



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 37

Commissioner: Honourable Justice Richard LeBlanc

Thursday

16 May 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

I assume now we'll just fall in order as well.

So Nalcor Energy is next.

MR. SIMMONS: Yes, good morning,
Commissioner. Thank you.

Good morning Mr. Bown; as you know, Dan
Simmons for Nalcor Energy.

MR. BOWN: Good morning, Mr. Simmons.

MR. SIMMONS: So I want to cover some of
the same areas that you've been questioned on
already, both by Mr. Learmonth and by some
other counsel. I want to clarify a few things and
bring you to a couple of other documents to get
some comments from you on them.

First question, though, I had was: During the
time period that's under discussion – the 2013
financial close time period and several years
after that – were you a notebook keeper? Did
you have one of these notebooks that we see
some people have like Mr. Sturge kept, where
you kept regular notes of either meetings or
activities or to-do lists or that sort of thing?

MR. BOWN: I did keep notes irregularly.

MR. SIMMONS: Irregularly?

MR. BOWN: But as I noted during Phase 1 –

MR. SIMMONS: Yes.

MR. BOWN: – that when I left Natural
Resources all my materials –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – were left and I no longer have
those books. The books that I have currently –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – that I dealt with when I moved
to the Major Projects office, I turned in all those
materials to the Commission.

MR. SIMMONS: Okay.

And in your preparation for coming here today,
you've told the Commissioner already that you
had access to materials within government, I
guess, to go back electronically to look at your
emails. You told us that.

MR. BOWN: Yeah.

MR. SIMMONS: Did that review include
reviewing any of your handwritten notes or any
notebooks that you kept?

MR. BOWN: I didn't have any notebooks from
that period of time.

MR. SIMMONS: Okay.

And by that period of time, we mean the 2013
during financial close?

MR. BOWN: Yes.

MR. SIMMONS: And what about during 2014
and 2015?

MR. BOWN: I don't – no, I didn't have any
notebooks from then either.

MR. SIMMONS: Okay, so –

MR. BOWN: When I left Natural Resources in
2016 –

MR. SIMMONS: Yes.

MR. BOWN: – I only have my notebooks from
that point forward.

MR. SIMMONS: Okay.

And did you – when you were preparing, did
you make any inquiries then, within government,

to see if you could get access to your notes from back in those time periods?

MR. BOWN: I went to the Department of Natural Resources. They returned all my boxes to me.

MR. SIMMONS: Yes.

MR. BOWN: My notebooks weren't in them.

MR. SIMMONS: And your notebooks weren't there.

MR. BOWN: Yeah.

MR. SIMMONS: Okay.

I presume that might've been helpful to you had you had access to the notes you kept at that –

MR. BOWN: Yes.

MR. SIMMONS: – time –

MR. BOWN: Yes.

MR. SIMMONS: – your notebooks.

THE COMMISSIONER: That's an interesting situation. We have – is there anybody here from government this morning? We have requested from government all of the documents and now we're hearing this morning that Mr. Bown did have notebooks. We had not received any notebooks from that time that I'm aware of anyway.

So, between – Mr. Ralph and now Mr. Fitzgerald is getting up as well.

MR. FITZGERALD: I guess on the –

THE COMMISSIONER: If you could just turn off your mic –

MR. FITZGERALD: Mr. Simmons, I just –

THE COMMISSIONER: – there for a minute, Mr. Simmons.

MR. FITZGERALD: Thank you.

To that point on notebooks, I know that Mr. Bown did have notebooks. He has asked for them. They haven't been provided. And I can also say to you, Commissioner, that Ms. Mullaley has a detailed memory of what she did with her notebooks when she left her job as clerk of the Executive Council and those notebooks haven't been found either.

It's – neither one of my clients have been able to have access to these notebooks, despite efforts by Mr. Ralph and government to try to find them, but they seem to be misplaced or missing.

THE COMMISSIONER: Mr. Ralph.

MR. RALPH: I haven't participated in looking for Mr. Bown's notebooks. A lot of people have been trying to track down Ms. Mullaley's notebooks and they appear to be nowhere to be found within the Confederation Building, and I guess I think most people are presuming that they were destroyed.

But, I spoke to Ms. Mullaley myself and spoke to people in Cabinet Secretariat regarding those notebooks and who would've handled them, and they've looked everywhere in storage for the Cabinet Secretariat and they can't find them.

THE COMMISSIONER: So what is the policy in government for destruction of documents?

MR. RALPH: As far as I know – and I can get this from Cabinet Secretariat – but I understand there is no policy with regard to these books, in terms of saving them. And I think they'd be considered transitory and, certainly, it's in the discretion of the holder, or perhaps their manager, whether they're destroyed or not, or kept.

THE COMMISSIONER: So are you telling me that in government's search for documents – particularly now, let's talk about these notebooks – that somebody has tried to ferret out who it was that would've had possession of these, whether or not they were destroyed or haven't been destroyed?

MR. RALPH: Yes, so we know that Ms. Mullaley believes she gave them to a person in Cabinet Secretariat who's now retired. We – you know, we contacted that person; they have no

recollection of that. We looked throughout Cabinet Secretariat in their storage areas and couldn't find them.

You know, so I mean we followed every possible lead and they don't seem to be around. I know that in the beginning, when this process started, received the summons from the Commission, I think in every department people went around asking for their books. I know that with Mr. Bown –

MR. BOWN: Mm-hmm.

MR. RALPH: – and with Mr. Carter, they said: Give me your books that you have, we'll photocopy them and send them to the Inquiry.

THE COMMISSIONER: Right.

So can we – can I ask you to go back to the Department of Natural Resources. Mr. Bown is telling me today that he had notebooks that he left them at Natural Resources in 2016, so that's not that long ago –

MR. RALPH: Yes.

THE COMMISSIONER: – and that basically he left them there; when he went back he couldn't, he was given some boxes, and they didn't include the notebooks. Can we do a further search in Natural Resources to see if we can find these notebooks –?

MR. RALPH: Absolutely, this is the first I have been come aware of Mr. Bown's plights, but I will certainly have a look –

THE COMMISSIONER: Right.

MR. RALPH: – and see what we can do.

THE COMMISSIONER: How long do you think it will take you to figure that out?

MR. RALPH: We can start that process today.

THE COMMISSIONER: Perfect. So maybe by next week we might have an idea.

MR. RALPH: I would think, by next week, we'll have the answer.

THE COMMISSIONER: Okay, so next week, I'll hear from you –

MR. RALPH: Yes, you will.

THE COMMISSIONER: – with regards to this. Okay. Thank you. All right, Mr. Simmons, sorry interrupt you.

MR. SIMMONS: No, that's fine, Commissioner.

Okay, Mr. Bown, I have to ask you some questions, of course, about financial close and about your knowledge of the capital cost – the forecast capital cost at that point. You've given a certain amount of evidence, a fair bit of evidence on that already. So, just to make sure I understand what we've heard from you so far, the first point is that it seems that you don't actually have clear recollections of what you did and didn't know at that time, about whether there was a new capital cost forecast that was being used. Is that true?

MR. BOWN: That's correct.

MR. SIMMONS: And you had been asked yesterday in your direct examination, and I think the way the question was put was to whether you had any knowledge at that time that the capital costs were being estimated at \$6.531 billion, and I believe you said you had no recollection of that.

MR. BOWN: I wasn't aware at that time, no.

MR. SIMMONS: Okay. And to be clear, now, after Ms. Breen examined you yesterday, is it that you know that you hadn't heard that number at that time or you can't recall whether or not you knew about that number at that time?

MR. BOWN: I will supplement that by saying I reviewed my materials, my email and the documents that are attached to email, and so there is nothing in my records and there is nothing in my recollection.

MR. SIMMONS: Okay.

So put aside the review of the records for a moment because I just want to separate that a little bit.

MR. BOWN: Okay.

MR. SIMMONS: I want to see what you remember. And are you telling me that you remember that you didn't know about the specific number 6.531 or that you can't recall whether or not you knew about it? There's a difference.

MR. BOWN: I understand there's a difference.

MR. SIMMONS: (Inaudible.)

MR. BOWN: I don't remember there being a 6.5.

MR. SIMMONS: Okay.

Now, what about aside from that particular number 6.531, what about whether or not you were aware there was a change in the forecast capital cost from the DG3 estimate. Do you know whether you were aware at financial close that there was a change in the estimate?

MR. BOWN: No. I wasn't aware.

MR. SIMMONS: Okay.

And do you recall from that time – because we have gone through a number of documents, and from your recollection, do you recall there being any discussion about whether there was a change or would be a change in the capital cost at financial close?

MR. BOWN: The focus of our discussion as it related to cost overruns – sorry, I'm going to move a little bit to the left –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – the focus of our discussion and the engagement that we had amongst ourselves and Nalcor related to the drafting of the agreements related to cost overruns.

MR. SIMMONS: Mm-hmm. Okay. So I think you've answered the question.

Now, we've heard evidence from Premier Dunderdale that she knew about the \$6.5-billion forecast.

MR. BOWN: Mm-hmm.

MR. SIMMONS: And Mr. Learmonth has indicated that we can expect to hear evidence from Mr. Morris – I don't know myself what he would say and haven't seen any interview transcript, but apparently he'll say he knew of this. Mr. Morris was your deputy?

MR. BOWN: Assistant deputy.

MR. SIMMONS: Assistant deputy?

MR. BOWN: Yeah.

MR. SIMMONS: Okay. Who was your deputy at the time?

MR. BOWN: I was the deputy.

MR. SIMMONS: Oh, sorry, I lose track of who's who, yeah.

MR. BOWN: Yeah.

MR. SIMMONS: And so Mr. Morris reported directly to you?

MR. BOWN: Yes.

MR. SIMMONS: Yeah.

He appears to have been pretty closely involved in the financial close process in the month or two leading up to financial close on November 29.

MR. BOWN: He was part of the team that was assigned with the Department of Finance –

MR. SIMMONS: Yes.

MR. BOWN: – that was looking at the equity costs and –

MR. SIMMONS: (Inaudible.)

MR. BOWN: – and what the financing process was going to look like.

MR. SIMMONS: Mm-hmm. Okay.

So, can you give us any explanation as to how Mr. Morris would have that information and it wouldn't have found its way up to you?

MR. BOWN: I can't answer that. I don't –

MR. SIMMONS: Okay.

MR. BOWN: – know.

MR. SIMMONS: Can you give us any explanation as to how the premier would have that information and you wouldn't have been aware of it?

MR. BOWN: No, I don't have an explanation. The premier can be aware of information that other staff wouldn't be.

MR. SIMMONS: Okay.

So do you have any recollection of any communication from Mr. Morris on this issue? Like, can you say Mr. Morris never told me that there was an increase in the forecast capital cost? Or do you have any recollection one way or the other?

MR. BOWN: I don't have a recollection of a conversation with Mr. Morris about 6.5.

MR. SIMMONS: Pardon me?

MR. BOWN: I don't have a recollection of a conversation with Mr. Morris about 6.5.

MR. SIMMONS: Okay, so I'll be very particular about that again, and I'll –

MR. BOWN: Okay.

MR. SIMMONS: – say is that you don't recall whether or not he told you or your recollection is that he never told you about the 6.5?

MR. BOWN: I don't recall that he ever told me.

MR. SIMMONS: You don't recall that he ever told you. Okay.

Well, let's look at – we're going to go through a few documents here now. I had some questions on some of them for you. And let's start, please,

with Exhibit P-03543. And, Mr. Bown, in your book that should be volume 1, tab 38.

MR. BOWN: Yes.

MR. SIMMONS: So, just to put this in sequence. I could bring you to the document if you want, but it was a – this is November 3, 2013, and a couple of days before, on November 1, there had been some information provided from Nalcor on equity requirements that had been transmitted up to the minister of Finance, and I think it had come over to you and you'd –

MR. BOWN: Mm-hmm.

MR. SIMMONS: – given it to your ministers. So, that rings a bell?

MR. BOWN: Yes.

MR. SIMMONS: Okay.

This is now the 3rd of November, 2013, and this is an email exchange between you and Mr. Martin. And if we go to – first to page 3 – I'll just follow through the chain a little bit. On page 3, Mr. Martin sent you some answers to the question: "Is the project on schedule?" And with the statement at the beginning – "How about this" and then if we go to page 2.

Oh, and actually, you replied: "Good answer" – I'm sorry. Mr. – I'll start again.

MR. BOWN: Okay.

MR. SIMMONS: Mr. Martin prepared these draft answers to questions, and when we go to page 3, we see that he sent them to you –

MR. BOWN: Mm-hmm.

MR. SIMMONS: – and said: "Take a look. What do you think?" And you replied: "I'm good. Do you want me to forward?"

MR. BOWN: Correct.

MR. SIMMONS: So, first question is this seems to be a fairly casual exchange between the two of you. There's not a big air of formality around this. There's a sense of familiarity of discussing these sort of things. Is this – was this

typical for the type of communication that you had with Mr. Martin during this period?

MR. BOWN: So, by way of context, these were questions that were being asked by Minister Marshall and Minister Dalley. He was sharing them with me before they went to them to –

MR. SIMMONS: Yes.

MR. BOWN: – ensure that the – you know, that he was getting the good answer to them. So – yes.

MR. SIMMONS: Hmm.

MR. BOWN: This would be the type of exchange that we would have.

MR. SIMMONS: Right. Okay.

And then if we go to page 1, you had asked if Mr. Martin wanted you to forward them, and on the bottom of the page, he replies and says: “Yes. To Derrick, and Tom.” Now, that would be the two ministers.

MR. BOWN: Correct.

MR. SIMMONS: Would it be common for you to act as a conduit for this sort of information between Nalcor and both the ministers of Finance and Natural Resources?

MR. BOWN: No, not always. Sometimes Ed dealt directly with the ministers, dealt directly with the premier.

MR. SIMMONS: Mm-hmm.

MR. BOWN: I think this was just a case of where there were some questions that were asked. They wanted to meet just to review the responses to see if they hit the mark.

MR. SIMMONS: Okay.

And then when we look at the top of page 1, Mr. Martin sent you a supplementary message just a few minutes later. And he says: “In the meantime, tell them no need to get into this info.” So the them sounds like it’s the two ministers –

MR. BOWN: Yes.

MR. SIMMONS: – that you’re forwarding the information too. All right.

And he says – he includes in that message, he says: “Hard dates are not success or failure” He says “dates will change” He says “it will evolve” He says: “Holding all to one date is nonsense”

So the first point here seems to be that Mr. Martin is communicating that although we’re talking about schedule and I’ve given you these answers on schedule, it’s important to know that there – that you have to be careful with how much reliance you put on the hard dates in the schedule. Does that seem to be the message he’s communicating here?

MR. BOWN: Yes.

MR. SIMMONS: And he’s actually asking you to communicate that information to the two ministers. So did you do that?

MR. BOWN: The ministers were more interested in the responses to their questions.

MR. SIMMONS: I’ll ask my question again.

MR. BOWN: I wouldn’t have shared that portion with them.

MR. SIMMONS: Okay, so you wouldn’t have. So the answer is: No, you did not pass this information on to the ministers?

MR. BOWN: I would’ve cut out the responses to the questions provided to them directly.

MR. SIMMONS: Right. Do you remember what you did?

MR. BOWN: This –

MR. SIMMONS: Because you’re saying you would have. First of all –

MR. BOWN: I understand.

MR. SIMMONS: – tell me if you know what you did.

MR. BOWN: Not exactly, no.

MR. SIMMONS: So the answer is: No, you know don't know what you did.

MR. BOWN: No.

MR. SIMMONS: Okay.

And you're speculating that what you would've done is, in fact, you wouldn't have given them this information, you would've cut out this part of the message and only sent them the answers that we saw over on page 3 and 4.

MR. BOWN: Because that would be my normal practice.

MR. SIMMONS: Because ...?

MR. BOWN: That would be my normal practice.

MR. SIMMONS: That would be your normal practice.

Wouldn't you have considered it important, if Mr. Martin was asking you to provide this supplementary information to the ministers, to give it to them?

MR. BOWN: Sure.

MR. SIMMONS: Wouldn't there be a risk that they might place more reliance on the drafted answers than they – than Mr. Martin may have wanted them to, based on what he said should be given as supplementary information?

MR. BOWN: No, the ministers wanted the direct response to the question.

MR. SIMMONS: Okay.

So you acted then as – you used – you would have – you don't remember, but you're assuming you would have used your own discretion to determine how much of this information got passed to the ministers from Mr. Martin?

MR. BOWN: I would've given – yes. The answer is yes. I would've given them the answer to the questions that they requested.

MR. SIMMONS: Okay, thank you.

That was the 3rd of November. Let's go ahead now to the 8th of November and Exhibit P-03489, please. And I believe this one is in the financial close binder, volume 1, tab 17.

So you've – I think you've been referred to part of this chain of messages before. It actually begins on the 7th of November over on page 4 where there's a message from Todd Stanley to a number of people, including you.

MR. BOWN: Yeah.

MR. SIMMONS: Now, my understanding is this is shortly after Canada has – the Canadian – Canada's representatives have sent draft wording for the cost overrun clause.

MR. BOWN: Yes.

MR. SIMMONS: And it's become known that Canada wants a funding account set up where money is going to have to be deposited whenever there is a forecast, an annual forecast that the capital cost has increased from the DG3 estimate. Was that your understanding of where things sat at that point?

MR. BOWN: Yes.

MR. SIMMONS: Yes, it is.

So Mr. Stanley on the 7th makes some comments on that, and in the third paragraph here he says: "This proposal would apparently change equity funding numbers" So you would've been aware on the 7th of November of Mr. Stanley's statement regarding that, correct?

MR. BOWN: Mm-hmm.

MR. SIMMONS: And then there's discussion on – going back on pages 3 and page 2. It appears to be – this is people within the Department of Finance and Justice. You're not included in – on this chain at this point, correct?

MR. BOWN: No.

MR. SIMMONS: But when we go back to page 1 at the top, we see that you are included as a cc on Mr. Morris's last message, which includes

the whole chain. So all of this would've come to you, is that correct?

MR. BOWN: Yes.

MR. SIMMONS: And at the bottom of page 1, Ms. Brewer –

MR. BOWN: Yeah.

MR. SIMMONS: – her position then in Department of Finance was – I always forget who's ADM and who's DM.

MR. BOWN: Donna was the deputy.

MR. SIMMONS: She was the deputy.

So in the second paragraph there, she says: "Sounds like the project cost, debt vs equity schedule they provided over the weekend to Minister may need to change"

So, first of all, is that a reference to the information on equity requirements that had come through on the 1st of November?

MR. BOWN: That they had provided for Minister Marshall.

MR. SIMMONS: Yes, okay.

So she says: It looks like that needs to change. Then she says, "if they know there is a cost overrun projection at time of FC." FC would be financial close?

MR. BOWN: Yes.

MR. SIMMONS: Then she says: "Guess we may find out what generally on budget means!" Do you know what that reference to generally on budget?

MR. BOWN: That was part of their communications messages on how is the project doing. We're generally on budget.

MR. SIMMONS: Okay.

So you would agree with me that this message here that you received indicated that there is now some uncertainty over whether the project costs was going to be on budget at financial

close or whether there was going to be a cost overrun?

MR. BOWN: No. I think from Donna's point of view, is that given the language – again, she is the steward of the budget –

MR. SIMMONS: Mm-hmm.

MR. BOWN: –the amount of equity that we currently have available.

MR. SIMMONS: Mm-hmm.

MR. BOWN: And that if her concern is that we don't know if there is going to be a cost overrun, but if there is this language that gets put in, then it's going to impact our budget for this year and next year.

MR. SIMMONS: Okay. So if there is a cost overrun, it is going to impact then.

MR. BOWN: Yes.

MR. SIMMONS: So the possibility of a cost overrun is being flagged here. Would you go that far with me? Or the possible impact from a cost overrun is being flagged.

MR. BOWN: The latter.

MR. SIMMONS: Right, right.

So at this point, I mean you – and, again, do you have any recollection of –

MR. BOWN: No.

MR. SIMMONS: – getting this message or –

MR. BOWN: No.

MR. SIMMONS: No, you don't. Because I am going to suggest at having received this, this should have flagged in your mind, okay, we've got an issue we need to be on top of here. If there is this – and I read this as suggesting there could be a change in the forecast, and if there is, it's going to have financial implications for the province that have to be dealt with. So there is an issue here to be addressed.

MR. BOWN: Yeah, my –

MR. SIMMONS: Would you have seen it that way?

MR. BOWN: No.

MR. SIMMONS: No?

MR. BOWN: My concern – my view of this here would be that there's language that's been drafted that we need to clearly understand –

MR. SIMMONS: Okay.

MR. BOWN: – that if at some point in the future, there is going to be – if there is a cost increase and not when or of the current one – that it's going to impact the way that we calculate our equity projections going forward.

MR. SIMMONS: Okay, so how do you square saying this might only apply to cost increases in the future, with your statement if they know there's a cost overrun projection at time of financial close? This seems to be very specific –

MR. BOWN: No, she's being –

MR. SIMMONS: – to concern at time of financial close.

MR. BOWN: I think she's being – well, I don't know the word.

MR. SIMMONS: I mean how can you read this any other way than there being a concern about the impact of project cost at financial close?

MR. BOWN: Yes and she's concerned that if there is an increase that we don't know about –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – it would impact our equity projections.

MR. SIMMONS: Okay, so we're right back to my question now. If there's a concern that there might be a cost increase that you don't know about, wouldn't that flag up an issue then that you're going to want to make sure you resolve that question of whether there is going to be a financial increase by financial close. Or would you say, well, we don't need to worry about that?

MR. BOWN: No, no, I wouldn't say that. No.

MR. SIMMONS: Okay, let's go ahead then a few more days to November 11, and this is going to be Exhibit P-03446. It's in the same financial close binder, volume 1 and I think it's at tab 1.

So this is the 11th of November and on the bottom message on that page – this is from you. It goes to a long list of people including Donna Brewer, Paul Morris, Randy Pelletier, Paul Myrden, all of whom I think were in that chain of discussion we referred to a moment ago.

MR. BOWN: Yeah.

MR. SIMMONS: And you say: "I'd like each of you to accompany me to EPC Tuesday morning." That's Economic Policy Committee?

MR. BOWN: Yes.

MR. SIMMONS: "I'll send out the draft presentation shortly that I will be delivering."

So why would you want to have such a large group of people available to you at that Economic – for that Economic Policy Committee presentation? How would that work?

MR. BOWN: We were dealing with a significant number of matters across multiple departments –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – in that meeting and normally it's the one department that would participate, but in this particular case we were dealing with land issues, we were dealing with the equity issues and I believe there was one more topic as well, and it was important that if Cabinet ministers had questions, we had the appropriate people there to answer their questions.

MR. SIMMONS: Okay.

So did all these people attend with you at that meeting?

MR. BOWN: They sat outside – most of them sat outside, some came inside.

MR. SIMMONS: Okay.

So what does it mean standing outside, they wait in an empty room –

MR. BOWN: There's an empty room.

MR. SIMMONS: – somewhere in case they're called in?

MR. BOWN: Yes.

MR. SIMMONS: Okay.

Let's go ahead a couple of days now to November 13 and this is Exhibit P-03601. It's in your – in the other set of books, Charles Bown exhibits volume 2, tab 88. And I'm going to start on the bottom of page 1, please.

So this is a message from Mr. Sturge, it's to Mr. Martin and to you.

MR. BOWN: Yes.

MR. SIMMONS: As I say, November 13. The subject is called FLG CP Status, so that would be federal loan guarantee, condition precedent –

MR. BOWN: Yes.

MR. SIMMONS: – status?

MR. BOWN: Yes.

MR. SIMMONS: So by this time – correct me if I'm wrong – but there were two sets of conditions precedent coming from the federal loan guarantee term sheet that had to be dealt with. There was the A list and the B list.

MR. BOWN: Yes.

MR. SIMMONS: And you would've been quite familiar with that because you were helping work to resolve a fair number of these conditions precedent.

MR. BOWN: Yes.

MR. SIMMONS: And you were monitoring the state and status of these conditions precedent working up towards financial close.

MR. BOWN: Correct.

MR. SIMMONS: Correct?

MR. BOWN: Correct.

MR. SIMMONS: And Mr. Sturge here, when we go over to the top of page 2, says – starts that paragraph by saying: "Hi, just finished call with Canada." And ends saying: "Here is current status of CP's" He lists them all out.

MR. BOWN: Mm-hmm.

MR. SIMMONS: The A list is there on page 2, the B list starts on the bottom of page 2 and goes over to the top of page 3. So let's go to the top of page 3.

And condition precedent B9 reads – I have two questions coming out of this one for you – "... Independent Engineer Report (final draft targeted for Nov 15 delivery to Canada; Nalcor still working more details with Project Team on revised capital costs for IE)."

So you'd been asked some questions before about the independent engineer report, it seems very clear here that Mr. Sturge is making a point of reporting to you on the status of that report 'cause, in fact, it's one of the conditions precedent –

MR. BOWN: Yes.

MR. SIMMONS: – to that federal loan guarantee.

MR. BOWN: Mm-hmm.

MR. SIMMONS: Yeah.

Did Mr. Sturge keep you informed throughout this process about what the status was of the availability of that final report?

MR. BOWN: It was a topic at every conversation that we had regarding the CPs.

MR. SIMMONS: Okay.

And then the next point is there. He says: Nalcor is still working more details with the project team on revised capital costs for IE.

Do you have any recollection of having noted that statement?

MR. BOWN: No.

MR. SIMMONS: Or being aware that Nalcor was working on revised capital costs for submission to the independent engineer as part of that process?

MR. BOWN: It doesn't come to mind right now.

MR. SIMMONS: Nevertheless this email message certainly was sent to you –

MR. BOWN: Yes.

MR. SIMMONS: – and it's a topic that you were closely following –

MR. BOWN: Mm-hmm.

MR. SIMMONS: – the satisfaction of these conditions precedent.

MR. BOWN: Yes.

MR. SIMMONS: Yes, it was? Okay.

So we'll come back to this exhibit again in a moment, but first let's go to – Mr. Sturge has notes from that same day, November 13, and they're found at Exhibit P-02523. It's in the financial close binder volume 1, tab 23.

MR. BOWN: One moment.

MR. SIMMONS: And you were referred to these earlier as well.

MR. BOWN: Okay.

MR. SIMMONS: So on the left-hand side here there's a note where Mr. Sturge has written: Charles Bown. And he read these notes for us in his examination. And I noted him to say –

THE COMMISSIONER: What page are you on there, Mr. Simmons, sorry?

MR. SIMMONS: Oh, sorry, page 10.

THE COMMISSIONER: Page 10.

MR. SIMMONS: I just have this single photocopy, so I had not noted it. My apologies, Mr. Bown.

Okay.

So, on the left, he noted: "Need to roll new capex out to Donna Brewer." Now, this is the same day, by the way, that he sent you that last message with –

MR. BOWN: Mm-hmm.

MR. SIMMONS: – those conditions precedent in it. "Need to roll new capex out to Donna Brewer. He will speak to Ed. Section 4.10 language could result in NL putting in more equity at FC. (Will need details – told CB we did not have all details yet and we're working through it). CB spoke to Ed – got green light."

So, first of all, do you have any recollection of this conversation with Mr. Sturge?

MR. BOWN: Not specifically, no.

MR. SIMMONS: Okay.

The reference to needing to roll new capex out to Donna Brewer, that would seem to tie-in pretty well with that last condition precedent report, that I just referred you to, saying that Nalcor was working through a new cost information for the IE, would it not?

MR. BOWN: The context that I read this in, and following from previous notes from Mr. Sturge, was that after we had received the new language from Canada, that if there was going to be a cost increase that they should provide those costs to Finance as soon as possible.

MR. SIMMONS: Okay.

So do I take it, then, that you weren't, sort of, charging Mr. Sturge with saying: You get the cost – financial cost increase information to me, if there's going to be an increase, you need to get that into Finance?

MR. BOWN: Yes.

MR. SIMMONS: Okay.

So is it fair, then, that your expectation would've been that reports about that would've gone to Finance, and they wouldn't necessarily have even come to you?

MR. BOWN: Right.

MR. SIMMONS: Okay.

MR. BOWN: Again, as I had mentioned earlier, we had –

MR. SIMMONS: Mmm.

MR. BOWN: – established a number of teams.

MR. SIMMONS: Mm-hmm.

MR. BOWN: Legal team, Finance team and intergovernmental, which I was leading.

MR. SIMMONS: Right.

MR. BOWN: So –

MR. SIMMONS: So if you got, kind of, left out of the loop about the numbers moving around about what this capex estimate was at this point, that would nearly be consistent with what you'd told Mr. Sturge to do.

MR. BOWN: Yes.

MR. SIMMONS: Which was to communicate with Finance about it.

MR. BOWN: Right.

MR. SIMMONS: You've been asked already about this bit about you speaking to Ed. Do you have any idea where you would've been at this time? Might you have been somewhere where Ed Martin was available to you and you were able to have a conversation with him about release of this information and pass it back to Mr. Sturge?

MR. BOWN: Likely it would have been a phone call. I think the normal process for these things are if they would like to get Ed's approval for anything that they were going to do –

MR. SIMMONS: Yes.

MR. BOWN: – and he suggested that maybe I should make that call for him.

MR. SIMMONS: Mm-hmm.

Well, that would seem kind of odd. Why would you do that?

MR. BOWN: I have no idea. That's just the way I read it.

MR. SIMMONS: Mmm.

Would that be consistent with the kind of relationship that you had with Mr. Martin that we saw in one of the earlier emails I referred you to?

MR. BOWN: Yes, but sometimes Derrick wanted something – he wanted to do something that I requested. He said: Well, maybe you should give Ed a call –

MR. SIMMONS: Mm-hmm

MR. BOWN: – and see if that is okay with him.

MR. SIMMONS: Mm-hmm. Okay.

MR. BOWN: That wouldn't be inconsistent.

MR. SIMMONS: So that's the 13th, now let's go back to Exhibit P-03601, please. It's in your book of documents, volume 2, tab 88 – we were there a moment ago. And this time we are at the – this is the same chain of messages that had the comments on the conditions precedent. And I want to go up to the top of page 1, please.

So the next day, November 14, this is Mr. Sturge's message, and he mentions there are at the end that, "... here outside Cabinet waiting with Charles now."

MR. BOWN: Mm-hmm.

MR. SIMMONS: So what was happening here?

MR. BOWN: So, following the meeting with EPC on the 12th, there was a meeting with Cabinet on the 14th. Derrick attended with me on that meeting as well.

MR. SIMMONS: Okay.

He says they were waiting outside. Did you get invited into that Cabinet meeting or were you just on standby in the (inaudible) –?

MR. BOWN: No, we were invited into that Cabinet meeting.

MR. SIMMONS: Okay.

And what happened there? What was that about?

MR. BOWN: We gave the same presentation that we gave at EPC.

MR. SIMMONS: Mm-hmm, okay.

Now, by this point, you'd had an email from Mr. Sturge the day before with those conditions precedent in it. And you'd had the conversation with Mr. Sturge about the capex. Now I understand from you now that your view was that capex increases needed to be reported to Finance.

Did you do anything at that Cabinet meeting to bring to the attention of anyone in the room that there was work being done on a new capital estimate and that numbers were going to be reported to the Department of Finance?

MR. BOWN: I don't recall that conversation taking place at Cabinet. No, I don't recall that.

MR. SIMMONS: Do you ever recall telling your minister that information?

MR. BOWN: No.

MR. SIMMONS: Okay.

Let's go to Exhibit P-02217, please. It's in the financial close book, volume 1, tab 32. So we've just left November 14; we're now going to jump ahead to November 19, a few days later. I bring you to this document because this is the one that kind of started our whole Inquiry down this line some time ago.

MR. BOWN: 32?

MR. SIMMONS: Right.

MR. BOWN: Go ahead.

MR. SIMMONS: Yes, try tab 32 and it should be Exhibit P-02217.

MR. BOWN: Yes.

MR. SIMMONS: You weren't party to this message, but this was the one from Mr. Meaney to the administrator of the data room with a couple of schedules that are attached there. There's a reconciliation showing the change from the DG3 estimate of \$6.202 billion to the current – the current FFC of \$6.531, and there's also a schedule showing the breakdown contract by contract where those changes have taken place.

In the message Mr. Meaney had written: "Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH. Do not provide access to NL, BLG and Faskens at this time."

Earlier on in evidence here at the Inquiry, this has been treated as if Nalcor was refusing to – or withholding from government information about this cost increase. So, the first question for you is that was there – and you may have given evidence on this when you were here before. Was there a formal or informal protocol between Nalcor and government about how important information such as cost increases were to be communicated within government, i.e. – and, in particular, a desire to ensure that people, the politicians, senior politicians would not be caught out by information finding its way into the civil service without them knowing early that there were things like changes in capital budgets?

MR. BOWN: I'm going to answer yes and no for that question.

MR. SIMMONS: Okay.

I'll let you explain that.

MR. BOWN: I'll apologize for a yes and no answer.

MR. SIMMONS: These are long complicated questions but –

MR. BOWN: Yeah.

MR. SIMMONS: – your answer is what’s important.

MR. BOWN: But in terms of giving a full update and making everybody aware in a fulsome way there would generally always be a formal presentation that was given to the premier and minister, et cetera. But it never ever meant that if there was information that was being developed that was part of the process of doing that, that it couldn’t be shared beforehand, no.

MR. SIMMONS: So – now, at this point, was your expectations still that that information would be going to the Department of Finance rather than routed through you?

MR. BOWN: Yes. Again, we assigned teams. As I mentioned yesterday in response to a question, we had very few people doing many things.

MR. SIMMONS: And we understand that Mr. Morris is going to say that even though he wasn’t in the Department of Finance that he, in fact, was aware of the specific number that was contained in this information here. So do you know whether Mr. Morris had access to – was given access to this data room information?

MR. BOWN: I cannot be certain of that.

MR. SIMMONS: All right, let’s go ahead a couple of days now to November 21, Exhibit P-03447. It’s in the Charles Bown book, volume 1, tab 13.

MR. BOWN: Thirteen?

MR. SIMMONS: This is from Mr. Warren at Nalcor. It’s to a number of people, including you – your address is on the list here I think.

MR. BOWN: Mm-hmm.

MR. SIMMONS: Correct?

MR. BOWN: Yes.

MR. SIMMONS: Yeah.

And the subject is Business Issue Debrief and he says: “Hi all,

“Here is a list of items for our discussion momentarily.”

So is this part of the continuing process of working through issues with Canada and resolving the things that need to be dealt with in order to get the federal loan guarantee in place?

MR. BOWN: Yes.

MR. SIMMONS: If we turn to page 2, where the issues are listed, the first one was “Capital Cost Overruns (Section 4.10)” –

MR. BOWN: Mm-hmm.

MR. SIMMONS: – “Canada requiring pre-funding starting at DG3. We will try to move them to start at Financial Close.” Now, do you have any recollection of the discussion at this meeting on this issue?

MR. BOWN: No, I don’t, but my understanding, as I read through the documents and as I read this one, would be following from the initial email that we got on November 7 that we had to find a way to get the language from section 4.10 to the term sheet into the equity support agreement – equity support and guarantee agreements and that this was a continuation of that. And if, indeed, there was going to be a cost increase, that moving to a date other than DG3 was a good thing.

MR. SIMMONS: So I’m gonna suggest that – and if we’re just reading these couple notes here –

MR. BOWN: Okay.

MR. SIMMONS: – that this is consistent with needing to move the start date for the calculation of the additional equity contributions in the cost overrun account to financial close because the financial close cost estimate number was higher than the DG3 number, ’cause otherwise, it wouldn’t make any difference. Correct?

MR. BOWN: Yeah, absolutely. It wouldn’t make a difference, but we weren’t – I’m saying that I wasn’t aware that there was a number.

MR. SIMMONS: Mm-hmm. So –

MR. BOWN: But this, in principle –

MR. SIMMONS: Right.

MR. BOWN: – this was the appropriate thing to do.

MR. SIMMONS: Okay.

So did you participate in this meeting and leave this meeting with no idea that there was an increased capital cost under discussion, for financial close?

MR. BOWN: I couldn't find anything in my records to indicate that there was.

MR. SIMMONS: Okay. And you –

MR. BOWN: Nothing in my recollection.

MR. SIMMONS: – and you have nothing in your recollection. Is it possible that there was discussion at this meeting, about an increased capital cost? 'Cause there's a number in play now since the 19th. There's a particular number in play, 6.531. Is it possible that that got discussed here and you just don't remember it?

MR. BOWN: I don't recall it being discussed.

MR. SIMMONS: Okay.

Do you recall the meeting at all?

MR. BOWN: Not particular.

MR. SIMMONS: Is that "no"?

MR. BOWN: No, I don't remember it.

MR. SIMMONS: Okay. The same day, November 21 – Exhibit P-02126, please. These are some more notes from Mr. Sturge. I don't have the – these may not be in your books, so we may have to look at the screen.

THE COMMISSIONER: That's correct. It's not in his binder.

MR. SIMMONS: So on the left-hand side, there's a heading there that says: Debrief with Ed/Charles, 11/21/13 – same day as we were just talking about.

"Ed, Charles, Donna Brewer, P. Myrden, P. Morris,

"Sturge, Auburn, Hull, Xeno, C. Hippern."

And there's – appears to be seven different issues here. Do these look – does this look like a continuation of the discussion of clearing off those conditions precedent in order to get the FLG in place?

MR. BOWN: Yes.

And I do recall, on that day, that – from my records, I knew that I was home sick, so I wasn't at work the day previous and I wasn't at work that day. And so I – this was a call-in for me.

MR. SIMMONS: Okay. So, you were on the phone –

MR. BOWN: Yeah.

MR. SIMMONS: – for this meeting. I mean that's not unusual in this things.

MR. BOWN: Yeah.

MR. SIMMONS: There's many meetings where there's people who are on the phone. Correct?

MR. BOWN: Yeah.

MR. SIMMONS: And so you've participated in many important meetings by participating by phone, I expect, have you?

MR. BOWN: Yes.

MR. SIMMONS: The first issue there is: Capital Cost Overruns – agrees with pre-funding.

MR. BOWN: This would be the –

MR. SIMMONS: So –

MR. BOWN: – language for the agreement.

MR. SIMMONS: Right. So, one of the issues would be whether there would be an escrow account at all –

MR. BOWN: Right.

MR. SIMMONS: – Canada had been looking for it. So, at this point, there's movement towards agreeing with their being an escrow account for equity funding.

MR. BOWN: Yes.

MR. SIMMONS: “Donna” – that would be Ms. Brewer – “creates problem as NL has no approval for equity until April 1.”

So, I'm gonna suggest that the only way there could be a problem, without approval of equity until April 1 of the following year, would be if the proposed provision created an obligation to fund new equity at financial close.

Is there any other way that there could be a problem?

MR. BOWN: No.

MR. SIMMONS: No. And the only way the obligation could be corrected – could be created to fund more equity at financial close is if it's known that the estimated capital cost at financial close are higher than DG3 costs. Correct?

MR. BOWN: If they are known to us, yes.

MR. SIMMONS: Okay. So, whatever the discussion was here, at this meeting, you were party to it, you would have heard what was discussed, you would have, at the time, known what the issues were, right?

MR. BOWN: Right.

MR. SIMMONS: Okay.

Let's go to the next day, November 22, 2013 – Exhibit P-02673, and I don't think this is in your binders either.

THE COMMISSIONER: That's correct. It'll be on the screen.

MR. SIMMONS: Okay. So, we'll have a look. And you're not part of this chain, but this is the next day, and Mr. Morris is –

MR. BOWN: Yes.

MR. SIMMONS: – part of it. And if we scroll down, please, to the bottom of page 1? You may have been brought to this part of the message before. This is the message –

MR. BOWN: Yes.

MR. SIMMONS: – where there's an explicit reference to \$6.5-billion capital cost estimate.

MR. BOWN: Mm-hmm. I've seen this.

MR. SIMMONS: Right. So, did Mr. Morris ever bring – did Mr. Morris bring this to your attention –

MR. BOWN: I don't recall –

MR. SIMMONS: – at this point?

MR. BOWN: – him bringing this to my attention.

MR. SIMMONS: Would you have expected that this was important enough information that it should have been brought to your attention?

MR. BOWN: In those days, as we were getting close to close –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – again, we were working in discrete teams, we may have missed each other.

MR. SIMMONS: Right.

By this point, knowing that you'd told Mr. Sturge that this information needed to be reported to Finance, is this just something that was off your radar, and that you just weren't paying attention to? And this was part of the other teams' issues to look at?

MR. BOWN: Yes.

MR. SIMMONS: It was.

MR. BOWN: Yes.

MR. SIMMONS: And, just one more to kind of close out the chain here. That was the 22nd, let's go to the 26th of November, P-02125, and that's at financial close book, volume 1, tab 53. This is

from Mr. Sturge, it goes to Mr. Martin, and it goes to you as well as Donna Brewer and Paul Myrden.

And Mr. Sturge writes: “Hi folks, we heard back from Canada last evening on the outstanding project finance business issues. As you may recall, we gave them a written proposal Thursday evening last week on all of the remaining eight business issues. They came back last evening and gave us everything we asked for with one exception and with two clarifications. Included in the written proposal back” – from – “them (that they accepted) was that cost overruns would be pre-funded in an escrow account, but only from the cost estimate at Financial Close, which is certainly better than calculating overruns from the DG3 number.”

So, I’m gonna suggest it seems pretty clear here that the resolution of this issue by calculating cost overruns from financial close was a benefit, in that had it been calculated from DG3, there would’ve been extra –

MR. BOWN: (Inaudible.)

MR. SIMMONS: – equity required.

MR. BOWN: Agreed. From a legal drafting perspective, which was the challenge for me, with Canada, was to ensure that if there was going to be a cost increase –

MR. SIMMONS: Okay.

MR. BOWN: – should one occur –

MR. SIMMONS: So –

MR. BOWN: – that it be from when we signed all the agreements versus some other point back when we signed the term sheet.

MR. SIMMONS: Well, this suggests there’s a real-world consequence right at that time, from that.

MR. BOWN: I had carried that over – I discussed that with Mr. Learmonth yesterday.

MR. SIMMONS: Yeah. Well, tell me again, did you understand, at the time, that there would’ve

been actual funding required had this not been agreed to by Canada?

MR. BOWN: I don’t recall that. No.

MR. SIMMONS: And then a few days later, closing happened on November 29. Project – the whole set of documents were distributed. We know that project finance agreements, if you go to them and add up the cost numbers in them, it comes to 6.5 – 6.53.

Is that something that would’ve risen to your attention at the time of close?

MR. BOWN: No. The commercial agreements were handled by – when Nalcor, their outside counsel, they would’ve prepared for us a letter from the chief legal – chief finance – chief legal officer, indicating that all the terms, commercial terms, were consistent with the term sheet that government had approved.

The Department of Justice, our third team, would have received that letter and would have had BLG review that, as well.

MR. SIMMONS: Right. And I believe – we’ll go there if we have to, but do you recall the project finance agreements, including a schedule which was capital cost?

MR. BOWN: No, I don’t.

MR. SIMMONS: With numbers in it?

MR. BOWN: No.

MR. SIMMONS: You don’t recall?

MR. BOWN: No. I wouldn’t have reviewed that detail.

MR. SIMMONS: Right. So having walked through that, I think I understand a little bit better now, Mr. Bown, about what your role is in relation to this, and that you, in fact, were relying on the Department of Finance to be the ones who are monitoring this issue about cost increase and impact on the funding of the equity account.

MR. BOWN: We had developed shared responsibilities –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – between the Department of Finance, the Department of Justice and Natural Resources.

MR. SIMMONS: Right. So if, at the time of financial close, you personally weren't aware of new numbers for estimates, which you can't recall being aware of it, that does not mean that person – that people within the Government of Newfoundland and Labrador were not aware of those numbers.

MR. BOWN: I think the Premier has indicated – the former premier has indicated –

MR. SIMMONS: Yes.

MR. BOWN: – that she was aware.

MR. SIMMONS: Okay.

So have you seen any indication, or can you provide anything from your recollection to suggest that anyone from Nalcor who was involved in this financial close arrangements attempted to hide or conceal or withhold from government the estimate, the capital cost estimate at financial close?

MR. BOWN: The only challenge I have with that, Mr. Simmons, is that I would've expected to see, in the documents that were being shared back and forth with government at an early stage, details about cost estimates, as we had done – which was our normal course previous and the path that we had followed in the future.

MR. SIMMONS: Right. So the process here was different, because the context, I'm going to suggest, was different in the way this was happening. And my question is – and that doesn't suggest to me that there was anything on the Nalcor side where they were trying to not disclose this to government. It seems pretty clear a lot of people in government knew this. You didn't, but a lot of people did. Correct?

MR. BOWN: It would appear that way, but I can't say that information was free flowing in the way that it should have been.

MR. SIMMONS: Mm-hmm.

MR. BOWN: It just – I look at the email where it says, do not disclose.

MR. SIMMONS: Right. So –

MR. BOWN: But it did cause me some concern.

MR. SIMMONS: So when we read through, at this time – that's what it said. So when we read through the whole package here – as we just went through a certain amount of it there, then – I'm going to suggest that there was plenty of information in there for you to know that there was going to be a reassessment of capital cost and it was likely going to be higher than it had been at DG3.

Do you agree with me that, objectively, looking at the material that was available to you, that's a conclusion that we can reach?

MR. BOWN: Looking backwards now?

MR. SIMMONS: Yes.

MR. BOWN: Yes.

MR. SIMMONS: 'Cause that's what you're doing when you go back and –

MR. BOWN: So –

MR. SIMMONS: – review it, right?

MR. BOWN: Yeah.

MR. SIMMONS: Okay.

And if you, as, kind of, the primary point of contact with the project and Nalcor in Natural Resources over this – have you had any concern that the manner in which that information was being communicated wasn't dealt with properly, that you had some responsibility to get involved and say: Well, we need a presentation on this. Or where's your deck or something like that?

MR. BOWN: I think it's indicated there that I did –

MR. SIMMONS: Pardon me?

MR. BOWN: Excuse me, sorry, I'm clearing my throat. I think – excuse me, Commissioner, I need a drink.

I think I did say there – it's noted in Derrick Sturge's notes – that if there was going to be new cost that it had to get to Finance. So, yes, I did reach in and say provide the information.

MR. SIMMONS: Right. So we'll hear from the people from Finance on that, I expect.

All right, thank you very much.

I just have a few questions, then, about the – 2015. And in 2015 there was a new AFE, authorization for expenditure, put in place for 7.65 billion, which I think was in the latter part of September of 2015.

MR. BOWN: Yes.

MR. SIMMONS: Yeah, you're familiar with that.

You weren't asked very much about that in your direct examination, but I think you'd said that that number came as a surprise – some surprise to you?

MR. BOWN: Yes.

MR. SIMMONS: Okay.

Can we bring up Exhibit P-02412, please? And this is not in your package of materials. So this was a – 2412, please. I may have said 2212.

This was prepared by Mr. Meaney when he gave evidence, and he put in where he'd put together a chronology of events leading up to that AFE in September.

MR. BOWN: Mm-hmm.

MR. SIMMONS: Did you have any opportunity to review this before giving your evidence here today?

MR. BOWN: Yes, I did some time ago. It's not fresh –

MR. SIMMONS: Okay.

MR. BOWN: – right now.

MR. SIMMONS: Right.

So I'm not going to question you on a whole lot of detail. There's a couple of points I want to bring you to.

If we scroll down to the entry for March 9/10, please. Just down a little. Okay, stop there.

So, Mr. Sturge gave evidence when he was on the stand about having accompanied Mr. Martin to a meeting at Confederation Building on March 9, 2015, and he said you were there, and Minister Dalley was there, and Julia Mullaley was there, and he thought maybe Craig Martin might have been there.

MR. BOWN: Mm-hmm.

MR. SIMMONS: And although there wasn't anything, a written presentation on cost update given at that time, his evidence was that Mr. Martin gave what he described as a quick update on Muskrat Falls and Mr. Sturge had notes with 7.5 in it as being, he concluded, a reference to a potential increase in the capital cost at that time.

So do you have any recollection of that meeting, of that happening?

MR. BOWN: Not specifically, no.

MR. SIMMONS: Right. And Mr. Sturge's testimony was that on the next day, the 10, there was a further meeting with the premier, Premier Davis, and his assistant, Joe Browne, that he attended as well.

Is that something you would have been at or have any recollection of?

MR. BOWN: No.

Is there a specific presentation deck that was developed for this meeting?

MR. SIMMONS: Well, I'm just asking you if you have any recollection of it.

MR. BOWN: Yeah. No.

MR. SIMMONS: Okay.

So you can't help us on those. Okay.

And if we scroll down, then, on to the June 22 entry, please. On page 3, I think, it is. Okay, you can stop there. This is a reference actually to a document that's in evidence, P-02418, please.

So this is a message from Mr. Meaney to Mr. Bennett. So it's within Nalcor. You're not on the message chain, so you wouldn't have seen it at the time.

On June 22, 2015, and Mr. Meaney says: "I just spoke with Ed. He is prepping for discussion with Minister this evening. He asked me again about what was driving change from \$7.5 to \$7.6b." And then he goes on to explain what some of that change is.

Do you know anything about this meeting with the minister, and whether that would have been the Minister of Natural Resources?

MR. BOWN: I don't know which minister.

MR. SIMMONS: Okay.

Do you have any recollection concerning what might have happened here and what communication was given by Mr. Martin to the minister at that time?

MR. BOWN: No.

MR. SIMMONS: Okay.

And we don't need to go back to the chronology but here's another entry for August, and I can bring you to a couple of documents here. P-3562, please, which is in your volume, Charles Bown, volume 2, tab 58.

MR. BOWN: (Inaudible).

Okay, (inaudible).

MR. SIMMONS: Okay, so if we go to the bottom of that first page, there's a message from you. It's to K. O'Neill at Nalcor Energy. This is now August 11, 2015 –

MR. BOWN: Mm-hmm.

MR. SIMMONS: – so this is about five or six weeks before the actual update – the AFE update was announced of 7.65. The subject is FW: MF Update schedule, and over on the top of the second page – hmm. Okay.

Wait, no, it's the bottom of the first page. It says – you write: "I note in your MF cost update schedule that a meeting is earmarked for Gilbert to update the Oversight Committee. Has this been confirmed for Monday? if so, I'll ... start the process of setting up the meeting."

And then if we go back to the top of page 1, the reply to you is: "Charles, just heard back from Heather ... we're good to go for the MF updates

"A briefing has been booked with the Premier on Aug. 17. Cabinet is Aug. 20 ..." et cetera, et cetera.

So you seem to be, at this point, in the loop, I'll say, on the arrangements that are being made for communicating a cost update to the Oversight Committee, to the premier, to Cabinet. Do you have a recollection of being involved at this time in these activities?

MR. BOWN: Not a clear recollection, but, yes, I would have been.

MR. SIMMONS: Okay.

And then if we go to Exhibit P-02552, please. This one isn't in your books.

This is a short time later. This is now August 17. It's from Mr. Martin; it's to you.

MR. BOWN: Mm-hmm.

MR. SIMMONS: And he's sending a presentation. Just go to page 2; we can see the first page of the presentation, the August 2015 Project Update. This is the one –

MR. BOWN: I'm familiar with it.

MR. SIMMONS: – that presents the 7.65. You're familiar with it?

MR. BOWN: Yeah.

MR. SIMMONS: Go back to the first page, please. So Mr. Martin is giving you sort of an advanced look at this, and he's saying "Please take a look." So is this – was this typical for Mr. Martin to be giving you sort of a first look at these things to get your feedback and comment on the way these things are going to be presented?

MR. BOWN: The purpose of providing me with a copy of the presentation would be to ensure that given my understanding of government, minister and the premier's office, that the presentation was complete.

MR. SIMMONS: Okay. No other purpose?

MR. BOWN: No other purpose.

MR. SIMMONS: All right.

Only one other document I want to refer you to, and then we're done. P-03570, this is on a different topic. That's in your – in Charles Bown book – volume 2, tab 66. And you were referred to this in your direct examination.

MR. BOWN: Go ahead.

MR. SIMMONS: So the topic here is – the subject of these messages is "Follow up on EY request regarding Board minutes" And it's communication between you and Mr. Bennett.

MR. BOWN: Mm-hmm.

MR. SIMMONS: And if we pick up the first message in the chain, which is on page 2, please, Madam Clerk. It says January 2016. Mr. Bennett writes: "Charles, EY continue to press for this info, but before referring them to you, I would like to discuss."

And then on the bottom of the first page, you reply: "In a meeting. Have raised it again with Julia."

And then on the top of that page, Mr. Bennett says: "Thanks. I need a holding statement for EY, as they are starting to complain about not having access to data. Can I let them know I am seeking clarification from the Province on this issue?"

So Mr. Bennett first asks about whether he can refer EY to you on this issue, and then wants to know if he can tell them that he's waiting on some kind of clarification from the province. So what's going on here? What's your role or involvement in this question about whether EY should be given access to the board minutes?

MR. BOWN: This I do recall. The – EY was requesting copies of board minutes. Gilbert was not inclined to give them that level of documentation. That – I had referred this to Julia for her to contact EY to come back with a decision on providing the board minutes –

MR. SIMMONS: Okay.

MR. BOWN: – as part of their review.

MR. SIMMONS: So why – and we can ask Mr. Bennett this, I guess – but why would you understand him to be saying that if they continue to press, that he'd be referring them to you – for them to contact you directly?

MR. BOWN: Well, I guess he was saying I'm saying no, and if they continue to press, I'm going to send them back to you and you deal with it. What I was doing was getting it to Julia before that happened.

MR. SIMMONS: Mm-hmm. Okay.

Okay, thank you very much.

All right, Mr. Bown, that's all the questions I have for you. Thank you very much this morning. Thank you, Commissioner.

MR. BOWN: Thank you.

THE COMMISSIONER: Thank you.

Concerned Citizens Coalition.

MR. BUDDEN: Good morning, Mr. Bown. As you recall from our previous dealings, I'm sure, my name is Geoff Budden, and I'm the lawyer for the Concerned Citizens Coalition, which as you no doubt recall, as well, are a group of individuals who for –

MR. BOWN: Mm-hmm.

MR. BUDDEN: – many years now have been observers and critics of the Muskrat Falls Project.

So, I have a number of questions here today. It should take about a half-hour. I am going to start with some ground we probably covered to some degree in our early examination of you, but I think it bears repeating. You spent your entire career with the Government of Newfoundland and Labrador, I understand, and you've had a good career. You've risen to the level, now, of deputy minister; you've been at that level for a while. And I guess I'd like to start by asking you to tell me what you understand to be the duties and the responsibilities of a deputy minister, particularly as to your minister.

MR. BOWN: In short, responsibility is to manage the day-to-day responsibilities of the department. Each minister is given a mandate letter, responsible to ensure that they achieve the objectives in the mandate letter and to report to the minister.

MR. BUDDEN: Sure, and we've heard evidence that the – essentially, therefore, through the last four or five years of the previous government, there is a new minister just about every year. There's certainly a fair bit of turnover. I know you weren't there for all of that, but I would suggest to you that part of your duties as a minister would be to inform and educate a minister to remind them of certain policy concerns and so forth. Would you agree with me there?

MR. BOWN: I agree.

MR. BUDDEN: Okay.

And that would also include, perhaps, I would suggest, the duty to respectfully challenge the minister if you believe the minister is advancing something that deviates from best practice or from existing policy, that kind of thing.

MR. BOWN: Respectfully, yes.

MR. BUDDEN: Of course, realizing, obviously, there is a decider and there is the –

MR. BOWN: Correct.

MR. BUDDEN: – and that's not you, but –

MR. BOWN: No.

MR. BUDDEN: – you do have that duty to respectfully bring matters forward even if it is not necessarily what the minister may want to hear?

MR. BOWN: Correct.

MR. BUDDEN: Okay.

So, I've talked, obviously, about the individual deputy ministers, but when deputy ministers and similarly situated individuals are acting collectively, as with an Oversight Committee, those duties would still exist, I presume. Although in this case, you're not dealing with an individual; you're, perhaps, dealing with the Cabinet.

MR. BOWN: Right.

MR. BUDDEN: Okay.

So, we've heard evidence that the Oversight Committee – and I don't think this is in dispute – but essentially as it existed it from the time it was brought together in the spring of 2014 until outside experts were added at some point in 2017, through that three year period, approximately, the Oversight Committee consisted of – exclusively of senior civil servants. I am correct in that, am I not?

MR. BOWN: Yes, you are.

MR. BUDDEN: Okay.

And we've reviewed your evidence from Phase 1, and you were quite frank that really until you got the Grant Thornton report for instance, you had no real idea what a P-factor was. So I take it that whatever skills you brought to the table – I'm not disputing, you know, your expertise within governance – you had no particular skills with regard to megaproject construction, engineering, any of those things.

MR. BOWN: That's clear, yes.

MR. BUDDEN: Okay.

And that would be true as well for all other members of your committee?

MR. BOWN: Some brought some previous experience, we had a couple of engineers there who had private sector experience before but I don't believe it was in megaproject engineering.

MR. BUDDEN: Sure. So really you were – whatever skills you had within government, you collectively and really individually had no particular skills with regard to – that one would ordinary require, I would suggest, to provide oversight to a megaproject construction.

MR. BOWN: That depends on the type of oversight that you're trying to achieve.

MR. BUDDEN: Fair enough.

MR. BOWN: If it's engineering oversight or – I guess, the intent of the Oversight Committee, the mandate was to receive information from Nalcor and be able to determine whether there are any places in the project that was off track.

MR. BUDDEN: Sure, okay.

And that feeds nicely into where I'm going now. Could you perhaps call up Exhibit 02698, Madam Clerk? It's a two-page document and the first page is really where my interest lies. And I'm not sure if you have that, Sir.

THE COMMISSIONER: 02698, did you say Mr. –?

MR. BUDDEN: Yes, I did.

THE COMMISSIONER: No, that's going to be on the screen.

MR. BUDDEN: Yes, but it will be right in front of you on the screen.

And I'm going to – what this is, these are briefing notes from a – from the premier of the day, Mr. – the Honourable Tom Marshall, and I'll read it: Speaking Notes for Oversight Announcement, Thursday, July 31, 2014. We can scroll down a little bit, Madam Clerk, it's more towards the bottom of the page that I'm interested in. And – that's fine.

What I'm going to read to you – and this is, of course, from the remarks of Minister Marshall – Premier Marshall, quote: "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.

"To strengthen and formalize the existing oversight already in place since work started on the project, we have established an oversight committee to provide additional assurance to the people of the province."

So that, of course, is the Oversight Committee on which you sat.

MR. BOWN: Mm-hmm.

MR. BUDDEN: That clearly is the reference there.

MR. BOWN: Yeah.

MR. BUDDEN: The – so at the time (inaudible) – the first few months of this committee being put in place, did you have any doubts or questions about the ability of the Oversight Committee to provide this robust, prudent oversight, such as this document envisages?

MR. BOWN: No, but we had engaged EY; they had given us a platform, a program to operate from. So, you know, until such time as you find out that that's not working, you would believe that you're on the right path.

MR. BUDDEN: Sure. So you knew right from the beginning that if this job was to be done appropriately, you required that expert advice.

MR. BOWN: Yes.

MR. BUDDEN: Okay.

And, with regard to EY, during your dealings with them, did you ever doubt or question that they did indeed have the expert advice that the committee required?

MR. BOWN: No.

MR. BUDDEN: Okay. So you had full confidence in EY?

MR. BOWN: Yes.

MR. BUDDEN: And, as far as you know, that was the consensus of the committee? There's no debate there. People were saying: Look, these guys aren't up for the job. None of that?

MR. BOWN: No, we engaged them a total of four times, so we respected their work.

MR. BUDDEN: Sure.

Thank you.

And you knew as well – and it's plainly obvious, I would suggest, from Premier Marshall's remarks – but there are many other exhibits I could put to you, but I don't think it's in dispute that the government clearly were – of the day, were clearly representing to the public that: Look, this Oversight Committee is doing important work, its work is to provide – with its expert assistance, to provide robust, prudent oversight. That's not in doubt that the public were being led to believe that was in place?

MR. BOWN: Correct.

MR. BUDDEN: Okay.

The – I'm going to be getting into a little bit, I guess, about how EY saw the relationship, and we've heard evidence, and some of it was put to you yesterday, but much of it – it all emerged really through Michael Kennedy of EY, who you would have –

MR. BOWN: Mm-hmm.

MR. BUDDEN: – dealt with, I presume, who testified all day Monday.

And, at one point, there was an internal EY email in which one of the partners complains to another that one of the Oversight Committee reports – and I believe it was the August 2014 report – was simply the Oversight Committee setting out, on one hand, what EY was saying and, on the other hand, what Nalcor was saying, without attempting to synthesize or to draw conclusions of its own.

Are you familiar with that evidence?

MR. BOWN: That was a really long lead-in. You want to try that one again?

MR. BUDDEN: Sure.

We heard evidence through Michael Kennedy – and it was essentially an email that was introduced. He wasn't a party to it because it was before his time, but all the evidence got introduced through him. And what the email was complaining about, essentially, was saying: Look, this report, all it does is it presents our view of things, it presents Nalcor's view of things, but there's no attempt there to synthesize or the Committee to draw conclusions of its own. It's just repeating the Nalcor wording, repeating our wording with no independent conclusion. That was, I would suggest, Mr. Kennedy's evidence.

And so I'd rather just park that for now. I won't ask you to comment on it. But I then asked him, I said: Look, do you think the reason why the Oversight Committee didn't draw a conclusion of its own was because it lacked the skills to independently come to a conclusion? And he agreed with me.

What do you have to say in response to that? Do you think that's a fair comment?

MR. BOWN: I don't have a response to that. I don't know the exact situation. My dealings with Mr. Kennedy were when I was the chair. We had a very good relationship and we accepted their report in its entirety. So I think at the beginning there was some challenges in relationship building between Nalcor and EY, and that's likely what precipitated the email –

MR. BUDDEN: Well –

MR. BOWN: – that Mr. Kennedy was referring to.

MR. BUDDEN: You say in the beginning – that ended at some point? That they sort of meshed together, there's no head-butting between Nalcor and EY?

MR. BOWN: In the last report that we did, EY described the relationship as very positive and constructive.

MR. BUDDEN: Sure. But we're talking about, say, through the end of 2015 –

MR. BOWN: And that's what I was indicating, that as time went on the relationship improved greatly.

MR. BUDDEN: Okay. But for the first year and a half or two years it wasn't a particularly good relationship, I'd suggest.

MR. BOWN: That's clear in the evidence –

MR. BUDDEN: Yes.

MR. BOWN: – yes.

MR. BUDDEN: And, to swing back to my question, 'cause I do wish you to answer it. Do you think it's – Michael Kennedy's conclusion was that the Oversight Committee, in and of itself, lacked the knowledge or skills to really draw a conclusion between what Nalcor was saying and what EY was saying. And he agreed with me when I put that to him. Do you think that's an accurate comment?

MR. BOWN: If it was a – some specific matters on which we had no expertise, then the answer would be yes.

MR. BUDDEN: Okay.

And the specific matters of which you have no expertise were quite extensive. Really, it would be anything to do with – I would suggest, with, you know, with risk assessment, with the analysis of why the schedule was running late, those kinds of things. I mean, those are all outside your individual areas of expertise, aren't they?

MR. BOWN: Yes.

MR. BUDDEN: Okay.

I guess the question is: Do you have an answer to his – I guess, to that EY complaint? Why was it that the – I guess, the two contrary positions, that of Nalcor and that of EY, were just sort of

presented without – like why, say, did the committee not accept the evidence of its own expert?

MR. BOWN: I don't recall that specific incident, Mr. Budden, I apologize.

MR. BUDDEN: Okay.

MR. BOWN: To be able to give you a very clear answer, I can't, I'm sorry.

MR. BUDDEN: That's okay. We'll have other witnesses so we'll –

MR. BOWN: Yes.

MR. BUDDEN: – return to it.

There's also evidence emerged through Mr. Kennedy – and I won't walk through it all, but essentially there's a fair bit of frustration expressed how the Oversight Committee, for instance, appeared to accept Nalcor's position that quite a bit of information was commercially sensitive when EY was saying it clearly is not.

It's that and there were other examples as well. But EY were openly saying internally, look, you know, we're embarrassed to be associated with this, should we withdraw? Firstly, did you have any sense at the time that EY were this frustrated?

MR. BOWN: In a general sense, yes – again, EY didn't appear at our Oversight Committee meetings, but we did have discussions; the clerk would report, the chair would report back on how the work was going. She had direct contact with EY. But, yes, I understand there were some frustrations in their ability to gather information.

MR. BUDDEN: Sure.

Those frustrations were of concern to you, I would assume.

MR. BOWN: Yes.

MR. BUDDEN: Okay.

What did you do about it? Did you report that up the line to your minister? Did the committee as a whole report it up the line to its instructors?

MR. BOWN: The committee chair – and the question is for the committee chair for (inaudible).

MR. BUDDEN: Okay, well, I'm asking you what you knew about it, but I'll return – we'll get to her. Yeah.

MR. BOWN: And, no, the minister would be aware that there were difficulties.

MR. BUDDEN: Pardon?

MR. BOWN: I would have made the minister aware that there were difficulties.

MR. BUDDEN: You would have made Minister Dalley aware that there were difficulties. And just to nail that down, what specific difficulties did you make Minister Dalley aware of?

MR. BOWN: The relationship, getting information.

MR. BUDDEN: Okay.

MR. BOWN: Yeah.

MR. BUDDEN: And what was his response?

MR. BOWN: I don't recall that. It would have been, we – no, I'm not going to be subjective. I apologize.

MR. BUDDEN: Pardon?

MR. BOWN: I'm not going to be subjective.

MR. BUDDEN: You're not going to ...?

MR. BOWN: Be subjective. I don't know what his response is.

MR. BUDDEN: Oh yeah, well, I just asked for your response.

MR. BOWN: Yeah.

MR. BUDDEN: I mean if somebody took the papers and threw them in the air –

MR. BOWN: No.

MR. BUDDEN: – you know, that would be a response that you could report on.

MR. BOWN: Yeah.

MR. BUDDEN: So you don't recall anything he said or did –

MR. BOWN: No.

MR. BUDDEN: – or how he appeared to react.

MR. BOWN: No.

MR. BUDDEN: Okay.

Perhaps we could call up Exhibit P-03414, Madam Clerk. And if you could bring us right to page 6, I'd appreciate that.

THE COMMISSIONER: 03014?

MR. BUDDEN: Yeah and this – 03414, I'm sorry.

THE COMMISSIONER: 03414.

MR. BUDDEN: 03414.

And that is not before you so we have to go to the screen on page 6, please, Madam Clerk. So that's good.

So these are notes from a meeting with Paul Harrington. We've seen these before, notes from the meeting with Paul Harrington on May 6, 2015. And I'll read it here, the key parts: "The purpose of this memo is to document the above meeting.

"Purpose of the meeting: interview with Paul Harrington." Then the attendees are listed. We can scroll a little bit farther. And from the committee we have – you're not at this meeting I would assume?

MR. BOWN: No, I've never seen this document.

MR. BUDDEN: Pardon?

MR. BOWN: I haven't seen this document.

MR. BUDDEN: Okay, well, what it is – we'll get to the good part in a second, but there are a number of attendees there from Nalcor, from EY and, for my purposes, most importantly, Craig Martin, executive director, Government of Newfoundland and Labrador. And, of course, he's the executive director of the Oversight Committee. I'm correct on that?

MR. BOWN: Yes.

MR. BUDDEN: Okay.

Can we scroll down –?

MR. BOWN: At that time.

MR. BUDDEN: Pardon?

MR. BOWN: At that time.

MR. BUDDEN: At that time, of course. So what we have here, the first bullet point: "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."

Firstly, have you previous been aware that Mr. Harrington reacted in that fashion?

MR. BOWN: No.

MR. BUDDEN: Okay, so –

MR. BOWN: If I were at the meeting I guess I would have had a recollection of that but ...

MR. BUDDEN: So I guess my question to you: Did Mr. Martin report back to the Oversight Committee that, look, the project director is being asked questions about the project and he stormed out of the room?

MR. BOWN: I would expect that Mr. Martin would have given a debrief, but I don't recall that specific debrief.

MR. BUDDEN: Okay.

You would agree with me that this is unacceptable behaviour on the part of Mr. Harrington.

MR. BOWN: Again, if we were trying to gather information for a contract that we had just completed, assigned with EY with scope of work then, yes, he was an important person to be in the room.

MR. BUDDEN: Okay and I'd ask you to accept that as a given. If I'm wrong, then I'm wrong, but –

MR. BOWN: Yeah.

MR. BUDDEN: I guess my question to you – and you've no – at the – in your mind at the moment you've no recall of being briefed about such behaviour by Mr. Harrington.

MR. BOWN: No.

MR. BUDDEN: Okay.

So, therefore, it follows that, you know, you have no recollection as to whether your minister or Cabinet or anybody would have been advised of this.

MR. BOWN: No.

MR. BUDDEN: Okay.

MR. BOWN: That's a question for Mr. Martin and the clerk – or, sorry, I'd say the chair of the committee.

MR. BUDDEN: Yes and we'll get to them too, but –

MR. BOWN: I apologize for saying that but –

MR. BUDDEN: Oh yeah.

MR. BOWN: – I'm trying to be helpful.

MR. BUDDEN: Yeah and that's fine. Don't worry, I'm – I will return to this. But since you're here –

MR. BOWN: Yeah.

MR. BUDDEN: – I’m going to ask you – although you’ve answered it – is this the kind of information, as a deputy minister sitting on an Oversight Committee, that you would expect to be reported to that committee?

MR. BOWN: Yes. That – yeah, at the next meeting when we would receive the status update on how things were going with the contract, this would’ve been an update on any activities or difficulties would’ve been normally discussed.

MR. BUDDEN: Sure.

Let’s call to Exhibit 03557. That’s more for Mr. Harrington, but in this case it’s an email sent directly to you. And –

THE COMMISSIONER: That’s at tab 53 of Mr. Bown’s book.

MR. BUDDEN: Yeah.

If it’s easier for you, you can read it out of –

MR. BOWN: I can read it here and I’m familiar with it.

MR. BUDDEN: Okay. Sure.

So what this is, this is an email that was sent a couple months earlier than what we just covered. It’s Harrington to yourself talking to Mr. Bennett, and it reads as follows. And I’ll read it because there’s a particular part or two I want to emphasize: “Charles

“Mark and Jim met with Craig today - I am rather concerned with what they reported back to me and wanted to let you know since we chatted about that earlier today.

“here are some of the things that are concerning... this is what Jim advised.....

“Approach - Jim asked Craig very point blank what is the OC's desired approach. He advised they need to have EY conduct an ‘independent review’ which IA” – Internal Audit, we’ve heard Nalcor’s Internal Audit – “could certainly be part of, but having Nalcor IA lead and EY piggyback off that would not work.”

Now, here’s, I guess, the key part: “I think this may be offside with discussions held at the Ed” – Ed Martin – “Premier level on this matter back before Xmas. I understood it was agreed that Internal audit from Nalcor would lead and EY would join in that Audit.” Firstly, do you recall getting this email?

MR. BOWN: I don’t recall getting the email. It’s quite some time ago.

MR. BUDDEN: Well, yes, well, it’s four years ago.

MR. BOWN: Yeah.

MR. BUDDEN: The – I guess, a couple of questions come out of that. Firstly, was it your understanding that EY, your independent expert, was essentially just going to piggyback off Nalcor’s own Internal Audit?

MR. BOWN: Absolutely not.

MR. BUDDEN: Absolutely not. So, certainly, if there were any discussions held at the Ed/premier level of that effect, that wasn’t made known to the board?

MR. BOWN: No.

MR. BUDDEN: Okay.

I have to say when I read this, it struck me as really – it’s fairly blatantly Mr. Harrington reminding you that, look, a special relationship exists here between the premier and Ed Martin. You know, this is way above your head, Mr. Bown. Are you getting that sense that he’s trying convey that message? Is that the message you took from it?

MR. BOWN: It’s not what I took from it. It was just, you know, I received a number of these over the years, complaints, basically saying, you know, I don’t like what’s going on, do something about it. But, no, I don’t see it as in a threatening fashion, no.

MR. BUDDEN: Okay.

We’ve heard a lot of evidence, particularly in Phase 1 but continuing into Phase 2, that clearly there did exist – Nalcor wasn’t just another

Crown corporation, there did exist – Nalcor wasn't just another Crown corporation. There did exist a particularly close relationship between the premier's office and the executive of Nalcor. You'd agree with me there?

MR. BOWN: That's not in dispute.

MR. BUDDEN: Correct.

Think about this question carefully before answering it. I would suggest to you – or, yeah, let me turn it around a bit. Did you, personally, or do you feel the committee felt, collectively, intimidated in its efforts to carry out its robust oversight by this special relationship?

MR. BOWN: No, never.

MR. BUDDEN: Okay. (Inaudible) –

MR. BOWN: I can be categorical.

MR. BUDDEN: Okay.

So, even though the fact that you guys were all deputy ministers or similar –

MR. BOWN: Yeah.

MR. BUDDEN: – your fate, your careers really depended on maintaining positive relationships with – you know, with Cabinet, with your ministers.

MR. BOWN: Mm-hmm.

MR. BUDDEN: You knew there was a special relationship above the heads of all of you, and that was – at no time did you feel constrained or intimidated by that?

MR. BOWN: I never felt constrained or intimidated.

MR. BUDDEN: Okay, and that wasn't even a – some bit of discussion within committee members: Look, we got to be careful here. These guys are plugged in at the highest levels.

MR. BOWN: No.

MR. BUDDEN: Okay.

MR. BOWN: Never had that discussion. That would've never occurred.

MR. BUDDEN: Okay.

What did you do in response to this email from Harrington?

MR. BOWN: This would've been – I think if we were able to go through the email chains, this would've been forwarded directly to Julia, and the reason being – to the chair – the reason being is that the chair dealt directly with EY, and if there's an issue coming with EY –

MR. BUDDEN: Sure.

MR. BOWN: – that Julia would take care of it.

MR. BUDDEN: Sure. Okay.

I'm going to read you something from – we've had a draft transcript of yesterday's hearing, so this is better than my notes. I'm just going to read you a little passage where you're being questioned by Mr. Learmonth, and I'm reading it off my phone, so it'll be a little slow and awkward. But, anyway, it goes as follows. Mr. Learmonth says of you: So, do you agree that the executive summary of the process and controls reviews, which was the second contract with – that that was not released until December 21, 2015. And you say: Yes.

Mr. Learmonth: And that when it was released, it was just the executive summary? It wasn't the full report because at the request of Nalcor, and with a concurrence of government, EY had prepared a report, and government wanted it broken down into two. So, there were two reports, one of which was released to the government, and one of which was not released. And you say: Yes.

Mr. Learmonth: And that the reason for the splitting of the report was Nalcor's position that there was commercial sensitivity that could do harm, and that argument – yeah – and that the evidence is that Richard Noble of EY said of the 11 points – of the 11 claims to commercial sensitivity, only one had merit. Are you aware of that? And you say: Not his exact point, no.

Mr. Learmonth: Well, do you know why the position of Nalcor prevailed over the position of the experts at EY – sorry, I lost my spot there – on this question of commercial sensitivity, and you say: No, I wasn't part of that discussion. And Mr. Learmonth: You weren't? But you were on the Oversight Committee. You say: Oh yes. Mr. Learmonth: So you know what I am talking about? About the splitting of the reports. Do you agree – did you agree to have those reports split or was that – and you say: It wasn't my decision to make. Mr. Learmonth: Whose decision is it to make? Mr. Bown: Ultimately, that was left with the minister and premier.

So you recall obviously saying that yesterday.

MR. BOWN: Yes.

MR. BUDDEN: I guess my – couple of questions to you. I'm really interested in the exploring that process a little more. You guys, as we've established, had a duty to advise and a duty to – you know, to, sort of, respectfully put forward counter-arguments and so on to the minister.

Firstly, did nobody on the committee see it as problematic that your own expert was saying, look, virtually none of this is commercially sensitive? Nalcor is saying it all is, and the government accepts Nalcor's view and doesn't release it. Was – did anybody – was anybody concerned about that? Did anybody regard that as problematic?

MR. BOWN: I don't recall anybody as saying that, you know, this was something that they couldn't stand for, no.

MR. BUDDEN: Okay.

Well, isn't it something that a robust oversight process shouldn't be able to stand for?

MR. BOWN: I didn't say that it didn't because it couldn't; I said that they didn't because they didn't see this as a place where they should or would. This was a case of Nalcor identifying clear commercial sensitivities, and their view was accepted.

MR. BUDDEN: Accepted by whom?

MR. BOWN: Ultimately, it would have been the committee who released the report.

MR. BUDDEN: Well, not there. You say there it was the – it wasn't your decision to make.

MR. BOWN: I said ultimately the committee who would have accepted the report. That would have been in consultation, ultimately, with the premier and the minister.

MR. BUDDEN: You say here: Whose decision was it to make? Or rather Mr. Learmonth says: Whose decision was it to make? And you say: Ultimately, that was left with the minister and the premier. So which is it?

MR. BOWN: Sorry, I am splitting hairs. The reports are released by the committee.

MR. BUDDEN: Yeah.

MR. BOWN: Right? So when I say ultimately it is the committee, well, ultimately, when the committee releases it, it is theirs. The decision-making process included – ultimately, the decision of what's going to go out was made with the premier and the minister.

MR. BUDDEN: Yes –

MR. BOWN: Sorry, I am splitting hairs with you. I apologize.

MR. BUDDEN: Well, let's keep going with it 'cause I still really haven't received an answer that I am satisfied with. Your own experts says this isn't sensitive. Nalcor says it is. How was it that Nalcor's view prevailed? Who made that decision? You've said it was the premier and the – and Cabinet, so we're agreed so far.

MR. BOWN: I didn't say Cabinet; I said it would have been with – in consultation with the premier and the minister.

MR. BUDDEN: Okay.

So they made the ultimate decision.

MR. BOWN: Yes.

MR. BUDDEN: Okay.

Did the Oversight Committee object to that decision?

MR. BOWN: I don't recall to them objecting, no.

MR. BUDDEN: Okay.

Do you not, in retrospect, see that as a significant issue? That Nalcor was simply deferred to, notwithstanding the fairly strong submission of your own expert?

MR. BOWN: No, because on some matters, not all, on some matters, Nalcor's viewpoint and perspective would be different than others – I'm not identifying just specifically EY – and that you have to take that into consideration.

MR. BUDDEN: No, you don't actually. You guys are the committee. I mean, Nalcor is a Crown corporation; it's ultimately answerable to government. So I would suggest to you that you don't have to take Nalcor's view into – well, you have to consider it, but you don't have –

MR. BOWN: I have to.

MR. BUDDEN: – to let it carry the day do you?

MR. BOWN: No. And we didn't allow it to carry the day. What we did was we considered it. A decision was made, and that's was the path that was taken.

MR. BUDDEN: And it was the path that Nalcor wanted?

MR. BOWN: Yes.

MR. BUDDEN: And your own expert objected to?

MR. BOWN: Yes.

MR. BUDDEN: Okay.

And you cannot recall if the committee pushed back against government at all on that issue?

MR. BOWN: No.

MR. BUDDEN: Okay.

One more brief excerpt from yesterday. This one was Mr. O'Flaherty in this instance. And going to read it to you as follows, and he is saying – he's questioning you as follows. Mr. O'Flaherty: Two days after he – meaning Premier Ball – became Premier, he understood, for whatever reason – and he'll testify – that Mr. Martin has said he will resist a full review. Was that consistent with the view of you as a senior bureaucrat, independent of what the Premier may have known? Did you share the view in mid-December 2015 that it was likely that Mr. Martin of Nalcor would resist a full review by Ernst & Young? And you say: Understand your question now. The answer is yes.

So I guess I'll ask you this: why was it that by December 2015, you had concluded that Mr. Martin would resist a full review?

MR. BOWN: Because the discussion context around there – one going to take place had already occurred.

MR. BUDDEN: Okay.

MR. BOWN: So we were aware that this was going to happen.

MR. BUDDEN: Sure.

How long had you held that view? Is that a view you'd had really from the beginning of this process, that Nalcor would resist a full review?

MR. BOWN: Oh, I think – I think we can go – there's plenty of evidence that goes back to the beginning of the creation of the Oversight Committee, and then any of the work that we did leading are following through.

MR. BUDDEN: Yes.

MR. BOWN: It was resistance, absolutely. The –

MR. BUDDEN: And what did you, for your part – we'll get to committee in a second – for, I guess – what did your part did you do to bring – okay, for – let me back up.

Were you concerned about this resistance? Did you regard it as problematic?

MR. BOWN: No, because we were going to do our work.

MR. BUDDEN: Okay. Well, that's a matter of debate, I guess, to the degree in which the committee was able to do its work. But did anything happen at any point that caused you to bring concerns to your minister, saying: Look, Nalcor is resisting a full review. They're being obstructionist here, they're not releasing information.

Did you personally ever bring those concerns to your minister?

MR. BOWN: As it relates to the question that there were –

MR. BUDDEN: To Nalcor's resistance to a review.

MR. BOWN: Are we talking about the specific review of the last one?

MR. BUDDEN: No, I expanded the question more generally.

MR. BOWN: Okay. Then yes. It was known throughout that the minister, and some ministers, that sure, there was pushback.

MR. BUDDEN: Okay.

And so your – you reported to your minister. Did you give him any advice with respect to that?

MR. BOWN: I don't recall giving advice. I provided information saying we're doing our work at the committee. We experienced some resistance; we're moving forward.

MR. BUDDEN: Okay.

Do you feel that throughout your period of time as deputy minister, during the period of the Oversight review, that you fulfilled your duties to advise your minister as to problems or shortcomings with the Oversight Committee process?

MR. BOWN: I'm not identifying any shortcomings with the Oversight Committee process. What I would've done as deputy

minister and as the chair, I would've identified challenges as they arrived with the committee's ability to do its work.

MR. BUDDEN: Okay.

Okay, I'm gonna move on to just wrap up with a handful of, sort of more general questions.

We've heard reference to the data room, and there's – much time was consumed yesterday, which I don't plan to return to, about whether a particular document may have been in the data room and whether or not you could've or should have been familiar with it.

I guess my question is more general. You obviously were a busy man. It was a busy department with, you know, lots of things on the go, not just Nalcor. We've heard evidence of that and I accept it. How user-friendly was this data room? I mean, were five documents a day being dropped into it, 50? Were they being indexed? Were particular things red flagged for your attention?

MR. BOWN: I don't recall accessing that data room at that time. There is a data room now that we access regularly as part of the Oversight Committee. Documents go in there in a regular basis. There is, actually, a schedule for how documents get done, and there's email notifications that are received when the documents are put in there.

MR. BUDDEN: Okay.

I'm thinking a little more expansively, and I may have worded my question poorly, but I'm thinking more of the period of time in late 2013 when the issue of whether it was 6.2 billion or 6.5 billion and what notice had been given of it to government and so forth. If I understood the evidence correctly, there was at that time a data room of which documents were, for want of a better word, dumped into.

I guess my question: Did you have access to that data room at that time?

MR. BOWN: I don't recall having – I may have had access. I didn't use it.

MR. BUDDEN: Okay.

So even if you had – at some level you may have had access, it just wasn't something that you regarded as part of your duties or responsibilities to review documents being dumped into it.

MR. BOWN: No. We had divided the work and we had people who were pulling documents out if they had access, yes.

MR. BUDDEN: Okay, fair enough.

We've heard evidence in – back in February from a Dr. Guy Holburn, who is an expert in the governance of Crown corporations, and we were looking, in particular, at the governance of Nalcor and its board of directors. And I had a number of questions for him that brought out some of the evidence which we've heard about the board being thin, being under resourced in terms of time, in terms of board members and so forth.

And we ended – or near the end I put a particular question to him, as follows. I said, have you, in your studies, in your practice, in your research, come across a board of a major Crown corporation with so few board members receiving so little compensation for so many hours work? And he said, no, I have not.

So, obviously, it's for the Commissioner to determine whether or not there was a real issue at the board of directors' level, but I would suggest to you that the evidence so far would seem to suggest that the board was very thin and, as Dr. Holburn said, perhaps it was thin to – and under resourced and underpaid – to a degree that he had never encountered before.

So if we accept as a given that this was very problematic governance – like, my question to you, I guess, as deputy minister of Natural Resources, is who, in your understanding, would have been responsible for that failure of governance? What office, what individual?

MR. BOWN: That – appointments to boards at that time was a Cabinet decision.

MR. BUDDEN: Okay.

So you personally feel you bear no responsibility for the fact that this board was in – was problematically constituted?

MR. BOWN: No.

MR. BUDDEN: Okay. And you – that responsibility, if this Commissioner were concerned and were looking to attribute, I guess, responsibility for this, it would lie at the level of Cabinet, of the premier?

MR. BOWN: It's the government's decision to appoint people to boards and commissions – then, not – today, it's not.

MR. BUDDEN: Yeah, I understand that. We – and we heard quite a bit of evidence about that, so I'm not disputing your point.

As a follow-up question, were you aware of these problems or issues at the time, 2011 through the end of 2015, say?

MR. BOWN: Yes.

MR. BUDDEN: Okay, what did you do about your awareness?

MR. BOWN: I raised it with the office of the Cabinet Secretariat that there were some challenges at Nalcor with a number of directors.

MR. BUDDEN: Okay, so you feel you fulfilled your duties in that. You recognize you did have a duty to go with it?

MR. BOWN: Absolutely.

MR. BUDDEN: And that you believe you fulfilled those duties?

MR. BOWN: Yes.

MR. BUDDEN: Okay.

The last real question I have for you is – and, again, it's for the Commissioner to decide, but I would suggest that there's evidence that you were, you know, very intimately involved in the process of sanctioning Muskrat Falls. You played a major role in that sanctioning process.

And then we find you, you know, not quite two years later, year and a half later, being appointed to an Oversight Committee. Did you, yourself, feel any concerns that perhaps you weren't an appropriate person to sit on an Oversight

Committee of a project that you had played such a significant personal role in sanctioning? Did you have concerns about your own suitability?

MR. BOWN: I was appointed by way of an order-in-council.

MR. BUDDEN: Yes.

MR. BOWN: And I followed the duties as assigned by the order-in-council.

MR. BUDDEN: Okay.

Not answering my question. My question is did you have concerns? And, if so, did you raise those concerns with anyone?

MR. BOWN: I didn't have concerns.

MR. BUDDEN: Okay, so you –

MR. BOWN: Of myself.

MR. BUDDEN: Pardon?

MR. BOWN: I didn't have concerns of myself.

MR. BUDDEN: Okay. So even though that you'd worked with these individuals over a period of many years and shared a common goal, you did not feel that would in any way constrain you from being able to exercise robust, prudent oversight over them?

MR. BOWN: I was not and am not a choir director for Nalcor.

MR. BUDDEN: Okay.

Thank you, Sir. Those are all my questions.

MR. BOWN: Thank you.

THE COMMISSIONER: I think we'll take our morning break here. And next will be Ed Martin.

Ten minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All Right.

Edmund Martin.

MR. SMITH: Thank you, Commissioner.

Mr. Bown, Harold Smith for Edmund Martin.

MR. BOWN: Good morning, Mr. Smith.

MR. SMITH: Okay. I only have a fairly few questions, but, you know, I'd like to try and follow up on some of the questioning that you've already been subjected to by my colleagues here at the Inquiry.

In questioning from Ms. Best and perhaps others, you indicated that if you became aware of a significant change in the project costs or project, generally, not just costs, you would immediately inform your minister. Is that a fair – ?

MR. BOWN: That's accurate.

MR. SMITH: And we've heard this before that, you know, the civil servant, especially at the senior levels, are, you know, obligated almost to ensure that their minister is not taken by surprise by someone in the press or otherwise. Is that fair?

MR. BOWN: That's correct.

MR. SMITH: Yeah.

And who was your minister in March of 2015?

MR. BOWN: Derrick Dalley.

MR. SMITH: Derrick Dalley.

Now, Derrick Dalley has testified here at this Inquiry. Now, what he testified to is that he was unaware of 6.531 or \$6.5 million – billion dollar project change. And the first change that he heard from 6.2 was 6.99, and that was around July of 2015.

Did you hear his testimony when he gave evidence here at the Inquiry?

MR. BOWN: No, I didn't hear his testimony.

MR. SMITH: You did not hear it?

MR. BOWN: No.

MR. SMITH: You're very difficult to hear when you are away from the microphone.

MR. BOWN: Okay, sorry. I'll move.

MR. SMITH: Thank you.

Now, I'm curious, could the clerk put up Exhibit P- 03498? Okay.

THE COMMISSIONER: That'll be tab 42, book 1.

MR. SMITH: Now, my understanding and the evidence that was called yesterday on this exhibit, okay, which you're copied on, okay – would you scroll up, please? Going – there, stop.

In this particular exhibit of March of 2014, I understood you to say that you became aware that 6.5, in fact, was now a hard cost. In fact, you even went so far as to say sometime before this, but you have no recollection of exactly when –

MR. BOWN: Right.

MR. SMITH: – you became aware of it.

And I also understood you to say that when you found this out, you did refer – or excuse me – inform Minister Dalley.

MR. BOWN: I would have, yes.

MR. SMITH: You would have?

MR. BOWN: Yes.

MR. SMITH: Now, do you recall that you did or are you saying that because of the practice within senior levels of the civil service, you believe you would have because that's just how it's done.

MR. BOWN: I understand that Mr. Dalley said that he wasn't aware of 6.99 until. But this was during the budget process and so it may have

been just his recollection, but we would've had an updated equity number in our budget reflecting the new cost, so ...

MR. SMITH: So, you can't reconcile why Minister Dalley testified before this Commission that he had no knowledge of any prices increase after 6.2.

MR. BOWN: It's probably just his recollection. I can't –

MR. SMITH: Okay.

MR. BOWN: – speak to that, but –

MR. SMITH: So, it may be a recollection problem on his part.

MR. BOWN: Absolutely.

MR. SMITH: But you're convinced that you would have let him known that.

MR. BOWN: Absolutely, because it would've been part of the budget process, and then when you go to Estimates Committee, as we all want to do once the budget is read in the House, you defend your budget so you have to explain all the budget line items.

MR. SMITH: Okay.

Now, I noted that there was some – I would probably say skepticism – over the suggestion that you heard from Mr. Martin that it's commercially sensitive or difficult to have new numbers brought out in the middle of negotiations with contractors. And I got the impression that you were accepting Commission counsel's view that that didn't make any sense. Is that a fair statement?

MR. BOWN: There were times when it made absolute sense and there were times when there was just a blanket statement that was cast that we didn't agree with.

MR. SMITH: Okay.

Now, in those times it made sense, what would be the circumstances that you would identify as the times that it made sense?

MR. BOWN: A dollar value on a bid.

MR. SMITH: A –

MR. BOWN: A dollar value from a bidder.

MR. SMITH: Yes, I see. Yes.

And why did it make sense not to disclose a new AFE or new authorization for expenditure, now there's an increase in the capital cost?

MR. BOWN: I don't understand your question.

MR. SMITH: Say, well, why would a reluctance to issue a revised capital cost have a negative impact on the negotiations of a bidder or a contractor?

MR. BOWN: I don't see that.

MR. SMITH: Okay. But you did accept a minute ago that there are circumstances where –

MR. BOWN: Certain specific circumstances where you're going to actually release information about a bidder, than, yes.

MR. SMITH: Okay.

Now, would you not understand that if you're in critical negotiations on a very significant aspect or project, part of the project that – indicating publicly that additional monies have been added to the budget, would you not understand that that would create difficulties for those persons at Nalcor trying to get the lowest possible cost?

MR. BOWN: That would be their perspective, yes.

MR. SMITH: Yeah. That would be a perspective.

MR. BOWN: Yes.

MR. SMITH: You don't share that perspective?

MR. BOWN: Not in all instances, no.

MR. SMITH: Not in all instances.

MR. BOWN: No.

MR. SMITH: That means you would've accepted in some.

MR. BOWN: Depending on a specific circumstance.

MR. SMITH: But you would agree that it's not bogus as such. It's that – it depend on particular circumstances at the time.

MR. BOWN: Right. But, generally, the process was, and continued to be, that when there was a cost update it was known and announced.

MR. SMITH: Now, we've had an awful lot of focus here at this Commission of Inquiry on the capital cost and, of course, no one's suggesting that it's not an important aspect of, (a), the Commission's Inquiry but also, you know, the decisions of government and Nalcor, if you will, as an arm of government or a Crown corporation to do the job. I want to ask you, you were involved very early on, even up until sanction – was the capital cost the only criteria upon which the decision was made to move forward with Muskrat Falls?

MR. BOWN: No, in Mr. Martin's presentations he would, generally, provide the long-term view on oil price, the long-term view on electricity rates, the aging transmission and generation fleet and the need for a replacement and then, from there, the analysis of why this particular project was the best alternative.

MR. SMITH: So the best alternative was not for the immediate future but for a longer period.

MR. BOWN: That was the argument.

MR. SMITH: That was the thrust.

MR. BOWN: That was the thrust.

MR. SMITH: Right.

And we've heard all kinds about in Phase 1 – about CPW, et cetera. Do you know some of the factors that went into the CPW?

MR. BOWN: Yes. Capital cost, operating cost, financing, financing during construction, financing after construction, et cetera. Basic cost estimate numbers.

MR. SMITH: Yeah. Return on equity?

MR. BOWN: Yes.

MR. SMITH: The water rentals, for example, in relation –

MR. BOWN: Yes. Any fees, rentals, agreements –

MR. SMITH: Okay.

And you indicated fuel costs. And there was, you know, there was a lot of debate here at the Commission as to whether you can project fuel costs out for the life of a – of the Muskrat Falls Project but nevertheless that was part of the analysis that was done.

MR. BOWN: Correct.

MR. SMITH: Correct.

So when Mr. Martin uses the view, value of the project, do you see that he sees value as a review or consideration of all of those factors that made Muskrat Falls the choice to obtain the necessary power that was required for the Island?

MR. BOWN: I would agree that, yes, when he uses the term value it's more than capital cost.

MR. SMITH: Okay.

So value is not just a mythical or some kind of esoteric phraseology, it's tied back to the view of how the project got sanctioned in the first place.

MR. BOWN: Also, I think in a number of the presentation decks that Mr. Martin would have delivered, he would have defined the concept of value and what those elements are.

MR. SMITH: So would you also agree that sometimes in any responses to inquiries from government, Mr. Martin would tend to come back to the value of the project overall?

MR. BOWN: Two-part answer: Yes, that would be his approach. That wasn't necessarily what we were always looking for. It was, sometimes, a specific question and we would get the valued response.

MR. SMITH: Get a valued response?

MR. BOWN: Yup.

MR. SMITH: So he was consistent in trying to show that the value of the Muskrat Falls Project, which was fundamentally why it was chosen to go forward with, okay, was the justification for whatever the issue was of the day.

MR. BOWN: If you look at every project update presentation that he gave –

MR. SMITH: Yeah.

MR. BOWN: – it opens, first 10, 15, 20 slides –

MR. SMITH: Okay.

MR. BOWN: – about value.

MR. SMITH: So, I'll take it then that the project wasn't sanctioned purely on the capital cost of Muskrat Falls; it was sanctioned with respect to the benefits to Newfoundland and Labrador that were envisaged by the analysis that was done prior to sanction.

MR. BOWN: At that time, yes.

MR. SMITH: Thank you, Sir.

MR. BOWN: You're welcome.

THE COMMISSIONER: Okay, thank you.

Former Provincial Government Officials.

MR. T. WILLIAMS: Good day, Mr. Bown.

MR. BOWN: Good day, Mr. Williams.

MR. T. WILLIAMS: Tom Williams, I'm representing a party known as the former government-elected officials for the period of 2003 through 2015, with the –

MR. BOWN: Mm-hmm.

MR. T. WILLIAMS: – exception of former Premier Dunderdale.

I just have one line of questioning, and it's something that I know we've covered or you've

been questioned extensively about in your direct testimony as well as cross, and again it's about the knowledge on the 6.5 number.

And the reason I wanna touch upon that because there's been a fair amount of evidence pertaining to the knowledge of at least three of my clients and what they knew at the times, and which has been somewhat contradicted by the evidence of former Premier Dunderdale. And, again, I think it's – you're aware of the fact that she's given evidence here that she is of the understanding that she knew something of the 6.5 number at financial close, correct?

MR. BOWN: Mm-hmm.

MR. T. WILLIAMS: So if I can just pose a question to you – again, I don't wanna go back over everything that you've said so far, but again in your direct, or your cross-examination with Mr. Porter, you've indicated that it would – it was some period subsequent to financial close that you learned of this number, and we know, given the exhibit that was just shown to you, in March 10 of 2014, that you had knowledge at least at that point in time. Would that be correct?

MR. BOWN: I had knowledge at that point, yes.

MR. T. WILLIAMS: Okay.

So I wanna bring your attention to an exhibit, Exhibit 02034, if I could, Madam Clerk.

THE COMMISSIONER: That's one that'll have to come up on the screen.

MR. T. WILLIAMS: Yes, that – but that would not be in your binder.

And this is a email, and if we could just scroll down a little bit. This is an email from January 20, 2014, and it's from Diana Quinton and it's directed to Derrick Dalley, but Darrell Hynes and yourself and others are cc'd on this. Darrell Hynes would've been in the premier's office at the time; is that correct?

MR. BOWN: No, he was executive assistant to Minister Dalley.

MR. T. WILLIAMS: And he was with Mr. Dalley at that point?

MR. BOWN: Yes.

MR. T. WILLIAMS: Okay, so that both yourself and Mr. Hynes were in the minister's office at that time.

MR. BOWN: Yes.

MR. T. WILLIAMS: And this press release, dated January 20, 2014, is headed up: Sound Fiscal Management Remains Government's Focus. And I just wanna do – read the first paragraph, it goes on to say: “**Minister Clarifies Information about Capital Cost of the Muskrat Falls Project,**” and the first paragraph reads: “Today, the Honourable Derrick Dalley, Minister of Natural Resources, confirmed that that direct capital costs for the Muskrat Falls Project is” 6.2 “as indicated in the Decision Gate 3 cost estimate released to the public in October” of “2012. A capital cost update on the Muskrat Falls Project will be provided within the first quarter of 2014.”

I trust this document arose for purposes of advising the public of what the cost were at the time, that it was released given the 20th of January?

MR. BOWN: Yeah. I don't understand the – I don't remember the context, but if it says “minister clarifies,” then it was probably in response to a comment made by another political party or by somebody in the public.

MR. T. WILLIAMS: And can you tell me the process that would be undertaken before a release like this would be going out from the Department of Natural Resources? Who would it be vetted through, to ensure accuracy?

MR. BOWN: Well, that would go through the communication staff in the premier's office.

MR. T. WILLIAMS: So obviously, it would go through communication staff within the Department of Natural Resources as well as the premier's office?

MR. BOWN: That would be the responsibility of the communication staff in the Department of Natural Resources –

MR. T. WILLIAMS: Okay.

MR. BOWN: – to ensure that their counterparts were aware and signed off on it.

MR. T. WILLIAMS: Okay.

So we can take some confidence that both the minister's office as well as the premier's office reviewed, vetted this before it went out into the public.

MR. BOWN: That would be the normal course.

MR. T. WILLIAMS: Okay. And that you were aware of the same.

MR. BOWN: Yes.

MR. T. WILLIAMS: All right.

And given this period in time, I trust you would not allow a press release to go out to the public that contained inaccurate information for which you had direct knowledge of.

MR. BOWN: There was no new AFE for Muskrat Falls.

MR. T. WILLIAMS: Okay.

So at this point in time, you can take confidence in the fact that at least from January 20, you're both – your minister as well as, your understanding, the premier at the time would have been of the view that the accurate number was 6.2.

MR. BOWN: The AFE for the project was 6.2.

MR. T. WILLIAMS: Okay, and this was at least – or close to a month, there would have been subsequent for a month past financial close. Correct?

MR. BOWN: That's correct.

MR. T. WILLIAMS: Okay, great.

That's all the questions I have. Thank you.

MR. BOWN: Thank you.

THE COMMISSIONER: Okay, thank you.

MR. LEARMONTH: One point, there's been some questions put to the witnesses that Premier Dunderdale said that she knew about the 6.5 figure before financial close. Now, Ms. Dunderdale may have said that in one point in her evidence, but Ms. Dunderdale gave a lot of different versions as to the time that she became aware of the 6.5 figure. So to simply say that her evidence is that – categorically, that she knew about it, 6.5, I think overlooks the fact that there were other answers that she gave to the point that may qualify that. That's the only point I wanted to make.

THE COMMISSIONER: Okay.

Anyway, Consumer Advocate?

MR. PEDDIGREW: Good morning, Mr. Bown.

MR. BOWN: Good morning.

MR. PEDDIGREW: Chris Peddigrew, representing the Consumer Advocate.

A number of areas I was gonna ask you about this morning have been canvassed, so my question will be a little shorter than I was anticipating, but – and just – I might as well start with the issue of the 6.5 as it's been covered extensively this morning.

I do have – so, my understanding of your evidence is that you were not aware of the 6.5, obviously, that's been canvassed extensively. I guess my question is, though: Leading up to financial close, whether or not you are aware that actual cost overruns had been identified by Nalcor, did you have concerns based on the communications that were – some of them you were copied on, meetings you were in – did you have a concern that there was an impending cost overrun?

MR. BOWN: No.

MR. PEDDIGREW: So, you were 100 per cent comfortable that 6.2 was the number and there was no risk that –

MR. BOWN: I don't –

MR. PEDDIGREW: – shortly after financial close, there was going to be a cost overrun announced?

MR. BOWN: I don't recall having any serious concerns at that time.

MR. PEDDIGREW: Madam Clerk, if we call up Exhibit P-03498, please. And before we go there, Mr. Bown, before I ask you a question about this document, I guess, to go from 6.2 to 6.5, I mean, it sounds like a small increase when you phrase it that way, but it's a \$300-million increase. It's a lot of money.

MR. BOWN: Yeah.

MR. PEDDIGREW: I'm assuming that an increase of that magnitude would have been concerning to you?

MR. BOWN: An increase.

MR. PEDDIGREW: Certainly, \$300 million.

MR. BOWN: Yes, an increase.

MR. PEDDIGREW: Okay.

And so, we've seen the Exhibit that Mr. Williams just pointed you to, from January of 2014, and we've seen Exhibit – this Exhibit P-03498, which references, I believe, the \$6.5 billion – so, you're aware of it by March 2014.

Given that it would be of concern to you, you have no recollection of when, between December and March, you became aware of a \$300-million increase?

MR. BOWN: Well –

MR. PEDDIGREW: Or how you became aware of it?

MR. BOWN: – no. And I searched my records, and I don't have the specific document or recollection of when that occurred.

MR. PEDDIGREW: You don't remember being shocked or surprised or upset or angry?

MR. BOWN: No. Sorry, I'm drawing a blank on that one.

MR. PEDDIGREW: Okay.

In terms of what was put out to the public and the ratepayers, you know, once we get up to 6.5, factoring in financing costs, you're getting very close to – or at the \$8-billion level. Any concern on your behalf about the message that was being put out to the public about the amount? I mean, people who were intimately involved with the project would understand the difference between 6.2 and 7.4, and one includes financing and one doesn't. But, from the point of view of the public, any concern on your behalf that the public could be confused by the interest or the financing figures not being included in the numbers that were put out?

MR. BOWN: That was something that we had raised on a number of occasions when costs were released, that it was – be clearly identified as capital cost, only it does not include the AFUDC and IDC.

MR. PEDDIGREW: And raised with who? With the politicians?

MR. BOWN: With Nalcor.

MR. PEDDIGREW: What about with the communications that were being put out by either Nalcor or government?

MR. BOWN: Not specific. I guess it was, in general, to Nalcor, when you release cost numbers, indicate that it doesn't include AFUDC and IDC.

MR. PEDDIGREW: All right.

And we had evidence from Minister Marshall when he was here, and he indicated that 7.4 was the figure he used, just to be completely, I guess, transparent with the public. Was that something that was discussed, do you know, amongst the minister of Finance, the minister of Natural Resources, Justice, premier's office, as to whether that was a point of contention at the upper levels of government?

MR. BOWN: I don't recall the conversation that they would have had. But, again, that

conversation could have taken place in Cabinet, when they're in camera – that officials aren't present.

MR. PEDDIGREW: So do you recall being part of any conversations where –

MR. BOWN: No.

MR. PEDDIGREW: – that issue came up?

MR. BOWN: No.

MR. PEDDIGREW: The Economic Policy Committee that you gave presentations to in the lead-up to a financial close, how many presentations total – I guess in the October, November time period – would you have given to either Cabinet or the Economic Policy Committee?

MR. BOWN: I think it was that – that one presentation with the –

MR. PEDDIGREW: Yeah.

MR. BOWN: – six agreements, as I recall.

MR. PEDDIGREW: Just the one.

MR. BOWN: I think so.

MR. PEDDIGREW: Okay.

And was your evidence that the issue of capital cost was not raised –

MR. BOWN: (Inaudible.)

MR. PEDDIGREW: – during that presentation at all?

MR. BOWN: I don't recall it being raised.

MR. PEDDIGREW: And nobody asked you about it?

MR. BOWN: No.

MR. PEDDIGREW: None of the ministers?

MR. BOWN: I don't recall the conversation about that.

MR. PEDDIGREW: You don't recall being asked about it.

MR. BOWN: No.

MR. PEDDIGREW: And similar, I guess, to Mr. Simmons's questioning on the 6.5 figure, is that you don't recall being asked or are you saying definitively that you were not asked?

MR. BOWN: I don't recall being asked.

MR. PEDDIGREW: So you could have been asked, you just don't know.

MR. BOWN: Correct.

MR. PEDDIGREW: So going back to the document I had just had Madam Clerk call up, 03498.

If we go down to page 3 of this document, and we see the email from Paul Myrden to Derrick Sturge, Rob Hull, James Meaney and Auburn Warren, Paul Morris and Donna Brewer.

And then the next email up on the bottom of page 2, when Auburn Warren replies he adds you to the recipient list.

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: Do you know why he'd be adding you at this point?

MR. BOWN: No.

He obviously looked and he didn't see me on there so he felt that it was necessary that he should have me on there. I don't know why he did that.

MR. PEDDIGREW: Okay.

Would it be that you were – I guess would this be an example of you being one of the main – or the main point in Natural Resources with Nalcor, and Auburn Warren would be adding you for that reason?

MR. BOWN: I don't know why he would have added me.

MR. PEDDIGREW: You're not – you don't have any answers as to why he –

MR. BOWN: No.

MR. PEDDIGREW: Okay, Madam Clerk, if we could call up Exhibit P-02051, please, and page 4.

And so, Mr. Bown, Mr. Budden, during his questions, did ask you about the – I guess the members of the committee –

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: – and their experience and qualifications to sit on an Oversight Committee. I just wanted to follow up on that somewhat. So I believe you said there was engineering experience, but was there anybody – if we look at the last paragraph here on page 4 – one page up I believe. I think on page 4 in the red numbers in the top-right corner.

Okay, here we go. Thank you.

The last paragraph here, Mr. Bown, it says: "The Committee assembled a Working Group of professionals possessing specialized skills in the areas of law, engineering, project management, accounting, and auditing. The Working Group includes internal resources supplemented by external consultants with specialized expertise in major capital project practice."

So that external consultant you're talking about, that's EY –

MR. BOWN: Yes.

MR. PEDDIGREW: – with the expertise?

MR. BOWN: And, actually, there were two engineers who were added to this list, yes: One, an engineer from Municipal Affairs who had extensive engineering experience and an engineer from Transportation and Works was subsequently added to this group as well.

MR. PEDDIGREW: Okay. Do you know when they were added?

MR. BOWN: It was after this report was published they were added to the team.

MR. PEDDIGREW: Okay. But no major project experience –

MR. BOWN: No.

MR. PEDDIGREW: – that you're aware of.

MR. BOWN: No.

MR. PEDDIGREW: Okay.

MR. BOWN: But it was recognized that we should have someone at the table who can understand some of the engineering jargon.

MR. PEDDIGREW: I'd like to take you to Appendix C of this document which is, Madam Clerk, page 38.

So, Mr. Bown, this is a letter from – if we go – Madam Clerk, you don't need to go to the last page, but it's a letter from Thomas Marshall, the premier, and Derrick Dalley, minister of Natural Resources to Ken Marshall, chair of the board of Nalcor and Ed Martin.

So this is a letter setting out in July of 2014 information that government is requiring from Nalcor in –

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: – relation to project oversight. So – and I believe that your evidence has been that in the early stages of the project Oversight Committee, there was difficulty getting information from Nalcor.

If we turn to page 39, Madam Clerk, and, Mr. Bown, we have an extensive – what looks like an extensive list of information here. So at what point – and if you need to take a moment to look down over this, that's fine, but at what point, I guess, in your – during your time on the Oversight Committee – or maybe it didn't happen while you were on the Oversight Committee. But at what point did Nalcor begin to provide all the information that was outlined as being required in July 2014?

MR. BOWN: I can't speak specific to the details of that information. And, again, that was the purview of the executive director of the committee who pulled in all this information,

then pulled it together into reports for the committee members. So I can't speak specific to which information was probably the slowest that we were able to get access to.

MR. PEDDIGREW: Right. So, well, maybe I'll put the question to you the other way: Is there anything in this list that you were having particular trouble getting from Nalcor during your time on the Oversight Committee? Anything in relation to, if you want to look at the first heading, cost – cost information.

MR. BOWN: Can we scroll down? I think the one thing that we had the most difficulty with was getting the monthly risk register, g. under Other Information, which we ultimately did receive.

MR. PEDDIGREW: Under Other Information?

MR. BOWN: Yeah. That's one that I can pick out in particular that comes to mind.

MR. PEDDIGREW: Right, okay.

But, generally, when you look at this list, was Nalcor providing this information which it was required to provide by the minister and the premier throughout the course of 2014 and '15 and probably into 2016?

MR. BOWN: As time went on, yes, the –

MR. PEDDIGREW: Now, what does that mean, as time went on? Like, when did that ...?

MR. BOWN: No, I'll put it in context for you. The start was slow as we were gathering information and identifying the particular reports that they had that met this list. So it did take a little time to gather all the information.

MR. PEDDIGREW: And what does that mean, a little time? Was it weeks, months?

MR. BOWN: It was months.

MR. PEDDIGREW: Right.

MR. BOWN: Yeah.

MR. PEDDIGREW: So are you saying you were confident that you were receiving this information in 2015 – all this information?

MR. BOWN: I'd say by 2015, yeah, we were doing much better. Yes.

MR. PEDDIGREW: At one point?

MR. BOWN: I'd say it took about a year to iron out the wrinkles. But, again, that's a best question for the executive directors, for Mr. Martin and Mr. Carter, who would've had hands-on experience on that.

MR. PEDDIGREW: Okay but your recollection was that it was probably mid-2015 before you were receiving everything that you had requested or that had been requested?

MR. BOWN: And that's a long list.

MR. PEDDIGREW: It is.

MR. BOWN: Yeah.

MR. PEDDIGREW: Yeah.

MR. BOWN: But the basic important things right out of the gate – costs, schedule – yes, we were receiving right away.

MR. PEDDIGREW: And, Mr. Bown, what was the origin of this letter? Or how did the – how did Premier Marshall and Minister Dalley come to send this letter?

MR. BOWN: I recall that this was one of the recommendations of EY, that we send a letter outlining what particular data the committee would require.

MR. PEDDIGREW: And do you know was consideration given prior to financial close to requiring Nalcor to provide this kind of information? Was that ever anything that was discussed?

MR. BOWN: I don't recall, only in the context of establishing an Oversight Committee.

MR. PEDDIGREW: Which didn't happen until 2014.

MR. BOWN: Right.

MR. PEDDIGREW: Okay. But – okay, so the – I guess the idea of an Oversight Committee was raised in 2012 –

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: – in some form or another. And so what I’m wondering is between 2012 and financial close, was there consideration given to requiring Nalcor to provide this type of information?

MR. BOWN: No.

MR. PEDDIGREW: Or did it not come up until 2014 in July?

MR. BOWN: It didn’t come up until 2014.

MR. PEDDIGREW: Madam Clerk, if we could call up Exhibit P-03505, please?

THE COMMISSIONER: That is in tab 49 of the financial close book.

MR. PEDDIGREW: Thank you, Commissioner.

So, Mr. Bown, this is a document that came up yesterday –

MR. BOWN: Yes.

MR. PEDDIGREW: – so Milly Brown, director of communications with the Office of the Premier. And at this point was minister – was – sorry; was it Premier Marshall in July 2014? I believe it was.

MR. BOWN: Yes.

MR. PEDDIGREW: We just – the document we just looked at was Premier Marshall.

MR. BOWN: Yeah.

MR. PEDDIGREW: Now, I’d like to take you to page 6 of this document.

MR. BOWN: Commissioner, what tab was that again?

THE COMMISSIONER: I’m sorry, it’s at tab 59 – 49, rather, of the financial close book.

MR. BOWN: Thank you.

MR. PEDDIGREW: And, Mr. Bown –

MR. BOWN: Go ahead.

MR. PEDDIGREW: – just before we go to page 6, just to give some context to this document, so this is a document sent to you by Milly Brown, I guess, with some key messages that the Premier’s office thought was important or were important to put out in response to the Oversight Committee report.

MR. BOWN: Yes.

MR. PEDDIGREW: And so if we go to page 6. And so if we look at the bottom of page 6 under: Shareholder Letter to Nalcor. Okay, and I’m assuming that’s the letter we were just looking at a moment ago.

And it says: “The oversight committee has presented a shareholder’s letter to Nalcor that states the required information and terms of reporting to the oversight committee. The committee has had ongoing correspondence with Nalcor; and much of the information requested in the shareholder’s letter has already been made available to the committee for review.”

And so, I guess, reading those last few lines, to me, that would seem to be inconsistent with your statement that – and I know you’re not the author of this document, but that would be inconsistent with your statement that you were having trouble, initially, getting documents from Nalcor. When you read this it makes it seem that, for the most part, Nalcor are complying.

MR. BOWN: But initially is not July. Initially starts back in February, March, April when we’re setting this up and letting them know what we’re going to be doing.

MR. PEDDIGREW: Right. But, again, you said your recollection was that it was not ’til mid-2015.

MR. BOWN: Not everything.

MR. PEDDIGREW: Right.

MR. BOWN: But –

MR. PEDDIGREW: You don't agree with me that this – the last three lines of this last paragraph, which seem to indicate that, for the most part, Nalcor is complying?

MR. BOWN: I can't say that it's not incorrect. It's best a question left for the executive director.

MR. PEDDIGREW: I'd like to take you to page 13, Mr. Bown.

And the question here, where it says: “**When did Government know about the \$6.5 million?**” And the, I guess, proposed answer to be put out in response to the Oversight Committee report is that: “Nalcor had indicated for several months that there was a possibility of an increase in cost for the Muskrat Falls Project.”

Now, I just want to go back to a question I asked you a few moments ago about did you have a concern in the months leading up to financial close about a cost overrun. This document seems to be saying that Nalcor was advising that there was a possibility of an increase.

How do you square those two?

MR. BOWN: We were aware – like, concern. Were you aware there was some discussion in the public and discussion internally that they were facing some cost pressures? You said did I have a concern. It wasn't a concern 'cause I knew that there was some conversations ongoing about cost pressures. Maybe I'm –

MR. PEDDIGREW: What are you talking about now? You're talking about – what I'm talking about is: In the lead up to financial close and, you know, we have our 6.2 and our 6.5. And what – my question to you earlier was: Did you have concerns that even if you thought 6.2 was the number, did you have concerns that

number could be higher on or after – shortly after financial close? And you said: No, you did not have concerns.

What I'm saying here is that this document indicates that Nalcor had been communicating a possibility of an increase.

MR. BOWN: Yeah, maybe me saying no to concerns probably wasn't the right response. Maybe it's – were we aware that they were under some cost pressures? The answer is yes.

MR. PEDDIGREW: But you were aware of cost pressures but you were not concerned.

MR. BOWN: I won't say I wasn't concerned. Maybe –

MR. PEDDIGREW: Were you concerned?

MR. BOWN: Well, I guess, maybe concerned is the right response. I find concerned to be more of a – closer to upset kind of – was I aware, yes.

MR. PEDDIGREW: Okay. Well, I mean, my understanding of concern is that if you're in a position that you were in at Natural Resources that you would be – I don't – worried is the right word, but the potential cost increases –

MR. BOWN: Yeah.

MR. PEDDIGREW: – (inaudible) concerns is the right –

MR. BOWN: I'm sorry. I don't want to be – going back and forth with you on semantics. But, yeah, in that list of words, similar to that – yeah, there would be one that would fit. Concerned would seem to be more out on the other end. We weren't of the view that there was going to be another billion or two billion or three – then we would've been concerned.

MR. PEDDIGREW: Okay. But \$300 million is –

MR. BOWN: It's a number, yes.

MR. PEDDIGREW: – not concerning?

MR. BOWN: No, I didn't say it's not concerning. Just in context, that's all.

MR. PEDDIGREW: So, basically, just so I'm clear, you were aware there was a possibility of cost increases in the lead up to financial close.

MR. BOWN: Well, we were aware that they were under some cost pressures. They were still negotiating contracts and they were telling us that, you know, some were up, some were down, we're mitigating, we're negotiating. So there was some potential there.

MR. PEDDIGREW: You were satisfied with that explanation from Nalcor –

MR. BOWN: (Inaudible.)

MR. PEDDIGREW: – and it didn't rise to the level of concern for you.

MR. BOWN: At that time we were satisfied.

MR. PEDDIGREW: Okay.

Page 17, Madam Clerk, please.

And then, Mr. Bown, the question here that says: **“Why can't you just let the PUB take a role in the Muskrat Falls Project? You realize by not doing this, the Provincial Government does not look open and transparent at all.”**

So, again, what we have here is, I guess, potential questions government is anticipating hearing and a proposed response to some of these concerns that people might express. And so the proposal here for a response to that concern is: “The PUB still has a role in Muskrat Falls, including the review of electricity rates.”

What does that mean?

MR. BOWN: Yeah. And looking back at that now – it would look like that one sentence there is not complete. That's not a complete response. Because the Public Utilities Board still sets the electricity rates in the province; Muskrat Falls is an input into those electricity rates – is the more appropriate response there.

MR. PEDDIGREW: Okay.

But there certainly wasn't any – I mean, reading that you might take away from this –

MR. BOWN: Right.

MR. PEDDIGREW: – statement that the PUB would have a say in whether Muskrat Falls costs get passed onto the ratepayer or not.

MR. BOWN: Yeah.

MR. PEDDIGREW: That's not the case?

MR. BOWN: No.

MR. PEDDIGREW: Mr. Bown, yesterday when you were asked about the independent engineer reports and you indicated that besides the one that was put into the data room in July of 2013 you didn't see one. You asked Nalcor for them but they didn't provide them for additional drafts. And Mr. Learmonth asked you, I believe, you know: Why didn't you demand them from Nalcor? And I believe your response was: Well, it wasn't the way we did business with them.

MR. BOWN: Writing a letter – Mr. Learmonth's comment was: Why didn't you write a letter and demand it? The – we didn't – my response was that's not how we dealt with Nalcor. We didn't write them memos and demand things. We called them, emailed them, had conversations with them and said here's what we need.

MR. PEDDIGREW: But at a certain point when calls and emails don't get the desired result, I mean, isn't there a point when something should be elevated to the point of writing a letter?

MR. BOWN: In – the answer is yes. In my years of being associated with Nalcor, I don't think that's occurred more than two, three times.

MR. PEDDIGREW: This – in relation to the independent engineer reports and not getting them, in your mind that didn't rise to the level of requiring a letter?

MR. BOWN: No.

MR. PEDDIGREW: Madam Clerk, if we could go back to Exhibit P-02051 for a moment, please.

And I believe, Mr. Bown, you said yesterday as well that when you – you did ask Canada for a copy of the independent engineer reports and were refused. Is that correct?

MR. BOWN: No.

We asked Canada for access to the independent engineer as part of our ongoing oversight process.

MR. PEDDIGREW: You did not ask Canada for a copy of the reports?

MR. BOWN: No.

MR. PEDDIGREW: Why not?

MR. BOWN: We had – it had already been made clear to us by Canada that the independent engineer worked for them and that if we wanted access to the independent engineer, it had to be through Nalcor.

MR. PEDDIGREW: Okay. Madam Clerk, if we could go to page 11 of P-02051, please.

And, Mr. Bown, just under the independent engineer paragraph here, I will just read it out to you, it says: “The Committee has identified that the Independent Engineer, MWH, is a key source of oversight assurance. As a result, the Committee has worked with the Federal Government, Nalcor and MWH to establish a formal arrangement to provide the Committee access to all materials and activities undertaken by the Independent Engineer. MWH will deliver certificates and reports to the Province concurrently with its provision to the Government of Canada. Further, representatives of the Province will participate in any meetings, site visits and conference calls among MWH, the Federal Government and Nalcor Energy and its subsidiaries.”

So, I put to you that that, I guess the level of agreement in co-operation that we see here in this paragraph, at this point, is certainly an about-face in terms of the position of Canada –

MR. BOWN: Yes.

MR. PEDDIGREW: – that you indicated a moment ago. So why the change of heart?

MR. BOWN: I don’t know what exactly compelled them to change other than our repeated insistence that we wanted access to the independent engineer and actually over time our engagement with the independent engineer in Canada has only improved.

MR. PEDDIGREW: Okay. When you say repeated access, could you please elaborate on that, like were they –?

MR. BOWN: Continue to ask them, to say this is important for us in order to do our oversight activities, we need to have access to his reports.

MR. PEDDIGREW: So it rose to the level of being important enough, post-financial close, to insist on it with Canada, but it had not risen to that level prior to financial close?

MR. BOWN: Yeah, that would be the case.

MR. PEDDIGREW: Could it be that you didn’t insist on it before financial close?

MR. BOWN: Absolutely. They didn’t agree.

MR. PEDDIGREW: Could be?

MR. BOWN: Pardon.

MR. PEDDIGREW: You did insist on it before financial close and they refused or you just – you did not insist on it? You asked once and were told no and didn’t follow up?

MR. BOWN: No, we asked repeatedly.

MR. PEDDIGREW: Before financial close?

MR. BOWN: Yes.

MR. PEDDIGREW: Okay. But again as Mr. Learmonth asked you yesterday, you have no documentation to substantiate. It’s just based on your –

MR. BOWN: I was at the negotiating table.

MR. PEDDIGREW: At the negotiating table.

MR. BOWN: Yup.

MR. PEDDIGREW: And they changed their minds early in 2014?

MR. BOWN: They changed their mind. Power of persistence.

MR. PEDDIGREW: So who from Canada was refusing pre-financial close?

MR. BOWN: That would've been the Department of Natural Resources Canada and their legal counsel, Cassels Brock.

MR. PEDDIGREW: Okay. Who were you dealing with at the table that was refusing?

MR. BOWN: That would've been the assistant deputy minister.

MR. PEDDIGREW: Who would that be?

MR. BOWN: At the end it was – there was two throughout the process, but Jay Khosla, at the end.

MR. PEDDIGREW: Who is that, sorry?

MR. BOWN: Jay Khosla.

MR. PEDDIGREW: Jay Khosla. So, Jay Khosla was the person who made the decision not to provide you with the independent engineer report prior to financial close?

MR. BOWN: I guess he would've made that response in concert with his legal counsel.

MR. PEDDIGREW: Was he the same person who changed his mind in – or was there somebody else making the decisions in 2014?

MR. BOWN: I don't know who actually made the decision in 2014 but he was still there, so it would have been him being part of the process, changed his mind.

MR. PEDDIGREW: Madam Clerk, if we could look at document 03440, please.

THE COMMISSIONER: Tab 3.

MR. PEDDIGREW: Thank you, Commissioner.

So, Mr. Bown, this is a document – you can let me know when you have it open there.

MR. BOWN: You can go ahead.

MR. PEDDIGREW: Okay.

A document that came up yesterday that came up during your evidence and so it's an information note from Department of Natural – or within, I guess, Department of Natural Resources, so I believe you were asked if you were the author of this document. You said no. Is that correct?

MR. BOWN: Right.

MR. PEDDIGREW: Okay. Do you know who the author of this document is?

MR. BOWN: I think we had a team of people who were working on this.

MR. PEDDIGREW: Who would be on that team?

MR. BOWN: That would have been the – and I'm being best guess now and I don't remember the key individuals who were in place at that time, but it would have been the assistant deputy minister of Electricity [sp. Energy] Policy.

MR. PEDDIGREW: Who's that?

MR. BOWN: In 2012, I don't recall who that was because we had a change out. It was either – Paul Scott, I'll make my best guess.

MR. PEDDIGREW: Paul Scott. Okay, that might makes sense, actually.

MR. BOWN: I think his name shows up in this note somewhere, doesn't it?

MR. PEDDIGREW: On page 7, yeah, there's a –

MR. BOWN: Right.

MR. BOWN: So Paul Scott was the assistant deputy minister.

MR. PEDDIGREW: Okay.

And so, would he – so you say teams, would anybody else besides Paul Scott have had input into this?

MR. BOWN: Sure, his director of electricity and one or two of their staff.

MR. PEDDIGREW: Okay. Would they have been the individuals who met with Robert Noseworthy?

MR. BOWN: Yes.

MR. PEDDIGREW: And I guess the engagement of Mr. Noseworthy – how did that arise?

MR. BOWN: We – there was a concern that Nalcor – Muskrat Falls, when negotiating with Newfoundland and Labrador Hydro, and this had come up in a conversation between me and the staff that are we okay with that level of closeness of a negotiation. So we asked to review the documents – the term sheet.

We'd already been part of the process where memorandum of principles before they negotiated was prepared, and when they went and had a look in at the term sheet they said there are some concerns here that we have that we've moved away from the principles of the term sheet. They asked Robert Noseworthy and Power Advisory to do a review.

MR. PEDDIGREW: Right. Okay.

And so I'd like to take you to some of those concerns now because I would put to you that they – some of the concerns raised by Mr. Noseworthy are pretty serious, especially –

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: – in terms of the ratepayers

If we go about halfway down page 1, under the heading “*Departures from the Memorandum of Principles ...*” and so the first one here, Mr. Noseworthy points out – this is a summary of Mr. Noseworthy's findings and Mr.

Noseworthy's summary of the meeting with him is at Annex A to this document.

So, the summary prepared by the – Paul Scott or whoever in Natural Resources indicated that Mr. Noseworthy's “overall assessment is that there has been a clear shift from protecting the interest of the ratepayer as contemplated in the MOP to a focus on ensuring the financial viability of the Project in the Term Sheet. Mr. Noseworthy believes there is no benefit accruing to NLH in the early years, with Nalcor receiving all of the benefit.”

And, you know, we go on here a couple of more bullet points where there's concerns expressed about the impact on ratepayers, and then the last bullet under that heading says: “The MOP contemplated that transmission costs would be charged on the LIL which would generate revenue and help pay for the Project. The Term Sheet does not contemplate any transmission charges resulting in Nalcor and Emera getting free transmission, even though NLH is paying all the costs.” And then the ratepayer paying all the costs.

MR. BOWN: Yeah.

MR. PEDDIGREW: So, if we move on to the next page, page 2, towards the bottom. So, “Mr. Noseworthy” – says or – “agrees that the Project can't be regulated under the current PUB system” – that's – we all know the reason for that – “but there has to be significant and meaningful independent oversight of the costs related to the project given the level of expenditures.”

Okay, so I'm taking it that the significant and meaningful independent oversight – is it your position that the Oversight Committee that was established two years after this memo in 2014 met the recommendation of Mr. Noseworthy that the oversight be significant and meaningful?

MR. BOWN: That was the intent, yes.

MR. PEDDIGREW: But did it meet that standard?

MR. BOWN: I can't make that determination.

MR. PEDDIGREW: Right. In your view?

MR. BOWN: Yeah.

MR. PEDDIGREW: You were on the committee.

MR. BOWN: Yes.

MR. PEDDIGREW: In your view, it met the standard that Mr. Noseworthy was saying was required?

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: Yes?

MR. BOWN: Yes.

MR. PEDDIGREW: Okay.

MR. BOWN: Sorry, I didn't mean to go mm-hmm.

MR. PEDDIGREW: The next bullet: "With the ratepayer being required to cover all costs incurred on the project, it is incumbent on the province to ensure that costs are independently reviewed and released to the public in a report."

Did that happen? Were the cost of the project independently reviewed?

MR. BOWN: Costs as they were incurred through the Oversight Committee process, yes.

MR. PEDDIGREW: So, again, you feel the Mr. Noseworthy's recommendation for independent review –

MR. BOWN: (Inaudible.)

MR. PEDDIGREW: – of all costs that would incur to the ratepayer?

MR. BOWN: With the benefit as well of having EY do reviews for us.

MR. PEDDIGREW: Right.

MR. BOWN: Yes.

MR. PEDDIGREW: Despite EY's criticisms of the Oversight Committee throughout, or for the period 2014, 2015, you still feel that this

recommendation from Mr. Noseworthy was satisfied?

MR. BOWN: I believe so.

MR. PEDDIGREW: You say you believe so?

MR. BOWN: Yes.

MR. PEDDIGREW: So on to page 3, Madam Clerk, please.

Now, Mr. Bown, if you look at the bottom of this page where it says: "Action Being Taken." And, again, I just – in the context of a number of very serious concerns being raised by Mr. Noseworthy in this report, it says: "Action Being Taken: None. For Information purposes only."

MR. BOWN: Yeah. So it's not a decision note, so it doesn't have next steps in it. That's just – that was just normal practice. Everybody is given a template on how you do a briefing note, and if you don't have your specific next steps in place you just put none in there and there was some information, which was to brief me. So there was action taken on this.

MR. PEDDIGREW: Okay. So this doesn't mean that there was –

MR. BOWN: No.

MR. PEDDIGREW: Okay.

MR. BOWN: That's just a note format.

MR. PEDDIGREW: And if we go to the next page, Madam Clerk, page 4, under Issue 1, the third bullet down.

And so this is a summary of the meeting with Mr. Noseworthy. In the third bullet he says: "Now is the time to address issues with Nalcor prior to going down a 'slippery slope.'"

So, again, this is – this document is dated October 2012. So despite Mr. Noseworthy's advice to do this now, it was two years before the first Oversight Committee or the first version of the Oversight Committee was put in place.

MR. BOWN: No, I think you're reading that out of context. I think you're referring to –

MR. PEDDIGREW: (Inaudible) context?

MR. BOWN: The issue was departures from the memorandum of principles.

MR. PEDDIGREW: Right.

MR. BOWN: So it said action needs to be taken now on the term sheet before you head down the slippery slope.

MR. PEDDIGREW: Right. But one of the – on the first page, or if we look at the first bullet here. Departures from the memorandum of principles: “a clear shift from protecting the interest of the ratepayer.”

MR. BOWN: Yeah. So there was action that was taken in – what’s the date of this – in 2013, in relation to the PPA between –

MR. PEDDIGREW: Nothing in relation to independent oversight. That was not done until two years later.

MR. BOWN: Right.

MR. PEDDIGREW: And nothing in relation to requiring – and I don’t think this was ever done – anything in relation to Nalcor requiring to submit information to an independent body before costs were approved. That’s not anything that was ever put in place, is it?

MR. BOWN: No, and I don’t think that was – is that – do you see this here?

MR. PEDDIGREW: No, I don’t. No.

MR. BOWN: Okay. Okay.

MR. PEDDIGREW: Okay.

I’d like to take you now to P-01128, please, Madam Clerk.

THE COMMISSIONER: That’s at tab 4.

MR. PEDDIGREW: And so, Mr. Bown, is this document – again, a “**Direction Note Department of Natural Resources.**” Is this something that flowed out of the document that we were just looking at a moment ago?

MR. BOWN: Well, it would’ve been a part of it. There was a team that was established following the direction in April to look at project oversight. This would have flowed directly from that.

MR. PEDDIGREW: Okay.

And it’s, I guess, discussing some of the same concerns that were discussed by Mr. Noseworthy. If we look about halfway down the page, the third bullet, it talks about Mr. Noseworthy talking about “significant and meaningful independent oversight” as a result of the ratepayer being “required to cover all the costs.”

Then if we go to page 2 – I’m sorry, who is the author of this document?

MR. BOWN: This would be the same group.

MR. PEDDIGREW: The same group?

MR. BOWN: With the addition of Justice. And while it doesn’t recognize Finance there, Finance was part of the team as well. I think that was an oversight. This is a draft note.

MR. PEDDIGREW: So this is a – generated by Finance, Natural Resources and –

MR. BOWN: Yeah. This –

MR. PEDDIGREW: – Justice.

MR. BOWN: Yes.

MR. PEDDIGREW: Okay.

And if we look at page 2, about halfway down. And so – it says: “Two approaches are put forth for consideration for this phase of the Project:” – and this phase being the project development, construction phase – that Newfoundland utilize “**the Same Independent Engineer as Nalcor/Federal Government.**”

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: And that Nalcor utilized – option 2: Nalcor utilized a different independent engineer. Ultimately, is it option 1 –

MR. BOWN: It's –

MR. PEDDIGREW: – you decided to go with?

MR. BOWN: Well, it's the Oversight Committee with the independent engineer, yes.

MR. PEDDIGREW: The independent engineer of –

MR. BOWN: Yes.

MR. PEDDIGREW: – the federal government.

MR. BOWN: Yeah.

MR. PEDDIGREW: If we look at page 5, Madam Clerk.

These seem to be notes. I don't know if they were part of the original report or they were added after the fact, but do you know who the author of these notes is?

MR. BOWN: I don't recall.

MR. PEDDIGREW: And so –

MR. BOWN: This was attached to the note?

MR. PEDDIGREW: I'm assuming so. It's part of Exhibit P-01128.

MR. BOWN: No.

MR. PEDDIGREW: You don't know who the author of these comments would be. So the last two bullets at the bottom of this page.

MR. BOWN: No.

MR. PEDDIGREW: Where it said: "I disagree with the recommended approach as it would establish a situation where a biased AG would make and release reports about the project and the Nalcor without any input from Govt."

And, "I also disagree with the other approaches and have asked the team to re-visit. One option is to retain the IE from the Construction Phase."

So we can go through concerns. Does that jog your memory as to who might have been the person expressing these concerns?

MR. BOWN: Very well be me, but I can't say for certain.

MR. PEDDIGREW: You don't remember writing this?

MR. BOWN: No.

MR. PEDDIGREW: Would these be concerns that you had at the time?

MR. BOWN: That I don't recall. Other than the last one, was being consistent with having the IE from the construction phase be part of the project throughout. That's been my belief.

MR. PEDDIGREW: We're just going back for a moment to page 4. This is in relation to the Project Operations Phase and what the options are for oversight. And so, the four options are: Independent Auditor; Board of Commissioners of Public Utilities, number two; NL Auditor General, number three; and then number four is a Committee to Review Options and Make Recommendations.

And so: "Mr. ... Noseworthy believes this Phase is more challenging and suggests the appointment of a representative group to consider this matter and make recommendations on future on-going oversight for the project following commissioning."

So the group could consist of consumer advocates representing the interests of consumers; the Auditor General; the Chair or CEO of the PUB; and, a representative of the Development/Construction Phase oversight group for purposes of continuity.

And if we look at the cons that were listed here for this option: "Public perception may be an issue if Government does not implement Committee's recommendation(s)."

So, the second con: "Committee may need to consult with outside expertise to carry out their mandate." Making pressured – third: "May be pressure for the committee to hold public meetings." And, four: "Cost of committee would be an additional expense."

I mean, I put to you: Are those true concerns, those four cons?

MR. BOWN: Those are – whenever we do this kind of exercise, that’s required in anytime you’re doing a decision note.

MR. PEDDIGREW: Right.

MR. BOWN: Regardless of whether you –

MR. PEDDIGREW: Oh, I’m not saying they’re not –

MR. BOWN: Right.

MR. PEDDIGREW: – required, but something done with it.

I guess my question to you is, they don’t seem to be serious concerns?

MR. BOWN: No, but you have to put them down so that the person who’s reading has the benefit of making a decision in the full context. So they’re –

MR. PEDDIGREW: Okay.

MR. BOWN: – getting two different points of views. That’s the purpose of pros and cons.

MR. PEDDIGREW: But for the purpose of establishing a committee that would review and make recommendations and, again, some additional independence. I mean, the cons of that option don’t seem to be –

MR. BOWN: These don’t get ranked and they don’t get numbers attached to them, whether they’re big concerns or small concerns.

MR. PEDDIGREW: Okay.

MR. BOWN: Just meant to be there –

MR. PEDDIGREW: Ultimately, this option –

MR. BOWN: – to help inform the decision maker.

MR. PEDDIGREW: Ultimately, this option was not chosen.

MR. BOWN: Right.

MR. PEDDIGREW: And that – the current Oversight Committee was responsible for development and construction. We haven’t reached this phase yet.

MR. PEDDIGREW: I wanna ask you a question about – I just have a few more questions for you.

Exhibit P-01129, Madam Clerk, please? I believe this is an email exchange between yourself and Robert Thompson in relation to the document we were just looking at. Is that correct?

MR. BOWN: Yes.

MR. PEDDIGREW: Okay.

And, so, you indicate to Mr. Thompson that you’ve been working on an oversight model for Muskrat Falls in the wake of exempting the PUB. And then Mr. Thompson goes on to say to you: The note is “in reasonably good shape. I think” it’s “essential that your minister be armed with key messages on this topic. Ideally we would have an approved accountability and oversight process to announce simultaneous with the bill.”

So, I guess given that that was the expressed wish of Mr. Thompson, that it be simultaneous with the bill, how did it not – and I recall your evidence yesterday saying, you know, there was few of you responsible for a number of things. But how did something like oversight not rise to the priority level sufficient enough that this would be done in 2012? Why did it take until 2014?

MR. BOWN: I can’t answer in the specific, other than the fact that it was – we had put teams together to do this. These same teams were pulled off to work on – in this case here, this was Bill 60 and 61, they were pulled off as part of the legislative process. At the same time, we were doing the arrangements between Nalcor and Emera and with the Government of Canada.

It – you know, the direction was given in April and we were here now in December and had run out of time.

MR. PEDDIGREW: Ran out of time to put oversight in place?

MR. BOWN: Yes.

MR. PEDDIGREW: Mr. Budden asked you about – made reference to a Guy Holburn, who was a witness in Phase 1. And I'd just like to bring you to a couple of aspects of Mr. Holburn's report, which is Exhibit P-00528, please, Madam Clerk.

So I don't know if you had an opportunity to review Mr. Holburn's report?

MR. BOWN: I read it quickly –

MR. PEDDIGREW: Okay.

MR. BOWN: – just to make sure that I had an understanding.

MR. PEDDIGREW: I'd like to take you to page 22.

Mr. Holburn, in – on page 22, under section 6.4, so Execution and Oversight, which is what – most of the questions I've been asking you about today.

MR. BOWN: Yes.

MR. PEDDIGREW: And so, Mr. Holburn – and I think this needs to be viewed, or my questions are being asked to you in the context of the PUB's ability to exercise oversight has been removed.

MR. BOWN: Mm-hmm.

MR. PEDDIGREW: Okay?

And so, I would put to you that Mr. Holburn's advice as to how things should be carried out takes on even more significance in that context without PUB oversight.

So Mr. Holburn says under paragraph – or heading 6.4: "Once the project is sanctioned, project owners bear primary responsibility for the implementation according to budget and schedule and to manage its construction in an efficient manner. Recognizing the risk for future cost over-runs, governments and regulators may

devise oversight governance mechanisms and attach conditions that incentivize proponents to execute projects prudently."

So prior to financial close, that was not done. Would you agree with that?

MR. BOWN: Yes, in terms of timing, correct.

MR. PEDDIGREW: Mr. Holburn goes on to give an example of how things were done in Ontario, the Darlington Refurbishment Committee, where the contractor in that case would have to submit information to a review board before it would be paid. Again, nothing like – was anything like that ever considered in relation to the Muskrat Falls Project, to having Nalcor submit documentation before it would be given any money by government?

MR. BOWN: No, I don't recall it.

MR. PEDDIGREW: Okay.

MR. BOWN: Or I wasn't part of any discussion where it was raised.

MR. PEDDIGREW: Was it something that was – if it wasn't raised and you weren't part of any discussion –

MR. BOWN: Right.

MR. PEDDIGREW: – do you know – is it something that you thought of yourself?

MR. BOWN: No.

MR. PEDDIGREW: No?

MR. BOWN: No, it's not something –

MR. PEDDIGREW: Okay.

MR. BOWN: – I thought of myself.

MR. PEDDIGREW: On page 24 under 6.5, Cost Review and Recovery. So the second paragraph here Mr. Holburn makes reference to Nova Scotia. And it says: "Nova Scotia followed best practice in regulatory oversight of the Maritime Link by requiring the proponent, NSPML, to apply for cost recovery from the URB after project completion."

So did that ever – did Nova Scotia's intended practice ever come up in your discussions with Nova Scotia?

MR. BOWN: No.

MR. PEDDIGREW: And, Mr. Bown, my last question or maybe a couple of questions for you is something that's been, I guess, touched on by some of the other counsel in their questioning of you and it relates to your, I guess, relationship with Mr. Martin. And so there certainly seems to be – there's a number of emails between yourself and Mr. Martin. I believe you've agreed that you were probably Mr. Martin's main point of contact at the Department of Natural Resources. Is that ...?

MR. BOWN: Yes, but he also regularly dealt with the minister and the premier as well.

MR. PEDDIGREW: Okay.

MR. BOWN: I wasn't the lead for the government, no.

MR. PEDDIGREW: Right.

And, I guess, I'm wondering: When did you become – so, besides the minister, you would have been Mr. Martin's main point of contract within the department?

MR. BOWN: Yes.

MR. PEDDIGREW: And when did that – was that during your entire time as deputy minister or did that also apply during your time as assistant deputy minister?

When did that relationship where you would be –

MR. BOWN: No.

MR. PEDDIGREW: – in touch with other – when did that start?

MR. BOWN: No, the – when I became deputy minister because that would be the normal contact for the CEO to have a relationship with the deputy minister.

MR. PEDDIGREW: Okay.

And was that during your – I guess, during – were you gone from Natural Resources before Mr. Martin was gone from Nalcor or vice versa?

MR. BOWN: He was gone before I left –

MR. PEDDIGREW: Okay.

MR. BOWN: – Natural Resources.

MR. PEDDIGREW: So, during your entire time with the Department of Natural Resources, you were in somewhat regular contact with Mr. Martin?

MR. BOWN: Yes.

MR. PEDDIGREW: Okay, and not always with other people. Not always with the minister copied or – sometimes it was just yourself and Mr. Martin on some of these communications?

MR. BOWN: Yes, an email, yeah.

MR. PEDDIGREW: And was that at the direction of anyone? Did the minister or the various ministers who were at Natural Resources – did they instruct you to be the main point of contact, or was that just something that evolved?

MR. BOWN: It's something that evolved.

MR. PEDDIGREW: Okay. Those are my questions

Thank you.

MR. BOWN: Thank you.

THE COMMISSIONER: Right. Thank you.

All right, just to see where we are 'cause it's lunchtime now. I don't believe there's anybody here from the Innu Nation this morning.

The Nunatsiavut Government I don't think is here.

NunatuKavut, you have some questions.

There's nobody here from Ekuanitshit.

Grand Riverkeeper, do you have questions?
Yep, okay.

I don't believe the Former Nalcor Board Members have any questions. I think I was told that yesterday, and nobody was here from the Resource council.

So, we still have two parties to go. So, we'll adjourn until 2 o'clock this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Thank you.

All right, NunatuKavut Community Council.

MR. STEWART: Good afternoon, Mr. Bown.

THE COMMISSIONER: Your mic.

MR. STEWART: We're on now? There we go.

All right, good afternoon, Mr. Bown. Roy Stewart, legal counsel for NunatuKavut Community Council.

MR. BOWN: Good afternoon, Mr. Stewart.

MR. STEWART: I should be pretty quick.

First, as deputy minister for approximately four years post-sanction, you would have been in a position to oversee the government's implementation of the Joint Review Panel recommendations. Is that correct?

MR. BOWN: No. Those were overseen by the – by and large by the Department of Environment. They held the permit for the project release.

MR. STEWART: As for the recommendations for your department, would you have been in the position to oversee those recommendations?

MR. BOWN: Yes, I guess.

MR. STEWART: Okay.

MR. BOWN: I don't recall them right off the top of my head.

MR. STEWART: Okay.

Well, Madam Clerk, could we get Exhibit P-00051?

THE COMMISSIONER: It'll be on the screen.

MR. BOWN: Thank you.

MR. STEWART: As you can see, this is the government's response to the report of the JRP. If we could go to page 5, please.

And my focus here is on the response to Recommendation 5.4, which is related to atmospheric monitoring. The government offered to co-operate with Nalcor, where possible, to advance atmospheric monitoring and in this response, specifically offered resources and assistance from the Water Resources Management Division for that purpose.

But my understanding is that the Water Resources Management Division is included in the scope of the Department of Environment. Is that correct?

MR. BOWN: Right.

MR. STEWART: Correct.

Do you recall anyone from the Department of Natural Resources during your tenure assisting Nalcor in atmospheric monitoring?

MR. BOWN: It would be outside the scope of the mandate of the Department of Natural Resources.

MR. STEWART: Okay. Yeah, so –

MR. BOWN: This is the scope of the Department of Environment.

MR. STEWART: Okay. Perfect.

Could we then go to page 12, please? And the focus here is in the response to Recommendation 7.5, where the Department of Natural Resources was tasked with requiring Nalcor to minimize road construction and to ensure that all roads

constructed outside the impoundment area were only approved if necessary.

Do you recall what work the Department of Natural Resources did in response to this recommendation?

MR. BOWN: So the Department of Natural Resources at that time was comprised of the Mines and Energy branch and the Forestry and Agrifoods branch. And this was the responsibility of Forestry and Agrifoods; it had its own deputy minister or CEO. And that responsibility currently resides with forestry lands and resources. So it's not the responsibility – it was never my responsibility in the Department of Natural Resources.

MR. STEWART: Okay.

Could we then jump to page 31, please, Madam Clerk? And here the response to Recommendation 15.1 – which you can see near the top of the page – the government committed to making regulations, establishing a monitoring and community liaison committee.

Would the minister of Natural Resources have been the lead on developing these regulations?

MR. BOWN: No, that would be at the Department of Environment, currently Municipal Affairs and Environment.

MR. STEWART: Okay.

So you may be able to speak to my next question, I'm not sure, which is – could we jump to page 33, Madam Clerk?

And in response to Recommendation 15.5, the government states that – and I quote, “As identified in the Governments’ response to recommendation 15.1, a committee will be established by Nalcor” However, the response to Recommendation 15.1 said that the government will enact regulations to establish a committee. Are you able to speak to that discrepancy and the difference in the language?

MR. BOWN: No, I can't speak to that. That's – again, that's the Department of Environment.

MR. STEWART: Madam Clerk, if we could now get Exhibit P-03455?

And, Mr. Bown, you were asked a few questions on this exhibit yesterday.

MR. BOWN: Yes.

MR. STEWART: And just paraphrasing, but you basically said you were hands off on this – on a response for protesting and that you would essentially forward the protest updates to your team. Is that correct?

MR. BOWN: That's correct.

MR. STEWART: In this particular email, you forwarded it to a number of people: Siobhan Coady, who was and is the Minister of Natural Resources. Who are the other people to whom you sent this email to?

MR. BOWN: Diana Quinton was the director of communications, Megan Sheppard was, at that time, was Minister's Coady's executive assistant, and Tracy English was the associate deputy minister of Energy.

MR. STEWART: And was it your regular practice to forward along these updates on protest to these specific people?

MR. BOWN: Yeah, this would be the core team who would need to be informed about activity. This was going – the – Deanne Fisher from Nalcor would be sending this to the premier's office, separate email – like, under separate cover to the premier's office, to the Department of Environment. So she sent one to me, which was for me to distribute to the Department of Natural Resources.

MR. STEWART: So, I guess my next question is what was the rationale for forwarding? Was it just to keep the minister and other people within the department informed? Or was it in contemplation of action on behalf of the minister?

MR. BOWN: Information only.

MR. STEWART: Okay.

My last few questions are related to Exhibit P-03460. If we could get that one, please.

Again, you were asked some questions on this one yesterday, Mr. Bown.

MR. BOWN: Yes.

MR. STEWART: And I believe, if I recall correctly from yesterday, you said that with the help of others, you prepared these job responses. Is that correct?

MR. BOWN: Yes.

MR. STEWART: Okay.

My focus for this question is on question 7, which is towards the bottom of page 5. And this question and response concerns the issues of clearing the reservoir to limit methylmercury production. In this response, which is in the last paragraph, and I'll quote: "Given the potential for impacts on fish and fish habitat from further clearing and soil stripping, Nalcor is of the view that a federal EA trigger exists related to these impacts and a subsequent section 35 Fisheries Act authorization. Nalcor also notes that any new reservoir clearing/stripping undertaking may trigger federal EA provisions through the operation of the federal loan guarantee. Provincial triggers would also apply."

So my question is, is this an opinion that was shared by the government of the time?

MR. BOWN: No, this is just information that we would have received from Nalcor that we added to a response to a question.

MR. STEWART: Okay.

And my last question, Mr. Bown, is did the province of Newfoundland and Labrador consider full clearing of the reservoir to be a risky action because it may trigger additional environmental assessment requirements that could further delay the project?

MR. RALPH: Excuse me, Mr. Commissioner. The – I think, as everyone knows, this process – the IAC process is ongoing. Cabinet has considered some recommendations. They've discussed this with Nalcor. I've advised Mr.

Learmonth of the situation. Invitations went out before the election to sit down with the Indigenous groups.

So, there is a process ongoing. Certainly, this Inquiry should address this issue, but I would suggest this is not the time and this is not the witness to do it. Mr. Bown is very tangentially involved in this issue, and later on there will be a witness, I suggest, that would be in a much better position to answer my friend's questions.

And right now, I would suggest, certainly there is – answering his questions could prejudice this ongoing process that's happening right now.

THE COMMISSIONER: Mr. Stewart.

MR. STEWART: I guess, in response to that, I'm supportive of the process that was just mentioned. As far as answering the question, we would like to have an answer especially since Mr. Bown has already said that he did draft these responses with the assistance of others. So, the information is going to come out anyway, we hope.

THE COMMISSIONER: Okay.

So what was your question again? Here's – so I – just to remind me here. It's – so did the province agree with the position put forward by Nalcor that to do clearing in the reservoir – more clearing in the reservoir, it would trigger EA – federal EA review? Is that what your question is?

MR. STEWART: Yeah. Did the province consider a full clearing of the reservoir to be a risky action because it may trigger additional environmental assessment requirements, which could further delay the project?

MR. RALPH: In fact, I have no objection to that question actually, Commissioner. I think if –

THE COMMISSIONER: All right. Okay.

MR. RALPH: – just want to point out it should not go any further, but certainly that's our position.

THE COMMISSIONER: Right.

MR. RALPH: In terms of exactly –

THE COMMISSIONER: So –

MR. RALPH: – what the policy –

THE COMMISSIONER: So again –

MR. RALPH: – is about right now.

THE COMMISSIONER: – just to make sure we understand what the question is and – because I do expect there will be other witnesses that will be called – like, Mr. Ball is going to be coming in, Ms. Coady, you know, people from Nalcor Energy as well – who are probably in the picture on this as well.

MR. STEWART: So perhaps somebody else that –

THE COMMISSIONER: Right. But I have no problem with the answer – asking that question because I think this witness is the right person to ask that to. I mean, he's the one who drafted this or it's in or under his name with the assistance of others, so I think it's a fair question to ask him.

MR. STEWART: And – sorry, Commissioner.

THE COMMISSIONER: Go ahead.

MR. STEWART: Mr. Bown, if you are unable to answer it, then are you able to tell us the name of somebody who assisted in drafting these responses or somebody else within the government who is most suited to answer this question?

MR. BOWN: It's – I can state clearly that Gilbert Bennett would have provided me with the – with these particular sentences.

MR. STEWART: Okay. That's all my questions.

MR. BOWN: Thank you.

THE COMMISSIONER: So, let me just go back, just for a second, just before you finish. So, my question, Mr. Bown, is are you aware as to whether or not the issue of the clearing of the reservoir that – was there – does the government

share Nalcor's view that that would trigger federal EA review?

MR. BOWN: I'm not aware. I'm not aware that the Department of Environment has done that assessment.

THE COMMISSIONER: Okay. So, these are views that are Nalcor's views –

MR. BOWN: Yeah.

THE COMMISSIONER: – and, to your knowledge, they're not the government – not the province's view?

MR. BOWN: This was a draft at that time. And, again, we were just putting together factual information that would have been provided by Nalcor. It says "Nalcor is of the view."

THE COMMISSIONER: So, I can take it that it's only Nalcor's view, at least as of this time.

MR. BOWN: Yes.

THE COMMISSIONER: Okay. Does that help?

MR. STEWART: Yeah, I think that's as helpful as we're going to get at this point.

THE COMMISSIONER: Okay. Good.

MR. STEWART: Okay.

THE COMMISSIONER: Thank you, Mr. Stewart. All right.

All right, Grand River [sp. Riverkeeper] Labrador and the Labrador Land Protectors.

MS. URQUHART: Good afternoon, Mr. Bown. My name is Caitlin Urquhart, and I'm representing the Grand Riverkeeper and Labrador Land Protectors, and they're two citizens' organizations that are dedicated to protecting the ecology of the Grand River, which is now, obviously, the subject of this Inquiry and this project.

So, obviously, we – I asked some questions in the first phase, so we're building on that, going from sanction forward. Madam Clerk, I'd ask if

you could just pull up P-00041. And so, this is just, sort of, provides some context and backdrop as to the questions that I'll be asking today.

Thank you. And at page 291, please. Thank you. If you scroll down a little bit, please.

So, the recommendation of the panel in respect of the authorizing regulations, which would release the project from the environmental assessment process, was the – you'll see the first recommendation or the first point there is that it would list and require "Nalcor to implement all" of "its environmental management commitments in relation to the Project made during the course of the" EA, and in addition to "measures recommended by the Panel"

So you may know that that recommendation was not actually complied with, and – so, Madam Clerk, if you can, please pull up P-02702. And this is actually the regulation that released the project from the – form the EA process, and there were conditions on the release.

And if, Madam Clerk, if you can please scroll down, it'll be on page 2, Conditions of release, number 4. There we go, thank you.

MR. BOWN: Mm-hmm.

MS. URQUHART: So you'll see here that the government chose to – not to actually list out the commitments and what would be required of Nalcor, but, in fact, to have Nalcor abide – just sort of a blanket statement – that it would abide by all of its commitments made. So this is sort of just the foundation, obviously this is – implicates your department, and your department was in charge of a number of these responses.

So I'm wondering who compiled the list of commitments pursuant to the environmental impact statement, the IRs, the EA, all that stuff. Who was in charge with, of compiling that list?

MR. BOWN: The regulator (inaudible) Department of Environment.

MS. URQUHART: Okay, do you have any –

MR. BOWN: No, no.

MS. URQUHART: – but do you know and – of any contact of who that would be?

MR. BOWN: No.

MS. URQUHART: Okay.

And, so within your department, who was charged with ensuring that the – anything that touched on Natural Resources was properly set out in that list?

MR. BOWN: I don't recall any one person being identified, but do you have a specific commitment that I could – it would help?

MS. URQUHART: Well, I mean, there were obviously many commitments, and my – what I'm trying to understand is who was responsible for confirming that the – I'm assuming that Nalcor actually prepared the list, would be my –

MR. BOWN: Okay.

MS. URQUHART: – my first proposition.

MR. BOWN: Sure.

MS. URQUHART: I don't know whether that's the case. You were the primary contact with them, would you be aware of whether that would've come from them or from within your departments?

MR. BOWN: No, there was an environmental assessment working committee of officials from all departments, who were involved in this process. I wasn't deeply involved in the drafting of the conditions of release or actions thereafter.

MS. URQUHART: Okay. Sorry, so you said there was a committee?

MR. BOWN: Yes.

MS. URQUHART: (Inaudible.)

MR. BOWN: For every environmental assessment, there is an environmental assessment –

MS. URQUHART: The EA –

MR. BOWN: – committee.

MS. URQUHART: – committee. Do you know who was on that committee?

MR. BOWN: My department, I don't know. I don't recall

MS. URQUHART: So, as the – you know, the top of the – sort of the top of the chain and the primary point of contact for Nalcor, did you receive such a list of all of the commitments that were made by them?

MR. BOWN: I don't recall receiving it, but I don't believe it would made its way to me anyway.

MS. URQUHART: Okay. You don't think you would have seen something like that.

MR. BOWN: No.

MS. URQUHART: Why would that be?

MR. BOWN: 'Cause I have never seen it for other projects as well, where they have been, say, shelved by other commitments. I've never seen one.

MS. URQUHART: Okay. How does – how do you monitor whether or not they are abiding by the commitments?

MR. BOWN: The regulator, the one who monitors the commitments.

MS. URQUHART: Okay, but you – you know, Natural Resources is responsible for permitting and, essentially, shepherding this project. You're the department that's responsible for this project, at the end of the day.

MR. BOWN: We didn't do any permitting for this project.

MS. URQUHART: Are you – you're not responsible for regulatory compliance in any way, for this project?

MR. BOWN: No.

MS. URQUHART: Not even outside – even if the particular items that your department has been responsible for?

MR. BOWN: The regulator is the governing body. If there is any issues with non-compliance, it's either raised with the proponent or with the department.

MS. URQUHART: And who raises it?

MR. BOWN: The Department of the Environment, regulator.

MS. URQUHART: Right, so you're saying that either would be raised by – raised to Nalcor or to the regulator. But who is monitoring whether or not it's actually being complied with?

MR. BOWN: The Department of the Environment.

MS. URQUHART: Okay. And again, that includes things like the timber which was a resource, to my mind, that would be the responsibility of Natural Resources. No?

MR. BOWN: Yeah, if the conditions of release – whatever conditions of release exist.

MS. URQUHART: Mm-hmm.

MR. BOWN: If the – it's the Department of Environment's responsibility, it's their duty as regulator –

MS. URQUHART: Mm-hmm.

MR. BOWN: – to ensure that their complied with.

MS. URQUHART: Okay. And so you're – so you would have it – wouldn't have ever seen a list or any sort of documentation that lays out what the –

MR. BOWN: No.

MS. URQUHART: – responsibilities, what those commitments were.

MR. BOWN: No.

MS. URQUHART: Okay. And so you would have no knowledge of whether such a list would have been released to the public and publicly available for, for example, organizations such as

Grand Riverkeeper or Labrador Land Protectors?

MR. BOWN: No.

MS. URQUHART: Right. And so you've no information as to whether – how or whether, if at all, this was monitored?

MR. BOWN: No, I can't answer that.

MS. URQUHART: Okay.

Madam Clerk, if you can, please go to P-01403. Thank you. So, and if you can scroll down – sorry, I have – so this is a – ta-ta, ta-ta, ta-ta, here we go.

So, this an information note around the Joint Review Panel and the recommendations that were the responsibility of Department of Natural Resources.

MR. BOWN: Yes.

MS. URQUHART: So, there were nine specifically assigned to Department of Natural Resources. So beyond drafting the responses, what responsibility, if any, did Natural Resources take on beyond drafting the responses?

MR. BOWN: I don't recall any additional responsibilities.

MS. URQUHART: So, after these items were – you had prepared the response –

MR. BOWN: That was our mandate, that's what we were requested to do by the Department of Environment and the environmental assessment committee.

MS. URQUHART: So, you did not – the Department of Natural Resources did not then become responsible for ensuring compliance with those –

MR. BOWN: No.

MS. URQUHART: – terms?

MR. BOWN: No.

MS. URQUHART: Okay.

So, if we can do down, please, Madam Clerk, to page 8, and scroll down somewhat, yeah. Please, just a little bit further, it's this Recommendation 14.3.

So, in this instance – so your department was responsible for responding to this particular recommendation. It was recommended by the panel that Nalcor carried out seismic testing and this was to ensure that the structures would be stable in the event of a seismic event, and ensure the safety of the people living downstream from a potential dam failure that would cause flooding and potentially the loss of property and life in that area.

So, I'm wondering – obviously, the government accepted the intent but, in fact, only required seismic monitoring. And I'm wondering if you can, please explain and – you know, for the folks in Labrador who live downstream who would like to know – why it was decided that this would be the – that the – actually, that the recommendation of the panel would be rejected.

MR. BOWN: I can't answer that at this stage. I've lost the context of this, it's been a while. And we don't – and the Department of Natural Resources doesn't issue any permits for seismic testing. I don't know if this was related more to the Forest and Agrifoods Branch than it was to Mines and Energy. But nevertheless, no, I don't have – I can't answer your question. I'm sorry.

MS. URQUHART: So, do you recall any discussions or any reports or any basis for the decision that the department made not to proceed with seismic testing as recommended?

MR. BOWN: Not at this stage. No, I don't. I'm sorry.

MS. URQUHART: Okay.

In terms of – actually, Madam Clerk, please, if you can scroll down, and I apologize I don't have the – actually, I don't think it is in this document. My apologies.

Merchantable timber, that's the piece in particular, and this is actually one of the recommendations from the JRP, but one of the

items was that all – one – obviously, when the reservoir is cleared, all that wood – any merchantable wood would be used – utilized. And it was position of the Government of Newfoundland and Labrador that they would take responsibility for that resource after it was harvested.

And so I'm wondering if you have any information about my assumption – and correct me if I'm wrong – is that that's a Natural Resources – that would fall within the portfolio of Natural Resources. Is that correct?

MR. BOWN: The Forest and Agrifoods Agency at that time.

MS. URQUHART: Okay.

MR. BOWN: So as I explained a moment ago, there were two elements at Department of Natural Resources.

MS. URQUHART: Mm-hmm.

MR. BOWN: There was a CEO of Forestry and Agrifoods and deputy minister of Mines and Energy.

MS. URQUHART: Sorry, say –

MR. BOWN: Sorry, a CEO of the Forestry and Agrifoods Agency –

MS. URQUHART: Mm-hmm.

MR. BOWN: – which would have been responsible for the recommendation of merchantable timber –

MS. URQUHART: Mm-hmm.

MR. BOWN: And then my responsibility which was Mines and Energy

MS. URQUHART: Okay.

And so you – so I take it as be saying that you weren't responsible –

MR. BOWN: No.

MS. URQUHART: – for anything to do with the merchantable wood and clearing.

MR. BOWN: No.

MS. URQUHART: Okay.

And, Madam Clerk, if you can please go to P-03603, so you've indicated today and yesterday that you had no involvement in the methylmercury portfolio. And I'm wondering if that's – when did that start? When did you – like, this is an email from May 16 – oh my goodness, the same day – 2013, and it appears to be an information note on methylmercury which was prepared by your office –

MR. BOWN: Mm-hmm.

MS. URQUHART: – and at that point sort of sent off to another minister. So it appears to me, based on this, that you were involved at one point. I'm trying to sort of suss out when that changed.

MR. BOWN: Likely it would have been around this time, but our engagement with methylmercury was only in preparing messages not in anything to do with the monitoring or management of methylmercury. There's no staff at Department of Natural Resources had any skill set in that so, clearly, it was appropriate that at some point it had to be handed off to somebody.

MS. URQUHART: Okay.

And so when you say preparing messages, I'm assuming that that also means some of the research or background that would have gone into determining what the messages ought to be.

MR. BOWN: No, actually, the staff would have reached out to the Department of Environment to get those appropriate messages. We would've had no skill set in that regard.

MS. URQUHART: Okay. So why was your department then tasked with doing the messaging?

MR. BOWN: I think initially it fell to the department because the project was under the Department of Natural Resources, but this was a very specific item for which the department had no skill set or ability to respond to.

MS. URQUHART: Okay.

So you're saying that up until, but not – but somewhere in around this time, 2013 –

MR. BOWN: Somewhere around this time.

MS. URQUHART: – it would've changed –

MR. BOWN: Yeah.

MS. URQUHART: – because you would've gone from – into a more monitoring phase.

MR. BOWN: Yes.

MS. URQUHART: So – but prior to this, would that have – you know, it appears that that would have fallen under your portfolio.

MR. BOWN: Again, as a broad point of a broad issue, yes.

MS. URQUHART: As an issue relating to the project.

MR. BOWN: Absolutely, but in terms of the specifics of it, it would not.

MS. URQUHART: Okay.

And so in this – at this time – so this is post-Joint Review Panel, this is after all that – you know, after that's happened and it's been released from the joint – from the environmental assessment process. So, during the lead up and throughout that process, would it have been your department or would it have been the Department of Environment that would have been managing questions? I know there's a whole series of –

MR. BOWN: Mm-hmm.

MS. URQUHART: – letters and all sorts of stuff. Who would have been managing the, let's say, the methylmercury file prior to this?

MR. BOWN: The Department of Environment, absolutely.

MS. URQUHART: Okay, so this was sort of more a one-off than a regular –

MR. BOWN: Yeah, and I think it also – this may be in reference to some – because you're here at May, Thursday, probably – and very early in the morning – related to getting ready for the House of Assembly or something like that.

MS. URQUHART: Mm-hmm.

MR. BOWN: Or some event that they were attending –

MS. URQUHART: Yeah.

MR. BOWN: – right?

MS. URQUHART: It was, I think, actually, just subsequent to a letter that was sent, I believe, by Nunatsiavut saying that they wanted to have –

MR. BOWN: Okay.

MS. URQUHART: – you know, they wanted to be involved in the monitoring process.

MR. BOWN: Okay.

MS. URQUHART: So – but at that point – so you were responding to those questions and preparing the information notes or the briefing notes for the minister at that time.

MR. BOWN: My staff would have been in concert with the Department of Environment, yes.

MS. URQUHART: Okay. That's all for me.

MR. BOWN: Thank you.

MS. URQUHART: Thank you.

THE COMMISSIONER: Okay, Nalcor Board.

Ms. Best.

MS. G. BEST: Good afternoon.

Glenda Best, I'm representing the board of directors of Nalcor –

MR. BOWN: Good afternoon.

MS. G. BEST: – prior to 2016.

I just have a couple questions following up on a question asked by Mr. Budden. With respect to the appointment of the board of directors of a Crown corporation, in this case Nalcor, I understand that the appointments are done by Cabinet. Is that –

MR. BOWN: Correct.

MS. G. BEST: – correct?

MR. BOWN: Yes.

MS. G. BEST: So do you as deputy minister have any involvement in determining who Cabinet should consider?

MR. BOWN: No.

MS. G. BEST: And if the board of directors of a Crown corporation wrote to the minister to request additional individuals be placed on the board, or individuals with specific skill sets being placed on the board, would you have any involvement in advising the minister with respect to that request?

MR. BOWN: It would be forwarded to the Cabinet Secretariat office and then that would be processed through the premier's office.

MS. G. BEST: So all you would do would be to –

MR. BOWN: Forward.

MS. G. BEST: – forward the message.

MR. BOWN: Yes.

MS. G. BEST: And has that always been the procedure while you've been involved?

MR. BOWN: Absolutely.

MS. G. BEST: Okay. Thank you.

That's all the questions I have.

MR. BOWN: Thank you.

THE COMMISSIONER: All right, I believe that's everybody.

Mr. Fitzgerald.

MR. FITZGERALD: No questions.

Thank you.

THE COMMISSIONER: No questions, all right.

Redirect, Mr. Learmonth.

MR. LEARMONTH: I have a few questions.

Mr. Bown, Paul Morris was – at the time of financial close, as I understand it – the assistant deputy minister –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – for Energy Policy.

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

And he had taken on that position in April 2013. Is that correct?

MR. BOWN: I'll take your word for that. I can't determine if that's the correct info.

MR. LEARMONTH: Well, can you confirm it was in 2013?

MR. BOWN: Yes.

MR. LEARMONTH: So it's just a short time, the year of financial close, right?

MR. BOWN: Yes.

MR. LEARMONTH: And can you confirm that he had been – before becoming assistant deputy minister of Energy Policy – and I think he succeeded Paul Scott. Is that right?

MR. BOWN: Yes, he did.

MR. LEARMONTH: Yeah.

Prior to that, he was assistant deputy minister of Energy Innovation Roadmap from 2010?

MR. BOWN: Yes, he was.

MR. LEARMONTH: Okay.

So what are the difference in these two positions, assistant deputy minister of Energy Innovation Roadmap and assistant deputy minister of Energy Policy?

MR. BOWN: At the time – well, in the Energy Plan there was a recommendation to prepare an Energy Innovation Roadmap which would guide how the province would take advantage of its investments in energy projects, petroleum or hydro electricity and grow the economy through innovation.

Mr. Morris was with the Department of Business and trade and we asked him to come over and to do that piece of work for us, which he did. The ADM of Energy Policy is the – is a – like, his role on energy innovation, that would have been a temporary position. The permanent position inside the department for responsibility for electricity and energy policy is the one that he would have occupied at that time. So when Mr. Scott moved to a new role, we asked him to move into the current role.

MR. LEARMONTH: Right.

So, how was it that Mr. Morris appeared, at least from the emails we've seen, to be even slightly more involved with the Department of Finance and their work on financial close –

MR. BOWN: Again, he was –

MR. LEARMONTH: – than you were?

MR. BOWN: – yeah, he was working with his team who are – we have economists in the department. He was working with his team and those working with the Department of Finance. I was working more on the intergovernmental, coordinating side.

MR. LEARMONTH: Okay.

Did you have a close working relationship with Mr. Morris, at the time of financial close?

MR. BOWN: Well, we weren't on the same floor, we were on different floors in the building.

MR. LEARMONTH: You were on different floors.

MR. BOWN: Yes.

MR. LEARMONTH: And that's the Natural Resources building on –

MR. BOWN: Yes.

MR. LEARMONTH: – Elizabeth Avenue?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

The question I anticipate most – many people have is that if Mr. Morris knew about this budget increase is 6.531, how was it that you wouldn't know? Can you give us any more information than you've already given us, on that topic?

MR. BOWN: No, I think I've explored the full breadth of my memory and my records on that.

MR. LEARMONTH: Yeah. But does it not surprise you that this – that you're in the same department, he's working closely with you, although on a different floor, that this important information, \$300 million, wouldn't come up somewhere?

MR. BOWN: Yeah, on face value, yes.

MR. LEARMONTH: Yeah.

MR. BOWN: But, again, I don't have a clear recollection of that.

MR. LEARMONTH: All right.

Now, you were asked by Mr. Peddigrew about the independent engineer and your – I think you reiterated that in your discussions at the negotiating table for the federal loan guarantee, that you had asked whether you could get the reports and –

MR. BOWN: Yeah.

MR. LEARMONTH: – the answer was no. Is that correct?

MR. BOWN: Correct.

MR. LEARMONTH: You would have to get them from Nalcor.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

And you did say you acknowledged that you got the July report, you requested and got it. But I'd like a little bit more clarification as to why, as it turned out, you didn't get the subsequent reports, even though I believe you said that you asked repeatedly for them?

MR. BOWN: In the meetings that we would've had with them, that where we would've gone through the A-list and the B-list, that would've been on the list.

MR. LEARMONTH: Yeah.

MR. BOWN: And if it was completed, if they had said it was completed, then we would've said: Give it to us. Otherwise, they were telling us that it was not completed, we're still working on it.

MR. LEARMONTH: Yeah.

But there were many drafts subsequent to the July draft that you received, that were completed and were received by Nalcor.

MR. BOWN: I understand that once I read the Grant Thornton report.

MR. LEARMONTH: Yeah. And you're saying that – you're saying point-blank that up until the time of financial close, Nalcor's position was they hadn't received any other reports – any other draft reports?

MR. BOWN: Yeah, or else, we would have received them.

MR. LEARMONTH: Yeah.

MR. BOWN: And that was their commitment to us –

MR. LEARMONTH: Yeah.

MR. BOWN: – that if they received draft, they would give it to us.

MR. LEARMONTH: Yeah, but I'm telling you they did receive them.

MR. BOWN: Yeah.

MR. LEARMONTH: So do you feel let down by Nalcor in not providing you – I mean, you can assume, for the sake of this question, that they did receive reports – draft reports in October and two more in November before financial close. You can accept that as being factual for the purpose of this question.

MR. BOWN: Yes.

MR. LEARMONTH: Well, do you feel that you were let down or misled by Nalcor if Nalcor's position was that they hadn't received any reports?

MR. BOWN: I was quite surprised when I read the Grant Thornton report, and I shared with you in testimony –

MR. LEARMONTH: Yeah.

MR. BOWN: – that I was very surprised that we hadn't received them.

MR. LEARMONTH: But I'm asking you whether you felt that you were misled. If Nalcor is telling you –

MR. BOWN: Not misled – let down, if you wanted to use one of your terms. Yes, we should've received them.

MR. LEARMONTH: Well, why not – why don't you agree that you were misled? If Nalcor is saying it has – have at least one report and you're asking for it and Nalcor is saying we don't have it, which I take it is what you're saying –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – on what basis can you say that this – that you weren't misled?

MR. BOWN: I guess I can't.

MR. LEARMONTH: You can't. No, okay. Fine.

And in terms of the – one other point is that I think many would find it unusual or difficult to understand why you wouldn't have been in a position – you would not have been in a position or you didn't think you were in a position to demand the report – reports. Is your answer that you did demand it, but you were told that they didn't exist?

MR. BOWN: Didn't demand it, I asked for it. Our team would have continued to ask for it in meetings where I –

MR. LEARMONTH: Yeah.

MR. BOWN: – wasn't present.

MR. LEARMONTH: But the answer was: We don't have any.

MR. BOWN: Yes.

MR. LEARMONTH: That was it. They – repeat their answer.

MR. BOWN: Well, that it's not finished and that –

MR. LEARMONTH: Yeah.

MR. BOWN: – it's being worked on.

MR. LEARMONTH: But you've already acknowledged that was misleading, right?

MR. BOWN: Yeah.

MR. LEARMONTH: Yeah.

Okay. I just want to refer you to – I mentioned yesterday the July 2013 report which did, by the way, indicate – you said that you – I asked you whether you had studied it, and you said you reviewed it and you didn't really understand some of the things in it.

MR. BOWN: Yeah.

MR. LEARMONTH: I can tell you the report does say that – does refer to the fact that certain parts of it were to be drafted later in 2013.

MR. BOWN: Yeah.

MR. LEARMONTH: So – and that's on page 205. It says: Conclusions and Independent Engineer's Opinions. Maybe we could just bring this up, it's Exhibit P-02175. We'll go to page 1, first – excuse me, page 3.

THE COMMISSIONER: Yeah, on your screen.

MR. LEARMONTH: So we'll go to page 3, please? That's page 1 we have now. Yeah, page 3. Okay, thank you.

Independent Engineer's Report – if we just go down a little bit, you'll see this a draft July 12, 2013?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

And then if we go to page 205, you can see that it says: Conclusions and Independent Engineer's Opinions; to be drafted later in 2013.

So –

MR. BOWN: Yes.

MR. LEARMONTH: – on that basis, if you had studied it, I think you would've been aware that another draft was coming.

MR. BOWN: Oh, it was clearly noted that this was a draft until –

MR. LEARMONTH: Yeah.

MR. BOWN: – there was more coming.

MR. LEARMONTH: And the last point on this was – and you did acknowledge yesterday, I think, that you weren't as vigilant as you should've been in running down these reports? Is that correct?

MR. BOWN: I noted that to you, in testimony, that – and with the benefit of hindsight and experience since, sure, yes, I should've been more vigilant.

MR. LEARMONTH: Yeah. But on the other hand, if you were asking and they were misleading you by saying you didn't have the reports, then –

MR. BOWN: Yeah.

MR. LEARMONTH: Yeah.

Anyway, I want to refer to the – a November 15 report. I told you there was one on October 15, and there was on November 15, and there was one on November 27 – that was the last one that Nalcor received before financial close. The final report wasn't received until after financial close.

But anyway, this November 15 report, Exhibit P-01949.

THE COMMISSIONER: It'll be on your screen.

MR. LEARMONTH: If we could bring that up, P-01949. Yes, and just go down. See, this is a draft November 15, 2013?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Okay, if we just turn to page 152, and this is a reference to a subject that I discussed with you without referring to this document yesterday.

If we go to paragraph 3 on page 152, it says: "While Nalcor adopted a theoretical P50 contingency based on analytical modeling (i.e., range uncertainty) of the project's sub-element summary budgets, the IE expresses the opinion that the calculated overall 6.7% scope contingency is aggressive relative to our legacy experience with similar remote heavy-civil construction endeavors that typically have a contingency reserve for known, but not specifically quantified" – excuse me – "risks approaching double to quadruple what is currently provided for LCP."

So if you take the quadruple and you multiply that by the, say 368, you're over \$1 billion. That's quite a big swing, isn't it?

MR. BOWN: Yes.

MR. LEARMONTH: And do you agree that, in retrospect, it – if you had seen this report, it would've caught your attention in a very serious way?

MR. BOWN: Me or others in our team, yes.

MR. LEARMONTH: Yeah, it would have. You wouldn't have ignored it.

MR. BOWN: No.

MR. LEARMONTH: No.

So you see the importance of having missed the – receiving the reports?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Well, I guess if you asked for them and you were repeatedly told that they didn't exist, that was sort of one level of running issue down, but it's difficult to understand why you wouldn't have gone back to the independent engineer just to be able to source the information right from the horses mouth rather than relying on Nalcor. You agree that that would have been prudent?

MR. BOWN: We were operating on a protocol that the independent engineer worked for the Government of Canada –

MR. LEARMONTH: Yeah.

MR. BOWN: – and that we would get our information through Nalcor.

MR. LEARMONTH: Yeah, and you –

MR. BOWN: And never came to mind –

MR. LEARMONTH: Yeah.

MR. BOWN: – that we would go to the IE and get the report.

MR. LEARMONTH: Yeah. Well, you did after sanction – excuse me, after financial close –

MR. BOWN: With a process in place.

MR. LEARMONTH: – and they complied with a reliance agreement –

MR. BOWN: Yeah.

MR. LEARMONTH: – that you're aware of.

MR. BOWN: Yes.

MR. LEARMONTH: So, it never occurred to you to go to the independent engineer and get that document – a similar document, before financial close?

MR. BOWN: Not at that time, no.

MR. LEARMONTH: Okay.

So I guess this is – do you agree that this is another example of government simply relying on Nalcor and being let down in the end?

MR. BOWN: We relied on Nalcor. Again, Nalcor was put in place, with a mandate –

MR. LEARMONTH: Yeah.

MR. BOWN: – to hire expertise and –

MR. LEARMONTH: Yeah.

MR. BOWN: – and we relied on that expertise.

MR. LEARMONTH: Yeah. And in the case of the independent engineer, you were let down, weren't you?

MR. BOWN: We'll use that word, yes.

MR. LEARMONTH: Yes, okay. You agree with that. Okay.

The last question I wanted to put to you has to deal with something that Mr. Smith, Harold Smith, brought up. I think we touched on it yesterday, but I just wanna make sure I understand your evidence on it.

Mr. Smith brought up the – you know, the importance or suggested there was some importance to keeping any increase in the capital cost estimate confidential, because if you didn't,

contractors would somehow take advantage of that in their bids and you'd end up with higher contract prices?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Right?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. Now, you know, that's one point of view. And for the sake of this question, I want you to assume, just for the sake of argument, that there's any – some validity in what Mr. Smith is saying, as I say, just for the sake of this argument.

Can you tell me what that – if that is true, how that, in any way, would mean that Nalcor would be justified in not sharing that information with Cabinet on a confidential basis?

MR. BOWN: No, because there's no reason.

MR. LEARMONTH: There's no –

MR. BOWN: Other than if you felt that Cabinet confidentiality wasn't strong.

MR. LEARMONTH: Yeah. But, I mean, isn't it true that Cabinet deals with very –

MR. BOWN: Absolutely.

MR. LEARMONTH: – highly confidential matters involving figures of more than \$300 million (inaudible) on a regular basis?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So, I suggest that if that was the thought process, that there was no rational basis for it, do you agree?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. You agree.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. All right.

Those are my questions. Thank you very much.

MR. BOWN: Thank you.

THE COMMISSIONER: All right. Thank you, Mr. Bown. You can step down. Thank you.

MR. SIMMONS: And, Commissioner?

THE COMMISSIONER: Oh, yes? Sorry.

MR. SIMMONS: I wonder if I might have, I believe – I know it's out of turn – just to ask a couple of questions regarding these drafts of the independent engineer reports that were referred to, but –

THE COMMISSIONER: Go ahead.

MR. SIMMONS: Thank you, Commissioner.

Mr. Bown, regarding the provision of drafts of the independent engineer reports, you did have the draft of the report from July of 2013. Correct?

MR. BOWN: Yes.

MR. SIMMONS: Okay. And, I think you've given us evidence that in the time period leading up to the financial close, the provision of a final report was one of the conditions present that you were involved in, tracking with personnel from Nalcor.

MR. BOWN: Right.

MR. SIMMONS: Correct?

MR. BOWN: Yes.

MR. SIMMONS: And, that I understand you to have said that you were being told that the report wasn't completed.

MR. BOWN: Right.

MR. SIMMONS: Okay. So, the first question is: What did you understand during that process, about whether or not other drafts would have been prepared, circulated, exchanged? What was your expectation about that?

MR. BOWN: Wasn't aware.

MR. SIMMONS: Okay.

Who and when did you ask for more drafts or any other drafts of that report?

MR. BOWN: As I have indicated to Mr. Learmonth, whenever there was a meeting where we went through the A- and B-list, that would –

MR. SIMMONS: Okay.

MR. BOWN: – come up and say what –

MR. SIMMONS: Okay.

MR. BOWN: – is the status.

MR. SIMMONS: Can you tell me who – name the people that you asked –

MR. BOWN: Derrick Sturge –

MR. SIMMONS: – for those reports.

MR. BOWN: – Jim Meaney, those are the folks who are responsible for that.

MR. SIMMONS: Okay. And when did you ask Mr. Sturge for those reports?

MR. BOWN: I can't give you a specific date, but I'll tell you is that every time we went through the A- and B-list, it was important to get a status on where everything was, and we would ask, whether it was me at the meeting or my staff at a meeting –

MR. SIMMONS: No, I'm asking about what you did, now.

MR. BOWN: Oh, I would always ask.

MR. SIMMONS: Okay. And Mr. Meaney also? When you did you ask Mr. Meaney?

MR. BOWN: Whenever we – he was present in a meeting.

MR. SIMMONS: Tell me exactly what you were told. Were you ever told that we have reports and we're not giving them to you?

MR. BOWN: No.

MR. SIMMONS: Were you ever told that we do not have any reports?

MR. BOWN: We were told that we were continuing to work on the report –

MR. SIMMONS: Mm-hmm.

MR. BOWN: – with the IE.

MR. SIMMONS: Were you ever told that there was a draft report available that you would not be given?

MR. BOWN: No. Don't recall that at all. That wouldn't be acceptable.

MR. SIMMONS: Knowing that there'd been a draft given to you in July, did you ever expressly ask after that, for any other drafts of the report?

MR. BOWN: It would come up in the same context as I had mentioned a moment ago.

MR. SIMMONS: Yeah, it's not exactly the – not exactly the answer to the question. Do you ever recall saying: Are there any new drafts that I can have? 'Cause that's a different thing –

MR. BOWN: I understand.

MR. SIMMONS: – than saying: Is the report finished and can I have a copy of the final report? That's a different thing than asking to be provided with continuing drafts that might be exchanged.

MR. BOWN: The commitment that was provided by Mr. Meaney was to continue to provide us with drafts. I think there was, there's an exhibit to that.

MR. SIMMONS: And what you're referring to there now is prior to – that was in the spring of 2013, was it?

MR. BOWN: I don't – can't remember the date (inaudible).

MR. SIMMONS: Prior to your receipt of the July report.

MR. BOWN: I thought it was subsequent to.

MR. SIMMONS: Thank you very much, Mr. Bown.

MR. BOWN: (Inaudible.)

MR. SIMMONS: And thank you very much, Commissioner.

THE COMMISSIONER: Thank you.

All right, thank you. You can step down, Mr. Bown. Thank you very much.

MR. BOWN: Thank you.

THE COMMISSIONER: All right. We're concluded for the day.

And, for the long weekend, I wanna wish everyone a good long weekend.

And we'll be back on Tuesday morning. I believe our next witness is Ronald Power starting on Tuesday and (inaudible). Okay.

So we're adjourned until Tuesday morning, 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.