



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 46

Commissioner: Honourable Justice Richard LeBlanc

Monday

3 June 2019

CLERK (Mulrooney): All rise.

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

Please be seated.

THE COMMISSIONER: All right. Good morning.

All right. Mr. Learmonth, when you're ready.

MR. LEARMONTH: Yes. The first witness today will be Craig Martin. I would like to enter the following exhibits – or have them entered into the record: P-03905 to P-03937 and P-04007 to P-04012.

THE COMMISSIONER: Okay. All right, those will be marked as numbered.

And Mr. Martin, I'll ask that you stand, please. Do you wish to be sworn or affirmed?

MR. C. MARTIN: Be sworn.

THE COMMISSIONER: Sworn? Just take the Bible there if you would, please.

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

MR. C. MARTIN: I do.

CLERK: Please state your name?

MR. C. MARTIN: Roland Craig Martin.

CLERK: Thank you.

MR. LEARMONTH: Yes.

THE COMMISSIONER: So, it's Roland first – is your first name, Sir?

MR. C. MARTIN: Yes.

THE COMMISSIONER: Okay.

MR. C. MARTIN: I go by Craig.

THE COMMISSIONER: You go by Craig, okay. Good. Thank you.

Be seated.

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

MR. C. MARTIN: Mount Pearl.

MR. LEARMONTH: Mount Pearl. And what is your education after you finished high school?

MR. C. MARTIN: I have a Bachelor of Commerce and I'm also a certified public accountant.

MR. LEARMONTH: You attended Memorial, did you?

MR. C. MARTIN: Yes, I did.

MR. LEARMONTH: And when did you get your Bachelor of Commerce?

MR. C. MARTIN: I graduated with my B.Com in 1992.

MR. LEARMONTH: Yes. And after receiving your B.Com, what work did you do?

MR. C. MARTIN: I worked with the Province of Newfoundland and Labrador, originally with the Department of Finance as a tax auditor.

MR. LEARMONTH: Right. And you – how did you acquire your professional designation?

MR. C. MARTIN: I did my designation the following two years after. I'm – certified management accountant was the designation I had at the time and becomes a certified public accountant when the organizations merged a few years ago.

MR. LEARMONTH: So, there was a merger and now your – you – your – people with your designation are the same as people with a chartered accountancy designation.

MR. C. MARTIN: Yes, essentially, you have the CAs, the CGAs –

MR. LEARMONTH: Yes.

MR. C. MARTIN: – and the CMAs merged.

MR. LEARMONTH: All right. And you're a member in good standing of the provincial association –

MR. C. MARTIN: Yes, I am.

MR. LEARMONTH: – licensed to practice in the Province of Newfoundland and Labrador?

What – just give us a brief summary of [3 seconds of audio recording lost due to technical issue] developed at the Government of Newfoundland. You were hired in one position. Just take us up to – I believe you were in a senior position in the Department of Finance before you came – became executive director of the Oversight Committee. Is that correct?

MR. C. MARTIN: No, at the time I was director with Natural Resources. I was director of Royalties for the province.

MR. LEARMONTH: And you – then in – you were appointed as executive director of the Oversight Committee. Is that correct?

MR. C. MARTIN: Yes, in May 2014.

MR. LEARMONTH: Yes.

If we just turn to – in your books, Mr. Martin, it'll be binder 1 and it'll be tab 2. The exhibit number is P-03905.

If you could turn to page – just starting on page 2. Can you identify this document, please?

MR. C. MARTIN: Yes, this is the contract of employment for when I was executive director of the Oversight Committee.

MR. LEARMONTH: Right.

And what is the term of this contract?

MR. C. MARTIN: I believe this contract should have terminated on March 31. I'm just looking now.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Actually, there – I'm not seeing any specific term in here –

MR. LEARMONTH: Well, actually –

MR. C. MARTIN: – (inaudible) terminated (inaudible).

MR. LEARMONTH: – that's on page 2, 1.3, your term is stated there.

MR. C. MARTIN: March 31, 2015, yes.

MR. LEARMONTH: Yeah, so May 12, 2014, to March 31, 2015.

And in fact, you continued on in this position until May 11, 2015. Is that correct?

MR. C. MARTIN: Yes, it is.

MR. LEARMONTH: When you were appointed ADM – assistant deputy minister of the Department of Finance.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

Now, when you were appointed to this position under the contract of employee in Exhibit P-03905, did you – did it result in a change of your physical office?

MR. C. MARTIN: Yes – excuse me – I was located at the Natural Resources building as director of Royalties. When I moved into the position of executive director, I moved to Cabinet Secretariat.

MR. LEARMONTH: Okay, so you actually physically –

MR. C. MARTIN: (Inaudible.)

MR. LEARMONTH: – changed offices. All right.

Now, if we go to – well, actually, I wanna ask you – just confirm that the Cabinet – the Oversight Committee reported to Cabinet. Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: So you took instructions from the provincial Cabinet?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

And before we go any further, I wanted to ask you this: did you see the – or watch the evidence of Julia Mullaley when she testified here on May 29 and May – the morning of May 30?

MR. C. MARTIN: I saw most of Ms. Mullaley's testimony.

MR. LEARMONTH: Okay.

Did Ms. – I'm not gonna ask you – take you through all her evidence, but can you answer this question – did Ms. Mullaley say anything or recall events in any way that is different from your recollection of events?

MR. C. MARTIN: No, there was nothing that Julia raised that I had any particular concerns on.

MR. LEARMONTH: And do you take exception to any of her evidence?

MR. C. MARTIN: No.

MR. LEARMONTH: You don't? Okay.

And she was your – she was the chair of the Oversight Committee so you reported –

MR. C. MARTIN: Yes, my direct report would've been Julia as chair of the Oversight Committee.

MR. LEARMONTH: All right.

And after you left in May 11, 2015, to become the assistant deputy minister of Finance, I understand that as a result of being the assistant deputy minister of Finance, you automatically had a position on the Oversight Committee?

MR. C. MARTIN: Yes, the position that I moved to was an actual member of the Oversight Committee. So I continued with the Oversight Committee as a member at that point.

MR. LEARMONTH: Yeah, because there wasn't – there was more than a year before someone was appointed to replace you, is that correct?

MR. C. MARTIN: Before there was another executive director, yes.

MR. LEARMONTH: I think it was in or about August 2016 –

MR. C. MARTIN: Sounds –

MR. LEARMONTH: – when Paul Carter was appointed.

MR. C. MARTIN: – right time – yes.

MR. LEARMONTH: Do you – is there – can you provide any explanation for the fact that there was this rather long gap?

MR. C. MARTIN: I can't answer specifically why. I mean, when I first exited the position I was still very heavily involved with the Oversight Committee up until around the end of September 2015 when we were trying to finish up the EY report and get the materials done at that point in time.

There was a Cabinet officer, Harman Khurana – you'll see his name show up in materials – he was providing support out of Cabinet Secretariat at that point in time. Whether or not – whether there was a change in government, whether that delayed or anything else, I couldn't say; I'd be speculating at that point. But essentially at that point it was being supported by Harman through Cabinet Secretariat until Paul was hired in 2016.

MR. LEARMONTH: All right.

Now I'd like you to turn to tab 1 in your book of documents, P-03286. This is an email, April 10, 2014, from Richard Noble of EY to other individuals at EY. Now we know that this pre-dated – this – April 10, that was before you were appointed. But were you doing actual work on the Oversight Committee before the official date of your appointment in the exhibit I just referred to?

MR. C. MARTIN: No, I had some original work because I was at Natural Resources at the

time. I believe it was probably in March when they were looking for – to hire an accounting firm to do some work for them. They had actually – Charles had asked me whether there was anyone we were aware of because of the fact we were an accounting group within Natural Resources, within that department.

Originally reached out to Grant Thornton because they were doing some work for us, but they were conflicted because they were doing work at that point in time – excuse me – for the PUB.

MR. LEARMONTH: Yes.

MR. C. MARTIN: So essentially, at that point we identified EY and PwC as two potential alternatives for the department for this type of work, and I passed both those names along to Paul Morris at the time, who was the assistant deputy minister responsible for energy policy.

MR. LEARMONTH: Okay. Well, dcwq at tab 1 of your documents, that's Exhibit P-03286, that's dated April 10, 2016. So you wouldn't have –

THE COMMISSIONER: 2014.

MR. LEARMONTH: – 2014 – you wouldn't have had any –

MR. C. MARTIN: No.

MR. LEARMONTH: – knowledge of –

MR. C. MARTIN: No, not at that point.

MR. LEARMONTH: – of that. Okay, we'll leave that.

Tab 3 of your book, Exhibit P-03906. This is an email from David Steele to you.

MR. C. MARTIN: Mm-hmm.

MR. LEARMONTH: And you were in your position at that time. Can you give us some background as to the circumstances surrounding this email communication from David Steele of EY to you?

MR. C. MARTIN: Certainly. At this point we've got EY under contract with us to help us – support in putting together the oversight protocols and our terms of reference and such. So this is draft materials that we have going back and forth as this point as we're preparing that information for – really, for basically approval by Cabinet and release at a later date. So these are early drafts of those materials as we're moving back and forth here.

MR. LEARMONTH: All right. If we go to tab 5 of your book, that's Exhibit P-03908. This is a "Muskrat Falls Value and Cost Update" dated June 24, 2014. And at page 22 is a reference to the cost being 6.990. Is that – did you receive this document on or about June 24, 2014?

MR. C. MARTIN: Yes, this would've been the presentation that they would've likely given the Oversight Committee at that point in time with respect to the change to the 6.99 and then it would've also been presented to Cabinet.

MR. LEARMONTH: Okay. Next, tab 6, Exhibit P-02051. Can you identify this document, please?

MR. C. MARTIN: Yes, this is the first Oversight Committee report.

MR. LEARMONTH: Yeah. Did you – what role, if any, did you play in the preparation of this report?

MR. C. MARTIN: I would've made the initial draft of the report.

MR. LEARMONTH: You would've done it yourself, would you?

MR. C. MARTIN: Yes, in – basically, myself and David Steele from EY prepared this document on a first draft, and then obviously once it was completed on a first draft it would've been modified as we circulated it amongst the committee members and everybody fed into it.

MR. LEARMONTH: Yes. If we please turn to page 13 of that document, P-02051.

MR. C. MARTIN: Mm-hmm.

MR. LEARMONTH: Now, we've reviewed this with other witnesses, including Ms. Mullaley, but in the first paragraph, the second sentence says: "In December, 2013, upon completion of the Federal Loan Guarantee and financing, and in consultation with MWH, the DG3 capital cost estimate was revised to \$6.543"

Now, did you, do you have any information as to when this change to 6.543 was made?

MR. C. MARTIN: Excuse me – my understanding is that it was made in December of 2013.

MR. LEARMONTH: But were you involved, did you –

MR. C. MARTIN: No, and I had no involvement. Again, my involvement in the project started in May of 2014.

MR. LEARMONTH: Well, because of the position that you occupied there'd be no need – there would be no reason why you would be concerned about numbers like this or become aware of them, is that correct?

MR. C. MARTIN: No, no. In my previous position at that point in time, I was director of royalties for the province, so we were dealing with offshore oil revenues.

MR. LEARMONTH: All right.

In this same Exhibit P-02051, if you could turn to page 21 – and I think we already have evidence that EY was given a contract to – the first contract that they were given was to develop a proposed oversight protocol for the Oversight Committee, is that true?

MR. C. MARTIN: Yes.

MR. LEARMONTH: That's the first contract.

MR. C. MARTIN: Yes.

MR. LEARMONTH: And can you identify this report at page 21 of Exhibit P-02051?

MR. C. MARTIN: Yes, this is the report that was delivered as a result of that particular scope of work.

MR. LEARMONTH: Yeah. Do you know why – you know, with all the resources that government has, why government would retain, you know, an external advisor, EY, to prepare basically a, you know, a – the terms of reference for the Oversight Committee – why it wouldn't be done in-house?

MR. C. MARTIN: Well, EY was hired from a project management expertise prospective here, in order to support the Oversight Committee. So, from an oversight protocol, I mean they were obviously asked to help develop and feed into it, and they make recommendations here, but it is a combination of EY acting as an advisor and what is developed in-house.

MR. LEARMONTH: Okay. So what was –?

MR. FITZGERALD: Commissioner – sorry, I'm just wondering if Mr. Martin's mic can be adjusted; it's a little bit difficult to hear in the back of the room.

THE COMMISSIONER: Oh okay; if you could just –

MR. FITZGERALD: Thank you.

THE COMMISSIONER: – speak up just a bit –

MR. C. MARTIN: Yup.

THE COMMISSIONER: – and I –

MR. C. MARTIN: Is that better?

THE COMMISSIONER: – that will, yeah, and that will alert people in the technical room, as well, to stop his mic.

MR. LEARMONTH: All right.

THE COMMISSIONER: Let me know if there's any other issue.

MR. FITZGERALD: Thank you.

MR. LEARMONTH: Tab 11, Exhibit P-04008. There's a reference in this document to "a Reliance Letter executed by the ProjectCos and MWH and the Canada Acknowledgement and Consent Letter." Can you tell us generally what this Reliance document concerns?

MR. C. MARTIN: Yup. The Reliance Agreement essentially – as we laid out in our first report, the Oversight Committee would be looking at what activities were already happening from an oversight audit review perspective, with respect to the project. So the independent engineer was – excuse me – already in place for Canada in the role of overseeing the project from their perspective.

We had no formal relationship with the independent engineer and we were aware of the information being provided, but we had no actual relationship other than speaking to him and that. So, this formalized the relationship. Essentially it's a reliance letter whereby it gave us full access to the independent engineer materials and that they prepared, and it's a consent letter as well from Canada granting that access from that perspective.

So it allowed us to take it a step further rather than just having their information, but it gave us an ability to rely on that information –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – in a more formal manner.

MR. LEARMONTH: Okay.

And this agreement, it says in this email – P-00040 – that you'll find the NL IE reliance letter executed, but it isn't attached to this document, but it's been entered in another exhibit, just for the record.

Please turn to page – excuse me tab 12 of volume 1 of your book, P-01992. Can you identify this document, please?

MR. C. MARTIN: Yes. This is the Committee report for the period ending September 2014.

MR. LEARMONTH: Okay.

Now, at this time we know that the engagement of EY had come to an end, the first one. Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: So, would it fair for us to understand that the information contained in this document, P-01982 would be information that was provided to the Oversight Committee by Nalcor?

MR. C. MARTIN: Oh yes.

Excuse me.

We set up our reporting structure from Nalcor over the course of July, as we were moving forward with our original protocol. So, in conjunction with EY at the time, and we defined what monthly reporting we were going to receive from Nalcor in order to conduct our oversight activities. So, there were numerous reports outlined that we received from Nalcor. We received a monthly Lower Churchill Project report, which is our summary reports broadly distributed within the organization (inaudible) to all the executive.

We would have accessed the IPS report, the Integrated Project Schedule report.

MR. LEARMONTH: Mmm.

MR. C. MARTIN: That was an actual report used by the project management team.

MR. LEARMONTH: Yes.

MR. C. MARTIN: We would have had the construction reports, those were the reports actually signed off and submitted to the independent engineer by Nalcor in order to have their draw certificates issued.

MR. LEARMONTH: Did you receive them from the beginning?

MR. C. MARTIN: We –

MR. LEARMONTH: We know the committee was set up on March 14 –

MR. C. MARTIN: No.

MR. LEARMONTH: – 2014.

MR. C. MARTIN: We basically – over the course, in conjunction with this piece of work and setting up the oversight protocols, we define what information we were going to require from Nalcor throughout July, and received our first real regular reporting starting that September of 2014. So, that's when we had the data room fully set up and Nalcor started submitting its regular monthly documents.

Really it's October, 2014, when we start receiving our full scope of documents.

MR. LEARMONTH: Okay.

MR. C. MARTIN: And, in terms of other documents, we would have received a copy of the independent engineers draw certificate, whereby he's attesting to what Nalcor submitted and sending it off to the collateral agents so the monies can be issued. We got our monthly material contracts report, which outlined the material contracts, what was awarded, what was outstanding, where they were to.

So, there was a numerous number of reports defined at the outset that we received on a monthly basis. So the information in this would've been based on the data that was picked up from reviewing those reports.

MR. LEARMONTH: All right. So it wouldn't be – it would be based on information received from Nalcor and on the construction reports that were filed on a monthly basis with the independent engineer.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Correct.

If we – actually before I ask this next question. At this stage, can you give us some information as to the relationship between Nalcor and the Oversight Committee?

MR. C. MARTIN: At this stage, the relationship – excuse me – is still a fairly decent relationship at this point. We're working back and forth. They're providing information. There's a lot of time in between trying to get information. If you go back through the email

threads there, I mean, through September and even in through October, we're still having to chase down Nalcor to get complete sets of documents and that put into the data room.

But, I mean, generally the documents are starting to flow. We're sending questions and that back and forth to Nalcor. It is a bit of a challenge, again – as the email thread will show – when I go through these particular documents – when we're sending over our questions, is getting detailed answers back on things. Some of the answers are very high-level, working back and forth, trying to get them down, like, when we ask questions about – we see that something is 5 per cent off schedule or 5 per cent over from a cost perspective. It's really the earlier stage of the project, so Nalcor is very high-level responding on those types of things. But again, it's very early in the project, as well, at that point in time.

MR. LEARMONTH: Okay.

And at this point, the point that this document was prepared, is it correct that government was very trusting in Nalcor? That there was belief that Nalcor was providing full disclosure of relevant documents?

MR. C. MARTIN: Oh, yes. There was no expectation at this stage that there was any information that wasn't being put forward. This was about having a second set of eyes in order to reply back to Cabinet at the end of the day what we were seeing beyond just what Nalcor was saying –

MR. LEARMONTH: Okay.

MR. C. MARTIN: – what we're seeing here from an internal document review perspective.

MR. LEARMONTH: So there was no skepticism or concern about the quality of the information that was received – that was being sent by Nalcor to the Oversight Committee at this time?

MR. C. MARTIN: At this point in time, no. Excuse me. At this point, as we worked through November – later in November and early December is when we start raising – and, again, it's not necessarily to quality; we start raising

questions in terms of how some of the things are being structured. Because, at that point, we're starting to see things in the IPS schedule and recognizing things, like on the manufactured costs.

For goods that are created off-site, they're not actually being tracked directly through the IPS schedule. They're being – they're showing up there, but manufactured goods, such as the turbines and that that are being made in China, don't show up until the very back end, so suddenly we're recognizing things like the IPS is – these can't be tracked through the IPS, so –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – therefore we're moving directly to the manufacturer and reports of that for those types of things.

MR. LEARMONTH: Okay.

Now on page 22 of this document, P-01992, under – in paragraph – under the heading “2 Contractor performance impact on Project schedule,” says: “Nalcor advises that they are confident in the contractors and suppliers selected and their proven track” record “of completing contracts on time” and so on.

So, at this point did you, as a member of the Oversight Committee, have any concerns as to the performance of Astaldi?

MR. C. MARTIN: At this point in time, it's very early stages of Astaldi. So at this point, we don't have any real concerns at this point. This would've been issued in and around December of 2014.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So, if you – if – we see some slippage happening there from a schedule perspective as of September –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – and we some continued slippage a little bit later in the fall –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – but it's really the winter of that year when we see the significant slippage in schedule on Astaldi. That's what shows up then in our March report.

MR. LEARMONTH: Yeah, but we, you know – we know that – I think this is common ground that – we know now that Astaldi's performance was very limited, exceedingly so, in 2014.

Now, were you – when did you first become aware of that?

MR. C. MARTIN: In 2014?

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Realistically, it would've been in December-January as we're moving forward there. We're seeing slippage that fall.

MR. LEARMONTH: Yeah, because on page 33, in the first, or at the top, the “1,” the second paragraph: “Overall, the Muskrat Falls Project remains on schedule and construction progress for the Muskrat Falls generating facility ... is generally where we anticipated it to be at this point.”

Now, you know, we've had evidence that would call into question the accuracy and validity of that statement, because Astaldi was making very, very little progress at the time. I take it that you believe that this statement was true when you put it in the report?

MR. C. MARTIN: (Inaudible) these are Nalcor's words at this point in time coming forward in terms of the questions.

MR. LEARMONTH: These are Nalcor's words, so you –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – were – you weren't concerned at this point about the performance of Astaldi or any other contractor, is that true?

MR. C. MARTIN: Not to the extent that it generates as we go – or into the winter months.

MR. LEARMONTH: All right.

Now, go to tab 14, which is Exhibit P-03912. This is an email from you to James Meaney at Nalcor, a request for proposals, October 2, 2014: "Attached is a copy of the RFP." And the actual request proposal begins on page 3.

Now, you've told us that the first engagement by EY had come to an end, and there was no assurance of any kind, that EY would continue on to perform services to the Oversight Committee. Is that correct?

MR. C. MARTIN: That is correct. This was a limited call. There's –

MR. LEARMONTH: Okay.

MR. C. MARTIN: – if you – just on the previous email, will note there – actually, when Jim sends me the email, I have mentioned that the RFP was going out in a limited call. So it was, essentially, sent out to EY, KPMG and PWC. Those were the three parties that it went to.

MR. LEARMONTH: Okay. And as it turned out, I think only EY was able to perform the services because –

MR. C. MARTIN: Mmm.

MR. LEARMONTH: – others were disqualified on the base of conflict?

MR. C. MARTIN: Essentially, at the end of the day, of the three parties, EY was the only one that submitted it after. Grant Thornton was still conflicted at this point in time because of the work with the PUB. And Deloitte was also conflicted because they were the auditors for Nalcor.

MR. LEARMONTH: Yeah.

And I'm not going to go into the details of all the contracts, but we have had evidence, which has been confirmed by Michael Kennedy, that over the course of its engagement with the Oversight Committee, there were six specific contracts entered into. There was two that were called umbrella or engagement ones that actually dealt with general services. And then there were four other ones: one for the first phase, which you know about; second for the process and

control phase; the third for the January 2016 contract for the full review of schedule and cost; and then the fourth – actually the sixth, including the two general ones, the sixth –

MR. C. MARTIN: (Inaudible.)

MR. LEARMONTH: – would be for the review as to whether the recommendations –

MR. C. MARTIN: (Inaudible.)

MR. LEARMONTH: – contained in the big report had been implemented. Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: You confirm that?

MR. C. MARTIN: Yes, that sounds correct.

MR. LEARMONTH: Okay. Thank you.

Turn to tab 15, please? This is Exhibit P-03300. This is an email from Richard Noble. And, you knew Richard Noble, did you?

MR. C. MARTIN: Yes. I worked – Richard was one of my main contacts at EY.

MR. LEARMONTH: He was, I wouldn't say the – necessarily, the lead, but he was the principle –

MR. C. MARTIN: Richard would've been the lead from a project management perspective.

MR. LEARMONTH: Okay.

MR. C. MARTIN: David was the local partner who was the actual person who (inaudible).

MR. LEARMONTH: David Steele. I think –

MR. C. MARTIN: Yes, David Steele, yea.

MR. LEARMONTH: – was called an engagement partner.

MR. C. MARTIN: Yes.

MR. LEARMONTH: I think that's what –

MR. C. MARTIN: Yeah.

MR. LEARMONTH: – (inaudible).

MR. C. MARTIN: Richard would've been the actual partner who was the project management background.

MR. LEARMONTH: So, this email, P-03300, this is an email from Mr. Noble – second page, saying: “The data clearly is shaky. The process and controls have not been vetted... and the baseline appears not fully stable. Basically... their report is being built on untested sand... and all it is doing is restating management's assertion that ‘the project is going fine.’”

Now, I know you weren't on this email, but the reference here is to the Oversight Committee that's – report that's being proposed for December. Correct?

MR. C. MARTIN: It would be the one we were preparing to be released in December, I think, which would've been the September report.

MR. LEARMONTH: Yes.

MR. C. MARTIN: Yes.

MR. LEARMONTH: So did – when is the first time you saw this email or became aware of the position that is stated in here that – as expressed by Mr. Noble?

MR. C. MARTIN: The email itself, I became aware of through the disclosure documents through this Commission. I probably saw it sometime – I believe it would've been prior to my interview on April 8.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: In terms of the information being raised here, in terms of the (inaudible) around process controls not being vetted, we were aware of that in this same time frame, and we understood that they had not been vetted at that point in time as well. We were relying on internal reports being prepared –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – within Nalcor at this point.

MR. LEARMONTH: So what –

MR. C. MARTIN: But these were the reports being prepared in order to report –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – internally on the project, and for them to manage the project.

MR. LEARMONTH: Okay.

MR. C. MARTIN: So that would be the second phase of work then, at that point in time.

MR. LEARMONTH: Yeah. So, and once again, at this point there – government and the Oversight Committee had this trusting relationship with Nalcor, there was full trust in the information that Nalcor's providing?

MR. C. MARTIN: At this point, from a process controls perspective, this is part of our review processes to make sure we have our – basically, from a due diligence perspective, things done – because we're relying on these reports to report to the public. It's not that we distrust the reports. To be quite frank, there was no expectation that we're – at the outset, that we were gonna get the type of report back that we did receive at that point in time. This was about saying: Do they have adequate controls? Do they have – can we rely on the information we're rolling through? Things like that.

MR. LEARMONTH: Yeah. But, just to deal with a broader question that – someone looking at the whole history of EY's engagement by the Oversight Committee, some might say: Why, after EY was retained, didn't you instruct EY to do the full review of the cost and schedule, rather than do it in a planned and phased way where you're talking about developing the terms of reference and then the process and (inaudible)? Why didn't you send EY in with full authority to do a review of the cost and schedule at the time that they were retained back in March or April 2014? Why the long delay?

MR. C. MARTIN: There was no intent, at that point in time, to review the cost and schedule, because the cost and schedule – the understanding was – had already been prepared and had already been vetted. As you notice in some of the documents, it shows up there that it's been reviewed by MWH at DG3, it had been

earlier reviewed by Manitoba Hydro, Navigant Consulting had looked at some pieces.

So there's a general belief within government as a whole, that this thing has already been looked at.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: When EY is hired originally, it's not with that intention at all; it's from the setting up the ongoing process of now, of seeing how the project is performing against that particular schedule and against those costs as we go forward.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So that was the construct and that was the view at that point in time.

MR. LEARMONTH: Yeah.

But with the benefit of the information that you have now –

MR. C. MARTIN: Right.

MR. LEARMONTH: – do you agree that it was an error to place reliance on the MHI report, because the scope of work for MHI was such that the review of the risk, strategic risk, had been removed?

MR. C. MARTIN: At this point, I think it's a statement of fact that this information wasn't verified in the way that everybody was believing it was.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: It hadn't undergone a full scope review.

MR. LEARMONTH: Yeah. So you had an honest but mistaken belief that MHI had done a complete review.

MR. C. MARTIN: MHI and MWH at this point in time –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – as well, at the close of DG3, so –

MR. LEARMONTH: Yeah, we know from listening to Mr. Argirov, that the review that – MWH did was just high level.

MR. C. MARTIN: Yes, we know that –

MR. LEARMONTH: And –

MR. C. MARTIN: – now.

MR. LEARMONTH: – you know that now.

MR. C. MARTIN: Yes.

MR. LEARMONTH: If you had known – are you able to answer this, that – I know it's retrospective and hindsight, but if you had known that there were, well, I'll say problems with the work of MWH from the point of view of government, provincial government, and there were problems with the MHI report, would your perspective on this whole subject have been different?

MR. C. MARTIN: Oh, yes. I mean we would've approached the whole oversight structure from a different perspective.

MR. LEARMONTH: Yes.

MR. C. MARTIN: I mean, again, the oversight was structured from the beginning with the baseline already in place and was about how it's performing against that baseline at that point in time.

MR. LEARMONTH: All right.

Tab 16, Exhibit P-03913. This is a document that was sent by Paul Harrington to – well, it's an internal document, James Meaney and – actually, no – that came to you, Craig Martin also.

MR. C. MARTIN: Mm-hmm.

MR. LEARMONTH: Can you identify this document, Mr. Martin?

MR. C. MARTIN: This appears to be the update that was presented to the Oversight Committee by Nalcor on November 28, 2014.

MR. LEARMONTH: Okay.

And what was your understanding about the AFE at this time – or the cost estimates?

MR. C. MARTIN: At this point in time, our understanding is the cost estimate is the 6.99 that would've been reset in June of 2014.

MR. LEARMONTH: Okay. Have you come across any information that would call that belief into question?

MR. C. MARTIN: As a result of this Commission, yes, the Grant Thornton report.

MR. LEARMONTH: Okay. I'm gonna get into the Grant Thornton report, but I take it that – well, what was your reaction generally – I'll get into it in more detail – when you saw the information on pages 19, 20 and 21 of the Grant Thornton report?

MR. C. MARTIN: Frustrating, disappointing, it's – to understand that there was information there available that wasn't being disclosed, and there were questions being asked at that point in time, maybe not so much here, but as we move forward from a risk perspective, more so once we start getting into the winter months of 2015 where you could see the real slippage is just falling away from the – on the main site up there for Muskrat.

MR. LEARMONTH: Yeah.

And if we look at page 44 of Exhibit P-03913, right at the bottom it says – and this – once again, this document is dated November 28, 2014. It says: "Estimated costs of potential changes are included in the FFC."

MR. C. MARTIN: Yes.

MR. LEARMONTH: Does – what's your reaction to reading that in this document?

MR. C. MARTIN: Well, again, obviously, that's not a factual statement based on the information that has come forward since.

MR. LEARMONTH: Right.

But you believed it was?

MR. C. MARTIN: Yes.

MR. LEARMONTH: You took it at face value.

Okay, tab 18 is Exhibit P-03556. December 14 email from Dawn Dalley at Nalcor to Charles Bown. So, this is – we're getting towards the end of the December 2014.

If we go to page 3 of this document, the question – which is answered by Nalcor – the question is put: "**What has caused the slippage in schedule for the Powerhouse & Intake and the Spillway & Gates?**"

Here is Nalcor's answer: "Nalcor is aggressively managing the cost and schedule of the project. Overall, the Muskrat Falls Project remains on schedule and construction progress for the Muskrat Falls generating facility is generally where we anticipated it to be at this point." Then: "The slippage in project schedule is largely due to a slower" start "than anticipated mobilization and start up by Astaldi Nalcor is working closely with the contractor and measures have been put in place between Nalcor and Astaldi to address issues affecting progress."

So, the statement that – and we know now that – well, do you believe this statement to be true when you received it?

MR. C. MARTIN: At the time, we – from the perspective that they potentially could, yes. Those are Nalcor's words, and we believed it. If they're saying it, it's potentially true. I should – I want to phrase it from the perspective of we know there's pressures in that.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: But we have no reason to disbelieve at this point in time.

MR. LEARMONTH: Yeah. But because they're saying in the answer that: "... and construction progress for the Muskrat Falls generating facility is generally where we anticipated it to be at this point."

So, that a very reassuring statement, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Suggests there's no surprises.

MR. C. MARTIN: But – and this is with respect to September reporting of this period.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: But we are seeing, then, in December, we would've had our October reports at that point in time.

MR. LEARMONTH: But this email –

MR. C. MARTIN: Mm-hmm.

MR. LEARMONTH: This information is contained in an email, if you go to page 2 of Exhibit P-03556, dated December 12, 2014.

MR. C. MARTIN: Yes, but the question is in the context of the September report.

MR. LEARMONTH: All right.

And then question b – excuse me – on page 3 of Exhibit P-03556, question: **“Does the progress schedule slippage on the Powerhouse & Intake and the Spillway & Gates impact the Milestone Schedule or Project Budget?”**

Answer: “Based on the completed work to date for these projects, there are currently no impacts on the milestone schedule and first power remains on target for late 2017.” Once again, a very reassuring statement?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Now, with what information you have now, do you believe that this was a fair comment or an accurate comment at the time?

MR. C. MARTIN: At that point in time, no, I don't.

MR. LEARMONTH: No.

So you're getting this information, which you now know is –

MR. C. MARTIN: At this point in time –

MR. LEARMONTH: – unreliable.

MR. C. MARTIN: – at this point in time this is – again, now, I'm looking back in hindsight, this would've been in December. As we get into January, February, March months –

MR. LEARMONTH: Yes.

MR. C. MARTIN: – of 2015, as we continue on, this is where we start getting the IPS schedules that are showing little to no progress on an ongoing basis with respect to the Astaldi contract at Muskrat Falls.

MR. LEARMONTH: But that conflicts with the information that's stated in this document, does it not?

MR. C. MARTIN: Yes, it does. I do want to reference though that this question though is from a – it's – from a date perspective –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – it's answering a question relating to the period ended September 2014 for reporting purposes.

MR. LEARMONTH: Until the end of September 2014.

MR. C. MARTIN: Yes, yes.

MR. LEARMONTH: But still, so that's up to October.

MR. C. MARTIN: Well, yes.

MR. LEARMONTH: Well, anyway.

MR. C. MARTIN: I just wanted – like, we're seeing a planned progress over the winter months. Let's say something in the way of 2, 2.2 per cent expected or projected planned progress on those contracts during the winter months, on average each of –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – the three months, and we're seeing actual performance of 0.1 per cent.

MR. LEARMONTH: Okay, that's fair enough.

But even at this time, we'll say the end of September 2014, if Astaldi was not doing very much – and that's what the evidence is; there's great concern about the slow start they had – how could this – these two statements that I just referred to you be correct?

MR. C. MARTIN: Those, again, are Nalcor's words. This is what Nalcor was advising at that point in time.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Tab 21, Exhibit P-03306.

This is an email from David Steele to Paul Hickey. It's not copied to you, so it's internal. But this is a summary on page – beginning on page 2 – and there was a reference to this in one of the earlier emails. I didn't mention it to you. But were you aware that from a very early date that EY was concerned that its name may be associated with the work of the Oversight Committee and because it hadn't really done any work apart from developing a terms of reference, that there was a concern by EY that their reputation could be injured by people believing that the Oversight Committee has retained EY and if EY is involved, then they must be on top of things. Were you aware of the – that concern?

MR. C. MARTIN: Not to that extent. That's – I was aware that in December, when we were doing the September report, that we had originally had a comment in there saying – making a statement that EY had contributed to the development of the oversight protocols and that David had spoken to Julia and actually requested that that particular comment be removed.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So I was aware of that because of the fact and they did raise only from the perspective that they hadn't been on site. But from the perspective that it could cause a great deal of reputational damage like to the extent of what you're seeing in this internal communication? No. So we're aware and we know they're not –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – entirely satisfied with having that name there. And nothing turned on it from our perspective because it was only a statement of fact from the earlier ones, so it was an easy one to strike.

MR. LEARMONTH: Yeah.

But you understand the basis for such a concern, do you?

MR. C. MARTIN: In terms of their –

MR. LEARMONTH: Concern to their reputation.

If their name is associated with the work of the Oversight Committee, yet they're not really doing anything.

MR. C. MARTIN: At this point in time. I –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – understand the statement –

MR. LEARMONTH: Yes.

MR. C. MARTIN: – certainly. Yes.

MR. LEARMONTH: Yeah.

And you believe it's a legitimate issue, do you?

MR. C. MARTIN: I think that they're concerned that they're associated without doing anything, absolutely. Any –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – firm should be.

MR. LEARMONTH: Yeah.

Just to turn back – just because I'm – I – there was an earlier reference on November 27 to this reputational risk issue. If you go back to tab 15, Exhibit P-03300.

Right at the bottom – this is the email from David Steele to Richard – no, Richard Noble to Emiliano Mancini and others. At the bottom it

says: “We will need to put this in writing... EY would not want to be associated (albeit loosely) with a public report that is clearly missing the mark... we will need to have our position clear and that position documented prior to the reports release.” So that’s the first of mention of it.

And then returning to the exhibit under consideration here – that’s Exhibit P-03306 at tab 21 – you can see on the bottom – towards the bottom of page 2, it says: “The Draft report contained a detailed terms of reference of the committee. EY knows ... the committee has not developed processes, nor conducted the effort, to effectively meet the stated terms of reference. However, it is presented in the report, preceding the detailed report ... thereby posing a risk that a reader could falsely interpret that the terms of reference have been fully addressed and form the basis for the information in the report. We also note that the use of EY’s name as the advisor who worked with the Committee to develop the terms of reference could be falsely interpreted as EY has continued to work with the Committee.”

And then if we go to page 3, we can see that – towards the bottom – that these concerns were addressed with Julia Mullaley. She obviously accepted them, and there were adjustments made in the report to deal with the concern expressed by EY. Do you agree with that?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

Next, please turn to tab 23 in your book which is Exhibit P-03917. This is dated January 16, 2015, and there’s a scope of work for the project controls review – this is Exhibit P-03917. If you turn to page 2 and the pages thereafter, can you tell me what we’re dealing with here?

MR. C. MARTIN: This is the proposal with respect to the piece of work that we were looking at next, in terms of the project controls. So this is the proposal of how they’re going to approach it and move forward with that review.

MR. LEARMONTH: Okay, so this is phase 2. This is just the – this isn’t the schedule and cost review that was done in January.

MR. C. MARTIN: No.

MR. LEARMONTH: This was just an intermediate step. Would you recall?

MR. C. MARTIN: This is, essentially, the piece whereby we’re looking at going in to have the reports that we’re relying on reviewed to make sure that we can rely on those reports.

MR. LEARMONTH: So it’s just a process – a review of processes and internal controls. Is that right?

MR. C. MARTIN: Yes, with respect to populating the internal reports.

MR. LEARMONTH: Yeah.

And, once again – returning to an earlier issue that I put forward – at this time, which is January 2015, is it still the fact that from the Oversight Committee’s point of view that you were – you still had full trust and confidence in Nalcor?

MR. C. MARTIN: At this point in time, I mean we still are not expecting the extent of what happens from a – the output of this review and the fact that there was other information there that’s disclosed with this Grant Thornton report. So, at this point in time, we’re still working forward with Nalcor at this.

We are starting to get concerned in January, February about the project with respect to Astaldi because of the continued slippage at this point in time. But, as we talk to Nalcor on those particular pieces, they keep talking about come this spring, their plan for the ramp-up, the 120-day turnaround plan whereby they were going to ramp up operations trying to catch up things like this.

So, at this point, what we’re hearing is that, look, yes, we’re slipping, but there’s opportunities here to recover this. And, again, it’s the piece we’re taking mitigation actions, there’s pressures, it’s this constant type of language.

MR. LEARMONTH: Yeah.

So – and Ms. Mullaley gave evidence about that, that her recollection of these disclosures – oral disclosures by Nalcor, in particular, Mr. Martin, was that generally that, well, there are cost pressures but we're mitigating and there's – everything is fine in the end. Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: So the question of cost pressures is raised. Is that – would that be on a regular basis?

MR. C. MARTIN: Cost pressure discussed – once we're into this time frame there's discussions around it from the perspective of, yes. Now, again, a lot of the focus though really, from the committee's perspective on these questions at this point in time, is the Astaldi file.

MR. LEARMONTH: Right.

MR. C. MARTIN: Because that's the one where it's – we can clearly see the slippage and that happening.

MR. LEARMONTH: Right.

MR. C. MARTIN: I guess another concern we had at this point in time comes out there earlier. I believe it's in one of the exhibits there where Gilbert asks what is the oversight purpose of this – is we were having some challenges with respect to the reporting, linking the schedule progress and the cost progress so that it could be cleanly tracked.

When we deal with the IPS document it takes the projects and breaks them down by components. So you could actually see what was happening with certain components on the schedule basis there with respect to Muskrat. Like, you can see the actual here's the plan progress in a given month, here's the actual progress that the (inaudible) for a given month. And it's not for Muskrat Falls Project as a whole; you'll see the gates, the spillways, the different pieces, component view like that. So it gave you a view as to what's happening from a schedule perspective.

On the cost side is where we were having some challenges because the costs are being reported and structured differently. They're not linked to

this same component view the way they're being reported to us. What we're getting in the construction reports is where we're picking up the cost progress, we are seeing a plan and we are seeing an incurred, but it's at an accounting level, it's not associated with the actual activity.

And one of the email threads there I just noticed when we were going through is one of the ones where I'm going back and forth with Gilbert and I'm asking questions about trying to get down, is there a component view, is there something below this level that we can use to try and link these two. Because that's part of the challenge we're dealing with is we can see from a progress perspective what's happening progress-wise; the dollars are separate, they're not lining up and linking in the same way.

MR. LEARMONTH: So would this – could this – at this time could your concerns be characterized as being a little bit more suspicious?

MR. C. MARTIN: At this point in time? I don't know if suspicious is the right word at this point. No, I don't think we were suspicious.

MR. LEARMONTH: Okay, well, tell me what the right word is then.

MR. C. MARTIN: We are – our concerns are heightening from the perspective that we're seeing schedule slippage and we're seeing costs dropping along. So we're asking what's happening from a cost perspective and that's where we'll talk about pressures. They'll talk about the fact that Astaldi has the labour cap within their contract, things like that are being discussed at this point. But we're still being told at this point that, look, there's time to make this up. We've got the spring coming; we've got our 120-day turnaround plan.

MR. LEARMONTH: Now, you are aware at this point that there was a project – the controls department was issuing monthly reports. You're aware of that now, right?

MR. C. MARTIN: Yes, that's the piece from the Grant Thornton.

MR. LEARMONTH: Yeah and you weren't aware of that in, say, January 2015.

MR. C. MARTIN: No, those reports coming out like that, what we were getting was the –

MR. LEARMONTH: You didn't receive those reports, is it?

MR. C. MARTIN: No, those weren't part of the reports being sent to the committee.

MR. LEARMONTH: Yeah. Do you think they should have been?

MR. C. MARTIN: Absolutely.

MR. LEARMONTH: Why?

MR. C. MARTIN: Because they're material to what we were trying to report on if they're actually showing cost pressure or cost increase. That's now not to say they're in the final forecast cost at this point, but there's actual quantified potential cost changes that should be disclosed to the committee so it should be disclosed to Cabinet, someone is reporting on it.

From a public perspective we'd have to stop and say: What do we do from a commercial-lens sensitivity perspective? So I couldn't say whether it would or wouldn't at that point because that was always a struggle, in terms of reporting, is trying to balance commercial sensitivity –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – against the public's right to know because part of the challenge is the contractors are part of the public. But from an internal reporting perspective for the Oversight Committee for Cabinet, all of that, there shouldn't be any screening of that or commercial sensitivity lenses or anything else, that should be flowing through.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: And the committee is asking Nalcor, when they're in – like, structurally each month – the committee meets once a month – we prepare our analysis based on the information we're seeing. We prepare a regular deck each month for the committee outlining here's what we've seen, here's what we've talked to Nalcor about. Nalcor would then come in with their

presentation – and we saw an example of that earlier – and they'd have their discussion with the committee and present and that would give the committee members a direct opportunity to ask questions back and forth.

And I can't say specifically in this time frame, but there were questions over time about what could this mean about cost. You know, if you haven't got an actual cost nailed down on it yet, you know, what could it be for an order of magnitude, a range and that. And those pieces, the answer would be, well, we'd have to do a full quantitative risk assessment, run the Monte Carlo. That's pieces we're not doing yet at this point in time, so that doesn't exist. When, in fact, from what we're seeing on this Grant Thornton report in the information, it did exist and wasn't disclosed.

MR. LEARMONTH: Yeah.

Well, maybe not the Monte Carlo, but the final forecast cost –

MR. C. MARTIN: Final forecast –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – or the potential changes to the final forecast cost, yes.

MR. LEARMONTH: Yeah.

The information that you've seen in the Grant Thornton report we'll get into, was not consistent with the assurances that you were getting from Nalcor at this time about everything being in control and so – is that correct?

MR. C. MARTIN: No – excuse me – it's not. It's basically information that doesn't show up in the internal reports that the committee is utilizing.

MR. LEARMONTH: Right.

MR. C. MARTIN: And these are just – and, again, these reports are distributed to all the senior executive at Nalcor. These are reports that are to be given to the independent engineer in order for him to certify and make the draw request to the collateral agent to access the bond holdings.

MR. LEARMONTH: Well, actually, in 2015 as you may know, this lack of disclosure by Nalcor to the independent engineer caused a big concern. Are you aware of that?

MR. C. MARTIN: I'm aware of it now, yes.

MR. LEARMONTH: And what happened is, I think, is in October 16, 2015, Alison Manzer, external counsel, wrote a very stern – I would say – letter to Mr. Meaney, because at that point the independent engineer had received the 7.65 revision –

MR. C. MARTIN: Mmm.

MR. LEARMONTH: – and the – his words were he was very upset because he knew that this 7.65 didn't happen overnight and he was concerned that he would look bad to the lenders that he was reporting to – or the collateral agent. And were you aware that Canada took a very firm stance on that? The fact that they weren't getting the right information on a regular basis on –

MR. C. MARTIN: I –

MR. LEARMONTH: – cost updates?

MR. C. MARTIN: I wasn't aware of that particular meeting at that time, but I was aware of it after.

MR. LEARMONTH: You are now?

MR. C. MARTIN: I am now, yes.

MR. LEARMONTH: But you were being treated the same way as Canada was, weren't you?

MR. C. MARTIN: (Inaudible.)

MR. LEARMONTH: You weren't getting the updated figures.

MR. C. MARTIN: We were not getting – no, I mean, today from a reporting perspective from Nalcor, we do get information on quantified risks on a go-forward basis. Some of them may be arranged. It could be this to this.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: But, I mean, from a reporting perspective, now we're basically having disclosure on those things. We should've been having disclosure on (inaudible) at that point in time.

MR. LEARMONTH: Yeah. And the disclosure, it doesn't mean that these are final costs. I mean, they are always changing. Everything changes in a construction project.

MR. C. MARTIN: Absolutely. And it may be that the – it may be that we're not changing the AFE at this point in time because –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – we haven't landed exactly. But, the challenge with this particular piece is, you're trucking along, there's pressures, it's things like that, but we can manage it and then suddenly – bang – we've got a \$600-million change.

MR. LEARMONTH: Okay. There wasn't very much that Nalcor managed, was there? In terms of cost increases when you look at the record.

MR. C. MARTIN: When you look at the – back through the record – I mean, again, it's – I would be expressing a personal opinion as opposed to a professional one, but the estimate from the beginning, based on things I saw, it seems low.

MR. LEARMONTH: Yeah.

But what I'm saying is that there was – you know, there was a lot of this talk about mitigation, but it's easy to talk about mitigation. But where was the mitigation, because everything kept on getting worse and worse and worse? Isn't that true?

MR. C. MARTIN: Yes, it is. I mean, I – again, looking back, I see multiple things happening. I mean – and again I'm expressing a personal opinion here –

MR. LEARMONTH: Yes, I understand.

MR. C. MARTIN: – as opposed to a professional.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: I believe the original estimates were too low; that the schedule was too aggressive. I mean, we're looking at, again, planned-progress achievement in the winter, and as much progress planned as you're looking at getting during the summer months. You can't achieve that in Labrador winters.

MR. LEARMONTH: Mmm.

MR. C. MARTIN: Not with the – unless you had something like the Integrated Cover system and that.

So the original estimates appear low, there were issues that were run into with –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – the Astaldi contractor. The geotechnical piece in Labrador; the fact that the – there's so much extra spent on the actual base for the towers that wasn't anticipated and wasn't large enough.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So I see it as a combination of things.

MR. LEARMONTH: Okay.

In terms of working in the winter, I think you may be aware of Don Delarosbil, who was very experienced in these matters – says that it would take three times as much labour to achieve a task in the winter in the North than it would in the summer. Other witnesses have said it would be double than that, but it's a pretty big difference. Yeah?

MR. C. MARTIN: But, I mean, that winter of 2015, we were – I used that as the example because it was so extreme in terms of we would see a planned progress of 2.2 per cent (inaudible) – again, it may have been 2 per cent – but 2.2 and an actual achieve process of 0.1.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: (Inaudible.)

MR. LEARMONTH: That's a red flag, isn't it?

MR. C. MARTIN: Oh, absolutely. I mean, it's just – I mean, you're looking at it. You're now bleeding in terms of your planned activities. That's a lot to try and pick up.

MR. LEARMONTH: Yeah.

Okay, now, tab 25 [sp. tab 24], Exhibit P-03309. This is that email from Richard Noble to David Steele.

Can you identify this document? Excuse me.

MR. C. MARTIN: This appears to be an internal document –

MR. LEARMONTH: Yes.

MR. C. MARTIN: – with EY.

MR. LEARMONTH: But in the second dot it says: "In neither case is the OC in a position where it can fully rely on the Nalcor reporting and associated processes going forward."

Did – was this sentiment or view –

MR. C. MARTIN: (Inaudible.)

MR. LEARMONTH: – expressed to you –

MR. C. MARTIN: Could I ask again –

MR. LEARMONTH: – by EY at the time?

MR. C. MARTIN: – what tab that is? I'm looking (inaudible).

MR. LEARMONTH: Oh, excuse me. No –

THE COMMISSIONER: Tab 24.

MR. LEARMONTH: – it's tab 24.

MR. C. MARTIN: Twenty-four.

MR. LEARMONTH: Sorry, I said 25. P-03309.

Were you aware at this time, January 20, 2015, that, internally, EY was – had formed these views?

MR. C. MARTIN: In neither case is the OC – not to the extent of which it’s being raised here.

MR. LEARMONTH: Okay.

MR. C. MARTIN: I mean, we know that we’ve got concerns about – at this point that we’re relying on the data and haven’t actually verified that the reports could be relied upon at this point in time.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So we’re aware of that particular piece.

MR. LEARMONTH: Because I remember when Michael Kennedy was testifying, I put to him the proposition that relying on – from an oversight committee’s point of view, relying on information that is just passed on by Nalcor, I described it, I think, as a useless exercise, and he said he didn’t agree. He said that it was of limited value. So we’ll go with his more moderate expression.

MR. C. MARTIN: Mm-hmm.

MR. LEARMONTH: Do you agree with that?

MR. C. MARTIN: From a – I don’t agree fully, no. From the perspective – this is – like, these are not custom reports. This is not information simply being provided by Nalcor. This is actual reports – existing reports that exist within Nalcor and are being produced for purposes within Nalcor and being utilized within Nalcor for those purposes.

The monthly LCP report is the one that was issued about six weeks, roughly, after the end of each month. I believe there is actually one in evidence here, but the distribution list on that report is substantive within the organization. The entire executive of Nalcor received that report, even those that are not involved in the project. So that is the piece there.

The integrated project schedule that we’re receiving is the integrated project schedule that’s being reported and produced within Nalcor. So it’s part of what is used by the project team at Nalcor and flows up through the system. We’re

using the IPS at a (inaudible) level, too, at this point in time.

The construction report, again, is a very purpose-built report. It is a report built for the independent engineer –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – and submitted to him for the purpose of a draw certificate.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So I –

MR. LEARMONTH: But you’re assuming that the construction reports are accurate.

MR. C. MARTIN: Correct. And I –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – agree from the perspective that it is limited in the sense that we’re relying on these reports and we do need to do this piece of work, from a process controls perspective, to say that we can rely on them.

MR. LEARMONTH: Because in 2015 it’s clear that the construction reports, or at least in the opinion of (inaudible) engineer, were not accurate, they were inaccurate.

MR. C. MARTIN: Absolutely.

MR. LEARMONTH: And Mr. Meaney has acknowledged that.

MR. C. MARTIN: Yes, yes.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: But – and that was the piece, but what – I guess what I’m trying to clarify is, from the starting point, relying on reports that are being developed internally, there’s not an expectation at this point in time that there’s information intentionally not being reflected. If – when we go out and start to do this process and controls audit, it’s to find out if there’s gaps, if there’s errors, if there’s things not rolling up.

MR. LEARMONTH: Right.

MR. C. MARTIN: The concept that there's actually a second set of information at the project team level that they're not allowing it to flow up through the system, they're not reporting it in their own internal documents, other than what they're keeping amongst themselves, that's – I mean, that's a foreign concept at this point in time.

MR. LEARMONTH: All right.

Next, turn to tab 25, Exhibit P-03310. And this – January 22, 2015, email – and this is when, you know, EY is involved in the process controls review aspect.

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

Now, at this point were – and that being January 22, were you aware that there were concerns expressed by EY that they weren't getting access to documents?

MR. C. MARTIN: Yeah, I can actually speak to this one because I've seen this in the evidence and went back through my own email thread to try and get context on it. At this point in time, EY is not in the field executing the work, we're working on the statement of work. So this is the piece whereby we had already had Internal Audit moving forward reviewing the – that scope of work with respects to the quality assurance and the change and that.

So to give you context on this, this is – this point in time is I'm working back and forth with EY at this point to define the scope of work. Because of the fact Internal Audit was already looking at it, when I seen the piece come through on a proposed scope, I struck it from the scope myself at that point in time, from the perspective that EY was – that Internal Audit was looking at it. We were gonna look at it from a reliance perspective.

If you follow the email threads through on this one, Richard raises concerns here. I believe there's another one internally that shows up somewhere where Richard raises concerns, but David actually comes back to me on the 26th –

MR. LEARMONTH: David Steele –

MR. C. MARTIN: Yes, David –

MR. LEARMONTH: – you're talking about Richard Noble and David Steele –

MR. C. MARTIN: Yes, sorry, yes.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: David actually comes back to me in an email on the 26th and explains that the – how this access to the risk logs and the risk registers ties back to the piece that they're trying to do from a process control perspective. And based on that conversation, I modified the scope of work again and added it back in. If you go to the 28th –

MR. LEARMONTH: Right.

MR. C. MARTIN: – there's a draft where this piece is actually added in with access back to these documents and then that's – that revised piece actually shows up again, then, in the final draft – or the final signed copy of the statement of work.

MR. LEARMONTH: All right.

Next at tab 26, Exhibit P-03311.

It's an email from David Steele to others at EY. And if you could just turn to – it's a – document on page 2 is entitled Engagement Risk Profile Discussion, January 23, 2015.

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

Fairly strong statement – they’re saying they can’t do their job without this.

MR. C. MARTIN: Yes.

MR. LEARMONTH: And was this brought – this concern brought to your attention?

MR. C. MARTIN: Yes, this email would have been the one dated – this is prior to the other correspondence we have on January 26 and the draft on January – of the statement of work on January 28 where we actually bring those pieces back in.

MR. LEARMONTH: Yeah.

And then if you go to – on that same page 6 of Exhibit P-03311, in paragraph 3, under the heading Overall risks to consider: “We are associated to the OC and their mandate. We” are – “We currently believe” that “they are placing undue reliance on the information provided by Nalcor; They do not appear to be willing or able to negotiate a full mandate to meet their purposes.”

Is that what you were referring to? I mean, this is a big concern, right?

MR. C. MARTIN: It is, but this concern is all arising, from what I can see here, with respect to the risk logs and risk registers.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: But they were at it again, from a real-time perspective – I think what’s happening here is EY – this is January 22 – is going from the perspective that we’re just not getting access to these risk logs and risk registers because of what was going back and forth from the draft of the statement of work. But again, at this point that was a misconception on all parties at the end of the day.

When David came back to me on the 26th – because again, we were looking at it that Internal Audit had already started work on this particular piece. As we go through later on, Internal Audit was doing this; we allowed – we had EY review their audit plan. We also had EY review their audit results at the end of the piece so that we

could determine whether or not we could (inaudible) reliance on that work.

So this not having access to the registers on January 22 is their interpretation that they’re not getting it. But when they come to me on January 26 and explain, look, we understand Internal Audit is doing that work, we’re not talking about looking at it from a how they’re putting together their risk logs and things like that; we just need the access to it to perform the current scope of work to see that the things that are captured there are flowing through the reporting that’s going back to the commission – or the committee, sorry.

At that point in time I said, okay, I understand what you’re saying here now. I get it. And we modified the scope of work in order for them to have access to the information for that purpose.

MR. LEARMONTH: All right, and then at the bottom of page 6 of Exhibit P-03311, once again the reputational risk issue is restated, correct?

“Regardless of” –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – “how well we qualify” –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – “individual reports, we are associated and if this project runs into significant overruns, media and” the “opposition attention will focus on the fact that the OC and their independent advisors EY) did not do their job.”

MR. C. MARTIN: Yes.

MR. LEARMONTH: And once again, do you confirm that that’s a legitimate concern from the point of view of EY?

MR. C. MARTIN: Oh absolutely. I mean, EY at this point in time are – they’re an independent accounting firm. I mean, they do have reputational risk with respect to any of this.

MR. LEARMONTH: Yes.

Tab 29, Exhibit P-03316. It's a March 8 [sp. 6], 2015 email from David Steele to you and others. Paragraph 3 says: "We believe there is an inherent limitation to the scope of the review as currently contemplated. In order for the Oversight Committee to meet its objectives of assessing the completeness and accuracy of cost and schedule information being reported to them" et cetera.

So this is a restatement of the concerns, and it attributes it to an inherent limitation to the scope of the review.

Did you deal with this concern? Because this email was sent to you.

MR. C. MARTIN: Yes, March 6 this one is, the later one.

MR. LEARMONTH: March 6, 2015, yeah. Did you deal with that?

MR. C. MARTIN: From the perspective here, we essentially – "I understand that the Committee has accepted this limitation at this point in time, as there is current momentum and" accepted "by Nalcor for EY to begin work, and ... there will soon be an opportunity to assess gaps in coverage between the work EY will conduct" with "the Committee and the work Nalcor IA has completed."

So this is the path forward on this particular thing. It's – again, what David is pushing at here now is to actually – it's not access to the logs; it's reviewing the actual details of how those logs and data are being completed.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: All we've done at this point in time is say: Look, Internal Audit is in there; they're executing their scope of work.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: It'll be provided to you at the end of it to review and if there's gaps, we'll cover those gaps once we're done at the end.

So yes, EY is raising the issues but we're here now – I mean, this is March month. We're trying to get them in the field and get this audit moving

at this point in time. We're saying we understand there are some inherent limitations there, but those inherent limitations or gaps should be closed fairly quickly because of the fact that Internal Audit will be supplying its final report now shortly. And once we review that, we can review it from a reliance perspective. And if there are gaps from a reliance perspective, we can then look at how we fill those gaps.

MR. LEARMONTH: Yeah.

Seems like there's a lot of back and forth between your advisors, EY and government about the scope of the review. And I'll say at this time that you did have a heightened sense of concern about the information you were getting from Nalcor. Is that correct?

MR. C. MARTIN: At this point in time, we are looking at it. We still don't have a good linkage between the cost –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – and the schedule progress.

MR. LEARMONTH: Yeah.

So why don't you just stand back and say: Look, why are we tiptoeing around? Why don't we just get EY to go in there and do a detailed examination of the – of cost and schedule and forget about these little distinctions about the scope. Give them the full power to do that and then you can avoid a lot of this back and forth tiptoeing, I call it.

MR. C. MARTIN: Yeah.

I understand what you're saying there and, in retrospect, I can't disagree. But from a context at the time, we've got issues here where we're trying to keep them within scope and this is appearing in our scope or piece of work to try to turn around fairly quickly. That's the goal at this point in time because, again, it is important to us being able to rely on the documents.

The other thing, though, at this time, from a context perspective, is this is the same time when Nalcor is still there. The relationship between Nalcor and EY is not great. We're trying to get them out in the field to execute this

piece of work. We've already set up our oversight protocols whereby we've set up reliance basis and that. So the context at the time is: I understand there may be some inherent limitations but if there are inherent limitations, there'll be an opportunity to address those in the matter of – I think it was sometime early May when we actually had the completed IA, Internal Audit, reports available –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – at that point in time for them to review. And they did identify a couple of gaps, which it was the intent to move forward on it at a later date. But once we saw what came out of the project and controls audit and then the results of that, this whole thing led into the full-blown review that happened then later on.

MR. LEARMONTH: Well, it wasn't until January –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – 2016 –

MR. C. MARTIN: Yes, at this point –

MR. LEARMONTH: – when there was a change of government.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Yes.

At this point where we're to, though, is we've started to try and move this piece of work at that –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – forward (inaudible) early January –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – and we're at March 6 and we're still not even in the field at this point in time.

MR. LEARMONTH: Okay.

MR. C. MARTIN: So we're trying to say, look, narrow the scope, move forward, let's get this thing moving.

MR. LEARMONTH: Well, you know, as I said, narrow the scope – perhaps the best thing to have done would be expand the scope.

MR. C. MARTIN: In retrospect, knowing what we know now, absolutely.

MR. LEARMONTH: Yeah, okay.

Anyway, tab 30, Exhibit P-03328.

Well, once again, this is from Richard Noble to Paul Hickey. He's saying in paragraph 1: "In my 17 years' experience of conducting project reviews and audits, it is highly unusual when assessing cost and schedule management that you would be constrained from examining the processes/basis of plans and estimates to start with. These underpin cost and schedule performance and its management. Everyone knows that."

And then at the bottom of page 1 of this exhibit, it says: "My position continues to be that in order to meet its very reasonable mandate, the OC of the Gov NL should not be indulging these constraints being placed on the review by Nalcor. Nalcor should be directed to comply with Gov NL request as" they "are reasonable. We were assured by Craig that we would be granted access to any information we deemed necessary and yet we are receiving push back."

"The extent of challenge on our requests for data and our conducting the work is itself not reassuring."

"But as ever, we will work professionally and sensitively with the client and" with "Nalcor."

Once again, this is a very, you know, important point that, you know, that EY is time and time again stating that they're not getting the proper access and they're being critical of the Oversight Committee for not pampering Nalcor but indulging in constraints that are put up by Nalcor.

So why did you indulge Nalcor and constraints on the scope of the examination being done by EY under this mandate?

MR. C. MARTIN: Now, this particular email here is May 7. I'll give a little more context on it here.

But if I go to the beginning here, the very first item number 1 where you mentioned here – what Richard's starting to talk about here is the basis of the plans and estimates to start with. So this is right back to the original baseline at this point. This talks about this whole idea of scope creep again and that –

MR. LEARMONTH: Right.

MR. C. MARTIN: – this is Richard internally saying we need this. But, right from the beginning when we started out here, that was clearly excluded from the scope of work from the outset, 'cause there was no expectation on that front.

So this here now I don't believe is with respect to the risk register, that what's happening here at this point in time is Nalcor still hasn't had access to the Astaldi contracts. We haven't had the Internal Audit reports. There were several other contractor reports that EY had not had access to.

So over the upcoming periods, again, I have email threads within my emails on this. We move forward with Nalcor, and we do get access for EY for all the documentation that it requested during the course of its audit.

The only thing – or two things that I'm aware of is – from a scope perspective, is one, we left out the original baseline right from the beginning, from day one, that we weren't reviewing the baseline at this point in the original cost estimates because there was no expectation to do one, so – and we did narrow the scope with respect to the risk logs and risk registers and that.

But again, it was from the perspective that it's – this work was already being done by Internal Audit. It's not that we're not going to consider it and not that we're going to ignore it; it's just if we let Internal Audit finish the piece of work they're literally at this point in time executing

themselves – the audit reports, I believe, were made available to EY and they reviewed 'em somewhere around the 15th, 16th of May?

MR. LEARMONTH: Yup.

MR. C. MARTIN: Other than those two particular pieces, which were issues within the scope, yes, absolutely, EY had challenges with Nalcor trying to access documents and things. But at the end of the day, going back and forth, EY did get access to all the materials in order –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – to complete that particular –

MR. LEARMONTH: There was a lot –

MR. C. MARTIN: – (inaudible).

MR. LEARMONTH: – of money wasted.

MR. C. MARTIN: Absolutely. It was a lot of back and forth and a lot –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – of pushing.

MR. LEARMONTH: It was unnecessary and I don't know why the Oversight Committee didn't meet with – call in the people at Nalcor and tell them that look, this is what – or want – we want done, and you're to co-operate with it, take a firm hand on it, because there's a lot of money being wasted, a lot of money, taxpayers' money, on this tiptoeing, which I would – I think is an appropriate statement.

MR. C. MARTIN: We're looking at basically a scope of work here I think that EY planned originally would've been six to eight weeks, so six to eight week of billable work –

MR. LEARMONTH: Yup.

MR. C. MARTIN: – would probably happen realistically over a 10- to 12-week period, so about three months.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: We're basically into six months for this full execution –

MR. LEARMONTH: Right.

MR. C. MARTIN: – of work. Absolutely. Yeah we've – I – from a Nalcor perspective, every time we turned around we would be getting pushback on something.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: There would be an issue that EY would say, well, we thought we were getting this but when we got there that wasn't in the room. We'd follow up and say how come that's not there? Oh yeah, we missed that piece; we've got to get it.

There would be Nalcor reaching out – I believe there was an example of that in one of Ms. Mullaley's documents whereby Nalcor had reached out – or it might have been in my documents – where Nalcor had actually reached out to Paul Harrington and reached out to Charles to complain about the piece of work being done because of – they were considering it scope-creeping by EY.

There's another piece where they were complaining we thought that Internal Audit was going to lead on this point, and they're complaining about me again because I said, no, it's not Internal Audit, it's EY doing this particular piece.

So it is quite seriously a constant pushing –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – back and forth here to try and execute this piece of work.

MR. LEARMONTH: Well, based on what you just said, I think the comment that Mr. Noble made – I think it was Mr. Noble – that you were indulging – the Oversight Committee was indulging Nalcor appears to have been an accurate statement.

Do you agree?

MR. C. MARTIN: At the end of day, I guess – how do I answer that one? At the end of the day,

the Oversight Committee is not a judicial body. It has – at the end of the day, the Oversight Committee cannot truly instruct Nalcor to do anything. For Nalcor to be instructed, it would have to roll back through Cabinet and through the department.

MR. LEARMONTH: Oh.

MR. C. MARTIN: Again, I'm not trying to say that – I understand what you're saying; I just want to clarify that the Oversight Committee, itself, directly, or myself in my position in particular, I could work with Nalcor, I can talk to Nalcor, I would follow up with Nalcor. But this – at the end of the day, it's not a good – it's a question of: how do you move forward to get access to the information?

MR. LEARMONTH: No, but given the fact that all these back-and-forths are consuming taxpayers' dollars, why didn't the Oversight Committee, at this point, go to Cabinet and say: look, we're wasting taxpayers' money by Nalcor's – the roadblocks that Nalcor is putting up and they're impeding EY, and whoever it is that has to talk to Nalcor, we'd ask that you do so because we just don't want to waste anymore money.

Why wouldn't you have done that?

MR. C. MARTIN: Excuse me.

Again, it's my understanding that every time we hit a roadblock or whatever, it would escalate up through the committee. There would be calls made, and access would happen after that. It's just unfortunately each time – or I shouldn't say each time, but there would be then and later a time where a roadblock would be hit again or something would come up again.

MR. LEARMONTH: And more money wasted.

MR. C. MARTIN: Essentially, yes.

MR. LEARMONTH: Yes. Okay.

Tab 35, Exhibit P-03323.

Now, this is a – this is from Emiliano Mancini to you and others saying that: "Please find attached

the deck for the kick off meeting with Nalcor for your review.”

So, after all this time – well, this is March 26, so this is the kickoff. This is the meeting where they get together to set the schedule for the review, is that correct?

MR. C. MARTIN: Yes. This is the – essentially, this is the start of the fieldwork for that review.

MR. LEARMONTH: Yeah.

And when was the contract awarded?

MR. C. MARTIN: The contract itself – we were looking – well, the contract, itself, was really the end of January.

MR. LEARMONTH: End of January.

So, it’s quite a lot – a lot of time has passed –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – before the kickoff meeting has started –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – right? I would think the kickoff meeting would be started, like, a day or two after the contract was signed. No? Obviously not.

But is that because of the roadblocks that were being put up by Nalcor that it took so long to get to the kickoff meeting?

MR. C. MARTIN: Trying to recall now specifically what would have been the delays. It would have been a number of things on this particular piece. I can’t specifically say what would have caused it at that point. It would have been things though – obviously, we were trying to get Internal Audit. Internal Audit was working with –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – EY on this particular piece, so they were coordinating back and forth.

There would have been some pieces there going back and forth on the statement of work.

MR. LEARMONTH: Right.

MR. C. MARTIN: Could have been any number of particular reasons. I honestly can’t recall –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – specifically what would have been this one.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: But, unequivocally – I mean Nalcor never ever welcomed EY with open arms I can say unequivocally.

MR. LEARMONTH: It was a loveless embrace, was it?

MR. C. MARTIN: Yes.

MR. LEARMONTH: All right.

If we – now, the actual work was – had been carried out since January on this phase 2, but the actual contract was not signed until about April 27. And if you turn to tab 38, Exhibit P-03326, and if you go to page 2, this is the formal contract – actually, it’s dated March 9, but there had been work done under this contract under the umbrella agreement prior to March 9. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah, okay.

This is the formal contract.

MR. C. MARTIN: Yes.

MR. LEARMONTH: And it says on page 2 it’s dated March 9.

“**Scope details:** Perform an assessment of Cost and Schedule management processes and controls, and related reporting; Assess methodology for calculating and reporting Cost and Schedule.

“Scope exclusions: The estimating and cost baseline process will not be assessed.”

Okay, so – well, you already answered that question because, I think, some people would say, well, why not. But, anyway, it was specifically excluded. And that work was actually carried out in the January 2016 contract, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah.

Okay, if you go to page 4 we can see the cost of this process controls review is – well, estimate \$118,324 with a 5 per cent contingency. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah.

But all the money that had been spent in the back and forth, that was covered under another contract, right?

MR. C. MARTIN: That would have been a –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – combination of the umbrella agreement and –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – what was actually billed.

MR. LEARMONTH: All right.

Now, tab 39, Exhibit P-03923, this is a – in the announcement of your appointment as assistant deputy minister, Taxation and Fiscal Policy. And the appointment is effective May 11, 2015, so you were there about a year.

MR. C. MARTIN: Yes.

MR. LEARMONTH: And you – so then you left the Cabinet Secretariat office and moved to Finance. Is that right?

MR. C. MARTIN: Yes, I did.

MR. LEARMONTH: But as you said earlier, because in your capacity as assistant deputy minister of Taxation and Fiscal Policy that you are automatically a member of the committee, you carried on work not as executive director but as a member of the Oversight Committee?

MR. C. MARTIN: Yes, I was – the position itself was a member of the Oversight Committee and as we go through, I’m still very heavily involved. Like, I’m involved much more than most of the other members at this point –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – in time, up until around the end of September as we’re trying to get this piece of work completed with EY and –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – you know.

MR. LEARMONTH: And I think you said before you couldn’t give an explanation why someone didn’t replace you because we know that Paul Carter, who was – who succeeded you, was not appointed until the summer of 2016. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: And you don’t have any reason why that position was left open for so long?

MR. C. MARTIN: Again, Harman Khurana was the Cabinet officer who was supporting the committee, but he was doing only a limited scope of the work as opposed to the full executive director role. I was still heavily involved up until the end of September at this point in time. So the gap really starts more so, I guess, around that October when – because especially between myself and Harman, we’re both backfilling in terms of keeping things moving at that point in time.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Why it wasn’t filled after that, I can’t say.

MR. LEARMONTH: But you were involved quite a bit after September –

MR. C. MARTIN: Oh, I'm still involved, absolutely. Because I'm –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – still a committee member and then –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – depending on what comes up, I mean having been executive –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – director for a year, I'm closer to a lot of the pieces than some of the other members would've been.

MR. LEARMONTH: Okay, now tab 40, Exhibit P-03414. It's an email from Emiliano Mancini to David Steele about all meetings minuted: "Please see attached notes from our meetings with Julia/Craig, J Kean and P Harrington for your review."

Now, if we go to page 6, this is a note of a meeting that you actually attended personally. Exhibit P-03414, page 6: "Notes from the meeting with Paul Harrington on May 6, 2015." It shows the attendees and then proposed time – and this was at Nalcor's project office, 350 Torbay Road, time: 2:30 to 3:30.

The first dot: "As soon as EY prepared to formulate the first question, Paul Harrington interrupted the meeting and left saying that he was expecting a debriefing and was not prepared to respond to any question." Now, you were there, were you?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Do you recall this?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Well, can you explain the circumstances that – you know, what was said or what was done that caused Mr.

Harrington to leave the meeting to best of your recollection? Just set the scene for us.

MR. C. MARTIN: There wasn't very much said or done in fact. From what I recall, we had arrived at the meeting, Mr. Harrington came in. As soon as – literally as the meeting, I know, indicates here, as soon as EY started to go through, Paul cut off and said he was simply expecting a debriefing, he had another meeting. He walked up and he – was stood up and he left.

MR. LEARMONTH: So it wasn't in response to any questioning on subject matters that he wasn't prepared for or anything like that?

MR. C. MARTIN: No, not that I'm aware of. It was literally stood up, walked out of the meeting as indicated.

MR. LEARMONTH: Did this appear to be staged to you or did it seem to be a genuine distaste for the discussion?

MR. C. MARTIN: The relationship between EY and Nalcor was very difficult to manage. This behaviour, though, was unacceptable, at the end of the day. Whether or not it was staged or frustration, I mean we knew what we were getting together for, it was to discuss this particular piece. So I was a bit – I shouldn't say a bit, I was surprised with the reaction, but whether or not it was staged versus reaction –

MR. LEARMONTH: Well, I guess you can't really say that perhaps.

MR. C. MARTIN: – I can't.

MR. LEARMONTH: Yeah but it was sudden. I mean it wasn't, like, after a bit of an introductory comment –

MR. C. MARTIN: No, no.

MR. LEARMONTH: – it was bam, right away?

MR. C. MARTIN: Yes. Yes.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Either – I mean, again, it was either staged or Mr. Harrington already had

his mind made up that if anything came up then he was walking out.

MR. LEARMONTH: Yeah.

And these gentlemen, or some of them, Emiliano Mancini at least and Richard Noble, had come from Toronto for this meeting or for – this was one of the purposes of this trip?

MR. C. MARTIN: This was – yes, this meeting – I mean they're in from Toronto, at this point, doing their review and this meeting is part of that review.

MR. LEARMONTH: Yeah. So that's a further waste of money, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

Okay, tab 42, Exhibit P-03924, this is an email – well, a series of emails from Mr. – say, Mr. Harrington. Can you give me some insight as to what's going on here? This is from Paul Harrington to you, June 23, 2015.

MR. C. MARTIN: Yes, this is an email from Paul to myself.

MR. LEARMONTH: So, at this point, was he on speaking terms with the committee?

MR. C. MARTIN: Oh, from the committee perspective, yes.

MR. LEARMONTH: No, no, but I mean he walked out of one meeting so, at this point, had there been a change?

MR. C. MARTIN: There – yes, at this point Paul is moving back and forth from a committee perspective. This particular piece here is with respect to our March 2015 draft report that we had shared with Nalcor, again, for vetting purposes in terms of making sure on what we were saying is accurate and things such as that.

So Paul is coming back here on this particular one saying he disagrees with one of the comments because it deals with the production volumes. We're reporting outside of the March period at this point and time. This ties back to

the 120-day plan that they had in place in order to try and move forward to recapture some of the time lost with respect to the Astaldi contract that winter.

MR. LEARMONTH: Right.

MR. C. MARTIN: So, in this particular report, we had put comments forward that related to that plan that were past the March period. They were actually relating to April and May. And I believe – I'd have to go back to confirm, but I believe, the May one, they had actually not achieved what was planned – or it may have been April that wasn't achieved, but the first month of the 120-day plan they had done well; the second month they hadn't achieved even what was planned from a make-up perspective. So, we had included that fact from an IE comment in our report.

MR. LEARMONTH: Right.

MR. C. MARTIN: Paul disagreed with including that, saying that this was a report for March and, therefore, it shouldn't be included in that particular report, and if it was, then he wanted other materials put in there.

MR. LEARMONTH: So, what was your reaction to that position?

MR. C. MARTIN: We didn't agree with the position and we left the comment in the report.

MR. LEARMONTH: Okay.

Tab 43, Exhibit P-04010. This is an email from you to David Steele and Richard Noble, June 23, 2015. This appears to be a commentary provided by Nalcor to the Oversight Committee on the EY report. Is that correct?

MR. C. MARTIN: Yes. It is.

MR. LEARMONTH: It's fairly long and detailed, is it?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Do you know who wrote this commentary?

MR. C. MARTIN: I don't know specifically. I mean, it would have been written by who – the Nalcor project team. It would have involved Paul certainly. I don't know how much Gilbert would have been involved and what other members (inaudible).

MR. LEARMONTH: Okay.

Page – excuse me, tab 44, Exhibit P-03331. It's an email from David Steele to Craig Martin. Could you give us some background on what we're dealing with here?

MR. C. MARTIN: Okay, this is with respect to sharing some materials back and forth with Richard and then in terms of what we're talking about for putting in the current oversight report. And they're just giving us some feedback now in terms of where we're – quoting other ones – whether or not we should be doing our work from a reliance perspective – reviewing those particular reports and that.

MR. LEARMONTH: Okay.

Tab 45, P-03333. This is an email from Richard Noble to Charles-Antoine St-Jean, David Steele. This is about the draft, and what it says is, second paragraph: "However, I like yourselves remain convinced that our recommendations are sound and given the probability of a delay and attendant costs, believe the Government of Newfoundland and Labrador should be best served by publicly initiating close scrutiny of the project cost and schedule.

"Historically, the Oversight Committee have found it difficult to commit to this."

So this is a comment – I guess the report had been finalized then. Is that correct?

MR. C. MARTIN: This is the – yes, the –

MR. LEARMONTH: The form of it. It may not have been released but it was –

MR. C. MARTIN: From the perspective – at this point in time, we had been going back and forth with EY probably for about five or six weeks at this point, so by the time we get to the August report, from a committee perspective, it's pretty much completed.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: We – there's very few changes to it up until to the point where it goes to Cabinet.

MR. LEARMONTH: And are – at this point, this report having been completed or close to being completed, do you – were you getting the sense that EY was really pushing to do the – a more comprehensive review?

MR. C. MARTIN: At this point – well, at this point, I can't say that I particularly did. I know that if we're raising issues that given where we are from a project control basis and that, that it's something that should be considered. So, at this point, yes, it's being discussed, but it's still very high level at this point. But the key difference, I guess, at this point in time is we now know where we are with respect to the project (inaudible) the fact that we can't rely on what's coming through on those reports.

MR. LEARMONTH: Yeah, that's the reality, isn't it?

MR. C. MARTIN: That's the reality at this point, yes.

MR. LEARMONTH: So when we look at the draft report or the August 31 report, we know that it was issues about the commercial sensitivity, but, anyway, the draft report is at tab 46, and it's Exhibit P-03420. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: And just summarize your understanding of what the oversight – what if any concerns the Oversight Committee had after it reviewed this report – or what concerns did you have, I should say.

MR. C. MARTIN: Well, I mean, right away we know that we'd have issues with quantification, that costs are not being – or, pardon, risks are not being quantified and being included in the forecast. If we go to page 6 of the document –

MR. LEARMONTH: Yes.

MR. C. MARTIN: – we'll see the key cost management process and control risk issues are

outlined there. And, actually – and just above that we also have the key schedule management process and control risks and issues.

MR. LEARMONTH: Right.

MR. C. MARTIN: So for the three of the five samples selected, the development plans were incomplete and did not meet the criteria. “A majority of” all contractors “included in the Sample were not systematically rolled ... into the ... IPS.”

MR. LEARMONTH: Right.

MR. C. MARTIN: “A completion date has not been established for finalizing an integrated baseline of contractor and IPS schedules to correct the issues noted in #1 and #2 above.”

MR. LEARMONTH: Yeah.

MR. C. MARTIN: “The IPS development and maintenance process is not fully documented.”

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So, I mean, those are significant findings with respect to how the – reporting the schedule through those particular documents. And then we have similar types of things with the respect to the costs as we move forward.

MR. LEARMONTH: Okay. But at this point – I understand that there was a lot of trust placed in Nalcor and its internal systems and processes, but when you get this report, doesn’t that heighten your concern?

MR. C. MARTIN: Oh, absolutely. I mean, at this point, we have initial findings like this in, I believe it’s the early June – end of May, early June the first indication of these things –

MR. LEARMONTH: Right. Yeah.

MR. C. MARTIN: – is EY is coming forward. So, no, no, at this point, we have serious concerns about it. And it’s – then also this same time frame, the end of June of 2015, when we’re first becoming aware then of the potential – of the 7.65 –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – cost increase that’s also being contemplated.

MR. LEARMONTH: So, you knew something was wrong, didn’t you?

MR. C. MARTIN: Absolutely.

MR. LEARMONTH: The Oversight Committee knew that there was some – a problem here that had to be dealt with?

MR. C. MARTIN: At this point and time, yes.

MR. LEARMONTH: Yeah.

Okay, if we go to page – tab 47. I’m not going to spend a lot of time on this. This is an Oversight Committee, September 16, 2015, presentation by Nalcor. And if we look at page 31, we see that the – at this time there’s still – I don’t know if it’s page – I probably got the wrong page, but, anyway, in this document, there is still a statement that the 6.99 figure is being used. Is that correct?

MR. C. MARTIN: Page 13.

MR. LEARMONTH: Excuse me, page – yes, page 13. Yeah.

MR. C. MARTIN: Yes.

MR. LEARMONTH: So it still says six – but Ms. Mullaley said – I don’t want to go over all of hers – but she said at this time, everyone knew that that figure was wrong.

MR. C. MARTIN: Yes.

MR. LEARMONTH: So, Ms. Mullaley was at a loss to understand – like, my question is if everyone knew that this was a fiction, why was it prepared?

MR. C. MARTIN: Again, this is a Nalcor document. Why –

MR. LEARMONTH: I know but –

MR. C. MARTIN: Oh, yes, absolutely. I mean, what we should expect if that is still the final

forecast cost from an AFE fixed perspective, there should be additional information here tying in that bringing that 6.99 up to 7.65 at this point in time.

MR. LEARMONTH: Right.

MR. C. MARTIN: And then, potentially, if there's other risks there at this point, which – we know the Astaldi piece is still outstanding and still an unknown quantity at this point and time – you would expect to see that raised in this document with a question mark or something there if the range is not determined at this point in time. But it's a clear risk and it clearly has some dollars associated with it; it's just unknown at that point and time what it could be.

MR. LEARMONTH: Yeah. But was there any discussion that – like, this is sort of like a comedy that everyone at the committee knows this figure is wrong. You're getting this thing with wrong information, I mean, I think many people would say, what's going on here?

MR. C. MARTIN: I think from a Nalcor perspective all they would have said is we have not modified the AFE yet so, therefore we have not updated the cost.

MR. LEARMONTH: Oh. Okay.

Was there any reporting protocol that prevented Nalcor from providing you with cost information other –

MR. C. MARTIN: No –

MR. LEARMONTH: – than the AFE?

MR. C. MARTIN: – no –

MR. LEARMONTH: No.

MR. C. MARTIN: – absolutely not.

MR. LEARMONTH: Okay. So that's pretty lame don't you think?

MR. C. MARTIN: Oh, yes. Absolutely. Again, at this point in time, the committee reports that we receive these days from Nalcor, have cost – if there's pieces there beyond – from beyond what they're currently carrying, they will show

risks in there and they will associate something in the range of a dollar range if they think there's something going on there.

MR. LEARMONTH: All right.

Tab 49, Exhibit P-03650. Now this – if we go to page 2 first. This is an email from Paul Harrington to Dawn Dalley, I believe. Anyway, there's a number of people in Nalcor. In the middle, Mr. Harrington writes, September 26, 2015 – so they've got the draft report by now, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah. "I cannot stress" that "enough the damage releasing this report can do, it can effect Astaldis share price negatively and ruin our hard worked" planned "relationship build with their negotiating team, also it will push this issue into the public eye at the worst possible time. I reiterate my recommendation that the OC revive a verbal report on EandYs advice and not a formal report."

And then on page 1, September 27, Mr. Harrington writes to Gilbert Bennett; "This is a very serious issue and unless we put a halt on the e and Y push to be a shadow IE we will be screwed. To be perfectly frank I believe this is a battle we have to win.

"My position becomes untenable otherwise.

"Pile on by all means and help to stop this foolishness."

And Gilbert Bennett says; "I agree – this is surreal...."

Can you give us some information on this? This seems to be quite a concern expressed by Mr. Harrington and acknowledged to be legitimate by Gilbert Bennett.

MR. C. MARTIN: So the context on this is, this is with respect to the EY report and the Committee report for – that's planned to be scheduled – issued the end of September. We have shared the reports with Nalcor at this point in time, for them to provide information. They've raised commercial sensitivity concerns

on pieces of it. As the Committee, we've worked back and forth on pieces, but we're pretty much at the stage now where we have a report that we're satisfied with and we're preparing to move forward to Cabinet and release.

And, in fact, I believe, September 26th – that may have already gone to – no – I'm not sure. I don't want to – no – I'm not sure whether or not it had already gone to Cabinet at that point or not.

MR. LEARMONTH: Okay. So, Nalcor, basically, was saying don't release the report because of – there's commercially sensitive issues, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: And this led to the splitting of the report in two. Is that right?

MR. C. MARTIN: Yes. There was a decision, I believe, a couple of days after this – that the report would be – well, there was a decision there a couple of days after not to release the report as it was and then there was discussion about subsequent – about splitting the report in two, to try and address these commercial sensitivities further.

MR. LEARMONTH: Okay. Well, Ms. Mullaley gave detailed evidence on this, so I'll just touch on some of the – some of the issues – but not – certainly not on all of them. Next, we're into volume 2; if we go to tab 54, this Exhibit P-03928 – September 28 from David Steele to Julia Mullaley and Craig Martin. Can you tell me what this speaks to?

Well, I'll just turn your attention to the bottom of page 1, second last paragraph: "We have also quickly reviewed the 'Commercially Sensitive Flags' document provided by Nalcor to you. The points raised may be alleviated by the fact that we have now removed references to [Astaldi] and the Appendices. Considering these adjustments, it would be prudent for you to circle back to Nalcor to get an agreed upon position on the" commercially sensitive "that remains.

"It is currently difficult to understand the specific matters of the" commercial "sensitivity from the points (comments in document) raised by Nalcor, as Nalcor has not provided the rationale."

So, EY is saying that – at this point, that they don't really recognize the validity of the concerns expressed by Nalcor on commercial sensitivity. Is that correct?

MR. C. MARTIN: Yes. Yes.

MR. LEARMONTH: Yeah. Did the Oversight Committee take any position on this?

MR. C. MARTIN: At this point in time, the Oversight Committee is preparing to finalize and release this report.

MR. LEARMONTH: Okay. Now, if we go to tab 50 – tab 55 – once again, this is – now this is Exhibit P-03651, James Meaney, September 28. So, this is the ongoing discussion, right? If we go to page 2 at the bottom there's an email from Dawn Dalley to other people at Nalcor saying, "First, thank you for your responses ... The OC/GNL are holding the E&Y report for now as a result of our concerns and we will engage them further" in the coming days.

So, was – what caused the Oversight Committee to hold the report? Was it a direction from Cabinet or a discussion with Nalcor?

MR. C. MARTIN: A direction from Cabinet.

MR. LEARMONTH: Direction from Cabinet?

MR. C. MARTIN: Well, my understanding, I don't have direct knowledge, but Julia advised us that the premier had decided that we were going to hold the report at this point in time and –

MR. LEARMONTH: The premier – that's Premier Davis, is that right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay. And you got that information from Julia Mullaley?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay. Well I guess you didn't have any choice at that point –

MR. C. MARTIN: No.

MR. LEARMONTH: – if the premier was saying that.

All right, tab 57, Exhibit P-03337. And this is from Richard Noble, September 29, so this debate is ongoing. He says in paragraph two in his email to David Steele – at this point there's a two report option, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: To split the report, one dealing with –

MR. C. MARTIN: One is a high-level summary, and the other one contains the details.

MR. LEARMONTH: (Inaudible) tend to be released to the public and the other one would contain what Nalcor said was commercially sensitive would be held, is that right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

But, Mr. Noble says – we know that Mr. Steele didn't understand the basis for the claim of commercial sensitivity. Here Mr. Noble is saying "We don't know what Nalcor's thinking is for a majority (10/11) of items requested to be removed by Nalcor and identified commercially sensitive ... we can hypothesize... but it is not clear why they see them as such."

So that's two people at EY that have that view, is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay. Did you have any concerns? Did the Oversight Committee form any independent assessment of this – of the validity of Nalcor's concerns?

MR. C. MARTIN: The Oversight Committee was prepared to issue the report as was for September 28.

MR. LEARMONTH: Okay.

But you were told not to?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

And so we see here at exhibit P – this is at tab 58, October 15, 2015. This is from you to Julia Mullaley and Charles Bown. So even though your tenure as executive director has ended, you're still, like, deeply involved, correct?

MR. C. MARTIN: Yes. At this point, I believe, David had sent me the email on this particular piece, but I believe myself and Harman are back and forth depending on who they contacted at any point.

MR. LEARMONTH: Yep.

MR. C. MARTIN: So they had sent me this email, and I was following up with Julia to see exactly where this was at this point.

MR. LEARMONTH: Okay.

Tab 59, Exhibit P-03339, and this is the reference to the two report option.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay, so this is like the Oversight Committee wanted to release to the public the full report, you were told by the Premier's office not to, so the sort of approach the Premier's office accepted, I guess, is to put it into two we've talked about that before.

MR. C. MARTIN: Put it into two reports, basically, to try and move past the commercial sensitivity issue.

MR. LEARMONTH: Yeah.

I suppose from EY's point of view it didn't make any difference, because as long as all of their information in the first report – whether it was split into two or three – as long as their

client, the government, received it, it was up to the government to decide the format.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yup.

All right.

And then, at tab 60, this is Exhibit P-03422. So, this is the two reports.

We have – this is from Richard Noble to you and others: “Dear Craig,

“We have redrafted the reports into two parts ...

“An executive summary (intended for public consumption and that omits details that might be commercially sensitive)

“A detailed supplement (that contains commercially sensitive”

So these two reports are contained ...

Yeah.

MR. C. MARTIN: Yes.

MR. LEARMONTH: And, just before I leave this, do you confirm that the – even the small executive summary that was to be released to the public was not released until December 16, 2016

–

MR. C. MARTIN: Yes.

MR. LEARMONTH: – when the new government came in.

MR. C. MARTIN: Yes.

MR. LEARMONTH: That’s correct.

MR. C. MARTIN: The executive summary was released in December, and the detailed report was released in March.

MR. LEARMONTH: March, 2016.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

And tab 61. This is October – P-03582 – October 29, 2015. This is that summary report you’re referring to, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Okay.

And then, the full report was not released to – the information I have was that the second part of the two-part report was released either on March 30, 2016, or some time between March 30, and April 12, 2016.

MR. C. MARTIN: I can’t say the specific date, but the time frames sound correct.

MR. LEARMONTH: Okay.

THE COMMISSIONER: I’m noticing here now, Mr. Learmonth, that it’s 20 after, or almost 20 after. Do you want to take your morning break here?

MR. LEARMONTH: It’s up to you. It’s fine.

THE COMMISSIONER: Okay.

I think we’ll take our break, then, for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

Mr. Learmonth.

MR. LEARMONTH: Yes.

Tab 64, Exhibit P-03340.

Now, this is – on page 1, the middle of the page there’s an email from Paul Hickey to Kirsten Tisdale, David Steele, Michael Kennedy and Richard Noble.

Are you still on board at this time?

MR. C. MARTIN: I'm still with the Oversight Committee at this point in time.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: I'm not – on this particular piece, I'm in and out, depending on whether Julia pulled me into a piece or not.

MR. LEARMONTH: Okay.

Well, this is – this was after the election, and I think the day after the Cabinet was formed. Paul Hickey says: "I just got off the phone with the Premier. He has asked Julia to talk to David about a full review of Muskrat."

So were you aware that, at that point, a full –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – review was –?

MR. C. MARTIN: Yes, it was being discussed at this point.

MR. LEARMONTH: Okay.

Tab 65, Exhibit P-03423.

This is a comment by Richard Noble to David Steele on the quantitative risk assessment.

He says, bottom line – it's towards the end: "Bottom line... they blew their contingency allowances which were clearly inadequate and have the substantial overruns on cost and schedule as a result... hmmm... a reassessment is perhaps warranted now, wouldn't you think.

"Please have a final look over, David... they should be ready to go."

Now, were you – was the Oversight Committee aware that there hadn't been a quantitative risk assessment done since before sanction?

MR. C. MARTIN: No.

MR. LEARMONTH: You didn't know that?

MR. C. MARTIN: No.

MR. LEARMONTH: Okay.

Did you ever inquire as to when the most recent quantitative risk assessment had been done?

MR. C. MARTIN: I'm trying to think.

I don't think we inquired as to when it was last done. We would've asked questions along the lines of: You're showing us these risks, are they quantified and projected? And that's where they would speak to, well, to do that as a re-baseline quantitative assessment –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – things like that.

MR. LEARMONTH: But they never did re-baseline, did they?

MR. C. MARTIN: No, they – well, they re-baselined when they went to the 6.99 and then the 7.65. But in terms of, as you indicated, to going back and doing a full quantitative assessment and doing the full build up again, no, not that we we're aware of.

MR. LEARMONTH: Because in that exhibit I referred to, P-03423, his – Mr. Noble's interpretation of this tangential explanation –

MR. C. MARTIN: Mm-hmm.

MR. LEARMONTH: – as he describes it, put forward by Nalcor, is: "We did it once... but haven't updated the quantitative contingency assessment in 3 years and are now managing by the seat of our pants... and living with the results."

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah. So you didn't know at this time that there were no quantitative risk assessments done since –

MR. C. MARTIN: No.

MR. LEARMONTH: – sanction in December 2012?

MR. C. MARTIN: No.

MR. LEARMONTH: Did it surprise you to learn that that was the case?

MR. C. MARTIN: Yes, absolutely.

MR. LEARMONTH: Okay.

Now, tab 66, Exhibit P-03832.

This is the report dated October 30, 2015. Well, I guess, that's the one before it was split. Is that right?

MR. C. MARTIN: Yes, that's the executive summary (inaudible).

MR. LEARMONTH: Yeah.

Tab 67, I just mention this because – this is Exhibit P-03931 – you seem to be still involved at this point. Is that correct?

MR. C. MARTIN: This is December 21, 2015.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Yes, this one would've come to me. I'm not sure whether this is because of the committee or if this has to do – I think this is a budget question, something was after arising.

MR. LEARMONTH: Okay.

MR. C. MARTIN: I'm not – I can't remember specifically because I could've been involved in this question on either role.

MR. LEARMONTH: Okay.

Now, tab 70 is a – this is the scope of work for the – when the government changed, the Premier ordered a new – like a full review of the project costs and schedule. And this is –

THE COMMISSIONER: 03586?

MR. LEARMONTH: P-03586, correct.

THE COMMISSIONER: Okay.

MR. LEARMONTH: This is the January 14, 2016, scope of work – or the first page of it. Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: All right.

Now, at tab 71, P-03346.

This is a comment that Michael Kennedy made after travelling to St. John's and meeting with the project management team and executive – or some of them anyway.

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

Now, this indicates – well, it speaks for itself but –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – it also has, from a taxpayer's point of view, an indication that – you know, there's a suggestion there: We spent \$400,000, and we're – we haven't made much progress, which I think is a clear –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – clearly something emerges.

Once again, does that not reflect a lot of wasted money?

MR. C. MARTIN: In – oh, absolutely. I mean, it's – again, it's money being spent without being able to make the progress on the file.

MR. LEARMONTH: Yeah.

And for the time spent – I mean, they're a professional firm, they have to be paid for their hourly rates and their having senior people from England and Australia in here and –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – so the meter is running.

MR. C. MARTIN: Yes.

MR. LEARMONTH: And there seems to be an element of frustration about the lack of transparency and the fact that they can't get data, correct?

MR. C. MARTIN: That's what I'm seeing here in this email, yes.

MR. LEARMONTH: That's what it says anyway.

MR. C. MARTIN: I can't speak specifically to the execution of this audit because I wasn't engaged –

MR. LEARMONTH: Okay, well –

MR. C. MARTIN: – (inaudible).

MR. LEARMONTH: – yeah, I was gonna ask you. The next document at tab 73; this is Exhibit P-03086. This is the record kept of Kelvin Parsons of that meeting on February 25.

I take it that you were out of the picture at this time?

MR. C. MARTIN: Again, I may be in at specific pieces, if Julia has pulled me into a meeting, but I'm not there for the general management of this file, yes.

MR. LEARMONTH: Okay. Well, we had information for that by Ms. Mullaley.

And then if we go to tab 74, Exhibit P-03934.

This is an indication – well, it's actually from you to Paul Harrington, saying that the plan is to release reports tomorrow of March 17. And this is the Oversight Committee report for the period –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – ending December 2015, correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: That's quite a long delay, isn't it?

MR. C. MARTIN: Yes, it is.

MR. LEARMONTH: Well, why was it such –?

MR. C. MARTIN: December '15 – no, that would be a –

MR. LEARMONTH: That's quite a long time for the release of a report, isn't it?

MR. C. MARTIN: That is a December of 2015 report. No, that would be – usually we would release within – December is being released in March – within about three months. From a reporting perspective from Nalcor, we'd normally get our first round of reports in about three weeks after the end of the month.

MR. LEARMONTH: All right.

MR. C. MARTIN: But some of the other reports, like the large monthly report that circulates internally, that's usually about six weeks after the end of the month.

MR. LEARMONTH: Okay.

Tab 78, Exhibit P-04012, this is an email – oh, excuse me, I need to go back. It's tab 77, Exhibit P-03936.

This is an announcement, April 10, 2017, of the appointment of four people – non-government people – to the Oversight Committee.

MR. C. MARTIN: Yes.

MR. LEARMONTH: Why was it felt necessary, to your knowledge, to appoint people from outside government, because up until now, it had only been senior civil servants? Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: So what caused that to change?

MR. C. MARTIN: My understanding is that the government wanted to bring in independent members as well.

MR. LEARMONTH: Okay. Did you think that was a good idea?

MR. C. MARTIN: Certainly. I mean, they bring a different skill set and they bring a different viewpoint on it.

MR. LEARMONTH: Right.

Now, a couple of questions on EY. You know, we've heard that there was resistance by Nalcor to provide documentation to EY. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: But, surely, EY had signed confidentiality agreements. Is that correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: So, on what basis could Nalcor have concerns about providing EY with documentation if there were confidentiality agreements in place?

MR. C. MARTIN: There should not have been, essentially. I mean, if there's confidentiality agreements in place they should've had access to the documents. There should be no concerns from that perspective.

MR. LEARMONTH: No concerns at all, right.

MR. C. MARTIN: Agreed.

MR. LEARMONTH: Right.

Now, I wanted to ask you some questions. Mr. Budden raised a point on behalf of the Concerned Citizens about AFUDC and that perhaps that the cost estimate was understated. Did you hear that evidence?

MR. C. MARTIN: I did hear some of that, yes.

MR. LEARMONTH: Okay. Can you give us anything on your understanding of that point and how it actually works out?

MR. C. MARTIN: Yes, I believe the question was put to Ms. Mullaley, was it, in respect –

MR. LEARMONTH: Yes.

MR. C. MARTIN: – to the AFUDC, because it was calculated there for capital cost with respect to the Labrador-Island Transmission Assets, but there was no such cost associated with the Muskrat Falls or the Labrador Transmission Assets. It ties back to the concept that the LIL is a – has partners in it from outside of the province and is a more standard set-up from a return on the equity investment perspective in the sense that they're getting their – I may misquote the number, but I believe it's 8.5 or 8.6 return on their equity invested each month – or each year, sorry.

So in the case of the LIL, there would've been – for the contributions coming in, there would've been a return calculated on those on the front end. The Labrador Transmission Assets and the Muskrat Falls assets are calculated on a different basis. They've got an internal rate of return over the life of the project, return back to the investor.

So I think the question was couldn't there or shouldn't there be an AFUDC or a similar type thing associated with those two assets which would've increased the cost of the assets on the front end. And, I guess, from the perspective of where you recognize those return on equity costs, potentially, yes, you could. Over the life of the entire project it wouldn't make any difference, because you're getting an 8.4 per cent return or, again, that was the – what was calculated at the time – an 8.4 per cent return on all the equity invested in the project over the period.

MR. LEARMONTH: Correct.

MR. C. MARTIN: But where it's back-end loaded because of an internal – or because of the IRR calculation, the way this thing is built you're not getting 8.4 per cent up front, you're getting something substantively less; therefore, you're getting substantively higher than 8.4 per cent on the back end.

So I think the question related to if you calculated 8.4 per cent over the entire thing, then would that have not increased the capital costs? And I guess the answer on that is, yes, from a decision-point perspective if you pulled those costs into that front end and said I'm taking a straight piece, it would. It wouldn't change the overall cost of the project –

MR. LEARMONTH: No.

MR. C. MARTIN: – itself from a capital and operating over its life, but it's an issue of where the costs are recognized from –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – a timing perspective.

MR. LEARMONTH: So in saying that, are you acknowledging that there certainly may be validity to the point –

MR. C. MARTIN: Oh, yes.

MR. LEARMONTH: – that Mr. Budden –

MR. C. MARTIN: Yes.

MR. LEARMONTH: – put forward?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah. Okay.

The Grant Thornton report, Exhibit – it's not in your book but I've advised your counsel to ask you some questions about it; they won't be long – P-01677. This is the phase 2 Grant Thornton report. You mentioned it earlier in your evidence.

If you could – if we could bring up, first, page 19? Okay, now at the bottom, under line 13, there's a reference here in July 2013 this is before financial close.

PMT comments 2018: *“July 2013 Final Forecast Cost deck presented by Project”* management CEO of \$7 billion. Communication to executive: “Email from Paul Harrington to Gilbert Bennett July 22,” here is the deck that has been produced. So we know that Mr. Bennett and Mr. Harrington received it.

Excerpt from presentation: We are forecasting the FFC to be \$7 billion, 12 per cent beyond the DG3. *“Exposure if mitigations are successful...FFC would be reduced to \$6.8 B.”*

Now, when did you first find out about the existence of that FFC?

MR. C. MARTIN: I became aware of this as a result of the Grant Thornton work.

MR. LEARMONTH: And what was your reaction when you found out this information?

MR. C. MARTIN: Shocking, it's – there's information there that's material, and its material to decisions at this point in time. I mean, where you're still – the project is not even, in terms of financial close, until later on in November-December of this particular year. So, this is information that is material to the decisions that's not being disclosed.

MR. LEARMONTH: Yeah.

So do you regard that as being a serious failure on the part of Nalcor to disclose the relevant document?

MR. C. MARTIN: Absolutely, especially at this stage. I mean – again, information should be disclosed throughout, but this is prior to financial close, so this is prior to having the commitment in terms of the borrowings done, the monies raised for the bondholders and that. Once you cross that threshold, then it becomes a different decision point. Again, it's not to say something couldn't be done, but you've crossed that key point.

MR. LEARMONTH: Yeah, so the critical time is financial close.

MR. C. MARTIN: Absolutely.

MR. LEARMONTH: Yeah.

And even if Nalcor had some explanation, you know, saying: Well, we think we're going to do this and we're going to do that, we're going to mitigate or undercut, surely, a reasonable person would expect that Nalcor would provide this information. And if they wanted to explain it in a way that was – you know, whatever way they want, that discussion would have been appropriate. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: Yes, absolutely.

I mean, again, the province is the investor here in this particular circumstance and this is, essentially, indicating that there's already knowledge that the monies to be spent are significantly higher than what's been communicated.

MR. LEARMONTH: Yeah.

And just to go over the point that you raised earlier, that just because Nalcor provides this to government doesn't mean that government has to release it to the public.

MR. C. MARTIN: No, no, absolutely not. I mean, again, it's – commercial sensitivity has always been a challenge on this project.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: I mean, from the perspective of – I mean, at the end of the day the government is investing on behalf of the taxpayers, the people of the province; so therefore, they have a right to know what the other side of it is to contractors. And there's other parties out there that make up –

MR. LEARMONTH: Yeah.

MR. C. MARTIN: – a part of that too; there's information legitimately shouldn't be disclosed.

MR. LEARMONTH: Yeah.

MR. C. MARTIN: So that's been a consistent balancing act.

MR. LEARMONTH: Yeah.

And if you turn to page 20 you've got other estimates: August 2013, September 2013. They fluctuate a bit but they're still way over the 6.2, right?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah.

And, once again, do you agree they should have been disclosed for the same reasons you gave?

MR. C. MARTIN: These absolutely should have been disclosed.

MR. LEARMONTH: Okay.

Now, page 12 of the Grant-Thornton report, there's an indication in – if you go to page 12, the first 10 lines – about the contingency being blown or disappeared. Now, this has to be read and subject to any comments that – like, it was 6.5, according to Nalcor, at the time of sanction, so that would have to be figured into this.

But in April 2013 Nalcor knew or ought to have known that their contingency was gone out the window because of the CH0007 bids. Correct?

MR. C. MARTIN: Yes.

MR. LEARMONTH: Yeah.

Now, when did you first become aware of that information?

MR. C. MARTIN: Again, it was through the Grant-Thornton report.

MR. LEARMONTH: And I'll ask you the same: What was your reaction?

MR. C. MARTIN: Again, it's disbelief. I mean, this is information that's absolutely critical to decision points on this project that's not being disclosed.

MR. LEARMONTH: Yeah. Okay.

Those are my questions. Thank you very much.

MR. C. MARTIN: Thank you.

THE COMMISSIONER: All right.

All right, Nalcor Energy.

I think I'm right on this. Now, I know that the plan was if it was any Nalcor employee, it would be – he would go second-last –

MR. SIMMONS: That's correct.

THE COMMISSIONER: – if they had their own counsel. I'm just trying to recall if the same applies to the government.

MR. SIMMONS: No. No, Commissioner, it doesn't

THE COMMISSIONER: Okay, so then –

MR. SIMMONS: I'm here in the right order.

THE COMMISSIONER: No, so it should be – 'cause Mr. –

MR. RALPH: He's represented by –

THE COMMISSIONER: He has his own counsel, so I should be asking the province first.

MR. RALPH: That's fine.

MR. SIMMONS: Oh, yes. I missed that, actually. I thought you might have asked the province and I'd missed the question.

THE COMMISSIONER: No, I didn't. So my mistake and I apologize for that.

MR. RALPH: I won't be long.

THE COMMISSIONER: Okay.

Government of –

MR. LEARMONTH: Before we get going, there's two exhibits that I intended to enter. If I could do that now before Mr. Ralph speaks.

THE COMMISSIONER: Okay.

MR. LEARMONTH: They're P-04001 to P-04005.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Thank you.

THE COMMISSIONER: And those will be entered as numbered. And I'm sorry, Mr. Ralph.

MR. RALPH: No problem.

THE COMMISSIONER: So Province of Newfoundland and Labrador.

MR. RALPH: Good morning, Mr. Martin.

MR. C. MARTIN: Good morning.

MR. RALPH: As you know, my name is Peter Ralph. Nice to see you again, chat with you again.

And I want to ask you a question specifically about that period of time from when you ceased being executive director of the Oversight Committee until there was a new Oversight Committee executive director appointed. And I believe that would have been in August of 2016.

MR. C. MARTIN: Yes, that's my understanding.

MR. RALPH: So we have a period of approximately 15, 16 months when there was no permanent person occupying that position.

MR. C. MARTIN: Yes.

MR. RALPH: And I understand that during that period of time, I think you mentioned, Harman – I don't know if I'm pronouncing his name –

MR. C. MARTIN: Harman Khurana.

MR. RALPH: – Khurana. He wasn't an executive director, but he was responsible for the operation of the Oversight Committee. Is that right?

MR. C. MARTIN: Yes, Harman would – we would still get our reports in from Nalcor each month, and Harman would compile the analysis and the reporting to the committee in terms of our own internal analysis and our decks and that.

MR. RALPH: Right. So, again, there would still be a monthly meeting –

MR. C. MARTIN: Yes –

MR. RALPH: – of the committee.

MR. C. MARTIN: – generally, yes. Yes.

MR. RALPH: And in terms of reporting, can you recall – I understand that you mentioned that there was a report that came out, I believe, March of 2016 that would have covered the period up to December 2015.

MR. C. MARTIN: Yes, I believe we had – our report that came out in September covered to August 2015 –

MR. RALPH: Yes.

MR. C. MARTIN: – because of the change – excuse me – and then the subsequent report for December came out in that following March. So that was a longer period than normally would be, but we were in between periods at that point in time.

MR. RALPH: Right. So there was no quarterly reports, I believe, for quite sometime. It would have been, I think, March of –

MR. C. MARTIN: We would have had March –

MR. RALPH: – 2016.

MR. C. MARTIN: – of 2015, then we had an August of 2015 –

MR. RALPH: Yup.

MR. C. MARTIN: – then we had that December of 2015 –

MR. RALPH: Yes.

MR. C. MARTIN: – that came out in March.

MR. RALPH: Right. And then there wasn't another quarterly report, I believe, until 2017. Is that right?

MR. C. MARTIN: I can't recall specifically.

MR. RALPH: That's fine.

Now, also, looking at the web page, there was – there were monthly reports.

MR. C. MARTIN: Yes, the committee would still look at – meet on a monthly basis and review the materials that were coming in.

MR. RALPH: And so those monthly reports, were they posted publicly as well?

MR. C. MARTIN: We started posting the monthly reports, I do believe. I just can't say the specific date.

MR. RALPH: That's fine.

MR. C. MARTIN: Yeah, that was a change in the reporting process with the new government and the new chair.

MR. RALPH: So with regard to your monthly meetings, I guess the – you would receive reports from Nalcor?

MR. C. MARTIN: Yes.

MR. RALPH: And they would attend the meetings, and there would be questioning of Nalcor officials?

MR. C. MARTIN: Yes, same type of process.

MR. RALPH: Right.

So what had changed during that period of time? Aside from that there was no quarterly reports produced publicly, what difference did you – would you have seen in terms of the conduct of the Oversight Committee?

MR. C. MARTIN: On a day-to-day – I shouldn't say day-to-day – on an operational basis from a monthly perspective, not really a lot of change at that point in time. I mean, the committee were still meeting, we were still asking Nalcor questions, we were still advising the chair of where we were, and the chair would communicate it up from there.

MR. RALPH: And Mr. Khurana, I think, at the time he would've been a Cabinet officer. Is that right?

MR. C. MARTIN: Yes, Mr. Khurana was –

MR. RALPH: (Inaudible.)

MR. C. MARTIN: – yes, he was Cabinet officer.

MR. RALPH: And what was his training? Do you know?

MR. C. MARTIN: Harman is also a professional accountant.

MR. RALPH: Thank you very much. I have no further questions.

MR. C. MARTIN: Thank you.

THE COMMISSIONER: All right.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Good morning, Mr. Martin.

MR. C. MARTIN: Good morning.

MR. SIMMONS: Dan Simmons for Nalcor Energy. I've got a few kind of discrete items I want to hit this morning. First of all, I understand you assumed the position of executive director of the Oversight Committee in May of 2014 –

MR. C. MARTIN: Yes.

MR. SIMMONS: – is that correct?

Had there been anyone in that position before you?

MR. C. MARTIN: No.

MR. SIMMONS: Was that really the start of the work of the Oversight Committee?

MR. C. MARTIN: The Oversight Committee – or not the – Natural Resources already had EY in doing some work at that point in time in conjunction with Nalcor looking at some reports and things like that – really an earlier stage of trying to set up the protocols. And – but other than that and setting up the actual committee itself, structurally what they were doing –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – I don't believe there was very much from an actual review perspective.

MR. SIMMONS: Okay.

But aside from a review perspective, even starting to establish the committee, getting people appointed, having the first meeting, was it –

MR. C. MARTIN: I –

MR. SIMMONS: – around this May time frame –

MR. C. MARTIN: I –

MR. SIMMONS: – that those things starting moving?

MR. C. MARTIN: I believe it was March when they had their first set of appointments done.

MR. SIMMONS: Okay.

MR. C. MARTIN: And I think the committee itself had its first meeting in April.

MR. SIMMONS: And how long before May was it that Natural Resources had engaged EY to start giving some advice about how the committee should be structured and set up?

MR. C. MARTIN: It would've been sometime in March when I – as I indicated earlier – that I had reached out to EY –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – and PwC and passed the information –

MR. SIMMONS: Yes.

MR. C. MARTIN: – along to Paul. So –

MR. SIMMONS: Okay.

MR. C. MARTIN: – I'm thinking it would've been probably some time early April. From a time frame perspective, that would've been the –

MR. SIMMONS: Right.

MR. C. MARTIN: – approximate times.

MR. SIMMONS: So, the efforts really start in March of 2014 to get the Oversight Committee up and running.

MR. C. MARTIN: Yes.

MR. SIMMONS: And I gather, from your description of events, that it took a period of some months before things were put together, before you knew what to be asking for from Nalcor Energy and before you, kind of, started to get in a position where you could work out some of these issues about what needed to be reported, what commercial sensitivity concerns there were – these various things.

MR. C. MARTIN: Yes.

MR. SIMMONS: Yeah.

MR. C. MARTIN: Excuse me. It was really September of 2014 when we started getting the regular monthly reports coming in.

MR. SIMMONS: Right. Yes.

So, it took March to September, really, to get things rolling and to get things in place and set up.

MR. C. MARTIN: There was – yeah, there was a combination of things that happened during that time frame that would've contributed to the timing in – that was the cost increase in 6.99 in June, which we're still working behind the scenes, but sort of slowed down – from where you would've went from a reporting perspective – because we had to let the baseline go through and that.

MR. SIMMONS: So, we know that the project was sanctioned in December of 2012, so the decision was made to go ahead with it then.

MR. C. MARTIN: Yes.

MR. SIMMONS: Financial close happened sometime after that. And you would've become aware that the actual construction work got under way in 2012 –

MR. C. MARTIN: Yes.

MR. SIMMONS: – correct? You would've –

MR. C. MARTIN: Generally.

MR. SIMMONS: Generally.

You would've known that there was a road being built and, in fact, the bulk excavation contract was awarded and that work started before financial close.

MR. C. MARTIN: Yes, I was aware of that.

MR. SIMMONS: And you would've been aware – eventually, you would've learned that even the Astaldi work – Astaldi was given what's called a Limited Notice to Proceed in September of 2013.

MR. C. MARTIN: (Inaudible.)

MR. SIMMONS: Right?

MR. C. MARTIN: Yes –

MR. SIMMONS: Yeah.

MR. C. MARTIN: – I'm familiar.

MR. SIMMONS: Okay.

So with a fair bit of work actually started before March of 2014, I'm wondering if you can give us any commentary on whether it would've been beneficial for your work in the Oversight Committee – and the committee's work – to have had it established earlier before any of the actual construction started, so you could work through the start-up, work things out with your advisor, EY, and Nalcor about what information needed to be provided and start to address some of these concerns up front before you found yourself in the middle of a construction project that was under way.

MR. C. MARTIN: Again, I can't really speak to that. That would've been a decision of government at the time based on whatever the circumstances surrounding were.

MR. SIMMONS: No, I'm not asking you why it wasn't done or why the decision was made, but I'm interested in your view, as the executive director who came in in May of 2014, whether your job would've been easier and whether it would've gone more smoothly had it been set up, say, a year before.

MR. C. MARTIN: Yes.

MR. SIMMONS: So, following from that then, any of the obstacles (inaudible) that were encountered, or any of the difficulties that had to be worked out then through 2014 into 2015 – can you give me any view as to whether some of those things might have been resolved and worked out easier, if they were being done in the environment where the construction wasn't already full-tilt under way?

MR. C. MARTIN: Well, in terms of the timing and in terms of receiving reports as I –

MR. SIMMONS: Yes.

MR. C. MARTIN: – indicated earlier, it's September when we first started receiving – and we were into October really before we receive a full suite and again if my – the emails went back and forth there with Nalcor at the time, and the persons working at Nalcor were obviously juggling multiple issues at that point in time. So, we again end up with gaps, and therefore there is follow-up emails and it takes time to get those gaps filled in.

MR. SIMMONS: Okay. All right.

Now Ernst & Young's first assignment was, as I understand it, to help – well first, we came by Natural Resources and then to help the Oversight Committee in determining what information they should be requesting from Nalcor in order to discharge the oversight role.

MR. C. MARTIN: Yes, they – it was basically to help us to identify what we were going to utilize and also with respect to how we were going to set up our oversight protocols.

MR. SIMMONS: Okay. And you described for us earlier this morning the different types of reports that you began to receive from Nalcor by September as a result of that work?

MR. C. MARTIN: Yes.

MR. SIMMONS: Right. So, by the time we get to September then, the reporting protocol that's in place for the types of information, types of reports that were coming from Nalcor – were those things that had been developed by the Oversight Committee in conjunction with the advice from EY?

MR. C. MARTIN: (Inaudible.) And in consultation with Nalcor –

MR. SIMMONS: And in consultation with Nalcor. So, all hands were on the same page by that point as to what reports were going to be coming from Nalcor?

MR. C. MARTIN: EY had raised some issues in some earlier emails whereby they were pushing on some of the reports, where we should be diving a bit deeper?

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: Like with the IPS schedule, in particular, we were at a level 2 with the IPS. They were suggesting we should be down to a level 3 or 4. So, there were a couple of things there whereby EY didn't fully agree with what we were utilizing, but generally if you go to the list of documents.

MR. SIMMONS: Yeah. So, in that time period then and afterwards, did you understand that on the Nalcor side – that some of the drivers on the Nalcor side about what could and would be provided, included the resourcing that was necessary on the Nalcor side, in order to develop information and whether there would be extra burdens placed on the people whose primary responsibility was execution of the work.

MR. C. MARTIN: In terms of that piece, that was taken specifically into account when we developed the oversight protocols and more so –

MR. SIMMONS: Yes.

MR. C. MARTIN: – when we took into account the reports.

MR. SIMMONS: Okay.

MR. C. MARTIN: A big consideration here was we had moved to relying on reports that exist and were to be used for multiple purposes, as opposed to doing purpose-built reports, things like that. Hence the basis for why we did it, the assurance activities after the fact because again we had no reason to question what was in the reports up front but just from a general assurance perspective we were relying on them,

reporting on them, we want the assurance in place.

So that was a piece and that's also part of the oversight protocols themselves. I mean, we wanted to look at what activities were already under way so we looked at work that – MWH, and we struck the Reliance Agreement. We looked at the fact that Deloitte was already in there doing audit work, so therefore we asked Deloitte to do additional procedures on top of that in order to provide certain things.

Internal Audit already had a significant amount of work scheduled. We actually met with Internal Audit, got a copy of their work schedule and saw what actually overlapped with our mandate and requested that they actually reshape their schedule so that those things were advanced and done earlier so we could fit in.

So it was multiple things there trying to leverage as much of the activities that were already under way.

MR. SIMMONS: So although on the Nalcor side there may have been concerns raised about what the burden of this reporting would be, it sounds like those were things that, on your side, the Oversight Committee side, were taken seriously and both sides worked together in order to find their way through –

MR. C. MARTIN: Yes.

MR. SIMMONS: – in dealing with that.

MR. C. MARTIN: Yes.

MR. SIMMONS: So this wasn't a case of it not being a legitimate concern on Nalcor's part. This was something they raised, and it got worked through.

MR. C. MARTIN: Yes.

MR. SIMMONS: Okay.

Now similarly, with concerns around commercial sensitivity, and aside from reporting through to Cabinet and so on, when it comes to the public release of information from the Oversight Committee – whether it's the Oversight Committee reports or the EY reports –

Nalcor would at times take the position that there was commercially sensitive information and that they asked not to have released, but it was the Oversight Committee that made the call, made the decision generally, unless directed to do something different from Cabinet or the premier.

MR. C. MARTIN: Yes, I mean from a commercial sensitivity lens –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – excuse me – the Oversight Committee would review materials, we'd look at where we were going, we'd share drafts with Nalcor before we'd release. Nalcor, if they had commercial sensitivity concerns they'd raise them. We'd look at them, work through them and that. Generally, we were aligned on these matters up until that final (inaudible).

MR. SIMMONS: Right. So generally there – you were aligned on it.

MR. C. MARTIN: Well, we would reach alignment.

MR. SIMMONS: Reach alignment. So I take it then, that on the Oversight Committee side, there was a recognition that yes, there were concerns about commercial sensitivity from time to time, and that there could be harm to the project at times if certain types of information was released publicly.

MR. C. MARTIN: Absolutely. Commercial sensitivity has been a balancing act since day one.

MR. SIMMONS: Yeah. And the type of harm that could be caused to the project would include the risk of increased cost from putting information that would otherwise be confidential in the hands of contractors who are engaged on the project.

MR. C. MARTIN: Potentially, yes. It's always trying to find the balance of –

MR. SIMMONS: (Inaudible.)

MR. C. MARTIN: – releasing to the – releasing versus damaging.

MR. SIMMONS: And although Nalcor would take positions and express views on what was commercially sensitive and not, Nalcor was not in a position or had no right to dictate to the committee what could or could not be released (inaudible).

MR. C. MARTIN: No, Nalcor would raise its concerns, if they had concerns. We would put our own lens to it first, anyway. Nalcor would raise concerns if they disagreed, and again, generally – well, I don't recall another party having to intervene and making a decision on the commercial sensitivity.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: Other than that instance.

MR. SIMMONS: Okay.

So it would seem to me this would be part of almost the expected to and fro on issues where the Oversight Committee has, as an important objective, public communication, and the project, I'll call it, has as their objective trying to get the project built and control the costs as much as possible. So it's almost inevitable that there's going to be some tension between those two objectives.

MR. C. MARTIN: Yes.

MR. SIMMONS: Yeah, okay.

Okay, you were shown Exhibit P-01992, and that was the Oversight Committee report – maybe we can bring it up, Madam Clerk, please – from September of 2014. I think this –

THE COMMISSIONER: Tab 12.

MR. SIMMONS: – was the first report. And you've been brought to page 33, which I'll bring you back to again, please. Okay you can stop, please. Stop there, please. So just scroll down a little. Up. Thank you.

So this is a point in the report where I understand the committee to be reporting on questions that were posed to Nalcor Energy and reporting the responses received.

MR. C. MARTIN: Yes.

MR. SIMMONS: Okay. And you've been asked a number of questions about this already. This is September of 2014 and the very first question is what caused the schedule slippage on the powerhouse and spillway gates. So it seems self-evident at that point that the committee already had information at that point, that the schedule was slipping on the powerhouse and spillway.

MR. C. MARTIN: Yes, actually. If we go to – I'm just trying to find it here.

MR. SIMMONS: Yeah, it's reported more fully earlier in the –

MR. C. MARTIN: Yes –

MR. SIMMONS: – report.

MR. C. MARTIN: – it's reported earlier. We see some slippage here in September's report, but at this point as well this is in December, so we have October's reports ourselves. So though –

MR. SIMMONS: Right.

MR. C. MARTIN: – we're not reporting on them here, we're seeing continued slippage –

MR. SIMMONS: Yeah.

MR. C. MARTIN: – ourselves at this point.

MR. SIMMONS: So as of September, I'm curious, what was the source of your information about that schedule slippage? How did you know it –

MR. C. MARTIN: Well, it came from the –

MR. SIMMONS: – was?

MR. C. MARTIN: – IPS schedule.

MR. SIMMONS: Okay. Which was information that had been provided by Nalcor in response to this protocol that had been worked out about the type of information reports that were supposed to be given.

MR. C. MARTIN: Yes.

MR. SIMMONS: Right. So this is very early on in your work, and you're – it's already apparent to the committee that there's schedule slippage with Astaldi and you're asking questions about it.

MR. C. MARTIN: Yes.

MR. SIMMONS: So what did you understand was being done about it at that time – at the project?

MR. C. MARTIN: At the project at this point in time, what we understood is they were putting the Integrated Cover System in place and they were behind schedule on that particular –

MR. SIMMONS: That would be Astaldi putting the integrated –

MR. C. MARTIN: That was – yes, Astaldi is –

MR. SIMMONS: – which is ICS.

MR. C. MARTIN: – yes – sorry – yeah, Astaldi was installing the Integrated Cover System up there in advance of working through the winter.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: So part of the challenge that they've indicated to us is that they were delayed getting working on that particular piece and they were moving forward on that at that point. And since that cover system was part – was not a permanent structure there, it actually – the construction of it wasn't included in the IPS schedule, so therefore it wasn't a schedule piece of work from a measurement perspective, on progress. So they were following behind.

But the indications were: Once the ICS was in place, they'd be able to work through over the winter; and the schedule slippage that they lost over those few months there, they would pick up over the course of the project.

MR. SIMMONS: So in addition to the answer we see here on this page, it seems that there was other discussion around this issue and other information that you've just described to us that the Committee had.

MR. C. MARTIN: Oh yes, the Committee would have discussed these matters with Nalcor. And now, what I indicated may not be exactly in this time period, it could be –

MR. SIMMONS: Yes.

MR. C. MARTIN: – in November, December as well. But those are the types of discussions that are going on, that fall.

MR. SIMMONS: So when we see a report like this with a question and an answer, that's not the only information the Committee had on this topic.

MR. C. MARTIN: No, no, potentially not. I mean, the Committee would always have information there, potentially, that we would exclude for commercial sensitivity purposes or possible – but we may have more detail than what –

MR. SIMMONS: So what we have here in the answer to this question is some information that Nalcor submitted as an answer that could be publicly disclosed at that stage in the project.

MR. C. MARTIN: Yes, these are specifically Nalcor's answers. We would –

MR. SIMMONS: Yes. Yeah.

MR. C. MARTIN: – put the question forward and Nalcor would give us their specific answer.

MR. SIMMONS: And that the Oversight Committee – for the purpose of the report that was released publicly at that time, the Oversight Committee was satisfied with including this answer to that question, even though you had more detail available to you, about it.

MR. C. MARTIN: Again, I can't say specifically here –

MR. SIMMONS: Yes.

MR. C. MARTIN: – from a timing perspective. But, generally, you know, we would move forward with answers, providing as much as we could. But –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – if we were going to change anything on that, we would go back to Nalcor and push at them or ask them at things.

MR. SIMMONS: Okay.

And I think you told us that there was a 120-day plan that had –

MR. C. MARTIN: Yes.

MR. SIMMONS: – been put in place. Now can you tell me what that was, what that was all about?

MR. C. MARTIN: The 120-day plan was their plan for that spring, in order to accelerate concrete pours –

MR. SIMMONS: Spring of 2015?

MR. C. MARTIN: – 2015.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: Would have been – now I believe it was 120 days starting May. June, July, August month where they were going to push forward aggressively to try and make up time over the winter – that they lost over the winter months, or the previous fall and winter.

MR. SIMMONS: So I'll stop you there for a moment. So although in September, you know, there's been slippage, I gather from what you said then and what you said earlier, that it wasn't until the Astaldi's performance over the winter was known, that the issue became more serious.

MR. C. MARTIN: That's – yes, that's my understanding. Yes.

MR. SIMMONS: So –

MR. C. MARTIN: Really, it became more serious from the perspective – I guess the first piece would bring the – once we got to late fall or early December –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – when the Integrated Cover systems weren't in place, and then the concerns were raised that –

MR. SIMMONS: Yeah.

MR. C. MARTIN: – we're not gonna – potentially, not gonna be able to make the progress over winters.

MR. SIMMONS: So, the point of this 120-day plan that was put in place then – well, first of all, was that Astaldi's plan or Nalcor's plan or – what do you know about it?

MR. C. MARTIN: My understanding is it was – it was, I believe, Astaldi's plan –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – but it was in the consultation with Nalcor.

MR. SIMMONS: So, it sounds like the sort of plan Astaldi was – had to develop in order to present to Nalcor to satisfy Nalcor about what they were going to do to make up for the bad productivity up to that point, over the winter.

MR. C. MARTIN: Again, I can't speak –

MR. SIMMONS: Okay.

MR. C. MARTIN: – definitively to that but – because it would have been Nalcor that we were discussing and brought the plan forward to us, but I believe that is the –

MR. SIMMONS: Yeah. So, when – when this 120-day plan was reported to you, was this an example of what you referred to earlier, as a mitigation effort, to mitigate against schedule loss?

MR. C. MARTIN: Yes.

MR. SIMMONS: Okay. And at that time, what was being reported to you about what was thought about how successful those mitigation efforts were going to be in order to recover schedule and keep the project on track to meet its – its completion – the original completion deadlines?

MR. C. MARTIN: It was still relatively positive at that point in time –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – that, you know, it was wait and see –

MR. SIMMONS: Yes.

MR. C. MARTIN: – but they're still relatively positive that they pick up a nice bit of the schedule at that point in time.

MR. SIMMONS: Right. And did you have any reason to think that that wasn't being reported to you genuinely, with a genuine belief on the part of the Nalcor representatives, that the point of this was to have Astaldi make up the schedule, and that there was a possibility that Astaldi would be able to do it?

MR. C. MARTIN: At this point in time, we had no reason to disbelieve.

MR. SIMMONS: Okay. All right. And this is getting us into the spring of 2015 now, under this –

MR. C. MARTIN: Yes.

MR. SIMMONS: Yeah.

Okay, on a different topic – eventually, EY was retained to do a review of costs and schedule, and this is after they'd done review of the reporting processes. We move on, and I lose track of what time it is, but this is (inaudible) 2016.

MR. C. MARTIN: December '16.

MR. SIMMONS: Thanks. Yes, December 2016. And you were asked by Mr. Learmonth why the Oversight Committee just didn't do that right away back in 2014? And in part of your answer I'd understood you to say that there'd been reliance on other work that had been previously done, and you mentioned MHI, and on work that was being done by Canada's independent engineer, MWH.

MR. C. MARTIN: Yes.

MR. SIMMONS: Correct, okay.

Now I think this statement was made to you, like, did you know now that, in retrospect, you

couldn't rely on the work that had been done by MHI?

MR. C. MARTIN: And the –

MR. SIMMONS: And that you said –

MR. C. MARTIN: – indication is that, yes –

MR. SIMMONS: Okay.

MR. C. MARTIN: – you couldn't, that the –

MR. SIMMONS: So –

MR. C. MARTIN: – that the detail that we would've believed was done wasn't.

MR. SIMMONS: Right. So why do you say that you should not have been relying on the work of MHI, at the time?

MR. C. MARTIN: Going – based on the information now that I've heard through the – of course, at this Commission.

MR. SIMMONS: Okay.

Tell me what your understanding of that information is so that I –

MR. C. MARTIN: Yeah.

MR. SIMMONS: – understand why you're willing to say that you wouldn't have relied on the work of MHI?

MR. C. MARTIN: My understanding is that from a cost perspective to (inaudible) MWH had not done as deep a dive.

MR. SIMMONS: No, MHI.

MR. C. MARTIN: Oh, MHI. Sorry. MHI had not done a full Monte Carlo and looked at the QRA and such.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: And you're only asking with respect to MHI right now?

MR. SIMMONS: MHI only, at the moment. Yes.

MR. C. MARTIN: That they hadn't provided that much and that the cost overview was still a very high-level one at an earlier date.

MR. SIMMONS: You know, assuming that that's – you know, we'll accept that as an accurate description. Do you know why they didn't do that?

MR. C. MARTIN: I don't know.

MR. SIMMONS: Who was MHI retained by?

MR. C. MARTIN: By the province, I believe.

MR. SIMMONS: Mm-hmm, yeah.

And do you understand that it was the province that determined the scope of work to be performed by MHI?

MR. C. MARTIN: Again, I can only attest – I don't know.

MR. SIMMONS: Right.

So in 2014 then, when you became the executive director of the Oversight Committee, did you have any information available to you within the Department of Natural Resources or otherwise in government, that you could go back to in order to satisfy yourself as to what work MHI had actually done?

MR. C. MARTIN: That was –

MR. SIMMONS: Or not done?

MR. C. MARTIN: – that – right from the outset, very early in the process, we questioned whether or not it was expected as part of that mandate, to go back and do a review on the original baseline.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: And the response on that particular piece was no, that we were relying on the 6.5.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: And then the cost adjustment that was done then –

MR. SIMMONS: Right.

MR. C. MARTIN: – to the 6.99, because it had already been reviewed multiple times and there was no desire to go back to revisit.

MR. SIMMONS: Right.

But you did understand then, though, that MHI had been working for the province and not for Nalcor, when it had done that work. Do you understand that?

MR. C. MARTIN: I didn't understand that one way or another. I – again, for the earlier parts like that –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – I wasn't involved in the project at that point in time.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: I'm not disagreeing.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: I'm just ...

MR. SIMMONS: So at the time, you didn't – you might've – did you think at the time when you became executive director in 2014, that MHI's work had been done for Nalcor?

MR. C. MARTIN: I hadn't really thought about it one way or the other.

MR. SIMMONS: Okay. MWH was the independent engineer. Now what did you – when you came in in 2014, what did you understand the independent engineer's role to be?

MR. C. MARTIN: My understanding was the HM – the independent engineer was there for Canada, on behalf of Canada, to review the projects cost and schedule performance.

MR. SIMMONS: Mm-hmm, okay.

And did you understand that the independent engineer reported to Canada?

MR. C. MARTIN: Yes.

MR. SIMMONS: Okay.

And at that point there was no arrangement in place for the independent engineer to report to the province.

MR. C. MARTIN: No, there wasn't.

MR. SIMMONS: Okay.

So what did you do then to make sure you fully understood the scope of the work that the independent engineer was doing when reporting to Canada?

MR. C. MARTIN: Could you state the question again?

MR. SIMMONS: In 2014, when you became executive director, did you do anything to inform yourself about exactly what the independent engineer was reporting on? What work –

MR. C. MARTIN: Oh, okay.

MR. SIMMONS: – the independent engineer was doing?

MR. C. MARTIN: Okay.

MR. SIMMONS: So – because this seems to be some degree of reliance placed, at that point –

MR. C. MARTIN: Yes.

MR. SIMMONS: – on the fact that the independent engineer was reporting to Canada.

MR. C. MARTIN: Yes.

MR. SIMMONS: And you said that later had you known more fully what the independent engineer was doing, I take it that you might have thought differently.

MR. C. MARTIN: But that's in – my comment there was with respect to the baseline again, not on a go-forward basis. From a go-forward basis, the independent engineer was looking at anything from – coming in and visiting from a quality assurance perspective –

MR. SIMMONS: Okay.

MR. C. MARTIN: – in terms of the activities. They the visit the manufacturers at times in order to ensure quality assurance; they also met, in terms of costing and cost performance, against the baseline on a go-forward basis. So, again, in terms of the activities go forward, I was familiar with those and I had looked at the reports.

In terms of what they had actually done with the baseline –

MR. SIMMONS: So –

MR. C. MARTIN: – that was outside of – I did not investigate any of that. As I've said, from the outset, the baseline was accepted and the committee's mandate from the outset was to measure the performance against the cost and schedule.

MR. SIMMONS: So just to make sure we clearly understand what you're saying here, what do you mean by the baseline? What is that –

MR. C. MARTIN: Oh, the original –

MR. SIMMONS: – that you refer to?

MR. C. MARTIN: I'm sorry, the original estimates. The 6.5, really, is what I'm referencing here.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: Essentially, the 6.5 was the number that was included in the construction reports and it was –

MR. SIMMONS: Yes.

MR. C. MARTIN: – the number at the financial close. So the base that we moved forward from was 6.5. We had the increase to 6.99, which we followed up with the independent engineer on, from the perspective that he had reviewed that.

MR. SIMMONS: So in 2014 then, when the OC work started, did you know one way or the other whether the independent engineer had

done any kind of analysis of the 6.5 baseline cost?

MR. C. MARTIN: At that point in time I knew the independent engineer had reviewed it and from a contingency perspective, and had some commentary on the contingency.

MR. SIMMONS: Yes.

MR. C. MARTIN: I knew that they had a couple of changes, the information that essentially was laid out in the November 2013 report.

MR. SIMMONS: I see. So you did have that November 29, 2013, report available to you. Whatever we see in that, that information was available to you –

MR. C. MARTIN: That information was available.

MR. SIMMONS: – when you started your work. Okay, good. Thank you.

This is a question I asked Ms. Mullaley as well. When we look at the internal EY messages – which you wouldn't have seen until participation here in this Inquiry and we've got quite a few of them here – we don't have as many communications from EY to you. So we don't get to really see well, on the record we've got available, how to compare the two and what the two look like.

So I'm interested in your observations now, having seen EY's internal communication, as to whether you perceive any difference in the views they were expressing internally and what they were communicating to the Oversight Committee.

MR. C. MARTIN: Yes. I mean, the views that they were expressing internally versus the views as they would put – be put forward to the Oversight Committee were completely different from a delivery perspective.

What – again, this is personal opinion – of what we're seeing there on the emails – are personal opinions from EY at that point in time, as opposed to when they would talk to the committee it would be on a professional basis. I

believe there's some emails there whereby – there are an example of one or two there, I think, in the evidence whereby Richard – I know one specifically and I don't know where it's to, but where Richard is talking about one of the potential limitations because of the work Internal Audit is doing again.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: But then he says, but it's – you know, it's not that big an issue, so we can address it this way and move forward. So, that is the type of information I would receive from EY.

MR. SIMMONS: Yeah.

MR. C. MARTIN: What I saw internally, I'll be frank, I was surprised with some from Richard's perspective.

MR. SIMMONS: Okay and that's not what you heard.

Now, sometimes when teams are assigned to do work on all sorts of areas, there will often, I'm going to suggest, be a degree of internal debate, and there will be different views internally. And this stuff gets worked out internally until there's a more considered view of the team arrived at, which then gets communicated, in this case through EY, to government.

Now, would that be any different than what we see in some of the internal Nalcor communications where people complain about EY's involvement, et cetera. But then, when it comes to communicating with you, there may be a more measured position taken than what the internal debate suggests?

MR. C. MARTIN: Certainly could be.

MR. SIMMONS: Okay.

Mr. Mullaley had acknowledged that EY were intended to have a bit of creep in their scope, with kind of – with each assignment they would either, on their own, start to creep into areas that weren't specifically within their scope of work or come back and say: We should be doing more than what's in our scope of work. Was that your observation also?

MR. C. MARTIN: From time to time, yes. The baseline was the challenging one because we specifically were not looking at the baseline at that point in time, and the baseline would come up every now and again in terms of pieces.

MR. SIMMONS: Okay.

And we spoke a little bit earlier about the fact that it was kind of a legitimate push pull with Nalcor about the resources they had to apply to deal with responding to EY and to the Oversight Committee in what the needs were. So, in that context, were you surprised at all if people at Nalcor would, from time to time, push back at the Oversight Committee when they thought EY was exceeding the scope?

MR. C. MARTIN: Again, I wasn't surprised with it. I mean, they would come back and forth and if there was a scope issue they would raise it, or things like that.

MR. SIMMONS: Okay.

Can we have Exhibit P-03311, please? I think I understand your explanation of this one, but I want to go back to it just to make sure I have it correct.

THE COMMISSIONER: Tab 26.

MR. SIMMONS: Okay, so this is January 22, 2015, and there is a document attached here at page 6, I think: Engagement risk profile review?

MR. C. MARTIN: Yeah.

MR. SIMMONS: And you were asked a number of questions here that related to whether EY could get access to risk registers and so on.

MR. C. MARTIN: Yes.

MR. SIMMONS: Now, I want to make sure I understand that this – your discussion here was about the process of developing what EY's scope of work was going to be, not in connection with their execution of an agreed scope of work where they were meeting resistance from Nalcor.

MR. C. MARTIN: That is correct.

MR. SIMMONS: Right.

So the discussion here is about whether the scope of work should give them access to the risk registers, not whether they were on the job and being denied access –

MR. C. MARTIN: Yes.

MR. SIMMONS: – to risk registers.

Okay, good, thank you.

In September of 2015 there was a new AFE put in place – that's authorization for expenditure – for \$7.65 billion at that point as the project cost.

MR. C. MARTIN: Yes.

MR. SIMMONS: First of all, can you explain to me what your understanding is of what an AFE is and what the purpose of it is?

MR. C. MARTIN: Well, the AFE, my understanding, is the authorizing – authorization for expenditure.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: So it's essentially, it's approved by the board –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – in order to allow them to increase – to basically increase their spending for the project up to that 7.5. So that authorizes them to spend up to \$7.65 billion.

MR. SIMMONS: So would I be technically correct to say that the AFE authorizes the project to actually commit to spend money up to the limit of what's approved in the AFE?

MR. C. MARTIN: Yes.

MR. SIMMONS: Right. So would there be a difference between that concept, approval for commitment to expend money up to a particular level, and forecasting what could – what other costs might or might not be incurred over and above that level?

MR. C. MARTIN: Oh, yes. I mean, there'd be a difference between those two, yes –

MR. SIMMONS: Right.

MR. C. MARTIN: – absolutely.

MR. SIMMONS: Yeah. And was that a difference that was well understood at the Oversight Committee from the outset?

MR. C. MARTIN: In terms of that it could exceed the AFE? Yes –

MR. SIMMONS: Mmm.

MR. C. MARTIN: – that's where we would be looking for information on final forecast cost in terms of the project. That would be a piece whereby we would say: Okay, are we seeing – if you're talking about risks, are they quantified? How much is our exposure? Things like that.

MR. SIMMONS: Right, right.

So you understood that the AFE didn't necessarily include anticipation of all – of money that might have to be spent for all risks that might materialize on the project.

MR. C. MARTIN: Potentially, yes.

MR. SIMMONS: Okay.

So in September, then, of 2015 the AFE was put in place for 7.65 and I think you've said that it was around June or July when the Oversight Committee knew fairly specifically that there was going to be a cost increase.

MR. C. MARTIN: It would've been the latter part of June.

MR. SIMMONS: Yeah, latter part of June and that would've been in the range of \$7.5 billion being talked about at that point.

MR. C. MARTIN: No, that was the –

MR. SIMMONS: Does that ring a bell?

MR. C. MARTIN: – that was the 7.65.

MR. SIMMONS: The 7.65 was known the latter part –

MR. C. MARTIN: They were still finalizing going through in terms of – but it would've been the latter part of June that we first heard of it.

MR. SIMMONS: So can you tell me anything about what your understanding was of why from June – it took from June until September before this (inaudible) could be put in place and there could be a public announcement?

MR. C. MARTIN: In terms of Nalcor's piece, they indicated they were still going back and forth and finalizing some of the numbers which didn't –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – change after.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: And then part of it was just a communications process internally. I know that as of the end of June, members of the Oversight Committee were aware –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – as well as the minister of Finance and the minister of Natural Resources.

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: I would – I don't know, but I would've assumed that the Premier would've then been aware either later that day or the –

MR. SIMMONS: Right.

MR. C. MARTIN: – following morning.

MR. SIMMONS: Right.

Are you aware of either any pressure from within government to get out and release that number earlier, or any desire within government to exercise restraint as to when that number would be released? One way –

MR. C. MARTIN: I –

MR. SIMMONS: – or the other.

MR. C. MARTIN: I'm not aware one way or the other.

MR. SIMMONS: Okay.

Now, there's been some suggestion that the fact that there was going to have to be an increase was known before June and that that was communicated – back as early as even March – that there would be – that there was going to be an increase but maybe not fully quantified. Does that sound familiar to you at all?

MR. C. MARTIN: Not really, no.

MR. SIMMONS: Okay. Okay.

I will bring you to one document, if I can find the reference. Bear with me a moment.

P-02630, please.

THE COMMISSIONER: 02630.

MR. SIMMONS: Now, you probably –

THE COMMISSIONER: This one will be on your screen.

MR. SIMMONS: It's going to be on your screen only, and we'll go to page 3. These are notes kept by Derrick Sturge, who I think you knew, and so you probably haven't seen these before – page 3, please.

And he's giving some evidence in relation to this, and on the bottom-right side of the page he's got the heading there, it says – I think it's Distribution Assets and there's a date "3/9/15" which he said was March 9, 2015. And his recollection was that this was a meeting that he attended, along with Mr. Martin, with some officials at government. And in a – sort of a preliminary discussion, not a part of the official agenda of the meeting, there was some discussion about the direction the project cost was going in, and he actually has a number in there, 7.5, in this note.

Do you have – did you – were you a participant at that point in that meeting or know anything about it?

MR. C. MARTIN: I believe my name is there below isn't it? Or is it? I can't tell.

MR. SIMMONS: It may be, yes.

MR. C. MARTIN: It looks like it. I don't recall that particular piece. I really don't in the context of the meeting and that.

Now, I will note one thing, though, because this 7.5 – according to these notes – relates to Astaldi as opposed to the 7.65 as a – does not relate to Astaldi. So those are two different numbers as well from a comparative perspective. But I honestly – I can't recall one way or the other on that.

MR. SIMMONS: Okay, so you can't really shed much more light on that for us. Okay.

Exhibit P-03565, please.

THE COMMISSIONER: 03565. That would be at tab 47.

MR. SIMMONS: Thank you, Commissioner.

So this was a presentation to the Oversight Committee from September 16, 2015. You've already been asked some questions on this and you were brought, I think, to page 13. So maybe we can go there for a moment.

This was the one where the total cost is being reported as \$6.99 billion, which you've said everyone knew wasn't the real number at that point and –

MR. C. MARTIN: Yeah.

MR. SIMMONS: – that it was going to be 7.65.

MR. C. MARTIN: Yes.

MR. SIMMONS: Was that a topic of discussion? Was that a topic of any kind of concern that this report is saying 6.99 when everyone already knows it's going to be 7.65?

MR. C. MARTIN: It wasn't a big issue of discussion at the meeting, no.

MR. SIMMONS: No? Okay.

If we go to page 15, please. Page 15 here is a graph and it says: Final forecast cost summary. And if you look at the red line, the red line – would I be correct that that seems to track the AFE numbers when they're in place?

MR. C. MARTIN: Yes.

MR. SIMMONS: And if you look at the legend on the top, the red line is: "Final Forecast Cost excl. Potential Trends." So would those potential trends would be – that be the kind of thing that was – that everyone knew was going to be taken into account in the difference between the \$6.99 and the \$7.65?

MR. C. MARTIN: In terms of between – on this particular one?

MR. SIMMONS: Yeah.

MR. C. MARTIN: I can't say everybody would have known that one way or the other, you know.

MR. SIMMONS: Right.

MR. C. MARTIN: I guess one of the challenges would be, at this point, is what we're having reported here is the AFE amount –

MR. SIMMONS: Yes.

MR. C. MARTIN: – and it's – I mean you make (inaudible) and here on trends, pressures, things like that –

MR. SIMMONS: Mm – hmm.

MR. C. MARTIN: – as opposed to detailing these are the types of things and providing either an estimate or a range of estimates so that you get better insight as to where this thing is potentially going –

MR. SIMMONS: Sure.

MR. C. MARTIN: – and you're going to inform better and that. That is a significant piece that has shifted over time, in terms of the reporting.

MR. SIMMONS: Right.

And at this point, though, you'd agree with me that members of the Oversight Committee would have recognized there that final forecast costs, excluding potential trends, was the AFE number and that potential trends were items that could increase that cost.

MR. C. MARTIN: Oh, there's two things here right now. We know that we have – are moving to \$7.65 –

MR. SIMMONS: Yeah.

MR. C. MARTIN: – and we know that at this point in time the Astaldi contract is somewhere –

MR. SIMMONS: Okay.

MR. C. MARTIN: – from the perspective we've got significant issues at this point in time –

MR. SIMMONS: Mm-hmm.

MR. C. MARTIN: – and how do we progress on those issues and is there or what is the cost going to be on those issues?

MR. SIMMONS: So it was recognized then, at that point as well in the committee, that there could potentially be cost and schedule impacts from the Astaldi contract, but they weren't yet known.

MR. C. MARTIN: Yes.

MR. SIMMONS: So you were – you gave us an explanation of AFUDC and the differences in the way that the construction cost was taken into account for the LIL on the one hand, the Labrador Island Link and the LTA – Labrador Transmission Assets – and Muskrat Falls on the other. And I'm not going to try and repeat back exactly how that works, but on a basic level, I understand that there were two different financial methods used to account for the cost of the money that was being used during the construction period before the project is completed.

MR. C. MARTIN: Yes.

MR. SIMMONS: Okay.

And on one hand it's AFUDC, allowance for funds used during –

MR. C. MARTIN: Yeah.

MR. SIMMONS: – construction, right?

MR. C. MARTIN: Yes.

MR. SIMMONS: And on the other hand, it's the internal rate of return?

MR. C. MARTIN: There's an internal rate of return on the overall expenditure on that one, over the life of the project.

MR. SIMMONS: Right.

MR. C. MARTIN: That's the 8.4 per cent internal rate of return.

MR. SIMMONS: Okay.

So if we were to say someone forgot to include AFUDC on the Muskrat Falls piece of the project, that would be an incorrect statement because the cost that's being addressed in AFUDC on one hand is being addressed in the internal rate of return on the other.

MR. C. MARTIN: It's being addressed in the internal rate of return, yes, over the course of the project.

MR. SIMMONS: Okay.

And I think you said that the fact that internal rate of return was used on one and not AFUDC wouldn't change the overall capital cost of the project?

MR. C. MARTIN: Wouldn't change the entire cost of the project over the life of the project.

MR. SIMMONS: Over the life of the project; wouldn't change the operating costs of the project over the life of the project.

MR. C. MARTIN: Well, you would essentially either pull operating back into capital or vice versa, essentially. It's recognized during the operating period essentially.

MR. SIMMONS: So the only difference is in the way these costs are being recognized in the accounting for the project.

MR. C. MARTIN: They – well, absolutely, it's a different accounting treatment because one is not incurred until later in the project. So, from an accounting treatment perspective, I'm not aware that there's any problem with accounting with – accounting for it the way in which it was accounted for, from an accounting treatment perspective.

MR. SIMMONS: Yeah, good.

Thank you.

MR. C. MARTIN: Thank you.

MR. SIMMONS: Okay, thank you very much. I don't have any other questions.

MR. C. MARTIN: Thank you.

THE COMMISSIONER: Okay, it's 12:30 so I think we'll take our break here and come back with Concerned Citizens after lunch.

So we'll come back at 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: So, you remain under oath at this time.

And Concerned Citizens Coalition.

MR. BUDDEN: Sure. Good day, Mr. Martin. As you probably know if you've been following the Inquiry, my name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition, which as you probably know, as well, is – consists a group of individuals who for a number of years, now, have been observers and critics of the Muskrat Falls Project. You probably know a couple of them: David Vardy, Ron Penney.

MR. C. MARTIN: Yes.

MR. BUDDEN: Yes.

I don't have a whole lot for you today, but I do have some questions. Firstly, my understanding is – which confirmed by the evidence this morning – that you were involved in the design and the scope of work for the Oversight Committee. You were there at the very beginning?

MR. C. MARTIN: Yes, I was.

MR. BUDDEN: Okay.

Perhaps, Madam Clerk, we could bring up, when you're ready, Exhibit P-02697, and it's page 5 that I am interested in. Well, actually, we'll go to the first page just to set up the exhibit, so we all know what it is – 02697.

THE COMMISSIONER: Okay, that one will be on your screen.

MR. BUDDEN: What this is, as is self-evident there, Mr. Martin, this is the communications plan that was released at the time, the, I believe the first oversight report of the – of your committee was released in July of 2014.

MR. C. MARTIN: Mm-hmm.

MR. BUDDEN: And if we can scroll down to page 5, Madam Clerk, and it's the fifth bullet point that I am interested in, and I'll just read it. And I have a few questions. And I've put this to other witnesses, so it may sound familiar to you. "Government's" – and I quote – "Government's oversight committee strengthens and formalizes the existing oversight for the construction phase of the Muskrat Falls Project. A departmental committee of Finance, Natural Resources, and Justice, chaired by the Clerk of the Executive Council, is focusing on project costs, scheduling, and overall project performance."

So, obviously you are familiar with these words. You probably played a hand in writing this paragraph.

MR. C. MARTIN: I don't recall, but potentially. These words would come from the mandate of the Oversight Committee, though.

MR. BUDDEN: Sure, yeah.

I guess my – I'll word the question as follows, and there will be a few follow-up questions: were there further definitions of the committee's role, or further instructions from the executive, or by any other process or by – did by any other process the Oversight Committee come to review, as circumstance evolved over time, the business case for the Muskrat Falls Project? Was that something you guys were ever tasked with or ever looked at?

MR. C. MARTIN: No, we didn't. The Oversight Committee was primarily focused on the cost, schedule and project performance based against the baseline. So it was about this is what the current budget, this is what the current schedule is; how are they performing against that?

MR. BUDDEN: Sure.

And the mandate was neither expanded nor did you take it upon yourselves to look at the – I've got several different topics here. So the impact of the project on ratepayers, that was never something that the committee considered?

MR. C. MARTIN: That wouldn't be – that would've been outside of the Oversight Committee's mandate.

MR. BUDDEN: Likewise, there was not a stop-go analysis of the cost and benefits of the project?

MR. C. MARTIN: Not by the Oversight Committee.

MR. BUDDEN: Okay.

MR. C. MARTIN: The Oversight Committee was very narrow in its mandate.

MR. BUDDEN: Sure, yeah.

And I'm getting that, but I just want to – just for completeness. And so the Power Purchase Agreement and the risk of insufficient revenue generation, that wasn't addressed by the Oversight Committee either?

MR. C. MARTIN: No, it wasn't.

MR. BUDDEN: Okay, nor the environmental consequences about issues such as methylmercury, say, that may have emerged?

MR. C. MARTIN: No, they're not.

MR. BUDDEN: Okay.

MR. C. MARTIN: (Inaudible) outside.

MR. BUDDEN: Sure.

Perhaps, Madam Clerk, we could bring up 03440 – Exhibit 03440 – and bring us to the front page just to contextualize it a bit for the witness and for anybody else. You're not likely to have this one in front of you, I don't believe – yes.

What this is, Mr. Martin, is – it speaks for itself. It's an information note dating from October 2012, so a little before the Oversight Committee was struck – well, two years before. And it's "Consultant's Review of Nalcor-NLH Commercial Term Sheet," and the issue is "To provide a summary of the assessment of the Term Sheet provided by external consultants Robert Noseworthy and Power Advisory" – Inc. And if we can scroll down just a tiny bit further, the part I'm interested in is the part with Mr. Noseworthy so just up a tiny bit more, Madam Clerk. Bring us back just a little more, thank you.

So you can see there, in the first bullet point under Background and Current Status, it just confirms there's an engagement of Mr. Noseworthy. And then in the next bullet is – which I'll read – is a – really a capsule biography of Robert Noseworthy, which reads as follows: "Robert Noseworthy is the former Chair and CEO of the Board of Commissioners of Public Utilities ... was a Deputy Minister with the provincial government for 12 years, and is also a former Chair and CEO of the Newfoundland and Labrador Housing Corporation. Mr. Noseworthy holds an engineering degree, as well as an MBA."

Are you personally familiar with Robert Noseworthy?

MR. C. MARTIN: No, I'm not.

MR. BUDDEN: Okay.

But I would suggest it's self-evident from his qualifications there that he would be a knowledgeable person around issues such as regulation and project construction and so forth?

MR. C. MARTIN: Certainly.

MR. BUDDEN: Sure.

Perhaps, Madam Clerk, you could bring us to the second page, and it's the section under Oversight that I'm interested in. So we can scroll down a tiny bit. Could you, for us, Mr. Noseworthy, read the first two bullet points – sorry, Mr. Martin – the first two bullet points under Oversight?

MR. C. MARTIN: "Mr. Noseworthy agrees that the Project can't be regulated under the current PUB system, but there has to be significant and meaningful independent oversight of the costs related to the project given the level of expenditures."

"With the ratepayer being required to cover all costs incurred on the project, it is incumbent on the province to ensure that costs are independently reviewed and released to the public in a report."

MR. BUDDEN: Okay. The phrase that leaps out at me there, Mr. Martin, is – quote – "... there has to be" a "significant and meaningful independent oversight of the costs related to the project given the level of expenditures."

Given the – I would suggest, the relatively limited mandate of the Oversight Committee such as you and I have just reviewed, do you believe your committee was able to deliver that significant and meaningful independent oversight such as it is contemplated here?

MR. C. MARTIN: I would have to say that the committee by itself does not deliver on that full mandate.

MR. BUDDEN: Okay. By itself, are you including its consultation with EY there? Or you mean with or without EY?

MR. C. MARTIN: Oh, no, when I talk about that, I also reference the other types of oversight activities that were ongoing that we've discussed.

MR. BUDDEN: Sure.

MR. C. MARTIN: But in terms of an overall independent piece with one single body, I would have to concur.

MR. BUDDEN: Okay. To your knowledge, were these other elements that I just discussed with you a moment ago – was there any sort of parallel committee addressing those? Any other branch of the executive or of the government?

MR. C. MARTIN: Not that I'm aware of.

MR. BUDDEN: Okay. I guess, what do you believe to be the accomplishments the Oversight Committee? How is Newfoundland and Labrador better for its existence? What was accomplished?

MR. C. MARTIN: Well, from an oversight perspective – that's a challenging one to answer in retrospect given where we are today.

MR. BUDDEN: Yeah.

MR. C. MARTIN: I mean, the Oversight Committee essentially provided an alternate set of eyes into what was happening there beyond what was flowing from Nalcor directly. One of the challenges was – is the information that was available was incomplete – very much so. I mean, the Oversight Committee, at the end of the day, did, I believe, provide benefit to Cabinet, at the end of the day. I believe it did provide some limited benefit to the people of the province as well. It did give more oversight – insight into what was happening with the project than existed prior to the Oversight Committee.

MR. BUDDEN: Sure. Some limited benefit.

MR. C. MARTIN: Yes, I – absolutely, some limited benefit from that perspective. And, I mean, it is the activities of the Oversight Committee and what happened from real time and all that at the time that led to in December 15 with the new government moving in and having the final review done, but the challenge

is that's three years after we're into the project at that point in time.

MR. BUDDEN: Sure.

In retrospect, knowing what you know now, having read Grant Thornton, having seen these other reports, do you believe that circumstances outside the committee's control hamstrung it in its ability to provide a more fulsome project review?

MR. C. MARTIN: Well, I mean the committee's mandate was limited in scope right from the beginning. I mean, the committee was never mandated until later in the process to go back and look at the original cost base and estimates. That was, specifically, actually set aside at the beginning of the mandate to monitor against that.

In terms of going back in time, I mean, anybody would have to recommend, knowing what we know today, that there should've been a full independent review of the project on a cost basis right from the start, and more especially as we got close to the final decision in terms of financial close, before we made the final financial commitments.

MR. BUDDEN: As in it's – I would suggest to you that at the end of the day, looking back on it now, knowing what we know now, that certainly wasn't provided by the committee, was it?

MR. C. MARTIN: Oh, no. That wasn't provided by the committee.

MR. BUDDEN: Okay.

A couple of questions to conclude; Mr. Learmonth raised some questions about project cost financing and Mr. Simmons returned to them. And all of that, of course, grows out of my examination of Mr. Mulcahy on – we lose track of time – last Thursday, perhaps.

I guess I'm going – I'm not going to revisit all of that, it's a fairly lengthy topic and we'll address it again with other witnesses, but there are some important points. And since you seem knowledgeable, I'd like to return to them with you.

As a starting point, obviously, there are – there is always a cost of project financing, isn't there?

MR. C. MARTIN: Yes.

MR. BUDDEN: There's no such thing as free financing.

MR. C. MARTIN: No, no. There's always a project finance cost.

MR. BUDDEN: Okay.

And in this particular instance, a certain model was used to finance the LIL, the Labrador-Island component of the transmission project, while another model was used to finance the Labrador elements, the generation, the Churchill Falls, Muskrat Falls transmission component. That's also correct, isn't it?

MR. C. MARTIN: Yes, it is.

MR. BUDDEN: Okay.

The LIL financing; that was, I would suggest, the more conventional way of calculating interest, isn't it?

MR. C. MARTIN: Yes, it is. That's what you would conventionally normally see in that type of arrangement.

MR. BUDDEN: Okay.

Why is that more conventional?

MR. C. MARTIN: That is generally what you see in terms of any type of – again, my understanding; I don't claim to be an expert –

MR. BUDDEN: Sure.

MR. C. MARTIN: – in this area, but it's my understanding that that type of financing arrangement is what you see normally in any kind of regulated power distribution environment, no different than what you see in terms of the PUB setting the return every year.

MR. BUDDEN: Okay.

MR. C. MARTIN: So it's a return on your investment at that point in time.

MR. BUDDEN: Right on. And that's an interesting point because the LIL, of course, was regulated, wasn't it?

MR. C. MARTIN: Yes.

MR. BUDDEN: It had – it was regulated by the UARB of Nova Scotia.

MR. C. MARTIN: Yes.

MR. BUDDEN: Which wasn't about to accept a non-conventional, non-traditional model for financing.

MR. C. MARTIN: Yes.

MR. BUDDEN: Okay.

MR. C. MARTIN: Again, my understanding, these are all things prior to my involvement, but with the committee, so ...

MR. BUDDEN: The Labrador components on the other hand, the Muskrat Falls of – Labrador – Muskrat Falls, Churchill Falls Transmission Link and also the generating components of the project, they, on the other hand – their particular financing model, which didn't include AFUDC, wasn't, as we know, subjected to regulatory overview, was it?

MR. C. MARTIN: No. Not that I'm aware of.

MR. BUDDEN: Okay.

And I guess pulling it all together – so AFUDC is a real cost, isn't it? I mean, drop-kicking costs down the road decades, doesn't make them go away, does it?

MR. C. MARTIN: No. And, I mean, a lot of investors wouldn't put their money in, in that manner unless there was significant upside. On a fixed return you would want – or some sort of guaranteed return, you would normally want to start seeing return on your money up front.

MR. BUDDEN: Sure. In this case it was actually lower return, wasn't it; 8.4, as opposed to 8.5?

MR. C. MARTIN: Slightly lower –

MR. BUDDEN: Yeah.

MR. C. MARTIN: – but it's only a marginal amount. It's just that it's higher risk return on it, in that case, because a lot of the return is based on the back end of the project –

MR. BUDDEN: Yes.

MR. C. MARTIN: – which may or may not be realized more, especially given the current environment.

MR. BUDDEN: Which may or may not be realized more, especially in the current environment.

MR. C. MARTIN: Highly likely not.

MR. BUDDEN: Okay.

Let's leave it at those words. Thank you.

THE COMMISSIONER: All right. Thank you.

Edmund Martin.

MR. SMITH: No questions, Mr. Commissioner.

THE COMMISSIONER: Okay. Thank you.

Former Provincial Government Officials '03-'15.

MR. T. WILLIAMS: Good afternoon, Mr. Martin.

Tom Williams, I represent a group known as the former government officials for the period of 2003 through to 2015, with the exception of former Premier Dunderdale.

I just have one brief area that I'd like to explore and that's basically the operational side of the Oversight Committee, you know, how it actually functioned. I know –

MR. C. MARTIN: Mm-hmm.

MR. T. WILLIAMS: – it was established in the spring of 2014. You would've been a full-time employee, I trust –

MR. C. MARTIN: Yes.

MR. T. WILLIAMS: – of the committee?

MR. C. MARTIN: Yes, I was.

MR. T. WILLIAMS: How many other full-time employees were there of the committee?

MR. C. MARTIN: I would've been the only full-time employee of the committee.

MR. T. WILLIAMS: Okay.

And in terms of administrative support, what would be the –

MR. C. MARTIN: I had administrative support through the staff in Cabinet Secretariat.

MR. T. WILLIAMS: Okay.

And the other members of the committee, obviously, they came from other governmental departments, from Finance, Natural Resources and Justice, but they would have had other, obviously, full plates, you know, in terms of their –

MR. C. MARTIN: Oh, absolutely. I mean, these are – they all had full-time jobs and the committee was a piece that they were participating in, but by no means was it a full-time job for them. It could be. I mean, they had significant workloads.

MR. T. WILLIAMS: Okay.

So was there a schedule for meetings? How – can you tell me how it, operationally, would – you know, would occur? Would it be called at the call of the chair or would you schedule it as executive director?

MR. C. MARTIN: We would normally call at the chair. We tried a couple of times to schedule at certain times of the month, but that became a challenge with everyone's schedules. So we normally call at the chair. We would distribute the materials in advance. We had the shared directory where we put the oversight materials in advance for the meeting and we would then have our meeting.

MR. T. WILLIAMS: So how many times a month would you typically meet?

MR. C. MARTIN: Oh, the Oversight Committee itself would typically meet once a month as a whole.

MR. T. WILLIAMS: Okay.

And I would anticipate there'd be a fairly long agenda, given the areas that you were covering in terms of the project itself.

MR. C. MARTIN: Oh, yes. And it depended on – I mean, once we were into things like the Ernst & Young report and things like that, we may have multiple meetings in a month, depending on what issues were coming up and if we needed to meet as a whole. But the agenda, as a whole, would normally be – most meetings, I believe, would range in about three to four hours.

MR. T. WILLIAMS: And was there a delegation of authority within the committee? For example, did one member of the committee have responsibility for pursuing any particular aspect or was it discussion as a whole?

MR. C. MARTIN: Generally discussion as a whole. Now, I mean, depending on the topics, I mean we had people with different backgrounds, right? I mean, Finance would have been from the financial background, Justice from a legal perspective; we had an ADM there from Transportation and Works who has an engineering background. So it would depend on the speciality areas that you were dealing with, somebody may or may not take a lead on it.

MR. T. WILLIAMS: Okay.

In terms of action items that would arise from the meetings, would that then be your sole responsibility to follow up on those?

MR. C. MARTIN: Yes, generally the action items would be followed up by the executive director.

MR. T. WILLIAMS: Okay. So with respect to issues – and I don't want to get into the details of – particulars of, you know, pursuing documents through Nalcor, things of this nature, that would have been your sole responsibility?

MR. C. MARTIN: That would have been my responsibility. I would only escalate it then if it became an issue.

MR. T. WILLIAMS: Okay.

Moving on to the drafting of reports, who would have actual responsibility for – I know the reports started initially quarterly and I think you indicated they did try to move into monthly reports. Is that correct?

MR. C. MARTIN: I believe at a later date we moved to monthly posting. Essentially, the report now is a different format. It's the actual report that's presented, but prepared and presented to the committee.

MR. T. WILLIAMS: And what would be the process of the actual drafting of the reports and the finalizing and proofing of reports?

MR. C. MARTIN: The drafting of the reports would start with myself as the executive director and, basically, taking the information that we have from the monthly reporting for that quarter, compiling it. We'd have our meeting with the committee and when we did our regularly monthly review on those materials to determine what areas we were interested in pursuing more this month, what types of questions we wanted to answer – ask and answer, I should say – and I would follow up on it from there. We'd draft a report, we'd follow up with the questions and it would become a (inaudible) process, then, once there was a draft in place; then the draft would start circulating amongst the committee members.

MR. T. WILLIAMS: And I trust that – would that circulate by way of email or would it be always committee meetings in terms of reviewing the drafts.

MR. C. MARTIN: No, it would be distributed to committee members but it would've been based – an email would go out advising that the draft was available and be shared directly.

MR. T. WILLIAMS: And I guess what I'm leading to is the realistic time frame in terms of – because, you know, there's some suggestion that why were reports so long, you know, getting out that there would be a time frame.

So was it a realistic, the time frame, of 30, 60 days in order to – like, how a report would be drafted and –

MR. C. MARTIN: Oh –

MR. T. WILLIAMS: – circulated (inaudible)?

MR. C. MARTIN: Sixty days would be challenging because even our reporting from Nalcor, we would be six to seven weeks after a month ended before we'd get our full suite of reports in from Nalcor for us to complete our analysis and do our reporting.

So we've already got our September reports, we would not receive the full suite of reports until probably the second or third week of November in that case. So therefore, then, we'd have multiple weeks ourselves to do our analysis, our drafting and get it ready to go in order to issue it in December.

MR. T. WILLIAMS: So if you're doing a report on the first quarter, we'll say – and I use this only by way of example – you know, the first quarter ending at the end of March, then I trust you would need to obtain the documentation numbers, et cetera, from Nalcor or whomever you were seeking it.

MR. C. MARTIN: Oh, yes. I mean, until we received our monthly reports from Nalcor we would not have any data to do the analysis on. So –

MR. T. WILLIAMS: And typically how long would that period take from the time – the end of a quarter to the time you had the information in which you could start to commence the drafting of your report?

MR. C. MARTIN: Different reports had different timing on them. So they would normally start showing up about three weeks after the end of that month. So that would be the IPS and the construction reports, but some of the other reports could be as long as six to seven weeks after the end of that month, that previous month.

MR. T. WILLIAMS: And what would your typical – and I'm not trying to tie you down to time frames – but your typical time to

turnaround the report in order to get it out to committee members?

MR. C. MARTIN: At that point in time we'd likely had already meet, initially, as a committee on the earlier information without the full LCP report. So I'd have information already and I would have already started drafting because I'd have data from the IPS and construction reports. But normally, I believe, we would issue somewhere around – what – the middle of the third month.

MR. T. WILLIAMS: Okay. So it's not uncommon – the practice would be, typically, to get a report on a quarter circulated or published towards the end of the following quarter.

MR. C. MARTIN: Yes.

MR. T. WILLIAMS: Okay. And that would be a habit for ongoing time periods; that was not just isolated, that would be typical for each reporting period.

MR. C. MARTIN: Yes. I mean, if you go through you will find the first report – the September report would've been issued in December; the December report would've shown up in March.

MR. T. WILLIAMS: And was your office physically situated separate from where you had been working before or were you still working out of your – the same physical premises?

MR. C. MARTIN: No, no. I was originally – as director of Royalties, I was in the Natural Resources building. When I went to executive director for the Oversight Committee, I actually moved to the Cabinet Secretariat.

MR. T. WILLIAMS: Okay.

And I trust that the Oversight Committee was established to be an arm's-length committee of government. While you did report to Cabinet, you operated and functioned at an arm's-length capacity. Would that be –?

MR. C. MARTIN: The Oversight Committee was – I mean, at the end of the day, Cabinet could direct us.

MR. T. WILLIAMS: Okay.

MR. C. MARTIN: As we saw in terms of that report from September of 2015.

MR. T. WILLIAMS: Yes.

MR. C. MARTIN: There was a direction on that one.

At the end of the day, the committee prepared its reports, it submitted the reports to Cabinet and presented to Cabinet, but Cabinet had to approve the final release of the report.

MR. T. WILLIAMS: So I appreciate that. So you reported and approved (inaudible). But in terms of day-to-day operation, there wouldn't be interaction –

MR. C. MARTIN: No, no, day to day –

MR. T. WILLIAMS: – or an interference from political –

MR. C. MARTIN: No, no –

MR. T. WILLIAMS: – figures –

MR. C. MARTIN: – no, no, no, no. On a day-to-day operational basis, I mean, the committee functioned, we –

MR. T. WILLIAMS: And in your experience, in your role as executive director, did you ever experience any political interference –?

MR. C. MARTIN: No.

MR. T. WILLIAMS: No, okay.

Thank you very much.

That's all the questions I have.

THE COMMISSIONER: Thank you.

Kathy Dunderdale is not present.

Julia Mullaley, Charles Bown. I'll get you at the end, I guess.

Robert Thompson is not there.

Consumer Advocate.

MR. PEDDIGREW: Good afternoon, Mr. Martin.

MR. C. MARTIN: Good afternoon.

MR. PEDDIGREW: My name is Chris Peddigrew, I represent the Consumer Advocate and the ratepayers of the province.

A few questions for you today: Just in terms of your – when you became a member of the – or were appointed to the Oversight Committee, did you – was there any training or anything offered in terms of what your role would be or your responsibilities would be to you or any of the other committee members?

MR. C. MARTIN: No. I mean, essentially – we established – went back through the materials that were available and the Cabinet decisions and what they had communicated publicly, and based on that information we drafted up what we felt was indicated, was the mandate, and then it went through the system for approval that way.

In terms of moving forward, then, to define the reporting and define the activities and the insurance pieces, that was work undertaken by myself and EY and then through the committee itself as it developed and then brought forward for final Cabinet approval.

MR. PEDDIGREW: Okay.

And had you ever had any similar experience in an oversight role like on the Oversight Committee from your time in government?

MR. C. MARTIN: From a direct oversight role from that perspective, no. That's a little bit of a different role for myself. My background would be – you know, my background has been in various roles within government, financial, but most of my work has been primarily in audit areas, audit verification.

MR. PEDDIGREW: Okay.

When you were appointed to the committee did you read any of the reports – say, from Manitoba Hydro, the Joint Review Panel, the PUB reports – to familiarize yourself with the project?

MR. C. MARTIN: At that point in time, no, I never reviewed those reports. What I did review were things like the Nalcor website, I looked at the Navigant – not the Navigant, sorry – the MWH report from November of 2013, and I had access to various officials who had been working on the project from earlier dates.

MR. PEDDIGREW: Access to what? Sorry, to ...?

MR. C. MARTIN: Various officials who had been –

MR. PEDDIGREW: Okay.

MR. C. MARTIN: – working on the project historically as well.

MR. PEDDIGREW: Okay. But the documents I mentioned, you had not – you did not read them when you joined?

MR. C. MARTIN: No, I did not read those documents.

Again, the original baseline was outside, was accepted upfront, so therefore we were designing around what do we do to measure against that baseline; not to go back and revisit.

MR. PEDDIGREW: Right. Okay.

I'd like to take you to – this is a little bit of a follow-up on some of Mr. Budden's questions – but it's document 01128, please, Madam Clerk.

So, Mr. Martin, this again refers to Mr. Noseworthy, who Mr. Budden just asked you some questions about. Now, the document won't be in your binder, but if you look at the first page here, it's a direction note, Department of Natural Resources. And on the last page of this document it's November 27, 2012, so pre-financial close.

Is this a document you've seen before? And I'll give you a second just to look at it, from the first page – 2012, you were with Department of Natural Resources at that time, is that ...?

MR. C. MARTIN: Yes, I was.

MR. PEDDIGREW: Okay.

MR. C. MARTIN: But I wasn't – my involvement with the Department of Natural Resources was on the Royalties side –

MR. PEDDIGREW: (Inaudible), okay.

MR. C. MARTIN: – the petroleum side.

MR. PEDDIGREW: So is this is a document – like, have you seen this document before today?

MR. C. MARTIN: I'm not familiar with this document.

MR. PEDDIGREW: All right.

And so is it fair to say, then, that this document would not have been given to the Oversight Committee to assist it with developing its mandate or terms of reference or what its roles and responsibilities were?

MR. C. MARTIN: I don't recall seeing this document.

MR. PEDDIGREW: Okay.

And again, you know, I take it you're seeing it for the first time. So as we go through it, if it becomes familiar, certainly feel free to say so.

I'm assuming, as well, that if you weren't provided with it, then as far as you know, Ernst & Young were not provided with it either.

MR. C. MARTIN: No, not that I'm aware of.

MR. PEDDIGREW: If we look at the first page – if we go down about halfway, right – so the bullet point that begins: Mr. Robert Noseworthy. And this, again, relates to the question that – the questions Mr. Budden asked you.

So Mr. Noseworthy is making reference there – about three lines down in that bullet point – to a significant and meaningful independent oversight in relation to the fact that the ratepayer is paying the cost. But, again, I think you answered that question to Mr. Budden, that that sort of degree of oversight or type of oversight that Mr. Noseworthy was referring to was not really what your committee carried out.

MR. C. MARTIN: No, our committee was focused on the project performance against its baseline, as it moved forward from a cost and schedule perspective. When I say cost, I am speaking to cost performance against budget, not necessarily the reasonability of the cost.

MR. PEDDIGREW: Not necessarily –

MR. C. MARTIN: Not necessarily the reasonability of the cost. I am reading from here about –

MR. PEDDIGREW: Okay.

MR. C. MARTIN: – the reasonability, so that would have been a different test –

MR. PEDDIGREW: Yes.

MR. C. MARTIN: – that – I mean, there were some pieces done that would have touched on that. Some of the pieces that we asked Deloitte to do in terms of the overhead and that. That would have touched on that type of topic, but to say on a comprehensive basis, no.

MR. PEDDIGREW: You are primarily focused on whether – how it compared to the budget.

MR. C. MARTIN: Absolutely, we were primarily focused on the project performance against how the project was performing against the budget itself and how the schedule was moving forward against the timeframes.

MR. PEDDIGREW: Okay.

If you move down towards the bottom of this page, the second last bullet, the bullet that begins with “*No Authority to Approve/Disapprove Expenditures.*”

So, it just makes reference here to the fact that “all oversight options are non-regulatory”

Then at three lines down there, said: “They do not include any authority to approve or disapprove costs, including any questionable expenditure if encountered the review. Given that the PUB will be directed to include all Project costs in rates, if any questionable expenditure is encountered, it would be a

decision for the Government at the time whether to reimburse the ratepayers”

Was that ever – did that issue ever come up at the Oversight Committee? In terms of like how you would define what your role was or how you would set your terms of reference –

MR. C. MARTIN: I was –

MR. PEDDIGREW: – was this – was the fact that there would be no PUB oversight, did that heighten your awareness of what your role was or what your responsibilities were –?

MR. C. MARTIN: It was recognized early in the process that there was no PUB oversight, but, again, the current mandate that was prepared was based on what was being said publicly at the time, what the most recent Cabinet paper that had gone forward to government.

What was said – I reviewed Hansard, to see what was being said in the House of Assembly. Based on that, we drafted what we felt was being said at that point in time, and put it forward to say, is this the Oversight Committee?

MR. PEDDIGREW: So, in September 2015, when you were advised or told not to release the report at that time, did you have any feelings – personal feelings on that? Did you feel that was the right decision? The wrong decision? Were you bothered by that instruction?

MR. C. MARTIN: Well, I guess at the time, I mean, my preference – personal preference would have been that the report was released. I mean, as a Committee as a whole, we had, from our perspective, worked through all the – what we consider – what we deemed to be, and accepted as commercially sensitive items. So, up to that point and time, we were ready to release the report, but, again, my understanding is Mr. Martin made some contact, and he raised commercial sensitivity concerns at higher levels, as well, and there was a decision undertaken to slow down and revisit again.

MR. PEDDIGREW: Sorry. Did you say understanding was that Mr. Martin – Ed Martin, you mean – made contacts?

MR. C. MARTIN: Again, my understanding; I don't know that for a fact.

MR. PEDDIGREW: Right. That's your understanding.

MR. C. MARTIN: That's my understanding.

MR. PEDDIGREW: And that's where the direction originated – is your understanding?

MR. C. MARTIN: Yes. (Inaudible) to my understanding, again, is the direction originated from the premier at the time.

MR. PEDDIGREW: And, when you say your preference would have been to release the report – you had satisfied yourself that there was no commercially sensitive information contained in it – is that so that the public would be informed? Is that the reason that you wanted it to be released?

MR. C. MARTIN: Oh yes. Absolutely. I mean, at this point in time we've got considerable findings that the information we have been relying on, it – there's significant gaps and problems with that information, at the same time when we've got another cost increase being announced with the project.

MR. PEDDIGREW: Mr. Martin, and I realize you – you know, you're operating within the parameters that you – that were assigned to you, so I'm not suggesting this was your decision, but, I guess, to the extent that anybody might perceive that the Oversight Committee was independent and reported to the public, it really wasn't. It was an Oversight Committee that reported to Cabinet, and then Cabinet would decide what went to the public.

MR. C. MARTIN: The Oversight Committee was independent of Nalcor. The Oversight Committee was not independent of government.

MR. PEDDIGREW: Just a question about the reliance agreements and so, the timing of – was that – what point was that in 2014 that you first entered into the reliance agreement?

MR. C. MARTIN: That was in July of 2014.

MR. PEDDIGREW: In July. Okay.

And so, from your point of view – what were the advantages to having the reliance agreements with the independent engineer?

MR. C. MARTIN: That gave us full access to the independent engineer. So, we were supposed to be sent copies of his materials directly from him that gave us full access to him when he was down doing our site – his site visits – gave us access to data to make phone calls, have discussions with them and ask him for his opinions on things.

MR. PEDDIGREW: Instead of having to go through Nalcor. You could go directly to the –?

MR. C. MARTIN: We could go directly to the independent engineer, but the other thing is if we were going through Nalcor, we would have had access to him when he was down for a visit, but by going to route we did, I mean, at this point in time – again, Paul would be able to speak to it better later on – but, I mean, we have the independent calls with the independent engineer and that, where Nalcor would be invited to participate if they choose to do so, but it's not going through Nalcor to arrange.

MR. PEDDIGREW: Okay.

How did the reliance agreements come to be? Like, do you recall who raised entering into them as a way to get access to the independent engineer? Did it come from within one of the departments? Did it come from one of the ministers?

MR. C. MARTIN: I'm not sure if it came from Justice, to be honest with you. And I – again, I honestly can't recall, but I think the issue became that if we were going to actually rely on them and start utilizing them in that way, we were going to need something in the way of permission from Canada, and the independent engineer was going to want something themselves to specifically indicate that, though you're relying on it, the key difference is we could rely on it – we had access and everything else – but at the end of the day it's still clear that the independent engineer –

MR. PEDDIGREW: Right.

MR. C. MARTIN: – reports to Canada and has no –

MR. PEDDIGREW: Yeah.

MR. C. MARTIN: – liability to us.

MR. PEDDIGREW: Right. Yeah. Simply a way for you to get better access to the information.

MR. C. MARTIN: Yes.

MR. PEDDIGREW: But you don't recall how or who within government said – hey, it's a good idea for us to go to the independent engineer directly?

MR. C. MARTIN: Well, we were already – would have been looking at the independent engineer's report and that, and the independent engineer was coming down that summer, actually, I think in August or latter part of July or early-August, to do another site visit; so those were the types of things to precipitate it, but as to who actually said we should get a reliance agreement, I honestly can't –

MR. PEDDIGREW: Okay. Fair enough.

During your evidence this morning – I think, when Mr. Learmonth was asking you some questions – you mentioned that there was some information that had been requested from Nalcor at some point in relation to cost and schedule changes, and I believe you said it was in the project or it could have been contained in the project controls reports, and I may have misheard you, but you were told at some point that that information did not exist by Nalcor.

And I'm just wondering: who from Nalcor would have – and you've subsequently found out from reading the materials preparing for – or as part of this Inquiry that the information in fact did exist. I'm just wondering who from Nalcor would have told you at the time that it did not exist?

MR. C. MARTIN: I can't say specifically. I mean, in terms of persons attending the Oversight Committee meetings, generally, the three individuals who were generally there at the

beginning would have been Gilbert Bennett, Paul Harrington and Jim Meaney.

Specifically who said at what point, I can't specifically say at some point in time, but –

MR. PEDDIGREW: But those were the three main –?

MR. C. MARTIN: But those would have been the three main people attending the Oversight Committee meetings at the beginning. Steve Pellerin was brought in later on in order to have a single facilitator at Nalcor to bring together materials, because one of the challenges was trying to get things coordinated through the individuals themselves. And again those other three individuals were busy with the project, as well, so Steve was brought in as a coordinator for multiple external parties.

MR. PEDDIGREW: Okay.

MR. C. MARTIN: Just to give you context, a specific issue when we were talking about: well, we really don't have a cost on that, we'd have to do a quantitative analysis on that, there's pressures, things like that. That really came down to, okay, we're talking about these risks, but what are they worth? They're not – we're not moving. You know, the final forecast cost is not moving. Are you saying that it could be eaten within it? Is there a risk around it? What is the range? Those types of things.

MR. PEDDIGREW: You were looking for a cost range?

MR. C. MARTIN: Yes.

MR. PEDDIGREW: Even if you didn't have a – even if Nalcor didn't have an exact figure?

MR. C. MARTIN: Yes, just to understand the exposures; the challenge is you're seeing things happening, you're seeing in terms of schedule slippage, you hear talk about pressures and mitigating actions, but you're not getting anything to even give you a clear idea of, okay, what is this worth? Is this a \$10-million issue? Is this a \$50-million issue?

MR. PEDDIGREW: Okay.

MR. C. MARTIN: Or is this a \$50-100-million issue? That's one of the earlier challenges.

MR. PEDDIGREW: Okay.

MR. C. MARTIN: That's not a challenge today with the Oversight Committee.

MR. PEDDIGREW: Okay.

And you were asked this morning, as well, about – and so, I know you used the phrase quantitative, and I guess you mean that phrase in the sense of a number, but you were asked this morning by Mr. Learmonth about whether you were aware in December 2015 that it had been three years since there was a QRA, so a quantitative risk assessment, that was carried out. And I think you said you weren't aware, but, I guess, at the time were you aware of what a quantitative risk assessment was or, like, would you have known what it was in order to ask whether one had been done?

MR. C. MARTIN: I've – it's through my experience with the Oversight Committee that I would have had more knowledge on what this referred to in terms of the quantitative risk assessment.

MR. PEDDIGREW: In December 2015, do you feel you would've known enough about what a QRA was to ask –?

MR. C. MARTIN: In December 2015, yes.

MR. PEDDIGREW: Okay.

And just the last area of questioning, Mr. Martin: there was some discussion this morning, as well, about the ICS, the dome, and that there had been some assurance given in September 2014 by Nalcor that, you know, if we – once the dome is completed, work can be carried out during the winter, and there's a chance there for Astaldi to catch up and get back on schedule.

Did anybody from Nalcor ever raise the possibility with you, in that time frame, that the dome, or the ICS, might not be able to be constructed by winter?

MR. C. MARTIN: I don't recall anybody raising that issue until we get into December

month that they're any real challenges with the dome.

MR. PEDDIGREW: But not raised in the fall?

MR. C. MARTIN: Not that I recall.

MR. PEDDIGREW: Okay.

Okay, those are my questions. Thank you.

MR. C. MARTIN: Thank you.

THE COMMISSIONER: All right. Thank you.

Innu Nation is not present. Nunatsiavut Government.

NunatuKavut.

MR. RYAN: Good afternoon, my name is Victor Ryan. I'm counsel for NunatuKavut Community Council.

I just have some questions about the beginning of the Oversight Committee. If I have your evidence correctly from just a few minutes ago, your perception of the role of the Oversight Committee was just to consider the cost and the schedule and whether those, in effect, were lining up to the baseline provided by Nalcor. Is that correct?

MR. C. MARTIN: Yes. If we go back to the actual terms of reference, which forms part of the original report that was issued July 2014, the three main pieces for the committee were – one is the cost performance against the project budget, is the schedule performance against the project schedule and then is to review and identify risks associated with the project and how they could impact those two pieces.

MR. RYAN: And so I'm hoping that you could help at least me understand your perception of the role of the Oversight Committee as it relates to the third term of reference, the identifying of risks and making sure that there's appropriate contingency? Because at least to my mind, how you're describing the Oversight Committee's work now doesn't quite match up with the three points in the terms of reference.

MR. C. MARTIN: And are you – is it the one relating to the risk that you’re specifically –?

MR. RYAN: Yes, the third one –

MR. C. MARTIN: Okay.

MR. RYAN: – specifically.

MR. C. MARTIN: So from a risk perspective, a lot of that would be done through what we were talking about in terms of Nalcor coming in each month with its presentations – what are the things being encountered, what’s happening publicly, where you’re in terms of those from a contingency perspective, have they been quantified if you’re talking about risks. Again, one I’ll go to specifically is Astaldi – once we started to get – falling behind schedule and then later on in that winter. Questions – are there going to be knock-on cost impacts here – things like that as they arose.

MR. RYAN: So do you consider the third point – the point in the terms of reference about risk – to apply solely to risks already identified by Nalcor and provided to the Oversight Committee?

MR. C. MARTIN: We would be dealing with risks that arise – either identified by Nalcor or identified through our actual review of the data coming in. One – and if we – I had questions based on that things arose or things that are happening generally in the public that you would become aware of.

MR. RYAN: And so how does that fit into merely reviewing the cost and schedule to make sure that they’re matching up with the baseline provided by Nalcor?

Perhaps I’m just misunderstanding, but it seems as though the way you’re describing the role of the Oversight Committee now is quite restricted. You know, you have the schedule and the budget and is that being completed on time and on schedule.

But the third point of the terms of reference is to identify whether cost and schedule risks are reasonably anticipated and managed, including whether risks are being sufficiently identified,

addressed and whether Nalcor has established the adequate contingencies.

So that seems to me to be beyond reviewing the cost and schedule to see if they match up with the baseline. Are – is that beyond how you’ve described the role of the Oversight Committee today?

MR. C. MARTIN: I don’t know if I’m really understanding your question fully. Like, I understand you’re trying to identify what activities the committee would have undertaken in order to identify risks aside from those that were simply identified and already noted by Nalcor.

MR. RYAN: Yes.

MR. C. MARTIN: And, again, in terms of potential risks, when we’re reviewing data coming in, we’ll see that there’s slippage – Astaldi contract in particular – slippage in terms of performance on that, so then we would wanna talk to Nalcor and say, okay, this is a risk now. So that (inaudible) – a risk, potentially, if Nalcor hadn’t identified it themselves, that’s a potential risk, so we’d wanna ask questions and understand better what it is and quantify.

If there’s things happening with respect to methylmercury, we’d be aware of concerns around that in the public purview. So, we would want to talk to Nalcor to understand what those are. We potentially would talk to Department of Environment, who was responsible for the regulatory side of it, just to understand where they are, things like that.

So, there would be risks identified and questions asked through – not just the fact that Nalcor had included in a report through the things the committee is seeing either through reviewing its reporting or seeing what’s happening in the environment around the project. But I’m not sure what you’re asking beyond that.

MR. RYAN: Well, it does really in part add to the issue of methylmercury. So there’s – we’ve learned through the Inquiry – through documents – that Nalcor in – at least around 2015, 2016, considered the issue of additional reservoir clearing to potentially trigger further federal and provincial environmental assessment

approvals and federal *Fisheries Act* authorizations.

And so, I'll put it to you that that represents a cost and schedule risk if further governmental permits and authorizations are required in the project. Would you agree with me?

MR. C. MARTIN: Absolutely, yes.

MR. RYAN: Yes. So, to me, that seems like it was fall squarely within the third bullet point of the terms of reference of the Oversight Committee because it is an anticipated cost or a schedule risk. And so it would've been within the purview of the Oversight Committee to consider how Nalcor was anticipating that risk, how they were managing that risk and whether there was contingency set aside to mitigate that risk. Did the Oversight Committee do any of that?

MR. C. MARTIN: The Oversight Committee would've had conversations with Nalcor surrounding that particular issue in terms of understanding what was happening there, what they're doing, things like that. Whether or not there's a contingency set aside would be something depending on where risk is from an escalation perspective. The risk of it actually having to be delivered, things like that.

But – and some of the Oversight Committee members participate in other groups within government. So, therefore, you're bringing knowledge to the table because of your activities in other roles within government that would give you insight into what's happening on particular files and that as well.

So, I mean, the Oversight Committee would be aware of the issue, but we're not the regulator or anything like that on it, or we wouldn't be actively be doing anything with it other than being aware and understanding what's happening there because the actual regulation of it would be under the Department of Environment, and then any mitigating actions and things being considered would be by Nalcor and then for approval.

MR. RYAN: Maybe it's just my understanding, but that seems to me to be irreconcilable. You agree that this issue would represent a cost

and/or schedule risk, therefore – at least in my view – it's quite clear that it would fall within the scope of the Oversight Committee.

And, if I have your evidence correctly, you also said that the Oversight Committee would have had conversations with Nalcor, they would have had pre-existing knowledge from individual members of the Oversight Committee, but the Oversight Committee wouldn't have actually done anything because it's not a regulator.

So, to me, that's quite inconsistency – in fact, irreconcilable. Would you agree? Do you see that as irreconcilable as well?

MR. C. MARTIN: No, I'm not. Like, the Oversight Committee is not a regulator – I'm trying to understand what actually it is you're leaning towards. I'm not really understanding.

MR. RYAN: Well, so did the Oversight Committee ever issue any report identifying this risk?

MR. C. MARTIN: I can't recall.

MR. RYAN: Right.

Do you recall specifically having any conversations with Nalcor about this risk?

MR. C. MARTIN: Yes –

MR. RYAN: Right.

MR. C. MARTIN: – but it may not have been in my Oversight Committee role.

MR. RYAN: Okay.

Do you recall in your Oversight Committee role ever requesting further information from Nalcor or requesting that Nalcor brief the Oversight Committee, specifically on this issue?

MR. C. MARTIN: This issue has been discussed in Oversight Committee before.

MR. RYAN: But did the Oversight Committee request it?

MR. C. MARTIN: It would have been part of the risks that were brought forward and

discussed with respect to the project from a Nalcor perspective.

MR. RYAN: Okay.

So what oversight was conducted by the Oversight Committee on this issue? It sounds like you talked to Nalcor about it, it sounds like you didn't write anything down with respect to it, it sounds like you didn't identify it in any reports that were released to Cabinet and then to the public.

So what oversight was actually done on this issue which we both agree was squarely within the Oversight Committee's mandate?

MR. C. MARTIN: See, I would have to review the reports to see if actually – if there is any reference to that issue as a risk, in the later reports.

MR. RYAN: Okay, that's fair.

I have reviewed the ones that are before the Inquiry and I'll put it to you that there's no mention of it in there. And so, just taking that as truth – and if that's wrong, we can clear it up later – what is the role of the Oversight Committee if not identifying risks and making sure that they're being reasonably anticipated? What were you supposed to do in this situation, that you did not do?

MR. C. MARTIN: I'm not – I'm really not clear on what it is you're asking here. I'm struggling with this one, from the perspective of understanding. Now, maybe it's because I'm wearing multiple hats within government and there are areas where that issue is being considered and talked about. And it would be members of the Oversight Committee that are aware of that. So there's other things happening there.

MR. RYAN: But, and –

THE COMMISSIONER: I guess – just, if I can – I think you're both sort of talking around the issue as opposed to directly nailing it. So let's just take methylmercury, for instance. Assuming that there is nothing in the report or any of the reports of the Oversight Committee, what did you do about the methylmercury issue,

the risk related to methylmercury, that it was arising at the time – about additional reservoir clearing? What did the Oversight Committee do with that information?

MR. C. MARTIN: And again, I'm –

THE COMMISSIONER: Did you go back to Nalcor and did you say: Look, you need to put money in your budget to cover off – or a contingency to cover off what potentially could be a –

MR. C. MARTIN: Okay.

THE COMMISSIONER: – \$100-million issue?

MR. C. MARTIN: Okay, I think I understand what you're –

THE COMMISSIONER: Is that where you're going with this? Like, are you going to asking, like, what did they do?

MR. RYAN: It is in part, Commissioner, but I'm less concerned about the actual issue of the methylmercury.

THE COMMISSIONER: Okay, I'm only using that as an example.

MR. RYAN: My issue is that Nalcor foresaw additional governmental approvals that would delay the schedule and increase cost.

THE COMMISSIONER: Mm-hmm.

MR. RYAN: It seems as though Nalcor, to my view, didn't do anything with that information. And I'm trying to ascertain whether or not the Oversight Committee ever discovered that information, and if so, if they ever did anything with that information.

THE COMMISSIONER: Fair enough.

MR. RALPH: If I – like, this might be helpful, Commissioner. I understand that in – I think it was December of 2018, there was the – the Oversight Committee discussed the \$107 million to \$370 million in risks that represent strategic risk, and I think EY also reviewed that number.

That's a number that's not included in the budget, but it's been –

UNIDENTIFIED MALE SPEAKER:
Publicly.

MR. RALPH: – it's been raised and EY considered it to be a reasonable response to that issue.

THE COMMISSIONER: Okay. I'm still not sure that's answer Mr. – your question. But anyway, go ahead.

MR. RYAN: So, I'm not sure if that makes it any more clear, Mr. Martin, but it's clear to me, and I'll put it to you that Nalcor identified a risk to both the cost and the schedule. I haven't seen anything that indicates that Nalcor did – took any action to identify that risk to government – no, sorry, that's not true. They did identify that risk to government, but I don't see anything that shows that they identified that risk to the Oversight Committee.

You say that you are aware of it but perhaps because of the different hats that you play.

I just want to know if the Oversight Committee took any action whatsoever with respect to the issue of additional reservoir clearing triggering further governmental approvals.

MR. C. MARTIN: Take any action from the perspective of asking is there money set aside for this, asking – again, I'm not trying to be difficult, I am struggling with this question. Like when you say, take any action with respect to it, like the Oversight Committee –

MR. RYAN: Any action.

MR. C. MARTIN: – would be aware of what Mr. Ralph just outlined there then in terms of an amount that was set aside as a strategic risk there, as a potential outcome. But such a risk wouldn't necessarily flow down to a tactical basis at this point in time because it would be contingent upon what is the probability of it happening and things like that. So it may not be within the current AFE, but it would exist.

MR. RYAN: But that's –

MR. C. MARTIN: And –

MR. RYAN: – that's a fair thing. The answer can be no. If the Oversight Committee didn't do anything, then the answer is no. But did the Oversight Committee request further information? Did they, you know, write it down? Did the Oversight Committee decide this isn't for us to consider and so we will leave it to other people? Just what did the Oversight Committee do?

MR. FITZGERALD: Commissioner, we've been going back and forth on this for a while. If I may assist, if you look at the committee meeting, committee minutes are there for the Oversight Committee that are reference to seeking updates on methylmercury and whatnot, in the minutes themselves but not in the report. Just trying to be of assistance to my learned friend.

MR. RYAN: And, thank you.

It's not quite on issue, but perhaps I have my answer, I think. I would put it to you that the Oversight Committee didn't do anything in response to that issue of additional environmental permitting triggers, which would increase cost and increase the schedule. Would you agree with me or not?

MR. C. MARTIN: But right now, there are no additional increase of permits or environmental pieces required at this time. There is a strategic risk that's been identified relating to that issue; an amount has been quantified and made public, relating to that issue. So, again, that's where I'm struggling to understand what it is you're seeking for the Oversight Committee, from that perspective.

The risk is – has been identified, it's been discussed, there's a quantification around it. There's been no increase in budget at this point in time, to put an amount there on it. But the amount is publicly available out there and has been disclosed publicly. So that's why I'm – I'm trying to understand what it is you're seeking for the Oversight Committee to do.

MR. RYAN: I'm not seeking the Oversight Committee to do anything –

MR. C. MARTIN: No, no, but –

MR. RYAN: – I’m just asking if you did anything. And I think I have my answer, Commissioner, so –

THE COMMISSIONER: Well, let me just – just so I can understand because I may have missed something here in the crossfire here. So are you asking the witness when this arose in 2015, 2016 where the issue of recognition of a potential for additional reservoir clearing was acknowledged by Nalcor – at least was raised in Nalcor’s eyes – are you asking at that specific time did the Oversight Committee do anything to – because there was – and then there would have been an issue about the need for further permits, further approvals since that ...

Are you asking at that particular time what did the Oversight Committee do in response to that information? Is that what you’re asking?

MR. RYAN: Yes or at any – at the time that the Oversight Committee would have been made aware of the issue.

THE COMMISSIONER: Yeah, so when did you become aware of it?

MR. C. MARTIN: I’d have to review the minutes. I honestly cannot say. I mean, I know we were aware of the issue; it’s been discussed more frequently in the latest years as opposed to historically, from what I recall at this point.

MR. RYAN: I think I have –

THE COMMISSIONER: And your evidence –

MR. RYAN: – my answer, Commissioner.

THE COMMISSIONER: Okay.

MR. RYAN: So, thank you, those are my questions.

THE COMMISSIONER: All right, then. Thank you.

Grand Riverkeeper/Labrador Land Protectors.

MS. URQUHART: Good afternoon, Mr. Martin.

MR. C. MARTIN: Good afternoon.

MS. URQUHART: I’m Caitlin Urquhart and I represent Grand Riverkeeper Labrador and the Labrador Land Protectors. You may know them as some citizens’ organizations based out of Labrador who are dedicated to maintaining the ecological integrity of the Grand River or Mista-shipu, which is the traditional name of the river that’s been dammed in this project.

I actually just wanted to start by acknowledging that today the Missing and Murdered Indigenous Women and Girls inquiry is holding its closing ceremonies and releasing its final report that concludes that genocide by a colonial government has led to the disproportionate deaths and disappearances of Indigenous women and girls. So, today, I’m thinking of our Innu and Inuit members of Grand Riverkeeper Labrador and Labrador Land Protectors who are processing these findings and recommendations and I wanted to acknowledge that.

THE COMMISSIONER: Okay, take your time and, when you’re ready, you can ask your questions.

MS. URQUHART: Thank you.

So, one of the recommendations, actually, that’s come out of the MMIW inquiry is the increasing participation of Indigenous women in governance structures. And as somebody who was around from the beginning of the Oversight Committee, I wonder if you can speak to whether or not participation or inclusion of local and Indigenous individuals was considered on that committee.

MR. C. MARTIN: At the outset, the Oversight Committee was strictly an internal government committee –

MS. URQUHART: Mm-hmm.

MR. C. MARTIN: – made up of senior government officials with backgrounds – technical backgrounds for the technical areas that we were looking at so, no, that wasn’t a consideration during the time when I was there when it was established.

MS. URQUHART: The terms of reference specifically exclude a number of items, one of them being environmental risks. And I'm wondering if you can explain why that is.

MR. C. MARTIN: Environmental risks fall under the purview of the Department of – MA – Municipal Affairs and Environment from a regulator perspective. Part of the challenge is the committee was kept relatively narrow in scope so that it could focus on those specific issues that were arisen at the time.

There are multiple areas and issues associated with this project and it touches many corners, but the Oversight Committee itself was an oversight committee with respect to the cost and schedule. Things could roll in there if they become an actual risk and there's an issue behind – falls around them with respect to quantification, but beyond that, they wouldn't sit with outside.

MS. URQUHART: And so who would your contact within Department of Environment been? Like, who was in charge of those risks?

MR. C. MARTIN: Oh, in terms – well, I mean, we would be dealing with Jamie Chippett directly, deputy minister, and he'd flow it down through the department.

MS. URQUHART: Anyone else? Just Jamie Chippett.

MR. C. MARTIN: Generally, it would happen at the direct deputy's level. It could be one of the ADMs associated with it at a point in time, but Jamie would be the primary contact.

MS. URQUHART: Okay.

One of the other items was community concerns. Can you explain why that was excluded?

MR. C. MARTIN: Again, it was a narrow scope. The committee was kept very narrow scoped. It addressed those particular issues that were identified at that time, being the cost and schedule performance against the baseline, and the risks that could affect the cost and schedule.

MS. URQUHART: So who would've been your contact for that piece, for understanding

what the community concerns would've been if they rise to the level of a risk?

MR. C. MARTIN: At this point in time, from an Oversight Committee perspective I can't say, but there are other committees within government that address the Muskrat Falls Project where there would be other departments involved with respect to Muskrat issues.

MS. URQUHART: Okay, so what committee do you think would be in charge of that?

MR. C. MARTIN: An area where things like that potentially could come up would be the Lower Churchill Project committee, which is a committee of departments as well, senior officials within government, that look at different issues that are coming up with respect to the project over time. So you would potentially have other representatives there for that department, including Cabinet Secretariat and such.

MS. URQUHART: Okay. And the other element that I was interested in was regulatory compliance. So I'm assuming, similarly, unless it rises to the level that it represents a cost or schedule risk, you weren't looking at that?

MR. C. MARTIN: No, regulatory compliance would fall to whatever department is responsible for that particular regulatory role.

MS. URQUHART: Okay, so the same as above.

And so what I'm trying to understand is the process by which something sort of comes to the attention or becomes a risk that the Oversight Committee is interested in analyzing or looking at. Can you explain that a little bit?

MR. C. MARTIN: Well, a lot of the risks that the Oversight Committee would look at are just those that already show up in the risk report that forms part of the Lower Churchill Project report. But there's one of those in evidence I believe here today, I don't have the reference number, but that particular risk report can be found at the end of that particular report.

So that'll show the actual risks that are already identified and being monitored in terms of a

Nalcor perspective and where those are. Other risks and things happen over time. I mean, the Oversight Committee has had – has looked at some issues and with respect to the North Spur. Because we had some requests on that, and it's been an issue in the public purview to see if there's risks or dollars associated with that thing –

MS. URQUHART: Mm-hmm.

MR. C. MARTIN: – again, the methylmercury one I was asked about earlier – the Oversight Committee would be aware of the fact that, that other issue arose and that there is a strategic amount set aside for it. But it's a recognized amount, it's not in the budget right yet and it may or may not come into the budget. But it exists, it's known and government is aware of it and the public are aware of it at this point.

MS. URQUHART: Okay.

So I'm understanding the first method, or the first, sort of, channel for risks to come to the attention of the Oversight Committee is the Nalcor report.

MR. C. MARTIN: The second one would potentially be whatever we identify ourselves through the review of the information coming in each month. So if we see something happen with –

MS. URQUHART: That was the slippage you were talking about earlier. Okay.

MR. C. MARTIN: Yes, schedule slippage, or cost overruns, some – they're burning through their money faster than they're doing their progress on the project. So those are three things the committee identifies in the analysis and asked questions about. And then the third would be what is actually happening, what is happening in the public purview, things like that that would raise questions.

MS. URQUHART: So would those ever come from the minister, or like a deputy minister or minister? Would they, you know, indicate to you –?

MR. C. MARTIN: They could. They could originally from anywhere, depending on where they are.

MS. URQUHART: Okay.

And so what would be, sort of, the test or the threshold that you would need in order to acknowledge – I mean, for example, with methylmercury, like, this is a risk that's been known since, you know, the project was first proposed in the '80s. You know, we've always known that methylmercury is going to – you know, is a by-product of having a large reservoir. And so, I'm just wondering the process by which at what point does it get escalated to now it's going to go to the Oversight Committee for consideration or analysis?

MR. C. MARTIN: From an analysis perspective, the Oversight Committee would not have done a lot of analysis on the methylmercury issue. I mean we would be aware of the issue, there would have been discussions on the issue and we would be aware of the strategic risk amount that's been set aside but, again, that amount is not in the budget at this point in time. Whether or not it moves into the budget would be as the risk progresses and sees where it goes, and whether or not it becomes now, is it going to be a realizable risk. I only use that one as an example, but is there potential for 'realizability' and then at what point does it shift in?

MS. URQUHART: So, again, I'm just trying to – maybe a different example, like the cofferdam, would be ...

MR. C. MARTIN: Mm-hmm.

MS. URQUHART: I'm, I get –

MR. C. MARTIN: Yeah.

MS. URQUHART: – I'm just trying – I'm really just trying to understand. So you can identify risks – when you say things that come from the public, like, is it just this is what's being talked about in the media, it's – how – you know –

MR. C. MARTIN: Well –

MS. URQUHART: – how are you identifying these and –

MR. C. MARTIN: Well –

MS. URQUHART: – deciding which ones are worth investigating and which ones just that we don't worry about?

MR. C. MARTIN: Well, I mean, generally, if we're aware of something that's happening, we'll discuss it with Nalcor to get a better understanding of what it is, and from that perspective, I guess, the cofferdam, as an example, would be one. Once we became aware of the issue with the cofferdam, there was multiple work on the go with that particular risk. There was calls with the independent engineer to understand what he had seen there before. There were regular updates happening from the project site up there as to what they were doing and how the project was responding to it. There were calls online with Canada as well because – a lot of interest in that one because it was happening – it was a realized risk that was happening in real time at that point in time.

MS. URQUHART: Okay. And so what about the protests, for example? Would that have been something that would have gone to the Oversight Committee?

MR. C. MARTIN: The protests? No. That one – at that point, the protests had happened.

MS. URQUHART: Okay. So the, sort of, stirring up the Make Muskrat Right process and all that through that whole time, that wasn't being identified as a risk or –?

MR. C. MARTIN: Well, it would've been there as a risk to the project. That's likely – that one actually shows up in the risk register that's attached to that report as one that Nalcor is carrying.

MS. URQUHART: And so long as the risk is identified and quantified, that satisfies the Oversight Committee, like, from your perspective?

MR. C. MARTIN: Well, no, we would want to understand what was being done to mitigate the risk.

MS. URQUHART: Okay.

MR. C. MARTIN: So things that are happening, in terms of rate – risk mitigation. In terms of things like, again, we go back to the methylmercury. The IEAC was put in place and they're working through that particular issue with their report. So that would be an action that's happening right now that may have a deliverable that helps address that particular issue.

MS. URQUHART: That's all, thank you.

MR. C. MARTIN: Thank you.

THE COMMISSIONER: Astaldi Canada, Inc. is not here. Former Nalcor Board Members.

MS. MORRIS: No questions, Commissioner.

THE COMMISSIONER: Newfoundland and Labrador Building and Construction Trades Council/Resource Development Trades Council. Not here. Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: No questions.

THE COMMISSIONER: Thank you.

ANDRITZ.

Grid Solutions.

Barnard-Pennecon. All right, Mr. Fitzgerald.

MR. FITZGERALD: Thank you, Commissioner. I'll be brief.

Mr. Simmons put some documents to you and referenced the June meeting with Mr. Martin, the minister of Finance and the – I believe it was the minister of Natural Resources – regarding the potential \$7.65-billion number. And you gave an answer that Nalcor was checking the numbers, tinkering with the numbers. Are you aware at that time – did you have any recollection that the number was not solid at that time? Because Mr. Martin was indicating that he wanted to see how Astaldi was going to perform over the summer.

MR. C. MARTIN: That sounds familiar to me, yes.

MR. FITZGERALD: And that's one of the reasons why it wasn't a firm number at that time?

MR. C. MARTIN: Yes, we would still be within the 120-day plan at that point in time.

MR. FITZGERALD: Okay. Thank you.

Mr. Budden and Mr. Peddigrew both put historic documents, I would suggest – 2011 and 2012 – talking about oversight and should it have been this way, should it have been that way. At the time the Oversight Committee was created, the political will, which you were subject to as a civil servant, was very clear that you weren't to review the baseline, correct?

MR. C. MARTIN: Yes, that's correct.

MR. FITZGERALD: And as a public servant, your duty then is to faithfully execute.

MR. C. MARTIN: Yes.

MR. FITZGERALD: And the terms of reference on that initial scope are very clear about what was the limitation and what was not to be included.

MR. C. MARTIN: Yes.

MR. FITZGERALD: So while historically there might have been views on what oversight was, you as a public servant had no control over, I would suggest – or little control over, whether or not you were going to go back to review the baseline and review risks, which your political masters had already done with respect to, in your view, MHI and the independent engineer and whatnot.

MR. C. MARTIN: Our mandate was reviewing: cost; schedule; performance on a go-forward basis –

MR. FITZGERALD: A go-forward basis.

MR. C. MARTIN: – against the remediation line.

MR. FITZGERALD: Exactly.

And I guess the final point of clarification, and I don't know if – this hasn't really been addressed. Can you explain to the Commissioner what exactly the internal audit is and how you get a level of assurance from the internal audit? Why was the Oversight Committee waiting on that piece of work? In terms of certifications, how does Internal Audit work? Can you just give us an explanation of that?

MR. C. MARTIN: Certainly.

So Internal Audit is, literally, an internal audit function. They'll undertake various audit activities within the organization in order to ensure the scopes of work that they look at are functioning properly. And they are – perform tests in accordance with internal audit standards. Using them from a reliance perspective is – using anybody from a reliance perspective, if they're certified and qualified, is a fairly standard audit process. Again, we saw through the Grant Thornton audit that they actually relied on work by Internal Audit, as did Emera.

Now, Internal Audit – it seems to be that there's some concerns that Internal Audit is part of Nalcor, which they obviously are; however, from an internal audit perspective, internal audit groups are set up such that they are board governance structures.

The Internal Audit group would not report directly within the Nalcor executive. Their report would be up through to the Nalcor board at the end of the day. So they are still part of the organization, but they have a separate accountability separate from the executive itself directly to the board. It is therefore – they're a tool in order to provide the board assurance in terms of its activities and things that are happening within the organization that they're responsible for.

MR. FITZGERALD: Is there a certification that internal auditors would have and guidelines they'd have to follow?

MR. C. MARTIN: Yes, there are.

MR. FITZGERALD: And what is it – can you just elaborate on that, please?

MR. C. MARTIN: That is the – it's an actual internal audit certification. I can't recall the actual name on it, but there's a – it is a specific certification and there – basically, they have internal audit rules, as well.

MR. FITZGERALD: Knowing that they have a specific certification and that they do report to the board level directly, would that be a – give you an extra level of confidence as an Oversight Committee with respect to the numbers that they were providing?

MR. C. MARTIN: Yes, and in conjunction with actually reviewing the work that they did, yeah. A –

MR. FITZGERALD: (Inaudible.)

MR. C. MARTIN: – part of any reliance is you review the actual work.

MR. FITZGERALD: And would that be one of the reasons why the Oversight Committee, in terms of dealing with Ernst & Young and collaborating with Ernst & Young, wanted the Internal Audit piece done and so that it – I guess it would assist Ernst & Young in moving forward – and the Committee.

MR. C. MARTIN: Oh yes, absolutely. I mean, this piece of work that we're talking about here – these internal – the committee had reviewed Internal Audit's work plan earlier that year and actually asked the Internal Audit group to change their work plan in terms of accelerating certain work and moving it around because they would have had other work that was outside the committee's mandate and the committee wasn't interested in. So Internal Audit actually accommodated that request and moved things around in order to be able to move forward so the committee could have reliance on those activities.

MR. FITZGERALD: Thank you, Mr. Martin, those are my questions.

Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Redirect?

MR. LEARMONTH: No redirect, so we can move to the next witness now –

THE COMMISSIONER: No, I might just have just a –

MR. LEARMONTH: Oh, sorry. Okay.

THE COMMISSIONER: – couple of questions if I can.

MR. LEARMONTH: Sorry.

THE COMMISSIONER: So can I get – there's – there are minutes from the Oversight Committee that the Commission has. I'm not clear that every set of minutes has any indication as to who was – how many people were actually attending these meetings. Was there a – some sort of an attendance sheet or something like that done when these – when the committee would meet?

MR. C. MARTIN: Yes, the – and I'd have to look at the most current ones, but the committee minutes normally show – start off what committee members present, what committee members are absent, and then it'll show invited guests below – so who was invited in at that particular date in order to present to the committee.

THE COMMISSIONER: Okay.

So – just so I don't have to go through every set of minutes, when you were there as the executive director, how many members of the Oversight Committee existed at that time?

MR. C. MARTIN: Just stay with me a minute.

THE COMMISSIONER: Yeah.

MR. C. MARTIN: There were two from Cabinet Secretariat, three from Finance, one from Justice, two from Natural Resources, one from Transportation and Works. I'm going by –

THE COMMISSIONER: Mmm.

MR. C. MARTIN: – so two, five, six, eight, nine – nine members is what I'm counting here now.

THE COMMISSIONER: Anybody there from Environment?

MR. C. MARTIN: No.

THE COMMISSIONER: Okay.

So nine people. So of – so during most of the meetings, just in a general way, how many people would actually physically attend those meetings?

MR. C. MARTIN: It varies by meeting. Generally, in order to have a quorum, at the time we would be seeking at least one representative for each department. So in the case of Justice, we would allow Justice to substitute in somebody who was not a Committee member since they only had one representative.

THE COMMISSIONER: All right.

So how often did only one representative attend, from any of the groups?

MR. C. MARTIN: In the earlier days while I was there, generally, we had a fairly full Committee participation. There could be days where there were two or three missing, but, generally, we would have six or more.

THE COMMISSIONER: Six or more.

And, so would Charles Bown be at most of these meetings?

MR. C. MARTIN: Yes.

THE COMMISSIONER: Okay.

So you said earlier about the fact that you were not – you know, you – because there had been an MHI report, because MHW – you were thinking that there had been so called deep dives down on the cost schedule, and I know it wasn't part of the – initially, part of the mandate. You were ADM, assistant deputy minister of Natural Resources, and related to Royalties.

MR. C. MARTIN: I was director of Royalties.

THE COMMISSIONER: You were director of Royalties. And then you went right from there to the executive director role.

MR. C. MARTIN: Yes.

THE COMMISSIONER: Okay.

So did you sit down with Mr. Bown and get any direction from Mr. Bown or information from Mr. Bown related to what had transpired, before you began your role as an executive director?

MR. C. MARTIN: In terms of the history of the –

THE COMMISSIONER: Yeah.

MR. C. MARTIN: – file as a whole?

THE COMMISSIONER: Yeah.

Mr. Bown was – you know, it's pretty clear here that Mr. Bown was the point person in the bureaucracy, for the Muskrat Falls Project. What I'm trying to find out is: Did you and Mr. Bown sit down before you undertook your role as executive director, in order for you to be educated with regards to the project?

MR. C. MARTIN: Most of my interaction at that front would've come with Paul Morris, actually. Paul was the assistant deputy minister –

THE COMMISSIONER: (Inaudible.)

MR. C. MARTIN: – responsible for –

THE COMMISSIONER: Okay, but Mr. Morris is only – my understanding, Mr. Morris was only – had just become the assistant deputy minister months before financial close. Mr. Bown was the point person. Did you sit down with Mr. Bown and have a discussion with Mr. Bown before you undertook your role as executive director so that you could learn more about the Muskrat Falls Project?

MR. C. MARTIN: I would've had discussions with Mr. Bown on and off over the period, but to say we actually sat down to have a specific discussion up front, I would say no.

THE COMMISSIONER: Right.

So, did you ask Mr. Bown any questions related to – you know, I mean you've – you're saying you had the baseline for the cost and schedule.

Did you ask Mr. Bown anything about that baseline?

MR. C. MARTIN: No. Up front, when I first joined the – I moved over into this role, it was about defining what it is they wanted from a committee perspective. That's where we started at the outset.

THE COMMISSIONER: Right.

MR. C. MARTIN: So –

THE COMMISSIONER: So, here you are defining the role of the Oversight Committee, and what I'm – and you're saying the direction that you had was that you weren't to do anything with regards to the baseline. You're only going to be looking forward from the baseline.

My query is, is that: Did you not see it as at all reasonable to speak to Mr. Bown about the history of his involvement with the Muskrat Falls Project and getting the numbers, things that I'd say you have to – it's one thing to know what the number is should you understand what that number is made up of. And what my worry is: I haven't heard you say anything about what you knew about the composition of that baseline number.

MR. C. MARTIN: I'll be quite frank, that paved – review in the composition of that baseline number was not something that was done up front.

THE COMMISSIONER: Well, how could – if that's the case, how could the Oversight Committee conduct an analysis of project performance versus cost?

MR. C. MARTIN: In terms of its performance against that – go forward?

THE COMMISSIONER: Right.

MR. C. MARTIN: At that point in time, the direction was – and again, the direction was clearly that we were going against that particular baseline, move forward; that the understanding, generally, and not myself – this is generally within government, and the direction that's coming down through is that: Look, that's already been reviewed multiple times. The

baseline is what it is. We wanna know how we're performing against it.

THE COMMISSIONER: Did Mr. Bown ever say to you that this baseline has been reviewed numerous times?

MR. C. MARTIN: Mr. Bown may have, in conversations, said this is reviewed several – various times. But very early in the process, I think probably shortly after the 6.99 came out and while we're finalizing our oversight report, there was a question specifically asked – you know, we're moving from 6.5 now to 6.99. What is the expectation? Are we supposed to go back and look at the baseline? What is the clear expectation here?

And my understanding is: Ms. Mullaley discussed that with the premier of the day and the – basically, the understanding there was that the baseline's already been looked at. It is what it is. We wanna move forward.

THE COMMISSIONER: But the baseline, then, had changed by \$300 million.

MR. C. MARTIN: Yes, it had, but that was the narrow scope change that was identified in terms of the pieces that made up – but then, then we were following up with MAWH [sp. MWH] who was going into to review that particular baseline, themselves, in that August.

THE COMMISSIONER: Okay, good. Thank you very much.

MR. C. MARTIN: Thank you.

THE COMMISSIONER: You can step down.

We'll take our break and we'll bring up the next witness then at this time.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Next witness, Mr. Learmonth.

MR. LEARMONTH: This is Paul Carter.

THE COMMISSIONER: And, Mr. Carter, do you wish to be sworn or affirmed?

MR. CARTER: Sworn.

THE COMMISSIONER: Can you just take the Bible in your hand, please.

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

MR. CARTER: I do.

CLERK: Please state your name?

MR. CARTER: Paul Quinton Carter.

CLERK: Thank you.

THE COMMISSIONER: And be seated, Mr. Carter, if you would, please.

MR. CARTER: Thank you.

THE COMMISSIONER: And –

MR. LEARMONTH: Exhibits I'd like to have entered are P-03876 to P-03903, P-04006, P-04013 and P-04014, please.

THE COMMISSIONER: Okay, those'll be entered as numbered.

MR. LEARMONTH: Okay.

Okay, Mr. Carter, could you give us your educational background since high school?

MR. CARTER: So I have – hold two university degrees. One at a Bachelor's level and one at a Master's level. And they are both from the Faculty of Forestry & Environmental Management from the University of New Brunswick.

MR. LEARMONTH: Okay. And when did you get those degrees?

MR. CARTER: I graduated with my Bachelor's degree in 1994 and my Master's degree in 1997.

MR. LEARMONTH: Yes.

And what – did you join the Government of Newfoundland and Labrador after your graduation?

MR. CARTER: No, I was actually working with the federal government, with Natural Resources Canada and it was the division of the Canadian Forest Service.

MR. LEARMONTH: Where were you stationed?

MR. CARTER: Some of the work that I would have completed would have been taking place in Fredericton, New Brunswick, but the bulk of that time on the West Coast of the Island, in Corner Brook.

MR. LEARMONTH: All right.

And when did you join the provincial government?

MR. CARTER: I joined the provincial government in 2005, around September time frame.

MR. LEARMONTH: And what position did you take on?

MR. CARTER: It was actually a new position that was created in Labrador. It was a new executive position in – with the Department of Natural Resources. The title of that position was executive director for Natural Resources for Labrador and I was based in Labrador City and Wabush.

MR. LEARMONTH: Okay. Now – so between that and your appointment as executive director of the Oversight Committee on August 18, 2016, what positions did you occupy?

MR. CARTER: Okay.

So I was in the position of executive director of Natural Resources for Labrador between the period from 2005 to 2011, at which time my position was kind of more reprofiled, if you will, and more directed to – towards the iron ore industry with a significant amount of growth that was taking place in the sector during that time.

And my – then relocated to St. John’s and operated from there on a permanent basis. I was in that position until – in that actual – well, I had responsibilities, of course, for iron ore while I was in Labrador in the original position. The actual iron ore executive director position, I was in that until approximately spring of 2012 at which time I was appointed to the position of assistant deputy minister for the Royalties and Benefits division in the Department of Natural Resources, focused on – primarily on oil and gas royalty administration, and mining and industrial benefits along with oil and gas as well.

MR. LEARMONTH: And that was your last position until you were appointed executive director of the Oversight Committee on August 18, 2016. Correct?

MR. CARTER: That’s correct.

MR. LEARMONTH: Yeah.

Now, Craig Martin’s tenure in that position ended on May 11, 2015, so there was more than a year before the position was filled. Do you know why that vacancy existed for that period of time?

MR. CARTER: No. I never had any real, firm indication in any way as to what the reason would have been for not filling the position.

MR. LEARMONTH: All right.

So when you were first appointed, you would’ve served under chair Julia Mullaley, for the first five weeks.

MR. CARTER: Yeah, that’s correct, approximately five weeks.

MR. LEARMONTH: Then the clerk and chair after Julia Mullaley was Bern Coffey and he was appointed September 21, 2016.

MR. CARTER: That’s correct.

MR. LEARMONTH: That’s correct?

MR. CARTER: Yeah, that time frame sounds –

MR. LEARMONTH: Okay.

Now we’re just gonna go through some of the documents in your binder. Tab 24, Exhibit P-03876. This is an email from Nina Goudie, August 18, 2016: “Congratulations on your appointment as Executive Director, Muskrat Falls Oversight! I am touching base regarding your move to Cabinet Secretariat, the transfer of your accounts and the management of records belonging to the Department of Natural Resources.”

So we heard that Mr. Martin actually left his office in Natural Resources and went into an office at Cabinet Secretariat, upon his appointment. Did you have a similar experience?

MR. CARTER: Yes.

MR. LEARMONTH: So you changed all your –

MR. CARTER: Yes.

MR. LEARMONTH: – emails and (inaudible) –

MR. CARTER: I left the Department of Natural Resources physically –

MR. LEARMONTH: Yeah.

MR. CARTER: – and relocated to Cabinet Secretariat to perform this position. I was –

MR. LEARMONTH: Did you have any orientation?

MR. CARTER: Orientation?

MR. LEARMONTH: Like, you know, there was a transition. Did Mr. Martin meet with you and explain what –

MR. CARTER: It was relatively brief. At the time, Mr. Martin was actually, you know, not, you know, the one that would’ve received me, if you will, in terms of the transition that you (inaudible) executive director although it was – and I primarily dealt with Harman.

MR. LEARMONTH: Harman was in the Cabinet Secretariat?

MR. CARTER: That’s correct.

MR. LEARMONTH: Yeah.

MR. CARTER: And then, you know, after I had some initial discussions with Harman –

MR. LEARMONTH: Yeah.

MR. CARTER: – I also, you know, did follow-up, of course, knowing that Craig was still a member of the Committee and available and had been in the role before.

MR. LEARMONTH: Yeah, and Harman certainly is Khurana, K-H-U-R-A-N-A. Correct?

MR. CARTER: That's correct.

MR. LEARMONTH: Okay.

If we go to tab 25, Exhibit P-03877, I think we see – if we turn to page 3, this is an email from Steve Pellerin. Was Steve Pellerin your principle contact at Nalcor at the time of your appointment?

MR. CARTER: Yes, he was.

MR. LEARMONTH: And would that continue on for a period of time?

MR. CARTER: It did and it still does continue today, although there's been some adjustment to that, of course, with the bifurcation of the project that occurred in 2016.

MR. LEARMONTH: Yes.

MR. CARTER: And, you know, with two different teams reporting to the Committee, they both had, you know, two individuals who would, you know, act as that liaison. Originally, Steven would've, you know, held that position and had responsibility for the whole of the communication in terms of the interface with the executive director.

MR. LEARMONTH: Okay.

MR. CARTER: But it was expanded, of course, and two individuals involved.

MR. LEARMONTH: Okay, this is Exhibit P-0387 on page 3. This is – I guess these are just the initial contacts whereby you're given access

to the secure data room and so on. These are, sort of, part of your orientation or breaking in to the position, is that correct?

MR. CARTER: Just so I'm correct, P-03877?

MR. LEARMONTH: Yes.

MR. CARTER: Yes. So, yes, at this time I – you know, while I was appointed on the 18th to the position and my physical move probably did not occur until around the 22nd or 23rd, something in that time frame.

MR. LEARMONTH: Yes.

MR. CARTER: And, you know, at this particular point in time, you know, I would've been granted access to the data room.

MR. LEARMONTH: Yes.

MR. CARTER: And it's September 7 and I do recall, as well, I had participated in my first committee meeting which took place on August 30.

MR. LEARMONTH: Okay.

But at this time, Ms. Mullaley is still the chair, correct?

MR. CARTER: That's correct.

MR. LEARMONTH: Okay, tab 26. It's Exhibit P-03878 and if you could turn to page 2 of that. Is this – this email from David Steele, is this the first introduction you had to Mr. Steele, or communication you had with Mr. Steele of EY?

MR. CARTER: Yes. And at this particular point in time, Julia – it's dated September 20 and would've been around the time –

MR. LEARMONTH: Well –

MR. CARTER: – or getting close to her departure.

MR. LEARMONTH: Yeah, well on page 2 there's an email from David Steele to you.

MR. CARTER: So –

MR. LEARMONTH: That's – there's a reference here to Michael Kennedy, the lead – Canadian infrastructure advisory leader of EY, correct?

MR. CARTER: Yes.

MR. LEARMONTH: Okay, so you didn't know –

MR. CARTER: I didn't know him.

MR. LEARMONTH: – about him at the time.

MR. CARTER: I didn't know Mr. Kennedy or Mr. Steele prior to –

MR. LEARMONTH: Okay.

MR. CARTER: Yeah.

MR. LEARMONTH: And then on page 1 of this document there's certain other email. So it looks like you're just getting introduced to the position?

MR. CARTER: That's correct.

MR. LEARMONTH: Okay.

Tab 28 is Exhibit P-03880. And this is from you to Bernard Coffey, who was then the chair, correct –

MR. CARTER: Yes.

MR. LEARMONTH: – of the Oversight Committee, as well as being the clerk. He just took the same positions that Julia Mullaley occupied.

MR. CARTER: That's correct.

MR. LEARMONTH: Okay, can you describe what's going on in this exhibit? There's a reference to Telegram reporter, Ashley Fitzpatrick, asking for information.

MR. CARTER: Yeah.

MR. LEARMONTH: Yeah.

MR. CARTER: So at this particular point in time, I do recall that there in – earlier in

September there had been some communication with Ms. Fitzpatrick, I believe it came through the Department of Natural Resources. And there was an indication that a committee report would be released by the end of October is –

MR. LEARMONTH: Right.

MR. CARTER: – what the question referenced. And it was messages that were being developed for communication, I guess, back to Ms. – or, sorry, Ashley Fitzpatrick at the time.

And at this particular point in time, and I'll just – you know, to clarify, you might – you know, that you do see that we were talking about a committee report in October and at this particular point in time, you see that, you know, we're trying to provide an update, you know, in terms of why this – you know, what the next steps are here. It's obviously beyond that date.

MR. LEARMONTH: Yes.

MR. CARTER: Now as to whether or not – and I can't recall if this was actually ever communicated or not, but there was some seemingly discussion between myself and Mr. Coffey in terms of messaging.

MR. LEARMONTH: Okay.

At this point before we (inaudible), could you describe the relationship that you and the Oversight Committee had with Nalcor from the time that you were appointed, and then just take us forward to –

MR. CARTER: Sure.

MR. LEARMONTH: – throughout to give us some (inaudible), because we know from earlier witnesses that there was, I'll say, a strained relationship between the Oversight Committee and Nalcor, certainly before – at least until the time Mr. Martin left.

MR. CARTER: Mm-hmm.

MR. LEARMONTH: Yeah. Could you give some information on that, please?

MR. CARTER: In terms of when I arrived –

MR. LEARMONTH: Yes.

MR. CARTER: – and what the – how –

MR. LEARMONTH: And how it's been since then.

MR. CARTER: Yeah.

So, you know, I'm coming there and – as I said, towards the end of August and I had an opportunity for the first committee meeting, as I mentioned. I believe it was August 30, you know, and, you know, the – you know, very cordial, you know, in my own mind. You know, it wasn't hostile although, you know, through earlier discussions I did have with some of my colleagues, Mr. Martin, you know, he did communicate to me that it had been tense at –

MR. LEARMONTH: Craig Martin told you that.

MR. CARTER: That's correct, yeah.

MR. LEARMONTH: Yeah.

MR. CARTER: And, you know, but in terms of that first meeting – and Julia would have been chairing that meeting – I know the – it wasn't confrontational, you know, at that particular point in time, certainly. You know, so it – you know, first contact was, you know, positive.

And, you know, I did have a degree of co-operation, certainly in terms of engaging with Mr. Pellerin, you know, to look for whatever information that I was trying to seek, you know, on the early end of this. I wasn't into it very deep but, you know, it was okay, you know, at the beginning.

You know, of course, as we got deeper into certain issues and certain files, you know, I did certainly, you know, see some reluctance, you know, in terms of some of my communications with them on certain aspects. But we were at a point in time on the front end of my engagement, of course, where we'd, you know, been through – the June 2016 project capital budget update was through. I was, you know, trying to understand that myself in terms of, you know, understanding the budget, how it worked how it was structured and, you know, certainly

researching extensively about the project and whatnot.

And then –

MR. LEARMONTH: Okay, but in terms of your relationship – but just take it to you – you said it was cordial at the beginning and just take us through –

MR. CARTER: Yeah, certainly.

MR. LEARMONTH: – right up to today –

MR. CARTER: Yeah.

MR. LEARMONTH: – and describe –

MR. CARTER: Yeah.

MR. LEARMONTH: – whether there is any changes in the relationship.

MR. CARTER: And I mean, I think – I guess, in many ways, I had the benefit of past experience from Craig, you know, who I was dealing with quite extensively, that, you know, we had a new budget. But the important thing, of course, was, you know, to stay on top of trying to quantify, if you will, any additional risk or cost risk associated with – you know, with the project that was currently not contained within the budget.

MR. LEARMONTH: Mmm.

MR. CARTER: Now, certainly, on the front end of a new budget update, you know, that, you know, probably not as sensitive but, certainly, it was something that we wanted to, you know –

MR. LEARMONTH: Mmm.

MR. CARTER: – to dig deeply on. And, you know, I – there was some reluctance on that point and – you know, but certainly, you know – and then, of course, you know, there was issues that fall in respect of –

MR. LEARMONTH: Okay.

MR. CARTER: – you know, where we went into deep engagement with the cofferdam and issues associated with that.

MR. LEARMONTH: Okay, but did the relationship improve, stay the same, or – you know, I'd just like to deal with the relationship. Not the details of the discussions –

MR. CARTER: Yeah, certainly.

MR. LEARMONTH: – just the relationship generally.

MR. CARTER: Yeah. You know, in the front end, as I mentioned, certainly around, you know, trying to understand costs and any, you know, pressure, there seemingly was reluctance to move into a place where we are today. You know, that – you know, through a lot of hard work, you know, I guess on both parts, you know, the committee and Nalcor seemingly had a respectful relationship and one of trust.

MR. LEARMONTH: Okay.

MR. CARTER: And, you know, very good transparency and, you know, accountability.

MR. LEARMONTH: Okay, that's fine. Thank you.

If you go to tab 29, which is Exhibit P-03881, this is November 16, 2016, and there is discussion here about the cofferdam leak issue.

MR. CARTER: Yeah.

MR. LEARMONTH: Now, we've already heard evidence about that so I don't want to go into it in great deal, but we heard from Aaron Rietveld and Derek Tisdell on April 4, 2009. They're from Barnard-Pennecon and they explained it and they gave some background that this is something that can happen.

It was a risk that had been identified as a possibility. It did materialize. There was a possibility of doing jet grouting. That was an option but another option was decided upon by Nalcor and eventually the problem was solved.

MR. CARTER: Mm-hmm.

MR. LEARMONTH: That's a very general description of it, of course, but I don't need to go into the detail, I just want you to know. Was this a big issue for the Oversight Committee?

MR. CARTER: The cofferdam –

MR. LEARMONTH: The cofferdam leak?

MR. CARTER: Yes, it was, and leakage of the cofferdam during the attempt for it to complete river closure in the fall of 2016 –

MR. LEARMONTH: Yeah, that would've been the late fall, November, correct?

MR. CARTER: That's correct.

MR. LEARMONTH: Yeah.

MR. CARTER: And, you know, probably one of the, you know, first issues, you know, while I was at the committee that I really got involved in, in a, you know, a significant way, in terms of wanting to understand what was happening here and what risk this potential circumstance posed for the project.

MR. LEARMONTH: Right. And so in this email at tab 29, P-03881, this is a communications from Karen O'Neill at Nalcor. Because, of course, government would have to be kept up to date this because it was a public issue, correct?

MR. CARTER: That's correct.

MR. LEARMONTH: Yeah.

So the Oversight Committee would've monitored this and through to the time when the remediation had been completed. Is that correct?

MR. CARTER: Yes.

MR. LEARMONTH: Okay. And everything was done to your satisfaction?

MR. CARTER: You know, to the extent, you know, we had capacity to, you know, to comment on such matters, yes. You know, that – you know, at the end of the day, my understanding of initially of this issue is that, you know, the desired intent was to have a water level in the reservoir –

MR. LEARMONTH: Mm-hmm

MR. CARTER: – for that winter, you know, to protect against frazil ice formation and the effect of a hanging dam downstream of the lower falls

MR. LEARMONTH: Right.

MR. CARTER: – and the potential problems that could create should it be that the ice dam gets large enough and, you know, start to result in water back-flowing.

MR. LEARMONTH: Right.

MR. CARTER: And, you know, I know that they – you know, the projects certainly did a lot of work around remediation and, you know, and

MR. LEARMONTH: Right.

MR. CARTER: – work to, you know, protect assets to the extent they could.

MR. LEARMONTH: Yeah.

So the remediation work that Nalcor did with its contractor was successful. Is that correct?

MR. CARTER: Yes. Well, at the end of the season, you know, as we were moving, I guess, probably around the February, you know, we were informed that the campaign was, you know, largely complete.

MR. LEARMONTH: Right.

So that was with –

MR. CARTER: But I did know that the water level was probably at around 21 metres at that particular point in time when ice cover formed.

MR. LEARMONTH: Okay.

MR. CARTER: So a combination, undoubtedly, and I understand there was a piece of ice that assisted here as well.

MR. LEARMONTH: Right.

MR. CARTER: In, you know, becoming lodged in the upper falls area which, you know, provided a hinge for, you know, the formation of

growth of ice upstream from that point, coupled along with, as well, with some of the – you know, the impact of the grouting works.

MR. LEARMONTH: Yeah.

So the Oversight Committee was monitoring this issue and, in the end, Nalcor's remediation was successful and the issue – the problem was resolved.

MR. CARTER: Yeah.

MR. LEARMONTH: Is that correct?

MR. CARTER: Well, we certainly got through that winter without –

MR. LEARMONTH: Yeah.

MR. CARTER: – without, you know, having any type of a negative impact, you know, to –

MR. LEARMONTH: Yeah.

MR. CARTER: – the project assets.

MR. LEARMONTH: Okay. That's fine.

If we go to tab 31, now, this is a request – if you go to Exhibit P-03883, this is a release, if you go to page 2, from the NDP caucus, you know, criticizing, to some degree, the fact that Muskrat – the Oversight Committee had not been producing much information to the public, that the – some materials were late in being released.

What response, if any, did you take to this NDP caucus news release? What did you do?

MR. CARTER: Mr. Learmonth, I just want to be clear, I may have – when you – at our previous discussion prior to this question – I just wanted to make sure I was reading appropriately here – were you referring me to tab 30, or –?

MR. LEARMONTH: I was referring to the cofferdam issue.

THE COMMISSIONER: Tab 29.

MR. CARTER: Tab 29. Okay, sorry.

MR. LEARMONTH: Yeah. Yeah.

MR. CARTER: Yes, so this was a press release, I guess, that was, you know, from the NDP –

MR. LEARMONTH: Right.

MR. CARTER: – in terms of, you know, their view and some commentary around activity of, you know, government of the day and talking about oversight with Nalcor.

MR. LEARMONTH: Right.

So did you respond to this release?

MR. CARTER: I do not recall having prepared anything in terms of responding to this. You know, generally, you know, in terms of communications, you know, of the activity of the Oversight Committee, you know, Natural Resources would play a communications role, but I don't have a recollection here of, you know, actually responding to this particular document.

MR. LEARMONTH: All right.

MR. CARTER: But, you know, I do know that – you know, and I think that you had – now, Barry, if I – I'm sorry, Mr. Learmonth, if you recall, you know, that, you know – so this is November 22. I guess, you know, the communication from the NDP, at this particular point in time, is almost a year.

MR. LEARMONTH: Right.

MR. CARTER: You know, and I've heard very little from the Oversight Committee in this respect.

MR. LEARMONTH: All right.

Next, we'll turn to tab 32. It's Exhibit P-03884.

And if you turn to page 3, I think you'll see this is the document: Meeting in St. John's and visits to Lower Churchill Project sites, July 11 to 15, 2016. And the date of the report is November 22 – November 2, 2016.

MR. CARTER: Yes.

MR. LEARMONTH: Now, do you – did you begin the practice of attending the site when the independent engineer made his scheduled visits to the site?

MR. CARTER: I did.

MR. LEARMONTH: Okay.

So what would be the purpose of your attending with the independent engineer to the site?

MR. CARTER: So, just to give you a little bit of perspective on that, this is a report that, you know, was prepared by the independent engineer and it's dated November 2. I believe there might have been an earlier draft of this that was in the possession of Nalcor, and, you know, there may have some edits that were taking place.

I wasn't aware that the draft was there or whatnot, but I – you know, the first receipt I've seen of this report was on – you know, I believe it's November 22 time frame. And, of course, when I read the report, I'm being informed by Nalcor, as well, that day that this is the report that they'd received. They're putting it on their website that particular day.

MR. LEARMONTH: Right.

MR. CARTER: And, you know, which I'm – you know, processing that and, you know, what would be a standard procedure here for a report from the IE, from the project team.

MR. LEARMONTH: Yeah.

MR. CARTER: And, you know, I'm – when I read the report, I was concerned –

MR. LEARMONTH: Okay.

MR. CARTER: – concerned, you know, from a couple of points.

MR. LEARMONTH: Yeah.

MR. CARTER: Number one, you know, the fact that we never had this report but, also, as well, you know, as a committee we didn't have this report and I had to ask for it.

MR. LEARMONTH: And so who were you – who did you – you were critical of the fact that you had not been provided with the report?

MR. CARTER: Yes.

MR. LEARMONTH: And who was your criticism directed to, the independent engineer or Nalcor or both?

MR. CARTER: To Nalcor.

MR. LEARMONTH: Okay.

MR. CARTER: Because my understanding at the time is that, you know, I wasn't expecting this report to come directly from the independent engineer. It was my expectation it was coming to the province, but directed through Nalcor.

MR. LEARMONTH: But under the Reliance Agreement, there was a (inaudible) about July 2014 the independent engineer was – had agreed to provide you with these reports –

MR. CARTER: Yeah.

MR. LEARMONTH: – directly, correct?

MR. CARTER: I don't know that – you know, and, certainly, it may have occurred at times and previous to my engagement –

MR. LEARMONTH: Mm-hmm.

MR. CARTER: – where there were reports coming directly to government –

MR. LEARMONTH: Mm-hmm.

MR. CARTER: – from the independent engineer. Now, I never observed that in the time that I had been there –

MR. LEARMONTH: Okay (inaudible).

MR. CARTER: – other than more recently.

MR. LEARMONTH: You weren't happy with Nalcor?

MR. CARTER: I wasn't happy, no.

MR. LEARMONTH: Okay and –

MR. CARTER: And I guess, you know – and, you know, I'll be clear, you know, this is – I was aware that there was a site visit because some of our team members from the Oversight Committee participated in this particular –

MR. LEARMONTH: Yeah, I think on page 7 it's those persons are identified as Cluney Mercer and Cory Grandy.

MR. CARTER: That's right.

MR. LEARMONTH: Page 7, yeah.

THE COMMISSIONER: Yeah.

MR. CARTER: And, you know, it's but important to note that, you know, their participation in this event, as I understood it, wasn't necessarily that they attended all parts and aspects of this site visit and site – you know, but I do understand that they travel to site.

MR. LEARMONTH: Well, would they have – I mean they'd be able to attend, to go on the full tour, wouldn't they?

MR. CARTER: Correct.

MR. LEARMONTH: There's no limitations based on –

MR. CARTER: I wouldn't see any limitation. I mean, in fact, you know, they'd be encouraged I would think. It would be a good thing to do.

So, I mean, as a result of this – and, you know, we're not speaking too deeply here about the report and what it says at this particular point in time but, you know, as a take-away from this, you know, situation, this report, you know, what it contained –

MR. LEARMONTH: Yeah.

MR. CARTER: – you know, we did take further steps in terms of the process we would use going forward in terms of site visits and meetings and participation of the committee.

MR. LEARMONTH: Okay.

MR. CARTER: I can expand on that or I can wait until later if you prefer.

MR. LEARMONTH: Yeah, we can wait on that.

MR. CARTER: Okay.

MR. LEARMONTH: So just to go just to page 8 and 9 so people can follow, these are reports on the powerhouse and the various aspects of the report, of the site visit.

MR. CARTER: Yes.

MR. LEARMONTH: Now, if we go to page 17, this is the conclusions and comments. Did you – did these conclusions and comments, or any of them, cause the Oversight Committee to be concerned or cause the Oversight Committee to take any action?

MR. CARTER: Sorry, on page ...?

MR. LEARMONTH: Seventeen and 18, please.

MR. CARTER: Sorry, I'm – 17 and 18, is that what's on my screen?

THE COMMISSIONER: Just look at the red numbers on the top of the page and you'll see –

MR. LEARMONTH: Top right-hand corner.

MR. CARTER: Okay, sorry, my apologies.

So this is a July site visit, if I'm correct. And I'm not, I don't have a real firm recollection if he's reporting against the June budget or the – or if he's in July, but certainly, you know, I'm very much aware of project delay and the issues in terms of, you know, the powerhouse –

MR. LEARMONTH: Yeah.

MR. CARTER: – and various aspects of the project.

MR. LEARMONTH: This is a report on the visits to the site, July 11 to 15.

MR. CARTER: Right.

MR. LEARMONTH: That wouldn't be just to the – it would be to all the sites, but anyway, that was the period.

MR. CARTER: That's right. Maybe he –

MR. LEARMONTH: Okay.

MR. CARTER: – looked at various aspects of the project at this particular time.

MR. LEARMONTH: So did the conclusions that I've referred you to, do they cause any concern and, if so, what concerns?

MR. CARTER: Not to the extent, you know. Certainly, we were aware that there were problems, you know, with the schedule, you know, that were – where the project was re-baselined in July – in June, sorry, of 2016.

MR. LEARMONTH: Right, following the quantitative risk assessment. Yeah.

MR. CARTER: That's correct. Yeah

MR. LEARMONTH: Okay. So there was nothing in there that really concerned you or alarmed you. Is that right?

MR. CARTER: No, it didn't because I would have – at this particular point in time, I would have been thinking, you know, that where you do see the delays and the significant schedule slippage, he's referring to the – previous to the June 16 project capital budget and schedule re-baseline.

MR. LEARMONTH: That's right.

MR. CARTER: He's probably referring – he's referring back to, you know, before that re-baselining had occurred with that project budget and schedule.

MR. LEARMONTH: All right.

At tab 33 is Exhibit P-03885. If we go to pages 2 and 3 there's a chronology. And can you tell me who prepared this document on pages 2 and 3 of Exhibit P-03885?

MR. CARTER: I prepared the bulk of it.

MR. LEARMONTH: Okay.

MR. CARTER: And I believe, at the time, I may have had some assistance as well from

Krista Quinlan who was also in Cabinet Secretariat.

MR. LEARMONTH: Okay.

And just at the top, this gets back to something you referred to earlier: “A July 2016 Independent Engineer (IE) Site Visit Report (the Report) was prepared and sent to Nalcor for fact checking by the IE on September 20, 2016. The draft Report was also sent to NRCan at the same time. The Oversight Committee was not provided a copy or advised of the reports existence.”

That was the concern that you had, is that right?

MR. CARTER: Absolutely.

MR. LEARMONTH: So who did you call up to complain?

MR. CARTER: Well, I guess my primary contact, of course, would have been Mr. Pellerin.

MR. LEARMONTH: Okay. And what did he say when you voiced your displeasure at this?

MR. CARTER: You know, he provided an account of, you know, why the report was there and that he had only received it on that evening on the 22nd, which I believe –

MR. LEARMONTH: Well, he had but –

MR. CARTER: Yes.

MR. LEARMONTH: – it was sent to Nalcor on September 20.

MR. CARTER: Yes.

MR. LEARMONTH: Yeah.

MR. CARTER: And, yeah, I – in fact, it may have actually been there earlier.

MR. LEARMONTH: Well, it says at the top that –

MR. CARTER: Yeah.

MR. LEARMONTH: – it was sent to Nalcor for fact checking by the IE on September 20.

MR. CARTER: Right.

MR. LEARMONTH: So that would be a reliable date, wouldn't it?

MR. CARTER: Yes.

MR. LEARMONTH: Yeah.

MR. CARTER: In September, yeah.

MR. LEARMONTH: Yeah.

Okay and then we get down to the bottom of page 2. It says: The Oversight Committee had not, prior to November 22, been informed of the content or provided a copy. So this – you weren't too happy about this.

MR. CARTER: No, I wasn't very happy.

MR. LEARMONTH: I can tell by the tone of your –

MR. CARTER: I think it's – you know, it's a two-part thing here. And I wasn't happy that we weren't made aware, but at the same time I also acknowledge, you know, I was relatively new to the Oversight Committee. I knew that there had been a site visit because there was communication of that when – you know, through my – I don't know if it was the first meeting or, you know, other engagements with the committee.

But perhaps, you know, I should have been looking for that report earlier but I – you know, it was my first encounter with an IE report from a project site visit.

MR. LEARMONTH: Right.

MR. CARTER: And I wasn't certain of timing and, you know, how long it takes for those to be prepared.

MR. LEARMONTH: Yeah.

Anyway, you indicate on page 3 of this that there's four steps that you believe needs to be implemented so that you –

MR. CARTER: Yes.

MR. LEARMONTH: – to address this problem, is that correct?

MR. CARTER: That's correct. And if I recall correctly – and I think it's in the binder here – we also issued a letter –

MR. LEARMONTH: Yeah.

MR. CARTER: – in this respect.

MR. LEARMONTH: We'll be coming to that, yeah.

MR. CARTER: Yeah.

MR. LEARMONTH: And on tab 34, which is Exhibit P-03886, this is just the – this is connected to the earlier exhibit, is it not? This has the same information: Next steps. It's just probably a draft, this is – or draft documents for the report that we referred to earlier. Is that correct?

MR. CARTER: So this one is Wednesday, November 23 –

MR. LEARMONTH: Yes.

MR. CARTER: – at 3:30 versus the chronology –

MR. LEARMONTH: November 23 at 7:34 p.m.

MR. CARTER: Mm-hmm.

MR. LEARMONTH: So it looks like this was prepared prior to the ...

MR. CARTER: That's right.

MR. LEARMONTH: Is that correct?

MR. CARTER: Yeah.

So it looks like it's, you know, a draft which has been modified, but certainly something that I've

sent to Bern. And I understood that Bern was out of town at that particular junction, but this was an important –

MR. LEARMONTH: To Bern Coffey.

MR. CARTER: – important enough issue that it was important that the clerk be – or – and the chair (inaudible).

MR. LEARMONTH: Was Mr. Coffey –

MR. CARTER: Clerk, yes.

MR. LEARMONTH: – equally concerned about this delay?

MR. CARTER: Yes, he was concerned as well.

MR. LEARMONTH: He was. Yeah.

MR. CARTER: Yeah. And, in fact, you know, he followed up immediately following this to have some phone calls and meeting with Nalcor on this particular issue.

MR. LEARMONTH: Okay, tab 35 is Exhibit P-03887. And if we go to page 2, this is – I think you can confirm is a release that Nalcor provided on the cofferdam issue.

MR. CARTER: Yes –

MR. LEARMONTH: On or about December 3?

MR. CARTER: Page 4? Yes.

MR. LEARMONTH: Yeah. Well, the release was actually December 2. So was this satisfactory to you, that Nalcor was communicating in public about the work that had been done to address this problem?

MR. CARTER: You know, this – and I believe there would have been probably more of these. You know, certainly, you know, there was – it was known, you know, in a public manner that there was leakage with the cofferdam, you know, most likely, probably, through people who were working on the site, you know. But, you know, it would certainly be important, you know, that the – there's an understanding in the

community of – that this is a cofferdam that’s leaking –

MR. LEARMONTH: Right.

MR. CARTER: – versus other structures. It’s –

MR. LEARMONTH: Yeah.

MR. CARTER: – temporary in nature, but important to keep –

MR. LEARMONTH: Yeah.

MR. CARTER: – stakeholders advised.

MR. LEARMONTH: I was just going to say a cofferdam is a temporary dam.

MR. CARTER: That’s correct.

MR. LEARMONTH: Yeah. It’s not a permanent structure.

MR. CARTER: That’s correct.

MR. LEARMONTH: All right, very good.

Now, tab 36 is Exhibit P-03888. This is a Draft Information Note, Cabinet Secretariat, title: “Muskrat Falls Oversight Committee November 29-31 Site Visits and Meetings.”

Did you attend at the site on – during those meetings –

MR. CARTER: No.

MR. LEARMONTH: – those visits?

MR. CARTER: So this, again –

MR. LEARMONTH: Did you attend? Yeah?

MR. CARTER: Yeah, I attended – I didn’t go to the site but I attended the meetings.

MR. LEARMONTH: Okay.

MR. CARTER: So I think it’s important at how you connect these documents together.

MR. LEARMONTH: Okay, please do.

MR. CARTER: Yeah.

So first issue: IE report that, you know, the Oversight Committee was not in receipt of – got in or then had receipt of the oversight – oh, or, sorry, of the report. Looked at the report, had concerns, you know, in terms of what the – or what the conclusions were or suggestions by the IE.

You know, and certainly one of those suggestions was about, you know, having remediation works available, you know, should it be that there’s issues with the river closure and the cofferdam performance, you know, to be able to quickly respond to that type of circumstance.

MR. LEARMONTH: Right.

MR. CARTER: And, you know, then as well, had the benefit of the independent engineer actually being in town very soon after this event in November, and having the opportunity to actually sit with the independent engineer, NRCan and their team, of which this was a very, you know, topical subject, of course, for the IE when he visited –

MR. LEARMONTH: Yes.

MR. CARTER: – to get an update in terms of, you know, what was transpiring. So we were participating in the meeting. There were three of us from the Oversight Committee: Myself, Walter Parsons and Cory Grandy.

MR. LEARMONTH: Okay.

MR. CARTER: In terms of travel to the site, it was performed – Cory Grandy travelled to the site, but I participated in all meetings.

MR. LEARMONTH: Okay.

MR. CARTER: And this document, you know, is a start. And I do have another document that I think I asked to be added that gives a more fulsome account of, you know, the meeting that was held. This was an early draft –

MR. LEARMONTH: All right.

MR. CARTER: – coming out of that meeting.

MR. LEARMONTH: Okay.

Tab 37 is Exhibit P-03386. Now, this is a deck prepared on – well, received on December 11, 2016. It's from Michael Kennedy. It says: "Hi Paul. As discussed, please find attached deck briefly reviewed last week during our meeting."

So if you turn to page 2 of that exhibit, it says: "Discussion notes for briefing with NL Govt re Muskrat Falls Project, September 2016." What, generally, was the nature of your relationship with EY at this time? We know that they provided their full report –

MR. CARTER: Yes.

MR. LEARMONTH: – on or about April 8 or April 6, 2016.

MR. CARTER: Yes.

MR. LEARMONTH: So you had – they were doing ongoing work for the Oversight Committee, providing ongoing advice. Is that right?

MR. CARTER: The April interim report had been released.

MR. LEARMONTH: Yeah.

MR. CARTER: My understanding in looking at the records when I came, you know, to the first of the position, that the interim report may have been released. And I also believe there may have been some briefings, you know –

MR. LEARMONTH: Right.

MR. CARTER: – that were taking place for the –

MR. LEARMONTH: Yeah.

MR. CARTER: – you know, the Stan Marshall – new, being, you know, in place. But beyond that, you know, there was no actual active scope of work, you know, that was alive, other than the fact that there was an interest, of course, and – to complete the interim report.

You know, and certainly Mr. Kennedy was interested in having a discussion of it with me

about, you know, the status of where that might be and, you know, communicating his views to me in terms of what they – how they see the project, to take into consideration.

So, ultimately, you know, there is, as you're aware, you know, a head agreement, if you will, or – you know, for EY to be –

MR. LEARMONTH: For ongoing work.

MR. CARTER: That's correct.

MR. LEARMONTH: And then there's – for each assignment –

MR. CARTER: Separate –

MR. LEARMONTH: – there's a specific –

MR. CARTER: Separate –

MR. LEARMONTH: – concept.

MR. CARTER: – scope of work that, you know, is developed for each of them.

MR. LEARMONTH: Okay.

MR. CARTER: But, you know, there's certainly, you know, wanting to provide their perspectives to both myself and Bern, because –

MR. LEARMONTH: Mm-hmm.

MR. CARTER: – this is in reference to – we had a meeting on December 8 –

MR. LEARMONTH: Yeah.

MR. CARTER: – and he's sending along the presentation. He didn't actually have a presentation in hand at the meeting, but we were reading from his screen on his computer.

MR. LEARMONTH: Yeah.

Okay, well anyway, just to go to page 3 of this document –

MR. CARTER: Yes.

MR. LEARMONTH: – P-03386, it's noted on – at the top, number 1: "No-one outside of

Nalcor, has been involved in reviewing the Muskrat Falls project since March 2016, including the revised cost / schedule estimate of July 2016. Govt oversight committee has not reported formally since December 2015.”

Now, I guess that the date of March, that’s when they did the field work for the schedule and cost estimates.

MR. CARTER: That’s correct.

MR. LEARMONTH: Is that correct?

MR. CARTER: That’s my understanding.

MR. LEARMONTH: That’s your – okay.

MR. CARTER: And then I do note that, you know, they do say that there’s been no formally report that has occurred since December –

MR. LEARMONTH: Yeah.

MR. CARTER: – of ’15. Of course the December ’15 report was released in –

MR. LEARMONTH: Yeah.

MR. CARTER: – March or April.

MR. LEARMONTH: And then on page 5 of this document, the – there’s a summary of the key findings of the April 2016 report.

MR. CARTER: Yes.

MR. LEARMONTH: And they include: “Overall conclusion that September 2015 Forecast of schedule and cost was **not reasonable**” So there was fairly heavy criticism about the revision to 7.65 as being too light, right?

MR. CARTER: Right.

MR. LEARMONTH: Too low.

MR. CARTER: Yes.

MR. LEARMONTH: Yeah and these were the reasons that there were a number of items that should’ve been reflected but weren’t in the (inaudible) –

MR. CARTER: That’s right.

MR. LEARMONTH: – of EY, okay?

MR. CARTER: Correct.

MR. LEARMONTH: Now if we turn to page 6 of this exhibit, these were – are recommendations. And now I take it at this time the – EY is proposing to do further work to see whether the recommendations in the April 2016 report have been implemented. Is that correct?

MR. CARTER: Yes.

MR. LEARMONTH: This is a lead up to that.

MR. CARTER: That’s right.

MR. LEARMONTH: Is that correct?

MR. CARTER: Yeah.

MR. LEARMONTH: Yeah.

Okay, then we go to tab 38, which is Exhibit P-03889. I think this is a letter that you referred to earlier, Mr. Carter, where you said that you had sent a letter to Nalcor?

MR. CARTER: That’s correct.

MR. LEARMONTH: And this is the letter, right?

MR. CARTER: Yeah, and I – you know, I need to be clear. You know, I’m signing a letter and sending it in my role as the executive director, but certainly this, you know, is a discussion that’s occurred with the Oversight Committee. I’m not just doing this arbitrarily on my own.

MR. LEARMONTH: No –

MR. CARTER: But, you know, I did. I think the letter reads for itself. It’s fairly –

MR. LEARMONTH: Yes, it does.

MR. CARTER: – firm and, you know –

MR. LEARMONTH: It gets the point across for –

MR. CARTER: Right.

MR. LEARMONTH: – sure, yeah. And did that correct the problem?

MR. CARTER: In terms of ...?

MR. LEARMONTH: In terms of it – were the items that you put in your letter addressed properly by Nalcor?

MR. CARTER: Yeah.

MR. LEARMONTH: Or at least to the satisfaction –

MR. CARTER: Well, I – you know, I haven't taken exception, you know, to certain events from this point forward related to these matters.

MR. LEARMONTH: Yeah.

MR. CARTER: And, you know –

MR. LEARMONTH: No, well, I guess the question is, you said that the – you state very clearly four items the Oversight Committee wants.

MR. CARTER: Right.

MR. LEARMONTH: Did Nalcor comply with these four requests?

MR. CARTER: Yeah.

MR. LEARMONTH: Okay, they did.

MR. CARTER: I – you know, although the one thing I would say, Mr. Learmonth, is, you know, in terms of reports, draft or final, you know, I do recall that, you know, there were circumstances where I would've received final reports, wouldn't have received a draft. But certainly they were received in a timely manner and we weren't dealing with contentious issues, such as those in the independent engineer, or the July report.

The other thing I would like to point out here is in number 4, and probably it's in my haste, you know, and I take some responsibility for this. Now, in terms of item number 4: Nalcor "to ensure that the Committee is included/copied on

all government briefing materials related to the Muskrat Falls" costs and schedule risks, you know, is – it's perhaps a little bit of an overreach in terms of, you know, what I put here in this letter.

MR. LEARMONTH: Okay.

MR. CARTER: But, certainly, you know –

MR. LEARMONTH: Yeah.

MR. CARTER: – just if you think about the volume of material that may be, you know – can – being communicated amongst the various lines of government, that it was probably – but I – you know, obviously, I was agitated.

MR. LEARMONTH: Right. All right.

Now, tab 40 is Exhibit P-03891. There's information here. It's an email from – well, between Clyde McLean –

MR. CARTER: Yes.

MR. LEARMONTH: – and Paul Harrington. And if you go on the bottom of page 1 and then turn over to page 2 you can see that this is a report by Clyde McLean, area management, river management on the items such as the –

MR. CARTER: Yes, that's correct.

MR. LEARMONTH: – the grouting and ice buildup and so on. Why was a report of this nature required at this time?

MR. CARTER: Well, I guess, certainly, as part of our exercise in wanting to understand exactly what was going on with the cofferdam and the potential risk that it posed for the project, we were very active and engaged, you know, with the Nalcor project team. And, you know, basically, asked for, you know – wanted to understand the detailed plans for remediation and mitigation, you know, to protect project assets.

And wanted to see information that was also being, you know, shared with the independent engineer and, you know, sought endorsement from the independent engineer here as well that,

you know, they were satisfied with the plan that was going to be deployed going forward. But, certainly, you know, daily or weekly updates, you know, in terms of anything relevant or significant happening with the remediation work –

MR. LEARMONTH: Yes.

MR. CARTER: – you know, we were provided copies, and this would be, you know – the time frame is February 9. So these, you know, early days you would have had, you know, less sophisticated, you know, in dealing with the immediacy of the repairs but, you know, the detail that we would see. But what you see here is a fairly comprehensive and well-developed –

MR. LEARMONTH: Yes.

MR. CARTER: – data package that talks about the – or demonstrates, of course, the work that’s ongoing with respect to this – with this issue.

MR. LEARMONTH: Okay. Thank you.

MR. CARTER: And we were receiving these, you know, regularly, to be up to date and up to speed in terms of how this was being managed.

MR. LEARMONTH: Okay.

Tab 41 is Exhibit P-03892. And this is – well, it’s an email from you to Bernard Coffey and others in government, dated March 10, 2017. A reference in the email is to the cofferdam repairs, the North Spur and the SOBI crossing.

If we turn to page 3 this is entitled: Meetings in St. John’s and visits to Lower Churchill Project sites, November 28 to December 11. So this is the regular swing by the IE to the site and other construction locations. Correct?

MR. CARTER: Yes.

MR. LEARMONTH: Okay.

And did you attend with Mr. Nik Argirov –

MR. CARTER: So this would –

MR. LEARMONTH: – on this?

MR. CARTER: Sorry, my apologies.

MR. LEARMONTH: Did you attend with him? Were you personally present?

MR. CARTER: No, this was the – so this was going back to the meeting that I referenced –

MR. LEARMONTH: Yes.

MR. CARTER: – when the independent engineer came to town to –

MR. LEARMONTH: Right.

MR. CARTER: – discuss the issues. And, you know, it was part of his biannual, I guess, visit to the province to view the project. As I mentioned, I participated in meetings that were taking place in St. John’s.

MR. LEARMONTH: Right.

MR. CARTER: And I – Cory Grandy went to site.

MR. LEARMONTH: Right.

MR. CARTER: And so I participated in all of the meetings. Walter Parsons was with me as well at certain points in time.

But, you know, just in terms of the trail of documents here, you know, we didn’t want to be ever in a situation before, or in a situation again, because if you – not this particular report, but if you go back to the report that was reviewed before from July, you know, there was certainly, you know, commentary that, you know, committee members were present throughout this site visit.

MR. LEARMONTH: Right.

MR. CARTER: However, you know, it wasn’t entirely clear that members were present for all aspects of the project – of the tour, sorry, and the meetings. So, you know, as an outcome and a learning from this experience, you know, we were – you know, the procedure that we embarked upon was different than that, you know. Our practice has been any time there’s a site visit by the independent engineer and

NRCan, we participated through all aspects of it and I generally do that.

MR. LEARMONTH: Okay.

And so you have – the Oversight Committee has a good relationship with the –

MR. CARTER: Absolutely.

MR. LEARMONTH: – independent engineer?

MR. CARTER: Absolutely.

MR. LEARMONTH: Good, okay.

Now, page 14 and 15 of Exhibit P-03892, these are the conclusions and comments –

MR. CARTER: Sorry, page number?

MR. LEARMONTH: Thirteen – no, 14 and 15.

And I'd just like you to go through and see whether there's anything in these conclusions and comments that you find of particular concern.

MR. CARTER: Sorry, I'm just taking a little bit of time here to read it.

Yes, so –

MR. LEARMONTH: Yeah.

MR. CARTER: – it's consistent.

MR. LEARMONTH: So does everything seem to be –

MR. CARTER: Yeah.

MR. LEARMONTH: – in order?

MR. CARTER: Yeah.

MR. LEARMONTH: Yeah. No surprises or anything –

MR. CARTER: Nothing –

MR. LEARMONTH: – like that.

MR. CARTER: – jumping off the –

MR. LEARMONTH: Yeah.

MR. CARTER: – page there.

MR. LEARMONTH: Yeah.

And at this time, can you confirm that you're satisfied that you're getting a good disclosure from Nalcor and also good disclosure from the independent engineer?

MR. CARTER: Yes.

MR. LEARMONTH: Yes. Okay, thank you.

MR. CARTER: No, I was – we were very pleased with the information –

MR. LEARMONTH: Yes.

MR. CARTER: – we were provided with respect – but, you know, we were serious about this issue as well.

MR. LEARMONTH: Yeah and so Nalcor recognized that –

MR. CARTER: Yes.

MR. LEARMONTH: – and complied. Okay.

Tab 42, Exhibit P-03893; now, if you go to page 5 first, this is a letter – on page 5, 6 and 7 – from David Vardy and Ron Penney –

MR. CARTER: That's –

MR. LEARMONTH: – who have actually testified here.

MR. CARTER: That's correct.

MR. LEARMONTH: It expresses in a very detailed, thorough manner, concerns that the two gentlemen had about the North Spur. Correct?

MR. CARTER: That's right. Yes.

MR. LEARMONTH: Yeah and their concerns. And you received this letter and you responded, I believe, by – after considering it, writing the letter that appears on page 3 to Gilbert Bennett. Is that correct?

MR. CARTER: Yes.

MR. LEARMONTH: Yeah.

So you took this as a serious –

MR. CARTER: Yeah.

MR. LEARMONTH: – issue?

MR. CARTER: I did.

MR. LEARMONTH: And you wanted to get to the bottom of it. Is that right?

MR. CARTER: Well, you know, certainly – you know, and I think you’ve heard testimony here earlier from Mr. Martin – Craig. You know, the reason there was a reaction to this letter – well, certainly, it’s addressed to the clerk, which is, you know, one of the most senior – is the most senior civil servant –

MR. LEARMONTH: Right.

MR. CARTER: – and also the chair of the committee.

MR. LEARMONTH: Yes.

MR. CARTER: There was commentary in here about if the North Spur dam fails, there’s a risk of life in Happy Valley-Goose Bay.

MR. LEARMONTH: Yes.

MR. CARTER: And, you know, this was something that – you know, and I had a conversation with Bern, you know, as the –

MR. LEARMONTH: Bern Coffey.

MR. CARTER: Yes, that’s correct.

MR. LEARMONTH: Yeah.

MR. CARTER: And, you know, that, you know, this letter is something that, you know, it just couldn’t totally pass off in any way, shape or form, you know. So we did decide that it was important to respond here.

MR. LEARMONTH: And that’s why you sought the information from –

MR. CARTER: Yes.

MR. LEARMONTH: – Nalcor.

MR. CARTER: Yeah.

MR. LEARMONTH: That was your actual –

MR. CARTER: No, not that – and it’s important to understand. So in terms of actually responding to each of the issues that were identified – and there’s a list of 20 – you know, the path that we did take was that Nalcor was asked to respond to the issues in terms of the actual – some more of the engineering or the –

MR. LEARMONTH: Right.

MR. CARTER: – you know, the science around the North Spur and, you know –

MR. LEARMONTH: Yeah.

MR. CARTER: – positions on it.

MR. LEARMONTH: So that’s what you sent out to them. We’ll deal with the replies from Nalcor later.

MR. CARTER: Yeah, and then in addition –

MR. LEARMONTH: Yeah.

MR. CARTER: – to that, you know, we undertook, you know, ourselves to, you know, I guess, you know – and we were also having this – this was discussed with the committee.

MR. LEARMONTH: Right.

MR. CARTER: You know, and the committee, we had adopted a view that, you know, the work in the North Spur is certainly, you know, has been done by professional engineers, and our expectation, of course, being that, you know, it’s documented, in terms of approval of various documents that are related to the design and construction of the North Spur.

MR. LEARMONTH: Okay.

MR. CARTER: But, you know, as an added step we would, you know, just to satisfy ourselves, you know, that – and we had some

record of this, that we, you know, undertook this

—

MR. LEARMONTH: Right.

MR. CARTER: — letter to — in addition to having directed Nalcor to respond to Mr. Vardy

—

MR. LEARMONTH: Okay.

MR. CARTER: — and Mr. Penney, sorry —

MR. LEARMONTH: Yeah.

MR. CARTER: — both of them really.

MR. LEARMONTH: Okay, the next exhibit is tab 43, it's Exhibit P-03894. It's an email from you to Bernard Coffey —

MR. CARTER: Yes.

MR. LEARMONTH: — April 22. This is dealing with the collapse of the draft tube on or about March — May 26 or May 28, 2016?

MR. CARTER: Yes.

MR. LEARMONTH: It was something constructed by a company headquartered in Kansas and it collapsed and, fortunately, there was no serious physical —

MR. CARTER: Right.

MR. LEARMONTH: — injuries.

Now, did you — I suppose this is something that you would want to be up to date on and advise the clerk who would advise the minister should there be public — a request for public comments on that. Is this correct?

MR. CARTER: No, this was myself advising Bern of what this report said.

MR. LEARMONTH: Right.

MR. CARTER: So I had received a copy of the report and it was received from Nalcor.

MR. LEARMONTH: So that'd —

MR. CARTER: Yeah.

MR. LEARMONTH: — be page 2 of Exhibit —

MR. CARTER: Yeah. Yeah.

MR. LEARMONTH: — P-03895.

MR. CARTER: Yeah.

MR. LEARMONTH: Correct?

MR. CARTER: That's correct. So the Nalcor team — you know, this was an area of interest for us, if I recall. And they submitted the report when they had it because the root cause investigation originally was not complete. But once it was complete they took the report that was consult and commissioned by Nalcor, and placed it in the data room for us. And we would've had this in advance of public release of this document.

MR. LEARMONTH: Okay.

MR. CARTER: And I was doing a quick read of the report in terms of its content —

MR. LEARMONTH: Okay.

MR. CARTER: — and communicating that to Bern as per his request.

MR. LEARMONTH: Yeah, well, we know there's still litigation outstanding about this, there is some (inaudible) so ...

MR. CARTER: Yeah. You know, this was one of two reports that were produced; the other report was actually produced by Astaldi themselves —

MR. LEARMONTH: Yes.

MR. CARTER: — in terms of their investigation. And that one was publically released —

MR. LEARMONTH: Yeah. Yeah.

MR. CARTER: — and available on the website.

MR. LEARMONTH: Yeah, we've had those filed as exhibits.

MR. CARTER: Right.

MR. LEARMONTH: So, yeah.

Okay, tab 46 is Exhibit P- 03896. And this is – if we turn to page 2 can you confirm that this is the May 29, 2017, scope of work to – it says:

“Objective and Scope

“The objective of this review ... is to assist the Province’s Oversight Committee ... for the Muskrat Falls Project ... in assessing the status of the implementation of recommendations ... from the Consultant’s Interim Report dated April 8 ... The scope of the Review is subject to the limitations set out”

So that’s – I think we mentioned that before that there had been a preliminary proposal.

MR. CARTER: Yes.

MR. LEARMONTH: And this resulted in the signing of this scope of work. Is that correct?

MR. CARTER: This would’ve been very close to the final scope of work, for this –

MR. LEARMONTH: Yeah.

MR. CARTER: – piece of work.

MR. LEARMONTH: Yeah.

MR. CARTER: If my memory – if I recall, I believe it was June 2.

MR. LEARMONTH: Mmm.

MR. CARTER: You know, this is May 28 so it’s becoming refined. You know, there are probably some (inaudible). –

MR. LEARMONTH: You’re correct actually. The – there’s another scope of work here dated June 2.

MR. CARTER: Yeah.

MR. LEARMONTH: And I’ll come up to that, but you’re right, this wasn’t – this was just the preliminary document –

MR. CARTER: Yeah.

MR. LEARMONTH: – and it was refined.

MR. CARTER: Yeah. But, you know, there’s – you know, going from initial reach, in terms of –

MR. LEARMONTH: Yeah.

MR. CARTER: – my engagement with EY to where we are here today in a development – or sorry, at this point and time in developing a scope of work, you know, there’s other –

MR. LEARMONTH: Yeah.

MR. CARTER: – you know, engagements that are taking place, not necessarily with me. And Charles is involved in this and, you know.

MR. LEARMONTH: Okay, so the – on – at tab 46 is the final signed agreement of the draft we referred to earlier. It’s Exhibit P-03897 and if we look on page 2 this is dated June 2, 2007.

MR. CARTER: Yeah.

MR. LEARMONTH: The objective and scope is the same as I –

MR. CARTER: Yes.

MR. LEARMONTH: – indicated and the cost is – the fee estimate was \$250,000. It’s shown on page 5. Is that correct?

MR. CARTER: Yes.

MR. LEARMONTH: So that was a fair amount of work involved in this, is that correct?

MR. CARTER: Yeah. It was certainly – you know, the recommendations were, you know, one of the aspects that were – you know, we were very concerned about in terms of, you know, seeing –

MR. LEARMONTH: Yeah.

MR. CARTER: – and hopefully having improvement in terms of the way that the –

MR. LEARMONTH: Yeah.

MR. CARTER: – project was managing it’s, you know, various functions.

MR. LEARMONTH: Yeah.

And just Ms. Mullaley indicated that she was satisfied with the quality of the reports prepared by EY?

MR. CARTER: In during her time?

MR. LEARMONTH: Yes.

MR. CARTER: Yes.

MR. LEARMONTH: Do you share –

MR. CARTER: So this would have been a report that was post-Julia and –

MR. LEARMONTH: Yes, but did you feel that it was of high quality, as well?

MR. CARTER: I thought it was a good report.

MR. LEARMONTH: Yeah.

MR. CARTER: Yeah.

MR. LEARMONTH: Okay. Thank you.

No problems with it, with –?

MR. CARTER: Nothing that jumped out. You know, I was pleased with the report in terms of the outcome or what it said –

MR. LEARMONTH: Yeah.

MR. CARTER: – that there had been significant improvement –

MR. LEARMONTH: Yeah.

MR. CARTER: – in terms of, you know –

MR. LEARMONTH: It –

MR. CARTER: – some of the observations that were made earlier.

MR. LEARMONTH: It was much more positive –

MR. CARTER: It was.

MR. LEARMONTH: – than the April –

MR. CARTER: That's correct.

MR. LEARMONTH: – 2016 report. So Nalcor had responded appropriately, maybe not perfectly, but –

MR. CARTER: Yeah.

MR. LEARMONTH: – they had done a good job in implementing the –

MR. CARTER: That's right.

MR. LEARMONTH: – criticisms that were contained in the April 2016 report. Is that a fair way to put it?

MR. CARTER: That's correct.

MR. LEARMONTH: All right.

Now, if we go to tab 49, this is Exhibit P-03899. And this is – it's from you, North Spur letter, July 20, 2017, to Gilbert and Stephen. I take it that's Gilbert Bennett –

MR. CARTER: That's right.

MR. LEARMONTH: – and Stephen Pellerin: "Please see attached letter from the Committee on the North Spur. It is a follow on from the letter you provided to me."

MR. CARTER: Yes.

MR. LEARMONTH: And this deals with the Vardy-Penney concern, is that correct?

MR. CARTER: It is. Yeah.

MR. LEARMONTH: Yeah.

MR. CARTER: That's still ongoing back and forth between ourselves and Nalcor in –

MR. LEARMONTH: Yeah.

MR. CARTER: – getting various information.

MR. LEARMONTH: Yeah.

And if we turn to page 3 of this exhibit, I guess you're looking for – you got some information from – back from them –

MR. CARTER: Yes.

MR. LEARMONTH: – but now you’re digging deeper, is that right?

MR. CARTER: Just, you know, in terms of engineering – appropriate engineering approvals associated with the design and construction of –

MR. LEARMONTH: Yeah.

MR. CARTER: – the North Spur. I mean that’s the extent of what we’re looking at here.

MR. LEARMONTH: Yeah.

MR. CARTER: I mean that – and that was the premise of the Oversight Committee at the time –

MR. LEARMONTH: Yes.

MR. CARTER: – as I mentioned earlier.

MR. LEARMONTH: And in the end or up until – you know, right up until today is the Oversight Committee satisfied with the work that the – that Nalcor has done with respect to the North Spur?

MR. CARTER: Yeah. Well, there’s certainly – there’s a couple of things that I need to complete here before –

MR. LEARMONTH: Okay, well, can you tell us what remains outstanding today?

MR. CARTER: Sorry, it’s not in this particular letter.

MR. LEARMONTH: No.

MR. CARTER: It’s in the first one. And it was the items around the engineer design drawings.

MR. LEARMONTH: Mm-hmm.

MR. CARTER: But also as well the as-builts. So post construction as-built design –

MR. LEARMONTH: Yeah.

MR. CARTER: – drawings.

MR. LEARMONTH: But I mean, you know, they were supposed to get – you know, we’re at a very late stage. Is there any other confirmation or assessment that the Oversight Committee feels is necessary or warranted with respect to the North Spur –

MR. CARTER: This is – you know, again I think it’s important to recognize now, North Spur – regulatory responsibility for North Spur is not held within the Oversight Committee.

MR. LEARMONTH: Yeah.

MR. CARTER: The regulatory responsibility, you know, is in the Department of Municipal Affairs and Environment in terms of dam safety guidelines –

MR. LEARMONTH: Yeah.

MR. CARTER: – and issuance of a permit under –

MR. LEARMONTH: I realize that but –

MR. CARTER: Yeah.

MR. LEARMONTH: – surely, the Oversight Committee has some position that it’s taken on this. Is that –?

MR. CARTER: Yeah, my – you know, and certainly we would, you know, further discuss this with the committee, but the extent of what this review is meant to be was simply that documents exist that our engineer stamped, and though two outstanding items are the design documents for construction and the as-builts following the construction.

MR. LEARMONTH: And you haven’t got them yet?

MR. CARTER: The engineering design documents were – you know, are – there was communication that they were available, but it was also that line was –

MR. LEARMONTH: You mean communication here at the Commission?

MR. CARTER: No. Well, there’s a letter that was written to me from Nalcor that if you would

like to come and view these documents, you know, that they are available, make arrangements with Mr. Pellerin.

MR. LEARMONTH: But do you have copies of them, of those –?

MR. CARTER: I don't have them, no. They're in the records room of Nalcor. But the plan would be that I would go along with whatever appropriate engineer to be able to validate those documents –

MR. LEARMONTH: Okay.

MR. CARTER: – you know, in terms of – but the other part of this, you know, when I – as I'm learning more about the way that these things work, you know, I was also interested in having the as-builts available as well, so you would do it in one piece.

MR. LEARMONTH: Okay. Well, this came up in questioning, I think it was last week or maybe the week before, and I think the Commissioner requested that –

MR. CARTER: Right.

MR. LEARMONTH: – these – some documents or reports be provided to – provided by Nalcor –

MR. CARTER: Yes.

MR. LEARMONTH: – that we're waiting on a response from Nalcor for the –

MR. CARTER: Okay, so my understanding –

MR. LEARMONTH: Pardon?

MR. SIMMONS: They're available now.

MR. LEARMONTH: Oh, they are available?

MR. SIMMONS: They're available.

MR. CARTER: My understanding –

MR. LEARMONTH: Okay, I'm just told they're available now.

MR. CARTER: Okay.

MR. LEARMONTH: So I guess we'll be getting them forthwith?

MR. SIMMONS: Yeah, tonight.

MR. LEARMONTH: Tonight? Okay.

MR. CARTER: Yeah, so, Mr. Learmonth, in terms of, you know, transparency, you know, certainly, I have those reports as well. They were sent to the Oversight Committee by Nalcor.

MR. LEARMONTH: Okay.

MR. CARTER: There were some recent reports. There was a construction report for the North Spur. There was a – sorry, a post-construction assessment of the construction report, and then there was an additional addendum to the post-construction assessment report.

MR. LEARMONTH: Okay, well, I guess, Mr. Simmons has just indicated that we're going to get those, so –

MR. CARTER: Correct.

MR. LEARMONTH: – we can leave it like that, and we'll just make it available to the parties.

MR. CARTER: You know, and in terms of the committee itself, we've been kind of keeping an eye to this and, you know – but certainly reviewed those reports as well, I have.

MR. LEARMONTH: Right.

Okay, tab 52, please? This is the report that we referred to, I think, earlier about the – EY's report on the assessment of the implementation of – the exhibit is P-03902, August 31, 2007, assessment of implementation of EY interim report recommendations. Correct?

MR. CARTER: I'm just making sure I'm following you here. So, sorry, did I – tab number?

MR. LEARMONTH: Fifty-two.

THE COMMISSIONER: Tab 52.

MR. CARTER: Fifty-two, okay.

MR. LEARMONTH: So that's the final report, correct?

MR. CARTER: August 31, yes, it is.

MR. LEARMONTH: Okay, very good.

That's the one you referred to earlier. And then we can see if we go to page 32 of that exhibit, it is P-03902. This is the reply from Stan Marshall, the response to the EY report –

MR. CARTER: Yes.

MR. LEARMONTH: – which is – it speaks for itself, correct?

MR. CARTER: Yeah.

MR. LEARMONTH: Okay, I want to refer you to an exhibit that – it's not in your documents, but I think you're aware I'm going to refer to it. See Exhibit P-03430, that'll come up on your screen. You see that?

Now, it says from Michael Kennedy of EY to Paul Hickey, David Steele, Tim Calver and Kirsten Tisdale. It's a report of – Michael Kennedy says, okay: "These are my notes from this afternoon's meeting with Paul Carter / Bern Coffey. Initially this meeting was planned as a social / catch up meeting with Paul, who I met with on Sept 23rd. When I arrived Paul said I have a surprise for you, the Clerk is going to join us for 20 minutes."

Do you recall this meeting?

MR. CARTER: Yes, I do.

MR. LEARMONTH: Yeah.

So, "In rough chronological order: Bern introduced himself and said he is still coming to terms with the role since appointment on Sept 21st. He mentioned he was one of the most vocal opponents of the project and a member of the 2041 group.

"Curiously he went back to the EY report of Oct 15, as a starting point. He summarised that report as saying to him: Nalcor doesn't know

what it is doing, has lacking process for forecast going forward, is hiding the extent of the problem."

Do you confirm that Mr. Coffey said that at the meeting? Is that an accurate reflection of what Mr. Coffey said at the meeting, to your recollection?

MR. CARTER: Yeah, that's accurate.

MR. LEARMONTH: Okay.

And had you had – were you aware of Mr. Coffey's position before the meeting on –

MR. CARTER: Yeah, it's –

MR. LEARMONTH: – these matters?

MR. CARTER: I did.

You know, certainly Mr. Coffey, when he arrived at Cab Sec and assumed the position of clerk and the chair of the committee, you know, I would've had frequent discussion with him, you know. I never knew Mr. Coffey previous to myself being in Cab Secretariat and Mr. Coffey arriving, you know, not personally. I knew who he was.

MR. LEARMONTH: Yeah.

MR. CARTER: He talked openly and freely to me.

MR. LEARMONTH: Yes.

MR. CARTER: We had a lot of significant discussion about, you know, where things stood from both of us. He was very – you know, and his communication to me was, you know, he's a vocal critic of the project, has been historically, but we're here, you know, we have a job to do, we have to look forward. You know, we can't dwell on the past. We – you know, we basically – you know, we got – you know, we're in this circumstance; we have to move forward here.

MR. LEARMONTH: Okay.

MR. CARTER: But he was – you know, and he was very, very, you know, empowering, I guess, for me, in terms of giving me, you know, certain

ability to ask whatever question I felt was necessary in engagement with the project team. And, you know, so he was – you know, he set down some clear markers in terms of his expectations and, you know, his views over the project, you know, as we commenced a relationship and started working together, you know, during his time, and the type of action that we were taking on certain items.

MR. LEARMONTH: Okay.

And then if we go down to the three – fourth dot is referring to what Mr. Coffey said: “He then talked about the Oversight Cttee and said Julia told him on walking out the door, that the Cttee was not effective and had to be rethought. They are in the process of thinking through what that could look like.” Did – is that a fair representation of what Mr. Coffey said at the meeting, to the best of your recollection?

MR. CARTER: I can’t confirm the first sentence in that bullet –

MR. LEARMONTH: Yeah.

MR. CARTER: – but I certainly can confirm the second –

MR. LEARMONTH: Mmm.

MR. CARTER: – because we were having an active discussion about that –

MR. LEARMONTH: Okay.

MR. CARTER: – in terms of, you know, the future of the Oversight Committee, the role that it would play, the role and the way that it would report.

MR. LEARMONTH: Right.

MR. CARTER: And, you know, certainly the other piece being, you know, what role EY would play in bringing –

MR. LEARMONTH: Yeah.

MR. CARTER: – the report to (inaudible).

MR. LEARMONTH: Well, Ms. Mullaley had a different take on this. She said it wasn’t quite –

MR. CARTER: Yeah.

MR. LEARMONTH: – what she said, but we’ll just leave that if you can’t –

MR. CARTER: I – in all honesty, Mr. Learmonth, I can’t recall Bern saying that, you know, explicitly. I – but I do know, you know, we were talking about what this thing might look like –

MR. LEARMONTH: Right.

MR. CARTER: – and, you know, he was an avid critic of the project –

MR. LEARMONTH: Right.

MR. CARTER: – you know, in terms of some of the earlier bullets you asked me about.

MR. LEARMONTH: Yeah.

Okay, right at the bottom of page 1 of Exhibit P-03430 it says: Paul said – and this was, once again, Mr. Kennedy’s take on what was said at the meeting.

MR. CARTER: Sure.

MR. LEARMONTH: “Paul said he had been talking to Bern about a reformatted Oversight Cttee which is arms length from Govt, and reports directly to Cabinet and staffed with truly independent people. EY would be ideally placed to work with this cttee for on-going review and assurance.”

So was this a topic of discussion that you had with Mr. Coffey, that perhaps a restructuring of the committee was called for so that it would be more independent than it was at the time?

MR. CARTER: It – you know, in terms of who’s talking to who or who is suggesting these things, it’s probably a little bit uncertain. I’m probably surmising. You know, that –

MR. LEARMONTH: What do you mean by that?

MR. CARTER: You know, and to the extent of, you know, that this is where we would have been in terms of between Bern and I as, you

know, an outcome of where we thought this should be at this particular point in time.

But, you know, there was certainly hesitation, you know, in terms of Bern's view of the way that the committee was structured. He –

MR. LEARMONTH: He had concerns, did he?

MR. CARTER: He had concerns, yes. And, you know, the concern from my perspective early on was more about the role that the committee played in terms of public reporting.

MR. LEARMONTH: Right.

MR. CARTER: Yeah.

MR. LEARMONTH: But was Mr. Coffey's concern a little bit more advanced than that in the sense that he wanted to restructure the committee or he was thinking about the merits of restructuring the committee?

MR. CARTER: I mean, I think that he was certainly open to – you know, after having some time and perhaps wanting a little bit more time with the committee to, you know, consider if an adjustment might be made.

MR. LEARMONTH: So this was under consideration by him.

MR. CARTER: Well, you know, I was certainly, you know, kind of understanding that I – you know, I'm probably not being clear here. Let me help you.

MR. LEARMONTH: Well, no, I –

MR. CARTER: You know, like, because I – you know, in my own position, I was uncertain where this committee was going –

MR. LEARMONTH: Yeah.

MR. CARTER: – in terms of –

MR. LEARMONTH: Okay, let me put it more directly.

MR. CARTER: Yeah, sure.

MR. LEARMONTH: At this time was Mr. Coffey speaking to you about a reformatted Oversight Committee which would be arm's length from government and reports directly to Cabinet and staffed with truly independent people?

MR. CARTER: Yeah, I don't – that seems to me to be too advanced in terms of what Mr. Coffey would have said to me directly. This may be, you know, some interpretation of a communication. Perhaps that's my thoughts, you know, that's being represented there.

MR. LEARMONTH: Okay.

MR. CARTER: Like, I don't think that – but I do know, you know, certainly in terms of dealing with Mr. Coffey, you know, that we had been through a couple of committee meetings he, you know, had participated in and he, you know – you know, he did have – he could see that from his, you know, participation in the meetings and some of the work or some of the things that the committee could do that, you know, it was, you know, something that, you know, had value.

MR. LEARMONTH: Okay.

So I'll just conclude with this: The committee, from your point of view, is working well. Correct?

MR. CARTER: No, I wouldn't necessarily say it's working well. Reporting, you know, it's something that I'm dealing with, you know, in the front end of my engagement on it.

MR. LEARMONTH: Well –

MR. CARTER: Today –

MR. LEARMONTH: – what –

MR. CARTER: Today, yes, I think that the committee is functioning very well.

MR. LEARMONTH: Okay, well, that's what I'm talking about today.

MR. CARTER: Yes, okay, sorry.

MR. LEARMONTH: You know –

MR. CARTER: My apologies.

MR. LEARMONTH: – there were problems in the beginning, I understand that.

MR. CARTER: Yeah.

MR. LEARMONTH: And that you're getting a reasonable level of co-operation from both the independent engineer and from Nalcor.

MR. CARTER: Absolutely.

MR. LEARMONTH: Okay, so you have no complaints in that respect.

MR. CARTER: I mean – Mr. Learmonth, I mean, you know, we've come a long way from, you know, some of the things that you've heard Craig speak about and others, Julia –

MR. LEARMONTH: Yeah.

MR. CARTER: – you know, having participation in the committee. You know, one of the largest issues always being, you know, any cost or – you know, call it final forecast cost, but certainly, you know, if you want to look at it in more layman's terms, anything, you know, that exists that's out there beyond the AFE, you know, that isn't being reported –

MR. LEARMONTH: Yeah.

MR. CARTER: – to the committee, what that might look like, certainly getting cost information now on risks that are, you know, key risks within the, you know, the AFE funding budget and, you know –

MR. LEARMONTH: So you feel –

MR. CARTER: – you know, that's –

MR. LEARMONTH: You feel that the Oversight Committee has –

MR. CARTER: (Inaudible.)

MR. LEARMONTH: – a good handle on those items and that you're –

MR. CARTER: Yes.

MR. LEARMONTH: – and that there's regular reporting from both the independent engineer and Nalcor.

MR. CARTER: Correct.

MR. LEARMONTH: So you don't have any insecurity as to, like, do we know what's going on here or –

MR. CARTER: I mean I – you know, I'll say to you I sit in the committee, you know, and – you know, and perhaps and –

MR. LEARMONTH: Well, you're the chair of the committee, yeah.

MR. CARTER: I am. And I think I –

MR. LEARMONTH: Yeah.

MR. CARTER: – need to expand a little bit more here because in my – when we talked about coming to the Oversight Committee we kind of went right to my job as executive director.

MR. LEARMONTH: But you're the chair now.

MR. CARTER: I'm now the chair of the committee, you know, and that would've occurred in February, February 1, upon the departure of Charles Bown from the committee –

MR. LEARMONTH: Yeah.

MR. CARTER: – or, sorry, not – but Charles went to –

MR. LEARMONTH: Yeah and that'd be February 2019.

MR. CARTER: That's correct.

MR. LEARMONTH: Yes.

MR. CARTER: It's only recent. And, also, at the same time I was appointed as, you know, the chair of the deputies LCP coordinating committee –

MR. LEARMONTH: Right.

MR. CARTER: – at the same time, because those were both functions that Charles held.

MR. LEARMONTH: Okay, upon your appointment in February 2019 was a new executive director appointed?

MR. CARTER: No.

MR. LEARMONTH: Are you –

MR. CARTER: Not at this time.

MR. LEARMONTH: You're in both roles?

MR. CARTER: I'm serving in both of those roles.

MR. LEARMONTH: Oh, you're in both.

MR. CARTER: Yes.

MR. LEARMONTH: Okay.

MR. CARTER: And I – you know, and I also serve in a role with the Department of Justice and Public Safety –

MR. LEARMONTH: Okay.

MR. CARTER: – in terms of advisory role in terms of the facilitation for any inquiry –

MR. LEARMONTH: Mm-hmm.

MR. CARTER: – both in terms of, you know, document production, document screening for commercial sensitivities or other privileges, engaging with Mr. Ralph, you know, frequently in terms of engaging with the clerk, who we're largely taking our direction from in the way that we operate here. A bit –

MR. LEARMONTH: What is –?

MR. CARTER: Sorry.

MR. LEARMONTH: It's the deputy clerk,

MR. CARTER: The clerk.

MR. LEARMONTH: I thought the deputy clerk was –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. CARTER: Yeah. Now the deputy clerk is now the clerk. Yes.

MR. LEARMONTH: Excuse me. I wasn't aware of that.

MR. CARTER: But, Mr. Learmonth, to go back to your question about transparency and with, you know, with Nalcor at this particular point in time, you know, there are a couple of items that, you know, where there's some additional cost information that I'd like to see. And I think you believe that Tanya Power, actually, might have made some reference to this in her testimony because I did –

MR. LEARMONTH: Right.

MR. CARTER: – you know, catch the tail end of, you know, her testimony,

MR. LEARMONTH: Mm-hmm.

MR. CARTER: But, you know, in terms of some of some of the latest data that we have around the project, you know, certainly, you know, all of the major risks with any cost implications, either within or above the AFE as we understand them, you know, have been communicated to the committee.

MR. LEARMONTH: Okay.

MR. CARTER: But also, as well, you know, the – and, you know, Tanya Power had mentioned, you know, the issues around protection and control software for the HVDC –

MR. LEARMONTH: Right.

MR. CARTER: – transmission system. You know, there's some additional quantification of cost that's required there but, you know, as late as – or later – early last week, you know, I did have a conversation with Mr. Haynes about that. And he, you know, had told me that I would be receiving that information and there's some other things that, you know, they need to do to get to the place where you're able to quantify that.

MR. LEARMONTH: Okay.

MR. CARTER: But, you know – and, you know, I think here’s an important consideration. I mean, the Oversight Committee today, you know, has the value or the added benefit, if you will, of a revised cost estimate which was released in June –

MR. LEARMONTH: Right.

MR. CARTER: – of 2017 –

MR. LEARMONTH: Right.

MR. CARTER: – which is one that, you know, probably, most accurate or more accurately reflect this – reflects the current circumstances in terms of where the project was.

MR. LEARMONTH: That’s \$10.1 billion.

MR. CARTER: That’s \$10.1 billion –

MR. LEARMONTH: 12.7 including the –

MR. CARTER: – with the 2.6 financing cost.

MR. LEARMONTH: Yeah. Yes.

MR. CARTER: You know, it did (inaudible) of course, you had it in ’16, you had the Astaldi, you had the situation, you had more money added in –

MR. LEARMONTH: Right.

MR. CARTER: – early ’16, but – or late – sorry, early ’17 but, you know, so there’s different circumstances. I would – you know, there’s nothing that’s never easy with this, you know, and –

MR. LEARMONTH: Right.

MR. CARTER: But, you know, at the end of the meetings, you know, certainly, myself, you know, I’m sitting across with my – you know, our group of deputies or assistant deputy ministers were sitting with independent committee members that were added –

MR. LEARMONTH: Right.

MR. CARTER: – you know, which have great value and benefit to the committee. And, you know, after our meeting I think my – you know, my last closing statement is point blank: You know, is there anything that’s out there in terms of – or that has not been reported in the – you know, which has any significant impact in terms of cost or schedule that you haven’t communicated to us in this meeting? And the answer is no.

MR. LEARMONTH: Okay.

MR. CARTER: And, you know – so I mean if we’re going to be – and, you know, I fully respect what these people are telling me and, you know, I do have capacity to test it if there’s, you know, certain irregularities, you know, that might –

MR. LEARMONTH: Right.

MR. CARTER: – be in it. But, you know, so that’s kind of the nature of the relationship and, you know, I don’t know what more I can ask for. I know certainly if there ever was something that, you know, was perceived to be not open, not up front when it should’ve been, you know, certainly my suggestion would be that, you know, there’d be particular ramifications for that in terms of whoever I would make that suggestion or recommendation to, to act on.

MR. LEARMONTH: Okay.

MR. CARTER: But, you know, I’m feeling, you know, comfortable.

MR. LEARMONTH: Okay.

Well, thank you very much. I’m sure the other counsel will have some questions for you, but that’s the end of my questions.

THE COMMISSIONER: Okay.

It’s actually 10 to 5 now, so we’re not going to proceed with questions, but I do have one question before you – we step down for the day.

MR. CARTER: Right.

THE COMMISSIONER: Can you tell me who the independent members of the Oversight Committee right now are?

MR. CARTER: Yeah, so originally in April of 2017 –

THE COMMISSIONER: I just want to know who they are now.

MR. CARTER: Yeah, so we're actually down to two committee members right now.

THE COMMISSIONER: Okay.

MR. CARTER: There was a recent – a relatively recent resignation from Vanessa Newhook who –

THE COMMISSIONER: So she was one and she's now resigned.

MR. CARTER: Yes, that's right.

THE COMMISSIONER: Who else is there?

MR. CARTER: Jim Feehan resigned in – earlier in 2007 – sorry, we're in 2018.

THE COMMISSIONER: Okay, and who's left?

MR. CARTER: Jason Muise and Paul Snelgrove, our Labrador representative.

THE COMMISSIONER: Okay.

And what would Mr. Muise's experience be?

MR. CARTER: Mr. Muise is a, you know, a very well-experienced contractor in terms of – in the field of oil and gas development, with a specialty engineering background in terms of the company that he runs and manages, which is subsea systems and engineering for offshore oil and gas development.

THE COMMISSIONER: Mr. Snelgrove?

MR. CARTER: Mr. Snelgrove is a, you know, a business entrepreneurial individual from Happy Valley-Goose Bay. My understanding he's involved in a couple of different personal

businesses, also business – sorry – with the airport authority in Happy Valley-Goose Bay.

THE COMMISSIONER: So Mr. Feehan has been resigned since 2018. Are any steps being taken to fill his role?

MR. CARTER: At that particular time, you know, that there was no action that was taken to refill Mr. Feehan's role. And I think, you know, that there might have been some belief that, you know, we were in a better place in terms of a, you know, what we were seeing in terms of project cost and schedule.

And – but, more recently, in terms of – a little bit more concerning, when you're losing one – or sorry, losing two, with Vanessa Newhook's departure, you know, I have embarked in a discussion with the deputy minister of Natural Resources and that would be Mr. Ted Lomond, and he's has had a discussion with Minister Coady. My understanding when Vanessa originally came to the committee, it was through Vanessa – or, sorry, through Minister Coady.

THE COMMISSIONER: Okay, so –

MR. CARTER: So –

THE COMMISSIONER: – right now nothing is happening, but potentially something could happen to replace either or both Ms. Newhook and Mr. Feehan?

MR. CARTER: That is a possibility but, you know, I would suspect maybe one more so than the two, unless there's other direction given at this particular point.

THE COMMISSIONER: Well, we'll find out from Ms. Coady when she's here.

MR. CARTER: Yeah, certainly in terms of – and this kind of got – you know, certainly with the election and these things –

THE COMMISSIONER: Right.

MR. CARTER: – you know, it was a –

THE COMMISSIONER: All right, we're going to adjourn here now and tomorrow we'll continue with cross-examination.

But I'd like to start tomorrow morning at – are we on – are we going to start Mr. Harrington tomorrow afternoon or where are we with that? Because I understand that –

MR. LEARMONTH: That's –

THE COMMISSIONER: – Mr. Warren is not –

MR. LEARMONTH: – a possibility because I can't see Mr. Auburn Warren taking the full day. So it's my understanding that that's a possibility but not a certainty.

THE COMMISSIONER: Okay.

Yeah, I don't think – I think Mr. Warren was being called for a limited purpose, as I understand.

MR. LEARMONTH: Yes.

THE COMMISSIONER: All right, I guess we'll start at 9:30 tomorrow morning and we'll see where we go.

All right?

MR. LEARMONTH: Thank you.

THE COMMISSIONER: So 9:30 tomorrow morning.

MR. CARTER: Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.