Long Term Care Covid-19 Commission Mtg.

Investigation - One Site and Pandemic Pay
on Monday, January 18, 2021

77 King Street West, Suite 2020
Toronto, Ontario M5K 1A1

neesonsreporting.com | 416.413.7755

MEETING OF THE LONG-TERM CARE COVID-19 COMMISSION

--- Held via Zoom, with all participants attending remotely, on the 18th day of January, 2021, 11:00 a.m. to 12:30 p.m.

BEFORE:

The Honourable Frank N. Marrocco, Lead Commissioner
Angela Coke, Commissioner
Dr. Jack Kitts, Commissioner

PRESENTERS:

Janet Hope, ADM MLTC Policy Division

Melissa Helferty, Manager, Infectious Diseases Policy & Programs Office of the Chief Medical Officer of Health

Brian Pollard, ADM MLTC Capital Development Division

John Callaghan, Co-Lead Commission Counsel Gowling WLG

PARTICIPANTS:

Alison Drummond, Assistant Deputy Minister Long-Term Care Commission Secretariat

Kate McGrann, Co-Lead Commission Counsel Long-Term Care Commission Secretariat

Derek Lett, Policy Director Long-Term Care Commission Secretariat

Jessica Franklin, Policy Lead Long-Term Care Commission Secretariat

Adriana Diaz Choconta, Senior Policy Analyst Long-Term Care Commission Secretariat

Angela Walwyn, Senior Policy Analyst Long-Term Care Commission Secretariat

Jennifer King, Gowling WLG

Michael Finley, Gowling WLG

Lynn Mahoney, Counsel Gowling WLG

Peter Gross, Counsel Gowling WLG

Roopa Mann, Counsel at the Ministry of the Attorney General

Eric Wagner, Counsel at the Ministry of the Attorney General

Michael Robertson Director, Long-term Care Response

Branch MLTC Policy Division

Kelci Gershon Director, Long-term Care Policy & Modernization Branch MLTC Policy Division

Kristin Smith, Counsel MOH/MLTC

Sunil Mathai, Counsel MAG

Stephanie Figliomeni, Counsel MOH/MLTC

ALSO PRESENT:

Janet Belma, Stenographer/Transcriptionist

-- Upon commencing at 11:00 a.m.

COMMISSIONER FRANK MARROCCO (CHAIR): So now let's get on with why we're here.

JOHN CALLAGHAN: So, Commissioners, my friends have a slide deck which I'd ask Patty Brooks to put up. I would ask someone on their side to do instructions so that the Commissioners know who's from there the Government side. Maybe Ms. Hope can do that.

COMMISSIONER FRANK MARROCCO (CHAIR): I think you're on mute, Ms. Hope.

JANET HOPE: Apologies. I thought I'd taken myself off mute. Good morning. Nice to see you all again.

And, yes, I'll just start by briefly introducing the colleagues who are here with me today. Melissa Helferty is with the office of the Chief Medical Officer of Health, and so Melissa can particularly speak to some of the issues with respect to the role of that office and the matters that we're discussing today.

Brian Pollard, who I think you all know who is my colleague, ADM, and it be -- during the first wave was ADM of Operations and was involved in some of the early work around pandemic response

and some of the early work relating to single-site issues.

I became involved in the single-site issues in late March, and I also led on pandemic pay, so I'll be speaking primarily to those issues. And I'm joined in that regard by the two directors, so Michael Robertson is the director who was lead director with me on the single-site emergency order.

MICHAEL ROBERTSON: Good morning.

JANET HOPE: And Kelci Gershon was lead director working with me on the pandemic pay issue.

So if you'd like us to start into the presentation, we have some contextual information around Public Health at the beginning as well as the early stage of the pandemic just to situate the issue. And then we'd take you through our decision approach on the single-site emergency order and then the single -- the pandemic pay issue.

So if you'd like us to start in, I would ask Melissa to perhaps speak to the first couple of slides.

MELISSA HELFERTY: Thank you, Janet. I just want to confirm that you can hear me okay?

COMMISSIONER FRANK MARROCCO (CHAIR):

We -- I can.

MELISSA HELFERTY: Great. Thank you. So good morning, Commissioners. To begin today's presentation and discussion, as Janet mentioned, we wanted to provide some background information on the Public Health management of outbreaks in long-term care homes prior to COVID-19 emerging and a pandemic being declared by the World Health Organization in March of 2020. As you're likely aware, the office of the Chief Medical Officer of Health Public Health Division issues the Ontario Public Health standards. These outline the minimum expectations for Public Health programs and services delivered and implemented by our Public Health units.

Under these standards are also a number of protocols, guidelines, and reference documents which provide additional information to health units on the approach and implementation of these programs.

The reference document that we'd like to further highlight today are best practices entitled, Control of Respiratory Infection Outbreaks in Long-Term Care Home. The purpose of this document is to provide additional

recommendations or best practices that can be utilized by both long-term care and Public Health with the prevention, detection, and management of respiratory infection outbreaks.

I would like to note that this reference document was developed prior to COVID-19 for influenza and other respiratory pathogens and really is based on principles of outbreak management, our lessons learned over a number of years managing outbreaks in these settings and the latest evidence at the time it was released.

So again, to note that many of the fundamental principles of outbreak management included in this document may apply in the COVID-19 outbreak context which we'll further discuss.

Next slide, please. Thank you. As mentioned, on the previous slide, the reference document, Control of Respiratory Infectious Outbreaks in Long-Term Care Homes provides recommendations and strategies on a number of outbreak control measures.

Given the discussion today, we wanted to focus on two specific areas, working at other facilities and cohorting of staff. The recommendations included are, again, more

specifically geared for influenza when a staff or a resident could be vaccinated or receive prophylaxis to prevent and reduce transmission. However, I did want to note and flag that the underlying principles are to reduce transmission within a facility as well as to other facilities. Back-exclusion policies which may also be considered as a protective measure are especially important, and some of these are outlined in Appendix VIII of this Control of Respiratory Outbreaks in Long-Term Care Homes Guide and include how and when the exclusion policy comes into effect in managing shared staff working in a home with a declared outbreak, just to name a few.

I would also like to note that I am aware that a document -- or this document was shared with Commission counsel last Friday.

JOHN CALLAGHAN: Can I -- so, Melissa, let's just review here. So these are the documents that pre-exist the pandemic.

MELISSA HELFERTY: Correct.

JOHN CALLAGHAN: Right.

MELISSA HELFERTY: Yes.

JOHN CALLAGHAN: And I take it prior to the pandemic, in fact, since SARS, it's been

recognized that in long-term care, the majority of workers are working part-time. You're aware of that?

MELISSA HELFERTY: I have heard that.

JOHN CALLAGHAN: Right. And that because they're working part-time, they work at multiple sites. You were aware of that, right?

MELISSA HELFERTY: I have heard that, yes.

JOHN CALLAGHAN: Right. And certainly, since SARS, it was known that part-time or casual workers who work in multiple sites posed a risk of spreading a disease from one site to another. That was known, right?

MELISSA HELFERTY: Yes, I am aware of that.

JOHN CALLAGHAN: Right. And did you do any other workup about the possibility of ordering single-site employment in the Chief Medical Officer's Health -- Office?

MELISSA HELFERTY: Prior to pandemic?

JOHN CALLAGHAN: Right, prior to.

MELISSA HELFERTY: Not that I'm aware of specifically looking at long-term care. I'm not aware of that.

JOHN CALLAGHAN: So there wasn't a mock pandemic where you gamed out this possibility, correct?

MELISSA HELFERTY: Our pandemic plan does include language around limiting staff working in multiple sites; however, it does not provide details that the Ministry of Long-Term Care has provided in their emergency order.

JOHN CALLAGHAN: Right. And you didn't -- you didn't work out the Ministry of Labour considerations that come up later prior to the pandemic, correct?

MELISSA HELFERTY: Not to my knowledge, no.

JOHN CALLAGHAN: Go ahead. Continue.

COMMISSIONER FRANK MARROCCO (CHAIR): Just before -- just before you do that, I'm looking at working at other facilities. So if the staff are immunized, then there's -- then there's no restrictions on their ability to work at other facilities, correct?

MELISSA HELFERTY: Correct, as long as they're not --

COMMISSIONER FRANK MARROCCO (CHAIR): But of course -- of course, nobody in this -- in

this COVID-2 outbreak or pandemic was immunized because there was no vaccine until recently.

MELISSA HELFERTY: Correct.

COMMISSIONER FRANK MARROCCO (CHAIR): So what applies to them is the portion of this that deals with unimmunized staff, and it seems to me they can work at other facilities unless they have a fever or other symptoms.

MELISSA HELFERTY: Also, if they are -- if they are on chemoprophylaxis during an outbreak.

COMMISSIONER FRANK MARROCCO (CHAIR): What does that mean?

MELISSA HELFERTY: It means that they're taking antivirals. So --

COMMISSIONER FRANK MARROCCO (CHAIR): I see. And would they administer the antivirals to themselves?

MELISSA HELFERTY: That would be a decision for the individual and the home.

COMMISSIONER FRANK MARROCCO (CHAIR): But how do they get the antiviral --

MELISSA HELFERTY: They could --

COMMISSIONER FRANK MARROCCO (CHAIR): -- to take it?

MELISSA HELFERTY: They could go to

their physician, or if there is a physician within the home, that person could prescribe.

COMMISSIONER FRANK MARROCCO (CHAIR): So then the person -- the PSW would go to the doctor in the home and ask the doctor to prescribe an antiviral?

MELISSA HELFERTY: That is an option, or they can go to their family physician, and if it is in a home that's in outbreak, then the Public Health Unit may also provide antivirals.

COMMISSIONER FRANK MARROCCO (CHAIR): And did they provide antivirals? Probably wouldn't have done any good, but if that's the plan you have --

MELISSA HELFERTY: So, again --

COMMISSIONER FRANK MARROCCO (CHAIR): -- would they provide it?

MELISSA HELFERTY: So, Commissioners, this is just to highlight that these conversations have happened pre-pandemic. As you've mentioned, there is -- or there was no vaccine available in March when the pandemic was declared, so the purpose and intent of highlighting this piece of this document is to illustrate that these conversations or this language has been included in

some of our guidance document pre-pandemic.

COMMISSIONER FRANK MARROCCO (CHAIR): But the purpose of including it, that's the training you have, right? That if there's a -- if there's an outbreak, you either are immunized, or you go to the doctor at the home or your family doctor and ask for them to prescribe antivirals.

MELISSA HELFERTY: For influenza outbreaks, yes.

COMMISSIONER FRANK MARROCCO (CHAIR): But what do you -- what does the plan provide for in a situation like this where you can't be immunized because there's no vaccine, and there's no reason to believe that the antivirals will be of any use anyway?

MELISSA HELFERTY: I --

COMMISSIONER FRANK MARROCCO (CHAIR): You have no cure for the thing.

MELISSA HELFERTY: That's correct. So that's -- one of the lessons learned with COVID and the pandemic is how to manage outbreaks in these facilities without having a vaccine or antivirals.

COMMISSIONER FRANK MARROCCO (CHAIR): And so prior to this happening in any of the discussions that went into preparing the pandemic

response, there was no -- it had never occurred to anybody that you might have a situation where you have a disease and no cure for it.

MELISSA HELFERTY: COVID-19 is a new and emerging disease which does not have the vaccine or antivirals which is part of our learnings as we've gone through outbreak management through this pandemic.

But the intent of this slide is just to highlight the fact that for influenza outbreaks in long-term care homes, there are -- there have been conversations around staff working in multiple locations. But again, that's just a highlight for influenza and not COVID.

COMMISSIONER FRANK MARROCCO (CHAIR): Okay.

JOHN CALLAGHAN: Can I just ask a question? So that -- I take it that inherently means that when you went to look for guidance, you went to the influenza pandemic plan, correct?

MELISSA HELFERTY: Yeah, we went to --

JOHN CALLAGHAN: You --

MELISSA HELFERTY: -- our existing resources.

JOHN CALLAGHAN: Right. And even

though SARS was a coronavirus and COVID is a coronavirus, there was no plan for a coronavirus, correct?

MELISSA HELFERTY: We do have documentations for SARS 'cause it is a reportable disease.

JOHN CALLAGHAN: Right.

MELISSA HELFERTY: However, our Public Health experience in outbreak management is much more significant for influenza and other respiratory diseases because we deal with those outbreaks on an annual basis.

JOHN CALLAGHAN: Okay. Thank you.

MELISSA HELFERTY: And then just to also next to highlight is another principle to outbreak management, and that is cohorting. So cohorting staff and residents between the outbreak areas and non-outbreak areas is important to reduce potential transmission as this limits the number of people interactions and, therefore, limits the number of people exposed to one another.

So again, minimizing the movement of residents, staff, volunteers, and other employees especially during an outbreak reduces the overall risk of exposure and possible infection.

So as we've discussed, I just do, again, want to reiterate that this document was developed for influenza and other respiratory pathogens and has been used as a resource by public health units in their management of outbreaks for a number of years.

It does highlight principles of outbreak management for influenza and respiratory pathogens, but is also applied in our -- in some of our COVID-19 [indecipherable].

So happy to answer any further questions or turn it back to you, Janet.

JANET HOPE: So in the absence of questions at this point, maybe they could go to the next slide, please. And I don't think I have brand-new information for you here, but just to put into context as we start into the specific subject matter you want to discuss today, to remind that in the early stage of the pandemic, as we're into March, the early objectives for the Ministry of Long-Term Care were really twofold. We were very concerned with stabilizing the workforce and all very conscious of some of the challenges longstanding and well-documented challenges around staffing in long-term care and a concern that in a

pandemic environment with a lot of uncertainty, how are we stabilizing this workforce.

JOHN CALLAGHAN: Can I ask, Janet, on that point, I don't see any plan for a surge capacity for employees. Was there a plan for surge capacity for employees in long-term care?

JANET HOPE: I'm not aware of one.

Brian, are you?

BRIAN POLLARD: No, I'm not either.

JOHN CALLAGHAN: Okay. Thank you.

JANET HOPE: And then the second objective, obviously, providing the supports and tools to homes to help them in their management of infection, prevention, and spread. So we list a number of initiatives here. I think they've all been the subject of some discussion with you previously. We had initial emergency prevention and containment funds that were available to homes. They were able to use those funds in a variety of -- fairly open-ended funds to use them in a variety of ways to meet additional incremental costs associated with managing whether that was staffing, cleaning, PPE, et cetera.

The initial regulatory changes to provide some additional flexibility on the staffing

front, the initial Directive 3, we'll speak a little bit more to that on the next slide.

The initial emergency order on work deployment which enabled movement of redeployment of staff. In the economic statement on the March 25th, there was a signal of further emergency prevention and containment funding to come, and then an emergency order on streamlining requirements.

So all of these were over a ten-day period of series of actions intended to address these two objectives around stabilizing the workforce and managing infection spread. And this is at a time where we we're just starting to see the outbreak in homes and starting to see some reporting of critical staff shortages.

COMMISSIONER FRANK MARROCCO (CHAIR): What was understood -- was it understood with the planning around influenza that it's the staff that would bring the influenza in to the homes, and the visitors in -- would bring the disease, the influenza into the homes?

JANET HOPE: Maybe, Melissa, or, Brian, are you able to speak to that?

BRIAN POLLARD: Yeah. Hi. It's Brian

here. So I would say we would certainly have had some concern about transmission of the disease from visitors which is why we had, by this point, also stopped visitation into long-term care homes. So that happened earlier in March.

With regards to the staff aspect, I'm not sure, Melissa, if from a CMOH perspective, there were -- there was any kind of insight about that around -- during this period of time?

COMMISSIONER FRANK MARROCCO (CHAIR): But the question was really based on the experience with influenza, was it understood that the infection is going to get into the homes either from staff or visitors. The residents are not going to bring the infection into the homes --

BRIAN POLLARD: Yeah.

COMMISSIONER FRANK MARROCCO (CHAIR): -- because they're not leaving the homes, generally.

BRIAN POLLARD: Yeah. Yeah, so, I mean, I think that that's probably a fair -- it's a fair assessment that, you know, it was obviously coming in from outside the home.

You know, I would also say, at this point in time, we were still -- we were still

debating whether we actually had community spread, right? So that would have been the other -- that would have been the other factor that would have made this a little bit more conclusive in terms of staff transmission or staff bringing the -- bringing the disease into the home.

But you're quite right, Justice Marrocco, in terms of the resident wasn't going anywhere, so they obviously weren't, you know, infecting themselves.

COMMISSIONER FRANK MARROCCO (CHAIR): But in terms of community spread, on the chart that's -- the page that's on the screen now, homes in outbreak, in one week, it goes from 1 to 12.

So wouldn't that suggest that there's -- that since the residents aren't moving from home to home, there must be community spread?

BRIAN POLLARD: Yeah. Yeah, so as I said, there -- you know, were starting, you know, two points, and that's where you make a trend. But we could -- we were obviously on a path where we were starting to see something happening in the community.

So, you know, to your question about whether there was some awareness that staff were

potentially the ones who were bringing the disease into the -- into the home, yes, but I would also say that at the same point in time that we're talking about, our list of symptoms was also evolving, right?

So the -- we had initially had a very short list of symptoms. I think it was, like, fever and cough and some other stuff. And that list grew over a period of time. So obviously, as that list grew over a period of time, then you were able to capture more and more staff who potentially had the disease.

COMMISSIONER FRANK MARROCCO (CHAIR): Okay.

COMMISSIONER JACK KITTS: Can I ask a -- can I ask a question about the homes reporting critical staff shortage? I'm interested in how that information was obtained.

Were the homes asked to report in -- about staff shortages, or is it a voluntary report? Because we've heard that staff shortages were critical in many homes even before the pandemic hit, so I'm just trying to rationalize no homes reporting critical staff shortage, and how would that have been obtained?

BRIAN POLLARD: Yeah. So this would have been within the context of the pandemic, and we would have set up a dyad structure where the inspectors were reaching out to every home across the Province to understand not only whether they had critical staffing shortages, but the situation with PPE and then, of course, the information pertaining to outbreaks and other kind of specifics around the disease spread in homes.

So to answer your question, we were getting that information through our inspectors who were talking to homes.

COMMISSIONER JACK KITTS: And inspectors -- the inspectors were going to all homes, or they were just going to homes with outbreak?

BRIAN POLLARD: They were talking -- they weren't going to homes necessarily, but they were connecting into all homes.

COMMISSIONER FRANK MARROCCO (CHAIR): Connecting by telephone?

BRIAN POLLARD: That's right, yeah.

JANET HOPE: Okay. If there aren't further questions here, then starting on the next page, we start to drill in, then, to the

single-site issue.

So the initial action on -- with respect to single site was in the initial Directive Number 3 which was issued on the 22nd, and the language there, which we've quoted in the slide, built on the guidelines in the OPHS regarding multiple site employees.

That initial Directive 3 fairly shortly thereafter, there were discussions ongoing about additional measures that might be included in a Directive 3 to provide additional direction. And that included whether the language around single site should be strengthened.

So as you see here, the initial language was that employers -- wherever possible, employers should work with employees to limit the number of work locations to minimize risk to patients' exposure.

So very shortly thereafter, discussions about whether or not this should be strengthened, and there are a range of issues here, of course, whenever you start to talk about potential limiting of employment sites; there are issues for the staff person themselves. This is their employment and potential impacts on loss of income and potential

mitigation; what would be the scope of any such restriction; how might such a restriction exacerbate existing staff shortages.

As the conversations continued, the labour-relations issues became more apparent. And in the context of discussing, could this directive -- how could this directive be strengthened, there were also discussions about the legal authority of the Chief Medical Officer of Health.

The -- we do have information in the Appendix. Essentially, the Chief Medical Officer of Health has authority to direct long-term care homes and other healthcare providers. The Chief Medical Officer of Health does not have authority to direct employees.

So as we're looking at the issues around this desire to strengthen the language, the -- how to effect such a strengthened language given the legal authorities of the Chief Medical Officer of Health was at issue.

I should just be clear. I became -- my team became involved in this issue about March 29th when the labour-relation issues were starting to surface. It was asked that my team as a policy

team would take on the leadership of this to work through some of those broader issues that went beyond the strictly clinical aspects.

COMMISSIONER FRANK MARROCCO (CHAIR): Can I ask you -- can I ask you, Janet, one of the issues -- according to this slide, one of the issues that was considered was the impact of the restriction on staff -- existing staff shortages.

So it was recognized, am I right, at the very outset, that the -- restricting the employees to a single site would negatively affect the staff-shortaging problem?

JANET HOPE: It was a significant concern. If I'm -- if I'm working at two different long-term care homes, and I have to pick one, I'm not going to be available to work at the other.

And similarly, as the conversation went on, also, if we're talking about -- I might be a PSW working part-time in a long-term care home and part-time in home and community care or part-time in a hospital and part-time in long-term care.

So it wasn't just about staff shortages potentially in long-term care but also, conceivably, in other parts of the system, and where would people pick if they had to pick one

site?

COMMISSIONER FRANK MARROCCO (CHAIR): And thank you for that. I think that's -- that describes the problem. If at the same time the ability of family members to get access to the long-term care facilities was restricted --

JANET HOPE: Yes.

COMMISSIONER FRANK MARROCCO (CHAIR): -- which would to the extent that those family members were caring for their family members in the -- in the long-term care home, that would also further exacerbate the problem of staff shortages, right?

JANET HOPE: To the extent that family members were providing care, yes.

COMMISSIONER FRANK MARROCCO (CHAIR): Well, we've certainly heard --

JANET HOPE: Yes. M-hm.

COMMISSIONER FRANK MARROCCO (CHAIR): -- from a lot of family members that they went there, and they tried -- they would bring food and help clean up, you know, their relatives who couldn't -- who couldn't --

JANET HOPE: Yes.

COMMISSIONER FRANK MARROCCO (CHAIR):

-- look after themselves.

JANET HOPE: Indeed.

COMMISSIONER FRANK MARROCCO (CHAIR): So then those two -- was there any consideration to what the counter -- how the staff shortage would be addressed? Well, this exacerbates it.

JANET HOPE: Yes.

COMMISSIONER FRANK MARROCCO (CHAIR): But was there any consideration to how you can address it?

JANET HOPE: Absolutely. So colleagues in the -- in the division that are cross-appointed to the Ministry of Health and the Ministry of Long-Term Care were actively working on building an infrastructure called a matching portal that was used throughout the pandemic to try to outreach to people who might be available to work in long-term care particularly as other economic activities shut down. There were people who were unemployed or underemployed and who might have skill sets that were relevant to come in.

And our emergency order on staffing flexibility gave homes more flexibility as to who they could hire to bring in, like, what kind of skills might be appropriate to provide assistance

in the home.

So there were absolutely efforts to try to attract and bring in additional people to provide support and help, and those activities extended over the course of the pandemic. And as we got a little bit further on, we provided emergency orders to allow for the redeployment of -- in municipal homes, the redeployment of municipal employees or the redeployment of staff who were being underutilized in the hospital and home and community-care sector into long-term care.

COMMISSIONER FRANK MARROCCO (CHAIR): Thank you.

JOHN CALLAGHAN: So I take it, then, Ms. Hope, before we move to another part, that this was all the policy work that you undertook between, effectively, March 29th and the approval on April 14th, correct, the various issues under discussion?

JANET HOPE: This is a pretty -- yes, this -- these issues were ongoing until final decisions were made.

JOHN CALLAGHAN: So can I just put up -- and I'll ask Melissa a few questions. If we can put up document Number 1 just so I understand

what the sequence is.

So, Melissa, this is a letter from the Chief Medical Officer of Health, the March 19th. In it he says, if we could scroll down, please, Patty: I am, therefore -- right. If you could stop:

"I am therefore making the following recommendation to all parts of the health sector."

And if you can further down, please. And you'll see the highlighted portion that says, under multiple locations:

"We appreciate the unique circumstances of health workers who may work in different care settings and may have different employers.

Health workers who work in multiple locations should identify themselves to their managers and develop an individualized plan to manage their employment across these settings over the course of the pandemic.

In some high-risk settings, it may be possible to coordinate

arrangements for the staff to only work in one institution."

So this letter is dated March 19. Were you -- were you involved in discussion with the Chief Medical Officer of Health about this letter?

MELISSA HELFERTY: No, I was not.

JOHN CALLAGHAN: So how does this -- do you know, then, how this letter goes from a letter, then, to Directive 3, which the words are Directive 3 is document 3, on the 22nd?

MELISSA HELFERTY: So my understanding is that there was a need for stronger language, so a directive to actually be issued to long-term care homes. The same OH memos are just recommendations. They're not -- they're not requirements.

JOHN CALLAGHAN: Well, if you go to the language, I would suggest -- if you could go, then, down to the language --

So if you could move it down, Patty, please; down one more, please. Thank you. There you go.

So this is the language, though:

"Wherever possible, employers should work with employees to limit

the number of different work locations that employees are working at, to minimize risk to patients of exposure to COVID-19."

Do you see that?

MELISSA HELFERTY: M-hm.

JOHN CALLAGHAN: So it's wherever possible and should. This isn't a mandatory order, right? It doesn't say must. It said should.

MELISSA HELFERTY: So the directive is -- I understand what you're saying. I do believe, though, the intent of the language was to be more as prescribed within the directive.

JOHN CALLAGHAN: But what -- I just -- the Chief Medical Officer of Health has powers under Section 77 that allows him to provide an order. Was it the Chief Medical Officer of Health's view or the Office's view that they couldn't order the employers to just have one -- the employee work at one site, or was that not your view?

MELISSA HELFERTY: So I believe that as Janet had mentioned, the authorities of the CMOH to have and issue these directors -- directives is to the long-term care sector. It's not to the

specific employees.

JOHN CALLAGHAN: Right. So was there any discussion of making an order under 29.2 of the HPPA?

MELISSA HELFERTY: Not that I'm aware of, and this was -- this directive was developed and issued based on the legal advice that we received, but I may have to take that back.

JOHN CALLAGHAN: So this advice was happening at the time. There wasn't a prepackaged plan. This was working it out as you went, correct?

MELISSA HELFERTY: I'm not a hundred percent certain of what the actual process was.

JOHN CALLAGHAN: Now, you're aware that under 29.2, which is a power that gives local Medical Officer of Health powers to provide orders, and it also gives the Chief Medical Officer of Health the same power that they actually ordered hospitals to operate long-term care facilities. You're aware of that?

MELISSA HELFERTY: I was not -- I'm aware of the plan. I was not part of the legal discussions or received the legal advice.

JOHN CALLAGHAN: So at the time -- at

the time this directive was issued, it was understood that there was limitations as to what you could do?

MELISSA HELFERTY: As part of the CMOH powers under this authority, yes, because the directive could be -- provides a specific direction to the sector or the health sector and not to the individual employees within that sector.

JOHN CALLAGHAN: Was there any discussion about using an emergency order as of either March 19th or March 22nd?

MELISSA HELFERTY: Not that I'm aware of, but perhaps my Ministry of Long-Term Care colleagues have a better understanding.

JOHN CALLAGHAN: Janet, I mean, was -- or, Brian.

JANET HOPE: So I can -- I can add that around about the 27th, 28th of March when I started to be -- hear the conversations on this subject, I do know that a couple of times, you know, these seemed to be the limitations of a directive, and perhaps an emergency order might be another way of coming at it.

But at this -- as of the end of March, to my knowledge, there was not yet active

exploration on the Ministry's part of an emergency order come to what -- where we came in early April.

JOHN CALLAGHAN: Right. I'm going to -- I've got a few more questions about this period of time. So as of -- that discussion wasn't taking place as of March 22nd, I guess, when Dr. Williams issued his Directive 3, correct? Is that what I'm understanding from your answer?

JANET HOPE: I can't speak to the discussions that -- around March 22nd.

JOHN CALLAGHAN: Well, Mr. Pollard, are you able to assist?

BRIAN POLLARD: No. I don't -- I can't answer that question for you.

JOHN CALLAGHAN: Okay. Well, if I could --

COMMISSIONER FRANK MARROCCO (CHAIR): Well, just before you -- just before you do that, I'm trying to understand the wording. And I appreciate what was said about the wording of that page that's on the screen now.

But was there some ingrained reluctance to use the authority that the statute gives the Chief Medical Officer of Health and give an order that, you know, in the interests of keeping the

people in these long-term care facilities home safe, you'll have to limit where they work? Was there some ingrained reluctance to give that direction?

Because the wording of this -- and I think it's apparent to all of us, this isn't really a directive that's very powerful: Wherever possible; should work to minimize the risk. It's -- it's a suggestion.

In your experience, either -- or, Janet, or, Melissa, wasn't there some reluctance to issue orders?

JANET HOPE: I can't -- I can't speak to sort of --

COMMISSIONER FRANK MARROCCO (CHAIR): All right.

JANET HOPE: -- what was in the decision maker's head at this point in time. I would just say, though, that, you know, it's saying to employers they should work with employees to limit wherever possible, I think recognizing -- and again, I'm making an assumption as a policy person who, then, sort of looked at, how do we strengthen this -- that employers aren't in a position to prevent an employee from working at another

location if they don't have control over that work location.

COMMISSIONER FRANK MARROCCO (CHAIR): Okay.

JOHN CALLAGHAN: Could I just go to document number 2 which would maybe provide at least one explanation to answer Dr. Kitts' question.

If you go down to the bottom, please, to the start of this.

So, Melissa, this is an email from Dr. Michael Finkelstein who is the director -- Acting Director and Associate Medical Officer of Health in Toronto, and it says -- and it's a Barbara Yaffe, who is your -- who was one of your bosses, I assume, correct?

MELISSA HELFERTY: That's correct.

JOHN CALLAGHAN: And she has -- he says: (as read)

> "We have a declared COVID-19 outbreak at Seven Oaks Long-Term Care Home."

And I can tell you we've heard that that's a municipal long-term care home. (As read)

> "This home is owned by the City

of Toronto. Index case was a PSW who had mild illness while working. PSW who cared for the first resident case, onset of PSW illness March 16th cough and sore throat, March 17th fever. Worked March 16th and 17 at Seven Oaks; outbreak confined to 3rd floor."

And that's dated March 22nd, and if we just go up, you'll see their communications as he's trying to bring it to the attention of your office, and now it's Elizabeth Rea, who's the Associate Medical Officer of Health Tuberculosis Program for the Toronto Public Health, and she notes: (as read)

"We have one declared outbreak here, Seven Oaks, but also two other long-term care homes with a single resident case just detected and four facilities with staff visitor exposures."

And it goes: (as read)

"Biggest issues: Severe PPE shortage, staffing, unable to put many exposed staff on home

isolation, or there will be no one left to care for residents, especially with visitors excluded now. We have been largely putting staff on work/home isolation restricted to one facility. Ripple long-term health staffing shortages across multiple facilities."

And I point out, this is the City of Toronto who said they commandeered, I think, 300 employees and from elsewhere in the city of Toronto.

If we go to the next -- go up a little bit, and it says -- this is now Mr. Finklestein back: (as read)

"I would really reinforce the need for a workforce strategy for long-term care health sector quickly with some decisions on people working only one place and move them to full-time hours to compensate them for their disruption. This way, at least, if they do get sick, they will expose only one cohort of people and not two of them. Also,

somehow reinforce the message of not working when the health care worker is ill. In the past week, we've had a number of healthcare workers come back positive and determine that they worked many shifts while ill which makes it very challenging to do contact tracing."

And then it ends up with Mr. Shingler who says: (as read)

"MLTC is currently working on text for a communication into long-term care on these issues. We were just discussing whether this needs to be guidance from CMOH or be elevated to a directive."

So I take it, Melissa, were you aware of the city of Toronto outbreak at Seven Oaks?

MELISSA HELFERTY: Yes, I was aware of it after these emails had been sent.

JOHN CALLAGHAN: Right. And it was -- I take it, well, that must have been brought home to you that these employees who are getting sick and coming to work is a problem, correct?

MELISSA HELFERTY: Yes, and the extent

of this outbreak.

JOHN CALLAGHAN: Right. Okay. If we could, then, I want to talk about another --

COMMISSIONER FRANK MARROCCO (CHAIR): Mr. Callaghan, before you leave that --

Melissa, was there any consideration given at this point to paying for -- to institute a policy of paid sick leave?

MELISSA HELFERTY: Not that I would have been part of the discussion, but again, I want to see if my Ministry of Long-Term Care colleagues --

COMMISSIONER FRANK MARROCCO (CHAIR): Yes, and I'm sorry, Melissa, to direct the questions always at you. If you feel they're better directed someplace else, you go ahead and do that.

MELISSA HELFERTY: Thank you.

JOHN CALLAGHAN: After all, we have Mr. Pollard.

BRIAN POLLARD: So that's happened to me before, so I'm not aware of any conversations that were being had about paid sick leave.

COMMISSIONER FRANK MARROCCO (CHAIR): Does it -- does it seem obvious that if they're

coming to work because -- sick because they need the money, that one of the ways to try to get at this problem is to pay them to stay home when they're sick?

BRIAN POLLARD: So, Janet, you can go ahead. I mean, I'd just kind of say really quickly, yes, it does seem obvious. But, you know, one of the other -- you know, one of the assumptions we're probably making here is that they didn't have paid sick leave, and I don't know whether that's true especially speaking about City of Toronto. So, you know, I don't know how true that is in this situation.

COMMISSIONER FRANK MARROCCO (CHAIR): Okay.

JOHN CALLAGHAN: But generally, generally in the wider community, you --

BRIAN POLLARD: Yeah, but generally in the wider community, yeah. I mean, that's a -- you know, I get your -- I get your point that, obviously, if people feel they need to work to sustain themselves, they're going to, you know -- it gives them -- you know, they're probably more likely to come to work while ill.

JANET HOPE: I can just add that it is

my understanding that the -- that part-time and casual long-term care staff still fall under the collective agreements that are in place, and those collective agreements typically provide for payment in lieu of sick leave and benefits.

There are some collective agreements that provide for a limited number of sick days for part-time employees, but that's the minority of cases.

And the other point I will just make is that we did have the emergency prevention and containment funding we were providing to homes and giving them the flexibility to use that in a variety of ways. So whether that was to move part-time staff to full-time or to provide other kinds of assistance to employees to help achieve the objectives, that -- they had that flexibility.

JOHN CALLAGHAN: But there was no direct policy to ensure sick people stay home? It was -- it was an envelope of money they could use for that or use for some other purpose, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: Right. If we could just go to document number 3. This wasn't in your list. This is Ontario Regulation dealing with

long-term care homes. I think document 3 is -- no -- March 23rd. Document 3, please. Maybe in the next document. Okay.

So this is an Ontario Regulation, and it's published on March 23rd. And I'll just take you -- then I'll take you to the Cabinet meeting, and it says: (as read)

> "It's a work deployment, and it seems to allow those who have more than one home to deploy people amongst their homes."

So (3) says: (as read)

> "Without limiting the generality of Section 2 of the schedule and despite any other statute, regulation, order, policy, arrangement, or agreement, including a collective agreement, health service providers shall and are authorized to do the following: Identify staffing priorities and develop, modify, and implement redeployed plans including the following: Redeploying staff within different locations in or between

facilities of the health service provider.

Do you see that, Ms. Hope? Or, Mr. Pollard, whoever was involved in this?

JANET HOPE: I think this is a Brian question.

BRIAN POLLARD: Yes, I do see it.

JOHN CALLAGHAN: All right. So this -- we'll -- let's just take a look and see what the Cabinet note -- but, I mean, this is an order that's made despite any collective agreement, right?

So the issue that you talked about a moment ago with Directive 3 in terms of collective agreement, this order dealing with residents -- long-term care homes on March 23rd, so it obviated the collective agreement, correct? That's what it says?

BRIAN POLLARD: Yes.

JANET HOPE: Yes.

JOHN CALLAGHAN: And if we can go, then, to document 5, and this is the -- this is the Cabinet notes, I think, and I'm -- there's a Minister's speaking remarks, which who I assume is to -- is Minister Fullerton of March 23rd.

And if you can go in a couple pages, Patty, please. All right. This is -- you have to go past all the pictures.

And it says there: (as read)

"This order would provide long-term care home operators the authority to identify staffing priorities and develop, modify, and implement redeployment plans despite any other statute, regulation, order, arrangement, or agreement including a collective agreement."

If we could then go over a couple of more pages, a briefing note to Cabinet. It says: (as read)

"If approved, the order would allow long-term care operators to identify staffing priorities and develop, modify, and implement redeployment plans current collective agreements restricted -- current collective agreements, restrict the reassignment of staff in long-term care homes. This order would allow long-term care operators

to implement redeployment plans without complying with provisions of a collective agreement including layoffs, seniority service, or bumping provisions. The emergency order if approved would complement other actions taken by the Government to support long-term care operators and adapting their operations to focus on maintaining the safety of long-term care residents during the COVID pandemic including restricting visitors and regulatory amendments to increase staffing flexibility."

And then if you go over to, now, a couple of more pages, 3 of 5 at the bottom, please. And it says -- if you can go to page 3 of 5 at the bottom, please. Thank you.

(As read)

"It is possible bargaining agents in the long-term care sector could seek damages as a result of overriding collective agreement provisions. This would be dependent

on the facts of each circumstance, the specific collective agreement at issue, and the actions taken by each individual employer.

It is anticipated that any potential costs would be significantly outweighed by the necessary flexibility provided under the emergency order.

The government and long-term care operators would vigorously argue against claims by bargaining agents and rely on the powers authorized under the EMCPA."

If you can go to the next two more pages to 5 of 5, under risks. There we go. (as read)

"There is a risk that concerns will be raised by labour unions and staff about any temporary redeployment. MLTC will closely -- will work closely with Treasury Board secretariat to develop an appropriate mitigation strategy to address these concerns.

> While the emergency order issued by the Premier regarding hospital staffing applies to a broader public sector organizations, this order would also apply to for-profit and not-for-profit long-term care operators which may create a distinct labour relations risk."

So if I could ask you, Mr. Pollard, this direction, this emergency order allows a large operator who owns a number of homes, say one of the -- one of the chains, to move employees from home to home, correct?

BRIAN POLLARD: Yeah, the intention here was to balance whatever available health human resources we have in the system.

JOHN CALLAGHAN: Right. But we've got the direction from the Chief Medical Officer of Health that you shouldn't be moving from home to home, and this allows the large operators who have more than one home to move their employees from home to home, correct?

BRIAN POLLARD: Yeah, but I don't think the intent is that this would have happened on a daily basis. So worker at home A on day 1 and

worker come home B on day 2, and then go back to, you know, home 1 on the third day.

It really was meant as a balancing feature where across the organization, if you had the capacity and the capability to move some staff to help offset understaffing in other locations, this would provide you the flexibility to do that.

JOHN CALLAGHAN: Right. And you're aware that -- you're aware that when you eventually bring the emergency order in to address single sites, that you remove this because it's perceived to be inconsistent, correct?

BRIAN POLLARD: I think, as we progress through, as we get into April, it becomes a bit clearer to us in terms of, obviously, if we're going to go down, with -- you know, go a different approach, that we want to make sure that everything is aligned, so to the extent that we make changes to this in the future to align with the work that was done around single site, yes. Then we're --

JOHN CALLAGHAN: So let me ask you this: How is it that this emergency order addresses and disposes of collective agreements on the 23rd of March, and yet, when we talk about single site, we have a directive from the Chief

Medical Officer of Health, and we've just heard Ms. Hope talk about the policy considerations dealing with collective agreements, was there -- why wouldn't that same apply as of March 22nd with respect to changing the directive from the Chief Medical Officer of Health into an emergency order?

BRIAN POLLARD: Sorry. Maybe repeat the question. I'm not sure what you're asking me.

JOHN CALLAGHAN: Well, I understand that the work being done sort of from March 29th to April 14th addressed a labour issue dealing with the collective agreements. And we had the Chief Medical Officer of Health who has clearly stated that you should only be working in one home. And yet, here it is on the 23rd, you dispose of collective agreement rights with respect to the large operators who have more than one home. Why wasn't that done as of March 23rd for all sites? Why wouldn't we have just done an order like that --

BRIAN POLLARD: Yeah, so I don't --

JANET HOPE: If -- if I can --

BRIAN POLLARD: Yeah, I don't -- I don't have any insight on kind of the -- you know, the broader thinking in terms of order directive,

which comes first, et cetera.

JANET HOPE: If I could also just add, though, I think we're talking about different types. Like, there's not just sort of one issue of overriding a collective agreement. There are different types of labour relations issues that different actions might invoke.

So we can come to that when we talk more about what were the labour issues we had to address with the single site and eventual emergency order.

JOHN CALLAGHAN: But you'll agree that the Cabinet note clearly indicates the Cabinet was told to take the risk of whatever collective agreement fallout there would be in order to make that emergency order work, correct?

BRIAN POLLARD: Yes, because our primary concern at that point in time -- and this was going to Cabinet -- was around staffing stability, right? We were starting to see more and more homes talk about critical staffing shortages.

JOHN CALLAGHAN: But what I don't understand is that order only works for the benefit of somebody who owns more than one home. I thought you had a lot of operators who owned one home,

particularly the not-for-profits, so they wouldn't have had no advantage by that order, correct?

BRIAN POLLARD: Yeah, so this was -- this was a systemic order, and it was multifaceted, so, you know, you've identified one clause that you're talking about. But it was really -- it was really designed to give maximum flexibility to operators to staff their homes.

And, you know, again, I would say that the operators, the expectation here, the underpinning expectation here that you would have been doing that in as safe a manner as possible.

I don't -- you know, I don't take away from what you've read any -- that any operator would say, let's take, you know, staff who are ill and move them from one home to another home, right? I mean, you would still --

JOHN CALLAGHAN: Well, and I'm not --

BRIAN POLLARD: -- still have the responsibility to do that in a responsible manner.

JOHN CALLAGHAN: Right. But let me ask you: We've heard repeatedly in this inquiry that the for-profit chain homes had a worse outcome. Have you done any analysis as to the movement of their staff between the date of the March 23rd

order and the date of its rescission to see if that's actually happened or not?

BRIAN POLLARD: As if that was a contributor to their outbreaks, you mean?

JOHN CALLAGHAN: Yes.

BRIAN POLLARD: No.

JOHN CALLAGHAN: Okay. Can we go to document Number 7. Or, actually, sorry, my apologies. I think it's -- it might be document number 6. So this is a briefing note. I'm not sure to whom it's -- it's the Ministry of Long-Term Care.

And I take it, Janet, at this point, or Ms. Hope, I should say, you're working on the strategy issues dealing with converting the directive of Dr. Williams into a -- possibly an order, right?

JANET HOPE: I'm just reading here to make sure I've got the right note because there were different iterations.

JOHN CALLAGHAN: Yeah. This is just one we picked out. I know there are others. This is dated --

JANET HOPE: Right.

JOHN CALLAGHAN: -- March 30th.

JANET HOPE: March -- sorry. It's dated March 30th?

JOHN CALLAGHAN: Yes.

JANET HOPE: Then at this point, we were still -- this is when we were being asked to look at options around working with the Chief Medical Officer of Health Office on strengthening Directive Number 3, and I believe in this note it might point out some of the limitations of working with a directive and that emergency order might be --

JOHN CALLAGHAN: Correct.

JANET HOPE: -- an alternative.

JOHN CALLAGHAN: Right. So this, just for the Commissioners' benefit, overall considerations, if you could just there -- move it up a little bit. Well: (as read)

"The strategic goal is to further limit the potential spread of infection to vulnerable seniors by restricting the potential for spread among different employment settings."

And then overall considerations: (as read)

"A number of staff in the long-term care sector are part-time often working in more than one long-term care home, elsewhere in the healthcare sector or in other sectors secure full-time hours. The -- this increases the risk that a part-time employee of one long-term care home may inadvertently transmit the virus among a number of other long-term care homes.

There is interest in strengthening existing direction to long-term care homes to minimize the risk of patient and staff exposure to COVID-19.

Ensuring adequate staff to safely care for long-term care patients is currently a challenge in many long-term care homes. By restricting where staff can work, the challenge may be exasperated."

And that's what you were talking to the Chair about, correct, Ms. Hope, the exasperation of

the challenge?

JANET HOPE: Yes. Yes.

JOHN CALLAGHAN: And then just to go to the next page, the -- this is -- if you can go to the next page further down. There you go. And you go -- there you go. And I'm actually going to read the non-highlighted portion, and this is another -- this is the policy issues that you were dealing with: (as read)

"MOL, Ministry of Labour recommends that any such order direction includes some protection for employees to ensure their collective agreement entitlements are maintained, restored after the order ends."

That's one of the -- that's one of the policy considerations you were dealing with?

JANET HOPE: Correct.

JOHN CALLAGHAN: And then it goes -- below that it says: (as read)

"Confirmation would be needed with Constitutional Law Branch that such a directive order would not contravene Section 7 of the

Charter."

And again, and below that says: (as read)

"The Chief Medical Officer of Health would need to agree that this expanded direction is within the scope of his authority."

So you were still trying to determine whether this was under the Chief Medical Officer of Health's authority or whether you needed emergency management order, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: Okay. So then if you could then go to the next document, document 7, this is -- this is a -- you'll see it's dated March 30th. It's a document. If you can scroll back up, you'll see it's an Ontario Health document. And if you go to the -- this is the release of March 30th. And if you go to the first -- second page there, there we go, right there. If you go to the top of that page. Thank you.

And it says: (as read)

"This document has been developed to provide healthcare organizations with recommended

minimum standard support healthcare workers who work in more than one organization. For purposes of this document, the term healthcare worker, HCWS, retains the hospital employees, physicians, mid-wives, researchers, trainees, volunteers, and contract employees as well as healthcare workers in other settings such as home and community care, long-term care, and retirement home."

If you go down to common principles, it says: (as read)

"HCWs are essential to health and well-being of our society and our ability to manage and deliver services. HCWs are essential service that is critical. The successful management of the pandemic. We're committed fully to ensuring the safety and well-being of all HCWs.

Many HCWs currently work in more than one healthcare organization

allowing HCWs to maintain employment at more than one organization supports the financial well-being and enables more flexible system deployment and response.

HCWs represent a unique group that requires different considerations for multi-site employment during critical times."

If you could go over to the next.

COURT REPORTER: Sir, could you just maybe speak closer to the -- when you --

JOHN CALLAGHAN: Sure.

COURT REPORTER: -- speak down, you're cutting out on me. Thank you.

JOHN CALLAGHAN: My apologies.

If we can go to recommendations: (as read)

"To help maintain the ability to deliver critical health services across Ontario healthcare system, it is recommended that organizations should not restrict HCWs from working for multiple organizations."

And I guess what I'd ask, Ms. Hope, is

how is it that Ontario Health puts out this directive at a time when the Chief Medical Officer of Health has his directive, and you're working on an order?

JANET HOPE: I can't speak on behalf of Ontario Health. I first saw this document yesterday when the additional documents were provided to us.

JOHN CALLAGHAN: And, Melissa, had you seen this document before?

MELISSA HELFERTY: I had not seen it prior to it being released. And I can't speak to what the policy decisions were within Ontario Health for including this in this document.

JOHN CALLAGHAN: Okay. All right. So I think we're back to the -- I think early April, I think, is where we're at on -- if we go back to the slide deck. There you go.

JANET HOPE: Great. So I'll just -- I'll just finish up, then, at the -- we were discussing that there were a range of things that were under discussion for inclusion in Directive 3 beyond this specific issue we've been discussing now. And that by March 30th, we -- it was clear that we weren't going to resolve these broader

issues with the direction around work locations in -- immediately, and, therefore, these issues should not hold up the other changes where there was a desire to move forward and a consensus ability to move forward quickly.

So a revised Directive 3 was released on March 30th, and it continued to -- it did not change the language of the March 22nd directive with respect to limitation of employment sites. So now --

COMMISSIONER FRANK MARROCCO (CHAIR): Was there -- was there, then, just a disagreement between Ontario Health and the Chief Medical Officer of Health about multisite employment?

JANET HOPE: I can't -- I can't say that -- I can't say yes or no to that. I don't know. I just know there was -- what my understanding was, we need to keep working on these issues. We haven't -- we haven't resolved the issues around multisite, and we can't hold up these other important issues that need to be expressed in Directive 3 for that purpose. We need to keep working on these issues.

COMMISSIONER FRANK MARROCCO (CHAIR): Understood.

JANET HOPE: Yeah. So if we could move to the next slide. We also were, then, also focusing our attention a little bit to the issues around financial incentives. So I've mentioned the emergency funding we provided to homes. We did, on April 1st, give homes additional detail on the additional funding for the new fiscal year that was announced in the economic statement.

And we realized that it would probably be helpful to reinforce for homes that they had the flexibility to use this money to increase part-time employees to full-time orders in order to facilitate being consistent with the guidance in -- or the Directive 3 language.

We were hearing anecdotally that -- from the Associations, the two Long-Term Care Home Associations, that a number of homes were acting consistent with those directives. Probably more -- my sense was more some of the larger homes that had some of that flexibility to take part-time staff at one site and make them full-time there and part-time staff at another site and make them full-time at another site.

But we also heard from the Associations that further encouragement around the ability to

use these funds in a flexible manner would be helpful, and that further direction was -- or further clarification -- I shouldn't say direction -- further clarification memo was released on the 9th.

We also were starting in this period to look at the issue of pandemic pay, and I'd like to say we'll just maybe finish the story on the emergency order, and we can -- subsequent slides deal with pandemic pay in more detail.

COMMISSIONER ANGELA COKE: Sorry. Could I ask one question there? Just in terms of the conversion to full-time, so you mention that you'd heard from some of the Associations that this was happening.

Was there any requirement to report or specifically let the Ministry know how much of this was actually happening or not?

JANET HOPE: No. There was not. We were -- we were, as Brian referenced earlier, collecting information daily from homes to meet sort of immediate reporting -- informational needs, but we were trying to be careful not to add layers of additional reporting for homes that were feeling quite stressed.

COMMISSIONER ANGELA COKE: Okay.

JOHN CALLAGHAN: Can I just go to document 10, please?

COMMISSIONER JACK KITTS: Just before that, John, could I just ask -- sorry -- once again, about the critical staff shortage? Was it still the inspectors that were reporting the homes that had critical staff shortage? And did -- was there a definition for what critical staff shortage meant?

BRIAN POLLARD: Yeah, it was still the inspectors that were gathering that information from the field, and there was not a -- to my knowledge, a definition for a critical staff shortage. It really was left to homes to identify that to us on a case-by-case basis.

COMMISSIONER JACK KITTS: Okay. Thank you, Brian.

JOHN CALLAGHAN: Document 10, please. All right. So just by April 8th -- and if you could go down -- this is an email to Sean Court of your office. And it's from the Secretary of Cabinet's office, they: (as read)

"Secretary of Cabinet has asked us to urgently look at strengthening

the current direction and the current CMOH Directive Number 3 that wherever possible, employers should work with employees to limit the number of work locations that employees are working at to minimize the risk of patients of exposure to COVID-19.

The goal is to have more direction rather than encouragement to long-term care homes that they must limit employees from working at multiple long-term care or other health congregate care settings."

And at the bottom, if I could take you to the bottom, it says: (as read)

"This is urgent given the overarching impact of the sector and the heightened attention to this aspect as part of containment."

So it's fair to say that this issue has extracted Secretary of Cabinet, and it's now urgent as of April 8th? Janet, I guess, I assume you're working on --

COMMISSIONER JACK KITTS: You're on

mute, Janet.

JANET HOPE: I'm sorry. I put it on mute to try and avoid the echoing. Yes, it was -- this was -- this is addressed on my next slide. It was on April 8th. The Deputy was in attendance at a meeting that included the Secretary of Cabinet in the Premier's office, and he was given explicit direction to figure out how to make this strengthening of the language -- how to make that possible.

JOHN CALLAGHAN: Okay. Well, and I won't take you, but there's a document -- maybe you recall that there was -- and I could take it to you [sic] if you wish, but whereby there was a comparison with British Columbia that had this requirement, but they left it at the local Medical Officer of Health level. Do you recall what the consideration was leaving at the local level or at the Provincial level with the Chief Medical Officer of Health?

JANET HOPE: No. The -- we did -- and this is what the email you have posted shows.

JOHN CALLAGHAN: Right.

JANET HOPE: We did ask colleagues to look into some of the details on what

British Columbia was doing, I think, also perhaps Quebec. Maybe it wasn't in this email, but we did not have extremely sort of -- we didn't dig really, really deeply into what B.C. was doing. The structure and the authorities of their Chief Medical Officer of Health and their regional of authorities are different, so there are some limitations to trying to, you know -- we were really trying to focus on what are the authorities we have.

And it was very -- I think this was April 8th. It was April 9th we had a clear decision that we would take forward an emergency order as our way of dealing with this, that a directive wasn't the -- going to be an effective approach to achieve the degree of direction and protection for employees that we were seeking.

JOHN CALLAGHAN: But the question, I think, was more directed to, it wouldn't be left at a regional level. It would be left at a provincial level, right?

JANET HOPE: Correct.

JOHN CALLAGHAN: All right.

JANET HOPE: Correct. That was our --

JOHN CALLAGHAN: Just to -- if we go

back to the slide deck for one second before we change it.

So in your slide deck, you've given us the -- you've given us the residents' deaths as of April 5th to 11th at 140. Now, this directive was to stop the disease coming into the home, correct, by --

JANET HOPE: Yes.

JOHN CALLAGHAN: All right. So it was -- what we really want to look at is infection rates, what was the infection rate at that time because I think the evidence we have -- and if you have different evidence, you can tell us, but that somewhere between 25 to 30% of long-term care residents die if they're infected, and it's been pretty consistent throughout; is that your understanding?

JANET HOPE: I can't speak to those percentages, but sounds --

JOHN CALLAGHAN: Well, we'll come back to this. Let's turn to the next slide. I'll come back to that in a moment.

JANET HOPE: Okay. Right. So as we've discussed, clear sense on April 8th we need to move forward. April 9th, it was agreed within the

Ministry and with Cabinet office -- the Minister's Office that we would bring an emergency order on April 14th. So I think April 9th was the Thursday, April 14th the following Tuesday of Easter weekend.

And so over that five-day period, the team was working to resolve the various issues that needed to be resolved in order to have an emergency order for approval, so we had to determine the scope of the employment restriction; was it going to be just for long-term care? Was it going to include other healthcare settings, or, in fact, all employment settings?

And that, obviously, linked to concerns about both individuals' income protection as well as implications for exacerbating staffing shortages.

We -- we're looking at issues around mitigating, so for -- a key issue was whether agency staff -- or other nonemployment relationship individuals should be within the scope of the order. The labour relations and employee protections -- and so, for example, here, as I think you may have read out in one of the earlier notes, if an employee has to effectively give up a job as a result of complying with the emergency

order, how do we ensure they have appropriate protections, that they're not deemed to have quit the job, and so worked with colleagues at the Ministry of Labour to make sure that there were other emergency order provisions relating to the Employment Standards Act that would give them protection.

We had to tease out where is the onus of responsibility being placed in the emergency order, and in the end, the eventual emergency order placed some responsibility on both the employee and on the -- on the employer so that the employee had to be disclosing if they were subject to the order to their employer.

The implementation approach, so we eventually ended up with that sort of two-phase approach where there was a deadline by which the employee must disclose to the employer that they were subject to the order by virtue of their employment -- multiple employment settings; and then a few days for the employer to be able to make adjustments so that we didn't have some sort of catastrophic staffing collapse as a result of an emergency order which is meant to protect residents; and then clarifying issues around legal

authority and constitutionality.

So we took the emergency order to Cabinet on the 14th, and it was released on that date.

JOHN CALLAGHAN: So if we can look at document 13. This is the Cabinet notes, I guess. If we can go to the next page. This is the Minister's remarks to Cabinet, and if we could go down a little bit, please, it says -- no, further up, please. There you go.

(As read)

"The evidence is increasingly clear that many outbreaks are the result of asymptomatic staff unknowingly introducing the virus into homes. We know that a considerable number of long-term care staff work part-time often in more than one job at another long-term care home, or retirement home, or elsewhere to create full-time employment.

Unfortunately, this can dramatically increase the risk that the virus is transmitted by

asymptomatic staff among a number of homes or healthcare settings. This puts both staff and residents at risk."

If you go down a little further: (as read)

"We must keep the virus from spreading into more homes wherever possible. Last month, the Chief Medical Officer of Health issued a directive to long-term care homes strongly encouraging employers to work with staff or limit the number of different work locations that employees are working at."

And then if you go down further, the next page: (as read)

"That is why we are strengthening direction given to employers through this proposed emergency order. The Ministry recognizes the concerns that some employees may experience financial hardship as result of having, they give up one or more part-time jobs.

These employees would be entitled to job protected leaves of absence under the Employment Standards Act. We are also encouraging long-term care homes to use the emergency funding we have recently announced to move staff from part-time to full-time. Given the critical staffing shortages in the sector and the availability of funding, we believe that more staff who wish to work full-time in long-term care should be able to do so.

So there was never an order to convert part-time to full-time during the pandemic, was there?

JANET HOPE: There was not.

JOHN CALLAGHAN: And there was a -- and we'll get to this in a second, but there was protection that they could get their job back after the pandemic if they had to give up one of their part-time jobs?

JANET HOPE: Correct. They were deemed to be on a leave of absence.

JOHN CALLAGHAN: Right. So if we could

go over to the Cabinet briefing note, page 1 of 7. Further on. There you go. There you go. Down further. It says -- and this is to -- this is what I was saying to Mr. Pollard: (as read)

> "MLTC is also seeking to make a corresponding amendment to an emergency order which was made on March 23rd and extended on April 9th. The previous order provides staffing flexibility for long-term care operators including deployment of staff across multiple long-term care homes operated by a licensee.
>
> The proposed amendment would ensure alignment with the new proposed order by clarifying that an employee is not able to provide services at more than one long-term care home."

So I take it the idea was you revoke the earlier emergency order so it's consistent that employees can only work at one home, correct, Ms. Hope?

JANET HOPE: I wouldn't say revoked. I believe we amended because there were, as Brian

said, a variety of staffing flexibilities in that emergency order. And so redeployment within the individual home would still be possible under that other emergency order.

JOHN CALLAGHAN: And then if we can go over, then, to page 6 of 7 at the bottom, under financial hardship there. There we go. (As read)

"This order may also result in financial hardship for affected employees who currently rely on multiple sources of income and whose income may be significantly reduced as a result of being required to only work in one location.

If the employee continues working for any employer for more than ten hours per week, they would not currently be eligible for CERB.

This may be partially mitigated by long-term care homes moving staff from part-time to full-time which would be supported by the Government's COVID-related emergency fund."

And then it goes on to refer to the

fact that they will get their job back.

But though if an employee -- if an employee -- if an employee is required to give up employment and they work at the other employment for more than 10 hours, they can't get CERB. And there wasn't any sick pay -- pardon me -- any other payment from the Province, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: As you'll tell us, there was a provision that we're going to talk about as pandemic pay, but that only applied if they worked, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: Can we just go over -- I just want to just cover off a few things to make sure they're accurate. If we can go over to a few more pages, Patty, it's page 2 at the bottom, if you can keep on going. It must be the next one right there. There -- yes, if you can go down further.

And I just want to make sure I'm right. It says: (as read)

"A number of employees in the long-term care sector work part-time. Less than half of filled

positions in long-term care homes are full-time employees."

That's a correct statement?

JANET HOPE: That was correct as of our most recent data which was 2018, but we have no reason to believe, at this point in time, it would have been significantly different.

JOHN CALLAGHAN: Right. And so: (as read)

"These part-time employees are often working in more than one LTC home or elsewhere in the healthcare sector to secure full-time hours. This increases the risk that a part-time employee of one LTC home may inadvertently transmit the COVID virus among a number of other LTC homes or healthcare settings impacting staff and residents."

And I take it just this order did not prevent the employees from working at other non-healthcare settings such as a grocery store?

JANET HOPE: That's correct.

JOHN CALLAGHAN: Or a meat packing plant?

JANET HOPE: Correct.

JOHN CALLAGHAN: Okay. And if we could just -- this order is approved by Cabinet, but it doesn't come into effect 'til April 22nd; is that right?

JANET HOPE: Well, it's in effect. It require -- and then it has two dates for particular types of compliance. So it was -- it was released on the 14th. By April 17th, employees who were subject to the order had to disclose to their employers, and employers had to be fully compliant no later than April 22nd.

JOHN CALLAGHAN: So by April 22nd, they couldn't work at more than one location, correct?

JANET HOPE: Correct. That was the deadline.

JOHN CALLAGHAN: So can we just put up -- I just want to -- I want to put up the daily stats for April 22nd just so -- because you put in the -- in your --

COMMISSIONER FRANK MARROCCO (CHAIR): Just before you do that, the order's issued April 8th, but it's not made publicly available 'til the 14th?

JANET HOPE: No. April 8th, there was a decision that we needed to get on with and find a solution to these outstanding policy issues and legal issues that we had identified earlier.

April 9th, there's a decision that we will bring an emergency order to Cabinet, so we have to now construct that emergency order. And on April 14th, the emergency order is brought to Cabinet, and Cabinet approves it.

COMMISSIONER FRANK MARROCCO (CHAIR): All right. So April 8th, the decision is made by...

JANET HOPE: Direction is given by the Secretary of Cabinet and the Premier's Office to the Ministry that we need to get on with figuring this out and come back with a solution.

COMMISSIONER FRANK MARROCCO (CHAIR): And so between that date and then April 14th is when you come back with -- not when you come back, but when the Ministry comes back with a solution.

JANET HOPE: We have resolved all of the issues. We have drafted the emergency order. We've -- yes, and we come back and present to Cabinet the solution for their final consideration.

COMMISSIONER FRANK MARROCCO (CHAIR):

So in terms of the operative date when the solution, so-called, goes into effect, it's April 14th.

JANET HOPE: It's -- yes, it's legally -- I'm not a lawyer, so maybe I'm going to get the terminology wrong, but it is -- it is an emergency order in effect as of the 14th, and it requires certain actions to be taken on -- no later than certain dates.

COMMISSIONER FRANK MARROCCO (CHAIR): All right. Okay.

JOHN CALLAGHAN: So just to go back, so it wasn't -- this is April 22nd, which is a date by which no one should be working in more than one home. By that time, there are 516 residents' deaths, and then there's 2,189 confirmed residents' sickness. And if we use the 30% rate that we've been given by experts, that's another 656 people that are going to die. So that's over 1,073 deaths from, say, March 18th when the issue's identified from the Chief Medical Officer of Health until the effective date of April 22nd; does that sound right?

JANET HOPE: I -- these are the -- these are the figures you're showing. Yeah, I

don't -- I can't dispute those.

JOHN CALLAGHAN: Okay. So then let's -- well, I guess we'll move on to pandemic pay. Thank you.

JANET HOPE: Okay. Great. So if we could go back to the slide deck and the next slide. So we began working on the issue of pandemic pay approximately April 2nd, and over the period of April 2nd to 8th, the Ministry team developed options and potential approaches for pandemic pay in the long-term care sector.

And the policy objective here was really around just further stabilizing staffing by encouraging employees to work and attracting new employees through a pay incentive.

We did not have a specific direction from -- for -- to take this forward for Government decision making at the time. It was something that we generated from within the Ministry and options that we were working up.

We briefed the Minister's Office -- I believe it was on April 9th, and I know there were, then, conversations over the next few days, but we were not given a specific decision path to bring this -- these proposals forward for Cabinet

decision making.

So we were not getting traction to make a political decision on pandemic pay at this time for long-term care. And we believe that that was, based on the conversations we were having, concerns that to enact pandemic pay in long-term care might further disrupt cross-sector labour movement that's -- initiating pandemic pay in long-term care would set a significant precedent that could have significant costs beyond long-term care.

So while we were working this up in the context of the long-term care sector, there were these broader concerns.

On April 14th, the Prime Minister made a public statement that indicated the Federal Government was interested or willing to make some contribution to a wage supplement program for individuals in -- deemed essential. There were no details at this point in time. This was a public statement, and at that time, we were asked to bring our proposal forward to the Treasury Board for consideration on April 16th.

We were also, on April 14th -- this happened to be the same day we were bringing the emergency order into Cabinet, of course, as we've

just discussed, but we were also pulling together the -- pulling together into a -- into a plan the various initiatives and activities that were happening around long-term care into the long-term care action plan which was released on April 15th. And in that action plan, under the theme around health human resources, we did reference -- we had no decision on pandemic pay. We had the Federal Government's signal, so we did publicly signal that we would be working with the Federal Government to determine how their recently announced initiative to top up wages for essential healthcare workers can be used in Ontario to support our long-term care staff.

JOHN CALLAGHAN: So if I could just take you to a document -- I believe it's 15. My handwriting's not clear. So this is a slide deck. It's April 16th. So this would be about the time you went to Treasury Board, correct?

JANET HOPE: Yeah, I would just note that what you've got here, it's dated April 16th, but it says in red, New Appendices.

So this is the April 16th document, but this version also includes a couple of appendices that did not go to Treasury Board until later.

JOHN CALLAGHAN: Oh, I see. Okay. So we -- just take a quick look through it.

JANET HOPE: Yeah.

JOHN CALLAGHAN: At page 2, it says that it's proposing a temporary wage increase, and at that point, you're looking to announce a $2 per hour wage increase, and that was the initial idea, was it?

JANET HOPE: That was the initial proposal that we had worked up in the Ministry, yes.

JOHN CALLAGHAN: Right. And by this time, it says: (as read)

> "The Federal Government has committed to reimburse provinces for two-thirds of the cost of the wage increase for employees making less than $2,500 a month."

So that -- the idea was this -- that the workers who are going to get this are likely going to make less than $2,500 a month?

JANET HOPE: At that point in time. At this point in time, the discussions with the Federal Government had not been concluded, if I'm recalling correctly.

JOHN CALLAGHAN: And if you can just go over to the next page.

And at this point, it says: (as read)

"The current COVID pandemic is having a major impact on long-term care homes and has led to critical staffing pressures in a sector that was -- already experienced staff shortages particularly among nurses and PSWs.

ULTCA and long-term care homes are reporting a significant reduction in staff with the highest needs being PSW and registered nurses."

Now, I take it the idea of the pandemic pay was to stabilize the workforce?

JANET HOPE: Yes, and encourage additional people to come into the workforce, yes.

JOHN CALLAGHAN: Right. And then if you can go over to page 7, you are working out the economics here of a wage increase of $2 an hour, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: And at this time, I

take it grocery chains had given a pandemic increase of about that range?

JANET HOPE: Roughly, yes.

JOHN CALLAGHAN: Yeah. Okay. And if you go to page 15, you're now costing out a wage increase of $4 an hour.

JANET HOPE: So that -- this would be the Appendix that did not go forward on April 16th. It was -- it went forward at a later date on the 24th.

JOHN CALLAGHAN: Right.

Could you go further on, please, Patty, page 15. There we go. Next. There you go. Right there. Okay.

So, yeah, and so you're working it out, and for 16 weeks, the estimated cost, $228 million to increase a wage $4 an hour.

JANET HOPE: Correct.

JOHN CALLAGHAN: And then you had another idea, and it's the lump sum. Can you explain that, which is Exhibit -- Appendix C, if you could?

JANET HOPE: So this feature was that staff who worked a minimum number of hours within a designated period of time would be eligible for an

additional lump-sum bonus.

JOHN CALLAGHAN: If we could go to document 25. This, I'm not exactly sure what this is. This says, a funding package.

JANET HOPE: Right. Would you like me to explain that?

JOHN CALLAGHAN: Yes, please, would you?

JANET HOPE: Yes. So following Cabinet approval of a program and the authorization to initiate a program and the funding for it, we then do the detailed program design and to get -- actually get the money out the door with the appropriate transfer payment agreement with the recipient of the program.

So in the context of the Ministry of Long-Term Care, we call a funding package that documentation, which once we've done all of that program design work, documents what the program is that we're about to put out the door, what approvals and authorities we have for it. And it's the -- it is the package that is, then, approved up to the level of the Minister so that we can release the program details to the sector and effectively enter into transfer payment agreements.

JOHN CALLAGHAN: And this was for a 16-week period from April 24th to August 13, 2020, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: If we go down, and you did $4 an hour, and you did the thousand dollars lump sum we just looked at, correct?

JANET HOPE: Correct.

JOHN CALLAGHAN: And then, source of funding, in the end of the day, am I to read this -- it says: (as read)

"Up to 90 million for funding will come from the emergency response fund. The remaining 231 million will be covered through Federal funding."

Am I to read that to say that the Province only paid 90 million, whereas the Feds paid 230 million of this program?

JANET HOPE: So I will separate out two concepts. One is the accounting that the Province does with the Federal Government under a Federal-Provincial arrangement. And that accounting is that over the totality of the program, which was not just long-term care; it was

the various sectors that had a pandemic pay program. Over the totality of that program, the Federal Government would meet two-thirds of the cost provided that program met their other eligibility criteria.

So for the Province as a whole, the Province received two-thirds of the funding and had to come up with the other third from internally.

What this deals with specifically is just our authority and our, where can we draw on the funds because we have to flow a hundred percent of what's needed. So this is saying that we have an existing vote-in item which has $90 million that we can draw on and that we need Treasury Board to give us the remaining cash, and that we understand that will be covered through Federal funding, but it is not essential at a Ministry level to designate which dollars were Provincial and which dollars were Federal.

JOHN CALLAGHAN: Okay. That's helpful. And I just take you to document 34, and I do this to show that -- I take it -- and I'll read a little bit here so it's clear that --

And if we can go to page 13 of 14, Patty --

-- that the program was at least perceived to be a success. Now, this is regional results of your review of the homes, and I'm just going to read this so that the Commissioners get a sense of what the view was about the program: (as read)

"The homes level of preparedness and sustainability of operations was noted to be directly related to funding resources and at great risk if funding is not secured/maintained.

This funding is a combination of a continuation of 100% of operational funding regardless of bed loss occupancy as well as pandemic pay and other funding mechanisms to support homes, increased expenses, and need to create bench strength related to staffing and resident care needs.

Many homes noted the impact of the cessation of the pandemic pay and the return to staff absenteeism rates similar to those experienced

pre-COVID.

Anecdotally, the homes are reporting correlation between the pandemic pay and maintaining staff ratios and stability.

With chronic historical shortage of PSW resources across the system, this was not a surprising finding from the assessments.

Homes in the sector as a whole continue to be challenged by the lack of PSW resources available that has only been exaggerated by Wave 1 experiences and the further loss of PSWs from the system.

Pandemic pay noted above, at least anecdotally, contributed to a more stable workforce. While it is not surprising to see PSW shortages and pressures, the frequency with which homes reported challenges in recruiting registered staff, both RN and RPN, was also noted.

This challenge was more apparent in the northern part of central

region but was indicated across the entire region."

So I take it, from your perspective, the pandemic pay -- at least this suggests, and I'd ask what your own experience -- it actually worked?

JANET HOPE: Yes, I think the general consensus is that it was an effective tool to stabilize staffing during Wave 1.

JOHN CALLAGHAN: Right. And you -- you then -- this expired in August, so what happened after that?

JANET HOPE: Correct. The funding arrangement with the Federal Government and the terms of the program were for the 16-week period. The program ended. And until October 1st, there was no Provincial initiative to supplement any wages in long-term care.

JOHN CALLAGHAN: And what happened in October?

JANET HOPE: The personal support worker temporary wage enhancement of $3 an hour was implemented for long-term care and some other sectors in the healthcare system.

JOHN CALLAGHAN: Now, there was a news article on the weekend that while the Government

had flowed money to the long-term care homes, some homes had not paid out their staff. Can you -- and I've asked, and there's a letter. This is the article. It's on the screen now. I'd asked for the letter that's referred to that the Minister wrote. I'm sure I'll get it in time.

But could you just explain that to the Commissioners and what the Ministry is doing to ensure these employees get their money from October 1st?

JANET HOPE: Sure. So the announcement was made on October 1st. Similar to what I described with pandemic pay, there's a process between the time of announcement until we get the funding -- the program details confirmed and the funding package approved and out the door.

So in this case, it was November 30th that the Province provided long-term care homes with the specific details. And shortly thereafter, the funds flowed to homes. We -- the first installment of funds was on December 10th.

The transfer payment agreement for these funds has had two main reporting periods: One, I believe is -- I'm sorry. I'm not going to get the date right -- whether it's early February

and then one at the end of the program.

However, we had heard concerns from members of Cabinet in late December that there was concern -- they were hearing from personal support workers in long-term care who were asking when they would get paid. We didn't, at that point, have specific information on which homes had paid and which homes had not yet initiated the payments to staff.

Recognize that once the home receives the details and the payment, it might -- pay periods vary, and there might be some variation in time where employees receive their pay.

However, in response to these concerns that that were PSWs who were saying they hadn't received their pay, we had a memo from the Deputy go on December 21st to homes articulating our expectation that homes would pay eligible personal support workers as soon as possible.

And we also indicated that we would start collecting weekly data. We had a -- had initiated, at some point during the fall, a data collection tool for some key data on bed occupancy, and so we used that tool to collect from homes what percentage of homes had begun paying their eligible

employees. And we've been collecting that data weekly since that time.

Most recently, the data is -- sorry -- I'm just going to reference my notes here so that I get the amount correct. The most recent date of collection was on January 13th. There were some problems with that data collection, the data collection instrument on that date, but roughly 29% of homes that reported had not yet begun paying their personal support workers.

JOHN CALLAGHAN: And given the importance that pandemic pay meant to keeping employees at work, are you taking steps to get those 29% in line to pay the employees?

JANET HOPE: Yes. Sorry. Part of the step is, you know, the -- collecting the data, and we've also asked them to indicate the date by which payment will start. Unfortunately, we don't have the data from the that field yet.

I made calls to some of the chain homes that were not reporting on -- I think it was following the January 6th data report, and we understand from the article that the Minister wrote as well to some homes.

JOHN CALLAGHAN: And what was the

response you got from the chain homes?

JANET HOPE: They gave me the dates by which they were going to start payment. They -- in one case, they explained -- they detailed some of the challenges with their antiquated payroll system that led them to have to do manual calculations. They went through their explanation of what their situation was and gave the dates that they were expecting to start payment, personal support workers in each case. I don't have the dates in my --

JOHN CALLAGHAN: That's fine.

U/T JANET HOPE: -- in my memory, but in each case, they were in a matter of one or two further weeks.

JOHN CALLAGHAN: All right. Maybe we can follow up later in our process to see how that is. Did you need to go back to the slide deck? Because I was going to do sick pay if there was nothing more.

JANET HOPE: Yeah. May I just ask -- I look at the time. I'm sorry. I -- are we in a position that -- sorry. I had made a commitment for 1 o'clock that is with -- I just need to make arrangements if I'm not going to be able to keep

that commitment.

JOHN CALLAGHAN: Well, I --

JANET HOPE: Because we were booked 'til 12:30.

COMMISSIONER FRANK MARROCCO (CHAIR): That's right.

JANET HOPE: Actually, I'm sorry. I'm sorry. Let me just -- may I just check? It might -- it might be 1:30. I might be fine. No, it is 1 o'clock.

So I just need to make arrangements if I can't keep that commitment.

JOHN CALLAGHAN: Well, I would think I'd have about 20 minutes, so you might be late.

JANET HOPE: Okay. Kelci, I assume you're still on the line. Could you please start the 1 o'clock meeting on my behalf? I assume you're still there, Kelci, and can do that?

COMMISSIONER FRANK MARROCCO (CHAIR): Do you want to take a minute and see to that? We can stand down for a minute or so.

JANET HOPE: If you wouldn't mind. Thank you.

COMMISSIONER FRANK MARROCCO (CHAIR): Sure. We'll just break for five minutes.

JANET HOPE: Thank you very much.

(BREAK)

COMMISSIONER FRANK MARROCCO (CHAIR): Well, I think we're ready to go. No, Mr. Pollard is not here yet.

JANET HOPE: I think we're ready to go on our side.

COMMISSIONER FRANK MARROCCO (CHAIR): Oh, okay. Good.

Go ahead, John.

JANET HOPE: If Sunil is --

SUNIL MATHAI: I'm ready. I'm just waiting to -- I just wanted to see if Mr. Pollard --

JANET HOPE: Yes, I see Brian.

SUNIL MATHAI: Brian's there. Okay. Yes. And Melissa's there as well. Okay.

JOHN CALLAGHAN: So just before I start, Ms. Hope, I just want to make sure there's nothing else you wanted to say about either pandemic pay or single site, just --

JANET HOPE: The -- I think we skipped over one of the slides on pandemic pay which just gives some of the issues that were being worked out. I'm not sure if this is critical. We

obviously -- until we got to the point of approval, we were working out the conclusion of the Federal negotiations, the additional sectors and workers that would be included because the program did extend beyond long-term care.

The final defining parameters which you've referenced in your questioning that we ended up on a $4 per hour with the additional lump-sum payment, and also needed to have an emergency order to override legislation which would otherwise have restricted certain wage increases in not-for-profit homes. And we received Cabinet approval on the 24th.

So that was just the additional information there, and I think we've covered the information on the next slide on the subsequent -- the temporary wage enhancement for personal support workers, so --

JOHN CALLAGHAN: And just --

JANET HOPE: -- I'm in your hands.

JOHN CALLAGHAN: Just so it's clear, I think you said it wasn't until sort of April 3rd, thereabouts, that the concept of pandemic pay was in discussion. It wasn't in March --

JANET HOPE: It was April 2nd that we

started the policy, roughly April 2nd that we started the policy work on pandemic pay. Yes.

JOHN CALLAGHAN: Okay. I wanted to speak a little bit about sick pay. If we could just -- and I'm going to show you some documents that set out the discussion. So if I could show you document 35. Okay.

So this is a letter to the Premier and the Minister of Health of February 4th, 2020, and it's actually signed by -- I think it's 134 or 174 doctors. And it says, if you can go down, it says -- and they're -- and they're raising the spectre that the coronavirus which has now been identified will cause havoc. And they says -- and it says: (as read)

> "Under current legislation, many workers in Ontario cannot follow their health providers' recommendations to stay at home and rest because it means foregoing their wages. This includes workers in high-risk settings such as those with food preparation duties, especially the handling of ready-to-eat foods, working in acute

care or long-term care facilities, and working with children in care.

The medical literature consistently states that employees with no sick leave are more likely to go to work and expose others to infection.

Additionally, research shows that workers have no choice but to send their children to school sick because they cannot afford to take unpaid time off or afford child care. A lack of paid sick days results in children and adults transmitting infections at school and work exasperating contagions throughout the Province."

And then it goes down the next down -- two -- the next paragraph down or the one beyond that: (as read)

"Evidence shows that paid sick days are a vital measure to decrease the spread of illness and ensure proper recovery.

In the context of recent concerns

with the novel coronavirus [indecipherable], we consider the current Provincial labour laws to be a serious threat to the health and safety of [indecipherable]. "

So was there a discussion in long-term care, and recognize this isn't addressed to your Ministry, but was there discussion at that time in early February about the value of sick pay?

JANET HOPE: I was not involved in any such discussions.

JOHN CALLAGHAN: If you can just go to document 36. Now, this is advice from Public Health Ontario. It's dated March 9th, 2020. If we can go to the next page, it says -- next page one up, too many. Back. Back. Yes, there you go. That there -- and that second paragraph: (as read)

"It is important to note, however, that some influenza-based assumptions do not apply to COVID-19. For example, children do not currently appear to be at increased risk of severe disease from the novel virus, and their role in transmission is unknown which may

have implications for some public health measure.

Additionally, evidence on the relative role of asymptomatic and pre-symptomatic infectiousness and its contributions to transmission is still emerging but puts the onus on all members of society well and sick to be contributing to community Public Health measures."

So I take it -- I know the Government was applying the precautionary principle, so at this time, there was obviously concern about asymptomatic and presymptomatic spread. Were you aware of that around March 9th?

JANET HOPE: So I wasn't involved in discussions around the coronavirus at this period of time.

JOHN CALLAGHAN: I don't know if Mr. Pollard has a better answer, or he was involved? He seems to know?

Mr. Pollard? I think we may have lost him.

If we can go to page 10. It says -- sorry, back one page. There you go. Right there.

Okay. Second bullet from the bottom there above evidence. Up. Up. Sorry, the other way. It says -- this is -- it says: (as read)

"Workplace and Higher Education: Options include prepare for increased absenteeism and business and academic continuity."

And then if you go to page 11, it says: (as read)

"A review of studies on workers who attended work with infectious illness found that the prevalence of working while ill ranged from 35% to 97%. In several studies, workers reported that not having paid sick leave or no more available sick leave was a reason for working while ill."

Do you know whether it was known to the Ministry of Long-Term Care that the prevalence of people going to work while ill or alternatively asymptomatic was going to be significant during coronavirus as of March 9th?

JANET HOPE: I was not aware of this document. I can't speak to what was being

discussed at that point.

JOHN CALLAGHAN: All right. So if we can go to document 37. Now, this is a May document, so you -- were you around in May? You were.

JANET HOPE: Yes. It's -- and it wasn't that I wasn't around in March. It's what I was working on.

JOHN CALLAGHAN: And this says: Mask use for nonhealthcare workers. But inside, at the second page, it talks about hierarchy of controls. And it says: (as read)

> "A comprehensive strategy to reduce the risk of COVID-19 transmission in the workplace would include as many controls as possible."

And it says: (as read)

> "Administrative, optimising the movement of workers to minimize potential contact with the hazard, scheduling staggered shifts, breaks, and meals, workstation spacing, work-from-home policies, limited hours, staff reduction, virtual

meetings, paid sick leave, temperature screening, symptom screening."

So by May, was there a discussion about the administrative control of sick leave, paid sick leave?

JANET HOPE: I was -- I'm not aware of any such discussions in May.

JOHN CALLAGHAN: All right. Now, if we could just take you to document 39. Now, this is -- this is an email that goes to long-term care, and it's about -- it's from a home that's in outbreak.

And if you go down -- there, if you can go back a little bit, Patty, next page back, please. There you go. Stop there. After the quote of April 15th, if you can just go up a little bit.

And it says: Mon Sheong, which is the home -- (as read)

"-- is currently operated only 20% of staff capacity due to mounting numbers of staff members testing positive, falling ill, requiring self-isolation, or

quitting.

The remaining nurses and frontline workers are tirelessly working 12 shifts -- 12-hour shifts to provide 24-hour care.

Residents are locked in their rooms. Families do not know if their loved ones are being fed, hydrated, or toileted."

And this is April 30th. And if you go over the next page, the administrator writes: (as read)

"Our immediate demands include stronger worker protection and paid sick leave for frontline long-term care workers including PSWs, cleaning staff, and nurses. We demand that all frontline staff including part-time staff and contract workers be provided with a minimum 14 days of paid sick leave."

Now, would this -- did this come to your attention, this email?

JANET HOPE: No.

JOHN CALLAGHAN: Do you know what

happened to it in the Ministry of Long-Term Care?

JANET HOPE: I didn't see this email until yesterday with the document production. I'm not sure who -- to whom it was addressed, but I don't believe I've seen it.

JOHN CALLAGHAN: Okay. Because it also discusses PPE, et cetera, so you don't know what happened to this --

JANET HOPE: I think, if I recall correctly, that the incoming email was addressed to Stacey Colameco.

JOHN CALLAGHAN: Who is she?

JANET HOPE: Stacey was the director of the inspections branch at that point in time.

BRIAN POLLARD: Okay.

JANET HOPE: She didn't report to me.

BRIAN POLLARD: So I can talk to that, John -- Mr. Callaghan, if you want. So any of these -- we would have look at this as a -- as a complaint letter, and it would have gone into our complaints area. And I think at the top of the email, I capture that Lorene Ross that responded to this or gave direction on how to handle it, and she would have been our manager of complaints and critical incidents.

JOHN CALLAGHAN: But did anyone action the request to look at sick pay?

BRIAN POLLARD: Not that I'm aware of.

JOHN CALLAGHAN: If we can go to document 38. Now, this is to the Minister of Health. It's on the home-care front. And again, this, at the second page in, it says: Government's -- and there's this concern about workers at home care, which was an issue, I take it, that your office didn't deal with, but they're PSWs as well, generally, on the home care side?

JANET HOPE: PSWs and other types of staff, yes.

JOHN CALLAGHAN: And they're saying: (as read)

> "The Government's key objectives must be to increase compensation to all home care workers regardless of where home care is delivered; provide funding for service, provides organizations, home-care employees to pay sick leave benefits leave related to COVID-19; provide funding to replace worker income for lost hours during

COVID; and provide PPE."

So I take it -- I take it you were not aware what happened to the -- to this request to have money for sick leave benefits?

JANET HOPE: No. As you know, it was a letter to Minister Elliot about home and community care, so it presumably would have been forwarded to that part of the Ministry of Health.

JOHN CALLAGHAN: Now, if you go to document 40, this is one of those slido things that we talked about. I think -- some -- one of you presented on it. Somebody presented on it here. And if we can down to the third page, these are questions that were unanswered. You'll see -- if you can go back there, you'll see -- if you go back, 16, you'll see -- remember, this is -- and I -- this was very confusing for us who aren't in the public service. But in slido, people are -- they vote questions that are going to be discussed at the meeting. And some are voted to be discussed, and some aren't, correct? And that's -- isn't that how that works?

JANET HOPE: Correct.

JOHN CALLAGHAN: All right. Now, if you go down to page 3, it says on number 27,

someone asks the question: (as read)

"What is the plan to ensure all workers have enough paid sick days to isolate if needed?"

And that's the Alliance of -- for Healthier Communities. It got one vote. It didn't get discussed. Did anyone -- do you know whether anybody would have followed up with the Alliance for Healthier Communities?

JANET HOPE: I don't know. No. I didn't -- I wasn't involved in managing this table.

JOHN CALLAGHAN: All right.

COMMISSIONER FRANK MARROCCO (CHAIR): Was there some indication that the Government, at a high level, was just simply not interested in paid sick leave?

JANET HOPE: I certainly can't speak to that. I would just say, to my best recollection of the period through Wave 1, I do not recall an active -- any kind of active conversation about sick leave as an issue that we needed to address.

And I don't know, Brian, from the operation side, whether you were hearing about it?

BRIAN POLLARD: No.

COMMISSIONER FRANK MARROCCO (CHAIR):

So it was never indicated -- you never got the impression that there's no point in really going into this because the Government has no intention of doing it?

JANET HOPE: No. As I said, I really -- I wasn't -- I don't recall hearing anything about sick leave. We were -- you know, we were talking about staff in homes; we were talking about PPE. We were talking about testing, you know, all of the -- visitors, all of those issues. I do not recall conversation about sick leave.

JOHN CALLAGHAN: So if we can go to document 45. Now, this slide deck deals with pandemic premium pay, but I'd like to go to page 12. And now, when we get there, you'll see that the title -- page 12, please. I think it's further on. Oh, they're all numbered page 12. That's unfortunate. Keep going. It's towards the back. Somehow, they've all been -- next -- go ahead -- anticipate -- it should say anticipated impacts. Next slide. It must be the next slide. There you go.

All right. So this is anticipated impacts, and I'm just interested that UNIFOR, which one -- is one of the bigger unions says -- has

taken the same position as CLAC: (as read)

"In addition, the previous requests for paid sick leaves of up to 14 days and expanded access to PPE."

So were the unions like UNIFOR asking for sick leave; do you know?

JANET HOPE: I don't know. I wasn't involved in direct conversations with the unions. And I think this is a Ministry of Health deck. I --

JOHN CALLAGHAN: Right. And you may not know. I mean, we --

JANET HOPE: Yeah.

JOHN CALLAGHAN: And this one, you may not know, but I just would ask -- this is slide 42. And we can ask the Minister when she comes and the Deputy Minister.

And this slide deck deals with -- if you go -- it's specific that: (as read)

"The Ministry was seeking approval to implement specific temporary changes to physician compensation mechanism to maximize the capacity of physician supply and

to enable the flexibility to redeploy physicians."

And then if we look at the page, I'm actually -- sorry, I am at page 7, and there were go. Sorry, this is -- well, that's -- this is -- this is an odd deck. It must have two page 7s. If you could go -- there we go. Keep going. It's titled HHR Strategy, Need For Additional Actions. Would that have been it? I don't know. I think it's further back Patty, please.

My apologies. It's just -- I think we the -- some of these slide decks have the two -- two of the same pages on them. All right. If we can go -- keep going. I'm wondering if you're on the right document. What did I say? Is it 42 or 45? Apologies.

PATTY BROOKS: This is 45.

JOHN CALLAGHAN: Maybe we should try 4 -- let me just go back to my original set, please. It's very -- good thing I'm not running a war. Yeah, it's slide 42. Okay.

So it says: (as read)

"Work is also underway to develop solutions and proposed action to address other potential

barriers to further enable the HHR's strategy including working with Treasury Board secretary to determine the viability of providing sick pay and benefits, options, or equivalent funding, to part-time healthcare providers who want to take on additional work."

Was there some discussion, as far as you're aware, in the Government to provide sort of a sick pay benefit to doctors but not to --

JANET HOPE: I'm not aware. I have not been involved in any conversations around physician issues.

JOHN CALLAGHAN: And then we know that at some point, the Federal Government suggests that there be sick pay, and if I could go to document 47. And this is a joint statement by the Premiers of British Columbia, Manitoba, and the Yukon. And it says: (as read)

"We're pleased that the Federal Government is looking at a sick-leave program that protects people in business, and we look forward to advancing this

initiative. Paid sick leave is crucial for the safe restart of our economy."

Okay? So you were aware that the Prime Minister had proposed to provide to the provinces -- provide available sick leave across the country?

JANET HOPE: To be honest, I don't have a recollection of this.

JOHN CALLAGHAN: And --

COMMISSIONER FRANK MARROCCO (CHAIR): It does seem -- it does seem odd, though, so many different entities are discussing this, unions, premiers, but there's no discussion of it in Ontario that came to your attention.

JANET HOPE: There's none that came to my attention, correct. Generally, in general, issues around sick leave and entitlement to sick leave are issues that the Ministry of Labour would typically deal with.

JOHN CALLAGHAN: So then there's some speaking notes, document 50. And this is the Council of Federation call, but I just want to -- it is a timeline of events. And it says May 13th -- if we go down a little bit, Patty, there

you go: Timeline of events, there you go. Oh, back a little bit. Back a little bit, please. No. Sorry. It says -- should be timeline of events. There you go. Go down a little bit.

It says: (as read)

"May 13th, letter sent to PM Trudeau from 21 business organizations including Retail Council of Canada and Ontario Chamber of Commerce with a request for the Federal Government to initiate discussions with provincial governments to extend COVID-19 sick pay coverage under the EI program and/or CERB."

So I take it there was -- were you aware -- you weren't aware, then, that this discussion was going on?

JANET HOPE: No. This was not something I was involved in or would have been aware of.

JOHN CALLAGHAN: And then if we go to document 51, and were you aware that the Federal Government was proposing a package of about $14 billion for the Province of Ontario?

JANET HOPE: Yeah, I had some general awareness of the safe restart program, and we would have provided input into that with respect to our costs in long-term care responding to COVID.

JOHN CALLAGHAN: All right. So this comment says the -- if we look: (as read)

"The 14 billion the Federal Government has offered is simply inadequate and is not enough to address the needs we have identified. We estimate that our costs in these areas could reach 23 billion in Ontario, well upwards of 15 billion nationally. This is not an exaggeration.

And in Ontario, this includes --"

And it goes through a number of items including, interestingly, one and a half billion to meet PPE demands. Was that your -- was that the estimate as far as you were aware?

JANET HOPE: I wouldn't be the right person --

JOHN CALLAGHAN: Okay.

JANET HOPE: -- to respond to that.

JOHN CALLAGHAN: And then it says: (as

read)

"A restart framework built around a set of categories works so long as not every category requires Provincial buy-in. Categories are universal, but not all will be applicable in every jurisdiction. For example, Ontario was not contemplating a provincial paid sick leave program for Ontario and is not a priority for our Government. We'd rather see the 1.1 billion be used towards the health system capacity."

See that?

JANET HOPE: Yes, I see it.

JOHN CALLAGHAN: All right. And so as far as you're aware, there's never been a public statement or position by the Province of Ontario that the Province would have paid sick leave?

JANET HOPE: I am not aware of public statements about sick leave by this Government, no.

JOHN CALLAGHAN: Okay. Thank you. Those are my questions, Commissioners.

COMMISSIONER FRANK MARROCCO (CHAIR): Well, I don't think we have any further questions.

Ms. Hope, thanks -- and both of you, thank you. Melissa, you too, thank you very much for your time and for the effort.

And, Mr. Pollard, thank you for the presentation. And it will -- it will require some thought on our part, and your contribution to that is very much appreciated. Thank you.

SUNIL MATHAI: Thank you very much, everyone.

JANET HOPE: You're very welcome.

COMMISSIONER FRANK MARROCCO (CHAIR): And sorry that we kept you longer than we promised.

JANET HOPE: It's quite all right. Thank you very much. Have a good day.

MELISSA HELFERTY: Thank you.

COMMISSIONER ANGELA COKE: Thank you.

-- Adjourned at 1:23 p.m.

REPORTER'S CERTIFICATE

I, JANET BELMA, CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth;

That all remarks made at the time were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 19th day of January, 2021.

_____

NEESONS, A VERITEXT COMPANY
PER: JANET BELMA, CSR
CHARTERED SHORTHAND REPORTER

WORD INDEX