



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 62

Commissioner: Honourable Justice Richard LeBlanc

Thursday

27 June 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open, the hon. Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right.

All right, good morning.

MS. COADY: Good morning.

THE COMMISSIONER: Good morning, Ms. Coady.

All right, Mr. Learmonth.

MR. LEARMONTH: Thank you.

The witness today will be Siobhan Coady. Could Ms. Coady be sworn?

THE COMMISSIONER: All right, Ms. Coady, if you could stand, please, and place your hand on the Bible.

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

MS. COADY: So help –

CLERK: – so help you God?

MS. COADY: So help me God.

CLERK: Please state your name.

MS. COADY: My name is Siobhan Coady.

CLERK: Thank you.

Is your mic on?

MS. COADY: It is.

UNIDENTIFIED MALE SPEAKER: Yeah.

MR. LEARMONTH: I'd first like to enter some exhibits. They are P-04292 to P-04322, P-04325 to P-04330, P-04333, P-04345 to P-04349 and P-04351.

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

MR. LEARMONTH: Okay.

Now, Ms. Coady, what is your present occupation?

MS. COADY: Thank you.

I'm the Minister of Natural Resources and Deputy Government House Leader, Government of Newfoundland and Labrador.

MR. LEARMONTH: First, could you give us a brief summary of your educational pursuits after high school?

MS. COADY: Certainly. I'm an Institute of Corporate Directors director from the University of Toronto. I'm an accredited public relations professional. I studied at – studied advanced management at Oxford University and political science here at Memorial University.

MR. LEARMONTH: And can you give us a summary of your political career?

MS. COADY: Certainly.

In 2008 to 2011, I was a Member of Parliament for St. John's South – Mount Pearl. On November 30, 2015, I was elected as a Member of the House of Assembly for St. John's West and re-elected in May of this year again as – in St. John's West.

MR. LEARMONTH: Okay.

And since your first election you've been the Minister of Natural Resources. Is that correct?

MS. COADY: Correct.

MR. LEARMONTH: Yeah.

And so you were reappointed when the present – when the previous government was formed on December 14, 2015. Is that correct?

MS. COADY: That is correct.

MR. LEARMONTH: Now, can you tell me your first contact with Ed Martin, after you were

elected, following the November 30, 2015, election?

MS. COADY: Certainly.

On or about December 15 I received a phone call from Mr. Martin, a courtesy call, to say thank you for – you know, congratulations on being elected and congratulations on being the Minister of Natural Resources. And he looked forward to – looked forward to working with you, kind of, call. He went on to say that it would be important in the next number of days to get together to discuss the Muskrat Falls situation.

He talked about a situation with Astaldi. He mentioned it particularly, and that there was concerns that they needed to get to negotiations with Astaldi. And I asked him, is it urgent before Christmas, I mean this being now the 15th of December and having just been sworn in. He indicated that it was. I asked him, you know, so this is substantive? He indicated that it was, you know.

And I said, substantive as in – and he – you know, hundreds of millions of dollars substantive. I asked if it was in the September update, the update that had been given publicly in September. He indicated that, no, it had not been in that estimate, that this would've been – would be additional. So that caused me concern and I asked, you know, so this is urgent? And he indicated that it was very important.

I asked how long he had been – you know, did the former administration know how long you had been dealing with this. He did indicate that in the previous spring that he had – he had brought it – he had been speaking to government about this issue and I think, in particular, he mentioned Mr. Davis, but ...

So once he had indicated that was important and serious, that it involved money that may or may not have been in the – that was not in the estimated amount of September that he – that I – that we needed to get together, so I said we'll do that as quickly as we possibly could.

MR. LEARMONTH: So what was your reaction, generally – in general, to receiving this news about the Astaldi problem?

MS. COADY: Concern on multiple levels, concern that this had been a situation that had been developing. Mr. Martin had indicated that, you know, this had been in – you know, this had been a problem of productivity and a problem of over the last little while that – at least the 18 months. And I don't know if he indicated that length of time at that particular phone call or subsequently, but it had been around for quite some time and that the issue required immediate attention.

I was concerned that it was not in the schedule of September, so my immediate thoughts were, well, what else isn't in the schedule – the cost and schedule that was released in September? If that wasn't in there, what else, and this had been going on for quite some time. And the fact that the former administration knew that and it had not been disclosed, or had not been dealt with, concerned me greatly, and that it was relatively – it was important to the point of being – needed to be done within the next number of days, that he wanted to speak with me and the Premier about this, you know, important issue, so ...

MR. LEARMONTH: Yeah.

MS. COADY: So that caused me great concern. Like, I am starting to get, even at that earliest conversation, a sense that we didn't have the full picture of Muskrat Falls. So it helped inform me as to, well, you know, as we were – in my thinking and in the thinking that we, as government, were forming the development of the – of whether or not, you know, to conduct an investigation into the cost schedules and associated risk that helped to inform that piece of work.

MR. LEARMONTH: Did you report this telephone call with Premier Ball, or did you wait to get further information?

MS. COADY: I would've certainly mentioned it to Premier Ball. I don't know if I reported a telephone call, but I certainly would've had a conversation with him about this important issue.

MR. LEARMONTH: Right.

Now, please turn to tab 3 in the first book you have before you. This is Exhibit P-04328, a

Financial Overview, dated December 15, 2015. And you referred to this at least once in your interview, Ms. Coady; it's an 82-page document. And I'd like you to tell us when you first received this December 15, 2015, document that had been prepared by Nalcor.

MS. COADY: You'll note that it's dated December 15 which is a day after I would've been sworn in as the Minister of Natural Resources. In early to mid-January of 2016 there would've been a briefing that Mr. Martin would've attended – would've requested. Or I would've requested a briefing that he would've presented and that would've been in the first two weeks of January 2016. I also invited the minister of Finance because, of course, as a new minister you receive multiple briefings on important topics.

This one in particular was of importance because of the cost, and now knowing what I knew that there was going to be pressure on that cost and schedule that was delivered in September of 2015. I do note it is a significant package, and what caused me to raise the issue is it doesn't – even though it's an 82-page document; it does give a very high level overview of Muskrat Falls Project, it did not really disclose some of the intricate issues that we were going to face or were facing immediately upon assuming Government of the Province of Newfoundland and Labrador.

So if you think about the telephone call that I would've had on December 15 indicating, you know, a fairly significant concern with Astaldi, and then was it reasonable that that was not indicated in the deck of January of 2016, and without disclosures of some of the other concerns that we will start to learn about as we entered into January of 2016.

But it was an – to me it is an indication of how Nalcor presented information, a substantive amount of information, but not necessarily getting to the most salient points. And I thought it was important – an important point to note.

MR. LEARMONTH: Yes. I believe the reference to the current state of the Lower Churchill phase 1 is found on page 52, beginning on page 52, and ending on page 62

but, I didn't see any reference to the Astaldi problem.

So could I summarize what you're saying in this way – or part of what you're saying this way: You get a phone call on December 15 raising considerable concern about Astaldi, and then you get a deck the same day, and there's no mention of the serious problem that had been communicated to you. Is that the basis for your concern at this point?

MS. COADY: I would not have received this deck on the 15th. This would've been, probably, provided to me some days prior to our meeting with Mr. Martin. What I'm pointing out, I think, is a – the significant concerns around a contractor that were not particularly raised in this deck. Even though you're briefing the minister, it's a significant deck, you're having two senior ministers meeting to discuss this, and yet there's nothing really indicating some of the challenges around the Muskrat Falls Project and the Lower Churchill Project in this very significant deck and early briefing. And I think it's indicative of, kind of, the information that was being provided at the time.

MR. LEARMONTH: Right.

Tab 4, if you could turn to that in your book, Exhibit P-03451. This is a release, December 21, 2015, just a week after a new government had been formed, from Natural Resources. And it refers to the proposed release of the – one of the reports that Ernst & Young had done. And I just want you to confirm that what was released on December 21 was the executive summary, not the main report. Is that correct?

MS. COADY: That is correct.

MR. LEARMONTH: Yeah.

MS. COADY: The main report would've been released at a later date. On December 21, we wanted to put out – during the fall of 2015, EY had done a study on the processes and controls around the project. It was a significant and, I think, telling piece of work. And we wanted to put it out there. There was a call to put it out there, to be honest with you. And I think that was important that we put as much information out there as we possibly could.

So we put out the executive summary at the time. There was some concern around confidentiality around some of the contracts, and so we put out this piece of work. This was within the first week, remember, of us being sworn in and becoming a government. And so we put out this first piece of work and, at a subsequent date, we put the remaining information.

MR. LEARMONTH: Yes.

And we know from the evidence of Michael Kennedy of EY and others that the work for this process and controls report had been done, I believe, in April 2015, and then the final versions were prepared towards the end of October 2015. Do you – was there any record in the documents that you reviewed to explain why this report was not released to the public until you did? Do you have any record of that? Was there a reason that you found in the records of the Department of Natural Resources?

MS. COADY: Not in the records of the Department of Natural Resources, and nor was it presented to me as such. This would've been work that was completed for the Oversight Committee. The Oversight Committee is a committee of Cabinet. So there was nothing that I would've seen in Natural Resources to indicate why it was not released. My recollection is that it was not released because of that sensitivity around the information that it contained.

MR. LEARMONTH: Yeah.

But the information that the – the report that had been prepared had been split into two. One was the executive summary which you released in December 21. The other substantive one was prepared – the first report was split because of commercial sensitivity. So the second report – or second part of this report wasn't released I think until April. But I just wonder whether there's a reason that this first report wasn't done. Because the commercially sensitive information had been removed from this report.

MS. COADY: I would not be able to advise what occurred before I was sworn in. Unfortunately, it would be anecdotal for me to tell you what I (inaudible) otherwise, so ...

MR. LEARMONTH: Okay.

Tab 5 is Exhibit P-03452. This is another release dated December 21, 2015, from the Executive Council and Natural Resources, and it's entitled Government Opens Books on Muskrat Falls Project. The second paragraph reads:

"Given cost overruns, schedule changes and baseline updates on the Muskrat Falls Project, it is prudent for the Provincial Government to review the project's cost and schedule to determine if there are any critical risks moving forward. Ernst & Young will undertake a comprehensive, independent review and identify opportunities for corrective action, if necessary. This type of due diligence is not uncommon in major capital projects and we are moving ahead with the work immediately."

All right, now this is only a week after your government was formed. Why was such an early decision made to undertake this review? What was the reason for engaging EY to do this work just one week after your government was formed?

MS. COADY: There had been concerns expressed around the Muskrat Falls Project since its inception. There had been cost and schedule concerns as recently as September of 2015 leading into the 2015 election. There had been an update. There had been a call to me by Mr. Martin indicating that there were additional pressures.

It would've been – it was responsible and prudent, I think – I think the Premier actually said that in his notes – it's very responsible for us to really look at the project to see where we are, to look at the risks moving forward and to make some determinants as to how to best address the situation that the province found itself in. It was important that we had cold eyes on the project, and look at the cost schedule and associated risks of the project so that we can determine the best path forward. It was the responsible thing to do.

MR. LEARMONTH: All right.

And I believe the record indicates that the contract was signed in early January for this engagement by EY.

MS. COADY: Correct.

MR. LEARMONTH: All right.

Tab 6, Exhibit P-04033; I think these have been identified as notes of – with Minister Cathy Bennett, she was minister of Finance at the time.

In terms of communicating with government – with Ed Martin and other representatives of Nalcor, would that be with the Department of Natural Resources or to the Department of Finance or both at this time?

MS. COADY: It's such a significant project and expenditure to the – you know, on behalf of the people of the province, that while I – the Minister of Natural Resources has the responsibility for Nalcor, there was certainly, and continues to be, ongoing discussions with multiple departments.

And I'll use an example. You mentioned Finance. Because there is such financial impacts and there would be ongoing discussions between officials with Finance and officials with Nalcor on financial matters, there would be ongoing discussions with the Municipal Affairs and the Environment because they are the regulator of both the, you know, environmental issues and the regulatory issues around the environment, as well as the dam safety programs. So there are touchpoints with multiple departments. I am the lead and responsible department for Nalcor, but they would have interaction with other departments for sure.

MR. LEARMONTH: Tab 8 is Exhibit P-03571. This is an email from Ed Martin to Julia Mullaley and Charles Bown, January 22, 2016.

And this is a – Mr. Martin says: "Here is the version for the Premier. I had to modify Option 1B - I had the wrong numbers in there, just noticed on a quality check."

Now, this is a deck dated January 2016. I do note that in tab 10 there's the same deck, but in tab 8 parts of it are redacted and in tab 10 there are no redactions. So I don't know the reason for that, but anyway.

January – this deck was sent on January 22, 2016. Had you met with Mr. Martin following

your – sometime between December 15 and January 22, 2016? Or what type of – how would you describe the communications that you had from Mr. Martin or other representatives of Nalcor during this period?

MS. COADY: There would've been multiple discussions with Mr. Martin, even in December of 2016 and then leading into January. As I said, he was concerned that he could move forward with discussions with Astaldi and he wanted to make sure that he could do so. He – there had been also, obviously, multiple discussions with Mr. Martin and co concerning the EY report.

So there would've been a number of opportunities to have that – to have a discourse with him, both on the EY study and the – and moving towards ensuring that the co-operation of Nalcor, the – and that the work could be done with EY, and there would've been multiple discussions around the Astaldi piece and moving forward.

So this is a document that was presented to Planning and Priorities Committee –

MR. LEARMONTH: Yes.

MS. COADY: – on or around the same January 24.

MR. LEARMONTH: Was the Nalcor-Astaldi problem high on your priority list or was it just one of many issues that you had to deal with between the time your government was formed on December 14, 2015, and we'll say January 22, 2015 [sp. 2016]. What level of priority did you give the Nalcor-Astaldi problem during this period?

MS. COADY: I think the evidence speaks to that. Planning and Priorities met within a month of being sworn in to deal specifically with Astaldi. So I would – I'm pointing to – I don't have to recollect, I'm pointing to the fact that there was a – you know, the Planning and Priorities Committee, which is the most senior committee in Cabinet, would've been pulled together to discuss this very – this significant issue. So it would've had one of the, you know, priorities of government at the time.

MR. LEARMONTH: Yeah.

So we'll just go to tab 10 now because that's the unredacted version of this report. And if you go to page 23 of tab 10, which is Exhibit P-04294, you'll – you can see that there's a note that on January 26, 2016: "A presentation respecting Muskrat Falls Update – January 2016 was deferred."

Can you now confirm that this report never went to a full Cabinet meeting, it was just sent to the minister who met with you and others about it?

MS. COADY: I can confirm it did not go on this particular day. It was deferred from – from this date on January 2016, instead it went to Planning and Priorities Committee.

MR. LEARMONTH: Right. And we can – I'm not going to go through all this exhibit in detail, but we can see the subject matter is – it's Astaldi throughout this presentation. Now, can you give me some sense as to the extent of this problem with Astaldi that was communicated to you by Mr. Martin? I mean was it a \$50,000 issue? Was it a \$100 million, \$200? Just give me some recollection as to the ranges that you thought would be required to solve this problem, based on the information you received from Mr. Martin.

MS. COADY: In the earliest days, and I'm meaning the first month, it would have been in the 150, 250 range. That there was a – there was some thought that that – this could be around the 150 to 250 range; however, if you – even if in glancing through this document you'll note that it – that was – it did go up, additional cost over contract bid, not including profit. There's other schedules and cost impact. There was some concern around moving expeditiously on this.

So my initial was in the several hundred, but that grew and it grew as more information was presented, including this document. You'll see that, you know, there's ranges here in terms of what could, ultimately, happen and – but I will add that it was a significant discussion occurring as to why it was felt that we should negotiate with Astaldi around this.

So, there was a significant discussion around the contract. Why – you know, why was two-thirds of the money expended and only one-third of the project completed? There was concern around

whether or not we had all the information. There was a concern around the possibility of – there was concern around the contract itself and whether or not, you know, Astaldi moving forward – the claim was even potentially possible, like, what was in the contract. So a lot of discussion and concern around whether or not we should be discussing this and whether or not we should hold a contractor to account on what was in the contract.

MR. LEARMONTH: But were you getting a coherent message from Nalcor? Like, an assessment – an analysis of the problem and a breakdown of the amount of money that Nalcor believed would be necessary to resolve this problem?

MS. COADY: Again, I let the facts speak for themselves in some ways. No, I would answer to your question, quite directly. That is why the Premier and I had discussed, you know, we needed more information. Obviously, we had concerns around the lack of information, the lack of diligence and presentation to us. And you'll see in other documents there was – that was a widespread theme.

It wasn't just myself or the Premier, it was a widespread theme that there was concerns around the information being presented, and noting that Mr. Martin had negotiated the original contract, you know, making sure that we had cold eyes on this. And that is why there was a move to bring EY in on some of the discussions around what we would – what we potentially could do with Astaldi.

MR. LEARMONTH: Okay.

Tab 9, Exhibit P-04293; this is a January 24 memorandum from Tim Murphy, who I believe was Premier Ball's deputy chief of staff at the time. Is that correct?

MS. COADY: Correct.

MR. LEARMONTH: To Dwight Ball and Kelvin Parsons, who was the chief of staff at the time. Is that correct?

And this deals with concerns over the – concerns that should be considered in respect to the Planning and Priorities meeting on – that was

scheduled to come up on Tuesday. That's what it said in the first paragraph on page 2. When is the first time you saw this document, Ms. Coady?

MS. COADY: In the – in preparations for today's meeting –

MR. LEARMONTH: Yeah.

MS. COADY: – I was provided documentation, so I had not seen it prior to this. This would've been a memo from the deputy chief of staff to the Premier; however, having reviewed it, it does accurately reflect the concerns that had been in general discussion at the time.

MR. LEARMONTH: All right.

So you had – you do confirm that –

MS. COADY: Correct.

MR. LEARMONTH: – you believe it was a reasonable statement of the concerns –

MS. COADY: It –

MR. LEARMONTH: – that people in government, including you, were feeling about the Astaldi problem at this time?

MS. COADY: Yes, I had had many discussions with the deputy, as well as the chief of staff, concerning this.

MR. LEARMONTH: All right.

Tab 11 is Exhibit P-03086. This is a February 26, 2016, record prepared by Kelvin Parsons. It was sent to Dwight Ball and Tim Murphy concerning a February 25 meeting with EY that was held following a February 24 – excuse me, a February 25 meeting of Cabinet.

Now, if we could just turn to page 2 of this exhibit. Have you reviewed this exhibit before you came in today? I think you said you did in your interview – yes.

And you were present together with the Premier, Kelvin Parsons, Tim Murphy and Julia Mullaley, and do you – can you provide any comment as to whether you believe that this is

an accurate record of what was said at this meeting to the best of your recollection?

MS. COADY: I can confirm that this is an accurate reflection. It's reasonable discourse of what – it is a reasonable account of what did – what was said, and I can confirm that the Premier did utilize these notes.

MR. LEARMONTH: Yeah.

And was the information provided by EY – I think it was mostly by David Leather. Was this information – first, was it new to you? And, second, was it of concern to you? You can just go through the document and point out parts that were new to you and state whether they were of concern to you or not.

Let's just go on the page first – on page 2 first. Say the fourth dot down: "EY's estimate is the problem with Astaldi's in the range of \$600-\$800 million. Nalcor has been referring to a \$650 million issue." What was your reaction to receiving that information?

MS. COADY: If I may go back one earlier and say the "\$7.65 Billion is not reasonable" would have caused me concern. Caused me concern on December 15 when I learned that it was – that the Astaldi – that there had been an Astaldi issue, that they were wanting to negotiate and that it was not included in that assumption, a number. So that's the first –

MR. LEARMONTH: You're referring to the September 25, 2015 –

MS. COADY: Correct.

MR. LEARMONTH: – revision –

MS. COADY: Right.

MR. LEARMONTH: – to the AFE which was in the amount of \$7.65 billion.

MS. COADY: Correct.

MR. LEARMONTH: Yeah.

MS. COADY: And if you look at the bullet above the one that you noted, it's – that's the first time that EY basically says \$7.65 billion is

not reasonable, particularly as it relates to the Astaldi situation. So you asked what caused me concern; that was the first thing that caused me concern, knowing what I did of December '15. The second thing that caused me concern is the ranges; again, the changes in numbers over time was of concern.

MR. LEARMONTH: The third one from the bottom that says that "Not only was there no Management Reserve included in the budget, Nalcor's view is the amount of money available for the MF project is unlimited given that Nalcor believes Government will provide whatever funding is required. That has been the practice and experience until now."

What was your comment on that information?

MS. COADY: I think that's one of the most grievous concerns that we – you know, that we were faced with, was the fact that there wasn't adequate – an adequate reserve. There wasn't a – there was a – I believe somebody during the Commission of Inquiry said it was a P1, not an adequate reserve.

MR. LEARMONTH: The P1 was the schedule, yeah. Yeah, yeah, yeah.

MS. COADY: Correct, yeah.

But I guess all the way through here, when you read through this particular document, you're going to see that we were starting to understand the bigger scope of the problem and the bigger scope of the knock-on effects of the schedule, the knock-on effects to cost and where we were with this particular project. And it was not in a very – it was – you know, there was difficulties in multiple fronts. And while we may be focusing on one front, the knock-on effect to this particular problem was throughout the project.

MR. LEARMONTH: Yeah.

And on page 3, near the middle, it says: "EY described a culture of 'we know best' on the MF project at the senior levels (CEO and direct reports). EY added that the mid-management level and down in Nalcor are extremely competent and committed to the project."

Was that of concern to you, that description of the "we know best" attitude provided by EY?

MS. COADY: Tone at the top of any organization is incredibly important to how an organization functions, and I will agree with the statement that "we know best" – it was basically the attitude of the Muskrat Falls Project. And, you know, they had a tremendous amount of confidence in what they were doing and in how they presented information and in what they felt was the outcome of the Muskrat Falls Project.

And what we were learning was, of course, that was not the case. The case was that the schedule – the cost and the schedule was not reasonable. So we were – the tone of the Muskrat Falls, of the Lower Churchill Project, was "we know best" and Nalcor was "we know best." But in effect that was not the case.

MR. LEARMONTH: There's a disconnect there. Is that correct?

MS. COADY: Correct.

MR. LEARMONTH: Page 4. I'm not going to take you through all of these concerns. I'll just – if there are any ones in particular that you want to address –

MS. COADY: Mm-hmm.

MR. LEARMONTH: – you can let us know. But the second paragraph on page 4: "Specific to the Astaldi issue: EY is real surprised that discussions with Astaldi to resolve the \$600-\$800 million issue are still at a high level, even though the problem has been evident for 18 months." Now, I think you said that Mr. Martin called you on December 15 and was – expressed concern about this.

Were you aware on December 15 if this problem had been in existence for a long time?

MS. COADY: I recall that I did ask if he had brought this to the attention of the former administration and he indicated yes, in the spring previously – previous. So that would've been the spring of 2015. So this had been an ongoing issue for quite some time and had not been resolved.

So when you're – in any circumstance, in any organization including government, when something has been known for quite some time and not dealt with, you're – you have to reflect on why isn't it – why hasn't this moved? Why hasn't this been dealt with? And it's the complexity of it is one thing, but another thing is the fact that it – I think there was no – there were discussions, but there was no really negotiating strategy or negotiation per se.

MR. LEARMONTH: Yes. And on page 5, this is noted in the third paragraph down where it says: "EY noted that what's missing from Nalcor for government to make a decision on whether to provide Nalcor with a negotiating mandate is a Negotiating Strategy. That strategy, which Nalcor should have prepared, would outline objectives of an agreement, parameters around amount of funding, how and when funding could be made available, who would be involved in the negotiations, the terms and conditions we would attach to any agreement, starting and acceptable closing positions, where the other side would likely be coming from"

Now, had you – this is what EY said. Did you find at the time that there was no negotiating strategy? There was nothing – I mean, I know there was a deck presented. But there was nothing of – in a way of a detailed plan of attack to deal with this problem? In other words, did this finding that I just – or opinion that I just read reflect your understanding at the time also, or confirm your understanding?

MS. COADY: It did. My understanding is that – or I was never – I never saw the full negotiating strategy. As you saw, we did have that rather high-level deck, but in my experience, that is not a negotiating strategy. If my department is negotiating anything with any organization, you would have to have an approved process. You'd have to prepare the, you know, the parameters and get a scope of what you're trying to achieve. So that would be standard procedure in any organization and in government, I will say that. But I had not seen that for Astaldi. It was one of the issues of concern.

MR. LEARMONTH: All right.

We'll next move to tab 12, which is Exhibit P-04295.

MS. COADY: If I may, before we move on.

MR. LEARMONTH: Please.

MS. COADY: And again, you have to put this in a little bit of a context of: you have a challenge with a contractor and a challenge with a contract, which the person who's coming to you to negotiate actually negotiated the first contract. So I want to put that in context. So, you know, Mr. Martin had invested – you know, had dealt with the original contract and now coming to say we need to open up a new set of negotiations. So I wanted to put that in context.

MR. LEARMONTH: Okay, thank you.

Is there anything else you wanted to add on your – to your commentary on that document?

MS. COADY: Not at this point, thank you.

MR. LEARMONTH: Okay, thank you.

Tab 12, Exhibit P-04295. This is an email from Tim Murphy to Paul Hickey – he's a partner at EY – dated February 28, 2016. It says, "Paul – FYI, Minister Coady, Kelvin and Ed will be having a courtesy meeting with the Italian Ambassador and Astaldi reps on Tuesday, March 1."

Can you tell us something about this meeting?

MS. COADY: Certainly.

It was a request by the Italian ambassador from Ottawa to meet with the minister of Natural Resources in Newfoundland and Labrador. That, in and of itself, is not unusual if he'd been here on other business, but he specifically wanted to speak of the Astaldi contract.

That is highly unusual; and I have had courtesy meetings with other ambassadors certainly, that are visiting the province of Newfoundland and Labrador, and happy to share with them, you know, our natural resource development and what opportunities there may be for their country.

But for an ambassador to come to speak to a minister about a contract certainly is unusual and it certainly caused me to reflect on – I'm not the

holder of that contract – Nalcor is – and why would the ambassador be coming to see me on that particular point, especially at what I'm going to call a sensitive time. So I found it highly unusual. The meeting did go ahead.

MR. LEARMONTH: And so he – the Italian ambassador flew from Ottawa to meet with you about this Astaldi problem. Okay, can you give us your recollection of the exchanges at the meeting?

MS. COADY: I can.

Prior to the meeting – just by way of context, again – prior to the meeting, there had been a discussion about whether it would be appropriate to – for me, actually, to meet around the particular – they – he specifically had asked around the Astaldi contract. I had agreed to meet on, really, as a courtesy meeting. So I want to point that out: I – we agreed to meet as a courtesy to the Italian ambassador, not to get into any details.

The meeting was held in the Department of Natural Resources Building. In it –

MR. LEARMONTH: On Elizabeth Avenue? Yeah.

MS. COADY: On Elizabeth Avenue.

The ambassador – and he brought two other individuals with him. Also in attendance was Mr. Martin. I had requested the chief of staff, Kelvin Parsons, and my executive assistant, Megan Sheppard, to attend as well.

My purpose in the meeting was, as I said, to be courteous and welcoming, but I certainly didn't want to get into any details of anything. The ambassador did raise how important the Astaldi contract in Canada was to the Government of Italy, how important it was that we resolve the matter.

He raised – again, which I found interesting – he raised the possibility of the Italian prime minister coming to Muskrat Falls and perhaps the prime minister of Canada would go, that they're friends or colleagues or something to that effect, that it was – you know, and again, he

was in a very professional courteous tone, I will say that.

This was not – I will say that it was in a very professional and courteous tone. But he was – I would say impressing upon me the importance of Astaldi to the Government of Italy and how it would be important to resolve the matter.

MR. LEARMONTH: So even though he was, as you've said, professional and polite and diplomatic, I take it, the message was –

MS. COADY: Mm-hmm.

MR. LEARMONTH: – pretty clear, do you agree?

MS. COADY: Absolutely clear.

MR. LEARMONTH: Yeah, yeah. And the meeting ended on a happy note? Or a friendly note?

MS. COADY: This – as I said we were both – we, myself representing the Government of Newfoundland and Labrador and the ambassador representing his country, were both very – both very diplomatic. But the Italian ambassador's message – he wanted to make sure I understood it.

MR. LEARMONTH: Well, did the meeting cause you to adjust in any way your attitude towards resolving the Astaldi problem?

MS. COADY: Just – I did know that it was important to the Italian government but it was also important to the people of Newfoundland and Labrador, and I certainly would have taken the point of how important it was to the people of Newfoundland and Labrador into the most, into the most important point of what I was trying to achieve.

MR. LEARMONTH: Okay, thank you.

Tab 15 is Exhibit P-03364. This is from Michael Kennedy of EY; it's dated March 7, 2016. It says, "Hot off the press. Draft report attached. Meeting the Premier et al at 8am tomorrow in St. John's. Please don't circulate, unless the person who have signed the ring fence procedure. Mike"

So this is the first draft of the report that had been commissioned by the government in January. It was discussed in December 2015 and the contract was signed in January 2016, is that correct? December 15 –

MS. COADY: Correct.

MR. LEARMONTH: – and then January yeah, okay.

Did you attend this meeting with the Premier?

MS. COADY: On March 8 at 8 a.m., correct.

MR. LEARMONTH: Yeah and the report was presented –

MS. COADY: It was.

MR. LEARMONTH: – and discussed, I take it.

What, if any, concerns did you have about the findings of EY as expressed in this draft report? You can turn to pages – there's a number, you can flip through if you want to zero in on any particular part if it gave you – if it caught your attention please do so, or you can make a general comment. If you're –

MS. COADY: I'll make a general comment first.

MR. LEARMONTH: Yup.

MS. COADY: Throughout February, we had had meetings with EY that did indicate some – you know, I guess a number of concerns around the Muskrat Falls Project. Most specifically around the cost and the schedule and that it was not reasonable but we did not have a good sense of what was reasonable because of course we had not finished all the work that needed to be done to get a reasonable assumption as to where we would be going. So, I – the fact that there was – you know, they pointed out issues with how risk was being assessed, they pointed out issues around the, you know, cost and schedule not being reasonable, how risk was being assessed, how discussions were unfolding with Astaldi, they – around, you know, governance and how we can improve that and what confidence levels in terms of risk we should be

looking for. So they were pointing out multiple concerns within the project.

MR. LEARMONTH: Right.

MS. COADY: And I think that did inform us as to how – what we would need to do in order to put this in a better – you know, to understand what the cost and schedule would be and to put the project on a better track.

MR. LEARMONTH: But you – the concerns you had were not alleviated by this report in any way. Is that correct?

MS. COADY: Not alleviated, no. They were – if I can say the word escalated because, of course, they were pointing out things that we were – we were, you know, understanding now as time was progressing on the multitudes of concerns that were there.

MR. LEARMONTH: Okay.

MS. COADY: And I will say, again, you know, there were a lot of pressure on the cost and the schedule, and we know where we are today, understanding, you know, that we're still sticking to the June of 2017 estimate. There was a lot – we're learning more and more and more of some of the impacts that would be on that cost and schedule.

MR. LEARMONTH: Thank you.

Tab 16 is Exhibit P-03589. It's a March 7, 2016 briefing note prepared by Nalcor. It's entitled Implications of Cancelling or Significantly Delaying the Muskrat Falls Project. Now, this is March 2016.

Obviously, this topic was under consideration at this time. Is that correct? The possible cancellation or significantly delaying the Muskrat Falls Project?

MS. COADY: I will say that it was part of my due diligence to ask for information and to have legal review of information to ensure both I was being thorough and diligent. I will say, and I know that it's been before the Commission just as it was before me, that once you look at the contracts for, for example, Nova Scotia, once you understand the implications of the federal

loan guarantee, you intuitively knew that the implications of cancelling or – cancelling the project were too significant in order to be able to do so, but that did not stop me from asking – I think it did not stop me from asking the questions.

I think it's very important, from a challenge function, to always consider the maximum options that you have, and, of course, I would've done that and not leaped to a conclusion. I wanted to – you know, to have a legal review, which we did do, I wanted to have consideration, just to make sure we're not being – you know, I was not being steered in a particular course.

So, this was part of my due diligence of ensuring that what I was seeing was correct, that it was thorough, that I was vetting it, that I was asking the right questions. So, this is just, you know, one part of that; making sure that I wasn't being driven in a particular direction, because that was the path to go. I believe in taking deep breaths and analyzing what you're doing to make sure that the path you're taking is the correct one, and that's what I did here.

MR. LEARMONTH: And so having carried out your due diligence, I take it that you came to the conclusion that it was not feasible or reasonable to terminate the contract. Is that correct?

MS. COADY: Correct.

MR. LEARMONTH: Yeah.

MS. COADY: I think that is very evident by the contracts that had been set, it was very evident by the commitments that had been made to Nova Scotia, very evident by the federal loan guarantee, very evident by other contracts and knock-on effects to those contracts, and very evident by the implications to Newfoundland and Labrador if we did shut down the project, that it would not be in the best interest of the province to do so. And – but I want – again, it was more – while that's evident, it was more of a making sure that I wasn't missing something.

MR. LEARMONTH: Okay. Thank you.

Tab 17 is Exhibit P-03834. This is the Summary of the EY Interim Report, March 2016. We've already touched on the contents of that report, this is dated March 10, 2016. Yeah, if I didn't say – so P-03834. If we go to page 9, March 10, 2016 – this is a Minute of Council: "A Presentation respecting Summary of EY Interim Report was received by the clerk of the Executive Council. Approval was given to release the EY Interim Report."

So does that tell you whether this went to Cabinet or not, or whether it was just received by the Executive Council?

MS. COADY: No, this would've gone to Cabinet and approval would've been given to release a report.

MR. LEARMONTH: Okay.

MS. COADY: By Cabinet.

MR. LEARMONTH: Okay. Well, I'm just gonna turn – ask you to turn to page 4, 5 and 6, the – on page 4, another heading, Key Findings, it says: "September 2015 Forecast is not reasonable." And I think that you've already mentioned your view on that, which is similar to – I guess it was based on the contents of this report. Is that correct, that the September 2015 Forecast, the financial forecast, was not reasonable? Then EY confirmed your concerns. Is that correct?

MS. COADY: They did their analysis and made their recommendations and made their observations. And it did confirm what I understood from that first phone call with Mr. Martin. When Mr. Martin said that it was not the amount of money that he was looking for to begin discussions with Astaldi was not included in the September – from that moment on, I knew that there were challenges to that cost that was made public in the end of September 2015. But, you know, EY would've done their work, would've done their analysis and came up with that conclusion independent of my thoughts.

MR. LEARMONTH: All right.

So, once again, that was confirmation of the way that you were leaning. Is that correct?

MS. COADY: It was – their observations were that the – it was not reasonable and it confirmed what I was thinking.

MR. LEARMONTH: Right.

MS. COADY: Absolutely.

MR. LEARMONTH: Right.

Tab 18 is Exhibit P-04298. This is March 11, 2016, it's from you to – this is an email from you to Tim Murphy. And on page 2, it's a memo to the Premier, dated March 7, 2016.

Can you tell us why you prepared this memo to the Premier on March 7, 2016?

MS. COADY: This was coming from discussions that we were holding with EY and I wanted to look at what are our options here, what are our pathways we could take coming out of their findings. You know, you could – as I said, you could, you know, look at the cost and schedule, and draw a line as to how much the project could cost; you could appoint a new board of directors, a new CEO; expand the oversight.

Or, I gave an alternative of maybe convening a panel, an independent task force, to take the EY report, study it, and give a summary of all options and recommendations on how best to proceed. So that it wasn't just our thinking, you would take some of the best experts in the Province of Newfoundland and Labrador, take some of the broader thinking of the community and let them look at and analyze and consider, you know, what their recommendations would be on governance, on management, on oversight, on the project itself. And so those were two options that I was kind of saying – you know, it was more of a, you know, a stream of here are some of the things we could be thinking about.

I like to, before I make up my mind, always have before me a set of options so that I can consider what is the best path forward and not the most expedient path forward. And so I would've just sent this to the Premier as part of that thinking at the time. And as you note that I thought that at that time, that we should perhaps think about this independent task force of getting some of the best thinking in the city and the

province and bringing some of the best minds that I could think of. And I gave some options of some people that I thought would be – would add value to that task force.

Again, this was – these were people that I thought would be of value – would add value to that thinking. Not necessarily had I asked them, not necessarily had I, you know, given it – there's – you know, there's a wide breadth of people that could add to that. These were just my initial thoughts that I had provided to the Premier so that he could add it to his options.

MR. LEARMONTH: All right, thank you.

Tab 19 is Exhibit P-04329. It starts off in the middle of page 1, an email from Paul Harrington, March 16, to James Meaney and other individuals at Nalcor. And it's, I guess, a report of a meeting that was held with the Premier, with you, Minister Coady, Julia Mullaley and the chief of staff with EY representatives.

And on page 2 of this document at the second paragraph, Mr. Harrington writes, "Quite frankly I saw the Premier looking hard at Leather during his attempts at justifying the report and the statements in it and I believe that Leathers stature was reduced in his eyes. Ed was direct, respectful and totally professional and laid out the rationale for the management response, which was kind of understood by the minister but it was clear that there was a distinct gap between" the "opinions of EY and Nalcor that would be problematic."

And then before I ask the question, if we turn back to page 1, Mr. Meaney writes to Derrick Sturge, "This is why today's release of the reports got canned late last night. They were in with Premier until almost 10:30. I spoke with Lance afterwards. Apparently Leather from EY was way out of line"

Now, do you have a recollection of this meeting? You were in attendance.

MS. COADY: I remember –

MR. LEARMONTH: Yeah.

MS. COADY: – the meeting well.

MR. LEARMONTH: And did you form the same observations that Mr. Harrington did as to the reaction of the Premier to what Mr. Leather was saying?

MS. COADY: No, I do not. I would say that the Premier was concentrating, the Premier was listening. I would say the Premier was respectful, as he always is, and I would say again – I would confirm that Mr. Martin was respectful and professional. Of course he would be. And of course it was a challenging meeting in that EY was presenting – you know, was presenting some of the challenges they see with the project and presenting some of the challenges that they see with where – with the situation we were presented with at that time and some of the ways – some of the recommendations around that. So it would've been a challenging meeting, a difficult meeting, but it was certainly respectful.

MR. LEARMONTH: All right.

And –

MS. COADY: But the – but I did not observe the Premier was questioning or looking – quote, unquote – hard at Mr. Leather. I think the Premier was concentrating and the Premier was listening intently. He does have a – he does listen to balance, but it was certainly – I don't agree with the statement that he was questioning what Mr. Leather was saying.

MR. LEARMONTH: All right.

Was this a productive meeting? And if so, in what way was it productive?

MS. COADY: I found it very productive in that I appreciate clear discourse and having the opportunity to hear all sides of a situation. So, therefore, I found it productive in listening to Mr. Leather's observations and analysis, and also I found it important to listen to what Mr. Martin was saying and his observations and analysis. I think that gives you a balanced view.

So I found it productive from that perspective. I also found it advantageous to have all – have the parties in the room. There were things that Mr. Martin disagreed with, and that was totally appropriate, and there were things that Mr.

Leather and EY were pointing out that were difficult, I'm sure, to hear. And so it was respectful; it was an important conversation, and I thought that it progressed well.

I think it – the Premier made it clear to Mr. Martin how we would be progressing on the Astaldi negotiations. And I think it was crystal clear that there would be a role for EY in that going forward and that things were to progress along that route.

MR. LEARMONTH: Was there any expression of resistance by Mr. Martin to the proposal or direction that EY remain involved in providing advice on the Astaldi problem?

MS. COADY: There had been resistance throughout – I hesitate to use the word resistance. There had been resistance throughout that Mr. Martin thought it would not be productive to have EY in the room when dealing with Astaldi. He thought it might undermine authority and that it would undermine the negotiating strategy.

So I want to say that he had concerns about how best to proceed, but equally the government had concerns. We had concerns of the fact that we're in the situation to begin with, that we had concerns around the original contract and, you know, why wasn't that covering where we needed to be? And we had concerns to ensure that this was – you know, that we had all the information and important direction that was required in order to have a successful outcome.

MR. LEARMONTH: Okay.

Tab 22 is Exhibit P-04301. It's an email from Ed Martin to you and Julia Mullaley, dated March 18. And attached to this document, P-04301, is a draft letter to Mr. Stinellis, so Astaldi S.p.A. That's the parent company.

What was your understanding of the purpose of sending this letter to Mr. Stinellis at this time, March 18, 2016?

MS. COADY: This was reflected in the outcomes of the meeting that we were just discussing, that a letter would be prepared to send to Astaldi to reopen some discussions. If you read through the letter, it was prepared by

Mr. Martin with EY's involvement, and it set out some principals and clarity around – and I want to use utilize this particular sentence or draw attention to: "For the avoidance of doubt, Muskrat Falls Corporation has not seen any evidence of contractual entitlement."

And we were – you know, so this was kind of coming back to EY and saying: Please, fully disclose and individually quantify all underlying causes of increases in the cost under the contract. So it was, I guess, opening up dialogue with Astaldi, but on a without-prejudice basis and without – without cost to the, you know, contractual entitlement.

MR. LEARMONTH: Right.

Now at this point, was Mr. Martin authorized to conduct negotiations directly with Astaldi?

MS. COADY: It was off –

MR. LEARMONTH: As opposed to being, you know, instructed to conduct negotiations with EY in the room also.

MS. COADY: EY, it was clear – and it was in the notes that we just previously discussed, coming from Nalcor, it was discussed that they would – and I'm gonna refer back to Exhibit 00019.

MR. LEARMONTH: And that's –

MS. COADY: Even at the bottom of that it said the cost of points –

MR. LEARMONTH: – that's P-04329, yeah. Okay.

MS. COADY: Thank you.

MR. LEARMONTH: Okay.

MS. COADY: It does say that: "... seek input from EY." It even says that it has to seek input from EY. Between EY – there had to be, you know, involvement of EY.

MR. LEARMONTH: All right. Tab 24 is Exhibit P-01984. This is the – it's called the Interim report of the EY's Review of project cost, schedule and related risks, dated April 8,

2016. This was the final version of this piece of work.

MS. COADY: First document.

MR. LEARMONTH: I think it's referred to as interim because there was a subsequent report on the – assessing whether the recommendations in this report had been properly carried out by Nalcor, you know. Okay. So anyway, we've already gone through this. There's not too much in the difference, if any, so we won't spend any time with this. It's dated April 8, 2016.

We'll next move to tab 25, which is Exhibit P-03368. This is an email from Paul Hickey to Tim Murphy and others at Nalcor – at EY. The second paragraph from the bottom says – on page 1, says: "Our perception is that Nalcor won't allow EY to be involved in the Astaldi matter as directed by the Premier."

Now this suggests that – may suggest – I'll put it in an extreme way that the Premier directed Nalcor to allow EY to be involved, and that Nalcor wasn't going to follow that direction.

Now, maybe I've put in too extreme way, it's open to interpretation. But can you give me some help in understanding what your thoughts are on this comment?

MS. COADY: The Premier had been clear, and in the previous notes, I thought that the – even Nalcor had captured that the Premier was clear that EY had to be involved in the strategy development, the – it had to involved directly with what was happening with the Astaldi contract.

And, again, we have to reflect on the fact that Nalcor, itself, had originally did the contract – or Mr. Martin and company had originally done the contract with Astaldi. It had been pointed out that we didn't see a breach of that and that we want to have cold eyes, so somebody not engaged in the original contract to have – to be involved in the development of the strategy and involved in the development of the discussions.

I thought that was made very, very clear to Nalcor, and I recall a – you know, telephone conversations with Mr. Martin where I – where he clearly understood, completely – and he

reflected upon that, and we reflected on what he was saying, but I think we came to the mutual understanding that they – EY was to be involved. And here's an email – a memo to deputy chief of staff on Saturday, April 9, indicating that that was of concern that EY was not getting the co-operation or involvement that they required.

MR. LEARMONTH: Okay. Thank you.

Tab 26 is Exhibit P-03453.

Now, this is a 2016 Budget Speech. And on page 5, there's a reference – there's a statement made about Nalcor, going on for a couple of pages after that.

Can you tell us how this document came into being? Who prepared it and what your reaction was to the contents as far as Nalcor is concerned?

MS. COADY: Preparation of the Budget Speech is done by the Department of Finance in cooperation or discussion with the Premier's office. I can't comment on – you know, the evolution of this particular speech. I would imagine there are multiple drafts. I can tell you my involvement.

On the morning of the Budget Speech of 2016, I – my deputy minister came to me in the morning and said he had just found out that there was reference to Nalcor in the budget. I asked if we had seen it 'cause I certainly had not. He indicated that no, it had not been vetted by the department.

I was not pleased that it had not come to the attention of the department, that is not the process by which it would – it should be done. I was concerned as well, I hadn't seen it, so I did not know what it would contain. And I made a call to the chief of staff because I was not pleased with not having had the opportunity to review that information.

MR. LEARMONTH: The chief of staff of the Premier's office?

MS. COADY: Correct.

MR. LEARMONTH: Okay. And you – so you voiced your concerns?

MS. COADY: I voiced my concerns that it had not been vetted by me or my department, ensuring that it was both accurate, which is one reason why you would do it. And I'm not saying this is not accurate, I'm just saying that would be one reason why you would come to your department – but also knowledge, awareness. And it would be, you know, normal for me to then reach out and let Nalcor know what was coming.

MR. LEARMONTH: To give them notice as a courtesy.

MS. COADY: I normally would do that as a courtesy.

MR. LEARMONTH: But anyway, you were concerned, but the paper was filed anyway and made public in any event. Is that correct?

MS. COADY: Correct.

MR. LEARMONTH: Yeah. And I understand that this, the contents of this 2016 Budget Speech that we're referring to and the reporting of it were of great concern to Mr. Ed Martin, who I believe was in Montreal at the time. Is that correct?

MS. COADY: Let me put the week in context for you. This would – the Budget Speech was delivered on the 16th – I'm just checking the dates, just allow me to do that. This is April 14. The report of the Muskrat Falls cost schedules and associated risks report by EY would've been made public earlier in that week. So I want to put the sequence of time so that you –

MR. LEARMONTH: Yes.

MS. COADY: – understand, 'cause I think it's important leading up to when the EY report was made public and the Province of Newfoundland and Labrador – the Government of Newfoundland and Labrador accepting all the recommendations of EY.

And then right on the heels of that, Mr. Martin was on a personal time, out of province. And then the Budget Speech would've been – I think

this was a Thursday, if memory serves, a Thursday – this would’ve been read into the record. So that would’ve happened on a Thursday.

MR. LEARMONTH: Okay.

MS. COADY: So it was important for timing perspective. Tuesday was EY report; Mr. Martin wasn’t even in town, he was away on personal time by – I understood that. I knew that when we were putting out the report, he was fine with that. And we put out the report, I did the media that day, and then Thursday was the Budget Speech.

MR. LEARMONTH: Right.

So, I understand you heard from Mr. Martin shortly after the 16th. Is that correct?

MS. COADY: I did. On the Saturday morning, which would’ve been – so this would’ve been Thursday, on the Saturday morning I had a – received a phone call at home. It was very early in the morning, I would say roughly 8 o’clock in the morning. On Saturday morning, I received a call from Mr. Martin. He was out of province and he was clearly concerned about what had occurred over the – you know, in the budget and then the subsequent media from the budget.

He was – Mr. Martin has a very even tone, as you can appreciate because you – he’s been before you. However, he was quite animated that morning, animated for Mr. Martin, and I took it that he was quite, you know, upset and concerned, upset – you know, he referred to his family, he referred to his reputation, he referred to – that he wanted to have a meeting with myself and the Premier.

I hung up the phone from Mr. Martin, I – and I spoke to the Premier. We set a meeting for Sunday night, and that – and I phoned back Mr. Martin, he said he would return to the city to have that meeting on Sunday evening.

MR. LEARMONTH: And what date was Sunday evening?

MS. COADY: The 16th.

MR. LEARMONTH: Sixteenth –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: – and did you attend that meeting?

MS. COADY: No, 15, 16, 17th, my apologies.

MR. LEARMONTH: Okay.

MS. COADY: Had to do the math.

MR. LEARMONTH: Did you attend that meeting? –

MS. COADY: Yes, I did. At 7 o’clock in the Premier’s office.

MR. LEARMONTH: And what came out of that meeting?

MS. COADY: Mr. Martin –

MR. LEARMONTH: To your recollection.

MS. COADY: Mm-hmm.

Mr. Martin expressed his concerns around the – you know, the Budget Speech and the subsequent media. He basically said to the Premier and to me – he presented I’m gonna say three options or ultimatums. One is we come and support him and the project and he would remain; two is he could stay for a year and then depart; or three, he would – he would have – he would leave.

The second option of him leaving after a year was taken off the table. Both the Premier and Mr. Martin said that doesn’t really – it really isn’t an option. So, the options were: support the project and the leadership team publicly, or Mr. Martin would have to – would have to leave.

That was what he presented to the Premier and me that evening.

MR. LEARMONTH: Okay. And then what note did the meeting end? Was there an agreement or was –?

MS. COADY: It was respectful. As I said, both Mr. Martin and the Premier have a – had a respectful tone. It was – the Premier asked to

pause. He needed to – you know, he needed time to absorb what Mr. Martin was saying to him and asking of him. Which was appropriate, I thought, it was a very reasonable and appropriate that he would – he would do so and take some time to understand what was being said. And we agreed that we would meet with him the next couple of days and that is exactly what we did.

MR. LEARMONTH: Okay. And so the next meeting took place when, that you attended? Took place when?

MS. COADY: That would have been two days later, on Tuesday, I believe the 19th.

MR. LEARMONTH: And what happened at that meeting? What was the subject matter of the discussion at that meeting? Well, I know what the subject matter, but what were the details of it?

MS. COADY: Again, you know, the Premier indicated that, you know, he was placed in a very difficult position and this was the – you know, this was – it was – it was a difficult – he felt he was placed in a difficult position that – he did indicate to Mr. Martin he had a great deal of personal respect for Mr. Martin, but that he didn't feel he was left with much option, that he could not really come out and support the project at this particular time, based on the information that was coming out of the analysis that we were – that we had undertaken. And so, therefore, it became clear that Mr. Martin would depart.

MR. LEARMONTH: And – so, the meeting ended and were there arrangements made for press conferences the following day, that being April 20?

MS. COADY: Correct. Mr. Martin and myself and the Premier indicated that it would be in the best interests of everyone that it – this took place as expeditiously as possible. Like, you didn't want – you didn't want this, kind of, to be found to be a discussion on the – in – around water coolers. You wanted this to be handled properly and effectively and respectfully, and that – the next morning, there would be press conferences. We – I believe we all then said: Well, let's, you know, work with Communications and get the

proper communications. And that occurred on the next day.

MR. LEARMONTH: All right.

So there were two press conferences, and just to get to the point, I think Mr. Martin said – he was in his press conference, which was at the Nalcor building on Columbus Drive – that he was resigning – or he was leaving for personal reasons. And that – at the press conference you attended with Premier Ball, the words used by Premier Ball were that Mr. Martin was stepping down effective immediately. Is that correct?

MS. COADY: That is correct.

MR. LEARMONTH: Okay.

Now, we're not gonna go into a complete detailed review because this was reviewed by the Office of the Auditor General and the February 2017 report concerning the circumstances surrounding Mr. Martin's departure is at tab 33, Exhibit P-04306.

And – can you confirm that this report was accepted by government?

MS. COADY: It was.

MR. LEARMONTH: It was. All right. Thank you.

Next, we'll go to tab 27, which is Exhibit P-00408. This is an email from Ken Marshall dated April 20, 2016 at 8:55 a.m. Do you recall receiving this email?

MS. COADY: I did.

MR. LEARMONTH: And what was your reaction to the contents of it, if you recall?

MS. COADY: I do.

MR. LEARMONTH: Okay.

MS. COADY: I draw attention to the second paragraph, and I supported this paragraph and supported his language and I made note of that. "Given that as proper governance would dictate, the CEO's employment contract rests squarely with the Board, the Board will be meeting on

this matter and the resultant employment contract obligations as one of the items of business this morning.”

So I took that at face value. I did call the Premier’s office to ensure that he was aware of this and asked if – you know, if the Premier was responding, I believe he did to say, you know, received or whatever. And so, therefore, it rested then with the board to make the decisions around the employment contract.

MR. LEARMONTH: Yeah.

And we know later on in the day, the board terminated Mr. Martin’s employment with cause and thereby the severance package –

UNIDENTIFIED MALE SPEAKER: Excuse me, I don’t think it was with cause.

MS. COADY: I’m sorry, it was without cause.

MR. LEARMONTH: Without cause, sorry.

MR. LEARMONTH: Yeah.

MS. COADY: For clarity, it was without cost.

MR. LEARMONTH: And there – therefore triggering certain consequences arising from his employment contract.

Okay. Thank you.

Tab 28 is an email, it’s Exhibit P-02390, dated April 26, from James Meaney to Xeno Martis at Fasken and others at Nalcor.

Paragraph 2 says: “I have wondered if in fact the Province really is the one who gets to make the decision whether or not to cancel the Project, given the default provisions of the PFA’s and Canada’s security interests?”

Do you know what Mr. Meaney was talking about here, suggesting that it may not be the province who makes the decision?

MS. COADY: I can make an assumption, but I cannot say directly what his thinking was. But I certainly understand, I believe, what his train of thought was and I would assume, but I cannot confirm because this is his thinking, not mine,

he was referring to the loan guarantee that was provided by the federal government. But I don’t understand his reasoning or thinking in that.

MR. LEARMONTH: Yeah, ’cause obviously it was – if the project was gonna be cancelled, it was government’s decision, not Nalcor’s. Correct? Or no one else’s.

MS. COADY: I’m not – I don’t want to presume what he was thinking at the time.

MR. LEARMONTH: All right. Thank you.

Tab 32, Exhibit P-04111. If we turn to page 2 of this document, this is a draft letter to Brendan Paddick, the chair of the board of directors of Nalcor, and it’s dated – it’s a draft letter. We don’t have any evidence that this letter was ever sent or signed.

MS. COADY: It was not.

MR. LEARMONTH: It was a reason it wasn’t signed – sent or signed?

MS. COADY: Yes. As I indicated early this morning, I’m an Institute of Corporate Directors’ director and I thought it might be prudent and important to prepare kind of a mandate. This was a new board going in, focus their direction and give them, you know, really my thinking on their responsibilities. And it would’ve been the first time that you see this type of thing, but I think it might be a good practice in the future.

So I had prepared or asked to be prepared kind of an overview letter that would help to give some thought to the board as to expectations that might – the department might have of their focus.

MR. LEARMONTH: Okay.

MS. COADY: And so I – we – I asked for a draft be prepared, and you’re seeing before you the draft. At the end of the day, I determined that it was not in the best interest to send this particular letter at this particular time. And there’s – there was a multitude of reasons for that. New process, first of all, of doing this, so it – set a new process. Secondly, there were a lot of things that the board, obviously coming in – a

brand new board coming in – later in 2016, I think, they – one of their first board meetings were in December 2016.

I had been focusing – obviously, giving them information. They were doing briefings on all these things and I didn't want to interfere with their discourse of doing that, they understood completely, they have their own board governance process so, I did not send the letter. But it had been – most of these would've been dealt with at different – in different ways or in different directions-giving by the government.

But I do think, you know, as we move forward, as we continue to develop and grow in our governance models and processes for Crown corporations, it could become best practice.

MR. LEARMONTH: Okay, thank you.

Now before – I just wanna go back a little bit. Mr. Martin – when he gave his evidence here – testified that he had an understanding that he had been given a negotiating mandate by government, which would've allowed him to reach a binding settlement up to a certain limit. He did say that he probably would've – he would've checked back with government just to confirm it before he did use that authorization.

But my question is: At any time, was Mr. Martin given authority to reach a settlement with Astaldi?

MS. COADY: Not that I am aware.

MR. LEARMONTH: Okay.

MS. COADY: I can certainly say that at the – what – and we've already reflected on that letter that was sent to Astaldi around that time and we – the – the direction to Mr. Martin would've been to have EY involved in the development of a negotiating strategy. And that did not occur, so I can say without hesitation that I – my recollection is not that he was given any mandate. The mandate would've been to, A, you could trigger that letter that was approved, and I believe sent or at least approved anyway. Two, involvement of EY in the parameters around the – you know, any type of discussion.

MR. LEARMONTH: Okay. Thank you.

Now, Mr. Martin also said that he was – at a time when we actually sitting at the negotiating table with Astaldi, that he received a phone call from government telling him to withdraw from negotiations.

Do you have any information on that point?

MS. COADY: No, I do not.

MR. LEARMONTH: Okay. (Inaudible.)

MS. COADY: I can say that there was a lot of discussion, a lot of – remember – I'm going to use some of the language that was used at the time: without prejudice. That I – you know, Mr. Martin had talked about having discussions, not necessarily negotiations, that this had been going on, you know, there had some kind of back and forth for 18 months.

Remember that – I'm just point out some of the evidence that I think is important that he had – that the Premier had been clear to him – and it's even indicated in their own internal information – clear to him that EY had to be involved, clear that – it was clear on the letter that it was without prejudice, that we didn't see a contractual requirement of this.

So, I'm just pointing out some of the evidence that would say that he would not have been given the go-ahead to just go settle this.

MR. LEARMONTH: All right. Thank you.

Tab 34 is Exhibit P-04307, document Additional Federal Loan Guarantee for Muskrat Falls.

I just wanted to identify this as being the recommendations made for the signing of this – for the arrangements with Canada for the federal loan guarantee.

Is that correct?

MS. COADY: This would've been the Cabinet paper that went before Cabinet, on making a decision around this.

MR. LEARMONTH: Okay.

MS. COADY: So, we would've had a presentation and discussion. The presentation is

in the back if anyone would like to see the presentation that would've gone to Cabinet –

MR. LEARMONTH: Yeah.

MS. COADY: – on the federal loan guarantee 2, and then, obviously, a decision taken to enter into the agreement.

MR. LEARMONTH: And for those who are interested, at tabs 50 to – excuse me – at pages 50 to 58, there are Minutes of Council which give the authority to sign this federal – this second document with Canada.

Just going through now, we're at – at tab 36 – it's a little bit out of order. But anyway, tab 36, Exhibit P-00127: June 23, 2017, Muskrat Falls Project Update.

At this point, Mr. Stan Marshall had been appointed CEO in place of Mr. Martin. And can you just confirm, if we go to page 12 of this document, that this is the final AFE – or we hope it's the final AFE – for \$10.11 billion. Is that correct?

MS. COADY: Correct.

MR. LEARMONTH: Okay.

Now, when Mr. Marshall came in – and he was appointed following the departure of – Mr. Marshall was appointed following the departure of Mr. Martin – did you observe any change in the communications and flow of information from Nalcor to government?

MS. COADY: I did. I can say that Mr. Marshall's – I talked a little bit earlier about tone at the top and how important that is to an organization because it sets the direction within an organization. And Mr. Marshall's culture is one of clarity and transparency and directness, and so while that is sometimes – sometimes you'll see a different, you know, evolution within an organization, it does take time. But Mr. Marshall's is – and you can appreciate his infamous public persona – he's very direct and I can say that that would be the case of him even today.

MR. LEARMONTH: Yeah.

Would it be fair to say that you – your view is that you always know where you stand with Mr. Marshall?

MS. COADY: Absolutely.

MR. LEARMONTH: Thank you.

Tab 42 – we're in book 2 now, Ms. Coady. This is Exhibit P-03902, August 31, 2017. I referred earlier to a third – a second report from EY and this is the report. Is that correct?

MS. COADY: It is.

MR. LEARMONTH: This is the one – that's why the first report referred to the April 18 was called interim –

MS. COADY: It is.

MR. LEARMONTH: – because this was the follow-up –

MS. COADY: Correct.

MR. LEARMONTH: – Assessment of implementation of EY's Interim Report. And I'm not going to go through it in detail but you've reviewed it and can you confirm that it was generally supportive of the actions that Nalcor had taken?

MS. COADY: That was very –

MR. LEARMONTH: Not a hundred per cent but, generally speaking, the tone of this –

MS. COADY: That was very important and I think it was important to all of us in the province. But I know as minister it was important to me to have EY go back and determine if things – you know, whether or not the recommendations that they put forward from the initial report were being implemented, and whether or not there had been a change in the organization and whether or not that further work and further response was required.

And my observation was that everything – you know, everything that said we were going to do, we had done, but I wanted cold eyes on that to make sure that that was the case.

MR. LEARMONTH: And I'm referring to the same exhibit, P-03902. At page 32, Stan Marshall provides his response to the report and it speaks for itself.

Third paragraph: "The EY report recognizes the good work and the progress completed to date by the Lower Churchill Project team.

"We continue to be focused on finishing the remaining 20 per cent of the construction and completing the project in the best way possible for the people of the province."

So that was his response.

Tab 43, Exhibit P-04310; this is an August 31 Natural Resources release where you're announcing the release of this – of the report. It says: "Today, the Honourable Siobhan Coady, Minister of Natural Resources, released the final report from EY which assessed the status of ... the April 2016 interim report recommendations"

So why do you feel it's important to have disclosure to the public of these reports on a timely basis, as opposed to sitting on them and waiting to make that type of disclosure? What are your thoughts on that topic?

MS. COADY: There's a level of scrutiny in the Muskrat Falls Project and a level of concern that being transparent and providing information as quickly as possible to people is important to them. And we've tried, as a government, to ensure that information is presented in a timely manner. And it would be a focus to ensure that as – you know, as best possible, when possible, as possible we have that information presented.

And, you know, we're not always perfect but that is the goal. And I thought time had already passed; I mean it had been a while since the original report of EY had been submitted. There had been a lot of water – pardon this analogy, but a lot of water under the bridge and a lot of things have happened – had happened in that intervening period: The bridge agreement with Astaldi, the final agreement with Astaldi and new board of directors, expansion of the Oversight Committee, new CEO. It was important that EY make their observations and that we make those observations public.

MR. LEARMONTH: Thank you.

Tab 48 is Exhibit P-04314. This is a release dated March 26, 2018, from Natural Resources. And the heading is: "**Government Adopts Open Access Framework for Transmitting Electricity.**" And the announcement speaks for itself. And I'll just point out that at tab 50, the legislation to carry out this intent is contained. That's Exhibit P-04316. And then the regulations – specifically Regulation 42/18, is Exhibit P-04315.

Now, can you just give us an overview of the reason that government felt it was necessary to adopt an open access framework for transmitting electricity in March of this year? Why was it done?

MS. COADY: This is all part of the original constructs of Muskrat Falls and connection to the North American grid. So once you're connected to the North American grid, you have to be able to have a – you know, the FERC rules are important and you have to have a framework to allow for open access transmission.

This work does provide for a systems operator which is housed, actually, within the – it's a division of Newfoundland Hydro, it's one way, it's ring circled, meaning it's separate but it is still housed within Hydro. And it's a means and mechanism to allow for transmission on our – on the grid that's in Newfoundland and Labrador.

So you have to follow the rules, and because we now have a link to that – to the North American transmission system, these rules are required. They would not likely be used by many people but they have to be available because we are at the end of the grid, but the system has to be available and it is important and a requirement.

MR. LEARMONTH: Okay.

And can we assume that before you made this initiative that you obtained legal advice to ensure that it did comply with the FERC and the other regulations that it had to comply with?

MS. COADY: Absolutely. We would have had to have ensured that it was compliant. And I can tell you that we have – you know, in the year – almost, yeah – within the year since that we've

put it in place, things have, you know, been working well. And, of course, we would have done the due diligence, the work required and the analysis required to ensure that it was compliant, and I understand that it is.

MR. LEARMONTH: Thank you.

THE COMMISSIONER: So, can we just – I notice it's quarter after 11 now. Should we take our break here now?

MR. LEARMONTH: We can.

THE COMMISSIONER: Okay, let's take 10 minutes then now.

MS. COADY: Thank you.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right, Mr. Learmonth, when you're ready.

MR. LEARMONTH: I wanted to ask you about the – your recollection of the fiscal situation of the province when the government was formed on December 14. Can you give us some – an overview of that or your recollection of the state of the finances of the province at that time?

MS. COADY: Certainly.

In December of 2015, upon assuming the role of government in the province, it became clear to those charged with the responsibility of ensuring fiscal responsibility for the province that there was a serious financial difficulty in the province. We had been told in the fall of 2015 that we were approximately \$1 billion in deficit, \$1.1 billion I believe. And upon taking on the role of responsibilities of government we understand that that was over \$2 billion – 2.6 is the number that I recall.

And so we were faced with a very, very difficult situation, both economically and financially, in the Province of Newfoundland and Labrador.

And I will say that while things have improved, we're still – it's still a work in progress.

MR. LEARMONTH: Okay.

Now, Mr. Martin, when he testified he referred to the fact that the – you know, the bond – the ratings – the credit ratings for the province had improved. And he didn't say that the Muskrat Falls burden was not an issue, but he said it was – he felt it was exaggerated, the extent to which Muskrat Falls has contributed to a fiscal problem with the province. Do you have any comment on that?

MS. COADY: While I might respect his opinion, it is that I can tell you that over the last number of years there has always been – the challenges of Muskrat Falls and how we're managing those challenges have been an important discussion leading into and I'm sure at the discussions with bond-rating agencies. And I know that the CEO of Nalcor, Mr. Marshall, has been – you know, has worked with the Minister of Finance to ensure that proper information is provided because it is an issue for the bond-rating agencies –

MR. LEARMONTH: Okay.

MS. COADY: – concern of the bond rating agencies.

MR. LEARMONTH: So we're not out of the woods at this point, is that correct?

MS. COADY: I would not say that. I mean, we're certainly improving.

MR. LEARMONTH: Yes.

MS. COADY: In our financial and fiscal situation, the province is certainly improving and, you know, we're moving towards, in '22-'23, a balanced budget. And I believe we have the support of all parties in the House of Assembly towards that goal, and I think that's important to note, especially in a minority-government situation.

But there is much work to be done and we do have the serious issue – and I will say that – of ensuring we can pay for Muskrat Falls. Under the constructs – as you're well aware, under the

constructs of the Muskrat Falls Project, the burden of paying for the project fell to the ratepayers. And, of course, that is coming due and fairly shortly, as the project comes due in 2021. And so finding ways to manage that payment and not having it fall, the full – you know, fall to the ratepayers and taxpayers of this province has, you know, has consumed a lot of time as well.

MR. LEARMONTH: All right.

Now, as you know, the question of rate mitigation is now before the Public Utilities Board. And this Commission is not going to conduct a parallel inquiry; it would be a duplication of effort and a waste of resources. However, there are just a few questions I want to put to you on the issue of rate mitigation.

Now, I'll first ask you to turn to tab 47 in your book –

MS. COADY: Forty-seven.

MR. LEARMONTH: – which is at P-04313. This is November 10, 2017, title: Reference question on electricity rate mitigation for the Board of Commissioners of Public Utilities Board. So this is the beginning of the consideration of referring the matter to the Public Utilities Board. Is that correct?

MS. COADY: Yes, that would – this would be the information that would've been provided to Cabinet, including the PowerPoint presentation that would've been walked through at Cabinet describing why and what we're asking of the Public Utilities Board. It was an important piece of work.

MR. LEARMONTH: Okay.

And we have at tab 71, Exhibit P-04322, an April 2019 document entitled, Protecting You From the Cost Impacts of Muskrat Falls. That's the document but there's a shorter summary of the position of government, which is at tab 72, and it's P-04325. It's a release dated April 15, 2019, from the Executive Council and Natural Resources entitled, "Premier Ball Releases Plan to Protect Residents from the Cost Impacts of Muskrat Falls."

Halfway – a little bit lower than halfway down, the document states: "To manage electricity rates, approximately \$725.9 million is expected to be required to address Muskrat Falls costs in the first full year of electricity generation.

"To address this cost, the proposed framework includes: NL Hydro Net Operations Savings and Revenue (\$178.2 million)." So if we subtract the 178.2 from 725.9 – and that would be on the assumption that these savings would be realized – we're still left with \$547.7 million in shortfall which has to be found somewhere.

Now, we also know that in the election campaign there were statements made that neither the ratepayers wouldn't pay for this cost, nor would there be any increase in taxes to fund this cost. There are documents here that confirm what I just said is correct.

And you were aware – you were involved in those assurances to the public, is that correct? That there'd be no – ratepayers wouldn't pay and there'd be no income tax increases.

MS. COADY: There'd be no additional costs.

MR. LEARMONTH: Yes, yeah. No increases.

MS. COADY: No additional cost to ratepayers and taxpayers because of Muskrat Falls.

MR. LEARMONTH: Yeah.

Okay, now I realize that this is a very complicated question and that the Public Utilities Board is spending a lot of time on it, but the basic question is: Where is this \$547 million going to come from, if it's not going to come from the ratepayers or people paying tax?

MS. COADY: So if you review the document on –

MR. LEARMONTH: Yeah, take us through it so you can explain –

MS. COADY: Yeah –

MR. LEARMONTH: Yeah, okay.

MS. COADY: – if I would. And it is a challenge, there's no doubt about that, but there

are – if I can use the term, there are four buckets that we're going to get this money from and they're clearly outlined and articulated; one is through reducing expenses. And we have been working diligently to consider how we would reduce expenses, for example, and streamline at Nalcor to be able to realize savings.

MR. LEARMONTH: Would those expenses – were those proposed savings including reducing payroll at Nalcor?

MS. COADY: One of the ways of – as the project is, you know, completed, those that are involved in the construction of the project will no longer be required within Nalcor. And so they're – you know, they will naturally – and you're starting to see this already – naturally be moving on and transitioning. So that was always the case.

We're also looking at other efficiencies that we can have within – and any duplication within Nalcor, making sure that Nalcor is as efficient and working efficiently with Hydro. As you know, the Public Utilities Board is also doing a fair amount of work in this. It's not the intention to do mass layoffs. That's not the intention, but there will be a transition of people that are involved in the construction that may not be there post construction. So there will be savings there.

MR. LEARMONTH: And the Public Utilities Board is reviewing that point, is it?

MS. COADY: Yeah, they are also reviewing that.

MR. LEARMONTH: Okay.

MS. COADY: We also looked at – there had been a significant increase in the budgeting of the operations and maintenance of a transmission – operations and maintenance around the transmission and how that would occur. That is also noted in the Public Utilities Board report and we feel there's savings there.

And there's also savings, we believe, in the use of diesel in rural and remote communities because we've actually gone out for an expression of interest to try and change the energy mix in these rural and remote

communities and we think that we can save on diesel. That's one way. So that's reducing cost.

There's also another available source of income through raising revenues. That's through switching of electricity in public buildings. Of course, that is also helpful when you consider we want to address climate changes, switching from diesel to electricity, especially renewable energy. We also look at some of the carbon credits that will be available because of Holyrood being shut down, or being minimized in use. So there's ways of it raising revenue.

Of course, there's the export of power and maximizing the export of power. And also, for example, looking at available energy that we would have in the province and utilizing that energy. You know, I think of data centres. We have a significant number of potential opportunities for data centres and maybe using some of that surplus energy in getting higher value for that internally. And, as well, maximizing our opportunity for export sales by firming up some power. So there's a number of different ways and means of generating additional revenue.

And then, of course, we're also in discussions with the federal government around managing the financing of Muskrat Falls. And considering some of the mechanisms around the Muskrat Falls Project and dealing with them and discussing with them ways that we can improve the financing arrangements so that we would have – be able to generate monies to help pay for Muskrat Falls.

MR. LEARMONTH: Okay.

And that would involve restructuring the Power Purchase Agreement –

MS. COADY: That –

MR. LEARMONTH: – and so on.

MS. COADY: It could, and we're –

MR. LEARMONTH: Okay.

MS. COADY: – also having discussions on a broader sense. Officials are already meeting with officials of the federal government, and, as you

know, myself and the Premier met with the minister in April.

MR. LEARMONTH: Okay.

But, anyway, this subject – what you’re talking about – is before the Public Utilities Board, and –

MS. COADY: Actively.

MR. LEARMONTH: – am I correct that government will wait until it receives the final report, or other reports of the Public Utilities Board before it makes any final decision on how the rate mitigation proposal is going to be implemented, decided and implemented?

MS. COADY: There’s active work going on, of course, on all these methods. I mean, we’re talking about, you know, how do we electrify public buildings? We don’t need to wait for some of those things to occur before – for the Public Utilities Board to finish their deliberations, but we are anxiously awaiting their analysis and their considerations, of course.

We have the Public Utilities Board initial report. I think it was February 14 of this year that we made public immediately, as well, because we thought it was that important, and there have been good studies done by Synapse and by Liberty feeding in for more information.

So, it’s part of that due diligence and thoroughness that we think is important to be able to, you know, assure the people of province that we’ll find a way forward and not, as the construct of Muskrat Falls was developed, bear 100 per cent of the burden on the ratepayers.

MR. LEARMONTH: All right.

I want to ask you a couple of questions about the North Spur. As you know, there’s been a lot of discussion about that. We had an environmental panel where there were three representatives of government, and this is an issue that is of great concern to many groups and individuals in Labrador, including Indigenous groups.

And I wanted to – before I ask you a question, I just wanted to advise you that the Commissioner, in his interpretation of the terms

of reference, clearly stated that the term – in his view, the terms of reference do not permit him to conduct any further environmental assessment and nor does the time that he has permit such an analysis; however, the Commissioner is – will be making some statement on whether the environmental concerns were reasonably addressed and whether reasonable measures were taken –

MS. COADY: Mm-hmm.

MR. LEARMONTH: – in accordance with industry standards to deal with environmental problems, including the North Spur.

Now, first I want to ask you: Do you have any background in engineering or geotechnical engineering, geology or anything like that? Do you have any background in any of those subjects at all?

MS. COADY: No, I do not.

MR. LEARMONTH: Okay.

So, have you addressed, in your own way, the question of whether Nalcor has taken reasonable measures to – in accordance with industry practices – to deal with the North Spur? Have you considered that, or is that something that you would just leave to the experts in your department and the experts in Nalcor and those retained by Nalcor? Do you have any comment on that, on whether you’ve made an assessment, and what is the basis of the assessment? Because, as you know, there are still some reports out there that call into question the methodology used by Nalcor in dealing with the North Spur.

For example, if you turn to page 70 – tab 73, this is an exhibit P-04345, and it’s a document that was sent to you by Dr. Stig Bernander and Lennart Elfgren. Do you remember receiving this letter?

MS. COADY: This particular letter, the first time I saw it was when you provided it last evening. I do draw to your attention the date would have been caretaker mode in government until early in June. This was dated April 15th, when the election was already underway.

MR. LEARMONTH: Okay.

MS. COADY: So, this particular letter – but I will say – I’m going to back up a little bit and just answer as fulsomely as I can your initial questions: how do I, as not being an engineer or geotechnical expert, ensure that the information that I receive is complete?

That is a most important function I believe that a minister can have and a board of directors can have is the challenge function. And it is very important to be able to ask not only questions but the right questions, and asking of those experts why decisions are made and how decisions are made and what more information and what more work should be done.

So, I believe that’s the – you know, it’s a very important process because all of us, in no matter what walk of life we have, once you become – you know, once you become involved in certain things you become, you know, you might have a set of blinders on. So that challenge functions of taking off those blinders and considering and thinking and understanding is very important. And so, that’s why I really appreciate and respect the work of Mister – Dr. Bernander, and really appreciate and respect the letters and there are a number here in exhibit by Messrs. Penney and Vardy, because they help with that challenge function.

So I can tell you that I take their work very seriously and utilize some of the challenge function that they are providing in assessing and understanding what more could, should or would be done. So I asked the questions to my team, to Nalcor and to others, whether what they have done – and there have been over 30 reports, 30 different reports from – everyone from SNC-Lavalin to Hatch, looking at the North Spur, whether what has occurred is reasonable and appropriate and whether or not further work is required.

I can tell you that, based on some of the challenge function that has occurred, you know, the things have occurred, like there has been a panel, for example, comprised of technical experts from Laval University, Memorial University, and, I believe, the Norwegian Institute – Geological Institute – to review the work of Mr. Bernander – Dr. Bernander, and

review, you know, his premises and making sure, for example, that we’re considering all those that work, that’s been undertaken.

I can tell you that Hatch is – has undertaken a complete review of the work that SNC-Lavalin has done on the geological work of the North Spur. I can tell you that there has been a post-construction analysis and a report done on – for North Spur that’s currently on the website. I can tell you the independent engineer has reviewed that work. I can tell you that there is a monitoring system in place now.

So, if you – and when you review some of the language and some of the words from Messrs. Penney and Messrs. Vardy, Dr. Bernander, you’ll see why some of this extra work has been done is because that – of the good work and challenge function. And I think it’s important that we do that and it’s important that I keep an open mind to ensure that any further work that is required is done, and I’ll continue to do that.

MR. LEARMONTH: Okay.

So are you saying that you believe that Nalcor has – and government – has taken reasonable steps to – in accordance with industry standards to – with respect to the safety of the North Spur?

MS. COADY: I do. I think it has been – I mean, I don’t know what further we could do unless we go out and analyze those 30 reports and get another analysis done on those 30 reports. I can say that, you know, I continue to test and I continue to ask whether or not, you know, there’s something further we should be doing and I will continue to do that.

I’ve had conversations with the CEO of Nalcor who had cold eyes going in to this to whether or not it was reasonable. I – you know, we continue to do that and even as recently as, you know, the independent engineer reviewing the post-construction assessment is important. So we’ll continue to consider what is being said and whether or not it meets the test.

I can also say that monitoring, you know, the dam safety requirements – the Canadian dam safety requirements have to be followed and they are. And that, you know, there’s been stress and strain tests done, there have been – and that

there has been analysis done in just about all of these topics that are raised. And we'll continue to do what we feel is – you know, continue to test to make sure that we're doing everything possible.

MR. LEARMONTH: Right. Thank you.

I'm sure there'll be other questions from other counsel, but thank you for stating your position.

Now I want to turn to methylmercury –

MS. COADY: Mm-hmm.

MR. LEARMONTH: – the unresolved issue of methylmercury. First, I want to ask you: Are you – what can you tell us about the state of the negotiations or discussions between government and the Indigenous groups that are involved in this issue. Can you bring us up to date as best you can on where this stands?

MS. COADY: Certainly, happy to do so. This is a very important and complex conversation and discussion, and one which government in general takes extremely seriously and respects and recognizes the concerns. So I can tell you that most recently – so I'll start with what's happening most recently and we can go backwards.

But, most recently, the Premier, as minister with responsibility for Indigenous Affairs, has met with the groups, the Indigenous Affairs leadership, to discuss what I'm going to say the overview and the requirements coming out of the IEAC, and ensuring that a committee is struck to ensure that they are implemented, and that I understand that all three groups now have responded to the terms of reference for that – for the new committee.

I can tell you that the recommendations coming in the IEAC, around monitoring and around human health and around the food security, have – you know, have had tremendous amount of work done on them. And I could tell you that there is a respect for ensuring that everything that can be done should be done, is done.

You'll appreciate that as Minister of Natural Resources responsible for Nalcor, that I have an

interest and a role, but I am not the regulator of the environment –

MR. LEARMONTH: Mmm.

MS. COADY: – and I ensure that I am not overly influencing that decision-making process. I respect the parameters around such, but I do follow it with interest and I can tell you, with sincerity, there is a genuine respect for the concerns and making sure that everything that is done can be done.

MR. LEARMONTH: Okay, but if – and I want to take you through some documents but, first, I want to ask you this: The full impoundment of the reservoir is scheduled for this summer.

MS. COADY: Mm-hmm.

MR. LEARMONTH: Once the – once that has been done, it appears that the options for any physical remediation work will disappear forever. I realize that there can still be testing and so on, but in terms of actual physical work – be that wetland capping or other measures – as soon as there's impoundment, my understanding is that you can forget about that. Am I correct?

MS. COADY: Again, I'm not a technical expert and I do not want to portray that I am. I can tell you that SNC-Lavalin has prepared a number of reports for various requests of information on this matter, and they would be the experts on this. I can tell you that I did hear from the officials that were here last week and what their opinion is. I can tell you that I do know, for example, that wetland capping would only have a 1 to 2 per cent impact on methylmercury, in any event.

So those are the things that I do understand and have a personal reflection on, but whether or not – what can be done post-impoundment, I would leave that to the experts.

MR. LEARMONTH: Okay, well, I want to take you through some documents, please.

The – tab 39, Exhibit P-04308, if we go to page 4, we can see this is – well, on page 1, first. It's entitled – it's a document entitled Issue: To provide a Muskrat Falls Project Summary and

Update. So this prepared by and received approval from you, July 27, 2017.

MS. COADY: Correct.

MR. LEARMONTH: I just want to recite some of the background facts by reading from page 4 of this document:

“Methylmercury concerns about the Muskrat Falls Project have been raised by various parties since the project was announced. The Federal/Provincial Joint Review Panel was created in 2011 to ensure that the Lower Churchill Project environmental assessment satisfied their respective legislative requirements. The panel recommended that, if the Project was approved, a regionally-integrated cumulative effects assessment be done as well as the establishment of protected areas. In March 2016, F/P experts and other consultants participated in a scientific workshop to examine the science surrounding the issue.”

I take it you agree with that because you approved this statement, correct?

MS. COADY: This was – this note was prepared by my officials in advance of a federal-provincial meeting, and I would’ve taken it as required.

MR. LEARMONTH: Yep.

Next paragraph: “The Nunatsiavut Government ... partnered with Harvard University (Dr. Elsie Sunderland) to do their own study whose conclusions suggested higher-than-expected levels in Lake Melville, before flooding. In April 2016 they released more information suggesting that methylmercury levels could rise significantly if only partial clearing took place. Dr. Sunderland attended the above noted workshop and was in contact with government officials, however, confusion arose when Harvard stated ‘that’s not the sort of work that Prof. Sunderland does or would do.’ The Minister of Environment and Climate Change reached out to Harvard to seek clarification regarding their stance on Dr. Sunderland’s current and future research on methylmercury.”

Then: “In November 2015, the NG started the ‘Make Muskrat Right’ campaign asking the

province, among other things, to commit to full reservoir clearing. Since then numerous protests have taken place. In October 2016 the Premier met with Indigenous leaders resulting in an agreement for further independent assessment by establishing an Independent Expert Advisory Committee. Government created the methylmercury Monitoring Plan while Nalcor drafted the methylmercury Environmental Effects Monitoring Plan to create baselines for monitoring and mitigation.”

Now, the reference to in October 2016, that was the protests – that was the meeting, the marathon 10- or 11-hour meeting that resulted in the end of the protest because assurances were given by government to, you know, appoint an IEAC. And although there was no commitment to be – that government would be bound by the findings of the IEAC, there was certainly an implied obligation to treat any recommendations in good faith. Do you agree?

MS. COADY: Yes. I – and I would say that there was – this has been a – methylmercury has been dealt with with sincerity and concern since that time.

MR. LEARMONTH: Okay.

And after the – in the – as part of the resolution that was reached in late October 2016, is it true that government committed to bring the reservoir levels down after the partial flooding in the winter only to find out shortly after that it wasn’t feasible, it would be too risky. Do you recall that?

MS. COADY: That is my understanding, yes.

MR. LEARMONTH: And this is notwithstanding the fact that government had made the commitment to Indigenous leaders without actually knowing whether it was possible to reduce. Is that correct?

MS. COADY: My understanding is that the Premier had had a conversation with I believe it was Mr. Bennett concerning same. Understood that it could be done. And subsequent – following the meeting of – in October with the Indigenous leaders, it was determined by SNC-Lavalin that that would – could cause soil

erosion, and therefore concern was raised at that time.

There was a series of letters between the Premier and SNC-Lavalin concerning same.

MR. LEARMONTH: Right. But to date, the reservoir levels have not been brought back down. Is that correct to your knowledge?

MS. COADY: To my knowledge, they're – they've been relatively stable around 23-25 metres.

MR. LEARMONTH: Okay.

And the IEAC final recommendations were received in April 2018. Is that your recollection?

MS. COADY: That is as I understand it, yes.

MR. LEARMONTH: And in the recommendations, although they weren't all unanimous, the main – there was a recommendation for targeted soil removal and wetland capping, correct? That was a –

MS. COADY: Correct –

MR. LEARMONTH: – unanimous –

MS. COADY: – that was in the IEAC –

MR. LEARMONTH: Yeah.

MS. COADY: – report, but as you well pointed out, there was not agreement on removal.

MR. LEARMONTH: There was no consensus on soil removal, but there was a unanimously supported recommendation that wetland capping be carried out. Do you agree with that?

MS. COADY: That's what I understand.

MR. LEARMONTH: Okay.

Next I'd like you to turn to tab 57, please.

This is Exhibit P-04320, and it's November 13, 2018. It's a Technical Briefing: IEAC's Methylmercury Recommendations. Are you familiar with this document?

MS. COADY: I have reviewed it, yes.

MR. LEARMONTH: Okay.

Now, do you know what – you know, it's an analysis of the recommendations, as it says it is. What was done by government after receiving this technical briefing and reviewing it on November – on or about November 13, 2018?

MS. COADY: That would be more – a better – better directed to the minister responsible for the environment. I can tell you that in January of 2019, there was a presentation to Cabinet about the recommendations of the IEAC. But what occurred between November 18 – no, sorry, November 13 and, I think you said, you know, between there and the presentation, it would be better directed at the department that would be responsible.

MR. LEARMONTH: Well, if we go to tab 61, Exhibit P-04242. This is a January 10, 2019, document. And this is an information note from the Department of Municipal Affairs and Environment. Title: Government's Response to the IEAC Recommendations on Methylmercury.

And it lists government's response, one of which, on page 3, says: "Based on lack of consensus, uncertainty in the theoretical modelling approach, possible adverse environmental effects of soil removal, Innu land claims and the fact that nowhere has soil removal for reservoir preparation to reduce MeHg ever been carried out, soil removal recommendation will not be accepted." So that's the end of that, I guess.

But then it says: "Recognizing that wetland capping has very little theoretical benefit, it does give some long term benefit and does not present any environmental risks. It will be combined with fish habitat compensation. Wetland capping is therefore accepted."

So based on what this document clearly states, as of January 10, 2019, do you agree that the recommendation for wetland capping was accepted by government?

MS. COADY: That's what I understand.

MR. LEARMONTH: Okay.

Next we go to tab 63, Exhibit P-04321. This is an email starts off – from Gilbert Bennett, January 16, 2019 to Jamie Chippett, deputy minister, copied to others. Subject: Wetland Capping initiative.

Mr. Bennett says: “Further to our discussions on Monday regarding potential wetland capping, there are a number of points arising from the SNC-Lavalin report on wetland capping that need to be carefully considered” Then there’s a reference to the SNC-Lavalin report.

At the bottom of page 2 of this document, Mr. Bennett says: “To summarize, the conditions assumed by SNC Lavalin in their report for the IEAC are no longer applicable, and consequently their execution plan and cost estimates are no longer valid. To understand what could be undertaken given the current situation, I have asked SNC Lavalin to identify whether any mitigation might be available to us” – and I emphasize “any mitigation.” “This could be in the form of work done after impoundment, which they discussed briefly in their report, or through some alternate approach that they may be able to suggest.”

So after receiving this email, Mr. Chippett writes back on January 16, in fact, just 27 minutes after receiving Mr. Bennett’s – and says: “Noted. This is consistent with our discussion on Monday.” So Monday would’ve been – January 16 was Wednesday, so Monday would’ve been January 14.

So do you agree that, based on this exchange of emails, that government’s acceptance of the recommendation to do wetland capping was no longer feasible?

MS. COADY: What I understand is leading into the decision of Cabinet in January of 2019, I understood that Nalcor had been engaged with the Department of Municipal Affairs and the Environment concerning wetland capping. That I questioned when the opportunity arose, whether wetland capping was the next step for everyone involved. I question whether they had been in discussions with Nalcor and that Nalcor understood the timing and I understood they had been.

Subsequent to this, I understood that Nalcor had indicated that SNC-Lavalin was now indicating that that window had – the window for doing this, as presented to the IEAC and to the Department of Municipal Affairs and Environment, had closed and that they were considering other options as to what could be done.

MR. LEARMONTH: Yeah, but how could this happen, that it could be closed? I mean, government had been in discussions with Nalcor, and it’s difficult for many, I suggest, to understand how the left hand, it appears, didn’t know what the right hand was doing.

In other words, why did it take government – why did government not get on this issue after the recommendation had been accepted and tell Nalcor, don’t do anything to interfere with our plan to do wetland capping until we get back to you – how did this left hand not knowing what the right hand was doing occur? It’s difficult to understand. Do you agree?

MS. COADY: I can only say that, again, you’re asking for the involvement of what occurred in Municipal Affairs and Environment and with Nalcor. I can say that Nalcor and SNC-Lavalin in particular had indicated the timelines and requirements. I can’t tell you what occurred in another department, but I can tell you that it was – that SNC-Lavalin had prepared reports for the IEAC indicating timelines and indicating what needed to occur.

I can tell you that Nalcor had had discussions with MAE around this issue, but I can’t tell you where the disconnect arose. I really can’t tell you because, of course, you’re asking – I don’t know what occurred between, you know, in the Department of Municipal Affairs and Environment and that would be better directed to that department as to what the time frames were.

MR. LEARMONTH: But you agree there’s a disconnect here?

MS. COADY: There’s a timing – there’s definitely a timing issue here. I agree with that, that where one indication is, you know, we have a timing sensitivity on getting wetlands capping done prior to –

MR. LEARMONTH: Mm-hmm.

MS. COADY: – the impoundment –

MR. LEARMONTH: Mmm.

MS. COADY: – and then running out of that time frame. So like, I absolutely agree that there is a concern there, but I can't tell you what occurred that – as to the rationale as to why.

MR. LEARMONTH: But you understand –

MS. COADY: And what I cannot tell you, as well, if I may, from a technical perspective, what may occur now. If you note in – and you just read it into the record, you note that he says to under – I have asked SNC-Lavalin to identify whether any mitigation might be available to us, and what form of work after impoundment, and what they've discussed briefly in their report.

MR. LEARMONTH: Yeah, but I'm talking about wetland capping –

MS. COADY: Yeah.

MR. LEARMONTH: – and I'm saying that government appears to have let this option disappear because it didn't know what Nalcor was doing. It didn't jump on it earlier – early enough to implement the recommendation for wetland capping, and I just think people have trouble understanding how this disconnect developed.

MS. COADY: I cannot answer for you how the disconnect may have occurred. I can tell you, again, that, you know, the report was received in April of 2018 by – from the IEAC with their recommendations. I can tell you that SNC-Lavalin had been involved with understanding the time frame that would require for wetland capping, but I cannot tell you why decisions were not – or were taken and not taken during a period of time in another department.

MR. LEARMONTH: Do you agree that it's puzzling?

MS. COADY: I think that it's certainly showing that there is some – there was some indication of time lag, but it would be better – it would be better directed to – as to why to those that were

involved at the time, and I'm not trying to pass that off, it's just I can't tell you what occurred from the – in another department.

But I can tell you that, you know, there had been discussions. I know Nalcor was – would've been involved with telling and talking to the MAE as the regulator responsible for that, for the environmental concerns, it would've – they would've been speaking to MAE at the time. I can tell you that MAE was – the minister of the day would've been talking to the Indigenous groups and the chair of IEAC. At the time I could tell you things were occurring and timelines were – you know, we're talking about from April of 2018 to December, so it's not a – it's, you know, it's not a terrifically long period of time, but I think the information, as it's showing, is saying there's a gap in decision-making that might have closed a window on a particular opportunity.

MR. LEARMONTH: Well, do you agree that you can take that further, that there was definitely a gap that removed the opportunity of wetland capping from government?

MS. COADY: There appears to be a time frame where it did not – the decision to do the capping was not made. And then, subsequently, it was determined – I mean, I recall clearly asking in January whether Nalcor was aware and involved in the – you know, aware of the time frames, you know, aware of the direction this was taking, and I understood that they were. And so therefore, I understood that the time frames would be there to be able to get this done, and I learned, subsequently, that no, that wasn't the case.

MR. LEARMONTH: Then if we go to tab 66, Exhibit P-04243, it's an email from Martin Goebel, January 23, 2019, to Valerie Glynn, re Minister Letto to Stan Marshall. And as you can see, starting page 4, there's a draft letter to Stan Marshall for the signature of Graham Letto, whether it was sent or not. Okay?

But we know from the earlier correspondence that government knew on January 14 –

MS. COADY: Mm-hmm.

MR. LEARMONTH: – if not before then, that wetland capping was not an option. Do you agree?

MS. COADY: Was not an option of January 14 –

MR. LEARMONTH: Yes.

MS. COADY: – I agree.

MR. LEARMONTH: Okay.

MS. COADY: But it was an option leading into the – in the fall of 2018.

MR. LEARMONTH: Yeah, okay.

MS. COADY: Right.

MR. LEARMONTH: Fine. And it wasn't exercised, yeah.

But – okay, that being the case, that on January 14 government knew that the option was no longer available to do wetland capping. Why is it that on January 23 there's a draft letter prepared which says on page 2 [sp. page 4], the second paragraph – picking up about two-thirds of the way through: "Furthermore, surface water quality monitoring for methylmercury since October 2016 with over 1,100 samples, contradicts some of the modelling predictions given that there has already been some reservoir impoundment. Wetland capping, on the other hand, was supported by all Indigenous groups. I am therefore directing that Nalcor proceed with the wetland capping option only and that Nalcor do so in accordance with the permitting requirements of this department."

Now, the problem or the contradiction here is that government knows on January 14 that it can't carry out the wetland capping, yet there's a letter drafted on January 23 directing Nalcor to do what government knew it couldn't do. Can you explain this?

MS. COADY: I'll just make – I'll make an observation. I am not – I do not have any knowledge as to when the letter to Mr. Marshall would have been drafted or sent. I know that you're – what you're following through is on

Wednesday the 23rd. I thought that was a concerning –

MR. LEARMONTH: Well, just to help you with that Ms. Coady –

MS. COADY: Certainly, because it's from another department, yeah.

MR. LEARMONTH: On page 2 of Exhibit P-04243, Valerie Glynn sends the email to Martin Goebel: "Trimmed and put into Jamie...."

And then it says: "Hi Val,

"As discussed could you please place this new letter into TRIM"

So it seems to be a – you know, not something that was drafted, like, weeks ago.

MS. COADY: Again, I have no knowledge – I don't – I don't – I didn't receive a copy of this letter as you – as –

MR. LEARMONTH: Right.

MS. COADY: – I know it's copied to me. I'm not sure if it was sent and I don't know when it was drafted. I'm following through on your logic, I just don't have the knowledge to be able to confirm why the Department of Municipal Affairs and Environment would've been updating or – it says updating – updating a letter in January of this nature. I can't make a supposition as to why they were doing that.

MR. LEARMONTH: But do you agree that it's difficult to understand and it's difficult to reconcile with the record?

MS. COADY: Well, especially with what's occurring in January 14 where Mr. Bennett – and I'm sure you would've asked him this – but Mr. Bennett is saying he's re-engaging SNC-Lavalin to see what further things can be done now that the fall window and the early – if my memory serves, SNC-Lavalin had said, in order to ensure impoundment would occur in July to September of 2019, then the capping would've had to been done in the fall or winter.

MR. LEARMONTH: Yeah.

MS. COADY: So the fall of 2018, winter of 2019.

MR. LEARMONTH: Yeah. But government either didn't know this, or knew it and decided to sit on its hands, I suggest. It's only one of – it's got to be one of the two.

MS. COADY: I don't see any attempt – and again, I'm not the regulatory authority on this – but I don't see any attempt, to be quite frank with you, within government to not address this issue.

MR. LEARMONTH: Okay.

MS. COADY: Whether the timing is of concern, whether there was – you know, whether there was a time lag, I can't comment. But I can tell you, with sincerity and honesty, that I don't see a deliberate attempt within government not to address this (inaudible) –

MR. LEARMONTH: You're not aware of any deliberate attempt?

MS. COADY: I am not – absolutely not – aware of any deliberate attempt. I see sincerity in trying to address –

MR. LEARMONTH: Okay.

MS. COADY: – the concerns.

MR. LEARMONTH: Oh, okay.

MS. COADY: Even though the methylmercury levels are still low, I see a sincere attempt by all involved to try and address it.

MR. LEARMONTH: And do you agree, though, that just because you believe that government was sincere in its attempt to deal with the issue, that it's possible – and that you were sincere, it's possible that others in government weren't sincere? Do you recognize this possibility?

MS. COADY: That would be – again, you know, that's a supposition. I can say that I have not observed –

MR. LEARMONTH: Right.

MS. COADY: – that attitude within government.

MR. LEARMONTH: Yeah.

MS. COADY: I have not observed in any of my dealings with other departments or with the – or with any officials –

MR. LEARMONTH: Yeah.

MS. COADY: – actually –

MR. LEARMONTH: Yeah.

MS. COADY: – that goal. So –

MR. LEARMONTH: You haven't observed it, but you also said you didn't know what was going on in Municipal Affairs.

MS. COADY: I can tell you that they received the report – what I said was I'm not responsible for the department so I can't with authority give you –

MR. LEARMONTH: Okay.

MS. COADY: – an indication. I can tell you that they received the report in April that there was – the minister responsible would've been meeting with the chair of the IEAC, would've been meeting with Indigenous leaders, would've been meeting with officials on this important topic and that there was a change in leadership in November. That's what I – those are the facts, so ...

MR. LEARMONTH: That you know, yeah.

MS. COADY: That I'm aware of.

MR. LEARMONTH: Okay.

Now, tab 69, Exhibit P-04189. This is an email from Gilbert Bennett to Jamie Chippett and Paul Carter, Deanne Fisher, Wetland Capping initiative, dated February 13, 2013, [sp. 2019]. And this is a memo starting on page 3 from SNC-Lavalin dated January 23, 2019.

On page 9 of – oh, excuse me, the bottom of page 8, Conclusions: "A supplemental feasibility assessment has been undertaken by SNCL of

wetland capping prior to the 2019 spring freshet. This involved a review and assessment of the work identified in the SNCL report prepared in March 2018 The spring freshet period spans from 15 April to 15 June.

“This review has found that it is not feasible to undertake the capping in the five months available between end of January 2019 and the start of the freshet. Some of the key points for this conclusion include,” and they’re listed down.

Then, “Immediately after spring, the groundwater table remains high, and the ground surface is saturated, making access to the target sites difficult and dangerous, and with increased risk of landslides. It is unlikely that any work could be undertaken prior to mid-summer for this reason. It is also planned that impoundment of the reservoir will begin after the spring freshet, in mid-summer, so there would not be sufficient time to undertake the work.

“This review also examined the feasibility of capping target wetlands after impoundment based on comments provided in the previous study. This approach is not recommended as there would be a safety risk that will require a significant mitigation effort. In addition, it is likely to take a considerable amount of time following impoundment to address the issues before the capping could begin (likely more than two years). It is also understood that to maximize mitigation, under this scenario, capping should be completed immediately following reservoir creation, which will not be possible.”

So do you agree that this report, if it’s accepted and if it’s good, closes the door forever on capping of the wetlands in the Muskrat Falls reservoir?

MS. COADY: I believe that Mr. Bennett asked SNC-Lavalin for their opinion on wetland capping and what could be done. This is coming out of direction by the province in January of 2019, coming out of the IEAC recommendations. And what SNC-Lavalin is saying is that it would be – and I – you quoted from them, so I won’t requote – that it would be very difficult to do anything at this point in time. So understanding that officials that were here

last week did indicate to the Commission that based on their analysis that it would be impossible to do wetland capping at this point with impoundment coming between July 15 and the end of September. That’s where I am.

However, I can say that the Province of Newfoundland and Labrador is – you know, is still working with the Indigenous groups to see what can be done.

MR. LEARMONTH: Well, I realize that, but I’m talking about wetland capping.

MS. COADY: Mm-hmm.

MR. LEARMONTH: And I just remind you that this is something that was a unanimous recommendation of the IEAC, that government accepted it and somehow it’s now become impossible to accomplish.

Has this position, the reality that we face now, been communicated to the Indigenous groups, that they can forget about wetland capping? Has this been communicated to the Indigenous groups, to the best of your knowledge?

MS. COADY: I have not been in contact with the Indigenous groups, personally. I can’t speak to what the minister responsible for Indigenous Affairs or the minister responsible for the Environment has communicated.

MR. LEARMONTH: Okay. Now, the – and that’s Mr. Ball, right?

MS. COADY: Correct.

MR. LEARMONTH: Yeah. And I think he – I think Mr. Ball – my information is that he met with – in the second week of – in June – with the Indigenous groups and, at the time, he announced the creation of the Monitoring and Health Management Oversight Committee or the –

MS. COADY: That’s my understanding.

MR. LEARMONTH: Yeah. But you don’t know whether the Indigenous leaders or groups know, at this point, that – forget about wetland capping. You don’t know whether they know that or not.

MS. COADY: I have – I cannot tell you with any –

MR. LEARMONTH: Okay.

MS. COADY: – with any certainty what the Indigenous groups are aware of at this point in time. I can tell you that it was front-page news on Friday past of the local paper of what officials said.

MR. LEARMONTH: Yeah. Because – and the reason that I’m expressing some – you know, expressing the difficulty in understanding this, at least for me, is that we heard very passionate presentations from Mr. McLean, Mr. Laing and particularly so from Marjorie Flowers, about the importance of this issue to the Indigenous groups.

And if you look at their evidence on the webcast, you see how passionate they are about this and now that this opportunity has been taken away, I suggest to you that there’s been a failure by government – I’m not talking about you, personally – but a failure by government to properly, responsibly and in good faith address the legitimate concerns of the Indigenous groups. Can I have your comment on that, please? A failure.

MS. COADY: If there is, I do not think it’s deliberate. And I – I take your words sincerely and I understand how passionate people are about this very important issue and I’ll again say I believe that government has been responsive to – trying to address the concerns that have been raised. I will also point out, scientifically, that there has – the levels of methylmercury have been not significantly risen – raised, and I will point out that wetland capping only would attribute to 1 to 2 per cent of the mitigation of methylmercury, should it be raised.

Having said that, I understand the passion and I understand the concern that – and it would’ve been helpful if there had been a, you know, a different outcome here.

MR. LEARMONTH: Yeah.

MS. COADY: But I cannot tell you why the decision wasn’t made until January of 2019, but I can tell you that, you know, Nalcor was positioning itself and was working toward that

end, but the decision had not been taken. But I honestly cannot express why that it – you know, it took that long.

MR. LEARMONTH: It’s a –

MS. COADY: I have –

MR. LEARMONTH: It’s a good question, isn’t it?

MS. COADY: I have no insight as to – and, again, I take the role of regulator and not – very responsibly in that, as Minister of Natural Resources responsible for Nalcor, it would – I have to respect that there is a role of a regulator there and that I – you know, that I have to respect that boundary.

MR. LEARMONTH: Now, if you just turn to tab 68, Exhibit P-04248, this is from Jamie Chippett at the top and it’s to Erin Shea: Key messages, February 11, 2019.

“Anticipated Questions: Is government stalling on the response to the recommendations? Will you direct Nalcor to remove the soil ...?”

Well, anyway, is government stalling – I question the tense there. I think it should be: Did government stall, but anyway, we’ll take it for what it says.

So your – does this message or this anticipated question, the fact that it’s been recorded on February 11, 2019, satisfy you that government knew that this was a possible response to the failure to comply with the recommendations and they were preparing a communications package to deal with it?

MS. COADY: You know, just looking the date of the – if you’d give me just a quick moment.

MR. LEARMONTH: Take whatever time you need, please.

MS. COADY: Yeah.

Again, Mr. Chippett is the deputy minister in Municipal and – Municipal Affairs and the Environment. And they would’ve – and Erin Shea, as the communications, they would’ve prepared those key messages.

I do note that the information prepared by SNC-Lavalin would've been sent to Mr. Chippett on February 13. So I just want to point that out to you, Mr. Learmonth, that the information from SNC-Lavalin – I'm looking here from Gilbert Bennett to Jamie Chippett – it was dated February 13.

MR. LEARMONTH: Well –

MS. COADY: And I'm not – I'm just wondering if he had received the final report –

MR. LEARMONTH: Yeah.

MS. COADY: – of SNC-Lavalin. I don't want to presume that he had.

MR. LEARMONTH: But they were – the last report from SNC-Lavalin just confirmed the earlier report.

MS. COADY: It confirmed that –

MR. LEARMONTH: It wasn't a new one.

MS. COADY: – there was no further –

MR. LEARMONTH: Yeah.

MS. COADY: – and this is what I'm understanding from this latest report, that there was nothing further.

MR. LEARMONTH: Yeah.

MS. COADY: If I reflect back on the email – the earlier exhibit where you asked about Mr. Bennett's response to Mr. Chippett, it did indicate that Mr. Bennett was saying that he was doing further work with SNC-Lavalin to see what can be done and I'm pointing out that when that report was sent to Mr. Chippett. But I'm sure Mr. Chippett would've been happy to have given you more clarity around this.

MR. LEARMONTH: Yeah, but I'm – what I'm suggesting to you is that the information that – in the latter report from SNC-Lavalin in February 2019 only confirmed the information that Mr. Bennett referred to and relied on in his January 16, 2019, email. Do you agree with that?

MS. COADY: I think that Mr. Bennett asked SNC-Lavalin to see if there was anything further that could be done.

MR. LEARMONTH: Yeah.

MS. COADY: And SNC-Lavalin is indicating in this report that there is not –

MR. LEARMONTH: All right.

MS. COADY: – from their –

MR. LEARMONTH: Okay. I'm going to put –

MS. COADY: – professional opinion.

MR. LEARMONTH: I'm going to put a position to you. We've heard this and I wanted to know whether you feel there's any merit in it or not. I want to put it to you as bluntly as I can so there'll be no mistake.

And I'm going to say that after reviewing the documents that we've just gone through that a clear question emerges or arises as to whether government was serious or sincere about ever implementing their mediation work with respect to alleviating the methylmercury problem. And I think that's confirmed by the document I just referred to, P-04248. It was on the mind that someone anticipated questions.

Anyway, so we do know that there is a body of public thought that – and perhaps in Indigenous communities in particular – that government was just stalling and scheming and extended the talk on capping the wetlands until such a time when the full impounding of the reservoir would make this work impossible. Now, what is your response to such a position?

MS. COADY: Why would government do that? Why would – how would that have been helpful?

MR. LEARMONTH: Well –

MS. COADY: Wetland capping would've – would cost somewhere in the vicinity of \$20 million.

MR. LEARMONTH: Yeah, well –

MS. COADY: And I think that's the number that I understand, somewhere in that vicinity. And if – I don't – I wouldn't understand why there would be that attitude within government, to be honest with you, and I'm being as sincere as I can be.

MR. LEARMONTH: Right.

MS. COADY: Why would government take that approach? I'm –

MR. LEARMONTH: Well, I can't answer that for you.

MS. COADY: All right.

Were there mistakes made –

MR. LEARMONTH: Yes.

MS. COADY: – because you asked that question.

MR. LEARMONTH: Yeah.

MS. COADY: If there were, I don't think they were deliberate.

MR. LEARMONTH: Okay. That's an answer.

MS. COADY: And I'm being – like, it wouldn't – there would be no benefit to, I think you used the term, maliciously or –

MR. LEARMONTH: No, I didn't use that term.

MS. COADY: No, or is it that there was an attempt to kind of –

MR. LEARMONTH: I said –

MS. COADY: – to move that.

MR. LEARMONTH: – scheming.

MS. COADY: Scheming, okay.

MR. LEARMONTH: Yeah.

MS. COADY: That was the word I was trying to recall.

MR. LEARMONTH: Yeah.

MS. COADY: I don't see that. I don't see why that would be the case, but there – you know, so I don't think that there were – that was the – that was being done.

MR. LEARMONTH: All right.

But you agree that, in any event, whether it was intentional or just caused by inattention or dropping the ball, the left hand not knowing what the right hand was doing – any of those phrases – do you agree that at this point it's clear that all the money that was spent, all the taxpayers' money that was spent on dealing with the IEAC recommendations with respect to the physical work that could be done on the reservoir, was just a total waste, because –

MS. COADY: No, I do not agree with that.

MR. LEARMONTH: – the option has been taken away now for the physical remediation because the impoundment will be taking place probably this month, or –

MS. COADY: No –

MR. LEARMONTH: – next month.

MS. COADY: – I cannot agree with your preamble. I'm sorry, but I think there was valuable work done by the IEAC. And I think if you look at the three other recommendations they're well –

MR. LEARMONTH: Yeah.

MS. COADY: – under way and there's been a lot of work done. There is a great effort towards ensuring the proper and effective monitoring, proper and –

MR. LEARMONTH: Mm-hmm.

MS. COADY: – effective compensation on food and health monitoring, so I – a lot of the work that I see is – has asked for is in place.

MR. LEARMONTH: Right.

MS. COADY: There is one of the four –

MR. LEARMONTH: Yeah.

MS. COADY: – recommendations where there was a fair amount of controversy about – one of those four recommendations there was a fair amount of controversy – has not been fulfilled because – for whatever reason, it has not been fulfilled, and that is unfortunate. But I still think that there is analysis being done as to what can be done. And I think there was sincerity in the attempt to get all four of the recommendations completed.

MR. LEARMONTH: Yeah.

But I didn't – what my – that doesn't really answer my question because I believe in my question, I qualified it by saying that do you agree that all the work was done on the potential physical work that could be done on the – for the reservoir has been a waste of money? I realize there are other things –

MR. O'FLAHERTY: Mr. Commissioner, I'm sorry, the question has been answered. So, you know, Mr. Learmonth has had wide latitude to pursue this. He's asked the witness the question, and she's answered: It was not a waste of money. She doesn't agree with the premise.

MR. LEARMONTH: But the question was not – I didn't say all of the work of the IEAC; I said the work of the IEAC with respect to the physical options that were open for remediation work on the reservoir.

THE COMMISSIONER: Physical meaning either the soil removal or –

MR. LEARMONTH: Yes.

THE COMMISSIONER: – wetland capping?

MR. LEARMONTH: Yeah.

THE COMMISSIONER: I think that's a fair question to ask based upon the answer that was given.

MR. LEARMONTH: Do you see the distinction?

MS. COADY: Certainly.

MR. LEARMONTH: Yeah, so –

MS. COADY: I believe – and I believe this with – I believe that there was a lot of work that was done and continues to be done to ensure the Indigenous leadership understands the impacts of soil removal, understands the impacts of capping on methylmercury and understands what the parameters are.

It is now coming to the realization that without changing some things, capping may not be – you know, cannot, may not be able to occur is one thing. But the work that had gone into understanding what the impact of capping would have on methylmercury, understanding what the impacts of removing soil, what that would do, I think is important work. And so I don't think it was a waste of time; I think it was important work and I think it led to the body of evidence as to what could, should or – could occur.

Now, you have pointed out, you know, on multiple occasions that there has been – there was a gap between – in the time frames of the decision. And I accept that. There is a gap in the time frame of the decision to make, but I do not think it was part of the scheme in order to do so. I think it just – it – the decision was not brought in the time that was required in order to ensure that it could be done.

MR. LEARMONTH: Okay.

But – so you believe that – the work that was done by the IEAC on the physical –

MS. COADY: Mm-hmm.

MR. LEARMONTH: – potential, you believe that still had value even though there's no possible way at this point, as far as we know, that any of those recommendations could be implemented.

MS. COADY: It certainly has value. It absolutely has value in my opinion. First of all, it helped to – it helped lead to a body of understanding for the IEAC to make their recommendations, for the Innu to make their recommendations on the soil removal and what the impacts that would have. It certainly does inform us that capping would've only led to

about a 1 to 2 per cent possible decrease of methylmercury.

And we also have all the monitoring that occurred in between that period of time –

MR. LEARMONTH: Yeah.

MS. COADY: – that tells us that methylmercury levels have not been increasing to the level that was anticipated. So I think it does add value. Any time that you take the opportunity to understand from a scientific perspective what the impacts of these are, I think it does add value to the understanding of what's occurring.

MR. LEARMONTH: All right, thank you very much. Those are my questions.

THE COMMISSIONER: All right. Thank you, Mr. Learmonth.

All right, we'll take our noon break now. Come back at 2 o'clock, and we'll begin examinations this afternoon.

MS. COADY: Thank you.

THE COMMISSIONER: Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right, the Province of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: No questions.

Thank you, Commissioner.

THE COMMISSIONER: Okay.

Concerned Citizens Coalition.

MR. BUDDEN: Good day, Ms. Coady – excuse me.

Good afternoon, Ms. Coady. As you know, my name is Geoff Budden and I represent a group called the Concerned Citizens Coalition. And as I am sure you know as well, the coalition consists of individuals who, for many years now, have been observers of –

MS. COADY: Mm-hmm.

MR. BUDDEN: – and critics of the Muskrat Falls Project. And some of them you've – we've heard the names so far today: Mr. David Vardy, former clerk of the Executive Council; Mr. Ron Penney, former deputy minister and various others – Des Sullivan, various other –

MS. COADY: Mm-hmm.

MR. BUDDEN: – men and women. So I have a number of questions for you today and I'd like to start – we've heard evidence, through Phase 1 mostly, that in the previous government, the one that ended in 2015 with the election of your government, there was a certain relationship between Nalcor, the Premier's office and the Department of Natural Resources. And the evidence, I would characterize it as follows: That there was a direct relationship between the Premier's office and Nalcor, that Nalcor really was dealing with the Premier's office to a greater extent than it was dealing with the department itself.

Board appointments, at that time, came out of the Premier's office. There would be regular meetings between Ed Martin and others and the premier of the day, sometimes with the minister not even involved or even aware of. So, that's – I would suggest that was the background as it existed throughout most of the term, at least, of the previous government.

And the first few questions I have are going to be in trying to get a sense of how things have been since December 2015. So, I guess, as sort of an introductory question: Do you believe that Nalcor really is – are you responsible for Nalcor as a minister or is it more under the bailiwick of the Premier's office directly?

MS. COADY: It's clear that Nalcor is – reports to the Department of Natural Resources. I will give you evidence of their budgetary process, their quarterly reporting process, their public disclosure process: all would come through the Department of Natural Resources.

MR. BUDDEN: Okay.

And, say, when it comes to meeting with the CEO, with Mr. Ed Martin in the early days, and then after 2016 – April 2016 with Mr. Stan Marshall would, say, the Premier – Premier Ball ever meet – has he ever met with those individuals – I'm not talking about the social occasions but has he ever had meetings with them about Nalcor business without you being present?

MS. COADY: Yes.

MR. BUDDEN: Okay.

How often would that happen? Under what circumstances would that happen?

MS. COADY: I can't tell you how often it would happen if I'm not involved. So I can say that it's my – there are occasions, whether it be because of the Premier's role as Indigenous Affairs or Labrador Affairs that he may be reaching out to Mr. Marshall on occasion.

Generally, I'm informed. If there's something that I need to be informed of, I would be informed of them. In a general sense, I'm kept in the loop as to what the conversations may or may be and, oftentimes, I'm involved but not always.

MR. BUDDEN: Okay.

And you attribute that to his dual role as not only Premier, but also as Minister of Indigenous Affairs?

MS. COADY: As I said earlier today, there are occasions, especially on the regulatory side of things, where Nalcor would have conversations with the Department of Municipal Affairs that I may not be involved in. There may be conversations with the Department of Finance because of the financial considerations –

MR. BUDDEN: Mm-hmm.

MS. COADY: – or with Indigenous Affairs because of those considerations that I'm not involved in. But I certainly – you know, I do find out about them. I am informed of them, oftentimes, if the – depending how often this occurs after the fact. But the – you know, and there are occasions and times when the Premier's office would reach directly out to Mr. Marshall or to the head of the chair of the board, Brendan Paddick.

And, you know, there are two things I would say; one is there – the two largest situations facing the province, and I would argue today, as well as they were back in late 2015 are two things: One is our financial circumstance that we find ourselves in this province, and the second is, you know, due to the Muskrat Falls Project. And this is, you know, a very significant project happening so, yes, there are interactions.

MR. BUDDEN: Okay.

Has there – has that evolved or changed in any substantive way over the period of time of your government?

MS. COADY: I would say it happens less than it perhaps – than what I understand it happened previously. I have, you know, regular conversations, obviously, with Nalcor on different issues and my department has regular contact with Nalcor on different issues. We are responsible, for example, for this Inquiry. We're responsible, for example, for the information going to the Public Utilities Board, those substantive files, but there is an ongoing, you know, discussion between the Premier's office and Nalcor. Of course there is.

MR. BUDDEN: Sure.

MS. COADY: And I – but I can't comment as to what it was prior to; I'm just saying it doesn't seem to be over – an overly significant amount.

MR. BUDDEN: Okay.

As – where I'm going with this, I suppose, is we obviously have a principle of ministerial accountability.

MS. COADY: Mm-hmm.

MR. BUDDEN: And through Phase 1 there appeared to be – or rather, the pre-2015 period, there were times where it appeared that the minister was totally out of the loop as to what was happening on the Muskrat Falls file, on the Nalcor file even. And you, obviously, can't have accountability if you aren't aware of what's happening.

Do you feel that you are and can be held accountable for Nalcor, for what happens under its watch? Has any of these other lines of communication, other portfolios, their involvement – has that in any way compromised your accountability?

MS. COADY: It's a very interesting question and I'm not quite sure where your – where – what the direction is. But I think Cabinet is accountable for the Muskrat Falls Project and Nalcor, not just me. I think the whole entire government is. So I will say that I think it's a large project –

MR. BUDDEN: Mm-hmm.

MS. COADY: – and there are a lot of regulatory responsibilities that rest in other departments. I take my role extremely seriously and that's just by my nature.

So I would ensure that the accountability and responsibilities do rest with me. That is my nature. And I also tend to ensure that what is occurring with Nalcor, that I'm aware of and generally working toward improvements of the project or betterments of the project so that we can get to the finish line.

MR. BUDDEN: Okay, well, I'll take that as an answer.

Have you been following this Inquiry? Have you been briefed or have you observed yourself the evidence as it has unfolded? Some of it, all of it, a little bit of it?

MS. COADY: I have not been following on a daily basis. Just, time will not permit nor my responsibilities will permit that. I have asked to have, you know, newspaper clippings and information that appears in media to be

forwarded to me, which I do receive and review. So I am generally informed but I cannot say that I've heard nor read all the testimony.

MR. BUDDEN: Okay. Fair enough.

From your interview and, again, from your evidence earlier today, this is what I took from it with respect to that December 2015 – December 15, 2015, conversation, or thereabouts, that you had with Mr. Martin. So I'm going to ask you to confirm this and if I'm wrong then correct me.

But my understanding is that you – your evidence was that Mr. Martin told you on or about December 15, 2015, that he had told Premier Davis the previous spring, that is the spring of 2015, that there were hundreds of millions of dollars in cost overruns on the Astaldi contract and that those overruns had not, to that point, to December 2015 –

MR. T. WILLIAMS: Mr. Commissioner, I don't know if that's an accurate quote.

I know what Mr. Budden is referencing, he – there was evidence by the witness that Mr. Martin had referenced that he had told Mr. Davis, but I don't think if you check the transcript that this morning – and I was preparing, taking careful notes – that there was a reference to specific amounts of hundreds of millions of dollars.

So I just want to make sure that question is clear when it's being put to the witness because I will need to have follow-up in that regard.

MR. BUDDEN: With respect, I think the witness herself could clarify that when the time comes. I'm referring both to the interview notes and to her evidence here today, so if I'm wrong then the witness presumably will correct me.

THE COMMISSIONER: All right.

Well, just be fair to the witness, that's – like I can't – to be honest with you, without going back, I can't recall if she referred to hundreds of millions of dollars in the same breath that she spoke about mister – Premier Davis. I can't recall it this morning. I know there was mention of Premier Davis and I know there was mention of hundreds of millions of dollars, but I can't – I

don't – I'm not sure if they were linked or not. So maybe we could get clarification from the witness herself and –

MR. BUDDEN: Sure.

THE COMMISSIONER: – so go ahead and ask your question.

MR. BUDDEN: Sure.

As I was asking, Minister Coady, when – my take on your evidence, and again for correction or clarification, is that on or about December 15, 2015, Mr. Martin called you as incoming Minister of Natural Resources, perfectly understandably. But in the course of that conversation he said to you that the previous spring, that is the spring of 2015, he had had a conversation with Mr. Paul Davis, then premier, and in the course of that conversation he told Premier Davis that there were hundreds of millions of dollars in cost overruns on the Astaldi contract and that these overruns had not, to that point, December 2015, been publicly disclosed or disclosed in publicly released updates.

And is that your evidence?

MS. COADY: Here is what I recall: On or about December 15 I received a phone call from Mr. Martin, first of all, congratulating me; second of all, asking for a meeting to discuss the Astaldi contract. During the course of that conversation I learned that it was, you know – I asked, you know, what are we talking about here? And he said hundreds of millions of dollars. I asked if it was included in the – I assumed, actually, I think – I assumed it was included in the September 2015 update. He indicated that it was not. I said: Was the previous government aware? He said he made them aware in the spring of 2015.

That's what I understand by that conversation. That's what I recall.

MR. BUDDEN: Okay.

And I note in your interview you – and I'll just read you the little bit – it's from page 6 to page 7. And this is just to, perhaps, confirm your

evidence here now, or at least that you were saying this back in June.

At that time you said: In that conversation it was a verbal – as I said – a verbal conversation where he'd called to congratulate me and tell me that he'd like to see me. When he said, you know, it's – we're going to have to renegotiate Astaldi. It's, you know, it's in the hundreds of millions of dollars overrun, which is quite astounding to me.

So you recall saying that back in June. You used that figure of hundreds of millions of dollars back in June as well when you were interviewed a month ago in June – or a couple of weeks ago – a week ago.

MS. COADY: No, if I ask you to read that again, what I'm hearing you say is a little different.

MR. BUDDEN: Okay, why don't you –

MS. COADY: So what I – yeah, perhaps I can read it. What I – here's my testimony and here's what I recall of a verbal conversation of December of 2015 –

MR. BUDDEN: Okay.

MS. COADY: – was he wanted to see me, that this was, you know, concerning Astaldi, that it was, you know – in a verbal conversation, it could be in the several hundreds of millions. I asked about whether or not the previous government was aware of this. He indicated that it was. I asked if it was in the update in September and it was not. That was the gist –

MR. BUDDEN: Yeah.

MS. COADY: – of the conversation. So if you'd like me to read what I said, being interviewed, I can do that and confirm.

MR. BUDDEN: Sure. The key point is – I will let you look at it.

MS. COADY: Sure.

MR. BUDDEN: (Inaudible) outlined in several sections here, but the key one, really, is beginning at –

MS. COADY: Okay. Perfect.

MR. BUDDEN: – bottom (inaudible).

MS. COADY: Thank you.

MR. BUDDEN: (Inaudible) looking for you to confirm is indeed that reference to hundreds of millions of dollars.

MS. COADY: If I can read into the record exactly what I said.

MR. BUDDEN: Sure.

MS. COADY: I think it does clarify that – that he – where he said he had told government in the spring that they would have to do this; meaning that they would have to negotiate with Astaldi.

I don't – I cannot confirm that he told me that he had told Paul Davis the amount. I can tell you that he told me it's in the hundreds of millions. I cannot tell you what he – if he had – what he had told Mr. Davis. I was not privy to the conversation. But I can tell you on the phone to me, he indicated it was in the hundreds of millions.

MR. BUDDEN: Okay, perhaps I can have the transcript back (inaudible).

MS. COADY: Absolutely, sorry I closed the page.

MR. BUDDEN: So your evidence is that you – he told you hundreds of millions of dollars but you can't swear here today that he told Mr. Davis – that he told you he'd told Mr. Davis it was hundreds of millions of dollars as a specific figure.

MS. COADY: I cannot recall, specifically, him telling me what he told Mr. Davis, except that he – that they were informed in the spring of 2015.

MR. BUDDEN: Okay.

Okay, did you – did Mr. Martin provide any explanation to you as to why this figure had not been released previous to that point? Or any figure, or at least the fact of overruns had not been released?

MS. COADY: I'm trying to sort out in my mind what I knew from the telephone conversation versus what I knew four days later or five days later.

In the telephone conversation I seem to recall – and again, I'm – I just want to make sure that I'm, you know, focused only on that telephone conversation rather than what I subsequently learned. I recall him saying something about, you know, they – a slow start to the project, but I can't recall – again, it was a verbal conversation – specifically what he said on December 15, 2015 –

MR. BUDDEN: Sure.

MS. COADY: – except that, you know, it was a slow start to the project and, you know, things had gone better in the summer of 2015.

MR. BUDDEN: Okay.

MS. COADY: That was – that's all I can recall.

MR. BUDDEN: Sure.

So again, he didn't – did it come up in that conversation or at any point in your dealings with Mr. Martin as to why this figure had not been released prior to this point? Or the fact –

MS. COADY: (Inaudible.)

MR. BUDDEN: – of the overruns being so extensive?

MS. COADY: The best answer I can give you is my recollection of that telephone call and to say that in the gist of the conversation – and again, I just want to make sure people understand that it was a telephone conversation – the gist of the telephone conversation, that he did mention a slow start to – slow start that, you know, they – it had been better in the spring and that they had not – that it – they had not finalized anything and it's commercially – you know, it's still ongoing. So that's the best I can recall of that particular conversation. I could – be happy to fill you in on things that happened –

MR. BUDDEN: Sure.

MS. COADY: – subsequent to that, but on that particular moment.

MR. BUDDEN: Okay, well let's move on for now.

The board of directors, of course, that you inherited and the CEO you inherited in December were gone by April, four months –

MS. COADY: Mm-hmm.

MR. BUDDEN: – and a bit later. In that intervening period of time, did they have your confidence, the board and the CEO, as minister?

MS. COADY: That's a – that's an important question.

I think that it was an important period of time where I was – I mean, I'm new in a role, I certainly knew Mr. Marshall and Mr. Martin, so it wasn't that I was unfamiliar with them as individuals, and I had respect, personal respect for them.

MR. BUDDEN: Just for clarification, of course, that's Ken Marshall we're talking now.

MS. COADY: Yes, certainly.

MR. BUDDEN: Lot of Mr. Marshalls –

MS. COADY: Thank you.

MR. BUDDEN: – in this scene.

MS. COADY: Thank you for that.

I certainly had personal respect for both Mr. Ken E. Marshall and Mr. Ed Martin, and so I don't think I reflected on whether or not they had the – my confidence to carry on the project because, of course, I was learning about the project, and some of the things that were not publicly known at the time, such as the Astaldi situation and then the knock-on effect of that.

So, I can't say I was not supportive of them. I was concerned about the project and what I was learning but, you know, from a personal respect I knew both of them and respected both of them. But, you know, we – I was literally learning about some of the challenges within the project.

MR. BUDDEN: Okay, so my question was did they have your confidence during that period of time? Would the answer be yes, they did have your confidence?

MS. COADY: I would say I – they had my personal confidence in both individuals. I was learning whether or not, from a project perspective, whether I could, you know, support everything that had happened, I was still learning whether they – I could understand that.

MR. BUDDEN: Sure.

MS. COADY: So, I would say that they – you know, if I was overly concerned they, you know, at that point in time there was no move afoot to have them both replaced or anything, if that's what your question is. But I will say that I was learning whether or not that project was in the right place, and I think you have to take – you have to do the diligence and you have to take the moment to understand what was happening at that time, to know how you could progress in the project.

MR. BUDDEN: Okay, you somewhat anticipated my next question, so we can skip over that.

Stan Marshall, of course, became CEO after Mr. Martin's departure, and he rather famously referred to the – to Muskrat Falls as a boondoggle, and suggested that it should not have been sanctioned. I don't have the correct – exact time for that quote but my recollection, it wasn't long after his assumption of the role.

MS. COADY: It was June of 2016.

MR. BUDDEN: June of 2016.

Were you surprised to hear him say that, and did it reflect your own personal views?

MS. COADY: To answer your first question, no I was not surprised to hear Mr. Stan Marshall say that. Mr. Marshall has his – has a direct manner of speech and I – which I appreciate, actually. Has a very direct manner of speech and he does feel that it is a boondoggle.

I can tell you that pre-sanction of the project, as a private citizen I had a lot of concerns. I was

on, you know, the CBC panel at the time questioning some of the numbers and questioning the project itself, so I had ongoing concerns about the project and I can tell you that once I was learning more about some of the cost schedule problems and challenges, that it certainly does look like a project that should never have been started in this province – a personal opinion – and so I – I would not correct Mr. Martin on that – I’m sorry Mr. Marshall on that phrase.

MR. BUDDEN: Okay, fair enough.

Which leads to as I referred earlier, my clients have been critics of this project as individuals for well prior to sanction, during the sanction debate and post-sanction. And in – as we will hear evidence with Mr. Ball but I’m sure you’re aware of it as well – on March 1, I believe it was, Mr. Vardy, Mr. Penney actually wrote Premier Ball and in that correspondence suggested to Premier Ball, or advised Premier Ball that they believe the appropriate thing to do at that point, would be to have an appropriate body – perhaps EY, perhaps some other panel of experts – take a step back, look at the project and determine whether it made sense at that point to proceed or whether it made sense at that point to somehow stop the project.

So, that was their recommendation as of March 1 –

MS. COADY: March 1 of what year?

MR. BUDDEN: 2016.

MS. COADY: Thank you.

MR. BUDDEN: So in the same sort of period of flux. And about the same time – and perhaps we can call up Exhibit 2390, Madam Clerk, which we heard this morning as well; that was the Nalcor brief. And if we go to page 3, just, you know, I’m setting up where –

MS. COADY: Sorry, I’m just wondering where –

MR. BUDDEN: Sure.

THE COMMISSIONER: 2390 is at tab 28 in book 1.

MS. COADY: Tab 28, thank you.

UNIDENTIFIED FEMALE SPEAKER:
Page?

THE COMMISSIONER: Twenty-eight.

MR. BUDDEN: And it’s page 3, Madam Clerk.

So, here we see – and this really, this briefing note I would suggest –

MS. COADY: I’m sorry but it’s not – there it is, okay. Implications of Cancelling. Thank you.

MR. BUDDEN: I won’t be questioning you on this but this is a briefing note you would have received in the same time period and the title and the issue really sum it up. “Title: Implications of Cancelling or Significantly Delaying the Muskrat Falls Project. Issue What are the Implications for the Government of Newfoundland and Labrador (‘Government’) making a decision to cancel or significantly delay all or a component of the Muskrat Fall Project (the ‘Project’) and providing the associated direction to Nalcor Energy?”

And, the conclusion essentially is that Nalcor thought it was a good idea to continue with Nalcor’s project. So that was – I guess, the competing advice the government was receiving at that time, you had Nalcor saying let’s continue, you had other people – we’ve already acknowledged that credibility – saying let’s stop, take a cold eyes review.

I guess my question to you is, would it not have been prudent to seek advice from somebody other than Nalcor itself, perhaps to go to EY, perhaps to strike another panel entirely, and say look, we need to revisit this project. Even now, even though it’s late, we still need to revisit it, given these unanticipated overruns.

Would that had not, I would suggest, have been the prudent thing to do, faced with what your own CEO was acknowledging was now a boondoggle?

MS. COADY: Thank you very much for the question, it’s important, I think.

And I indicated this morning, I had asked for a review of the Muskrat Falls significance and the contractual obligations thereunder. I did receive a briefing note, as you've seen today –

MR. BUDDEN: 02390, that briefing note.

MS. COADY: – correct –

MR. BUDDEN: Yeah.

MS. COADY: – the briefing note as you've presented today, I did receive that from Nalcor. I also had had legal opinion on – that had indicated what the contractual requirements were. We had internal legal counsel as well providing, you know, information and advice. It was – it's – it is very evident, and I think it was even said in this Commission, it was very evident that once the federal loan guarantee and the obligations to Nova Scotia were entered into, it would've been near impossible to stop the project.

I listened very intently and did meet with, on a regular basis – or I believe regular basis – David Vardy and Mr. Penney, who I have respect for, and a lot of – they gave a lot of wise advice at the time, and which I appreciated, and a lot I acted on.

In – you know, I think it was evident that stopping the project was – would've been near – was impossible to do, based on the contractual arrangements that had already been in place.

MR. BUDDEN: Sure.

MS. COADY: So, while I would've – while I – and as you saw in one of the earlier exhibits, I did say, you know, maybe a panel to look at this in its entirety would've been important. It wasn't – it wouldn't be just on shutting it down, it would've been on governance, it would've been on –

MR. BUDDEN: Mm-hmm.

MS. COADY: – you know, the contractual obligations and there – and other indicators. But stopping the project, from a legal perspective, just – it just couldn't be done.

MR. BUDDEN: Okay, though obviously Mr. Vardy and Mr. Penney thought that – who are hardly unsophisticated people, thought it was worth a look. So I would point that out.

I guess it's a follow-up question. Earlier in your evidence, you spoke how important it was to have cold eyes on the project. That was your phrase and I thought it was a good one. So, on the one hand, we have the possibility of a cold eyes review. On the other hand, we have Nalcor, who I would suggest hadn't done a whole lot to this point to really inspire confidence and it clearly had some self-interest in the game.

MS. COADY: Mm-hmm.

MR. BUDDEN: So would it not in retrospect perhaps have been a good idea just to step back and to confirm some of what you're saying that it truly was either impossible, nothing – I guess it's truly impossible that it made more sense to proceed down this path than to take another path.

MS. COADY: I am clearly saying to you, Sir, that I believe I did take a step back and you – I'm quoting you now; you said it was worth a look. I agreed it was worth a look and did have legal – did have – you know, even EY looked at certain aspects of it. Even looking at, you know, certain of the analysis that was provided to me even by Nalcor, you have – there's a balance in, you know, of opinion.

It wasn't just Nalcor's opinion. It was a balance of opinion. And I think this Commission has reviewed the documentation and I believe I understand from record that understands that the legal implications under the federal loan guarantee and the requirements under the requirements of the Nova Scotia contract were such that it – we were pretty – our hands were pretty well tied at that point.

MR. BUDDEN: Of course.

Either way, it was going to be a hard road; we all acknowledge that. But I guess, just before I move on, you're not suggesting that EY or any other independent experts had done the equivalent of this briefing note here? So you have a – you've got Nalcor reading this into one

of your ears and, the other ear, there's no equivalent cold eyes analysis, is there?

MS. COADY: There is legal opinion –

MR. BUDDEN: Okay.

MS. COADY: – as I've indicated to you, looking at contractual arrangements that were entered into. EY had done some work around, you know, whether we could just stop the powerhouse and keep moving with the transmission. They had done a piece of work around that. We had our internal legal teams looking at things. So there – I believe in my analysis we did have this analysis done, this cold eyes done. May not be to the level that you had – that you may be suggesting would have been appropriate. But I think it was certainly prudent and appropriate to take a step back and that – and I believe we did.

MR. BUDDEN: Okay. Fair enough. That's your answer.

With respect to the Oversight Committee we've – I guess, what did you do? We've heard of the resistance within Nalcor to full co-operation and it's up to the Commissioner to judge that, but I would suggest that our submission, at least, the evidence we've heard, was that certainly continuing into your term as minister there was still resistance from Nalcor to full co-operation with the Oversight Committee and, in particular, with EY. What did you do as minister to address that problem?

MS. COADY: Well, first of all, tone at the top and indicating the requirement of Nalcor to be fully compliant, that started day one. The changeover of direction in, I guess, April of 2016, certainly did reinforce that tone at the top that compliance and assistance was required of Nalcor in the oversight. We also, in 2017, expanded the Oversight Committee to have independence on that –

MR. BUDDEN: Mm-hmm.

MS. COADY: – on a – you know, I remember – I recall clearly speaking to Mr. Vardy and Mr. Penney about these important issues and agreeing with them that independence on that

Oversight Committee would be important and that we have done that.

MR. BUDDEN: Yes.

MS. COADY: And expanding out that so it's not all internal to government. And I think that was important. Making sure that the Oversight Committee had the reports and reviewed the reports and considered the reports was also important.

MR. BUDDEN: Okay.

The – my next question was about the Oversight Committee which, as you acknowledged, was originally a creature of government. It was – consisted of high-level civil servants, public servants. And then in April 2017, as you've also just indicated, it was made more robust. My question is why – that was approximately 17 months into your tenure as minister. Why did that not occur until that point?

MS. COADY: Mostly because of all the other moving parts that were happening at the same time. So we had a new – I've already counted up until April of 2016 what was occurring. Remember that we had a new CEO come in '16. We had a new update in June of '16. We had ongoing concerns around – ongoing work happening around methylmercury. In the fall, we had the meeting with the Indigenous groups and that fall we had the protest. That December a new board of directors expanded – independent board of directors.

I'm just recounting some of the things that were –

MR. BUDDEN: Sure.

MS. COADY: So there were a lot of moving parts and, as quickly as possible, we expanded the Oversight Committee. So by – within that one year time frame, we had already then completed the work on the new board of directors – expanded, independent. So we had an interim board, an expanded board of – through the Independent Appointments Commission, we had a bridge agreement and a final agreement with Astaldi by that December. We had already made commitments to the Indigenous groups. So

by – as quickly as we could, we got to expand the Oversight Committee.

MR. BUDDEN: Sure.

MS. COADY: So I thought it was very important to expand the Oversight Committee and it was all a matter of timing and making sure that the reports were being done.

MR. BUDDEN: Okay, and you believed that those other steps were necessary, predicate steps before the Oversight Committee could be expanded?

MS. COADY: I would not say one was more important than the other. You know, I think it was essential to have an expanded board of directors. That is your first level of accountability, right? So you have a, you know, a CEO that understands the project, understands what you're doing. That's one level of accountability. The board of directors, expanded board of directors, independent board of directors ensuring that was in place was critical and then ensuring that you have good oversight, understanding what was happening with EY, understanding where, you know, all the – implementing the recommendations of EY were all very important steps and expanding the oversight was another important step.

MR. BUDDEN: Sure.

And I guess I would suggest to you before I move on, but there's no reason that one can't, on one front, be dealing with Indigenous groups and, another front, expanding the board and yet, on another front, making an Oversight Committee more robust. I mean, they're not sequential steps I would suggest; they can all happen at the same time. It needn't have taken 17 months to make a manifestly, non-robust committee robust, I would suggest.

MS. COADY: That's your opinion. I can tell you that my opinion is we worked as expeditiously as we could to fulfill all of our obligations. We had a project that was not performing effectively. We had important work to be done around the board of directors, important work to be done within Indigenous groups, important work to be done with some contracts.

We had a situation where these things were happening in real time and there are other functions within government that were happening as well and we – the independent oversight was put in place as quickly as we possibly could. It's an important step, I completely agree but, you know, not everything can happen in the one day.

MR. BUDDEN: Okay, fair enough. That's your answer.

Madam Clerk, could call up P-04346? My final set of questions around the North Spur so all of these will be concerned with that.

While this is being called up, I just want to review some of the evidence we've heard. We've heard through other witnesses that Dr. Bernander from Sweden made a presentation here in Newfoundland in St. John's in 2016 and brought forward an academic paper and, as a response to that, Nalcor organized a – what they called a peer review committee. And I believe in your evidence today you spoke of that committee. You didn't name it by name, but you referred to a panel that included somebody from Memorial, somebody from Norway and so on.

So, you're familiar with the peer review committee, I take it?

MS. COADY: I am.

MR. BUDDEN: Okay.

And you would also be familiar, I would imagine – based on the evidence I'm about to show you – that the peer review committee did not satisfy all of the concerns of certain critics of the project and, particularly, didn't satisfy the concerns of Dr. Bernander and some of his colleagues.

So, you're aware that they continue to have concerns even after the peer review has completed its study?

MS. COADY: I am.

MR. BUDDEN: Okay.

MS. COADY: And I certainly indicated this morning that I appreciate their interventions and

their – the information they present because it does help to inform me in my – in providing the challenge function and making sure that we are doing all of our diligence. So I have appreciated their interactions. And I do know that they continue to have issues and concerns that hopefully we are addressing and ensuring that are addressed to the best satisfaction we can.

MR. BUDDEN: Sure, and you have no reason to doubt that they are – they may or may not be right, but they – you’ve no reason to doubt –

MS. COADY: They are certainly sincere.

MR. BUDDEN: Sincere and credible people. These are recognized academics and so forth, you’re not disputing that.

MS. COADY: I don’t – I cannot inform this group as to what their credentials are. I’m not questioning their credentials. I’m just – if you’re asking me to determine their expertise, I’m sorry –

MR. BUDDEN: Oh, no. I’m –

MS. COADY: – I cannot.

MR. BUDDEN: All I’m asking is to acknowledge that they do come before us with credentials. They have at least a field of academic expertise that is recognized.

MS. COADY: I’ll accept that.

MR. BUDDEN: Sure. Okay.

Well, the exhibit we have here, Minister Coady, is correspondence again from –

THE COMMISSIONER: It’s at tab 74, book 2.

MS. COADY: Thank you.

MR. BUDDEN: I believe you found it, yes.

It’s at page 4346, and what this is – I’m not going to read it, but it’s important that the record, I suggest, show that this correspondence took place. This is correspondence from Mr. Vardy and Mr. Penney again, and they’re writing you in February of 2019. So,

approximately four months ago, exactly four months ago. And, again, about six or seven weeks before the election was called. So, clearly, this wasn’t a caretaker situation. You are actually minister at this point.

And they – this correspondence restates their concerns and speaks to the concerns of Dr. Bernander and others and calls for the creation of an independent panel of geotechnical experts and engineers and so forth to independently study the stability and safety and fit-for-‘purposeness’ of the North Spur.

So, you acknowledge having received this correspondence back in February?

MS. COADY: The department has a copy of this correspondence, yes.

MR. BUDDEN: Yes.

And if we go, Madam Clerk, to 04345, which is another in this sequence of correspondences – and this was referred to, I believe, earlier today by my learned friend, Mr. Learmonth. This is correspondence –

THE COMMISSIONER: It’s at tab 73.

MR. BUDDEN: Yes, the previous one.

This was correspondence from the academics themselves, the authors of these concerns, and while you acknowledge that this arrived – it was dated, I think, a day or two before the election call but I accept that this would’ve arrived in a caretaker situation, but you’re familiar with it now. And this again reiterates, at a somewhat technical level, some of their concerns about the North Spur, and it also calls for the creation of an independent panel to study that issue, doesn’t it?

MS. COADY: I can say that, as I addressed this morning, it was received during caretaker mode. They have made references to what they would like to see – they would like to see additional work done. I can read the entire thing if you wish.

MR. BUDDEN: It’s 12 pages and some of it’s relatively –

MS. COADY: Yeah.

MR. BUDDEN: – technical and we don't –

MS. COADY: Yeah.

MR. BUDDEN: – all want to be here 'til 8 o'clock tonight. So, I don't think that's necessary, but all I'm saying at this point is they have put forward those concerns and ask you to move forward with an independent panel. You're not disputing that. That's my only point.

MS. COADY: I can tell you that I've had multiple correspondence from Dr. Bernander on this issue.

MR. BUDDEN: Yes.

MS. COADY: As you indicated earlier, that an expert panel had been convened to look at his findings. I can tell you that I wrote to him in March of 2019. This is his response to my letter of –

MR. BUDDEN: Right.

MS. COADY: – March of 2019, that this has been received by the department and is under review for response.

MR. BUDDEN: Okay.

Here's why my clients and others are not satisfied with the position that your department has taken, just to summarize some evidence we've heard, and my clients will be submitting. It's up for Mr. Commissioner to determine whether this is correct or otherwise, but our submission would be that Nalcor has a history of interfering with cold eyes reviews, that there's been a history of attempting to influence how those views have been presented. We've seen that with MHI, we've seen it with Ziff, we've seen it with Messrs. Westney, Owen and others, I would suggest. So – and that's all evidence that has been heard, publicly heard at this Inquiry, and that ultimately the Commissioner will determine whether what I'm saying is, in fact, so.

MS. COADY: Mm-hmm.

MR. BUDDEN: But, anyway, that's some of the evidence we've heard. Are you familiar with that evidence? And are you concerned at all with the implications, given Nalcor's history of having Nalcor commission a panel solely within its own control, commission all these other studies and then come forward and say everything is okay, we have no concerns here. Does that not concern you at all, to be reliant entirely on Nalcor and on your own department who also have a history here perhaps of complicity in some of this presentation of reports that have been re-edited in some fashion? Have you any concerns at all about that?

MS. COADY: I've listened with intent to your choice of words on this and I will say that I have respect for the experts that have been convened to look into the matter. The panel that you have said – who you have questioned whether they have – they are independent or not, they are esteemed professors at some of the largest universities, not just in Canada but in other countries as well.

I have no evidence, nor reason to question their outcomes. I would take it at – as on their professional reputations, that what they put forward is to their best ability. So, I would not question their integrity in that. So, I would assume if they have signed a document, if they have, you know, put their professional stamp on something, you know, there are over 30 reports from SNC-Lavalin from Hatch – you mentioned the panel, if they – it's their professional reputation on this, so I have no reason to question their integrity.

I can say that I have listened or heard, not everyday, I've already indicated that, but I have heard in a general sense from the happenings at the Inquiry, and I really look forward to receiving the report from the Inquiry, that there, you know, there is this level of interference, and I still say that these are professionals that you're questioning and I have no reason not to believe what they are signing is in their best opinion.

So, I will take that at face value. I will correct one thing that you did say was – it was a position your department has taken. What we have done in my department and under my leadership, is to ask the questions that should be asked around the North Spur, that – and I accept

the level of, you know, the level of questioning, the intent of the questioning and, you know, the expertise of some of those people coming forward. And so what the role of the department is – and I've said this previously: This challenge function is really important. And I think it's important that we continue to have a challenge function.

I think it's important to always question findings, always question – did you ask the right questions? Did you, you know, are – did you ensure that the people giving their opinion gave their – you know, considered these facts? And I think it's the role of the department to continue to do that. It is also the role of the board of directors. And it is also the role of the Oversight Committee.

So the more people asking the questions I think is valuable, it's important. And I – but I have to take – the experts that are assembling, I have to assume that they're – once they sign off on something, that it is their considered opinion.

MR. BUDDEN: That's exactly the same thing some of your predecessor ministers said about MHI, exactly the same thing some of them said about Ziff and these other reports. Does that not make you uncomfortable?

MS. COADY: I'm not understanding your question.

MR. BUDDEN: Okay.

My question – my point is that we've heard other ministers of Natural Resources sit in that very chair, or the equivalent chair up in Labrador, and say: Look, I relied on MHI. You know, they are reputable, they were experts. I relied on some of these other experts. And then we heard from those experts themselves and have seen other evidence that would suggest that their reports were not – did not escape from the Nalcor review process exactly as perhaps they originally had intended them to be. So, again, I'm not – I don't know any more than you do, I would suggest, the degree to which these other Nalcor-generated reports may perhaps have been influenced.

But I guess my question is this: Given what's at stake for the people of Labrador, particularly

given what's at stake for the people downriver of the dam, would it not be the prudent thing to do to get a cold eyes review, a cold eyes review independent of Nalcor, to have a look at this geotechnical – this engineering work that's been done on the North Spur to satisfy the concerns of the local people that they're not relying entirely on Nalcor or anybody who is working with Nalcor, an independent body has said this dam is safe, stable and fit for purpose. Why aren't you, as minister, going down that route?

MS. COADY: In pressing your point, you may be questioning my integrity. I can tell you this –

MR. BUDDEN: Well, how did I question your integrity?

MS. COADY: Allow me to finish if you would?

MR. BUDDEN: Okay.

MS. COADY: Then you can ask any –

MR. BUDDEN: But I don't – digress by dragging your integrity into it. I never challenged your integrity. Not once.

MS. COADY: May I continue?

MR. BUDDEN: Of course.

MS. COADY: Thank you. Allow me to say that it is very important – and I'm gonna say this again – it is very important to continue to question the 30-plus reports that we have received on the North Spur. It is incredibly important to ensure dam safety. I can tell you that there is – there are multiple, multiple groups, multiple organizations in – and I'll just use one example: SNC-Lavalin, who did the design for the stability of the North Spur. Their work has been questioned by Hatch in an independent review. The work that has been completed has now had a post-construction assessment. The post-construction assessment is being reviewed, but besides – I'll just use one, by the independent engineer. The monitoring of the work that was done is under way.

So when you say – when you question whether or not enough has been done, that's a very – I think it's a very important point. And I will continue to question that, right until – I think

that, you know, we – as you saw, these are dated – these are recent letters to which you’re referring, and to which, you know, we are responding and considering and questioning. As recently as within the last couple of weeks, I have gone to colleagues within the department, questioning what – you know, where we are with this particular piece of work? Who’s reviewing this? Has oversight seen this? The independent engineer seen that? So – you know, this is a continuing effort to ensure that this – that the North Spur has been constructed and it has integrity.

I will say that we’re not reliant on one organization. That’s not the case in this. We’re talking about 30. We’re not reliant on one analysis; we’re looking at – so we – there’s more analysis; there’s more oversight; there’s questioning of the work that’s been done, how has the work been done. And we’re still – and even though we’ve had, you know, work completed and then somebody reviewing the work that’s been completed and someone reviewing all of the work that’s done, we’re still questioning it.

So I would say to you, Sir, that it’s not like what you may have said that I am a minister sitting before you taking the advice of one professional organization; I’m telling you there have been 30 different reports. Now should there, could there, would there be more work that can be done? Again, I’m saying to you I am willing and listening and questioning to make sure that everything that can be done is done.

MR. BUDDEN: And how many of those 30 reports have been commissioned, other than through Nalcor?

MS. COADY: They would all be commissioned from Nalcor.

MR. BUDDEN: Thank you.

No more questions.

MS. COADY: That’s who’s paying for it. That’s how it’s being paid for.

THE COMMISSIONER: All right, thank you.

All right, Edmund Martin.

MR. SMITH: Good afternoon, Ms. Coady.

Harold Smith for Edmund Martin. I don’t have a lot of questions but I do have a few. Can I have P-03086, please?

THE COMMISSIONER: That’s at tab 11 of your book number 1.

MR. SMITH: If you could scroll down, please? Thank you.

These are the, if you will – they’re called speaking notes from the February 25 meeting with EY.

MS. COADY: Mm-hmm.

MR. SMITH: But I don’t necessarily see them as speaking notes – in other words, not Mr. Parsons giving you speaking notes – it’s just that he recorded apparently what was being said at the meeting in February with EY. He wasn’t – this is not his speaking notes, this is a recording of what EY –

MS. COADY: I –

MR. SMITH: – presumably told government.

MS. COADY: My recollection is Mr. Kelvin – Kelvin provided – Mr. Parsons provided them to the Premier so that he could have a record to be able to respond – to provide it to Cabinet.

MR. SMITH: Okay.

MS. COADY: So they could, in fact, be speaking notes –

MR. SMITH: You think that –

MS. COADY: – but they were notes of the meeting.

MR. SMITH: That’s what I’m trying to understand. Is the –

MS. COADY: Yeah.

MR. SMITH: Are these speaking notes in the normal course of politics and government to be –

MS. COADY: Yeah, I –

MR. SMITH: – spun in such a way as to, you know, create the least harm, if you will? Or are they just a recording of what EY told government at a meeting on February 25? I’m just trying to figure out which really they are.

MS. COADY: I understand that they are Mr. Parsons’s notes from the meeting and that the Premier was going to speak to them.

MR. SMITH: Okay.

MS. COADY: So they – so – just so that, for clarity and certainty, I think what you’re talking about is whether this was key messaging that government –

MR. SMITH: Right.

MS. COADY: – kind of uses and – no. It – they were notes taken in a meeting that the Premier did speak to.

MR. SMITH: Okay.

And was it assumed, to your knowledge – was it assumed that what was said was accurate; in other words, that EY provided an accurate representation of their views.

MS. COADY: I’m a little confused –

MR. SMITH: Well, I’m just –

MS. COADY: – by your question. What –

MR. SMITH: I’m just –

MS. COADY: Could you rephrase?

MR. SMITH: Yeah, well, I’m trying to understand whether or not you indicated, to your knowledge, that these were the statements to your remembrance while at the meeting. You said that these were an accurate reflection of what was said.

MS. COADY: To my recollection this is what was said at the meeting.

MR. SMITH: Right.

Now, the next question then from that is: Did you do any investigation or did any other of your team do any investigation as to the accuracy of what was said?

MS. COADY: It was the accuracy of what was said by EY?

MR. SMITH: By EY, yes.

MS. COADY: We had – I’m – I may be missing your point, so –

MR. SMITH: Well, maybe I’ll give you a little help, okay?

MS. COADY: That’ll be perfect.

MR. SMITH: Let’s look at bullet number two: “The lead EY rep was David Leather, who in a past life was CFO for the London Olympics which had a budget of 9 billion Euros. That project came in on time and on budget.”

Do you know if that’s truthful?

MS. COADY: I have no idea whether it’s truthful in that this was Mr. Parsons’s notes that were provided to the Premier. I cannot verify personally whether that – what the budget of the London Olympics was, if that’s your question to me.

MR. SMITH: Right.

And one further question that arises from that is whether or not – it appears – it looks like the government accepted the statements of EY and recorded them as if they were truthful.

MS. COADY: I have no reason to think that EY would not – they were coming to government, they had a – no; let me back up a little bit. EY was commissioned by the provincial government to look at the, you know, the cost schedule and associated risks. They came to us at a meeting in – toward the end of February and gave us their findings, verbal findings. So I would not have questioned their verbal findings, except to understand, to probe how they came about those findings and why they came about those findings and then in anticipation of their report.

MR. SMITH: So if I ask you the basic question, did you review the conclusions for accuracy, you would say no, that you accepted them as provided?

MS. COADY: There would've been discussions with EY to determine what they were seeing within their probes and within their analysis. And, certainly, in their presentation of their report, it is their report and we accepted their report.

So, if you're asking me if we accepted their report, yes, we did, but there's – you know, we would've asked and questioned why they came to those conclusions. But they are a professional firm and we would've accepted that they had done the proper analysis, and we would've probed that proper analysis to find – to get to their findings and accepted their findings.

MR. SMITH: You're aware that Professor Flyvbjerg has been retained by the Commission as an expert in these projects or megaprojects and the kinds of issues that arise from that. It was one of the first pieces of evidence that the Commission heard back in, I believe, September of last year.

MS. COADY: I'm not sure your point, but I'm listening.

MR. SMITH: Okay.

So, are you aware that Professor Flyvbjerg was retained by the Commission to provide –

MS. COADY: Not –

MR. SMITH: – expert evidence?

MS. COADY: Not specifically. I do not know the gentleman, but –

MR. SMITH: No.

MS. COADY: – I do know that you – the Commission has latitude and the right to retain expert witness and I understand they have.

MR. SMITH: Okay.

Were you aware that Professor Flyvbjerg, in studying the London Olympics, said that the

conclusion that it was on budget, on time makes little sense, if you consider the fact that the budget and time issue were increased by 78 per cent from the initial amount?

MS. COADY: I think I understand where you're going with this. I will say that this is Mr. Parsons's notes based on his information. I cannot confirm anything about the London Olympics.

MR. SMITH: Okay, but by – my understanding is that these notes were provided to the Premier for his speaking to the Cabinet or others. That's what you testified to a few minutes ago.

MS. COADY: That's what I understand.

MR. SMITH: Right. So, these notes – or the content of the notes were not tested before they were given to the Premier.

MS. COADY: You'd have to ask Mr. Parsons what testing he would've done on those – on his recordings.

MR. SMITH: Well, my understanding is, is that these recordings are actual recordings of the meeting, which you confirmed was the content of the meeting.

MS. COADY: I, to the – as I indicated this morning, to the best of my recollection, these are notes that were taken by Mr. Parsons. And, in a general sense, in the review of those notes, they look like what we discussed in that meeting.

MR. SMITH: Were you ever made aware of the internal emails of EY talking about using their involvement in the project as a way of getting to their big goal or ultimate goal which was a long-term arrangement valued, in their words in their email, between 10 and 50 – sorry – \$10 million, roughly, between 10 and 15 years of – did you – were you ever made aware of those –?

MS. COADY: I'm still not aware of them, except by what you're telling –

MR. SMITH: Yeah.

MS. COADY: – me today.

MR. SMITH: Okay. Well, they're before the Commission in any event, okay.

Would that give you any concern if that in fact is correct? And I suggest to you it is, but, you know, assuming it is correct, would that give you any concern if you considered that – internally at least – EY were targeting this project or the work in this project as a means of stepping into a longer-term arrangement worth millions and millions of dollars?

MR. LEARMONTH: I object to that question. That's – there was one email sent by Michael Kennedy, he said he was blue-skying. To say that this was a plan, a concerted plan – we don't have any response to the email. It's a one-shot affair that never went anywhere. I think it's a stretch for Mr. Smith to put it to the witness as he has, suggesting this was a long-term plan, because there's no evidence of that.

THE COMMISSIONER: Mr. Smith?

MR. SMITH: I would indicate that it's clear from the number of internal emails of EY that they were on a path to keep increasing their involvement in the project. And the email that I'm speaking about does talk about their big goal. I may have incorrectly indicated that it's over a long period of time to get to the big goal, but that was their goal, that's their stated goal. And I'm just asking whether or not that would be a concern to the Minister if she was aware of that?

THE COMMISSIONER: Well, let me – let me just –

MR. LEARMONTH: Still not –

THE COMMISSIONER: – just a second –

MR. LEARMONTH: Still not correct.

THE COMMISSIONER: All right. Okay. So let me just say this which might help everybody along. I think you're trying – I think people are trying to connect dots that are not on a straight line. I mean, that's the best way I can say it. So, yes, you had a professional organization that was looking for more work. I think most corporations would do that. Whether or not that

impacts the issue of their objectivity with regard to the project, I don't see the link.

So, from my point of view, you can ask the question, but I'm not sure it's going to help me in any great –

MR. SMITH: (Inaudible.)

THE COMMISSIONER: – assistance at all. I think you guys – I think what you're doing is you're blowing something out of proportion. That issue, to me, is so minor that with – considering the major issues that I have to look at, I've – I get frustrated because it's – it's almost to me like I'm trying – somebody's trying to get my attention turned from the important things to things that, hmm, got a little bit of something there, you know, maybe we can make a little bit of noise about it.

That's not where I'm going. So I, you know, Mr. Smith –

MR. SMITH: I – I – I –

THE COMMISSIONER: – all I'm just saying is – I'm just telling you, that's the way I'm feeling right at the moment.

MR. SMITH: – I understand, Commissioner –

THE COMMISSIONER: Okay.

MR. SMITH: – but attempting to draw a line, perhaps a little straighter line –

THE COMMISSIONER: Right.

MR. SMITH: – as we move forward –

THE COMMISSIONER: Right.

MR. SMITH: – in the questioning today.

THE COMMISSIONER: Well, I think in asking the questions, you need to be careful about how you are framing them. 'Cause I'm not certain that the evidence that you're suggesting has been put before the Commission is actually as you say it. It may your perception of it, but I'm not certain it's everybody else's. Nor is it mine.

MR. SMITH: No, I'm certainly not –

THE COMMISSIONER: So –

MR. SMITH: – the only one guilty of that.

THE COMMISSIONER: – right, and I'm not saying you are. But I'm just – I'm just saying that it's – to me, it's – it's a peripheral matter at this stage of the game, for me. Yes, I've heard it, I will look at it, I will consider it. But I think you're – with regard to the way you're asking this question, I think it's blowing it out of proportion.

MR. SMITH: Well, I'll move on in any event.

THE COMMISSIONER: Okay.

MR. SMITH: Did the – sorry. Did the SNC risk report of 2013 come to your attention? And if so, when?

MS. COADY: It did come to my attention on or about – you're – on or about mid-June of 2017.

MR. SMITH: And did you happen to consult with Mr. Martin as to his knowledge of such a report?

MS. COADY: I did not consult with Mr. Martin on that. Mr. Martin had – was no longer CEO of Nalcor as of April 2016.

MR. SMITH: Well, my question then is: If you hadn't consulted with Mr. Martin and received the report, why would you go into the press and say that Mr. Martin saw the report before he left business?

MS. COADY: I can tell you that SNC-Lavalin advised that they had – they had provided the report to Mr. Martin.

MR. SMITH: You're aware that the Commission's expert Grant Thornton has reviewed the – and interviewed the various people involved, and concluded that Mr. Martin did not receive a copy of the report.

MR. LEARMONTH: Once again, that's not correct. Grant Thornton said that there was no evidence that he did. They didn't say he didn't.

MR. SMITH: Fine. If you don't have the evidence, my position is and will be to the Commission: If you don't have the evidence, you can't say it.

THE COMMISSIONER: Okay.

MR. SMITH: So, Mister –

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: So, I think, in fairness, what Grant Thornton has said is that they could come to no conclusion because they couldn't go one way or the other because there was a not sufficient evidence for them to make a conclusion That's what I read from it. But, in any event, I think it's a fair question to ask the witness as to why she – why – assuming she made the comment –

MR. SMITH: Yeah.

THE COMMISSIONER: – why she made the comment and – go ahead.

MR. SMITH: Thank you.

Why make the comment?

MS. COADY: I was advised that SNC-Lavalin had confirmed that it was – it was delivered, they actually had delivered it to Mr. Martin; that it was provided to Mr. Martin; that it was reviewed with Mr. Martin. Therefore, he had seen it.

MR. SMITH: And –

MS. COADY: I believe his testimony –

MR. SMITH: – to quote the –

MS. COADY: – it's been that he has seen it.

MR. SMITH: – and to quote my learned friend, Mr. Learmonth, there's no evidence to support that – insufficient evidence I should say, not no evidence. Insufficient evidence –

MS. COADY: I cannot –

MR. SMITH: – to support that.

MS. COADY: – comment on what evidence is before the Commission in its entirety. I have no – I could not comment on that.

MR. SMITH: Okay.

Now, I'll move onto another area and that is the area of the Astaldi – I don't think it was clear when Mr. Martin was called and told to cease discussions with Astaldi.

Do you recall when that was?

MS. COADY: No, I do not, but I was – I'm going by what Mr. Learmonth asked this morning.

MR. SMITH: If I suggest, that it was in January of 2016. Would you be in a position to confirm or –?

MS. COADY: No, I would not be in a position to confirm. I can tell you that, as I said, on or about December 15, I had the phone call. I know that on or about December 20, there was a meeting to discuss with Mr. Martin, of course, going into EY, but Astaldi came up. I can tell you that by towards the 20 – I think it was January 24, excuse me for a moment. Around about January 24 there was a planning and priorities presentation. So in the intervening time, it would be – seeing he was – I think the evidence would tell you, seeing that he was presenting to the planning and priorities committee, you know, towards the 24th of January, then why would he have been negotiating prior to that in any event?

MR. SMITH: And did the suspension of the Astaldi discussions have an adverse effect on the bargaining position of Nalcor, to your knowledge?

MS. COADY: Could you repeat that question?

MR. SMITH: Okay.

MS. COADY: I just want to make sure I have the right language for you.

MR. SMITH: Yeah, okay.

Did the suspension of the Astaldi discussions being held by Mr. Martin have any adverse

effects, okay, on the cost? We'll put that – put it in very clear terms.

MS. COADY: I would say that I understood that Mr. Martin had been having conversations. And I think – and to use his words without prejudice, for about 18 months. I would not characterize it as a suspension by government – but by government requesting information on what was being discussed, where – you know, what the parameters of the negotiations were, what the proposed outcome was, what the direction was. So I wouldn't – I would characterize it as ensuring we had the appropriate information.

MR. SMITH: I'd like to go back on that question and ask you if indeed Mr. Martin was called while sitting at the table of those discussions, and told to cease. Were you aware of that?

MS. COADY: I'm trying to reflect on whether or not I was aware that he was called during a meeting with Astaldi. I can say that Mr. Martin would've been aware that government required more information before negotiations with Astaldi could occur. You will reflect – I will reflect on the fact that there was, you know, a fair amount of questioning of whether or not – and it says it in the letter – the letter that was presented this morning – it questions whether or not there has been any – there are any commercial terms in order to have a discussion.

MR. SMITH: When we look at a piece of information from a transcript of Mr. Lance Clarke's testimony – which I unfortunately, don't have a copy of the pages for you. But in his testimony, he noted that – you know who I mean when I say Lance Clarke?

MS. COADY: I do.

MR. SMITH: Okay.

It says that – question from Mr. Collins: "Did the 2015 election and the election of" the "new government have any effect on the negotiations with Astaldi?"

And Mr. Clarke responds: "It affected timing. We – in" the "fall of 2015, as this was coming clear, we had done a huge amount of work on

leverage, understanding where our strength points were and how we could best possibly get to good numbers and get to the right position.

“One of the key things for us was to ensure we didn’t lose summer construction seasons. So, getting in the middle of a negotiation in the middle of the construction season in a hard way would clearly hand leverage over to Astaldi, because they could use the work” as a lever, you know, the ongoing work. “They could slow down, they could do different things. It’s done; it’s not supposed to be, but it’s done; it’s natural. That was the biggest lever we felt they” had would – and “would have.”

Okay?

“So, we were entering heavy into the fall, late fall of ’15, saying, okay, we got to figure out what these guys – what their expectations are commercially? And, of course, that’s when the election” occurred. Or, sorry, was ongoing.

“So, we were fairly limited in terms of what our remit could be, because it was clear that if we were going to come to some sort of resolution, it would” have to “be new money to go” into the “AFE and it would have to be go – someone would have to go and have a conversation with government to get approvals for that. Okay?”

So, it appears that there was a fair amount of, if you will, background work determining what their best negotiating position would be, and when that would be, and that went off the rails when the discussions were suspended or halted; and our understanding of the evidence in this hearing is that delays is money.

So, would you agree that suspending the negotiations in the winter before the construction season and reinstating them – excuse me – towards the spring or the beginning of the construction season had a, or could have, or reasonably would have, had an effect on the cost.

MS. COADY: I cannot agree with you on this particular point, that the newly sworn-in government, me as Minister and others, would have asked and required the negotiating strategy, and would’ve – you know, it was – we’re doing the contemplations around why where we were,

in terms of, you know, is there a breach, what are you talking about, where – why do we need to negotiate, what has to happen.

If that work had been done and was readily prepared and available to us, I think that would’ve been presented and I don’t have evidence that says it was – I do have before us today the PowerPoint presentation that was given to the Planning and Priorities Committee in January. There was discussions then throughout February of saying we really need to make sure that we have the right negotiating strategy and the right information and you would have seen the letter that Mr. Martin had indicated without prejudice to Astaldi at the time, saying what – and we already entered into that evidence.

So, I think it was a matter of making sure that the government had the information it required in order to provide guidance and direction. This was, again, because there was no reserve – because there was no either management reserve or an effective reserve – this was a significant cost overrun that was not recorded in September of 2015.

MR. SMITH: I would direct your attention to the September ’15 slide presentation and there are clear exceptions for the Astaldi matter in the – that the numbers provided were without regard to what Astaldi might cost because they didn’t know at that time. Okay, just so that we’re on the same page –

MS. COADY: I appreciate you pointing out the September ’15. I cannot agree that they were clear.

MR. SMITH: Now, in any event, after the suspension and through the period, EY was appointed to investigate the Astaldi situation as I understand it. Is that correct?

MS. COADY: I’m going to just say that the term, suspension, is your term.

MR. SMITH: Okay.

MS. COADY: And your question was when was EY brought involved?

MR. SMITH: With the Astaldi issue. Not just the cost and schedule, but the Astaldi issue specifically.

MS. COADY: I would say I'm just – I'm recalling time frames now that's –

MR. SMITH: Okay.

MS. COADY: So forgive me for a moment to search the – to search my memory.

Astaldi – sorry, EY was engaged in January and, really, I had just gotten down to work in January. I believe it was the 24th of January when the presentation of the Planning and Priority Committee would've been held.

It would've been around that time that they would've been involved, you know, considered to be involved in the Astaldi. Just – and I reflect back on something that I indicated this morning. One of the concerns was, of course, Mr. Martin had been the negotiator and the person involved in the original contract and the original development of a relationship with Astaldi. And making sure that we – you know, we all stepped back and have a fresh look at where we were and how did we get there.

So, it was – you know, it was important to understand why we were considering having EY have a look at this. Mr. Martin had provided what he had provided and I'll leave it to the record and for your review as to what he provided on January 24. And, again, I'm concerned that I don't have exact date, but it's around that time.

So you will have seen onto the record what was provided on the 24th and I'll leave it for the Commissioner and co – and counsel to determine whether that would've been sufficient to give a negotiating parameters.

MR. SMITH: Minister Coady, I gather – and I'm going to start my question this way: Is Mr. Martin's involvement in the contract – it's your understanding that he was involved in the Astaldi contract, in the creation or negotiation of that original contract. That's my understanding –

MS. COADY: He was CEO of –

MR. SMITH: – from what you're saying.

MS. COADY: – the company at the time.

MR. SMITH: Yeah.

Now, being CEO of the company and at the table negotiating the contract, are you saying that he was at the table and negotiated the contract?

MS. COADY: I'm saying that it was under his authority and responsibility. I could not tell you where he was during the days of discussions around Astaldi.

MR. SMITH: Because I put it to you that under the model that we've heard about, that the contracts were negotiated by the project management team, well below Mr. Martin.

MS. COADY: But he was certainly at the table having conversations with Astaldi at that point.

MR. SMITH: To try and correct the problem that was created, okay?

So, in any event, ultimately government believed it was necessary to have EY – and you use the word, involved –

MS. COADY: Mm-hmm.

MR. SMITH: – with the discussions with Astaldi. What was your understanding of involved with Nalcor and their negotiations with Astaldi? It's important to know what your feeling or understanding was.

MS. COADY: Mr. Martin had expressed concern about having them at the table, you know, saying that it would – it could diminish his authority in regard to the discussions. I know that the premier – and, matter of fact, it was in evidence this morning the premier was pretty clear that Ed Martin would be the one leading, but that we would have involvement of EY and understanding – I know EY was involved, for example, in the preparation of the letter that went to Astaldi. I know that they were – you know, the anticipation of this would be that EY would be part of the discussions around where we're going with the possible discussions.

MR. SMITH: Now, ultimately, Mr. Martin left the organization and Mr. Stan Marshall entered as the CEO.

MS. COADY: Mm-hmm.

MR. SMITH: When Mr. Marshall came in, my understanding, under his direction, negotiations continued with Astaldi.

MS. COADY: Are you looking to me –

MR. SMITH: I don't know.

MS. COADY: – for me to confirm?

MR. SMITH: Do you know if that was the case?

MS. COADY: It would have –

MR. SMITH: Because he'd have to get approval, according to my understanding.

MS. COADY: Okay.

He – we – at that particular time – now we're talking about towards the end of April – as you know, by June there was a bridging agreement to get us through the summer of 2016 and that did occur.

MR. SMITH: Yes.

So the question I have is: Did Mr. Marshall get specific approval of your department, the lead department, to enter into discussions?

MS. COADY: He would've – that would've been not just from my department, though –

MR. SMITH: Yeah.

MS. COADY: – because I want to be clear. On such a significant project and significant challenges that we were having, it was understood that Mr. Marshall going in, at this particular time, we have an – we now have an interim board of directors and moving through, into the summer of 2016, that we would have to have some type of bridging agreement in order to be able to achieve that. And then over the course of the – after the next six months, of course, the final agreement occurred and the

new board of directors was in place in December of 2016.

MR. SMITH: My question may not be clear enough, but my question is very simple and that is: Did Mr. Marshall receive a mandate, we'll call it, from government to negotiate?

MS. COADY: There were certainly discussions with Mr. Marshall surrounding this and multiple discussions around how to resolve the situation.

MR. SMITH: Well, I take it the answer to my question was, yes, there was a mandate.

MS. COADY: I just indicated that, yes, there were multiple discussions.

MR. SMITH: Okay.

And now – and Mr. Marshall, did he include EY in those negotiations or discussions?

MS. COADY: Not at that point.

MR. SMITH: So you required Mr. Martin to have EY involved, but you didn't have the same requirement for Mr. Marshall. Is that correct?

MS. COADY: At that point, the things had – things had progressed quite rapidly. We had had the EY report at that point and we'd spent significant amounts of dollars on that report. We had Mr. Marshall coming in with his depth of experience in hydroelectricity and he was doing a cold eyes review of the project. And he was not – he was new to that – to the agreement, so he could have cold eyes on the agreement, on the circumstances surrounding the development and the course of the project. And we felt it was sufficient to be able to enter into discussions to see how we can move forward with a contractor.

MR. SMITH: So the answer to that question was really, no, there was no requirement to –

MS. COADY: No, I said that up front.

MR. SMITH: – have EY.

MS. COADY: I said that up front.

MR. SMITH: Yeah, okay.

Now, you mentioned, in answer to my friend Mr. Budden's question, that Mr. Marshall had at a point in time, referred to the project as a boondoggle. Do you recall that evidence?

MS. COADY: Yes.

MR. SMITH: Okay.

My question arising from that was –

MS. COADY: Mm-hmm.

MR. SMITH: – was Mr. Marshall, at the time he made that comment, appointed the CEO of Nalcor?

MS. COADY: Yes. I indicated to Mr. Budden that was – would've been June of 2016. I remember it well.

MR. SMITH: Okay.

And could I have your view as to how that comment meets Mr. Marshall's fiduciary duty to the corporation?

MS. COADY: I believe Mr. Marshall was giving his opinion on a direct question, and it was his opinion that he expressed. He's a very direct person.

MR. SMITH: Okay.

And I have one more quote that I'd like you to comment upon, and, again, Mr. Commissioner and other counsel, I can't locate a transcript of Mr. Paddick's testimony. I don't know if one –

THE COMMISSIONER: I don't –

MR. SMITH: – actually exists yet or not.

THE COMMISSIONER: I haven't seen that one show up yet.

MR. SMITH: No.

THE COMMISSIONER: We're about – I was advised yesterday – because I was looking for something, I was advised yesterday we're about four to five weeks behind, but we are prioritizing some of the ones. Like, we – I thought it was important, for instance, that Mr. Bennett's

transcript be prioritized so I – for counsels' purposes, so I had that one prioritized.

I can't recall where Mr. Paddick's is to be quite honest with you.

MR. SMITH: Well, in lieu of having a transcript brought to us, we've done what others have done here during the course of the Inquiry and did an unofficial version –

THE COMMISSIONER: Okay.

MR. SMITH: – of it, and would just like to make a comment with respect to Mr. Paddick's views or –

MS. COADY: Mm-hmm.

MR. SMITH: – position.

And he said in answer to the question: What is your outlook for the project, both short and long term? And he came back and said: I mean, I think we're going to finish strong, and, you know, if there was one sort of take-away in this, it's what I call a self-fulfilling prophecy. You know, if a firm believer that people get up in the morning – I'm a firm believer, I'm sorry – you know, I'm a firm believer that people get up in the morning and when they're driving to work, they think about what they got to do today, what's my timeline to do it, how much money do I have to spend to do it and I'm going to do it diligently. They don't do the opposite. People don't get up in the morning, get to Starbucks – or get a Starbucks and get in the car and say, how am I going to screw up today, okay? You know, that's not human nature. Human nature is, I'm going to do a good job.

But if – you know, if it gets to the point where the transport truck blows over in Wreckhouse, that's Nalcor's fault, or it's raining on May 24 weekend, that's Nalcor's fault, and nobody wants Nalcor to succeed for whatever reason or political reasons – or for political reasons or special interest groups or whatever, guess what? We're not going to succeed. And it's really – if anything comes out of this Commission, it's a chance to start over and to put the jersey on and want Nalcor to get back to what it used to be, which was a very respected part of the

community and a very important part of the community.

I think that if we can get there so that everybody actually is cheering for you instead of trying to cut the legs out from under you, and people can go to work again, and people will put on their résumé that they put – or, sorry, that they worked for Nalcor. Because, right now, they're wondering whether or not it's better to go with a two-year holiday in a résumé than that which they worked at Nalcor. Like, that's where we got to get, right? And I think once we're all on the same bus, cheering for the same outcome, right, we can turn this around, and it'll prove to be a project that – you know, you look at the Upper Churchill, however many years in. We are now 50 to 60 years and we've put in place an asset management program to ensure that's got a long life.

Yes, there are all kinds of naysayers or people with opinions on whether this is a good deal or a bad deal and rewriting history as to how it came about. But hopefully the history on this one can be that we built an asset that we can be proud of, that made us self-sufficient for generations to come, that position us to export power, to control our own destiny. We've had billions of dollars of economic benefit flow into the province, and it should continue to flow to the province, but we've all got to want it to work. That's the main message. You know, if nobody wants it to succeed, it hasn't got a chance to succeed.

Could you make a comment on the chair of the board – the current board – views as regarding the project?

MS. COADY: Mr. Paddick and others on the board have been working very, very hard for all of us here in Newfoundland and Labrador since December of 2016. They are leaders in their community. And they are doing so without compensation and, truly, without real recognition. So before I say anything, I'd like to give them that recognition because I can tell you they are working earnestly and under difficult circumstances. We're trying – they're trying very hard to make this project be completed in a better position.

Mr. Paddick is, I think, basically saying there that over time – and time is always an interesting thing. I look at the Upper Churchill Project, and people for the last 50 years, you know, have felt that this was, you know, a terrible contract; and now we see under Muskrat Falls basically a worse contract. And that comes from – well, you can ask Mr. Marshall – Stan Marshall – his views on that. I've often heard him talk about how, you know, we never paid for the Upper Churchill and it was a – everyone says it was a terrible contract, and now, you know, when you compare it to all the money that we're paying for the Muskrat Falls Project, I think the analysis lies in itself.

So I will say to Mr. Paddick, to the comments that you've read onto the record, which I hadn't – I had heard clip-its from the media response, this: That he is basically saying that over time there may be some benefit here to this project. I know that he is a champion of the people that are working hard for the Province of Newfoundland and Labrador. There are 1,700 people working at Nalcor today. We're talking about a project and that is why we're asking the Commission to consider what – how – you know, what were the decisions made to get us to where we are and how can we improve in the future?

And I think if I interpret Mr. Paddick's words, he's looking for those same answers and is hoping that in the future, that we can reflect back on a project that may provide benefits, but time is an interesting word.

MR. SMITH: I draw your attention specifically to the section that says: But hopefully the history on this one can be that we built an asset that we can be proud of and made us self-sufficient for generations to come, that positioned us for export power to control our own destiny. We have had – we've had billions of dollars of economic benefit, et cetera, et cetera.

So it doesn't seem like he's speaking that far into the future. He's speaking in general that the project, in the end, has a number of significant benefits, such as reduction of our dependence on oil.

MS. COADY: I take it that may be your interpretation of his point. When I listen to his

words, I may have a different interpretation that there may be benefits in time once the project is paid down. But having – being the person that has been charged with having to find solutions to the challenge of having ratepayers pay for this project, I can tell you that I don't see those benefits today. In the course of time, in the fullness of time – in the fullness of time – you – and when the asset is paid down sufficiently, when the costs are lowered, then, you know, the fullness of time will determine that.

MR. SMITH: But it's fair to say that benefits such as a lack of dependence on oil are short term.

MS. COADY: Are you referring to lack –

MR. SMITH: Holyrood.

MS. COADY: – of dependence on –

MR. SMITH: Holyrood.

MS. COADY: So you're referring to lack of dependence on the diesel generation. Well, there we could – I'm sure there are other experts that said there are other – there may have been other alternatives to diesel. I can tell you that the Department of Natural Resources has put an expression of interest now out to the general community asking for information on how we can take Labrador, for example, or rural and remote communities off diesel.

MR. SMITH: I'm talking about the elimination of Holyrood –

MS. COADY: Mm-hmm.

MR. SMITH: – as per the plan. And the –

MS. COADY: Yeah.

MR. SMITH: – multi-thousands of barrels of oil that won't need to be burned if this project works as planned.

MS. COADY: There is a climate change effect.

MR. SMITH: Yeah.

MS. COADY: We will be 98 per cent renewable energy because of Muskrat Falls. That is correct.

MR. SMITH: So those are instant benefits – or nearly instant and –

MS. COADY: That we would be 98 per cent renewable energy?

MR. SMITH: Right. Yes.

MS. COADY: There could have been other alternatives but – to Muskrat Falls to achieve that, yes.

MR. SMITH: And what were they? Ninety-eight per cent renewable energy.

MS. COADY: Ninety – well, I mean, renewable energy, I mean, there's wind, there's solar. There's, you know, other forms. All I'm – you're asking me to say about the reduction of diesel at Holyrood. And I'm saying, yes, that is one aspect of Muskrat Falls. It does give us 98 per cent, and all I'm pointing out is we could've been at 98 per cent by other means as well.

MR. SMITH: Okay. And you're speaking from –

MS. COADY: In a general sense.

MR. SMITH: – what report?

MS. COADY: I'm not. You asked me a general question; I'm responding in a general sense.

MR. SMITH: My understanding is that Grant Thornton reviewed the various options –

MS. COADY: Mm-hmm.

MR. SMITH: – that you speak of and concluded that they were not a viable option for Newfoundland, some of them – just before Mr. Learmonth jumps up again –

MS. COADY: I –

MR. SMITH: – some of them weren't a viable option.

MR. LEARMONTH: (Inaudible), right. I was going to jump up.

MS. COADY: I guess, Sir, all I'm pointing out is when you ask the general question of – one of the benefits of Holyrood is that we are now renewable energy and I acknowledge that. And I said we absolutely – with Muskrat Falls we are at 98 per cent, and then you went on to say that's a benefit and I said yes. I pointed out we could be 98 per cent using other means as well. That's all I'm pointing out. I'm not arguing with you – your premise, I'm just pointing out that there are other ways and means of getting there.

MR. SMITH: And the project has been identified as bringing other monetary benefits to the province in terms of –

MS. COADY: Employment.

MR. SMITH: – the broad spectrum, not only the immediate benefits of employment and taxes and consumables, et cetera, but also in the long term in terms of the dollars that will come to the province from water rentals, that type of thing.

MS. COADY: There are export opportunities at Muskrat Falls. As you realize, 40 per cent of Muskrat Falls are export – current rates, it's very, very low. But over time those rates may go – may increase and we might get more for our export energy. That is a potential.

MR. SMITH: Thank you, Ms. Coady.

That's all I have.

THE COMMISSIONER: Thank you.

MS. COADY: Thank you.

THE COMMISSIONER: All right.

So I'm starting to get a little bit concerned about time today. So I'm wondering whether we should push on or just take a shorter break or ...? Push on somebody is saying.

Are you ready to go Miss – for Kathy Dunderdale? Let's go.

MS. E. BEST: Good afternoon, Minister Coady.

Erin Best, I'm counsel for Kathy Dunderdale.

MS. COADY: I'm sorry, for whom?

MS. E. BEST: Kathy Dunderdale.

MS. COADY: Oh, okay.

Thank you.

MS. E. BEST: So since you were elected, I understand that – and I believe you just stated within the past half-hour or so – that Nalcor board members have not been compensated.

MS. COADY: That is correct.

MS. E. BEST: Why not?

MS. COADY: My understanding is they were not compensated previously. That they were – there was a dual appointment with Newfoundland Hydro and that they were being compensated through Newfoundland Hydro. That's my understanding. I could be corrected.

That there is a provision under the act to allow them to be compensated, but to be quite frank, we – the situation in the province did not allow us to be able to provide that compensation, and they were prepared – most of them were prepared to work as volunteers. And while we certainly appreciate all their hard work, there is provision under the act to be able to provide remuneration and I understand that the chair did indicate that he has raised that issue with me.

MS. E. BEST: Okay.

So what's your – is there a plan for addressing that? Has there –

MS. COADY: Not at present.

MS. E. BEST: – been – has it been addressed over the past four years?

MS. COADY: No, we have not provided remuneration. We can. It is permissible under the act. But we have not provided remuneration for the board of Nalcor.

MS. E. BEST: Okay.

So that's my question: Why not?

MS. COADY: The situation that the province found itself in, fiscally, and because of the situation with the Muskrat Falls Project, it was felt that it was an inappropriate time to do that. And we had a great, willing board, and that they are willing to provide that service. You have heard from the chair of the board saying that some are seeking compensation, and we have not, at this point, determined that we would be able to do so.

MS. E. BEST: Okay. So what I'm understanding from you is that it would be expensive to compensate the board and it's not an expense that the province is able to take on right now, or has not been able to over the past number of years. Is that what you're saying?

MS. COADY: That's – you're paraphrasing, but pretty much – there is – we can provide compensation, that is permissible. But we have determined that we will not at this point in time.

MS. E. BEST: Okay.

And do you think that compensation would improve the – I guess, the makeup of the board or the expertise that we see on the board?

MS. COADY: We have incredible expertise on the board of Nalcor. We have people that have, you know, large-scale development and knowledge. We have people that are, you know, Institute of Corporate Directors, directors, so that they know the appropriateness and roles and responsibility of the board. We have people that have depth of experience in oil and gas, we have people that have – we have a very broad range of expertise on the board, and we've been very, very supportive and appreciative of their expertise.

MS. E. BEST: Okay, great. But that didn't answer my question though.

Do you think that compensation would improve the expertise on the board?

MS. COADY: I think we are attracting expertise to the board as it is, without compensation.

MS. E. BEST: Okay, so you don't think compensation is necessary –

MS. COADY: I think –

MS. E. BEST: – to reach that end?

MS. COADY: No, I didn't say that. I said that compensation could be provided, it's not currently being provided and that we have excellent knowledge and competence on the board.

MS. E. BEST: Okay.

In a Telegram article in February 2012 you say that – and, at that time, I understand you were not involved in politics. You say you are involved in investigating run-of-the-river hydroelectricity for the province. Can you explain that?

MS. COADY: No, I was not involved with run-of-river technology. I was, my – I was a private – let me –

MS. E. BEST: Sure.

MS. COADY: – say this: I was a private citizen.

MS. E. BEST: Yes.

MS. COADY: So everybody should understand that.

MS. E. BEST: Yes.

MS. COADY: I have people that I know that are – you know, I have close associates that have been involved in run-of-river technology in British Columbia.

MS. E. BEST: Mm-hmm.

MS. COADY: And that there was a question at the time through me as to whether or not that would be something that the province would be interested in.

MS. E. BEST: In February of 2012?

MS. COADY: I cannot confirm the date. I was a private citizen in February of 2012, so ...

MS. E. BEST: Yeah, correct. So this was the 20-questions article – you know, *The Telegram* does it often.

MS. COADY: Okay.

MS. E. BEST: And so your answer that – at that time in February of –

MS. COADY: Yeah.

MS. E. BEST: – 2012 was that you were involved in investigating –

MS. COADY: Mm-hmm.

MS. E. BEST: – run-of-the-river hydroelectricity –

MS. COADY: Mm-hmm.

MS. E. BEST: – for the province. So, but –

MS. COADY: Not for the province. That there was a possibility of an entrant coming to the province to provide run-of-river technology to provide electricity to the province, if that was something that was a possibility.

MS. E. BEST: Okay.

I just wonder, because Muskrat Falls would've been, you know, well into the –

MS. COADY: Mm-hmm.

MS. E. BEST: – stages of being considered at that time. So do you have anything further to say about it? I'm still unclear as to whether or not – was the information that you collected, was that passed along to government, or –

MS. COADY: No, this wouldn't have been –

MS. E. BEST: – do you have anything –?

MS. COADY: This was questioning whether or not – so again, I have associates in another province that have done many run-of-river projects.

MS. E. BEST: Yes.

MS. COADY: And there was, through me, an inquiry as to whether or not that would be something appropriate for Newfoundland and Labrador. I did receive some information from the province, you know, as to what was happening in – this would've been for rural and remote communities, not the Muskrat –

MS. E. BEST: That was my next question –

MS. COADY: Okay, yeah.

MS. E. BEST: – did it have anything to do with Muskrat Falls?

MS. COADY: It could be for rural and remote communities, as they had done this in other jurisdictions.

MS. E. BEST: Okay.

So, just to follow up, did it have anything to do with Muskrat Falls?

MS. COADY: Not that I'm – no, not at the time.

MS. E. BEST: Okay.

Okay, those are my questions.

MS. COADY: Okay.

MS. E. BEST: Thank you.

MS. COADY: Thanks.

THE COMMISSIONER: Thank you.

Former Provincial Government Officials '03-'15?

MR. T. WILLIAMS: Afternoon, Ms. Coady. My name is Tom Williams and I'm representing the group known as former elected government officials for the period of 2003 to 2015 with the exception of Ms. Best's client.

Just to pick up on shortly before you left off, you spoke about the admiration and the respect that you have for current board members, given the fact that they're volunteering their time. I trust you would have that same respect for former board members who've given evidence here of

the time and commitment that they've given for –

MS. COADY: Absolutely. They gave a tremendous amount of time and commitment to the province and they – you know, they did as best as they could at the time, I would say.

MR. T. WILLIAMS: Okay.

The issue I want to address with you primarily is the one that came up during Mr. Budden's testimony and I had raised an objection for –

MS. COADY: Mm-hmm.

MR. T. WILLIAMS: – clarification and I want to go back to it just to make sure we're clear here.

And if I have your evidence correct as of this afternoon, you stated after questioning and interjection, that I cannot confirm that he – being Mr. Martin – told Mr. Davis that it was hundreds of thousands of millions when they spoke. Would that be correct?

MS. COADY: Hundreds of millions, not hundreds of thousands of –

MR. T. WILLIAMS: I'm sorry, hundreds of millions.

MS. COADY: Yeah, I just wanted to correct the record.

MR. T. WILLIAMS: And that would be in keeping with your testimony at your interview on June 19, 2019, which was – you referred to because when you do state – you say: I believe, actually, he said Paul Davis at the time and he told government in the spring that they would have this issue.

So am I – fair to say you don't have any direct knowledge of the – well, other than the reference that Mr. Martin made as to the particulars of that conversation between Mr. Martin and Mr. Davis in the spring?

MS. COADY: That is correct.

MR. T. WILLIAMS: And as I think the Inquiry has garnered through the evidence called, that

the Astaldi issue had been ongoing for quite a period of time, that it was well known within Nalcor, at least, that there was an issue outstanding of compensation in relation to Astaldi. Would that be correct?

MS. COADY: What I –

MR. T. WILLIAMS: Now that you've learned since being minister.

MS. COADY: What I understand is a 12- to 18-month time frame.

MR. T. WILLIAMS: Okay.

So it was an issue out there with Astaldi but there wasn't numbers. I'd ask if Madam Clerk could bring up Exhibit 03087.

THE COMMISSIONER: Three – give – just give me that number again? Three ...

MR. T. WILLIAMS: Pardon me?

THE COMMISSIONER: Just that – what is that number again?

MR. T. WILLIAMS: 03087. I – it may not – the witness may not have that exhibit –

MS. COADY: Okay.

MR. T. WILLIAMS: – but it's a letter. There we go. And if we could go to page 2.

This is a letter to Mr. Marshall and it's dated April 26 of 2016 from Astaldi and it's dealing with aspects of the negotiations. And if I can bring you down to the fourth paragraph there, and in the fourth paragraph, starting at the time, I'll just read out:

"In September 2015, legal counsel established a joint task force to undertake a 'without prejudice' Collaborative Settlement Process ... to assist the CEOs in developing a reasonable commercial solution. The task force met regularly and documented its progress. The task force considered various contractual solutions to address the new circumstances and the new value of the works. Nalcor forwarded to Astaldi a term sheet containing the items of a possible agreement. This Collaborative Settlement

Process was suspended following an inconclusive meeting between management and CEOs for both organizations during the week of 24 January 2016.

“Nalcor has been aware of the order of magnitude of Astaldi’s claims since at least 7 October 2015” So that kind of puts in reference for us the exact time frame. He goes on to say: “... when Astaldi presented its Cost and Productivity Analyses, estimating the additional compensation required at that time (not including some of the ongoing entitlements detailed below) to be over \$700,000,000 mainly due to the fact that the actual labour productivity rates of available manpower pursuant to ...” and it goes on.

The reason why I bring this to your attention is that this letter focuses as to when an actual number was put in to Nalcor from Astaldi, and that date being October 7, 2015. And that was the weeks immediately prior to the election of 2015. Is that correct? The election was in November of 2015? That’s when you would’ve been elected?

MS. COADY: The election concluded November 30 of 2015.

MR. T. WILLIAMS: And so I think you’ve referenced periods similar to the most recent election as being – that period being what we call – is well known as a government caretaker role.

MS. COADY: That would be normally around the date of – the date the election is called –

MR. T. WILLIAMS: Called.

MS. COADY: – which would’ve been around the end of October until the date of the swearing-in of the Cabinet, so – and that particular point would’ve been around the 15th of December, 14th of December.

MR. T. WILLIAMS: So we know that only Nalcor knew, at least at October 2015.

And if we go to Mr. Martin’s testimony – his interview, I’m sorry – no, his testimony of June 12, 2019 before the Commission, and this was when Mr. Learmonth was questioning with

respect to the AFEs in the fall, being September 2015.

And when questioned on that, Mr. Learmonth is quoted as saying: “Well – but you did know that there was a problem and you did know there was a schedule delay and you could have made a reasonable estimate,” did you – because they’re trying to focus here on numbers.

And Mr. Martin is quoted as saying: “And, once again, you start laying numbers out there without the – it just doesn’t work. So the way we handled it in that particular case was to be clear to the elected officials that” it “was not in there. And they asked tremendous questions, obviously,” and “what could it be and where could it go? And, frankly, I just had to talk them through that: Here’s what we know – in that particular instance – but I can’t give you a number. I just can’t do it.”

So we have here, at this point in time, where Mr. Martin has confirmed – we have Astaldi affirming – that the numbers would have only been known in the fall of 2015. Would you have any other reason – have any reason to think otherwise?

MS. COADY: Only by that telephone conversation of December 15 of 2015, that – and I was not given a firm number, only to be able to say that if they – you know, it was known that it would be in the hundreds of millions, and that – that it was not in the September forecast.

So I – other than – I – you’re – I don’t know what occurred prior to my –

MR. T. WILLIAMS: Okay.

MS. COADY: – becoming minister.

MR. T. WILLIAMS: But that – again, that was in December of 2015 –

MS. COADY: Correct.

MR. T. WILLIAMS: – right, as opposed to the spring of 2015, when that conversation took place. So Mr. Martin quoting hundreds of millions to you in December could well be information that he had garnered or he was able

to solidify over the course of the weeks or months ahead.

MS. COADY: He did indicate that it had been going on for quite some time, but I cannot tell you what he knew or understood and – or even what he told Mr. Davis at – and others. I can't –

MR. T. WILLIAMS: Yeah.

MS. COADY: – confirm nor offer an opinion.

MR. T. WILLIAMS: Okay, fine.

The only other issue I briefly want to touch base with you is with respect to the issue that Mr. Learmonth had raised, and, again, I don't want go into any great detail on it as well, but he had made some observations with respect to issues pertaining to rate mitigation. And you had indicated at that time that your government is taking strenuous efforts now to address this issue; it's under review by the Public Utilities Board.

MS. COADY: Mm-hmm.

MR. T. WILLIAMS: And then you listed off a number of options in this regard, and if I could just go through some very briefly. I'll just list them.

You – and correct me if I'm wrong – you had identified savings realized from Nalcor – realized, I'm sorry, from Newfoundland Hydro; reinvestment through Nalcor dividends; reduce Nalcor expenses; reducing costs through rural diesel reduction plans; realizing additional electrical sales through other IT projects in Labrador; carbon credits, again, realized as a result of the Muskrat Falls Project; additional export power opportunities; and renegotiating the loan guarantee.

You seemed enthusiastic about some of those. Are you – you know, is that a proper characterization of that? You're optimistic, at least, that through these various options, you should be able to – or your government should be able to attack the rate mitigation issue?

MS. COADY: I'm, by nature, an optimistic person so I do get passionate about finding solutions to problems. So I would say that that is

a normal act for me, to be passionate and optimistic. I will say that we have worked as a department and as Nalcor very – and as government – very diligently over a two-year period to try and come up with solutions to this difficult problem. So am I passionate about it? Absolutely. We're looking forward to further work done – being done by the Public Utilities Board to inform this and where – it is – you know, our goal and our intent is to ensure that the Muskrat Falls Project is not impacting the ratepayers and taxpayers of the province so ...

MR. T. WILLIAMS: And to put everything in perspective, we've had evidence in the early stages of the Inquiry that rates would have likely seen some increase regardless if we started Muskrat Falls or not, that Newfoundland Hydro had not been back for a rate increase before the Public Utilities Board for a number of years, so rates would in all likelihood had seen some increase; we can't say how much.

But I'm as optimistic as you are and I hope that your rate mitigations efforts work. So if they do work, are we able – you know, the fear that exists in the populace out there, I would suggest to you, is – you know, the buzz lines are rates are going to double. But our rates would have gone up marginally. And if your rate mitigation plans are successful, then people don't have to worry that it's out there, that we're likely going to see rates double, do they? Because if we implement these various strategies – and strategies that were talked about by administrations before yours – if these aspects are put in place, then people won't have the fear that they otherwise would have (inaudible).

MS. COADY: I'm not – I cannot confirm that administrations before ours had plans. I cannot confirm that.

MR. T. WILLIAMS: Okay.

MS. COADY: I will say that we've made significant progress in trying to achieve a – achieve not having Muskrat Falls impact the rates of the province, that rates will – may rise small amount to pay for what I'm going to call the regular maintenance and requirements of the electric system but will not be reflective of Muskrat Falls. But I will say this: If we did not have Muskrat Falls, then the – then a lot of the

monies that we now have to allocate towards rate management could have been allocated to something else.

So, you know, I hear your point. I am – you know, we’re working fervently to ensure that it does not impact the rates, but I do reflect on if we didn’t have to worry about that, what – where could that money have been invested?

MR. T. WILLIAMS: And that’s a fair comment, but I think in your last closing comments you said in the fullness of time, we may see a difference. And Nalcor, your own Crown corporation, have described this as the most attractive hydroelectric resources in all of North America. Would you not agree with me that in the fullness of time, we may be left with a project that’s going to return substantive dividends to the province? And a very valuable asset.

MS. COADY: I will say this. We still have – so here are my observations and these are – and you can take them for what they’re worth. My observation is this: We still have to get that power out of Newfoundland and Labrador in order to achieve some of the exports – export opportunities that we’re talking about. We still have – so we’re still challenged there. It is an attractive –

MR. T. WILLIAMS: Can I just – how – I don’t see the challenge there. I’m missing a – I mean, we have the Maritime Link; where’s the challenge at getting it out of Newfoundland and Labrador?

MS. COADY: You have a substantive amount of power to take outside the province.

MR. T. WILLIAMS: You mean sell.

MS. COADY: Sell.

MR. T. WILLIAMS: Yeah.

MS. COADY: Absolutely.

MR. T. WILLIAMS: Okay.

MS. COADY: You also do not know, at this point in time, what the requirements of the – of North America will be as we progress through

time. So as I said, in the fullness of time, we will know the value of this investment that the province of Newfoundland and Labrador has made. I cannot tell you in 50 years’ time what type of electricity we may or may not be using in North America or how we’re going to be using it in North America, but I can say the fullness of time does provide us with the opportunity to be able to understand what those impacts are. But I do – you know, I – we do have Muskrat Falls. We do have – there is still Gull Island that is there for potential, but no one is considering now developing Gull Island. There’s nobody looking to develop Gull Island today. So we’ll see, in the fullness of time, where the investment that Newfoundland and Labrador made in Muskrat Falls falls out.

MR. T. WILLIAMS: But you would agree with me that hydroelectricity is a pretty attractive green energy option in the times in which we live? From an environmental perspective.

MS. COADY: It is still considered green energy. There are those that have expressed – and I’ll be honest with you – that there are environmental impacts of hydroelectricity development. So it is – and we still have a very significant – I think this will – one of the last big opportunities, in Gull Island, that still exists.

MR. T. WILLIAMS: So we might have another one yet if we learn some lessons?

MS. COADY: I’ll leave that to others to determine.

MR. T. WILLIAMS: We’ll leave that to the Commissioner. Okay, thank you very much.

THE COMMISSIONER: Thank you.

All right, are you okay to go for –

MS. COADY: Sure.

THE COMMISSIONER: – a couple more – and I’m just – I will take a break. I guess I see we’re gonna be going beyond.

Julia Mullaley, Charles Bown?

MS. COADY: Hello.

MR. FITZGERALD: Good afternoon, Minister Coady.

MS. COADY: Hello.

MR. FITZGERALD: I represent Julia Mullaley and Charles Bown. My name is Andrew Fitzgerald.

At the beginning of your testimony today, you indicated that you were elected federally. When was that? Roughly.

MS. COADY: I'm just trying to remember the date – 2008 to 2011.

MR. FITZGERALD: 2008 to 2011.

MS. COADY: October.

MR. FITZGERALD: October.

MS. COADY: Thank you.

MR. FITZGERALD: At the time you were elected federally, did you – were you appointed to any ministerial portfolios during that term?

MS. COADY: I was in opposition, but I did hold the portfolio of critic for Treasury Board.

MR. FITZGERALD: Okay. And subsequently, you left politics and you were elected in Newfoundland, when?

MS. COADY: November 30 of 2015.

MR. FITZGERALD: And you've been a minister ever since?

MS. COADY: Correct.

MR. FITZGERALD: Different portfolios or the –

MS. COADY: No –

MR. FITZGERALD: – same portfolio?

MS. COADY: – the same portfolio.

MR. FITZGERALD: Okay.

MS. COADY: I've had some additions to my portfolio but I've been Minister of Natural Resources since December of 2015.

MR. FITZGERALD: So would it be fair to say that you have experience with both federal civil servants and provincial civil servants in terms of how they carry out their duties?

MS. COADY: One from a government perspective and one from an opposition perspective.

MR. FITZGERALD: Okay. That's even better.

I'd like to direct you to P-00807. That won't be in your book; it'll pop up on the screen.

MS. COADY: Okay. Thank you.

MR. FITZGERALD: This is a Muskrat Falls independent review Decision Note was dated May 11, 2011. Just a quote there: "Attached is a Decision/Direction Note regarding above-noted, and signed by both Minister Marshall and Minister Skinner."

If I could take you to page 4 – the bottom of the page, please. Thank you. This was prepared by Paul Myrden at the Department of Finance. You familiar with Mr. Myrden?

MS. COADY: No, I'm sorry, I am not.

MR. FITZGERALD: Okay. It be recognized – obviously, he was a public servant at the time.

MS. COADY: Okay.

MR. FITZGERALD: Okay. And it was approved by Terry Paddon and Mr. Charles Bown, my client. Do you recognize those individuals?

MS. COADY: I do.

MR. FITZGERALD: Okay. So this was a note that was prepared by the civil servants and it was forwarded up to Minister Marshall and Minister Skinner, and they subsequently signed off on it. You –

MS. COADY: Mmm.

MR. FITZGERALD: – see that there?

MS. COADY: I do.

MR. FITZGERALD: Okay. I'd like to take you to –

MS. COADY: May I ask a question?

MR. FITZGERALD: You certainly can.

MS. COADY: Is that a Direction Note or an Information Note?

MR. FITZGERALD: We can go to the top of the page, I believe it answers. Page 1 – yeah. Yes.

MS. COADY: (Inaudible.)

MR. FITZGERALD: Up – up above. Decision required –

MS. COADY: This is a Decision –

MR. FITZGERALD: – Direction Note.

MS. COADY: – Direction Note. Okay, thank you.

MR. FITZGERALD: So you'd be familiar with these types of documents?

MS. COADY: I am.

MR. FITZGERALD: I thought you might be.

The “Decision / Direction Required:

“Whether to approve the selection and retention of a qualified consultant to provide an independent review and report on the detailed project analysis prepared or commissioned by Nalcor, including an assessment of the various risks associated with the Muskrat Falls Hydro Development Project ... and their potential implications for the Province.

“Finance and Natural Resources are supportive of the proposed initiative as it represents both good business practice as well as an enhancement to the existing robust due diligence process.”

If we can go down to page 3, under Scope, please. Thank you.

“The retention of an independent consultant by the Province would be intended to obtain a new MFP project specific assessment of both the fundamental assumptions underlying the project development plan and the detailed accompanying analysis completed by Nalcor or its agents and advisors. It could also include an assessment of the due diligence completed to date including a report on the rigour of this process. It would be a risk-based assessment which would focus on the various types of project risk and the potential implications for the Province.

“While preliminary in nature, the risk assessments that might be included in the consultants’ mandate could include the following: Design and engineering risk. Construction risk. Generation / technical risk. Market risk. Financial risk. Contractual risk.

“These” items “will have to be expanded into a detailed statement of work which will be required as a pre-condition of negotiating the retention of a consultant.”

If we can scroll down a bit further, please, under Process – thank you. I’m not gonna read the whole paragraph to you, Minister, but, ultimately, the civil servants here suggested that, “The pool of such potential candidates would appear to be limited by the fact that at least two are conflicted as a result of existing relationships with Nalcor. This would rule out Deloitte, as Nalcor’s auditor, and PWC, as the current consultant to Nalcor on the Lower Churchill project generally. This leaves Ernst & Young, KPMG and possibly Grant Thornton as potential candidates.”

So this was the advice – the recommendation that was coming from Finance and Natural Resources in 2011 with respect to an independent review, similar to what EY did ultimately when your government got in power.

Were you aware that the civil service was recommending this as early as 2011?

MS. COADY: No, I was not.

MR. FITZGERALD: Would you agree with me that it is prudent and good practice for the public servants to provide such advice to ministers, in such circumstances?

MS. COADY: It is.

MR. FITZGERALD: And would you also agree with me that while the civil servants can provide the advice, can provide the recommendations, if the political will is not there to move on it, that's all the civil servants can do in the circumstances?

MS. COADY: I'm thinking about this as to – from the civil servants' perspective. If, in a normal course of action, I would have an interchange with my officials –

MR. FITZGERALD: Yeah.

MS. COADY: – and I am – you know, we would have a respectful discourse and if we don't really – you know, if they are presenting advice to me to do something and I ultimately – it is ultimately the minister of the department and government's decision not to progress with something. If it was substantive enough, I am sure that they could take it to the clerk of the – the clerk who would be responsible, of course, for all civil service.

So I would think that a senior civil servant who is – who feels that, you know, a decision that is important, they can escalate it to, of course, the clerk –

MR. FITZGERALD: Oh, yes.

MS. COADY: – for further analysis and review.

MR. FITZGERALD: Okay. Except from the part from escalating it to the clerk, let's assume it was done, once again, it really is the minister and the government of the day that has the final say whether that advice is going to be followed.

MS. COADY: Correct.

MR. FITZGERALD: And your counsel, I fail to remember the witness he was cross-examining, but he did bring out the point that when the Liberal got in, it took a very short period of time for a scope of work to be decided

upon and for EY to come in and for a report to be completed.

MS. COADY: Mm-hmm.

MR. FITZGERALD: And the point I am getting at is that this demonstrates to me that, depending on the circumstances and the government, if the political will is there, the civil service is there to faithfully execute the decisions, but absent of political will the political service is really in the hands of its masters, isn't it?

MS. COADY: I can say when we entered into government in December of 2015, that one of the ways we were able to expedite is because of the Oversight Committee's contractual arrangements with EY and the fact they had done the cost – the process review during the fall of 2015, so they were able to escalate it rather rapidly. But you are correct in that it is the ultimate decision and the political decision to move forward in any direction.

MR. FITZGERALD: Is ultimately –

MS. E. BEST: Commissioner, I'd like to interject. I take some issue with this line of questioning in that when Minister Marshall was on the stand, he testified that this direction note was considered and that the reference to the PUB, along with the MHI report, were sufficient to satisfy what they considered to be the thrust of this recommendation.

And I will note that Mr. Bown's counsel was careful to just read out this direction note and go over the areas of risk; whereas, when the MHI report went forward, of course, it was Mr. Bown, himself, who removed the risk from the (inaudible) –

MR. FITZGERALD: No, it wasn't Mr. Bown who removed the risk. It was Kathy Dunderdale that removed the risk and you know that.

THE COMMISSIONER: Well, you got –

MS. E. BEST: No, Sir, not at all.

MR. FITZGERALD: There was a meeting in August.

THE COMMISSIONER: Excuse me just for a second now.

So, you guys can take that discussion out and have it between yourselves; I'm really not that interested in it. But what I will say, I think the questioning related to political will is an appropriate question. I'm not saying, Ms. Best, for instance, that I agree with the – with what is being put to the witness as a precursor to the answer. All I'm just saying is that, you know, the issue of political will, obviously, is an important issue. I mean – and the minister has just, basically, confirmed what everybody else has said. Ultimately, at the end of the day, it's up to the politicians.

So I'm not sure why it's inappropriate for the question to be asked. What – if you're concerned about the way it's being asked, and whether or not there's a factual basis for it, well, stand up and tell me and I'll let you know that, you know, really, I'm going to be the one who decides that, ultimately, at the end of the day.

MS. E. BEST: Yes, thank you.

I thought that the line of questioning was leaving out an important aspect of the context, but I think –

MR. FITZGERALD: My next question was going to –

MS. E. BEST: – it's been clarified.

MR. FITZGERALD: – put to witness that this went to Minister Marshall, and then the decision was that it would go to the PUB.

THE COMMISSIONER: Right.

MR. FITZGERALD: So ...

THE COMMISSIONER: Okay. Go ahead.

MR. FITZGERALD: Thank you.

I'll deal with the issue of political will and the risk on my closing submissions.

With respect to – if we can go up a little bit further here to the risk piece – oh, no, down below. Sorry, just below the scope. Thank you.

You're the current Minister of Natural Resources?

MS. COADY: That is correct.

MR. FITZGERALD: Yes.

And so, you'd be familiar, I guess, generally speaking, with seeing these type of documents with respect to receiving advice, with respect to, you know, studies you may need, consultants you may need to bring in and that type of – those types of issues?

MS. COADY: Are you asking me if I'm familiar with a direction note, or familiar with design and engineering?

MR. FITZGERALD: Just in general. You have a couple of civil servants here recommending a consultant come in in with respect to design and engineering risk; construction risk; generation/technical risk; market risk; financial risk; contractual risk. It seems to be an all-encompassing recommendation that's going forward from the civil service at the time.

And I guess what I'm getting at is, given that what we know now, wouldn't you agree that this was a reasonable recommendation at the time?

MS. COADY: There would – and I'm just giving you my experience in the development direction note – there would've been an ongoing discussion prior to the development of the direction note as to what should be – what should it encompass. And these are general – I mean these risks, you know, you could consider other risks, but these are certainly risks that would've been known to the project, they're –

MR. FITZGERALD: Yes.

MS. COADY: – you know, I won't say they're all encompassing –

MR. FITZGERALD: No?

MS. COADY: – I'll just say they are general risks that might've – might be occurring for this particular project.

MR. FITZGERALD: And I completely agree with you, Minister Coady, because below it

says: “These themes will have to be expanded into a detailed statement of work which will be required as a pre-condition of negotiating the retention of a consultant.”

So you’re right, these are general themes that could’ve been expanded upon, if that was the choice that was followed. But ultimately what happened here, the decision was made not to go this route, and to go to the PUB. Were you aware of that?

MS. COADY: I’m only aware of this document as you’ve brought it to me today.

MR. FITZGERALD: Okay.

So you weren’t aware – just to be clear, you weren’t aware prior to today that the public service was recommending this as early as May 2011?

MS. COADY: Not that I recall.

MR. FITZGERALD: Okay, thank you, Minister Coady.

MS. COADY: Thank you.

THE COMMISSIONER: Consumer Advocate, so just give me idea, Mister –

MR. PEDDIGREW: Peddigrew.

THE COMMISSIONER: – thank you, Peddigrew – how long you’re going to be?

MR. PEDDIGREW: Probably 10 or 15 minutes.

THE COMMISSIONER: Okay.

And then we have NCC, you’re –

MR. RYAN: I just have two questions, Commissioner.

THE COMMISSIONER: Okay.

And Grand Riverkeepers?

MS. URQUHART: Probably about 10 minutes.

THE COMMISSIONER: Okay.

And then Former Nalcor Board Members?

MS. MORRIS: Five minutes at most.

THE COMMISSIONER: Okay.

Trades Council’s not here, are they? And then Mr. O’Flaherty?

MR. O’FLAHERTY: I don’t have any questions right now.

THE COMMISSIONER: Okay.

All right, let’s take a few minutes break here now, because we’ve been going since 2 o’clock and we’ll come back in 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Mr. Peddigrew.

MR. PEDDIGREW: Good afternoon, Minister Coady.

Chris Peddigrew (inaudible).

THE COMMISSIONER: Could you just turn on your microphone there.

MR. PEDDIGREW: There we go, sorry about that.

Chris Peddigrew for the Consumer Advocate.

Some of the questions I was going to ask, as usually happens, have been asked already. So, I won’t have you up there very long.

Just following up on some questions about the composition of the board of directors and the issue of no compensation. And I guess my question is – I’ve heard a little bit from you today and from Mr. Marshall, Ken Marshall, as well, when he was giving evidence about the fact that it was a volunteer board, a lot of hours,

a lot of time and I'm certainly not taking issue with that. It seemed like board members put in a lot of effort for no compensation, and I don't think a lot of people necessarily agree to do that. So, certainly commendable, but do you – there's no suggestion certainly if there's a lower standard that they would be held to as board members because there's no compensation or because they sacrifice so much of their time.

MS. COADY: While I recognize and appreciate their gift of time and talent to the province, they also have a fiduciary responsibility. And anybody that accepts a board of director's position would understand that they have a fiduciary responsibility and I know that they would take to do the – and understand the task.

MR. PEDDIGREW: And so, the same as a board member who would be compensated.

MS. COADY: Correct.

MR. PEDDIGREW: Okay.

Just a question about the – some of the questions Mr. Learmonth asked about the meeting with the Italian ambassador and the suggestion or the insinuation – however you want to phrase it – from the Italian ambassador about the importance of Muskrat Falls Project for Astaldi.

Was there any discussion about the Italian government perhaps stepping in to help or assist, given that the parent company was in such trouble, it was an important project for them? Was that discussed or considered?

MS. COADY: Not to my recollection. I believe we did not go into that. My role in that meeting was really a listening one. I wanted to understand what the direction was coming – it was highly unusual for an ambassador to come and ask and make this point, and I was listening with intent as to what his point was, but we did not discuss the Italian government, nor any government, intervening in a commercial contract.

MR. PEDDIGREW: Okay.

So, did you gather or garner any sense of why – I think you said it was unusual – so why the meeting was arranged or requested?

MS. COADY: I do not have an answer to that except to say that it was presented to me by the ambassador that it was important to government, and he was making me aware of how important it was. But, as I said, it was also equally important to the people of Newfoundland and Labrador, if not more so.

MR. PEDDIGREW: Right, okay.

I'd like to take you to Exhibit P-00408, which I believe is in your binder.

THE COMMISSIONER: Four-zero –?

MR. PEDDIGREW: 00408.

THE COMMISSIONER: Yes, tab 27.

MS. COADY: Thank you.

MR. PEDDIGREW: Okay. So this is the email you received, along with Premier Ball, and it's copied to the other board members and to Mr. Martin on Wednesday, April 20.

And so in the second paragraph it reads: "I understand that in your meeting with ... Nalcor CEO last night that" the "agreement was reached ..." – sorry, "that an agreement was reached regarding the CEO's departure from Nalcor."

So, the phrase there agreement, was that simply a – there was an agreement to part ways, or do you – did you understand Mr. Marshall to mean that all the terms of Mr. Martin's departure had been worked out at that meeting?

MS. COADY: I think that was his turn of phrase. I indicated this morning what was agreed was that Mr. Martin was going to depart. I gave you the synopsis of there was several options. One option being that we would support the project and support the team, the leadership team, or Mr. Martin would depart. And it was, I guess, understood – if you want me to put a word there – it was understood that Mr. Martin would be departing.

MR. PEDDIGREW: Okay.

I don't intend to get into the findings of the Attorney General.

MS. COADY: Sure.

MR. PEDDIGREW: I know that's not something we're going to deal with, but I am interested in the thought process of government leading up to this meeting and following this meeting. And in terms of departing, I mean to me that suggests quitting. It ultimately did not turn out that way.

So if we go on to the next sentence here, and I think you said this morning that the sentence that begins: "Given that as proper governance would dictate, the CEO's employment contract rests squarely with the Board." So, from your point of view the board was going to handle that matter. But then if we go down to the fourth paragraph that begins with third, and in this same email the board is referencing the fact that they'll be discussing a resignation en masse and based on the fact that the board felt that they did not have faith in government.

So, did it strike you as odd at all that the board is in one breath saying that, look, we don't feel we have confidence in government at this point, yet still suggesting to you that they're gonna go ahead and deal with the issue of how to deal with the departure of the CEO?

MS. COADY: No, they had indicated their fiduciary responsibility and they had indicated that they will be dealing with matters around the contract. In this particular paragraph, they have – they seem to indicate that we reached directly through to the CEO in deciding employment continuation.

In actual fact, Mr. Martin requested a meeting with myself and the Premier and presented three – really, two options and the – we could not see option one, which was supporting the project, so that led us to as I think the turn of phrase that the Premier used: A very difficult situation. They're a very difficult circumstance.

So I – you know, the board indicated its responsibilities in the first paragraph and by the third point was saying, you know, you're reaching – you reached through to the CEO, which I would say that would be that Mr. Martin reached through to the Premier and myself.

MR. PEDDIGREW: And so did you clarify to Mr. Marshall that the – that you did not reach out to Mr. Martin, that it was the other way around?

MS. COADY: I did not clarify with Mr. Marshall.

The response to this email came from the Premier at, basically – or just after 9 or somewhere around that time – I'm just, you know, just acknowledging receipt of the email.

MR. PEDDIGREW: The Premier responded to Mr. Marshall.

MS. COADY: I think saying, basically, received.

MR. PEDDIGREW: Okay.

And then if we look back up to the third paragraph that begins with the word: Second, three lines down – or, sorry, the second line. Mr. Marshall says: "As I advised, the Board has a responsibility to the organization. Yes to the shareholder, yes to the employees, yes to the public, and over arching to the Corporation."

The corporation is made up of, I would suggest, shareholders, directors, employees and the public indirectly through the shareholder being the government. So what did you understand Mr. Marshall to have meant by that sentence? What did you take from that sentence?

It almost seems like he's putting priority of the corporation over the shareholder, the employees, the public but, to me, they are the corporation. So I'm wondering what you might have understood from what Mr. Marshall said there.

MS. COADY: Bless you.

The second paragraph really had to deal with the – what has been termed in the vernacular as the bonus program, short-term incentive – the variable incentive pay program. And the government was suggesting to the board at the time that it would be inappropriate to pay bonuses and the board was saying back to government they had reviewed the matter and that they have a responsibility to the corporation in order to pay the short-term incentive program.

So when I reviewed that, I took it to mean that they had a responsibility to – on this matter and that they were going to exercise what they had thought was best. So I didn't delve into analyzing that particular sentence. I suggest if you – maybe Mr. Marshall might be able to give you his thinking at the time, but the thinking when I reviewed the note was basically a clear message saying we're reviewing and voting on this, and we do have the responsibility of same.

MR. PEDDIGREW: And then in the last sentence of this paragraph where he says: "Should government, in its capacity as" a "shareholder disagree with the Board, government will presumably take the requisite steps to amend, however in the interest of the organization we will make what we feel is the just and proper decision."

So did you understand that that was just in relation to the short-term incentive program or was that in relation to that, plus the decision about Mr. Martin?

MS. COADY: I can't tell you my thinking at the time, but I can tell you that I would've read it as I do now and say he was dealing with – he was talking about the short-term incentive program. Government had been saying to the board at the time that, you know, based on where – you know, where the circumstances were with both the project and the province, that they didn't think it was appropriate. And the board was saying at that particular time, look, we're going to make the just and proper decision for the board and for the corporation and you can basically direct if you feel otherwise.

MR. PEDDIGREW: Feel otherwise. Okay.

So in relation to the board's decision with respect to Mr. Martin, did government feel that it had the ability to overrule that board decision?

MS. COADY: I'm sorry, repeat that? Were you talking about just Mr. Martin now?

MR. PEDDIGREW: Just Mr. Martin, yeah.

MS. COADY: Okay, so repeat the question for me, if you would, please.

MR. PEDDIGREW: So in relation to the decision to invoke the severance provisions under the contract, I'm wondering did government feel it had the ability to override the – as shareholder, to override the decision of the board. Or did it conduct an analysis to see if it did have that option?

MS. COADY: This has been dealt with in the Auditor General's report, of course, and so I refer you to that report. I can say that it was a – the matter of Mr. Martin's contract was left to the board of directors. There were indications – and that would've been covered in the Auditor General's report and how that was dealt with subsequent to the departure of Mr. Martin.

MR. PEDDIGREW: Okay.

I'd like to take you to Exhibit P-03453, which I believe is in the binder as well. It's the Budget Speech from –

THE COMMISSIONER: Tab 26.

MR. PEDDIGREW: – 2016.

THE COMMISSIONER: Tab 26.

MR. PEDDIGREW: And just to recount some of the evidence this morning, Minister Coady, so Mr. Marsh – or Mr. Martin called you on Saturday morning following the Budget Speech on a Thursday. Is that correct, early Saturday morning at home?

MS. COADY: That is correct.

MR. PEDDIGREW: There was a meeting on Sunday between yourself, Mr. Martin and the Premier.

MS. COADY: And the chief of staff.

MR. PEDDIGREW: Right and a couple – okay, chief of staff. Another meeting on Tuesday where this ultimatum was given about –

MS. COADY: The – I won't call it an ultimatum, I'll be kinder. The options were given –

MR. PEDDIGREW: The options, okay. But the options were –

MS. COADY: – on Sunday. And, yes, the second meeting was on the Tuesday where the ultimate decision was made.

MR. PEDDIGREW: Okay.

And the decision was: Support me and the project or I leave.

MS. COADY: Basically.

MR. PEDDIGREW: Okay.

And so part of that related to an issue that Mr. Martin – or issues Mr. Martin had with the Budget Speech. Is that –?

MS. COADY: That's what he – he indicated on the phone to me that it was – it had been building and it was probably – you know, that it had been building. As I indicated this morning, the EY report had come out on the Tuesday. Mr. Martin wasn't even in town so he was obviously accepting and understanding what would come out of that announcement.

However, on the Thursday, with the Budget Speech is what he had indicated to me – came out of the Budget Speech and the subsequent communications around the Budget Speech had now caused him to be concerned about his reputation and about his family. And that's what he presented to me on Saturday morning.

MR. PEDDIGREW: Okay.

Did he – and if we just go to page 5 of this document, 03453, which is a part of the Budget Speech that mentions Nalcor and I'm just wondering – and, certainly, Minister, take a moment to review, but did Mr. Martin indicate any particular aspects? I mean, when I read the Budget Speech, you know, it's a – for a project that's so far behind schedule and so far over budget – to me there's nothing in here that would jump out as particularly offensive, but I'm just wondering was there a particular part that Mr. Martin did not like?

MS. COADY: Not that I recall. I just recall in a general sense him remarking, as did Mr. Marshall – Mr. Ken Marshall –

MR. PEDDIGREW: Ken Marshall.

MS. COADY: – that they had concerns about not being aware that it was – if it was in the Budget Speech then being taken aback by the comments around the Budget Speech. But as I indicated this morning, I wasn't aware of the budget –

MR. PEDDIGREW: Right.

MS. COADY: – if it was in the Budget Speech. So, you know, I guess, it was – in a general sense that they did not very concerned.

MR. PEDDIGREW: The fact that it was in the Budget Speech as opposed to ...

MS. COADY: I think – that's what I understand.

MR. PEDDIGREW: Okay. Fair enough.

And then just going back to one of your answer a few moments ago, and I think that when the – I guess the decision about the two options was before yourself and the Premier, and you indicated – or, I think, you said the Premier indicated to Mr. Martin that, well, look, I can't support the project at this time. I have respect for you, Mr. Martin, but I can't –

MS. COADY: Personally.

MR. PEDDIGREW: I can't personally – but I can't support the project at this time. And I believe you probably alluded to those reasons why. Well, I guess, first of all, did you agree with Mister – Premier Ball, that you could not support the project at that time?

MS. COADY: Yes, what Mister – what the Premier did say was he didn't feel it appropriate to support the project, based on the knowledge that we've been gaining, and especially with the EY report. That he wasn't prepared to come out and, you know, endorse the project.

MR. PEDDIGREW: Right.

MS. COADY: And that there was a conversation that ensued around the leadership of the project and that, you know, there are, you know, concerns around what's happening within the project and that he – that the Premier was not prepared to support either the leadership in a

public way – in a public statement, which is what Mr. Martin was hoping for, I believe. And that – and I did support that, it would've been difficult to – with the knowledge that we'd – had gained –

MR. PEDDIGREW: Yeah.

MS. COADY: – it would've been difficult to do that at that point in time.

MR. PEDDIGREW: And I guess I'm wondering and I – you know, we're talking about the project being behind schedule, well over budget, the – I guess the, finding out that Astaldi was going to be hundreds of millions of dollars and not necessarily to 150-250 that you were told in December.

Were these reasons given to Mr. Martin as look, we understand that, you know, you weren't happy with the budget speech; we understand you're not happy about EY, but look what we're dealing with. You know, we have a project that's behind schedule, over budget, we have these concerns, you know, do you – can't you see why we can't support the project publicly at this time? Was that a conversation that was had or put to Mr. Martin?

MS. COADY: In a general sense; perhaps not as constructive as you've just indicated, you know here's five reasons or anything of that nature, but in a general sense, look we've just had the EY report – remember this is a difficult conversation –

MR. PEDDIGREW: Yes, for sure.

MS. COADY: – at that point, right?

MR. PEDDIGREW: Yeah.

MS. COADY: And, you know, there's – you know, there's people involved. And so the conversation was mutually respectful, it was professional and, you know, it was – we have all this information from EY, we've got – we have a lot of challenges here, it wouldn't be appropriate for me to, you know, come out and endorse this project at this point in time.

MR. PEDDIGREW: Okay.

And so I guess given the concerns that you had at that point in time, April 2016, was there any consideration given to a for-cause termination?

MS. COADY: As I indicated –

MR. O'FLAHERTY: So, Mr. Commissioner, that calls for Ms. Coady to be asked about, you know, legal matters. I don't think that's a proper question for Ms. Coady.

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Yeah, I was just thinking the same thing, that we've already proceeded with respect to the departure of Mr. Martin on the basis that there's a report filed, government has accepted it, and I think that you have allowed certain questions about facts surrounding – taking us up to the departure, but I do believe that Mr. Peddigrew is treading – going too far with this, given the position that we've taken earlier.

MR. LEARMONTH: Mr. Peddigrew?

MR. PEDDIGREW: Commissioner, from the – in the grand scheme of the total cost of the project, the cost of the severance package is probably minor. It's still several million dollars. I believe that the public probably has an interest in knowing what government's thinking was leading up to the ultimate departure of Mr. Martin, who was head of the project. And whether consideration was given to – or what options were considered by government in terms of ending that relationship. I think it's a fair line of questioning.

THE COMMISSIONER: Well, one thing that I know I'm not doing is reassessing whether or not Mr. Martin should've been terminated with cause or without cause. So, that being the case, I don't think that's within my terms of reference. I just can't see how – like I think what the public wants to know is what the story is –

MR. PEDDIGREW: Yes.

THE COMMISSIONER: – behind that, and that's why I've allowed the questions that I have. But I don't think – I think going beyond that to saying: Look, you know, did you think about, you know, terminating him with cause, or

whatever the scenario is, I'm not sure that's helpful at this stage of the game because –

MR. PEDDIGREW: Okay.

THE COMMISSIONER: – I think – I don't think it really goes to the terms of reference that I have –

MR. PEDDIGREW: Okay.

THE COMMISSIONER: – to deal with.

MR. PEDDIGREW: And I certainly wasn't going to ask for what advice or anything like that. I just wondered was there something considered, but I'll certainly withdraw the question.

And, Minister Coady, last question, and this is – it's moving to a different topic. The \$10.1 billion estimate that we have now, it's been in place since July 2017, I believe.

The questions this morning around cost associated with the methylmercury analysis, and the wetland capping, reservoir clearing, and all the studies and reviews that have been done over the past, you know, year or so, are they included in that 10.1, or will they be something additional on top of that 10.1 at some point?

MS. COADY: My understanding is what we – what – all that is contained within the 10.1

MR. PEDDIGREW: Within the 10.1. Okay.

MS. COADY: The only thing there was – there is – if you'll check the Oversight Committee reports – there is the management reserve that says – the management risk that does say if there's, you know, any soil removal protests – that type of thing – under the management risks, they're not included.

MR. PEDDIGREW: Okay.

Thank you.

Those are my questions.

MS. COADY: Thank you.

THE COMMISSIONER: All right. Thank you very much.

All right.

The Innu Nation is not here, I don't believe.

Nunatsiavut is not here.

NunatuKavut Community Council?

MS. COADY: Hello.

MR. RYAN: Good afternoon, Ms. Coady.

My name is Victor Ryan. I'm counsel for NunatuKavut –

MS. COADY: I'm sorry, I didn't catch your name.

MR. RYAN: Sorry, Victor Ryan.

MS. COADY: Okay. Thank you.

MR. RYAN: I'm counsel for NunatuKavut Community Council.

MS. COADY: Okay.

MR. RYAN: I just have two questions for you. The first is with respect to the wetland capping and reservoir clearing issue. And so if I take your evidence so far, you as Minister of Natural Resources, you have authority over Nalcor but the Minister of Natural Resources has no authority over the regulation of the environment or authority over the IEAC. That would be the Minister of Environment, correct?

MS. COADY: That is correct. The regulatory responsibility rests with Municipal Affairs and Environment.

MR. RYAN: So I don't mean to ask you any questions that are more properly posed to that regulator. But as the member of the Lieutenant-Governor in Council with authority over Nalcor, were you ever made aware that Nalcor had a view that additional reservoir clearing or wetland capping risked triggering further environmental assessment processes?

MS. COADY: I understand that there was a concern that if the soil removal was the preferred choice that that would – that would – that could cause an environmental impact. But I do not understand that for wetland capping, per se.

MR. RYAN: Okay. And do you remember how you came to know that? A specific person from Nalcor...?

MS. COADY: It was not posed to me as – as a definitive. It was in a conversation with Stan Marshall that it could, if soil clearing – clearing of the reservoir was taking place, then that had never been done globally. And that it would likely require environmental – you know, an environmental assessment.

MR. RYAN: And that's consistent with the evidence that we've had so far at the Inquiry, is that Nalcor's view is that there was a risk –

MS. COADY: Mm-hmm.

MR. RYAN: – it wasn't a sure thing. So then just to follow up quickly, given that you were informed that this was a potential risk, not something that was sure to occur, but could potentially occur if additional reservoir clearing was ordered. Did you as the Minister of Natural Resources take any steps to reach out to organizations like the federal Minister of Fisheries and Oceans or the Canadian Environmental Assessment Agency to determine whether that risk was in fact founded or unfounded?

MS. COADY: No, I did not.

MR. RYAN: Did you request that Nalcor take steps to determine whether the risk was founded or unfounded?

MS. COADY: No, I did not direct Nalcor to do it. They would in the course – and I'm sure you'll ask this to Mr. Marshall – but in the course of managing the project, if they were required to remove soil, which again, had never been done and was – if they had been directed to do that, then, of course, they would've actioned whatever was required in order to do that.

MR. RYAN: So then my second question is just in reference to something that you said earlier today, but again, in keeping with wetland capping and the recommendations from the IEAC, I believe you were talking about the four IEAC recommendations, the second round of recommendations.

MS. COADY: Mm-hmm.

MR. RYAN: And in reference to wetland capping or reservoir clearing you said that – I believe you said the reservoir clearing recommendation was controversial.

MS. COADY: Mm-hmm.

MR. RYAN: And I don't think that's the first time that we've heard that specific word used with respect to that recommendation. But I'm just wondering if you could explain to the Commissioner: Why is it controversial?

MS. COADY: Maybe a better choice of words would've been there, but I do understand the Innu Nation had sent a subsequent letter and had indicated that their – they – their desire was that removal wasn't – you know, it was not their recommendation. That they felt – and it was quite – they were quite strong in their sentiment of this, and that they were the ones most involved. And of course, they – you know, they had the New Dawn Agreement. It was – there were some constitutional requirements for the Innu Nation in that particular area.

So I think that's maybe why I say it was controversial. I don't mean it in that sense. I mean that it was – there was a strong sense from, you know, one of the proponents that this is not the right thing to do.

MR. RYAN: And so the controversy there, if we take your word – and I take your point that you said maybe I could've used a better word – is just a lack of unanimous thought with respect to a recommendation.

MS. COADY: I would say strong thought against that recommendation.

MR. RYAN: Okay.

Okay, thank you.

Those are my questions.

MS. COADY: Thank you.

THE COMMISSIONER: All right.

The Conseil des Innu de Ekuanitshit. Not here.

Grand Riverkeeper Labrador/Labrador Land
Protectors.

MS. URQUHART: Good afternoon, Minister
Coady.

How are you?

MS. COADY: Wonderful, thank you.

How are you doing?

MS. URQUHART: I'm doing all right, it is
warm in here.

So I'm not going to – I'm trying to not canvass
ground that's already been covered and just sort
of –

MS. COADY: Thank you.

MS. URQUHART: – touch a few points.

So I wanted to go back just to the North Spur
really quickly. You'd indicated that the
geotechnical engineering on the North Spur was
reviewed of – that SNC had done – was
reviewed by Hatch. So that's your understanding
is that that had been reviewed by Hatch.

MS. COADY: That is my understanding. And
as I said, there have been 30 geotechnical reports
that are all available, and the most recent one I
steer you to would be the report that looks at the
post-construction assessment and I think, you
know, we have to now reflect on the post-
construction assessment and the follow-up to
that, so ...

MS. URQUHART: So, actually, I'll start with
that then.

You'd indicated that that was being reviewed by
the independent engineer.

MS. COADY: That's what I understand.

MS. URQUHART: Okay, that contradicts what
was – the testimony we received from Gilbert
Bennett yesterday on that issue.

MS. COADY: I under – so here is where I'll
reflect. In the independent engineer's report –
maybe it was the most recent report – he
indicates that he was waiting to review that, so I
–

MS. URQUHART: He was waiting to, but he
hasn't –

MS. COADY: – so –

MS. URQUHART: – received it yet.

MS. COADY: Well, the – it was a report that
would've been several months old, so I am
assuming that because it's several months old
that they – he was – he would now be reviewing
it because it's now available. So it was my
assumption based on his – maybe it was his last
report.

MS. URQUHART: Okay. Well (inaudible) –

MS. COADY: If you want the particular
section, I can get that for you.

MS. URQUHART: I'm sure we can find that.

MS. COADY: Okay.

MS. URQUHART: And, Madam Clerk, if we
can please go to P-04348.

THE COMMISSIONER: That would be at tab
77, book 2.

MS. COADY: Thank you.

MS. URQUHART: And this is a letter from
Mr. Jim Gordon from March of this year, March
14 of this year, and I just want to refer
specifically – if we go to the last paragraph on
this page, please, Madam Clerk. Oh sorry,
maybe I have the page wrong. Yeah, oh no,
that's correct, sorry. That's the one, the second-
last paragraph.

So this is a letter in which Mr. Gordon – so you
had quoted him as saying that he believed that
the dam was safe. He later wrote a further

analyses in which he said that he had based that upon a belief that he had that Hatch had reviewed the North Spur design.

He indicates here: “About a month later, when I was talking to one of the HATCH geotechnical engineers on another project, I casually mentioned that they had approved the design of the North Spur dam. He then vociferously contradicted my comments, and advised that HATCH had never at any time reviewed the SNCL work on the Spur. Consequently I withdrew my support in a later blog.”

So I just want to confirm this is obviously stating his understanding that Hatch has not reviewed the North Spur design – I just want to put it to you. So your understanding is that they have reviewed the –

MS. COADY: My understanding is that they have and that the report is online.

MS. URQUHART: Okay.

MS. COADY: And this letter would’ve come to the department and would be under review –

MS. URQUHART: Mm-hmm.

MS. COADY: – I don’t if it’s been responded to – not that I recall it’s been responded to as of yet –

MS. URQUHART: Mm-hmm.

MS. COADY: – because there are a lot of points in his letter –

MS. URQUHART: Mm-hmm.

MS. COADY: – and we would be following up then to make sure that that letter is responded to and that any concerns that he had – that he puts forward are addressed.

MS. URQUHART: Okay. So it’s your understanding that the – that Hatch has reviewed those technical –?

MS. COADY: Yeah. Hatch has reviewed the engineering design – I cannot confirm. So this – I’m watching my language very carefully here. He’s talking about it – like, they approved the

design of the North Spur dam. My understanding is that Hatch has reviewed that engineering design and has signed off on it as a review. That’s my understanding and it is available online.

MS. URQUHART: Okay.

And we’ve discussed this a number of times that there was in various independent engineer reports from 2014 and even earlier and going on into 2015, 2016 – the independent engineer repeatedly brings up the fact that there is not – that mapping of the geotechnical conditions as they’re being found isn’t being done as they’re being found, so on an ongoing basis.

Was that something that was ever – and from my understanding up until – this mapping was produced and was never prepared despite repeated – you know, repeatedly the IE saying it needed to be done. And I’m wondering whether that was ever flagged to you or in your department and whether that was something that would be of concern.

MS. COADY: The independent engineer’s report is clearly reviewed by the department and by the Oversight Committee and I read them as well, and questions would have been raised around the mapping. I just cannot – at this particular time it would be – I know that Mr. Marshall will be appearing before you, he can advise you as to where we are on that particular issue, but I’ll take it as well and consider what’s been done as well.

MS. URQUHART: And so my understanding from Gilbert Bennett’s testimony was that this mapping was not – that records were being kept but mapping wasn’t being done.

MS. COADY: Okay.

MS. URQUHART: Despite the fact that it had been raised on numerous reports of the independent –

MR. SIMMONS: Commissioner, I don’t think that is quite correct. I think Mr. Bennett’s evidence was that all the records were carried in the field and the intention was to actually produce the as-built maps at the end of the project, and that I think he gave evidence that

that work has in fact been done at the end of the project.

MS. URQUHART: And what I'm referring to is not as-builts. My understanding and my read of the independent engineers, what they were seeking was that as the geotechnical conditions were being found and discovered, they would be transposed on to a map so that the information was all in one place, not in notebooks. They were held in Labrador, they couldn't be accessed by folks here on the ground.

MR. SIMMONS: I think we're talking about the same thing. That's the process. The information is gathered in the field, it is eventually transposed into the mapping. That's what I take out of the evidence, but –

THE COMMISSIONER: Right.

So, again, my understanding is – I did a pretty good review last night of Mr. Bennett's testimony but my understanding is when mister – actually, it was almost at the end of the day yesterday – was that what he was being asked was related to the very same thing you're asking. However, that being said, the minister has already indicated that she's prepared to review that and look at it and to provide an answer, and one way or the other, hopefully you can get an answer.

But, to me, I think what Mr. Bennett did say yesterday is that it wasn't being done as it was ongoing but the notes were being kept, as you said, in notebooks, in the field, but that has – the intention was to do it at the completion of the project. That now has been done, and he did refer to it as as-built. Now whether as-built means the same thing, I really don't know, but I assumed it did, okay?

MS. URQUHART: Right.

THE COMMISSIONER: So, Minister, this is clearly an issue that's arisen and whatever you could do to assist us would be greatly appreciated.

MS. COADY: Thank you.

THE COMMISSIONER: Yes.

MS. URQUHART: Thank you.

You indicated in your earlier testimony that this project is a whole government's responsibility. So it's – while it's – your – under your portfolio, really everybody is responsible for this. Is that – ?

MS. COADY: Well, there are touch points in various departments. For example, Municipal Affairs and Environment has the regulatory responsibility of the environment. And so, therefore, they would be requiring certain aspects of the project for the environmental responsibility. They are the regulatory authority on that.

From the financial means, the Department of Finance, obviously, has been engaged. And then, of course, the Premier as minister of Indigenous Affairs would have direct, you know, direct interest and involvement as well.

So, I do see it as a whole of government; though, I am – and I take my role pretty seriously – I am responsible within government for Nalcor. But there – because there are interactions and touch points, there are interactions on an ongoing basis with other departments.

MS. URQUHART: But you would agree, at least, that the – all of government has a fiduciary responsibility towards Indigenous people of this province?

MS. COADY: Correct.

MS. URQUHART: Okay.

And so while methylmercury specifically –

MS. COADY: May I just interrupt you? You –

MS. URQUHART: Mmm.

MS. COADY: – used a particular word, so I just wanted to go back there. You said –

MS. URQUHART: Mm-hmm.

MS. COADY: – fiduciary.

MS. URQUHART: Fiduciary, yes.

MS. COADY: What is your understanding of that word? Because that word sometimes has interesting meanings to different people. So, I wonder if I just –

MS. URQUHART: Well, the Crown. So the government, the state, under the Constitution and case law –

MS. COADY: So it does have responsibility, but fiduciary might be a little different. So I wanted to make sure that we were clear. All of government has a responsibility to Indigenous people.

MS. URQUHART: Yes. Well, I won't pin you to a legal, you know –

MS. COADY: Yes.

MS. URQUHART: – and I'm not asking you to be a lawyer, but government has a responsibility, and whether or not you want to use the word fiduciary, I believe that's the correct term, but that's –

MS. COADY: Okay.

MS. URQUHART: – we can – that's not the point. All of government has that –

MS. COADY: Has a responsibility.

MS. URQUHART: – responsibility.

And the evidence that we've seen indicates that the government sort – essentially adopted – and this was prior to your time. So in 2012 adopted the position, Nalcor's position that there would be no significant effects beyond the mouth of the river.

Is that your government's position?

MS. COADY: I'm sorry, the – what was the position previously?

MS. URQUHART: That there would be no –

MS. COADY: There'd be no (inaudible) –

MS. URQUHART: – significant effects beyond the mouth of the river.

MS. COADY: Well, I can tell you that the – what the monitoring – and, again, this is not –

MS. URQUHART: Mmm.

MS. COADY: – in my department, so I refer you to the technical expertise within the Environment –

MS. URQUHART: Mmm.

MS. COADY: – Department of the Environment as to the – what the effects of the monitoring would be. Monitoring, of course, as – that is being carried out today on what the effects of the methylmercury are.

MS. URQUHART: Yes; but, obviously, your government has decided to proceed with the project. That it will go ahead, that impoundment will happen. And so you must have some view of whether or not upon impoundment – I mean, right now we're only at, whatever it is, 23 to 25 metres. It's going to go up upon full impoundment, whether or not there will be impacts beyond the mouth of the river.

MS. COADY: That is better directed to the Department of the Environment –

MS. URQUHART: Okay.

MS. COADY: – as to what they're seeing and what they're observing and what their impacts – they believe would happen. I'd leave it to their technical expertise.

MS. URQUHART: Okay. And were you – I'm sure you're aware that in 2013 Nunatsiavut had sought funding for research and monitoring into methylmercury.

MS. COADY: In 2013? No, I am not aware. I was not aware that they sought funding.

MS. URQUHART: And, actually, they were denied funding at that time and it – they ended up going out and doing their own studies which were then published in 2015.

MS. COADY: I am – that's the Calder report that you're referring to?

MS. URQUHART: And the Schartup – yes.

MS. COADY: Okay.

MS. URQUHART: And, Madam Clerk, if you can please go to P-03590.

THE COMMISSIONER: 3590.

MS. URQUHART: And that'll be on your screen.

THE COMMISSIONER: Yes, that's not going to be in your book.

MS. URQUHART: So, pursuant to the, you know, following the JRP – following the release from environmental assessment in March of 2012, the project – the proponent, Nalcor, was required to prepare and have approved Human Health Risk Assessment Plan to address the human health risks. And this, you know, throughout 2012, 2013, 2014, 2015, these were being – various different iterations were being prepared and there were consultations ongoing on those. They had not been approved up to that point.

And, Madam Clerk, if you go to the bottom of – this actually has a fair bit of, sort of, background. If you can scroll through it a bit you'll see there is a – the timelines of some of the –

MS. COADY: I will point out, this is information note –

MS. URQUHART: Yes.

MS. COADY: – to the Department of Municipal Affairs and the Environment (inaudible.)

MS. URQUHART: Yes. No, I understand that.

MS. COADY: Okay.

MS. URQUHART: Yeah. Yeah, I understand the process.

Thank you.

So, if you'll just go to the bottom of page 2, please, Madam Clerk. So, you'll note – so this is all during your time. There was – so NG had commented that they – there wasn't sufficient

technical detail in the HHRA for them to be able to review it.

Were you aware that – of that concern at all?

MS. COADY: I was aware, generally. And, you know, in a general sense I would be aware that there was concerns, yes.

MS. URQUHART: And, in spite of that, in June of that same year your government approved this Human Health Risk Assessment Plan. Is that correct?

MS. COADY: I'm aware in a general sense. Again, you're asking for information that's coming out of Municipal Affairs and the Environment and the process that would be, you know, from a regulatory process.

MS. URQUHART: Mm-hmm.

MS. COADY: So, in a general sense, I was aware of – there are concerns by certainly by Indigenous groups around the project, around methylmercury, around the issues – excuse me – around human health – pardon me – and that the things were progressing. There was analysis being done and some work being done to try and work through these like the workshop that you mentioned.

MS. URQUHART: In fact, there were actually three workshops –

MS. COADY: Mm-hmm.

MS. URQUHART: – on methylmercury in that year. And in – we've gone to already – later Nunatsiavut then appeals that decision of government –

MS. COADY: Mm-hmm.

MS. URQUHART: – to approve that Human Health Risk Assessment Plan, and in –

MS. COADY: I think that was under Minister Trimper you're referring to in –

MS. URQUHART: Yes. Yeah.

MS. COADY: Yeah. Okay.

(Inaudible.)

MS. URQUHART: I'm assuming because you're part of Cabinet, this is a project. I mean it's quite public, this.

MS. COADY: Mm-hmm.

MS. URQUHART: There's the Make Muskrat Right campaign going on.

MS. COADY: Oh, I'm very familiar.

MS. URQUHART: There's a lot of media. I expect that you were, you know –

MS. COADY: Oh –

MS. URQUHART: – to some extent briefed on the fact that this is –

MS. COADY: Mm-hmm.

MS. URQUHART: – all happening.

MS. COADY: Absolutely.

MS. URQUHART: Okay.

And, Madam Clerk, if you can please go to 04288, this is a response that Nalcor had drafted to the appeal that Nunatsiavut Government made of the Human Health Risk Assessment Plan.

THE COMMISSIONER: It's on your screen.

MS. COADY: It's –

THE COMMISSIONER: It will be.

MS. COADY: Okay.

MS. URQUHART: And if you'll scroll down, please, Madam Clerk to page 5, there's a note here that says: Full clearing and it goes on. There's some analysis here of the fact that soil removal may trigger further EA processes, but you've already discussed that so I'm not going to discuss that. But at this time, so – and this is in, I believe, September – August or September of 2016.

MS. COADY: Okay.

MS. URQUHART: Nalcor has indicated – and this is their statement so: “The statement that ‘Nalcor did not identify any feasible way to reverse mercury contamination in the ecosystem once flooding takes place’ is incorrect. At this time a feasible mitigation measure does not exist.”

So it was Nalcor's position that there was no feasible mitigation measure for addressing methylmercury in the reservoir. Is that – was that a position that was communicated to you?

MS. COADY: I have not seen the letter to which you're referring except that you have it before me on the screen. So I'm not familiar with this particular exhibit. I can say to you that the – that the regulatory requirements of anything to do with the environment would've come from the Department of Municipal Affairs and the Environment.

I can say that Nalcor had concerns about how the – you know, how they may be able to fulfill some of the requirements that may be coming to them. And they would've been communicating those concerns to the department that would be regulating them. But I can't say, that I – that I'm not quite sure the question you're asking me.

MS. URQUHART: I'm trying to understand – on my read, at this time Nalcor is saying we have no feasible mitigation measures available to us. And I'm wondering whether that was something that was communicated to government in around that time?

MR. SIMMONS: Commissioner, just in – I'm just reading what's written there and I think the statement, “at this time a feasible mitigation measure does not exist,” is in reference to the prior quote, which is talking about reversing methylmercury after flooding has taken place, which seems to be a narrower thing than saying that there are no mitigation measures at all available. So I'm – it's just a matter of context.

MS. URQUHART: My view is that we're talking about mercury contamination in the ecosystem and whether or not a mitigation measure to address that exists. I'm not sure, I think we're –

THE COMMISSIONER: All right –

MS. URQUHART: – sort of splitting hairs on that, but that’s –

THE COMMISSIONER: Well, it’s hard because we’re dealing with somebody else’s letter. But the first statement does – and it seems to be responding to the first statement that, “‘Nalcor did not identify any feasible way to reverse mercury contamination in the ecosystem once flooding takes place’ is incorrect. At this time a feasible mitigation measure does not exist,” and that’s what – that’s the point that’s being made.

So I’m assuming it’s referring to once flooding has – takes place. I mean, even now we know that up to a certain period of time Nalcor was agreeing that it was possible to do wetland capping, for instance. It was only later that it was determined by them that it’s too late to do it once – because impoundment is so close.

MS. URQUHART: Mm-hmm.

THE COMMISSIONER: So I think it’s a fair thing to suggest that they are probably talking there about once flooding takes place. In other words, once they impound, there’s – they’re saying there’s no feasible way to deal with the methylmercury contamination.

MS. URQUHART: So once it’s done, it’s done, which is essentially the point we’re at now in time –

THE COMMISSIONER: Right.

MS. URQUHART: – right?

THE COMMISSIONER: Exactly.

MS. URQUHART: Brings us to –

THE COMMISSIONER: Anyway, that’s my thinking, just in response to –

MS. URQUHART: Yes.

THE COMMISSIONER: – what we’re –

MS. URQUHART: Mm-hmm.

THE COMMISSIONER: – trying to do.

MS. URQUHART: I appreciate that.

So at the time – and I think we’ve dealt with the risk of returning to – returning the water tables as was promised in the October 2016 meeting. We dealt with that issue.

Madam Clerk, if we can please go to P-04252 – sorry, that will be on your screen.

THE COMMISSIONER: That’s going to be on the screen. Yeah.

MS. URQUHART: And this is a timeline that’s been prepared for methylmercury actions. And it goes through some of the workshops that were held in that year. And I just wanted to note that – so you’d indicated – so the IEAC is established in October of 2016. Five months later, the terms of reference are finalized. Five months after that, the chair and members are appointed. They then, a month later, released their interim report and six months later their final recommendations and that’s on April 10, 2018. The dates are all held in here – contained in here.

You stated earlier in your testimony that government received the IEAC report, had meetings with the chair and Indigenous groups and I believe you said: Those are the facts as I believe, as I’m aware. So, obviously, I’ve just pointed to this as a touch point for the timelines.

Madam Clerk, if you’ll please go to P-04179. This is an email from August 15, 2018, and it’s from the chair of the IEAC to Jamie Chippett. And it reads: “I hope that you are well and having an enjoyable summer. Hard to believe ... it has been a year since we started the IEAC going.

“I was wondering what decisions have been made. If I can be of any assistance please do not hesitate to contact me. I believe that I have a good grasp of the issues including the sensitivity associated with each of the recommendations.

“Hope to hear from you. Best wishes Ken”

So this is in August; they’ve released their report in April. It sounds to me as though they’re not – they hadn’t really had a great deal of communications with the chair. Is that surprising to you?

MS. COADY: It's hard for me to question another department on their work processes and on the assessments they were doing. I was not privy to them so I can only say that I understand that they were doing work but I can't comment on their work processes.

MS. URQUHART: And, Madam Clerk, if you can please pull up P-04183. And this is, again, an email from the chair and it's dated September 30, 2018, so this is some five months after the report is released. And it says: "Hello Jamie

"I was somewhat surprised that I did not get a response to my last message to you but I realize that this is a very difficult decision for the Province.

"I know that I am the former Chair of the IEAC but I am still concerned that the hard work that a lot of people put in has not had a response.

"I would hope that you are interested in something more than the input from Nalcor at this stage. I have tried hard to represent, as Chair, the results of the process but it is strange that no one has asked me for my scientific opinion?

"I hope that any decision reflects the concerns of the stakeholders and the science reviewed by the IEC, not 'new' information that was not made available by Nalcor to us as requested.

"Pleased to talk anytime."

Is that surprising to see this coming from the chair of the IEAC?

MS. COADY: This is the first time I've seen this email, and it is challenging to know what was happening in another department. I really find it difficult to comment, except that I would've thought that they were in connection. That's all I can say is this is between two other individuals that I'm not privy to their work processes.

MS. URQUHART: Okay.

And, Madam Clerk, if we can, please go to P-04304. And that's – sorry – binder 1, tab 30. And this is the November 1, 2018 technical briefing. And now I note that there were

previous – there were earlier iterations of technical briefings, but this is the first one that seems to have government response indicated.

Madam Clerk, if you can, please can to page 15 – actually, sorry, page 16.

And, Minister Coady, I'd ask you to read that out into the record, if you could, please.

MS. COADY: Page 14?

MS. URQUHART: Page 16, in red. It's slide 14, yeah. It's a bit confusing that (inaudible).

THE COMMISSIONER: Yeah, on the top of the page, it's – the numbering –

MS. COADY: The page –

THE COMMISSIONER: – is in red.

MS. COADY: – so it's – what I'm seeing on the screen is correct? Page –

MS. URQUHART: Yes.

MS. COADY: – 16?

THE COMMISSIONER: Yes, page 16.

MS. COADY: I'll read that.

MS. URQUHART: Yes.

MS. COADY: Page 16: "IEAC Recommendation (Mitigation) Government Response."

Bullet: "There was lack of consensus by the IEAC scientists, the IEAC oversight committee, and the IEAC voting members for targeted soil removal.

"Wetland capping had unanimous support among the voting IEAC members.

"Therefore, Nalcor will be ordered to proceed with wetland capping."

MS. URQUHART: And I just wanted to confirm that that was never actually done, to your knowledge?

MS. COADY: There was a decision before Cabinet in January of 2019.

MS. URQUHART: So in November of 2018, that decision that was presented in this deck was not acted on until January of the following year. Is that your evidence?

MS. COADY: That is what I understand.

MS. URQUHART: Okay. And that is 10 months after the release of the IEAC – the math – nine months. Math’s not necessarily my strong suit. Nine month later.

MS. COADY: Actually, it’s less than that but – because it was – the IEAC report –

MS. URQUHART: Yeah.

MS. COADY: – was released in April.

MS. URQUHART: Yeah.

MS. COADY: So –

MS. URQUHART: (Inaudible.)

MS. COADY: – that would be roughly six, seven months. Seven months after.

MS. URQUHART: No, I have 10 still.

MS. COADY: Okay. Well, I won’t – we won’t argue, it’s late in the day.

THE COMMISSIONER: April to November –

MS. COADY: It’s a long time.

THE COMMISSIONER: – April to November isn’t 10 months but –

MS. COADY: (Inaudible.)

MS. URQUHART: That was to January, sorry.

THE COMMISSIONER: Oh, to January.

MS. URQUHART: To January when the decision –

MS. COADY: Oh.

MS. URQUHART: – was actually – when you actually took –

MS. COADY: Sorry, I thought you were talking about to November.

MS. URQUHART: – some sort of action which – in the end, the letter wasn’t actually sent so, there wasn’t really an action in the end.

So I take it from that perspective, from the perspective of beyond monitoring – and I know that you’ve indicated a lot of work went into the – sort of first three recommendations, but on that fourth one, it appears that the government really took a wait-and-see approach.

MS. COADY: I don’t believe they took a wait-and-see approach, that is not my understanding. My understanding is they were reviewing the recommendations. So I cannot classify them as a wait-and-see. I can only classify them as they were analyzing the work that was done and seeking to ensure that it was the appropriate response. I cannot speak to the time delay.

MS. URQUHART: And when they did make a decision, they determined it wasn’t a priority to act on it immediately.

MS. COADY: I’m sorry, say that again.

MS. URQUHART: When this decision was made in November, they didn’t make it a priority to act on it immediately.

MS. COADY: You’re asking me to comment on another department’s work, it’s – I can’t say what their thinking was. I can – I can give you my personal observation, I cannot give you my – I do not know what was happening within the department at the time. So I – it’s very hard for me to comment.

MS. URQUHART: Those are all my questions. Thank you.

MS. COADY: Thank you.

THE COMMISSIONER: I’m gonna ask probably the most stupid question of the day, but I think one that, if you’re watching this inquiry, you might wanna ask. And that is: Notwithstanding the fact that you’re getting

advice from Nalcor at this point in time that wetland capping is not possible, it's not feasible – that assumes that impoundment is going to take place in the next couple of months. Is there a reason why the government has – or has the government determined that wetland capping can not take place by virtue of delaying the impoundment?

MS. COADY: Certainly, there – I am sure within the Department of Municipal Affairs and Environment and within the – I know that there are discussions happening with the Indigenous leaders. It would be from Nalcor's perspective – it was always on the critical path to have impounding beginning – they have a permit from July 15 to the end of September, whether that permit can be changed or whether there are other potentials of movement – I know that's on the critical path, from the time perspective.

THE COMMISSIONER: Right. So assuming that Mr. Marshall could explain to us what the impact would be, you don't fully understand the ins and outs of delay and what it would mean or –

MS. COADY: I think it would be best – because I know he is before you next week, I could give you my general sense that I – my understanding is that there is a permit given for a certain – particular period of time, that there is a significant amount of work, and that delay of the impoundment would mean missing certain windows. And how much wiggle room there is within that is to be determined.

THE COMMISSIONER: And the Premier is gonna be testifying next week, so we can ask him as well.

All right. Fine. Thank you.

Former Nalcor Board Members?

MS. MORRIS: Good afternoon, Minister Coady.

My name is Julie Morris and I represent the Former Nalcor Board Members: Ken Marshall, Gerry Shortall, Tom Clift and Terry Styles.

So, most of my questions have already been asked, so I won't keep you that late today. My

first question: Ken Marshall tendered his resignation in February of 2016 and remained at the request of Premier Ball. Was it the intention of the new government to terminate the board of directors at that time that Mr. Martin was terminated? And if so, on what basis?

MS. COADY: There was no discussion about the board of directors at the time of Mr. Martin's resignation – or departure, I'll use the term departure. At the time of his departure, there was no discussion about the board of directors at that time.

We had – leading up to that, as you know, my thinking was we have to expand, develop, improve upon the numbers, but there was no discussion at that – you know, that we were dealing with an awful lot of other things; there was no real discussion about the departure of the board.

MS. MORRIS: Okay, thank you.

In Mr. Peddigrew's line of questioning, he suggested to you that in the context of Mr. Marshall's letter to yourself and the Premier, that it appeared that Mr. Marshall was giving priority to the corporation instead of to the public and the shareholder. I understand from the evidence you provided today that you have a high level of respect for the Nalcor board members and their fiduciary duty, including the former board members. So in your particular dealings with Mr. Marshall, did he act in any manner, in his capacity as a board member, to lead you to believe that he or other board members were not fulfilling their fiduciary roles and responsibilities?

MS. COADY: Not in my – you asked about my direct dealings with Mr. Marshall –

MS. MORRIS: Yes.

MS. COADY: – not in my direct dealings with Mr. Ken Marshall – I should say his first name –

MS. MORRIS: Yes.

MS. COADY: – not in my direct dealings with Mr. Ken Marshall. He certainly was engaged and involved.

MS. MORRIS: Sorry? What –

MS. COADY: He was engaged and involved in what he was doing and he was acting in a manner that was very professional and dedicated.

MS. MORRIS: Thank you, those are my questions.

THE COMMISSIONER: All right, thank you.

Newfoundland and Labrador Construction Trades Council, not here.

Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: I don't have any questions on redirect, Mr. Commissioner; however, I understand that my client just wishes to briefly address a point with the Commission. Thank you.

THE COMMISSIONER: Okay, maybe we should do that now, then.

MS. COADY: Absolutely. I just – before I concluded, I had said to counsel that I would like to say one thing to you, Mr. Commissioner, and to counsel and to those that have been working so diligently on this – is to thank you. This has been an onerous task, I realize, but it is an important one. And your deliberations and your – and the evidence that you're gathering will inform not only government but the people of this province on a very important issue and guide us, I think, in the years to come as to how we can improve upon the processes, on especially anything of this magnitude that the province may or may not undertake, but even guidance in terms of best practice, in terms of the development of our government. So I thank you and I just wanted – I thought at the end of the day I would at least say that to everyone in this room – how much the work that you're doing is appreciated.

THE COMMISSIONER: Okay, thank you.

Redirect, Mr. Learmonth?

MR. LEARMONTH: No redirect.

THE COMMISSIONER: Okay.

I just want to go back to a little question that I put to Mr. Bennett last night. I'm assuming that the \$10.1 billion that has been thrown around now as the number does not include the Maritime Link – the cost of the Maritime Link.

MS. COADY: No, it would not.

THE COMMISSIONER: Okay.

So has government – to your knowledge, has anyone in your department or in government generally – Finance or whatever – ever costed out what – you know, we're obviously not getting the Maritime Link for nothing. We're paying Emera back for the fact that they've paid the \$1.555 billion for the Maritime Link.

Has anyone in government looked at costing – figuring out a method by which you can cost the number for the province to pay back Emera for the ownership of the Maritime Link in 35 years' time?

MS. COADY: I'm not aware of any work that had been done around either two things: the equity share that the – that Nova Scotia holds or the opportunity cost of that holdings – of the holdings. So not that I'm aware, Mr. Commissioner.

I have asked for some analysis to be done on the total impact of the project. We know that it is \$10.1 billion and we know what it will be with interest. But we don't know over the – over this – over the length of time that we're paying the amortization of the project what the impact will be. So I have asked for some analysis to be done on that, but we can certainly add to that analysis what the impact of the Maritime Link is.

THE COMMISSIONER: Okay. I would like to see that if –

MS. COADY: Mm-hmm.

THE COMMISSIONER: – possible. I think we've made a request already. But –

MS. COADY: Okay.

THE COMMISSIONER: – I'm not certain if that's the case or not. So maybe that's a take-away that you could maybe look at or consider.

All right, good. Thank you very much.

We'll adjourn until tomorrow morning. We have two witnesses tomorrow. One is a witness from Grant Thornton who has done some work on the procurement process for – and supply process for Nalcor Energy. There's not much controversial in that report from what I can recall having read it a few weeks ago. But I do wanna make sure that we get that before the Commission.

And then I believe – I think we're starting with Stan Marshall tomorrow at some point in time as well. So we'll start tomorrow morning at 9:30 and we will be finishing tomorrow afternoon at 4:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.