



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 48

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*Commissioner: Honourable Justice Richard LeBlanc*

Wednesday

5 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:** Okay.

All right, good morning.

**MS. MUZYCHKA:** Good morning,  
Commissioner.

**THE COMMISSIONER:** Good morning.

Let me at least get my book open here.

I think, Mr. Harrington, you were affirmed in  
Phase 1?

**MR. P. HARRINGTON:** Yes, I was.

**THE COMMISSIONER:** Okay, I'll just ask  
that you stand and we'll have you reaffirmed  
this morning.

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

**MR. P. HARRINGTON:** I do.

**CLERK:** Please state your name.

**MR. P. HARRINGTON:** Paul Harrington.

**CLERK:** Thank you.

**THE COMMISSIONER:** Thank you.

All right, Ms. Muzychka.

**MS. MUZYCHKA:** Good morning.

Before we start, Commissioner, I have a number  
of exhibits to enter.

**THE COMMISSIONER:** Okay.

**MS. MUZYCHKA:** They are P-03958 to P-  
03984, P-04015 to P-04024 and –

**THE COMMISSIONER:** Just one second now.

**MS. MUZYCHKA:** Slow down.

**THE COMMISSIONER:** What was the second  
group?

**MS. MUZYCHKA:** P-04015 –

**THE COMMISSIONER:** Mm-hmm.

**MS. MUZYCHKA:** – to P-04024.

**THE COMMISSIONER:** Okay.

**MS. MUZYCHKA:** And then there's P-04027  
to P-04028.

**THE COMMISSIONER:** All right, those will  
be entered as numbered.

**MS. MUZYCHKA:** Thank you.

All right, we'll begin, Mr. Harrington.

Good morning.

**MR. P. HARRINGTON:** Good morning.

**MS. MUZYCHKA:** Just – you've given  
evidence at this Inquiry before, so we won't go  
back through your background, but I'll just  
confirm that you are project director for the  
Lower Churchill Project?

**MR. P. HARRINGTON:** That is correct.

**MS. MUZYCHKA:** And you've been involved  
with the project since 2006?

**MR. P. HARRINGTON:** That is correct.

**MS. MUZYCHKA:** You are at the top of the  
organizational chart for the PMT?

**MR. P. HARRINGTON:** That's correct.

**MS. MUZYCHKA:** And you report directly to  
Gilbert Bennett?

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** Okay.

You were served with a summons from the Commission on April 11, 2019, to produce all social media and other text messages related to the Muskrat Falls Project. Is that correct?

**MR. P. HARRINGTON:** That is correct, yes.

**MS. MUZYCHKA:** Okay. And you produced pictures of four text message conversations?

**MR. P. HARRINGTON:** That – yes.

**MS. MUZYCHKA:** Okay.

Were that all of the messages – were those all of the messages that you had on your cellphone?

**MR. P. HARRINGTON:** At that time, yes.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Do you use your phone – the text feature – in the course of your work to communicate with your colleagues and business?

**MR. P. HARRINGTON:** Occasionally, yes. I mean, I – but it's normally just for where are you, are you coming to the meeting, that type of thing.

**MS. MUZYCHKA:** Okay.

So you don't have – you don't make it a habit to exchange messages with other members of the team?

**MR. P. HARRINGTON:** Not really in any great detail, I would say.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** I tend to use emails.

**MS. MUZYCHKA:** Tend to use email.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Okay.

Commissioner, we have reviewed the four text conversations produced by Mr. Harrington, and we've not entered these as an exhibit at this time because we don't believe them to be substantively useful.

**THE COMMISSIONER:** Okay.

**MS. MUZYCHKA:** Mr. Harrington, is it your practice to delete your messages from your phone periodically or ...?

**MR. P. HARRINGTON:** Yeah, periodically and, you know, automatically they get wiped by the iPhone itself.

**MS. MUZYCHKA:** How frequently do your phone messages get wiped? Or your text –

**MR. P. HARRINGTON:** I think it's 30 days, that's –

**MS. MUZYCHKA:** Thirty days?

**MR. P. HARRINGTON:** Yeah, yeah.

**MS. MUZYCHKA:** Is that a setting that you put on yourself? Or is it default?

**MR. P. HARRINGTON:** I don't – I just had it from the get-go. I mean, it's just one of those things.

**MS. MUZYCHKA:** Okay.

Were you aware that the Commission did not receive any produced text messages from Ron Power, Jason Kean, Lance Clarke or James Meaney?

**MR. P. HARRINGTON:** No, I did not know of that. No.

**MS. MUZYCHKA:** Okay.

And we were told that there's the practice of deleting messages every 30 days or, in some cases, some people delete them daily.

**MR. P. HARRINGTON:** Yeah, I think –

**MS. MUZYCHKA:** Is that something that –

**MR. P. HARRINGTON:** – it varies, I think, from person to person, you know.

**MS. MUZYCHKA:** Is that –

**MR. P. HARRINGTON:** Some people are very meticulous about, you know, clutter, I think is what I heard at least. Yeah.

**MS. MUZYCHKA:** Okay.

Have you at any time discussed deleting your phone text messages with Lance Clarke, Jason Kean, Ron Power or James Meaney?

**MR. P. HARRINGTON:** No, I haven't. No.

**MS. MUZYCHKA:** Okay.

The Commission received a number of slide decks and papers put together by Nalcor's project management team in April, May –

**MR. P. HARRINGTON:** Excuse me; I'm getting a little bit of feedback. I'm not – it's not coming out very clear to me.

**THE COMMISSIONER:** Okay. Can – thank you for alerting us to that. I'm just wondering in the backroom if we could just get the volume turned up a bit because – and then we'll just –

**MR. P. HARRINGTON:** Is it the same with you?

**THE COMMISSIONER:** Yeah.

**MR. P. HARRINGTON:** Yeah.

**THE COMMISSIONER:** And just if it gets – just let me know if it gets – if it's any better –

**MR. P. HARRINGTON:** Right.

**THE COMMISSIONER:** – and they'll – they're monitoring on the side there.

**MR. P. HARRINGTON:** Okay, yeah.

**THE COMMISSIONER:** So, if not, we'll take a break and try to figure it out.

**MR. P. HARRINGTON:** Okay, thank you very much.

**THE COMMISSIONER:** Just – if it is bothersome just let me know.

**MR. P. HARRINGTON:** Yeah, yeah.

**MS. MUZYCHKA:** I did notice –

**MR. P. HARRINGTON:** It might be me, I don't know.

**MS. MUZYCHKA:** No, it is a little bit muted.

**MR. P. HARRINGTON:** Yeah.

**THE COMMISSIONER:** I think the volume has gone up a little bit by the sounds of it. Am I right on this?

**MR. SIMMONS:** Well, from where we sit it seems a little bit better at the moment, but so far this morning it has been very quiet all around.

**MR. P. HARRINGTON:** Okay, so it's not me.

**THE COMMISSIONER:** I'm getting the nod that they've done something so, hopefully –

**MR. P. HARRINGTON:** Yeah, I'll battle on.

**THE COMMISSIONER:** Yeah, I think we're good now but just let me know.

**MR. P. HARRINGTON:** Will do.

**THE COMMISSIONER:** Okay.

**MS. MUZYCHKA:** All right.

I was just asking you about the slide decks and papers that were put together by the project management team that we were presented with in April of last year – April, May.

**MR. P. HARRINGTON:** Is it the five volumes?

**MS. MUZYCHKA:** It's the five-volume –

**MR. P. HARRINGTON:** Okay, good.

**MS. MUZYCHKA:** – five-volume set.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** Yes, that's what everybody has been calling it. And it contains various slide presentations that were prepared by members of the project management team. Did you have any involvement in the preparation of these documents?

**MR. P. HARRINGTON:** Yeah. Basically, yeah, I kicked it off, I commissioned the whole thing. Yeah.

**MS. MUZYCHKA:** Okay, and it was under your direction that the various topics were addressed?

**MR. P. HARRINGTON:** Yeah, that's correct. Yeah.

**MS. MUZYCHKA:** And did you review the documents and the presentations afterwards?

**MR. P. HARRINGTON:** I wouldn't say I did every slide or every – you know, every page, but I skimmed some of it.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Is it your belief that the contents of the documents are correct and true to the best of your knowledge, information and belief?

**MR. P. HARRINGTON:** I think it was the best knowledge we had at the time. And that was the purpose of putting the books together was to try and capture, you know, the knowledge from people who were, you know, possibly leaving the project. So I wanted to try and capture it before everyone's memory got too bad.

**MS. MUZYCHKA:** Okay.

I want to ask you about some of the hiring practices now in relation to the project management team. In 2011, we understand that Mr. Power, Ron Power, hired Darren DeBourke to take on the project management role for the HVDC transmission – or HVDC specialties, to look after packages 0501, 0502 and 0534.

Is that correct?

**MR. P. HARRINGTON:** When was the date again?

**MS. MUZYCHKA:** In 2011.

**MR. P. HARRINGTON:** In 2011, I think there were – that's when he was hired, but I think the position was advertised before that.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** But I could be wrong.

**MS. MUZYCHKA:** Yeah, not a problem.

We understand that from Mr. DeBourke's testimony that prior to getting the position, though he had project management experience, he had very limited technical knowledge of power supply, and no equivalent experience on converter station or switchyard sites.

Were you aware of that?

**MR. P. HARRINGTON:** I knew of Mr. DeBourke on previous projects and I knew that he had some solid project management experience from his previous positions on Sable working for ExxonMobil. He was responsible for, you know, some pretty big packages there. You know, I don't think there's very many people who have HVDC experience. You know, in the province, it's fairly new.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And to augment Mr. DeBourke's, you know, tiny team, Trina Troke was brought on to assist him and Trina Troke – Ms. Troke has a lot of experience in switchyards and transmission systems.

**MS. MUZYCHKA:** Right.

I'd like you to turn to binder number 2; it's the Paul Harrington binder.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And it's Exhibit P-03783, and it at tab 68.

**MR. P. HARRINGTON:** Now, that – I didn't hear that.

**MS. MUZYCHKA:** Okay, it might have been 'cause I stepped out of the range of the microphone.

**MR. P. HARRINGTON:** Which tab was it?

**MS. MUZYCHKA:** Tab 68.

**MR. P. HARRINGTON:** Thank you.

**MS. MUZYCHKA:** All right.

In Mr. Power's testimony, we put to him that there were multiple candidates with extensive experience, both technical experience and project management experience, with electrical engineering backgrounds and actual project management experience in HVDC conversion projects.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And if you look at tab 68, there are a number of CVs that are attached that were received in connection with the advertisement for the area manager HVDC specialty installations.

**MR. P. HARRINGTON:** Mmm.

**MS. MUZYCHKA:** And I'm not going to go through them all in any detail, but, for example, the first one at page 3 is an individual with 35 years' experience in electrical engineering. Another individual, on page 11, who's got 20 or 25 years' experience and he's an electrical – or she's an electrical engineer.

**MR. P. HARRINGTON:** Mm-hmm.

**MS. MUZYCHKA:** Another one with 35 years, electrical engineer, and so on. And there's one with 40-plus years' experience and having various involvement in HVDC projects.

When hiring for Mr. DeBourke's position – and I understand that you had signed off on the actual job description for the positions.

**MR. P. HARRINGTON:** More than likely, yes.

**MS. MUZYCHKA:** Approved the contents of the requisite qualifications and so on.

**MR. P. HARRINGTON:** I would generally do that – at that role description level.

**MS. MUZYCHKA:** Okay.

So when hiring for that position, would you feel that some level of relevant technical knowledge would be appropriate for a person who's going to be managing the HVDC project?

**MR. P. HARRINGTON:** Well, you know, at the time, I wasn't – I don't get involved in the actual interviewing process or the hiring process of these people; I rely upon the team that's reporting to me, and, in this case, I guess it was Mr. Power who went through the various CVs, and I would rely upon his judgment in those matters.

**MS. MUZYCHKA:** Okay. 'Cause it seems that the position for – that Mr. DeBourke was hired for, he was tasked to visit multiple bidder sites in other countries and evaluate the performance on other projects. And so it would strike one that having, you know, at least an electrical engineering background and some experience with HVDC systems would be appropriate if you're trying to go and visit and evaluate and determine whether or not, you know –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – you want to accept bids from individuals –

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** – or corporations.

**MR. P. HARRINGTON:** – you know, I think it's a matter of how the team is constructed. I mean, you know, the manager, you know, brought on for management experience, he would bring on his experts to support him in all of that. And as I say, you know, the – my involvement is that I'm relying upon the people reporting to me to go through the selection process and to choose what they think is the best individual to satisfy the requirements.

**MS. MUZYCHKA:** Okay. Would they run that past you at any point?

**MR. P. HARRINGTON:** No, there's so much going on that, you know, I rely upon, you know, the team to do that.

**MS. MUZYCHKA:** Okay.

Now, you did mention that you were familiar with Mr. DeBourke's work when he was with the Petro-Canada, Terra Nova project.

**MR. P. HARRINGTON:** No, he was working on the ExxonMobil project in – on Sable Offshore.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** You knew him before he came to –

**MR. P. HARRINGTON:** I knew of him.

**MS. MUZYCHKA:** Yeah.

**MR. P. HARRINGTON:** Yeah, yeah, yeah.

I hadn't worked with him, per se.

**MS. MUZYCHKA:** Yes.

Scott O'Brien, we understand he first came on to the project as area manager for Muskrat Falls dams and spillway. Is that correct?

**MR. P. HARRINGTON:** I believe so, yes. I'm –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – not gonna argue with it, yeah.

**MS. MUZYCHKA:** All right, if we go back to binder 2 at tab 69.

**MR. P. HARRINGTON:** Sixty-nine.

**MS. MUZYCHKA:** And, again, this is at page 10 we'll go.

**CLERK:** The exhibit number?

**MS. MUZYCHKA:** Oh, I'm sorry, the Exhibit number is 03781.

**MR. P. HARRINGTON:** Ten, yes.

**MS. MUZYCHKA:** Okay, so if we look at page 10, this is the job description for that position, "Area Manager – Muskrat Falls Intake" – intakes and powerhouse, sorry.

Keep getting that page wrong. Sorry, that's page 8.

**MR. P. HARRINGTON:** Page 8.

**MS. MUZYCHKA:** Yes, dams and spillway, and you can see on the page – bottom of page 9 is your signature, and approved by, the terms of the qualifications for that position.

And if you look at page 9, you see that the qualifications or the experience, the successful candidate "...shall possess a project management background with 15 to 20 years of project management in a senior position on major projects."

Is that correct?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay.

Now at the time that Mr. O'Brien applied for this position in 2011, were you aware that he'd only been out of school for 15 years, and he would not have had the minimum 15 years of senior project management experience?

**MR. P. HARRINGTON:** No, I – I wasn't aware of that, no.

**MS. MUZYCHKA:** Okay.

Do you – did you know Mr. O'Brien prior to him coming onto the project?

**MR. P. HARRINGTON:** Yes, I had experienced Mr. O'Brien on, I think, the Petro-Canada project. I observed at that time that he was a very solid project manager, he had the attributes that one aspires to for, you know, a good project manager, an effective project manager, he had leadership skills. He was a

good decision-maker, he built a good team around him, I noticed that as well.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And I also felt as though he, you know, he could inspire people, he was inspiring teams and he was dedicated individual, he was a determined individual and he was highly competent and totally professional.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** In my opinion.

**MS. MUZYCHKA:** Well, yes, that may be so, but in terms of the qualifications for the position – I won't go to the tab, but we had also pointed to Mr. O'Brien's testimony that there were a number of individuals who had also applied for the position, along with him, that had 20 to 25, even 35 years experience in project management that would've fit within the qualifications.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Okay.

Mr. Kean – Jason Kean. If we turn to Exhibit P-00884, it's at book 2 of the Paul Harrington binder at tab 70.

**MR. P. HARRINGTON:** Okay, next one.

**MS. MUZYCHKA:** Next page.

This is Mr. Kean's CV, and when – we can see that – if we scroll up to just under the roles – yes, okay. Project leadership roles. Perfect.

We can see that he came into the role of project services manager at Nalcor. And from his résumé, we see that he had only two years experience in a similar role for Petro-Canada on the Terra Nova Project.

**MR. P. HARRINGTON:** Mmm.

**MS. MUZYCHKA:** Did you approve the hiring of Mr. Kean, given his limited experience in a project services role?

**MR. P. HARRINGTON:** So, my recollection of how Mr. Kean, and I believe Mr. Lance Clarke, were hired – it was as a result of an advert in the newspaper. They applied to Nalcor, and the review – interview review committee was made up of VPs from Nalcor. So, that would've been stretching my memory here.

I think Mr. Jim Keating, Mr. Gilbert Bennett, Mr. Derrick Sturge, and there may have been another, but I think they were the interview committee –

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

**MR. P. HARRINGTON:** – and they interviewed both Mister – and I don't know – can't remember exactly how many people applied – but they happened to come forward with a kind of a presentation as to demonstrate why they were the right fit for the job.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** I wasn't involved in that either, and the decision that came from the committee that both these people – I think the role was a business services manager, and they said it would be more appropriate to hire both of them, but one as a commercial manager and the other one as a project services manager – I think that was the title.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Well, if we look at page 3 of Mr. Kean's CV.

**MR. P. HARRINGTON:** Page, sorry?

**MS. MUZYCHKA:** Page 3.

**MR. P. HARRINGTON:** Three, sorry.

**MS. MUZYCHKA:** The top of the page, and you'll see that Mr. Kean later got moved to senior project manager, overland transmission lines in January 2013.

**MR. P. HARRINGTON:** Yes.



**MS. MUZYCHKA:** Prior to going into this role it doesn't appear that Mr. Kean had any experience in overland transmission, and only a few months of co-op student work term placement experience in power supply.

With that, do you believe that Mr. Kean had the requisite qualifications to – for this position, given that he had never held a comparable role in any other project?

**MR. P. HARRINGTON:** I do. And I say that because Mr. Kean is a very competent individual. He's a very competent manager. He has – as we've seen – been the architect of many of the best-in-class processes and procedures that have been brought to this project. He was ably assisted by Mr. Kyle Tucker, who did have a lot of transmission experience; Mr. Kumar Kandaswamy, as well, had a huge amount of experience; and the engineering team that came from SNC.

So I wasn't put out by that because I think we needed a solid manager in that position, ably supported by a good technical team. So I think that mix was appropriate.

**MS. MUZYCHKA:** Okay.

And we've heard evidence from each of Mr. Kean and Mr. DeBourke and Mr. O'Brien that while they may have applied for the position based on an advertisement, they were each contacted by either Mr. Power or Mr. Kean, depending on who was there first, with respect to – or contacted by either Mr. Power or by Mr. Kean in terms of some of the other individuals, to – invited to apply and approached specifically because of past knowledge with the Terra Nova project. So it wasn't a totally random situation which brought these gentlemen to apply for the positions.

Given the fact that we've looked at their qualifications now, how would you respond to the criticisms that these individuals were hired based on their connection to other members of the Nalcor team through Petro-Canada and Terra Nova, and not on their relevant technical experience and knowledge?

**MR. P. HARRINGTON:** Well, I don't agree with that, because I believe they're extremely

competent individuals and they would be treated fairly and reasonably with anyone who applied for that position. As I say, Mr. Kean and Mr. Clarke were approved by, you know, a board of VPs, right? So, you know, they were hired for that particular purpose.

And I think all of these people that you've mentioned have done, you know, a very good job for the project, to be perfectly honest, and they've dealt with extremely challenging circumstances. And sure, people can, you know, be a critic of why these people were hired, but, you know, they were the right choice.

**MS. MUZYCHKA:** Okay.

You did mention when you gave testimony in relation to Mr. DeBourke's involvement – it wasn't specifically in relation to him, but you did say that there was – there is a limited pool of qualified individuals in Newfoundland –

**MR. P. HARRINGTON:** Well, you know –

**MS. MUZYCHKA:** – for this type of job –

**MR. P. HARRINGTON:** – we're trying to – yeah, we're all guided by the Benefits Strategy and we're all trying to maximize the development of people within the province. You know, that's one of the tenets of the Benefits Strategy, is that we should be giving, you know, people from the province the opportunity to participate in these major projects because I think there's a real desire and I think it's a healthy desire to bring people, you know, from the province and give them that opportunity.

**MS. MUZYCHKA:** But you wouldn't do that to the expense of experience and qualifications of –?

**MR. P. HARRINGTON:** No, but if you got two people that, you know, are pretty close, you might want to look at the Benefit Strategy and say: Well, you know, is this person gonna be a better fit for us because he's used to – he knows, he's committed to the project, he's really committed to the province? And, you know, I can honestly say that the team – the project team that's been put together and have laboured throughout all of these years, are totally

committed to doing the best they can for this project and for the province.

**MS. MUZYCHKA:** Okay.

Well, I think there might be some that might dispute the fact that there's an equal balance in candidates, but –

**MR. P. HARRINGTON:** No doubt, no doubt. Criticism is easy, as Churchill said, achievement is difficult.

**MS. MUZYCHKA:** All right.

I'm just gonna move on to Astaldi for a moment. We're heard evidence about how Astaldi performed after the Limited Notice to Proceed was issued in September of 2013.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And without getting into all of the details, I'm sure you're well familiar with the challenges that Astaldi presented with – in September, October and November, prior to the contract being actually awarded at the end of November 2013.

If you turn to tab 71 of your book, it's Exhibit P-03707. It's at tab 71, book 2. And we'll go to page 2. Page 2, this is an email chain from November 7, 2013. Ed Martin writes to you: re Astaldi progress question. Mr. Martin asks: "... Still the right contractor?"

And if we go to page 1, you reply and confirm: "They are still the right contractor, they can pick up speed, we are doing all we can."

So can you explain the context of that email? Why was Mr. Martin writing you at that particular time? And why was he concerned?

**MR. P. HARRINGTON:** I think if we go back to page 2 –

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** – if we may, please.

So I'm writing to Ed Martin: "here is an update from our team regarding your questions- I have

highlighted what I believe to be the main issue ...." And it's all about the needing – Astaldi needing a robust start-up team to support the readiness – the LNTP and readiness requirements.

So what we were seeing there was some of the people that they were proposing, initially, in the bid weren't showing up. So what we wanted to do is make sure that we were bringing that to the attention of Astaldi at the highest levels and we were phoning them up regularly to say: Why aren't you stepping up to the plate here and taking advantage of the LNTP that's been presented to you?

So I think that was the context.

**MS. MUZYCHKA:** Okay.

And then in terms of Mr. Martin's reply, you – or in terms of your reply to his questioning, whether or not they were still the right contractor, was there a sense that maybe it wasn't too late to change the award?

**MR. P. HARRINGTON:** Well, that was in the direct response to his question: "... Still the right contractor?" I mean, we just – you know, we were just in a LNTP position then –

**MS. MUZYCHKA:** Yes, no commitment had been made to award –

**MR. P. HARRINGTON:** No commitment had been made but, you know, you don't give up on someone, you know, from the get-go. Well, I wouldn't.

And I asked him here: Could you include the key messages I highlighted. So I wanted him to contact the CEO of Astaldi and light a fire underneath him. So, you know, I felt as though that's all that was needed at that point in time, was for them to wake up and get on with it.

**MS. MUZYCHKA:** Okay.

But had there been some concerns and red flags in terms of the difficulty they had in mobilizing and really what could be – I think Mr. Power or Mr. O'Brien both said that they had done little,

if anything, by the time November rolled around.

**MR. P. HARRINGTON:** I wouldn't call it a red flag. I would call it a yellow flag.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** You know, and so that's why I'm writing this 'cause I'm, you know, I'm taking the comments I'm getting from the team and making sure that we're trying to get the best attention we can from the – from Astaldi.

I think Astaldi, you know, had the view that, well, perhaps we wouldn't get the federal loan guarantee and perhaps they weren't gonna get a contract signed. So I think there was some hesitancy from their side to actually jump in with both feet.

Well, that was their choice. But we were prepared to provide them with funding and perhaps they had internal issues that they weren't willing to, you know, jump in with both feet, as I said, and really commit to this.

**MS. MUZYCHKA:** Right.

But now you did state in your email to Mr. Martin that Astaldi needs a robust start-up team to be able to do that. And we've heard evidence that the schedule that was in place for the project was very aggressive and that there was little float, if anything, you know, everything had to go on schedule, as per plan. I believe that was Mr. Power's evidence.

With the late start of the project and the late award of the contract in November – it was late in the construction season, I believe, initially, the plan was that it would be done some time in July and, of course, it was delayed because of the fact that final –

**MR. P. HARRINGTON:** I don't think they could have mobilized 'til September. I think that was the earliest they could do that because the bulk excavation wouldn't have been finished (inaudible).

**MS. MUZYCHKA:** Okay, so that part.

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** Yeah, no, go –.

**MR. P. HARRINGTON:** I think there's a slight nuance there.

**MS. MUZYCHKA:** Okay.

But I think the point is that by the time the contract was awarded or was to be awarded, we'll say, before it was – it was late November and we had already seen that Astaldi had shown little enterprise in moving forward in a robust fashion.

Were there concerns, at that point, that these milestones and the schedule, as it was at that time, were going to be challenging with this particular contractor? Did you still have confidence, I guess, is what I'm saying, after seeing roughly two months, three months worth of work from them, that they had what it took to be able to move this project along at the speed that was required?

**MR. P. HARRINGTON:** What did give us confidence is the fact that, you know, we went to them – or I didn't go to them but the commercial folks went to Astaldi and said, look, you know, this is the situation. This is, you know, you know where you are, you know where you are with regards to your preparation and, you know, when the contract will be awarded. And looking out ahead of you, are you still committed to delivering the project in accordance with the milestones that were established, initially? I believe the answer was yes, right. At least, the answer that we got was yes, we are still committed to making those milestones.

And, in fact, what gave me even greater comfort was the fact that they were still prepared to accept the \$75 million worth of liquidated damages, should they fail to achieve those milestones. So, they were putting their money where their mouth was.

So, you know, if you get that type of response from very senior levels in, you know, the Astaldi organization, why wouldn't I believe that?

**MS. MUZYCHKA:** Fair enough, but there certainly was evidence prior to the contract

being awarded, and given the circumstances I just described, that it was late in November, they hadn't started to do anything meaningful with respect to the ICS, which was part of the Limited Notice to Proceed was to start designing and putting the plans together for that so that they could work through the winter.

And given that we know that they had no experience in working in a Northern climate, they just – you know, there's a number of factors that, I would suggest, would cause one to rethink whether or not Astaldi is the right contractor, as Mr. Martin had posed.

**MR. P. HARRINGTON:** So that's why we asked them: Are you still, you know, are you still committing –

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

**MR. P. HARRINGTON:** – \$75 million worth of liquidated damages to achieve the milestones? You know, and they were fully aware. There was no duress placed upon them. They could've said no. They could've said something else but they didn't and so, you know, faced with that, we proceeded.

**MS. MUZYCHKA:** Were you confident in their financial ability to be able to withstand the financial stressors and pressures that come with such a large package in the circumstances? Because it's one thing to say, the contractor says yes, they can do it, but if they can't do it, the costs to the project are going to be significant that you may not be able to recover. So that's why I'm just wondering if those factors were considered.

**MR. P. HARRINGTON:** So, the best answer to that one is that the responsibility for reviewing the financial strength of Astaldi, or any of the other contractors, was not my responsibility. I deferred to those more who had that skillset, the Nalcor corporate, Investment Evaluation finance group. They would do the checks and, basically, I was waiting to hear back: Are they okay or not, right? And then they would advise the CEO.

**MS. MUZYCHKA:** Who's the they you're referring to?

**MR. P. HARRINGTON:** I just mentioned it. The –

**MS. MUZYCHKA:** But by name.

**MR. P. HARRINGTON:** Pardon?

**MS. MUZYCHKA:** By name.

**MR. P. HARRINGTON:** Oh, that would be, I mean directly under Derek Sturge's – sorry, Derek Sturge's group. Be it Investment Evaluation, which I think was led by Steve Goudie or Auburn Warren or Rob Hull. I could be wrong on some of those names, but those names are the names that spring to mind.

**MS. MUZYCHKA:** Okay.

Well, we know, of course, that they did receive the project and they started to work. And then we heard from Mr. Power's evidence and Mr. O'Brien's that Astaldi's performance in 2014 was dismal. And, in fact, Mr. Power had prepared a PowerPoint entitled: Astaldi the Road to Failure.

**MR. P. HARRINGTON:** I never saw that.

**MS. MUZYCHKA:** No. But you must have been aware of the performance issues with Astaldi in 2014?

**MR. P. HARRINGTON:** Yes, absolutely, because that was being – filtering up to me, and I was consequently ensuring that the leadership team, both Mr. Bennett and Mr. Martin, were fully aware of the challenges that we were facing with Astaldi at the site level.

We wanted to make sure that corporately that we were going to get the attention of the senior people in Rome. So that would be their CEO, their risk manager and also the Astaldi Canada Inc. senior person.

So, we, quite early on, in maybe March of 2014, we had our first senior-level meeting with Astaldi. I think it was in Rome, and we clearly communicated to them, and I think there's an exhibit that's in there which shows how many meetings we had at the senior CEO VP-type level to impress upon Astaldi the very serious situation that they would end up in if they didn't

take immediate action. And if I was to look at, you know, the numbers, just the progress numbers from Muskrat Falls from a planned versus actual at the end of 2014, they were about 6 per cent adrift overall on that site.

So, yes, the – we were deeply concerned that they weren't getting their act together, but it wasn't being manifested itself particularly at that point in time, in the numbers that I was looking at, right, the serious numbers. So –

**MS. MUZYCHKA:** But just to stop you there for a moment, Mr. Harrington. The numbers would have included the amount of concrete that was placed because that was a big part of the first year –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – of Astaldi's requirements.

**MR. P. HARRINGTON:** That would have, yeah.

**MS. MUZYCHKA:** And we heard and we've seen evidence in the Grant Thornton report that the amount of concrete that was placed in the first year didn't come close to what was on the schedule.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** In fact, it never did actually reach the amounts that they had put in their bid as being achievable.

**MR. P. HARRINGTON:** I think it did, actually. There were periods when it did, but that was later on.

**MS. MUZYCHKA:** And that's true, there was.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** And I believe the Grant Thornton report indicated that to meet the schedule after – once the contract was awarded, November 2013, they – to the point of August 2018, Astaldi would've had to have placed 13,300 cubic metres each month, and that in that time period Astaldi only achieved that 9 times out of 57 months. So that's –

**MR. P. HARRINGTON:** Yes, that was a challenge for them. I totally acknowledge –

**MS. MUZYCHKA:** So I find it a little surprising that –

**MR. P. HARRINGTON:** So all I'm saying is –

**MS. MUZYCHKA:** – in the end of the first year –

**MR. P. HARRINGTON:** – at the time, right, when I was looking – you know, I'm looking at the progress curves and so that's the view I get on things. The further down you go into the organization the more you get into how many metres cubed and how much rebar and things like that. But, you know, I'm not saying that as an excuse.

**MS. MUZYCHKA:** No, but it's –

**MR. P. HARRINGTON:** All I'm saying is that those are the numbers that were – that was, you know, I was seeing. I was also very concerned about their lack of, you know, the fact that they had, you know, kind of – you know, a constant change in project managers. The project manager that we had that had the, you know, Canadian experience, Mr. Chryssolor I think his name was, and the very senior team of construction superintendents and various other levels that he would bring to the table, they didn't show up.

Now, Mr. Chryssolor had a medical issue. But, you know, that was up to Astaldi to, you know, find somebody else. I mean – so, yes, all of these things with regards to organizational lack of readiness with regards to the crusher, lack of readiness towards the batch plant, you know, hiring people when you didn't have a very solid plan in place, all of these things were genuine concerns by the project team and myself. And we were raising those at the site level, but we were also raising that at the CEO level to say this is a serious problem and you need to wake up and get after it.

And if you read the summaries that I put in of those numerous meetings that we had in – all over the place, you know, London, New York, Rome, wherever we could get them where their CEO – we could all get our people together, you

know, it – that was the constant theme: You're heading for a wall if we don't do something about it.

**MS. MUZYCHKA:** Right, and I think –

**MR. P. HARRINGTON:** Now, from a point of view is – you know, that's what we were doing constantly, right?

**MS. MUZYCHKA:** Okay, fair enough. But I think that it was quite clear by 2014 that there was some serious issues with respect to maintaining your schedule.

**MR. P. HARRINGTON:** No doubt.

Yeah, there was worries, but they kept telling us on – that oh, yeah, yeah, we can catch up. You know, we – we're doing this, we're doing that. We're gonna be bringing in another project manager. He's gonna be – he's gonna make the difference. You know, we're going to be catching up this year on the spillway. And, if fact, they did.

The spillway in 2013 was –

**MS. MUZYCHKA:** 2014.

**MR. P. HARRINGTON:** No, in – 2014, yes, thank you – in 2014 was behind schedule by, I think the number's, again, at 3 or 4 per cent. And in the next year they'd caught up that and were in – actually ahead in the spillway. And the spillway was a critical path for river diversion. So they did demonstrate that they could turn things around to a degree.

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

**MR. P. HARRINGTON:** They fell down on the powerhouse.

**MS. MUZYCHKA:** Were there discussions with the executive and yourself, as a senior member of the project management team, about the possibility of replacing Astaldi in 2014?

**MR. P. HARRINGTON:** Well, we looked –

**MS. MUZYCHKA:** Mr. Power spoke to some of that in his evidence, and I –

**MR. P. HARRINGTON:** Pardon?

**MS. MUZYCHKA:** I said we heard from Mr. Power that there was some discussion as to –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – maybe moving to a plan B, which would be replace –

**MR. P. HARRINGTON:** Yes, yes.

**MS. MUZYCHKA:** – the company.

**MR. P. HARRINGTON:** And so we looked at and we asked legal counsel whether we had, you know, the legal right within the contract to terminate for default. And the legal advice that we got at that point in time was that there wasn't enough evidence to support that approach.

**MS. MUZYCHKA:** And so then there were efforts to –?

**MR. P. HARRINGTON:** So we were always looking at – no. So we applied ourselves to looking at: How can we turn them around? And we – I think there was a critical meeting in London around about December of 2015 where we – no, 2014, I believe, sorry – where we said, look, you need to look at your organization, because your organization isn't doing the job. And you need to bring some key people, and we are prepared to provide you with some of our key construction management people that had worked on other projects, civil projects in the province. Bill Knox was one of them, and –

**MS. MUZYCHKA:** Roy Collier.

**MR. P. HARRINGTON:** Thank you. Yeah, Mr. Collier was the other one.

And they – eventually Astaldi, I think, realized that that was the right thing to do. And there was an immediate improvement in organizational effectiveness.

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

**MR. P. HARRINGTON:** We saw then that the – that those two individuals were then bringing on other people, because the way that this industry works is that, you know, it's leadership

and it's people, and people will follow good leaders. And Mr. Knox and Mr. Collier were recognized as people who knew what they were doing and very competent individuals, and had the leadership skills that would encourage people coming from other projects to actually, you know, get on board and get this thing going. And, you know, there was a certain – and there is still, that pride in the workers of Newfoundland and Labrador to get this project finished. So that was a turning point in the organization at the site.

**MS. MUZYCHKA:** Okay.

So were you satisfied that these – I'll call them mitigation efforts, in terms of providing Mr. Knox and Mr. Collier and other supports that we've heard from other witnesses to Astaldi in 2015 – did those – were you satisfied that they would negate any of the costs associated with the rather poor performance in 2014?

**MR. P. HARRINGTON:** So the benefit that we had was we had a very solid contract. The contract, as you've probably heard, included a – what's called an LMax, a labour max and, you know, that's almost like a fixed price – in fact, it is. And that any costs above and beyond that LMax would be at the cost of Astaldi.

And that is what we were clearly communicating to the CEO and the senior levels in Astaldi to say this contract – and they acknowledged it's a solid contract, and it was well written and well organized and they signed on to it – committed them not to – you know, committed them that any costs above and beyond that LMax would be at their dime.

**MS. MUZYCHKA:** Right. We also know that, subsequently, there were further agreements made – completion agreements made with Astaldi, and other sums were paid because of the fact that their financial circumstances –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – prevented them from being able to be held to the LMax.

**MR. P. HARRINGTON:** And that's absolutely true.

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

**MR. P. HARRINGTON:** The financial difficulties that Astaldi got themselves into, not just on this project but, you know, the economic collapse in Venezuela where Astaldi had, you know, outstanding monies owed in the Venezuelan currency – that collapsed. The bridge that they were trying to – a concession that they had trying to sell in Turkey, in over the Bosphorus – that fell through because of the Turkey – the economic problems in Turkey and the political upheavals in Turkey.

So there were things going on, right, that we didn't know would result in Astaldi not being able to, you know, come to the table to deliver their contractual commitment.

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

So faced with that situation, as you've seen I think, there was an evaluation done. Given all of those circumstances, but going back to when the question was – 2014, 2015, but I didn't know about those future things that were going to happen. I mean –

**MS. MUZYCHKA:** Yeah.

**MR. P. HARRINGTON:** – who could predict those things? So –

**MS. MUZYCHKA:** But there's always risk in a project when that – even with a project or a corporation that's reviewed and seen as financially sound, there are many things that can happen that are beyond your control or beyond anyone's estimation, but that if realized, can have fairly significant consequences.

**MR. P. HARRINGTON:** Yeah, that's correct.

**MS. MUZYCHKA:** I guess – and that's where, you know, the evaluation of the company and then –

**MR. P. HARRINGTON:** But I think –

**MS. MUZYCHKA:** – combining for –

**MR. P. HARRINGTON:** – they're called the black swan events, outside of anyone's control.

Unfortunately, I think the Lower Churchill Project has had more than its fair share of them.

**MS. MUZYCHKA:** Black swans.

With the plan in place and – in 2015 to move Astaldi forward with that, given the fact that we'd had, you know, the poor 2014 performance, the ICS structure had failed and was going to come down or, at least, it hadn't reached the point at the end of 2014 where it was doing what it was supposed to do, which was to shelter –

**MR. P. HARRINGTON:** Getting in the – it was getting in the way, I think, has been testimony.

**MS. MUZYCHKA:** Right and so the productivity that was expected through the winter wasn't going to happen, or didn't happen. So, you know, things are still moving along very slowly and we've heard that –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – even by the time 2014 arose, the – there had already been a loss of one construction season, given the late award of the contract in 2013, the difficult challenges in 2014. So there was, you know, I would suggest, a heightened concern with respect to maintaining the further milestones down the road.

**MR. P. HARRINGTON:** And they kept saying they would – they kept saying they could recover. They used the spillway as an example of being able to recover from – in 2014. At the end of 2014 they were almost 4 per cent behind on the spillway, yet at the end of 2015 they were 3 per cent ahead –

**MS. MUZYCHKA:** Mmm.

**MR. P. HARRINGTON:** – on the spillway.

So, you know, they were saying: There you go. We can do this. Just let us keep going and we'll manage and we'll be – going to be doing other things. And by then, we were starting to get some traction on the, you know, the benefits that were, you know, ensuing from, you know, Mr. Collier and Mr. Knox and bringing those – their

expertise and their superintendents and supervisors who could turn this ship around.

And it –

**MS. MUZYCHKA:** Who was –?

**MR. P. HARRINGTON:** Sorry.

**MS. MUZYCHKA:** Sorry. Who was watching this progress with Astaldi? Because I would think that, you know, if there were sufficient concerns that – you know, an enhanced scrutiny.

**MR. P. HARRINGTON:** We were all watching.

**MS. MUZYCHKA:** But who was responsible? Would it have been Mr. Power? Would it have been Mr. O'Brien or – you know, in terms of keeping the executive informed as to the progress –

**MR. P. HARRINGTON:** Well –

**MS. MUZYCHKA:** – I guess, ultimately, it would come up to you.

**MR. P. HARRINGTON:** So project controls, you know, do the numbers; short put it's simple as that. But, you know, the numbers don't tell you everything, as we know.

You know, organizational effect, organizational changes and things may not be always reflected in the numbers. They manifest themselves if it's not organized properly later on; however, you know – so I was getting monthly reports. You know, I think you've seen some of those cost and schedule reports that were coming forward.

So they would have been coming from the project controls group and we would meet on a monthly basis and it would be attended by the people you've mentioned. So it would be the project controls manager, the project controls individual for that, you know, C1, C3, C4 – those are the terminologies that we use for Muskrat Falls HVDC and transmission respectively.

And so, you know, that's when – that where all those things would be talked about and then, you know, we would then percolate that and, if



necessary, raise it up to the executive. But as you've seen by the number of meetings that we were holding at senior level with Astaldi senior management, you know, that was done possibly, you know, every – it was constant. I mean it really was.

We had our eye on the ball, I can say that, and so did leadership, certainly Gilbert Bennett. Mr. Martin made a particular point of being kept informed of it but, of course, he had four other lines of business to be looking after as well. So, you know, Mr. Bennett and myself would be the individuals who would keep him informed.

**MS. MUZYCHKA:** Okay.

I want to turn to P-01962. It's at the Paul Harrington binder 2 at tab 72.

**MR. P. HARRINGTON:** Seventy-two?

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** Now, you would recognize this as a letter that you wrote to Stan Marshall.

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** In – on June 6, 2016.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And this is just a month or two after he became the CEO of the organization.

**MR. P. HARRINGTON:** Yeah. I don't know whether it's a month or two but –

**MS. MUZYCHKA:** Yeah. I believe he was – he came on sometime in the late spring or something but –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** In any case –

**MR. P. HARRINGTON:** It would be after April, I guess.

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** So, we know that Mr. Marshall bifurcated the project team into transmission and generation and brought John MacIsaac from the transmission – or, sorry – yeah – from the transmission side and that reduced Mr. Power's scope of responsibility because he was no longer responsible for –

**MR. P. HARRINGTON:** Sorry. I missed that.

**MS. MUZYCHKA:** When the project bifurcation occurred –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – the – Mr. – sorry – Mr. MacIsaac was brought in from Hydro –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – to lead the transmission portion.

**MR. P. HARRINGTON:** And the HVDC.

**MS. MUZYCHKA:** HVDC. And –

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** – that was removed from the scope of Mr. Power's.

**MR. P. HARRINGTON:** And myself.

**MS. MUZYCHKA:** And yourself. Okay.

So, I'd like to get your comments of the period of time when the change of CEO is happening and – with particular emphasis on your letter here. You're saying that there are "some inherent risks" in the changes that he was proposing.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** So, can you explain what's in the letter and why you wrote this to Mr. Marshall at that time?

**MR. P. HARRINGTON:** Right.

At the time – you know, put myself back into the events from early 2016 to June. It was a very difficult time from the project team’s perspective. It was a very confusing time because, you know, we had lots of situations, lots of activities going on; we were trying to keep the project going.

As you know, it was a very – you know, we’re still trying to keep Astaldi on track. So, we were focused – and that’s our focus as a project team, is to keep the job going. And meanwhile, we had all of these things going on in the background that were causing a large amount of concern and, yes, anxiety within the project team, and they needed leadership, to be perfectly honest. And they needed to be – you know, we needed to calm things down a little bit.

We had lost a CEO. The board resigned. There had been a change of government. EY were, you know, pursuing their big goal – we call it. And we knew that there were attempts by SNC to snatch back the EPCM role that they’d failed dismally in 2011 and 2012. So that was the context. Team were very worried – the team were quite concerned that they were all gonna be removed. And we didn’t know Mr. Marshall at the time. We do now and he’s been very supportive of the team, and we really appreciate what he’s done. But at the time, we – he was an unknown quantity.

So, I was very concerned – and I always am concerned – about the chemistry of the team. And I knew and I was very concerned that if the individual that he was proposing to bring in would not fit that chemistry, would not – it wouldn’t work out. And I was very concerned that I would lose two or three senior people.

And, as it turned out, we did: Mr. DeBourke, Mr. Kean and Ms. Troke. So that was two project managers and a deputy project manager. So, I could see that coming in my own – what was my own opinion, and I wanted to express that to Mr. Marshall. And – because once you lose that type of corporate knowledge and – these are the people who negotiated the contracts with Valard and Alstom at the time, so I felt as though we would be at a bit of a disadvantage when it came to claims if we had lost that knowledge.

So, that – I was quite up front and honest about that, and, hopefully, I was respectful in the way that this was composed. So that was one part of it. I wanted to let him know that – you know, and probably he didn’t – that, you know, the – there had been some risk work done at the outset of the project and sanction time. And I wanted to alert him to that.

And I wanted to alert him to the fact that the SNC situation and what we had to do to recover from that very serious failing by SNC of their EPCM role, you know, that here they are, they’re coming back again at us. And so I just wanted to let him know that this is the second time around. We – they’ve let us down before.

**MS. MUZYCHKA:** Okay.

Well, let’s just turn to the top of page 2 of your letter.

And you start off by saying: “They” – meaning the project management team – “are now starting to feel abandoned and also feel that they are being painted as scapegoats for the decisions that were made outside their control.”

And then you go on to say: “For example, with regards to the project schedule at Project Sanction, the quantitative risk analysis (QRA) that was carried out on the Project schedule resulted in a P75 of 79 months from Project Sanction to get to First Power. The recently completed QRA resulted in the same result, a P75 of 79 months from Project Sanction to First Power. However the direction that was provided to the Project Team was to set a very aggressive schedule with a First Power target that was recognized as being in the P5 to P10 range.”

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** “The unlikely probability of achieving these cost and schedule targets was well known.”

So, when I’m reading this, it seems that you’re saying that the decision to go with an aggressive schedule was not the project management team’s, but the project – or the executive. So, are you saying it’s Ed Martin and Gilbert Bennett that set the parameters for this project – you know, to go with such a low probability

schedule? Or was that a decision that was made in conjunction with the project management team?

**MR. P. HARRINGTON:** I think this – it's been quite clear from their evidence that everyone acknowledged it was an aggressive schedule, and, you know, you can put P-numbers around it. At this point in time, I had the benefit of hindsight. And I was defending the team.

I – This is a good team. It's a good – they've worked hard. They're very diligent in what they do. They're honest people. They're from the province. They work very hard to try and mitigate things, and I will stand up for them. And I was standing up for them here.

**MS. MUZYCHKA:** But my question was were you saying that the decision was outside of their control because the schedule was imposed on them by Gilbert Bennett and Ed Martin?

**MR. P. HARRINGTON:** I think the aggressive schedule was clearly something that was a target, right? And I don't set targets. Targets are given to me, same as a – you know, an AFE. That's given to me, and I have to work within the approved AFE and target that's provided to me. That's my job and that's what I try and get the team to get behind and do the very best they can to deliver against the approved schedule and the approved budget.

**MS. MUZYCHKA:** But if you knew that the schedule was so aggressive, as the project director, wouldn't you have brought that to the attention of the executive and said: This is going to be very difficult to achieve in the time frame given the budget that we have, especially after the first year with Astaldi and – you know, you know at that point, your schedule has been – has been affected by at least one year.

**MR. P. HARRINGTON:** Yeah (inaudible).

**MS. MUZYCHKA:** Was there a dialogue with the executive, on the fact that, you know, this is going to be a challenge for the team and it should be set at a less-aggressive schedule and perhaps we need more money, because we know that the longer this project goes on, the cost per day increases and, you know, you will not be

able to fit within the budget that you were initially given.

**MR. P. HARRINGTON:** And that's, as you said, you know, as things moved on, we did, we were raising those to, as you've seen in the – I think they were called management outlooks, indicative final forecast costs. Those decks showed where we believed – you know, we got our crystal ball out and we looked at – based upon the trends that we were seeing, if those trends continued across the board, which they may or may not have done, then it could go here and, you know, the cost could go here and the schedule could go here.

We were indicating, you know, I think initially six to nine months was – may have been that – one of the decks that we've presented. And then later on, once we got the benefit of seeing how they were performing, it was 12 to 18 months.

**MS. MUZYCHKA:** Okay.

But how is it that you were saying that the decisions that were made were outside their control, why the project management team was feeling abandoned and painted as scapegoats? Because the project management team was, in fact, the team that had all the control in terms of moving this project forward, in terms of the hiring of the contractors, in terms of monitoring the progress, making the decisions along the way.

I see the project management team as being a very involved party in the ongoing project, so I'm puzzled by your comment to the new CEO that these are decisions that were made, and they're being made – painted as scapegoats.

**MR. P. HARRINGTON:** But the project team don't set policy, we just reflect the policy that's provided to us and that, I mean, and – right at that point in time, as I had mentioned, that – there's lots of anxiety in the project team and they are starting to feel abandoned. And that's a genuine kind of thing that was coming to my attention and that these people are thinking: Why, you know, we're getting – we, you know, we're getting blamed for everything. I – and some of things are not within their control.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And so –

**MS. MUZYCHKA:** Answer me this, then: Is the P5 to P10 a correct statement of the belief of the project management team, at the time of the contract?

**MR. P. HARRINGTON:** Pardon, sorry.

**MS. MUZYCHKA:** Was it the belief or understanding of your team that the schedule that was set was a P5 to 10?

**MR. P. HARRINGTON:** So we had two – two Ps, and we had been through this through Phase 1, and I'll go through it again. So, we had our planners, with senior SNC planning folks who had recently completed a hydro project in northern Quebec, were providing me and the rest of the leadership team with a view that the schedule was achievable.

On the other side, we had a view from Westney, who were not experts in hydro developments to the same degree that the SNC planners and our planners working with them were, developing schedules based upon individual (inaudible) coming from the engineering design. What Westney looked at is: What are the pivot points that might end up if you don't achieve them? And so, I'll step through them.

The first pivot point was the ability to achieve bulk excavation in accordance with a schedule, and to place the riverside cofferdam. That was done on time, on schedule. And what Westney said: Well, if you didn't achieve that one, you would lose a whole season. But we didn't.

The second one, second pivot point, which is, you know, like a weather window-type thing if you understand that term, was the river diversion. So the river diversion required the spillway to be concrete and in use. We achieved that schedule as well, and we diverted the river by putting the cofferdam in place.

The third one – so, again, that would've been another year that would've been lost. The third pivot point, which is what Westney were telling us, right, that these things, you know, if you don't get this one, it's gonna throw you out.

They claimed it was productivity of the labour, availability of the labour, and weather. Well, it wasn't the availability of labour, we got the people. It wasn't necessarily the weather, although the failure of the ICS contributed to the fact that we couldn't pour concrete to the degree that we wanted to, in winter.

So it was Astaldi's performance that pushed that final one out.

**MS. MUZYCHKA:** Mmm.

**MR. P. HARRINGTON:** And, yeah, that's what happened.

**MS. MUZYCHKA:** Okay. But that doesn't answer the question that –

**MR. P. HARRINGTON:** Sorry.

**MS. MUZYCHKA:** – the project management team was not aware of the aggressive nature of the schedule. Is that – or were they aware?

**MR. P. HARRINGTON:** I think they were aware.

**MS. MUZYCHKA:** Did they know that it was –?

**MR. P. HARRINGTON:** It was in the QRA.

**MS. MUZYCHKA:** So they knew that they had a 5 – less than 5 per cent chance of –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – making it.

**MR. P. HARRINGTON:** We looked at that, and that was based upon the analysis –

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** – not the schedule work that was done by the –

**MS. MUZYCHKA:** No, fair enough.

**MR. P. HARRINGTON:** – experts' people. So we had this – you know, two views. We knew it was aggressive because, you know, whether it was a P5 or P10, I think that's the two bookends.

**MS. MUZYCHKA:** Okay. But the point is, then, if you did know that it was aggressive, and then there's things that are happening along the way that are causing a slowdown and delays in the projects and cost overruns, that it's not really fair to say to the new incoming CEO that – you're throwing up your hands and saying: Well, it wasn't our fault, we didn't set the schedule.

**MR. P. HARRINGTON:** Yeah, I don't think we're – you know, I don't think we're abdicating responsibility. Don't think that, right.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** We know we're responsible for the things that we can control. And that's what we've been doing diligently. I really believe that.

**MS. MUZYCHKA:** Okay, the next document I want to turn to is at the PMT binder, but it's P-02299. It's binder 1 at tab 23.

**MR. P. HARRINGTON:** Binder 1, tab?

**MS. MUZYCHKA:** Twenty-three.

**MR. P. HARRINGTON:** Twenty-three.

**MS. MUZYCHKA:** All right. This is an email chain between you and Nik Argirov, the independent engineer.

**MR. P. HARRINGTON:** Mm-hmm.

**MS. MUZYCHKA:** And it's dated June 6, which is the same date that you wrote to Mr. Marshall, the letter that we were just looking at. You're writing to Mr. Argirov about the letter to Mr. Marshall, that you're going to write and the struggles that you're having with the team.

Now, as the independent engineer, why was it that you're writing to Mr. Argirov at this point, this – making this statement? Can you explain why you're engaging in this?

**MR. P. HARRINGTON:** Because Mr. Argirov, as the independent engineer, was aware of what was going on in the team. I mean, he knew that all of this upheaval: CEO leaving, new CEO coming in, EY and their big goal objectives and

what impact that was having on the team. As his – part of his responsibility is to look at, for Canada, risks and that includes, you know, an effective and fully functioning project management team so –

**MS. MUZYCHKA:** Yeah, well, let's look at the bottom – or, sorry, the top of page 2 of that email.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And that's your original message to Mr. Argirov.

**MR. P. HARRINGTON:** Yup.

**MS. MUZYCHKA:** So, you say –

**MR. P. HARRINGTON:** Because he met with Mr. Evan – Marshall, rather, and he was well aware of what was going on and he raised his concerns to me and I raised my concerns to him, right.

**MS. MUZYCHKA:** So you're saying that Mr. Argirov spoke to you about the concerns?

**MR. P. HARRINGTON:** Yes, he was concerned what was going on with the team. You know, he's been in project teams before, he saw what was going on, he had eyes, you know. He was looking and seeing things and, you know, he was a – he believed that the integrated team that we moved to was a very sensible move and here we are, we're about to split the team up.

**MS. MUZYCHKA:** Okay. Because you do say in your email: "It seems the splitting up of the project team into Generation and LTA/LIL is back with a vengeance. I am very concerned that there will be senior folks leave. You have stood up for the project team and I appreciate that but I am not sure that our new CEO cares about the team I don't expect you to do anything more a simply wanted to let you know."

What did you mean by: You have stood up for the project team?

**MR. P. HARRINGTON:** Well, you know, he was a strong supporter of the move to the integrated team. He wrote that in one of his

reports. He thought that it was a very sensible move and he's always been – he's been appreciative of the work that's been developed by the team and he's, you know, he's seen the positive aspects of the team, and that's about it really.

I didn't know Stan at all, so that's why I'm saying that. I don't know whether he cares about the team or not. We were all expecting to be shown the door, to be honest, at that point in time.

**MS. MUZYCHKA:** Okay. Just struck me as interesting that you would have involved the independent engineer.

**MR. P. HARRINGTON:** But he has a responsibility for, you know, how the team performs. He reports to Canada, and there we are.

**MS. MUZYCHKA:** Okay.

Let's go back to binder 2 of Paul Harrington, hearing binder. And we're looking at Exhibit 02343, and it's at tab 73.

**MR. P. HARRINGTON:** Seventy-three?

**MS. MUZYCHKA:** Seventy-three.

**MR. P. HARRINGTON:** Thank you. Give me a moment.

**MS. MUZYCHKA:** This exhibit is two emails from you to Nik Argirov. Here it looks like you're describing a situation where a number of people on the project management team were not invited to an event. This is a more recent email than – this is about two years later.

I want just to – you say, "Nik, it is quite surprising and no doubt hurtful to those on the Project team who led the transmission and switchyard/converter projects for so many years getting to 80% complete that they have not been invited to the event today. I am not thinking of myself but others such as Ron Power, Lance, Jason, Scott. Quite disappointing and indicative of poor form. This is truly that stage of a project where there is a reward of the uninvolved as Stan would say."

And then you state at the follow-up email: "I am reminded of the novel by George Orwell 1984 where history was rewritten to suit the political agenda. Revisionism is alive and well with John MacIsaac where Darren Debourke and Jason Kean become non persons and everything they did was forgotten and all the credit is taken by folks who didn't do the heavy lifting. Shame on Nalcor."

So I'd like you to explain what you were thinking at that time and why you used the term: shame on Nalcor.

**MR. P. HARRINGTON:** I thought it was very poor form for – not only were some people invited, at one time –

**MS. MUZYCHKA:** And what was the invitation for?

**MR. P. HARRINGTON:** This is for the big event that occurred at Soldiers Pond, which was a big media event. And everyone was there for the photo ops and – big deal.

So some of these people are listed there were actually invited and then uninvited. So that's why I'm saying that's pretty much a – not a nice thing to do to someone. Especially from some of these people who'd taken the switchyard and HVDC work at Soldiers Pond from a blank piece of paper to where it was at that point in time.

I'll always stand up for the team and I do believe that it was poor form.

**MS. MUZYCHKA:** What about the comment about revisionism? What did you mean by that?

**MR. P. HARRINGTON:** Well, all of a sudden Darren DeBourke and Jason Kean won't exist with regards to the contribution that they had made to get it to 80 per cent complete.

They did a lot of work here, and for them to be just completely ignored, I thought that was – hence, the expression: Shame on Nalcor for that one.

**MS. MUZYCHKA:** And, I mean, clearly, you obviously had strong issues about the decision of Mr. Marshall to bifurcate the project.

Did you also have issues with John MacIsaac?  
He was brought from the Hydro team to –

**MR. P. HARRINGTON:** So, I'll go back.

You know, I believe I had expressed my opinion about the bifurcation and raised my concerns –

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** – with Mr. Marshall, you know. I think it's going a little bit too far to say I had strong opinions. I was just trying to express – as I felt was my duty as project director to raise some concerns with Mr. Marshall. And I can tell you, and, hopefully, Mr. Marshall will back me up on this, that he appreciates honest and direct communication to him. He doesn't want to be surrounded by yes people. That's what he has told me.

We have a good relationship, I believe, I hope, and – well, I'm still around, so I must be – says something to me. And he, you know, he appreciates what – my opinion on things, and I will offer it.

**MS. MUZYCHKA:** What about Mr. MacIsaac?

**MR. P. HARRINGTON:** Mr. MacIsaac, I think, has a completely different style. I didn't think that Mr. MacIsaac's style would be compatible with the team that had been put together. And, as it turned out, my concerns were actually realized.

Mr. Kean left, Mr. Darren DeBourke departed, Ms. Tanya Power. So, that's two project managers and a deputy. That's a big hit, right? I've only got three, at the time.

**MS. MUZYCHKA:** But you had the, you know, introduction into that team of Mr. MacIsaac, so it – while you may have been down one or two members, there was the bringing in of a new manager –

**MR. P. HARRINGTON:** Yeah, but, you know –

**MS. MUZYCHKA:** – who had a lot of experience.

**MR. P. HARRINGTON:** – he didn't have that background knowledge that Mr. Kean had, Mr. DeBourke had with regards to the contract negotiations, you know.

So, I just – you know, I expressed my opinion and, you know, it was – Mr. Marshall came back and said: Well, there you are, that's what it is, so get on with it. And so I did.

You know, once I've expressed my opinion, I'm not going to be a fifth column and work against it. I'll just get on with my job, which was focusing on the C1.

**MS. MUZYCHKA:** Okay.

And now if we can move to Exhibit P-02220, and it's at tab 74, page 1. This is an email to you – from you to James Meaney and a number of other people, dated November 6, 2013. So, we are going back to the pre-Astaldi contract award time.

**MR. P. HARRINGTON:** Okay. Yeah.

**MS. MUZYCHKA:** Page 1. This email – or you're attaching a draft of the independent engineers report, with a number of your written comments. Do you see that?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** All right.

Now, on page 5 – if we turn to page 5, scroll up a little, the circled area, that's good. You have circled: "MWH has direct working experience with Astaldi's Latin America company as Owner's Engineer on much smaller hydroelectric projects with less severe weather conditions than prevailing conditions at Muskrat Falls. Our experience leads us to a suggestion that this contract be very carefully managed by the Integrated Project Team to avoid change orders, in MWH's opinion, and to keep the work on schedule."

And then if we go back to page 1 of the email, you write at number 3: "Astaldi - MWH are in a conflict with this the S American projects they claim to have been the Owners Engineer is incorrect - the Chacayes Project they were the detailed design engineer contracted to Astaldi,

Hatch was the Owners Engineer and that Project won Hydro Project of the year in 2012 and also environmental awards so how MWH can say that they had a bad environmental performance and overall failure beats me.”

And then you state: “All specific comments to Astaldi and extra vigilance are uncalled for - I have no problem with MWH being generic in commentary saying that ‘nalcors should take appropriate Project management oversight of key contractors based on the level of actual or perceived risk.’”

Can you explain, first off, why you thought that MWH was conflicted?

**MR. P. HARRINGTON:** Because they were in a contractual dispute.

**MS. MUZYCHKA:** With?

**MR. P. HARRINGTON:** With Astaldi.

So – that’s it.

**MS. MUZYCHKA:** That’s it.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** And so you felt that undermined their comments in relation to –

**MR. P. HARRINGTON:** Well of course, yeah.

**MS. MUZYCHKA:** Okay.

The comment from MWH was an explicit observation regarding potential Astaldi issues –

**MR. P. HARRINGTON:** Well that could be applied to any contractor. You got to be alert to claims. I mean, to be honest, you know, you could write that about all contractors that – and I felt that we should be taking appropriate project management oversight of key contractors. It’s not just Astaldi but all of them –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – based upon the level of actual or perceived risk. So, yeah, that was –

**MS. MUZYCHKA:** Clearly –

**MR. P. HARRINGTON:** – my position. That was my comment back to Jim. You know, if MWH weren’t willing to take that on board, well fine. But this is an internal one to James saying I thought that was out of order, and I stand by it. I don’t see anything improper with that.

**MS. MUZYCHKA:** So you didn’t see anything improper with asking the independent engineer to revise their report and remove the comment regarding careful management being removed?

**MR. P. HARRINGTON:** So, let me – I think it’s become a little bit more apparent in our business, in the project management business, that when reports are drafted, they are provided to Nalcors or whoever they’re dealing with, and the – it’s perfectly normal and common practice for comments to be provided back to them – feedback – be it, it’s commercially sensitive or it may be unnecessary. It’s factually incorrect, statements may be incorrect – I understand in many cases they don’t have the time that we have to look at all of the details, so they could get a hold of the wrong end of the stick.

And, you know, and then it’s – is it within scope, right, because, you know, we’ve seen and we’ve heard the many, you know, many reviews stray away from the riverbanks that have been set by the statement of work or scope of work description.

**MS. MUZYCHKA:** Okay but just, you know, on that point, the statement that was made by MWH was based on their experience and they had experience on the much smaller hydroelectric project with less severe weather conditions and they say, “Our experience leads us to a suggestion that this contract be very carefully managed by the Integrated Project Team ... and to keep the work on schedule.”

So, you know, it’s a statement alerting you – or, actually, they’re ultimately reporting to Canada who is financing this project.

**MR. P. HARRINGTON:** Yeah, and I’m agreeing with them, right, but I just wanted to make sure that –



**MS. MUZYCHKA:** But you wanted it out of the report.

**MR. P. HARRINGTON:** Where did I say that?

**MS. MUZYCHKA:** Well, you say, “All specific comments to Astaldi and extra vigilance are uncalled for.” But let’s look at the next page or tab – 75. That’s P-01986. That – binder 2, tab 75. And if we look at the November 29, 2013 version of the independent engineer report, page 46 shows that, ultimately, this wording was changed. The report now says – and it’s the last paragraph before 3.5.

**MR. P. HARRINGTON:** But I’m not – yeah – I’m not instructing them to change this. This is an internal thing from me to James Meaney because he asked me for my comments. If I’m asked for my comments, I’ll provide my comments. If Jim Meaney or the MWH people don’t agree with them, I’m fine with that.

**MS. MUZYCHKA:** I just –

**MR. P. HARRINGTON:** These are not – you know, I’ve heard them: Oh, you’re editing. No, I’m not editing. I’m providing feedback and comments. That’s what I’m asked to do and that’s what I do. They can take my comments or leave my comments, I don’t care.

**MS. MUZYCHKA:** Okay.

But, ultimately, when they finalize their report they state: “MWH has direct working experience with Astaldi’s Latin America company as Owner’s Engineer on much smaller hydroelectric projects with less severe weather conditions than prevailing conditions at Muskrat Falls. All contractors will require Nalcor management oversight.”

**MR. P. HARRINGTON:** So they –

**MS. MUZYCHKA:** Which is a lot softer than the ominous warning that’s contained in the first version.

**MR. P. HARRINGTON:** Yeah, but that’s up to them to – you know, I don’t direct them.

**MS. MUZYCHKA:** No, but your –

**MR. P. HARRINGTON:** This is internal review and it’s – this is quite normal. This is quite common. It happens –

**MS. MUZYCHKA:** Common to –

**MR. P. HARRINGTON:** In our industry that when we receive draft documents, we comment on them. It’s not automatically that the individual – I think you heard from Mike Kennedy recently that’s it’s perfectly normal to take – to receive comments, but it’s up to the author to accept or reject those comments. If they reject those comments, that’s where it stops.

**MS. MUZYCHKA:** You’re saying that your comments back to Jim Meaney were not meant to go back to the independent engineer and suggest a change.

**MR. P. HARRINGTON:** They’re not meant to instruct the independent engineer. If Jim felt that’s all – okay, I’ll roll those forward – because he was getting comments from lots of people, right? He would be the collator of those comments. So, that’s what I’m saying.

**MS. MUZYCHKA:** Where’s the independence of the independent engineer if his draft report is circulated to the management team that he is supposed to be providing oversight for on behalf of the Government of Canada – if you are reviewing his draft reports and making suggestions and perhaps even stronger suggestions –

**MR. P. HARRINGTON:** No, they’re not stronger than suggestions (inaudible).

**MS. MUZYCHKA:** Okay, well, even suggestions like revising and having the opportunity to revise a report.

**MR. P. HARRINGTON:** No, they’re not revising the report. I’m providing comments because I’m asked to provide comments.

**MS. MUZYCHKA:** Okay. But the only reason that you would be asked to provide comments on a draft report would be for purpose of revision; otherwise, you’d just be given a final copy and say, here you go, read it and if you want to comment on it, you can.

**MR. P. HARRINGTON:** Well, the independent engineer does it today.

**MS. MUZYCHKA:** But you also have –

**MR. P. HARRINGTON:** The Oversight Committee do it today. EY did it and will do it – if they're still around, I don't know – but they provided theirs for comment. This is not unusual. This is not, you know, a step in – you know, into a new area; this is common practice. I think it's been – like, I think within the Commission, I think it's just new, that you don't expect this to happen, but it happens all the time.

**MS. MUZYCHKA:** Okay.

Well, I would suggest that some people might see that as encroachment on the independence of the reports that followed.

**MR. P. HARRINGTON:** Well, I –

**MS. MUZYCHKA:** And I'll just put that out there for you.

**MR. P. HARRINGTON:** You know, all I'm asked – if somebody asked me to provide comments, I'm going to provide comments.

**MS. MUZYCHKA:** All right.

In hindsight, do you think that the comments of the independent engineer with respect to the close eye that – and vigilance on Astaldi was warranted?

**MR. P. HARRINGTON:** I don't think we could've had more vigilance on Astaldi to be perfectly frank. We were on them from the get-go.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** I didn't need that to be told and I saw what was happening.

**MS. MUZYCHKA:** All right.

I'm going to turn now to the project management binder, binder 1, tab 15 and it's Exhibit P-02212.

**MR. P. HARRINGTON:** Could you – hang on a second actually. I'll get this one out here.

**MS. MUZYCHKA:** This is an email chain between you, Jim Meaney –

**MR. P. HARRINGTON:** Could you just –

**THE COMMISSIONER:** Tab 15.

**MR. P. HARRINGTON:** Say again?

**THE COMMISSIONER:** Tab 15.

**MR. P. HARRINGTON:** Fifteen.

**THE COMMISSIONER:** Yeah.

**MR. P. HARRINGTON:** Thank you very much, Commissioner.

Please, yes.

**MS. MUZYCHKA:** All right, so this is an email chain between you, Jim Meaney and Lance Clarke in November of 2013, and if we go to page 2.

**MR. P. HARRINGTON:** Two, yeah.

**MS. MUZYCHKA:** And at the bottom of page 2 and it goes to page 3, you make comments about the removal – or you vote to ask to have Jim Looks – Loucks?

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** So, first of all, who is Mr. Loucks? What's the background here on this email exchange?

**MR. P. HARRINGTON:** What he did? What was his role? I'm not sure, to be – this was –

**MS. MUZYCHKA:** Was he someone that is on the independent engineer –

**MR. P. HARRINGTON:** So, it says here –

**MS. MUZYCHKA:** – team?

**MR. P. HARRINGTON:** – on page 3 – so when you enter into a contract – and at the time, I think, the contract, it was between Nalcor and

MWH – you name individuals there, right? And Mr. Loucks is not – so this is from Lance Clarke to me.

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** And this states that Mr. “Loucks is not a named person in Schedule B” – so that’s the contract he’s referring to – “nor is that person shown on the” organization form “chart so I vote” – to be him – “ask him to be removed from this work - he has not been authorised.”

So, as far as Mr. Clarke is saying here, this person isn’t even part of the team. So where does he come from?

**MS. MUZYCHKA:** Well, actually, you wrote the email, first off, on the very bottom.

**MR. P. HARRINGTON:** Oh, yes.

**MS. MUZYCHKA:** And, you say: “A couple of observations.

“1 There is nothing in the Scope Of Work which indicates that the IE” –

**MR. P. HARRINGTON:** You’re right. Sorry, I missed that.

**MS. MUZYCHKA:** – “should provide unsolicited recommendations and certainly not as per the draft IE report that these recommendations are worded as instructions with timelines to deliver.”

And “2 Jim Loucks is not a named person in Schedule B” et cetera.

And then, Lance Clarke responds to you and says: “Agree with 1. On 2, I believe Loucks was added” –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** – “after so is authorized.”

**MR. P. HARRINGTON:** Yeah, you’re right. Yeah – I’m wrong.

**MS. MUZYCHKA:** Okay. And then Mr. Meaney responds, as well, and says: “Agreed and correct.” So –

**MR. P. HARRINGTON:** All right. Yeah, I’m following it now.

**MS. MUZYCHKA:** Yeah. Sometimes it’s hard to read that. I understand.

**MR. P. HARRINGTON:** So this was just kind of an internal toing and froing.

**MS. MUZYCHKA:** Right but then you say – and we go back to page 1 –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – “Well if he was added he can be removed - I do not believe he adds any value so when” I “get through the IE report we should get Loucks and Rey removed from the team. Rey because of his poor organization and general performance and Loucks because he is argumentative and antagonistic towards Nalcor.” So –

**MR. P. HARRINGTON:** Yeah. That was my view and I thought he was being extremely difficult and not difficult in a – you know, an inquiring way, just provocative and he wasn’t really adding any value.

**MS. MUZYCHKA:** Okay.

Now, I understand the contract was made between Nalcor and MWH, but the services were being provided to Canada –

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** – as the independent oversight –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – to them as their – I guess, not security, but reassurance that the project is moving along as it should, that they’re financially backing.

**MR. P. HARRINGTON:** Mm-hmm.

**MS. MUZYCHKA:** So why is it that you would feel that you could interfere with the staffing choices that the independent engineer would make at their level in these circumstances?

**MR. P. HARRINGTON:** Well, I was –

**MS. MUZYCHKA:** They have a task, they're reporting to the Government of Canada and you're saying: I don't like these two; they're difficult, argumentative and poor performance. They should be out.

**MR. P. HARRINGTON:** That is right. Well, that's internal, it's not – this is not addressed to the IE; these were my views. And as a project director I'm always looking at, you know, are we getting any value out of these particular individuals.

And, you know, it's not the IE per se. Mr. Loucks was added, as you noted, at a later point in time; he wasn't on the original scope. And I just – the feedback I was getting from the team is that this isn't – this is going to be crazy if this guy carries on like this. And with regards to Mr. Rey, which is Mr. Rey Hokenson, it was the – Canada's representative, Alison Manzer, who eventually felt that he should go, right?

**MS. MUZYCHKA:** Okay.

All right, let's look at P-02264 and it's in the Paul Harrington binder 2 at tab 76.

**MR. P. HARRINGTON:** Could you say again, please?

**MS. MUZYCHKA:** It's at tab 76.

**MR. P. HARRINGTON:** Okay, thank you.

**MS. MUZYCHKA:** All right, this is an email chain involving James Meaney, and Nick Argirov, and a number of other individuals and yourself. And the email attached is a presentation called Muskrat Falls Project Cost Update, July 22, 2014.

Okay, and if we scroll down, it appears that the presentation deck was sent – re-sent to Mr. Argirov in November. And I believe the dates of the email is, yeah, November 19.

So the independent engineer was supposed to be verifying the cost overruns. Is that correct?

**MR. P. HARRINGTON:** I think it's part of the project finance. And this is not my area, but I'll do my best. The cost – as part of the project finance agreement, there was such a thing called the cost overrun certificate that had to be issued on an annual basis on the anniversary of the financing. I think I'm correct in that.

**MS. MUZYCHKA:** Okay.

So this is dated July 22, 2014, and then we see that it's being re-sent to Mr. Argirov in November of 2014, some months later.

**MR. P. HARRINGTON:** From Jim Meaney, yeah.

**MS. MUZYCHKA:** Sends it, yeah.

And so if we scroll down through the PowerPoint, or the deck, just go down to – and we can look at, say, on pages 22, 23, thereabouts.

**MR. P. HARRINGTON:** 22, 23.

**MS. MUZYCHKA:** And this provides status, budget amounts, AFE, variances. Just continue to scroll to the next page, yeah. Not to get into those numbers, my point is just simply to illustrate what information is contained in this slide, or in this presentation. And there's also capital cost drivers, forecast – there's a lot of financial information, and it's obviously a cost update.

So my question to you is whether the independent engineer was doing any independent work to verify the cost estimates, or was he relying entirely on the numbers that were given to him by Nalcor?

**MR. P. HARRINGTON:** I wouldn't know for sure.

**MS. MUZYCHKA:** Okay.

But you'd see his reports, and you know what information is being generated by your group.

**MR. P. HARRINGTON:** But the question was, was he doing anything in the background.

**MS. MUZYCHKA:** Yes. Do you know if there –?

**MR. P. HARRINGTON:** I don't know.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So whether – the other part of your question was, was he relying 100 per cent on the information that was presented here. I wouldn't know that either, because you would have to ask Mr. Argirov.

**MS. MUZYCHKA:** Okay.

If we continue on to P-02290. It's in the PMT binder, number 1.

**THE COMMISSIONER:** All right.

What tab is that?

**MS. MUZYCHKA:** Tab 20, Commissioner.

**THE COMMISSIONER:** Thank you.

**MR. P. HARRINGTON:** I didn't hear that one, sorry.

**THE COMMISSIONER:** Tab 20.

**MR. P. HARRINGTON:** Thank you very much.

**MS. MUZYCHKA:** This is an email from Alison Manzer, who is the legal counsel for Canada. And if we go to page 2, you can see that it's a letter dated October 16, 2015. And if we scroll down – actually, just scroll back up, sorry. This paragraph here is good.

This happened after they received a September cost update of \$7.65 billion. And they were saying it was surprising and that "Both Canada and the Independent Engineer feel that the buildup of these cost overruns, and a proper estimate of further anticipated cost overruns, should have been identified on a month to month basis."

I'm not sure – that's in the first paragraph. So there appears that there was some delay in information that was being provided. Is that consistent with your understanding of the expectations for cost information going to the independent engineer, that it would be updated monthly?

**MR. P. HARRINGTON:** So they receive construction reports from Nalcor on a monthly basis. So I believe that's, perhaps, what they're referring to.

**MS. MUZYCHKA:** But it doesn't appear that they were getting the information on a timely basis. So by the time they learned of the \$7.65 billion update, several months had passed. And I take it that they're expressing displeasure with not being provided with information on a more timely basis.

**MR. P. HARRINGTON:** It does seem that way.

**MS. MUZYCHKA:** Do you know why that wasn't happening? Why that information was not being provided?

**MR. P. HARRINGTON:** I don't sign off on the construction reports.

**MS. MUZYCHKA:** No, but there's – you know, as a project director there are certain protocols and information that's required to go to the various agencies, especially one that's providing –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – financial support.

**MR. P. HARRINGTON:** And I think what they're pointing to here, and I haven't because I wasn't involved in this when – I read this yesterday.

They're talking about means and methods and ways to improve upon that. So, obviously, there was a disconnect somewhere along the line, and Cassels Brock are now suggesting how best to address that. So, yes, there was a disconnect and

–

**MS. MUZYCHKA:** They issued fairly strong directions.

**MR. P. HARRINGTON:** Oh, yeah. I – yeah, absolutely.

**MS. MUZYCHKA:** And are you aware whether or not there was a change in the protocols after that?

**MR. P. HARRINGTON:** I believe so, yes, because otherwise we wouldn't have got funding the next month. So I think there was an acknowledgement by – Mr. Meaney and Mr. Bennett would be the primary contacts here, and Mr. – I think the other lawyer was Mr. Xeno Martis from Faskens.

So, I think we held a meeting at – I seem to remember – in Ottawa where these things were talked through, and there was a consensus of opinion that we would be doing exactly what they've asked, to try and avoid repetition of the disconnect that obviously occurred here.

**MS. MUZYCHKA:** Okay.

All right. Commissioner, I don't know if this is a good time to take our morning break.

**THE COMMISSIONER:** We can do it. Seeing as we started at 9 this morning, it might be a good spot.

So we'll take 10 minutes now.

**MR. P. HARRINGTON:** Ten minutes, okay.

**THE COMMISSIONER:** Ten minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right.

Ms. Muzychka.

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

All right, Mr. Harrington, we're gonna turn to tab 22 of – sorry, just lost my place – tab 22, the PMT binder 1.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And that's P-02297. Right, and this is an email exchange between yourself and Mr. Harrington – or Mr. Meaney, involving an exchange of emails with the independent engineer.

At the bottom of page 1, we see that Nik Argirov sends you a message attaching a chain of emails between him and Canada. He says: "Highly confidential!" On page 2 and 3 of the document, we see that Nik Argirov has given his concern to Canada regarding the change – the management changes when Stan Marshall came in as CEO.

And if we look at page 3, just down to the bottom, the Nik Argirov email, May 24, 2016, it just highlights: "The recent press coverage and purported senior management announcements of Nalcor regarding the Lower Churchill project has given rise to an identified risk. That risk being the ability of the project to be completed on the current time schedule and budget."

Why did Mr. Argirov send his advice to Canada about bifurcation to you, on a highly confidential basis, using your personal email address?

**MR. P. HARRINGTON:** I really don't know why he'd sent it to me – I mean, I don't know the exact details of why he would do that to me. But, you know, he was – he knew that I was deeply concerned about the risk that I perceived. So this was before I even wrote the letter to Mr. Marshall. So he's just telling me that he sees the same thing. So –

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** – why he sent it to my personal address, I couldn't answer. I don't know.

**MS. MUZYCHKA:** Okay.

Do you believe it was appropriate to receive highly confidential discussions regarding the engineer – independent engineer reports and

recommendations to your personal email? Why – you know, you must have established a chain of communication with Mr. Argirov and provided him with your personal email address, rather than using your Lower Churchill address.

**MR. P. HARRINGTON:** Well, he knew of my personal email address because, you know, from time to time we'd be visiting sites and I wouldn't generally – you know, I'd use my personal phone in those types of situations because I'm not looking around a Nalcor computer.

**MS. MUZYCHKA:** You – do you get emails on your phone?

**MR. P. HARRINGTON:** Yeah, I provided thousands of them.

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Yeah, yeah.

**MS. MUZYCHKA:** So – well, why wouldn't you have him send emails to your Nalcor address, if you have them on your phone?

**MR. P. HARRINGTON:** No, I don't have a Nalcor address on my phone.

**MS. MUZYCHKA:** You don't.

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** So how do you –

**MR. P. HARRINGTON:** I'm sorry, I'm misheard you there.

**MS. MUZYCHKA:** So you received them, what, on an iPad or ...?

**MR. P. HARRINGTON:** If I have an iPad with me, yeah.

**MS. MUZYCHKA:** Well, how do you receive email communications when you're on the road?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** How do you, was my question.

**MR. P. HARRINGTON:** It depends. If I'm on the plane, right, I'm not going to get my computer out or my iPad out. I'm gonna use my phone.

**MS. MUZYCHKA:** So that's how you would communicate, with your phone?

**MR. P. HARRINGTON:** The most convenient method.

**MS. MUZYCHKA:** And on your phone – I'm not trying to trip you up –

**MR. P. HARRINGTON:** I know.

**MS. MUZYCHKA:** – here, I'm just trying to understand. Do you have your personal email on your phone?

**MR. P. HARRINGTON:** Only.

**MS. MUZYCHKA:** Only.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And you don't have – so this is your personal phone or is it a Nalcor phone?

**MR. P. HARRINGTON:** I don't have a Nalcor phone.

**MS. MUZYCHKA:** So – and I understand that you're an independent contractor just like –

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** – the other members of –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – the team.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** So you, through your business, provide yourself with a phone?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And that phone is for business purposes?

**MR. P. HARRINGTON:** And personal.

**MS. MUZYCHKA:** And personal.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** But you don't keep – or you don't have –

**MR. P. HARRINGTON:** I don't have two phones, no.

**MS. MUZYCHKA:** You don't need two phones.

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** I mean, most people have – or many people have their personal email address and their business email on the same phone device.

**MR. P. HARRINGTON:** I don't think that's permitted. I could be wrong, but –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – I don't – I mean, (inaudible) like that.

**MS. MUZYCHKA:** All right.

So you're telling me then that you don't receive any business emails on your – on a portable device such as a cellphone?

**MR. P. HARRINGTON:** I don't have PHarrington@lowerchurchillproject or whatever it is. Yeah, I don't have that.

**MS. MUZYCHKA:** Okay. So the only way would be if you were to look at your laptop?

**MR. P. HARRINGTON:** Or – yeah, and that might be in an overhead or whatever, you know.

**MS. MUZYCHKA:** Okay. But when I meant travelling, I didn't actually mean being up in the sky. I meant being in another location or –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – being on the road to visit, you know, an office of one of the –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – contractors or –

**MR. P. HARRINGTON:** Sometimes I do and sometimes I don't. It's – it just depends.

**MS. MUZYCHKA:** Okay.

I'm just puzzled how you would, you know, be reached. As a man of considerable authority over this project if you don't have an email address on your personal phone device or on your business phone device – and maybe you don't because it's –

**MR. P. HARRINGTON:** I –

**MS. MUZYCHKA:** – for reasons, I don't know, but I just –

**MR. P. HARRINGTON:** I check it when I go up to the hotel or something like that.

**MS. MUZYCHKA:** You check your emails?

**MR. P. HARRINGTON:** Yeah, at nighttime when you're finished all of the travelling, or whatever it is you're doing, and meetings. I don't tend to, you know, open my iPad when there's a meeting going on.

**MS. MUZYCHKA:** No, but if someone had to reach you?

**MR. P. HARRINGTON:** They'd phone me.

**MS. MUZYCHKA:** They'd phone you. Or would they text you?

**MR. P. HARRINGTON:** Probably text me to say: Please phone me. Yeah.

**MS. MUZYCHKA:** Okay.

So you're saying then that for Nik Argirov to be able to reach you, you provided him with your personal email address?

**MR. P. HARRINGTON:** Well, he just knew it, I think. Yeah. He probably had it in his – well, I can't answer that. I don't really know and I won't speculate.



**MS. MUZYCHKA:** Okay.

So it's not because you didn't want this information to go through the regular channels at Nalcor? The normal business –

**MR. P. HARRINGTON:** Well, he didn't.

**MS. MUZYCHKA:** He didn't or was it –?

**MR. P. HARRINGTON:** Well, I didn't say use my email here, did I? No, he just sent it to me.

**MS. MUZYCHKA:** Okay.

We've seen a few emails earlier, as well as this one, where you are communicating with the independent engineer through your personal email address.

**MR. P. HARRINGTON:** Yeah, yeah.

**MS. MUZYCHKA:** And I believe one of them you may have – I can't put my hands on it, but you may have asked that he contact you through your personal email.

**MR. P. HARRINGTON:** I may have done that, yeah.

**MS. MUZYCHKA:** Or he may have asked you. But either way, Mr. Harrington, I'm wondering whether or not that is appropriate, in a business context, to be having communication with someone whose role is oversight for the major financial backer of this project, to be communicating outside of the normal business channels.

**MR. P. HARRINGTON:** You know, I don't see that there's anything improper about it.

**MS. MUZYCHKA:** You don't see the optics of the fact that there is a line of communication through business?

**MR. P. HARRINGTON:** No, because if it resulted in something business-wise, then it'd become part of the record. If it's just some communication backwards and forwards on things that may be moving along, then I can't say more than that, really.

**MS. MUZYCHKA:** All right.

Mr. Harrington, I'd like to just go back to the letter that you wrote to Mr. Harrington – Mr. Marshall.

**MR. P. HARRINGTON:** Marshall.

**MS. MUZYCHKA:** You're Mr. Harrington, and I just need to find the reference as to where that is.

It's at Paul Harrington binder 2 at tab 72, and it's P-01962.

**MR. P. HARRINGTON:** 72.

**MS. MUZYCHKA:** I just want to scroll up to page 2, and go back to – yeah, that's fine.

**MR. P. HARRINGTON:** Can I catch-up, please? I'm just getting there.

Page 2, yes.

**MS. MUZYCHKA:** Okay.

I'm not clear that you answered the question this morning, but I'm going to ask you again.

On the statement that you wrote, that's underlined, where you say that: "However the direction that was provided to the Project Team was to set a very aggressive schedule with a First Power target that was recognized as being in the P5 to P10 range." that that is a true and correct statement?

**MR. P. HARRINGTON:** What? Is there a question there, sorry?

**MS. MUZYCHKA:** Is that statement, with respect to the schedule –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – being recognized in the P5 to 10 range, is that a true statement?

**MR. P. HARRINGTON:** As I mentioned earlier, the –

**MS. MUZYCHKA:** It's a yes or no.

**MR. P. HARRINGTON:** Oh, yes.

**MS. MUZYCHKA:** Is it true or is it not true?

**MR. P. HARRINGTON:** Yes. Yeah. As I mentioned earlier, as well, the – we had the two – what I call the book ends.

**MS. MUZYCHKA:** Right. So, are you saying that it's a true statement – yes?

**MR. P. HARRINGTON:** Yes

**MS. MUZYCHKA:** Okay.

All right, the next document or section that we're going to talk about is with respect to EY and the Oversight Committee.

How would you describe your feelings towards having the involvement of the Oversight Committee on this project? Your views, not feelings. That's too subjective.

**MR. P. HARRINGTON:** My views, okay.

Well, my – how can I best convey this – and I may be a little bit long here – but my primary objective as project director is to provide guidance and leadership to the project team to deliver the project. That is our prime function. That is where I'm trying to keep the team focused on all of the time and we don't have, you know, excess resources to deal with things.

So any – and I'm not just saying the Oversight Committee – but any additional impact on or demands for time from other outside sources that require resources to be reassigned from the project team from what we should be doing on a day-to-day basis, I'll always, you know, I'll always try and seek absolute clarity on those things.

Now, the way that I seek absolute clarity is I always say: Is this a duplication of effort? Has it been – has this review been done before, right? Or are we providing information that would inform you already? Number two: Is there a clear scope of work, riverbanks, so that we can make sure that we understand the information that you're looking for? And once I have those in place, I will then assign the appropriate resources to efficiently answer the questions that are being posed.

Now, that, you know, I'm clear on that and I'm very firm on that because I've seen in my 40 years of experience of megaprojects and I've been involved in multiple reviews, as a reviewer and the reviewee, unless you have those things clearly defined, you get scope growth, you get people doing work that –

**MS. MUZYCHKA:** Okay, that's –

**MR. P. HARRINGTON:** – they shouldn't be doing because it's outside scope and it takes away the work that the team should be doing.

**MS. MUZYCHKA:** All right.

Well, let's – before you go any farther with it, let's just bring up Exhibit P-02049. I don't believe it's in your books, so it'll come up on the screen.

**MR. P. HARRINGTON:** It's not in my book. Have I seen it before?

**MS. MUZYCHKA:** You probably would have. It's a release –

**MR. P. HARRINGTON:** Oh, okay.

**MS. MUZYCHKA:** We'll just bring that up, Madam Clerk.

So it's dated July 29, 2014, and if we look at the mandate, just so we understand the parameters here: "The Oversight Committee ... of the Government of Newfoundland and Labrador has been established to provide" –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – "reliable and transparent oversight on the following key issues associated with the Muskrat Falls Project ...."

Number "1. The Project cost and schedule is well managed – the Committee will examine" – such – "issues ... as whether management processes and controls are well-designed and followed, contracts are being managed diligently and financial drawdowns comply with the established processes" and then "2. The Project is meeting the cost and schedule objectives ..." – and what – "the Committee will examine ..."

and thirdly: “The cost and schedule risks are being reasonably anticipated and managed ....”

And so it sets out there – just scroll up a little more, Madam Clerk. Right, okay, so that’s – and it states that: “The Committee’s mandate does not include participation in the management of the Project,” et cetera.

So, given the scope, the mandate of the Oversight Committee, and it is certainly focused on the transparent and – scroll down a little bit – or sorry, up, please, right – reliable and transparent oversight. So it is – the goal is for oversight.

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** Then we know that the Oversight Committee retained EY to assist them in their mandate to –

**MR. P. HARRINGTON:** In –

**MS. MUZYCHKA:** – provide expertise.

**MR. P. HARRINGTON:** In 2015.

**MS. MUZYCHKA:** Right, in 2015, and – so, essentially, the Government of Newfoundland, through its committee, has appointed –

**MR. P. HARRINGTON:** Hmm.

**MS. MUZYCHKA:** – the – EY to oversee things and, as the owner, do you have any issue with the fact that they would be –

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** – entitled to have oversight on a project that they’re backing for –

**MR. P. HARRINGTON:** Not at all.

**MS. MUZYCHKA:** – many –

**MR. P. HARRINGTON:** Not at all.

**MS. MUZYCHKA:** – billions of dollars?

**MR. P. HARRINGTON:** Yeah, not at all.

**MS. MUZYCHKA:** Okay.

Now, if we turn to Exhibit P-03286, that’s in Paul Harrington binder 2 at tab 77, we’ll turn to page 2.

**MR. P. HARRINGTON:** What was the tab, sorry?

**MS. MUZYCHKA:** Seventy-seven.

**THE COMMISSIONER:** Seventy-seven.

**MR. P. HARRINGTON:** Seventy-seven.

**MS. MUZYCHKA:** Okay.

So we’re at page 2 and we’ll – this email of April 10, so we’ll just continue to scroll right there. Thank you.

So Mr. Noble, who is one of the members of EY, he writes about having a meeting with individuals involving the Nalcor team, the CFO, direct independent auditor – is that the IA – VP program and then the director program. Would that be yourself, Mr. Harrington?

**MR. P. HARRINGTON:** Say – can you just repeat that? I’m trying to follow it here.

**MS. MUZYCHKA:** Okay, well, just go to the email. It’s on page 2.

**MR. P. HARRINGTON:** Oh, page 2, sorry.

**MS. MUZYCHKA:** April 10, 2014.

**MR. P. HARRINGTON:** That would be – I think they’re referring to me.

**MS. MUZYCHKA:** Okay.

So they state in the second paragraph: “The meetings were understandably quite tense. The Nalcor team had received the government’s detailed data request... and rebuffed the request stating that it was more than required by other interested parties, but also was ‘superficial’ and at other times ‘too detailed, intrusive and requiring additional work’ ... and at other times ‘we already use that information.’”

**MR. P. HARRINGTON:** Well, yeah, I –

**MS. MUZYCHKA:** And then the next paragraph it states: “At the end of the first session, our client felt defended by EY but also a tad insulted by Nalcor’s Proj Dir who had dismissed inconsistently their requests.” Okay.

**MR. P. HARRINGTON:** I don’t understand who I dismissed inconsistently.

**MS. MUZYCHKA:** I think that may be a typo. I would suggest that they meant –

**MR. P. HARRINGTON:** That’s – I don’t –

**MS. MUZYCHKA:** – dismissed consistently.

**MR. P. HARRINGTON:** Yeah.

So, number one, this is from Mr. Noble internal. I can’t remember these meetings internally. I wouldn’t be – I mean this is his view on things.

**MS. MUZYCHKA:** Do you –

**MR. P. HARRINGTON:** I don’t agree with what he’s saying here. I don’t dismiss things just like that. So, you know, I – what can I say? He’s trying to extend his scope of work continuously on the project. Mr. Noble was frequently stepping outside of the scope of work that was assigned to him. And, as I said before, as soon as that happens you’re going to get push back because it means he’s tying up people from the project team that should be doing other things.

And, you know, for example – just as an example, in one of the EY – I think it was a later EY review, it was in excess of 50 project people that were involved over a period of eight to 12 weeks with EY. There were 35 meetings and we provide hundreds of documents to them. That takes an awful lot of effort. It takes an awful lot of things. People that should be doing one job; they’re now doing another job.

I know it’s important to do these things but it should be kept within a scope of work, because as soon as we start doing things outside the scope of work it shouldn’t – you know, it’s not part of the scope so it’s tying up my people who should be doing other things.

So, you know, Mr. Noble, it was a constant battle of wills with him to be perfectly honest.

He was constantly criticizing me and the way that – I mean, he was uncomplimentary about, you know, who I am and a seasoned program leader with a technical depth, local charisma, but with a hard edge.

We’ve seen emails from Mr. Noble which are very sarcastic in nature. We’ve seen emails from Mr. Noble which are not complimentary to the government, not complimentary to Julia Mullaley, not complimentary to almost anyone he had dealings with.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And I – you know, for me –

**MS. MUZYCHKA:** You disagree?

**MR. P. HARRINGTON:** – this is what his view on life; it’s certainly not my view on life.

**MS. MUZYCHKA:** Okay.

Well, let’s look at the bottom of page 1 and just in terms of the statement there of Mr. Charles-Antoine St-Jean. And he says, “I am a bit surprised at NALCOR...they should have expected that such high ticket /politically sensitive project needs a fairly robust monitoring framework...it is in everyone best interest.”

So do you agree with that statement?

**MR. P. HARRINGTON:** Well, no, because –

**MS. MUZYCHKA:** Not the part about being surprised.

**MR. P. HARRINGTON:** – I don’t agree with the premise.

**MS. MUZYCHKA:** Not the part that he’s surprised – I should be clear – that you should expect that such a “high ticket/politically sensitive project needs a fairly robust monitoring framework ....”

**MR. P. HARRINGTON:** And I believe there was a robust monitoring framework.

**MS. MUZYCHKA:** And what was that robust monitoring framework?

**MR. P. HARRINGTON:** Well, it was all of the governance that was put in place. That was – you’ve heard from other people, not just me, of how governance and how there was independent audits and reviews by other people. And I think even our, you know, current CEO said we’d been reviewed to death.

So, you know, this is all based upon total belief in which – in what Mr. Noble said. I disagree with Mr. Noble.

**MS. MUZYCHKA:** All right.

Well, let’s turn to tab 78, please, in the same book. And it’s Exhibit 03414.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** And this is a memo from EY documenting a meeting on May 6, 2015. And –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – we’ll go to page 6. And this is a memo of notes from the meeting with Paul Harrington on May 6, 2015. And we heard that this was a kickoff meeting, that people had come down from Toronto and elsewhere to meet with you and other members of the team.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** As –and at the bottom bullet, the first bullet, it says: “As soon as EY prepared to formulate the first question, Paul Harrington interrupted the meeting and left saying that he was expecting a debriefing and was not prepared to respond to any question.”

And then on the next page it says: “New time to interview Paul Harrington was discussed. He will not be available the following week; any meeting will have to be rescheduled” for the week of the 18th.

Now, we heard evidence from EY about that. And we also heard evidence from Craig Martin about that meeting.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** And so –

**MR. P. HARRINGTON:** Would you like to hear my side of it?

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Okay.

So I was – my meeting call was for an update meeting with EY, that they would present their status to me. When I got to the meeting I found out that I was brought there under false pretenses. They wanted to interview me and ask me a series of questions that I was totally unprepared for.

So I said, look, give me the questions that – number one, why would you hold an interview session with the executive director of the Government of Newfoundland and Labrador, when normally interviews are done one-on-one or one-on-two? You don’t invite an executive director to have – and this is all part of Mr. Noble’s, you know, methods. It was a constant battle with this individual. He was always trying to trick you into doing things and I was brought there under false pretenses.

**MS. MUZYCHKA:** But, now, if you look at the second bullet –

**MR. P. HARRINGTON:** And they didn’t respect me.

**MS. MUZYCHKA:** The second bullet notes that: “After Paul Harrington left, EY and Craig Martin had a meeting with Steve Pellerin and Doug Woodford to present the points EY intended to discuss with Paul Harrington.”

**MR. P. HARRINGTON:** Yeah, so what I asked for them – I mean, it’s normal – it’s normally respectful. I’m, as project director, a very busy guy. I don’t – I would expect and – you know, them to provide me with a list of questions beforehand so I could be prepared. It’s a lot more efficient to do it that way.

So, consequently, I got that list, I had a meeting with them on May the 30th, I provided fulsome answers to all of their questions, in writing.

**MS. MUZYCHKA:** Why couldn't you do that on the day when they had –

**MR. P. HARRINGTON:** Because –

**MS. MUZYCHKA:** – people there?

**MR. P. HARRINGTON:** – I wasn't prepared. They didn't – I didn't even know what questions they were going to ask. I need to be available to take the questions, go away and review them.

If they'd provided those questions to me a week beforehand, this meeting would have gone ahead with no problem. But I was told it's not an interview; it's a meeting to provide you – me – with an update of where we are. And then, they changed – they pulled the rug out from underneath me.

**MS. MUZYCHKA:** Then why did you leave?

**MR. P. HARRINGTON:** Because I had other things to do. I mean, what's the point in going into a meeting that is – you're there under false pretenses.

**MS. MUZYCHKA:** Why wouldn't you stay and listen to the points that they intended to discuss with you? Then, you'd be –

**MR. P. HARRINGTON:** They weren't intending to discuss anything with me; they wanted me to answer a series of questions that I wasn't prepared for at that point in time; I had another meeting to go to.

**MS. MUZYCHKA:** Well, then, additional cost and expense was incurred as a result of having to have the consultant travel back –

**MR. P. HARRINGTON:** They –

**MS. MUZYCHKA:** – to accommodate that.

**MR. P. HARRINGTON:** – they – they were there already. They'd been there for almost 12 weeks, tying up my team.

You know, I think you've got to take a grain of salt from what they're trying to portray me as here; it's part of a series of things that they've been trying to do that's, you know, obviously

become apparent and, you know, what their motives were at the end of the day.

**MS. MUZYCHKA:** All right. Let's look at your PMT binder number 1.

Have a look at tab 39 –

**MR. P. HARRINGTON:** So, which one is it?

**MS. MUZYCHKA:** PMT binder number 1, please. And the Exhibit number is P-03648.

**MR. P. HARRINGTON:** I missed the tab number again.

**MS. MUZYCHKA:** Tab 39.

**MR. P. HARRINGTON:** Sorry.

Yeah.

**MS. MUZYCHKA:** Let me just see what ....

So, this appears to be a draft report that you're providing feedback on?

**MR. P. HARRINGTON:** So this was – is it the OC report? I think it may be.

Yeah. Oversight Committee report. I was asked to – they solicited my feedback, so it was feedback, as requested, based upon the draft report I had received, and this was to Mr. Martin, copy: Charles Bown, Gilbert Bennett and Lance Clarke.

**MS. MUZYCHKA:** And are some of these your comments that – or edits? I think as we go through the report at page 6, for example, you're seen as making a comment.

**MR. P. HARRINGTON:** Sure.

**MS. MUZYCHKA:** So I guess some of the review –

**MR. P. HARRINGTON:** Some are mine, and some are somebody else's, I don't know who.

**MS. MUZYCHKA:** – all right. So I guess you're reviewing it for accuracy?

**MR. P. HARRINGTON:** Well, no. I was asked to provide comments, and provided comments.

**MS. MUZYCHKA:** Okay, well let's look at page 10.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And then we have a note by the committee saying: "The Committee has also noted that the Risk Log indicates that risks associated with the River Diversion for 2016 and the Powerhouse Concrete placement have increased from Medium to High during this quarter."

And your comment is: "Suggest rewording this it is misleading and requires some further explanation."

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** So that's your input to that, so –?

**MR. P. HARRINGTON:** That's my feedback, and you can see my feedback underneath. I just tried to provide further context.

**MS. MUZYCHKA:** Okay.

Let's turn to – just a moment. Let's turn to tab 41. This is a series of emails between –

**THE COMMISSIONER:** 03650?

**MS. MUZYCHKA:** – oh, I'm sorry, yes, 03650.

If we turn to page 2.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Won't go through the full email, but there is a question of a report that EY is going to be releasing.

**MR. P. HARRINGTON:** I remember which report –

**MS. MUZYCHKA:** You remember it?

**MR. P. HARRINGTON:** – I can't remember which report.

**MS. MUZYCHKA:** Okay, well it would have been some time in September 2015.

In any case, you state to Dawn Dalley –

**MR. P. HARRINGTON:** Yes, the communications person.

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** "I cannot stress enough the damage releasing this report can do, it can effect Astaldis share price negatively and ruin our hard worked 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" – perhaps means receive – "a verbal report on EAndYs advice and not a formal report.

"This is a critical issue to me.

"Paul."

And then she responds, says, "Understand. We're working on it."

And then if we can go up to page 1, you write to Gilbert Bennett –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – and just read that email.

Can you read the email, please?

**MR. P. HARRINGTON:** Oh, yeah.

"Gilbert

"This is a very serious issue and unless we put a halt on the e and Y push to be a shadow" – independent engineer – "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."

**MS. MUZYCHKA:** Okay. So –

**MR. P. HARRINGTON:** This was EY's attempt to increase their scope outside of the agreed scope and it was part of Mister – it was Mr. Noble's drive and he told me this – that he will be pushing hard to get more and more work on this project and I think he even mentioned at one time, you'll be reporting to me at one time.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** EY was retained by the Government of Canada – the Government of Newfoundland to provide –

**MR. P. HARRINGTON:** For a specific scope of work.

**MS. MUZYCHKA:** Right. But isn't the question of scope of work a concern for the Government of Newfoundland and not for you?

**MR. P. HARRINGTON:** Yeah, and I was expressing it internally.

**MS. MUZYCHKA:** But you're asking the executive of Nalcor to "pile on by all means and help ... stop this foolishness." So you're –

**MR. P. HARRINGTON:** We'll push back.

**MS. MUZYCHKA:** – essentially pushing heavily back against EY and their involvement.

**MR. P. HARRINGTON:** Well EY, to be a shadow independent engineer, absolutely, yeah. I mean, that wasn't their scope of work at all.

**MS. MUZYCHKA:** Well, we went through what the scope of work was in terms –

**MR. P. HARRINGTON:** It wasn't to be a shadow independent engineer.

**MS. MUZYCHKA:** Well, we know what the Oversight Committee was charged with doing and in order for them to be able to get the information to provide reliable information and transparency; you are putting up roadblocks here by –

**MR. P. HARRINGTON:** No, I'm expressing an opinion – and I think I'm entitled to – to say

look, we can't have two independent engineers on this job. It doesn't make any sense.

**MS. MUZYCHKA:** But do you need –

**MR. P. HARRINGTON:** The Oversight Committee and their scope and their role, that's perfectly understandable. They would provide to EY a specific scope of work. You've heard in the testimony from both Ms. Mullaley and Craig Martin that EY were constantly trying to broaden their scope outside of what the intent that the Oversight Committee wanted them to do.

**MS. MUZYCHKA:** But as I said to you –

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** – isn't that the concern of the Government of Newfoundland, who hired EY, and not your concern? If they're trying to get information which they believe is imperative and necessary in order to allow the Oversight Committee to fulfill its mandate, why do you feel it's appropriate for you to be taking a position on them widening their scope or being a shadow independent engineer?

The point is: Oversight Committee has appointed this group of individuals to provide information of a sufficient nature and quality in order to receive reliable and transparent knowledge with respect to the project.

**MR. P. HARRINGTON:** But not to be a shadow independent engineer, that was never their scope of work. That's my point.

**MS. MUZYCHKA:** But the independent engineer is also tasked with similar responsibility in terms of providing transparency and reliable information to the Government of Canada.

**MR. P. HARRINGTON:** Though we don't need two of them.

**MS. MUZYCHKA:** But the independent engineer does not work for the Government of Newfoundland. It provides information –

**MR. P. HARRINGTON:** But the independent engineer – there was an arrangement made



where the independent engineer could provide that type of input to the Oversight Committee.

**MS. MUZYCHKA:** So are you saying then that the independent engineer should simply have been tasked to provide the same information to the Government of Newfoundland and not cause you further disruption?

**MR. P. HARRINGTON:** That option was provided –

**MS. MUZYCHKA:** And was it –

**MR. P. HARRINGTON:** – to the Oversight Committee.

**MS. MUZYCHKA:** But the Oversight Committee chose an independent option, independent of Nalcor's independent engineer.

**MR. P. HARRINGTON:** But I think you're mixing up things here. I think we're missing each other on the – in the corridor. I'm talking about the – an independent – a shadow independent engineer about what the independent engineer is. The independent engineer is a qualified hydro specialist. So we didn't want someone coming in on work outside of their range of skill sets. That's what I was talking about.

**MS. MUZYCHKA:** Right.

But there were varying levels or differences in skills that EY was bringing to this project.

**MR. P. HARRINGTON:** But certainly not – they didn't – weren't hydro specialists or transmission specialists.

**MS. MUZYCHKA:** No, but they were looking for the information with regards to the costs and the schedule and risk and those sorts of things.

**MR. P. HARRINGTON:** Yeah, but my point here was he was going into the area of the independent engineer, his scope of work which was as a hydro specialist –

**MS. MUZYCHKA:** And how –?

**MR. P. HARRINGTON:** – and as a transmission specialist. And I didn't feel as

though that that was appropriate. And, you know, Mr. Bennett agreed with me; this is surreal. We were all, you know, quite surprised by how EY were constantly expanding their scope outside of that which they contracted to do for the Oversight Committee. And you've heard that from not just me, but from the people on the Oversight Committee and Ms. Mullaley. So, you know –

**MS. MUZYCHKA:** We also heard from Ms. Mullaley and from Mr. Martin, and from the individuals like Mr. Kennedy who came to testify at this Inquiry –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – that there was a fair amount of resistance put up by yourself and Nalcor, generally, in terms of providing the information that they required to meet their mandate.

**MR. P. HARRINGTON:** When it was outside of scope,

**MS. MUZYCHKA:** But again, you are making the determination yourself when shouldn't you have as the –

**MR. P. HARRINGTON:** I get the scope of work provided to me; I assigned resources according. If they ask for information that is not within that scope of work, I think it is fair to say: Why do want that information when it's outside the scope of work that has been assigned to you by the Oversight Committee? I don't see anything wrong with that.

I am trying to manage my resources. I am trying to make sure we are not, you know, diverting essential resources from what they should be doing onto a piece of work that even the Oversight Committee don't feel as though should be done. So if we go back to this particular situation, that's what I am talking about. It's an internal view about things. That's my view.

I really can't say very much more about it, unless you've got some more questions.

**MS. MUZYCHKA:** All right. We are going to look at Exhibit P-03423 Paul Harrington, binder 2, at tab 79. In this –

**MR. P. HARRINGTON:** Would you say again, tab ...?

**MS. MUZYCHKA:** This is an internal email –

**THE COMMISSIONER:** 79, tab.

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

This is an internal email dated December 18, 2015 from Richard Noble. And, in the email, he says that Nalcor acknowledged some of our findings and tried to soften others with wordy and, at times, tangential explanations. And then he goes on saying: “My favorite being:

“‘The approaches to contingency development contemplated by E&Y were undertaken at project sanction in December 2012. Our current approach, which we believe to be appropriate and prudent at this stage of project development, is to continue to engage in direct discussion on emerging risks and cost pressures and take management action when they have emerged.’”

And then he goes on to say: “Which in other words ...

“‘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.’”

Do you agree with his assessment of Nalcor’s view on risk assessment –

**MR. P. HARRINGTON:** Well –

**MS. MUZYCHKA:** – or his interpretation of that statement?

**MR. P. HARRINGTON:** I think it’s fair to absolutely not, and it’s dripping with sarcasm –

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

**MR. P. HARRINGTON:** – and I think it’s totally unprofessional, even to have this type of email, even if it’s internal, to – is obviously –

has no respect for the work by Nalcor, and I think it’s shocking.

**MS. MUZYCHKA:** But now there hadn’t been any updated quantitative risk assessments since prior to project sanction, is that correct?

**MR. P. HARRINGTON:** That’s correct.

**MS. MUZYCHKA:** And there was no other formal evaluation of risks as the project moved along and –

**MR. P. HARRINGTON:** Oh yes, there was. We were managing risks on a monthly, daily basis. That’s totally incorrect to assume that just because you don’t do a quantitative risk analysis that you’re not managing risks. That is completely wrong.

**MS. MUZYCHKA:** Now, so why wouldn’t a QRA have been done on a sooner –?

**MR. P. HARRINGTON:** Because QRAs are very expensive, number one. I think the QRA that was carried out in 2012 took many months and cost almost \$750 million. You don’t do QRAs when there’s no – it doesn’t warrant it.

And as a matter of interest, if, you know, if I may, I met last week with all of the utility project managements teams across Canada, so that’s BC Hydro, Manitoba Hydro – BC Hydro are doing Site C, Manitoba Hydro are doing this Keeyask project, Hydro One, OPG, New Brunswick Power and Hydro-Québec were there also, and we talked about QRAs, and yet QRAs are not done every six months as was recommended. That’s just doesn’t bear any sense. It probably gives a lot of work to EY, but there is no – if we had done a QRA for the last year or two years, it would have been absolutely no change at all. You’ve got to have a – you got to warrant to spend that amount of time, effort and money on something. It’s got to have value.

**MS. MUZYCHKA:** But things did change. You know, the schedule had changed; the costs had changed; the management team had changed. A new CEO – well, not at this point hadn’t been appointed. But, I mean, there certainly were lots of reasons –

**MR. P. HARRINGTON:** But we were doing a QRA at that point in time.

**MS. MUZYCHKA:** Okay, well, it doesn't appear that EY was as convinced as –

**MR. P. HARRINGTON:** EY will never be convinced 'cause they've got ulterior motives.

**MS. MUZYCHKA:** Okay.

So, it's not because they are expressing a professional opinion as to a standard industry –

**MR. P. HARRINGTON:** They may think it a professional opinion, but I think the exhibits speak for themselves.

**MS. MUZYCHKA:** Mr. Kennedy testified that in his experience: "... at sanction you would certainly expect a Monte Carlo simulation to be performed along with other analysis as to cost and schedule ...." And thereafter he says that good industry practice on projects of this type is ever six months unless a project was going well.

**MR. P. HARRINGTON:** It's not good industry practice 'cause I asked all of those utilities, how often you do a QRA? And they don't do it every six months.

**MS. MUZYCHKA:** But are they in the midst of constructing a major –

**MR. P. HARRINGTON:** Keeyask, yes.

**MS. MUZYCHKA:** Yes, that's one.

**MR. P. HARRINGTON:** Yeah. Hydro-Québec, yes. Romaine project, they don't do that.

**THE COMMISSIONER:** Even if there are major changes in the project, they don't do that?

**MR. P. HARRINGTON:** Exactly, Commissioner. And what were we doing in 2015 and 2016? We were doing exactly that.

**THE COMMISSIONER:** Excuse me just for a second, though, you may have misunderstood my question. I am asking you when you had this discussion with, last week or the week before –

**MR. P. HARRINGTON:** Yeah.

**THE COMMISSIONER:** – did they indicate that it's not good industry practice or it's not their practice –

**MR. P. HARRINGTON:** Right.

**THE COMMISSIONER:** – even if – to do them more often – even if there are major changes?

**MR. P. HARRINGTON:** You don't do them every six months. You do –

**THE COMMISSIONER:** Okay.

**MR. P. HARRINGTON:** – them if there is a major change.

**THE COMMISSIONER:** Right. So, you do them if there are major changes.

**MR. P. HARRINGTON:** Yeah. Yeah, sorry, Commissioner–

**THE COMMISSIONER:** Yup.

**MR. P. HARRINGTON:** – clarify that for you.

**MS. MUZYCHKA:** So, you don't believe there were any major changes to warrant the running of a new QRA up to that point?

**MR. P. HARRINGTON:** 'Cause we didn't have certainty on the ranges that we would be using for those. 'Cause it's all about Astaldi. This – you know, this is all about Astaldi.

**MS. MUZYCHKA:** Right.

But what did you know in 2012 when you ran a QRA? The project hadn't even gotten off the ground. I mean, it's an assessment of risks and potential risks.

**MR. P. HARRINGTON:** Well, that's why it is called a sanction decision. Because –

**MS. MUZYCHKA:** You have to base it on projections based on what you know. So, the fact that you don't know what's going to happen with Astaldi, you do know that something did happen with Astaldi –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – and that they feel behind and that they –

**MR. P. HARRINGTON:** And then we did a QRA – then our first priority was to get them back functioning properly. Once we knew that they were functioning as efficiently as they possibly could, and then we could identify their concrete placement rates, we could then consider a QRA, which would then include their latest – or our assessment on their latest capabilities and when – what type – what effect that might have on schedule and cost. And that’s what we did starting off in 2015, and we finished it in 2016 when we got the milestone – sorry – the completion agreement in place.

Up until that point in time, we were just working on a bridging agreement.

**MS. MUZYCHKA:** Yes.

That’s not – you know, in response to my question that there wasn’t – there was no QRA done –

**MR. P. HARRINGTON:** Well, I –

**MS. MUZYCHKA:** – until 2016.

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** Okay. So there was nothing done from 2012, before the project got off the ground, until four years later.

**MR. P. HARRINGTON:** And that was in accordance with our risk management plan.

**MS. MUZYCHKA:** Which was directed by whom?

**MR. P. HARRINGTON:** That was Nalcor – or an agreement that we put in place and that was the approved procedure.

**MS. MUZYCHKA:** So, that was a –

**MR. P. HARRINGTON:** I approved it.

**MS. MUZYCHKA:** You approved it. And this was a procedure that was created in-house –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – by Mr. Jason Kean.

**MR. P. HARRINGTON:** Yeah. Yeah.

**MS. MUZYCHKA:** And so based on that –

**MR. P. HARRINGTON:** That was our plan. Yeah.

**MS. MUZYCHKA:** For the –

**MR. P. HARRINGTON:** We would only do QRAs if it warranted it and we had the information to make it a successful operation.

**MS. MUZYCHKA:** Okay.

Why was a QRA done in 2016? Or it was actually begun in 2015.

**MR. P. HARRINGTON:** Yeah. Because we then had more concrete – sorry, pardon the pun – information from Astaldi on their concrete placement rates. We had – then we could project that forward. Until we got to that point in time, we were still dealing with uncertainty with Astaldi. But once we started getting them turned around, we could then reasonably carry out a QRA, which would take a number of people away from what they should be doing, and would get, with Westney’s help, to produce a new forecast.

**MS. MUZYCHKA:** Now, this email exchange between Mr. Noble and his colleagues at EY was dated December 2015. So –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – I mean, at that point, we know that thoughts are being given to do a QRA or, perhaps, the recommendations from EY have caused –

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** – one to rethink whether or not one should be done and one was done in 2016.

**MR. P. HARRINGTON:** No, it was nothing to do with EY.

**MS. MUZYCHKA:** No?

**MR. P. HARRINGTON:** No. Absolutely not.

**MS. MUZYCHKA:** Okay.

Let's turn to the next tab in that book – tab 80 and it's Exhibit P-03346.

This in another internal EY email, and it's from Michael Kennedy on January 21, 2016, and he says: "... 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." And then, I think it's "Thieu Hue mentioned to me yesterday that we are 400k into this up to this week. Are we at the point of a straight forward discussion with Julia?"

So, Mr. Kennedy indicated, when he testified, that the concern was that they had already spent \$400,000 and had little information and had made very little progress because of the roadblocks that were put in place –

**MR. P. HARRINGTON:** Okay, so –

**MS. MUZYCHKA:** – and the resistance to providing information, and he's feeling, you know, uncomfortable with the level of information to the point where he says he's queasy.

What's your response to where EY seems themselves at this point?

**MR. P. HARRINGTON:** So, EY were ill-prepared when they kicked off this particular piece of work. The statement of work hadn't been agreed upon. They arrived on January 10; it took until January 18 before they had an agreed scope or what they call statement of work – an approved non-disclosure agreement. The non-disclosure agreement hadn't been put in place before they arrived. The non-disclosure agreement was challenged by EY. They hadn't put it in place beforehand, so we needed that NDA. We also –

**MS. MUZYCHKA:** It was ultimately put in place.

**MR. P. HARRINGTON:** Pardon?

**MS. MUZYCHKA:** It was ultimately put in place.

**MR. P. HARRINGTON:** Yeah, but three days before – and you can't provide an outside consultant with information without them signing an NDA.

**MS. MUZYCHKA:** Okay. Well, I didn't see any emails here from anyone with respect to the reason for not providing information is because they –

**MR. P. HARRINGTON:** But –

**MS. MUZYCHKA:** – hadn't signed an –

**MR. P. HARRINGTON:** – I'm trying to explain that to you now.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And because, you know – of course Mr. Kennedy wouldn't say that, oh, yeah, the reason why we spent \$400 K is because we weren't well-prepared when we landed in St. John's.

The other thing that they didn't have in place was a conflict of interest clearance, because we found out that EY were already doing some tax work for Astaldi.

So, consequently, we then needed – or our legal counsel required – this is Nalcor's legal counsel required EY to come up with a check on all of their branches, that they weren't doing work for any of our other contractors as well.

What that ended up with, it was called – let me think again – ring-fence confidentiality agreement where they – everyone who had access to the data room, where the information was provided, would sign off to say that they confirm that they have no conflict, they're not working on any other – with any other contractor that Nalcor had.

So, that should've been in place before they arrived, on the 10th. It wasn't, it took until the 17th or the 18th before we started to –

**MS. MUZYCHKA:** Of what month?

**MR. P. HARRINGTON:** – we were allowed to – sorry.

**MS. MUZYCHKA:** 17th or 18th of when?

**MR. P. HARRINGTON:** January.

**MS. MUZYCHKA:** January.

**MR. P. HARRINGTON:** So, it's a bit unfair, shall I say, to say that once you got all of that cleared away, then we could start to release information into the data room. But, until – so if that's obstruction, I don't believe it is, I think it's good due diligence and business practice to make sure that you're conforming and listening to your legal counsel who's telling you: You need these things in place before you can share this information with that particular consult. That –

**MS. MUZYCHKA:** But, none of those issues –

**MR. P. HARRINGTON:** – that – so that's not being difficult, that's not being obstructive, that's just being sensible.

**MS. MUZYCHKA:** But nobody's mentioned that, as being a reason why the information wasn't forthcoming. Ms. Mullaley didn't testify that –

**MR. P. HARRINGTON:** Well, no one asked me.

**MS. MUZYCHKA:** – well, we had delays.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** And, you know, Mr. Kennedy didn't indicate that there were constraints while the organization –

**MR. P. HARRINGTON:** Well, Mr. Kennedy –

**MS. MUZYCHKA:** – dealt with –

**MR. P. HARRINGTON:** – wouldn't, would he?

**MS. MUZYCHKA:** But there is no disclosure of any documents, to my knowledge, that would

have highlighted this as being a reason for the delay.

**MR. P. HARRINGTON:** But, I have some, I mean, yeah.

**MS. MUZYCHKA:** Well, we –

**MR. SIMMONS:** Commissioner, on that point, I don't think there's been any request to identify specific documents, but there's been such fulsome disclosure of email and other documents, millions of items. I can't say whether it's in there or not, but we haven't been asked to help to try to identify anything.

**THE COMMISSIONER:** All right. That's –

**MR. P. HARRINGTON:** But that –

**THE COMMISSIONER:** – that's – excuse me –

**MR. P. HARRINGTON:** (Inaudible.)

**THE COMMISSIONER:** – first – excuse me, Sir. That's fair enough.

And so if you or anyone else wants to identify that, then fine. I think the point is, I don't – I – up to now, I haven't seen it but – you know, actually yesterday, I think I mentioned that we had over 5 million documents. Actually, I get my fingers wrapped last night because our assistant director tells me there's actually 5,984,000 documents that we actually have.

So, there may well be documents that are there, that I'm not aware of right at the moment.

**MS. MUZYCHKA:** And I would request –

**THE COMMISSIONER:** And any assistance – any assistance with regards to identifying them would be greatly appreciated.

**MS. MUZYCHKA:** Certainly. It comes as a bit of a surprise that this wasn't raised by Nalcor's counsel with Mr. Kennedy or with the oversight team or anything to – if this was an issue of concern that caused delay or resistance with respect to the free flow of information that was requested. So, you know, this comes as somewhat of a surprise at this stage.

**THE COMMISSIONER:** Okay. Well –

**MR. SIMMONS:** Commissioner, I have to respond to that.

**THE COMMISSIONER:** Okay.

**MR. SIMMONS:** I have to respond that. This is not a trial where anyone is on trial, and when there are opposing counsels conducting an adversarial matter, where there's responsibilities on one side or the other. This is an inquiry, where Inquiry counsel run the show and decide what's to be enquired upon.

We choose to ask questions on issues that we think will help along the way, but it's not fair, not correct, to say that there's an obligation on Nalcor or Nalcor counsel to put forward positions and to bring these sorts of things – or things out. So, I have to disagree with that.

**THE COMMISSIONER:** Mr. Budden, you wanted to say something?

**MR. BUDDEN:** Yeah, I was going to make the point –

**THE COMMISSIONER:** Can we just turn on your mic and ...

**MR. BUDDEN:** I was going to make the point that Ms. Muzychka made, but I will respond to Mr. Simmons, thinking that perhaps I'm speaking out of turn, but even though this is not a trial, surely we have some evidentiary standards.

And, if this (inaudible) even put to Mr. Kennedy on cross-examination and here it now emerges, days later, and this witness – first any of us had heard about it, we didn't have the opportunity then to follow up with Mr. Kennedy. It's just been dropped here, like a bomb. And, I would suggest that it's very unfair to all of us who are trying to figure out what's going on here.

**THE COMMISSIONER:** Okay. So, again, I – you know, the way I look at this is that I don't know whether the documents include anything or don't include anything. As I've said, up to now, I haven't seen anything more than what I presently have. And, in particular, when – you know, preparing for this witness, I reviewed,

obviously, the exhibits that were included in the book that was – in the books that were given to me.

I don't think it's unfair at this stage if, in fact – first of all, I don't think it's fair to suggest that Mr. Simmons would know everything that's in those 5,984,000 documents, either, so – and he may well not have known. And I don't know if this is the case or not; he may well not have known this – what Mr. Harrington was gonna say today. So, I can't cast any negative aspersions on Nalcor's counsel with regards to this particular issue or anything.

What I'm saying here, I'm here just to try to determine what the truth is and to try to figure out, you know, how I'm gonna assess – to assess all this evidence. If there's something that can be provided to me that points to this, then that would be very helpful for me to see.

If we – if one of the counsel feels that we need to go back to Mr. Kennedy or somebody else as a result of what's being stated for their point of view, I mean, we can do that. It doesn't necessarily mean they have to be called, because most likely they won't be because of the time situation, but we might get an affidavit from them, just so that I can see what their view is.

But this is a Commission of Inquiry and, you know, I can't say that I would expect Nalcor's counsel to have raised this earlier on, in examination of another witness, when I don't know if Nalcor's counsel would've even known at that point in time. I – you know, maybe he did, maybe he didn't, but right now, based upon the way that this Inquiry's proceeded so far, I find that Nalcor's counsel has been very fair with regards to providing information when it's needed.

So it would surprise me if they would not have provided it if they had known it. And I'm gonna go on the assumption that they're continuing to do what they've always done, and that is very helpful to me and to the Commission in getting this Inquiry going.

So I'm hopeful that sort of tries to deal with this. You know, if we now see some documents surface, Mr. Budden and other counsel, that you feel we need to go back to Mr. Kennedy on,

speak to Commission counsel. As I say, there are other ways to get his point of view on it. Or Julia Mullaley or someone else. And I take the point that Ms. Mullaley didn't refer to this.

So, you know, I just don't know what to say about it until I see if there's anything in those documents that, in any way, corroborates or whatever. And even if it's not there, it doesn't necessarily mean that Mr. Harrington is not being forthright; it just means that I have to assess his evidence along with everybody else's evidence at the time.

**MR. P. HARRINGTON:** And I'm going from memory.

**THE COMMISSIONER:** Right.

Again, so be careful now, Mr. Harrington, because when I'm dealing with counsel, I deal with counsel. I'm not gonna be dealing with you on this, so.

**MR. P. HARRINGTON:** I apologize.

**THE COMMISSIONER:** No problem.

**MR. FITZGERALD:** Commissioner, if I – it may be of help. Exhibit 03396, there is a reference in Appendix A of that document, Ring-Fence Procedures Memo, and I think that's what Mr. Harrington might be referring to. That might assist Mr. Simmons in finding additional documents.

**THE COMMISSIONER:** Okay, 03396.

**MR. SIMMONS:** And Commissioner, what I can say is: We'll go back and we'll do our own searches to see what we can turn up on – touching on these issues. Any documents that we can identify, we'll certainly bring to the attention of Commission counsel as we do – have from time to time, and they can make their decisions regarding what to do with it.

**THE COMMISSIONER:** Right, that'll be helpful.

**MS. MUZYCHKA:** It certainly wasn't my –

**THE COMMISSIONER:** Excuse me.

**MS. MUZYCHKA:** – intention –

**THE COMMISSIONER:** Excuse me –

**MS. MUZYCHKA:** Oh.

**THE COMMISSIONER:** – just for a second here. One more counsel behind you that wants to (inaudible).

**MR. O'FLAHERTY:** Sorry, counsel.

**MS. MUZYCHKA:** Oh, okay.

**MR. O'FLAHERTY:** Good morning, Commissioner. Peter O'Flaherty. I'm here –

**THE COMMISSIONER:** Mm-hmm.

**MR. O'FLAHERTY:** – for party here today, but as the Commission would know, I was also here representing a witness, Mr. Kennedy, when he was here on the stand.

In light of some of the comments that have been made this morning by the witness here, I will contact Mr. Kennedy and will ask for instructions on whether or not there is some sort of rebuttal that he feels is appropriate. Because it's not only the documents, which we're talking about, but also some of the things that Mr. Harrington is suggesting, about documents which were in the record – are not the position which was taking by any counsel here at this hearing, at least not to my recollection, and I was here during the evidence.

So, in fairness, while it is a fact-finding mission, and I understand that, it's also appropriate that everybody have an opportunity to address the issues as they reflect upon them.

Thank you, Mr. Commissioner.

**THE COMMISSIONER:** So, let me respond to that, Mr. O'Flaherty, if I can.

I'm not – you know, like, everybody has an opportunity to come in and tell me their story. Because somebody says something later on that somebody else disagrees with, it doesn't necessarily mean I'm going to give them the opportunity to rebut it. Again, it's all a question



of my assessment of the evidence at the end of the day.

There's a process in place in the *Public Inquiries Act* that deals with issues related to the interests of people. I don't know to any significant degree how that is working, but I'm assuming it is. And, as I said, for the – what I'm prepared to do on this particular point is to say to Commission counsel and to other counsel that if there's a need to go back to Mr. Kennedy on the issue of why this particular delay – and we're talking about in January 2015 – 2016. I'm not talking about all of the testimony. I'm not going to get into a war of words between EY and Nalcor. That's not for me. You two, sue each other, do whatever you want to do, but leave that – leave me alone, 'cause I got enough to do.

So, all I want to do is just try to get everybody's point of view and then come to some conclusions at the end of the day. And the only way Mr. Kennedy will be contacted with regards to this, so far, after hearing from Mr. Harrington up to now – and my direction's going to be clear on this – will be with regards to what was happening in January 2016 and that email that was – that he had authored. That's it.

**MR. O'FLAHERTY:** Well, thank you, Mr. Commissioner.

And, I guess, what I was – my point really was to, not so much to the documents that we're talking about, but this is the suggestion by Mr. Harrington. He's made some statements, such as he was there on false pretenses at a meeting and one thing or another. And as you've heard, and which hasn't been reflected in the evidence, that the people from the – that were, you know, working for the Oversight Committee said that they were satisfied that Ernst & Young's work was conducted with the highest ethical standards and with the highest professional standards when they were cross-examined on the issue.

So, I'm simply asking for the opportunity to reflect back with Mr. Kennedy. He may have nothing to offer on it. And, as you say, it is your decision at the end of the day, but it was not put to him, you know, in his evidence.

**THE COMMISSIONER:** Right.

**MR. O'FLAHERTY:** Thank you.

**THE COMMISSIONER:** Again, you can speak to Mr. Kennedy in any way you wish to do so. I have no right to interfere with that. The only thing I'm – right now that I'm going to hear back from Kennedy on, potentially, and that's if Commission counsel decides it's necessary, is in reference to the January 2016 email, okay.

**MR. O'FLAHERTY:** Thank you, Mr. Commissioner.

**THE COMMISSIONER:** Okay.

Ms. Muzychka.

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

As I was starting to say, it wasn't my purpose in raising it to, you know, malign Mr. Simmons in terms of failing to bring it up but rather that, you know, the issue of the relationship between Nalcor and the Oversight Committee and EY has been discussed extensively at this hearing and the difficulties in terms of having the information transmitted between the parties. At no time had that even been raised as a possible reason for the –

**THE COMMISSIONER:** Yeah, I understand.

**MS. MUZYCHKA:** – the reason for it. And that was essentially it; that if it had been, well, why didn't we hear about it before? And there may be a very good reason for it in that it had never been brought to Mr. Simmons's attention. I'm sure that he hasn't read through all 5,900,000 of the documents as well. So, you know – but it certainly did raise a flag that how come we didn't hear about this before, this doesn't make any sense, so.

**THE COMMISSIONER:** Okay. Fair enough.

**MS. MUZYCHKA:** So to that extent, we can move on to the next exhibit.

See where we were.

**THE COMMISSIONER:** So we had just finished with Exhibit P-03346, tab 80.

**MS. MUZYCHKA:** Right. Okay.

Right, and at the – right, so we were at – yes, 3346. So if we look to the bottom of the email chain, we see that – in the email that he: “Received a call from Julia. She was questioned by Nalcor today why EY were requesting Project Briefings made to the Premier and” – to – “the Nalcor Board. They are reluctant to provide this information as they feel ... this does not relate to our scope of work ....

“We need to get back to her on this asap.”

And then there’s further discussion between David Leather and David Steele.

“Hi David

“As you know the management reports that we have been shown so far are incredibly detailed and it is difficult for a reader to be able to clearly and quickly identify the important issues and get a clear understanding of the cost, schedule and risk issues.

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

You know, so – I mean, people are questioning why aren’t we getting the information, this is normal information and so on. And, you know, the only issue that is raised certainly as being communicated from Julia Mullaley is that Nalcor is questioning the scope of work issue. There was nothing, no other reference as to, you know, they’re not – they haven’t signed undertakings or they haven’t signed off on conflict issues or they’re waiting – that no information will go forward until certain things happen. The barrier is it’s not within the scope. Do you agree with that?

**MR. P. HARRINGTON:** Mmm. Well, what they’re asking for here is project briefings made to the premier and the Nalcor board. I – I don’t know. I don’t have those; project team don’t have those. So there would be briefings that would be held by the CEO and the VP. So I

can’t really comment on whether that’s even accurate. I don’t know.

**MS. MUZYCHKA:** But it certainly appears that they’re looking for information on constant schedule forecasts information.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** They certainly would be entitled to that.

**MR. P. HARRINGTON:** Well, I’m not saying they’re not – they weren’t.

**MS. MUZYCHKA:** Okay, but they’re not getting it. That’s the point that they’re expressing, is that they’re not getting the information.

**MR. P. HARRINGTON:** But I wasn’t being – I wasn’t being a bottleneck there.

They got – we provided – as I mentioned earlier, we had 35 separate meetings with the EY team over how many weeks. We – there were – I have records of 50, over 50 people from the project team participating in those meetings, and we submitted – I could be wrong on the number – but it was hundreds of, I thought – 900 pops in my mind, but hundreds of documents that were eventually put into the data room once all of these due diligence things were carried out, and I can’t remember the exact dates, but it was – you know, it was certainly shortly before January 21 of ’17 springs to mind. I seem to remember that was when some of those things were signed off.

**MS. MUZYCHKA:** All right.

Let’s turn to tab 81, please. Exhibit –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** – 03428.

This is another internal EY email dated February 11, 2016 discussing Nalcor’s reluctance to provide information. This email goes over some comments that you would’ve had with a meeting with EY.

So if we turn to page 2, under “Contract Summary Sections” and Astaldi, it says – move

down to Astaldi; just scroll down, right there. Thank you.

“Paul suggests Astaldi should not even be in this report outside of saying ‘this is excluded’ - that is his interpretation of the scope limit discussion with the premier.”

Can you explain why you believed that the Astaldi issues were outside the scope of EY’s work?

**MR. P. HARRINGTON:** Yup. Yes.

I attended a meeting with the premier, the EY representatives, various members, I think, of the Cabinet and with Ed Martin and Gilbert Bennett, I think, and perhaps Mr. Meaney. And in there – and I think there’s an exhibit of my notes that were taken at that meeting, where it stated that: until such time as a – some kind of deal had been cut with Astaldi, and, at that time, the expectation was by the end of February. So, this is still February 11 – that until such time as that was resolved, then the sensitivity associated with the Astaldi negotiations would preclude any reference to Astaldi. That’s what I firmly believed.

**MS. MUZYCHKA:** Mr. Kennedy testified that he recalled the premier saying that the Astaldi information would not be provided until the first week of February.

**MR. P. HARRINGTON:** Yeah, but –

**MS. MUZYCHKA:** This is February –

**MR. P. HARRINGTON:** – that was on the premise that we actually had a deal with them.

**MS. MUZYCHKA:** Okay. Because this was February 11.

**MR. P. HARRINGTON:** And we – yeah – and we didn’t have a deal with them.

**MS. MUZYCHKA:** And – so, you were reluctant to have EY access information on behalf of the Oversight Committee –

**MR. P. HARRINGTON:** Because of –

**MS. MUZYCHKA:** – on behalf of the Government of Newfoundland, on the grounds of commercial sensitivity relating to Astaldi.

**MR. P. HARRINGTON:** Because that was my belief, that that was the understanding with the premier and the CEO.

**MS. MUZYCHKA:** But do you believe that there is an issue of commercial sensitivity between Nalcor and the Government of Newfoundland?

**MR. P. HARRINGTON:** Well, this was a public report.

**MS. MUZYCHKA:** But there’s –

**MR. P. HARRINGTON:** This is a report that was going to go public.

**MS. MUZYCHKA:** But there certainly can be redaction or, you know, removal of commercially sensitive information vis-à-vis the public.

**MR. P. HARRINGTON:** Well, that could be done.

**MS. MUZYCHKA:** But not as between the government and Nalcor.

**MR. P. HARRINGTON:** Well, that was my interpretation of the scopes. So, I mean, you know, if I was wrong, I’m sure they would have said, fine, you’re wrong. Right? And I’m only suggesting that, right – Paul suggests.

I’m not some ogre that insists upon all these things.

**MS. MUZYCHKA:** Let’s turn to tab 82 of the same book. It is P-03086. This is an email from Kelvin Parsons to Dwight Ball on February 26, 2016, and in the email he attaches some notes that EY has communicated to the government.

So if we go to page 3 of the notes, it says: “Given that EY was kept away from the Astaldi file until very recently....”

**THE COMMISSIONER:** Where is this at?

**MS. MUZYCHKA:** I'm just trying to find that now, Commissioner.

Oh, sorry, it's at page 4. It's at page 3 of the notes and page 4 of the exhibit, the second-last bullet.

So it says: "Given that EY was kept away from the Astaldi file until very recently, they have only started to think about our options going forward. When EY asked Nalcor to walk them through the options Nalcor considered, EY got the 'we know best' response, essentially dismissing anything beyond more cash to Astaldi now."

What's your response to that? Is that a fair assessment?

**MR. P. HARRINGTON:** I'm sure it was from their point of view; I don't know what they're referring to here. I don't even know what (inaudible).

**MS. MUZYCHKA:** Well, let's put the context in fairness to you, okay.

So this is an email from Kelvin Parsons, who – I forget what his position was –

**UNIDENTIFIED MALE SPEAKER:** Chief of staff.

**MS. MUZYCHKA:** – chief of staff for Premier Ball. And – so he wanted to – he met with the EY people, and so we'll just read the notes. It says: "Premier, Here are the notes taken from our EY meeting yesterday. I believe they accurately reflect what EY said. To avoid missing anything, avoid misinterpretation, insure Cabinet completely understands the EY position I strongly recommend you begin the meeting today by having Tim or I READ these notes then fill Cabinet in on your conversation with Ed Martin then go from there. This is too important and sensitive an issue to lose anything in translation."

And then the speaking notes are what we were looking at from February 25 meeting with EY.

**MR. P. HARRINGTON:** I mean –

**MS. MUZYCHKA:** And the first bullet indicates that: "Following yesterday's Cabinet Meeting, we had a 3+ hour meeting with EY ...." That's at page 2.

**MR. P. HARRINGTON:** I don't really have anything to offer here.

**MS. MUZYCHKA:** No, I'm just giving you the context. There's no question on that but you had expressed some confusion as to the origin of these notes and how they came about, so I'm just walking you through that so that you know the context in which these comments arose.

**MR. P. HARRINGTON:** Yeah, but –

**MS. MUZYCHKA:** So these are comments that are made by EY – had made to EY – by EY to Mr. Parsons in his meeting and the various – I mean, there's a lot more notes here that we can go through, but my key point was in relation to the Astaldi file comment and the resistance of providing the information that we had just referred to in the prior exhibit.

But – so in that – with that background in place, do you agree that Nalcor had not gone through any options with respect to Astaldi with –

**MR. P. HARRINGTON:** Oh, we'd gone through multiple options, and, at that point in time, we were – the mandate to negotiate further would be removed from the CEO. So, that mandate to reengage with Astaldi didn't occur until Mr. Marshall came on board, and we had a meeting with Mr. Marshall and within one hour, I believe it was within that one-hour meeting, he grasped what we were considering and he told us to go straight ahead and reengage with Astaldi.

So, we – there's been a lot of work done regarding options and financial analysis and what Astaldi's financial situation was or wasn't and what their cash flow was; a tremendous amount of work had been done.

So I would, if it's – just to be brief, I don't agree with that statement.

**MS. MUZYCHKA:** Okay.

Let's turn to Exhibit P-03368, Paul Harrington binder 2, tab 83. This is another exchange of emails between EY and the government.

Paul Hickey from EY writes to Tim Murphy on April 8, 2016, and at the bottom of page 2 is where it starts. He writes: "We would recommend that the Premier make no representation ..." – wait now, that's not the right page.

**THE COMMISSIONER:** It's the next page, page 3. It's the second – the next bullet on page 3.

**MS. MUZYCHKA:** Yes, sorry, the bullet.

"We would recommend that the Premier make no representation about risk or comfort around the material contracts (Astaldi aside) until EY has conducted a review in May. The reasons for this are as follows" and then they're outlined there.

"EY has not been provided with a final cost/schedule forecast for 7 out of 8 contracts, in fact very far from it." They'd requested the information but has not yet been available from Nalcor. "For the final report we expect updated cost/schedule forecasts for Astaldi, Andritz, Valard 327, 3 Alstom contracts and Barnard Pennecon due to ongoing Nalcor reviews and Astaldi impacts."

Why was Nalcor unable to provide EY information on the final cost schedules for seven out of eight of those contracts?

**MR. P. HARRINGTON:** I can't – I mean this is a – an internal thing. I don't know whether that's a true statement or not.

**MS. MUZYCHKA:** So are you challenging the veracity of the –

**MR. P. HARRINGTON:** I'm –

**MS. MUZYCHKA:** – report by EY –

**MR. P. HARRINGTON:** I'm not.

**MS. MUZYCHKA:** – to cite that they haven't?

**MR. P. HARRINGTON:** I'm just saying I don't have any backup for this at all.

**MS. MUZYCHKA:** Do you have any reason to believe that that wouldn't be a fair statement, a true statement?

**MR. P. HARRINGTON:** No, as I said, I don't understand why I should be questioned on this, and – understand – so, could you repeat your question? Perhaps I just misunderstood.

**MS. MUZYCHKA:** Well, I'm – the question is: Why was Nalcor unable to provide EY information on the final cost and schedule forecasts for seven out of eight contracts? The first bullet.

**MR. P. HARRINGTON:** Well, I believe we did provide cost and schedule forecasts for seven out of eight contracts. I – I'm – I don't quite understand –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – what they're saying here, and so, you know, as far as I was concerned, we were providing information to EY in the data room, and if they asked for that information, and it was available, we would provide it.

**MS. MUZYCHKA:** Okay, we heard –

**MR. P. HARRINGTON:** There was no attempt to withhold this type of information at all. So I'm – that's why I'm a bit confused as to why they would make that statement.

So I don't really understand what they're talking about here and what, you know – 'cause I was firmly of the opinion that the data room was, you know – we may have, you know, may have taken some time to get the information to them, but if it was available to us, it was available to them. That's why I –

**MS. MUZYCHKA:** So you're saying that there's no basis for EY's statements that information was not forthcoming from Nalcor when it was required or requested by EY?

**MR. P. HARRINGTON:** As far as I was – as far as I knew, we were providing all the

information that they asked in as timely a manner as we could. If the information wasn't there, for example, if a contractor wasn't providing us with updated, you know, monthly reports, how could we provide something that wasn't there?

**MS. MUZYCHKA:** Okay.

But what about the concerns that were expressed to Mr. Kennedy about commercial sensitivity? There were examples that he had given in the course of his testimony where he said the major reason Nalcor refused to provide information to EY was because the information was too sensitive.

Now, given that they were retained by Nalcor's shareholder to advise on a confidential basis to the government, and the government had the right to know about these sensitive issues, why would that even been raised as a barrier?

**MR. P. HARRINGTON:** I don't what specifically Mr. Kennedy was referring to.

**MS. MUZYCHKA:** Do you – are you saying that you never refused to give EY information or the Oversight Committee information on the basis of commercial sensitivity, or just sensitivity in general?

**MR. P. HARRINGTON:** We would flag it as being commercially sensitive. Any information that was provided to them, if it was deemed to be confidential, it would go into the – a different data room that had certain access restrictions. So they could view it, but not print it.

**MS. MUZYCHKA:** Okay.

But Ms. Mullaley also expressed surprise about the resistance of Nalcor to provide her with information on the grounds of commercial sensitivity. She said there's no commercial sensitivity, or no grounds for a sensitivity claim as between the Government of Newfoundland and a shareholder and Nalcor.

**MR. P. HARRINGTON:** But certainly, from a project team's perspective, I wouldn't prevent any information being provided. If it was requested, it would go into that –

**MS. MUZYCHKA:** Okay.

But the question is: Did you actually prevent the information to go? Is it your evidence here today that –

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** – at no time did you refuse to release information to the Oversight Committee or EY on the grounds of sensitivity?

**MR. P. HARRINGTON:** EY, maybe, but the Oversight Committee, no. EY specifically on the Astaldi thing, if I was instructed that that was a no-go area.

**MS. MUZYCHKA:** And instructed by whom?

**MR. P. HARRINGTON:** By our CEO and by that meeting with the premier.

**MS. MUZYCHKA:** Was that the only example that you can think of?

**MR. P. HARRINGTON:** That's the only one I can think of.

**MS. MUZYCHKA:** Was EY ever given the full picture on Astaldi?

**MR. P. HARRINGTON:** The full picture on Astaldi isn't over yet. So, the full picture –

**MS. MUZYCHKA:** The full picture as it exists –

**MR. P. HARRINGTON:** – on Astaldi, we didn't really engage with Astaldi until Mr. Marshall's, kind of, appointment as CEO and that meeting I just referred to.

EY, as far as I know, had no involvement, other than to finish the final report. They issued of the interim report, and they came back to review the final report, possibly, a year later. And, in that interim, I don't believe – unless they were given some information that I wasn't aware of.

**MS. MUZYCHKA:** Okay.

Mr. Kennedy also testified that on a number of occasions in meetings where it became clear that they were digging into areas that made Nalcor

uncomfortable, Nalcor would end the meeting abruptly.

Are you –

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** – familiar with those situations?

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** Have you ever left a meeting abruptly?

**MR. P. HARRINGTON:** Well, as you know, I've left that one meeting abruptly, and there may be occasions where, you know, I had to move to another meeting. And, you know, if you allocated an hour, an hour and a half for a meeting, and you're double-booked, and you need to go to another meeting and it takes you half an hour to get to Hydro Place, 'cause that's where the meeting is, you may have to leave, you know, abruptly, but not rudely I hope.

**MS. MUZYCHKA:** Okay.

Well, his testimony was that there were a number of – couple of examples of meetings where it became clear that areas where the discussion was, or where Nalcor perceived it was heading, that they were uncomfortable about, the meeting would end abruptly.

**MR. P. HARRINGTON:** I –

**MS. MUZYCHKA:** That's his testimony. I'm just asking for your –

**MR. P. HARRINGTON:** Yeah, but that's his –

**MS. MUZYCHKA:** – views on it.

**MR. P. HARRINGTON:** I can't add anything to that.

**MS. MUZYCHKA:** You don't deny that that may have happened?

**MR. P. HARRINGTON:** I've just explained, I hope, that, you know, in some cases, he may see it as leaving abruptly, it might be viewed by – whether it was me or somebody else, that they

just had another meeting to go to, and this meeting ran its course.

So, you know, we have back-to-back meetings, obviously.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** This is true.

**MS. MUZYCHKA:** Fair enough.

All right.

So, we're ready to move into a new area if we want to break now or –?

**THE COMMISSIONER:** Okay. So, this might be a good spot to take our noon break then.

So, we'll break now until 2 o'clock and come back at 2.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is in session.

Please be seated.

**THE COMMISSIONER:** All right.

Ms. Muzychka, when you're ready.

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

I just want to go back to the issue that we were talking about just before we broke for lunch. We've obtained a number of exhibits since then that I'd like to review with you, Mr. Harrington.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** So if you could turn to your binder 2 at –

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible) entered into evidence.

**MS. MUZYCHKA:** Oh, sorry. Before you do that I need to enter them into evidence, before I forget.

So we have Exhibit P-04036 to P-04039.

**THE COMMISSIONER:** To 04039?

**MS. MUZYCHKA:** 04039.

**THE COMMISSIONER:** Okay, those will be marked as entered.

**MS. MUZYCHKA:** Okay.

Now, we can refer you to tab 102, please, Exhibit P-04036.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** You got that, all right.

So this is an email from Robert Spasyouti to Joe Telebar. It's a – I believe this to be an internal email from EY and in that – it's dated Tuesday, February 23, 2016. And in that there's indication about the signing of a ring-fence procedure.

Is that what you were referring to this morning?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay. And in that – and this one was specifically to address the issues and concerns arising out of EY's prior involvement with Astaldi.

**MR. P. HARRINGTON:** That's correct.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Now, I like to go back – or move to Exhibit P-04039. And when we spoke before lunch we were reviewing the email of –

**THE COMMISSIONER:** It's tab 105.

**MS. MUZYCHKA:** Tab 105, Commissioner.

We were reviewing the email of Mr. Kennedy in – which was dated January 11, I believe.

**MR. P. HARRINGTON:** Yes. That's the – just before the kickoff meeting.

**MS. MUZYCHKA:** Right. And he was – was it just before the kickoff or was the conclusion as he was on his way back?

Just bear with me a moment.

**MR. P. HARRINGTON:** It says: "... proceed with the presentations planned for Tuesday and Wednesday ...." So this is Monday.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So that would be the 12th and the 13th of January.

**MS. MUZYCHKA:** Okay. I don't know what you are referring to there, Mr. Harrington. So if you would just bear with me a moment, 'cause I am looking for the –

**THE COMMISSIONER:** I think you are looking for 03346, tab 80.

**MS. MUZYCHKA:** Tab 80, okay, that's (inaudible) –

**MR. P. HARRINGTON:** Oh, I'm in the wrong one, sorry.

**MS. MUZYCHKA:** Yeah. So tab 80, we'll just go back to that before –

**MR. P. HARRINGTON:** Sorry. I was looking at the wrong one.

**THE COMMISSIONER:** I believe that's the one that we were talking about this morning.

**MR. P. HARRINGTON:** All right, yes.

**MS. MUZYCHKA:** Yes. Okay.

So this was actually an email that was dated January 21, 2016, from Michael Kennedy to David Leather and David Steele, where he said that he was feeling pretty queasy about where we are given the call to Julia from Nalcor and continued absence of data and the culture of lack of transparency.



So you had indicated at that point that there was an issue – or at some point, the reason why there wasn't information being provided to EY was because of the conflict issue and that there had to be some sort of agreement signed before you could go any further with that. Is that –

**MR. P. HARRINGTON:** That was –

**MS. MUZYCHKA:** – fair?

**MR. P. HARRINGTON:** – there was two agreements. It was the non-disclosure agreement and this ring-fence agreement, so there were two.

**MS. MUZYCHKA:** Right, okay.

So if we turn to tab 105 at Exhibit 04039, we see an email chain between yourself and Gilbert. But if we could go back to the – we'll say, page 3 or – sorry, page 4.

We have an email from Michael Kennedy to Steve Pellerin at the Lower Churchill Project, and he writes that he's very much looking forward to working with you on the review. Our team will be arriving in St. John's through the course of Monday the 11th and will be meeting together on Tuesday the 12th at EY offices, and then he just goes on to talk about what's going to be discussed at the meeting and go forward.

Do you see that?

**MR. P. HARRINGTON:** I do.

**MS. MUZYCHKA:** Okay. He sets out his agenda and what's gonna happen.

And then this email is responded to – or he writes again and he says something else about the agenda, and then that email is forwarded to you, somehow, and you write: "Gilbert

"You indicated over the weekend that there was still an unresolved issue of Conflict of Interest, NDA with the EY team.

"Has that been cleared and are we able to release data?

"Pls advise."

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And then Mr. Bennett responds at the top of page 2: "This has to be cleared before we can proceed. We must have confirmation that none exist..."

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** All right.

And then you write an email to Brian Crawley, Lance Clarke and copied Gil Bennett, and I just want to get you to read the email for us, please. Aloud.

**MR. P. HARRINGTON:** Oh, sorry.

"Gents

"We have a clear instruction not to provide access to data until this is cleared - so as agreed, if we have not heard back that we have a signed NDA ..." – conflict of interest, ring fence by 10 – I didn't say ring fence, I said COI –

**MS. MUZYCHKA:** Conflict of interest –

**MR. P. HARRINGTON:** – "by 10.00 AM tomorrow then we proceed as follows:

"... Inform Ed of our intentions as outlined in point 2 ...

"... When EY arrive Lance and I take Mike Kennedy aside into my office and explain that we can proceed with the presentations planned for Tuesday and Wednesday however access to data cannot be given until we have a signed NDA/COI from EY covering their team and also inform Mike that we are aware of work that EY are performing with Astaldi and please check that does not present a" conflict of interest, COI, before signing the forms.

"3 Await Mike's response and advise Ed/Gilbert of same."

**MS. MUZYCHKA:** Okay.

So is that, in fact, what happened then when EY arrived the following day –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – on the 11th?

**MR. P. HARRINGTON:** We proceeded with a full presentation to them over those two days. I assembled all of the project managers and we spent a very detailed review of the deck –

**MS. MUZYCHKA:** No, my question was –

**MR. P. HARRINGTON:** Sorry.

**MS. MUZYCHKA:** – is this what took place when EY arrived?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Number two, did –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – when they arrived –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – did you take –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – Lance and Mike –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – Kennedy aside and tell them that? Yes.

**MR. P. HARRINGTON:** As well as –

**MS. MUZYCHKA:** The other things –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – but, more importantly, you waited until they arrived before you sprung it on them that this was going to be an issue for you going forward.

**MR. P. HARRINGTON:** I don't think I deliberately did that. I was just – as soon as he arrives we talked to him.

**MS. MUZYCHKA:** Okay, why wouldn't you give him a heads-up that – why wouldn't anybody contact EY and say, look, there's still

this issue, we're aware that there's a potential conflict of interest?

**MR. P. HARRINGTON:** I wasn't dealing with EY.

**MS. MUZYCHKA:** Okay. So, well, you indicated –

**MR. P. HARRINGTON:** Because EY were negotiating with government on this and that's –

**MS. MUZYCHKA:** But they were coming –

**MR. P. HARRINGTON:** So there's no attempt to catch them out –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – or anything like that.

**MS. MUZYCHKA:** Well, fair enough.

Why is it that you said this morning then that when they arrived, you said they were not prepared and they didn't have the necessary releases and agreements?

**MR. P. HARRINGTON:** Because I would've thought they would have checked into this before they arrived to make sure that all – you know, it's normal to have a – you know, an NDA and it's normal to have a conflict of interest when you're doing work for one of our main contractors. So I think that was the advice that we were given by our legal folks.

**MS. MUZYCHKA:** The advice that you had listed in your email?

**MR. P. HARRINGTON:** Pardon?

**MS. MUZYCHKA:** The information that's set out in your email about requiring the NDA/COI or the timing of the question?

**MR. P. HARRINGTON:** I just would have thought that EY would have all that squared away before they arrived.

**MS. MUZYCHKA:** Okay.

Well, we know that they did not know that this was going to be an issue for you until you took them aside at the start of their meeting –

**MR. P. HARRINGTON:** But it's –

**MS. MUZYCHKA:** – but yet we know that –

**MR. SIMMONS:** Commissioner, I'm not sure that's a fair representation of what we're reading in the message, because we've just seen a moment ago that there's an earlier message to Mr. Bennett where Mr. Harrington has said you indicated over the weekend that there was still an unresolved issue of conflict of interest. So that suggests that this was something that had already been in play.

**THE COMMISSIONER:** Well, that – but, in fairness, too, Mr. Simmons, that's an email – if I read this correctly, it's an email that was sent by Mr. Harrington to Gilbert Bennett.

**MR. SIMMONS:** Yes, that's correct, but it is indicating, at least in that message, that there – it's suggesting that there has been some previous discussion of this because it's regarded as still an unresolved issue.

**THE COMMISSIONER:** I'm not sure it indicates who the discussion was between. This could be a discussion that was internal to Nalcor, it could've been with – that, we don't know. But at this stage of the game, you know, I think the questions are fair questions to be put to the witness.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** I think the point is though, Mr. Harrington, that certainly someone – you became aware on the weekend. When you became aware, I'm not clear, but certainly you checked back with Mr. Bennett –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – on January 10 –

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** – and said – is this: “You indicated over the weekend ... there was still an unresolved issue of Conflict of Interest” so, you

know, it was something that you were aware of. I'm just wondering why that would not have been raised. And if it wasn't, that's fine, but I certainly think that it would be an unfair comment for you to make that EY came unprepared to deal with the issue if it had not been brought to their attention, which is what you ended up doing when they arrived, when you took them aside and raised the ...

**MR. P. HARRINGTON:** Yes. As I said in my testimony earlier, I just thought they would've had all of these things worked out. That was my belief.

**MS. MUZYCHKA:** Okay.

But may – might it had been a better thing if EY had been advised earlier that there may be these issues, that perhaps we should postpone our meeting and, therefore, we don't have all of this expense incurred, having them come to St. John's –

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** – on that plan.

**MR. P. HARRINGTON:** – the email on the 11th at 9:05 a.m. from Gilbert Bennett to me, is copied to Charles Bown re clearance to start populating data room and shared decks: “This has to be cleared before we can proceed. We must have confirmation that none exist ...”

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So – yeah, so the people who were dealing with EY at this point in time was not Nalcor.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** It was – I guess it was Charles Bown. So, you know, he knew, so that would've been his, perhaps, obligation to say: Hold the bus, go home, or stop travelling or whatever. I probably – I didn't even – I may not have even had Michael Kennedy's – I hadn't met him before then.

**MS. MUZYCHKA:** All right.

**MR. P. HARRINGTON:** Okay?

**MS. MUZYCHKA:** Well, we do know that the initial email from Michael Kennedy that's on page 3, was addressed to Steve Pellerin at Lower Churchill. So he is one of your people.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** But I'm not copied on it.

**MS. MUZYCHKA:** No, I understand. Okay.

So if we turn to Exhibit P-04038 at tab 104 of book 2, we see an email from Ed Martin to Julia Mullaley and Charles Bown and this is dated Wednesday, January 13. And there's a discussion with respect to agreements and services with respect to Astaldi.

And then if we move forward to Exhibit P-04037 at tab 103, we see an email from Paul McCarthy to David Steele, Michael Kennedy, et cetera. It's to internal EY email and it identifies the issues with respect to the requirement for a ring-fence procedures memo and who would be required to sign it. Do you see that?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay. And that's dated Monday, January 18.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** All right.

And then if we look at tab 102, that's Exhibit P-04036. And, again, it's another EY email and it's dated Tuesday, February 23, 2016, and it identifies the requirement for the EY ring-fence procedures and a copy of the memo which is being requested to be signed. Do you see that?

**MR. P. HARRINGTON:** I see that.

**MS. MUZYCHKA:** Okay.

So is it reasonable to assume then that by on or about February 23 or thereabouts, that that issue of conflict of interest with respect to EY's access to the information they were requesting would have been resolved?

**MR. P. HARRINGTON:** For the ring-fence, I'm not – I think the NDA was slightly before that.

**MS. MUZYCHKA:** Yes, but in any event –

**MR. P. HARRINGTON:** Yeah, this –

**MS. MUZYCHKA:** – the final thing would've been on or about the 23rd of February?

**MR. P. HARRINGTON:** As soon as people signed this thing –

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** – they would be allowed access to the data room. So that was the issue.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So going back to the earlier one, it was February 21 that, you know, came from Mike Kennedy who'd said that – well, suggested that we might be, you know, obstructing them or delaying them. But, in fact, we weren't – this was all part of this process here.

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** So, you know, that's why I said what I said –

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** – and I think it's been – as we've seen in these emails here –

**MS. MUZYCHKA:** No, well, I guess –

**MR. P. HARRINGTON:** – that there was stuff that wasn't yet allowing us to do that and I was told not to.

**MS. MUZYCHKA:** Well, if we go back to tab 103, which is Exhibit 04037, you can see that there's a number of people who would have signed the document in person at the St. John's office. And there's 13 individuals –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – in fact, David Steele was there, Michael Kennedy –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – and that would have been signed off on the 18th of –

**MR. P. HARRINGTON:** So that's three days, you know, later –

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** – this email comes out saying I'm really worried that we spent half our amount. Well, that's not because we were obstructing them.

**MS. MUZYCHKA:** No, but the – you know, one can see from reviewing these documents that the issue was raised with EY at the meeting, when you took them aside as planned on the 11th –

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** – and then by the 18th, the – EY has dealt with the ring fence –

**MR. P. HARRINGTON:** That's correct.

**MS. MUZYCHKA:** – issue. And –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – so it's signed off on –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – by that point. So –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – you know, my question to you is that had this information been provided to EY earlier, when it was – the issue of a potential conflict of interest came to light, EY could have dealt with it as expeditiously – more expeditiously in terms of –

**MR. P. HARRINGTON:** That's perfectly true if government had told them that they needed to get these things signed beforehand, or at least make sure that they didn't have any issues that

would prevent them from moving ahead. It's not my obligation to do that.

**MS. MUZYCHKA:** No, I understand that. My question was whether you think that it would have moved along just as quickly if they had brought –

**MR. P. HARRINGTON:** Yes, if they had – this –

**MS. MUZYCHKA:** – had it brought to their attention.

**MR. P. HARRINGTON:** – because as soon as this was all clarified, the population of the data room went ahead.

**MS. MUZYCHKA:** All right, I'm going to bring you now to Exhibit P-01162. And it's at your Paul Harrington binder number 2, tab 98.

This is a memo from Richard Westney outlining the tactical and strategic risks with – were estimated to calculate contingency and management reserve. If we go to page 2 – the memo indicates that you and Mr. Kean went to the – Westney's offices in Houston –

**MR. P. HARRINGTON:** Hmm.

**MS. MUZYCHKA:** – to – on June 4 and 5, 2012 to finalize the inputs to that analysis. Is that correct?

**MR. P. HARRINGTON:** That is correct. Finalize the tactical cost risk ranges.

**MS. MUZYCHKA:** Okay.

Now as I understand it, the inputs to the tactical risk analysis represent a best-case and a worst-case scenario for each package?

**MR. P. HARRINGTON:** That was identified in the bullet point ahead. Yes.

**MS. MUZYCHKA:** Okay. If you look to tab 92 which is Exhibit P-04019.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** This appears to be the – this exhibit represents those inputs as they stood

after the May 25, 2012 workshop. Would you agree?

**MR. P. HARRINGTON:** Couldn't say for certain that these were the ones in the workshop, but I won't dispute it.

**MS. MUZYCHKA:** Because this is a listing there of – then if we look at tab 84.

**MR. P. HARRINGTON:** Excuse me.

**MS. MUZYCHKA:** At page 2 – this is Exhibit P-00130.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** And we could bring up page 238, please?

**MR. P. HARRINGTON:** I only have two pages.

**MS. MUZYCHKA:** Yes. If you turn your page –

**THE COMMISSIONER:** Mine only has page 137 in it as well.

**MS. MUZYCHKA:** Okay.

**THE COMMISSIONER:** We'll have to look at it on the screen, I guess.

**MS. MUZYCHKA:** Yes. Yes. We will deal with that in a moment. Page 238 – if we can scroll –

**MR. P. HARRINGTON:** This is the DG3 –

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** – that – I'm just trying to get myself into this.

**MS. MUZYCHKA:** Okay.

So these represent the final inputs starting at this – it's actually page 130, or 230 – comes down a little bit later. But you see the categories? That may not be the correct page. Okay.

We can move from that one. Scroll up. Okay, yeah. Are these inputs that we're seeing under

cost category, are those part of the risks that are being considered? Best-cost, worst-cost scenario?

**MR. P. HARRINGTON:** I believe so. If it's part of this document, which I guess it is –

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** – then, you know, it is what it says it is.

**MS. MUZYCHKA:** Okay, these risks were identified in May 24, 2012. If you –

**MR. P. HARRINGTON:** In the –?

**MS. MUZYCHKA:** – go back to your binder, the two pages that you have is a copy of the first page, which is the project cost and schedule risk analysis report.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And then page 137 shows the risk workshop attendees list –

**MR. P. HARRINGTON:** Yeah, that's –

**MS. MUZYCHKA:** – key risks.

**MR. P. HARRINGTON:** – that's day 2. Day 1 was, would be this.

**MS. MUZYCHKA:** Day 1 would be the?

**MR. P. HARRINGTON:** The tactical risk.

**MS. MUZYCHKA:** The tactical risks, okay.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** All right. We may return to that in a moment.

All right, I want to now turn our attention to the 2013 SNC risk report.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** And why it is that Nalcor appeared to have not wanted to receive a copy of that report.

**MR. P. HARRINGTON:** Do we have an exhibit?

**MS. MUZYCHKA:** We will bring one up.

**MR. P. HARRINGTON:** Okay, sorry.

**MS. MUZYCHKA:** So we can turn to the PMT binder 2 at tab 57. It's Exhibit P-03159.

**MR. P. HARRINGTON:** (Inaudible) could you repeat that, please?

**MS. MUZYCHKA:** PM –

**THE COMMISSIONER:** Book 2 and tab 57.

**MR. P. HARRINGTON:** Thank you, Commissioner.

**MS. MUZYCHKA:** All right, we're going to start with page 2, the bottom of page 2.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** This is an email from you to Gilbert, copied to Lance, on May 29 – (inaudible) see – yes.

So we have an email in which you identify that you “met with Normand and JD Tremblay ... yesterday and asked for clarification on the SLI risk analysis that was carried out on the project.”

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Do you see that?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And so maybe you can elaborate and tell us about what happened and how you became aware of SNC's preparation of a risk report.

**MR. P. HARRINGTON:** Well, I wanted to meet with Normand and J. D. Tremblay because I wanted to find out where we were going with risk. There was – you know, there were some discussions, I think, with high levels of SNC that I didn't participate in with the – with Gilbert, perhaps, and Ed Martin, and they were talking about risks in the general sense. So I wanted to follow up with Mr. Normand – with Normand

Béchar and Mr. Tremblay and find out what was going on 'cause I really didn't know at that time in time.

**MS. MUZYCHKA:** Okay.

So just to pick it up from your email after the “I met with Normand and JD Tremblay” and just read from “It appears that M&M division” – we'll just read –

**MR. P. HARRINGTON:** “It appears that M&M” – and that's mines and metals [sp. Mining & Metallurgy], just to –

**MS. MUZYCHKA:** Mines and ...?

**MR. P. HARRINGTON:** Metal.

**MS. MUZYCHKA:** Metals, okay.

**MR. P. HARRINGTON:** Yeah.

“... division VP asked for this and the M&M division preformed the analysis – it was based on the data from the LCP Risk Workshops that Jason had chaired mid last year. The status is that a draft is with” – Bernard – “Gagné and Scott Thon” – Bernard Gagné, at the time, I think, was SNC's representative, I believe. And Scott Thon was the vice-president. “... and they may be thinking about providing it to us.” They hadn't offered it to us. I personally – “I would respectfully decline that offer because of a number of very important factors:

“1 Because the work was based on the same source data that Westney used there is nothing new here – Risk wise.

“... The risk analysis shows the unmitigated risk and cost result and” – it – “is not a probabilistic analysis using Monte Carlo sampling techniques – so the results will be subjective in interpretation and will not reflect the mitigations we have implemented or the cost result of the mitigations – i.e the results will be misleading and inaccurate.

“... We have had no opportunity to challenge the assumptions or factual accuracy of the input data and we really do not have ... time or inclination to do so – we need to focus our efforts and resources on the risks going forward

not spend time on some dated, incomplete analysis using techniques which are inferior to those used by Westney.

“So I recommend we talk to Scott and reassure him” – that’s Scott Thon – “and reassure him that we realize there was no mal intent here however given the above we would prefer if this remained as a draft internal document and not presented to us.” Because it was (inaudible).

“However there is something that we need to work on together and that is to revitalize the risk identification and mitigation efforts within the LCP team. It is now time to assess our current state regarding Risk Management and identify an action plan to get us to the desired state. I have asked JD Tremblay to provide me with that. I know that the LCP team has been very much focussed on dealing with other significant priorities and may not have been able to formally maintain the Risk register however I am also confident that the significant priority work the team is focussed on are indeed the biggest risks facing us and that we are in good shape here and with a little extra effort can catch up without major issue. I will support the Risk effort and lend my authority to Jason and JD Tremblay to help move this forward.”

**MS. MUZYCHKA:** Okay.

So is your feeling, at this point, that this document not be released to Nalcor?

**MR. P. HARRINGTON:** Well, the document, as I was told, was an internal document. It was marked confidential from what I was told. It was not yet approved. It was using – you know, we hadn’t been involved in any of the work. It was basically done behind my back without my authority ’cause they were using an unauthorized use of project data with persons and persons unknown in the M&M division. I didn’t know who was getting access to this information.

So I wasn’t all too pleased about it. I’ll be perfectly honest about that.

**MS. MUZYCHKA:** Okay.

And to your first point in the email, you’re saying that there’s nothing new in the report that Nalcor didn’t already have. Is that –

**MR. P. HARRINGTON:** That’s –

**MS. MUZYCHKA:** – correct?

**MR. P. HARRINGTON:** That’s what they told me. And I asked J. D. Tremblay a number of times to provide me with a risk report that wasn’t confidential and it wasn’t internal, that could show any new risks that they’d identified that he hadn’t put into our risk register ’cause he was our risk manager.

So, I asked J. D. Tremblay numerous times to provide me with a comparison report between anything new, tell me, show me. I never got such a report.

**MS. MUZYCHKA:** Okay, but did you ever ask them for a copy of the SNC report so you could make that comparison yourself?

**MR. P. HARRINGTON:** No, because they said it was internal and for – if anything, they were thinking about – it may be offered to – by Scott Thon to Gilbert Bennett, and I don’t think that ever happened. And in fact, none of us saw that report until it became public – I think in ’17? But it was provided to our CEO, Stan Marshall, in 2016, and I believe – I believe; I don’t know for sure – that he gave that to government at 2016.

**MS. MUZYCHKA:** Okay.

But the point is that you met with Mr. Tremblay, and you say you repeatedly asked him to give you a report –

**MR. P. HARRINGTON:** Sorry?

**MS. MUZYCHKA:** You said that you had met, on a number of occasions, with Mr. Tremblay and had repeatedly asked him for a report showing –

**MR. P. HARRINGTON:** That wasn’t internal and it wasn’t confidential, yes.

**MS. MUZYCHKA:** But it – you were asking for him a – for a report on the comparison of



risks from their internal report. Is that correct? A report –

**MR. P. HARRINGTON:** Is –

**MS. MUZYCHKA:** – on the report, is that what you were looking for?

**MR. P. HARRINGTON:** Is there anything new that I can use?

**MS. MUZYCHKA:** Well, you understood that there were no new risks. Is that what –?

**MR. P. HARRINGTON:** But I wanted to have confirmation of that.

**MS. MUZYCHKA:** Okay, but they – certainly that was what was communicated to you.

**MR. P. HARRINGTON:** Directly.

**MS. MUZYCHKA:** Okay, and they didn't offer you the report at that time. Is that your evidence?

**MR. P. HARRINGTON:** Pardon?

**MS. MUZYCHKA:** They did not offer the report to you at that –

**MR. P. HARRINGTON:** They –

**MS. MUZYCHKA:** – time?

**MR. P. HARRINGTON:** – did not offer me a report –

**MS. MUZYCHKA:** Yeah.

**MR. P. HARRINGTON:** – at that point in time.

**MS. MUZYCHKA:** Okay.

So why would you want Mr. Tremblay to give you a report on the report if you were not interested in the report?

**MR. P. HARRINGTON:** 'Cause he – I wanted to make sure he wasn't keeping anything back from me.

**MS. MUZYCHKA:** And how would you know that if you didn't get a copy of the report?

**MR. P. HARRINGTON:** 'Cause I asked – look, I asked him to provide me with a discrepancy report. He never did, so I assumed there wasn't any. And I was right.

**MS. MUZYCHKA:** All right.

When you asked Mr. Tremblay and Mr. Béchard if there were any new risks, were you aware that Mr. Tremblay may not have been aware of the strategic risks that were contained in the QRA?

**MR. P. HARRINGTON:** I wasn't, no.

**MS. MUZYCHKA:** Okay. Well, let's go through some documents.

Let's go to P-03159 in PMT binder 2 at page 2.

**MR. P. HARRINGTON:** Say again?

**MS. MUZYCHKA:** PMT binder 2.

**MR. P. HARRINGTON:** Oh this – the same one? Yes?

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** At – oh, I don't have a tab number there. Just a moment.

**THE COMMISSIONER:** What's the exhibit number, 03159?

**MS. MUZYCHKA:** 03159.

**THE COMMISSIONER:** That's at tab 57.

**MS. MUZYCHKA:** Tab 57, okay. I must have overlooked that one. That's just the previous – oh, it's the same document that we were looking at. All right, yes, we're just right above. And this is Mr. Kean's response to you. Do you see that there? He writes to you: "Paul,

"One point of note - SLI did not have access to any data from these sessions.

“They only participated in some of it and I provided none of it to them.”

**MR. P. HARRINGTON:** But he was responsible for the risk register. Mr. Tremblay was the owner of the risk register, and it was a project risk register.

**MS. MUZYCHKA:** But he wasn’t – they didn’t participate in the QRA that was done in 2012, though?

**MR. P. HARRINGTON:** No, that’s correct.

**MS. MUZYCHKA:** That was done – and I recall in your interview that you specifically did not want SNC or SLI being involved in the risk assessment.

**MR. P. HARRINGTON:** Because it was owner’s risks that we were looking at there.

**MS. MUZYCHKA:** Okay.

Now if we go to P-00130, and in that’s in the Paul Harrington binder 2 at tab 84.

**MR. P. HARRINGTON:** Tab ...?

**MS. MUZYCHKA:** That’s the document that we were just looking at with the names on the page 137. And it’s entitled key risks workshop –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – attendee list –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – day 2. And you look through those names, Mr. Harrington, is there anyone there on that list from SNC?

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** All right. Let’s turn to tab 85 of your binder, Mr. Harrington, binder 2. It’s Exhibit 01975.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And this is the document of your recollections, is it, regarding –?

**MR. P. HARRINGTON:** I provided this in the very first interview I had with Ms. O’Brien. I think it was June of last year.

**MS. MUZYCHKA:** Okay.

So, let’s just go to page 2, please. And at the top it starts with: “I also seem to recollect that the SNC Risk report was also brought up during an SNC - Nalcor senior management alignment session which was held in Pippy Park Bungalow.

SNC Senior management were advised that Project had performed a QRA prior to the Sanction decision which included Strategic and Tactical risks and the cost and schedule risks to the project had been quantified prior to the Sanction Decision and Project Executive and Government were provided the results of the QRA as part of the Sanction decision.” And then in – you state: “I had the impression that this information was not previously understood by SNC ....”

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** So, what did you mean by that, that they didn’t understand?

**MR. P. HARRINGTON:** Exactly as it’s written.

**MS. MUZYCHKA:** What is it that they didn’t understand?

**MR. P. HARRINGTON:** That we’d actually carried out a QRA and identified the strategic risks, tactical risks. The strategic risks would be management reserve and we’d pass that up the line.

**MS. MUZYCHKA:** So, basically, SNC did not know about the – Nalcor’s QRA.

**MR. P. HARRINGTON:** They didn’t know all of the things that we were doing, no, as owner.

**MS. MUZYCHKA:** Okay.

So was that a deliberate decision to cut SNC out of the risk work –

**MR. P. HARRINGTON:** No –

**MS. MUZYCHKA:** – that was being done on the QRA?

**MR. P. HARRINGTON:** It's not – I mean, any owner has information that he doesn't necessarily need to share with his contractor. I think that's perfectly normal that there are certain parts of the business that are owner exclusive, and that's it.

**MS. MUZYCHKA:** Well, if Mr. Tremblay and Mr. Bécharde weren't privy to a significant part of the risk analysis – not being involved in day 2 of the workshop – how could you rely on their conclusion that there no new risks? I mean, how would they know? They wouldn't have had a copy of the report. They weren't involved in its preparation.

**MR. P. HARRINGTON:** Because they told me they used the exactly same risk report that the project – that Mr. Tremblay was responsible for –

**MS. MUZYCHKA:** What risk report?

**MR. P. HARRINGTON:** It's the –

**MS. MUZYCHKA:** Or is a register (inaudible) –?

**MR. P. HARRINGTON:** – risk register, sorry.

**MS. MUZYCHKA:** The listing of the risk –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – the identification of risks.

**MR. P. HARRINGTON:** Yeah. It's the risk register.

**MS. MUZYCHKA:** We've heard some testimony that government was not provided with the report on the strategic risk before sanction. Were you aware of that?

**MR. P. HARRINGTON:** But it was certainly prepared as a document provided to – I think Gilbert Bennett signed it off. So, as I've

mentioned before, my line of command stopped at Gilbert Bennett and the CEO.

**MS. MUZYCHKA:** Now, Mr. Tremblay indicated in his interview that when you found out about the SNC risk report, his impression was that you were not happy, were his words, with the unfavourable 2013 SNC report.

**MR. P. HARRINGTON:** No, I wasn't happy that they were doing it behind my back without asking my permission.

**MS. MUZYCHKA:** They need your permission to make –

**MR. P. HARRINGTON:** Well –

**MS. MUZYCHKA:** – that assessment?

**MR. P. HARRINGTON:** – I am the project director and they are using project information with persons or persons unknown, I think it's only a reasonable thing to say, why didn't you ask me.

**MS. MUZYCHKA:** Okay. I think some –

**MR. P. HARRINGTON:** And they didn't.

**MS. MUZYCHKA:** But some of the concern was that you were concerned that the report could be subject to an ATIPPA request.

**MR. P. HARRINGTON:** I wasn't – what I was trying to explain to them is that if it's a confidential report, and it's for internal use only, that's not going to protect it, right, from ATIPP. That's what I explained to them. They didn't quite understand how ATIPP worked in this province. So I just gave them an explanation that that's, you know, that's the way it works here.

If – it's no good putting confidential and, you know, internal use only, that's not going to stop it from being accessible by ATIPP.

**MS. MUZYCHKA:** Okay.

Well, let's just turn now to P-03172 which is Paul Harrington binder 2, tab 86.

**MR. P. HARRINGTON:** 86?

**MS. MUZYCHKA:** 86. Next page.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay. Just a sec now, I'm at the wrong binder. Okay, we turn to page 2, please.

**MR. P. HARRINGTON:** Of this –

**MS. MUZYCHKA:** Of this exhibit, 03172 –

**MR. P. HARRINGTON:** 03172, yes.

**MS. MUZYCHKA:** And, you're writing to Justin Dahl at Westney?

**MR. P. HARRINGTON:** Correct.

**MS. MUZYCHKA:** And you're requesting an analysis to be done to understand if the risks identified in the SNC report were identified by the project team risk. And this is now dated in 2017, so this four years after the –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – initial preparation of the report. So when the report was raised as an issue in 2017, it appears you engaged Westney to do the analysis?

**MR. P. HARRINGTON:** Well, yes, because they're the people who did the QRA, back at DG3.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So I felt they were the best placed people to give me a response to the various questions that I laid out there. I think – you know, I could read them all out, but it's basically I wanted to know – ultimately, I wanted to understand if the SNC risks included in the assessment would've been a revelation to us, at the time. So that's really what I was looking to –

**MS. MUZYCHKA:** All right.

**MR. P. HARRINGTON:** – (inaudible).

**MS. MUZYCHKA:** Let's turn to tab 58 of the project management team binder 2, and it's Exhibit 01847.

**MR. P. HARRINGTON:** Um, bear with me, please. (Inaudible.)

Binder 2?

**MS. MUZYCHKA:** Binder 2, PMT binder 2.

**MR. P. HARRINGTON:** Tab?

**MS. MUZYCHKA:** At 58.

**MR. P. HARRINGTON:** Thank you.

**MS. MUZYCHKA:** Okay, this is the analysis that you hired Westney to do. Is that correct?

**MR. P. HARRINGTON:** I'm looking at the wrong one. PMT?

**MS. MUZYCHKA:** PMT binder 2, tab 58.

**MR. P. HARRINGTON:** Fifty-eight, sorry.

**MS. MUZYCHKA:** Fifty-eight.

**MR. P. HARRINGTON:** Yeah, I misheard. Yes, this looks like the report.

**MS. MUZYCHKA:** Okay.

If we go to page 6, this report was prepared – or is dated December 2017.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** All right.

At page 6, we see that Westney has come to the conclusion that all risks included in the SNC-Lavalin risk assessment had all ready been identified by Nalcor. Is that correct?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay. And there's just check marks showing where they're referenced as key risk numbers and so on.

**MR. P. HARRINGTON:** Yes, and I remember listening to Mr. Jason Kean's testimony on this

matter, and from what I could gleam from what he was saying is – and the questioning, is that some of the references may not be as accurate as perhaps they ought to have been.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** But notwithstanding that, all – he testified that all the risks were indeed included but – so that what's I was understanding.

**MS. MUZYCHKA:** Okay. Well, some of them or at least one of them couldn't have been identified specifically, and that would have been the change of management of the project from an EPCM to IMT arrangement because that hadn't occurred in 2012.

**MR. P. HARRINGTON:** Could you repeat that one, please?

**MS. MUZYCHKA:** I said that one of the risks that was identified by SNC in their risk report –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – had to do with the change in management of the project from an EPCM contract to the – Nalcor taking on the integrated management team approach. So that hadn't happened or wasn't formalized until 2013, so it would not have been identified, presumably, as a risk –

**MR. P. HARRINGTON:** In 2012.

**MS. MUZYCHKA:** – in 2012.

**MR. P. HARRINGTON:** Yeah. Maybe –

**MS. MUZYCHKA:** And I mean there's risks associated.

**MR. P. HARRINGTON:** – the odd thing like that, I would guess, but I think the material issues were covered.

**MS. MUZYCHKA:** Okay. You don't see the change in management of the project as being material?

**MR. P. HARRINGTON:** As a risk?

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Well, it had already happened, so it's like saying, you know, identifying a risk of flood in your basement when you're up to your knees in water. It's – it had already happened, we were actively – we were in damage control –

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

**MR. P. HARRINGTON:** – already at that point in time.

**MS. MUZYCHKA:** Right. But, I mean, it was a risk to the project, the fact that it had occurred and it can be quantifiable in terms of the impact that it would have.

**MR. P. HARRINGTON:** In 2013 –

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** – or 2012?

**MS. MUZYCHKA:** No, certainly it wouldn't have been in 2012, but it would have been in 2013, identified as a risk to the project.

**MR. P. HARRINGTON:** I think from SNC's perspective –

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

**MR. P. HARRINGTON:** – I thought that risk had already passed us because we were in damage control, as I mentioned, that we were trying to mitigate the impact of a risk that had materialized.

**MS. MUZYCHKA:** Okay.

Well, in terms of this report, we heard testimony that Mr. Kean was asked – approached by you to assist in this endeavour. Do you recall that?

**MR. P. HARRINGTON:** Yeah. I asked him to give me an initial kind of viewpoint –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – and –

**MS. MUZYCHKA:** At that time Mr. Kean was no longer with Nalcor.

**MR. P. HARRINGTON:** That's correct.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** So –

**MR. P. HARRINGTON:** 'Cause he, I believe, was in – I mean, Mr. Kean was actively involved with this at the point – at that point in time, so he was still on a retainer with Nalcor.

**MS. MUZYCHKA:** So he was actively involved with the Nalcor project in the time leading up to this?

**MR. P. HARRINGTON:** Not at this point – this – are you talking about when I asked for this to be done?

**MS. MUZYCHKA:** Yes, this being the –

**MR. P. HARRINGTON:** No –

**MS. MUZYCHKA:** – review by Westney.

**MR. P. HARRINGTON:** – I think he'd left, he left, but we – he was still on a – on a (inaudible) retainer for occasional work that we needed to get done.

**MS. MUZYCHKA:** Okay. So what was it that you had asked Mr. Kean to do?

**MR. P. HARRINGTON:** Um.

**MR. P. HARRINGTON:** You wanted Westney to prepare a report.

**MR. P. HARRINGTON:** I wanted Westney – I wanted him to give me an initial viewpoint, without going into the enormous detail that Westney were obliged to do. I wanted to him to have a look at the SNC report, and from his knowledge, from his – you know, he was deeply involved in the DG3 risk analysis that – just to give me an initial assessment. It's a – that's what I asked him to do, I seem to remember.

**MS. MUZYCHKA:** Okay. Mr. Kean indicated that he was asked to identify all of the risks in the Nalcor's risk register, and to provide that information to Westney.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** For you to provide that information to Westney. Do you remember that?

**MR. P. HARRINGTON:** No, I have a – I don't have a full memory of that.

**MS. MUZYCHKA:** Okay. Do you believe that there was any conflict of interest from Mr. Kean and Westney, to be involved in doing this review?

**MR. P. HARRINGTON:** No, 'cause I think facts are facts. This is fact. I don't see that as a conflict.

**MS. MUZYCHKA:** Okay. Well, we know that both Mr. Kean and Westney Consulting had been fairly involved in the Nalcor's DG3 QRA work in 2012.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And because of that, it wouldn't be in their interest if there were findings that SNC's risk analysis revealed or conflicted with their 2012 QRA work. So, I mean, given that fact, do you think that they could be truly objective in their analysis –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – as to the comparing their work with SNC's work?

**MR. P. HARRINGTON:** Yeah. Yes, I did, I felt as though they would – they were a professional group, and they would give us a true answer. And, you know, I have no reason to doubt that they're providing me with accurate information.

**MS. MUZYCHKA:** Okay. Let's look at page 6 of that Exhibit again. So we have that up on the screen.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** It looks like this chart lists all 50 risks identified by the 2013 SNC risk report. And we've gone through this before with Mr. Kean, so I won't –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – rebuild all of that evidence, but –

**MR. P. HARRINGTON:** Please.

**MS. MUZYCHKA:** – and then, on the next column, it says: Included, and there's check marks all the way down through, and then in the last column is the Nalcor-LCMC reference. Is that –?

**MR. P. HARRINGTON:** Which we recognize it may not have been entirely accurate.

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** The – yeah.

**MS. MUZYCHKA:** And, you would have gained that from Mr. Kean's testimony.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** So, we're looking at either risks, Rs, or KR's, or key risks, as we run down through the –

**MR. P. HARRINGTON:** Yeah, the – at page 7, goes onto more – Very high, High, Medium, and Low.

**MS. MUZYCHKA:** Right.

Do you know why Westney would have chosen to provide just the key risk number or the risk number, instead of writing out the risk titles that corresponded with that?

**MR. P. HARRINGTON:** That, I – no, I don't think that was specified or stipulated. I think it was just the way they thought it was best presented.

**MS. MUZYCHKA:** Do you think that that's – makes it for an easy presentation for anyone reading that to be able to determine whether

there is a comparison of the risks, that they, in fact, relate one to the other?

**MR. P. HARRINGTON:** Well, it was – it was commissioned by me and, you know, it was adequate for me.

**MS. MUZYCHKA:** Do you know what KR23 is?

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** Do you know what KR11 is?

**MR. P. HARRINGTON:** No. I couldn't –

**MS. MUZYCHKA:** Forty-three?

**MR. P. HARRINGTON:** – quote that.

**MS. MUZYCHKA:** No.

**MR. P. HARRINGTON:** Sorry.

**MS. MUZYCHKA:** So, you know, is this meaningful to you as you review it?

**MR. P. HARRINGTON:** Well, yeah – well, I'm looking at if they include it, more than anything. I'm not digging into – doing their work for them, I really am not. I'm just saying: Was it all included? And their response was: Yes. So, you know, their professional output and – I trust their work.

**MS. MUZYCHKA:** Okay.

Did you ever say to Westney: Can you, like, elaborate on this so it's easy to read, I can present it to whoever it is that needs to see it and understand?

**MR. P. HARRINGTON:** No, I didn't go –

**MS. MUZYCHKA:** Yeah –

**MR. P. HARRINGTON:** – that step.

**MS. MUZYCHKA:** – you didn't question it.

**MR. P. HARRINGTON:** No, I didn't question it, will be honest.

**MS. MUZYCHKA:** Okay.

'Cause we know from previous examples today and others, that you are not a stranger to reviewing reports and providing your commentary where you feel it's appropriate.

**MR. P. HARRINGTON:** Yeah, but I took it on its merits here.

**MS. MUZYCHKA:** Okay.

So did you challenge Westney on any of their conclusions then, that these risks were included and that they were, in fact, correlating to the ones that SNC had identified?

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** So you didn't –

**MR. P. HARRINGTON:** No, I didn't.

**MS. MUZYCHKA:** – go beyond that other than –

**MR. P. HARRINGTON:** Nope.

**MS. MUZYCHKA:** – take –

**MR. P. HARRINGTON:** I mean, I commissioned the report, the report was delivered, ticks are here, for sure. But, you know, it's also making statements that they – for example, on page 4: "All risks identified by SNC-Lavalin were included in the LCP risk register and considered in Westney's analysis."

So, you know, that – that's a pretty strong statement that I believed.

**MS. MUZYCHKA:** Okay, well –

**MR. P. HARRINGTON:** So –

**MS. MUZYCHKA:** – when you engaged Westney to do this report in 2017 –

**MR. P. HARRINGTON:** Yep.

**MS. MUZYCHKA:** – now four years later, what were your reasons for getting the analysis done?

**MR. P. HARRINGTON:** I was driven by, you know, the – there was a report in the newspaper to say that – accusations that we weren't being diligent with regards to – that the project team were not being diligent with regards to risk, risk management and following up with risks.

And so I wanted to, you know, make sure that that wasn't correct and – and the analysis was, as I identified in this report, that that wasn't the case. That we were following up on risk, we were actively mitigating risks that were being identified in SNC's report, and indeed, in – already in our risk register. So it was that that prompted me to move to this step.

**MS. MUZYCHKA:** Okay.

So before you engaged them to do the report, was it your intention that you would ultimately release this report to the media or to the public?

**MR. P. HARRINGTON:** Not at all.

**MS. MUZYCHKA:** No?

**MR. P. HARRINGTON:** No, I mean, like all of the evidence that's come out here, you know, this is internal. You know, I'm not –

**MS. MUZYCHKA:** But you indicated that you did it because of information that was out there in the public –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – and –

**MR. P. HARRINGTON:** And so I gave this to our communications department to say, look, that statement that's being made may be inaccurate, so you might want to consider this. They decided not to pursue it. I just think it's right to get the correct facts, at least, you know, to me. I thought there may be something I'm missing. This was, you know, four years later and, here we go.

**MS. MUZYCHKA:** What was this report primarily used for then? Was it distributed to anybody? Did you use it?

**MR. P. HARRINGTON:** I sent it to Stan 'cause he asked for it.



**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** I think the email preceded some of this – one of the exhibits earlier – he was asking about the SNC report, he had some views on the SNC report and, you know, I shared the – he wanted to know, I believe, was there anything in it and the statements that were being made. So I followed up on it.

**MS. MUZYCHKA:** All right.

Let's look at P-03661, it's at the Paul Harrington binder 2 –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** – at tab 87.

**MR. P. HARRINGTON:** Eighty-seven?

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Excuse me a second.

**MS. MUZYCHKA:** You see that?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay. So you're writing to Gilbert Bennett and Karen O'Neill –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – and copying Ron Power, and it's entitled Pam Frampton article. And you attached the analysis of SNC-Lavalin's risk assessment. So I assume that's the – that's the Westney report?

**MR. P. HARRINGTON:** I'm reading it now.

**MS. MUZYCHKA:** Just read it aloud for us.

**MR. P. HARRINGTON:** Well, "I suggest that the Westney report is released because of this misrepresentation of the facts by the media needs to be addressed."

**MS. MUZYCHKA:** Okay. So that – did – are you aware of whether the report was released to the public or the media, in anyway?

**MR. P. HARRINGTON:** No. No, it wasn't. I think it was released as part of the Inquiry's demand for information. So, it wasn't released at this point in time. No.

**MS. MUZYCHKA:** But if it wasn't gonna be used for any public purpose, why would you have spent, you know, thousands, tens of thousands of dollars on having Westney review the report if you were confident that there were no new risks identified in SNC's report?

**MR. P. HARRINGTON:** Yeah, but we were having statements out there, that I needed to, in my own mind, to be absolutely sure.

**MS. MUZYCHKA:** You had Jason Kean as well, you said, look at –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – the report –

**MR. P. HARRINGTON:** Yeah, yeah.

**MS. MUZYCHKA:** – and do a comparison.

**MR. P. HARRINGTON:** Absolutely, belt and braces.

**MS. MUZYCHKA:** You didn't feel confident, and you still –

**MR. P. HARRINGTON:** I just –

**MS. MUZYCHKA:** – wanted (inaudible) –

**MR. P. HARRINGTON:** – wanted to have something between, you know, a report that I could completely nail this in my own mind.

**MS. MUZYCHKA:** Okay. Let's go to tab 86, binder 2, with Paul Harrington, it's Exhibit P-03172.

**MR. P. HARRINGTON:** Ah, this is to Stan, right? Yeah.

**MS. MUZYCHKA:** Okay, so this is an email to Stan Marshall, which shows that you provided him with a copy of Westney's report.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Do you know if that report went beyond Mr. Marshall, to the board or government?

**MR. P. HARRINGTON:** I don't know. I wouldn't know.

**MS. MUZYCHKA:** All right.

Okay. Now, the next topic I want to cover with you, Mr. Harrington, is the issue of on-site authority, which we've heard a lot about over the last number of days or weeks. We've heard from multiple witnesses that the issue of authority to make decisions on site versus at Torbay Road, led to – or causes of concern for some of the people on site, contractors and some of your own people. I am just gonna get you to comment on some of the testimony that we've heard about this, as the director.

**MR. P. HARRINGTON:** Fine.

**MS. MUZYCHKA:** A common thread of what we have been hearing is that the project team was not on site enough and that the construction managers that were on site did not have the ability to make major decisions, which led to at least two managers leaving the project. I'm going to take you to some specific references.

We heard from Des Tranquilla – and you, of course, would know Mr. Tranquilla –

**MR. P. HARRINGTON:** Yes, I do.

**MS. MUZYCHKA:** – that the on-site management had little decision-making authority and that the cost and schedule decisions were made in St. John's, which caused frustration amongst the site team. He testified that Nalcor's model was that construction managers were only to observe and report, which wasn't the model he was used to on other projects. And he also felt that the \$200,000 or \$250,000 spending authority he had was a lower amount than he had been used to in a similar job on other projects.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** What do you say to that? Do you have any response?

**MR. P. HARRINGTON:** Well, you know, Mr. Tranquilla is coming from – I think his previous job was a mine, single site. And, you know, that particular job that he was on had a certain model that they used there and that's different from the model that we use on our project.

The C1 construction management plan clearly stipulated that the site manager – so there's two, basically, managers at site: There's the site manager who looks after the camp and the catering and the security and those things, and then there's a construction manager whose – and his team, whose responsibilities are for the management of the contract in accordance with the specifications, the quality standards and the safety and environmental rules that are being established.

They have full authority to exercise that as the only – so there's a difference between having authority to exercise the contract and to do everything with the contractor to ensure that the contractor delivers that which he is being, or they are being contracted to deliver in accordance with the specifications, the standards. They can make some decisions which, you know, they are entitled to make, and I think examples of, you know, change orders can be written for snow clearing or moving rebar or doing small changes.

For any change that affects the overall integrity or the engineering of the project, or would extend the overall cost of that contract, would come back to home office. And the project manager in home office, as the company representative, would have the responsibility then to ensure that any of that engineering change would have, you know, been checked by the engineer of record. Or if it was an environmental impact it would be checked by the environmental team, or if it was a safety-related issue, that the safety team would look at it; if it's quality, it would be quality team. So the home office have that kind of overall kind of a big picture, if you want to call it that.

**MS. MUZYCHKA:** Okay. I mean we heard testimony from Mr. O'Brien and Mr. Power about –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** – the matrix. So, you know, we don't have –

**MR. P. HARRINGTON:** Yeah, sorry if I've repeated that.

**MS. MUZYCHKA:** – to delve into that in too much detail. But, you know, the perception and the reality of those who were working on site in Labrador was that the particular model may not have been strictly adhered to if people were there empowered, as we heard Mr. O'Brien say, to make decisions on site and had certain financial authority, but the observations of a number of individuals – and Mr. Tranquilla was one of them – who said that their main role was to observe and report and that all the decisions had to be made in St. John's, so –

**MR. P. HARRINGTON:** I don't fully agree with what Mr. Tranquilla said there because he did have authority to manage the contracts. You know, these situations and people coming from different jobs sometimes bring the, you know, their process and procedures that they used before and sometimes they're not comfortable with the fact that they're not given carte blanche.

This project wasn't done that way. And, again, I refer back to my recent discussions with all of the project directors and vice-presidents on the Site C project, the Keeyask project; the La Romaine project, I think, was there as well and other projects. I asked them that very thing: Where does your project manager sit? And they, almost all of them, said they sit in our home office and the construction manager at site manages the construction.

So, you know, you can ask contractors – and some of the contractors are some people coming from a different job. I'm not saying that, you know, on that job it wasn't suitable for what they were doing and it might have been perfectly okay, but on this job and other megaprojects in the hydro business that are going on across Canada, the home office have to control the overall, the big picture. The site manager has to handle the site.

I mean – and from a point of view of, you know, for example, Mr. Scott O'Brien, he would have, perhaps, not a site but he has fabrication sites that he has to look after, manufacturing sites that

he has to look after, engineering houses that he has to look after, as well as the site. So he's ideally placed in a home office to be able to look after all of those things and make sure that each and every one of those people, right, who were looking after perhaps in a large fabrication facility, that they're not going off on a tangent and doing what they think they've got carte blanche to do.

**MS. MUZYCHKA:** No, fair enough but –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – you know, given that, really isn't it a question then of having more authority on site, whether it's Mr. O'Brien or somebody else. Why wouldn't Des Tranquilla feel like he should have –

**MR. P. HARRINGTON:** I –

**MS. MUZYCHKA:** – a couple of million dollars in authority for changes and the ability to deal with things that may not materially impact? Because the impression that he gave was certainly that, you know, he was capable and had done that in other projects and felt, you know, constraint in his ability to make meaningful contribution on the –

**MR. P. HARRINGTON:** I can't – I mean I've tried to answer the question as best I can.

**MS. MUZYCHKA:** Okay. No, fair enough. I mean I understand and, certainly, the position that we've heard is that this is the way that we did things and that was –

**MR. P. HARRINGTON:** And it's fully documented, it's a 200-page – I think – plus document that clearly identifies the rules and responsibilities. And, you know, if you ask others, all right, who followed Mr. Des Tranquilla – if you ask Ed Bush, if you asked the manager after him whose name escapes me at the moment, if you ask Bill Knox and if you ask the current one, Jeff Reid, do they think they have sufficient responsibility and authority to make – to do their job? I think they would tell you completely different to what Mr. Tranquilla has. And Mr. Tranquilla couldn't square that circle and, you know, he moved on and that was fine.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And – but we need people to support the approach.

**MS. MUZYCHKA:** All right.

We didn't just hear it from him; we heard testimony from Mr. Don Delarosbil, who was the manager – project manager for Astaldi.

**MR. P. HARRINGTON:** Correct, he's a contractor. He may have a point of view and he may have his own agenda and he may be pursuing that agenda. Contractors have a completely different perspective.

**MS. MUZYCHKA:** Okay, well, let me just – wait until I put to you the question about what his comment was.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** He indicated he stopped attending project meetings every week because nobody attending had any authority.

**MR. P. HARRINGTON:** And I'm sure he'd say that because that's part of their claim.

**MS. MUZYCHKA:** Okay.

There are also a few resignation letters. I'm sure you've seen them.

**MR. P. HARRINGTON:** Cohorts of Mr. Tranquilla

**MS. MUZYCHKA:** From a number of managers including: Ted Vanwyk, Brian Cottrell and Mark (inaudible).

**MR. P. HARRINGTON:** And they were all brought on by Mr. Tranquilla. So they were –

**MS. MUZYCHKA:** Well, let's just bring –

**MR. P. HARRINGTON:** They came from the other – the same job I mentioned earlier.

And I don't want to get into, you know – I'll try and avoid getting into criticism of – you know, but you can't have subordinates out in the field pushing back against established procedures.

This is the procedure that we decided on this project. It is not unique. It has been used by other – and it's currently being used by other megaprojects in the hydro world. Sure, you can ask contractors or people who've left the project, for whatever reason, or I don't know, people with a grudge to bear, and they'll say: Oh, it was all wrong. Well, they're not there, that's not – they can have that opinion, that's fine. I don't have any problem with that. I really don't.

**MS. MUZYCHKA:** Okay.

Well, a lot of the things came up, and I don't know that there was push back against authority from the site to home office, but there were comments that were made in their letters of resignation, so –

**MR. P. HARRINGTON:** I saw that, yes.

**MS. MUZYCHKA:** – you know, if we look at PMT binder 1, tab 1, which is Exhibit 03048.

**MR. P. HARRINGTON:** It will come up on screen, I think, (inaudible).

**MS. MUZYCHKA:** Yeah, it's in the PMT number 1, if you wanted to pull it up yourself. And this was Mr. Ted Vanwyk.

**MR. P. HARRINGTON:** Sure.

**MS. MUZYCHKA:** And he said specifically he was leaving the project – he felt he couldn't "continue to meaningfully contribute to the project and perform as expected." He says: "On the Lower Churchill Project, construction management is now directed by Nalcor in St. John's and on site we are the eyes and ears for others to organize high level meetings with the contractor and to make decisions. The contractor is fast learning that the decision making is done in St. John's, not at the site. This undermines our authority and significantly reduces our ability to manage as I believe we should be doing."

**MR. P. HARRINGTON:** Well, that's, you know –

**MS. MUZYCHKA:** Were you aware of this letter?

**MR. P. HARRINGTON:** – construction management is not directed by Nalcor in St. John's. Construction management is at site. So as I – you know, I think we could ask 10 other people and they'd give a different opinion. You could ask the 10 people who've actually built this project from when Mr. – and when Mr. Tranquilla left and Mr. whatever his name is left, and they would give you a completely different view on things. They would say this works fine. This person left because he didn't get his own way, right. So he didn't like the way we were doing it. Fine, move on.

**MS. MUZYCHKA:** Okay.

Well, let's look at the next exhibit, 03049, and this is at tab 2 of the same book, PMT binder 1. And this is a letter of resignation from Brian Cottrell on page 3.

**MR. P. HARRINGTON:** Another colleague of Mr. Tranquilla.

**MS. MUZYCHKA:** So he writes to Mr. Tranquilla, the site manager, and he says: "I feel ... my capabilities and experience are not being fully utilized, I am not challenged by my work or my work load and have no decision making capability. Further, the management style employed by St John's gives me great concern as the control and decision making capabilities do not lie with the experienced people on site, but rather with St John's who are removed from the day-to- day ... operations and this often causes unnecessary delays."

**MR. P. HARRINGTON:** It's more of the same, you know, and –

**MS. MUZYCHKA:** So again –

**MR. P. HARRINGTON:** – and it would be my same answer.

**MS. MUZYCHKA:** Yeah. No, fair enough.

**MR. P. HARRINGTON:** I mean, I'm not going to –

**MS. MUZYCHKA:** I'm simply drawing them to your attention.

**MR. P. HARRINGTON:** – drag this out.

**MS. MUZYCHKA:** And then, at tab 3, the next one is a letter of resignation from John Mulcahy. And if we look at page 2, and it's Exhibit P-02819.

He says: "In all my years in construction, the field team ran the construction site and the head office supported the field team. On Muskrat Fall it is vice versa and is to the detriment of the project and the people of the province especially with all the interfaces coming up. It cannot be micro managed from head office."

And then, it's – I mentioned there's also commentary made by Mark Turpin when he exited – or he wrote to Stan Marshall and also raised a number of concerns. So I'm simply pointing them out to you.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And you were the project director. My first question to you is: Did these letters ever make it up the chain to you? Were you aware that there was some conflicting views or contrary views as to how the project should be managed from people working at the site?

**MR. P. HARRINGTON:** Should be managed?

**MS. MUZYCHKA:** Or could be managed?

**MR. P. HARRINGTON:** Thank you.

The – this one obviously did –

**MS. MUZYCHKA:** Mr. Mulcahy?

**MR. P. HARRINGTON:** – as it's directed to me. I had a lot of respect for Mr. Mulcahy, yeah. And his background is generally – you know, he was a construction contractor for a large portion of his time, and – yeah, sure, I don't criticize his viewpoint; I'm not criticizing his experience. I wouldn't dream of doing that. He's – he has his view, and that – he's fine.

And I – you know, eventually, Mr. Mulcahy's role, like all projects – we're go-away people. Once we get to a certain stage, the job is done, we move on. So his role ran out at a certain point of time, and I think he felt as though he should be there a lot longer, and we didn't have a particular need for him. And so that was when,

you know, unfortunately, like all projects, there comes a point in time where you have to let these people go.

**MS. MUZYCHKA:** Sure, but –

**MR. P. HARRINGTON:** So I'm not going to –

**MS. MUZYCHKA:** – that doesn't give him motivation, though, for him making a comment like that. If he felt that this was an observation as an experienced individual in the construction industry –

**MR. P. HARRINGTON:** As a contractor, right? And so, you know, I'm sounding like a cracked record here but I can't – you know, this is the model that was chosen, this is the model that we wanted people to agree with and conform to. Like any procedure, any large project, you have to have procedures. You have to have people who will buy into the procedures, otherwise it's anarchy – it's chaos. We can't afford to do that –

**MS. MUZYCHKA:** Okay, so –

**MR. P. HARRINGTON:** – and this is what – okay, you're (inaudible) –

**MS. MUZYCHKA:** No, no. But I understand that there are procedures and that Nalcor had well-documented procedures as to the performance and the matrix of authority and all that sort of thing.

**MR. P. HARRINGTON:** But just because you have three letters doesn't mean to say we were wrong.

**MS. MUZYCHKA:** Well, I'm just suggesting to you that there were others that shared a contrary opinion. But –

**MR. P. HARRINGTON:** There's probably a lot of contrary, you know, opinions on things. I just look at what my experience has been. And my experience since I – even going back to 1977, the first project I was on, Statfjord A in Norway, the construction team were at the work face on the platform or the module yard and home office is where the project manager sat. And that's been a theme throughout the last 40

years with me, and I've only ever done megaprojects.

So I understand people may have a difference of opinion and you're only seeing one side of the (inaudible) you mentioned here. But, you know – but you've heard evidence from Mr. Power and Mr. O'Brien, and if you asked Mr. Reid, Mr. Ed Bush, Mr. Peter Tsekouras – is the other name that I'd forgotten – and ask them what they thought, well, they didn't leave, they stayed and they built the thing and they felt as though the system – the way that we had it was perfectly workable and they didn't pack up and go home.

**MS. MUZYCHKA:** Okay.

Well, let's draw your attention now to Exhibit P-01977, and that can be found at the project management team binder 2, at tab 55. If we could bring – well, this is the SNC-Lavalin Risk Assessment.

**MR. P. HARRINGTON:** Oh, we are on this one again.

**MS. MUZYCHKA:** Tab 55.

**MR. P. HARRINGTON:** Yeah, I'm coming to it. Please bear with me.

**MS. MUZYCHKA:** Certainly.

**MR. P. HARRINGTON:** Right, so this is the risk report that was released in 2017.

**MS. MUZYCHKA:** Correct.

**MR. P. HARRINGTON:** Correct?

**MS. MUZYCHKA:** I don't know if it was 2017 or 2016, but –

**MR. P. HARRINGTON:** It was given to Mr. Marshall in 2016, but I don't think government released it 'til 2017.

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** I could be wrong.

**MS. MUZYCHKA:** I could be wrong – it's not an important –

**MR. P. HARRINGTON:** I stand to be corrected.

**MS. MUZYCHKA:** So that's not critical at this point –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** – for the point of my question.

At page 16 –

**MR. P. HARRINGTON:** Let me get there, please – 16.

**MS. MUZYCHKA:** It's very hard to read – it's very small. But if you look at the risk report, there is – the third line, "Difficulty transitioning to an integrated team project delivery model" is identified as a risk. Do you see that?

**MR. P. HARRINGTON:** Mm-hmm.

**MS. MUZYCHKA:** Do you read that? And then if you look at the mitigation factors, I mean, they identify: "Insure key positions filled by skilled and experience people specifically in projects of this nature." And then – sorry, I meant to read the first one: "Issue an authority matrix giving site managers latitude."

**MR. P. HARRINGTON:** And we came forward with a – what we thought was an acceptable latitude.

**MS. MUZYCHKA:** Okay, but do you think that maybe SNC in their report is suggesting that might be insufficient?

**MR. P. HARRINGTON:** SNC had, you know, their view on things and they wanted to – well, that's – they have difference of opinions with us on that, and that's fine. I don't have any problem with that. But, ultimately, we have to make the calls.

**MS. MUZYCHKA:** Right.

**MR. P. HARRINGTON:** We have to – we have –

**MS. MUZYCHKA:** So, ultimately –

**MR. P. HARRINGTON:** – to be the managers here.

**MS. MUZYCHKA:** – it was the decision of the project management team to continue on as you were?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** We were satisfied with the latitude that the site managers were provided, and it's proven to work very well since those who didn't agree with that moved on.

**MS. MUZYCHKA:** Now, I understand – or we've heard from Mr. MacIsaac – not here in this room, but in interviews –

**MR. P. HARRINGTON:** Who?

**MS. MUZYCHKA:** Mr. MacIsaac.

**MR. P. HARRINGTON:** Yes, go ahead.

**MS. MUZYCHKA:** – that he pushed his project managers, like, Mr. DeBourke, to be on site five days a week, to have a frequent presence, and we're going to presumably hear from him that it was important to his approach that the management team be on site to know what's going on in order to effectively manage the contractors.

Do you agree with that?

**MR. P. HARRINGTON:** Well, that's his opinion.

**MS. MUZYCHKA:** Okay, so you don't necessarily agree with that.

**MR. P. HARRINGTON:** Well, when Mr. Darren DeBourke left, the person who replaced him stayed in home office.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** So I don't understand the issue.

**MS. MUZYCHKA:** All right.

Do you believe that the alternate model that's purposed by the various individuals has any merit in a project of this size?

**MR. P. HARRINGTON:** Not –

**MS. MUZYCHKA:** Are you –

**MR. P. HARRINGTON:** – not that we – the way that we've operated it is the way my experience has been and it's the way that other projects carry it out. It maintains a very good control overall. I think that's been evidenced by the very low percentage of actual change. And, yeah, I think it's a very – especially when you have multiple sites and multiple offices that you have deal with.

You know, I repeat myself again, your fabrication yards, manufacturing facilities, engineering houses, not just SNC but Hatch and, you know, ANDRITZ and – you got to sit in the middle of all these things, you've got to try and control. It's a very complex task and it's oversimplified to say: I'll go to site. Which site? Tell me.

**MS. MUZYCHKA:** Okay.

Well, you know, it's a comment that has been heard, and not just from your people, but from contractors who manage their particular contracts from – not from their home office, be it the Cahill-Ganotec, Tim Harrington.

**MR. P. HARRINGTON:** Yeah. But he refers back to John Henley in home office.

**MS. MUZYCHKA:** Sure. But he's on site to –

**MR. P. HARRINGTON:** Yeah. Yeah. But so we have a construction manager on site and he refers back to Scott O'Brien for certain matters.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Tim Harrington refers back to John Henley. John Henley meets with us for any major changes. So –

**MS. MUZYCHKA:** Major changes.

**MR. P. HARRINGTON:** Well, yeah, changes that affect not within the bounds of the contract that's being laid out.

**MS. MUZYCHKA:** Okay.

Well, it's a little different, your views, than what we've heard here in this room, so that's why –

**MR. P. HARRINGTON:** Well, you know, I –

**MS. MUZYCHKA:** – I put it to you to –

**MR. P. HARRINGTON:** We have different views –

**MS. MUZYCHKA:** – to respond to.

**MR. P. HARRINGTON:** – and that's fine, I think that's healthy.

I am not going to criticize other people who have different views on things, but once you settle on a procedure that you're going to follow, you follow it. You don't keep changing your horses in midstream. I don't think that's helpful.

**MS. MUZYCHKA:** Okay.

Commissioner, I don't know if now is a good time for a break? I'm going to move on to –

**THE COMMISSIONER:** Yes.

**MR. P. HARRINGTON:** – another topic and –

**THE COMMISSIONER:** It's probably a good break here – time to break right now.

So, we'll adjourn now for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right, Ms. Muzychka?

**MS. MUZYCHKA:** Okay.



Commissioner, I'd like to enter a further exhibit, please.

**THE COMMISSIONER:** Uh-huh.

**MS. MUZYCHKA:** It is P-04040, and it is located at tab 106 of Mr. Harrington's binder 2

**THE COMMISSIONER:** All right, that'll be marked as numbered.

**MS. MUZYCHKA:** Okay, thank you.

All right, Mr. Harrington, want to address another topic with you. We've received a number of comments from our website which prompted us to investigate the issue of Nalcor's relationship with recruitment agencies, and one in particular that your son has been employed with.

We understand that he was employed with Dovre Canada Group from November 2010 to February 2013. Is that correct?

**MR. P. HARRINGTON:** I couldn't be sure of the dates, I don't know.

**MS. MUZYCHKA:** Okay, but is he employed with Dovre Canada Group?

**MR. P. HARRINGTON:** He was.

**MS. MUZYCHKA:** Okay. And I believe he was subsequently employed, then, with NSB from February 2013 to present day?

**MR. P. HARRINGTON:** At least I know to the present day.

**MS. MUZYCHKA:** Okay.

I believe you were a little bit more certain about the dates when we interviewed you, that he was employed from –

**MR. P. HARRINGTON:** I don't –

**MS. MUZYCHKA:** – 2010 to 2013 in –

**MR. P. HARRINGTON:** I can't remember to be honest.

**MS. MUZYCHKA:** Okay, do you have any –

**MR. P. HARRINGTON:** And whatever –

**MS. MUZYCHKA:** – reason –?

**MR. P. HARRINGTON:** – I said then, if I said it then I must've had a better recollection, I –

**MS. MUZYCHKA:** Okay, do you have any reason to believe that those dates aren't accurate?

**MR. P. HARRINGTON:** Oh, no, I don't dispute it with you.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** I just wouldn't like to say a hundred per cent that I'm right – you're right.

**MS. MUZYCHKA:** Okay.

All right, well let's look at P-03965, which is in the Paul Harrington binder 1 at tab 2, and I'd like to go to page 39, please.

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** Do you see that appendix E document. This is part of, just for identification purposes, a response to an ATIPP request, a report.

**MR. P. HARRINGTON:** I beg your pardon?

**MS. MUZYCHKA:** If we look at page 1, please to go back to page 1, please.

**MR. P. HARRINGTON:** Oh.

**MS. MUZYCHKA:** The subject line is: ATIPP - final response. And then it includes a report which has a number of appendices and exhibits, an organizational chart and so on, and appendix E is the one at page 39 that I wanted to draw your attention to.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** So, this would've been generated by Nalcor. So if you look at the exhibit, you'll see that Dovre Canada Group in 2011 had 11 recruitments –

**MR. P. HARRINGTON:** Mm-hmm.

**MS. MUZYCHKA:** – 2012 it was 7; 2013, 7; and then it increased to 14 in 2014; and 12 in 2015. And then if we look at NSB Energy, we'll see that in 2011 there was only 4 recruits; '12 – 2012 it was 2; in 2013 the number jumps significantly to 24; in 2014 to 23; and then in 2015 we have 30.

**MR. P. HARRINGTON:** Mm-hmm.

**MS. MUZYCHKA:** And if we look at the dates of the employment that we just talked about, it seems to correlate with his time in the employ of each of these agencies. Can you explain why that might be?

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** Were you personally involved with any of the hiring from these agencies?

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** Would a member of your team have been involved in the hiring from these agencies?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And would you have been aware then of that?

**MR. P. HARRINGTON:** By aware ...?

**MS. MUZYCHKA:** Aware of the source of where the individuals were –

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** – being recruited from?

**MR. P. HARRINGTON:** No. I – no. No involvement whatsoever. No influence whatsoever.

**MS. MUZYCHKA:** Do you see that there's a potential for a conflict of interest here, given your role as a project director?

**MR. P. HARRINGTON:** I don't and Nalcor reviewed it, code of business conduct. I think it

was twice they looked at that and said no, it's been reviewed. The whole process has been reviewed by –

**MS. MUZYCHKA:** Okay, just let's stop you right there. Who reviewed it and when?

**MR. P. HARRINGTON:** Gilbert Bennett.

**MS. MUZYCHKA:** Sorry?

**MR. P. HARRINGTON:** Gilbert Bennett and the HR department.

**MS. MUZYCHKA:** And why would they have reviewed it? At who's request? What –?

**MR. P. HARRINGTON:** Probably those ATIPP requests – you're not the only receiver of ATIPP requests from people who have some axe to grind.

**MS. MUZYCHKA:** So you're saying that Mr. Bennett would have reviewed your role – or not your role but your son's role –

**MR. P. HARRINGTON:** Well, certainly I saw an email on that and ...

**MS. MUZYCHKA:** And email from whom?

**MR. P. HARRINGTON:** Mr. Bennett.

**MS. MUZYCHKA:** And do you remember when that would have been?

**MR. P. HARRINGTON:** No, I don't.

**MS. MUZYCHKA:** Do you remember what year it might have been that he reviewed that?

**MR. P. HARRINGTON:** I wouldn't like to say just off the top of my head.

**MS. MUZYCHKA:** Okay.

Can you tell me whether or not there would have been any steps to isolate you from any of the contracts in which you may have had a conflict?

**MR. P. HARRINGTON:** Well, that's right. I was completely separated. These two things are completely separated. I had no involvement whatsoever.

**MS. MUZYCHKA:** And were these efforts to keep you isolated documented anywhere?

**MR. P. HARRINGTON:** I think in the same – it's the same email thread that I'd seen – I'd dug out before. It was in response to an ATIPP.

**MS. MUZYCHKA:** We know from your testimony that no one in your family has any ownership or partial ownership of either of these companies, the Dovre or NSB Energy? Is that correct?

**MR. P. HARRINGTON:** That is correct.

**MS. MUZYCHKA:** Okay.

Do you know if your son receives any incentives, bonuses or any form of additional compensation for Nalcor –

**MR. P. HARRINGTON:** I –

**MS. MUZYCHKA:** – positions that are provided by NSB?

**MR. P. HARRINGTON:** I don't know that.

**MS. MUZYCHKA:** You've not discussed that.

**MR. P. HARRINGTON:** No, I haven't discussed that. That's his business.

**MS. MUZYCHKA:** Were there any formal audits done of the – your role and the role of these companies in Nalcor's hiring recruitment –

**MR. P. HARRINGTON:** The process has been audited.

**MS. MUZYCHKA:** Which process?

**MR. P. HARRINGTON:** The hiring process with agencies and audits, as well. So I think that was Internal Audit.

**MS. MUZYCHKA:** That would – if you're referring to the audits, I would suggest to you that was done in relation to a specific company, not either Dovre or NSB.

**MR. P. HARRINGTON:** Yeah, I think it's just general.

**MS. MUZYCHKA:** So with no specific – the one you provided to – or referred to us.

**MR. P. HARRINGTON:** I –

**MS. MUZYCHKA:** So there is no formal conflict of interest, to my knowledge –

**MR. P. HARRINGTON:** That's right.

**MS. MUZYCHKA:** – report that's been done that relates to your son's role with the companies in which we've seen a significant rise in the number of recruitments.

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** So I – so, to be clear, the only things that were done was that Gilbert Bennett was tasked with reviewing whether or not there was a conflict and sent you an email –

**MR. P. HARRINGTON:** Not me. I mean it was in response to an ATIPP request and I saw the response.

**MS. MUZYCHKA:** But nothing was communicated to you personally?

**MR. P. HARRINGTON:** Well, I was copied on the email, I think.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Which would have said that –

**MR. P. HARRINGTON:** Yes, there's no conflict of interest.

**MS. MUZYCHKA:** So there was no conflict of interest at all?

**MR. P. HARRINGTON:** That's correct.

**MS. MUZYCHKA:** So why were you then isolated from any of the hiring decisions that were made from NSB?

**MR. P. HARRINGTON:** Just so there was no perception of conflict of interest.

**MS. MUZYCHKA:** I'm going to ask you to turn to Paul Harrington binder 2 at tab 99, and this is Exhibit P-03779.

**THE COMMISSIONER:** Can you give me the tab number again, please?

**MS. MUZYCHKA:** Tab 99, binder 2.

Okay. So this is a memorandum from Tanya Power which lists the final forecast cost figures that she identified from detailed backup files linked to the presentations that you gave. If we can just scroll down just briefly there, okay, you have a chance to just briefly look at that.

Now, if we go to tab 100, page 1 –

**MR. P. HARRINGTON:** Okay.

**MS. MUZYCHKA:** – it's Exhibit 03747. We see that this is a monthly cost report document. Do you recognize that, Mr. Harrington?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And is this the first monthly cost report document that was prepared?

**MR. P. HARRINGTON:** I wouldn't like – I don't know for sure.

**MS. MUZYCHKA:** Okay. What does official FFC mean there on the ...?

**MR. P. HARRINGTON:** I can't see that.

**MS. MUZYCHKA:** It's right there, it's in the handwritten portion.

**MR. P. HARRINGTON:** Oh, that would be the: In dashboard.

**MS. MUZYCHKA:** Just read the note, maybe that'll help. It says: "Official FFC in Dashboard will remain at 6.531 B as presented to Feds in Nov 06 Audit."

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** "As Instructed by Paul H."

**MR. P. HARRINGTON:** Right.

**MS. MUZYCHKA:** And that – would that be you?

**MR. P. HARRINGTON:** That would be me.

**MS. MUZYCHKA:** Okay.

So the number on the front page, though, if you look at the project amount in the column under LCP, at the bottom when you look at the FFC it reads 6.424547241.

**MR. P. HARRINGTON:** Six point – no, LCP previous months, 6.424, yes. Yes.

**MS. MUZYCHKA:** Okay, so how can we reconcile that number being 6.424 with your indication to keep the number at 6.531?

**MR. P. HARRINGTON:** The 6.531 was established for the federal loan guarantee and that was back in an earlier version of what we were looking at. So this is – you know, at that point in time we're looking at trends, bids coming in and things can go up and they can go down over time. So this number was less, 6.424 versus 6.5, but by then the feds – that number 6.531 was part of all the documentation.

So, yeah, this is a little bit lower. It could have gone a little bit higher again the next month. As I said before, these things fluctuate based upon the latest information we have at any one point in time. So, you know, 6.531 was the official number that we had and that's what we stuck with.

These things that we're looking at – well, this week or this month, is it slightly higher or slightly lower? It's slightly lower at this point in time, but we still put the 6.531 because it was embedded in all of the discussions with the feds.

**MS. MUZYCHKA:** Okay, but in reviewing Ms. Power's memorandum, we don't see a 6.531 number calculated in the management outlook by project control. So how can that be the official number provided for the loan guarantee purposes?

**MR. P. HARRINGTON:** I can't – I don't have an answer to that. No.

**MS. MUZYCHKA:** Can't answer that? Okay.

Well, let's just go back to 03379 which is at tab 99 in your book.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And if we look at page 3, the December 13, 2013, number, you'll see the number ranges between 6.867 and 6.988. Do you see that?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** And then if we look at P-01831, which is at Paul Harrington book 1, tab 14 –

**THE COMMISSIONER:** Tab 14, book 1.

**MS. MUZYCHKA:** – we're looking at a May 23, 2014, briefing deck that states two distinct numbers with a 7.5 outlook for project duration. And you turn the page to –

**MR. P. HARRINGTON:** This is 2014 now, eh?

**MS. MUZYCHKA:** Yes, 2014. So, this is a little bit later.

**MR. P. HARRINGTON:** (Inaudible.)

**MS. MUZYCHKA:** 2014. And then, in June of 2014 we know the AFE comes up and it's a number of 6.99. Do you agree with that?

**MR. P. HARRINGTON:** I believe so, yes.

**MS. MUZYCHKA:** Yeah. So wasn't the AFE meant to cover the best estimate of the project to completion?

**MR. P. HARRINGTON:** I think if you look at the – page 8 of that exhibit –

**MS. MUZYCHKA:** Sorry, I can't hear you.

**MR. P. HARRINGTON:** Page 8 of that exhibit, that part will help me.

**MS. MUZYCHKA:** Which exhibit are you looking at? What's the number?

**MR. P. HARRINGTON:** 01831.

**MS. MUZYCHKA:** Okay, page 8.

**MR. P. HARRINGTON:** So, 6.99 is there, and then there's what's called management reserve. These are things that might happen. So, the 6.99 was what was, you know, pretty much firm, at that point in time. But we wanted to identify management reserve for short and longer term for – that would add up to another, you know, 7 point – from 7.2 to \$7 billion to \$7.5 billion. That was what the crystal ball was telling us.

**MS. MUZYCHKA:** Right.

So why wouldn't you have gone and put in 7.5 in –

**MR. P. HARRINGTON:** Because I –

**MS. MUZYCHKA:** – as opposed –

**MR. P. HARRINGTON:** – I don't prepare the AFE.

**MS. MUZYCHKA:** Okay. But you do see the difference in the information?

**MR. P. HARRINGTON:** Well, there is a difference and – but I think it's, you know, it's identified there that the subtotal, contracts with firm bid price and contracts without firm bid price were, you know, we were projecting what we saw to give us a total of 6.99.

That would've been – this was presented to leadership executive and then it's out of my hands and into the hands of the people who prepare the AFE.

**MS. MUZYCHKA:** If we go back and look at P-02549, which is in your binder number 1, tab 16.

**MR. P. HARRINGTON:** Sixteen?

**MS. MUZYCHKA:** Sixteen.

This is Lower Churchill Cost and Schedule Update report, dated 12 Feb 2015. If we look at page 8 and 9, looks like there is a plan to do a staged AFE. It's 7.5 first and then 7.7.

Do you see that there in the middle of –?

**MR. P. HARRINGTON:** That's – yeah, that's AFE 2 – 7.5 to 7.7.

**MS. MUZYCHKA:** Now, if we go back to the beginning of that –

**MR. P. HARRINGTON:** And AFE Rev 3 is 7.7.

Yeah, go ahead, sorry.

**MS. MUZYCHKA:** Okay. So, this is what was presented to the executive team?

**MR. P. HARRINGTON:** Yep.

**MS. MUZYCHKA:** Why would you not request the 7.7 figure from the executives to whom that you presented the slide deck for the AFE for June 2014?

**MR. P. HARRINGTON:** Why? Is that the question?

**MS. MUZYCHKA:** Yes.

**MR. P. HARRINGTON:** Well, I was told you could only have a certain amount, and it's the – you know, the way that it was – we could only get a certain amount up until mid-2016, you guys have got to work on it and try and drive the prices down. And telling me that we might need some –

**UNIDENTIFIED MALE SPEAKER:** Mr. Commissioner, I'm sorry. We can't hear Mr. –

**MR. P. HARRINGTON:** Sorry. Yeah. Sorry, I'm just leaning over here.

Let me bring this book over, and – so, we were told you can have until 2016 but you've got to mitigate and try and drive that price down from 7.7 for the remainder. So, he wasn't giving us the full amount.

**MS. MUZYCHKA:** And who would be the person telling you that?

**MR. P. HARRINGTON:** It would be Ed Martin.

And that was, you know, that was in line with the – I think it's been called, quite frequently,

the red-meat syndrome, that we only give certain amounts at a certain time, and then you got to work a bit, make sure that you're doing everything that you can to keep your costs down to 7.5, I guess it was there. You're not going to get 7.7, so go away and work on it.

**MS. MUZYCHKA:** So, the number really didn't reflect the true cost of completion; it was being understated.

**MR. P. HARRINGTON:** Well, the numbers I was presenting was presenting, you know, the best view that we had at the time.

**MS. MUZYCHKA:** Right. But in terms of, you know, the AFE, it wasn't a true reflection then.

**MR. P. HARRINGTON:** I don't – you know, I don't write the AFEs.

**MS. MUZYCHKA:** I understand that, but you do know that the AFE was for 6.99, but yet the numbers show that the project cost was much higher than that.

**MR. P. HARRINGTON:** No, I think the AFE 2 was 7.49.

**MS. MUZYCHKA:** 7.4.

**MR. P. HARRINGTON:** Five.

**MS. MUZYCHKA:** Sorry, the 7.7 was the –

**MR. P. HARRINGTON:** Yeah, the extra bit.

**MS. MUZYCHKA:** – the extra bit.

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** Yeah.

So, it wasn't really representative. And what I'm taking, what you're saying is that there was concern that by putting in the larger number that it could be a concern for contractors being aware of how much money was in the budget?

**MR. P. HARRINGTON:** I think I'm pretty sure that was the thinking but –

**MS. MUZYCHKA:** You mentioned red-meat syndrome.

**MR. P. HARRINGTON:** Yeah, yeah. That's part of it.

**MS. MUZYCHKA:** Okay.

We also know that that particular concern can be managed with good managers. I think Professor Flyvbjerg had spoken to that.

**MR. P. HARRINGTON:** Hmm.

**MS. MUZYCHKA:** Do you recall that?

**MR. P. HARRINGTON:** No, I don't recall that bit.

**MS. MUZYCHKA:** Okay. All right.

So if the AFE, then, is to reflect the cost of completion, at the time, that, you know –

**MR. P. HARRINGTON:** It's the cost I was given to work with.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** And I'm not picking – splitting hairs there, but –

**MS. MUZYCHKA:** No, okay, I understand you're saying it wasn't your ultimate decision that – but you presented the information to the executive and Mr. Martin told you that you couldn't have 7.7.

**MR. P. HARRINGTON:** Work within that.

**MS. MUZYCHKA:** Work within a smaller amount. That's your evidence.

**MR. P. HARRINGTON:** That's my evidence.

**MS. MUZYCHKA:** Okay.

If we look at the Grant Thornton report, which is P-01677, which is in your binder, tab 22, book 1. We're gonna go to –

**MR. P. HARRINGTON:** Excuse me a second.

**MS. MUZYCHKA:** Okay. It should be in the same book that you just had.

**MR. P. HARRINGTON:** Okay.

Can you hear me?

**MS. MUZYCHKA:** Yes.

So we're looking at page 11.

So these are the tables that show the first contracts awarded and what their DG budget amounts were and what the value of the contracts were at award date. And at DG3, it's showing that the packages accumulatively over \$50 million at the time of sanction. And we know that by the time April 2013 comes, which is prior to financial close, it was clear that the contingency of \$368 million had been exhausted.

Do you agree?

**MR. P. HARRINGTON:** 6.531 included a contingency amount.

**MS. MUZYCHKA:** Yes, so – but by the time – before financial –

**MR. P. HARRINGTON:** The original contingency was exhausted, but there's still an – there was a contingency in the 6.531.

**MS. MUZYCHKA:** But that was the contingency, the 368.

**MR. P. HARRINGTON:** No.

**MS. MUZYCHKA:** The tactical –

**MR. P. HARRINGTON:** We're missing each other again.

**THE COMMISSIONER:** I think one of – you're talking about the 6.2, he's talking about the 6.5.

**MS. MUZYCHKA:** Five.

**THE COMMISSIONER:** Right. So in the 6.2, I think you agree that the contingency was exhausted in the 6.2 number.

**MR. P. HARRINGTON:** And that the 6.5 –

**THE COMMISSIONER:** And there was a contingency –

**MR. P. HARRINGTON:** – included –

**THE COMMISSIONER:** And there was a contingency –

**MR. P. HARRINGTON:** – more contingency.

**THE COMMISSIONER:** – added for the 6.5.

**MS. MUZYCHKA:** Okay.

Was there any time or thought given to re-baselining or doing any further work on the contingency, at that time, once you knew that the first contingency had been exhausted?

**MR. P. HARRINGTON:** Well –

**MS. MUZYCHKA:** Even before financial close?

**MR. P. HARRINGTON:** The 6.531 included a contingency.

**MS. MUZYCHKA:** So you felt that was sufficient?

**MR. P. HARRINGTON:** And then we were already identifying that, you know, the costs could go greater than that. So, what we were doing is passing that information up the line. So, to do a re-baseline, I'm – the re-baseline was basically the AFE –

**MS. MUZYCHKA:** Yes, but I –

**MR. P. HARRINGTON:** – and the AFE came the next year.

**MS. MUZYCHKA:** Right, but I'm suggesting that prior to financial close there was enough information available in which the numbers should have been reviewed and revised –

**MR. P. HARRINGTON:** Well –

**MS. MUZYCHKA:** – because the contingency was already gone before the –

**MR. P. HARRINGTON:** And, you know, I was reporting what I reported –

**MS. MUZYCHKA:** Right, and so –

**MR. P. HARRINGTON:** – up the line.

**MS. MUZYCHKA:** – in your reports to executive, who is – who you would –

**MR. P. HARRINGTON:** Make the ultimate decision, yeah.

**MS. MUZYCHKA:** Right.

Did you ever say we don't have enough money in the AFE as it stands now to do the project; we need to review this and make sure we have additional funds? Was that ever part of your conversation with the executives?

**MR. P. HARRINGTON:** But that was all in the decks that we provided.

**MS. MUZYCHKA:** Okay, so that – and then you would not have had a conversation with them?

**MR. P. HARRINGTON:** Just to say this is where it could go.

**MS. MUZYCHKA:** So that wouldn't have been your decision, then, would it to –?

**MR. P. HARRINGTON:** It wouldn't be my decision, you know, I mentioned –

**MS. MUZYCHKA:** But you would have had input in it.

**MR. P. HARRINGTON:** Well, we were providing input.

**MS. MUZYCHKA:** Okay.

I have questions for you with respect to the Westney report, the risk report, and in that they had identified the Inquiry, this Inquiry, as being a risk of cost –

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** – to the project of \$135 million. Are you aware of that?

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** Okay.



Do you think this number is accurate? Do you know how they calculated it?

**MR. P. HARRINGTON:** I didn't participate in that particular activity.

I'm – you know, again I received the report back from them, and I think Tanya Power went to Houston to do that particularly piece of work, I was tied up with something else, so I have no reason to believe it was wrong. The report speaks for itself, I believe.

**MS. MUZYCHKA:** Do you have any thoughts yourself as to the potential cost or risk, I should say, to the project from your perspective?

**MR. P. HARRINGTON:** Okay, from my perspective, my opinion. I think if I was to look at things, I think it's a little bit early to tell. I think all of the costs will be tallied up possibly two years from now when all of the claims are settled and all of the dust settles. There'll be an inevitable cost that, you know, the Inquiry direct costs that you're accumulating and reporting against.

There's the costs of literally thousands of hours of the project team that have been, you know, responding to queries, preparing as a witness or preparing for interviews. I've had eight interviews with yourselves and Grant Thornton and all of that takes a lot of time. I know I would probably say that over the last 12 to 18 months 60 per cent of my time has been dedicated, and I understand the, you know, the reason for the Inquiry and, you know, the public have a right to know and, you know, they need answers and they need to find these things out, and the Inquiry will get you there, but there will be a cost.

And so there's the cost of it, the cost of Nalcor's thousands of hours that we've spent on this, and all the other witnesses as well, they've all spent time in it, so whether that's actually attached to the Inquiry, but it's a cost that's –

**MS. MUZYCHKA:** Mmm.

**MR. P. HARRINGTON:** – there.

I think one of my biggest concerns is that this project isn't over yet. I have, in my long

experience, I've been involved in 10 commissioning and start-up periods of megaprojects, and I can assure you that the commissioning and start-up of a large piece of rotating machinery such as we have in the powerhouse is not with – you can't just assume it's gonna go smoothly, the – things happen during that phase, and I'm worried and I'm concerned that we won't be able to retain the people we need in the project team for a variety of reasons.

You know, we've heard of some of the, you know, personal statements that have been made against some of those people, and I'm worried that we won't be able to retain those people throughout that commissioning and start-up period, and not only that, but we need some key people to stay with us through the conclusion of arbitrations, mediations, settlement of claims over the next, I would guess, year and a half to two years.

**MS. MUZYCHKA:** Okay, so with your –

**MR. P. HARRINGTON:** And there's a cost there but I couldn't put a number to it, and in addition to that, I mean, the – I'm going on a bit but you asked, so .... The other aspect is that from a point of view of contractors and the amount of documentation that's being provided – quite rightly, in this Inquiry and the documentation that's being provided – is above and beyond that which they would normally get access to, and especially when it comes to witness statements and eventually a report will be forthcoming.

So will that empower or improve the chances of increased settlement claims? Maybe, difficult to say, but all of these things add up. And it'll be tallied up in 18 months to two years from now and, yes – yes – it could be in hundreds of millions, you know, but that's a risk that is being understood and it may happen. That's my personal view.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** I sincerely hope it isn't, I really do, because, you know, this is something that I hope that we could've avoided but here we are. We're doing what we can.

And I know the Commission and the Commission counsel and everyone involved is doing their very best to mitigate and protect against commercially sensitive things but, you know, you asked my personal view and that is it.

**MS. MUZYCHKA:** Okay.

I take it it's clearly not a number that is easily quantifiable at this stage, if ever.

**MR. P. HARRINGTON:** No. I mean you can't – until the dust settles, you don't know.

**MS. MUZYCHKA:** Would it have made a difference if the Inquiry was called after the commissioning?

**MR. P. HARRINGTON:** I think so, yes, yeah, when contracts were closed out. You know, we're doing a post-mortem and the patient is still alive.

**MS. MUZYCHKA:** Okay.

I just want to ask you – go back to a couple of times today you've indicated that you were at a conference recently and you had spoken to a number of your – of individuals who are with other hydroelectric –

**MR. P. HARRINGTON:** Yes. Yeah, we meet on a yearly basis, so – sorry, I've interrupted you.

**MS. MUZYCHKA:** You did.

**MR. P. HARRINGTON:** Yes.

**MS. MUZYCHKA:** What I – my question is: Who specifically would you have been meeting with? Can you tell us the names of the individuals and their organizations?

**MR. P. HARRINGTON:** Not all – I can't remember all of them.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** But Dave Bowen, who is the project director for site for Keeyask –

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** – Manitoba Hydro. I'll try and give you the senior people.

This – the – and I can't remember his name just off the top of my head, now that you've just sprung it on me – is the project – I think he was the project director or the executive vice-president for Site C with BC Hydro. There was a Chantale Germain, who is a senior planning individual – project planning individual with Hydro-Québec. They were the big three.

There were others: Paul Burroughs from, if I recollect correctly, OPG, Ontario Power Generation; the other folks from SaskPower; Hydro One. NB Power would Rod Eagles, and he's, I think, a senior VP with project – senior projects with NB Power. I think he's looking at Mactaquac. Those are the ones I can remember off the top of my head.

**MS. MUZYCHKA:** Okay, so these are conferences, and you all get the opportunity to meet and discuss things.

**MR. P. HARRINGTON:** Well, yeah, and we – okay, so we meet – we try to meet annually and we've been doing that – it was set up by BC Hydro or – about 10 years ago. And we – it's a forum where we can discuss, you know, what we're seeing in the industry and our own personal experiences. The – we provide a status of each of the projects. We identify some key risks and problems, and it's quite surprising that the – well, perhaps it isn't quite surprising, the – there's a common theme of common problems –

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

**MR. P. HARRINGTON:** – and common challenges –

**MS. MUZYCHKA:** And this –

**MR. P. HARRINGTON:** – throughout the big megaprojects.

**MS. MUZYCHKA:** Right, and so this is the group that you're referring to when you said I had –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – we had discussed the issue of QRA and frequency –

**MR. P. HARRINGTON:** Yeah.

**MS. MUZYCHKA:** – and whether or not –

**MR. P. HARRINGTON:** Canadian Electrical Utilities Project Management Network. It's a big –

**MS. MUZYCHKA:** Is that the name of your group?

**MR. P. HARRINGTON:** That's the name of it, yeah.

**MS. MUZYCHKA:** Okay.

Interesting – I mean, I assume that you're aware that the Keeyask project is one that is way over budget and is also –

**MR. P. HARRINGTON:** Yeah, they've faced – it's – they've faced major problems with their main civil contractor as well.

**MS. MUZYCHKA:** And the same with Site C in BC.

**MR. P. HARRINGTON:** Exactly, we're all in the same boat. We were all crying in our beer –

**MS. MUZYCHKA:** Way over budget –

**MR. P. HARRINGTON:** – right?

**MS. MUZYCHKA:** – worse even than Muskrat Falls is.

**MR. P. HARRINGTON:** I wouldn't like to put a worse or better on that.

**MS. MUZYCHKA:** Okay.

**MR. P. HARRINGTON:** It wouldn't be fair for me. I don't know enough.

**MS. MUZYCHKA:** All right.

I believe that's all my questions, Commissioner.

**THE COMMISSIONER:** Okay. And –

**MS. MUZYCHKA:** Mr. Collins has a number of questions that he'd like to put to the witness.

**THE COMMISSIONER:** Okay.

So, Mr. Collins.

**MR. COLLINS:** Thank you, Commissioner.

The Commission has heard some testimony from Jason Kean about the evolution of reliability standards on the Labrador-Island Link. I'd like to start by reviewing some of that evidence to confirm it matches your understanding and to provide some context.

So, we've heard that the reliability of a transmission line is often measured by a return period –

**MR. P. HARRINGTON:** Correct.

**MR. COLLINS:** – and that a return period of one in 50 years means the line is engineered to withstand extreme winter-like ice conditions that would occur, on average, once every 50 years.

**MR. P. HARRINGTON:** In accordance with the Canadian standard.

**MR. COLLINS:** And one in 150 years means it's engineered to withstand conditions that would arise once in 150 years and so forth.

**MR. P. HARRINGTON:** Right. That's correct.

**MR. COLLINS:** And we've heard that when Nalcor was considering building the Gull Island project with a large high-voltage direct-current line to the Island, that the return period for that line was planned to be one in 150 years – you don't –

**MR. P. HARRINGTON:** You're testing my memory now, but I – it – do you have – I mean, I don't know. I can't remember.

**MR. COLLINS:** That's fair.

**MR. P. HARRINGTON:** Yeah.

**MR. COLLINS:** So –

**THE COMMISSIONER:** We have had that testimony.

**MR. P. HARRINGTON:** Okay. Well, in that case I won't argue with it. Yeah.

**MR. COLLINS:** We've heard that at Decision Gate 2, the Muskrat Falls Project was sanctioned with a lower reliability return period of one in 50 years.

**MR. P. HARRINGTON:** Yes. And that was in the basis of design –

**MR. COLLINS:** Yes.

**MR. P. HARRINGTON:** – signed off by the engineering team.

**MR. COLLINS:** And Mr. Kean couldn't tell us very much about why the decision was made to lower the return period from one in 150 years to one in 50 years.

We have heard that between 2012 and 2014, the tower designs and locations were steadily re-engineered and that in the final design of the Labrador-Island Link, each section meets a one in 150-year return period, and many sections meet or exceed a 500-year return period.

**MR. P. HARRINGTON:** Yeah. That's in accordance with the changes to the Canadian standard. That's my recollection.

**MR. COLLINS:** Yeah.

We've heard that these reliability improvements were expensive and not fully accounted for in the Decision Gate 3 estimate in that –

**MR. P. HARRINGTON:** The Decision Gate –

**MR. COLLINS:** We've heard that the reliability improvements were not fully factored into the Decision Gate 3 estimate.

**MR. P. HARRINGTON:** Because the Decision Gate 3 estimate would have been based upon the basis of design document at the time. So yes.

**MR. COLLINS:** That's right. And so the reliability improvements explain part of the cost increases, and Mr. Kean gave us, as a ballpark,

that they might amount to \$300 million of extra cost.

**MR. P. HARRINGTON:** I'm sure he's – Mr. Kean is very diligent, so I'm not going to argue with him.

**MR. COLLINS:** Good.

So what generally was your role in determining the reliability-return periods for the Muskrat Falls Project?

**MR. P. HARRINGTON:** I wasn't. I didn't have a role. I – you know, that was design – that was the engineering people who designed all the basis of design and managed that particular document. The basis of design was reflected by engineering drawings that would have to be developed. So my involvement was we build it, you tell us what to build.

**MR. COLLINS:** So I would like to take you to P-04040, which is tab 106. And this is a new exhibit.

**MR. P. HARRINGTON:** In which one?

**MR. COLLINS:** Tab 106.

**THE COMMISSIONER:** Book 2 of your own book.

**MR. P. HARRINGTON:** One moment, okay, hang on, I have to move over now. One-oh-six.

**MR. COLLINS:** And this is a document that has just come to our attention. The – this is an – have you found it?

**MR. P. HARRINGTON:** Yes.

**MR. COLLINS:** So this is an email from you to Paul Humphries from May 20, 2010.

**MR. P. HARRINGTON:** Wow.

**MR. COLLINS:** And it forwards an email from you to Gilbert Bennett from the previous day, May 19, 2010. And the email is about something called Case 8 – the “Muskrat Stand-alone case.” Do you remember anything being discussed here?

**MR. P. HARRINGTON:** No, I'm sorry.

**MR. COLLINS:** That's reasonable.

So do you know, or can you tell from this email, what the main features of case 8 were?

**MR. P. HARRINGTON:** No. Nine years ago (inaudible) –

**MR. COLLINS:** Do you remember that – do you remember, in the lead-up to Decision Gate 2, in the years that this project was being developed, Nalcor developed a series of different cases, configurations of how the Lower Churchill Project might be developed?

**MR. P. HARRINGTON:** Yeah, I think –

**MR. COLLINS:** Some of them with Gull Island; some of them with Muskrat. Some one before the other.

**MR. P. HARRINGTON:** Right.

**MR. COLLINS:** Some of them going through Quebec; some of them going (inaudible) –

**MR. P. HARRINGTON:** But I couldn't remember – I couldn't, with any accuracy, say what Case 8 was. I think we ended up with Case 11, but that's about as much as I could stretch to.

**MR. COLLINS:** So if we look at this email – why don't you read the email?

**MR. P. HARRINGTON:** Pardon?

**MR. COLLINS:** Why don't you read the email into the record? Could you read your email to Mr. Bennett –

**MR. P. HARRINGTON:** Okay.

**MR. COLLINS:** – into the record, starting with: Jason will be sending you? Thank you.

**MR. P. HARRINGTON:** “Gilbert

“Jason will be sending you the description of what constitutes the Case 8 - Muskrat Stand-alone case. I understood that you had signed off on this already but I just want to make sure there is no breakdown in communication before we

set off down this path.” And that would be to do, perhaps, estimating or some preliminary engineering or site investigation. “The drive behind this Muskrat Stand-alone case was to get the cap costs down as low as possible because we were advised that the LCC case did not work.” That's line-commutated conversion, that's a different type of HVDC.

**MR. COLLINS:** Yes.

**MR. P. HARRINGTON:** “So that caused the team to go with VSC” – voltage-source conversion –

**MR. COLLINS:** Mm-hmm.

**MR. P. HARRINGTON:** – “(although the VSC overhead transmission is not yet proven in practice to operate within the design specifications and the Siemens model tests are underway and not yet complete) also the return period for the transmission tower design was reduced to 1:50 years and there were very few island upgrades based on the 600 MW Converter station at Labrador and 540MW station at Soldiers Pond. Jason will send you the sketch that was the basis for the cap cost estimate we have developed and provided to Investment Evaluation.

“I believe the most important result of the Muskrat Stand-alone case is what happens at the Labrador end to keep the costs to the minimum, (which was the challenge that was put to the team at the time) - the Converter station would be located at Muskrat and there would be two 345 kVac lines from Muskrat to CF. This would avoid a substation at Gull and would reduce transmission costs - Jason will advise the cost saving that results from this configuration. This case is going for economic analysis.

“This may be the lowest cost solution but may not be the design that is preferred and since Ed is talking sanctioning a project, now is the time to settle on the project we want to move forward with and that may not necessarily be the lowest cost solution. Perhaps the cap cost reduction using VSC is so great that we can now afford the 735kVac line from CF to Gull with a partial switchyard at Gull and two 230kVac lines from Gull to Muskrat. We do not get to know what

the results are of the economic modelling so it is difficult for us to judge.

“We can provide the costs and build the data for that variation of the Muskrat stand-alone (i.e the partial gull switchyard, one 735” – kV, Gull Island to Churchill Falls and two 230 kVac Gull Island to Muskrat Falls – “to Rob’s team should this be decided as the Muskrat stand-alone case we want to” – move forward within the detailed design.

“You have the sign off pen so pls let me know how you wish to proceed.”

**MR. COLLINS:** Thank you.

So there are a few points here I’d like to highlight. Case 8 is not the same as the DG2 version of the Muskrat Falls Project. It seems – Case 8 seems to involve a Labrador transmission line from Muskrat Falls straight to Churchill Falls with no converter station at Gull Island, much like what we have.

**MR. P. HARRINGTON:** Yes.

**MR. COLLINS:** And it involves a high-voltage line to Soldiers Pond, a smaller high-voltage line, only 600 megawatts.

**MR. P. HARRINGTON:** No –

**MR. COLLINS:** And –

**MR. P. HARRINGTON:** – it talks about a 735 kV – one 735 kV line from Gull Island to Churchill Falls and two 230 kV islands lines – AC lines from Gull Island to Muskrat Falls, so –

**MR. COLLINS:** Mr. Harrington, that – this paragraph that you’re reading from appears to be – the sentence begins: “Perhaps the cap cost reduction ... is so great that we can now afford ....” So this is not describing the features of Case 8, it is describing something that could be –

**MR. P. HARRINGTON:** Oh.

**MR. COLLINS:** – added.

**MR. P. HARRINGTON:** Yeah, okay. Sorry.

**MR. COLLINS:** So the Commission has heard that the capital cost estimate and the basis of design at Decision Gate 2 were not actually based on a 900-megawatt Labrador-Island Link, they were based on a 600-megawatt Labrador-Island Link that was scaled up. Do you – are you familiar –

**MR. P. HARRINGTON:** Yes.

**MR. COLLINS:** – with that?

**MR. P. HARRINGTON:** Yes. I’m saying yes, but I’m pretty sure that was the case, right?

**MR. COLLINS:** So that’s good.

Could we bring up P-00097, which is not in the binder?

**MR. P. HARRINGTON:** Okay.

**MR. COLLINS:** But this is the Decision Gate 2 QRA. And if we go to page 16 of this document and scroll down a little, we’ll see that the – if you scroll down a little further we’ll see that the basis of assessment is Capital Cost 8.

And if we go to the next page – it’s Case 8. If we go to the next page we’ll see that there are three changes: They increase the Labrador-Island Link capacity, increasing the Island system voltage and reverting back to LCC from VSC.

**MR. P. HARRINGTON:** Yes.

**MR. COLLINS:** So is it fair to say that Case 8, described in this email, was the ancestor of the Lower Churchill Project, as it was eventually sanctioned?

**MR. P. HARRINGTON:** I don’t know.

**MR. COLLINS:** You don’t know.

**MR. P. HARRINGTON:** No.

**MR. COLLINS:** Well, we can work that out in time and we can proceed on that basis for the time being. In this email –

**MR. P. HARRINGTON:** The email again, yeah.

**MR. COLLINS:** – in this email, you indicate that the drive behind the Muskrat stand-alone case was to get the cap cost down as low as possible. So – and to that end a number of changes were made including reducing the return period for the transmission tower to a one-in-50-year return period. Do you – do you see – do you agree that appears to be –

**MR. P. HARRINGTON:** That appears to be –

**MR. COLLINS:** – the reason for the reduction?

**MR. P. HARRINGTON:** Part of it, but it's also the VSC technology versus the LCC technology.

**MR. COLLINS:** There are number of changes that were made.

**MR. P. HARRINGTON:** Yes.

**MR. COLLINS:** Do you agree that from this email it appears that the reason for all those changes was to reduce the capital cost?

**MR. P. HARRINGTON:** Yes.

**MR. COLLINS:** Do you know why it was important to reduce the capital cost?

**MR. P. HARRINGTON:** Because they were looking for the least-cost option.

**MR. COLLINS:** That's possible. Another thing that it says here is: "... because we were advised that the LCC case did not work." Do you know what work means?

**MR. P. HARRINGTON:** It didn't work in the – at that point in time they were doing system studies.

**MR. COLLINS:** Yeah.

**MR. P. HARRINGTON:** I'm stretching back nine years.

**MR. COLLINS:** Oh, okay.

**MR. P. HARRINGTON:** Yeah, yeah. And the system studies indicated that the design they were looking at, using the voltages they were looking at, were incompatible or not ideal for the existing system on the Island. And, you know,

Paul Humphries was the individual who was – you know, that was his expertise, not mine.

**MR. COLLINS:** Thank you.

Is it reasonable to infer from this email that the reliability of return period was lowered as part of developing Case 8 in order to lower the capital cost estimate and that design choice was retained through DG2 and DG3?

**MR. P. HARRINGTON:** I don't – I'd have to have a look at the details because I don't know what this basis of design actually stipulated, whether it was one in 50 or one in 150.

**MR. COLLINS:** It indicates here: "... the return period for the transmission tower design was reduced to 1:50 years ...."

**MR. P. HARRINGTON:** Yeah, but that was part of this economic analysis that they were doing. So whether this Case 8 and this Case 8 that's – that you may – referred to earlier, the same, I really can't confirm.

**MR. COLLINS:** Was Nalcor in the habit of having multiple cases with the same name?

**MR. P. HARRINGTON:** I don't know if they were in the habit of doing it, but it – I'm saying I don't know whether they – I can't say for certain that they're the same thing. All –

**MR. COLLINS:** (Inaudible.)

**MR. P. HARRINGTON:** I'm struggling a bit here, right?

**MR. COLLINS:** Was the – is the reliability return period for the Case 8 that's described in P-00097, is that one in 50 years, or is it a higher reliability return period?

**MR. P. HARRINGTON:** I'm sorry.

**MR. COLLINS:** So, if this – this document is describing the reliability return period falling from a hundred – one in 150 years to one in 50 years. Do you know if that design choice is the same as the choice that was made at DG2?

**MR. P. HARRINGTON:** That's what I can't –

**MR. COLLINS:** You don't remember if –

**MR. P. HARRINGTON:** I don't – I can't confirm it without looking at all of the documents.

**MR. COLLINS:** Did you indicate earlier in your evidence that you agreed that the reliability return period at DG2 was one in 50 years?

**MR. P. HARRINGTON:** I said I'm not going to argue with you on that.

**MR. COLLINS:** Okay.

**MR. P. HARRINGTON:** I think –

**MR. COLLINS:** Very good.

**MR. P. HARRINGTON:** – that was what I said, yeah.

**MR. COLLINS:** That's fair.

Do you know – what was the purpose of this – of your email to Mr. Bennett?

**MR. P. HARRINGTON:** Now, that's a tough one. Nine years ago ...

**MR. COLLINS:** If I could suggest the –

**MR. P. HARRINGTON:** There's so much going on, and, you know, asking me to –

**MR. COLLINS:** The subject of the email –

**MR. P. HARRINGTON:** – remember what was behind my thinking nine years ago on the 20th – you know, whenever it was – of – yeah. That – I really ...

**MR. COLLINS:** The subject of the email is "Sign off Case 8," and the last line is: "You have the sign off pen so pls let me know how you wish to proceed."

**MR. P. HARRINGTON:** Yeah.

**MR. COLLINS:** Do you know what the purpose of the email was?

**MR. P. HARRINGTON:** For Gilbert to make a decision.

**MR. COLLINS:** And it – was it Mr. Bennett's decision to sign off – was it his decision whether or not to authorize this case?

**MR. P. HARRINGTON:** Well, that's why I'm sending it to Mr. Humphries also, because I'm saying: "My concern is as discussed we have prepared a low cost scenario screening" – right – "but the technical risks associated with this case are not fully appreciated in detail but we all know they exist."

So what I'm saying is, this might've been a theoretical piece of work that, hey, you could get the cost down if you did this, this, this, this and this. But the technical expert is Mr. Humphries, and I'm flagging to him is, well, this is just – you know, I don't know whether – you know, you should be looking at the technical risks associated right here. So that's – and I'm piecing this together –

**MR. COLLINS:** I understand.

**MR. P. HARRINGTON:** – as you understand, and that's probably the best I can offer there.

**MR. COLLINS:** So do you mean that although you're asking Mr. Bennett to sign off on this design, your purpose might not be to get him to sign off on it.

**MR. P. HARRINGTON:** No, I sent this note to Gilbert yesterday. Mr. Humphries would feed into Mr. Bennett.

**MR. COLLINS:** I – excuse me, I'm focusing on your email to Mr. Bennett, not –

**MR. P. HARRINGTON:** Okay.

**MR. COLLINS:** – your email to Mr. Humphries. Was the purpose of your email to Mr. Bennett to get him to sign off?

**MR. P. HARRINGTON:** On the screening, low-cost scenario.

**MR. COLLINS:** Yes. Yeah, it is.

**MR. P. HARRINGTON:** So I'm saying, this is what – this is what's been done, let me know before we go off and –



**MR. COLLINS:** But –

**MR. P. HARRINGTON:** – how, you know, how you would wish to proceed.

**MR. COLLINS:** So if the reliability return period in case – was reduced from a higher reliability return period, associated with the Gull Island scenarios, to a one in 50-year reliability return period, would that – would the decision to authorize that have been made by Mr. Bennett?

**MR. P. HARRINGTON:** It would be made by various people, and Mr. Bennett wouldn't have a – you know, the exclusive decision there. I mean, he's the VP but he'd be getting input from engineering, input from system planning – system planning would probably be the people there, Paul Humphries and his team.

**MR. COLLINS:** So he would receive input from many people, but would he sign off on it?

**MR. P. HARRINGTON:** He would sign off based on the advice that those people provided him with.

**MR. COLLINS:** He would sign off on it.

**MR. P. HARRINGTON:** I believe so, yes.

**MR. COLLINS:** And so, if the Case 8 referred to in this email is the same as the Case 8 that is referred to in the Decision Gate 2 documents –

**MR. P. HARRINGTON:** Right.

**MR. COLLINS:** – and if the decision to lower reliability return periods at this point was made to lower capital costs – lower the capital costs of the project – and if that design choice was retained through sanction, then this document indicates that – suggests, at least, that Mr. Bennett was the one who authorized the reduction in the reliability return period.

**MR. P. HARRINGTON:** I think you'd have to ask Mr. Bennett that, because that's me guessing.

**MR. COLLINS:** You have no memory and no ability to add?

**MR. P. HARRINGTON:** I wouldn't like to be definitive on that, and I think you'd have to ask Mr. Bennett.

**MR. COLLINS:** At the top of the page you refer to various technical risks associated with the case. In the email below you refer to various technical questions about the use of VSC technology, which I understand was not used.

Do you know if there were any other technical risks you were concerned about?

**MR. P. HARRINGTON:** Yeah, I'm pretty sure there were.

**MR. COLLINS:** Do you know if the reliability return period would have been one of them?

**MR. P. HARRINGTON:** That might have been one of them.

**MR. COLLINS:** Do you recall if you had any concerns about the lower reliability return period associated?

**MR. P. HARRINGTON:** No, I didn't have at that point in time.

**MR. COLLINS:** Thank you, Mr. Harrington.

**MR. P. HARRINGTON:** Thank you.

**THE COMMISSIONER:** All right. It's now past 4:30, so we have tomorrow. And I'm assuming we can get thorough everyone tomorrow. So, I'm just wondering – I think maybe we will start at 9 tomorrow morning because – just to make sure we are finished. So we'll start tomorrow morning, 9 o'clock.

**UNIDENTIFIED MALE SPEAKER:** Thank you.

**THE COMMISSIONER:** Okay.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.