



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 1

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*Commissioner: Honourable Justice Richard LeBlanc*

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**CLERK (Mulrooney):** This Commission of Inquiry is now open. The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right. Good morning.

Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

The first witness today will be Mr. Todd Stanley.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. LEARMONTH:** The first witness today will be Mr. Todd Stanley. Mr. Stanley was the senior legal counsel with the Department of Justice and Public Safety from 2001 to 2018. His last position before returning to private law practice was deputy minister of Justice and Public Safety.

I just have a few introductory comments to make and that's because a lot of the documents or some – at least some of the documents that are going to be entered as exhibits will be redacted. And, likewise, in the transcript of the interview hearing there are heavy redactions, particularly where it deals with water management and other matters that fall under the umbrella of solicitor-client privilege.

I just wanted to provide a little of background so the public will understand the process that we have followed since the Commission was struck. Under an agreement between the Department of Justice and Public Safety and the Commission in January of this year, the department agreed to provide the Commission with all legal opinions and reviews in its possession. Even though many, if not all, of these legal opinions and reviews were protected from disclosure by reason of solicitor-client privilege. The understanding was that although the Commission would be able to review all of these documents, the Department of Justice reserves the right to assert claims of litigation, privilege – excuse me – solicitor-client privilege where

applicable before these documents were distributed to the parties with standing.

In accordance with this agreement, the department has redacted some documents in full or in part. The redactions have been made – are legitimate and are necessary in order to protect the province's legal position on certain legal matters. In addition, certain other documents have been redacted because they are commercially sensitive.

There is a third category of documents that have been redacted – which really don't apply to Mr. Stanley's evidence – and they are documents which have been redacted in whole or in part because they were considered by me, in the case of my review, to be irrelevant or of insufficient value to the work of the Commission to get into an argument with the Department of Justice as to whether they fell under claims of solicitor-client privilege or commercially sensitive. Such a – you know, arguments on these points which were dealing with irrelevant or not necessary to the work of the Commission – items would've slowed down the work of the Commission, or possibly interfered with the scheduling.

However, as I said, the claims – the redactions in the case of Mr. Stanley, who will be testifying today, are on the basis of solicitor-client privilege. Now, because solicitor-client privilege is an issue, in particular, with the evidence of Mr. Stanley there will probably – this will probably extend the time (inaudible) today that would otherwise take to complete Mr. Stanley's evidence. And there may be times during the presentation of Mr. Stanley's evidence when things appear to be unstructured or perhaps even ragged; however, the extra time will be well spent because the province is entitled to assert claims of solicitor-client privilege.

Perhaps Mr. Ralph or Mr. Leamon would like to make some additional comments on this subject matter before we start?

**MR. RALPH:** Thank you, Mr. Learmonth.

I think that summarizes very well the procedure that the Commission has adopted and it is important for the Government of Newfoundland and Labrador to point out that we have given every document that we've found relevant to this

Inquiry to the Commission to read before anything has been withheld or redacted. And it's withheld or redacted only as a last resort to protect the interest of the people of Newfoundland and Labrador.

But again, I thank Mr. Learmonth. I think he has very well summarized the procedure.

**THE COMMISSIONER:** All right. So just before we begin and just to comment on that.

One of the things that I've tried to do is to try to ensure that the Commission proceeds in an orderly fashion and in a way that basically allows us to get the work done in the period of time that we have to do it – is to instruct counsel to work with parties, including counsel for various witnesses who are testifying with regards to evidence. There are certain matters, and I referred to this earlier, that are privileged matters that are outside of the ambit of this Inquiry. There are other matters that I will have a direct say in with regards to what might be commercially sensitive and what is not commercially sensitive.

There is a fair bit – as I understand it, having spoken with counsel this morning – there is a fair bit of Mr. Stanley's transcript that had been – that has been provided to the parties that is redacted, and a fair bit of that – a good bit of that relates to water management. So one thing that I will say this morning is that we are very close as a Commission in determining how we are handling the – how we are going to handle the water-management issue.

One of the things that I've strived to do is to try to get agreement – and still working on getting agreement of various parties with regards to allowing a viewing of the solicitor-client information, including solicitor-client privileged information, for the Commission to review. Not for the purposes of determining whether it's right or whether it's wrong, but to determine how the risk was – how the risk of – relative to water management, if there was a risk, how it was reviewed and whether or not the – it was reasonable in the circumstances to proceed in the fashion that it proceeded. So that's the basis upon which I'm dealing with that particular issue.

There are other matters, obviously, that Mr. Stanley will be speaking to that are not directly related to water management, but also are not crucial to the evidence that I may need to hear with regards to the matter. I've given full confidence to – I have full confidence in Commission counsel with regards to their ability to work these things out. And I trust that I'm getting what I need to get and what I can get in order to get a – make a proper determination at this time.

So having said that, Mr. Stanley, I'll ask you to stand and you can indicate whether you wish to be affirmed or sworn.

**MR. STANLEY:** Affirmed, if it's (inaudible).

**THE COMMISSIONER:** Please.

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

**MR. STANLEY:** I do.

**CLERK:** Please state your full name for the record.

**MR. STANLEY:** Gregory Todd Stanley.

**CLERK:** Thank you.

**MR. LEARMONTH:** Before Mr. Stanley begins to present his evidence, I wanted to enter a new exhibit. It's P-00529. There are other exhibits that I'll be referring to today in my questioning of Mr. Stanley that have previously been entered into evidence, so the only new one is Exhibit P-00529.

**THE COMMISSIONER:** Thank you.

**MR. LEARMONTH:** Mr. Stanley, would you please provide us with a summary of your education after high school?

**MR. STANLEY:** I graduated from high school, 1987. In 1992, I graduated with a Bachelors of Commerce from Memorial University, and in 1995, I graduated with a bachelors of laws from the University of Toronto.

**MR. LEARMONTH:** All right.

And is it correct that from 2001 to 2013 you were Justice legal counsel providing legal services to the Department of Natural Resources?

**MR. STANLEY:** From 2001 to 2013, yes, that would be correct. Yes.

**MR. LEARMONTH:** Okay.

And am I correct in understanding that the official reporting line would be for Nalcor to report to the Department of Natural Resources in the first instance when reporting to government?

**MR. STANLEY:** I'm not sure there would've been a formal line, but yes, generally Nalcor would be viewed as coming through the Department of Natural Resources and the executive at the Department of Natural Resources, yes.

**MR. LEARMONTH:** All right.

And so would you be able to go as far as to say Nalcor was supposed to report to and receive direction on significant matters from the Department of Natural Resources?

**MR. STANLEY:** I think it would be more accurate to say that the Department of Natural Resources would be involved in Nalcor coming to government and looking for direction on matters. But I'm not sure that there was a formal, you know, constricted chain of command that, you know, Nalcor was only supposed to receive direction from the Minister of Natural Resources on all matters, no.

**MR. LEARMONTH:** Yeah.

But in the case of a Crown corporation, is it correct that any Crown corporation has a department to which it is required to report?

**MR. STANLEY:** Yes – sorry – the, yeah, the usual process would be that there would be a responsible department for every Crown corporation and agency and that, for example, that department would be the one who would put forward Cabinet papers relating to that Crown department or agency. And in this case, Natural Resources would be the department putting forward Cabinet papers in respect of matters to

do with Nalcor and Newfoundland and Labrador Hydro.

**MR. LEARMONTH:** Thank you.

Now, when you were legal counsel doing work for the Department of Natural Resources, who was it that you report to?

**MR. STANLEY:** As a solicitor for the Department of Natural Resources, you would overall be responsible and reporting to and taking instructions from, ultimately, the deputy minister, but depending upon the structure of the department and a solicitor's relationship with the individuals in the department, you could be working more closely with assistant deputy ministers or directors or even people at the policy-analyst level depending on the project.

**MR. LEARMONTH:** All right.

And were you the senior Justice legal counsel who was providing legal advice to the Department of Natural Resources throughout the period 2001 to 2013?

**MR. STANLEY:** I can't say that starting in 2001 I would have been. The Department of Natural Resources, under its umbrella over time, included aspects of Forestry and Mining. I generally did not advise on those matters. When it came to electricity- and energy- and oil-and-gas-related matters, I would've been the primary solicitor, although there were other solicitors that I worked with to provide that advice.

**MR. LEARMONTH:** All right.

And during your tenure as legal counsel of – with responsibility for the Department of Natural Resources, would the process be when the Department of Natural Resources was making a recommendation to Cabinet that you would review those recommendations before they went to Cabinet Secretariat?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah.

And what would be the purpose of the review in those situations?

**MR. STANLEY:** Ordinarily, legal counsel would be brought in by the department to – the process was legal counsel would be brought in by the department to advise and consult with the department in the formulation of a policy. But in any event, the Cabinet papers submitted by the department has to contain, in the rear, a legal and legislative analysis of what is being proposed by the department, so that departments, in order to be – to essentially to complete their Cabinet paper, according to the templates, had to show that the matter had gone through their legal counsel and their legal counsel had advised on it.

**MR. LEARMONTH:** All right.

And is it correct that the Department of Justice – I realize it's called Department of Justice and Public Safety –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – but I'll just refer to it as Department of Justice –

**MR. STANLEY:** Sure.

**MR. LEARMONTH:** – for the sake of brevity. Is it correct that the Department of Justice would generally resist any effort by another government department to have a Department of Justice legal counsel embedded in that other department?

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Perhaps you could explain –

**MR. STANLEY:** I can explain.

So the – if I – I'll explain a bit more broadly. The Civil Division of the Department of Justice is the law firm essentially internally for government. The numbers vary, but there's approximately 20 to 22 solicitors in that division who provide solicitor departmental advice to various departments and agencies in government.

We have always – I say we; it's no longer we, but putting my old hat on for a second. The department always maintained a policy that the

solicitors would be physically located together in a quasi-firm structure, as opposed to having solicitors located in the departments for a number of reasons.

One of them was to maintain the optical and the practical independence of the solicitors, and it also provided the solicitors involved with – we found it was extremely beneficial for the ability to actually consult with, discuss with and work with other solicitors as opposed to being a sole solicitor possibly alone in a department.

**MR. LEARMONTH:** All right.

So I believe you indicated in your interview on August 31 of this year that – I think you said that the reason that Justice lawyers stay within Justice and are not embedded in departments is – one of the concerns is that if a lawyer is embedded in a department, that lawyer might have a tendency to forget which team he or she is playing for?

Those were your words, I believe. Is that correct?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah. Is that an appropriate description ...?

**MR. STANLEY:** Yeah, I appreciate the opportunity to clarify what I might've said.

Yes, the requirement and the expectation of government is that the legal – the solicitor would be a, in the end, an arms-length assessment of what the department is doing, as part of the process of advising Cabinet and commenting on Cabinet papers. So there is a concern that if you have a solicitor embedded in the executive of a department, it is difficult both practically and conceptually to maintain that independence.

**MR. LEARMONTH:** Okay.

So the reason that legal counsel are not embedded in other departments is to – an attempt to ensure independent, unbiased advice?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yes, okay. Thank you.

During the course of your employment with the Department of Justice, did you have occasion to have direct contact with representatives of Nalcor?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

And would your contact with Nalcor be with senior executives including Edmund Martin and Gilbert Bennett?

**MR. STANLEY:** Yes, those and others over the course of my working there –

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** – working with the department.

**MR. LEARMONTH:** Who other – what other representatives come to mind?

**MR. STANLEY:** So, my involvement with Nalcor would have been on an issue-by-issue basis. So depending on the issue I was dealing with, it might depend on who you were dealing with.

I had contact with Nalcor's internal legal counsel, including Wayne Chamberlain, Peter Hickman and – he's going to get mad at me if I forget his name.

**MR. LEARMONTH:** Todd Newhook, I think it is.

**MR. STANLEY:** Todd Newhook and others there. The – I also, because most of my work involved dealing with the commercial and financial side of the development of the Lower Churchill as it got going, I had a lot of involvement with various individuals working for Derrick Sturge, who was the CFO – who is the CFO of Nalcor – including Auburn Warren, Jim Meaney and others.

**MR. LEARMONTH:** All right.

Did you at any time during your tenure in the Department of Justice have communications with Nalcor on project cost estimates for the Muskrat Falls Project?

**MR. STANLEY:** Other than it being a one way, where I would have been told what the project cost estimates were, generally, no.

**MR. LEARMONTH:** No.

So you wouldn't have received any of the supporting documents, for example, for the cost estimates for the term sheet with Emera or the DG2 numbers or the DG3 numbers, is that correct?

**MR. STANLEY:** No, I would just have known what those numbers were because of their inclusion in various government documents.

**MR. LEARMONTH:** Yeah.

Now, in – I just wanted – in your interview you said that Nalcor's formulation of its cost estimates for the project was, from a legal point of view, a black box. Do you recall saying that?

**MR. STANLEY:** Yes, yes.

**MR. LEARMONTH:** Can you just explain what you meant by a black box?

**MR. STANLEY:** The process whereby Nalcor arrived at various cost estimates by use of the term black box, I mean that there was no transparency from the Department of Justice into that process. That is partially a function of the fact the Department of Justice would have brought nothing to that process, nor possibly had any expertise in what that process involved. And so, as a result, the numbers that came out of Nalcor, we knew that Nalcor was doing cold eyes review, we knew that Nalcor was having various reviews done of the work they had done. But, at the end of the day, we just saw the number, we didn't see anything behind it.

**MR. LEARMONTH:** You never received any documentation in relation to cost estimates for either DG2, DG3, is that correct?

**MR. STANLEY:** Not the supporting documentation, no, but I'm not sure I would have expected to as a solicitor.

**MR. LEARMONTH:** Yeah. So that wasn't part of your mandate to review those.

**MR. STANLEY:** No.

**MR. LEARMONTH:** Do you know what department, if any, conducted a review of those figures? Do you –

**MR. STANLEY:** I would –

**MR. LEARMONTH:** – have any personal knowledge of that?

**MR. STANLEY:** No. I don't know of any department doing a review of those numbers.

**MR. LEARMONTH:** Okay. Based on your experience, would you expect that some department in government would have conducted a review of those figures?

**MR. STANLEY:** Yeah. Any work being done to review those numbers would have either of been by the Department of Natural Resources, but I would expect as well the Department of Finance.

**MR. LEARMONTH:** Okay. But you – that would be what you would expect.

**MR. STANLEY:** That would be –

**MR. LEARMONTH:** You're not saying –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – I take it, that they did these reviews?

**MR. STANLEY:** I don't remember there being any. I don't remember seeing anything of any review of those numbers, no.

**MR. LEARMONTH:** Okay. Thank you.

Now, I want to – you've said earlier, and correct me if I'm wrong, that generally the – Nalcor would be expected to report to the Department of Natural Resources in the first instance? Not all the time, but –

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** – generally. And I want to ask you some questions about – under the topic of government's oversight of Nalcor.

Can you explain, based on your observations as senior legal counsel from 2000 – well, from 2001 to 2013 – your understanding of the Province of Newfoundland as oversight of Nalcor and whether it conformed to the usual expected course?

**MR. STANLEY:** Well, I think I may have noted in my interview, I'm not sure, well, there was a normal course given the nature of what Nalcor and Newfoundland Labrador Hydro was – were getting involved in. The traditional model that you would have of a Crown agency coming through its responsible department was not followed exactly the same way it would be for another agency such as, you know, the workplace compensation commission or The Rooms or something like that.

Quite frequently the government's interaction with Nalcor was at a higher level in terms of briefings and on important issues. I think I mentioned in my transcript, the – in my interview – that a lot of times it was Nalcor coming into the Premier's office. And I should clarify that, that a lot of times what would happen would be a presentation by Nalcor, physically in the Premier's office, in the room for that presentation would be representatives from the Premier's office and usually the premier, but also representatives from the various departments involved.

So, if it was a Finance matter, ordinarily the minister of Finance, the deputy minister of Finance would be there. If it was a Natural Resources matter – and, frankly, at most times somebody senior from the Department of Natural Resources would be there. But on the bigger issues and the bigger decisions that needed to be made, that would ordinarily be how it would occur as opposed to a presentation to just the Department of Natural Resources and then the Department of Natural Resources carrying the ball within government.

**MR. LEARMONTH:** And that would be the normal course, what you just mentioned before?

**MR. STANLEY:** That would be the normal course for, sort of, most other Crown agencies recognizing they're not – they weren't involved in the magnitude of issues that Nalcor was, yes.

**MR. LEARMONTH:** So there was more direct reporting to the Premier's office than there would normally be?

**MR. STANLEY:** Yes. Yes.

**MR. LEARMONTH:** Yeah. And I think in your – I just wanted to put something to you that you said in your interview, quoting page 18 of your transcript: "There was an aspect that Nalcor was – there were concerns at Natural Resources – concerns in government that there was insufficient oversight or insight into what Nalcor was doing, mostly on the control – on a host of fronts over time. Most of the work that Nalcor did from about – on the Lower Churchill – from, I don't know, 2009 to 2012 or '13, Nalcor was, you know, sort of reporting directly to the Premier's office and intervening departments found out later what was going on."

Do you recall saying that?

**MR. STANLEY:** I do. The process – and part of that can be part explained by the communications process within government. There would be matters that would be brought forward by Nalcor in a presentation at the premier's table with the executive of various departments present. There would be discussion of those issues in that context. There would be decisions and instructions made, sometimes instructions and approvals to Nalcor, sometimes decisions that matters had to be referred within government, reviewed and that sort of thing.

But, as a part of the process of government, there were times when the results of that meeting may be communicated through Nalcor far more quickly than they were communicated through government to the people who are actually doing the work.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** So you had circumstances where the people at Nalcor, at the operational level, may have known what had been decided in a meeting before the people in government, at the operational level, had known.

**MR. LEARMONTH:** Okay. Is that normal?

**MR. STANLEY:** No, but it's probably understandable given that the people in Nalcor had one thing they were working on, which was this project, and the people in government usually had a number.

**MR. LEARMONTH:** Yeah. But you said in the passage that I just referred to that – the last point you made was, quote, "... Nalcor was, you know, sort of reporting directly to the Premier's office and intervening departments found out later what was going on."

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** So –

**MR. STANLEY:** That's what I mean, that you could have situations where a issue had come up when Nalcor came in to do a presentation in the Premier's office and the department that was – may have been involved in the actual topic or issue of that discussion that happened at the premier's table, may not have found out that was actually discussed until subsequently.

**MR. LEARMONTH:** Okay, but just to follow up on that, you say later on, on page 18 – and you're referring to the period of 2009 to 2013, I'm going to quote what you said: "So you could have circumstances where Nalcor do – come into government and make a presentation on the eighth floor ...." That's the Premier's office, right?

**MR. STANLEY:** Yes. Yes.

**MR. LEARMONTH:** "... go get the instructions and approvals, go back and then they'd call the government departments and tell them what they were doing. And the government departments would find out through Nalcor what had been approved on the eighth floor, and may not necessarily think the eighth floor had all the information in front of them that they should have when they made that decision and not agree with the decision."

That's a little different from the situation you're describing, isn't it?

**MR. STANLEY:** So that would be in a subset of the scenarios I was talking about. Yes, you could have situations where that – there were



situations where that occurred, that the government departments would be advised by Nalcor that there's been a decision made in respect of a topic. And the government departmental people at the time would've been surprised, simply by virtue of the fact that they didn't know that that topic was going to be discussed at the Premier's office, and may have had differing views or thought that the Premier's office should've had more information.

I should caveat that with that – a lot of those instances would've occurred in the early days of the project.

**MR. LEARMONTH:** Well, what do you mean by the early days of the project?

**MR. STANLEY:** So around 2009 to 2011-'12 when there was a number of the actual structural aspects of the project, how this was gonna work, how it was gonna be structured were being sorted out. And a lot of these instances I'm talking about happened the first time a topic came up.

It would not be determinative of the ultimate resolution of the matter because the matter would go through and be discussed a number of times. And the departmental views eventually would also have come into the discussion before ultimate final decisions were made.

**MR. LEARMONTH:** Yeah, but just carrying on, on that point in your transcript you say – and I'm quoting on page 18: "So the whole issue of how Nalcor's operating versus how government was operating, and the level of control or insight or" – there was a – this was a – "that was a constant issue at lower levels of government than I – than like, sort of, the Premier's office. I'm not sure I'm putting that well."

Then you say: "There was constantly discussion going on that Nalcor was basically a fiefdom. And we didn't know – always know what was going on over there, you know, at the operational level."

So you're saying that it was – well, I don't have to paraphrase, you say: There was discussion going on – "There was constantly discussion going on that Nalcor was basically a fiefdom."

Can you expand on what you meant by using the term "fiefdom" in that context?

**MR. STANLEY:** Overall – if I can provide a comment first – our interview was a fairly fast-moving and conversational piece, so there were some topics and some language used in there that, in retrospect in a transcript, may lead to some misunderstanding or could use clarification.

The reference at the operational level, such as providing advice to the department, there wasn't a lot of transparency with respect to the individuals at the – you know, at the policy analyst level or otherwise, as to what matters or how matters were perceiving within Nalcor or what they were or were not doing or how they were contemplating dealing with issues.

There was no direct operational reporting between Nalcor and the Department of Natural Resources on a detailed level. So the people working in the Department of Natural Resources, who may be working on particular issues, didn't have a good idea of what was going in Nalcor, where Nalcor may have been going on a particular issue, until it, perhaps, came to a head – higher-up.

**MR. LEARMONTH:** Okay.

But you – I mean, the word "fiefdom" was not presented to you and asked whether –

**MR. STANLEY:** Nope.

**MR. LEARMONTH:** – you agreed; this was a word that you came up with –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – on your own free will.

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** And are you attempting to qualify your use or choice –

**MR. STANLEY:** No.

**MR. LEARMONTH:** – of that word?

**MR. STANLEY:** No, I mean, the general impression was that the people at Nalcor had – were doing what they needed and thought they wanted to do to get the project that they were working on advanced. And it – they weren't necessarily always – they didn't view – they didn't necessarily always view the Department of Natural Resources as having an oversight role in doing that.

**MR. LEARMONTH:** Well, then, who – do you know who they thought had an oversight role, if it wasn't the Department of Natural Resources?

**MR. STANLEY:** Well, the people in – at the level I'm talking about in Nalcor that we would've been dealing with, they would've been reporting to their own executives.

**MR. LEARMONTH:** Yeah, but not to the Department of Natural Resources, which would be the normal line of reporting, I think, based on what you said earlier?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** On some matters, yes.

**MR. LEARMONTH:** Yeah.

And just going a little deeper into this point, Mr. Stanley, with respect to the word "fiefdom," on page 19 of your transcript – I'm quoting from something you say: You know, there were instances where we met, "we went over to Hydro, or Nalcor, for a briefing on something as to how the Muskrat project would be structured – this was fairly early days – and they would tell us it's gonna be A, B or C."

And then you say: "I remember a meeting where we went – and I can't remember what the briefing was, the topic of it – but the instructions were, like, you know: And it's gonna work like this. And the government people were sitting there and were like: Well, who said it's going to work like that? That's, you know, the perceived, at least, concerns about how that would be.

"And Nalcor's response was, this was approved by the premier. And one of the Natural Resources people who was there said: Oh, that's

interesting, I don't remember writing the policy analysis on that. The comment was facetious. There was no policy analysis on it. Right? It never came through the experts at Natural Resources to say: Okay, here's the wrinkles, here's the hairs on that, here's the problem with it.

"Nalcor came and got approval from the Premier's office. We're gonna do this; marched off and had their instructions and their approvals. So that was unusual."

Do you recall saying that?

**MR. STANLEY:** Oh yes, I did.

**MR. LEARMONTH:** Yeah. And do you stand by that comment?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** You do?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah, without qualification?

**MR. STANLEY:** No, I remember exactly that meeting. As noted, it was in early days. And at the end of the day the issue that was at issue in that meeting received a number of iterations of consideration. And government's views on that ultimately were, you know, well expressed and taken into consideration. It wasn't final but in the early structural days there were meetings like that. Yes, I remember that one in particular.

**MR. LEARMONTH:** The – now, I'd like you to give us your evidence on the question of whether – well, you've said, to a certain degree in the way you've said it, that Nalcor was getting approvals directly from the Premier's office in certain situations.

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** And that would be Premier Williams or Premier Dunderdale?

**MR. STANLEY:** For most of the matters I guess we're discussing, it would probably have been Premier Dunderdale, more so than Premier

Williams. At least the ones I would have had experience with.

**MR. LEARMONTH:** Okay.

And what – was there any change in the relationship between, say, between Premier Williams and Nalcor and then Premier Dunderdale and Nalcor? So, in other words, after Premier Williams retired, Premier Dunderdale was – burst into the Premier's office. Did the relationship or reporting that you just described change in any material way from your observations?

**MR. STANLEY:** In my observation, the direct style of the premiers in dealing with Nalcor across the boardroom table changed, but that's a function of the fact that they were, in part, different individuals. I think I noted that Premier Williams, when he – while he was a promoter of the project, obviously, was also an individual that when you sat across from him and had to present something, he would – in respect of a business proposition or economic proposition such as this project was – he was a demanding person, would ask a number of questions and would – you had to make sure that you had everything buttoned down before you went in front of him on those matters.

Premier Dunderdale's style personally would've been a little bit different. That's not to say that Premier Dunderdale wasn't capable of asking pretty penetrating questions pretty quickly when you appeared in front of her as well. But there was a – the tone of those meetings from the premier's chair may have been a little bit different, yes.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** In the sense that Premier Williams was, we'll say, very much hands-on and questioning the –

**MR. STANLEY:** Yes, so –

**MR. LEARMONTH:** – positions put forward by Nalcor, whereas are you saying that Premier Dunderdale was less so?

**MR. STANLEY:** In a personal – from what I observed sitting at the boardroom table for some of these meetings, I would say, on a personal level, perhaps yes. I'd have to qualify that.

Most of my interactions with Premier Williams on dealing with Nalcor would've been on the Oil and Gas files as opposed to actual – the Muskrat Falls files, as a function of timing, and by the time Premier Dunderdale – or Minister Dunderdale became premier, the Nalcor hydro project, the Muskrat Falls Project, was expanding exponentially in terms of the scope of work and the activities.

So there was actually – it would've been more difficult to keep that level of pressure up on Nalcor in those meetings, personally, by the premier involved.

**MR. LEARMONTH:** Right.

Now, at your interview you described your understanding of the relationship between minister Jerome Kennedy, then-Minister of Natural Resources, and Nalcor, and I think you indicated that, from your observations, Mr. Kennedy didn't always have a good relationship with Nalcor, is that correct?

**MR. STANLEY:** In my – I can't claim to have been around for a lot of it, but in my view of it, Mr. Kennedy kept the pressure on the people from Nalcor when he needed answers, and at a personal level, I, you know, I saw one or two instances of exasperation, irritation, but I wouldn't comment as to his overall personal relationship.

**MR. LEARMONTH:** So what would the exasperation that you perceived be related to or caused by?

**MR. STANLEY:** If he needed – well, it would be similar to the exasperation he would probably exhibit towards departmental officials.

If he needed information to do his job and didn't feel like he was getting it, Minister Kennedy would ensure his displeasure at that was understood.

**MR. LEARMONTH:** All right.

Now, the – at your interview we had some discussion about the certain level of exasperation and irritation that was caused by Nalcor’s relationship by government and including the – on the oversight issue. Do you recall giving evidence on that subject?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

Would you comment on that please?

**MR. STANLEY:** Do you mean in terms of the Oversight Committee ...?

**MR. LEARMONTH:** No.

**MR. STANLEY:** Just to clarify.

**MR. LEARMONTH:** What I’m – okay, I’ll just – what I’ll do to make this easier and to move this along quickly – on page 21 of your transcript, you say – my question to you was: “So this relationship would that have caused concern throughout the civil service.”

And your answer is: “Yes, there was a level of the civil service that was – whose attitude towards Nalcor as this was going on was – I dunno what – I dunno if I’ve got the terminology – exasperation, irritation, there was a – as I was saying there was times when Nalcor was treating government as the – the perception was Nalcor was treating government as an entity whose job it was to do whatever Nalcor needed ... to get the projects that it was working on done, whether it was oil and gas or whatever.

“You know, most of the – I think most of the government, civil service, felt disrespected by – they didn’t perceive that Nalcor had any idea what the role of Natural Resources was. The Department of Natural Resources would be perceived to be a check on Nalcor, what they were coming in with, and instead, they were assumed to be a cheerleader. So there’s a fair amount of exasperation.”

And then you say: “There were practical issues about timing, Nalcor’s expectation that government – Nalcor could take six months to do something – miss a deadline by six months, but then expect government to be able to do it in

three weeks. Whenever Nalcor got around to it. That sort of stuff. So there was a lot.”

And this is the last paragraph: “The other thing you shouldn’t lose sight of, just for context, is, 2013, government was in budget cuts. We were laying people off, and Nalcor was hiring everybody they could find. So this perceived inequality of just plain old money, you know, resources. They got as much as – they can do whatever – they got resources to do whatever they want, and they’re coming to government and asking us to do whatever we can get done. You know, I need this in three weeks or whatever, and we’ve got two-thirds of the people we used to have, ’cause the government never – the government didn’t staff up or preserve resources to meet Nalcor’s – to meet the requirements that Nalcor was shedding into government, basically.”

Now, the first point here about the level of disrespect and that – you said that, you know, certain people in the civil service any – the perception was that Department of Natural Resources was assumed to be a cheerleader of Nalcor. Could you expand on that please?

**MR. STANLEY:** Yes, the people working in, not just the Department of Natural Resources, but some of the other departments, at the level of responsibility that I was dealing with, you know, ADMs or directors or policy analysts, they were in a, sort of, an unusual position.

Government was clearly a – not a cheerleader – a proponent of the Muskrat Falls Project. The individuals from Nalcor who are also at the same operational level also knew government was a proponent of the project, and therefore, when the individuals from Nalcor called over with what they perceived to be what they needed in order to move forward on any particular issue – without getting into specifics – the perception, I think, on the part of the people from Nalcor was that well, government would do whatever government could do to meet Nalcor’s needs.

The individuals in the departments, of course, were used to being in a position where such requests would be reviewed, analyzed, and it’s part of their job to determine what is or is not appropriate based on government policies, overarching matters and then would provide

advice as to whether such things could or could not be done or how they should be done.

And in the early days, in particular – 2009, 2010, 2011, 2012 – the – that was a disconnect between, sort of, Nalcor's expectations and the work of these civil servants, as to how they thought they should be prosecuting their job. So the tone from Nalcor that – you know, of course you're going to do X, whatever we need, and usually what we would find is that Nalcor's request was to solve a problem. Nalcor had determined how that problem could be solved, and their request was for something extremely broad that had policy and/or legal implications beyond the solution that Nalcor was proposing.

And the work of the department – the response would be they don't need whatever it is they're asking for. We can solve their problem – if they come to the department with the problem, we know how to solve that problem; the solution they're asking for isn't what they need. And so at first instance, it would be exasperation with the Nalcor people coming forward 'cause they would say we need X, and the department's internal review of it would be we can't do X, it may not be legal to do X in some contexts 'cause of our statutory arrangements, as a matter of policy, we don't do X because of the knock-on effects or the implications or we've never done it that way or whatever.

And then you'd have to go back to Nalcor and say: What exactly is it? Why do you need X? Nalcor would provide you with information about the problem and then the department's expertise would kick in to say: Okay, we can solve that problem this way.

But the fact that a lot of times Nalcor would come in with the solution as opposed to the problem and assumed the department would do what they require, that was a source of irritation.

**MR. LEARMONTH:** Okay. But – so you stand by what you said?

**MR. STANLEY:** Yes, I do.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** I mean, that was at the operational level of –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – of a lot of departments, there was irritation.

**MR. LEARMONTH:** Yeah, I'm just going to ask you this point. I mean, government is the sole shareholder, the owner of Nalcor on behalf of the people of Newfoundland and Labrador, correct?

**MR. STANLEY:** Correct, yes.

**MR. LEARMONTH:** Government, as far as the relationship between government and Nalcor is, Government is in the dominant position, do you agree?

**MR. STANLEY:** Ultimately, yes.

**MR. LEARMONTH:** They're the shareholder on behalf of the people.

**MR. STANLEY:** Ultimately, yes.

**MR. LEARMONTH:** And the shareholders are supposed to protect the interests of the people of Newfoundland and Labrador, do you agree with that?

**MR. STANLEY:** With government as shareholder, yes.

**MR. LEARMONTH:** Yes.

Well, I suggest that what you're describing here is, if not a complete to a certain degree, a reversal of roles, and that what you're talking about here is a relationship where the classic saying the tail is wagging the dog, applies.

You have a wholly owned Crown corporation disrespecting the civil service that is representing the shareholder. Making decisions that the civil service of the Province of Newfoundland is not aware of and finding out. I suggest that this is a classic tail-wagging-the-dog situation. Do you agree with me?

**MR. STANLEY:** I'm hesitant to agree with that in that what I'm describing is the events as they occurred, operationally, over time. At the end of the day, usually most of these issues would have been resolved in a manner along the lines of

what you're thinking. But it wasn't always the tail – it wasn't the tail wagging the dog at the end of the day, but there was definitively an issue where Nalcor was perceiving that government was there to help it get the project done.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** As opposed to doing the job that government officials would have thought, which was evaluating what Nalcor required.

**MR. LEARMONTH:** Well, you know, I guess it's up to the people listening to the evidence to describe it and it's not my duty or obligation to argue with you, but we'll leave – your answer is on the record –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – and my question is on the record, too.

And, now, do you know why government allowed this situation to continue? I mean, I think that some might say that government should have put Nalcor in its place and told Nalcor: Look, this is the way it's going to be done, you go to the Department of Natural Resources, you follow the normal procedures. You don't jump all over the place and you don't do things and then tell the Department of Natural Resources later.

Why – do you have any evidence or explanation as to why government didn't, yes, put Nalcor in its place?

**MR. STANLEY:** Well, I think, at the end of the day, the matters that Nalcor was – were raising were things that needed to be done for the project to move forward, and attention between Nalcor and coming forward with those matters and the departments in evaluating them was probably, to the extent that it was raised at the highest level, seemed to be beneficial.

You know, Nalcor may have assumed that some of the departments were cheerleaders, but that's not how it worked out. And I don't know, at the level I'm talking about, about whether it would have been necessary or beneficial to bring that discipline to Nalcor.

I mean, to be clear –

**MR. LEARMONTH:** (Inaudible.)

**MR. STANLEY:** If I could just – the – when issues came up where government officials were saying Nalcor's asking for X and we don't have enough time to review it or a concern of what they're asking about, the message from the executive at government was always to the civil servants to do your job and double check and make sure that you do the job you're supposed to do to keep an eye on Nalcor, or to keep a check on what Nalcor is doing. It wasn't give Nalcor whatever they want.

**MR. LEARMONTH:** Well, I'll go back to the word cheerleader. That's a very strong term to use when we're talking about the dominant person or entity in a relationship being a cheerleader?

**MR. STANLEY:** Well, the perception from, I think, from Nalcor's point of view, like the government clearly was a proponent and, therefore, would be doing whatever it could to assist the – Nalcor in getting the project put forward. Which put the civil servants, at times, in a difficult situation because everybody knew that, but still they were being encouraged to do their critical work that they were required to do.

**MR. LEARMONTH:** Okay.

Now, I don't want to – this is phase 1, we're dealing with the sanction phase, but you did mention something about the oversight committee and I want to touch on that very briefly, that – you commented, page 23 of your transcript, that you had people telling you that the oversight committee was asking for information from Nalcor about what was going on and was not getting the information. Do you recall giving that evidence?

**MR. STANLEY:** I do.

**MR. LEARMONTH:** And can you expand on that, please?

**MR. STANLEY:** So the – I don't have the date in front of me of when the oversight committee was formally constituted, but the – it was originally constituted, I think, as a committee of

senior government officials to provide oversight over Nalcor operations. I wasn't on the oversight committee when it was created.

**MR. LEARMONTH:** No.

**MR. STANLEY:** But I was aware – there was a representative from the Department of Justice on it. I was aware that there were concerns as the committee started that they were having difficulty getting the level of reporting from Nalcor that I think they were expecting or wanted, in the beginning of the oversight committee.

**MR. LEARMONTH:** Okay. So, just to make sure everyone understands. So, government, the shareholder, the sole shareholder of Nalcor, is having trouble getting information from their wholly owned Crown corporation?

I say that because I think some people may have problems understanding how that's possible and I'd like you to comment on that.

**MR. STANLEY:** Well, at the level I'm talking about it would've been the officials attempting to work out protocols with Nalcor to get the information that was required, and I think part of the issue would have been simply a – part of the issue appeared to be a clash of misunderstandings between the parties.

Nalcor had a significant number of people who had come from private sector, who would not have been used to a shareholder asking for the level of information that was being required and requested by government, and also there were concerns about access to information and where the information would go when it was supplied to government. But, yes, at the officials' level, there were concerns –

**MR. LEARMONTH:** Yep.

**MR. STANLEY:** – that there were problems getting the information. And I'm not sure, I think I said in my transcript, I'm not sure to the extent those concerns were ever raised to the highest levels of government. There were ultimately solutions to require Nalcor, legally require Nalcor to hand over the information, but nobody wanted to go to that if a – if it could be worked out at the officials' level.

**MR. LEARMONTH:** Okay.

Now, I just want to take you to your use of a term at your interview: runaway train.

On page 20 of your transcript you say: Mr. Stanley: He, I think – okay this goes back, I'll just go up a little further. **“MR. STANLEY:** That would presume insights in Minister Kennedy's thinking that I'm not sure I'm gonna put on the record.” Okay. And then it says: Mr. Stanley – this is what you're saying: “He” – presuming you're referring to Minister Kennedy –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – “I think, viewed them as being, as a number of people in government did as you're getting into 2000 ....” I think you meant 2010, but –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – you said 2000.

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** I can't remember when he was there 2011, 2012, I think. “You know, they were sort of being viewed as being a little bit of a runaway train that we didn't have any control over. You know, so they'd call over and” asked government, “say – government – well, I need the following 15 things for the project to go ahead and I need it all done by Tuesday.

“And you get these calls and then you'd be looking at it going this is, you know, three months work and massive policy issues, blah, blah, blah. But Nalcor's like ... we just need it done. So that – personality difference, that kind of stuff, he gave them a hard time ....” That's Mr. Kennedy, I take it.

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** “... hard time or purported to give them a hard time on matters. I don't think he had much of a personal fondness for them or the project and the like.”

So, once again, this is not a term – runaway train – that was put to you and asked whether you

agree with it; you selected this term. And I'd like you just to give a little bit more explanation as what you meant when you said that it was – Nalcor was – quote: “a little bit of a runaway train ....”

**MR. STANLEY:** As the matters would've moved forward from, I guess, the Emera deal in 2010 to Nalcor moving forward with the original sanction and others – as you get into 2011, 2012, there's an enormous amount of work being done at Nalcor. I mean, they're staffing up and doing work on a host of fronts at the same time.

And it wasn't clear at the time to people that – internally, the government that I was advising or dealing with, that government had a complete handle at the operational level as to actually everything that Nalcor was or was not doing, or what they were doing on particular fronts – not what they were or were not doing, but where they were going or what their decision process was, et cetera, on particular matters.

So it wasn't that we were operating in lockstep with Nalcor, Nalcor was charging ahead with the project and they – as they had been instructed to do and looping – there wasn't a lot of looping back to advise everybody in government that everything – what was going on over in Nalcor, I guess is the best way to put that.

**MR. LEARMONTH:** Yeah, but – so this proceeding ahead with the project, that was well before the project was ever sanctioned. Isn't that correct?

**MR. STANLEY:** If sanction would be 2012 –

**MR. LEARMONTH:** Well, actually, it would be the end of 2012.

**MR. STANLEY:** Yes. Yes.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** So, yes, I mean there was an enormous amount of work going on in Nalcor on the project from, I would say, at least mid-2010.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** And that's just based on my knowledge of the work that was done in advance of the Emera negotiations which happened in the fall of 2010. I mean the project was staffing up – Nalcor was staffing up, at least to get in par. And on all fronts – on the financing fronts, the commercial arrangements, the engineering fronts, we were aware there was work going on all fronts on the project.

**MR. LEARMONTH:** So when you use the term, as you did –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – as I quote – as I read in the –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – quotation, runaway train – you used runaway train – you're referring to the, say, 2010? Would that be a fair assumption?

**MR. STANLEY:** Yes, well – and to be clear, I'm not referring to it being a runaway train at the level of the government executive – you know, Cabinet Secretariat, Premier's office – having or not having insight into what was going on at Nalcor. Again, I wasn't operating in those circles for a lot of that; I was providing advice to the Department of Natural Resources.

And in the – in part – the portions of the, sort of the executive and the management of the Department of Natural Resources there wasn't a clear understanding or ability to get information as to what exactly – everything that was going on over at Nalcor. So runaway train may be an overgeneralization but, yes, there was frustration and a concern as to what was going on.

**MR. LEARMONTH:** Well, you used the term train –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – later on in your evidence, too, for the second time. And I just want to refer to that, it's on page 29. You say: They – the “election, you know – that election



was on – and talking well outside my brief as lawyer here, but just frankly – that election was gonna be on the Lower Churchill Project.

“So they were basically locked in to the Lower Churchill Project and what the guys at Nalcor were telling them was gonna be the cost estimates and the like.

“And they had inherited a project and a team and a corporation and a structure where everybody was told all the time that they were the best people in the world that had ever been tasked to do this stuff, and they were world experts and they were gonna do it right and we had every contingency covered, and if you talked to Nalcor, it was nothing but confidence expressed.”

Is that –?

**MR. STANLEY:** Well, I mean, let’s be clear. First of all, those comments were made clearly outside my brief as a solicitor for government.

**MR. LEARMONTH:** Right.

**MR. STANLEY:** I think the comments in respect of government – that the message that government had been putting out in respect of Nalcor and its expertise is pretty self-evident from –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – the public discussions at the time.

**MR. LEARMONTH:** No, but you said this. I mean you –

**MR. STANLEY:** No, I know. I think – I don’t disavow what I said.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** I’m just saying that I don’t think there’s anything there that was not known at the time.

**MR. LEARMONTH:** Yeah.

And going back to the train, because I said you made a second reference to that.

**MR. STANLEY:** Sorry, yes.

**MR. LEARMONTH:** I’ll just go to that now. Just carrying on a little further on page 29 you say: “Was I party to meetings where people looked at each other and said, you know, should we be doing this? Probably, but they weren’t formal ones because this train was leaving the station. It had already left the station. There was no internal process inside of government where anybody said, okay, we are doing this, now what are we gonna need to do to control costs.”

So, once again, you’re referring: This train leaving the station. Do you agree with me that suggests that an irreversible decision had been made?

**MR. STANLEY:** No, I don’t – I’m not purporting to say by that, that at some point government had made an irreversible decision that it was going forward with the project no matter what. There were a number of steps along the way, steps that I was involved in, such as the conditions precedent for the government federal loan guarantee, that, you know, at that point you had to make a decision as to whether you were going ahead with the project or not.

The issue was that there was no question government was a proponent of the project publicly and that – from 2010 onward, and that it would have been an extraordinary decision by government, I think, to, at some point, decide now that we were not going to proceed with this project in some form.

**MR. LEARMONTH:** But you don’t disavowal or withdraw from these comments. Is that correct?

**MR. STANLEY:** No, no.

**MR. LEARMONTH:** No, okay.

**MR. STANLEY:** No.

**MR. LEARMONTH:** And then on page 30 of your transcript, just continuing on with the – actually, the bottom of page 29, you say: “The only extent to that was the attempt by government to insert a governance structure upon Nalcor that you should have if you – and in your disclosure documents you’ve probably got

a host of emails back and forth from Natural Resources and government and – Natural Resources and Nalcor ... We're gonna talk about getting a more formal, you know, governance arrangement in place, et cetera, et cetera, but it never went anywhere for a while 'cause Nalcor resisted all of it.

"But the tone at the time from the top was, you know, that Nalcor's the best thing since sliced bread."

And I say: "The top being the Premier's office?"

Mr. Stanley: "And – yeah."

Now, so what premier were you referring to when you said that, both or one, either at Premier Williams or Premier Dunderdale or both?

**MR. STANLEY:** At the time that there was a discussion about putting project oversight in place to that level with Nalcor, I guess the Premier's office would have been Premier Dunderdale's office.

**MR. LEARMONTH:** Yeah.

So I suggest to you that an arrangement or a – I mean, a protocol on reporting and so on, one would assume that that would have been in place from the beginning and you're telling us it wasn't. And when the subject was broached with Nalcor, Nalcor resisted.

**MR. STANLEY:** No, I don't think that's what I'm saying. There was always protocols in place for Nalcor reporting in to government in terms of financial information and others; some of it is mandated in Nalcor's legislation.

What I'm saying is that there was a period of time where it was acknowledged that government, perhaps, needed more detailed information from Nalcor. And if my memory serves me correctly, the concern at the time was ensuring that the governance was in place as much for the operational phase as for the construction phase.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** There was a concern at the time about implementing a greater structure. The Department of Natural Resources was working on that, and, again, there was, I think, in part a cultural difference between the people working at Nalcor and the people in the government who may have been pursuing that information.

All of this was a precursor that led into the same issue coming up for when the management – the oversight committee was officially established.

**MR. LEARMONTH:** Yeah.

But I'd just suggest to you that some may find it difficult to understand how Nalcor would have the power to resist an attempt by the shareholder – the Government of Newfoundland – to put in place a governance arrangement.

**MR. STANLEY:** The – Nalcor wouldn't –

**MR. LEARMONTH:** Given the fact that the government, representing the shareholder, is the dominant person in the relationship.

**MR. STANLEY:** I think –

**MR. LEARMONTH:** Please explain that.

**MR. STANLEY:** Yeah, I think that the reliance on the idea that the shareholder is in the dominance position – legally, structurally of course that's true. What we are talking about in this circumstance is discussions that were being had at officials' levels with officials at Nalcor in respect of the information that would be required – or requested and required, to put together for oversight. And the individuals at Nalcor, at the officials level, not necessarily understanding, appreciating why the shareholder would need that information.

Your – the basis of your proposition to me is you're talking about the ultimate exercise of the relationship between the parties. But at the operational level, it was far less of a situation where government would always be getting out the shareholder 'I can tell you what to do and here's how we're going to do it' power.

**MR. LEARMONTH:** Yeah. But you agree with me that government was in the dominant position in this relationship?

**MR. STANLEY:** Yes. And at the end of the day, if government wanted to use the powers available to it to the fullest extent –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – through the board of directors, government could have retained – obtained any information it wanted to.

**MR. LEARMONTH:** But would you agree with me that – as you’ve acknowledged that government is in a dominant position that that – when we look at what happened here, that that fact was very well disguised?

**MR. STANLEY:** Disguised that government was in the dominant position?

**MR. LEARMONTH:** Well you know, government’s in the dominant position. Do you think that government – I suggest do you think that government would act as if they were in the dominant position, and not having done so – which as I suggest is a reasonable inference from your evidence – that the fact has disappeared. The dominant relationship – the dominance that government was allowed to have in the relationship was not – non-existent.

**MR. STANLEY:** I wouldn’t say it was non-existent. It was complicated.

**MR. LEARMONTH:** Okay.

And on page 30 you say, just after the last quotation there, the best thing since sliced bread. You say, “The political – you know, there was no desire there for – to walk into somebody’s office to say we need a 15-person team here put over there, to do nothing but question everything that comes from Nalcor, vet it, and the resources, there was no appetite to hear that, let alone, you know, to be the person walking in the office to propose it. And there was no funding. We had no money to do any of that –”

What do you mean there was no appetite for that?

**MR. STANLEY:** Well, I mean, internally within government when – from about 2010 to 2013, you were in a circumstance where we were looking at or actively reviewing all

government operations for budget cuts. So, there was – when I say no appetite, there was – you were completely cutting against the grain to suggest that we needed a significant resource allocation within government to – for an office that would be dedicated to oversight of the Muskrat Falls Project.

**MR. LEARMONTH:** Mm-hmm.

We touched earlier to some extent on the cost estimates and you explained that in your position at the Department of Justice that wouldn’t be something that you would be involved in, is that correct?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** But – were you aware of the level of disclosure that Nalcor was making to government on cost estimates both at DG – well, both at DG2 and DG3?

**MR. STANLEY:** No, only in that I wouldn’t have been involved in the presentations that government would have made or the information disclosures that – sorry, that Nalcor would have made to Finance or the Department of Natural Resources on costing.

**MR. LEARMONTH:** Okay.

Now the – at DG – at the time that the term sheet was signed between Emera and Nalcor – that was November 18, 2010 I believe – the public was advised that the cost for Nalcor would be \$5 billion and that the cost for – estimated cost – for Emera would be \$1.2 billion.

Now we’ve – it’s been established, I would suggest that the \$5 billion figure did not include any amount for strategic risk. At the time that the term sheet was announced, on or about November 18, 2010, were you aware that the figure of \$5 billion did not include anything for strategic risk?

**MR. STANLEY:** No.

**MR. LEARMONTH:** Is that something that you just wouldn’t be involved in? Is that the reason?

**MR. STANLEY:** Well, I'm not sure if I can say if that's the reason why I wouldn't know that the number wasn't there. No, and generally those numbers, we would – at the Department of Justice, those numbers would be presented to us by the client, to say that is what we're dealing with.

**MR. LEARMONTH:** And we're told by some sources – there may be other evidence on it; Nalcor certainly had to take a different position on it if they decide, but from the project management team's point of view – the reason that the strategic risk was withdrawn, or removed from the DG2 estimate, was at the request of Emera. Apparently Emera wanted it done so that it would be easier for it to get its – that position past the Nova Scotia UARB.

Did you – you heard about that at the interview, but did you know that – about that before August 31, 2018?

**MR. STANLEY:** No.

**MR. LEARMONTH:** No.

So, that's news to you.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay.

Can you tell us, based on your experience as a senior civil servant, government official, the duty to provide a minister of the Crown with correct information before the minister of the Crown makes an announcement to the public?

**MR. STANLEY:** Well, I'm not sure I'd put it as a duty to provide with correct information. The communications process – if the minister is going to make a public statement, the expectation of everybody in the department is to ensure that the minister is making accurate public statements; both for the government, you know, for the consumption of accurate information in the public, and also internally.

I think I noted in my transcript the implications of being an individual who is providing the minister with inaccurate information, who then makes a public statement it has to correct. You don't want to be in that circumstance.

**MR. LEARMONTH:** Why not?

**MR. STANLEY:** Well, if a minister believed that you had provided – deliberately provided inaccurate information and had him made a public statement to that extent – I mean, one could argue that is insubordination and breach of your employment obligations. That's not the way that process generally works.

The concern about ensuring that numbers are accurate before they're introduced by the minister, or said publicly is one of the primary things that occurs before a communications event in government. I mean –

**MR. LEARMONTH:** Okay, thank you.

Could we please bring up the Grant Thornton report, which is, I believe, P-00014?

**THE COMMISSIONER:** (Inaudible.)

**MR. STANLEY:** I –

**THE COMMISSIONER:** Do you only have the one binder or do –

**MR. STANLEY:** I have two.

**THE COMMISSIONER:** – you have two? Two. So –

**MR. LEARMONTH:** It's not in your binder, Mr. Stanley.

**MR. STANLEY:** Oh, okay.

**MR. LEARMONTH:** But it will come up on your screen. It's already been entered as an exhibit.

And could you turn to page 41? And then 42 – just go back to 42. Okay, 41 again. I may have the wrong page.

Okay, well, I must have the wrong reference in my note here.

I'll come back to the Grant Thornton report later.

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

**MR. LEARMONTH:** No, it's okay. I'll come back to it later.

The – you indicated in your transcript that Nalcor's constant or continuous use of this PowerPoint to present their points of view was a joke in the civil service.

**MR. STANLEY:** It was a joke between us and Nalcor at times, yes. I'm not saying that Nalcor was a joke in the civil service. Nalcor's –

**MR. LEARMONTH:** No, I didn't say that. I said that the use – their use of a PowerPoint was –

**MR. STANLEY:** The use of a PowerPoint was –

**MR. LEARMONTH:** I'm just reading it –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – reading this, this –

**MR. STANLEY:** Uh-huh.

**MR. LEARMONTH:** From page 85, you say: "Nalcor's default means of communication is the PowerPoint deck. There was a joke that – we had a joke at Justice, 'cause we used to write up stuff, and you'd see what we'd write and send it over to Nalcor and they'd be like: I need that in a deck. The joke used to be, we don't have PowerPoint; you don't have Word. Right? You used to – everything that you wrote was in a PowerPoint deck."

So it seems that the joke was at Justice, not with Justice – between Justice and Nalcor.

**MR. STANLEY:** Yeah, no it was a joke raised between us. I mean, Nalcor's default means of communication when doing presentations or for most things when they came in to government was to use a PowerPoint deck and PowerPoint slides for the presentation or the discussion.

At the Department of Justice, of course, we – perhaps rightly – have a reputation of doing nothing with that level of brevity. So it was highlighting a culture difference: that we used to joke that the people at Nalcor didn't own a copy of Microsoft Word and we didn't own a copy of

Microsoft PowerPoint. But there's no question, I think Nalcor's default communication's methodology was for presentations to use PowerPoint decks.

**MR. LEARMONTH:** So that was a joke at the Department of Justice?

**MR. STANLEY:** It was a joke between us and Nalcor, yes. Yeah.

**MR. LEARMONTH:** But just to clarify – it may not be –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – significant, but you –

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** – didn't say that in your interviews. You said it was a joke at Justice.

**MR. STANLEY:** I may have said in – yes. Okay.

**MR. LEARMONTH:** All right.

The – I'm going to ask you some questions now, Mr. Stanley, to the documents that have been entered into evidence and are in the binder before you for your ease of reference. I'd like you to give us your recollection of the – if you have one – of the circumstances leading up to the government referring the water – not water management, the – yeah, the water management issue to the Public Utilities Board. Were you involved in that process?

**MR. STANLEY:** Referring water management to the Public Utilities Board?

**MR. LEARMONTH:** Yeah, the – you know, there was a procedure whereby government decided to give the Public Utilities Board the right to impose a water management agreement for a river if the operators on the river did not – were unable to come to an agreement. And I think we have – if we – to assist you – if we brought up Exhibit P-00195.

Does this – we go to page 2 – does that help you in your recollection of this subject, Mr. Stanley?

**MR. STANLEY:** Yes. I mean, this, I think – if I don't have this here – this would be the Cabinet paper, I think, it would appear, that would have been brought forward for the amendments to the Electrical Power Control Act –

**MR. LEARMONTH:** Right.

**MR. STANLEY:** – to bring forward the provisions that were put in regarding water management.

**MR. LEARMONTH:** Yeah.

And you can assume, for the purpose of the further question, that in March 2010 the Public Utilities Board issued an order in which it approved a Water Management Agreement for the Churchill River, which had been negotiated by the management – approved by the management of CF(L)Co and Newfoundland Hydro but was not passed by the board of directors of CF(L)Co because the necessary yes vote of Hydro-Québec appointed director was withheld.

Does that bring back any memory?

**MR. STANLEY:** I know of that. I don't know much more – I wasn't much more involved in that than –

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** – from the media –

**MR. LEARMONTH:** Okay.

Well, perhaps you –

**MR. STANLEY:** – at that point.

**MR. LEARMONTH:** Okay, well, I won't – I realize it isn't in the – your documents, so I'm not –

**MR. STANLEY:** Hmm.

**MR. LEARMONTH:** – faulting you for not remembering it, but if you could turn to Exhibit 00001, page 11, and that – at the top is a section 5.7? Exhibit 00087, page 11.

Do you see that?

**MR. STANLEY:** Section 5.7?

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Just read that into the record for us, please?

**THE COMMISSIONER:** Pardon me.

**MR. STANLEY:** “A provision of an agreement referred to in section 5.4 or 5.5 shall not adversely affect a provision of a contract for the supply of power entered into by a person bound by the agreement and a third party that was entered into before the agreement under section 5.4” and “5.5 was entered into or established, or a renewal of that contract.”

**MR. LEARMONTH:** Yeah.

Do you know – can you give us your understanding about how that section 5.7 would apply to a – the Water Management Agreement that was imposed by the Public Utilities Board?

**MR. STANLEY:** I think we're drifting close to issues that were –

**MR. LEARMONTH:** Well, I've already –

**MR. STANLEY:** – (inaudible).

**MR. LEARMONTH:** – spoken to Mr. Ralph, and I'm not going to go beyond – like, I know we're –

**MR. STANLEY:** Okay. All right, okay.

**MR. LEARMONTH:** – in water management, and I – Mr. –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – Ralph and I have already agreed, I think, that we can – I can ask Mr. Stanley questions up to the point of asking him whether the water management issue was addressed by government, to his knowledge, before November 18, 2010, and December 17, 2012.

So I will not go beyond that, and I think that was acceptable to –

**MR. STANLEY:** Okay.

**MR. LEARMONTH:** – Mr. Ralph.

**MR. STANLEY:** So on the wording of the section, “the agreement referred to in section 5.4 or 5.5” would be the Water Management Agreement you’re referring to that was implemented in 2010.

**MR. LEARMONTH:** Yes.

Yeah, so how – what is the impact of this section, if any, to your knowledge, on the Water Management Agreement?

**MR. STANLEY:** There’s no impact on the Water Management Agreement under the wording of this section. It is that the terms of that Water Management Agreement “shall not adversely affect a provision of a contract for the supply of power entered into” before that agreement.

**MR. LEARMONTH:** Okay.

So that would be any contract entered into before the Water Management Agreement?

**MR. STANLEY:** That’s the wording of the section, yeah.

**MR. LEARMONTH:** Yeah. Okay.

Now, as I said, I’m going to ask you very limited questions on the subject of water management for the reason that the Commissioner articulated earlier there’s going to be an in camera session and we’re working on developing that.

But I am going to ask you this, Mr. Stanley: Was the issue of water management on the Churchill River considered and dealt with by the province, the Government of Newfoundland and Labrador, before the November 18, 2010, term sheet was signed by Emera and Nalcor?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yes, okay.

And was it – again, the same question, but the time is December 17, 2012, the date of sanction. Was that issue considered by the government prior to the sanctioning of this project by Nalcor on December 17, 2012?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** It was? Okay. Thank you.

Please turn to tab 3 of your documents which is Exhibit P-00180.

Mr. Stanley, would you give us a summary of the subject matter in this memorandum to the Executive Council? Give us some – your recollection of the information as to why it was deemed advisable, if not necessary, to create a new Crown corporation.

**MR. STANLEY:** So, yes, as part of the – at this point in 2007, as part of the formulation of the government’s Energy Plan and other policy decisions that were being made by government, it was acknowledged that government needed a corporate vehicle to implement the policy objectives that government was putting forward, and that there was a difficulty in doing it simply under Newfoundland and Labrador Hydro as it was created.

One of the difficulties – the main one – was that Newfoundland and Labrador Hydro was a regulated entity for most of its operations under the Public Utilities Board. And the activities that government was contemplating to get involved in, both in terms of oil and gas and hydroelectric development, were not matters – were matters that wouldn’t be regulated by the Public Utilities Board or the level of regulation hadn’t been sorted out. And it could get quite complicated, from an administrative and even an accounting point of view, to have those activities combined in the same corporation.

So using reference for how this had been done in other jurisdictions as well, the determination was made that the best approach was to have an energy corporation that would not be regulated – that would not hold the regulated assets directly, or would not be directly regulated by the Public Utilities Board to pursue those policy objectives, and then leave Newfoundland and Labrador

Hydro as a regulated entity by the PUB for the purposes of simplicity.

**MR. LEARMONTH:** Okay.

So you provided advice in relation –

**MR. STANLEY:** Yes, Sir.

**MR. LEARMONTH:** – to that –

**MR. STANLEY:** Right, yeah.

**MR. LEARMONTH:** – decision?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah.

And, eventually – I know it was deferred in one Cabinet but eventually it was – the presentation went to Cabinet. It was deferred on May 10, 2007, and finally it was implemented and the – this new corporation became Nalcor. Is that correct?

**MR. STANLEY:** Yes, I don't have the date when we –

**MR. LEARMONTH:** No.

**MR. STANLEY:** – they adopted the Nalcor name but, yes, this was the –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – corporation.

**MR. LEARMONTH:** Well, the document may be self-explanatory, but thank you for providing your insight into the reason why it was necessary.

And then later on at tab 9, Mr. Stanley, it's Exhibit P-00529.

**MR. STANLEY:** Mm-hmm.

**MR. LEARMONTH:** There's a – this was a memorandum to the Executive Council entitled: Legislative Amendments Required to Advance the Implementation of the Muskrat Falls Project. Can you give us some background as to why this matter was considered by Cabinet?

**MR. STANLEY:** These were amendments to various pieces of legislation being put forward by Natural Resources, the Department of Natural Resources, as we're required to put the framework in place to implement – the most of this being directed at implementing the financing structure required for the Muskrat Falls Project.

**MR. LEARMONTH:** Okay, so this would be done in order – among other reasons to comply with the requirements set by Canada for the federal loan guarantee?

**MR. STANLEY:** Yes. In the 2012 term sheet that was negotiated with Canada there was a significant number of conditions precedent.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** And this would have been the provincial government's answer or solution to some of those conditions precedent.

**MR. LEARMONTH:** Okay. Thank you.

And as I said, it's probably self-explanatory, but you were involved in advising government on this matter, were you?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

The next piece of legislation I'd like you to make reference to is at your tab 11. And it's Exhibit 00193 starting off on page 1, if that could be brought up, Madam Clerk.

Now, these were after the Energy Corporation Act had been passed and became law. I take it that the – it was found that legislative amendments were required in order to allow – generally, to allow Nalcor to impose confidentiality on various aspects of their operations. Is that correct?

**MR. STANLEY:** Yes, at this time. And this was 2008 so this would be four years before what we were just talking about.

**MR. LEARMONTH:** Okay.



**MR. STANLEY:** This Cabinet paper, I think, highlights – it asks for two things which is amendments to the Energy Corporation Act to implement a host of changes, including access to information restrictions, and also asks for approval to create OilCo as a Nalcor subsidiary. At that time, government was in negotiations with the oil companies on the Hebron project, and this dealt with issues that were coming out of those negotiations.

**MR. LEARMONTH:** Okay.

So because Nalcor was becoming involved in oil and gas operations and business then, obviously, there had to be some level of confidentiality that they could (inaudible) over the confidential – confidential information they would receive from the oil companies. Is that correct?

**MR. STANLEY:** Yes. I don't think I'm breaching privilege here. The – Nalcor wasn't just becoming involved in oil and gas, Nalcor was inserting itself into existing oil and gas arrangements, projects.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** And in those discussions, the companies involved, the oil companies were very concerned about knowing that Nalcor's Oil and Gas operation would have a level of protection against public disclosure for their business information.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** I think.

**MR. LEARMONTH:** And I think anyone would understand why that would be a reasonable measure to take.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Yeah.

The – in tab 4, which is Exhibit P-00038, there's a – the document is entitled: Terms of Reference and Reference Question. This is for the reference of the question to the Public Utilities Board in the spring of 2011, correct?

**MR. STANLEY:** Yes, I think so.

**MR. LEARMONTH:** Yeah. Were you involved in developing the plan for referring this question to the Public Utilities Board in the spring of 2011?

**MR. STANLEY:** I would have advised Natural Resources on this, yes.

**MR. LEARMONTH:** You would have advised Natural. Well, I won't get into the legal advice –

**MR. STANLEY:** No, no.

**MR. LEARMONTH:** – you would have provided them, but – so you were involved. They would have asked you to –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – provide legal advice on this matter?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** Can we just take a break here now, Mr. Learmonth? I notice it's 11 o'clock and I do have to do something. I just got a message that I have to do something, so I wonder if we could just take our normal morning break here.

**MR. LEARMONTH:** That's fine with me.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right, Mr. Learmonth.

**MR. LEARMONTH:** Yes, thank you.

Please turn to tab 7, Mr. Stanley, which is Exhibit P-00043. Now, this was a – just so we can follow it, if we turn to P-00043, page 23.

This is the copy of the directive passed by Cabinet, authorizing the premier to sign a

commitment letter as indicated on schedule D, “outlining Government’s intentions in support of Phase One of the Lower Churchill Project, subject to the Department of Natural Resources consulting with the Communications Branch on a revised communications plan.”

So this – under this document, the government gave a, I suppose, a completion guarantee or a guarantee to fund the project to the end. Is that a fair way to put it, Mr. Stanley?

**MR. STANLEY:** Not in so much in that it was a binding commitment. I think the commitment letter was a statement of how government intended to approach the financing of the project and what it would do to support the project. But it wasn’t a decision to do those things.

**MR. LEARMONTH:** So the decision to do those things would be triggered when the federal loan guarantee was signed. At that point, it became a binding commitment, is that correct?

**MR. STANLEY:** No, I would suggest the decision to do the various things wouldn’t have occurred until financial close in 2013.

**MR. LEARMONTH:** Yeah, that’s what I mean, the federal loan guarantee.

**MR. STANLEY:** Oh, sorry, yes, yes, I thought you were – okay, yes.

**MR. LEARMONTH:** That’s what I meant.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Not the signing of the – not the memorandum but the actual financial close.

**MR. STANLEY:** The actual financial close when all the commitments were signed.

**MR. LEARMONTH:** At the point, they came out with binding obligation.

**MR. STANLEY:** Yes, yes. No question. The questions –

**MR. LEARMONTH:** Yep.

**MR. STANLEY:** – were signed.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** The contracts were signed then.

**MR. LEARMONTH:** Thank you.

Now, to your knowledge, before this matter was considered by Cabinet in the document that I’ve just referred to you, did – was any analysis prepared by government as to the potential consequences of signing this – providing this commitment letter? In other words – I’ll just give you an example.

To your knowledge, did government say: Okay, now, we’re gonna give this a completion guarantee or guarantee the contingent equity. What are we guaranteeing? What risks are out there? Do we have documentation so we can access the extent of our commitment that we’re giving here? To your knowledge – do you understand my point?

**MR. STANLEY:** I do.

**MR. LEARMONTH:** My question? Do you know whether any such analysis was done?

**MR. STANLEY:** On – so, without getting too far into the actual advice provided, in respect of the financial implications of a completion guarantee and what they look like, I’m actually – I’m not sure what analysis was done. There was significant analysis that went into this letter before – and the terms as it was drafted up.

**MR. LEARMONTH:** But my point is, it would be understandable, certainly reasonable, I would suggest, that before someone – an entity gives a – makes a financial commitment, which was contemplated here, it hadn’t –

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** – be figured yet.

**MR. STANLEY:** Mmm.

**MR. LEARMONTH:** But it’s contemplated here that the person signing the guarantee, or whatever you wanna call it, would say: Okay, what am I guaranteeing here? What are the costs known at the time that I am guaranteeing?

**MR. STANLEY:** So, I'm not sure if I'm answering your question. I mean, to be clear, this was a letter that was given to say government would do these things in support of the project in 2011. In 2013, when the guarantee was actually signed, there was a significant amount of financial analysis gone into – on government side that I would've seen.

In respect of what it was looking like to actually sign the guarantee, before this document was signed, I know there was analysis done on various points and issues that are in this document. I don't have any memory of seeing a detailed financial analysis leading up to this document.

**MR. LEARMONTH:** Okay. Thank you.

And do you know whether there is any – after this commitment letter was issued, I think Premier Dunderdale provided it to Edmund Martin at Nalcor on October 18, 2011, which was just after this matter was considered by Cabinet. But do you know whether there was any plan implemented to monitor the potential consequence of this? In other words, to say: Okay, now, we're – we've given a commitment letter, we wanna track this to make sure that there's no big increases in the amounts that we're guaranteeing and, you know, a plan to follow the extent of the exposure created by issuing this commitment letter.

**MR. STANLEY:** While again the legal issue would be there's no exposure created by this commitment letter 'cause it was a non-binding document.

The purpose of this letter, if I remember correctly, was that Nalcor wanted it to take to financial institutions to get what they called the shadow rating of the project for purposes of the negotiations with the federal government.

So, I don't know of any monitoring or additional monitoring that was put in place on the cost side in respect of Nalcor just by simply executing this letter, no.

**MR. LEARMONTH:** You're not aware of anything?

**MR. STANLEY:** No. No.

**MR. LEARMONTH:** Tab 8 is P-00051 is the Government of Newfoundland and Labrador's Response to the Report of the Joint Review Panel. And you're familiar with, I guess, generally, with the Joint Review Panel process and they had hearings and so on. You're familiar –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – with that, generally.

**MR. STANLEY:** Generally, yes.

**MR. LEARMONTH:** Yes. Okay.

Were you involved, in any way, in the preparation of the document at tab 8, that's P-00051? In other words, these are (inaudible) made by the Joint Review Panel and these were the responses to the recommendations provided by the Government of Newfoundland and Labrador and, just for the record, the Government of Canada provided a response too. But were you involved in the preparation of any of these responses?

**MR. STANLEY:** So, when we had our interview on the 30th of August, I think my answer was that I may have generally reviewed this but didn't remember having any input into any of these specifically.

There are one or two here that I do now remember that I did give more specific advice on, but, generally, this would have been handled by other counsel at the Department of Justice, as most of these issues would have been in respected of environmental or Aboriginal issues.

**MR. LEARMONTH:** And so it would've been, apart from the environmental and Aboriginal issues, the Department of Justice would not have been involved in the preparation of this response?

**MR. STANLEY:** I can't say, I mean, most of the concern with such a document would've probably, at some point, gone through a solicitor at Justice just for the purposes of ensuring that there was nothing in the responses that raise legal issues themselves. So, yes, so overall it wasn't written by Justice, for example, no.

**MR. LEARMONTH:** Would it be correct then to say that Justice didn't have input into the preparation of the document, the substance of the document, but only would have conducted a review to see if there were any legal issues created by it?

**MR. STANLEY:** I don't have direct knowledge of how that would've occurred, but I think that's how it went, yes.

**MR. LEARMONTH:** Okay.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay, thank you.

Tab 10 is Exhibit P-00061. It's a document entitled *Upper Churchill: Can we wait until 2041?* And this was issued by the Department of Natural Resources some time in November 2012, so a month or so – maybe six weeks or so, before the – well, Cabinet decided to allow Nalcor to sanction this project on December 7, so it would've been within a month of that, presumably – or a month before that.

Did you have any input into the preparation of this document?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

I know that there's legal issues and I'm not gonna push hard on that, but what would've been the role you played in the preparation or review of this document?

**MR. STANLEY:** We would generally have been reviewing this document to ensure it was legally accurate, I guess, in the statements that were being made.

**MR. LEARMONTH:** Okay. And that was your –

**MR. STANLEY:** Pretty much.

**MR. LEARMONTH:** – mandate –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – in concerning that document. Okay, thank you.

Now, I'm going to try again to do a little better with this Grant Thornton report. Could we bring up P-00014 again, please? Page 9. Yes.

Now, have you seen this Grant Thornton report before, Mr. Stanley?

**MR. STANLEY:** No, the – I think the report came into (inaudible) after I left government so I hadn't seen it before our interview in August.

**MR. LEARMONTH:** So the interview on August 31 would've been the first time that you had a look at it?

**MR. STANLEY:** Yes. Yes.

**MR. LEARMONTH:** Okay. Okay, well, I'm just gonna ask you a few questions.

If you look at this page 9, lines 4, 5 and 6. It says: "Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor's Project Team, that strategic risk exposure was to be funded through contingent equity from GNL."

Before you left government, did you have any inkling or any information whatsoever that Nalcor had excluded approximately 500 million of strategic risk exposure from the capital cost estimate?

**MR. STANLEY:** No, no.

**MR. LEARMONTH:** No. So did this – what was your reaction when you saw this?

**MR. STANLEY:** I was surprised. I'd never seen this concept or that number put forward and I think, as I said in our discussion on 31st of August, I'm – I can't comment as to whether it was appropriate to put a number on government's ultimate completion risk, because that is sort of what we're talking about.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** But I'd never seen the idea that it was valued and/or removed.

**MR. LEARMONTH:** All right.

And page 62 of the same document, Madam Clerk. There's discussion down towards the bottom of that about this P50 value. I know you said that the first time you saw this Grant Thornton report was on – at the time of your interview on August 31, 2018.

Before August 31, 2018, did you have any knowledge as to the use of this P-factor in developing project cost estimates?

**MR. STANLEY:** No, not to my knowledge. No, not to my memory.

**MR. LEARMONTH:** Okay.

So this discussion is not something that you would've been aware of while you were at the Department of Justice?

**MR. STANLEY:** No, and – I mean, to be frank, if someone had said Nalcor was using P50, I'm not sure – that's not exactly my wheelhouse, so I'm not sure that would've raised any alarm bells to me even if I had heard it.

**MR. LEARMONTH:** You would've left that to others?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay, fine.

And the last reference is – to this document is page 65.

Now, this has to do with the scheduling and the finding of Grant Thornton, which is that – in referring to an image on the immediately preceding page: "The above image notes that July 15, 2017 ... was a P1. This meant that there was a 99% chance that the schedule for first power would not be met."

Now, because Nalcor had used that figure of July 15, 2007 [sp 2017], in reporting to government, I understand it – once again, there may be more evidence on that. So the use of the

July 15, 2000 [sp 2017], schedule date was a P1, meaning there was a 1 per cent chance that that target date would be met, and a 99 per cent chance that it would not be met.

At any time – you were at government, did you know anything about this?

**MR. STANLEY:** No, I had never seen that before you showed me the Grant Thornton report or that –

**MR. LEARMONTH:** Did you have any reaction to this information? Assuming it's all true, do you have any reaction to that information?

**MR. STANLEY:** Well, I think as I – I think I had two reactions. I guess the first one, which was probably in my transcript, is the question about what the sensitivity was, because that becomes the next question, you know, was it – was it the – that the probability spread over months or years. The other one was, I think, I just expressed surprise that a number with that low a level of certainty would go out and be communicated as the commitment –

**MR. LEARMONTH:** Yes.

**MR. STANLEY:** – or the – what was the, you know, the plan.

**MR. LEARMONTH:** Yeah. Okay, fine.

Those are my questions.

Thank you very much, Mr. Stanley.

**MR. STANLEY:** Thank you.

**MR. LEARMONTH:** All right. Thanks Sir.

**THE COMMISSIONER:** All right.

**MR. LEARMONTH:** Oh, yes. There was one more, I forgot. Sorry about that.

Page 32 of your transcript you indicate that – I'm just going to read it into – move things along.

You say: "The – I don't remember there being a concern that Nalcor's cost estimates, as they

were being provided at any point ... were being lowballed or a concern that they were being artificially reduced or something. I don't remember that, the idea that – I don't remember any discussion that Nalcor's saying it's gonna be X, but we don't trust that number, because we think they're gaming the number. I don't remember any discussion at all."

Did the government have any plan implemented to review the cost estimates that you're aware of?

**MR. STANLEY:** Not that I'm aware of, but I'm not sure I – my memory may be slipping. I'm not sure I would've been that involved in it if they did.

**MR. LEARMONTH:** Okay. Were there any resources allocated to conducting such a review?

**MR. STANLEY:** There may have been resources available in the Department of Finance, but as I think I said, there was no dedicated Muskrat resources within government that I was aware of.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** (Inaudible.)

**MR. LEARMONTH:** Okay, that will be all my questions for now. I may have some on redirect depending on the questions.

Thank you.

**THE COMMISSIONER:** All right.

Government of Newfoundland and Labrador.

**MR. RALPH:** Good morning, Mr. Stanley.

I just have a few questions for you and they relate largely to the operation of government and government policy and the use of certain documents. And perhaps we can start with the Cabinet submission, because I think in terms of determining what's government policy, it's relatively straightforward to determine when a Cabinet submission goes forward what policy is adopted. Is that fair to say?

**MR. STANLEY:** Yes. I mean, a Cabinet submission that reaches the Cabinet table upon which there's a decision made, there would be a minute in council from Cabinet deciding what government's response was to the – whatever policy issues were in that paper.

**MR. RALPH:** And so perhaps you can describe the process of a Cabinet submission from its inception in a department and going through the process of Cabinet Secretariat and Cabinet?

**MR. STANLEY:** So the process has varied a little bit over time. A department needing or wanting a Cabinet decision on an issue would draft a Cabinet paper, which is in a fairly prescribed form which has varied over time – the template – setting out the description of the issue and also raising a number of perspectives on that issue to show they've consulted with various departments and gotten the insight of various departments on that issue.

Those are commonly referred to as lenses at the back. So if you see them, you will see a legal and legislative – Rural Secretariat, Aboriginal issues – just to make sure that whatever the department is bringing forward has been sort of vetted around in government.

**MR. RALPH:** So – but that happens once it's been in Cabinet Secretariat, is that correct?

**MR. STANLEY:** That can happen in both actually. So the process then is when the minister of the department signs the Cabinet paper and submits it into the Cabinet Secretariat process, the Cabinet Secretariat will then circulate the paper itself to various departments to ensure that those departments' comments are accurately reflected in the paper, or they may circulate it more broadly than the department did to other – that were not consulted when the Cabinet paper was being written.

**MR. RALPH:** And so I understand within Cabinet Secretariat there is a Cabinet officer – or Secretariat officer that does that work. Is that –?

**MR. STANLEY:** Yes, I'm not exactly the – perhaps the best person.

There's – Cabinet Secretariat has a number of Cabinet officers whose jobs are to review

Cabinet papers as they're submitted from their client departments – they have responsibilities – and then to ensure that the paper is processed through that circulation and the comments are all received on a schedule.

**MR. RALPH:** Right.

So that person's responsibility, in some circumstances, is to go to each individual department to get comment –

**MR. STANLEY:** Yes, yes.

**MR. RALPH:** – on that?

**MR. STANLEY:** Yes.

**MR. RALPH:** And so how do we – and perhaps you can't answer this question – but how does that then ultimately get into Cabinet?

**MR. STANLEY:** The – there's a – sort of a very scripted process.

Once the Cabinet officer's received all of the comments, assuming that there's no ground to send the paper back to the department for revision at that point, the Cabinet executive – or Cabinet Secretariat – prepares a summary of the Cabinet paper, which is then – with a recommendation for what Cabinet Secretariat thinks of what the department is looking for, and then that summary and the Cabinet paper are put on the Cabinet agenda and circulated to ministers in advance of that meeting.

**MR. RALPH:** So then I guess the entire Cabinet, or Executive Council, considers that submission, and there are several recommendations in the submission?

**MR. STANLEY:** Yes – depending on the submission, yes.

**MR. RALPH:** And I guess there could be a number of decisions emanating from that?

**MR. STANLEY:** There could be a number of decisions emanating from that. They'd all – and all those decisions would be recorded in minutes in council. That's part of the Cabinet Secretariat's job.

**MR. RALPH:** Right.

And so the minute in council indicates what decision has been made?

**MR. STANLEY:** Yes.

**MR. RALPH:** And so why would there be an OC, which I see in –?

**MR. STANLEY:** Oh, so the minute in council is literally the minutes of the decisions and the consideration of materials in Cabinet. An order-in-council is a document evidencing a decision of Cabinet. But usually, an order-in-council is only issued if the decision requires some level of formal public acknowledgment or notice or record that the decision has been made.

There are a number of pieces of legislation that require decisions by Lieutenant-Governor in Council to be made under the legislation. Those decisions are required to be evidenced by orders-in-council so that the orders-in-council, which are generally public documents, give the decision of government in respect to that issue can then be publicly seen.

The minutes in council are not public documents. They're confidential documents to government.

**MR. RALPH:** Yes.

Now, I don't have an example for you, but I've seen documents where there is a submission by Nalcor and then an MC and an OC –

**MR. STANLEY:** Yes.

**MR. RALPH:** – with no analysis by a Cabinet officer. Have you seen documents like that?

**MR. STANLEY:** No, not recently, no. But I may not have been – I mean, ordinarily the submission would come from Natural Resources, not Nalcor directly.

**MR. RALPH:** Yes.

**MR. STANLEY:** That would be the normal process for most major policy issues, 'cause Cabinet would want the department's commentary on it.

**MR. RALPH:** Right, that's fine.

So like I say, a Cabinet submission is fairly straightforward in determining what sort of government policy –

**MR. STANLEY:** Yeah.

**MR. RALPH:** – comes out of that submission.

I think a briefing note or a note is a different animal altogether.

**MR. STANLEY:** Yes.

So a briefing note is a far less formal process. There, over time, have been developments in the templates used for briefing notes to distinguish between those that are simply communicating information and those that are actually seeking a decision.

But for example, within a department, if someone wanted a decision by the deputy minister or the minister, within the department, a briefing note might be prepared by whoever's responsible, and the briefing note would not leave the department. The briefing note would be considered by the executive of the department; the decision would be made, and that's it.

Occasionally, briefing notes were used to circulate information within government that would leave a department and go to Cabinet Secretariat for information or for a decision. And those notes – over time, the requirement was developed that the minister of the department had to sign off on those notes. So if you're physically looking at a briefing note that, at the end of the note, says prepared by, approved by, approved by, and it's approved by the minister, that's a clue that that note left the department and was going somewhere else for consideration.

**MR. RALPH:** So it's not a straightforward exercise to determine if the contents of a briefing note represent government policy?

**MR. STANLEY:** No, no. Depending on who drafted it and who approved it, you could have briefing notes drafted that represented the thoughts of the policy analyst working in the

issue, but you wouldn't have necessarily every clear record of whether it was approved or not by even the next level of management if you were getting –

**MR. RALPH:** Right.

**MR. STANLEY:** – all of the briefing notes that had been drafted.

**MR. RALPH:** So conceivably, you have a policy analyst, or someone within a department, drafts a briefing note. It doesn't go anywhere, but they save it somewhere.

**MR. STANLEY:** You could have that, yes.

**MR. RALPH:** And it's captured by a search.

**MR. STANLEY:** Yes, yes. I mean, every briefing note that you would have in a complete search of government records couldn't be stated to represent government policy on that point. Some of them may be no more than an individual's notes.

**MR. RALPH:** Right.

Those are my questions. Thank you, Mr. Stanley.

**THE COMMISSIONER:** Okay.

Nalcor Energy?

**MR. SIMMONS:** Good morning, Mr. Stanley. Dan Simmons for Nalcor Energy, as I think you probably know.

**MR. STANLEY:** Mm-hmm.

**MR. SIMMONS:** The Energy Plan, I think, was adopted by government as a public policy document while you were in your position at the Department of Justice?

**MR. STANLEY:** Yes.

**MR. SIMMONS:** Yes?

Did you play any role in the development of that plan directly or indirectly?



**MR. STANLEY:** Yes. I was part of a team, I guess, that would have been involved in the drafting of it at least, yes.

**MR. SIMMONS:** Okay.

And I think the Energy Plan – we’ve heard – is a, kind of, a source document for the creation of Nalcor, originally Energy Corporation of Newfoundland and Labrador, and sets out what some of the policy objectives were about the creation of that –

**MR. STANLEY:** Mm-hmm.

**MR. SIMMONS:** – company. Is that correct?

**MR. STANLEY:** I think that’s correct, yes.

**MR. SIMMONS:** Yeah.

**MR. STANLEY:** It’s been a while since I looked at it, but yes.

**MR. SIMMONS:** Yeah.

From what you recall, and this – I know it’s not a test, but can you tell me what your understanding is of what the idea was about putting Nalcor in place originally as it flowed out of the Energy Plan?

**MR. STANLEY:** Well, I think, as I said, I mean, the idea of Nalcor was to have a corporate vehicle to implement government policy in respective issues under the Energy Plan, such as, I think the term the energy warehouse gets used.

**MR. SIMMONS:** Mm-hmm. Yeah.

**MR. STANLEY:** And the model that was looked to was things such as Hydro-Québec –

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** – and I believe Statoil, as it was then, in Norway.

**MR. SIMMONS:** Mm-hmm. Okay.

And you’d be familiar with the Energy Corporation Act –

**MR. STANLEY:** Yes.

**MR. SIMMONS:** – which is the act of the legislature that created what was first called Energy Corporation of Newfoundland and Labrador and then renamed Nalcor Energy?

**MR. STANLEY:** Yes.

**MR. SIMMONS:** So would it be correct that we would look to that act for guidance as to what the governance relationship is between the shareholder – the province – and the corporation?

**MR. STANLEY:** That would be where the formal relationship would be set out, yes.

**MR. SIMMONS:** Right. And concerning any informal relationships, is there any other precedent – was there at the time Nalcor was created – any other precedent in place for a company like that and how it would relate to the Department of Natural Resources?

**MR. STANLEY:** As I said, in my comments earlier, no – I mean, there was – we didn’t have three Nalcors and this one was different – there was – this was a unique circumstance.

**MR. SIMMONS:** Right.

So for those people employed in the civil service who provided – filled the levels of policy guidance in the departments – the assistant deputy ministers and so on – would there have been any kind of institutional knowledge or any past practices in place that would, you know, inform their expectations about what this relationship would be like?

**MR. STANLEY:** No – other than those it would’ve developed with previously dealing with Newfoundland and Labrador Hydro –

**MR. SIMMONS:** Yes.

**MR. STANLEY:** – on a smaller subset of matters.

**MR. SIMMONS:** Right. Okay.

Now, aside from natural resources, are there any other – would you and your experience in justice have dealt with any other provincially-owned corporations that might’ve had a comparable

mandate or a comparable structure to what was put in place for Nalcor?

**MR. STANLEY:** No, I mean there was – government had a couple of Crown corporations created at the time, such as The Rooms –

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** – the Research and Development Corporation, which used a statute extremely similar to the Energy Corporation Act – it was virtually identical on most fronts. The legal structures for those entities would not have been wildly dissimilar to Nalcor.

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** The actual operational scope of what they were involved in, and the relationship with the departments that they governed then would've been different, I think, because they simply wouldn't have as much going on.

**MR. SIMMONS:** One example that comes to my mind is the Liquor Corporation, which is –

**MR. STANLEY:** Yes.

**MR. SIMMONS:** – is set up as a stand-alone corporation that engages in what in many places is the private business sector. In your experience have you had any involvement or knowledge in – what – how the governance relationship works in respect –

**MR. STANLEY:** Yeah.

**MR. SIMMONS:** – to the Liquor Corporation?

**MR. STANLEY:** I'd have to say I don't have a lot of experience with that, only because I would only know tangentially from advice being provided to just – from – by Justice to the Department of Finance in respect to the Liquor Corp., and I never was Finance's solicitor, so –

**MR. SIMMONS:** Right.

**MR. STANLEY:** – I wouldn't directly know that, no.

**MR. SIMMONS:** So would it be fair to say that the governance model for a corporation set up like Nalcor – which has as a large part of its mandate to engage in public – in private sector activities as well as the subsidiary-regulated activities through Hydro, as you said – that the expectation would be that it would function in some respects like a private corporation, as opposed to a department of government.

**MR. STANLEY:** Yes, I think that was the intention, to a certain extent, with the creation of Nalcor.

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** And if I could, I think that was the expectation of a lot of people who worked at Nalcor. And I think that was at times a source of the friction and/or misunderstanding respecting government's shareholder disclosure information requests. Because you would have a circumstance of individuals who had come from private industry, where they would not be used to a shareholder seeking the level of information that government at times was seeking – and it was more of a cultural clash than anything else.

**MR. SIMMONS:** Yeah.

So, Nalcor Energy had a corporate structure where there was a board of directors and the board, I believe, is appointed by government.

**MR. STANLEY:** Yes.

**MR. SIMMONS:** And there's a chief executive officer; who I think is selected by the board.

**MR. STANLEY:** He – I think, is selected by the board but appointed by the Cabinet.

**MR. SIMMONS:** And appointed by the Cabinet.

**MR. STANLEY:** Yes.

**MR. SIMMONS:** So the government not only appoints the board but also has some involvement in appointing the CEO.

**MR. STANLEY:** Yes.

**MR. SIMMONS:** From the level of CEO down, does government play any role in hiring the people, or selecting them, or managing the work of people? Or does that flow down from the CEO, as in a private corporation?

**MR. STANLEY:** My memory of the Energy Corporation Act is government's sole executive appointee is the CEO. And everybody under the CEO would be the responsibility of the CEO and the board of directors, I believe, to a point.

**MR. SIMMONS:** So as a matter of – you know – general corporate governance in that situation, would the communication flow within Nalcor be expected to be up to the CEO level and then from the CEO across to the shareholder – which in this case is the government – for important decision making?

**MR. STANLEY:** For important decision making – yes – I think that is accurate.

**MR. SIMMONS:** And would it be fair to say that that's a bit of a different model than many other subsidiary organizations that report into departments in government.

**MR. STANLEY:** I'm not sure I can agree with that, but only because most subsidiary organizations operate largely in isolation from government because they don't share overlapping areas of responsibility.

**MR. SIMMONS:** Now in this case – in looking at the Muskrat Falls Project and your involvement in it and your departments involvement in it – would the primary areas of overlapping responsibility between Justice, Finance perhaps, Natural Resources and the things Nalcor were involved in – would they primarily have involved financial and commercial arrangements?

**MR. STANLEY:** They definitely were one of them – I can't say that they would've been exclusive to that 'cause there would've been joint concern on Aboriginal matters.

**MR. SIMMONS:** Yes. (Inaudible.)

**MR. STANLEY:** And there would've been a relationship where government was still the environmental regulator.

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** So government – Nalcor would have been expected to, and would have gone through environmental processes, with government as the environmental regulator as any other entity – which is my understanding how it occurred. Most of the other interactions – there were a number of areas where they weren't – I don't know if strictly commercial or financial – that there was interaction, for example, on issues to do with land rights in the creation of the transmission line.

**MR. SIMMONS:** Hmm.

**MR. STANLEY:** And an entire discussion and a process that went on with Nalcor to identify what – how do you actually create the legal interest required for them to build the Labrador-Island Link transmission line? And the creation of a special statutory instrument in easement so that, you know, there were whole discrete pieces of work. The one that I worked on the most would have been the financial arrangements and the commercial arrangements.

**MR. SIMMONS:** Right.

So, for example, the negotiation of the arrangements with Emera. Were you and/or people from your department involved either directly or indirectly in those negotiations? Without getting into the substance (inaudible) –

**MR. STANLEY:** No, I'll get into that. We were involved – I was involved in the negotiation of the term sheet with Emera, which I think was in 2010.

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** Government generally wasn't involved in the detailed negotiations between Nalcor and Emera at the negotiation levels. There was no government representative there, as I understand it.

**MR. SIMMONS:** So for the term sheet – were there government representatives who were at the table for the negotiation of the term sheet?

**MR. STANLEY:** Again, without getting into it – no, the government representatives would have

been outside the room consulting with the Nalcor people before they went in to the negotiations with Emera.

**MR. SIMMONS:** So present for the negotiations, in a position to know what was happening in the negotiations and to be consulted with, but not actually at the table doing the negotiating.

**MR. STANLEY:** For the 2010 term sheet? Yes.

**MR. SIMMONS:** Okay.

What about for the negotiations concerning the federal loan guarantee? What kind of direct or indirect involvement did you or people from your department play in that?

**MR. STANLEY:** We would've – government was more involved in those negotiations. We would have provided advice to the government officials who were involved in those negotiations.

**MR. SIMMONS:** Okay. And, I think as well, government retained other outside legal counsel from – in order to assist with government's role in those negotiations. Is that correct?

**MR. STANLEY:** Yes. I think it's in 2011 –

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** – government retained the firm of Borden Ladner Gervais to provide government with advice on the financial negotiations and what government's roles would be –

**MR. SIMMONS:** Mm-hmm.

**MR. STANLEY:** – recognizing that government was going to have to make direct commitments into those financing arrangements.

**MR. SIMMONS:** Right.

So it's fair to say government was actually a participant in those negotiations, along with Nalcor, federal government and, I guess, Emera as well –

**MR. STANLEY:** For the federal loan –

**MR. SIMMONS:** – who were involved in all of it.

**MR. STANLEY:** – guarantee?

**MR. SIMMONS:** Yes.

**MR. STANLEY:** Yes, I think that's accurate.

**MR. SIMMONS:** Okay. Good.

Okay, thank you. I don't have anything else.

**MR. STANLEY:** Thank you.

**THE COMMISSIONER:** Concerned Citizens Coalition.

**MR. BUDDEN:** Good day, Mr. Stanley. We've met before, of course.

My name is Geoff Budden, as you know. I'm the lawyer for the Concerned Citizens Coalition which, as you probably know, is a group of individuals who, for a number of years, have been concerned about the Muskrat Falls Project.

**MR. STANLEY:** Yes.

**MR. BUDDEN:** So I have a few questions for you. And unless I say otherwise, I'm – when I'm asking you about certain – how certain – what certain people did or didn't do, I'm really focused on the period pre-sanction, so, say, 2008 or '09 up to 2012.

**MR. STANLEY:** Okay.

**MR. BUDDEN:** So that's just a general principle.

As I take your evidence – and obviously I've read your transcript as well – it appears that the normal oversight role that government might have with respect to a Crown corporation wasn't present with Nalcor. Would you agree with that?

**MR. STANLEY:** I can't say at the top level that the – I don't know if there is a normal oversight when you get into the scope of activities Nalcor was undertaking.

There were concerns that government's – as I think I stated, government's desired level of

oversight into what was going on at times was – there was an inability to get the information, at least in the beginning.

**MR. BUDDEN:** Sure.

And I should distinguish, certainly, would you agree there was a lack of departmental oversight as one would ordinarily see.

**MR. STANLEY:** I'd leave the overall departmental oversight comment to – I think Mr. Bown is going to testify at some point here because he would have been – more knowledge of that. But the – I guess, Nalcor's relationship with government wasn't restricted to coming through the Department of Natural Resources would probably be the best way to put it.

**MR. BUDDEN:** Of course. There was a – as we've heard, there appeared to have been direct lines of communication, perhaps, to the Premier's office that wouldn't ordinarily be there.

**MR. STANLEY:** More than you would see with a normal – other Crown Corp. as discussed here, yes.

**MR. BUDDEN:** Sure.

I guess, though, one question – and you – you're – you pre-date Nalcor with government, you were there from 2002 up. Was it always that way? Like, with Newfoundland Hydro, did they operate in the same way prior to, say, 2007 or so?

**MR. STANLEY:** I'm not sure my memory serves me. There was always issues that Newfoundland Hydro – there were – I shouldn't say issues, there were instances where Newfoundland Hydro's relationship with government as a Crown Corp. was not strictly – no, in terms of governments, I can't comment. I don't know whether Newfoundland Hydro would or would not have had a line around Nalcor – or the Department of Natural Resources, it would've come strictly through the Department of Natural Resources every time. I don't have memory of either.

**MR. BUDDEN:** Okay. So you simply cannot comment one way or the other.

**MR. STANLEY:** I don't think I can comment on that, no.

**MR. BUDDEN:** Okay.

You seem to be about to comment or you seemed to hesitate there before you finally said you can't comment.

**MR. STANLEY:** There's one issue I'm aware that there was – going back to issues of a rub between the levels of government and how Nalcor (inaudible) itself. There's a traditional issue, I think, on the same front with how Newfoundland and Labrador Hydro dealt with property interests for transmission lines. That they would do something and then tell government what they had done, and government would grant the interest as opposed to ...

But that's just one instance of, you know, an example of where it wasn't always strictly by the book with Hydro either, I guess.

**MR. BUDDEN:** And that's the one instance that stands out in your mind?

**MR. STANLEY:** Yeah, that's what I remember. Yes.

**MR. BUDDEN:** Sure.

**MR. STANLEY:** Yeah.

**MR. BUDDEN:** Okay.

This development where Nalcor obviously acquired a bit of a special relationship, I'm curious as to how that came about. Was it something that was sort of announced in advance, Nalcor was going to have a special relationship? How was that communicated to the senior levels of the civil service of which you obviously were part of?

**MR. STANLEY:** Well, I would've been advising the senior levels of the civil service as opposed to being one for a significant portion of the time. No, I think the development of the relationship was far more organic than that. There was no formal announcement or formal structure. It arose out of the – I guess, the interest and the implementation originally with

the oil and gas measures and Nalcor and it sort of developed from that.

**MR. BUDDEN:** Sure.

I'm struck somewhat by your choice of the word "organic." Would it also be true to say that the bureaucrats found out about it sort of after the fact?

**MR. STANLEY:** No, I mean what we're talking about is a pretty slow process whereby Nalcor – you know, the levels of reporting and Nalcor's interaction with government developed over time. I don't know if bureaucrats would've found out about it after the fact on any particular instance, it just sort of became the norm.

**MR. BUDDEN:** Sure.

So there's no policy that said hereafter Holdco or Nalcor or whatever will have a somewhat different relationship than will most Crown corporations and will, in many respects, deal directly with the Premier's office rather than going through the departments?

**MR. STANLEY:** No, I'm not aware of a formal policy on that. And as I stated, I think dealing with the Premier's office physically may have involved dealing with the executive of the departments when those meetings occurred.

**MR. BUDDEN:** Okay.

You've talked about certain instances, what appears to be almost resistance or pushback to this. Is it fair to say that there was some resistance or pushback or was there not?

**MR. STANLEY:** Oh, I think it's fair to say that – use an analogy: down in the engine room. There were concerns by people in government who had responsibility for areas and policy responsibility and who cared what they were doing. There were concerns that a model where their advice wasn't obviously always being solicited at first instance might result in government making decisions.

Usually, by the time any final decisions were made, because none of this – and none of this was done quickly – everybody's advice and opinions were solicited and heard. So it wasn't

like people were completely avoided in making decisions, it's just that at times, especially in the early days, there was a view that there were people that perhaps didn't get a chance to have their say before a discussion occurred.

**MR. BUDDEN:** Sure. And policy people, people who would ordinarily expect to have their say –

**MR. STANLEY:** Yes.

**MR. BUDDEN:** – for a policy decision.

**MR. STANLEY:** That's what I'm talking about, yes.

**MR. BUDDEN:** Sure.

**MR. STANLEY:** Yeah.

**MR. BUDDEN:** Concerns expressed – how were they expressed, formally, informally? Can you give, like, an example –

**MR. STANLEY:** Oh.

**MR. BUDDEN:** – to help us understand?

**MR. STANLEY:** I –

**MR. BUDDEN:** These are important points.

**MR. STANLEY:** I think people would – I would expect that the people involved would raise it with their management, their direct – you know, their manager. I don't think it was unknown to the executive of the Department of Natural Resources, for example, that these things – there were concerns. I think the executive of the department of resources would probably – or Natural Resources would probably have had the same concerns.

**MR. BUDDEN:** Okay.

You spoke generally there. You said: I wouldn't think it was unknown.

**MR. STANLEY:** Mm-hmm.

**MR. BUDDEN:** But I guess I'm asking you: Can you – you know, thinking back, can you think of an actual instance of such concern being

expressed, how it happened, who made it, how it was received?

**MR. STANLEY:** Well, I have heard the concerns, but I wouldn't have been part of the department to know how the people in the department may or may not have communicated that through their executive.

**MR. BUDDEN:** Okay, but who were you hearing concerns from?

**MR. STANLEY:** From – you know, from the people that I work with who would have been the policy analyst directors, ADM at times, you know.

**MR. BUDDEN:** Okay.

**MR. STANLEY:** Yeah.

**MR. BUDDEN:** Did you, yourself, ever express any such concerns?

**MR. STANLEY:** I expressed concerns at times about perhaps the – to my executive, about, not so much the communication methods or what was going on in terms of people not getting a chance to, you know, decisions being made. My concerns that I would have expressed would have been in respect of legal services, you know, as – concerned about our resources, Nalcor's resources, our ability to interact, our ability to keep up, that kind of thing.

**MR. BUDDEN:** Okay. Two questions there, I guess, firstly, who did you – you say your executive, that would be –?

**MR. STANLEY:** Oh, well I would have been a solicitor in the Department of Justice for – at the time we're talking about. So I would have had discussions on that with my assistant deputy minister and deputy minister at the time.

**MR. BUDDEN:** Who would have been –?

**MR. STANLEY:** We're probably, at that point, talking about Don Burrage and my assistant deputy minister at that time would have been, possibly, Debbie Paquette, I think.

**MR. BUDDEN:** Okay. Sure.

**MR. STANLEY:** And there were others.

**MR. BUDDEN:** And your concern was with respect to legal – to a duplication of services or perhaps services that counter contrasting advice on –

**MR. STANLEY:** No, not so much that. It's just we would regularly have meetings with the Department of Natural Resources who would tell us this is what we think is coming, both in terms of Muskrat Falls Project and otherwise, this is what our legal services – we're going to need in the next six months. This is what could be coming.

And we'd have those meetings regularly and then it would be a matter for me to raise with the executives to say, my client, being Natural Resources, looks like we could need this amount of legal resources to get this work done. We're not sure when it's coming or if it's coming, but if it does we're going to have a problem. And then within the Department of Justice, we'd try to find ways to ensure that we have the necessary resources available.

**MR. BUDDEN:** Okay.

You mentioned Mr. Bowen a moment ago – or Bown rather, I believe – what was the nature of your working relationship with him and what were your respective positions? What were those interaction? Now, you're not talking about terms of whether you got along or not but –

**MR. STANLEY:** No.

**MR. BUDDEN:** – tell me a bit about the line of command there.

**MR. STANLEY:** I would have started to work with Mr. Bown when he started to get involved in the Energy and Muskrat file, because I think he came from the mining side of the department, which I hadn't had experience with. On a lot of matters, I was providing him with legal advice on the matters he had in front of him.

**MR. BUDDEN:** Okay.

**MR. STANLEY:** Or I was providing advice to people that were working for him on legal

advice on matters he had in front of him, as he rose in the Natural Resources executive.

**MR. BUDDEN:** Okay.

Did you ever hear him, and, again, we'll hear from him, but did you ever hear him express any concern about any aspect of the Muskrat Falls Project or any concern, enthusiasm, anything at all? And, again, we're talking pre-sanction.

**MR. STANLEY:** I – first question is, I'm not sure whether or not such concerns as expressed would be privileged or not. I think they probably would be, so on that basis, I don't think I'm gonna answer that.

**MR. BUDDEN:** Okay.

Perhaps, Mr. Commissioner, could we have some direction on that, whether the witness should answer that question?

**THE COMMISSIONER:** Well, it's – the question is so general that I don't know the specifics of what it – what type of information, but if this witness is telling me that if concerns were raised with him and he responded to them as a lawyer to the department, then I would suspect that they are solicitor-client privileged. But I don't know, like, I'm sort of in a bit of a vacuum here –

**MR. BUDDEN:** Maybe focus the question a bit?

**THE COMMISSIONER:** – because I don't really – right. Because I don't really know the nature of what it is you're asking, it's such a general question.

**MR. BUDDEN:** Okay, firstly, were there questions or concerns he raised with you, other than specific to seeking your legal advice with respect to those concerns?

**MR. STANLEY:** Over the time –

**THE COMMISSIONER:** Excuse me for a second.

So, can you turn off your mic for a minute and then I'll get Mr. Fitzgerald to put his on?

**MR. FITZGERALD:** I think that is also still too vague: Were there concerns other than seeking your legal advice? That is so open-ended, it's not even funny. I mean, Mr. Stanley was the lawyer for Mr. Bown as his – in his role at Justice. He's asserted solicitor-client privilege, and I don't think Mr. Budden should be allowed to go any further down this fishing expedition.

**THE COMMISSIONER:** I'm not so sure that question was not more specific. Let's see if the witness can answer it without having to get into anything that might be solicitor-client privileged. You were about to answer.

**MR. STANLEY:** Over the term of my relationship with Mr. Bown on this file, yes, there were points where we had discussions about concerns about the project, yes.

**MR. BUDDEN:** Okay. Outside of him seeking your legal advice with respect to those concerns?

**MR. STANLEY:** I don't know of any that I can put my finger on that would've been outside of our legal relationship, no.

**MR. BUDDEN:** Okay, I assume that circles back, Mr. Justice, you now have a specific question that you can address.

**THE COMMISSIONER:** Yeah. I think that is, you know, if the witness is answering that there were concerns that were discussed but they weren't outside the ambit of what would be considered to be solicitor-client privilege, I cannot –

**MR. BUDDEN:** I appreciate that, yeah.

**THE COMMISSIONER:** – base my (inaudible).

**MR. BUDDEN:** Okay, so, that's your evidence. We'll move on.

Mr. Robert Thompson, what was the nature of your working relationship with Mr. Robert Thompson?

**MR. STANLEY:** I would've –

**MR. BUDDEN:** Again, pre-sanction.



**MR. STANLEY:** Yes, I would've – I'm trying to think – I would've been advised in providing legal services, occasionally, to Mr. Thompson when he was a deputy minister, but he came from the Department of Health, so I wouldn't have known him that well. Then when he was clerk, I would've been part of the team providing him with legal services, if he needed legal advice, on matters to do with Energy related things. Much the same as Mr. Bown.

**MR. BUDDEN:** Okay. And I'll ask the very same question with the same context.

Did Mr. Thompson ever express concerns to you about the Muskrat Falls Project, outside of the ambit of seeking legal advice from you?

**MR. STANLEY:** None that I remember, no.

**MR. BUDDEN:** Okay. Thank you.

As I understand your evidence as particularly on direct, but also through Mr. Simmons, do I take it that you're unaware of any department of the Government of Newfoundland including the Finance and Natural Resources having fully reviewed the cost and schedule information provided by Nalcor at the time or in the period leading up to sanction. And I think by reviewing, I'm thinking of essentially efforts intended to verify the numbers and schedule being put forward by Nalcor. Are you aware of any such review having taken place?

**MR. STANLEY:** Other than the public third-party reviews that would have been known at the time, no.

**MR. BUDDEN:** Okay.

Was it that the civil service lacked the capacity to appropriately review – I'm talking about Finance and Natural Resources – to appropriately review Nalcor's proposals with respect to cost and schedule?

**MR. STANLEY:** I don't know if I can answer that because it wouldn't be in my speciality to know what would be required to actually do such a review. Where it's a, you know, a project finance accounting exercise.

**MR. SIMMONS:** Okay.

I'd like to turn to a certain part of your transcript, page 32 in particular, I'm going to read one of your answers to –

**MR. STANLEY:** Hmm.

**MR. SIMMONS:** – a somewhat similar question you gave at that time, then ask you either to adopt it or to distinguish it.

Quote: "That may have been in part" – I can give you more but I think this will be sufficient – "That may have been in part, because as I said before, what Nalcor was doing to generate those numbers, for the cost estimates for construction and the like, were largely – as, like I said, it's a black box. Government had no insight – you know, I didn't see any insight by government into what Nalcor was doing." And this is the key part. "And I don't think government had the expertise to say to Nalcor, send me over everything, I'm going to do an independent cost review. There's nobody in government to dictate that mail, right?"

**MR. STANLEY:** Yeah, I mean, at the level of send me all of your fundamental information and I'm going to redo your cost estimates for the project, I was not aware that we had that capacity within government.

**MR. BUDDEN:** Okay.

We're not talking about redoing it; we're talking about doing an independent cost review. And your evidence is that, to your knowledge, nobody in government had the capacity to do an independent cost review of the product Nalcor was producing.

**MR. STANLEY:** Yes, yes –

**MR. BUDDEN:** Okay.

**MR. STANLEY:** – to my knowledge. I could be proven wrong.

**MR. BUDDEN:** Well, that was your understanding.

**MR. STANLEY:** That was my understanding at the time.

**MR. BUDDEN:** Okay.

I'm – on some – broadly the same subject area, at page 37 you made a comment; again, I'll read you a quote here. And there's a bit of a preamble but I think this stands for itself.

You say: "I don't know if government – I'm not aware of anytime where government actually asked anyone to do that analysis or to figure out whether or not we should be reporting that ... you know, my understanding of the cost estimates from Nalcor was always, basically, hard core cost estimates with a contingency bump of, like, 10 or 15 per cent" – and this is the key part – "'cause they were so sure they had everything bolted down."

**MR. STANLEY:** So –

**MR. BUDDEN:** They, being Nalcor, obviously.

**MR. STANLEY:** Yeah.

So I mean I was involved in discussions where Nalcor was talking about their cost estimates and expressing confidence that they had the cost estimates done and had been vetted, had gone through a number of processes and were talking about contingencies that they viewed as being prudent to – and what they would expect to be within in the development of the project.

**MR. BUDDEN:** Because they had everything bolted down.

**MR. STANLEY:** Well, to use my term, yes. I think it's pretty clear from my transcript that we had a fairly conversational discussion on the 31st of August. And, yes, but that's what I meant by that term, yes.

**MR. BUDDEN:** Sure.

So what exactly do you mean by bolted down? I guess it's your term –

**MR. STANLEY:** Well, they would have – I mean, as I said before, for the greatest extent, the cost estimates that were coming out of Nalcor for various things were, I think I used the term, a black box. You were told that they had done all of this work to develop the cost estimates, you didn't see behind those numbers very much.

So that's what I meant there. They had – you know, they were expressing confidence that they had gone through and costed everything out and that their numbers were reliable –

**MR. BUDDEN:** Okay.

**MR. STANLEY:** – on that basis.

**MR. BUDDEN:** You spoke in your direct evidence about Nalcor coming to government for direction. And I guess I'd suggest to you, would it be more accurate in these years to say that Nalcor was, in many respects, coming to government with directions? This is what we need to do, this is what you got to do, you got to do it now.

**MR. STANLEY:** No. I mean, you may need to distinguish between – at the highest levels and what was being required at departmental levels. Nalcor was coming in to – on a hundred issues on a regular basis to develop how the project was going to be – move forward and to come forward and say, this is what we're going to need to do to advance the project.

I don't think that, you know, the tone of that at times may have sounded like they were dictating to government what they needed but, government, usually in frustration with that, would push back and usually the solution that was ultimately arrived upon would be somewhere in between what Nalcor wanted and what government was originally initially willing to give.

And I think that overall tension was actually very healthy because there was no rubber-stamp engine underway; you know, government wasn't just giving Nalcor what they wanted. At the higher levels, I'm not sure I would view that Nalcor came in and was dictating to government anything. It was far more of a: This is – in order to prosecute the project, this is what we would need, this is what we're looking at, this is what we're thinking of, do you approve?

**MR. BUDDEN:** Let's go to – I'm going to bring you back to a passage of your transcript, and this may clarify my thoughts a bit and perhaps yours. Mr. Learmonth directed you to a passage on page 19 of the transcript. I know you have it in front of you –

**MR. STANLEY:** Mm-hmm.

**MR. BUDDEN:** – but I'll just read you a couple of the key paragraphs. This is you: "You know, there were instances where we went over to Hydro, or Nalcor, for a briefing on something as to how the Muskrat project would be structured – this was fairly early days – and they would tell us it's gonna be A, B or C.

"I remember a meeting where we went – and I can't remember what the briefing was, the topic of it – but the instructions were, like, you know: And it's gonna work like this. And the government people were sitting there and were like: Well, who said it's going to work like that? That's, you know, the perceived, at least, concerns about how that would be."

Those were your words.

**MR. STANLEY:** Yes.

**MR. BUDDEN:** And then you said, "And Nalcor's response was, this was approved by the premier." So the sense I get from this is that there is a whole chain of communication between Nalcor and the Premier's office, and the departments were utterly outside the loop on that.

**MR. STANLEY:** The instance that we're talking about – and in the early days there were instances where that would be the case. The ultimate resolution of matters – nothing ever came to a final resolution through that process, including the topic that was at discussion at that meeting.

That – ultimately, as I said, that was a scenario where Nalcor had gotten approval to do it this way that was originally communicated. By the time it was all resolved it was neither – I think using the terminology I used in my statement it was neither A, B or C. That was the ultimate resolution of that matter.

**MR. BUDDEN:** Okay.

So would it be fair to say then the broad strokes of policy would be worked out between Nalcor and the Premier's office, the particulars of implementing that policy sometimes required a bit of give and take with the departments?

**MR. STANLEY:** No, it would be that the first run at some of these foundational issues back at this time may have been discussed at the Premier's office and not just – a discussion at the Premier's office didn't exclude the executives of the departments involved, that was just physically where it happened. And then, ultimate resolution of the matter would have involved the departments, but the first run at it might have come up in a meeting.

**MR. BUDDEN:** Okay.

**MR. STANLEY:** And there was also a timing of communication issue that I think the people within Nalcor were getting communicated decisions that had been made perhaps faster than a decision had been made or communicated in the department.

**MR. BUDDEN:** Okay.

You didn't say it quite like that in your transcript.

**MR. STANLEY:** No, I did not. No.

**MR. BUDDEN:** Okay.

**MR. STANLEY:** As I said, my discussion with Mr. Learmonth on the 31st of August was a fast-moving conversation and we didn't get a chance to clarify some of those points.

**MR. BUDDEN:** Okay, under oath though.

**MR. STANLEY:** Mmm.

**MR. BUDDEN:** I mean you knew why you were –

**MR. STANLEY:** I stand by what I said there.

**MR. BUDDEN:** You knew why you were there.

**MR. STANLEY:** Oh no, I agree.

**MR. BUDDEN:** Yeah.

**MR. STANLEY:** At that time it wasn't clear I was going to be a witness, but yes.

**MR. BUDDEN:** Okay. So now you are a witness.

**MR. STANLEY:** Now I'm a witness.

**MR. BUDDEN:** Okay and you're backtracking a little bit perhaps?

**MR. STANLEY:** No, I think what I'm saying is consistent with what I said there. I mean that meeting happened. The – that discussion happened at that meeting, but I don't think Mr. Learmonth and I got into a discussion of the ultimate resolution of the issue that occurred at that meeting.

**MR. BUDDEN:** Okay.

One issue that this Inquiry has had to face is that there has been some trouble simply finding certain reports out of – reports and analysis from key Departments of Finance, Natural Resources with respect to certain aspects of the Muskrat Falls Project and, particularly, around cost and schedule estimations. And Premier Williams was asked, in redirect I believe, if he had any answers to that, where might this analysis actually be.

**MR. STANLEY:** Mm-hmm.

**MR. BUDDEN:** And do you personally have any recollection of seeing analysis around those issues generated within the departments?

**MR. STANLEY:** No. I don't – if I get the gist of what you're asking about, analysis of Nalcor's numbers as provided, my answer would be, no, I think.

**MR. BUDDEN:** Okay.

The – we talk about decision sanction, but as obviously you well know, that was really a choice between two options: One option being to develop Muskrat Falls, the other option being to continue with the Isolated Island Option. So at least as it has been presented to us, that was brought forward in – at the time of DG3, at the time of sanction, as essentially a cold look based on the economic factors between those two choices.

It is the position of my client, which I'll put to you, that in fact the decision, practically speaking, really had been made sometime before, that there was a commitment to Muskrat

Falls and that all the major players within Nalcor and government were committed to Muskrat Falls.

And I guess I'm asking you, as somebody who was – we'll hear from other people – but somebody who was in government at the time, what was your sense, I guess, of the relative enthusiasms for the two options? Muskrat Falls Project and the Isolated Island project.

**MR. STANLEY:** I'm not sure how to answer that, because I don't remember – while I know those were the options that went to the Public Utilities Board, I don't remember the analysis or the discussions within government at the time of sanction being just those two, we have to do one of them. That's not my memory of how it occurred.

**MR. BUDDEN:** That's not your memory of DG3 December 2012 sanction?

**MR. STANLEY:** That's not my memory. I'm not saying that that's not how it happened, but that's not my memory of the options or the discussions within government at that time, no.

**MR. BUDDEN:** Okay, what is your memory of the discussions?

**MR. STANLEY:** I'm struggling with that, because I'm not sure how much I do remember of that.

Some of that stuff would have been outside of my brief. The biggest concern at that time was getting the Term Sheet negotiated with the federal government for the loan guarantee. After that was done, which I think was that fall, I'm not sure how much, directly, I had involvement in the sanction decision actually at that point.

**MR. BUDDEN:** Okay.

So you are not in a position to comment on –

**MR. STANLEY:** I don't think so, no. I mean, I was at the sanction announcement, but I don't remember having a lot of work or insight or input into the deliberations before that decision, no.

**MR. BUDDEN:** Okay.

We will, of course, hear from former minister Jerome Kennedy; he's a scheduled witness. You made some comments about he – perhaps he had – if I took them correctly, he might have had a bit of a fraught relationship with Nalcor.

**MR. STANLEY:** Well, Minister Kennedy – yes, I mean, he was – the bit that I saw, because I would have been providing advice to his department, he was tough on Nalcor; he was tough on the department. He also had a tough job to do because he was about to introduce the legislation in the fall of 2012, I think some of which we talked about here, to the House of Assembly, to implement government's financing commitments on the project.

So yes, I mean, he was demanding to work for and legitimately so given his responsibilities.

**MR. BUDDEN:** Tough on Nalcor – in what respects was he tough on Nalcor? Was he tough on them because they weren't – he was unhappy with their cost estimates. Was he tough with –

**MR. STANLEY:** No.

**MR. BUDDEN:** – them because they were late in getting stuff in?

**MR. STANLEY:** It might be – and I'm talking generalities here now. It may be if he was asking for information that he thought he needed to do his job, and what was coming over wasn't exactly information he wanted or whatever, he would let them know.

**MR. BUDDEN:** Okay.

There's a – as you no doubt are aware, much of your transcript has been redacted.

**MR. STANLEY:** Yes.

**MR. BUDDEN:** We don't know what you said, and we don't know what you were asked. There is a little passage I find somewhat intriguing on page 69, and it's surrounded by pages of redactions, so I may be going into an area that somebody will stop me, but I'll go there anyway until I'm told to stop.

Mr. Learmonth answered something with: "Yeah." And then you said: "It's a weird space.

Because we've been hearing all this stuff. You know, there were periods of time" when "basically you go to someone and say: Look, this is the media, this what's out in public. This is part of what drove Minister Kennedy to finally wanna get something out. That is what they're saying in the press."

And there's another redacted bit, and then: "So those issues, on a number of fronts but on this one in particular, is what prompted Minister Kennedy to write those information things to at least get the record straight on some of this stuff. Because he'd run into debates with people to stand up and go: When the province signed the power contract."

The bit there I'm interested in is: "in particular, ... prompted Minister Kennedy to write those information things to at least get the record straight on some of this stuff." What do you mean by "get the record straight"?

**MR. STANLEY:** So the exhibit that was put to me respecting – I think it's tab 8 or 9. The exhibit that was put to me regarding the document that was prepared by the Department of Natural Resources, I think it's titled Can We Wait 'til 2041? So that was a factual document put together by Minister Kennedy in preparation for debates in the House of Assembly.

And I think he wanted to – and you'll have to ask him that –

**MR. BUDDEN:** We will.

**MR. STANLEY:** – but the message was he wanted that document and others to be put together so that everybody was talking from the same factual basis because there was a number of times where in debates respecting matters such as 2041 that people have their facts wrong – not their opinions, their simple facts, such as whether or not the Province of Newfoundland and Labrador signed the power contract.

So he wanted that document put together just so everybody at least was operating – I – my understanding was at the time – from the same, correct factual basis to have a debate.

**MR. BUDDEN:** So if I get the record straight, that's what he meant –

**MR. STANLEY:** Yes.

**MR. BUDDEN:** – was to have a document that consolidated all the various facts around 2041 and the projects generally?

**MR. STANLEY:** Yeah, sort of a tombstone document you can use that actually lays out the facts.

**MR. BUDDEN:** Okay.

Have you anything else to offer us with respect to Mr. Kennedy and Nalcor? We will hear from him, of course –

**MR. STANLEY:** No, I think I'll leave that to him.

**MR. BUDDEN:** – and some people from Nalcor.

Pardon?

**MR. STANLEY:** I'll leave that to him.

**MR. BUDDEN:** Okay.

Had you heard reservations or concerns expressed within government as to whether Nalcor had the skills and experience to develop this project on budget and on schedule? This project meaning Muskrat Falls.

**MR. STANLEY:** No. No, I have to say, none come to mind.

**MR. BUDDEN:** Okay.

So that wasn't the concern within the department?

**MR. STANLEY:** The Department of Justice, no.

**MR. BUDDEN:** Okay.

In Natural Resources?

**MR. STANLEY:** I don't remember there being any concerns about the personnel or the expertise at Nalcor, no.

**MR. BUDDEN:** Okay.

Within the department – we've heard that the department may well have lacked some of the expertise needed to independently evaluate the Nalcor figures. Had we – had – are you familiar with any concerns expressed within either Justice or –

**MR. FITZGERALD:** Justice?

**MR. BUDDEN:** – Natural Resources?

**MR. FITZGERALD:** We are talking about a number of government departments. I just think if Mr. Budden is going to put that type of question to the witness he should ask if it's Department of Finance, if it's Department of Natural Resources or what department are we talking about?

**MR. BUDDEN:** That was the very point of my question, which I was interrupted.

**THE COMMISSIONER:** Okay. Go ahead.

**MR. BUDDEN:** Okay.

As I was saying, the Departments of Justice, Natural Resources and Finance, did you hear concerns expressed along those lines.

**MR. STANLEY:** In respect of their ability to do what?

**MR. BUDDEN:** In respect of the lack of independent verification of numbers relating to cost and scheduling.

**MR. STANLEY:** I can't speak for the Department of Finance. I know that, at that time, the Department of Natural Resources – at the time, the Department of Natural Resources was struggling overall with resource issues. We all were, so was the Department of Justice. The – I can't say that I heard anything directly tying those struggles to an inability to review anything, no.

**MR. BUDDEN:** Okay.

By resource issues, you mean human resources and –

**MR. STANLEY:** Yes.

**MR. BUDDEN:** – that (inaudible).

**MR. STANLEY:** Yes. Mainly.

**MR. BUDDEN:** And these were during the difficult years –

**MR. STANLEY:** Yes. And I think the Department of Natural Resources has – had a number of vacancies in its org chart at the time as well.

**MR. BUDDEN:** Okay.

I take it from your answer – particularly Mr. Simmons – that the negotiations around the Maritime Link and the other contracts around the implementation of the Maritime Link and the federal loan guarantee and so forth, to your knowledge, lawyers for the Government of Newfoundland were not actually in the room while those negotiations took place?

**MR. STANLEY:** Well, you need to be more specific. In respect of the negotiations between Nalcor and Emera, after the 2010 Term Sheet was negotiated, government lawyers were not directly involved in that. Government lawyers were directly involved in –

**MR. BUDDEN:** Federal loan guarantee.

**MR. STANLEY:** – all aspects of the federal loan guarantee.

**MR. BUDDEN:** Of course. Yeah.

Yes, you're quite right.

And the other aspects of the dealings with Emera, other than the Term Sheet – is it the same answer as for the Term Sheet, the negotiation of the Maritime Link contract and so forth? Or would it be a different answer?

**MR. STANLEY:** Well, I think – I'm not sure whether negotiations would've been – I mean, the Emera arrangements, I think, required 12 or 13 contracts.

**MR. BUDDEN:** Yes.

**MR. STANLEY:** There was involvement by the Government of Newfoundland in those

discussions at one point because there was an Intergovernmental Agreement negotiated. But other than that there was no direct participation in the negotiations as they occurred.

**MR. BUDDEN:** Okay, sure.

I just got a final handful of questions around Newfoundland Hydro and Nalcor, and their relationship.

We've heard evidence from the four members of the board of Nalcor who testified – who were on the board as of sanction – that each of them was also concurrently a director of Newfoundland Hydro. So there appears to have been an overlapping directorship between the two corporations. Okay? So we've heard evidence about that.

What is your understanding of the relationship between Nalcor and Newfoundland Hydro as of this time period leading up to sanction?

**MR. STANLEY:** I'm not sure what I can add to that. I know that upon the creation of Nalcor – which would've been 2007, 2008 – boards were jointly appointed just out of convenience. The Nalcor – the Energy Corporation legislation required there be a number of independent directors. I was aware that there were, over time, problems or concerns about the ability to fill vacancies on boards and the ability to find independent directors for the number of corporations that were created.

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

**MR. STANLEY:** I'm not sure if that answers your question.

**MR. BUDDEN:** It does somewhat. But also, would it be accurate, say, to describe Newfoundland Hydro as a subsidiary corporation of Nalcor?

**MR. STANLEY:** Oh, I'm sorry – yes. Structurally, corporately – yes. I think there's a section in the *Energy Corporation Act* that says it owns a hundred per cent of the shares of Hydro.

**MR. BUDDEN:** Okay.

**MR. STANLEY:** The only exception to that is, I think, there's also a provision in the Hydro Corporation Act that says it can receive direct instruction from Cabinet if required.

**MR. BUDDEN:** Okay.

And this time, of course, Nalcor had entered into – or was entering into various financing arrangements to construct Muskrat Falls, including the federal loan guarantee.

**MR. STANLEY:** Mm-hmm.

**MR. BUDDEN:** And would it be accurate to say that as a precondition for those loans there had to be a Power Purchase Agreement entered into between Nalcor and Newfoundland Hydro?

**MR. STANLEY:** I think conclusion of that Power Purchase Agreement would've been – I may have my timing wrong – would've been a condition precedent for the federal loan guarantee?

**MR. BUDDEN:** Yes. That's (inaudible) –

**MR. STANLEY:** I think that's my understanding if it was.

**MR. BUDDEN:** – yeah.

**MR. STANLEY:** I didn't work on those agreements, so I'm not sure of their timing.

**MR. BUDDEN:** Okay.

So – and the effect of the Power Purchase Agreement that was ultimately signed, committed Newfoundland Hydro to purchase power into a period of many decades –

**MR. STANLEY:** Hmm.

**MR. BUDDEN:** – 50-plus years – from Muskrat Falls and somewhat independent of demand, there was an obligation to purchase that power.

**MR. STANLEY:** Yes, that's my understanding. Yes.

**MR. BUDDEN:** Okay.

You're familiar, of course, with the *Hydro Corporation Act, 2007*?

**MR. STANLEY:** Yes.

**MR. BUDDEN:** Okay.

As – I'm just going to read briefly from section 5(1) of that act which says that: "The objects of the corporation are to develop and purchase power on an economic and efficient basis ..." and then there's some stuff I've left out "... and to supply power, at rates consistent with sound financial administration, for domestic, commercial, industrial or other uses in the province, ...."

**MR. STANLEY:** Mm-hmm.

**MR. BUDDEN:** And so I take it from that that Newfoundland Hydro has a statutory duty, as set out in its purpose, of – to purchase power on an economic and efficient basis and to sell that power at rates consistent with sound financial administration to other domestic customers – to me and you and everybody else in this room, and others.

Do you see, I guess – or do you acknowledge a possibility of a conflict between those two – I guess, the purpose of Nalcor to finance its project and Newfoundland Hydro to deliver, to purchase power as affordably as possible and to deliver power to its customers as affordably as possible?

**MR. STANLEY:** I think to answer your question would require me to give a legal opinion, which I don't think I'm prepared to do.

**MR. BUDDEN:** Okay. So that's something that would fall within the solicitor-client privilege that you're asserting?

**MR. STANLEY:** As to whether or not that advice had ever been solicited, yes.

**MR. BUDDEN:** Okay. Thank you.

We'll bring that up with other witnesses.

Thank you. That's it.

**THE COMMISSIONER:** All right. Good.



Thank you.

It's 12:30 now, so I think we'll take out break here now until 2 o'clock, and we'll return and Edmund Martin will be next for cross-examination.

**CLERK:** All rise.

**Recess**

**CLERK:** This Commission of Inquiry is in session. Please be seated.

**THE COMMISSIONER:** All right.

Edmund Martin?

**MR. SMITH:** Good afternoon, Mr. Stanley. Harold Smith –

**THE COMMISSIONER:** Just turn your mic on.

**MR. SMITH:** Yeah. Harold Smith for Edmund Martin.

You've testified generally that there were presentations, a number of them, to the eighth floor, I think, was –

**MR. STANLEY:** Yes.

**MR. SMITH:** – where the premier was, right?

**MR. STANLEY:** Yes.

**MR. SMITH:** Would you have sat in on any of those meetings?

**MR. STANLEY:** On some of them, yes, but not as a default. I would have sat in on ones where there were legal issues potentially or negotiations going on, but I wasn't automatically attending.

**MR. SMITH:** And was, to your knowledge, Mr. Martin present?

**MR. STANLEY:** Yes.

**MR. SMITH:** And would any other officials of Nalcor have been present?

**MR. STANLEY:** Depending upon the topic of a presentation, there would have been other officials from Nalcor. For example, if it was a financial issue, Derrick Sturge probably would have been there or somebody from his area, for example.

**MR. SMITH:** Now – and you said you had a number of years where you were working as a lawyer for the Department of Natural Resources.

**MR. STANLEY:** Yes.

**MR. SMITH:** And you told us about some frustration within the department.

**MR. STANLEY:** Yes.

**MR. SMITH:** Mostly over things coming to them other than through what they normally would expect in terms of information or requests for action.

**MR. STANLEY:** Yes, I think that's a way to put it.

**MR. SMITH:** Would – looking at that group – given that, I think you told us, at the eighth floor, often the minister or the deputy or even the ADM might be present. Would – I take it from that that the people that were expressing levels of frustration were in the middle ranks of the government?

**MR. STANLEY:** Yes, yeah that's right. That would be the best way to put it, yes, not necessarily the executive levels.

**MR. SMITH:** Okay.

And do you know whether they were excluded from the information or was it a situation where they may have gotten the information a little later than they thought they should?

**MR. STANLEY:** I think it would be the latter more than the former. That it was just a question of communication inside organizations as to what was going on.

**MR. SMITH:** 'Cause I noted in your cross, you said – and I'm paraphrasing a little – by the time of the final decisions, everyone's opinions were solicited and heard.

**MR. STANLEY:** Yes, yes.

**MR. SMITH:** Okay.

And do I take it from that that the middle management, if you will, of the department would have been involved at some point in time?

**MR. STANLEY:** Yeah, ultimately, before any final decision on any point was made, usually the matter would've gone around a couple of times between government and Nalcor. And through that process, the departmental officials, the subject matter experts and the like, would have had the opportunity to be consulted, to provide their opinion.

**MR. SMITH:** Now, in that context, would that mean that either the CFO or Mr. Martin would have been involved with the middle management people of –

**MR. STANLEY:** No, not ordinarily. No.

**MR. SMITH:** Who would be, from Nalcor, involved in those discussions?

**MR. STANLEY:** That would depend upon the area you were talking about. You – you know, Nalcor had its own, for lack of a better description, middle-management ranks of people, you know, on the – that work – for example, there are people in the finance department that work for Derrick Sturge, like Jim Meaney and Auburn Warren, who I think has presented here.

There were other people that I would've run into in other areas of Nalcor. I'm not sure I could name a lot of them off the top of my head. But yes, it would've been, sort of, officials-to-officials level, for lack of a better description.

**MR. SMITH:** And was your recollection of the frustration or concern – did that also transcend to the Department of Justice or merely the Department of Natural Resources?

**MR. STANLEY:** No. Our frustration, for lack of a better term, would have been reserved just for issues such as acknowledging the issues around things such as your classic gripes over resource inequality or that kind of thing.

**MR. SMITH:** And I took that to mean, during your testimony so far, that this was a common problem in government, that a number of departments, particularly Justice, which you were, at one point in time, deputy minister –

**MR. STANLEY:** Yes, I was deputy minister of – yeah.

**MR. SMITH:** – you know, had issues with numbers of people to do the required work.

**MR. STANLEY:** Yes, it was always – I mean, it's constantly a struggle; it continues to be a struggle to meet the demands of the client with the resources that are available in a government department, yes.

**MR. SMITH:** Thank you, Mr. Stanley.

That's all the questions I have.

**THE COMMISSIONER:** All right.

Kathy Dunderdale?

**MS. E. BEST:** Good afternoon, Mr. Stanley. I'm Erin Best. I'm counsel for Kathy Dunderdale.

**MR. STANLEY:** Good afternoon.

**MS. E. BEST:** So I gather from your evidence and the evidence of others before you that some times during the period of 2010 to sanction – I kind of want to stick in that period – Nalcor had meetings at the premier's office when you weren't present?

**MR. STANLEY:** Oh yes. Yes, no question.

**MS. E. BEST:** Okay.

So you probably wouldn't even have been aware that some of those meetings were happening, were you?

**MR. STANLEY:** No, you are right, yes.

**MS. E. BEST:** Okay.

And you don't even know probably how often that happened, do you?

**MR. STANLEY:** No, by definition probably not, no.

**MS. E. BEST:** Okay.

So if the Minister of Natural Resources, for example, and other ministers had been present at those meetings with the premier and Nalcor, you wouldn't even know about that would you?

**MR. STANLEY:** No, although just to refresh or to clarify what I said –

**MS. E. BEST:** Yeah.

**MR. STANLEY:** – even the meetings I was at had attendance by people such as that as well.

**MS. E. BEST:** Okay.

**MR. STANLEY:** Yes.

**MS. E. BEST:** 'Cause some might think, based on some of the things you've said this morning, that Nalcor met with the premier regularly without anyone else being present, without the ministers being present, but that's not right, is it?

**MR. STANLEY:** No, that's – and I attempted, I think, to clarify this earlier. The meetings may have occurred physically in the Premier's office by function in the premier's boardroom, but the attendees at the meetings would ordinarily be, at least ministers if not officials, from the relevant departments, as well as staff from the Premier's office and probably from Cabinet Secretariat as well.

**MS. E. BEST:** And probably the minister of Natural Resources.

**MR. STANLEY:** Yeah. Sorry, yes, the minister of Natural Resources; if it was a Finance matter, the minister of Finance or the deputy minister of Finance could have been at the meeting as well.

**MS. E. BEST:** Okay.

**MR. STANLEY:** The location of the meeting doesn't necessarily imply the only attendees.

**MS. E. BEST:** Okay because I wanted to look at – the reason why I'm asking is – there's a couple of reasons. First of all, I want to, you know – it

addresses the issue of Department of Natural Resources being out of the loop –

**MR. STANLEY:** Right.

**MS. E. BEST:** – I guess, right, if the minister was at the meeting.

**MR. STANLEY:** Yeah.

**MS. E. BEST:** Also, I wanted to ask you when there's a meeting between, say, a government department and a third party, and the premier indicates that – let me go back. If there's a meeting between a department and a third party, where does that meeting – that meeting would often occur at the – in the department's boardroom?

**MR. STANLEY:** Yes.

**MS. E. BEST:** Okay. So if the premier indicates in advance that the premier is going to attend, would the premier then go to department for the meeting?

**MR. STANLEY:** No.

**MS. E. BEST:** What would happen?

**MR. STANLEY:** No, the premier, for lack of a better description, rarely wanders through the facilities. If there's a meeting with the premier occurring, it's usually in the premier's boardroom.

**MS. E. BEST:** Okay.

So it could be a meeting that was – Natural Resources minister could be there, others could be there –

**MR. STANLEY:** Yes.

**MS. E. BEST:** – Nalcor could be there, but it would take place at the Premier's office because the premier was also going to be present.

**MR. STANLEY:** Yes, that's ordinarily the way it would work. Yes.

**MS. E. BEST:** Thank you.

In your interview you gave an example of a meeting that you were at where – and I’m just going to tell you the gist of it now, I think it’s on page 19 of your interview document. But Nalcor sort of said it’s going to be like this and government says: Who says? And Nalcor said: It was approved by the premier. That’s the idea, right?

**MR. STANLEY:** Yeah.

**MS. E. BEST:** And Commission counsel addressed it and I think my friend, Mr. Budden –

**MR. STANLEY:** Yes.

**MS. E. BEST:** – addressed it as well. And that’s all hearsay, right?

**MR. STANLEY:** Well –

**MS. E. BEST:** This conversation.

**MR. STANLEY:** – I was present at the meeting so I’m not sure if that’s hearsay.

**MS. E. BEST:** Okay.

Okay, but you didn’t say any of those things; you overheard it at the meeting.

**MR. STANLEY:** Oh, I’m sorry, yes. No, yes.

**MS. E. BEST:** Okay.

And I know we’re, you know, allowed to – hearsay is –

**MR. STANLEY:** Mmm.

**MS. E. BEST:** – acceptable here, but I do think that we ought to get behind it a little bit and I would like to know the details of that meeting. Like, who said those things?

**MR. STANLEY:** In terms of the individuals?

**MS. E. BEST:** Yes.

**MR. STANLEY:** I would – this would be a meeting that would’ve happened around 2010. I’d have trouble remembering the individuals at Nalcor we would’ve been meeting with in detail.

**MS. E. BEST:** Well, now, first of all, I want to ask you about that 2010 date because you say here – and you say – first you say: “... this was fairly early days ....”

**MR. STANLEY:** Yes.

**MS. E. BEST:** And then I’m not sure if you’re talking about this but you say: “I use that loosely. 2009 would have been about when we got the Energy Corporation set up ....” It’s – so are you sure it’s 2010?

**MR. STANLEY:** No, no, I’m trying to place that meeting in time just knowing what the topic was that was discussed at the meeting.

**MS. E. BEST:** Yeah.

What was the topic?

**MR. STANLEY:** The meeting, at the time the discussion was around the structure of, I believe, the PPA that would be – occurred between Hydro and Nalcor.

**MS. E. BEST:** Okay, how sure are you about that?

**MR. STANLEY:** The topic, I’m very sure.

**MS. E. BEST:** Okay and the date of the meeting?

**MR. STANLEY:** That, I’m not sure about.

**MS. E. BEST:** Okay.

And who did say these words?

**MR. STANLEY:** The governmental comment would’ve come from David Bazeley who was the director of energy – electricity policy at the time.

**MS. E. BEST:** David Bazeley?

**MR. STANLEY:** I’m not sure who it was that we were meeting with at Nalcor. That, I can’t remember.

**MS. E. BEST:** Okay.

And so what was it that got approved by the Premier's office in –

**MR. STANLEY:** Well, I mean, to be clear – and I think we've went over this – this was the first meeting on a matter that went on for some period of time. I think the issues that were discussed were ones around how things would work out under the PPA in respect of the split of benefits and/or costs in relation to additional power sales, additional capacity being required; pretty detailed points of pivot between Hydro and Nalcor in terms of benefits under the PPA.

**MS. E. BEST:** Okay.

So if that was discussed between the premier and Nalcor, are you 100 per cent sure that the minister of Natural Resources wasn't at that meeting?

**MR. STANLEY:** I have no idea if the minister of Natural Resources was at that meeting or not.

**MS. E. BEST:** Okay.

And this conversation, the one between that Nalcor employee and David – did you say, Bazeley?

**MR. STANLEY:** Bazeley.

**MS. E. BEST:** Yeah.

Was that the conversation that led you to the conclusion that Nalcor would get approvals directly from the Premier's office?

**MR. STANLEY:** No, that wasn't the first or last instance of that structure, that's just the best example of it I can remember as an anecdote, just to demonstrate what was going on

**MS. E. BEST:** Okay, so what's another example? Because with that one you weren't sure if the minister was – the minister may have been at that.

**MR. STANLEY:** Yes, but I wasn't raising those – that example or any other one to confirm whether or not the minister of Natural Resources would have been at the meeting.

**MS. E. BEST:** Okay have –

**MR. STANLEY:** The issue was that the individuals in the department, two or three levels through the executive down from the minister, when we went to the meeting wouldn't have known what might have been discussed at a meeting even if the minister of Natural Resources was there.

**MS. E. BEST:** Okay, because that's what I want to get to. I mean –

**MR. STANLEY:** Yes.

**MS. E. BEST:** – from the way it came out earlier it made it sound like Natural Resources was either kept out of it or was out of the loop.

**MR. STANLEY:** Yeah. No.

**MS. E. BEST:** And that the premier was dictating to Nalcor and/or vice versa without the minister of Natural Resources or anyone else being involved. But that's not the case is what you're saying, is it?

**MR. STANLEY:** That's not – that's not what – no, that's not what I meant to imply. No.

**MS. E. BEST:** Okay. Thank you.

Now, the involvement of the premier at a meeting with a Crown corporation and the minister – so if a Crown Corp. and the department are going to have a meeting, the premier doesn't typically attend those sorts of meetings.

**MR. STANLEY:** I would have to say no.

**MS. E. BEST:** Yeah? Okay.

**MR. STANLEY:** Yes. You're right, yes.

**MS. E. BEST:** So wouldn't the premier's presence at this meeting – these meetings between Nalcor and the Department of Natural Resources, wouldn't that indicate a heightened level of oversight? More than there's usual – more than the usual oversight over a Crown corporation?

**MR. STANLEY:** Yes, you could put it that way. Yes.

**MS. E. BEST:** This morning you sort of implied that Premier Dunderdale didn't scrutinize Nalcor's work as much as Premier Williams. But wasn't it Premier Dunderdale who ordered the Ziff report, the Hatch report, the MHI report on the DG3 numbers and then who put the question to the PUB?

**MR. STANLEY:** I don't disagree with anything that you've said. My comment in respect of minister – or Premier Williams versus Premier Dunderdale was a comment on their personal styles in the meetings that I observed, not a comment in respect to their administration's due diligence over the project.

**MS. E. BEST:** Okay.

So while Mr. Williams would have maybe put a lot of questions to Nalcor at a meeting, I think you indicated Premier Dunderdale also did that.

**MR. STANLEY:** She's quite capable of doing that, yes.

**MS. E. BEST:** But that she did that at times.

**MR. STANLEY:** At times, oh yes. Yeah.

**MS. E. BEST:** Yeah.

And then she also went on to engage experts to check out some of these things?

**MR. STANLEY:** Yes. Actually, I wasn't involved in a lot of that, so I take your list – I can't comment on that, but yeah, I take your point.

**MS. E. BEST:** Okay. Thank you.

You describe some initial friction or frustration, I guess, due to the culture clashes between Nalcor and Department of Natural Resources, at the outset, but then, I think you just indicated to my friend, Mr. Smith, that they, you know, they were addressed over time.

At the end of the day, was any information that was requested by government actually withheld from Nalcor to your knowledge? Withheld by Nalcor I mean?

**MR. STANLEY:** Yeah, no I –

**MS. E. BEST:** (Inaudible.)

**MR. STANLEY:** No, not to my knowledge.

**MS. E. BEST:** Okay.

And the fact that Natural Resources was even requesting this information, doesn't that indicate that they had involvement in and awareness of what Nalcor was doing?

**MR. STANLEY:** There was an – there was no – there was a recognition of a need to have better insight into what Nalcor was doing.

**MS. E. BEST:** Mm-hmm.

**MR. STANLEY:** And that process of attempting to set up such oversight and get such information was an attempt to action that.

**MS. E. BEST:** Okay.

And I think you said this morning it was healthy and that there was not a rubber stamp by government.

**MR. STANLEY:** Yes, and – no – I mean, at the end of the day, the levels of, sort of, interdepartmental or inter-agency – rivalry's not the right term, but friction was – you know, it was, in the long term, in terms of the faith that you have in the process, beneficial, because you knew that it wasn't a rubber stamp when it went into the departments.

The departments were kicking back where required, and things were being analyzed and parsed and done in a way that would be in best interest of everybody, and that was generally encouraged by all levels of the executive.

**MS. E. BEST:** Okay.

Your evidence this morning seemed to indicate that you had some concern or criticism maybe with the level of oversight by government. Is that true?

**MR. STANLEY:** I was – I expressed concerns that were put to me about oversight. I'm not sure I expressed any myself.

**MS. E. BEST:** Okay.

Well, I wonder who you went to with these concerns? Who did you bring them to?

**MR. STANLEY:** Well, I think as I discussed this morning –

**MS. E. BEST:** I know you talked about the legal ones.

**MR. STANLEY:** Yes, the legal concerns we would've had would've went through the departments.

**MS. E. BEST:** What about the other concerns?

**MR. STANLEY:** If I had any concerns about oversight at those levels, I would've expressed them to the client department, which would've been Natural Resources.

**MS. E. BEST:** Okay, so –

**MR. STANLEY:** And I say if 'cause I don't know if I have a memory of actually doing so.

**MS. E. BEST:** Well, that's what I was gonna ask you.

**MR. STANLEY:** Yeah.

**MS. E. BEST:** You know, did you, and if so, to whom and when?

**MR. STANLEY:** Oh, I don't know for sure whether or not I would've actually expressed concerns about oversight. If I did have such concerns or was advising the department in respect of its attempts to do that, it would have been a discussion with the client, you know, up to and including, I guess, the deputy at the time.

When is – would have been tied to when the oversight was an issue, which I think was in 2012 and 2013, but I don't have any firm dates.

**MS. E. BEST:** And if that concern had been a real serious concern for you, wouldn't you have reported it in a formal manner?

**MR. STANLEY:** If I thought there was a –

**MS. E. BEST:** Wouldn't you have an obligation to report it in a formal manner?

**MR. STANLEY:** Yes, yes. If I thought that there was actually – that that level of concern needed to be documented, yes.

**MS. E. BEST:** And you did talk about – you mentioned this morning that you did have some discussions with, I think you mentioned, Don Burrage, now Justice Burrage, and Debbie Paquette, Justice Paquette.

**MR. STANLEY:** Uh-huh.

**MS. E. BEST:** So when were those discussions?

**MR. STANLEY:** Oh, well, I'm not sure the timing of that. I don't know when Justice Burrage was appointed. Do you know?

**MS. E. BEST:** I believe he was appointed in 2012.

**MR. STANLEY:** Yes, okay, so it would have been –

**MS. E. BEST:** You mean – sorry – appointed to the bench?

**MR. STANLEY:** Appointed to the bench.

**MS. E. BEST:** Yes.

**MR. STANLEY:** Yes.

**MS. E. BEST:** Yeah.

**MR. STANLEY:** So Justice Burrage and I would have worked fairly closely on one or two matters to do with Churchill. He was handling, for example, a lot of the Aboriginal files –

**MS. E. BEST:** Right.

**MR. STANLEY:** – directly, even while he was deputy minister.

**MS. E. BEST:** Mm-hmm.

**MR. STANLEY:** So if we had concerns about the legal resources required to meet the requirements at Natural Resources, it would have been during that period: 2010, 2009, up to 2012.

**MS. E. BEST:** Okay.

Now, we heard Mr. Williams's testimony that no senior officials brought these concerns to him. My client's evidence will be similar, I believe, so is it – do you think that Mr. Burrage did not bring the concerns forward or that he didn't understand them, or ...?

**MR. STANLEY:** Well, depending on the concerns we're talking about. I mean, concerns about Justice resource and/or oversight, he may or may not have raised those with the minister – his minister at the time.

**MS. E. BEST:** Mm-hmm.

**MR. STANLEY:** We – he may or may not have raised those with the relevant deputy of the other departments and discussed what could be done about it. It isn't a situation where everything would go into a process that would bring it straight to the premier's desk.

**MS. E. BEST:** So they may have been addressed?

**MR. STANLEY:** They may have been discussed and considered and the party – you know, within government, the people determined what could or could not be done in respect to that. I don't know.

**MS. E. BEST:** Okay.

Those are my questions, thank you.

**THE COMMISSIONER:** Thank you.

Former Provincial Government Officials '03 to '15?

**MR. J. KING:** Good afternoon, Mr. Stanley.

Justin King, I represent Former Provincial Government Officials from 2003 to 2015, many of whom you would be familiar with from your time with government.

**MR. STANLEY:** Yes.

**MR. J. KING:** And that excludes Kathy Dunderdale –

**MR. STANLEY:** Yeah.

**MR. J. KING:** – and you just heard from Ms. Best.

So firstly, you say this morning that you were with the DOJ between approximately 2001 and May of 2018?

**MR. STANLEY:** September 2001 to May of 2018.

**MR. J. KING:** Okay.

And your primary involvement with Muskrat Falls would've been between the period of 2001 and 2013?

**MR. STANLEY:** Yes, on the front end of that, there wouldn't have been much, but yes –

**MR. J. KING:** Okay.

**MR. STANLEY:** – it started to fade at 2013.

**MR. J. KING:** Okay.

And that period was as a senior solicitor? I guess not senior –

**MR. STANLEY:** (Inaudible.)

**MR. J. KING:** – you moved into the senior –

**MR. STANLEY:** Yes.

**MR. J. KING:** – role.

**MR. STANLEY:** Yeah.

**MR. J. KING:** And you reported directly to Department of Natural Resources?

**MR. STANLEY:** Well, the reporting where – I was counsel or solicitor for the Department of Natural Resources. My org chart or reporting relationship would've been still within the Department of Justice.

**MR. J. KING:** Okay.

Did you report to any other departments other than Natural Resources?

**MR. STANLEY:** During that period, no. I don't think I did.



**MR. J. KING:** Okay.

So I'm going to make some references obviously to your interview transcript and your evidence this morning. So in your interview, and again this morning, actually, you discussed the fact that DOJ lawyers are kept separate and apart from the client.

**MR. STANLEY:** Yes.

**MR. J. KING:** So I'm just wondering if you could go into a little bit of reasoning as to why that is the case. I know you touched on it this morning, but ...

**MR. STANLEY:** Oh, the view is that keeping the Department of Justice solicitors – the civil solicitors – collocated together has a number of benefits to government. It permits, sort of, easy transmission or communication of information between solicitors and the ability for solicitors to consult on issues with each other. Now, I know that wouldn't be impossible if they were physically separate, but it creates an atmosphere where that process is far more organic and can happen far easier.

It also permits – it's, I mean, for ease of management of the department, having everybody physically in one place. And it helps ensure that those solicitors don't become, for lack of a better description, captive to the thinking of the executive of the department in which they would work and can still provide the independent role that they're required to do.

**MR. J. KING:** Okay.

So in terms of your usual work, your day-to-day work, you wouldn't be, say, on the floor of the Department of Natural Resources, you know, with the executive, et cetera.

**MR. STANLEY:** I – yeah, no. I would've day-to-day worked out of the Department of Justice, and if I was at the Department of Natural Resources, it would usually have been required for meetings with the client, but, for example, I did not have a office in the Department of Natural Resources.

**MR. J. KING:** Okay. And you would report directly to the deputy minister or the assistant DM?

**MR. STANLEY:** Yes, depending on the issues at the time, yes.

**MR. J. KING:** Okay.

Would you generally have meetings with the minister of Natural Resources, or would it be generally meetings with, as you said, the deputy minister?

**MR. STANLEY:** The only times where you would have meetings with the minister would probably be in respect of legislation or other matters that the minister was going to have to either speak on or speak to.

**MR. J. KING:** Okay.

**MR. STANLEY:** Or if there was a matter coming up at a political level and the minister wanted to, for lack of better description, hear directly from the lawyers about that. But, ordinarily, no, you wouldn't be meeting with the ministers.

**MR. J. KING:** Okay, and we're kind of getting into job duties, et cetera, during your time –

**MR. STANLEY:** That's fine.

**MR. J. KING:** – as a solicitor.

I just – as a very general level, can you just take me through your general responsibilities with the DoJ during that period, as a senior solicitor.

**MR. STANLEY:** As a solicitor.

It's not that different than it would be as a solicitor in practice for a client. The responsibilities would have been to in terms of – there would've been the – include the oversight or drafting of contracts as needed by the department. For – just for context, some other solicitors spent a fair amount of time reviewing RFP documents or consulting with the departments on RFP –

**MR. J. KING:** Right.

**MR. STANLEY:** – documents before it happens. I didn't have to do much of that 'cause Natural Resources didn't have much of that work.

It would be advising on policy issues, policy questions that would come up, questions that would come up from the public facing aspects of the department. Like, I would be asked to consult sometimes on disputes or how to handle petroleum licensing on land.

And then it would also be advising and consulting on the policy development going on in the department, up to and including, the drafting of Cabinet papers.

**MR. J. KING:** Okay.

So, would you be involved in direct correspondence to and from Nalcor? I know this is something we touched on a little bit this morning but –

**MR. STANLEY:** Yeah, I would, it'd depend on what was going on.

In respect to this project, it – over time, as the negotiations got more and – or not the negotiations, as the interactions with Nalcor got more and more technical on matters such as the project financing negotiations, we would have more and more and more direct contact with Nalcor's lawyers: inside counsel, outside counsel. Mostly outside counsel, in finishing the negotiations and that process without necessarily – you'd be more to the point of briefing departmental officials as to what was going on as opposed to accompanying them to the negotiations.

**MR. J. KING:** Okay.

So, I guess, it's fair to say that most of your work would be directly, as it pertains to Nalcor, would be working with their lawyers as well.

**MR. STANLEY:** A similar portion of it was when we got to the transactional phase such as the federal loan guarantee.

**MR. J. KING:** Okay.

**MR. STANLEY:** Before that, it probably would've been meeting with the Department of Natural Resources to talk about what is required or was not required to be done to – as part of the project to meet Nalcor's requirements.

**MR. J. KING:** Okay.

And, again, this is something we touched on this morning, but, in terms of your day-to-day duties, you wouldn't have had any responsibility in terms of reviewing the business case for Nalcor, being cost estimates –

**MR. STANLEY:** No.

**MR. J. KING:** – type of stuff.

**MR. STANLEY:** No, that would –

**MR. J. KING:** Okay.

**MR. STANLEY:** – be outside the legal brief.

**MR. J. KING:** Okay. And would you be able to confirm if other officials from other departments would've been reviewing this documentation?

**MR. STANLEY:** I think, as I said, I'm not aware that they were or they weren't, actually.

**MR. J. KING:** Okay.

**MR. STANLEY:** I don't know.

**MR. J. KING:** So your answer is you don't know if they were –

**MR. STANLEY:** I'm not sure, I don't know.

**MR. J. KING:** – or if they were not.

**MR. STANLEY:** Yeah.

**MR. J. KING:** Okay. And again, something else from this morning, but Mr. Learmonth mentioned the P-rating, the probability rating which has been discussed throughout the proceeding.

**MR. STANLEY:** Yes.

**MR. J. KING:** That wouldn't have been something that would've come across your desk at the DoJ?

**MR. STANLEY:** No, to my knowledge I never saw that before.

**MR. J. KING:** Okay.

So, I want to get into some questions – again, this has been discussed previously, but just the general relationship between government and Nalcor.

So, you made – obviously made some observations as to, you know, from your perspective with the DoJ, and one of the questions that's been coming up – I guess is a two-part question – is, you know, were Nalcor and government in constant communication, as pertains to the project and, if so, how did that occur? And in your interview, Mr. Learmonth put it to you that there was very little in writing that he had at the time from Nalcor to government, and he asked if that's a normal way for a Crown corporation to correspond with government.

Do you recall this conversation with Mr. Learmonth? Again, we've touched on it this morning.

**MR. STANLEY:** I think so, yeah.

**MR. J. KING:** From your interview as well?

**MR. STANLEY:** Yes.

**MR. J. KING:** Do you –

**MR. STANLEY:** Yes.

**MR. J. KING:** – recall that in your interview?

Okay, so I want to explore just two aspects of your answer to that question in your interview.

**MR. STANLEY:** Yes.

**MR. J. KING:** So, you stated – and this is at page 84 – "... there's no metric upon which we could compare Nalcor in how they operated when it came to communication with anybody else, because we don't have another Crown

corporation ..." – and this is my own words, but similar to Nalcor.

**MR. STANLEY:** That would inaccurate, but what I meant, yes.

**MR. J. KING:** Okay. So, could you just go into more – a little more detail on what you meant by that?

**MR. STANLEY:** Well, as Nalcor's operations – to put it colloquially – ramped up from about 2008, 2009, 2010, the scope of what Nalcor was dealing with and the scope and, I guess, the number of places where Nalcor would interface with various government departments, far exceeded any other Crown corporation that we would have, even big ones, you know, the liquor – the Newfoundland Liquor Corporation would have dealings with the Department of Finance as its shareholder, and it might have dealings with one or two other departments, but they'd be pretty nominal. Nalcor was, at times, dealing with a host of government departments at the same time.

**MR. J. KING:** Okay. And that, I guess, unique relationship or unique circumstance, with – in terms of Nalcor, would any of that arise from their legislation under the *Energy Corporation Act*? Would you be able to comment as to their – that unique nature, if any of that would flow from the legislation?

**MR. STANLEY:** No, I think, I'm – most of the level of interaction I'm talking about 'arised' just practically from the activities as Nalcor, as I said, started to perceive and go down the road of planning for the Lower Churchill. The number of issues that were coming up just across the board, whether they were environmental, Aboriginal, financial, commercial, land, real estate, regulatory, you know, it was not all necessarily relating back to the *Energy Corporation Act*.

**MR. J. KING:** Okay. And just back to that same line of question you had in your interview with Mr. Learmonth. You stated: Nalcor's default means of communication was a PowerPoint deck. And then you basically stated that there would be follow-up meetings and telephone calls, et cetera.

**MR. STANLEY:** Yes.

**MR. J. KING:** So do you still stand to that? Is that still a correct statement as to –?

**MR. STANLEY:** Oh, yes.

Yes, and I think you'll probably see that in the documentary record.

**MR. J. KING:** Okay.

**MR. STANLEY:** The only caveat I put in that is that didn't apply to Nalcor's counsel.

**MR. J. KING:** Okay.

**MR. STANLEY:** So my dealings with Nalcor's counsel, inside and outside counsel, they were dealing on the same, you know, the same means we would.

**MR. J. KING:** Okay.

**MR. STANLEY:** Yeah.

**MR. J. KING:** And correspondence as between counsels (inaudible).

**MR. STANLEY:** Yes, (inaudible).

**MR. J. KING:** I'm assuming that would be the privilege (inaudible).

**MR. STANLEY:** And sharing opinions and all that. Yes, we, you know, without getting into what they were.

**MR. J. KING:** Mmm.

**MR. STANLEY:** The format was exactly – would be in the process of exactly what you'd expect.

**MR. J. KING:** Okay. So your understanding is that in terms of the flow of information, as between Nalcor and government, that was happening. It was just potentially not in a manner that, you know, conventionally, we might expect in terms of emails and lengthy reports. Those types of things.

**MR. STANLEY:** I –

**MR. J. KING:** Particularly emails, obviously.

**MR. STANLEY:** I'm –

**MR. J. KING:** Yeah.

**MR. STANLEY:** – not sure about emails, and to agree it was, it was not happening in emails. In my experience, it was not happening in lengthy written reports.

**MR. J. KING:** Okay. But your understanding was still that there was information, a flow of information as –

**MR. STANLEY:** Yes.

**MR. J. KING:** – between government and Nalcor.

**MR. STANLEY:** Yes.

**MR. J. KING:** And again, on that note that there would be telephone calls and meetings arising or, you know, continuing on from those presentation decks.

**MR. STANLEY:** Yes.

**MR. J. KING:** Okay.

Another item that we discussed today is, basically, the idea of government officials challenging the information that was being provided to by Nalcor, and I'm assuming you remember this line of questioning from your interview.

So on page 20, you make a comment pertaining to former Premier Williams. You state: "... Premier Williams was, you know, an advocate and a proponent of everything Nalcor is doing. But when Nalcor presented to Premier Williams they had to have their homework done 'cause he would cross-examine them, hold them – you know, double-check what was going on."

Do you recall making that statement as it –

**MR. STANLEY:** Yes.

**MR. J. KING:** – pertains to Mr. Williams?

**MR. STANLEY:** Yes.

**MR. J. KING:** And you stand by the contents of that statement?

**MR. STANLEY:** Yes.

**MR. J. KING:** Okay. So I'll put it to you that –

**MR. STANLEY:** Mmm.

**MR. J. KING:** – effectively, you're saying that Mr. Williams wouldn't take Nalcor's information as face value, that he would challenge and examine the findings that were being brought in front of him?

**MR. STANLEY:** Yes, I mean, as a personal matter, Mr. Williams would, as I said, he was not above and would quite frequently double-check, inquire, bring his, you know, his personal experience to bear, just to question exactly what Nalcor's talking about, what they looked at, had they looked at certain things. That sort of thing.

**MR. J. KING:** Okay. And I guess following along that same line – and it's also been discussed as it relates to Jerome Kennedy, who would've been minister of Natural Resources during that time.

**MR. STANLEY:** He would have been minister of Natural Resources I think – definitely during 2012 –

**MR. J. KING:** Okay.

**MR. STANLEY:** – I don't have the (inaudible) –

**MR. J. KING:** And, again –

**MR. STANLEY:** – yeah.

**MR. J. KING:** – this is going back to your interview transcript, as well, so –

**MR. STANLEY:** Yeah. Okay.

**MR. J. KING:** – there's a statement there that you said, Mr. – statement – Mr. Kennedy might've been the one pushing back at Nalcor. Okay, so that's –

**MR. STANLEY:** Yes –

**MR. J. KING:** – quoting that –

**MR. STANLEY:** – I think I said that this morning –

**MR. J. KING:** – in that conversation.

**MR. STANLEY:** – yes.

**MR. J. KING:** Right?

So based on your experience from, you know, government at that time, would it be fair to say that Mr. Kennedy was also actively challenging Nalcor; that he was challenging information that was being provided to him?

**MR. STANLEY:** Well, I think at the – just to clarify, I think at the time we're talking about, it wouldn't have been at the same time the minister – that Mr. Williams was premier. I don't think –

**MR. J. KING:** No, this – and again –

**MR. STANLEY:** – but later on –

**MR. J. KING:** – sorry, I –

**MR. STANLEY:** – yeah.

**MR. J. KING:** – should – yeah. And that flowed from your interview transcript –

**MR. STANLEY:** Yeah, sorry. Yeah.

**MR. J. KING:** – sorry. Yeah.

**MR. STANLEY:** Yeah – no, later on there – yeah, there was no question the – from my observations from being involved in the department at that level, there was no question that that was exactly what Minister Kennedy was doing, as – particularly as he got ready to go in the House in the fall of 2012 and table legislation.

**MR. J. KING:** Okay.

And then this morning we discussed, as well, the idea of Mr. Kennedy actually putting pressure on Nalcor to provide the documents that he, we'll say, he needed or he was looking for.

**MR. STANLEY:** I'd say information as opposed to documents.

**MR. J. KING:** Okay, so information that he was looking for.

**MR. STANLEY:** Yeah.

**MR. J. KING:** So that is a correct statement in –

**MR. STANLEY:** Yes, (inaudible) –

**MR. J. KING:** – as to your understanding of it –

**MR. STANLEY:** – yes. Yeah.

**MR. J. KING:** – he we would put pressure on Nalcor to provide that?

**MR. STANLEY:** He would put pressure on Nalcor and the department.

**MR. J. KING:** Okay.

This morning there were some comments made pertaining to, you know, the tail wagging the dog or –

**MR. STANLEY:** Hmm.

**MR. J. KING:** – you know, Nalcor leading the government – those types of issues. And I take it from your evidence this morning that you don't completely agree with that statement?

**MR. STANLEY:** I think I've used enough flowery language to get myself in enough trouble without adopting anyone else's.

I'm not sure I agree with the characterization of the tail wagging the dog in the big picture. 'Cause as I said, some of the statements – some of the evidence in the – about the concerns about tension between the parties and/or Nalcor's hesitation to provide information, or the way Nalcor was or was not engaging with government is down, for lack of a better description, in the engine room. Like the people that –

**MR. J. KING:** Hmm.

**MR. STANLEY:** – were dealing with Nalcor on a day-to-day basis on issues.

I wouldn't expand that to assume that on a government-wide basis, at the highest levels, that you could characterize it as Nalcor – the tail wagging the dog – Nalcor leading government around. I wouldn't go that far.

**MR. J. KING:** Okay.

And in your evidence this morning you also made a statement that the message from the executive was always, you know, do your job, double-check what you're looking at –

**MR. STANLEY:** Mmm.

**MR. J. KING:** – in terms of what we're reviewing. Do you stand by that statement?

**MR. STANLEY:** Yes. And I just emphasize, I've never saw a situation where anybody instructed the government officials to say: Give Nalcor what they want.

**MR. J. KING:** Okay.

**MR. STANLEY:** It was: If you don't think Nalcor needs what they want – the encouragement was to find a solution but do it within the parameters that you think is appropriate.

**MR. J. KING:** Okay.

And again, this has been touched on before, but some of the conflict – for lack of a better word, we'll say conflict – between Nalcor and government in terms of the back and forth exchange of information; you perceived this as potentially a good thing in terms of what government was doing. Can you just touch on that a little bit more?

**MR. STANLEY:** Well, I think as I said, I think the – and to go back to my comment – my previous comment – the tension or the friction between them resulted in better solutions to most of the issues. As opposed to just government rubber-stamping whatever it was Nalcor wanted.

**MR. J. KING:** Okay.

And there was another statement made this morning that basically Nalcor was in a dominant position which was disguised from, you know, I guess, the general public. And I believed you disagreed with that assertion.

**MR. STANLEY:** Yeah, I mean, that's much that same. I think my answer is the same as the tail wagging the dog one.

**MR. J. KING:** Hmm, yeah, basically, yes.

**MR. STANLEY:** There's no question there was a lot of momentum behind what Nalcor was doing and that it was – that the province was a proponent of it. So in that context I – you know, there was work done, good work done, to make sure that Nalcor got what it needed, but not got what it wanted all the time. I guess that's –

**MR. J. KING:** Okay.

**MR. STANLEY:** – the best way to put it.

**MR. J. KING:** Okay. So just to finish, I just want to get an idea of some relevant issues or topics that you would've worked on while you were with the DOJ.

**MR. STANLEY:** (Inaudible.)

**MR. J. KING:** Obviously not going into any –

**MR. STANLEY:** Nope.

**MR. J. KING:** – level –

**MR. STANLEY:** Okay.

**MR. J. KING:** – of detail. But you can just confirm if you have worked on it.

So I'm assuming you would've had involvement in providing legal advice on legislation and amending –

**MR. STANLEY:** Yes.

**MR. J. KING:** – amendments to legislation; specifically, *Energy Corporation Act*?

**MR. STANLEY:** Yes.

**MR. J. KING:** Electrical Power Control Act?

**MR. STANLEY:** Yes.

**MR. J. KING:** Hydro Corporation Act?

**MR. STANLEY:** Yes.

**MR. J. KING:** Amendments to the *Public Utilities Act*?

**MR. STANLEY:** Yes, depending on what amendments you're talking about.

**MR. J. KING:** Well, it would be amendments in relation to the (inaudible) –

**MR. STANLEY:** In the time frame we're talking about, yes.

**MR. J. KING:** Okay. Any involvement in the PUB reference?

**MR. STANLEY:** Yes.

**MR. J. KING:** Okay. Water rights management issue?

**MR. STANLEY:** Yes.

**MR. J. KING:** Aboriginal issues?

**MR. STANLEY:** No, not generally.

**MR. J. KING:** Okay, and would that have been just another solicitor –?

**MR. STANLEY:** That would've been another solicitor within the department.

**MR. J. KING:** Okay. The Joint Review Panel report?

**MR. STANLEY:** A tiny bit – mostly other solicitors in the department.

**MR. J. KING:** Okay. Cabinet papers on Muskrat Falls?

**MR. STANLEY:** Yeah.

**MR. J. KING:** Okay, so that would've been just ones that would've been vetted by Justice?

**MR. STANLEY:** Yes.

**MR. J. KING:** Okay. 92A constitutional issue?

**MR. STANLEY:** Yes.

**MR. J. KING:** Federal loan guarantee?

**MR. STANLEY:** Yes.

**MR. J. KING:** And the Emera agreement – or I guess agreements.

**MR. STANLEY:** Yes, to the extent that once those were negotiated and finally signed off between Nalcor and Emera they went through a government approval process, which they did.

**MR. J. KING:** Okay. Any other major issues that I might have ...?

**MR. STANLEY:** No. In respect to this project that would be all of them, I think.

**MR. J. KING:** Okay.

Thank you, Mr. Stanley.

That's all my questions.

**MR. STANLEY:** Thank you.

**THE COMMISSIONER:** Julia Mullaley and Charles Bown.

**MR. FITZGERALD:** Mr. Stanley, my name is Andy Fitzgerald and I represent Julia Mullaley and Charles Bown. We've met before. How are you?

**MR. STANLEY:** Yes, Mr. Fitzgerald. How are you?

**MR. FITZGERALD:** Good, thanks.

I just want to clarify some comments that were made this morning. And I guess to be fair to you as a witness, I want you to clarify your role in all of this, I guess, and how you became involved. You were at government until May of 2018?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** And then you went to Cox & Palmer?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** A large law firm in downtown St. John's.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Generally speaking, what do you do at Cox & Palmer?

**MR. STANLEY:** Generally speaking, I provide advice to energy clients of the department, or of the – old habits die hard – energy clients of the firm.

**MR. FITZGERALD:** One of the reasons I'm asking you the question is because you got there in May after a number of years in government.

**MR. STANLEY:** Mm-hmm.

**MR. FITZGERALD:** And it wasn't until August 31, a few months later, that you were interviewed by Commission co-counsel, is that correct?

**MR. STANLEY:** The interview was on the 31st of August, yes.

**MR. FITZGERALD:** Yeah. So May, June, July – about three months later.

**MR. STANLEY:** Something like that, yes.

**MR. FITZGERALD:** And at that time, would it be fair to say you were going through a period of transition after a number of years in government?

**MR. STANLEY:** Yes, I think that's accurate.

**MR. FITZGERALD:** And at the time of your interview, you had not applied for standing?

**MR. STANLEY:** No, I had not.

**MR. FITZGERALD:** And if my notes are correct, you only were granted standing by the Commissioner on October 15, 2018, is that correct?

**MR. STANLEY:** That date sounds about right, yeah.



**MR. FITZGERALD:** When you attended the interview with Commission counsel in August 31, 2018, did you have your own legal counsel present?

**MR. STANLEY:** No, I was with government counsel.

**MR. FITZGERALD:** As you did not have standing at the time of your interview, did you have access to all the documents that the parties that have full standing had at the time of your interview?

**MR. STANLEY:** No, before my interview I was provided with a package of documents that – I don't know how it was developed, but most of them were things that my name was on. But I hadn't had a chance to review all of them before the interview. I think I got them the day before.

**MR. FITZGERALD:** At a time when you had about three months in transitioning from government to private practice at a new large law firm.

**MR. STANLEY:** Yes

**MR. FITZGERALD:** If you had standing or had all those documents beforehand, do you think it could have assisted you? For your interview? In a more wholesome fashion?

**MR. STANLEY:** There were one or two points upon which – after having a chance to reflect and review the documents after the interview – I realized that there could have been more complete answers given to the questions that were asked – I think I raised one of them this morning in respect to the JRP in that, I think in the interview, I said I hadn't or had no memory of commenting on them, but the documents that I was provided – once I had a chance to go through them revealed, I think, I commented on one part.

So, yes, I guess.

**MR. FITZGERALD:** And then to be fair to you, I mean, the transcript was put to you this morning and during cross-examination the words were put to you –

**MR. STANLEY:** Mm-hmm.

**MR. FITZGERALD:** – some colourful, some not colourful –

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** – but I wanted to make sure that the Commission had a full perspective of what you were dealing with at the time of the evidence – the transcript. Now, it's also my understanding, then, when you were at natural – sorry, when you were at government and dealing with Natural Resources you were primarily an oil and gas individual.

**MR. STANLEY:** I would have started out – the work I did for the five years before I went into government was in respect of oil and gas work, and then when I went into government in 2001, it was basically to fill the chair of person providing oil and gas advice at that time to government. Yes.

**MR. FITZGERALD:** Did it ever become primarily you advising your client – the Department of Natural Resources on Hydro, or did you still have a dual role or multiple roles?

**MR. STANLEY:** Multiple roles would be the best way to put it.

**MR. FITZGERALD:** Okay, my learned friend asked you about meetings with respect to the Nalcor officials going to the Premier's office for briefings.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** You were in government 12, 13 years?

**MR. STANLEY:** In total? Sixteen and a half (inaudible).

**MR. FITZGERALD:** Sixteen and a half. My apologies.

Have there ever been instances in the past where the premier would want a meeting with government officials or Crown corporation about a significant project or investment?

**MR. STANLEY:** Yes, of course.

**MR. FITZGERALD:** Well, this is not an unusual circumstance, say, someone going to the premier's office for an important meeting?

**MR. STANLEY:** No. No.

**MR. FITZGERALD:** And I believe you confirmed that department officials would sometimes be present during those meetings.

**MR. STANLEY:** That would be the rule – not the exception.

**MR. FITZGERALD:** Rule.

**MR. STANLEY:** There would usually be department officials present.

**MR. FITZGERALD:** There was no intent to exclude the public service or the civil service because they were there.

**MR. STANLEY:** By definition – if I was at the meeting, there was no intent.

**MR. FITZGERALD:** No.

In terms of management styles by ministers, I guess, you indicated that Minister Kennedy would put some pressure on government officials –

**MR. STANLEY:** Mm-hmm.

**MR. FITZGERALD:** – and pressure on Nalcor.

**MR. STANLEY:** Mm-hmm.

**MR. FITZGERALD:** We all know Minister Kennedy. What was the response of government officials and civil servants when they were tasked to do something for Minister Kennedy?

**MR. STANLEY:** Well there'd be – I think it'd be what you would expect, that, you know, the objective was to make sure that the minister's requirements are satisfied. That's the – usually the objective of any departmental official.

**MR. FITZGERALD:** Not uncommon for ministers to task the civil service with looking into matters and bringing information back to them, is it?

**MR. STANLEY:** Usually that would be handled through the deputy.

**MR. FITZGERALD:** Mm-hmm.

**MR. STANLEY:** And I don't mean to imply that Minister Kennedy didn't handle it through the deputy, but everybody knew who needed the information.

**MR. FITZGERALD:** Thank you.

On page 21 of the August 31 transcript, you refer to cheerleaders. I just want to make sure we're clear on who the cheerleaders were. As I read the document – or the transcript – it says, "The Department of Natural Resources would be perceived to be a check on Nalcor, what they were coming in with and instead, they were assumed to be a cheerleader."

So the assumption was being made by Nalcor, not DNR here, right?

**MR. STANLEY:** Yes. Yes –

**MR. FITZGERALD:** Okay.

**MR. STANLEY:** – sorry, yes. That's the – the intention of that was to reflect on the fact that the contact from – contacts from Nalcor would assume that the department was going to do what needed to be done because the people in the department were supposedly the – as interested in facilitating – that's not the right way to put it – were as much the proponents and – I don't want to use the word cheerleader because that's not the right term.

The assumption was that the people in the department were basically in the same place in terms of their objective was to get the project done, as the people at Nalcor were. And it didn't recognize that the people in the department may have that as an objective but there would have been additional policy objectives that they would be responsible and the custodians for, and that they had to watch.

**MR. FITZGERALD:** And I believe you addressed this with my friend there, Mr. King. In these meetings with representatives of Nalcor, they may have wanted to have obtained X, Y and Z, but in fact government officials would

question if it was the best course of action for the province?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** So it wasn't a situation where, here's what I want, and they got it?

**MR. STANLEY:** No, you – no. That's – ordinarily it was: here's what I want – speaking hypothetical –

**MR. FITZGERALD:** Yes.

**MR. STANLEY:** – here's what I want – that, you know – we're not sure we can do that, why do you want it? Then you'd analyze what the problem is they're trying to solve, and then the government and Nalcor together would arrive at a circumstance that probably better solves the problem that wouldn't necessarily match with what Nalcor asked for in the first instance.

**MR. FITZGERALD:** And this process would not always be immediate, would it?

**MR. STANLEY:** It was – that'd take some time. There'd be iterations through that for most issues, yes.

**MR. FITZGERALD:** And analysis.

**MR. STANLEY:** And analysis, yeah.

**MR. FITZGERALD:** You also indicated that – in your evidence, I believe, your words – that the message to civil servants was to do your job and keep check on Nalcor.

**MR. STANLEY:** It was, yes. And I said that just to make it clear that it wasn't to give Nalcor everything that they asked for.

**MR. FITZGERALD:** And I suggest that question to you just to make sure you were clear; thank you.

In your experience as a public servant, in your doing your job and monitoring the activities of a Crown entity, do you expect to be fully informed by the agency – or the Crown entity?

**MR. STANLEY:** I'm not sure that's a question I can really answer because as a Crown

employee, I never actually had responsibility to monitor a Crown agency in the same way that the line department would have with theirs.

**MR. FITZGERALD:** Okay.

You're a lawyer and you've been with Justice for, I believe, 16 years and now you're with Cox & Palmer.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** You have a lot of experience in the Justice department.

Would you agree with me that the public service needs to have a certain level of trust when it's dealing with Crown entities and Crown corporations in their dealings on a day-to-day basis?

**MR. STANLEY:** I'm not sure if you need to have trust but you would ordinarily expect – you know, you would ordinarily expect the reporting to be of a quality and of a nature and of a fashion that would be – justify the positions that the people are in, yes. I'm not sure if that answers your question.

**MR. FITZGERALD:** Oh, I believe it does, thank you.

You've also used the comment in your transcript of runaway train.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Yes.

Despite this comment or observation, you and the public service continued to do your job in good faith?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** To the best of your ability?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Continued to conduct checks and balances and to provide information to government to the best you could?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Based on the information you had?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** It wasn't really runaway.

**MR. STANLEY:** I'm not sure we're talking about the same thing, but internally in government, everyone was doing the job that they were required to do.

**MR. FITZGERALD:** Thank you.

Mr. Learmonth asked you questions regarding your duty as a public servant with respect to providing correct information to the minister –

**MR. STANLEY:** Oh, yes.

**MR. FITZGERALD:** – and it just came up there briefly.

**MR. STANLEY:** Yeah.

**MR. FITZGERALD:** Would you agree with me – and it's an obvious, I think – you can only provide the information that you have in your possession, can't you?

**MR. STANLEY:** Oh yes, yes.

**MR. FITZGERALD:** And ultimately, you provide advice and recommendations based on that information?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** And it may or may not be followed.

**MR. STANLEY:** Oh yes, yeah.

**MR. FITZGERALD:** People disagree with Todd Stanley from time to time.

**MR. STANLEY:** People do, and yes, and the Department of Justice, and they don't always follow Justice's advice, and more power to them sometimes.

**MR. FITZGERALD:** Right.

I have a question on water management, and I know we're all walking on eggshells –

**MR. STANLEY:** Mm-hmm.

**MR. FITZGERALD:** – around that issue but – and I don't want you to go into anything privileged, but it did come up in Mr. Learmonth's questioning.

I believe your evidence was this was considered at both the term sheet stage and the pre-sanction stage.

**MR. STANLEY:** It had been considered before those stages –

**MR. FITZGERALD:** Before those –

**MR. STANLEY:** – was indeed what I said.

**MR. FITZGERALD:** – stages.

**MR. STANLEY:** Yeah.

**MR. FITZGERALD:** Oh.

**MR. STANLEY:** Mr. Learmonth asked me had it been considered by that date.

**MR. FITZGERALD:** In your opinion as a senior lawyer at Justice, was the consideration significant in terms of time and resources?

**MR. STANLEY:** I'm not gonna answer that one.

**MR. FITZGERALD:** Did you consider it, personally?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Okay, so you did look at it as a Justice lawyer.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** You will give me that.

**MR. STANLEY:** I will give you that.

**MR. FITZGERALD:** Okay. Thank you.

Respect to the federal loan guarantee, it is my understanding you were involved with that as well?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Yup.

And I believe you said that there was a significant amount of financial analysis that was done, and that you saw that – you saw some financial analysis on FLG?

**MR. STANLEY:** I would, as part of the negotiating team, have seen the financial analysis or seen a financial analysis done, financial work done in respect of the financing, but that doesn't necessarily mean in respect of costs.

**MR. FITZGERALD:** No, I just wanted to –

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** – I wanted to figure out what that was.

**MR. STANLEY:** Yes, sorry, yes.

**MR. FITZGERALD:** Okay.

**MR. STANLEY:** So, the analysis in terms of potential financing structures, rates of return, discount, you know, all the things that went into the formulation of options and narrowing down how that would be done, I would've seen that but not necessarily been involved in it.

**MR. FITZGERALD:** Okay. Thank you.

I'd like to direct the witness to P-00051, please, Clerk.

This is the response to the recommendation for the – from the JRP.

**MR. STANLEY:** Mm-hmm.

**MR. FITZGERALD:** I'm sorry, Mr. Stanley, I'm not sure what tab that is in your –

**MR. STANLEY:** I've got them, tab 8.

**THE COMMISSIONER:** Tab 8.

**MR. FITZGERALD:** I believe in your evidence that you said you did look at this, but it was also reviewed by other lawyers?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Was that Justice Burrage and Mr. Justin Mellor?

**MR. STANLEY:** They may have and probably would have looked at this in respect to the Aboriginal issues. I'm not sure who else may have looked at it in the department as well.

**MR. FITZGERALD:** Okay.

I'd like to direct the witness to P-00061, please. That's the 2041 paper.

**THE COMMISSIONER:** Tab 10.

**MR. STANLEY:** Thank you.

**MR. FITZGERALD:** I believe in your evidence you said this was prepared at the direction or at the request of Mr. – Minister Kennedy?

**MR. STANLEY:** Yes, I believe he – yes, sorry, yup.

**MR. FITZGERALD:** What steps were taken in preparation of this document? You played a role in this, didn't you?

**MR. STANLEY:** I think I said in evidence that we, the Department of Justice, had reviewed this for accuracy.

**MR. FITZGERALD:** Okay. So if something was inaccurate in that you would have pointed it out to the department, presumably.

**MR. STANLEY:** Yeah, well, without – that's probably solicitor-client privilege, but I'll say yes, yes.

**MR. FITZGERALD:** Okay. Didn't want to go there, so –

**MR. STANLEY:** Yeah.

**MR. FITZGERALD:** – that wasn't my intention. Thank you.

So there were several – so you reviewed this document at Justice. Did other lawyers look at it as well, do you know?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Do you know who they were?

**MR. STANLEY:** I would think at least – Don Burrage would have, I think, seen this before it went out as well.

**MR. FITZGERALD:** Okay.

**MR. STANLEY:** I think.

**MR. FITZGERALD:** Page 7 of this document, “Summary of Principal Legal Documents

“A number of principal legal documents (see Annex A for a more comprehensive description) are key to CFLCo’s operations.”

It then lists one, two, three – if we could just scroll down a bit – four, five.

**MR. STANLEY:** Sorry, I’m on the wrong page, hold on now.

**MR. FITZGERALD:** This is page – it may not be page –

**THE COMMISSIONER:** It’s page 7 on the top of the page.

**MR. FITZGERALD:** Yes.

**THE COMMISSIONER:** In red.

**MR. FITZGERALD:** Thank you, Justice.

**MR. STANLEY:** 00061, page 7.

**THE COMMISSIONER:** Yes.

**MR. STANLEY:** No, okay, hold on. I’ll go off the screen, okay.

**MR. FITZGERALD:** It lists a number of –

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** – legal agreements: Water lease between the Government of Newfoundland and CF(L)Co; power contract, CF(L)Co and Hydro-Québec; power contract between CF(L)Co and Newfoundland and Labrador Hydro; guaranteed – the GWAC, sorry; the shareholders’ agreement between Newfoundland and Labrador Hydro, Hydro-Québec, and CF(L)Co and the Water Management Agreement.

Did Justice review these agreements in conjunction with providing this document?

**MR. STANLEY:** I would say yes. Most of them are more historical than –

**MR. FITZGERALD:** Well, it said that.

**MR. STANLEY:** – operational, yes.

**MR. FITZGERALD:** Yeah. But in terms of providing the factual basis, you would have looked –

**MR. STANLEY:** Justice is familiar with all these documents.

**MR. FITZGERALD:** Okay, thank you.

And on page 11 of the document.

**THE COMMISSIONER:** It’s actually tab 9.

**MR. FITZGERALD:** Second paragraph, it indicates: “The power contract expires in 2041, at which time the province will obtain much more control over Upper Churchill power than currently exists, and certainly benefit from the economic returns of that resource. However, Upper Churchill power is not exclusively owned by the province and Newfoundland and Labrador may consequently not have unfettered control over the resource. There will be no free power available to the province and there will be limited rights to recall power after the power contract expires.”

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** You’re familiar with that paragraph?

**MR. STANLEY:** It's been a long time since I read it, but, yes, okay.

**MR. FITZGERALD:** Would you stand by that?

**MR. STANLEY:** Yes. Although, the wording is a little unusual, but yes.

**MR. FITZGERALD:** When you say unusual, what wording did you find unusual?

**MR. STANLEY:** Well, the declaration that there will be no free power available, I think, is – there's a number of assumptions built into that that aren't clearly set out here.

**MR. FITZGERALD:** Okay. Do you know what those are off the top of your head?

**MR. STANLEY:** Not without getting into it in –

**MR. FITZGERALD:** Okay.

**MR. STANLEY:** – more detail, no.

**MR. FITZGERALD:** But in principle, you agree with the paragraph?

**MR. STANLEY:** Yes. Oh yes, no question.

**MR. FITZGERALD:** And I guess there was other conclusions there as well that you would have reviewed before it went out?

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Do you stand by your work?

**MR. STANLEY:** I try to, yes.

**MR. FITZGERALD:** There was another report released regarding the 92A issue. I believe Mr. King referenced it?

**MR. STANLEY:** There was a – and if I remember correctly, there were about three or four papers released at the same time.

**MR. FITZGERALD:** Yeah.

In terms of the process and how those reports were released, was it a similar process all along? Did it always go from Natural Resources, Finance, Environment, whatever entities would be involved? And then, would it go to Justice for a final review or how do that – how'd it play out?

**MR. STANLEY:** Again, without getting into what is probably solicitor-client privilege stuff –

**MR. FITZGERALD:** I don't want to get into it.

**MR. STANLEY:** – the process would've probably been more iterative, back and forth with Justice, depending on what the topic was. But those other departments may have been involved as well.

**MR. FITZGERALD:** I guess the point I'm trying to get out, Mr. Stanley, is that there was a collaborative effort between the departments and Justice in preparing the document, as opposed to just –

**MR. STANLEY:** Oh yes, no, that's an accurate thing. Yes.

**MR. FITZGERALD:** Yeah, okay. Thank you.

You made a comment that – well, somewhat asked you for your opinion and your opinions today are not the opinions of the Government of Newfoundland and Labrador, are they?

**MR. STANLEY:** No, I wouldn't support that. No.

**MR. FITZGERALD:** No, these are your personal opinions in terms of when you were working there.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** And you're giving evidence based on your time you were there.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Yes.

There's an issue of whether there was expertise in government to conduct a review. And I believe you said at the time, no. I'm not going to

get into a debate on that, but let's say we accept your opinion that there's no one in government to look into the nuts and bolts of Nalcor's numbers. Let's accept the premise. What would a government normally do in that situation?

**MR. STANLEY:** Ordinarily, government would contract out for those services if required.

**MR. FITZGERALD:** For instance, would have hired someone such as MHI to review DG3 numbers.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** That wouldn't be uncommon in your experience, if you didn't have the expertise in-house?

**MR. STANLEY:** That's quite commonly how government operates. Yes.

**MR. FITZGERALD:** And you would set up a contract with MHI with respect to what their duties and obligations –

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** – were to you.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** Would you review that contract at Justice or would that be ...?

**MR. STANLEY:** Ordinarily, depending on who hired MHI or who hired a consultant like that, we had standard form consultant contracts so departments didn't necessarily have to come to Justice for every single one of them. The department had, basically, a template it could use and operate without necessarily solicitor oversight. I don't know whether that MHI contract was reviewed. I don't have any memory of doing it.

**MR. FITZGERALD:** Generally speaking, you would expect that whoever you contracted with would provide you with the information that they were obligated to provide under the contract.

**MR. STANLEY:** Yes.

**MR. FITZGERALD:** I believe Ms. Best raised the issue of it wasn't an issue of the civil service or the public service not getting information sometimes when meetings were held in at the Premier's office, it was an issue of the timing. Sometimes –

**MR. STANLEY:** Yeah, my perception of it, sometimes it was an issue just simply of timing and of communication.

**MR. FITZGERALD:** And near the end of your questioning, the issue of oversight came up, and you used the word – if I had concerns on oversight, I would've provided it to – and this is the route I would've taken.

**MR. STANLEY:** Mmm.

**MR. FITZGERALD:** You don't actually recall if you ever did have any concerns on the oversight issue, do you?

**MR. STANLEY:** The – no. I can't recall a positive instance where I had specific concerns that I thought needed to be raised, that hadn't been raised to that point, no.

**MR. FITZGERALD:** And you did not subsequently sit on the Oversight Committee.

**MR. STANLEY:** When it was first constituted, no.

**MR. FITZGERALD:** You –

**MR. STANLEY:** I did as deputy minister starting in July of 2017.

**MR. FITZGERALD:** But at the outset, I believe it was 2014, you weren't involved in that.

**MR. STANLEY:** I did not sit on the committee, no.

**MR. FITZGERALD:** And that wasn't at your insistence that this needed to be done, was it?

**MR. STANLEY:** A committee?

**MR. FITZGERALD:** Yeah.

**MR. STANLEY:** No, no.



**MR. FITZGERALD:** Thank you, Mr. Stanley.

Those are all my questions.

**MR. STANLEY:** Thank you.

**THE COMMISSIONER:** I think we'll take our afternoon break here and then, next, will be Robert Thompson. So we'll just adjourn for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** Please be seated.

**THE COMMISSIONER:** All right, Robert Thompson?

**MR. COFFEY:** Good Afternoon, Mr. Stanley.

I'm Bernard Coffey and, of course, you know that. I represent Mr. Thompson.

A couple of questions; you were asked by Mr. Learmonth about, you know, the context in which you'd known Mr. Thompson. And you indicated, of course, he had come out of the Department of Health.

In relation to that, I'm going to suggest that while you were a solicitor in your early days with the Department of Justice that you and he worked on the Atlantic Accord.

**MR. STANLEY:** I worked on the Atlantic Accord and –

**MR. COFFEY:** As a lawyer you did.

**MR. STANLEY:** As a solicitor I worked on the – was it called the 2005 Accord.

**MR. COFFEY:** Yeah and he would've been the clerk at the time.

**MR. STANLEY:** Oh, if Robert was the clerk, yes, then definitely I would've worked with him on that, yeah.

**MR. COFFEY:** And did you have any involvement in the formulation of the Energy Plan?

**MR. STANLEY:** Yes.

**MR. COFFEY:** And would he also, as clerk, have been involved in that?

**MR. STANLEY:** I think he would've over time, yes.

**MR. COFFEY:** Now, a number of counsel have asked you about – or broached or dealt with you the topic of exchange of information between Nalcor and the Department of Natural Resources, or Nalcor and government at large – the core departments at large, okay?

**MR. STANLEY:** Mmm.

**MR. COFFEY:** You've been asked about that. In particular about, for example, you know, Minister Jerome Kennedy's expectations –

**MR. STANLEY:** Mm-hmm.

**MR. COFFEY:** – you were asked about that.

Would it be fair to say that Mr. Kennedy had communicated that he wanted – he wanted information, he wanted it, I'm going to suggest, promptly. He wanted the information to be accurate and for it to be thorough.

**MR. STANLEY:** Yes.

**MR. COFFEY:** And, again – anyhow, I, you know – I'm going to suggest, of course, it would be your own personal observation, but would you have personally understood and understood others that – understood that that was the case? Anybody who dealt with Mr. Kennedy would've expected –

**MR. STANLEY:** Oh yes.

**MR. COFFEY:** – understood that.

**MR. STANLEY:** Yeah.

**MR. COFFEY:** Now implicit in this is – and, Ms. O'Brien, at one point earlier in this Inquiry – in fact, I believe, raised it with a witness – she put it that – I think she phrased it somewhat this way: The truth, the whole truth and nothing but the truth, that idea?

**MR. STANLEY:** In terms of what – your previous questions determined what minister –

**MR. COFFEY:** Well, in terms of the – if Minister Kennedy was asking for information from Nalcor.

**MR. STANLEY:** He would've assumed what he was getting was the truth, the whole truth and nothing but the truth.

**MR. COFFEY:** Yeah, okay, in that context. Thank you.

And I'm going to suggest to you that not only did, for example – your understanding was Minister Kennedy – that was his expectation, but in fact, I'm going to suggest to you, it was your own expectation.

**MR. STANLEY:** Yes. I mean I think I said somewhere that there's no – I didn't have any memory of any of these issues about whether or not there was anything coming over from Nalcor that was deliberately deceptive –

**MR. COFFEY:** Yes. Yeah.

**MR. STANLEY:** – which I think Mr. Learmonth had put to me a couple of times in questioning.

**MR. COFFEY:** And I believe, as well, you have indicated at some point – or your testimony that you were never given reason to doubt your understanding in that regard?

**MR. STANLEY:** No, no.

**MR. COFFEY:** Now, Mr. Fitzgerald asked you about your involvement in the federal loan guarantee.

**MR. STANLEY:** Mm-hmm.

**MR. COFFEY:** And that would be the FLG-1, I'll put it. The first one.

**MR. STANLEY:** Yes, to clarify, my – the FLG-2, which I think was finalized by 2017, by that point I was in – I was not doing Natural Resources work. And I think when that actually closed I wasn't even in the Department of Justice at that point.

**MR. COFFEY:** Yes.

And, Sir, and just on that point – and before I got to go back to the FLG – you were with Natural Resources until when, in the sense of providing them with legal advice?

**MR. STANLEY:** I –

**MR. COFFEY:** Exactly when?

**MR. STANLEY:** Pretty much to the close of the FLG process, in – I think it was December 2013. I had been appointed assistant deputy minister in August of that year, so I was taking on different responsibilities within the department.

But being that invested in the FLG process and that involved in it with – I essentially did that for four days a week and ADM for one day a week. And then, when we finally closed that, I moved into the ADM role full time.

**MR. COFFEY:** Yeah, you stayed on to finish, to (inaudible).

**MR. STANLEY:** I stayed on to finish the project, the project that I had been working on.

**MR. COFFEY:** And after that, you were no longer providing, like in the way you had before, legal advice to the Department of Natural Resources (inaudible)?

**MR. STANLEY:** Yeah, you're correct. After that, the responsibility was ensuring there was someone to provide the legal advice, but it wasn't necessarily and usually was not me.

**MR. COFFEY:** Yes.

Now, in relation to the federal loan guarantee, Mr. Fitzgerald mentioned to you the – or asked you whether you had, you know – or is aware the financial analysis had been done?

**MR. STANLEY:** Yes, I think I clarified that financial analysis of the financing terms –

**MR. COFFEY:** Yes.

**MR. STANLEY:** – I was very aware of. But whether there was financial analysis done of the

underlying costs to be – that the financing was to support, I don't know of any that was done.

**MR. COFFEY:** The financial analysis done of the financial terms, who performed that financial analysis?

**MR. STANLEY:** That would've been done by Nalcor. At that point I start, frankly, to lose track of who had – there was a fair number of men of expertise that had been retained, either by Nalcor – I don't remember if government had specifically retained economic advisors in respect of the financing. I think I do, but I can't remember who they might have been.

**MR. COFFEY:** Okay.

**MR. STANLEY:** But there was a fair amount of resources put on that – on the file.

**MR. COFFEY:** And, at the time, do you recall being satisfied that adequate resources were – from – to your understanding had been addressed to deal with the financial analysis?

**MR. STANLEY:** I had no question that Nalcor certainly had the resources on it. And within government, government had dedicated resources. I think, by the end of it the Department of Finance actually had somebody embedded with Nalcor's financing team where they were located doing the negotiations and working on it. And we had the resources we needed; we had a separate outside counsel ourselves advising us on it as well.

**MR. COFFEY:** Now in relation to, if I just could, Commissioner ...

While you were providing advice to DNR in relation to electricity matters, do you recall there ever being or ever being involved in exemptions that were granted or were issued by the Cabinet under section, I think it's 5.2 of the *Electrical Power Control Act, 1994*.

**MR. STANLEY:** Yes.

**MR. COFFEY:** Do you recall which ones?

**MR. STANLEY:** Now –

**MR. COFFEY:** In your time frame. Okay.

**MR. STANLEY:** In my time frame. I believe there are exemptions that were granted in 2004 in respect of the financing that AbitibiBowater would have done.

**MR. COFFEY:** In Stephenville.

**MR. STANLEY:** And I may give (inaudible). Well, in Stephenville, as well, yes, and in respect with the Exploits properties.

**MR. COFFEY:** Yes.

**MR. STANLEY:** There would've been an exemption, continuing exemption, after 2008 for Nalcor in the operation of those facilities because they were, I think, being exempted. There were a number of exemptions that were put in place for the financing as part of the overall structure for the Muskrat project that I would've been –

**MR. COFFEY:** Yes.

**MR. STANLEY:** – involved in. Other than that I –

**MR. COFFEY:** I –

**MR. STANLEY:** I don't have a direct memory of many more than that.

**MR. COFFEY:** One in 2013 for Exploits generation?

**MR. STANLEY:** That would be in respect – that would be the continuing one that was done in respect of the assets that were expropriated from Abitibi for Nalcor.

**MR. COFFEY:** Thank you, Commissioner.

**THE COMMISSIONER:** Consumer Advocate.

**MR. HOGAN:** Hi, my name is John Hogan; I'm counsel for the Consumer Advocate.

I just want to go back to a point that everyone seems to keep asking you about, but I'm going to get some clarification now.

In your transcript of page 21 – I'm just going to read out this quote. Some of these words have been brought up, I don't know if the full quote

has been read: “You know, most of the – I think most of the government, civil service, felt disrespected ... they didn't perceive that Nalcor had any idea what the role of Natural Resources was. The Department of Natural Resources would be perceived to be a check on Nalcor, what they were coming in with, and instead, they were assumed to be a cheerleader. So there's a fair amount of exasperation.”

So –

**MR. STANLEY:** Yes.

**MR. HOGAN:** – you recall making that statement?

**MR. STANLEY:** I do, yes.

**MR. HOGAN:** Do you still agree with that statement?

**MR. STANLEY:** Yes.

**MR. HOGAN:** Okay, so I just – the reason I want some clarification is you were – when you were under cross-examination by a few of the counsel here today, they seemed to – the way I read it was they seemed to raise points that, you know, the minister of the Natural Resources would have attended meetings with – in the Premier's office with Nalcor. The minister, therefore, would have had information about those meetings implying that Nalcor, the Department of Natural Resources, wasn't cut out of the process at all.

Now, there is – you do agree with your statement there that there was some frustration in the civil service. So can you square those two positions, I would say?

**MR. STANLEY:** Yeah, the – well, not the misunderstanding – the link is that while there was no question that if there had been meetings in the Premier's office on a particular topic, the minister and perhaps even the deputy minister would have been involved in those meetings.

It doesn't automatically trickle down, especially if it's just the minister who was involved in those meetings. The process of dissemination of information inside the department isn't either seamless or potentially very fast. So it is entirely

possible you could have a meeting where the minister was – or even the deputy was at meeting where matters were discussed and that information not be disseminated down to the relevant areas of the department, which I was talking about, which I think I clarified was – you know, I'm not talking about at the ministerial level. But that the officials may or may not have gotten the full briefing or the full understanding or any understanding of what happened at that meeting and that, as a result, they would feel frustrated if they were learning things from Nalcor, rather than from their own executive.

**MR. HOGAN:** Okay. So regardless of who was in those meetings with Nalcor in the Premier's office, doesn't take away from the fact that the civil service did feel as they feel, which the words were you – was disrespectful.

**MR. STANLEY:** Well, yeah, I'm not purporting to speak for –

**MR. HOGAN:** Yeah.

**MR. STANLEY:** – the entire civil service.

**MR. HOGAN:** I understand that.

**MR. STANLEY:** But, yes, there are employees at levels of the Department of Natural Resources where there was always going to be a bit of a – that was always going to be an issue.

**MR. HOGAN:** And do you recall – were there any other departments that were responsible for other Crown corporations who felt the same way, vis-à-vis that Crown corporation as opposed to Nalcor?

**MR. STANLEY:** No, but I don't know of another Crown corporation that would've had, as I think I said before, the same scope of interaction with various levels of government. And part of that is a function effect that Nalcor – when we're talking about, say, 2009, 2010, 2011, Nalcor was a growing entity, an evolving entity into various areas. Most of government's other Crown corporations are steady-state operations.

**MR. HOGAN:** But was that a reason to or an excuse to allow the civil service to feel as they feel – as they felt because it was new and

developing, as opposed to the Liquor Corp. which had been for X number of years? I mean, you still can't – we can't get away from the fact that people in the government, lots of people by the sounds of it, didn't feel that this was the way things should be done. And it's not, you know –

**MR. STANLEY:** Well, there's a couple of things in that. I mean there was a feeling – I don't purport to sit here to speak for the entire civil service below a certain paygrade. There was a feeling within government of irritation at times with Nalcor and how Nalcor was interacting with government.

Whether there was a view – that was as much a view as to – no, let me – there were concerns about process, how they were coming in. There were concerns about instances where there was, as I think I stated – especially in the early at first instance – situations where Nalcor was communicating that this decision had already been made and the government officials hadn't been aware of it. That was definitely a source of frustration.

But there were a number of other sources for the frustration that we're talking about. You know, you've got departmental officials, whose budgets have been frozen and/or possibly reduced, dealing with the concerns and trying to help out Nalcor, whose budget was going nowhere but up at the various points in time. There was two completely different cultures interacting, basically. One was, you know, a culture of people from the private sector who were – they were being brought in to a new organization that was being set up that had – you know, was well-resourced and interacting with government departmental and civil servants – career civil servants who were not necessarily feeling the same way.

**MR. HOGAN:** But that created stress on –

**MR. STANLEY:** That created a lot of –

**MR. HOGAN:** – the civil servants?

**MR. STANLEY:** – stress and tension between the two entities.

**MR. HOGAN:** Was there – I don't know what the right word is. I don't know, jealousy or

something like – you know, Nalcor's being treated this way while the civil servants are being treated that way.

**MR. STANLEY:** I think jealousy is probably too –

**MR. HOGAN:** Resentment?

**MR. STANLEY:** Probably a resentment, but a low-level resentment of the fact that, you know, Nalcor – we were all at that point all spending taxpayers' dollars. And yet the Nalcor access – the Nalcor salaries were even higher than the civil servants' salaries were. So all of that combined to create sort of this friction.

**MR. HOGAN:** I think you were asked about the difference between Premier Williams, his approach with regards to meetings with Nalcor, versus Premier Dunderdale. I don't think you were necessarily asked about the difference between Minister Dunderdale and Minister Kennedy and their approach. I know you've talked about – directly about Mr. Kennedy's –

**MR. STANLEY:** Mm-hmm.

**MR. HOGAN:** – relationship with Nalcor. How is it different than Minister Dunderdale's?

**MR. STANLEY:** I wouldn't – I didn't actually have a lot of insight into Minister Dunderdale's relationship with Nalcor, in that when Minister Dunderdale was there, we wouldn't have been doing that much to do on Muskrat Falls. And I don't remember there being – having a lot of interactions with her in respect to the oil and gas files, any more so than any other minister. So I don't know if I can answer that, actually.

**MR. HOGAN:** What was the – you weren't there then or what was the reason behind that?

**MR. STANLEY:** I was there, but just the way those files developed, there wasn't a lot of interaction with – by me with the Natural Resources Minister. Just how they were handled.

**MR. HOGAN:** Okay.

Broadly speaking, I think, can you recall any conversations with any of these individuals, the ministers of Natural Resources or the premiers,

about consumer rates and how this project would affect consumer rates?

**MR. STANLEY:** I – no. Direct conversations between me and them on that topic, no. That wouldn't be something I would be talking about.

**MR. HOGAN:** Okay.

Well, it – because it wasn't a legal issue?

**MR. STANLEY:** Pretty much, yes.

**MR. HOGAN:** Okay.

I'd say – suggest that, with regards to the federal loan guarantee, it was a condition that the ratepayers had to be responsible for the cost of the project, correct?

**MR. STANLEY:** Yes, yes.

**MR. HOGAN:** Legislation was passed to that effect?

**MR. STANLEY:** Yes.

**MR. HOGAN:** So in that aspect, for sure, the ratepayers are a legal issue.

**MR. STANLEY:** Yes, no question, yes.

**MR. HOGAN:** Okay.

And so no – with regards to, specifically, the federal loan guarantee and the legislation that was passed, you had no conversations with any of the ministers or the premiers –

**MR. STANLEY:** I –

**MR. HOGAN:** – the premier, I guess I should say, at that –

**MR. STANLEY:** Yeah.

**MR. HOGAN:** – point in time?

**MR. STANLEY:** No. I mean, the issue that the federal loan guarantee was – getting the federal loan guarantee was beneficial to rates because it reduced the interest rate that the province would have to pay (inaudible) –

**MR. HOGAN:** But it would lock the ratepayers in for the full cost of the project.

**MR. STANLEY:** The – well, now, the issue of locking the ratepayers in for the full cost of the project is arguably a – not a decision, 'cause I don't mean to imply that it was made and it was uncontroversial, but it was a structure to this project that was inherent in the Province of Newfoundland and Labrador carrying on this project alone, because at the end of the day, somebody's got to give the completion guarantee. So there weren't that many ways to deal with that issue. So but –

**MR. HOGAN:** So I'm not – you're not a decision maker at Nalcor, I understand that, but another way to deal with it is to not proceed with that route, right?

**MR. STANLEY:** Also, but – yes, oh yes, yes.

**MR. HOGAN:** With those discussions –

**MR. STANLEY:** Yeah.

**MR. HOGAN:** – or you know, was it – or were we too far gone at that point?

**MR. STANLEY:** Well, I don't know if we were too far gone, because you can always say no, as I said before. I mean, but up until the point where the federal loan guarantee financing documents were signed and you'd say you'd borrowed the money, arguably you could have said no.

The – but that issue of the effect on rates of the province committing – to be the ones committing to finish the project, to go back to your original question, I don't remember that being a specific topic that was discussed. I certainly didn't discuss it, because it was arguably inherent in some decisions that had already been made.

**MR. HOGAN:** Okay.

Madam Clerk, if we could just turn back to P-00061, page 11 please? So this is the 2041 paper.

**MR. STANLEY:** Oh, yes.

**THE COMMISSIONER:** Tab 9.

**MR. HOGAN:** Page 11, please? Just scroll down to the third paragraph. And just – I’m sorry – okay – anyways, the paragraph that starts with: “Waiting until 2041.” Just – the third line there says – this is a document that you said you helped draft, right?

**MR. STANLEY:** Justice would have provided comments on it as it was drafted, yes.

**MR. HOGAN:** Okay. Says: “There is” – the third line there – “There is also considerable risk and uncertainty regarding security of supply and reliability, the cost to ratepayers, and environmental compliance.”

So the cost to ratepayers was obviously discussed regarding the 2041 option, correct?

**MR. STANLEY:** Yes.

**MR. HOGAN:** With regards to this specific option?

**MR. STANLEY:** Yes. But this –

**MR. HOGAN:** So – sorry.

**MR. STANLEY:** Just to be clear.

**MR. HOGAN:** Yeah.

**MR. STANLEY:** The – this being a Department of Natural Resources, not – as opposed to a Department of Justice publication –

**MR. HOGAN:** Okay.

**MR. STANLEY:** – the discussion of the cost to ratepayers would’ve been based on economic discussions and, one presumes, information that was in the Department of Natural Resources at the time. We didn’t fact check or verify every statement in this thing as it was being drafted.

**MR. HOGAN:** So you, as a member of the Department of Justice, wouldn’t have had any –

**MR. STANLEY:** I –

**MR. HOGAN:** – input on that?

**MR. STANLEY:** No, I mean, my concerns with this was to make sure that the statements in it were legally accurate.

**MR. HOGAN:** Right, okay.

You see why I’m asking though, I mean, it was an issue with – the ratepayers came up, obviously, with regards to 2041, and you don’t have any recollection that it came up with regards to the Muskrat Falls option?

**MR. STANLEY:** Well, that’s not what I said. You asked me if I had any discussions with people –

**MR. HOGAN:** Okay.

**MR. STANLEY:** – about whether the cost to ratepayers came up. I didn’t have any discussions personally with people, because the cost to ratepayers isn’t something that I would ordinarily have in my responsibility.

**MR. HOGAN:** Okay.

**MR. STANLEY:** I’m not saying that the cost to ratepayers didn’t come up –

**MR. HOGAN:** No. No, I understand that.

**MR. STANLEY:** – in the discussions of 2041 – of the Muskrat Falls Project.

**MR. HOGAN:** Okay, thanks.

I just wanna get back to these premier meetings – the office at the premier’s – the meetings at the premier’s office with Nalcor when they would come and do presentations. We’re talking about two different administrations, so I just wanna make sure we got on the record exactly who was at –

**MR. STANLEY:** Up until 2012, yes.

**MR. HOGAN:** 2010? And then there was Ms. Dunderdale –

**MR. STANLEY:** Yes, in 2010 to 2012.

**MR. HOGAN:** Right.

So can you give a – do you know who would've typically attended these meetings during Premier Williams's administration?

**MR. STANLEY:** Well, the only meetings – I think I said before I can comment on the ones that I was invited to.

During Premier Williams's time, most of the meetings that I would've been invited to in respect of Muskrat would've been attended by – it would've been Mr. Martin, it would've been one or two people from Nalcor depending on what the topic of the meeting was and it would've been, for example, the premier, chief of staff, communications people, clerk of the Executive Council –

**MR. HOGAN:** Okay.

Let's just – so who would the chief of staff have been?

**MR. STANLEY:** Brian Crawley was Premier Williams's chief of staff.

**MR. HOGAN:** And the communications people would be ...?

**MR. STANLEY:** At the time, it was Elizabeth Marshall and – I've never been in a meeting in the premier's office where there wasn't his own communications person there.

**MR. HOGAN:** Okay.

**MR. STANLEY:** It would've been the clerk. Robert Thompson would ordinarily be there. And then it would've been the minister of the department and possibly the deputy of the minister of the department, or if the minister wasn't available, just the deputy of the department for whom there was a policy issue being discussed in the meeting.

**MR. HOGAN:** Okay.

What about Mr. Bown?

**MR. STANLEY:** Mr. Bown would be at most of them I would expect, yes.

**MR. HOGAN:** And what was his role in those meetings?

**MR. STANLEY:** He would ordinarily, depending on what was going on, either being receiving a briefing from Nalcor at the same time. More likely, he would be sitting with Mr. Martin to brief everybody in the room as to what it was in government's view and governments sort of coming in – Nalcor making the presentation and then advising as to where the Department of Natural Resources was on that issue.

**MR. HOGAN:** Yeah.

**MR. STANLEY:** Because usually it wasn't as a stranger to the presentation.

**MR. HOGAN:** The Premier's office had the designated – were they a client within the Department of Justice?

**MR. STANLEY:** No.

**MR. HOGAN:** Every department would be considered a client.

**MR. STANLEY:** Yes, every department, including Cabinet Secretariat, would have solicitors assigned. But the Premier's office doesn't generally – isn't considered a department, doesn't have a solicitor assigned to it.

**MR. HOGAN:** It's not really an entity, I guess, in terms of government operations. Am I mischaracterizing that?

**MR. STANLEY:** No, I wouldn't say that, but it is far more of a – you know, the clerk of the Executive Council is basically the premier's deputy minister.

**MR. HOGAN:** Right.

**MR. STANLEY:** That's one of the characterizations of the role. The Premier's office itself is as much a – I don't know –

**MR. HOGAN:** CEO.

**MR. STANLEY:** Yeah, it wouldn't be accurate to say it's as much a – as a political office as a policy office or governmental office, but –



**MR. HOGAN:** The premier would direct his ministers, right?

**MR. STANLEY:** Yes, exactly. Yes.

So the Premier's office is there in support of the premier in that role, but it doesn't have its own solicitor assigned to it directly or anything like that.

**MR. HOGAN:** The Premier's office is not making decisions the same way ministers are making decisions.

**MR. STANLEY:** No, the –

**MR. HOGAN:** From a legal standpoint.

**MR. STANLEY:** Yeah, the ministers are – legally, the ministers have a responsibility under legislation to sometimes make decisions or have decisions made in their departments. There's no legislation that specifies that decisions be made in the Premier's office.

**MR. HOGAN:** Okay.

So back to the – those meetings, were those people still – that you mentioned for – at the offices of Premier Williams, the same people present when Premier Dunderdale was in office?

**MR. STANLEY:** Yes, well, the same roles would be present; the individuals in those roles would change.

**MR. HOGAN:** Okay, so chief of staff would've been –

**MR. STANLEY:** Chief of staff, I would expect to be at least one communications person there.

**MR. HOGAN:** Who was the chief of staff?

**MR. STANLEY:** For – well, Premier Dunderdale, I can't remember the man's name and I should be able to. I apologize for that, I'm sure –

**MR. HOGAN:** And what about the communications person or people?

**MR. STANLEY:** That, I can't remember. There was a fair number of them.

**UNIDENTIFIED MALE SPEAKER:** The former MP – what's his name. A federal MP was the chief of staff.

**MR. STANLEY:** Well, he was the chief of – sorry. Mr. Reid was eventually chief of staff for Premier Marshall.

**MR. HOGAN:** Ross Reid.

**MR. STANLEY:** Ross Reid.

But the chief of staff – I don't know if he was chief of staff at some point for Minister Dunderdale or Premier Dunderdale or not. And I can't remember the man now, his name was – chief of staff for Premier Dunderdale. I didn't have (inaudible).

**MR. HOGAN:** And Mr. Thompson and Mr. Bown, were they in the meetings with Premier –

**MR. STANLEY:** Yes, I think – yes, yes, they were still – they would've been in those roles. They continued, yes.

**MR. HOGAN:** You dealt with financing.

**MR. STANLEY:** Yes.

**MR. HOGAN:** When Nalcor needed or requested or required financing, would the request come from Nalcor directly or would it come through Natural Resources?

**MR. STANLEY:** Issues in respect of financing might have come through Natural Resources. I mean, it was known; it's sort of an obvious conclusion Nalcor was going to require financing to do this project. Details respecting the financing requirements of Nalcor may have come as much through the Department of Finance as the Department of Natural Resources –

**MR. HOGAN:** Okay.

**MR. STANLEY:** – to my experience.

**MR. HOGAN:** So it would have – it would not have come directly through Nalcor?

**MR. STANLEY:** Nalcor wouldn't have directly walked in and said we need financing under

these terms without the client departments having some involvement in it somewhere.

**MR. HOGAN:** But would it have been one of the topics at meetings in the Premier's office where Department of Finance officials might have found out later that, yeah, this is what the financing is, so go do it.

**MR. STANLEY:** No, that's not ultimately how the matter would have resolved. Now, they may have find out that there was a discussion about financing and these are the options we're looking at – and I'm speaking entirely hypothetically here – but no final decisions were made on any of this without the departments having their say. It was more the intervening discussions that may have occurred without the departmental officials.

**MR. HOGAN:** And we haven't talked about Gull Island but there was, you know, the evidence that we have so far is a decision was made to not proceed with the Gull Island export project. You're aware of that?

**MR. STANLEY:** I'm aware of the decision, yes.

**MR. HOGAN:** Yeah. Do you recall that ever being an issue within your department, a topic of conversation or an issue?

**MR. STANLEY:** No.

**MR. HOGAN:** You – just if you can just remind me again what your involvement was with the Emera term sheet negotiations. Now, you said – I think you said you didn't negotiate the term sheet.

**MR. STANLEY:** So I think I've already, just without getting into solicitor-client privilege stuff, I advised the Department of Natural Resources, who was part of the team that negotiated – that was available to Nalcor, essentially, as they negotiated the term sheet with Emera.

**MR. HOGAN:** Okay.

**MR. STANLEY:** But I was never in the room for those negotiations and I don't think, to my knowledge, the Department of Natural

Resources was never in the room for those negotiations.

**MR. HOGAN:** Yeah, because ultimately it was a deal between Emera and Nalcor.

**MR. STANLEY:** Yes.

**MR. HOGAN:** Okay.

Do you know when the negotiations with Emera commenced?

**MR. STANLEY:** No, it would have been some point in 2010. I learned of them, I think, in October (inaudible).

**MR. HOGAN:** You learned of them in October –

**MR. STANLEY:** Yeah.

**MR. HOGAN:** – and it was signed in November.

**MR. STANLEY:** Yes, it was a busy period of time for the term sheet negotiations.

**MR. HOGAN:** So would you have learned of it after negotiations had commenced. Can you comment on that?

**MR. STANLEY:** I think the negotiations were underway – and when I say learned of it, I may or may not have known they were going on, but I got involved in October 2010.

**MR. HOGAN:** And what stage were they at, at that point?

**MR. STANLEY:** They were – I'm not sure I can answer it. They were fairly – they were probably, for lack of a better description, halfway to what ended up in the term sheet.

**MR. HOGAN:** Yeah.

We've seen documents, Nalcor board minutes, of meetings where certainly they approved the term sheet and to proceed to negotiate that term sheet with Emera. Have you seen that or you're aware of that, I guess?

**MR. STANLEY:** I would never have seen Nalcor board minutes.

**MR. HOGAN:** Do you know then how that approval goes from Nalcor to the government? And does the government have to review that and make any decisions?

**MR. STANLEY:** The government was involved in the negotiation process for the term sheet. The – it may have been a – sort of a two-pronged approach as opposed to a sequential one. Government's approval – government wouldn't have approved anything if I had to approve it at the end of the day without knowing that the board of directors had approved it.

**MR. HOGAN:** Well, is there a formal approval procedure after Nalcor does their approval?

**MR. STANLEY:** It depends on the topic. There are things that could just – there are things that just need to go to the Nalcor board of directors. And if approved there, there is no requirement to come back to government for everything. A lot of that is controlled by the scope of the Energy Corporation Act.

**MR. HOGAN:** Okay, so what about the term sheet? Would that have had to go to government for approval?

**MR. STANLEY:** The – without sitting down to go through the Emera-Nalcor term sheet, at first instance I'm not sure there was anything in there that statutorily had to go to government for approval.

**MR. HOGAN:** Okay.

**MR. STANLEY:** I think it might have – I mean, obviously, it was approved by government, but I'm not sure that there was a power that government had to exercise to approve it.

**MR. HOGAN:** Okay.

We don't know. We don't know if there's –

**MR. STANLEY:** I don't know – I mean I do know government approved it; obviously, government held an announcement for it. But I don't know if the government actually needed to

statutorily – whether there was something of respecting borrowing commitments or things that are flagged by the Energy Corporation Act that had to be approved by the Lieutenant-Governor in Council.

**MR. HOGAN:** Okay.

**MR. STANLEY:** I'm not familiar with it at this point.

**MR. HOGAN:** When one of the counsel was asking you, you talked about the Emera agreements, so these are the subsequent agreements.

**MR. STANLEY:** Yes.

**MR. HOGAN:** You said that – I think you said you were involved with the government approval process. So after –

**MR. STANLEY:** Those negotiations took a significant period of time after –

**MR. HOGAN:** The Emera agreements?

**MR. STANLEY:** The Emera agreements.

**MR. HOGAN:** Yeah.

**MR. STANLEY:** The negotiation of those documents took, I want to say – and I could be wrong about this – about 18 months. I think it was late 2010 we did the term sheet. I don't think the Emera agreements were actually finally signed off until the spring or the summer of 2012.

So when they were done, there was an approval process that went on within government. I cannot remember if it's a statutorily required approval or if it was just government wanted to know what was in those agreements. So I was part of that process.

**MR. HOGAN:** So was that an ad hoc decision to set up that process for the Emera agreements?

**MR. STANLEY:** I don't know if ad hoc is the right term. It was a – I think government always said that they were going to approve those documents, but as I said, right now, I can't

remember whether that was actually a requirement or just a policy decision.

**MR. HOGAN:** Okay. So were you part of that – you were part of that?

**MR. STANLEY:** I was part of the process to get government to approve those agreements – that's not the best way to put it. I was part –

**MR. HOGAN:** On your (inaudible), I guess?

**MR. STANLEY:** Well, no, I was a part of the process. The part of – the big part of the work was actually to summarize the agreements because you were talking about 14 pretty complicated agreements. So there was an ongoing project to provide the decision makers with accurate summaries of agreements that were under negotiation at the time so that they could see what was in those agreements and approve them.

**MR. HOGAN:** But was the reporting going directly to government or was Nalcor involved as well?

**MR. STANLEY:** Well, Nalcor was providing us, at Justice and at the Department of Natural Resources, with descriptions of the drafts as they went along, as they go closer to finalization.

**MR. HOGAN:** Do you recall the names of the individuals at government that you were dealing with, and Nalcor?

**MR. STANLEY:** At Nalcor, no. In government – well, I know, a former, I mean, former Assistant Deputy Minister Paul Scott, I think, was one of the people who's in charge of shepherding this process through.

Other than that, I can't remember exactly who in Natural Resources would have been involved in that but there was a couple of people trying to – whose responsibility it was to get the government work done on those agreements, and the analysis done and the summaries done, so that they could go through the Cabinet process.

**MR. HOGAN:** So, that was my next question. Well, who's the final sign-off authority on the Emera agreement process that you're talking about?

**MR. STANLEY:** Well, there would have been a Cabinet paper signed by the Department of Natural Resources, under which they went to Cabinet. So that would have been the minister of Natural Resources at the time, I guess.

**MR. HOGAN:** There seems to be specific recollection anyways of the Cabinet sign-off for the Emera agreements as opposed to the term sheet.

**MR. STANLEY:** Yes. I remember the negotiations –

**MR. HOGAN:** I'm saying your recollection, now, I'm not –

**MR. STANLEY:** No, I get that. I remember the –

**MR. HOGAN:** Yeah.

**MR. STANLEY:** I remember the process for the approval of the Emera term – Emera agreements. The process no question, there was – that was a process that went to Cabinet. The term sheet, I can't remember what process went through to get – for the approval of that within government.

**MR. HOGAN:** Okay.

Just a couple of questions on the PUB. You – I think you said you were involved with that reference?

**MR. STANLEY:** Yes.

**MR. HOGAN:** Do you know what minister of Natural Resources – who it was at that time?

**MR. STANLEY:** No, not off the top of my head, I don't.

**MR. HOGAN:** Okay.

Do you know if the terms of reference were sent to Nalcor for its review?

**MR. STANLEY:** I don't know. I can't say positively whether I know they were or were not.

**MR. HOGAN:** You can't say?

**MR. STANLEY:** I don't remember that, no.

**MR. HOGAN:** Okay.

Do you think it would be appropriate for Nalcor to review those terms of reference or not?

**MR. STANLEY:** It would not surprise me if they had, but I don't know whether they had or not.

**MR. HOGAN:** Just a quick question on Newfoundland Power.

Did they ever intervene, to your knowledge, or get involved in the planning of the Muskrat Falls process with government?

**MR. STANLEY:** No, I don't know of any interaction with them.

**MR. HOGAN:** Yeah.

Another question on –

**MR. STANLEY:** Actually, can I qualify that for a second?

**MR. HOGAN:** Yeah, sure.

**MR. STANLEY:** I think there was a consultation with them in respect of the 2012 legislation before it was passed. I think they were briefed on it, just so that there would be an understanding of what was actually being done in the legislation, but other than that I don't remember any interaction with Newfoundland Power.

**MR. HOGAN:** You don't know who at Newfoundland Power would've been involved in that –

**MR. STANLEY:** No.

**MR. HOGAN:** – briefing?

**MR. STANLEY:** No, no.

**MR. HOGAN:** Okay. Briefed by –?

**MR. STANLEY:** Probably, I don't know, it may have been Mr. Bown, but I'm not sure who

would've gone and discussed it with Newfoundland Power.

**MR. HOGAN:** Not sure, okay.

Just another question back to Nalcor sort of taking the reins.

**MR. STANLEY:** Mm-hmm.

**MR. HOGAN:** You know, put it all back to you again, you've been through it.

There's other issues that we haven't talked about today, just things like – I think you might've mentioned it, actually, you talked about from a Hydro perspective and property and transmission lines.

**MR. STANLEY:** Yes.

**MR. HOGAN:** So Nalcor would've, I think, expropriated property to put transmission lines in for the Muskrat Falls Project?

**MR. STANLEY:** Yes and no. There were and are, I think, still – I think there's still expropriation going on or being sorted out.

There was a statutory framework created after the time period you're dealing with. I think it was a little bit later, or it might have been in 2012, I can't remember exactly when, there was a statutory framework created to ensure that Nalcor could expropriate easements for the purposes of the transmission line.

We created a special land instrument, frankly, so that Nalcor got exactly the rights it needed to build a transmission line, but didn't get any more rights than were necessary to do that because, at the time the analysis was done – this is again privileged but we'll just go down here for a second – at the time the analysis was done, there was no instrument in Newfoundland property law that would let you do what they needed to do –

**MR. HOGAN:** Yeah.

**MR. STANLEY:** – so we created a new one.

**MR. HOGAN:** Obviously, issues come up; environment issues, wildlife, rivers, streams, forests, et cetera.

**MR. STANLEY:** Yes.

**MR. HOGAN:** Did Nalcor get the same sort of special treatment with regards to those issues? You know, would they meet directly in the Premier's office about this stuff?

**MR. STANLEY:** No, and to be clear, any matter that involved environmental regulation of Nalcor, and the requirement of Nalcor to go through or to discuss those issues, which we'd all be involved in the environmental assessment process, I had no direct insight into that 'cause I didn't provide legal advice to the Department of Environment.

What I saw in meetings respecting the progress of the project was that Nalcor was being required to comply with the environmental process in lockstep with how any other developer would be and they weren't getting any special treatment in respect to those requirements, no.

**MR. HOGAN:** Okay. This is the last questions I have.

You mentioned or someone asked you, I mean, there was a phrase that Nalcor was behaving like a public company.

**MR. STANLEY:** In context of a publicly traded company?

**MR. HOGAN:** Yes.

**MR. STANLEY:** Yes.

**MR. HOGAN:** I mean, they're not a public company are they?

**MR. STANLEY:** No, no, so – well, maybe I'll let you ask your question.

**MR. HOGAN:** Was that the belief in government that they were different than other Crown corporations and they should be allowed to behave like a public company?

**MR. STANLEY:** I think the belief in government might be far too broad a term.

**MR. HOGAN:** Okay, I'm gonna ask it this way: Was it a top-down approach in the government to let Nalcor behave like a public company?

**MR. STANLEY:** No, I wouldn't say that. I think it was recognized that Nalcor was going to have disciplines within it analogous to a public company as opposed to a – sorry, not to confuse things here – as opposed to being a public sector Crown corp, that Nalcor would be structured and have disciplines in it that were closer to a publicly traded company.

One example of that is the annual shareholders meeting that Nalcor holds for the general public, I mean, the Newfoundland and Labrador Liquor Corporation doesn't do that. So, the approach to Nalcor was that it would have more of those – more of that structure or more of that treatment, but it wasn't that a big decision that we were gonna let them be a publicly traded company or act like a publicly traded company, therefore, let them off, anything we require them to do anyways.

**MR. HOGAN:** I think in the – some of the context was with regards to document disclosure. And Mr. Learmonth said, you know, if – why couldn't the shareholder demand the documents?

**MR. STANLEY:** It –

**MR. HOGAN:** So, I'm wondering if the shareholder at the top – the Premier's office or the ministers' – weren't demanding the documents because they were letting them act like a publicly traded company.

**MR. STANLEY:** There may or may not have been that. I'm not exactly sure how far up into that point the discussion of disclosure of documents and information went. But there's no question in the legislation, at the end of the day, government had the ability to demand those documents if they wanted to.

**MR. HOGAN:** If they wanted to.

**MR. STANLEY:** Yeah.

**MR. HOGAN:** Okay. That's all the questions I have.

Thank you.

**THE COMMISSIONER:** All right, Emera Inc.?

**MR. O'KEEFE:** No questions, Mr. Commissioner.

**THE COMMISSIONER:** Former Nalcor Board Members?

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

**THE COMMISSIONER:** Okay.

All right, Todd Stanley and Terry Paddon.

**MR. KELLY:** Mr. Commissioner, I wonder if I would be permitted to ask some questions of this witness and since this is my friend's right of reply?

**THE COMMISSIONER:** Okay, so you – so, obviously, your client has special standing here.

**MR. KELLY:** Yes.

**THE COMMISSIONER:** And in order to be able to ask questions, you would have to apply to be able to do that. Perhaps you can give me a reason –

**MR. KELLY:** I only wanted to ask a few questions about the regulatory process and, in particular, the reference to the PUB in 2011.

**THE COMMISSIONER:** All right, go ahead.

**MR. KELLY:** Mr. Stanley, Ian Kelly and I represent Newfoundland Power.

**MR. STANLEY:** Yes, Sir.

**MR. KELLY:** I just have a couple of questions about the reference to the Public Utilities Board in 2011. And just to set this up for you, we know that the Muskrat Falls Project had already been exempted, agreed, from a PUB review?

**MR. STANLEY:** It would – I'm not sure about the timing of the – oh sorry, yes, there was –

**MR. KELLY:** Yes.

**MR. STANLEY:** – original exemption for the Muskrat Falls Project that, I think, dated to the 2000s.

**MR. KELLY:** Yeah, exactly. Much earlier –

**MR. STANLEY:** Yeah, sorry, yes.

**MR. KELLY:** And we had premier – former Premier Williams's testimony here. And I think it fairly clear from his testimony that during his period he wasn't contemplating a reference to the Public Utilities Board. And we know that in – sometime in 2011 this reference of, what I'll call the least-cost reference, gets made to the Public Utilities Board.

Can you provide the Commission with any insight as to how that decision process came about?

**MR. STANLEY:** I think – I don't think I can answer that because I think my insight into those processes would have been as counsel advising people and that would be solicitor-client privilege.

**MR. KELLY:** Right. I'm not asking you for any advice that you would've given, but was there some event that happened or some reason that led to the PUB reference?

**MR. STANLEY:** I'm not sure that I'm aware of one, no.

**MR. KELLY:** Okay.

Do you know who, in government, would've been the principle decision-makers to make that decision?

**MR. STANLEY:** Well, ultimately, the reference was a Cabinet decision, so it would've –

**MR. KELLY:** Yes.

**MR. STANLEY:** – come through Cabinet.

**MR. KELLY:** But in order for it to go to Cabinet –

**MR. STANLEY:** No, I –

**MR. KELLY:** – it would’ve had to go up –

**MR. STANLEY:** I’m not exactly sure, actually, where that idea would have originated.

**MR. KELLY:** Okay. Thank you.

**THE COMMISSIONER:** Right.

Todd Stanley?

**MS. VAN DRIEL:** Thank you.

**THE COMMISSIONER:** Just turn on your mic there, if you would, please?

**MS. VAN DRIEL:** Now it’s off and now it’s on? Okay, sorry.

Yeah, just a few questions here, Mr. Stanley. This is about your initial interview on August 31. When were you asked to come for an interview? Do you remember the time period?

**MR. STANLEY:** I think it would have probably been early – late July, early August. Because there was some discussion of scheduling dates and I was out of town for most – or part of the middle of August.

**MS. VAN DRIEL:** Right. And when did you receive any documents from Commission’s counsel?

**MR. STANLEY:** So, obviously, now not being with government, I didn’t have any documents to review.

The documents I received from Commission counsel in advance of the interview, I think, came in the night before or the afternoon before.

**MS. VAN DRIEL:** Right. And was that a lot of documents they sent to you?

**MR. STANLEY:** I was sent a couple of hundred documents, probably 2,000 or 3,000 pages of records that I had touched at some point that had come out through, I think, a computer search.

**MS. VAN DRIEL:** So did you feel it gave you a lot of time to prepare for this interview?

**MR. STANLEY:** Not to be fully briefed on what those documents said, no, obviously.

**MS. VAN DRIEL:** And did you have conversations with the Commission for the purpose of the interview?

**MR. STANLEY:** Not with the Commission, no.

**MS. VAN DRIEL:** Did you have conversations with anybody else for the purpose of the interview?

**MR. STANLEY:** Well, I was accompanied to the interview by counsel for the Government of Newfoundland and Labrador. And the primary purpose of the interview was understood to be in respect of the water-management issues.

**MS. VAN DRIEL:** Right. And was counsel for government also your counsel at that time?

**MR. STANLEY:** No, I – it was – I viewed counsel for government being there as being responsible for this – the – holding the privilege of what I could or could not discuss on a solicitor-client-privilege basis.

**MS. VAN DRIEL:** And what was your understanding – before you started to give responses to the questions of Mr. Learmonth, what was your understanding of the information that all of what you would say at that interview be solicitor-client privilege?

**MR. STANLEY:** I think at the time my understanding was that we were having a discussion within privilege and that what we were discussing, and my answers and my responses, were all within the umbrella of solicitor-client privilege.

**MS. VAN DRIEL:** And if you had known that apparently not all of it – certainly, not your observations and impressions of what went on within government, that that type of information would not be privileged, would you have answered differently?

**MR. STANLEY:** I may have been more circumspect in the language that I used in



answering the questions, but the answers I've given – the nature of the answers would have been the same.

**MS. VAN DRIEL:** Right.

So, today, we've heard a lot of evidence from you in response, particularly, to statements you made and are expressed in the transcript. Is there anything in what you said today that would contradict or is in conflict with what you said at that time?

**MR. STANLEY:** No, I don't think so. I don't think there's anything in the transcript that I didn't – I don't stand by what I said. There are, as I think I noted, a couple of times where the transcript may end without there having been a full discussion or development of a train of thought. I think anyone reading the transcript will see it's fairly conversational and that the transcript may discuss a point, but I think it's come out here possibly once or twice, that wasn't the final resolution of the issue that was involved.

**MS. VAN DRIEL:** Right, okay.

On a different subject matter, if I may, we've heard evidence from members of the board of the Nalcor. I think they were asked, and I can't remember by whom, about the reason why the deputy minister had no seat on the board of Nalcor. And maybe you can enlighten the Commissioner on that because I think there is a real –

**MR. STANLEY:** Yes.

**MS. VAN DRIEL:** – issue there.

**MR. STANLEY:** I think I heard – I was listening, I think I heard that question asked last week. There was – when the energy corporation was set up in 2006-2007, there was – well, recognizing this is probably privilege, but I think we're okay – there was legal advice requested and obtained from the Department of Justice that it would not be appropriate for a deputy minister to sit on the board of Nalcor. And I think that legal advice is actually in – that was in the records that were provided to me before the interview, so I think the Commission has those opinions.

**MS. VAN DRIEL:** Okay. Thank you.

And then one more question that relates, really, to the federal loan guarantee. We heard evidence from Mr. Brockway last week in respect of the report done by Grant Thornton at the request of the Commissioner, in respect of the federal loan guarantee and the PPA and the impact of those on the Newfoundland ratepayer. And twice there was a reference – and I believe you have seen that report?

**MR. STANLEY:** I've reviewed it quickly, yes.

**MS. VAN DRIEL:** Right, yeah.

And twice there was a reference in the report to – that the terms and conditions of the federal loan guarantee were agreed to in November – November 30, I believe, it was – 2012. Mr. Brockway seemed to be not entirely aware or familiar with whether or not the actual loan guarantee – and when that was issued. Can you expand on that a bit?

**MR. STANLEY:** Yes, so the arrangement that was reached in 2012 was basically the federal government's agreement to provide the loan guarantee on certain terms and conditions, which were rather voluminous.

It took most of 2013 to satisfy those terms and conditions, including the negotiation of commercial agreements, to satisfy them, and then it wasn't until financial close in 2013 that – that's my understanding – that the federal government, having been satisfied that all the terms and conditions had been met as part of the financial close, actually executed and delivered a loan guarantee document to the lending agencies that would have required it.

**MS. VAN DRIEL:** Yeah. Okay, thank you.

That's all the questions I have.

**THE COMMISSIONER:** Redirect.

**MR. LEARMONTH:** Yes. Mr. Stanley has given evidence in response to a question from Ms. Van Driel that he didn't think there were any contradictions between his evidence and his interview evidence on August 31. Well, I take a

completely different point of view on that subject.

I suggest that there – it's very clear that there were many contradictions between the evidence that Mr. Stanley gave in cross-examination today and in examination-in-chief today and also in his interview. And so I'm – I don't accept this business about – that the differences are as a result of clarifications or expansions of points raised. I don't accept that.

And so I – therefore, I'm raising an issue about Mr. Stanley's credibility, his personal credibility, in his evidence today in cross-examination and the evidence he gave under oath at the interview. And I wanted to make Mr. Stanley aware of that at the beginning.

That leads to my next request: is that I be given leave to cross-examine Mr. Stanley on both his evidence that he gave today in cross-examination and the evidence that he gave under oath at his August 31 interview. I believe the grounds are set out. It's set out in the *Evidence Act*, which applies to inquiries, and I would ask for that leave.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Maybe some parties want to make –

**THE COMMISSIONER:** I can –

**MR. LEARMONTH:** – argument on that, but ...

**THE COMMISSIONER:** So first of all, without the issue of the question of whether it's cross-examination or examination, you have the right to re-examine. And certain things – certainly, things that were raised by the other counsel subsequent to the examination that you provided are matters that are within the purview of redirect, so you can certainly do that.

I understand the position you're taking, and I guess it will be for me to decide whether that's the case or not, but this is a public hearing, a public inquiry, and as a result, I'm going to give the right to ask your questions, and we'll see where this is gonna go this afternoon.

And you can go ahead and put your questions to Mr. Stanley.

**MR. LEARMONTH:** Okay, thank you very much.

Now, you've referred in your answers to Ms. van Driel and also in other evidence – I think it was to Mr. Budden – about – you described the interview as a fast-moving conversation?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** What do you mean by that?

**MR. STANLEY:** That it was a frank discussion of issues that were raised in response to the questions that you asked.

**MR. LEARMONTH:** Right.

Why – is there anything abnormal about that?

**MR. STANLEY:** I think the language that was used in the interview, most people would recognize, was probably more conversational than would be expected for a discovery-ish context.

**MR. LEARMONTH:** Okay.

But you volunteered to participate in the interview, is that correct?

**MR. STANLEY:** Yes, I believe I did.

**MR. LEARMONTH:** You weren't subpoenaed –

**MR. STANLEY:** I was not.

**MR. LEARMONTH:** – or summonsed?

**MR. STANLEY:** Nope.

**MR. LEARMONTH:** Okay.

You were represented by two legal counsel from the Department of Justice: Mr. Leamon and Mr. Ralph.

**MR. STANLEY:** They were present at the interview, yeah.

**MR. RALPH:** Commissioner, I don't think it's fair representation to say that I was representing Mr. Stanley at the time, and I think we – Mr. Stanley and I understood why – the purpose of my presence, and it was not to represent Mr. Stanley.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Well, I don't think that's in the transcript, but that doesn't really make a lot – there were two counsel from the Department of Justice present with you, is that correct?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Yeah.

And – so are you saying that you treated this interview as a – which was under oath or affirmation, correct?

**MR. STANLEY:** (Inaudible.)

**MR. LEARMONTH:** Are you saying that the – there was some reason that you didn't get all your evidence out that you were – you know, you were prohibited or there was – you were cut off or anything like that in the – answering your questions?

**MR. STANLEY:** No. No, that's not what I was saying.

**MR. LEARMONTH:** Well, what are you saying? I mean, you seem to be – Mr. Stanley, I suggest that you're attempting in your – attempted in your cross-examination to backtrack from some of the evidence that you gave in the interview, and I'm suggesting that the reason you're doing that is not simply because the evidence wasn't true but because you have come to regret some of the things that you said. What's your response to that?

**MR. STANLEY:** I've not come to regret some of the things I've said in that interview at all. I may have regretted the terminology that I used in making those statements in the interview.

**MR. LEARMONTH:** What terminology do you regret?

**MR. STANLEY:** Well, I think it's pretty clear that there was one or two places where I used more flowery language or more descriptive language than necessarily added anything to the discussion.

**MR. LEARMONTH:** Well, I mean, how – you're a lawyer.

**MR. STANLEY:** I am.

**MR. LEARMONTH:** You're under oath or affirmation at this interview. And how long have you been a lawyer?

**MR. STANLEY:** Twenty-four years.

**MR. LEARMONTH:** Twenty-four years.

**MR. STANLEY:** I think.

**MR. LEARMONTH:** And you were formerly, until earlier this year, the deputy minister of Justice for the province?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** So you're suggesting now that you used flowery language that you regret? Is that what you're saying?

**MR. STANLEY:** The language in one or two instances – the nature of the language I used, yes.

**MR. LEARMONTH:** Okay.

Well, give me examples of this flowery language position that you're now putting forward?

**MR. STANLEY:** I don't think the use of the term, one of the terms that you used before, of runaway train necessarily –

**MR. LEARMONTH:** I didn't use that.

**MR. STANLEY:** – added –

**MR. LEARMONTH:** You did.

**MR. STANLEY:** No, yeah, but you raised it.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** I used that term in a context to impart a meaning of there being a concern about the level of control or the level of knowledge that was going on in to Nalcor, but that's a descriptive metaphor that maybe not necessarily adds a great deal to the other message, which I fully stand by, which was that there were concerns at the time of how much stuff was going on at Nalcor.

**MR. LEARMONTH:** Yeah.

Well, you chose the word, right?

**MR. STANLEY:** I did.

**MR. LEARMONTH:** Yeah.

And with your legal experience, I suggest that it's unreasonable to expect people to accept that this was a poor choice of words or flowery language that you, upon reflection, shouldn't have used.

**MR. STANLEY:** Mr. Learmonth, when I came to do an interview with the Commission, I wasn't – it wasn't clear that I was going to be called as a witness. I knew that I was under oath, no question.

The – I came voluntarily as a witness because I wanted to ensure that the Commission had full understanding of the flavour and colour of relationships and situations that may or may not have been going on, or that were going on, between government and Nalcor at the time that wouldn't necessarily be fully apparent in the document review that I knew the Commission had been doing.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** So I gave descriptions of relationships, descriptions of scenarios, situations. I think I went down one or two or three hypotheticals at the time, some of which I'm not sure are in the transcripts, some (inaudible) – I'm not sure, may have been redacted – to attempt in the interest of ensuring that the Commission had full understanding and fleshing out of the nature and the more human story behind the – behind what was going on at the time – that would necessarily have been apparent from the documents. So I did use the

words – there's no question, you didn't put any words to me that I accepted there's language there.

In the fullness of time, if I had realized that we'd be sitting here today being cross-examined on those words as a witness, I'm not entirely sure I would've used the exact same words, but I would – I still stand by the statements that were made in the information – or the point that I was making when I used that language.

**MR. LEARMONTH:** Yeah. So you're not – you agree that there was no – it was a very cordial atmosphere at the interview. Is that correct?

**MR. STANLEY:** Absolutely.

**MR. LEARMONTH:** Yeah, there was no pressure put on you?

**MR. STANLEY:** No, none whatsoever.

**MR. LEARMONTH:** You were speaking freely and voluntarily?

**MR. STANLEY:** Yes, absolutely.

**MR. LEARMONTH:** Yeah.

So I just – I don't want to dwell on this any more than I have to but, you know, I think one might question a person with your legal experience, to now come and say that you regret using a choice of words and so on. You feel comfortable doing that, do you?

**MR. STANLEY:** One or two of the words that were used in a 90-page transcript – yes, I do.

**MR. LEARMONTH:** Okay, what other words that would fall under this category you've put forward of flowery language? Runaway train was one – or train was one. What other terms did you use that you are now saying fall under this category of flowery language?

**MR. STANLEY:** There was at least – I can't remember, there's one term put to me here today, but I – actually, I can't put my finger on it.

**MR. LEARMONTH:** It – well, so was it –

**THE COMMISSIONER:** Cheerleader might be one?

**MR. STANLEY:** Cheerleader might be one, but I think that was in characterization of Nalcor's approach to the Department of Natural Resources. So I don't – I stand by that. The impression that Nalcor was expecting, I think, to an extent, that the Department of Natural Resources to be a cheerleader for the project. I think that's accurate.

**MR. LEARMONTH:** That's accurate.

Okay, any other –

**MR. STANLEY:** They're all accurate, I just would've used different wording to describe the same scenario.

**MR. LEARMONTH:** Well, so what's the distinction then? If you're – if those words properly conveyed what you intended to communicate, what's the significance of your saying: well, I would've used different words?

**MR. STANLEY:** I think the – I would've used words that were perhaps less conversational, and used language that was more directly explicative to avoid misunderstanding.

**MR. LEARMONTH:** So are you saying the use of those flowery terms – the ones you've described so far – have led to a misunderstanding?

**MR. STANLEY:** On one or two instances here, I think on cross, my evidence has shown that may be the case. Or at least the scope of that language was, yes.

**MR. LEARMONTH:** Okay, well can you expand on that please?

**MR. STANLEY:** Well –

**MR. LEARMONTH:** Tell us where.

**MR. STANLEY:** Well, without my transcript in front of me, that's a rather difficult thing for me to do –

**MR. LEARMONTH:** Okay, well –

**MR. STANLEY:** – but I'll try, I'll try –

**MR. LEARMONTH:** – I'm going to – actually I'm going to – I was just about to say, Commissioner, that given the extent of what I respectfully submit are the contradictions and incompatibilities between his evidence at the interview as well as in the cross-examination – that I would like not only to show Mr. Stanley a copy of his interview transcript, but I would like to take the somewhat unusual step of asking you to allow this to be entered into an exhibit at this proceeding.

**THE COMMISSIONER:** Okay, well let's deal with one thing first.

Did you wanna show it to him?

**MR. LEARMONTH:** Okay.

Okay, well do you wanna look through it and show me –?

**MR. STANLEY:** Well, now, Mr. Learmonth, it's a 90-page transcript. Even with the redactions that are here – I'm not exactly sure what you're asking me – to identify where I would have –

**MR. LEARMONTH:** Well, you asked –

**MR. STANLEY:** – used the language that I would have –

**MR. LEARMONTH:** – to see the transcript.

**MR. STANLEY:** I agree.

**MR. LEARMONTH:** Yeah, so –

**MS. VAN DRIEL:** Excuse me – if I may just interject for a moment.

I think that Mr. Learmonth should show to the witness the sections that he means to challenge –

**MR. LEARMONTH:** Well –

**MS. VAN DRIEL:** – and not just throw at him a 94-page document –

**MR. LEARMONTH:** Well he asked –

**MS. VAN DRIEL:** – to make up –

**MR. LEARMONTH:** – for it.

**MS. VAN DRIEL:** – his mind in two or three minutes.

**THE COMMISSIONER:** Right.

Okay, so let's – it's now twenty-five after four. We're gonna finish with Mr. Stanley today – I don't care if it's 7 o'clock tonight.

So, I guess my query, is let's get this moved on a little bit. And one of the things I'm gonna suggest at this stage is – I'll let you proceed with asking questions, and maybe you can point him to various pages in the transcript, if that's what you wish to do, or – I know the question you asked was whether or not there were other areas that he – of flowery language – that he would say something different about, so that's why he was given the transcript.

But in order for him to go through 90 pages to do that it's gonna take some time.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** So, is that crucial, or (inaudible) –

**MR. LEARMONTH:** Not really, but I thought he asked for –

**THE COMMISSIONER:** Right.

**MR. LEARMONTH:** – (inaudible).

**THE COMMISSIONER:** Because the other thing is, to be quite frank, is based upon what I've heard today so far there's been so much reference to the transcript, I'm gonna have that transcript. And it is gonna be made an exhibit. There's no question in my mind that I'm gonna have that transcript to review.

The only way I can assess the evidence of this witness, based upon what everybody is now saying is for me to have a look at the transcript and see what was said, and compare it to his testimony; and I'm gonna do that.

So – but if there are specific areas now you wanna put the witness to – wanna put to the witness, go ahead, Mr. Learmonth.

**MR. LEARMONTH:** Okay, well there are.

Mr. Stanley, I believe – and I'd like to get this straight before I ask you some questions on specific points – but I understand your evidence to be that: what you said in the interview, you stand by, but that there were – but you now believe that clarification or expansion on the points is required in order to properly reflect your views. Is that correct? Is that a fair way –?

**MR. STANLEY:** Yeah, I've said that once or twice today in response to the –

**MR. LEARMONTH:** So the way –

**MR. STANLEY:** –questions on these –

**MR. LEARMONTH:** – I've put it –

**MR. STANLEY:** – matters.

**MR. LEARMONTH:** – I've got it right, do I?

**MR. STANLEY:** I think that's right, yes.

**MR. LEARMONTH:** Yeah. Okay.

Now – and one of the main points, I suggest, where your interview evidence – and perhaps, to a lesser extent, your examination-in-chief today – differs from your cross-examination, is that you're saying that the – well, the information was ultimately provided – all the necessary information was ultimately provided by Nalcor to government, but it was at the ministerial level or deputy minister level, is that correct?

**MR. STANLEY:** I'm not sure I'd agree, but I'm not sure of the context that you're saying that.

**MR. LEARMONTH:** Well, you know, you're saying that this seems to be a problem of timing – that eventually government got all the information they needed, but the timing of the delivery of that information was an issue, rather than non-delivery of it. Is that correct?

**MR. STANLEY:** Again, you're gonna have to more specific as to what information we're talking about.

**MR. LEARMONTH:** Well, so is that summary of your –

**MR. STANLEY:** So, in – there's one –

**MR. LEARMONTH:** – wait 'til I finish the question.

**MR. STANLEY:** I'm sorry, okay.

**MR. LEARMONTH:** Is that summary that I gave you not what you're saying?

**MR. STANLEY:** The – what I'm saying is that there were one or two places in our discovery where – or in our interview – where I discussed, in certain circumstances, where it was presented to departments – for example, page 19 – where – which is the meeting, I think, that had been raised a couple of times where it was presented to officials from the department, attended at Nalcor, and were advised by the official – the Nalcor personnel as to what a decision had been made by – at the premier's – at a meeting in the premier's office – that the officials from government were not aware at the time of attending that meeting what those decisions had been made.

**MR. LEARMONTH:** Mmm.

**MR. STANLEY:** That is described in my transcript (inaudible) –

**MR. LEARMONTH:** That is described in your transcript?

**MR. STANLEY:** That is on page 19.

**MR. LEARMONTH:** Okay. Just show me that in your –

**MR. STANLEY:** It starts there with the – I think the fourth reference to Mr. Stanley and then that meeting, which I think I discussed in detail with –

**MR. LEARMONTH:** Okay, which is – what paragraph are you referring to on page 19.

**MR. STANLEY:** On 19, as I see it, there's 1, 2, 3, 4 paragraphs and a line under – and the fourth reference to my – the fourth interchange where it goes: Mr. Learmonth, Mr. Stanley, Mr. Learmonth, Mr. Stanley.

And then there's a description by me of a meeting that occurred at the Department of Natural Resources – or sorry, at Nalcor, where a government official was told that a decision had been made and that the comment by the Natural Resources personnel was that they don't remember doing the policy analysis on that point.

**MR. LEARMONTH:** Yeah but – so why didn't you provide further clarification, if you wanted to, at the time?

**MR. STANLEY:** Well, I'm not sure what the question was being asked at the time. We were having a discussion of the level of information that was gone through. But, I mean, to be frank, I showed up at the interview with no knowledge that you were going to ask questions of this nature, so I gave example at the time of a scenario where there had been problems and difficulties with information exchange between – or decisions being made without the personnel from the Department of Natural Resources being involved.

On reading the transcript, to prepare to come here today, that fact occurred, but it – I did not, at the time of our interview – we did not get into – I did not suggest or discuss in part that ultimately the decision that was a topic of that interview was not the decision that was ultimately made by government or by Nalcor so –

**MR. LEARMONTH:** Well, why didn't you explain it at the interview?

**MR. STANLEY:** Well, now, Mr. Learmonth, I came to an interview where I thought I was going to be discussing water management and got asked a host of questions about the relationship between government and Nalcor. I hadn't seen a government document in four months; I didn't know that these were topics that were going to come up in the interview.

And I gave the best interview I could off the top of my head, at that point, in an effort to ensure that the Commission had as much information as it could. But whether or not my answers to this on every point that was asked were entirely complete by rote at the time, I would suggest to you – now, no, there is additional information I could've provided if I had time to prepare, which I now have as a result of it being two months out from the interview.

**MR. LEARMONTH:** Well, if you didn't think you had enough time to prepare for the interview, why didn't you ask for a postponement?

**MR. STANLEY:** The – that didn't come up as a possibility or a requirement. I didn't – I was fully prepared to come and discuss water management at detail.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** I think the unredacted transcript will show I did discuss water management at detail. These issues, in respect of the history of the operations within government, I was trying to be helpful to provide information on something I wasn't expecting to be asked in the first place.

**MR. LEARMONTH:** Yeah. Well, why didn't you ask for a postponement if you didn't have time to review the documents? Because, Mr. Stanley, I suggest to you that the documents that you did receive contained many subject matters other than water management. So the point being is you knew it wasn't just restricted to water management.

**MR. STANLEY:** I knew I received documents on a whole host of things. I did not know what you were going to ask me about.

**MR. LEARMONTH:** Well, why would we send them to you in advance of an interview if we weren't going to ask you about them?

**MR. STANLEY:** Mr. Learmonth, the documents I received appeared to be a dump of every information – every document in your database that contained my name.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** I didn't know – you wouldn't be able to discern. There's a host of things in those documents you still haven't asked me about.

**MR. LEARMONTH:** Yeah. Well, anyway, you didn't ask for a postponement, you felt (inaudible) comfortable coming in.

**MR. STANLEY:** I did not ask for a postponement. I came to try to be helpful, to answer the Commission's questions on what I thought was going to be primarily water management.

**MR. LEARMONTH:** Yeah.

Well, who told – did I tell you it was going to be water management? Did anyone at the Commission tell you it was going to be water management?

**MR. STANLEY:** No, I don't think so.

**MR. LEARMONTH:** No.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay.

Well then, when you were asked questions that were not on water management, why didn't you say, look, I'm not prepared to answer to that question, I need more time to review and gather my thoughts?

**MR. STANLEY:** At that time I was attempting to be helpful by answering the questions as best I could; for lack of a better description, off the cuff. If I had known now what I know then, yes, perhaps that's what I should have done.

**MR. LEARMONTH:** Yeah.

Now, on – I'd like you to turn – once again I'm going to go over some of this information that we discussed this morning on page 18 of the transcript. The paragraph is – and I'm quoting you again: "So you could have circumstances where Nalcor do – come into government and make a presentation on the eighth floor, go get the instructions and approvals, go back and then they'd call the government departments and tell them what they were doing. And the government



departments would find out through Nalcor what had been approved on the eighth floor, and may not necessarily think the eighth floor had all the information in front of them” and they should have when they made their decision and not agree with the decision.

“So the whole issue of how Nalcor’s operating versus how government was operating, and the level of control or insight ... that was a constant issue at lower levels of government than I – than like, sort of, the Premier’s office. I’m not sure I’m putting that well.”

And you say: That was – “There was constantly discussion going on that Nalcor was basically a fiefdom. And we didn’t know – always know what was going on over there, you know, at the operational level.”

Now, is fiefdom one of those words that you would follow – categorized as flowery?

**MR. STANLEY:** Well, yes, for lack of a better description. But, you know, I stand by its use there. The entire context of that – I’m concerned that there were times when I was talking about my interactions with the department and departmental officials and the interpretation of what I said was in respect of government writ large.

So the first paragraph of what you just read out to me pretty much is the exact same topic that’s on the discussion on the next page, which is a discussion of scenarios where there would be decisions made at the Premier’s office. And then departmental officials that I was dealing with in the departments would find out through Nalcor what had been discussed on the eighth floor, and at times, when those decisions came through, would not necessarily think that the Premier’s office had had the benefit of the full discussion.

I think the clarification I’ve offered here today is that while that process occurred – and that occurred on and off during the early processes – the decisions that were being made at the Premier’s office were not necessarily the final cut at that topic. And by the time the final decisions were made, all the departmental officials usually felt that they had had an opportunity to discuss same and to provide their input.

**MR. LEARMONTH:** Well, once again, why didn’t you just simply say that at the interview?

**MR. STANLEY:** I’m not sure why I didn’t go that – further into that to say that at the interview. Like I said, I don’t think I was expecting to be asked the question in the first instance.

**MR. LEARMONTH:** Yeah. Well, that’s your answer, is it?

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Okay.

Now, you also suggested that at the – you know, you were saying that you believed that perhaps the minister of Natural Resources and/or the deputy minister would be present at the – these meetings in the Premier’s office?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Well, if you weren’t present, how do you know that they were?

**MR. STANLEY:** So for a number of meetings that occurred in the Premier’s office, I would be present.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** And in respect of the meetings that I was present with –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – I would be there with the people I talked about.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** For other circumstances, without probably violating solicitor-client privilege, I was told by the people who were in the meeting that they were there, that there was a meeting today in the Premier’s office and et cetera, et cetera.

**MR. LEARMONTH:** Okay.

Do you have any records of this information?

**MR. STANLEY:** In – well, I don't have possession of any records right now.

**MR. LEARMONTH:** Yeah because you're going back sometimes like eight years or so on, right? You know, back to meetings – what might have –

**MR. STANLEY:** Oh yes, yes, exactly.

**MR. LEARMONTH:** – happened in (inaudible).

**MR. STANLEY:** We're talking – we could be talking 2007–

**MR. LEARMONTH:** So –

**MR. STANLEY:** – 2008, 2010.

**MR. LEARMONTH:** Yeah. So are you going entirely by your memory?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

So is – are you saying now that there were no occasions when the premier of the day met with Nalcor representatives directly without any government officials present?

**MR. STANLEY:** No, Mr. Learmonth, that's not what I said –

**MR. LEARMONTH:** (Inaudible.)

**MR. STANLEY:** – and I don't think that can be taken from what I said. I said –

**MR. LEARMONTH:** Okay.

Well, I'm asking you so you can answer.

**MR. STANLEY:** I said that there were scenarios where I would be informed, even if I wasn't present in the meeting, that meetings had occurred on the eighth floor, in the premier's office, where there were Natural Resources or other – Department of Finance or other people present when I wasn't.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** So I knew that those were there. Whether or not – I can't comment as to whether there were also meetings where it was just the premier or premier's representatives or staff and Nalcor. I wouldn't know about those, but I'm not saying they didn't happen.

**MR. LEARMONTH:** Or you wouldn't – or you're not saying that they did happen either, right?

**MR. STANLEY:** I have no knowledge.

**MR. LEARMONTH:** Yeah, okay. So that's – okay, we'll leave it at that.

So in this context with you now saying that while the – eventually the Department of Natural Resources would have got the information although perhaps after an approval from the premier. Well, if that's what you're saying, why would you use the word fiefdom? I don't understand that.

**MR. STANLEY:** The term – at the time, I was talking about the fact that there was always concerns at the level of the department that the department was given the information that Nalcor thought the department needed to do the work that the department was doing but that the department didn't have, basically, the ability to go over and ask Nalcor for such information as it wanted at an official's level.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Or not wanted, but maybe perhaps needed or felt that it should've had an official's level.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** Nalcor jealously guarded access to its information.

**MR. LEARMONTH:** Yeah.

But do you agree that this clarification that you've now stated about, you know, eventually all the information came to the Department of Resources. That's a significant difference, I suggest to you, from the substance of your evidence at the interview on August 31, 2018. Do you agree?

**MR. STANLEY:** No, I think it's a question that wasn't asked to me at my interview in August 31.

**MR. LEARMONTH:** Well, you were given the answers. You had an opportunity to give the answers.

**MR. STANLEY:** Yes, but I could have gone on for 200 pages. There's descriptions in – opposed to having direct questions put to me as to how these things may have eventually resolved themselves.

**MR. LEARMONTH:** Okay. Fair enough.

Have you answered that as –?

**MR. STANLEY:** I think so. Through all the questioning today, yes.

**MR. LEARMONTH:** Okay.

And on page 20, of the transcript, just to come back to – about three-quarters down or – yeah – down the page. He's referring to Mr. Kennedy: "He, I think, viewed them as being, as a number of people in government did as you're getting into 2000 – I can't remember when he was there 2011, '12, I think. You know, they were sort of viewed as being a little bit of a runaway train that we didn't have any control over. You know, so they'd call over and ask – say government, well, I need the following 15 things for the project to go ahead and I need it all done by Tuesday."

Now, if you're describing it a bit of a – quote, "a bit of a runaway train that we didn't have any control over," I suggest to you that that's inconsistent with what you said earlier today and in answer to my questions that eventually all the information that was necessary was provided by Nalcor to the Department of Natural Resources.

**MR. STANLEY:** I don't see how those two things are inconsistent when my statement was framed as being in terms of 2011 and 2012.

**MR. LEARMONTH:** Hmm.

**MR. STANLEY:** At the time that we were talking about, which was between project sanction and the sanction – sorry, in between the

commitment letter and project sanction, there were times where, yes, it perceived that Nalcor was running down a number of roads independently at the same time and we, being the Department of Natural Resources and the people I was dealing with, didn't have much control over.

That's not inconsistent with that information eventually coming into government. That's the – what's not there, because the discussion and – on the 31st of August didn't go to and ask that question.

**MR. LEARMONTH:** Hmm. Yeah.

But time and time again in your interview, this general subject came up. Now, I'd point out that you never ever mentioned or provided this qualification or expansion that you're now providing today –

**MR. STANLEY:** That –

**MR. LEARMONTH:** – i.e., that, ultimately, Nalcor provided all the information to Department of Natural Resources. You had many, many opportunities; it just wasn't one occasion, yet you never, ever brought it up, and I wonder why not?

**MR. STANLEY:** Well, as I said, first I'd suggest we never had a discussion of the ultimate resolution of those issues, but second of all, perhaps I should've. I would've assumed that the Commission's operating with a full documentary record of what was or was not provided at any given time.

I didn't know I needed to get into a detail of what level of information was or was not provided. Ultimately, I was trying to provide some colour as to what I assume was a rather dry documentary record.

**MR. LEARMONTH:** So are you saying that the reason that you didn't give this full answer was that you assumed that the Commission had documentation in its possession that would make it obvious to them so there'd be no need for you to provide the information?

**MR. STANLEY:** I assumed the Commission had a record of all the information that was

ultimately exchanged, so I was just trying to put the story around the information.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** But no, that statement is not in my testimony but nor was it asked.

**MR. LEARMONTH:** Mm-hmm.

Well, it's not in your testimony even though I suggest you had an opportunity to provide that information –

**MR. STANLEY:** If –

**MR. LEARMONTH:** – on numerous occasions, Mr. Stanley –

**MR. STANLEY:** If –

**MR. LEARMONTH:** – not just once.

**MR. STANLEY:** If it had come to my mind at the time to provide and clarify that point, I would have.

**MR. LEARMONTH:** Okay.

Now, on page 21, once again, we're talking about this exasperation, irritation.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Now, if the Department of Natural Resources or whatever department of government was involved – I mean, if the information came in eventually, why would there be exasperation and irritation?

**MR. STANLEY:** Well, because –

**MR. LEARMONTH:** And why would there be a feeling of disrespect?

**MR. STANLEY:** Again, to go back to what I was talking about before, I was talking about the process.

So at the beginning of the process and/or at various times, there's no question that there was a feeling of disrespect on the part of the department that the individuals working in the Department of Natural Resources felt – and,

like, again, I'm not talking about at the executive level – but the individuals felt that they were being disrespected by Nalcor, that Nalcor and the people at Nalcor didn't understand the role of the department.

The fact that the information may have come in the next week, the next month, eventually come in through a different manner or whatever, didn't change the effect or the feeling of the individuals in the department at the time that they weren't getting the respect that they thought they were due from Nalcor.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** I don't view those statements as being inconsistent at all.

**MR. LEARMONTH:** No, I know you don't, but others may have a different point of view.

But anyway, but how do you know, if you're just going by memory, that in all occasions – on all occasions the necessary information was ultimately provided by Nalcor to government. How do you know that?

**MR. STANLEY:** Well, because of all the – in all the scenarios where government was required to make decisions respecting Nalcor or Nalcor's operations or to make decisions respecting whether or not there was a need to change legislation, make a decision that there was a hundred or more inflection points, government would never – never ultimately made a decision at the ministerial or Cabinet level unless government felt it had the information necessary to make the decision.

So there were no decisions made at the ultimate level for final implication, such as with legislation or such and such, without government being satisfied that it had the information necessary from Nalcor eventually.

**MR. LEARMONTH:** How do you know? How do you know that?

**MR. STANLEY:** Well, because government would not have proceeded with the legislation without being satisfied it had the information. I would have advised on the Cabinet papers. I saw most of the inside baseball on most of those

decisions as they were made, and I never saw one where government was saying well, we're making this decision, but we're not sure we've got all the information from Nalcor we need to make the decision. I have no memory, recollection or anything of that circumstance.

**MR. LEARMONTH:** Yeah, but I'm not just talking about, you know, matters that went to Cabinet. I'm talking about decisions made on the –

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** – on the project.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** And not all those matters would, in any event, go to Cabinet.

**MR. STANLEY:** No, there were loads –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – of operational matters that would've been made within the department.

**MR. LEARMONTH:** Yeah. So, well – or made by Nalcor alone, I suggest, based on your interview transcript?

**MR. STANLEY:** Well, if they're made by Nalcor alone, they would be things that government didn't need to – or didn't have a role in to start with.

**MR. LEARMONTH:** Well, how – what if there are occasions where Nalcor simply didn't tell government what they were doing?

**MR. STANLEY:** Well, the interaction between Nalcor – (inaudible) there's probably scenarios where Nalcor didn't tell government what it was doing. But government's interaction with Nalcor at the level – at the Department of Natural Resources was in respect of when Nalcor needed legal structures, legal matters – or if there's an intersection between what Nalcor was trying to do and government's rights, responsibilities and powers.

There was all kinds of decisions being made at Nalcor that the Department of Natural Resources

officials I'm dealing with would never – may never have seen – would never have any insight into.

**MR. LEARMONTH:** Okay.

Now – so you're saying, once again, that Nalcor always provided information to government when it was necessary to do so from government's point of view. Is that correct?

**MR. STANLEY:** I'm saying that ultimately at the end of the day, information usually came from Nalcor to satisfy government in respect to a decision that was made, eventually.

**MR. LEARMONTH:** Usually or always?

**MR. STANLEY:** Well, I said that in respect to every decision that I saw, the government wouldn't make the call unless it had what it thought was the information it needed from Nalcor, eventually.

**MR. LEARMONTH:** And you're surmising that? That's what you're surmising?

**MR. STANLEY:** Well, I saw a fair number of those decisions, and the ones I was involved in I would state that that was how it worked.

**MR. LEARMONTH:** Yeah.

And at the top of page 23 we talk about providing information.

**MR. STANLEY:** Yeah.

**MR. LEARMONTH:** Well, it starts off actually, Mr. Stanley, on the bottom of page 22. And we're talking about – well, I'll just pick up where I say – in my question on page 21.

“But I think an average person, the public, would think that the relationship would be the reverse of that, that government's in control for this wholly owned Crown corporation, and would be calling the shots, we'll say, as opposed to the way you described it.”

And then there's a statement on page 23 – oh, excuse me, I'm looking at the wrong page – that's page 21. Anyway, at the top of page 23,

you refer to government wanted more – excuse me, just scratch that.

“Government wanted more financial reporting on the project, such as when the management – even when the – before the set-up of the Oversight Committee and even after the Oversight Committee was set up, my understanding was – I wasn't on the committee at the time, but I had the people telling me that the Oversight Committee was asking for information from Nalcor about what was going on and was not getting the information – Nalcor resisted providing the information that was being demanded. Actively.”

So that's an emphasis “actively” –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – do you agree?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** So how is that compatible with what you're saying now, that Nalcor always provided the information in the final analysis?

**MR. STANLEY:** Because Mr. Learmonth, that statement was in respect of when the Oversight Committee was set up –

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** – which it actually says.

**MR. LEARMONTH:** Mm-hmm.

**MR. STANLEY:** When the – or Oversight Committee was set up there was a constant battle with Nalcor – as it was told to me and as I was advised – to get the information necessary from Nalcor to meet the Oversight Committee's requirements.

**MR. LEARMONTH:** Yeah. And –

**MR. STANLEY:** By the time I sat on the Oversight Committee, which would've been in 2018, 2017, there was a full level of disclosure – at least the disclosure was quite transparent from Nalcor.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** But we were talking at this point about when the committee was set up and it was a grind and a problem when the committee was set up.

**MR. LEARMONTH:** Yeah.

**MR. STANLEY:** That's what I said. I stand by that statement. The fact that there was no question about how did that ultimately resolve, or that I didn't get into or voluntarily go down another route to talk about what the status was as of today, because we weren't talking about today, we were talking about sanction. I'm not sure I view that as being inconsistent. I stand by my statement.

**MR. LEARMONTH:** You're not sure, are you? No? So you're not sure?

**MR. STANLEY:** I don't view that as being inconsistent that I – we didn't get into a discussion of how the Oversight Committee works now.

**MR. LEARMONTH:** Yeah. Well, I suggest to that description – I know it's in relation to the Oversight Committee, but that would be applicable to Nalcor's dealings with government generally, that government right from, say, 2000 and onward, government was – resisted providing information that had been demanded by government. What's your response to that?

**MR. STANLEY:** That there are a number of levels of interaction between Nalcor and government and at the highest levels, for example at the ministerial and/or premier's level, I'm not going to confirm that I thought that the premier and/or a minister was being frozen out of information that they required or directly asked for. But at the officials' level and when the Oversight Committee was being set up, it was being lead – I think their first chair was Julia Mullaley but I stand to be corrected from that – in those discussions there was active resistance from Nalcor to provide that information, as I stated there, when it was set up.

**MR. LEARMONTH:** Yeah. And you're suggesting that was something new, Nalcor

refusing or resisting to provide information to government?

**MR. STANLEY:** New and when the Oversight Committee was set up, no. Because I think I testified earlier that there was at – before that there was concerns about getting information from Nalcor and a discussion of just putting an oversight structure in place, and the same resistance and concerns – the same resistance to getting information was there as well.

**MR. LEARMONTH:** Okay.

Just turning, Mr. Stanley, to page 29 of your interview transcript, the bottom second to last paragraph. You say – well, in – there's something – there's more information in your answer earlier, but I'll just focus on this. If you – unless you feel you want to expand it.

“Was I party to meetings where people looked at each other and said, you know, should we be doing this? Probably ... they weren't formal ones because this train was leaving the station. It ... already left the station. There was no internal process inside of government where anybody said, okay, we are doing this, now what are we gonna need ... to control costs.”

Now, I suggest to you, Mr. Stanley, that that statement is completely incompatible or inconsistent or is a contradiction of the evidence you gave in cross-examination wherein you suggested that: While eventually the information came from Nalcor in the final analysis, it wasn't provided to the middle management originally, but eventually it came in.

Can you comment on that suggestion, please?

**MR. STANLEY:** Mr. Learmonth, I'm not exactly sure what you're alleging 'cause that paragraph doesn't deal with the transmission of information from Nalcor at all.

**MR. LEARMONTH:** Well, it says: “There was no internal process inside of government where anybody said, okay, we are doing this, now what are we gonna need ... to control costs.”

**MR. STANLEY:** So recognizing the way this language is framed, the discussion here was that in the context – well, I'm still not sure – I mean,

there being no internal process to say, okay, now we're going to do this – I was never in a meeting to say we're gonna do this, now we need to be able to control costs – the concerns regarding controlling costs at the construction level never really came up in any conversations I was in.

The idea of the train leaving the station is a reference to the fact that there was – I don't think this is – there was significant momentum behind this project from 2010 onward as being a matter that was likely going to – was being advocated by government, or supported by government, and that the idea – the whole point of that was there was never a formal meeting that I was in to say, let's all look around and see, you know, all right, is this project going to go ahead – as a discussion of what we were going to do.

I'm not sure what you're implying that I've contradicted in that.

**MR. LEARMONTH:** Yeah. Well, anyway, you've given your answer and the Commissioner will have to assess your answer.

You say that the – this train was leaving the station and you say it had already left the station. What's the train? What's the – the reference to the train is a reference to what?

**MR. STANLEY:** Would be the decision as to whether or not the government was proceeding with the process of implementing the Muskrat Project as it had decided, which included doing it by itself.

**MR. LEARMONTH:** So, the train leaving the station, that's a fairly strong statement, don't you think, or had left the station?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Is that one of those flowery terms that you wish to amend or –

**MR. STANLEY:** Well, I'm not sure. My concern is that – not that the flowery language that I want to amend, but that the use of the statement creates, I guess, some – it's not accurate and some confusion as to what I was saying.

There was –

**MR. LEARMONTH:** Well, can you clarify the confusion –

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** – that you were (inaudible)?

**MR. STANLEY:** So, I wasn't in any – I wasn't involved in any meetings where there was a meeting inside of government to sit down and say, okay, we need to come up with a process to control construction costs on Muskrat Falls, which is, I think, what, at the end of the process, there's three or four things going on in that sentence. I wasn't in a meeting where the description was we need to sit down to control costs in Muskrat.

The train leaving the station – “Was I party to meetings where people looked at each other and said, you know, should we be doing this? Probably, but there weren't formal ones because this train was leaving the station.”

I don't remember ever being invited to or in a formal meeting where the topic of the meeting was a fulsome analysis as to whether or not Muskrat Falls was or was not the best option for providing power to the province.

**MR. LEARMONTH:** Okay, is that your answer?

**MR. STANLEY:** Yes.

**MR. LEARMONTH:** Okay.

Now, page 30 of your interview transcript, just before the redacted portion, Mr. Stanley?

**MR. STANLEY:** Yep.

**MR. LEARMONTH:** You say that: “But the tone at the time from the top was, you know, that Nalcor's the best thing since sliced bread.” And I say: “The top being the Premier's office? And – yeah.”

Okay, who was in the Premier's office when you believed that the Premier's office believed that Nalcor was the best thing since sliced bread?

**MR. STANLEY:** I wouldn't distinguish between Premier Williams or Premier Dunderdale with that, I mean, both were out publicly making statements to the extent that Nalcor was staffed with the world's best people that we could get and they were all industry experts and were making statements repeatedly, both of them were, and did, and Premiers after them did as well, expressing nothing but confidence in Nalcor.

**MR. LEARMONTH:** Yeah. Did you share that confidence?

**MR. STANLEY:** I didn't have any grounds to criticize or debate that confidence in respect of the individuals that were in control of Nalcor, no.

**MR. LEARMONTH:** No. So you didn't have any opinion on it at the time whether –

**MR. STANLEY:** At the time.

**MR. LEARMONTH:** – they were world-class people or –

**MR. STANLEY:** Yeah, well, that's the term they would use – sorry, thank you, yes. The Premier's office was constantly saying: it was world-class people, staffed with world-class experts and world-class etc. I didn't have any insight as to whether I questioned that or not – or I didn't question that or not.

**MR. LEARMONTH:** So you didn't have any opinion on that?

**MR. STANLEY:** No, no.

**MR. LEARMONTH:** And then you say later on, the next paragraph: “Yeah. The political – you know, there was no desire there for – to walk into somebody's office to say we need a 15-person team here, put over there, to do nothing but question everything that comes from Nalcor, vet it, and the resources, there was no appetite to hear that, let alone, you know, to be the person walking in the office to propose it. And there was no funding. We had no money to do any of that –.”

Now, why would you, I take it, not want to be the person walking into the office to propose



that? That seems to me to be a very reasonable and sound request to have made at the time?

**MR. STANLEY:** It might, but in a context where you're within government departments where every department has been put on freeze and/or is experiencing budget cuts and the implementation of what you're suggesting here would actually require a government to put in the budget a funding and a line item and support for an office to be created within government to keep track of and/or to monitor the Muskrat Falls Project at a time when the Premier's office and others were making statements that the Muskrat Falls people that they had over there were world class and they were going to do the best job that could ever be done on this project. The idea or the likelihood of there being the significant resources needed to implement such a team was pretty slim, and to be the person advocating for it would be probably be a little a-politic inside.

**MR. LEARMONTH:** What do you mean by a-politic?

**MR. STANLEY:** Well, it would be – you'd be a little bit tone deaf as to what the discussions were respecting funding on all fronts within government and the expectation that government would go forward with a budget telling the general public that we've been cutting services and/or are freezing, but we are now going to create an office with 15 people in it with budget funding of X-millions of dollars, solely for the purpose to keep an eye on the people that we've been telling you were world-class experts.

**MR. LEARMONTH:** Okay. Well, did you think at the time – and I don't know exactly when that was but you may be able to tell us – did you think that it would have been appropriate and wise for government to have provided funding so that there could be more oversight of Nalcor.

**MR. STANLEY:** Absolutely.

**MR. LEARMONTH:** You did.

**MR. STANLEY:** And I raised that to Mr. Bown and probably to Mr. Thompson.

**MR. LEARMONTH:** Okay. Why did you think that more money should be spent on the oversight of Nalcor?

**MR. STANLEY:** Well, for the very reason that while you had a circumstance where there was – Nalcor was – had vast resources and was proceeding down a number of fronts at once, as I think I stated once or twice in my transcript, there was nobody in government whose job full-time was to even keep track of what Nalcor was doing.

Everybody in government that was working on the Muskrat Falls files was doing it off the corner of their desk in addition to their other responsibility. So, I thought that they should have – there should have been a – somewhere a team of – even as a liaison office so that someone could know where the – Muskrat would've, or, sorry, that Nalcor would've had one contact to go through or somebody to keep track of all the various contacts that Nalcor was having with government on various fronts.

**MR. LEARMONTH:** Yeah. So you thought that was a deficiency in the oversight role that government was –

**MR. STANLEY:** It was – yes, it was definitely a concern of mine that there was nobody in government – we were spending hundreds of millions of dollars on Nalcor, there's nobody in government whose full-time job was Nalcor.

**MR. LEARMONTH:** Mm-hmm.

And did that situation ever change? You know, right up until the time you left government in 2018?

**MR. STANLEY:** The oversight committee eventually evolved into something that was providing and was getting from Nalcor and received pretty fulsome monthly reports as to the status of construction and various other information. And I think the secretary to that committee was a full-time person who was involved with gathering information respecting Muskrat Falls and Nalcor.

**MR. LEARMONTH:** Yeah. But you think that should have been done as early as 2010?

**MR. STANLEY:** I think that should have been done as early as 2010.

**MR. LEARMONTH:** Why was it – why do you think it should have been done as early as 2010?

**MR. STANLEY:** Well, you were sending –

**MR. LEARMONTH:** What was the need for it? What was the need that you were trying to – that you think should have been filled by such funding and by hiring a person specifically to look at the Muskrat Falls Project?

**MR. STANLEY:** Well, it was becoming obvious at that point that, as I said, and used the term runaway train, there was an enormous amount of work getting done over at Nalcor into which government didn't have much granularity of transparency as to what was occurring or what requirements Nalcor had. And there was a number of interfaces between Nalcor and government that I didn't think were being centrally tracked.

So, you know, I thought it would have been appropriate to set up a project office in government to – I don't know if it needed 15 people, but a project office in government to be the interface between government and Nalcor in respect of all those issues.

**MR. LEARMONTH:** And that never happened while you were –

**MR. STANLEY:** No.

**MR. LEARMONTH:** – in government?

**MR. STANLEY:** No.

**MR. LEARMONTH:** No.

**MR. STANLEY:** No.

**MR. LEARMONTH:** In retrospect, do you wish you had pushed harder for that funding for that establishment of such an office?

**MR. STANLEY:** Well, now, let's recognize I – that the time in 2010, 2011, 2012 I was an official in the Department of Justice. I can push all I want to at a certain point, but that wouldn't

be a Justice office or a Justice budgetary function that would've been with Natural Resources and/or Finance.

**MR. LEARMONTH:** No, but you could've proposed it.

**MR. STANLEY:** I think I had discussions where I suggested we should be looking at that, yes.

**MR. LEARMONTH:** But –

**MR. STANLEY:** I didn't put in a budget proposal for a Muskrat Falls oversight office or suggest that the individuals in Justice who were responsible for budget proposals put in such a request, no.

**MR. LEARMONTH:** Okay. Thank you.

Those are my questions.

I want to have that – the transcript that's in Mr. Stanley's hand, or will soon be in his hand, entered as an exhibit. So is that acceptable, Commissioner? I know that it's not our usual procedure, but I think there's – I suggest there's exceptional circumstances here today.

**THE COMMISSIONER:** Before I make my final decision on that, is there anybody who has any submissions they want to make on that?

**MS. VAN DRIEL:** Commissioner, it's Gerlinde van Driel speaking.

**THE COMMISSIONER:** Mm-hmm.

**MS. VAN DRIEL:** I do object to the recommendation of Mr. Learmonth. I see absolutely no reason to make an exception for Mr. Stanley's transcript as compared to the other transcripts which typically are not entered as exhibits.

I think that the suggestion is ill founded. Mr. Stanley's responses to the queries by Mr. Learmonth have been very satisfactorily answered, in my opinion. And I don't think there's any reason whatsoever to enter – or make an exception to enter this transcript into evidence as an exhibit for everybody to see.

**THE COMMISSIONER:** Anyone else?

All right, I think I indicated earlier that I thought maybe the best way for me to assess Mr. Stanley's evidence, in view of what I was being told, would be to have access to the interview. I think in the circumstances, based upon what I've heard today, I am going to enter the transcript as an exhibit so that I can have full – a fulsome review of it, otherwise, I can't; if it's not part of the evidence, I can't consider it.

So I am going to have the transcript entered as an exhibit. It can be numbered as the next consecutive number. I don't know where we are with exhibits, but it will be entered as an exhibit on today's date.

Mr. Stanley, thank you very much for your evidence.

**MR. STANLEY:** Thank you.

**THE COMMISSIONER:** And we'll adjourn now until tomorrow morning at 9:30.

And, Ms. O'Brien, you're on tomorrow?

**MS. O'BRIEN:** Yes, that's correct. We have Dr. Guy Holburn testifying.

**THE COMMISSIONER:** All right, so we're adjourned 'til tomorrow morning at 9:30.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.