COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2 Volume 17

Commissioner: Honourable Justice Richard LeBlanc

Monday 25 March 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.

All right, good morning – good early morning.

So, Mr. Meaney, you remain affirmed at this time.

And, Mr. Learmonth, when you're ready, please proceed.

MR. LEARMONTH: Yes, I'd like to enter two exhibits: 02438 and 02420.

MR. SIMMONS: Commissioner, if I may, regarding that.

One of those exhibits – I'm not sure which the number is – is a code of standards of conduct for the CFA Institute. And you recall on Friday there were some questions that were asked of Mr. Meaney about his membership, his charter in that institute. And on Friday, Mr. Meaney was pretty thoroughly examined on his work as general manager for finance for Nalcor through 2013 and 2015.

His CFA designation relates to work as a financial advisor, which preceded his time with Nalcor. And we have a concern that by putting that document on the record it invites a comparison between his work as general manager and the CFA Institute designation, which is kind of a voluntary membership. It's not a requirement for the work that he does with Nalcor or anything of that nature.

So – and I understand Mr. Learmonth wants to ask a few questions in relation to it. We question whether it is appropriate under the circumstances, balancing fairness for Mr. Meaney and what are the – you know, the real issues of inquiry here in the Inquiry to place that on the record and to pursue that line, so …

THE COMMISSIONER: Right.

So can I just ask you – just before I hear a response I just want to make sure I understand the argument. So being a member of the CFA is not required with regards to what Mr. Meaney's job is at Nalcor Energy. I'm assuming that's what you're saying.

MR. SIMMONS: That's certainly – yes, so Mr. Meaney can certainly confirm that, I believe, yeah.

THE COMMISSIONER: Okay, so we need to confirm that because if – you know, if a person has a designation for another position, which they're not fulfilling at one particular time, it would seem to me that if that position has nothing to do with the duties that the person is undertaking at that time, then it may be superfluous to look at those duties.

MR. SIMMONS: It –

THE COMMISSIONER: But – so I just want to make sure I understand what you're saying. You're saying that being a CFA doesn't mean you are – it has nothing to do with the duties that Mr. Meaney was doing at the time that he was working with Nalcor.

MR. SIMMONS: That's the submission. Mr. Meaney can certainly confirm that.

THE COMMISSIONER: Right. Okay.

MR. SIMMONS: And it's not as if he were an engineer that required a stamp and a membership in the engineering association or a lawyer who had to be a member of the Law Society in order to do the work that he's done.

THE COMMISSIONER: Okay.

MR. SIMMONS: Right?

THE COMMISSIONER: Can I hear from you, Mr. Learmonth, on this?

MR. LEARMONTH: Well, Mr. Meaney –

UNIDENTIFIED FEMALE SPEAKER: Your microphone.

MR. LEARMONTH: I disagree completely with what Mr. Simmons has said. Mr. Meaney has confirmed that he's a member of the CFA Institute. And if you look at the Code of Ethics that has been – well, that has been proposed to be entered into evidence, Standards of Professional Conduct and under the heading "**C. Misrepresentation**" it says: "Members and Candidates must not knowingly make any misrepresentation relating to investment analysis, recommendations, actions, or other professional activities."

Now, Mr. Meaney is engaged in a professional activity here. I don't see how it can be said that once he's a member of the CFA Institute, which he said he is, that he can separate his duties and say, well, I'm bound by the CFA Institute code of conduct for this activity, but for another activity where I don't have to have that designation I'm not bound by it. He is a CFA charter holder, and he is always bound by the code of conduct. And this term, "or other professional activities," expands it to any professional activity. So the fact that he does – it's not a requirement of his position to have a CFA, is totally irrelevant, in my opinion.

Moreover, Mr. Meaney, in response to a question on Friday, suggested – I don't have an exact quote – that, you know, when he reports every year it's in relation to, you know, certifying that he hasn't engaged in any criminal activity. He used the word "criminal" and I suggest that that's not correct. That there is a code and he's bound by the code in all his professional duties, whether it's a job requirement or not. In the same way if a lawyer is a member of the bar and is working in a position that doesn't require the person to be a lawyer that doesn't relieve the lawyer of professional duty. So I think that's totally irrelevant.

I don't plan to involve – engage in a, you know, mini-disciplinary hearing or anything like that. I just want to ask Mr. Meaney whether he acknowledges that while he was acting in relation to the federal loan guarantee, that at all times he was bound by the *Code of Ethics and Standards of Professional Conduct* of the CFA Institute.

So I don't see any merit in the objection. There has been some evidence on it. I want to clarify what Mr. Meaney said about this reporting on criminal activity because I don't see anything in the Code of Ethics that, you know, limits the annual certification that he must make to the CFA Institute to that type of activity. So I don't want to go on too long about it, but I do believe that it is relevant and I want to ask him some – you know, a short series of questions on it.

MR. MEANEY: Commissioner, if you wouldn't mind just for one moment – sorry –

THE COMMISSIONER: Okay, just one second now.

MR. MEANEY: Sure, yeah.

THE COMMISSIONER: I don't think I should really be hearing from you –

MR. MEANEY: Okay, sorry.

THE COMMISSIONER: – at this stage of the game. Mr. – I know Mr. Simmons is acting as your counsel.

MR. MEANEY: Sorry.

THE COMMISSIONER: So I have no problem – I think the way I'm going to handle this, to be quite honest, is – I haven't seen this document. I'd like to have a look at the document, myself, and view whether or not it is, you know – it has relevance to the role that Mr. Meaney is carrying out.
The point, I think, that I understand Mr. Learmonth is making is that if you're a lawyer and you're conducting yourself not specifically as a lawyer, but you happen to perform some – do something, perhaps as a director of a corporation, not in a legal capacity, that is illegal or whatever, you could be subject to sanction by the Law Society. I think that's the point that he's trying to make.

I want – I just want to see – I don't know enough about CFAs and what they are and what they do; I don't know anything about the charter. I'd like to have a look at it. And I think what I'll do is make a decision on this. It may not be today and if we need to call Mr. Meaney back, we'll call him back, but I need some time to think about this before I can make a ruling on it.

So I'm not saying, no, Mr. Learmonth, and I'm not saying, yes, Mr. Simmons, I'm just saying that I need some time to think about it. And when I think about it and give my decision, then we can act accordingly, all right?

So which of those exhibits is actually – that you're proposing is –

MR. LEARMONTH: 02420. So 02420 is the Code of Ethics and Standards of Professional Conduct of the CFA Institute. So, based on what you've just said, I just want to enter 02438.

THE COMMISSIONER: Right. And we'll – I'll deal with 02420 and sometime, hopefully before the end of the week, I'll certainly give some direction on this.

MR. LEARMONTH: It may be – it's only a couple of pages. It's not a long document so, anyway –

THE COMMISSIONER: When I get a –

MR. LEARMONTH: But –

THE COMMISSIONER: Yeah, as soon as I get a chance to look at it, I certainly will.

MR. LEARMONTH: Yeah, that's fine.

THE COMMISSIONER: Okay.

And as I said, Mr. Meaney, you remain affirmed at this time.

MR. MEANEY: I do. Yes.

THE COMMISSIONER: Okay.

Mr. Learmonth, when you're ready.

MR. LEARMONTH: All right.

Now, Mr. Meaney, we – on Friday we discussed the reporting requirements. We went over – as one example, one of the reports that Mr. Bennett signed with a certification of certain information. Correct?

MR. MEANEY: Correct.

MR. LEARMONTH: Now, I'd like you to – so the question is – or one question some people might have is: What is the basis of this long list of certifications that he made? Why is he commenting in the manner he is in every report? Because that form that he used in reporting to Ottawa on a monthly basis, there was no deviation from it in terms of the format. Do you agree with that?

MR. MEANEY: It was a format that was set out in the project finance agreements, yes.

MR. LEARMONTH: Yeah.

Well, if we look at the project – one of the project finance agreements, I'm not going to go through them – through the second one, I just want to show this as an example. If we turn to – and this would be at your binder 3 and it's at tab 44, the exhibit is P-02361. And if we turn to page 1, just to identify the document – do you have that, Mr. Meaney?

MR. MEANEY: Yes, I do.

MR. LEARMONTH: Do you see page 1?

MR. MEANEY: Yes, I do.

MR. LEARMONTH: Okay. Now, let's go to page 89. Are you there?

MR. MEANEY: Yes.

MR. LEARMONTH: Now, isn't this – this is the financing agreement, this is a binding obligation on Nalcor, correct?

MR. MEANEY: Yes, this is the terms of the Project Finance Agreement.

MR. LEARMONTH: Yeah.

And if we look under 11.3, Construction Reports, do you confirm – will you confirm that the contents of the report that we referred to on Friday, that Mr. Gilbert Bennett had signed, is fulfilling the requirements set out in paragraph 11.3 on page 89 to 91 of Exhibit P-02361?

MR. MEANEY: Yes, this section in combination with Schedule "K," I think it references here, is the basis for the form of the construction report.

MR. LEARMONTH: Yeah, well, there's nothing in Schedule "K," but this is the – now, has this ever been – has this section ever been amended?

MR. MEANEY: Not that I'm aware of. No.

MR. LEARMONTH: It's always remained the same.

MR. MEANEY: I believe so. Yes.

MR. LEARMONTH: So for every monthly construction report that Nalcor was required to send to Canada, do you agree that section 11.3 would govern the content of the monthly construction report?

MR. MEANEY: Yes, that'd be fair.

MR. LEARMONTH: Okay.

Now, please go through – you mentioned one – well, more than one point on Friday about this internal process and that you – you know, you somehow – Nalcor somehow tied the reporting requirement to the finalization of an AFE. Do you remember saying that?

MR. MEANEY: Yes.

MR. LEARMONTH: Okay.

Now, can you go through 11.3 and tell me whether there's any mention whatever to an AFE being tied somehow to the reporting requirements in 11.3?

MR. MEANEY: I don't believe there's a specific reference in any section 11.3.2, AFE but there's no reference excluding it or precluding it either.

MR. LEARMONTH: Well, there are requirements for – we went through this on Friday – that an analysis of the cost to complete the MF plant and that doesn't – isn't based on an AFE.

MR. MEANEY: The cost to complete it as determined in the report – the difference between final forecast cost and, I believe, it's incurred to date cost.

MR. LEARMONTH: Okay.

So there's nothing in – there's no reference in 11.3 to AFE and perhaps tying it somehow, even indirectly, to the reporting requirements specified in 11.3. You agree with that, don't you?

MR. MEANEY: If you wouldn't mind, I – could I check the Master Definitions Agreement?

MR. LEARMONTH: Oh, you checked that last week.

MR. MEANEY: Yes, but I'm looking for – that was on a different question I think you had asked that. Would I be able to check that, if you wouldn't mind?

MR. LEARMONTH: Yeah.

MR. MEANEY: I'm trying to recall what – here we go, I found it – sorry.

MS. O'BRIEN: It's P-02352.

MR. LEARMONTH: Or 02354.

MR. MEANEY: 02354 – yeah, I got it here. Okay.

Mr. Learmonth, what I was looking for – and I believe it may have gotten picked up in the amendments that were made to the Project Finance Agreements in 2015. And this is – the reason I was checking, you had mentioned was there any mention in here or any connection to AFE? And I was looking at the definition of MF project budget, and I do recall in one of the definitions it talked about – wait now I might have the wrong definition. There was a link in a project budget-related definition to AFEs or subsequently revised AFEs and I'm just trying to recall where it was.

And it may have gotten picked up in – so this would be the 2013 Project Finance Agreement we're looking at here now. Yes, I believe it may have been picked up in the amendments that were done in July of 2015. I don't know if we have a copy of that in the exhibits here that I could refer to.

MR. LEARMONTH: Well, you've seen all the exhibits. If it isn't there –

MR. MEANEY: Okay.

And, Commissioner, I think in terms of, you know, some relevance in terms of the question that was asked, a tie-in to the concept of AFEs in one of the definitions, I do recall it, I just – I can't seem to – I don't think it was in this version of it, it may have been in the subsequent one. So I was trying to answer your question in terms of was there any connection to the concept of AFEs. I do recall in the definition related to project budget there was, but it must have been in the amended 2015 versions I'm thinking of.

MR. LEARMONTH: Well, did that amend 11.3?

MR. MEANEY: It didn't amend the requirements of 11.3 but what it did was it amended, I guess, one of the definitions within 11.3.

MR. LEARMONTH: Okay. Which definition is that?

MR. MEANEY: I believe it was what was called MF Project Budget.

MR. LEARMONTH: Right.

MR. MEANEY: There was a – because what became the definitions was in 2015, I guess, the budget at this point in time – so MF Project Budget at this point in time would have been the Muskrat Falls component of the 6.531 we discussed about that last week. And then in the amendments that happen in 2015 that got defined as initial project budget. And then project budget became the then current AFE or any revised AFEs.

MR. LEARMONTH: Yeah.

MR. MEANEY: That's why I'm trying to find that connection because I think it might be relevant in discussions. So I mean that's something I can go find the – I guess it's that July 2015 amendments and we can provide that information. Yeah.

MR. LEARMONTH: Okay but what's that got to do with "11.3.2 an analysis of the Cost to Complete the MF Plant"? What's that got to do with what – with that section, with that requirement?

MR. MEANEY: Because when you calculate the cost to complete – cost to complete is the difference between final forecast cost and – sorry, my mistake, I was looking ahead to 11.3.3. Yeah, cost –

MR. LEARMONTH: No, I'm not – okay, well, we can do that.

MR. MEANEY: Yeah, no, sorry, I –

MR. LEARMONTH: But, first, I want to look at 11.3.2 because that's what we were talking about on Friday.

MR. MEANEY: Oh, my apologies. Yeah, so in terms of cost to complete, the point I just raised – no, it would be the difference between final forecast cost and incurred cost to date. Yeah.

MR. LEARMONTH: Yeah, so you acknowledge that?

MR. MEANEY: So that would be right in terms of 11.3.2, yes.

MR. LEARMONTH: Okay and so that never changed. So for every construction report, this cost to complete the MF plant or the LIL, because there's another agreement, would remain unchanged?

MR. MEANEY: 11.3.2 – that's right, that – the mechanics of that wouldn't have changed.

MR. LEARMONTH: Yeah. So what is your point?

MR. MEANEY: Sorry, I was jumping ahead to 11.3.3.

MR. LEARMONTH: Yeah.

MR. MEANEY: And –

MR. LEARMONTH: But what you're saying has nothing to do with 11.3.2, correct?

MR. MEANEY: Not 0.2. No, sorry.

MR. LEARMONTH: Okay, very good.

Okay and as I said, that has never – 11.3.2 has never been changed. You're going to see whether there was some amendment to a definition that could possibly have changed some of the other –

MR. MEANEY: Yes.

MR. LEARMONTH: – paragraphs.

But the discussion we had on Friday was in relation to an example report. You know, we didn't go through every construction report because the format was exactly the same. Is that correct?

MR. MEANEY: The format was the same. I guess my point was in the amendments that were made in '15 there were some updates to the definitions of project budget which did have a link back to AFEs. And so I was trying to raise that point.

MR. LEARMONTH: Okay. So just to – we'll have a couple further questions to leave this subject because we've talked about it a lot.

So in – between, say, June 2014 and October 2015 the budget that was referred to in all monthly reports was the 6.99. Is that correct? The 6.99 which was the AFE in 2014 – June 2014.

MR. MEANEY: Are you asking if the final forecast cost or the project budget?

MR. LEARMONTH: I'm saying the 6.99 was always used in the – as being the final forecast cost in terms of what you reported to Ottawa?

MR. MEANEY: Yes. In terms –

MR. LEARMONTH: Yes, yeah.

MR. MEANEY: – of the final forecast cost, yes.

MR. LEARMONTH: In terms – I know it wasn't real, but in terms of what you reported to Ottawa. Yeah.

MR. MEANEY: Yes. It wasn't updated but, yes, yeah.

MR. LEARMONTH: Yeah, okay. All right, thank you.

Please turn to Exhibit P-00874, page 1. It's not in your book but it'll be brought up on the screen. It's just the one page of a document I want to refer you to.

Do you see that?

MR. MEANEY: Yes.

MR. LEARMONTH: Now, this was a document that – it wasn't received by you or Mr. Sturge, but as received from the project management team. It was prepared for the Commission.

MR. MEANEY: Okay.

MR. LEARMONTH: You're familiar with that, with the volumes that the project management team (inaudible).

MR. MEANEY: Yes, I'm familiar that they did prepare, yes, some volumes for the Inquiry, yes.

MR. LEARMONTH: Okay. Now, I wanted you to look at Effect on Muskrat Falls Project. I'm going to read this: "FLG1 was predicated on Canada providing a loan guarantee of $5B of debt required for the Muskrat Falls Project, with the balance of the total $6.2B being funded by equity. All cost over-runs were to be funded by equity from the Province.

"Provisions within the FLG1 Agreement required that equity for any forecasted cost overruns be set aside by the Province in a pre-funded equity escrow account (i.e. COREA provision or Section 4.10 of the FLG1 agreement). Interpretation of this provision meant that overly conservative forecasts would result in the Province having to put more of its limited revenue aside (i.e. in escrow) to fund such potential over-runs, or it would be in breach of FLG covenants. All funds placed in escrow for potential use at a later time would deprive the Province of current funds required to fund other Provincial programs."

So do you agree that this agreement was the lenders were saying we're basing our lending commitment and the advance of funds on a certain project budget cost of 6.2 or 6.531, whatever it was, and the lenders are saying if there are cost overruns, you – Government of Newfoundland has to put up the cash in the form specified in the – under the COREA account. Is that correct?

MR. MEANEY: Yeah. The provisions of the project finance agreement between ourselves and Canada dictated the mechanism by which –

MR. LEARMONTH: Yeah.

MR. MEANEY: – if there was cost overruns –

MR. LEARMONTH: Yeah.

MR. MEANEY: – how they would be funded.

MR. LEARMONTH: The lenders are saying you have to put the money up if there's cost overruns, and there is a formula for making those contributions. Is that correct?

MR. MEANEY: Canada would, yes.

MR. LEARMONTH: Yeah.

MR. MEANEY: And not – you know, our discussion about lenders versus Canada.

MR. LEARMONTH: No, but – well, okay, whether it was the lenders or Canada, the obligation was on the Province of Newfoundland having given a guarantee or, you know, having given a commitment to fund contingent equity that the lenders wanted to be sure that if there were cost overruns, the – cash was going to be provided in the manner specified in the agreement, correct?

MR. MEANEY: Canada did, yes.

MR. LEARMONTH: Yeah, okay – well, Canada, okay.

MR. MEANEY: Yeah.

MR. LEARMONTH: Now, the next paragraph. This is what the – as I say, this isn't what you're saying; this is what the project management team said.

"In an effort not to be too punitive, Canada agreed that such forecasts would represent known, firm costs, such as awarded contracts and settled claims, and not be speculative in-nature by factoring in such elements as opening bid prices or submitted, unattested claims. By doing this, the amounts of funds the Province would have to place in escrow would be reduced, thus aiding their ability to maintain other Provincial programs in this period of reduced oil royalty revenues."

Now, we know that there was an exception made for Astaldi, the Astaldi caveat, correct?

MR. MEANEY: Yes, that was the –

MR. LEARMONTH: Okay.

MR. MEANEY: – ongoing commercial negotiation –

MR. LEARMONTH: Okay.

MR. MEANEY: – caveat, yeah.

MR. LEARMONTH: Okay.

Putting that aside, and acknowledging the existence of the Astaldi caveat, do you believe that this statement is correct in all respects?

MR. MEANEY: This was a statement that – I guess this one and the one prior to it – was a statement made by the project management team. So – or, you know, members of the project management team. And it was, I guess, their interpretation of what they understood the mechanics to be.

I don't – and I think we talked about this on Friday, because I think it was a Grant Thornton RFI that I had helped prepare the response for. And I think – I don't know if I would agree with the way they've characterized it here in this document.

MR. LEARMONTH: So you don't agree that it's a correct statement?

MR. MEANEY: I think they've made some broad – I do know that – I do recall there was lots of discussions with, you know, the federal government about when, you know, when material contracts were updated, we'd be providing them with updates on what the award value was relative to the, you know, the original budget. But I think the statement here is – made a broader generalization than how I would characterize it.

MR. LEARMONTH: Yeah. Because there were – it wasn't a requirement – or Nalcor wasn't allowed to say: until we settle a claim we don't have to mention – for the purpose of the COREA. There had to be a reasonable estimate made of claims as they came in, correct?

MR. MEANEY: There would have been. In the project – actually, in the construction report there's a section – where we talk about – I think it's called disputes – and we have to provide disclosure on if there was claims with any of the material contractors going on. We'd have to provide some disclosure on that, yes.

MR. LEARMONTH: Yeah. They didn't have to be finalized or settled or, you know, completely resolved before they were reported.

MR. MEANEY: The – of course the one that, you know, was – I guess, was an exception, as we talked about Friday – was the Astaldi situation and the knock-on of that, which would have involved – I guess eventually did involve – some claims from other contracts.

MR. LEARMONTH: Yeah, but hold on now. I thought I said at the beginning to put aside –

MR. MEANEY: Oh sorry, yes.

MR. LEARMONTH: – the Astaldi caveat.

MR. MEANEY: Yes.

MR. LEARMONTH: Okay. Now, I just wanted to make sure that there's no misunderstanding in this. I want you to refer to evidence given to the Commission by your senior person, Derrick Sturge.

MR. MEANEY: Okay.

MR. LEARMONTH: He testified under oath to this. And this is at page – October 31, 2018, page 81 and 2 and 83. And I'm gonna read it –

MR. MEANEY: Mr. Learmonth, do I have a copy of that here?

MR. LEARMONTH: No, but I can –

MR. MEANEY: Okay.

MR. LEARMONTH: – give you a copy if you want.

MR. MEANEY: Thank you.

MR. LEARMONTH: Okay, now, I'm just going to go through this. It will take a few minutes but I want to make sure that there's no misunderstanding or any ambiguity. If you –

UNIDENTIFIED MALE SPEAKER: Commissioner – Mr. Learmonth, could you just name the pages again, please?

MR. LEARMONTH: Page 81. Starting at –

UNIDENTIFIED MALE SPEAKER: Thank you very much.

MR. LEARMONTH: – page 81.

All right, so there's a question here on the right-hand – in the right-hand column. Do you see under where, Mr. Sturge: Yeah. Do you see that in the right – page 81?

MR. MEANEY: Yes, on page 81. Yes.

MR. LEARMONTH: Yeah. Okay.

Ms. O'Brien says: And I'm just going to read out part of it. It says: "Provisions within the FLG1 Agreement required that equity"– and Ms. – so what Ms. O'Brien is doing is reading the very same page –

MR. MEANEY: This one here, yes.

MR. LEARMONTH: – that I did, okay? And then – so that's – I'm not going to go through every word for word but that's what's going on.

And, then, in the next paragraph, Ms. O'Brien refers to the third paragraph, the one: "In an effort not to be too punitive, Canada agreed that such forecasts would represent known, firm costs, such as awarded contracts and settled claims, and not be speculative in nature by factoring in such elements as opening bid prices or submitted, unattested claims. By doing this, the amounts of funds the Province would have to place in escrow would be reduced," thereby "aiding their ability to maintain other Provincial programs in this period of reduced oil" – regime.

MR. MEANEY: (Inaudible.)

MR. LEARMONTH: So that's the same paragraph. I just want to make sure – yeah.

MR. MEANEY: So, yes.

MR. LEARMONTH: And then Ms. O'Brien says: And if we can just go to the next page – and this is a section called "***Net Consequences***." Well, that's on page – we can bring that up, page – that's also on page 1 of 00874, but it's the same number.

THE COMMISSIONER: The next page.

MR. LEARMONTH: Yeah, well, it's page 2, anyway.

THE COMMISSIONER: Page 2.

MR. LEARMONTH: Yeah. Okay.

If we go to the next page and this is a section called "***Net Consequences***" I'm not going to read it all out but I'm going to read a substantial bit: "Project cost forecasts made public were to reflect known cost over-runs, while future cost risks and trends were characterized as under study and subject to future confirmation and reporting.

"The net result was that public cost forecasts were not risk-adjusted cost forecasts that considered the potential exposure of potential risk items. This led to repeated cost updates and a view that costs were not in control."

Then there's a quote: "The Province's weakened fiscal situation contributed to the reluctance to communicate early to the public that cost over-runs had occurred, rather as illustrated in Figure 10, there was an extended lag between" the "Final Forecast Cost … updates were available and when such information was approved to be shared with the public."

Then Ms. O'Brien says to Mr. Sturge: "So the reason I'm putting this to you, Mr. Sturge, is obviously you were very involved with the FLG, the COREA account, which we've heard about. And, you know, just to summarize, this suggests that, look, this was an agreement between Canada and the province that we didn't – you know, we – until a cost really firmed up and we knew exactly what it was, we didn't have to put in our estimate; therefore, we would keep the amount of money we had to put into the COREA down.

"Was that a concept that was familiar to you?

"**MR. STURGE:** Yeah. I think what's described here is, you know, like most things, there's some truth and maybe a little bit stretched, when I read it. Because I think the issue here was that – my expectation is that forecasts were being set and we understood that that could have an impact on the province, but that wasn't the driver. That was never our driver.

"I think what this is getting at – and when I read this, it didn't feel right to me. And I tested it with Jim Meaney, who's the GM finance for Lower Churchill, who would be the guy dealing with Canada and all" – the – "issues, and I think that's where the truth in it is that – my understanding is that late 2015, maybe 2016, when all this uncertainly was taking place with Astaldi, there was an understanding reached between Nalcor's legal counsel and Canada's legal counsel as to how the Astaldi issue would be addressed and that was dealt with. So that was a common understanding reached, but that was the extent of it.

"And there may have been some desire, prior to that, for certain folks to maybe want this to be the case, but that was never the case.

"**MS. O'BRIEN:** Okay."

And then Mr. Sturge says: "And Jim was very clear with me … that that this was the only exception made for the Astaldi issue" late in 2015, 2016.

Do you agree with what Mr. Sturge's testimony?

MR. MEANEY: I think that would align with the response that I gave to the Grant Thornton question.

MR. LEARMONTH: Yeah. Yeah. But do you – is there anything that you – that I've just referred to that you disagree with?

MR. MEANEY: No, I think how Mr. Sturge described it would be pretty fair.

MR. LEARMONTH: Yeah. Well, he's relying on your explanation. And, actually, if you go on to page 83 of this document, at the top left, it says: "**MS. O'BRIEN:** So that wasn't your understanding of …

"**MR. STURGE:** It was foreign to me, yeah. And the only place – and I got complete trust in Jim's view on this because he's the guy talking to Canada, and there was that one exception for Astaldi in – that's there." Right?

MR. MEANEY: Yes. That's what he stated, yes.

MR. LEARMONTH: But do you agree with what he said?

MR. MEANEY: I think that would be consistent with the answer I've given, yes.

MR. LEARMONTH: Would you have any disagreement with anything that he said in the transcript information that I've just given to you 'cause I wanna know if there's something in there that you think is wrong, I'd – I want you to take the time to read it and tell us now because Mr. Sturge will be testifying on this and I'd like you to do that.

MR. MEANEY: I think that what Mr. Sturge has said is consistent with what I've said as well.

MR. LEARMONTH: So you agree with what he said.

MR. MEANEY: Yes.

MR. LEARMONTH: Yes?

MR. MEANEY: Sorry – yes.

MR. LEARMONTH: All right. Thank you.

Okay. The next exhibit I would ask you to turn to, Mr. Meaney, is exhibit P-02437. That's at tab 132 in volume 5 of your book of documents.

THE COMMISSIONER: What tab again, mister –

MR. LEARMONTH: That's tab 132.

THE COMMISSIONER: Thank you.

MR. LEARMONTH: You see that?

MR. MEANEY: Yes.

MR. LEARMONTH: Okay.

Now, this is February 28, 2019, so it's reasonably current. It's a memo to the board of directors from you about Transition to Operations ("TTO") Authorization for Expenditure Revision. And the reason I want you to provide some commentary on this is that it may be that many people in the public believe that 10.1 was the – it was the last capital cost estimate and then the rest of the money – this 2.7 – had to do with interest and financing charges. But that's wrong, isn't it?

MR. MEANEY: That's not entirely correct.

MR. LEARMONTH: Yeah, because in the 2.7 there are other costs. Correct?

MR. MEANEY: Yes. It's financing and other costs.

MR. LEARMONTH: Yeah.

Now what are those other costs?

MR. MEANEY: So, in the –

MR. LEARMONTH: Let's just go through this document. Maybe you can –

MR. MEANEY: Sure.

Maybe I can – it'd probably be helpful to go to page 3 of the memo 'cause there's a chart there that outlines what's the build up of the 12.7.

MR. LEARMONTH: Okay.

MR. MEANEY: So if you go to the top of the chart, the 10.1, that's the facilities capital costs. That's the 10.1 that's been talked about publicly on a number of occasions. And then the other 2.6 billion, which would give you the 12.7 –

MR. LEARMONTH: Excuse me, I said 2.7, yeah. It's 2.6, yeah.

MR. MEANEY: – and was always described as financing and other costs. And actually, it was described that way – if I recall – in the update that was provided by Mr. Marshall. And actually, if you look at an Oversight Committee report of – I think it was September 2017 – 'cause I believe it came out after Mr. Marshall's update – there was four or five pages that actually gave a great detail and explanation of the financing and others. And it talked about the, Commissioner, the categories that we have here.

So within the financing costs, which is – you know, for round numbers we'll say the 2.3 billion – it would have been IDC. The other financing costs would have been underwriting fees, closing costs associated with the two financial closes we had, fees to rating agencies. There would have been the independent engineers' fees were in there 'cause it was financing-related. There would be costs associated with the settlement of the interest rate hedges that we did in both 2013 and 2017.

Then the AFUDC – that's an amount, capitalized interest cost associated with Nalcor and Emera's investments in the Labrador-Island Link.

And then there's reserves, which are the debt service reserve accounts and liquidity reserve accounts that are required under the project finance agreement. So if you look at those agreements you'll see that those are referenced.

And the other costs – as I mentioned – there was two primary buckets. So there was what we call the TTO or transition to operations budget. And then there was also some allowances for pre-com costs – pre-commission costs. And these were costs associated with the operation and the maintenance of the assets prior to Muskrat Falls full power which, the current schedule is I think September – Q3 September 2020. So those would have been primarily associated with – because the transmission assets were going to be substantially completed at that point – at the time of the June 2017 update, I think the period was almost two years before the generation full completion.

MR. LEARMONTH: Yeah. But why were these costs put in – you know, the heading other costs rather than included into – in – or added on to the 10.1 –

MR. MEANEY: Because –

MR. LEARMONTH: (Inaudible.)

MR. MEANEY: No, sorry, go ahead.

MR. LEARMONTH: – no – I just want to complete the question. You've got – okay, on page 1, third paragraph down, "In addition to the TTO costs, included in the Other Costs Category … allowance for pre MF full commissioning … operating costs of $196M." For example – like, why wouldn't that go – be considered a project cost rather than a, you know, financing and other? Why did you create this category of other?

MR. MEANEY: Sure. The facilities capital costs and the AFEs that were associated with that – that totalled up to 10.1 in June 2017 – were always meant to cover the construction-related costs, so all the activities relating to, you know, construction and these type of activities. Whereas TTO and pre-comm costs and financing costs were seen separate as that, so a separate AFE was set up for the financing costs and then a separate AFE was set up for the TTO costs.

MR. LEARMONTH: Seen separate by whom?

MR. MEANEY: They're separate –

MR. LEARMONTH: Who decided they were to be, you know, not included in the – or added on to the 10.1?

MR. MEANEY: I don't specifically recall who – I don't recall, you know, what was the outcome of that discussion, other than – or what determined that, I guess, other than it was – I do recall that the construction – the facilities cost AFEs would've been the accountability of, you know, the EVP or the VP associated with the construction side of things. Whereas the TTO AFE had separate accountability; it was to the accountability of Mr. Henderson, Rob Henderson, who was the VP of TTO.

So in terms of, I guess, budget management and stewardship, it was set up as a separate TTO, separate from the facilities capital costs TTO – or AFE, sorry.

MR. LEARMONTH: But – so you don't know who made that decision?

MR. MEANEY: I know there was a lot of discussion as to why – I guess, at the end of the day, it would've been the CEO when the TTO AFE was approved, which would've been in June 2016 originally. So the CEO at that point in time was Mr. Marshall.

MR. LEARMONTH: Yeah.

MR. MEANEY: So he gave the okay to – you know, for us to go forward to the boards and get the TTO AFE approved. So I guess, ultimately, it would've been his decision.

MR. LEARMONTH: Okay.

And then at the bottom of page 1 you got: "LIL/LTA - $27M in operations 'start up' capital costs for 2019/2020 and additional Pre-Comm costs to be incurred prior to LIL mono-pole commissioning in 2019 …." I just wonder why they wouldn't be added on to the 10.1 rather than included as other costs in the financing component.

MR. MEANEY: Because these are costs that are going to be incurred in that interim period of transition from construction to full operations. So that was –

MR. LEARMONTH: Right.

MR. MEANEY: – why they were in the TTO bucket.

MR. LEARMONTH: Yeah.

And there was other – anyway, you don't really know who – you didn't make the decision, but it's just the question that why are they allocated as other costs as opposed to included in the capital cost.

MR. MEANEY: Yeah and I think I've tried to explain it in terms of how the AFEs were set up in that there was –

MR. LEARMONTH: All right.

MR. MEANEY: – an explanation to folks on that in the public realm.

MR. LEARMONTH: That's all you can say on that, I take it. Yeah.

The – just a couple of other little points I have here. If we look at – we've already referred to Exhibit P-02208 and I want it brought up. That's volume 1, tab 25.

THE COMMISSIONER: P –

MR. LEARMONTH: Do you see there's – that's the version, I think, of the November 6 –

MR. MEANEY: Sorry, the –

MR. LEARMONTH: P-02208.

MR. MEANEY: Tab 25, Mr. Learmonth?

MR. LEARMONTH: Tab 25.

MR. MEANEY: Yes, okay, I have it. That's the presentation from the 6th of November.

MR. LEARMONTH: Yeah. And that was dated – what date there?

MR. MEANEY: That's the 6th of November, 2013.

MR. LEARMONTH: Sixth of November, 2013.

MR. MEANEY: Like, that's the – yeah, here we go. That's on the screen, yes.

MR. LEARMONTH: Okay. You see that.

Now, if we look at – so you've got that, and if we look at – now, I'd like this to be brought up on the screen – P-02438.

MR. MEANEY: I'm sorry. Mr. Learmonth, which book is that one in?

THE COMMISSIONER: That would be at book 5, tab 133.

MR. LEARMONTH: 02438 – it'll be brought up on the screen anyway.

UNIDENTIFIED MALE SPEAKER: Tab 133.

MR. MEANEY: Okay. That's the – I believe that's the same presentation, yes.

MR. LEARMONTH: Well, it's – no, this is November 5, 2013. The earlier one that I referred to was November 6, I think, wasn't it?

MR. MEANEY: Are we looking at – just to make sure, we're looking at Exhibits 02438 –

MR. LEARMONTH: Yeah.

MR. MEANEY: – and Exhibit 02208?

MR. LEARMONTH: Yeah.

MR. MEANEY: They're the …

Oh, sorry, okay. No, yeah, this is the – okay, gotcha. Sorry, yeah.

MR. LEARMONTH: Do you see the – that they're different.

MR. MEANEY: Yeah, so this was –

MR. LEARMONTH: Okay, why were there changes made between November 5 and November 26? For example, if you look at – just look at page – it's 39 or 40 of the – 39 or 40 of Exhibit P-02208.

MR. MEANEY: Okay, so –

MR. LEARMONTH: Forty.

MR. MEANEY: So 40 of –

MR. LEARMONTH: Yeah.

MR. MEANEY: – 022 – okay, yeah.

MR. LEARMONTH: Forty. So in that you've got "Protecting Our Investment" right?

MR. MEANEY: Yes, yeah.

MR. LEARMONTH: And then in the corresponding page in Exhibit P-02438 – if you go to page 14 –

MR. MEANEY: Okay, 14.

MR. LEARMONTH: – it's the same content but it – the earlier version said Minimizing Further Cost Growth. Do you know why that change would have been made?

MR. MEANEY: I don't.

MR. LEARMONTH: And there's other changes in the two reports also.

MR. MEANEY: Yeah, I know, this – the one in 02438, that was a draft of the presentation that was being circulated amongst – it looks like the project team and Ed. I wouldn't have been on that correspondence.

MR. LEARMONTH: Okay. But I think Mr. Martin was suggesting some changes in one of the emails, but you don't know anything about that, do you?

MR. MEANEY: No, I don't know the basis of his suggestions.

MR. LEARMONTH: Okay.

MR. MEANEY: I do recall, yes, we found – there was an email, I think we reviewed last week, that showed he'd been providing some comments through email to Jason but the – I can't speak to the basis of his comments.

MR. LEARMONTH: All right. Thank you.

Now, there's a few more exhibits I want to go through, and then we'll be done. Volume 4, tab 115, please, it's Exhibit P-02404.

MR. MEANEY: One, two – yup.

MR. LEARMONTH: Okay, now, you're saying here, this is in relation to the work – or the Oversight Committee – an Oversight Committee request. This is December 17, 2014; you say to Ed Bush: "OK...at my desk. The challenge is its hard to educate people who don't want to (or know how to) listen." And there's – earlier, you know, there's two or three other pages that you might want to look at to –

MR. MEANEY: Yes.

MR. LEARMONTH: – answer the question. What are you talking about here?

MR. MEANEY: Yes. So this was part of the – I think we actually spoke about this on Friday and I talked about in the early days of the Oversight Committee, you know, going through some of the growing pains and folks, I guess, learning, on both sides, what's the areas that everyone should focus on. And this is actually related to that.

I think it was at that same point we discussed, last week – and if you go to page 2, it was the one about, you know, they were looking for detailed variance explanation on the Muskrat Falls cost. And it was $5 million above a – you know, a plan of $1.064 billion and just – you know, again, we're venting a bit of frustration in terms of why we're spending a lot of time on this because it didn't seem material. And as I talked about, as the relationship evolved, we worked these things out.

MR. LEARMONTH: Right. Tab 118.

MR. MEANEY: Okay.

MR. LEARMONTH: It's Exhibit P-02407.

MR. MEANEY: Okay.

MR. LEARMONTH: Do you see that, Mr. Meaney?

MR. MEANEY: Yes.

MR. LEARMONTH: Okay. So this is the Construction Report dated October 20, 2015. If we turn to page 2 and 3, it's done in the same format as – and Mr. Bennett certifies this or signs off on page 4. Was this the construction report that caused the trouble or the problem with Ms. Manzer? Was the submission of this report –?

MR. MEANEY: No. The –

MR. LEARMONTH: Or – it was the September one, was it?

MR. MEANEY: No. No. It was actually – it was the – it was the update that we gave them on the 28th of September, 2015 –

MR. LEARMONTH: Okay.

MR. MEANEY: – that was the, I guess, the email – or, sorry, the letter was a follow-up to that discussion.

MR. LEARMONTH: It was a follow-up to that discussion, all right.

MR. MEANEY: Yes.

MR. LEARMONTH: Thank you.

MR. MEANEY: And sorry, Mr. Learmonth, I had referred to it earlier – and you can see here – my point earlier about the amendments that were made to the project finance agreements in 2015.

MR. LEARMONTH: Yeah.

MR. MEANEY: If you look at, for example, page – you could use page 7, I guess, as an example. I talked about the concept of project budget – an initial project budget. It's there in terms of the – that form of the chart in the report now. And remember I had mentioned that –

MR. LEARMONTH: Yeah.

MR. MEANEY: – initial – it is – just – I referenced this earlier and I was trying –

MR. LEARMONTH: Sure.

MR. MEANEY: – to recall where it was.

MR. LEARMONTH: Okay. But that doesn't change the reporting requirements.

MR. MEANEY: No. It just – it changed –

MR. LEARMONTH: Yeah.

MR. MEANEY: – how the information that was provided in the reporting. That's all.

MR. LEARMONTH: Yeah. But the content – it didn't – it wasn't a change of substance; it was just a change in the form. Is that correct?

MR. MEANEY: Change in the form and there was a linkage there back to AFEs and that's –

MR. LEARMONTH: Yeah.

MR. MEANEY: – what the point is there.

MR. LEARMONTH: But it didn't relieve you of the obligation of reporting the – you know, the costs – forecast cost?

MR. MEANEY: No.

MR. LEARMONTH: No. Okay. Thank you.

Tab 119. This is Exhibit P-02408 and it's December 2, 2015. You're writing Paul Myrden of the Department of Finance. I think he was in management of debt servicing or Debt Management. Now, what is going on here? Is it something about the province wanting to delay funding to COREA because they had a problem with raising the money or the availability of short-term borrowing? Can you explain this?

MR. MEANEY: At that point in time – so which would have been late 2015 – the province was experiencing some challenges in short-term borrowing markets. And, of course, they were gonna have to go out and borrow the funds to fund their component of the COREA payment that year.

And I believe what was going on that year, if I remember, there was an year – there was a time, and I think it might have been '15 in Canada where there was a bit of a liquidity crisis in the acid-bath commercial paper market broadly across Canada. And it had a knock-on effect to abilities of borrowers to borrow in the short-term market. And that was what was going on here with the province's situation, borrowing –

MR. LEARMONTH: And the –

MR. MEANEY: – situation.

MR. LEARMONTH: – and the COREA had to be funded by December 14, right?

MR. MEANEY: It did. And they ended up being able to provide the funding. It was just, you know, we didn't want to be pushing it right to the end, we were trying to be proactive and make sure that it was gonna be –

MR. LEARMONTH: You didn't want to test the issue as to whether they would –

MR. MEANEY: Correct.

MR. LEARMONTH: Yeah, okay. That's fair enough.

Okay. Well, pending a ruling on, Commissioner, on the code of ethics question, we'll have to wait to see of that, but at this stage, anyway, I can say that my questions are over. I may have some in redirect depending on the cross-examination.

Thank you very much.

THE COMMISSIONER: All right.

Province of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. HISCOCK: One second now.

Good morning, Mr. Meaney.

William Hiscock with the Concerned Citizens Coalition.

MR. MEANEY: Good morning.

MR. HISCOCK: I'd like to begin with asking you a quick question in relation to the federal loan guarantee. In that guarantee – and it's section 2.1, it refers to recourse against the borrower.

Could you explain whether this protects the province from claims made by lenders or the guarantor? Or how that would work?

MR. MEANEY: Could you clarify – when you said section 2.1, which agreement you're speaking to?

MR. HISCOCK: The – in the federal loan guarantee, I'm sorry, is the –

MR. MEANEY: So this would be the November –

MR. HISCOCK: – so this would be –

MR. MEANEY: – November 2012 document?

MR. HISCOCK: We have it at Exhibit –

MR. MEANEY: There we go.

MR. HISCOCK: – 00065, I believe.

MR. MEANEY: Okay.

MR. HISCOCK: So that would be –

MR. MEANEY: If someone could help me in terms of which binder and exhibit.

UNIDENTIFIED SPEAKER: (Inaudible.)

MR. HISCOCK: Okay. Thank you.

MR. MEANEY: Section 2.1. Okay. Now, if I could just read it for a moment, that would be helpful.

And, sorry, Sir, could you repeat the section you were reading there again?

MR. HISCOCK: Sorry. It refers to recourses against the borrower there.

MR. MEANEY: Recourses against the – okay. The –

MR. HISCOCK: I'm wondering whether this provides any protection from the – for the province from claims made by lenders or the guarantor.

MR. MEANEY: "The Lenders shall not be bound to pursue or exhaust their recourses against the relevant Borrower …." So the borrowers that were being referred to here were the Nalcor Lower Churchill Project Companies. And if I could see where lenders is defined that would be helpful. There we go.

(Inaudible) okay, yeah, so the way the financing structure was set up – and I had some discussion with Mr. Learmonth and Ms. O'Brien in some of my interview about – the debt financing structure was set up on a limited recourse project finance basis, so in a situation where lenders – because at this point in time the final structure hadn't been finalized. If, you know, the lenders took any actions under the Project Finance Agreements, the recourses would've been limited to the assets or the contracts of the project, not assets outside those entities, such as other assets of Nalcor or other assets of the Province of Newfoundland.

MR. HISCOCK: Okay.

So this is protection, but this is actually – would come to bear against Newfoundland; it's not a protection for Newfoundland? Or am I misunderstanding that?

MR. MEANEY: No, this is a protection in terms of if you're doing any type of financing on a limited recourse project finance basis, the recourses under the financings are limited to the assets of the project, not necessarily other assets of the equity sponsor – so I guess, in this case, would've been Nalcor and ultimately the province. So this would've been a – I guess if you would call it – a protection to Nalcor and the province as the equity sponsors of the project.

MR. HISCOCK: Okay.

If we look at section 3.5(v) of this federal loan guarantee, there's a conditions precedent there:

Execution – sorry, gone past it, but just wait for it to come up there now.

Sorry, 3.5(v), is this where we are there? What I have is: "Execution of an inter-governmental agreement …" – between Canada and Newfoundland – "in which the NL Crown:

"(a) makes the commitments outlined in Schedule 'A' to Canada;

"(b) indemnifies Canada for any costs that it may incur under the FLG as a result of a regulatory decision or regulatory change (including through legislation or policy) that prevents a Borrower from recovering Project costs and fully servicing the Guaranteed Debt; and

"(c) guarantees completion of the MF, LTA and LIL Projects to COD such that, where non-completion is due to NL Crown's failure to comply with the commitments outlined in Schedule 'A', NL Crown shall indemnify Canada for any costs Canada may incur as a result of those Projects not achieving COD."

That was the agreement, basically, that Newfoundland committed to in relation to Canada, as my understanding. Is there any limit to the indemnification required under the sections?

MR. MEANEY: So that's – that was called out in the inter-government agreement, the IGA –

MR. HISCOCK: Mm-hmm.

MR. MEANEY: – that was executed between Canada and the Province of Newfoundland in November of 2013.

And there was, I guess, two primary commitments that they – that Newfoundland made under that. And as it was, I guess, summarized here was that they committed that they wouldn't take any government action that would impact the – which would've been, I guess, a legislative or regulatory change that would've impacted the recovery of the costs to repay the financing. And then, as it's noted here, they committed that they were gonna honour the equity commitment –

MR. HISCOCK: Yes.

MR. MEANEY: – that they made that goes along with the debt financing, which is separate, to fund the project. So that was the commitment that Newfoundland made to Canada through the IGA.

MR. HISCOCK: And there's no limit on that – no limits to that indemnification, is there? I mean, it's full.

MR. MEANEY: I think you probably want to defer – you probably want to ask that question of someone from the Newfoundland Justice Department. The Nalcor team wasn't involved in the negotiation of the IGA. That was between Canada and Newfoundland. So someone from that team would be better to speak to, you know, the exact nature and extent of the indemnification from a legal perspective.

MR. HISCOCK: From your understanding as, you know, heavily involved in the financing side of this, does this make the province potentially liable for both the equity and the debt?

MR. MEANEY: No.

MR. HISCOCK: Okay.

In what way are they not – which portion of that would they not be liable for? I mean, they're putting in the equity –

MR. MEANEY: The –

MR. HISCOCK: – how are they not liable for the debt here?

MR. MEANEY: They're liable for their equity commitment that they've made – that will go alongside the debt to fund the project cost.

MR. HISCOCK: Okay.

And how are they not liable for the debt?

MR. MEANEY: They're only liable for their equity commitment.

MR. HISCOCK: Okay.

I'd like to speak to you – I have a few questions regarding project termination next.

When Nalcor learned in 2013 that Hydro-Québec had taken action under the power contract, did that cause any reassessment of the sanction decision that you can recollect?

MR. MEANEY: Not that I'm aware of.

MR. HISCOCK: Did the July 2013 rejection of the Maritime Link application by the UARB cause a reassessment of the sanction decision that you're aware of?

MR. MEANEY: I couldn't speak to that.

MR. HISCOCK: You wouldn't have been involved in those discussions?

MR. MEANEY: I wouldn't have been involved in those discussions, no.

MR. HISCOCK: Would that be because of the level you were at in 2013? Would you not have had some role because – my understanding is once the Maritime Link application was rejected, about half of the power that we were gonna be generating we no longer knew where it was gonna go. Would that not have impacted on the financing of this project? Or –

MR. MEANEY: I wasn't involved in the negotiation of the agreements with Emera. I was focused on the financing. So you probably want to ask someone else that question.

MR. HISCOCK: Fair enough.

If we could please turn to Exhibit 02390, which is a review of the project termination undertaken by yourself and others.

THE COMMISSIONER: Tab 97 – tab 96, book 4.

MR. HISCOCK: Thank you.

MR. MEANEY: Tab 96, book 4. Yes. Yes, this is the memo we spoke about on Friday.

MR. HISCOCK: Did the new Liberal government ask that the option of cancelling the project be analyzed?

MR. MEANEY: I believe this issue came up, yes, and we had prepared this memo in response to a question from the Liberal government on that.

MR. HISCOCK: And was this report given to the new government?

MR. MEANEY: Yes. This memo was provided to the new government, yes.

MR. HISCOCK: Would you agree that there would be some point, anyways, where it would have been economic – where it would not have been economic to continue the project if the cost overruns continued?

MR. MEANEY: Sorry, can you repeat the question?

MR. HISCOCK: Would you agree that there would be some point where it would have been not economic to continue the project if the cost overruns continued? And if so, at what point should this decision have been taken, in your mind, to potentially cancel the contract?

MR. MEANEY: I guess at the time the question was posed by the Liberal government, at that point in time this was the memo where we outlined what the implications of that would be. So it was covered in the memo.

MR. HISCOCK: Would you agree, in your mind anyways, that a shutdown could have been managed in a relatively orderly fashion, given the federal government's involvement in the project as the guarantor of the debt, if the province had decided on the basis of a full cost-benefit analysis that termination was its best option?

MR. MEANEY: Our assessment of the situation was outlined in the memo.

MR. HISCOCK: And do you think that it could have been effectively wound down?

MR. MEANEY: I wouldn't want to speculate on that.

MR. HISCOCK: What was your opinion in the memo?

MR. MEANEY: We laid out the ramifications of what that would be in the memo. I think it's all very clearly outlined there.

MR. HISCOCK: So you wrote the memo regarding the implication and whether it could be shut down effectively. I'm asking you a fairly straightforward question which is: Was an orderly shutdown possible, given the federal government's involvement there?

MR. MEANEY: I don't think I would be the best person to speak to that in terms of an orderly shutdown of a major construction project.

MR. HISCOCK: Who would you think would be the best person to speak to? Would it be Mr. Sturge?

MR. MEANEY: No, I mean he would be –

MR. HISCOCK: Mr. Martin?

MR. MEANEY: He would be of a finance background along with myself. In terms of an orderly shutdown of a major construction project, probably, you know, Mr. Bennett or some of the folks on the project management team could best speak to that in terms of what that would involve.

MR. HISCOCK: And from a financing perspective, would it have been achievable to shut down and mitigate the costs in 2013 or 2014?

MR. MEANEY: In terms of the financing implications of it, it was outlined in the memo and there was a legal opinion provided by Fasken Martineau – which is, I guess, been redacted from this – in terms of what the financing implications were of that. And I think it's all covered in great detail there.

MR. HISCOCK: Okay.

I'd like to ask you a couple of questions in relation to dividends as well. Nalcor has advanced – and this is in Exhibit 00254, which is a table of dividends. And my understanding is that they're based on DG2.

THE COMMISSIONER: Just look at the screen.

MR. MEANEY: Okay, sure.

MR. HISCOCK: Yeah.

THE COMMISSIONER: 00254.

MR. HISCOCK: Yeah, 00254, which is a table of dividends, as I say, based on DG2. And Nalcor has advanced this and suggested that, notwithstanding the cost overruns, large dividends can be expected into the future.

This exhibit suggests dividends of $22 billion. In the face of reduced demand projections and escalating cost overruns, is $22 billion in dividend payments realistic?

MR. MEANEY: I guess at the time this chart was prepared that would've been the forecast of what the dividend amounts were expected to be.

MR. HISCOCK: Okay.

And knowing what we know now, is it not more likely that Muskrat Falls will generate rather large losses given its inability to cover costs either through domestic sales or export revenues?

MR. MEANEY: I know there's been updated projections on what the dividend amounts would be and those have been put out there in public realm as, I guess, as part of information and responses to ATIPP requests and things like that. So I think that information is available publicly.

MR. HISCOCK: You're in charge of – you know, I mean, you're the VP Finance here. I don't think it's unrealistic of me to ask you is, you know, isn't it more likely that we're actually gonna be suffering losses here and not paying a $22-billion dividend out?

MR. MEANEY: No, there still would be dividends going back to Nalcor and the province through the agreements – the power purchase agreements and the transmission funding agreements, so the return of the equity and the return on the equity. And, I think, again, that would have all been clarified in a number of ATIPP responses that have been provided on this matter.

MR. HISCOCK: Do you have any idea what the power rates would have to be to generate a $22-billion dividend?

MR. MEANEY: I could not tell you off the top of my head, no.

MR. HISCOCK: Okay.

Would you agree that demand elasticity and demographic projections for this province make it impossible that revenues will come close to recovering the annual revenue requirements despite the use of a hybrid accounting method to defer costs in the future?

MR. MEANEY: I don't think I'm qualified to comment on demand elasticity and load forecasting and all those things, so I'd want to defer to someone else on that.

MR. HISCOCK: Who came up with the $22 billion initially? Where – this is advanced by Nalcor as a $22-billion dividend they expect to pay out.

MR. MEANEY: So this chart, I believe, would have been produced by our – I'm gonna say it would have been from the investment evaluation group, which would have had the long-term forecast in terms of what, you know, revenues, expenditures and dividends were gonna be at that point in time.

MR. HISCOCK: And this would be the long load projections that showed constantly increasing electricity usage despite the fact that we've had several years of declining electricity uses in reality. Is that –?

MR. MEANEY: It would have been based on whatever the assumptions were in terms of the long-term view at the time this chart was produced. And I can't tell you specifically what all the various assumptions were there on load forecasting and whatnot and demand.

MR. HISCOCK: But you would agree that there's no suggestion today that anything like the $22 billion is gonna be coming in or could come in?

MR. MEANEY: I'd wanna see the – I guess the updated forecasts have been made publicly available that shows what the dividend projections are and I just don't have that information at the tip of my fingers.

MR. HISCOCK: Would you agree that if such dividends had been realistic the government would not have charged the PUB, through a reference, to inquire into rate mitigation options?

MR. MEANEY: I can't comment on that.

MR. HISCOCK: In your interview there's a reference to the Lower Mattagami Project.

MR. MEANEY: Lower Mattagami, yes.

MR. HISCOCK: Mattagami, there we go.

MR. MEANEY: Yes.

MR. HISCOCK: In what sense did the Muskrat Falls financing mirror that project? What similar attributes did it have?

MR. MEANEY: There was a number of attributes that were similar. There was a – obviously it was done on a project finance basis. There was an equity commitment during the construction period from the Ontario Finance Authority through OPG, I believe. And there was also a long-term agreement. We called it a PPA. I think they called it a HESA – was the abbreviation, I can't remember what it stands for. But it was a long-term contractual agreement with the offtaker for recovery of the costs of the project to recover, you know, financing costs, construction costs, O&M costs; similar to what had been set up under the PPA. Those are some of the more, I guess, material similarities.

MR. HISCOCK: So it was not financed on a cost-of-service basis? It was more similar to

Muskrat Falls in that it kicked those costs down into the future?

MR. MEANEY: I can't – I couldn't recall in terms of how they structure that into the cost recovery mechanism: whether it was done on a cost of service or some other basis. I just recall it was a long-term agreement associated with the recovery of costs.

MR. HISCOCK: Okay.

Also in your interview you mentioned a term of 35 years for generation and 40 years for transmission assets. I'm wondering, does that mean that the bonds were issued with terms of 35 and 40 years? Or that those periods – or that those are the periods within which financing must be completed?

MR. MEANEY: I believe that was the terms of the bonds that were issued for each of the two financings.

MR. HISCOCK: So 35-year bonds for the generation assets and 40-year bonds for the transmission assets.

MR. MEANEY: I believe that was the case. I'd go back and look at the bond circular, but I believe it was 35 years from the time of issuance for the generation side and 40 for the transmission side.

MR. HISCOCK: Some of the bonds that were issued were short term and some were long term. How was the term structure of the bonds determined?

MR. MEANEY: If we could go back to the federal loan guarantee agreement that we spoke to earlier, the November 2012 agreement. There was a section called – I believe it was FLG amortization. I believe that was the section.

No, take out the A, the second A.

THE COMMISSIONER: Take – yeah.

MR. HISCOCK: This would be in tab 3, I believe, of your material.

MR. MEANEY: Okay. In book 1, tab 3?

THE COMMISSIONER: Just –

MR. HISCOCK: Yes, 1, 3.

THE COMMISSIONER: – spelled amortization wrong.

MR. MEANEY: Go on tab 3, sure. Yeah. There we go.

Yeah, here it is. Sorry, section 3.3. So one of the requirements of the – actually, it was 3.3 and I think there was a – and 3.4 was a later one. So, basically, the requirement of the federal loan guarantee was over the term of the bonds they wanted the FLG exposure or, I guess, the amount of debt outstanding to decline over time. So that was the driver in terms of the structure of the financing.

So in the initial financing done in 2013 they were bullet bonds that were issued totalling $5 billion and then there was contributions that the Nalcor project companies would make to sinking fund accounts. So that fund – you know, the sinking fund contributions, netted against the debt outstanding, would give you that declining profile for the $5 billion.

And then for the $2.9 billion that was issued in 2017, we did a whole series of bonds, shorter duration bullet bonds that accomplish that same profile. And if I recall correctly, I think the total number of bonds issued in 2017 was somewhere in the range of 136 or 138 bonds, something along those lines.

So, basically, you created that same profile, you didn't need to use sinking funds. You basically had shorter maturing bonds, but it gave you the same overall declining profile that Canada required. And that was a requirement both in the original federal loan guarantee agreement of November 2012 and then the FLG2 agreement of – I guess, it was March 2017 that was signed.

MR. HISCOCK: Okay, well, my next question was whether there were sinking funds to go with these bonds. So, I guess, there were for the long and there weren't for the bullet or –?

MR. MEANEY: There were sinking funds that went with the first issuance that totalled $5 billion. There was not sinking funds that went with the second issuance that totalled $2.9 billion.

MR. HISCOCK: How large were the sinking funds in relation to the bonds, at least the initial $5-billion bond set?

MR. MEANEY: The – in a case of the Muskrat Falls bonds the entire balance of the debt was retired after 35 years, so that would have been the $2.6 billion. That was fully retired through sinking fund payments after 35 years.

And then in the case of the Labrador-Island Link financing, the sinking fund contributions were made over the 40-year period and then at the end, there's a smaller balance, the $2.4 billion that have to be refinanced. So I'd have to check in terms of what that dollar amount – but, you know, a substantial portion of the 2.4 was fully repaid through sinking fund contributions.

MR. HISCOCK: Okay.

And the sinking funds are to be taken out of revenue on an annual basis to help pay for the project. Are there any sinking funds currently in existence? Do we have a sinking funds account or anything of that nature now, presently?

MR. MEANEY: In terms of these financings? Oh, no, the sinking funds would not be in place yet because the construction is still under way. So the sinking funds get established, you know, post-full commissioning.

MR. HISCOCK: Okay.

On page 22 of your interview, you mentioned the final financial structure had not been selected and I believe you were referring to early 2012, that period at the time. Had the equity-to-debt ratios for each component been determined at that point in, say, 2012?

MR. MEANEY: The maximum debt-to-equity ratios got finalized in the November 2012 FLG agreement that we were just looking at.

MR. HISCOCK: Okay, yes. And had the term of the bonds been settled at that point as well?

MR. MEANEY: The – again, this agreement sets out the term of the bonds.

MR. HISCOCK: Had there been agreement on how long provincial equity be kept in the project? That was determined at the same time?

MR. MEANEY: There would've been a forecast of what the province's equity contributions were going to be during the construction period and then there would've been a forecast, which I guess would've been linked to that – the 22 billion that you asked about earlier. There would've been a forecast as to which – how they got their return of and their return on their equity investment over the term of the contracts.

MR. HISCOCK: That would've been – that would've already been determined at that point?

MR. MEANEY: That – no, I believe that got – there would've been some principles in terms of how that was going to look. That all got finalized in the PPA and the TFA that, of course, were executed in November of 2013, so that's where it all got, I guess, officially finalized.

MR. HISCOCK: Okay.

In the public utility business revenue requirements are used for setting rates, generally. In the case of Muskrat Falls, the revenue requirements are a combination of a hybrid of costs using two different accounting methodologies – this is my understanding. One is the cost of service and that's with the Labrador Link – is financed on that basis. Is that correct?

MR. MEANEY: I don't know if I'd characterize them as accounting. It was more – that was contractually how it was structured. But, yes, it was done on a, I guess, what would be consistent with a cost of service-type approach for the Labrador Island Link.

MR. HISCOCK: Yeah.

And then the generating assets and the Labrador Transmission Assets are financed using elastic pricing, supply pricing or power purchase pricing. Right?

MR. MEANEY: The way the PPA contract is set up is it's an escalating supply price and an escalating volume of power over the term of the contract. So the Labrador Island Link recovery kind of looks like declining and then Muskrat Falls looks like it's going up.

MR. HISCOCK: Yeah.

And does the hybrid system for revenue requirements and rate setting meet the standard of a good utility practice, in your mind?

MR. MEANEY: I can't think of why it wouldn't.

MR. HISCOCK: The loan guarantee calls for more provincial equity when costs increase. Does the new equity carry different rights and privileges from the existing equity?

MR. MEANEY: No.

MR. HISCOCK: So there's no differences and there's no differences in terms of classes or class shares or anything that had generated from the old equity or new requirement – equity requirements?

MR. MEANEY: No.

MR. HISCOCK: As well, in your interview, I noted that the transition to operations is a cost included under other costs. It's in the $2.6 billion over and above the $10.1 billion. I believe we were speaking of that earlier today. Would you explain what the other components of the 2.6 are? You explained the TTO.

Could you explain what IDC or interest during construction is and whether that's included in that $2.6 billion?

MR. MEANEY: I think I covered that when I walked Mr. Learmonth through the memo.

MR. HISCOCK: Yeah. So that's included in there. It includes, as well, allowance for funds used during construction. Correct? AFUDC.

MR. MEANEY: Yes, I explained: There's a crude interest or AFUDC associated with the Labrador Island Link component of the project. And then there's an amount included in the 2.6 associated with that.

MR. HISCOCK: If we could turn to Exhibit 01561, September 2017 report on the – of the Oversight Committee. I'd like to turn to –

THE COMMISSIONER: (Inaudible.)

MR. HISCOCK: – page 11 of that.

MR. MEANEY: Yes. Yes, that's the – I think that was the one I referred to earlier –

MR. HISCOCK: Yes.

MR. MEANEY: – when I was speaking to Mr. Learmonth

MR. HISCOCK: Sorry. If we could turn to the next page, page 12, of that exhibit.

And this explains the concept of interest during construction, and the IDC shows $1.4 billion is the – that's the single largest component of the $2.6 billion, correct?

MR. MEANEY: That's right. That's the interest on the debt that's incurred during the construction period.

MR. HISCOCK: And if we could turn to the next page, page 13. Could you read the first two bullets there?

MR. MEANEY: "AFUDC is the return that will accrue on equity invested to fund project construction." Labrador-Island Link "uses a utility cost of service model for cost recovery and will accrue AFUDC. The cost recovery profile under this model goes from high in the early years to low in the later years." That's what we just spoke about a moment ago.

MR. HISCOCK: Would you explain what is meant in bullet two, which states that the LITL uses a utility cost-of-service model for revenue requirements which will accrue AFUDC?

MR. MEANEY: That's how it's set out in the contracts, in terms of using that utility cost-of-service type revenue profile, and then during the construction period, there is an AFUDC component that accrues. And that goes into the – I guess, the cost that gets recovered from ratepayers post-completion.

MR. HISCOCK: Why is it that the cost recovery profile goes – quote – "… goes from high in the early years to low in the later years"?

MR. MEANEY: Because I think the cost-of-service methodology almost looks like the – I guess, the depreciation profile of an asset – that it's higher in the early years and declining over time. So that's the principles, I guess, of cost-of-service methodology.

MR. HISCOCK: It's front-end loaded, the costs are?

MR. MEANEY: Yes. Yeah, in terms of the recovery it's – the recovery amount will be greater in the early years, in the smaller amount, than the lower years as the balance declines.

MR. HISCOCK: And would you agree that the $2.6-billion figure, that includes $440 million in AFUDC for the LITL? Is that correct?

MR. MEANEY: If we could –

MR. HISCOCK: For the LIL.

MR. MEANEY: If we could pull up that memo I had. That sounds about right, but if we could pull up that memo we looked at earlier. I think it was in that range.

MR. HISCOCK: I think it was earlier on this slide, perhaps. Just give me one second here.

MR. MEANEY: Oh, it was the memo, the memo for the board.

UNIDENTIFIED FEMALE SPEAKER: The 440 appears to be on the slide (inaudible).

THE COMMISSIONER: It's also on the slide there.

MR. MEANEY: Yes, I think that's the amount that was consistent with what I reviewed in the memo earlier. It was 440, yeah.

MR. HISCOCK: Okay.

So why is there no AFUDC for the Muskrat Falls generation assets or for the line from Muskrat Falls to Churchill Falls?

MR. MEANEY: It's explained there in the last bullet on that page.

MR. HISCOCK: Okay. Would you explain it to us?

MR. MEANEY: "The MF/LTA cost recovery is based on an increasing price and increasing volume of electricity, and is therefore lower in the early years and higher in the later years. Within that cost recovery an 8.4% Internal Rate of Return (IRR) on equity invested is generated over the term of the power purchase agreement with NLH, but AFUDC does not accrue."

MR. HISCOCK: So is this bullet telling us that the methodology used for generating assets for the LTL is different from the cost-of-service approach for the LITL?

MR. MEANEY: Yes, that's meant to address that, that one's using an escalating supply, escalating volume approach in the PPA, and the other's using more like the cost-of-service approach, yes.

MR. HISCOCK: And there's no AFUDC for those other assets, right?

MR. MEANEY: No, their return is – the return to the shareholder is generated through the determination of the IRR, which then gets factored into the escalating supply price under the PPA. So in both cases the equity investors get a return, just the methodology by which it's determined is different.

MR. HISCOCK: And you'd agreed that the alternate methodology for Muskrat Falls and the LTA is based on an increasing price or escalating supply price, and that's effectively a back-end-loaded model?

MR. MEANEY: It creates a revenue profile that is smaller in the early years and higher in the later years.

MR. HISCOCK: Do you agree that the combination of two differing methodologies like this leads to inconsistent results?

MR. MEANEY: No.

MR. HISCOCK: Do you believe that it leads to rates in the early years that do not fully recover the government's equity investment?

MR. MEANEY: It recovers the equity investment in accordance with the terms of the contracts.

MR. HISCOCK: In the early years, the methodology chosen ensures that we do not recover that in the early years. It's back-end-loaded, correct?

MR. MEANEY: There's a recovery of the province's equity investment through the Labrador-Island Link component in the earlier years, and there's also a recovery of the equity investment in the generation side in the early years, but the full recovery, in both cases, happens over the entire term of the contracts.

MR. HISCOCK: So we're talking about having rates based on the escalating supply price, that it's based on the fact that as time goes on we're going to start generating more and more and more money out of this to pay off the debt, but in the early years we're not actually generating enough money to meet the cost plus the interest and repay the debt?

MR. MEANEY: You're going to have rates that are reflective of the cost-of-service approach in the Labrador-Island component of the project, and you're going to have rates that are reflective of the structure outlined there in the fourth bullet on the generation side.

MR. HISCOCK: Yeah, which is, I think, what I'm saying. So let me phrase it a different way: Would you agree the adoption of cost of service for the LITL means that Emera will receive their full 8.5 per cent return on equity as soon as it is earned, while the Province of Newfoundland and Labrador will have to wait many, many years for their 8.4 per cent return on Muskrat Falls and the LTA?

MR. MEANEY: Under the Labrador-Island Link, both Nalcor and Emera earn their returns over the term of the contract. And, similarly, on the generation side, Nalcor and the province earn their returns over the term of the contract, it's just they're structured in different manners.

MR. HISCOCK: And the difference in which they're structured is that Emera is going to start receiving its 8.5 per cent right away, and the 8.4 per cent for the province is going to be pushed off far into the future before we start to receive our money. Correct?

MR. MEANEY: Nalcor is also an investor in the Labrador-Island Link, so we get the same return as Emera do. And, ultimately, any returns on the Labrador-Island Link Nalcor gets, goes back to the province.

MR. HISCOCK: And we're talking about very different set of returns for the LITL versus Muskrat Falls and the Labrador Transmission Assets in the short term, in the near future.

MR. MEANEY: I think if you look at the figures there, the return is 8.4 per cent versus 8.5 per cent are pretty close, it's just how it gets recovered over the term of the two contracts is done differently.

MR. HISCOCK: I –

MR. MEANEY: But they get those returns over the terms of the contract.

MR. HISCOCK: The 8.5 per cent, that's something that Emera will start seeing right away. So in the same year – say, two years from now, Emera's receiving the 8.5 per cent. The 8.4 per cent – will we receive the full 8.4 per cent on Muskrat Falls and the LTA in two years' time?

MR. MEANEY: They'll get that return over the term of the contract.

MR. HISCOCK: I understand over a 50-year term or whatever the term of the contract is, but in the immediate future, what I'm saying is the difference in these two methodologies, would you acknowledge, means that Emera and Nalcor, I guess, on the LITL, will begin receiving their full return on equity, whereas for the province, for Muskrat Falls and the LTA, our return on equity is pushed well out into the future?

MR. MEANEY: Nalcor and Emera will get their return as calculated under the agreements, which is based on an 8.5 per cent return on equity rate.

MR. HISCOCK: Well, that wasn't the – that wasn't what the question was. The question is: Is it true that the 8.5 per cent for Emera, because of the differing methodologies, the costs-of-service methodology means that they are going to start getting their money, their full amount of money, right away? Nalcor will too. The province will not because its return is built in to the latter part of the contract, the latter part of this very long contract.

MR. MEANEY: So the returns that Nalcor get under the Labrador-Island Link, those returns go back to the province. So the province are getting their returns on the Labrador-Island Link in a manner similar to Emera.

MR. HISCOCK: But I'm not talking about a difference between Nalcor and Emera on the LITL. I'm talking a difference between the LITL and the method that Nalcor and Emera will get their money back on the LITL is very different from the methodology by which the province will be able to recover its money on the Muskrat Falls and the LTA. That's true, isn't it?

MR. MEANEY: The two methodologies produce a different profile in terms of how returns are sent back to the shareholders.

MR. HISCOCK: Yes, and the difference is that Nalcor and Emera will start getting their money right away, correct, the 8.5 per cent because it's a cost-of-service model?

MR. MEANEY: They'll earn the 8.5 per cent return on the equity base following in service. And they earn that same return through the whole term of the contract, but it's on a declining base because of the way the cost-of-service methodology works.

MR. HISCOCK: Right, it's on – yes, because they're getting their full 8.5 per cent on the equity they have invested in each year. But that's not what's going to happen for the province, is it?

The first year, in any given year in the early part of that contract, Newfoundland is not going to see 8.4 per cent return on investment. It may average – it's going to average that, in theory, over the life of the full contract, but the repayment and our 8.4 per cent is back-end loaded. We get our money at the end, Nalcor and Emera get their money in the beginning, it's front-end loaded. We just went through the front end and back end, the two methodologies, correct?

MR. MEANEY: The way you've – that's how the return on equity methodologies work in the two different contracts.

MR. HISCOCK: Right, and there was two different methodologies used.

MR. MEANEY: Yes.

MR. HISCOCK: Okay.

Would you agree that the exclusion of AFUDC for Muskrat Falls and the LTA – because we don't have AFUDC because it's not cost of service – that the exclusion of that means that the $2.6 billion in financing and other costs, which are part of the overall $12.7 billion, is actually understated?

MR. MEANEY: No.

MR. HISCOCK: Okay, we're going to carry on with this.

On page 181 of your transcript there was a reference to transition to operations. And we've gone into the TTO budget, and that number was identified as 63 million earlier in your testimony this morning. If this account had not been created, is it correct that it would have become part of the powerhouse project undertaken by Astaldi?

MR. MEANEY: No.

MR. HISCOCK: Is this the same amount identified in the TTO – we've already gone over that, actually, it was the same 63 million.

On page 14, sorry, of this Exhibit 01561, there's reference – and this is – sorry, page 14, yes – there's reference to interim use operating costs, and again included in the 2.6. Could you explain the difference between this amount and the TTO, Sir?

MR. MEANEY: That's the – in my memo, that was the distinction between the TTO and what we described as the pre-com costs – that memo that I reviewed with Mr. Learmonth earlier – that's the distinction, and I think we covered that.

MR. HISCOCK: If we could turn to Exhibit 01557 – on page 1 of that – 01557.

And that shows a breakdown of the equity and debt amongst the project components. Two-thirds of the project's equity, roughly, is invested in Muskrat Falls and the LTA, and approximately one-third in the LILT. Do you agree that most of the equity in Muskrat Falls Project is invested in Muskrat Falls or the LTA?

MR. MEANEY: A bigger portion of the equity would be in the Muskrat Falls generation plant.

MR. HISCOCK: And that the return on equity represents a major project cost, correct?

MR. MEANEY: The return on equity is the return that the shareholder earns on that equity investment over the duration of the contract.

MR. HISCOCK: If you take the 440 million in AFUDC for the LILT, and you use that to calculate what an appropriate AFUDC would have been for MF plus LTA, had it been done on a cost-of-service basis, that would add approximately $1 billion to the total financing costs, correct? Based on these divisions of equity – we're talking 440 million, and that's a part – that was about a third of the equity, so the other two-thirds would be about another billion, nine-hundred million, which would bring our total financing costs – financing and other costs – closer to 3.5, 3.6 billion, instead of the 2.6 billion.

MR. MEANEY: So the – um –

MR. HISCOCK: If there'd had to have been an AFUDC –

MR. MEANEY: Okay.

MR. HISCOCK: – made for Muskrat Falls plus the LTA – if they had used the cost-of-service basis –

MR. MEANEY: Okay.

MR. HISCOCK: – our total project costs would be about a billion dollars higher than they are currently listed as, correct?

MR. MEANEY: I guess if the Muskrat Falls component was done on a cost-of-service basis, yeah. Sounds like you've done the calculation, that – and if there was an AFUDC component associated with it, sounds like that would be the number that you've calculated.

MR. HISCOCK: Yeah.

Remember that the amount of equity in the Muskrat Falls is – and LTA – is a minimum of 35 per cent, compared with 25 per cent for the LITL. And that would – so that would drive up the equity costs and the associated AFUDC, correct? Had that been done on a cost-of-service basis?

MR. MEANEY: If you'd – if it had been done a cost-of-service basis and you had a higher equity percentage, then I guess the overall equity cost would be higher. I just think the math says that's the way it works.

MR. HISCOCK: Would you agree that the failure to apply cost-of-service methodology results in an understatement of the amount of AFUDC, and therefore an understatement of the full capital costs of this project?

MR. MEANEY: No.

MR. HISCOCK: Why?

MR. MEANEY: Because LIL was done on a cost-of-service basis, and Muskrat Falls was done on an escalating supply, escalating volume basis; and that's factual, that's the terms of the contracts, and on that basis these are the figures that represent the cost at in-service of the project.

MR. HISCOCK: There was a fair bit of testimony previously in terms of communication failures between Nalcor and the Government of Canada. Did you seek direction on reporting to the Government of Canada from your immediate supervisor or your supervisor, Mr. Derrick Sturge?

MR. MEANEY: I think we've been through this discussion on Friday.

MR. HISCOCK: Was he aware that Nalcor went seven to eight months without reporting the increase from 6.9 to 7.5 billion? Mr. Sturge.

MR. MEANEY: He would've been aware that we didn't provide the update to Canada until September 2015.

MR. HISCOCK: Did Mr. Sturge ever refuse you permission to release information to Canada?

MR. MEANEY: No.

MR. HISCOCK: Did Mr. Sturge ever refuse you permission to release information to the independent engineer?

MR. MEANEY: No.

MR. HISCOCK: Did Mr. Sturge ever refuse you permission to release information to the Government of Newfoundland and Labrador?

MR. MEANEY: No.

MR. HISCOCK: You spoke about the fact that you needed authority from Mr. Edward [sp. Edmund] Martin to release the up-to-date information to Canada. Did he at any time refuse you permission to release information to Canada?

MR. MEANEY: I think we walked through on Friday the process of how the update had to occur (inaudible).

MR. HISCOCK: And I'm asking you, did you – were you ever refused permission? Did you say, can I send this on, and you were told no?

MR. MEANEY: I think we've covered this as part of my testimony on Friday.

MR. HISCOCK: I don't recollect that having – that exact question having been put to you, and I was watching for it.

MR. MEANEY: I felt this was – this matter was covered pretty thoroughly in Mr. Learmonth's questions to me.

MR. HISCOCK: I'm going to ask you again, did Ed Martin ever ask – did you ever ask Ed Martin, can I send this along, and were told no? Did he ever refuse you permission to send something to Canada?

MR. MEANEY: Again, I think we covered this in the Friday discussion, but I'll defer to the Commissioner.

THE COMMISSIONER: I think it's a – whether we covered it on Friday or not, I think it's a fair question to ask, and so I think the question is, is did Mr. Martin – did you ever ask Mr. Martin to release information to Canada that he refused you – to allow you to do that at any time?

MR. MEANEY: We had a process that we had to follow in terms of – as, you know, as Mr. Learmonth and I discussed in great detail, there was a process that we had to follow in terms of, I guess, approval of what the budget amount was going to be, going forward with that to the province, and then to the boards and to the Government of Canada. So, I guess, as I'd said to Mr. Learmonth on Friday, in terms of final sign-off on release of information, that would've resided with the CEO, Mr. Martin, at that time.

MR. HISCOCK: Yeah, and you were the one who was sending the stuff on, though. Ultimately it was going to be who said, we should send this on. Did Ed ever tell you: no, don't. Not yet. Hold that; that's not going out. Were you ever refused permission to send something to Canada by Edward [sp. Edmund] Martin?

MR. MEANEY: I don't recall a specific refusal, I just know we hadn't – we hadn't followed all the steps in the process in order to eventually get the board to approve the AFE, and then we then go provide the update to Canada.

MR. HISCOCK: Did Mr. Martin ever refuse you permission to release any information to the independent engineer?

MR. MEANEY: Again, if – as we talked about on Friday – if there was information we had to provide to the independent engineer that's related to cost, he had to give the final signoff on that before it was released to anyone. I think the correspondence shows that.

MR. HISCOCK: That's not what I asked. I asked: Were you ever refused permission to send something on to the independent engineer?

MR. MEANEY: I don't recall a specific – I don't recall a refusal, I guess, in terms of direction to say, no. It was just a – you know, he had – we were waiting to hear from him in terms of him giving the okay to release information.

MR. HISCOCK: So, I want to be clear about this, you're saying – either – are you saying that you would never ask permission, or that you were always granted permission? How does that work, that you were never refused but you still didn't hand it on?

MR. MEANEY: We were – we would be waiting to hear – I guess, we'd be waiting to hear – in the case of cost information, we'd been waiting for Mr. Martin to give the okay to proceed with the steps that would be taken to eventually get the revised AFE approved, and then that would be the trigger for us to provide the update to Canada, at least in that 2015 period that we talked about extensively in Mr. Learmonth's questions.

MR. HISCOCK: Well, let's talk about before or after, at any time. I mean, there was a failure to provide information. You're saying you weren't refused, but obviously permission wasn't granted either to send stuff along. Was it just radio silence when you would reach out and say we need to send something on to the government?

MR. MEANEY: I think, again, we talked about this a fair bit in terms of the process that had to be followed, and then once we got the sign-off from the CEO, that was the first step in terms of sharing information with, you know, various stakeholders, the province, the boards, Government of Canada.

MR. HISCOCK: Okay. In that seven or eight months while you were waiting to update the government and you knew you were sitting on old – you were providing old information, did you ever ask, can we send this on?

MR. MEANEY: I believe we covered this in the discussion on Friday, but if – Commissioner, if you'd like me to –?

THE COMMISSIONER: I think you answered the question that you didn't, but you can answer this – just answer the question.

MR. MEANEY: Sure, if you could ask – just ask me one more time just – it'd be helpful (inaudible) –

MR. HISCOCK: Yeah, during the seven or eight months –

MR. MEANEY: Yes.

MR. HISCOCK: – when you knew you were sitting on old information, you had newer information there, did you ever say, can I send this to the government, can I send this to Canada, I'm going to flick this over to the Oversight Committee, whatever?

MR. MEANEY: I think, as we talked about, there was – and I tried to show my chronology – there would've been multiple discussions along the way where we were trying to advance that information so that we, I guess, could get board AFE approval and that would allow (inaudible). So there would've been lots of discussions in terms of trying to advance that information.

MR. HISCOCK: I have just a couple of short questions left.

Did Nalcor disclose the potential for cost increases with Deloitte, who were its corporate auditors?

MR. MEANEY: Sorry, could you ask that question again?

MR. HISCOCK: Did Nalcor disclose the potential for cost increases with Deloitte, who were your corporate auditors?

MR. MEANEY: So, I guess, Deloitte would've been aware of the provisions under the project finance agreements, in that if there was going to be cost overruns, there were certain provisions under which how those got funded.

MR. HISCOCK: Did you disclose the potential for cost increases with Deloitte, who were your corporate auditors?

MR. MEANEY: I think they would've been aware that, of course, at any, you know, juncture along the way that there – the figures that were put out there, whether it had been the 6.2 or the 6.5 or the 6.9, that there was – obviously, those were estimates at the point in time in terms of what the cost to complete would've been. And I would expect they would've been aware that, you know, those are estimates and there is the potential for variation from those amounts. So there would've been discussion with Deloitte on that matter.

MR. HISCOCK: So that is a yes, we did disclose the potential for cost overruns and of cost increases with Deloitte, our corporate auditors?

MR. MEANEY: There would've been discussions with Deloitte in terms of that they were estimates at points in time and that those numbers could vary, yes.

MR. HISCOCK: And you wouldn't have provided your corporate auditors with the out-of-date estimates; you would've been providing them with fresh, the best information you had – the 7.5 as soon as 7.5 is available, the 6.99 as soon as the 6.99 was available – as they were your corporate auditors, after all?

MR. MEANEY: We would've been providing them with what the – at any point in time when we spoke to them, we would've been providing them an amount was the updated AFE. I don't believe it was in Deloitte's mandate to look at the reasonableness of final forecast cost, but you'd probably want to check (inaudible) –

MR. HISCOCK: But would that have been something you would've disclosed to them? No, whether it was something that what they would've done with it or how they would've used that information, another matter, but this is your corporate auditor; you would've disclosed that to them, surely?

MR. MEANEY: We would've advised them what the approved AFE was at that point in time, and if there was a subsequent update to the AFE, they would be made known of that information. It wouldn't be in their mandate to be doing analysis of final forecast costs, so I don't think it'd be something that they'd be asking about, and –

MR. HISCOCK: So your corporate auditors would've been just as in the dark as, say, the Government of Canada during that seven or eight month period where it was, internally, $7.5 million was recognized, but externally $6.99 million was the number?

MR. MEANEY: Corporate –

MR. HISCOCK: Billion, sorry, billion.

MR. MEANEY: Sorry, the corporate –

MR. HISCOCK: Yes.

MR. MEANEY: – auditors would've got an update on the AFE when the – or sorry, the corporate auditors would've got an updated on the forecast when the AFE was revised in September 2015, I guess, in this example.

MR. HISCOCK: And that would be – but not at any of the points before that, when there was eight or nine months where you knew that number wasn't – the old number was no longer relevant, where you knew it was 7.5 but it was still showing 6.99. The corporate auditors would have continued to believe it was 6.99 during that period?

MR. MEANEY: It wouldn't have been something that would come up in the discussion with Deloitte and it wouldn't have been required to because it wouldn't have been part of their mandate.

MR. HISCOCK: Wouldn't you have a general open disclosure requirement with your corporate auditor?

MR. MEANEY: There would be discussion with the auditors on disclosures in the financial statements, yes.

MR. HISCOCK: So am I misunderstanding here that in terms of your own internal – your corporate auditor, wouldn't you always be providing the full and best and most up-to-date information? Is there a reason that you would have to go through this whole – because this whole internal process to release information to the outside world is one thing, but surely that can't apply against your own corporate auditors?

MR. MEANEY: There's certain information that the auditors look at under their mandate, and the derivation of the final forecast cost wouldn't be something that's part of their mandate.

MR. HISCOCK: So you would have provided it to them – you wouldn't have been keeping that information from them; it just might not have been something that they thought was relevant?

MR. MEANEY: In terms of the discussions that we had with the auditors and what their role is in terms of providing sign-off on our corporate financial statements – you know, quarterly and annual statements. That wasn't a matter that was part of those discussions because it wasn't part of their mandate.

MR. HISCOCK: They wouldn't – it wouldn't have been relevant, and they wouldn't have wanted to see it and they wouldn't be at all disturbed to find out that they weren't given that information?

MR. MEANEY: I wouldn't want to speak on behalf of Deloitte.

MR. HISCOCK: Can you explain why Nalcor would use Deloitte for other services such as running team building sessions if they were in fact also your corporate third party auditor?

MR. MEANEY: I couldn't speak to that. There's a policy in terms of use of the firm that is the auditor that's – I guess it's a board approved policy. And I would expect that the services that Deloitte were used for fit within the approvals that were prescribed by the board in terms of the use of that firm.

MR. HISCOCK: Do you think that not sharing the cost estimates at the time was consistent with best accounting standards GAAP or IFRS?

MR. MEANEY: I think we shared with the auditors the information that we were required to share with them under the terms of their audit engagement.

MR. HISCOCK: I'm sorry, is that that it was consistent with the best accounting standards of the GAAP or IFRS? Is that –?

MR. MEANEY: I'm – I don't – I wouldn't want to make a comment on that having not seen that information specifically.

MR. HISCOCK: So you wouldn't be willing to commit to the fact that it was in best accounting practices –

MR. MEANEY: We –

MR. HISCOCK: – to not – to withhold that information from your internal auditors?

MR. MEANEY: We provided the information to our auditors that we were required to disclose to them under the terms of their audit engagement.

MR. HISCOCK: Thank you. Those are all my questions.

THE COMMISSIONER: Thank you.

Edmund Martin?

MR. SMITH: Good day, Sir. Harold Smith for Edmund Martin.

MR. MEANEY: Good day, Mr. Smith.

MR. SMITH: I don't have a lot of questions, but a couple of things come to mind from the two days or so I've listened to your evidence. And if you'll bear with me, I'll try and go through them as quickly as I can.

Now, who develops the cost or the – if you will, the forecast – final forecast cost estimate? Who develops that?

MR. MEANEY: That would be developed by the folks on the project team.

MR. SMITH: Okay. And is finance involved in the development of those costs?

MR. MEANEY: No, as I stated earlier in my testimony.

MR. SMITH: And when you look at the final forecast cost, are you aware that that number is solid, absolute? Or is it subject to change?

MR. MEANEY: I guess – it's called a forecast, so there is always the potential that it may vary.

MR. SMITH: Okay. And what kind of things would you anticipate would happen to change a forecast cost?

MR. MEANEY: There could be variations in terms of what the expectation of – cost related to certain components of the project might change over time. You could have a change in the schedule that could cause additional cost. You could have, I guess, a claim gets settled with a contractor that could cause a variation in the cost. You could have – you know, if it's a unit-based contract where, you know, it's a set price times a specific quantity, and if the quantity ends up being different than what was original forecast, then again that could cause a variation. There's a whole host of things, many different factors that could cause a variation in the forecast.

MR. SMITH: Okay.

Now, is the project team permitted to spend money because of their forecast on the final cost? Are they – can they spend whatever they need to?

MR. MEANEY: No, their ability to spend is limited by whatever the then-approved AFE is that's been approved by the board of directors.

MR. SMITH: And I heard testimony on Friday to suggest to me, at least, that a final forecast cost may be adjusted several times before an AFE is looked for.

MR. MEANEY: Yes. If you look at the categories within the final forecast cost, there's different buckets, including a contingency bucket. So you could see, yes, within a – you know, within the carry on of months, you could see variations within that forecasted amount.

MR. SMITH: And the final forecast cost, does that happen at a particular point in time in the project, like on the end of the first quarter or the third quarter? Or does it happen at any time during the course of the project?

MR. MEANEY: It could – there'd be a view at any point in time through the duration of the project.

MR. SMITH: So if you had a, sort of, final forecast cost six times in three months or four months, and you disclosed that to the public, government – or governments –

MR. MEANEY: Mm-hmm.

MR. SMITH: – would you consider that to give rise to any problems in terms of the reliability of the –?

MR. MEANEY: Yeah. I think, you know, people probably wondering why are you seeing such a constant variation in the final forecast cost figure. And it'd probably create some concerns and confusion possibly.

MR. SMITH: Now, you indicated that there was a protocol or a procedure that would be followed before a cost of the project would be released. And I'm not gonna say it's an AFE; I'm not gonna say it's a – you know, a final forecast. It's the cost of the project that's gonna be released, okay, to the public.

MR. MEANEY: Correct.

MR. SMITH: And you indicated that there could be confusion if it's all over the place and it changes monthly or weekly or daily even. So when you look at that – the procedure, what do you discern – and this is just as a vice-president of the company – what do you discern is the purpose of having a procedure to ensure that the number is the number that's backed by Nalcor?

MR. MEANEY: Sure. So I guess the purpose is – of the procedure is to make sure all the folks along the line who need to provide the sign-off that they understand what this is, that you've met all those requirements in terms of, you know, the CEO initially who ultimately has the sign-off on it, making sure that the shareholder is of understanding that board of directors, who, as we spoke about a moment ago, have to approve the AFE, and then of course it released to the public. So I think, you know, you're putting some rigour to the process to make sure that everyone, you know, who needs to signs off on it, and then it's made available to a broader audience.

MR. SMITH: Now, I understand there's also a policy – and I digress a little bit – but I understand there's a policy at Nalcor is that when a meeting begins, or a telephone conversation even, they'll have a safety moment, okay?

MR. MEANEY: Yes.

MR. SMITH: Did you ever ask to have the safety moment dispensed with?

MR. MEANEY: I can't recall ever asking that.

MR. SMITH: No. So there's procedure that is set down by the corporation to be followed before a number is released. Is that what I'm hearing?

MR. MEANEY: There was an agreed to – yeah, I guess there was an understood process or procedure in terms of how the – the steps of how that happened, yes.

MR. SMITH: So if you're – if you know that that's what's been dictated as the procedure, it's not uncommon for you to follow that procedure?

MR. MEANEY: That would be fair. I followed the procedure that, you know, was agreed to within the organization from the time I got there, I guess.

MR. SMITH: Okay.

And in the case of forecast that varied from time to time, like these final forecasts, who or what group would you understand to be responsible to challenge whether the forecast is accurate or not accurate?

MR. MEANEY: So the project controls team would be updating the final forecast costs, and then it would be the project team – you know, the project component managers and those folks – who would be, I guess, as you say, challenging or asking about some of the assumptions that underlie the final forecast cost. And then ultimately, they'd – you know, they'd agree, okay, that is the final forecast costs, and that's the amounts that would show up in the various reports.

MR. SMITH: Okay.

And beyond the executive – or sorry, beyond the project management team, would you anticipate that the executive would also challenge the final forecast that (inaudible) –?

MR. MEANEY: Yeah, I mean, the – there would – I expect there would be instances where the executives who had accountability for the project cost and the project schedule might ask questions and challenge as part of, you know, the normal process.

MR. SMITH: Now, if the executive was, for example, aware, or made aware, that a particular bid or contract price that came in higher than they anticipated was under discussion –

MR. MEANEY: Yes.

MR. SMITH: – would that lead them to understand that the final forecast cost may not be accurate?

MR. MEANEY: If they became aware that, you know, they were seeing variations through the bid process, then I guess that they would be aware that within the final forecast costs there may be some variations associated with that.

MR. SMITH: And my understanding is, is that the CEO is the person that initiates whether or not a number is going forward for an AFE, is that correct?

MR. MEANEY: Yes, that's the process that we –

MR. SMITH: That's the process.

MR. MEANEY: – described quite a bit on Friday, yes.

MR. SMITH: I noticed that –

MR. MEANEY: Yeah.

MR. SMITH: – yes.

Okay. Let me just digress to another point. Mr. Learmonth asked you – I believe it was on Friday – that there was a $497-million strategic risk, and he asked you about that and the P1, P3 schedule issues. Are you involved in any of that?

MR. MEANEY: No.

MR. SMITH: And I take it then for – you wouldn't have any understanding of why these – that research was done or that report was required by the company?

MR. MEANEY: No.

MR. SMITH: Thank you, Sir.

That's all the questions I have.

THE COMMISSIONER: Thank you.

Kathy Dunderdale?

MR. HEWITT: No questions.

THE COMMISSIONER: Former Provincial Government Officials '03-'15?

MR. T. WILLIAMS: No questions.

THE COMMISSIONER: Thank you.

Julia Mullaley, Charles Bown?

MR. FITZGERALD: Commissioner, I have a few questions. I just wonder – we started 8:30– if we could have just a short break and then –

THE COMMISSIONER: Okay.

MR. FITZGERALD: – continue?

THE COMMISSIONER: Yeah.

MR. FITZGERALD: Just five minutes even?

THE COMMISSIONER: Yeah.

Let's take 10 – we'll take our 10 minute break here this morning.

MR. FITZGERALD: Thank you.

THE COMMISSIONER: Yeah.

MR. MEANEY: Thank you. Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Fitzgerald, when you're ready.

MR. FITZGERALD: And thank you, Commissioner.

One moment, I'm just …

THE COMMISSIONER: Yeah.

MR. FITZGERALD: Please.

Good morning, Mr. Meaney. My name is Andrew Fitzgerald. I represent Charles Bown and Julia Mullaley –

MR. MEANEY: Good morning, Sir.

MR. FITZGERALD: – Julia Mullaley.

You're familiar with my clients?

MR. MEANEY: Yes.

MR. FITZGERALD: I've had some time to go through your transcript. Thank you.

MR. MEANEY: Okay.

MR. FITZGERALD: I don't intend to ask you about everything in it, but one of the things I did notice – and if you can confirm with me – that depending on the nature of the issue Nalcor was dealing with, you would deal with different individuals at government. For example, if it was Justice it would be Paul Stanley; if it was environmental affairs, you would deal with someone differently; Aboriginal affairs would be Aubrey Gover; and Finance would be a different official as well.

MR. MEANEY: Yes, that's correct. Depending on the nature of the issue there'd be a whole host of different folks within the provincial government that Nalcor would be engaging with.

MR. FITZGERALD: And in terms of a financial issue in the Department of Finance, who would you deal with primarily at the Department of Finance?

MR. MEANEY: Currently or, I guess –?

MR. FITZGERALD: I'm taking you back to November, December 2013.

MR. MEANEY: In the 2013 time frame, I guess the primary person there would've been Donna Brewer and Donna was the deputy minister of Finance. And then also Paul Myrden; Paul would have been engaged in a lot of discussions from a Finance perspective as well. I think he was a director or an ADM.

MR. FITZGERALD: Did financing, something like that?

MR. MEANEY: Yes. Yeah, director of capital markets or debt financing –

MR. FITZGERALD: Okay.

MR. MEANEY: So, obviously, he was very engaged on the financing and that side of things.

MR. FITZGERALD: Well, in the event that Nalcor needed more money from the province, those are the individuals that you would deal with at government.

MR. MEANEY: In terms of who would make the, you know, I guess the final call on equity contributions to Nalcor, yes, it would've been coming out of the Department of Finance.

MR. FITZGERALD: Thank you.

Now, we've had some evidence here about the $6.5-billion figure that Mr. Learmonth took you through on Friday. Did you have any meetings with Department of Finance officials on that change in capital cost from 6.2 to 6.5?

MR. MEANEY: There was a meeting on the 21st of November that we spoke about in –

MR. FITZGERALD: Did you have any meetings?

MR. MEANEY: – to try – yeah, I'll say, I –

MR. FITZGERALD: Okay.

MR. MEANEY: As I mentioned, I wasn't in that meeting.

MR. FITZGERALD: That's right. Thank you.

Were there any meetings besides the November 21 meeting that you would have had personally with Ms. Brewer or Mr. Myrden?

MR. MEANEY: In the case of Mr. Myrden, he was – through that period he was at the – I guess he was at the table with us on almost a daily basis and it was more around what was going on, you know, with the financing and the negotiations of the project finance agreement. So we would've had very regular contact with Mr. Myrden during that period.

MR. FITZGERALD: Were you aware that if the government required additional funding in November of 2013 that they would have, possibly, to get a special warrant in the House?

MR. MEANEY: Yes, I recall there was some discussion of that in that period, in that there was a – I guess there would've been an estimate of what the equity requirement was going to be. That would've been set back in the budget for 2013-'14, which would've been set around, I'm going to say the February or March 2013 period.

And then if there was a change in the financial close date or if there had to have been additional equity requirements required above and beyond what that amount was, that was set in the budget. As I understood, that was one means by which within government – that that's how you'd address that, you'd go back for special warrants.

MR. FITZGERALD: And you'd need an open House of Assembly to do that, I take it?

MR. MEANEY: I under – I believe that's how the process works, yes.

MR. FITZGERALD: Thank you.

I have some questions on the timeline and I'm going to reference you to a couple of exhibits.

MR. MEANEY: Okay.

MR. FITZGERALD: One is, I think, is tab 25 and it's Exhibit P-02208, Madam Clerk?

MR. MEANEY: P – 25, 02208, yes.

MR. FITZGERALD: And I think this was a November 6 presentation that was given at a meeting of Nalcor officials. I believe that was your evidence.

MR. MEANEY: Yes, that was the meeting between the folks from Nalcor and the Government of Canada and the independent engineer.

MR. FITZGERALD: Okay.

Can I take you down to page 24, please?

MR. MEANEY: Page 24. Yes.

MR. FITZGERALD: Now, I read this document and appreciate that I'm not a financial person. Financial capital cost plus 5 per cent, increase – I guess that's approximate $300 million?

MR. MEANEY: At that point in time that was the information that the folks who prepared this presentation, the project team said, yes, it was approximately $300 million.

MR. FITZGERALD: So I'm correct in saying that this wasn't a firm number at this time?

MR. MEANEY: At least in terms of what had been provided to us, yes. That wasn't – that wouldn't have been firm at that point in time.

MR. FITZGERALD: And I ask you that question because I'm going to take you to P-02217 and that is at tab 32, Mr. Meaney.

MR. MEANEY: Yeah.

THE COMMISSIONER: Thirty-two, book 2.

MR. MEANEY: Sorry, 32?

MR. FITZGERALD: Thirty-two, I believe.

MR. MEANEY: Yeah. That tab, again, would be 37? Is that right?

MR. FITZGERALD: I'm sorry, 32.

MR. MEANEY: Thirty-two. 02217, there you go, yeah.

MR. FITZGERALD: And if we could just scroll down, this is dated – sorry, before we scroll down – thank you, Clerk – Tuesday, November 19, 2013.

MR. MEANEY: Right, yes.

MR. FITZGERALD: And if we scroll down below, we have a November 19, 2013, current FCC of 6.531.

MR. MEANEY: That's right.

MR. FITZGERALD: Now, I believe in your evidence – I actually know your evidence – you said this arose out of an action item for your November 6 meeting. Is that correct?

MR. MEANEY: That's right. We had been given the indication of this approximately $300 million.

MR. FITZGERALD: Yes.

MR. MEANEY: And one of the requests that came out of that was we need to see a greater detail in terms of what that number is.

MR. FITZGERALD: And if we could just flip back to 02208 for a second –

MR. MEANEY: 02208, yeah.

MR. FITZGERALD: – and it's on the screen there as well – is one of the reasons you were looking for more detail at the November 6 meeting is because there was a – I guess there was interaction here between financing costs, excess sales and financial capital costs? Were you looking for the detail to get to your firm, hard number?

MR. MEANEY: The – I guess the request on the greater details on the facilities capital costs –

MR. FITZGERALD: Mm-hmm.

MR. MEANEY: – was one made by the independent engineer in Canada. They – you know, they, in their role, needed to see the –

MR. FITZGERALD: Okay.

MR. MEANEY: – details behind that number.

MR. FITZGERALD: Okay.

MR. MEANEY: Not just an approximately $300 million in a slide.

MR. FITZGERALD: So you undertook this as an action item on November 6, then November 19 we see a firm number.

MR. MEANEY: So, yes, we – I guess it was an action item that came out of that meeting. And then there was some correspondence started around – I think it was the 15th or 16th, it was my email that I said the pigskin is in flight.

MR. FITZGERALD: Yes, this is the internal email –

MR. MEANEY: Right.

MR. FITZGERALD: – between the Nalcor team, yeah.

MR. MEANEY: And then, finally, I guess the – you know, after the necessary reviews of that, that happened with the project team and Mr. Martin, this was the – I guess, the version that came back from them and this was the amount that was posted to the data room for Canada and the IE.

MR. FITZGERALD: Would it be fair to say that – and, you know, correct me if I'm wrong – that one of the reasons why it was delayed coming forward is that you simply didn't want to go forward with an approximate number before you had a hard number and providing it to the province or other officials.

MR. MEANEY: I think there was – yeah, I mean I think there was some discussion that, you know, they wanted to see more of the details behind the number.

MR. FITZGERALD: Yeah and as of that point in time, November 6, all the details weren't there.

MR. MEANEY: At least not to the finance team.

MR. FITZGERALD: Okay.

MR. MEANEY: Right.

MR. FITZGERALD: And the details didn't really get finalized, I believe, 'til November 19, once you had your hard number and it comes in to your email. Is that correct?

MR. MEANEY: In terms of the finalization of the details, yes. We would have received it – I guess it was the 19th.

MR. FITZGERALD: Yes.

MR. MEANEY: And then I, in turn, posted this document to the data room.

MR. FITZGERALD: Okay.

And you needed Mr. Martin's approval to do that.

MR. MEANEY: Well, the – he had given his sign-off in the thread of emails to –

MR. FITZGERALD: Okay.

MR. MEANEY: – say, yes, okay, yeah.

MR. FITZGERALD: That's fine.

MR. MEANEY: Yeah.

MR. FITZGERALD: Could Mr. Sturge approve the posting of the detailed number on November 19 without Mr. Martin's approval?

MR. MEANEY: No. Ultimately, it was the CEO would have accountability to –

MR. FITZGERALD: Okay.

MR. MEANEY: – give the sign-off on that.

MR. FITZGERALD: And when the pigskin is in flight, that's when Mr. Martin gives the okay. Is that correct?

MR. MEANEY: I think the pigskin flight email was the one where Gilbert had sent it on to Ed for his review.

MR. FITZGERALD: Okay.

MR. MEANEY: Yeah. So that was around, I think, the 15th or the 16th. And then, I guess, there was an email thread that came back to me from Mr. Harrington on the 19th and in that you could see there was some commentary from Mr. Martin.

MR. FITZGERALD: So, I guess, would it be fair to say that's an example of your communication processes: The team deals with it, it goes through Finance officials and then, ultimately, once you have a product you believe is acceptable, it goes to Mr. Martin and then it's up to Mr. Martin to bring the matter forward.

MR. MEANEY: Well, yeah, I guess there would have been a process by which there would have had to been sign-off within the project team and, I guess, ultimately Mr. Martin, and then that would be when we'd provide, you know, detailed information to folks. Yes.

MR. FITZGERALD: Okay.

So we have the hard number November 19. You did mention in your testimony that there was a meeting November 21, but you weren't at that meeting, were you?

MR. MEANEY: That's right.

MR. FITZGERALD: Yeah.

Your knowledge on that is based just on Mr. Sturge's notes, isn't it?

MR. MEANEY: Yes.

MR. FITZGERALD: Yes.

MR. MEANEY: So he'd have to confirm.

MR. FITZGERALD: Oh, well, I'll talk to him about that.

MR. MEANEY: Okay.

MR. FITZGERALD: I just wanted to confirm you weren't there.

MR. MEANEY: That's right. You're correct, yes.

MR. FITZGERALD: Thank you.

Now, in terms of the Inquiry, you mentioned that you saw Mr. Dalley's testimony, I believe, when he gave evidence up in Labrador?

MR. MEANEY: Yes.

MR. FITZGERALD: And then you made the comment on Friday that we got together and – following his testimony. Who got together after Mr. Dalley's testimony?

MR. MEANEY: It would've been myself and Mr. Sturge and I think Mr. Warren from – so all the guys from the finance team who were working together at that period and –

MR. FITZGERALD: How often did you get together?

MR. MEANEY: We were working together – I mean we kind of worked down the hall from one another –

MR. FITZGERALD: Mm-hmm.

MR. MEANEY: – so we see each other on a very regular basis. And we were going through our emails and records to kind of see what was the information that we had provided to folks from the province during that time period.

MR. FITZGERALD: And I guess, ultimately – Mr. Learmonth took you through this on Friday in some detail – there was a chronology appeared.

MR. MEANEY: The chronology that I think we were talking about in – on Friday was the chronology I prepared for the 2015 period.

MR. FITZGERALD: Okay, well, that's the question I'm asking. Is – was this chronology a collective or was it James Meaney's chronology?

MR. MEANEY: The chronology that we walked through – or sorry, the chronology that we walked through for 2015 –

MR. FITZGERALD: Mm-hmm.

MR. MEANEY: – that was one that I prepared.

MR. FITZGERALD: Okay.

MR. MEANEY: Yeah.

MR. FITZGERALD: And there was no input by Mr. Sturge, Mr. Warren or – what was the other gentleman you mentioned?

MR. MEANEY: No, it was – that was just the three of us, myself –

MR. FITZGERALD: The three of us?

MR. MEANEY: Yeah.

MR. FITZGERALD: Okay.

MR. MEANEY: I think for the 2015 one – no, that would've been based on my collection of, you know, my notes and –

MR. FITZGERALD: Okay.

MR. MEANEY: – my emails and stuff like that.

MR. FITZGERALD: There's also, in your testimony, a reference to a reliance agreement with the province once the Oversight Committee was involved?

MR. MEANEY: Yes, that was the 2014 agreement.

MR. FITZGERALD: Yeah.

And I accept that there's a provision in there talking about liability and that the province would not be able to, I guess, proceed against the IE in relation to having access to those reports. Do you recall that?

MR. MEANEY: Yeah, I think there was a provision that said, you know, any reliance by the province on the work of the contractor, which would've been the independent engineer –

MR. FITZGERALD: Mmm.

MR. MEANEY: – was at their sole risk –

MR. FITZGERALD: Yeah.

MR. MEANEY: – I think was the term. Yes.

MR. FITZGERALD: And you're a professional?

MR. MEANEY: Yes.

MR. FITZGERALD: And you're an FCA, is it?

MR. MEANEY: CFA.

MR. FITZGERALD: CFA.

And, you know, despite liability issues aside, would you agree with me that there's still an obligation on a professional to provide an accurate and complete work product?

MR. MEANEY: I think that's a fair statement.

MR. FITZGERALD: And despite the liability clause in the reliance agreement, this agreement was being relied upon by Canada – no, sorry, the independent engineer was being relied upon by Canada?

MR. MEANEY: Yes, that was their – that was who they were working for, yes.

MR. FITZGERALD: Yeah, and the, I guess, collateral agent TD – who is TD the collateral agent for?

MR. MEANEY: So TD was the collateral agent acting on behalf of Canada. And I think this is maybe where some folks would get confused about there being lenders involved in the project.

MR. FITZGERALD: How did Goldman Sachs fall into this?

MR. MEANEY: So – give a bit of background on that.

MR. FITZGERALD: Please.

MR. MEANEY: So, I guess, in terms of the underwriting of the bonds that were issued in the capital market, that was done by TD Securities – which is –

MR. FITZGERALD: Okay.

MR. MEANEY: – I guess, their capital markets investment banking arm – and Goldman Sachs. So they partnered up on the underwriting of the bonds just like RBC and Scotia did and other banks. So that was in the underwriting of the bonds.

TD Bank – so that was TD Securities, TD Bank acted as the collateral agent under the Project Finance Agreements. And their role there is really to be an administrator for the requirements under the Project Finance Agreements. And they're acting on behalf of the Government of Canada as the guarantor in that capacity.

MR. FITZGERALD: So the Government of Canada, it's fair to say, relies – excuse me – on the IE report.

MR. MEANEY: They – in terms of them getting satisfied that the FLG condition precedent had been met –

MR. FITZGERALD: Mm-hmm.

MR. MEANEY: – which was, you know, delivery of an IE report to their satisfaction, then Canada, I guess, would have relied on that IE report to be able to say, you know, the CP is satisfied.

MR. FITZGERALD: Yeah. And there was a number of professionals working with MWH providing that report.

MR. MEANEY: Yes. Yeah, you know, a whole host of folks, I guess, would be professional engineers.

MR. FITZGERALD: Yeah. So, you know, in that context, when you look at it from that perspective, you have a bunch of professionals with a lot of experience, doing an independent report for the Government of Canada. Liability issues aside, it doesn't seem unreasonable for the Government of Newfoundland to say we want to be able to review these reports and there should be a certain level of reliance we should be able to place on these professionals doing the work. I'm not talking about legal issues. I'm just talking about –

MR. MEANEY: Yeah.

MR. FITZGERALD: – what's reasonable in the circumstances here.

MR. MEANEY: I mean I get – yes, that's your point. From a legal perspective there that was very separate.

MR. FITZGERALD: Yeah.

MR. MEANEY: I guess in terms of if the Government of Newfoundland took some comfort, if that's the word –

MR. FITZGERALD: Yeah.

MR. MEANEY: – say, in terms of the work done by the IE as part of their, you know, decisions, I think that would be. But the legal reliance aside –

MR. FITZGERALD: Yes.

MR. MEANEY: – I don't think that would be unreasonable.

MR. FITZGERALD: Yeah, that's the point I'm getting at.

Thank you, Mr. Meaney.

I have a document here, it's tab 124, I believe, Commissioner. And it's at – it's P-02413.

MR. MEANEY: Sorry, that tab again was?

MR. FITZGERALD: Pardon me. Tab 124, I believe.

MR. MEANEY: One-twenty-four.

THE COMMISSIONER: So that'll be at tab – book 5.

MR. MEANEY: (Inaudible.) Yes.

MR. FITZGERALD: Mr. Meaney, are these your notes from 2013?

MR. MEANEY: Yes.

MR. FITZGERALD: Okay. If I can take you to page 10, please?

MR. MEANEY: Page 10. Okay.

MR. FITZGERALD: There's a reference there: "Call with NL Finance Nov 14/13."

MR. MEANEY: Yes.

MR. FITZGERALD: And who are – who's Anne Marie Miller and Gillian Andrews?

MR. MEANEY: These are folks from the Office of the Comptroller. So these are the folks that do the accounting for the province, the financial records.

MR. FITZGERALD: Okay. So are they Department of Finance officials, do you know?

MR. MEANEY: They are Department of Finance –

MR. FITZGERALD: Okay.

MR. MEANEY: – but not in the group, you know, that Paul Myrden and others would be in.

MR. FITZGERALD: Okay.

MR. MEANEY: Yeah.

MR. FITZGERALD: Thank you. Who's Kurt Legge and Carol Anne Lutz?

MR. MEANEY: So Kent Legge was the –

MR. FITZGERALD: Or Kent, yes.

MR. MEANEY: – was the Nalcor controller.

MR. FITZGERALD: Okay.

MR. MEANEY: Corporate controller. And then Carol Anne Lutz, I think, at that time was his assistant corporate controller.

MR. FITZGERALD: Okay. What's being discussed at – on this call?

MR. MEANEY: They – the province was in the process of finalizing their year end – I guess it would have been their year-end financial statements from the prior year.

MR. FITZGERALD: Okay.

MR. MEANEY: And there's some amount – where Nalcor's financial results roll up into the province's financial results –

MR. FITZGERALD: Okay.

MR. MEANEY: – you know, their – they had some questions about how those results were gonna be rolling up into the province's results. And I think there's some – typically some notes – some disclosure notes, commitment notes and these type of things. And so they typically make commitment notes relating to their arrangements with Nalcor. And they would have been asking us some questions about it I'm thinking.

MR. FITZGERALD: Okay. I just wanted clarification.

Page 11, please.

MR. MEANEY: Page 11, yes.

MR. FITZGERALD: Okay. And on the – if we can go to the right-hand side of the cut-off there. Yes, thank you very much.

It says: "Key Messages for IE Call. Nov 21/13."

MR. MEANEY: Yes.

MR. FITZGERALD: Do you know who was on that call?

MR. MEANEY: This was the meeting and the call that I was in. And that was why I wasn't in the meeting on the 21st with the folks from the Department of Finance.

MR. FITZGERALD: Okay.

MR. MEANEY: I can – I'd have to go back and get my – you know, from my calendar entry, to list all the folks that were there.

MR. FITZGERALD: Yeah. And if you wouldn't mind doing that. Because I – there's two points on that.

MR. MEANEY: Sure.

MR. FITZGERALD: I know the calendar entries may refresh your memory. But wouldn't you also agree with me that the calendar entries will show you who was invited, but not necessarily who attended? If they accept, maybe.

MR. MEANEY: Yes. I was gonna say, if they accepted, it would –

MR. FITZGERALD: Yeah.

MR. MEANEY: – it would show, yes.

MR. FITZGERALD: Yeah, I'd like you to check that, if you wouldn't mind, please?

MR. MEANEY: Sure, yup.

MR. FITZGERALD: If you look below here, the third bullet, if you could just read that for me, on the right-hand side?

MR. MEANEY: Third bullet.

MR. FITZGERALD: It begins with collective.

MR. MEANEY: Collective … "Collective interest between Nalcor, Canada and MWH to have commentary in the IE report that is objective and appropriate. We need to work together to ensure this."

MR. FITZGERALD: And if we go down below, there's a box. These are connected.

MR. MEANEY: Mmm.

MR. FITZGERALD: And what does that say?

MR. MEANEY: It said: "Report could go public, and I don't think a report of this nature would reflect well upon any of us." And I think this was in – sorry, I'll let you ask the question before I –

MR. FITZGERALD: Okay.

MR. MEANEY: – presume.

MR. FITZGERALD: Thank you.

Well, I guess the question I have is – and it goes back to the role of the independent engineer. When I read this, and I read the words "collective interests" and "report can go public" I mean, how truly independent was the independent engineer if there's a collective interest here?

MR. MEANEY: Yeah, I think what I was referring to there is, of course, this was a report that was needed to satisfy the FLG condition precedent. The FLG agreement was something that all of us were party to. And at that point in time, I recall, the draft of the report, there was a lot of holes in terms of information and I think some commentary from the IE that needed some clarification, and that was what the series of, I guess, meetings that happened in the latter part of November – we were working through the various drafts to get to a version of the report ultimately satisfied Canada's requirement to close on the FLG.

MR. FITZGERALD: Okay.

MR. MEANEY: And I think, you know, we always kind of anticipated – the box on the bottom, I think we always anticipated, given the public nature of this project, the public nature of the federal loan guarantee, there was probably an expectation that at some point in time the independent engineer report would probably be going public.

MR. FITZGERALD: Why wouldn't the report not "reflect well upon any of us"? Once again, there's an us, including the IE.

MR. MEANEY: I think it just – you know, we were working together to try to finalize this report, and having a report that had some of the comments that were in that draft, you know, I guess it didn't look good in terms of the professionalism of the report.

MR. FITZGERALD: Okay.

If we can just turn the page to page 12 on the left-hand side. On the – yeah, sorry, thank you.

And there – below it says: "Need an IE report with reasonable opinion on … Cost and … Schedule." And I believe your evidence to Mr. Learmonth was that you weren't aware of the P1 schedule issue at that time.

MR. MEANEY: At that time, no, that's right.

MR. FITZGERALD: In terms of – and you weren't aware of the Westney reports?

MR. MEANEY: At that time, no.

MR. FITZGERALD: No. And that's why I'm concerned with whoever else was on this call. That's why I would ask you to look at those calendar entries.

MR. MEANEY: Sure.

MR. FITZGERALD: Because there seems to be an issue with schedule and cost coming up here on these calls and I think it's important that we know who was in on those calls and in terms of what knowledge they had of Westney at the time. So it's an important point, wouldn't you agree?

MR. MEANEY: Sure, yeah. I mean, I – the exact names – but I can't tell you in terms of who was in that, I guess, that meeting and call on the 21st. It would've been folks from the independent engineer –

MR. FITZGERALD: Yeah.

MR. MEANEY: – folks from the Government of Canada –

MR. FITZGERALD: Mm-hmm.

MR. MEANEY: – folks from Blair Franklin, who are Canada's advisors –

MR. FITZGERALD: Yes.

MR. MEANEY: – and folks from, you know, the Nalcor team.

MR. FITZGERALD: Yeah, and that's why I'm concerned about it.

MR. MEANEY: Yeah. The –

MR. FITZGERALD: (Inaudible.)

MR. MEANEY: – I mean, those would be the people. I – the exact names I can get to you, I guess.

MR. FITZGERALD: Now, if we go to page 12 on the right-hand side, this is another November 21 call.

MR. MEANEY: It was at – that was that same session.

MR. FITZGERALD: Okay, same session.

MR. MEANEY: Yeah.

MR. FITZGERALD: You were busy on November 21.

MR. MEANEY: It was a long day.

MR. FITZGERALD: Now, I just note on this page, it refers to: "IE call – MWH, Canada, CBB, BF and Nalcor."

MR. MEANEY: Right.

MR. FITZGERALD: So it does appear that there were some Nalcor officials on the call.

MR. MEANEY: Yes, that's what I was just referring to.

MR. FITZGERALD: Yes.

MR. MEANEY: Oh, yes, there was a group of folks from Nalcor and the project team, that's right.

MR. FITZGERALD: And below here we have: "'Clean' report by the end of the week; Not a typical secured lender's IE report; Reasonableness of Cost and Schedule …." You see that there?

MR. MEANEY: Yes.

MR. FITZGERALD: So that's referenced again there now. And, once again, you didn't have the Westney report, we know that.

MR. MEANEY: That's right.

MR. FITZGERALD: So I think I really would like to know, if you can find out, who the names of the other individuals on that call were.

MR. MEANEY: Okay.

MR. FITZGERALD: Because schedule and cost does appear to be coming up here.

MR. MEANEY: Yes. Yeah, and it did – you know, I think as we spoke about on Friday, you know, there was a series of correspondence probably starting around the 1st of November. You know, initially between myself and Ms. Manzer, we kind of identified: here's the five or six, you know, key issues that we got to get everyone together on and make sure everyone's on the same page. And then there was a – you know, subsequent emails and correspondence relating to that.

MR. FITZGERALD: And if we can go to page 14 –

MR. MEANEY: Page 14.

MR. FITZGERALD: – there's a – and on the left-hand side.

MR. MEANEY: Yes.

MR. FITZGERALD: Thank you, Madam Clerk – long paper.

It was November 25, 2013, schedule – "MWH Schedule Call."

MR. MEANEY: Yeah, okay. Yes. Yeah.

MR. FITZGERALD: And on that call, I believe we have Paul Harrington; Lance, that would be Lance Clarke.

MR. MEANEY: Yes.

MR. FITZGERALD: Would that be Jason Kean?

MR. MEANEY: Yes.

MR. FITZGERALD: Who is the Ed there?

MR. MEANEY: Ed Bush.

MR. FITZGERALD: Ed Bush. Not Ed Martin?

MR. MEANEY: No.

MR. FITZGERALD: No, okay.

MR. MEANEY: Ed Bush was the manager of project controls at that point in time.

MR. FITZGERALD: Okay.

And then we have Nik and Rey, Howard and Mr. Loucks from –

MR. MEANEY: Yeah. Yes.

MR. FITZGERALD: Yes.

MR. MEANEY: Yes.

MR. FITZGERALD: And Alison, CBB.

MR. MEANEY: Yes.

MR. FITZGERALD: And Charles – and I'd suggest that's Charles Newman, her co-counsel –

MR. MEANEY: Correct.

MR. FITZGERALD: – and not Mr. Bown?

MR. MEANEY: You are correct.

MR. FITZGERALD: Thank you.

And we have Blair Franklin is David Pyper and Canada we have a Joe. Who's Joe?

MR. MEANEY: That was Joe Krupski.

MR. FITZGERALD: Joe Krupski.

MR. MEANEY: He was the representative from NRCan.

MR. FITZGERALD: So is this a continuation on from the issues that were being brought forward from November 21?

MR. MEANEY: Yes.

So this was a follow-up call to the session that was held on the 21st because the folks from MWH had some more specific questions about schedule. And I seem to recall – it might have been in my testimony on Thursday or Friday – it was one of the documents. It was a presentation that Mr. Kean had put together, path – critical path to the completion or something like that.

MR. FITZGERALD: Okay.

MR. MEANEY: And I think that was reviewed in this call.

MR. FITZGERALD: Now, on November 25 you weren't aware of the P1 schedule issue, obviously.

MR. MEANEY: Correct.

MR. FITZGERALD: But these are Nalcor officials that were in on that meeting or on that call?

MR. MEANEY: Yes, I mean there's folks there from the project team that –

MR. FITZGERALD: Yeah.

MR. MEANEY: – were on that call, yes.

MR. FITZGERALD: Exactly.

And they say: "MWH still need to review but accept the principle that LTA and LIL are off the critical path."

MR. MEANEY: Yes.

MR. FITZGERALD: So it seems to be that schedule was coming up here.

MR. MEANEY: Oh yes, you know, that was the presentation. That was a critical path presentation that the project team had put together.

MR. FITZGERALD: And then there's a reference below: "Sequences and durations seem reasonable …." What would durations – is that another reference to schedule?

MR. MEANEY: Yes.

MR. FITZGERALD: Okay.

MR. MEANEY: This would've been durations of activities in the schedule.

MR. FITZGERALD: Yeah.

Then we have another call. If we go to page 15 – I'm almost finished, Commissioner.

THE COMMISSIONER: No problem.

MR. MEANEY: There were a lot of calls in that period.

MR. FITZGERALD: I noticed. Your notes are very helpful.

This is November 27, 2013.

MR. MEANEY: Yes, it was a checkpoint call.

MR. FITZGERALD: A checkpoint call.

And we have Nik, Mr. Pyper – Mr. Pyper was with who again?

MR. MEANEY: David Pyper worked with Blair Franklin. They were Canada's financial advisor.

MR. FITZGERALD: And we have Charles Newman and that's Ms. Manzer's co-counsel.

MR. MEANEY: Yes, that's right, (inaudible) Cassels Brock.

MR. FITZGERALD: And Mr. Harrington and Lance Clarke.

MR. MEANEY: Correct.

MR. FITZGERALD: And, once again, at this point in time you're also talking about capital cost and schedule?

MR. MEANEY: This – well, I think what we were talking about here was there was sections in the independent engineer's report relating to these subjects.

MR. FITZGERALD: Yes.

MR. MEANEY: And will be – the comment there was, I guess it was feedback from – I think actually in the evidence there's an email. It was a follow-on email I had sent to Mr. Argirov –

MR. FITZGERALD: Mm-hmm.

MR. MEANEY: – saying as a follow-up to our call, these are kind of the take-aways and this was one of the ones that he talked about. It was the sections of the IE report on these particular subjects being finalized by end of day, Wednesday, Pacific Time.

MR. FITZGERALD: And we do have members of the project team being in at least two of these calls and you're going to check to see if they're involved in the November 21 call.

MR. MEANEY: Oh, they were, yeah. Yeah, I can –

MR. FITZGERALD: They were involved in the November 21 call?

MR. MEANEY: Oh yes, yeah, there was a whole – there was a host of folks from the project team that would have been in that –

MR. FITZGERALD: Okay.

MR. MEANEY: – November 21. I can confirm that for certainty, in terms of who it all was. That's what I'd have to go back and –

MR. FITZGERALD: That's fine.

MR. MEANEY: – check my calendar.

Because they – I mean, those were the folks that were the – I'll say the experts in their various fields that were being discussed, so they had to be in the room.

MR. FITZGERALD: Those are all my questions, Mr. Meaney.

Thank you very much.

MR. MEANEY: Thank you very much.

THE COMMISSIONER: Thank you.

Robert Thompson?

MR. COFFEY: Good morning, Sir.

My name is Bernard Coffey. I represent Robert Thompson.

Mr. Meaney, I'm going to, with you, go through, effectively the six, seven months after sanction, okay?

MR. MEANEY: After sanction, okay, yes.

MR. COFFEY: Yeah.

And I was just trying to get a sense because I've heard references to you being the chief contact for Canada in Nalcor in terms of the federal loan guarantee.

MR. MEANEY: Yeah, I would have been one of the main points of contact. Yes.

MR. COFFEY: No, no.

MR. MEANEY: Okay, sorry, go ahead.

MR. COFFEY: Were you the chief contact or the main contact?

MR. MEANEY: I would say I was the person that – probably within Nalcor – at least in terms of the working groups between Canada and Nalcor, I was probably the one that was speaking the most with folks from the Government of Canada, yes.

MR. COFFEY: So that if, for example, Ms. Manzer wanted to contact Nalcor, she would contact you as far as you know?

MR. MEANEY: Yeah, I mean often she would reach out to me. Yes.

MR. COFFEY: Are you aware of her ever reaching out to anyone else?

MR. MEANEY: She would sometimes – either she'd reach out to me or she would often go through our counsel who was her equivalent – Mr. Martis from Faskens.

MR. COFFEY: When did you begin to occupy the position of being the main contact for Canada and the FLG?

MR. MEANEY: I guess – I'm just trying to – it probably would have been, I'll say, probably post-financial close. I think that would probably be – no, I guess where that –

MR. COFFEY: Post-financial close?

MR. MEANEY: Yeah, like, I guess in terms of, you know, there would have – and I'll explain, I guess, why I said that.

During the period of – leading up to financial close, of course, there would have been a lot of correspondence going back and forth between folks from Nalcor and Canada and our lawyers. I had developed a good working relationship with my counterpart, Anoop Kapoor, who was the gentleman in Natural Resources. So – and I think that relationship really kind of developed through that 2013 period. And then, you know, certainly after that Anoop or Alison would always come to me first as a starting point.

MR. COFFEY: Okay. So I'm glad I'm exploring this with you because I misunderstood.

The federal loan guarantee, the idea or the contract or the term sheet – or call it what you like –

MR. MEANEY: Yes.

MR. COFFEY: – dated from when?

MR. MEANEY: November 2012.

MR. COFFEY: And then in December of 2012 we have sanction.

MR. MEANEY: Yes.

MR. COFFEY: In the beginning of 2013 – January of 2013 – who was the chief contact for Canada at Nalcor?

MR. MEANEY: Starting – beginning of 2013?

MR. COFFEY: Yes.

MR. MEANEY: I would have been one of the primary contacts from Nalcor.

MR. COFFEY: Okay.

MR. MEANEY: Yes.

MR. COFFEY: So it goes back – because that's almost a full year before financial close, is it –

MR. MEANEY: Yes, sorry.

MR. COFFEY: Yeah.

MR. MEANEY: Yeah and I – see, I would have been one of the primary contacts with Nalcor in 2012 because there still would have been contact coming from the federal government to Derrick as well – Derrick and myself in that period.

MR. COFFEY: Yes.

MR. MEANEY: And then as – I say as things progressed through 2013 and then post-financial close, from a Nalcor perspective I kind of fulfilled that role and Derrick stepped back a bit. So that – sorry, that was – I meant to –

MR. COFFEY: Okay.

MR. MEANEY: – clarify that.

MR. COFFEY: If we could bring up, please, Exhibit P-02224. And that would be –

UNIDENTIFIED MALE SPEAKER: 02204.

MR. COFFEY: 02224 would be tab 35, binder 2.

MR. MEANEY: Thirty-five …

MR. COFFEY: And –

MR. MEANEY: So right, yes, that would have been – tab 35, binder 2. Okay, yes.

MR. COFFEY: Now, this – if I could go, please, to page 2.

So sorry, just go – oh yes. Go down a bit, please? Yeah. Keep going. Thank you.

Right there – up a bit, please. Right there.

Now, Sir, on the morning of November 21, 2013, at 9:38 a.m., Ms. Manzer – and Ms. Manzer, you understood that she was the chief external lawyer for Canada in relation to the federal loan guarantee.

MR. MEANEY: Yes.

MR. COFFEY: And you'd been – up to that point, you'd been dealing with her on various things. Correct?

MR. MEANEY: Yes.

MR. COFFEY: Yeah. Now the second sentence there reads – and this is directly to you, she said, sending you two – I'll read the first two sentences. "Sending you two emails to make sure you know about them. Quite frankly this is a shit storm and" – no one – "can close at this stage." And she goes on to talk about – now explain that.

Mr. Meaney, in your career, have you ever received a similar email from anyone else and described what the activity you were involved in as a shit storm?

MR. MEANEY: I've had emails where folks have described the situation or a meeting using different words. I may have gotten one using the term shit storm. Shit storm, I've heard the – my colleague, Mr. Warren, used to like the use of phrase "gong show" sometimes but, you know –

MR. COFFEY: I'm – okay, fair enough. And, but he is in – he works for the same organization you do. I'm asking you about an external, external – an email from your counterpart or someone similar to your counterpart or contact outside Nalcor.

MR. MEANEY: I may have. I could not say – I couldn't say if it's certainly yes or no.

MR. COFFEY: Now this is the same day and Mr. Fitzgerald was just asking you questions about a meeting of November 21, 2013. This is the same day, isn't it?

MR. MEANEY: Yes. This would have been, I guess, the morning of – before the meetings got underway, by the looks of it, I'm thinking. And the, I guess, the – if it will be helpful, I think the – the shit storm she was talking about was the fact that there wasn't good communication going on in terms of folks getting information, and it was one of a number of times where, I guess, she and I worked together to try to get everybody on the same page in terms of getting – making sure that it was clear what folks on the independent engineer were asking about and making sure the folks on the project side clearly understood what the questions were being asked so they could provide the information. And I think she probably, you know, used some interesting words to describe how that communication – how that communication wasn't working very well, at that point in time.

MR. COFFEY: Now, Sir – and this was a, in effect, the – at that moment in time, eight days before financial close, this was a culmination of work that had been ongoing by the IE all throughout 2013.

MR. MEANEY: Yes, I guess their engagement started in August of 2012.

MR. COFFEY: In relation to the IE and the province, you know, post-sanction but before financial close, the first seven or eight months of 2013.

MR. MEANEY: Yes.

MR. COFFEY: Could you tell the Commissioner, please, what your understanding was the province wanted?

MR. MEANEY: That's related to the independent engineer?

MR. COFFEY: And financial information, generally – independent engineer and financial information generally.

MR. MEANEY: Yes, in the case of the independent engineer, the province would have been aware that the independent engineer report was a requirement of financial close –

MR. COFFEY: Sure.

MR. MEANEY: – and would've wanted that CP satisfied because they were very –

MR. COFFEY: Yes –

MR. MEANEY: – (inaudible).

MR. COFFEY: – but they also, did they not, wanted to actually see a copy of it?

MR. MEANEY: Yes, there was a –

MR. COFFEY: They made that plain early on.

MR. MEANEY: Yeah, there was – I think we spoke about this, there was a meeting in – it was June of 2013.

MR. COFFEY: June 14, 2013.

MR. MEANEY: Yes, and there was some folks in that meeting from the province and they had asked that when we receive the draft of the IE report that was expected in the summer, that we get them a copy of it. And that was the draft that I posted to the data room for their access in June – oh, sorry, July.

MR. COFFEY: Now, if we could bring up, please, Exhibit P-02170.

MR. MEANEY: 02170.

MR. COFFEY: Unfortunately, I don't believe –

THE COMMISSIONER: It's not in your book.

MR. COFFEY: – it's in your list.

THE COMMISSIONER: It's – you'll have to look at that one on the screen.

MR. MEANEY: Okay.

MR. COFFEY: Now, Sir, this is an email – if could scroll down, please. Thank you.

And you're looking here, you've – you're communicating with Mr. Bennett, Mr. Clarke, Mr. Harrington, Ms. Winsor about having a meeting – but if we could just scroll down a little bit further, please?

Yes. Now here, Sir, on March 22, 2013 –

MR. MEANEY: Yes.

MR. COFFEY: – and that afternoon you emailed Mr. Bennett, Mr. Harrington, Mr. Clarke, and you're forwarding them a note below, it says: "See note below from Paul Scott."

MR. MEANEY: Yes.

MR. COFFEY: "He has been pushing to have MWH, the IE who will effectively be acting for Canada (lender), do what's described below for the Minister/Province for equity put in before financial close. There is an issue of conflicting their independence which I have pointed out to him as being problematic."

MR. MEANEY: Yes.

MR. COFFEY: "Putting aside which firm could do any review prior to financial close, I am sensing a bigger" – quote – "'mindset'" – end quote – "issue here which may need to be addressed at a higher level within the Province.

"This meeting has been bumped a few times due to other FLG priorities, but Paul now wants to get together Monday.

"Would appreciate any thoughts you may have on this." And you're on your way back from Toronto, at that point.

MR. MEANEY: Yes.

MR. COFFEY: Now, "I am sensing a bigger 'mindset' issue here which may need to be addressed at a higher level within the Province." What are you referring to there?

MR. MEANEY: I think what I was referring to is there was recent messages from Mr. Scott that they wanted to get, you know, somebody to provide a review or assurance, I guess, prior to financial close. Mr. Scott had, you know, had been asking: Can the MWH serve in that capacity for the province? And, as I noted here, and we discussed with him they were acting on behalf of, you know, the borrowers or the guarantor – sorry, the lender or the guarantor.

So, in terms of how an independent engineer would work that's engaged for the lender or the guarantor, you can't really have the same one also acting on behalf of the equity sponsor. So that was why we said that's not gonna work, you know, but if there's a desire from the province to have somebody do that, there probably needs to be a discussion at another table to see how that could be addressed.

And that was a, I guess, a discussion probably at a more senior level within Nalcor and the province, hence the "higher level" comment.

MR. COFFEY: Sir, Exhibit P-02171, please. And again, Commissioner, that's not in the materials – in the binders, I don't believe.

THE COMMISSIONER: No.

MR. COFFEY: Now, Mr. Meaney, if you – scroll down, please. Keep going, please.

Yes, right there. Just go back up a bit, please.

This is on page 2 of the Exhibit. There is an email from yourself to Laura – Laurie Skinner.

MR. MEANEY: Yes.

MR. COFFEY: May 8, 2013. The subject is: LCP Governance & Control Procedures.

MR. MEANEY: Yes.

MR. COFFEY: And – I'm not going to take you all the way through it because it goes on for quite some length, but is it fair to say that at that moment in time – that is, the end of the first week of May of 2013 – Ms. Skinner was asking about financial controls and governance of this project?

MR. MEANEY: Yeah, I believe that that may have been why – what she was asking about and that was what prompted the – the meeting we eventually had in June of 2013.

MR. COFFEY: She –

MR. MEANEY: And we reviewed this, you know, presentation as part of that.

MR. COFFEY: She was the deputy minister of Finance for the Government of Newfoundland and Labrador, wasn't she?

MR. MEANEY: That's right.

MR. COFFEY: And the meeting – the briefing itself did not occur until the middle of June?

MR. MEANEY: Yes, that was June – it was 13 or 14 or something like that, I think.

MR. COFFEY: Do you recall why it took five weeks?

MR. MEANEY: I think it was just a function of trying to align everyone's schedule. And I would think at that point in time, if I recall, she obviously, being the deputy minister of Finance, probably had the busiest schedule of all of us, so we were trying to work around when people were available. And it ended up being just over a month later we got that meeting in place.

MR. COFFEY: Exhibit P-02172. And this is the – this is an email. It begins on page 1 with an email from yourself to Mr. Clarke. It's a deck for 2 p.m. meeting with GNL.

MR. MEANEY: Right.

MR. COFFEY: Friday, June 14, 2013.

MR. MEANEY: Yes.

MR. COFFEY: And if we look at this – I believe the exhibit itself is 83 pages. So if you go to page 2, this is the Lower Churchill Project Governance & Controls Overview, June 14, 2013.

MR. MEANEY: That's correct.

MR. COFFEY: And so this is an 82-slide deck, isn't it?

MR. MEANEY: Yes – I think so, yes.

MR. COFFEY: And you propose to cover that in about 120 minutes. Two hours.

MR. MEANEY: Yes, I mean, that was – we – that was when folks were available so we – the plan was to walk them through that presentation in that discussion. I think there was some slides you could move through more quickly and others you'd have to spend a bit more time discussing.

MR. COFFEY: Do you recall who attended this presentation?

MR. MEANEY: Yes, and I think in my interview with Ms. O'Brien and Mr. Learmonth, that was a take-away item and I had to confirm who the attendees were. I gave the list and my counsel, McInnes Cooper, can provide it. I know from the province it was Laurie Skinner and Paul Morris. And then there would have been a whole host of folks from, you know, Nalcor and the project team who were presenting different parts of the presentation.

MR. COFFEY: So the project team would be Mr. Bennett? Or is he above that?

MR. MEANEY: I mean, he – the project team are accountable to Mr. Bennett or reporting to Mr. Bennett. If he was in that meeting – I'd have to go back and we can check the attendees, 'cause I did – I know I did provide that as a follow-up to my interview.

MR. COFFEY: And – but Mr. Harrington?

MR. MEANEY: Yes, certainly Mr. Harrington (inaudible) –

MR. COFFEY: Mr. Clarke?

MR. MEANEY: Lance, yes.

MR. COFFEY: Mr. Kean?

MR. MEANEY: Jason, yes, would have likely been there.

MR. COFFEY: Now, this is a meeting where – if I could – just a second, please, Commissioner.

If we could go, please, to slide 17 – page 17, I'm sorry. Page 17. Just scroll down a little bit.

Now, bottom right-hand side, this is one of those presentations where the – quote – "*… the LCP Gate 3 estimate in its current state is one of the best mega-project 'base' estimates that this reviewer has seen in some time.*" Attributed to Mr. Hollmann.

MR. MEANEY: Yeah.

MR. COFFEY: April 2012.

MR. MEANEY: Yeah, that's what it says there, yes.

MR. COFFEY: Yes.

And do you know who decided to include this for the deputy minister of Finance's presentation?

MR. MEANEY: If you could just scroll up to the top of the slide just to see?

MR. COFFEY: Yes.

MR. MEANEY: Typically, the material that was prepared in any of these presentations relating to, you know, cost curves and this type of stuff would typically have been – certainly Mr. Kean would have prepared these – this slide, I would have expected.

MR. COFFEY: Okay.

If we could go to page 27 of the same exhibit? And again, Third Party Validation, this is –

MR. MEANEY: Yeah.

MR. COFFEY: – effectively a blown-up and expanded-upon version of the same thing. So in a presentation that was involving more than 80 slides to the deputy minister of Finance who was looking for Lower Churchill Project governance information, one of the things that – well, it appears at least twice there – is reference to Mr. Hollmann.

MR. MEANEY: Yes.

MR. COFFEY: And an assurance that, you know, the base estimate certainly is good. That's the assurance, isn't it?

MR. MEANEY: That's what the text seems to indicate, yes.

MR. COFFEY: If we could go then to, please, Exhibit P-01808.

THE COMMISSIONER: That'll be on the screen.

MR. COFFEY: It's not – I believe, Commissioner – not in the books – the binders.

And if we could scroll down a little bit, please. Going – and okay, just if I could, Commissioner, it's easier for me to do it this way. If I could, just a moment, please, Commissioner. I apologize; I'm just going to …

Yes, if you look at page 2, please? Well, actually, go up the – yes. Actually, go up to the end of page 1, I apologize. Just, Mr. Meaney, help me put it in context here.

You'll see this is an email at the bottom of the page, June 27, 2013, from yourself to Mr. Morris. It's copied to a number of other individuals, two of whom – amongst the two of whom is Todd Stanley.

MR. MEANEY: Yes.

MR. COFFEY: So Mr. Morris was whom?

MR. MEANEY: Paul Morris was – he worked in Natural Resources. I believe he was the assistant deputy minister around that time.

MR. COFFEY: Okay.

And you begin by: "Hi Paul

"Please find attached the following" and it goes on from there.

But if we go down to the bottom of that page – right there, thank you. Just go up a bit. Thank you. The second-last paragraph in the last sentence reads: "As we have indicated, while the IE will be producing these reports for Canada, Nalcor as project owner (and NL as our sole shareholder) will also be able to receive copies."

MR. MEANEY: Yes.

MR. COFFEY: And in the first sentence of that paragraph there's a reference to "the types of reporting that MWH will provide to Canada, both in Phase 1 (prior to Financial Close) and Phase 2 (Construction Period) …."

So is it fair to say that as of June 27, 2013, you were telling the assistant deputy minister of Natural Resources and Todd Stanley, who was the Justice Department lawyer involved in this, that the government would be able to receive copies of the IE reports as and when they were available? That last sentence in the second-last paragraph.

MR. MEANEY: Yeah, sorry, I'm just reading it there now – the types of reporting that (inaudible). Yeah, so I guess the scope of work probably would have been referring to the final IE report that was going to be due for financial close. And then phase 2 there would have been the site visit reports that they would be producing on a regular basis. And, as I indicated there, our expectation would have been that, you know, the province would be able to get copies of those.

MR. COFFEY: In fact, 13 – sorry this is the 27th of June, so 13 days before this on June 14 you had told Ms. Skinner that – she'd look if you'd asked for it. She wanted to see the IE report and you agreed to provide it.

MR. MEANEY: Yeah, but there I get – sorry, go ahead.

MR. COFFEY: Isn't that so?

MR. MEANEY: I guess there may have been a discussion at that point in time that we were expecting another draft of the IE report.

MR. COFFEY: Yes.

MR. MEANEY: And that she had asked could they get a copy of it and I said, yes, when we get it we'll post it. And that's we did. We posted it to the data room.

MR. COFFEY: Yes and we'll get to that in July in a moment. But here, at the end of June, you were, in effect, in writing confirming that that's the case and it's not limited to a draft July report.

MR. MEANEY: I would want to see the – it says here: "You will also see I have highlighted different sections of the IE" – scope of work – "that outline the types of reporting that MWH will provide to Canada, both in Phase 1" and in phase 2.

MR. COFFEY: Yes.

MR. MEANEY: I'd probably want to see the sections that are highlighted and that's in the trail of the email.

MR. COFFEY: Yes, but your last sentence – you typed this – "As we have indicated, while the IE will be producing these reports for Canada, Nalcor as project owner (and NL as our sole shareholder) will also be able to receive copies."

MR. MEANEY: Yeah. Yeah, these reports would have been referring to whatever I highlighted in the document that I'm referring to in the prior sentence.

MR. COFFEY: Well, which reports are we talking about other than –

MR. MEANEY: The –

MR. COFFEY: – the sort of draft report we got in July and then we got it in November?

MR. MEANEY: I'd want to see the – in the scope of work I obviously highlighted the types of reporting that MWH Canada will provide.

MR. COFFEY: Oh –

MR. MEANEY: So that's what I was referring to I would imagine.

MR. COFFEY: Though you were referring to, what, subsections of the reports?

MR. MEANEY: I –

MR. COFFEY: You were telling the assistant deputy minister for the Natural Resources for the province that Nalcor was only going to provide parts of the reports to the province?

MR. MEANEY: I'm just reading –

MR. COFFEY: Is that what you're telling the Commissioner?

MR. MEANEY: I'm reading what I said here in the email which was: "You will also see I have highlighted different sections of the IE" – scope of work – "that outline the types of reporting that MWH will provide to Canada, both in Phase 1 … and Phase 2 … As we have indicated, while the IE will be producing these reports for Canada, Nalcor as project owner (and NL as our sole shareholder) will also be able to receive copies."

So, I was, obviously, referring to whatever I highlighted in the scope of work that, I don't know if it was attached to this email or whatever the case may be.

MR. COFFEY: So you intended to convey to Mr. Stanley and to Mr. Morris here that the province was only going to provide portions.

MR. MEANEY: No, it's not what I said at all. I said I highlighted here the types of reporting that the IE was –

MR. COFFEY: Well, what types of reporting are we talking about, other than what –

MR. MEANEY: Well, yeah –

MR. COFFEY: – the type – the whole reports that the IE produced?

MR. MEANEY: Well, I think I referenced it in my email. Sorry, I said we have – you will see I've also highlighted different sections of the IE scope of work and outlined the types of reporting that MWH will provide to Canada so that – in that second sentence, that's clearly what I was referring to. Reading the email now, five, six years later, that's – I think that's what I was referring to.

MR. COFFEY: So which reports? Perhaps you can tell the Commissioner, what reports are you talking about?

MR. MEANEY: I would want to see what I highlighted in the scope of work –

MR. COFFEY: Okay.

MR. MEANEY: – because that's what I was referring to.

MR. COFFEY: Okay then.

MR. MEANEY: This was – the intent of this email was just to give folks from the province some background in terms of the work that the IE was going to be doing. And I highlighted, I guess, in the scope of work the types of reporting that they were going to be providing and said that that would be able to be provided to the province.

MR. COFFEY: Well, if we could go to page 104, please. Scroll down, please. Okay, just go up a bit again, please, so you can see that.

Okay, this is the independent engineer, attachment, Detailed Scope of Work – "Attachment 1 – Detailed Scope of Work … General Role of Independent Engineer."

Scroll down, please.

Is that the type of – that the highlighting you were talking about?

MR. MEANEY: I guess that's what I must've been referring to, yeah, the highlighting.

MR. COFFEY: So you can look at that and tell the Commissioner then, please, what reports you were telling the province that Nalcor would provide?

MR. MEANEY: (Inaudible.)

I guess we probably want to keep scrolling down there. Let's just see – sorry (inaudible).

MR. COFFEY: When you're finished that, I'm going to take you to some more of it.

MR. MEANEY: (Inaudible) okay, yeah.

MR. COFFEY: Go to page 111, please.

And this is number "5. Task 5: Review Capital Budget, Total Project Cost Estimate." Is this the type of report you're talking about?

MR. MEANEY: I think this would be one of the tasks – if we could scroll up in the document, maybe, just to see what – okay, sorry, keep going. Keep going. Keep going. Yeah, sorry, keep going. Task – oh, wait now – okay, task 4.

So I think this – sorry, just go up that one – I wanted to see the header of this section if I could.

MR. COFFEY: It's on page 105.

MR. MEANEY: Okay. Oh, sorry, here we go. So, yeah, this was – so this was just one of the many things they had to do as part of their technical review. Sorry, I just wanted to get the context for what that reference was.

MR. COFFEY: Sure. So this is the phase 1 aspect of it.

MR. MEANEY: So this – yeah, this is their technical review. And there's a number of things they had to do. So if you keep following down through the list here – you know, site visits. Slowly, sorry, if we could. Review of construction, planning the schedule. And, you know, there's various tasks listed. That's right.

MR. COFFEY: The one you highlighted is at page 111. Which is review – Task 5: Review Capital Budget.

MR. MEANEY: Yeah, I think –

MR. COFFEY: Total Project Cost Estimate.

MR. MEANEY: Sure, yeah. I think I was highlighting there what their – what – I guess this was one of their tasks that they had to review of the total project cost estimate. That was one of the tasks as part of their review.

MR. COFFEY: So to come back to your email of June 27 to Mr. Morris and Mr. Stanley, you were telling them that Nalcor would provide, presumably, the IE's report in relation to total project cost estimate as it was available.

MR. MEANEY: If we could – could we keep scrolling down through the text just to see what else was highlighted?

MR. COFFEY: You go ahead.

MR. MEANEY: Because I think what I did was here I highlighted a whole significant part of the scope of work just so the folks could see, you know, what it was that the IE's scope was. So that's probably what all these highlights here are. And then there was a task 6.

Keep going, sorry. Task review, loan documents, review pro forma, prepare independent engineer's report. Yeah. Okay, I was just seeing if there was anything else that was highlighted in the scope of work.

So I guess what I had – what I indicated there was these are the type of scopes that was gonna be – just, sorry, could you scroll back up again there one more time? Yeah, so I think this was (inaudible) – okay. (Inaudible).

Right. So I think what this outline was this was the – this would be what eventually would be the various things that they would have to put in their independent engineer report – the various – you know, the cost estimate and other matters.

MR. COFFEY: Okay.

MR. MEANEY: And this was – I think this was in reference to what would have been the inputs to the – sorry, if you keep going down again – these would have been the components that would have made up that independent engineer report that was required for financial close.

MR. COFFEY: Yes.

MR. MEANEY: Yes.

MR. COFFEY: Now, you were then – to go – to circle back to your June 27, 2013, email to Mr. Morris and Mr. Stanley – and there may be others, but certainly the two of them – you're telling them that Nalcor would provide that report – the IE report – and, in fact, you subsequently did provide one in July of 2013.

MR. MEANEY: We had –

MR. COFFEY: You just finished telling us –

MR. MEANEY: Oh yes, I mean, a specific request had come for that draft so we posted that draft to the data room.

MR. COFFEY: Okay, okay. Here's where we're going with this now, okay, so a specific request …

MR. MEANEY: (Inaudible.)

MR. COFFEY: Now, in – on – when you met on June 14, 2013 –

MR. MEANEY: Yes.

MR. COFFEY: – (inaudible) the deck, the 80-odd slides in that deck. On that day, you didn't know when the IE's report would be in.

MR. MEANEY: We must have known – I'm thinking – we had a draft – there was a draft came in March.

MR. COFFEY: Yes.

MR. MEANEY: And then –

MR. COFFEY: You knew there was gonna be another draft –

MR. MEANEY: Yes, and I think we –

MR. COFFEY: – and probably another one and another one.

MR. MEANEY: I guess we would have known at that point in time there was gonna be a draft coming in – I might have known that there would've been a draft coming in July. Maybe that was the indication we had from the IE – we're gonna get you a – the next draft in July or it's coming soon. So, I guess, I would have indicated when we get that draft, we can provide it to folks.

MR. COFFEY: Okay.

And then – that was in the meeting on June 14. June 27, you send an email saying this is the sort of the material and we will provide – in fact, you typed the sentence –

MR. MEANEY: Yeah. I think –

MR. COFFEY: – in that email of June 27. So was it the understanding when you left the meeting on June 14 that you would provide IE reports as and when they came in?

MR. MEANEY: I don't recall that discussion ever being had.

MR. COFFEY: Okay. So your position is – this is that they were only gonna get the next one – the next draft, that's it. Is that what you're telling us?

MR. MEANEY: I think there must have been, you know, and when going back through the thread of correspondence from that period, there must have been – and I think there was an email that I had said that the province was looking to get a copy of the draft report. That must have been a request that came out of that meeting. And we posted that document when we received it in the middle of July of 2014.

And I think I –

MR. COFFEY: (Inaudible.)

MR. MEANEY: Oh, sorry, go ahead.

MR. COFFEY: What I'm coming to is why didn't you send them the next time there was a draft? Why didn't you send it on to the province then?

MR. MEANEY: I don't recall why I did or didn't at that point in time. I mean, they would have had the July 2013 draft. I can't think of a reason why we did or didn't send them the subsequent drafts. I know during that period, of course, we would have been having update calls in terms of the status of the various federal loan guarantee conditions precedent and the discussion with folks from the province would have been, okay, how we doing on the status of getting that CP satisfied. I don't recall anyone ever –

MR. COFFEY: So unless they asked, you weren't going to offer, effectively? That's what you're telling the Commissioner?

MR. MEANEY: No, that's not –

MR. COFFEY: All right, well, you didn't offer, did you?

MR. MEANEY: I mean, we didn't – I think we can see – or as we discussed that we can't seem to find any correspondence to say that we did send the subsequent drafts. I think that's –

MR. COFFEY: Well, that's clear.

MR. MEANEY: Yeah.

MR. COFFEY: But you didn't offer to either, did you?

MR. MEANEY: I don't recall offering and I don't recall anyone specifically asking either so –

MR. COFFEY: So the point being that unless they specifically asked, you weren't going to offer and you weren't going to send?

MR. MEANEY: I guess if someone would have asked me for –

MR. COFFEY: That's not what I –

MR. MEANEY: – a copy – yeah –

MR. COFFEY: That's not what I asked.

MR. MEANEY: No, but if someone had asked me for it, that would have been a trigger for me to say, okay, well, I'll make sure I get that in the data room for you.

MR. COFFEY: Now Exhibit P-02175, please.

THE COMMISSIONER: Again, you can –

MR. COFFEY: It's not –

THE COMMISSIONER: – just look at the screen.

MR. COFFEY: Sorry, Commissioner, but –

THE COMMISSIONER: It's on the screen.

MR. COFFEY: Thank you.

Now, this is the – I take it that this is the email of July 12, 2013, whereby you received the July 2013 draft independent engineers report.

MR. MEANEY: That would've been, I guess, how the draft came across to us from MWH, yes.

MR. COFFEY: If we could go, please, to Exhibit P-02176, which is –

THE COMMISSIONER: Tab 6.

MR. COFFEY: – in tab 6, binder 1.

THE COMMISSIONER: It will also come up on your screen.

MR. COFFEY: Now, when we look at this – (inaudible) just a moment, please, Commissioner.

Go to, please, page 4. Now, this – go partway down the page, right there. Thank you.

This is from yourself, it's July 16, 2013, that afternoon, to Mr. Harrington, Mr. Kean, Mr. Clarke, copied to Mr. Bennett, Mr. Sturge and Mr. Warren. Subject is: Draft IE Report to Ed/NL. And Mr. Learmonth has taken you through this.

There in the second paragraph, after you refer to giving them a heads-up, you say: "Both Ed and the Province have been asking about the latest draft of MWH's IE report. Ed is wondering what some of the 'big issues' are and NL want a copy ASAP." And you've capped the ASAP.

MR. MEANEY: Shorthand for as soon as possible.

MR. COFFEY: Yes, I gather that.

"You probably recall we had committed to provide this to NL as part of that LCP Governance & Controls session held a month or so ago."

MR. MEANEY: That's that June meeting.

MR. COFFEY: Now, Sir, do you know when this was actually given – or access was provided to the Government of Newfoundland and Labrador?

MR. MEANEY: There was a – sorry, there was an email that I – where I transmitted the document to the data room. It was – sorry, what was the date of this email?

MR. COFFEY: This was June – July 16.

MR. MEANEY: It would've been right around that time. Maybe, you know, a day or two after I believe. But there was an email that I – I sent it to Meghan Felt at McInnes Cooper, and asked that she post it to the data room, and the NL user group was one of the recipients of that.

MR. COFFEY: How did you get permission to do that?

MR. MEANEY: To post it to the data room?

MR. COFFEY: Yes. How did you know that you had Ed Martin's approval to post it to the data room?

MR. MEANEY: Oh, I had – how did I know that I had Mr. Martin's approval?

MR. COFFEY: Yes. Because you kept referring – in your evidence here, you kept referring to that.

MR. MEANEY: I think when I was referring to getting approval from Mr. Martin, it would've been for information relating to project costs, project schedule or award of material contracts. That was – when I talked about it in my testimony earlier, that was what I was focusing on.

MR. COFFEY: Well, here, if we look at page 7 – I'm sorry, go back up a bit. Actually at page – I apologize, page 5. And right there, thank you.

"The one area we I could see some potential sensitivities with Ed and Province is the level of Contingency in the DG3 estimate. Below is the latest commentary in this area: …." That's there in blue.

And then if we go to page 7 – scroll down, please. There, thank you. "They" – in this context – "seem to have tempered their comments" – which presumably is MWH has tempered their comments. But the last paragraph in that email says: "Putting this report in circulation with Ed and the Province may result in a renewed discussion on contingency. Just wanted to make sure you weren't blind sided by this. Feel free to give me a call with any questions or concerns."

Now, I'll ask you again: How did you know that you had permission to put this in the data room for the province to look at? How did you know you had Mr. Martin's permission? Or did you need it?

MR. MEANEY: Yeah, in terms of, I guess what I'd talked about, getting sign off from Ed on things, it would've been on capital cost updates, schedule or major contract awards. I'm not sure this would've been –

MR. COFFEY: Well, can (inaudible) –

MR. MEANEY: – some – now, what I was highlighting here was – to the guys who, I guess, worked for Ed and who were the guys accountable for the cost estimate and the contingency – was: Guys, you know, you probably want to give Ed a heads-up that there's this commentary in the report so he's aware in the case someone from the province asks him about it. Because he would, ultimately, be the one that the province – that would be, you know, answering questions to them on capital cost estimates.

MR. COFFEY: So in this context where the IE in the July 2013 draft report was in effect at a minimum saying the contingency should be twice as high as it is – as it then currently was –

MR. MEANEY: I guess that would be if you're looking at the 12 to 18 per cent – that's where you're getting the base of that, yes.

MR. COFFEY: That – and that would, of course, drive up the capital cost.

MR. MEANEY: If you put a higher contingency amount in, yes.

MR. COFFEY: And therefore the province would get that and would realize that it was 6 per cent or thereabouts. Before the IE is saying it should be double or more. That would drive up the capital cost. Yet you were prepared – because that would affect the capital cost – you were prepared to send this to the province, give it to the province, without Mr. Martin's approval.

MR. MEANEY: I think we're kind of mixing subjects a little bit, possibly, in that I say my – but what I had talked about with Mr. Learmonth last week was: if there was an update to the capital cost, you know, in the periods that followed in terms of the ongoing development of the project, the starting point for the update to the capital cost being shared with the broader audience was always the CEO's sign-off to start sharing that information with folks. I think we're –

MR. COFFEY: Was it the starting point or the end point? I'm going to suggest to you it was the end point. It was the last thing before the province was told, because the starting point always came from the project management team.

MR. MEANEY: Within Nalcor it would've been the last point, is that your –?

MR. COFFEY: Yeah. Oh, yes. I –

MR. MEANEY: Yeah, I mean – yes. Sorry, I'm thinking I – when I say –

MR. COFFEY: The last point –

MR. MEANEY: Yeah.

MR. COFFEY: – before you would hit send or tell Ms. Felt to provide access was you wanted an assurance that Mr. Martin gave his approval. And this would have affected doubling the contingency – undoubtedly would have affected the capital cost.

MR. MEANEY: This would have been the independent engineer's commentary on the contingency. This would not have been the actual capital cost –

MR. COFFEY: Okay.

MR. MEANEY: – numbers. And I was referring to the latter.

MR. COFFEY: Now, if we go then, please, to P-01828. It's not in the material, I don't believe, in front of you.

Now, this is a document that has – on page 1 has an explanation, I gather, of what it is. And it's described in the –

MR. MEANEY: This was the –

MR. COFFEY: – second sentence –

MR. MEANEY: This was the – sorry. This was a package that the project management team I think put –

MR. COFFEY: Oh yeah.

MR. MEANEY: – together for the Inquiry, right?

MR. COFFEY: Oh yes.

MR. MEANEY: Yes, okay.

MR. COFFEY: And the second sentence reads: "July 2013 Final Forecast Cost deck presented by project team to CEO of ~$7.0 billion."

And, now, this document, after that intro, is 24 pages long. I'm gonna ask you to go to page 2, please, Madam Clerk?

Stop there. Now, this is "Lower Churchill Excomm- Contract Advisory Subcommittee." Now what's that?

MR. MEANEY: That would have been an ExCom – that would have been a committee of the ExCom, which was a group of folks from Nalcor and the project that were set up to talk about issues that were going on with the project. And if there was need for, say, coordination between corporate functions and project functions and hydro functions, this was the group where some of that discussion happened.

MR. COFFEY: What did ExCom stand for?

MR. MEANEY: Executive Committee, I believe.

MR. COFFEY: Now, this is – I gather this signifies a meeting? Or a scheduled meeting?

MR. MEANEY: That was the ExCom meeting, yes.

MR. COFFEY: "Attendance is **required**" – in this context – "for Paul Harrington." That's July 31, 2013, from 2:30 to 3:30 p.m.

MR. MEANEY: Yes.

THE COMMISSIONER: And there's a required there in the middle of the page.

MR. MEANEY: Yeah. Those are –

MR. COFFEY: On the screen.

MR. MEANEY: Yeah. Those are folks who would have been invited to the meeting.

MR. COFFEY: And I notice that the last word in the required is "Lance" which presumably is – what we see on the screen is not all the people who were invited.

MR. MEANEY: Yes. It looks like it got cut off.

MR. COFFEY: Now, you are one of those?

MR. MEANEY: Yes, in the ExCom meeting.

MR. COFFEY: Now, do you know – because if I – I could take you through this document, but when one scrolls through it – and if you could just (inaudible) – Madam Clerk, slowly, just go – scroll down. This is "Slides for tomorrow" and July 23 – just go back up – okay – 2013, 3:34 p.m.: "Gents

"Thoughts please." And this is Mr. Clarke looking for Mr. Harrington and Kean's thoughts, and he describes what he wants from them. And continue on down please. And there – right there.

"Excomm Contracts Subcommittee 24-July-2013." Go on. And you notice the first substantive slide in the deck is – begins Purpose.

MR. MEANEY: Yes.

MR. COFFEY: Keep going. And then Pertinent Points and it goes on. Keep going, please. Scroll through. All right.

There – right there. Now, page 7 is an FFC Deck, July 23, 2013. This is an email from Jason Kean to Paul Harrington. "I have updated the deck to include an additional slide re cost reduction opportunities." And we go down through it further you'll see, if we examine this, that there's a – even another version of the deck.

MR. MEANEY: Right.

MR. COFFEY: A longer version.

MR. MEANEY: Okay.

MR. COFFEY: And, now, are you in a position to say whose deck you saw?

MR. MEANEY: I didn't see this deck.

MR. COFFEY: Okay, well – so how do you know you didn't?

MR. MEANEY: Because I would have recalled a discussion prior to financial close of a presentation of $7 billion. The only figure I had prior to financial close was the 6.531.

I think that the meeting invite was for the ExCom and there was a presentation done for that. This would have been the presentation that was made by the project team to Mr. Martin – a separate discussion, separate meeting. This –

MR. COFFEY: Okay.

MR. MEANEY: This package on FFC, if this is the one where the $7 billion is outlined –

MR. COFFEY: Yeah.

MR. MEANEY: – that wasn't presented at the ExCom.

MR. COFFEY: Well, page 2 of this exhibit suggests that at least one of these decks was shown to that ExCom meeting.

MR. MEANEY: You'd have to ask the folks who put this package together why they included that invite for the ExCom. Because I know I never saw this presentation.

MR. COFFEY: Now, Sir, in particular, I'm just going to – I'll just pick a particular page because I think perhaps it's illustrative – page 18 of this exhibit. Scroll down – okay, right there, thank you.

It's titled Key Influencers on FFC and if we could just scroll up a bit please, again, to help put this in context, Mr. Meaney. (Inaudible) up further, I'm gonna go to the introductory email. Right there – this is apparently – at least in the presentation in here in the exhibit it follows July 22, 2013, 10:18 a.m. Email from Mr. Harrington to Mr. Kean. And again, go down – go back please, to page 18.

Now Sir, this – that particular diagram there – or schematic or bar chart, I suppose, technically – shows the $7 billion and how it was derived, doesn't it?

MR. MEANEY: Yes, it looks to be the case.

MR. COFFEY: And the first you heard of the – well, you've said that you never heard of the $7 billion? Not financial close.

MR. MEANEY: Correct.

MR. COFFEY: Sir, again, are you able to explain to the Commissioner how it could transpire that by – certainly by July 24, 2013, apparently Mr. Bennett and Mr. Martin knew that the FFC as illustrated there on that page in front of you, would be $7 billion, and that you would not be made aware of that?

MR. MEANEY: No, I can't explain why that happened.

MR. COFFEY: Does that suggest – or doesn't – does not that suggest that within Nalcor, you know, even at the level you occupy, being one of the primary contacts for the Government of Canada, that information wasn't only made known – if it was made known at all – on a need-to-know basis?

MR. MEANEY: In the case of capital cost information, it was provided to us once it had the, you know, the sign-off from the folks, I guess, who would have been reviewing this particular package.

MR. COFFEY: So, apparently, the project management team in July of 2013, when around the same time you are sending an independent engineer's package to the province because the province had requested it and was looking for it.

MR. MEANEY: Yes.

MR. COFFEY: At around the same time that that's going on, apparently – I don't know if it's in the same building but certainly in the same organization you're in – a fairly detailed analysis here of how the $7 billion is arrived at exists, doesn't it?

MR. MEANEY: It looks to be the case, yes.

MR. COFFEY: Can you offer any explanation at all, any – kind of, in theory, even – explanation as to what possible reason there might be for you not to be given this information?

MR. MEANEY: No, I can't.

MR. COFFEY: So, in relation to this – this existed. Mr. Learmonth asked you about this, but I'm gonna ask you as well. Do you feel that you were lied to?

MR. MEANEY: It looks like there was information that was not provided to me. The basis as to why, I don't know.

MR. COFFEY: (Inaudible.)

Do you feel that you were lied to by omission? 'Cause you can lie by omission. People can lie by omission. Do you feel that you were lied to?

MR. MEANEY: I don't know if I'd say I was lied to. I would say I wasn't provided information that certain folks had access to that said something different than what I had. I don't know if I'd call that a lie but, I mean, I wasn't – I guess I'd say I wasn't fully informed.

MR. COFFEY: And the people who did not provide the information to you knew full well that you were representing certain other information to the federal government that was different from what they had told you.

MR. MEANEY: I guess that would be the case.

MR. COFFEY: And, in fact, was different than what you were conveying to the province at the time.

MR. MEANEY: And when was –

MR. COFFEY: Well –

MR. MEANEY: – (inaudible) – when we say at which time – are we talking about –

MR. COFFEY: June, July of 2013.

MR. MEANEY: Yeah. So I mean this wouldn't have been reflected in the draft IE report that they would have received. That would be correct.

MR. COFFEY: I'll deal with this squarely. If – and, Mr. Meaney, I'll ask you to think about this carefully. At that point in time, June, July and August of 2013 – in fact, yeah, in that period of time – can you think of any way in which the province – unless Nalcor told you and therefore you could tell the province – any way that the province could have known about the $7 billion?

MR. MEANEY: I can't. That information would've had to come from Nalcor.

MR. COFFEY: That's it (inaudible).

And Nalcor, at least some segments of Nalcor, or people within Nalcor, were keeping the information even from people such as yourself, apparently.

MR. MEANEY: That's what appears to be the case.

MR. COFFEY: If we could look, please, Exhibit P-00880.

MR. MEANEY: Do I have this one?

MR. COFFEY: No. No, Sir. No, you don't.

MR. MEANEY: Okay.

MR. COFFEY: No, although it does involve an aspect of Mr. Sturge's notes.

MR. MEANEY: Okay.

MR. COFFEY: It's – this has been identified otherwise as – do you recognize the handwriting?

MR. MEANEY: Yes.

MR. COFFEY: Okay, that's Mr. Sturge's?

MR. MEANEY: I believe so, yes.

MR. COFFEY: The – on the left-hand side: LCP Cost Estimate, 9/12/13, which would be September 12, 2013.

MR. MEANEY: Okay. Yeah.

MR. COFFEY: It reads: "Ed has had multiple meetings with the project team on the status of the capital cost estimate but has not included me in any of" those, presumably – these or those. "… he clearly does not want me to know where the estimate currently sits.

"As of right now all I am" –

MR. MEANEY: Aware.

MR. COFFEY: – "aware of is that DG3 $6.2B estimate."

So as of September 12, 2013, were you in the same position that Mr. Sturge was?

MR. MEANEY: Yes.

MR. COFFEY: Did Mr. Sturge ever talk to you during that period, during August and September of 2013 – up to September –

MR. MEANEY: Yes, we –

MR. COFFEY: Well, 2013 about the fact that you didn't have any details behind the 6.2 billion?

MR. MEANEY: Yes, we would've been talking about that.

MR. COFFEY: What did you say? What did you talk about?

MR. MEANEY: We – I think, I – we spoke a bit about this in my testimony last week that we had indicated to Ed and the project team on a number of occasions during the summer that, you know, the expectation was that there's going – needed to be an updated capital cost figure for financial close. And, you know those being the folks that would be accountable for preparing that, that we didn't want to get, I guess, jammed and have something come too late so we were raising to people, listen, we need to get this information out to folks in a timely basis.

MR. COFFEY: And what was the response. Who were you talking to? Harrington, to Kean, who?

MR. MEANEY: So in those meetings there probably would've been a number of folks. Ed would have been there, Gilbert would have been there and I guess some of the gents from the project team as well; so Harrington, probably Jason, Lance. It was, you know, usual group of folks that were in part of those discussions.

MR. COFFEY: So yourself and Mr. Sturge would be sitting in meetings with Mr. Martin, Mr. Bennett, Mr. Harrington, Mr. Kean and you would be articulating what you just did then.

MR. MEANEY: Yes.

MR. COFFEY: And what would the response be? I mean, just in terms of you're not going to be very – sitting around a boardroom table, there's a bunch of you.

MR. MEANEY: Yeah.

MR. COFFEY: And what would the response be?

MR. MEANEY: I don't recall, you know, the specific conversation, but it – it may have just been, you know, we're still working on that, still discussing that with Ed. I – that would be my guess.

MR. COFFEY: Well, I'm not asking you to guess, I'm asking you what was said.

MR. MEANEY: I think, from our perspective –

MR. COFFEY: Yes.

MR. MEANEY: – I can recall we said on a number of occasions what I just conveyed to you, that, you know, the expectation is going to be we're going to need an updated, you know, capital cost estimate prior to financial close and we need to get this information sooner rather than later to folks – don't want a big, you know, jam up at the end prior to financial close.

MR. COFFEY: Mr. Sturge's – I would refer to it as a diary entry or note to file or whatever – whatever he might call it – he says there that he only noted the total figure, 6.2 billion.

MR. MEANEY: That would have been the DG3 number, yes.

MR. COFFEY: Yes.

MR. MEANEY: Yes.

MR. COFFEY: In fact you didn't even have a breakdown of that.

MR. MEANEY: We would have seen some breakdown of the 6.2 in terms of, you know, breakdown by component –

MR. COFFEY: (Inaudible.)

MR. MEANEY: – breakdown into, you know, the four or five cost buckets. Type of stuff that we'd feed into our analysis. But certainly not the detail, detail DG3 full estimate.

MR. COFFEY: So he was looking for a more detailed breakdown of the 6.2 as well as an updated FFC?

MR. MEANEY: No, I don't think that was what he was referring to in his note there.

MR. COFFEY: Okay. So you think he was referring to an updated FFC?

MR. MEANEY: Yeah. Referring to – we're looking for – right now what we know is – to be the capital cost of the project was 6.2. And, you know, looking for an update – or if there was an update to that number.

MR. COFFEY: And you kept getting assurances from – do you remember who? I mean who was telling you, look, we're working on this? Was it Mr. Harrington, Mr. Kean, Mr. Bennett?

MR. MEANEY: It was –

MR. COFFEY: Mr. Martin? Who?

MR. MEANEY: All those folks would have been in the room. I couldn't recall, you know, who might have said those words. I just knew it was under discussion.

MR. COFFEY: So yourself and Mr. Sturge and whoever else was there from the financial group would just then – the meeting would end. Did you get up and leave and wait for the next meeting to broach the same subject again? Is that what you're telling the Commissioner? That's the way this worked?

MR. MEANEY: I guess as I mentioned earlier, when the team who was accountable for developing the capital cost estimate was prepared to give that information to us, and, you know, that would require the sign-off of the CEO. They were gonna give it to us. They were aware that we were looking for it.

MR. COFFEY: Thank you, Commissioner. I appreciate it.

THE COMMISSIONER: Okay. It's close to 12:30, and I think – it seems obvious to me – unless I hear differently that Mr. Meaney is going to be a while longer – I – we have two other witnesses that are appearing today by Skype, and I'm planning on having them heard. And so I expected that we would be finished – based upon what I was sort of being advised, that we might be finished by 11:30 or so.

So to not be an inconvenience to them, we're gonna move to the SNC witnesses now and Mr. Meaney is gonna have to come back. Maybe tonight, maybe tomorrow night. Whenever we can fit him in, but before the end of the week, Mr. Meaney will be done.

So I don't – what I would like for counsel to do is just to advise Commission counsel of how long you expect you might be with Mr. Meaney so that I can figure out a good time to bring him back. And at this stage, Ms. O'Brien I think you're next with Mr. Tremblay. Do we want to start Mr. Tremblay for a half an hour now or do you want – I don't know if anybody's been in touch with him or whatever.

MS. O'BRIEN: I know he is on standby.

THE COMMISSIONER: Okay.

MS. O'BRIEN: So it's – really it's up to you whether you want to take the break – the lunch break now and start him after lunch or me begin and then take a break. I expect I'll be with – between an hour to an hour and a half on my direct with Mr. Tremblay.

THE COMMISSIONER: Okay.

And then we have Mr. Thon. So it's going to be a long day today because we're gonna finish those two before we go home. So Mr. Meaney, I'm going to get you to step down and we'll advise Mr. Simmons as to when you have to come back, but keep yourself available because it will be sometime this week.

MR. MEANEY: Okay.

THE COMMISSIONER: And it could be tonight, we'll see. And I apologize for this, but I just want to keep to my schedule now and that's it.

MR. MEANEY: I understand.

THE COMMISSIONER: Okay, thank you. You can step down.

We'll get – let's make arrangements now. We'll take a minute and get him on Skype. We'll work 'til 1 and then we'll take our break then.

CLERK: All rise.

Recess

THE COMMISSIONER: All right, I believe we have the witness available on webcast now, so we'll bring him up.

MS. O'BRIEN: Thank you.

Our witness is Jean-Daniel Tremblay who's appearing by Skype from Montreal.

THE COMMISSIONER: All right.

MS. O'BRIEN: Thank you.

Before we have the witness affirmed, Commissioner, I'd ask to have the following exhibits entered: P-02417 to P-02419, P-02421 to P-02426.

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

Mr. Tremblay, I'll ask you to be affirmed at this stage.

MR. TREMBLAY: Yes.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. TREMBLAY: I do.

CLERK: Please state your name, please.

MR. TREMBLAY: Jean-Daniel Tremblay.

CLERK: Thank you.

MS. O'BRIEN: Thank you, Mr. Tremblay.

You – just by way of introduction, I'm just going to get you to confirm that you worked on the Muskrat Falls Project as an employee of SNC-Lavalin from the summer of 2011 until the fall of 2013. Is that correct?

MR. TREMBLAY: That's correct.

MS. O'BRIEN: Okay.

And I'm just going to give a little bit of summary of the work that you did. And I understand initially you worked on the DG3 estimate reporting to Mr. Paul Lemay. And then following that, you had a position as a risk coordinator and interface manager. Is that correct?

MR. TREMBLAY: That's correct.

MS. O'BRIEN: All right.

So in a few moments we'll get back to a bit more detail of the work that you actually did, but I'm first going to ask you to give a brief overview of your education and work history prior to joining the Lower Churchill Project.

MR. TREMBLAY: I graduated in 1995. I have a construction engineering degree from the École de Technologie Supérieure. I started my career in '96 per se with a heavy civil contractor. I worked with them for about eight years. I did three major projects on – while I was there: a big pipeline job, a big highway project and also a hydroelectric diversion tunnel in 2003.

From 2005 to 2007, I worked for a consulting firm which was specialized in repairing construction claims for – mostly for major contractors. And I've been working with SNC since 2007, aside from 2010 when I was with another employer but I came back to SNC. So I've been – I started working with SNC in 2007 in the hydro division as an estimator.

MS. O'BRIEN: Okay.

MR. TREMBLAY: And I'm still at the employ of SNC, but since 2015 I am at the corporate risk and insurance group.

MS. O'BRIEN: Okay, thank you.

When you joined the Lower Churchill Project in the summer of 2011, did you work out of Montreal or did you travel and stay in St. John's?

MR. TREMBLAY: Both. My initial months, I would say, starting maybe July 2011, I did some work from Montreal. I did an initial three-day trip, well let's say, around August, and after that, I was somewhat full time for the remainder of 2012. It started about a three-week stay and then – but I – in the fall of 2012 I would say I was pretty much full time over there.

MS. O'BRIEN: Okay.

And did that continue on that way until you left in the fall of 2013?

MR. TREMBLAY: Yes, exactly.

MS. O'BRIEN: Okay.

MR. TREMBLAY: I did do some trips home every once and a while.

MS. O'BRIEN: That's fine.

MR. TREMBLAY: But I was stationed full time over there, yes.

MS. O'BRIEN: Okay.

And was Paul Lemay already in St. John's working on the DG3 estimate when you joined in the summer of 2011?

MR. TREMBLAY: Yes, he was.

MS. O'BRIEN: Okay.

So just looking at that time there when you were working on the team doing the estimate, can you give us a brief overview of what your role was on the team?

MR. TREMBLAY: An overview would be – I was there to support Paul. Paul was the actual estimator who was really structuring the estimate and making sure we had all the numbers we needed. And I would support him in all the ancillary tasks and, you know, the whole – I was coordinating the estimating team and I was also an intermediary or interfacing with the client to better understand what they needed. And I would be – I would support Paul in that manner. I would do all the activities that would allow him to be full time on the estimate and I was supporting Paul, basically.

MS. O'BRIEN: Okay. And when you're saying interfacing with the client, that means you would be interfacing with Nalcor, is that right?

MR. TREMBLAY: Yes. Yes.

MS. O'BRIEN: Okay.

And did you report directly to Mr. Lemay?

MR. TREMBLAY: Just for the duration of the DG3 estimate Paul Lemay was my report and I also interfaced with Nalcor personnel – mostly Mark Turpin – during the initial stages of the DG3 and Jason Kean also who was – well, Mark was reporting to Jason, but Jason was also, you know, discussing the project and the estimate with Jason also.

These were my main reports or interfaces –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – during the estimate period. Yes.

MS. O'BRIEN: Okay.

We heard testimony from Mr. Lemay in Phase 1. And I'm just going to summarize a portion of his testimony, Mr. Tremblay, and then see if you agree with it. But his testimony was that following the delivery that SNC-Lavalin had to deliver their DG3 estimate to Nalcor by December 15 of 2011. And that was done, that delivery was made.

And then, after that, people from the SNC estimating team were moved into a bullpen-type area on the Torbay Road office with Nalcor employees. And then further time was spent in early 2012 – up until May or June – finalizing the estimate, breaking it down by contract package and doing some fine tuning, shall we say. Is that consistent with your recollection?

MR. TREMBLAY: Yes, very much so.

MS. O'BRIEN: Okay. And were you involved in that work?

MR. TREMBLAY: You mean the first portion of 2012?

MS. O'BRIEN: Yes, working in the –

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

MR. TREMBLAY: I was still on the estimating team up to – I would say it was mid-June of 2012.

MS. O'BRIEN: Okay.

Now, there is evidence that's been put in – in one of the presentations that was delivered by the project management team that's been adduced into evidence – that Nalcor was not satisfied with the December 2015 deliverable, and the estimate itself is cited as being, in one of those presentations, incomplete and of poor quality.

Were you, at the time, aware that Nalcor – or at least some people at Nalcor felt that way about the estimate?

MR. TREMBLAY: Well, a couple of days after we did submit the estimate there was an email stating a list of deficiencies, but you got to keep in mind that this was a $6.3-billion estimate and we had 40 binders of backup information. The estimate had been reviewed by the AACE. It was given a Triple A. All our estimators were really well experienced in estimating hydroelectric.

So I don't know where – I don't agree with the poor quality aspect. The form might've been different from what they would've wished or something like that, but I don't agree with the notion that it was of poor quality. The estimate was a first principle estimate and it was consistent with industry practice in any – in every way –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – in my view.

MS. O'BRIEN: And when you just – I'm not sure if I heard you correctly or not. I thought you just said that AACE – you'd been given a Triple A rating. Can you explain – did I hear that correctly?

MR. TREMBLAY: Yes. The AACE is the American Association of Cost Engineers. There was – while we were preparing the estimate there was a review. I can't recall the name of the individuals, but they were from the AACE and they reviewed our estimate. And their conclusions was that our report was Triple A, meaning that it was structured how an estimate should be, it contained the level of details it should and it was – we had no indication at that point that anybody was dissatisfied with the estimate.

MS. O'BRIEN: Did you see this report?

MR. TREMBLAY: I don't recall seeing the report, no – just hearing the conclusions of it.

MS. O'BRIEN: Would this be John Hollmann? Is that the name that you'd be thinking of?

MR. TREMBLAY: It may be. It may be. I can't – I don't have a recollection, but it may be that it was John Hollmann, yes.

MS. O'BRIEN: Okay.

And who did – so who did you get that information from?

MR. TREMBLAY: I think it was recently during the Commission. I think at some point – was it Paul Lemay's testimony? Because the only – I listened to Paul Lemay's testimony during the Commission and I think it was related somewhere to there. I'm not sure where exactly but at the time, contemporaneously, I didn't know the name of the person (inaudible) that.

MS. O'BRIEN: Contemporaneously, have you heard that it was a – got a Triple-A rating?

MR. TREMBLAY: Yes, that – yes and the AACE and a Triple-A and it was –

MS. O'BRIEN: Okay so –

MR. TREMBLAY: – flying colours.

MS. O'BRIEN: – that's what I want to find out: Who did you hear that from? Contemporaneously, back in 2012, who did you hear that from?

MR. TREMBLAY: I'm not sure. Maybe Paul, I'm not sure.

MS. O'BRIEN: Okay.

MR. TREMBLAY: I'm not sure exactly. I couldn't name anybody specific but I know the information surfaced that it had a Triple-A rating at that time but I'm not quite sure how or who.

MS. O'BRIEN: Okay.

I'm going to get you to go to P-00860. It's tab 1, Commissioner, in the book you have before you. This is an exhibit we already reviewed with Mr. Lemay in Phase 1.

MR. TREMBLAY: Yes.

MS. O'BRIEN: I believe you should have that in front of you. Do you, Mr. Tremblay?

MR. TREMBLAY: I do.

MS. O'BRIEN: Okay.

So can you just explain to us what this is that we're seeing here?

MR. TREMBLAY: The first page would be a summary of the – where is it, December 15 – it's a summary of our estimate – oh, there it is – a summary of the estimate cost dated December 15 with a different – the first page there –

MS. O'BRIEN: Yes.

MR. TREMBLAY: – May 31, 2012, yeah. So it's a summary of the total of the capital cost.

MS. O'BRIEN: Okay.

And did you prepare this first page?

MR. TREMBLAY: I don't recall preparing it. I could but I'm not sure. It seems it may be – I'm not sure, maybe. I could have. It would be I may have prepared it but I'm not sure. I don't remember preparing it but it could have been me.

MS. O'BRIEN: Okay. So this says that the first number $4.464 billion – I'm just rounding – that was the DG3 estimate that was submitted by SNC-Lavalin –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – on December 15?

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

And then the next number here, the 4.283, this was the – is that, to the best of your knowledge, the final estimate as it was on May 31, 2012, after the work had been done in the bullpen?

MR. TREMBLAY: I really don't recall the numbers but it's stated there so, yes, it would be the estimate dated May 31, yes.

MS. O'BRIEN: Okay.

And I just want to confirm that that first – the numbers there, the 4.64, that would not include any estimate for the SOBI portion of the project, is that correct?

MR. TREMBLAY: Four point four-eight, you mean? You said 4.64. I'm not sure I'm following the same –

MS. O'BRIEN: Oh, sorry, 4.464. The first number there.

MR. TREMBLAY: Oh, it (inaudible) four in what I see, anyways. No, that would not include the SOBI, definitely not. That was not in our – that was not in the scope of our – SNC's – of our capital cost estimate.

MS. O'BRIEN: Okay.

And the last – the fourth line down: "Estimate cuts directed by Nalcor." And there's $134 million or so there. Do you have any knowledge where that number came from?

MR. TREMBLAY: Where? I don't find the estimated cuts.

MS. O'BRIEN: It's the fourth – sorry, the fifth –

MR. TREMBLAY: Okay, okay, okay.

MS. O'BRIEN: – fifth line down.

MR. TREMBLAY: It's a heading. I was looking for – okay, the heading.

May 31, (inaudible) estimate submitted, so 4.283. "Estimate total value (excluding … without Nalcor cuts." So your question is?

MS. O'BRIEN: Do you know where that number came from?

MR. TREMBLAY: It must be the sum total of all the adjustments that were made between December and May.

MS. O'BRIEN: Okay. And to your knowledge, would those – the – any adjustments between December and May, would they have been directed by Nalcor?

MR. TREMBLAY: Yes. Yes. Or you could have some instances where we would have maybe refined some cost inputs, like, let's say, for example, if we had received budget cost from subcontractors to replace assumptions that were done previously or something like that. It could be just regular – how do you say this – an estimate refining and when you increase – so some of the changes could have been from, you know, just fine tuning the estimate from – but definitely there were some cost or estimate changes that were directed by Nalcor.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So you have two types of adjustments, yes.

MS. O'BRIEN: Okay. I'm gonna go to the second page of this exhibit. Again, we've –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – looked at this page before. Can you –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – make that a little bit smaller please, Madam Clerk?

So the – we have heard evidence already from Mr. Lemay that the top portion of this page would be a printout from SNC-Lavalin's – the software system that you used to develop the estimate. Would you agree with that?

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

MR. TREMBLAY: The software is HCSS, yes.

MS. O'BRIEN: HCSS, thank you.

And the bottom part of the page is handwriting. Do you recognize that handwriting?

MR. TREMBLAY: Yes, that's my handwriting.

MS. O'BRIEN: Okay. So can you just explain to us what the purpose was of the handwriting and calculations that you put on this page?

MR. TREMBLAY: This is – actually, this was backup information that I had prepared, because, at the time, we were putting figures in – I don't recall if it was weekly or monthly reports. And at some point I had entered the – which one? (Inaudible) report – should have been – okay, so I had entered 4.3 in a weekly report, and the following report I inserted the 4.4. And this exact page was a backup I had prepared to explain the differences in the two reports. So it's just a – I was correcting a typo.

And if you look correctly, the listing at the top includes various figures, and the $137 million pertains to – one second – it pertains to support facilities, so it's just that I mixed up the lines when I – in my initial one. So this is only to correct a typo I had done in a previous report. And I corrected it in a following report and prepared this sheet here just to have a backup to explain the difference between the two reports. So –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – it's just because I used 137 which is on the – I should have used the 69 on the upper line. I just mixed up the lines and that's a – I did this just to document why there was a difference.

MS. O'BRIEN: Okay. And to your knowledge, the – on the typed portion of the page that totals the total amount of the estimate at $5,111,686,040.68, is that an accurate number totaling what the DG3 estimate was submitted by SNC-Lavalin on December 15?

MR. TREMBLAY: I'm not sure. Paul would be a better person to respond with respect to the figures. It would be – it's dated December 15. It's – but I wouldn't want to be the one to say to what extent this figure is accurate; I was not involved in the actual computation of the numbers per se.

MS. O'BRIEN: Okay. On the – your handwriting there you say: "Actual Dec. 15 Estimate without" – the – "EPCM Costs." You use that number; you back out two numbers that are on that table above associated with EPCM expenses, and then you got to the –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – the 4,464,547 et cetera number.

MR. TREMBLAY: Yes.

MS. O'BRIEN: Which is the one that appears in the first page of this exhibit as the "December 15, 2011 Estimate total value (excluding EPCM costs)."

MR. TREMBLAY: Yeah.

MS. O'BRIEN: Okay. So, based on that note, can you say whether this was the actual estimate that SNC-Lavalin submitted?

MR. TREMBLAY: Well, yes. Yes, that's what I'm saying.

MS. O'BRIEN: Okay.

MR. TREMBLAY: Don't – I'm not going to tell you if it's accurate because I did not compute, but this is what we submitted at that time. And the difference there is because we were removing the EPCM costs.

MS. O'BRIEN: Okay, thank you.

And then on the final page of this exhibit – this goes back to that 134 million that I asked you about on page 1 that's listed under estimated cuts directed by Nalcor – this page 3 of the exhibit, do you recognize this document?

MR. TREMBLAY: Yes. It's the last page of the – it's page 9 of 9, and it would be the last page of what we would – what we call the general control sheet. So this was a table that we initiated after the completion of the initial DG3 estimate.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So the December 15 estimate became our baseline. So any adjustment that we would make to the estimate following the issuance of the December 15 estimate – be it positive or negative, if we added money or removed money from the initial estimate – we would log it on the general control sheet.

Plus you have different column headings at the end that would indicate, you know, some justification why we were doing the change and everything, just to document the – you know, every change that was done to the December 15 estimate going forward.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So this would be the last page of the 9-page table, yeah.

MS. O'BRIEN: Okay. So that 134 million number is listed – that we looked at on the first page – it's listed here with the – next to it is subtotal JK's changes. Who would JK be?

MR. TREMBLAY: I don't see your subtotal JK – oh, okay. Oh there. JK is Jason Keen or Kean. Jason Keen. I'm not quite sure how you say it now. Jason Keen – I called him Jason Keen, yeah.

MS. O'BRIEN: It's Kean.

MR. TREMBLAY: From Nalcor. Kean, okay. Jason Kean from Nalcor.

MS. O'BRIEN: Okay. All right. I'm gonna bring you next to P-00861 please? Tab 3 of your book, Commissioner.

So this is a draft document. The covering email here is an email from you to Jason Kean on July 5, 2012. And it says, "Revision 02 of Basis of estimate Draft no. 2."

Can you please explain for us what this is?

MR. TREMBLAY: One of my tasks – in support of the estimate and in support of Paul – I was the one preparing the BOE – BOE is the basis of estimate document. A basis of estimate document – the purpose of – excuse me – the purpose of a basis of estimate document is to record or document the base information you're considering for your estimate – your assumptions, your hypothesis and any – if you're using labour rates, you're going to indicate what's the source of your labour rates. If you're using any figures or – it's where you write down what's the assumptions that you considered for your estimate.

So my task was to prepare this report and so this is what I did. But only in respect to the capital – the scope of the SNC capital cost estimate. So this means that we – the scope of our estimate was for Component 1, which was the powerhouse; Component 3, which was all the substations and the – every node at the end of the power line; and Component 4 was the entire transmission line.

So the basis of estimate was there to capture – basically you describe what the specific scope of every sub-item was, what were the methods that you were considering to perform the work, what are the costs that you were considering and all that. So I prepared this report and issued it, I believe it was at the same time or – I don't recall exactly when I issued it. But I issued it shortly after the completion of the estimate and the BO – the basis of estimate document that I was preparing was to be incorporated into Nalcor's overall basis of estimate, which, they would include in there the basis for the estimate of the entire hydroelectric development, including SOBI, including all their costs, the owner cost of permitting, any other cost that was outside the scope of our estimate.

So this email here which – what's the date of this? In July. So yes; so I recall doing two updates to my initial version of the basis of estimate; one earlier in the year, and that was the second and last updated version of my BOE document that I submitted to Nalcor.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So after that, Nalcor incorporated it into their own master basis of estimate. But I didn't – I was not involved after this on the basis of estimate –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – document.

MS. O'BRIEN: So what I'm understanding from you is that this document, although it's – was still in a draft form, this is the final version of your work on this document?

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

MR. TREMBLAY: Yes.

MS. O'BRIEN: And then this got submitted to Nalcor and they incorporated it into their larger basis-of-estimate document?

MR. TREMBLAY: Presumably, yes. I did not see the overall basis of estimate after that.

MS. O'BRIEN: Okay.

MR. TREMBLAY: Yeah.

MS. O'BRIEN: I believe it would have been in the exhibits that were provided to you for today.

MR. TREMBLAY: Yeah.

MS. O'BRIEN: Do you recall seeing it there?

MR. TREMBLAY: Yes, but at the time I had not seen it.

MS. O'BRIEN: I understand. Okay, you didn't see it at the time.

Commissioner, just for your information, we have looked at Nalcor's basis of estimate document previously. It's actually been – the B1 version of that has been entered into exhibit twice as P-01193 and P-00094; they're identical documents. And the B2 revision was entered as Exhibit P-00133, just for the completion of your record.

Okay, so, looking at this document, Mr. Lemay, going back to P-00861, the document that you put together, where did you get the information to go in the document? So, you know, the – it details, you know, what the assumptions were made and, you know, how the estimate was completed, shall we say, in words. Who would you have gotten the information from?

MR. TREMBLAY: Well, I could do some part of the way. There was – you know, there were – there was a fair amount of descriptive information where you would describe the scope and everything, so I did part of that. But, basically, anything I put in that report was validated by the actual estimator who had prepared the estimate.

MS. O'BRIEN: Okay, so would –

MR. TREMBLAY: So I –

MS. O'BRIEN: – that be Mr. Lemay?

MR. TREMBLAY: Mr. Lemay and other estimators that were involved in the estimating because we had a team of estimating with their own, you know, estimating discipline. The – we had one person who was a specialist in high-power transmission line estimating. We had a person that was specialized in the powerhouse. We had another person who was a specialist in stations. We had another estimating group that was more heavy civil. So we had a team – and we had mechanical electrical, so we had a team of estimating personnel.

So I would prepare a draft version of – you know, there's some information I could gather from other sources, like the description of the work and the general – generalities, but I would do a draft and the actual estimator who had performed the estimate would go over what I had prepared and input his comment and … you know.

So I was just like the person who was gathering the information from everywhere and putting it into text and it was revised by every individual estimator who had participated in the development of the estimate.

MS. O'BRIEN: Okay.

And I believe Mr. Lemay gave us some more testimony in Phase 1 about who those individual people were involved. So you would have gone to each of them to ensure that this document was accurate. Is that fair to say?

MR. TREMBLAY: Exactly.

MS. O'BRIEN: Okay.

MR. TREMBLAY: Yes, yes.

MS. O'BRIEN: All right.

And I know it's detailed here in the document itself, but I understand – just to confirm here – not only did you not do the SOBI you didn't do any estimate of the owner's costs. You didn't do any estimate of the contingency – the tactical contingency or any strategic contingency. Is that correct?

MR. TREMBLAY: Yes, that's correct, all of the above. You are correct.

MS. O'BRIEN: Okay. And also you didn't do any estimate of – for escalation either, did you? And "you" meaning SNC-Lavalin.

MR. TREMBLAY: No. Not to my knowledge. Maybe we provided support for Nalcor but it was not part of our scope to estimate those things.

MS. O'BRIEN: Okay. All right.

So I'm gonna leave any detailed questions on the estimate itself. We've already heard some from Mr. Lemay and he's coming back to give that testimony later this week. So I'm not gonna ask you anything further on the details of the estimate.

I'm gonna go now to your work as a risk coordinator and interface manager. I understand that once the DG3 estimate was complete in the late spring or summer of 2012 that you were appointed risk coordinator and interface manager. Can you just explain to us how this came about? I mean, was that a position you applied for? Or how did you come to have that new position?

MR. TREMBLAY: Well, my work with respect to the estimate was coming out of close. We had completed the DG3 estimate and coincidentally we – there was another person that was – that had the risk role within the SNC team. And I'm not quite sure what happened before I was appointed, but my recollection was that I was selected or I was deemed to be a good candidate by Jason – Jason Kean. And my general impression that it was Jason that appointed me because he was, you know, happy with the work I had done on the estimate and I was, you know, I was – how can I say this? I could communicate very easily with both Nalcor and SNC and I was, you know, a positive asset on the team.

So the – what I gather is that Jason appointed me – selected me to do the risk because of my background experience. As well I had field experience in heavy construction and heavy civil engineering. I had previous experience in claims and – so I had this profile that made me a good candidate for risk, because risk is very wide so you need a wide perspective of things. So that's how it came about.

MS. O'BRIEN: Okay.

MR. TREMBLAY: And that's how it came about. Yeah.

MS. O'BRIEN: And would you have remained reporting to Mr. – who did you report to in this role? Would – were you still reporting to Mr. Lemay? Or did your direct report change?

MR. TREMBLAY: My report changed. I was more reporting to Normand Béchard and also, you know, coordinating regularly with Jason –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – Kean.

MS. O'BRIEN: So your direct report would have been to Mr. Béchard who was with SNC-Lavalin, but you also would have been in regular contact with Mr. Kean from Nalcor. Is that correct?

MR. TREMBLAY: Correct.

MS. O'BRIEN: Okay.

And to your knowledge, was this appointment at all related to the transition from – the transition to an integrated management team as opposed to the EPCM format that Nalcor had used previously?

MR. TREMBLAY: I never made that connection before. Could have been, but it's not – I never saw that as a factor in my appointment. I was just happy to be on the project and part of the team still.

MS. O'BRIEN: Okay.

Had you ever worked in a risk coordinator-type role before?

MR. TREMBLAY: No, I hadn't. Never before.

MS. O'BRIEN: So was this your first time working directly with risk?

MR. TREMBLAY: Yes, it was.

MS. O'BRIEN: Okay.

All right, can you just tell us a little bit about what your duties as the risk coordinator and interface manager were? And, again, I don't need a lot of detail on that but just at a higher level, please?

MR. TREMBLAY: Okay. Well, at that point the scope of the project was being divided into commitment packages or contract packages, whatever, whereby you subdivide the entire scope of the project into consistent or relevant scopes so that you can give a contract to a specialized contractor. So you try to avoid mixing up disciplines to – in other words, you try to optimize the content of a contract. So that's what we called the packaging of the job.

So the process of packaging – the scope was ongoing. And once the packaging was complete, we needed to – the project team needed to prepare contract packages for each of these packages. So the procurement team was preparing the contractual language and everything.

And in the meantime, I was conducting workshops with the subject matter experts that were assigned to the package. And the intent was to elicit or, you know, make surface any risk that we could anticipate but much more on a technical standpoint. I'm a technical person, I'm a technical engineer so I would discuss the technical aspects of the packages and we would try to, you know, surface more – or elicit, if you want, the risks that we should have on our radar.

And after that I would prepare what I would call a table which was a risk inventory. And that would define the actual technical risks that we should look out for. Some mitigation measures that were developed and proposed by the project team. And this was in turn submitted to the procurement team, which could take this and make sure that when they're developing their contract packages for – in preparation for the RFP package that would go to market, so they would incorporate the risk information. It was, you know, the qualitative risk information that we provided through our workshop to ensure that the contractual language would be consistent with the risk we had identified. So that was one portion.

Furthermore, once the contract package was ready, there was also a risk questionnaire that was included in the contract packages when it went out for bid. So – excuse me – so a version of that questionnaire had been prepared previously by my predecessor. So this questionnaire was adapted, you know, as needed for specific packages. So I would prepare the questionnaire prior to the RFP going to market.

And when the bidders would return the bids, they returned all three completed risk questionnaire and then I would evaluate this questionnaire and comment the responses of the individual bidders. I would prepare a table, a comparative table of the bidders' responses to the risk questionnaire, and submit this to the procurement team so it would supply some – my evaluation on a risk questionnaire perspective to the procurement team in order to support them in the – in their decision process to decide who to award the contract to.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So that's pretty much the – in essence what – the time I was there, that was the gist of it.

MS. O'BRIEN: Okay.

You just mentioned your predecessor. Who was that?

MR. TREMBLAY: My predecessor was a gentleman that was named Yuri Raydugin. He was a – it's a Russian name, so Yuri Raydugin, I think it's R-A-Y-D-U-G-I-N.

MS. O'BRIEN: Okay. And he was also SNC-Lavalin?

MR. TREMBLAY: At the time, yes, he was.

MS. O'BRIEN: Okay.

Can you please look at Exhibit P-02426, please? Tab 13, Commissioner.

You did mention about how you were doing a regular risk inventory. This exhibit, when you get to it – here it is. It is a – the covering email here, this is just an example of one, but this is a covering email from you to Carlos Fernandez where you're submitted a "1207 monthly Risk Report." And what we see here is it's a report – I'm just scrolling through it quickly – but it talks about various risks and then we get some – a bit of a heat map on the end here, you know, rank listing of risks and rating of them as high, medium or low, et cetera.

Is that what you're referring to when you talk about keeping track of a monthly risk inventory? Or is this something different?

MR. TREMBLAY: Well, yes and no.

What you're seeing is the July 2012 update to the monthly report. The monthly report was subdivided into multiple relevant sections. There was a cost control, an engineering and risk manager, among others. And so this was an update to a previously prepared report. Yuri was – my predecessor was preparing the risk portion of the monthly report. So I inherited those tasks as well. That's another thing I was doing.

So the – you have two things in there. The text portion is what – you know, it's a descriptive of what happened during the monthly period and the heat map is the overall risk register that was performed prior to my involvement by Yuri and the Nalcor team and the whole project team. So that listing there is an exercise that was performed before I got there. And what I would update in that report was mostly the text part. If you look at the bullet points – if you look at the bullet points above the heat map, those are the things that I would really update every month. And that would reflect, you know, if we had done workshops on such and such commitment package or what risk activity was done during that month, I would update it there.

But the heat maps below, I rarely, if ever, updated it because we did not do a general risk assessment as – the initial exercise that was done by Yuri prior to my arriving on – in this role was not revisited or re-performed while I was there at that time.

MS. O'BRIEN: Okay. All right.

So – and what I'm understanding is this monthly risk report piece that you were doing, that was in addition to the risk inventory that you were maintaining, although, there may be some overlap between the information on each. Is that correct?

MR. TREMBLAY: Overlap on each what – you mean my risk inventory versus the heat maps there?

MS. O'BRIEN: Yes.

MR. TREMBLAY: There could be some overlap, yes.

MS. O'BRIEN: Okay.

MR. TREMBLAY: If the risks are the same. But the heat map there encompasses enterprise risk, you know, stuff that we – that I would not address, like permitting or a land acquisition or stuff like that. It's higher level, if you want. So I was more focused on the scope of a given package – of a given work package.

MS. O'BRIEN: Okay.

THE COMMISSIONER: So might this be a good place to take our break, then?

MS. O'BRIEN: It is.

THE COMMISSIONER: So, Mr. Tremblay, it's –

MR. TREMBLAY: Yes.

THE COMMISSIONER: – Commissioner LeBlanc speaking at this stage. I apologize for keeping you waiting this morning. Things have not going – gone according to schedule.

But we're about to take our break, it's now 1:15 here in Newfoundland.

MR. TREMBLAY: Okay.

THE COMMISSIONER: So we'll be coming back at 2:15, in an hour's time. So you'll join us, we'll connect you – with you again and you'll complete your testimony when we come back at 2:15 our time, which, I guess, is quarter to 1 your time.

MR. TREMBLAY: Okay. Perfect.

THE COMMISSIONER: All right.

Thank you very much.

MR. TREMBLAY: (Inaudible.)

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Ms. O'Brien, when you're ready.

MS. O'BRIEN: Thank you.

I'm just waiting for Mr. Tremblay to come back on the screen.

Great, thank you, Mr. Tremblay.

We'll continue with your evidence. You remain under affirmation.

We have spent a considerable time at the Inquiry to date examining the QRA that Nalcor did in 2012 with respect to the DG3 estimate. And so this is a qualitative risk analysis that Nalcor did. Did you have any involvement in that QRA?

MR. TREMBLAY: You mean quantitative risk assessment, right?

MS. O'BRIEN: Well, I believe the – the word –

MR. TREMBLAY: Because you said qualitative.

MS. O'BRIEN: I did say qualitative. I purposely said qualitative.

MR. TREMBLAY: Okay.

MS. O'BRIEN: It was – I do believe it was referred to as a qualitative risk analysis, but I do know Nalcor has used QRA to mean both quantitative or qualitative. I'll bring it up on the screen here; it's Exhibit P-00130.

And this was work that was facilitated by Westney Consulting. Are you familiar with this? I know we talked about it briefly in your interview.

MR. TREMBLAY: I'm looking for the exhibit you're referring to.

MS. O'BRIEN: It may not be in your binder but it's – I have it up here. I'm just to get the title, it's: Decision Gate 3 Project Cost and Schedule Risk Analysis Report. And Westney Consulting assisted Nalcor in doing some Monte Carlo simulations and such to support the QRA piece of this work.

Do you recall what I'm talking about now?

MR. TREMBLAY: Well, I see it on the screen but I had no involvement in the production of that report.

MS. O'BRIEN: Okay.

And the evidence we have is that Nalcor held risk workshops to facilitate this QRA in May of 2012, specifically on May 23 and 24 of 2012. We know that there were SNC-Lavalin people there at the workshops. Did you attend the workshops?

MR. TREMBLAY: No, I did not.

MS. O'BRIEN: Okay.

So the – I think the actual sign-in sheets for those workshops are here. And I did check, you're not on the sign-on sheets but, for example, I know that Normand Béchard was and there may be others from SNC as well. Were you aware that that work was going on at the time?

MR. TREMBLAY: In May 2012? No.

MS. O'BRIEN: Okay.

I'm just curious. As the risk coordinator, one might have expected that you would have been included in workshops addressing risk, which is what I understand these were. Do you have any knowledge or explanation as to why you were not included?

MR. TREMBLAY: Well, you referred to May 2012. At that time I was not the risk coordinator in May 2012.

MS. O'BRIEN: Understood. So you were just on the estimating support team. So that may be the explanation.

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay, so you weren't there at that time. Okay.

And when you talked about the work that you did with respect to risk – I believe you said this but I just want to confirm. When you were doing your risk inventories and looking at, say, the technical risks that would be associated with various scopes of work, am I understanding correctly, you did a quantitative analysis, not a qualitative analysis?

MR. TREMBLAY: The opposite. The opposite – it was more qualitative than quantitative.

MS. O'BRIEN: Oh. I'm sorry. Okay. Yeah. So you did a –

MR. TREMBLAY: Yeah.

MS. O'BRIEN: – qualitative. Okay. So no numbers involved.

MR. TREMBLAY: No. We didn't get there, no.

MS. O'BRIEN: I'm going to bring up another exhibit. This is in your book, it's P-02422, tab 5, please, Commissioner.

This is an email chain there, you – primarily between you and Mr. Kean on – in January 23, 2013. And there's discussion here – I'm just going to scroll down to the bottom. You are writing to Mr. Kean and you're talking about bringing in Ric Cox to attend a risk review.

Can you just tell us what was going on here?

MR. TREMBLAY: Okay. Well, as I've mentioned earlier, there was a global risk register that had been performed before I was appointed the coordinator and, ultimately, what I was working on with Jason here was to update this risk register, the overall risk register, with – which would have involved the – well, included the involvement of a Nalcor executives and the people who were there – the risk owners that were initially there in the original workshop that led to the preparation of the initial overall risk register. And to support me in this task, I had discussed it with Jason, and I had proposed that we involve Ric Cox, which is a SNC person, which worked at the corporate risk function.

So I was coordinating with Jason how we could, in a – have Ric Cox come to Newfoundland and help us conduct these workshops in an effort to update the overall risk register. So that's the gist of it, that I had – I was a coordinating here the – when Mr. Cox would be available and what his role would be. And Jason was initially in agreement with this approach.

MS. O'BRIEN: Okay.

And I think that's indicated here: "As discussed today, I agree."

You just said –

MR. TREMBLAY: Yeah.

MS. O'BRIEN: You just used the word "initially" – Mr. Kean was initially in agreement. Did –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – did that change over time?

MR. TREMBLAY: Well, ultimately, the risk workshop for the overall risk register involving Ric Cox and myself ultimately that did not occur because – I don't recall when exactly, but in the following weeks of this email, Jason told me that they had elected to go forward with that exercise, but with the help of Westney instead of me and Mr. Cox.

MS. O'BRIEN: Okay. Thank you.

I'm just going to talk to you – ask you a few questions about the change to the integrated management team. Were you aware in 2012 or early 2013 that Nalcor was changing SNC-Lavalin's role from an EPCM role and transitioning to an integrated management team?

MR. TREMBLAY: Yes, I was aware like pretty much everybody else. Yes.

MS. O'BRIEN: Okay.

And if I could get your comment on – did that transition affect how your day-to-day work was carried on? Or what effect, if any, did that transition have on you personally?

MR. TREMBLAY: On me, personally, not much because from day one I was, you know, an intermediary between Nalcor and SNC and I was interfacing closely with all the personnel on the site. So for me, personally, that's my personal experience in terms of my day-to-day work.

It was – it did not have an impact on me although, of course, it was a change in a sense that SNC would become – would no longer be the EPCM. And so there was some, you know, people were – morale was affected because it wasn't clear where – what was going to happen and everything.

But on a day-to-day basis for myself, I can't say that it was such a big change because I was already fully integrated and on both sides myself.

MS. O'BRIEN: Okay.

The evidence we've had that – is that Nalcor decided to make that transition because, you know, to summarize, poor performance by SNC-Lavalin in the EPCM role, and there's been a fair bit of evidence on what complaints that Nalcor had with respect to the work that was being done by SNC-Lavalin.

You were there. Did you – what was your – were you aware – was it evident to you that there was – that SNC-Lavalin was having – was struggling in its performance of its contract?

MR. TREMBLAY: I would say that one of the main issues from the onset was not – I wouldn't say it was performing the contract. There was, from the onset, a difference in perspective with respect to the work to be done and how it should be done.

I detected that straightforward because it was a question of – well, the way I coined the difficulties between SNC and Nalcor is – I would say it was – I would use the term, maybe it was like a – a paradigm dissonance because most of the Nalcor team were very, very intelligent, bright people that had lots of experience in the oil and gas industry. Whereas the entire SNC team, we were, you know, very good people but we had experience mostly in hydroelectric, which is mainly heavy civil contracting, heavy civil construction.

So these are two different industries completely and there are some different – you know, strict differences in the way you name things, in the contracting approaches, in the technical terms and there's a difference also in how you – how can I say this? There's a difference with respect to how you deal with uncertainty.

Because in the industrial and manufacturing sector you have a certain element of, you know, reproducibility because if you do the same thing more often, you can get a sense of where you're going. But in the heavy civil, and especially in hydroelectric, you never have the same project twice because you're adapting the entire project to a river, so everything is a first of a kind in hydroelectric.

So I think there was – it was a – there were difficulties to have – to understand ourselves in the same language, if you want, and in the same technical language because we had different terms for different things. And we would be comfortable with certain aspects of things and then Nalcor was – they weren't – they didn't feel the same because we should do this in that way. So the approach was – there was a difficulty in aligning the approaches and how we go about things.

So I think that's one of the main reason where all the difficulties came from because, you know, it's two different animals. The oil and gas industry has their way of doing things and the heavy civil – and especially hydro – have their own way of doing things. And on the Nalcor side there were very few people who had extensive experience in hydro, and on the SNC side we had very little people who had extensive experience in oil and gas.

So an example I remember, once we had an estimate review and the question came up about the scaffolding. And Nalcor was uncomfortable because in the estimate we had – we didn't have a line item for scaffolding and that was interpreted as us being incompetent because we don't include scaffolding in our estimate. Well, in an oil and gas project, when you're building a very big piping job, you spend a great deal of time and money, you know, erecting and disassembling scaffolding, moving them and taking them down. So the scaffolding is a big cost item in those industrial projects, whereas in a heavy civil job where you're moving, you know, hundreds of thousands of cubic metres of material and pouring concrete, scaffolding is a very, very small item and it's ancillary. So we – that – it just – that's just an example to illustrate where we were coming from.

Two – we had two different lenses on how to go forward, and I think Nalcor was really surprised by the fact that we weren't speaking the oil and gas language. So that's a big part of the difficulties we had in having this – the team integrate in a more optimal way. And this goes, as well, to, you know, the – we usually speak of commissioning only, and they have mechanical completion and commissioning because in the oil and gas industry, it's mainly mechanical engineering, and us, it's mainly heavy civil. So you don't have – mechanical completion does not – you know, does not resonate in the heavy civil work. So when you say that – what do you mean by mechanical completion, Nalcor would be, what do you mean you don't know what mechanical completion?

Or, an example, the first time I was told we will need all P&IDs, so – and I asked them, what's a P&ID? Because I'm a heavy civil construction, and P&ID is a process and instrumentation diagram. I mean, unless you're doing something that requires instrumentation and everything – you have some in the powerhouse, but that's a mechanical engineering strictly; it has nothing to do with heavy civil. So when you say you don't know what a P&ID, they – Nalcor would interpret that as being: These guys, they don't know anything, they don't know that they're talking about.

So in my mind, that's one of the major issues on the project is the fact that you had two groups coming from different avenues having very different perspective on how to organize and develop a megaproject.

MS. O'BRIEN: Okay. Thank you.

I'm gonna ask to bring up Exhibit P-02423, please. Tab 6 of your book, Commissioner.

Mr. Tremblay, you and I have discussed this email previously in the interview. What this is, is – it is a report of a meeting that was held on February 5, 2013. And that was really an information session that was held with – jointly with Nalcor people, SNC-Lavalin people, and to give people working from both groups some information about the transition to the integrated management team.

I understand that you were at that meeting. Is that correct?

MR. TREMBLAY: Yes, that's correct. Contrary to our interview – I said I wasn't, but upon further reading and reflection and reading the transcript, I realized that this was the – some sort of a town hall or something, like you mentioned. So, yes, I was there. I don't – I know I was there, I don't remember much, but I know I was there.

MS. O'BRIEN: Okay. Well, I just wanna put the – on page 2 here, we see a bit of the description, and I'm not gonna go through all of it, but I wanted to read –

MR. TREMBLAY: Yeah.

MS. O'BRIEN: – out a little bit here. I'm gonna – starting at the – it's the second full paragraph from the bottom. And I'm gonna start partway through the – actually, I'll start at the beginning of the paragraph. And this is, I should note, Bert Peach who's writing this. Do you know Mr. Peach?

MR. TREMBLAY: No, I do not.

MS. O'BRIEN: Okay. I understand he was with Bae-Newplan Group, which was affiliated with SNC Lavalin Inc.

MR. TREMBLAY: Yes, in St. John's. Yes.

MS. O'BRIEN: Okay.

MR. TREMBLAY: But I don't know this gentleman.

MS. O'BRIEN: Okay.

He wrote: "After the meeting I spoke with several of the people in attendance, both from SNC-Lavalin and Nalcor. I sense … there is dissatisfaction among the staff about the way the project has been organized and has progressed to date. There is a degree of distrust of the senior management group and their attitude toward the staff reporting to them. Many of the SLI folks feel they are being pushed aside and their opinions are not being listened too. Even some of the Nalcor staff are frustrated with the bureaucracy of the organization and how difficult it is to get things done. There were questions raised about the level of expertise of the construction management team and whether the people being chosen for the site organization will be able to deliver the project in the long term. Looking at the three components of the project, the Transmission Lines appears to be progressing well in the opinion of most people. Progress is not as rosy on the other components."

So now I know – I don't know if you – you may not have been one of the people he spoke to, but you were there and I wanted to get a sense of whether this report resonates with you. Or did you have a different perspective than what's being reported here by Mr. Peach?

MR. TREMBLAY: Mr. Peach has a fairly accurate description of the ambiance, the atmosphere at that time. There was a big – everybody was pretty – I think it reflects pretty accurately what the mindset of most of the people was at that time.

The integration and a – it was a Nalcor takeover and SNC was kind of pushed aside. Absolutely, that's the general feeling and everybody was: Okay, Nalcor has the authority and we just have to do what they want, and that's it. No. I would agree with the representation made by Mr. Peach here. It's pretty accurate, yes.

MS. O'BRIEN: Okay.

One other area I just wanted to briefly touch upon. Did you have any involvement with – in the schedule development for the Lower Churchill Project?

MR. TREMBLAY: No, I did not.

MS. O'BRIEN: Do you recall if there were any issues or concerns about the schedule that was being used?

MR. TREMBLAY: The schedule in – you know, my feeling, my perception was the schedule is an ongoing issue. There was always an issue with the schedule because it wasn't clear who was in charge of the schedule, and everybody was looking for the schedule, the schedule was always in progress, and there was a lot of – I wasn't part of these discussions, but it was a topic that went around a lot and the schedule was definitely an issue throughout the project.

It was never available to anybody, really, because everybody was always working it, so it's kind of like – it was strange. It was not a – usually a schedule is a tool to help you plan your project, and, you know, it evolves as you plan around it, but the schedule was one thing and a group of people were working on it, and everything. But it was not really easily – I didn't really – requested it, but what I heard was that the schedule is an ongoing issue, yes.

MS. O'BRIEN: Okay.

And would that have been consistent throughout your time on the Lower Churchill Project? I know you left in the fall of 2013.

MR. TREMBLAY: Well, the time I was there, yeah. The schedule was kind of a saga, if you want. It was always an issue.

MS. O'BRIEN: Okay.

MR. TREMBLAY: Availability, readiness – it was not available and it was complicated. It seemed that it was very complicated, everything surrounding the schedule.

MS. O'BRIEN: Okay.

All right. Thank you.

I'm gonna now take you to two exhibits in fairly quick succession. The first one is P-02424 and then I'll go to P-02425.

Commissioner, P-02424 is found at tab 7.

MR. TREMBLAY: Okay.

MS. O'BRIEN: So this is an email here. It's coming from Normand Béchard to Scott Thon, who we'll be hearing from soon, Bernard Gagné, Serge Guerette and you –

MR. TREMBLAY: Yes.

MS. O'BRIEN: And it says: "Hi Scott and Bernard

"Here is a 1st draft of the report that we will discuss Tuesday morning on the conference call."

And I'll just do a quick scroll through here so you can get a sense. So this is a first draft of what has become known as the SNC risk report –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – and this email's dated April 21, 2013. And then if you go to tab 2 – or, sorry, Exhibit P-02425. And that's at tab 9, Commissioner, for you.

Here we have further – this – the email's dated May 21, 2013. You're not actually on this email, but I understand it – the covering email is from Michel Mackey and – or Mackay – and it says: "Good morning,

"Here's the final report concerning the potential exposure of Lower Churchill project." And: "The task force appointed made a high level risk assessment spending a week to perform a quantitative risk assessment estimated at 2.4 billion CDN. Lower Churchill is a high profile project; for the local community, the provincial and federal governments.

"Please sign the first page at your convenience."

And Mr. Mackay is sending this to Mr. Scott Thon, who we will be hearing from later on today. And here we have what is, by our records, the latest and final version of the report that we've been able to find.

So that was just by way of introduction, Mr. Tremblay. I'd like you to please tell us about your involvement with this report. To your knowledge, how did it come about?

MR. TREMBLAY: My knowledge of this report came through Normand Béchard. Normand Béchard approached me at April of that year. This is – the email was dated April (inaudible). That fits – it was in April of 2013, and he told me that he had been requested to produce a risk assessment report with people from the Montreal SNC office. And, you know, he asked me to support him in that task.

So what happened is that there was a workshop that was organized. I was in Newfoundland with Normand. I don't recall anybody else – there may have been, but I don't recall – in Newfoundland who – I'm not even sure if there was anybody else. But on the other end, it was – in Montreal – it was a Skype workshop. At the other end there was a group from Montreal. I knew Michel Mackay, but the other people I didn't really know. And we did a workshop via Skype.

And my role in there was I was what you would call the scribe. I would capture, take notes about the discussions when they were identifying risks and everything. So I took notes for the preparation of the risk register that is attached to the report. After the workshop, what I did is I – you know, I further fine-tuned the wording because it was more in note form. But I fine-tuned the wording on the risk register and I provided it to Normand the following day, I think, in my final version of the risk register. And this, in turn, was submitted to Michel Mackay who completed the actual report.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So that's the essence of my involvement.

MS. O'BRIEN: Okay.

I'm going to just ask Madam Clerk to go to page 1, 5 – 15. So I believe – is this – if you go to page 15 of that exhibit, Mr. Tremblay, and –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – sort of scroll through the subsequent pages, is this the –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – risk register that you're talking about?

MR. TREMBLAY: Yes, it is.

MS. O'BRIEN: Okay. So you primarily put that document together, is that correct?

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

Was there anyone in this – in the workshop or involved in producing this document – was there anyone from Nalcor involved?

MR. TREMBLAY: No. It was an internal document requested by SNC executives and performed by SNC personnel and it was at the cost of SNC only.

MS. O'BRIEN: Okay. So, to your knowledge, there was nobody from Nalcor involved throughout the process?

MR. TREMBLAY: There was nobody from Nalcor –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – that's – yes.

MS. O'BRIEN: Okay. So when we look back at those people who were on the email chains and such, they'd all be people who are within SNC-Lavalin, is that right?

MR. TREMBLAY: Correct.

MS. O'BRIEN: Okay.

When you were doing this work, you know, can you give me a sense of how long it took to get this work done? Do the workshops, compile the work and, kind of, get through to the final report. I know we're seeing it's – this – the final email there is dated some time in May. If we go to page 1, please, Madam Clerk.

MR. TREMBLAY: On my part, it was – well, we had the workshop. I think, we did that from 5 to 7 say, and I spent the better part of the following night, I think – I'm not quite sure if it's the day after the workshop or the following day that I completed the risk register. But I turned around a day or two for the production of the risk register.

MS. O'BRIEN: Okay.

MR. TREMBLAY: And after that I'm not sure. I wasn't part of the preparation of the other – you know, of the actual word report there. So I'm not quite clear on how much time that took, but it was not months. It was a week or two at the most. But I don't know exactly.

MS. O'BRIEN: Okay.

And did you have any involvement in doing the quantitative work? In other words, putting dollar values to some of these risks or was that done by other people within SNC-Lavalin?

MR. TREMBLAY: That was done by the team in Montreal that were preparing the workshop. That were – we were discussing – yeah.

MS. O'BRIEN: Okay.

And who is Michel Mackay or Mackay?

MR. TREMBLAY: Michel Mackay is – at the time, he was the risk manager for the Mining & Metallurgy division – SNC division.

MS. O'BRIEN: Okay. Do you know why he was involved?

MR. TREMBLAY: I'm not sure because he was one of the good – I think we were – SNC was seeking the involvement of M and M and so they wanted to have a better understanding of the project risks. So their risk person was Michel MacKay so …

MS. O'BRIEN: Okay.

MR. TREMBLAY: But that's my understanding of it.

MS. O'BRIEN: Now, while you were doing this work did you discuss it with anyone from Nalcor?

MR. TREMBLAY: No, I would not have because it was an SNC report requested by executives from corporate so … you know.

MS. O'BRIEN: But it was an SNC report being done on a Nalcor project. You would have been in daily contact with Jason Kean and other people from Nalcor. So why would you, you know, have not let them know that the work was ongoing?

MR. TREMBLAY: I can't say if it was an explicit request but the feeling I had was that it was not to be discussed with Nalcor because it was an internal document. We did the workshop after hours from five to seven and it was an internal report for internal purposes. That was my understanding of it.

MS. O'BRIEN: And who did you get that understanding from?

MR. TREMBLAY: That would have been Normand, Normand Béchard.

MS. O'BRIEN: Okay.

I'd like to bring up P-01837, tab 11 for you, Commissioner.

Mr. Tremblay, I understand that what we have here is – I'm just scrolling down a bit. This is a calendar invite from Paul Harrington to you and to Normand Béchard.

It's – the calendar invite is for May 28, 2013, and the description here is down here. It says: "I would like to know if there are any risks identified by SLI that are not already on the LCP Risk register and to understand the recent work carried out by SLI regarding LCP Risks."

So did you receive this invite from Mr. Harrington?

MR. TREMBLAY: Yes, I did.

MS. O'BRIEN: Okay, what was your reaction when you got the invite?

MR. TREMBLAY: Well, my immediate reaction was that it must be related to the risk report that we did on our side, because there's no reason why Mr. Harrington would have – send a meeting request to myself and Normand at the same time for any other reason because my role did not involve, you know, meeting with Paul Harrington on a regular basis.

So I knew that the – from then on that the reason for the meeting was to discuss this report. So, immediately, my sense was that he had seen the report and wanted to discuss it, so …

MS. O'BRIEN: Okay.

Did you attend the meeting?

MR. TREMBLAY: Yes, I did.

MS. O'BRIEN: And were just the three of you there: you, Mr. Béchard and Mr. Harrington?

MR. TREMBLAY: That's correct.

MS. O'BRIEN: Okay.

And where did the meeting take place?

MR. TREMBLAY: In Paul Harrington's office.

MS. O'BRIEN: Okay.

And I understand you took notes of that meeting?

MR. TREMBLAY: I did.

MS. O'BRIEN: Okay. They've been entered as Exhibit P-01836, please, Madam Clerk, tab 12, Commissioner.

So, Mr. Tremblay, I'd like you to go over in some detail whatever you can remember of that meeting. And please feel free, as you're giving us that description, to refer to your notes.

MR. TREMBLAY: Well, the meeting was in his office. It was – it's indicated there from 4:30 to 5:30 on that day. So there was no agenda per se. There was a brief safety moment from Mr. Harrington.

And Mr. Harrington told us that he had met with Ed Martin, who had met Bob Card. So I believe Bob Card was the one who had asked us to prepare the risk report in the first place.

MS. O'BRIEN: And he was –

MR. TREMBLAY: So risk work –

MS. O'BRIEN: Sorry, Bob Card was – what was his position at SNC-Lavalin?

MR. TREMBLAY: At the time he was the CEO of SNC-Lavalin.

MS. O'BRIEN: Okay, thank you.

MR. TREMBLAY: So: "Risk work performed by SLI – What's the deal?" So that's my notes there, my hand notes, but he was – he asked us a number of questions to have a better understanding of our report such as, you know: Where did your data come from, you know, why weren't we involved and the like.

And, you know, it was made pretty clear to me, anyways, that he had – you know, my impression during the meeting was that he had seen the report, he was not happy with the report. And at some point he mentioned the notion of the ATIPP thing, the access to information. That if that report got out that could be a concern if that report became public.

So, in essence, the message that I got out of that meeting was that the report we had prepared never existed. He didn't want that report to exist. So, I was pretty shaken by the meeting and I had a distinct feeling that what we had done was not to the liking of Nalcor.

So, in essence, that was pretty much the message in that meeting that, you know …

MS. O'BRIEN: What was Mr. Harrington's tone during the meeting?

MR. TREMBLAY: Well, he was very composed, but you could still detect that he didn't – he wasn't happy with the fact that we had prepared this report.

MS. O'BRIEN: Okay.

I'm just gonna go over some of the notes and just get a little more detail. So it says here: "Risk work performed by SLI – What's the deal?" So would that have been a question that mister – were you recording what Mr. Harrington was – the question –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – he was putting to you?

Okay.

MR. TREMBLAY: Yes.

MS. O'BRIEN: And then here we see NB – would that be Mr. Normand Béchard?

MR. TREMBLAY: Precisely, yes.

MS. O'BRIEN: Okay. So can you just interpret what you're saying here in this section of the notes?

MR. TREMBLAY: So Normand explained to Paul Harrington that, in light of the transition from the – IT is the – from EPCM to integrated team, as "M&M" – was – "involved to conduct a risk assessment" at the request of SNC executives. So the "report issued currently" – yeah, so the report is "issued currently in Hydro top mgt." Paid for by SNC. Initiated following meeting – in Montreal. M&M condition – so the "M&M condition for supporting LCP is conducting the risk assessment."

So there was –

MS. O'BRIEN: Okay, so M&M is mines and metallurgy division of –

MR. TREMBLAY: Yeah.

MS. O'BRIEN: – SNC-Lavalin? And when you wrote here: "Report issued currently in Hydro top mgt." What is Hydro top management?

MR. TREMBLAY: Well, Hydro refers to the SNC Hydro division. And top management, at the time, I'm not quite sure who it might be, but it was the top management of Hydro or SNC. I'm not quite sure. It's a figure of speech there.

MS. O'BRIEN: Okay, that's fine.

MR. TREMBLAY: I'm not quite sure.

MS. O'BRIEN: I just –

MR. TREMBLAY: Yeah.

MS. O'BRIEN: – wanted to clarify you weren't talking about Newfoundland and Labrador Hydro, for example.

MR. TREMBLAY: No, no, no, no, no. It was – Hydro means SNC Hydro. Yes, yes.

MS. O'BRIEN: And the next note down continues "PH." So is this something that Mr. Harrington would be saying?

MR. TREMBLAY: Exactly. "Westney involved in" – qualitative – I wrote "qualitive." I'm not sure – it's quantitative – this is a typo when I was writing quickly and it's quantitative. Quantitative assessment "followed by quantitative and Monte Carlo." Oh, no, it's qualitative. Yeah, followed by qualitative and Monte Carlo. So he's referring to Westney having done a similar exercise, so.

MS. O'BRIEN: Okay.

And –

MR. TREMBLAY: (Inaudible.)

MS. O'BRIEN: – the next section here: "Develop Contingency." Just explain what you're referring to there?

MR. TREMBLAY: Well, that's the – what – a continuance of what Paul was saying there, that the purpose of the Westney, I believe, would be that it was: "Develop Contingency; Held by Project Director; Contingent equity." I don't remember exactly, but it must be Paul continuing his explanation as to why Westney did the previous report.

MS. O'BRIEN: Okay. And then I'm just gonna scroll down to the next page. So then – I think that says "Concerns," does it?

MR. TREMBLAY: Yes.

MS. O'BRIEN: And are these concerns that were being expressed by Mr. Harrington?

MR. TREMBLAY: Yup.

MS. O'BRIEN: Can you just –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – go over those, just maybe read out your notes and give us the explanation?

MR. TREMBLAY: "SLI conducted without LCP knowledge. Had they known." So this means had they known they would have prevented us from doing it or they would have requested to be part of it or I don't know.

"2 – Sensitivity of data" – that's the ATIPP thing – "Could be subject to an ATTIP – Access to Information Protocol." So that was what I detected as one of the big concerns – he didn't want the report to come out.

"Need to know what the new risks identified."

MS. O'BRIEN: Okay.

MR. TREMBLAY: So.

MS. O'BRIEN: And what did you understand that – he was asking to know what new risks identified. What was he referring to?

MR. TREMBLAY: Well, if our report contained any new risks that were not already identified –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – in the previous one.

MS. O'BRIEN: Okay.

Then, please go on. It says: "Financial close in" – the – "fall of 2013." Can you read what's below that?

MR. TREMBLAY: "Will need to demonstrate we have updated action; Provide assessment of status of Risk Reg soon to PH; Desired state; Current state; How to get there. Finish."

MS. O'BRIEN: Okay. So what is your recall of what you meant by those notes?

MR. TREMBLAY: That was Paul Harrington speaking. So he was requesting us to provide updated risks – updated action – "provide assessment and status of Risk Reg soon."

MS. O'BRIEN: Okay.

MR. TREMBLAY: So the existing risk register should have been updated soon.

MS. O'BRIEN: Okay. And then further down on the page – is this – this squiggle here to indicate that's the end of your notes of that meeting?

MR. TREMBLAY: Yes.

MS. O'BRIEN: Are – is there anything else on that page relevant to the –

MR. TREMBLAY: No.

MS. O'BRIEN: Okay.

MR. TREMBLAY: No. The rest is day-to-day stuff. You see a – there's a to-do list or I don't know.

MS. O'BRIEN: Okay.

MR. TREMBLAY: It's not related to the meeting.

MS. O'BRIEN: Okay. Did you have the report present at the meeting?

MR. TREMBLAY: No.

MS. O'BRIEN: Okay. Did Mr. Harrington have a copy of the report at the meeting, that you saw?

MR. TREMBLAY: I didn't see a copy of the report at the meeting, but the nature of his questions – in my mind, it was clear he had seen the report. Now, my feeling, the – because of the – I don't know exactly what made me think that. But from that day on I was – my belief was that he had seen the report when we had the meeting. He had already seen it.

MS. O'BRIEN: Okay and so –

MR. TREMBLAY: But –

MS. O'BRIEN: – your – I take it what you're saying is you didn't have direct knowledge of that, but based on the questions that he was asking and the general tenor of the meeting, that was your understanding that he had.

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

So in the meeting you noted there that he has asked you – said he needs to know what new risks were identified and there's also – I take it here he's looking for an assessment of the status of the risk register soon, getting desired state, current state and how to get there.

Were these – did you follow up with Mr. Harrington to provide him this information that he was looking for?

MR. TREMBLAY: The – with Mr. Harrington following this meeting in May, the subject of risk between myself and Mr. Harrington was never brought up until I left the project. He – there was never any – no follow-up on the part of Paul Harrington with respect to my notes there.

At the beginning of 2013 I had attempted to do exactly that, to update the risk register with Ric Cox, as I mentioned earlier, but to update this Nalcor elected to go with Westney. So on my part I did not have access to, you know, to the people Westney – I didn't have the liberty or access to organize a similar workshop as Westney so I wasn't – it wasn't quite clear how I should proceed.

And for the better part of the previous year I have been, you know, identifying new risks on a regular basis for every construction package that we reviewed. So, on the overall basis, I didn't proceed with the production of any updates because after that report, in the latter part of 2013, it was becoming increasingly difficult to have access to Nalcor personnel to conduct workshops. And, in any case, I – you know, I didn't have the ability to have access to the same executives and corporate personnel that Westney had access to or that participated in the initial workshop, for that matter, back before I came in.

MS. O'BRIEN: Okay, I'm just going to break that down.

MR. TREMBLAY: So I –

MS. O'BRIEN: Oh sorry, go ahead.

MR. TREMBLAY: And so the subject of that – the SNC internal report was never discussed after that May meeting, either with me or anybody else. It was – I had the distinct feeling that it was a taboo subject and I should never discuss that ever again.

MS. O'BRIEN: Okay.

At this meeting, had Mr. Harrington asked you to advise him of what new risks had been identified by SNC in their risk assessment?

MR. TREMBLAY: Well, that's the gist of my notes and what he said. But I don't recall asking me specifically for a report per se but, yes, he said that what we need to know is what are the new risks. So – but like I mentioned, I did not do any workshops or any other meetings with Nalcor personnel to try to identify new risks.

MS. O'BRIEN: So why not? I mean if he'd asked that he wanted the new risks, if he'd asked he wanted an updated assessment of the risk register, why didn't you do that work?

MR. TREMBLAY: At the time, I was carrying on doing the risk work that I was doing from the onset. And that aspect of the – you know, comparing the original master risk register with a new one, it never came – it wasn't clear how I could proceed and it did not – I did not manage to do it before I was removed from the project.

MS. O'BRIEN: Okay and we'll get to your removal from the project in just a moment. So am I to understand Mr. Harrington never followed up with you –

MR. TREMBLAY: Never.

MS. O'BRIEN: – after this meeting to look for that work?

MR. TREMBLAY: The subject of the SNC internal report was never mentioned after that.

MS. O'BRIEN: Okay, by Mr. Harrington. Or but what about –

MR. TREMBLAY: Or anybody else.

MS. O'BRIEN: What about Mr. Béchard? Did he ever follow up with you about this work?

MR. TREMBLAY: No, not after the meetings. Not following – no, after that, no.

MS. O'BRIEN: Okay.

Do you know whether any of the risks that have been identified on the risk register that you did for the SNC-Lavalin risk report – do you know if there was any risks there that had not been considered on the Lower Churchill Project's internal risk register or such that they were new risks? Or risks that SNC considered to be still live or ongoing risks that Nalcor had retired or removed from their current risk register. Did you ever do that analysis?

MR. TREMBLAY: No. In light of what I just told you, I did not – first of all, I did not have the final version of the SNC report and I did not embark on that comparison exercise because the internal SNC report was not something I could look into.

So I did not do that exercise of comparing both reports, because following the meeting, the SNC report was not a subject or – I didn't have the report per se, and I – it was not a subject that I would entertain anymore.

MS. O'BRIEN: And what – why do you say that, it was not a subject you would entertain anymore?

MR. TREMBLAY: Because we were told by Paul Harrington that the report needs not to exist.

MS. O'BRIEN: And you're saying that was at that meeting that we're just talking about.

MR. TREMBLAY: Yes.

MS. O'BRIEN: Okay.

MR. TREMBLAY: Yes.

MS. O'BRIEN: Do you know if the report was ever delivered to Nalcor? In other words, do you have any direct knowledge of whether the report was ever delivered to Nalcor?

MR. TREMBLAY: At the time I was there, I don't know. My impression was that Paul Harrington had seen it. I knew, of course, from the Commission, it was issued, I think, two years ago. But at the time of the project, back in 2013, I don't know if they had seen it or not.

MS. O'BRIEN: Okay.

MR. TREMBLAY: If they had been – you know, if the report had been transmitted to them.

MS. O'BRIEN: All right. So have you now given us all the information that you have on this 2013 SNC risk report?

MR. TREMBLAY: Yes, I didn't do anything more about it after May – after the meeting.

MS. O'BRIEN: Okay.

Now, we know you left the project in the fall of 2013. Can you please tell us how did that come about?

MR. TREMBLAY: I was informed by Normand that the Nalcor project team had decided that my service would no longer be needed at the end of November. And my distinct impression is that that decision was a follow-up, probably, of my involvement in the SNC report. I think there was – from then on, there might have been a trust issue.

And furthermore, in one of – another meeting, a meeting that was – I don't recall the subject of that meeting, but at one point, I did admit or state that I believed that Nalcor was not – because following – well, the second part of 2013, it was becoming increasingly difficult to secure the availability of the Nalcor personnel to perform my risk workshops and the like, and the reason I was given is that there was always other priorities. There's other priorities; we can't do your workshop, J. D., and blah blah blah. So I would organize the workshop; it was going forward until an hour before the workshop. I was told mostly by the – well, generally but in one – so it was becoming increasingly difficult to secure the access to the, well, subject-matter expert that could be part of the workshop.

And in another – not a risk meeting – I don't recall the reason or the purpose of the meeting, but it was a meeting where Scott O'Brien was present. And I did state during that meeting – there was about 10 people – in front of the 10 people that I felt that the focus given to risk management by Nalcor may not have been as appropriate as it should been. And I believe Scott O'Brien did not appreciate this comment and I think my – I'm pretty sure that my being removed from the project is not totally unrelated to that episode in that meeting where I criticize, to some extent, Nalcor's involvement in project risk management because I was – it was never a priority when it came to doing my workshops and everything, so –

MS. O'BRIEN: Okay.

MR. TREMBLAY: – so my tenure on the project ended at – in November, November 2013.

MS. O'BRIEN: Okay.

And when you say – I understand you're saying, you know, this was your impression that –

MR. TREMBLAY: Yes.

MS. O'BRIEN: – it was because, you know, you had raised the concern – what I'm hearing you say, you raised the concern that you didn't think Nalcor was giving enough priority to risk, and your basis for that was – it was you were trying to hold these risk workshops and do your work as a risk coordinator, and you were finding it increasingly difficult to get people to come to the meetings and participate. So you raised this at the meeting and you're saying, you know, your impression was it wasn't appreciated or words to that effect. And you think that's why you were ultimately removed.

Was there – what was said to you at that meeting?

MR. TREMBLAY: Like I said, I don't recall what was the purpose of that meeting. It was not a risk workshop meeting, it was another meeting. I'm not – I don't recall the purpose, but what was said to me following that remark was that Scott O'Brien said: You're absolutely right. So – and he was – it's tough to say, but I knew he was not pleased at that time. So him saying that you're absolutely right is probably that it was my – my role in the risk that was not to his liking, so – so basically – that's my impression of it, at the time.

MS. O'BRIEN: Okay.

So if he's saying to you it's – you're absolutely right, obviously that impression wasn't formed because of the words he was using. Was there something in his tone or his attitude towards – I mean, what led you to feel –?

MR. TREMBLAY: Yeah. There was a bit of sarcasm and you detected the tone that he was unhappy. He was not – he wasn't happy that I had made that comment in front of everybody.

MS. O'BRIEN: Okay.

MR. TREMBLEY: So.

MS. O'BRIEN: All right.

So then – so you don't have any firm – what I'm hearing is you don't have any firm evidence of this but it was your impression that that was – that reason, coupled with your involvement in the 2013 risk report was – were the reasons why you were ultimately removed?

MR. TREMBLAY: Well, when Normand told me that I was removed from the project, I alluded to the fact that I might have brushed someone from the Nalcor team in the wrong way and he seemed to be in agreement with my assessment.

MS. O'BRIEN: And when you say brush someone the wrong way, are you referring there to Mr. Harrington or are you referring to Mr. O'Brien?

MR. TREMBLAY: No. Well the – my statement – my last statement was referring to Mr. O'Brien.

MS. O'BRIEN: Okay.

MR. TREMBLAY: So and – Normand seemed to be in agreement that it had contributed.

MS. O'BRIEN: Okay. And so as – am I understanding correctly, it was Nalcor who asked that SNC-Lavalin remove you from the Lower Churchill Project?

MR. TREMBLAY: Yes. Well, Nalcor decided everything with respect to who could be or not on the project. Of course.

MS. O'BRIEN: All right.

After you left the Lower Churchill Project in November 2013, did you continue to work with SNC-Lavalin?

MR. TREMBLAY: Yes, I did. I came back to the Montreal hydro division office to continue my work with the group there.

MS. O'BRIEN: And are you still employed by SNC-Lavalin?

MR. TREMBLAY: Yes, I am. But now I'm with corporate SNC. I'm with the risk and insurance group.

MS. O'BRIEN: Okay. All right. Thank you, Mr. Tremblay. Those are my questions for you.

THE COMMISSIONER: All right.

Province of Newfoundland and Labrador?

MR. RALPH: No questions.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Good afternoon, Mr. Tremblay. Dan Simmons for Nalcor Energy. I'm never sure where –

MR. TREMBLAY: Good afternoon, Mr. Simmons.

MR. SIMMONS: I'm never sure where to be looking. So if it looks like I'm not looking at you, it's because I'm not sure which camera I'm supposed to be looking at –

MR. TREMBLAY: Yeah.

MR. SIMMONS: – Mr. Tremblay.

MR. TREMBLAY: It's all good.

MR. SIMMONS: Good.

So it was in April of 2013 that Mr. Béchard asked you to participate in the risk workshop that you've described. And I understand you've told us it was done between 5 and 7 one afternoon. Was that done at the Lower Churchill Project offices on Torbay Road here in St. John's?

MR. TREMBLAY: Yes.

MR. SIMMONS: Yes. And it was you and Mr. Béchard participated. And I gather you weren't participating because you were involved in risk at that time, up 'til then I don't think you had done any work on risk analysis at all, had you?

MR. TREMBLAY: Well, in April 2013 yes, I had been the risk coordinator since June of 2012.

MR. SIMMONS: Oh, I'm sorry. I'm thinking about (inaudible) – I've got the timing wrong. Okay, so you had been the risk coordinator at that point so it makes sense for you to be involved.

Who were the people on the other end of the call in Montreal? You've mentioned Mr. Mackay.

MR. TREMBLAY: Michel Mackay.

MR. SIMMONS: Yes. And the other people – do you know any of them? Can you name any names at all about who else participated in this?

MR. TREMBLAY: I don't recall. Well, I didn't know anybody on the other end, personally. So –

MR. SIMMONS: Okay.

MR. TREMBLAY: – I'd be hard pressed to associate a face with a name at this point.

MR. SIMMONS: Yeah.

MR. TREMBLAY: There were people from Mining and Metallurgy division –

MR. SIMMONS: Hmm.

MR. TREMBLAY: – I was with hydro division, so I, personally, had not worked with those people before so –

MR. SIMMONS: Okay.

Mr. Mackay, what was his role in the Lower Churchill Project?

MR. TREMBLAY: He had no role in the Lower Churchill Project.

MR. SIMMONS: Okay.

And the Lower Churchill Project within SNC, was it the power division that was responsible for the Lower Churchill Project, not the Mines & Metallurgy division?

MR. TREMBLAY: Correct. Although there might have been resources coming from the Mining & Metal division but the responsibility was a hydro division responsibility –

MR. SIMMONS: Hmm.

MR. TREMBLAY: – to my knowledge.

MR. SIMMONS: So that – although you don't know who the people were who participated from the Mines & Metallurgy division, can you tell me if any of them had had any role at all in the Lower Churchill Project, up 'til the point that they were doing this risk assessment?

MR. TREMBLAY: I can't say – not to my knowledge, it was not my – I don't know. I'm not saying yes or no; I don't know.

MR. SIMMONS: Okay.

So the only two people who are participating in this risk workshop, who you knew to have had any role on the project, were you and Mr. Béchard.

MR. TREMBLAY: Yes.

MR. SIMMONS: Correct? And –

MR. TREMBLAY: Who I knew, yes.

MR. SIMMONS: Yeah. And your role was to act as scribe, as you called it – I gather to take notes so that you could transcribe the results of the workshop into the risk register that Ms. O'Brien brought us to. Is that correct?

MR. TREMBLAY: Correct.

MR. SIMMONS: So do I understand correctly then that the people who, in this two-hour workshop, identified risks for the Lower Churchill Project and put values on those risks – aside from Mr. Béchard, you can't say that any of them had had anything to do with the project before?

MR. TREMBLAY: Well, I can't say. I can't tell you with certainty that such and such individual had done this and this on the project. I don't know.

MR. SIMMONS: Right. Okay.

So had you told – you were – you told us that you were one of the people who was probably fairly well integrated between the SNC and the Nalcor teams –.

MR. TREMBLAY: In St. John's.

MR. SIMMONS: – in St. John's.

MR. TREMBLAY: Yes.

MR. SIMMONS: Yes. So I presume, on a daily basis, you had frequent contact with both SNC-related people at the project office in St. John's and Nalcor people at the project office in St. John's, on a daily basis.

MR. TREMBLAY: Correct.

MR. SIMMONS: Yeah. So when you were asked by Mr. Béchard to participate in this workshop, either before or after, did you tell anyone else associated with Nalcor that you were going to or had done this?

MR. TREMBLAY: Not to my knowledge. No, I wouldn't have. I knew it was an internal request from the office of Bob Card or highly – high up in the –

MR. SIMMONS: Right.

MR. TREMBLAY: – corporate there, so –

MR. SIMMONS: Mmm.

MR. TREMBLAY: – I knew it was internal and it was not to be used for – internal for SNC purposes.

MR. SIMMONS: Right.

So did Mr. Béchard ask you not to tell anybody?

MR. TREMBLAY: I don't recall him specifically telling me this but I inferred that is wasn't something to be – it was an internal document, so.

MR. SIMMONS: Okay.

So this would strike some people as an odd thing, for SNC to be doing an internal risk review without involving Nalcor whose project it is, doing it fairly quietly.

Did this strike you as unusual at the time?

MR. TREMBLAY: Well, it was coming from higher up. And from the explanation that Normand gave during my meeting with Paul Harrington, he said that the SNC hydro division had requested resources from the M&M division.

MR. SIMMONS: Yes.

MR. TREMBLAY: So one of the conditions for the M&M division to provide management resource to SNC for the Lower Churchill, one of the condition was that a risk assessment be performed. So it was a – that's my understanding from what was said during the Paul Harrington meeting.

MR. SIMMONS: Okay.

And that's your understanding from what Mr. Béchard told Mr. Harrington while you were there in the meeting, that it was the M&M division within SNC that wanted the risk report done before they would co-operate with the power division to provide resources for the project.

MR. TREMBLAY: That's my understanding.

MR. SIMMONS: Okay.

Did you ever – had you have any understanding of what was intended to be done with this report when it was completed?

MR. TREMBLAY: No. No.

MR. SIMMONS: Did you ever ask whether it was intended to deliver it to Nalcor?

MR. TREMBLAY: I –

MR. SIMMONS: Ever ask any one?

MR. TREMBLAY: – no, I didn't ask. It was for Bob Card or something so –

MR. SIMMONS: Right. Right.

So after you sat in on the workshop in April of 2013, did you have any involvement at all with the preparation of that report from that time until you were called to the meeting with Mr. Harrington?

MR. TREMBLAY: The only involvement I had was I proofread one of the versions before final just, you know –

MR. SIMMONS: Yes.

MR. TREMBLAY: – but nothing substantive further than that.

MR. SIMMONS: Right.

MR. TREMBLAY: You know, correct typos and review the thing but not – more to the form than to the content, you know.

MR. SIMMONS: Did you tell anyone at Nalcor that you had a draft report, you were proofreading it? Did anyone at Nalcor know you were doing that?

MR. TREMBLAY: I don't think so. I know that I didn't discuss it with – it was an SNC request. So, no. I was not – I don't know, but to my knowledge, nobody knew from Nalcor. No.

MR. SIMMONS: Okay.

Now you – eventually, then, you came to this meeting with Mr. Harrington. And you have your notes. First of all, there was – you were brought to Exhibit 01837. Maybe we can bring that up again, please, Madam Clerk. This is just the calendar appointment.

Now, if I heard you correctly, in your direct evidence you told us that when you received this appointment, you assumed it was about the risk report that you worked on. Do I understand that correctly?

MR. TREMBLAY: Yes.

MR. SIMMONS: And you assumed then that Mr. Harrington must have knowledge that there was a report. Is that correct?

MR. TREMBLAY: Yes.

MR. SIMMONS: When you came to the meeting, did Mr. Harrington – and you've told us Mr. Harrington didn't have a report there and neither did you or Mr. Béchard have a report there. Correct?

MR. TREMBLAY: Correct. My – I don't know, I didn't see any report. We, Normand and myself, didn't have a report. And I didn't see any report on –

MR. SIMMONS: Okay.

MR. TREMBLAY: – Paul Harrington's side.

MR. SIMMONS: So if we go to your notes then, they are at P-01836. Madam Clerk, please.

And I know notes are often point form. They're not verbatim accounts of what happened in meetings, so we have to do our best to try and reconstruct when we see these things. And you have the safety moment noted there. Then you say: Paul Harrington met with Ed Martin, who'd met with Bob Card.

Do you remember anything more about what was said about what had happened at the meeting between Ed Martin and Bob Card? And what was being reported back? What do you remember?

MR. TREMBLAY: No.

MR. SIMMONS: Anything in addition to these notes?

MR. TREMBLAY: No, that was six years ago. And –

MR. SIMMONS: (Inaudible.)

MR. TREMBLAY: – no.

MR. SIMMONS: Okay.

And then your note says: "Risk Work Performed by SLI – What's the deal?" So that sounds like that's Mr. Harrington's question. You're noting what it was Mr. Harrington was asking for.

MR. TREMBLAY: Correct.

MR. SIMMONS: Correct. And I note you didn't say: risk report prepared by SLI. You said: risk work.

So I'm gonna ask you now: Can you say whether in this meeting Mr. Harrington was the one who, at any time, said he was aware a report existed? Or was he just aware that there had been risk work done and wanted to know, as you wrote down, what's the deal?

MR. TREMBLAY: Good question. I don't remember. It was too long ago. But my distinct impression, I don't know on what basis I can – but my souvenir of that moment is that he was discussing a report. I don't remember him saying specifically report but my impression was that he had seen the report, or he had the report or – it was clear to me since six years that he was talking about a report.

MR. SIMMONS: Okay.

Now put aside your impression. Because you formed your impression when you got the calendar invitation, you've told us that. That when you received the invitation, you assumed it was about the report. So put aside your impression; can you tell us, do you have any evidence that Mr. Harrington knew of the report before you went into that meeting and Mr. Béchard told him about it?

MR. TREMBLAY: Well, we had an invitation and it refers to the risk – what the – in the – (inaudible) – in the meeting invite – where is it? Is it the next one?

MR. SIMMONS: Well we can go to the meeting invite. It's 01836, page 2 in particular. If we can bring that up, Madam Clerk? 01837, I'm sorry I gave you the wrong number I believe. Page 2.

MR. TREMBLAY: No – you are correct. In the invite he says: "… the recent work carried out by SLI regarding LCP Risks."

MR. SIMMONS: Right.

There's no mention of a report there.

MR. TREMBLAY: No, you're right, it doesn't say; but in my mind, it was on all the report we did.

MR. SIMMONS: Right.

MR. TREMBLAY: I understand what you're saying, but my impression is – it does not change. My impression of that time was that he'd seen the report.

MR. SIMMONS: Yeah.

MR. TREMBLAY: At that time, that was my impression.

MR. SIMMONS: Okay.

So that's your impression and that's – we'll – okay, we'll have to leave it at that. Now –

MR. TREMBLAY: And also during the meeting, he clearly referred to the ATIPP, the access to information –

MR. SIMMONS: Right.

MR. TREMBLAY: – so, you know, the access to information – the information in – well, this type of information, would, you know, reasonably be in the form of a report not just – so that's another – you know, he said that report mustn't exist.

MR. SIMMONS: Okay.

So let's look at your notes again at 01836, then. I won't dwell on this too long.

If we go down through the sequence of what's here on the first page. We'd gotten to "Risk Work Performed by SLI - what's the deal?" And then it says "NB" – which you say is Normand Béchard – "Transition from EPCM to IT – M&M involved to conduct Risk Assessment." And then you say "Report Issued."

Now maybe I'm wrong, but I was reading this as Mr. Béchard as having explained what had happened and that a report had been issued and where it was.

Am I reading that correctly?

MR. TREMBLAY: Yes, "… to conduct Risk Assessment. Report Issued - currently in Hydro top Mgt."

Yes.

MR. SIMMONS: Right. So I'm reading this as – and then it goes on: "Paid by SNC." So that's –

MR. TREMBLAY: Mm-hmm.

MR. SIMMONS: – all information that Mr. Béchard was providing.

So when I read these notes, what I see happening here – and correct if I'm wrong – it that Mr. Harrington was asking: What was the risk work that was performed by SLI? What's the deal? Mr. Béchard tells him why it was done. Tells him there's a report. It's been issued. It's with hydro top management. It's been paid for by SNC and so on. Am I reading that –

MR. TREMBLAY: Yes.

MR. SIMMONS: – wrong?

MR. TREMBLAY: Yes. No, you are correct.

MR. SIMMONS: Okay.

And then, if I understand correctly, the outcome of this meeting was that what Mr. Harrington was most interested in was whether any new risks had been identified and if there were, he wanted to know what they were.

Is that correct?

MR. TREMBLAY: Well, yes, that's what – one of the things that concluded the meeting. Yes.

MR. SIMMONS: Okay.

So after this meeting, did you ever discuss with Mr. Béchard again either this – either the report that had been prepared or the request to provide information about new risks?

MR. TREMBLAY: No.

MR. SIMMONS: Why not?

MR. TREMBLAY: As I mentioned earlier, for me it was not clear how I could proceed to, you know, update the initial risk register. And if the report we had prepared was not to exist, I wasn't sure how to proceed. And the request was never followed up on, and ultimately I was removed from the project.

MR. SIMMONS: Okay. So did anyone tell you the report was not to exist? Or was this your impression?

MR. TREMBLAY: That was – I don't recall the exact terms Mr. Harrington used during the meeting, but it was to that effect. I don't recall the exact words, but he – it was clear – clear – that this report must not be available or it needs to not exist.

MR. SIMMONS: Well, this is –

MR. TREMBLAY: He didn't want the report to be –

MR. SIMMONS: Yeah.

This is important, Mr. Tremblay, because I don't read a statement to that effect in your notes, those words in your notes. So what can you tell us about what Mr. Harrington actually said? Or are we left with your impressions, just as we're left with your impression that Mr. Harrington had seen the report?

MR. TREMBLAY: I don't see how I can provide you with proof because it's not written in my notes.

MR. SIMMONS: Okay.

MR. TREMBLAY: So what else can I tell you? That I was there; I assisted the meeting – I was present during the meeting. I remember the impact that meeting had on me. After that meeting, I knew that this was something that was important, and that did not go well with Mr. Harrington.

And the distinct impression was that it was a bad idea to – for that report to be – to have been produced and it became very clear to me that my participation in that report was not good for me and that it was not positive –

MR. SIMMONS: Yeah.

MR. TREMBLAY: – a positive thing.

MR. SIMMONS: Yeah.

So leaving the meeting, though, you had a very clear request to provide information about whether any new risks had been identified. So – and I'll ask you again – after that meeting, did you go to Mr. Béchard either then or at any time after and say: I'm having trouble knowing what to do, or: should I be doing something to provide these risks, or: can I give them a copy of the SNC report, or: I'm having trouble getting co-operation.

Did you ever go back to Mr. Béchard and discuss any of that with him in order to try and satisfy the request that Mr. Harrington had made for information about new risks?

MR. TREMBLAY: There was a verbal request made during the meeting but it was never ever discussed again by Mr. Harrington or anybody else after the meeting. And following the meeting I carried on doing what I was doing for the better part of a year in identifying new risks and everything. So I was, in my mind, contributing to that effort of identifying new risk on a daily basis.

MR. SIMMONS: Mmm.

MR. TREMBLAY: But to your question, no further discussion specifically related to that meeting after the Paul Harrington meeting.

MR. SIMMONS: Right.

No further discussions with Mr. Béchard. It's Mr. Béchard I was asking about. Am I correct –

MR. TREMBLAY: Yeah that's right.

MR. SIMMONS: – there were no further –?

MR. TREMBLAY: Correct.

MR. SIMMONS: You didn't raise it with him; he didn't –

MR. TREMBLAY: No, I did not.

MR. SIMMONS: – raise it with you.

MR. TREMBLAY: Exactly.

MR. SIMMONS: Now I do have to ask you about this meeting you attended where you said you – it wasn't a risk meeting but you said you made a comment to the effect that – of commenting on the attention or emphasis that was being given to risk work. And tell me again what it was that Mr. O'Brien said in response to that.

MR. TREMBLAY: He said you hit it right on the head – you hit the nail right on the head.

MR. SIMMONS: Okay.

And you took –

MR. TREMBLAY: To the effect that –

MR. SIMMONS: And you took that to mean that he was unhappy. Did he say anything else to you? Did he say he was unhappy? Did he ever say anything to you that directly expressed any concern about what you had said?

MR. TREMBLAY: It was six years ago, I don't remember exactly what else he said. But again, the tone that he used and everything, it was clear that he was unhappy with my comment.

MR. SIMMONS: Right. So once again you're left with an impression, and from that impression you've assumed that Mr. O'Brien was unhappy with your comment, even though he said nothing that you can remember –

MR. TREMBLAY: Well, I –

MR. SIMMONS: – to support that.

MR. TREMBLAY: – I didn't say he said nothing, I said I don't remember exactly what he said after. And my impression was, to the most part, corroborated by Normand when I asked him why I was removed from the project. And, you know, it was kind of clear that one of the major reasons was because I had, how can I say this, said something to Nalcor personnel that was not agreeable to them. I don't know how to say it politely.

MR. SIMMONS: (Inaudible) Okay, well, we'll hear from Mr. Béchard, so we'll get to hear what he says about that.

MR. TREMBLAY: Yes.

MR. SIMMONS: Okay, thank you very much. No further questions.

MR. TREMBLAY: You're welcome.

THE COMMISSIONER: Concerned Citizens Coalition.

MR. BUDDEN: (Inaudible) break (inaudible).

THE COMMISSIONER: I wasn't going to take one yet. I'm trying –

MR. BUDDEN: Okay.

THE COMMISSIONER: – we have another witness to get to, so –

MR. BUDDEN: Okay.

THE COMMISSIONER: – I'm trying to get through. If – so if you're ready you could go ahead now.

MR. BUDDEN: Sure (inaudible).

THE COMMISSIONER: Okay.

MR. BUDDEN: Good day, Mr. Tremblay. My name is Geoff Budden; I'm the lawyer for the Concerned Citizens Coalition, which is a group of individuals who for a number of years have been critics of the Muskrat Falls Project. Again, I'm attempting to look at you, but I'm not sure if I am or not. So, again, as with Mr. Simmons –

MR. TREMBLAY: That's okay.

MR. BUDDEN: Thank you.

MR. TREMBLAY: That's okay.

MR. BUDDEN: A couple of questions. Perhaps we could start on, Madam Clerk, by bringing up Exhibit P-00014, which is the first Grant Thornton Report. And in particular, if you could bring us to page 58 of that document.

THE COMMISSIONER: So you don't have that document, Mr. Tremblay (inaudible) –

MR. TREMBLAY: No, I don't.

THE COMMISSIONER: Okay.

MR. BUDDEN: Okay, I'm going to read you a couple of excerpts from this, Sir, and perhaps you could tell me whether you would agree with – or whether what I'm reading is true to the best of your understanding and belief.

So I'm going to start by reading from page 10: "Nalcor engaged SNC as the Engineering, Procurement and Construction Management ('EPCM') contractor specifically for their experience in hydro-electric projects. SNC's engineers were involved in the design of the project and their estimating team completed approximately 70% of the base estimate."

So you would agree that that is correct, Sir?

MR. TREMBLAY: Yeah, I can't speak to this, to the 70% precisely, but yeah, that sounds about right, yes.

MR. BUDDEN: Okay. And –

MR. TREMBLAY: But it –

MR. BUDDEN: I'm sorry, go ahead, I interrupted your answer.

MR. TREMBLAY: No, no, short answer, yes, I would agree.

MR. BUDDEN: Okay. So the best of your understanding, it is correct.

MR. TREMBLAY: Yes.

MR. BUDDEN: Okay.

The next sentence: "SNC engineers determined material quantities required for each work package and provided quantity tables to the SNC estimating team, which was led by SNC's Lead Estimator."

Again, to your understanding and belief, is that correct?

MR. TREMBLAY: Yes.

MR. BUDDEN: Okay.

MR. TREMBLAY: Yes.

MR. BUDDEN: What role, if any, did you play in that process, Sir?

MR. TREMBLAY: Like I mentioned earlier, the lead estimator, Mr. Paul Lemay, was the one structuring the estimate and everything – excuse me – my role was to support him in that task, because it's a big task, and there a lot of indirect activities that you also need to do to – you know, there are some, there's some tables to prepare, there's some people to coordinate, there's some items to tabulate, and there's a lot of work that needs to be done to coordinate the effort of the entire estimating team.

The communication between each, between the members of the estimating team and it's – I did a lot of things, but that, it's difficult to explain. It's a coordination role, so you are everywhere, you speak to everybody and you try to support the lead estimator in anything he needs.

So with respect to your quantification table that was your question, that would be, you know, it was like any other document that was issued by any individual contractor. He would issue it to Paul, or if any other work was required to the quantities, I could look into it. I did support at one point a basis of quantification report where the powerhouse quantities were developed and various exercises of the sort, basically, generally, yeah.

MR. BUDDEN: Okay.

We have heard from Mr. Lemay briefly in Phase 1, and we'll hear from him again in the next couple of days, but one part of his estimate – or of his evidence I remember was he indicated at one point, if I understood him correctly, that the estimating software, at least some of the estimating software he used was essentially purchased off the shelf. And I guess my question to you, were you aware of that, for starters – is that something you were aware of?

MR. TREMBLAY: Of what? That we – that it was off the shelf or –

MR. BUDDEN: He – yes –

MR. TREMBLAY: – that we purchased –?

MR. BUDDEN: – that some of the software was not, I guess, built for purpose for this, but was rather purchased off the shelf. Was that something –

MR. TREMBLAY: Well, it –

MR. BUDDEN: – that you remember?

MR. TREMBLAY: Yes, I do. It was the HCSS system, which is a system – a third party system, yes.

MR. BUDDEN: Okay. Is that customary, based on your past experience?

MR. TREMBLAY: Well, in heavy civil there's a lot of ways to do estimates with their – there's the good and the bad. If you have an in-house system, you're having difficulty interfacing with outside systems. And if you have an off-the-shelf system, it may not be customized to your specific task. But as the task was fairly broad, we had – it was a big project with a broad variety of types of work. HCSS was the system that was deemed capable of doing this pretty fluently with Excel, because everybody's pretty good with Excel, so the interface with Excel was good. So we could talk with any individual estimator that was familiar with Excel and we would provide them with a template generated by this system in Excel. So they'd fill that, and we import that Excel file into the system.

So it was the best of two worlds where we could benefit from the off-the-shelf aspect of performance-wise, while still maintaining some customization – quote, unquote – possibilities to suit our needs. So it was a good – I think it was a good compromise, yes, a good system.

MR. BUDDEN: Sure. Just one or two other question in that same vein before we move on.

Did you, yourself, feel at any time that you lacked the tools that you wanted or needed to do this estimating task to the best of your ability? And the second part, did you ever hear any other members of the SNC team or any of your Nalcor counterparts complain about lacking the necessary tools to do the estimating job properly? So first part, you; second part, did you hear anything.

MR. TREMBLAY: Did I feel that we didn't have any tools? Well, staffing a project like this is always a challenge, so, of course, in the initial portions, you always wish you were a bigger team at the start, but at the end we had a sufficient team.

In terms of tools, like I mentioned, the software we had, I think, was good for the job, because it allowed us to speak to any estimator as long as they could master Excel. So that was a very good aspect – excuse me – aspect of it.

In terms of hearing other people on the project saying they didn't have any tools, not really. It wasn't a resource thing; it was finding the right people at the right time that was always – it's always a challenge for a megaproject to staff it in the initial stages. But that was not anything out of the ordinary for a project of this magnitude.

MR. BUDDEN: Sure.

The – to move on to another topic, we've heard evidence, of course, as you no doubt are aware yourself by now, that the – that in 2012 the outside risk assessor, Westney, assessed this project as a P1 and then a P3. In either event – rather the schedule was assessed at a P1 or then a P3. So in either case, obviously, a schedule that was regarded as very, very aggressive. Were you aware of that at the time during your tenure?

MR. TREMBLAY: No, and I'm not quite certain I understand what you're referring to, to P1 and P3.

MR. BUDDEN: The probability of the schedule being maintained and first power being delivered as scheduled in 2017.

MR. TREMBLAY: I understand but I'm not familiar with the P1 and the – I'm familiar with P10, P50, P75, meaning a 75 per cent chance of it – of us doing it, but P1 would mean we have only a 1 per cent chance of achieving our goal. I'm not quite sure I understand your P1, P3 correctly in the same way you do. But in any case, I was not involved or aware of (inaudible) –

MR. BUDDEN: Sure, you may never have encountered such low numbers in your career, but those are indeed the numbers that were being proposed so it was indeed the same P-factor schedule. So you weren't aware of that? That's the key point.

MR. TREMBLAY: No.

MR. BUDDEN: Okay.

MR. TREMBLAY: No.

MR. BUDDEN: What implications for the estimate would such a schedule that's being so aggressive as to be virtually impossible to meet – what implications would that have for the estimate?

MR. TREMBLAY: Well, I mentioned this regarding the schedule earlier. The schedule was always an issue, but when you're doing a capital cost estimate like this, you need to assume a reasonable time to do your work. But it was indicated that it was a very aggressive schedule. The – I remember, for the powerhouse, the number of cubic metres that needed to be poured each day was very optimistic, you know, multiple – I don't remember the figure exactly, but it was a big volume of concrete every day – daily concrete every day. So it was fairly aggressive, and that was – you know, it was noted, but the schedule was the schedule and that was it.

MR. BUDDEN: So the schedule is determined without reference to an aggressive schedule, is that just picked up by contingency or in some other way? So again, I'm interested in this interplay between an aggressive schedule and the estimates.

MR. TREMBLAY: Well, if you have – well, the interplay would be if you have less time to do the same work, you need to put more resources. And your unit – the unit cost for a resource, when you add more, it may be higher than when you have less, because you have the over stacking of trades, you have overtime to pay so your unit cost might be higher if you're using more resources in less time than if you have more time and you – so. That's the type of interplay there is in general term – in very general terms.

I can't speak exactly to the exact estimate we did and where – I can't give you precise examples because I wasn't actually the number cruncher. But that's the – one type of interplay you can have between estimate and schedule.

MR. BUDDEN: Sure. And just, too, for completeness, who was the number cruncher?

MR. TREMBLAY: Well, Paul was the lead estimator, but there was a – there's a whole team of estimators involved as well with different disciplines. We had – like I mentioned earlier in my testimony, we had an estimator, a specialist estimator for the transmission line, for the stations. We had an electrical, mechanical and, you know, heavy civil, the powerhouse. We had a whole team of estimators that were not necessarily all in St. John's, but there was a big – it was a big team effort.

MR. BUDDEN: Sure.

Madam Clerk, perhaps you could call up P-01678, which is the Williams Engineering report, and bring us to page 7 of that document. And again, I don't think, Sir, this is one you'd have so I'm going to read you paragraph 25.

On page 7, Madam Clerk.

I'm going to read you a portion of that, I'm going to ask you whether you – again, whether it's true to the best of your information and belief.

A little farther down, please. Okay.

I'm going to read this to you, Mr. Tremblay: "Significant changes combined with multiple schedule delays can magnify the impact of individual factors on productivity factors. Productivity reductions can be magnified by 30-60% depending on the severity and number of the changes and delays. A combination of factors resulted in the planned productivity rates not being achieved."

Firstly, would that be something that would be in accordance with your understanding and belief, or at least consistent with them?

MR. TREMBLAY: As a general statement, as it pertains to what can affect a project in general, yes, of course. It's a general statement that I would agree with. I mean, any project, if you have multiple changes, it's – you know, it's better to have less changes than more, of course.

MR. BUDDEN: Perhaps Madam –

MR. TREMBLAY: But changes are virtually impossible to avoid, there's always changes.

MR. BUDDEN: Okay.

Madam Clerk, perhaps we could go back to P-00014, I missed one thing there. And in this case, page 58, back to 58. And down, scroll down a tiny bit more. Again, I'm going to read you another brief section, and then we'll have a few questions about it, Sir.

And I'm reading from line 14, for anybody who's following: "Labour productivity hours were estimated based upon normal working conditions and then they were increased by an additional 20% to account for the lack of skilled labour in 2012 and potential reductions in productivity due to weather and other circumstances."

Is that in accordance with your understanding, Mr. Tremblay?

MR. TREMBLAY: I wasn't involved directly in the determination of that figure. Or anything that was Paul's thing. But I would agree that it makes sense. But I was not involved in the determination of that, the sentence you just read.

MR. BUDDEN: Okay.

MR. TREMBLAY: But it makes sense to me.

MR. BUDDEN: Well, we'll hear from him, but just since I have you here – so it was Mr. Lemay's decision to use the 20 per cent figure?

MR. TREMBLAY: I assume, yes, or –

MR. BUDDEN: Sure.

MR. TREMBLAY: – it was directed – or I'm not sure. I don't – I can't confirm or infer where the 20 came from, but it was Paul Lemay's – in Paul Lemay's purview, yes.

MR. BUDDEN: Sure. So you can't really tell us why it was 20, as opposed to 15 or 25 or any –

MR. TREMBLAY: No.

MR. BUDDEN: – other number.

MR. TREMBLAY: No, no.

MR. BUDDEN: Perhaps – well, okay, there's one more thing you might be able to help us with.

Perhaps page 63, Madam Clerk. And it's line 22 that I'm interested in, which I think is closer to the bottom. Yeah.

I'm going to read this brief paragraph: "Performance risk exposure relates to labour productivity, which can be impacted by a number of factors such as weather, location, etc. The DG3 Project Cost and Schedule Risk report notes that the rates used in the estimate and contingency were much better than what was currently being experienced in Long Harbour; a project ongoing in Newfoundland at the time."

So my questions for you, sir, are, firstly: Were you the individual who chose Long Harbour as a point of comparison or was that somebody else?

MR. TREMBLAY: No, I don't recall. I'm not familiar with Long Harbour. I could not have compared it to Long Harbour, so …

MR. BUDDEN: Okay.

MR. TREMBLAY: Long Harbour is another project in Newfoundland, but no.

MR. BUDDEN: So you can't tell us why it would've been Long Harbour, as opposed to, say, one of the James Bay Hydro-Québec –

MR. TREMBLAY: No, I can't.

MR. BUDDEN: – projects. Okay.

MR. TREMBLAY: I can't.

MR. BUDDEN: Do you happen to know what – if a 20 per cent figure was used here, as we established a couple of moments ago, do you know what comparable figures would've been used, say, in the east Romaine project?

MR. TREMBLAY: No. I wasn't involved in the Romaine project either. So I don't know.

MR. BUDDEN: You don't know at all? Now, I'm not asking you: Were you the one who came up with it? But are you even aware of what that figure was?

MR. TREMBLAY: No, I'm not aware of that, of what that figure was, and it's very dependent on the market and the labour you have. If you have experienced labour – there's a lot of factors. So I'm not even sure it would be the same exact rationale. Every project is very different.

MR. BUDDEN: Okay. Just a final question, really, or it may lead to another couple of questions.

In your evidence a few moments ago when Ms. O'Brien was questioning you – and you were talking about the evolution of the estimate from December 2011 to the number a few months later, as I understood it – with respect to the post-December refining of the estimate based on higher quality information from the contractors, if I understood you, you're getting more precise quotes from the contractors and refining the number. And I guess the question I would have – I presume some of those numbers from the contractors would be higher, some would be lower. Am I correct in that?

MR. TREMBLAY: Well, numbers from contractors – one example of the increase in quality of information other times is having more time to actually find better information and all that. But you are correct in stating that adjustment could be positive or negative. And I refer to that earlier in my testimony when I discussed the general – what is it – the general control sheet in my earlier testimony there. So, yes, in the post-December 2011, yes, there were adjustments both ways, plus and minus, throughout.

MR. BUDDEN: Thank you, those are my questions.

Thank you very much.

MR. TREMBLAY: Okay.

THE COMMISSIONER: Ed Martin.

MR. SMITH: Good afternoon, Mr. Tremblay.

Harold Smith for Ed Martin.

MR. TREMBLAY: Good afternoon.

MR. SMITH: I only have a few questions.

At the time of – that we've been discussing – in late '12 and earlier '13, what was the situation as you understood it with respect to SNC-Lavalin on the world stage?

MR. TREMBLAY: Well, you're referring to – on the world stage, what do you mean? You mean the –

MR. SMITH: Well –

MR. TREMBLAY: – what's the question, exactly, on the world stage?

MR. SMITH: Well, my understanding is that SNC-Lavalin was embroiled in allegations of wrongdoing in other parts of the world.

MR. TREMBLAY: Yes.

MR. SMITH: Okay. And –

MR. TREMBLAY: So –

MR. SMITH: – my question then becomes, is that, do you know if that had any impact or a factor in Nalcor dealing with SNC-Lavalin at this time?

MR. TREMBLAY: I can't say, per se. Of course, nobody was indifferent to the fact that that was happening. It was all over the news. Everybody was aware, and it – excuse me – it was something unfortunate and, you know, if you could choose you would prefer things like that not to happen. But on a day-to-day basis it did not affect our – I mean, it's different from what was happening in St. John's.

MR. SMITH: Okay.

MR. TREMBLAY: So I can't speak for what Nalcor thought about it.

MR. SMITH: You were unaware that that was a topic of discussion between Mr. Martin and Mr. Card as the new president of SNC-Lavalin?

MR. TREMBLAY: No, I was not privy to their discussion. I can only speculate.

MR. SMITH: Okay.

MR. TREMBLAY: I don't know.

MR. SMITH: Well, I'll go on again.

Ms. O'Brien canvassed what turns out to be – looks like a cultural difference between the SNC-Lavalin team and the Nalcor team, particularly in relation to oil and gas projects, and I think you said, slightly different for hydro projects. In other words, the terminologies weren't the same, and there was a number of other points of disagreement or misunderstanding, one or the other. Is that correct?

MR. TREMBLAY: Yes, that's the way I characterized it. Yes, different perspectives.

MR. SMITH: Okay.

MR. TREMBLAY: Different lens.

MR. SMITH: Right. And having a different perspective, was it of terrific shock to have the EPCM contract changed to an integrated management approach?

MR. TREMBLAY: I would rather say it was a consequence, rather than anything else.

MR. SMITH: Okay.

And that consequence, it seems that it's quite coincidental that shortly after that announcement, or that change, between EPCM and a combined management team, that something happened inside SNC. And I'm just wondering, is – was that the trigger for the movement or having M&M become involved in the project?

MR. TREMBLAY: I can't – I have no answer to provide; I don't know. It was not in my – I have no knowledge of any of that. I mean, I was in St. John's and very engaged in my work. What was happening outside the office, I don't know. I don't know.

MR. SMITH: Okay.

Having said you don't know, my understanding is that at the meeting that was held with Mr. Harrington, the – my understanding is the reason given – or the driver to perform this risk analysis that we've been talking about for about an hour or so now, the driver was Hydro division asking the metallurgical minerals, I guess it is, division, something about the Newfoundland project. What precisely was the issue that M&M were asked to look at?

MR. TREMBLAY: I don't know. And you're mixing – I mean, you spoke about the early 2012 on the world – what was happening, and the meeting with Paul Harrington was a year later, so …

MR. SMITH: Oh, I understand that. I'm moved on from there; I'm moved on to –

MR. TREMBLAY: Okay.

MR. SMITH: – a – the basic question is that the reason for the risk analysis that was given was something to do with M&M when this was a hydro project. So I wonder if you have any information to tell us why M&M would be doing any kind of risk analysis on a project that was under the bailiwick of Hydro and run by the SNC Hydro side of the business.

MR. TREMBLAY: Other than the understanding I gathered from Normand's explanation during the meeting, I was – my involvement was downstream for any of those discussion that might have taken place. I was not involved in upstream discussions as to why the report was required and the risk. I just supported Normand in the effort that was required of – that was asked of him. I don't know other than what I've indicated in my notes, which represents what Normand had explained to Mr. Harrington.

MR. SMITH: Do you have any idea what the implications were of SNC-Lavalin losing the EPCM part of the contract?

MR. TREMBLAY: Well, it was a morale killer that would – that's for sure. But other than that, I'm not privy to any of the – it was six years ago, and I haven't been involved in the project since so –

MR. SMITH: My understanding –

MR. TREMBLAY: – I don't know.

MR. SMITH: My understanding, EPCM aspects of the cost was removed from some other subsequent cost estimates. In fact, I've understood you to say that you were involved in the removal of – a reversal or removal of some of those costs from early estimates.

MR. TREMBLAY: No, you –

MR. SMITH: No?

MR. TREMBLAY: You're referring to my – the backup of a mistake I had made.

MR. SMITH: Yes.

MR. TREMBLAY: Well, that was not a removal. It was a segregation of the cost and isolating the EPCM cost from the rest. It was not removing them; it's just to break down the cost into two components: the project and the EPCM costs.

MR. SMITH: So did you –

MR. TREMBLAY: Nobody – I don't know what your inferring here but –

MR. SMITH: Did you –

MR. TREMBLAY: – but no.

MR. SMITH: Did you subsequently break out the EPCM from being part of the engineering and joint management team?

MR. TREMBLAY: I wasn't really involved in the definite breakdown, but the EPCM cost is a cost item that needs to be estimated, and it was estimated at some point.

MR. SMITH: Okay.

Did you, or would you, consider that the risk report that you were working on with your Montreal colleagues could be – one of the uses of that would be to recover or regain the EPCM aspect of the contract?

MR. TREMBLAY: Hmm.

MR. SMITH: Did that – did you have an impression about that? You seem to have other impressions.

MR. TREMBLAY: No, all of – the first time I hear it is you saying it, no.

MR. SMITH: Okay.

MR. TREMBLAY: No.

MR. SMITH: Now, you have – you told us about the impressions and you were impressed by other counsel with respect to the impressions you took. But were you also aware that the Grant Thornton Phase 2 report essentially concluded – the experts that investigated this, after many interviews, concluded that the report was never given to Nalcor.

MR. TREMBLAY: No, I was not aware, until – I think it was when I had my interview with the commissioners in August – that they mentioned something to that effect. But before that, in my mind he had seen the report at least or I wasn't clear but erroneously maybe. I don't know. But my – I have a distinct souvenir that the – my impression was that he had seen it based on the nature of the questions and the fact that the access to information thing there, the ATIPP, the report must not be so …

MR. SMITH: But you would agree, if it's been concluded by Commission's experts that – and Nalcor did not receive the report – your impression cannot be correct.

THE COMMISSIONER: Well, that all depends – excuse me just for a second.

MR. SMITH: Yeah.

THE COMMISSIONER: That all depends upon the conclusion I come to. Just because the – just because an expert that the Commission paid for –

MR. SMITH: I –

THE COMMISSIONER: – provided a report –

MR. SMITH: I'm only putting a question forward in cross.

THE COMMISSIONER: – doesn't mean (inaudible). Plus I'm not certain –

MS. O'BRIEN: I –

THE COMMISSIONER: Excuse me just for a second, Ms. O'Brien. Plus I'm not certain that's exactly what the conclusion that the GT report actually stated. But I'll leave that for another day.

MS. O'BRIEN: That was the point I was going to make. I don't know that Mr. Smith is really accurately summarizing what the Grant Thornton conclusions are. They're there, obviously. They speak for themselves.

THE COMMISSIONER: All right.

Go ahead, Mr. Smith.

MR. SMITH: Did you give a copy of the report to anyone at Nalcor?

MR. TREMBLAY: Me? No.

MR. SMITH: No?

MR. TREMBLAY: I didn't have the final report.

MR. SMITH: Okay.

And do you know when the final report was actually issued?

MR. TREMBLAY: No.

MR. SMITH: If you don't know when the final report was issued, how can you have the impression that someone had a copy of the report?

MR. TREMBLAY: Again, I'm telling you the way I remember the meeting. I was there, and those are my impressions. Mr. Harrington referred to: Where did you get your data for your report? If the report gets discoverable through the access to information, it could be a concern.

So listen, I didn't – I don't have a recording of the meeting to tell you verbatim what was discussed, but my definite impression is that there was question of a report as was discussed with Paul Harrington. So it's my impression. I can't give you more than that. But I was there and that's my testimony; that's what I think.

MR. SMITH: Do you know of –

MR. TREMBLAY: That's my story.

MR. SMITH: Okay. Do you know of anyone –

MR. TREMBLAY: (Inaudible.)

MR. SMITH: – within SNC – do you know of anyone with in SNC that actually gave the report to someone in Nalcor?

MR. TREMBLAY: Aside from what I said earlier, back in – two years ago I think it was – when it came out in the media at that time, but before that, no.

MR. SMITH: Okay.

MR. TREMBLAY: I don't know what happened –

MR. SMITH: Mm-hmm.

MR. TREMBLAY: – to the report after I participated in its preparation in April.

MR. SMITH: Not until 2016, which I think you're referring –

MR. TREMBLAY: Yeah.

MR. SMITH: Yeah, okay.

And I think you testified to the fact that all effective activity with respect to the report, either determining what was in or what was out, more than what was in the risk register of Nalcor – you can't hear?

MR. TREMBLAY: Well, I missed the initial part of your statement, so –

MR. SMITH: Okay.

MR. TREMBLAY: – I lost track. It faded.

MR. SMITH: Okay, no problem. I'll rephrase, if you wish.

What I'm wondering is that the report itself, you indicated that you know of no one that had given it to Nalcor. But in that period prior to the report being presented to Nalcor in 2016, prior to that period of time, okay, there was no – my understanding from your testimony – and you correct me if I'm wrong – that there was no further discussion beyond the Harrington meeting with respect to that report.

MR. TREMBLAY: I agree.

MR. SMITH: Okay.

And, as you indicated, the report was internal and intended to be internal from the beginning. It was intended to be an internal discussion inside SNC.

MR. TREMBLAY: That was my understanding, yes.

MR. SMITH: Right.

And it was you who provided a lot of the essential information on the risk register. My understanding, from your testimony, is that in your two-hour or so meeting in the evening after hours, you provided a lot of the information with respect to the risks on the project.

MR. TREMBLAY: To the extent where I was the one capturing the notes and putting them in a risk register format –

MR. SMITH: Okay.

MR. TREMBLAY: – yes, but the nature or the content was a workshop effort. I was not deciding what was – I worked on the formulating of the risk definitions and whatnot –

MR. SMITH: Yeah.

MR. TREMBLAY: – so that it would be easily readable. But the actual content was a workshop effort.

MR. SMITH: Okay.

MR. TREMBLAY: It was not me.

MR. SMITH: Would you have used information that you gathered as a Nalcor person working on the Nalcor project to provide that information to your workshop?

MR. TREMBLAY: At the time – well, the workshop was a stand-alone effort, so it's to get another estimate, another assessment.

MR. SMITH: Okay.

MR. TREMBLAY: So I did not bring – no.

MR. SMITH: So the answer is: no, that you did not use Nalcor information in order to conduct or be part of that workshop and create the ultimate –

MR. TREMBLAY: I don't believe, no.

MR. SMITH: – I think you said prose or narrative. Is that correct?

MR. TREMBLAY: I did the wording, if you want. The wordsmithing, if you want, of the – the content of the risk register based on what was discussed in the workshop. But I don't recall using Nalcor information aside from, you know, generic descriptive information. But I don't recall. I'm not sure where – what information was used prior. But like I said, I was not involved in upstream of the actual workshop. I was just notified by Normand that we had to do this. But the whole organizing behind it, I was not …

MR. SMITH: Okay.

So the risk register that we're looking at, the 2016 register, that register was a new effort, or a – shall we say a greenfield register.

MR. TREMBLAY: To my –

MR. SMITH: That has –

MR. TREMBLAY: – yes (inaudible).

MR. SMITH: That has nothing to do with Nalcor's register. Because Nalcor –

MR. TREMBLAY: I would say so, yes.

MR. SMITH: – had a register as well, right?

MR. TREMBLAY: Yes. But I would agree with your statement. It's a stand-alone effort – greenfield if you want to call it that, yeah.

MR. SMITH: And did you inform Mr. Harrington or others that it was greenfield?

MR. TREMBLAY: No.

MR. SMITH: So he could've gotten the impression that you effectively moved some of their information into another division of your company – M&M.

MR. TREMBLAY: I'm not – well, he could've – I don't know what the impressions he could've had.

MR. SMITH: You were working on a risk register –

MR. TREMBLAY: I'm not sure I follow.

MR. SMITH: Excuse me. You were working on a risk register. Okay. Nalcor has a risk register for the project.

MR. TREMBLAY: Okay, yes.

MR. SMITH: So if you're working on a risk register for the project, isn't it logical to assume that the risk register of Nalcor would be, at least, part of a risk registry you're developing for M&M?

MR. TREMBLAY: Well, anything is possible. But this was an internal review. So we – SNC wanted to make its own mind on the project. That was the purpose of – my understanding – that was the purpose of the whole workshop. So we want to make our own – it's an internal review we want to do. So –

MR. SMITH: Yeah. And could you – do you have any particular knowledge of the reason why you wanted to do it?

MR. TREMBLAY: No. Like I said, multiple times, I was not involved in the upstream of my involvement during the workshop. I don't know the inception of the request is – I don't know. I'm not aware.

MR. SMITH: Thank you, Sir.

All the questions I have.

THE COMMISSIONER: All right.

I think we're soon gonna take a break. But let me just get a feel for where we are with this witness because the other witness we need to call today, who is hanging on, is an individual we have to get in today because I'm not sure when we're gonna be able to get him again.

Kathy Dunderdale. I don't believe is here.

Former Government Officials, any questions?

MR. T. WILLIAMS: (Inaudible.)

THE COMMISSIONER: Okay.

Julia Mullaley, Charles Bown.

MR. FITZGERALD: No questions.

THE COMMISSIONER: Robert Thompson.

MR. COFFEY: No questions.

THE COMMISSIONER: None.

Consumer Advocate.

MR. HOGAN: (Inaudible.)

THE COMMISSIONER: Ten to 15 minutes, okay.

Innu Nations is not here.

Astaldi. None.

Former Nalcor Board Members. No.

Newfoundland Trades Council and Resource Development Trades Council.

MS. QUINLAN: (Inaudible.)

THE COMMISSIONER: Not here.

Oh, not – I'm sorry. I keep missing you because you keep moving around.

MS. QUINLAN: (Inaudible.)

THE COMMISSIONER: Dwight Ball, Siobhan Coady. None.

ANDRITZ is not here.

Grid Solutions, I don't believe is here.

Barnard-Pennecon, I don't believe is here.

And counsel for SNC-Lavalin, how long do you expect to be?

MS. OH: Very little.

THE COMMISSIONER: Very little. Okay.

Well, let's take our break and then we'll come back with the Consumer Advocate then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay. Just before we begin – just so Mr. Meaney is aware of this – I'm gonna have Mr. Meaney return tomorrow morning at 9 o'clock and we're gonna – based upon discussions with counsel, I understand there's about another 30 to 40 minutes max that we're gonna need with Mr. Meaney.

I've also had an opportunity, over the lunch break, to have a look at the CFA document to see what it actually says and what it means. And I also had done a review because I – of the – some of the documents that have been entered into evidence. And I am – I've come to the conclusion I am gonna allow the questions on the issue of the CFA designation. I don't want this to be, as I said, anything to deal with internal discipline or anything of that nature. I think there's a question to be asked and I'll hear the question, and if it's an appropriate question, then I'll allow it to be asked.

But I will indicate the following, that – and I didn't do this extensively 'cause I needed to get something to eat over lunchtime – but I've reviewed at least six emails that were signed by Mr. Meaney that relate to his referring to himself as a CFA.

These are – at P-02180, this was an email to Dawn Dalley on September 6, 2013, where he referred to himself as a CFA in his signing block. P-02350, which was an email with the report on the Lower Churchill Governance and Controls document of April – of August 23, 2013, again, referring to his designation in the signing block as a CFA. 02401 – P-02401. March 17, 2014, in an email to Gil Bennett – Gilbert Bennett – he referred to himself, again, in the signing block as the CFA. P-02402, Mr. Meaney to Alison Manzer, an email dated June 20, 2014, again, referring in the signing block to the fact that he was a CFA. 02239, this was also sending contractor reports – or speaking about sending contractor reports to MWH, dated January 22, 2014, again, referring to himself in the signing block as a CFA. And then 02240, an email to Charles Newman, who I understand works with Alison Manzer, dated January 23, 2014. As I said, I've – there were others that I have reviewed and looked at as well, but those are the six right now that I had noted.

And based upon that, notwithstanding the fact that his work may not have been, you know, specifically related to investment work or whatever, he is obviously referring to his designation as a CFA. So I think the question concerning whether or not he felt bound by the requirements of being a CFA is a relevant question for the purposes of the Inquiry and I will allow it.

So Mr. Meaney will come back tomorrow morning at 9 o'clock.

Mr. Simmons, if you can arrange for that, and you should be able to advise him that I don't think we're gonna need him much beyond quarter to 10 tomorrow, all right?

MR. SIMMONS: Thank you, Commissioner.

THE COMMISSIONER: All right.

So we'll next go to the Consumer Advocate.

MR. HOGAN: Is he there?

MR. TREMBLAY: I am.

MR. HOGAN: Okay.

I can't see you but I can hear you.

THE COMMISSIONER: Okay, maybe we –

MR. TREMBLAY: Okay.

THE COMMISSIONER: – can bring him up on the screen, please? Oh, here we are. Good.

MR. HOGAN: Okay, good afternoon. My name is John Hogan. I'm counsel for the Consumer Advocate.

MR. TREMBLAY: Mr. Hogan.

MR. HOGAN: Hello.

Just not too long ago, Mr. Budden was asking you about the interplay between the schedule and the estimates that are prepared. So maybe Mr. Lemay could answer this in more detail, but I'll put it to you. Would the scheduled assessments in that interplay include working in winter conditions?

MR. TREMBLAY: Well, of course. The winter season, when you're talking about heavy civil works is always a factor. You try to optimize your work to avoid winter as much as possible, but depending on the schedule, you have no choice so you have to adapt your methods to compose with winter conditions. But absolutely, winter is a main factor, especially in a hydro project.

MR. HOGAN: So it was taken into account in these estimates?

MR. TREMBLAY: Yes, because, for example, I know that – you need a shelter for doing concrete in the winter. So Paul would be the better position to be more precise with this, but, of course, winter is a part of the assumptions that are carried in the estimate. Because the question of not working during the winter, I don't think this was contemplated in this project, but like I say, I might not be the best person to talk about the schedule and the estimate in the sense that, earlier on, it was a general statement.

MR. HOGAN: Okay. So you just raised that – I was going to ask you about that – that it wasn't contemplated not working in the winter. Is that – ?

MR. TREMBLAY: I'm not sure. I'm not sure. I don't recall if that had been an option or not.

MR. HOGAN: Okay.

MR. TREMBLAY: It was a while ago so I don't know. I'm not sure.

MR. HOGAN: So in other hydro projects, is that an option, to not work in winter – or maybe in any other projects – to not work in winter? Because I'll tell you that a couple of weeks ago we did hear evidence from a worker who was on site, who did give evidence that Hydro-Québec would not have done work in the winter. They would put their tools down and come back to be more productive in non-winter conditions.

So do you have any comment on that option?

MR. TREMBLAY: My comment would be – it depends on the project. I, myself, did a project that – we were on site the end of February, and I was on a hydro project, and there was a shelter that was built for the concrete team, their powerhouse, which took place throughout winter.

So the question – in an ideal world, of course, you try to avoid working in the winter, but it depends on the project. I wouldn't say that it's an absolute given that you do not work in the winter. It depends on the project.

MR. HOGAN: It depends on the project. Okay. And you don't recall any specific discussions around that, whether that should be done in this project or not?

MR. TREMBLAY: No. I don't recall – but in light of – I know that the word out was it was an aggressive schedule. So I can't see how we could have avoided working during the winter. But again, I may not be the best person to talk about the schedule. I was not involved in the schedule.

MR. HOGAN: So would part of the aggressive schedule be pushing through winter conditions? Would that be one of the ways the schedule is aggressive?

MR. TREMBLAY: I specifically remember the concreting – the powerhouse concreting – which was deemed to be, you know, a tall order in terms of daily volume every day. That was a concern at the time.

MR. HOGAN: Okay.

MR. TREMBLAY: But that's – it's a souvenir I have of the time. It was doable, but it's a lot of concrete.

MR. HOGAN: Okay, so –

MR. TREMBLAY: (Inaudible.)

MR. HOGAN: – I'll ask Mr. Lemay about more details on that issue. Is that fair?

MR. TREMBLAY: Yes, that would be the best source. Me, as – I wasn't directly – I wasn't the person directly responsible for deciding of those things.

MR. HOGAN: Okay. Thank you.

Madam Clerk, if we could please bring up P-00860 again? Page 3.

THE COMMISSIONER: So this –

MR. TREMBLAY: Do I have –

THE COMMISSIONER: – one will be on – no, this one will be on the screen, Mr. Tremblay.

MR. TREMBLAY: Okay.

MR. HOGAN: So Ms. O'Brien referred this document to you earlier today. I just wanna ask you about page 3 specifically.

THE COMMISSIONER: Actually, you do have that in tab 1 of your book.

MR. TREMBLAY: Okay.

Yes.

MR. HOGAN: You're ready?

MR. TREMBLAY: Yes, I am. Yes. I understand. Yes, I have it in front of me and I know what you're referring to, yes.

MR. HOGAN: Okay.

And Mr. Budden sort of touched on this issue, but he's – you talked about some plus/minuses regarding the estimate. I just wanna know if you can walk the Commission through the process here. Is it that SNC would do an estimate and then provide the estimate to, in this case Jason Kean, and he can adjust the estimate as he sees fit?

Is this what's happening here?

MR. TREMBLAY: Well, like I explained earlier in my testimony, the – we completed the estimate on – mid-December of 2011 and the following six months was to fine-tune the estimate, if you want. And like I mentioned earlier and has – was stated by another person there, that the quality of the information evolves with time. So you might have, you know, more precise information that you can have a better understanding of the actual – a better – let's say a better estimate than you initially have.

And this is a normal process because you – it's a question of definition. Your – the level of definition increases with time and as the level of definition increases you have – you're in a better position to have a more – a better estimate.

So the way it work is every time – because we wanted to start with the December estimate as kind of our baseline in terms of capital cost, and then any adjustment that was deemed necessary to the estimate, (inaudible) whatever the source of the adjustment, it will be logged in this general control sheet.

So if it was, for example, we had – we could substitute an estimated cost based on assumptions with a quote –
a budgetary quote from a supplier, which was more reliable than our – we would substitute that, and if the supplier quote was, I don't know, $10,000 cheaper than our original estimate then we would include a minus $10,000.

And on the other hand, if the other way would be the same, if we had another source of information – source of cost information that would result in a higher cost in this log, that would result in having a plus – well, a plus, I don't know, whatever, a plus $20,000 and at the end of the column you have – you do a summation of the plus and minuses which gives you a overall adjustment to the overall initial price of December.

So I don't know if that answers your question but that's basically the approach and the source of the change to the estimate could be of various origin. So yes, Jason did request us to – instead of this, please consider this instead, I think that's more reasonable. In other instances it was a – you know, following further refining of this specific element, we now have more valid information, so we think this cost should be substituted.

So there is a variety of reasons why these changes occur and this is a normal practice because, you know, in a perfect world you would have unlimited time and unlimited resource but that's not the actual real world. So in the real world you have limited time and limited resource, so any additional time you can review and perfect your estimate it will result in variations of this sort. This is not a – this is not an exceptional or – this is only reasonable because you want to have a better – a better estimate.

MR. HOGAN: Okay. So I understand all that, thanks for that.

I guess my focused question is: SNC is the estimator. Is Mr. Kean making suggestions that are then approved by SNC, or is he taking your estimate and saying thanks for doing this, but now I'm going to adjust it accordingly as I see fit? Do you see the difference?

MR. TREMBLAY: Yes, I do. And as I mentioned, the sources of the change are from various types, all the ones I mention. And they were instances where some changes were imposed by Jason: he said no, you're going to use this instead.

So the – the example that comes to mind for me is the pickup trucks. We had estimated a certain number of pickup trucks that the management team of the project would require, and the number of pickup trucks was reduced unilaterally by Jason and that's the cost that was carried on the estimate.

MR. HOGAN: So at the end of the day, you provide your work, which is Triple A rated, and it's Nalcor's to do, as they see fit, to adjust or not accordingly. And in this case, for example, they did adjust it based on how many pickup trucks you recommended versus what they thought was appropriate.

MR. TREMBLAY: For that specific example, yes, but, of course, I wouldn't put that at a general – as a general statement, as you did, but those situation did occur at some point – some times.

MR. HOGAN: Okay. Thank you.

Just move forward to the risk – SNC risk report. Your evidence was that Mr. Harrington wasn't pleased when he found out the work was being done and that you said he wanted the report not to exist. But you also said, and you had in your notes, that Mr. Harrington wanted to know what the additional risks were. Correct?

MR. TREMBLAY: Yeah.

MR. HOGAN: So I'm wondering if you can try and reconcile that for me. He's upset and he doesn't want the report to exist, yet he wants to know what is in the report. So how can you reconcile those two items?

MR. TREMBLAY: That – I'm struggling because that was part of my conundrum there what – it wasn't clear how I could proceed. If the SNC report did not exist, then I couldn't, you know, use it and –

MR. HOGAN: I'm not – sorry to cut you off – I'm not concerned about –

MR. TREMBLAY: Yeah.

MR. HOGAN: – what you were going to do next. I'm concerned about what Mr. Harrington thought. I would think he would want to know what the risks were as a person on a project team and he did express to you that he wanted to know what the risks were, the new risks that were identified. That makes sense to me. Yet, he didn't want the report to exist.

So how can you reconcile those two things: I wanna know what's in the report, but I don't want it to exist?

MR. TREMBLAY: I don't know.

MR. HOGAN: You don't –

MR. TREMBLAY: I don't know, that's at – that was why I had the weird feeling coming out of that meeting. And that – the impression that I were referring to earlier was that what we had done was not okay with them. So I'm not sure. I'm not sure why he did not want our report to come out or become public. That was not spelled out but it was clear that the report – he did not want the report to come out.

MR. HOGAN: Okay.

MR. TREMBLAY: But –

MR. HOGAN: You have in your note, as well, reference to ATIPP, which is –

MR. TREMBLAY: Yeah.

MR. HOGAN: – Access to Information legislation here in Newfoundland and Labrador. I'm going to assume you didn't know anything about ATIPP prior to that meeting.

MR. TREMBLAY: Correct. Absolutely, you're right. And I took it down because he mentioned it.

MR. HOGAN: So he mentioned it. So is it possible that Mr. Harrington's not being pleased about this was the main focus – the main reason he wasn't pleased was a public disclosure issue?

MR. TREMBLAY: I can't speak to what was in his mind, but that's what that suggests, yes. That was made clear that the – one of his concerns was that it would become – it could become public through ATIPP if we issued the report formally.

MR. HOGAN: And that the new risks that had been identified could become public.

MR. TREMBLAY: Well, yeah, the SNC report.

MR. HOGAN: Yes. Okay. Thank you.

Just a couple more questions. You talked about not enough emphasis being put on your work, risk assessment. Who, in particular, did you feel was not listening to you when you were pushing to have risk assessment be more of a focus?

MR. TREMBLAY: Well, the event I was referring to earlier – was Scott O'Brien that was not pleased with my comment during the meeting. And the impression I had, like I mentioned earlier, was that my displeasing him in that meeting was one of the reasons why I think I was removed from the project.

MR. HOGAN: Was there anyone else that you felt wasn't paying enough attention to risk assessments on the project management team?

MR. TREMBLAY: Well, it – the impression I get is that – you know, earlier I spoke to the importance of having time and resources. So as deadlines approach, people get involved and they have less and less – they have to be, you know, they have to be more careful how they use their time.

So the feeling I was getting is that – you know, the risk assessment workshop came down the priority list, if you want. That was the – that was – that's what was stated to me: We have other priorities. There was always other priorities, especially in the latter part of the 2013 there. I was – it was increasingly difficult for me to schedule my risk workshops because there were other priorities to tackle. So that, in effect, was what fueled my comment to Scott O'Brien at that time, and –

MR. HOGAN: Who expressed that to you, that risk assessment was being pushed down the priority list?

MR. TREMBLAY: It was – because I had multiple workshops to conduct or – in an ongoing fashion. And I would send meeting invites to a selected group of people relevant to the workshop. And everybody was –

MR. HOGAN: Who are those people? I'm trying to get the names of the people that didn't consider this to be important.

MR. TREMBLAY: Well, it depends. I don't recall. It was depending on the work package, the commitment package – like I mentioned earlier, the project was divided – subdivided into commitment packages. But ultimately, the two people that really express to me that the risk workshops that I was conducting were not as priority as other stuff were Scott O'Brien and Darren DeBourke were the two I can recall that did express to me that the – there was one workshop with Darren that I had requested a list of invitees from people from the package. And it was a fairly big list, there was a lot of people in the workshop. So Darren removed some people from the workshop, but he allowed, if you want, the workshop to proceed.

But this issue was mostly with component 1, with Scott O'Brien's group, that often the workshops were cancelled the last, you know, last moment, last minute and it had to be rescheduled. So there were some workshops that couldn't take place because of that.

MR. HOGAN: Okay. Thank you.

That's all my questions.

THE COMMISSIONER: All right.

Any questions then from – counsel for SNC-Lavalin?

UNIDENTIFIED FEMALE SPEAKER: No questions, thank you.

THE COMMISSIONER: Thank you.

All right. Redirect, Ms. O'Brien?

MS. O'BRIEN: Just one item on redirect. It's not so much a question, I just want to clarify. Could you please bring up Exhibit P-01677, please, Madam Clerk?

This is the Grant Thornton's, page 2, report. And I believe I was on my feet during Mr. Smith's cross-examination. Page 136.

So I had suggested that I thought that Mr. Smith may not have accurately stated what the findings and conclusions were in the Grant Thornton report. And so, I just wanted to confirm this here. Sorry, I just got to get the line.

Yes, there it is. Sorry, number 1 at line 14: "That it was possible nobody from Nalcor saw the … SNC Risk Report in 2013." That was the conclusion that that was possible, so just a clarification. Thank you.

And no questions for Mr. Tremblay.

THE COMMISSIONER: Mr. Tremblay, thank you for your time. Not sure where you went, but thank you for your time –

MR. TREMBLAY: You're welcome.

THE COMMISSIONER: – and we appreciate the fact that you've joined us and we'll hang up now.

All right.

And we'll get Scott Thon on the – okay, we'll take five minutes then just to get Mr. Thon on. And my understanding from speaking with Mr. Learmonth is that he doesn't think he's going to be extremely long here.

I don't wanna sit late, but I don't want us to get behind. I got Mr. Meaney again tomorrow and I thought I was gonna finish him today. We have to get back on deck this week, so maybe Monday's the best day to burn a little bit of the midnight oil and hopefully, we'll catch up.

But, anyway, we'll see.

(Inaudible.)

CLERK: All rise.

THE COMMISSIONER: So five minutes.

Recess

CLERK: All rise.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Is this right?

THE COMMISSIONER: Right, Mr. Learmonth, when you're ready.

CLERK: Please be seated.

MR. LEARMONTH: Are we hooked up? Mr. Thon, are you there?

THE COMMISSIONER: He should be on the screen any second.

MR. LEARMONTH: There he is.

Do you hear me, Mr. Thon?

MR. THON: I hear you. Yes.

MR. LEARMONTH: Yeah. It's Barry Learmonth. Thanks for standing by for so long.

Could Mr. Thon be affirmed or sworn, please?

THE COMMISSIONER: Yes, he'll be affirmed right now.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. THON: I do.

CLERK: Please state your name.

MR. THON: Scott Thon.

MR. LEARMONTH: Yeah.

CLERK: Thank you.

MR. LEARMONTH: And where are you now, Mr. Thon?

MR. THON: I am physically located in –

MR. LEARMONTH: What city?

MR. THON: – Calgary, Alberta.

MR. LEARMONTH: In Calgary, Alberta. And what is your present occupation?

MR. THON: I'm the president and CEO of AltaLink Limited.

MR. LEARMONTH: Okay.

Please state your educational background since high school.

MR. THON: Yes, I'm an electrical engineer by training and I've also done some – I also have a certificate from the University of Western Ontario on their executive and management program.

MR. LEARMONTH: Yes.

Please state your work history since you graduated from the University of Saskatchewan with an engineering degree – an electrical engineering degree.

MR. THON: Sure.

I spent a number of years at TransAlta Utilities which was a vertically integrated owner of generation transmission and distribution. I worked in transmission and worked in the generation areas of that company, ultimately worked in the power trading group and then back to the transmission business again in through the late '90s – 1990s, at which – in early 2000 I left to help start up a company called AltaLink, which was the former transmission business of TransAlta, which was sold to a consortium. And I became the president and CEO at that time of AltaLink and then I have stayed in that role other than a secondment – which I think is what we'll be talking about today – of just over one year that I was seconded to SNC-Lavalin as their EVP of global power.

That role had a variety of power projects. The type of project would go from generation through to transmission distribution and all forms of generation, and they would be projects globally, pretty much on every continent at the time.

MR. LEARMONTH: Okay.

Just a couple of preliminary questions, just describe what type of business AltaLink carries on in Alberta.

MR. THON: Yeah, maybe I'll just – also just comment that most of that career I just described is as an executive or working as an engineer for an owner of a utility and that is exactly with AltaLink. It's a regulated utility in the Province of Alberta. It's regulated by the Alberta Utilities Commission and we own just over $8 billion in transmission assets so it's a transmission-only company.

MR. LEARMONTH: Okay.

Now, you mentioned that I believe – or I'd ask you to confirm that in mid-January 2013 you were seconded from AltaLink to SNC-Lavalin and the period that you worked on the Muskrat Falls Project was approximately 13½ months from January – mid-January 2013 to March 1, 2014. Does that sound correct?

MR. THON: That sounds correct, yes.

MR. LEARMONTH: And this term, secondment, please confirm that at the time that you were seconded to SNC-Lavalin from AltaLink, that SNC-Lavalin was the owner of AltaLink?

MR. THON: That's correct. I'm just – I just need a second to think about whether they were the hundred per cent owner but they definitely were a shareholder. They were either 75 per cent owner or 100 per cent owner at that time.

MR. LEARMONTH: Okay.

MR. THON: And I just can't exactly remember when that transaction happened.

MR. LEARMONTH: And right now they don't have any ownership interest in AltaLink. Is that correct?

MR. THON: That's correct.

MR. LEARMONTH: Yeah.

MR. THON: We're now fully owned by Berkshire Hathaway Energy.

MR. LEARMONTH: Yes, and you're the president of Berkshire Hathaway Energy Canada. Is that correct?

MR. THON: That's right. I sit on the entity – the board of the entity and – that owns AltaLink.

MR. LEARMONTH: Yeah.

MR. THON: But, also, it has development responsibilities across Canada in the energy sector.

MR. LEARMONTH: But it's a holding company more or less, is that right, and a development company? Berkshire Hathaway Energy?

MR. THON: Yes, that's right. Berkshire Hathaway Energy Canada – that is a holding company that owns the AltaLink business and it also owns a development company, to your point.

MR. LEARMONTH: Yes.

MR. THON: And that development company is quite separate from AltaLink, but it does look at developing electricity and other energy projects across Canada.

MR. LEARMONTH: Yes.

And at the time you were seconded to SNC from AltaLink (inaudible) did – Bob Card was the president?

MR. THON: That's correct.

MR. LEARMONTH: And that, initially, he asked you to take the position with SNC on a permanent basis, but you first agreed just simply to a three-month period. Is that correct?

MR. THON: Yeah, that's correct. We said three to six months; it wasn't definitive. And while he was looking for me to do it permanently, that's something I decided not to do.

MR. LEARMONTH: And it was eventually – your mandate with SNC-Lavalin ended on or about March 1, 2014.

MR. THON: That's correct.

MR. LEARMONTH: Yeah, and did you move from Calgary to Montreal during this period of secondment?

MR. THON: No, I didn't physically move my family. Basically, the power group, actually, was headquartered out of Toronto, and so I spent a lot of time in Toronto and then some time in Montreal. But more of the time was spent in Toronto or at the different project sites, whether they be in St. John's or where they were.

MR. LEARMONTH: Okay. Your position during the period of your secondment was VP, vice-president of global power. Please explain what your duties were in relation to the Muskrat Falls Project.

MR. THON: Yes, so the way that we were organized around the Muskrat Falls Project is we had two divisions that ran hydro projects globally: one was based out of Montreal and the other based out of Vancouver, Canada. And this fell under the division in – out of Montreal.

Montreal had a number of projects across Eastern North America, certainly work for Hydro-Québec in Canada, and Muskrat Falls fell into that group. The person leading that team was Bernard Gagné and he was my direct report. And Normand Béchard would report to Bernard.

And so I was the executive level responsible for the Muskrat Falls Project, and how I connected to the project was that we had – the primary way was through a steering committee that was set up on the Muskrat Falls Project. My counterpart on that committee was Gilbert Bennett, but other members, senior members of the – were on the steering committee as well. On my side, Bernard Gagné and Normand Béchard, and then on the Nalcor side it was Gilbert, Paul Harrington and Lance Clarke.

MR. LEARMONTH: Okay.

At the time of your – when you became involved in the Muskrat Falls Project, January 2013, were you aware that the role of SNC-Lavalin, under a contract dated February 1, 2011, was that of an EPCM contractor?

MR. THON: I knew that it had been and it was in transition.

MR. LEARMONTH: Okay.

Now, what – just give some details to exactly what you mean by it was in transition.

MR. THON: I guess the – my first contact with Nalcor was a trip to St. John's where I did go and have a meeting, a lunch meeting, with Gilbert and Ed Martin. I think that was the only meeting I had, other than with Bob Card with Ed Martin, so that was – and really, my goal there was to really understand where they were at. They were the customer. I understood that they weren't happy with SNC and I was trying to understand why that was and where they saw the project going and how SNC could be part of that.

MR. LEARMONTH: Mmm.

MR. THON: Given that I spent my entire career as a utility executive that owned assets, I felt I was in a very good position to understand what they were concerned about. And so, really, my goal at that first meeting was to understand what was going on, and that's when they really spoke about they had lost confidence in SNC's ability to perform an EPCM and they wanted to move to this concept called an integrated team.

MR. LEARMONTH: Okay. Now, was this meeting in January 2013?

MR. THON: Let me – just a sec.

MR. LEARMONTH: Well, we'll refer to the documents – would it be in January or February, we'll say?

MR. THON: I think I have it here in my notes, February 5 is when I –

MR. LEARMONTH: Okay, that was the meeting –

MR. THON: – when I had that meeting. Yeah.

MR. LEARMONTH: So did you do any assessment as to the position taken by Nalcor that there were perhaps shortcomings in SNC's performance that they observed anyway?

MR. THON: They weren't – the assessment I got was not that detailed in those early meetings. It was clear that the – Nalcor had made the decision to move to an integrated team, so I didn't feel like there was much negotiation room there.

So really my goal was: how do I make sure that whatever this turns out to be, regarding an integrated team, that it became very successful for both SNC and for Nalcor? So that was my focuses. What does the integrated team look like and how do I make it successful?

MR. LEARMONTH: Yeah.

Now, were you aware at this – when you took the assignment or at least at the time of this first meeting – that the experience that the project management team of Nalcor had on hydroelectric projects was limited, we'll say? Were you aware of that?

MR. THON: I wasn't aware until I arrived on site and had a chance to meet the different leaders and it was clear that – and they were quite open about it, actually, that they were trying to bring a discipline from other large projects in oil and gas to the hydro project which – well, I thought, could be a helpful perspective if you needed those hard-core hydro engineer construction in project management. And I had seen many times, in my career, owners try to step into roles that they're not familiar with, and that was a big risk for me. And I did tell them that on a number of occasions.

MR. LEARMONTH: Okay. Why would that be a risk?

MR. THON: Well, quite frankly, owners don't build multi-billion dollar projects very often, at least not most companies. There are a few that have a steady stream of multi-billion dollar projects and as such they can develop an in-house competence for that. But in my experience that is very rare and you have to have the discipline as a leader that you make sure that you've brought in some experts, and so really that was the – my voice. It's in – and my recommendation is, let's not – you may be unhappy with SNC-Lavalin's performance, but don't let that colour you in removing key leaders you're gonna need to be successful on a project that you don't have any experience in and doing.

MR. LEARMONTH: Okay.

When you communicated that information to them, how was the message received by the Nalcor representatives?

MR. THON: They always – they were always very cordial about it, at least with me, and they would accept it and understand it. I think ultimately, though, through a number of decisions, that was proved out that they weren't gonna follow that advice, but they never pushed back on it.

MR. LEARMONTH: Okay.

The – now, at the time you became first involved, we'll say January and February of 2013, did you form any, or did you receive any information as to what role, if any, SNC-Lavalin would be playing in the risk assessments?

MR. THON: No, other than my team was highly frustrated right from day one when I arrived in early February for my first trip, about their ability to get information. And they were quite worried on a number of fronts. One was that – first would be that they couldn't adequately assess the risks and adequately assess the – what the project schedule and cost was gonna be. So they were quite frustrated by the fact that they couldn't get the information they needed to perform what are pretty basic functions in a project around cost and schedule.

MR. LEARMONTH: Okay.

And who would be available from SNC-Lavalin in your head office or elsewhere to do risk analysis? Did – was there a group set up in any one of your offices, SNC-Lavalin's office, to – who specialized in risk assessment?

MR. THON: Definitely there – SNC-Lavalin, at the time I was there anyways, and I would suspect now, has a specialized group out of head office that sets standards in and how you do risk assessment. Each one has its own bit of flavour but there are rules that they go through, and procedures and processes that they use. So that was really the group that would perform the – I don't want to use the term lightly – but it's more the rules and the administrative procedures around risk management. So there is a group at head office.

MR. LEARMONTH: Yeah.

Is that an area that you have any expertise in, risk assessment?

MR. THON: I certainly understand the outputs of it. I don't know you'd want to have me run the models but I certainly understand that – the concepts of it, yes.

MR. LEARMONTH: All right. Okay, now I want to turn to some Exhibits and before I do, I want to have them entered into evidence. Commissioner, that would be Exhibits P-02427 to P-02535 –

THE COMMISSIONER: Okay.

MR. LEARMONTH: – if they could be entered.

THE COMMISSIONER: Those will be marked as numbered.

MR. LEARMONTH: Yeah.

Mr. Thon, I understand that you have a book of documents before you which hopefully corresponds with the book I have. Is it – do you have a book of documents that are – is tabbed?

MR. THON: I do, yes.

MR. LEARMONTH: Okay, thank you.

Okay, let's first turn to tab 1 which is Exhibit P-02427. This is an email from Paul Harrington to Gilbert Bennett, Ron Power, Jason Kean, Lance Clarke, Brian Crawley.

Well, it speaks for itself. Mr. Harrington says: "Here is a summary of the key points.

"The Power Division has not been impacted by the reorganization other than Patrick Lamarre is replaced by Scott Thon …

"Joe will now report to Scott and Hydro is still based in Montreal.

"Joe believes that this is Bob Card changing the top folks and starting with a clean sheet" et cetera.

Then we go down towards the bottom: "Regarding Normand" – that's Normand Béchard, I take it – "Joe has talked about the role I had outlined to him and he thinks Normand will support that but we will talk more on Thursday.

"Joe wants the new CEO and Scott to meet with us including Gilbert and Ed - we mentioned the Feb 6th potential date for a Sanction celebration and that Joe's admin should work with Bev Lane to firm up the date."

Now, I think the Joe there is Joe Salim, is that correct?

MR. THON: Joe Salim, yes.

MR. LEARMONTH: Salim. And he was responsible for the project, was he?

MR. THON: Prior to Bernard –

MR. LEARMONTH: Managing director of Hydro East.

MR. THON: It was – yes. And shortly after me taking over, Joe was removed from that role and that the individual, Bernard Gagné, was put in as the general manager for Hydro East.

MR. LEARMONTH: Okay. So this Exhibit refers to the February 6 meeting. So that would have been a 2013 meeting – that would have been the first meeting that you attended in St. John's with the Nalcor group. Is that correct?

MR. THON: That's correct.

MR. LEARMONTH: Okay.

Now we turn to page – tab 2, Exhibit P-02428. This is an email from John Husch to you. It says: "5th Feb Meeting" and it was sent February 1, 2013. So who is Mr. Husch?

MR. THON: He was responsible for the transmission components of the Muskrat Falls Project.

MR. LEARMONTH: All right.

Now, we turn to – well, this – there's an agenda for the meeting in paragraph 3 of the email from Paul Harrington to Karen O'Neill, Ron Power and Normand Béchard about this meeting, what's referred to here as February 5.

So there's – you and Mr. Husch were there representing SNC-Lavalin and then there's a – you know, an outline of the buffet style of food and refreshments for the meeting. And then on page 2 there's a number of items listed: SNC-Lavalin "guests explain how important this project is to the senior Management and how the new CEO and executive is organized" with "the visions and values they espouse - SNC Guests to present."

And then there's a long list of things including: "A joint declaration by Nalcor and SNC senior folks that we have to work together as a single project delivery team and … we have full Corporate support to make this … a success"

So was this meeting sort of like a come-together meeting of SNC-Lavalin and Nalcor representatives to try and improve morale or – what was the purpose of it, if not that?

MR. THON: The meeting was really for the whole team. And so the primary purpose of that meeting was for the executives on both – from both companies to really set a strong tone from the top that both of the companies were committed to working together. And while we were shifting the style of contract, that both companies were very committed to make this work, and we worked, quite frankly.

And so this was not so much a meeting of the top people, it was, actually, a town hall-style meeting where each key executive would stand up and really talk about how important the success of Muskrat Falls was for each company.

MR. LEARMONTH: Yeah.

Were there any morale problems with the SNC people at this time, given the fact that they were in a transition period, changing from an EPCM contractor to an integrated management team set-up? Did you sense any morale problems either from Nalcor or SNC-Lavalin at this point?

MR. THON: Well, I think there was a lot of uncertainty and when people have uncertainty that does affect morale. Clearly, there was unhappiness on the performance from Nalcor – sorry, Nalcor assessed SNC-Lavalin's performance. There was frustration from SNC-Lavalin on Nalcor as a customer.

And then the ultimate was the announcement that we were moving to a different contract model and that certainly did create a lot of uncertainty about what would that look like and who – what would my job be? Would I have a job? And the vast majority of SNC-Lavalin employees that I spoke to were highly motivated to work on this project. It was a career-building project. It's a very – you want to make it success and you want to build – put it on your curriculum vitae that you were part of successfully bringing the Muskrat Falls Project in.

MR. LEARMONTH: Yeah.

MR. THON: So while they all wanted to work on it, they were feeling a lot of uncertainty about what was next.

MR. LEARMONTH: Yeah.

Now, we heard earlier today from Jean-Daniel Tremblay who was – who testified just before you, actually; he's still an employee of SNC-Lavalin. And he described that there was a – I don't know if it was a clash but there was a problem created by the fact that the SNC-Lavalin people working on the Muskrat Falls Project came from a hydroelectric development experience, whereas the people on the Nalcor side were substantially from the oil and gas industry. And there was different manners of communicating and different emphasis on planning and so on. Did you – were you aware of that – a clash being created for that reason?

MR. THON: I wasn't – I wouldn't call it a clash of cultures. I'm – you know, I live and work a lot of my career in Alberta, Canada. I certainly understand megaprojects in the oil and gas sector and megaprojects that I've been involved with in the electricity sector.

I do come back full circle to your earlier questions that they – some of the concepts are very transferrable, but at the end of the day the risks on a hydroelectric project are fundamentally different than an oil and gas project. And if you don't understand that, you don't have experience in that, really bad things can go – can happen.

So I didn't really expect that big of a culture clash per se. These are megaprojects and you organize them. I did – beyond what was already requested and agreed to prior to my arrival on some work from Deloitte – I did request Deloitte to provide some major projects people to help us think through the differences between oil and gas and electricity. That, ultimately, was rejected by Nalcor, but it was something that we did try to bring together.

MR. LEARMONTH: And you were – you had people – you were aware of people in the Calgary office of Deloitte's that had expertise and could probably provide some important information on that subject. Is that correct?

MR. THON: I became aware, I didn't know them personally. Prior to my arrival, there had been some – Deloitte had been contracted by Nalcor and SNC-Lavalin to do some workshops to – around team effectiveness, which, I think, could be very valuable. They're – generally, they're focused on team-building style but when the one came up that I was gonna be in charge of hosting and paying for on SNC-Lavalin's account, I suggested we go beyond just team effectiveness and we see whether Deloitte had some people who had big-project experience and we could add them, and to create even a more effective workshop around how do you run these projects effectively.

I didn't know whether Deloitte had these people, but, in fact, when I reached out to the Toronto head office, they did inform me that for an additional fee, we could bring their large-project organization people out of Calgary. And as I said, I didn't know them personally, but I did understand that they were working in oil and gas on major-project organizations. I suggested that to Nalcor, to Gilbert, but that was rejected.

MR. LEARMONTH: And you – SNC was going to pay you the cost of this?

MR. THON: The agreement was that there was two sessions, and this agreement was done before I arrived. And the first session was paid for by Nalcor and the second one paid for SNC – by SNC-Lavalin. So –

MR. LEARMONTH: But it never happened.

MR. THON: – this was as –

MR. LEARMONTH: The second –

MR. THON: Yes, it did happen.

MR. LEARMONTH: – oh, the second one did?

MR. THON: Yeah. The second one did happen and – but we just did not include those big-project people from –

MR. LEARMONTH: Oh yeah.

MR. THON: – Deloitte.

MR. LEARMONTH: Yeah. That's what I meant.

MR. THON: But we did have the people that did organizational effectiveness. And, in fact, it was at that off site where it was – it became clear they weren't gonna listen to our advice around who leads what in the project.

MR. LEARMONTH: Nalcor was not going to listen that – to your advice – SNC-Lavalin's advice on that?

MR. THON: The way the workshop was set up was to do both team-building as well as to try to assess who would be the best leaders in this new organization. And when I say new organization, I mean this integrated project organization which we were – on the SNC side, we were really working hard to understand – because we wanted it to be in place and so it was clear for our people to reduce that uncertainty. And second of all, we were gonna enter into a contract renegotiation to move it from an EPCM contract to something new – we didn't know exactly what – and the sooner we could get the organization set, the faster we could move on both – reducing uncertainty and change in the contract.

So we did work on that at the off site and Deloitte was there to help us do it. Our first pass of the leadership just roughly had it about 50 per cent SNC-Lavalin employees and about 50 per cent Nalcor – either Nalcor employees or Nalcor contractors, if you like. But then after a bit of a caucus by each side, Nalcor did come back and say, no, they really couldn't have that many leaders from SNC-Lavalin in the organization. And so that's when they – when they rejected SNC-Lavalin, even though they – we had all agreed in the initial pass, anyways, that they were the right leaders on the different subgroups. That's when I knew they weren't gonna listen to our leadership advice.

MR. LEARMONTH: All right.

And when would that have been approximately?

MR. THON: I'm gonna just look here.

That was on May the 30th and 31st. It was an off site facilitated by Deloitte.

MR. LEARMONTH: And that's 2013, right?

MR. THON: Yes, 2013 in St. John's.

MR. LEARMONTH: Okay.

Now at tab 3, Exhibit P-02429. This is an email from Paul Harrington to Gilbert Bennett, February 8 – so that's just (inaudible) after your first meeting.

Mr. Harrington says: "Gilbert

"I fully understand that you are dealing with Scott Thon and I understand that you spoke to him today. It is critical to know exactly what is said in those phone calls and meetings because Scott will try and divide and conquer – if he sees that he can bypass the Project Director and get to you then he will undermine my authority and we will be lost. I cannot operate under that type of situation."

I know you didn't receive this email, but can you give us any information that would help us to understand the concern that Mr. Harrington is expressing in this opening paragraph of the exhibit?

MR. THON: I can't speak for Mr. Harrington. So, no, I can't tell you what he was thinking. I can tell you what – the way I read it is that or my perspective on it is – given that, as I said earlier, I spent most of my career in the same kind of position as Mr. Martin and Mr. Bennett, as the owner of a utility, I could relate to the kind of concerns that they had. And I think Paul was concerned somehow that that would undermine his authority, just on a plain read of this. So that would be my only take-away from it is that –

MR. LEARMONTH: Yeah.

MR. THON: – but I thought it was quite natural, and that's the way the project was structured that my peer was Gilbert and so we would have a number of conversations on how projects can be successful, the things as an executive leader you need to be watchful of. And he would give me advice and I'd give him advice. And I thought it was – hopefully, he would listen to my advice and he certainly didn't always take it and – but that's the nature of doing projects.

MR. LEARMONTH: Yeah.

And what was your relationship with Mr. Harrington? How would you describe your relationship with him, at the time?

MR. THON: Cordial but he was very quiet around me, I would say, yeah.

MR. LEARMONTH: Yeah.

MR. THON: Yeah.

He rarely spoke up, he often – he often just listened to the conversation, didn't contribute a whole lot when I was around.

MR. LEARMONTH: Did you find that unusual?

MR. THON: Yeah, I did. Yeah. I'm used to project directors that – and I know that Mr. Harrington has some strong opinions and – but he didn't express those typically when I was around.

MR. LEARMONTH: All right.

Tab 4 is an email from Paul Harrington to Lance Clarke. This is dated March 2, 2013.

And is this a reference to the proposed plans for the Deloitte scope of work?

THE COMMISSIONER: 02430.

MR. LEARMONTH: 24 – 02430.

MR. THON: Yeah, that's exactly what we were talking about earlier where I was happy to have the Deloitte team-effectiveness people come, but I was also hoping to add some large-project people from Deloitte to the meeting. And, as I said earlier, Gilbert communicated to me that he would not support that and this memo looks like it's referring to that exactly.

MR. LEARMONTH: Okay. Well, if – you know, some may be surprised that Nalcor wouldn't agree to, you know, have this input from Deloitte.

Did you ever receive a reason from Nalcor why this proposal was not acceptable to Nalcor?

MR. THON: No, not a – nothing directly. They didn't think it was of value. I think it was pretty short and sweet; they didn't support it and they didn't think it would be valuable.

MR. LEARMONTH: All right.

Next exhibit is tab 5, and it's Exhibit P-02431. It's an email from Lance Clarke to Paul Harrington, Gilbert Bennett, Bernard Gagné, John Husch and you.

If you turn to page 2 you can see it's one of these presentations for a CEO meeting in April 2013. It's mostly photographs, there's not much content in it, although there are references to key contract awards in 2013 on page 22 and 23.

So did you attend a CEO meeting in April 2013? I know you weren't the CEO but did you attend this meeting in April 2013, presumably between Bob Card, and Gilbert and Edmund Martin?

MR. THON: Yes. I was at the meeting, yeah, as was Gilbert.

MR. LEARMONTH: Okay.

And what was the – generally the purpose of the meeting in April 2013?

MR. THON: Bob Card wanted to make sure that he had a connection with the key large projects. I certainly encouraged him to do that as well. And so it was really the first time that Bob could come out to St. John's and meet with Ed. And as part of that visit we had a number of things that we did. There was some one-on-one time between Ed and Bob.

We had this meeting, which was a little bit larger executive meeting, to talk about the status of the project as well as some of the things we needed to be focused on. There was also some meetings we set up with Bob around – with our employees to really help their morale as we went forward with this uncertainty. And then I think there was a dinner, if I recall, with Ed and Gilbert and a few other ones. That was a more social, get-to-know-you kind of dinner.

MR. LEARMONTH: Okay.

At tab 6, Exhibit P-01811, this is – there's a copy of the SNC-Lavalin risk assessment that was – I understand was prepared in April 2013. There were a number of drafts that – within – circulated within SNC-Lavalin.

Can you give me some background as to what – you know, what can you tell us about why this risk assessment was prepared and for what purpose?

MR. THON: Yeah, Bernard Gagné came to me and was saying, you know, we're highly frustrated on getting the information from Nalcor. And Normand has recommended that we do a risk assessment before the door closes, if you like, on – for getting more information.

And what he was referring to there was as we shift out of the – being the EPCM, that we would have less and less information. And we would do some kind of a risk assessment of where we see – saw the project at because we were highly frustrated at not being able to have those kind of conversations with the senior levels at Nalcor.

So that was under – that's where the request came to me. I thought it was a great idea because I wanted to be able to – when we had steering committee meetings – and as I mentioned the steering committee was the more senior people, did not include Bob Card and Ed Martin, but included the rest of the senior people – I wanted to make sure that in those steering committee meetings we were focused in on the key risks and what our views were on the key risks, as well as how to mitigate them.

I really liked the idea that Normand came up with that we not just – well, first of all we have our risk group in Montreal that does lots of these, run the process. We would certainly have people – we would require people that were intimately knowledgeable and had the information from the project site, but we also would bring in some, what I would call cold eye review because, quite frankly, I always like to just push on my team a little bit to find out whether everything they're saying is exactly right. Are they, maybe, over blowing the situation or whatever because you hear differing opinions; one from the customer, being Nalcor, and another from my team.

So I like the idea of bringing in – we were able to find a very experienced person who's just on the Panama project in mining and metallurgy and added them also into the mix. So I really like the idea when it came forward, not just because the window was closing, but it gave – it would give all of us something that we could use going forward as well as it would be a little bit of a check-in on, hey, here's what a third – kind of a third cold eye review would look at this project and what they would say about it.

MR. LEARMONTH: Yeah.

Was it any concern that the risk analysis was done or, you know, signed off on by mining and metallurgical people with experience in that area as opposed to hydroelectric people?

MR. THON: Oh, I think it's both. I mean if you look at the first page it would be a very typical sign-off. Normand's on there and Michel and –

MR. LEARMONTH: Right.

MR. THON: Now, Claude did sponsor it and Claude is from M&M –

MR. LEARMONTH: Yes.

MR. THON: – our mining and metallurgical and he had a lot of experience so – and that was that cold eyes review so – that I was really looking for. So that's – it wasn't uncharacteristic that we would – when we do these reviews, that we would have other divisions come in and do a peer review of each other just so that we can really test whether people are drinking their own Kool-Aid.

MR. LEARMONTH: Okay.

The – now, the risk assessment, you know, indicates a potential of $2.4 billion. I don't want to go through it all, I think everyone has seen the contents of it and reviewed it.

This was an internal risk assessment. At any time was it the intention of SNC-Lavalin, as far as you know, to provide a copy of this risk assessment report to Nalcor?

MR. THON: You know, I don't really know. I never spoke about giving it to Nalcor. I was primarily focused on finding out for myself and for our team what the – what we thought those risks were so we could bring them forward to Nalcor in our regularly scheduled meetings and make sure we had mitigations or not if they chose not to mitigate them in the way we thought.

So I did expect that through the course, Normand, as the project director, would probably share the document with his counterpart, Paul. But there was no big discussion of whether we would – that I recall – give it to them or not.

MR. LEARMONTH: Okay.

Now, in all the versions of this report that we've seen, there isn't one version that you signed. And I know that you gave an interview – and we have a record of that interview, not a verbatim record, but we have a summary of your evidence which was given to Grant Thornton on June 20, 2018, where you deal with this report and that's at tab 14.

And then if you recall at your – at the interview, I asked you – rather than take the time to go through it word for word during the interview, if you could review the record prepared by Grant Thornton at tab 14 – and by the way, that's Exhibit P-01842. If you could review that and see whether there was any clarification or corrections that you wanted to make.

And then you sent an email, which I received from your counsel, and that's at tab 16, CIM – okay, Exhibit P-02435. So you did make one qualification to the information you gave to Grant Thornton in that interview. If you could just look at tab 15 and just explain what the clarification is that you thought was necessary after reviewing the Grant Thornton record.

MR. THON: Yeah, when I looked through the Grant Thornton notes they were asking me about whether I was aware of the document and whether I had reviewed it and whether I had signed it. And the way it was recorded in there, I clearly remembered reviewing the risk report. I knew of its existence, I just explained that and – but I don't physically remember whether I signed it or not. So I think that was the only clarification that I wanted to highlight.

MR. LEARMONTH: Okay.

Assuming that you didn't sign it, would that – some might suggest that that was an indication that you didn't agree with it and you didn't want to put your name on it. If anyone has that impression, would that be a correct impression?

MR. THON: No, it wouldn't. I did agree with the risk assessment that was done.

MR. LEARMONTH: So the fact that you didn't sign it you don't believe is a matter of great concern?

MR. THON: Not for me personally. It could – I don't know what other thinks but, no, I had reviewed it and agreed with the risk assessment that the team had done.

MR. LEARMONTH: Okay.

Now, I'm just going to turn to tab 14 which I referred to earlier. That's Exhibit P-01842; that's the June 20 interview. And, actually, the interview was done by telephone, actually, with Grant Thornton.

And if we turn to page 2 of that, there's – you're quoted as saying or reported as saying that: "I would have attended one CEO meeting between Bob Card and Ed Martin and others that we had in St John's, near the end of April 2013." Would that be a different meeting from the one that we referred to earlier or would it be the same meeting?

MR. THON: That's the same meeting, yeah.

MR. LEARMONTH: That's the same meeting, okay.

MR. THON: Yeah.

MR. LEARMONTH: Now, at this – just – we're going down on page 2. Do you – is it correct that you talked about risks at this meeting? You're quoted as saying towards the bottom on page 2: "In the CEO meeting between Bob Card, myself, Ed Martin and a few other … we certainly did express the concerns of the risks that are in that report." Do you recall that?

MR. THON: Yeah, I see that. And, yes, we did. I mean, as you saw, the document itself that was presented was fairly high level, more of a project update, but then we did go through some of the risks. We wouldn't have gone through all of the risks in the risk report with Ed; you know, there's quite a long list of them. Those were more done at our steering committee with Gilbert and Paul Harrington, but we certainly did discuss some of the risks at that meeting with Ed.

MR. LEARMONTH: Yeah

Now as – and then you were asked: "**Was the content of the report shared with Nalcor?**" And you say: "Like I said, I can't remember whether we gave it to them or not." That's the bottom of page 2.

It may appear to be unusual or surprising that if you're in a meeting with its chief executive officer and you're discussing a risk report that you had prepared, that you wouldn't have given a copy to Mr. Martin. If your evidence is that you didn't give a copy to him, can you provide us with some explanation as to why?

MR. THON: Well, my recollection is that the risk report wasn't done. We had – in fact, we had been working on it and had some idea of some of the concerns already and we spoke about those, but my recollection is we didn't have a finished report.

Once again, it was primarily for internal purposes – was so that we could take a look at what the risks were and we could discuss them then with Nalcor. For me, it was bit inconsequential about whether we actually gave it to them or not. But I guess more directly to your question is I don't believe the risk report was complete when we had the meeting.

MR. LEARMONTH: Yeah.

But at the top of page 3 of Exhibit P-01842 you're – this is – this statement is attributed: "We certainly did on a number of occasions, walk through the key areas of the report and our concerns around the risk, yes. We did go through that in a number of meetings."

So are you saying that – you say a number of meetings with – are you excluding this April meeting where you met with Bob Card and Ed Martin and Gilbert Bennett?

MR. THON: The primary meetings that I'm referring to are the steering committee meetings.

MR. LEARMONTH: Right.

MR. THON: There were also then the – which I attended. Then there were also project-level meetings that Normand and Bernard would attend where we went through those risks. Did – so then, yes, the CEO meeting we did talk about some of the risks, but it was at a much higher level than we would be going to in those other two meetings.

MR. LEARMONTH: Okay. Well, actually, just to clarify what I said, on page 3 towards the bottom you do refer to – well, this confirms what you said that – question: "**Would that report had been revised subsequent to the meeting with Ed Martin?**

"My recollection is that we were working on the report when we had" the "April meeting. It was not complete and it was not completed until after that meeting. So there would have been some revisions.

"I don't believe that there was anything that Nalcor provided us that changed the contents of that report."

MR. THON: Yeah, exactly.

MR. LEARMONTH: But was the existence of the report – the fact that a report had been prepared – discussed at the steering committee meetings?

MR. THON: No, not to my recollection.

MR. LEARMONTH: Yeah.

Well, if it –

MR. THON: Not to my recollection.

MR. LEARMONTH: Well, if it had been prepared at the time of the steering committee meetings, why wouldn't it be passed across the table to them or sent to them by email or – by them I mean Nalcor. Do you have any explanation for that?

MR. THON: Well, I just didn't think it was of consequence. A, as I said earlier, I would expect that the project director would be into the details of this report. My recollection would be as we've done our own work on this and we see these as the risks and so you walk through the risks.

Now, it's an internal document to SNC-Lavalin and so when I say we've done our own work and here's what we've found, we would talk about them. An example might be we don't recommend giving very large packages the size that you are looking at giving up and we think that it's a significant risk. Here's the way we believe that you should mitigate that. We would talk a lot about that and they decided not to follow our mitigation plan.

MR. LEARMONTH: Okay. Now, what is the problem, if there is one, with giving large packages as opposed to a series of smaller ones, based on your experience?

MR. THON: Yeah, so based on my experience is you limit the field of potential bidders. That may or may not have been the case here but you do limit the field of competition.

And, of course, the most – as an owner, when you have the most power, if you like, is in that competition. And once any construction project or any engineering contract gets signed, oftentimes the power shifts to the person you've chosen because it's difficult for the owner then to make a change.

Now, that becomes very difficult when you have a very large package. For a whole bunch of reasons the person performing that package has a significant impact on the project. And your ultimate consequence to the contractor is removing them, but that often causes you more of a concern when you have a very large package, and then the – than it does the actual contractor.

And then the second piece is find a replacement will often cost you more and they are very limited. So it just became – just for a whole host of reasons, those very large packages are often much higher risk for owners than not.

MR. LEARMONTH: Is that point of view, to your knowledge – you've worked on a lot of large projects, is that point of view generally shared in the industry? Or is it the type of thing that where some people agree with it, some people don't agree with it? Just give me some level of – give me some indication of the level of acceptance that that thought has in the large contract – or larger project area.

MR. THON: Yeah, I don't know if I can speak to a general consensus. The other side of the coin would be that when you have multiple contractors, there is a risk of the interfaces between those contractors. So that would be the counterargument. The counterargument would say: I have higher risk when I have to manage multiple contractors versus giving it all to one. Our view was – on this one, as you have seen in the report and we spoke to, that it was much higher risk to go with the very large packages. And we typically haven't done that on the projects that I've been involved in.

MR. LEARMONTH: Okay.

But how was this information received by the Nalcor people? Did they say thanks for your information but we're doing it our way? Or was there any feedback that you got after you made this point?

MR. THON: They – they accepted it, is my recollection, and they expressed a lot of confidence that they could find enough bidders to create a competition and they had confidence in some of the names that they were bringing to the bid list that would be able to perform this kind of a project in a remote area of Canada.

We didn't have quite the same confidence they did and – but they, you know, they were the customer at the end of the day and they heard the risk we highlighted, they heard how we would mitigate it and they chose to go a different way.

MR. LEARMONTH: Okay.

Tab 7, Exhibit P-02432. This starts off at the bottom – well, a little ways down. It's an email from Scott, from you to Robert Card and Nicole Girard, "Confidential: Lower Churchill Backgrounder."

Are you familiar with this email that you sent to Bob Card?

MR. THON: Yes, I am.

MR. LEARMONTH: Yeah.

So why would – what was your purpose in sending this email to Bob Card on April 24, 2013?

MR. THON: So this is just prior to the first trip and meeting that Bob is gonna make out to St. John's.

MR. LEARMONTH: Mm-hmm.

MR. THON: And so it was, really, to give him a backgrounder and a status update of the – who the people are he's gonna be meeting, what some of our team – what they believe, where the project is at. So as Bob gets ready, he knows what is ahead for him.

MR. LEARMONTH: Okay.

Now on the – on page 2, 3 and 4, there's a summary of, well, certain items related to the Lower Churchill Project. Who prepared the document at page 2, 3 and 4 of Exhibit P-02432?

MR. THON: Right. So that would have been given to me by Bernard, but I believe a lot of it was Bernard working with Normand Béchard.

MR. LEARMONTH: Okay.

And did you agree with the contents of this presentation?

MR. THON: I generally did, I mean, insofar as the – is the – this is what the team believed and what the team's experience was. So I didn't – I read through it and didn't have any reason to question it and so, I provided it to Paul.

MR. LEARMONTH: Okay.

Just a couple of topics under major concern – this is on page 2 at the top: "Nalcor being an owner and an utility, has not the necessary flexibility and autonomy to handle all issues raised in a day to day project business.

"Actually many struggles are happening when it is time to settle project rules and politics such as policy on employees travel, ppe reimbursement, project branding, assignment conditions, project communications" – et cetera.

Do you believe that was a fair statement for the writer to make?

MR. THON: Your last part about the struggles day to day, I couldn't really speak to that. I think I would – but I would agree with the opening statements. Being owner of a – in a utility is an extremely different skill set than being a builder of a major project.

Sadly, we're – both groups are engineers – I'm one of those as well – and they often believe that they can do the other's job, but they are fundamentally different skill sets. And so I would agree with that opening statement that the – being an owner of a utility, really, does not make you an expert in building major projects.

MR. LEARMONTH: All right.

And on authority and empowerment, it says that: "Since the EPCM contract has been awarded, Nalcor management never accepted to discuss and agreed to implement an authority matrix so" – as – "to empower the EPCM managers in their role."

Was that your understanding? Do you believe that was a fair reflection of the – the belief of SNC people at the time?

MR. THON: I believe it was of – it is what I was hearing. I was hearing a lot of frustration from the SNC-Lavalin team who was saying that they – while they were leaders in name, they didn't have decision-making authority. Whether that's hiring and firing decisions or approving expenses or whatever it might be, it was – it was very frustrating for them that they didn't have the authority that went with the role.

MR. LEARMONTH: Yeah.

Now for example, Normand Béchard, who was the project director, I think, and he's gonna be testifying but, you know, his evidence is that he had extensive experience as the top person in the construction of – of major hydroelectric power projects in Quebec.

You're familiar with Mr. Béchard's background, generally, are you?

MR. THON: Yes, yes.

MR. LEARMONTH: Yeah.

MR. THON: I believe he was a vice-president in Hydro-Québec.

MR. LEARMONTH: Yeah. But he, I mean, he said that he – he had no authority and he said he felt, his word was: I felt useless. He was very unhappy.

Do you know why the – Nalcor would, you know, have someone with his talent and background and experience on the roster, yet relegate him to a position where he felt that he was useless? Do you have any insight that you can provide us for that?

MR. THON: No, I don't think I can help you. I – I can – I can endorse the fact that Mr. Béchard was very frustrated. The types of things you just said to me around his lack of authority, he was certainly not used to, being a project director. And, in fact, he had confided in me, early on in my mandate, that he would be leaving the project. We – he was good enough to make that a very long transition to – to help SNC-Lavalin through that and help, quite frankly, Nalcor, I think, through that transition. But – but he – from my early days on, he – he really felt frustrated.

MR. LEARMONTH: Yeah. I think if you turn back, just to the same Exhibit P-02432, on page 1, the second to – third-to-last paragraph, you say: "It is confidential but Normand has advised us he plans to leave at the end of the year" – that would be 2013 – "(Nalcor does not know this) and I hope to change that."

That's –

MR. THON: Yeah –

MR. LEARMONTH: – that's what you're referring to?

MR. THON: – exactly.

MR. LEARMONTH: Yeah.

MR. THON: That's exactly what I'm referring to.

MR. LEARMONTH: Okay.

Just – just turn now to page 3 of Exhibit P-02432, "Proper execution schedule

"The baseline schedule that has been worked out during the stage 2 and agreed with the client was very optimistic and having few float. This statement has been confirmed after a 2 days workshop with the Wesney group. The project has been sanctioned with a 6 months delay and the early works had started later than planned resulting in a rebaseline pushing the river diversion by one year but keeping the 1st power date in December 2017 for political reason. Such a schedule is unrealistic and may result in schedule and cost overruns."

First, do you know what was intended by the term "for political reason"?

MR. THON: No, I didn't – I can't – I don't have any further information. This is all prior to me arriving, but I do agree this is exactly what I heard, is that there had been a bit of a delay in sanctioning. There was some concern – I think it's actually in the risk report –about the window of opportunity for the river diversion. And so I don't believe the …

The only comment I guess I could add to it is at our off-site that – with Deloitte that I referred to earlier – is I did hear very strongly, at least at that point in time, that cost from Nalcor – that the cost was probably of the prime importance versus schedule. So that would be a little counter to this, I guess, but I do distinctly remember them saying how important this is for Nalcor, for Newfoundland and Newfoundlanders. They were very earnest in that and they also did say that if they had to miss on something, schedule would be the one that they were gonna miss on.

Although there was some system-operating concerns they had that they really wanted to get the hydro online just because they had some other thermal plants coming up. So anyway, it's a mixed bag but I can't really speak to what Normand was talking to – or Bernard in this particular document.

MR. LEARMONTH: Okay.

Now actually, you said that this document was prepared, I think, before your time, but I think it's attached to your April 24, 2013 email. Is that – am I wrong on that?

MR. THON: Sorry, I wasn't referring to that the document was prepared.

MR. LEARMONTH: Oh, all right.

MR. THON: I was just talking about the contents of what you were reading to me around the baseline schedule was prior to me arriving. But I do agree it's exactly what I was hearing from my team.

MR. LEARMONTH: Yes.

And under cost estimate on page 3: "At the gate 3" – that was December, or – well, in the fall of 2012 – "At the gate 3, a class 3 estimate has been produced on direct and indirect costs by the EPCM contractor. The client took 5 months to make the necessary reviews with a third party so to complete his CAPEX evaluation. The EPCM contractor has not been involved in this process and very few details have been transferred to us so to implement all the costs in the system and being able to insure an appropriate follow up …"

Now, if you're – you know, SNC was brought into this project because the Nalcor people required a company with deep experience in hydroelectric projects. Do you agree with that?

MR. THON: Yeah, I – that's certainly what I've heard from the Nalcor folks, yes.

MR. LEARMONTH: Yeah.

Well, can you give me any explanation as to why SNC-Lavalin – why Nalcor decided to exclude SNC-Lavalin completely from risk assessment and risk analysis? Can you come up with any explanation for that, or any reason as far as you understood it?

MR. THON: No, I – and I don't think that they would say that – they wouldn't say that they were excluding us from all risk analysis, but they certainly weren't giving SNC-Lavalin all the information that was required around cost. And what I – the way I read this is it's – it is fairly common for an owner to have their own engineer review the work of their EPCM. And so when I read this that's the way I took it, is that there was an owner's engineer who was reviewing SNC-Lavalin's work around the Class 3 estimate.

MR. LEARMONTH: Yeah.

But they – I mean, the evidence is that Nalcor chose to retain Westney from Houston to do their risk assessments and that's what I mean when I say SNC was excluded from participating in that process, or from receiving the results of the risk analysis prepared by Westney. Is that a usual situation for when you have an EPCM contractor, even though it's being – in a transition period to integrated management? Do you find anything unusual about that?

MR. THON: Mr. Learmonth, just so I'm clear, so are you referring to that document or are you are now just talking generally?

MR. LEARMONTH: Just generally to the risk assessment, yeah.

MR. THON: (Inaudible), okay.

Yeah, I think it would be very common for an owner to include the EPCM in a deep risk assessment. So it is unusual that the EPCM wouldn't have all the information to make that risk assessment. That said, for them to bring in another party to test that also is not unusual.

So, overall for them to bring in Westney I didn't find overly concerning. Owners often want to – have to form their own view. What was unusual to me was that we couldn't get all of the cost information.

MR. LEARMONTH: Okay. Thank you.

Now at tab – well actually I'll turn to – it's the same documents at tab 8 as 9. So let's go to tab 9. This is Exhibit P-02434 and this is a document here, P-02434. At page 2 and 3 is – it looks like a joint letter signed by Gilbert Bennett and you. Can you give us some background for this? This is July 12, 2013, on page 2. Can you identify –

MR. THON: Right.

MR. LEARMONTH: – this document?

MR. THON: Yeah, so one of the action items that I recall coming out of the off-site with the Deloitte team that was focused on team building and organization effectiveness was (inaudible) from the top – not dissimilar to the town-hall-style meeting we had with the CEOs or with Ed. And, really, what we wanted to do was to step up the communication from both the senior leaders, both at SNC and with Nalcor, to really set that tone of co-operation and to really make it clear to the teams that they were meant to co-operate for the success of the project and they were not to – meant to build silos.

So, that's the overall reason that I recall that we put this together. I volunteered to take the draft of it – make the first draft. So we hashed it out a bit on – in – on our team and then this was my attempt to have Gilbert sign off on it.

MR. LEARMONTH: Okay.

Now, did you attend meetings or meet with Nalcor executives on a regular basis, you know, between – say – April 2013 and when you left in March 2014? Did –

MR. THON: Yes, we had the steering committee meetings –

MR. LEARMONTH: Yeah.

MR. THON: – after that.

MR. LEARMONTH: Yeah.

MR. THON: Yeah.

MR. LEARMONTH: And could you describe the, you know, your – give us your take on the effectiveness of these steering committee meetings.

MR. THON: I would say there were – I felt that they were not as effective as they could be. They – the agenda often was an update on the project and we would talk about key risks and what they would be and what they wouldn't be. But they were very reticent to share much information –

MR. LEARMONTH: Even with you?

MR. THON: – Nalcor – yes, yes.

And then we would talk about different ways to mitigate risks. Sometimes they would say, yes, we agree with that; it's not good. And other times they would just say: Thanks, we'll take that away.

MR. LEARMONTH: Okay.

MR. THON: So it did get it a – give me a chance, certainly, to get connected face to face with the SNC-Lavalin team, make sure that they were engaged and then have a chance to make sure that Nalcor was apprised of what we were seeing in the project. But my other primary focus was to try to figure out what this integrated team was going to be. We knew it wasn't going to be an EPCM anymore, and both from a contractual risk but also from a team-uncertainty point of view, that was another reason to have those steering committee meetings.

MR. LEARMONTH: Yeah.

And who typically would be in attendance at these steering committee meetings? Would it be the same people all the time or different people for each meeting?

MR. THON: Generally the same people. Certainly, Gilbert and I were there. Paul and Bernard Gagné from – my direct report from – in the Hydro division. And then we would typically have Lance and – Lance Clarke – and Normand Béchard there. Sometimes – they weren't always there. Sometimes it was just the four of us, but we typically would have them in there at least for part of the meeting.

MR. LEARMONTH: All right.

And would they be every month or every three months? Or would they just be called when the situation required a meeting?

MR. THON: They were scheduled to be quarterly. So we had those series of meetings early on. I was out in February; we had the Bob Card meeting in April; then we had the off-site in May, I think it is. Then we started the quarterly meetings after that. So my notes would say we had one in end of August, then we had another one at the end of November, and then I pretty much was getting ready to move on so …

MR. LEARMONTH: Yeah. Okay.

When you did move on, which was at the end of February 2014, what was your perception or understanding about the state of the relationship between SNC-Lavalin and Nalcor?

MR. THON: It was – it remained unclear. SNC-Lavalin was very earnest in their view that they wanted this to be a success, and I fully would back that up, that they really did want this to be a success. Even though, you know, the sting of being taken out of the EPCM role by then had subsided, and it had been replaced with a: Okay, we're in a services role, if you like, and how do we make it successful in a services role? The second thing that I would say is that it was – remained unclear about what the contract was gonna look like.

So coming out of the off-site, it was clear to me that there was going to be no leadership roles for SNC-Lavalin. That helped them define what the contract should look like, and I asked the team to start the negotiation, which I believe started in the fall of 2013 to renegotiate the EPCM contract into something that looked more like a services contract for this integrated team.

MR. LEARMONTH: Okay. Those are my questions. Thank you very much, Mr. Thon. Other counsel may have questions for you.

THE COMMISSIONER: All right. The Government of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: Good afternoon, Mr. Thon, my name's Dan Simmons, counsel for Nalcor Energy. I'm going to pick up on a few things that Mr. Learmonth has asked you about already today. And if I understand, from what you've told us already, when you came into the position that you occupied in this time period beginning in 2013, the decision had already been made to move SNC away from the EPCM contract towards the integrated team, and that's something that was done when you arrived, and I gather that you kind of accepted that as a –

MR. THON: Yes – sorry, there's just something going on in my office –

MR. SIMMONS: Yes. Here, too.

MR. THON: – (inaudible) just hold for a quick second.

MR. SIMMONS: And that's something that you accepted as a fait accompli, and your approach was to move forward from that, rather than to look back, was it?

MR. THON: It was that we were out of the – that SNC-Lavalin was out of the – EPCM role –

MR. SIMMONS: Yeah.

MR. THON: – but I didn't know what integrated team meant. There's a lot of different flavours of what an integrated team could look like. And so trying to define that for our teams was my primary goal.

MR. SIMMONS: Right. Now, one of – I was interested in something you said just a few moments ago. You referred to the sting of being taken out of the EPCM role, so can you tell me more about what the sting was for SNC about that happening?

MR. THON: Well, I mean, you – you're not in a leadership position anymore. And I think that, for some people, is difficult, clearly.

I think it also made it – well, not I think, I know it made it difficult to recruit people to the project. We often had requests from our counterparts at Nalcor to bring better leader – better people to the project, and I was very earnest in trying to do that. But very often, if you brought a very experienced person and proposed them to Nalcor, and they did like them, once the person understood that they were not going to be in any kind of a leadership role, they really didn't have any interest in going to the project. So it made it quite difficult to be successful when you're not in a leadership role, so that's what I was referring to.

MR. SIMMONS: Okay.

Did the change from EPCM to integrated team have any impact on the revenue that SNC expected to earn from its participation in the Lower Churchill Project?

MR. THON: Nothing in the near term.

There was certainly some – there was a lot of engineering work that was gonna happen. Ultimately, as you got later into the project, it would likely impact the revenues, but that was behind us when I arrived. It was like Bob and myself had realized, okay, that's where it is and that was built into SNC-Lavalin's forecast, and it is what it was.

I – my – our biggest concern was what are we being asked to do, so then we actually can figure out what our revenue might look like, and then what's the risk under the contract?

MR. SIMMONS: Right.

So when you came into the position – and I think Mr. Card was fairly new then as well – the – you're telling us that you didn't know what the integrated management team was going to look like and, presumably, how much participation SNC and its personnel were going to have in it.

So at the outset, was there interest on SNC's part in working to try to ensure that SNC and its personnel played as large a role in the integrated team as possible?

MR. THON: I think I wouldn't agree with the larger role.

MR. SIMMONS: No?

MR. THON: I would be focused on the right role.

MR. SIMMONS: Mm-hmm.

MR. THON: We really thought we had some key leaders, in particular, that could add a lot of value to the project. So at least for me, this was not a big concern about running out and adding man-hours. I know that some of the Nalcor people suspected that, but that's not who I am, and that's not who Bob Card is.

So we really just were very focused on – on making sure this is gonna be – get the right leaders in place. We thought that was our critical value add that we could do to really make this a success.

MR. SIMMONS: Sure.

I'd like to bring you, please, to Exhibit 01817. Page 15, please, Madam Clerk.

THE COMMISSIONER: 1817.

MR. SIMMONS: Oh yes.

THE COMMISSIONER: That is tab 11.

MR. SIMMONS: Thank you.

MR. THON: Yeah.

MR. SIMMONS: So, Mr. Card, this is not something you would have seen, I expect, before – I'm sorry, Mr. Thon. This is not something you would have seen before preparation for your evidence here today, I expect.

This is a presentation that was prepared by some members of the project management team as part of this Inquiry process. And –

MR. THON: Okay.

MR. SIMMONS: – actually page 15 please. I may have said 17.

And this is a page where they've identified some of the performance issues that they saw with SNC-Lavalin's performance in 2011 and 2012. And I know this was before you were involved, but I just had a couple of questions for you about some of these.

The first one says, "Resources." And it says, "During the Engineering & Procurement phase of the Project SNC struggled to provide the resources required with a succession of Project Managers and Functional Managers assigned to the Project coupled with significant senior personnel gaps."

Now, I presume when you started, you would have needed some sort of briefing on where the project stood, where SNC's performance of its duty under the EPCM contract stood, what the problems were that had happened so that you could understand things moving forward.

Is this statement here about resources, is that consistent with what you would have been informed of when you took on the role?

MR. THON: It wouldn't be specifically like this, but would resourcing be a concern? Yes.

MR. SIMMONS: Okay.

MR. THON: And – but what I would context that with is, start-up of a project, you always want your full complement the next day. And that's just never a reality. So there's always this concern, particularly from the owner. And the owner needs to work with the engineering company to bring people on, both quality and quantity.

What I heard from my team is that yes, there were some gaps, but a lot of that was being exacerbated by their inability to hire people without going through a very long process. They didn't have the authority to hire people. And that's what the source of the delays were.

MR. SIMMONS: Mm-hmm, okay.

MR. THON: So that's what I heard from the SNC-Lavalin team.

MR. SIMMONS: Okay. So that's what they reported to you.

Skip ahead to slide 18 please, page 18?

So this one provides some information about the turnover of key SNC positions in 18 months after the contract was awarded to SNC – from January 2011 to June 2012. And there are positions there such as general project manager – three people – different people in that position in the first 18 months. Project controls manager – four people in that position. Two different people – change-outs of project manager, procurement of contracts manager and construction manager for Muskrat Falls and a number of others there.

Is that what you would regard as being typical start-up for a contract like this – to see this kind of turnover in important positions?

MR. THON: I guess you have to – when you put this to me, I (inaudible) don't have the context on the size of the team. If the attrition rate is on 300 people that doesn't seem like that big a deal. If it's attrition on 50 people then it does seem like a big turnover rate. But it's really – when you take it out of context like this, it's really difficult.

It is very common that you would have people come in and out at start-up, oftentimes, and that's in any business. You lose people often in the first six months or first year and, in fact, I know – I had my own company – that's often our highest turnover as people come in – they realize the project wasn't or the company wasn't exactly what they thought it was and they decided to move on. And so turnover in the first year is actually a pretty common thing, is my experience.

MR. SIMMONS: And these positions here – would you agree with me – these are senior, important positions that are described on this chart. Are they not?

MR. THON: They're all manager-level so they're our leaders. Yes.

MR. SIMMONS: Yes. So these are the leaders and –

MR. THON: Not the most senior leaders, to be clear.

MR. SIMMONS: Okay. Would these be among the more senior leaders who would be part of the team that would be on site doing the work for the Lower Churchill Project, as opposed to the more senior leaders within SNC whose responsibilities would be shared among multiple projects?

MR. THON: I think there's a mix here. Yes. But – yeah, you probably have some of the more senior people.

MR. SIMMONS: Right. So to be clear, you would regard this as being normal – to see this – these numbers of senior leadership people positions changing out during the first 18 months of a project like this – for an EPCM contract.

MR. THON: No, I didn't say that. I would have to have the context for how large the team was to really make an assessment of whether 17 people is material or not.

MR. SIMMONS: Okay.

Let's go back up to slide – page 15, again, please?

The second box there says – Decision Gate 3 deliverables; and Decision Gate 3 was the point where the project was sanctioned. Are you familiar with the Decision Gate process? Is that something that you've worked with on other projects before?

MR. THON: I'm generally familiar, yeah.

MR. SIMMONS: Yes, okay.

So, and this again would have been before you took up your position. It says a " Significant number of DG3 deliverables not produced by contractual date, including cost estimate inputs - Engineering for HVDC scope and transmission lines, engineering lacking."

Are these the sorts of things that would have been of concern to you, had you been leading this project in 2011 and 2012?

MR. THON: Whenever you miss deliverables on a gate it would be – that would be concerning. I don't know the significance of them because I wasn't there, but that was Nalcor's opinion and if it's true, it would be concerning.

MR. SIMMONS: Okay.

And while you were in your position, did you hear or see anything, or did you get reports to you that would allow you to determine if in fact that wasn't true, if that didn't happen?

MR. THON: There was a number of frustration from the SNC-Lavalin team. There was HVDC which I'm pretty familiar with, given my current role, has a very specialized skillset and when you have an owner that doesn't have the expertise it becomes very slow and very difficult.

So on the one side you have the owner and Nalcor saying these deliverables aren't met, and on the other side you have the engineering team saying: well it's because it takes them so long to process it, because they don't quite understand the project that they're overseeing.

MR. SIMMONS: Right. Do you know whether or not that was the cause of the failure to have delivered on the engineering for the HVDC scope and transmission lines here?

MR. THON: I don't know if that was the cause but that's certainly what I heard from the SNC-Lavalin team.

MR. SIMMONS: Okay.

And just on implementation, it says: "A lack of implementation of the committed SNC processes, tools and systems (e.g. PM+) resulting in poor controls and the need for Lower Churchill Management Corporation to step-in on numerous occasions to fill critical gaps (people and processes). SNC Power Division had no experience with SNC corporate systems."

Now these seem to be fairly fundamental concerns about SNC's preparedness and readiness to get moving on this project in the first 18 months. Was this the state of affairs when you took over or had these problems been remedied by then?

MR. THON: It was not the state of affairs that – when I took over, but they were not implemented. So I wouldn't say it's as dire as what these words say, but I would say that they – the processes and the tools, PM+ and others were not fully implemented.

My team's feedback on that was they were not getting the information provided to them to be able to populate the PM+ and make it work properly. So that would be the counterpoint to what this document says.

MR. SIMMONS: Hmm. Well, the last statement I read there was: "SNC Power Division had no experience with SNC corporate systems." Was – do you know if that was a correct statement or if that was incorrect?

MR. THON: I know that the person that was in project controls at – in St. John's on the Lower Churchill Project was very experienced in PM+ and which is the key corporate tool that would – that's highlighted here.

MR. SIMMONS: Okay.

Can we go to Exhibit 02432, please? Page 3.

MR. LEARMONTH: Tab 7.

MR. SIMMONS: Oh, I'm sorry (inaudible).

MR. THON: Tab 7.

Okay, thank you.

MR. SIMMONS: Mr. Learmonth brought you to this page, and this was a – as I understand it, this was information that was prepared to be provided to Mr. Card prior to his meeting with Mr. Martin in St. John's. Do I have that right?

MR. THON: That's correct.

MR. SIMMONS: Yeah.

And if we can scroll down a little bit, please, to the section that's headed Cost estimate – yes, we can stop there. So this one – and who is – this was prepared by Mr. Gagné and Mr. Béchard, was it?

MR. THON: It was given to me by Mr. Béchard, but I'm quite sure that Mr. – sorry, it was given to me by Mr. Gagné, but I'm quite sure Mr. Béchard was involved, yes.

MR. SIMMONS: Okay.

And it says: "At the gate 3, a class 3 estimate has been produced on direct and indirect costs by the EPCM contractor." Which would be SNC. Then it says: "The client took 5 months to make the necessary reviews with a third party so" – as – "to complete his CAPEX evaluation. The EPCM contractor has not been involved in this process and very few details have been transferred to us so" – as – "to implement all the costs in the system …" – et cetera.

Earlier today we heard evidence from Jean-Daniel Tremblay, and he was one of the SNC staff that was involved in doing the estimating work under the supervision of Mr. Paul Lemay. Did you know either Mr. Tremblay – or both of Mr. Tremblay and Mr. Lemay?

MR. THON: No, not specifically. I dealt – on the project controls side it was more with a fellow by the name of Serge Guerette who was the PM+ person.

MR. SIMMONS: Okay. Well, Mr. Lemay was the lead estimator who prepared the estimate and Mr. Tremblay worked as part of his team and had a coordinating role and did some other duties that he described to us earlier today.

And we understand from that evidence that the SNC estimate of the components it was to estimate was completed December 15, 2011, and delivered to Nalcor. And there then followed a period of a number of months when the estimate had to be completed and there was a bullpen of people put together, which included some Nalcor people and some SNC people, including Mr. Tremblay, who worked on completing aspects of the estimate that needed to be completed and fine-tuning some other aspects that needed to be fine-tuned or altered until the estimate was completed. Were you aware that that's what actually happened?

MR. THON: No, that was before my time. I didn't have that information.

MR. SIMMONS: Right. Because when it says, "The EPCM contractor has not been involved in this process …" referring to the five months to make the reviews and complete the capex evaluation. Based on what we heard earlier today that would seem to be inconsistent with the evidence that we had from Mr. Tremblay. So you can't resolve that inconsistency for us, can you?

MR. THON: No, I'm sorry, I don't – I wasn't there then.

MR. SIMMONS: Okay.

Now, you were asked a number of questions about the risk assessment that was prepared with work done on it in the spring of 2013, and I believe you've told us that it was Mr. Gagné who came to you and suggested that this be – that SNC do this work and prepare this risk assessment. So can you tell me, again, about what Mr. Gagné told you the purpose was of preparing the risk assessment?

MR. THON: He just said that he and Mr. Béchard had been talking and before we lose – we don't have all the information, but before we lose it as we get shifted into more of a services position we should understand what the risks are so that we can communicate them to Nalcor.

MR. SIMMONS: Okay.

Were there any other motivations or any other reasons given to you by Mr. Gagné other than collecting risk information to be able to give it to Nalcor?

MR. THON: Nope, not that I recall. It was very much to – it was quite frustrating not to have all the information, and this just seemed like a great way to make sure that we could bring it all together. And quite frankly, I liked it, as I said earlier, because we would have some of our peers and some – from some of the other divisions that SNC-Lavalin actually weigh in to see whether the power team was actually accurate or not in their concerns.

MR. SIMMONS: Mm-hmm.

We've heard from Mr. Tremblay earlier today that he had it – after this work was done, he had attended a meeting with Mr. Béchard with Paul Harrington at the office in St. John's. And that at that meeting, Mr. Béchard told Mr. Harrington that the risk report had been prepared at the request of the mines and metallurgical division of SNC that were somehow being asked to become involved by the power supply division and that they wanted this risk report done before they would get involved, I gathered. Have you ever – have you heard of that? Do you know –

MR. THON: No, I –

MR. SIMMONS: – anything about that?

MR. THON: No, I hadn't heard of that. It was the M&M, or the mines and metallurgical you saw –

MR. SIMMONS: Yes.

MR. THON: – on the sign-off sheet –

MR. SIMMONS: Yeah.

MR. THON: – that they were involved in the process. We were – also there was some good candidates in that division. I had the full co-operation of the executive leading that group to try to find ways to move some of his people onto our project if it could work out.

MR. SIMMONS: Mm-hmm.

MR. THON: But I don't recall them ever making a request for this –

MR. SIMMONS: Prior to –

MR. THON: – (inaudible).

MR. SIMMONS: – this time in early 2013, had people from the mines and metallurgical division been involved in the project? Was SNC drawing on those personnel before them?

MR. THON: You know, I couldn't say exclusively or not.

MR. SIMMONS: Mmm.

MR. THON: The – we often had people in hydro projects that moved to mining and back and forth. So there might have been some. But did we continue to try to find people from both within power and also M&M? Yes, we did. And in fact, I presented some other people to Nalcor that were construction leaders that were from M&M some months later.

MR. SIMMONS: Right.

So in early 2013, then, was this a new initiative of yours to try and bring more people from M&M into the project?

MR. THON: I wouldn't call it a new initiative. But I would say it was where – very much used it – viewed it, Bob Card in particular, as a key project for SNC-Lavalin and while everyone has their own division, as every – in any company, we all wanted to work co-operatively to make it a success.

MR. SIMMONS: Okay.

So, the report that was ultimately produced had a sign-off spot for you to sign and we know that it didn't get signed eventually. But, given the position you were in, would you be involved in the doing or monitoring or any of the work of the preparation of a report like this, or would it arrive on your desk as a finished product and you'd see it and then determine then whether you were going to sign off on it?

MR. THON: The latter is more accurate.

MR. SIMMONS: Mm-hmm. Right.

MR. THON: I wouldn't be in any of the working – or I was not in any of the working sessions to prepare the risk report. A draft would come to me, Bernard and Normand Béchard and I would talk about the different risks and whether how – what was the process they used and I would test that and ask questions around that –

MR. SIMMONS: Okay.

MR. THON: – was typically how it went.

MR. SIMMONS: So how much did you know about the process about who was involved in providing the information with SNC that found its way into this report? 'Cause you did mention earlier that there were people who were involved in the project who were involved in this. I wonder if you can tell me who you know from the project contributed to this work –

MR. THON: Oh, I –

MR. SIMMONS: – SNC people involved in the project.

MR. THON: You mean on the – involved with the Lower Churchill Project (inaudible).

MR. SIMMONS: Yes, the Lower Churchill –

MR. THON: Yep.

MR. SIMMONS: – Project, I'm sorry. Yeah.

MR. THON: Yeah.

No, I don't know specifically. Bernard and – so, Mr. Gagné and Mr. Béchard were obviously involved in it.

MR. SIMMONS: Mm-hmm.

MR. THON: Mr. Béchard is intimate with the Lower Churchill Project.

MR. SIMMONS: Right.

MR. THON: And my assumption was then he would draw on some of his people that were under his direction in St. John's to help him prepare (inaudible).

MR. SIMMONS: Right.

So, Mr. Tremblay has told us earlier today that he participated in one two-hour workshop with Mr. Béchard and they were on the telephone with people in your Montreal office, which included a Mr. Mackay from power division who had not been involved in this particular project. And otherwise we understand it was people from the mines and metallurgical division.

And are you aware of any greater participation of other people in providing the information that was used to assess what the risks were and how to value them for this report?

MR. THON: No. I'm –

MR. SIMMONS: Okay.

MR. THON: – not – I don't know the individuals that were specifically on the team, no.

MR. SIMMONS: Okay. All right.

Now you've told us the purpose of doing this was to be able to gather risk information so that it could be provided to Nalcor. And you've told us as well that the risk information was discussed at the steering committee, but I understand from what you've said that the – that you cannot say that the existence of the report itself was ever disclosed in steering committee or in any – or to Nalcor by you in any other forum. Do I have that right?

MR. THON: Yeah, not to my recollection. Do – I don't recall –

MR. SIMMONS: Mm-hmm. Right.

MR. THON: – speaking about a specific risk report.

MR. SIMMONS: Well, when you look at the report, it not only deals with identifying and describing risks, it also puts values – puts numbers on them and it comes up with a $2.4-billion figure at the end.

If your purpose was just to gather risk information for the purpose of informing Nalcor, why was there also an exercise conducted to try and value those risks?

MR. THON: Well, because that's a fundamental part of doing a risk assessment. And my view is you may have a risk but if it has very little consequence on the cost or schedule to the project – so, that would be why we would put – I would require them to make some assessment of the cost.

MR. SIMMONS: Well, once the assessment of the cost had been done, why not inform Nalcor of what those assessments were?

MR. THON: I –

MR. SIMMONS: Why only tell them what –

MR. THON: – believe we did.

MR. SIMMONS: – the risks were and not the values that SNC had put on the risks?

MR. THON: Well, I got – I believe that we did talk about that in the steering committees. We would say: Look, the contractual risk, you know, this is how we view it. It could be in the order of this size (inaudible) and – but at that point putting a specific number on it, given that we didn't have all the information, was maybe not required. But we certainly did talk about these are the big risks and here's the order of magnitude that you could expect if you run into those risks.

MR. SIMMONS: See the thing I find difficult to understand here is that with SNC having gone through all the effort to actually prepare a report that captures this information, the risk information and the numbers, why not just simply bring a copy to the steering committee? Why not hand it over to Gilbert Bennett? Why not transmit it by Aconex with a cover letter so it goes in the system? Why hold onto the report and just talk about the things in it instead of actually delivering the report?

MR. THON: I thought it was a non-issue, quite frankly. We did an internal assessment of where things were at. I expected that Normand would discuss that with Paul, a project director – detailed review. And then at the steering committee, as I said, we talked about the bigger risks but we certainly didn't go through, you know, the 40 risks that that level of detail of a report would have gone through.

So, for me it was a non-issue. The report was being discussed at the project level, and the steering committee was going to deal with highlighting what those big ones were.

MR. SIMMONS: Thank you very much, Mr. Thon. I don't have any other questions.

THE COMMISSIONER: Concerned Citizens Coalition.

MR. BUDDEN: Good day, Mr. Thon.

My name is Geoff Budden. I represent the Concerned Citizens Coalition and the coalition is a group of individuals who, for a number of years now, have been critics of the Muskrat Falls Project.

I'm looking what I believe is at you, but if I'm looking somewhere else I apologize for that.

Really, I've got a – my questions are mostly concerning the risk report, pretty much where Mr. Simmons left off. And I noted some of your comments when you were testifying, both in direct and with Mr. Simmons. You spoke about the – when Mr. Learmonth asked you for what purpose was the report completed you spoke about your team being highly frustrated, do this before the door closes, do some kind of risk assessment because you're highly frustrated, and elsewhere you said give us something we could use going forward.

And, I guess what I'm interested in more – I suppose a different way of framing it a bit – what was the motivation of SNC-Lavalin for putting this significant effort into this risk assessment?

MR. THON: Just as – I think you recapped it well. What I'd said earlier is that we knew that we had limited information and we knew we were going to get far less of it. As you move to not actually managing the project and just providing services to it, you're certainly quickly going to lose where the project is at.

So, while we still had it we wanted to take a snapshot in time and say: Look, here's the value we can provide Nalcor. If you listen to us these are the types of risks and here's how we would mitigate them versus the way you're doing it. And so that created the opportunity – by doing the risk report – to have the discussions about those risks and how to mitigate them.

MR. BUDDEN: So, in that sense was it basically an attempt to, I guess, re-involve yourself in the process that – in a project that was somewhat slipping away? Is that what you're saying? Sit down with the management of Nalcor and say: Look, there's issues here. We've identified them; we can help you with them.

MR. THON: I think it goes to what I had said earlier is that, as an owner, my advice to Nalcor had been: Let's put the right people in the job regardless of the history. And it was our attempt to try to prove to Nalcor that we have some very strong leaders and maybe we weren't going to have the leadership role anymore for the whole project, but please don't throw the proverbial baby out with the bathwater and you should really see the value in this and really keep some key people in leadership roles on the project.

MR. BUDDEN: The key, you mean key SNC-Lavalin people? Key –

MR. THON: Or whoever was right for the job, and, yes, SNC-Lavalin would be. And, in fact, as I recounted earlier at the off-site, we did put up an org chart, and we had criteria about who should be the leader in what area. That would be a mixture of their technical abilities as well as their experience as well as their ability to lead people, which is a key skill to be in a leadership position. And we independently – sorry – we together actually agreed on the best people, regardless of which company they came from. And at the end of the day, you know, that was changed. But it really was let's just put down the trying to defend, you know, who came from where and just get the best people.

MR. BUDDEN: Okay.

I would suggest that implicit in that is, sort of, an assumption that the team Nalcor had there were not the best people. They were not correctly identifying risk. They were not correctly utilizing the resource that SNC-Lavalin had. Would you agree with me that that was part of the thinking behind the requesting of this report?

MR. THON: Not – I wouldn't fully agree with you. Just I would agree that – maybe just back up. I think that Nalcor and some of the people they put in were very talented people, and that's why trying to change them – we didn't have any reason to change out those leaders, but we certainly did believe that they had formed an opinion of SNC-Lavalin, based on a history, that was having them preclude SNC-Lavalin from any leadership role. And I felt that wasn't the best for the project.

So, yes, they did have some strong people in some leadership roles, clearly – stronger than the people SNC-Lavalin had. But also, SNC-Lavalin had some very key people that they were not willing to put in leadership positions.

MR. BUDDEN: Okay.

Mr. Tremblay, in his evidence earlier today at about 2:23 – I was struck by and I noted it – he spoke fairly eloquently, I thought, about how while the Nalcor people – the Nalcor team had some smart people but they're from a different background. They're from an oil and gas background. And while the SNC-Lavalin had people who had very specific hydro skill sets, which he saw as being lacking in the Nalcor team. Is that an assessment that would – that you would share?

MR. THON: Generally, yes. Yeah.

MR. BUDDEN: Okay.

And does it therefore follow, I suppose, that this report was generated, at least in part, again to show the SNC – rather, the Nalcor people, look, you know, we're saying you guys aren't good but you're missing stuff here. These are things that we've identified that you appear not to have. Was that part of the thinking?

MR. THON: That would be accurate, yes.

MR. BUDDEN: Okay.

Thank you, that was – I found that informative.

As the last thing that somewhat flows out of that, some of the witnesses we've heard from – some of the local politicians – have described the Nalcor team as a world-class team in terms of developing this project. Is that a term you yourself would use to describe the project management team that you dealt with?

MR. THON: Boy, that's a hard description. It depends in what light. Did they have major projects experience? Yes. So in that sense they were strong. Did they have world-class experience in large hydro? No. So I think, as I said earlier, we could have added some leaders from the SNC-Lavalin team that would have improved the overall leadership team.

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

MR. THON: Thank you.

THE COMMISSIONER: Edmund Martin.

MR. CONSTANTINE: No questions.

THE COMMISSIONER: Okay. Kathy Dunderdale is not here. Former Provincial Government Officials, no. Julia Mullaley, Charles Bown.

MR. FITZGERALD: No questions, thank you.

THE COMMISSIONER: Robert Thompson.

MR. COFFEY: No questions.

THE COMMISSIONER: Consumer Advocate.

MR. HOGAN: Hello, Mr. Thon. My name is John Hogan. I'm counsel for the Consumer Advocate.

MR. THON: Hello.

MR. HOGAN: I just want to go to the April 2013 meeting you had with Mr. Martin where you did discuss risks, I guess, discuss the contents of the SNC risk report with him. That's correct, right?

MR. THON: Yes, that's right.

MR. HOGAN: So can you be more specific in terms of what specific risks were discussed at that April 2013 meeting?

MR. THON: I'm sorry, I can't. It's hard to recall exactly what happened. I certainly remember that Lance was running the slide deck on behalf of the group that we looked at earlier. We certainly had a concern about the very large construction work packages. So I believe that we talked about that. But really I can't recall much more specifically than that so –

MR. HOGAN: Okay. And there was a disagreement between you and Nalcor about that risk, correct?

MR. THON: Well, they didn't disagree it was a risk, but they felt that they could mitigate it.

MR. HOGAN: That they could make it, is that what you said, sorry?

THE COMMISSIONER: Mitigate it.

MR. THON: No, sorry, they could mitigate it.

MR. HOGAN: Mitigate it. Thank you. Okay.

Well, maybe – can you think of any other ones that – where there was a disagreement on that they felt that – Nalcor felt that they could mitigate, whereas you are raising it as an issue?

MR. THON: I guess another one would be what the integrated team looked like. I talked about that quite a bit already, but we believed that while SNC wasn't going to have the leadership position in all the boxes anymore, that there were some key leaders that would really benefit the project, and they were – they didn't agree with that.

MR. HOGAN: Okay. That's two. Anything else that comes to mind?

MR. THON: Not off the top of my head, no.

MR. HOGAN: Okay. Thank you.

Just – if we could just turn, please, to P-01842 – we've already looked at this – page 6.

MR. THON: 01842 is 14.

MR. HOGAN: Tab 14.

THE COMMISSIONER: Tab 14, yeah.

MR. THON: Yeah. And what page were you on, Sir?

MR. HOGAN: Page 6, please. If we could just scroll down –

MR. THON: Okay. Thank you.

MR. HOGAN: – to the last couple of sentences there.

MR. THON: Yeah.

MR. HOGAN: So the "objective review had about 50% of the leadership roles were SNC at 50% were Nalcor employees or Nalcor direct contractors; After that, it reverted back and no SNC were leaders except for Normand"

So you commented on that earlier today: you were disappointed by this, and this was sort of the last straw.

MR. THON: Sorry. I'm on the wrong tab. What tab was I supposed to be on?

THE COMMISSIONER: Tab 14.

MR. THON: All right, sorry, I'm off one.

Yes, right. So this is what is what I was talking about earlier. This was the off-site with Deloitte and –

MR. HOGAN: So I just want to clarify – you might have said it, but was this agreed, at some point in time, between SNC and Nalcor that there would be 50 per cent each?

MR. THON: No. No. This is – so at the off-site, we – as it says there in the document – my recollection is we said, what makes a good leader? And we said, generally, it would be technical. Hydro – would be one. Hydro experience would be another and then people leadership skills.

MR. HOGAN: Mm-hmm.

MR. THON: And we then, just as a group, worked together to say: Here is who could potentially be the leader – that's on the team today, regardless of where they come from. And who do we believe is the right person? When we'd done that exercise, we step back and looked at the org chart, and I'm just now – saying: Generally, it was 50/50, there was no pre-agreement, I just thought it was amazing how (inaudible).

MR. HOGAN: And Nalcor didn't participate in that process?

MR. THON: They did. They –

MR. HOGAN: They did participate.

MR. THON: – were. They were there, yeah.

MR. HOGAN: So what was their reaction when it was generally 50/50?

MR. THON: Yeah. Nothing, you know we looked at it and it was like, oh okay, well. And then we took a bit of a break and during the break, they went to caucus by themselves, and then when they came back from the coffee break, they just said that wouldn't work. They would – they couldn't see any SNC-Lavalin people in these leadership roles and so they were gonna have to change the work that we had done.

Now, once again, it was draft work and we'd just done it based on the criteria that I outlined here, but they had decided that they had to make the decision to remove some of those SNC-Lavalin people.

MR. HOGAN: They wanted a higher percentage of Nalcor people in those roles.

MR. THON: Yeah, Nalcor or Nalcor-contracted, because they might not be Nalcor employees.

MR. HOGAN: Okay, thank you.

Just one final question, if we could please look at P-01817 please, page 35. Which I don't think you have.

THE COMMISSIONER: Yes, tab 11.

MR. THON: Okay.

MR. HOGAN: Okay, sorry.

THE COMMISSIONER: Tab 11.

MR. THON: Okay.

MR. HOGAN: Page 35, so Mr. Simmons brought you to this document, this is a document prepared by Nalcor. The last couple of bullet points there – this change to the integrated team, it says, "did not materially change SNC liability".

Do you agree with that?

MR. THON: No.

MR. HOGAN: You don't agree with that?

MR. THON: No.

MR. HOGAN: Okay. Can you explain why you don't agree with that?

MR. THON: Well, when you're an EPCM and you – and particularly when you look at the contract, the type of risks you take on, because you are – have the leadership on the project, you're willing to accept a lot more risk, and that's what that contract did, the original contract. And so, when you are taken out of the leadership, and you don't have the opportunity to make the decisions anymore, then you're not willing to accept the level of risk that was in the original contract.

MR. HOGAN: So it's fair to say there's a shift in accountability from SNC to Nalcor.

MR. THON: Absolutely, and I think that was, as I was also speaking to Nalcor about – well, as an owner, it feels quite good to take over control of something, you absolutely let the engineering team off the hook at that point because you assume the accountability.

MR. HOGAN: For better or for worse.

MR. THON: That's right.

MR. HOGAN: Last page to look at is page 16 of this document. Under contract strategy, is says: "The contract strategy ideas being put forward by the new SNC PM were based upon the HQ model and were incompatible with the strategy approved by Nalcor Executive & deemed essential for financing."

I'm wondering if you have any knowledge, or can you elaborate on that at all. What was the problem with the HQ model?

MR. THON: You know, what I – sorry, I can't help you there. I don't know what they're referring to, and I – yeah, sorry, I can't help on that one.

MR. HOGAN: Okay. That's fine. That's all my questions.

Thanks very much.

THE COMMISSIONER: All right.

Astaldi Canada Inc.

MR. BURGESS: No questions.

THE COMMISSIONER: Board Members. I don't think she's here.

Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: No questions.

THE COMMISSIONER: So, counsel for SNC-Lavalin.

Actually, I think I'd refer to you better as counsel for the witness because I don't think we have SNC-Lavalin as a party here.

So, go ahead, Ms. Murphy.

MS. MURPHY: Good afternoon, Mr. Thon.

I'll be short. I hope I'm looking at you.

I understand from Mr. Card that it was his practice to have an internal risk assessment done on all projects for SNC-Lavalin. Were you aware of that practice?

MR. THON: He did say he wanted that to become the practice and so we were in transitioning to that.

Clearly, for projects where SNC-Lavalin was the EPC, i.e., SNC-Lavalin was taking on the price risk fully as a lump sum. That was an absolute requirement that it went through. It was much more optional when you're doing a services contract, but he did say that he wanted to move that practice across all of our projects, yes.

MS. MURPHY: Okay.

I also understand it's no magic that M&M was involved, except that they were essentially a cold eyes review. They had significant experience in risk analysis and quantification of it. Can you comment on that?

MR. THON: No, I'd agree with that statement. I don't think there's much more to say. They had the skills and it was a nice – for me, it was a nice test for my team.

MS. MURPHY: Okay.

Finally, Mr. Simmons showed you a document which was produced by Nalcor in 2018. It was – you don't to flip to it, it was Exhibit P-01817. And he – it suggests that SNC-Lavalin's performance was deficient.

While you were the head of power, were you ever advised of receiving any formal notice from Nalcor that SNC's performance was deficient?

MR. THON: No, I was never advised that our performance was not up to par. I was advised that they wanted new – different resources and could SNC-Lavalin provide those resources. So that was probably the biggest push that I had from Nalcor on performances, that they wanted more higher-skilled talent in certain areas –

MS. MURPHY: Okay.

MR. THON: – particularly in construction.

MS. MURPHY: Thank you very much, and no further questions.

THE COMMISSIONER: Redirect, Mr. Learmonth.

MR. LEARMONTH: No redirect.

THE COMMISSIONER: All right.

Mr. Thon, thank you very much for taking sort of – waiting for us today. I know you've been very patient out there. We appreciate that and thank you. We're gonna cut you off now and I think we're gonna call it a day.

Tomorrow morning at 9 o'clock with – we'll bring back Mr. Meaney.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.