



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 34

Commissioner: Honourable Justice Richard LeBlanc

Monday

13 May 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open. The hon. Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

I'd like to enter the following exhibits: P-03279 to P-03357, P-03381 to P-03433, P-03582 to P-03588, P-03592 and P-03593.

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

MR. LEARMONTH: Okay.

The witness today is Michael Kennedy, representative of Ernst & Young LLP. Could Mr. Kennedy be sworn or affirmed?

THE COMMISSIONER: Okay. Which – you can stand, Sir, if you wish. Which would you prefer, to be sworn or affirmed, Sir, before you give your evidence?

MR. M. KENNEDY: The Bible –

THE COMMISSIONER: Sworn.

MR. M. KENNEDY: – please.

THE COMMISSIONER: Okay, just stand, please.

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

MR. M. KENNEDY: I do.

CLERK: Please state your name.

MR. M. KENNEDY: Michael Kennedy.

CLERK: Thank you.

MR. LEARMONTH: Mr. Kennedy, in what city do you live?

MR. M. KENNEDY: Vancouver, British Columbia.

MR. LEARMONTH: Yes. And what is your position?

MR. M. KENNEDY: I'm a partner with Ernst & Young LLP.

MR. LEARMONTH: Okay. Just for clarification, Ernst & Young LLP is sometimes referred to as EY. It's the same entity, is that correct?

MR. M. KENNEDY: Yes, it's effectively the same.

MR. LEARMONTH: So I'll refer to one or the other, it's the same thing.

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Please state your education after high school.

MR. M. KENNEDY: So, I did a degree in construction management from the University of Manchester.

MR. LEARMONTH: In England?

MR. M. KENNEDY: In England.

MR. LEARMONTH: Yes.

MR. M. KENNEDY: And, thereafter became a member of the Chartered Institute of Building and a chartered construction manager.

MR. LEARMONTH: Okay. And, what is that? Just give a little bit of information on the – what's covered by those designations.

MR. M. KENNEDY: It's effect – it's a qualification that recognizes skills and experience in program, project and construction management, so it's a combination of technical experience from doing a degree, plus a set number of years of experience.

MR. LEARMONTH: Okay, and those are designations that're given in the UK, England?

MR. M. KENNEDY: They're given in the UK. They're actually – you can actually get them in Canada, but in other parts of the world, as well.

MR. LEARMONTH: Yes. So, after you completed your formal education, what work did you take on?

MR. M. KENNEDY: So, I started work, and I went to work for a general contractor in the UK. And, after about five years, I got into owners' project management. So, representing owners and clients and how they manage construction projects. So, I did that for about five years in London, and then moved to Canada 20 years ago this year.

MR. LEARMONTH: Right. So, you've been in Canada for 20 years?

MR. M. KENNEDY: Twenty years. Yeah.

MR. LEARMONTH: Yeah. And, when you came to Canada, where did you go to work?

MR. M. KENNEDY: To Vancouver, and worked for a consulting company that provided project management services.

MR. LEARMONTH: Yeah. And, following that engagement, what was your next –

MR. M. KENNEDY: So –

MR. LEARMONTH: – work assignment?

MR. M. KENNEDY: – so in 2002, that company was acquired by Stantec.

MR. LEARMONTH: Yes.

MR. M. KENNEDY: And, I continued running the group until probably 2008 as the leader of the project management group, and then took on more of a corporate role, leading Stantec across British Columbia. So there was somewhere over 1,000 staff of all different types – engineers, architects, environmental scientists, so on and so forth.

MR. LEARMONTH: Yeah. And they reported to you?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. So, project management is an area of expertise that you have. Is that generally a fair comment?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yes. And, after you finished up with Stantec, where did you go to work?

MR. M. KENNEDY: So I joined EY in August, 2015, as a partner.

MR. LEARMONTH: As a partner?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: So, just to be clear, you're a project manager; you're not an accountant?

MR. M. KENNEDY: I'm not an accountant.

MR. LEARMONTH: All right. Thank you. And EY is an international firm that, you know, carries on a consulting business in project management areas, and related areas, is that correct?

MR. M. KENNEDY: It's a large consulting practice across the globe, not just project management, but many types of advisory services.

MR. LEARMONTH: But project management is one of them.

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yes. All right.

When did you personally become involved in the advisory services that were provided to the Government of Newfoundland and Labrador in relation to the Muskrat Falls project?

MR. M. KENNEDY: I believe it was around December 15, 2015.

MR. LEARMONTH: Yup.

But you can speak – you’ve reviewed all the documents, and you can speak to the early work before you became involved as well, is that correct?

MR. M. KENNEDY: Yes, I can.

MR. LEARMONTH: All right. Okay.

Now, we’ll get into the details as we carry on, but do you agree that there were four scopes of work, four contracts, dealing with specific – four specific scopes of work, and there are also two other master work agreements that covered general work for the Government of Newfoundland and Labrador, this Oversight Committee?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: So, it’s a total – there’s a total of six contracts?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay, we’ll start with contract 1 and if you can turn to your book of documents, it’s number 1, binder 1, and I’m gonna take you to tab 1 and on page 3, Exhibit P-03279, will you look at this document starting on page 3 and confirm that this is the first contract?

MR. M. KENNEDY: Yes, this is contract 1.

MR. LEARMONTH: All right.

And if we turn to page 4, we can see at the bottom that the monetary ceiling on this contract was \$25,000 plus HST. And if we look at the scope of work – in other words what’s covered under this contract – we can turn to page 9 of Exhibit P-03279 and this outlines the advisory services. I’ll just read the key activities covered by this:

“Reviewing the current established list of Information Requests to be used by the Committee established by the Government of Newfoundland and Labrador (‘the Committee’)” – that’s the Oversight Committee, I add – “in

conducting oversight of the Muskrat Falls Project (the ‘Project’).

“Conduct a gap assessment of the established list of Information Requests and provide recommendation additional items that should be added or modified for the Committee to conduct Project oversight.

“Obtain information through documentation review and interviews to identify planned governance models for the Committee.

“Provide recommendations to identify opportunities to improve and formalize the planned governance structure”

So, this is the – this is just an opening-type engagement whereby you’re advising the Oversight Committee about what – how they should set-up their protocols. Is that fair way to put it? Or, perhaps, you can give a better explanation for what it is, generally.

MR. M. KENNEDY: Yes, I think it’s fair. It’s quite a – it’s a – it implies quite a broad range of services that could be requested from the government.

MR. LEARMONTH: Yeah. And it’s a preliminary – it’s a low monetary value. So it’s just getting the ball rolling. Is that right?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah. All right.

Okay. Then, if we go to tab 2, volume 1. That’s Exhibit P-03280. Can you identify this document, Mr. Kennedy?

MR. M. KENNEDY: So, this document is an EY, if you like, agenda for a kick-off meeting for the type of services that were referred to in the earlier document.

MR. LEARMONTH: Okay. Kick-off meeting with who?

MR. M. KENNEDY: I would – I’m not completely sure who would’ve attended, but certainly government.

MR. LEARMONTH: That's a standard phrase used at the beginning of a contract –

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: – is it –

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: – first meeting? Okay.

And, the – tab 7, can you identify – if you turn to page 2, can you just identify, first, who Richard Noble is? His email of April 1, 2014 is on page 2.

THE COMMISSIONER: P-03285?

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: So, Richard was an associate partner with EY and was the lead – was leading this engagement at the time in 2014.

MR. LEARMONTH: Okay. What is the subject, generally, covered by these emails? What is involved here?

MR. M. KENNEDY: So this is a discussion around how to stop the engagement of some internal EY communications on some issues to be aware of. That kind of thing.

MR. LEARMONTH: Yeah.

Okay, before we go on, there's just a couple of things I wanted to fill in.

On page 7 of Exhibit P-03279, which is your tab 1, there's a start and completion date indicated, and the start date for this part of the assignment is March 7, 2014. The completion date March 21. So it's just a two-week assignment. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

There's one other point that I think I missed covering in your qualifications, before I forget I'll enter it. I understand you're also a project management professional. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: PMP and that's issued by the Project Management Institute.

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: You're an active member of that organization?

MR. M. KENNEDY: Yes, I am.

MR. LEARMONTH: Okay, thank you.

Okay, next we'll got to tab 8. This is an email – Exhibit P-03286. This is an email from Richard Noble to others on the EY team for this assignment. Is that correct? And it's dated April 10, 2014. I'm just going to read a couple paragraphs of it.

“Nalcor's resistance is bedded partly in an understandable desire to minimize the effort required to support the oversight ... and also to reduce the potential for unwarranted red-flags and noise from what they view as ‘yet another third party reviewer.’”

Then the second paragraph: “Nalcor's Program Director Paul Harrington appears to be a seasoned program leader which in this scale of program requires technical depth, local charisma but also a hard edge with the occasional need to be an adept ‘street fighter’. His dismissiveness bordering on rudeness to the Government and thinly veiled attempt at manipulation of the wording of the consensus from the meeting are not unusual tactics in one cadre of big ticket Programme Directors who seek to demonstrate both their credentials and Kahunas.

“However, he can be overruled by the VP of the program”

I know you weren't – you know, there's obvious some meetings here, but can you give me your sense about what is going on here?

MR. M. KENNEDY: I think Richard – well, firstly, Richard is expressing an opinion internally within EY to some of the local partners and some of the team members, just offering some commentary on probably a couple

of interactions that Richard would have had with Paul Harrington.

MR. LEARMONTH: Yeah. So does this indicate there's a little bit of tension in the air in terms of the contact with Nalcor or not?

If you go – perhaps if you go to page 2 of the email, there's a description provided by Richard Noble of the meeting. Just have a look at that and see whether you can gauge any sense as to whether there's, you know, a collaborative atmosphere or a good relationship developing or whether there's tension or maybe a combination of those?

MR. M. KENNEDY: Certainly, the word tense is used. I would offer that it's not unusual, at the beginning of these kind of engagements, for there to be a sort of forming period where a relationship is being built and so that's not unusual.

MR. LEARMONTH: Yeah. So, you've seen this before and it's not really all that noteworthy. Is that correct?

MR. M. KENNEDY: Clearly, Richard could say it – could say the opposite of this that it was a very collaborative meeting and, you know, very positive et cetera, et cetera. But the fact that it was tense is – I wouldn't draw any particular conclusions from that at an early stage.

MR. LEARMONTH: All right.

Tab 9, which is Exhibit P-03287. Can you identify this document, please? It's at your tab 9.

MR. M. KENNEDY: So, this is an EY document, which, I think, pulls out information that – from work that was done at the time and captures the type of information that we would expect the Oversight Committee to be requesting of Nalcor, and so this would be partly advice that we were giving the Oversight Committee as part of this engagement.

MR. LEARMONTH: All right.

Tab 11 is Exhibit P-03289. It's at your tab 11, as I said. Now, at the bottom of page 1 where there's references to a preliminary draft and so on, but at the top there's an email from Richard

Noble to David Steele. He's your local engagement partner for this project. Is that right?

MR. M. KENNEDY: Yes, David is what we call the engagement partner. So, he's not necessarily the subject matter expert. He manages the engagement on behalf of the firm.

MR. LEARMONTH: Yeah. And he's – he was, and still is, based in St. John's. Is that right?

MR. M. KENNEDY: Yes, David is a partner here in St. John's.

MR. LEARMONTH: Yeah. And the rest of the people working on the project – Mr. Noble, later yourself and there's some other individuals – they were from other – from offices of EY other than St. John's?

MR. M. KENNEDY: Yes, I think there was one team member from – let's call it contract three that was from here in St. John's.

MR. LEARMONTH: Yeah, but mostly – so I guess this is highly specialized work, is that correct, this project management? In the sense that not every office of EY would have – would be staffed to perform the function that you were asked to do for the Oversight Committee. Is that why you're going outside of St. John's to get this work done?

MR. M. KENNEDY: Yes, that's correct. Also, given the nature of a project of this size and scale, it means that we go out to our global business as well to look for expertise.

MR. LEARMONTH: Okay, now – and is it – at this tab 11 at P-03289 there's a suggestion in the second-to-last paragraph. It says: "However, what Nalcor has declared that they do indeed have, suggests that they also have the balance of the information requested ... just have not yet offered to provide it."

Is that an early indication that there was some issue about the – Nalcor's giving documentation to EY?

MR. M. KENNEDY: It's certainly clear from Richard's email that out of the 25 items, only two had been provided and more was to follow.

Whether that was indicative of a delay, it probably does imply that, but the reality at the time of writing this, there may be reasons for that.

MR. LEARMONTH: Okay.

And at tab 15, this is the final draft, July 25, 2014. Is that correct?

THE COMMISSIONER: P-03293.

MR. LEARMONTH: 03293, yeah. You can just look, starting on page 3 and tell what that document is.

MR. M. KENNEDY: So this is the final draft of EY's report under contract one.

MR. LEARMONTH: Right.

Now, as indicated earlier, the – this report was supposed to be provided within two weeks, you know, on March 21 and here were are July 25, 2014, and the report is being prepared. Can you give any explanation for the fact that this report was not completed within the two weeks specified in the contract?

MR. M. KENNEDY: The work that we completed, effectively the draft report, was first drafted at the end of that two-week period.

MR. LEARMONTH: Yes.

MR. M. KENNEDY: It was then a number of months to get to this point. And I would attribute that to ongoing discussions between ourselves and government, ourselves and Nalcor and discussions between government and Nalcor.

MR. LEARMONTH: Yeah.

But your work was done within the two-week period or close to it, is that correct?

MR. M. KENNEDY: Very close to it, yes.

MR. LEARMONTH: Yeah.

But is that not a considerable delay from, you know, sometime in March to July 24, to get a, I would say, a preliminary document prepared?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: I'm not blaming EY; I'm just asking if you can fill in the circumstances as to why it would've taken so long to get to this point for a fairly basic type engagement.

MR. M. KENNEDY: It's a long period of time and it really shouldn't take that long.

MR. LEARMONTH: Yeah, right. But you had your work done in March.

MR. M. KENNEDY: I'd have to look at the dates specifically but it was at two weeks or very close to two weeks.

MR. LEARMONTH: Okay.

Okay, so that was the first phase of your engagement. And I take it that EY was not able to assume that EY would be continued on for further work, is that correct?

MR. M. KENNEDY: That's correct, yes.

MR. LEARMONTH: It wasn't a contract, it just – it was contract to contract. So, at the end of this first engagement the government could've retained another company to carry on. Is that correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: There's no obligation to EY.

Nevertheless, if we look at tab 18 – and I'm going to refer to this as – this is Exhibit P-03296. This is the November 7, 2014, master services agreement, the first of two. Is that correct?

MR. M. KENNEDY: Yes, this is a master services agreement.

MR. LEARMONTH: Yeah, and it identifies as the services on page 8, Scope of Work, Schedule A.

So, is this general – you know, there's six items listed as the key activities which are included in the scope. Is this just general-type work between contracts? Is this what we're dealing with here?

MR. M. KENNEDY: This contract is a framework contract which covers all of the work that EY does.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: So, you can see at Schedule A here on page 8 there is a broad range of services that EY can be asked to provide in a – let's call it an ad hoc way –

MR. LEARMONTH: Yes.

MR. M. KENNEDY: – at the request of government.

MR. LEARMONTH: Yes.

MR. M. KENNEDY: And then also supported by this agreement is the ability to create specific statements of work for ongoing contracts.

MR. LEARMONTH: Yeah, and that's referred to in the second paragraph after the six. It says: Under this Agreement – and this is page 8 – “Under this Agreement, individual Scope Statements will be developed and agreed to by the Consultant and Committee prior to” commence of any work. Is that what you're referring to?

MR. M. KENNEDY: That's it, yes.

MR. LEARMONTH: Yeah, okay. Thank you.

And then – and the max and the monetary ceiling on this contract, if we turn to page 4 of Exhibit P-03296, is \$250,000 plus HST. Is that correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Yeah.

And if we go to the – turn back to page 6 at the bottom, the start date is October 31, 2014, and the end date is March 31, 2015. Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

And then we'll get to this later, but in another contract dated April 1, 2015, there's a similar-

type contract, master services contract, that follows the completion of this contract. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Correct. All right.

Okay. Now just to go back – so we've identified that contract. I just want you to turn back to tab 17 which is Exhibit P-03295. Do you see that document, Mr. Kennedy?

MR. M. KENNEDY: Yes, I do.

MR. LEARMONTH: Now, that's a – this is – would I be able to describe this accurately as this is a presentation that was made in the – you know, for the purpose of attempting to obtain ongoing work from the government? Is that a fair way to put it, standard-type document?

MR. M. KENNEDY: Yes, the government issued an RFP for – or request for proposals, as it's called – for advisory services to support the Oversight Committee for Muskrat Falls. So this document is the EY written submission or proposal to that request for proposals.

MR. LEARMONTH: Yeah.

And so, eventually, you were given the contract that we've just referred to, right?

MR. M. KENNEDY: We were successful. So, this was an open competition.

MR. LEARMONTH: Yeah.

All right, and so the start date for this was October 31, as we've said.

Now, if we go to tab 19, this is Exhibit P-03297. So this is dated – this is from Richard Noble. It appears at this point that he's the – doing probably more work on it than any other representative of EY. Is that correct?

MR. M. KENNEDY: Yes, Richard is the – what we call the subject master expert, SME –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – that’s doing the work. He has the expertise in program and project management.

MR. LEARMONTH: And where was he based?

MR. M. KENNEDY: In Toronto.

MR. LEARMONTH: In Toronto.

MR. M. KENNEDY: Toronto.

MR. LEARMONTH: Okay.

So anyway, this is November 25, 2014, and he – it appears that he is reviewing a draft report from Craig, who is the executive director of the Oversight Committee at the time. Craig Martin, correct?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Yeah.

And he says in paragraph 3 of this email: “There is insufficient data to be able perform any useful analysis on Management’s Forecast to Complete; specifically there is no cross reference of expenditure versus schedule, substantiation of variance management/Final Forecast Cost or the adequacy of contingency; The number craig uses for cost overruns (using a fraction of overall budget instead of fraction of expenditure ... understate” and so on.

And then he says in the next paragraph: “Overall it is not possible to give a clear picture... but there are some concerning trends.

“Furthermore the format and style of the report does not give a strong direct impression... this is because he is having to use indirect material from Nalcor’s own reports.

“The lack of provision of data must be solved or the OC will not meet their mandate.

“Furthermore... they have to review Project Controls at earliest opportunity to even judge the ability to use the data as provided.

“Finally, the delay in securing this input from us has put them in a hole of having to delay the

report... and then publish a ‘management reports that’ with no effective analysis or challenge.”

Now, what does this report indicate to you? Does it have anything to do with the information that’s being made available by Nalcor?

MR. M. KENNEDY: This email is an internal EY email that is commenting on the draft Oversight Committee report, which Craig Martin from government would’ve put together. So Richard is commenting on the government’s report.

MR. LEARMONTH: Yeah. Right.

MR. M. KENNEDY: And as part of that, he is noting that there is information in that report that is clearly being provided by Nalcor. So there is some indirect commentary on the information being provided by Nalcor.

MR. LEARMONTH: Yup.

And so what’s the benefit – if this is the case, what would be the benefit of just – of having an Oversight Committee and then simply restating information provided by Nalcor? What would be the benefit of that in terms of an oversight role?

MR. M. KENNEDY: Well, the Oversight Committee’s terms of reference, as I recall, were to – is not just to receive information from parties and present it. It has to provide a degree of analysis and diligence, which in asking – which this document is – and this is an internal email, but we were asked by government through that master services agreement, those ad hoc services –

MR. LEARMONTH: Right.

MR. M. KENNEDY: – to provide commentary.

MR. LEARMONTH: Yeah.

But my point is – and it’s more of a question than a point – that if an Oversight Committee is set up to, obviously, oversee, and they’re retaining EY, what is the utility of – if this was what was going on, what would be the utility of simply repeating or regurgitating information provided by Nalcor?

MR. M. KENNEDY: Well, clearly if the information is being taken from Nalcor and is just being presented by the Oversight Committee without analysis, then that has limited value from the perspective of the terms of reference that the Oversight Committee is – has been given.

MR. LEARMONTH: Yeah. Okay.

And we're into November – this email is November 26, 2014, and I want you to turn to – well, turn to page 2 of Exhibit P-03298. And this is at the end of the email, where I will say there are numerous concerns presented by Richard Noble, and at the end he says: "While this has been relayed to Craig verbally... if there is no progress in addressing these concerns, we will need to put this in writing and consider EY's position on the assignment."

Now, am I correct in taking that that this is an indication that, like, maybe we don't want to be involved with this if this is the type of information the Oversight Committee is going to use?

MR. M. KENNEDY: What Richard is conveying here is the discussion that would have been – that was happening in EY at the time that because we had been engaged by the Oversight Committee under the master services agreement to provide ad hoc services, that there may be a perception that we were advising and assisting the Oversight Committee and endorsing the reports that were being issued. And, also, remember that we hadn't been specifically engaged under – let's call it a contract 2 – with a specific scope of work.

So, we were providing, you know, high-level commentary on a report, but there was a concern that there would be a perception that we were engaging in a major piece of work.

MR. LEARMONTH: So – put it another way. That's a concern that, okay, EY is – has been identified to the public as working on this project. If the Oversight Committee is referring to the work being done by EY, and EY isn't really doing much, then there could be a concern that someone said, well, I thought EY was taking care of this.

Is that the concern that is being identified here, generally?

MR. M. KENNEDY: Yes, I think that's generally a good summary.

MR. LEARMONTH: Okay.

If we turn to page – excuse me – tab 22, which is Exhibit P-03300.

Once again, Mr. Noble – November 27, 2014. Sending it to Emiliano Mancini, David Steele and Aman Gill –

MR. M. KENNEDY: Mm-hmm.

MR. LEARMONTH: – concerning a meeting with Craig Martin.

He says: "They are still struggling with this report.

"The data clearly is shaky. The process and controls have not been vetted... and the baseline appears not fully stable. Basically... their report is being built on untested sand... and all it is doing is restating management's assertion that 'the project is going fine.'

"Craig insistence on a theoretical question 'can we use planned value as a basis'... was difficult to answer to his satisfaction."

And then, at the bottom, Mr. Noble says: "We will need to put this in writing... EY would not want to be associated (albeit loosely) with a public report that is clearly missing the mark... we will need to have our position clear and that position documented prior to ... reports release."

Now, can you explain what the concern addressed here? Is it the same thing that we talked about in relation to the earlier document?

MR. M. KENNEDY: It's the same concern –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – perhaps expressed a little bit clearer in this one than the previous one.

MR. LEARMONTH: Yeah.

So, the Oversight Committee is proceeding to basically, you know, restate management's assertion that the project is going well or fine. That's what – do you agree that that's a proper characterization of Mr. Noble's sentiments? That's what he says.

MR. M. KENNEDY: Yeah, so – although I don't recall the specifics of that particular Oversight Committee report, so I wouldn't wanna comment on whether management was saying it was going well at that point, but –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – but yes.

MR. LEARMONTH: Yeah.

And I just point out, at this stage, that the Oversight Committee was established – well, it was announced in February 2014. You got involved in the first week of March. So here we are eight months later – and by the way I'm not trying to blame EY for this. I know that you're working for a client and you do your work in the schedule that's provided by the client, but eight months after, all we have is your first phase of work in terms of a – of the work that you're providing to the government. Is that right?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

But doesn't that – can you explain or account for the long time delay here? I mean, one would think, perhaps, that if the Oversight Committee was, you know, really serious about getting this work done, that they'd be moving at a much faster pace and directing you to do your – I know you weren't doing an audit – but to do your review?

THE COMMISSIONER: Excuse –

MR. LEARMONTH: Do you see the point?

THE COMMISSIONER: Just before we do, I see Mr. – standing up there?

MR. FITZGERALD: Yeah, I have some concerns with the way the evidence is being, I guess, put to this witness.

This witness has testified that he was not personally involved with this file 'til December of 2015. There are a number of emails being put to this witness that he is not a party to. He's being simply asked to say, well, what is your opinion on this for a time period when he had absolutely no involvement with the file.

I know, in this Inquiry, we've been somewhat flexible in terms of admission of evidence, but in a lot of cases, emails are being put to witnesses knowing that other witnesses are gonna be called in the future, and from what I know, none of these other individuals from Ernst & Young are gonna be called here. And I have some concerns about – in fairness to this witness, he can only answer as best he can – but asking him to comment upon and what was going on at a time period where he had no involvement with the file.

THE COMMISSIONER: Right.

Mr. Learmonth?

MR. LEARMONTH: Well, he's a representative of EY; these are internal documents. Mr. Kennedy knows that if he can't offer a reasonable interpretation on – of the points I'm raising, then he can decline to answer.

But, you know, we don't have – we're not – we don't have the luxury of time of calling every witness from EY; it would take a long time. So, if Mr. Kennedy feels that I'm asking him to state positions that he's just not comfortable with – in other words, if the documentation isn't clear enough to him – well then, that's fair enough. He can state that. But I don't think I've been pressing him to, you know, come to some conclusion that he feels uncomfortable with, and I – and as I said, I urge him to resist if he feels that I'm trying to do that.

THE COMMISSIONER: Mr. Fitzgerald?

MR. FITZGERALD: Commissioner, I recognize that time is important, but also so is procedural fairness and fairness to my clients, who are members of the Oversight Committee, including Mr. Craig Martin, including Mr. Paul Carter. And while those witnesses may not be

called, I mean, we still need to do this in a fair process.

While typically a business record could go in – if it was, like, a bank statement or something that’s in the normal course or an EY report – I have a problem with him speaking about internal emails in the company that he was not involved with at the time that these things were going on. It just doesn’t seem fair to me.

THE COMMISSIONER: Okay.

So, not unlike other evidence here – and I think Mr. Learmonth made a point that I’d like to make as well. Unfortunately, this Inquiry is under a significant time restriction, and as a result, we’ve heard from a lot of witnesses who have been referred to documents that have been produced by their company or within their corporate knowledge of whatever. This is – what’s happening this morning is not new.

I do accept the point that there has to be fairness to this, because Mr. Kennedy obviously wasn’t there at the time. Some of these letters, from my point of view, actually speak for themselves. And I think the best purpose of this sort of evidence is to actually lead it so that the public is aware of these documents.

As to whether or not Mr. Kennedy can make conclusions about what was going on at the time, probably that is – that’s not that helpful to me, in the sense that, as I said, much of this is – you can read it and you take from it what you think it means. And that’s what I will be doing unless somebody else basically tells me – or is able to establish – that it means something else.

So, I guess what I’ll ask, Mr. Learmonth, is that where Mr. Kennedy is not involved, I have no problem with you reviewing the emails themselves. But as to whether or not it actually means what you think it means or whatever, probably we should try to avoid, as much as possible, those types of questions because it’s really meaning that the witness is giving his view as to what the letter says when really, at the end of the day, it’s going to be my interpretation of that that’s going to count.

MR. LEARMONTH: Okay.

THE COMMISSIONER: All right?

MR. LEARMONTH: Thank you.

Well, let me rephrase the point. You were – EY was retained in March of 2014, and there was – that work was – the draft for that report was completed within two weeks, and the final report in July 24. Then there was the first, you know, general agreement that was put out. Now we’re up to November 26, 2014. Can you tell me what had been accomplished, based on your knowledge of the file, between March 6, 2014, and November 26, 2014? Can you tell me what was accomplished?

MR. M. KENNEDY: I’m not sure I can answer that question specifically, Mr. Learmonth.

MR. LEARMONTH: Okay. Well, had you filed any report other than the first report that we referred to?

MR. M. KENNEDY: The final draft report was filed earlier in the year.

MR. LEARMONTH: Yeah, okay.

Anyway, tab 25. That’s Exhibit P-03303. At the bottom – it’s an email to David Steele dated Thursday, December 4, 2014. And the subject is “getting concerned.”

Rich – I take it that’s Richard Noble. Is that right?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Yeah. “This should be interesting. I believe that if we aren’t able to execute the project in the new year with the level of transparency and cooperativeness we expect, we should consider resigning from this engagement. We can assess this in the new year when we are crossing that bridge.

“Secondly, the next SOW I think we should write up and propose is to do a deep dive performance review of the Astaldi contract. Some of the information Craig was providing to me just now are pointing to significant labor issues and progress issues. They are not going to make up ground over the winter months give the units haven’t been constructed, and if anything,

it will likely slip further. If we can't get out ahead of this in the new year and perform such a review, it is only a matter of time (likely ... May or June) that Nalcor will make the announcement that there is another 1B added to the cost estimate. And we will be there looking like idiots... the advisors to the OC who didn't catch anything.

"Just some thoughts."

And then you have the reply from Richard Noble. He says: "Yep... the report is basically a shoddy lash-up" – and this is the Oversight Committee report, correct?

MR. M. KENNEDY: That –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – is the –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: "Yep... the report is basically a shoddy lash-up restating Management's half baked and possibly dubious data... we really should avoid our name on it.

"OC has" – well, he says – "'spit the bid' on this one... would honestly be better to say 'we're getting back to in the new year'... cos as it stands, they're saying nothing and spending the electorates money to do so.

"I ... think Nalcor will kick like a mule... there's a while till we're on-site yet methinks." So this is December 4.

Now, can you elaborate on the problem identified in this by EY representatives?

MR. M. KENNEDY: This is the same issue that we spoke about earlier of the danger – of the concern for us of being associated with a report that appears to be based on management reporting from Nalcor, which we would've had insight through this engagement into how that management report is being compiled.

MR. LEARMONTH: And the utility of simply restating management's positions is what?

MR. M. KENNEDY: There is very little value in that, in my opinion.

MR. LEARMONTH: Okay.

The next document I want you to look at is tab 26. It's Exhibit P-03304. Can you please explain the purpose of this document, if you're able to do so?

MR. M. KENNEDY: So, this is an EY document that summarizes a proposal – an approach to doing what we call a project controls review, and from this document, which would've been discussed with government, we would expect to develop a – as we call it – statement of work. I think in the contract it's called a scope of work for a further contract under the agreements we had.

MR. LEARMONTH: Yeah. Because up to this point all you've done is that very preliminary work in terms of preparing reports. Is that right?

MR. M. KENNEDY: We did the contract 1 work.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: Plus we were providing ad hoc advice.

MR. LEARMONTH: Ongoing advice.

MR. M. KENNEDY: Yeah, at the request of government.

MR. LEARMONTH: But despite the ongoing advice that was provided, the Oversight Committee appears to have been content to simply restate management of Nalcor's position. Is that a fair comment?

MR. M. KENNEDY: I can't comment specifically on that, other than reading the documents here of Richard's opinion.

MR. LEARMONTH: Okay, thank you.

Tab 28, Exhibit P-03306. If we go to page 2, this is – appears to be prepared by David Steele, your local engagement partner, to Paul Hickey, who is also a local partner. Is that correct?

MR. M. KENNEDY: Yes, both were local partners with EY.

MR. LEARMONTH: Yeah. And if we – so on page 2, right, just a little bit below the middle of the page there's a paragraph starting: EY obtained a copy. Do you see that?

MR. M. KENNEDY: Yes. Yes, I do.

MR. LEARMONTH: Okay. "EY obtained a copy of the draft report on Dec 17, 2014. EY reviewed the report, not in" – its – "capacity as the Advisor to the Committee, as an SOW" – statement of work or scope – is that a statement of work or scope of work?

MR. M. KENNEDY: I think under the contract it's –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – scope of work.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: We always, internally, call it statement of work.

MR. LEARMONTH: It's the same thing.

MR. M. KENNEDY: It's the same thing.

MR. LEARMONTH: Yeah. "... SOW has not been signed yet, but as to view how EY's name is used and at the request of the Committee's director, 'to identify if there are any major gaps'.

"EY reviewed a copy of the draft report on Dec 17, 2014. As we are not engaged under an SOW, we did not provide detailed feedback, but did notice the use of EY's name as noted above, and we did identify a significant issue with the report.

"The Draft report contained a detailed terms of reference of the committee. EY knows that the committee has not developed processes, nor conducted the effort, to effectively meet the stated terms of reference. However, it is presented in the report, preceding the detailed report results, thereby posing a risk that a reader

could falsely interpret that the terms of reference have been fully addressed and form the basis for the information in the report. We also note that the use of EY's name as the advisor who worked with the Committee to develop the terms of reference could be falsely interpreted as EY has continued to work with the Committee."

So, is this an ongoing concern about the use – about the association of EY with the work of the Oversight Committee?

MR. M. KENNEDY: Yes, it is.

MR. LEARMONTH: It is. And so, what – why would that concern continue? This is December 16, 2014.

MR. M. KENNEDY: Well, the document here refers to EY reviewing a further draft of the Oversight Committee report of December 17, and we had already identified concerns around some of the content and then also seeing that EY's name had been – is noted in the document, our perception of that, at the time, is that we would be associated with being completely supportive of the draft report as it was presented.

MR. LEARMONTH: Yeah. So, you didn't want to have your name associated with the report. Is that correct?

MR. M. KENNEDY: Yes. Because we had done very little work other than reviewing a report – a draft report.

MR. LEARMONTH: Yeah.

All right. Tab 31. Now, we're into January 20, 2015. This is from Richard Noble to David Steele. It said: "Aside from the obvious limitations" –

THE COMMISSIONER: P-03309.

MR. LEARMONTH: Yeah, 03309, yeah.

"High level summary attached ... Scenario 1. Inability to assess cost and schedule processes and information provided (period).

"Scenario 2. Potential errors in our assessment...."

And then he says: “In neither is the OC in a position where it can fully rely on the Nalcor reporting and associated processes going forward.

“In both cases, we would also then expect significant additional iterations with Nalcor on the report as we try to substantiate the findings... with possible delay of OC report and/or failure of OC to report.”

And then down on the second-to-last paragraph of that document, page 1, P-03309. “However, the challenge remains that if the Nalcor project in the future announces significant cost and schedule overruns which were not caught by OC due to limitations in the work performed, both OC and EY will likely suffer reputational damage irrespective of any caveats appearing in the report.

“Apologies, but if we ... cave now... the OC’s money will be poorly spent ... we’ll be wearing this together going forward... And no one wants that.”

So, is that – that’s an ongoing concern. Now, we’re into January, the end of – January 20, 2015, about the same thing we’ve talked about before, the concern of EY about reputational damages as a result of being linked in some way to the work of the Oversight Committee. Is that correct?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay.

Go to tab 32, Exhibit P-03310. This is from Richard Noble to David Steele and Paul Hickey.

It says: “Dear David,

“Appreciate this is difficult to navigate. I have added in some clarifications and changes.

“I would **not** give a straight ‘recommend to proceed’ with option 2 and have made it clearly conditional that OC accepts the risk and that we would have to clearly state the limitations of the work and risk to the” – Oversight Committee – “in the report.”

And then he says: “We have never... repeat never... been refused access to change logs and risk registers and related process information in any major project review I have conducted over the last 16 years. And this includes reports on projects whose sensitivity and results materially impacted their Market Capitalization in the many ... billions.”

So can you – do you – is this an indication that – well, it’s a statement that EY has been refused access to this documentation by Nalcor. Is that correct? That’s what it says, doesn’t it? If not, tell me what it does say.

MR. M. KENNEDY: It certainly says that EY has been refused access. Whether that is by Nalcor or by government is not completely clear in this document to me.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: The inference is from Nalcor, yes.

MR. LEARMONTH: Okay. But it could be government?

MR. M. KENNEDY: It could be.

MR. LEARMONTH: Okay.

The next document is tab 33 and that’s Exhibit P-03311, page 2. This document is identified as an engagement profile discussion. Would this be an internal document?

MR. M. KENNEDY: Yes, this is an internal briefing document with EY partners in Atlantic Canada.

MR. LEARMONTH: All right.

And page 3 it says: Muskrat Falls Oversight Background. It says at the top: There are one or two conditions that should be met for the Oversight Committee to effectively execute its mandate of providing oversight to the cost and schedule performance. It says item one and then item two.

And, then, I want to take you to the bottom paragraph of page 3: “In their last report (December 2014) to the public, EY requested

that our name be removed from the report due to concerns about either of the above conditions not being met.” And those conditions are one and two, correct?

“The OC agreed and removed reference to EY and also followed our recommendation to include a statement that EY would be engaged to perform such a review (# 2 above) to give the OC assurance over the completeness and accuracy of the information reported to them.”

Then if we go to page 5 at the bottom, it says: “Due to the fact that the scope and risk management information is very sensitive and that Nalcor IA” is in “the process of reporting on cost and schedule, the OC have requested that EY perform a scope that does not include Scope and Risk Management processes and does not include the provision of relevant scope (change management) and risk logs/registers.”

And then if we go to page 6 it says: “Without access to Scope and Risk processes or access to related Scope and Risk registers, it is not possible to perform a scope of work that meets the objective of giving the OC comfort” with “the completeness and accuracy of cost and schedule information reported to them by Nalcor.”

Now, I’ll come right to the point. I mean, can you explain to me how you can do a decent, reputable assessment of cost and schedule without access to these documents? Is it possible?

MR. M. KENNEDY: Without access to scope and risk?

MR. LEARMONTH: Yes.

MR. M. KENNEDY: It’s far from ideal, but there is, through the process of being exposed to a range of project documents under the narrower – much narrower definition of scope and cost, it is – it certainly is possible to form a robust opinion of issues that can be recommended to the Oversight Committee, but it is far from ideal.

MR. LEARMONTH: Yeah because that’s what – the details on the risks and so on is a critical item when you’re assessing cost and schedule, isn’t it?

MR. M. KENNEDY: Yes, I mean if you look at – if I can refer you to page 4 there is a schematic there that shows how these four legs on a stool, if – I guess, is a good analogy – of schedule, scope, cost and risk drive analysis of project issues. I would even go further that cost and schedule management are outputs of considering scope and risk issues. And really the management of any construction project is managing scope and managing risk and mitigating risk. That then produces a cost and schedule report which has to be managed. So if it’s – it is pretty foundational to have risk and scope in there.

MR. LEARMONTH: Yeah.

And if we go to page 6 I think there is further clarification on this point, or an explanation. Page 6 of P-03311, it’s written that: “Without access to Scope and Risk processes or access to related Scope and Risk registers, it is not possible to perform a scope of work that meets the objective of giving the OC comfort over the completeness and accuracy of cost and schedule information reported to them by Nalcor.” Do you agree with that statement?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay.

And then in the bottom of that page 6 is: “Residual reputational risk: Regardless of how well we qualify individual reports, we are associated and if this project runs into significant overruns, media and opposition attention will focus on the fact that the OC and their independent advisors EY did not do their job” So this is just a repeat of the ongoing concern.

That seems to be a very big concern from EY throughout all of these documents. Is that correct?

MR. M. KENNEDY: Yes, and I think this document and the briefing that would have followed internally from this was making sure that the senior partners in Atlantic Canada were aware of the risks of conducting this work on a high-profile project.

MR. LEARMONTH: Yeah.

Well, you know, we know, according to what's stated on page 5, that – it says at the bottom: "... the OC have requested that EY perform a scope that does not include Scope and Risk Management processes and does not include the provision of relevant scope (change management)"

Do you – can you explain why the OC, Oversight Committee, would take this position?

I'm – I'll give a little bit more back (inaudible). The Oversight Committee was set up to monitor Nalcor in certain areas. There are documents – and I'll refer you to them – where the Oversight Committee said that it would have unfettered access to Nalcor's documents. That's the (inaudible).

So why would – can you explain why the Oversight Committee would appear, at this time, to be prepared to proceed with a much limited review when the objective is to make it – have a transparent exercise, a review that could be shared with the public?

MR. M. KENNEDY: I don't think I can explain why they elected to remove that scope. I would infer that that there was a strong request from Nalcor for that scope to be removed. And as a more general point, looking at the mandate of the Oversight Committee as representing the sole shareholder, I would expect the Oversight Committee to determine what was appropriate in terms of the scope of the review.

MR. LEARMONTH: Yeah.

But what would be appropriate? If you were asked for your advice, it would be to get those documents to allow you to do an assessment of risk. If – is that correct?

MR. M. KENNEDY: Yes, that's right.

MR. LEARMONTH: Yeah, okay.

But I realize that, from your point of view, you're representing a client. If they ask you to do something that is – you have to comply with their instructions, correct?

MR. M. KENNEDY: Well, we don't have to comply. I mean, ultimately, we – if we – we will

provide an opinion. Ultimately, if we feel that continuing with the work poses risks to the client's reputation and ourselves, we do have an option under the contract to decide not to continue working.

MR. LEARMONTH: Right.

Okay, now, the next document is tab 38 and it's Friday, March 6, 2015. Now, at this – this is an email from David Steele to Craig Martin.

THE COMMISSIONER: 03316.

MR. LEARMONTH: Okay.

MR. LEARMONTH: Now – so we're a full year after the – you were engaged, is that correct?

MR. M. KENNEDY: After the contract 1 engagement, yes.

MR. LEARMONTH: Yes. And the only report you've prepared is that very preliminary document.

MR. M. KENNEDY: In July 2014, I think.

MR. LEARMONTH: Well, yeah but the draft was done in March 2014.

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Over a year later so – correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

Now this is an email from David Steele; in the third paragraph Mr. Steele says: "We believe there is an inherent limitation to the scope of the review as currently contemplated. In order for the Oversight Committee to meet its objectives of assessing the completeness and accuracy of cost and schedule information being reported to them, a review connecting the key elements of the Project's Risk and Scope Management processes to the Cost and Schedule reporting/processes needs to be completed. Nalcor IA..." That means Internal Audit does it? IA?

MR. M. KENNEDY: I believe so, yes.

MR. LEARMONTH: "...have conducted audits of Risk and Scope Management and issued Draft reports which have not yet been supplied to the Committee. There are inherent limitations of reviewing separate components of Project Management and Controls by separate groups, as such processes are inextricably linked. In addition, from a preliminary review by EY of Nalcor's IA planning documentation for their Risk Management audit, we believe there are gaps in coverage between what they are doing vs what the current scope contemplated or EY's review. This will limit the value provided to the Committee and the ability to meet its objectives at this time."

Do you agree with that paragraph I just read?

MR. M. KENNEDY: Yes I do.

MR. LEARMONTH: Yeah.

And then he says: "I understand that the Committee has accepted this limitation at this point in time, as there is current momentum and acceptance by Nalcor for EY to being work, and that there will soon be an opportunity to assess gaps in coverage between the work EY will conduct for the Committee and the work Nalcor IA has completed."

So I guess this seems to be an acknowledgement of the fact that the Oversight Committee is – it appears, is continuing with this point that they're not gonna ask you to review risk. Is that true, and that's the inherent limitation that's being identified?

MR. M. KENNEDY: David Steele is confirming here with government that we believe there are gaps, and that as part of finalizing our review that those gaps should be addressed, if you so chose to remove –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: –the scope and risk elements.

MR. LEARMONTH: So this would be a standard letter that's sent, like, we just want to

make sure this is understood. Is that the point of an email like this?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah, okay.

Tab 39, Exhibit P-03317. Now we're into March 11, 2015. This is from Emiliano Mancini. He's from your Toronto office too, is he?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And is he – what is his experience in these – in project management?

MR. M. KENNEDY: Emiliano is now a senior manager in our Toronto office, part of my team. I believe he's got a degree in civil engineering, and I'm going to say between 15 and 20 years industry experience.

MR. LEARMONTH: Okay.

So exhibit P-03317, page 1, the fourth dot down: "Nalcor requested to review the draft of the workplan and the approach of the review prior to submission to the Oversight Committee. A meeting has been scheduled for tomorrow afternoon to go through this. Richard and I will attend, Nalcor's project director, project control manager and IA representatives have also been invited."

So is this regular or normal that you're working for the Oversight Committee and Nalcor is requesting to review the scope of work before you give it to the Oversight Committee?

MR. M. KENNEDY: Yes, it's a very normal process.

MR. LEARMONTH: But you're reporting to the Oversight Committee; why would you give it to Nalcor first? That's the subject of the oversight. Maybe you can just explain that?

MR. M. KENNEDY: Well, the best way to approach these types of reviews is to do it in a very collaborative way. You know, based on our own experience, my personal experience, it's very beneficial where you've got a much clearer meeting of the minds, so that you've got clear understanding of what information is easily

available, what information is going to take a little bit longer to produce. So it's just a collaborative process that we strive to do at the outset.

MR. LEARMONTH: Okay, so there's nothing unusual about that?

MR. M. KENNEDY: No.

MR. LEARMONTH: Right. You would have to get the permission, or consent of the Oversight Committee to do that, wouldn't you?

MR. M. KENNEDY: Yes, I mean, it would be a recommendation of how we would embark on the work, and it would – I think it was contained in that earlier briefing on how we intend to do the work, which is – which would be a collaborative approach.

MR. LEARMONTH: All right. Tab 40 is Exhibit P-03318. This is March 13; once again, Emiliano Mancini to Alison Ball at Nalcor. So I guess this is the type of consultation and the scope of work that we were discussing earlier. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

And at page 3, there's a document, "Muskrat Falls" – that's page 3 of the exhibit, yes – "Muskrat Falls Project Review Pre-KOM" – that's kickoff meeting, right?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah, "...with Nalcor, March 2015."

What is a pre-kickoff meeting?

MR. M. KENNEDY: So this document would be used as a briefing with Nalcor and would probably be used at the kickoff meeting to explain steps that we want to go through, reconfirming the scope, reconfirming the limitations on scope, which is the removal of scope and risk management methodology, the activities, timescales. I was looking to see if it had specifically names of individuals we would be meeting with, and then at the back is an

indication of the kind of questions that will be asked during interviews with Nalcor project representatives.

MR. LEARMONTH: Okay.

Next is tab 41, Exhibit P-03319. It's an email from Richard Noble to David Steele and Paul Hickey.

"Hi David, The progress this week was encouraging. Sorry to see he's pinged you during your time away. On the subject of limitations I'm afraid it's "same old same old" repeat of Groundhog Day.

"Our advice is that based on our experience, the scope of IA's work as outlined in their audit plan/ program did not appear to be an adequate basis for the OC group to place its full reliance. It was also executed by an inexperienced group. We have yet to see the report. As such there are limitations in the assurance they can draw.

"Our current audit is indeed not repeating the limited program that IA did. But clearly we would be remiss were we not to make clear those limitations and allow the OC to draw assurance from something that currently appears inadequate Etcetera."

So this seems to go on and on and on, this repetition that there's, you know, inherent weakness and limited program. Like, this is an ongoing discussion, is it? And – is that correct?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: I mean if email after email about this – and am I correct that at this point, the Oversight Committee is still not accepting your advice?

MR. M. KENNEDY: I'm not sure I would say not accepting advice. The scope was more limited than we had recommended.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: What Richard is pointing out here is that there was agreement from the Oversight Committee that some of the work would be undertaken by Nalcor's internal audit group. He's expressing the opinion that an

internal audit group has different experience and qualifications to what we would bring to a review, because our people are practitioners with experience in program and project management, whereas an internal audit group is – has a different skill set.

So, I think – yes, to answer your question, it's a continuation of the concerns of the past number of weeks.

MR. LEARMONTH: Yeah.

But, if you're recommending something and the Oversight Committee is not going along with your recommendation, then they're not following your recommendation. Isn't that self-evident?

MR. M. KENNEDY: It is, because if you read through this whole document, David provides some suggestions on how to move forward. And then, there is a response from government which doesn't clearly agree with David, and then Richard is confirming that.

MR. LEARMONTH: Yeah. So, they're not following your recommendation, government –

MR. M. KENNEDY: Not fully. No.

MR. LEARMONTH: No.

Okay. So, that's the end of the discussion on the – on contract 2, that's the general contract, was it?

Now we're moving into contract 3, and that – I'd ask you to turn to tab 48 in volume 2, please? The document is P-03326.

THE COMMISSIONER: Tab again is – which tab?

MR. LEARMONTH: Tab – binder 2 –

THE COMMISSIONER: Tab?

MR. LEARMONTH: – tab 48.

UNIDENTIFIED MALE SPEAKER: Thank you.

MR. LEARMONTH: P-03326. Now, if you'll just turn to –

MR. M. KENNEDY: Sorry, Mr. Learmonth, that – you said this was the conclusion of contract 2.

MR. LEARMONTH: No, this is the start of contract 3 –

MR. M. KENNEDY: Sorry. Start of –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – contract 3.

MR. LEARMONTH: We finished contract 2. This is the start of contract 3.

MR. M. KENNEDY: I believe this is the start of contract 2.

MR. LEARMONTH: Well, no, I'm calling the umbrella agreement –

MR. M. KENNEDY: Oh, the umbrella agreement.

MR. LEARMONTH: – general service agreement as – I'm taking them in order of date. So this is the second contract for a specific scope of work, but it's the third contract that EY is entered into. Correct?

MR. M. KENNEDY: Okay. Yes.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: I follow.

MR. LEARMONTH: Thank you.

So, tab 48, 03326. Now, this is an agreement – maybe this probably doesn't warrant much discussion – but I just note that the email on page 1 of P-03326 – the email's dated April 27, 2016 [sp. 2015], review of project controls and such.

When we turn to page 2, the statement of work is dated March 9, so it's sort of backdated, is it? Is there any significance to that?

MR. M. KENNEDY: I can't say if there's significance. There's certainly a number of weeks between what appears to be the statements of work being finalized and when it's being issued for signature.

MR. LEARMONTH: Yeah.

Now, on page 2 of this Exhibit, P-03326, the "Scope details:

"Perform an assessment of Cost and Schedule management processes and controls, and related reporting;

"Assess methodology for calculating and reporting Cost and Schedule."

So, this is a – one year after the – you got your first instructions. Why – can you explain – maybe you can, maybe you can't – but, like, why are you still – why are you not dipping – jumping right into a review of the costs and schedule and risks? Why is this intermediate step being taken?

MR. M. KENNEDY: And I can't answer that, specifically.

MR. LEARMONTH: You understand the point, though?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah.

Would it have been possible at this time – or feasible or reasonable – for the Committee to come to you and say: Look, okay, now let's get into it; here, we want you to do this – the review – that you actually did it in 2016?

Is there any reason you'd have to take this intermediate step? Couldn't you do it all at once?

MR. M. KENNEDY: Well, based on the report that we – on the first report that we completed at the end of that two-week period in March 2014, I would expect an Oversight Committee representing the shareholder to certainly move much faster, given the – specifically the information requests that we had put to them that they needed to obtain from Nalcor.

MR. LEARMONTH: Right. Yeah. So, you would have expected that, would you?

MR. M. KENNEDY: Yes, absolutely.

MR. LEARMONTH: Yeah.

And – we see, once again, this is Exhibit P-03328 [sp. P-03326], and now we're onto tab – page 3. The timetable – this report is dated the 8th of – March 9, it's – if – the bottom paragraph on page 3 says: "If timelines persist beyond the estimated eight weeks effort due to extended validation reporting" – et cetera.

So, the timeline is two – eight weeks, right?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And the amount of the contract – it's not a large contract – it's page 4 – \$118,000 – "\$118,324, with a 5% contingency to a ceiling of \$125,000." Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And the timeline for the completion of this report – at the top of page 4 – indicates March 9 to March 13 – you start, and then April 27 to May 1 – you finished this part of the review. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah. And did you finish your work within that time period – at least to the point where you could prepare a draft report?

MR. M. KENNEDY: I'd have to check the specific dates. I think it was certainly within 10 weeks or there –thereabouts.

MR. LEARMONTH: Yeah.

But when was the final report prepared? You submitted a – your initial report in, say, 10 weeks which is close to the eight. When was the final report – after it was considered and reviewed by Nalcor and so on – when was the final report delivered to government?

MR. M. KENNEDY: I believe that was the end of August 2015.

MR. LEARMONTH: 2015?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Oh, that's – that's –

MR. M. KENNEDY: It may have been July, I'd have to – the document is in here, I believe, so ...

MR. LEARMONTH: Okay. We'll get – we'll get to that.

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Okay. We'll just back up for a minute – go back to tab – tab 45, I guess. This is the kickoff meeting for – do you have tab 45?

THE COMMISSIONER: 03323, part – I'm sorry. That's – yes.

MR. LEARMONTH: Can you identify that exhibit, please?

MR. M. KENNEDY: This is an EY document – was a presentation/agenda for how we would conduct the work. It has further detail than an earlier version that we looked at around – certainly not the eight-week timeline. It's got a list of – of Data Request Listing, as it's called on page 9, and a list of – at page 10 – individuals from – all from Nalcor that we – that we expected to have a discussion with.

MR. LEARMONTH: Okay.

Now I'll ask you to put volume 3 beside – binder 3 beside number 2, because some of the exhibits are out of order and – so, I'll be flipping back between –

MR. M. KENNEDY: Okay.

MR. LEARMONTH: – binder 3 and binder 2.

Well, the next document, which is in binder 3, is a – tab 133. Now, we're up to – okay, March 31. Can you identify this document and explain the importance of it, if there is any?

THE COMMISSIONER: So is this P-03066?

MR. LEARMONTH: It's P-03066. It's dated April 29, 2015.

MR. M. KENNEDY: This document is an EY internal document from Emiliano Mancini. And he is providing high-level comments on a Nalcor document which includes schedule and contract performance information from one of its contractors, Astaldi.

MR. LEARMONTH: Okay, were you doing work on Astaldi at this point?

MR. M. KENNEDY: We were – Astaldi, as part of the project, would have been included as part of the data request list and the interviews. It wasn't specifically focused on Astaldi.

MR. LEARMONTH: No.

Okay, the next tab, 134, binder 3, Exhibit P-03413. This is preliminary observations – on page 4: **"Preliminary observations for discussion purpose only – May 5, 2015."**

Can you just go through this, pages 4 and 5, and provide some explanation? Is this – these are observations after some contact had been made with Nalcor by your team. Is that correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Okay. And who made these observations?

MR. M. KENNEDY: It was certainly by EY. Whether it was Emiliano or Richard Noble or both, I can't be specific on.

MR. LEARMONTH: Okay.

Now, on page – observations to be noted, towards the bottom of page 4 of P-03413, paragraph 2 – number 2, I should say: "Control baselines and control plans (i.e. Control Schedule Baseline Document and Schedule Development and Control Plan) are incomplete and/or fail criteria, as per Nalcor's coordination procedures. Work down date has not been established."

Can you explain, in general terms, what that means?

MR. M. KENNEDY: So a control baseline, in this context is – in simple terms you have a schedule baseline, you have a cost baseline that

is set at a point in time and then you measure progress against that baseline through – as is referred to here as a control plan. So there is a methodology for how you’re doing the assessment.

So what this is saying is that both the baseline and the method of monitoring through the control plans are incomplete.

MR. LEARMONTH: Is that a serious matter or not?

Well, I should – I’ll withdrawal that and say what is the significance of that finding, if there is any?

MR. M. KENNEDY: It’s an indication of a gap in project controls discipline and process. As to the quantum of its significance, you can’t tell from that statement.

MR. LEARMONTH: Okay.

So, your review – you’re just reviewing the processes, not the actual underlining data. Is that right?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Yeah. So this is the limit on this stage of your review.

MR. M. KENNEDY: Yes, it’s focused on processes.

MR. LEARMONTH: Okay, number 3 on page 4 of P-03413: “Contractor’s compliance on cost and schedule requirement is a significant challenge for the program.”

Now, in the context of the work you’re doing, what is the significance, if any, of that comment?

MR. M. KENNEDY: So, typically, on any large infrastructure project, and certainly on this project, major contractors – in fact, all contractors are expected to, on a regular basis, usually monthly, provide updates on their progress, which is then incorporated into the project team’s view of go-forward progress.

If you look at the paragraph above, which is focused on Astaldi clearly, at this point, it’s apparent that there is a very significant challenge with the progress of Astaldi in meeting its contract requirements.

MR. LEARMONTH: Okay. And that would turn up under the mandate that you had for this – for the limited mandate you had?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: It would? Okay.

And number 4: “It is not clearly defined how the MonteCarlo simulation is being performed, what inputs are being used and how the results of the simulation will be leveraged.”

Can you expand on that finding and explain the significance, if any, of it?

MR. M. KENNEDY: So, Monte Carlo simulation is a very standard industry process to quantify risk in terms of schedule and cost going forward. What this point is saying is that from the discussions that we’ve had with Nalcor project team members, there seems to be a lack of clarity on how the Monte Carlo simulation is being performed.

MR. LEARMONTH: And that has to do with the quantitative risk assessments, is that correct?

MR. M. KENNEDY: The Monte Carlo simulation is a tool and a technique that informs a quantitative risk assessment.

MR. LEARMONTH: Yeah.

Now, based on your experience, when you read this on May 5, 2015, is that something that jumps out at you, or is it just sort of, you know, a moderate finding that could represent a problem or not? How would you characterize the seriousness of it?

MR. M. KENNEDY: If I were reading this cold in May 2015 it would indicate that the project has serious challenges.

MR. LEARMONTH: Then on the top of the next page, page 5: “The basis for rebaselining is

not defined. It will be up to senior management to decide when and if rebaselining is required.”

Can you explain that, please?

MR. M. KENNEDY: As I said earlier, the baseline is where you start and then you measure progress against that, in terms of cost and schedule. Often in projects, the project will be re-baselined and there is – there should be a discipline around how that is implemented and a discipline around the decision to implement it.

So I think what this is saying here is that it’s not clear on the rules of how a re-baselining would happen.

MR. LEARMONTH: There should be rules, shouldn’t there?

MR. M. KENNEDY: There should be rules.

MR. LEARMONTH: But, once again, is that of any concern to you?

MR. M. KENNEDY: It is a concern.

MR. LEARMONTH: And then number 6: “Contingency and contingency forecast are weak.” Can you explain that and advise whether that’s a significant finding in your opinion, based on your experience?

MR. M. KENNEDY: It’s a significant finding and it links back to the comment at number 4 around being unclear on how the Monte Carlo is being implemented, because that is a process that gives you an indication of the degree of contingency that you need, over and above committed expenditures on a project.

MR. LEARMONTH: Yeah.

Seven: IPS – what does that mean? IPS (inaudible) –

MR. M. KENNEDY: That is Integrated Project Schedule.

MR. LEARMONTH: All right.

“... is not yet fully based in contractor’s schedule. IPS focuses on construction and commissioning only. It does not provide

engineering, procurement or operation readiness information. It also does not show percent completion.”

Please comment on that.

MR. M. KENNEDY: So, as I said earlier, the contractors, in particular the larger contractors, have to provide progress updates on a regular basis. Those updates are then feed into the Integrated Project Schedule, so that the project team can have a current view of what is anticipated on scheduled performance.

So, the comment here is saying that that information was not being fully included, and from further discussion that we’ve had it was clear, I believe, that from July 2014, that Astaldi’s updated schedule had not been built into the Integrated Project Schedule, which, given the commentary on page four of the exhibit around critical challenges, just again builds a sense that there are some serious problems.

MR. LEARMONTH: Yeah. Because if you don’t know the details about the Astaldi contract, which is the biggest one, how can you do a proper assessment?

MR. M. KENNEDY: Yes, and there are also – yes, I would agree with that, there are also contractual reasons why you don’t reflect Astaldi’s progress outwardly, which is kind of getting into the weeds a little bit. But the project team did not appear, at this point, to have a clear view of the anticipated schedule and cost progress – performance going forward, rather.

MR. LEARMONTH: Number 8: “IPS mapping/process is not documented and is complex.” What is the significance if any of that finding?

MR. M. KENNEDY: So, as you may be able to imagine the, I mean, these schedules have literally thousands of activities in them that are all linked together and they’re done with computer software, which is often referred to as P6. So then you’ve got a very complex schedule and then you’re integrating equal – not equally complex but updates from contractors that are also very complicated.

So there has to be a real discipline around, you know, even back to are you using the right file, but you also have to be very disciplined around having rules for how – these are technical terms – how float is calculated. Whether it's an early start activity or a late start activity, that, you know, this is a carefully run procedure, you're not just putting it together in a binder, in simple terms.

MR. LEARMONTH: So this was not up to scratch?

MR. M. KENNEDY: That's what –

MR. LEARMONTH: If this is correct.

MR. M. KENNEDY: That's what the statement says, yes.

MR. LEARMONTH: And is that significant?

MR. M. KENNEDY: It's not unusual on major projects, but reading the commentary overall, it's another indicator of problems within the project controls process.

MR. LEARMONTH: Yup.

And number 9: "Schedule delays and likely need for rebaselining. Potential change to execution strategy."

Is that a new finding or is that just to build on some of the earlier findings in paragraphs 1 to 8?

MR. M. KENNEDY: That reference may be to a change that happened in the implementation strategy of the project where originally SNC-Lavalin had a broader role as the project implementer, and it reverted back to, I think it was called an integrated project team.

What this may be commenting on is that change in strategy has not been fully reflected in the rebaselining of the project.

MR. LEARMONTH: The next document, this is in binder 2, tab 49, P-03327, an email from David Steele to Richard Noble and Emiliano Mancini, where he's saying on May 6, 2015: "Could you formally minute all meetings today with Craig/Julia, Jason Keane and Paul Harrington?"

And I'll just note that at the end of the earlier exhibits there was a reference to the need to set up meetings with Jason Kean and Paul Harrington, correct? It's in the exhibit, yeah. If you look at – just go back –

MR. M. KENNEDY: Certainly, Paul Harrington, I'd have to check if Jason Kean was –

MR. LEARMONTH: Exhibit P-03413, at the bottom it says – on page 5.

MR. M. KENNEDY: Yes, that's – yeah.

MR. LEARMONTH: Interviews to be completed this week: Jason Kean for Monte Carlo simulation and Interface Management and Paul Harrington.

So, the – Mr. Steele, the local engagement partner, is saying that formally minute all meetings. Is that a usual procedure to formally minute all meetings?

MR. M. KENNEDY: Yes, we certainly endeavour to have a written record of every meeting during this type of engagement.

MR. LEARMONTH: All right.

Now – so this at the same time, this is following the – this memorandum that we referred to, so when you look at the concerns in the memorandum, I've asked you to consider them individually and you've given your commentary on them individually. But what would – if you look at them in totality, if you read the whole thing, what is your reaction at this point? Like, when you read all these items.

It could be that everything's fine. It could be that there's problems; there's serious problems. What would be your take on that as a total picture?

MR. M. KENNEDY: There is a serious problem on the project.

MR. LEARMONTH: A serious problem.

MR. M. KENNEDY: Yes.

MR. LEARMONTH: And then we go to page – tab 50 of the same binder 2, Exhibit P-03328.

Now, this is a – on page 2, there's an email from David Steele to Richard Noble, Emiliano Mancini and Paul Hickey.

“Richard,

“When speaking to Craig” – that'd be Craig Martin, today – “he mentioned concerns were being expressed from Nalcor about EY going outside of scope of the SOW. Specifically that we were asking for items that involved the ‘Plan’. He says, we shouldn't be assessing the Plan, but we should be focused on assessing cost and schedule actual and forecast information.” And then he goes on to expand on that.

So, obviously, you know, after, you know, Nalcor has contacted Craig Martin, and that's pretty obvious. Is that correct? That's what it says.

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah.

But in terms of the scope of work, or the statement of work, what – I mean, the government is funding this project, correct? The government has set up an Oversight Committee. On what basis would Nalcor have any right to, you know, complain to government about what oversight work was being done on the project? Can you speak to that point, please?

MR. SIMMONS: Mr. Commissioner, I think we're probably straying into something that's going to be pretty speculative for this witness to give an answer to that.

THE COMMISSIONER: Yeah, I think that might be a bit speculative for this witness to say.

MR. LEARMONTH: Okay.

THE COMMISSIONER: You know, I think the email speaks for itself with regards to EY's position that it is associated with the plan, and we know that – and it also expresses the fact that Nalcor seems to be suggesting it's outside the scope of work.

MR. LEARMONTH: Okay, that's fine.

THE COMMISSIONER: (Inaudible.)

MR. LEARMONTH: All right.

Now, on page 1 of tab 50, P-03328, Mr. Noble says in the third – second paragraph: “The two points of concern are themselves easily answered but these questions highlight the impact of the constraints/limitations being placed on this assignment as well as Nalcor's intent to take a minimal interpretation on our mandate such that it renders an effective assessment almost impossible.”

In paragraph 1, he says: “In my 17 years' experience of conducting project reviews and audits, it is highly unusual when assessing cost and schedule management that you would be constrained from examining the processes/basis of plans and estimates to start with. These underpin cost and schedule performance and its management. Everyone knows that.”

Do you agree with that statement?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah.

And is that a concern? The fact that this was written on May 7, you know, in that time frame. Does that cause you any concern?

MR. M. KENNEDY: It would, having looked in detail at the previous exhibit of the preliminary findings of what we'd found during the review.

MR. LEARMONTH: Yeah.

Okay, now I'd like to go to tab 135 in book 3, Exhibit P-03414.

Now, this is a – I'd like to first – this is – there – obviously, there's a meeting with Paul Harrington on May 6. This is identified on the top of this email from Emiliano Mancini. May 6 and a memo of a May 6 meeting with Jason Kean – I guess that's a follow-up to the reference to those gentlemen in the earlier exhibit we considered where meetings were suggested. Do you remember?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Yeah, yeah.

So okay, let's turn, first, to the notes from the meeting with Paul Harrington. And this is on page 6.

It says: "**Notes from the meeting with Paul Harrington on May 6** ... The purpose of this memo is to document the above meeting.

"Purpose of the meeting: interview with Paul Harrington

"Attendees: Paul Harrington ... Steve Pellerin – Relationship Manager, Lower Churchill Project ... Craig Martin – Executive Director" – of the Oversight Committee, yup – "Richard Noble ... Emiliano Mancini." The place of this meeting is at "Nalcor's Project office, 350 Torbay Road, St. John's; Time: from 2:30 to 3:30pm."

And then it says: "As soon as EY prepared to formulate the first question, Paul Harrington interrupted the meeting and left saying that he was expecting a debriefing and was not prepared to respond to any question." So, presumably it was a very short meeting, correct? According to this document.

MR. M. KENNEDY: Yes, that's what it says.

MR. LEARMONTH: Okay. Well, you're an experienced project manager. Does that give you any concern? That there is a meeting called at the Lower Churchill Project's office; Mr. Harrington is asked one question and leaves the meeting. He won't answer it.

MR. M. KENNEDY: Reading it, it would cause me to ask further questions as to why – what was motivating that given that I would have expected that that briefing document that we looked at in an earlier exhibit and the types of questions that would be asked during a discussion with project team members would have been put in front of Paul Harrington before the meeting.

MR. LEARMONTH: Yeah.

But, I guess, there was no point in any further discussion because Mr. Harrington apparently got up and left. Is that right?

MR. M. KENNEDY: That's what it says.

MR. LEARMONTH: Yeah.

The – next is a meeting in the same exhibit, page 8, interview with Jason Kean. This is on the same day. Attendees: Jason Kean, Alison Ball, Richard Noble, Emiliano Mancini. Time: from 11:30 to 12:10.

Okay. Use of the Monte Carlo simulation, and that was referred to in an earlier document. Do you remember that?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay. Jason – "a. Jason Kean mentioned that the MCS was used only during DG2 and DG3, however he did not recall the probability (e.g.: P50, P80) associated with cost and schedule baseline calculated with MCS. The simulation was conducted using industry standards. No more detail was provided."

So, obviously, Mr. Kean said that he didn't recall. He's their risk person, right?

MR. M. KENNEDY: I don't know that that was his specific title at the time.

MR. LEARMONTH: Well, he's given evidence, and that'll have to be considered.

But what is your take on this, assuming this is a correct statement of what Mr. – of Mr. Kean's comment that the Monte Carlo simulation was used only during DG2 and DG3. Now, DG3 was – you know, those documents were prepared before December 2012.

Does that indicate any problem in your opinion?

MR. M. KENNEDY: If it was only used before 2012, that would be a concern.

MR. LEARMONTH: I know, but it would've been used in 2012, but not after, according to this.

MR. M. KENNEDY: Yes. So, as you're saying, if it wasn't used after 2012, that would be a concern.

MR. LEARMONTH: Why?

MR. M. KENNEDY: Monte Carlo simulation is an industry standard way of producing risk-adjusted, as we call it, cost and schedule forecasts.

So, certainly at project sanction, you would expect a – and I should also say that the Monte Carlo simulation itself is one input. It is not a definitive tool, but it gives project teams lots of information on which to ask further questions and formulate a viewpoint.

So at sanction you would certainly expect a Monte Carlo simulation to be performed along with other analysis of cost and schedule forecasts. And thereafter, I would say good industry practice on projects of this type is that a Monte Carlo simulation would probably, most frequently, take place every six months.

MR. LEARMONTH: That would be a good practice?

MR. M. KENNEDY: That would be good practice. It really depends on the progress of the project. A project that is going well may decide to leave it to an annual or even a biannual review if – and only do an updated analysis if there was a major event change.

MR. LEARMONTH: Yeah.

Could I – could we infer from that comment that in a project which – where everything seems to be going fine, that there's less need to do a Monte Carlo simulation on a regular basis than there is in a situation where there are problems that have been identified?

MR. M. KENNEDY: As a general statement, I would agree with that.

MR. LEARMONTH: Yeah.

And, you mentioned – did you mention six – every six months, would that be a standard recommendation that you would make for any project of this kind?

MR. M. KENNEDY: I think for a – for a project of this size and complexity and – sorry – reflecting on other major projects I've been involved in, six months is a – is a usual cadence.

MR. LEARMONTH: Okay.

And if there were no Monte Carlo simulations done for this project – and, say, from – we'll say December 2012 up until the date of your review, which is 2015 – what is your reaction to that?

MR. M. KENNEDY: That would be an obvious gap in – if I relate it back to our scope of work, of what we were being asked to do there – that would be an obvious gap in the cost and schedule management processes that were in place on the project.

MR. LEARMONTH: Okay.

Next, in binder 3, tab 136, it's May 26 – P-03415 – an email from Emiliano Mancini, a briefing with Craig. Can you have a look at this document and explain to me what is going on here? It refers on page 2 to an interview with Nick Ternasky on April 9, 2015. You just have a look through that, and give us some understanding about what is going on here.

MR. M. KENNEDY: Yeah, so these are – these are EY notes through Emiliano Mancini of a discussion with Nick Ternasky, who was a member of the project team.

MR. LEARMONTH: Tab – book –

MR. M. KENNEDY: Sorry. Correction: he's not a member of the project team; he was a representative of the contractor.

MR. LEARMONTH: You know which contractor?

MR. M. KENNEDY: Actually, I'm confused there. I'm not specific on who Nick Ternasky is.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: I just read the first page. It said "Project Control Lead for Valard," so – I read that as he worked for Valard, and I think he did work for the project team.

MR. LEARMONTH: All right.

Tab 52, binder 2. It's an email from David Steele to Richard Noble and Emiliano Mancini: Just talked to Craig June 5th, 2015. Second paragraph: He – presumably that's Craig – “confirmed that he does not want this in draft report format.... as it will be available to any requestor through ATTIP. He believes that this is a step in the communication and validation process with Nalcor, and should precede the draft report. I am inclined to agree. I think we can still precede the listings (positive and constructive findings) with a cover letter.”

So, this is just a discussion about the means of communication, is that right?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Yeah.

Tab 53, Exhibit P-03331; paragraph 2 of this email from David Craig – David Steele to Craig Martin and Richard Noble: “Where we were coming from is that the OC (and EY) have not done very limited reliance work. I know you are familiar with these concepts, but I wanted to relay a few points..... Relying on the work of others is a concept well documented in professional standards. We are not saying that you can't or shouldn't rely on the work of IA... you should strive for this where possible. What we are indicating is that should not do so at this point in time... considering the very limited reliance procedures performed.”

Can you give us some explanation of this communication?

MR. M. KENNEDY: David Steele from EY is pointing out some of the factors that should be considered in accepting other people's work, and specifically whether – and inferring how EY would accept other people's work. And further down there are points that should be considered specifically here when looking at the work of Nalcor's internal audit team.

MR. LEARMONTH: Yeah. Well, we talked about that before, but there is limited value in placing reliance on the work of others when you are doing a review for an Oversight Committee, is there not?

MR. M. KENNEDY: The points of this document is to say that you can use that information or data that is being prepared as long as you've been through a reliance process, but irrespective of that, the data that is put together, still has to be reviewed by the Oversight Committee for it to form its own view.

MR. LEARMONTH: So, it's not a substitute then.

MR. M. KENNEDY: No.

MR. LEARMONTH: All right.

Tab 138, binder 3, Exhibit P-03417.

Now, if we turn to page 2 first, this is – indicates “Nalcors Lower” – top paragraph – “Nalcors Lower Churchill Project (LCP) ... has reviewed the draft document of Preliminary Findings for Nalcor feedback dated June 8th, 2015. We believe this proposed section requires a significant re-write to conform to the stated scope of work associated with the intended review and to” – move accurately reflect – “more accurately reflect the” – general – “information,” and there's a long list of criticisms of the report and so on. It goes on to page 7.

So, I guess it's clear what's happened is you sent Nalcor your list, your preliminary findings, and you've asked for their comments and you've got it. Is that right?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And, Mr. Noble says, on June 24, page 1, “Hi. This is their reply. (Just take deep breaths).” Do you know what that means?

MR. M. KENNEDY: I think Richard is conveying that he's read the comments and there's probably significant areas that we – that we don't accept the commentary.

MR. LEARMONTH: Okay.

Page 139 – tab 139 – this is an email from David Steele to Craig Martin, dated June 25, 2015.

THE COMMISSIONER: Three four one eight?

MR. LEARMONTH: Yeah, 3418.

“We have reviewed the comments provided by Nalcor. Based on this review, we’d only advise very minor changes to the report” – as previously – “provided. Therefore, I would recommend, that rather than send a minor update ... we should schedule a time to sit with Nalcor to step through each” one.

“This would probably be better done face to face in St. John’s in the week of July 6th-10th.”

So, I take it that they – you’ve got these suggested changes, and they’re long, and they’re detailed, but you’re not paying much attention to them after review. Is that correct?

MR. M. KENNEDY: Well, we paid close attention to them.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: We disagreed with the – in the most part – by the points that Nalcor were raising.

MR. LEARMONTH: Yeah. So, you didn’t change your report substantially because of these concerns having been expressed. Is that correct?

MR. M. KENNEDY: We considered the comments. We always look for input on how to make things clearer, fact-checking of numbers, dates, et cetera. We consider – we also consider opinions. We think that’s all part of a collaborative process, but ultimately it’s EY’s opinion of what we found.

MR. LEARMONTH: Yeah. So, is the process work like this, that you send your preliminary findings, you ask their – for their comments, which they gave you, then in an open-minded framework, you assess their criticisms, and if they’re valid, you will change your report. If they’re not valid, you won’t. Is that a fair way to put it?

MR. M. KENNEDY: Yes, that’s correct.

MR. LEARMONTH: Now, tab 54, binder 2. It’s an email from Richard Noble to David Steele, June 25: response to EY final.

THE COMMISSIONER: 03332.

MR. LEARMONTH: “This is our first cut. We continue to hold to the findings. While acknowledging that they have their own point of view and are actively trying to manage the project (which we clearly communicated in the report) a majority of what we saw as their commentary was:

“Challenging semantics (e.g. use of assessment and gap inferring an audit etc);

“Incorrect (e.g. asserting the EVM doesn’t apply ...);

“Inconsistent” – et cetera;

“Accepting our point but with either a challenge or qualifications”

And then the next point: “Related to items we have also raise”

So, he says then, after that: We’d only advise very minor changes to the report we previously reported. And there is an indication that you wanted to meet with them face-to-face to discuss this point. Is that correct?

MR. M. KENNEDY: Yes, that’s correct.

MR. LEARMONTH: Okay.

The next document is at tab 140 in book 3. I’ll bring that up, and then – the number is Exhibit P-03419.

Now, you’re sending – David Steele is sending to Craig Martin the draft report. So, this is the report that you’ve finalized after taking into account Nalcor’s comments. Is that correct?

MR. M. KENNEDY: Yes, that’s correct.

MR. LEARMONTH: And this was sent August 12, 2015?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Was finalized August 12? Now, that's a little longer than the eight weeks that were contemplated. Is that correct?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay. And what was the reason for the delay, if you know?

I know you weren't involved until December 2015, or thereabouts, but are you able to answer that question without – you know, based on your knowledge rather than guessing?

MR. M. KENNEDY: It was because of backwards and forwards between governments and Nalcor on drafts of the report.

MR. LEARMONTH: That hadn't been anticipated. Is that correct?

MR. M. KENNEDY: Certainly, there's an anticipation that there's going to be comments and review time.

MR. LEARMONTH: Yeah. But they were greater than had been anticipated. Is that the reason why you weren't able to complete the report on time, or do you know?

MR. M. KENNEDY: I can't say –

MR. LEARMONTH: Okay.

MR. M. KENNEDY: – specifically.

MR. LEARMONTH: Fair enough.

Now, tab 55, book 2. Now, this is from Richard Noble to Charles-Antoine St-Jean. He's another member of the EY team, is that correct?

THE COMMISSIONER: P-03333?

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: Yes, Charles-Antoine is, or was, an EY partner at the time.

MR. LEARMONTH: Right. Can you tell me what's going on here?

MR. M. KENNEDY: It's an EY internal discussion anticipating that there may be further

commentary or push back from either Nalcor or the Oversight Committee or both.

MR. LEARMONTH: Okay. Do you know why there'd be that anticipation?

MR. M. KENNEDY: That would be because of the response to the – certainly in the case of Nalcor – the response to their suggestions, edits, changes, et cetera, et cetera, wouldn't have met their requirements.

MR. LEARMONTH: All right.

Next document is tab 56, binder 2. It's Exhibit P-03583. Now, this is a report dated October 29, 2015, correct?

THE COMMISSIONER: Okay, can we figure out where this is now? It's P-03583?

MR. LEARMONTH: P-03583, it's tab 56.

UNIDENTIFIED FEMALE SPEAKER:
Fifty-six is (inaudible).

MR. LEARMONTH: Pardon?

THE COMMISSIONER: It's not tab 56. Is it 156?

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: Oh, it's 156. Okay, sorry, I got the wrong, sorry about that. So it's 156, volume 3.

So can you identify this document, P-03583?

MR. M. KENNEDY: Yes, this is the final report of the second statement of work, as I think you referred to earlier as contract 3.

MR. LEARMONTH: Okay. Now, this is dated October 29, 2015.

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah. So, the August – the first one was dated August 31. So it took that long to get this in final form?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: You know why?

MR. M. KENNEDY: No.

MR. LEARMONTH: All right.

Now, we look at page 5 of this document, P-03583. These are review limitations. “The following areas were excluded from the scope of the review:

“The estimating processes and cost baseline process were not assessed. The Oversight Committee indicted it intended to rely on the results of the DG approval processes (DG2 having been reviewed by MHI Consulting and DG3 having been reviewed by the Independent Engineer) and the approval of the narrow scope cost adjustments in the 30 June 2014 update.”

So this is a qualification that you wanted to put in your report is that correct?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: And then: “The accuracy” – once again the bottom of page 5 – “The accuracy of the forecasted costs or schedule dates for the contractors or Project as a whole.”

So why was that excluded?

MR. M. KENNEDY: It was because we didn’t have full – we didn’t have definitive forecasts provided by Nalcor for the some of the contractors.

MR. LEARMONTH: Okay.

And then the top of page 6: “Change Management and Risk Management processes. The Oversight Committee indicted Nalcor’s Internal Audit Department are assessing these areas and intends to assess Nalcor’s Internal Audit reports for reliance purposes.”

So, does that mean that the Oversight Committee is going to do that themselves?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Without you? Without EY?

MR. M. KENNEDY: That is what the statement says there. It doesn’t say without EY, but it intends to assess Nalcor’s internal audit reports.

MR. LEARMONTH: Do you know what qualifications the Oversight Committee would be to make that assessment?

MR. M. KENNEDY: I can’t speak to that.

MR. LEARMONTH: Can’t speak to that. Okay.

And then on page 6: “Summary of key findings.

“The following observations were noted during our review: ... Key project control processes have been developed including an Integrated Project Schedule, Project Execution Plan and Coordination Procedures; 2. Project reporting summarizes key information on construction cost and schedule; 3. Nalcor continues efforts to work with contractors on maintaining a disciplined approach to project management, control and reporting; ... Proactive measures had been taken to manage potential claims; ... We saw evidence of active formalized management of cost and schedule issues and risks arising during the Project; ... A reasonable matrix organizational structure has been established staffed with resources experienced in cost and schedule management.”

Now, does this match the significant concerns that you expressed earlier in – about that – those findings in that May 5 document?

MR. M. KENNEDY: I believe it does, yes.

MR. LEARMONTH: Yeah.

But do you say here you have significant concerns and so on? Is there anywhere in the report where you clearly indicate your – the concerns that you expressed earlier?

MR. M. KENNEDY: We don’t use the word significant in here. However, it – you know, both within this and within the detailed observations that were within the document, we are highlighting that there are risks and issues.

MR. LEARMONTH: Okay.

And, once again, you're not – this is not your detailed review of cost and schedule and contingency and so on. This is just reviewing the process. Is that right?

MR. M. KENNEDY: This is focused on processes, yeah.

MR. LEARMONTH: So this is October 2015, and you started your work on this project in March 2014. So it's – a lot of time has passed, and all you've – well, in accordance with your instructions, all you've achieved are those two reports. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Does that appear to you to be a long period of time to get to that point?

MR. M. KENNEDY: As I said earlier, I think the issues that were highlighted in our first report would imply that it did take – it took a long time to get to October 2015, to be highlighting further levels of details of the issues that we were identifying over a year earlier.

MR. LEARMONTH: It took a long time, did it?

MR. M. KENNEDY: I would say so.

MR. LEARMONTH: Okay.

Binder 2, tab 57, that's Exhibit P-03335. Can you identify this document, which you received from Julia Mullaley who, at the time, was chair of the Oversight Committee?

MR. M. KENNEDY: This is a document from government – I'm just looking at the date here – that I think was circulated to David as a draft for consideration for inclusion within our final report.

MR. LEARMONTH: It's before the October report that I just referred to –

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: – probably out of order. Okay.

Next, tab 142 of binder 3, and that's Exhibit P-03421. This is an email from Dawn Dalley – well, it originates as an email from Dawn Dalley of Nalcor, September 26, 2015, and then it was sent on to you – EY by Julia Mullaley.

So these are the final – this is the final comments that Nalcor has about your report. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay. And these were not – I won't say they were dismissed, but they weren't – they didn't prompt you to make many changes in your report. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay.

Next is tab 58 in binder 2, Exhibit P-03336. It's an email, I think, from – Muskrat Falls update. Do you know who this is from? It says, "Richard and I just received this ... OC insert from Julia ... tonight."

Is that from David Steele?

MR. M. KENNEDY: Yes, it is from David Steele. It's part of a meeting invite.

MR. LEARMONTH: Okay.

Now, in the last paragraph he says: "As you read it" – and this is dated September 28, 2015, so this is leading up to that final report. "As you read it, you will see that there is still a significant amount of divergence from Nalcor's position to EY's observations. I feel that the OC is presenting two sides without an inclusion of its own position or satisfaction with Nalcor's response. Please read through and let's all think on the implications/risk of such a report being released. Julia expects a response from us tomorrow, hence the reason for the early meeting tomorrow – everyone's schedules appeared open."

So, what are the implications of such a report being released? Can you expand on that, please?

MR. M. KENNEDY: I can't speak to the implications of the report.

MR. LEARMONTH: Okay. So you can't –

MR. M. KENNEDY: (Inaudible) released.

MR. LEARMONTH: – make any comment on this?

MR. M. KENNEDY: I can offer a comment on what David is saying here in the meeting request.

MR. LEARMONTH: Okay. Please do.

MR. M. KENNEDY: Well, David is briefing other EY partners that there is divergence in views and expressing his view that the OC is presenting Nalcor's viewpoint and EY's viewpoint without putting forward its own viewpoint.

MR. LEARMONTH: Yeah. Is that not unusual? This is an Oversight Committee, and it's not stating where it stands on something.

MR. M. KENNEDY: You would expect the Oversight Committee to express its opinion.

MR. LEARMONTH: Okay.

Tab 59 – binder 2 – Exhibit P-03337. Now, this has to do with this issue that we hear a lot about, commercial sensitivity. If you look at this document and Richard Noble is saying – “Sorry David... But we first need to qualify the commercial sensitivity with Nalcor

“We don't know what Nalcor's thinking is for a majority (10/11) of items requested to be removed by Nalcor and identified commercially sensitive ... we can hypothesize... but it is not clear why they see them as such.

“Their removal would substantially alter the quality of the content... if we don't understand their alleged point of sensitivity we will also get into a back and forth updates and reedits.

“Keen to help... but we need Nalcor to qualify why/in what way they see the sensitivity in order for us to do the right thing in the report.

“Best regards.”

So, this seems to be a situation where Nalcor is saying this can't be in the report because it's commercially sensitive and Mr. Noble is saying – I don't understand it for – one out of 11 he seems to recognize as being legitimate. Is that correct?

MR. M. KENNEDY: He's saying that he doesn't understand Nalcor's thinking as to why they are – why they believe it's commercially sensitive.

MR. LEARMONTH: And then tab 61, this was the first reference, I think, to the two reports issued. Craig Martin, of the Oversight Committee, on October 26, 2015, is saying: “Sorry, been tied up in other files this last ... weeks. No specific direction ... My understanding was that you were looking at preparing two separate reports (one with the confidential info and one without) in order to address the Commercial Sensitivity concerns raised.

“Is that what you have prepared at this stage? If so, need current drafts to recirculate to Nalcor on the Commercial Sensitivity to get their feedback ... prior to finalizing.”

And then Mr. Steele says at the top of P-03339: “We had determined that 2 reports is an option. We were waiting for Nalcor to provide additional detail on the rationale for the positions they have taken” et cetera. So why would you agree to two reports if you didn't agree that – if you agreed that only one of the items raised by Nalcor, one of 11, was really commercially sensitive?

MR. M. KENNEDY: Well, we hadn't agreed that they were or weren't commercially sensitive. We were trying to understand the rationale for why they were commercially sensitive. As time marches on here, we have determined that we can put the report into two versions: One is a version that we believe would satisfy the requirements of Nalcor around

commercial sensitivity without diluting any of the message if it was issued as one report, and then a second report would contain the detail, in any case.

MR. LEARMONTH: So one report would be released to the public and the other one wouldn't, is that it?

MR. M. KENNEDY: Yes, I think that's the case.

MR. LEARMONTH: Okay.

But my question is that had you – well, I guess is this: Had you reversed field on your assessment that 10 out of 11 – of the 11 items were not commercially sensitive?

MR. M. KENNEDY: We hadn't reversed field as you put it. We – Richard's earlier question was trying to understand the rationale. So, in Richard's mind, he didn't have a clear rationale as to why Nalcor believed these were – these items were commercially sensitive.

MR. LEARMONTH: And tab 143, that's Exhibit P-03422. We're into October 28 now and this is to Craig Martin from Richard Noble: We have redrafted "the reports into two parts as requested: An executive summary (intended for public consumption and that omits details that might be commercially sensitive); A detailed supplement (that contains commercially sensitive material).

"We like yourselves are keen to see this put to bed and trust that" the "approach works."

So, the Oversight Committee, it would appear, accepted Nalcor's position on this, that it was necessary to split the report into two? Or was it their idea?

MR. M. KENNEDY: Well, ultimately, I think it's – it was our decision to produce a report in two parts. I'm not sure I could confirm that the – well, I can't confirm that the Oversight Committee accepted Nalcor's position.

MR. LEARMONTH: Right.

Anyway, it was done by that two-report approach. Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Tab 20 – tab 62. Now, we're into – after – at this point, the election has been completed and the – Premier Ball has – is now in the Premier's chair. And if we look at P-03340, which is tab 62, Paul Hickey is saying: "I just got off the phone with the Premier. He has asked Julia to talk to David about a full review of Muskrat" et cetera.

So, just to put this in the proper context, so your – the – that report on the processes, sort of the high-level processes report, has been completed and now the discussion is moving on to the real review work. Is that correct?

MR. M. KENNEDY: Yes, the discussion had moved on to EY producing a program review with a much broader mandate.

MR. LEARMONTH: Yeah, much deeper.

MR. M. KENNEDY: Much deeper and broader mandate.

MR. LEARMONTH: A look at the details rather than just the processes and so on. Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: But where a lot of time has passed – I know I keep on coming back to that but, I mean, I'm – we're thinking that we're up to December 2015 and the Oversight Committee was announced February 2014. It seems like a long time has passed to get to this point. Do you agree?

MR. M. KENNEDY: I would agree and I would also say that from this point in December 16 we had mobilized from literally around the globe, the team that was on the ground, the first week of January.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: With –

MR. LEARMONTH: In anticipation of doing this further engagement. Correct?

MR. M. KENNEDY: At the direction of government.

MR. LEARMONTH: Yes, right.

And those were – there were many – there was at least a couple of people from the United Kingdom. Is that right?

MR. M. KENNEDY: Three from the United Kingdom, probably five from Canada, one from Australia.

MR. LEARMONTH: All right.

Now, in this exhibit I referred to, P-03340, December 16 – so Mr. Hickey’s recounting a call (inaudible) with the Premier. And he says: “Ed Martin, CEO of Nalcor has said he will resist the full review.” Were you aware of that? Because you’re involved at this time, right? Who resisted?

MR. M. KENNEDY: Yeah, so I was aware of that. I mean I was in the email chain here and through subsequent inquiries, I can say that the Premier told – I think by a telephone call told Paul Hickey, who’s the author of the Premier, that the Nalcor CEO would resist the review.

MR. LEARMONTH: Yeah. Do you know on what basis? Were you informed of the basis?

MR. M. KENNEDY: I can’t say further than that.

MR. LEARMONTH: How can Nalcor resist a review if it’s ordered by the Premier?

MR. M. KENNEDY: I can’t answer that.

MR. LEARMONTH: Okay.

Next document is –

THE COMMISSIONER: I just wonder – I just noticed it’s now 11:20 –

MR. LEARMONTH: If I could have five more minutes and I’ll be finished this section.

THE COMMISSIONER: Okay, go ahead.

MR. LEARMONTH: Or less than five minutes. Now, tab 144, Exhibit P-03423, this is a December 18, 2015, email from Richard Noble to David Steele. And you’re on this email, so

you’re definitely on board at this point, Mr. Kennedy.

Second paragraph, P-03423, page 1, Mr. Noble writes: “I believe there to be no action/changes required as a result of the management responses from Nalcor. They acknowledged some of our findings and tried to soften others with wordy and at times tangential explanations ... My favourite being” – quote – ““The approaches to contingency development contemplated by E&Y were undertaken at project sanction in December 2012. Our current approach, which we believe to be appropriate and prudent at this stage of project development, is to continue to engage in direct discussion on emerging risks and cost pressures and take management action when they have emerged.””

Now, you’re an experienced project manager, what does this mean? I mean, is that a helpful comment?

MR. M. KENNEDY: From Nalcor?

MR. LEARMONTH: Yeah. He says it’s a tangential explanation and this is his favourite one.

MR. M. KENNEDY: I wouldn’t use the word “tangential.” What stands out for me in this comment from Nalcor, in the context of how it’s presented in this document, is that what we are ask – what we are now recommending happen was last undertaken in December 2012, so that was three years ago.

MR. LEARMONTH: Yeah. And that – you indicated that’s a problem, is it?

MR. M. KENNEDY: It’s not an indication of good practice.

MR. LEARMONTH: No.

And then he says: “Which in other words is

“We did it once... but haven’t updated the quantitative contingency assessment in 3 years and are now managing by the seat of our pants... and living with the results....”

In other words, I guess that's a comment on the fact that there's no real risk assessment being taken on a regular basis and they're living – going by the seat of their pants.

MR. M. KENNEDY: I wouldn't choose the words that Richard uses there, but I understand the spirit of what he's saying.

MR. LEARMONTH: Do you agree with the spirit of what he's saying?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: You do? Okay, fine.

The next paragraph from Richard Noble's email is: "Bottom line... they blew their contingency allowances which were clearly inadequate and have the substantial overruns on cost and schedule as a result...hmmm... a reassessment is perhaps warranted now, wouldn't you think."

That's just a reference to the same thing that it appears to be obvious that a risk assessment is long overdue. Is that a fair way to put that?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Okay.

Okay, and I'm going to refer to one more document, if I could, before we take a break, Commissioner. Is that all right?

THE COMMISSIONER: Yes, go ahead.

MR. LEARMONTH: Yeah.

Tab 145, Exhibit P-03424. Now, can you identify this document at tab 145, please?

MR. M. KENNEDY: So this document was prepared by Richard Noble over the Christmas period of 2015-16 and it was prepared to brief the EY team that was being assembled. And, as we noted earlier, we have people from the UK, people from Australia, people from Canada who at varying levels wouldn't have been particularly familiar with – at a very basic level – the Canadian system of government, or even where Newfoundland is, believe it or not – those kind of things. So it was – the intent of this document

is to give a – let's call it a state of the nation of where we think we're at before we embark on the next piece of work.

MR. LEARMONTH: Okay.

If you turn to page 8 of this document, please, it says: "The broad timeline and key events since EY's involvement are shown right. The execution of EY's role has been challenging throughout. This has primarily been due to difficulties in Gov NL resolving agreements with Nalcor concerning the mandate of the OC and the scope of EY review and assessment work to be performed.

"In summary, EY initially proposed that the Government: Review of the PMO/Project Controls & Reporting as a foundation; Perform on-going monthly review of cost and schedule progress, reporting, risks and issues; Conduct detailed reviews of critical risks/issues at schedule intervals and at key milestones."

Is that your understanding of the initial proposal to government?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Okay.

Then he says: "This was to be accompanied by annual assurance planning as well as an emphasis on establishing an early working agreement with Nalcor to support the execution of this mandate. The Government noted its budgets were constrained and coupled with difficulty in managing Nalcor in this regard, did not commission the full body of work EY recommended.

"EY has been consulted on review of the OC's published quarterly reports which largely recast NALCOR's own reporting with cautionary statements. EY was careful to limit any statement of its role in their review of OC reports. EY was also requested to attend heavily 'managed' site reviews (e.g. with Nalcor refusal to provide detailed schedule reference material)."

And skipping one paragraph and he said: "The publication of EY's first full report was then

delayed with additional rounds of review, until December 2015. ~Six months after first draft.

“A new Liberal Government was elected and a thorough review was requested”

Now, do you – based on your knowledge of the project, do you – after reading that page 8, do you see anything that is factually incorrect? Or on which you have a different opinion?

MR. M. KENNEDY: I don’t see of anything that’s factually incorrect.

MR. LEARMONTH: Okay.

And then on page 12 of this report, P-03424, it says in bold at the bottom: “Until such time as the noted management process and controls risks and issues are addressed, the completeness and accuracy of Project schedule status reporting to the Oversight Committee cannot be fully verified.”

Do you agree with that statement?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Then on page 13, at the bottom: “Until such time as the noted management process and controls risks and issues ...” – now, this is the same – that’s the same ...

MR. M. KENNEDY: This is referring to –

MR. LEARMONTH: Yeah –

MR. M. KENNEDY: – costs, Mr. Learmonth.

MR. LEARMONTH: – (inaudible).

MR. M. KENNEDY: It’s the one (inaudible) –

MR. LEARMONTH: It’s a different one, yeah.

MR. M. KENNEDY: – schedule.

MR. LEARMONTH: Yeah, it is different – “Until such time as the noted management process and controls risks and issues are addressed, the completeness and accuracy of Project cost forecasting status reporting to the Oversight Committee cannot be fully verified.”

Do you agree with that statement?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah.

And this is December – this is the end of 2015 and your engagement started in March 2014, and this is where we’re at – this is where we’re at, right?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Okay.

Okay, we can break now, if that’s what you’d like to do.

THE COMMISSIONER: All right.

All right, let’s take 10 minutes then now.

CLERK: All rise.

Recess

CLERK: All rise

Please be seated.

THE COMMISSIONER: All right, Mr. Learmonth, when you’re ready.

MR. LEARMONTH: Yeah, just before I start there was two exhibits that I didn’t properly enter this morning. They’re P-03358 to P-03377. Could they be entered, please?

THE COMMISSIONER: Yes, those will be entered.

MR. LEARMONTH: Now, tab 47. That’s in binder 2, please, tab 47. It’s Exhibit P-03325. If we turn to page 2, this is the next agreement. Remember, what did we call them? There was four contracts for specific scopes of work and there was one contract, or as I call it, an umbrella agreement. What did you call it? What term did you give to it?

MR. M. KENNEDY: We simply call it master services agreement.

MR. LEARMONTH: Master services agreement, correct.

MR. M. KENNEDY: Sorry, master services agreement.

MR. LEARMONTH: So the first master services agreement that we've discussed and referred to expired on March 31, 2014. And can you identify P-03325, which starts on page 2, as being the contract for the continuation of the general services that are identified? Is that Correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: And page 4, the maximum monetary ceiling of this was \$342,000, that's payment 1.3 – under that Payment General, 1.3(a). Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay.

And the scope of work, well, that's the same as in the first agreement, as sort of a – well, excuse me, the start date is April 1, 2015, on page 6 and the completion date is March 31. Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And the scope of work, on Schedule A, page 8 – this is the same scope of work as on the first master agreement, is that correct? Or, close to it?

MR. M. KENNEDY: I haven't actually looked at them side by side, but I think it's the same.

MR. LEARMONTH: Seems to be the same –

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: – general ongoing –

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: – advice, as opposed to, work made pursuant to a specific terms of reference, because the Oversight Committee, between your engagements on this specific project, is still seeking your advice on an ad hoc basis. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Next, please turn to tab 66, Exhibit P-03344. Now, if we go to page 2 of this agreement, this is dated January 14, 2016. And this is what – well, I'll call it – this is the real analysis that you've been building up to. Is that correct?

MR. M. KENNEDY: It's the contract 3, as you referred to earlier, the – as it says there: Review of project cost schedule and schedule forecast and related risk.

MR. LEARMONTH: Yeah.

And if we look on page 2, the scope details, it says: "To review Nalcor's cost and schedule forecast to complete the project" because the earlier contract just dealt with processes, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

Okay, develop an understanding of the work performed by Nalcor to arrive at its revised baseline cost; understand the project cost performance and review estimates to complete it; understand the project's schedule performance and review; using the results of work stream 1 to identify findings, as well as potential impacts et cetera.

I presume these scope details would've been prepared by EY. Is that the correct understanding?

MR. M. KENNEDY: Yes. As I recall, we – during the first week of January we drafted the scope details and we had backwards and forwards with government on wording, and I understand government had backwards and forwards with Nalcor on wording. So this is where we ended up.

MR. LEARMONTH: Right. And page 7 the: **"EY Resources, Fees and Expenses:**

"EY has provided an initial estimate of fees for this review with a range of \$750,000 to \$1,250,000 based on time and materials, with a

target fee of \$1,000,000 provided by the Province. These are estimates” and so on.

And the – on page – going back to page 3 we see that: “A report will be drafted by EY early March 2016, with a final draft issued by mid-March 2016.” So you’ve only got two months to do this, is that correct?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: But with this, I’ll say, compressed schedule for such a big undertaking, is it true that you would need a fairly big team?

MR. M. KENNEDY: Yes. And it’s not just size, it’s capability of team, which is – of the individuals, which is reflected in the hourly rates.

MR. LEARMONTH: Yeah but you need experienced, seasoned people, is (inaudible)?

MR. M. KENNEDY: That’s right, yeah.

MR. LEARMONTH: Yeah. For example, I think one of the members of the team was David Leather from your Manchester, UK, office at the time?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: And he was the CEO or – of the London Olympics, is that right?

MR. M. KENNEDY: No, he wasn’t the CEO; I believe he was the CFO.

MR. LEARMONTH: Chief financial officer?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. And that came in under budget, did it?

MR. M. KENNEDY: It did.

MR. LEARMONTH: Yeah.

And at this time – have you worked on big projects like this before, or similar to this, in terms of dollar value and complexity before?

MR. M. KENNEDY: Not as big as this.

MR. LEARMONTH: Yeah but you have worked on big projects?

MR. M. KENNEDY: Yeah, billion-plus.

MR. LEARMONTH: Billion-plus, okay.

Now, tab 67 – we’re in book 2 now, tab 67, Exhibit P-03345, if we go to page 2 first, at the bottom. This is from Richard Noble – he’s still on the team, correct?

MR. M. KENNEDY: Yes, Richard was part of the team.

MR. LEARMONTH: And Tim Calver, where is he from?

MR. M. KENNEDY: Tim is from the UK practice. He’s a power and utility expert.

MR. LEARMONTH: He is. And Thieu Hue Lam?

MR. M. KENNEDY: Thieu Lam –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – is how you pronounce it.

MR. LEARMONTH: Okay. Who – where’s –

MR. M. KENNEDY: Thieu Hue, she was a manager in the Ottawa office.

MR. LEARMONTH: And what was her area of expertise?

MR. M. KENNEDY: She was a – she wasn’t necessarily experienced in infrastructure projects, but she had a program – project management background.

MR. LEARMONTH: All right. And Sam Wolyniec?

MR. M. KENNEDY: So, Sam Wolyniec was transitioning from the UK practice back to the Australia practice. He is originally from Perth, Australia.

MR. LEARMONTH: And Emiliano Mancini, he was involved in the other phases, but he was

from Toronto. And what was his area of expertise?

MR. M. KENNEDY: He was a manager from Toronto and, again, project controls, project management.

MR. LEARMONTH: Next, it will be tab 146, and it's Exhibit P-03425. This is a transcript or not – a record of a meeting with Ed Martin, CEO, on January 15, 2016, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And when we look at page 2 of this Exhibit P-03425, Tim – that's Tim Calver, I take it – “David, Tim” – it's from David Leather; he's the gentlemen from Manchester – he says: “As discussed last week, I attach my notes of the meeting with Ed for you to add to/amend...” Can one infer from that that they were in attendance at the meeting as well?

MR. M. KENNEDY: I recall that myself, Tim Calver and David Leather were at that meeting. I can't specifically recall if David Steel was there.

MR. LEARMONTH: Okay. Okay, but you were definitely there, were you?

MR. M. KENNEDY: I was there.

MR. LEARMONTH: Okay. Because if you are being asked to review the minutes for their accuracy, obviously, if you weren't there, you wouldn't be requested to do so, correct?

MR. M. KENNEDY: Right.

MR. LEARMONTH: Now, this interview, it was a meeting with Ed Martin, January 15, 2016. So you've got this mandate of this engagement. And is it correct that you are interviewing the CEO and perhaps others just to get a general overview of the project history and what's – and the future prospects of the project. Is that right?

MR. M. KENNEDY: I wouldn't describe this as an interview. There were, obviously, three or four of us from EY with Mr. Martin plus the senior members of the Nalcor project team. And, as I recall, it was actually at the request of Nalcor earlier this week that Mr. Martin wanted

to provide a briefing and context on the project. So, in the spirit of how we had started the engagement the previous week in meetings with the premier and staff, we obviously accepted the opportunity to go over to Mr. Martin's office and receive a presentation.

MR. LEARMONTH: All right.

Now, we see that there's a background on page 2. On page 3 at the top, under the heading Risks – and this is Exhibit P-03425 – it says – and I take it this is attributed to Mr. Martin – “The delays in Astaldi's work will result in a significant delay in the completion of Muskrat Falls Generation. This could be up to 18 months beyond the end of December 2017 when all works should have been completed.”

So was this new information to you? That Mr. Martin was telling you that it could be an 18-months delay beyond the end of December?

MR. M. KENNEDY: No.

MR. LEARMONTH: It wasn't news to you?

MR. M. KENNEDY: I don't believe so.

MR. LEARMONTH: Okay, well, did you know that the project was going to be delayed? Or did you hear the 18-months figure before that?

MR. M. KENNEDY: I –

MR. LEARMONTH: Do you see my point – my question, like, did – were you of the view before you spoke to Mr. Martin that there was gonna be a delay in the project, generally, with no specified time? Or were you of the view that based on information you had received that it was – the 18-month figure had been –

MR. M. KENNEDY: I don't recall whether it was specifically 18 months, but we knew there was a significant delay.

MR. LEARMONTH: Okay.

Now, down – the sixth paragraph down. It says: “The current cost estimate of \$7.653” – and that was a figure that was – there was an AFE for that in September 2015. Okay – “... includes

unallocated contingency estimated by EM at approximately \$0.2 billion. (Confirmed post meeting to be \$178 billion” – I guess that should be million, right?

MR. M. KENNEDY: Yes, that’s correct. It should be million.

MR. LEARMONTH: “... at 30 November 2015.) EM indicated that in addition to whatever variance may arise as a direct result of the Astaldi negotiations, (for which he gave no indication of quantum), additional cost variances beyond this of up to \$200 million could potentially arise in addition to the available contingency being fully utilised.”

And then – this is what is attributed to Mr. Martin – “With the benefit of hindsight EM agreed that ideally they would have included a greater risk allowance in the project budget relating to productivity issues, but the contingency level was influenced by the funding arrangements. (These require additional monies to be paid into an escrow account by the provincial Government. If the cost estimate increases above the original estimate of \$6.2 billion, an amount equal to the cost estimate increase, divided by the number of years remaining to completion ... has to be paid into the escrow account each year to ensure that the Province has sufficient funding available to complete the project. This is because the Canadian Government had to provide underwriting guarantees of \$5 billion”

Now, this – I’m not – I’m a little bit confused here. The \$6.2 billion was the figure – \$6.202 billion or whatever – was the figure at sanction, which was December 17, 2012. Mr. Martin appears to be speaking about the escrow account, the COREA account, which was part of the contract with the Government of Canada for the federal loan guarantee, but that wasn’t entered into until November 29, 2013. So do you know whether Mr. Martin was saying it was – you know, that the contingency level was influenced by funding arrangements? Did that apply to the time of sanction or the time of financial close or do you know?

MR. M. KENNEDY: I don’t know.

MR. LEARMONTH: Okay. Very good.

Now, next will be tab 77 in volume 2. This is Exhibit P-03355. January 29, 2016, from David Steele.

Can you – on page – the document begins at page 2, what – why was this document prepared to your knowledge?

MR. M. KENNEDY: This document was prepared both for internal briefing to senior partners within the firm and also as a presentation to government on the status of the engagement.

MR. LEARMONTH: Okay.

Now, if we turn to page 5, second paragraph – well, the heading is: “**Unanticipated delays in receiving data may negatively impact EY delivery schedule.**”

Second paragraph: “There have been a number of obstacles to timely receipt of data: NDA signing, competing priorities at Nalcor, delayed requests for clarification/justification, document release process.

“The greatest delays have related to the most critical data requests.”

And then under the box it says: “The above delays have impacted efficiency and effectiveness these past two weeks because we could not perform certain data analysis required and they impaired our ability to prepare for deep dive sessions with Nalcor.

“This results in a risk that additional follow on meetings with Nalcor will be required on certain major contracts.

“This is not allowed for in delivery schedule timing, but may be a moot point based on the options to be considered in relation to Risk 2”

Now, so this speaks for itself. I mean, you’re having trouble getting – you’re into this assignment, has a fairly short time frame, two months, and you’re having problems getting documentation from Nalcor. Is that right?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Yeah.

Now, when you're – you're a professional firm and your time is – your fees are based on time. Is it true that these delays, which delay you in completing your work, add to the cost of completing your work?

MR. M. KENNEDY: They certainly can, if the delays continue. What often happens is the amount of work that is done tends to get compressed, if the deadline remains the same.

MR. LEARMONTH: Yeah, but if you're bringing people in from the UK and flying them in from Toronto and Ottawa and so on, and they come here and they haven't got the data to work on, does that have any impact on, not only schedule, but ultimately cost of the project – cost of your engagement?

MR. M. KENNEDY: It certainly can do and when you bring in resources from – and this applies to all of us, you know, you're committed for the two months or whatever it is, and it's not as simple as sort of sending people back and asking them to do other things. So the efficiency of that work was certainly impaired.

MR. LEARMONTH: Okay.

Then we go to page 7, and it says – once again on Exhibit P-03355. "A condition of success for a review of any project's cost and schedule forecast is that the project have established its own position on cost and schedule forecast. This would include: Re-baselined project schedule, cost and risks (including any knock on effects); Transparency on the quantification of risk within the re-baselined plan – i.e., Monte Carlo simulation.

"We know that these conditions are not presently met for this project."

So you know for sure now that there's no Monte Carlo simulations done on a regular basis. Is that right?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay. It says: "Nalcor's re-baselining effort and quantitative risk

assessment (QRA) for the Muskrat Falls Generation project is anticipated to be completed by **late March** (this is dependent on the timing of the conclusion of the Astaldi discussions)."

So, was this something that, I guess, Nalcor – when you became involved and expressed your views to Nalcor, that they decided, finally, to get a quantitative risk assessment done.

MR. M. KENNEDY: The accurate answer, I think, is that Nalcor had already decided to undertake the QRA, at that point, but I can't say when that decision was taken.

MR. LEARMONTH: All right.

And then Transparency Risk on page 7. "EY currently does not have access to the relevant information related to the above noted activities that we require to effectively complete our review and enable GNL to have ongoing oversight over the most critical Project activities (i.e. activities regarding Astaldi) at this critical juncture of the Project. Without EY and GNL having this access and transparency, GNL will be in a difficult position to exercise oversight throughout this important period and may instead be relegated to a backward looking review exercise."

MR. M. KENNEDY: Hmm.

MR. LEARMONTH: Now, is this not a significant finding? Is this a significant finding – you're – what you're identifying here?

MR. M. KENNEDY: There are really two parts to this. There's the absence of the information that was requested as part of this engagement, which is referred to earlier, the delays in that. But there was – from the outset – from the start of the engagement, there was direction from government that the details of the Astaldi situation would not be provided, either to us or to government, until the first week of February.

MR. LEARMONTH: Okay. Was there any reason given for that?

MR. M. KENNEDY: It was put as commercial sensitivity, very delicate negotiations, that kind of reasoning.

MR. LEARMONTH: How can there be an issue of commercial sensitivity when you're doing the job for the Oversight Committee and you're – you've given confidentiality agreements.

MR. M. KENNEDY: We didn't agree with that position that we should not have access to the information around Astaldi given the apparent significance of the implications.

MR. LEARMONTH: But what was Nalcor's position on that supported by government? I mean, you thought you should get this information, and you didn't get it. And who decided that you were not going to get it? Nalcor or government?

MR. M. KENNEDY: Well, I think, ultimately, it was – ultimately, it would've been government because the first meeting that we had with Nalcor – the first time that I met anyone from Nalcor – was the end of the first week of January with – and government staff and the premier were there. And, as I recall, the premier said there is going to be a period up to the 1st of February where EY isn't going to have access to the Astaldi information.

MR. LEARMONTH: Okay. That's pretty clear.

Then on the bottom of page 7: "In the absence of" – "Timeline Risks: In the absence of ongoing monitoring, EY will not be able to assess the outcomes of Nalcor's efforts and final position in these areas within current EY delivery timelines. This limits our ability to include the outputs of these QRA's in any report issued by the existing final report deadline"

So, is this letter or this slide deck, whatever you want to call it, is this notice to the government that: Look, we're having trouble with this and this is going to affect our schedule in completing the work. Is that one of the objectives in this document?

MR. M. KENNEDY: Yes, it is.

MR. LEARMONTH: Yeah. Because if you don't – if you can't get the documents, you can't do the work. It's as simple as that. Is that right?

MR. M. KENNEDY: That's part of it, for sure.

MR. LEARMONTH: What other part is there? If that's not all of it, what other parts are there?

MR. M. KENNEDY: Well, there's availability of people. There are processes that – and reviews that Nalcor themselves were undertaking that – including the QRA. There is this significant gap of the Astaldi information.

MR. LEARMONTH: Right.

Next, tab 69, binder 2, Exhibit P-03346.

Now, this is an email from you –

MR. M. KENNEDY: Sorry, I've lost the reference there. You said binder 2?

MR. LEARMONTH: Tab 68, I might've given the wrong one; 68 of volume 2 – binder 2. You see it?

MR. M. KENNEDY: Yeah, I do.

MR. LEARMONTH: That's P-03346.

Now, this is an email dated January 21, 2016. I understand that earlier in January that you had – you and the team, David Leather and others, had assembled in St. John's and that you had face-to-face meetings with the Nalcor team. Is that right?

MR. M. KENNEDY: Yes, they started 12th of January, I would say.

MR. LEARMONTH: So you were in St. John's for what, roughly 10 days, and your team was?

MR. M. KENNEDY: From the 11th of January I was here for – I was here that week, over the weekend and through the following week.

MR. LEARMONTH: Yeah. And part of your work was meeting with the Nalcor project team and –

MR. M. KENNEDY: Yes.

MR. LEARMONTH: – executive. Is that right?

MR. M. KENNEDY: Yes, that’s correct.

MR. LEARMONTH: Okay. So this is January 21, and you’re writing to David Leather, David Steele, Kirsten Tisdale, concerning “Call from Julia.” You say – January 21, this is after your interviews with the Nalcor people. Correct?

MR. M. KENNEDY: After the first interview.

MR. LEARMONTH: Yeah, and you’re flying back to Vancouver or you’ve flown back to Vancouver, right? That’s YVR?

MR. M. KENNEDY: That’s –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – yeah.

MR. LEARMONTH: So you’re saying: “Hi David. I know we talked a little earlier just when I got back to YVR. Just thinking a bit more, I feel pretty queasy about where we are at given the call to Julia from Nalcor and continued absence of data, which are again indicative of the culture and lack of transparency over there. None of this consistent with normal practice in major capital project, let alone best practice. Thieu Hue mentioned to me yesterday that we are 400k into this up to this week. Are we at a point of a straight forward discussion with Julia? Mike.”

Now, that’s a fairly strong, you know, clearly stated point. You got back from meetings with Nalcor and you felt queasy and you’re mentioning concerns about – indicative of the culture and lack of transparency.

Can you expand upon those thoughts, please?

MR. M. KENNEDY: Let’s take “the culture and lack of transparency.” So we had a team that was put together of, you know, fairly senior practitioners, and we formed a view, through the different meetings, that we were going to that. While the Nalcor team was being, to a degree, responsive and co-operative, that there was also a very strong feeling that – that they were not

forthcoming with information in terms of when we were asking questions and receiving answers. And the phrase that I was kind of using at the time was: We felt very – very managed in the way that our interactions were going.

And I would contrast that with our experience and my experience in major capital projects and having been on the other side of a, you know, fairly senior reviews. It was quite tense and it, certainly, wasn’t an approach of, you know, what can we tell you; what do you want to know?

It felt like there was – they were being very careful with what they were sharing with us.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: And to the question then on – I mean, I felt queasy about that, but I also felt queasy that we’d mobilize this team that had a – that had a fee – burn rate of, you know, easily \$200, \$250,000 a week. And they’re – maybe less than that – and we were two weeks into this and we’ve got obstacles to looking at when we would be able to complete our report.

MR. LEARMONTH: Yeah. And you use the word “queasy.” Did – what’s your understanding of the meaning of queasy? Like, it is uncomfortable or nervous –

MR. M. KENNEDY: Well, it –

MR. LEARMONTH: – or –?

MR. M. KENNEDY: – it may have had more to do with 10 hours getting back to Vancouver but it was feeling uncertain.

MR. LEARMONTH: Yeah. And troubled?

MR. M. KENNEDY: Yes, troubled.

MR. LEARMONTH: Yeah. And you say that’s it not normal practice and major – it’s not consistent with normal practice, let alone best practice.

Now, I think in the interview, you gave examples of where you’d be meeting with Nalcor and then, like, two of them would

disappear and go outside and then come back and so on. Do you remember any of that?

MR. M. KENNEDY: I think this comes later in some of these documents. But there were a couple of examples of meetings where it became clear that areas that – where the discussion was or where Nalcor perceived it was heading – that they were uncomfortable about it. And the meeting would end – would end abruptly.

MR. LEARMONTH: Abruptly.

MR. M. KENNEDY: Yeah.

Well, it was: Okay, we've talked enough about this; we're gonna have to adjourn.

MR. LEARMONTH: Okay.

Now, to your knowledge – this was your – these were your observations after you arrived back in Vancouver. To your knowledge, were your observations shared by the other EY representatives that attended these series of meetings with Nalcor representatives?

MR. M. KENNEDY: Yes. And – and as the – the – as we call it, the delivery partner, you know, part of my role is to listen to the other team members, and – and even in this email, which was – which was clearly sent from a hand-held device, to convey the feeling of the team, not just my own view of things.

MR. LEARMONTH: Yeah.

And the reference to \$400,000, is that a reference to the fact that you – like, you're spending all this money – well, you were retained to do this work – and that you're stymied in doing it because of the lack of co-operation by Nalcor?

MR. M. KENNEDY: It's a reference to – in the statements of work that – the target cost for doing this was a million dollars. And here we are, 40 per cent of the way into it, of the fee, and we've – of not feeling we've done 40 per cent of the work.

MR. LEARMONTH: Right, because you haven't got information and co-operation from Nalcor. Is that right?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay.

So the taxpayers ultimately have to pay for this, but anyway.

In the middle of page 1 of Exhibit P-03346, this is an email from David Leather, the same day, January 21. And he says: "As you know the management reports that we have been shown so far are incredibly detailed and it is difficult for a reader to be able to clearly and quickly identify the important issues and get a clear understanding of the cost" – and – "schedule ... risk issues.

"The Oversight Committee and Nalcor Board have a key role going forward in monitoring and challenging cost, schedule and risk issues. If they aren't getting the clarity of information that they need they will not be able to perform that role effectively. The quality and clarity of reporting could in our view have a material impact upon the effectiveness of the overarching monitoring and decision making.

"It is quite normal" – under – "a review such as this to be provided with copies of such reports. Is there a particular reason why there is reluctance to provide them?"

Now what – what reports are – where is their reluctance to provide reports? What are the reports and who is reluctant, if you can answer that question?

MR. M. KENNEDY: I think the – the reference is to – we wanted to see – we wanted to have access to the reporting that was provided to – to Nalcor's board, and there was – there was at least reluctance from Nalcor to provide that information.

MR. LEARMONTH: Have you seen that before in any other project review?

MR. M. KENNEDY: I have. It's – you know, our view is that seeing the information that the project team is reporting to executive leadership and to its board is a pretty foundational piece of project oversight.

MR. LEARMONTH: Yeah.

But I see at the bottom of page 1 of Exhibit P-03346 that – this is January 21, 2016, it's from David Steele. He said: "Received a call from Julia. She was questioned by Nalcor today why EY were requesting Project Briefings made to the Premier and the Nalcor Board. They are reluctant to provide this information as they feel that this does not relate to our scope of work (i.e. assess reasonableness of cost and schedule forecast)."

And then there is a reference to Julia in the top email, the one I referred to first. You said: "Hi David. I know we talked a little earlier just when I got back ... Just thinking a bit more, I feel pretty queasy about where we are at given the call" from Julia from Nalcor. What do you know about this call to Julia from Nalcor?

MR. M. KENNEDY: Well, I think it ties in to a narrative here that I expressed probably clearest is around what appears to be a lack of transparency.

MR. LEARMONTH: Okay.

Next tab 69, Exhibit P-03347. This is an email January 21, Tim Calver; he's of your UK team. And he's writing to Steve Pellerin, who I understand is a representative of Nalcor and he was involved in this matter. He says: "Hi Steve,

"I want to give you a heads up on a likely escalation coming tomorrow which maybe we can head off at the pass.

"I'm concerned by the lack of uploading of many of the substantive, data and decision related documents to the dataroom. I have asked our PMO for a checklist" et cetera.

"It is critical that we are able to prepare for the contract meetings" et cetera. So what's the – what does the term escalation mean in this context, to your knowledge?

MR. M. KENNEDY: The reference to escalation is taking it above Steve Pellerin to Paul Harrington and Gilbert to try and get resolution. So the way we set ourselves up within the working dynamic is that Tim was paired off with Steve Pellerin, I was paired off with Paul Harrington.

I was paired off with Paul Harrington to, as we went through this, develop a, you know, a good working relationship and so on and so forth. So Tim here is giving Steve a heads-up that we don't have access to some of the information, it's been dragging on, so I'm going to need to escalate it.

MR. LEARMONTH: So who – up until this point, like, who has been making the request to Nalcor for the documentation? Who on your team would've been – more than one person or – ?

MR. M. KENNEDY: It was more than one. It was coordinated through Sam Wolyniec, who maintained a sort of ongoing update of a document request list, data list.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: So that was kind of used as the checklist every time we were checking in to see where the information was.

MR. LEARMONTH: Okay.

Tab 72; it's an email from David Steele to Julia Mullaley and Charles Bown, data flow. He says: "Hello, Julia and Charles" – it's dated January 22 – "I wanted to provide you an update following on from our conversation earlier today. Nalcor have today provided the contracts requested and have also committed to provide the latest contractor reports by cob. A number of other less progress critical documents have also been added to the data room. Some of the requested detailed" et cetera. So it seems like Nalcor is coming around to some degree at this point. Is that correct?

MR. M. KENNEDY: I'm not sure coming around is the way I'd describe it. There's certainly more information had been supplied.

MR. LEARMONTH: Well, I mean coming around to your request to provide information.

MR. M. KENNEDY: Oh, I would say, getting around to our –

MR. LEARMONTH: Yeah, getting around.

MR. M. KENNEDY: – request, maybe.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: Not to be semantic about it.

MR. LEARMONTH: Okay, that's fine.

Then at tab 77, P-03355 – now, this is a – this is dated January 29, 2016. And this is the – on page 1, P-03355, it says – it's from David Steele: "This was the final presentation material to Julia. Thieu, please put on file as final and consider any quality requirements (RAS signed by myself and Kirsten). Thank you."

So if we go to page 5, so you're saying: "A significant volume of data has been received and we discuss outstanding data requests with Nalcor each day.

"There have been a number of obstacles to timely receipt of data: NDA signing, competing priorities at Nalcor, delayed requests for clarification/justification, document release process.

"The greatest delays have related to the most critical" things, and then you're referring to all this – these matters that I think we've referred to this before, but this is just a restatement of the concerns that you had at the time about the flow of information. Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay.

Tab 78, Exhibit P-03356; it's an email from Steve Pellerin, February 1, request from Ed Martin. It's to a Tim Calver: "Paul was with Mr. Martin after our session ... and gave him an update on our mutual activities. In the spirit of the" earlier "sessions with him and government about collaboration and cooperation, Mr. Martin requested a briefing from E&Y on what you are planning to share with your client Wednesday"

Is that a usual request?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay. And did you meet with Mr. Martin?

MR. M. KENNEDY: Yes, we did, on February 3.

MR. LEARMONTH: Okay.

And what information did you give him? Everything you had?

MR. M. KENNEDY: We presented through a paper copy, as I recall, the initial findings of our work and that document was then, subsequently, presented to the steering committee of government that afternoon.

MR. LEARMONTH: All right.

Tab 149, Exhibit P-03428; this is a reference to a meeting on February 11, 2016, with Nalcor from Sam Wolyniec?

THE COMMISSIONER: This is P-03428? Where's that?

MR. LEARMONTH: 03428, tab 149. Now – have you got that now? Have you got it, Mr. Kennedy?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: All right.

So, we go to page – this is a reference to a meeting – do you know who the meeting of Nalcor – with Nalcor – who the representative of Nalcor was at this meeting or conversation?

MR. M. KENNEDY: I can't say, specifically. There's reference to Paul, which I would infer is Paul Harrington; Brian –

MR. LEARMONTH: Crawley, probably.

MR. M. KENNEDY: Brian Crawley.

MR. LEARMONTH: Maybe.

MR. M. KENNEDY: I don't recall myself whether I attended this.

MR. LEARMONTH: Okay.

Now, contract summary section is page 2. So this is when – the information Nalcor is giving you on February 11, 2016. Is that correct?

MR. M. KENNEDY: That's right.

MR. LEARMONTH: Okay. So there's for ANDRITZ: "Nalcor say there are errors with andritz. The works are 'Pit free' and not a risk."

That's what you were told about ANDRITZ. Did you come to any different conclusion after reviewing the contract documents?

MR. M. KENNEDY: I don't recall.

MR. LEARMONTH: Don't recall.

MR. M. KENNEDY: No.

MR. LEARMONTH: And then Alstom: "Pauls view is no cost risk, some delay to contract shedule, but there is float between that date & the project milestone" So that's a positive statement, is it?

MR. M. KENNEDY: It appears to be.

MR. LEARMONTH: Pardon?

MR. M. KENNEDY: It appears to be.

MR. LEARMONTH: Yeah.

And then Astaldi: "Paul suggests Astaldi should not even be in this report outside of saying 'this is excluded' - that is his interpretation of the scope limit discussion with the premier."

What can you tell me about that?

MR. M. KENNEDY: Well, as I said earlier, the – at the first meeting with Astaldi and government, including the premier on February – I'm sorry – January 7, I recall the premier saying that the Astaldi information would not be provided until the first week of February.

MR. LEARMONTH: Right.

MR. M. KENNEDY: I don't agree with the notes here saying that it is – that it should be – that it was excluded as a scope item; that the

report still has to talk about Astaldi even if we don't have the information.

MR. LEARMONTH: I mean, this is February 11, so the limit placed on the premier to the end of January has passed, right?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah, so you don't agree with that.

And then you say – but how can you do a proper – a report and investigation by – if you exclude Astaldi, which was the source of the biggest problem?

MR. M. KENNEDY: Well, you can't do a comprehensive review, and our interim report in April makes that point, that there are –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – significant gaps in the analysis.

MR. LEARMONTH: All right.

And then Valard, it says: "... nalcor would dispute that there is a risk to claim: have not had a claim yet – cant say a claim is likely – on what basis?" Anyway, that's the position.

And then on the top of page 3 of Exhibit P-03428 – "Contingency slide: 1st bullet - escrow is an output not an input. Nalcor take exception & say it is a slight on their professional integrity."

Can you give me some –

MR. M. KENNEDY: I –

MR. LEARMONTH: – explanation for that?

MR. M. KENNEDY: I can't give a specific comment on that as to what it's referring to, other than it's clearly about the escrow process.

MR. LEARMONTH: Escrow is an output, you don't – so you can't decipher that.

MR. M. KENNEDY: I can't put that into a context.

MR. LEARMONTH: Yeah. And then it says: “**Other Comments:** Nalcor suggest a lot of the language is alarmist, and there are not facts in the document to substantiate the assertions made; we accept will review our use of the”

So – alarmist, did you feel that anything in your report, the language, was alarmist?

MR. M. KENNEDY: Well, whether it’s interpreted as alarmist or not, is not for me to say. The words in the final report reflect the views of EY.

MR. LEARMONTH: Right.

Tab 150, Exhibit P-03429, this is an Interim Status Summary to the steering committee briefing. What’s the steering committee?

MR. M. KENNEDY: I recall the steering committee was a smaller subgroup of the Oversight Committee, and I don’t recall specifically who would’ve – who was part of that. Certainly the clerk was.

MR. LEARMONTH: Okay, page 3 of this document, P-03429: “*Scope & Constraints.*” And this is an Interim Status Summary, right, prepared by EY?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: “EY, to date, has had no visibility Nalcor’s analysis and the potential outcomes of the Astaldi discussions, which currently presents the most material cost and schedule risk to the Project, and potentially has” – serious – “... knock-on consequences.”

So this is the same problem. You know, the question is: How can you do a proper analysis without this information? Do you have an answer for that?

MR. M. KENNEDY: Well, I would say that certainly through January it became – as January progressed and into early February, it became very apparent to us that we weren’t going to receive specific information regarding the Astaldi issue or briefings or have discussions, et cetera, et cetera. So, as we’d flagged before, we’re saying, look, to have a completed report, which was originally due the 1st of March, to

have a complete report was just not going to happen.

MR. LEARMONTH: Yeah.

So when did you finally get – or begin to receive information on the Astaldi problem?

MR. M. KENNEDY: I – we never received full information on the Astaldi problem.

MR. LEARMONTH: Was that a – I know that you were retained by government on, sort of, a separate contract – or it was included in one of their – you had a specific assignment to deal with the Astaldi ...

MR. M. KENNEDY: Yeah, that’s correct.

MR. LEARMONTH: So you were able to get some information on it, were you?

MR. M. KENNEDY: We – as part of that we were able to get some information. What –

MR. LEARMONTH: (Inaudible.)

MR. M. KENNEDY: – what I’m trying to say is that I don’t think we were ever given the full picture on Astaldi.

MR. LEARMONTH: And was that acceptable to the Oversight Committee in government, that you would not be given full access to all that information?

MR. M. KENNEDY: I don’t recall specific commentary, but I do remember – I’m jumping forward here into the middle of March – there being quite a high degree of tension because Nalcor was saying to government that EY has got everything they need and we were saying to government, no, we don’t.

MR. LEARMONTH: And if you didn’t get all the information that you were seeking, can one infer that the Oversight Committee accepted Nalcor’s restraint?

MR. M. KENNEDY: I can’t say that, specifically.

MR. LEARMONTH: But you never did get all the information you requested on Astaldi. Is that correct?

MR. M. KENNEDY: That's my recollection at the time.

MR. LEARMONTH: Okay.

Page 4 of this document, P-03429, you say at the middle: "Given the significant scope and time remaining on the Project (construction is 40% complete), a 5% contingency level appears low (before any consideration of the Astaldi situation).

"Allowances for and documentation of strategic risks do not appear to be included in the current project cost / schedule reporting."

Now, what is the good practice or best practice – however you want to describe it, however you chose to describe it – on including strategic risks in the budget, in the project costs and the scheduling reporting?

MR. M. KENNEDY: Well, the – first off, good practice is to define very carefully how you categorize the different risks and what definitions you use. In this instance – from recollections – strategic risks were defined by Nalcor as – included weather, included labour conditions, there were – there were several other. Our viewpoint, very early on in this, is that it is inappropriate to exclude them from reporting on costs and schedule.

MR. LEARMONTH: Yeah. Why is that?

MR. M. KENNEDY: Well, building a major – to use those two examples of labour and weather delays – building a major hydro project in Labrador and the associated transmission, you've got to expect that there will be labour challenges and weather issues.

MR. LEARMONTH: Yeah. So what's the effect of excluding them from the project budget or the final forecast cost, whatever you want to call it?

MR. M. KENNEDY: You're not fully informing the projected costs and schedule outcome.

MR. LEARMONTH: Have you ever seen a situation where strategic risks, identified strategic risks were not included in a project budget?

MR. M. KENNEDY: Yeah, sometimes there are reasons why you need to be clear why it is being excluded. We found it – we thought it was very unusual that those two examples of weather and labour availability would be excluded. We just didn't understand that.

MR. LEARMONTH: You didn't understand that.

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: All right.

Tab 79, binder 2, we're into February 13, 2016. There's a reference here in the third paragraph. This is a February 13, 2016, Saturday, from David Steele to Tim Calver, Kirsten Tisdale, Michael Kennedy, copied to Paul Hickey.

Mr. Steele says: "I talked to Julia" – I take it that's Mullaley – "and explained the situation and Nalcor's reaction. A few points I relayed: I explained that Paul H was upset that we shared a new version of the three slides per her request, as they ... had not yet reviewed the revision."

And do you know what this issue was about, why Mr. Harrington was upset?

MR. M. KENNEDY: I do.

So, going back to the spirit of how we wanted to do this, back to that first meeting with the premier, we had – and I believe I said this during that meeting as part of my remarks on January 7, was that there would be – quote, unquote – no surprises to the senior Nalcor team of information that we are providing to government.

What happened here is that we provided the deck that you – that we were looking at earlier, we briefed government. We also included in the deck our interpretation of Nalcor's response to

the points that we were making, and I believe there is a document in here where you can see an amended version and it's got NTD – note to document.

Paul was upset because we had sent that version to government without himself or Nalcor looking at it. And to be completely accurate with it, he was right and it was a misstep on our part.

MR. LEARMONTH: Right.

MR. M. KENNEDY: I don't think it was intentional, it just happened.

MR. LEARMONTH: Did you speak to him about it?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: When you say he's upset, what do you mean by that?

MR. M. KENNEDY: He expressed his displeasure that, you know, we had not followed the – lived up to the agreement that we'd made at the outset, and, as I just said, he was accurate in that.

MR. LEARMONTH: Okay.

But nevertheless, whether he was accurate or not, Exhibit P-03357 on note: one, two, three, four, five, the fifth dot down says: "She" – and that's Julia, I take it – "made it clear that EY should not communicate our recommendations for action/next steps/reporting to Nalcor until she and the SC have also had a chance to review, consider and then and only then will the SC engage Nalcor in next steps discussions."

That seems to be a little bit inconsistent with the evidence you gave about the arrangement you had with Nalcor. Is that correct?

MR. M. KENNEDY: Yes, I'd agree.

MR. LEARMONTH: Well, this was –

MR. M. KENNEDY: I'd agree with that.

MR. LEARMONTH: Yeah. No, this was just – and you'd have to comply with instructions from your client, not Nalcor, right?

MR. M. KENNEDY: Correct.

And I think the other context to put onto this is, notwithstanding the intentions that were conveyed at the meeting on January 7, that we are now six weeks further on and the – our initial findings, you know, have implications and are controversial.

So, I think Julia here is – notwithstanding any agreement that may have been made to be very collaborative, that we should only send our recommendations through after the steering committee's seen them.

MR. LEARMONTH: You used the word controversial. What do you mean by that use of that term?

MR. M. KENNEDY: Well, they'd be controversial with Nalcor, because Nalcor weren't agreeing with some of the comments that we made in the initial report.

MR. LEARMONTH: All right.

Tab 81, which is exhibit P-03359, fourth paragraph down, we're talking about: "I recognise that a linear relationship does not exist between project management expenditure and project physical progress, but the difference here is significant. Although Project Management" Well, you can read the rest of that.

Can you tell me why this is significant, recognizing that no linear relationship exists, but it's still a significant issue, is it?

MR. M. KENNEDY: Well, as part of forming a view on overall cost and schedule, the project management costs of running a project like this, of, you know, are pretty significant. I don't recall the specific numbers but it's hundreds of millions, probably over a billion.

So, it's a component of project cost that we want to look at, and what the email is talking about is quite correct, there isn't a linear relationship between project costs and progress. So, if you built 40 per cent of the project, it doesn't mean

you've spent, necessarily, 40 per cent of the project management costs.

MR. LEARMONTH: Right.

MR. M. KENNEDY: Having said that, what Tim, Tim Calver is saying in this email is even if you do draw a rudimentary relationship here, it implies that the current rates of burn, you're going to be out of project management costs in June 2017.

MR. LEARMONTH: Right.

Well that's an obvious problem, isn't it?

MR. M. KENNEDY: Absolutely.

MR. LEARMONTH: Yeah. So even though there's no linear relationship, you can still use that information to ascertain whether there's a problem or not. Is that true?

MR. M. KENNEDY: Well, now – and I don't have specifics but project management costs are still being incurred on the project, which is three years ago. So, it's an indication of a problem.

MR. LEARMONTH: Right.

Tab 83, which is exhibit P-03086. This is an email from Kelvin Parsons who, at the time, as I understand it, was chief of staff for Premier Dwight Ball and it's copied to Tim Murphy who was an official in Dwight Ball's office.

Mr. Kelvin Parsons says: "Premier, Here are the notes taken from our EY meeting yesterday, I believe they accurately reflect what EY said. To avoid missing anything, avoid misinterpretation, insure Cabinet completely understands the EY position I strongly recommend you being the meeting today by having Tim or I READ these notes then fill Cabinet in on your conversation with Ed Martin then go from there. This is too important and sensitive an issue to lose anything in transition."

So then we turn the page to page 2 of this exhibit, P-03086, and this is the record that Kelvin Parsons made of a meeting following a Cabinet meeting in February 25, 2016, a 3½ – no – "... 3+ hour meeting with EY to get their thoughts on the Astaldi issue, and on the

Muskrat Falls project more generally. The Premier, Min Coady, KP, TM and JM attended."

I think JM is certainly Julia Mullaley, KP would be Kelvin Parsons and Tim – TM would be Tim Murphy. Would that be correct? And you were there, were you?

MR. M. KENNEDY: Myself and David Leather, and I also recall Paul Hickey from EY was – attended –

MR. LEARMONTH: Okay.

MR. M. KENNEDY: – too.

MR. LEARMONTH: Well, the first – the second dot on page 1 is: "The lead EY" – representative – "was David Leather" – whose – "past life was CFO for the London Olympics which had a budget of 9 billion Euros. That project came in on time and on budget.

"EY's key conclusion from their work to date is the current cost estimate of \$7.65 Billion is not reasonable, particularly as it relates to the Astaldi situation.

"EY's estimate is the problem with Astaldi is in the range of \$600-\$800 million. Nalcor has been referring to a \$650 million issue."

So by this time, David Leather, among others at EY, had conducted some level of an assessment of the Astaldi problem. Is that right?

MR. M. KENNEDY: Yes, and I introduced David at this meeting because he hadn't met – he certainly hadn't met the Premier at this point, and at this point, we had certainly been authorized by government to conduct a detailed review of the Astaldi issue.

So, the way we organized ourselves is I carried on doing the – you know, leading the engagement and had David focus on the Astaldi review.

MR. LEARMONTH: Okay.

And the next point is, one of – I'll speak loud to go over the noise we're having here – "One of EY's key findings is when the MF project was initially set up, there was no Management

Reserve put in place. This Reserve is normal for major capital projects and is a finite pot of funds available for” – unseen – “technical and management risks that arise above the project level.”

That was one of your key findings, was it?

MR. M. KENNEDY: I don’t recall that specifically in terms of how it ended up in the final report, but it was certainly a conclusion that we had drawn and offered that opinion during that meeting.

MR. LEARMONTH: Yeah.

And was that an opinion that was shared by all of your team or just Mr. Leather?

MR. M. KENNEDY: By all of the team.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: And when you talk about a management reserve, am I correct that – in understanding that when you use the term reserve, you’re talking about actually funding, that a reserve – it’s not just an abstract figure, that you have to take the money and put it in an account or appropriate it in some way. Is that correct?

MR. M. KENNEDY: There are different definitions of management reserve. A normal definition is that you can have a management reserve that the project team is authorized to access if necessary. You can also have a management reserve that is held by the sole shareholder or in this case the government.

MR. LEARMONTH: Yeah.

But is it the practice to have it actually funded? Like, I’ll give you an example. You know the way insurance companies, when they set up a reserve, they actually take the money and put it into a separate account.

MR. M. KENNEDY: I don’t think it would be put into a separate account. I’m involved in a situation right now where there is a government reserve allocated which can only be accessed at

the – at – by the agreement of government. It is appropriated within the government’s operating budget, but it isn’t actually put somewhere separately.

MR. LEARMONTH: But it’s recognized in a budget?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Yeah, it’s not just an abstract thing –

MR. M. KENNEDY: No.

MR. LEARMONTH: – floating out there, right, okay.

And then next: “The Risk Register document for the MF project refers to the plan to establish such a reserve – but there is no record of how the decision was taken not to establish a reserve.”

That was one of your findings?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: And next: “Not only was there no Management Reserve included in the budget, Nalcor’s view is the amount of money available for the MF project is unlimited given that Nalcor believes Government will provide whatever funding is required. That has been the practice and experience until now.”

Was that said at the meeting?

MR. M. KENNEDY: At this meeting, yes.

MR. LEARMONTH: Yeah.

And: “EY’s view is there should have been a 5-25% set aside for a Management Reserve, based on the initial \$6.2 Billion budget.” Is that accurate?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Okay.

Next: “Another major concern EY has identified is the project doesn’t have a risk-adjusted cost and schedule forecast, and no documented

assessment of cost and schedule performance. This is a basis requirement of Board reporting and normal practice for major capital projects.”

Do you share that view?

MR. M. KENNEDY: Yeah, so that picks – that links the commentary earlier around the appropriateness of, among other things, conducting a Monte Carlo simulation.

MR. LEARMONTH: On a regular basis?

MR. M. KENNEDY: On a regular basis.

MR. LEARMONTH: Every six months or so?

MR. M. KENNEDY: Whatever the agreed cadence –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – is.

MR. LEARMONTH: Okay.

Next, we’re on page 3 now: “From EY’s analysis to date, there has been no challenge function to the MF leadership team – not from a CFO, not from ... Nalcor Finance group, even though there is a fiduciary responsibility to do so.”

Do you agree with that comment?

MR. M. KENNEDY: I agree.

MR. LEARMONTH: Next: “EY told us there is no sense of responsibility at Nalcor for MF cost escalation. The focus is on completing the project regardless of the cost, with government being there to provide unlimited funds. Nalcor’s view is the cost increases are ‘unfortunate’ but the long-term benefits surpass the cost increases.”

Is that an accurate reflection of Nalcor’s position as far as you know?

MR. M. KENNEDY: Based on the interactions over the previous four weeks, yes.

MR. LEARMONTH: Okay.

Next: “EY described a culture of ‘we know best’ on the MF project at the senior levels (CEO and direct reports). EY added that the mid-management level and down in Nalcor are extremely competent and committed to the project.”

I think in your interview you said that that – the mid-management would be people below, well, Ed Martin, Gilbert Bennett, Jason Kean, Lance Clarke and Paul Harrington?

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Perhaps I’ve missed someone else, so the people – you’re referring to people –

MR. M. KENNEDY: Yeah, it was –

MR. LEARMONTH: – below them on your –

MR. M. KENNEDY: – it was Scott O’Brien level down.

MR. LEARMONTH: Right, so he’d be included in that group or ...?

MR. M. KENNEDY: Of very competent people, yes.

MR. LEARMONTH: Yeah, okay.

Next: “EY also looked at the issue of ... change in strategy not to have SNC Lavalin as the EPCM contractor. This change in strategy to not have a world-class EPCM contractor manage but rather turn project delivery over to an Integrated Project Management Team, was not fully thought out, in EY’s opinion.”

Did you – did EY identify that as a problem, the transition from an EPCM situation to an integrated project management?

MR. M. KENNEDY: We didn’t directly call it a problem, and the easiest thing on projects like this is to sort of second guess why decisions were taken, and I think in this case it was two or three years earlier. What we formed the view on is that it hadn’t been fully thought through of the implications of making that decision, which may or may not have been a good decision.

MR. LEARMONTH: Right.

MR. M. KENNEDY: And, equally, in the next point what we also couldn't see – and we asked – is we couldn't see how this decision was taken. We couldn't see a trail back to who approved the decision and how it was taken. It's a pretty fundamental decision.

MR. LEARMONTH: Right.

Okay, I'm not going to go through every one of these points but on page 4 at the top: "Astaldi aside, the remaining components of the project are generally within what you would expect though the remaining contingency is low. EY doesn't know how much contingency is left though with a starting 5% contingency and the \$600-\$800 million problem with Astaldi, a less than prudent amount of contingency remains." So that's – you agree with that, do you?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Next: "Specific to the Astaldi issue: EY is real surprised that discussions with Astaldi to resolve the \$600-\$800 million issue are still at a high level, even though the problem has been evident for 18 months." Can you give some clarification on that or expansion on that?

MR. M. KENNEDY: Some of the – although there was certainly – in the early days there was a lot of resistance to providing any commentary or information on Astaldi, but as we got through January and now we're at the end of February, it did start to open up a little bit. And we were – we would, I think particularly David Leather and myself, were struck by how unspecific the stage the negotiations had got to.

And we were receiving commentary back that this is really complicated, nobody understands this apart from us. Astaldi don't understand it. We're having to help them understand it and it just created an impression for us that it was still at a high level.

MR. LEARMONTH: Yeah, even though 18 months had passed since the problem was identified.

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Okay and then the next is EY – on page 4: "EY seriously questioned the Nalcor approach of hiring a consultant to convince itself that Astaldi was in financial trouble. They described this as a type of covert, private eye approach. So far, Nalcor has provided a report on Nalcor letterhead but refused to identify for EY who did this work on their behalf (to allow EY to follow-up and validate the findings)."

So what is this about refusing to identify for EY who did this work?

MR. M. KENNEDY: So we were – my recollection is we were informed that a consultant – and I recall the words being used of a world-class consultant, a competitor of yours – has been retained to assess Astaldi's financial position. And when we asked – which we thought was a reasonable question – well, who are you – who have you retained, they – Nalcor wouldn't provide the answer.

MR. LEARMONTH: They just flatly refused?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: On what grounds?

MR. M. KENNEDY: It was back to the narrative of it's too sensitive, it's too complicated, it's too – discussions are very delicate at the moment.

MR. LEARMONTH: Well, but you're – I mean, you're retained by the government to advise on a confidential basis. I mean, I don't understand that train of thought. Can you go over it again, please?

MR. M. KENNEDY: Well, I didn't understand the reasons either why we weren't being given access.

MR. LEARMONTH: Okay, okay, that's fair enough.

Then on page 5, the second point down: "When we asked why Nalcor would be pressing for permission from the government to get a mandate to settle with Astaldi prior to March 8-9, EY indicated these dates were likely being

used as a pressure tactic by Nalcor on government (rather than by Astaldi on Nalcor).”

Can you give some clarification of that?

MR. M. KENNEDY: So this reference is the date of March 9 which, as I recall, was the last available date for when Astaldi had to post its quarterly financial statements.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: And that is significant in the context of its auditors would then have to publicly release an opinion on the financial health of Astaldi.

MR. LEARMONTH: Well – but, why would that be a problem? I mean, Astaldi is a publicly traded company. They have to disclose, I take it, you know, risks that they have and financial issues they have to their shareholders. Am I correct in that?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: The – our interpretation of that is that Nalcor were using that date, which was 10 days hence, as a way of pressuring the government to make a commitment around – a firm commitment around additional costs.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: And the language that was used in the meeting was writing a cheque to settle the Astaldi situation.

MR. LEARMONTH: But wouldn’t one expect it – like, before the Government of Newfoundland, which is, you know, facing financial issues at the time – wouldn’t one expect that before being asked to write such a big cheque, that they would get – be given a full and frank disclosure of the exact situation that they were dealing with?

MR. M. KENNEDY: Yes, absolutely.

MR. LEARMONTH: Yeah. Okay.

Next, “EY noted that what’s missing from Nalcor for government to make a decision on whether to provide Nalcor with a negotiating mandate is a Negotiating Strategy. That strategy, which Nalcor should’ve prepared, would outline objectives of an agreement, parameters around amount of funding, how and when funding could be made available, who would be involved in the negotiations, the terms and conditions we would attach to any agreement, starting and acceptable closing positions, where the other side would likely be coming from ...” – where the other side.

Well, I guess this is what I was referring to, that one would expect.

Do you agree that before being asked to make a commitment to fund this size of an expenditure, that government would have every detail possible so that it can be considered?

MR. M. KENNEDY: Well, even beyond the detail of the settlement, what we haven’t seen – and that’s this point here about the negotiating strategy – we hadn’t seen elaborated by Nalcor was a negotiating strategy, which is a basic component of how you start to settle a major commercial issue with a contractor, which in our view, if you take the 18-month timeline, that negotiating strategy would’ve been put in place 18 months ago, and it didn’t appear that Nalcor had that.

MR. LEARMONTH: Right.

Well, am I correct in assuming that if they had it, they didn’t show it to you?

MR. M. KENNEDY: Well, actually, a couple of days later, the – a negotiating strategy was produced –

MR. LEARMONTH: Okay.

MR. M. KENNEDY: – for us.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: Our view, at the time, on reviewing it was that it was largely – it was general information that could be accessed from

the Internet. It wasn't a specific strategy on how to deal with the problem.

MR. LEARMONTH: So, would you call it superficial?

MR. M. KENNEDY: Superficial.

MR. LEARMONTH: Yes?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay.

Okay, we'll leave that document.

Next document is at tab 84. It's Exhibit P-03361.

THE COMMISSIONER: I'll just note, Mr. Learmonth, it is almost 1 o'clock and maybe what we should do is take a break here now, because it's been a long morning for the witness, and as well for everyone else, and come back at 2 o'clock. Let's take an hour then today, as opposed to an hour and a half.

MR. LEARMONTH: That's fine with me.

THE COMMISSIONER: Okay so we'll take a break until 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Sir, did you need something or ...?

MR. M. KENNEDY: No, no, I'm fine, thanks.

THE COMMISSIONER: All right.

Mr. Learmonth, when you're ready.

MR. LEARMONTH: Thank you.

Okay, we're at binder 2, tab 85, Exhibit P-03362. This is a March 1, 2016, document.

Why was this document prepared? It was sent from David Steele to Tim Calver. Can you tell us why this was – document was prepared because we're getting close to the – well, the tentative deadline for the filing of your report, correct? Or at least as it was thought to be at the time of the contract.

MR. M. KENNEDY: I don't recall specifically why it was prepared by Tim Calver other than I know that we felt that we had to be ready for – beyond the report, being ready to provide a sort of context briefing to government and possibly for the Premier, but I can't remember a specific reason.

MR. LEARMONTH: But you're saying – oh sorry, did I interrupt you?

MR. M. KENNEDY: No.

MR. LEARMONTH: Okay.

On page 3, P-03362, it says: "A condition of success for a review of any project's cost and schedule forecast is that the Project have a reasonably established position on cost and schedule forecast. This would include: Re-baselined project schedule, cost and risks (including any knock on effects); Transparency on the quantification of risk within the re-baselined plan – i.e., Monte Carlo simulation; We know that these conditions are not presently met for the Project."

Now, that being the case, is it not very difficult to complete your assessment in the thorough way that you had intended without this information? Or what effect does the absence of this information have on your capacity and ability to prepare a comprehensive report that you had contemplated preparing when you signed the contract?

MR. M. KENNEDY: Well, first of all, I wouldn't call it a report that was not comprehensive. It would certainly have significant caveats in it.

MR. LEARMONTH: All right.

Okay, but these are impediments, are they? To preparing – the absence of this information is an impediment to preparing the kind of report that you contemplated preparing at the first instance?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yes. Okay.

Eighty-six, which is P-03363, this is from Richard Noble, and this deals with – we discussed this at your interview, the P80 value, and I think everyone who has listened to the Inquiry knows a little bit about the P-factor. And he suggests – Mr. Noble suggests this wording: *“The Project Contingency should make appropriate allowances for all risks including strategic, at a confidence level reflecting stakeholders required cost certainty. Our experience is that a reasonable conservative value (typically P80*) should be used for probability on cost and schedule and further that this would be based on a thorough Quantitative Risk Assessment.”*

So he’s, well, recommending that that be included in the report, correct?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Yeah.

And just – if we can pause for a second, am I correct that just using, like, a P80 or a P50 – we’ve heard these things floating around – that you have to have more information. You can’t just look at whether it’s a P50 or a P80 in isolation. That you have to consist of – consider the range we’re talking about. Is that true?

MR. M. KENNEDY: Yeah, so a Monte Carlo analysis – or it’s sometimes referred to as an at-risk analysis, which is the kind of software that’s used – it produces a bell distribution of probabilities, and there can be a big range in there. So – and I’d also caveat it that when you’re looking at the data that comes out of it, it is just one input into a decision-making process that a project team would make.

MR. LEARMONTH: Right.

MR. M. KENNEDY: But if there is a big swing between – I’m trying to think of a good example

for you – between – let’s say between P80 and P90, then you may choose to discount the P90 value because it is so materially different, and it’s just a quirk of the statistical analysis, if that makes sense.

MR. LEARMONTH: So you – am I correct that you can’t just talk in terms of whether it’s a P50 –

MR. M. KENNEDY: No.

MR. LEARMONTH: – or a P80.

MR. M. KENNEDY: No.

MR. LEARMONTH: It’s not useful for (inaudible) –

MR. M. KENNEDY: I mean, the number doesn’t have any context to it.

MR. LEARMONTH: Right.

MR. M. KENNEDY: And it’s – I understand that people would find it a very easily recallable number, which I think plays into the conversation about whether to put an actual –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – number in the report.

MR. LEARMONTH: Well, it’s – I guess it’s – people derive some comfort with it because it suggests some mathematical certainty when you put –

MR. M. KENNEDY: Yeah, and it –

MR. LEARMONTH: – a figure – and it doesn’t exist in itself, right? There has to be – the range of distribution has to be considered, among other things, with it, correct?

MR. M. KENNEDY: Yeah, this is not a science in terms of predicting cost and schedule forecasts. This is an input to a decision-making process.

MR. LEARMONTH: Right.

So – and Mr. Noble seems to be recommending – is recommending this, and his reasons are on page 3 and 4 of this Exhibit P-03363, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

Do you know – you may not agree with his recommendation and that's fine, but do you know why he was pushing for a P80 to be included in the report? Do you have any recollection of that?

MR. M. KENNEDY: Other than what's written here I don't remember a specific reason. Richard had a tendency to be more black and white in terms of how things were represented, whereas my view on this was that we needed a – that everybody needed a degree of flexibility.

MR. LEARMONTH: Okay, very good.

Now, in the Exhibit P-03364 – and this is the report dated March XXX, so this is just the first draft report of your review of the project cost, schedule and related risks. I'm not going to go through it in detail but I do note that on page – at – on page 7 of this exhibit, the P80 confidence level for setting project contingency is included in the report, correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Page 7 it's included. So, at this point, anyway, it seems that Mr. Noble's recommendation is being followed, is that correct?

MR. M. KENNEDY: We have a – we had a lot of discussion about this and I believe from looking through other artifacts, originally we didn't have a number in Richard's view was incorporated. There was an ongoing discussion over a number of weeks.

MR. LEARMONTH: And then in the document at – this is March 18, draft interim report. This is a further – this is an email March 18 from Tim Calver to Nalcor people: Mr. Harrington, Pellerin, Crawley, Bennett.

It says: "Paul, Gilbert, Brian, Steve,

"Attached is" our "final version of the report sent to Julia Mullaley today.

"We don't expect further changes so you can use this to finalise ... your management response."

THE COMMISSIONER: So this is 03365 that you're referring to now?

MR. LEARMONTH: P-03365, right.

THE COMMISSIONER: And it's tab 88.

MR. LEARMONTH: Yeah, it's tab 88. And I note that in this document, also, on page 7, that the P80 is – remains. Is that correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Okay.

Tab 89 is an email from – Exhibit P-03366, email from David Leather to Paul Hickey, dated March 21: "Just spoke to Tim. The Government's message to Nalcor was ... that it isn't ready to issue the EY report this week (the truth). That should be our understanding if asked."

So that's just a communication on the date of the release of the report. Is that correct?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: Yeah.

Now, I just note that the date of this is March 21, 2016, which is just slightly past two years from the time that you were retained. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yeah.

The next document is at tab 90, P-03367. It's an email from David Steele to Paul Hickey, meeting with Premier. This would have been Premier Dwight Ball at the time. Correct? Yes.

Yeah, okay.

Hello, "meeting with the Premier went well." Tim – and I believe that's a reference to Tim

Murphy who is his assistant. Am I correct in that?

MR. M. KENNEDY: I believe so, yes.

MR. LEARMONTH: Okay.

“Tim has asked to meet with us tomorrow ... to run through changes he would like to our report. Namely, they would like us to adjust (remove) reference to the P80 and also remove reference to the QRA that is underway. The rationale for the removal of these references is ... they do not want our report to create a public expectation that Government will receive copies of the QRA” for “then be subject to ATIPPA ... and he also indicated ... this could impact the Federal Loan Guarantee ... Paul can you expand). The overall reference for the need for a more conservative confidence level to be used by Nalcor will remain.”

And if we turn over the page, on page 2 of 03367 it says: “**The Premier did speak**” up “**to the ongoing negotiations with Astaldi**: He still feels that he would like someone in the room. He indicated that all that was needed was a person should be in the room.”

Do you – okay, first we’ll deal with the P80 on the first page. So it appears that the government – whether that’s the premier or his assistant or someone in government – is requesting that the P80 reference be removed. Well, it doesn’t appear, that’s what they’re saying.

Was this suggestion followed? Because we know in the final report that we’ll see the P80 has been removed. So why – I guess, we know that there’s this suggestion from the Office of the Premier that it be removed, we know that it was removed and I want you to tell us why it was removed, if there are other reasons other than they – other than the position taken by the Premier or someone else in his office

MR. M. KENNEDY: The – firstly, I don’t recall whether I got a copy of this email, so – and I can only – and I’m speaking for the firm here. The – as I recall it – and ultimately it was myself that had the final sign-off on the report, so I can’t remember if I received this email. I remember it coming up in a conference call that we had on this day and it was actually a very,

very simple discussion. And I don’t recall it being a request from government per se, although I think that was mentioned.

For me it was, okay, we’ve been backwards and forwards on this issue of whether it should be specifically P80 or not. Personally, I’m comfortable whether it – if it’s in or if it’s not in. It’s not, to me, important. My preference was not to have it in. So, out of that conference call, it was decided to take it out.

MR. LEARMONTH: But why was it your preference to not have it in?

MR. M. KENNEDY: I just felt it gave a little bit more – as I said earlier, a little bit more flexibility, and it wouldn’t be a sort of simplistic figure that the public or the media would latch on to that things aren’t following EY’s recommendations. And, in fact, what actually happened on this is when the project was – when the QRA was finished, it adopted a P75 which, I’m sure we’ll come on to it, when we came back the following year we were quite happy with that.

So I didn’t – my view was I didn’t want somebody to be able to say, well, it’s a P75, but you recommended a P80 so there’s a gap there.

MR. LEARMONTH: Okay.

So would it be – are you saying really that it was no big deal whether it was in there or not?

MR. M. KENNEDY: Yeah, so I would say that. It was no big deal. I remember it being a very short conversation on that call.

MR. LEARMONTH: Yeah, okay.

And what about the reference on page 2 to the Premier wanting to have someone in the room with respect to the Astaldi negotiations? Do you have any recollection of discussing that issue, either internally or with someone at the Premier’s office?

MR. M. KENNEDY: Yes, and just to give a little bit of context around this, I was fully engaged in St. John’s until around about March 11 or 12. Because David Leather was continuing with the work stream focused on Astaldi, he

remained here in St. John's with Tim Calver. I didn't physically need to be here.

So that work continued for another couple of weeks until we finalized our opinion document, and David Leather had a number of interactions with the Premier and staff. So that, to me, indicates why there was an indication that the Premier saw value in having David Leather in the room. And it was also during that period where it was obvious to us that we still weren't getting full access to all the Astaldi information from Nalcor, which may have prompted the request, actually.

MR. LEARMONTH: Yeah.

Now, the – if we turn to tab 91, Exhibit P-03368, this is dealing with the Astaldi document. And Paul Hickey is writing Tim Murphy at the Premier's office, I believe, with David Leather, Tim Calver, David Steele and Michael Kennedy copied.

The second to last paragraph from the bottom, Mr. Hickey of EY says: "Our perception is that Nalcor won't allow EY to be involved in the Astaldi matter as directed by the Premier." Now, just that sentence alone may prompt some people to say how is that possible. That if the Premier of the province, the owner of the project, wants EY to be present in the room, then one would think that EY will be present in the room. Do you understand my point?

MR. M. KENNEDY: I do.

MR. LEARMONTH: Yeah. Do you know why it turned out that you weren't in the room?

MR. M. KENNEDY: I can't say specifically other than that was the case. As I said a couple of times, we didn't feel that we had full and complete transparency on to where the – where Nalcor were at with the Astaldi discussion.

MR. LEARMONTH: All right.

But anyway, you didn't participate in any way in the negotiations with Astaldi. Is that correct? I mean, in the – being in the room, we'll say.

MR. M. KENNEDY: We did not meet with any officials from Astaldi at any point.

MR. LEARMONTH: Okay. Either alone or with Nalcor representatives, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: All right.

And page 3 of this document, P-03368, this is an email, at the bottom of page 2, from Paul Hickey to Tim Murphy and copied to the same other – same people that was on the earlier email.

If you look at page 3, at the top – second paragraph, the first dot there. "We would recommend that" – on page 3 – "the Premier make no representation about risk or comfort around the material contracts (Astaldi aside) until EY has conducted a review in May. The reasons for this are as follows: EY has not been provided with a final cost/schedule forecast for 7 out of 8 contracts, in fact very far from it. We requested this information, but it has not yet been available from Nalcor as they were conducting significant reviews on Valard 327 and the 3 Alstom contracts. For the final"

So, even at this late stage – we're in April, given your mandate started in March – you still haven't got this information from Nalcor, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Was any explanation provided as to why this information would not be available? This is important information for you to receive and review for the purpose of your report. Is that correct?

MR. M. KENNEDY: It is.

MR. LEARMONTH: Do you have any explanation?

MR. M. KENNEDY: I don't have any specific reasons other than a continuation of the narrative and commentary that existed from day one back in January.

MR. LEARMONTH: Okay.

Now, the document itself, if we go to tab 91 – excuse me, we're at tab 91. It's the same tab, Exhibit P-03368, at the back of this is the report.

It's dated – well, it was April 8, 2016. And I'd like you to refer to pages – first page 10, you can see what's being changed in the report. It's highlighted in red, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And then 14, there's more red ink. And then at 23 in the recommendations, once again the P80 is withdrawn. So, this was your final – you finally decided to make these changes. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay.

And then page 92, excuse me, tab 92 is the – is an indication that the report has been released, correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay.

Now, I'd like you to go back to the document that was ultimately released to the public, and that's tab 91, Exhibit P-03368. And just take us through some of the – first of all, will you confirm that this was your final report? April 8, 2016.

MR. M. KENNEDY: Yes, it's the final report.

MR. LEARMONTH: Okay.

Let's go to some of the findings, not all of them, page 29 of Exhibit P-03368, 1.3: "The overall conclusion of the Review is that the September 2015 Forecast is not reasonable." And that was for \$7.653 billion, right? That's referenced just above there.

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Yup.

It's not reasonable. "The principal reasons for this conclusion are as follows: the Muskrat Falls Generation ... contract for civil construction is significantly behind schedule in the Powerhouse and Intake areas. The direct and indirect consequences of this delay are expected to have

material impacts on cost and schedule that are not reflected in the September 2015 Forecast."

I mean, weren't these delays in the Astaldi contract well-known by September 2015?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: So the \$7.65 should have been higher in September 2015 if that's true. Do you agree?

MR. M. KENNEDY: I don't know that I can say specifically that it should have been higher. What we were saying here is that the – I mean, the inference is, yes, it would be higher – but we were saying is that when the September '15 forecast was made in September '15, that it was not reasonable.

MR. LEARMONTH: At the time?

MR. M. KENNEDY: At the time.

MR. LEARMONTH: So in September 2015, the \$7.653 billion AFE or cost estimate was not reasonable?

MR. M. KENNEDY: Correct.

MR. LEARMONTH: Okay.

And was that mainly because of the Astaldi contract?

MR. M. KENNEDY: Well, I think there are other smaller issues, but still, you know, material issues.

MR. LEARMONTH: Yup. Okay.

In the next sentence, you say: "the current contingency level representing 4.7% of the cost to complete, or 2.3% of total cost, is low for the current stage of completion of the Project. More than 50% of" – the – "work ... has been finished. The majority of design, engineering and procurement work is complete; however, there is a significant amount of physical construction work remaining that will be followed by commissioning and integration. This construction work is challenging in terms of ... scale, time and geography and as such is exposed to a wide range of execution risks."

So, that's your reason for saying that the contingency level remaining at that time is not – is too low?

MR. M. KENNEDY: Yes. And overall, as we've talked about before, there was certainly absent from the forecasting was this risk adjusted forecast through a Monte Carlo simulation.

MR. LEARMONTH: Right.

And then you say at the bottom of page 29: "... there is a risk of multiple-month delay to completion of the HVdc transmission line contract as a result of a number of delivery challenges that have been experienced to date and the risks associated with the remaining scope, where full mitigation may not be possible."

Now, that's the same contract – that's the Valard contract, correct, for the transmission line?

MR. M. KENNEDY: I can't recall, specifically. I believe so, yes.

MR. LEARMONTH: But you remember Mr. Harrington said that he wasn't aware of any claims of it?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Your assessment was a little different. Is that correct?

MR. M. KENNEDY: Yes. Certainly, the Valard contract was one that we were looking at carefully.

MR. LEARMONTH: Yes.

1.4 – now we're on the top of page 30. Okay, that's just the risk (inaudible) – then 1.5. "We have the following observations relevant to the conclusion in 1.3 above: risks defined by Nalcor as strategic are not allowed for in the financial forecast; the potential cost and schedule impacts of all individual risks are recorded in the Project's risk register but are not systematically reflected in the overall reported forecasts for cost and schedule"

Okay, just pause on that. If they're recorded on the project's risk register, how is it possible that they wouldn't be reflected in the overall reported forecast? I mean, why do you put them in there if you're not going to deal with them?

MR. M. KENNEDY: So, the risk register is a database that will list a risk – will risk – will list the probability of it happening, and if it does happen, what the impact of it is.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: And there can be ranges on that.

MR. LEARMONTH: Yes.

MR. M. KENNEDY: And then, usually, you will have a mitigation strategy for that risk, and you may have costs and you will have, usually, costs associated with that –

MR. LEARMONTH: Right.

MR. M. KENNEDY: – mitigation strategy.

All of that information is then fed into a model such as the Monte Carlo –

MR. LEARMONTH: Right.

MR. M. KENNEDY: – analysis to produce what is called a risk-adjusted cost and schedule forecast.

MR. LEARMONTH: Correct.

MR. M. KENNEDY: So, just because it's sitting in the register doesn't mean it is reflected in the cost forecast.

MR. LEARMONTH: Yes, I understand that. But my question is: What's the point of putting it in – that documentation into the risk register unless you're going to do a Monte Carlo simulation, or account for the risk in some other acceptable matter? What's the point?

MR. M. KENNEDY: Well, in this case, I would agree it. There is no point in not doing it. In some projects, there are – a Monte Carlo analysis is not performed. Do you use the risk register as a management tool to question and

address within your own project team whether actions had been taken on specific risks?

MR. LEARMONTH: Okay.

Now, I'm going to – in the interest of saving time, I'm not going to go through all these – just one more. I mean, people can see – it's up on the screen but one of the other findings or recommendations is that: "...the Project contingency should make appropriate allowances for all risks, including strategic, at a confidence level reflecting stakeholders' required cost certainty. EY recommends that consideration be given to the use of a more conservative confidence level for setting Project contingency, based on a thorough risk assessment."

I guess that's talking about the same thing, the QRA, right?

MR. M. KENNEDY: Mm-hmm.

MR. LEARMONTH: Now, when you look at all these recommendations, am I correct or incorrect in sensing that these are fairly serious matters that have to be adjusted – is that a fair observation or is it too strong?

MR. M. KENNEDY: It's a fair observation.

MR. LEARMONTH: It is?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah. Okay.

Okay. Now, we're moving on to the last of the six contracts. Before I start that – after you completed your final, you know, your work, like, in the – and prepared the report that I just referred to – did you do – were you requested to or did you do any further review of cost estimates? Like, in other words, how much it would take to get the project to completion?

MR. M. KENNEDY: No, not specifically. We did do minor pieces of ad hoc work at the request of government and it was – one example, I believe, is we were asked to attend a briefing with Stan Marshall in early June –

MR. LEARMONTH: Right.

MR. M. KENNEDY: – 2016.

MR. LEARMONTH: Right.

MR. M. KENNEDY: But we weren't doing substantive work in any way.

MR. LEARMONTH: Yeah.

You mentioned Stan Marshall, because I believe Mr. Martin departed on or about April 22, 2016. Was there any change in the atmosphere in terms of your relationships with Nalcor after Mr. Martin came in?

MR. M. KENNEDY: I could only comment on that specifically related to when the final contract was being put in place in June 2017.

MR. LEARMONTH: Right. So – well, the final contract was dated April 8, 2016 – no, I'm sorry. I'm sorry. I'll just turn to the document. You're absolutely correct. It's at tab 162, it's Exhibit P-03587.

And what this is – where I mixed this up, is it says: Muskrat Falls Oversight Committee Review of Implementation of the Recommendations from the EY Interim Report dated April 8. That's where I got – so and this is dated June 2, 2017, as you say.

Now, the scope of the work is identified on page 1: The objective of this review is to assist the Province's Oversight Committee for the Muskrat Falls Project in assessing the status of the implementation of recommendations from the consultant's interim report dated April 8, 2016. The scope of the review is subject to the limitations below. You list the limitations. That's the scope.

If you go to page 4, the estimate, I think, is \$250,000 for your review. Correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: As expected – page 1, the report was expected to be delivered to – within six weeks. Is that correct?

MR. M. KENNEDY: I don't recall the specific
—

MR. LEARMONTH: Page 1.

MR. M. KENNEDY: — timing.

Yes, I see it there now. Six weeks, yes.

MR. LEARMONTH: Six weeks. Yeah. Okay.

So did you — were you personally involved in the work on this statement of work?

MR. M. KENNEDY: Yes, I was.

MR. LEARMONTH: Okay.

Well, can you answer that question about whether there was a change in communications or the relationship between EY and Nalcor for this scope of work as opposed to the previous one?

MR. M. KENNEDY: Yes, it was quite different (inaudible).

MR. LEARMONTH: Okay, how was it different?

MR. M. KENNEDY: I mean, firstly, I think it's important to say that in both engagements, certainly the mid-level managements of the project were helpful, co-operative, professional, et cetera. I think the difference with when we came back in — 'cause the field work was done in July 2017 — was there was — it was clearly a very — it was very transparent discussions and conversations with the senior project leaders. What I'd also say is that most of the — most if not all — well, most of the significant issues had been addressed and I think the project team now had a clear line of sight on the completion of the project with a reasonable degree of confidence on cost and schedule.

MR. LEARMONTH: Okay. So it's a better atmosphere, was it?

MR. M. KENNEDY: I think there was the part of it that was the team itself was just more confident now that they got the difficult issues out of the way and they were dealing with them.

But, also, I think the interactions with EY were much more transparent.

MR. LEARMONTH: Okay.

Tab 93, Exhibit P-03370 — I want you to go to page 3 of this. This is a review of Muskrat Falls cost and schedule forecast next steps discussion. What was this document? Why was this document prepared?

MR. M. KENNEDY: So at this point —

MR. LEARMONTH: Well, this is actually — I'm out of order on this one, I think, right, because you were up to June 2016?

MR. M. KENNEDY: We just talked about June
—

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: — of 2017.

MR. LEARMONTH: Yeah.

Okay, so forget about that exhibit.

MR. M. KENNEDY: Okay.

MR. LEARMONTH: Now, this document — this — I think I mentioned it to you, this document at tab 95, Exhibit P-03372. This is an internal memo — I know nothing was done with it, but what was going on here, the thought of perhaps obtaining work directly from Nalcor. Can you give me the context for this, please?

MR. M. KENNEDY: So this email from myself — and remember that this team, certainly David Leather and Tim Calver, we'd all — we weren't actively working on the project. So this is an internal EY — email to EY partners —

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: — just emphasizing to them as a business opportunity that Nalcor may — could become a significant business opportunity for us. And, you know, I recognize in the email that it's — I think I used the word self-serving, so — but I'm just putting that context there for the partners for what is below on — you can see key messages of what we

wanted to transmit to Stan Marshall during a conference call that had been arranged for that week.

MR. LEARMONTH: Okay. So did anything – was this just like a thought that – a fleeting thought and nothing happened with it?

MR. M. KENNEDY: Well, I mean part of my role leading this group in Canada is to be alert to significant business opportunities, so I'm just setting that context. We – you know, subsequent to this, we certainly never approached Nalcor to do specific work, nor did any work particular to my involvement. I understand there were other pieces of work that other parts of the EY firm has done for Nalcor over the years.

MR. LEARMONTH: Okay, so nothing was done in furtherance of this –?

MR. M. KENNEDY: No.

MR. LEARMONTH: No. Okay.

It was just a thought that you had and then nothing happened with it.

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: Very good.

Tab 104, Exhibit P-03384; now, this is September 27, 2016. There's reference here to Bern – I think that's Bern Coffey at the bottom – Julia Mullaley to David Steele. It said – right at the bottom of page 1 of P-03384: "David, just wanted to mention that I have discussed this with Bern as well as part of the transition."

Did you have any dealings with Bern Coffey?

MR. M. KENNEDY: I met Bern Coffey the first week of December 2016.

MR. LEARMONTH: Okay.

Now, I'm going to turn to tab 151 and that's Exhibit P-03430 – yeah, P-03430. This is an email – at tab 151. And this is an email from you to Paul Hickey, David Steele, Tim Calver and Kirsten Tisdale. And you're obviously – you're talking about a meeting and you say: "Hi

everyone. Paul/Dave we can debrief live tomorrow in the office.

"These are my notes from this afternoon's meeting with Paul Carter" I think at the time he was the executive director of the Oversight Committee. Is that correct?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: And, Bern Coffey, he was the clerk of the Executive Council at the time?

MR. M. KENNEDY: That's correct.

MR. LEARMONTH: Okay.

"Initially this meeting was planned as a social/catch up meeting with Paul, who I met with on Sept 23rd. When I arrived Paul said I have a surprise for you, the Clerk is going to join us for 20 minutes.

"In rough chronological order:

"Bern introduced himself and said he is still coming to terms with the role since appointment on Sept 21st. He mentioned he was one of the most vocal opponents of the project and a member of the 2041 group.

"Curiously he went back to the EY report of Oct 2015, as a starting point. He summarised that report as saying to him: Nalcor doesn't know what it is doing, has lacking" progress "for forecast going forward, is hiding the extent of the problem."

What was the context of this discussion? I mean, you made this – these notes, so I presume you believe they're accurate. So what was the context of this type of discussion, and then he – well, just before you answer that, he says: "He then expressed growing alarm/concern in government with the recent events at" Muskrat Falls. What is going on here?

MR. M. KENNEDY: So I think the first thing to say is that I wasn't in St. John's specifically for – to meet with Bern Coffey and Paul Carter. I was here for other matters, and that applies to the reference to the September 23 meeting as well.

So having met Paul, and had an introductory conversation with him, we had agreed to meet on December 6. And it was a – I think the other context to put into this is that government was indicating that they wanted EY to complete the final report.

So, remember, the April report was an interim report that had the caveats around –

MR. LEARMONTH: Yes.

MR. M. KENNEDY: – the Astaldi information, et cetera, et cetera.

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: So at some point government was going to issue an updated report, so this was an informal conversation about where is that – you know, when is that likely to happen and so on and so forth.

MR. LEARMONTH: Okay.

MR. M. KENNEDY: And the notes that I've put down here reflect my understanding of what Bern Coffey said about that.

MR. LEARMONTH: Okay, very good.

Tab 108, P-03388; on page 2, Mr. Steele, David Steele, to Tim Calver, says: "Could you develop a workplan slide with activities detailed that reflects a scope of providing an update report on the status of mgmt/gnl actions taken in relation to our recommendations from the first report? Minister said she thought" that "this was" the "first step and wanted an understanding of the activities required."

Is this what you were talking about just earlier, that there was a prospect of doing a further report to bring – to more – to complete the outstanding issues that remained from the April 8, 2016, report?

MR. M. KENNEDY: Yes, in fact, the week prior to this, we were asked to attend a meeting with the Premier and Minister Coady and staff to discuss the type of work that would be undertaken as – to complete the report.

MR. LEARMONTH: All right.

Tab 109, Exhibit P-03389, this is an email from David Steele to Paul Hickey, EY Proposed SOW, January 18, 2017. So is this another extension of this discussion about perhaps doing another engagement for the government? This was under consideration?

MR. M. KENNEDY: Yes, that's correct.

MR. LEARMONTH: That's what it is, yeah, okay.

I guess, at this point, it was believed that many of the, we'll say, deficiencies in the data that you received for the April 8, 2016, report had now been received so that you would be able to do a more complete report. Is that a fair way to put it?

MR. M. KENNEDY: Well, we haven't received them because we weren't doing any work on the project.

MR. LEARMONTH: Okay. But you must have thought that there was more data or there would be no point in doing another review, would there?

MR. M. KENNEDY: I honestly can't say that we knew that one way or the other.

MR. LEARMONTH: Okay.

Page – tab 110, in the middle is an email from Tim Calver, February 1, 2017 –

THE COMMISSIONER: 03390.

MR. LEARMONTH: 03390.

Tim Calver writes to Michael Kennedy, Damian Joy – Damian Joy was a new person to your team. Is that right?

MR. M. KENNEDY: Yeah, Damian –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – is an infrastructure partner with very similar experience to me who's based in Toronto.

MR. LEARMONTH: Okay.

And this – in the middle of the page – I’m referring to this email. It says: “The issue here is that we want to reset the relationship with Nalcor and get on the front foot. If they get a detailed plan before any alignment on expectations of the review, we risk this being counterproductive.

“Our experience is that GNL do very little to align expectations, or worse will placate Nalcor with a statement that this is just a rubber stamp exercise and then forward on our detailed plan.”

Was that the history? Mr. Calver is describing a – an approach that, perhaps, the Government of Newfoundland took. Is that an accurate statement in your opinion?

MR. M. KENNEDY: I would say it’s a simplistic way of putting it for the brevity of an email, but I would agree that officials in government could have taken a different approach in the firmness that they were dealing with Nalcor.

MR. LEARMONTH: What would that different approach entail?

MR. M. KENNEDY: Resisting requests to change the scope of work. Maybe – you know, back to your earlier questions about the length of time taken to do reviews – it could’ve just been pushed through faster.

MR. LEARMONTH: Right. All right.

Now, tab 118 is an email, June 27, 2017, from David Steele to Charles Bown and you – says: “Hello Charles” – David Steele says – “Michael had a phone meeting with Jim and team over the weekend. It was a positive meeting” That would be Jim Meaney, would it?

MR. M. KENNEDY: That’s – that would be Jim Meaney.

MR. LEARMONTH: (Inaudible) this is to get the ball rolling on the – on your work for the last engagement. Is that correct?

MR. M. KENNEDY: That’s correct.

MR. LEARMONTH: Okay.

Tab 119, we’re progressing along, June 28, 2017. What is this email from David Steele about? You – actually, he refers to this Commission; we’ll leave that one alone.

Next is tab 125. This is an email – it’s Exhibit P-03405 – from David Steele. Well, he’s the local engagement partner, so he seems to be, sort of, coordinating the communications among the team. Is that correct?

MR. M. KENNEDY: Sorry, 125.

THE COMMISSIONER: Yes, in book 3.

MR. M. KENNEDY: Book 3?

MR. LEARMONTH: Yeah. 03405 –

MR. M. KENNEDY: Yeah, I have it.

MR. LEARMONTH: Yeah. Do you see? It says, okay, “Overall she is happy.” I presume that’s Siobhan Coady, the minister.

MR. M. KENNEDY: Yeah, it’s Minister Coady.

MR. LEARMONTH: And, “Here’s the feedback that should be considered.” So, is this something further about the possibility of the government asking you to do further work on the project?

MR. M. KENNEDY: Oh, I’m sorry. Was it a question?

MR. LEARMONTH: Is this a further example of the discussions you’re having with government to do further work on this project?

I mean, at this point, is EY anticipating the possibility of getting further work on the project to complete the outstanding items from the April 8, 2016, report?

MR. M. KENNEDY: Well, one of the recommendations that came out of our work – the updated report in 2017 – is that there should be – that the Oversight Committee should be supplemented by resources to assist in the oversight. And that could be us; it could be –

MR. LEARMONTH: Anyone.

MR. M. KENNEDY: It could be anyone.

MR. LEARMONTH: Yeah.

Because – I mean, we know that the Oversight Committee was staffed by members of the civil service and also – and later people from outside government, but isn't it difficult for people, no matter how intelligent and hard-working they are – isn't it hard for them to really provide oversight without the active participation of an expert firm such as EY? Can you comment on that, please?

MR. M. KENNEDY: Yes, I will. It's – I would agree you need expertise, and I don't want to get into whether members of the Oversight Committee – and certainly the non-government members of the Oversight Committee had the right expertise.

MR. LEARMONTH: Right.

MR. M. KENNEDY: What I would say is that irrespective of anything, you need resources that have the ability and the experience and to get under the hood of the project. If we're brought – if it is EY, and we're just brought in to sit with the other members of the Oversight Committee, then we just become another opinion. We don't have a data-based analysis to support any conclusions. So, to do that in-depth review needs focused resources. That is not a volunteer effort.

MR. LEARMONTH: Right.

But people without – I guess that's – is that another way of saying, like – let's say I – I'll give you an example. Let's say I was on the Oversight Committee. I don't know anything about construction. I don't know about the questions to ask. I may, you know, be able to follow some things, but my role would be very – I wouldn't – maybe I wouldn't be useless, but I'd be close to it when it got down to diving into the details unless I knew something about project management. Do you see my point?

MR. M. KENNEDY: Yes. I agree.

MR. LEARMONTH: Yeah. Okay.

The final report, dated August 31, 2017, is at tab – is Exhibit 03408, and this is at tab 128.

So this is a – when contrasted with the – this is a general question – with the April 2016 report, this is, would you say, a very – sort of a positive endorsement of the steps that Nalcor has taken?

MR. M. KENNEDY: I would agree it's a positive endorsement.

MR. LEARMONTH: Okay.

You've noticed improvements – if we look at the Implementation of Recommendations, it seems to be an indication that there's been a lot of improvement from the April 6, 2016 –

MR. M. KENNEDY: Yes, that's –

MR. LEARMONTH: – report.

MR. M. KENNEDY: – that was our view.

MR. LEARMONTH: Okay. Well, we won't go through it in detail.

Then tab 129, Exhibit P-03409. This is September 26, 2017.

What is this document that you're sending to – well, you're sending it to yourself. I guess it's just an aide-mémoire. But what is on your mind at this point?

MR. M. KENNEDY: I actually think I was – I believe I was using this text for other completely unrelated purposes.

MR. LEARMONTH: Okay, yeah.

Okay, tab 130. This is a summary received from government on the total cost for your engagement, and I found out – I've been informed that it's not really accurate because there was \$288,000 in disbursements, so that would drive the total down to 2.136. Is that correct?

That's the information I received.

MR. M. KENNEDY: I think that's generally correct. I'm not sure that –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – that is the correct number, but generally correct, yes.

MR. LEARMONTH: And on the – there's other documentations in here, but I just wanted to point out that it appears from my review of some other documents that were added today that, in fact, EY's work came in under budget, in many aspects of it. In other words, you were authorized to spend 500 and you spent 200. Is that correct?

MR. M. KENNEDY: Well, the quantum was different to that, but –

MR. LEARMONTH: No, no, that's just an example.

MR. M. KENNEDY: – but, certainly, yes, within the – with the agreements that we had with government, the work that we were authorized to do, we spent less than that amount.

MR. LEARMONTH: You spent – you came in under budget?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Can you tell me what the – you listed off an amount –

MR. LEARMONTH: The new –

THE COMMISSIONER: – the totals?

MR. LEARMONTH: – exhibits?

THE COMMISSIONER: Yes, the totals. So I'd like to get the –

MR. LEARMONTH: They were – they're included in the –

THE COMMISSIONER: Is there an exhibit?

MR. LEARMONTH: Well, the exhibits – which maybe Mr. O'Flaherty will want to discuss.

The new exhibits are at tab 165, P-03592 and there's another document, Exhibit P-03593, at tab 66 which deals with the Astaldi work.

THE COMMISSIONER: So what was the total you had indicated there?

MR. LEARMONTH: Well, I think it was 2.1 – I'm not exactly sure, but I think it was 2.1 plus disbursements. But the other – maybe Mr. O'Flaherty can clarify this. But I guess the point I'm making is that the – there was unused budget and now – and if you look at those two documents that I last referred to, that will be borne out.

THE COMMISSIONER: All right.

MR. LEARMONTH: Mr. Kennedy, the last exercise I want to go through is to refer you to certain parts of the Grant Thornton report. I don't know if it's in your book, but we've discussed this at your interview. It's Exhibit P-01677, and if we could bring up – well, just to identify the document, it's December 7, 2018, Construction Phase report. You're familiar with this document, to some extent, are you, Mr. Kennedy?

MR. M. KENNEDY: I have seen this document –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – I wouldn't say I've read it in detail.

MR. LEARMONTH: Okay.

And just go to page 12, please. This is a reference to – well, the finding of Grant Thornton that by April 2013 Nalcor knew, or at least ought to have known, that the contingency was blown – it was gone. Were you aware that that information was known by Nalcor – ought to have been known by Nalcor on April 2013.

MR. M. KENNEDY: Sorry, could you just point me – specific –

MR. LEARMONTH: Well, read page – lines 1 – read it to yourself, if you don't mind. Read lines 1 to 10 on page 12.

MR. M. KENNEDY: Yes.

MR. LEARMONTH: Yeah. Do you understand that paragraph? Were you aware of that? Did Nalcor ever tell you that?

MR. M. KENNEDY: Not specifically.

MR. LEARMONTH: Yeah.

Is that something you would have expected Nalcor to provide to you?

MR. M. KENNEDY: I think at the outset of an engagement, such as this – even going back to the first contract in November 2014, we would expect to have clarity on what the cost and schedule forecasts are and the contingency amounts that were allowed for at that time. And as it goes through each stage gate, a status of how they're doing against the baseline, if you like.

MR. LEARMONTH: So you would've expected Nalcor to have provided this information, or not?

MR. M. KENNEDY: It would certainly be very helpful as context that you – we can see the progression of the project, for sure.

MR. LEARMONTH: It would've been an aid to you in doing your work. Is that correct?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: And if we turn to page 19 of the same report, P-01677, you're aware that at DG2 – 3, the estimate at the time of sanction was 6.2, correct?

MR. M. KENNEDY: I recall that number, yes.

MR. LEARMONTH: And then at financial close, November 29, 2013, it was up to 6.5.

However, I want you to refer – refer you on the – some information beginning on page 19, at the bottom, under line 13. You can see here that in July 2013, which is before financial close, the project management team had a final forecast cost of \$7 billion. Do you see that?

MR. M. KENNEDY: Yes.

MR. LEARMONTH: And – qualified by the possibility of mitigating it to \$6.8 B. Were you aware of that figure?

MR. M. KENNEDY: Not specifically.

MR. LEARMONTH: No – well, not specifically – were you aware of –?

MR. M. KENNEDY: No.

MR. LEARMONTH: No.

Okay, and then if you turn to page 20 of the same report and then 21, there's all these other project management team final forecast cost updates. But were you aware of any of these cost updates? It runs from page 20, 21, 22 and 23.

MR. M. KENNEDY: Again, I don't recall the specifics. I think in our report – in our interim report and maybe in our final report in 2017, we laid out the history of the project as –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: – we understood it, which I believe we can look, but I think it started at that 6.5, 6.6 number.

MR. LEARMONTH: By the way, I'm not trying to compare your – I mean, Grant Thornton –

MR. M. KENNEDY: No, no.

MR. LEARMONTH: – had access to complete –

MR. M. KENNEDY: Yeah, and those numbers were given to us. We –

MR. LEARMONTH: Yeah.

MR. M. KENNEDY: Yeah.

MR. LEARMONTH: No, but I mean Grant Thornton had access to the documents, so I'm not suggesting that you should've picked this up.

MR. M. KENNEDY: No, (inaudible) –

MR. LEARMONTH: I'm just asking whether you're aware of it.

And one last point is that the – we – I’m not gonna refer you now to the documents, but before sanction in September 2012 –

THE COMMISSIONER: December 2012 or – ?

MR. LEARMONTH: December 2012, before sanction in December 2012, Nalcor, based on a risk assessment done by its consultant Westney, based on that – well, they – Westney said that the schedule that it reviewed was first a P1, and then it was elevated to a P3 after it received further information from Nalcor.

So P3, were you aware of that fact?

MR. M. KENNEDY: No.

MR. LEARMONTH: Once again, is that the type of information that would’ve – that would’ve – you would’ve expected Nalcor to provide you during the course of your review engagement?

MR. M. KENNEDY: It would’ve been helpful context to understanding how the project had progressed, for sure.

MR. LEARMONTH: Those are all my questions, thank you very much.

THE COMMISSIONER: Thank you.

All right, cross-examination, Province of Newfoundland and Labrador.

MR. LEAMON: No questions, Commissioner.

THE COMMISSIONER: Okay.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Good afternoon Mr. Kennedy, my name is Dan Simmons, the lawyer here for Nalcor Energy.

You’ve covered a lot of ground so far today. I won’t be going over everything with you, but there will be a few things that you spoke of that I want to go back to.

But before we do that, I wanted to understand a little bit better your own personal involvement in the work that you’ve described here. So, do I understand correctly that you actually weren’t assigned to any work, any EY work, on this project until December of 2015, is that right?

MR. M. KENNEDY: That’s correct.

MR. SIMMONS: Okay, so for the entire time period prior to then, had you had some role in the background where you weren’t hands-on with it, or you kept informed of what was going on, or were you just off doing other things?

MR. M. KENNEDY: I was – I was involved in other files.

MR. SIMMONS: Okay.

So then, when did you first learn that you were going to become involved in the – in this project?

MR. M. KENNEDY: I think it was around about December 14.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: I actually recall seeing a photograph of what is now the spillway of the project on the cover of *The Globe and Mail*, or on the business section of *The Globe and* –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – *Mail* and –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – and sort of reading it casually and thinking, oh that’s an interesting project –

MR. SIMMONS: Right. Now I –

MR. M. KENNEDY: – and then – and then went into the office and was told you’re gonna get involved in this.

MR. SIMMONS: Okay.

Now, I do understand that you’ve been asked to come here today to speak to events prior to

December 2015 and you've gone through a lot of documents and answered questions in relation to those but do you have any direct personal knowledge of those things, other than what you've learned from the review of the documents in preparation for coming here to give evidence?

MR. M. KENNEDY: So Richard Noble was –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – at that point, part of the infrastructure team that I lead in Canada.

MR. SIMMONS: Yes.

MR. M. KENNEDY: So from December '15 Richard was giving me detailed briefings on the background of some of the reports that had already been written. Same with Emiliano Mancini, who was still part of the team. So there was a lot of dialogue as part of getting going with this.

MR. SIMMONS: Okay. So for the purpose of doing the new work you had to do going forward, you were working with some of the people who had been involved before, and naturally you had to talk about some of the things that had happened up until that time.

MR. M. KENNEDY: That's correct.

MR. SIMMONS: All the email and so on that you've been referred to, though, are – were many of those new to you for the purpose of coming here and giving this evidence?

MR. M. KENNEDY: Most of them were; there were some of them I recall were being shown to me –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – as, you know, and here's an example, here's an example.

MR. SIMMONS: Right. Okay. Thank you.

So then once you became involved on the 14th of December, 2015 can you give me kind of a bit of a fuller description of what your role was since then on the various projects that you've

described: whether it was an overall management role; whether you've been doing hands-on analysis; whether it's been some mixture of it, so that I can have some better appreciation of where you've been directly involved in the doing of the work that led up to the various reports?

MR. M. KENNEDY: From December –

MR. SIMMONS: Yes, please.

MR. M. KENNEDY: – 2015.

MR. SIMMONS: Yup.

MR. M. KENNEDY: So, I mean, the first task that I had to focus on was putting a team together.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: You know these kind of individuals are, by their nature, busy on other files, it was over Christmas, there was an expectation that we would show up ready to go first week of January and then have the full team together the second week of January so that was the initial focus for me.

Going forward it was an oversight role of the team; we had different issues that we had to address, we swapped some team members out during the process, we made some changes to the way we were put together. Certainly the primary point of contact along with David Steele, to the clerk at the time – that was probably the primary and certainly the primary interface from, let's call it a technical perspective.

MR. SIMMONS: Sorry?

MR. M. KENNEDY: A technical perspective.

MR. SIMMONS: Yes. Primary interface with whom?

MR. M. KENNEDY: With the clerk.

MR. SIMMONS: With the clerk, okay. Yup.

MR. M. KENNEDY: And then involved in, not just meetings with the senior project executives

– Gilbert Bennett, Paul Harrington, so on and so forth – but, you know, going through all of the – we were given very helpful briefings from the project team on all the different components.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: And then on selected areas, sitting there doing the deep dive with the other team members.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: Because they generally did the deep dives into things but you know, I would sit in on some of those.

MR. SIMMONS: Were there any areas of expertise that were squarely within your responsibility, as opposed to other members of the team having the assignment and you would be playing a more oversight type of role? For example, were you a schedule specialist, or something along those lines?

MR. M. KENNEDY: No, I wouldn't put it that way. I think –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – I think what I was bringing to that team was the experience of 20 years in Canada and understanding how things are done here and each province is different. There are different ways of –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – different interpretations of different things so, certainly for the team coming from the UK that – you had to explain that and it was a lot of that (inaudible).

MR. SIMMONS: A couple of questions then about your personal background. You started this work December of 2015; of course you came to EY in August of 2015, so you hadn't been with EY when this particular work started and I think you said with your prior employer, which was Stantec I believe, you left to come to EY.

MR. M. KENNEDY: (Inaudible.)

MR. SIMMONS: And since 2008 you had more of a corporate role. So were you actually involved in project management work, either contractor side or owner side, during that period from 2008 up until 2015?

MR. M. KENNEDY: Yes, I was. And I remained continually involved in providing project management consulting work. I found it was getting smaller and smaller as time went on.

MR. SIMMONS: Mm-hmm, okay.

And can you give me some idea of what some of the megaprojects have been that you have been involved in since you've been in Canada?

MR. M. KENNEDY: In Canada? The first big project I was involved in was a transit line extension. That was \$1.2 billion.

MR. SIMMONS: In Vancouver?

MR. M. KENNEDY: In Vancouver.

MR. SIMMONS: Okay.

MR. M. KENNEDY: Stantec was heavily involved in just about every one of the Olympic venues for the Vancouver 2010 Olympics.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: I was involved in the Jansen mining project in Saskatchewan. That was the – I wouldn't call that a major role. And then typically, the sort of whole series of what we call social infrastructure projects between a value of \$400 million to \$2 billion.

MR. SIMMONS: Thank you.

So some of my questions are going to bounce around a little bit. Can we bring up Exhibit P-03285, please? I'll remember what it is when we see it on the screen.

Okay, this is from –

THE COMMISSIONER: That is at –

MR. SIMMONS: – early on –

THE COMMISSIONER: – tab 7 in book 1.

MR. SIMMONS: So from this – this is from before your involvement. This is one that you were referred to by Mr. Learmonth, April 2, 2014. And if I recall correctly, at this point, EY had been asked to give some advice around the setting up of the Oversight Committee role and just its initial interactions with Nalcor and some initial questions that they wanted some assistance with. Is that correct –

MR. M. KENNEDY: That's correct.

MR. SIMMONS: – of where we were at this time?

MR. M. KENNEDY: Yes.

MR. SIMMONS: Okay.

Can we go to page 2, please. Scroll down – okay. Stop there. Just down a little bit – no – up, perhaps. Okay, stop there.

So this is a message, April 1, from Mr. Noble. And he starts out saying, "I expect Nalcor may indeed say" and he's got a whole bunch of questions there.

Do you know if there'd actually been any engagement with Nalcor at the point where Mr. Noble wrote this message or this is just something from his own experience that he's saying, we're going to be going to this organization building this project, we're gonna be coming in asking them a lot of questions, this is the kind of a response we can expect?

MR. M. KENNEDY: I don't know if Richard had at this point met anybody from Nalcor. I would interpret the way he's stating the questions here is, you know, this is somewhat based on his own experience.

MR. SIMMONS: Mm-hmm. Okay.

So have you had – had you had experience prior to this yourself being part of a consulting team that got sort of thrown into a project midstream where the project is partially constructed and these issues underway – have you had prior experience with that sort of consulting?

MR. M. KENNEDY: Yes.

MR. SIMMONS: You had?

In your own experience, what sort of reaction would you tend to expect from the project team under those circumstances? Where they're busy doing the work, they now have some unexpected oversight being thrown at them, what would you normally expect the kind of reaction to be to that?

MR. M. KENNEDY: In my experience, project teams understand and accept –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – that there will be oversight and that there will be reviews done by independent consultants. And I would also say that project teams that are operating at a high level, not only understand and accept that, but are well prepared for it, whatever the review is, and take an attitude of we're going to be collaborative, we're going to answer all the questions, et cetera, et cetera.

MR. SIMMONS: Mm-hmm.

And I noted that in your evidence this morning, in response to some questions from Mr. Learmonth about – I don't remember which document it is now; it might have been the queasy email. You made a point of saying when you were asked about the transparency comment in that, that it wasn't that the Nalcor people you were dealing with weren't responsive and weren't co-operative, but it was that you didn't feel that you were getting the full transparency, the full picture on everything.

And I noted in your interview, it seemed to me that you made a point of saying that it wasn't a matter of a lack of responsiveness or lack of co-operation. And so, am I describing that correctly that that's what your observation were during your involvement with Nalcor and the project?

MR. M. KENNEDY: Yeah, and I think the lack of transparency I would sort of attribute that more to the senior project leaders as opposed to the working level.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: Even so, at the working level, it was evident that people were careful with what they were saying.

MR. SIMMONS: Mm-hmm, right.

And when we you were saying it wasn't that people were – well, you said they were co-operative and they were responsive, so the interactions then must have been such that when you made requests for information if it was possible to get it there, at least there is a willingness on the part of the people you were dealing with to try and deal with the requests that you were making. Is that fair to say?

MR. M. KENNEDY: Yes.

I mean, Steve Pellerin is –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – is probably the best example of that –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – because he was the designated person that we went to. And in fact, I think that was his role more generally was to deal with third-party stakeholders. So I think Steve was genuinely trying to be helpful and we certainly didn't have a problem with how Steve was going about things.

MR. SIMMONS: Now, Mr. Learmonth, just a while ago, asked you about what your experience was with the review that was conducted in 2017. And he'd asked you if there was any difference in the way – in what you observed. I understood you to say yes, there was, and you seemed to describe it as being a bit more positive.

And did you – so when you were dealing with Nalcor, though, in 2017, was the senior leadership team substantially the same, the personnel, as they had been previously? Had there been any significant change in the people that you were dealing with?

MR. M. KENNEDY: Well, obviously, there was a different CEO.

MR. SIMMONS: A different CEO, yes, I grant you that.

MR. M. KENNEDY: The project had also been bifurcated –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – so Gilbert Bennett was focused on the powerhouse and John MacIsaac, as I recall, was focused on the transmission –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – assets. Paul Harrington was working for Gilbert and I can't recall the name of the equivalent project director on the transmission side, but he was new. And I think the other significant change was that there was a very, very close linkage through Tanya Power, who was the then – now the project controls manager –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – to – I don't say tie the two bifurcated pieces together, but we very quickly developed a very high degree of confidence in the information that Tanya Power was providing because we knew it was an accurate reflection of both sides of the project. And she was very, very, very responsive as well.

MR. SIMMONS: Right.

So in answer to my question, though, several of the senior people who were part of that senior project management team were still in generally equivalent positions in 2017 –

MR. M. KENNEDY: Yes, that's –

MR. SIMMONS: – as in 2016.

MR. M. KENNEDY: – that's right.

MR. SIMMONS: And yet, you say you observed a difference –

MR. M. KENNEDY: Yes.

MR. SIMMONS: – in that period of time?

MR. M. KENNEDY: Yes.

MR. SIMMONS: Okay.

And I think the other thing you said in relation to that was that the project was past, perhaps, some of its most significant challenges by then. You're nodding your head?

MR. M. KENNEDY: Yes.

MR. SIMMONS: And that – do I take it that your understanding was that they were in a position where it was more easily possible to predict the cost and schedule out to the end of the project, than perhaps it had been when you were involved in the 2015-2016 time period.

MR. M. KENNEDY: Yes, that's a fair statement.

MR. SIMMONS: Yes, that is correct? Okay.

And in the 2015, early 2016 time period, is it correct that the largest uncertainty about cost and schedule, the big factor regarding that was going to be the fate of the Astaldi contract?

MR. M. KENNEDY: Yes.

MR. SIMMONS: And the Astaldi performance?

MR. M. KENNEDY: Yes.

MR. SIMMONS: And would you agree with me that until some element of certainty was introduced to the future relationship with Astaldi, there would be challenges in predicting what the final cost for the Astaldi work would've been and what the final schedule would have been?

MR. M. KENNEDY: Yes, I would agree with that.

MR. SIMMONS: Did you, at the time, see that as contributing to any of the difficulties that you perceived in Nalcor being able to provide you with the kind of predictive information that you were looking for to do your work?

MR. M. KENNEDY: Yes, in part –

MR. SIMMONS: Yes. Okay.

MR. M. KENNEDY: – because of –

MR. SIMMONS: In what part then? I'll take the part that contributed.

MR. M. KENNEDY: Contributed to the difficulty?

MR. SIMMONS: Yes.

MR. M. KENNEDY: Because of the uncertainty as to where that commercial issue was going to resolve itself.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: There was a range of figures being talked about.

MR. SIMMONS: Right. Okay.

And, eventually, there was some certainty brought to it, I think, when in partway through 2016 when the agreement started to be put in place for Astaldi. Okay.

Now, EY's client throughout this whole piece was, I guess, more narrowly the Oversight Committee but, technically, the Government of Newfoundland and Labrador.

MR. M. KENNEDY: That's correct.

MR. SIMMONS: So – and your dealings for – if you had to get instructions about what you were to do, or how to respond to anything, it would be the Oversight Committee would be your principal contact to go to. And I gather on other occasions you'd deal with the clerk?

MR. M. KENNEDY: My recollection of it was that Julia was providing –

MR. SIMMONS: The direction.

MR. M. KENNEDY: – the direction.

MR. SIMMONS: Okay.

MR. M. KENNEDY: And I can't – I think, I assume – still assume that she was a member of the Oversight Committee.

MR. SIMMONS: So – and you’ve followed through with Mr. Learmonth what some of the concerns were about availability of information, along the way. I presume that EY would’ve been careful to make sure that the client – either the Oversight Committee or Ms. Mullaley – would have been aware of any of the difficulties that you felt might have been standing in the way of you doing your work.

MR. M. KENNEDY: Yes.

MR. SIMMONS: Yes, okay.

And so the client, the Oversight Committee, or more broadly, the government, presumably would have been in a position to take some action on that, but that would be their determination to make.

MR. M. KENNEDY: That’s right.

MR. SIMMONS: And it was since Nalcor was not the client, Nalcor was not in a position to give any direction to EY, nor did EY take any direction from Nalcor. Is that correct?

MR. M. KENNEDY: We didn’t – obviously didn’t take specific direction, but we were very sensitive, I think, to comments and opinions that they made.

MR. SIMMONS: Right. Okay.

At the outset of this Inquiry, when we first began dealing with consultants and experts who do reports on things – and we’ve heard about a lot of them along the way – it came as a surprise to some people that reports would be shared in the way they are for comment, either with a client that they’re being done for or with someone that – who’s being audited or is being reviewed.

But it – and I think it’s correct to say that that is a fairly common process when consultants are engaged to do this kind of work, correct? That reports – draft reports will be shared for the purpose of getting feedback, checking for factual accuracy, ensuring that issues are addressed?

MR. M. KENNEDY: Yes, completely correct.

MR. SIMMONS: Okay.

And here, the sharing of reports here by EY, was that any different than what you would expect to do on any other similar engagement that you – that EY had?

MR. M. KENNEDY: I – no difference. In fact, I would say if – we were probably overly prudent –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – in terms of the reach out on dialogue, given some of the sensitivity of some of the issues.

MR. SIMMONS: Right. So whenever feedback was received from Nalcor in response to any of the draft reports that were circulated, am I correct that that was actually in response to an invitation, either from EY directly or through government, for Nalcor to provide comment.

MR. M. KENNEDY: Yes, the document was provided too.

MR. SIMMONS: Right.

And although you and EY may not have accepted all or maybe not very much of the, you know, requests that were made for changes or comments in those reports, did you ever feel pressured in any way from Nalcor because they were providing those comments?

MR. M. KENNEDY: No, I wouldn’t say we felt pressure. We were going to provide an independent view of –

MR. SIMMONS: Right.

So did you ever see anything improper with Nalcor providing those kind of comments on the report, or even the content of the things that they were suggesting?

MR. M. KENNEDY: No.

MR. SIMMONS: Can we go to Exhibit P-03413, please.

THE COMMISSIONER: 03413?

MR. SIMMONS: And that is in volume 3, tab 134, I think.

So we're going to jump up to May of 2015. I'm actually going to go to page 4, please, Madam Clerk. So this is the May 5, 2014, preliminary observations from EY on Muskrat Falls Project controls cost and schedule. So I forget which sequence in the reports this one was, but I think this was the second –

MR. M. KENNEDY: Correct.

MR. SIMMONS: – principle mandate, right? And this mandate, if I understand it correctly, was not to dive into has cost been properly estimated or is the schedule right, it is to look into – was to look into the processes around project controls for cost and schedule.

MR. M. KENNEDY: That's correct.

MR. SIMMONS: That's correct, so that the Oversight Committee would understand what those processes were. And if you had advice to make for improvement of those processes, that was what the Oversight Committee was looking for?

MR. M. KENNEDY: That's correct.

MR. SIMMONS: Yeah, okay.

So when we look at – and the first item here is: Limitations. There's two things limited. The first is: "The review did not assess how ... cost and schedule baselines were developed and estimated." The second says: "This scope did not include a review of scope/change management and risk management processes."

So what I want to understand clearly here is that these were not things you were asked to do and couldn't for one reason or another, these were things that were outside of the mandate that was given to you by government for the purpose of this report?

MR. M. KENNEDY: Yes.

MR. SIMMONS: Yeah.

And then we have a list of a number of positives that are described there. We don't hear about those very often, but I won't run through them verbally with you. But you did find, in that review, that there were a lot of positive

management processes already in place and functioning within the Nalcor organization, correct?

MR. M. KENNEDY: Yes, that's correct.

MR. SIMMONS: Yeah.

And then under observations, if we can scroll down, please? So it was clear here that from doing this work, you became aware that there were critical challenges facing Astaldi and that that was a significant problem for the project at the time.

And I had a couple of questions coming out of this here. The first is: There's a mention of Monte Carlo simulations there, and you've given us evidence that this is a fairly standard thing on a project – to do Monte Carlo simulations – and you're suggesting they should be done fairly regularly.

Do you – from your own personal expertise – do you have risk management expertise in your background, either the performance of QRAs or have you worked with Monte Carlo simulations yourself? Or is this something you're aware of from, sort of, a different perspective?

MR. M. KENNEDY: No, I have this from personal –

MR. SIMMONS: Pardon me?

MR. M. KENNEDY: I have this from personal –

MR. SIMMONS: Good. Yeah.

MR. M. KENNEDY: – experience.

MR. SIMMONS: So, in – we were referred – and by one other counsel in doing an examination, I think, last week – to some materials that were entered in evidence from, I believe it's Mr. Merrow, who you might be familiar with? A well-known writer on construction management in the United States. I think he's associated with IPA, if you've heard of that organization.

MR. M. KENNEDY: I'm familiar with IPA; I'm not familiar with that individual.

MR. SIMMONS: Yeah. Okay.

He – I think he’s written some materials to say Monte Carlo analysis is of no value. Are you familiar with that argument out there in the industry?

MR. M. KENNEDY: At university, 30 years ago, there was a view that Monte Carlo is just out there and don’t pay any attention; there was a view that this is the future. It was – it swung backwards and forwards.

MR. SIMMONS: Yeah.

So, from the work that you do over the last, you know, 10 years or so, do you encounter differing views on what the, sort of, best-practice way is to approach ongoing risk assessment in a project? Are there variances in the way different consultants would recommend that this be done?

MR. M. KENNEDY: There are variances, for sure.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: There is, though, a consistent application of a Monte Carlo-type process.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: Some consultants have adjusted the methodology for doing the Monte Carlo assessment. And as I’ve tried to say a number of times, it is one contributor to forming a risk assessment.

MR. SIMMONS: Right. It’s an input; it’s not the whole –

MR. M. KENNEDY: It is not the whole –

MR. SIMMONS: – ball of wax –

MR. M. KENNEDY: – the whole story.

MR. SIMMONS: Yeah.

MR. M. KENNEDY: But I would say that there is a common theme on – certainly on projects of over \$1 billion that this is –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – this is a standard approach.

MR. SIMMONS: Right. Okay.

Question for you about the risk registers that got referred to and, partially, in this context of doing QRAs and ongoing risk analysis. But my understanding – and correct me if I’m wrong – is that risk registers were, and have been, maintained at the project – at the Lower Churchill Project throughout and that a primary purpose during the construction phase of the risk registers is to monitor the risks associated with the execution of the different pieces of the work so that the risks can be managed and that – and you’re nodding your head –

MR. M. KENNEDY: Yes.

MR. SIMMONS: – so that is a purpose.

MR. M. KENNEDY: Yes.

MR. SIMMONS: And that in order to do that, that doesn’t necessarily require ongoing quantitative assessment of the value of the risk in order to be able to identify mitigation strategies and execution strategies to deal with them.

MR. M. KENNEDY: Yes, I did – it was like I – I answered a question from Mr. Learmonth earlier.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: The risk register –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – and the management of the risk register –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – is a separate activity than producing a risk register for the purposes of putting it into a Monte Carlo model.

MR. SIMMONS: Right.

So when you go to the QRA and use the Monte Carlo model and come up with the – sort of, the big picture view on what the quantification of project risk is, that's for kind of a larger purpose; that's not for the purpose of actually managing the contracts and trying to control the cost on the ground.

MR. M. KENNEDY: That's correct.

MR. SIMMONS: Correct?

MR. M. KENNEDY: Yes.

MR. SIMMONS: Okay.

And in your work, did you examine that second piece of it? How the risks were being managed on the ground for the purpose of controlling the costs sort of on a contract by contract basis.

MR. M. KENNEDY: Yes.

MR. SIMMONS: Okay.

And did you have any – reach any conclusions about that?

MR. M. KENNEDY: We – in the work in – I'm not going to speak to the work in 2015. In 2016, we observed that the – let's call it the day-to-day project team – were actively managing through the risk register –

MR. SIMMONS: Yeah.

MR. M. KENNEDY: – where we felt that there was a disconnect was how that reporting of issues was being reflected in the overall cost forecast.

MR. SIMMONS: Right.

So it's moving it up to the overall cost forecast as opposed to having the data needed to manage the –

MR. M. KENNEDY: Yes.

MR. SIMMONS: – job?

MR. M. KENNEDY: In 2017 –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – I would say that we became very comfortable that there was a very fluid and organic up and down of information.

MR. SIMMONS: Right.

So the piece that you weren't satisfied with in 2016 had been dealt with and solved in 2017?

MR. M. KENNEDY: Yes.

MR. SIMMONS: Yeah, okay.

There's also reference here to the control baseline schedule document, and I think there's an IPS, which is a reference to the overall schedule for the project. And we see references here in some other documents that in 2015, 2016, in that time period, you found that the overall baseline schedule hadn't been updated to account for some of the things that had been happening on the project. I'm putting this very generally now. You're nodding your –

MR. M. KENNEDY: That's correct.

MR. SIMMONS: – head, okay. The big one probably being Astaldi's performance – and you're nodding your head again –

MR. M. KENNEDY: Yes.

MR. SIMMONS: – and I'm gonna suggest that real performance problem had happened in 2014, and after 2014 into 2015, it was a matter of dealing with it. Is –

MR. M. KENNEDY: That's –

MR. SIMMONS: – that –

MR. M. KENNEDY: – correct.

MR. SIMMONS: – your understanding? That's correct as well.

So, to build the baseline schedule for the project, am I correct that the individual contractors have contractual responsibilities to submit their detailed schedules so that they can be input into the overall project schedule?

MR. M. KENNEDY: That's correct.

MR. SIMMONS: Correct.

And they are to do that monthly?

MR. M. KENNEDY: That's correct.

MR. SIMMONS: I think, yeah.

And if the contractors are not complying with their obligations, if any of them are not submitting what they're supposed to under their contracts, a satisfactory schedule, then Nalcor does not have all the detailed information they may need in order to build that overall project schedule.

MR. M. KENNEDY: That's correct.

MR. SIMMONS: Right.

So when you were identifying deficiencies in the project schedule in 2015 and 2016, did you make any assessment of how much of that was attributable to the failure of the contractors to have submitted the schedules that needed to be input into that?

MR. M. KENNEDY: I don't recall how we did – if we did a – how much was a quantum of how it contributed –

MR. SIMMONS: Mmm.

MR. M. KENNEDY: – but we certainly recognized that it was a gap in the information.

MR. SIMMONS: Yes, okay.

Regarding the Astaldi contract, aside from the – sort of the project controls side of assessing cost and schedule, in 2015 going into 2016, there was, what I think we would call, a major commercial issue with Astaldi, which required negotiation and there – eventually there were some agreements entered into in 2016.

Am I correct that until the change of government and your meeting in the Premier's office in January 2016, EY did not have a mandate from government to become involved on the commercial side of the Astaldi contract?

MR. M. KENNEDY: Yes, that's correct in that we weren't specifically being asked about – to –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – review Astaldi.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: Understanding, at a – in a – at a general level, where the Astaldi issue was at –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – was – would've been important information for us as part of the 2015 work to make a determination on the effectiveness of the cost and schedule management processes.

MR. SIMMONS: Right. So your mandate at that time was to assess the effectiveness of the cost and schedule management processes. It wasn't until 2016 that you were given any mandate to actually look into the commercial problem – difficulties with Astaldi. Is that correct?

MR. M. KENNEDY: Yes, that's correct.

MR. SIMMONS: That's right, yeah. Okay.

And this is where our topics are a bit more random again. Exhibit P-03330, please.

THE COMMISSIONER: That would be tab 52, book 2.

MR. SIMMONS: And the document is really just a reference for a question. It's volume 2, tab 52. You were referred to this before. This is from June 2015, message from Mr. Steele to Mr. Noble, Mr. Mancini. And he refers here to Mr. Martin, Craig Martin of the Oversight Committee, not wanting something in a draft report format as it will be available to any requester through ATIPP, A-T-T-I-P [sp. A-T-I-P-P], which is Access to Information legislation.

How common was it when you were dealing with government for there to be requests to communicate things in ways that would not be subject to access to information requests?

MR. M. KENNEDY: First off, I'd say that all of our team was – and there are – as you would

appreciate there's different legislation in each province.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: It's different in British Columbia.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: So, you know, we're familiar with the intent and the obligations of the legislation. We're also not a public body per se.

MR. SIMMONS: Right.

MR. M. KENNEDY: We react to how our client wants things to be communicated unless there is something clearly egregious or some type.

MR. SIMMONS: Yeah.

MR. M. KENNEDY: So, to answer your question, not just with this provincial government, but I find it sometimes quite a common process that ways are – ways and means are put in place that does seek to minimize the potential exposure through a freedom of information request.

MR. SIMMONS: Right. And to put it very simply, if the document is in government's hands, then someone may be able to submit a request and get it, where they wouldn't get it if it's in your hands.

So to go back to my question, though, was this – well, let me ask you this: Was there any standing kind of arrangement between EY and the government of the province about what sort of information would not be put in writing because of this concern?

MR. M. KENNEDY: I don't think there was anything specific ever –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – put together, certainly not from my close involvement in –

MR. SIMMONS: Yeah.

MR. M. KENNEDY: – this file.

MR. SIMMONS: Yeah.

Was there any understanding between the two parties about whether there were things that would not be put in writing?

MR. M. KENNEDY: I wouldn't even go so far as to say was there an understanding. I think we were – I think everyone was careful around the use of email, for example.

MR. SIMMONS: Exhibit P-03423, please, which is volume 3, Exhibit – tab 144. It's an email message from December of 2015. So this – you were actually on this one because this is not long after you were involved.

Mr. Learmonth asked you some questions about this message, which is from Mr. Noble to Mr. Steele. And it's commenting on some of the content of what's described as the management response from Nalcor.

So I just want to make sure we understand what we're talking about here. Am I correct that these quotes are taken from a – Nalcor's response that would be provided as a response to the final EY report and that these were not suggestions for change to the EY report.

MR. M. KENNEDY: I can't say that specifically. I certainly agree with it that they were – that they are taken from Nalcor's comments, certainly the first one.

MR. SIMMONS: So do you recall that after your report was finalized – and we can go to the website now on the Oversight Committee, and your report is there and there's a document from Nalcor called the – which is the Nalcor response to your report, the management response. Does that ring a bell –

MR. M. KENNEDY: Yes, it does.

MR. SIMMONS: – with you? Okay.

And we can scroll down through this message if we need to, but I think the reference here to the management responses are the draft that Nalcor had prepared of its management response that would be filed to your report and, in fact, it had

been shared with EY before it was being finalized.

MR. M. KENNEDY: Yes.

MR. SIMMONS: Does that ring a bell?

MR. M. KENNEDY: I see the reference now.

MR. SIMMONS: Yes.

MR. M. KENNEDY: So I would expect that that text –

MR. SIMMONS: Okay. Okay.

MR. M. KENNEDY: – is in the final management response.

MR. SIMMONS: So when we look at this quote here: “The approaches to contingency development contemplated by E&Y were undertaken at project sanction in December 2012,” seems to be a factual statement on Nalcor’s part of what their position is. Do you agree with me?

MR. M. KENNEDY: Yes.

MR. SIMMONS: And then they say: “Our current approach, which we believe to be appropriate and prudent at this stage of project development, is to continue to engage in direct discussion on emerging risks and cost pressures and take management action when they have emerged” Now, this is not Nalcor telling you to put this in your report, this is their own management report. Do you see anything objectionable or concerning about this quote here?

MR. M. KENNEDY: I would say that the recommendations that we were providing in 2015 –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – what Nalcor is saying is that they were undertaken three years earlier –

MR. SIMMONS: Right. So you’re not –

MR. M. KENNEDY: – in December 2012.

MR. SIMMONS: Yeah.

MR. M. KENNEDY: So I would infer from that that there is a gap there between what we’re recommending now and when it was last done.

MR. SIMMONS: Okay, well, we could quibble about that because the first sentence I read as saying that back when we developed the contingency in 2012, the approaches we used are like the ones you’re recommending now. But, aside from that, this is Nalcor’s statement in response and I’d suggest to you that EY didn’t have to agree with it or disagree with this.

MR. M. KENNEDY: That’s correct.

MR. SIMMONS: Okay.

Now, when I read this message as a whole – and I just put this out to you for comment, and maybe it’s just the way Mr. Noble writes – but when I read this message here, it seems to me that there’s a dismissive tone that he’s using here when he’s talking about Nalcor’s position that they’re going to put out in response to your report.

So did – was there any – as the EY person in charge of this team, was there ever any concern on your part with internal communications like this, whether there was any concern about the attitude that any of your team may have brought to the work that they were doing on this project?

MR. M. KENNEDY: Because of communications like this?

MR. SIMMONS: Like this.

MR. M. KENNEDY: I don’t think there was anything specific. The team, as it came together after this and as they got to know Richard, began to understand his style of communication, which –

MR. SIMMONS: Okay.

MR. M. KENNEDY: – I wouldn’t choose to write it that way –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – but I can – it’s certainly consistent with how Richard put emails together, for sure.

MR. SIMMONS: Sure. Okay.

And we’ve seen a few internal Nalcor emails that were never intended to go outside the company either. Okay.

A question about the team that you put together in January of 2016 for the new work, and this is not a significant point, but you mentioned Mr. Leather – David Leather, and Mr. Learmonth did ask you about his involvement in the London Olympics as CFO, and the statement was made, and it’s been made in the documents, too, about how the London Olympics came in on budget and on time.

Now, our first witness here at the Inquiry was Professor Bent – I’ll say his name wrong – Flyvbjerg.

MR. M. KENNEDY: Yeah.

MR. SIMMONS: Do you know of Professor Flyvbjerg and his –

MR. M. KENNEDY: Yes.

MR. SIMMONS: – work on megaprojects?

MR. M. KENNEDY: Yes.

MR. SIMMONS: Right.

So if you google his name and London Olympics you’ll find a paper that he did looking at Olympics as megaprojects, and he reports the London Olympics as having been 76 per cent over budget.

Now, it’s not a big deal, but we have two, you know, credentialed people saying something very different on some basic facts. And I’m not so concerned with who’s right and who’s wrong –

MR. M. KENNEDY: Mm-hmm.

MR. SIMMONS: – on this, but do you have any kind of comment on – in the consultant world about how usual or unusual it is to seek

consultants having very different views sometimes on things such as this?

MR. M. KENNEDY: Well, certainly, consultants do have different views.

MR. SIMMONS: Yes.

MR. M. KENNEDY: With costs and budgets, I’m always reminded of the maxim: It depends when you start counting –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – and it depends who’s doing the counting.

MR. SIMMONS: Mm-hmm. Okay.

And the other thing I wanted to ask you about, then, was – P-03086, please. This was the email message from Mr. Kelvin Parsons with his notes of presentation that had been made to Premier Ball.

THE COMMISSIONER: Did you say it was 03386?

MR. SIMMONS: Oh, 03086.

THE COMMISSIONER: Oh, I’m sorry.

MR. SIMMONS: Volume 2, tab 83.

Mr. Learmonth took you through a number of bullet points on several pages of that presentation. So we can just scroll down – you can just stop there, that’s fine.

Is there a report that has all this advice in it?

MR. M. KENNEDY: Of this meeting?

MR. SIMMONS: Yes.

MR. M. KENNEDY: No.

MR. SIMMONS: Is there a presentation that was used at that meeting that has all this in it?

MR. M. KENNEDY: No.

MR. SIMMONS: Because there’s a lot in these notes that I don’t find expressed the same way in

any of the reports that EY did. Is that – would that be a fair statement?

MR. M. KENNEDY: In part. I think you’ve got to remember that we were just beginning to get the briefings on the Astaldi scenario and our conclusions about the Astaldi scenario were not concluded by the time of issuing the April 15 report.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: So I would describe these comments that are attributed to us, to EY, as being comments as we saw them on February 25, based on what we knew at the time.

MR. SIMMONS: Yeah.

Because I don’t – I know these aren’t your notes –

MR. M. KENNEDY: (Inaudible.)

MR. SIMMONS: – so I didn’t see that qualification in it. But you would apply that qualification to the items dealt with in these notes, that this was a point-in-time view before you had actually completed your work.

MR. M. KENNEDY: That’s right.

MR. SIMMONS: Yes, correct, okay.

And unlike other work done in a more formal way where you would provide – you would interact with Nalcor and provide Nalcor with notice of what conclusions you were reaching, so they could have an opportunity to provide more factual information, summary information, or even challenge them. That process hadn’t happened for anything that was reported in this meeting –

MR. M. KENNEDY: That’s correct. Yes. This was – as I recall, it was an invitation to have a conversation with the premier on our views on how things were going overall and how things were going with Astaldi. And the extent that it was off the record was clear. And it was supposed to be an hour – it was at least three hours.

MR. SIMMONS: Okay.

Almost done – can we go to P-03282, please, which is at volume 1, tab 4. We’re right back to the beginning of the engagement here, March 20, 2014. And can we scroll down, please. Stop there.

The last – this is an internal EY message, and the last paragraph there says: “There is still a larger” – role to – “play here to provide ongoing assistance which I think we are positioned very well to go after.” So it appears at the outset EY was interested in looking for opportunities to expand its role and do additional work, correct?

MR. M. KENNEDY: If there was value to be provided, yes.

MR. SIMMONS: Right, right.

So when we come up to 2016, then, meeting with the premier, there had been a change in government. Did – and I’ll just throw this straight at you: Did EY view that as an opportunity to expand its role and to do more in-depth, involved consulting work for the remainder of the Muskrat Falls Project?

MR. M. KENNEDY: Because there was a change in government?

MR. SIMMONS: Did you see that as an opportunity?

MR. M. KENNEDY: I don’t think that we viewed a change in government as necessarily –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – doing that. We did believe that we had issued – we had started to issue recommendations in 2014 and at the conclusion of the fieldwork in the second go-round in 2015. And then there had been a pause –

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: – where the recommendations had not been implemented by staff at the government.

MR. SIMMONS: Mm-hmm.

MR. M. KENNEDY: To the extent that that would be changed by the political side of the government changing, I can't comment on that.

MR. SIMMONS: Okay. All right, that's satisfactory.

Thank you very much, Mr. Kennedy.

I don't have any other questions for you.

THE COMMISSIONER: I think we'll take our 10 minutes here now and come back.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Concerned Citizens Coalition.

MR. BUDDEN: Good afternoon, Mr. Williams.

As you will – sorry, Mr. Kennedy.

MR. M. KENNEDY: Kennedy.

MR. BUDDEN: As you will recall from our brief conversation outside, my name is Geoff Budden, I'm the lawyer for the Concerned Citizens Coalition. And the coalition was a group of individuals who, for many years, have been observers and critics of the Muskrat Falls Project. So I have about, I'd say, 15, maybe 20 minutes worth of questions for you today.

So, I'll start, you know, from reading the interview, it seems that your career essentially has been devoted to building things and then you move from that phase into a different phase of your career where you provided oversight to other people and other projects, large scale projects in many cases. Is that a fair description of your working life?

MR. M. KENNEDY: That's certainly been the focus of my time at EY in the past four years. I wouldn't categorize that as being typical of the years before that, certainly at Stantec.

MR. BUDDEN: Okay.

But from reading your, again, the interview and your brief outline of your career, I presume that over your career, not just the last four years, but over the span of your career, you would've worked – perhaps been part of oversight committees, previous to encountering this one?

MR. M. KENNEDY: Oh, yes, for sure.

MR. BUDDEN: Okay.

And what sort of expertise do you generally find – have you generally encountered on oversight committees? And I'm thinking of, you know, professional accreditations, professional engineers, people with experience in large-scale construction projects. What kind of people have you encountered on oversight committees?

MR. M. KENNEDY: So, I think the first comment I would make is that there needs to be diversity in an oversight committee, within a government project. It, obviously, shouldn't just be government officials. You should have independent members, and I think they, sort of, independent members probably fall into two camps.

One is people who have experience and credibility around being able to handle complicated public policy issues and you can have a range of backgrounds: law, accounting, senior leaders of businesses, et cetera.

And then I think you look for – and particularly on a project like this – you look for people who have hands-on experience and expertise of program and project management. And I would differentiate that, specifically, from necessarily being a professional engineer or a geoscientist –

MR. BUDDEN: Mm-hmm.

MR. M. KENNEDY: – or an architect. People may have those qualifications but – and be registered as engineers or architects but they're not actually – their training and experience often isn't the management of delivery of projects, which is something that I would look for.

MR. BUDDEN: Sure.

So, for instance, you could have a long career as an engineer or as an accountant and never encounter a Monte Carlo simulation, for instance, I would assume. Like, that's something that's specific to large-scale construction projects.

MR. M. KENNEDY: You could have a career as an engineer or an accountant or an architect where you would never come across a Monte Carlo.

MR. BUDDEN: Sure.

And, again, in your experience, would you typically find on oversight committees individuals who – when you mention, you know, probability, probabilistic analysis or a Monte Carlo simulation, they would know what you mean? Is that typically the kind of expertise you would find in an oversight committee?

MR. M. KENNEDY: Yes, and I think specific to those individuals who have experience of program and project management delivery.

MR. BUDDEN: Okay.

And would such committees typically seek external, and I think you've somewhat covered this but just to be absolutely clear, would they typically seek external or independent expertise? Somebody from outside the entity or a related entity?

MR. M. KENNEDY: It's not always done. I – we believe that global good practice is to seek external resources.

MR. BUDDEN: Sure.

What we – I would suggest to you and, again, you're the witness so it's your thoughts that are important, not mine, but when you came to this project at the beginning of 2016, the oversight committee you encountered at that time, I would suggest to you, consisted of, you know, seasoned, I think is the phrase that one of your documents uses or senior civil servants, but not – none of whom were engineers or had significant large-project experience. Would you agree with that observation?

MR. M. KENNEDY: Yes.

MR. BUDDEN: Okay.

Would, again, from your experience, would that be unusual in an oversight committee such as this sort?

MR. M. KENNEDY: I'm not sure I'd call it unusual. It's sometimes the case that that is the arrangement that's in place and if we're asked to provide an opinion, we would say that it's important to look at broadening the depth and breadth of experience.

MR. BUDDEN: Sure.

I'm gonna put to you a quote from your interview and it's – it refers to a particular exhibit that we seen here today but I neglected to note the exhibit number, so I apologize for that, but I think from the context it will be fairly obvious what I'm talking about.

I'm reading from – it starts with a question Mr. Learmonth put to you halfway through page 64. Tab 69, I'm reading here now from Mr. Learmonth and it's an exchange between the two of you.

Mr. Learmonth: It's a meeting note, I guess, Muskrat Falls report update, organizer: David Steele; attendees: Richard Noble, Charles-Antoine St. Pierre [sp. St-Jean], Paul Hickey.

If you look at the bottom of this team, David Steele writes: "As you read it, you will see that there is still a significant amount of divergence from Nalcor's position to EY's observation. I feel that the OC" – Oversight Committee – "is presenting two sides without an inclusion of its own position or satisfaction with Nalcor's response. Please read through and let's all think of the implication/risk of such a report being released. Julia expects a response from us tomorrow, hence the reason for an early meeting ... – everyone's schedule appeared open."

And then – Mr. Learmonth have been quoting, and I imagine you recognize the quote, I know he's going back to his words: Now, do you agree that this is, you know, what's going on? Am I correct that this is what's going on here, that there's some suggestion that the Oversight Committee rather than, like, accepting your report, is going to put out your report and

Nalcor's comments on the report without some indication about which – whether they accept your report or not. Is that the concern here?

And you say – there's a brief interruption, but then you say: I would say that David is raising an issue for discussion internally that we have prepared a report. Nalcor has prepared a response, there is a gap and the OC doesn't appear to put together its own view of what should happen.

And you – and Mr. Learmonth says: Yeah, this is fence-sitting, isn't it? I mean, that's fence-sitting, isn't it? I mean, you retain an expert to prepare a report, you get the report, you either accept it or – in whole or in part. Why would – what would motivate the Oversight Committee, based on your information, to put in this situation – the Oversight Committee should make up their mind whatever – whether they accept your report or not.

And you say: Or they should certainly provide – if there are things in the report that they disagree with, they should put them in writing. Mr. Learmonth: And send them back to you? And you say: Yeah.

So I guess my question there is – again, we're talking of the work of this GNL Oversight Committee. And I guess I would suggest to you, for you to agree with or disagree with, that a likely explanation for why the Oversight Committee perhaps just presented the two versions of events rather than analyzing and integrating them, was they simply lacked the comprehension of these matters, the knowledge to do that kind of analysis. Would you agree with that?

MR. M. KENNEDY: I would think that's – I would say that's a fair statement.

MR. BUDDEN: Okay.

You, of course, came on the scene at the beginning of 2016. Did the composition of the Oversight Committee change thereafter during your period of involvement?

MR. M. KENNEDY: I don't recall it changing. It did change in I believe it was March 2017, because we met with some independent

members who had been appointed when we were doing the field work in July 2017.

MR. BUDDEN: Right. And some of those people, at least one of those, would've been an engineer, I believe, a Mr. Muise. Do you recall that?

MR. M. KENNEDY: Yes, I do. Yes.

MR. BUDDEN: Sure.

MR. M. KENNEDY: That's correct.

MR. BUDDEN: How would you compare that version of the Oversight Committee to the one that was in place when you first came on the scene, in terms of their ability to engage on a – on the technical level that the project involved?

MR. M. KENNEDY: It was certainly – it certainly offered a broader experience base of – of project implementation. I – back to my point around experience within program and project delivery, I would have to look at as to whether there was any significant change.

MR. BUDDEN: Sure. Okay.

And move on to another quote, this is from page 8 of the interview, a shorter quote. Mr. Learmonth says to you – asks you: So would it be anticipated in these circumstances that there would be some pushback from Nalcor or, you know, that they're being reviewed. Like, at this stage of the review, would you anticipate some pushback from Nalcor? And you say: I think, in my experience, it's often the case that there was pushback.

And you then – then you go on to say: What I would also say, though, is that it's also often the case that project teams – particularly on larger scale and high-profile projects – expect reviews and are well prepared for reviews.

And, I guess – and I'll ask you for the entirety of your involvement with this project and including what you familiarize yourself with, through review of what came before you. Did the Nalcor team present to you as a project management team that expected reviews and were well prepared for reviews?

MR. M. KENNEDY: I think it's factually correct that they were – that they expected reviews and were well prepared for reviews. I would say that is factually correct.

MR. BUDDEN: Okay.

Being prepared, I suppose, perhaps – I would suggest to you there's being prepared to, I guess, resist a review, to fight it trench by trench, and there's prepared to engage with the reviewers in good faith. Would you be – go so far as to say that the project management team was well prepared to engage with EY in good faith?

MR. M. KENNEDY: No.

MR. BUDDEN: Okay.

So were – was there preparation or the former category, prepared for trench warfare, to resist the engagement?

MR. M. KENNEDY: I wouldn't characterize it in those terms; I think it depended on the individuals we were having the dialogue with.

MR. BUDDEN: Okay.

Well, let's go to Exhibit P-03414, please, Madam Clerk, if we may. Again, this predates your involvement, but it is an exhibit that we have had here. And if we can scroll down just a little bit, please.

MR. LEARMONTH: It's tab 3 – book 3, tab 135.

MR. BUDDEN: Okay.

And if we can scroll a little further, it's the quote where – essentially where Mr. Harrington walks out of the interview. So I neglected to note the page number when we went through, but it's not a long document.

MR. LEARMONTH: Six.

MR. BUDDEN: Page 6? Thank you.

So we've encountered this, but I think it bears being returned to because I find it rather extraordinary. Quote: "As soon as EY prepared

to formulate the first question, Paul Harrington interrupted the meeting and left saying that he was expecting a debriefing and was not prepared to respond to any question."

I will suggest to you, perhaps, that is more like a trench-warfare resistance to any kind of meaningful engagement. Would you agree with me there?

MR. M. KENNEDY: I would agree on the premise that assuming that we are provided an agenda, we had provided examples of the kind of questions that were going to be asked that – on formulating the first question, for an individual to leave the meeting saying was expecting a debrief, that's unfortunate.

MR. BUDDEN: Sure.

And while this may be perhaps an extreme example, was this rather indicative of Mr. Harrington's engagement with EY?

MR. M. KENNEDY: Certainly from 2016 I wouldn't – I would say it was not typical of Paul Harrington's engagement with us.

MR. BUDDEN: Okay.

You draw a distinction there from 2016. How about prior to 2016?

MR. M. KENNEDY: Partly because I wasn't personally witnessing it, but having –

MR. BUDDEN: Of course.

MR. M. KENNEDY: – spoken to the – and spoken recently to individuals who were at this meeting and other meetings, it's just really unfortunate.

MR. BUDDEN: What is really unfortunate?

MR. M. KENNEDY: That the manner of just walking out of a meeting.

MR. BUDDEN: Okay and that wasn't isolated behavior, I would suggest to you. That was

perhaps typical of his approach to EY prior to 2016.

MR. M. KENNEDY: I don't know if I'd say it was typical, but there were a number of occasions.

MR. BUDDEN: Okay.

So, taken on the whole, his attitude and engagement with EY was not helpful or appeared to be, perhaps, exercising the best of good faith.

MR. M. KENNEDY: I'd agree with that.

MR. BUDDEN: Thank you.

Were there other members of the project management team whose behaviour was similar, perhaps, to Mr. Harrington's, in your experience?

MR. M. KENNEDY: I would say that – obviously, Paul Harrington, Lance Clarke – in different ways, Ed Martin. There was an undercurrent of this, as I referred to earlier, a lack of willingness to come forward with information.

As for examples of Paul – this example here of Paul interrupting the meeting – there were examples that was – that was somewhat similar, but I wouldn't say they're as – quote, unquote – as a, you know, kind of as abrupt as that.

MR. BUDDEN: Sure.

MR. M. KENNEDY: And, Paul is a project director. I've seen and worked with individuals (inaudible) Paul throughout my career. So in some ways, I'm a little bit less sensitized to it, I guess.

MR. BUDDEN: They're not (inaudible) delicate souls, perhaps.

The phrase I used in one commentary of him was, essentially, look, here is this guy – as much as you just said – this is a project manager, they are a special breed. They have to be tough, considering what's demanded of them, and they have to be charismatic, they have to be a bit of a

street fighter. You remember coming across that quote somewhere in the material?

MR. M. KENNEDY: Mm-hmm.

MR. BUDDEN: Okay.

I would suggest, however, that you don't want somebody who's street fighting with his own side. Like, that's not a positive quality.

MR. M. KENNEDY: Well, sometimes some of the discussions you have internally in projects are equally as lively as the one outside the project, in fairness.

MR. BUDDEN: Okay.

But this, I would suggest, and this behaviour that we've heard of here today, really, is obstructionist towards the – your efforts to conduct a government-mandated project review.

MR. M. KENNEDY: As I've said, the – reviewing this particular meeting with the individuals involved, recently, I would agree with that statement.

MR. BUDDEN: Sure. And that's not the only example of such an ism.

MR. M. KENNEDY: There were more examples, yes.

MR. BUDDEN: Okay. Taken as a whole – and realize some individuals were – you know, there are degrees of cooperation, but a – taken as a whole, would you suggest that the project management team was resistant to this overview, to the point of being obstructionist?

MR. M. KENNEDY: At the mid-level down – and I think I'd defined – or, I think Mr. Learmonth defined the, sort of, senior five or six people. At the mid-level down, I don't think there was active obstruction of what we were trying to do.

MR. BUDDEN: But, from the mid-level on up, you believe there was?

MR. M. KENNEDY: It was certainly a theme of the way that – the interactions were going.

MR. BUDDEN: Sure. And the names, I believe Mr. Learmonth offered, were Mr. Martin – Edmund Martin, Mr. Gilbert Bennett, Mr. Paul Harrington, Mr. Jason Kean and Mr. Lance Clarke – I’m not as certain of that one, but I believe those –

MR. M. KENNEDY: That’s –

MR. BUDDEN: – are the five names.

MR. M. KENNEDY: – no, I would include Mr. Clarke in that.

MR. BUDDEN: Okay.

To your knowledge, was Ernst & Young ever engaged or asked, in any way, by the Government of Newfoundland – or any officials of the Government of Newfoundland, to evaluate those individuals, their skills, competence, fitness for the project. Was that ever something that was requested, to your knowledge, of EY?

MR. M. KENNEDY: Not specifically.

MR. BUDDEN: Okay. Generally?

MR. M. KENNEDY: I recall that there was, later into February, there was –

MR. BUDDEN: Of 2016.

MR. M. KENNEDY: – of 2016, there were conversations around that.

MR. BUDDEN: Can you tell me more about that?

MR. M. KENNEDY: I think we were asked our views on the different individuals and so on and so forth. And within our team, there was a range of opinions as well.

MR. BUDDEN: Okay.

MR. M. KENNEDY: So.

MR. BUDDEN: Who did the asking? I guess, first, who asked that?

MR. M. KENNEDY: I can’t recall specifically, but it would – I’m sure it would’ve come up in

the conversations that we were having with the steering committee of the Oversight Committee, which would’ve included the clerk. I don’t recall, specifically, whether it came up in the meeting where the exhibit was shown – with the notes from Calvin Parsons, with the Premier. I can’t recall specifically, but I wouldn’t be surprised if we were asked.

MR. BUDDEN: So if I were to ask Ms. Mullaley, that’s perhaps something that she could tell us more about?

MR. M. KENNEDY: She may have a clearer recollection than me.

MR. BUDDEN: She was present, was she?

MR. M. KENNEDY: I can’t say for sure. I do remember, within our team, having quite extensive discussions around the senior leadership of the project.

MR. BUDDEN: Okay.

Do you believe that EY’s input played any role at all in Mr. Martin leaving the project?

MR. M. KENNEDY: I think our report speaks for itself in terms of the recommendations that we provided on what needed to happen next with the – with the project. I can’t say whether it led in a direct way or an indirect way, Mr. Martin leaving.

MR. BUDDEN: Sure.

It’s a theme running through much of the report – both before your time and a little while after – a fear, I guess, that EY would be tainted or its reputation would be damaged. And I don’t know if it was ever stated – or I don’t have a quote at my finger tips, but my strong sense of it was a fear that you’re being brought into this project to sort of give your reputational stamp of approval to the oversight process and yet, you weren’t being allowed to do your job as you wish to do it.

That is a theme. I’m correct there, aren’t I?

MR. M. KENNEDY: I think it’s a theme that’s prevalent in many of these kind of files that we take on. We – it is our advantage as a firm that

our brand and reputation is generally held in high regard. Equally, that can be used as a – EY’s involved, so everything is fine.

So we are very, very careful around the way that we set up statements of work on what we’ve agreed to do and the limitations that we have to do. Having said that, we are also mindful of however careful you are in the – certainly in the public realm, it – you know, people aren’t particularly interested in the details.

MR. BUDDEN: Yeah. They’d always read the caveats.

Perhaps we’ll go to exhibit – this is really my last question – Exhibit 02698, Madam Clerk. And it’s the first page – I think it might just be a one-page or two-page document.

THE COMMISSIONER: Okay, this is one you’re gonna have to look at your screen.

MR. BUDDEN: Yeah, this – you won’t have this one.

MR. M. KENNEDY: (Inaudible.)

MR. BUDDEN: It’s an exhibit that came up through one of the politicians.

What this is – well, it says for itself: “Speaking Notes for Oversight Announcement, Thursday, July 31, 2014.” Well before your time. But if we can scroll down to the fourth paragraph, I believe, Madam Clerk. Yes. If you could hold the fourth and fifth one just like you have it.

And I’ll just read them: “Along with the oversight committee’s first report, several additional documents have also been released. These include the terms of reference for the oversight committee, two reports prepared by the Independent Engineer and Ernst and Young, and a shareholder letter that states the terms of Nalcor’s reporting requirements to the oversight committee.”

And here’s a paragraph, I guess, I’m gonna return to: “Our government continues to facilitate robust oversight of the Muskrat Falls Project on behalf of the people of Newfoundland and Labrador. Prudent oversight remains a

priority for us and it will be ongoing through the construction and operation stages of the project.”

So two things are going on here, I’d suggest. In paragraph five the government is essentially saying: Look, you know, taxpayers, citizens feel reassured, we have robust oversight in place. And if you go back to previous paragraphs, they’re talking about you guys as one of the, I guess, pillars of that robust oversight.

Is this the kind of scenario that you were – had in mind when you were worried about reputational damage, be – your name being taken in support of an assertion of robust oversight?

MR. M. KENNEDY: Well, when you consider the small scope of work that we had undertaken by the time of this memo, which I believe – I can’t (inaudible) –

MR. BUDDEN: This is three months into your gig, I know that.

MR. M. KENNEDY: I believe the – yeah, July 2014, I mean –

MR. BUDDEN: Yeah.

MR. M. KENNEDY: – we had a planned scope of work which was – I’m not saying the dollar value is necessarily completely indicative, but it was a small – it was a small piece of work.

I agree with you it does build on that theme that it’s putting Ernst & Young’s name there. At that point, the work that we had done, and from the observations, I think, that we’ve – that we reported out on, I wouldn’t characterize it as robust oversight.

MR. BUDDEN: Sure.

Do you ever feel, through the end of 2015, that you had been permitted to apply that – you know, speaking the collective you – EY had been permitted to apply its skills to a degree that would justify using you guys as supportive assertion of robust oversight?

MR. M. KENNEDY: No.

MR. BUDDEN: Thank you.

That's my last question.

THE COMMISSIONER: All right.

Edward Martin – Edmund Martin.

MR. SMITH: Good day, Sir.

Harold Smith for Edmund Martin.

I will be brief since Mr. Simmons asked almost all the questions I had, actually, so I'll try and be as brief as possible.

The interesting thing is – in relation to Mr. Budden's questions, you described, you know, Lance Clarke and Paul Harrington as having, I guess, a reluctance to be – Mr. Harrington and Mr. Clarke having a reluctance to provide you with the kind of information that you thought you were entitled to. But then you said, and I quote: In different ways, also Ed Martin.

Could you explain what you mean by in different ways? Obviously you have no instances where Mr. Martin walked out of a room when the question was asked of him. So what's your ...?

MR. M. KENNEDY: I think the simple answer to that is we formed a view that –

MR. SMITH: Who did the – formed a view?

MR. M. KENNEDY: That we, EY, formed a view –

MR. SMITH: Your team? Yeah.

MR. M. KENNEDY: – the team –

MR. SMITH: Yeah.

MR. M. KENNEDY: – formed a view that – I know it broadened it beyond Paul Harrington and Lance Clarke, Gilbert Bennett, Jason Kean – that this reluctance was in part or was very clearly an expectation that was being given by the CEO.

MR. SMITH: So you're suggesting that Mr. Martin, from your perspective, directed the project management team to be difficult?

MR. M. KENNEDY: That's how it appeared at the time, yes.

MR. SMITH: And what's your evidence of that, Sir?

MR. M. KENNEDY: I think probably an example of that – and, I mean, I certainly don't have a document that says, you know, don't do this –

MR. SMITH: No –

MR. M. KENNEDY: – do this.

MR. SMITH: – but you had meetings with Mr. Martin, did –

MR. M. KENNEDY: We had –

MR. SMITH: – was there any indication in the meetings with Mr. Martin that he had given that direction?

MR. M. KENNEDY: I think one place where we inferred that was at a meeting on February 3 where we presented to the Nalcor team an overview of our initial findings. So I was the one who walked through the – I walked through the findings. And we expected it to be, you know, kind of an open dialogue on getting a response: what do you think – some backwards and forwards. And as I recall Mr. Martin stood up and took the team out of the room, and said: We'll be back to you with our comments. And it struck me at the time as a somewhat odd culture for how to approach that meeting based on experiences that I've had –

MR. SMITH: It's an odd culture for the CEO to make sure everyone is aligned on the team, as to what the response ought to be to your observations.

MR. M. KENNEDY: Just –

MR. SMITH: That's an odd culture?

MR. M. KENNEDY: Just to without warning say: Okay, we're gonna leave the meeting room.

MR. SMITH: How long were they gone?

MR. M. KENNEDY: Thirty, 40 minutes.

MR. SMITH: Okay.

And they came back?

MR. M. KENNEDY: They came back.

MR. SMITH: And they gave you a response.

MR. M. KENNEDY: Yes, Ed gave a response.

MR. SMITH: Ed gave the response. So he could've just been merely asking –

MR. M. KENNEDY: He –

MR. SMITH: – his project management team: What are your thoughts on (inaudible) their comments?

MR. M. KENNEDY: He could well have been.

MR. SMITH: Right. I mean, he's the CEO. He's not in the weeds –

MR. M. KENNEDY: Yeah.

MR. SMITH: – is he?

MR. M. KENNEDY: No.

MR. SMITH: So how did you get the impression that it was him directing the team?

MR. M. KENNEDY: As I said, that was the impression that was left with our team.

MR. SMITH: Yeah.

MR. M. KENNEDY: I'm not – I can't provide anymore –

MR. SMITH: No facts.

MR. M. KENNEDY: No facts.

MR. SMITH: Okay.

I don't know, Mr. Commissioner, if it's appropriate or not, but one of the documents referred to by Mr. Simmons regarding the cost overrun of the Olympic project, I do have a copy of and I can offer it, you know, to the clerk. To –

THE COMMISSIONER: What you do is subsequent to this –

MR. SMITH: Yeah.

THE COMMISSIONER: – as you would normally do if you have an exhibit, you contact Commission counsel, they will then have it vetted through, if it needs to be vetted, and –

MR. SMITH: Okay.

THE COMMISSIONER: – so, yes, that can be entered as an exhibit, subsequent –

MR. SMITH: I just – I know the document referred to so I thought I'd –

THE COMMISSIONER: Yeah.

MR. SMITH: – make it available since I already had it.

THE COMMISSIONER: Okay.

MR. SMITH: Now, I noted in your review of your CV that you worked in a number of different projects and one of the comments I was unfamiliar with, so I'd ask you, is social – excuse me – it's with the projects you worked in your career, and it was a social infrastructure –

MR. M. KENNEDY: Yes –

MR. SMITH: – project?

MR. M. KENNEDY: – I said that.

MR. SMITH: What are they?

MR. M. KENNEDY: That's an umbrella term for hospital projects, school projects, housing projects, that type of thing.

MR. SMITH: Yeah, but they don't include hydroelectric generation, do they?

MR. M. KENNEDY: Not within social infrastructure, no.

MR. SMITH: And did – do you have any specific hands-on experience with large-scale hydroelectric projects?

MR. M. KENNEDY: Not prior to this.

MR. SMITH: Okay.

And would you feel you're in any way impaired from commenting on those kind of projects in your role?

MR. M. KENNEDY: Well, obviously, it would be beneficial to have more experience, but, you know, I was part of a team that has been involved in lots of different types of megaprojects. And certainly in the Canadian context, there hasn't been a major, greenfield hydroelectric project built, I believe, since Revelstoke in BC.

MR. SMITH: And what year was that? Do you recall?

MR. M. KENNEDY: I believe it was 1986.

MR. SMITH: So, effectively, there's not really a lot of people that have, you know, serious, senior role management of a big hydro project.

MR. M. KENNEDY: I think that's true across Canada. It's true across the six senior individuals –

MR. SMITH: '86 is 30 years ago –

MR. M. KENNEDY: Yeah.

MR. SMITH: – or longer, right? So, it didn't surprise you, then, that many of the executives and senior project management team had origins in the oil and gas industry?

MR. M. KENNEDY: No, it didn't surprise me.

MR. SMITH: No.

Now, final series of questions for you, Sir. I noted that your original retainer was about \$25,000, and in correspondence – certainly internally if not externally, but certainly internally – there was references to how your name associated with that particular level of project, depending on what happens, could be damaged – your reputation (inaudible) could be damaged. And you made overtures, I think, to the Oversight Committee and maybe to government to expand your scope of work. Is

that a fair characterization of what happened between '14 and '15? From \$25,000 to \$250,000 retainer?

MR. M. KENNEDY: I don't think it was overtures to expand the scope. With the first contract, which was \$25,000 and which I believe became \$90,000, that was almost entirely or entirely due to the length of time that it took to complete the engagement.

MR. SMITH: Okay.

And – but at the same time, in your reports, as I understand it – certainly the internal memoranda – suggested that additional work really needs to be done in order to avoid us being treated or looked at as a pillar – quote, unquote – of the oversight.

MR. M. KENNEDY: I don't think I'd agree with the statement that additional work means that that will address the reputation issue.

MR. SMITH: Okay.

So the additional work – what was the impetus for seeking additional – an additional retainer over and above the original that had a cost overrun of 200 per cent or more?

MR. M. KENNEDY: Well, the entire engagement through the three or four years was not over budget.

MR. SMITH: Okay. Just that particular piece of it?

MR. M. KENNEDY: That particular piece was over the allowance that had been established.

MR. SMITH: So you are well aware, then, of – over budget and outside the original schedule, that things happened that prevent you from hitting your original schedule and/or your budget. Correct?

MR. M. KENNEDY: Yeah, absolutely.

MR. SMITH: Now, there were – I think Mr. Learmonth suggested this morning that there were two, like, umbrella – or an umbrella, which was extended, contract – contracts – with EY, and then there were three specific other contracts

above that – over and above that. Three specific engagements.

MR. M. KENNEDY: There were four specific statements.

MR. SMITH: Four. I stand corrected. So, four specific engagements. And the engagement prior to the government change would be what dollar value? Do you recall? What were the total engagements?

MR. M. KENNEDY: I believe the final agreed statements of work was around about \$118,000.

MR. SMITH: A hundred and eighty thousand?

MR. M. KENNEDY: Hundred and eighteen.

MR. SMITH: Yeah, 118, I'm sorry. Hundred and eighteen thousand. And after the government change in March or February of '16, the new contract, at that time, was worth what?

MR. M. KENNEDY: So, this is the next contract?

MR. SMITH: Yeah.

MR. M. KENNEDY: The statement of work gives a range of between 750 and \$1.25 million.

MR. SMITH: Would that be the kind of significant opportunity that EY was touting in one of their internal emails – be able to get from three or four engagements at \$118,000 to one engagement for \$1.2 million?

MR. M. KENNEDY: I can't comment on that.

MR. SMITH: Okay. Thank you.

I can't – I'll leave it there. Thank you very much, Sir.

THE COMMISSIONER: Thank you, Mr. Smith.

Kathy Dunderdale.

MR. HEWITT: No questions, Commissioner.

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

MR. J. KING: Good afternoon, Mr. Kennedy. Justin King on behalf of a group of former provincial government officials between the years 2003 and 2015. So, just for some context for you, that's a group of former premiers and Cabinet ministers.

The first question I have for you is in relation to your experience in dealing with Crown corporations in your career. This was discussed in your interview. Do you recall that line of questioning with Mr. Learmonth in your interview?

MR. M. KENNEDY: Yes, I do.

MR. J. KING: I don't think it was discussed today. And you stated that you did have some significant prior experience in dealing with Crown corporations.

MR. M. KENNEDY: That's correct.

MR. J. KING: Okay. I'm just going to read a quick quote from your interview. This is at page 11 – so Mr. Learmonth says: So, based on your experience, have you ever seen a situation where a Crown corporation would, I would say, have the nerve to, you know, act in this way when government is the entity that is bringing in the – you know, has decided that they need the oversight. And you said: I have seen it. Yeah.

So, I'm just wondering if you could provide some context into where you'd seen this before and your experience in that regard.

MR. M. KENNEDY: Well, I can't give you too many specifics because of confidentiality.

MR. J. KING: Of course.

MR. M. KENNEDY: But, certainly, it is a reasonably common dynamic for Crown corporations, particularly where they're set up as – with an independent governance model to certainly have a – in some cases, be resistant to specific oversight activities.

MR. J. KING: Okay.

MR. M. KENNEDY: In some cases, it's legislated. It could be what is a general review, for example, et cetera, et cetera.

MR. J. KING: And I think in your interview, you said it would be part and parcel doing government projects?

MR. M. KENNEDY: I think there's always a dynamic where there is – government will have – if I could say, from the political side, has objectives. The Crown corporation is – as much as possible, and rightly – is seeking a degree of independence from government, and there is a kind of vague area in between where that's where the discussion is.

MR. J. KING: Okay.

MR. M. KENNEDY: But I think that's fairly consistent across the public sector.

MR. J. KING: Okay.

And would that be, kind of, distinct from, say, a private sector review that you might've done that creates distinct problems for the work that you had to do?

MR. M. KENNEDY: It's – I mean, the private sector has other – there are other features of that, but certainly, you know, in the private sector, a – for a public company, it is ultimately – its immediate governance is its board, and it reports to shareholders, which is a different animal.

MR. J. KING: Okay.

Some questions in relation to risk management. This is generally the period of mid-2015. And in your interview and, I guess, this morning, as well, you discussed emails going back and forth between EY and the Oversight Committee relating to the potential for doing a scope and risk management review. So, you recall looking at those exhibits.

And your opinion, based on your review of the documents, was that – and this came up in your interview – was that not doing a risk management review at that time didn't eliminate the value that EY was bringing to the project in terms of their scope of work at that time.

MR. M. KENNEDY: Yeah, I think it would've been ideal to have done the risk and scope management. We would certainly have been more comfortable with that.

MR. J. KING: All at the same time.

MR. M. KENNEDY: All at the same time. But we think there was still significant value in the insights that we were able to develop from the scope of work that was agreed.

MR. J. KING: Okay.

And in your interview, you made the statement that these categories don't operate in discrete buckets? Do you recall making that statement?

MR. M. KENNEDY: Yes, I do. And –

MR. J. KING: And –

MR. M. KENNEDY: – that's correct.

MR. J. KING: – can you expand on that a little bit?

MR. M. KENNEDY: Well, at a first step, cost and schedule are, almost by definition, are directly linked. The longer it takes, the more it's gonna cost. As I said earlier, I have a view – and I think it is a reasonably common view – that cost and schedule are results of how well you manage scope and risk.

The two biggest drivers on any project are scope and risk. Have you defined the scope? And, then, are you managing the risks associated with that scope?

MR. J. KING: Okay. And we also just discussed this morning some items in terms of Nalcor's Internal Audit. And there is some correspondence relating to that issue. And, I believe, Exhibit 03331, if we could go to that?

THE COMMISSIONER: 03331. Okay. So, that's at tab 53.

MR. J. KING: So, this is an email from David Steele to Craig Martin. And in the middle paragraph, he says: "Relying on the work of others is a concept well documented in professional standards. We are not saying that you can't or shouldn't rely on the work of IA... you should strive for this where possible." And it goes on from there.

So, in terms of the Internal Audit, and your experience in past – I know you weren't involved at this time, particularly, but in terms of your past experience, would internal audits be something that an Oversight Committee would generally be able to rely upon or, at least, become part of the conversation?

MR. M. KENNEDY: Well, an internal audit function, in a Crown corporation or in a public company or a private company, is an important characteristic of good governance. What I would offer as a statement here is that in terms of doing – looking at assessing cost, schedule, scope and risk, that an internal audit function very often doesn't have the type of expertise that we were bringing to the table, which is a real understanding of how you deliver projects.

And as a theme, what we bring is we're looking – we're not looking to provide a status of the project; we're looking to provide recommendations that improve the future, whereas internal audit functions, their tendency is to look what has happened in the past and, obviously, provide recommendations to avoid it in the future.

MR. J. KING: So, in terms of that expertise – I know you're saying there's a distinction there in terms of what they both bring to the table – what would the Internal Audit bring to the table in terms of their expertise?

MR. M. KENNEDY: I think they would bring a much closer knowledge of, you know, specific processes and procedures that – and would have a, you know, a – be much more familiar with financial systems and so on and so forth.

MR. J. KING: Madam Clerk, if we could go to 03339?

THE COMMISSIONER: Tab 61.

MR. J. KING: So this is an email from David Steele to Craig Martin, and I believe in this email – basically, what comes out of it is that EY determined that two reports in this time period was an option, and one of those wouldn't include the potentially commercially sensitive information.

MR. M. KENNEDY: That's correct.

MR. J. KING: Yeah.

And my understanding of the exhibits this morning was that both the Oversight Committee and EY were waiting for Nalcor to provide some further detail on the rationale for those commercial sensitivity issues?

MR. M. KENNEDY: That's correct.

MR. J. KING: Okay, and I know this was obviously before your involvement; we're getting pretty close to the time when you started.

When you started in your engagement, was there any discussion or any documentation that suggests that the reason for the delay in submitting the – or releasing the report in that time period surrounded this issue of commercial sensitivity?

Do you recall any conversation around that?

MR. M. KENNEDY: Not specifically around commercial sensitivity.

My recollection of how it was relayed to me as I got involved is that there was continual back and forth between Nalcor and government on the report itself, as –

MR. J. KING: Okay.

MR. M. KENNEDY: – opposed to it being specific around commercial sensitivity.

MR. J. KING: Okay.

And I guess we could say commercial sensitivity was certainly one of those –

MR. M. KENNEDY: Oh, for sure.

MR. J. KING: – issues, okay.

MR. M. KENNEDY: For sure.

MR. J. KING: And, I guess, just generally in relation to commercial sensitivity, is that an issue that you have a lot of experience in dealing with in terms of an issue that you see come up often in your work in the past?

MR. M. KENNEDY: It's a common issue.

Our view is that it's a non-issue because we're subject to confidentiality agreements and non-disclosure agreements like everyone else. I mean, within a project team, you would have, you know, perhaps 200, 300 people that are alive to commercial sensitivity. So, having six people from EY added to that, doesn't make any difference albeit that we are from – come at it from a very different perspective.

MR. J. KING: Right.

Just a question about your engagement with the Oversight Committee, generally. I think this has been drawn up earlier.

I'm gonna go to page 8 of your interview. This is probably your second interview, yeah.

So this is some questioning around your understanding of the engagement with the Oversight Committee. So, Mr. Learmonth says: There's references here to government, and we know that you were retained by the Oversight Committee. Did EY regard them as sort of interchangeable pieces? Like, were your instructions for the Oversight Committee or from, for example, the premier's office?

And then you said: I think, generally speaking, we regarded them as one and the same. The Oversight Committee as a group, the premier's office, the clerk, I think we regarded it as all being one and the same.

And then Mr. Learmonth asked a question in relation to who would your instructions come from, and then your answer is that, generally speaking, it would come from Julia Mullaley.

MR. M. KENNEDY: Yes, that's correct.

MR. J. KING: Okay.

So I just wanna clarify your understanding there in terms of who your engagement was with. Was it particularly with the Oversight Committee?

MR. M. KENNEDY: Well, obviously it was with the government but I – my personal – I think the team regarded Julia as the representative of the Oversight Committee.

MR. J. KING: Okay.

And, I guess specifically my concern would be, I guess, the period before December 2015, and this would be, obviously, in reviewing the documents, because you weren't directly involved. But were you aware of any direct involvement from EY with the premier's office or with the premier at that time?

MR. M. KENNEDY: Not specifically.

MR. J. KING: Okay.

My last question relates to the expertise of the Oversight Committee, and I – this came up with Mr. Budden and with Mr. Learmonth as well. So in relation to expertise, what's your knowledge, awareness of the working group that was created by the Oversight Committee?

MR. M. KENNEDY: I don't recall any interaction with a working group.

MR. J. KING: Okay.

MR. M. KENNEDY: I –

MR. J. KING: Do you understand the working group to be part of their initial terms of reference?

MR. M. KENNEDY: My –

MR. J. KING: Again, this will only be in reviewing, 'cause you weren't involved at the time.

MR. M. KENNEDY: Yeah, my recollection of the working group relates to the recommendation that we provided at the end of the first report in 2014 where we called for a working group that had a broad and deep mix of experience.

MR. J. KING: Okay. And that also made it into the terms of reference, in terms of the intent to establish a working group.

Did you have any engagement with a working group through EY, or review any documents in terms of the period before your involvement?

MR. M. KENNEDY: No. Not that I can recall.

MR. J. KING: Thank you.

That's all of my questions.

THE COMMISSIONER: Thank you.

All right. Julia Mullaley, Charles Bown?

MR. FITZGERALD: Hi.

Good evening, Mr. Kennedy.

MR. M. KENNEDY: Hi.

MR. FITZGERALD: My name is Andrew Fitzgerald. I represent Julia Mullaley and Charles Bown.

As you can appreciate as being the fifth or sixth lawyer up, many questions get asked beforehand, and I have to jump around a little.

But at the outset, and Mr. Simmons confirmed this, you had no involvement whatsoever, prior to December '15, with the Oversight Committee, did you?

MR. M. KENNEDY: That's correct.

MR. FITZGERALD: December 2015, that is.

MR. M. KENNEDY: December 2015.

MR. FITZGERALD: In terms of the initial engagement of Ernst & Young, can you describe that for me? What was Ernst & Young initially supposed to do, in assisting the Committee?

MR. M. KENNEDY: I think the initial piece of work was to provide recommendations on the structure of the Oversight Committee and to provide recommendations on the types – on the type of information that the Oversight Committee should be requesting from Nalcor.

MR. FITZGERALD: Okay.

If I can direct the witness to P-03283, please.

THE COMMISSIONER: (Inaudible.) Okay, so that would be tab 5, book 1.

MR. FITZGERALD: We can scroll down to page – it might be page 3. No, keep going. Keep going, please. Thank you.

The second paragraph there, Mr. Kennedy: "EY has been engaged by the Government to conduct a third party assessment of the Oversight Committee's protocols under development. Program managers and other specialist resources from EY's Major Capital Projects practice were engaged to bring the necessary experience to deliver on this mandate. Over the course of one week, EY reviewed the documents provided by Government, interviewed Oversight Committee members and met with Nalcor representatives to understand the project environment and governance landscape. EY provided recommendations based on our experience with other projects of comparable scale and complexity. These recommendations were presented at a meeting with the Oversight Committee on 19 March 2014."

Would that summarize your engagement?

MR. M. KENNEDY: That's a good summary.

MR. FITZGERALD: If we can go down to section 2.0 of this report. Thank you.

"The Government requested EY to conduct a rapid assessment of the Oversight Committee's protocols under development to:

"... Provide recommendations to improve the governance and processes of the Oversight Committee;

"... Conduct a gap assessment of the Government's Information Request List, which is an initial list of items the Oversight Committee would periodically request from various stakeholders."

What is a gap assessment?

MR. M. KENNEDY: What is a gap –

MR. FITZGERALD: Yes.

MR. M. KENNEDY: – assessment?

So, it is looking at the information that the Oversight Committee or the – well, the intended Oversight Committee would be looking for and comparing it with the type of information that

we would expect an oversight committee to be asking for.

MR. FITZGERALD: In terms of context, at the time that the Oversight Committee was engaged in 2014, was EY aware – and we’ve learned a lot of information since, but was EY aware, at the time, that project had undergone reviews by Manitoba Hydro International?

MR. M. KENNEDY: I can’t recall specifically.

MR. FITZGERALD: Okay.

I’m just trying to put myself in my client’s shoes of what I would’ve known at the time. So, you don’t recall that?

MR. M. KENNEDY: No.

MR. FITZGERALD: Okay.

Were you aware that there’s an independent engineer retained by the Government of Canada that was also looking into the project and reviewing the project in terms of construction costs and whatnot?

MR. M. KENNEDY: Yes.

MR. FITZGERALD: Were you aware that Blair Franklin was also involved for the Government of Canada in terms of looking at the project?

MR. M. KENNEDY: I can’t say specifically.

MR. FITZGERALD: Okay.

Would it be uncommon for an entity such as Ernst & Young to look at those types of reports from those other entities, to see if they could be relied upon by an oversight committee?

MR. M. KENNEDY: We would, certainly, welcome those type of reports to provide context. Whether it would be within our purview to rely on them, would be –

MR. FITZGERALD: Okay.

MR. M. KENNEDY: –a different discussion.

MR. FITZGERALD: With respect to internal audit, would it be customary for an Ernst & Young-type organization in conducting an engagement like you had here, to look at the internal audits and see what use could be made of it?

MR. M. KENNEDY: Yes, I would agree with that.

MR. FITZGERALD: That would be prudent, wouldn’t it?

MR. M. KENNEDY: Yes.

MR. FITZGERALD: You wouldn’t want to spend money or incur costs, if you were a client, if your consultant could – if this – was satisfied with the work that already was done by the internal audit, would you?

MR. M. KENNEDY: I would agree with that.

MR. FITZGERALD: Yeah, you wouldn’t want to repeat the work, would you?

MR. M. KENNEDY: No, you wouldn’t want to repeat the work.

MR. FITZGERALD: No.

So, we have an Oversight Committee that’s put in place in 2014. In terms of context – and we have reports that are being done by Manitoba Hydro International, we have an independent engineer involved, Blair Franklin involved. And then Ernst & Young is brought in to help it with oversight protocols and to conduct a gap assessment.

MR. M. KENNEDY: Yes.

MR. FITZGERALD: Okay.

So, your – one of the purposes of a gap assessment is to fill in the gaps that you believe are not in place. Correct?

MR. M. KENNEDY: That’s correct.

MR. FITZGERALD: You're looking for the information.

If we can go to 4.A of this report – just scroll down a little further, please? Okay.

Okay. **“The Oversight Committee should review cost and schedule performance, forecasts and risk management in addition to the validity of costs incurred.”** This is Ernst & Young's words – your words, your report.

MR. M. KENNEDY: Yes, they are.

MR. FITZGERALD: Yeah.

Number one: **“The project cost and schedule is well managed”**

Number two: **“The project is meeting the cost and schedule objectives”**

And number three: **“The cost and schedule risks are being reasonably anticipated and managed”**

So this is what you had in mind at the time in terms of assisting the Oversight Committee?

MR. M. KENNEDY: This – these are our recommendations –

MR. FITZGERALD: That's right.

MR. M. KENNEDY: – for what the Oversight Committee should do.

MR. FITZGERALD: Exactly, that's fine.

MR. M. KENNEDY: Yes.

MR. FITZGERALD: Okay, I'm gonna go from there.

If we could go to P-03582, please.

THE COMMISSIONER: (Inaudible.)

MR. FITZGERALD: Oh sorry, Commissioner, that's –

THE COMMISSIONER: Tab 155, book 3.

MR. FITZGERALD: And if we can scroll down to – I believe it's page 6. And if we can scroll down a bit further towards the bottom.

Thank you.

Those last two paragraphs, Mr. Kennedy – “We recognize that Nalcor is using many conventional management processes and controls for the Project. However, while certain contractor Earned Value data is being collected, Nalcor is not reporting using a full Earned Value Management System across the whole of the project. Reporting on Earned Value performance would however, provide additional useful data and information to the Oversight Committee on both individual contractor and overall Project performance where available.

“Until such time as the management process and controls risks and issues identified in this report and the detailed supplementary report are addressed, the completeness and accuracy of Project cost and schedule status reporting to the Oversight Committee cannot be fully verified.”

What is this telling us, in English? Generally, what's going on here?

MR. M. KENNEDY: Well, it is in English.

MR. FITZGERALD: I know it's in English, but you know what I mean.

MR. M. KENNEDY: It is –

MR. FITZGERALD: What is this telling us? I'm sitting on the Oversight Committee, I'm relying upon your expertise. What is this telling me?

MR. M. KENNEDY: It is saying that Nalcor is not using an earned value management system.

MR. FITZGERALD: And why is that significant?

MR. M. KENNEDY: Because that is a typical industry practice, process, approach across all types of projects for assessing the progress of work, both in terms of cost progress and schedule process.

MR. FITZGERALD: The second paragraph indicates: “Until such time as the management process and controls risks and issues identified in this report” How does risk play into this here?

MR. M. KENNEDY: Assessment, quantification and management of risk is really the essence of what project management is all about.

MR. FITZGERALD: And this was provided to the Oversight Committee by Ernst & Young?

MR. M. KENNEDY: Well, we are saying here that until the issues identified –

MR. FITZGERALD: That’s right.

MR. M. KENNEDY: – in the report are provided – are addressed by Nalcor, then the Oversight Committee will be restricted in reporting out on cost and schedule status.

MR. FITZGERALD: Yeah, I guess, that’s my point, that you did identify this – and I’m not taking issue here and it may be a roundabout way I’m trying to get there. But you did identify a problem with the way risks were being quantified, I believe, in this report. Is that what is going on here? We don’t have enough information?

MR. M. KENNEDY: I mean, I would have to look into the following commentary on specifically how we talk about the – what we’re identifying as issues with management processes and risks –

MR. FITZGERALD: Well, let’s just look – sorry, Mr. Kennedy, but number four above: “Fully quantified risks or trends have not been documented for certain significant challenges on the project. The scale of potential challenges is also not quantified in the summary reporting made available to the Oversight Committee.”

Does that assist you?

MR. M. KENNEDY: Yes.

MR. FITZGERALD: Can you explain that to me in – elaborate on that for the Commissioner?

MR. M. KENNEDY: So the risks have not been documented for significant challenges on the project.

MR. FITZGERALD: And why would that be important for an Oversight Committee to know?

MR. M. KENNEDY: An Oversight Committee would need to understand where significant risk issues are in the project.

MR. FITZGERALD: Thank you.

Now, this report was not released but – I’m not gonna dive into that with you. I’ll let my client address that.

In your evidence, you were – sorry – Mr. Learmonth asked you some questions about delay and timing of getting reports out and whatnot. You recall being asked those questions?

MR. M. KENNEDY: Yeah.

MR. FITZGERALD: Okay.

You really weren’t in a place before December 2015 to really comment on the cause of any delay, were you? Whether it was Nalcor or whether it was government, whether it was Ernst & Young?

MR. M. KENNEDY: Not personally.

MR. FITZGERALD: P-03297, please.

THE COMMISSIONER: That would be tab 19, book 1.

MR. FITZGERALD: If we can go to the bottom of the page.

Thank you.

There’s a quote here and this in an internal email of Ernst & Young. It says: Finally, the – can we just go up to the top again? My apologies, Commissioner, I just want to get the date of this. This is November 25, 2014. Okay, we can go down.

And it indicates: “Finally, the delay in securing this input from us has put them in a hole of

having to delay the report... and then publish a 'management reports that' with no effective analysis or challenge."

When I read this, the inference I take from this is that it's an Ernst & Young delay that's here: The delay in securing this input from us. This is an internal Ernst & Young email, isn't it?

MR. M. KENNEDY: Can we scroll up, please?

MR. FITZGERALD: I recognize it's not your email, I just – I'm wondering who else it could be if it's not Ernst & Young.

MR. M. KENNEDY: Okay. Scroll down, please.

Well, I would say it is – the delay is not – the input from us was delayed.

MR. FITZGERALD: No, I agree. My point is –

MR. M. KENNEDY: That's not –

MR. FITZGERALD: – the delay in securing this input from us, Ernst & Young –

MR. M. KENNEDY: No.

MR. FITZGERALD: – has put them in a hole – the Oversight Committee.

MR. M. KENNEDY: No, what I'm saying is we weren't able to provide that input because of a delay. That's how I read that.

MR. FITZGERALD: No. We'll agree to disagree. It's not your email; it's not mine.

Were you aware that the initial budget for the Oversight Committee was \$500,000?

MR. M. KENNEDY: No.

MR. FITZGERALD: Were you aware that with respect to the initial budget of the Oversight Committee of \$500,000 included in that was the salary of the executive director?

MR. M. KENNEDY: No.

MR. FITZGERALD: Were you also aware – or were you aware that it also would include travel costs for members of the Oversight Committee going back and forth to Muskrat Falls?

MR. M. KENNEDY: No.

MR. FITZGERALD: I put the question to you because what I would suggest is that when you look at it in context, when Ernst & Young was brought in at the beginning, in terms of to assist the Oversight Committee with oversight, it was never the intention that the Oversight Committee would be provided with a budget in the millions of dollars to allow Ernst & Young to go in at the outset and do a deep dive into work that the government and OC had already believed had been done in many circumstances. Would that be fair?

MR. M. KENNEDY: Yeah, I sort of think that's fair.

MR. FITZGERALD: We know a lot more now than we knew then, but I'm just trying to put us back into the shoes of the committee.

Were you also – were you aware that the Oversight Committee's budget was controlled by government?

MR. M. KENNEDY: No, but that would be a reasonable presumption.

MR. FITZGERALD: Yeah, I just make the point, there was no independent opportunity to access funds.

There's been some discussion by Mr. Smith, he brought this up, and I believe Mr. Simmons did as well. Would you agree with me that there's generally a struggle between consultants and clients in terms of the consultants wanting to offer the world and be paid for it in terms of the body of work or the scope of work, and the client trying to push the consultant back saying: Look, we only want what we need.

You would come across that daily, wouldn't you?

MR. M. KENNEDY: I recognize that dynamic.

MR. FITZGERALD: And it is a dynamic, isn't it?

MR. M. KENNEDY: Yes.

MR. FITZGERALD: P-03372, please.

That is – I don't believe we've looked at this one yet.

UNIDENTIFIED MALE SPEAKER: 03372.

MR. FITZGERALD: Binder 2, tab 95. This is your email?

MR. M. KENNEDY: Yes, it is.

MR. FITZGERALD: To Mr. Steele, Mr. Leather, Mr. Hickey and Mr. Calver.

MR. M. KENNEDY: Yes, it is.

MR. FITZGERALD: The first paragraph: "Hi everyone. I thought it would be useful to say out some thoughts for the call tomorrow. If for no other reason, I reread all of the material this afternoon and tried to crystallize some key messages we may want to get across. Before that and from an EY perspective only" – caps lock – "THE BIG GOAL is positioning us for further on-going work to support the project and Nalcor going forward. As Paul, David and I discussed on Tuesday in St. John's, Nalcor is potentially a \$10m plus per year client over the next 10-15 years. WE have an opportunity with brand new CEO, to make ourselves the strategic advisor for them as Nalcor focuses on unlocking resource based value for the Province."

This is your words?

MR. M. KENNEDY: Yes.

MR. FITZGERALD: And your big goal here was securing more work for Ernst & Young?

MR. M. KENNEDY: I would call that a blue-sky goal and – that maybe a goal in the future.

MR. FITZGERALD: Well, I raise this, because it goes back to the tension between consultants and clients. At the outset, Ernst & Young comes in to suggest you need X, Y and Z, to the Oversight Committee. But how much is that

recommendation, that's being made to the Oversight Committee, coloured by this corporate culture here of trying to get more work for Ernst & Young?

MR. M. KENNEDY: I don't accept that at all.

MR. FITZGERALD: These are your words, aren't they?

MR. M. KENNEDY: This is an internal email between EY partners.

MR. FITZGERALD: Oh, it is.

MR. M. KENNEDY: It's a blue-sky discussion reminding partners who are outside of the Canadian jurisdiction that there is potentially a business opportunity here with Nalcor, in the future.

MR. FITZGERALD: Paul Hickey is Canadian.

MR. M. KENNEDY: David Leather is not Canadian.

MR. FITZGERALD: Okay.

MR. M. KENNEDY: Neither is Tim Calver.

MR. FITZGERALD: Mr. Hickey's from Newfoundland, isn't he?

MR. M. KENNEDY: That's not the point I'm making.

MR. FITZGERALD: Oh, I understand. It goes back to the tension I'm talking about.

MR. M. KENNEDY: I said there is a dynamic that I'm aware of. That isn't to imply that that is the way that I conduct business or that EY conducts business.

MR. FITZGERALD: Would you think it would be prudent for a client to recognize that in hiring a consultant, the client needs to recognize the work that has already been done so it can limit the cost that it's gonna pay to a consultant?

MR. M. KENNEDY: A client has to assess and determine the value that is being delivered – from the work that is being delivered and the value that can be gleaned for future work.

MR. FITZGERALD: Wouldn't you think it would be important that client was a public entity and it was the taxpayers' money, that the Oversight Committee should be even more prudent in making sure it's spending its money appropriately and not unnecessarily?

MR. M. KENNEDY: I think all oversight committees, whether they be public or in the private sector, need to be very conscious of spending dollars wisely.

MR. FITZGERALD: Thank you very much.

THE COMMISSIONER: All right.

Robert Thompson is not here.

Consumer Advocate?

MR. HOGAN: Good afternoon, Mr. Kennedy. I'm (inaudible).

THE COMMISSIONER: Just turn on your mic there, please.

MR. HOGAN: My name is John Hogan. I'm counsel for the Consumer Advocate.

I'm going to take you back to, I think, some questions you were asked about at around 9 o'clock this morning. Your kickoff meeting that took place in March of 2014, correct?

MR. M. KENNEDY: Mm-hmm.

MR. HOGAN: I just want to get your comments on whether – or the timing of the establishment of the Oversight Committee. We know this project was sanctioned in 2012; we know there was financial close in 2013; we know the project was announced in 2010. So it's not until 2014 that an Oversight Committee kickoff meeting takes place.

So can you just generally talk about your – give some comments about the timing of the establishment of the Committee? Given that history that I just gave you, leading up to it.

MR. M. KENNEDY: Yeah, sort of in a – as a general statement, oversight committees, independent oversight, whatever you want to call it, should be not only established at time of

sanction, but should be fully functioning at time of sanction.

MR. HOGAN: That's a general statement.

MR. M. KENNEDY: As a general statement.

MR. HOGAN: So I would – is there still a benefit of establishing this four years after sanction?

MR. M. KENNEDY: Yes, but it is a reduced benefit.

MR. HOGAN: Okay.

Can you elaborate on that at all? I don't wanna put words in your mouth, but so ...

MR. M. KENNEDY: Well, sanction – so, an – independent oversight should ideally be in – be in place to review the sanction decision, which will not only be a – will go beyond the sort of schedule and cost forecast, but it will also assess the implementation strategy that the project is pursuing; the procurement strategy; the contracting mechanisms, et cetera, et cetera.

So, in this case in 2014, if you take early 2014 as when the Oversight Committee was established, as I think the document showed today, the issue with Astaldi, which became a major issue, was happening during 2014. So, the reduced value of the Oversight Committee is, it doesn't have the ability to manage or assist in the management of that particular issue because it's already happening.

Having said that, I think that the work that we believe we contributed to, through to April 2016, was helpful for government in addressing some of the – the more fundamental issues on the project.

MR. HOGAN: Okay, I just – I wanna correct the record. I think I said it was established four years after sanction. If I said that, I should've said two.

MR. M. KENNEDY: Mmm.

MR. HOGAN: Okay.

MR. M. KENNEDY: Yeah.

MR. HOGAN: So in terms of a standard for establishing oversight committees for large projects, would you say that this – there is a standard, and if so, was the standard met in this case?

MR. M. KENNEDY: There is no standard.

MR. HOGAN: So you only get the benefit, depending on when it's set up, and the earlier the better.

MR. M. KENNEDY: You get more benefit from it being earlier, for sure.

MR. HOGAN: Thank you.

If we could just – well, we don't necessarily have to look at a document, but the kickoff meeting was March 2014, and the report, I guess, I don't know if – I think it was the draft report came out July 2014. Correct?

So you said – you'd said to Mr. Learmonth this was a long time; I think it was supposed to take two weeks, and this obviously took months. So what I'm wondering is if you're aware, were drafts going back and forth between EY and Nalcor at that point in time, between March and July of 2014 of the report?

MR. M. KENNEDY: They were certainly going backwards and forwards between government and I can't recall specifically if they were going directly backwards and forwards with Nalcor.

MR. HOGAN: And do you know how many drafts would have went back and forth?

MR. M. KENNEDY: I can't say with clarity.

MR. HOGAN: And you say – are you able to say whether it was normal or abnormal?

MR. M. KENNEDY: I think the view of all of us is that it took a long time; it took too long for that report to be finalized.

MR. HOGAN: Okay.

Also, Mr. Learmonth was asking you questions earlier this morning. You said Atlantic – and it's the best I could to write it down – Atlantic

Canada partners, I think you meant EY partners, were wary of and aware of the risks of getting involved with the Oversight Committee.

You also agree with Mr. Learmonth when he said – suggested EY had some reluctance with getting involved in the Oversight Committee. So I wonder if you could comment a little further on what was discussed amongst the Atlantic Canada partners about getting involved in this project in 2014, 2015.

MR. M. KENNEDY: I think the – or the general conversation would have evolved around this is a very high-profile engagement that the firm believes it can support and that we've got skills that are relevant and applicable to this. The discussion will have been around are we in a position where we can be – where our client can be successful. Are they taking the right steps that through involving us it will be a successful process. And if the client is not successful, however you want to define that, then inevitably there will be some consequences for EY.

MR. HOGAN: So what was the discussion about the success of the client then? Was there a worry that this project was not going to be seen as a success?

MR. M. KENNEDY: I would probably say that the – is the Oversight Committee – is it set up and structured with membership in a way that is – that will allow it to be successful.

MR. HOGAN: Well, what does that say about the state of the project in 2014? And I guess what was Ernst & Young's partner's view of the state of the project in 2014?

THE COMMISSIONER: I think you're mixing – I think maybe there's a misunderstanding here –

MR. HOGAN: Sure.

THE COMMISSIONER: – because I misunderstood the question. I think I would have answered this similarly to Mr. Kennedy. The issue of the project – are we talking about the Muskrat Falls Project or are we talking about the actual engagement of EY? Which project are you talking about?

MR. HOGAN: Well, I guess his words were the Atlantic Canada partners were wary of – I mean he – I think he said the success of the project. I took that to mean there might be some reluctance to get involved with the Oversight Committee because of their view of the project.

Now, if that's not what he said –

THE COMMISSIONER: The project being the Muskrat Falls Project.

MR. HOGAN: The Muskrat Falls Project.

THE COMMISSIONER: Okay, okay I understand what you're (inaudible).

MR. HOGAN: There was no committee existing that – when they were discussing getting involved, so that's what I'm asking.

What was the – is that what you meant, there was a discussion amongst the EY partners about the Muskrat Falls Project?

MR. M. KENNEDY: I – it probably applied to both, actually.

MR. HOGAN: Okay.

When you say both, what do you mean? The project –

MR. M. KENNEDY: The project itself, plus in terms of this piece of work for the Oversight Committee is – can that be successful.

MR. HOGAN: All right, we'll leave it at that. Thank you.

It was mentioned today that there was an election that took place in the fall of 2015. This would've been before you became involved. But through your review and maybe discussions with other people involved, do you know if this was discussed by anyone at EY with Nalcor at all leading up to the 2015 election?

MR. M. KENNEDY: I –

MR. HOGAN: Was it an issue at all? Was it something that was on anyone's minds?

MR. M. KENNEDY: No.

MR. HOGAN: Not that you're aware of?

MR. M. KENNEDY: No.

MR. HOGAN: Okay.

Can we please turn to P-03323?

THE COMMISSIONER: 03323.

MR. HOGAN: Page 10, please. So that's –

THE COMMISSIONER: That would be tab 45, book 2.

MR. HOGAN: So this is a preliminary interview list. You're familiar with this document? So –

MR. M. KENNEDY: Yes, I am.

MR. HOGAN: Pardon me?

MR. M. KENNEDY: Yes, I am.

MR. HOGAN: Okay.

So, if we can just scroll just through the list there and we can see everyone that's on it. I'm just wondering if you can comment on why Mr. Martin or Mr. Gilbert Bennett were not included on the interview list?

MR. M. KENNEDY: Can I just clarify? Is this from 2014 or 2015? It's 2015, isn't it?

THE COMMISSIONER: Yeah, March 26, 2015.

MR. M. KENNEDY: Yeah.

So I would imagine, or I would – actually, I wouldn't imagine, I'd – it's because this work was – this work in 2015 was focused on review of processes and controls, which I'm not sure there would've been huge value in having a discussion with the CEO or the executive sponsor.

MR. HOGAN: You're not sure? Is that – can you say that definitively that's why they're not on that?

MR. M. KENNEDY: I think –

MR. HOGAN: Right –

MR. M. KENNEDY: – that’s a judgment call. Certainly, from this list, you would be able to have a very good – develop a very good viewpoint of the processes and controls. It may be applicable to include those two individuals later.

MR. HOGAN: Okay.

Can we please turn to P-03413, please?

THE COMMISSIONER: 03413. That’s tab 134, book 3.

MR. HOGAN: If we could just scroll down to page 2, please? I just want to ask you about this line right there. It says: “Nothing has been handed to nalcor ... And nothing can or should be sent to the government.

“All verbal ... All part of the process.

“Cheers,

“Richard.”

MR. M. KENNEDY: Mm-hmm.

MR. HOGAN: Are you able to say why nothing should be sent to the government? Now, I know we’ve talked about ATIPP legislation. Do you know if this is the reason in this email? Maybe you want to browse through the whole chain.

MR. M. KENNEDY: If you can go to the bottom of the email that would be helpful. Which document and binder is it, again? Maybe it would help me if I look at the –

THE COMMISSIONER: Yeah, it’s tab 134, book 3.

MR. M. KENNEDY: If there was a question, can you repeat it? Sorry.

MR. HOGAN: Yeah.

So my question was, do you – if I could just have a look at it. Scroll up a little bit please – the other way.

“And nothing can or should be sent to the government.” Do you know why this statement is being made in May of 2015?

MR. M. KENNEDY: I think Richard was probably reflecting his experience to date on the engagement that we hadn’t – we had been providing either verbal briefings or we were handing documents to the government and taking them back at the end of the –

MR. HOGAN: So it had more to do with –

MR. M. KENNEDY: – at the end of the discussions.

MR. HOGAN: – public disclosure concerns as opposed to not telling government things. Is that fair to say?

MR. M. KENNEDY: Yes.

MR. HOGAN: Just a couple of more questions. If we could please turn to P-03086, these are the bullet points from Kelvin Parsons’s, I guess, meeting minutes.

THE COMMISSIONER: 03086 is tab –

MR. HOGAN: Eighty-three, book 2.

THE COMMISSIONER: Tab 83, book 2. Thank you.

MR. HOGAN: Page 2 please, scroll down a little bit. Okay, that’s fine, thank you.

Page 2 – no, I’m just speaking to him. So do you want to get it in your binder there? That’s fine. Okay.

MR. M. KENNEDY: Yes.

MR. HOGAN: So the third last bullet says: “Not only was there no Management Reserve included in the budget, Nalcors view is the amount of money available for the MF project is unlimited given that Nalcors believes Government will provide whatever funding is required. That has been the practice and experience until now.”

Now, you probably haven't been watching but we've heard evidence that this has been referred to as a sort of a blank cheque. Government –

MR. M. KENNEDY: Mm-hmm.

MR. HOGAN: – has written a blank cheque to complete this project, so I won't get into too much more evidence than that, but I'm wondering if you can comment further on that in terms of was this Nalcor's view and, if, so did it have any effect on cost overruns.

MR. M. KENNEDY: I recall that we heard a statement from Nalcor that their belief – and it may have been the individual's belief – that there was unlimited funding available from the government.

MR. HOGAN: And you recall one individual saying that?

MR. M. KENNEDY: Yes.

MR. HOGAN: Do you know who that individual was?

MR. M. KENNEDY: Yes. James Meaney.

MR. HOGAN: James Meaney. Okay, and was that a conversation you had with Mr. Meaney?

MR. M. KENNEDY: I was certainly present, yes.

MR. HOGAN: Do you know who else was present?

MR. M. KENNEDY: David Leather from EY.

MR. HOGAN: Okay.

And was this just a meeting with the three of you?

MR. M. KENNEDY: It may have been a meeting in which the CFO was also present. I can't –

MR. HOGAN: The CFO being Mr. Sturge?

MR. M. KENNEDY: Yes.

MR. HOGAN: Okay.

And just to drill down a little bit, what was Mr. Meaney implying by making that statement, or did he elaborate further? What's the consequences of a blank cheque?

MR. M. KENNEDY: It was received by myself and David Leather because we – this statement stuck out for us as you might imagine that – it represented an attitude that government would be backstopping the cost of the project.

MR. HOGAN: Regardless of the cost?

MR. M. KENNEDY: Regardless of the cost.

MR. HOGAN: Yeah, thank you.

If we could turn to page 4 –

MR. M. KENNEDY: I would just add I would have to be – whether the CFO was there, I can't recall that. But I remember having a meeting with Jim Meaney and the CFO; I can't recall whether it happened at that meeting.

MR. HOGAN: Okay, thank you.

If we could just turn to page 4 of this document, the third last bullet: "EY indicated that the agreement with Astaldi stipulates that Nalcor pays Astaldi for every hour worked, and payments are not tied to achieving concrete poured milestones. Nalcor officials described this specific contract provision as 'one regret they have'. So, Astaldi has been paid for every hour worked, even for building the failed dome and taking it down."

So is this something you recall hearing from anyone at Nalcor that the Astaldi contract was one regret they have?

MR. M. KENNEDY: Certainly the contractual payment mechanism which, in simple terms, meant that Astaldi – if the hours were worked, they were paid for as opposed to it being linked to milestone delivery of concrete-placed production.

MR. HOGAN: Okay. So that was a regret, that specific provision?

MR. M. KENNEDY: I think we – I can't remember if it was Paul Harrington or if it was

Lance Clarke said that that is a specific regret that they had of the way the Astaldi contract was structured.

MR. HOGAN: And do you recall one of those two individuals specifically saying that to you?

MR. M. KENNEDY: I – it was one of those two individuals or it could've been – they could've both been there at the same time.

MR. HOGAN: All right. That's all the questions I have.

Thank you.

THE COMMISSIONER: All right, Innu Nation is not present.

Astaldi Canada Inc.

MR. BURGESS: No questions, Commissioner.

THE COMMISSIONER: Former Nalcor Board Members.

MS. G. BEST: Hello, Mr. Kennedy, my name is Glenda Best and I'm counsel for the Former Nalcor Board Members 2004 to 2016. I just have a couple of questions for you.

Did you have, during the course of your contracts, any interaction with the board of directors of Nalcor?

MR. M. KENNEDY: I believe during 2017 we did.

MS. G. BEST: So that would be following the resignation of the board that (inaudible) –?

MR. M. KENNEDY: Yes, that was with the new board of directors.

MS. G. BEST: And would it have been normal practice when you're conducting such a review to have – to look at governance and to have communications with the board of directors?

MR. M. KENNEDY: Yes –

MS. G. BEST: That would be normal practice?

MR. M. KENNEDY: – absolutely.

MS. G. BEST: And was there any particular reason why that was not undertaken until to 2017?

MR. M. KENNEDY: I couldn't give a specific answer to that.

MS. G. BEST: Did you have a discussion about interviewing the board of directors at all with any representatives of Nalcor or of the Government of Newfoundland and Labrador?

MR. M. KENNEDY: I don't recall any specific request before 2016. We certainly did request access to the materials and briefings that were being sent to board members 2016 onwards, and there was a refusal around that.

MS. G. BEST: Okay, so when you were speaking with Mr. Learmonth and I believe it was around Exhibit P-03086, you were talking about there being a change in the strategy that Nalcor was undertaking and you were seeking documentation that they had presented to the board of directors in relation to that, and you didn't receive it at that point in time, so you were asking for the information prior to April of 2016 – was it being refused then?

MR. M. KENNEDY: Yes.

MS. G. BEST: Did you consider that to be unusual?

MR. M. KENNEDY: We didn't understand why there was an objection is probably the way I would answer that question –

MS. G. BEST: Okay.

And in preparing your reports then, was the absent of that information significant – the absence of it?

MR. M. KENNEDY: It was and I think it informed one of the recommendations in April 2016 that governance and reporting – I forget the exact wording – needs to be reviewed, not just within the Nalcor project team, not just within government, but also with Nalcor's board.

MS. G. BEST: Okay.

One further question then: With respect to the governance of an organization such as Nalcor, a Crown corporation, would your normal practice be to look at the interactions between the executive and the board, or would you also look at the composition of the board?

MR. M. KENNEDY: We would certainly be forming a viewpoint on the dynamic between the executive team and the board –

MS. G. BEST: Mm-hmm.

MR. M. KENNEDY: – and whether the board was providing an independent view and feedback. We would also be forming a view on whether the board had the breadth and depth of experience that we would think is appropriate for overseeing a project such as this.

MS. G. BEST: Okay.

Thank you very much.

Those are all the questions that I have.

THE COMMISSIONER: All right, thank you.

Newfoundland and Labrador development – Newfoundland and Labrador Building and Construction Trades Council. Not here.

Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: No questions.

THE COMMISSIONER: ANDRITZ Hydro is not here.

Grid Solutions is not here.

Barnard-Pennecon is not here.

All right, counsel for Ernst & Young.

MR. O'FLAHERTY: Good afternoon, Mr. Kennedy.

I realize you've been on the stand now for seven hours so I won't keep you too long, but I'm gonna cover a couple of topics that I think could be of assistance to the Commissioner.

First of all I wanna cover a topic that arises from the questions of Mr. Simmons and Mr. Fitzgerald regarding your personal knowledge of the events that are described in the documents which predate your personal involvement in the EY engagements, which I believe you dated to December 15, 2015.

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And I believe the Commissioner pointed out this morning when there was an objection made with respect to hearsay about those previous documents, that it's simply not possible to have everybody from a particular organization testify at the Commission. So that was something that was discussed and anticipated when choosing you to come and speak on behalf of the firm, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So I just wanted to clarify to help the – my learned friends and the Commissioner with the steps that you would've taken, and you gave some evidence about validating that information before you came here. You said that – you indicated that you had the benefit of working closely with Richard Noble who was the technical lead for those two first engagements, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: From December 15, 2015, on, he was there as a resource, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: You also mentioned in your evidence that you'd recently reached out to individuals even who attended meetings at which certain statements had been made or evidence had been recorded of what had happened to clarify exactly what their recollection was of what had happened, correct?

MR. M. KENNEDY: That's right.

MR. O'FLAHERTY: And you also reached out to speak with other members of EY about EY's – and to whom they – or sorry – from whom they had obtained the information that they had recorded in the emails, correct?

MR. M. KENNEDY: That's right.

MR. O'FLAHERTY: Did you also have an opportunity to review all of the documents from the first two engagements with the engagement – local engagement partner, Mr. Steele, and to discuss and validate any information about which you had any concerns?

MR. M. KENNEDY: Yes, we went through the documents extensively.

MR. O'FLAHERTY: So then it is from that overall broader perspective and as a subject matter expert in the management and delivery of projects, that you came here to speak on behalf of the firm, correct?

MR. M. KENNEDY: Yes, that's correct.

MR. O'FLAHERTY: Okay.

Thank you.

Just briefly, then, in respect to the first engagement, and I just wanted to, you know, clarify – and I believe my learned friend, Mr. Fitzgerald, had brought this out as well. But this began on March 7, 2014, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And that engagement was to provide advice to the Government of Newfoundland and Labrador on the governance structure and processes of the contemplated Oversight Committee established by GNL, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And also, information requests that the OC should provide to Nalcor in order to perform its mandate. That was what EY was asked to advise on then, right?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So if we could bring up, Madam Clerk, P-03281, please.

THE COMMISSIONER: 03281, which is at tab 3 in your book – first book.

MR. O'FLAHERTY: So we just – just briefly look at this. I don't want to take this – take you through this in detail, Mr. Kennedy, because you've covered this exhibit. But by March 19 of 2014, this document shows that the recommendations of EY were provided to the Government of Newfoundland and Labrador upon both the governance structure and processes of the Oversight Committee that were recommended, and upon the information requests that should be provided by that committee to Nalcor, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And one of the key recommendations – if you were to turn up page 8, please. If we could keep going just a little bit further than that – okay, I might not have the exact page.

But one of the key recommendations, Mr. Kennedy – and I don't want to prolong the matter – was the establishment of a working committee to support the work of the senior bureaucrats who are on the Oversight Committee, wasn't it? Here we go – this is the page here, yeah.

MR. M. KENNEDY: Yes, that's correct.

MR. O'FLAHERTY: And if you look at the bottom left of this particular exhibit, you will see the skills that are recommended by Ernst & Young to assist the senior bureaucrats in executing the mandate, correct?

MR. M. KENNEDY: Correct.

MR. O'FLAHERTY: And then if we were to go then to pages 12, 13 and 14 of the report, that's – there we go, starting there. The – so what the Commissioner can find here in this report is the cost, schedule and other information that EY is recommending that the Oversight Committee should request for review from Nalcor to execute its mandate, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So at any time in this engagement – the first engagement, was EY ever involved in any receipt of independent

information from Nalcor, of Nalcor documentation, about the Muskrat Falls Project?

MR. M. KENNEDY: I – no, no.

MR. O’FLAHERTY: We’re just advising –

MR. M. KENNEDY: No.

MR. O’FLAHERTY: – you’re advising government on how to set this structure up and what type of information to request, correct?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: Let’s move now to Mr. Fitzgerald’s – Mr. Fitzgerald then asked some questions about a particular document. And it’s – I just want to clarify – 03297, please.

Now, Mr. Learmonth went through how after the first engagement ended, in or around July 25 of 2014, there was a RFP competitive process for advisory services to the Oversight Committee, correct?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: And EY put in a proposal, which we’ve looked at just briefly, and they were awarded the contract to provide those services on a go-forward basis from October of 2014 until March 31 of 2015, correct?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: So, during that time frame, there were ad hoc services being provided by EY on a – you know, a basis when they felt – that is, the Oversight Committee felt, to be clear – that they needed advice, they could come to Ernst & Young for advice, couldn’t they?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: 03297, please. This is one of the examples.

It’s – just take your time and look at this, ’cause we ran through this, and we looked at a particular cut out phrase from this. But this deals with – as it says in the first sentence: “I have

performed an initial review of Craig’s draft report.”

What work is Mr. Noble doing for EY on behalf of the Government of Newfoundland and Labrador on this date?

MR. M. KENNEDY: So he is providing, as you termed earlier, ad hoc advice, and in this case it is reviewing what is, presumably, the draft Oversight Committee report.

MR. O’FLAHERTY: Right.

So the Oversight Committee is doing its work, they have taken your earlier recommendations about how to set up the structure and what information they need, and they put together a report and asked Ernst & Young to provide comments on it, correct?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: Now, let’s go to the point further down at – this document – and I’m sorry, Madam Clerk – where you get to the – something about a delay is on us or something. Yes, here we go: “Finally, the delay in securing this input from us has put them in a hole of having to delay the report... and then publish a ‘management reports that’ with no effective analysis or challenge.”

Now, I appreciate this is not your email, of course, right? But again – once again, just to clarify – at this point in time, Ernst & Young is not receiving any reports from Nalcor and analyzing them on behalf of the committee, is it?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: Right.

So let’s move forward then to the second engagement, just briefly. So this was the engagement to assess the adequacy of Nalcor’s costs and schedule management processes and controls, correct?

MR. M. KENNEDY: That’s correct.

MR. O’FLAHERTY: And, I believe, originally, what – as we looked at the documents – what happened was EY had recommended that

all four legs of the stool – the processes for all four should be looked at, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: But that was not the mandate provided to EY. It was two legs of the stool, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So, there were different iterations of the final report based on one document versus two documents containing within it – and that arose with respect to commercial sensitivity and those types of issues, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: Right.

But – lets go to P-03583, please, Madam Clerk.

THE COMMISSIONER: That is tab 156.

MR. O'FLAHERTY: So, this document here is November 29, 2015, and by this point in time, there were – there was instructions provided to EY to provide two reports, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: One is a summary document. The other contains the information that was felt to have been potentially of commercially sensitive information, correct?

MR. M. KENNEDY: I'd just add a caveat that rather – we were comfortable with –

MR. O'FLAHERTY: Yeah.

MR. M. KENNEDY: – issuing it as two reports rather than being instructed to do it as two reports.

MR. O'FLAHERTY: And that's what I wanted to clarify for the Commissioner, and for the assistance of the Commissioner – really, if you go page 6 at the bottom of this report – this first one here – right there.

So, until – beginning with the sentence – the words “Until such time.” So, for the assistance of the Commissioner, this is really the fundamental conclusion at the end of the engagement, the second engagement. And whether it's in one report or two reports – it's in all the reports – that “Until such time as the management process and controls risks and issues identified in this report and the supplement” – right, which is with the additional information – “are addressed, the completeness and accuracy of Project cost and schedule status reporting to the Oversight Committee cannot be fully verified.” Correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: That's what it came down to. Okay.

So, then we're now going to get into just some clarification of the issue of – and this is in light of some questions that – especially that my learned friend, Mr. Smith, asked on behalf of Mr. Martin about what actually happened with the estimates and the costs, and an exhibit was put together with respect to that, okay?

Could we bring up P-03410, Madame Clerk?

THE COMMISSIONER: 03410. That is at tab 130.

MR. O'FLAHERTY: So, 03410, if we were to look on the far right of the document under Total EY Services to Date, you'll see the number on the bottom is \$2,424,208.79, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: I'd like you now to bring up for us, please, P-03592. Now, if you were –

THE COMMISSIONER: That's at tab 165.

MR. LEARMONTH: Volume 3.

MR. O'FLAHERTY: Yup. Thank you.

Oh, that's excellent, Madam Clerk, for my old eyes. If you can see that same number – if you look at the yellow line going across to the right on the bottom of the page, you'll see that same

number there, don't you? \$2,424,208.79, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So this document here – the first document was put in as a record through the Government of Newfoundland and Labrador – I understand produced that record. It is the correct amount, but the difference is that the EY document is going to break out the – both the services, that is the professional fees and the expenses or expenditures, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And it's also going to compare the statement of work estimates of professional fees to what the professional fees charged were in each of the particular engagements, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: I'm just going to take you through this because if we were to look at the top under Phase 1 contract, statement of work, and we're starting on the left-hand side of the document, date March 6, 2014; that's exactly the spot. You see that?

MR. M. KENNEDY: (Inaudible.)

MR. O'FLAHERTY: The initial ceiling was – if we move over – was \$25,000, and the estimate was \$19,300, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: You go down a line to the – this is the extension, because we looked at it – the recommendations were provided on March 19, but the work dragged on until July 25, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So there was an extension by government on 18th of July, 2014, for an additional \$24,500 ceiling, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And you come up with \$49,500, Mr. Commissioner, for the entire engagement. And the amount actually billed was – what was that amount next to it, please? Mr. Kennedy, can you see that?

MR. M. KENNEDY: \$37,825.

MR. O'FLAHERTY: No, it's \$40,000 –

MR. M. KENNEDY: (Inaudible.)

MR. O'FLAHERTY: Forty thousand was the estimate, yeah, and we billed \$37,825, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: Okay.

Now we move down to the review of – the next part of it is the ad hoc services, and you have \$37,899, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And that was under a umbrella agreement which had a maximum of 250, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: So that's not going to go into the statement of work estimates, but that's a piece that's outside the statements of work, is it not?

MR. M. KENNEDY: That's correct, and I made a reference earlier to that \$25,000 or \$20,000 eventually costing \$90,000, I think, which clearly included the ad hoc services, so we should –

MR. O'FLAHERTY: Right.

MR. M. KENNEDY: – we should distinguish that.

MR. O'FLAHERTY: Right.

So this calculation is very helpful because the numbers are more clear on this, but if you go to the second phase, grey, the grey entry here starting in March 9, '15. We have \$125,000 is the ceiling and the estimate is 125, and the

amount of professional fees is the green number there. What is that, that's eventually charged?

MR. M. KENNEDY: \$192,404.50.

MR. O'FLAHERTY: Right.

So, this initial engagement for the second – sorry, the estimated time frame for the engagement of the second phase of work was six weeks, wasn't it?

MR. M. KENNEDY: Was it six or eight?

MR. O'FLAHERTY: It was either six – okay –

MR. M. KENNEDY: It was eight.

MR. O'FLAHERTY: – sorry.

MR. M. KENNEDY: It was eight, actually.

MR. O'FLAHERTY: It was eight weeks, okay, and we started on March the 9th, 2015, and when did the engagement end?

MR. M. KENNEDY: It was October 2015.

MR. O'FLAHERTY: October 2015.

MR. M. KENNEDY: Mmm.

MR. O'FLAHERTY: The next one now is phase 3, and this is when you come on the scene, personally, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And you're familiar with this, this is the – you've already testified this was \$750,000 to \$1,250,000 and there was a target of a million dollars, correct, for fees?

MR. M. KENNEDY: The premier expressed a desire to keep it to a million dollars if possible.

MR. O'FLAHERTY: Right.

What you actually billed is the green number at the bottom, which is how much?

MR. M. KENNEDY: \$1,615,451.

MR. O'FLAHERTY: Correct.

So, on the face of that, it looks as if you are almost \$400,000 over fees, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: But, if we were to move down below, you'll see there is Astaldi, directed to charge to interim SOW, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: Was there a separate work stream authorized and budgeted for, for EY to do that work?

MR. M. KENNEDY: Yes, although it was captured within – as referred to there as the phase 3 statements –

MR. O'FLAHERTY: Right.

MR. M. KENNEDY: – of work.

MR. O'FLAHERTY: And can we just flip up just for one moment, 0593, please Madam Clerk.

MR. LEARMONTH: Tab 166 in binder 3.

CLERK: What's the number again?

MR. O'FLAHERTY: 05 – I'm sorry, 03593, please.

This is the Muskrat Falls Project review budget status report, March 11 is the date of it, but my understanding is this is presented about a week later to government?

Is that correct?

MR. M. KENNEDY: March 18 –

MR. O'FLAHERTY: March 18 –

MR. M. KENNEDY: – I responded.

MR. O'FLAHERTY: – it was presented.

If we were to turn to the next page, please, you can see the tracking of the first engagement, the \$1,250,000, right?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: That's what we're looking at here, and you can follow it along as saying to complete, it should come in under budget, correct?

MR. M. KENNEDY: That's right, correct.

MR. O'FLAHERTY: And now if we turn to the back, next page, we have a separate piece of work, the Astaldi Options Analysis Review, right?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And you have already pointed out, as Mr. Learmonth has, that that report is actually in the record of the exhibits here before the Commission –

MR. M. KENNEDY: It's in the documents, yes –

MR. O'FLAHERTY: Right.

And then let's go to the last page. And what are we looking at here?

MR. M. KENNEDY: So, there are three bullet points and one is by March 4 on specifically the Astaldi options analysis, we had already incurred fees of \$150,000 approximately. The estimate to complete that work was a further \$310,000 for a total forecast of \$460,000.

MR. O'FLAHERTY: Right.

Now to go back to our other document and I will finish it up with 03592, please. So when we go back to the bottom of the page, you have along the yellow bar, you'll see A: \$1,665,438. That provides the estimated of the statement of work fees, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And if you go over to the actuals: 2.136 – correct?

MR. M. KENNEDY: That's correct?

MR. O'FLAHERTY: And if you scroll down you'll see the Astaldi work was \$496,000, so it was greater than the 460 estimated, correct?

MR. M. KENNEDY: That's correct.

MR. O'FLAHERTY: And then the last piece of work performed is the briefing for – ad hoc work, the briefing is the \$26,000, correct?

MR. M. KENNEDY: Yes, that's correct.

MR. O'FLAHERTY: Thank you. Those are my questions, unless there is anything arising from that.

Thank you very much. Thank you, Mr. Kennedy.

THE COMMISSIONER: (Inaudible) Mr. Learmonth.

MR. LEARMONTH: No.

THE COMMISSIONER: No questions? All right.

Thank you, Mr. Kennedy. It's been a long day. I appreciate the fact that you have given us your time.

All right, we'll adjourn until tomorrow morning. We are going to start tomorrow morning at 9 o'clock, because again it's going to be another one of those busy days and I do want to leave two full days for the next witness after that. So, we will be starting tomorrow morning at 9 o'clock, okay.

CLERK: All rise.

This Commission of inquiry is concluded for the day.