



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 9

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

27 February 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

First witness today is Derrick Dalley. Before Mr. Dalley is sworn, I'd like to have exhibits entered. They are P-02021 to P-02061, P-02124 to P-02126.

THE COMMISSIONER: All right, those exhibits will be marked as entered.

Mr. Dalley, do you wish to be sworn or affirmed?

MR. DALLEY: Sworn is fine.

THE COMMISSIONER: Pardon me?

MR. DALLEY: Sworn is fine.

THE COMMISSIONER: Could you stand, please?

CLERK: Take the Bible in your right hand, please.

Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth so help you God?

MR. DALLEY: I do.

CLERK: Please state your name.

MR. DALLEY: Derrick Dalley.

CLERK: Thank you.

MR. LEARMONTH: Mr. Dalley, what – where do you live?

MR. DALLEY: I live in St. John's.

MR. LEARMONTH: Yes.

And I want to give you some dates of your – relating to your political career. Just – I'm going to ask you to confirm whether I have the right information.

Is it true that you were a Member of the House of Assembly of the Province of Newfoundland and Labrador November 2007 to November 30, 2015?

MR. DALLEY: Yes.

MR. LEARMONTH: And were you minister of Natural Resources from October 9, 2013, until November 30, 2015?

MR. DALLEY: Yes.

MR. LEARMONTH: And so that you were the minister of Natural Resources on November 29, 2013, the date of financial close?

MR. DALLEY: Yes, I was.

MR. LEARMONTH: Yes.

And your previous Cabinet appointments – I'll just go through them. Were you minister of Fisheries and Agriculture from October 9, 2012 to October 9, 2013?

MR. DALLEY: Yes.

MR. LEARMONTH: That was just before you went to Natural Resources.

MR. DALLEY: Yes.

MR. LEARMONTH: Yes?

Were you minister of Tourism, Culture and Recreation from October 28, 2011, to October 19, 2012?

MR. DALLEY: Yes.

MR. LEARMONTH: And were you minister of Business from January 13, 2011, to October 28, 2011?

MR. DALLEY: Yes, I was.

MR. LEARMONTH: Okay, so at the time of sanction in December 2012, you're the minister of Fisheries and Agriculture, correct?

MR. DALLEY: Yes.

MR. LEARMONTH: And then, as I said, at financial close minister of Natural Resources.

Mr. Dalley, I'd like you to turn to Exhibit P-01677, which is the Grant Thornton report. Do you have it before you?

MR. DALLEY: I do.

MR. LEARMONTH: All right.

Now, before we deal with some of the information on page 12 I wanted to ask you: At the time of sanction, what was your understanding of the – as to the cost estimates that were relied on by Cabinet, or by you, anyway?

MR. DALLEY: Capital costs would've been the \$6.2 billion.

MR. LEARMONTH: Okay.

At the time of financial close on November 29, 2012, what was your understanding of the costs that were available at that point?

MR. DALLEY: Capital costs would've been \$6.2 billion.

MR. LEARMONTH: So there was no change?

MR. DALLEY: No change.

MR. LEARMONTH: Okay.

And you voted for sanction and to execute the documents related to the financial close based on that information?

MR. DALLEY: Yes, I did.

MR. LEARMONTH: All right.

Now, page 12. I'm going to read the first 16 lines. I'm quoting: "As indicated above, prior to

financial close, bids were received from contractors whom ultimately were hired which collectively, exceeded the DG3 budget by approximately \$600 million, a twenty five percent ... overage. The amount of this overage exceeded the DG3 tactical contingency amount (\$368 million) by over \$230 million. Hence, prior to financial close, Nalcor should have been aware that the contingency amount included in DG3 budget was insufficient. Furthermore, Nalcor should have known that by April 2013 when the CH0007 bids were received" – that's the Astaldi bids, by the way – "(four months after sanctioning) that the DG3 contingency amount was exhausted. Accordingly, Nalcor knew that the remaining budget of \$4.2 billion (\$5.8 billion which is base plus escalation, less \$1.6 billion subtotal of DG3 budget at April 2013) after the consideration of CH0007 did not have any contingency remaining."

At the time of financial close were you aware of those facts?

MR. DALLEY: No, I was not.

MR. LEARMONTH: Okay.

When did you first become aware of these facts?

MR. DALLEY: Probably when I read this report. I don't recall having any knowledge of these contracts and the impact on the financial close number.

MR. LEARMONTH: Yeah.

MR. DALLEY: So it's through this report.

MR. LEARMONTH: So at the time of financial close you weren't aware of any of these facts?

MR. DALLEY: No, I was not.

MR. LEARMONTH: And the report was – the report in question, Exhibit P-01677, was dated December 7, 2018, so you would've learned this information after December 7, 2018.

MR. DALLEY: That's correct.

MR. LEARMONTH: Okay.

What was your reaction, if any, when you read this passage from the report?

MR. DALLEY: I was – I guess I was surprised. You know, we had gone through a process. And I think important for me as well, being the minister at the time – minister responsible to deal with, basically, the public engagement and the dissemination of information to the public, and to be answerable and answerable to the media and so on. And I was using the number 6.2 because that was what I was advised and believed to be the correct number.

MR. LEARMONTH: Yes.

And can you tell us what your understanding is of the duty of a politician when reporting information to the public on capital expenditures such as this? What is the obligation on the – on a politician in these circumstances?

MR. DALLEY: Well, the obligation would be to be accurate in information. I mean, this was a very significant decision and important issue for the people of the province. We'd gone through two elections on this issue and it was important from a political standpoint that we be accurate in the information we were putting to the public.

MR. LEARMONTH: Okay.

So, if you had been aware of this information, well, before financial close, we'll say – because this information was not available at the time of sanction, but it was available at the time of financial close – would that have caused you to do a deeper dive into the project to get to the bottom of where the financial picture was?

MR. DALLEY: Without question, but you know, there would've been a lot of work, obviously, to arrive at this number and if there was a different number, then that's the number we should've had. So at that time, if there was a change in numbers, that should've been the numbers used and should've been the number that we put out publicly.

MR. LEARMONTH: Yeah, but in order to get that – this information, you had – the information had to come from Nalcor, correct?

MR. DALLEY: Yes, they were the principal party that was doing the work around providing us with these kinds of numbers.

MR. LEARMONTH: So, looking back on this, do you agree with the point that Nalcor should have provided you with this information that was in their possession before financial close?

MR. DALLEY: Fundamental decisions such as this – it was incumbent on Nalcor and important for government, caucus, myself as minister, Cabinet in particular, to have the accurate number. And if 6.5 was the accurate number then we should have had the 6.5.

MR. LEARMONTH: Okay, or whatever number – whatever (inaudible) –

MR. DALLEY: Whatever the number, we should have had an accurate number.

MR. LEARMONTH: All right.

Now, as far – with respect to financial close, do you agree with the point that the project could've been cancelled at any time up to financial close? There would've been money spent – I think \$900 million, but it could've been – the project could've been put on hold if it was thought appropriate to do so. But that after financial close, given the documentation, the contractual arrangements with Canada whereby Canada could, if the province didn't complete, come in and complete the project and then send the bill to the Government of Newfoundland and Labrador.

Given those facts, do you agree with the point that, after financial close, although there was a theoretical possibility of cancelling – I mean, it could have been done – that, realistically, it was a point of no return?

MR. DALLEY: I would agree that, you know, beyond financial close and the loan guarantee, that practically, you know, this project was moving forward. It would have been a great challenge to – not to say it, as you said, theoretically, it probably, you know – some other decisions could have been made. I don't know, but without question, it was a commitment that we were gonna move forward.

MR. LEARMONTH: Yes.

So there would have been harsh consequences if the province did not complete the project, given the fact that it had given a guarantee for contingent equity?

MR. DALLEY: Yeah. Yeah, it would have been quite tangly, for sure, you know, with respect to the obligations that we committed to and what the federal government had expected as a result of the federal loan guarantee.

MR. LEARMONTH: Yeah.

Do you recall – I’m sure there are records on this and we’re trying to find them – but do you recall when Cabinet met to finalize the – or give final approval to the documents that were necessary to be signed for the – for financial close? We know financial close was February – November 29. Do you know if Cabinet met on November 29 or November 26? Can you give me any information on that?

MR. DALLEY: I don’t recall a specific Cabinet meeting. I would think there’d be Cabinet records available to, you know, to verify a Cabinet meeting. I know at that time there was significant discussion. It was a very important issue to the project and for the people of the province. You know, there was a tremendous amount of work to secure the federal loan guarantee.

So, you know, I know all that was going on at the time. But, specifically, whether there was a Cabinet meeting prior to or shortly after, I don’t recall.

MR. LEARMONTH: All right.

Next, please turn to page 19 of the Grant Thornton report – P-01677.

You got that before you, Mr. Dalley?

MR. DALLEY: Yes, I do.

MR. LEARMONTH: Okay.

So, at the bottom, where there’s a table under line 13 dealing with final – forecast final cost, and the first reference is to a forecast final cost

dated July 2013. So that’s well in advance of financial close. And you can see – the quote is: “*July 2013 Final Forecast Cost deck presented by Project team to CEO*” – that’d be Edmund Martin – “*of ~\$7.0B.*”

Do you see that?

MR. DALLEY: Mm-hmm.

MR. LEARMONTH: And then the next column, where it deals with communications to the executive: “Email from Paul Harrington” – he was the project manager – “to Gilbert Bennett July 22, 2013 states ‘... *here is the deck that has been produced for you and Ed.*’” And then the third column says: “We are forecasting the FFC to be ~\$7.0B which is 12% beyond the DG3” which would be the 6.2. “Exposure if mitigations are successful ... FFC would be reduced to \$6.8 B.”

So that was July 2013. When is the first time you became aware of the existence of that July 2013 final – forecast final cost?

MR. DALLEY: When I read the Grant Thornton report.

MR. LEARMONTH: Not before then?

MR. DALLEY: No.

MR. LEARMONTH: Now –

MR. DALLEY: Now, understanding, Mr. Learmonth, at the time in July 2013 I would’ve been minister of Fisheries at the time –

MR. LEARMONTH: Yeah.

MR. DALLEY: – so probably less involved in the details.

MR. LEARMONTH: Yes.

MR. DALLEY: But for me, personally, would have been when I read the Grant Thornton report.

MR. LEARMONTH: All right.

And there are, on pages 20 – well, 20, 21, 22 and 23 there are summaries of other forecast final

cost documents; they speak for themselves. For example, September 2013, which was after sanction, but before –

MR. DALLEY: Financial close.

MR. LEARMONTH: – financial close, it says: “Sept 2013 Briefing deck presented by Project team to CEO and VP Cap costs in the range of \$6.7B and \$6.95B.” And then “Handwritten notes: *‘as presented to EJM [Ed Martin] 12-Sep-2013.’*”

Were you aware of the existence of that final forecast cost – forecast final cost until you – at any time before you read the Grant Thornton report?

MR. DALLEY: No, I was not.

MR. LEARMONTH: Oh.

And all the other ones on these pages were you aware of them?

MR. DALLEY: No, I was not.

MR. LEARMONTH: You were not?

So, anyway, just to get back, so you – at the time of financial close you believed that the 6.2 billion DG3 number was the applicable – was the best estimate that was available for the cost of the project. Is that correct?

MR. DALLEY: Yes.

MR. LEARMONTH: Yeah.

Now, the next document I want to show you is Exhibit P-02114, and that can be brought up on your screen. And if we can turn to page 2 of that document, Mr. Dalley. Have you seen this document before?

THE COMMISSIONER: What tab is that, Mr. –

MR. LEARMONTH: I don’t believe it’s in the – in Mr. – I’m not sure if it’s in the book, but Mr. Dalley, I believe, is aware of it.

MR. DALLEY: Is that the new one entered today?

MR. LEARMONTH: No, that’s the one was entered – I don’t believe it’s in the documents. It was in Mr. Davis’s documents.

MR. T. WILLIAMS: Yes, I believe that was the one that we were supplied with the other night. It went to Mr. Davis. It was entered yesterday.

MR. LEARMONTH: Yeah, so can it be brought up on the screen?

THE COMMISSIONER: 02014.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. DALLEY: I see it.

MR. LEARMONTH: It’s page 2. You’re familiar with that, are you?

MR. DALLEY: I have page 1 –

MR. LEARMONTH: Okay, you got 1. Okay, well, let’s go to page 2 –

MR. DALLEY: – 114.

MR. LEARMONTH: – of P-02114. Do you have that before you, Mr. Dalley?

MR. DALLEY: 01214?

MR. LEARMONTH: Yes, page 2.

MR. DALLEY: No, I have page 1.

UNIDENTIFIED FEMALE SPEAKER: One.

MR. T. WILLIAMS: I don’t know if that’s the right number there.

THE COMMISSIONER: Just one second.

MR. T. WILLIAMS: 02114.

MR. LEARMONTH: 02114, yeah, page 2. Yeah, that’s it.

MR. DALLEY: Okay. Now I have it.

MR. LEARMONTH: Okay, you’ve got that.

Okay, so you've seen this chart before, have you?

MR. DALLEY: I did.

MR. LEARMONTH: Okay.

So it's dated November 19, 2013, and, you know, it speaks for itself but it suggests that – well, November 19, 2013, current – under the second column: Current FFC – that's the forecast final cost – we have a figure of 6,531,754,580 and this is dated November 19, 2013. Were you aware of the existence of this forecast final cost at any time before financial close?

MR. DALLEY: No.

MR. LEARMONTH: When is the first time you saw this chart or this document?

MR. DALLEY: This particular document I saw yesterday.

MR. LEARMONTH: Yesterday. All right.

And then if we turn back to page 2 – page 1 of this report, there's an email from James Meaney of Nalcor: Hi Meg, "Please post the attached files to the data room this evening. I am going to suggest the 'Material Contracts' folder in the 'Overview' subfolder.

"Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH." – That's the independent engineer's company – "Do not provide access to NL, BLG and Faskens at this time."

Do you have any information to give it as to why Nalcor would not want the Government of Newfoundland and Labrador to have access to this document on November 19, 2013?

MR. DALLEY: No, Sir, I do not.

MR. LEARMONTH: You don't have any information. But, anyway, you weren't aware of this \$6.5-billion figure at the time of financial close?

MR. DALLEY: No, I have – I have no recollection of the 6.5 number or where it came from. You know, obviously, in preparation for the Inquiry there's documents referencing 6.5, but it's – that's when I basically became aware of it.

MR. LEARMONTH: Okay.

Now, there's another document that came to light – we received it late last night – which may be relevant to this point. And it's in your book of documents at tab 58, Exhibit P-02125. Do you have that before you?

MR. DALLEY: Yes, I do.

MR. LEARMONTH: All right.

So this is an email Tuesday, November 26, 2013, 9:28 from Derrick Sturge – I believe he was the CFO at Nalcor – to Ed Martin, Charles Bown – he was your deputy minister. Is that correct?

MR. DALLEY: Yes, he was.

MR. LEARMONTH: Donna Brewer – I believe Ms. Brewer was in Department of Finance. Is that correct?

MR. DALLEY: Yes.

MR. LEARMONTH: And Paul Myrden – he was in the Department of Finance also. Is that correct?

MR. DALLEY: Yes, he was.

MR. LEARMONTH: Yeah.

So it says that – the subject is: "Outstanding Business Issues with Canada." So this is just three days before the financial close.

I'm going to read part of it: "Hi folks, we heard back from Canada last evening on the outstanding project finance ... issues. As you may recall, we gave them a written proposal Thursday evening last week on all of the remaining eight business issues. They came back last evening and gave us everything we asked for with one exception and with two clarifications. Included in the written proposal

back to them (that they accepted) was that cost overruns would be pre-funded in an escrow account, but only from the cost estimate at Financial Close, which is certainly better than calculating overruns from the DG3" numbers. So there are two issues we'd have to decide on. And then it reads on.

Now – so this is a reference three days before financial close to, you know, cost overruns; there's no amounts in this email. We've – number one, were you aware of this information before financial close?

MR. DALLEY: No.

MR. LEARMONTH: You weren't. So if there was a suggestion that you had some knowledge that there would be cost overruns beyond the 6.2 at the time of financial close, you would reject that suggestion?

MR. DALLEY: I would. I mean, I had no recollection of a number beyond 6.2.

MR. LEARMONTH: But –

MR. DALLEY: And this document appears to be reference to, obviously, negotiations with the Government of Canada on the federal loan guarantee.

MR. LEARMONTH: Yes.

MR. DALLEY: And my deputy would've been involved but I was not involved in the federal loan guarantee discussions.

MR. LEARMONTH: And you don't recall your deputy reporting anything along these lines to you?

MR. DALLEY: No, I don't.

MR. LEARMONTH: All right.

And then the next document is – it's P-02126 and that's at tab 59 of your book.

MR. DALLEY: Mm-hmm.

MR. LEARMONTH: This, I understand, is some handwritten notes that Derrick – in the handwriting of Derrick Sturge and perhaps Mr.

Simmons will want to ask you questions about them. But, anyway, you weren't aware of any cost overruns that had been identified or were under consideration at the time of financial close? That's your evidence?

MR. DALLEY: No. That's my evidence, it was a 6.2 number and I have no recollection of anything any different.

MR. LEARMONTH: All right.

And do you agree that it was incumbent on – or Nalcor was under a duty to provide you with the best information they had on costs, I will say, up to the time of financial close?

MR. DALLEY: Yes, and at the time we obviously believed that's exactly what they were doing.

MR. LEARMONTH: Yes.

Now, I want to ask you some questions. I realize that you were new to the Department of Natural Resources at the time of financial close, having been appointed minister of Natural Resources, I believe it was on October 13 or earlier in October. But did you have any – did you do any work or have any input into the arrangements with Canada for the guarantee?

MR. DALLEY: No. I had no involvement in the loan guarantee. I was aware of the discussions, you know, Justice, Finance and the premier's office. And once it was delivered, I guess, and when we secured the loan guarantee I would have become aware of some of the details, but other than that not involved at all in negotiations.

MR. LEARMONTH: Okay.

Well, to your knowledge did the Government of Newfoundland and Labrador place any reliance on the fact Canada had given the guarantee in terms of their due diligence on the project?

MR. DALLEY: I think there was some.

MR. LEARMONTH: Yeah.

MR. DALLEY: Sure.

MR. LEARMONTH: Okay. But if there was some reliance, what would be the basis of that because I don't believe there are any communications between Canada and the Province of Newfoundland before financial close; it was with Nalcor. Is that correct?

MR. DALLEY: Again, I wasn't involved so I don't know exactly who would've been directly involved in –

MR. LEARMONTH: Yeah.

MR. DALLEY: – the discussions.

MR. LEARMONTH: Yeah.

MR. DALLEY: As I said, later when, I guess, the loan guarantee was achieved –

MR. LEARMONTH: Yeah.

MR. DALLEY: – and some involvement with Justice and Finance –

MR. LEARMONTH: Yeah.

MR. DALLEY: – but other than that I couldn't tell you directly who was –

MR. LEARMONTH: Yeah.

MR. DALLEY: – in the room and doing the negotiation.

MR. LEARMONTH: Yeah. Well, what I said actually before wasn't correct. I know that there were – the Government of Newfoundland was involved. But I'm thinking specifically of any reviews that Canada may have done on the cost estimates. Any testing of the cost estimates that had been provided by Nalcor.

Did you put any reliance on the Government of Canada's work on that matter?

MR. DALLEY: I didn't see the work that was done, but understanding and in the discussions as to oversight, the due diligence that was performed by the Government of Canada with reference to, you know, the lending, the legal, environmental – there was a number of aspects of conditions, and I guess oversight to – and due diligence on behalf of Canada that I was aware

of, basically, through conversation. But other than that, not aware of the documentation or any testing that would have been done –

MR. LEARMONTH: Yeah.

MR. DALLEY: – outside of just that general conversation and understanding.

MR. LEARMONTH: Were you aware that Canada was doing some form of review at some level on the capital cost estimates and contingencies et cetera?

MR. DALLEY: My understanding they were as a part of their due diligence but, beyond that, I wasn't aware of who or what documentation or how much work got done.

MR. LEARMONTH: Yeah and so you weren't aware of – if they were doing that due diligence on the cost estimates, you weren't aware of the scope or extent of the –

MR. DALLEY: No, I was not.

MR. LEARMONTH: – review that they were undertaking.

MR. DALLEY: No.

MR. LEARMONTH: Yeah.

Is there any reason why the Government of Newfoundland and Labrador didn't request a copy of the report of the independent engineer before financial close?

MR. DALLEY: I don't know why there would be a reason why. And, again, I know from my perspective – I don't know about Finance or the Premier's office, but I know I don't recall requesting the report.

MR. LEARMONTH: Yeah.

MR. DALLEY: I understood that there was an independent engineer report being completed for – as a part of the condition precedent for the federal loan guarantee. That was a requirement of the report when the loan guarantee was approved and, obviously, the report had to have been done and met the satisfaction of the Government of Canada at the time.

Following that – I think it would have been February – it became, I guess, a discussion about where the report was and we eventually got the report in April.

MR. LEARMONTH: Yeah.

MR. DALLEY: I was aware that the report was for the Government of Canada and then, subsequent to that, there was some discussions and it was (inaudible) that the engineer report and their work would be supportive to the Government of Newfoundland and Labrador and supportive to the Oversight Committee that we put in place.

MR. LEARMONTH: Yes.

But would it not have been prudent for the Government of Newfoundland and Labrador to request a copy of the independent engineer's report before financial close so that you could have a look at the work they had done and see whether it corresponded with your understanding as – with respect to the cost estimates? Would that –

MR. DALLEY: Again, I can't –

MR. LEARMONTH: – not have been –

MR. DALLEY: I can't confirm if there was no request made. I know from my involvement and because I was not involved – my involvement as minister. But I was not directly involved in the loan guarantee, other than knowing that that was a condition precedent and a report had been done. I would not have been directly involved so, you know, it might be best to ask someone directly involved whether there was a request for that report and whether it was denied or otherwise.

MR. LEARMONTH: Okay.

MR. DALLEY: So I'm not sure.

MR. LEARMONTH: But are you aware whether – as to whether a request was made by the Department of Natural Resources before financial close for a copy of the independent engineer's review of cost estimates?

MR. DALLEY: I'm not aware of a request.

MR. LEARMONTH: Okay.

Because I'm just – ask you to turn to page 16 of the Grant Thornton report, P-01677. And this is a review or analysis of the contents of portions of the reports prepared by the independent engineer and shows the – how the wording changed from report to report.

You can see that the draft – and by the way, there were other reports. These – there's been a selection made here of three. I think there were a total of, perhaps, five or six reports, but Grant Thornton decided to just select three.

So if we look at the Draft Report, November 15, 2013 – this is just below line 15. Do you have that before you?

MR. DALLEY: Oh, sorry, the Grant Thornton report?

MR. LEARMONTH: Yes, page 16.

MR. DALLEY: Sixteen? Okay.

MR. LEARMONTH: Okay, so – and this says, example 1 – Draft Report, November 15, 2013: The IE – the comment in – that's extracted from the November 15 report is: "The IE typically sees contingency allowances in the range of 12 percent to 18 percent at this state of project development." And just for the record, the contingency used by Nalcor in the DG3 numbers was 6.7 per cent. There was 6.7, so the independent engineer is making that comment, 12 per cent to 18.

And then under that it says, the – and then in the Interim Final report, and that's the one that was prepared on the day – or dated the same date as financial close. It was changed to: "The IE typically sees contingency allowances in the range of 6 ... to 10 percent at this" – time – "state of project development." So the 6.7 would've been within that. But then, underneath that, it says – in the box below the – what I just referred to: "These contingency values appear ... to be at the low end of the observed range which in our opinion is aggressive."

Now, do you agree or – I'll put it to you that, you know, if you had had that report before financial close or on the day of financial close,

that it may have caused you to dig deeper into that subject matter of contingencies and so on. Do you agree with that point?

MR. DALLEY: You know, at the time, this report – in my view, this report was about financial close. It was about the details that were going to be provided to secure the federal loan guarantee. And, again, subsequent to that, the independent engineer report became very important to oversight and where we were.

MR. LEARMONTH: Yeah.

MR. DALLEY: I knew, you know, it was an interim report. As I've stated before in my interviews, there was a lot going on in government at the time and I didn't request the report. Part of, you know –

MR. LEARMONTH: Yeah.

MR. DALLEY: – the day-to-day routine; if there's a report or there's material I need, the deputy would provide it. Other than that, I don't have an explanation as to why we didn't ask for the report.

MR. LEARMONTH: Yeah.

MR. DALLEY: Eventually, we got the report; it was interim for the Government of Canada. It became a final report and eventually, report – we received a report.

MR. LEARMONTH: Yeah.

But – and I know it's, sort of, hypothetical because we're looking back, but I suggest to you that if you had received that report November 29 and you read the point that the – the statement that the contingency values appear to be at the low end of the observed range which, in our opinion, is aggressive, that they have caused you to, you know, have a harder look at the matter?

MR. DALLEY: It's – you know, again, there was conversations going on at the time: Could this have possibly fed into some other questions around, you know, the project and, particularly, around the schedule. And, you know, it may have led to some more questions but, you know, it's possible we're having the same kinds of

questions and conversations at the same time. So it may have, I couldn't say for sure.

MR. LEARMONTH: Yeah.

The – I'd like you to explain the nature of your communications with representatives of Nalcor while you were minister of Finance. Let's take the first year, for example. Did you have a – was there any protocols set up whereby the government – you would receive information from the chief executive officer or other representatives of Nalcor? What arrangements were in place and what practice was followed in that respect?

MR. DALLEY: It was fairly open, not structured. I would primarily rely on my deputy minister for information and even access to Nalcor. There were times that I would talk to Mr. Martin directly; either meet with him or have conversation. I've met with the board chair to have conversations but, for the most part, it was open. I found Mr. Martin, in particular, to be very co-operative and engaging and available, understanding that they were building a project.

But, you know, from my perspective there was another element in terms of our accountability to the people. And, particularly, as minister, being kind of the public voice for government on the project, I felt that Mr. Martin understood that and, as a result, we had a good working relationship. And he was available when I needed him and I could get the information when I needed it. You know, to some extent, you know, not always but it's – again, it was a good relationship and worked well and particularly through the deputy minister as well.

MR. LEARMONTH: Yeah.

So you – well, let's say – let's take the period between the time of your appointment and financial close. On how many occasions would you have met with Mr. Martin during that period?

MR. DALLEY: From my appointment to financial close?

MR. LEARMONTH: Yes.

MR. DALLEY: October 9 to November 29?

MR. LEARMONTH: Yes.

MR. DALLEY: I don't recall.

MR. LEARMONTH: You don't recall.

MR. DALLEY: No.

MR. LEARMONTH: And for these meetings that you had with Mr. Martin, either during the period I referred to or after that, did you keep any records or any minutes of the meetings or anything like that?

MR. DALLEY: No, I did not.

MR. LEARMONTH: Okay. There was no records taken at all?

MR. DALLEY: No.

MR. LEARMONTH: Did you ever receive any written communication – apart from the slides and so on, did you ever receive any correspondence or emails from Mr. Martin while you were minister of Natural Resources on cost estimates or possible overruns or anything?

MR. DALLEY: Again, none that I recall. You know, you're getting hundreds of emails a day sometimes, so I don't recall an email that would stand out and give me a number that was contrary to the numbers I had.

MR. LEARMONTH: Okay.

You said you met with the chair of the board of directors of Nalcor on at least one occasion. Is that correct?

MR. DALLEY: Yeah, I would – my recollection is three times.

MR. LEARMONTH: Okay. When would that have been?

MR. DALLEY: Would've been later; wouldn't have been early, from my recollection. I couldn't tell you dates but I do recall meeting with – the chair at that time would've been Mr. Marshall.

MR. LEARMONTH: Mr. Ken Marshall. And did you meet – where did you meet with Mr. Marshall, in your office or elsewhere?

MR. DALLEY: My recollection was once in my office and twice at lunch.

MR. LEARMONTH: Okay.

Was that – was – were you two the only people present or were there other people with you?

MR. DALLEY: Would've been just the two of us.

MR. LEARMONTH: Just the two of you.

MR. DALLEY: Mm-hmm.

MR. LEARMONTH: On all three occasions?

MR. DALLEY: Yes.

MR. LEARMONTH: And what was the nature of the discussion at those meetings?

MR. DALLEY: Again, I don't recall the details of specific – you know, specific details, but it would've been a conversation about a number of things, but certainly about the project and how things were going and other issues, whether it was public issues, board concerns – just a general conversation of – about the project.

MR. LEARMONTH: About the project.

Please turn to page – tab 16 of your book of documents, Mr. Dalley. That's Exhibit P-02036.

MR. DALLEY: Yes.

MR. LEARMONTH: And you've seen this document. It has to do with – it's a report from James McLeod of *The Telegram* dated on February 25, 2014.

It starts off: "The provincial government didn't bother to ask to see a key report from the only body assigned to do ongoing independent oversight of the Muskrat Falls project, according to Natural Resources Minister Derrick Dalley.

"What's more, Dalley said the reason the government never saw the report was because the Government of Canada authorized a \$5-billion loan guarantee based on an interim draft of an engineer's report."

What exactly did you mean by that?

MR. DALLEY: Well, first off, the interview with Mr. McLeod was not a great interview, and I acknowledged that a few days later in the House of Assembly, with respect to detail and my preparation for the interview. So I acknowledged that publicly.

And having said that, it – Mr. McLeod and what he wrote, whether I was speaking or speaking totally on behalf of the provincial government, you know, he may have taken some liberties with that. But the issue goes back to a fuller discussion, I guess, about the requirement for the independent engineer's report to satisfy the condition precedents and to secure the \$5-billion loan guarantee.

MR. LEARMONTH: Yeah.

Now, the – on page 1 at the bottom you say – you're quoted as saying, or this is what Mr. McLeod writes: "Dalley was at a loss to explain why the provincial government got the February interim report but didn't get the critical November interim report, which was the basis for the \$5-billion ... guarantee."

Is that a correct representation of what you said?

MR. DALLEY: No question at the time, when we had that discussion I couldn't explain why there would've been – we didn't have a copy of the report. But understanding the report, as stamped on the report, it was done for the Government of Canada process. Later we'd get those reports released. I think we didn't actually get it until February or –

MR. LEARMONTH: Yeah.

MR. DALLEY: – April some time.

MR. LEARMONTH: Yeah. But would you agree that by that time it was too late to do anything if there was something in the report that you – that caused the government concern?

MR. DALLEY: No –

MR. LEARMONTH: There's a document –

MR. DALLEY: No, I wouldn't – I don't think I would agree with that premise in the fact that, you know, all of the information would've helped contribute to the decision probably, but beyond that as well in terms of the oversight, in terms of next steps, in terms of transparency and accountability, so ...

MR. LEARMONTH: Yeah, but after the funds had been advanced, it was too late to turn back.

MR. DALLEY: With respect to having that report to feed into the decision on financial close, yes, we never had that report.

MR. LEARMONTH: Yeah.

MR. DALLEY: But the report obviously satisfied the Government of Canada for the federal loan guarantee.

MR. LEARMONTH: Right. Yeah.

MR. DALLEY: And at the time my view was – because I wasn't involved with the federal loan guarantee, my view was basically, look, this is a requirement here, we've met that requirement. And, over time, we get the report. Like many reports on a daily basis, I would end up with the report.

MR. LEARMONTH: Yeah. I understand that.

MR. DALLEY: Yeah.

MR. LEARMONTH: But the point is this, that I'm putting to you and I want your comment on that. The time to get the report is before the financial – the guarantee is put in place and the government – or Nalcor has received the funding. There's not much you can do about it after that point.

And by getting the reports in February, even if there was something in the report that was of concern, there's nothing you could've done about it because the money had already been advanced.

MR. DALLEY: Nothing we, I guess, we could've done about it with respect to the financial close.

MR. LEARMONTH: Right.

MR. DALLEY: Fair.

MR. LEARMONTH: Okay.

And then on top of page 2 – just following up, I want to refer to it: “When asked, he said, ‘Good question. Ask the Government of Canada.’”

What did you mean by that? Why would you make that statement?

MR. DALLEY: Well, at the time, based on – again, I don’t recall specifics of the interview, but at the time Mr. McLeod obviously wanted to know why we never had the report. And it was up to the Government of Canada to release the report was my understanding.

MR. LEARMONTH: Okay. But your government could’ve asked for a copy of it.

MR. DALLEY: And our government may have. I know I did not.

MR. LEARMONTH: Okay, very good.

And then you say – the third paragraph on page 2: “‘We didn’t need to see a report for the federal loan guarantee,’ he said. ‘We’ve got our own work done around the project and the loan guarantee and the financing.’”

What were you referring to when you said: We’ve got our own work? What work was done that you –?

MR. DALLEY: Well, in preparation in terms of sanction, as well as the lead up to financial close that this was an important element. But we were given numbers around capital cost and the – you know, the work, I guess, from a decision point that we were being provided numbers and it had been a tremendous body of work done up to that point.

MR. LEARMONTH: But when you (inaudible) our own work, I suggest that means government’s own work. Is that what you’re referring to?

MR. DALLEY: Including Nalcor.

MR. LEARMONTH: Including Nalcor. But what work did government do that would fall

into that category of “our own work”? What were you referring to there?

MR. DALLEY: It would have referencing at the time, primarily, I guess, the work of Nalcor but as well, whatever involvement with respect to finance, justice – it’s just a general comment at the time.

MR. LEARMONTH: All right.

Because you’re – are you aware that when government retained Manitoba Hydro International to do a review of the DG3 capital cost estimates, the Manitoba Hydro recommended or suggested that there should be a review done of strategic risks for the project? And that the government, at the request of Nalcor, we understand, removed that from the scopes so that there would – never was any review done of the strategic risk – on the strategic risk issue by Manitoba Hydro International.

Were you aware of that?

MR. DALLEY: I’ve been aware of it through the discussions at this Inquiry.

MR. LEARMONTH: Yeah.

Were you aware of it before this matter came up at the Inquiry?

MR. DALLEY: No.

MR. LEARMONTH: No.

So, what I’m suggesting to you, there wasn’t – the government never did a full review of the financial aspects or cost estimates.

Do you agree with that?

MR. DALLEY: (Inaudible.)

MR. LEARMONTH: I mean, there was nothing done by the Department of Finance. We know that.

MR. DALLEY: And again, at the time – I mean, I was speaking as a new minister in Natural Resources and that was my knowledge at the time –

MR. LEARMONTH: Yeah.

MR. DALLEY: – my understanding at the time.

MR. LEARMONTH: Yes.

MR. DALLEY: And obviously, if it's – you know, subsequent, beyond that – if it's an indication that the work wasn't done, certainly wasn't my understanding at the time.

MR. LEARMONTH: Yes.

And you say later on in paragraph 1, 2, 3, 4, 5, 6, 7, 8 – 10: “There is no one within the Department of Natural Resources who is studying Nalcor's engineering and design work in detail, and when it comes to the only independent body doing that sort of work, the government didn't get the report until three months after it was” – done.

Then you say: “But Dalley said it would be a waste of resources to have anybody in the Department of Natural Resources doing that kind of detailed oversight.”

What's the basis for that statement?

MR. DALLEY: Well, I think, with the caveat acknowledging that it wasn't a good interview, the – at the time, thinking that we never had an engineering expert that we're going to follow with Nalcor.

Again, the relationship, in my understanding of the relationship and what I saw when I came into the department, there was a solid relationship established with Nalcor. You know, day to day, there was access, there was opportunity. They were, you know, almost an extension of the department, that the expertise that we needed to build this project were there and they were our people. And we were working together, whether it's – you know, in that kind of an approach, and to duplicate that and have someone at Natural Resources.

At the time, that was certainly my understanding.

MR. LEARMONTH: But isn't there a duty or do you agree that there is a – certainly a role for

oversight, independent oversight of Nalcor in this situation, when you have a large capital project?

MR. DALLEY: Yes.

I would agree that oversight and, I think, if you look at a number of initiatives by our government, if you look at right from the beginning to pre-sanction, post-sanction, financial close and beyond – I know it's been answered in here in a number of discussions – there's a long list of oversight. And for me, it equates some of the oversight with transparency and accountability as well. And there's significant mechanisms built in around transparency and accountability.

And, you know, I certainly agree with you that there has to be some level – but at the same time, there was significant oversight in place but the relationship with Nalcor was a good relationship. And the expertise to run Nalcor and, particularly, to build the project worked very closely with Natural Resources.

MR. LEARMONTH: Yeah.

But, in terms of the capital cost estimate, if the government removed from the scope of work – to be carried out by Manitoba International – a review of strategic risk, I suggest to you that government didn't do a – never did a complete, up-to-date, detailed review of the capital cost estimates.

And the reason I'm emphasizing that point in this question is that the problem with this project is the capital cost estimates. That's why we're here. So how could – you said there was a lot of oversight but with no independent review of the capital cost estimates undertaken by the Government of Newfoundland.

I'd ask you to explain the basis for your comment in the – on page 3 of this exhibit that there's been tremendous oversight.

MR. DALLEY: My understanding at the time – that the oversight that was involved of the pre-sanction would have involved a number of independent analysis and reviews.

MR. LEARMONTH: Mm-hmm.

MR. DALLEY: In terms of Manitoba Hydro, Navigant, Knight Piésold, Public Utilities Board, Wade Locke, you know, I – my understanding was they were all involved in some aspect and then beyond sanction. The work around financial close, particularly around the federal government's work, around what the requirements were, as well the engagement of Justice and Finance and Premier's office. And then within Nalcor itself, the way it was structured and set up all the way through with respect to project management team, the executive team, the board, the internal audit functions, governance functions: all those things were in place and that would've been my understanding that, you know, everyone in some way contributing to –

MR. LEARMONTH: Yeah.

MR. DALLEY: – contributing to the information that was being provided to us.

MR. LEARMONTH: Yeah.

But I'm speaking of independent oversight by government, not by Nalcor. I'm talking about independent oversight of the capital cost estimates by the Government of Newfoundland. And I'm suggesting to you that there was never one done because the scope of review of Manitoba Hydro International's engagement removed strategic risk from their scope of work. So on that basis can you point me to one study that the Government of Newfoundland and Labrador did to verify or analyze the capital cost estimates at DG3 of 6.2 billion?

MR. DALLEY: No, I mean, at the – the removal of the risk assessment was something I became aware of as a result of the Inquiry, but at the time of these comments, I would not have been aware of that.

MR. LEARMONTH: All right.

The – and just for the record, you said you relied on Knight Piésold. I think the information we have is Knight Piésold never completed a report. That there was a draft report that the Consumer Advocate had Knight Piésold prepare, but the – it was never put into final form.

The second point is when you referred to Navigant. Navigant did a high-level review of the DG2 capital cost estimates, not the DG3. Do you acknowledge those points?

MR. DALLEY: Yes, sure.

MR. LEARMONTH: Yeah, okay.

Please turn to tab 2 of the book of documents and it's Exhibit P-02022. It's a one-page document. Do you have that, Mr. Dalley?

MR. DALLEY: Yes, I do.

MR. LEARMONTH: Yes.

Okay, so on – we'll start at the bottom and then – and go up. On Friday, October 18, 2013 – so that's just, you know, a short time before financial close – Paul Myrden, who you've acknowledged as a – worked for Finance, is that right?

MR. DALLEY: Yes, my understanding.

MR. LEARMONTH: Sends an email to Derrick Sturge, Robert Hull, James Meaney and Auburn Warren, they're the – some financial people at Nalcor.

The email says: "Hi guys,

"Minister Marshall has asked to be provided with the following financial information:" – okay.

"1. A breakdown of budgeted project costs by component showing total project costs along with the portion which is the responsibility of Nalcor" And then there's other – list of items.

And if we turn to page – to tab 4, which is Exhibit P-02024, we see that there's a reply from Auburn Warren. And there's a chart on page 2 of that exhibit which shows – this is Exhibit 02024, page 2.

Can you look at that chart?

MR. DALLEY: Yes.

MR. LEARMONTH: Okay.

And do you acknowledge that the total capital cost estimate here – this is just before financial close – is \$6,202 – in the right column?

MR. DALLEY: Yes, it is.

MR. LEARMONTH: Yeah.

And there's no reference to any other figures?

MR. DALLEY: No.

MR. LEARMONTH: Yeah.

So the Minister of Finance got this information just a short time before financial close.

Do you agree with that?

MR. DALLEY: Yes.

MR. LEARMONTH: Okay.

Okay.

Tab 3 of your book of documents, Mr. Dalley, is Exhibit P-02023. This is November 1, 2013, and the article saying: Muskrat power will be profitable.

In the first paragraph, or second – excuse me, first paragraph – and once again, this is another article by James McLeod – Mr. McLeod writes: *“The Muskrat Falls project will be an important source of power for mining developments. So everyone is clear: while we're waiting for some of that development and we don't need that power, we're going to sell it. We're going to make money for Newfoundlanders and Labradorians.”*

At the time you made this statement, or at any time after you made this statement, were there any calculations done as to how much money was gonna be realized from selling surplus power? Or were these just general statements?

MR. DALLEY: Mostly, general statements.

MR. LEARMONTH: You're not aware of any calculations done?

MR. DALLEY: I'm aware of a number – I know there was a number. I'm – remiss to say it,

because I'm not sure exactly what the number was. But I know there was always a number, you know, a general number that was used in looking at the value of the project and what would get calculated in, I guess, the net value of the project. But I'm not sure what that number was.

MR. LEARMONTH: Okay.

So it was just a general –

MR. DALLEY: Yes.

MR. LEARMONTH: – expression of the understanding that you had.

MR. DALLEY: Yes.

MR. LEARMONTH: Yes.

Okay, tab 8 is a – no, excuse me, tab 5. This is November 6, 2013, it's from Diana Quinton. Can you identify Diana Quinton?

MR. DALLEY: She would have been the communications director in the Natural – in the Department of Natural Resources.

MR. LEARMONTH: Okay.

Now, there's a quote here –

UNIDENTIFIED MALE SPEAKER: Exhibit number, please?

THE COMMISSIONER: 02025 – P-02025, tab 8 – tab 5, rather.

MR. LEARMONTH: Oh, it says – it's entitled, well: Motion Defeated to Return Muskrat Falls to the Public Utilities Board.

And there's a quote from you, Mr. Dalley: “The Public Utilities Board and their independent advisor, Manitoba Hydro International, have already reviewed the Muskrat Falls Project. Manitoba Hydro's report clearly acknowledged that Muskrat Falls is the least-cost option. Following a nine month review process and over \$2 million later, the conclusion of the Public Utilities Board was essentially that they could not come to a conclusion.”

Is it correct that the Manitoba Hydro report that you were referring to had been commissioned by the Government of Newfoundland and Labrador rather than the Public Utilities Board?

MR. DALLEY: Couldn't tell you exactly which one because I think MHI did a report for the Public Utilities Board and I think they did a report for government after.

MR. LEARMONTH: Yeah.

MR. DALLEY: So I'm not sure which one in terms of the timing, but it certainly would have been one of them.

MR. LEARMONTH: Yeah, but the one that the Manitoba Hydro did for the Public Utilities Board was a review of DG2 costs.

MR. DALLEY: Okay, well, it would have been the one – other one for government. I couldn't tell you exactly which one.

MR. LEARMONTH: Okay.

So was this a statement that had been prepared for you by your staff?

MR. DALLEY: It would have been.

MR. LEARMONTH: It would have been. And, once again, I don't want to dwell on it too much but at the time – if you were referring to the DG3 report of Manitoba International, I take it that at the time you wrote this statement, November 6, 2013, you weren't aware that Manitoba Hydro's scope of work had been changed so that there was no analysis of the strategic risk?

MR. DALLEY: No, I was not.

MR. LEARMONTH: You're not aware? Okay.

Tab 8 is Exhibit P-02028 and it's dated November 25, 2013, so we're getting close to financial close. And is this a – can you identify this document? Is it a proposed press release or what is it?

MR. DALLEY: It appears to be a compilation of key messages around financial accountability and benefits to the province within government,

and particularly when there's issues, particularly issues of the day, whether a minister would speak publicly or the premier, or you were going to the House of Assembly to answer questions, it was general that the communication staff would compile key messages and ensure that ministers were aware.

So, this is what this looks like. For what purpose, I don't recall. But it could have been in prep for – whether it was some public appearance or some presentation, I'm not sure.

MR. LEARMONTH: But it refers under the heading: financial accountability. It says: Nalcor is accountable to the Government of Newfoundland and Labrador. Nalcor files reports and plans under the transparent, accountability. And then, Nalcor files an annual business report and holds an AGM. And Nalcor has an independent auditor to review its financial operations.

Do you agree that the – in an ordinary audit, which Nalcor had done on a regular basis, there's no review of cost estimates?

MR. DALLEY: Not fully aware of what details are done in the full audit.

MR. LEARMONTH: Okay.

Tab 9, it's a release from your department, Natural Resources, December 10, 2013. In a second to – it's Exhibit P-02029. In the second to last paragraph, you say: "Today's announcement is a testament to our Premier's leadership and reaffirms our government's confidence in the Muskrat Falls Project. We have done our due diligence right from the start on this project to ensure it is in the best interest of Newfoundlanders and Labradorians and we have achieved a project that will be a source of renewable electricity generation" – et cetera.

What due diligence are you referring to in this passage?

MR. DALLEY: This would have been a generic comment and understanding and confidence at the time that, based on the information we had, we were making decisions that were in the best interests of the people of the province and

moving forward with the project to address some of the energy concerns.

MR. LEARMONTH: Okay.

Tab 10, which is Exhibit P-02030, in the third to last paragraph you state – or in this press release from Natural Resources dated December 24, 2013: “Completion of the Federal Loan Guarantee and financing are major milestones completed this year for the Muskrat Falls Project. The loan guarantee will result in projected savings of \$1 billion in interest costs for ratepayers”

Was any calculation done to show how that \$1-billion figure was calculated?

MR. DALLEY: My recollection, the number would have been given to us by Nalcor, I think, it was \$1 billion, \$ 1.1 billion. Other than that, not that I’m aware of any – in my department.

MR. LEARMONTH: So that would’ve been information received from Nalcor.

MR. DALLEY: Yes.

MR. LEARMONTH: All right.

But probably not verified by Department of Finance?

MR. DALLEY: I couldn’t answer that.

MR. LEARMONTH: Okay.

Tab 11, Exhibit P-02031. This is a letter from – dated December 17, 2013, from the honourable Joe Oliver to you. In the middle of the second paragraph, Mr. Joe Oliver says: “Furthermore, Canada’s obligations to consult and accommodate Aboriginal” – people – “in advance of taking decisions on the environmental assessments of the three projects” – has – “been satisfied.”

Is there some reason Mr. Oliver would be writing you on that – this subject at this time?

MR. DALLEY: Other – I guess, essentially, he’s writing Minister Marshall, who had made the request.

MR. LEARMONTH: No. He’s writing you, I think.

MR. DALLEY: Because Minister Marshall had made the request.

MR. LEARMONTH: Oh, yes. Okay, okay.

Tab 14? Here you refer to – let’s see now – in paragraph – this is January 20, 2014. “Minister Clarifies Information about Capital Cost of the Muskrat Falls Project” – so this is January 20, 2014, couple of months after – almost a couple of months after financial close. And the quote here is for you – is: Today, the honourable Derrick Dalley, minister of –

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: Oh, P-02034. Sorry.

“Today, the Honourable Derrick Dalley, Minister of Natural Resources, confirmed that” – the – “direct capital costs for the Muskrat Falls Project is \$6.2 billion, as indicated in the Decision Gate 3 cost estimate”

So that’s just a confirmation of what you said earlier that at the time of the sanction – or at the time of financial close, you believed it to be 6.2 –

MR. DALLEY: Yes.

MR. LEARMONTH: – and not 6.5 or any other number.

MR. DALLEY: No.

MR. LEARMONTH: Correct?

MR. DALLEY: Yeah, correct.

MR. LEARMONTH: Okay.

Tab 15, which is Exhibit P-02035. Is this – if you could just have a look at that? At the bottom, there’s an email from James McLeod.

Is this the background to the document that I referred to earlier where you were quoted and said that you didn’t have a good day or whatever? Is this –?

MR. DALLEY: That is the –

MR. LEARMONTH: That's the background –

MR. DALLEY: That's it –

MR. LEARMONTH: – information.

MR. DALLEY: – around the –

MR. LEARMONTH: Okay.

MR. DALLEY: – the interview and the discussion, sure.

MR. LEARMONTH: Okay.

Tab 17, which is Exhibit P-02037. Now, this is a February 25, 2014, email from Ed Martin of Nalcor to, I believe, it's Karen O'Neill at Nalcor and to Charles Bown, Derrick Sturge – a number of people.

Can you explain what this – these emails are about. And, in particular, the – what's contained on pages 2 and 3 of that Exhibit P-02037. Just have a look at it and explain what your recollection is of this.

MR. DALLEY: My recollection basically comes from reading this and looking at it. It would have been a discussion and effort to address some of the public information, I guess, that was – references James McLeod and trying to ensure which was, I guess, a part of the – particularly around the communications and the co-operations between Nalcor and my department ongoing throughout the project, to try and ensure that the right information was out, the accurate information was out and trying to help understand.

I mean, this is a massive project, very complicated and trying to ensure that the – again, our accountability to the public and trying to have the right information out. So this looks like it would have been that kind of an effort between Nalcor and ourselves.

MR. LEARMONTH: Because it seems to me – and correct me if I'm wrong – that Mr. Martin is writing a draft of a press release that he expects you to send out?

MR. DALLEY: Not exactly. I think he would have had some –

MR. LEARMONTH: Well, just look at page 3.

MR. DALLEY: Page 3? Yeah.

MR. LEARMONTH: Yeah.

So it's an attachment. I think – do you agree that Mr. Martin prepared this draft on page 2 and 3?

MR. DALLEY: I don't know if he would have prepared a draft. He may have had input to have a look at with respect to details and fact.

MR. LEARMONTH: All right.

So anyway we're talking about February 25, 2014. On page 2 of this document the second-to-last paragraph says: "At each phase of the Muskrat Falls Project, from sanction, to financing, construction and finally operation, the Provincial Government has had direct oversight of Nalcor. The Departments of Finance and Natural Resources work in close collaboration with Nalcor Energy and have regular meetings and exchanges of information; and cabinet is updated regularly by the CEO of Nalcor on its business operations. The Provincial Government is provided with all the information it requests, including project expenditures and equity investments."

Now, based on what you know now today, do you not agree that that was a misleading statement?

MR. DALLEY: No, I don't think it would be misleading. I think, you know –

MR. LEARMONTH: How would you characterize it then?

MR. DALLEY: Could it have been a stretch, I guess, based on some of the language. But the – you know, we felt – and I felt at the time – that the oversight was in place, there's work being done. As well, this is into February where by then there was, likely, conversations around oversight on construction. I think it's not far beyond that that we announced the Oversight Committee on construction.

So, you know, again, there was a working relationship with Nalcor through different aspects –

MR. LEARMONTH: Yeah.

MR. DALLEY: – of the project and different departments within government. So there would have been some oversight direct to analyze the numbers. What Finance done, I couldn't say. But, again, I think the relationship between Nalcor and the government and, particularly, Department of Natural Resources, you know, we relied heavily on the work they were doing.

MR. LEARMONTH: Yeah.

MR. DALLEY: And relied heavily on their facts and their work believing that, obviously, we were on the same side. We were working together to try and address a major issue in the province and felt that the information we were getting was accurate.

MR. LEARMONTH: Yeah but I think my question, if I didn't make it clear, is based on what you know now, particularly the contents of the Grant Thornton report. Would you feel comfortable in saying that this was an accurate statement based on what you know now?

MR. DALLEY: To some extent. You know, if we had to rewrite it six years later with all the information we had, would some of the language possibly change, you know, having taken a closer look at it and see, you know? But certainly at the time felt it was accurate.

MR. LEARMONTH: I know at the time but I think I'm – I mustn't be asking the question properly. I'm saying based on what you know now – and let me give you an example. You know now, for example, that in July 2013 the project management team had made a cost estimate of \$7 billion, which was not communicated to you. Correct?

MR. DALLEY: Correct.

MR. LEARMONTH: Okay. Is that failure to communicate compatible with the language in the second-to-last paragraph on page 2 of Exhibit P-02037? And, if so, tell me how it is.

MR. DALLEY: Well, I guess, that specific example would indicate that that information did not come to – certainly did not come to Natural Resources. So that would probably contradict some of the language that's there.

MR. LEARMONTH: Yes and there are other examples in the Grant Thornton report also. Correct?

MR. DALLEY: I would –

MR. LEARMONTH: Well –

MR. DALLEY: Yes, there are. Yes.

MR. LEARMONTH: Well, about the fact that –

MR. DALLEY: Yes.

MR. LEARMONTH: – that the contingency was exhausted before –

MR. DALLEY: Yeah.

MR. LEARMONTH: – financial close?

MR. DALLEY: Yes.

MR. LEARMONTH: So that would contradict –

MR. DALLEY: I think so.

MR. LEARMONTH: Yeah but – okay, well, there's a couple of examples. There may be more but, anyway, we'll leave it at that.

Tab 18, Mr. Dalley, is Exhibit P-02038. Now we're into February 28, 2014. I don't want to come back to this in every document but this will probably be the last time.

In the one – fourth paragraph from the bottom it states: "Before the project began, we had independent experts verify the project. We asked the Board of Commissioners of Public Utilities to do a review, and we hired Manitoba Hydro to give us an engineering assessment and project evaluation."

So, once again, I suggest that's slightly incorrect because the review done by Manitoba Hydro did

not have a – did contain a review of strategic risk. I guess –

MR. DALLEY: Yes.

MR. LEARMONTH: – you didn't know this at the time, right?

MR. DALLEY: No.

MR. LEARMONTH: No, okay.

And if you had known at the time you probably wouldn't have said it this way, is that correct?

MR. DALLEY: Well, I think it'd be fair that the information that we were trying to convey to the public, the decisions we were trying to make were based on the information we had.

MR. LEARMONTH: Yeah. But you have better information now.

MR. DALLEY: Six, eight years later and 5-million documents and an Inquiry to have a great discussion on the transparency, accountability, oversight and all the details? Yes, Sir, I believe we do.

MR. LEARMONTH: Yeah.

Just going to the top of this report, you're saying – well, it's from Diana Quinton but I take it this is a question and answers that she's preparing for you? Is that right?

MR. DALLEY: Yes. Yes.

MR. LEARMONTH: Okay.

And why would she be doing this? Was it an expectation you'd be questioned?

MR. DALLEY: Probably. I would have been questioned quite frequently, you know. Whether it was specifically on an aspect of the project or whether it was in the House of Assembly or whether I was just going to an event for some other issue within the Department of Natural Resources or some other event, when the media would show up they could ask you about anything at any time.

MR. LEARMONTH: Yeah.

MR. DALLEY: So I couldn't tell you specifically what this was for.

MR. LEARMONTH: Yeah.

And just to come back to the paragraph below: "Before the project began, we had independent experts verify the project. We asked the Board of Commissioners of Public Utilities to do a review" Now, do you agree that the scope of the review that the government had the Public Utilities Board do was very limited? It wasn't a complete review. Do you agree with that?

MR. DALLEY: Yes, I think it's been stated with respect to the Interconnected Option and the Isolated Island Option.

MR. LEARMONTH: Yes.

And just give me – we hired Manitoba to give an engineering assessment and project evaluation. And then you say: "We hired other companies to review natural gas and wind. We evaluated Upper Churchill and constitutional arguments. We made all this information public. We have released cost and revenue estimates and we have made project agreements available online."

What evaluation did you do of the Upper Churchill? What were you referring to there?

MR. DALLEY: Again, I don't know exactly in terms of – you know, as this was provided to me but it was a – I do know there's been ongoing challenges and discussions and, you know, court reviews of the Upper Churchill and the agreements. And, you know, the – it's always been a source of contention, I think, for Newfoundlanders and Labradorians and how that contract was done.

MR. LEARMONTH: Yeah.

MR. DALLEY: And there's been tremendous work with our government and other governments, I guess, to try and find a way to find a more satisfactory outcome.

MR. LEARMONTH: Well, to your knowledge, before sanction did your government assess the possibility of buying power from Hydro-Québec and bringing it to the Island?

MR. DALLEY: Again, I don't know for sure. I know there's been some evidence entered. All I can say is I didn't.

MR. LEARMONTH: Okay.

Tab 20 is Exhibit P-02040. And this is a statement made by Tom Marshall: Marshall promises Muskrat Falls Oversight Committee. And I think the Oversight Committee was established, according to this on – this document on March 14, 2014?

MR. DALLEY: Yes, that sounds about right.

MR. LEARMONTH: Yeah.

And do you agree that there was no oversight of the project by government during 2013 or from the time of financial close until the Oversight Committee was established on March 14, 2014?

MR. DALLEY: No, I wouldn't agree there was no oversight. There's many forms of oversight simply by engagement and discussion with Nalcor. And the accountability that was built into Nalcor would signify some sort of oversight.

So I wouldn't agree that there was no oversight, but I would certainly agree that this particular decision by our government and led by minister or Premier Marshall at the time would certainly strengthen the oversight and certainly clarify it.

MR. LEARMONTH: Okay.

Okay, so what oversight was there on the – from financial close up until March 14, 2014? What was the – can you give me some particulars of the oversight that was applied?

MR. DALLEY: I think, you know, again the constant interaction between Nalcor and the various departments and the Premier's office would be a certain level of oversight.

MR. LEARMONTH: Okay.

MR. DALLEY: And the requirements that – of reporting as well as having the board function in place with Nalcor.

MR. LEARMONTH: Yeah.

But the fact that the Oversight Committee was established, will you confirm – or you can deny it, but what's your comment on the point that there was obviously a need for it that hadn't – to fill a void in the – up 'til March 14.

MR. DALLEY: I would agree. I would agree that there was a – we felt, you know, there's significant public discussion as well. We felt that it needed to be strengthened and we felt it needed clarity, particularly for the public. And I think that's the reasons why we put it in place.

MR. LEARMONTH: Tab – and by the way, did the Oversight Committee report to Department of Natural Resources or to the Premier's office?

MR. DALLEY: It reported to Cabinet.

MR. LEARMONTH: To Cabinet. So it'd go to the Executive Council and then the clerk would move it through the system and it would eventually end up in – on the Cabinet table?

MR. DALLEY: Yes.

MR. LEARMONTH: All right.

Tab 21 is a release from Natural Resources, March 24, 2014. Now, before I get into a certain passage, it seems that around this time, March 2014, there's a lot of work and a lot of emphasis on – by government on this oversight; document after documents, oversight, oversight, oversight.

What caused this turn, you know, to oversight? Like did something happen or was there a discussion in Cabinet that we don't have oversight, we have a void and we're going to have to fill that void? Please give me some background on that.

MR. DALLEY: I don't recall specific conversations but it was, you know, I think Minister Marshall would – or Mr. Marshall would probably be able to provide more insight as it was certainly his leadership. He had become premier in – early in 2014 and there were certain things that he wanted to accomplish, I think. And that was certainly one of the things that he felt we should be doing and we certainly got support of Cabinet.

As well, if you recall, in January we went through a difficult period in the province with, dare I say it, DarkNL.

MR. LEARMONTH: Mm-hmm.

MR. DALLEY: And that prompted a lot of questions. You know, it was certainly a challenging time in the province, I felt a challenging time for our government, as well, and Newfoundland and Labrador Hydro, so there was a lot of discussions and PUB involved. There was a lot of activity around that as well and I think that highlighted some issues. There was continuous, you know, public reference as well, which was important to us because we felt accountable to the people of the province.

So those are the kinds of things that was going on at the time that probably contributed to looking at strengthening our oversight. And particularly, you know, as we move from financial close into, you know, a significant period of construction, on a relative sense we're still early in the construction so it was important to get some things in place.

MR. LEARMONTH: Yeah.

And then tab – but was Thomas Marshall the driving force behind this focus in and around March 2014 on oversight?

MR. DALLEY: I think he would have been the lead.

MR. LEARMONTH: Yeah.

MR. DALLEY: You know, he would have had support, I think, from Cabinet and those of us involved, but I would give him, certainly, the credit for the – for that direction.

MR. LEARMONTH: But even before the establishment of the Oversight Committee, are – is it your evidence that there was adequate oversight for the Muskrat Falls Project, based on what you know now?

MR. DALLEY: What I know now is, I guess, different at the time. At the time, my understanding was there's tremendous oversight and, certainly, the confidence in the working

relationship with Nalcor would have supported that.

What I know now, I guess six, eight years later, if you were to go back and do it, would you do some other things? I think potentially we might make some other decisions around oversight, but it's six or eight years later.

MR. LEARMONTH: Yes. Would you be able to give us some insight as to what changes you would have made with the benefit of (inaudible)?

MR. DALLEY: Well, just respect to oversight. I mean it's – you know, how many layers of oversight do you put in place? You know, it's certainly contemplated and debated. I mean, you know, we're relying on the Grant Thornton report here significantly for this Inquiry, put a lot of faith in the work that's done.

Should there have been oversight on what they did? Should it be some other independent look at what they're doing? I'm not suggesting that there is, you know, I'm fine with it, but it's that kind of a debate that was constant around Muskrat Falls as to how much more do you need, how much more do we want. And it was a drive on our part, obviously, that we need to satisfy the public concern as well, so ...

MR. LEARMONTH: Okay. Thank you.

Page – tab 24, Exhibit P-02044. This is an email from Charles Bown. Now, Charles Bown was the deputy minister of Natural Resources throughout your tenure as minister of Natural Resources, is that correct?

MR. DALLEY: Yes.

MR. LEARMONTH: And you relied on him for reporting and –?

MR. DALLEY: Everything.

MR. LEARMONTH: Yeah.

Did you have a high opinion of him?

MR. DALLEY: Very high, as a tremendous individual – very dedicated public servant. Very knowledgeable. You know, Charles had been

there – you know, when you’re a new minister coming into a department, your deputy minister is key and Charles had quite a bit of knowledge of who the players were and what the issues were and certainly the relationship with Nalcor as well. So, I found him to be very, very resourceful and very helpful.

MR. LEARMONTH: Okay.

At tab 24, which is Exhibit P-02044, there’s an email from Charles Bown to you, April 23, 2014. He says: “Tom Marshall says development related to the Muskrat Falls project will continue until it’s determined that it’s no longer the least-cost option. At one point the hydro development was cheaper by \$2.5-billion, but an independent engineer’s report into the project released last week showed the dam was struggling to stay on budget. Exactly what the cost overruns are is not known; Nalcor has committed to releasing updated cost figures once all of the contracts have been awarded. DG3 data had the province’s share of the project pegged at \$6.2-billion, which doesn’t include interest.

“Premier Marshall says a sanction decision has been made to forge ahead with the development of the dam. But how much is too much? Marshall says when Muskrat Falls is no longer the least-cost option.

Marshall says \$2.5-billion is a big number, but if it comes to that, then that’s when government will have to sit back and review its options.”

And then that’s forwarded to you and your reply with two exclamation points is:
“Unbelievable!!”

MR. DALLEY: Yes.

MR. LEARMONTH: What was unbelievable to you at that point?

MR. DALLEY: I don’t recall. I don’t want to make a guess at what that would have been. But I don’t recall the specific response or why I would have made that response.

MR. LEARMONTH: You can’t give us any information (inaudible)?

MR. DALLEY: Well, I could try and figure out why I would say that, but at the time – I don’t recall, at the time, why I would say that.

MR. LEARMONTH: Can you give us some insight now as what you meant?

MR. DALLEY: Rather than guess at what I might have meant, I mean, it could have been anything going on at the time about whether Minister Marshall was out and I wasn’t aware of it, whether it was other discussion leading up to it on *Open Line*, whether it was other issues in VOCM – like, the context of that particular time and comments would have certainly helped me understand why I would say unbelievable, but –

MR. LEARMONTH: All right.

MR. DALLEY: – certainly today it could have been anything.

MR. LEARMONTH: Okay.

The next document is at tab 25. This is Exhibit P-0204 – excuse me, tab 26, Exhibit P-02046: Muskrat Falls; Value and Cost Update, June 25, 2014. If you turn to page 22 of this exhibit, I think you can see the chart there where it shows that the capital cost estimate has increased from 6.2 at DG3 at sanction to \$6.99 billion. Is that correct?

MR. DALLEY: Yes.

MR. LEARMONTH: Is that the first time you’ve – when you received this document from Nalcor, is that the first time you became aware of this, you know, almost \$800-million increase in the capital cost estimate?

MR. DALLEY: I don’t – it would’ve been the first time it was a firm number, but as minister, I would’ve been briefed on this before it went to Cabinet.

MR. LEARMONTH: Okay.

MR. DALLEY: I would’ve been prepared exactly when that would’ve been. But it – to my recollection, that’s when the number moved from 6.2 to 6.99, with an understanding through the discussions and, you know, being engaged, I guess, over the period of time that there was a

lot of activity – you know, there’s 200 contracts, a hundred work fronts; there was a lot of things happening with Muskrat Falls. But to have a definitive number, this would be it right here.

MR. LEARMONTH: And on page 9 of this document it says at the bottom: “Schedule; Commissioning and start-up of first power - 2017.” So that – there had been no change in the estimated date of – in the schedule, is that correct?

MR. DALLEY: That’s correct.

MR. LEARMONTH: Okay.

Now, were you aware of the problems that Astaldi had in getting rolling on their work, you know, from November 29, 2013, when their contract was signed, up ’til, say, the end of 2014? Were you aware of the problems that were encountered by Astaldi’s very slow start?

MR. DALLEY: To some extent. Aware it was a slow start, aware of weather conditions, aware of some challenges, would’ve had some conversations – again, not specific – but I would’ve had conversations with Mr. Martin understanding the – you know, the constant reference and acknowledge that, you know, there’s schedule pressure, there’s some challenges. That would correlate into, you know, a discussion of what’s happening with the project.

So not in great detail but would’ve had some knowledge of some of the challenges.

MR. LEARMONTH: Yeah.

Were you aware, for example, that during 2014 the executive and some of the project team for Nalcor were flying to Rome and New York and London to, you know, meet with the executives of Astaldi to express their concern about the very slow start?

MR. DALLEY: I was aware.

MR. LEARMONTH: Yeah.

MR. DALLEY: During those discussions and, I think, at that stage and certainly throughout – up to 2015 – as I gave evidence earlier – I had a

good working relationship with Mr. Martin and had, you know, discussions on a number of issues. But he always, I think without exception, was extremely confident in where the project was, acknowledging, you know, challenges, but felt that it was under control. He’s working it, mitigation was in place, we’re expecting to see improvements, we are seeing improvements: like, that was a – I think, without exception, that would describe Mr. Martin with respect to the schedule and where the project is.

So from a minister perspective, and having confidence and a trust in Mr. Martin, that would be around these kinds of issues. Throughout it was always very confident that mitigation measures were being put in place.

MR. LEARMONTH: So even though there was a problem with Astaldi that the things would be caught up –

MR. DALLEY: Yes.

MR. LEARMONTH: – as we moved along? Was that the message Mr. Martin was giving?

MR. DALLEY: Yes, it was.

MR. LEARMONTH: Yeah.

Did you – are you aware now that Westney, the consultant of Nalcor in Texas, had given an estimate in – or had made a statement in a report to Nalcor in September 2012, a few months before sanction, that the project had a 1 per cent chance of meeting schedule and that was later upgraded or revised to a 3 per cent chance.

So their consultant was saying the target for first power – which at the time, I believe, was July 1, 2017 – there was a 3 per cent chance of meeting that. Are you aware of that information now?

MR. DALLEY: I am now, yes.

MR. LEARMONTH: Okay. When did you first become aware of that information?

MR. DALLEY: Through this Inquiry.

MR. LEARMONTH: Through this Inquiry.

MR. DALLEY: Mm-hmm.

MR. LEARMONTH: Mr. Martin never told you?

MR. DALLEY: Not to my recollection.

MR. LEARMONTH: Yeah.

Now, the point is in – I'm not going to make – with every – make the same point, but assuming that information from Westney was reliable, you're starting off with a 3 per cent chance, then Astaldi doesn't perform in the first year. You can see that, with those two things taken into account, that perhaps the P3 is even optimistic. Do you understand what I'm saying – suggesting?

MR. DALLEY: I do. You know, I don't profess to understand fully, you know, issues around P-factors. But it's, you know, the – and not aware of a 3 per cent chance of success. I mean, I was aware – Mr. Martin was clear, that this is an aggressive schedule and justified an aggressive schedule with respect to trying to manage the costs and the contractors and the bids. And, you know, we understood that, that there was an aggressive schedule. That was his approach to the project.

And, again, I think throughout all of the reports there was acknowledgement of schedule pressure throughout. And I think all the reports, from what I've read, and discussions, there was always some mitigation measures and plans in place and a confidence that we would overcome this.

MR. LEARMONTH: Okay.

But a 3 per cent chance of meeting schedule is – you – I suggest that a proper word, it's not an aggressive schedule, I suggest to you a proper word is virtually impossible schedule.

MR. DALLEY: Well –

MR. LEARMONTH: Three per cent chance?

MR. DALLEY: Again, a layman looking at – not being familiar with project development and so on, yes, it sounds like a 3 per cent chance is high risk.

MR. LEARMONTH: Yeah, yeah. Okay.

Tab 27 is Exhibit P-02047. It's a report from EY: the Government of Newfoundland and Labrador, Review of Government protocols to oversee the Muskrat Falls Project. This is July 25, 2014.

MR. DALLEY: Mm-hmm.

MR. LEARMONTH: What were the circumstances under which EY was asked to prepare this proposal?

MR. DALLEY: My recollection would be it would be driven by the Oversight Committee. The chair at the time was, I think, Julia Mullaley.

MR. LEARMONTH: Yes.

MR. DALLEY: And my deputy would've been involved, but I was not directly involved with the Oversight Committee. It was independent from our perspective and independent of my role as minister.

So, at the time, I know it would've come to a discussion in Cabinet about we're going to set up a committee, then we had to resource the committee with whatever their needs were. And it was felt that setting up this committee and what information to look at that – you would need outside engagement and EY was selected.

MR. LEARMONTH: But if you were satisfied with the financial reporting and communications on financial matters that government was receiving from Nalcor, why would it be necessary or why would the decision be made to go and get an independent auditor to examine those issues?

MR. DALLEY: Well –

MR. LEARMONTH: Like, what caused that? It had to be something, I suggest, that caused the Oversight Committee to have an independent auditor engaged.

MR. DALLEY: I would defer to Julia, probably, to explain in more detail.

But it's, you know, when we made a decision to strengthen the oversight and create an independent committee, the committee decided

what their needs were gonna be and working through what their terms of reference were and the information they would need. And there would've been a decision that outside support, independent support, to help set up the committee structure and what they would be reporting, was needed. So, you know, again, it probably would've been discussed in Cabinet for financial approval and so on, but I would see that as a reason why.

MR. LEARMONTH: Yeah.

But there was a suggestion made yesterday in questioning by Mr. Fitzgerald that Julia Mullaley was adamant, she insisted that EY be retained, and that Ed Martin was trying to ensure that they weren't retained and that Ms. Mullaley, as I understand the questioning from Mr. Fitzgerald, took the position that if EY wasn't retained she was gonna quit the committee.

Do you – did you hear that evidence yesterday?

MR. DALLEY: I did hear the evidence.

MR. LEARMONTH: Yeah. What can you add to – or what comment can you make on the truthfulness of that evidence?

MR. DALLEY: I couldn't verify that.

MR. LEARMONTH: You couldn't –

MR. DALLEY: No, I don't recall any conversation with respect to Julia threatening to resign or quit her position at all.

MR. LEARMONTH: Okay, well, we'll have to hear from –

MR. DALLEY: It may –

MR. LEARMONTH: – Ms. Mullaley –

MR. DALLEY: – have happened, but it didn't happen with me.

MR. LEARMONTH: All right. So you had no knowledge of that.

MR. DALLEY: No.

MR. LEARMONTH: If it's true or not you don't know.

MR. DALLEY: No.

MR. LEARMONTH: All right. Well, we'll deal with that at another – with another witness.

On tab 27 we've got this P-02047, and once again, just to go over that point, at the bottom of page 4 of that exhibit, it says: "**The Oversight Committee should review cost and schedule performance, forecasts and risk management in addition to the validity of costs incurred:** In order to achieve," et cetera, et cetera.

Now, Mr. Dalley, I suggest to you that at this time, these items were of great concern to government; that something had happened which caused you to consider the reliability of the information that Nalcor was providing to government on these matters and you wanted to have an auditor to examine that information.

Do I have that right?

MR. DALLEY: Could I ask where you just read from, 'cause I don't have –

MR. LEARMONTH: Page 2.

MR. DALLEY: Of –

MR. LEARMONTH: Excuse me, page 4. I said page 2. Page 2 [sp. page 4] at the bottom, Recommendations. And this is at tab 27, Exhibit 02047.

MR. DALLEY: Yes.

MR. LEARMONTH: Do you see at the bottom of page 1, the oversight –

MR. DALLEY: Okay, page 2? Yes.

MR. LEARMONTH: Page 4.

MR. DALLEY: Page 4. Okay.

MR. LEARMONTH: Okay.

MR. DALLEY: Sorry, could you go through that again because –

MR. LEARMONTH: Okay.

MR. DALLEY: – I didn't know where you were reading from.

MR. LEARMONTH: Fine.

Point one at the bottom of the page, do you see that?

MR. DALLEY: Yes.

MR. LEARMONTH: Okay, these are under the heading, Recommendations.

“The Oversight Committee should review cost and schedule performance, forecasts and risk management in addition to the validity of costs incurred: In order to assess progress towards achieving the cost and schedule objectives,” et cetera.

Now, I'm suggesting to you that at this point this Oversight Committee, which is overseeing Nalcor and the construction, has made the determination that it was necessary to engage independent auditors to verify this information. And the inference I draw from that, that obviously there was a need to do that and it must have been caused by some lack of information or some deficiency that the Oversight Committee saw in the report – financial reporting of Nalcor. Do you agree with that?

MR. DALLEY: Um –

MR. LEARMONTH: In other words, why would they make this recommendation if there was no need to?

MR. DALLEY: It may have been. Again, I don't recall the discussions around for this purpose. It certainly may have been. But I do know that if we're going to set up an Oversight Committee, you had to give it some teeth, you had to, you know, put the resources around it and allow it to do the work that we wanted. But understanding that the Oversight Committee was set up for this purpose with respect to construction, and it was government's way of adding and strengthening oversight in construction so that we can report to the public.

MR. LEARMONTH: Yeah –

MR. DALLEY: And this was the approach. Was it driven because we weren't satisfied with what we were getting from Nalcor? I couldn't say that was the case but I do know –

MR. LEARMONTH: You can say it was the case?

MR. DALLEY: No, I can't say it was the case. But I do know the case was that we felt we needed to do more reporting to the public and address the public concerns. And that was driving – that, I do know. Whether – again, I don't recall if it was driven by the fact that we weren't satisfied with what we were getting from Nalcor.

MR. LEARMONTH: Well, I'll just leave you with this question: If you were satisfied at this time with the financial reporting and cost estimates and so on from Nalcor, why would spend hundreds of thousands of dollars to engage an independent audit firm to conduct the review proposed by the Oversight Committee? Why would you do it?

MR. DALLEY: The – two things, I think: one is around the independence of the Oversight Committee and the commitment that we had made; and secondly, with respect to setting up how we would report information to the public, early in the construction state of the project that would go on for a number of years, it was important to get it right. And the independent committee themselves – and, again, I think Julia could probably answer to this – would've wanted to ensure their structure and the information they have. So that would be the reasons for doing it.

MR. LEARMONTH: All right.

Tab 28, Exhibit P-02048. This is a letter signed on page 3 by both the premier, Thomas Marshall, and you. It's written to Nalcor Energy. Why, on July 29, 2014, would you have written this letter where you're, you know, directing Nalcor to provide certain information to the Oversight Committee?

MR. DALLEY: I think for the –

MR. LEARMONTH: Now, you're saying – it's a polite but firm letter. It says at the top of page

two, “**Additional Oversight Committee Project Information**.”

“In addition, Nalcor shall provide to the Oversight Committee the following information: ... Baseline Budget” and so on – some detailed information there.

Was this letter written because there had been a delay, or – in Nalcor’s providing this information to the Oversight Committee?

MR. DALLEY: Not that I recall. I mean, if it’s – it could’ve been a conversation with Julia and the premier at the time, but it’s certainly for the record to have this in place.

MR. LEARMONTH: Okay. So you don’t have any recollection as to whether there was a problem –

MR. DALLEY: No. You know, again, it – the interaction, particularly with the chair and the premier – I may not have been involved with that.

MR. LEARMONTH: Okay. You’d have nothing more to add on that.

MR. DALLEY: No.

MR. LEARMONTH: Oh.

Tab 29, Exhibit P-02049, this is the – a document concerning the members of the Oversight Committee and they’re listed at the bottom: the clerk of the Executive Council, deputy minister, et cetera – all government people.

Why wouldn’t the Oversight Committee that’s obviously overseeing the work of Nalcor be staffed by at least one, if not more, expert in construction management, hydroelectric projects and so on? While I don’t doubt the capabilities of these individuals that were appointed – I don’t doubt that at all – I’m suggesting to you there’s a big deficiency when you don’t have someone on the Oversight Committee that can ask the proper questions of Nalcor, someone who has experience and can see deficiencies and know what’s – what information is missing and so on. This subject was covered by Dr. Guy Holburn yesterday. Do you see the point?

MR. DALLEY: Mm-hmm.

MR. LEARMONTH: Do you agree with me?

MR. DALLEY: The – you know, looking at the makeup of the committee, if that was just the committee and that was their work, the committee had access to basically whatever they needed, who – outside professional support –

MR. LEARMONTH: Okay.

MR. DALLEY: – engaged EY, which was supported by our government to bring that expertise, which was valuable to the committee and the oversight. They had arranged an agreement with the independent engineer work with respect to their site visits, to be part of the meetings, to get the reports and the information, to be able to question.

So that was an extreme level of professional support on the construction engineering work. As well, there was a working group that they established that would bring in other professionals with some experience to support the Oversight Committee as well as I guess the, you know, the committee and what they felt they needed. We certainly tried to support them where we could.

MR. LEARMONTH: Yeah, so I guess – is your answer generally that, although there weren’t people on the Oversight Committee that could provide this expertise, that the Oversight Committee could retain experts to fill any gaps in their knowledge base?

MR. DALLEY: Yes, they could.

MR. LEARMONTH: Okay, thank you.

Tab 32, which is Exhibit P-02052. This is a speech, or – it looks like a speech that you were making for oversight announcement?

MR. DALLEY: Yes.

MR. LEARMONTH: Why would you be making this speech? The – hadn’t the committee already been struck?

MR. DALLEY: We had announced – I think if I, again, go back to the chronology of the

Oversight Committee announcing in March and eventually EY, the report was done, the work was – the initial report, and then we held a – I think it was Premier Marshall and myself would've announced the oversight work and made that public.

MR. LEARMONTH: All right, so was this the first announcement to the public of the – I thought it was announced in March 2014?

MR. DALLEY: It would've been introduced in March as to what government's plans were, but this would've been after some of the work had been completed.

MR. LEARMONTH: Okay, and the – one, two, three, four – fifth dot down you say: "I would like to note at that outset that there has been more information made public about this project than any in the history of our province, providing the opportunity for review by the public, government and independent experts" – et cetera.

Now, I suggest again that the information that you now know, based on the Grant Thornton report, if you had known that at the time, you wouldn't have made that statement. Do you agree?

MR. DALLEY: I don't necessarily agree about making the statement about the information that's been made public. I think we went to great lengths, committed to a process that was transparent and accountable, working with the information that we had. And I think there's extensive information in the public. So, you know, from that perspective, that's how we felt.

MR. LEARMONTH: Yeah.

MR. DALLEY: You know, it's a phrase – the most – than any project in the history of our province – but that's how we felt. And, you know, you could argue there might be a political element in that statement, but it's how we felt at the time.

MR. LEARMONTH: Okay.

But how can there be transparency and accountability if you're not getting critical cost information from Nalcor? How is that possible?

MR. DALLEY: Well, we never had that information at the time.

MR. LEARMONTH: You never did. But I'm asking you to look at it now through – based on what you know now.

MR. DALLEY: Well, what we know now, yes, it would be different. I mean, it's hindsight, and all the information we have has been tremendous.

MR. LEARMONTH: Yeah.

Next document I want to take you –

THE COMMISSIONER: Okay, just before we go to that, I think – I just noticed it's quarter after 11, so we should take our break here for 10 minutes.

MR. LEARMONTH: Okay.

CLERK: All rise.

Recess

THE COMMISSIONER: All right, Mr. Learmonth.

MR. LEARMONTH: Turn to tab 46. This is the report of the Oversight Committee dated March 2015.

THE COMMISSIONER: P-02003.

MR. LEARMONTH: So as these reports are being prepared and sent to the – you know, delivered to Cabinet, are you still in communication with Mr. Martin on a regular basis?

MR. DALLEY: Yes, I would be.

MR. LEARMONTH: Okay.

I just looked at page 6 of this report at Exhibit P-02003. And this is March – well, the report for the period is March 2015. And was it your understanding that the path to first power for December 17 was still on?

MR. DALLEY: Yes. As reported in this document? Yes.

MR. LEARMONTH: And you believed that to be the case, did you?

MR. DALLEY: I did. The conversations around, you know, the various challenges, particularly with Mr. Martin – again, you know, I referenced his confidence and belief that there were obviously pressures. He would acknowledge the pressures but confidence that that could be overcome and referencing the mitigation measures that were ongoing that would help, you know, continuously advance the project.

MR. LEARMONTH: Well, what were those mitigation measures as communicated to you? I mean, at this point –

MR. DALLEY: Specifically –

MR. LEARMONTH: – the ICS, the Integrated Cover system, had been abandoned –

MR. DALLEY: Yes.

MR. LEARMONTH: – or was abandoned at that time so – and we know that the project was shut down or Astaldi's work on the project was shut down during the winter of 2015 and '16, starting December of 2015 'til March or April 2016. So did you inquire as to the basis on which Mr. Martin was expressing confidence that the schedule could be maintained for first power?

MR. DALLEY: Yeah, I don't remember the specific conversations but we would have had conversations around, again, the progress and how things are going. The mitigation factors – again, my recollection is, you know, probably printed right here in these reports.

But, certainly, the challenges with Astaldi and the management on site, references to Nalcor inserting more people to help, finding ways to improve productivity, referencing seeing improvements, referencing that, you know, 2015 is going to be a very important summer with respect to, you know, closing a gap on some of the slippage, you know, those general – as I read them in these reports, I can recall those kinds of conversations with Mr. Martin and his confidence that the measures are taking place. You know, I was pleased at least they were

acknowledging the challenges and referencing that we're doing things. And –

MR. LEARMONTH: Yeah.

MR. DALLEY: – again, validated by the oversight reports that mitigation's in place. I think one of the reports references a 120-day mitigation plan. So it would give me that level of knowledge that this was taking place.

MR. LEARMONTH: All right.

And you believed what Mr. Martin was telling you?

MR. DALLEY: I did.

MR. LEARMONTH: Yeah.

Tab 49, this is Exhibit P-02010, Cabinet update, Muskrat Falls Project, September 21, 2015.

If you turn to page 18 and can you confirm that this was the first time that you were aware that the project costs had increased to 7.65 billion from 6.99 and earlier 6.2?

MR. DALLEY: Sorry, the page number?

MR. LEARMONTH: Page 18.

MR. DALLEY: Eighteen.

MR. LEARMONTH: Well, there's other references but page 18 will do it.

MR. DALLEY: Yes, again, as I referenced earlier, the 7.65 number – I would have been aware of that prior to but certainly around this period of time as it was in – brought in to Cabinet.

MR. LEARMONTH: So you would have been aware of it like weeks before, or –?

MR. DALLEY: Well – and, again, I don't recall exactly when I became aware of 7.65, but based on the process as minister and, certainly, in Cabinet there would be questions in the Cabinet. I would have had a briefing on this prior to the Cabinet meeting.

MR. LEARMONTH: Yeah.

Was there a high level of concern when you found out that the project costs had gone up to – projected project costs had gone up to 7.65 billion?

MR. DALLEY: Yes, there was. You know, the – a number of factors. Concern, you know, from within but certainly within Cabinet around, you know, the cost of the project, the schedule of the project. And throughout, I think less from those of us directly involved but certainly those less involved, the differential number of least-cost option of \$2.4 billion was always – I think it was a simple way to associate where this project was going with respect to other options.

And very simple at that because we know there's a lot of factors go in to balance the two, but I think people saw the \$2.4 billion as the gap that we're working with. So, you know, there was concern around that and that extended, obviously, to the concern around rates. You know, I know our government and our Cabinet was concerned about rates and what that impact would be. But, again, you know, the value of the project, the mitigation: all of that would be somewhat alleviated.

MR. LEARMONTH: Did you receive an assurance – not a guarantee, but a general assurance – from Mr. Martin at the time that the increase of the budget was to 7.65, that that would probably be it because all the contracts were in place? Was that your understanding?

MR. DALLEY: My understanding was that the contracts were in place, you know, the bids were in. And that was a significant part of the increase and the challenges and market pressures that was constantly referenced throughout.

And as we – you know, as I had talked with Mr. Martin and within the department, you know, as you look at the chronology of contracts being awarded, I think, you know, into 2014 there was probably three left. And then as that moved on there was always a challenge to get a number because these big contracts were coming.

So, to that extent, the 7.65 contracts were let, bids were in hand, there was more confidence in that number.

MR. LEARMONTH: Yeah.

MR. DALLEY: I was also aware that – well, of Astaldi challenges and that Mr. Martin was working with Astaldi around, you know their performance issues, concerns – you know, cautious about claims and what direction things should go in. So I knew there was something else coming. It wasn't quantified, but I certainly understood, in discussions with Mr. Martin, and he was certainly forthright in the fact that that was the process that was ongoing.

MR. LEARMONTH: Okay. The – tab 54 contains the SNC Risk Assessment 2013. It's Exhibit 01977. Are you familiar with that document, Mr. Dalley?

MR. DALLEY: Only as a result of this Inquiry.

MR. LEARMONTH: Okay. When's the first time you heard about that report?

MR. DALLEY: Would have been in the media. I think there was some reference to it in the media, current government and some discussion.

MR. LEARMONTH: So –

MR. DALLEY: Would've been first time. And actually seeing it would be here.

MR. LEARMONTH: Okay. Were you aware of it before you left –

MR. DALLEY: No, I was not.

MR. LEARMONTH: – government –

MR. DALLEY: No, I was not.

MR. LEARMONTH: – on November – okay. So 7.65, when you left government November 30, 2015, that was the last cost estimate that you saw, correct?

MR. DALLEY: Sorry, say it again?

MR. LEARMONTH: Seven point six-five billion, when you left government, was the figure that was on the table at that point?

MR. DALLEY: Yes, it was.

MR. LEARMONTH: It was. All right.

There was just a couple of points I wanted to clarify. We've seen in the documentation that, apparently, Derrick Sturge at Nalcor, and others at Nalcor, were – did a lot of work for the federal loan guarantee. Can you give us any information as to why that work wouldn't have been done by the Province of Newfoundland since the Province of Newfoundland was on the hook?

MR. DALLEY: I cannot.

MR. LEARMONTH: You can't. No information on that?

MR. DALLEY: No.

MR. LEARMONTH: You also referred – made some comment about the GT report – we're dealing with the GT report. I wasn't sure exactly what you meant by referring to the GT report – Grant Thornton report. Do you remember you referred to it, that now we're going by the GT report or something like that?

MR. DALLEY: Oh, we were having a conversation about oversight.

MR. LEARMONTH: Yeah.

MR. DALLEY: And just, I guess, a general sense of the discussion as to –

MR. LEARMONTH: Yeah.

MR. DALLEY: – how much oversight is needed and that level –

MR. LEARMONTH: Yeah.

MR. DALLEY: – and – not implying –

MR. LEARMONTH: Yeah.

MR. DALLEY: – at all –

MR. LEARMONTH: Yeah.

MR. DALLEY: – but just by –

MR. LEARMONTH: Yeah.

MR. DALLEY: – way of reference.

MR. LEARMONTH: No, I just wanted to make sure everyone knows that the Grant Thornton report is a piece of evidence that the Commission will consider. The Commissioner is not required to accept the report in whole or even in part. And the – it's just one piece of evidence. We just don't look at the Grant Thornton report and say, well, that's it; otherwise, we wouldn't be calling evidence.

So I just wanted to make sure everyone understands that that's just one part of the work of the Commission. And if the evidence in the GT report is contradicted by other evidence, then the Commissioner will be able to consider the matter and make findings of fact.

MR. DALLEY: No, thank you. I wouldn't want to be on record to convey anything otherwise.

MR. LEARMONTH: Yeah.

MR. DALLEY: But it was just in reference to –

MR. LEARMONTH: No, I don't –

MR. DALLEY: – (inaudible).

MR. LEARMONTH: I just wanted to clarify since you brought it up.

MR. DALLEY: Oh, fair enough.

MR. LEARMONTH: And also the report is done – the last comment I'll make about it – it's an independent report. Like, we retain them, but they do their own investigation.

MR. DALLEY: Mmm.

MR. LEARMONTH: We don't supervise their investigations. I just wanted to make sure you understood that.

MR. DALLEY: No, I understand. I do.

MR. LEARMONTH: Okay. Thank you very much.

Finally, I – we touched on the subject of the obligation or duty on a politician to, you know, be truthful and forthright in making communications to the public on matters such as capital cost estimates. I just wanted to turn back

to page 14 – tab 14 of – in your book, P-02034. I directed your attention to – or asked you to look – to consider this document earlier, but I didn’t – there’s one point I meant to cover but didn’t.

And under the – where it says Sound Fiscal Management Remains Government’s Focus, the quote says: **“It’s important that those representing the people of the province understand how the project works and how costs are derived, and that they prudently provide accurate information to the public.”**

Is that a fundamental part of your philosophy as a politician, the requirement to disclose to the people of the province, in the way that you’ve described here, things like capital cost estimates?

MR. DALLEY: Yes.

MR. LEARMONTH: Yeah. But it has to be based on the information you have, obviously.

MR. DALLEY: Well, you know, when I look back at our involvement three, four years ago now that we’re directly involved, but even predated that, you know, as politicians we rely very heavily on people around us, and departments, to feed us information, whether it’s Muskrat Falls or whether we’re building a hospital or a school or whatever policy decisions we have to make.

So, you know, with Muskrat Falls, you know, we – I genuinely felt that we were getting accurate information and we were making decisions in the best interests of the people of the province. And we were comfortable in doing that.

MR. LEARMONTH: Yes.

Okay, those are my questions.

Thank you very much, Mr. Dalley.

THE COMMISSIONER: Cross-examination.

Province of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Good morning, Mr. Dalley, Dan Simmons for Nalcor Energy.

A few things to follow up with you this morning, not too much. And I’d like to start with P-01993, please, Madam Clerk.

This, Mr. Dalley, is the mandate letter that the premier gave you to – and I don’t have the tab number, unfortunately, in your binder.

THE COMMISSIONER: Actually, I don’t think it’s in this booklet.

MR. SIMMONS: This may have come from the collection of documents for Mr. Davis.

THE COMMISSIONER: Correct.

MR. SIMMONS: Yes.

MR. DALLEY: I have it.

THE COMMISSIONER: It’s also on the screen.

MR. SIMMONS: Okay.

MR. DALLEY: On the screen? Okay, go ahead. That’s fine.

MR. SIMMONS: Okay.

So – and I understand from Mr. Davis yesterday that it was his practice and the practice of some premiers before him to prepare mandate letters to give to their ministers to give them some sense of the overall direction that they were to take in the discharge of their duties for – which is the portfolio that they had. So had it been your experience in other portfolios that you had mandate letters like this available to you?

MR. DALLEY: I don’t recall other mandate letters.

MR. SIMMONS: Okay.

MR. DALLEY: I –

MR. SIMMONS: So this may have been the first, in your experience?

MR. DALLEY: It may have been. I may have them, but I hadn't seen them, so –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – that I, you know –

MR. SIMMONS: Okay.

MR. DALLEY: In preparation for this, I haven't seen any other mandate letters.

MR. SIMMONS: Sure.

Now, I understand that it was October 9 of 2014 when you assumed responsibilities as minister of Natural Resources.

MR. DALLEY: 2013.

MR. SIMMONS: 2013, thank you.

And this mandate letter is dated December 8, 2014.

MS. O'BRIEN: That's tab 37 (inaudible).

MR. DALLEY: Okay, thank you.

MR. SIMMONS: Tab 37.

So my first question is: Is this when you received this mandate letter? Were there any previous versions or any other drafts? Or did you not get this until over a year after you'd taken the position as minister of Natural Resources?

MR. DALLEY: Maybe perhaps clarification. This came from Premier Davis, who didn't become premier until the –

MR. SIMMONS: Fall, yes.

MR. DALLEY: – fall of –

MR. SIMMONS: Yes.

MR. DALLEY: – 2014.

MR. SIMMONS: Okay, so when you –

MR. DALLEY: So –

MR. SIMMONS: So this was when you received it, yes.

MR. DALLEY: Yes.

MR. SIMMONS: So prior to that, when you became minister, you did not have a mandate letter like this (inaudible).

MR. DALLEY: None that I remember.

MR. SIMMONS: Okay.

MR. DALLEY: I've searched through, I haven't been able to find one, so ...

MR. SIMMONS: Okay.

So from the 9th of October then, 2013, when you became minister, until financial close which was 29th of November, there's about seven weeks there. You came from a background in other portfolios where I expect you had not been involved in anything day to day concerning the Lower Churchill Project. Is that correct?

MR. DALLEY: That's fair to say.

MR. SIMMONS: Yes.

MR. DALLEY: I mean, other than the Cabinet briefings or – but day-to-day, absolutely not.

MR. SIMMONS: Right, so what you knew you would have learned around the Cabinet table, not from any other involvement in aspects of the project. Is that true, or if you knew – if you were involved in other ways, tell me how.

MR. DALLEY: Other than through media, you know, the reports in the media and so on following it and through Cabinet –

MR. SIMMONS: Right.

MR. DALLEY: – but certainly not through any intimate detail or direct involvement.

MR. SIMMONS: Yeah. Now, I do understand that Natural Resources is an important portfolio. There's a lot of things that happen in it. You've said there were a lot of activities when you were minister. But in October of 2013 the Lower Churchill Project would have been one of the

biggest pieces of business that the department had on the go, would it, or were there other things of equal or greater importance at the time that you can recall?

MR. DALLEY: It would absolutely be one of the biggest if –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – you know, the biggest.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: But I couldn't categorize if what went on in October when I got there – you know, I could give you a litany of issues that were very significant and none any more significant than Muskrat Falls –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – but potential closure of the refinery and 600 jobs was on my plate.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: You know, challenges in the mining industry was on my plate. Issues around the closure of the mill in Corner Brook was on my plate. The challenges with the forest industry, basically, shut down in Central Newfoundland would have been on my plate. So, you know, they're – exactly when, I couldn't tell you, but –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – that's the kind of –

MR. SIMMONS: Sure.

MR. DALLEY: – position it was.

MR. SIMMONS: All right.

So, between becoming minister in October and about seven weeks later when financial close happened – can you give me some idea of how you prepared or educated yourself about the project, knowing that it was going to be part of the responsibility of your department while you were minister? Is there a set of briefing books waiting on your desk the morning you arrive?

Are there a series of meetings set up with department officials? Was there any kind of structured process to allow you to get up to speed on the things you needed to know about the project?

MR. DALLEY: I would say all the above.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: You know, briefing books, a tremendous amount of discussion with the deputy in particular and may call in various officials, if needed, under the direction of the deputy.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: You know, basically, the deputy role was to get me ready as best he could, understanding as well that we're moving into a period where the House of Assembly was opening and I would have been, you know, on the hot seat with respect to –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – question period, in particular. So, understanding the files – not just the Muskrat file, but you know, probably 50 or 60 files where you could potentially get questions on. So –

MR. SIMMONS: Right.

MR. DALLEY: – that would have been the approach: Let's get the minister briefed up and that takes time. I've heard it referenced that it takes nine months to a year to get your feet in under you in Natural Resources because of the volume of what goes on in that department.

MR. SIMMONS: Okay.

And to what extent do you rely the – in – when you're a minister in a position like this, to what extent do you rely on your deputy to act as, kind of, a gatekeeper to determine when issues rise to a level that they require the minister's involvement and when there are things that can be dealt with within the bureaucracy without having to put them on the minister's desk?

MR. DALLEY: I think, initially, probably 100 per cent.

MR. SIMMONS: (Inaudible.)

MR. DALLEY: You know, I'm new coming to a department where a broad range of issues and different focuses, a lot of complex files, so you would rely on the deputy 100 per cent.

MR. SIMMONS: Mmm.

MR. DALLEY: As time went on, I had a, you know, a tremendous working relationship with the deputy and, again, my – I would give him full compliments in terms of –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – his integrity and ability and so on. So, I had a good working relationship – confident in what we were doing. As time went on and I learned the files a little more, and you learn, you know, who is involved and you get a little more comfort level – not to say I wasn't relying on him, probably certainly less than I would have been when I entered the department and –

MR. SIMMONS: Right.

MR. DALLEY: – probably moved for the first three or four months.

MR. SIMMONS: Sure.

So – and you were fortunate, I think, in this position to have a deputy who had experience in the department and experience with the Lower Churchill Project, correct?

MR. DALLEY: Very much.

MR. SIMMONS: Very much.

So, by financial close, how far along were you in this process of getting yourself up to speed to the point where you could become more involved in, kind of, directing what sort of information you needed as opposed to relying on the bureaucracy in the department to make some of those calls for you?

MR. DALLEY: I couldn't say how far along I was.

MR. SIMMONS: Mmm.

MR. DALLEY: I would have to say from October the 9th onward, then I would have been consumed with issues of Natural Resources, including Muskrat Falls. And just – a point you just made – I just wanna qualify a little of it.

MR. SIMMONS: Sure.

MR. DALLEY: You know, my dependence on the deputy, you know, it was very significant; however, decisions and, you know, the deputy would inform me and brief me and discuss with me and rely on me to make the call. That was basically – Charles Bown was the deputy minister at the –

MR. SIMMONS: Mmm.

MR. DALLEY: – that was his approach as well, understanding – I felt Charles had a really good understanding of the role outside of politics.

MR. SIMMONS: Right. Okay.

So the commercial close was the 29th of November of 2013 and, of course, there was a lot of work and activity that preceded that to get the parties to the point where the formal agreements could be entered into on that date and for – and to have the federal loan guarantee put in place. So you would recognize that?

MR. DALLEY: Yes.

MR. SIMMONS: Okay.

What – how involved were you personally in that process, between the time you became minister up until the closing occurred on November 29th?

MR. DALLEY: I was not involved in the federal loan guarantee process –

MR. SIMMONS: Mm-hmm.

MR. DALLEY: – negotiations that was happening. My understanding was mostly driven by the Premier's office.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: My deputy was involved –

MR. SIMMONS: Yes.

MR. DALLEY: – again, as a resource and knowledge and, I guess, continuity of, you know, the changeover of people and so on.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: But I was not involved in the details –

MR. SIMMONS: Okay.

MR. DALLEY: – of the loan –

MR. SIMMONS: Okay.

MR. DALLEY: –negotiation, loan guarantee.

MR. SIMMONS: To what extent was your deputy's involvement in the process reported up to you? Was there a process for daily or weekly reports, formal briefings, informal discussions? Can you give us some idea about what the information flow was up to you?

MR. DALLEY: Well, it was constant. You know, it was day and night.

MR. SIMMONS: Mm-hmm.

MR. DALLEY: Whether it was face to face or email or on the phone, so it would have been constant at the time. There would have been formal briefings scheduled because sometimes it wasn't just a deputy doing it, you would have to arrange for officials. So, you know, there would have been scheduled briefings. That would have been the process.

MR. SIMMONS: Right.

What can you tell me about the role of the Department of Finance as compared to the Department of Natural Resources in the commercial arrangements for the federal loan guarantee?

MR. DALLEY: My understanding in the finance – the financing of the project,

particularly around the equity when the province would be in a position, those kinds of things would have all been financial considerations versus Department of Natural Resources. That would be my understanding.

MR. SIMMONS: Okay.

And you are aware that through that process that the Government of Newfoundland and Labrador did have its own external legal counsel involved, advising them through that process, are you?

MR. DALLEY: Yes, I think they did. I read it, but yes.

MR. SIMMONS: Okay.

So you were brought to a number of documents from around this time and, first of all, I'd like to go back to Exhibit P-02114, please, Madam Clerk.

Okay, this is an email message and it's from November 19, 2013. If we could go to page 2, please. Mr. Learmonth brought you to this, Mr. Dalley. And this second page is a reconciliation dated November 19, 2013, which is about 10 days before commercial close.

MR. DALLEY: Yes.

MR. SIMMONS: And it has a breakdown of the DG3 or sanction capital cost number of \$6.2 billion and then it has a column headed current FFC, which we understand to be final forecast cost – that's what the acronym is. And the total in that column is \$6.531 billion. And I believe your evidence has been that this is not a number or information that you recall having made available to you prior to financial close.

MR. DALLEY: That's correct.

MR. SIMMONS: Correct, okay.

You were also brought to the email message on page 1. So can we go there, please? And this message refers to posting that document to something called a data room. And it says that: "Access needs to be given to Canada, Cassels Brock, Blair Franklin" MWH. And it says: "Do not provide access to NL, BLG and Faskens at

this time.” BLG – would you know that to be a law firm?

MR. DALLEY: I’m not familiar with it.

MR. SIMMONS: Okay, all right. And it says at this time. So that’s the 19th of November.

And I want to bring you now to Exhibit P-02126, please. And this exhibit – we’ll hear from Mr. Sturge later I think, but it’s been introduced as being an excerpt from some notes that he kept. And he has some notes here that are dated two days later on November 21, 2013. A bit difficult to make out, but it’s the left-hand column there in the middle of the page.

MR. DALLEY: I think I have those.

MR. SIMMONS: Yeah, I’m having the same –

THE COMMISSIONER: Tab 59.

MR. DALLEY: Okay.

MR. SIMMONS: And the note appears to read: Debrief with Ed/Charles and the date is there. And it lists Ed, Charles, Donna Brewer, P. Myrden and P. Morris.

Now, do you know who Donna Brewer is?

MR. DALLEY: Yes.

MR. SIMMONS: And what position did she hold in government at this time?

MR. DALLEY: I think she would have been the deputy minister of Finance.

MR. SIMMONS: Deputy minister of Finance. And P. Myrden – do you know who Mr. Myrden is?

MR. DALLEY: Yes, by way of this.

MR. SIMMONS: Okay. And he was also an official from the Department of Finance at this time, I believe?

MR. DALLEY: Yes.

MR. SIMMONS: Okay. And there’s a – pardon me, I’m going to have to get my paper copy

here. Time for an update to the progressive glasses I think.

So there’s a note here that says: “Issues” – and the first item – “(1) Capital Cost Overruns.” So my question for you out of this is: Were you aware that this meeting took place on November 21, 2013?

MR. DALLEY: I have no recollection of that.

MR. SIMMONS: Okay.

Was anything reported to you by Mr. Bown, your deputy, or anyone else on or after this date about there having been a meeting where one of the noted subjects is capital cost overruns?

MR. DALLEY: None that I can recall. I mean, I can’t say there wasn’t but I don’t recall a meeting to discuss capital cost overruns –

MR. SIMMONS: Okay.

MR. DALLEY: – prior to financial close.

MR. SIMMONS: All right.

Let’s go also, then, to Exhibit P-02125, which Mr. Learmonth also brought you to this morning.

So this is an email message, now, from five days later, November 26, 2013, which is also three days before commercial close. It’s from Mr. Sturge and the recipients are Ed Martin, Charles Bown – who was your deputy, correct?

MR. DALLEY: Yes.

MR. SIMMONS: Donna Brewer, P. Myrden, who we’ve identified as being officials in the Department of Finance. And Mr. Learmonth read the first paragraph. You can have a look at it again, but I read it as stating that there has been – there is a different cost estimate being considered at financial close than there had been at DG3. Is that the way you read this?

MR. DALLEY: Yes. Yes.

MR. SIMMONS: All right.

Okay, thank you very much.

I don't have any other questions, Mr. Dalley.

THE COMMISSIONER: All right.

Thank you.

Concerned Citizens Coalition.

MR. BUDDEN: Good morning, Mr. Dalley.

My name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition, and if you've been following the Inquiry you probably know that the coalition consists of individuals who, for many years, have been critics of the Muskrat Falls Project.

The – I'm going to have a few questions, obviously, for you today. I won't be too long. But the first thing: Were you present yesterday when Mr. Davis gave his evidence?

MR. DALLEY: I was.

MR. BUDDEN: Okay, and we'll get into some specific issues. But was there anything that he testified to that you – any particular thing he said yesterday that you would take issue with? You would disagree with?

MR. DALLEY: You know, off the top of my head, no. If I went down through everything just to see if there were any, you know, slight discrepancies given his role as premier and mine as minister, and my role of two years versus his one, you know, I'd have to look at it closely. But there's nothing that jumped out for me yesterday that, you know, we got a problem. No.

MR. BUDDEN: Fair enough. Yeah, that's what I want at this point, just sort of that broad overview –

MR. DALLEY: High level, no.

MR. BUDDEN: Pardon?

MR. DALLEY: At a high level, no.

MR. BUDDEN: Fair enough.

So just a little review as the other lawyers have done of your parliamentary career. So you're elected in 2007, you were a backbencher for

most of the final term of the Williams government, and as I understand it, you were appointed to Cabinet as minister of Business in January of 2011.

MR. DALLEY: Right.

MR. BUDDEN: Okay. And you've spoke about this, but just to – I'll ask you as I've asked other ministers who have testified. Just describe briefly the, I guess, the learning curve to come to terms with your portfolio: what you did, what briefings you received, who you met with and so on.

MR. DALLEY: Well, again, the reliance would've been on the deputy. I would've met with a lot of people within the department under the direction of the deputy. Would've had countless number of briefing books, countless number of briefings, and quite frankly, that would be ongoing. You know, there was – you do your briefings but it's such a fast-paced department where there's – you know, you're open on so many fronts, so many issues around resource development and you have a duty to respond to what's happening on a daily basis.

So, you know, beyond the briefings and the discussions, the nature of that department and the volume of work, any given day you'd be involved in a briefing or a discussion or a preparation or, you know, again, policy, whatever. So it's a – it's just hectic, ongoing and a steady pace all the time.

MR. BUDDEN: Sure.

Just, generally, could you tell us a little bit, I guess, of the workload that you would've experienced during your time as a Cabinet minister? And realizing, obviously, that you had constituency responsibilities, but I'm just trying to get a sense now: Were you working 40 hours a week on average, 50 hours a week, 60 hours a week?

MR. DALLEY: I would, you know, I – unique I guess. I commuted. My home was five hours away. So when I went to St. John's, I had a week, I was on my own. I spent, I'd say, on average 14 hours a day working with the department, sometimes more. You work all day and the evenings then – you know, your

evenings are free and you spend time prepping for the next day as well.

MR. BUDDEN: And it was like that for years on end?

MR. DALLEY: No, in – particularly in the Natural Resources department. I mean, I alluded to it earlier but it's, you know, the magnitude of the files, whether it was, you know, a mining sector alone with respect to – just to give you a context of the environment, mining sector would have had, you know, challenges with Wabush closures, labour challenges at IOC, looking to develop the Julianne Lake deposit, trying to find a way to get the Alderon deposit moving, dealing with Tata Steel in terms of their development – one of the few developments that was happening in mining.

You know, you come to the province and you look at challenges around a potential shutdown of the refinery and 600 jobs, we're trying to find a way to save the paper mill in Corner Brook. There's challenges of shutdown in the forestry industry in Central, there was challenges in Labrador, particularly with Muskrat Falls wood. You know, agriculture was a growing industry that needed a lot of attention.

Add a layer to that, you got the, you know, oil and gas sector, which was absolutely important to the province, and we were developing a new land tenure system, we were developing a new generic royalty approach, we were developing offshore legislation, we were dealing with Statoil to try to get the next development, we were announcing White Rose and trying to negotiate that. There were NAFTA challenges.

Like, I could just go on in terms of what the two years consumed. Layer on top of that then, of – you know, the complexities of Muskrat Falls, but the power outage in January of 2014 was extreme; it took a lot of time and effort and very important to the people of the province and put a lot of time into that.

And the other side of that is my duty as an MHA, with a very challenging district of four islands and the Fogo Island ferry in the news every other week. I can tell you it was a pretty hectic time.

MR. BUDDEN: I can imagine.

MR. DALLEY: I loved it, but it was a very hectic time.

MR. BUDDEN: And you were minister of Business for only nine months. Then, as I understand it, you were in two other departments for about a year each, and then you went to Natural Resources on October 9, 2013.

MR. DALLEY: That's correct.

MR. BUDDEN: So, each new department – there would have been a new learning curve, a new area to try to get some grip on. And then you got to Natural Resources.

MR. DALLEY: Yes.

MR. BUDDEN: Okay.

Just going to put a – you remember, of course, being interviewed by commissioner Learmonth back in – a couple or three weeks ago.

MR. DALLEY: Yes.

MR. BUDDEN: And, as you know, no doubt, there's a transcript of that interview.

MR. DALLEY: Yes.

MR. BUDDEN: Have you reviewed it before you took your – took the stand here today?

MR. DALLEY: I did.

MR. BUDDEN: Okay.

Just gonna put a couple of quotes to you. I'm looking at page – and this really just reinforces what you've just said, but it's an important point, I believe. On page 11, in response to – and this point you're getting into the interview with James McLeod.

And you said: I had been, at that time, a new minister into a very hectic department with a lot of areas which I – where I wasn't familiar with in terms of agriculture, forestry, mining, then you list a bunch more. And – so this was into the New Year. You'd been a minister three months or more at this point but you were still, I gather,

trying to – you’re going through this learning curve, trying to master this very complex department

You’re agreeing with me?

MR. DALLEY: Yes.

MR. BUDDEN: Okay.

And then we go to the next page and what you say there was you – and again, you were – refer to the interview with Mr. McLeod that would have taken place near the end of February 2014 – so 4½ months into your portfolio. And you said: At least, you know, again, my knowledge of everything that was going on and being new in there – at that point, that was my position.

So, you still really regarded yourself as a new minister, even 4½ months into your portfolio.

MR. DALLEY: Yes, I did. You know, it takes time. And it just – you know, the briefing and so on. And I do recall the interview with Mr. McLeod – not full details, but it was not one of my better moments over the eight years in politics, so I remember it well.

MR. BUDDEN: Fair enough.

And I guess my main point there – and then elsewhere in your evidence in response to a question by Mr. Learmonth, you said that – and I didn’t get your exact words, but it was something like it was a rule of thumb or an understanding that it takes a minister nine months to a year to get a good grip on his or her department. Do you recall saying that or something to that effect –

MR. DALLEY: Yes that’s –

MR. BUDDEN: – to Mr. Learmonth?

MR. DALLEY: – you know, I mean, it varies on the department, and it certainly varies on the minister and the capability, I guess to, you know, be able to manage all the files and so on. But I, you know, I’ve heard Minister Marshall say as well that, you know, it takes nine months to a year to get your feet in under you and then in some cases you’re on the move again, for a lot of different reasons. But that’s the general

nature. And certainly Natural Resources would have been, obviously, one of the more – busier, complex departments relative to the others.

MR. BUDDEN: Sure.

I was struck by that comment because it made me reflect on the fact that, from the time Minister Dunderdale departed to become premier in the fall of 2010 until you took over almost exactly three years later, in that intervening three years there were three different ministers – Minister Skinner, Minister Marshall and Minister Kennedy – each of whom was there I think roughly a year or two, perhaps a little longer. But basically in that three-year span, three ministers came and went between you and Minister Dunderdale.

So, I would think, just following from your earlier evidence, it would – I would suggest that the Department of Natural Resources must have been in – really almost a constant flux as new ministers would come in, try to master this very complex department, then they’d be gone and a new minister would come in and so on.

Do you think that is a fair description of things?

MR. DALLEY: Constant flux – not necessarily. I mean, I can understand and see that the change in ministers – and as I alluded to, you know, to be able to have a little more in-depth knowledge of what’s going on in the department takes time; it’s a big department.

But my experience – I found, I mean, you know, not negating those challenges, but my experience that – the stability really rested with the deputy. You know, I felt in my experience – I can reference another department – when I went to Fisheries and the deputy minister at the time was Alastair O’Rielly – absolutely tremendous resource and knew the files, knew the industry and certainly made my job a lot easier and I would reference Mr. Bown the same way.

So, while I concur that the change creates some issues, it creates a lot more issues for the bureaucracy because, again, they’ve got to spend the time now to brief up another minister and that’s a challenge. It takes time and there’s work to be done. But the stability in the department,

from my experience, would have come from Mr. Bown.

MR. BUDDEN: Sure, but it does leave the minister, I would suggest, in the position of being quite reliant on the bureaucracy, as you put it, on the deputy minister and so forth.

MR. DALLEY: Oh, I would agree.

MR. BUDDEN: Okay.

Who, during your tenure as the minister of Natural Resources – who did you believe to be the Cabinet minister responsible for Nalcor?

MR. DALLEY: Minister of Natural Resources.

MR. BUDDEN: So you would have seen yourself as the minister responsible for Nalcor.

MR. DALLEY: Yes.

MR. BUDDEN: Okay.

And what did you envision that responsibility to be? I mean, what did you see – if somebody were to say to you, well – or, I'm asking you now – how did you exercise your responsibility to – as a minister for Nalcor? What did you regard as the essence of that responsibility? What would you say?

MR. DALLEY: Well, I think it goes back to the concept of Nalcor and the vision. There was always a challenge and reference about the significant resources in our province and how we're going to find a way to develop it for the benefit of the people of the province. It's been a discussion for decades and this was a new approach and to be able to bring together a corporation of expertise that would work very closely with the department and try and find ways to develop our resources – whether it was, you know, the offshore oil and gas, the equity shares, the different approach to different things that was happening.

So, that mandate of Nalcor to help develop the resources for the benefit of Newfoundland and Labrador – that's how I viewed Nalcor – as, you know, as an extension of the department and my role to oversee, but I felt it was their role as well to work very closely with us in terms of

government setting the policies and working, engaging, with Nalcor because their involvement around resource development had a direct impact on, obviously, the people of the province, on the Treasury, on the direction or the ability of government (inaudible).

MR. BUDDEN: Fair enough.

MR. DALLEY: Yeah, so –

MR. BUDDEN: And it's the – the word you just used, oversee. So you do acknowledge it was your responsibility as minister to oversee Nalcor at some level. You would agree with me there?

MR. DALLEY: Yes, you know, again, defining oversight. But I would agree that the – Nalcor would report to the Department of Natural Resources and I would be the conduit, I guess.

MR. BUDDEN: Sure, and I guess, as minister, I would like you to define what you understood oversight to mean in that context.

MR. DALLEY: You know, there were reporting mechanisms. There was functions established within Nalcor as – within their own internal – you know, oversight for me was certainly about transparency and accountability. Ensuring that the requirements for access to information was established. The accountability in terms of what you're doing, whether it was through your, you know, your reports – monthly reports, quarterly reports, annual audits, those functions. Ensuring those kinds of things were in place – and they were. And the other part would be that there would be constant engagement back and forth with Nalcor and their leadership and the department and my staff.

MR. BUDDEN: Okay, so you inherited – when you stepped in the department, we were past sanction. So essentially, I would suggest that Nalcor had said, look, we're – you know, we can build this dam for \$6.2 million and the transmission line and so forth. So I guess, what would you, as minister, have done to ensure that they were accountable to that commitment? You use the word accountability, and I'm just –

MR. DALLEY: Yes.

MR. BUDDEN: Why don't you put a bit of –

MR. DALLEY: Well, I can –

MR. BUDDEN: – put a bit of meat on the bones.

MR. DALLEY: I mean, you know, the availability of the information and the professional oversight in terms of internal/external audits, and those things were in place. And again, coming into the role in October well established – well-defined to establish a relationship with Nalcor, to be able to engage in conversations with them, to ensure the deputy was, you know, the deputy was, indeed, connected well to Nalcor in terms of information. So, you know, that kind of oversight would've been my initial involvement.

MR. BUDDEN: Okay. Well, let's break that down a little bit.

You – as we've heard, you personally played no role in establishing the Oversight Committee, I understand? That was established by Premier Marshall, am I correct on that?

MR. DALLEY: Other than discussions, probably, in Cabinet.

MR. BUDDEN: Okay.

MR. DALLEY: Yes.

MR. BUDDEN: But say, for instance, the – how that Oversight Committee was constituted. I mean, we saw a list there a few moments ago of eight or 10 individuals, mostly at the DM level and so forth.

MR. DALLEY: Yeah.

MR. BUDDEN: How much input did you personally have into the constitution of that committee?

MR. DALLEY: I don't recall other than, you know, it would have been at Cabinet and certainly would have been supportive of the concept. But in terms of the actual makeup, I don't recall. I may have had comments at the time, but other than that would've been

contributing, like, probably other Cabinet ministers.

MR. BUDDEN: Sure.

To what degree, if at all, were you uneasy about the fact that you were the minister of Nalcor, yet the Oversight Committee for Nalcor's biggest project, really you played a relatively minimal role, I would suggest, in the establishment and supervision of that committee.

MR. DALLEY: Very comfortable, because in my view if we were going to make this independent we didn't need ministers involved. I was very cautious of – and had a number of discussions around political interference. You know, this is a major project, open on many fronts, 200 contracts.

You know, you hear talk of things that went on in Montreal around, you know, contracts and interference and, politically, it's not a place that I wanted to be around contract interference. And so setting up an independent committee to look at this, in my view, the less political hands on this the better.

MR. BUDDEN: Okay.

So you saw it as a positive thing, that the Oversight Committee was removed from you and your oversight functions.

MR. DALLEY: Yes.

MR. BUDDEN: Yeah, okay.

We've heard evidence that – and we've seen the names, that there's nobody on that committee who had any particular experience, or probably any experience at all, in the – in project management or anything such as what was occurring here in Labrador at the time. Did that cause you any concern at the time?

MR. DALLEY: No, because at the time I think ministers were put in place that if there was gaps, that they could fill them with a working group. We supported the EY support, particularly around, you know, their understanding of capital projects.

So, you know, I felt that it was certainly strengthening oversight, I felt it was a good initiative and, you know, less political interference but, at the same time, whatever resources that this committee needed and we would support that. So with the working group, with access to outside professional supports, access to the independent engineer, I was comfortable.

MR. BUDDEN: Okay.

And we'll return to some of that in just a moment, but let's zoom out just a tiny bit.

Perhaps, Madam Clerk, we can call up Exhibit P-2052. And it's a – I believe that's a three-page document. It's page 1 that I'm looking at that moment. If you can scroll down just a tiny bit further, Madam Clerk.

THE COMMISSIONER: Tab 32.

MR. BUDDEN: Yeah.

MR. DALLEY: Thank you.

MR. BUDDEN: So the third bullet there – and, again, this is – we – perhaps just scroll back to the head so I can introduce the exhibit properly – we've heard from this. But this is a speech you gave, I guess, at the – in the summer of 2014. And if we go back to the third bullet, you're confirming there, as I understand it, a – quote: "... a project of this magnitude and importance requires our oversight." And so that obviously is something – as you just said here now – at the time you were saying that, publicly, that oversight of this project is required.

MR. DALLEY: I think, at the time, strengthening the oversight, we felt, was required.

MR. BUDDEN: Okay.

Perhaps we can scroll down just a little more. Yeah, that paragraph there. The one that – perhaps you can read it for us, Mr. Dalley? The one that begins: "I would like to note"

MR. DALLEY: "I would like to note at that outset that there has been more information made public about this project than any in the

history of our province, providing the opportunity for review by the public, government and independent experts including Manitoba Hydro International, Navigant Consulting, the Board of Commissioners of Public Utilities, Dr. Wade Locke and Ziff Energy Group of Calgary."

MR. BUDDEN: That's good. And we are familiar with all of those names from Phase 1, which is, of course, the pre-sanction phase, and I guess I'm asking you, what role, if any, did any of these agencies play in the oversight of the construction phase of Muskrat Falls?

MR. DALLEY: None to my knowledge at that stage. I do understand from reading reports recently on the Nalcor website that Manitoba Hydro, I think, Navigant and another group I don't recall has been utilized since. To what extent I don't know, but I know these groups that were involved pre-sanction were utilized in some capacity since we've left government, I guess.

MR. BUDDEN: When you were minister did you, in any respects, rely at all on that oversight? Were you even aware of it?

MR. DALLEY: This oversight that's referenced here?

MR. BUDDEN: No of – you just mentioned of these various agencies, you've –

MR. DALLEY: Yes.

MR. BUDDEN: – said that you've thought that three of them may have been involved post-sanction. Did I understand you correctly?

MR. DALLEY: Not during my tenure. Since 2015 and subsequent new leadership and new government.

MR. BUDDEN: Okay, so during your tenure, you had no reason to rely on any of these agencies for oversight over the management of the construction project?

MR. DALLEY: Not the detailed construction, no.

MR. BUDDEN: Okay.

So you've mentioned Ernst Young. Are there any other external agencies that you're aware of that would have played a role in the oversight – the Ernst Young and the independent engineer – otherwise are you aware of any external agencies that would have played a role in the oversight of Muskrat Falls construction?

MR. DALLEY: Well, EY, the independent engineer. I think Deloitte was an external party to Nalcor with respect to audit functioning.

MR. BUDDEN: But – not to interrupt you there, but since we're on that – are you suggesting that Deloitte was involved in an audit of the construction of the project?

MR. DALLEY: No. No, no. Just –

MR. BUDDEN: Okay.

MR. DALLEY: – in terms of any external oversight that, you know, at some aspect of the project.

MR. BUDDEN: Like any company –

MR. DALLEY: Some aspect of Muskrat Falls.

MR. BUDDEN: Okay.

Of Muskrat Falls or of Nalcor in just the broad –

MR. DALLEY: Or Nalcor –

MR. BUDDEN: – corporate sense?

MR. DALLEY: – in general, I guess, that would tie into Muskrat Falls. I mean, it was – again, it was a part of it.

MR. BUDDEN: How did it tie into Muskrat Falls? I'm talking about the Deloitte oversight.

MR. DALLEY: My understanding was, you know, Nalcor, as a corporation, and their financial activity would have been – Muskrat Falls would have been tied at – into that, into other aspects of their financing.

MR. BUDDEN: Sure.

MR. DALLEY: But it's – but beyond that, I don't recall any other group that would have

been engaged in the direct oversight of construction.

MR. BUDDEN: Okay.

And just before we move on from Deloitte, was it your understanding that Deloitte was playing a role in the – some sort of audit role in the construction phase of the Muskrat Falls development?

MR. DALLEY: No, I don't think so.

MR. BUDDEN: Okay, thank you.

So it's really the independent engineer and Ernst Young.

MR. DALLEY: Yes.

MR. BUDDEN: Okay.

Madam Clerk, perhaps we could call up Exhibit 00395?

CLERK: Pardon me?

THE COMMISSIONER: What's the exhibit number again?

MR. BUDDEN: I'm sorry, 00395. And just before I get to that, Mr. Dalley – I don't think you've got that in your book, but it's fairly brief, so – maybe he does. Is that one of the tabs?

THE COMMISSIONER: I don't think so.

MR. BUDDEN: Okay.

THE COMMISSIONER: I think it's on the screen.

MR. BUDDEN: Sure.

MR. DALLEY: Okay.

MR. BUDDEN: I'll read it to you. But just before you get there, there's a preliminary question. You mentioned that you had occasional dinners – or I think two dinners and a meeting with Mr. Ken Marshall. Am I correct on that, Mr. Dalley?

MR. DALLEY: Yes.

MR. BUDDEN: Okay.

And would you have had much or any contact with other board members? Or of the –

MR. DALLEY: No.

MR. BUDDEN: – board of Nalcor?

MR. DALLEY: No.

MR. BUDDEN: Okay.

Can you right now even tell us who any of those other members might have been?

MR. DALLEY: Could I name them for you?

MR. BUDDEN: Yeah.

MR. DALLEY: Al Hawkins.

MR. BUDDEN: Okay.

MR. DALLEY: Leo Abbass. I know these people but – I can see their face, but I can't call their names.

MR. BUDDEN: Sure. Okay.

MR. DALLEY: Yeah.

MR. BUDDEN: Let's move on. We can scroll down perhaps down, perhaps a little further, Madam Clerk.

What this is, just for your information, Mr. Dalley, is an email that was sent in January of 2012 by Thomas Clift, who was a member of the board of Nalcor and, in particular, was chair of governance for Nalcor. And this is obviously before your time as minister for this department, but it sets up a question or two. So I'm going to read you paragraph 1. And again this is an email that Mr. Clift sent to Robert Thompson who was the clerk of the Executive Council.

And reads as follows: "In spite of the numerous requests that we have made of the previous and current administration, we are still really short of Board members." And I'm going to skip over that part because that issue was addressed not long after. But then here's the key part: "Our Board would benefit greatly from the addition of

individuals with large-scale engineering project experience, international project experience, labour relations experience and additional finance or accounting experience. In addition, we would benefit greatly from the addition of an individual with connections to Labrador. At the present time (in all cases) our committees are minimally stocked – as is our Board. I recall a situation recently where I had to get up at 4:30 a.m., while travelling (in California) and attend a 5 hour meeting (via phone), so that the meeting could proceed. Others members can relay similar experiences."

So what am I really focused on there, Mr. Dalley, is Mr. Clift's plea, I would characterize it, which he had said that they'd been raising for years at that point, as of 2012, for members of the board of directors of Nalcor who had these particular types of specialized experience. And he talks about "large-scale engineering project experience, international project experience, labour relations experience and additional finance or accounting experience." And Mr. Clift, in his testimony, said that when he left the board in April of 2016, which was after your time, these needs had still not been addressed.

So I guess I'll ask you a couple of questions. Firstly, were you are that Mr. Clift had been making these requests previous in time to your tenure?

MR. DALLEY: No, I don't recall seeing this. No.

MR. BUDDEN: Okay. You said when you met with Mr. Ken Marshall, chair of the board, he would raise board concerns. I think that was your phrase. Did he ever raise these concerns?

MR. DALLEY: Again, as I referenced earlier, I don't know the specifics of conversations with Mr. Marshall, but I was aware through conversations with Mr. Marshall of the challenge and the workload for the board. You know, it was extensive. There were times – for some reason 60-odd meetings come to mind and they were on subcommittees as well.

So, you know, I was aware of the need to address board issues and I think, you know, through discussions the board appointments were done through the Premier's office. I do

know we had engaged – it might have been started before I got there, that I don't recall, but I know there was work done by Knightsbridge Robertson Surette; a nice package of work. It referenced a way forward with respect to board composition, matrix, compensation – the kinds of things that I would have had conversations with Mr. Marshall about.

Mr. BUDDEN: That was quite late in your tenure as minister though, wasn't it? That was near the very end.

MR. DALLEY: For me it probably would have been – because there was a couple of issues there, I don't recall when. It could have been late 2014, early 2015; I think the Knightsbridge report was in March of 2015.

And, as well, I think at the time the chair had left and Mr. Marshall was a temporary and it was required that we need to get a permanent position made because of the decisions and signing authorities and so on that was happening within the board. So that would have been an issue that I would have dealt with as well with respect to recommendation or forwarding a discussion on to the Premier's office.

Mr. BUDDEN: Okay.

I'll focus my question a little more. Did Mr. Marshall make you aware that the board felt it needed these particular areas of expertise? And, if so, did you in turn let either Premier Marshall or Premier Davis know of those concerns?

MR. DALLEY: I can't reference specifically what Mr. Marshall would have discussed because I don't recall specifics. But I do recall having conversations and I do recall the issue of the challenge with the board members in terms of their workload.

You know, a tremendous group of people, very dedicated and committed to the project and the province. And, you know, really appreciate the work they did, but with the number and the volume of work, it was a challenge. And I recall those kinds of conversations. Specifically, I couldn't tell you.

Mr. BUDDEN: Okay.

MR. DALLEY: Beyond that, conversations with Minister Marshall – at the time Premier Marshall; he would have known as minister as well. And, again, those kinds of things – the way that generally worked in government with board appointments that the reference would be made to the Premier's office, and through their process they would manage board appointments. And that's basically how it worked.

MR. BUDDEN: Okay.

Well, I'm going to end by just asking you a few questions about your dealings with Mr. Martin, and we've heard evidence how frequent they were and so on, so I'm not going to return to that. But what I would like to do is look at your transcript, and there's a fairly long quote on page 18 and again on page 19, but it's important, so I'm going to read it to you.

And Mr. Learmonth asks you – this is about halfway down 18: Did you have – did you receive updates from Nalcor on the Astaldi contract, the problems that were showing on the Astaldi contract? Did you follow that to any degree?

And your answer was: Some discussion with Ed – Ed Martin, obviously – general discussion about, you know, again, schedule pressures, what's happening, issues with Astaldi, you know, around productivity, what are you hearing, what's happening, just a general conversation about how things were progressing. I mean, that was – I couldn't tell you a specific conversation.

And then Mr. Learmonth says: Yeah.

And then you said: But over the course of time and discussions, we would've had conversations about how things were going. Details? No, but what – how are things going on the site, you know.

And the following page – I'll skip over a bit, but then I'll pick up again. You – Mr. Learmonth says: Have you met with him, just the two of you?

And you say: Yeah, yeah.

And Mr. Learmonth: Yes, like – rather – like regularly, or just ...?

And you say: No, no, no, no, just, you know, where, you know, normally Charles Bown would be available. If he wasn't, then I just sit and have a chat with Ed. Nothing about trying to keep everybody else out, but just depending on, you know, how the day was or what was convenient, then we'd sit and have a chat about aspects of the project.

And we'll skip down to the bit. Then it's Mr. Learmonth: Okay, at any time before financial close were you aware of any problems with schedule? In other words, that – were you aware of any information that would lead you to the conclusion that the scheduled date for first power of December or July 2017 was off.

And you say: No.

So I guess what – you use words like this was a general discussion, this was a chat, and I don't want to put too much weight on your particular choice of words back a couple of weeks ago, but I guess what I'm really interested in is knowing – okay, well, let's set it up like this: You knew during your tenure, I would suggest, that there were at least some issues with the Astaldi contract. You're aware of that?

MR. DALLEY: Yes.

MR. BUDDEN: You're aware that the dome they're building up here, that that hadn't worked out as planned.

MR. DALLEY: Yes.

MR. BUDDEN: You're aware of that?

How – to what degree did you, I guess, press or question or interrogate Mr. Martin to say: Look, Sir, you know, what's going on here? Are these contract problems – are they going to cause us problems with maintaining the schedule? Like, give me a sense of how much you pushed him.

MR. DALLEY: Well, you know, I certainly think the term interrogate would be strong. Didn't ever feel there was a need to interrogate. Again, we had a very co-operative working relationship where he was available. And I

would have conversations with Mr. Martin, lots of times through the deputy, but again, as I referenced earlier, you know, my home was five hours away so I worked when I travelled. I was on the phone – hands-free, but I was on the phone. And it's – you know, I could call up Mr. Martin and have a discussion. Might've been something that came up during the day. So those are the kinds of conversations that – you know, I felt I had access to Ed whenever I needed him.

Specific details – I don't recall going into specific details of Astaldi, understanding – and Ed would acknowledge that in our conversations, the pressures with Astaldi, but very cautious around how it's being handled, cautious around issues around claims, issues around commitments and how this was going, but again, very confident. Always left me feeling that Ed's got this under control, there's mitigation measures, there's discussions going on, even go see the parent company, you know, going to insert some Nalcor people here to get the management going, we're seeing improved productivity. Those are the kinds of things and conversations that Mr. Martin would leave me with.

So it's – that was my experience.

MR. BUDDEN: Okay.

We've heard from Mr. Kennedy, who speaks of and – you know, and he did because we've seen them. To the degree we can read them is another question, but he took hundreds of pages of notes, including a lot of notes from meetings with Mr. Martin. And from those notes it appears that he – like, Mr. Kennedy was in New York meeting with PIRA. He was back asking Mr. Martin, well, what about – I just heard this. What do you make of that?

There's nothing really of that degree of interrogation in your dealings with Mr. Martin, were there?

MR. DALLEY: Well, again, there was no interrogation, but there are times when, if there's issues, particularly in the public – again, looking at the measure of responsibility, I guess, as minister and lead minister to be the public – I would be reluctant to say the face of government with respect to Nalcor, but I was the one

primarily in the public answering the questions, whether it was *Open Line*, media or whatever might be the case.

MR. BUDDEN: Sure.

MR. DALLEY: So if something came up during the day that was an issue or had a concern or I didn't understand, through discussions with the deputy, it might end up that Gilbert Bennett would explain it or, you know – or Mr. Martin would explain it. Whoever I needed to explain, particularly around some of the technical aspects of the project that might be out there in the media and people were making noise and challenging, and that was of concern to me. It's important to me, and I need to understand and I would make those calls.

MR. BUDDEN: Okay, and again, before I move on – I'm just about done – but don't get hung up on the word interrogation. That's just a term for questioning. So, again, by interrogation, I really just mean kind of a probing question, like –

MR. DALLEY: Fair enough.

MR. BUDDEN: – perhaps like I'm doing now or like the other lawyers have done.

MR. DALLEY: Sure.

MR. BUDDEN: Yeah. So there's nothing of that nature, really?

MR. DALLEY: Okay.

MR. BUDDEN: You're agreeing with me?

MR. DALLEY: Oh, sure. You know, it's – I just want to make the point. I don't want it to be, you know – I just see interrogation as seeing a word that's a fairly strong word that would mean there's a reluctance and you have to put pressure and so on, and I never had that experience with Mr. Martin.

MR. BUDDEN: Okay.

Well, we're here, of course, because Mr. Martin's assurances appear to have been incorrect and the project is delayed and over budget. I guess my final question is to what

responsibility do you think you bear for those problems?

MR. DALLEY: You know, I guess when you sign up to become a politician, then you take on the responsibilities of government at the time. I felt, at the time, I was proud to be part of a government that was prepared to make tough decisions, prepared to look at ways to advance the province. And we were tasked with a big job, with a big responsibility. I took that very seriously, put a lot of time and effort into it, and feel that, you know, contrary to eight years later and \$30 million and a team of lawyers and an Inquiry and all of that that, you know, are exposing and having the discussions, I think you get to the root of the core that, from my perspective and politically, we had a job to do. We had information. We had established a trust and a working relationship. We made decisions on the best information that we had and we felt that information was right.

And, you know, so from that perspective, that's how I feel. I guess that's how I sleep at night, you know?

MR. BUDDEN: Okay. Thank you, Mr. Dalley. I have nothing further.

MR. DALLEY: Thank you.

THE COMMISSIONER: We're going to break here now, but we're going to need to push this along a little bit, so we're going to come back at quarter to 2 today for – we'll start at quarter to 2 this afternoon.

All right.

CLERK: All rise.

Recess

CLERK: All rise.

The Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay.

Edmund Martin.

MR. SMITH: Good afternoon – oh, thought it was off.

Good afternoon. I'm Harold Smith and I'm representing Mr. Martin.

I'm interested in a few more general aspects of your testimony, and in particular your knowledge of why Muskrat Falls Project was chosen.

Do you recall why it was chosen as a project to supply power?

MR. DALLEY: Because it was the least-cost option.

MR. SMITH: Okay. And the least-cost option was determined by current – excuse me, we're so used to using the acronyms, I think I'll have to go that – CPW.

MR. DALLEY: Yes.

MR. SMITH: Okay. Current [sp. cumulative] present worth.

MR. DALLEY: Mm-hmm.

MR. SMITH: Now, were there other, you know, positives, other than the least-cost option, that the Muskrat Falls Project presented to government and to you as a minister of the Crown at that time?

MR. DALLEY: Yes, my recollection would be there was tremendous benefit to development of the Muskrat Falls Project in terms of net value of the project, in terms of addressing the need for power, issues around improving reliability, improving redundancy, potential to shut down Holyrood and move away from fossil fuels and move to renewable energy, to create a new access corridor by being interconnected, where we could flow our energy and have value in a project with respect to selling our electricity, create an opportunity to develop other energy resources, creating tremendous employment and economic opportunity. You know, those are the kinds of tremendous benefits that were presented and associated with the development of Muskrat Falls.

MR. SMITH: And now, in the context, if you will, of the situation after sanction and prior to financial close, there was an indication from counsel Commission that perhaps it should've been disclosed that the project costs had gone up and for that – and for the express reason of getting government to re-evaluate the project.

If the cumulative present value of the project – the cumulative present value of the project hadn't materially changed, given those additional benefits that you've pointed to, would there have been any purpose in determining whether or not it was \$6.2 or \$6.5 billion?

MR. DALLEY: Yes, I think so. Understanding and appreciate the net worth, the – you know, the CPW as well as the net value overall of the project and the offsets that would contribute to, you know, potential overruns. Understanding that and understanding – knowing that the number was 6.5, whether that would've triggered a re-evaluation, you know, again, I'm sure there's a lot involved in an evaluation. But it certainly – I think it was incumbent that the number, whatever that was, regardless of the offsets on CPW, whatever that number was, I think it was important for us as government to know what the number was. You know, I think it was a hard number that the public would attach to. So it was important from, you know, probably – you know, obviously from a project, building a project and what the accurate number was, but certainly it was important as well from a political – an obligation to the people of the province that the accurate number was out there.

MR. SMITH: Okay.

So – but in – just looking back and thinking about it in context of which Muskrat Falls was chosen and the substantial benefits that would arise, some of which are essentially public-policy benefits, is it likely that the project would've been halted?

MR. DALLEY: I can't really say. You know, I think and I'm a firm believer that the merits of the project and the benefits of the project, some of which I just outlined, they still exist. They still exist even though we're having a discussion about the, you know, significant increase in capital costs. I still believe in the merits of the project.

Whether knowing at the time 6.5 would've altered a decision, I can't say because there's a whole lot that goes into that decision. I understand that, but to me it's not the point. The point would be that, yes, there may have been value, it may have been re-evaluated. We may have proceeded. You know, key as well was the CPW gap of \$2.4 million – billion, which was, you know, again, as I alluded to earlier today, is a key number with respect to understanding of where we are and the least-cost option.

So, you know, it may not have materialized into altering the project.

MR. SMITH: Okay.

MR. DALLEY: But I don't know. I can't say for sure.

MR. SMITH: Now, when you look at, you know, the \$2.4 billion, and just put that in perspective from your perspective, would – if there was no material change in the \$2.4-billion difference between the Isolated and the Muskrat Falls Project, where would be – where would your leanings be?

MR. DALLEY: It's hard to say at this point. I mean, that was one aspect.

But, I mean, you know, from a basic understanding of the project, both, I think, within government, you know, outside of those directly involved, and certainly within the public, one of the premises of moving forward around least-cost option was, based on the evaluation, this was the project that was the least cost, by a CPW of \$2.4 billion. So that was an important number. That was important.

Whether other information, you know, offsets and so on would've changed some of that, I don't know. But I – you know, on principle, the number that we went forward with on financial close, we believed, I believed, it was the accurate number of \$6.2 billion.

MR. SMITH: You mentioned offsets. Were you familiar or knowledgeable of any offsets that would offset the cost as far as a CPW is – analysis is concerned?

MR. DALLEY: If I recall, and I certainly can be corrected, but particularly around financing, I think there was a significant benefit realized, as well as more analysis resulted in what we could see as more benefit with respect to the sale of power.

MR. SMITH: Okay.

And we saw today, the new exhibits entered today, that indeed government officials were made aware of a change in the amount, and I gather from your evidence that you weren't told this.

MR. DALLEY: No. Are you referring to the evidence this morning?

MR. SMITH: Yes.

MR. DALLEY: Yes.

You know, with respect to that evidence, there's no number on that evidence that was provided this morning, and I can only refer to the numbers. Again, I have no recollection of the 6.5 number and the decision at the time – as I alluded to in January 20 press release, my understanding was it was 6.2.

MR. SMITH: I understand that, but I'm – I understood part of the problem was, is that you were unaware that even no number change had occurred in the cost. In other words, they had not disclosed that there was going to be an increase in the capital cost.

MR. DALLEY: Well, again, my recollection, as I – you know, my recollection is that I wasn't aware that the number had changed to 6.5.

MR. SMITH: No, but there were officials in your department and in the Finance department that were aware that there was a change.

MR. DALLEY: Yes, according to the evidence presented this morning that there was some discussion about potential overruns.

MR. SMITH: Okay.

MR. DALLEY: With no number attached.

MR. SMITH: Okay.

Okay.

Now, at what point in time do you recall becoming aware that once financial close occurred the project was essentially on a one track towards completion?

MR. DALLEY: It would've been around the – again, I don't remember a specific time, but it would've been probably around the time of the briefing of the details of the federal loan guarantee.

MR. SMITH: Okay.

You were briefed as a minister, or briefed as Cabinet, in Cabinet?

MR. DALLEY: Minister.

MR. SMITH: Okay.

So you knew fairly early on that once started the project would either be finished by Newfoundland or finished by Canada and charged to Newfoundland?

MR. DALLEY: Yes, as I've stated, I wasn't involved in the loan guarantee negotiation, but when it was complete and the details – I recall going to the – I'm going to say Department of Finance boardroom and documents were there and a presentation chart of how this was structured and arranged, and the commitments and some of the details. I don't remember the details today, but I do know because of the Inquiry and the reference to these kinds of commitments that I would've known that at the time.

MR. SMITH: And I take it then that in terms of that knowledge, okay, after financial close the increases that occurred in the budget, in the capital cost estimates, would have limited effect on the ability of the province to shut the project down.

MR. DALLEY: I don't think I would've been to that level of detail about shutting the project down. I don't really recall a conversation where we would've had explicit, you know, detailed discussion about shutting the project down.

MR. SMITH: Okay.

Now, in terms of your discussions with Mr. Martin, Mr. Martin as the head of Nalcor would be involved in many aspects of your portfolio, not just the Churchill Falls project, is that correct?

MR. DALLEY: Absolutely.

MR. SMITH: Sorry, not Churchill Falls, Muskrat Falls Project.

MR. DALLEY: Sure.

MR. SMITH: When you look at his level of confidence, as you've spoke of quite frequently, his level of confidence, he did express there were pressures with respect to schedule and pressures with respect to costs. I understood that you recalled those types of discussions but no firm numbers.

MR. DALLEY: No, I would agree. I mean, there was an acknowledgement that, you know, this was a big project and I recall, you know, the 200 contracts, there's 100 work fronts, there's a lot going on. There's 4,000, 5,000 people involved. You know, it's a very large, complex project and, you know, Mr. Martin would acknowledge that there's constant pressure.

MR. SMITH: Okay.

And you met with him with respect to the Muskrat Falls Project. Had you met with him on any of his other interests, if you will, like the oil and gas side, particularly?

MR. DALLEY: Yes, I – again I don't recall specific –

MR. SMITH: No.

MR. DALLEY: – meetings, but again, you know, Mr. Martin was always co-operative and available and, you know, a tremendous resource, knowledgeable. And issues around the oil and gas, I recall specifically Statoil in particular, we were – you know, there was a discovery in the, you know, in the – new frontier discovery. And how we were proceeding and progressing, Nalcor would've been directly involved with that, Mr. Martin, Mr. Keating and we would've been as well. So, you know, there were multiple things that Mr. Martin and I would've discussed.

MR. SMITH: So when you answered the question earlier today of how many, you know, meetings would you have held during your time as minister of Natural Resources you said several, I think, and you didn't put a particular number on it. But would some of those meetings, that you were referring to, be in relation to the other aspects of Mr. Martin's responsibility with Nalcor or where you really speaking only to the issues arising in relation to Muskrat Falls?

MR. DALLEY: No. I mean, there may have been some specific – and again, you know, qualifying meetings, as I alluded to, conversations on the phone while I'm driving, things like that, you know, technically could constitute a meeting, I guess, but certainly discussions with Mr. Martin –

MR. SMITH: Okay.

MR. DALLEY: – and there would have been specific times, specific to something related to Muskrat Falls, but certainly other times specific and only specific to oil and gas.

MR. SMITH: Okay.

Now, with respect to the issue of strategic risk, if you will, or contingent risk, contingent liability, were you aware that there was a letter from the Government of Newfoundland, essentially, to the project team and to Canada, that Newfoundland would underwrite any cost overruns?

MR. DALLEY: The date of the letter – do you have it?

MR. SMITH: Yeah, did they – did – were you aware of such a letter, or such a –

MR. DALLEY: What would have been the date for the letter, do you know?

MR. LEARMONTH: October 18, 2011.

MR. SMITH: Thank you.

October 18, 2011.

MR. DALLEY: Yeah.

No, I wouldn't have been aware of that letter, and I ask because, I guess, the briefings around the federal loan guarantee and what my understanding was of that and since – I just don't want to mix up the two – but no, I wouldn't have been aware of a October 2011 letter.

MR. SMITH: But you do recognize that – at least I took from your evidence that you recognize that there was significant benefits to have a loan guarantee from the federal government.

MR. DALLEY: Yes, and I also understood that the province had agreed to –

MR. SMITH: Right.

MR. DALLEY: – the overruns.

MR. SMITH: Just – if I can go back a little bit to re-evaluating after April of 2013 and before financial close – where would the \$900 million go if you did close the project, or shut the project at that time? Where would the \$900 million that was spent up to that point in time – where would that go? Do you know? Understanding –

MR. DALLEY: Yeah, where would the debt go?

MR. SMITH: Where would that amount go? How would that be recovered?

MR. DALLEY: I couldn't answer that question – whether – I think it's best that Finance answer that question.

MR. SMITH: Okay.

Now, my understanding, again, is that you were the minister at the time the project cost of \$7.65 billion was put in place?

MR. DALLEY: Yes.

MR. SMITH: Okay.

And are you aware whether there was a presentation to Cabinet with respect to that particular AFE?

MR. DALLEY: Yes, I think I have it, somewhere –

MR. SMITH: Yeah.

MR. DALLEY: – around 21st, 28th of September?

MR. SMITH: Okay.

And, in relation to that document, did you get the impression that the cost change in the capital cost estimates was finished – that it was done?

MR. DALLEY: You know, I think if you look at the deck in isolation, you could certainly see, again, you know, the value, the presentation, the positive, the contracts, particularly was – I know this was a significant challenge going, you know, from market pressures and to the contracts coming as to what that number would be, and to have those done, I think there was some – I don't know if relief is the right word – but there was, you know, there was some – a higher level of confidence in the numbers.

But I knew that there was particularly an ongoing issue with Astaldi, and I knew Mr. Martin was very much engaged, but I didn't know as to what number that would be.

MR. SMITH: Okay. Yup.

Because if you look at P-02006, I don't know the – you're –

MR. DALLEY: What is that?

MR. SMITH: It's the deck that was presented at a Cabinet meeting. I don't know the tab number, I'm afraid.

MR. DALLEY: I think it's right here.

THE COMMISSIONER: (Inaudible.)

MR. SMITH: 02006.

THE COMMISSIONER: Tab 56.

MR. DALLEY: Fifty-six. Okay.

MR. SMITH: Okay?

Gonna, you know, direct your attention to a few pages in that document, which I think signals – I'm not sure, but I wanna get your impression – signals that it's not over yet, and there's still possible cost – capital cost increases coming.

And I direct your attention first to, say, 40 – page 42.

MR. DALLEY: Okay.

MR. SMITH: And you can see here that there's an indication of some of the offsets, okay, with respect to lower – sorry, lower-than-budgeted financing costs, about \$500 million, and 3 per cent – or sorry, I'm – my – I'm like Mr. Simmons; my variation on my glasses needs to be checked.

MR. DALLEY: I – did you say page 42?

MR. SMITH: Forty-two, yeah. That's in red.

MR. DALLEY: So, yeah, okay, now I have it.

MR. SMITH: Okay.

So you notice that it says: "Although the following amounts are not ... part of 'facilities capital', they are partial offsets to overall value of the project which have occurred since sanction, equating to 13% (nominal) of facilities capital"

MR. DALLEY: Mm-hmm.

MR. SMITH: So, there was disclosure by Nalcor to the Cabinet that there were offsets to some of the increases in the capital cost?

MR. DALLEY: Yes, there were.

MR. SMITH: Okay. I direct your attention to 44 – next – two pages away. Okay.

And therein you see that the market conditions are representing \$462 million. These are costs that are really outside the control of anyone at Nalcor. In other words, the market costs have – the bid prices were coming in higher. The control doesn't exist in Nalcor to fix them. That's a matter that has to be negotiated between Nalcor and the prospective bidder.

Do you recognize that there would be ongoing negotiations to deal with these market costs?

MR. DALLEY: Yes, with respect to, you know, the process that's been alluded to, you know, contract RFPs, contracts and then negotiations around pricing and what elements of how the contract would look. Yes, I understand that.

MR. SMITH: And would you agree that, you know, these negotiations are commercially sensitive?

MR. DALLEY: I would.

MR. SMITH: Okay.

And would you also agree that disclosing some of these numbers as actual numbers of the project cost could create difficulties in those negotiations?

MR. DALLEY: Conceivably, it could. It depends on, I guess, the type of the negotiation, the type of contract. But –

MR. SMITH: Yeah.

MR. DALLEY: – conceivably it could.

MR. SMITH: Okay. Page 54 please.

Looking at the last two bullets, it says, in terms of key messages as to what was going on at this time: “The Powerhouse is behind due to Astaldi ... start, and first power from Muskrat Falls will be delayed from 2017, with the revised timeframe under review.” In other words, they didn't give you a specific time when first power would be done, but it's – they're signalling fairly quickly in August – this document was prepared in August of 2015 – they're signalling that the timeline for first power is moved out – not going to be December anymore.

MR. DALLEY: Yes.

MR. SMITH: Okay.

And they said the “Additional costs and potential ... offsets and reductions associated with the powerhouse delay are also under review.” So, at this point in time, they're actually using some of the offsets to reconcile

the project or to keep the project economically viable.

MR. DALLEY: Okay.

MR. SMITH: Okay?

Page 66 – and we're nearly done.

MR. DALLEY: Okay.

MR. SMITH: Okay, at 66 they outline the key remaining risks, again, to Cabinet. In the September time frame – I agree, the deck was prepared in August, but it was actually presented, I believe, in Cabinet in September.

So they're talking about the risks, okay, and some of the key risks. It says even though all of the POs and contract costs contracted will be limited further just to market risk, okay, the other risks, which are a little less certain, are labour productivity of time and material-type contracts, key contractor performance, potential claims, potential union unrest, Aboriginal unrest, geotechnical risk of the North Spur and North Dam construction, and commissioning and start-up.

Although there was – they refer to risk mitigation plans, it's sort of sending a signal, I submit, to the Cabinet, to yourself that, you know, these risks can cost more money.

MR. DALLEY: I would've been aware of these risks. Some are generic to large projects –

MR. SMITH: Yeah.

MR. DALLEY: – I would suggest, and others, through my discussions with Mr. Martin, particularly around productivity, contractor performance, particularly around Astaldi, as well as geotechnical work that was required, would've been aware.

And like I referenced, Mr. Martin was always confident. And, again, as referenced in this deck, risk mitigation plans are in place and being actioned, so acknowledging that the risks are there and having a plan to try and mitigate.

MR. SMITH: And –

MR. DALLEY: Consistent with what my experience was throughout.

MR. SMITH: And did Mr. Martin ever outline to you some of the reasons why he was confident on the schedule?

MR. DALLEY: Again, I don't recall specifics. I couldn't say specifically that he did but, you know, we would've had conversations around these kinds of issues and he would have indicated to me what he's doing to address and trying to move this along, so ...

MR. SMITH: Okay.

But in the context of the schedule did he mention anything about the guarantees that he had received from Astaldi's parent company that they could meet the schedule?

MR. DALLEY: Yes, I recall, again, vaguely, but I know he went to meet with the parent company and there was some significant changes that rolled out as a result of that and a commitment that, you know, we're going to meet this schedule.

MR. SMITH: Okay.

And did he ever indicate that the independent engineer for Canada had indicated the schedule was doable?

MR. DALLEY: And, again, he may have, but I – specifically, I don't recall.

MR. SMITH: Okay.

And I believe also SNC-Lavalin had indicated the schedule was doable.

MR. DALLEY: Same answer.

MR. SMITH: Did you know that?

MR. DALLEY: Same answer.

MR. SMITH: Okay.

MR. DALLEY: I mean, he may have and, you know, some evidence have come forward here that – you know, some of the documents and so

on – but other than that he may have, but I just don't recall if he gave me specific reasons.

MR. SMITH: Okay.

Could you go to 67, Madam Clerk?

The only red area is exactly what you've been testifying to most of the morning. That is that Astaldi was a major unknown and they were working on mitigation and dealing with Astaldi, but it was at the time of moving to \$7.65 billion – it was still an unknown quantity and a risk that the project cost could go up.

MR. DALLEY: It was. Again, to my knowledge, it was being addressed. I was very concerned about the number. I never had a number, couldn't get a number. I'm not sure if Mr. Martin had a number to be honest, because it was a negotiation and trying to position it so that it would minimize, obviously, the impact on the cost overrun.

MR. SMITH: Okay.

Now, you mentioned in your direct testimony that you were proud of a government that was willing to try and change the fortunes of the province. You're part of that government and you were proud of that fact that the government was doing that.

MR. DALLEY: Yes.

MR. SMITH: And what aspect or what part of that changing fortunes of the province was represented at the Muskrat Falls Project?

MR. DALLEY: I think the project was, maybe, just one aspect of it. Mostly around the whole resource development approach and seeing success, I think, with the oil and gas development with the, you know, the new opportunities, the seismic work that was done. That was feeding into, you know, some of the highest bids that we've ever received.

So the potential and the outlook looked good and our investments and our decisions and the way things were going seemed to be very positive with respect to the, you know, the supply of energy. We needed power. That was established. Found a way that this was

reasonable and could work; a big project, big economic driver, all the benefits. You know, it's something I felt that, you know, these are the kinds of things that's going to make a generational difference in Newfoundland and Labrador.

MR. SMITH: Thank you, Sir.

That's all the questions I have.

MR. DALLEY: Thank you.

THE COMMISSIONER: Kathy Dunderdale?

MR. HEWITT: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Julia Mullaley, Charles Bown?

MR. FITZGERALD: No questions, thank you.

THE COMMISSIONER: Thank you.

Robert Thompson? Not present.

Consumer Advocate?

MR. HOGAN: Afternoon, Mr. Dalley. My name is John Hogan, counsel for Consumer Advocate – excuse me.

So, Mr. Dalley, first I just want to ask you again about financial close. And you were the minister of Natural Resources at that time, correct?

MR. DALLEY: Yes.

MR. HOGAN: You've been through that. But you had no involvement in the federal loan guarantee, correct?

MR. DALLEY: Correct.

MR. HOGAN: So my question is: As the minister responsible for Natural Resources at that point in time, why did you not have any involvement in the federal loan guarantee?

MR. DALLEY: It's probably a question best answered by the premier at the time; however, given that I moved into Natural Resources on October the 9th, there's been tremendous

amount of work and meetings and discussions and so on around the details of the federal loan guarantee and it was certainly near the end stages. Whether that contributed to why I wasn't involved, whether it was felt that it was more of financial aspect with Finance and the Premier's office, that would be where I would land on that.

MR. HOGAN: Okay. So I understand it was obviously almost done by the time you came there in October. You said to ask the premier of the day at the time, but we can't do that now because he's already testified. So were you told specifically by him your department doesn't have to have anything to do with the federal loan guarantee?

MR. DALLEY: I don't think the premier of the day had testified.

MR. HOGAN: No, you're right, sorry.

MR. DALLEY: Yeah.

MR. HOGAN: Well, not for this Phase 2. You're correct, sorry.

MR. DALLEY: Mmm.

MR. HOGAN: So we can ask her but I'll – guess I'll ask you this – that question then. Were you told by her that you – that your department does not have to be – have any involvement with the federal loan guarantee?

MR. DALLEY: No, I don't recall being told that.

MR. HOGAN: Okay.

Did you ask to be involved with the federal loan guarantee because it was your – you were responsible for the ministry?

MR. DALLEY: Don't know if I asked. Likely not, given that I knew I'd be briefed in the end, which I was. I'm given what was transpiring from October 9 to a deep dive into a, you know, a massive amount of work and briefing, and everything else. I doubt I asked.

MR. HOGAN: Okay.

So when you say you knew you'd briefed, do you mean at the time it was completed, you would be briefed on it?

MR. DALLEY: In the end, that I would get some sense of what's involved in this loan guarantee.

MR. HOGAN: Okay.

So who briefed you on it in the end?

MR. DALLEY: As I said, I recall going – I think it was the board room at Finance. And I think Todd Stanley would have been there from Justice, and some finance people. Exactly who, I couldn't tell you.

MR. HOGAN: Was this a Cabinet briefing? Do you recall?

MR. DALLEY: I don't recall. I think it was outside of Cabinet. And I don't recall the Cabinet briefing.

MR. HOGAN: Okay.

Do you recall anyone at the Department of Finance briefing you other than, you said, Mr. Stanley from Justice?

MR. DALLEY: I don't. I think Minister Marshall would have been there at the time.

MR. HOGAN: Tom Marshall.

MR. DALLEY: Other than that, I can't tell you who was there.

MR. HOGAN: So Mr. Davis testified yesterday, he wasn't aware of the, I guess, the ramifications of the federal loan guarantee at that point in time where Canada could say: You need to complete the project. And as Mr. Learmonth said that theoretically, the project could be stopped, but in all likelihood, it couldn't after the FLG was in place.

So what was your understanding at the time? The same as Mr. Davis's?

MR. DALLEY: No. At the time when I was briefed, I think I would have had all the principles and elements of the guarantee. Again,

I can't remember the specifics, but if I would have been briefed, it would have been briefed on those kinds of principles that the commitment that we were making as a province and a commitment that the federal government was making and what – how that would translate into an impact on a project.

MR. HOGAN: Okay.

So you had more of an understanding than Mr. Davis. And you heard Mr. Davis's testimony yesterday.

MR. DALLEY: Yes.

MR. HOGAN: Okay.

So again, I know it was only a period of October and November before financial close during your time as – when you became minister of Natural Resources.

But were you aware, in those two months, about the status of what bids were coming in with regards to the Muskrat Falls Project?

MR. DALLEY: No.

MR. HOGAN: Not at all –

MR. DALLEY: No.

MR. HOGAN: – in those two months.

So you weren't aware, obviously, of any of the bid amounts?

MR. DALLEY: No.

MR. HOGAN: Did you ask about the status of the bids in that period of time, those first couple of months?

MR. DALLEY: I may have. I mean – you know, I used to ask questions from time to time. Probably discussions with the deputy about, you know, what's this gonna cost and not have an accurate number. But I would say: For the most part, no, I wasn't involved in the bid process or the numbers from a commercial perspective.

MR. HOGAN: And I don't want to catch you out but you obviously – Mr. Learmonth did

bring you to the section of the Grant Thornton Report that said that contingency had been exhausted at the time of financial close, based on the bids that were coming in. That's why I'm asking these questions.

MR. DALLEY: Yes. No, I did not know.

MR. HOGAN: Yeah.

And you're – but you didn't have any update or any knowledge of the bids at all in these two months.

MR. DALLEY: No, none that I recall at all.

MR. HOGAN: So your deputy didn't brief you on the status of the bids or anything like that at that point in time.

MR. DALLEY: I might have known about status, I didn't know numbers.

MR. HOGAN: Okay.

I just wanna – in your transcript, your interview with Mr. Learmonth, you do say this: I guess from my tenure at – from October on, you know, I would assume there would have been quite a bit of activity from July until financial close. So a lot of information and number movement would have taken place.

I guess it sounds like you would have been aware that would have been a busy time in terms of the bids but still, you didn't have any knowledge or seek any information.

MR. DALLEY: Well, not just in term of the bid, I mean. This is a massive project and it's been ongoing for a number of years. So, I mean, there would have been activity going on. Did I know exactly when they made bid calls? I don't recall that but, you know, my assumption would be – even there's evidence that there's \$900 million spent over the course of time. I know there was a tremendous amount of work going on in many fronts with this project. So basically what I'm alluding to there.

MR. HOGAN: Okay.

And also, between October and November, or during October, November, I think you said in

your interview with Mr. Learmonth, you weren't directly involved in the excess energy agreement negotiations?

MR. DALLEY: Well, I think I'd qualify it a little bit –

MR. HOGAN: Yeah, sure.

MR. DALLEY: – that I wasn't really directly involved because again, a lot of this work has all transpired before I arrived. However, it wasn't closed when I arrived. And I don't want to be the one to sit here and say: I was the one who came in to close it. But it's – I would have been the minister at the time when that was closed. So I would have been briefed and aware of the details of that agreement.

MR. HOGAN: Okay. Thank you.

So, Mr. Dalley, I guess after going through all those issues with you, the EEA, the bid statuses, the federal loan guarantee, I mean, you only had two months to get up to speed. And you actually said earlier today that you were a layman in terms of construction issues.

MR. DALLEY: Oh, very much.

MR. HOGAN: Fair enough.

So, you know, this was the financial close of the biggest expenditure in the history of Newfoundland and Labrador. And the minister only had two months to get up to speed and, in fact, didn't participate in any of these major issues because he wasn't up to speed.

So do you see any problem with that?

MR. DALLEY: No, because the Muskrat Falls Project was not about any one person.

MR. HOGAN: No, but the ministry was about – there was only one ministry responsible for Nalcor and it was yours at the time.

MR. DALLEY: But the task of financial close wasn't with the department that I was the minister of.

MR. HOGAN: Okay.

What about the excess energy agreement, the meeting with the independent financial – or sorry, the independent engineer and the status of the bids and the federal loan guarantee? That was all under the gamut of Natural Resources, wasn't it?

MR. DALLEY: Not the federal loan guarantee.

MR. HOGAN: Okay.

The other ones then.

MR. DALLEY: Yeah, the energy excess would have been between Natural Resources and Nalcor –

MR. HOGAN: And the –

MR. DALLEY: – and the hydro division.

MR. HOGAN: And the bid statuses?

MR. DALLEY: Pardon?

MR. HOGAN: The status of the bids, the incoming bids.

MR. DALLEY: Yes. You know, to some extent, understanding that politically, my department and the deputy minister, myself, particularly, were not involved in the bid process, were not involved in contracts and – for obvious political reasons.

MR. HOGAN: So do you feel you had a handle on the ministry within the first two months?

MR. DALLEY: As best I could.

MR. HOGAN: As best you could.

When do you feel that you had an ultimate handle on the ministry? I understand you can only do what you do in the amount of time you are given.

MR. DALLEY: Yeah.

That's a tough question because, you know, we referenced earlier today – every day, there was something different in that department. It's a very big department. And when you look at resource development for the Province of

Newfoundland and Labrador any given day, there's a new issue and new challenge where, again, you have to apply your time and effort to bring it up.

So, you know, I could say – when do you ever get a handle on? You know, I wasn't an expert, didn't come out of it an expert, but, you know, put a lot of time and effort in. And as time went on, got more and more comfortable with the resource department and more comfortable with the issues. But could be the first to say that learned a lot, but there was a whole lot left to learn even when I left.

MR. HOGAN: Okay.

Thank you.

Excuse me.

Just another comment from your transcript – in your interview, when you were asked about Astaldi: And do you remember discussing it with Ed Martin? And your answer was: I do briefly, yeah. I guess the issue was around the cost. And my recollection is that the integrated cover system was an add-on by Astaldi.

So, do you recall saying that in your interview?

MR. DALLEY: Yes.

MR. HOGAN: So, what do you mean by add-on? 'Cause my understanding before your answer, I guess, that wasn't an add-on, it was part of the original bid.

MR. DALLEY: Well, my understanding in advice that was given to me around the ICS – and I particularly remember because it came up and I anticipated a question in the House of Assembly. And I couldn't say for sure if it was Mr. Martin or Mr. Bown. I certainly know I had a discussion with Mr. Bown around the ICS in terms of – because I had made a statement that it wouldn't be any cost to the ratepayers. And that was advice that I was given that this – and the ICS was kind of an add-on to the Astaldi bid – Astaldi's approach to address, you know, winter issues, productivity issues and so on. That was my understanding of it.

MR. HOGAN: Okay.

So if I were to tell you it wasn't an add-on; it was part of the bid – the initial bid – and meaning that they would build this dome as part of the total contract package and continue on with work and that would be the cost of the project, what does – is that – was that not your understanding at the time?

MR. DALLEY: No, my understanding was, I mean, that it was something that came up during the process that Astaldi would do as kind of an add-on and that it wouldn't be a – impact the cost of the project.

MR. HOGAN: Okay.

MR. DALLEY: That was my advice and that was my understanding.

MR. HOGAN: And that makes sense if it's an add-on, but now, knowing that it wasn't an add-on – it was part of the bid package – and if they're not going to complete the build, which is what we know – now know happened –

MR. DALLEY: Yes.

MR. HOGAN: – doesn't it make sense that the schedule will then fall behind?

MR. DALLEY: Well, you know, you can jump to some conclusions and make sense that the aspect of the project that had hoped to be gained by the ICS would have been lost. But it doesn't mean that the schedule is going to be put off because there have been other ways to mitigate.

MR. HOGAN: Fair enough. So –

MR. DALLEY: So, you know, I wouldn't jump to that conclusion, but understanding what the ICS was for – half of it was done, no doubt, then they had to reset and figure out how they were going to deal with the next challenge.

MR. HOGAN: So it was Mr. Bown who briefed you on that specific issue regarding the purpose of the dome and how it related to the contract.

MR. DALLEY: Mr. Bown would have advised me prior to the House of Assembly and, again, I seem to recall Mr. Martin – some conversation and it may, you know again, it may not be – may just be Mr. Bown, but that was clearly my

understanding, and I think the record will show if my comments in the House of Assembly –

MR. HOGAN: Okay.

MR. DALLEY: – support that.

MR. HOGAN: So you were – you said you were – you specifically had that briefing because you anticipated the question in the House.

MR. DALLEY: Yes. That was a, you know, so you'll understand –

MR. HOGAN: Yeah.

MR. DALLEY: – the general routine of the day when the House of Assembly is open – that by lunchtime in the day and then all the media had their hitch for the day, then in preparation and anticipation of what might come in the House of Assembly during Question Period, we would convene. My communications person, my deputy, and we'd go through a series of issues or what might come up or review other things and that's where that kind of a discussion would have taken place.

MR. HOGAN: Did you have any discussions with Mr. Martin and when you were briefed by Mr. Bown on the – any knock-on effects that Astaldi – the dome issue with – Astaldi might have, in terms of any other contractors that might be relying on this dome?

MR. DALLEY: Don't recall.

MR. HOGAN: Don't recall that?

MR. DALLEY: No.

MR. HOGAN: Any other – so no discussions or briefings with regards to any extra cost being incurred because of this dome issue?

MR. DALLEY: I don't recall. I don't think so, but I don't recall.

MR. HOGAN: Okay. You were acting Minister of Education at one point in time?

MR. DALLEY: I was.

MR. HOGAN: For five months?

MR. DALLEY: I was.

MR. HOGAN: Okay, you smiled a little bit. What was the smile for?

MR. DALLEY: I was just – you know, it was a – I outlined my responsibilities; some had shifted because a change in department, but it's – a minister was ill at the time and, given a background in education I became the Minister of Education during a Question Period – during the budget process and during the estimate process.

MR. HOGAN: Okay, did you receive a mandate letter for that?

MR. DALLEY: I don't think so.

MR. HOGAN: Okay, did you find it difficult given that you were sometimes working 14 hours a day to have an add-on of another department at that point in time for five months?

MR. DALLEY: The job was always difficult, so it's, you know, it got added in and by all accounts I think we managed our way through a number of issues, but you know, nonetheless it was, you know, it was increasing your workload.

MR. HOGAN: It was increasing the workload, obviously.

MR. DALLEY: Yes, it was.

MR. HOGAN: In terms of your briefings or Cabinet briefings from Nalcor, you keep saying these decks. I'm just wondering if you ever got detailed reports as opposed to decks.

MR. DALLEY: None that I recall.

MR. HOGAN: No?

MR. DALLEY: No, it was mostly through the deck presentation and face to face.

MR. HOGAN: I just want to bring up a document that Mr. Smith took you to, actually, P-02006, please.

THE COMMISSIONER: That's tab 56.

MR. DALLEY: Okay, I'm there.

MR. HOGAN: Page 66, Mr. Dalley.

So, I'm just taking this one just as an example; there's no magic in this one. Page 66, please.

So, I mean we've seen these decks since Phase 1. I don't communicate in decks; I don't – ever really seen it before, but it seems to be the way that Nalcor likes to communicate. So my question is: Do you think you would have had more details if you had gotten reports as opposed to decks?

And it struck me as – just an example here: “There are risk mitigation plans in place and being actioned.” Wouldn't it be more helpful to have a report on what the risk mitigation plan is as opposed to just getting it in a deck with a sentence and possibly a presentation?

MR. DALLEY: Not necessarily. I think the purpose – and I just think to some of the Cabinet meetings where you have – you might have 20, 30, 40 Cabinet papers, whatever – you know, stacks of reading and preparation for ministers. This was probably a more efficient and effective way to deliver an overview where, you know – these are talking points obviously and an opportunity to engage face to face I think probably would have been more effective than having detailed written notes.

In isolation, I would probably agree with you, but in the context of Cabinet where there would be sometimes two or three binders of information – where, on very short notice, you had to prepare – I think this would have been more effective.

MR. HOGAN: So, I don't disagree with you that at a meeting this might be a good idea, or a better use for – an overview is the word you used – but, you know, if you wanted to go back to your office and learn more about the risk mitigation plan, I think you'd agree a detailed report would help.

MR. DALLEY: It could. Or I could pick up the phone and ask the question –

MR. HOGAN: Okay.

MR. DALLEY: – and get another briefing.

But, you know, again, I'm not saying that having things in writing is – would have been useless –

MR. HOGAN: (Inaudible.)

MR. DALLEY: – but it's, you know, understanding the context that – this approach was generally felt to be very effective.

MR. HOGAN: If we could please turn to P-02125, please.

So, we've seen this a couple of times today. And just note that Mr. Bown is – this is an email to him on November 26, 2013, and I think you said you don't recall being briefed on this email.

MR. DALLEY: Correct. (Inaudible).

MR. HOGAN: You can't say you were not briefed on this email?

MR. DALLEY: No, I can't, but I don't – I certainly don't recall it.

MR. HOGAN: Okay.

So, we can ask Mr. Bown.

MR. DALLEY: Yes, yeah.

MR. HOGAN: You brought up the Knight Piésold report when you were listing off, I guess, things that you relied on in terms of oversight. Do you recall saying that today?

MR. DALLEY: Yes, in preparation I was looking at – the Consumer Advocate had – I think there was a number of references along the way with press releases outlining – so, yeah.

MR. HOGAN: So, Mr. – I think Mr. Learmonth said it was draft report.

MR. DALLEY: Yes.

MR. HOGAN: My understanding is that – I shouldn't say that – when I asked Mr. Kennedy about it, he had a letter that went to the Consumer Advocate and he – when I asked him a question, he said it could be interpreted that Mr. Johnson, the Consumer Advocate, was permitted to retain experts to assist him in his

presentation to the PUB, but that the reports are not to be filed at the PUB.

Now, just so you're clear, that was my interpretation and Mr. Kennedy said, sure, you can interpret that that way.

But, in any event, the Knight Piésold report was not filed at the PUB and it was not made public. So, are you aware of that?

MR. DALLEY: No –

MR. HOGAN: You weren't aware of that.

MR. T. WILLIAMS: Mr. Commissioner, I'd like to take some issue with that. I don't recall that being exactly the evidence at the time. My understanding that – was that there was not a formal report completed, so therefore it's not that the report wasn't filed; it's that Knight Piésold were consulted, but that a report was never assembled.

Now, I may stand to be corrected but I don't think there was ever – the way the question is being posed suggests that there was a report, but that that report was never filed.

I – maybe Mr. Learmonth can add clarification.

MR. LEARMONTH: I can clarify that, I think. There was a draft report prepared by Knight Piésold for the Consumer Advocate but it was never put in final form. So that's it. It's a draft report and I believe that's been entered into evidence.

THE COMMISSIONER: And it was never filed either.

MR. HOGAN: All my point – yeah, I guess, I didn't say whether it was a final report or not. My point was that it was never filed with the PUB.

THE COMMISSIONER: Right.

MR. LEARMONTH: But I think it was filed here.

MR. HOGAN: It was filed here, absolutely.

MR. LEARMONTH: Yeah.

MR. HOGAN: Yeah.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: But it was – Mr. Hogan is correct from my recollection, is that there was a report – there was some communication from Mr. Kennedy to the Consumer Advocate about retaining an expert and getting a report.

My recollection is, is that the report was not – there was no report filed with the Public Utilities Board at the time. And I also believe he is correct in saying that at the time the report was not made public.

MR. LEARMONTH: I agree with that recollection.

THE COMMISSIONER: Correct.

So go ahead and ask your question.

MR. HOGAN: So, on that basis that the report was not made public, you were obviously aware of it?

MR. DALLEY: No. No, because I hadn't followed and, you know, I certainly stand corrected. The – I guess my reference was basically some generic reference to other information that had flown over the years.

MR. HOGAN: So I'll just say this to you, that I think the evidence was too, that, well, Premier Dunderdale certainly referenced that report in the House of Assembly. I can tell you that and I'm pretty sure Minister Bown – or Deputy Minister Bown said that he would have at least known about the report as well.

So the reason I'm just asking is that, you know, it wasn't made public and you brought up that report here today so I wanted to know what you knew about it at the time.

MR. DALLEY: I don't recall. Probably, you know – do you know what time frame that was?

MR. HOGAN: Well, it would have been around the time that the PUB was doing its work, I would assume, because that was the purpose of

the Consumer Advocate retaining Knight Piésold so –

MR. DALLEY: Probably predated me as minister of Natural Resources, so probably not much at all.

MR. HOGAN: Okay. So you didn't read it?

MR. DALLEY: I don't recall reading it.

MR. HOGAN: Okay.

Do you recall it – the report being an issue in any discussion about not disclosing it to the –

MR. DALLEY: No.

MR. HOGAN: – public?

MR. DALLEY: No, just a – again, just a generic reference today.

MR. HOGAN: Okay.

I – is it just sort of like a talking point issue because lots of people, sort of, raised all these groups as – not supporters but reasons for oversight? Is it just, sort of, in that context you referred to that report?

MR. DALLEY: Yes, in terms of the list.

MR. HOGAN: Sure.

If we could please turn to P-02038 and scroll down a little bit, please, so you –

THE COMMISSIONER: Tab 18.

MR. HOGAN: Sorry, we looked at this earlier today. Further, please.

So right here it says: "We have a four-pronged approach to oversight of the project" Do you want to have a look at this email again? You saw it earlier today.

MR. DALLEY: Yes.

MR. HOGAN: Okay.

"We have a four-pronged approach to oversight of the project ... The provincial and federal

governments, along with the lenders, require regular updates on all aspects of the project.”

So I’m just wondering, did you collaborate or meet with anyone at the federal government during your time as minister with regards to oversight?

MR. DALLEY: No, I did not.

MR. HOGAN: Okay. How come?

MR. DALLEY: How come. Don’t recall a conversation or a need to collaborate with the federal government, given the federal government commitment around Muskrat Falls with the loan guarantee, which was outside of my involvement.

MR. HOGAN: Was there any oversight at all taking place in terms of collaboration between the provincial and federal governments?

MR. DALLEY: I don’t know. I couldn’t answer that with respect to, you know, other departments, Premier’s office or – but certainly none from my involvement.

MR. HOGAN: Okay.

Just back to Astaldi for one quick second. Did you meet with Astaldi yourself when you were aware that there were some issues with their work?

MR. DALLEY: No, I did not.

MR. HOGAN: Okay.

You never did any travel to Rome, New York, London, et cetera?

MR. DALLEY: Unfortunately, no.

MR. HOGAN: Did you meet with any Nalcor executive other than Mr. Martin?

MR. DALLEY: Yeah, from time to time, you know, they may be in the room. I don’t – there might have been a meeting with Gilbert Bennett, but from time to time, like, you know, Gilbert would be in the room, Derrick Sturge would be in the room, but mostly just those people.

MR. HOGAN: Okay.

MR. DALLEY: Dawn Dalley would’ve been there as well on times.

MR. HOGAN: Okay.

And what was Dawn Dalley’s role in the meetings?

MR. DALLEY: I think she was communications VP.

MR. HOGAN: Was she giving recommendations to your department about communications?

MR. DALLEY: Dawn – yeah, on times, yeah.

MR. HOGAN: So was she coordinating with – who was your communications –?

MR. DALLEY: Diana Quinton.

MR. HOGAN: Okay.

Did they coordinate communications between themselves?

MR. DALLEY: Yeah, and I think Dawn would’ve been more than communications but, yes, there would’ve been that circle of communications. Not all the time but depending on the nature of, you know, what we’re dealing with –

MR. HOGAN: There would be some –

MR. DALLEY: – then there would be –

MR. HOGAN: – sorry.

MR. DALLEY: – co-operation, for sure.

MR. HOGAN: There’d be some coordinated efforts between a department and the arm’s-length Crown corporation in terms of communications.

MR. DALLEY: Yeah, arm’s length would be a – probably a stretch, given their relationship that’s been alluded to, but given that the – particularly around the technical side of Muskrat Falls and a lot of the technical nature of the

public, you know, inquisitions, then there's times that certainly they would be involved.

MR. HOGAN: Okay. Would they take the lead on it or would your department?

MR. DALLEY: It would primarily come from my department. You know, there may be times when they need to do things and they would consult with us or vice-versa, you know, by the very nature of the project and us, you know, cohabiting in some way to develop this project. When you're pointing out public information in public documents there is a coordinated effort between whether it's Nalcor and the department, and certainly with the Premier's office as well, understanding that putting out information has to be vetted.

And one of the things as well, you want to make sure, particularly the premier – and in some cases the minister – are aware of things that are going out, because you can get cornered and asked questions anywhere at any event. So there would be a coordination and a vetting and, you know, people would know generally when things are going out. Not always, but generally. That would be the process.

MR. HOGAN: When the Oversight Committee was set up, was this discussed, or did you discuss this with anyone at Nalcor?

MR. DALLEY: Don't recall.

MR. HOGAN: Can't say, no?

MR. DALLEY: No, I don't know if there would've been a conversation with Mr. Martin, but I don't recall sitting down saying we're going to put this in place. You know, because, again, there was a lot of conversations but I don't specifically recall a conversation around oversight.

MR. HOGAN: So you don't recall any specific approval or disapproval by Nalcor of the establishment of the Oversight Committee?

MR. DALLEY: No. I don't recall disapproval. I do recall conversations with Mr. Martin around this issue, the challenge that he's experiencing as well with his leadership. If you look at, you know, for a short time with respect to PUB

submissions, DarkNL, all the consultants, Muskrat Falls, it was constant there for a while. And all of those issues and thousands of questions and interviews would have been the responsibility, basically, of his top people.

So, you know, I remember having those conversations about those kinds of challenges and – but understanding, my view was that, you know, there is a job to do there, but from our perspective it'll be accountable to the people of the province. So, you know, this thing's got to get done, so.

MR. HOGAN: You said challenge to his leadership. You didn't mean anyone was challenging his leadership, just that he was facing challenges. Is that what you meant?

MR. DALLEY: No, nobody –

MR. HOGAN: Yeah.

MR. DALLEY: – challenging his leadership, but the challenges of –

MR. HOGAN: Of his leadership.

MR. DALLEY: – of his leadership in that, you know, he's reliant on some of his top people, and his top people were being tied up essentially – as expected, but tied up answering thousands and thousands of questions and, you know, obviously that was –

MR. HOGAN: So was that a complaint he made that – to you that his resources were thinning out or anything because of other things that government were doing and required?

MR. DALLEY: No, I wouldn't classify it as a complaint; I would classify it as part of the discussion.

MR. HOGAN: Did you have any knowledge of the – who was on the project management team?

MR. DALLEY: Gilbert and Paul Harrington.

MR. HOGAN: Okay.

Did you have any knowledge – and I guess we can read the Grant Thornton report on this I refer

to – is that they had little to no hydro experience. Were you aware of that?

MR. DALLEY: No, I'm aware of it now because of the Grant Thornton report, but did I do – you know, check résumés when I was – became minister, no.

MR. HOGAN: Okay, so not aware of their experience whatsoever?

MR. DALLEY: No.

MR. HOGAN: I just want to clarify what you said when Mr. Smith was asking you a question about the CPW, and I guess you can tell me if this was accurate. It wasn't – the decision wasn't as simple as just looking at the CPW analysis. It was still about full knowledge, transparency and disclosure to the public of any number. Do you agree?

MR. DALLEY: Not sure, more context.

MR. HOGAN: Well, Mr. Smith put it to you that, you know, if there's X number of dollars less than the \$2.4-billion difference in the CPW –

MR. DALLEY: Yes.

MR. HOGAN: – as long as it was less than that, it didn't really matter because it would still be the least-cost option. To which you replied, no, we still would've wanted to know any and all numbers.

MR. DALLEY: No, absolutely.

MR. HOGAN: So you agree with that?

MR. DALLEY: Yes.

MR. HOGAN: Okay.

So my point is that it's not as simple as just the CPW analysis; it's knowing everything, yes?

MR. DALLEY: Absolutely. I mean, in my reference to the 2.4, was that was, you know, at a very high-level justification for the difference between Isolated and Interconnected. And to the general public who may not have been engaged over a lot of the details and so on, that was a

number, I think, that stood out with respect to a very high-level justification of the difference between the two.

MR. HOGAN: And to be fair, you actually said that earlier today.

MR. DALLEY: Yes.

MR. HOGAN: That it was a high level. But the general public might want to know – probably would want to know if it's 6.2 or 6.5.

MR. DALLEY: Oh, absolutely.

MR. HOGAN: Yeah.

MR. DALLEY: Absolutely.

MR. HOGAN: And it'd be your job to tell them if you knew?

MR. DALLEY: Absolutely.

MR. HOGAN: So now we've seen some evidence that, at financial close, there was warnings that – I guess, forecasts – that it was \$7.0 billion, and we've seen an email that it was \$6.5 billion, which you weren't aware of. Why do you think you weren't made aware of that?

MR. DALLEY: I couldn't answer that. I couldn't speculate. I mean, it's – I can only – for the record, I had no recollection of a 6.5 number.

MR. HOGAN: No, I understand that, but looking back now –

MR. DALLEY: Mm-hmm.

MR. HOGAN: – knowing that that number existed, can you speculate – I'll ask you to speculate – why you weren't told that number?

MR. DALLEY: I can't really speculate. I mean, it's, you know, legitimizing, is there a reason, was it a judgment call, would they change their decision, would the – you know, did they feel that the discussions around, you know, the net value of the project and the offsets would have satisfied it? I don't know. I think you're best asking the people that were involved and get an explanation. After that, maybe I'll be able to ...

MR. HOGAN: So one of the speculations you made there, I think though, was that there was a risk that maybe the project wouldn't get approved. Do you agree that could be one reason?

MR. DALLEY: I didn't make that speculation that the project that the project wouldn't get approved.

MR. HOGAN: Okay, I guess an issue with the project – do you think someone could speculate that that could be the reason?

MR. DALLEY: I think it would be a stretch to speculate the project wouldn't get approved because of a \$300-million cost overrun in the beginning. You know, I think, without question, that it would have – you know, would it have changed anything? Again, I think I've –

MR. HOGAN: Well, you asked that.

MR. DALLEY: – put in here that I don't know if it would have changed it to anything. Because, again, the 2.4 number was one of the issues that was important. But regardless of that, the principle was that we were going to the public with a number that we believed to be accurate.

MR. HOGAN: Okay. That's all the questions I have. Thank you.

MR. DALLEY: Thank you.

THE COMMISSIONER: Thank you.

Innu Nation?

MR. LUK: No questions, Commissioner.

THE COMMISSIONER: Nunatsiavut Government?

UNIDENTIFIED MALE SPEAKER: No questions, thank you.

THE COMMISSIONER: NunatuKavut Community Council?

UNIDENTIFIED MALE SPEAKER: No questions, Commissioner.

THE COMMISSIONER: Grand Riverkeeper, Labrador Land Protectors?

MS. URQUHART: Good afternoon, Mr. Dalley.

So my name is Caitlin Urquhart, and I'm representing the Grand Riverkeeper and Labrador Land Protectors, which you may know as some citizens groups here locally in Labrador that are dedicated to protecting the Grand River, which is the traditional name of the Churchill River.

So I'd actually ask, Madam Clerk, if you could first go to P-02045, please.

THE COMMISSIONER: Tab 25.

MS. URQUHART: This is a letter from Nalcor, dated April 23, 2014, and it addresses a – some correspondence received by – from Mr. Cabot Martin in relation to the North Spur, which, of course, is an issue that my clients have significant concerns about to this day.

So I'm wondering – this was obviously during your tenure as the Natural Resources minister – were you satisfied when you reviewed this letter that – around the safety of the North Spur?

MR. DALLEY: I'll say, yes, I was. Understanding the technical – I certainly had no knowledge of the technical aspects of the North Spur and would have relied on, I think, Mr. Bennett for his technical expertise and the amount of work that Nalcor were doing that I would have accepted that, yes.

MS. URQUHART: So did you review the correspondence from Mr. Cabot Martin?

MR. DALLEY: I don't recall but I would have seen the letter, yes. I don't recall the letter, but if correspondence came from Mr. Martin, and it was directed to Nalcor to provide some answers to the letter, I would have seen it.

MS. URQUHART: And would you have read the – or would have reviewed the report of Dr. Bernander?

MR. DALLEY: Maybe not the full report but, you know, I know there was considerable public discussion around the North Spur so –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – would have been aware of it at the time.

MS. URQUHART: Would you have reviewed the report of Dr. Bernander, at the time? Do you have a recollection of reviewing it?

MR. DALLEY: No.

MS. URQUHART: Okay.

MR. DALLEY: No recollection.

MS. URQUHART: And this letter – actually, Madam Clerk, if you don't mind just scrolling a little bit please. So, further, a little bit further. There's – it goes on to discuss the – a report from – sorry, actually, yeah, it's a little bit further on I believe. There we go, sorry.

MWH, which I believe we've established as the independent engineer, and it goes on to discuss his comments, which are summarized. Did you read the report of the independent engineer specifically as it relates to the North Spur?

MR. DALLEY: I read through some of the independent engineer reports. If there was reference to the North Spur there, I would have read it, but to recall it today, no.

MS. URQUHART: Okay. Yeah, I'm not looking for detail on the report, just whether or not you had read it at the time. Okay.

And as you – you've indicated that you were satisfied based on the assurances that you received in this letter from Mr. Bennett on the North Spur. Did anyone within government undertake their own independent analysis of these reports during your tenure?

MR. DALLEY: An analysis of reports – none that I'm aware of.

MS. URQUHART: So when you started – and, sorry, I've got to get the date right there – October 2013, and I expect that you would've

established some sort of a protocol with your deputy minister in terms of what types of information you expect to be brought to you. And, obviously, different ministers have their own preferences. Some people just want only one-pagers and they don't want to have anything further than that. Some people want every single report all piled up on their desk. Everyone has their own preferences. But obviously the lines of the expectation have to be set out.

So I wonder if you can explain a little bit about what, to you, would raise to the level of things that you need to be made aware of by your DM.

MR. DALLEY: Well, I don't recall establishing any protocols. There have been very open discussions daily on a number of issues and that I would've expected the deputy minister to bring forward what reports I needed. Particularly around where there were decisions, as well as particularly if there was any public concerns. As minister, whether it was, again, House of Assembly, media, public things that I absolutely need to be aware of, as one of the rules is that, you know, you don't want a minister to be caught off guard. And that's one of the things we worked very hard to try and do. Not always was the case we have success with that, but it's certainly something that – one of my principles or premises of being a minister was I don't want to find out something before a microphone. If there's something going on, I want to know what it is.

MS. URQUHART: So in terms of the governance that your government was responsible for doing, in terms of ensuring that regulatory compliance of this being the largest project in Newfoundland and Labrador history, how – what processes were in place to ensure compliance with the regulations?

MR. DALLEY: Well the – you know, again, the regulatory part would've primarily come from the Department of Environment. And I wouldn't have been involved with that. But I understand Environment would take the issues, take the public issues, as well as deal with the compliance around permitting and so on.

MS. URQUHART: Can you elaborate a little further on that?

MR. DALLEY: Not really. That's as much as I know. With the, you know, the – there were aspects of this that, I guess, different departments were involved in. But with respect to, you know, the Joint Review Panel, you know, the environment assessment that was required, you know, it's in legislation, there's a process that's followed. Not everybody may be happy with it, but it is what's there in legislation. I know Nalcor had to go through a rigorous process and decisions had to be made from both a federal and provincial perspective to release the project from an environmental review. And there were – I understand there were some conditions attached and beyond that, you know, the compliance would rest with the regulator, which was certainly within the Department of Environment.

MS. URQUHART: So were you aware that the Joint Review Panel had recommended that the regulations releasing the project would – they recommended that it would include all of the commitments that Nalcor had made throughout the EIS and JRP processes?

MR. DALLEY: That joint review would've been released 2012, I believe.

MS. URQUHART: Yes, correct.

MR. DALLEY: Yeah. And the only other reference that I would have was a note given to us this morning with respect to an information note developed by the Department of Environment.

MS. URQUHART: Mm-hmm.

MR. DALLEY: So outside of that I would not have known the details. I mean, you know, would it have come up in a Cabinet discussion, and the minister of Environment does a brief presentation? Possibly, I don't know. But I wouldn't have had a list of those conditions and so on.

MS. URQUHART: Okay.

So, actually, Madam Clerk, if you can please bring up P-00051, which is actually the Government of Newfoundland and Labrador's response to the JRP report. And so

understanding, of course, that this is before your time, but just –

MR. DALLEY: Sure.

MS. URQUHART: – to set a little bit of context in terms of some of the questions that I'm asking. And let me just get the page number – apologies.

So that was in – on page 30, Recommendation 15.1; that elaborates the Joint Review Panel's recommendation in respect of how the authorizing regulations would be developed, and it indicates there that they'd recommend that the regulation, the first point: lists and requires Nalcor to implement all of its commitments. Now, in the actual legislation, in which the project was released from environmental assessment, Nalcor is required to develop their own list.

So is that common, in your experience, that the party of a regulated industry would be preparing their own, essentially, regulations around what they're required to do in order to comply with the regulations?

MR. DALLEY: I wouldn't have any experience in dealing with those issues, particularly around the environmental issues and –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – you know, the – I couldn't say.

MS. URQUHART: But, I mean, you're a lawmaker. You sat in the House of Assembly and there are regulated industries as part of your previous portfolios. Is it common – have you seen anywhere else where the regulated party makes their own list of what regulations they ought to be complying with?

MR. DALLEY: Again, I couldn't say because I don't recall a specific reference to something like that. You know, I would say that given this process that there would be opportunity for the parties to have input; whether it is to actually define –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – and that it would be totally accepted. It's not something that I'd be aware of but are you suggesting that that's what occurred?

MS. URQUHART: So I'm asking if you've ever seen that before. So in this case it was recommended that it would – that the government would provide the list of – here are all the conditions that you require – you're required to comply with and that's what's in the regulations. In this case, the government released it and asked Nalcor to provide a list of its own commitments. Do you see what I'm –?

MR. DALLEY: Its own commitments –

MS. URQUHART: Do you see the difference between –?

MR. DALLEY: – in relation –

MS. URQUHART: Not even the government listing out, here are – here's what you're required to do in order to fulfill your – this release from environmental assessment. They deferred that responsibility to Nalcor to create the list.

MR. DALLEY: So government didn't do a list?

MS. URQUHART: No. Well, I mean, I not seen one. Have you ever seen one?

MR. DALLEY: No, again, as I referenced to you at the beginning of this – I'd like to be more help to you but I don't have a lot of knowledge with that.

MS. URQUHART: Mm-hmm.

MR. DALLEY: And those environmental issues would've absolutely been dealt with over in the Department of Environment.

MS. URQUHART: Mm-hmm. And at the end of the day, though, the Department of Natural Resources was at the helm of this project.

MR. DALLEY: Yes.

MS. URQUHART: And so if we can go, actually, you had – let me just see what number – exhibit number that is. It was indicated in 02037 and this is actually reiterated a number of

times throughout numerous different documents. If we can go to the second-to-last paragraph, please.

THE COMMISSIONER: (Inaudible) tab 17.

MS. URQUHART: And this is a – some key messages that were being provided, I guess, in collaboration with Nalcor there. So this is about the full story on Muskrat Falls. And if you can continue to go down, please.

So the second-to-last paragraph indicates there that Nalcor is providing monthly reports on and details a number of different things, but includes environmental activities and stakeholder engagements and so on. So what I'm – I'm trying to understand whether the government itself had – everything that I've seen shows that Nalcor was providing regular updates to the government as to its compliance.

I'm wondering whether or not you're aware of any checks or audits that were happening from the government's perspective to confirm or verify that compliance or that purported compliance?

MR. DALLEY: I'm not aware but I would have to defer the question, to get the right answer, to Department of Environment. And likely, given it's an ongoing project, that the current Department of Environment, the current government would probably be in a better position to give you an update as to compliance and oversight.

And I'm not saying that to try to pass that off but it's been 3½ years, I wasn't involved with the Department of Environment. So –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – you know, the current update is – so I guess what you're looking for is to what checks and balances are in place and who's checking on Nalcor that they're complying with what they said they'd do. I think the best update would come from the current government.

MS. URQUHART: I'm not looking at the current government; I'm looking at your tenure as the minister of Natural Resources.

MR. DALLEY: Mm-hmm.

MS. URQUHART: And I'm trying to know – I'm trying to find out whether or not you ever received updates as to the – like, if they are not complying with the regulations, this is a significant concern in terms of the viability of the project. It can't go on. There must be some sort of fine or repercussions to a project that fails to comply with the – with its regulations. Am I correct?

MR. DALLEY: As I told you before, during my tenure –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – and my two years as minister –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – the issues around environment and environmental compliance – serious issues, I would agree with you – were the responsibility of Environment. I didn't engage, weren't involved. And, again, I can't give you the answer you're looking for because I had no involvement.

Was it in passing? Was there something in Cabinet? I'm not saying I had no exposure to it –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – but in terms of a responsibility of a checklist to check the compliance on the environmental regulations, it didn't rest with me as minister of Natural Resources.

MS. URQUHART: Were you ever made aware of compliance issues? Was it ever flagged to you that there was – that any of these matters within the regulation were not being complied with?

MR. DALLEY: I think the only reference that I would be able to make is that the deputy minister – I recall my deputy minister referring one day of a call from the deputy minister of Environment. Because, as you reference, we were the lead and had the knowledge – I guess, particularly the deputy minister – there would likely have been exchange.

And I recall a reference to an exchange with the deputy minister of Environment calling the deputy minister of Natural Resources. How often that occurred, I have no idea. But other than that, that's the only knowledge that I would have.

MS. URQUHART: Okay and I'd like to actually bring you to, if you can, please, Madam Clerk, bring us to 02124. And this is the Information Note that you were just speaking of from the Department of Environment and Conservation, November 24, 2015.

MR. DALLEY: Mm-hmm.

MS. URQUHART: And so we don't have a series of these to put before you from throughout your tenure, but this is nearing the end of your tenure as –

THE COMMISSIONER: (Inaudible) 57.

MR. DALLEY: Tab –

THE COMMISSIONER: Fifty-seven.

MR. DALLEY: I have it.

MS. URQUHART: So in this Information Note there's two issues that are considered outstanding items under the environment assessment plan: And that's wetland and riparian compensation plans – and I'll just note for the record that under the Joint Review Panel those are actually two distinct plans – as well as the Human Health Risk Assessment Plan and environmental effects monitoring plan.

So these were – particularly, the Human Health Risk issue was a very contentious issue in the public eye at that time while you were minister. Was that something that was brought to your attention, that this was – that that was still outstanding?

MR. DALLEY: It's probably still outstanding, is it?

MS. URQUHART: I'm not looking at the present day; we're looking up to the end of your tenure. And I'm just wondering whether or not you were aware – made aware – that these issues were outstanding, so they were not being – the

environmental assessment release conditions had not been complied with or not had – had not been met by that point in November 2015?

MR. DALLEY: No, I have no recollection of being made aware of specific compliance issues and how Department of Environment were addressing those. I would say I am aware of, you know, the concerns around, you know, methylmercury and those kinds of issues that have surfaced and have surfaced over a period of time and still surfacing today, I understand.

MS. URQUHART: And so, actually, Madam Clerk, if we can go to page 4 of this Information Note. I just – I find it interesting and I just want to get, I suppose, your thoughts on this. That it's indicated here that some ministerial-level meetings had happened in January 2013, so prior to your coming on as the minister of Natural Resources.

And it's clear by the text here that Minister Tom Marshall was at those meetings and then proceeded, actually, to have some dialogue with hon. Darryl Shiwak, including a letter dated March 1, 2013, from the hon. Minister Marshall indicating that there was no funding available to assist in research and monitoring program. And that was around the issue of methylmercury.

So your predecessor was involved, I'd say, at least in the weeds at that level in this issue, but you chose not to become involved in that.

MR. DALLEY: I'm not sure that's the fair assessment to say I chose not to. You know, again, there's many, many issues related to Muskrat Falls and I had my responsibilities.

But, with respect to methylmercury, I recall going into the House of Assembly and methylmercury was one of the – I guess what you call the hot-button issues of the day, and it being deferred to the Department of Environment minister to answer those questions and that file basically belonging to the Department of Environment.

MS. URQUHART: So you deferred responsibility to the Department of Environment rather than your – you didn't take on that that personal responsibility even given that it was your department's project, that it has the

potential of poisoning food sources and having folks downstream having their houses flooded.

MR. DALLEY: Again, there's many aspects of the Muskrat Falls Project and I would provide context that financing and equity have a significant part of the Muskrat Falls Project.

MS. URQUHART: Mm-hmm.

MR. DALLEY: I didn't take that on either. That was in the Department of Finance.

Environmental issues were the expertise of the understanding. The in-depth, day-to-day involvement with regulations, that responsibility rested with the Department of Environment. And the decision to have Environment handle environmental issues, I don't think it'd be correct in saying that I chose. It would probably have been more of a discussion; it could have been the premier's direction. But where the best fit was to deal with those issues and then the best understanding, it didn't rest with me.

MS. URQUHART: So during your tenure, the issue of what was referred to in the Joint Review Panel as merchantable wood – and actually if, Madam Clerk, if you can just return to P-00051, specifically at page 4, Recommendation 4.7 talks about the recommendation to – I believe it will just be on your screen there – that the – sorry, actually, I'll read the recommendation there just that "Nalcor be required to ensure utilization of harvested timber from reservoir preparation and the merchantable wood taken from the reservoir as part of its 'trash and debris' removal program..."

And, if you don't mind, for the record, if you could just read the response of the Government of Newfoundland and Labrador back into the record please?

MR. DALLEY: The response?

MS. URQUHART: Yes, the response there.

MR. DALLEY: "The Government of Newfoundland and Labrador accepts the intent and principle of utilizing all natural resources. The Government of Newfoundland and Labrador will accept responsibility for the resource after it is harvested by Nalcor,

processed and stored at the landing sites identified.”

MS. URQUHART: So the Government of Newfoundland and Labrador was responsible for the resource – in this case, timber – that was harvested by Nalcor. What, during your tenure, did the Government of Newfoundland and Labrador do with this natural resource?

MR. DALLEY: That natural resource, because the Department of – basically the forestry and agriculture agency was within Natural Resources –

MS. URQUHART: Mm-hmm.

MR. DALLEY: – I can tell you that there was a tremendous effort to try and find some commercial value that could be added with that timber resource.

MS. URQUHART: Mm-hmm.

MR. DALLEY: Unsuccessfully, we had discussions with NunatuKavut about potential of how – whether it was that resource or the unharvested timber allocation in Labrador could be best utilized for economic benefit. We were unsuccessful in finding something that was feasible. And I think, if I can recall properly, in the end we went through some efforts and discussion to support utilizing that for – utilizing that timber and making arrangements to make it available for domestic use. That would be my understanding.

MS. URQUHART: And so do you have any recollection of those specific efforts that were made and when that would have happened – what the time frame was?

MR. DALLEY: It would have happened – I would say almost during my entire time. This was a real challenging issue – challenging for Nalcor, challenging for the department of forestry. We exhausted – we tried extensively to try and find, you know, at first, obviously, a commercial value. We were prepared to give this away. We weren’t looking. We just wanted – initially we wanted someone, you know, to remove this from an environmental perspective. That was what was asked of us. We couldn’t give it away – and a tremendous expense to it.

So it’s – again, that’s how that flowed, in terms of our approach to it.

MS. URQUHART: And so when the intention went from it being a commercial – trying to find commercial value to then, as you say, giving it away, what consultations were done with folks in community to determine how best to facilitate them taking the wood?

MR. DALLEY: How would that have come about? Would it have come out from the local MHA possibly? Discussions – I know NunatuKavut would have been involved ’cause I think it was arrangements where we would bring the wood in and lay it on site and be able to come and pick it up. So – and the general feedback that I got that it seemed to, you know – I think people appreciated it and it was helpful.

I probably would have got that from the local MHA, but outside of that, that would have been my depth of knowledge.

MS. URQUHART: And so this is – as you’ve indicated, this was the responsibility of the Government of Newfoundland and Labrador – to ensure that this resource was utilized. And, as far as you’re aware, the only consultations were done were perhaps something with NunatuKavut and whatever it was that the MHA indicated was appropriate.

MR. DALLEY: I think we would have – again, I mean whether there was more consultation with discussions with, you know, local domestic use – someone to buy it who wanted to sell it, I don’t think we looked – we accepted that option. And I think we would have went publicly looking for suggestions and opportunities or, you know, we were wide open. There was very little constraint on our approach of what we were going to try and do to remove this timber.

MS. URQUHART: And are you aware that much of that wood remains where it was stacked, rotting to this day?

MR. DALLEY: Like I said, I wasn’t aware, but I was probably aware that there’s no feasible solution that came of it.

MS. URQUHART: Those are all my questions, Commissioner. Thank you, Mr. Dalley.

MR. DALLEY: Thank you.

THE COMMISSIONER: All right. Former Nalcor Board Members?

MS. MORRIS: No questions, Commissioner.

THE COMMISSIONER: All right. Former government – Provincial Government Officials 2003-2015?

MR. T. WILLIAMS: Good afternoon, Mr. Dalley. I just have two or three brief questions arising out of your cross-examination this afternoon.

I'd first like to start with questions raised by Mr. Hogan, and he had raised some questions in respect to your personal knowledge of some of the bid packages that would have surfaced in respect to the project. Would this have been the responsibility of the minister of Natural Resources to review bid packages or would this fall under the auspices of the project managers and the project leadership team?

MR. DALLEY: Absolutely not on the responsibility of the minister. We were very guarded on any political involvement in bid process and bid selection. So, it would have rested with Nalcor and their team.

MR. T. WILLIAMS: And would that be the similar manner with other, higher projects that were involved with the Department of Natural Resources, i.e., oil and gas projects, things of that nature?

MR. DALLEY: Yes, it would have been negotiated outside of any direct involvement with the minister on – you know, unless it was required, but certainly around bids. If there was a negotiation around an issue and the minister needed to be involved, that'd have happened. But with respect to all the project – the contract process with Muskrat Falls, absolutely no involvement.

MR. T. WILLIAMS: Okay.

In addition, there was some questioning as to your level of involvement with respect to the federal loan guarantee, the excess energy agreement, et cetera. But was it not your

evidence earlier that this file – the Muskrat Falls file – was primarily led by the Premier's office at the time?

MR. DALLEY: Yes, when I went into Muskrat Falls – I don't think I've referenced – it's been evidenced here I think. But, again, I went into, as minister, where the premier had spent the previous five or six years – four or five years on the file. So, largely – particularly the federal loan guarantee, my view was directed at the Premier's office.

MR. T. WILLIAMS: Okay, and that would have been consistent with the experience of your predecessors, I trust, Minister Marshall and Minister Kennedy, who've both given evidence as well – who've indicated that they had little or no involvement in those particular files, given the fact that they were being led through the Premier's office.

MR. DALLEY: That would be my understanding.

MR. T. WILLIAMS: Okay.

And just following up on the last questions – legal counsel for the Grand Riverkeepers posed a number of issues and concerns which our clients had with respect to environmental issues. But is it not true that, while the Muskrat Falls Project falls under the auspices of the Natural Resources department, that various other departments within government are involved in various elements of the project, and that not all aspects fall to Natural Resources?

MR. DALLEY: That's correct. I mean, you know, I'd acknowledge the importance and certainly the sensitivities around these kinds of issues and I know it's been an ongoing issue. I know, yeah, there is a process and maybe – you know, there may be issues with the process, but there's an outcome: the project was released from environmental review. And so, you know, again, important issues, but within that, and within the broad scope of Muskrat Falls, it was not just the Department of Natural Resources that were involved. Environment played a role; Finance played a role; Justice played a role; premier's office played a role.

MR. T. WILLIAMS: Okay, so would it be natural that an environmental issue pertaining to the project would be delegated to the Department of Environment?

MR. DALLEY: Yes, it would.

MR. T. WILLIAMS: Okay, thank you.

That's all the questions I have.

MR. DALLEY: Thank you.

THE COMMISSIONER: Redirect, Mr. Learmonth?

MR. LEARMONTH: No redirect.

THE COMMISSIONER: Okay, I just have a couple of questions.

I don't want to hold you too long, Mr. Dalley, but – and I certainly don't mean to make it sound like I'm picking on you on this, but it's somewhat surprising to me that people who are dealing with this particular file or even working in government, working on files, aren't keeping notes.

And it strikes me that this whole issue of there being some sort of a, you know, inadvertence to making notes or whatever – I'm not exactly sure where this is all coming from. Because I do think at some point in time I need to look at this whole idea of a duty to document 'cause one of the things that I'm seeing is, you know, a lack of recollection here three or four years later. And I can well appreciate that, but if there were notes, certainly that would be a good way to refresh your memory.

So I'm wondering whether or not, when you entered government, were you given any orientation, were you given any instruction, first of all as a Member of the House of Assembly with regards to taking notes, keeping notes with regards to various issues that arise? And more significantly, when you were appointed to the Cabinet, when you were appointed as a minister, were you given any advice, direction, orientation with regards to actually keeping notes of your dealings?

MR. DALLEY: Upon becoming a MHA and becoming sworn in as a Cabinet minister, there would be some direction given, and particularly around confidentiality, more so. I don't recall any direction or discussion about a duty to document, and I think you raise a really good point.

But, you know, issues around confidentiality, particularly around Cabinet, and documents – you know, there are times and sensitivities around issues less – I won't say less is better, but managing documents and the control of information is extremely important from a Cabinet confidentiality perspective. So that would have been a general kind of discussion and understanding as Cabinet ministers but –

THE COMMISSIONER: Okay, so is that – and I want to explore that a little bit more, but – so is that a discussion or advice that is given by the clerk of the council or is it a political direction – where did you get this from?

MR. DALLEY: It may have been clerk. It may have been the head of the table giving direction on our first Cabinet meeting. Might have been in the package when you become an MHA around government documents and so on, but some of it, I just feel, is understood as well.

THE COMMISSIONER: Okay.

So am I understanding you right when you say that due to confidentiality issues, whatever they might be, certainly surrounding Cabinet, that less was better? Is – that was the understanding you got?

MR. DALLEY: No, I don't want to say less is better, but there are situations around managing the flow of documents and how much, you know, is written and where it goes and who sees it. And, you know, Cabinet confidentiality is a, you know, a very high value placed on Cabinet confidentiality, so balancing – you know, I would suggest, you know, the reference to duty to document, but the other issue would be the duty and responsibility around Cabinet confidence.

THE COMMISSIONER: Right.

MR. DALLEY: If that makes sense?

THE COMMISSIONER: Yeah, it does. And there's legislation and there's law that protects privilege – Cabinet privilege. Are you aware or do you recall that – it would have been during your term and perhaps even when you were minister of Natural Resources – that your government sought advice with regard to the whole issue of the ATIPPA legislation and the issue of documentation within government?

MR. DALLEY: Yes, I am aware of it.

THE COMMISSIONER: Okay.

And are you aware of the report that was prepared by – I believe it was Mr. Wells at the time –

MR. DALLEY: It was.

THE COMMISSIONER: – who was brought in –

MR. DALLEY: It was.

THE COMMISSIONER: – and the recommendations that were made. And, in fact I think, if my memory serves me correct – and I could be wrong on this because it's been a while since I seen that report – is that he actually referred to there being a need to recognize that there was benefit to having a duty to document?

MR. DALLEY: Again, I haven't seen that report in a long time, but I don't recall the reference to it. But I know there was a significant piece of work done around ATIPP and that whole issue.

THE COMMISSIONER: Right. And I'm assuming that some of the concern with regards to confidentiality, particularly for a political member, would be concern that you might actually get ATIPPed?

MR. DALLEY: That would – you know, given, you know, my tenure, I think, as a politician – I was 2007 elected – I would say we were the first government that really came into the era of social media exposure. You know, we brought in legislation. We brought in ATIPP. The whole focus on, you know, transparency, trying to do more, you know, we kind of – I don't know we were the foundation of where that would grow

from, but it – you know, the issue around ATIPP certainly becomes an issue within government. Once you brought in the legislation, you had to live by it. And I think, inherently, within – in communications and so on – it was certainly a sensitivity within government.

THE COMMISSIONER: So rather than creating transparency, it actually reduced it somewhat in the sense that there was less of a willingness to put things in writing?

MR. DALLEY: To some extent. But also, with respect to confidentiality, I think it became more of an issue. And sensitivities around, particularly Cabinet discussions, where we could be discussing a major development in forestry in Central Newfoundland and all the details that, you know, there's a responsibility, as well, around that confidentiality. Not just from a Cabinet perspective, but from a commercial perspective, and other clients.

So it just kind of changed the whole dynamic.

THE COMMISSIONER: Right. But in the legislation itself, there are exemptions. I mean, commercially sensitive information, there –

MR. DALLEY: Yes.

THE COMMISSIONER: – are exemptions. For instance, even under the *Energy Corporation Act*, there are exemptions with regard to commercially sensitive material even getting to the Privacy Commissioner.

MR. DALLEY: Within ATIPP, yes.

THE COMMISSIONER: Right. One other question, too. And again, this is – not to pick on you because others have done the same – you were asked, by Mr. Budden, about the issue of, you know, how do you feel about things right at the moment, at this particular point in time? And your comment is not like many others that I've heard from the politicians that were involved, in the sense that they're saying that they did the best they could with what they had.

Ultimately, from your point of view and in a democracy, when a government makes a decision, who is responsible for that decision?

MR. DALLEY: Government.

THE COMMISSIONER: Right.

So when you say government, is it the people who actually decide to make a decision – for instance Churchill – or Muskrat Falls. Like, your Cabinet, your government, basically, decided to proceed with Muskrat Falls. So I assume that there was an understanding that the responsibility for Muskrat Falls fell to the government of the day. And it was a responsibility to ensure that the project, actually, was done as a least cost to the province.

MR. DALLEY: Mm-hmm.

THE COMMISSIONER: Right?

So the responsibility then is with the government of the day yet – and I know it's necessary to rely on other people, whether it be within Nalcor or your civil service or whatever the situation is. But, ultimately, if – and I'm saying this at this stage of the game – if it is established that you weren't getting everything you should have been getting – whose responsibility was that?

MR. DALLEY: That's a tough question. I guess, ultimately, you'll decide but it's – you know, and I think it's a fair question from a government perspective. I mean we went through two elections from, you know, a democracy point of view; we went through two elections on a Muskrat Falls mandate. The people of the province overwhelmingly supported that mandate. We moved forward with the project.

We had information put before us where we made a decision that we felt was in the best interests of the people of the province. Ultimately, in the end, some of that information appears to have changed. It may, obviously, impact the project. At the end of the day, you know, it's – I guess we have to take some responsibility, having made the decision, having went to the people of the province to support us to do it.

Beyond that I think there's a level of responsibility but there's also a level of accountability, as well, with respect to those

people who were responsible to provide with us and tasked to deliver to us the information that we needed. You know, from a government perspective, politicians, in general, they have various backgrounds, various expertise, various levels of education.

These are the people in our democracy that are tasked with making the big decisions and carrying that responsibility, but understanding, as I alluded to today, you know, we can have, in my view, the inquiry – and it drilled down into Muskrat Falls in which – what we're doing and we're finding out a lot of things.

We're finding out as well a tremendous, tremendous amount of work where good work was done and put us in a position. But, beyond that, there was a thousand things going on in government at the same time and I think that's – when I sit back as a former politician, you know, again, the comment we did the best we could with what we had – does that negate responsibility? It's not my intent.

You know, I accept that we made that decision and we believed it was right. If it turns out that it's not, then you live with it, but if it turns out in the end, we'll be very satisfied.

THE COMMISSIONER: Okay.

All right, thank you, Mr. Dalley, I appreciate your time.

We'll take our break here.

We're going to have to rejig now a little bit about how we're going to handle the next three witnesses. And I just need to sort of figure out – and I'm going to ask Commission counsel to speak to me during the break just on trying to figure out timing here because we may well have to – I got to figure out just how long we're going to need to sit today, what time we're going to start tomorrow so that we can get ready.

I know that the witness that we have on Friday is going to take the whole day, so that's why I need to – we need to sort of catch up a bit. And I don't want to shortchange anyone who is presently about to give testimony, so we'll come back and have a bit of plan when we come back.

Ten minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Our witness is – Mr. Russell is where?

UNIDENTIFIED MALE SPEAKER: Commissioner, he just stepped out for a moment.

THE COMMISSIONER: Okay.

UNIDENTIFIED MALE SPEAKER: He'll be right in.

THE COMMISSIONER: So hopefully he'll return quickly.

I've just had a discussion with counsel who are going to be doing the examination for – on behalf of the Commission, and I'm being advised that they feel that it's very doable with regards to the schedule. It may well mean sitting a little later this evening and I – and just to make sure, we're going to start at 9 o'clock tomorrow morning. So I think, based upon what I've been told, I think we're in good shape.

So, Mr. Russell, when you're ready.

And, Mr. Russell, do you wish to be sworn or affirmed?

MR. RUSSELL: Sworn.

THE COMMISSIONER: If you could stand then, please, Sir?

CLERK: Take the Bible in your right hand, please.

Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth so help you God?

MR. RUSSELL: I do.

CLERK: Please state your name?

MR. RUSSELL: Todd Russell.

CLERK: Thank you.

MR. LEARMONTH: Thank you for coming, Mr. Russell.

What is your position?

MR. RUSSELL: I'm the president of the NunatuKavut Community Council.

MR. LEARMONTH: And how long have you held that position?

MR. RUSSELL: In – my current tenure went from 2012 'til the present. I was president from 1994 until 2005.

MR. LEARMONTH: Yeah.

And then you entered federal politics, is that right?

MR. RUSSELL: Yes.

MR. LEARMONTH: And at the end of that you came back and resumed your old position?

MR. RUSSELL: I was elected again, yes.

MR. LEARMONTH: Yes. Correct.

Now, please turn to tab 10 of the book of documents before you.

MR. RUSSELL: Okay.

MR. LEARMONTH: This is a – entitled summary – it's Exhibit P-00267, this is a summary that your group prepared for the Commission of Inquiry. Is the information in this summary still valid? Is there anything you'd want to change in it?

MR. RUSSELL: I think it fairly reflects our position.

MR. LEARMONTH: Fairly reflects your position, okay. I think we went over this the last time you testified, but just want to make sure

there is nothing in there that materially has changed in any material way.

Okay, there are a number of topics I want to discuss with you and the first was the Community Development Agreement that you – that your group entered into with Nalcor.

MR. RUSSELL: Yes.

MR. LEARMONTH: You're familiar with that?

MR. RUSSELL: I am.

MR. LEARMONTH: Okay.

Could you state the background for the – entering into that agreement, how did it come about that you entered into negotiations with Nalcor? And what was the general – what was your general description of those negotiations?

MR. RUSSELL: We've had a long, I suppose, and involved kind of relationship with Nalcor, at least during my 10 years within NunatuKavut and before that with the Labrador Metis Nation. It started probably, at least from my recollection, in the late 1990s when there was talk of, you know, Lower Churchill developments, whether that was Gull Island or Muskrat or some combination of those.

And from the beginning we had certainly made our concerns known about these potential developments or projects that were being contemplated on lands that were under claim, certainly by NunatuKavut; certainly, areas that our people had traditionally used and occupied and areas that our people continue to have a strong and intense relationship with those lands and waters.

And over many years we had indicated that Nalcor – or Newfoundland and Labrador Hydro, whatever entity – was the proponent in – or the potential proponent, that they had obligations to sit with us, to talk with us, to respect the fact that these lands are important, that we have asserted rights and that there was a need for a relationship, a positive relationship, with a major proponent or developer, particularly one that was proposing projects that could have such

significant impacts upon our people, our lands and waters.

And so, you know, as these things started to unfold, of course, those efforts were intensified, like when seemingly projects were becoming more real or being proposed in a more concrete way. And so, you know, we often made efforts to be engaged in a meaningful way, in a respectful way with Nalcor – or before that, Newfoundland and Labrador Hydro, whatever the entity was.

Certainly, you know, we weren't met with much, let's say, generosity of spirit or even, I would say, generosity of following the law, the duty to consult, the duty to be accommodated. And so, you know – and through the pre-sanction through into sanction phase and into, you know, the implementation of the Lower Churchill Project we, again, asserted ourselves and said, you know, you're operating – you want to operate on these lands, there are significant impacts upon our people, our communities from many, many different aspects or angles.

And we continued always to say we need to be at a table, a respectful table, so that you can understand where we're coming from, so that you can respond appropriately, so that our rights are respected, so that our concerns are taken seriously. That has always been sort of the – how we have operated and the vein in which we have approached, yes, Nalcor and the provincial government, in the context of these developments.

We weren't met, I mean, with – again, with a government or with a proponent that said, yes, we would like to engage with you in this particular way. What we found was obfuscation, denial, and if there was some acceptance that we have to deal with you, we're going to deal with you in such a low manner that we're just going to cover our behinds in order to reduce legal risk, I think, from their perspective, which I think sometimes they translate into, you know, economic risk around a particular project.

And, of course, you know, we continued to ask these things. Even after being denied, even after going to courts, even after protests, we continued to say we – the preference here is negotiations, the preference here is a table, a

respectful table, to deal with our legitimate concerns, the impact on our rights. And that has been something that, certainly, I continued in my role as president when I became re-elected in 2012. And we kept, you know, asking and indicating to the government that this was the best way forward.

We did find a bit more receptiveness, I guess, with the current administration under Premier Ball. We certainly found a lot more openness under the leadership of CEO – Mr. Marshall, and there came a point when both agreed that – primarily Nalcor, I think, at the time, but certainly I would say that Nalcor wouldn't have moved without the province – that let's sit down and have a chat and see if we can't – repair might be – you know, repair our relationship, to maybe have a different relationship primarily going forward.

It wasn't as much an agreement that was done in the context of looking backwards and trying to have an IBA around Muskrat Falls, or to have a remediation agreement or even a reclamation or a compensatory type of agreement. That wasn't what this was. It was how do we – how are we gonna look going forward?

MR. LEARMONTH: Yeah. And did you say that there was a change in the atmosphere when Mr. Stan Marshall became CEO of Nalcor?

MR. RUSSELL: Without a doubt.

I mean, the first meeting we had was, I don't understand – there was some choice words, you know, that could be used but, you know, the conversation was, I don't understand why this wasn't done earlier, I, you know, I have great relations – I had great relationships with some of the Indigenous peoples I work with in BC, I think it makes for a better project, it makes for a better way forward. I can't understand why we don't have that kind of a relationship with you guys, and, you know, we'll see where this goes kind of – that –

MR. LEARMONTH: That was Mr. Marshall speaking –

MR. RUSSELL: That was Mr. Marshall. That was a –

MR. LEARMONTH: Yeah, yeah. That was his expression.

MR. RUSSELL: Yes. And it's still – things didn't happen overnight. There was some months after that particular initial conversation that seemingly, you know, we got a letter saying let's sit down and explore where we might want to go with a relationship agreement.

MR. LEARMONTH: Okay.

Now, the agreement that was dated December 1, 2017, is contained in tab 9 of the book of documents, and there's a CBC article that I want to turn to dealing with the announcement of this arrangement, and that's at tab 7, if you could turn that up. And I see you're shaking hands with Mr. Jim Keating, the – a VP, vice-president of Nalcor. Were your negotiations mainly with – ?

MR. SMITH: Excuse me what's the exhibit number, please?

MR. LEARMONTH: 01707.

Were your negotiations for this agreement with Mr. Keating principally?

MR. RUSSELL: Yes.

MR. LEARMONTH: Okay. So did you sit down at the table and work this out with him, over a period of time?

MR. RUSSELL: Yes, and with others, obviously.

MR. LEARMONTH: Yeah, okay.

Now, this – so this is an \$8-million agreement for a period of six years, is that correct?

MR. RUSSELL: That's right.

MR. LEARMONTH: And can you give me your general understanding of what this – how these funds are to be applied and for what purposes?

MR. RUSSELL: Most of these funds will flow directly into community initiatives –

MR. LEARMONTH: Yes.

MR. RUSSELL: – priorities of our people. A good chunk of it will go into infrastructure developments. There is about \$75,000 that will go into what we call the George Roberts Community Grants Program that's on an annual basis. \$25,000, I think, goes into a Southern Inuit Education Program that we have instituted in partnership with the schools in some of our communities.

There is a specific chapter for Cartwright and some of the initiatives in that particular community. There is also some implementation funds that will help us move through the implementation pieces of this agreement. There is also some money attached to a hair-sampling study which might be challenging for me at times but – so there's various components to the agreement.

MR. LEARMONTH: Okay.

So do you regard this agreement as a starting point for ongoing improvements in the relationship with Nalcor?

MR. RUSSELL: Certainly that is the – one of the intents of the agreement, yes.

MR. LEARMONTH: Yeah.

And do you – when – this agreement's with Nalcor – I know there's certainly obviously a legal distinction, but when you – when you're dealing with Nalcor, do you consider that to be equivalent to dealing with the Province of Newfoundland? Or do you consider those two entities to be separate for the purpose of your arrangements?

MR. RUSSELL: For the purpose of this arrangement, we would consider these to be separate.

MR. LEARMONTH: Okay.

So do you have parallel negotiations going on with the Province of Newfoundland for a similar kind of agreement?

MR. RUSSELL: No, we don't.

MR. LEARMONTH: Okay.

Okay, Mr. Russell, so that's a good starting point.

I next want to turn to the question of the protest that your group and you in – you have been involved in in relation to the Muskrat Falls Project. And if we turn to tab 15, there's an article – that's Exhibit P-02076 – and it's entitled "Russell, NunatuKavut members arrested near Muskrat Falls."

Actually, before I refer to that, I should have earlier entered the exhibits into the record, which I forgot to do. So I'll do that now. The new exhibits are: P-01707 to P-01709, P-02075 to P-02079, P-02089, P-02090, P-02115 to P-02120. May they be entered into evidence?

THE COMMISSIONER: Just the last one, P-02115 did you say?

MR. LEARMONTH: P-02115 to P-02120.

THE COMMISSIONER: All right, those will be entered as marked.

MR. LEARMONTH: Okay, thanks.

Yeah, so the arrest. This is the document at – in tab 15, and it's P-02076. Can you give us the background to this arrest and the protest that led to this arrest?

MR. RUSSELL: As I've testified earlier, we made our concerns and interests known for a long, long time about Muskrat Falls. The potential impacts upon our rights, the potential impacts upon the land, the water, our people's health. In October of 2012 – I know it's a little bit before this – there was an initial protest at the Muskrat Falls gate. And that particular protest went from about early morning, like, around 6, 7 in the morning 'til early evening, about 6 or 7. That –

MR. LEARMONTH: Was your group – did your group –?

MR. RUSSELL: Oh yes, our group organized –

MR. LEARMONTH: Yes.

MR. RUSSELL: – and we assembled there.

MR. LEARMONTH: Yes.

MR. RUSSELL: You know, it was a great fall day; it was in October of 2012. And arising from that, the next day there was an ex parte injunction granted. And then subsequent to that there were – there was something like an interim injunction and then there was a case that went forward with Judge Robert Stack, and it was made into a permanent injunction, and from our vantage point, you know, an injunction that was far reaching, that had the effect of basically shutting down almost any type of protest associated with the Muskrat Falls Project.

In fact, the injunction was written in such a way that it could expand – that any area that Nalcor wanted to use or to associate with the project – that could be covered by the injunction as well.

So it was – what we felt, you know – pretty draconian and had the effect, in some regards, of producing for Nalcor a protest-free zone for what we now know about two years. So that was some of the background –

MR. LEARMONTH: Yeah.

MR. RUSSELL: – that we have – some of the background. Then in April of 2013 we continued to protest on what we thought might be an area outside of the scope of the injunction itself and so we were protesting at an intersection of the road.

MR. LEARMONTH: What were you protesting in particular? Was there one – did something occur that caused you to protest or was it just something that had built up over time –

MR. RUSSELL: Well –

MR. LEARMONTH: – that led you to decide to protest?

MR. RUSSELL: It was certainly a continuation of building up over time – frustrations of a lack of access to processes. If we did have access to processes we didn't have the requisite resources to participate effectively or efficiently in those

particular processes – the minimization of us and our concerns and our interest.

I – you know, leading an Indigenous people that's fighting for its rights – I tell you within that particular context that that's very, very difficult. And we said we needed to go back on the land again and emphasize that we have rights to assemble. We have rights to speak. We have a right to protest even with this injunction in place because we – you know, even though it was far-reaching, we didn't think it would reach 10 kilometres from the site or from the gate, but – so we protested there. It was strategically – we strategically protested there, obviously.

THE COMMISSIONER: This was – when you say – this is – is this where the turn is – where you turn off to 570?

MR. RUSSELL: That's right.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay, the injunction was granted sometime in October 2012. Is that correct?

MR. RUSSELL: That's right.

MR. LEARMONTH: Yeah. And this was at that turnoff to the road?

MR. RUSSELL: No, that was at the gate.

MR. LEARMONTH: That was at the gate. Okay.

MR. RUSSELL: And then – so we, you know, we were outside of this – there was a certain number of kilometres, I think, that we had to stay away from particular sites that were supposedly Nalcor's and so, you know, we chose that – it was outside of that particular kilometre zone. It was at an intersection, and yes, it had an impact of slowing down traffic that was going to Muskrat Falls.

You know, you protest to have an impact; you don't protest not to have an impact. But you protest – you know, what we understood to be lawful protest and so we assembled there. We weren't there any more than – I would say – it was a bitter cold day. We started again early in

the morning and I wouldn't say we were there any more than three hours, maybe four, and there was a large police presence. And at that particular time we were approached by the RCMP that said that – to get out of the intersection and we said: Listen, traffic is still proceeding; things are still moving. We have a right to be on the land as well.

And subsequently, a number of us lay down and subsequently a number of us were took away.

MR. LEARMONTH: There was seven in total, were there not?

MR. RUSSELL: Seven or eight, I –

MR. LEARMONTH: Yeah.

MR. RUSSELL: – was – is the number but, yeah, so we were handcuffed and we were put in the requisite vehicles.

MR. LEARMONTH: Okay.

MR. RUSSELL: These vehicles and carted to jail.

MR. LEARMONTH: I just want to make sure I've got – the dates are clear to this. The injunction – I don't want to get them mixed up. If we look at tab 14, there's a document indicating that the injunction that you referred to – the one that could expand and so on – was granted October 11, 2012, correct?

MR. RUSSELL: The initial ex parte injunction –

MR. LEARMONTH: Yes.

MR. RUSSELL: – was around that time, yes.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: So that's P-02075.

MR. LEARMONTH: Yes.

And then that injunction was dissolved by the Court of Appeal, correct?

MR. RUSSELL: Well, that was the ex parte injunction. That was one judge. Then there was another judge that referred that to, I guess, trial –

MR. LEARMONTH: Yes.

MR. RUSSELL: – and then that was when we had the Robert Stack decision.

MR. LEARMONTH: Yes.

MR. RUSSELL: That became the permanent injunction –

MR. LEARMONTH: Yes.

MR. RUSSELL: – and that is what we appealed –

MR. LEARMONTH: Yeah, and that was –

MR. RUSSELL: – as I understand it.

MR. LEARMONTH: And that was overturned by the Newfoundland Court of Appeal in 2014 and the judgment is contained at tab 18.

MR. RUSSELL: So, yeah, that is the judgment.

THE COMMISSIONER: P-02079.

MR. LEARMONTH: Is that correct?

MR. RUSSELL: Mm-hmm.

MR. LEARMONTH: Okay.

Okay, so just – we'll just get back, then, to tab 15, which deals with the – shows the arrest in April 5, 2013. So how long were you in custody?

MR. RUSSELL: Eight hours, nine hours.

MR. LEARMONTH: And then you were released and not – you weren't rearrested were you?

MR. RUSSELL: No.

MR. LEARMONTH: Okay.

The – in terms of the –

MR. RUSSELL: Even though we returned to that site the next morning.

MR. LEARMONTH: Yes.

But you weren't rearrested?

MR. RUSSELL: No.

MR. LEARMONTH: Okay.

Was your – did you protest in a different way?

MR. RUSSELL: Not much.

MR. LEARMONTH: Not much. But, anyway, you weren't rearrested.

MR. RUSSELL: We still had people in that particular vicinity. We – the traffic was still being slowed. There was information being given out. I remember getting on at least one or two of the buses and having a little talk with some of the workers and our message was well-received –

MR. LEARMONTH: Okay.

MR. RUSSELL: – at that particular time.

MR. LEARMONTH: Okay.

Now, at tab 16, or – it's exhibit P-02077. There's a release from – you issued entitled Nalcor Injunction Effectively Prohibits and Extinguishes Aboriginal Rights, NunatuKavut Appealing. Did you prepare this press release or participate in the preparation of it?

MR. RUSSELL: Yes, I did.

MR. LEARMONTH: Okay, why – can you just expand a little bit on the statement – it effectively extinguished Aboriginal rights – just give us a little bit of background to that statement?

MR. RUSSELL: Well, obviously the zone, you know, this ever-expanding zone five kilometres from the sites that Nalcor – first of all, you had the sites, you know, nobody was allowed access to that. These were areas where people had hunted and fished and harvested for a long, long time. With the injunction, that was going to be

even more accumulative in impact in the sense that you weren't allowed to go near it and – for any reason: hunting, fishing or anything of that nature.

I remember immediately after Judge Stack gave his decision and said that you can't – you're not allowed within five kilometres of the site except for this little safety zone that they created, that we said: Well, that would cover the highway. What would happen to our people who are travelling on the highway within five kilometres of Nalcor's site? And you – I'm not sure if it's in evidence, but I can certainly speak to the fact that almost immediately the judge issued a variance of his injunction and said: Oh, no, I did not mean, you know, itinerant traffic going a pass or through this five-kilometre zone.

So what I'm saying is that there's no doubt that there was an impact upon people's ability to exercise their Indigenous rights – their rights to hunt, to harvest, to – and in some cases fish, obviously. So it was in that particular context that we talked about our Aboriginal rights.

Also, we have the constitutional rights as any other citizen: the right to speak, the right to assemble, you know, peacefully and we felt that certainly this injunction prohibited those particular rights – unlawfully, we felt.

MR. LEARMONTH: Yeah. So, ultimately, the Court of Appeal accepted your position and set aside the permanent injunction. Is that correct?

MR. RUSSELL: That's right.

MR. LEARMONTH: Okay.

Now, can you tell us about the participation of your group in the 2016 protests?

MR. RUSSELL: Well – and again, I think, you know, we want to be clear. Many of the – a lot of the issues that we have expressed are within the realm of – that the government was not respecting our Indigenous rights, our asserted claims. They were not dealing with us, as we felt, lawfully in terms of the duty to consult and the duty to be accommodated. And then there were other issues as well, you know, very tough environmental issues, impacts upon land use, cultural impacts. All of these types of things

were a part of our concerns that we had expressed many, many times about the Muskrat Falls Project.

And in 2016 there was a building of some very, very serious concerns that people were expressing in our communities; that were being expressed by other Indigenous groups, particularly Nunatsiavut, but much, too, by people in the communities. Whether some people were associated with Indigenous groups or not, you know, there were other people expressing some very, very serious concerns. Concerns that weren't being – as I said earlier – listened to, acted upon, or if they were, they were being minimized.

And so I remember prior to the 2016 protest, Nunatsiavut had done quite a bit of work on its own to certainly bring the issue of methylmercury, in particular, to the forefront. And to say that, you know, how significant this was and this could be to people in the communities.

MR. LEARMONTH: Just give us a little bit of depth to that. Why –

MR. RUSSELL: Well it –

MR. LEARMONTH: Why was it important?

MR. RUSSELL: Well, first of all, you know, they had did this research. They had launched a campaign that said make Muskrat right. It was a campaign that had been endorsed by some international organizations, as I understood it. And we at the time said, you know what, the concerns that Nunatsiavut are raising, through this additional research that they have undertaken on their own, are concerns that we share. And we at the time said we support the Make Muskrat Right campaign; more needs to be done, the government needs to address, and the methylmercury side, this particular concern.

So we expressed our concern to – our support to Nunatsiavut for the Make Muskrat Right campaign. I believe we done that through letter and I believe we also did it publicly through a press release. And so there was a number of – there was a number of walks, there was a number of on the ground actions, not necessarily coming from Nunatsiavut or from Innu Nation

or from NunatuKavut, particularly, but there was a number of protests that were happening and walks that were happening. And –

MR. LEARMONTH: Were they coordinated protests from different Indigenous groups or was it –

MR. RUSSELL: They weren't –

MR. LEARMONTH: – one group?

MR. RUSSELL: No, they weren't coordinated from our particular perspective. I can't speak to if there was coordination with other Indigenous groups. But, you know, sometimes we would get a call that said: Would you like to show up, you know, at the rally we're having to express our concerns over methylmercury? So, you know, I wouldn't call that necessarily coordination. I mean, those were sometimes invitations that we had.

The coordinated effort, I believe, in terms of Indigenous groups, happened in June of 2016, if my memory serves me correctly, when we had a major rally with all three Indigenous leaders and groups represented, and there were hundreds of people that attended that particular rally.

MR. LEARMONTH: Where was that rally?

MR. RUSSELL: That was adjacent to the Legion, the Royal Canadian Legion here in Happy Valley-Goose Bay. It wasn't on the grounds, it was just outside of the grounds. And there were speeches given by myself, President Lampe and, at the time, president, or Grand Chief Anastasia Qupee. And so that was, I guess, one of the few, if the only, coordinated actions that were being taken by Indigenous groups, at least the three of us.

And subsequent to that, I mean, the protests or the things continued, continued, continued, and then in the fall of 2016, we as –

MR. LEARMONTH: So was that the starting point for this –?

MR. RUSSELL: I don't know if it was a starting point. It was certainly a part of the build up to what some people would call the more –

the major underground actions that happened in the fall of 2016.

MR. LEARMONTH: Okay.

Okay, continue on.

MR. RUSSELL: And so, you know, these actions continued, these actions continued. In the fall of 2016 we issued a press release, we did a press conference indicating that we would join these particular actions as an organization firmly stating that our concerns around the impact on our Indigenous rights, our concerns over methylmercury in particular, and there might've been some reference to the North Spur at that particular point.

MR. LEARMONTH: Can I just – there's a document at tab 19, Exhibit P-02089. Now, this is a release dated April 20, 2016. Might that be the release that you are referring to or was it another one?

MR. RUSSELL: No, this is in response to Nunatsiavut's work.

MR. LEARMONTH: Yes. That's a reference to the Make Muskrat Right campaign.

MR. RUSSELL: Yes.

MR. LEARMONTH: Yeah. So that's a different one?

MR. RUSSELL: The Make Muskrat Right campaign was launched prior to this.

MR. LEARMONTH: Yes, okay.

MR. RUSSELL: What I'm talking about is when we formally said that we're going to be taking on the ground action and we're gonna commit some of the time and resources of our organization to be participatory to those particular protests, on the ground actions, whatever word you want to use. That was in the fall of 2016.

MR. LEARMONTH: Okay.

MR. RUSSELL: And so we did. You know, we brought people in, we paid for food; we certainly contributed in as many ways as we thought we

could. We had our staff, you know, participatory – those who wanted to be, obviously. We were in the midst of organizing a major, major rally on a particular day, at around 3 o'clock, I believe, we were organizing that particular rally. It didn't happen as we had anticipated, our particular rally, which was in conjunction with all those other people who had concerns. And that was the day that, you know, that the gate came open and some people had entered and went inside.

So there was a long, I would say, build up to those protests, the fall protests, or the fall on the ground actions. Our group was participatory to certain of those actions and had committed ourselves to that.

MR. LEARMONTH: Yeah.

Was the cause or what – in terms of what sparked these protests you said earlier, I think, that it was buildup. Was the methylmercury issue part of the reason that these protests got off the ground?

MR. RUSSELL: I think there's no doubt in my mind that methylmercury crystalized, you know, people's concerns with this project. I mean when you start talking about human health and the impacts upon human health and people's food safety concerns, that gets really – that gets very real for people, you know, and visual for people. You know, the cultural impacts, the food security impacts, you know, traditional rights impacts: all of these things, you know, are sort of coming together.

And so, yes – and there was a report, I remember, in June. I can't remember exactly what – was it June, but it was this human health risk assessment report that the government had issued and there was a lot of talk in that one about compensation. And that sort of, you know, inflamed people's passions and saying, well, if they're talking compensation, isn't that an admission that there's going to be a negative impact here. And if there's going to be a negative impact there's more that can be done to mitigate it or to lessen it, or to not have that impact occur at all.

And so I think people were really mobilized as well around that there was more that could be

done. And, in fact, the Make Muskrat Right campaign that was brought in by Nunatsiavut wasn't – from my reading of it, was with a view to more could be done to mitigate potential negative impacts. And we shared that with Nunatsiavut and we certainly applauded them for the proactive approach that they took.

They had the resources, or they had taken the time to get the resources in order to substantially respond to a major concern that their people had.

MR. LEARMONTH: Okay.

Now, these protests continued on for a number of days, is that correct, in 2016?

MR. RUSSELL: Yes, there was a number of days. And I mean, you know, there was various phases, I suppose. There was buildup, then there was this sort of crescendo of protest and there was lingering, you know, protests after, you know, after the going through of the gate and the occupying of the campus that a lot of people focused on. And, of course, you know, this precipitated another injunction, you know.

And so that obviously had some very serious concerns for people's individual freedoms and the expression of those particular freedoms and it affected a lot of people.

MR. LEARMONTH: And so the protest eventually came to an end. There was a meeting at the Confederation Building. Is that correct?

MR. RUSSELL: Yes, I remember. We didn't necessarily –

MR. LEARMONTH: How did that come about? I mean you were – there was a protest and then something happened and –

MR. RUSSELL: There was a buildup in terms of protests and I – we got a note, just a very simple email: The premier is going to invite you to a meeting next week. It was no more than two lines – all the Indigenous leaders. This was the day before we were planning our major rally.

But by this time, I mean, you know, the protest had certainly been in kind of, full swing; I mean there was certainly a ramp-up. I would have thought that the government was giving a

message by this particular time, but the invitation happened before, sort of that culmination of some of that – some of the protest activities, but the meeting happened after the – you know, sort of, the big protest happened. And, yes, we were invited – the three leaders were invited.

MR. LEARMONTH: Did you personally attend the meeting at the Confederation Building?

MR. RUSSELL: I did personally attend the meeting and I had two of my colleagues with me.

MR. LEARMONTH: Yes, and did – were there representatives –

MR. RUSSELL: All three.

MR. LEARMONTH: – of both the provincial government and Nalcor at this meeting?

MR. RUSSELL: Yes.

MR. LEARMONTH: Yeah and how long did the meeting last? I think it was an overnight meeting or –

MR. RUSSELL: Twelve hours.

MR. LEARMONTH: Twelve hours.

MR. RUSSELL: Fourteen hours, something of that nature it was.

MR. LEARMONTH: Yes, and what was the result of the meeting?

MR. RUSSELL: The result of the meeting was an agreement to put in place the Independent Expert Advisory Committee, the IEAC.

MR. LEARMONTH: Yes.

MR. RUSSELL: That the terms of reference would be worked out with the Indigenous peoples represented by the three groups in Labrador with the province and Nalcor. There was a lot of talk about the raising of water levels at that particular time from –

MR. LEARMONTH: Mm-hmm.

MR. RUSSELL: – I can't remember the exact levels but maybe – I think it was something like 18 or 19 metres to 21 to 23, something in that – those –

MR. LEARMONTH: Yes.

MR. RUSSELL: – that range. There was serious concerns about would this have a negative impact in terms of spiking methylmercury production with those water levels going up. So there was – and there was some agreement that they wouldn't go beyond a certain level.

MR. LEARMONTH: Yes.

MR. RUSSELL: And the rationale was that, you know, that was the level where much of the vegetation had already been flooded, say, through natural spring, runoff and things of that nature. So we weren't going to go up, that was kind of the premise.

And there was an agreement around water levels to address some very timely issues. And then there was an agreement to set up the IEAC. Those, I think, were the primary results –

MR. LEARMONTH: Yes.

MR. RUSSELL: – of that particular meeting.

MR. LEARMONTH: Yeah and when were the terms of reference completed for the Independent Expert Advisory Committee?

MR. RUSSELL: I can't give you the exact date. I believe it was some months after that.

MR. LEARMONTH: But your group had input into the development of the –

MR. RUSSELL: Yes, we were at many, many meetings –

MR. LEARMONTH: Yes.

MR. RUSSELL: – of the – I wasn't personally. We had representatives in the room that were working very, very hard with other representatives to get the terms of reference – well, something we all could agree on.

MR. LEARMONTH: Okay.

Now, the work of the IEAC was completed and the report was filed. Do you know when that was?

MR. RUSSELL: Well, there were two reports filed by the IEAC, there was – or two sets of recommendations filed.

MR. LEARMONTH: Yes.

MR. RUSSELL: And I mean it was pretty – I have to say they did their work quite efficiently. I mean the first set of recommendations dealt with ongoing, I believe, science work that needed to be done, monitoring and those types of things. That would then lead into the second recommendation – the second recommendations, and that, I believe, was in April of 2018 that they were –

MR. LEARMONTH: Yes.

MR. RUSSELL: – sent to the government.

MR. LEARMONTH: Yes.

MR. RUSSELL: And the – would recall the recommendations that would – this expert group, which included both traditional knowledge and Western science, had recommended the government act upon to reduce the potential impacts of methylmercury.

MR. LEARMONTH: And there wasn't unanimity in all of the recommendations. I think there was one where there wasn't –

MR. RUSSELL: I think of all the recommendations there was only one recommendation that did not have unanimity.

MR. LEARMONTH: Yeah and that was the clear cutting of –

MR. RUSSELL: And that was – yes.

MR. LEARMONTH: Yes.

So this report was filed and was your group generally satisfied with the recommendations?

MR. RUSSELL: Yes, we were.

MR. LEARMONTH: All right.

And what has been done about these recommendations? The report went to government. I understand it wasn't binding on government to implement them, but it was certainly a suggestion that they would deal with the recommendations.

MR. RUSSELL: I would say that there was more – you know, when – there was a sense of urgency when that meeting was held in the fall. I – you know, what was agreed to in that meeting, I – we took it that it was done meaningfully, that it was done with integrity, that, you know – and that the issue that we were going to deal with through this particular process, that it required each party to respond appropriately given the timeliness, given the depth of concern, even the impact that certain recommendations might have on the project in terms of cost, in terms of timelines.

So we understood that going into this particular process. The government understood that going into this particular process. The IEAC understood that and that is why they worked so diligently, so efficiently in a pretty compressed time frame to get the recommendations to government.

I think it's unconscionable that the government has not responded with the same vigour, with the same integrity to these set of recommendations that were made to them. I fail, in my own, looking at the situation, to understand what is prohibiting them from responding to these particular recommendations because I think now it's going to call into question were – and people are already asking these questions – were they serious about the process?

MR. LEARMONTH: Yes.

MR. RUSSELL: Were they serious about the issue?

MR. LEARMONTH: Yes.

MR. RUSSELL: You know. And so I think that the length of time it's taking the government to respond to these set of recommendations is – you know, it's outrageous. It's outrageous length of time.

MR. LEARMONTH: Yeah.

The – well, since the second report of the IEAC was filed, have you had ongoing discussions with government about the possible implementation of the recommendations? Have you been consulted?

MR. RUSSELL: We have been asked to attend a couple of teleconferences wherein we're informed that it looks like we're going to be able to respond to these imminently. That hasn't happened. And I can only say that at almost every opportunity that I have been in contact with the premier or with a relevant minister, we have emphasized that you need to move to respond to these particular recommendations.

And, again, I mean I believe that the premier himself was on the record as saying in mid-December that the – our response is imminent and you should have these early in the new year. I don't know if anybody wants to interpret that two months into the new year is necessarily early but, I mean, it's certainly not imminent.

MR. LEARMONTH: Is it correct that if the reservoir is to be impounded or flooded this summer – which I think is the plan – that we're running out of time for the carrying out of any remediation measures or some remediation measures? Is that –

MR. RUSSELL: Certainly the full clearing recommendation, if they're going to keep to their supposed timeline, would be seriously impacted by – I say, to be honest, undoable.

MR. LEARMONTH: Yeah.

MR. RUSSELL: But, you know, so – and of course this was the – this was part of the consideration about timely responses to getting the recommendations in, but timely responses to the government getting the responses out.

MR. LEARMONTH: Right.

At tab 20, Exhibit P-02090, there's a release – a statement was released by your group dated December 17, 2018. Could you turn to that and just take us through the – that report and advise why you found it appropriate or necessary to issue this release on December 17, 2018.

MR. RUSSELL: Well, this particular release comes after a series of – I don't know if you want to call them petitions, but saying to the Premier that – you know, the Premier himself in June of 2018 and then in subsequent conversations with, as I've said, with the Premier or with appropriate ministers saying you need to move on these, you need to move on these.

And, you know, obviously those conversations didn't seem to be producing the result that we needed so we were, in effect, trying to apply public pressure – more public pressure to the government to respond to the set of recommendations. And that's what precipitated this particular release.

MR. LEARMONTH: Yes. So you don't know where this stands right now. Is that correct?

MR. RUSSELL: I don't.

MR. LEARMONTH: Yeah.

And have you been given a date on which more information –

MR. RUSSELL: We have not.

MR. LEARMONTH: – will be provided.

MR. RUSSELL: We have not.

MR. LEARMONTH: So you just don't know what's going on. Is that a fair way to put it or –

MR. RUSSELL: Well, yeah –

MR. LEARMONTH: – is it too extreme?

MR. RUSSELL: Yes, I mean, we – there's been no communication from the government saying to us that we're going to give you a briefing on what we're going to – what our responses are going to be and this is when we intend to make that particular response.

MR. LEARMONTH: All right.

Okay. Thank you for that information.

Did your group take and has it continued to assert a position on the North Spur issue?

MR. RUSSELL: Certainly we've had a number of our people that have expressed serious concerns over the North Spur throughout the course of this project from its, sort of, inception to now implementation. We have supported efforts, particularly by the Grand Riverkeeper, to bring some extra information and data to this particular matter.

I remember we helped fund an expert from clay institute – I can't remember if it was in Sweden or Norway – to come over and give a presentation. I know that we helped fund, I believe, some of the work that Dr. Bernander did here.

So, yes, it was a – certainly it was a concern that was expressed by some of our people; it was one that our organization participated in. But it's certainly not one of the issues that had a lot – had more priority than the impact upon our Indigenous rights or the issue of methylmercury. Not saying it wasn't important, but certainly we didn't articulate our concerns maybe as a priority item on that particular issue as we did on others.

MR. LEARMONTH: Yeah. And the main – I know it's not the only issue, but methylmercury is –

MR. RUSSELL: Methylmercury is –

MR. LEARMONTH: – quite a bit more important.

MR. RUSSELL: – one of the big issues because we kind – it's an accepted fact that there will be methylmercury issues associated with hydroelectric developments. There's arguments about what the nature of that impact is going to be, obviously. But certainly, yes, that – from an impact perspective, that was one of the very big issues that we had expressed and before these protests happened, you know, for some time now.

And the issue of the impact upon our Indigenous rights and not being forwarded what we believe is due process and, of course, then that triggers other things. If that's not taken seriously, if your concerns are not taken seriously, all those impacts upon your people and the communities don't get taken seriously either.

MR. LEARMONTH: Okay.

Now I want to ask you a general question that – with respect to the duty to consult. Did – what is your position on the – on how the Province of Newfoundland has carried out its duty to consult and accommodate for your people since sanction in December 17, 2012?

MR. RUSSELL: Well, if – we have said for some time that they have not met the duty to consult, certainly, in the pre-sanction phase.

MR. LEARMONTH: Yes.

MR. RUSSELL: That if there was – if that was inadequate and wholly inadequate from our perspective in the pre-sanction phase, it was almost non-existent, even though on paper there might have been a process after sanction.

MR. LEARMONTH: Yeah.

MR. RUSSELL: If the dollars were inadequate in the pre-sanction phase to allow for any type of integrity and substance when it comes to fulfilling that duty to consult in the pre-sanction phase. There was no monies available for so-called consultation in the post-sanction phase.

MR. LEARMONTH: Okay, now could you –

MR. RUSSELL: The government got a – what they call consultation guidelines that the province brought in. You know, and when you get down to consultation on permits, which is kind of like where we feel the rubber meets the road, because the rest of it is sort of theoretical before that, but once you get – start to get permits, that's when it permits activity to take place in a certain ...

So we, you know, but we had – there was no resources offered to us when it came to consultation on the permitting phase, which was in the post-sanction –

MR. LEARMONTH: Yes.

MR. RUSSELL: – phase of this project.

MR. LEARMONTH: I'd like you to speak a little bit about funding that you expect to receive when you're asked to, you know, participate in a

consultative process with government on environmental or other issues. What role does funding play from your point of view?

MR. RUSSELL: I mean, it is pretty massive in terms of here you have this very complex project, you know, multiple jurisdictions, multiple departments, multiple impacts, you know, cumulative impacts, a whole range of very, very, you know, complex engineering that takes place with a project like this. So when we go to – when we – when we're being consulted, we at least want some level of expertise that we can bring to bear on some of these matters. And that requires, sometimes, hiring certain consultants or expertise to be able to help us through that.

The level of funding that is being provided to us is, you know, or was provided to us was so miniscule that we could do little more than show up ourselves, basically, and make some presentations. And so we don't have the – we didn't have the capacity to be able to review some of these technical expert reports that had been presented to us, to give them a really good review, to be able to assess, you know, the veracity of these reports.

And so, you know, it was extremely, extremely limited – the resources that we had to bring to this consultative phase or this consultative process that the government had instituted. I mean, just run the numbers. I mean, I think the last testimony from one of the government officials was they were very, very happy that there were 10 groups and a million dollars. And we said here's \$100,000 each, now go to it. And, you know, that seemed to be like – you know, the way that was being framed was that, oh, we've gone above and beyond to make sure that you have the resources. But I can guarantee you that, in my view, that what they did was, again, a very – let's do enough to cover our backs, to basically reduce risk to a certain level in their minds just to get over that hump, you know, just to make sure that maybe we can meet that legal test. To get over that.

But is that really what consultation is supposed to do? Should government be looking at consultation only with a view of reducing its own risk to a potential court case or to maybe even protest? Is that the lens that they look

through consultation when it comes through the duty to consult with Indigenous peoples? Because that's not my reading of the Taku Tlingit case. The Taku Tlingit case says if people have asserted rights and there could be infringements of those rights or impacts upon those particular rights and on the people and these types of things, then there is a legal duty to engage with them in an appropriate fashion, with integrity – you know, responding with integrity.

But we did not and our group was never afforded that. And I believe the evidence is very clear on that particular point. I wasn't aware of some of the things that are in evidence now in these documents, but when I read through it, all of our suspicions become, I guess, validated to a less – to a certain extent. So ...

THE COMMISSIONER: Mr. Russell, if I can ask you this, and if you are able to say this, I didn't understand that the million dollars was actually divided amongst 10 groups, \$100,000 each. Is that the way it worked? Or was there some other mechanism by which each group was allotted a certain amount of money?

MR. RUSSELL: I'm not sure if we actually received that \$100,000. We received some money from what they call a participant funding envelope, which was made available to the – through the federal government Participant Funding Program. My understanding was that the province said we're gonna top that up a little bit with this fund. And so I'm not – even though that was the testimony, I can't say for certain that we actually received \$100,000 out of that sort of million dollars that was made available, because not each group got the same amount of funding, you know? And depending on the project, there were different levels of funding afforded to different groups.

MR. LEARMONTH: Okay.

Mr. Russell, that concludes my questions. I'm sure many other counsel will have questions for you.

Thank you very much.

MR. RUSSELL: Thank you.

THE COMMISSIONER: All right, I'm just gonna see where we are right at the moment. It's now a quarter to 5, and I'd like to try to continue at least for another 15 minutes or so if I can. And we will start early tomorrow morning.

So that obviously means we likely won't finish you today. Is that satisfactory to you?

MR. RUSSELL: No.

THE COMMISSIONER: No? Okay.

MR. RUSSELL: I would like to finish today. I have a flight out tomorrow at 8:25. If we're –

THE COMMISSIONER: All right.

MR. RUSSELL: – gonna start at 6 tomorrow morning, no problem.

THE COMMISSIONER: Okay. I'm up –

MR. RUSSELL: (Inaudible.)

THE COMMISSIONER: – for that. I'm usually up that early, but I think some others may be a bit reluctant.

So we'll continue on then, and I do want to accommodate Mr. Russell, obviously. I had expected to get him on earlier today, so I apologize that you're not there.

All right. Province of Newfoundland and Labrador?

MR. RALPH: Commissioner, I have no questions; however, Peter O'Flaherty has contacted me – and he represents the Premier and Minister Coady – and he tried to fly this morning, and he – his flight was cancelled because of weather, and he is – he has rebooked for tomorrow morning, but he doesn't get in here until 8:30. So he has asked me to have Mr. – have the opportunity tomorrow morning to cross-examine Mr. Russell.

THE COMMISSIONER: Well, that's not gonna happen, based upon Mr. Russell's availability. So I'm not sure if he may want – if he's listening in or if somebody can send him a text or an email – he may want to contact us and tell us how he plans on participating this

afternoon. Otherwise, I think he's gonna lose that ability to do it.

But I appreciate your advising me of that, and maybe you can send him a text or an email, and he can contact the office and –

MR. RALPH: Perhaps we'll leave the hearing room right now and see if I can arrange for him to –

THE COMMISSIONER: Yeah.

MR. RALPH: – to join in?

THE COMMISSIONER: And you can speak to our assistant outside, Diane, and she might –

MR. RALPH: Okay.

THE COMMISSIONER: – be able to figure something out.

MR. RALPH: Yes, thank you.

THE COMMISSIONER: Okay, thank you.

Nalcor Energy?

MR. SIMMONS: No questions. Thank you, Commissioner.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: No questions. Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you.

Edmund Martin?

MR. SMITH: No questions, Commissioner.

THE COMMISSIONER: Kathy Dunderdale?

MR. HEWITT: No questions, Commissioner.

THE COMMISSIONER: Former Provincial Government Officials '03-'15?

He's not there.

Julia Mullaley, Charles Bown?

MR. FITZGERALD: No questions, thank you.

THE COMMISSIONER: Thank you.

Robert Thompson?

Not here.

Consumer Advocate?

MR. HOGAN: No questions, Commissioner.

THE COMMISSIONER: Okay.

The Innu Nation?

MR. LUK: No questions, Commissioner.

THE COMMISSIONER: Okay.

Nunatsiavut Government?

MR. GILLETTE: No questions for Mr. Russell, thank you.

THE COMMISSIONER: Okay.

Grand Riverkeeper – yes, Grand Riverkeeper, Labrador Land Protectors?

MS. URQUHART: Good afternoon, Mr. Russell.

My name is Caitlin Urquhart and we met in the first Phase, and I'm representing Grand Riverkeeper and the Labrador Land Protectors. And I just was hoping that you could elaborate a little bit on some of the points that you were making earlier in terms of really the, sort of, build up of frustration that had happened and leading up to those direct actions in October. If you can provide, perhaps, a little bit more just in terms of what you were hearing from folks. What were – so, obviously health was one concern. Were there other concerns that people had that were being brought to you?

MR. RUSSELL: Yes.

I mean, no doubt the health concerns were top of mind for a lot of people. You know, for us as an organization, as I said earlier, it was the impact for a long, long time in terms of our Indigenous rights and the lack of respect and process that

was being afforded to our people and what that meant in terms of impacts. If you're not being heard, if you're not being responded to, you know, your people are being minimized, your concerns are being minimized and that was wholly wrong in my view from so many different points of view in terms of how the government was dealing with us.

There were concerns around the North Spur. There were also economic concerns, you know, with the impacts that were happening. People were saying, well, where are the economic benefits that were supposed to flow to people in communities, you know, most adjacent, most impacted by this particular development?

So there were many, many concerns – you know, some individual, some institutional, I would say, like in terms of organizations that were being brought forward.

MS. URQUHART: And so I know in 2012, when you were MP, you had done some survey around folks – their opinions about whether – their concerns about the project – whether they were in support of the project and so on. And that evidence came out in the first Phase. I'm just wondering – that was obviously while you were MP. Following that you returned – you were re-elected as president of NCC and I'm wondering if there was any other – if you ever did any further surveying or anything like that after that?

MR. RUSSELL: Well, that was a survey that we did. It was a very interesting survey. It was one of those direct call-ins, and I think we had over 2,000 people at one point on the line, either listening in, participating in that particular fashion. And yeah, they expressed their views to a number of questions that we were asking.

And of course there was, I think, 80-something per cent were dissatisfied with this particular project and the way it was proceeding, which certainly I believe – you know, I heard some evidence being given that governments had won mandates on moving forward with this particular development. Certainly I would say to – don't read into the fact that you might have got re-elected as – somehow that was an endorsement of the project. I can certainly say that that wasn't

the case from the people that I represent and certainly from the people of Labrador generally.

So, you know, it was – yes, it was a survey. I obviously reached out to my communities when I became president again at many, many meetings. And, you know, this issue of the Muskrat Falls in particular – project – yes, the Labrador Island Transmission Link as well – came up over and over again where people expressed the type of concerns that I have articulated in front of this Inquiry.

MS. URQUHART: And so Commission counsel led you through from, sort of, the original or the initial on-the-ground or on-the-site protests of 2012, where a number of folks were arrested through to 2016. And in the interim, obviously, the NCC had brought a case all the way to the Court of Appeal. Of course, NCC had participated in the Joint Review Panel. You know, all sort of legal means were being exhausted to try to object to this project.

And so in October, when the – October 2016, a further injunction was ordered and my understanding is that you tore that up and I'm wondering if you can kind of express what it was that you were trying to convey? What was the message behind that?

MR. RUSSELL: Well, it certainly came out of the context that in 2012, when this very – as I've said, draconian or very expansive permanent injunction was placed, you know, on our people and others I guess, I mean, at that particular time when I saw another injunction that looked very similar to that, I think my comment was: We know what to do with illegal injunctions. And yes, that precipitated me tearing it up, you know, in the press conference.

MS. URQUHART: And this was part of, sort of, this building frustration, of course, over the –

MR. RUSSELL: Oh, absolutely. I mean, it's – you know, it's difficult when processes, in my view, don't have the integrity that is required to respond appropriately to people's deep concerns – when, as I've said, when the – when people raise a concern, it's either minimized, there's an obfuscation or there's a sidelining of that particular concern, if it gets responded to it's in

such a manner that it doesn't appreciate the level of concern that's being brought.

Like, you know, when people talk about their health and well-being and safety – these are – that's so huge to people, you know, so huge and so meaningful – significant for people. So, yes, there was a lot of frustration that's been built up and I would say not just over a few months or even some years. This is in the context of – people have seen this time and time again and I think for some people they were saying we need to make our stand now. We need to make our voices heard. We need to make our concerns known and we need to move government to respond appropriately.

MS. URQUHART: Well, thank you for putting that context around that particular action and those are all my questions. Thank you.

THE COMMISSIONER: Nalcor – Former Nalcor Board Members?

MS. MORRIS: No questions, Commissioner.

THE COMMISSIONER: All right. Mr. Ralph is not back yet.

Mr. Ryan, do you want me to wait for – to see what the result of Mr. Ralph's discussion is going to be or did you want to start now with the ability to come back if Mr. O'Flaherty does proceed to ask questions?

MR. RYAN: Commissioner, I can certainly start now and then if there's the need to respond to anything I think that might be the quickest way to approach it.

THE COMMISSIONER: Okay. Thank you.

MR. RYAN: Mr. Russell, just a few things that arose from your testimony. Regarding the Community Development Agreement, I believe the question from Commission counsel touched on when the beginning of negotiations for the Community Development Agreement might have taken place. And I understood your answer to track more of the relationship between NCC and Nalcor through the life of the project, but is it accurate to say that the community development agreement, as a document itself, was only really contemplated, I guess, after a

change in leadership at Nalcor? Or did the community development agreement have its beginnings before Mr. Marshall became CEO?

MR. RUSSELL: Definitely not before Mr. Marshall. And I think it was in May or – May of 20 – what? 2017 we're talking about?

MR. RYAN: Okay.

And then the agreement was finalized in December of 2017?

MR. RUSSELL: Yeah. That's about the time frame.

MR. RYAN: Just in regards to the question from the Commissioner regarding funding, I stand to be corrected, but my understanding is the documents that we have about funding so far are at P-00041 at page 38, which outlines – Mr. Russell, that is in your book, I believe, but I don't –

THE COMMISSIONER: We'll bring it up on the screen.

MR. RYAN: Okay.

And that sets out the dollar amounts that – at page 38, Madam Clerk – the dollar amounts that different groups received from the federal government through the CEAA allocation. Sorry, Madam Clerk, 38 – three, eight. And so here the allocation from the federal government for the environmental assessment process is broken down by group.

And then to my knowledge, the only other breakdown akin to this is at P-00268. And it's at page 8 of that document. And it's just a similar breakdown for the Labrador Island Transmission Link. And I'm not actually sure if it's the – a breakdown in allocation of funds from the federal government.

But my understanding is these two documents are what we have in evidence so far as to how monies from the government were allocated between each Indigenous group to participate in these processes.

THE COMMISSIONER: We're just trying to bring that up now.

MR. RYAN: Yeah. And page 8.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. RYAN: And so this is from the Funding Review Committee. So my understanding is that this money is from the provincial government and it's what Mr. Russell referred to as the top-up onto the Canada Environmental Assessment Act funding.

THE COMMISSIONER: So it looks like it's \$199,000 total.

MR. RYAN: Yes.

And, certainly, it seems like the provincial government allocations were a little bit more evenly distributed than the Canadian Environmental Assessment allocation.

And, Mr. Russell, I just wanted to –

MR. RUSSELL: (Inaudible.)

THE COMMISSIONER: Pardon me?

MR. RUSSELL: Evenly thin.

THE COMMISSIONER: I'm sorry, I didn't hear you.

MR. RUSSELL: Evenly thin.

THE COMMISSIONER: Evenly thin. Oh, okay.

MR. RUSSELL: Yes.

MR. RYAN: I just wanted to make one more clarification about the issue of the North Spur, but really I just wanted to ask about the clarification between what issues NunatuKavut, as an organization, decides to invest time in versus issues that may be very important to members of NunatuKavut.

And so is it fair to say that for most of the Lower Churchill Project process, NunatuKavut, as an organization, invested a large amount of time and energy into advancing and asserting Indigenous rights, Aboriginal rights to Nalcor

and to the province? Is that a fair characterization?

MR. RUSSELL: Yes.

But in the context of the – you know, the assertion of these rights triggers the duty to consult and the duty to consult at a high level, in our view, which I believe was supported by – if you read what the Newfoundland and, again, Labrador Court of Appeal had rendered in its decision of 2007, and then having the ability to, you know, to be in an adequate system or adequate process of consultation. So there's underpinnings to that.

You know, it wasn't that we were trying to use the process of environmental assessment and that to get rights recognition. It was for them to understand the nature and the – of our claim so that we could get a process that was meaningful, that had integrity, that would produce, you know, less negative impacts on our people and more positive impacts upon our people and communities, and the same for our lands and waters from that type of a process.

MR. RYAN: Those are all of my questions.

THE COMMISSIONER: All right.

Maybe what we'll do is just take a couple of minutes –

MR. LEARMONTH: I've got – I have an email back from Mr. O'Flaherty. He advises that in the circumstances, he has no questions.

THE COMMISSIONER: Okay.

MR. LEARMONTH: So in the circumstances, I won't have any questions. So, I guess that's the end.

THE COMMISSIONER: Okay.

So redirect from you then, Mr. Learmonth.

MR. LEARMONTH: There's no redirect.

THE COMMISSIONER: All right.

Thank you very much, Mr. Russell. I appreciate your time. This is the second time you've been

back, so I appreciate the fact you've come back and thank you.

MR. RUSSELL: Thank you, Sir.

THE COMMISSIONER: All right.

We'll adjourn until tomorrow.

I'd like to start tomorrow morning at 9 o'clock if we can, just to make sure we do have enough time.

So we'll start at 9 o'clock tomorrow.

Are we starting with Nunatsiavut tomorrow morning or are we starting with the Innu Nation?

MR. COLLINS: Nunatsiavut.

THE COMMISSIONER: Nunatsiavut? Okay.

All right.

Thank you very much.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.