

Long Term Care Covid-19 Commission Mtg.

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



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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

1 PRESENTERS:

2

3 Janet Hope, ADM MLTC Policy Division

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5 Melissa Helferty, Manager, Infectious Diseases

6 Policy & Programs Office of the Chief Medical

7 Officer of Health

8

9 Brian Pollard, ADM MLTC Capital Development

10 Division

11

12 John Callaghan, Co-Lead Commission Counsel Gowling

13 WLG

14

15 PARTICIPANTS:

16

17 Alison Drummond, Assistant Deputy Minister

18 Long-Term Care Commission Secretariat

19

20 Kate McGrann, Co-Lead Commission Counsel Long-Term

21 Care Commission Secretariat

22

23 Derek Lett, Policy Director Long-Term Care

24 Commission Secretariat

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Michael Robertson Director, Long-term Care Response

1 Branch MLTC Policy Division

2

3 Kelci Gershon Director, Long-term Care Policy &

4 Modernization Branch MLTC Policy Division

5

6 Kristin Smith, Counsel MOH/MLTC

7

8 Sunil Mathai, Counsel MAG

9

10 Stephanie Figliomeni, Counsel MOH/MLTC

11

12 ALSO PRESENT:

13

14 Janet Belma, Stenographer/Transcriptionist

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

2 COMMISSIONER FRANK MARROCCO (CHAIR):

3 So now let's get on with why we're here.

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

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

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

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

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

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

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

10 MICHAEL ROBERTSON: Good morning.

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

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

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

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

25 COMMISSIONER FRANK MARROCCO (CHAIR):

1 We -- I can.

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

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

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

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

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

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

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

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

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

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

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

21 MELISSA HELFERTY: Correct.

22 JOHN CALLAGHAN: Right.

23 MELISSA HELFERTY: Yes.

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

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

4 MELISSA HELFERTY: I have heard that.

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

8 MELISSA HELFERTY: I have heard that,
9 yes.

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

15 MELISSA HELFERTY: Yes, I am aware of
16 that.

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

21 MELISSA HELFERTY: Prior to pandemic?

22 JOHN CALLAGHAN: Right, prior to.

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

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

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

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

13 MELISSA HELFERTY: Not to my knowledge,
14 no.

15 JOHN CALLAGHAN: Go ahead. Continue.

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

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

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

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

3 MELISSA HELFERTY: Correct.

4 COMMISSIONER FRANK MARROCCO (CHAIR):

5 So what applies to them is the portion of this that
6 deals with unimmunized staff, and it seems to me
7 they can work at other facilities unless they have
8 a fever or other symptoms.

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

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

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

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

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

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

22 MELISSA HELFERTY: They could --

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

25 MELISSA HELFERTY: They could go to

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

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

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

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

15 MELISSA HELFERTY: So, again --

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

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

1 some of our guidance document pre-pandemic.

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

8 MELISSA HELFERTY: For influenza
9 outbreaks, yes.

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

16 MELISSA HELFERTY: I --

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

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

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

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

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

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

15 COMMISSIONER FRANK MARROCCO (CHAIR):
16 Okay.

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

21 MELISSA HELFERTY: Yeah, we went to --

22 JOHN CALLAGHAN: You --

23 MELISSA HELFERTY: -- our existing
24 resources.

25 JOHN CALLAGHAN: Right. And even

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

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

7 JOHN CALLAGHAN: Right.

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

13 JOHN CALLAGHAN: Okay. Thank you.

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

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

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

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

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

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

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

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

7 JANET HOPE: I'm not aware of one.
8 Brian, are you?

9 BRIAN POLLARD: No, I'm not either.

10 JOHN CALLAGHAN: Okay. Thank you.

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

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

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

3 The initial emergency order on work
4 deployment which enabled movement of redeployment
5 of staff. In the economic statement on the March
6 25th, there was a signal of further emergency
7 prevention and containment funding to come, and
8 then an emergency order on streamlining
9 requirements.

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

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

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

25 BRIAN POLLARD: Yeah. Hi. It's Brian

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

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

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

16 BRIAN POLLARD: Yeah.

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

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

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

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

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

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

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

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

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

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

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

13 COMMISSIONER FRANK MARROCCO (CHAIR):
14 Okay.

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

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

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

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

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

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

20 COMMISSIONER FRANK MARROCCO (CHAIR):
21 Connecting by telephone?

22 BRIAN POLLARD: That's right, yeah.

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

1 single-site issue.

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

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

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

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

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

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

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

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

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

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

4 COMMISSIONER FRANK MARROCCO (CHAIR):

5 Can I ask you -- can I ask you, Janet, one of the
6 issues -- according to this slide, one of the
7 issues that was considered was the impact of the
8 restriction on staff -- existing staff shortages.

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

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

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

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

1 site?

2 COMMISSIONER FRANK MARROCCO (CHAIR):

3 And thank you for that. I think that's -- that
4 describes the problem. If at the same time the
5 ability of family members to get access to the
6 long-term care facilities was restricted --

7 JANET HOPE: Yes.

8 COMMISSIONER FRANK MARROCCO (CHAIR):

9 -- which would to the extent that those family
10 members were caring for their family members in
11 the -- in the long-term care home, that would also
12 further exacerbate the problem of staff shortages,
13 right?

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

16 COMMISSIONER FRANK MARROCCO (CHAIR):

17 Well, we've certainly heard --

18 JANET HOPE: Yes. M-hm.

19 COMMISSIONER FRANK MARROCCO (CHAIR):

20 -- from a lot of family members that they went
21 there, and they tried -- they would bring food and
22 help clean up, you know, their relatives who
23 couldn't -- who couldn't --

24 JANET HOPE: Yes.

25 COMMISSIONER FRANK MARROCCO (CHAIR):

1 -- look after themselves.

2 JANET HOPE: Indeed.

3 COMMISSIONER FRANK MARROCCO (CHAIR):

4 So then those two -- was there any consideration to
5 what the counter -- how the staff shortage would be
6 addressed? Well, this exacerbates it.

7 JANET HOPE: Yes.

8 COMMISSIONER FRANK MARROCCO (CHAIR):

9 But was there any consideration to how you can
10 address it?

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

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

1 in the home.

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

12 COMMISSIONER FRANK MARROCCO (CHAIR):

13 Thank you.

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

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

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

1 what the sequence is.

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

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

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

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

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

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

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

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

7 MELISSA HELFERTY: No, I was not.

8 JOHN CALLAGHAN: So how does this -- do
9 you know, then, how this letter goes from a letter,
10 then, to Directive 3, which the words are Directive
11 3 is document 3, on the 22nd?

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

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

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

23 So this is the language, though:

24 "Wherever possible, employers
25 should work with employees to limit

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

5 Do you see that?

6 MELISSA HELFERTY: M-hm.

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

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

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

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

1 specific employees.

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

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

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

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

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

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

25 JOHN CALLAGHAN: So at the time -- at

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 COMMISSIONER FRANK MARROCCO (CHAIR):
16 All right.

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

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

3 COMMISSIONER FRANK MARROCCO (CHAIR):

4 Okay.

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

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

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

17 MELISSA HELFERTY: That's correct.

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

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

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

25 "This home is owned by the City

1 of Toronto. Index case was a PSW
2 who had mild illness while working.
3 PSW who cared for the first resident
4 case, onset of PSW illness March
5 16th cough and sore throat, March
6 17th fever. Worked March 16th and
7 17 at Seven Oaks; outbreak confined
8 to 3rd floor."

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

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

22 And it goes: (as read)

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

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

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

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

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

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

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

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

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

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

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

25 MELISSA HELFERTY: Yes, and the extent

1 of this outbreak.

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

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

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

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

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

18 MELISSA HELFERTY: Thank you.

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

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

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

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

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

14 COMMISSIONER FRANK MARROCCO (CHAIR):
15 Okay.

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

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

25 JANET HOPE: I can just add that it is

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

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

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

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

22 JANET HOPE: Correct.

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

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

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

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

12 So (3) says: (as read)

13 "Without limiting the
14 generality of Section 2 of the
15 schedule and despite any other
16 statute, regulation, order, policy,
17 arrangement, or agreement, including
18 a collective agreement, health
19 service providers shall and are
20 authorized to do the following:
21 Identify staffing priorities and
22 develop, modify, and implement
23 redeployed plans including the
24 following: Redeploying staff within
25 different locations in or between

1 facilities of the health service
2 provider.

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

5 JANET HOPE: I think this is a Brian
6 question.

7 BRIAN POLLARD: Yes, I do see it.

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

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

19 BRIAN POLLARD: Yes.

20 JANET HOPE: Yes.

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

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

4 And it says there: (as read)

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

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

16 "If approved, the order would
17 allow long-term care operators to
18 identify staffing priorities and
19 develop, modify, and implement
20 redemption plans current
21 collective agreements restricted --
22 current collective agreements,
23 restrict the reassignment of staff
24 in long-term care homes. This order
25 would allow long-term care operators

1 to implement redeployment plans
2 without complying with provisions of
3 a collective agreement including
4 layoffs, seniority service, or
5 bumping provisions. The emergency
6 order if approved would complement
7 other actions taken by the
8 Government to support long-term care
9 operators and adapting their
10 operations to focus on maintaining
11 the safety of long-term care
12 residents during the COVID pandemic
13 including restricting visitors and
14 regulatory amendments to increase
15 staffing flexibility."

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

20 (As read)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 JANET HOPE: If -- if I can --

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

1 which comes first, et cetera.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 JOHN CALLAGHAN: Yes.

6 BRIAN POLLARD: No.

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

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

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

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

24 JANET HOPE: Right.

25 JOHN CALLAGHAN: -- March 30th.

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

3 JOHN CALLAGHAN: Yes.

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

12 JOHN CALLAGHAN: Correct.

13 JANET HOPE: -- an alternative.

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

18 "The strategic goal is to
19 further limit the potential spread
20 of infection to vulnerable seniors
21 by restricting the potential for
22 spread among different employment
23 settings."

24 And then overall considerations: (as
25 read)

1 "A number of staff in the
2 long-term care sector are part-time
3 often working in more than one
4 long-term care home, elsewhere in
5 the healthcare sector or in other
6 sectors secure full-time hours.
7 The -- this increases the risk that
8 a part-time employee of one
9 long-term care home may
10 inadvertently transmit the virus
11 among a number of other long-term
12 care homes.

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

18 Ensuring adequate staff to safely
19 care for long-term care patients is
20 currently a challenge in many
21 long-term care homes. By
22 restricting where staff can work,
23 the challenge may be exasperated."
24 And that's what you were talking to the
25 Chair about, correct, Ms. Hope, the exasperation of

1 the challenge?

2 JANET HOPE: Yes. Yes.

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

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

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

19 JANET HOPE: Correct.

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

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

1 Charter."

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

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

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

12 JANET HOPE: Correct.

13 JOHN CALLAGHAN: Okay. So then if you
14 could then go to the next document, document 7,
15 this is -- this is a -- you'll see it's dated March
16 30th. It's a document. If you can scroll back up,
17 you'll see it's an Ontario Health document. And if
18 you go to the -- this is the release of March 30th.
19 And if you go to the first -- second page there,
20 there we go, right there. If you go to the top of
21 that page. Thank you.

22 And it says: (as read)

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

1 minimum standard support healthcare
2 workers who work in more than one
3 organization. For purposes of this
4 document, the term healthcare
5 worker, HCWS, retains the hospital
6 employees, physicians, mid-wives,
7 researchers, trainees, volunteers,
8 and contract employees as well as
9 healthcare workers in other settings
10 such as home and community care,
11 long-term care, and retirement
12 home."

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

15 "HCWs are essential to health
16 and well-being of our society and
17 our ability to manage and deliver
18 services. HCWs are essential
19 service that is critical. The
20 successful management of the
21 pandemic. We're committed fully to
22 ensuring the safety and well-being
23 of all HCWs.

24 Many HCWs currently work in more
25 than one healthcare organization

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

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

10 If you could go over to the next.

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

13 JOHN CALLAGHAN: Sure.

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

16 JOHN CALLAGHAN: My apologies.

17 If we can go to recommendations: (as
18 read)

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

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

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

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

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

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

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

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

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

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

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

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

24 COMMISSIONER FRANK MARROCCO (CHAIR):
25 Understood.

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

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

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

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

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

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

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

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

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

1 COMMISSIONER ANGELA COKE: Okay.

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

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

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

17 COMMISSIONER JACK KITTS: Okay. Thank
18 you, Brian.

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

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

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

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

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

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

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

25 COMMISSIONER JACK KITTS: You're on

1 mute, Janet.

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

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

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

23 JOHN CALLAGHAN: Right.

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

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

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

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

22 JANET HOPE: Correct.

23 JOHN CALLAGHAN: All right.

24 JANET HOPE: Correct. That was our --

25 JOHN CALLAGHAN: Just to -- if we go

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

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

8 JANET HOPE: Yes.

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

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

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

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

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

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

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

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

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

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

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

1 authority and constitutionality.

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

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

11 (As read)

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

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

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

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

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

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

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

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

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

17 JANET HOPE: There was not.

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

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

25 JOHN CALLAGHAN: Right. So if we could

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

5 "MLTC is also seeking to make a
6 corresponding amendment to an
7 emergency order which was made on
8 March 23rd and extended on April
9 9th. The previous order provides
10 staffing flexibility for long-term
11 care operators including deployment
12 of staff across multiple long-term
13 care homes operated by a licensee.

14 The proposed amendment would
15 ensure alignment with the new
16 proposed order by clarifying that an
17 employee is not able to provide
18 services at more than one long-term
19 care home."

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

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

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

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

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

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

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

25 And then it goes on to refer to the

1 fact that they will get their job back.

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

8 JANET HOPE: Correct.

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

13 JANET HOPE: Correct.

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

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

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

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

3 That's a correct statement?

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

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

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

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

23 JANET HOPE: That's correct.

24 JOHN CALLAGHAN: Or a meat packing
25 plant?

1 JANET HOPE: Correct.

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

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

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

16 JANET HOPE: Correct. That was the
17 deadline.

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

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

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

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

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

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

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

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

25 COMMISSIONER FRANK MARROCCO (CHAIR):

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

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

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

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

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

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

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

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

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

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

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

1 decision making.

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

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

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

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

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

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

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

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

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

3 JANET HOPE: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 JANET HOPE: Correct.

25 JOHN CALLAGHAN: And at this time, I

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

3 JANET HOPE: Roughly, yes.

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

7 JANET HOPE: So that -- this would be
8 the Appendix that did not go forward on April 16th.
9 It was -- it went forward at a later date on the
10 24th.

11 JOHN CALLAGHAN: Right.

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

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

18 JANET HOPE: Correct.

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

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

1 additional lump-sum bonus.

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

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

7 JOHN CALLAGHAN: Yes, please, would
8 you?

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

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

1 JOHN CALLAGHAN: And this was for a
2 16-week period from April 24th to August 13, 2020,
3 correct?

4 JANET HOPE: Correct.

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

8 JANET HOPE: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pre-COVID.

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

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

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

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

24 This challenge was more apparent
25 in the northern part of central

1 region but was indicated across the
2 entire region."

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

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

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

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

18 JOHN CALLAGHAN: And what happened in
19 October?

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

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

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

7 But could you just explain that to the
8 Commissioners and what the Ministry is doing to
9 ensure these employees get their money from October
10 1st?

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

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

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

1 and then one at the end of the program.

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

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

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

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

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

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

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

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

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

25 JOHN CALLAGHAN: And what was the

1 response you got from the chain homes?

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

12 JOHN CALLAGHAN: That's fine.

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

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

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

1 that commitment.

2 JOHN CALLAGHAN: Well, I --

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

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

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

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

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

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

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

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

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

1 JANET HOPE: Thank you very much.

2 (BREAK)

3 COMMISSIONER FRANK MARROCCO (CHAIR):

4 Well, I think we're ready to go. No, Mr. Pollard
5 is not here yet.

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

8 COMMISSIONER FRANK MARROCCO (CHAIR):

9 Oh, okay. Good.

10 Go ahead, John.

11 JANET HOPE: If Sunil is --

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

15 JANET HOPE: Yes, I see Brian.

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

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

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

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

6 The final defining parameters which
7 you've referenced in your questioning that we ended
8 up on a \$4 per hour with the additional lump-sum
9 payment, and also needed to have an emergency order
10 to override legislation which would otherwise have
11 restricted certain wage increases in not-for-profit
12 homes. And we received Cabinet approval on the
13 24th.

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

19 JOHN CALLAGHAN: And just --

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

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

25 JANET HOPE: It was April 2nd that we

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

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

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

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

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

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

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

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

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

25 In the context of recent concerns

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

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

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

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

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

1 have implications for some public
2 health measure.

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

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

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

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

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

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

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

4 "Workplace and Higher
5 Education: Options include prepare
6 for increased absenteeism and
7 business and academic continuity."
8 And then if you go to page 11, it says:
9 (as read)

10 "A review of studies on workers
11 who attended work with infectious
12 illness found that the prevalence of
13 working while ill ranged from 35% to
14 97%. In several studies, workers
15 reported that not having paid sick
16 leave or no more available sick
17 leave was a reason for working while
18 ill."

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

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

1 discussed at that point.

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

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

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

13 "A comprehensive strategy to
14 reduce the risk of COVID-19
15 transmission in the workplace would
16 include as many controls as
17 possible."

18 And it says: (as read)

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

1 meetings, paid sick leave,
2 temperature screening, symptom
3 screening."

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

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

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

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

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

21 "-- is currently operated only
22 20% of staff capacity due to
23 mounting numbers of staff members
24 testing positive, falling ill,
25 requiring self-isolation, or

1 quitting.

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

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

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

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

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

24 JANET HOPE: No.

25 JOHN CALLAGHAN: Do you know what

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

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

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

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

12 JOHN CALLAGHAN: Who is she?

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

15 BRIAN POLLARD: Okay.

16 JANET HOPE: She didn't report to me.

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

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

3 BRIAN POLLARD: Not that I'm aware of.

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

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

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

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

1 COVID; and provide PPE."

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

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

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

23 JANET HOPE: Correct.

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

1 someone asks the question: (as read)

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

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

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

12 JOHN CALLAGHAN: All right.

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

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

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

24 BRIAN POLLARD: No.

25 COMMISSIONER FRANK MARROCCO (CHAIR):

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

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

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

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

1 taken the same position as CLAC: (as read)

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

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

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

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

14 JANET HOPE: Yeah.

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

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

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

1 to enable the flexibility to
2 redeploy physicians."

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

11 My apologies. It's just -- I think we
12 the -- some of these slide decks have the two --
13 two of the same pages on them. All right. If we
14 can go -- keep going. I'm wondering if you're on
15 the right document. What did I say? Is it 42 or
16 45? Apologies.

17 PATTY BROOKS: This is 45.

18 JOHN CALLAGHAN: Maybe we should try
19 4 -- let me just go back to my original set,
20 please. It's very -- good thing I'm not running a
21 war. Yeah, it's slide 42. Okay.

22 So it says: (as read)

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

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

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

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

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

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

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

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

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

10 JOHN CALLAGHAN: And --

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

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

21 JOHN CALLAGHAN: So then there's some
22 speaking notes, document 50. And this is the
23 Council of Federation call, but I just want to --
24 it is a timeline of events. And it says May
25 13th -- if we go down a little bit, Patty, there

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

5 It says: (as read)

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

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

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

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

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

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

7 "The 14 billion the Federal
8 Government has offered is simply
9 inadequate and is not enough to
10 address the needs we have
11 identified. We estimate that our
12 costs in these areas could reach
13 23 billion in Ontario, well upwards
14 of 15 billion nationally. This is
15 not an exaggeration.

16 And in Ontario, this includes --"

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

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

23 JOHN CALLAGHAN: Okay.

24 JANET HOPE: -- to respond to that.

25 JOHN CALLAGHAN: And then it says: (as

1 read)

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

14 See that?

15 JANET HOPE: Yes, I see it.

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

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

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

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

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

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

8 SUNIL MATHAI: Thank you very much,
9 everyone.

10 JANET HOPE: You're very welcome.

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

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

15 MELISSA HELFERTY: Thank you.

16 COMMISSIONER ANGELA COKE: Thank you.

17 -- Adjourned at 1:23 p.m.

18

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1 REPORTER'S CERTIFICATE

2
3 I, JANET BELMA, CSR, Certified
4 Shorthand Reporter, certify:

5
6 That the foregoing proceedings were
7 taken before me at the time and place therein set
8 forth;

9
10 That all remarks made at the time
11 were recorded stenographically by me and were
12 thereafter transcribed;

13
14 That the foregoing is a true and
15 correct transcript of my shorthand notes so taken.

16
17
18 Dated this 19th day of January, 2021.

19
20 

21
22 _____
23 NEESONS, A VERITEXT COMPANY

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