



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 45

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*Commissioner: Honourable Justice Richard LeBlanc*

Friday

31 May 2019

**CLERK (Mulrooney):** All rise.

This Commission of Inquiry is now open.

The Honorable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right.

Good morning, Mr. O'Brien; you remain under  
oath at this time. Ms. Muzychka, when you're  
ready.

**MS. MUZYCHKA:** Thank you.

Good morning Commissioner, good morning  
Mr. O'Brien.

**MR. O'BRIEN:** Good morning

**MS. MUZYCHKA:** I'm gonna start with – just  
going back to something we spoke about  
yesterday. In your testimony, you made the  
statement: none of the contractors that have  
executed work at Muskrat Falls have been  
encumbered in relation to the owner's team  
performance. The process that we – can't hear  
me?

**THE COMMISSIONER:** Excuse me. We're  
having trouble with the volume here. I can't –  
I'm getting feedback up here and – so just – if  
we can just wait one second maybe we will have  
somebody come out just to fix it.

Need a break?

Okay, we're – I'm sorry, we're having a few  
technical glitches this morning. We'll just take a  
break, just to try to get back on track here now.

**CLERK:** All rise.

### Recess

**CLERK:** Please be seated.

**THE COMMISSIONER:** All right.

It sounds better even as I step up to – on the  
podium here.

All right. Go ahead, Ms. Muzychka.

**MS. MUZYCHKA:** All right.

I'll go back over, just in case it wasn't picked  
up.

**MR. O'BRIEN:** Right.

**MS. MUZYCHKA:** I was directing you to what  
you had said yesterday, Mr. O'Brien, in your  
testimony. You had said: None of the  
contractors that have executed a work at  
Muskrat Falls have been encumbered in relation  
to the owner's team performance. The process  
set that we have is robust, the metrics that we've  
put in place to ensure that we maintain those  
robust processes, the offline availability, the  
addressing of urgent issues – all of those things  
speak to an owner's team that was engaged and  
supportive and enabling contractors to deliver.

Okay, so I wanted just to ask you a number of  
questions regarding that statement that you  
made.

**MR. O'BRIEN:** Understood.

**MS. MUZYCHKA:** And I would suggest that  
some of the evidence that we heard from the  
contractors was to the extent that there were  
issues with respect to the performance of the  
project management team, which did affect their  
ability to execute their contracts as efficiently as  
possible.

And one of them I alluded to yesterday and was  
the statement from Mr. Delarosbil. And I went  
back and looked at his transcript, and I'll just put  
to you a specific thing that he did state that he  
felt was not a failure but a deficiency in the  
project management team approach. And  
specifically, he had questioned about the ability  
to have an integrated schedule.

Do you recall whether or not Mr. Delarosbil had  
approached you about having an integrated  
schedule so he could see what was happening,  
what was coming up?

**MR. O'BRIEN:** We had an integrated schedule  
and we had an interface and integration  
management team in place at Muskrat Falls site  
that looked at the work that was being

undertaken with all of the contractors, and overlaid the activities of the various contractors that were working.

We reviewed that with the contractors on a daily basis, with each of the contractor organizations together with the owner's management team. Still meets on a daily basis to review the upcoming work; they also meet on a weekly basis to look at a three-week look ahead and understand what activities are coming over the next three weeks, in order to assess any potential impacts, pitfalls, any interface areas that may become challenging and to work together to identify how to solve those problems.

In addition to that, we issue to the contractors an integrated schedule that encompasses the whole of the work. That program has been in place for quite a long time, at Muskrat Falls, and really was established to ensure that there would be no impediments to the contractor organization. I think Mr. Delarosbil may have forgotten to mention that those activities were taking place at the site.

**MS. MUZYCHKA:** Well, he did say that there were short-term discussions about the contract schedule but there was never the ability to see it on a more long-term basis. You know, he said that – in his evidence – it is critical – I think it's critical that such schedules be shared and not for any commercial reasons, okay, so let's take that off the table. It's for being able to – it's being able to take advantage of opportunities, being able to look forward, be able to better plan your work, better understanding of what's coming up. Again, taking advantage of opportunities to help the project.

And then he cited some examples about if they were slightly behind and they could see that the schedule ahead was delayed as well, or there wasn't a critical path item, and then they wouldn't have to spend more money and engage more labour or what have you, in order to meet the deadline, when knowing that that wasn't a critical issue could save some money.

He did indicate then – I think Mr. Bader as well – indicated that they had made multiple requests for the type of schedule. Maybe what you're talking about wasn't what Mr. Delarosbil was talking about, but he was quite –

**MR. O'BRIEN:** No it's – I'm sorry, go ahead –

**MS. MUZYCHKA:** – he was quite clear that the scheduling and knowing what was coming up, was important to him. And he felt that the reason that it wasn't being shared likely was grounded in some kind of commercial sensitivity issues.

**MR. O'BRIEN:** The schedules were always shared. We established a process, and I described it to the contracting community when we set the process up, as a warts-and-all process. In other words, we would share all of the information with all of the contractors, and have the contractors share all of their information with everyone so that we could all see together what the issues were and what we could do together in order to ensure delivery in the most efficient way. I don't know if the process set that was developed for those are in evidence, but we can certainly do that and give examples of the reports that are prepared and the minutes in meetings that are undertaken on a daily and weekly basis in order to support that.

**MS. MUZYCHKA:** Okay, so I take it, then, it's your evidence that Mr. Delarosbil's concern was not, in fact, a valid concern, that there was provision of long-term schedules, short-term schedules, integrated schedules of other contractors and what was coming up that may affect them.

**MR. O'BRIEN:** It's a long-standing process that we implemented at the Muskrat Falls site. We developed that process once the contractors were starting to work together to ensure that we had visibility across all aspects of the work.

**MS. MUZYCHKA:** All right, well, let me give you another example. This had to do with the set-up of the towers – and I know that wasn't within your scope of management, but it's still under the project management team of Nalcor, which followed all the same processes.

And we heard evidence from Mr. Ducey and Mr. Williams that there were issues with respect to getting instructions and authority on site. And as they were going along, because they were hampered by lack of geological testing, they were left, oftentimes, to making decisions on applicable or appropriate foundations in the

field. And if they cost more than what had been previously scheduled to be installed, they would have to go and get approval from Nalcor to be able to do it.

And while they did acknowledge that there were some decisions that could be made on site for the lower cost foundations, any significant increase in foundation would have to go back to St. John's for discussion and decision. And Mr. Williams testified that there were delays – it could be weeks, it could be, on occasion, months. And he said that it influenced and it impacted them with their workflow and sometimes caused conflict in the field.

So that would have arisen out of the project management's plan and matrix that had been developed where these types of authority decisions had to be made in St. John's.

**MR. O'BRIEN:** I have responsibility only for the generation project and have no participation at all in what happened on the transmission project –

**MS. MUZYCHKA:** I understand that.

**MR. O'BRIEN:** – or with Valard and their contract. I can't speak in any way to the context or the validity of the testimony offered by Valard at this Inquiry.

**MS. MUZYCHKA:** But you are part of the owner's team, are you not?

**MR. O'BRIEN:** My responsibility is with respect to the generation project. I have absolutely nothing to do with the transmission project. You'll have to speak to the transmission management team in respect to that comment.

**MS. MUZYCHKA:** You made a statement that the owner's team performance did not impact contractors. I'm putting it to you that there is evidence that the owner's team performance and processes did impact the contractors. So, on a general basis, whether you had responsibility for transmission or HVDC or not, I think the point is, can you answer the question as to whether or not you recognize that there were occasions in which people and contractors have testified in this Inquiry that the processes had caused impact?

**MR. SIMMONS:** Commissioner, the statement that Ms. Muzychka refers to that Mr. O'Brien made yesterday obviously has to be taken in the context of his area of responsibility, which is Component 1, the powerhouse, not the transmission line. And it's unfair to try to get him to make some overarching commentary on what may have happened on other parts of the project.

**THE COMMISSIONER:** Ms. Muzychka, anything you want to add?

**MS. MUZYCHKA:** Do you not feel comfortable in –

**THE COMMISSIONER:** Okay, just – no, no, I was (inaudible) in –

**MS. MUZYCHKA:** Oh, sorry.

**THE COMMISSIONER:** – response to Mr. Simmons's comment.

**MS. MUZYCHKA:** Yes – no, you know, it's not essential, certainly. But I do think that, as a general proposition, when a witness – a member of the project management team makes a statement, it's not limited to the specific area or component that he would be working on. It's a general statement. Because the processes are not simply for the Component 1. They are the same processes that were applied project wide. And so I think it is a relevant question.

**MR. SIMMONS:** Commissioner, I don't think that's a fair characterization, to cast the project management team as being a unitary thing. We know from the evidence that there are different people with different ranges of responsibilities. As a witness on the stand, the witness should only be called upon to speak within their own range of their responsibility and not somehow be cast as having to speak for a larger group in that way.

**THE COMMISSIONER:** Yeah.

Okay. I think that this really boils down to, perhaps, Mr. O'Brien speaking yesterday in general terms when he meant to speak specifically about Component 1. His testimony yesterday, if I recall it correctly and as was – I assume you were reading from the transcript

from yesterday – that no contractors were encumbered by the activities of the owner’s team, something to that extent, I think could be taken as a general statement. And so I think it’s fair to raise this at this particular point in time because – and now Mr. O’Brien has – well, maybe not Mr. O’Brien – Mr. Simmons has indicated that he’s speaking specifically to Component 1, so we’ll find out if he was. Certainly that’s a question that can be put to him.

The other thing is that, you know, as I have listened to the evidence in this Inquiry, it’s clear to me that there was a group of the project management team that appeared to be what I would consider to be the core group. Mr. O’Brien is one of those individuals based upon at least the evidence that I have seen. So, you know, there – while Mr. O’Brien – and he can speak to what he knows and what he doesn’t know – it’s not unfair to ask Mr. O’Brien questions related to the owner’s team performance because he’s one of those corporate members. If he can’t answer because – just as he’s indicated with regards to the Valard contract, then that’ll be his answer.

So I think – I’m trying to put this all in perspective and whatever and – so I can understand where this question is coming from based upon the comment that was made yesterday. So I think the next question to be put to Mr. – if I can respectfully submit this, I think the next question to be put to Mr. O’Brien is his comment yesterday with regards to no contractors being encumbered by the owner’s team – activities of the owner’s team, et cetera, that it related specifically to Component 1 for which he had involvement and he’s not speaking with regards to the other components. So maybe that’s the question you should put to him.

**MS. MUZYCHKA:** Mr. O’Brien, when you were speaking yesterday –

**MR. O’BRIEN:** I was speaking to Component 1, the generation component. As you can appreciate, the Lower Churchill Project, the Muskrat Falls Project is three discrete projects: the generation project, the HVDC project and the transmission project. And in general, I can speak to the outcomes of the generation project,

but not to the other two as I was not responsible for their delivery.

**MS. MUZYCHKA:** All right.

But you do have awareness that the principles of authority were the same?

**MR. O’BRIEN:** The – with respect to change management as we talked about yesterday, the approaches that were established were across all aspects of the projects, yes.

**MS. MUZYCHKA:** Okay.

All right, we also were talking yesterday about Mr. Delarosbil’s evidence and evidence of other contractors, and you made the statement on a number of occasions that we should discount their credibility because they had claims outstanding. Is that correct? Is that – that’s your view?

**MR. O’BRIEN:** I don’t know that those were the exact words that I offered yesterday. What I did suggest is that contractors’ approaches and commentary made by contractors is often through the lens of their ability to claim against the owner while those contracts are open.

**MS. MUZYCHKA:** Don’t you think the same thing could be said about your evidence? That your evidence is through the lens of someone who’s trying to defend the claims and defend the actions of the managing team?

**MR. O’BRIEN:** So the owner’s team always – and in – especially on this project, always takes a fair and reasonable view with respect to the approaches that are being taken and always works to ensure that the contractors deliver in accordance with the obligations that they’ve committed to under the agreements that they’ve signed. And really, that’s all there is.

**MS. MUZYCHKA:** Well, you appreciate that ultimately, any outstanding claims that Astaldi may have or any other contractors will be subject to an independent adjudicative process, either through arbitration or judicial determination or via mediation. So, I don’t think that what’s said here in terms of commentary offered on management styles, would necessarily be determinative of those issues.

**MR. O'BRIEN:** I'm not sure I understand the question. Can you repeat that for me, please?

**MS. MUZYCHKA:** Well, you're suggesting that the reason these contractors are coming forward and making these statements has to do with the fact they have outstanding claims and that's a means, presumably, which to bolster their positions.

**MR. O'BRIEN:** Yes, I am.

**MS. MUZYCHKA:** And my statement to you or suggestion to you is that notwithstanding, they make statements of that nature in this forum. Their claims are gonna be subject to a rigorous review through either arbitration or judicial process. I mean, statements such as those which we've discussed yesterday may or may not have or not likely to have a determinative impact on the –

**MR. O'BRIEN:** I can't –

**MS. MUZYCHKA:** – outcome.

**MR. O'BRIEN:** – I can't say that they would not likely have a determinative impact. If you look at Astaldi's justification for incremental compensation in 2016, the management approaches with respect to managing the Astaldi contract were core to that claim.

**MS. MUZYCHKA:** Okay.

I'm gonna go back to where we had left off yesterday, which was just discussing the issue of authority on site and the concerns. And we had raised, of course, the issues from the contractors which you had felt was, perhaps, self-serving.

I do want to point out that Des Tranquilla gave evidence at this Inquiry last week and he indicated that the on-site management team had little decision-making authority and that the cost and schedule decisions were made in St. John's, which caused some frustration among the site team.

He testified that Nalcor's model was that construction managers were only to observe and report which wasn't the model he was used to on other projects. Mr. Tranquilla also felt that his \$200,000 or \$250,000-spending authority was a

lower amount than he had been used to in his experience. And given his level of experience and his involvement in projects of significant size, he felt somewhat encumbered by the constraints.

What do you have to say to that?

**MR. O'BRIEN:** I'm sorry, Ms. Muzychka, but with the banging – if you could repeat that for me, please?

**MS. MUZYCHKA:** All right.

We heard the evidence of Mr. Tranquilla, who is a Nalcor member, that the on-site management had little decision-making authority and that the cost and schedule decisions were made in St. John's, which caused from frustration amongst the site team.

He testified that Nalcor's model was that the construction managers were only to observe and report, which wasn't the model he was used to on other projects.

Mr. Tranquilla also felt that the \$250,000-spending authority that he had was a lower amount than he was used to in his experience. He indicated his frustration and difficulties in being able to execute and do what he felt was his best job under those constraints.

**MR. O'BRIEN:** Okay.

So, yesterday, we spoke to decision authority and the difference between decision-making ability and change management. And what I indicated then was that the site team was fully empowered to make the decisions necessary to deliver the project.

The engagement of the home office was with respect to making changes to the project. And, yes, the decision authority at site, with respect to making changes, is limited to \$250,000. There's actually multiple processes that are used. There's a field-level process, which I think Mr. Delarosbil has spoken to, that's capped at \$25,000. And that's about – if a worker in the field sees a piece of rebar that needs to be moved or adjusted, he can ask the contractor to take that on, up to a spending cap of \$25,000.

Larger changes up to \$250,000 exist at the site level.

The concepts of maintaining control over the change management process is something that was implemented across all of the projects at the Muskrat Falls. And as I'd indicated, there were multiple reasons associated with that. It's about cost control and making sure that the opportunities to make change and adjust and tweak are not taken lightly, and that leadership is engaged to ensure that those things are not taken lightly.

Mr. Delarosbil also talked about an expectation of – on a contract like Astaldi's, that he would've expected to see 10 to 15 per cent change associated with the scope. I'll tell you that on that package, change was limited to 2 per cent, which is quite something in a construction environment. Actually, if you look across all of the contracts at generation – I look to those kinds of changes and how they were managed. We, generally, were able to keep all of the contractors to about 2 per cent of the contract value for change where, I'd suggest, Mr. Delarosbil's 10 to 15 per cent is a more typical norm.

In addition to cost control, there are other aspects to change management that are not necessarily appreciated at the site level. And I think I spoke to those yesterday as well. And the reasons that the home office was engaged with respect to change management relate very specifically to those as well. Aspects of quality management, safety management, environmental management, impacts to the operator on a long-term basis, impacts to the other projects – the transmission project, the HVDC project – all wouldn't necessarily be appreciated at the site level, and they're the reason that the change management system required the engagement of the home office.

If I can give you an example – if Astaldi, for example, wanted to make a change to the geometry of the water passage, for example, in order to save a small volume of concrete or a rebar volume or a – the cost associated with the labour force in putting additional rebar in to support that. At the site level, they might not appreciate the long-term impacts to the operator in relation to a change like that. And the fact that

making that modification, while it may seem innocuous at the construction level, could result in long-term impacts to Nalcor in terms of the efficiency of the unit and their ability to operate it.

Some changes may also involve the need to engage the engineer of record, and did, in fact, on this project. And the need to draw in SNC's Montreal office to perform additional – find that element modeling in relation to the structural capacity of the asset. All those things require intervention or engagement on a level out with the site.

And that's the reason that the process was established the way it was.

**MS. MUZYCHKA:** Now, I understand that and certainly on a larger scale decisions or changes that could impact the project on a larger scope. But what we're hearing is day-to-day type decisions and ones that should be made on site, that could be made more quickly, more efficiently. Which would save time and money for not just the contractors but also to Nalcor. And it seems that, perhaps, the structure was not flexible enough to be able to recognize those sorts of efficiencies, and a smaller change that may have cost 300,000 dollars that didn't impact – or require, you know, reference back to Montreal or impact on other parts of the project would probably been able to be made on site with the appropriate authority. So I don't think that, you know, it's fair to say that this blanket policy was for the good of the project, when there are obviously areas where a little flexibility may have, in fact, saved as opposed to cost the company.

**MR. O'BRIEN:** No, that statement is not correct at all. The processes were put in place entirely to ensure that there were appropriate controls in respect to the execution of the work; and the suggestion that we could create a more flexible environment are not consistent with the execution strategies that were established.

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** I will tell you that on other megaprojects, different things are done, and it depends very much on the nature of the project. Mr. Tranquilla's past experience was in the

mining environment. The mining environment is very different than the type of construction effort associated with the Muskrat Falls project. They tend to be done in different ways, and the models are not necessarily consistent with the approaches that are necessary in relation to large civil construction at Muskrat.

If you look to similar projects to the Muskrat Falls generation project, in relation to the way the work is performed, the contracting structure, the approaches with respect to the contractors and the integration and interfaces surrounding those, you'll find that there are very similar processes at play. And I'd suggest that the characterization by those individuals in relation to this approach is an oversimplification of what's really a very complex problem; and that the systems and the controls that were put in place at Muskrat Falls generation and across the other projects at the Lower Churchill were all about addressing the complexity, addressing the challenges associated with the implementation of change and ensuring the minimization of cost and schedule risk to the project for the good of the people of Newfoundland.

**MS. MUZYCHKA:** Fair enough, but I think that history tells us that that really didn't end up to be the case. We had major cost overruns and major change in schedule and part of our job here at the Inquiry is to try and determine why that happened, and I'd suggest to you that perhaps the adherence to the rigid processes that had been set up by Nalcor may in fact have been a contributory factor.

**MR. O'BRIEN:** So I can't agree with that statement either, unfortunately. And if you look – and what I just offered, if you look at change at the Muskrat Falls generation project and the implementation of change, what you'll find is that the cost growth associated with change across each of the contracts is approximately 2 per cent of the contract value, where 10 to 15 per cent is a more typical norm.

Cost growth at Muskrat Falls Generation – while I concur it's significant and no one is happy about what's happened in relation to the overall cost – there are different reasons for cost growth at Muskrat Falls and it's not to do with change management at the site level or in the home office.

**MS. MUZYCHKA:** But it may account for delay.

**MR. O'BRIEN:** The processes that Mr. Delarosbil is referring to, and the others are referring to, are not to do with project delay.

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** The cost growth at Muskrat Falls associated with project delay is entirely to do with the delay associated with Astaldi's delivery. And I think the record very clearly shows that.

**MS. MUZYCHKA:** All right, well look, let's have a look at PMT binder number 1 of 4, at tab 1.

**MR. O'BRIEN:** PMT binder 1 of 4, tab which, I'm sorry?

**MS. MUZYCHKA:** Tab 1, it's Exhibit P-03048, and we're gonna look at page 4.

**MR. O'BRIEN:** Okay.

**MS. MUZYCHKA:** This is a letter from Ted Vanwyk to Des Tranquilla, site manager, and it's dated May 28, 2014. He is writing to submit his resignation. And if we look at the second paragraph of his letter, he states that he liked "...construction management work because it gives one the ability to be creative and to plan, organize, and control activities" – et cetera. "Job satisfaction comes from seeing work completed as you believe it should be done."

And then he states, "On the Lower Churchill Project, construction management is now directed by Nalcor in St. John's and on site we are the eyes and ears for others to organize high level meetings with the contractor and to make decisions. The contractor is fast learning that the decision-making is done in St. John's, not at the site. This undermines our authority and significantly reduces our ability to manage as I believe we should be doing."

And then he goes further, "Other issues that reduce our ability to effectively manage the contractor at the site includes the lack of an agreed schedule, no site based planners, no data on earned and spent manual manhours, an



unworkable approval process for contractor craft timesheets, increased intrusion by others into management of specific contractor activities, restrictions in document flow back to the contractor and Nalcor's unwillingness to take risks and direct the contractor."

Had you seen this letter before?

**MR. O'BRIEN:** I have.

**MS. MUZYCHKA:** And did it come to your attention in 2014?

**MR. O'BRIEN:** Yes, it did.

**MS. MUZYCHKA:** And what was your response to that?

**MR. O'BRIEN:** So, if I can provide context, this letter was provided about a month after Astaldi mobilized to site. Most of the things they refer to, the back of the second paragraph, are related to deficiencies associated with the contractor, not the owner's team. With respect to Mr. Vanwyk's desire to have autonomy with respect to change management – and I'll tell you, he's referring to change management in here, not with respect to day-to-day decision-making.

In a big project, a lot of people get hired, and not everybody is necessarily aligned with the overall strategies associated with delivery. There have been 380 or 390 people who have come to work at the Muskrat Falls generation project. And if one or two of them, like Mr. Vanwyk, was unhappy with the approaches that were taken with respect to the project, that's unfortunate, but the approaches that were established by Nalcor and by Nalcor's leadership in relation to execution of the project were what they were. This letter speaks to Mr. Vanwyk's unwillingness to work within those processes, and so he resigned.

**MS. MUZYCHKA:** So, I take it there was no consideration of whether there was any merit to some of his issues that he identified to see whether or not they were valid and –

**MR. O'BRIEN:** The processes –

**MS. MUZYCHKA:** – (inaudible)?

**MR. O'BRIEN:** – that were established for the project were established for the project. The project has – did then, and continues to work within the confines that had been established within the process set that's been established. And as I've said, 375 or 380 people have worked at Muskrat Falls generation, and one or two of them may have been unhappy with respect to those approaches. That's unfortunate, but the processes were established by the leadership, and we worked with them,

**MS. MUZYCHKA:** Okay.

Turn to tab 2, please, of that PMT binder? We're looking at Exhibit 03049.

And this is a letter dated the 2nd of June, 2014, from Brain Cottrell.

Do you know Mr. Cottrell?

**MR. O'BRIEN:** Yes, he worked in labour management at the site. He wasn't involved in construction.

**MS. MUZYCHKA:** Okay.

He writes Mr. Tranquilla, who's the site manager, and he states that he's tendering his resignation. He states in paragraph 3: "I feel that my capabilities and experience are not being fully utilized, I am not challenged by my work or my work load and have no decision making capability. Further, the management style employed by St. John's gives me great concern as the control and decision making capabilities do not lie with the experienced people on site, but rather with St John's who are removed from the day-to-day ... operations and this often causes unnecessary delays. I am concerned that in the month of May that 5 members of the Site Team have felt the need to resign and would expect this to have raised some major red flags with" the "head office. Unfortunately I expect more resignations to come."

Then he states, in concluding that paragraph: “In short the Site Team seems to be here for show a concept I believe is becoming more and more obvious to all” on “Site, sub contractors etc, as time goes by.”

What do you say to that?

**MR. O'BRIEN:** I offer the same thing I said about Mr. Vanwyk. A process set had been established, and it's unfortunate that some individuals weren't prepared to align and work in accordance with those processes. Brian's responsibilities were not in relation to construction or execution at the site. He reported to the HR department. And, again, there have been 375 or 380 people who have come to work at the Muskrat Falls generation team, and they've delivered the project within the established process set. If two or three of them don't align with those processes and choose to resign, then I really can't control that.

**MS. MUZYCHKA:** Well, in a sense, you can control that if you listen to what the people are saying and the employees – turnover of people who are on the site has to be an expense or a cost to the project. You lose the continuity, you – there's disruption in terms of hiring, people have to fill gaps until there's replacements. So it would seem to make sense that you would want to avoid further turnover if you could.

**MR. O'BRIEN:** But there wasn't a significant turnover at the site workforce.

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** This is one or two people in the beginning of the project who chose not to align with the process set that had been established for execution. He speaks to five resignations – fine, there's 130 people in the site organization who've stayed and delivered this project. There was no significant turnover with respect to the execution team, nor was there any significant challenge with the vast majority of the execution team in working through and working with the processes and the structure that was established by Nalcor's leadership for us to work – or develop and deliver the generation project.

**MS. MUZYCHKA:** So do I take it, then, that there's resistance on the part of the project management team to try to adapt any of the policies that were put in place to try and accommodate some of the concerns that were being raised? Or were the concerns being simply dismissed out of hand as, you know, we have a process, if you don't like the process, move on.

**MR. O'BRIEN:** So, it's neither of those. There are processes that are established for working at the site. Those processes are adapted and revised as necessary to support the needs of the execution team – to support the needs of the contractors in execution. What there was was core principles established for delivery of the project, including centralized controllers with respect to change management, and that process was not changing or wavering with respect to delivery from project inception right through to today. Those same processes and those same controls exist with respect to change management.

**MS. MUZYCHKA:** All right. Let's have a look at tab3 of your book. And that is Exhibit P-20819 – oh sorry – P-02819. So, this is a letter from John Mulcahy. It's dated 17th of July, 2017.

Mr. Mulcahy was involved with the project for a number of years. Correct?

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** And he was a gentleman of some significant experience?

**MR. O'BRIEN:** Mr. Mulcahy managed McNamara Construction for a number of years and came from retirement to advise the Lower Churchill Project, yes.

**MS. MUZYCHKA:** So, if you look to the bottom of the page, the last paragraph, and he notes in the last line: “I have always done my best for the project, and have saved this project \$80-\$100M directly, and could have saved another \$50-\$80M if people had listened to my advice and recommendations.”

And then if we continue on to the next page, he says: “In all my years in construction, the field

team ran the construction site and the head office supported the field team. On Muskrat Falls, it's "vice versa and is to the detriment of the project and the people of the province especially with all the interfaces coming up. It cannot be micromanaged from head office."

And then, ultimately he says: "I sincerely wish the project all the best and it will happen if attitudes change at the top and certain senior individuals operate differently, stop bullying, and support and empower" the "people around them and adhere to the core values."

So, again, we're getting an observation from a fairly senior advisor to the Muskrat Falls Project, and he also makes the observation that managing the project from St. John's is not the best approach.

**MR. O'BRIEN:** So that's Mr. Mulcahy's perspective. I don't agree with it, nor do I agree with the commentary that he's made within this letter. It's an opinion that he's provided, nothing more.

**MS. MUZYCHKA:** But there was nothing in that that you would've taken to – you had read this before, I'm sure. You had – it would've come to your attention.

**MR. O'BRIEN:** I've seen it before, yes.

**MS. MUZYCHKA:** Yeah.

And so there was nothing that the management team would have looked at and taken that and determined whether or not there's any merit to his observations.

**MR. O'BRIEN:** His observations are not correct.

**MS. MUZYCHKA:** And that was the view of the project management team?

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** And then it was just put aside?

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** All right.

In the SNC 2013 risk report – I'm sure you're aware of that document.

**MR. O'BRIEN:** I'm aware of the document.

**MS. MUZYCHKA:** SNC identified difficulty transitioning to an integrated team project delivery model as a major risk to the project. In their mitigations, they indicate that Nalcor would need to quote, "Issue an authority matrix giving site managers latitude." And that's at P-01977, page 16. I don't think it's in our books, but we can bring it up on the screen.

**THE COMMISSIONER:** (Inaudible.) Yeah, actually, it is in the PMT binder at tab – number 2 at tab 55.

**MR. O'BRIEN:** PMT binder 2 –

**THE COMMISSIONER:** Two.

**MR. O'BRIEN:** – tab 55.

**THE COMMISSIONER:** Fifty-five.

**MR. O'BRIEN:** Thank you, Sir.

**MS. MUZYCHKA:** Thank you, Commissioner.

You got page 16?

**MR. O'BRIEN:** Page 16?

**MS. MUZYCHKA:** Correct.

So at C1 – the second column or the second row of that exhibit. It's very difficult to read; maybe we can enlarge that?

It's: "Lack of proper delegation of authority, leading to an unsustainable authority structure as the site construction ramps up. Decisional team more familiar with the oil and gas industry than with heavy civil and hydro works, leading to mismatched processes and procedures, as well as to less than optimal value-plus decisions."

**MR. O'BRIEN:** Yes. I see that.

**MS. MUZYCHKA:** So, do you agree that perhaps it would have been worthwhile to

consider when you see that there are issues raised by individuals working for you – not just those that are working for the contractors – raising concerns with the management style – or the matrix which provides for the decision making in St. John's – that perhaps it's not appropriate?

**MR. O'BRIEN:** I think what I said was that there's a process they'd established for delivery of the generation project. And those processes were adjusted and adapted and modified. Even new processes developed as we worked through the course of the project and identified additional needs. The tenant – core tenant of maintaining control over change management was one that had been established by Nalcor at the outset for delivery of the project.

And if you look to the outcomes with respect to change management, it's been successful in that change has been limited. And the contractors have been held to the standard of delivering – in accordance with the obligations they've made or they have in the various agreements, and they've been required to deliver in accordance with the specifications in the drawing set that was established – contextually, you know, SNC's report is what it is. It was prepared in – by SNC at a time when SNC was being moved from an EPCM consultant and the project shifted into an integrated management team, and it wasn't shared until 2016, three years after this was prepared.

**MS. MUZYCHKA:** Right. And we don't need to get into the reasons for all of that –

**MR. O'BRIEN:** No. I think other people have testified in relation to that. What I'm offering only here is that from a context perspective. The commentary being made by SNC within this document is not necessarily motivated by best-for-project delivery.

**MS. MUZYCHKA:** That may be the case, but when you see the comments by the other four individuals that we just went through and the commentary of Mr. Tranquilla, I think that you have to appreciate that there is some merit to the concerns that were raised with respect to the management structure and authority and decision making. So, regardless of your reasons for perhaps discounting SNC's commentary in

that respect, I would suggest to you that it simply corroborates the sentiments of other individuals in the project, and that perhaps the project management team should have given that some consideration.

**MR. O'BRIEN:** I can't agree, unfortunately. The comments are provided in two very different contexts. SNC, as EPCM consultant, would have had a desire to maintain control out with the owner. And it was one of the challenges we had with respect to execution with SNC. And at the site level, in fact, we had a very specific examples of SNC as EPCM consultant making decisions and making changes and spending money that they did not have authority to do and hiding those decisions and the spending amounts from the owner. And establishing a process whereby the EPCM consultant would have the ability to do that out with owner furthers the agenda of the EPCM consultant and doesn't necessarily reduce capital cost or schedule for the project as a whole.

With respect to Mr. Tranquilla's comments, while I appreciate them – I mean, I appreciate the sentiment that he's offered – it's a management model and one that he was familiar with within the mining industry. The management model associated with this project was to maintain control and centralize control with respect to expenditure and with respect to change management. Those – the financial authority elevates very quickly within the controls that were established at Muskrat Falls. And that was done in order to ensure that there was transparency across the leadership with respect to cost or potential for cost growth, and to ensure, as I've said, that all of those relevant stakeholders were engaged with respect to change and understanding the impact, and to ensure that there were no impacts with respect to other projects in relation to change.

Again, as I have said, limiting the contractors to 2 per cent globally across the packages in relation to change is a significant success for the project.

**MS. MUZYCHKA:** Mmm.

**MR. O'BRIEN:** And cost growth, with respect to generation, is the result of different things, but

it's not about change management or decision making with respect to the site.

**MS. MUZYCHKA:** Do you think that if you or someone with your authority were on-site more that some of the challenges that have been identified may have been alleviated?

**MR. O'BRIEN:** So I don't think we have identified any challenges yet or any specific examples with respect to what those challenges may have been –

**MS. MUZYCHKA:** But we've talked in general sense over – from the various individuals about the delays in authority and undermining the site personnel's authority with respect to contractors.

**MR. O'BRIEN:** We haven't spoken to undermining the site's authority with respect to contractors. The site is fully empowered with respect to managing their contractors. I think I've said that. The site team is fully empowered with respect to decision making. The site team meets with the contractors on a daily basis across health, safety, quality, environment, engineering, construction, planning, project controls and commercial management. Every one of those specific topics is addressed with each of the contractors on a regular basis at the site with the site team. That team is fully empowered to deliver in relation to their requirements to execute the project.

**MS. MUZYCHKA:** Okay. That's certainly the party line based on the documentation that's set out in the project management matrixes and all the other policy documents that were drawn up.

What I'm seeing is that there seems to be very little deviation from that plan or even consideration that that would be in any way useful or appropriate –

**MR. O'BRIEN:** No.

**MS. MUZYCHKA:** – to consider in terms of the overall efficiency of the project –

**MR. O'BRIEN:** No.

**MS. MUZYCHKA:** – so let me put it to you this way – do you think that had there been a

change in the authority structure or the matrix that was created when the project was started, that there would have been a difference in terms of the outcome, in terms of claims, in terms of delays, cost overruns, or would it not have been a factor in your mind?

**MR. O'BRIEN:** I think you have to look back to, within the generation project – where did the cost growth come from? If – and I think there's an exhibit in the project management team binder that perhaps better describes this.

At sanction – at DG3, the Muskrat Falls generation cost was \$2.9 billion, as bid. So by the time the bids were received across all of the packages, the cost of the project was about \$3.8 or \$3.9 billion. So there was about a billion dollars in cost growth associated with the market. That had nothing to do with execution with respect to project delivery. It was strictly market conditions that raised the value of the project by about a billion dollars.

The cost of Astaldi in addition to the completion contract costs at \$750 million or so – if you look at the impact that Astaldi had with respect to the remainder of the contractors and the remainder of the work scopes at Muskrat Falls, the extension of time, the cost of non-conformance repair. I'm not talking about the cost to complete post-termination, that's a very different thing.

But with respect to the impacts that Astaldi had on the rest of Muskrat Falls, inclusive of the completion contract, that's about \$1.3 billion. That takes the overall cost of Muskrat Falls generation to between \$5 billion and \$5.1 billion. And the delta is about \$400 million. Within that \$400 million, exist the cost of weather, the cost of protest, the cost of the cofferdam repair, and other things.

And the true cost delta associated with the execution at Muskrat, aside from the impact of Astaldi's poor performance and delay, is really only about 6 to 7 per cent of the overall project value. And that's what we're really talking about managing here as a project management team or as an execution team at site.

**MS. MUZYCHKA:** Managing the risks, essentially, is what you're talking about. Risks of weather, risks of –

**MR. O'BRIEN:** Talking about managing execution. And the growth at Muskrat Falls, out with the impact of Astaldi, is about \$400 to \$500 million. Within that is weather risk and cost of weather shutdown, cost of bad weather, cost of protests and the shutdowns associated with those, and the cost of change within the project. And the total value of all of that change is only about 7 per cent of the project value.

**MS. MUZYCHKA:** That's what you're relating to change, change-orders cost?

**MR. O'BRIEN:** It's related to cost growth.

**MS. MUZYCHKA:** Right.

Well, we did hear that from other individuals too. Tim Harrington, who's project manager for Cahill-Ganotec, that he felt one of the reasons his contract had been successful is that he was always on the site, communicating with the crews on the ground, being visible, being up-to-date, knowing what's going on, having a presence.

John MacIsaac, I understand, had pushed his project managers, like Darren DeBourke, to be on site five days a week. We will hear from him that it was important to his approach that management team be on site to know what's going on in order to effectively manage contractors. You know, if managing the site will ultimately lead to cost efficiencies and minimizing delay, effective management would. That's the object, is it not?

**MR. O'BRIEN:** I think you're misunderstanding my role with respect to the project as a whole. My role is not to manage the site. The site manager and the construction manager and the 130 people that they have working for them, have a direct responsibility to manage the site –

**MS. MUZYCHKA:** Mm-hmm.

**MR. O'BRIEN:** – and to manage the contractors and to manage the execution of the work, and they do a very good job in that. And they've managed these contractors very, very closely. And they've minimized the cost exposure, and they've minimized cost growth

and schedule growth with respect to execution of the work.

**MS. MUZYCHKA:** Did –?

**MR. O'BRIEN:** My role as the home office project manager is much broader than that. Yes, Tim Harrington spoke about being an on-site contractor project manager and the importance of that. And with respect to the work scope that Cahill-Ganotec is performing, I would agree with that completely. And Tim has a counterpart who works at the Muskrat Falls site, who's directly responsible for interfacing with Tim every single day, and working with Tim and his team to make sure that any encumbrances that they have, and interface challenges that they have, any integration requirements or any supports that they need are managed. And that oversight team is – resides within the 130 strong organization at the Muskrat Falls site.

The home office project manager's role is not that; it's not to interface with the individual package managers on a day-to-day basis. The role is much broader, it's to manage all of the aspects, and support all of the sites because there are manufacturing sites, there are engineering sites, there are other sites related to the execution of this work that are not just at the Muskrat Falls generation construction site.

**MS. MUZYCHKA:** Mm-hmm.

**MR. O'BRIEN:** And there are teams of people in place at each of those sites, supporting this project on a global basis. And the role of the home office project manager is to support all of those teams and to go where necessary to support the execution of work.

**MS. MUZYCHKA:** All right then. I guess we will leave the authority issue at that rather than belabour it any further. We know your position.

Just wanted to go back now and just touch on some further issues with Astaldi – kind of jumped around a little bit yesterday. You have stated on a number of times, yesterday and today, that Astaldi was the main reason for delay and cost issues. There was a significant turnover in Astaldi's management team from – at the outset.

**MR. O'BRIEN:** Yes, there was.

**MS. MUZYCHKA:** And that – was that an impact? Did you feel that resulted in further delays and lack of productivity and those sorts of issues?

**MR. O'BRIEN:** Yes, it did.

**MS. MUZYCHKA:** Did they have issues with management of their subcontractors?

**MR. O'BRIEN:** Yes, they did.

**MS. MUZYCHKA:** Can you tell us about those?

**MR. O'BRIEN:** Astaldi was challenged with Proco.

**MS. MUZYCHKA:** Proco is?

**MR. O'BRIEN:** Proco is the subcontractor who was responsible for the erection of the Integrated Cover system.

**MS. MUZYCHKA:** Mm-hmm.

**MR. O'BRIEN:** Astaldi had commercial and technical challenges with them. Astaldi had challenges with their batch plant subcontractor, Labrador Ready Mix, which is a division of Béton Provincial from Quebec. Astaldi had trouble or challenges, I should say, with their structural steel supplier, Supermétal from Quebec City. Just to name a few.

**MS. MUZYCHKA:** And what, if anything, did you or Nalcor or the project management team have to do in relation to that? Was there any involvement on your part, in terms of trying to alleviate some of the pressures and concerns there?

**MR. O'BRIEN:** I think I described that yesterday as well. We set up a series of task forces to work with Astaldi across all of the critical issues that they were experiencing, the batch plant is an example. Astaldi struggled to get a batch plant operational to produce concrete and struggled to comply with the local regulatory and safety requirements.

So, we worked with them in developing action plans and monitoring performance of action registers, and support of all of the things that needed to be done in order to achieve that goal. We did that with them across a whole host of areas and established working groups within our own project management team in order to support that and create an environment where Astaldi could be successful. That took time and we worked through that in – through 2014 and maybe even into 2015 as we ramped them up towards, you know, their real major production in the spring of 2015.

**MS. MUZYCHKA:** Okay. And then we touched, as well, on some safety issues. With Astaldi, we know that there was a draft-tube formwork collapse which resulted in some changes in quality assurance procedures afterwards. We've heard evidence about the nature of what happened, so we don't need to get into that so much.

But, can you tell us about the changes that were made in the quality assurance procedures after that happened?

**MR. O'BRIEN:** Sure. We were very concerned about the quality of Astaldi's engineering. As you can appreciate, the draft-tube design was stamped by a professional engineer in the Province of Newfoundland and on – there was a design deficiency which led to failure. The structural columns were under-designed, as it turned out, which once the concrete was placed on top of the draft tube formwork, the columns buckled and failed. In the original design, as stamped by that engineer, the columns were made from four pieces of two-by-ten that were nailed together. And that actually resulted in a factor of safety that was just about one, meaning that the structure was on the verge of collapse when it was fully loaded.

Draft Tube 1 was actually poured with the same structure and survived. Draft Tube 2 didn't. In the final – in the redesign – when the draft tube framework was redesigned, it actually needed seven pieces of two-by-ten bolted together instead of nailed together. So it is substantially different but certainly not something that anyone could see at a site level. If you look at four pieces of two-by-ten that have been installed in accordance with a drawing that had been

stamped by an engineer, and it's not loaded with the concrete from above because that hasn't been placed yet, it's impossible to tell that that would fail later. And why would you expect it to if it's been approved and stamped by a professional engineer? In any event –

**MS. MUZYCHKA:** So how do you guard against further or future problems like that?

**MR. O'BRIEN:** So – sorry, preamble, but we became really concerned after that about the engineering effort of Astaldi and what we saw – and to go back to change management, what we also saw happening was Astaldi, with respect to their means and methods, was taking risks and making changes in the field on the fly that could – they had a number of near misses and incidents that could have led to injury or worse, and we couldn't let that happen.

And so we intervened and required that Astaldi undertake to provide third party engineering organization, so in other words, someone from outside Astaldi who was an expert in the areas that were under consideration – say, the erection of scaffolding on the site or the use of a JLG and ramps to support the JLG or whatever. And we worked with them to develop a risk matrix to look at what are the activities that you want to undertake or that you will undertake in the field and then required that they engage a third party engineering party consultant to, one, review the designs of the temporary works that Astaldi was undertaking to make sure that they were compliant with the code, compliant with the safety regulations and were safe for use in the field.

And, then, we required that not only did they – should they have a third party undertake the verification at the drawing level, but that the third party actually go out into the field and verify that the installation was in accordance with what the third party had seen in the drawing set. And we asked them to provide that verification and stamp it, as a professional engineer, to demonstrate to us, as an owner's organization, that they were really taking the right precautions with respect to execution.

**MS. MUZYCHKA:** Was the draft tube incident – would you describe that as an isolated incident

in terms of safety concerns, engineering? Did this have to do with quality control?

**MR. O'BRIEN:** The draft tube incident, at its core, was an engineering problem. The reason the structure failed was that it was under designed, as I've just described. The columns were not big enough or strong enough to support the weight of the concrete above them. An engineer stamped that and took the responsibility, as engineers do, for that work. That engineer has since been sanctioned and has lost his licence in the Province of Newfoundland as a result of that draft tube failure.

I think if you look to the early activities of Astaldi at Muskrat Falls and the work that they were doing in 2014, especially, their safety program was certainly not consistent with the expectations that we had and the safety culture that we had strived so hard to establish at Muskrat Falls. And we spent a lot of time with them rebuilding and creating a safety culture and an environment at the site that was positive and designed to ensure that everyone went home safely every single day.

I think if you look at that draft tube incident in that context, I would call it an engineering-related incident. And, you know, obviously, led to the changes that we made with respect to the verification and third party supports around Astaldi's means and methods.

**MS. MUZYCHKA:** Were there any other examples of quality control issues that arose that you can think of?

**MR. O'BRIEN:** There's lots of quality control issues in relation to the execution of the work. There were some very fundamental quality control issues in relation to the delivery of the structural steel, for example, and, in particular, the welding systems that were being used in the manufacturing processes and also with respect to the coatings that were being deployed on that material prior to its delivery to the Muskrat Falls site. Astaldi didn't have – like their safety systems, they didn't have a – at that time – a robust quality control system at their off-site locations and they weren't really adequately overseeing the work of some of their suppliers with respect to delivery.



We pushed that issue very hard with them and had them deploy additional resources across their manufacturing sites to ensure that what they were delivering was in compliance with the specifications that were established for the project. I don't – I think, you know, the rationale behind that is not well understood, why they were deficient with respect to their quality control system. It was probably cost-saving measures more than it was anything else, I suspect – on their part. It doesn't save any money for the project, just reduces their overall expenditure in respect to delivery.

**MS. MUZYCHKA:** These items were picked up by the project management team and people on site, presumably.

**MR. O'BRIEN:** The people on site and the quality oversight that we were providing at the manufacturing locations. So, our quality management system was a risk-based system where we looked at the risks associated with delivery and the various manufactured components, and we deploy teams of people to provide oversight over what the contractors were doing and ensure that they had the right systems in place to deliver what we needed for the project as a whole. That wasn't peculiar to Astaldi. The same efforts were deployed with respect to the work that ANDRITZ did in their manufacturing worldwide and in relation to the work that Cahill-Ganotec is doing for us today.

**MS. MUZYCHKA:** Okay.

With the issues that you've described with Astaldi in the early years and then even as time went on – there were cost overruns and production wasn't what it should have been – was there any thought or consideration given to descope or replacing Astaldi? And, if so, at what point?

**MR. O'BRIEN:** I think there's a presentation in either my binder or the PMT binder from 2014 that describes some thoughts with respect to approaches with Astaldi in relation to their performance.

**MS. MUZYCHKA:** Yes, we went over that with Mr. Power.

**MR. O'BRIEN:** Did you?

**MS. MUZYCHKA:** Yes.

**MR. O'BRIEN:** Okay.

**MS. MUZYCHKA:** So –

**MR. O'BRIEN:** Good, thank you.

**MS. MUZYCHKA:** I'm just more interested in your viewpoint on it, as being a little closer to the project.

**MR. O'BRIEN:** So I think that presentation well describes the thought processes around that time. And I don't have it in front of me, I can't remember the specific details, but there was consideration of a variety of options in relation to Astaldi's performance.

Decoupling as a concept is challenging; and it's not so simple as just cutting off one scope of supply and giving it to somebody else, as you can imagine. The work that Astaldi was doing was predominantly placement of concrete across multiple structures. And pulling one of those structures away and giving it to somebody else is not necessarily efficient, not necessarily to the benefit of cost or schedule, you know.

Astaldi was supplying all their own concrete, supplying the rebar, supplying all the ancillary equipment and their formwork to perform those works. And you would have to look to another contractor to provide those services; there's the cost of termination – there were no options within the Astaldi agreement for individuals – for scope reductions or descope of any of the particular activities. So, you know, it would be a commercial challenge, a technical challenge, an execution challenge at the site level, and it's not a simple undertaking.

**MS. MUZYCHKA:** No, but – so descope wasn't a viable option then, but I guess termination would've been the only other alternative, correct?

**MR. O'BRIEN:** Yeah, and termination in the early days was a challenge as well. And if you look at the agreement, and I think there's been an analysis of the agreement through the Grant Thornton work, there were provisions within the agreement for termination for cause and for convenience. Termination for cause, in the early

days, was challenging in relation to the work that had been executed and, you know, that there was legal opinion received on that list to speak to Lance Clarke and Paul Harrington –

**MS. MUZYCHKA:** Now we did speak –

**MR. O'BRIEN:** – in relation to Astaldi termination.

**MS. MUZYCHKA:** – we heard from Lance Clark as well about the completions agreements and what happened when Astaldi was terminated. So – but I do want to ask you a few questions on the process of bringing your plan B contractor, which was Pennecon, in to complete the work that Astaldi had not finished. And I – we did hear from Mr. Power in terms of that was – you know, he was working in the background and trying to make a plan.

**MR. O'BRIEN:** Very quietly. Mr. Power was responsible for the management of that work.

**MR. SIMMONS:** Excuse me, if I could interrupt for just a moment, Commissioner. Mr. O'Brien has alluded to legal advice in relation to termination issues here and I just throw up the caution that while the existence of that has been mentioned, the content of any legal advice is not something we should get into.

**THE COMMISSIONER:** Right, and I would agree with –

**MS. MUZYCHKA:** No, we certainly wouldn't be going there.

**THE COMMISSIONER:** – right, and I agree with that fully.

**MR. SIMMONS:** It's a reminder as well for Mr. O'Brien –

**THE COMMISSIONER:** Okay, yeah.

**MR. SIMMONS:** – as it is for everybody else at this point.

**THE COMMISSIONER:** Okay, I'm sure, Mr. O'Brien, you appreciate what –

**MR. O'BRIEN:** Yes, I do.

**THE COMMISSIONER:** – Mr. Simmons said, yeah.

**MS. MUZYCHKA:** Yeah. No, I'm not interested in delving into that. I'm more concerned with when – you know, the process, I understood, began in 2015-2016?

**MR. O'BRIEN:** Yes. It did.

**MS. MUZYCHKA:** And, was there a new RFP done, or was this more of a 'behind the scenes'?

**MR. O'BRIEN:** It's best – I know you've spoken to Mr. Power. But he is truly the one to speak best to it. My involvement in relation to plan B was very much on the periphery. I was working through the issues that we were having with respect to execution at that time. And Mr. Power managed the process, the bidding process, with respect to the plan B –

**MS. MUZYCHKA:** You were working with –

**MR. O'BRIEN:** – approach with Astaldi.

**MS. MUZYCHKA:** Yes.

**MR. O'BRIEN:** Before – for the Astaldi contract, I should say.

**MS. MUZYCHKA:** You had indicated in your interview that you were working behind the scenes with Pennecon.

**MR. O'BRIEN:** Sorry. The Lower Churchill Project was working behind the scenes.

**MS. MUZYCHKA:** Okay. You were involved in that process?

**MR. O'BRIEN:** Only on the periphery.

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** There was a process and – a bidder selection process that was implemented with respect to the plan B contract. And Pennecon was the selected bidder for performance of that work. I became more engaged in 2018 at a time when Astaldi was struggling to continue to deliver, and had run out of funds both within Astaldi Canada and corporately in Astaldi S.p.A. – in engaging

Pennecon and setting up a review of the work scope in the event that we needed to deploy them should Astaldi not be able to complete the program.

**MS. MUZYCHKA:** And there was a Limited Notice to Proceed issued to Pennecon, correct?

**MR. O'BRIEN:** There was.

**MS. MUZYCHKA:** And what did that involve? What was the scope of the work?

**MR. O'BRIEN:** I don't have the specific contents of the LNTP to mind. Do we have a copy of it here?

**MS. MUZYCHKA:** No. But I just mean from a general perspective, was it to do the work that you were just describing in terms of determining what was remaining to be done? Or was there some specific things in terms of mobilization?

**MR. O'BRIEN:** Sure.

The LNTP generally was intended to ready Pennecon to come to site to complete the work, should it be necessary. Not to mobilize, but it was established to undertake the readiness effort in establishing the organization, the processes, reviewing the work scopes that would be required to be completed, assess the situation, I believe prepare an estimate for performance of the work. Those sorts of activities.

**MS. MUZYCHKA:** And so was that to enable a smooth transition once the decision was made to terminate Astaldi?

**MR. O'BRIEN:** That's correct. As you can appreciate, moving one contractor out and replacing them with another is a very complex task. We also had the potential for significant impact with other contractors on site. The work of ANDRITZ, Cahill-Ganotec, others could've been affected by that transition. So it was imperative that we establish a process to minimize the impact associated with the shift, should it be necessary.

**MS. MUZYCHKA:** And so how would you categorize the transition? Was it relatively smooth, did it cause any major problems or issues?

**MR. O'BRIEN:** I think the transition was very smooth. Pennecon did a great job in that preparatory work and in establishing the approaches with respect to moving onto site and completing the scopes of work that remained that Astaldi had not completed. And if you look to the performance with respect to first power, we are still on target to meet the first power deliverables that had been established by Stan Marshall in 2016.

**MS. MUZYCHKA:** So I take it then there has not been a significant impact on the ultimate contract, aside from probably other issues that we don't need to get into. But there was a – there wasn't as great an impact, I guess, as it could've been when you switch out major contractor from site.

**MR. O'BRIEN:** The transition was very smooth and Penny did a very good job –

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** – of transitioning to site to mitigate the risks associated with the removal of Astaldi.

**MS. MUZYCHKA:** All right.

I do want to switch to talking about ANDRITZ now. We've spent a lot of time with Astaldi. Were – we understand ANDRITZ had provided the equipment – turbines, generators and other hydro mechanical equipment. The issues with respect to the components being shipped from China and those issues, we're not gonna talk about. Those, I believe, will be covered by confidential exhibits, Commissioner, so we're not going to delve into that aspect of the testimony.

But I do want to ask you a little bit about the execution of the contracts. I gather there was two: there was the CH00030 and CH00032. They were both done – managed by – or handled by ANDRITZ. Was there issues with the one package over another? Was there anything specific that you want to address with respect to the ANDRITZ contracts and their execution?

**MR. O'BRIEN:** There were two – there are two contracts with ANDRITZ. Package 00030, you're correct, is for the turbine and generator

scope, which all the manufacturing is completed and we're now in the process of installing those units with ANDRITZ at Muskrat Falls. I'm very much looking forward to spinning them, again, generating first power later this year.

**THE COMMISSIONER:** Can you tell me – I was on the site early in the spring – how many are there – are any of the turbines now installed?

**MR. O'BRIEN:** The rotor assembly is installed for Unit 1, and we're working to install the generator components right now. We hope to have Unit 1 mechanically complete toward the end of June of this year. Unit 2 is now in the assembly process and starting the installation in the second pit.

**THE COMMISSIONER:** Okay. So, the – my recollection – pardon me if I'm not using the right terminology, but my recollection was, when I was there in the spring, there was actually – one of the big turbines was actually physically in the plant. It was near the – where it was going to be placed.

**MR. O'BRIEN:** Yes. It would have been on the floor in the service bay at that time. So, it's been lifted and installed now in the pit.

**THE COMMISSIONER:** Okay. And then – so, then another one was going to come in for – so, we're at number 2 now.

**MR. O'BRIEN:** Yes.

**THE COMMISSIONER:** Is that what you're telling –?

**MR. O'BRIEN:** Yes, Sir.

**THE COMMISSIONER:** Okay. Good. Thank you.

**MS. MUZYCHKA:** Okay. So, CH0030 was the turbines and generators, which you were just discussing –

**MR. O'BRIEN:** Yes.

**MS. MUZYCHKA:** – with the Commissioner.

**MR. O'BRIEN:** Yes. CH0032 was the –

**MS. MUZYCHKA:** Problem child?

**MR. O'BRIEN:** – hydromechanical packages – so, essentially the gates.

**MS. MUZYCHKA:** The gates and the – yes. So, I understand that there were more issues with CH0032 that had given rise to a number of those. Can you address some of those issues?

**MR. O'BRIEN:** You know, I think with respect to the manufacturing programs put in place by ANDRITZ, they have delivered high-quality components to us in both of those packages where we deployed teams on to the manufacturing locations for that work to – which was – certainly the major components were in China, although given the scale of the work – and in particular with respect to the turbine-generator scope – there was manufacturing around the world: India, eastern Europe, Quebec, the US, as well as China.

In general the manufacturing work has proceeded. There have been some hiccups and some ups and downs in relation to the delivery, but I think – and maybe even Mr. Mavromatis characterized it at this Inquiry, as things that were in the – within the normal expectation of delivery of a project like this.

**MS. MUZYCHKA:** So, they weren't anything extraordinary? There was nothing that departed from the usual ups and downs that you would have in the course of the contract execution?

**MR. O'BRIEN:** There were challenges associated with the deliveries. There are with any major contract package, but nothing that I would characterize as out with the realm of normal commercial, contractual, technical issues.

**MS. MUZYCHKA:** Now, I understand that Mr. Mavromatis was brought on as project manager for ANDRITZ, but there had been someone previous to him, a Mr. Bertrand. Is that correct?

**MR. O'BRIEN:** Mathieu, that's correct.

**MS. MUZYCHKA:** Yes.

And, so, were there issues in terms of the interaction between the PMT and Mr. Bertrand?

Or was it an expertise issue? Can you shed some light on that?

**MR. O'BRIEN:** There weren't any issues with respect to interaction. Mr. Bertrand continued – even after Mr. Mavromatis arrived on this project, Mr. Bertrand continued to work on package 0032 and with our management team.

When ANDRITZ set the two packages up, they – 0030 was first out of the gate, the T&G package, because of the extended manufacturing duration and the delivery timelines necessary. So, it was awarded first and it was structured in a particular way.

When 0032 was awarded, ANDRITZ set about structuring their management organization and their approach to interfacing with the owner in a different way. And so we worked with ANDRITZ to realign the approaches on 0032 and bring it to an approach that was more consistent with what was undertaken in 0030. Part of that effort was to bring Mr. Mavromatis in, as a very senior project manager, to support the overall delivery of the work.

**MS. MUZYCHKA:** Okay.

We know there was quite a bit of conflict around change order 10. We heard from Mr. Mavromatis about that in his testimony. And that was the Nalcor directive to accelerate activities on the upstream and downstream spillway and powerhouse.

**MR. O'BRIEN:** Yes.

**MS. MUZYCHKA:** There was a change order ultimately issued by Nalcor for \$3.4 million to accelerate the project, and we heard from Mr. Mavromatis that that action to impose the change order – 'cause this wasn't part of the original scope of work that ANDRITZ had – caused some strain on their relationships with subcontractors. And they also had some issues in terms of funding and financing.

Were you aware that that was an issue?

**MR. O'BRIEN:** I guess to clarify: it was absolutely part of ANDRITZ's scope of work.

**MS. MUZYCHKA:** No, the work itself with the timeline.

**MR. O'BRIEN:** There was no change whatsoever – I'm sorry – there was no whatsoever with respect to the scope of work that ANDRITZ was asked to undertake.

**MS. MUZYCHKA:** No.

**MR. O'BRIEN:** What happened was Astaldi was late in delivering the spillway structures for ANDRITZ to install the gates. And as a result of that, we asked ANDRITZ to accelerate the scope of work that they were required to undertake underneath the agreement in order to continue to meet the diversion timelines that had been established for the project. And we set about, with ANDRITZ, to negotiate amounts for acceleration – in other words, to provide the additional – so the ANDRITZ contract is a lump sum, and we set about to negotiate, with ANDRITZ, an incremental amount associated with the acceleration, so the additional equipment and resources that they would need to shorten the timeline for delivery. Never to deliver anything different or anything that was out with what they had already planned to deliver.

That negotiating process lasted for quite some time, was quite challenging and ultimately resulted in Muskrat Falls issuing a change order to ANDRITZ directing them to complete the work in order that we could continue to achieve the diversion timelines that we had established. Failing to do that – failing to meet those diversion timelines would have resulted in an additional year on the project schedule, which is something that we couldn't support. ANDRITZ challenged that change order, and there was ultimately a mediated settlement in relation to that and a host of other things in relation to the contract.

**MS. MUZYCHKA:** Yes, but not before a notice of default and court proceedings which –

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** – preceded it.

**MR. O'BRIEN:** ANDRITZ was in default in relation to their obligations underneath the

agreement. They refused to do the work even though they had a contractual obligation to do so. And even under the change order directive, which the owner is entitled to provide underneath the agreement provisions, they continued to refuse to perform the work. And so we were forced to issue – despite our repeated appeals and our repeated efforts to negotiate a reasonable outcome, we were forced to issue a notice of default in relation to the work, and it wasn't until that notice of default was issued that the contractor actually came to the table and performed the work as required.

And we were successful in achieving the diversion window, and they were successful in accelerating the delivery of the components, albeit we had to scale back a little the milestone definitions in order to allow that to happen. There were a number of punch items that are, in fact, still on the table for ANDRITZ to complete in relation to that scope.

**MS. MUZYCHKA:** Okay.

We've heard that in a multiple contracts – and particularly in the ANDRITZ CH00032 package, project managers testified that there has been a significant amount of formal letters that – going back and forth. And we heard from – one of the contractors said the amount of formal correspondence was significantly higher than they had previously experienced on other jobs. Mr. Mavromatis testified that he actually had to hire someone to manage all the correspondence he was getting from home office.

What's your response to this?

**MR. O'BRIEN:** My response to that is Mr. Mavromatis writes more letters than we do. Mr. Mavromatis always had a team of people who were available in Montreal and, in fact, a dedicated team inside who were commercially responsible for supporting the work and preparing the letter correspondence that they deemed necessary to manage their commercial positions. That approach is consistent across all of these contractors at Muskrat Falls, and consistent with contracting approaches on major projects, in general.

Contractors have teams of people who are responsible for commercial strategy, responsible for preparation of commercial correspondence in relation to the work that they are executing, and for establishing claim strategy and documentation to support that.

The owner's team also has a commercial team who are participant at the site; a contract team of contact administrators, a commercial manager, who are responsible for working with the package teams, the package leads, the area managers, area construction managers, in preparing the necessary commercial correspondence to support the work as well – largely, in response to the commercial correspondence that's issued to or by the contractors to the owner but also, you know, if there are issues that need addressing in relations to the agreements, and they get raised in letter form.

**MS. MUZYCHKA:** But it can be somewhat distracting and it does create an environment – a somewhat adversarial environment if there's constantly letters going back, complaining about progress or, you know –

**MR. O'BRIEN:** So no, I can't agree with –

**MS. MUZYCHKA:** – or execution, et cetera.

**MR. O'BRIEN:** – that statement. The approach of commercial letter writing is very normal, it's the way that projects are run. It's critically important that letters be written to document issues, that letters be written to document deficiencies, that letters be written to document and refute the assertions that are being made by the contractor organizations.

Those letters become the project record, they become the vehicle by which to address claims. In the future, they come – they become the vehicle by which to address commercial close-out. And it is the way projects work. It's – there are groups within the project teams who support that, work through that.

And it's not a distraction but rather the normal course of business.

**MS. MUZYCHKA:** Now you did tell us in that interview in February, that, with Astaldi, the

Nalcor senior management approach was to be as supportive as much as possible in a collaborative atmosphere and not to write letters complaining about their lack of performance.

Do you recall that?

**MR. O'BRIEN:** I do recall that and there was a – ANDRITZ – or sorry, Astaldi – too many A-named contractors. Astaldi was, in the early days, a very collaborative contractor. They were committed, from the CEO down, to work with us in support of the execution, and committed to let us help them to rectify their deficiencies and work with us through the task forces that I've described, to deliver the necessary tools for execution.

And in that frame, we did reduce the number of letters that we would ordinarily have written. It's not to say that letters weren't written in relation to the agreement. And if you look back through the project record, there are probably 3,000 letters that have traded hands between Astaldi and ourselves. There are, absolutely, letters written in relation to the issues. But the intent, the desire and the approach was to be more collaborate and supportive and to help them through the challenges rather than to beat them over the head with it.

**MS. MUZYCHKA:** Right.

But that was certainly a different approach that was taken with ANDRITZ, which is a much more hard-nosed commercial approach – issuing notice of default, multiple letters, that sort of thing.

**MR. O'BRIEN:** No. No. The approach that we took with ANDRITZ, at the outset, was the same: to establish a collaborative and reasonable working environment with them and to support them in their delivery. And we worked through a number of challenges with them, in the same vein, with respect to scheduling options, with respect to installation options, even with respect to their own internal challenges between their corporate design team and their Canadian design team.

ANDRITZ established a more commercially focused approach very early, and a very strong commercial management team that issued

sometimes as many as six or seven letters to us a day, in relation to various topics. In fact, last Saturday, ANDRITZ issued six letters to me, in relation to execution at site.

And that's the approach that they've chosen to take, and as a result of that, we have to respond to those issues and respond to those letters and ensure that the record accurately reflects what's really happening at the site level and in relation to the agreements.

**MS. MUZYCHKA:** So the letter writing is essentially – it's just part of doing business.

**MR. O'BRIEN:** It's part of doing business.

**MS. MUZYCHKA:** Okay.

I want to direct your attention now to contract CH0009, which is the North and South Dams, and the Barnard-Pennecon bid. This had to do with the construction of the two dams and the – there was some evidence we heard with respect to the bid evaluation process.

Were you involved at all in the bid evaluation process, through either oversight or actual involvement?

**MR. O'BRIEN:** I wasn't a part of the bid evaluation team.

**MS. MUZYCHKA:** You weren't part or you were?

**MR. O'BRIEN:** I was not a part of the bid evaluation team. I was the project manager responsible for that package and would have sat with other project management team members as part of a steering team –

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** – oh, to which the bid evaluation team would have reported their outcomes.

**MS. MUZYCHKA:** All right. And I think Mark Turpin was on the bid evaluation team?

**MR. O'BRIEN:** Initially, yes.

**MS. MUZYCHKA:** Just want to get your commentary on – we’ll bring up Exhibit P-01901. It’s at tab 102 of the PMT binder number 4.

**MR. O’BRIEN:** That’s blank in my binder. Binder 4 of 4?

**MS. MUZYCHKA:** Yes.

**THE COMMISSIONER:** Yes, tab 102.

**MR. O’BRIEN:** Oh, I’m sorry. I was in tab 104. That explains why it was blank.

**MS. MUZYCHKA:** ‘Cause there’s nothing in it.

All right. So one of the things that Mr. Turpin testified, this Exhibit is – actually, we can just turn to page 4, please.

**MR. O’BRIEN:** Page 4.

**MS. MUZYCHKA:** Okay, just so we have the context of what is about.

This was a letter that Mr. Turpin wrote to Stan Marshall when Mr. Marshall came on stream. One of the issues he raised was – and he raised – it’s a number of issues in relation to his role with the North and South Dam and other things.

He testified that, in a meeting about the RCC mix design, there was issue of expertise over the concrete mix. Is that something that you recall?

**MR. O’BRIEN:** Yes, I recall the – Mark’s desire to change the approaches with respect to responsibility for mix design, if that’s what you’re referring to.

**MS. MUZYCHKA:** Right.

And, so, what I understand is that Astaldi – or not Astaldi, sorry – the contractor would have responsibility for the mix design, correct?

**MR. O’BRIEN:** That’s correct.

**MS. MUZYCHKA:** And – but there was some kind of delay in getting information as to the appropriate design process. And, so, Nalcor or the Muskrat Falls Corporation had engaged two

experts, Brian Forbes and Michael [sp. Malcolm] Dunstan, to provide advice.

Do you recall that?

**MR. O’BRIEN:** I think Malcom Dunstan and Brian Forbes were engaged to help us to understand RCC mix design very early, and to help us look at what necessary components would be built into the contract specifications with respect to the RCC mix.

**MS. MUZYCHKA:** Right.

**MR. O’BRIEN:** And both of them helped us to prepare the specifications that were, ultimately, included in package 0009.

**MS. MUZYCHKA:** Now, I mean, I understand that there are commercial merits to having the contractor have the responsibility for that, but what Mr. Turpin alleged was that the advice that had been given by the two experts that had been retained, they had provided their thoughts in a memo. I believe this statement is on page 5 of the letter to Mr. Marshall – middle paragraph. And he described a situation where a memo was provided, and you were not terribly receptive with respect to that and didn’t want to hear of it.

I just want to give you the opportunity to respond to that statement.

**MR. O’BRIEN:** Which statement?

**MS. MUZYCHKA:** It begins in the middle of page 5. He talks about: “As a last ditch effort to convince the component manager to change his mind we prepared the attached memo as signed by all members of the design team .... The memo was ripped up in front of us with a warning if it ever surfaced all members who signed the Document would be fired.” Et cetera.

**MR. O’BRIEN:** Yeah, so I can’t agree to the second statement, that I ripped up a memo and offered to fire the whole team. That’s certainly not my style and not consistent with the approach that I’ve taken with respect to the execution of this project.

What I will say is that a decision had been taken with respect to the contract strategy across this project that the contractors would have



responsibility for their means and methods. It's quite fundamental and consistent with megaproject execution approaches worldwide. We deployed a strategy like that with respect to Astaldi's work in ensuring that they maintain responsibility for means and methods, and, in fact, in the context of CH0007, retained responsibility for mix design.

There are a variety of reasons to do that. Owning any aspect of the contractor's means and methods puts the owner in a very precarious place with respect to responsibility for schedule delay, for quality, for cost overruns – any number of things – and it's important that the contractors retain that responsibility throughout the execution of the work.

The approach on package 0009 was no different than that, and it had been explained to Mr. Turpin that that approach was the desired approach with respect to the project. Mr. Turpin endeavoured to undermine that decision and engaged a group of people to prepare a memo to outline an alternate strategy whereby the owner would maintain responsibility for the mix design, albeit through a group of very established experts – technical experts – and not experts with respect to the particulars of this project, with respect to the schedule for this project, nor with respect to the commercial risk for strategies associated with this project. And the decision was a very complex one and based on all of those factors – and not based solely on a desire to establish the best possible mix – through the engagement of these consultants in a mix design study.

Alternate approaches were offered to Mr. Turpin in which a bid competition could be used to have the bidders perform a mix design program as a part of their bid effort should there be any real schedule risk associated with the development of a mix design.

At the end of the day, the decision was maintained to have the contractor maintain responsibility for the mix. There was no schedule risk. The mix design was established by the contractor and owned by the contractor, and the project was executed to a very high quality standard. The owner's concern, in relation to any of this, is ensuring that the ultimate product meets the quality requirements

of the specification. But, in doing so, not encumbering the owner with a suite of additional risks in respect to execution or otherwise that could impact the overall cost or schedule delivery of the project.

**MS. MUZYCHKA:** Okay.

When we had Mr. Power here he had indicated in his testimony that he had not seen the memo that had been prepared by Brian Forbes and Michael [sp. Malcolm] Dunstan. Do you know what happened to that memo? Would that not have been something that you would've brought to Mr. Power and discussed as –?

**MR. O'BRIEN:** It should be in the project record. I did bring it to Mr. Power. I – actually, Mr. Power and I discussed this issue as early as 2014, because there were similar issues in relation to some RCC work that we did on the project in 2014. And the desire by Mr. Turpin at that time to have the owner maintain responsibility for the mix, which led to a suite of commercial and delivery issues.

In relation to that contractor, Mr. Power and I reviewed that issue, and there's correspondence to support that, in 2014 as well as in 2015.

**MS. MUZYCHKA:** Okay. So these would've been issues that would've been discussed with the team?

**MR. O'BRIEN:** Yes.

**MS. MUZYCHKA:** All right.

Now we know that there had been bids submitted for the work in this package. If we can turn to P-02802, which is in the Scott O'Brien binder, tab 34.

This was Ken McClintock's presentation to you, Ron Power and Pat Hussey on July 24, 2015. Was that correct?

**MR. O'BRIEN:** Okay.

**MS. MUZYCHKA:** If we go to page 13 of the document ....

So at this point, just by way of context, I guess, there had been a process that had been started in

2014, and, in December, there had been some preliminary review of bids. Perhaps you can just take us through that – briefly, Mr. O’Brien?

**MR. O’BRIEN:** Yeah. There was. So this package was one where there was an extended RFP process. There was some preliminary work done in 2014 in reviewing the bids, and some discussion in December of that year with this steering team. Decisions were taken at that time to carry on through evaluation and optimization with the bidders. The primary decision in December was that Astaldi would be removed from the bid process. If I can recall, we had initially proposed three bidders: Astaldi, Barnard-Pennecon, and O’Connell’s. We may have removed Astaldi earlier; I’m not sure.

In any event, in December, because there was lack of clarity with respect to impoundment timing and with respect to some of the optimization issues and because the cost associated with the bids is received or substantially in excess of the DG3 estimate to the commentary I made earlier.

I think at DG3 this package was maybe 180 million, and the bids as received were in the order of 300 million. There was a desire by the management team to continue through the winter of 2015 and into the spring of 2015 in reviewing optimization opportunities with the bidders, while we worked to finalize the execution timelines.

**MS. MUZYCHKA:** So by the time you get to the summer of 2015, there’s been review of the – or were there resubmissions of the bids or changes that were made by the bidders?

**MR. O’BRIEN:** I – new bids were submitted by both bidders.

**MS. MUZYCHKA:** Okay.

**MR. O’BRIEN:** And then subsequent clarifications after the receipt of the new bids, I believe.

**MS. MUZYCHKA:** Okay.

So going back to Exhibit 02802, on page 13, there appears to be a new scoring model that’s being proposed by Mr. McClintock,

emphasizing execution and the project team. Do you recall that?

**MR. O’BRIEN:** Yes, I do.

**MS. MUZYCHKA:** And was that an issue for you or members of the oversight team?

**MR. O’BRIEN:** So the bid team at that time felt that an alternate weighting and strategy was more appropriate, which emphasized both execution and team composition. In this meeting, I believe Mr. Power requested that the bid team go back and score the bids against the original evaluation plan scoring matrix to ensure consistency and to understand if the outcomes would be the same in both instances. I recall – as I recall, they were.

**MS. MUZYCHKA:** They were rescored?

**MR. O’BRIEN:** No, they were the same after the rescoring. The outcomes were the same –

**MS. MUZYCHKA:** Okay.

**MR. O’BRIEN:** – after rescoring.

**MS. MUZYCHKA:** So we heard from Mr. McClintock that a very important factor in the July 24 recommendation – in this document it was a recommendation for Barnard-Pennecon – was that the team for Barnard-Pennecon was better. That they had more experience.

**MR. O’BRIEN:** And that was a factor from my memory. What was primary here was the execution plan and the execution plan as provided by O’Connells was not able to meet the timelines that had been established for diversion for the project.

**MS. MUZYCHKA:** Well, there was some commentary that their schedule didn’t appear to have any float.

**MR. O’BRIEN:** It had negative float from memory, and they didn’t meet the timelines –

**MS. MUZYCHKA:** Well –

**MR. O’BRIEN:** – established for diversion.

**MS. MUZYCHKA:** If we go to page 12 of this exhibit, we see bidder overview pros and cons and there's "very tight schedule" noted, "no float" –

**MR. O'BRIEN:** Okay.

**MS. MUZYCHKA:** – "Critical Path in jeopardy." Is that your recollection?

**MR. O'BRIEN:** I don't have the details of the schedule in front of me.

**MS. MUZYCHKA:** Fair enough.

So at the end of the meeting, when everybody walked away, was the instructions to the evaluation team to keep the recommendation and fill in the original paperwork to support it or were they to go back and do a fresh analysis using the original scoring? 'Cause at this point, the bid evaluation team had recommended Barnard-Pennecon as part of this presentation, but it was to be based on a different scoring model.

So when you all left, was your understanding that there would have been a fresh analysis using the original scoring or were they to simply complete the original paperwork?

**MR. O'BRIEN:** I don't recall specifically, but I'm sure Mr. McClintock has testified to the outcomes of the additional request to score with the original evaluation plan.

**MS. MUZYCHKA:** Would there have been a concern if the bid evaluation team had adjusted the results of the original criteria – was that an issue for the process or should you change the scoring methodology throughout?

**MR. O'BRIEN:** It depends on how it's done. The approaches that we're taking here were consistent with the bid evaluation requirements that had been established for the project. I think Pat Hussey has testified with respect to the approaches and the processes that were used for both release of RFPs and bid evaluation.

For the approach that was taken by this bid team, it was certainly within the confines of that process. The test requested by Mr. Power to validate against the original evaluation plan, just

– to use an over-used term, creates robustness in the process.

**MS. MUZYCHKA:** We also heard from Mr. McClintock's testimony that you had requested there be some new wording added to the CH0009 award recommendation document on August 12, 2015. So if we can bring up the document, I believe it's P-01870. I'm not sure what binder that's in.

**THE COMMISSIONER:** 01870 – that would be in PMT 3, tab 100.

**MS. MUZYCHKA:** PMT volume –?

**THE COMMISSIONER:** Tab 100 – 3, book 3.

**MS. MUZYCHKA:** Volume 3.

**MR. O'BRIEN:** Binder 3 of 4, tab 100?

**THE COMMISSIONER:** Yes.

**MR. O'BRIEN:** Thank you. Right at the back – okay.

**MS. MUZYCHKA:** All right, so there appears to be a signoff on the bid evaluation and award recommendation by most members on August the 10th. And then there was yourself and Mr. Hussey signed off on the 12th and Jason Kean and Jason Kean for Ron Power signed off on the 14th. Is that correct?

**MR. O'BRIEN:** I signed on the 10th.

**MS. MUZYCHKA:** Sorry?

**MR. O'BRIEN:** Is it –

**MS. MUZYCHKA:** Ed Over signed on the 10th, but actually, it was McClintock who signed on his behalf.

**MR. O'BRIEN:** I signed on the 10th, Pat Hussey signed on the 12th, Jason Kean and Jason Kean for Ron Power signed on the 14th.

**MS. MUZYCHKA:** Okay, sorry, I read the 10 as a 12 – okay.

**MR. O'BRIEN:** My poor penmanship.

**MS. MUZYCHKA:** Okay, so five of the signatories were on the 10th. So the change in the wording – do you recall what that was about?

**MR. O'BRIEN:** No, I don't. Do you have what I provided to Ken?

**MS. MUZYCHKA:** Well what it appears, and I don't have the – I guess we need to look at the other document, which I don't have the reference. But it appeared to have related to – reference to craft labour hours. Initially there was a reference on – we'll go to page 3.

**MR. O'BRIEN:** So that would be in section 2?

**MS. MUZYCHKA:** Section 2, the recommendation.

**MR. O'BRIEN:** Mm-hmm.

**MS. MUZYCHKA:** And then it's the lower last section of that paragraph. And that is, "The result indicates ... the 'Final Estimated Contract Value' would become equal between the two bidders following the addition of 220,000 craft labour" hours "to the Barnard-Pennecon JV bid. This would be equivalent to a 40% overrun in BPJV's craft labour Mhrs."

**MR. O'BRIEN:** Sure.

**MS. MUZYCHKA:** (Inaudible.)

**MR. O'BRIEN:** If I'd asked Mr. McClintock to include that, that's clarification for the record, as this award recommendation package becomes the project record with respect to the award outcomes for that particular package. What I didn't do was ask Mr. McClintock to make any modifications with respect to the evaluation or to the scoring outcomes, because that is something I couldn't do; rather, to have him provide addition clarity here within section 2.

**MS. MUZYCHKA:** Okay, but if we look at the – I believe it's P-02813. Probably in the PMT blinder, as well.

**THE COMMISSIONER:** 02813. That would be – I am not sure we have that in either of the binders. So that'll come up on your screen. Let's see what 02813 is.

**MS. MUZYCHKA:** Yes. Okay, this is it.

So this is the email from Ken McClintock to yourself –

**MR. O'BRIEN:** Mm-hmm.

**MS. MUZYCHKA:** – which says: "Here is the new wording I have put into the Award Recommendation. You may need ... to discuss our position and for follow-up with bidder 3."

And "... most important piece is Section 2."

And this is dated – sorry, I am going to scroll down again – Wednesday, August 12 at 4:04 p.m.

So if we scroll down to the – section 2. Okay – in the last – if we keep scrolling up – right there is good – we'll see the difference in the last – in that paragraph where previously you had noted the addition of 220 craft labour hours, it is now 140,000, and the – would be the equivalent to a 25 per cent overrun as to a 40 per cent overrun.

**MR. O'BRIEN:** I can't –

**MS. MUZYCHKA:** So I'm just trying to understand what the difference is between the two.

**MR. O'BRIEN:** I have no idea with respect to the changes that Mr. McClintock made here; you'll have to speak with Mr. McClintock with respect to that.

**MS. MUZYCHKA:** No, but he is sending it to you, and he is asking you to review it –

**MR. O'BRIEN:** (Inaudible.)

**MS. MUZYCHKA:** – so I am asking you, what does it mean? Why is there a difference?

**MR. O'BRIEN:** I don't know.

**MS. MUZYCHKA:** And why are there changes being made after – two days after half the people have signed or more than half of the people have signed off on the bid evaluation?

**MR. O'BRIEN:** There's no changes with respect to the scoring outcomes here. All Mr.

McClintock has offered is the outcomes of a sensitivity analysis that was done with respect to the craft labour hours. It doesn't change the scoring or the evaluation.

**MS. MUZYCHKA:** Okay. So, this relates – those changes relate to the sensitivity analysis.

**MR. O'BRIEN:** It's the sensitivity analysis in clarity, provided for the project record – no change in the scoring, nor of the evaluation outcomes.

**MS. MUZYCHKA:** Do you know if the documents were then re-signed, because it doesn't appear that they're ...?

**MR. O'BRIEN:** There's no – I don't know, and there is no change to the scoring outcomes or to the evaluation outcomes in relation to this. This is purely a sensitivity analysis that Mr. McClintock performed.

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** As to the reason for the difference between the two variables in the scoring or in the sensitivity analysis, I don't know. You'll have to speak to Mr. McClintock.

**MS. MUZYCHKA:** Okay. Just one other question on this particular contract or package. You're aware of an email from Len Knox that was sent to the Inquiry recently. It's –

**MR. O'BRIEN:** I've seen it as part of the Exhibits.

**MS. MUZYCHKA:** Yes. So, it's tab 36 of your book. It's P-03259.

**MR. O'BRIEN:** Tab 36?

**MS. MUZYCHKA:** Tab 36.

**MR. O'BRIEN:** Okay.

**MS. MUZYCHKA:** I don't want to get into all of the ins and outs. You've already read this email. You're aware that Mr. Knox is –

**MR. O'BRIEN:** I have read this email.

**MS. MUZYCHKA:** Yes, and he seems to suggest that there may have been an issue with respect to his being considered for bids. He describes the situation which Jason Kean suggested to him – that H. J. O'Connell continue – if they continued their claims, then package CH0006 – there would be a negative impact on them. Do you have any knowledge of the contents of Mr. Knox's email?

**MR. O'BRIEN:** No, I don't.

**MS. MUZYCHKA:** Were you ever – did it ever come to your attention that there had been issue or –

**MR. O'BRIEN:** Not that I can recall. I certainly wasn't present in any meeting between Mr. Knox and Mr. Kean.

**MS. MUZYCHKA:** And what about in the process of discussing the bids of H. J. O'Connell and Barnard-Pennecon? Were there any issues, that you can recall, in which concerns over claims were made in terms of the evaluation or scoring of their –

**MR. O'BRIEN:** I can't –

**MS. MUZYCHKA:** – bid?

**MR. O'BRIEN:** – recall, specifically. It is possible that a contractor's focus with respect to claims or contractor behaviour in relation to claims focus may have been part of the discussion, but I have no specific recollection. It wouldn't be unusual for that to be part of any bid evaluation – past performance of a contractor and past behaviours of a contractor.

**MS. MUZYCHKA:** Okay. And claims would be a negative feature in your view? A contractor that makes claims?

**MR. O'BRIEN:** It depends on the nature of the claim. If – contractors that are claims focused are often very challenging to manage from a commercial perspective.

**MS. MUZYCHKA:** Okay. Commissioner, this might be a good time to break. I'm almost finished, but – rather than run over –

**THE COMMISSIONER:** Yep. I'm sorry. I didn't realize it was that late this morning. So we'll adjourn now until – for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

**THE COMMISSIONER:** All right.

**CLERK:** Please be seated.

**THE COMMISSIONER:** Ms. Muzychka.

**MS. MUZYCHKA:** Thank you, Commissioner.

Mr. O'Brien, I want to ask you a little bit about an issue that we heard from, again, the Astaldi contractor, Mr. Delarosbil and Mr. Bader, particularly in relation to the removal of individuals from the site. And I understand that that's a contractual right that Nalcor has, or the Muskrat Falls Corporation, in the agreement.

However, the issue arose in which Mr. Delarosbil indicated that he did not have prior notice or consultation or wasn't involved in any investigation, and, basically, received notice that three of his key employees were summarily banned from the site. Can you elaborate on that, please?

**MR. O'BRIEN:** I can.

There's a – at Muskrat Falls generation, we've endeavoured to establish safety protocols and a safety culture at the site to ensure that every worker goes home safely every day. And it's something we take very, very seriously, and we've – in fact, we've recently been awarded the national award by the building trades for the safety performance of the project and the safety culture that we've established and our efforts in bettering the lives of the labour force across the country.

As part of that process, we have established, at the site, a series of safety absolutes, and it's quite normal to have safety absolutes in relation to these big projects for work sites, so. A safety absolute, really, is – it's like the 10 commandments of safety: the things you can't

do. And in the event of a safety infraction in relation to the work site, what happens is there's a committee – so, just to give you an example, sorry, of a typical safety infraction is: You can't be inebriated with either alcohol or drugs on the site, and if you're found to be in violation of that, you've contravened a safety absolute.

There's a safety absolute committee that meets on a regular basis to review any of the personnel on the site. And it applies to contractors, as well as to Nalcor's own people on the site. We don't make exceptions for anyone. The rules are the same for everybody.

We sit and review – or the committee. I'm not a part of the committee. The committee sits and reviews on a regular basis what's happened with respect to an individual incident. The contractors are asked to prepare reports to describe the incident, the root causes associated with the incident and the worker's contribution to the incident. And then, an appropriate discipline, if you want, is determined by the committee. The contractors actually sit on the committee with us

**MS. MUZYCHKA:** Okay. Just wondering if we're going to get to the question?

**MR. O'BRIEN:** It's quite important to the context –

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** – I'm sorry.

**MS. MUZYCHKA:** All right. Continue.

**MR. O'BRIEN:** The concepts that LCP was throwing people off the site is wholly incorrect. And it's important that the Inquiry understand the approach that was taken with respect to safety management at Muskrat Falls. Because the approach is with respect to personnel removal are all about maintaining a safe working environment to ensure that everyone goes home safely every day.

And the approach in relation to safety absolutes and the safety committee – or safety absolute committee are wholly important in relation to that. And the Astaldi personnel that were removed from the site were removed as a part of

this process. I think it's important that we put it back in the proper context. And what Astaldi's done in relation to this particular issue is taken entirely out of context.

In any event, appropriate discipline is determined by the safety absolute committee, and it could be anything from leaving the site for a week to leaving the site permanently. With individuals who are supportive of the process and willing to work with the organizations in their own contracting companies, we often bring them back to site on second-chance agreements and ask them to share their stories, share their experiences share what they've done from a safety perspective, with their own team members and even, in some cases, more broadly across the project site to help build a better and safer work site for everyone. It's very important to us, and it's very important that everybody goes home safely every single day.

There were, on occasion, individuals from the management teams of the contractors that were removed from the site. There were, on occasion, individuals from the LCP team that were removed from the site for a variety of reasons.

We had a – you know, to give you a specific example, at one point, ANDRITZ's leadership team arrived on the site – four of them – drunk in a truck and came across the gate prepared to go to work. We couldn't do that. Obviously, for a management team to arrive on site not in a state fit to go to work isn't acceptable, and so they were removed via that process. (Inaudible) –

**MS. MUZYCHKA:** Were they banned from the site?

**MR. O'BRIEN:** Yes, some of them. Two of them were –

**MS. MUZYCHKA:** Or did they get back?

**MR. O'BRIEN:** – two of them were allowed to return on a second-chance agreement. Two of them – the two more senior individuals – were asked to leave the site on a permanent basis. And ANDRITZ concurred with that approach because it was wholly unacceptable for senior leadership to show up to work drunk.

There are other examples like that. With respect to Astaldi, there were people removed on occasion as part of that process. A toppling of a 250-ton crane, for example, resulted in the removal of three Astaldi personnel from the site.

**MS. MUZYCHKA:** Including their safety officer, or safety manager?

**MR. O'BRIEN:** Yes, including their safety manager.

**MS. MUZYCHKA:** And I believe he was banned. All these individuals were banned from site.

**MR. O'BRIEN:** Yes, they were.

**MS. MUZYCHKA:** I don't think either of them returned.

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** But what about – I mean, I understand the need for safety and the right of the owner to exercise that right. But in terms of due process, I think from Mr. Delarosbil's perspective was that, you know, he was left high and dry with three people gone on the same day with no prior consultation or involvement in the process of why this was – particular action was necessary and to see if there could be some sort of arrangement made to offset that.

As I gather, they weren't removed on the day of the event. It wasn't like an emergency situation or a situation where you take steps immediately to prevent people who are impaired by alcohol or drugs, that you would ban them from the site at that moment. This event happened after the crane incident.

**MR. O'BRIEN:** Mr. Delarosbil's perspective is interesting. However, what's important to note is Mr. Delarosbil's safety manager was endeavouring to obstruct information release with respect to the toppling of the crane. That incident was very, very severe, and the crane could very easily – but for its landing position, it could very easily have toppled over the dam, and we could have had a much more serious incident. That safety manager was endeavouring to obstruct the investigation, he was endeavouring to obstruct release of information

in relation to that incident to the owner so that we could properly understand what happened and make sure it didn't happen again.

And it wasn't a unique occurrence with that particular individual. We had been struggling with Astaldi's safety manager for more than a year in relation to consistent and continued behaviours whereby he was focused on undermining the owner's efforts in relation to safety and to labour management, and not working with us toward establishing a better and safer workspace for all involved.

**MS. MUZYCHKA:** Mmm.

**MR. O'BRIEN:** The toppling of the 250-ton crane was the straw that broke the camel's back rather than an isolated incident – I don't think Mr. Delarosbil explained it that way.

**MS. MUZYCHKA:** Were there other individuals who were also banned from the site? Do you have a recollection as to what kind of numbers we're talking about?

**MR. O'BRIEN:** Over the last four years on the project, the management team personnel that were removed from the site? Eleven.

**MS. MUZYCHKA:** Eleven management –

**MR. O'BRIEN:** Including the four ANDRITZ managers who showed up drunk.

**MS. MUZYCHKA:** And were they banned permanently from site? Or were there other arrangements made as you –

**MR. O'BRIEN:** It depends –

**MS. MUZYCHKA:** – alluded?

**MR. O'BRIEN:** – on the individual. Individual cases were dealt with in different ways depending on the severity of the incident. For example, the situation with the Astaldi manager responsible for the 250-ton crane incident and his efforts to obstruct identifying the true causes and fixing the issues in relation to that crane failure, that was permanent. To the individuals who were drunk, two of them were left on a permanent basis; two of them were allowed to return.

I don't have the details of all of the particular incidents, but it very much depended on the incident, on the role of the individual and the level of responsibility that they had at the site, the prior knowledge that they had with respect to the issue. There were a number of factors that needed to be considered in relation to any one of these issues, and the safety absolute committee endeavoured to do that.

**MS. MUZYCHKA:** Okay.

What about for non-safety issues? We've heard some evidence that people were afraid to speak up 'cause they might end up losing their job. Is there any truth to that? I mean, Mark Turpin makes a comment in his letter to Stan Marshall about being threatened to lose his job if he didn't follow the plan with respect to the concrete mix issue. That's just one example, but there were others that may have alluded to that. Is there any truth to that or is that ...?

**MR. O'BRIEN:** Were people threatened with their jobs? No.

**MS. MUZYCHKA:** No?

**MR. O'BRIEN:** Were people held accountable with respect to the expectations for delivery? Yes, absolutely.

Muskrat Falls is not a punitive work site and not a punitive workplace. And if you look at the approaches that I've just offered in the relation to the safety absolute committee, for example, on the other megaprojects that I'm aware of and the ones that I've worked on in the past, these concepts of allowing people to come back for second chances and allowing them to share their experiences and allowing them to participate across the organization and supporting the cultures that we're trying to achieve are all about building an inclusive environment; they're not about being punitive.

**MS. MUZYCHKA:** So you would disagree with the impressions that some people may have had that it was – could be interpreted as a punitive environment? You'd say that that's not the case?

**MR. O'BRIEN:** That's correct.



**MS. MUZYCHKA:** Okay.

Lastly, I want to ask you about tab 38 in your book of documents. And this is Exhibit 03732, Madam Clerk.

This is a series of texts between you and Mr. Power from March of this year. We had, obviously, asked Mr. Power about that, and so in order to close that loop, it would be appropriate to get your impressions as being the other part of the conversation.

So if we turn to page 2, we're looking at specifically the text that ends with "Peter Mulcahy is tarred with the same brush – trust me." And that was a statement made by Mr. Power. And this comes after an exchange of discussion of texts between what's happening at the Inquiry, but not on the same day, of course. But there – you know, the problem with texts is there isn't a lot of backup or context, necessarily.

Your response was: "I know. I've been thinking about it all afternoon." Can you tell us what was going on in terms of that exchange?

**MR. O'BRIEN:** So, I think Mr. Power has already testified with respect to what he was indicating in relation to that text. I can't speak to it. What I can tell you is that I was thinking about it all day, and what I did about it was reached out to make sure that Peter was okay. Peter's father, John, had said some very disparaging things on the stand here in relation to the project team and in relation to the approaches at Muskrat Falls, and Peter has to live and work within that team.

At that time, I reached out to Peter's management and asked them to please ensure that Peter was okay and that Peter knew that he was supported in the project and that we couldn't consider the commentary that his father had made in relation to the commentary that – or in relation to Peter and Peter's performance. He's done a very good job at Muskrat Falls. He's a valued member of the team, and it's important that he feels that way.

There were similar conversations held in relation to Bill Knox because his brother, Ed – Newfoundland is a small world as we all know.

Bill's brother, Ed, offered us – also offered some commentary in relation to Muskrat Falls that was less than flattering. There were even newspaper articles about Bill and Ed – two brothers and a dome, I think, was the title, and there were conversations held with Bill, in the same vein, to make sure that he felt valued and an important part of the team.

**MS. MUZYCHKA:** Okay.

You agreed with Mr. Power's response back to you where he says: "I have not mentioned anything to Jeff or to Ken McClintock – we need to caucus first tomorrow – me, you, Pat."

**MR. O'BRIEN:** That's an entirely different conversation set.

**MS. MUZYCHKA:** No, we're looking at March 28 at 6:38 p.m.

**MR. O'BRIEN:** Yeah, at a different time. It's not connected in any way.

**MS. MUZYCHKA:** So, you're saying they're not connected? Those two texts?

**MR. O'BRIEN:** No, they're not.

**MS. MUZYCHKA:** So, the: "I have not mentioned anything to Jeff or to Ken ... we need to caucus ..." is an unrelated message from Mr. Power to you?

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** Okay.

Just another question I have with respect to that.

If you move up to Tuesday, March 26 at 2:29 p.m. – or, sorry, 7:14 p.m. – this is you in the blue bubble speaking – or texting?

**MR. O'BRIEN:** Yes.

**MS. MUZYCHKA:** You say: "Did you see the back of Normand's cross with Budden. I heard he took a hard run at me. Ed reaches out to Paul about it."

Can you tell us what – or who the Ed is, and the Paul, and what you're referring to there?

**MR. O'BRIEN:** Of course. So here at the Inquiry, that's a reference to the testimony that was provided by Mr. Béchar, of which I spoke yesterday –

**MS. MUZYCHKA:** Yes.

**MR. O'BRIEN:** – and of which I don't intend to delve into. With respect to the commentary about Ed and Paul, that's Ed Martin and Paul Harrington. After that testimony, because it was quite disparaging and quite personal and quite unprofessional, as I said yesterday, Mr. Martin did phone me and – of concern for my well-being because those statements were so very personal. And so he called to make sure that I was okay.

**MS. MUZYCHKA:** Your statement was “Ed reaches out to Paul about it.”

**MR. O'BRIEN:** Yes.

**MS. MUZYCHKA:** So Mr. Martin reached out to Paul Harrington?

**MR. O'BRIEN:** To get my phone number to call me –

**MS. MUZYCHKA:** Okay.

**MR. O'BRIEN:** – to see if I was okay because the personal commentary is very challenging for individuals who are not used to being spoken to or spoken about in that way.

**MS. MUZYCHKA:** Yeah.

All right, that's all the questions I have for you, Mr. O'Brien.

**THE COMMISSIONER:** Okay, thank you.

The Province of Newfoundland and Labrador.

**MR. LEAMON:** No questions, Commissioner.

**THE COMMISSIONER:** Concerned Citizens Coalition.

**MR. BUDDEN:** Good afternoon – I guess it is now. Good afternoon, Mr. O'Brien.

**MR. O'BRIEN:** Good afternoon.

**MR. BUDDEN:** As you know, my name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition, which is – you probably also know, is a group of individuals who, for a number of years now, have been critics of the Muskrat Falls Project and I guess critics and observers of the project. So I've got a fair number of questions for you today.

I'm going to start just with a fairly basic question. What did you consider to be the scope of your position as project manager of the Muskrat Falls generation project? The scope of your position.

**MR. O'BRIEN:** So, I think I described that yesterday in my earlier testimony. My role description is provided in the C1 management plan construction phase. My role is to steward the delivery of the Muskrat Falls generation project and to support the team members around me in ensuring its delivery.

**MR. BUDDEN:** Okay.

One key aspect of that position, I would suggest, fairly obviously, would involve liaising with representatives of the contractors and managing the Nalcor employees and contractors and other personnel on site. That would be an important part of that job.

**MR. O'BRIEN:** Yes, it is.

**MR. BUDDEN:** Okay. And how would you characterize your own leadership style and philosophy with respect to how you carried out those responsibilities on this project? Describe yourself as you see yourself as a manager.

**MR. O'BRIEN:** As a manager, my role – and I think I've just said it – is to support my team, ensure that the team has all of the tools that they need to deliver the project and that any encumbrances that may be impacting their ability to deliver are cleared. It's to clear a path for their success.

**MR. BUDDEN:** Okay, I'll focus that question a little more. How would you describe yourself in terms of how you carry out those functions in your interpersonal style? And I said manager; I should have also expanded that to include

dealings with contractors. So, how did you deal with people?

**MR. O'BRIEN:** In what context?

**MR. BUDDEN:** In the context of your style: how you would present yourself, tone, the way you deal with people.

**MR. O'BRIEN:** So, I think you've seen me here for the last day and a half representing the Muskrat Falls generation organization and the approaches that we've taken. My style in relation to execution is no different. We've maintained a focused, professional environment with respect to all of our contractors. We've worked with them to be fair and reasonable. We have tried to support their delivery to the extent possible within their own means and methods. And we've endeavoured to address anything was necessary to ensure they've delivered in accordance with the requirements of their agreements.

**MR. BUDDEN:** Okay. There are certain, I would suggest, accepted best practices when it comes to these interpersonal aspects of management. I mean, thinking of terms – and listen carefully, please – consistency, clear lines of communication, respectful interactions with people, leading by example, being open to feedback, allowing contrary points of view to be heard. All of which, I would suggest, collectively constitutes respectful workplace. Do you take issue with any of that?

**MR. O'BRIEN:** No, I don't.

**MR. BUDDEN:** Okay. And you would also agree that things such as shouting at people, talking over them, not allowing them to be heard and similar – what I would characterize as bullying behaviours would be inappropriate behaviours in the workplace.

**MR. O'BRIEN:** Yes, they are.

**MR. BUDDEN:** Okay. I'm not saying that they don't sometimes happen. We're all human. But when they do happen, you would acknowledge that they would be inappropriate – whoever does them.

**MR. O'BRIEN:** Depends very much on the context and the severity of the situation. As I've said to you, the approaches that have been taken with respect to contractors at Muskrat Falls have been about maintaining fair, reasonable approaches with respect to their execution – professional approaches with respect to the requirements for execution.

**MR. BUDDEN:** I would suggest there's nothing here that is contrary with demanding accountability. But how one demands accountability, I would suggest, must – or at least the ideal is that it be done respectfully in the terms we've discussed. You'd agree with me there?

**MR. O'BRIEN:** Yes.

**MR. BUDDEN:** Okay.

And you would also acknowledge that Nalcor has policies with regard to respectful workplaces and how interactions are to take place.

**MR. O'BRIEN:** Yes, they do.

**MR. BUDDEN:** And you would also acknowledge that the kind of negative behaviours that I described a moment ago are not only contrary to those things, they're also disruptive to the orderly progress of this construction project or any construction project?

**MR. O'BRIEN:** No, they can be. It depends very much on the circumstance, again, and it's difficult to oversimplify complex construction environments. With respect to respectful workplace, Nalcor has a respectful workplace policy that they have implemented across the – in fact, LCP has their own respectful workplace policy independent of Nalcor's corporate policies. And I have –

**MR. BUDDEN:** Just return to my question, perhaps, because we're wandering a little bit. Would you agree that to engage in these kind of behaviours I've described – the shouting, the other bullying – would be disruptive to the orderly progress of a construction project.

**MR. O'BRIEN:** I think I've answered that question, Sir, already and that it depends very much on the context and oversimplifying any

particular situation into a generality is not possible in the context of this situation you're describing. But I would say to you that generally, it's important to maintain professional decorum in relation to any work execution.

**MR. BUDDEN:** Because it's the right thing to do and also because to deviate from that could have negative consequences for the project?

**MR. O'BRIEN:** Possibly. I mean, you can't over characterize it. A tense meeting would result in a negative impact on the project: I don't think it's that simple.

**MR. BUDDEN:** I'm not talking about a tense meeting. The behaviours I describe go beyond a tense meeting, you would agree?

**MR. O'BRIEN:** Again, you can't oversimplify that to impact on the project as a whole.

**MR. BUDDEN:** Okay.

Let's move on. You have heard – and through your counsel, you know that I'm going there. You have heard a number of witnesses have described certain behaviours of yours, and I'm going to walk through some of that because among other things, I think you're entitled to the opportunity to respond on the record to what's been said on the record. So perhaps we can start with Exhibit P-03102, Madam Clerk. This is one we covered yesterday, so I'll just touch on it. I'll get into more detail with others.

**MR. O'BRIEN:** Can you tell me where it is, please?

**THE COMMISSIONER:** I'm just looking. I don't think we have this –

**MR. O'BRIEN:** Oh, I'm sorry, Commissioner.

**THE COMMISSIONER:** – one in your binder. I think you're going to have to see this one on the screen.

**MR. O'BRIEN:** Okay.

**MR. BUDDEN:** Sure.

**THE COMMISSIONER:** (Inaudible.)

**MR. BUDDEN:** It's fairly brief, Mr. O'Brien.

What it is, it's a letter that you will be familiar with when you see it. It's over the signature of Mr. Delarosbil and it's addressed to I would – to you. And the first paragraph is what particularly interests me and, again, at the very end. So, you – I'll read it. You can follow along yourself.

The second sentence onward is what I'm going to focus on. "Contractor wishes to point out that throughout the course of the September 20, 2016 site progress meeting Company behavior was aggressive, intimidating and demeaning towards Contractor staff. Contractor further asserts that this is not an uncommon practice by Company representatives at such meetings and this had been previously addressed. Such unprofessional conduct is unnecessary, non-collaborative, damaging to the relationship and in contravention to the intent of the current Bridge Agreement ..." and so on.

And at the very end, it – the last paragraph says: "... Contractor's PM made comments relating to the unprofessional conduct as noted above and asserted that should such behavior continue Contractor would not attend these meetings in the future." And assurance is requested.

So, we would've dealt with this yesterday, and in his evidence here at the Inquiry, Mr. Delarosbil stated that you were one of the individuals to whom he's referring to as shouting over the phone at him. So, this is intended, by his evidence, to include you in this characterization.

So, firstly, I would ask, if this were true – and I know you dispute it is – but if this were true, would you agree that this would be inappropriate behaviour?

**MR. O'BRIEN:** So, I can't attest that this is true. As I've offered, contractor correspondence is quite often tainted with the view of commercial claim, and Astaldi, at this time, was very focused on establishing that owner's intervention and behaviours were impacting their ability to complete the work.

**MR. BUDDEN:** We'll get to that, but, perhaps, you can just answer my question.

**MR. O'BRIEN:** It's very important for context, Sir.

**MR. BUDDEN:** And we'll get to it. You'll have your chance. As you explained it yesterday, and I'll return to it, but just taken as a discrete question: If this, what is being alleged here and confirmed in the viva voce evidence, were true, you would acknowledge that it would be inappropriate workplace behaviour?

**MR. O'BRIEN:** Again, I can't speak to the contents in this letter, nor that I was even in this meeting.

**MR. BUDDEN:** Zone out a little bit. If – you are a project – you had a responsible position here. If you became aware of such behaviour and believed it to be true, would you also see it as being inappropriate?

**MR. O'BRIEN:** It's important to maintain professional decorum with respect to the approaches with the contractors. I don't encourage nor do I condone shouting and unprofessional commentary. I will tell you that, as with any construction program, there are tense discussions, there are disagreements with respect to commercial issues. I can tell you I've been in meetings with Astaldi in which language was used, shouting was used, people have left and stormed out of rooms. I don't condone that either –

**MR. BUDDEN:** Okay. And that's – thank you, you've answered my question. And I will give you the chance, as you deserve, I'll take it that you deny that you were engaging in this behaviour in this conversation.

**MR. O'BRIEN:** Sure.

**MR. BUDDEN:** Okay. So you are agreeing that – you'd confirm your denial of having acted like this.

**MR. O'BRIEN:** I confirm my denial.

**MR. BUDDEN:** Okay.

And why, again – and I'll let you answer this – why do you believe Mr. Delarosbil wrote this letter back in 2016 and confirmed it here on the stand in 2019?

**MR. O'BRIEN:** I'm not aware of his testimony on the stand in 2019. What I can tell you is the context of the timelines associated with this.

Astaldi was out of money. Astaldi had failed to deliver in accordance with the context of the contractual obligations they had. There was a bridge agreement in place, absent alignment through the political realm with respect to moving forward with Astaldi, and Astaldi was working to forward a significant claim against Nalcor at this time.

There are letters throughout the course of the execution of the project that reflect all sorts of commercial approaches and this is just one of them.

**MR. BUDDEN:** So you believe these allegations are simply a commercial approach?

**MR. O'BRIEN:** Of course, they are.

**MR. BUDDEN:** Okay. And nothing more than that?

**MR. O'BRIEN:** Of course, they are.

**MR. BUDDEN:** And nothing more than that?

**MR. O'BRIEN:** Of course, they are.

**MR. BUDDEN:** You're not really answering my question.

**MR. O'BRIEN:** I have.

**MR. BUDDEN:** I don't believe you have.

**MR. O'BRIEN:** They're just a commercial approach.

**MR. BUDDEN:** That's it.

**MR. O'BRIEN:** Yes.

**MR. BUDDEN:** So he just made up this thing to advance a commercial purpose.

**MR. O'BRIEN:** Yes.

**MR. BUDDEN:** Okay. Fair enough.

The Commissioner may have to choose at some point, between accepting your testimony and accepting his. Is there any particular reason you can offer why he should accept your testimony on this point?

**MR. O'BRIEN:** I think, as I've offered yesterday, the contractor's motives are not always aligned with the owner's. And in this case, I think it's patently obvious what Astaldi's motives are.

**MR. BUDDEN:** You also bring motives to this though, of course.

**MR. O'BRIEN:** Yes, to deliver a project at the lowest possible cost to the people of Newfoundland. That's our only –

**MR. BUDDEN:** Yes.

**MR. O'BRIEN:** – motive as a project management team.

**MR. BUDDEN:** Well, your also motive is to defend your actions, obviously, and defend the project. You would acknowledge that?

**MR. O'BRIEN:** Our motives here are about delivering the project –

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** – in the best possible way.

**MR. BUDDEN:** All right. Let's move on.

I'm going to ask you now about Mr. Béchar and – of course, a gentleman you know and whose evidence has been discussed. And I now – I'm going to turn to – you won't have this in front of you, it's a transcript from his evidence which was given on March 26. And this is how the evidence – the part I wish to quote.

I asked – I said: "Mr. O'Brien, Mr. Scott O'Brien –

**"MR. BÉCHARD:** Yeah.

**"MR. BUDDEN:** – you had dealings with Mr. O'Brien as well, of course.

**"MR. BÉCHARD:** Yeah.

**"MR. BUDDEN:** Another person who has testified said that his own experiences with Mr. O'Brien were that Mr. O'Brien bullied him, would talk over him in meetings and so forth.

**"Did you personally witness such behaviours on the part of Mr. O'Brien?**

**"MR. BÉCHARD:** Yes.

**"MR. BUDDEN:** Okay. Was that your experience of Mr. O'Brien? That he would talk over you, interrupt you, that kind of thing?

**"MR. BÉCHARD:** Yeah, it happened."

So firstly, that's now another senior person who you liaised with on the project who's accused you of these behaviours, having witnessed them, having experienced them.

Firstly, if what he's saying is true, would you acknowledge that that would be inappropriate workplace behaviour?

**MR. O'BRIEN:** So, what he said is not true. And I think I've already expressed my opinion and position with respect to Mr. Béchar's testimony about me on a personal level. I don't intend to delve into mudslinging nor to address any of the personal allegations that are being made here. I don't find it professional. I don't find it consistent with the objectives of the project management team in delivering this project. And I find it offensive, quite honestly.

I'm – it's unfortunate that Mr. Béchar has chosen to make commentary like that, and a couple of other individuals as well. But if you're asking me, Sir, to please – to refute the individual comments that Mr. Béchar is making, I don't intend to delve into that sort of behaviour here.

**MR. BUDDEN:** Well, I think you're a whole lot – you are required to answer my question unless the Commissioner finds otherwise. So the first thing I'm going to ask is: Are you denying having acted as Mr. Béchar's described you as having acted? It's a pretty simple question.

**MR. O'BRIEN:** The answer is yes to that question and I am denying the behaviour. Again, Mr. Béchar was responsible for an organization

that wasn't performing. And, in my role, initially as area manager for the intake and powerhouse, and in my role as project manager, later, for Muskrat Falls generation, it was my responsibility, along with the project team, as you've offered, to hold Mr. Bécharde accountable with respect to the deliverables that were so sorely lacking with respect to their effort.

And that's all that was ever done in relation to Mr. Bécharde and his team. It was done in a professional way and it was done in a way that was consistent with ensuring that SNC fulfilled their obligations under their agreements.

**MR. BUDDEN:** Okay. And at all times, your comment towards him and in his presence was respectful. That's what you were saying – was in compliance with Nalcor policies around respectful workplaces and was consistent with your own philosophy of respect, as you've annunciated.

**MR. O'BRIEN:** That's correct.

**MR. BUDDEN:** Okay. Well, let's move on to Mr. Knox.

This is Mr. Knox's evidence as under questioning by myself. And reads as follows: In your interview – this is me questioning Mr. Ed Knox on the 15th of March, 2019. "In your interview you – and Mr. O'Brien" – that's you – "is coming up as a witness later on so we'll have a chance to explore some of this with him, but I want to put it on the record with you. In your interview on page 13 – I'm gonna quote some bits and just have you confirm them – and you say: And, you know, and I was saying that one of the persons that pop out to me the most, you know, on being – and I'm going to use this word because it's truth – being arrogant and" being "very difficult to deal with was Mr. Scott O'Brien. He did not listen to anything that most experienced people would put on the table, right, planning, you know, or" your "suggestions.

"So do you stand by those words?"

Mr. Knox said: "Yes, I do."

He goes on and – or rather I go on: "And he was not – he was" – again, quoting from him – "he was just, you know – you almost say a bully, okay. And I know I'm being recorded but, yeah, I would say that, you know, I'm not one to sit back either and if I know I'm right, I'll voice my opinion on it, you know. And I've done that there on the job and – but with Mr. O'Brien, well, it was just his way or no way. And, you know, he would shut you down in a meeting, he would overpower you, over-talk you, right? And, you know, he done that not only with us but also, I think, with his own people.

"So do you stand by those words as well?"

**"MR. KNOX:** I do, 100 per cent."

So, I'll stop you there, he describes some pretty specific behaviours – talking over people, overpowering them, shutting you down in a meeting and so forth.

Firstly, did you ever behave in such a manner towards Mr. Ed Knox?

**MR. O'BRIEN:** I don't agree that I behaved in that manner –

**MR. BUDDEN:** Pardon?

**MR. O'BRIEN:** – toward Mr. Knox. No.

**MR. BUDDEN:** I'm sorry. I missed the first part of your answer.

**MR. O'BRIEN:** I said: No.

**MR. BUDDEN:** Your answer is no, you didn't.

**MR. O'BRIEN:** I don't agree with that commentary.

**MR. BUDDEN:** Okay. Then you do –

**MR. O'BRIEN:** I will tell you that Mr. Knox, after Astaldi was terminated, reached out to me personally and requested that I hire him for work at the Muskrat Falls Project. Unfortunately, the organization was full and I was unable to provide a role for Mr. Knox –

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** – moving forward.

**MR. BUDDEN:** And you do agree that if you had indeed done such things or said such things, that they would be inappropriate behavior in the workplace.

**MR. O'BRIEN:** Yes, I agree.

**MR. BUDDEN:** Okay.

And, finally, and this is Knox again: “And sometimes, you know, as I said, within different levels of meetings where Mr. O'Brien was involved is that it seemed as if – not that it seemed, it was the case that he did not respect the opinions of, you know, the management within Astaldi, or even the individuals that we had subcontracted to, you know, to look into issues that we had from an engineering perspective. And a lot of cases it was, no, guys, this is the way we are going to do it.”

And I say: “And, in your opinion, did – the reason why we're here at this Inquiry is because of delays and cost overruns. In your opinion, did that management style, as demonstrated by Mr. O'Brien in your evidence, did that contribute at all to schedule delays or cost overruns?”

Mr. Knox: “In my opinion and those of others, absolutely.”

So, firstly, do you deny that your management style in any way contributed to cost overruns?

**MR. O'BRIEN:** I do.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** What Mr. Knox is referring to in that specific example is as an owner's organization we held Astaldi and the other contractors accountable, as you have just offered, Mr. Budden, and held them to deliver in accordance with the requirements of their specific contract and the specifications and the drawings within them. Contractors, as they do, try to deviate from those requirements in an effort to save money for themselves, not for the owner. And we ensured that the contractors continued to deliver to those requirements.

There were a thousand non-conformances and a thousand concession requests raised by Astaldi through the course of this work and we endeavoured, as a project management team, to ensure, through review and detailed assessment of all of those, that Astaldi continued to deliver in accordance with the requirements –

**MR. BUDDEN:** Mm-hmm.

**MR. O'BRIEN:** – we set out, so we would deliver a high-quality asset to this province for a long-term use; now, Mr. Power likes to call it a hundred years on the Lower Churchill River. Sometimes that meant telling the contractor, no –

**MR. BUDDEN:** Yeah sure.

**MR. O'BRIEN:** – that they couldn't do what they wanted and they couldn't make the changes that they wanted. And contractors don't always like that and individuals don't always like that.

**MR. BUDDEN:** Sure.

**MR. O'BRIEN:** But people weren't bullied, Sir. People were held accountable for requirements that were established for them.

**MR. BUDDEN:** And, obviously, like we're having a tense discussion now, but we're not engaging in inappropriate language or anything. So is this a kind of way you would have discussions in these tense moments?

**MR. O'BRIEN:** Tense discussions are what they are, Sir.

**MR. BUDDEN:** Yeah.

**MR. O'BRIEN:** No one likes to have them.

**MR. BUDDEN:** Well –

**MR. O'BRIEN:** I didn't take any enjoyment – as the project manager, you have to appreciate that I'm often the face of decisions that are made with respect to the project. And that doesn't mean that I'm making the decisions on an individual basis – and I talked about that yesterday – what it means is that I'm the company's representative, the owner's representative. I get to sign the letters that get



drafted and I have to support the team and the efforts that the team is undertaking.

And that often means I'm brought into rooms to mediate with respect to disagreements or to support the team in the approaches that they want to take with respect to the contractor performance. Sometimes that means we all get to sit in a room and agree that we're going to deviate; sometimes it means I get to go in the room and say, no, we're going to continue to work this way and we're going to work in accordance with the requirements of the agreement, you know –

**MR. BUDDEN:** I'm not disputing that you had a tough job to do – at all – but my point is that you do recognize that even difficult news needs to be delivered in a certain manner, a non-bullying manner. That people have to be given the opportunity to respond, to speak their piece. You do acknowledge all that?

**MR. O'BRIEN:** Of course.

**MR. BUDDEN:** Okay.

Let's move on – just a couple more of these – to Exhibit 01901. That's, again, one we looked at a few minutes ago and it's page 5.

I'm just putting it in front of you, just for your own benefit as much as anything else.

**THE COMMISSIONER:** That's PMT binder 4, number – tab 102.

**MR. BUDDEN:** And page 5. This is the Turpin evidence we heard just a moment ago. If we scroll down just a little bit, Madam Clerk, the – and just a tiny bit more – yes, that sentence there.

Quote: "The memo was ripped up in front of us with a warning if it ever surfaced all members who signed the Document would be fired." You've denied having acted in this fashion so I won't really turn to that, but I will say that you do acknowledge that such behaviour, if it had occurred by you or anybody else, would be inappropriate in a workplace.

**MR. O'BRIEN:** I have no recollection, in any way, of that event –

**MR. BUDDEN:** I understand.

**MR. O'BRIEN:** – as I was saying.

**MR. BUDDEN:** But my second part of my question – and if this had occurred, whether it was you or anybody who acted in such a fashion, ripping up a memo in front of people and telling them they'd be fired if it ever surfaced, you would regard that, I would assume, as inappropriate.

**MR. O'BRIEN:** It's not consistent with the way that I endeavour to behave on a project, no.

**MR. BUDDEN:** Okay. And the reason you wouldn't behave like that is because it is inappropriate.

**MR. O'BRIEN:** Fair.

**MR. BUDDEN:** Agreed? Yeah, okay.

Mr. Mulcahy also described – he didn't specifically mention you, but he did describe working in an atmosphere where he felt bullied on occasion and witnessed it. Was that – is that a surprise to you? Did you ever witness Mr. Mulcahy being bullied or bullying in his presence? Realizing that's a fairly broad word unless – unlike some of these other specific things we talked about, but I do want to put it to you.

**MR. O'BRIEN:** I – Mr. Mulcahy's testimony or his resignation letter, I can't speak to the individuals he was thinking of. Mr. Mulcahy had a tumultuous relationship with a couple of individuals that were in the project organization. It may be that he's referring to those, but I certainly wasn't witness to any bullying –

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** – of Mr. Mulcahy through the course of his work –

**MR. BUDDEN:** Thank you.

**MR. O'BRIEN:** – on the project.

**MR. BUDDEN:** That's an answer.

We are at 12:30, Mr. Justice. Obviously, I'm not going to finish any time real soon.

**THE COMMISSIONER:** Okay.

**MR. BUDDEN:** I'm in your hands.

**THE COMMISSIONER:** Okay, we'll come back, then, at 2 o'clock. I still – I'm still hopeful that – I was told yesterday about 2½ hours-or-so of cross. I'm assuming we're still on deck because I could come back a little earlier this afternoon if people felt we should come back.

You're shaking your head, Mr. Simmons?

**MR. SIMMONS:** Well, I don't know about the rest of the room, but I sort of have a sense that we're running a bit longer than might have been anticipated.

**THE COMMISSIONER:** Okay.

**MR. SIMMONS:** So depending on what others say, it might be wise to come back a little bit earlier.

**THE COMMISSIONER:** Okay, let's come back at quarter to 2.

**MR. BUDDEN:** Yeah, that's fine.

**THE COMMISSIONER:** Okay.

All right, so we're adjourned until quarter to 2 this afternoon.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** Okay, Mr. Budden.

**MR. BUDDEN:** Yes, Mr. O'Brien, going to return to a comment you made yesterday in your direct examination. And I may not have written this down correctly, but I have it something like that it was not – and this is you speaking: It was

not part of my core function to have a hydroelectric background. Do you recall saying that and am I quoting you accurately?

**MR. O'BRIEN:** So my role as project manager doesn't require a background in hydroelectric projects, no.

**MR. BUDDEN:** Okay.

I guess my question is that that particular assertion, that it's not part of your core function, what are you basing that on? And I'll – let me frame it a little bit. It would seem somewhat intuitive that a person who is building a hydroelectric dam would have some experience, just as a person building a bridge might.

And I accept your distinction about that you were really a project manager as opposed to necessarily somebody who needed hydro experience. But are you getting that from literature, from your own experience, from the direction given to you? And what do you base the assertion that was not part of your core function as a project manager of a hydroelectric dam construction to not have hydroelectric dam construction experience?

**MR. O'BRIEN:** We did talk about this yesterday and the approaches with respect to project management; in fact, we talked about the PMBOK of knowledge as a great example yesterday. The skill sets required for managing projects are about managing projects. And whether it's a hydroelectric project or an oil and gas project – in fact, both are energy projects – or any other megaproject, are about those project management skill sets and not necessarily about the specific technical skills related to the work itself.

So as I said yesterday, we had and have a team of people that has extensive amounts of hydroelectric experience, extensive amounts of experience in the areas where their skills are being deployed. My role as project manager is not to be a technical person or a technocrat in relation to specific issues in dam design or powerhouse water passage design. My role is to oversee and support the whole team that brings all of those skill sets to bear in delivery of the project.

**MR. BUDDEN:** Sure.

And that's fair enough. I guess a couple of things sort of arise out of that. I can accept that, like, the individual components such as a – you know, the particular engineering challenges of a dam are very specific, but taken sort of in a holistic way, you're building a dam just as if in the offshore sector you might be building a platform, or in some other sector you're building a bridge. And you don't see any advantage at all for – at a managerial level such as yourself, to having played some role in the previous construction of a dam? You really see that as having no real advantage at all?

**MR. O'BRIEN:** So we're not just building a dam, we are managing engineering campaigns. We're managing expert consultants. We're managing manufacturing programs. We're managing the construction of dams, powerhouses, roads, camps.

**MR. BUDDEN:** Sure.

**MR. O'BRIEN:** We're managing all of the services required to support those efforts. And my role in relation to the overall program is not with respect to the technical skills in any of those individual components. That's what the team is for and that's why the team brings such great skills to the table.

My role is to support them on a global basis, to empower them to enable them to deliver and to clear a path for them to achieve that.

**MR. BUDDEN:** Sure and just as if you were building a highway, you need a construction camp. If you're building a – anything, you need a – any big project, you need a construction camp. I can see what you're saying; however, I guess, just to – finally, just to answer my question straightforwardly, sort of yes or no, you see no particular advantage at all as to having apprenticed, having worked previously in a hydroelectric project before becoming manager of this component of one.

**MR. O'BRIEN:** No, the advantage is in having worked in megaprojects in the past and understanding the principles and the processes associated with the execution of megaprojects.

**MR. BUDDEN:** Okay.

I don't have the quote in front of me, but earlier this morning you were commenting on an assertion made by Mr. Tranquilla. And you made the comment that his background was in mining, not in hydroelectric development. And I was sort of struck by the fact that you, also coming from no background in hydroelectric, was really – were really being critical of the assertion of another person, on the basis that he had no background in hydroelectric development. Did I misunderstand you or am I missing something?

**MR. O'BRIEN:** I think you did, Sir.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** What I was offering is that his experiences were different. And Des had a great set of experience in the mining industry, and that the processes and approaches taken with respect to project management within the mining business are different than they are in the energy business. And the approaches taken with respect to Muskrat Falls were consistent with those taken on other megaprojects like this.

**MR. BUDDEN:** Okay.

So you see the category project management as spreading across all energy megaprojects. Whether you're building a nuclear power plant in Darlington or a coal-fired generator station in China or hydroelectric dam in Labrador or a platform in the North Sea, you see a commonality of experience there?

**MR. O'BRIEN:** I do. Project management skill sets are what they are. If you look at the individuals that have come to bear and been influential with respect to the execution of this project, SNC didn't bring project managers to the table that had specific hydroelectric experience because the hydroelectric experience came from within their engineering organization. Don Delarosbil has never been involved in the construction of a hydroelectric project because in the role that Don had with respect to Astaldi he didn't need that skill set, he was managing a construction program.

**MR. BUDDEN:** Okay, so, well, why do you need hydro people at all? Like, why is it you've said that there's expertise – I don't mean just why do you need them in the sense of designing a dam or designing something unique to a hydroelectric project, but why do you need them at all if there is this commonality of experience?

**MR. O'BRIEN:** The commonality of experience that I'm referring to is with respect to the management skill sets.

**MR. BUDDEN:** Mm-hmm.

**MR. O'BRIEN:** The technical skills sets are unique to any individual project. If you're building a process plant you need process engineers who have the specific skill sets in relation to the design and the operation of that process plant. If you're building a high rise you need engineers who are familiar with the structural requirements and the performance of high rises, both during construction and after. And in the context of a hydroelectric project you need hydro-specific skill sets in particular areas to support those technical requirements for the work.

**MR. BUDDEN:** Sure.

But do you not see advantages or am I incorrect here, but it would strike me as if you were familiar with a particular environment, work environment such as hydroelectric, you would know who the contractors are, who the experts are. You would have networks, you'd have contacts: you'd have all of that as all of us develop over time in our own areas of expertise.

You're coming from an entire different sector as were Mr. Harrington, Mr. Martin, Mr. Bennett and others. You don't bring with you, I would suggest, that kind of hydroelectric network of contacts or expertise and you don't see that as a disadvantage at all?

**MR. O'BRIEN:** No, well, as I've also said previously, the Muskrat Falls Project is not about me or any one particular member of the organization, it's about the team. And there was a large team of people with a broad swath of skill sets who were and are still involved in the execution of Muskrat Falls. And with them they bring skills sets in particular areas in relations to

those individual contracts, in relation to those individual scopes of work. And as a project manager and as a project management team, we rely on the skill sets of the team members to deliver.

**MR. BUDDEN:** Okay, well, that might segue nicely into some of my next set of questions. So Mr. Mulcahy – obviously, he was a gentleman with decades – I think he said 51 years of experience, much of it in the hydroelectric field.

Do you feel that he had such specialized skills? And, secondly, did you get the best use out of them?

**MR. O'BRIEN:** So we brought Mr. Mulcahy to the project – he actually arrived on the project before I did – in the role of advisor to provide advice with respect to the construction of Muskrat Falls. And he supported the project for several years in that capacity.

**MR. BUDDEN:** Okay.

So, again, my question; we've heard what he had to say, I won't return to that unless we have to, but do you believe you got the best use you could've gotten out of Mr. Mulcahy's specific hydroelectric experience?

**MR. O'BRIEN:** I think Mr. Mulcahy provided sound advice in a number of areas through the execution of the project and we listened to that advice and utilized John to the extent that he was willing to be participant. And I think he added value, as he's indicated in his correspondence, through the years that he worked on the project.

**MR. BUDDEN:** But, again, to specifically answer my question: Do you believe that you got the full value out of Mr. Mulcahy that was there to be got by yourself and your team?

**MR. O'BRIEN:** I think we did, yes.

**MR. BUDDEN:** Okay.

Mr. Gervais Savard – who was Mr. Savard?

**MR. O'BRIEN:** He was SNC's construction manager during the EPCM phase of the project.

**MR. BUDDEN:** Yes.

Another gentleman with extensive hydroelectric experience, I believe.

**MR. O'BRIEN:** I'm not sure of the contents of Mr. Savard's experience or his CV.

**MR. BUDDEN:** Okay.

Do you believe you got the full advantage of Mr. Savard's specific experience and skills?

**MR. O'BRIEN:** I think Mr. Savard's tenure on the project was a challenging time for SNC and – in respect to their performance. And as I indicated earlier today, there were some very specific challenges in relation to construction management that occurred at Muskrat Falls site prior to the change from SNC's role as EPCM, in which they were taking actions and approving changes and approving cost increases on the project that they didn't have the authority to approve and were withholding that information from the owner.

**MR. BUDDEN:** Okay.

So because of those failures, I suppose, on the part of SNC-Lavalin, it would be apparent that you didn't get the full – whatever expertise was there to be offered. It wasn't realized, whoever's fault it was.

**MR. O'BRIEN:** So Mr. Savard left the project as a result of those issues.

**MR. BUDDEN:** Okay.

The – we've heard evidence a fair bit but I'm not going to repeat it all, but we have heard evidence where various individuals – many individuals, actually – felt that their particular hydroelectric skills were not taken advantage of in a way that they thought were there to be taken advantage of.

I won't repeat that, but I do want to hit a couple of key points. And I'm back to the transcript of Mr. Béchar, in this case, the 26th of March, and I asked him that – as follows: I say – this is me questioning him: "I'm saying that there are people, of course, who get into a job and" realize "... they don't have a particular expertise of skill set ... and they –" and Mr. Béchar says: "Yeah."

And I said: "– and they turn to people, such as yourself perhaps, who know the – who do have those particular skills. Was that Mr. O'Brien's style?"

Mr. Béchar said "No," that he'd found that it wasn't your style.

Do you have anything to add? Well, okay, firstly, do you agree or disagree with that?

**MR. O'BRIEN:** I think I've already offered – with respect to Mr. Béchar's commentary, he's entitled to his opinion. I don't intend to enter into any mudslinging in relation to some of the personal commentary made by Mr. Béchar and others in relation to me and my skill sets.

**MR. BUDDEN:** Well, I guess you might call it mudslinging, I would call it they're commenting on your style and your skills, so I would suggest, respectfully, that those are matters that are rather central to this Inquiry.

So, he made a certain assertion about you, and I guess for now, it's suffice to say you are challenging and denying that assertion.

**MR. O'BRIEN:** He's entitled to his opinion, and I don't agree with him.

**MR. BUDDEN:** Okay. Fair enough.

The – Mr. Delarosbil also had a comment, which I'll bring us to now, and reads as follows. This is Mr. Learmonth questioning him on the 9th of May: "... did you ever have any discussions to Mr. O'Brien about your concern that he or someone with authority was not on-site to make decisions when problems arose or issues arose?"

And Mr. Delarosbil answered: "Yeah. The conversation came up in meetings that we thought there should be somebody on-site that would be able to make the decisions. A couple of commercial meetings I mentioned the fact that there was no decision makers on-site."

Mr. Learmonth said: "Yeah.

"And were those discussions productive?

"**MR. DELAROSBIL:** Well, nothing changed, so – as far as being productive, they were

productive for the time of the discussion, I guess, I would say.

**“MR. LEARMONTH:** Yeah. But nothing changed?

**“MR. DELAROSBIL:** Nothing changed on-site. There was never anybody put in position of authority on-site to be able to make the decisions.”

So, again, we’ve segued into a slightly different discussion about whether your absence from the site was problematic, and I take it what they’re saying there – it’s pretty obvious – is that in your absence, there was nobody on site with the delegated authority. Do you agree or disagree with that assertion?

**MR. O’BRIEN:** No, Mr. Delarosbil’s assertion is not correct. As I’ve explained earlier today, the site team was and is fully empowered to make all of the decisions necessary to deliver the project. The commercial meetings that Mr. Delarosbil is referring to are ones that were established where the site commercial manager would meet on a weekly basis with Astaldi’s team to look at change requests that Astaldi was making.

And Astaldi was very good at requesting amounts for small change that were exorbitant and entirely out with the value of the changes. Our commercial team endeavoured over extended periods to negotiate to reasonable outcomes with respect to those changes. But Astaldi refused consistently to agree and settle even very small changes and forced the escalation of those issues into other forms.

**MR. BUDDEN:** Okay.

I guess – I suppose I would frame it like this. We have your assertion that – or your admission that you lack specific hydroelectric experience. And your further assertion that that wasn’t problematic because the team included at a lower level, people with that experience. We’ve heard evidence from many people, I would suggest – we don’t need to review it – who have basically said that: Look, I’ve had such experience, I felt I wasn’t given the opportunity to use that experience and so I left the project or I was unhappy on the project. And we have

people saying as well that: Look, I was on the site. We were looking to get directions; we couldn’t get them because there was nobody on site who could give direction.

What, if anything, I suppose, should we draw from that or infer from that about your ability to manage this project and your ability to work with people who had complementary skill sets to supplement those that you had?

**MR. O’BRIEN:** I think, Sir, you’ve muddled about four different things into one overgeneralization with respect to those issues. There were different topics in relation to decision authority, authority with respect to change management and the contractors’ continued assertion, as contractors always do, that the owner is not supporting them in the way they need in order to support their claims development. They are very different things.

I’d also suggest that we haven’t heard from many people, but rather a very select group of individuals who were either removed from the project for very specific reasons or who left the project because they were unhappy with the approaches that had been established for execution of the project. As I’ve said before, there are nearly 400 people who have worked on the Muskrat Falls generation project. And the team, currently, consists of 180 people who are working diligently every day to deliver this project within those same constraints that have been established, and are doing it very successfully.

**MR. BUDDEN:** If somebody leaves because they’re unhappy with the direction, that may be saying – I would suggest the same thing that I’m saying – is that they’re unhappy because they are unable to integrate their skills so as to complement your skills in a way that they felt satisfactory. And I would suggest that it’s a fair bit of evidence there. It’s a fair bit of evidence this Commission has to consider.

**MR. O’BRIEN:** I’d suggest to you that there’s two letters in the record that we’ve reviewed this morning, that reflect that out of an organization of nearly 400. I don’t think that’s a fair bit of evidence.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** I think that's one or two people who, for their own reasons, chose not to work within the constraints that were established for the work.

**MR. BUDDEN:** Okay. So, let's turn it around and frame it in more positive terms. Do you believe – and it is your evidence to this Commission – that you did make appropriate use of individuals with skills complementary to your own, specifically individuals with hydroelectric project experience, to complement your particular project management skill set?

**MR. O'BRIEN:** Yes, I do. There's a large team of people working at Muskrat Falls, with a large complement of – or with a set of complementing skill sets, if I can put it that way, who all work together to deliver Muskrat every day.

**MR. BUDDEN:** Okay. We've heard evidence that other senior members of the project management team, including some senior to yourself, such as Mr. Bennett, were on site a fair bit. Perhaps, in Mr. Bennett's case, more than you were.

I guess my question to you is: Did that add value to the project? Was it a problematic for the project in the sense that individuals may be getting contradictory directions? Or was it a non-issue?

**MR. O'BRIEN:** No, it's a non-issue. I think if the evidence shows that Mr. Bennett and I travel to site more or less about the same number of times over the last five to six years, what I will tell you is that other project management team members – Mr. Harrington, Mr. Power, Mr. Clarke, others – travelled to the Muskrat Falls generation site as well as a broader – a much broader swath of the management team, the area managers, the package leads – there is a well-represented management team at the site on a regular basis in support of Muskrat Falls generation.

With respect to my own travel, as I said yesterday, my travel is based on where I am needed to support the work that's happening at the variety of sites that are operational in support of Muskrat Falls generation, not just the construction site on the Churchill River but rather offices in Montreal, in St. John's,

manufacturing locations, whatever. My role is to go where the team needs me to support them in those various aspects of the work.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** I'll also point out to you, if you don't mind, Sir, if you look at my travel record and you see in 2014 in particular, the vast majority of my travel was to Muskrat Falls because at that time, and in light of the challenges we were having with Astaldi, my presence was needed more there than it was at the other locations where the project was being executed.

**MR. BUDDEN:** Okay.

The – you went to this project as a relatively young man at a certain stage of your career. It was a big step up or at least a significant step up from you in terms of responsibility and so forth, which is as life should be. I guess what I'm asking you now as we approach the end of the project: What do you feel that you've learned? How have you enhanced your skills over the life of this project? What have you learned throughout this project that you didn't know going into it, in terms of this project management experience of a project on this scale?

**MR. O'BRIEN:** It's normal in the course of every project as we approach the end to develop a lessons-learned package that addresses the key lessons learned that the team has established through the execution of the project. And this project team will produce a lessons-learned package very much like that.

With respect to my own individual learnings, I wouldn't want to offer anything at this point. In relation to that, say that we'll produce a lessons-learned package at the end, that will clearly describe what the team has established through the execution of the work.

**MR. BUDDEN:** Okay. Well, I would like you to answer now. I don't need an answer that goes on and on, but perhaps you could fairly briefly just give us a sense of those lessons learned. And that may perhaps inform us in our understanding of the project, its successes and its failures.

**MR. O'BRIEN:** So I think this project has been very successful in a number of areas. If you look at the –

**MR. BUDDEN:** Again, focus on yourself, please, Mr. O'Brien. In your answer, please focus on yourself, your lessons learned.

**MR. O'BRIEN:** Of course, but I'm – you have to appreciate that I'm just one member of a team.

**MR. BUDDEN:** Yes.

**MR. O'BRIEN:** And it's – the lessons learned are really about what the team has experienced and gathered through the execution of the work, and I'm a part of that.

There've been a lot of successes. And I think one of the biggest lessons learned from this project is with respect to the value and a front-end loading the project, and ensuring that monies are spent early in engineering effort to minimize the opportunities and the exposure to change through the execution of the work. On this one, we were able to achieve 100 per cent approval for construction documentation prior to the award of our contract packages, and Astaldi's in particular.

And that served us in very, very good stead through the execution of the work, and being able to limit the amount of exposure that the project had with respect to engineering changes or changes in design that would lead to knock-on impact for construction and other issues. That same approach with respect to early expenditure for infrastructure, I think is also a very important aspect of project execution in a project like this one, and making sure that there's sufficient infrastructure available early to support the onboarding of the major contractors as they work towards execution of primary project deliverables.

**MR. BUDDEN:** Thank you.

I'm now – I'm gonna move on now to another section and I am going to rather refer to exhibits here. In the interest of time, I'll perhaps summarize them if I can.

I am gonna ask some questions about the dome, the ICS. And we've read, as excerpted in the Grant Thornton report, Williams Engineering were engaged to review the dome and they noted that, quote, "Only the Astaldi bid claimed to be able to place concrete during the winter." And further noted that, quote, "The enclosure strategy is not uncommon in cold climate. Attempting to enclose an area as large the dam structure combined with an overhead crane, material movement system is not common and warranted detailed scrutiny."

Firstly, do you disagree with anything I have read so far, in that little capsule?

**MR. O'BRIEN:** Well, the dome system was intended to cover the powerhouse excavation only, not the dam.

**MR. BUDDEN:** Pardon? I didn't quite get your answer.

**MR. O'BRIEN:** The cover system was never intended to cover the dam. The note in the report is incorrect.

**MR. BUDDEN:** Okay. Well, other than that, do you take issue with anything that was said there?

**MR. O'BRIEN:** Well, the commentary is based entirely on that then, isn't it? That a structure this large over the dam was unusual, and that's not a correct statement because the structure was never intended to cover the dam but rather only the powerhouse.

My understanding from the bid teams' efforts at that time, was that there was significant experience with respect to the use of cover systems like this in other projects in Northern Canada. And one of the other bidders did actually propose to use a similar cover system to support winter working operations as well.

**MR. BUDDEN:** So you didn't regard the dome, as proposed by Astaldi, as being particularly novel or particularly challenging?

**MR. O'BRIEN:** The bid team evaluation was actually very much a proponent of the use of the structure because of the experience and other places in Northern Canada were using structures like this.



**MR. BUDDEN:** Okay.

You – and, obviously, the schedule proposed by – or by Nalcor, which relied in large part on the pouring schedule, clearly, in turn, was reliant on the dome being constructed. You would agree with me there?

**MR. O'BRIEN:** The schedule was Astaldi's schedule, not Nalcor's schedule –

**MR. BUDDEN:** Yes, but Nalcor –

**MR. O'BRIEN:** – for performance of the work.

**MR. BUDDEN:** – obviously was relying on it.

**MR. O'BRIEN:** Yes, of course. The overall project execution schedule and the interface is – relied on the completion of the work by Astaldi.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** In any –

**MR. BUDDEN:** To what degree –

**MR. O'BRIEN:** Oh, I'm sorry. Go ahead.

**MR. BUDDEN:** No, no. You go ahead. Did I cut you off?

**MR. O'BRIEN:** No, all I was going to offer that in any big project like this, while the owner lays out a suite of milestones, it's the integration of the various contractor schedules and the reliance of them on each other to deliver which is critical, and we spoke to that earlier today and –

**MR. BUDDEN:** Yes, of course. Yeah.

**MR. O'BRIEN:** – the approaches of integration management.

**MR. BUDDEN:** Yeah.

I guess my point I'll summarize is this: Astaldi were coming forward, they're saying we proposed to build this ICS – this dome. You take issue with the assertion by Williams that there were novel or unusually challenging aspects to it.

I guess, what I'm asking you is: What did you do, in your position, as part of your responsibility to evaluate this Astaldi proposal, this bid – did you do to satisfy yourself that what they were proposing was, indeed, feasible and workable in the time frame they were suggesting?

**MR. O'BRIEN:** At that time the project was working with an EPCM consultant, SNC. The bid team – the bid evaluation was led by SNC – participation in the bid team included John Mulcahy as the owner's representative in support of that bid team effort – so that team did a thorough evaluation of all of the bids and did provide a recommendation back to the owner with respect to the best approach, which was to award to Astaldi.

**MR. BUDDEN:** Okay. And you relied on that, obviously?

**MR. O'BRIEN:** Yes, we did.

**MR. BUDDEN:** Okay.

Did you, yourself, do anything or cause anything to be done to inquire as to the feasibility of what was being proposed?

**MR. O'BRIEN:** No –

**MR. BUDDEN:** Did you do any kind of secondary oversight?

**MR. O'BRIEN:** That was a responsibility of the bid team and the EPCM consultant.

**MR. BUDDEN:** Okay. So the answer is: You, yourself, didn't undertake any kind of secondary review or evaluation?

**MR. O'BRIEN:** No, because that was the responsibility of the bid team and the EPCM –

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** – consultant.

**MR. BUDDEN:** And you, yourself, as of that point in time, saw no particular obstacle or reason or particular challenge to this proposed dome or ICS?

**MR. O'BRIEN:** So I – we spoke about this one yesterday as well and, you know, with respect to schedule execution, Astaldi signed the contract and signed a waiver with respect to the schedule execution and guaranteeing that they would deliver and waiving any rights they had in relation to non-delivery.

**MR. BUDDEN:** Okay. Because obviously the consequence of what happened was – as you said yesterday, even the loss of one season is pretty significant when you're talking about a project of this scale. So there's no doubt that the failure of that – the execution of that plan cost this project considerably. It did, didn't it?

**MR. O'BRIEN:** Yes, it did.

**MR. BUDDEN:** Okay. And do you, yourself, even in retrospect, see anything that you or anybody in your position might have done or should have done to have anticipated or inquired further into this particular scheme?

**MR. O'BRIEN:** Well, with respect to the proposal at the bid phase, again, the bid team did an evaluation of the bids, the bid team was a big proponent of the ICS structure and the bid team had specific experience in utilization of structures like this in other locations.

**MR. BUDDEN:** Okay. So you – just to answer my question, perhaps, in more of the affirmative: Are you satisfied that you did everything that anybody in your position could have done to have prevented what – you know, the disaster that unfolded?

**MR. O'BRIEN:** I'm satisfied with the approaches that were taken at the time with respect to the execution of the work.

**MR. BUDDEN:** Okay, thank you.

The – where there was some talk earlier today – fairly brief talk – about the collapsed formworks and the near tragedy that unfolded on May 29, 2016, and there's a reference to the report, the investigation, which noted as – was said earlier, problems with the towers but also problems with decayed, fungal wood being used in the construction, severe weathering, use of untreated wood and so forth.

And so, firstly, you would agree, obviously, this was a very serious accident and very nearly a tragic accident?

**MR. O'BRIEN:** It was a very serious accident, yes.

**MR. BUDDEN:** Yes. And almost a tragic one in the sense that people were put at considerable danger.

**MR. O'BRIEN:** It was a very serious accident and a serious near miss.

**MR. BUDDEN:** Okay, fair enough. That's good enough.

You spoke of a structural engineer who approved the drawings. I take it that person was not an employee or a contractor of Nalcor, it was –

**MR. O'BRIEN:** No –

**MR. BUDDEN:** – an Astaldi –

**MR. O'BRIEN:** – that engineer was an employee of Astaldi.

**MR. BUDDEN:** That's what I thought.

What role, if any, did the Nalcor inspection team or any other Nalcor employee play in approving that formwork in advance of this accident?

**MR. O'BRIEN:** In respect of the execution of the work, Astaldi – and it's not peculiar to Astaldi – has responsibility for means and methods, and specific responsibilities with respect to their temporary systems. So, as an owner, our concerns were about making sure that the contractor was delivering the final asset in the way that the final asset was prescribed to be delivered. So we are concerned as an owner's team that the contract – contractor has concrete that's of the right quality to support the longevity, that the waterstops are in the right places, that the rebar is in the right places to mitigate cracks.

And the way that an owner's team oversees that is in ensuring that the contractor has the right processes in place to manage that delivery. It is the contractor's job to maintain quality control.

In other words, to ensure that everything is exactly where it's supposed to be and everything is done exactly the way that it's supposed to be done. And the owner's role is one of oversight. So in the case of the draft tube formwork, for example, we would've been concerned that the outside shapes – I don't know if you're familiar with what this draft tube formwork looks like, but it's –

**MR. BUDDEN:** Only in the vaguest sense, so go on.

**MR. O'BRIEN:** It's a huge wooden structure that was designed in Oklahoma by a company that designs formwork for large hydro projects and other large construction projects. It was manufactured in Oklahoma and then it was shipped to the Muskrat Falls site and assembled on the Muskrat Falls site.

Now, as part of that process there would've been an engineering component and the company in Oklahoma would've engineered that structure. They would've done all the structural design calculations to make sure that when the concrete was placed on top of the formwork, that all of the struts and towers that were within the formwork would be able to resist the required loads. And then they delivered that engineering package along with the formwork itself to Astaldi, who had full responsibility for all of their temporary works including this formwork.

Because that work was done outside of the Province of Newfoundland, Astaldi is obligated underneath the Engineers Act to have that work undertaken by a Newfoundland registered engineer and –

**MR. BUDDEN:** And have it stamped.

**MR. O'BRIEN:** – and in this case, in lieu of asking the company in Oklahoma to register, Astaldi accepted full responsibility for that design, had the design reviewed internally within their own engineering team and they stamped off on it to say: Yes, it absolutely meets the design requirements and the structural capacity is fine and it meets all of the code requirements in Canada for what it was intended to be used for. And then they assembled it at the site.

Now, once it was assembled at site – I think there's a perception that people could walk along and look and see that this formwork was, in some way, a problem. But the formwork, it – what it did was it was the interior shape of a water passage. So it was a giant plywood box that you couldn't see inside. It was completely surrounded by plywood and then the concrete was poured around the outside and people went in after the fact and removed all this formwork from the inside.

So it wasn't readily visible that there would be some mould or weathering in relation to the timbers that were in use. But more importantly, the primary failure was really about the structural capacity. When the engineer designed it in Oklahoma, and when Astaldi verified that engineering with their engineering team in St. John's, they made a design error. The timbers that were used to hold up this giant plywood shape were, as they built them, four pieces of two-by-ten –

**MR. BUDDEN:** By ten, that's right.

**MR. O'BRIEN:** – bolted together.

**MR. BUDDEN:** You testified to that this morning.

**MR. O'BRIEN:** So without concrete on top of that, four pieces of two-by-ten would've stood up in the air. And it wasn't just a piece or a tower; this was a forest of shoring and towers and all sorts of things holding up this big plywood shape around the outside. And that would've stood there for quite some time because Astaldi had to preassemble that and then put it in place very, very early and then build concrete all the way around it.

Once the concrete was poured on top of the plywood, the whole system buckled and it failed because the design was wrong. When they redesigned it, they needed seven pieces of two-by-ten instead of four.

**MR. BUDDEN:** Mm-hmm.

**MR. O'BRIEN:** So to the naked eye and to any inspector, if you have a drawing stamped by a professional engineer that says four pieces of two-by-ten are what's supposed to be installed in

that location, and you look and there's four pieces of two-by-ten installed, okay. It's not buckling; it won't have buckled until the concrete is on top of it. There's no one going in there when the concrete is being placed on top of it because even if the thing was designed properly, that's putting people in an unsafe place. So it buckled. You couldn't tell from looking at that structure that it was designed incorrectly.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** That's why we rely on professional engineers.

**MR. BUDDEN:** Fair enough.

We've wandered a long way. It's an interesting – it was an interesting answer in a bunch of ways, but we wandered a long way from my original question, which was – let me put it to you again. Are you saying that there was no – nothing here that an inspection would've picked up and – or are you saying that Nalcor had no obligation at all to inspect this formwork?

**MR. O'BRIEN:** I'm saying both.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** Astaldi had full responsibility for their means and methods underneath the regulations and underneath the contract. Nalcor's role in this capacity would've been to understand the broader structural shapes to make sure that the powerhouse that Astaldi was building met the requirements for the powerhouse. How Astaldi got there is entirely Astaldi's responsibility.

**MR. BUDDEN:** Okay.

I'll – just my last question on this. Obviously, Nalcor has been proactive, I would characterize, in other ways, in that if a worker belonging to another company showed up on site drunk, as you've testified this morning, you guys didn't hesitate to intervene in that case. So I take it that if Nalcor or a Nalcor employee or an inspector had noticed a problem with this, there would've been some obligation to intervene to avoid this near miss, as you characterized it?

**MR. O'BRIEN:** So you'll see that in other places where Nalcor has intervened in relation to other work areas where unsafe practices have occurred, we have shut work locations down; we've shut the site down in its entirety if necessary in order to step back and make sure that everybody remains safe. It's paramount to everything that we do. There are several examples of that with Astaldi and other contractors.

Again, it's not peculiar to Astaldi where we intervene to stop things when we observed or took notice of things that were unsafe. The batch plant is a great example –

**MR. BUDDEN:** Yeah.

**MR. O'BRIEN:** – of that, where Astaldi was using wooden cable trays and had live panels in standing water inside the batch plant. And we asked them to stop and cease all operations, shut down power to the site, and then we worked with them to rectify those deficiencies and make sure they put a batch plant in place that was truly safe for people to work in.

**MR. BUDDEN:** Okay.

I have one final brief section, but before I get there, just to return to my very first question: scope of work. Scope of – I guess your responsibility of your position. So that would've included, I take it, everything within the generating – the generation site including the North Spur, including the roads leading to it, including the dam itself, the powerhouse – all of that would've fallen within your area of responsibility and authority –

**MR. O'BRIEN:** That's correct.

**MR. BUDDEN:** – with respect to Nalcor.

**MR. O'BRIEN:** That's correct.

**MR. BUDDEN:** Okay.

The last thing is – and again, I'll summarize this in the interest of time – we have an exhibit here, Nalcor's Business and Financial Report for 2014, and it speaks of reference to cash advances to Astaldi.

And for instance, on page 87, 11 (a), we have this quote: “As at December 31, 2014, long-term receivables include \$36.9 million ... related to long-term advances to suppliers in relation to construction of the Lower Churchill Project. Of the \$36.9 million, \$33.2 million relates to the Muskrat Falls hydroelectric plant and is secured by a ...” line “of credit from a Canadian Schedule 1 Chartered bank.” So I guess my question is, were these advances that had been made to Astaldi?

**MR. O'BRIEN:** I don't know.

**MR. SIMMONS:** Commissioner, just if we – I just – as a point of clarification, if that's LC there, I don't know if it's spelled out as line of credit or letter of credit.

**MR. BUDDEN:** Letter of credit, yeah.

**MR. SIMMONS:** Letter, not line.

**MR. BUDDEN:** My mistake, letter of credit. So was that something within your knowledge, advances had been made to Astaldi?

**MR. O'BRIEN:** I don't know what's in the financial report and can't speak to its content.

**MR. BUDDEN:** Okay, well –

**MR. O'BRIEN:** I can say that there was an advance to Astaldi –

**MR. BUDDEN:** Sorry, did you say you can say or can't say?

**MR. O'BRIEN:** Can.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** There was an advance to Astaldi as part of the agreements with Astaldi that was protected by a letter of credit.

**MR. BUDDEN:** Okay. Why was it felt necessary to do advances to Astaldi, which, after all, had passed the creditworthiness test not that long before?

**MR. O'BRIEN:** I can't answer that question. I think that's best asked of others.

**MR. BUDDEN:** Okay, who?

**MR. O'BRIEN:** Mr. Lance Clarke or Mr. Paul Harrington –

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** – were more engaged with respect to financing arrangements for Astaldi and those provisions within the agreement.

**MR. BUDDEN:** So your area of responsibility, you're saying, did not include responsibility for any advance that might have been made to Astaldi, and you have no understanding of particulars as to why those advances may have been made?

**MR. O'BRIEN:** I can't answer your question. No, that wasn't my responsibility.

**MR. BUDDEN:** Okay. And do you have any knowledge about it? Whether it was your responsibility or whether you heard about it incidentally.

**MR. O'BRIEN:** I'm aware that there were advances made to Astaldi underneath the agreement, and those were protected by a letter of credit.

**MR. BUDDEN:** Okay. And do you know why the advances were made?

**MR. O'BRIEN:** Again, you'll have to speak to Mr. Clarke or Mr. Harrington with respect to particular financial position of Astaldi at the time –

**MR. BUDDEN:** So –

**MR. O'BRIEN:** – and the need for advances.

**MR. BUDDEN:** So I guess the answer is – is it yes or no? Do you know why the advances were made?

**MR. O'BRIEN:** The answer is no.

**MR. BUDDEN:** Okay.

Do you know if the advances were ultimately credited or repaid when they were supposed to be?

**MR. O'BRIEN:** Through the course of the various agreements with Astaldi, there were agreements made with respect to these advance repayments as well. I think that's a matter of record. And I'm sure that Mr. Clarke has testified in relation to this issue. Ultimately, all of the advances to Astaldi were protected by a letter of credit.

**MR. BUDDEN:** Yes, and were repaid, then?

**MR. O'BRIEN:** Through recovery of the letter of credit. Astaldi –

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** – never repaid the advances made to them.

**MR. BUDDEN:** Okay. Were any penalties assigned or contemplated by the advance, and if so, were they, these penalties, paid? Or do you know?

**MR. O'BRIEN:** I don't know if there are any penalties in relation to repayment of the advance, no. But it would be in the agreements.

**MR. BUDDEN:** Okay, and you believe Mr. Harrington would be an appropriate person to ask about this?

**MR. O'BRIEN:** I think the agreement is in the record if – with respect to the position with respect to repayment.

**MR. BUDDEN:** Sure, okay. My very last question, if we can call up P-03732, Madam Clerk. And it's the page 2, I believe, the reference to Mr. Mulcahy. That's the – your text exchange with Mr. Power, which is –

**THE COMMISSIONER:** I don't think – oh, yes it is.

**MR. BUDDEN:** Yes, it is (inaudible).

**THE COMMISSIONER:** Tab 38 in your book, Mr. O'Brien.

**MR. O'BRIEN:** Page 2.

**MR. BUDDEN:** It's what flows after the reference to Mr. Mulcahy. It'd be the next page, I believe.

“Peter Mulcahy is tarred with the same brush – trust me.” And you say: “I know. I've been thinking about it all afternoon.” And then you talk about, in your evidence, if I understood you, that you were worried or concerned about Mr. Mulcahy, given his awkward position as the son of John Mulcahy, and you reached out to someone in management to see if he was okay. It was something like that, wasn't it?

**MR. O'BRIEN:** That's correct.

**MR. BUDDEN:** Okay. Who in management did you reach out to?

**MR. O'BRIEN:** I reached out to Peter's immediate supervisor and to our site manager.

**MR. BUDDEN:** And who was that?

**MR. O'BRIEN:** Greg McKenney and Jeff Reid, to ask them to check on Peter and be sure that Peter knew that he was a valued member of the team.

**MR. BUDDEN:** Okay. And those names, again, were ...?

**MR. O'BRIEN:** Greg McKenney, the project controls manager for Muskrat Falls generation and Peter's immediate supervisor, as well as Jeff Reid, our construction manager and the senior person on site at the time.

**MR. BUDDEN:** Sure, and that was the entirety of the message?

**MR. O'BRIEN:** Pardon?

**MR. BUDDEN:** And that was the entirety of the message, just an inquiry after – sort of see he was doing okay.

**MR. O'BRIEN:** It was not an inquiry; it was a request of them to visit Peter and ensure that Peter knew that he was a valued member of the organization and to ensure Peter that we valued the work that he was doing and we wanted him to stay and be a part of the team.

**MR. BUDDEN:** Okay.

**MR. O'BRIEN:** I was concerned about Peter, at the time, in light of the things that were being said here at the Inquiry.

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

**THE COMMISSIONER:** All right. Thank you.

Edmund Martin.

**MR. SMITH:** No questions, Mr. Commissioner.

**THE COMMISSIONER:** Kathy Dunderdale is not present, I don't think.

Former Provincial Government Officials.

**MR. J. KING:** No questions, Commissioner.

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

Consumer Advocate.

**MR. HOGAN:** Good afternoon, Mr. O'Brien.

**MR. O'BRIEN:** Good afternoon.

**MR. HOGAN:** My name is John Hogan. I'm counsel for the Consumer Advocate. Consumer Advocate, if you're not aware, represents the ratepayers. We're paying for this project.

**MR. O'BRIEN:** Yes, we are.

**MR. HOGAN:** Yes, they are. Yeah.

**MR. O'BRIEN:** I'm one of them.

**MR. HOGAN:** Why – I'm just curious, why did you make that comment?

**MR. O'BRIEN:** Because, Sir, we all, as citizens of this province, are paying for this project. I'm not isolated from it. That – it's important to know that. I'm a lifelong resident of this province.

**MR. HOGAN:** I understand that. But you understand that all the other ratepayers weren't involved with the project management. You understand that, don't you?

**MR. O'BRIEN:** I do.

**MR. HOGAN:** And you understand you're here to answer questions because the ratepayers want to know why they have to pay so much more than what was sold to them in 2012. You understand that as well?

**MR. O'BRIEN:** Absolutely.

**MR. HOGAN:** You understand why there might be some anger about why it's over budget?

**MR. O'BRIEN:** I don't think any of us are happy about –

**MR. HOGAN:** You understand why the ratepayers –

**MR. O'BRIEN:** – the cost growth at Muskrat Falls.

**MR. HOGAN:** – are angry about why it's over budget?

**MR. O'BRIEN:** I think I do, yes.

**MR. HOGAN:** Do you understand that they're angry that we're now – still don't have power despite it being promised two years ago? Do you understand that?

**MR. O'BRIEN:** I do understand that.

**MR. HOGAN:** Okay.

So, Mr. Budden did ask you about hydroelectric experience related to the project. So, I do have a few follow-up questions on that. If we could please turn to P-03682.

**THE COMMISSIONER:** 03682.

**MR. HOGAN:** I don't think you'll have this, Mr. O'Brien.

**THE COMMISSIONER:** No, that's going to be on your screen, Mr. O'Brien.

**MR. O'BRIEN:** Thank you.

**MR. HOGAN:** So, Mr. O'Brien, I asked Mr. Power – Ron Power – about this document when he was testifying before the Commission. It's my understanding that this is a document that was reviewed by the team prior to SNC-Lavalin being hired as the EPCM contractor. So, that would have been before your time with the project, as well. Is that correct?

**MR. O'BRIEN:** Yes, it is. I've never seen this document before.

**MR. HOGAN:** You've never seen this document. So, there's four pages here – it's pretty straightforward. It's – like I said, it was a document submitted by SNC when they were bidding for the EPCM contract, and you can see it's highlighted there. It says hydroelectric projects over \$100 million. So this would've been a summary of, obviously, projects that SNC would've done of this value for hydroelectric projects.

Now, when Mr. Budden was asking you questions, you said there was no need for you to have hydroelectric experience; it was more important for you to have project management experience. But you did say there was a large team and that's – to quote you, large team of people who you relied on that had hydroelectric experience.

So my question is, who were those people that you relied on that would've had hydroelectric experience on projects over \$100 million?

**MR. O'BRIEN:** I don't have the organization chart in front of me, but there's certainly –

**MR. HOGAN:** Sorry, can you – I can't hear you.

**MR. O'BRIEN:** I said I don't have the organization chart in front of me. But, you know, of those nearly 400 people that have come through the project, there are certainly a large number of them who were – who had hydroelectric experience on large hydro projects.

**MR. HOGAN:** So out of the 400 people, are you able to name one who had hydroelectric experience on projects over \$100 million?

**MR. O'BRIEN:** Sure, Greg Snyder, engineering manager for Muskrat Falls generation, joined the project in 2012, 35 to 40 years of hydroelectric experience.

**MR. HOGAN:** Okay, anyone else that you can think of?

**MR. O'BRIEN:** Luc Turcotte, area manager responsible for the powerhouse and the bid team leader for the Astaldi package, approximately 40 years of hydroelectric experience.

**MR. HOGAN:** Okay, (inaudible) –

**MR. O'BRIEN:** There are lots of others. I don't have an organization chart in front of me.

**MR. HOGAN:** Okay, and did you rely on Mr. Ron Power's hydroelectric –

**MR. O'BRIEN:** Yes –

**MR. HOGAN:** – experience?

**MR. O'BRIEN:** – absolutely.

**MR. HOGAN:** And did you report to Mr. Power?

**MR. O'BRIEN:** Yes, I did.

**MR. HOGAN:** I'm going to read – I read this to Mr. Power as well. This is evidence that was given by Mr. Bécharde on March 27, 2019, to the Commission.

I'm gonna read out his transcript. It's questions that I was asking him. So I started by saying: "... looking back now to when that was done in the spring, what expertise was missing at the leadership level of the integrated team?" He says, oh no – "Oh, you know, your question is wide like that." I said: "I know. I'm looking for some specifics from the expert here as to, you know" dot, dot, dot.

Mr. Bécharde said: "I'd say that there was – to me the main expertise that was missing was the management of such a huge project. Like, this project is really, really huge. You got a lot of logistic. You got contract management. You got procurement. There's a lot of details in those type of" projects, "... you need to have seasoned



people that have been living in their life, through the steps to get to that position.

“You see, to” me “– in my mind and this is only my opinion – to be a good component manager of a project like this, people should have at least 20 to 25 years of experience in the field. Not in the office, because this isn’t the field where the game is going. So having played a role in an office, doesn’t make you capable of driving such a project.”

Question: “So was that something that stood out ... a lot of the Nalcor or the client-assigned leaders ....”

He says: “There was ... There was people that, in their” expertise “have been involved not necessarily working in the field in such a project. And what I mean field, I mean an area like Labrador.”

Question: “You mean winter conditions in Labrador for hydroelectric ....” He says: “That’s right, exactly ... That was lacking” he says.

I said: “Okay. Can you think of anyone specific – can you name anyone specific who was put in a role that you think they weren’t suited for?” Mr. Bécharde says Scott O’Brien.

So you’ve heard all that. I’m wondering what you can – if you have a comment on that.

**MR. O’BRIEN:** So, as I’ve said before, Mr. Bécharde is entitled to his opinions. I don’t agree with them, nor do I intend to wade into the mudslinging – and I’ve used that word before –

**MR. HOGAN:** So I just stop you there, Mr. O’Brien. This is not about mudslinging. His opinion was that you didn’t have the expertise to be the project manager for a generation project. He’s not saying anything about you personally; he’s speaking to your résumé and your qualifications. He’s worked with you and he didn’t feel that you were capable of doing it.

There’s no personal attacks, there’s no mudslinging, so I’m asking to you comment on his opinion that you weren’t suited for the project.

**MR. O’BRIEN:** So it is a personal attack and it is mudslinging and, unfortunately, Mr. Bécharde is entitled to his opinion. He’s wrong. I don’t agree with him. And it’s borne out – if you look to the commentary made by EY – in relation to the project team which were, in their words, extremely competent and the reviews done by IPA, which also supported the project team and the organizational approaches that were taken with respect to execution of the work.

**MR. HOGAN:** So you disagree with Mr. Bécharde. That you feel like you did have the requisite experience to manage this generation project.

**MR. O’BRIEN:** I disagree with Mr. Bécharde.

**MR. HOGAN:** And do you feel Mr. Bécharde had more experience with these projects than you did prior to the start of your involvement?

**MR. O’BRIEN:** Mr. Bécharde came from SEBJ, an organization owned by Hydro-Québec for constructing projects in the James Bay region. I have not seen Mr. Bécharde’s résumé, nor can I comment on the various roles that he may have played within that organization.

**MR. HOGAN:** How long did you work with Mr. Bécharde?

**MR. O’BRIEN:** I don’t know the exact time of his tenure on the project. Mr. Bécharde arrived originally as the project director and eventually moved into a role of consultant essentially, but I don’t know how long he was there.

**MR. HOGAN:** Can you estimate? Was it less than six months?

**MR. O’BRIEN:** No, I can’t estimate. I don’t know how long he was there.

**MR. HOGAN:** You’re – you have no idea how long you worked alongside Mr. Bécharde on this project?

**MR. O’BRIEN:** I don’t know when Mr. Bécharde arrived and I don’t know exactly the timeline in which Mr. Bécharde left. It was shortly after the integration of the project management team, so that may have been sometime in 2012.

**MR. HOGAN:** I want to turn to Astaldi. You said yesterday Astaldi achieved very little in relation to the 2013 Limited Notice to Proceed. When Ms. Muzychka asked you about that, you hesitated a little bit because you weren't sure what the question was. You thought it may be – might've been what should they or could they have achieved? Do you recall that?

**MR. O'BRIEN:** Yes, I do.

**MR. HOGAN:** So my question is: What did they not achieve under the Limited Notice to Proceed that you feel like that they should have achieved?

**MR. O'BRIEN:** I don't have the specific details of what was and wasn't done, or the progress against the individual line items in the LNTP. What I offered yesterday was just Astaldi achieved very little underneath the LNTP.

**MR. HOGAN:** You can't comment any further of what you feel that they should have achieved or were obligated to achieve?

**MR. O'BRIEN:** Astaldi was obligated and should've achieved all of the deliverables underneath the LNTP.

**MR. HOGAN:** Okay.

Can you give a percentage? Well, how far you think they made it, at 10 per cent, 15 per cent?

**MR. O'BRIEN:** No, I can't give a percentage but it will be in the project record.

**MR. HOGAN:** You know, if we were here just to look at the project record we wouldn't call witnesses.

**THE COMMISSIONER:** All right, so let's –

**MR. HOGAN:** So –

**THE COMMISSIONER:** Just a minute, Mr. Hogan. Let's just – I know this can get a little tense, but let's just continue to ask questions and I'll ask –

**MR. HOGAN:** Okay.

**THE COMMISSIONER:** – the witness to answer them.

**MR. HOGAN:** Given that the fact that they achieved very little in relation to the 2013 Limited Notice to Proceed, I think it's fair to say there were warning signs that they possibly were not the right contractor and warning signs that it would lead to cost and schedule increases.

So my question is: How did you feel about awarding Astaldi the contract, the full contract, given the struggles with the Limited Notice to Proceed?

**MR. O'BRIEN:** So I guess it's not about how I felt. Astaldi committed that they would deliver the project. They signed documentation to support that they would deliver the project. There were challenges with respect to their mobilization. Those were noted and documented and, ultimately, the agreement was signed, based on those commitments.

**MR. HOGAN:** But you're signing an agreement with a party who you know has struggled and not delivered already. So my question is: Why would you do that?

**MR. O'BRIEN:** So, again, you'll have to speak to the leadership with respect to that approach. I wasn't involved in the negotiation that was taking place at the leadership level, but rather feeding up to the leadership with respect to progress that we were making on the various topics.

**MR. HOGAN:** In terms of the ICS, how much of effect do you feel this was, or how much of a part did this play in Astaldi's overall struggles in terms of schedule and cost overruns?

**MR. O'BRIEN:** The ICS was a major impact to Astaldi's delivery and probably cost between 12 and 18 months on the overall project schedule.

**MR. HOGAN:** And were you aware that when the bid – when the contract was awarded, the ICS was still just a concept?

**MR. O'BRIEN:** Part of the LNTP was to finalize the design for the ICS.

**MR. HOGAN:** Okay.

And I assume your answer is the same with regards to the awarding of that contract. You didn't have any say in negotiating or reviewing that – the bid, I guess, or the award of the contract. Is that correct?

**MR. O'BRIEN:** That wasn't my role.

**MR. HOGAN:** You also said yesterday in relation to Astaldi: "We were able to turn them around ...."

**MR. O'BRIEN:** I think I quoted Keith Dodson from Westney in relation to that.

**MR. HOGAN:** Have you – well, do you – is it your position that Nalcor was able to turn them around?

**MR. O'BRIEN:** It's my position that with the taskforces that we put in place and the efforts that we put in place, with respect to Astaldi was collaborating with us at that time, that we were able to achieve the deliverables that were necessary to get them working. We were able to get their batch plant and ancillary systems operational and by May of 2015 they were producing concrete production rates that were consistent with the expectations of the agreement.

**MR. HOGAN:** And so would you agree that – is your position that they were a problem contractor?

**MR. O'BRIEN:** I think I've already said that Astaldi's challenge – Astaldi was very challenging from an execution perspective, particularly in 2014 and early 2015. What they were, at that time, was collaborative in relation to working with the owner to rectify the challenges that they were having.

**MR. HOGAN:** So the project management team chose Astaldi. My question is: Do you or the project management team take any responsibility for having chosen a contractor that was a problem contractor and that needed help to be turned around?

**MR. O'BRIEN:** I think if you look at the project record, the bid evaluation is clear with respect to Astaldi. They brought the highest technical score and the best commercial score,

and the bid team recommendation was to award to Astaldi. That was ultimately done. Based on the information that was available at that time, was it the right decision? Yes.

**MR. HOGAN:** It was the right decision, yes. So the answer to the question is, no, you don't take responsibility for choosing the wrong contractor.

**MR. O'BRIEN:** I think what I offered is: Based on the bid evaluation and the information that was available at the time, Astaldi was the right contractor to perform the work. That was the rationale behind the award recommendation.

**MR. HOGAN:** In your interview with Commission counsel you said you were hired in 2011 – and this is your quote – to oversee the EPCM consultant. Do you recall saying that?

**MR. O'BRIEN:** I don't recall my exact words. I was part of an owner's oversight team –

**MR. HOGAN:** So that's what I want to –

**MR. O'BRIEN:** – in 2011.

**MR. HOGAN:** – I want to ask you about. Those are your exact words, oversee.

My question is: Why are you overseeing? Is that what happens? Is the EPCM contractor overseen by the owner?

**MR. O'BRIEN:** Yes.

**MR. HOGAN:** But the M stands for management, I sort of assume that they would be the ones that would manage and control and run and operate the entire project. Why are you being hired to oversee a contractor who's been hired to really build this dam?

**MR. O'BRIEN:** No, it's CM. That stands for construction management.

**MR. HOGAN:** Okay.

**MR. O'BRIEN:** Engineering, procurement and construction management. It's always necessary to have an owner's team who is overseeing the work of any contractor. Whether it's an EPCM consultant or an EPC contract or some form of lump-sum construction contract, there's always

a need for an owner's team to provide oversight to ensure that the owner's objectives are achieved in relation to the performance of the work.

**MR. HOGAN:** So in 2011, when you were hired to do that, would Mr. Béchard have been reporting to you at that point in time?

**MR. O'BRIEN:** No.

**MR. HOGAN:** Who would've been reporting to you from SNC?

**MR. O'BRIEN:** A different organizational structure. SNC didn't report directly to me at that time. SNC had an EPCM organization that they were building. Normand was the project director for SNC, so he would've interfaced on a day-to-day basis with Ron Power as the general manager for the project. And my interface point would've been with the C1 project manager from SNC who then was François Couturier.

**MR. HOGAN:** So would anyone from SNC be reporting directly to you at that point in time?

**MR. O'BRIEN:** Not directly at that time, no.

**MR. HOGAN:** The Commissioner referred to, this morning, when there was some back and forth about some questions related to the three projects and just the one project you were working on, as a core leadership team. So would you consider the core leadership team to be the leaders of all three projects?

**MR. O'BRIEN:** I think there's a very large core leadership team at Muskrat Falls. It includes the three project managers associated with the individual projects, the project director, the project general manager, as well as, you know, the matrix functions and all of those managers who support the overall delivery with respect to the work.

**MR. HOGAN:** So would those core members meet at all as a large group?

**MR. O'BRIEN:** Yes.

**MR. HOGAN:** Okay. How often would that happen?

**MR. O'BRIEN:** There were regular management meetings with respect to – with work and meetings done for different things: Meetings to look at cost, meetings to look at change management, meetings to look at overall progress, meetings to look at interfaces. There's a substantial suite of meetings that needed to take place on a regular basis across the organization.

**MR. HOGAN:** And there's overlap with the projects. You follow what I'm saying? It wasn't just the three silos going on without any overlap amongst the leadership?

**MR. O'BRIEN:** No, no. And Ron Power's role as the project general manager was really to integrate those three individual projects and ensure there was consistency across them.

**MR. HOGAN:** And were these ad hoc meetings as needed, or were they set up regularly – weekly, monthly?

**MR. O'BRIEN:** Both.

**MR. HOGAN:** So, were they weekly?

**MR. O'BRIEN:** Some meetings were weekly. I can't give you the specific details of the meeting schedule, but there were weekly meetings; there were monthly meetings on different topics, and there were ad hoc meetings as necessary.

**MR. HOGAN:** And where did these meetings take place? Were they on Torbay Road?

**MR. O'BRIEN:** Generally, yes.

**MR. HOGAN:** Okay.

Just in terms of the travel, which you've been asked about, who authorizes your travel, if anyone?

**MR. O'BRIEN:** All of my travel is authorized. It depends on where I'm going. The way the travel processes are set up for the Lower Churchill Project, the travel within Canada is approved at the project general manager level or – now the project deputy director, Ron Power. With respect to any international travel, it's extended all the way up to executive vice-president for approval.

**MR. HOGAN:** So, was there a budget that you worked within for travel, or did you go to Mr. Power as needed for each trip?

**MR. O'BRIEN:** No. There is a budget with respect to travel, but I'm not the keeper of that budget. And I did go to Mr. Power, or others, as necessary for each trip.

**MR. HOGAN:** If we could please turn to P-03047. And I don't think you would have seen or been familiar with this document.

**THE COMMISSIONER:** Yes, that's at PMT book 3, tab 80.

**MR. HOGAN:** So, this is an email Mr. Power sent to Mr. Harrington back in May of 2014. I'll give you a chance to look at it. I guess it's sort of an update to Mr. Harrington. You can let me know when you're ready.

**MR. O'BRIEN:** Okay.

**MR. HOGAN:** If we can scroll to page 2, please? So, he says – "**Astaldi: Failure to Perform**" – he says he "visited" the "site last Saturday. The situation there is virtually hopeless."

So, my question is, who was responsible for the site being virtually hopeless at this point in time? Now, you've – the integrated team has taken over well before May of 2014.

**MR. O'BRIEN:** Astaldi.

**MR. HOGAN:** Astaldi is.

**MR. O'BRIEN:** Astaldi is responsible for their means and methods. Astaldi is responsible to deliver. Astaldi was failing to deliver at this point.

**MR. HOGAN:** Okay. So, the project management team is not responsible – not taking responsibility for the site up to that point. The blame falls solely to Astaldi?

**MR. O'BRIEN:** The project management team was working to address the issues that were manifesting with Astaldi, but the contractor has responsibility for delivery underneath the

agreements, and the contractor has responsibility for his means and methods in getting there. Astaldi was failing.

**MR. HOGAN:** Yeah, that's all the questions I have. Thank you.

**THE COMMISSIONER:** Thank you.

All right, the Innu Nation is not present, Nunatsiavut.

NunatuKavut.

**MR. RYAN:** No questions, Commissioner.

**THE COMMISSIONER:** Thank you.

Conseil des Innus.

Grand Riverkeeper Labrador/Labrador Land Protectors.

**MS. URQUHART:** No questions, Commissioner.

**THE COMMISSIONER:** Thank you.

Astaldi Canada Inc.

**MR. BURGESS:** Commissioner, I note it's five to 3. If you're intending to break at 3, then I'd like to wait 'til after, but if you're proceeding on, I'm ready to go.

**THE COMMISSIONER:** Okay, we started at quarter to 2. Let's take our break now then, and then we'll start with you.

So we'll take 10 minutes now.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right, Mr. Burgess.

**MR. BURGESS:** Thank you, Commissioner.

And, Mr. O'Brien, good afternoon, my name is Paul Burgess and I represent Astaldi Canada Inc.

**MR. O'BRIEN:** Good afternoon.

**MR. BURGESS:** I'm going to ask you some specific questions. And what I would ask you to do when you're considering your response for me is I'm going to try to make my questions very specific and would ask that you make your answers very specific, Sir, please.

Now, you testified earlier in your evidence before this Inquiry that Nalcor's structure for Muskrat Falls was what you quoted – I'm going to quote you, I think, correctly: A matrix-style organization. Is that correct? Yes or no.

**MR. O'BRIEN:** Yes, it is.

**MR. BURGESS:** Sorry, I didn't hear.

**MR. O'BRIEN:** Yes, it is.

**MR. BURGESS:** Thank you.

And you testified, as I understood it, that you're the – you had sufficient on-site authority by Nalcor, and that if there was any changes to be made, those changes, though, would have to be reported to you and there would be a process. Is that correct?

**MR. O'BRIEN:** No, it's not correct. The changes were not solely reported to me. There's an organization that supports change management and an elaborate process or detailed process that requires the engagement of an appropriate set of stakeholders, depending on the nature of the change.

**MR. BURGESS:** Okay and that's what I wanted to ask you some questions on so I'm clear on it, because I wasn't clear from your earlier testimony. But let me first ask you, this structure that you talked about – because you clearly said there was a structure in place that you thought was appropriate, it was a core established principle, and it was there from the commencement of the project to this very day. Did I understand that part correct?

**MR. O'BRIEN:** The organizational structure grew with time to address the deficiencies with

Astaldi, in particular, through the course of the work.

**MR. BURGESS:** And does that relate to changes or scheduling or things of that nature?

**MR. O'BRIEN:** It relates to Astaldi's performance.

**MR. BURGESS:** Okay. And that structure, then, you said it goes through an elaborate process. So if someone has an issue on site, I take it that's where the issue would start. Is that correct or is that incorrect?

**MR. O'BRIEN:** No, that's correct.

**MR. BURGESS:** And if someone on site, it would go up to the – is it the site construction manager? He has the most authority on site on behalf of Nalcor. Is that correct?

**MR. O'BRIEN:** That's correct.

**MR. BURGESS:** And if he needs assistance or needs authority beyond his authority, where does he go?

**MR. O'BRIEN:** It comes back to the home office.

**MR. BURGESS:** Who's the home office? Specifically, Sir, what is the point of contact for any issues that the construction site manager would have?

**MR. O'BRIEN:** Depends on the nature of the issue. Construction manager may reach out to the engineering manager. He may reach out to the package lead. He may reach out to the quality team. He may reach out to the environment or the safety teams or he may reach out to me.

**MR. BURGESS:** Okay.

And the authority for – that people have below you at the home office, as you called it – and home office is St. John's. Correct?

**MR. O'BRIEN:** Yes, it is.

**MR. BURGESS:** The authority, I've heard – I think you said, that the site construction

manager, his authority – and I’m saying his because it was always a male in that position. Correct?

**MR. O’BRIEN:** Yes, it was.

**MR. BURGESS:** And his authority was \$250,000. Is that correct?

**MR. O’BRIEN:** That’s correct.

**MR. BURGESS:** And your authority was \$2 million. Correct?

**MR. O’BRIEN:** That’s correct.

**MR. BURGESS:** And between the construction site manager and yourself, I take it, then, that you have just explained there were people at the home office, at St. John’s, who would deal with matters in between the construction site manager and yourself. Correct?

**MR. O’BRIEN:** No, what I said was the construction manager may reach out to other parts of the organization, depending on the nature of the issue he needs to speak about.

**MR. BURGESS:** And who – can one of those individuals, other than you, approve any of these changes, deviations or issues? Or are there others below you in St. John’s who can do that?

**MR. O’BRIEN:** Within the contract, approval – for the final approval for the change or signoff on the change order comes from the company representative.

**MR. BURGESS:** Who’s the company representative?

**MR. O’BRIEN:** For Astaldi? Me.

**MR. BURGESS:** So let me go back, then, to figure out this maze that you’ve talked about. It goes from the construction site manager and wherever else it goes at the home office at St. John’s, it ultimately lands on your desk for your authority. Correct?

**MR. O’BRIEN:** The final approval for the change orders would come to the company representative, which is me.

**MR. BURGESS:** Okay.

**MR. O’BRIEN:** Resolution of the change may take place in any one of a number of locations, depending on the nature of the change.

**MR. BURGESS:** Right.

And so in your comments that you made earlier – so that’s the process now. Do I understand that to be the process?

**MR. O’BRIEN:** The process is documented in –

**MR. BURGESS:** No, is that the process that you just described? Is that the process that something has to go through when there’s an issue on site and it goes up through the chain of command to yourself. Is that the process?

**MR. O’BRIEN:** I don’t think I described the process, Mr. Burgess. What I offered was that the final signoff on the change order is done by the company representative. And in the context of the Astaldi contract, I am the company representative.

**MR. BURGESS:** Okay.

Will you agree with me, Mr. O’Brien – yes or no – that ultimately, then, when it comes to Astaldi and changes, it requires your authority and that’s where it ends?

**MR. O’BRIEN:** When it comes to Astaldi and changes, with respect to changes between \$250,000 and \$2 million, it requires my sign-off on the change order. When it comes to changes beyond \$2 million, then those changes elevate up within the organization.

**MR. BURGESS:** Okay.

And then one of the things that you had said in your evidence was there’s a process if there’s a significant change. And can you tell me then what your definition is of a significant change versus an insignificant change?

**MR. O’BRIEN:** I think all changes are significant in the context of project execution. There are multiple processes associated with change management. The processes that Mr.

Delarosbil spoke about in his testimony and the \$25,000 limits were changes at the field level, repositioning of rebar, moving a stockpile: small items that could be dealt with in real time at less than \$25,000. Significant changes that required home office intervention would typically exceed the \$250,000 limit, but, again, it depends very much on the nature of the change. A small change may have a very significant impact on the project as a whole from a dollar-value perspective or it may impact the operation long term. It depends on the change.

**MR. BURGESS:** Right. But any significant change goes to you, at least.

**MR. O'BRIEN:** Any change within – between \$250,000 and \$2 million comes to me for sign-off.

**MR. BURGESS:** Right. Do you have a recollection or an understanding about the level of the cost or spending that Astaldi would make on site, generally, on a particular day?

**MR. O'BRIEN:** I think Mr. Delarosbil has testified to that being in the order of a million dollars a day.

**MR. BURGESS:** I believe he said a million to a million and a half –

**MR. O'BRIEN:** Okay.

**MR. BURGESS:** – so would you agree with that?

**MR. O'BRIEN:** I think that's about right. Total spending on the site was about double that through the course of the execution –

**MR. BURGESS:** Okay.

**MR. O'BRIEN:** – of the work.

**MR. BURGESS:** And I assume you're familiar with sites such as this site and – is that correct, that a construction site is not something that you're not familiar with?

**MR. O'BRIEN:** That's correct.

**MR. BURGESS:** Right. And would you agree with me, yes or no, that change on the site is

almost daily? Would you agree? I don't need an explanation; I just need a yes or no.

**MR. O'BRIEN:** No, I don't agree.

**MR. BURGESS:** Okay. Thank you.

Now, you testified in your evidence that Mr. Delarosbil's counterpart, from the Nalcor side of it, would be a site construction manager. Is that correct?

**MR. O'BRIEN:** Yes, it is.

**MR. BURGESS:** Did you hear Mr. Delarosbil testify that it was his opinion that, in fact, you were his counterpart?

**MR. O'BRIEN:** No, I didn't hear that, but he's not correct.

**MR. BURGESS:** Okay, and he's not correct?

**MR. O'BRIEN:** No.

**MR. BURGESS:** And you had said that the site construction manager, though, was his counterpart.

**MR. O'BRIEN:** That's correct.

**MR. BURGESS:** And that despite the fact – did you hear Mr. Delarosbil testify that his authorization was for \$5 million? Did you hear him say that?

**MR. O'BRIEN:** No, I didn't, but I'm not surprised to hear that.

**MR. BURGESS:** Right, because in a project such as that, it would be important to have sufficient authority, wouldn't it? Yes or no?

**MR. O'BRIEN:** Mr. Delarosbil's decision authority is very different than the approaches of the owner in relation to the execution of the work. A contractor's requirements are not aligned with the owner's.

**MR. BURGESS:** Okay.

And would you agree with me that whenever there was any correspondence – you've talked about the commercial letters going back and



forth. You understand what I'm talking about when I reference those letters?

**MR. O'BRIEN:** There were letters, yes.

**MR. BURGESS:** And any of those letters, at least the majority, if not all, were between yourself and Mr. Delarosbil. Was that not correct?

**MR. O'BRIEN:** Mr. Delarosbil was the –

**MR. BURGESS:** No, was that correct or no?

**MR. O'BRIEN:** I'm the nominated company representative –

**MR. BURGESS:** No –

**MR. O'BRIEN:** – and the signatory of the letters.

**MR. BURGESS:** – I'll ask the question again, Mr. O'Brien, 'cause I think it's pretty clear.

The letters –

**MR. SIMMONS:** Commissioner, if Mr. O'Brien feels that he can't answer it strictly yes or no, he should at least be given the opportunity to give some explanation or why. Mr. Burgess wants to follow up, that's perfectly fine.

**THE COMMISSIONER:** Mr. Burgess?

**MR. BURGESS:** I thought it was a yes or no and I haven't heard that it's not a yes or no question. He went on with an explanation which I wasn't looking for, but if he answers I can't, it's not a yes or no. But I thought it would be a yes or no answer to that question, Commissioner.

**MR. SIMMONS:** Unless Mr. Burgess heard the explanation through, he's not in a position to judge whether it responds to the question.

**THE COMMISSIONER:** Right, okay, so a little bit of jostling here, and understand this all happens, so here's the way I'm gonna deal with this.

So, if you can answer the question yes or no, you answer it yes or no. If you can't answer the

question yes or no, could you please tell me you can't answer it yes or no? And then I'll decide how we're gonna handle it. Okay?

So the question was again, Mr. Burgess?

**MR. BURGESS:** Thank you, Commissioner.

Mr. O'Brien, I would put it to you that the majority, if not all of the correspondence, but certainly during the time that Mr. Delarosbil was the project manager for Astaldi, the commercial letters, I'll call it, were between you and Mr. Delarosbil. He would write to you; you would write back to him. Is that correct?

**MR. O'BRIEN:** As –

**MR. BURGESS:** Yes or no?

**MR. O'BRIEN:** – as nominated representatives, yes.

**MR. BURGESS:** No – sorry?

**MR. O'BRIEN:** I said, yes, as nominated representatives.

**MR. BURGESS:** Okay, thank you.

And if there was a major issue between – that came up, then that was a discussion that would be elevated to your level, and you would speak to Mr. Delarosbil or vice versa on the significant or material issues. Is that correct, yes or no?

**MR. O'BRIEN:** Not entirely, no.

**MR. BURGESS:** Okay.

On the on-site authority – I just wanna go back – and you've testified a fair bit on this but Madam Clerk, if we could bring up P-03022, please. And that's not in any of the binders, Commissioner, I understand that are before the witness.

**THE COMMISSIONER:** This will be on the screen. What was the –

**MR. BURGESS:** P-03022.

Do you see that letter, Mr. O'Brien?

**MR. O'BRIEN:** Yes, I do.

**MR. BURGESS:** And if you could scroll down, Madam Clerk, to the last page so that it puts in context for Mr. O'Brien.

If you could scroll back up now, Madam Clerk, to page 1, please.

Is that a letter that you're familiar with? And if you want to take some time to look at it, please take as much time as you need.

**MR. O'BRIEN:** Okay. Can you scroll up so I can see the date on the letter, please?

Okay.

**MR. BURGESS:** So, Mr. O'Brien, it's a letter dated June 23 –

**THE COMMISSIONER:** Just a second now –

**MR. BURGESS:** Oh.

**THE COMMISSIONER:** – had you – is – there's more to the letter. I think we should go to the next page –

**MR. O'BRIEN:** Thank you.

**THE COMMISSIONER:** – just to make sure.

Okay.

**MR. BURGESS:** Have you looked at it sufficiently, Mr. O'Brien?

**MR. O'BRIEN:** I've looked at it, yes.

**MR. BURGESS:** And is that a letter that is – that you're familiar with or are you seeing this for the first time?

**MR. O'BRIEN:** I may have seen that letter in 2014 when it was written.

**MR. BURGESS:** Okay, well then – but you don't recall, do you?

**MR. O'BRIEN:** I don't recall this letter –

**MR. BURGESS:** Yep.

**MR. O'BRIEN:** – no.

**MR. BURGESS:** Well, let me summarize, though – and you've read it, so if you want to raise any issues, fine. But it is a concern being raised by Astaldi Canada that there's not the appropriate people on site for Nalcor that have the decision-making authority. Were you aware that this issue was being raised by Astaldi in June of 2014, yes or no?

**MR. O'BRIEN:** I can't confirm – I'm sure I would have seen this letter at some point.

**MR. BURGESS:** Okay, thank you.

And I believe you testified earlier as well and acknowledged that there was a couple of meetings when Mr. Delarosbil specifically travelled to St. John's to meet with you when he raised the very same issue with respect to on-site authority. Is that correct?

**MR. O'BRIEN:** I can't confirm that. No.

**MR. BURGESS:** You don't recall meeting with Mr. Delarosbil and him expressing some concerns with respect to on-site authority?

**MR. O'BRIEN:** I recall meeting with Mr. Delarosbil on a whole host of occasions. I can't speak to any specific examples you may have provided –

**MR. BURGESS:** Well let me –

**MR. O'BRIEN:** – in relation to –

**MR. BURGESS:** – give you this example and I'm –

**MR. O'BRIEN:** – on-site authority –

**MR. BURGESS:** – okay. Mr. O'Brien I'm going to ask you, though, specifically with respect to this issue. Do you recall having any meetings with Mr. Delarosbil where he raised concerns with the on-site authority issue? Yes or no?

**MR. O'BRIEN:** No.

**MR. BURGESS:** Okay. We heard evidence from Mr. Power when he testified – did you listen to Mister – or see Mr. Power’s evidence?

**MR. O’BRIEN:** No. I did not.

**MR. BURGESS:** Mr. Power gave evidence that he remembered a meeting with Mr. Delarosbil and yourself. He doesn’t recall if he stayed for the whole meeting. But he does recall that in discussions with you after that meeting, you had communicated with him that Mr. Delarosbil raised concerns with respect to this very issue. Does that help – do you recall anything of that nature?

**MR. O’BRIEN:** No. I don’t recall.

**MR. BURGESS:** Okay. Thank you.

You were referred to the evidence earlier in your evidence before this Inquiry, with respect to evidence that was presented by Mr. Des Tranquilla. And in relation to that, there was three specific letters that were referred to you. And it was resignation letters of Mr. Brian Cottrell, Ted Vanwyk and John Mulcahy.

Do you remember giving that evidence in your – before the Inquiry?

**MR. O’BRIEN:** I remember looking at those. Yes.

**MR. BURGESS:** Okay. I want to clarify ‘cause I wasn’t certain. When you were questioned on – I believe it was Mr. Vanwyk’s resignation letter, that you had indicated some of the issues he was raising was related to Astaldi. Did I misinterpret that?

**MR. O’BRIEN:** No. You didn’t.

**MR. BURGESS:** Okay. Can – Madam Clerk then, can we bring up P-03048 please?

**THE COMMISSIONER:** 03048. Okay.

**MR. BURGESS:** That’s PMT1 binder. Tab 1, I believe, Commissioner.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** PMT1, Mr. O’Brien. It’s in your – I believe those binders are there by you. PMT1.

**MR. O’BRIEN:** PMT1.

**MR. BURGESS:** Tab 1.

**MR. O’BRIEN:** Okay.

**MR. BURGESS:** And if you go to page 4 as the letter that we’re – you were brought to earlier and for which I want to bring you to – and specifically you were asked questions in relation to the second paragraph where there’s – and it was quoted to you. Where it starts off on the third line; “On the Lower Churchill Project...” and it goes through about the concerns and issues that Mr. Vanwyk had.

And you’ve just confirmed to me that your response – or as I understand what you just confirmed to me – that you did indicate that to your – in your evidence, that some of the issues related to Astaldi. Can you point to me in that letter, which issues raised by Mr. Vanwyk related to Astaldi?

**MR. O’BRIEN:** Sure. The absent data with respect to earned and spent man-hours –

**MR. BURGESS:** Sorry, can you point to which line we’re at?

**MR. O’BRIEN:** The text starts with, “... no data on earned and spent manual manhours ...” Four lines up from the bottom of the second paragraph.

**MR. BURGESS:** Okay.

**MR. O’BRIEN:** Was a function of Astaldi’s deficiency with respect to their reporting.

**MR. BURGESS:** So that’s the no site-based planners, is that what it is?

**MR. O’BRIEN:** No, I said, no data on earned and spent manual man-hours.

**MR. BURGESS:** Okay, so the no data on earned and spent manual man-hours. Okay, that’s Astaldi related, is that your evidence?

**MR. O'BRIEN:** Deficient reporting from Astaldi, yes.

**MR. BURGESS:** Okay –

**MR. O'BRIEN:** (Inaudible.)

**MR. BURGESS:** Where does it relate to Astaldi, where does he indicate that? I don't see that here. Is that what you think he's implying?

**MR. O'BRIEN:** That's my memory of the situation.

**MR. BURGESS:** Okay, so it's not the letter, it's your memory. Is that correct?

**MR. O'BRIEN:** It's my recollection of what was happening on site at that time.

**MR. BURGESS:** Okay.

**MR. O'BRIEN:** You have to remember that Astaldi was failing through 2014 and (inaudible) –

**MR. BURGESS:** You've told us a lot about that –

**MR. O'BRIEN:** Yeah, I have.

**MR. BURGESS:** So, can you continue on then and tell us –

**MR. O'BRIEN:** Yeah.

**MR. BURGESS:** – what else relates to Astaldi?

**MR. O'BRIEN:** I can. The commentary with respect to contractor craft time sheet approval was a result of an approach being taken by Astaldi with respect to delivery of time sheets.

**MR. BURGESS:** Okay, but that reference approval process for contractor craft time sheets, is that approval process a responsibility of Astaldi, is that your evidence?

**MR. O'BRIEN:** Astaldi was submitting information that was incorrect and difficult to ascertain at that time.

**MR. BURGESS:** Okay, but with Astaldi (inaudible) –

**MR. O'BRIEN:** (Inaudible.)

**MR. BURGESS:** – but the question I'm asking you, Mr. O'Brien, was the approval process for presenting those craft time sheets – was that a contractual obligation of Astaldi?

**MR. O'BRIEN:** The approval process that was developed required adaptation because of the inability of Astaldi to provide information in a manner that was consistent with the owner's needs.

**MR. BURGESS:** Okay. Then if we can continue on, are there any other references in that letter as they relate to Astaldi?

**MR. O'BRIEN:** Yes, the commentary with respect to the direction of the contractor was a desire by Ted at that time.

**MR. BURGESS:** Sorry, where are you referring to now?

**MR. O'BRIEN:** On the last line of that same paragraph –

**MR. BURGESS:** Yes.

**MR. O'BRIEN:** – commentary in relation to directing the contractor was a desire by the individual at that time to overstep the commercial obligations that Astaldi had in respect of the agreement and move into direct intervention and management of Astaldi's activities directly.

**MR. BURGESS:** Okay, but as I read that Mr. O'Brien, what that is saying, he's suggesting that Nalcor should take the risk and direct the contractor as opposed to faulting Astaldi for that. Am I interpreting that –?

**MR. O'BRIEN:** Well, what he's offering here is that Nalcor should take the risk and direct the contractor because the contractor was unable to perform the work efficiently on their own.

**MR. BURGESS:** Okay.

Is there any other parts of that letter then, you would attribute to Astaldi, or was that it?

**MR. O'BRIEN:** No, that's all.

**MR. BURGESS:** So the rest of the issues that he raises are related to Nalcor. Is that correct?

**MR. O'BRIEN:** They're his opinion with respect –

**MR. BURGESS:** I understand that.

**MR. O'BRIEN:** – to the approach that's being taken.

**MR. BURGESS:** I understand what it is, but –

**MR. SIMMONS:** Commissioner, I think the witness should be allowed to at least finish the answer before he's immediately interrupted.

**THE COMMISSIONER:** I agree with that.

**MR. BURGESS:** Okay.

Mr. O'Brien, then, is there anything else related to Astaldi, other than what you've just indicated?

**MR. O'BRIEN:** No, there aren't.

**MR. BURGESS:** Okay.

In relation to the other – there was two other resignation letters: One was Mr. Brian Cottrell and one with Mr. John Mulcahy. I just want to make sure. I didn't hear you in your evidence indicate that any of their issues related to Astaldi. And I – you didn't say it so I – am I to assume that you don't relate their issues to Astaldi? And if you'd like, we can bring those up on the screen if you'd like, but that was my understanding.

**MR. O'BRIEN:** No, I didn't say that they did and I don't think we need to review them.

**MR. BURGESS:** Okay.

Now, it may be a question – and maybe I'm just asking it a different way, but I will ask this: Given all of the issues and concerns that you had – well, let me go back for a second. The process that was set up that you talked about for the on-site authority – and you said that was there at the beginning of this contract. Is that correct?

**MR. O'BRIEN:** The site always had the authority to deliver the project, yeah. Yes.

**MR. BURGESS:** Right.

So those principles that you talked about, that process was in place when the project started. Is that correct?

**MR. O'BRIEN:** That's correct.

**MR. BURGESS:** Okay.

And who created or decided that was the process? Do you know?

**MR. O'BRIEN:** That process and that approach, with respect to execution of this project, predates my engagement on the project.

**MR. BURGESS:** Okay.

During your time on the project, if anyone wanted to change the process, whose responsibility would it have been to change that process?

**MR. O'BRIEN:** The process owner.

**MR. BURGESS:** Sorry?

**MR. O'BRIEN:** The process owner.

**MR. BURGESS:** And who was the process owner?

**MR. O'BRIEN:** Generally, the project general manager was the process owner with respect to execution processes.

**MR. BURGESS:** And, in this case, during the major term of the contract with Astaldi at least, who had that position?

**MR. O'BRIEN:** It would've been Ron Power.

**MR. BURGESS:** So that's the position above you – directly above you. Am I correct in that?

**MR. O'BRIEN:** That's correct.

**MR. BURGESS:** And at any time did you or Mr. Power discuss the potential change of that process?

**MR. O'BRIEN:** I don't recall any specific discussion, no.

**MR. BURGESS:** At any point in time, did you raise with Mr. Power or did you have any concern that this process might not have been the most appropriate process?

**MR. O'BRIEN:** I don't recall any specific discussions.

**MR. BURGESS:** Okay.

At any point in time, did you consider spending more time on site – on the site at Muskrat Falls, than you have in the past?

**MR. O'BRIEN:** My travel record speaks to that. In 2014, during the period of Astaldi's early efforts and mobilization, I was spending more time at site than I have in other years.

**MR. BURGESS:** Okay.

Now, you've testified about the LNTP, or the Limited Notice to Proceed, with Astaldi and some of the issues. And so I'm clear and understand, did you support Nalcor's position to enter into the contract with Astaldi in November of 2013?

**MR. O'BRIEN:** With respect to the decision to contract with Astaldi, there was a bid award recommendation and I was signatory to that bid award recommendation.

**MR. BURGESS:** Okay.

In – specifically, though, for the timing purpose – so November 29, 2013, was when that contract was signed, wasn't it?

**MR. O'BRIEN:** I believe so.

**MR. BURGESS:** Did you have any concern of entering into that contract at that time, given the weather conditions and everything else?

**MR. O'BRIEN:** Astaldi committed to deliver in accordance with the project milestones and signed off accordingly. That signature in the waiver provided, as well as their acceptance of the site conditions which they signed for also at that time, allayed my concerns.

**MR. BURGESS:** So you had no concerns?

**MR. O'BRIEN:** Astaldi signed up for it.

**MR. BURGESS:** No, I'm asking if you had any concerns.

**MR. O'BRIEN:** And I'm telling you Astaldi signed up for it.

**MR. BURGESS:** And I'll ask again: Did you have any concerns that the contract was being entered into on November 29, 2013?

**MR. O'BRIEN:** On the basis that Astaldi committed? No.

**MR. BURGESS:** Thank you.

If you could, Madam Clerk, bring up Exhibit 03021. Commissioner, whenever there's a reference to one in the binder, I will raise it, but my understanding, most of these exhibits I'll refer to are not in the binders.

But it's P-03021, please, Madam Clerk.

**THE COMMISSIONER:** Okay.

That's correct. It's not in the binder.

**MR. BURGESS:** So it'll be on the screen, Mr. O'Brien.

**MR. O'BRIEN:** Okay.

**MR. BURGESS:** And you see it there in front of you. And if you could just scroll down slowly, Madam Clerk, so the witness can at least see in context it's a letter from Nalcor to Astaldi. And it's – just go back to the date, please – December 18, 2013, and it's to Mr. Ken Chryssolor.

And could you go down, Madam Clerk, to the signing page, please, which is page 4.

Now, Mr. O'Brien, it's a letter from you, as you will see, on December 18, 2013, signed by you to Mr. Ken Chryssolor. Do you recall that letter?

**MR. O'BRIEN:** No, I don't recall that letter. There have been a lot of letters.

**MR. BURGESS:** Okay.

Well, if we could just go then to the beginning. What I want to point out is – so that’s December of 2013, December 18. And at the beginning in the first paragraph, it indicates that, we, being Nalcor, has “a major concern which should be addressed in the upcoming contract kickoff meeting ... Although the schedule is incomplete and an exact assessment of whether or not turnover milestones will be met is not technically possible (at this time) certain trends related to first concrete production and the effective start of critical concrete is a concern to us ....”

Now that you see that, does that bring back any recollection or, again, is that something you don’t recall?

**MR. O’BRIEN:** The letter specifically? No. The challenges, in general, with respect to a concrete start-up at Muskrat – I think I’ve already spoken to that.

**MR. BURGESS:** Right.

So in light of the fact – well, let me ask you this question. This letter is December 18 of 2013; you’ve just signed a contract with Astaldi on November 29, 2013. Correct?

**MR. O’BRIEN:** Yes.

**MR. BURGESS:** Was this issue ever raised with Astaldi prior to this letter that – within your knowledge? Yes or no?

**MR. O’BRIEN:** I can’t recall.

**MR. BURGESS:** Okay.

Next, I want to turn to the full – what I’ll call full project integrated schedule. And you testified about this earlier today and as my notes – I just want to go through some of the notes as I understood it. So if I understand what your evidence was – and I’m going to quote you some specific things – but there was a project integrated schedule. Is that correct?

**MR. O’BRIEN:** Yes, there was.

**MR. BURGESS:** And as I understood your evidence, is you had indicated that you took issue with what Mr. Delarosbil had testified as, and you indicated he might’ve forgotten. But you testified that there was, in fact, a full integrated schedule and an integrated interface, that you reviewed with the contractors the schedule on a daily basis. You also had a three-week look-forward schedule and that the schedules were always shown to the contractors.

Have I said anything that is misinterpreting your previous evidence?

**MR. O’BRIEN:** What I said is we developed a program at the site for integration management that incorporated a daily simultaneous operations review. It included reviews of three week look-aheads, it including – included issuing of integrated schedules to all of the contractors and that we took a warts-and-all approach, that we would share all of the information that’s provided so that we could work together through any clashes.

**MR. BURGESS:** So this, as I understood what your evidence was, was it – it was a very collaborative approach and you saw the value in sharing this integrated schedule with all of the contractors so everyone knew what was going on. Is that correct?

**MR. O’BRIEN:** That was the desire, yes.

**MR. BURGESS:** Okay.

Madam Clerk, if you could bring up P-03104, please?

Again, Commissioner, I don’t think it’s in any of the binders. It’s on the screen, though, Mr. O’Brien.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** And, Mr. O’Brien, I’m gonna give you a minute, and if you want the clerk to scroll down, it’s two pages. I’m gonna bring you to the second and third paragraphs, specifically, but it’s a letter from Mr. Don Delarosbil to yourself, dated October 10, 2016.

And if you look to the second and third paragraphs, it says, “The ongoing series” – first of all, do you recall this letter?

**THE COMMISSIONER:** So, if we give –

**MR. O'BRIEN:** No, I don't recall this letter.

**THE COMMISSIONER:** – the witness a –

**MR. BURGESS:** Yeah.

**THE COMMISSIONER:** You might wanna have an opportunity to review the whole thing, 'cause I haven't even seen the whole letter myself –

**MR. BURGESS:** At any time, Mr. O'Brien, if I'm referring to any of these letters and you need time to review them or clarify, please let me know.

Would you like the clerk to scroll down so you can read it? I have a hard copy here for your purposes. Sorry, Commissioner, I don't have –

**THE COMMISSIONER:** Why don't we just – why – because I need to read this, too, so why don't you give us both an opportunity just to have a quick look at it?

Okay.

Okay, a bit more

**MR. O'BRIEN:** Okay.

**MR. BURGESS:** Commissioner, okay to proceed? The witness –

**THE COMMISSIONER:** Yes.

**MR. BURGESS:** – just indicated fine.

**THE COMMISSIONER:** You've read the two?

**MR. O'BRIEN:** I've skimmed it –

**THE COMMISSIONER:** Okay.

**MR. O'BRIEN:** – Commissioner.

**MR. BURGESS:** Okay. Thank you, Mr. O'Brien.

What I want to direct you to is the second and third paragraphs on page 1, and I'll read it out for you. It says: “The” – and so, this is the letter from Astaldi to – Mr. Delarosbil to yourself and it says: “The ongoing series of inaccurate, self-serving letters from Company's site personnel serves only to create an unreliable record wholly at odds with Company's obligations and on-going discussions between Company and Contractor's most senior officers.”

Then we get to the third paragraph: “Contractor's many requests for the full Project Integrated Schedule, documented in” weekly progress meetings “over the past year, have been ignored. Company has provided Contractor with none of this essential schedule information and data.”

So, how do you respond? This, I would put to you, is written confirmation from Astaldi to Nalcor that you are, in fact, not sharing the project integrated schedule. How do you respond to that, Sir?

**MR. O'BRIEN:** How do I respond to that? Well, what this letter is, is a clear commercial positioning by Astaldi at a time in 2016 when Astaldi was trying to advance a significant claim and suggested to the owner that the contracts were null and void, at the same time, working to negotiate some longer term arrangement in order to be compensated to stay and continue work on the site.

You can't look at this letter out of context – absent the correspondence issued by the owner to Astaldi at that time, nor would I suggest that anything that's contained within this letter is necessarily factually accurate or correct.

**MR. BURGESS:** Okay. But would you at least agree with me that it is correspondence alleging by Astaldi that you are not sharing the project integrated schedule? Would you agree, at least, there's a paper trail for that allegation?

**MR. O'BRIEN:** Astaldi is making this allegation in this letter.



**MR. BURGESS:** I agree. But would you at least agree –

**MR. O'BRIEN:** I agree that Astaldi's making an allegation in a letter.

**MR. BURGESS:** Okay. And your response is what? The allegation is false?

**MR. O'BRIEN:** My response is Astaldi made many allegations –

**MR. BURGESS:** Okay, no –

**MR. O'BRIEN:** – through this period.

**MR. BURGESS:** – but, Sir, what I'd ask you to do is not tell me – you've explained a number of times your issue with the position taken by Astaldi for commercial reasons, and we've heard that. But I'm specifically asking to you to respond to the allegation by Astaldi that Nalcor is not sharing the Integrated Project Schedule and I'm asking you, is that allegation false or is it true?

**MR. O'BRIEN:** At this time, I don't know if Astaldi was in possession of an integrated schedule, but I will tell you Astaldi was manipulating schedule information in relation to delivery of milestones and manipulating the progress of the work at site in order to maximize commercial benefit for themselves, as is outlined later on in this letter.

Again, this is entirely out of context and absent the correspondence provided by company in relation to what Astaldi was doing at that time, I can't speak to any of the specific details in –

**MR. BURGESS:** Okay, but I understood your evidence earlier today to be – and just recently – that you shared this integrated project schedule.

**MR. O'BRIEN:** We did.

**MR. BURGESS:** Okay, then Madam Clerk, P-03106 please.

Mr. O'Brien, this is another correspondence and it's from Muskrat Falls Corporation. P-03106 – and again, it's not in your binder so we'll have to look at the screen.

So, you see this letter? You want to go up to the top or how do you –

**MR. O'BRIEN:** No, no. Why don't we talk to the very first paragraph? So, at this time the process was being established – the contractor was required – so, no other contractors were working on site. And –

**MR. BURGESS:** No, before we go in –

**MR. O'BRIEN:** – (inaudible). No, it's important to understand context.

**MR. BURGESS:** But first, what I want you to do, Mr. O'Brien – if you want to take the chance and the opportunity to review the letter – it's a letter from yourself to Mr. Delarosbil – but I want you to have the opportunity to review it before I ask you a question on it.

Would you like to review it or would you like me to just bring you to the specific portions that I'd like to ask you about.

**MR. O'BRIEN:** I'd like the opportunity to review it.

**MR. BURGESS:** Okay.

**MR. O'BRIEN:** Do we have a hard copy that I can look at?

**THE COMMISSIONER:** I'm sorry, we don't –

**MR. O'BRIEN:** No?

**THE COMMISSIONER:** – physically –

**MR. O'BRIEN:** It's difficult to read on the screen –

**THE COMMISSIONER:** I know.

**MR. BURGESS:** – scrolling up and down.

**THE COMMISSIONER:** Why don't you control the screen then, why don't you –

**MR. O'BRIEN:** Can I do that?

**THE COMMISSIONER:** Yeah. No, in the sense of telling the clerk and she can do it for you.

**MR. O'BRIEN:** Of course.

**THE COMMISSIONER:** So, just as you want it to move, you go ahead and tell the clerk.

**MR. O'BRIEN:** Okay, can you scroll down?

Okay.

Okay.

Okay.

**MR. BURGESS:** You're looking up, Mr. O'Brien; are you sufficiently – have you sufficiently reviewed the letter? I'll ask the Commissioner in a second.

**MR. O'BRIEN:** I haven't reviewed the letter in its entirety; I've skimmed through it. I understand the context –

**MR. BURGESS:** Okay.

**MR. O'BRIEN:** – that this letter was issued.

**MR. BURGESS:** Right.

I'll ask you a question in a second, but first I want to make sure the Commissioner has had sufficient time as well please.

**THE COMMISSIONER:** Is it just the first part of the letter that you're gonna be asking –?

**MR. BURGESS:** Yeah, it is. The first two pages, Commissioner.

**THE COMMISSIONER:** Okay, let's go back to the first page.

**MR. O'BRIEN:** It's a very long letter, Commissioner.

**THE COMMISSIONER:** Yeah, that's why I figured I'd just stop there.

**MR. SIMMONS:** Yeah, Commissioner, if I might, I don't know where the line of questioning is going and if it's factual matters

that can be answered factually I think it's fine. If – I suspect, if the questioning were to stray into areas of talking about motivation or strategy behind some things that are happening, I'm afraid that we're gonna start straying into areas that are more sensitive with the upcoming arbitration.

**MR. BURGESS:** Commissioner, I can respond to that. I'm not straying into that area.

**THE COMMISSIONER:** All right, okay. So let's get to it.

**MR. BURGESS:** Yeah.

I have some –

**THE COMMISSIONER:** And if we go – like, I am very conscious that there is an ongoing arbitration between these parties, and as I said before many times, I do not want anything here at this Inquiry to impact that in a negative way for the people of the Province of Newfoundland, nor for Astaldi. So in the circumstances, I want you to bear that in mind, as I'm sure Mr. Simmons will when he questions the witness.

**MR. BURGESS:** I absolutely am, Commissioner, but this relates specifically to evidence that's been –

**THE COMMISSIONER:** Yeah.

**MR. BURGESS:** – already stated by this witness.

So Mr. O'Brien, if you could just look at the second paragraph under – it's entitled "Project Integrated Schedules," and I want to refer you to the first two lines. And so this letter is in response to that one we just looked at –

**MR. O'BRIEN:** Mm-hmm.

**MR. BURGESS:** – where Astaldi is raising the issue saying – and I'll paraphrase – but we – you won't give us the project integrated schedule. And if I read this letter, I want to refer you to a couple of lines here first. The "Company has advised Contractor" – so this is Nalcor saying we've advised you, Astaldi – "on several occasions that the Integrated Project Schedule is of no benefit to Contractor in planning its work.

The Integrated Project Schedule is a high level Company management tool only.”

And then, Madam Clerk, if we could scroll down to the second page, please, the first full paragraph, it starts at: Commencing. And there it says: “Commencing with its March 26, 2016 Monthly Progress Report, Contractor has included in the Planning Section of its reports the following comment: *‘At the moment, Astaldi is still waiting to receive the integrated schedule related to other subcontractors from the client and Company’s validation of the interface milestones with other contractors.’*”

“In response to Contractor’s statement in its April 30, 2016 Monthly Progress Report, Company commented as follows: *‘The text in Section 5 states “...still waiting to receive the integrated schedule related to other subcontractors...” As a note of clarity, Company will not be providing the integrated schedule to contractor.’*”

So what I’m trying to understand is I don’t see – that I think that is inconsistent with your evidence that Nalcor was providing the integrated project schedule to, at least, Astaldi and this seems to support that.

**MR. O’BRIEN:** That’s not correct.

**MR. BURGESS:** Okay, can you explain why it’s not correct?

**MR. O’BRIEN:** I can. This is a complicated commercial situation, Commissioner, and the commentary related to both of these letters speaks to commercial issues that were happening at the time, and if I might add, I believe to be relevant to the ongoing arbitration effort.

What I will tell you is Astaldi was endeavouring to manipulate the schedule through their progress reports and through the information that was being provided to the owner at that time. And they were establishing positions in relation to letter correspondence that were being put forward in order to better their outcomes in relation to an ongoing claim.

What I will say is that once the completion agreement was put in place, an agreement was

made with respect to schedule delivery. The integrated project schedule was shared consistently with Astaldi through the processes that I’ve described today.

I’ll also point out at this time Astaldi was the only contractor working on site in relation to the powerhouse and had no interfaces in relation to other works.

**MR. BURGESS:** Commissioner, in light of that, is it appropriate and do I have – is it okay for me to ask a couple of questions related to that? Because it seems to me, Commissioner, that it’s a very distinct point as to the evidence that he led earlier today and I see it being inconsistent. And I’m asking – and I think it’s relevant and I don’t see how that can impact the arbitration.

**THE COMMISSIONER:** Well, I’ll let you just ask your question and I’ll tell you if you’re – like, I’m still trying to – I’m sitting here trying to figure out now: How is this helping me with regards to a determination of the Terms of Reference? I mean it’s all very nice and interesting, I’m sure, for Astaldi and for Nalcor, but I’m not intermingled in that arbitration case.

**MR. BURGESS:** Yeah.

**THE COMMISSIONER:** So as long as it relates to the Commission’s Terms of Reference –

**MR. BURGESS:** Right.

**THE COMMISSIONER:** – I’ll let you ask the question.

**MR. BURGESS:** Well, here’s the relevancy, Commissioner, and the witness can hear this and then he can address it if he wants.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** There’s been – I thought that – before today I didn’t think there was an integrated schedule. And we’ve heard evidence to say if we had an integrated schedule, then that would’ve made the job easier and it would’ve kept cost down – the opportunities to impact on the cost and opportunities. To me, that goes to

the relevancy of the Terms of Reference of this Commission and is unrelated to the arbitration.

Now, we've heard the witness earlier today say: Well, that's not true, Mr. Delarosbil saying that there was no integrated project schedule. He must've forgotten because there was. But now we have correspondence going back and forth where the company, Nalcor, is saying: We're not giving it to you.

Now, he can say what he wants about anything else and phrase it as he wants, but this seems to be an indication they're not sharing the integrated project schedule. And I'm just putting it to him, that goes – that is inconsistent – I mean, it's black and white and I'm looking for an explanation. Because either the evidence he gave was false or there's an explanation.

**THE COMMISSIONER:** Mr. Simmons.

**MR. SIMMONS:** I think Mr. O'Brien has already answered that. He's just said that following the – putting the completion agreement in place, there was an agreement reached at that time and that the integrated project schedule was shared. So anything he said earlier is not inconsistent with that.

**THE COMMISSIONER:** Well, here's what –

**MR. SIMMONS:** And these letters speak for themselves.

**THE COMMISSIONER:** Right, but – so here's what I – maybe just so I can understand this, but what I got so far – I got what you said, Mr. Burgess, in the sense of that's what the witness did say earlier this morning, or earlier today, with regard to the integrated schedule. The – but now what I'm – I guess what I'd like from Mr. – and I don't think that this is commercially sensitive or whatever, but what I would like – and I'm not even sure where this is going, but I would like for Mr. O'Brien just to tell me: So was there a period of time when the integrated schedule was not being provided to Astaldi?

**MR. O'BRIEN:** Yes, there was a period of time when that information was not being provided to Astaldi, as we've outlined in this letter.

**THE COMMISSIONER:** Right and –

**MR. O'BRIEN:** There were sensitive – I'm sorry, Sir.

**THE COMMISSIONER:** So – and just because I don't want to get into areas where – so – and that relates – and what I hear – and what I am hearing from you, is it, that what you're saying is that was done, based upon the fact that the parties were then in negotiations, there were claims issues. This was commercial letters and there were commercial reasons why the schedule was being withheld.

**MR. O'BRIEN:** That's correct.

**THE COMMISSIONER:** Okay. So does that answer –?

**MR. BURGESS:** Well, I'm not sure. Is he – I'm sorry if I – can I – so I can make sure I understood what you just said to only what he acknowledged – was, for some reason, back in 2016 he acknowledges they were withholding the integrated schedule. Is that what I understood?

**THE COMMISSIONER:** That's what I heard him say. Yes.

**MR. BURGESS:** Okay, but that wasn't his evidence earlier and that's what I wanted to clarify.

**THE COMMISSIONER:** I understand –

**MR. BURGESS:** So what your evidence is now is, once the completion agreement was signed, then that's when you decided. And, at that point, did you share the integrated project schedule, because Mr. Delarosbil's says you didn't?

**MR. O'BRIEN:** We can provide to the Commission the evidence of the regular meetings that occurred with all the contractors and the schedule information that was provided. As I described this morning, those meetings occurred daily and weekly and schedules are issued on a weekly basis.

**MR. BURGESS:** Right. But what you said earlier was there was these meetings, and the look forward –

**MR. O'BRIEN:** That's correct.

**MR. BURGESS:** – you mentioned the specific time of three weeks.

**MR. O'BRIEN:** That's correct, as well as the longer term schedule was also provided to the contractors.

**MR. BURGESS:** Okay, so you dispute the accuracy of Mr. Delarosbil when he testified. Is that correct?

**MR. O'BRIEN:** That's – I don't know exactly what Mr. Delarosbil said. What I've offered is that there were and are integration meetings that take place at site –

**MR. BURGESS:** Okay.

**MR. O'BRIEN:** – that addresses all of the things that I've spoken about.

**MR. BURGESS:** Okay.

Then I'm going to switch topics, Mr. O'Brien, and the DT02 incident. And I'm not going to get into the specifics of that but I just wanted to ask: Was there anyone reprimanded, suspended or removed from site as a result of the DT02 incident?

**MR. O'BRIEN:** I don't recall specifically if anyone was removed from site as a result of that incident.

**MR. BURGESS:** Sorry, I didn't get the last part.

**MR. O'BRIEN:** I said I don't recall if anyone was removed as a result of that incident.

**MR. BURGESS:** Okay.

But if that – if someone was removed, it would be you signing that letter. Correct?

**MR. O'BRIEN:** Not necessarily. Site removals often took place through the safety absolute committee (inaudible) with my signature.

**MR. BURGESS:** Okay.

And if there's a letter such supporting the fact that someone was suspended or removed from site, would you provide that to Commission counsel, please, if that's appropriate, Commissioner?

**THE COMMISSIONER:** So for what purpose?

**MR. BURGESS:** Because I want to see – there's going to be certain questions on another incident where there were people removed from site and I will be asking if it's inconsistent application of a policy?

**MR. SIMMONS:** Commissioner, there's no process here for inter-interested party discovery of documentation. If it's a matter of identifying and finding documentation, the Commission either already has it or if they don't, they can request it from Astaldi. And it's Commission counsel's prerogative to determine if anything should be requested or produced, not another interested party.

**MR. BURGESS:** I can leave it at that, Commissioner.

**THE COMMISSIONER:** What I think you should do is if you – like, I'm not exactly sure where you're going with this, but I want to give you as much liberty as I can. But if there is a document that you feel would be helpful to me, then you can request it from Commission counsel and it can be – if it's not already entered, it can then be marked as an exhibit.

**MR. BURGESS:** I will do that. Thank you, Commissioner.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** We've heard you give evidence, Mr. O'Brien, with respect to the removal of three individuals from Astaldi on July 7, 2018, in relation to the crane incident.

**MR. O'BRIEN:** Yes.

**MR. BURGESS:** And as I understood it, you discussed – and I want to get some clarification – that while that decision – you would agree that you signed the letters – or the letter came from

you; I think it was signed by Mr. Power on your behalf.

**MR. O'BRIEN:** I did not sign the letters. I was on vacation in California at the time those letters were signed.

**MR. BURGESS:** Okay. The letter has your name on it. That's what –

**MR. O'BRIEN:** Yes, it does.

**MR. BURGESS:** – I was just explaining, that Mr. Power, I think, was the one who signed the letter on your behalf, correct?

**MR. O'BRIEN:** Yes.

**MR. BURGESS:** Are you aware, though, of that decision?

**MR. O'BRIEN:** Yes, I am.

**MR. BURGESS:** And did you have any involvement in making that decision?

**MR. O'BRIEN:** I was made aware of the decision and discussed the decision with the team at the time that it was made.

**MR. BURGESS:** And you had earlier in your evidence today talked about, if I understood it correctly, a safety absolute committee? Do I have that right?

**MR. O'BRIEN:** Yes.

**MR. BURGESS:** And is that the committee who deals with all safety issues?

**MR. O'BRIEN:** That's the committee that deals with safety issues in relation to safety absolutes.

**MR. BURGESS:** And in a case such as – whether it's the DT2 incident, whether it's the crane incident, do they have authority to make that decision? Or can you and do you do that on your own?

**MR. O'BRIEN:** They do have the authority to make that decision. Never is a decision taken with respect to the removal of an individual from site by me, on my own, as an individual. Any decision to remove an individual from the

Muskrat Falls site is taken very seriously. It's not something that's done haphazardly. The decisions are very considered and they're escalated to senior levels within the organization to ensure alignment and approval before any action is taken.

**MR. BURGESS:** And in this particular case, with the crane – what I'll call the crane incident –

**MR. O'BRIEN:** Mm-hmm.

**MR. BURGESS:** – you know what I'm talking about when I refer to it?

**MR. O'BRIEN:** I do remember the crane incident.

**MR. BURGESS:** And who would've made that decision?

**MR. O'BRIEN:** Ultimately Gilbert Bennett.

**MR. BURGESS:** Okay.

We heard some evidence from Astaldi witnesses and saw some documents where there was some communications between people at the high level of Astaldi with Mr. Stan Marshall. Did you hear that evidence? And in relation to the removal of site from Mr. Brian Chaput?

**MR. O'BRIEN:** No, I did not hear that evidence.

**MR. BURGESS:** The evidence was that there was some discussions between senior persons within Astaldi and Mr. Stan Marshall and that it was the understanding of the Astaldi person that Mr. Marshall was going to take the necessary action to have Mr. Brian Chaput returned to site. Are you aware of that?

**MR. O'BRIEN:** I'm not aware of anything in relation to that testimony, no.

**MR. BURGESS:** Okay.

Now, you've referenced the agreements between Astaldi, the Bridge Agreement and the completion agreement, correct?

**MR. O'BRIEN:** Yes.

**MR. BURGESS:** And you're familiar with those documents, I take it? I don't mean from a legal standpoint.

**MR. O'BRIEN:** Generally, yes.

**MR. BURGESS:** Right.

And in your evidence, though, one of the things you were putting forward was the additional money to Astaldi from the \$1.1-billion contract price – and I'm using approximate numbers now – to the number in the completion agreement had to do with the fact that Astaldi didn't have money at the time. Did I understand your evidence to be correct in that respect?

**MR. O'BRIEN:** Yes.

**MR. BURGESS:** But I would put to you that there was a significant claim put forward by Astaldi alleging that the entitlement to certain funds was actually, as a result, not of the responsibility or fault of Astaldi. Are you at least familiar with that principle?

**MR. O'BRIEN:** The justification for incremental compensation?

**MR. BURGESS:** Right.

And that justification agreement, which you referenced – and I don't believe it's in evidence – but that was a claim for about \$785,000. Is that correct?

**MR. O'BRIEN:** Seven hundred and eighty-five thousand dollars?

**MR. BURGESS:** Or, sorry, \$785 million. My mistake.

**MR. O'BRIEN:** I don't know the exact number. I am aware that there was also a response from Nalcor in a 27-page letter signed by Lance Clarke –

**MR. BURGESS:** I – no, I –

**MR. O'BRIEN:** – in relation to that claim.

**MR. BURGESS:** – I don't want to get into, Mr. O'Brien, to the details, but you will at least acknowledge that there was a claim by Astaldi

for a significant amount of money in the range of what the completion agreement was.

**MR. O'BRIEN:** I'm aware of the claim.

**MR. BURGESS:** Okay.

And, Commissioner, I'll just point to the Commission for reference. In the Bridge Agreement, which is at P-03028, there are some whereas clauses that talks about the fact the agreement is being made without any acknowledgement with respect to causes or liability for the amounts being claimed and paid. And I just do that for reference.

Now, Mr. O'Brien, on a number of occasions, you've talked about Mr. Delarosbil, and you're very familiar with Mr. Delarosbil, aren't you?

**MR. O'BRIEN:** Yes, I am.

**MR. BURGESS:** And would you acknowledge and agree that he's a very experienced and well-respected project manager in Canada?

**MR. O'BRIEN:** Mr. Delarosbil is certainly an experienced manager, yes.

**MR. BURGESS:** Would you agree that he's well respected?

**MR. O'BRIEN:** I can't speak to his reputation in Canada. I don't know of it.

**MR. BURGESS:** Okay.

Now, I understood you earlier to say that is you understood that he didn't have any hydro experience. Is that –?

**MR. O'BRIEN:** That's my understanding.

**MR. BURGESS:** Okay.

Well, in the evidence that we heard – and I won't bring you back to it – but I will suggest to you he was involved in a project called Plutonic, which is in British Columbia. And his evidence was it was a project – I understand it to be a hydro project, but we'll go back and we'll check the records – and it was about a billion-dollars cost – or project at the time. And he equated that, being 10 years ago, to about \$2 billion.

**MR. O'BRIEN:** Okay. I was unaware of that.

**MR. BURGESS:** And he talked about the Mattagami Project that he was involved with. Are you familiar with the Mattagami Project?

**MR. O'BRIEN:** Yes, I am.

**MR. BURGESS:** And he was involved with a hydro project in Cochrane, Ontario. So you weren't familiar that he had involvement in those, right?

**MR. O'BRIEN:** No, I wasn't.

**MR. BURGESS:** Okay.

You've indicated on a couple of occasions that the Commission shouldn't accept his evidence. It's tainted, I believe, is what your evidence was. And I've got quotes, I think three times at least if not more – probably more today – do you –

**MR. SIMMONS:** Commissioner, it's – I did not hear Mr. O'Brien to say the Commission should not accept Mr. Delarosbil's evidence. I heard him to provide some information that might be taken into account when considering the evidence, but I did not hear Mr. O'Brien make the statement that's been put into question asked by Mr. Burgess.

**MR. BURGESS:** I'm gonna put him – a quote to him, Commissioner, if that helps.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** So at page 102 of the transcript from May 30 – that's yesterday – you indicated "It's important to remember that Astaldi currently has an open claim for about \$800 million against the province. And anything that they say is affected or influenced by that claim and their desire to maximize their opportunities to recover against it."

Do you remember saying that?

**MR. O'BRIEN:** I do.

**MR. BURGESS:** Okay.

And you were asked by Ms. Muzychka, and it's on page 118 of the transcript from May 30, and

she says "So you're suggesting that his," and it's being Mr. Delarosbil's "evidence in that regard is tainted by the fact" that "he's got an outstanding claim – or his company does?"

And your response is "Of course, it is."

You remember saying that?

**MR. O'BRIEN:** If it's in the transcript, I'm sure I've said it.

**MR. BURGESS:** Okay.

Are you suggesting to this Commission, though, that Mr. Delarosbil's evidence, which he gave under oath, was false?

**MR. O'BRIEN:** I'm suggesting that the evidence provided by Astaldi is being provided through the lens of the claim that they have in front of –

**MR. BURGESS:** Okay.

**MR. O'BRIEN:** – Nalcor, at this time.

**MR. BURGESS:** I'm not asking are you – I know what you said, and that's what you said earlier. But I'm specifically saying – asking you the question, and I'd ask you to answer it specifically: Are you suggesting that Mr. Delarosbil's evidence is false?

**MR. O'BRIEN:** I can't speak to whether Mr. Delarosbil's testimony is true or false. All I've offered is that it needs to be contextualized. Astaldi's claiming against the province and the information that Astaldi is provided is viewed through that lens.

**MR. BURGESS:** Okay. Now, when you mentioned – when you made those comments with respect to it, and Mr. Power did the same thing, Mr. Ron Power, there was a reference to an \$800-million claim? Do you recall that?

**MR. O'BRIEN:** Yes, I do.

**MR. BURGESS:** And what's the basis for your allegation that there's an \$800-million claim, first of all?



**MR. O'BRIEN:** And the basis for my allegation is the notice of arbitration that's been filed by Astaldi.

**MR. BURGESS:** Okay. And is it your evidence that in that notice of arbitration, that there's a number of reference of \$800 million?

**MR. O'BRIEN:** Astaldi is providing a statement of claim to us today, that will provide a more detailed listing.

**MR. BURGESS:** No. You talked about the basis was a notice of arbitration. So, I wanna talk about that, Sir. In the notice of arbitration, are you alleging that there's a claim in that quantified for \$800 million?

**MR. O'BRIEN:** The notice of arbitration requests \$500 million in damages plus costs. And what I've offered was an estimate for the plus-cost portion to total approximately \$800 million. The statement of claim will be received today and –

**MR. BURGESS:** I don't want you to talk about –

**MR. O'BRIEN:** – (inaudible).

**MR. BURGESS:** – that, Mr. O'Brien, please.

Commissioner, just for reference, the notice of arbitration is not in, I don't believe, as an exhibit. I did communicate with Commission counsel last night and what I will say that in the submission made by Nalcor to the Commission in Phase 1 for the commercial sensitivity submissions, they did in fact provide a copy of the notice of arbitration and, as Mr. O'Brien has now said, there's no reference to \$800 million. Just want to make that point for the record, Commissioner.

**THE COMMISSIONER:** I think the point is, is that there's no reference in that document, to \$800 million. There's a reference, as I understand, to \$500 million plus costs, but this witness is equating the cost component as \$300 million. That's what his – that's what I think you're saying?

**MR. O'BRIEN:** That's my estimate, Sir.

**MR. BURGESS:** Okay. Well, I don't want to stray too much into that though –

**THE COMMISSIONER:** Right.

**MR. BURGESS:** – but –

**THE COMMISSIONER:** Okay. But, anyway – I get the point.

**MR. O'BRIEN:** The danger, Commissioner, is this though –

**THE COMMISSIONER:** I get the point that there is a, you know – in the notice of arbitration, which I – to be frank, I haven't seen or I can't recall seeing it, so – I've seen a lot, so I can't recall seeing it, so I can't say I didn't see it. But what I understand is, there's – there was reference to \$500 million at that stage of the game, plus cost. I understand that.

**MR. BURGESS:** Right, and that's posted on the Inquiry's website.

**THE COMMISSIONER:** Okay. Thank you.

**MR. BURGESS:** Okay.

And the claim, though, is not against the people of Newfoundland and Labrador, as you say it's – it's against Muskrat Falls Corporation, isn't it?

**MR. O'BRIEN:** Well, yes, it is against Muskrat Falls Corporation, which is an entity of Nalcor, which is a single shareholder, which is the Government of Newfoundland.

**MR. BURGESS:** Right. But it's the same company that was the project management team and, ultimately, spent over \$12 billion on this project, though.

**MR. O'BRIEN:** I don't think there's any reference to a cost of \$12 billion for capital expenditure on this project.

**MR. BURGESS:** Okay. I won't go further with that, then.

I just want to go back – and it's a question that I had made later in my notes, I apologize I didn't reference it earlier. But, was there some pressure put on Nalcor or the project management team

to sign the contract with Astaldi in November of 2013? Was there not a thought: Let's step back, it's not the right time, let's be cautious and let's do this later on when the weather is not such a critical upcoming issue? Was that ever discussed where you were?

**MR. O'BRIEN:** As I stated earlier, Astaldi signed up for this and committed to deliver in accordance with the milestone dates that were incorporated within the agreement and accepted to side, and signed off on it. I wasn't the party to any negotiation or discussion with respect to the agreement execution.

**MR. BURGESS:** So the answer is: No.

**MR. O'BRIEN:** The answer is: I wasn't part of the conversation.

**MR. BURGESS:** Right.

Now, I just want to clarify: Mr. Power made a couple of references in his evidence, and he indicated that you would be more appropriate to confirm this. Mr. Power's evidence – when he was giving evidence, he indicated that the work left by Astaldi to complete, when they were terminated in 2018, was something less than 10 per cent, but that you would know the more specific numbers.

Do you know the specific number?

**MR. O'BRIEN:** I think –

**MR. SIMMONS:** Commissioner, this may be another area where we have to tread a bit carefully. And Mr. O'Brien would know whether there's aspects of this that are involved or sensitive for the arbitration. So, it may be that if this is something that is of interest to you, that some general information could be provided. And if it's something that's of interest to you and you want more specifics, we can look at providing a confidential exhibit at some point afterwards, which would answer any questions you've got on this – on these topics.

**THE COMMISSIONER:** Any thought on that, Mr. Burgess?

**MR. BURGESS:** Yes.

Mr. Power gave that evidence. That wasn't from a question from me. He indicated in his evidence – his direct evidence – that he understood that it was 10 per cent or less, but that Mr. Power would know that. I'm also –

**THE COMMISSIONER:** Mr. O'Brien would know.

**MR. BURGESS:** Or Mr. O'Brien, sorry. And my second question then, to follow up, was to clarify because Mr. Power left it uncertain. So he's got evidence out there that: I think it's 10 per cent or less, but Mr. O'Brien knows.

He also indicated that there was a contract in place with Pennecon to finish Astaldi's work and he thinks it's \$150 million, but he wasn't certain. He said Mr. O'Brien would know that.

So my follow-up questions – and it wasn't objected to at the time other than you gave some caution to say, well, you got the percentages and the cost, Mr. Burgess, and you should leave it there, was what I read. And I'm just following up so we can clarify for the record whether Mr. Power's evidence was correct or incorrect.

**MR. SIMMONS:** So, Commissioner, if this is information that is of interest to you, I'm gonna propose that we will undertake to provide it as a confidential exhibit rather than have it disclosed to the other party in the arbitration, at this point. If it's relevant in the arbitration and it comes out in that context, that should happen in that forum, shouldn't happen here.

**THE COMMISSIONER:** Right.

I think what I got to try to understand here is certainly the – for me, the second question is something I would dearly like to know. So I'm not sure if there's an issue being taken with what the contract price is with Barnard – with Pennecon.

On the first question – maybe it's late in the day, but I'm trying to figure how this could impact the – knowing how much of the work was left to be done when Astaldi left the site, how is that ultimately going to impact the arbitration? And is it not something that the arbitrator will know as a matter, of course, in any event?

**MR. SIMMONS:** Yeah. And it's – and you're correct, it probably really is the second question that is more sensitive and that's one that I think the confidential exhibit you have already addresses in part. So – and Mr. O'Brien is perhaps in a better place than I am to recognize where the line is in relation to answering the question about how much work is left. So I'm willing to let him answer that question as far as he feels it's appropriate for him to go, but I'd like to respect that boundary there – that point.

So maybe if we hear what Mr. O'Brien has to say, that may satisfy the concern –

**THE COMMISSIONER:** Right.

**MR. SIMMONS:** – and maybe we can move on.

**THE COMMISSIONER:** So does that – because I do have some exhibits that provide me with some information and they are confidential exhibits. These are exhibits that generally aren't made available to the parties and not going to be made available to you, for obvious reasons, but these are confidential exhibits that are out there. So I'm well aware of the concern about the value of the Pennecon contract.

So the first question, as I said, I was having trouble figuring out how that would be something that wouldn't come into the arbitration that the arbitrator would not know.

**MR. BURGESS:** I can't – I can speak to that, Commissioner, because I'm hearing that several times from the witness: I don't want to stray into that. Yet he strayed into a whole lot of other areas like DT2 and other areas and I didn't object.

The arbitration is not going to be some kind of a secret we're going to hold things back. A very – it's hard to imagine – barring someone from Nalcor saying that is a very issue which we will fight with respect to the confidentiality of the arbitration, I can't imagine that those two questions –

**THE COMMISSIONER:** Okay.

Okay, here's – it's now quarter after 4, Friday afternoon and I'm intent on getting Mr. O'Brien

finished. So the way – and right now, to be honest with you, I just – I need to sort of percolate this in my mind a little bit more and I can't do it –

**MR. BURGESS:** And it's my last question so –

**THE COMMISSIONER:** I can't do it right on the spot. So here's what I'm going to suggest: I would like for Nalcor – like, Mr. – you know, I'm trying to do this carefully. Mr. Simmons, I'm assuming is not counsel of record on the arbitration. So he needs to consult with whoever that is to figure out exactly what is going – you know, what is – what fits within the test that I've set out and what does not fit within the test.

I'm going to give him that opportunity to do so. So the two questions that you have left to do – left to ask are one: How much of the work was left to be done once Astaldi left the site, with regards to its contract –

**MR. BURGESS:** Correct.

**THE COMMISSIONER:** – and two, what was the amount of money that was paid to Pennecon.

**MR. BURGESS:** Which I understand was a contract to finish all of the Astaldi's work.

**THE COMMISSIONER:** Right, to finish Astaldi's work. That's –

**MR. BURGESS:** That's the two questions.

**THE COMMISSIONER:** And I do have – I have something on that now, but it's not out to the public. So I need for Mr. Simmons to explain to me and to convince me that it is something that could potentially be commercially sensitive, that could impact, negatively, the arbitration.

If I can – if I see that, it will not go out publicly. It will be maintained by myself as a confidential exhibit so I can consider it. If it isn't, then it will be made public at that stage.

**MR. BURGESS:** I agree with that approach.

**THE COMMISSIONER:** And what I'm prepared to do, once Mr. Simmons is able to get back to Commission counsel on this, we'll – Commission counsel will have a discussion with

you and Mr. Simmons and we'll figure out the next step. If we have to come back in and talk about this and I have to bring Mr. O'Brien back for half an hour or 15 minutes, or whatever, to get the answer to the question, well, I will. If we don't need to do that, we won't.

So let's just – can we just leave it at that for the time being and let me just think about it over the weekend as well. And I need more information that I personally have.

**MR. BURGESS:** Not only can we leave it like that, my questions are over, Commissioner.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** Thank you.

**THE COMMISSIONER:** All right, so you'll work with Commission counsel on that subsequently next – early next week. And, Mr. Simmons, do you agree with me, what I suggested?

**MR. SIMMONS:** Yes, that's perfectly satisfactory, Commissioner. I'll – we'll take it away, I'll get some instructions and I'll communicate with Commission counsel on it.

**THE COMMISSIONER:** Okay.

**MR. BURGESS:** Thank you, Commissioner.

Thank you, Mr. O'Brien.

**THE COMMISSIONER:** All right, thank you.

Thank you, Mr. Burgess.

Nalcor Energy.

**MR. SIMMONS:** Mr. O'Brien, you know who I am.

**MR. O'BRIEN:** I do.

**MR. SIMMONS:** You do. Okay.

And it is almost 20 after 4 this Friday afternoon, as the Commissioner has pointed out. I'm going to try to abbreviate a few things as quickly as possible.

There are some documents that have gone in evidence that I just wanted to draw your attention to. And one issue in particular that I'd like you to give some comment on, Exhibit P-03941, please. The subject of safety on the work site has come up in various contexts through this phase of the Inquiry. Could there be –

**THE COMMISSIONER:** Okay, that's at tab 40, in book 1 in your book, Mr. O'Brien.

**MR. O'BRIEN:** Thank you.

I'm sorry, Commissioner, can you repeat the tab number?

**THE COMMISSIONER:** Tab 40.

**MR. O'BRIEN:** Thank you.

**MR. SIMMONS:** So the topic of safety on the work site has come up in various contexts so far in this phase with different witnesses commenting in general terms about whether they saw safety processes as effective or not. And the exhibit I've brought you to here, I think, is a presentation dated March 21, 2019, that you're familiar with, is it?

**MR. O'BRIEN:** Yes, I am.

**MR. SIMMONS:** Okay.

And it concerns safety performance specifically for the Muskrat Falls generation site. Is that correct?

**MR. O'BRIEN:** It does, although it incorporates some elements of safety performance with respect to our other work sites as well.

**MR. SIMMONS:** The title says: Safety performance, two years LTI free. What's LTI?

**MR. O'BRIEN:** LTI is lost time incident frequency. So it's a measure of – it's one of the measures that we use to look at safety performance. It's not the only measure but it's a good indicator of how work sites are performing generally. And it's a measure of the number of incidents where a worker doesn't get to return to work the next day per 200,000 hours, which is essentially a year's work.

**MR. SIMMONS:** Right.

So is this an industry standard way of measuring safety performance?

**MR. O'BRIEN:** It is. It's used across North America to assess safety performance on major projects.

**MR. SIMMONS:** So two years LTI free, was this a milestone of any sort that was being recognized?

**MR. O'BRIEN:** It was a big one for the project and one that we celebrated across the entire project. We have – in fact, we're still LTI free beyond the 21st of March, but at that time we had been two full years without a lost time incident, so two years since any worker was not able to come back for their shift the next the day.

It was not only celebrated by Nalcor as a project milestone, but we've also been awarded an award by the Canadian Building Trades in relation to our safety performance and the work that we've done in order to ensure that everybody gets to go home safely every single day.

**MR. SIMMONS:** Right. And what kind of organization is the Canadian Building Trades?

**MR. O'BRIEN:** The Canadian Building Trades is the representative organization for all of the building trades unions across all of Canada. So that would include all of the building or labour union organizations that are working at the Muskrat Falls sites and their national representatives.

**MR. SIMMONS:** Right. And are the unions that are members of the Resource Development Trades Council affiliates or members of that organization?

**MR. O'BRIEN:** Yes, they are all affiliated with the Canadian Building Trades.

**MR. SIMMONS:** There are a couple of exhibits that were put in – I won't bring you to them – that describe that particular award that you're referring to. And they identify that the recipients who actually accepted the award were Gilbert

Bennett, on behalf of the Lower Churchill Project, and also Mr. Darin King.

**MR. O'BRIEN:** That's right –

**MR. SIMMONS:** And –

**MR. O'BRIEN:** – as a representative of the RDTC.

**MR. SIMMONS:** Okay.

And what's Mr. King's current role in the RDTC?

**MR. O'BRIEN:** Mr. King is currently the executive director, I believe, of the RDTC.

**MR. SIMMONS:** Okay.

I'm not going to ask you very much about labour relations because I'm not actually sure how much that you've been closely involved in it. But can you tell me, generally, what the relationship has been with the RDTC under Mr. King's leadership?

**MR. O'BRIEN:** It's been very, very good. We work very closely with Mr. King locally and the local business managers, as well as with their national counterparts and meet them routinely to review project progress, to review things like safety performance, to review the path forward with respect to the project and to work to resolve, in amicable ways, any of the grievances which may be – may manifest as a result of the contractors' works.

**MR. SIMMONS:** I'll bring you back to the presentation, and if you go to page 3, please, there's a table there. And am I correct that this is a comparison for the years 2013 up to 2018 between the safety performance measured by "Lost Time Incident Frequency" between the three projects forming the Lower Churchill Project that are listed on the bottom of the table and Newfoundland and Labrador as a whole and Canada as a whole.

**MR. O'BRIEN:** Yes, that's correct.

**MR. SIMMONS:** And how have the projects compared to the numbers for the province and for the country?

**MR. O'BRIEN:** So as you can see, the projects' performance is in general a whole order of magnitude better than the performance that is being seen across Newfoundland, and across Canada in general. And it's really something that's a result of the hard work that we've put in, in order to build safety culture and to create an environment where everybody feels responsible for, not only themselves, but all of their colleagues and the workers around them and ensuring that everybody gets to go home safely every day.

**MR. SIMMONS:** Okay. And page 4, please.

There's a graph here that shows in graphic format, I think, comparison of the Lower Churchill Project as a whole, which I understand to be represented both by the yellow bars at the bottom and by the black line that runs across the bottom of the chart; is that correct?

**MR. O'BRIEN:** That's correct. So that black line represents the project to date –

**MR. SIMMONS:** Yes.

**MR. O'BRIEN:** – across all the years with the yellow bars representing performance in any one year. The blue line above that is a standard developed by Dupont to establish what really is a world class – in their words, not mine – world-class safety performance and the project has consistently performed well beneath – or much better than – beneath is better than, in this context – much better than that world-class definition.

The other lines reference Canadian standard averages and then information that we were provided by one of the other Canadian projects currently under construction in relation to their safety performance.

**MR. SIMMONS:** Okay. Now, page 13, please.

You just referred to Dupont's management – world safe – world-class safety measurement; this slide, I think, addresses that and am I correct that, in the second bullet, it says that, "Nalcor has identified Work Class Safety Performance to be 0.15 ... as a Lost Time Injury Frequency Rate." And the actual performance of the project has been 0.07 – approximately half.

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** Or twice as good as the targeted world-class measurement level.

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** And we'll just look at page 14 and then page 15, and these are other measurements comparing the Lower Churchill Project safety statistics. I won't get you to go through those, I just draw those to the Commissioner's attention.

And I will go to page 16, please.

Does this slide and this chart show the safety performance trend over time for the project?

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** And what does it tell us?

**MR. O'BRIEN:** What it tells us is – and it's in the heading – as the person-hours have increased on the project, our safety incidents have actually decreased. In 2018, obviously, our person-hours were reduced as the project's coming to completion. But it's indicative of the – I'll call it groundswell within the project and the contracting organizations and the owner's team toward building that safety culture and really ingrain the right behaviours and attitudes across all of the people working on the project.

**MR. SIMMONS:** Okay.

And, Commissioner, I'd refer to two other exhibits concerning the Canadian Building Trades Unions' award. Those are Exhibit P-03944 and 03945.

Mr. O'Brien, you were asked questions yesterday regarding camp accommodations and the availability of camp accommodations, and as part of the answer you gave, you had said, I understand, that pressure on camp accommodations rose – arose in large part from the difference between Astaldi's forecast requirements for camp accommodation and those that they actually required as they got into performance of the work.

**MR. O'BRIEN:** That's correct. Both the number of persons that Astaldi required on the site and the durations for their participation on the site grew dramatically from what Astaldi forecast at the bid phase.

**MR. SIMMONS:** Can we have Exhibit 03942, please.

**THE COMMISSIONER:** 03942, did you say?

**MR. SIMMONS:** 03942 and that is –

**THE COMMISSIONER:** Tab 41.

**MR. SIMMONS:** – book 1, tab 41, if you need to refer to it. The screen will probably do it for the purpose of my question.

So this is the first page of this exhibit and there is a graph there headed, "Astaldi Monthly Camp Requirements – Forecast vs Actual."

Can you just explain to me how we read this graph and how it relates to the evidence you've given regarding the comparison between forecast camp requirements and actual camp requirements.

**MR. O'BRIEN:** Of course.

What this chart shows is a month-over-month requirement for bed nights in the camp, so bed night being a night that a person would be required to sleep in the camp. And if you look at the blue line – the lower blue line, that's representative of what Astaldi forecast – what they projected they would require for completion of the work, and you can see that that peaks at about 20,000 through the fall of 2014, and then a slow decline in the number of bed nights required for delivery through June of 2018.

The green and red lines are the actual requirements of Astaldi measured from two different systems; one, an internal reservation system, one our benefits management system. So, a slightly different baseline, but what they show is a very clear deviation from that forecast plan, whereas Astaldi had previously peaked early in 2014 of 20,000 bed nights per month in their forecast.

What we actually saw was a month-over-month well in excess of 30,000 bed nights per month, peaking at approximately 40,000 bed nights all through the summer of 2017. It was for this reason, as I talked about yesterday, that we – it was necessary for us to procure and install additional camp space and take other mitigating measures. Because not only was the number of people growing dramatically, but the duration associated with their time on-site was growing dramatically.

And as the project was originally scheduled, other contractors – ANDRITZ, Barnard-Pennecon for example – would ramp up in the period that Astaldi was ramping down in order to – and we would be able to maintain a fairly consistent camp capacity as a result of that. But because Astaldi's requirements extended far beyond anything that they projected, all of a sudden, Astaldi had large numbers of people required on site at the same time that the other contractors still needed to ramp up. And that, again, is why we had to procure additional camp space.

**MR. SIMMONS:** Okay.

Can we go to Exhibit P-03946, please?

You've given evidence already, Mr. O'Brien, concerning turnaround times for concessions and other types of requests that originate from site.

This – there's a number of sheets to this document – a number of pages.

Can you tell us what this report is and what the purpose of it is, please?

**MR. O'BRIEN:** This is a management report that we issued weekly with respect to Astaldi's contract. We did this for other contracts as well, and it's a snapshot highlighting progress through a variety of documentation-related issues in support of the execution of the work.

So, it documents the number of documents that are under review – the number of site queries – the number of quality related requests non-conformances, concessions, et cetera. And what's highlighted here clearly indicates, as I talked about earlier, that the response times for Astaldi, in relation to the queries and

concessions that they were raising at site, was well within the reasonableness test and certainly well below the standards that we had established at the contract award.

**MR. SIMMONS:** If we look on the column on the far right near the bottom, there's a section there headed Letters. Do you see that?

**MR. O'BRIEN:** Yes.

**MR. SIMMONS:** And there are some numbers there. Can you tell me, as of the time of this report, which was February 2018, how many letters had been issued by the contractor and how many letters had been issued by the company to the contractor?

**MR. O'BRIEN:** So at this time, the contractor had originated – it looks like 1,269 or 1,301 letters against the company's issued 1,095 letters.

**THE COMMISSIONER:** Okay. This is on the –

**MR. SIMMONS:** This is on the far right – the bottom quadrant on the far right where there's a heading Letters, and if you go down several lines you'll see Contractor Total and Company Total.

**THE COMMISSIONER:** Yes. Okay. I see that.

**MR. SIMMONS:** And if you go over to Week 07 – the Week 07 column has the numbers that Mr. O'Brien just referred to: 1,301 for the contractor and 1,095 for the company.

**THE COMMISSIONER:** Okay.

**MR. SIMMONS:** Mr. O'Brien, I won't bring you to these other two documents, but, Commissioner, there are two other exhibits, P-03943 and P-03947, that also deal with statistics about response times for these inquiries – these queries. And there's a number of topics, Mr. O'Brien, that you've been asked enough questions about already, and I'm not going to –

**THE COMMISSIONER:** Can I just –

**MR. SIMMONS:** – (inaudible) with you.

**THE COMMISSIONER:** So, can I just try to understand this a little bit. So, when you talk about, like, site queries or concessions, does that include any possible request that could be made by a contractor on site, like – include change orders, it includes everything?

**MR. O'BRIEN:** So there – I guess, Commissioner, there's – the processes that are in use for the contractor communicating with the owner in relation to what's happening through construction are all documented in this report. The site queries is one. Queries is where –

**THE COMMISSIONER:** Okay. I understand that. So, if you had a – so, for instance, if a contractor went to your construction manager on site and wanted – spoke about something that they wanted to do or whatever, does that automatically get written up and then get included in this?

**MR. O'BRIEN:** That's correct.

**THE COMMISSIONER:** For every occasion?

**MR. O'BRIEN:** That's correct.

**THE COMMISSIONER:** Okay, so that would be included here?

**MR. O'BRIEN:** It's a very normal construction management-type approach.

**THE COMMISSIONER:** All right. But that – so it would be included here and (inaudible)?

**MR. O'BRIEN:** Yes, it would.

**THE COMMISSIONER:** Okay, that's all I really need to know.

**MR. SIMMONS:** Okay, thank you, Commissioner.

And so I will go to Exhibit P-03637, again, please, just to cross-reference something that you'd said earlier. And this is the exhibit prepared for Commission counsel – or by Commission counsel with the office where they tallied your visits to site based on information requested and provided from Nalcor Energy. And if you look on the right side, there's a heading there called Days Per Year. Then it lists



years from 2012 to 2018, and I understand this to be days spent – documented as having been spent on site by you from your travel records during those years.

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** Now, you mentioned that you had – in 2014 was a time that there was a particular need for you to be on site.

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** And if we look here, we see that in that year, you spent 33 days on site, which was more than at any other particular time.

Now, we've also seen an exhibit which listed your travel to other parts of the world in discharge of your responsibilities. So my question to you is can you tell me a little more about how the needs of the project drove when you worked from St. John's and when you had to travel to other locations?

**MR. O'BRIEN:** So as I've outlined earlier, my role here is to support the team at all of the sites in which the work for the project is being undertaken. And that has taken me to a variety of places. We have a series of internal meetings, both formally and informally, on a daily basis and a weekly basis to review upcoming activities, to review ongoing issues and to assess what supports are necessary at each of the various locations from the home office organization. And it's through that process, both informal and formal, that really dictates my travel schedule.

So through 2014, as I've testified, we were working very hard to get Astaldi operational, to get Astaldi mobilized and to support the efforts that were happening in relation to construction. And as a result of that, I spent a significant – or took a significant number of trips to Goose Bay, more than I had in other years. If you look at my travel to other places through that same period, you'll see that it was focused quite heavily on travel to Goose Bay, and my travel to other places diminished as a result of that.

**MR. SIMMONS:** Thank you.

You've also been examined regarding two resignation letters from Mr. Ted Vanwyk and from Mr. Cottrell and some evidence from Mr. Tranquilla, who – Mr. Tranquilla was construction manager early in the project I believe into the 2014 period. Does that –

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** – sound correct? And the letters from Mr. Vanwyk and Mr. Cottrell were also early in 2014. Now, my question is after 2014, you've described a number of staff who have worked on site for the project in various roles. To your knowledge was there any other concern or complaint that originated on the site after that time period concerning whether those people had the authority they needed to do the jobs they had to do?

**MR. O'BRIEN:** No, there wasn't. The construction management team continued after the departure of those individuals. Mr. Peter Tsekouras took over as construction manager, and there were no issues or complaints or commentary raised with respect to decision authority.

**MR. SIMMONS:** Regarding your role as project manager for Component 1, you've identified already that you were the designated company representative, contractually, for correspondence to be exchanged with contractors.

**MR. O'BRIEN:** Yes, I was.

**MR. SIMMONS:** Yes. And that comes out of the actual contract terms that are signed, that there's a designated person on each side, or position on each side, that is the formal point of contact for commercial matters, correct?

**MR. O'BRIEN:** That is correct.

**MR. SIMMONS:** Okay.

**MR. O'BRIEN:** Each of the contracts has a nominated company representative.

**MR. SIMMONS:** Mm-hmm.

**MR. O'BRIEN:** And decisions were taken with respect to all of the projects underneath the

Lower Churchill Project to maintain company representation at the project manager level.

**MR. SIMMONS:** Okay.

Now, we heard Mr. Delarosbil say – I said his name wrong – in relation to his position where he was the person who sent Astaldi letters, that he didn't write them all, that he was – he signed off on them all and there was some he was involved in more and some he was involved in less. And I'm paraphrasing a bit. Is that similar to the situation you were in?

**MR. O'BRIEN:** Of course. As you can imagine, on the generation project, there are 37 contract packages.

**MR. SIMMONS:** Mm-hmm.

**MR. O'BRIEN:** There's a team of, I've described it at site, 130 people. And in the home office another 50 to 60. All working in support of these various contracts. And through the organizational structure from the package leads who had responsibility for managing the packages to the contracts administrators through the area managers, the construction team, the commercial manager – all those individuals were participants at various levels in the production and the development of correspondence to support the execution.

I'm the signatory, but if you look at the volume of correspondence associated with a project like this, it's impossible to comprehend that I could have written all of that correspondence. That's what the team is for.

**MR. SIMMONS:** Now you just said – mentioned that there were 37 work packages that form part of Component 1 Muskrat Falls generation, I think.

**MR. O'BRIEN:** That's correct, yes.

**MR. SIMMONS:** And were you the designated company representative for all those 37 packages?

**MR. O'BRIEN:** Not all of them, no.

**MR. SIMMONS:** And what – how – what proportion would you have fulfilled the same role in as for the Astaldi contracts?

**MR. O'BRIEN:** All of the core contracts associated with the execution of the work. So the ANDRITZ packages, the Barnard-Pennecon package –

**MR. SIMMONS:** Mm-hmm.

**MR. O'BRIEN:** – Astaldi –

**MR. SIMMONS:** Mm-hmm.

**MR. O'BRIEN:** – some of the other packages that were deemed core to execution.

**MR. SIMMONS:** Right.

**MR. O'BRIEN:** The North Spur, for example.

**MR. SIMMONS:** So were you responsible for – your broader project management roles in – overseeing all those 37 work packages as well?

**MR. O'BRIEN:** Yes.

**MR. SIMMONS:** Okay.

You've been asked a fair number of questions about yours and the team's hydroelectric experience, and you've been asked to name some people on the team who had it. I just want to bring you, please, to the Grant Thornton report, P-01677 at page 91.

**THE COMMISSIONER:** That'll be on your screen.

**MR. SIMMONS:** Yeah.

Scroll down, please. Lower part of the page – okay, we can stop there.

There's a table here in this report which is noted as containing information submitted by Paul Harrington. I won't go through all this with you, but can you just look at this and tell me if these are some of the other people who had hydroelectric experience –

**MR. O'BRIEN:** Yes, they are.

**MR. SIMMONS:** – and are part of the team.

**MR. O'BRIEN:** It's a great example of people from across a variety of facets of the organization, all of which who had extensive hydro experience in areas relevant to the scopes of work that we're undertaking.

**MR. SIMMONS:** Okay.

And one other document I want to refer you to, that's P-03140. This does concern the Astaldi contract and the entry of the contract in November of 2013.

**THE COMMISSIONER:** Okay, that'll be on your screen as well.

**MR. SIMMONS:** Yes –

**MR. O'BRIEN:** Yes.

**MR. SIMMONS:** – it'll be on your screen as well. This is an internal Astaldi email message. Scroll down, please. And we can stop there.

It's noted as being from Ken Chryssolor who, we've heard, was the experienced Canadian hydroelectric project manager who had been put forward as being the Astaldi project manager for the work at Muskrat Falls.

**MR. O'BRIEN:** That's correct.

**MR. SIMMONS:** Is that your understanding?

**MR. O'BRIEN:** Yeah.

**MR. SIMMONS:** And it's to Mr. Guido Venturini. Do you know who that gentleman is?

**MR. O'BRIEN:** Guido was the project director for Astaldi –

**MR. SIMMONS:** Okay.

**MR. O'BRIEN:** – at the contract award.

**MR. SIMMONS:** Now it's an internal message. Have you had a chance to look at this since this was entered into evidence here at the Inquiry?

**MR. O'BRIEN:** I have reviewed it, yes.

**MR. SIMMONS:** Okay. And so, you're aware then that in this message, Mr. Chryssolor is raising internal concerns about Astaldi's readiness to undertake the work, and ability to meet the milestones?

**MR. O'BRIEN:** Yes, he is.

**MR. SIMMONS:** From your participation in, as project manager on this project – back in November, December of 2013, did Mr. Chryssolor or anyone else from Astaldi raise these concerns with you or inform you of any of these considerations?

**MR. O'BRIEN:** No, they did not. Not at all.

**MR. SIMMONS:** Thank you very much. I don't have any other questions, Mr. O'Brien.

**MR. O'BRIEN:** Thank you.

**THE COMMISSIONER:** Redirect, Ms. Muzychka.

**UNIDENTIFIED FEMALE SPEAKER:**  
(Inaudible.)

**THE COMMISSIONER:** Yes, okay. We will just take a five-minute break.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Ms. Muzychka.

**MS. MUZYCHKA:** Just a couple of questions, Mr. O'Brien.

You said something this afternoon to the effect that you were – Astaldi had met their contract concrete production levels in 2015. Are you sure about that?

**MR. O'BRIEN:** I (inaudible) that was Astaldi –

**MS. MUZYCHKA:** Put your microphone on please.

**THE COMMISSIONER:** Mic – just –

**MR. O'BRIEN:** I'm so sorry.

I think what I said was Astaldi was performing at levels that were consistent with the agreement levels. I don't know specifically, with respect to the volumes that they had proposed for the periods, if they were consistent with them, but they were certainly performing at significant levels by May of 2015.

**MS. MUZYCHKA:** But they certainly hadn't reached the level of the contract requirements.

**MR. O'BRIEN:** At that point they were substantially delayed. By May I think they had 13,000 or 14,000 cubic metres placed and then they ramped up through May and June and into the summer period.

**MS. MUZYCHKA:** Okay.

So I think it's clear that they did have increased production in 2015, but it didn't actually meet the level of the – what was predicted in the contract.

**MR. O'BRIEN:** Again, I don't have the specific concrete volumes to hand, but they were behind, for sure, in 2014 – or in 2015.

**MS. MUZYCHKA:** Okay.

The other thing is that – you just mentioned that after 2014 you didn't hear any more complaints regarding decision-making authority. Is that correct? Is that what you said?

**MR. O'BRIEN:** Yeah, I think –

[Technical error in video/audio feed.]

**MS. MUZYCHKA:** – from the site is –

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** That was your evidence.

**MR. O'BRIEN:** That's correct.

**MS. MUZYCHKA:** But you did get issues raised by Mr. Delarosbil. He had raised it post-2014. There had been – he didn't come on the

scene until 2015 and that was one of his concerns was the authority. And we also saw, in a letter from Mark Turpin to Stan Marshall, he had some issues with respect to the authority levels.

**MR. O'BRIEN:** So I was first provided a copy of Mr. Turpin's letter to Mr. Marshall as a part of the exhibits for this Inquiry and hadn't seen it beforehand. With respect to Mr. Delarosbil, what I was offering was that within our own site organization, there was harmony in moving the organization and the project forward in general. I didn't speak to what the contractors had to say, no.

**MS. MUZYCHKA:** Okay.

That's all my questions.

**THE COMMISSIONER:** All right.

Thank you very much, Mr. O'Brien.

We'll adjourn.

So, Monday, we have who on, Mr. Learmonth?

**MR. LEARMONTH:** Yeah, two witnesses.

**THE COMMISSIONER:** Two witnesses on and they are Paul Carter and –?

**MR. LEARMONTH:** Craig Martin.

**THE COMMISSIONER:** Craig Martin.

All right, so we'll adjourn until Monday at 9:30.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.