



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 42

Commissioner: Honourable Justice Richard LeBlanc

Monday

27 May 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.
Honourable Justice Richard Leblanc presiding as
Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

Mr. Ralph is not here this morning. But, Mr. Leamon, I wanted to mention about a week and a half ago, I – after Mr. Bown had testified, I requested that there be a deeper review of notes for Mr. Bown and, as well, for Julia Mullaley, who's going to be testifying later this week. So far, I know we haven't received anything. I've spoken to Commission counsel and have been told that Mr. Ralph has indicated there would be a memorandum. I don't want a memorandum; I want the notes. So, you know, because this is going to happen very shortly, and there's a potential we could be actually getting to Ms. Mullaley before Wednesday, we need to get the notes.

So I need to know sometime today what the situation is with the notes from Mr. Bown and, as well, from Ms. Mullaley. Both have indicated they have notes that were retained in government and we need those. And I see them as extremely important with regards to one of the Terms of Reference here and that's why I want them. And I would like to have them before Ms. Mullaley testifies, all right?

Okay, Mr. Learmonth.

MR. LEARMONTH: The first witness today is David Wade, but before Mr. Wade is sworn, I'd like to have the following exhibits entered into evidence: P-03810 to P-03819, P-03841 to P-03845, P-03860 and, lastly, P-03875.

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

And, Mr. Wade, do you wish to be sworn or do you wish to affirm this morning?

Be sworn?

Stand, please.

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

MR. WADE: I do.

CLERK: Please state your name?

MR. WADE: David Gregory Wade.

CLERK: Thank you.

THE COMMISSIONER: Just be seated there, Mr. Wade. And, Mr. Learmonth, when you're ready.

MR. LEARMONTH: Thank you.

In what community do you live, Mr. Wade?

MR. WADE: I live in Bay Roberts.

MR. LEARMONTH: All right. What is your occupation?

MR. WADE: Retired right now.

MR. LEARMONTH: When did you retire?

MR. WADE: 2014.

MR. LEARMONTH: Yeah, but in the middle –

MR. WADE: July.

MR. LEARMONTH: – of the year? July 2014?

MR. WADE: Yes.

MR. LEARMONTH: And so you haven't worked since you retired?

MR. WADE: Well, I am on a committee for Muskrat Falls in relationship to work teams. I'm a chair of the committee that deals with jurisdiction. And if they have a problem with the work team, particularly in the makeup of the work team, they request the committee to convene and have a hearing. So to that effect, I do some work in retirement.

MR. LEARMONTH: Yes.

MR. WADE: We haven't met that often. Three or four times. And I'm also an arbitrator for the Canadian plan for Canada, which is a jurisdiction as well. And even though it would be, I guess, specifically for the eastern part of Canada, it would be for any part where I'd be required to act as an umpire, so to speak, which is an arbitrator in the plan and –

MR. LEARMONTH: Yeah.

MR. WADE: – to do with it.

MR. LEARMONTH: We'll get into that later. There used to be an umpire system; now it's changed to a Canadian plan and you're an arbitrator (inaudible). –

MR. WADE: The local system was an umpire.

MR. LEARMONTH: Yes. Yeah.

MR. WADE: And the Canadian plan called them arbitrators.

MR. LEARMONTH: All right.

Now you retired in July 2014 or thereabouts and before you retired what was your position?

MR. WADE: I was the executive director of the Resource Development and Trades Council and executive director of the Newfoundland and Labrador Building and Construction Trades Council.

MR. LEARMONTH: Those are for the Province of Newfoundland.

MR. WADE: For the Province of Newfoundland, yes.

MR. LEARMONTH: And generally can you give us a brief overview of the type of work that you carried out when you held those positions?

MR. WADE: Well, it was mainly labour relations. Specifically in respect to the special projects it would be co-chairing negotiations with Robert Blakely, who is my national counterpart, who was executive director of the Canadian Building Trades out of Ottawa.

MR. LEARMONTH: All right. So –

MR. WADE: And –

MR. LEARMONTH: Go ahead.

UNIDENTIFIED MALE SPEAKER: Go ahead.

MR. WADE: – and all of the duties related to labour relations for the projects starting off with negotiating the agreement and then, I guess you could call it policing the agreement for the site. Grievance arbitrations, committee meetings and generally with the special projects there's several committees established like Health, Safety, Diversity, Liaison Committee – several of them, and I would be on all committees for the project.

MR. LEARMONTH: Yeah.

Now can you describe or give us some explanation as what is the Resource Development and Trades Council of Newfoundland and Labrador?

MR. WADE: The Resource Development and Trades Council is basically the Newfoundland and Labrador Building Trades Council, which consists of 16 unions, and it also consists of the international unions that these local unions in Newfoundland and Labrador are affiliated with.

MR. LEARMONTH: Yeah. The – I understand that of the 16 unions, 15 are somehow affiliated with AFL-CIO in Washington, DC, is that correct?

MR. WADE: Yes.

MR. LEARMONTH: Yeah. And there is one that isn't, the HRW, hotel and retail workers?

MR. WADE: Mm-hmm.

MR. LEARMONTH: Can you turn to tab 8 of volume 1, book 1, tab 8. That's Exhibit P-03843.

Now there's – have you got that, Sir?

MR. WADE: 03843?

MR. LEARMONTH: Yeah, but it's at tab 8.

MR. WADE: Yes.

MR. LEARMONTH: Yup. Now, is this a list of the 16 unions that you refer to as constituting the RDTC?

MR. WADE: Yes.

MR. LEARMONTH: All right.

So, in terms of a special project order, is it correct that the RDTC – in this case, the Muskrat Falls – the RDTC on behalf of the 16 unions would negotiate –

[Technical error occurs; audio feed is lost.]

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay, we lost the feed after you were referring to P-03843 which was tab 8.

MR. LEARMONTH: 03842.

THE COMMISSIONER: Well, 03843 was tab 8. It was the one where the list of the 16 unions –

MR. LEARMONTH: Yes.

THE COMMISSIONER: – and then we lost the feed immediately after that. So then you were going to be referring then to 03842 and I think we need to start again where you were – where we had basically lost the feed.

MR. LEARMONTH: Oh, that's fine.

So we'll start off again with this document. It's tab 8 of – excuse me, tab 3, volume 1 and it's Exhibit P-03842. It's entitled: Review of Special Project Order Legislation in Newfoundland and Labrador, prepared by James C. Oakley, February 29, 2012. And you've confirmed that you're generally familiar with this document?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

Then we go to page 5 of this document, P-03842, and this is the Executive Summary. I'll just read this quickly into the record and ask you

whether you agree that this is a correct description overall of the work that Mr. Oakley carries out:

“The stakeholders in Newfoundland and Labrador are supportive of Special Project Orders for major projects in the construction industry. The experience with the five Special Project Orders issued since 1990 has been generally positive. The advantages of Special Project Orders include the following: (1) labour peace and stability is assured for the project, as the no strike/no lockout provision in the special project collective agreement is in effect for the duration of the project; (2) special project collective agreements can incorporate terms such as aboriginal employment and gender diversity programs, and terms required by Development Agreements; and (3) the same terms of employment, such as work schedules, may be applied to all trades persons employed on the project. The stability of special projects attracts investment to the Province and promotes economic development.”

I know that there's much more in this but do you agree with those comments as a summary?

MR. WADE: Yes, I do.

MR. LEARMONTH: Okay.

Then if we turn to page 6 of Exhibit P-03842 and at the top it says: “The Consultant recommends that the legislation permit Special Project Orders that overlap temporally and geographically. This may be achieved in a way that provides flexibility and labour stability, by clearly describing the scope of work of a project, and by excluding a scope of work or geographic site of another project from a Special Project Order.

“The Consultant recommends that alternate tenants at the Bull Arm site be permitted by using Special Project Orders that overlap. Changes to the legislation are recommended to clarify the terms of overlapping Special Project Orders used for this purpose.”

Now, did the RDTC make submissions and participate to some degree in the work of Mr. Oakley in this project?

MR. WADE: Yes, we did.

MR. LEARMONTH: Yes.

And what was your understanding as – with respect to his mandate as far as it affected the Bull Arm site as opposed to the Muskrat Falls site?

MR. WADE: Well, we were given the impression that this was put in place for Mr. Oakley to review in respect to Bull Arm, because of the nature of the site which actually had two sites combined in the one site. And they wanted to be able to do a project on either side if the situation arose.

MR. LEARMONTH: And so the two – Mr. Oakley, in the passage I just referred to said he recommended “that the legislation permit Special Project Orders that overlap temporally and geographically.” So that was your understanding of the subject matter?

MR. WADE: Of our overall understanding of it going into it and making – our position to Mr. Oakley was that it was in reference to Bull Arm.

MR. LEARMONTH: Yeah and not Muskrat Falls.

MR. WADE: Well, when we spoke with the government before we did our report, our understanding was Bull Arm; nobody said anything to us about accommodating anything with Muskrat Falls.

MR. LEARMONTH: Okay.

MR. WADE: I mean Muskrat Falls wasn't a project at that point, at least with us it wasn't.

MR. LEARMONTH: To your knowledge it wasn't.

MR. WADE: No.

MR. LEARMONTH: Yeah, okay.

Now, if we go to – next, page 10 of this document at the bottom, it says: “Another feature of construction industry labour relations, where bargaining is on the basis of craft unions, is that there may be jurisdictional disputes

between unions over the assignment of work. Two or more unions may both claim that a particular job belongs to their members. These disputes concern which bargaining unit ought to perform the work. The trades unions have an internal plan to settle jurisdictional disputes.”

Now you referred to being – yourself as being an arbitrator on the Canadian plan and that the system that's in place now, I think since 2014, is that jurisdictional disputes between unions as to which – what work is theirs and which work is someone else's, they're covered now under the Canadian plan, and that the local umpire system has been abolished. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

And is this – down at the bottom in footnote 7 on page 11 of P-03842, there is a reference to the Green Book. That's the American version of the Canadian plan, is it?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

So what is the – in special project orders whether – for work covered by special project orders, jurisdictional disputes – in other words if two unions disagree on whether it's their – someone's – the work of one union as opposed to another, the work continues on and the dispute is settled under the Canadian plan. Is that correct?

MR. WADE: You're saying currently?

MR. LEARMONTH: Yes.

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

And that was a change brought in in 2014 where – because under the old system, as I understand it, it was settled locally under an empire – umpire system.

MR. WADE: Yes, it was settled locally under a local umpire system but the work, of course, still continued unless –

MR. LEARMONTH: Yeah.

MR. WADE: – the umpire changed the assignment to a different trade.

MR. LEARMONTH: Yeah.

And that's a feature of any special project order, that if there are jurisdictional disputes, the work continues. There's no stoppage of work allowed, it's resolved internally under the Canadian plan. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: All right.

MR. WADE: Now, if we turn to page 19 of this document, P-03842, page 19, and this – here Mr. Oakley goes into some of the history of special projects orders and he states in – the first special project order was in – for the Upper Churchill project. Will you agree with that?

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

He says, on page 19: "The rationale for the Special Project Order legislation for the Churchill River Project was discussed in the House of Assembly on May 22, 1968."

And then there's a reasons given for why a special project order was deemed necessary for that project, and the grounds for that are clearly stated in – on page 19 and carrying on to page 20 and after.

So that you agree that the Upper Churchill was the first special project order. Is that right?

MR. WADE: From what I know of the history of it, yes –

MR. LEARMONTH: Okay.

MR. WADE: – considering I started construction in 1967.

UNIDENTIFIED MALE SPEAKER: Yes.

MR. WADE: And I wasn't involved with the Upper Churchill project.

MR. LEARMONTH: How many special project orders before Muskrat Falls had you been involved with?

MR. WADE: All of them, since 1978.

MR. LEARMONTH: Okay, that would be five or six, would it be? Or more than that?

MR. WADE: Probably seven hydroelectric developments.

MR. LEARMONTH: Okay. So you're familiar with the – how a special project order is implemented and how it works –

MR. WADE: Yes.

MR. LEARMONTH: – in practice. Is that right?

And perhaps you could just tell us at this point: Can you give me any kind – us – any kind of an estimate as to how many collective agreements you've negotiated during your career?

MR. WADE: Well, since – I actually started at that part of it prior to being business manager of a local union, and it started around 1972.

So, we had agreements, generally, every three years, some for two-year period, and I was involved with them from '78 until 2000. And in 2000-2004, I worked directly with the international out of Washington, and then from 2004 to 2010 – 2004 to 2014, I was with the building trades as executive director and the RDTC. So all of the major projects that were done in that time period, I was the chair of negotiations.

MR. LEARMONTH: Okay.

And on that topic, how many collective agreements for hydroelectric generating facilities have you negotiated before Muskrat Falls?

MR. WADE: Well, every one that occurred, so say from '78 to 2014.

MR. LEARMONTH: Okay. S that would be seven or eight or so?

MR. WADE: I think it was around seven, I believe.

MR. LEARMONTH: Yeah.

And were all those projects covered by a special project order?

MR. WADE: I believe all of them were, yeah.

MR. LEARMONTH: Okay.

If we go to page 111 of this Exhibit P-03842, there's – starting at page 107 and continuing on to the end of page 10, there are 20 recommendations that Mr. Oakley recommended to government. Correct?

MR. WADE: Yes.

MR. LEARMONTH: And to your knowledge, were any of the recommendations implemented into legislation, by the government? I'll just refer you to tab 22 of binder 2 of your documents. That's P-03860.

And if you see that – there's two sections on page 7, the definition of – in section 2(1)(u), the definition of special project was amended and it was changed – the construction period, I think, from three years to two years. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: Okay. So that was a – something that Mr. Oakley recommended, was it?

MR. WADE: Yes.

MR. LEARMONTH: And then if we go to – and the reference to the amendment is on page 8, where you see at the end of the – just before – just about a little bit more than halfway down, it says 2002 c30 s1, right at the end, just before the line Back to Top – 2012, yeah. Do you see that?

MR. WADE: 2012 c30?

MR. LEARMONTH: Yeah.

MR. WADE: Yes.

MR. LEARMONTH: Is that your understanding – is that the amendment that you are referring to?

MR. WADE: Yes.

MR. LEARMONTH: Yup.

And then if we go to page 40 of the Exhibit P-03860, section 7 – 70, Declaration of special projects, once again, there is a definition change.

And if we go to page 42, we'll see that it was also – this section was amended, 2012 c30 s12 [sp. 2012 c30 s11]. Do see that on page 42? Just before Part IV Collective Bargaining and Collective Agreements.

MR. WADE: Page 42, it's –

MR. LEARMONTH: On the right side, 2012 c30 s12.

MR. WADE: Yes.

MR. LEARMONTH: And is it your understanding that this legislation was amended upon the recommendations of Mr. Oakley?

MR. WADE: Yes.

MR. LEARMONTH: Okay. Thank you.

Now I'd like you to go to – back to volume 1, tab 2, this is Exhibit P-03841. Have you got that document before you, Mr. Wade?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

When's the first time you became aware of the existence of this document?

MR. WADE: A few weeks ago.

MR. LEARMONTH: Did it provide any information to you, that made you better understand what was going on with respect to the legislative changes?

MR. WADE: Yes. If I had seen it before negotiating the Muskrat agreement, would have been a bigger help than today.

MR. LEARMONTH: Why is that?

MR. WADE: Oh, because it – because it lists all of the points that they were trying to make in negotiations.

MR. LEARMONTH: Okay.

Now there's in this document – I am not gonna take you through it, but there's – at this point, we understand that rather than there be one special project – or for the Muskrat Fall site, the reservoir clearing and the transmission line – that the plan is to have three separate collective agreements. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

Now, what is – generally, what is the effect of that having three separate collective agreements as opposed to having one covering all the work on the project, as was the case in the Upper Churchill contract? What's the effect, from a union's – RDTC's point of view?

MR. WADE: It allowed the owner to have an agreement in place for a project with a single union, what is commonly referred to as a wall-to-wall agreement –

MR. LEARMONTH: Yes.

MR. WADE: – where there's no recognition of jurisdiction, meaning, for instance, on the transmission line where an excavator would be used to dig a hole in the ground, which ordinarily would be with the operating engineers, in this particular case, it was all under the IBEW, electricians 1620. And they did all of the trades work, not just electrical, but work that would ordinarily be done by other trades.

MR. LEARMONTH: Okay.

And likewise the – another – there was another agreement for the reservoir clearing that was done by Labourers 1280?

MR. WADE: Twelve-oh-eight.

MR. LEARMONTH: Twelve-oh-eight. And do the same considerations apply that would be of

concern because work that would otherwise be done by other unions was being done by one union only?

MR. WADE: That was not exactly the same, but I guess somewhat similar, but there wasn't as many trades work done on that particular work, outside of, say, Labourers's work.

MR. LEARMONTH: Yup. So, this was –

MR. WADE: Done with the transmission line.

MR. LEARMONTH: So, the principal applies, but it didn't apply in the same way because a lot of the work done on the reservoir clearing would have been done by the Labourers anyway, whereas in the transmission line, there would be more unions who would otherwise participate in doing the work. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: Okay. So what's your reaction, generally? Is this something that is acceptable to the – was it something that was acceptable to the RDTC?

MR. WADE: It's certainly not something we would promote. No.

MR. LEARMONTH: Yeah.

MR. WADE: We were trying to operate as a group of unions, and the government was splitting that apart and creating a wall-to-wall agreement, which everyone at the table would oppose, or at least everyone except maybe the individual who was doing the wall-to-wall agreement.

MR. LEARMONTH: Yeah. But this was permitted by legislation, correct?

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

Now, if we go to page 38 of Exhibit P-03841, and I might add that – actually, we'll turn back. This report – I haven't identified it fully yet. This report, P-03841, if we go to page 1, it was dated February 10, 2011, and it says that it was

prepared by Lance Clarke, Debbie Molloy, Catherine Rowsell and David Clark.

Are you familiar with those individuals?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

Now, if we go to page 38 of this document, P-03841, under **J. Conditions for Recommending Traditional Construction Trades Model**. It says: "Prior to committing to the RDC as the bargaining agent for this scope of work, the following issues must be addressed to the satisfaction of Nalcor:

... Civil Trades' Control of RDC."

It says: "The RDC until recently was controlled by the mechanical trades who typically utilized hard nosed tactics, which were common in the 1980's and 1990's. Recently, the RDC leadership has transitioned to Carpenters' President Gus Doyle. Mr. Doyle and the Carpenters support a more enlightened approach to the management of labour relations and are supportive of a team-based approach for the execution of construction work.

"We recommend that the RDC be reconstituted as a separate council for the LCP or realigned for this scope of work so ... the RDC is controlled by the construction trades who will be predominantly performing this scope of work. These trades include"

Now, when is the first time you saw that paragraph?

MR. WADE: A few weeks back.

MR. LEARMONTH: And what was your reaction to it?

MR. WADE: I was surprised when I saw it.

MR. LEARMONTH: Why?

MR. WADE: That they would be so blatant as to put that down in writing. I guess, at the end of negotiations, we sort of knew to a large degree, not really that Gus Doyle was viewed that way by Nalcor.

MR. LEARMONTH: Okay.

So was this – now, ultimately – and we'll get into the collective agreements in a minute, but is it correct that ultimately, the way it played out was that when the collective agreements were negotiated – well, when the collective agreement for the reservoir facility was negotiated – that there were only five of the 16 trade unions at the table?

MR. WADE: You say for the reservoir?

MR. LEARMONTH: Yes.

MR. WADE: For the clearing of the reservoir?

MR. LEARMONTH: No, for the generating facility, I mean – the generating facility.

MR. WADE: For the dam and powerhouse.

MR. LEARMONTH: Yes.

MR. WADE: There were five present at the table who were, say, negotiating the agreement. After having probably four or five meetings, there was one additional trade present at the table – supposedly, without vote and – voice or vote, actually. And that was Jim Myers with the Plumber and Pipefitters.

MR. LEARMONTH: Okay.

So, what is the effect of this – only – there only being five – well, plus one, perhaps – of the 16 unions at the negotiating table? What is the effect of that? Is that acceptable? Does it cause any issues? If it causes issues, what are those issues?

MR. WADE: Well, it created a lot of issues at our main table of the RDTC because you had 11 trades who wanted to be present at the table in negotiations, as was always the case. I mean, we did an agreement with 16 unions, and the 16 unions had the opportunity to be represented at the table. In this particular case, Nalcor was saying five trades at the table and that's who we're negotiating with. And it certainly created a problem for myself as well as the other trades who were not present at the negotiations.

MR. LEARMONTH: Yeah. So, would that – that would cause – put you under a lot of pressure, would it?

MR. WADE: Well, yes, because I had to transfer all of the information that we would get at the negotiating table to the other 11 trades when we would reconvene in St. John's.

MR. LEARMONTH: Yeah. I suppose, naturally, there would be belief of – there could be a belief on the part of one of the – any one of the 11 that weren't at the table that their interests weren't being properly represented. Would it be a concern that, typically, you'd expect them to share?

MR. WADE: Yes. Certainly, some of the trades have different opinions on, you know, different articles, different language. And they had a concern with that actually.

MR. LEARMONTH: Okay. I think you called it a nightmare in your interview. Would you use that term today?

MR. WADE: Well, at times it was, yeah.

MR. LEARMONTH: Okay. More so than if everyone had been – if all the 16 had been at the table, correct?

MR. WADE: Yes, I mean it was all – it created, you know, arguments among the trades that certainly didn't work well.

MR. LEARMONTH: Yeah.

MR. WADE: One of the reasons being that on the front end of negotiations, it was conducted in Ontario as opposed to St. John's.

MR. LEARMONTH: Okay. Well, can you explain that process? I understand negotiations started in St. John's. Is that correct?

MR. WADE: Well, if you could call it negotiations starting in St. John's. I mean, they did give us a, you know, a sort of a preview of what the project entailed in St. John's –

MR. LEARMONTH: Okay.

MR. WADE: – giving us, you know, what the plan was for Muskrat Falls. But not to sit down and negotiate the agreement. That didn't start in St. John's; that started in Ontario.

MR. LEARMONTH: Why?

MR. WADE: Well, we were told that Nalcor didn't want the general public to know that we were actually negotiating a collective agreement for Muskrat Falls.

MR. LEARMONTH: Yeah.

But with – taking into account the fact that only five of the unions were at the bargaining table, and then the negotiations for the collective agreement are moved to Ontario, would that impose any additional problem on you in communicating with the 11 unions, or 10 at least, that weren't at the table?

MR. WADE: Well, when we were told of the negotiations, say, that were upcoming, we assumed it was in St. John's. And I guess part of the selling of this five-trade deal to the group with the RDTC, I suggested that we get a room adjacent to where we negotiate the agreement. And the 11 trades could be present in that room, and we could caucus and speak to them about what we were dealing with at the bargaining table.

MR. LEARMONTH: As it happened, yeah.

MR. WADE: But it didn't happen that way. Actually, then we found out that we had to go to Toronto in the hotel at the airport.

MR. LEARMONTH: So how would you communicate with the unions that weren't present at the table? I mean, you're negotiating on their behalf and presumably you have to get instructions with them and there has to be a line of communications. How would that work if you're at Toronto airport?

MR. WADE: Well, we would meet with them when we'd return to St. John's.

MR. LEARMONTH: Okay.

Was that an acceptable arrangement from your –

MR. WADE: Well, not by the 11 trades, but it was the only thing we could do, considering that it was only five actually allowed at the table.

MR. LEARMONTH: Yeah.

Did you protest the fact –?

MR. WADE: Oh yeah.

MR. LEARMONTH: Yeah.

MR. WADE: We certainly spoke of that to them, and it was a sort of a, well, if you don't want to negotiate the agreement, we'll find somebody else.

MR. LEARMONTH: Someone else meaning who?

MR. WADE: Well, CLAC was mentioned as one so –

MR. LEARMONTH: What's CLAC?

MR. WADE: CLAC is a sort of a union that was formed in Alberta that does work out there – oil-related work.

MR. LEARMONTH: Yeah.

MR. WADE: And I think it's a sort of a Christian union – I'm actually not overly familiar with it because it hasn't existed in our area.

MR. LEARMONTH: But from a practical point of view, even though, perhaps, Nalcor could negotiate with that union and remove you – from a practical point of view, given the fact that this is a project built in this province, how would that work?

MR. WADE: I think they knew it wouldn't work very well.

MR. LEARMONTH: Yeah.

Was there any discussion about Nalcor exercising the possibility of hiring non-union labour for this project?

MR. WADE: Yes, that was mentioned as well.

MR. LEARMONTH: Yeah.

So who was at the negotiating table on behalf of the – Nalcor? Who was representing Nalcor? Who was carrying out the negotiations?

MR. WADE: The main thrust of the negotiations was done by David Clark and Lance Clarke.

MR. LEARMONTH: Okay. And who is David Clark? Can you give us something about his background and why he would be there?

MR. WADE: David Clark is a lawyer who is out of New Brunswick. And we had previous relations with Mr. Clark with the Long Harbour project agreement. He came in from New Brunswick to negotiate that for the owners of the nickel processing plant.

MR. LEARMONTH: And you negotiated that on behalf of the RDTC. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: For the negotiations of the Long Harbour arrangement, were all 16 unions allowed to be present at the table?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

So, did – to your knowledge, did Mr. Clark have extensive experience in negotiating labour relations – collective agreement?

MR. WADE: Well, during the course of negotiations, he told me that that was the first construction project agreement that he had been involved with.

MR. LEARMONTH: That was at Long Harbour?

MR. WADE: Yes.

MR. LEARMONTH: The first one? Yeah. Okay.

Now, what was the general atmosphere of the negotiation? I know there are ebbs and flows in negotiations, but can you give us some

characterization of the, you know, rapport and whether there was collaboration and so on?

MR. WADE: With the Muskrat Falls –?

MR. LEARMONTH: Yes.

MR. WADE: It was, generally, somewhat tense. There was a constant effort on the part of Nalcor's negotiating committee to try to come up with, say, a new type of agreement specific for Muskrat Falls.

MR. LEARMONTH: Did you receive any reason for that? Were you advised of any reason for it?

MR. WADE: Well, they said it's a different type of project, and they needed some changes to, say, normal language in a project agreement.

MR. LEARMONTH: All right.

Now, you've told us who was carrying out the negotiations for Nalcor. That would've been Mr. Clarke and – Lance Clarke and David Clark. Is that right?

MR. WADE: Yes.

MR. LEARMONTH: Okay. Were they –?

MR. WADE: There were others there with the two of them, but they were the main trust of negotiations.

MR. LEARMONTH: Yeah, I think John Mulcahy was there for some. Is that right?

MR. WADE: Yes. Catherine Rowsell was there.

MR. LEARMONTH: What was John Mulcahy's role? You dealt with him before –

MR. WADE: Well –

MR. LEARMONTH: – I take it, right?

MR. WADE: – John Mulcahy had a fair bit of experience with that type of project, and he was – from what we could understand, he was the one at the table that knew what a project like that was about. The others, as far as we could

see, didn't have any understanding of, say, the actual work and project at all.

MR. LEARMONTH: Okay.

So, what would be the problem with someone not having any knowledge like John Mulcahy had?

MR. WADE: Well, it certainly helps to know what you're putting an agreement together for. John had hands-on with people working for him on a project like that, so I guess John knew what the requirements would be more so than the rest.

MR. LEARMONTH: All right. And you had dealt with John Mulcahy before, had you?

MR. WADE: Our counsel had; I hadn't personally done much work with John Mulcahy, but the Counsel had, and he was well known in the industry.

MR. LEARMONTH: Yeah. And he was thought to be a reliable type of fella?

MR. WADE: Oh yes –

MR. LEARMONTH: Yes.

MR. WADE: – very much so.

MR. LEARMONTH: Yup, okay.

Now there were – as I mentioned before and you mentioned it – there were three collective agreements that were negotiated. I just want you to identify them. I know there were various versions of them, but I just want to – you to identify the three agreements just for the record. If you could turn to tab 15 of binder 2.

This is a document in the bottom left-hand side – says last updated August 15, 2014.

THE COMMISSIONER: 03815?

MR. LEARMONTH: P-03815, yes.

So this – is this the agreement for the transmission line between the Lower Churchill Transmission Construction Employers' Association and the International Brotherhood of Electrical Workers and IBE Local 1620 [sp.

IBEW]. Is this – to your knowledge, is this a version of the collective agreement that was entered into for the transmission line?

MR. WADE: Yes, it appears that it would be that.

MR. LEARMONTH: Okay, and you had nothing to do with that whatsoever, right?

MR. WADE: No.

MR. LEARMONTH: That was negotiated directly by the International Brotherhood of Electrical Workers and IBE Local Union 1620 [sp. IBEW]?

MR. WADE: Yes.

MR. LEARMONTH: Okay. Just for the record, there are earlier versions. There's – well, I'll just state this for the record: there's a version dated January 28, 2013, which is in binder 1, tab 4, Exhibit P-03737, and another earlier version of this, April 14, 2014, tab 14, binder 2, Exhibit P-03814.

And then if we go to – for the – for this, the IBEW agreement, if we go to binder 1, tab 11, Exhibit P-03812. If you could turn that up, please?

Does that – that's a document – P-03812 – it's entitled: "*Lower Churchill Project Transmission Construction Special Project Order* under the *Labour Relations Act ... Filed June 17,*" 2018 [sp. 2013].

And if we turn to page 2 of that document, you can see in the definition: "2. In this Order

“‘agreement’ means the collective agreement dated January 28, 2013 ...”

Then there's a reference in (b) to “‘memorandum of agreement’ means the agreement entitled ‘Memorandum of Agreement to Resolve Disputes as to Overlaps’” and so on.

Then we can find that document at tab – binder 1, tab 7. If you could just turn to that?

P-02442. Does that appear to be the memorandum of agreement that's referred to on page 2, section 2(b) of Exhibit P-03812?

MR. WADE: Yes, I would assume.

MR. LEARMONTH: Yeah.

So can you just give us a little bit of background? What is this agreement on – at P-02442?

It says: “**MEMORANDUM OF AGREEMENT TO RESOLVE DISPUTES AS TO OVERLAPS OF SCOPES OF WORK IN COLLECTIVE AGREEMENTS DESIGNATED IN SPECIAL PROJECT ORDERS ENACTED UNDER SECTION 70 OF THE LABOUR RELATIONS ACT.**”

Did you have any knowledge of this document before you received it from the Commission?

MR. WADE: No.

MR. LEARMONTH: No.

Did – can you give us any explanation as to the purpose of this agreement or the reason, perhaps, that it was referred to in the special project order?

MR. WADE: That's the clearing of the reservoir, which was done with the Labourers' –

MR. LEARMONTH: Well, this is –

MR. WADE: – 1208.

MR. LEARMONTH: – this is between the Lower Churchill – so this is just – it's also between the IBEW and the Lower Churchill Reservoir clearers' association and the Labourers' [sp. Labourers' International Union of North America Construction and the Construction and General Labourers' Union, Rock and Tunnel Workers Local 1208] – so I think it applies to more than one union. And, it's referred to in all the special project orders, so I believe it applies to all the three collective agreements.

MR. WADE: Oh, okay.

MR. LEARMONTH: Okay. Well anyway, we'll get into that later.

The next collective agreement I want you to identify is the reservoir clearers' and this – Labourers' 1208 – if we turn to tab 9 in binder 1 –

MR. WADE: Mm-hmm.

MR. LEARMONTH: – can you identify that document, Exhibit P-03810?

MR. WADE: That's the agreement with Labourers' Local 1208 and – for the reservoir.

MR. LEARMONTH: Yeah, and once again you had nothing whatsoever to do with this, right?

MR. WADE: No.

MR. LEARMONTH: It was negotiated directly by the Labourers' International and Local 1208, correct?

MR. WADE: Yes.

MR. LEARMONTH: All right.

And once again, without going to the documents, I'll just refer to earlier versions. There's an agreement March 28, 2013, which is binder 1, tab 6. It's Exhibit P-03738. And that was signed, if you look at page 29, on April 2, 2013, even though it's referred to as being dated March 28; the reason it's April 2 is because it was signed on that date on page 8 [sp. 28]. That's the first earlier version.

The second – no, that's – actually that's the only one I – we have in the documents.

These versions – are collective agreements, once they're signed, are they regularly updated?

MR. WADE: Quite often, yes.

MR. LEARMONTH: Yeah.

And is it – and are the updates sometimes done just by an appendix as opposed to, you know, reproducing the whole agreement if needed?

MR. WADE: It's generally done as a memorandum of understanding.

MR. LEARMONTH: Yeah.

But it can be done either way, right?

MR. WADE: Mm-hmm.

MR. LEARMONTH: The whole document can be, like –

MR. WADE: Well, it, you know, you don't print the agreement again because you change one small item in it.

MR. LEARMONTH: Yeah.

MR. WADE: You just do a memorandum of understanding, and over in the front of the agreement, there's generally an article which states that the memorandums are part of the agreement as well as the body.

MR. LEARMONTH: Okay. Very good.

And the – if we go to binder 1, tab 12, Exhibit P-03813, can you identify that as being the special projects order for this – the collective agreement I just referred to, Lower Churchill Reservoir Clearing Special Project Order?

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

And then if we turn to page 2, you can see there's a reference to the collective agreement, what you just said, April 2, 2013, and also a referendum to the "memorandum of agreement" that I referred to at a – is tab 7, binder 1, P-00242. You see that's referred to in all the SPOs –

MR. WADE: Yes.

MR. LEARMONTH: – that memorandum? Yes. Okay.

The last of the three collective agreements and the only one that the RDTC was involved in was the generating facility. And there's a late – the latest version that we have of that is binder 2, tab

19, Exhibit P-03817. Can you turn that up, Sir? Have you got it?

MR. WADE: Mm-hmm.

MR. LEARMONTH: So you turn to page 2, is this the May 1, 2018 Collective Agreement that – Revision 8 – that you negotiated?

MR. WADE: Yes.

MR. LEARMONTH: Okay. This is the only one you have any knowledge of, really.

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

And, once again, I'll just point out for the record, that there's an earlier version of this – of P-03817 dated March 14, 2013, and that's binder 1, tab 5, Exhibit P-03739. And then another one – binder 1, tab 10, P-03811.

And in the special project orders for this, can you confirm that it's the same reference to that agreement at tab 7, that I referred to earlier?

MR. WADE: Yes.

MR. LEARMONTH: And that will be – the SPO will be at – okay, I'll just leave that for a minute and come back to it. It sort of – I have it out of order.

All right. The next document I want you to refer to is tab 13, binder 2, and it's Exhibit P-03214. It's an agreement dated July 13, 2010, Projects Benefits Strategy.

Can you turn to that document and identify it?

MR. WADE: Tab 13?

MR. LEARMONTH: It's dated July 13, 2010.

MR. WADE: Yes.

MR. LEARMONTH: Yeah. And it says on page 2 – 020 – P-03214, the second – the third and fourth paragraphs read: "All the work for the projects that can be performed in Newfoundland and Labrador shall be performed in Newfoundland and Labrador. To accomplish

this and further our Energy Plan goals, Government and LCP will build necessary relationships and continue to work with industry, educational institutions, labour, and aboriginal governments and groups.

"This document outlines the overall benefits strategy for the construction of the projects. This Benefits Strategy will inform all contracts, purchasing, and employment, and all contractors and subcontractors will be required to adhere to the principles and commitments as stated herein. The overriding objective of this Benefits Strategy is to provide opportunities and benefits to the people of Newfoundland and Labrador during the construction phase of the projects."

You were aware of the existence of this agreement and the intention of government under the Energy Plan –?

MR. WADE: I was aware of the – there being a Benefit Strategy. Wasn't aware of the language going into negotiations.

MR. LEARMONTH: But you were aware of the principles that –

MR. WADE: Yes.

MR. LEARMONTH: – the government wanted applied to this project, being that all the work that could be done in the Province of Newfoundland and Labrador would be done –

MR. WADE: Oh, yes.

MR. LEARMONTH: – here. Yeah. And that's a normal type of approach for government to take –

MR. WADE: (Inaudible.)

MR. LEARMONTH: – in these circumstances?

MR. WADE: I would like to think so.

MR. LEARMONTH: Yeah. Okay.

There's another document I want you to turn to. This is the tab 1, binder 1, Exhibit P-00298. Turn to –

MR. WADE: In binder 1?

MR. LEARMONTH: – that tab 1 –

MR. WADE: Tab1.

MR. LEARMONTH: – volume 1. This is the Lower Churchill Impacts and Benefits Agreement Summary, with the Innu of Labrador. Are you, generally, familiar with this document?

MR. WADE: Generally, yes.

MR. LEARMONTH: Okay. Now, did this document – was it the subject of any discussion at the – during your negotiations for the collective agreement?

MR. WADE: Yes.

MR. LEARMONTH: Can you describe the discussions in relation to this document?

MR. WADE: Well, most particularly, in the hiring language –

MR. LEARMONTH: Mm-hmm.

MR. WADE: – where preference was given to Aboriginals in Labrador.

MR. LEARMONTH: Yeah. But were you – but was this agreement discussed at the bargaining table?

MR. WADE: Yes.

MR. LEARMONTH: Okay. And did you see –

MR. WADE: The –

MR. LEARMONTH: – a copy of it?

MR. WADE: – this agreement, yeah, was referred to by the Nalcor bargaining committee. We weren't given a copy of it.

MR. LEARMONTH: Did you ask for a copy of it?

MR. WADE: Oh, yes.

MR. LEARMONTH: And what were you told?

MR. WADE: Couldn't have it.

MR. LEARMONTH: Okay. But how could you really – I mean you knew that – I mean I take it, in principal, you had no problem with the Innu of Labrador having priorities for hiring and so on?

MR. WADE: Every member of our council, including 11 that weren't at the table, were aware that the Aboriginals would be involved in the construction of the project, as well as people from Labrador who are qualified.

MR. LEARMONTH: Yeah. And there was no problem with applying that –

MR. WADE: No.

MR. LEARMONTH: – to the job. But they wouldn't show – Nalcor wouldn't show you this agreement, right?

MR. WADE: I – that's right.

MR. LEARMONTH: Okay. So you just had to accept their word that – on it.

MR. WADE: At most – about it.

MR. LEARMONTH: Okay.

MR. WADE: Or walk away from the table.

MR. LEARMONTH: All right.

Was there a reason that you received for the fact that you weren't get a copy of this agreement or even have a glance at it, never mind a copy?

MR. WADE: Well, at the end of the day, I mean we knew that there was no reason why we couldn't really have a copy, but I assume it probably had something to do with maybe the government and the Aboriginals making an announcement –

MR. LEARMONTH: Right.

MR. WADE: – of this, and certainly didn't want us speaking about it before that was done.

MR. LEARMONTH: All right.

Next, please turn to binder 2, tab 19, that's Exhibit P-03817. And we will first go to page 13 – and if you can turn that up, please. That's Article 7. Do you have it, Mr. Wade, Article 7? Okay.

This is hiring provisions, and in this Article 7, the hiring provisions priorities are listed in 7.02 – well, 7.01 says: "The Parties agree that creating a sustainable and flexible workforce will benefit the Council of Unions and ensure there is a significant workforce in Newfoundland and Labrador with the ability to obtain workers from Atlantic Canada and other parts of Canada support the project construction." Okay.

"... The parties agree to ensure compliance with a Gender Equity and Diversity obligation regarding hiring of females and persons from the under represented groups as specified by the Benefits Strategy or any employment equity plan that maybe applicable to the hiring of qualified Labrador Innu to be hired or referred to in the following order of priority."

So this is the hiring priority, correct? Qualified Labrador Innu, and then qualified residents of Labrador, then qualified residents of Newfoundland.

And then we go down to 7.04, it says: "After employment priority is given with the obligation contained in Article 7.02 and 7.03, the Parties are committed to work cooperatively to identify, recruit, refer and hiring workers in the following order of priority."

So after those that are identified in 7.02, it's: qualified Canadian workers who are members of affiliated unions – turn to page 14 – qualified Canadian workers; next, qualified legal residents of the United States of America who are members of unions affiliated with the Council of Unions and who are authorized to enter into and work in Canada; and other qualified non-Canadian workers who are authorized to enter and work in Canada.

And then there is a provision 7.05 for temporary foreign workers if should they be required for employment.

So was this – to your knowledge, was this something that – I take it that the RDTC, in negotiations, agreed to these points. Is that right?

MR. WADE: Yes.

MR. LEARMONTH: Yeah. And was that a standard type, was that a logical hiring order, in your view, at the negotiating table?

MR. WADE: For that specific project.

MR. LEARMONTH: Yes.

MR. WADE: There was a memorandum, of course, 2702, clarifying it a little more.

MR. LEARMONTH: Okay. All right.

Now you've indicated that the negotiations started in St John's. Can you give us the approximate date when the negotiations for your collective agreement commenced?

MR. WADE: The collective agreement negotiations started on April 4, 2012.

MR. LEARMONTH: And they concluded when?

MR. WADE: Um.

MR. LEARMONTH: I think there was a vote on December 21, 2012. Was that right?

MR. WADE: Yes, but the official signing was May 14 –

MR. LEARMONTH: Yeah.

MR. WADE: – 2013.

MR. LEARMONTH: Because it had to go to the internationals. Is that right?

MR. WADE: Well, there was a lot of people that had to be present to sign. Some of them were international people and, of course, then the others were on the Nalcor side.

MR. LEARMONTH: All right.

So just to give us some idea about how long these negotiations take. I understood that you

started in St. John's and then they're moved to Toronto airport, a hotel there. What typically would be the pattern? Would you go up there for a week or 10 days and then break and – just give us some sense of the timing –

MR. WADE: In some –

MR. LEARMONTH: – of the negotiations.

MR. WADE: – in some cases, the break was probably for a month or so. And we would be in Ontario for probably five to eight days or something like that.

MR. LEARMONTH: Right. And you'd get some work –

MR. WADE: Each time we'd go up.

MR. LEARMONTH: So when you're up in Ontario, I know that there's at least five unions, perhaps six, present, but would you have daily communications with those that were left out of the negotiating process?

MR. WADE: Well, if something came up at the table, that certainly was very important to a union, we had, you know, communication by phone.

MR. LEARMONTH: Okay.

MR. WADE: But for the most part, the 11 trades didn't get any real information until we returned –

MR. LEARMONTH: Yeah.

MR. WADE: – and we would convene a meeting and go through what we had, say, reviewed in Ontario.

MR. LEARMONTH: Yeah, so you had to do a lot of balancing here, did you?

MR. WADE: A balancing act, yeah.

MR. LEARMONTH: Yeah.

Now there was some reference in the documents – I won't go back to it unless you don't recall – but there was some determination that the

mechanical unions would not be at the table. Were you ever given a reason for that?

MR. WADE: Well, the reason why they wanted the five trades – we were given a reason for that as opposed to given a reason why 11 weren't there. We were given a reason why five were. And they wanted to directly negotiate with the five trades that had the majority of the work on the project.

MR. LEARMONTH: Okay.

MR. WADE: And we also, of course, knew why they didn't want the rest of them there in – now particularly the mechanical trades, because they felt that it would be harder to get some of the things that they wanted in that agreement, with the mechanical trades present.

MR. LEARMONTH: Right. Because the mechanical trades might hold out on certain things that –

MR. WADE: That the other five civil trades might be – might be – willing to work with.

MR. LEARMONTH: All right.

I think in your interview, you said that the mechanicals would not – would hold out for double time in certain situation until “hell freezes over.” Those were your words.

MR. WADE: Yeah. That's about –

MR. LEARMONTH: Yeah.

MR. WADE: – at where it was.

MR. LEARMONTH: Okay.

Now, so, we've already established that, I think, with December 22, there was a – the vote of the 16 people and is my – and please tell me if my understanding is correct that five of the unions voted to accept it outright.

MR. WADE: Yes.

MR. LEARMONTH: And two agreed to accept it, provided that a trade appendix was acceptable to them.

MR. WADE: Yes.

MR. LEARMONTH: Okay. What is a trade appendix?

MR. WADE: Oh. We negotiate the body of the agreement, and by we, I say the RDTC, which was myself and Bob Blakely as co-chair. And after the body of the agreement is negotiated, the negotiating committee for Nalcor, which, I guess, became the Muskrat Falls Employer's Association before – possibly before the end of negotiations, they met with each individual union of the 16 trades and negotiated a trade appendix specific to that individual trade, which could not be in conflict with the body of the agreement.

MR. LEARMONTH: Yeah.

MR. WADE: The body of the agreement would override the trade appendix.

MR. LEARMONTH: Okay. So, on the December 21 vote – and once again, correct me if I'm wrong – five agreed outright to accept it.

MR. WADE: Mm-hmm.

MR. LEARMONTH: Two agreed to accept it with – provided a trade appendix was successfully negotiated.

MR. WADE: Sure – satisfactory, yeah.

MR. LEARMONTH: And six voted no, and three were not present. Is that correct?

MR. WADE: Yes.

MR. LEARMONTH: So, it passed seven-to-six. Is that correct?

MR. WADE: At that point, yes.

MR. LEARMONTH: At that point. And then it went to the membership. Correct?

MR. WADE: Yes.

MR. LEARMONTH: And it had to go to the membership. So, all that the unions could do would be to recommend it to membership. Correct?

MR. WADE: Well, all of them didn't recommend it to their membership to approve it, but it was given to them to –

MR. LEARMONTH: Yeah.

MR. WADE: – vote upon.

MR. LEARMONTH: Okay. The ones that, obviously, didn't vote for it – the unions, obviously, they wouldn't recommend that their members approve it but –

MR. WADE: Mm-hmm.

MR. LEARMONTH: – they didn't, yeah. So, anyway, it went to a vote of all 16 unions –

MR. WADE: Mm-hmm.

MR. LEARMONTH: – and it passed by a slim –

MR. WADE: 57 per cent.

MR. LEARMONTH: – 57 per cent. And then after that, it had to go to – some people weren't present and, ultimately, it was, you know, sent where necessary, to the internationals and it was signed on – was it March 14, 2013?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

Was – so your work on this came to an end when the agreement was signed. Is that correct?

MR. WADE: No, that's when my work actually started –

MR. LEARMONTH: Okay.

MR. WADE: – on that.

MR. LEARMONTH: Well, thank you for correcting me on that. And give an explanation for that, please.

MR. WADE: Well, then we had to put everything in place for a project. I mean that was just the agreement, then we had markups. Some of the markups I would actually chair because the contractor was unfamiliar with them and

couldn't really do them, so I would do them for them.

MR. LEARMONTH: Okay, can you just explain what a markup is?

MR. WADE: A markup is where you introduce to the 16 unions the work that you're going to do on the site as a contractor. And then you assign each piece of work based upon the jurisdiction that each trade normally does.

MR. LEARMONTH: Right.

MR. WADE: And if one of the trades at the table, or two, feel that you made the wrong assignment, they can claim the work. Then they have a certain period of time where they can request an umpire to adjudicate it. And failing that, if the umpire opposed the assignment – the original assignment, the trade has the option to appeal to the Canadian plan, or the Green Book as you referred to it as well.

MR. LEARMONTH: Yeah but – okay, that – but that – all that process changed in 2014, as I understand it, when –

MR. WADE: Mm-hmm.

MR. LEARMONTH: – the –

MR. WADE: I'm talking when I –

MR. LEARMONTH: Yeah, yeah. But as –

MR. WADE: When I was there –

MR. LEARMONTH: – long as you were there it was a local umpire system correct? And then appeal to the Canadian plan.

MR. WADE: Yeah.

MR. LEARMONTH: But after you left in –

MR. WADE: After I left it was changed over so you didn't appeal to the Canadian plan. That was the only option that the local union had was to contact their international and request them to go to the Canadian plan with their claim.

MR. LEARMONTH: Yeah.

MR. WADE: And if the international agreed with them, they would go to the plan and present evidence and the international would present evidence and before the plan, as opposed to the business manager who would ordinarily do it with the local umpire.

MR. LEARMONTH: So with the change in this system to the local umpire was cut out, the local standards would not apply as much as the standards set by the Canadian plan for –

MR. WADE: Yes, the local umpires for the major projects in Newfoundland looked at Newfoundland jurisdiction which was the, say, typical history of work in Newfoundland and Labrador as a priority.

MR. LEARMONTH: So when it goes to the Canadian plan, the Newfoundland standards aren't necessarily applied.

MR. WADE: Not necessarily. It just depends.

MR. LEARMONTH: Okay.

So did you favour that change or – I know it's after you retired. Do you have views on it or ...?

MR. WADE: Well, I was a local umpire myself for a while, even though I was working for the international. And I had a large play in putting the language of jurisdiction together for major projects. So on that hand, I certainly preferred what I thought worked best for our province, but on the other hand, I'm an arbitrator on the Canadian plan.

MR. LEARMONTH: Mm-hmm.

MR. WADE: So I'm not going kicking –

MR. LEARMONTH: Yeah, okay. It's just a different approach.

MR. WADE: – the Canadian plan.

MR. LEARMONTH: I guess it's a different approach and some would prefer the old way and some would prefer the new way, but the new way –

MR. WADE: Yeah.

MR. LEARMONTH: – is what’s –

MR. WADE: So the old way gave the driver’s seat to the business manager of Newfoundland and Labrador. The new way gives the driver’s seat to the Canadian executive director of each individual union. So –

MR. LEARMONTH: Yeah.

MR. WADE: – it goes international instead of local.

MR. LEARMONTH: Yeah.

So, once again, the markup is – just to put it in the simplest terms possible, and if I’m making it too simple, please correct me, I know you will – that a piece of work is it – okay, someone has to cut down a tree and one union would say, that’s our work, another union might say, no, that’s our work. And if there’s no dispute, then there’s no dispute. If there is a dispute between two unions as to who is going to cut down that tree, it goes to the Canadian plan and the Canadian – this is the –

MR. WADE: Well, it only goes to the Canadian plan if: One, the business manager requests their international to do it –

MR. LEARMONTH: Yeah.

MR. WADE: – and number two, if the international obliges and says, yeah, okay, we’ll go to the plan. Because if the international says we’re not going anywhere, that’s the end of it.

MR. LEARMONTH: Okay, very good, right.

Anyway, whether you favour that or not – and I’m not going to ask you whether you do – it’s an efficient way to resolve disputes because there’s no work stoppages, right?

MR. WADE: Yes.

MR. LEARMONTH: Yeah.

MR. WADE: That’s right.

MR. LEARMONTH: Okay, very good.

Did you also, before your retirement – and we’re talking about probably a year – March 14, 2013, the agreement was formally signed and you retired in March –

MR. WADE: July.

MR. LEARMONTH: – July 2014, so it was a little over a year. And you were involved in this markup and you’ve described the duties that you carried out in relation to the collective agreement. Did you attend the site, the Muskrat Falls site, on occasion?

MR. WADE: Oh, several times, yeah.

MR. LEARMONTH: And would they be to attend liaison meetings?

MR. WADE: Not just to attend liaison meetings but, certainly, to attend liaison meetings. Yes.

MR. LEARMONTH: Yeah.

So what – okay, what type of business would you carry out when you went to the site? Like, why would you go to the site? What would be your purpose? And the site, I mean the Muskrat Falls site.

MR. WADE: Well, it could be for, you know, a lot of reasons; one is every week we would have a meeting at our office with the business managers, and part of that meeting would be dealing with work that’s ongoing in Newfoundland and Labrador. And part of the time you would be discussing Muskrat Falls and the business managers would speak of any problems that either they or the group in general were having in Muskrat Falls. I would possibly make a trip up there to change what was going on – what the problem was.

MR. LEARMONTH: Okay.

Now, were most of the RDTC workers assigned or did they work for Astaldi?

MR. WADE: Certainly not while I was working with the RDTC –

MR. LEARMONTH: What –

MR. WADE: – because they hardly were on site while I was in office.

MR. LEARMONTH: Well, July 2014 – they signed a contract November 29, 2013, so that would have been six or seven months into the contract. You said that you didn't see much of their presence on site?

MR. WADE: I met with Astaldi when they first came to the province and they laid out what they were planning on doing – including the MegaDome that they were going to put over the project. And we did have some – well, as an example, there was never any arbitration with Astaldi while I was in office. So our problems were very small, if any, as I can recall. I don't even recall having a grievance with Astaldi while I was in office.

MR. LEARMONTH: Right.

MR. WADE: Let alone an arbitration.

MR. LEARMONTH: Now, on the – did you – when you attended at the site, did you form any impression as to whether the work site was organized in an efficient manner? Did you form any impression on that point or was it too early in the game?

MR. WADE: Well, the first impression that you get attending the site back then would be the road, which was very, very rough road. It would be hard to get over even in a four-by-four, you know, in a lot of places. I'm not focusing my attention on the contractor who is doing the road, I mean, they were doing as well as they could at the time. And it was rough country to go through and the roads were very, very bad, especially for buses going over them carrying workers. And I would say mostly likely very bad if you were sitting in the back of the bus because, you know, you could possibly be thrown all over the place. But anyway we complained about the road, of course, we wanted it fixed. And I think the contractor actually doing the road was doing the best he could with it, but it was rough going.

Outside of that, there was a problem of where they brass in and brass out in relationship with establishing when they start the shift and when they end the shift. And, you know, a lot of cases,

brassing – like maybe going in half the distance – some workers would work, say for instance, in the camp and then they'd have to probably have to go to the end of the line to brass in and then come back out to their work place, which to me made no sense. And vice versa with other people – they'd brass in and then – outside of their work area, because they had two brass areas.

MR. LEARMONTH: Yeah.

MR. WADE: That was a problem.

Another problem that we had continuously was, what we would call, non-union contractors going in on site with their people who are not members of any group; weren't members of the RDTC. They – and we were constantly speaking to David Clarke about having something on the gate for security to stop that from happening, and it was still going on when I left office.

MR. LEARMONTH: Okay.

So what were your – what was the nature of your relationship with David Clarke? What was his role, as you understood it?

MR. WADE: He was over all labour relations to the project.

MR. LEARMONTH: Okay.

MR. WADE: And that was his role. And so I certainly was dealing with him a lot in relationship to what was going on on the project and off the project with meetings. I mean, we had meetings with the government regularly, David Clarke and I –

MR. LEARMONTH: Mm-hmm.

MR. WADE: – where we would give the government an update on the project.

And, of course, both of us were part of the Liaison Committee, so we would get updates from superintendents and project managers at those meetings. And they – all I really ever got at the meetings, in respect to the work itself, was that they were on schedule and productivity was great.

MR. LEARMONTH: On the subject of –

MR. WADE: And that was without Astaldi, by the way.

MR. LEARMONTH: So Astaldi was –?

MR. WADE: Not part of that on the initial meetings I had with the Liaison Committee. It wasn't until they came on board at the – say, at the end of my term, thereabouts, you know?

MR. LEARMONTH: Okay.

MR. WADE: And all they were doing, at that time, was site prep.

MR. LEARMONTH: Okay.

MR. WADE: They weren't doing any much, say, actual work. They were preparing to do it.

MR. LEARMONTH: All right.

And you mentioned productivity, do you have any – the issue of productivity of workers, and so on, has come up in this Inquiry. Can you make any comment on your knowledge of the productivity, generally, of Newfoundland workers?

MR. WADE: Well, the productivity of Newfoundlanders is well known in Alberta, where I had more meetings than I could count with a group representing all of the oil companies in Alberta who will come down here seeking out workers for their shutdowns, as well as their – any new construction that they had. And they valued the Newfoundland workforce.

Outside of that, the work that the local people here did on major projects in Bull Arm, I always got an excellent report on productivity. And I guess safety, as well, because the two of them sort of go hand in hand, and some contractors find it a little hard to balance the two where you get good safety and good productivity. Some of them feel that, you know, you're – you sort of got to lose a little on the safety to gain the productivity. But it's odd – I mean, the Hebron project finished there not too long ago and their safety record was unbelievable and their productivity was unbelievable as well. And the person who was head of the GBS in Bull Arm for Hebron openly said that it was unbelievable. And we –

MR. LEARMONTH: What was unbelievable?

MR. WADE: The productivity and safety –

MR. LEARMONTH: Okay.

MR. WADE: – for that site. It was something to – for any project to look at and to follow.

MR. LEARMONTH: Okay.

And were you told that personally by a representative of the Norwegian company?

MR. WADE: Yes.

MR. LEARMONTH: Okay.

Okay, so there are no complaints about productivity that you're aware of?

MR. WADE: No – actually, we used to go in and do site walks – all of the council. We'd take turns, including myself, and we'd go in and do safety walks on that site. If it wasn't weekly, it was probably every second week or something like that.

And they could see the difference – and, of course, we would point out anything that we saw as we were walking through and they'd correct it. And they knew that it was making a difference on the site for safety.

MR. LEARMONTH: Okay.

Now, wages – what – how did the wages under the collective agreement – the one collective agreement that you participated in the negotiation of – compare with the wages at the Hebron special project –?

MR. WADE: Much similar.

MR. LEARMONTH: So there was no raise, I don't think, in for – in the case of the Muskrat Falls contract. Is that correct?

MR. WADE: In the –

MR. LEARMONTH: (Inaudible.)

MR. WADE: – last –

MR. LEARMONTH: Yeah.

MR. WADE: – part of it in '17?

MR. LEARMONTH: Yeah. There was a raise on the Muskrat Falls site?

MR. WADE: The agreement, I think, ran to 2017 and I understand that no raise was put in place, but I retired in 2014 –

MR. LEARMONTH: Right.

MR. WADE: – and nobody called me to ask me what was going on with it or could I help them out on – no.

MR. LEARMONTH: Okay.

MR. WADE: You'd have to ask the people who were in the office after I left there.

MR. LEARMONTH: Right. Okay.

Okay. Is there anything else you'd like to add to your evidence, Mr. Wade?

MR. WADE: No, I'm fine with that.

MR. LEARMONTH: Okay.

And just before we leave – or I leave this witness, I was looking for a document that I didn't have: that was a special project order for the generation project, and actually that's at tab, well, it's tab 10, binder 1, it's Exhibit P-03811.

THE COMMISSIONER: 0381 –?

MR. LEARMONTH: One. And once again, on page 2, the end of the definition section 2, there's a reference to that agreement that – the collective agreement and that memorandum of agreement at tab 7 that I referred to.

Anyway, those are my questions. Thank you very much, Mr. Wade. I'm sure some others will have some questions for you.

Excuse me.

UNIDENTIFIED MALE SPEAKER: All right. Thank you.

THE COMMISSIONER: Okay.

Province of Newfoundland and Labrador.

MR. LEAMON: No questions, Commissioner, thank you.

THE COMMISSIONER: Nalcor energy.

MR. SIMMONS: Good morning, Commissioner. Good morning, Mr. Wade.

My name's Dan Simmons, counsel for Nalcor Energy here at the Inquiry.

Just a few things, some general things that I want to run over with you and I don't think I'll be too long.

First of all, just to confirm, your only involvement in negotiating these agreements was for the Muskrat Falls generation site and you had no personal involvement in the IBEW negotiation of the transmission line agreement or the Labourers' negotiation of the reservoir clearing agreement. Do I understand that correctly?

MR. WADE: That's right, none whatsoever.

MR. SIMMONS: Okay. All right.

And both those unions, the IBEW and the Labourers', they were members of the Resource Development Trade Council, were they?

MR. WADE: Yes.

MR. SIMMONS: So they were included within the group of 16 unions that you've spoken of that formed that council.

MR. WADE: Yes.

MR. SIMMONS: So I presume then that this is an acceptable process, for a union member of an organization like yours to participate in the negotiation of a collective agreement outside of going through the RDTC to do it.

MR. WADE: Is it normal?

MR. SIMMONS: Yes.

MR. WADE: No, it's not –

MR. SIMMONS: Well, I said acceptable.

MR. WADE: Well, I'd – I was at that 38 years –

MR. SIMMONS: Mm-hmm.

MR. WADE: – and I think that's the only one that I came across and it happened to be done by the Government of Newfoundland and Labrador.

MR. SIMMONS: Well, were you surprised –

MR. WADE: Disappointing.

MR. SIMMONS: Were you surprised at all that the Labourers' and the IBEW were willing to participate and do that?

MR. WADE: Willing to participate?

MR. SIMMONS: Mm-hmm.

MR. WADE: Well, actually, the Carpenters were asked to do the clearing of the reservoir.

MR. SIMMONS: Mm-hmm.

MR. WADE: And they told me they refused to do it. And we met and the Labourers indicated, you know, if they don't do it, somebody else would –

MR. SIMMONS: Mm-hmm.

MR. WADE: – outside of our group.

MR. SIMMONS: Mm-hmm.

MR. WADE: And so I don't think there was really much hard feelings between the group that the Labourers did that; little bit different with the IBEW with the transmission line.

MR. SIMMONS: Mm-hmm. Okay.

Mr. Learmonth referred you to Mr. Oakley's report, wherein he had reviewed special project orders and how these things had worked and this – that was the report that led, pretty directly it seems, to some of the amendments to the *Labour Relations Act* that affected the way the special

project orders, the three of them, got put in place here.

MR. WADE: Mm-hmm.

MR. SIMMONS: So, am I correct that Mr. Oakley is actually a pretty well-known and fairly well-respected lawyer who's been involved in labour relations in the province for some time. You'd would have been familiar with him for some time before hand?

MR. WADE: I dealt with him quite often because he probably was an arbitrator on most of our special projects.

MR. SIMMONS: Yes. Okay, so, he would have been very familiar with how other special project agreements had worked through the work he'd seen as an arbitrator on grievances and disputes coming out of those projects.

MR. WADE: I would say, yes.

MR. SIMMONS: Yup.

When you learned that it was Mr. Oakley, who'd been appointed to do that review, did you have any concern at all about whether or not he was appropriately qualified, and an appropriate neutral person to be selected to do that work?

MR. WADE: None whatsoever.

MR. SIMMONS: Okay. Thank you.

Mr. Learmonth also referred you to an internal Nalcor document and I don't need to bring it up, but it is P-03841, you might remember it? It's the – it's called "Nalcor Labour Model Recommendations Report ('Report')," this is one you hadn't seen before.

MR. WADE: Yes.

MR. SIMMONS: Now, either party going into a set of negotiations is going to have its own strategies developed before they go into it. I am sure the union does, as well as an employer, any time you're negotiating a collective agreement, would that would be fair to say?

MR. WADE: Fairly well, yeah.

MR. SIMMONS: Yeah. And would it be normal to expect either side to share their detailed strategies beforehand? You're smiling.

MR. WADE: Not really, although I heard that it happened after I left office, once or –

MR. SIMMONS: Okay.

MR. WADE: – something like that.

MR. SIMMONS: So, simple question –

MR. WADE: It may have been a mistake that it was sent out to the wrong people or something.

MR. SIMMONS: Okay. So, a document like the Labour Model Recommendations that was an internal report, that's not something you would normally expect to be shared prior to the negotiations at all.

MR. WADE: No. Definitely not.

MR. SIMMONS: Okay. Yeah.

You told us that the negotiations themselves started, I think, in April of 2012.

MR. WADE: Yes.

MR. SIMMONS: Yeah. Were you part of negotiating the agreement on bargaining principles that came before the formal start of negotiations?

MR. WADE: The bargaining principles?

MR. SIMMONS: Yeah. I understand on March 5 in 2012 there was a set of principles – bargaining principles – signed off on by the RDTC and the five unions who were going to participate in the negotiations.

MR. WADE: Mm-hmm.

MR. SIMMONS: Does that sound familiar?

MR. WADE: Yeah.

MR. SIMMONS: Yeah. What can you tell me about what that – what that document was. Commissioner, it's not in evidence, I don't think

– but we can certainly give the reference to it afterwards.

THE COMMISSIONER: Okay.

MR. WADE: That was where they were saying that it was special project –

MR. SIMMONS: Mm-hmm.

MR. WADE: – different than any other project and they were gonna –

MR. SIMMONS: Hmm.

MR. WADE: – require some language to that effect and, of course, it also had an addition of the area and the – and the Aboriginals that would be –

MR. SIMMONS: Right.

MR. WADE: – involved as well.

MR. SIMMONS: I understand –

MR. WADE: And that's where, you know, most of it was – then probably not all of but –

MR. SIMMONS: Yeah. I understand that some of the things generally addressed in those principles were that there was a desire to try and distinguish this project and –

MR. WADE: Yeah.

MR. SIMMONS: – that safety was a factor, productivity was a factor, and adhering to the goals of Aboriginal employment and (inaudible).

MR. WADE: Yeah it was – safety and productivity –

MR. SIMMONS: Yes.

MR. WADE: – has been a factor since I started construction.

MR. SIMMONS: Yes.

MR. WADE: And that wasn't any news whatsoever –

MR. SIMMONS: Right.

MR. WADE: – to anyone at the table on either side.

MR. SIMMONS: Right. So, those were easy ones to agree to.

MR. WADE: Yeah. Well, I mean, you know, that there's going to be –

MR. SIMMONS: Right.

MR. WADE: – wages in there. You know, there's going to be productivity in there. You know there's going to be safety in there.

MR. SIMMONS: And there was some other more specific things in those statements of principles including some statements about the approach that would attempt to be negotiated for the use of teams and –

MR. WADE: Counts of crews, we call them.

MR. SIMMONS: Counts of crews. Yes (inaudible).

MR. WADE: They choose to change the name to work teams.

MR. SIMMONS: Right. And those principles – they were signed off on by the RDTC and by the five unions before you then moved into the actual negotiations.

MR. WADE: Yes. They – work teams – as you – as – well, not only you call them – but it's in the agreement – it wasn't new to the RDTC.

MR. SIMMONS: Mm-hmm.

MR. WADE: That had been used even on the Hibernia Project,

MR. SIMMONS: Right. Right. And there was some evolution with that – some changes in the way they already –

MR. WADE: Yes.

MR. SIMMONS: – handled it. Well, it's –

MR. WADE: Like everything else in a collective agreement, it's all an evolution on every article that you look at.

MR. SIMMONS: Okay.

Now, the – on your side for those negotiations, I understand that you participated. And was it Mr. Blakely, from your international union, who participated as well? Have I got that right?

MR. WADE: He was with the building trades.

MR. SIMMONS: I'm sorry, with the building trades, the international organization.

MR. WADE: Yeah, he was the Canadian director for the building trades of Canada.

MR. SIMMONS: Okay. Yes, I see. And he –

MR. WADE: Which involved all unions –

MR. SIMMONS: He's –

MR. WADE: – as I was executive director of the Newfoundland and Labrador building –

MR. SIMMONS: Right.

MR. WADE: – trades for Newfoundland and Labrador.

MR. SIMMONS: I see.

So where was he based?

MR. WADE: Ottawa.

MR. SIMMONS: In Ottawa.

Did the five unions who were the direct participants – did they all have single people participating at the table, just one, or did they have teams or how many did they (inaudible).

MR. WADE: Well, a good few of them had their international representative there –

MR. SIMMONS: Yes.

MR. WADE: – at the bargaining table.

MR. SIMMONS: Yes.

And where would the international representatives be based? They wouldn't have

been living and working out of St. John's, I presume.

MR. WADE: Generally out of Ottawa.

MR. SIMMONS: Generally out of Ottawa. Okay.

So many of those people – had the negotiations been in St. John's, many of those would have had to travel to St. John's versus the Newfoundlanders travelling to Toronto. Okay. You're nodding your head, so you're –

MR. WADE: Yeah.

MR. SIMMONS: – saying, yes. Yeah.

Last point – you'd mentioned some involvement of some meetings with people at government. Now, do I understand correctly that there was a process built into – and I'm not sure if it's in the collective agreement or in the special project orders, so you'll have to correct me – for some reporting or involvement to the labour relations association – the LRA? Does that ring a –?

MR. WADE: CLRA?

MR. SIMMONS: No, the provincial government agency.

MR. WADE: Okay.

MR. SIMMONS: And there were periodic liaison meetings with those.

MR. WADE: Mm-hmm.

MR. SIMMONS: Okay. Can you tell me a little bit more about that, about how that came to be with the (inaudible)?

MR. WADE: I requested that that be put in place.

MR. SIMMONS: Okay.

And how did that work?

MR. WADE: Not as well as I –

MR. SIMMONS: Oh, you know, what the process was.

MR. WADE: – had anticipated.

MR. SIMMONS: No, I mean what was the process for doing that? Who were you meeting with, who – what was the government agency you were –

MR. WADE: The government appointed Yvonne Scott –

MR. SIMMONS: Mm-hmm.

MR. WADE: – to meet with myself and David Clark –

MR. SIMMONS: Yes. Okay.

MR. WADE: – periodically, probably every couple of months or something like that.

MR. SIMMONS: Okay.

MR. WADE: And we'd give her a view of what was taking place on the project.

MR. SIMMONS: Okay.

MR. WADE: Clark trying to tell her it was good as gold and I trying to be a little bit more honest with her.

MR. SIMMONS: Okay, well, I like the way you just – I'll respect the way you describe your respective roles there. So fair to say, then, that there was a government agency that was being reported to and was playing some role in monitoring –

MR. WADE: Mm-hmm.

MR. SIMMONS: – the labour relations environment on the site.

Yeah, okay.

Okay, thank you very much, Mr. Wade. I don't have any other questions.

THE COMMISSIONER: Okay, Concerned Citizens Coalition.

I just noticed it's 20 after 11. I didn't realize it was that late. Do you want to – are you okay to take a break now, Mr. Hiscock?

MR. HISCOCK: That would be fine, absolutely.

THE COMMISSIONER: Okay, we'll take our morning break then for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

THE COMMISSIONER: All right.

Concerned Citizens Coalition.

MR. HISCOCK: Good morning.

Will Hiscock with the Concerned Citizens Coalition.

I just have a couple of questions for you. In particular, I'm wondering, I guess, whether in your experience there was a large number of grievances with this particular project compared to other special projects you've been involved in?

MR. WADE: Well, there was a fair amount of grievances. I believe there was, to date, about 300.

MR. HISCOCK: Was there any common factors in the grievances that arose out of this project from your view?

MR. WADE: Well, certainly, like any project you'll get quite a few similar grievances.

MR. HISCOCK: Mm-hmm.

MR. WADE: They would be over wages, benefits, loss of wages or loss of benefits. I didn't see it, say, non-typical that way with other projects, for the most part.

MR. HISCOCK: In some of the interviews that we've seen, it seemed like the approach from Nalcor was that if you approach with a grievance and you didn't like the answer, you were simply told to go on to arbitration perhaps more quickly than you might've on other projects. Was that something that you heard, as well, on the site, or that you experienced?

MR. WADE: Well, one of the things I heard on the site was that some contractors came to resolutions with the unions.

MR. HISCOCK: Okay.

MR. WADE: And they were told by David Clark to go to arbitration.

MR. HISCOCK: Rather than resolve it?

MR. WADE: Rather than – well, they had already resolved it, they had agreed what they would do in relationship to it.

MR. HISCOCK: Right.

MR. WADE: But when it went to David Clark, he told them you're not resolving it that way, you're going to arbitration.

MR. HISCOCK: Okay.

And is it correct that all the arbitrations took place in St. John's? Or were there arbitrations taking place on site, as well?

MR. WADE: Possibly most, of course, that could be done in St. John's were done in St. John's, I would say.

MR. HISCOCK: Okay. So would the members have to then fly to St. John's to attend that arbitration?

MR. WADE: Mm-hmm.

MR. HISCOCK: You would have to pull them off of site for – to do –

MR. WADE: Yeah.

MR. HISCOCK: – the arbitrations here in St. John's.

MR. WADE: Yeah.

MR. HISCOCK: Okay.

MR. WADE: Well a lot of them would be, I guess, from the area.

MR. HISCOCK: From the Northeast Avalon anyways, okay.

MR. WADE: Mmm.

MR. HISCOCK: You've described who David Clark was and his role to some degree, and he had a role, I understand, during negotiations, obviously, a central role in the negotiations and, kind of, from the employer's side, drafting of the agreement. Is that correct?

MR. WADE: Yes.

MR. HISCOCK: But he also had a significant role after the contract was signed. That's correct, as well, hey?

MR. WADE: Yes.

MR. HISCOCK: And he would have had a central role in these arbitrations?

MR. WADE: Yes.

MR. HISCOCK: Okay.

MR. WADE: Well, he'd make the decision if it was going to arbitration or if it wasn't. I'm not sure what kind of a role you're referring to.

MR. HISCOCK: Would he have been hired on, I guess, to participate in these arbitrations?

MR. WADE: Well, he was participating in them, from what I can understand – that if he wasn't participating directly himself, somebody working for him or through him would do the arbitration.

MR. HISCOCK: So it would be – he would've had other staff – that was my next question, actually – he would've had other staff on the project, as well, hey?

MR. WADE: What's – yeah, he would have other staff, certainly.

MR. HISCOCK: Okay.

In your view overall, do you think that his involvement was of help to this project?

Do you think it helped this be a more efficient project that was resolved at the lowest dollar that we could get it done for? Or do you think his role increased the cost of this project?

MR. WADE: Well, I don't really look at a great project as just the lowest dollar –

MR. HISCOCK: Okay.

MR. WADE: – involved in building it. I look at it overall in relationship to how good the project was safety-wise, productivity-wise and for the workers themselves and how they did working on the project. And I think it could've been better than what is was.

MR. HISCOCK: On all three of those aspects, in terms of the safety, the productivity and the morale?

MR. WADE: Well, like I said before, every time I went to the project, I was given the deal that it was on time, on budget, productivity was great. So I couldn't ask for any better than that. Now, if that was exactly the deal, I don't know, but it was the deal I was given. So, you know, to that degree it was great.

After I retired I think productivity was an issue. I can't really speak much of it because I was retired and I wasn't hands on with it as to what was going on. I mean, you'd have to speak to the people who were in the office in my place after I left.

MR. HISCOCK: Okay.

Thank you very much.

Those are my questions.

THE COMMISSIONER: Edmund Martin.

MR. SMITH: Good day, Mr. Wade.

Harold Smith for Edmund Martin.

MR. WADE: Mr. Smith.

MR. SMITH: I'm going to follow up on a couple of points that have been made and just elaborate.

You indicated a few minutes ago that – in answer to my colleague's question – that Mr. Clark had complete authority over whether an arbitration went ahead or it didn't go ahead. Is that correct?

MR. WADE: Yes –

MR. SMITH: And it would even be a situation where the employer, following the collective agreement have – had decided to settle the matter, and Mr. Clark would say: No, it has to go to arbitration. Correct?

MR. WADE: As far as I know, that's what happened. And, actually, when that happened, I was retired.

MR. SMITH: Okay.

Now, if I could, just to take a little bit – a side turn here.

MR. WADE: Mm-hmm.

MR. SMITH: If a union fails to represent a member in a particular way, is there any remedy for the member?

MR. WADE: Oh, yes.

MR. SMITH: And what's that remedy?

MR. WADE: If a business manager don't, say, follow-through with something for a member, and if he feels like he's not being represented, he can go before the Labour Relations Board with a duty for fair representation –

MR. SMITH: Yeah.

MR. WADE: – for the business manager.

MR. SMITH: Okay.

And in the context of employers who are forced to become of the Employers' Association –

MR. WADE: Mm-hmm.

MR. SMITH: – in a special project, do they have a similar avenue of redress if they don't feel they're being presented properly?

MR. WADE: I'm not sure on that one.

MR. SMITH: Not sure?

MR. WADE: I haven't really reviewed legislation to see if it applied –

MR. SMITH: Okay.

MR. WADE: – in that case.

MR. SMITH: All right.

We'll back to the collective agreement. Does the collective agreement actually spell out, in detail, that the Employers' Association has the only unique or exclusive ability to negotiate or to arrive at agreements in the interpretation of the collective agreement?

MR. WADE: Yes.

MR. SMITH: Okay.

So when Mr. Clark would say to an employer who wants to settle, he has the authority of the collective agreement to support him?

MR. WADE: Yes. Yes.

MR. SMITH: That's correct? Okay.

Now, the other thing that you mentioned that puzzled me – I have a limited amount of knowledge in the area of labour relations in the province. But you mentioned that the internationals were in Toronto negotiating. It is my understanding that the internationals have no authority to negotiate collective agreements within the province.

MR. WADE: The internationals in this particular case, with the Resource Development Trades Council, comprise 50 per cent – or minus one – of that council. So, because of that, they have the right to be at the table with a voice and vote.

MR. SMITH: So what you're saying is that membership of the RDC –

MR. WADE: RDTC.

MR. SMITH: – RDTC, sorry.

MR. WADE: Yes.

MR. SMITH: The RDTC is made up of local unions and international unions?

MR. WADE: Yes.

MR. SMITH: So does that mean there are 32 effective entities at the table? The locals and –

MR. WADE: Yes – well, not exactly because, as you probably know, the carpenters have two local unions –

MR. SMITH: Right.

MR. WADE: – and the IBEW has two –

MR. SMITH: Two.

MR. WADE: – local unions, so they would be there representing four trades – the two internationals.

MR. SMITH: Okay.

MR. WADE: So you wouldn't have double 16; you'd have –

MR. SMITH: So when you mentioned the five –

MR. WADE: – a little less than that.

MR. SMITH: Oh, sorry. Please.

MR. WADE: Go ahead.

MR. SMITH: When you mentioned the five unions that were being – or negotiating in Toronto –

MR. WADE: Yes.

MR. SMITH: – okay, which five?

MR. WADE: It was the Ironworkers, the Carpenters, the Labourers, the Operating Engineers and the Teamsters.

MR. SMITH: And would they be represented by both their local representation and the international?

MR. WADE: At times.

MR. SMITH: At times?

MR. WADE: The international wasn't there at every meeting, but, you know, the Labourers was there quite often. If not every meeting, they

were almost there every meeting, but some were there maybe half the time because they have Canada to look after and they – sometimes they had to be elsewhere.

MR. SMITH: And in addition to that, you had a anteroom or a caucus room where the balance of the 11 trades were –

MR. WADE: Not while we were in Ontario.

MR. SMITH: Not in Ontario?

MR. WADE: No. No.

MR. SMITH: Now, the trade appendices that are attached to the agreement, you gave the impression, I think, that these were, like, separately negotiated with each of the various trades. But my understanding is that essentially they're – the trade appendices are what we refer to as a CLRA agreement and then was modified to ensure that it didn't conflict with the –

MR. WADE: Well, the trade appendices wasn't really the CLRA agreement, but it may have been excerpts taken from the CLRA agreement. It was just issues that were specific to that trade only. And if it was in the CLRA agreement, it was accepted that it could be in the appendix for the project agreement. But if it wasn't in the CLRA agreement, they weren't going to entertain it whatsoever.

MR. SMITH: Now, perhaps you and I know what the CLRA is. Could you tell the Commissioner what the CLRA is?

MR. WADE: Construction Labour Relations Association –

MR. SMITH: Okay.

MR. WADE: – that got accreditation in 1976 looking after the employers of Newfoundland and Labrador –

MR. SMITH: So this is an –

MR. WADE: – and directing them.

MR. SMITH: Yeah. This is an employers' organization that has the bargaining rights for all unionized employers in the province.

MR. WADE: Except for project agreements.

MR. SMITH: Except for special project agreements, right?

MR. WADE: Yeah. Yeah, special project agreements, that's right.

MR. SMITH: One of the features of a special project, it effectively eliminates the body that, since 1976, has negotiated all the collective agreements in the construction industry, correct?

MR. WADE: Yes.

MR. SMITH: Thank you, Sir, that's all the questions I have.

THE COMMISSIONER: Thank you. Kathy Dunderdale is not present.

Former Government Officials '03-'15.

MR. J. KING: No questions, Commissioner.

THE COMMISSIONER: Julia Mullaley/Charles Bown, not here. Robert Thompson.

Consumer Advocate.

MR. HOGAN: Good morning. My name is John Hogan. I'm counsel for the Consumer Advocate.

MR. WADE: (Inaudible.)

MR. HOGAN: Mr. Learmonth did ask you a little bit about the state of the site when you first went up there, and you talked about the road conditions. I'm wondering if you can elaborate any further on the state of readiness of the site other than the road when you first went up there. And, I guess, a follow-up question to that is, can you compare the state of readiness there to the state of readiness at Bull Arm before the project started?

MR. WADE: Well, Bull Arm for Hebron was sort of made ready when we were making it ready for Hibernia. So it's certainly a different site than going up in the woods and cutting a trail then through, making a road and starting a

hydroelectric project. You know, it's a completely different ballgame.

MR. HOGAN: Okay.

So, is there anything that you felt was lacking other than the state of the roads, in terms of site readiness?

MR. WADE: Well, I did talk about a few other things that was taking place. I mean, you have to expect a few blips on the front end of a project that's up in the wilderness – in the North. So, you've got a lot of different things that – to deal with that you don't really have to deal with, say, for instance, in Bull Arm or –

MR. HOGAN: Okay.

MR. WADE: – on the Island.

MR. HOGAN: Are you able to compare – was there any differences, one way or the other, between dealing with a private project versus a public project? Privately funded versus publicly funded.

MR. WADE: There was a major difference. Yes.

MR. HOGAN: And that was? What was the major –?

MR. WADE: The people who we were negotiating with had legislation in their back pocket.

MR. HOGAN: Okay. So, I was going to – that was going to be a follow-up question there.

So, did you – well, how did you – what was your view on that? How did it affect you? I guess what you're saying is the shareholder is the legislator and the negotiator, correct?

MR. WADE: Yeah.

MR. HOGAN: Okay. And how did that affect – what was your view of that?

MR. WADE: Well, it wound up with three projects instead of one.

MR. HOGAN: Okay.

MR. WADE: That's – like, Upper Churchill wasn't three projects.

MR. HOGAN: No.

MR. WADE: They had to do the same thing.

MR. HOGAN: Did you perceive that as a conflict or anything inherently wrong with that situation?

MR. WADE: Yeah. Yeah. Sort of playing what we used to call skunk pool.

MR. HOGAN: You called it skunk pool.

MR. WADE: Yeah.

MR. HOGAN: Okay. So what do you mean by that?

MR. WADE: It's eight-balling somebody, you know. You got to sink the eight ball so they cover it. If you hit their ball, you lose the game and their ball is next to the eight ball in the pocket. So they got you.

MR. HOGAN: Right from the start.

MR. WADE: And we've been – you know, I personally have been threatened with legislation before in the past from the government.

MR. HOGAN: Okay.

MR. WADE: They didn't follow through with it, but they –

MR. HOGAN: But this was a unique situation.

MR. WADE: Yeah, well – yeah, the other one was Cow Head, which was a government sort of project as well.

MR. HOGAN: Okay, so what was the issue there then?

MR. WADE: We were organizing the place because they were trying to do it non-union, and we were successful.

MR. HOGAN: Okay.

MR. WADE: And they then were fearful of what we would do because we had the contractors that were on that site organized. And they told us if we interfered with it, they would –

MR. HOGAN: Legislate.

MR. WADE: – make some legislation that we couldn't strike.

MR. HOGAN: Okay.

MR. WADE: And – but, you know, while it was a threat – and I think it was a few days before Christmas, at the time.

MR. HOGAN: Okay and –

MR. WADE: And it was the premier that was making the threat.

MR. HOGAN: Who was in charge of labour relations at Hibernia?

MR. WADE: Who was in charge –

MR. HOGAN: Yeah.

MR. WADE: – of labour relations at Hibernia? For the contractors, you mean?

MR. HOGAN: Yes.

MR. WADE: Well, there was two groups actually there: One for the base and one for topsides. And then they had Jim Kenny who was the overseer of both.

MR. HOGAN: Okay, so just in terms of comparing Hibernia labour relations to Muskrat Falls labour relations, do you have any insight or any opinions on that?

MR. WADE: Well, for me, it was a much simpler deal on Hibernia. But I wasn't in the same position; I was just looking after one local union.

MR. HOGAN: So it was simpler for you just because of your situation?

MR. WADE: Simpler for me –

MR. HOGAN: Okay.

MR. WADE: – because then I was only representing one union on that site and that's all I had to deal with, as opposed to all the unions and dealing with –

MR. HOGAN: In terms of how it was conducted on one project versus the other, are you able to provide an overarching comment on it to compare the two?

MR. WADE: I would have to say it was more professional on the – in Bull Arm on every project.

MR. HOGAN: Okay. And what do you mean by more professional?

MR. WADE: It was handled more professionally.

MR. HOGAN: Okay, in terms of what, though. Like, I just – if you could just elaborate a little bit for the Commissioner. What was done – I guess by professionally, you mean it was done better as well.

MR. WADE: Yes.

MR. HOGAN: So what was done better?

MR. WADE: The way that they carried on business.

MR. HOGAN: Okay.

I just want to talk about the timing and the – of the negotiations for the collective agreement. You told Mr. Learmonth that negotiations started on April 4, 2012. Is that correct?

MR. WADE: Yes.

MR. HOGAN: Okay, and do you know – I think you said that there was a vote that was –

MR. WADE: It was – there was a meeting, or meetings, prior to that.

MR. HOGAN: Okay, I'll get to that.

MR. WADE: One was just going over what the project was going to entail –

MR. HOGAN: So for –

MR. WADE: – and another, as Mr. Learmonth said, about the language of changes that were going to appear, not in detail, but alluding to –

MR. HOGAN: April 4 would have been the start of the formal negotiations?

MR. WADE: Yes.

MR. HOGAN: Okay, so that was going to be my question. There were informal discussions prior to April 4?

MR. WADE: Well, you could say informal but, I mean, they certainly had a purpose to them that –

MR. HOGAN: Okay.

MR. WADE: – to make us aware that this was going to be a different project.

MR. HOGAN: Yeah.

And when would you have been aware of that then? I call them informal negotiations; you said it was negotiations with a purpose, so when would that have started?

MR. WADE: Probably, a month before or something like that. I don't know the exact date.

MR. HOGAN: Okay.

And there is any certainty the month before that the project is going to go ahead, or any uncertainty? What are the discussions at that point in time?

MR. WADE: Well, I had been up in Labrador before for Muskrat Falls –

MR. HOGAN: Mm-hmm.

MR. WADE: – with Brian Tobin and, you know, that –

MR. HOGAN: It didn't happen.

MR. WADE: – didn't happen.

MR. HOGAN: Okay.

MR. WADE: So – well, I mean, if somebody says, well, we’re going building Muskrat Falls, you’re not going to say, well, that’s not going to happen, so you certainly get into it. I mean we negotiated an agreement for a second oil refinery here in the province – never happened.

MR. HOGAN: So it’s not –

MR. WADE: But that didn’t stop us from (inaudible) –

MR. HOGAN: In terms of the timing now –

MR. WADE: – and put that one in place, you know.

MR. HOGAN: In terms of the timing, we know this is not sanctioned until the end of 2012, but is that not unusual to do the negotiations prior to sanction? Is that normal or not normal?

MR. WADE: Well, you see, you’re talking about the special project orders sanction?

MR. HOGAN: Yes, yeah.

MR. WADE: Well –

MR. HOGAN: No, I’m talking about the sanction of the project, which was in December of 2012, when government announced that they’re going to go ahead with the project.

MR. WADE: It wasn’t unusual.

MR. HOGAN: Okay. Do you know if the vote, which was in December 2012, took place before or after the government announcement of sanction?

MR. WADE: The vote of 2012?

MR. HOGAN: You said to Mr. Learmonth you voted on in it in 2012 –

MR. WADE: Mmm.

MR. HOGAN: – but you said December 2012, but you didn’t give a date.

MR. WADE: I’m not sure. We – like, when we finished negotiations and, well, we had a vote to

see if the majority of the council was in favour of it prior to, say, the official signing.

MR. HOGAN: Which was in May.

MR. WADE: And – but I don’t know if there had been a sanction on the project at that –

MR. HOGAN: So, do you –

MR. WADE: – point.

MR. HOGAN: Do you know the date of the vote? We can probably find it out if you don’t know.

MR. LEARMONTH: December 21 (inaudible).

MR. WADE: I thought I –

MR. HOGAN: Yeah, that’s fine.

MR. WADE: I thought I gave you the –

MR. HOGAN: I thought you just said December. Mr. Learmonth tells me it’s December 21, 2012.

MR. WADE: Yeah.

MR. HOGAN: So just back to the timing that you were – you know, these discussions were ongoing in March and you said you’ve been involved before when the project hasn’t gone ahead. Were you aware, at that time, that there was – that this project was before the Public Utilities Board in March of 2012?

MR. WADE: Yes.

MR. HOGAN: Okay.

And are you aware that on March 31 of 2012 the Public Utilities Board said it didn’t have enough information to make a decision on whether this was the least-cost option?

MR. WADE: I mean I wasn’t following it all the time, but I mean what was the in the news, if it made news, I most likely saw it.

MR. HOGAN: Because you would’ve started formal negotiations four days after the Public

Utilities Board said that they can't make a decision on this project. So my question is: Was that ever an issue at the negotiating table saying, for example, why we're here talking about this when four days ago the Public Utilities Board gave an opinion on it?

MR. WADE: Well, we did negotiations on a full oil refinery before the Chinese said you're not getting the money.

MR. HOGAN: Okay.

MR. WADE: You know?

MR. HOGAN: But it could be –

MR. WADE: That's the way it is –

MR. HOGAN: Could be all for nothing.

MR. WADE: – in the industry.

MR. HOGAN: Okay.

MR. WADE: Yeah.

MR. HOGAN: The last question I have is you're aware that there's an EPCM contract with SNC, initially?

MR. WADE: The EPCM ...?

MR. HOGAN: Contract with SNC-Lavalin.

MR. WADE: Yes.

MR. HOGAN: And are you aware that that was – they moved away from that into what was called an integrated team model?

MR. WADE: Yeah, yeah.

MR. HOGAN: Okay. You look a little bit unsure there.

MR. WADE: Mm-hmm.

MR. HOGAN: I'm just – my question was: Did that have any effect in – did you see any effect of that change?

MR. WADE: SNC-Lavalin was the entity that knew that type of work more than anyone in the province.

MR. HOGAN: And – than anyone.

MR. WADE: And if I were doing it, would I put them aside at all? No.

MR. HOGAN: Okay.

MR. WADE: They are the ones in that type of work for Canada –

MR. HOGAN: Okay.

MR. WADE: – if not North America.

MR. HOGAN: Okay.

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

THE COMMISSIONER: Thank you.

Innu Nation is not present.

Astaldi Canada Inc.

MR. BURGESS: No questions, Commissioner.

THE COMMISSIONER: Former Nalcor Board Members?

MS. MORRIS: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Dwight Ball, Siobhan Coady – not here, I don't think.

ANDRITZ Canada.

Grid Solutions.

Barnard-Pennecon.

All right, Newfoundland and Labrador Building and Construction Trades Council/Resource Development Trades Council of Newfoundland and Labrador.

MR. LENEHAN: Good morning, Mr. Wade.

I wonder if we could put up P-03817.

THE COMMISSIONER: P-03817 –

MR. LENEHAN: That's a – that's the collective agreement revision 8, I think.

THE COMMISSIONER: Okay –

MR. LENEHAN: And just go to –

THE COMMISSIONER: – that's in tab 20.

MR. LENEHAN: – tab 20. So just go to the – I'm not sure if it's 272 or 273, Mr. Wade. It's the Memorandum of Understanding. I think you are –

MR. WADE: (Inaudible.)

MR. LENEHAN: Letter of understanding, it's at the –

MR. WADE: (Inaudible.)

THE COMMISSIONER: Wait now –

MR. LENEHAN: – end of the agreement.

THE COMMISSIONER: Wait now; we may not have the right number here. Can you, Mr. Lenehan, give me the number again of the exhibit?

MR. LENEHAN: I thought it was –

THE COMMISSIONER: P-03817?

MR. LENEHAN: – 03817, the collective agreement.

THE COMMISSIONER: Okay, it's tab 19. Sorry.

MR. LENEHAN: P-03817, okay.

THE COMMISSIONER: Okay.

MR. LENEHAN: I said there's a Memorandum of Understanding there regarding Article 7 of the collective agreement: Hiring priority. It's either 272 or 273.

THE COMMISSIONER: What page are you on now?

MR. LENEHAN: Either 272 or – you're in revision 8, so in the collective agreement it should be –

THE COMMISSIONER: 272 –

MR. LENEHAN: Do you know about the hiring priority, Mr. Wade?

MR. WADE: Page 274 or something like that.

MR. LENEHAN: I think it's 272 or 273 but ...

MR. LEARMONTH: (Inaudible.)

MR. WADE: Okay.

MR. LENEHAN: It's a Memorandum of Understanding that goes to the hiring articles dealing with Article 7.

MR. WADE: Letters of Understanding.

MR. LENEHAN: I apologize, in the –

MR. WADE: Well, it's not 272, it was –

MR. LENEHAN: In the agreement I work with it's on 273, which is the –

MR. WADE: 274 is aggregate on the quarries.

THE COMMISSIONER: Okay, maybe it's at page 278 –

MR. WADE: That would be 278.

MR. LENEHAN: You're at 278? Okay. This is the one dealing with – yeah, thank you. Mr. Learmonth had asked you some questions about Article 7 and you had mentioned that there was a Memorandum of Understanding that clarified the hiring priority.

MR. WADE: This is what I was referring to.

MR. LENEHAN: This is the document referring to it, right.

MR. WADE: Yes.

MR. LENEHAN: Just explain what the difference is between this or what the clarification is from Article 7?

MR. WADE: Well, the initial one was just general where it referred to qualified Labrador Innu – or I’m not sure if it was Innu or Aboriginal, but anyway. And then there were people from Labrador qualified and people from Newfoundland qualified, so that was clarified with the five that they have here and rotation.

I don’t really think that there was a lot of difference in relationship to, say, how the hiring took place, even though it was certainly better for contractors coming to the site to understand that – they could understand it better with this language than the previous one.

MR. LENEHAN: Right.

So it clarified that, for example, if a member of the RDTC, meaning a member of one of the 16 building trades who comprise the RDTC – if a resident of Labrador was already a member of that union, that individual would get priority over a non-union resident of Labrador.

MR. WADE: Yes.

MR. LENEHAN: And the same going further, when you get to the Island of Newfoundland.

MR. WADE: Yeah.

MR. LENEHAN: Yeah. Okay.

MR. WADE: Yeah, the RDTC was giving – given a little bit of recognition specifically in the hiring in this that they weren’t in the original one.

MR. LENEHAN: Right.

MR. WADE: But, of course, you also had to have somebody who was qualified to do the work –

MR. LENEHAN: Right.

MR. WADE: – apart from whether they were Labradorian, Innu –

MR. LENEHAN: Yeah.

MR. WADE: – or from Newfoundland and Labrador at all.

MR. LENEHAN: Okay.

One thing I want you to – perhaps you can confirm, Mr. Wade, is that while this agreement is between the Muskrat Falls Employers’ Association and the RDTC – so it’s an association of contractors – it’s my understanding, though, that at the negotiating table there were no contractors present, it was Nalcor that negotiated the collective agreement. Is that accurate?

MR. WADE: Yes.

MR. LENEHAN: Right.

And under the terms of the collective agreement, the employees at Nalcor, though, are exempted from coverage under the collective agreement. The collective agreement applies to the contractors’ employees, but not to Nalcor employees. Correct?

MR. WADE: Mm-hmm.

MR. LENEHAN: Right.

Now, in this particular collective agreement, I understand you would have been involved in negotiation of other agreements, including the Hebron project special project collective agreement, the Long Harbour special project collective agreement and, of course, other –

MR. WADE: Voisey’s Bay.

MR. LENEHAN: – Voisey’s Bay Project special project collective agreement, you were involved in all those.

MR. WADE: Yeah.

MR. LENEHAN: In this particular collective agreement, there is – I’ll just mention a couple of items, items like alternate work schedules. So you could work different rotations: 10 days on, four days off; 14 on, seven off and so on. There’s – these work schedules, were they common in the other collective agreements as well? Alternating work schedules.

MR. WADE: Hebron had specific work schedules.

MR. LENEHAN: Right.

MR. WADE: Hibernia did as well. I think Terra Nova had specific schedules also.

MR. LENEHAN: Right.

MR. WADE: Voisey's Bay, I think they did have –

MR. LENEHAN: Right. Yeah.

MR. WADE: – work schedules as well.

MR. LENEHAN: And the basic financial terms of the collective agreement and some of the – well, let's look at the wage package for example. One of the items – people reading this will see that all time worked done Saturday and Sunday, regardless of when you start your rotation, all time worked on Saturday and Sunday is paid at double time.

MR. WADE: Yes.

MR. LENEHAN: And on Fridays, it's paid – depending on your work schedule, you're paid at time and a half. So this type of language and these – if you will, it's – these wage packages that are there, were these common in the earlier projects, too –

MR. WADE: No.

MR. LENEHAN: – for example Long Harbour and Hebron?

MR. WADE: No.

MR. LENEHAN: What was the situation in Hebron?

MR. WADE: There was an agreement by both parties to do that. And one, of course, had put on a longer shift.

MR. LENEHAN: Right.

MR. WADE: Well, if you had a longer shift, you got Friday a bit different than, say, all double time –

MR. LENEHAN: Right.

MR. WADE: – you got time and half. And it was an incentive for either, say, the owner or contractors to put it in place and more hours of work for the workers.

MR. LENEHAN: When was that first implemented? In what project?

MR. WADE: I think it was implemented on Long Harbour, I think.

MR. LENEHAN: Right. I guess the point – when the Muskrat Falls Project terms were negotiated, that was no different than what had been negotiated at Long Harbour and Hebron in terms of the basic wage structure.

MR. WADE: A lot of what –

MR. LENEHAN: Yeah.

MR. WADE: – was in Muskrat was already implemented in other areas before. There wasn't much there that was never heard tell of before.

MR. LENEHAN: Right, okay.

I just want to ask you, just finally, Mr. Wade, about – you talked about discussion with the government – in particular the representative from the Labour Relations Agency, Ms. Scott – that you would go to these meetings with her and Mr. Clark – David Clark. Were there others at these meetings, at different times, besides the three of you?

MR. WADE: Generally not.

MR. LENEHAN: Right. And you mentioned that you would bring up issues but nothing would be acted on – as I think you said.

MR. WADE: No. Nothing would come out of it in relationship to fixing a problem that was reported.

MR. LENEHAN: Right. So –

MR. WADE: Several times in the past.

MR. LENEHAN: So, for example, you mentioned, I think, in 2014, you had non-union contractors coming on site. Now, what was the

(inaudible) – what was the problem with non-union contractors coming on site?

MR. WADE: Well, it wasn't that the fact that they were non-union contractors because the agreement, of course, states that all contractors coming on site abide by the project agreement. You don't have a bargaining relationship with them after they leave, but you do while they're on the project. And they abide by the project agreement, which states that your employees have a referral from one of the 16 unions to be on site working – in which case they came to site, which is okay, but they brought people who didn't have a referral from the local unions and were not members of the local unions.

MR. LENEHAN: Maybe I better phrase that – I should phrase that better than – the agreement requires that there be a referral from the local unions for all the unionized workers on site and all the workers on site are – or all the craft people on site – are to be unionized.

MR. WADE: Yeah, doing bargaining unit work.

MR. LENEHAN: Right. So, when you would raise this with Ms. Scott and – or did raise it with her about the fact that there were these contractors not using unionized personnel, what was the response from the government.

MR. WADE: What was the response?

MR. LENEHAN: Right.

MR. WADE: I think she may have wrote it down.

MR. LENEHAN: She may have written it down?

MR. WADE: Yeah.

MR. LENEHAN: Did anything ever happen, though, from the government or from Nalcor to correct the problem?

MR. WADE: No.

MR. LENEHAN: No. That's all I have. Thank you, Mr. Wade.

MR. WADE: Thank you.

THE COMMISSIONER: All right. Thank you.

Redirect, Mr. Learmonth.

MR. LEARMONTH: No redirect.

THE COMMISSIONER: Okay. Thank you.

All right. Thank you, Mr. Wade.

MR. WADE: You're welcome.

THE COMMISSIONER: Am I missing anybody? No. Thank you, Mr. Wade. You may step down.

All right. It's just about 10 after 12. Do you want to start the panel now? Or do you want to wait until – because by –

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: – the time we get them up here, it's probably going to take – we're going to probably take five minutes or so? It's up to you, whatever you want.

MR. LEARMONTH: I'd rather start now.

THE COMMISSIONER: All right. Well we'll go to 12:30, then. So let's take a break until we get the panel up here. And once they're up, we'll get them started.

CLERK: All rise.

Recess

CLERK: All rise

Please be seated.

THE COMMISSIONER: All right, Mr. Learmonth.

MR. LEARMONTH: Thank you.

The next two witnesses are Tom Walsh and Pat McCormick; they'll testify as a panel. Could Mr. McCormick be sworn and then Mr. Walsh be affirmed, please.

THE COMMISSIONER: All right, there's –

UNIDENTIFIED MALE SPEAKER: Do we stand up?

THE COMMISSIONER: Mr. McCormick, if you would stand up, please.

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

MR. MCCORMICK: I do.

CLERK: – so help you God?

MR. MCCORMICK: I do.

CLERK: Please state your name.

MR. MCCORMICK: Patrick McCormick.

CLERK: Thank you.

Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. WALSH: I do.

CLERK: Please state your name.

MR. WALSH: Tom Walsh.

CLERK: Thank you.

THE COMMISSIONER: All right. Mr. Learmonth.

MR. LEARMONTH: Okay.

So there's no structure to this, no specific structure. What I'll do is, I'll ask some questions to one of you individually, and rotate back and forth. Some questions I'll put that – in such a way that either of you can comment on it, you might want to give your take on it. So if someone – for example if Mr. McCormick gives an answer, and you want to supplement it with something, Mr. Walsh, and vice versa, you are free to do so.

Is that acceptable?

MR. LEARMONTH: Okay.

UNIDENTIFIED MALE SPEAKER: Yes.

MR. LEARMONTH: First, Mr. McCormick, can you state your present occupation?

MR. MCCORMICK: I am a business manager for the Hotel and Restaurant Workers Union local 779.

MR. LEARMONTH: And how long have you held that position?

MR. MCCORMICK: Since 1982.

MR. LEARMONTH: And between 2013 and 2017 what other duties did you take on?

MR. MCCORMICK: In 2013 I was elected as President of the RDTC and the Newfoundland and Labrador Building Trades Council.

MR. LEARMONTH: And you served in that position continuously until 2017?

MR. MCCORMICK: That is correct.

MR. LEARMONTH: Okay.

Mr. Walsh, what is your present occupation?

MR. WALSH: I'm a site representative for the Resource Development Trades Council. I am currently at the Muskrat Falls site.

MR. LEARMONTH: Yeah. And what are the duties of a site representative for the RDTC?

MR. WALSH: Well, you ensure that the collective agreement is being adhered to. You respond to any business manager's concerns that – of things that maybe going ahead, and you help out the stewards with any issues that they may have, with the exception of trade jurisdiction; it's an area that you stay clear of.

MR. LEARMONTH: Well, that goes to the Canadian plan, right.

MR. WALSH: That goes to the Canadian plan.

MR. LEARMONTH: Yeah

The – what, if any, role do you as site representative have in arbitrations?

MR. WALSH: I am usually the person who starts the grievance process after a steward or business manager has come to me and identified a problem, and we try to get it resolved. And then we move to the point where we file a grievance, we have step meetings, and then eventually wind up in arbitration sometimes, and sometimes I am a witness at these arbitrations.

MR. LEARMONTH: All right. Now I am going to give you some dates and I'll ask you to confirm as to whether these dates are correct as far as your work at the Muskrat Falls site. 'Cause I understand that you rotated back and forth between Hebron?

MR. WALSH: Yeah.

MR. LEARMONTH: Okay. So the dates I have are when you worked at Muskrat Falls: July 2014 to September 2015.

MR. WALSH: Correct.

MR. LEARMONTH: July 2016 to December 2016.

MR. WALSH: That's correct.

MR. LEARMONTH: And July 2017 to present.

MR. WALSH: That's correct.

MR. LEARMONTH: Yeah. And just tell us what your living accommodations were during these three different tenures at Muskrat Falls.

MR. WALSH: The very first time at Muskrat Falls, I actually stayed in the camp for my first turnaround, and I was on a two-weeks-on, one-week-off turnaround at that point in time. So the very first two weeks of being a site representative at Muskrat Falls I spent in the camp.

MR. LEARMONTH: After that?

MR. WALSH: After that two-week period, I moved into an apartment in Goose Bay. And when I came back the second time, I moved into a different apartment. And when I came back the third time, I moved into a different apartment.

MR. LEARMONTH: Okay. So you – right now, you drive back and forth every day to the site –

MR. WALSH: I do.

MR. LEARMONTH: – every working day. Okay.

Now, Mr. McCormick, I understand that you went to work on the Upper Churchill Project in 1967. Is that right?

MR. MCCORMICK: Yup. 1967.

MR. LEARMONTH: Yeah.

And what was your position, then? What work did you do?

MR. MCCORMICK: I worked for a company, J. J. Hussey. We were building the permanent camp – the main camp?

MR. LEARMONTH: Yes. And what were your duties?

MR. MCCORMICK: My position – I was general foreman.

MR. LEARMONTH: A general foreman. So a general foreman is – supervises the foremen?

MR. MCCORMICK: Supervise the foremen and the workforce.

MR. LEARMONTH: And the workforce. Okay.

And do you acknowledge that the Upper Churchill Agreement was the first one in the Province of Newfoundland and Labrador?

MR. MCCORMICK: Best of my knowledge, yes.

MR. LEARMONTH: Yeah.

And do you know whether there was one collective agreement or more than one collective agreement for the Upper Churchill Project?

MR. MCCORMICK: There was one collective agreement that covered all aspects of the project.

MR. LEARMONTH: Okay.

So you – when did you first go to work, in what year? Was this your first – it wasn't your first position, I guess, because you were a general foreman.

When did you join the workforce – what year?

MR. MCCORMICK: I joined the workforce '63.

MR. LEARMONTH: In '63. And you worked your way up so that you were general foreman on this project.

MR. MCCORMICK: I started off as a sheet metal worker.

MR. LEARMONTH: Okay. So what type of work were you the general foreman of? Was it concrete, or what?

MR. MCCORMICK: When I was there with J. J. Hussey, we were doing the metal siding, putting up all the buildings. Metal roofing, metal siding.

MR. LEARMONTH: Okay.

Now, in terms of your experience working in the construction industry, what is the benefit of having good supervisors and general foremen, as opposed to a situation where there's a lack of experience in those positions. Can you give us some general comments on that, based on your actual experience?

MR. MCCORMICK: Well, you got a general foreman that's responsible, someone has to take responsibility. And if you got good foremen working underneath the general foreman, it generates down through the workforce, it gives you good productivity. And as the general foreman, you're expected to address any problems or any issues that are on the work site.

MR. LEARMONTH: Okay. Now what was your experience at the Upper Churchill site, as far as accommodations and food was concerned?

MR. MCCORMICK: Accommodations on the Upper Churchill, I guess it's fair to say they

were second to none. Accommodations and the food.

MR. LEARMONTH: So there were no complaints or very few complaints in that regard?

MR. MCCORMICK: No. Very, very few complaints about the food or the accommodations.

MR. LEARMONTH: All right.

MR. MCCORMICK: Because one of the things that was expected of the catering contractor was to provide the best meals and the best accommodations possible.

MR. LEARMONTH: Okay. And, in your view, was that accomplished?

MR. MCCORMICK: Yes. Very much so.

MR. LEARMONTH: Okay. And what is the benefit to the labour force, in general, if there are good accommodations and good food as opposed to not so good?

MR. MCCORMICK: Well, the rule of thumb for people working up north years ago was that it was a – an essential for – to have good food and good accommodations for the workers. And it gave you a workforce that was very contented and happy to stay there.

MR. LEARMONTH: Okay.

MR. MCCORMICK: Keeping in mind that on the Upper Churchill, you went in for three months and you came out for two weeks after three months. So if the accommodations weren't great, there wouldn't be a whole lot of people who would want to stay there for three months.

MR. LEARMONTH: Okay. Now, did you – when you were a president of the RDTC – and I think at the same time, you were president of the HRW? Is that correct?

MR. MCCORMICK: Yes.

MR. LEARMONTH: Did you have occasion, say, between 2013 and 2017 or even after that, to visit the Muskrat Falls site?

MR. MCCORMICK: Yes. Numerous occasions.

MR. LEARMONTH: How often?

MR. MCCORMICK: Three, four times, five times a month.

MR. LEARMONTH: Okay. And that would be sometimes in your capacity as president of RDTC, and sometimes in your capacity as president of the –

MR. MCCORMICK: Mostly –

MR. LEARMONTH: – HRW?

MR. MCCORMICK: – in my capacity as the business manager of HRW 779.

MR. LEARMONTH: Okay.

MR. MCCORMICK: But while I'd be on site, I would talk to the individual contractors whoever –

MR. LEARMONTH: Okay. Now you've described your recollection of the food and accommodations of the Upper Churchill site. I'd like you to give your take on those same topics with respect to the Muskrat Falls site – based on your personal experience.

MR. MCCORMICK: Catering contractor at Muskrat Falls was Labrador Catering. Labrador Catering always had a reputation of providing good food, quality and quantity, to the workers. The only problem in Muskrat Falls that I was aware of, there was some questions about the packaged lunches that would go out.

Regards to the accommodations, accommodations did not come any way near to what the Upper Churchill was, which was pretty well 50 years prior to.

MR. LEARMONTH: Okay.

MR. MCCORMICK: At the Upper Churchill, rooms were cleaned every day, sheets were changed twice a week, and when you checked out after you completed your three months, the rooms had to be completely gutted and cleaned for the new person coming into that room.

MR. LEARMONTH: Okay.

MR. MCCORMICK: And Muskrat Falls workers, most times, were lucky if they got their room cleaned once in two weeks.

MR. LEARMONTH: Okay. Did this cause any complaints?

MR. MCCORMICK: A lot of complaints.

MR. LEARMONTH: Okay.

MR. MCCORMICK: If anybody wanted to review the shop stewards' meetings reports, pretty well every shop steward meeting – there was complaints about the cleanliness of the camp. One of the issues that was brought up on many occasions was – at the Muskrat Falls, right, there's a large amount of sands. So when the workers would go into the bunkhouses, four sets of stairs, there'd be a buildup with sand on the stairs. And they had the – some of the stewards had major concerns that somebody was gonna slip and fall on those stairs and get hurt.

And it was a continuous something but brought up, was never ever addressed.

MR. LEARMONTH: Okay.

MR. MCCORMICK: The only time that I recall where the bunkhouses would be immaculate is if they became aware that Stan Marshall was coming in for a visit and all the workers would be taking at a – the different areas – concentrated on cleaning in that area. So then the areas where the workers were taking on it for that period of time, there was no cleaning done.

MR. LEARMONTH: Okay.

Now – okay, you've talked about the problem presented by sand and it being on the stairs – which would be a safety issue also, would it not? That would be a safety issue?

MR. MCCORMICK: Yes.

MR. LEARMONTH: Okay. But what about the actual rooms? You mentioned that –

MR. MCCORMICK: The actual rooms – we had some of our people come in there and the ladies that went in there – 'cause 50 per cent or more of our membership are made up – female. And some of the ladies used to bring in their own cleaning supplies to clean their showers and clean their rooms.

MR. LEARMONTH: Why?

MR. MCCORMICK: Because if it wasn't – it's only cleaned once in two weeks. And, in particular, for the construction workers like labourers who are working at concrete all day, they come back to the rooms so – I don't have to explain how – when you're working on construction, at concrete work or rebar work or carpenter work, whatever, you're pretty messy. And when it's not clean, I'll tell you, there was complaints about there's scum being in the showers.

MR. LEARMONTH: But it's –

MR. MCCORMICK: And when it was not cleaned for five or six days, you know what happens?

MR. LEARMONTH: Yeah. So people working heavy construction, would they need to clean up pretty well, like, every night? Would that be right?

MR. MCCORMICK: Yes.

MR. LEARMONTH: Yeah. And what do you mean about scum in the showers? Who told you that?

MR. MCCORMICK: The workers complained about it –

MR. LEARMONTH: Oh.

MR. MCCORMICK: – that the scum build up in the showers.

MR. LEARMONTH: Okay. Now, you're giving this general – did you ever observe this yourself?

MR. MCCORMICK: Yes, I went in, checked some of the rooms.

MR. LEARMONTH: So, you're not basing this on what other people told you, this –

MR. MCCORMICK: The rooms were no comparison to – we just had completed a job in Labrador City, and the camp in Labrador City, you could go in the rooms; you could eat your supper off of the floor. In Muskrat Falls, you were taking a chance at taking your boots off.

MR. LEARMONTH: Okay. Now, was your observation – were your observations on this topic confined to, you know, a time period. In other words, from 2014 to '15 or – in other words, was there any change from the beginning?

MR. MCCORMICK: The camp had been an issue from day one. Right now, they're starting to reduce the numbers there, so it's a little better now. But at its peak, it was terrible.

MR. LEARMONTH: Yeah. And did you – so when you would go to site, would you from time to time hear complaints about this, or was it something that was, you know, isolated or repetitive, the complaints about this?

MR. MCCORMICK: Well, I went to the shop steward meetings, it was a continuous complaint from them, as well as the workers – the ladies that were working there cleaning the rooms were always complaining that they were overworked, they just had too much of a load to have and their workload was too demanding and they wouldn't have hired more staff.

MR. LEARMONTH: Okay.

Now, Mr. Walsh, I'm going to ask you to give your – give some evidence on the same topic: the food and the accommodations and any personal observations you made, any complaints. Just give us a general statement of the same topic that Mr. McCormick has just given evidence on.

MR. WALSH: Mr. McCormick only got the tip of the iceberg because he'd come in, and up until about a year, year and half ago, he was probably only the business manager there, to my knowledge, that had ever attended a shop stewards' meeting. And so the stewards would

tell him about the camp in addition to – I was delivering the same message week in, week out.

One of the problems that existed is – I don't think and I don't know, now even, if anyone knows the answer 'cause that – during my three different times there, I was told that your room would be cleaned every second day. That never happened, really. Then I was told it would be every third day and then I was told twice a week, but no one ever showed me any documentation that showed exactly when your rooms would be cleaned.

And week after week, stewards would send the pictures of a room that was supposed to be cleaned, but they'd take the towel that they were given, and dampen it and wipe it across the floor. And I probably got some pictures in my camera – in my phone – of a room that was allegedly just cleaned and, you know, the towel is run over – that towel is run over and the towel was pretty much black. And so, originally, a white towel, but it's black by the time someone just runs it across the floor.

And, unfortunately, there's a pretty simple fix had they hired a few extra cleaners, which they wouldn't do, and I still don't know why. But right from the very first day that I got here, the camp issue was a – the cleanliness of the rooms and how often they were was an issue. And my very first time, as I previously stated, I was in the camp for two weeks but the bed wasn't made up 'til, I believe, the 10th day or the 11th day or something like that. So, you know, it's – and, you know – and I got lots of pictures and information from the stewards. So, everything Pat has said so far is probably understated.

MR. LEARMONTH: Understated?

MR. WALSH: Yeah.

MR. LEARMONTH: Yeah.

Okay, so you went there in July 2014 – you went – first went to work there. Did you notice any change in the complaints that you received? In other words, was there any improvement that you observed based on your own observations and the complaints you received?

MR. WALSH: No, it was continuous. And one of the – at one point, there was a member there who got some kind of a skin rash or something, and it was – everyone believed he got it from the camp, and it was alleged it was similar to something you'd get in a prison camp – that type of a lesion on your skin (inaudible). And, you know, Arlene Dunn was the executive director at the time, and, you know, she brought it forward and – but, you know, like, it was never, ever fixed from now until even yesterday, I guess.

MR. LEARMONTH: So, would you get complaints –

MR. WALSH: (Inaudible.)

MR. LEARMONTH: – on a regular basis about the state of the accommodations?

MR. WALSH: Always. And at our last stewards' meeting – we hadn't had a camp committee meeting in over a year –

MR. LEARMONTH: When was your last one?

MR. WALSH: Our last camp committee meeting was February in which we brought –

MR. LEARMONTH: February of 2019?

MR. WALSH: No, it would be 2018.

MR. LEARMONTH: Okay.

MR. WALSH: That was the last camp committee meeting. And when I asked the – and I brought the issue forward about having the camp committee meeting and the – I brought this up at the last stewards' meeting there about a little over – about – say, two weeks ago, and the stewards said: Look, don't waste your time. We don't – if they schedule a camp committee meeting, forget about it, we're not going. So they – everyone is resolved to the situation: it is what it is; it's never ever going to be fixed and they're going to suffer through there five or six or seven days or longer, but – until the end of the project.

MR. LEARMONTH: Okay. So you haven't observed any or become aware of any improvement in the situation?

MR. WALSH: When the numbers go down there is always an improvement, 'cause you've got the same people that got more time to do some work and there is less people trekking into an area.

And right now what they are doing is the dorms are spread out from – over a larger area and now they're confining the area where people are sleeping to the dorms closest to the cafeteria. So there's – all those areas that have to be cleaned are not being trekked over, so there's more time to get stuff done. So when the numbers go down it's always a little bit – less complaints.

MR. LEARMONTH: Okay.

Speaking of numbers: How many of your members are working on site now?

MR. WALSH: We're around a thousand, but at any point in time one – because most – the majority of people are on a 14-7 shift; about one-third of those people are away from the site, and then you got some people that are coming back and forth from town. So I think the numbers in the camp are around the 600 mark, there right about now.

MR. LEARMONTH: Subject to a downward adjustment of 30 per cent because of the –

MR. WALSH: No, no. Say 600 at any point in time so –

MR. LEARMONTH: Oh, at any point, okay.

MR. WALSH: – you know –

MR. LEARMONTH: Oh, you've taken that into account.

MR. WALSH: – roughly around that number.

MR. LEARMONTH: And what was the peak, and when was the peak?

MR. WALSH: The peak at one point was 5,000 in total because we had three camps that were in usage at that point in time. We had the original old camp, it was called, and I think that had a maximum of about 400 people, and then we had the new camp which has a maximum of 1,500 people. These are all approximate numbers. And

then I think the Long Harbour camp, which we brought in about three years ago when we were at the peak of 5,000 people, that got about 700 or 800 people.

But even at that point in time we were – they implemented a living-out allowance for those people who wanted to or were able to move into the city, into the town of Goose Bay. As well as they actually changed schedules so that people – ordinarily you'd stay until the end of your shift and then you'd catch your flight out the next morning in some cases. But because of the demand for rooms, they allowed people to finish up earlier in the afternoon and catch that flight out the very next – that same evening, so the room would be available for someone coming in that night on a flight. So, you know, like, they did a few things like that.

Like, they installed bunk beds, and they gave people who lived in a – who shared a bunk bed a living-out allowance – a partial living-out allowance to – for the discomfort, you know, for – because they couldn't force you into a bunk bed. But if you said: Oh, my brother is here. He will – you know, we shared bunk beds when we were kids; we'll share a bunk bed now. They would both receive – I guess it was probably \$70, \$80 a day for the inconvenience.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay.

THE COMMISSIONER: I think this might be a good place to break, then, for lunch.

MR. LEARMONTH: Okay.

THE COMMISSIONER: So we'll take our break and come back at 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now open.

Please be seated.

THE COMMISSIONER: Mr. Ralph.

MR. RALPH: Yes.

Good afternoon, Commissioner.

I understand you raised the issue with regard to Ms. Mullaley's and Mr. Bown's notebooks.

THE COMMISSIONER: Yeah.

MR. RALPH: And we have not been able to find either of these individuals' notebooks despite exhaustive search and, in fact, there is no record of what happened with these items.

I understand that Mr. Bown was deputy minister of Natural Resources and went to Cabinet Secretariat and left his books there. They've done an exhaustive search of that office, can't find it. I understand Ms. Mullaley left the office of clerk and handed her books over to an employee of Cabinet Secretariat. That person has no recollection of receiving those notebooks and it can't be found, despite looking everywhere that they might be in Cabinet Secretariat and throughout government.

So we've spoken to current and former employees of both Natural Resources and Cabinet Secretariat and there is no record anywhere of what happened. Now – and these are the types of documents that are often considered transitory and if that's the case, they're destroyed, but we don't have a record that that's the situation here.

So that's the update that we have for you currently and I think now that the searches are over and we've given up, sort of, hope of falling – finding these documents.

THE COMMISSIONER: So what about the – somebody had mentioned to me that there was a thought that they could be in some vault in Confederation Building. Like –

MR. RALPH: They've been –

THE COMMISSIONER: – it sounds to –

MR. RALPH: – every place where Cabinet Secretariat puts items when they're no longer being used has been searched, including the vaults.

THE COMMISSIONER: Okay, Mr. Bown and – see, you know, I'm not doubting what you're saying, but I'm just saying to you that Mr. Bown and Ms. Mullaley, I understand, will be saying to me that their notes should be there and they have no reason to believe that they were destroyed or they were removed by themselves. And so, obviously, it's a – these notes are extremely important for me –

MR. RALPH: We understand that and there's been a tremendous effort in trying to find these. There's several times different employees have gone throughout the building, including the deputy clerk has followed up on this and searched quite strenuously throughout the building to try and find these; gone through boxes where you wouldn't expect to find these things just to make sure that they're not there.

THE COMMISSIONER: Mr. Learmonth, anything you want to add?

MR. LEARMONTH: Well, it's –

THE COMMISSIONER: Just turn off your mic, Mr. Ralph, please.

MR. LEARMONTH: Except to say that it's very surprising that important records like that would not be preserved. And Mr. Bown and Ms. Mullaley obviously had an expectation that they would be preserved; otherwise, they wouldn't have turned them in.

So I don't doubt the accuracy of what Mr. Ralph is giving here or anyone else, but I just find it very – disturbing might be a little bit too strong, but it's remarkable that the notes that were kept by these two senior civil servants and are – which are very relevant to the Terms of Reference, cannot be found. That's my only comment.

And I take Mr. Ralph at his word when he says that he's satisfied that the search has been diligent and comprehensive and that there – at this point there's, I suppose, very little hope that we'll ever find them.

MR. RALPH: I think there's no hope.

THE COMMISSIONER: Just (inaudible).

MR. LEARMONTH: Yeah. That's what I have to say about it.

CLERK: Turn on your mic.

MR. RALPH: So, Commissioner, you know, I think that what Mr. Learmonth is saying is certainly fair. And, you know, I had – you know, I've looked at the legislation, I've looked at the policy and I don't think it's appropriate now to do a deep dive into that, but I'm anticipating that as part of Phase 3, perhaps, that we – I would have an opportunity at that point, perhaps, even to call someone from Information Management and discuss with the Commission exactly how records are kept.

THE COMMISSIONER: So I'm already way ahead of you on that one. That will be part of Phase 3.

But, you know, I will just say this: It's surprising to me that with the Inquiry called that were – you know, and, like, things that would have been related to this, you know, related to this Inquiry, documents – you know, Mr. Bown was, you know, well known as someone highly involved from the government perspective in this. He didn't leave the department – you know, or didn't leave for his present post now, and I know he was in Cabinet Secretariat, but he was there at the time the Inquiry was called – or it wasn't with Cabinet Secretariat, it was with the premier's office or in that special position, I forget what it was called.

And then we have Ms. Mullaley who would have been, you know, the top civil servant in the province and no notes. I mean it is surprising to me that that is the situation. And just so that I am – and, again, I'm not questioning what you're telling me, but just so that I am satisfied and that I do what I think I need to do in honouring my role as a Commissioner here, I want government to provide me with a memorandum of what it actually has done to search for these documents so that it can be had by the Inquiry. It will be made an exhibit so that the public will know what efforts have been made to locate these documents.

And, as I say, they are extremely important for obvious reasons. And how that will impact the manner in which I can decide this, is something

that I really can't speak to right at the moment, but we will see. But it is that significant that I think it could well basically be a factor in what I can write about and what I can conclude about.

So I would like somebody in government to provide a detailed explanation of the effort made to locate these documents since day one and – both for Mr. Bown and for Ms. Mullaley – and provide that to us. How long do you think it will take to get that?

MR. RALPH: Actually, this morning I was working on that.

THE COMMISSIONER: Okay.

MR. RALPH: And we got the message from Mr. Leamon that you didn't want a memorandum, you wanted, I guess, an answer. And so –

THE COMMISSIONER: Well, I want an answer because we have Ms. Mullaley coming up.

MR. RALPH: Yeah. No, fair enough, fair enough.

So, you know, we're pretty far down that road. I would think, sort of, within a couple of days we can have that for you.

THE COMMISSIONER: Okay.

And you provide it to Mr. Learmonth and then –

MR. RALPH: Yes, as soon as we get it finished.

THE COMMISSIONER: – he can make the Commission aware of the fact that it's filed and if the public want to access it, they'll have the opportunity to do so.

MR. RALPH: Yes.

THE COMMISSIONER: All right.

Thank you, Mr. Ralph.

MR. RALPH: Thank you.

THE COMMISSIONER: All right, pardon me, gentlemen. I'm sorry that we diverged a little bit, but when you're ready, Mr. Learmonth.

MR. LEARMONTH: Okay.

All right, I want to ask both of you to give your personal observations as to the level of progress which you observed by Astaldi when you first went on the site and as you – as time progressed whether there was any change in your observations.

Mr. McCormick, can you answer that first?

MR. MCCORMICK: Well, my first introduction, when Astaldi went on site, they were like somebody lost in the wilderness. They had no idea what they were getting into. At that time, there was a lot of complaints from the workers, no paycheques.

MR. LEARMONTH: When was this, by the way?

MR. MCCORMICK: It's right at the beginning of Astaldi going on the site.

MR. LEARMONTH: All right.

MR. MCCORMICK: They had no payroll set up. They had nothing. Workers were there two or three weeks waiting to get a cheque and no cheques and nobody seemed to know what they were doing.

There was a problem there with the language gap. We could talk to the supervisors but a lot of them we had difficulty communicating with. They were supposed to have brought in a person that was supposed to be very proficient in labour relations, and in our discussions with him, he didn't seem to have any idea what was going on relative to construction. And when we checked and found out what his background was, he had done labour relations for air Italia or Italia air or whatever it is.

MR. LEARMONTH: Alitalia?

MR. MCCORMICK: Yeah.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: But he had zero knowledge of construction – no knowledge whatsoever. Had no idea about – I don't even think he knew how the grievance and arbitration process worked.

MR. LEARMONTH: And you discussed matters with him?

MR. MCCORMICK: Yes.

MR. LEARMONTH: Yeah.

So what was your reaction to finding that out?

MR. MCCORMICK: Well, my reaction when it happened, it made – recall Shawn Skinner, when he had made the statement to the evening Telegram about bringing in a European contractor not familiar with working in Canada's Far North, not familiar with doing work in our region and he – his position at that time, he said it had never had worked out well when they brought in contractors of this nature.

MR. LEARMONTH: Mmm.

MR. MCCORMICK: And we had seen that before at the Hibernia project. When the Hibernia project started they had brought in a company from France, DORIS, and they were at a loss too. The project was going nowhere. I guess ExxonMobil, in their wisdom, took DORIS out of it and brought in the Norwegian contractors and everything changed overnight.

So that's two times now that I've had to deal with contractors from Europe that had no idea what they were getting into when they came.

MR. LEARMONTH: Okay.

Now you said that – words to the effect that – I think you used the word, wilderness, that it appeared to be in the wilderness or whatever, Astaldi, from your observation.

MR. MCCORMICK: Yes.

MR. LEARMONTH: Can you just expand on that a little bit, please?

MR. MCCORMICK: And the management people there had their – they had a guy hired to

do the concrete – that was responsible for the concrete on the project and he had very limited background of – he had no background relative to doing the type of work that was going to be required for that project.

MR. LEARMONTH: Was he a supervisor, construction supervisor?

MR. MCCORMICK: Supervisor, yes. Responsible –

MR. LEARMONTH: So –

MR. MCCORMICK: Responsible for the concrete and to – from what we could find out when we checked on it, he had been in Goose Bay and he had done concrete basements for residential –

MR. LEARMONTH: Mmm.

MR. MCCORMICK: – and he probably had done this in high school or something, but no idea of what he was confronted with for that project.

MR. LEARMONTH: And what does – what effect does having a supervisor, such as this person, have on the – on productivity based on your experience?

MR. MCCORMICK: If you got somebody in charge and they don't know what they're doing, I guess then that just goes on down the line, doesn't it?

MR. LEARMONTH: Mmm.

MR. MCCORMICK: If you don't have the right direction, what direction do you go?

MR. LEARMONTH: All right.

MR. MCCORMICK: Now, they did bring in people after that were quite capable of doing the work.

MR. LEARMONTH: Yeah.

We heard some evidence that – I think it was from Mr. Mulcahy that he – his observation was that there were a lot of people – labourers on the site, too many to do the task, that they were just

standing around. There was too many to do the task that they were assigned. Did you make any similar observations?

MR. MCCORMICK: John Mulcahy, I would say, knew more about hydro projects than all of the other people put down there together. McNamara Construction had a reputation of being the top hydro project contractor in this province. They also went into Ontario up around the Sault Ste. Marie area, bid against the local contractors up there and, at least on three occasions, picked up major hydro projects. John Mulcahy was very well versed in what should and should not be done relative to a project.

MR. LEARMONTH: Yeah.

So you would accept his word on such an assessment?

MR. MCCORMICK: When I was on site I spoke to John Mulcahy several times. My first time speaking to him was he called me into his office and shut the door and he asked me how well did I know (inaudible) and how did – well did I know the people on the site, and we had a discussion on that.

It was easy to see that they didn't have the right supervision. When you talk about people standing around – you were asking me this morning about a general foreman. If you got the right people in place, people don't stand around. People stand around if they're not given the right direction and they got no leadership.

MR. LEARMONTH: Okay.

Now, I'll ask you the same question: Can you give your observations? I realize you didn't arrive until July 2014, but can you –

MR. WALSH: That was speaking – I wrote a couple of notes. One of the problems, as Pat alluded to, on the payroll was I think Astaldi originally managed their own payroll, but at the time that I arrived, probably July of 2014, they were ADP payroll, I think they're a fairly large payroll company. They may be North American, they may Canadian but, anyway, they were just taking over Astaldi's payroll.

And there were a lot of initial growing pains with ADP and Astaldi, because I had basically just arrived in July and the steward spent days upon days in the payroll office trying to get everything straightened up. But after that three- or four-month time period, there were – there weren't too many payroll issues after that, once they got the growing pains done.

But I would definitely conclude that Astaldi was certainly out of place. They worked in a lot of different countries, including – one of the stewards said that one of their last projects was in Chile and I said, well, they'll know what chilly is in January in Goose Bay.

So, after that, what happened is they were – they had warehouse people that were actually using microfiche. Now, microfiche in some of these other countries may have been state of the art, but microfiche in Goose Bay in 2014 is very old technology. And that's what they're using to keep track of material in the warehouse, according to the stewards that were there. And they seem to –

MR. LEARMONTH: You said microfiche?

MR. WALSH: Microfiche, yeah, that –

MR. LEARMONTH: What is that? Some people may not even know what that is.

MR. WALSH: It's like a, I think, a plastic laminate thing that you put in, like, almost like a camera lens or something like that and you got to move it around and stuff like that. It's a very – you know, I used it 30 years ago when I was, you know – everything is computerized now. And that's what they were using initially and they may have been using it to the very end. We never discussed it much after that. But it's on a film of plastic and that's how you keep track of things. So that's how they were – usually initially in the warehouse.

And some of the people that Astaldi had seems like they were over managed. Like, they probably had their core employees and the core employees that came over, they never brought any special skills or anything to the project. And as per the IBA where qualified Innu and qualified Labradorians and qualified Newfoundlanders are supposed to be the first

people hired, I – my feeling is that these people had no right to be on this project because they didn't bring any super specialized skills. You got a warehouse manager coming from Italy with microfiche and you mean to tell me that you can't find someone in Newfoundland that can do a better job than that. And I think that irritated me a little bit.

And going back to what Pat was saying about a chain of command, you've got your GF giving direction to your foreman, giving direction to your men, but if no one knows what to do, the men are going to stand around. They don't stand around because there's nothing to do, but once their foreman tells them we want you do this, that and the other thing, here are the tools you need to do it, it gets done.

Because as is pointed out by Dave Wade, Newfoundlanders are very productive people on these major projects and any construction job in the world. And they were mismanaged and by – initially by Astaldi, because they've never been in North America before and their building trades type of RDTC agreement was probably very unique to them. And they were not ready to proceed with the work that was required of them. That's my take on it.

MR. LEARMONTH: Did you see any improvement over time?

MR. WALSH: Yes. Don Delarosbil, he was originally a Kiewit guy. He had a lot of building trades-type construction experience and he brought a lot of changes to them and they see this start to take off.

MR. LEARMONTH: That was in May 2015 that he arrived.

MR. WALSH: Yeah.

MR. LEARMONTH: Yeah.

MR. WALSH: They seemed to start to get on track a bit after Delarosbil arrived.

MR. LEARMONTH: Did you notice any change, Mr. McCormick, after Don Delarosbil arrived?

MR. MCCORMICK: Yes.

MR. LEARMONTH: What change did you note?

MR. MCCORMICK: Well, when I was in Goose Bay, he asked me out to dinner, him and Ed Byrne – had worked with him then as labour relations. And he discussed with me the problems that Astaldi had faced and he was hoping to make a difference to the job and he told me what his ideas were.

One of the things he told me was that when he came on site, Dave Clark tried to interfere and tell him what he should and should not do. And he made it very clear to me that he let Dave Clark know that he was going to be running the job for Astaldi, not somebody in labour relations.

MR. LEARMONTH: This is David Clark, the representative of Nalcor?

MR. MCCORMICK: Yes.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: And he's telling me that Ed Byrne would be the person that would be doing the labour relations for Astaldi and to deal directly with him. There was also a number of local people that had gone to work with Astaldi, people who had previously worked with McNamara construction or with PKS. And it was Bill Knox; Ed Knox, who will appear here as a witness; and a fellow, Calvin Wells, who was responsible for the concrete pouring; and a guy from Bay d'Espoir who had worked with PKS and had previously worked at Hebron, Roy Collier. Those people going on that site made a big difference.

MR. LEARMONTH: Yeah.

So the person you said was skilled in concrete production, was he a general foreman? Mr. Wells, was it?

MR. MCCORMICK: Calvin Wells would – he probably was a general foreman or a supervisor over the concrete.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: But I assure you when those fellows went on the site there was no one standing around because they didn't have the appropriate supervision, because when those fellows showed up they had top-of-the-line supervision.

MR. LEARMONTH: Okay.

So you're saying that from your observation that the addition of Mr. Knox, and Mr. Collier, and Mr. Wells and the other gentleman from Bay d'Espoir, had a big impact on the production. Is that right?

MR. MCCORMICK: Well, they were better organized. They were used to the workforce. They knew how to deal with the workforce and how they can get the most out of their workforce because they had worked with most of the people working there on other projects.

MR. LEARMONTH: Okay.

Now, at your interview you gave some evidence about the comments that were made to you about the work productivity for Newfoundlanders and Labradorians on other sites that you worked on. Can you give us some evidence about your recollection of those discussions, please?

MR. MCCORMICK: Productivity by Newfoundland workers, in my opinion, was never an issue. I worked on the Upper Churchill and a lot of the contractors there at that time were from Quebec.

MR. LEARMONTH: Mmm.

MR. MCCORMICK: Newfoundland workers' productivity was never questioned.

At Hibernia, as I said about DORIS, productivity was rather low when DORIS was on the project, but when DORIS left and Norwegian contractors came in, and they hired a lot of our local people as general foremen, productivity changed overnight. When the project was finished, the guy responsible for the concrete, a Norwegian by the name of Atle Haug, he asked me to dinner up at the Battery Hotel.

In the course of the dinner he told me when they came over here they were led to believe that they were going to be dealing with a bunch of fishermen, having to show them how to pour concrete and do whatever. And he told me it was the furthest thing from the truth they had ever heard. He said that the workers at Hibernia for the concrete and the rebar and everything associated with the GBS, he said productivity and the quality of the work, he said, was second to none. He said that he won't have any problem taking the workforce he had at Hibernia and bringing it anywhere to work with – against Norwegian crews or Portuguese crews or Italians, who are supposed to be the best according to some people. He said Newfoundland workforce at Hibernia was second to none.

MR. LEARMONTH: Okay.

MR. MCCORMICK: And when Hibernia was finished, my understanding is that then-Premier Clyde Wells asked to have an audit done of the project relative to safety and productivity. The conclusion of that audit was that Hibernia was one of the best projects that was ever done, a project of that size, that magnitude.

And that report, I think, went on a shelf somewhere here at the department of labour and gathered dust. There was never ever – it never made the front pages. The only time we see Newfoundland workers getting the front page was something goes wrong and you'll hear stupid comments like non-productive, not qualified and that's far from the truth.

And it was no different with Hebron. Astor Nyborg was the guy that was responsible for the Hebron GBS. He was on that job on the regular site; he was the top man out there. And he didn't sit up on the hill in his office and gaze down at the workers; he walked that job day after day. He spent 16, 18 hours a day out there. Safety was his number one priority, productivity was number two. And when that project was finished, they – the Hebron Employers' Association invited the RDTC to go up to The Rooms.

And there that night, Astor Nyborg made it very clear that the safety and the productivity at Hebron was second to none. He's said it's a

world-class job and he was very proud of the Newfoundland workforce. And to this day he promotes Newfoundland workers and he promotes Newfoundland as a place to do work. He has gone to Statoil and recommended to Statoil that they build concrete floating platforms and build them here in Newfoundland out at the Bull Arm site, and that's on record.

MR. LEARMONTH: Okay.

Now, you said Astor Nyborg was the project manager for –

MR. MCCORMICK: Astor Nyborg was the fellow that was in charge. He was the top dog.

MR. LEARMONTH: Yeah.

And you said he spent a lot of time on the site?

MR. MCCORMICK: Yes.

MR. LEARMONTH: As opposed to in his office?

MR. MCCORMICK: Yes and he didn't go on the site and just talk to his superintendents, he went down in the workplace. And he climbed that GBS from top to bottom and talked to the workers there and would consult with the workers and ask them if they had any concerns. And if they had any concerns he made sure it were addressed. He left no doubt in the management of the people that were under him that if there was a problem there for the workers, he wanted it taken care of and they were taken care of.

MR. LEARMONTH: Okay.

So how would that – based on your own personal experience, you've worked – you had a long career. Contrast that situation where the top man is on the job all the time with a situation where, let's say, the top people are on a remote location, remote from the site.

MR. MCCORMICK: Right (inaudible).

MR. LEARMONTH: Based on your personal –

MR. MCCORMICK: Yeah, well, we talked about Astaldi. When Astaldi went there, there

was no communication between the top fellows and the fellows down in the hole. It was only after Don Delarosbil went there and he brought in Roy Collier and Bill Knox and Ed Knox and Calvin Wells, that's when things changed because the workers' concerns were addressed.

MR. LEARMONTH: Okay.

Now, is it – this – an issue is apparent in this Inquiry that – we know that the top – or the person responsible for the reservoir stayed in St. John's. He came to the site every – you know, every once in a while, it wasn't like he never came.

But the complaint by Mr. Delarosbil is that there was inadequate authority on the site to adjust to changes as they came up and issues as they came up. Have you been – ever been in the situation where there wasn't someone on any of the megaprojects or special projects?

MR. MCCORMICK: Very seldom when I was in Muskrat Falls did I ever see the people that were really at the top that were on site looking at what was transpiring. They were depending on someone else to communicate to them what was happening and what wasn't happening. We had one fellow that – we had an arbitration and a guy showed up, he was responsible for security and safety. I never ever saw him on the job. The only time I did see him was at the arbitration hearing.

MR. LEARMONTH: Okay.

So you –

MR. MCCORMICK: I don't know how you could honestly say that security was adequate if you never spent no time on the job or what degree of safety you had –

MR. LEARMONTH: Okay.

MR. MCCORMICK: – if you've never been on the job and never walked the job. For you to really understand about safety, you should be on the site. You should walk it.

At Hebron, Astor Nyborg asked us, all of the business managers, to go out and walk that job every week or every second week. He wanted us to be involved. Muskrat Falls – I don't think

they were too keen on us showing up at all. The difference was Norwegian contractors wanted us on site; Muskrat Falls, they wanted you to stay clear of the site. That's the feeling that I got, Sir.

MR. LEARMONTH: Okay.

Now, just to give an example of this issue about, you know, whether it's necessary or important to have someone high up in the chain of command on site as opposed to away from the site, what was your experience at the Upper Churchill Project?

MR. MCCORMICK: The Upper Churchill Project was more of a hands-on. Something similar – not to the extent of Hibernia or Hebron with Norwegian contractors, but a lot of the bigger contractors were in there from Quebec, Northern (inaudible) and Robertson Building Systems out of Ontario. They had supervisors that were on the job all the time, walking the job, discussing with the workers and with the men and making sure everything was done the way it should be done.

MR. LEARMONTH: When there's a senior person or persons on site, does that have – in your experience does that have any impact, good or bad, on worker morale?

MR. MCCORMICK: When it's on site – with Astor Nyborg, in both Hibernia and Hebron, the workers were very, very happy when they saw Astor Nyborg coming to their workplace and talking to them and asking about their concerns and what needed to be done and what didn't need to be done; makes a difference of having someone that's involved and having nobody involved.

MR. LEARMONTH: Okay.

The next point I want to cover is this – you've heard of it: The Integrated Cover system. And I want to ask each of you to give your impressions and observations on – of this Integrated Cover system.

I take it, Mr. Walsh, when you arrived that there was some construction on the go with respect to the Integrated Cover system. Is that correct?

MR. WALSH: Yes, they were started along with the Integrated Cover system. At the stewards meetings and driving up around looking at the Integrated Cover system, it seemed like a not very well-thought-out idea because, you know, like, you've got to get concrete in there, you got to get steel in there, you got to – I didn't know what they had for a crane system but, you know, you're moving a lot of material around and, you know, and now you got everything covered in, so how are you going to manage that. It seemed like a bad idea.

Plus with the cold up there, I didn't know what they were going to use to try and get that large of an area up to the temperature that they were talking about, which is, I think, 15 or 17 degrees Celsius, whatever it was, for pouring concrete where you can, in theory, walk around with your shirt sleeves and do the work. But, you know, it just seemed like someone wasn't thinking when they came up with that idea. It didn't – no one on site thought it was workable from the people I talked to and I guess they proved to be correct.

MR. LEARMONTH: What would the comments be about it that you recall?

MR. WALSH: Just the way that everything was covered in and you've got to bring material in. So, all of sudden, if you actually had it warmed up and now you've got to take half the side out of her to pour some concrete, you know, it'll take four or five hours, again, to get it warmed up again, you know. Like, it just – you know, it just wasn't well thought out, I guess, was some of the thoughts there.

You know, you're bringing stuff in, you're bringing stuff out and you're still trying to keep the place warm in 20 below, 30 below, you know. And the minute that you open up a decent-sized door, the place is freezing cold again so, you know, it's – there had to be a better way to do it than what they were doing, but that's the only idea that they had at the time.

I believe they – it can work on small scale because they've got some tents and they tarp in small areas to work and stuff like that, but on the large scale I don't think it's ever been done in Canada. I'm not 100 per cent certain about that, but not to the scale of what they were doing there, you know.

MR. LEARMONTH: Yeah.

Mr. McCormick, do you have any observations on the ICS from – as you saw it, when you were on site?

MR. MCCORMICK: Well, my first reaction when I heard about what they were going to do, I said to myself: Here we go, another Sprung greenhouse. It wasn't feasible. Anybody who knew anything about construction would not even to attempt to try to do what they were planning on doing. But it goes back to what I said earlier when Shawn Skinner talked about the European contractors coming over here not familiar with the environment they were getting into.

It was common sense that you put the roof over that structure, then you had overhead cranes, you had tower cranes that were probably 60 to 100 feet higher than the structure. How are we going to swing the material that had to go down in that hole through the roof, I don't know. I mean, if they had a sky dome where they could open it and close it, it probably would have been okay, but without opening and closing, it was only just a pipe dream.

MR. LEARMONTH: Okay.

So you weren't surprised when it was it was torn down?

MR. MCCORMICK: Yeah, I wasn't surprised at all.

MR. LEARMONTH: Okay.

Now, when – did you – was concrete poured in the middle of the winter on the Upper Churchill Project –

MR. MCCORMICK: Yes.

MR. LEARMONTH: – to your recollection.

MR. MCCORMICK: Yes.

MR. LEARMONTH: Okay, what type of shelters or –?

MR. MCCORMICK: Well, they used tarpaulins and plastic to cover in, and hoarding

and confining a certain area and put in the salamanders. And the heaters they had then were not close to the type of heaters they have today, but they – there was a continuous pour up there, it never stopped.

MR. LEARMONTH: Okay.

MR. MCCORMICK: But, of course then, on the other hand, you had people that knew what they were doing.

MR. LEARMONTH: Okay.

Now, I want to ask you some questions about labour relations; first you, Mr. Walsh. That's the area that you're assigned to, right? That's your –

MR. WALSH: Yes.

MR. LEARMONTH: – jurisdiction or whatever?

MR. WALSH: Yes.

MR. LEARMONTH: Okay.

Now, when you first went on site in July 2014 what impressions did you have about the labour relations situation generally?

MR. WALSH: Well, you almost got to go back to earlier because the RDTC was on Long Harbour where I originally started out. And part – I guess part of the problem was that any time a problem arose (inaudible) to file a grievance. But I think Dave Wade was the executive director at the time, but when Dave – and Dave Clark was actually the advisor or whomever for Vale at the time.

After the strike, or whatever happened out in Long Harbour, whatever you want to call it, the RDTC sort of changed its position that the – instead of immediately filing a grievance, that there'd be putting more effort into resolving issues. And I was – and that's the way we finished off in Long Harbour, that's the way we were doing things in Hebron and that was essentially the intention to – how to manage things in Muskrat Falls.

But they dragged everything out in Muskrat Falls. I think their feeling was if you left it,

something long – alone long enough that they would forget about it. There's a – labour relations was very difficult up at Muskrat Falls because no one would make a move without talking to the Muskrat Falls Employers' Association. You know, you'd think you had something resolved and then the Muskrat Falls Employers' Association would put the thumbs down on it.

We had an issue – the best example I can give you is probably back in January of 2018 we had an issue with meal allowances not being paid as an earned hour. So it wasn't a gigantic issue, it meant probably for that 20 minutes of double time, that you would earn your pension and health and welfare money as well, but it took seven months for the Muskrat Falls Employers' Association to get it resolved.

And, you know, this was something that we identified early in the new year, it should have been put to bed early, but the Muskrat Falls Employers' Association dragged it out for seven months. In retrospect, I probably should have filed a grievance the minute I found out about it, but we chose to follow the RDTC way of being reasonable and try and work it out and – you know. So it was not the best place for trying to get things resolved. It was a very slow, dragged-out process within the labour relations side of things up there.

MR. LEARMONTH: Yeah, but how would you compare it, say, to Hibernia and then Hebron?

MR. WALSH: Hibernia –

MR. LEARMONTH: In terms of the –

MR. WALSH: Well, I wasn't at Hibernia. I was a business manager at the time; I never had much dealings with it. But regard to Hebron, we – and Long Harbour it was a lot better there because, in both cases, as Pat identified, you had the man who was in charge at the time and things didn't linger.

And, at the end of the day, the workers want an answer. If the answer is not the one they want, at least they've got the answer. But in Muskrat Falls, things have been dragged out and dragged out and you think you got a resolve – I think

Desmond Tranquilla was – spoke here earlier. He was a site manager at the time and I remember going to his office one Sunday morning with a bunch of ironworkers at the time and they were complaining that neither one of them had a bed made up in almost two weeks and there's a big – you know, a big crew of ironworkers.

So Desmond seemed to want to take this bull by the horns and go and get it resolved and, you know, and then – and I felt somewhat confident: Okay, here's the site manager and he's finally going to fix this camp issue of beds not being made up properly. And, you know, I think after he tried to fix the problem I think he was gone within a month or two after that, but not very much long after it was – you know, no one would allow anyone to fix anything, I guess, is probably the best –

MR. LEARMONTH: And how did you find working with Mr. Tranquilla?

MR. WALSH: Desmond was a good person to work with. He was – you could have a conversation with him. I – and he's – and the few times that I dealt with him, like, specifically on this camp, bed made – bed issue, he seemed sincere about wanting to get it fixed. He seemed irritated that people weren't getting their beds made up and their rooms cleaned with some degree of a schedule. And, like I said, shortly after we tried to resolve that he seemed to disappear off site, so I don't know.

MR. LEARMONTH: For good?

MR. WALSH: Yeah.

MR. LEARMONTH: Okay.

Because he was a senior person –

MR. WALSH: He was, yeah.

MR. LEARMONTH: – so you would expect that something like that was –

MR. WALSH: And he wanted it fixed. At least I believed he wanted it fixed. He – when we met with him that morning with those ironworkers he was – he seemed irritated about the fact that this

problem continued to fester. And, you know, that's my take on Desmond Tranquilla.

MR. LEARMONTH: Well, who was in the position of authority from the Muskrat Falls Employers' Association in dealing with labour relations, specifically grievances and issues –?

MR. WALSH: We dealt with the companies but every road led back to Dave Clark, to my knowledge.

MR. LEARMONTH: Well, can you expand on that?

MR. WALSH: Well, even at arbitrations, we were at arbitrations numerous times and we'd be in the middle of a testimony and the lawyers would say we're going to take a break now, we've got to talk to Dave Clark or we've got to talk to our employer.

There's no one – no one moved, no one drank a cup of coffee, no one had a sandwich without talking to Dave Clark. That's the way it appeared to be but it probably wasn't quite that bad. But he seemed to have his pulse on – nothing moved without him putting his sign at the cross over it. And a lot of things, like I said, were just dragged out and dragged out and dragged out and in some cases resolved and – but it wasn't allowed to be resolved, it had to keep getting dragged out.

MR. LEARMONTH: Okay.

So you felt that Mr. Clark was largely responsible for –?

MR. WALSH: I felt he was an impediment to it, for sure.

MR. LEARMONTH: An impediment?

MR. WALSH: Yeah.

MR. LEARMONTH: Okay.

Now, so I guess there's – is it not better, like, on a job site, if there's a – I know there's always issues between labour and management; that's always going to be there and that's natural. But can – isn't it better to have a collaborative approach where you can sit down and look

across the table at someone and work something out?

MR. WALSH: Well, it's definitely – you know, and most cases you can do that. If you've got two reasonable people and you've got some language there, you know, like, not everyone is going to agree 100 per cent on what the language is, but you look at the bigger picture. If you've got someone that's reasonable and you're being reasonable, you should be able to avoid a lot of grievances.

And that's the – certainly, the – like, of all the grievances that were filed, only a small amount of them ever made it to – ever made it to arbitration. But within the collective agreement there's a five-day time limit of when a grievance has been filed and you're dealing with people and they won't give you an answer or they won't give you a definitive answer. They won't talk to you at all in some cases.

So, all of sudden, the five days are coming up, you file a grievance. Then finally someone talks to someone and it gets resolved and the grievance is just another one that's – that gets withdrawn because it got settled. But like Pat was saying, you need someone on site that's got the authority to make these decisions and that didn't appear to be the case on this project.

MR. LEARMONTH: Was David Clark on site?

MR. WALSH: Very rarely.

MR. LEARMONTH: Very rarely, yeah.

But was there – was there not someone on site who had authority to deal with, we'll say, everyday labour relations issues?

MR. WALSH: Well, in theory, Desmond Tranquilla had the – the camp was an issue and if Desmond Tranquilla was the site manager, you'd figure he would have the authority. But, like I said, after he was trying to fix the camp issue, all a short while after he was gone from the project, you know, and the camp issue continued. And that was probably 2014 when that happened.

MR. LEARMONTH: Okay.

Well, the situation that you're describing, was that a constant or were there ebbs and flows, times when it improved, times when it got worse? Just give us something on that.

MR. WALSH: It was pretty much constant, you know but, as always, there's some exceptions both ways. There's some that got dragged out extra, extra long and there's some actually that got resolved fairly quickly. But on the whole, it would – it was a long, dragged-out process to try and get anything resolved there in most of the issues. Because, like I said, most of our grievances never ever made it in front of an arbitrator because they got resolved after he got a chance to talk to them and get someone that – with enough authority to get them resolved. But a lot of them, they show up as a grievance but they, you know, 90 per cent of them probably resolved, 85 for sure.

MR. LEARMONTH: Okay.

Now, Mr. McCormick, you were – you had two capacities as president of the RDTC for five years, 2013 to '17, and also as the president of HRW local. What comments can you offer with respect to the labour relations climate at the Muskrat Falls site?

MR. MCCORMICK: My opinion, there was no MFEA, other than it being on paper. Nalcor controlled MFEA and fair to say that Mr. Clark was the one that done the controlling.

He talked about Desmond Tranquilla. Desmond Tranquilla tried to correct a lot of things there. He told me before he left the site, he said Pat, he said, I tried but I didn't have the authority to make the final decision.

And you asked about were there people on site to deal with the issues? Yes, there were people on site to deal with issues, but they had no authority to make a decision on any of the issues.

MR. LEARMONTH: Well, what's the benefit of having the authority to deal with an issue if you can't resolve it?

MR. MCCORMICK: That's a very difficult question to answer, Sir. They were there but,

like I said, there were – it's like MFEA was a paper tiger.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: On the Hibernia and Hebron sites, they had an employers' association and there was issues. It went to the employers' association and the employers' association made a decision whether or not it should be resolved without going to arbitration or go to arbitration, but that was not the case in Muskrat Falls.

MR. LEARMONTH: Okay.

MR. MCCORMICK: The Employers' Association never had no real authority because when they had a meeting, the number of people from Nalcor sitting at the MFEA meeting outnumbered the contractors. So they always had – they were always the dominant person in the room, Nalcor was.

The contractors could not, as an association, make a decision if Nalcor wanted a different decision. Kangaroo court, you know, call it what you like, I'm not (inaudible). It certainly didn't work the way it did on other projects with other contractors' associations.

MR. LEARMONTH: Okay.

MR. MCCORMICK: And most times, when I went to Labrador Catering with an issue, they would give me an answer and I said, well, that's not going to resolve it. And they made it very clear to me that Mr. Clark told them: Mr. McCormick doesn't like it, let him arbitrate it.

MR. LEARMONTH: Is that an expected type of response you'd get in a situation like that?

MR. MCCORMICK: That was the response. And it wasn't just for me, there was a gentleman, Roy Hawco, was the business manager for the Operating Engineers and the same position was put to him rather bluntly: If you don't like the answer, arbitrate it.

MR. LEARMONTH: I –

MR. MCCORMICK: And when you arbitrated, well, Dave Clark was involved in the arbitration. Then somebody from DWC legal sat

at the arbitration, and sometimes it was somebody from DWC associates that sat in at the arbitration.

MR. LEARMONTH: What's DWC associates or DWC law, what –?

MR. MCCORMICK: Those were entities that showed up at the arbitration hearings.

MR. LEARMONTH: But who – what is the DWC (inaudible)?

MR. MCCORMICK: Andrea MacNevan was there as legal counsel assisting the legal counsel – Nalcor's legal counsel. Then, sometimes, there was a lady, her name was German, I believe. I'm not quite sure but pretty sure it's German or Germane, depending on what way you want to pronounce it. She often showed up and she was there as an employee of DWC associates.

MR. LEARMONTH: So who owned DWC associates?

MR. MCCORMICK: Dave Clark, to the best of my knowledge.

MR. LEARMONTH: So are you saying – and I'm not trying – I just want to get to the bottom of this. Are you saying that he would send something to arbitration and then he would represent the employer – or him or his – or one of his associates or affiliates would represent the, as legal counsel at the arbitration?

MR. MCCORMICK: Well, Andrea MacNevan showed up, she was legal counsel assisting Nalcor's legal counsel at the arbitration hearing.

MR. LEARMONTH: Who was Ms. MacNevan? Who was she employed by?

MR. MCCORMICK: She was employed by DWC legal.

MR. LEARMONTH: Okay. And DWC is David Clark, is it?

MR. MCCORMICK: I can only tell you she showed up as representing – and she was there, she told us – we – she was asked what is your position here? Which she said, I'm with DWC legal.

MR. LEARMONTH: Okay.

MR. MCCORMICK: And Dave Clark made it very clear that she was there representing DWC legal.

MR. LEARMONTH: Okay.

MR. MCCORMICK: So my conversation with Jim Keating one time was we'll have great –

MR. LEARMONTH: Who?

MR. MCCORMICK: I have great difficulty –

MR. LEARMONTH: Who was this discussion with?

MR. MCCORMICK: Jim Keating.

MR. LEARMONTH: Of Nalcor?

MR. MCCORMICK: Nalcor.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: And I said, I have a job to understand how one person shows up at an arbitration hearing underneath three entities. The comment from Mr. Keating at that time that he wasn't pleased with David Clark wearing so many hats, but he said he's there and we have to deal with him, so ...

MR. LEARMONTH: Okay.

MR. WALSH: One thing I was going to add to what Pat had said, in Pat's capacity as a hotel and restaurant business manager, there were some long-outstanding issues with Labrador Catering and we arranged a meeting to show up. Pat and his assistant business manager, Junior, flew up to Goose Bay specifically for this meeting.

At the time of arranging this meeting, I believe that we had Labrador Catering and everyone else that should've been involved with that meeting ready to attend this meeting, but then when we got there the meeting was cancelled. Now, I was not told who specifically cancelled the meeting, but Pat was and he can tell you who said to cancel the meeting, who that was.

MR. MCCORMICK: We went in specifically to deal with the issues.

MR. LEARMONTH: When was this, first?

MR. WALSH: Pardon?

MR. LEARMONTH: When was this?

MR. WALSH: That would've been probably January or February of 2017, I guess.

MR. LEARMONTH: Okay. And there was a meeting, and who called the meeting and what was the purpose?

MR. WALSH: Pat asked me to arrange the meeting. I arranged the meeting. I had – I wanted people from Nalcor there, I wanted the people from Labrador Catering there. Pat and Junior were going to be there and I was going to be there and we're all – we – Pat and Junior flew in specifically for that meeting, but when we got there, there was no meeting.

MR. MCCORMICK: And George Kean from Nalcor was supposed to be there as well. When we arrived on site I went in to the Labrador Catering's office and I said, where is Richard? Oh, Richard is not here. We're supposed to have a meeting. And I already had spoken to a gentleman by the name of Gavin Hamilton who was in Alberta, and he's the – he was the guy responsible – he was the top dog with ESS at that time.

MR. LEARMONTH: What –?

MR. MCCORMICK: And so I called him, I said, Gavin what's happening? I said, we agreed to have a meeting. I said, your people are telling me that they've been directed not to meet with us and he said, I know nothing about it. So then I called George Kean. I said, George, are you coming over for the meeting? He said, no, I can't go, and I said, why? He said, I was told not to attend or not to have no meeting with H&RW Local 779.

So Gavin Hamilton called me back and Gavin Hamilton told me that Dave Clark had intervened and given direction not to meet with the union. And I went over to George Kean and we got into it hot and heavy, for a better way to

put it. And I said, come on, George, who told you not to have the meeting? And finally he admitted to it, he said, Dave Clark directed me not to meet with you. Gavin Hamilton told me that Dave Clark admitted to him that he gave the direction to Labrador Catering not to meet with us. So Mr. Clark yielded quite a bit of authority on that project.

MR. LEARMONTH: Okay.

Now, there's an exhibit that was entered into evidence. It's P-03875, I think it's at tab 23 of your volume 2. This is a letter from your – well, from Martin, Whelan, Hennebury and Stamp dated May 3, 2019 –

MR. WALSH: Did you say 23?

MR. LEARMONTH: 03875, yeah. I think it should be at tab – is it in your book as tab 23?

THE COMMISSIONER: Yes, it's tab 23. It should be there at tab 23.

MR. LEARMONTH: Is it not –

MR. WALSH: Is this on May 3, 2019?

MR. LEARMONTH: Yes.

MR. MCCORMICK: May 3.

MR. LEARMONTH: Have you got it there?

MR. MCCORMICK: Yeah.

MR. LEARMONTH: Okay. You've reviewed that letter, is it?

MR. MCCORMICK: Yes.

MR. LEARMONTH: And it sets out the theory or a position as to how the control of the Muskrat Falls Employers' Association is, in reality, in the hands of Nalcor, is that right?

MR. MCCORMICK: Yeah.

MR. LEARMONTH: Yeah. Have you read this?

MR. WALSH: Yes.

MR. LEARMONTH: Does this – I'm not going to go through it word for word, but after your reviewing this, does this appear to you to be a correct statement of the facts?

MR. WALSH: Yes.

MR. LEARMONTH: Okay. And you referred to D. W. Clark Services and so on – and I'm looking on page – the third page – excuse me, the second page of this letter.

MR. WALSH: Yes.

MR. LEARMONTH: Third paragraph. You say – it says: "Mr. Clark is a lawyer, the owner of D.W. Clark Services P.C. ... based in Fredericton, New Brunswick. Mr. Clark has a part-time role with Nalcor as a Senior Labour Relations" officer "for the Muskrat Falls Corporation (the 'MFC'). The MFC is a subsidiary of Nalcor, and together with the Lower Churchill Management Corporation, is involved in the administration of its commercial contracts. The MFC is not formally part of the MFEA."

Is that your understanding?

MR. MCCORMICK: Yes.

MR. LEARMONTH: You had – your understanding. So this letter, anyway, you believe that this is a correct statement of the situation in this letter, P-03875, do you? Yeah. And your – quite apart from, perhaps, the legalities, forget about that, what was your own observation as to who was running the show on labour relations from the employer's point of view? Never mind the legalities, just like what you saw with your own eyes and what you observed and heard?

MR. MCCORMICK: Dave Clark.

MR. LEARMONTH: Anyone else?

MR. MCCORMICK: No.

MR. LEARMONTH: Okay.

And what was your relationship with Mr. Clark?

MR. MCCORMICK: Pardon?

MR. LEARMONTH: What was your relationship with him? Did you get along with him or what?

MR. MCCORMICK: Would have to say not very good.

MR. LEARMONTH: No.

MR. MCCORMICK: And that started in Long Harbour.

MR. LEARMONTH: What do you mean?

MR. MCCORMICK: We had similar problems in Long Harbour with Mr. Clark and –

MR. LEARMONTH: He had a similar role in Long Harbour when he –

MR. MCCORMICK: Yes, he did.

MR. LEARMONTH: – originally?

MR. MCCORMICK: Yes, he did.

MR. LEARMONTH: Yeah, and –

MR. MCCORMICK: And there was all kinds of problems out there relative to grievance and arbitrations. I know that prior to Mr. Clark's leaving the project – how he left, I don't know. I don't if Vale let him go or he quit. Anyway, one day he didn't – one day he wasn't there, he didn't appear. And I was advised by ESS at the time that Mr. Denis Mahoney would now be addressing the issues and grievances and pending arbitrations.

When I met with Mr. Mahoney we had probably 120 issues on the table, either pending arbitration or – but no answers to none of them. After meeting with Mr. Mahoney several times, the 120 issues were probably reduced down to three or four, and the three or four took us a period of time to discuss the pros and cons of what should be done here, but dealing with Mr. Mahoney instead of Mr. Clark, all those issues were put aside, not one of them went to arbitration.

MR. LEARMONTH: Mr. Mahoney, just for the record, is a lawyer here in St. John's, correct?

MR. MCCORMICK: Yes.

MR. LEARMONTH: Yeah, okay. So you found Mr. Mahoney's style different from that of Mr. Clark?

MR. MCCORMICK: Yes, much different. (Inaudible) Mahoney is not going to give you anything, but when you argue and present a case and tell him the merits why this should happen, that should happen – we worked it out. Every one of them.

MR. LEARMONTH: Okay.

In your assessment, if the approach taken by Mr. Mahoney had been demonstrated on the Muskrat Falls site, would the outcome of the labour relations situation have been any different?

MR. MCCORMICK: I think it would be much different.

MR. LEARMONTH: Okay.

Now, there's some – we heard from – and I think you heard from Dave Wade this morning about this strategy of having three different collective agreements, as opposed to one collective agreement. Do you know what I'm talking about?

MR. MCCORMICK: Pardon?

MR. LEARMONTH: We talked this morning with Mr. Wade about the fact that at Muskrat Falls there was three separate collective agreements.

MR. MCCORMICK: Yes.

MR. LEARMONTH: As opposed to one, like what was the case at the Upper Churchill. Now, you've been around a long time in labour relations. What are the consequences, in your opinion, as far as labour is concerned, in having three collective agreements for the Muskrat Falls site, as opposed to one, which was the case for the Upper Churchill?

MR. MCCORMICK: Well, having three projects as opposed to one – my opinion on what transpired here, it was a way to weaken the strength of the RDTC. The Upper Churchill was

done, everything was done underneath one project agreement. Transmission line, clearing of reservoirs – everything had to be done with the Upper Churchill was done underneath one agreement.

When the *Labour Relations Act*, in my opinion, was changed, it came about because Hibernia Project had been completed, Bull Arm was out there lying idle, and at the best of my knowledge, one of the Cahill Group of Companies leased the site. During the period that they had it leased, there was another party came in that wanted to do some work there, and the Cahill Group of Companies, whichever it was, in their wisdom said no, we're leasing the project, there's nobody coming on site. The government wasn't too pleased with that. They felt that the – their hands – they were handcuffed in relation to the letting someone else go on the project, and they were adamant it was not going to happen a second time.

So they asked Mr. Oakley, I guess, to change the *Labour Relations Act* as to special project legislation. From my interpretation of what Mr. Oakley said was, in the case – and I used Bull Arm as the example – that when the Hebron Project was going ahead up there, once the GBS for the Hebron Project came out of the hole – or the GBS base – then Husky could've moved in and went down in the hole, down where the GBSs are built, and Husky could be building their GBS in the hole on that side while the Hebron Project was out in the deep water.

But that didn't apply anything close to what transpired in Muskrat Falls. In Muskrat Falls, they were allowed to subdivide the project, because a transmission line unto itself is not a project. Clearing up the reservoir was not a project. It was part of the project, the project being Muskrat Falls. How that was allowed to happen, I don't know. But I spoke to Mr. Oakley on it and I've asked legal counsel that I've used, to show me underneath the *Labour Relations Act* where a project can be subdivided into three projects. So far, nobody's been able to show it to me.

MR. LEARMONTH: Okay, well what's the problem with having three as opposed to one? What's the big deal?

MR. MCCORMICK: Three to one – one thing, it can cause friction between the workers.

MR. LEARMONTH: How does it cause friction between the workers?

MR. MCCORMICK: Well, a hot topic at our table was the Operating Engineers and the Teamsters, who lost a lot of work at that transmission line, and on the clearing of the reservoir as well. So, that was friction on the job.

Underneath the project agreement for Muskrat Falls, everybody received the same wages and benefits in a package. Nobody had anything different than anyone else. My understanding on the transmission line, there was a sweetheart deal made with the IBEW 1620 that their linesmen and apprentices would get a bonus, when all of the other workers – the Operators, the Teamsters, the Hotel and Restaurant workers – they didn't get any bonus. Now, I stand to be corrected, but that's my understanding of it.

So, if you're on the project, me and you were there working together, and you're getting a bonus and I'm not, doesn't make for a very good workplace.

MR. LEARMONTH: Okay.

MR. MCCORMICK: So, when you talk about productivity, how do you expect to have productivity when you're pitting one worker against another?

MR. LEARMONTH: Okay. And you believe that's the consequence of having more than one collective agreement?

MR. MCCORMICK: And unions going out and making a deal, you know. That's all it was – a deal.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: There was no enlightenment, only just greed.

MR. LEARMONTH: Okay.

Now, how would that work in practical terms if – so, the IBEW as the – the international and the

local – has the collective agreement for the transmission line. But if the IBEW needs, say, labourers or welders or something like that, how does that work? How do they get them if they don't have them in-house?

MR. MCCORMICK: I guess they would go online, or they'd advertise for workers and pick 'em up.

MR. LEARMONTH: So, rather than go back to the 16 group or whatever is left of the group of 16 –?

MR. MCCORMICK: My understanding, there were very few workers supplied by the Operating Engineers to that project, or the Teamsters or any of the unions.

MR. LEARMONTH: So, under the collective agreement with the IBEW, it's your understanding that they could hire whoever they wanted?

MR. MCCORMICK: Yes, they could.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: But they'd get priority, probably, too.

MR. LEARMONTH: (Inaudible.)

MR. MCCORMICK: Same as they did underneath Muskrat Falls agreement, but that was all.

MR. LEARMONTH: That was all. Okay.

Now, was your union one of the five that was at the – or six that was at the –?

MR. MCCORMICK: No, it wasn't.

MR. LEARMONTH: No. And how did you, as the president of your union, feel about that?

MR. MCCORMICK: Pardon?

MR. LEARMONTH: How did you feel about that? The fact that you were (inaudible)?

MR. MCCORMICK: I was opposed to it. I was opposed to it; very strongly.

MR. LEARMONTH: Did you voice your concerns?

MR. MCCORMICK: Oh, yes. On more than one occasion.

MR. LEARMONTH: Yeah.

So, why were you concerned? Why did you voice your concern?

MR. MCCORMICK: Because my members were not going to get to work.

MR. LEARMONTH: Okay. Now there's a document that's been entered in volume 2, binder 2, Mr. McCormick? You got –

MR. MCCORMICK: Where is it?

UNIDENTIFIED MALE SPEAKER: Volume 2.

MR. LEARMONTH: Yeah. This is – and it's tab 18, and it's Exhibit P-03816.

MR. MCCORMICK: Yes.

MR. LEARMONTH: Can you identify that document please?

MR. MCCORMICK: Yes.

MR. LEARMONTH: What is it?

MR. MCCORMICK: A document that was a settlement between Cahill-Ganotec that was negotiated between myself and a labour relations person, Carol Ann Molloy, for Cahill-Ganotec. It was signed off by Cahill-Ganotec, by H&RW 779 and by Darren King of the RDTC.

MR. LEARMONTH: So that looks like a settlement then; everyone signed it.

MR. MCCORMICK: That was a settlement. And Ms. Molloy called and told me that David Clark refused to sign it.

MR. LEARMONTH: Okay. Now, perhaps can you explain – are you aware of any reason why if everyone else agreed to it why Mr. Clark would not agree to it? Can you give us any information in that?

MR. MCCORMICK: I'd be guessing if I told you what – for what reason Mr. Clark didn't.

MR. LEARMONTH: Yeah. So you don't have any –

MR. MCCORMICK: I guess he wanted to flex his muscles and say I'm not doing it and it's not going to happen.

MR. LEARMONTH: Okay. So this –

MR. MCCORMICK: So he's recommending it – to go back to what I said earlier, when he refused to sign this, he's really forcing the matter to go to arbitration.

MR. LEARMONTH: Yeah. And what happened to it?

MR. MCCORMICK: It's in the process of going to arbitration.

MR. LEARMONTH: So this has never been resolved?

MR. MCCORMICK: Pardon? It hasn't been resolved.

MR. LEARMONTH: Yeah. But it's not a, you know, all these grievances are important but this does not involve a large amount of money, it's \$21,000; that's – I'm not saying that that's small change but, why wouldn't – if all the parties agreed to it, I don't think I can understand why it wouldn't have been approved for settlement? Can you help me with that?

MR. MCCORMICK: I really can't answer that question, Sir. I'd like to be able to answer it. Really, I wouldn't want to get inside Mr. Clark's head but...

MR. LEARMONTH: And that's – so that's –

MR. MCCORMICK: But the situation is, that \$21,000 had to be settled in 2017 – if it's settled in our favour, I guess that \$21,000 will come to escalate somewhat.

MR. LEARMONTH: Yeah. But the payment of this \$21,000 is made by – in this situation – Cahill-Ganotec, right?

MR. MCCORMICK: Yes.

MR. LEARMONTH: It's not Mr. Clark's organization that pays, is it?

MR. MCCORMICK: No.

MR. LEARMONTH: Well, anyway.

MR. MCCORMICK: Not to my knowledge, Sir.

MR. LEARMONTH: Yeah. Okay.

Now, Mr. Walsh, in your interview, you covered a few other topics. I want to take you to some of them – that – dealing with the Labour Relations issue that – I believe you said – you gave some evidence about the policy that Astaldi had with taking a day off if you wanted to go to see a doctor. What would be the situation?

MR. WALSH: The way they managed things was rather unorthodox. They had to fly you in at the start of your turnaround and fly you out the end of your turnaround. But if you wanted a day off, you had to take that full week off. If you had a doctor's appointment on what would normally be the first day of your turnaround you had to take that full week off. They still had to fly you in. They still had to fly you out. So, it didn't make any sense. They may as well fly you in and get 13 days out of you, instead of flying you in and out and only getting seven days out of you.

I thought it was just laziness on the part of some people to – and their policy was – it seemed like they brought in policies that may or may not have conflicted with the collective agreement but will – in a lot of cases – we never did challenge them through the grievance and arbitration process because one of their policies – that if they didn't have three days work for you – this was typically after Christmas when your turnaround would be restarting – that they wouldn't bring you in for three days.

So, they came up with different policies all the time and they weren't very well thought-out policies, 'cause if you've got to fly them in, you've got to fly me out, you may as well get as many days out of me as you possibly can. To

make me sit home for a week is just – pointless, I guess, from my perspective.

MR. LEARMONTH: Okay. Did that ever change, that policy? So, if you wanted to take one day off, you had to take the whole week off.

MR. WALSH: Yeah. If you – of course, first thing you need is a legitimate reason why you're taking that one –

MR. LEARMONTH: Yeah.

MR. MCCORMICK: – day off.

MR. LEARMONTH: Let's say you have a health issue.

MR. WALSH: A doctor's appointment. Your daughter is graduating from high school or university or whatever else and you needed that day or two off. So, they've got to fly you in or fly you out early. But you had to take that full week off and it never – never really was properly explained.

MR. LEARMONTH: Have you ever seen that situation before in any other job site?

MR. WALSH: No.

MR. LEARMONTH: No? And was there any explanation ever given to you for it?

MR. WALSH: Company policy.

MR. LEARMONTH: Okay.

You also gave some evidence about the – in terms of the organization of the job site, as you observed it, by Astaldi and you mentioned something about Vise-Grips and pliers?

MR. WALSH: Goes back to the microfiche in the warehouse. They had this microfiche system but instead of – on certain items, things were identified twice and they might be on a shelf – the same item in two different spots, in one case being identified as Vise-Grips and another time being identified as pliers.

This is information that the Teamster steward gave me, as to the way they ran things. They weren't well organized and they – and their

system, like I said, was microfiche and it was antiquated and it boggled the mind of the teamsters who'd been previously working in Hebron and Long Harbour, and they had a very efficient supply chain system.

And some of the supply chain system with Astaldi required, to my understanding, sometimes two or three signatures and sometimes had to go back to Italy for a signature. And this could be for a \$20 package of specialty screws that they never had on site. And, you know, here's all this time being wasted, jobs being held up because no one's got the authority to go out and get this \$20 package of screws that people can use on things. You know, it's just – like I said, it goes back to Astaldi not having any experience in – working in North America. That's my thoughts on the whole issue.

MR. LEARMONTH: Now, did they ever get away from this microfiche?

MR. WALSH: I'm not a hundred per cent certain they ever did, 'cause the same people who were there initially with Astaldi were still there at the very end and – I can't be 100 per cent certain, but as Astaldi was being moved out of the site, there was a lot of involvement with all of the stewards, and they did a great job of getting everyone off site. I can still sort of see this microfiche machine sitting on a table or a desk there as I'm in the warehouse with the stewards, helping them out at different things.

And, you know, I don't know if it was just there as a norm at that point or time or whether that they had evolved to a more efficient way of dealing with things. I can't say for certain.

MR. LEARMONTH: Okay.

And you also gave a couple of other examples about – something about coat hangers and made out of plywood?

MR. WALSH: Yeah, it's –

MR. LEARMONTH: Tell us something about that. It's just a small point, but I think it –

MR. WALSH: Oh, it's – the coat hangers in one of the offices were basically cut out of a

piece of plywood and they were shaped something like that. All they were – the only purpose of them was to hang a coat on – something like a boomerang, but they're screwed onto another piece of board.

The amount of time and money to make those pieces of plywood would have been outrageous unless you're in a country that Astaldi dealt with before where you're paying people 25 cents an hour, then you – then it's maybe an efficient way to make coat hangers.

But other than that, you go to a hardware store and you can buy, you know, 50 of these steel coat hangers for probably a buck each or something like that, and it's just sort of unusual to see that type of behaviour on such a big project. Just (inaudible) –

MR. LEARMONTH: So, they'd cut –

MR. WALSH: (Inaudible.)

MR. LEARMONTH: – hangers out of plywood?

MR. WALSH: Yeah.

MR. LEARMONTH: And they'd hire people to do that?

MR. WALSH: Yeah. There would've been carpenters that would've been – that was probably good for the carpenters. They would've been, with a scroll saw, cutting out these pieces of plywood, then they're hung up on the wall and the – you know, just a –

MR. LEARMONTH: Okay.

And what about – there was another example you gave about repairs to rain gears?

MR. WALSH: Yes.

Early on in the project, there was a requirement for fireproof coveralls for some people.

MR. LEARMONTH: Okay.

MR. WALSH: And these are fairly expensive coveralls; they're over a hundred bucks. But some of the – and when they got dirty, Astaldi

was, basically, tossing these expensive rain gear – these expensive coveralls away as opposed to cleaning – getting them cleaned.

And then, towards the end of the project, when they were low on money, they were actually sending out rain gear that someone else had worn, and I believe that was being sent to Labrador City to be cleaned and, in some cases, patched up with probably some kind of almost – I'm thinking duct tape, but maybe not duct tape, but probably something similar to whatever the rain gear was being made of, and then brought back because, in some cases, they weren't cleaned very well.

And the stewards would be at a meeting saying: Look, they brought me back this rain gear, and someone's already after cutting the legs off it because the short person who had it before – and now, it's only – it up six inches above my ankles, and, you know, it's no good or it's still dirty or whatever else. I said: Well, don't take it and get something different there. You know, you've got – they've got – under the collective agreement, they did have a right to take this material back and make it clean and reusable again, but it wasn't always clean and it wasn't always reusable.

But prior to that, this stuff was tossed away like nothing, and a lot of other things were tossed away. But like I said, it was, sort of, relevant to the whole, probably, running out of money thing, and, you know, just a –

MR. LEARMONTH: Yeah.

MR. WALSH: – change of –

MR. LEARMONTH: Okay.

Now, I want to ask you both – Mr. McCormick, you first – about your observation about safety on the Muskrat Falls site, as you observed it.

Can you give us something about that?

MR. MCCORMICK: Well, as I said in my evidence, there was a major concern of the workers when they were staying in the dormitories when the steps were full of sand, and that was never, ever addressed.

There was a time down in the hole when they were pouring concrete and a form let go, and as it happens, the workers were gone to lunch break. If the workers had to have been down in the hole, it could have been a whole different story.

MR. LEARMONTH: Yeah.

MR. MCCORMICK: But if you compare safety at Muskrat Falls to safety at Hebron, on a scale of one to 10, Hebron would have been at nine, 9½. Muskrat Falls, you'd be lucky if it was five to 5½.

MR. LEARMONTH: Yeah.

What is your observation on the safety issue, Mr. Walsh?

MR. WALSH: Similar. I've always thought Astaldi – they may not have been the best managed company in the – on the site in Canada, but they're certainly the luckiest because there's a – we're lucky that no one ever did get fatally injured on the site.

And some of the ways that they did it was just through, you know, instead of having the proper tool – at the interview, I also pointed out that at different times, there were some crane and rigging accidents and Astaldi – some of the iron workers commented on the material that they had to use. In some cases, they never had a sling that was long enough so they had to combine two and, you know, all kinds of jury-rigging in order to get the job done as opposed to not having the proper equipment to run the gear.

And then the gear that was there wasn't very well taken care of. You know, the iron workers told me about having to dig a sling out of mud to clean off and reuse. And, you know, that's probably – once you start throwing stuff down there into the mud and not taking very good care of it, the structural integrity of it deteriorates fairly quickly, I would think.

MR. LEARMONTH: Yeah.

Now, your – you dealt with a number of labour relations individuals in addition to David Clark. I believe there was George Kean and Larry Pittman. Is that correct?

MR. WALSH: Yes.

MR. LEARMONTH: And how did you find George Kean in terms of his dedication to his duties in labour relations?

MR. WALSH: I found George Kean very good to deal with. He was a very – he was Astaldi's labour relations. Now he's Nalcor's labour relations. But he was a very reasonable person to deal with. He – you could have a conversation with him, and he genuinely tried to fix things. And, actually, a lot of our stewards, who were initially with Astaldi, have got a lot of respect for George Kean.

MR. LEARMONTH: Is he still on site?

MR. WALSH: He's on site as Nalcor's labour relations person. I believe he answers to David Clark, now.

MR. LEARMONTH: Yeah. So, you respect him, do you?

MR. WALSH: I do.

MR. LEARMONTH: Yeah. And you still work with him?

MR. WALSH: I do.

MR. LEARMONTH: Yeah. And what about Larry Pittman? Did he come after George Kean?

MR. WALSH: George – Larry Pittman came directly after George Kean. And there is one specific dealings that I had with Larry Pittman that just infuriated me, I guess, for lack of a better term. It was a member of a union, and he was bipolar, and he couldn't really work on night shift. The easiest thing in the world was to move him to day shift. And Astaldi – and Larry Pittman was their labour relations person at the time – would not move him to day shift and keep him on day shift. And there would have been lots of his co-workers that would have volunteered to stay on night shift so that he could work on day shift.

And what – I think what infuriated me most was that he is a young guy and he's probably the time of person that you might be able to push around a little bit, and he was being pushed

around. And him and his wife were in the process of having a child, and they lost the child. Now, I don't know if him losing his job and the stress of all that caused that, but I know it didn't help.

And when we got to the arbitration, Astaldi shows up, and the lawyer at the time says, we can't defend this, and they pay him off. But there was no need to put that young person through all that BS for no reason at all. And that was my narrow but very memorable dealings with Larry Pittman. And he wasn't much better on some of the other stuff.

MR. LEARMONTH: So is it a simple as this, that this young man wanted to work, but he wanted to work day shift –

MR. WALSH: He was on day shift. They moved him to night shift and bipolar –

MR. LEARMONTH: Yeah.

MR. WALSH: – and I don't understand the whole disease very much, but he's – he found out he was having trouble staying on track on his medication and everything else by being on night shift and sleeping and everything else, and the easiest thing in the world, and to do the accommodation, was just move him to day. And like I said, there would have been an infinite number of his fellow union members that would have said, okay, if – I'll stay on night shift so that this guy can stay on day shift. You know that's typical – there would not have been an issue, but the company would not bend a little tiny bit to help this person out and it just – you know.

MR. LEARMONTH: You felt that it was serious, did you?

MR. WALSH: I was outraged by it 'cause I actually – like, we don't actually deal with human rights issues – complaints, but the minute this happened, I called the Human Rights Commission. I was planning on taking this on with this young fella myself. But, anyway, the Human Rights Commission personally called me back and said: Go through the grievance process first. If you don't get it resolved, then give us a call. But, anyway, like I said, we show up to arbitration, and their lawyer basically goes,

can't defend this. And he gets some money, but, you know, I don't know if the money was enough.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Can we take our break now, then, Mr. Learmonth?

MR. LEARMONTH: Sure.

THE COMMISSIONER: Okay. So, we'll take 10 minutes now.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MR. LEARMONTH: Mr. Walsh, there was a gentleman on staff, or perhaps he was a contractor of Astaldi, Brian Chaput. Do you know who I'm talking about?

MR. WALSH: Yeah.

MR. LEARMONTH: Okay. What, if any, dealings did you have with Mr. Chaput?

MR. WALSH: Mr. Chaput was very, very, very difficult to deal with. We had an issue with members who were injured at the site and our position was, as per workers' comp regulations, that these guys should be continuing to get the same hours until – there were actually six levels of a hierarchy within workers' comp and if they were anywhere within one or, I think, one, two, three and four, you work your same hours and the contractor finds a place for you to work.

Hierarchy number five is that you may not be able to work the normal number of hours, but a doctor dictates that you work four hours a day, five hours a day, six hours a day, so it's doctor regulated. And number six you are injured too bad to continue working at what you're doing and you've got to find a different career. But, anyway, I was going to say Dr. Chaput because

that's the nickname we put upon him: Dr. Chaput.

MR. LEARMONTH: So is he a doctor?

MR. WALSH: No.

MR. LEARMONTH: Yeah.

MR. WALSH: But it took him – he took it upon himself that he knew more than a doctor. He cut everyone back to the minimum amount of hours that he could get away with and we grieved it and eventually we won, but it was a hard-fought victory that – because every single minute of every single hour of every single day that these people lost, we had to fight tooth and nail for.

And we spent day after day after day in arbitration over every little issue that was there. And it was a – you know, it was probably a hollow victory at the end of the day, but – because by the time we did win, Astaldi didn't have any money to pay them anyway. So, you know, we've got some of the money from one of the other contractors that were involved. The AGF, I believe, was the other contractor.

So it got dragged out and dragged out and dragged out and dragged, which was probably the biggest problem with Muskrat Falls – dragging things out and trying to get things resolved. That's – and, you know, that was my primary dealings with Brian Chaput.

MR. LEARMONTH: All right, and you also dealt with Ed Byrne after Brian Chaput left. Is that right?

MR. WALSH: Yeah.

MR. LEARMONTH: And how were your relations with Ed Byrne?

MR. WALSH: Ed Byrne? I don't know if Ed Byrne had a better relationship with Don Delarosbil than some of the other people or what, but Ed Byrne was a good person to deal with. He gave you an answer and you could depend on what his answer was. And it was – and you never had to wait forever for an answer from Ed. So, you know, Ed Byrne was good to deal with and Gayle Foley and Jason Brown

after, they were working with Ed before he left and they were not bad people to deal with.

MR. LEARMONTH: Okay.

Was there – while you were on site, Mr. Walsh, was there ever an issue that arose about companies from Quebec bringing everything in and not spending any money in the province?

MR. WALSH: We noticed that, because at one point one of the stewards – like Mr. Smith there, directed to me to the IBA where I finally seen it there at a previous arbitration. And I read through it and I said, this is not being complied with in any way, shape or form because, you know, for starters, their main lawyer firm is from New Brunswick, which should be insulting to every single lawyer here in the room.

And they talk about the Newfoundland this and Newfoundland that, diversity this, diversity that, and not a single part was ever kept up to by Nalcor. You know, they didn't – and the companies from Quebec, they brought in all their supervision, whereas in Newfoundland we had just finished three big projects, we had people who moved more rebar and poured more concrete than anyone from Quebec had ever done and these people were being overlooked for jobs, as well as a ton of other jobs that could've gone to Newfoundlanders and not necessarily within the union side of things.

Like, one company brought in their confidential secretaries because they spoke French, but under my take on the IBA is that they should've looked in Newfoundland for – this would not be a union position, but as per the collective agreement, Newfoundlanders – Innu first, the Labradorians second and Newfoundlanders third, they should've looked – at least looked in Newfoundland for someone that spoke French and could've taken these positions, even though it wouldn't mean a single additional job for the unions. But that's just my take on what was written and what was lived up to.

MR. LEARMONTH: Okay.

Now, was there – I understand that there was an arbitration over laying off Innu workers before others in violation of the collective agreement. Is that correct?

MR. WALSH: Yes.

MR. LEARMONTH: Okay, what – can you describe the circumstances surrounding that grievance?

MR. WALSH: Well, Larry Pittman was the labour relations person for Astaldi. I filed a grievance that they were not in compliance with Article 7.08 of the hiring and Article 30.03 of the layoff, which it clearly identifies that qualified Innu shall be retained ahead of qualified Labradorians and they, in turn, shall be retained ahead of qualified Newfoundlanders.

So we felt that they weren't in compliance with that and we started an arbitration process. The process was up in Goose Bay. Wayne Thistle was the arbitrator and Dana was our lawyer – Dana Lenehan was our lawyer, and we eventually reached a settlement. We never got an arbitration decision on what the settlement was, but we did reach a settlement and –

MR. LEARMONTH: All right.

And there was – was there not some obligation to train Innu workers?

MR. WALSH: Article 7.08 –

MR. LEARMONTH: Yes.

MR. WALSH: – refers specifically to the training of the Innu and the Innu have not been trained to do anything that – you would figure after four years of being on a project like that, Innu would be able to take a project, not necessarily as big as Muskrat Falls, but take a – right now they're building a YMCA up there, it's probably a couple-of-hundred-man project, but if you've been trained all through the process to get some training and learn how to run a job, you'd be able to be a – definitely be a superintendent on that job after four or five years' experience.

But the Innu didn't receive any training and no one from Nalcor insisted that they get trained. In reality, they probably could not – you couldn't find an Innu to supervise the building of a shed in your backyard. That's how much they – they were the labourers, they were the cleaners, they never got any of the training that they – that I

felt they should've gotten, and that's – you know, and it was one of the main platforms of this agreement was that there's going to be some technology transfer, some ability picked up, but ...

MR. LEARMONTH: Well, that was one of the objectives, but did you see any evidence or just a little bit of evidence of it, or –?

MR. WALSH: There's no evidence.

MR. LEARMONTH: No evidence?

MR. WALSH: At all.

MR. LEARMONTH: Yeah.

And wasn't there some discussion at some point about training the – some Innu workers as shop stewards?

MR. WALSH: We had actually – our side of the table had agreed that we would bring in Innu shop stewards as – to be mentored by a union shop steward. And we were – to my recollection and knowledge we were perfectly fine with that whole concept, but there was one assurance that we wanted from the Muskrat Falls Employers' Association that this would not – after someone got a couple of weeks as shop steward, this would not remove our shop stewards from their position and all of a sudden, you know, make them all Innu shop stewards.

Because there's a lot to being a shop steward, and, you know, you need – in addition to knowing the agreements, you need to know your union's bylaws, you need to know about a union's health and welfare plans, you need to know your union's jurisdiction. So the two-day shop stewards course that we were offering would be a certain help in learning to be mentored, but it certainly would not qualify you to be a bona fide shop steward for the unions up at the site.

MR. LEARMONTH: But was there a training program for the Innu workers –

MR. WALSH: They did –

MR. LEARMONTH: – to become ...?

MR. WALSH: They did do some training. I believe it's a one-day or a two-day – Bill Parsons was the person who initially did the course and I'm thinking it's two days, but it may have only – in which they went through the whole requirements of what's expected of a shop steward. And it was done on numerous occasions and I'm believing that we've got 20 or 30 Innu that were trained to be shop stewards, probably only three or four of them ever reached the point where they were shop stewards. But, in a sense, they were also being mentored by the union shop stewards so that they'd be very competent in doing what they do.

MR. LEARMONTH: But would a one-day training course be sufficient?

MR. WALSH: No.

MR. LEARMONTH: No.

MR. WALSH: It'd bring you to the certain language in the – like, in that collective agreement where it's to, there's – I don't know, I guess, 30-odd clauses, but really 20 of them you never deal with, 10 you deal with all the time and, you know, that's the – that'd be them – those would be the clauses that you'd have to be very knowledgeable about and how to deal with them and where to go with them and all that.

But the one-day course, I believe some people took it as some type of important position, but really the only advantages that the steward has is that he's typically the last person on the job. So if you are there for four years or you're there for three days – for three years and 62 days, what's the difference? It doesn't mean anything, except you've got to deal with everyone's problems day in, day out.

So it's not as good a job as what you might think it is. It's actually a pain. In most cases, unions have got seven or eight or 10 people that they'll go to all the time to be the shop stewards because these are the guys who, day in, day out, will do the good job for you. And the reality of it, 90 per cent of the people in a union wouldn't take the shop steward's job if you offered it to them five times a day for a week. They don't want any part of the job. It's a headache at times, for sure.

MR. LEARMONTH: Is there an increase in pay when a person –?

MR. WALSH: No increase in pay.

MR. LEARMONTH: Okay, so a lot of people just say, leave me alone, I don't want anything to do with it?

MR. WALSH: Yeah.

MR. LEARMONTH: Yeah, okay.

Now, Mr. McCormick, I wanted to ask you, you've given your version of the labour relations atmosphere and how you – you expressed some concerns about the way that the matters were handled by Mr. Clark and perhaps others. Now, do you believe that that had any impact on the cost of the project, the labour relations environment, such as it was?

MR. MCCORMICK: It created a problem when you had shop stewards who were complaining about issues and then you had labour relations people – you had some labour relations people that wanted to address the issues and come up with a conclusion to them, but they were not able to do it, and then it created a lot of frustration. And when the shop stewards went back to the workers and said, well, we're after bringing it up a dozen times, but it's still not being addressed, well, then you're talking about productivity. That, right off the bat, that's a problem, because instead of doing their work, they're probably discussing issues that should've been resolved months ago.

So instead of working they're talking. So when you're working – when you're talking and not working, it's going to reduce productivity. And labour relations was responsible for that situation, all right?

MR. LEARMONTH: Okay, thank you.

All right, that concludes my questions.

Mr. McCormick, do you have anything else you want to add that I haven't asked you about?

MR. MCCORMICK: You know, I would conclude by saying that of all the projects I was involved with, the labour relations in Muskrat

Falls was by far the worst labour relations I ever dealt with or tried to deal with.

MR. LEARMONTH: Okay.

Mr. Walsh, do you have any concluding comment?

MR. WALSH: I think I'm good, thanks.

MR. LEARMONTH: All right. Thank you very much.

The other lawyers will want to question you, or some will, so thank you very much.

THE COMMISSIONER: Okay, Province of Newfoundland and Labrador.

MR. LEAMON: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

I don't have any questions for Mr. Walsh or Mr. McCormick, but I do want to just draw to your attention that there's one exhibit that was entered this morning, P-03875, and we had no prior notice of that exhibit before seeing it when it was entered this morning.

It's the letter from counsel for the RDTC who are a party with standing. And on just a brief read of it, it appears to present facts and a position, so it has the appearance of a submission of sorts. So I just want to draw that to your attention. I don't have instructions right now regarding it, but it may be that we may want to come back and seek leave to enter some material in response to that.

THE COMMISSIONER: Okay.

MR. LEARMONTH: I agree that it was –

THE COMMISSIONER: Just one second – go ahead.

MR. LEARMONTH: Okay.

THE COMMISSIONER: No, it's – yeah, (inaudible) turned on your (inaudible).

MR. LEARMONTH: It was a late addition. There's reasons for it but I won't go into them. And if Mr. Simmons or any other counsel feel that they've been prejudiced to any degree because of the late receipt of this document, then I would agree that they should have a chance to respond to it.

THE COMMISSIONER: Okay.

Hopefully this doesn't – I don't think this happens very often, so – but Mr. Simmons, certainly, if there is something your client wants to respond to, that's not a problem and we will have a look at it.

All right? Thank you.

Concerned Citizens Coalition.

MR. HISCOCK: Good afternoon, Mr. McCormick and Mr. Walsh. Will Hiscock here for the Concerned Citizens Coalition; just a few questions for you there.

Mr. McCormick, some of the first couple of questions I'll direct directly to you and then, well, there'll be some questions near the end that I'll put to both of you, perhaps. You stated in your interview that most of your site visits to Muskrat Falls were as a manager of the Hotel and Restaurant Workers Union. That's correct, is it?

MR. MCCORMICK: And the business manager.

MR. HISCOCK: And the business manager.

In response to questions from Mr. Learmonth, you commented on the substandard cleanliness of the rooms and scum buildup in the showers and so on. What union was representing the workers that were responsible for that janitorial work, do you know?

MR. MCCORMICK: I was.

MR. HISCOCK: It was. And was the issue poor supervision or was it inadequate number of

workers on site. What was the issue that caused that problem there?

MR. MCCORMICK: Primarily there wasn't enough cleaners. For years it was a rule of thumb that for every 15 individuals staying in the camp there would be an employee of the employer.

MR. HISCOCK: Yes.

MR. MCCORMICK: So, in Muskrat Falls, it was more like 35 to one.

MR. HISCOCK: More than twice the number of workers per cleaner.

MR. MCCORMICK: Than what would be the norm.

MR. HISCOCK: Okay.

Do you know why that was? Whose decision? That was a Nalcor decision –

MR. MCCORMICK: When the project –

MR. HISCOCK: – was it?

MR. MCCORMICK: – started we were assured – I wasn't part of the group of five, but the group of five have been very adamant in saying that they were promised that the camp in Muskrat Falls would be second to none. Well, across Canada the rule of thumb, rooms are cleaned every day, sheets are cleaned once a week and the room is completely cleaned every time there's a checkout.

MR. HISCOCK: Yes.

MR. MCCORMICK: So what we got in Muskrat Falls was a long ways away from what we were promised.

MR. HISCOCK: Do you think if you had been allowed to be in the room and it hadn't been limited to the five, that that may have been addressed at the time the collective agreement was being put forward in the first place, or when – if you had been part of those negotiations that would've been addressed?

MR. MCCORMICK: Well, the cleaning of the rooms, or the non-cleaning of the rooms, was really an issue for the RDTC.

MR. HISCOCK: Mm-hmm.

MR. MCCORMICK: I couldn't file a grievance as the union, I was only responsible for supplying the workers to clean the rooms and –

MR. HISCOCK: Yes.

MR. MCCORMICK: – that they perform an honest day's work, which they did, and went over and above what they really should've been doing.

MR. HISCOCK: Do you think that – so that was a failure of the RDTC that was – that caused the room – that issue to not be addressed on the Muskrat Falls site in your view, is it?

MR. MCCORMICK: What was that again?

MR. HISCOCK: It was a failure of the RDTC to have that addressed, to have the appropriate number of workers there to have that arranged?

MR. MCCORMICK: It wasn't failure of the RDTC. It was brought up. When we had liaison meetings – and I attended a good many with Arlene Dunn – at every one of the liaison committee meetings it was addressed to Yvonne Scott about the situation with the room. Dave Clark was on the other line; he would get back to us. Yeah. Never ever did.

MR. HISCOCK: Okay.

And so you were expecting a response from Dave Clark and that issue never got resolved?

MR. MCCORMICK: I was expecting for them to live by the commitment that they had made to the five unions during negotiations.

MR. HISCOCK: Yeah.

And that commitment to the five unions, that was meant to extend to the whole group. They were bargaining with the five, but really it was meant for the whole 16.

MR. MCCORMICK: It would be applicable to all 16.

MR. HISCOCK: Yeah.

This next question is for you, Mr. Walsh, and just a couple more to follow on. In your interview you referred to a worker who was terminated unfairly. And I believe that's who you were – the gentleman you were referring to earlier today, too, with the bipolar disorder, perhaps.

I'm wondering the frequency of terminations as an arbitrary measure by some supervisors or as a disciplinary tool at the Muskrat Falls site. Did you encounter that frequently that people were being dismissed over that kind of thing?

MR. WALSH: There were certainly not a lot of arbitrations that we dealt with, with termination. There were certainly a few, but it wasn't – of all the ones that we filed there were probably, maybe, eight or 10 stand out as wrongful terminations and wrongful suspensions and that, you know. That's – and that would be the maximum amount of people that were affected by that.

MR. HISCOCK: Okay, so you wouldn't see that that was an excessive problem or anything on the Muskrat Falls –

MR. WALSH: No, it was definitely not an excessive one.

MR. HISCOCK: Okay.

MR. WALSH: I guess one is excessive but, I guess, you know.

MR. HISCOCK: Okay, yes –

MR. WALSH: Yeah.

MR. HISCOCK: – fair enough. Anecdotally, we've heard of the need for secrecy, silence about matters occurring at the Muskrat Falls site. Some workers reported that they dare not talk about the problems that they had seen occurring on the site for fear of not being called back for work. Did you encounter that problem, or was that something that stewards raised in your meetings?

MR. WALSH: The stewards were – there was certainly that fear within some of the members that – because there were certain incidents that were brought forward to the stewards, but the first thing that they would tell the stewards: Don't mention my name in this issue, so the steward probably had his hands tied on some of the things.

So I guess there was ultimately a fear, but that fear isn't only with Muskrat Falls, you know, like – because the contractors got an awful lot of authority to remove you from the job if you're not the steward or – and even if you are the steward, if they – if you appear to be a troublemaker.

MR. HISCOCK: Okay.

So you say that it's not uncommon in the industry, we might say – you wouldn't say. Would you – you wouldn't say that there was any particular culture of fear or silence around Muskrat Falls, different from any other project really.

MR. WALSH: It may have been a little bit more, a little bit larger than typical, but it's certainly not unique.

MR. HISCOCK: Okay.

I'm also interested in the perspective of the RDTC and, you know, the trades councils. And, I guess, if at any time the trades councils were required to raise the safety record on the project with Nalcor, was that something that you would've raised with Nalcor, any safety issues and so on that you saw ongoing there?

MR. WALSH: I did not have much dealings with the safety issues. The business managers and the executive director and others would've dealt with it. I would've not dealt with it very often, if at all. Only if something was not resolved, I would just remind the steward and the workers that they've got the right to refuse.

If work is that blatantly unsafe, they've got the right to refuse and then you get it resolved through OHS. But other than that, I would not have much input into the whole safety aspect of things, other than the few things how I noticed

things weren't being done safely. That was at different times at different places.

MR. HISCOCK: Okay.

You just raised some issues with Commission counsel regarding the Innu and their ability to get training – you know, good job training on the site and so on. Do you feel that the Innu and other Labradorians, I guess, were treated fairly in relation to Muskrat Falls? Were they given the priority that they were due by and large?

MR. WALSH: They were given the jobs priority, but they certainly wasn't – they were not given the training priority as outlined in Article 7.08. And it's primarily that Innu that are identified for these training opportunities as per Article 7.08. At least that's the way I remember without actually looking at the collective agreement.

But the Innu did not receive any training for to be foremen, to be supervisors, to be anything. They got the jobs cleaning; they got the jobs being labourers, running a little bit of equipment. But, you know, they were there for four or five years, there should've been someone from Innu with an Innu heritage that should be able to take a job and take 40 or 50 people and build something, and that doesn't exist.

MR. HISCOCK: Okay.

And do you feel that – and that responsibility to get that training to the Innu, that would've been Nalcor's responsibility?

MR. WALSH: Nalcor, through the –

MR. HISCOCK: Through the contractors.

MR. WALSH: – up through the contractors. If Nalcor had to say, I want to make sure you train this guy in how to pour cement, I want this guy to be a camp manager, it gets done, but it wasn't.

MR. HISCOCK: You and – or both of you gentlemen and many others, have spoken about poor morale on the site. Can you explain why you think the morale on the site was poor?

MR. WALSH: It's obvious because things were dragged out so long. Because at the end of the

day, people want an answer, and if it's not the right answer, well, you move on or you deal with it or what – however it is, it is. But waiting for an answer forever just drags things out. Like Pat was saying earlier, you spend more time talking about: Have we got an answer for this yet? Have we got an answer for that yet? And you're waiting for an answer. That was also the problem that led to the Long Harbour walkout, that very same issue, not getting answers.

MR. HISCOCK: And the Long Harbour walkout, would that have been during the David Clark period on Long Harbour as well?

MR. WALSH: Yes.

MR. HISCOCK: And when you're referring to these things getting dragged out, I'm taking it from your testimony earlier you're basically referring to issues with Dave Clark and his –

MR. WALSH: Yes.

MR. HISCOCK: – system of labour management.

MR. WALSH: The issue at Long Harbour – not that we're here for the Long Harbour inquiry –

MR. HISCOCK: No.

MR. WALSH: – it was board. And board – living-out allowance. And it got dragged out and dragged out and dragged out, and if the unions did something, it got dragged out further and it led to the walkout. But the name synonymous with that is Dave Clark.

MR. HISCOCK: In general, does poor morale affect productivity?

MR. WALSH: Absolutely.

MR. HISCOCK: And would you have seen signs of that on the Muskrat Falls site?

MR. WALSH: Yes, lots of complaints. The stewards would be sometimes under a lot of stress because people were looking for answers and they would be coming to the stewards, and the stewards would be coming to me, and I'd be going to other people. And I'd say, look, I'm after – you know, after 12 or 13 days, and your

room has never been cleaned, and no one's even trying to clean it.

You know, and all that stuff wears on you when you're away from home because, you know, all the other things are happening as well, you know, and you can't be near. You probably – you know, the child is sick or something like that and here you are in a – basically a rundown room that's filthy and – you know, so it all impacts real life.

MR. HISCOCK: And if I understood the evidence – and I'll put this to both of you gentlemen – earlier, which was that there was some concern around the fact that Mr. Clark, in one sense, was a person driving grievances towards the arbitration process or driving problems towards the grievance process in the first place and also seemed to have a fairly significant financial stake in the arbitrations that went on. Is that – was that your impression from your side of the table?

MR. MCCORMICK: Yes.

MR. HISCOCK: Okay.

The agreement that this was based on, this May 2012 to 2017 – it says on the cover anyways. But this agreement, the Muskrat Falls agreement, that remains in place throughout the duration, correct? Then it goes right up to the mechanical completion of the project. Do you know when that's going to be? Have you heard from Nalcor what the date is expected to be for that?

MR. WALSH: I've heard a bunch of different dates for that –

MR. HISCOCK: Sure.

MR. WALSH: – none of them that I could say with any accuracy is correct.

MR. HISCOCK: Okay.

Do you know how many revisions there have been to this agreement since its signing?

MR. WALSH: Typically, the main body, it hasn't changed. The only thing is – I think Dave Wade pointed out earlier that if a MOU or letter

of understanding gets added to – the most recent MOU was the one that I referred to under Article 19.10. It was, I believe, August of last year. That would've been probably the only new revision for the most recent version of this collective agreement.

But if we sign an MOU tomorrow that – all the other ones would remain in place unless a new MOU voided a previous one or something like that. But the main body has not been changed.

MR. HISCOCK: And what was the rationale or the main reason behind the MOUs to date, do you know, or ...?

MR. WALSH: Problems –

MR. HISCOCK: I guess the big issues?

MR. WALSH: – that arose instead of rewriting the whole collective agreement that –

MR. HISCOCK: Any specific ones that come to mind that would've been addressed by these MOUs to date?

MR. WALSH: Well, one was the clarification for the layoff. 'Cause the hiring and layoff is covered under Article 7.08 and Article 30.03. But they signed a letter of understanding or a letter of clarification that outlined that an RDTC Labrador resident had hierarchy over a non-RDTC Labrador resident. And that sort of clarified the whole process on a go-forward basis.

That was one of the things that would've been in a new revision.

MR. HISCOCK: This question, again, to both of you gentlemen, whichever of you would like to answer or get your – both your opinions on it perhaps. In hindsight, I'm wondering, do you think that the project ought to have been delayed in order to not compete for labour and contractors at a time, especially in 2013 and 2016 when labour, especially in the trades in Newfoundland and across the country, was in short supply?

Would Newfoundlanders have gotten more benefit out of it if it had been able – if it had

been planned around labour shortages in our local market a little bit more?

MR. WALSH: No. Everything within it was fixable right from the get-go, I do believe. You know, like, maybe the – some of the more qualified people that you would've been looking for might've had to entice them a little bit more into the supervisor roles or whatever else. But the reality of it was that as a project winds down, people are getting ready to move on to the next one.

I was in Long Harbour towards the end of it, and people were getting ready to jump ship over to Hebron. And it was very likely had you been looking for a man with – or a woman with specific skills to come to Muskrat Falls as both of these projects were pretty much over with. You could've enticed them with the prospect of three or four years of work, you know.

MR. HISCOCK: Okay. Thank you. Appreciate it, gentlemen.

THE COMMISSIONER: Thank you.

Edmund Martin.

MR. SMITH: Gentlemen, Harold Smith for Edmund Martin.

I was interested in the number of arbitrations or – first of all, grievances and the number of arbitrations that have resulted from those grievances. Do either of you have an understanding of those numbers?

MR. WALSH: I can tell you that we were at grievance number 300, but we're nowhere near close to that than the number of arbitrations. We filed 300 a few days ago and 301 maybe tomorrow or the next day.

MR. SMITH: Okay.

And in terms of the number of those that went to arbitration, do you have any sense of what the numbers might be?

MR. WALSH: I believe our office does have that information, but I don't personally have it. I don't know if Pat's got it.

MR. SMITH: 03819, Madam Clerk.

THE COMMISSIONER: That would be at tab 21.

MR. SMITH: Twenty-one, yes.

THE COMMISSIONER: Thank you.

MR. SMITH: Did you happen to see this paper before?

MR. WALSH: I knew it was in the works, but I've not actually – that's why I said our office probably has got it. I know they were in the process of getting this information for the Inquiry but I –

MR. SMITH: Now, if I look at page 2 of that exhibit, the number of grievances referred to arbitration was 124 as of April 8, 2019. Does that ring any bells? A hundred and twenty-four, and no reason to dispute that, no?

And Arbitration Decisions – 34. There seems to be a wide disparity between number of arbitrations decided and the number of arbitrations referred. Is there any reason for that?

MR. WALSH: A lot of them got settled by the arbitrators sitting there. Like, the one I specified earlier, the guy with bipolar, we showed up to arbitration and they say we can't defend this. So it has an arbitration number, it has an arbitrator, but it doesn't have a decision.

MR. SMITH: So if I look a little further down on that page: Settled or Withdrawn before the arbitration hearing – 87.

MR. WALSH: There's your number.

MR. SMITH: Okay.

Now would you gentlemen – perhaps, Mr. McCormick, you're probably closer in terms of being a bit of a business agent for H&RW. What would a typical arbitration cost?

MR. MCCORMICK: What would it cost?

MR. SMITH: Yup.

I am looking at your side, not both sides, just your side.

MR. MCCORMICK: I can't give the number –

MR. SMITH: Okay.

MR. MCCORMICK: – not off the top of my head, Mr. Smith.

We never had a cheap one.

MR. SMITH: Mmm?

MR. MCCORMICK: We never ever had a cheap one.

MR. SMITH: No.

Well, I wanted to put it in perspective for the public as to the belief that arbitration is quick and cheap. Would you agree to that?

MR. MCCORMICK: Far from it.

MR. SMITH: Far from it. Typical arbitration cost, Mr. Walsh?

MR. WALSH: I have no –

MR. SMITH: Do you have any idea?

MR. WALSH: – idea the cost, but quick, definitely not.

MR. SMITH: Definitely not. And you would agree with Mr. McCormick, not cheap either?

MR. WALSH: I have no idea. He pays the bills.

MR. SMITH: He's basically - okay.

MR. WALSH: I just – that's –

MR. SMITH: But you had a stint, as I recall just –

MR. WALSH: Yeah, but –

MR. SMITH: – vaguely.

MR. WALSH: But I only had one grievance, though. But, I have been trained well for – by the boys. I usually have one a week now, so

MR. SMITH: So – but again, you were a business manager for one of the trades. Is that correct?

MR. WALSH: Yes, I was.

MR. SMITH: The Boilermakers.

MR. WALSH: For 18 years, yeah. Yes.

MR. SMITH: And during that 18 years you only had one grievance.

MR. WALSH: Yeah. There's a big difference in dealing with contractors provincially and the special agreements.

MR. SMITH: Okay.

I'm going to suggest to you that the typical arbitration might cost as much as \$30,000.

MR. MCCORMICK: I would say that's a cheap one.

MR. SMITH: That's a cheap one. Okay.

And that's one side. That's one side, \$30,000, and presumably the other side might spend that or more, correct?

MR. MCCORMICK: I can't agree with the more –

MR. SMITH: Yeah.

MR. MCCORMICK: – but I can say they pay the same.

MR. SMITH: Pretty well the same. Yeah. Okay.

So going to arbitration is a big decision, is it?

MR. MCCORMICK: It's an expensive venture.

MR. SMITH: Now, I'd like you bring up, Madam Clerk, 03816.

THE COMMISSIONER: That would be at tab 18, book 2.

MR. SMITH: This particular settlement you indicated that Mr. Clarke said no, but the parties were ready to go –

MR. MCCORMICK: Right.

MR. SMITH: – to a settlement.

MR. MCCORMICK: That's correct.

MR. SMITH: Would these settlements of this type would that be without prejudice?

MR. MCCORMICK: Yes, it would.

MR. SMITH: Now in the context and for – only for the purpose of fullness, okay, the issue that was involved in this particular matter that's gone to grievance – arbitration –

MR. MCCORMICK: What?

MR. SMITH: – what was the issue in this case?

MR. MCCORMICK: The issue was the refusal to hire a shop steward referred by the union.

MR. SMITH: In preference to?

MR. MCCORMICK: In preference to? In preference to what? To who?

MR. SMITH: Well, it seems to suggest an Indigenous person.

MR. MCCORMICK: The collective agreement act is very clear, Mr. Smith, that the union has the right to appoint stewards.

MR. SMITH: I'm not getting into –

MR. MCCORMICK: And we –

MR. SMITH: – the merits of the case.

MR. MCCORMICK: – and we appointed the steward.

MR. SMITH: Yeah, okay. But I just wanted to say that the issue is the appointment of a shop steward –

MR. MCCORMICK: Yes.

MR. SMITH: – over an Indigenous person.

MR. MCCORMICK: Yes, over –

MR. SMITH: Okay.

MR. MCCORMICK: – over – the union has the right to select a person – if you want me to explain it, Mr. Smith, I'll explain it; if you're looking for me –

MR. SMITH: No, no –

MR. MCCORMICK: – to give you –

MR. SMITH: – please, please –

MR. MCCORMICK: – the answer you want.

MR. SMITH: – explain. I just want to make sure you understand, I'm not looking to get into the merits.

MR. MCCORMICK: No.

MR. SMITH: I just want to know what –

MR. MCCORMICK: You asked a question.

MR. SMITH: – the issue was.

MR. MCCORMICK: So the collective agreement is very clear that the union has the right to appoint a steward. So, if an – if there's an Innu person and they're not qualified to be a shop steward, there's no way I'm going to appoint them. If they're a union member from Labrador and they're not qualified to be a union steward, I'm not appointing them.

MR. SMITH: So, again, the issue was seeking a referral for an Indigenous person, and he wasn't a shop steward, but you took the position that the collective agreement says I'm allowed to appoint a shop steward.

MR. MCCORMICK: The first person hired –

MR. SMITH: Yup.

MR. MCCORMICK: The first person hired, it's the union's right to appoint a steward.

MR. SMITH: Okay.

MR. MCCORMICK: And we appointed (inaudible) steward – it just so happens that person wasn't an Innu person.

MR. SMITH: Okay. Okay.

Now, in term of numbers of Innu on-site, how many would you have in your membership on-site?

MR. MCCORMICK: Forty, 50 maybe, or more.

MR. SMITH: Okay. And they would be predominantly in the camps?

MR. MCCORMICK: In the camp and in the kitchen.

MR. SMITH: And in the kitchen.

MR. MCCORMICK: And cleaning on the site in the different contractor's offices, and we have Innu people that are there as security officers.

MR. SMITH: Mr. Walsh, what about other contractors: would the have Innu on site?

MR. WALSH: Numbers-wise, the Labourers would be probably equal to the Hotel and Restaurant Workers, but they probably had 500-600 people on site with 50, 60, 70 Innu. Pat, probably 100 people on-site, and 40-50 Innu, probably 50 per cent of his members – membership on-site were on Innu heritage. And other trades: smaller numbers, a few Teamsters, a few Operating Engineers. There's at least one Innu pipefitter, and other than that, not big numbers from anyone else.

MR. SMITH: Now, about – if – I tried to follow you and do the addition, which is dangerous for me to do math in my head, but is about 250 would cover them all?

MR. WALSH: Oh, more than – that's probably a high number, but easily, yeah.

MR. SMITH: Okay. So, 225?

MR. WALSH: Yeah.

MR. SMITH: Okay. 225.

And of the 225 over the life of the project from 2000 – I think – and 14 is, essentially, when it got started.

How many have actually got to the level of shop steward?

MR. WALSH: Pat's had at least two; the Teamsters had at least two, and I know that we were trying to work on a deal to have stewards mentored by some of the other trades, but to my knowledge and recollection, that's probably it.

MR. SMITH: So, about four people have arrived at the –

MR. WALSH: Yeah.

MR. SMITH: Okay?

Now, some of the people that you mentioned, like the Teamsters, they essentially drive vehicles, don't they not?

MR. WALSH: Yeah.

MR. SMITH: On site?

MR. WALSH: And warehouse.

MR. SMITH: Warehouse, and labourers would do just about anything physical. It's mostly a physical trade.

MR. WALSH: Well they were responsible for pouring a lot of cement, keeping the – and all those other things, yeah.

MR. SMITH: Okay. And the – excuse me – Operating Engineers. They would be operating, for the most part, heavy equipment?

MR. WALSH: And most of the top-rated engineer Innu were, I believe, people who had just done the course and probably in the apprenticeship phase of their career. And there were, I believe, a few ironworkers that had Innu workers as well, and we actually had a graduation for some electrical workers, and a few of them made it to site as well. But – you know – but not as shop stewards. They were probably, at this point, just apprentices.

MR. SMITH: Okay.

And how many journeymen would be among the Innu?

MR. WALSH: Very few numbers because under Hotel and Restaurant Workers, you got training, but there isn't a red seal, which you reach at journeyman. Under labourers, you've got different facets of training, but you're more than capable at a lot different things, but you mightn't have a journeyman status.

MR. SMITH: My understanding is there are – there is a red seal for cooks.

MR. MCCORMICK: Yes.

MR. SMITH: Am I correct? And how many Innu have received their red seal? Cooks – in terms of being upgraded.

MR. MCCORMICK: None that I know of. Are you familiar with the red seal program? You don't –

MR. SMITH: I've done a few arbitrations (inaudible) –

MR. MCCORMICK: Well, you can't just receive a red seal.

MR. SMITH: Yeah. No.

MR. MCCORMICK: There's a process to earn that. Someone who never took the initiative to earn it – I guess they don't have it.

MR. SMITH: So, initiative is a cornerstone as to whether or not training into either operating engineer, heavy equipment, whether a journeyman status, whether in some of the trades – initiative even for red seal as a cook – initiative on the part of the individual is important in making the determination as to whether training was done or not done at the site. Is that fair?

MR. WALSH: Not necessarily.

MR. SMITH: No?

MR. WALSH: The way that it's written is that Innu would be – if they never actually had the initiative – someone would go out and, I guess, try and find some. We – there were people – not

only within the red seal trades that could have been – had they been brought in from the early part with the Teamsters – they could be – they could be a supervisor in a warehouse now. They could be a supervisor over a bunch of Teamsters.

There's actually, I think, one guy – Bart Penashue – who did reach GF but he's the exception. And with the labourers there were tons of opportunities for foremen and possibly GFs to work along with the guys, get the proper training to pour cement and –

MR. SMITH: Do you –

MR. WALSH: – it never materialized. If you want – if you think it's because there wasn't initiative – I think the agreement is fairly clear that they're going to try and get people involved and I don't believe they did.

Because there's, actually, one person – I mentioned to a contractor – very – a very capable person but – Innu – I suggested that he be a foreman but I think he's a little bit of a thorn in the company's side and they're not – they're not going to risk putting him into any position.

MR. SMITH: A foreman is also something that hasn't been, you know, fully discussed at this Commission. Foremen are, for the most part within the building trades, members of the building trades.

MR. WALSH: Yes, but you'll have to be a foreman, I guess, before you move up to a GF and before you reach the category of a superintendent.

MR. SMITH: Right.

And a GF, or a general foreman, over the foreman – over the workers or both – is also a member of the building trades unions, is that correct?

MR. WALSH: That's correct.

MR. SMITH: Yeah.

So in terms of that process and trying to balance the requirement of initiative against the obligation under the agreement to train people,

how do you train someone who doesn't want to? Like your shop stewards, for example, who don't want to take on the burden of being a steward?

MR. WALSH: Well, I guess the first question is did you look? And it doesn't appear that anyone ever looked. And that's my belief, that no one ever looked to see if there was someone that would want to be in these positions.

MR. SMITH: Thank you very much, that's all I have.

THE COMMISSIONER: Former Provincial Government Officials.

MR. LEARMONTH: Just before I forget, there's one exhibit I wanted to enter if I could.

THE COMMISSIONER: Okay.

MR. LEARMONTH: It's P-03904.

THE COMMISSIONER: (Inaudible.)

MR. J. KING: Good afternoon, gentlemen. Justin King on behalf of the group of Former Provincial Government Officials between the years 2003 and 2015.

I just have one question for Mr. McCormick. You mentioned this afternoon on a couple of occasions a *Telegram* article where Shawn Skinner had made some comments in relation to the potential award of the Astaldi contract.

MR. MCCORMICK: Yes.

MR. J. KING: You remember that – those comments? I don't think you identified the actual date of the article. Do you recollect the date –?

MR. MCCORMICK: Date of the article? No.

MR. J. KING: Okay.

MR. MCCORMICK: I'm pretty sure it was just after Astaldi was awarded the contract.

MR. J. KING: Okay.

I just did a brief search for potentially what article you could be referring to because I don't think it's been entered as a document or as an exhibit. And I found a potential article, September 3, 2013. Does that sound around about where it would be?

MR. MCCORMICK: If that – if you looked and found it's September '13, I guess that –

MR. J. KING: Okay.

MR. MCCORMICK: – that's where it's at.

MR. J. KING: And we could enter that as an exhibit. I don't think much turns on it, but I'm just trying to provide some context in terms of when that article was released and when you would've been aware of those statements having been made?

MR. MCCORMICK: I was aware of it when I read the evening *Telegram* –

MR. J. KING: Okay.

MR. MCCORMICK: – whatever day that was.

MR. J. KING: Okay.

MR. MCCORMICK: But I certainly recall reading it.

MR. J. KING: Okay. And you're aware that Mr. Skinner left government in October –

MR. MCCORMICK: Yes.

MR. J. KING: – 2011?

MR. MCCORMICK: Yes.

MR. J. KING: Okay. Were you aware of Mr. Skinner's position at the time he made those comments to *The Telegram*?

MR. MCCORMICK: I know that he went to work for the carpenters' training institute, I don't know.

MR. J. KING: Okay.

MR. MCCORMICK: But I know he was a representative of Aecon.

MR. J. KING: Okay. So you were aware that he was a representative of Aecon at the time of those comments?

MR. MCCORMICK: Yes.

MR. J. KING: Okay. And you were aware that Aecon was also a bidder for that work –

MR. MCCORMICK: (Inaudible) was a bidder.

MR. J. KING: – package? Okay.

Thank you. That's all my questions.

THE COMMISSIONER: (Inaudible.)

MR. HOGAN: Good afternoon, gentlemen. My name is John Hogan, and I'm counsel for the Consumer Advocate.

Mr. Walsh, first, I just want to follow up on something Mr. Hiscock was asking you about. And that was the other projects, Long Harbour and Hebron, that were ongoing when Muskrat Falls started. Did the availability of workers create any productivity issues with regards to the overlapping projects? The productivity of Muskrat Falls?

MR. WALSH: Nothing major. Most of the problems were probably in the way that it was being managed at different points in time. Because as I said to Mr. Hiscock that right now, even as this project is winding down, people are jumping ship to go to Site C in British Columbia, other projects elsewhere, where the prospect is that they've got three or four years' work as opposed to three or four months' work.

And it's just the way things happen. So, Long Harbour was pretty much over, and Hebron was winding down. So if you were looking for the right person, there's just a matter of – a person that you felt that would build a job, their time on the other projects were winding down. You could negotiate a deal, probably –

MR. HOGAN: So –

MR. WALSH: – with someone.

MR. HOGAN: So I thought you said there was no productivity issues, but there was

management issues with regards to the projects overlapping? Is that what you said?

MR. WALSH: Yeah.

MR. HOGAN: Okay, so what are the management issues that were existing back when this project started?

MR. WALSH: Well, management issues that they weren't managing the workers very well. 'Cause when you got a pile of people standing around because you've got nothing for them to do, that's not a – it affects productivity, but it isn't a productivity –

MR. HOGAN: Yeah.

MR. WALSH: – issue because the average Newfoundland worker, given the tools and tell him to go – what to do – as Pat pointed out, we're second in the world to no one and, you know, and that's well-known. Alberta loves to have Newfoundlander workers. The Norwegians said we're better than everyone else in the world. So, if you've got someone – if you've got a Newfoundlander and you've got a job for him to do and you give him the tools, you don't have to worry about that job getting done.

MR. HOGAN: So, when I say that – was there productivity issues I didn't – I wasn't directing that at the –

MR. WALSH: Okay.

MR. HOGAN: – workforce.

MR. WALSH: Okay.

MR. HOGAN: I was directing that at, generally, was there issues with work being done? Not saying that's it's the worker's fault. I guess that's the question I'm trying to get at. Was there issues with work not being done? It sounds like you're saying, yes, there was because there weren't workers there to manage – well, the managers – the workers were there, but the managers –

MR. WALSH: They (inaudible).

MR. HOGAN: – weren't able to be managed.

MR. WALSH: Yeah.

MR. HOGAN: Okay. Is that what you mean?

MR. WALSH: Yes. That's what I mean.

MR. HOGAN: Okay. So, those issues did exist?

MR. WALSH: Those issues did exist.

MR. HOGAN: The work was not being done despite workers being there.

MR. WALSH: Exactly.

MR. HOGAN: Okay. And was this just at the beginning of the project? Or did you find this throughout the whole project?

MR. WALSH: Well, at certain points in time, it's going to occur anyway because you're waiting for materials and everything else, but it was certainly prevalent early on in the project. Like, one steward told me, and I have no reason to believe that he's lying, but they spent an awful lot of time in the lunchroom waiting to go to work, but Astaldi wasn't ready to do this work and – you know, so they spent –

MR. HOGAN: But they're getting paid, though?

MR. WALSH: They're getting paid though – yeah, that's the important thing. They're getting paid, but they're not accomplishing much and, you know, that's – that happened. And on a big project like this, it's difficult to micromanage to the point where you've got exactly the right number of people every single minute of every single day, and there are some times when that occurs. But overall, ultimately, it's the management team to – role to get that –

MR. HOGAN: That's the camp.

MR. WALSH: Yeah.

MR. HOGAN: Okay. And you mentioned there was time when maybe a – I can't remember exactly what you said – there was – was there any time when there was lack of equipment or lack of tools that led to these issues as well? For example, there was workers there ready to work

and being paid, but they couldn't do the job because they're just –

MR. WALSH: At different points in time I believe there was. I remember reading about early on where the – they were cleaning concrete with toilet brush and everything else, but –

MR. HOGAN: Yeah.

MR. WALSH: – part and parcel of Astaldi's problem was getting a piece of equipment. For example, I was told on numerous occasions a piece of equipment, a backhoe or something, is broken down and just the whole process of getting that part in to get it repaired just got dragged out because maybe they had to go to Italy for approval or whatever else – whatever dragged out. But, anyway, a piece of equipment is down for a week or so, and no one can use it for a week or so or longer, and that, of course, affects production. And these things were commonplace on site.

MR. HOGAN: And more so than usual on other sites you've been on?

MR. WALSH: It appeared to be. I've never – the other sites I was on, I've never heard that issue brought up to the extent that it's been –

MR. HOGAN: Okay.

MR. WALSH: – in this particular project.

MR. HOGAN: I – stick with the issue of workers and availability of work. During the winter, was it an issue that there was a lot of workers on site who were not working, or did not have things to do or were not able to work because of winter conditions?

MR. WALSH: Typically the winter conditions are – were being managed by tarps and everything else, but it is well within the realm of possibility that the – and typically during the winter, we don't get as much productivity. I've heard a steward throw out a number one time – he was a concrete steward and he said it takes twice as long to pour a metre of concrete in the winter with the hoarding and everything else as oppose to the summer. I am not sure if that – if I recall that number exactly, but that type of

situation exists when weather impacts (inaudible) –

MR. HOGAN: But was there any workers that were just there and there was downtime because they could not work?

MR. WALSH: At different times there would have been, certainly. And early on in the project, like I said, the steward told me they were sat around the lunchroom, playing cards for days on end. And I don't know – I never went – I wasn't there on site when this occurred and I never went up and had a game of cards with them so I can't confirm if it is true or not, but this is what he told me. And there is no reason for him to embellish what he told me.

MR. HOGAN: Okay.

So I believe you gentleman were both here this morning and I asked this question to Mr. Wade about how he felt about the change from SNC-Lavalin being the EPCM contractor to moving to an integrated team model. Are you familiar with that, Mr. McCormick?

MR. MCCORMICK: Pardon?

MR. HOGAN: Are you familiar with the move of SNC-Lavalin as the EPCM contractor to the integrated team model?

MR. MCCORMICK: EPCM contractor was SNC-Lavalin.

MR. HOGAN: Right, and there was a change from them to the model becoming an integrated team?

MR. MCCORMICK: That is something that I always questioned –

MR. HOGAN: Okay, so I actually –

MR. MCCORMICK: – because SNC-Lavalin had a track record – quite qualified to do what they were supposed to do. But sometimes (inaudible) make you aware down there that the people that were in charge didn't want somebody there that knew what they were doing.

MR. HOGAN: Could you elaborate on that?

MR. MCCORMICK: Well, SNC-Lavalin was qualified to know if work was being performed the way it should be performed and where it was going, but they replaced SNC-Lavalin with their own people. I've never ever been told who their own people were and how qualified those people were to be able to take SNC-Lavalin's place.

MR. HOGAN: You can't comment on whether they were the right people or not because you don't know who they were.

MR. MCCORMICK: No.

MR. HOGAN: Okay.

MR. MCCORMICK: I don't know if anybody ever said who they were and what their qualifications were but we knew what SNC-Lavalin's qualifications were: they were world-class organization when it came to being an EPCM contractor.

MR. HOGAN: Mr. Walsh, do you have anything to add to that?

MR. WALSH: I – my first trip to site was July of 2014, I have no recollection of SNC-Lavalin being there: they may have been replaced by then or they may have been on their way out through the door but I have no dealings that, to my knowledge, of – with SNC-Lavalin.

MR. HOGAN: Okay. Just – can I ask a general question to either of you?

The collective agreements for the Muskrat Falls Project, I guess you can speak to just the one you're familiar with, can you generally say how they differ from other collective agreements you've been involved with for special projects in terms of – let's just focus on the pay and the benefit package. Was it the same – let's talk about, I guess, Hebron and Long Harbour – was – were the benefits the same, better, or worse generally and maybe you could give some –

MR. MCCORMICK: The wage package was more than Long Harbour.

MR. HOGAN: Pardon me?

MR. MCCORMICK: The wage package was more than Long Harbour.

MR. HOGAN: More than Long Harbour, and why was that?

MR. MCCORMICK: I guess they wanted to pay the money to get the best workers possible.

MR. HOGAN: Okay. Is that what happened? You don't know.

MR. MCCORMICK: The best workers were available so

MR. HOGAN: The purpose of that better wage package was to get better workers.

MR. MCCORMICK: Was to attract the best workers available.

MR. HOGAN: Okay.

Mr. Walsh, anything to add?

MR. WALSH: Actually, one thing I mentioned to Mr. Learmonth and it's totally ironic when – 'cause the language in the Long Harbour agreement regarding bereavement is exactly the same as the language in the Muskrat Falls agreement except for one single word; but it's interpreted 180 degrees differently. It's – in Long Harbour when an individual's family member died they got three working days off; if the individual died while you're at home you got three working days when you came back – not to go to work but you got paid for it. But in Muskrat Falls the exact same language interpreted differently, so sometimes even with the same language, you still wind up with a different interpretation.

MR. HOGAN: Depending who's reading it – interpreting it.

MR. WALSH: And whether or not, I guess, we go to arbitration to get a specific interpretation.

MR. HOGAN: Okay.

This is the last question I have for both of you. Now we're obviously here because the project is over budget and beyond schedule. Just wondering, from your experience can you give an opinion as to why that has happened and/or who is responsible for it?

Mr. McCormick?

MR. MCCORMICK: Say that again please.

MR. HOGAN: So we're here because we're looking at why the project was over – is over budget and beyond schedule; so do you have an opinion about why that is?

MR. MCCORMICK: Why it's gone over budget?

MR. HOGAN: Yeah.

MR. MCCORMICK: Never had the people there to – with the knowledge to be able to do the job the way it should've been done.

MR. HOGAN: And you're speaking in terms of –

MR. MCCORMICK: And it's not the on the ground workers, it's management, supervisors, engineering and whoever.

MR. HOGAN: – not the tradespeople.

MR. MCCORMICK: I don't think they were ready to start the project.

MR. HOGAN: You don't think they were ready to start the project. You think there was unpreparedness from the beginning?

MR. MCCORMICK: They were not well prepared to start the project.

MR. HOGAN: Okay.

MR. MCCORMICK: That's my opinion.

MR. HOGAN: Yeah, Mr. Walsh?

MR. WALSH: Well I'd have to – I don't have all of the information in front of me, obviously, but I need to know where the 12 or 13 billion was spent and, you know, the difference between the workers, the contracts, the – whatever the profit margin was. And I could probably given you a fairly accurate opinion then, but other than that, I'd be just – I'm sort of inclined to believe that at the end of the day, if you're a manager, the buck stops with you. And Nalcor was the manager.

MR. HOGAN: Okay, thanks very much. That's all the questions I have.

THE COMMISSIONER: Thank you.

Astaldi Canada. Sorry?

MR. LEARMONTH: We have a meeting at 4:30. We had one – I don't know how late you want to go. I just mention that to you, you can decide.

THE COMMISSIONER: Yeah, I just looked at my watch here now. We do have a meeting. I don't want these gentlemen to have to come back. I'm sensing that we're going to finish with them. How long are you going to be, Mr. Burgess?

MR. BURGESS: Less than five minutes, Commissioner.

THE COMMISSIONER: Okay, let's go and let's get this done.

MR. BURGESS: Thank you, Commissioner.

Good afternoon, gentlemen. My name is Paul Burgess, and I represent Astaldi Canada Inc. As you just heard, I only have a couple of quick questions.

Mr. McCormick, you were talking in your evidence earlier about the state of the accommodations and the cleanliness and so on, and it's my understanding that your dealings in relation to those issues was with Nalcor because that was who was responsible for the accommodations, the camp, the food. Is that correct?

MR. MCCORMICK: Yes.

MR. BURGESS: Okay.

And Mr. McCormick, in your evidence you talked about at the beginning of the project, there was an issue of payment to the workers of two or three weeks, and I thought you said no payroll. Could you tell me what time frame that was?

MR. MCCORMICK: That was at the beginning of Astaldi coming on the site and they

had no bank accounts set up, they had no payroll set up. There was –

MR. BURGESS: Okay, so there's two periods of time that that could apply to. They went on-site under the contract in – they signed the contract in late November of 2013. With Christmas then, they started in January of 2014. So it could be that time you're referring to, or was it the time when they went in under the Limited Notice to Proceed in September. Do you recall?

MR. MCCORMICK: No. After they started hiring and the workers had commenced to go to work on the site.

MR. BURGESS: So that would be say from January of 2014 –

MR. MCCORMICK: Yes.

MR. BURGESS: – correct? Were you aware – we heard evidence from Astaldi witnesses – that at the beginning of 2014, in January, for several months they were having issues with Nalcor's invoicing payment system, and difficulties then getting paid. Were you aware of that?

MR. MCCORMICK: I can't say that I was, no.

MR. BURGESS: Okay.

MR. MCCORMICK: I was only aware of the complaints from the workers not getting their cheques.

MR. BURGESS: Right.

And you talked about the – both of you gentlemen talked about the ICS. First of all I'd ask, Mr. McCormick, do you have any engineering expertise or training?

MR. MCCORMICK: No, I don't.

MR. BURGESS: Mr. Walsh, do you have any engineering expertise or training?

MR. WALSH: No, I don't.

MR. BURGESS: And did you bring – did you do any review of the design of the ICS, and if so, do you have any expertise or experience in

dealing with the design and erection of an ICS such as was being done at Muskrat Falls?

MR. MCCORMICK: No.

MR. WALSH: No.

MR. MCCORMICK: The only thing I have was being on the site watching them tearing it down.

MR. BURGESS: Yes.

Thank you gentlemen, that's all my questions.

THE COMMISSIONER: Thank you.

All right, Nalcor Board Members – Former Nalcor Board Members.

MS. MORRIS: No questions (inaudible).

THE COMMISSIONER: Thank you.

All right, Newfoundland and Labrador Building and Construction Trades Council and Resource Development Trades Council of Newfoundland and Labrador.

MS. QUINLAN: No questions.

THE COMMISSIONER: No questions.

All right, redirect.

MR. LEARMONTH: No redirect.

THE COMMISSIONER: Okay.

All right, gentlemen, thank you very much and we'll adjourn now. Just so that we know about tomorrow, are we moving up the witness for Wednesday to tomorrow? Or is it my understanding that she's not available?

MR. LEARMONTH: We'll have to have a day off tomorrow because the witness who was scheduled for Wednesday is not available for a very good reason.

THE COMMISSIONER: All right.

All right, thank you very much. I don't think it's going to be a day off for most of us, but anyway.

We'll be back then on Wednesday morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.