

TABLE OF CONTENTS

September 8, 2022

MR. ANTHONY STACK – SWORN

Cross-examination-in-Chief by Mr. Kyle Rees.....	Pgs. 001 – 054
Cross-examination by the Adjudicator.....	Pgs. 054 – 058
Cross-examination by Mr. Kyle Rees (Cont'd)	Pgs. 058 – 134
Cross-examination by the Adjudicator.....	Pgs. 134 – 137
Cross-examination by Mr. Kyle Rees (Cont'd)	Pgs. 137 – 163

MR. ED WALSH - AFFIRMED

Cross-examination-in-Chief by Mr. Kyle Rees.....	Pgs. 163 – 204
Cross-examination by the Adjudicator.....	Pgs. 204 – 206
Cross-examination by Mr. Kyle Rees (Cont'd)	Pgs. 206 – 268
Cross-Examination by the Adjudicator	Pgs. 268 – 280

MS. BERNIE OTTENHEIMER – AFFIRMED

Cross-examination-in-Chief by Mr. Kyle Rees.....	Pgs. 280 – 308
--	----------------

Certificate

September 8, 2022

1 ADJUDICATOR:

2 Q. Good morning, everyone. I see that the next
3 witness that we are scheduled to hear from
4 on this morning, our 8th day of this portion
5 of the inquiry, is Tony Stack, and I have
6 the Affidavit of Anthony Stack in front of
7 me. This is Mr. Stack?

8 MR. STACK:

9 A. Yes.

10 ADJUDICATOR:

11 Q. Mr. Stack, before you give your evidence to
12 the Board of Inquiry this morning, you have
13 the option of swearing an oath on the Bible
14 or giving your solemn affirmation to tell
15 the truth. It is your decision to make.

16 MR. STACK:

17 A. I'll swear an oath on the Bible.

18 ADJUDICATOR:

19 Q. Okay.

20 MR. ANTHONY STACK, (SWORN) CROSS-EXAMINATION BY MR.

21 KYLE REES

22 REPORTER:

23 Q. And for the record, please state your name.

24 A. Anthony Stack.

25 Q. Thank you very much. Mr. Stack has been

September 8, 2022

1 sworn.

2 ADJUDICATOR:

3 Q. Thank you. So, Mr. Stack, I expect that
4 this morning Mr. Rees is going to have a
5 series of questions that he's going to ask
6 you. Mr. Penney may have some questions in
7 follow-up, and I may have questions as we're
8 going along, or I may have some at the end,
9 so, Mr. Rees, go ahead.

10 MR. REES:

11 Q. Good morning, Mr. Stack. My name is Kyle
12 Rees. I'm the lawyer for Todd and Kim
13 Churchill, who are sat to either side of me.
14 Thanks for rearranging your schedule
15 yesterday. I know we had planned to have
16 you in at the end of the day yesterday. It
17 went a little longer with Darlene Fewer
18 Jackson, who was testifying before you, so,
19 I mean, we've got, you know, let's say, two
20 or two and half hours budgeted here. I
21 anticipate that, you know, we're going to be
22 speaking for somewhere around that period of
23 time this morning. Given that we're
24 speaking for a little longer, in the event
25 that you need a break or anything, you know,

September 8, 2022

1 you let me know. That's entirely
2 acceptable. It's also entirely acceptable
3 to tell me that you can't hear me, or you
4 didn't understand my question, or my
5 question is unclear. I won't be offended by
6 that. I've been told it frequently enough.
7 In front of you there are several documents.
8 I think right in front of you is your
9 affidavit, which we have as well, so thank
10 you for that. I'll be asking you some
11 questions about that document. In addition,
12 you know, there are several other documents
13 that as necessary I'll refer you to, and
14 we'll take some time to take you to the
15 document and make sure you're familiar with
16 it before asking you questions about that;
17 and as indicated, after I'm done asking you
18 some questions, the adjudicator or Mr.
19 Penney may have questions for you as well.
20 Sound good?

21 A. Understood. Thank you, Mr. Rees.

22 Q. Great. Just before I get started on the
23 actual material questions, then, you know,
24 you're aware that this hearing is being
25 broadcast, and is being streamed online.

September 8, 2022

1 Have you had a chance to view any of the
2 proceedings so far?

3 A. No.

4 Q. And you haven't discussed the evidence of
5 anybody else who has testified so far.

6 A. No.

7 Q. Great, thanks. I understand that your, you
8 know, role in this complaint—or the
9 Churchills' complaint begins in 2017.
10 That's when you take over the role of CEO,
11 right?

12 A. Yes, I was appointed acting CEO in the
13 spring of 2017 and later confirmed on
14 appointment in March of 2018 as permanent.

15 Q. Right, and so at the time you take over as
16 acting CEO, I understand the human rights
17 complaint is imminent. To that point in
18 time while you're CEO, the human rights
19 complaint gets filed. When is the human
20 rights complaint brought to your attention?
21 Is it upon filing, or does it sort of take a
22 while before the issues get brought to your
23 attention?

24 A. I would imagine it would've been pretty soon
25 afterwards, yeah, for sure. You know, at

September 8, 2022

1 that time we had contracted legal counsel,
2 and they would've advised us.

3 Q. Right. You're referring to Ian Wallace in
4 that case.

5 A. Yes.

6 Q. The moment that you were informed by, you
7 know, legal counsel that the complaint had
8 been filed and what the substance of the
9 complaint was, was that the first time that
10 you had heard that the Churchills, Carter
11 Churchill and his parents, had been raising
12 concerns with their child's education, or
13 had you heard about those concerns prior to
14 the filing of the human rights complaint?

15 A. I don't recollect any discussions prior.
16 It's possible I may have been involved in a
17 discussion, but I don't recall.

18 Q. Okay, how about more generally? I've asked
19 you about whether you had heard about Carter
20 Churchill's issues. Prior to being informed
21 about the filing of the human rights
22 complaint, had you heard that there were
23 issues being raised or complaints being
24 raised about deaf education in the province
25 of Newfoundland and Labrador? Was that an

September 8, 2022

1 issue you knew was active?

2 A. Well, stretching way back to my time as a
3 principal, I would've been cognizant of the
4 time in which the Newfoundland and Labrador
5 School for the Deaf was closed. I recall
6 having conversations with colleagues. One
7 colleague in particular was a former
8 principal of the School for the Deaf and
9 principal later of Holy Cross Junior High,
10 so I would've been aware of it, yeah. I
11 would've been aware of issues around deaf
12 education.

13 Q. And the conversations that you had had with
14 this colleague, who was formerly the
15 principal of the School for the Deaf, around
16 the closure of the School for the Deaf were,
17 you know, raising concerns about whether
18 these students' needs would be met in the
19 school population, is that right?

20 A. No, I--what I recall from that period was he
21 was now going through a similar process for
22 Holy Cross Junior High--

23 Q. Oh, right.

24 A. --and it was just the--his feelings around
25 that and the emotions attached to that.

September 8, 2022

1 That was primarily the discussion.

2 Q. I understand.

3 ADJUDICATOR:

4 Q. I don't. What do you mean by similar
5 situation at Holy Cross?

6 A. Well, Holy Cross Junior High at the time was
7 under review for potential closure, and he
8 was the principal of that school, and he had
9 gone through the process for the School for
10 the Deaf. Albeit, that was outside of the
11 parameters of the school district because
12 the School for the Deaf was a provincial
13 asset at that time, and these were—this was
14 in a period when I was in different roles in
15 Eastern School District.

16 MR. REES:

17 Q. Thank you. And I didn't quite—I get the
18 concerns that your colleague had been
19 raising to you, but what I'm wondering is,
20 you know, whether those conversations or
21 those issues that you would've been aware of
22 at the time, you know, would it have sort of
23 planted the seed in your mind—would it have
24 brought to your awareness at that point that
25 there were, you know, potentially problems

September 8, 2022

1 with the education of the deaf in
2 Newfoundland?

3 A. No, not at that time. I wouldn't have
4 necessarily made that connection. Just an
5 awareness that the School for the Deaf was
6 closed and that responsibility was then
7 falling to the then districts that were in
8 place.

9 Q. Okay, and so my original question was, you
10 know, prior to the Churchills' human rights
11 case being brought to your attention, had
12 you been informed of, or are you aware of,
13 did you believe that there were problems or
14 issues to be addressed with deaf education
15 in Newfoundland and Labrador?

16 A. No, not to any level of detail, no.

17 Q. Okay, so the filing or you being informed of
18 the filing of the Churchill' human rights
19 case is the first time that issue really
20 gets put on your radar.

21 A. Yes. Yeah.

22 Q. I know you had been a classroom teacher for
23 a period of time. You had been an
24 administrator for an even longer period of
25 time, and by which I mean a principal in a

September 8, 2022

1 school for a period of time. At any point
2 did you have any training in the education
3 of deaf children, or did you teach any deaf
4 children?

5 A. No.

6 Q. And have you—you know, even since your time
7 teaching, you know, even in the last few
8 years, have you had any kind of training or
9 education beyond what you would've just sort
10 of picked up on the job relating to the
11 services that are required to be provided
12 for deaf students or the teaching of deaf
13 students.

14 A. No formal training, no.

15 Q. What kind of informal training? I think
16 you're implying -

17 A. In the role of CEO you pick up information
18 regarding all aspects of the operation, not
19 at any level of detail, just that, you know,
20 there are students that are blind, visually
21 impaired or students that require services
22 of ESL, of—there are speech pathologists,
23 students—just that aspect.

24 Q. Okay.

25 A. That—the spectrum of needs that were out

September 8, 2022

- 1 there in the system.
- 2 Q. The spectrum of needs that are out there in
- 3 the system.
- 4 A. Yeah.
- 5 Q. One of which would be the needs of deaf
- 6 children.
- 7 A. Correct.
- 8 Q. A small constituency.
- 9 A. Yes, the numbers are small, but every child
- 10 in the system is a child in our system that
- 11 we have to serve.
- 12 Q. Right, the size of the constituency or the
- 13 number of children with a particular need
- 14 doesn't affect the obligations of the
- 15 district to meet that child's needs, does
- 16 it?
- 17 A. Correct.
- 18 Q. One of your duties—and I understand in your
- 19 affidavit you quoted from the legislation
- 20 that spells out, you know, the duties that
- 21 you have as the CEO of the school district,
- 22 and one of them is to administer, supervise
- 23 and evaluate all educational programs and
- 24 services, right, a very general description,
- 25 and I imagine a duty that encompasses, you

September 8, 2022

1 know, hundreds of various tasks, right?
2 Probably, I would suggest, one of your most
3 important duties.
4 A. Yes.
5 Q. What, if anything, have you done between
6 2017, you know, and now, the school year
7 beginning 2022, to review, supervise or
8 evaluate the educational programs and
9 services for deaf children?
10 A. Specifically for deaf children.
11 Q. Yes.
12 A. So, in my role as CEO, 64,000 students,
13 10,000 employees, it's a vast enterprise.
14 Ultimately, I am accountable for all of it.
15 In order for that to work, you have to
16 delegate responsibility, so I can delegate
17 responsibility, but I'm very much aware that
18 I can't delegate accountability. We have to
19 trust in the various strata of the
20 organization and the expertise of
21 individuals to address the component parts
22 of all district operations, be they
23 corporate services or programs for students.
24 As a CEO, you have to take a strategic view.
25 I directly report and am accountable to the

September 8, 2022

1 Board of Trustees, but I rely on the
2 expertise of those qualified and trained to
3 deal with various aspects of the programs
4 and be cognizant of what's happening in the
5 landscape around education, the total
6 environment. In 2017 there was a Premier's
7 Task Force Report. The Task Force Report—
8 one thing that we were particularly focussed
9 on was the whole discussion around student
10 services. We were very much aware that one
11 of the recommendations was that there be
12 leadership, senior leadership at the student
13 services' level, so part of my role would be
14 taking that strategic view, looking at our
15 organizational structure, how best we could
16 support that, and at that time up until that
17 point student services were imbedded in
18 regional structures. The lead for student
19 services would've been imbedded in regional
20 structures. Looking at this particular
21 recommendation and then discussing it over
22 time and analyzing our own structure,
23 looking at opportunities when there were
24 personnel changes, ultimately we created a
25 lead for student services, so that would be

September 8, 2022

1 the type of thing that I would do to assist
2 in any of our programs.

3 Q. And who's the first person who fills that
4 position?

5 A. That would've been Georgina Lake.

6 Q. Georgina Lake. When is that position
7 created?

8 A. That would've been, I believe, 2019. I
9 could—yeah, it was—and what we had to do was
10 adjust our structure, not without sacrifice.
11 It's always a zero-sum game. You're always
12 taking what you have and realigning, so
13 there's been a history of the Province of
14 Newfoundland and Labrador—and not unlike
15 other jurisdictions but particularly acute
16 here, I would argue—of the downsizing of the
17 leadership provincially. Yeah, 40-odd
18 boards down to 26, down to 10, down to four,
19 down to one, now potentially down to zero.

20 Q. I was going to say now down to zero
21 potentially, yes.

22 A. So, in the milieu, you know, we were losing
23 positions. When I was with the old Eastern
24 District, there was probably 28 executive
25 leadership positions in the province, you

September 8, 2022

1 know, and now it—you know, under English
2 when it was all coalesced down, there was
3 seven positions, eight positions surviving,
4 so we had to cycle some things, so after
5 Lucy Warren went on leave as an associate
6 director of education—she was responsible
7 for programs and operations—I had Mr. Ed
8 Walsh assume that role, and when he came
9 into that role, you know, he had a lot of
10 expertise in human resources, so we were
11 able to take some of those pieces of
12 operations that had part of the associate
13 role, slide them over to corporate services,
14 which is a huge undertaking, but things like
15 facilities, operations were put over into
16 that aspect, so that allowed then us to
17 create an associate—or redefined associate
18 position with human resources and
19 responsibilities, so, again, a bit of
20 sacrifice there, zero-sum game. You had
21 someone solely focussed on human resources.
22 You're going to sacrifice, like, that
23 executive position, put it in with the
24 associate to create a position for student
25 services because we were aware from the

September 8, 2022

1 Premier's Task Force Report as well, you
2 know, student services is a huge file; and
3 having it imbedded at the regional level, it
4 would be better to elevate to a provincial
5 level to give it a better focus, so, you
6 know, those are the types of things that I
7 would do as an executive to get at those
8 duties that you talked about as an executive
9 lead—as a strategic-level leadership
10 position as a CEO. I could go on about how
11 that led to the creation of somebody as a
12 lead for deaf and hard of hearing.

13 Q. Well, I'm going to ask you about that
14 actually a little later on—

15 A. Yeah, sure

16 Q. —because I do think that's an important part
17 of the story, so, you know, all of the role
18 that you have played in discharging your
19 duty to administer, supervise and evaluate
20 educational programs and services that
21 specifically relates to deaf education has
22 been, I guess, organizational
23 reorganization, some of with you've told us
24 about with Georgina Lake.

25 A. Yeah.

September 8, 2022

1 Q. Some of which you're going to tell us about
2 with the creation of the position, I think,
3 that Darlene Fewer Jackson occupies—

4 A. Yeah.

5 Q. —but they've all been modifications to
6 leadership and reporting structure.

7 A. Yes, to get at—what my main responsibility
8 that I'm accountable to the Board of
9 Trustees for is the Strategic Plan, and the
10 Strategic Plan involves components of
11 student—three main goals: student
12 achievement engagement, safe and caring
13 schools and leadership and organizational
14 development.

15 Q. In a review of education programs,
16 presumably that would involve a review of
17 the curriculum being taught at schools.

18 A. So, curriculum is not a responsibility of
19 the district.

20 Q. It's a responsibility of the Department of
21 Education.

22 A. Curriculum development is the responsibility
23 of the Department of Education.

24 Q. To what degree did the lack of a curriculum
25 in American Sign Language—there hasn't been

September 8, 2022

1 one. There still is not one. To what
2 degree did that—and I agree with you. It's
3 a department responsibility. To what degree
4 did that hamper your ability or your
5 district's ability to administer, supervise
6 and evaluate a deaf education program?

7 Q. Can you restate the question?

8 A. Yes.

9 Q. We both acknowledge that there is no ASL
10 curriculum in place and that that would be a
11 department responsibility. However, what
12 I'm asking you is the fact that there is no
13 ASL curriculum, that there is no curriculum
14 for deaf students from the department, to
15 what degree did that make your job of
16 administering, supervising and evaluating an
17 educational program for deaf students—to
18 what degree did that make that difficult?

19 A. Well, if there's no curriculum, it's hard to
20 evaluate.

21 Q. That's where I was going. That's what I was
22 implying, right? You can't evaluate the
23 program if there's no curriculum in place.

24 A. Right.

25 Q. Did you ever approach the Department of

September 8, 2022

1 Education and say, "Hey guys, I'm
2 responsible for evaluating curriculum. I
3 don't have a curriculum. I'm reliant upon
4 you as the department to do that." And, you
5 know, did you ever raise that issue with the
6 department?

7 A. I did not.

8 Q. Was it because you weren't aware that that
9 program didn't exist?

10 A. Well, we would—I would rely on that to
11 bubble up from the various strata in our
12 organization. If it was identified as a
13 critical need, then I would bring it
14 forward. I don't recall that being
15 identified as a critical need.

16 Q. Okay, so it never bubbled up.

17 A. No, to me. Not to me. It may have occurred
18 between lower levels of the organization.
19 How this works is generally the board chair
20 interacts with the Minister. I interact
21 with the Deputy Minister. The associate
22 director interacts with the Assistant Deputy
23 Ministers for K-12 education. Conversations
24 could've occurred at that level, or even
25 they could've occurred between some of our

September 8, 2022

1 director-level people and some of the
2 support people in the department, but I'm—I
3 can't comment on that because I wasn't privy
4 to those conversations. To my recollection,
5 I and Bob Gardiner, who was the only Deputy
6 that I dealt with at that time, would've had
7 that conversation.

8 Q. That's right. We asked Bob Gardiner, who
9 testified a few days ago, and he indicated
10 that to his recollection there was never a
11 request made from the district. Some folks
12 within the department identified that need,
13 but there was never a request from the
14 district, including from you or anyone else
15 that, you know, an ASL curriculum, a deaf
16 curriculum, ought to be developed, and
17 you're telling me you'd agree with that.

18 A. I'd agree with that.

19 Q. Were you aware that the Department of
20 Education had developed a report in 2011 and
21 which was later updated in 2019, which was
22 authored by Darlene Fewer Jackson? I keep
23 saying 2019. It's 2018. 2011, updated in
24 2018 by Darlene Fewer Jackson and Nora
25 Cahill addressing various gaps in the

September 8, 2022

1 Newfoundland and Labrador education system
2 regarding deaf children. Were you aware
3 that such a report existed?

4 A. No.

5 Q. And I understand that you may not have been
6 aware that during your role in 2017 and 2018
7 the existence of that report and the
8 recommendations of that report would've
9 formed a key component of this human rights
10 case, and I've put the question to several
11 witnesses. Darlene Fewer Jackson indicates
12 that, you know, the stuff in that report
13 formed the basis of the satellite classroom
14 recommendations and the ultimate
15 establishment of Eastpoint Elementary.
16 During the course of your time as CEO up to
17 the establishment of the Eastpoint satellite
18 classroom, had you been made aware of the
19 2011 report updated in 2018?

20 A. No.

21 Q. So, if I was to take you to that report
22 right now, that would be the first time you
23 would've seen that report.

24 A. Yes.

25 Q. Okay. Let's look at it, Volume 1. So, over

September 8, 2022

1 to your left-hand there are piles of
2 documents, and one of them says "Volume 1"
3 on the front, and it's Tab G as in Golf, and
4 there's a picture on the front cover of
5 three women signing in ASL presumably.

6 A. I got it.

7 Q. Seeing that cover, that doesn't jog your
8 memory in any way to say, "Oh yes, I
9 remember seeing this?"

10 A. No.

11 Q. Okay. I'm going to ask you about some
12 specific gaps identified in this report. I
13 take your evidence that, you know, you
14 hadn't seen this report. You know, you're
15 seeing it now, you know, for the first time.
16 I don't want to put you at a disadvantage
17 and, you know, quiz you about the contents
18 of this report or anything; that would be
19 unfair, but what I want to use this document
20 for is as a discussion point to discuss gaps
21 that are identified at that time and if any
22 of these gaps—obviously not through this
23 report because you didn't know about it, but
24 through other mechanisms if the gaps
25 identified in this report get brought to

September 8, 2022

- 1 your attention, okay?
- 2 A. Sure.
- 3 Q. So, I'd like you to look at Gap 5, which is
- 4 on page 11.
- 5 A. Okay.
- 6 Q. So, Gap 5, which is identified in 2011—and
- 7 when you turn the page over to page 12,
- 8 there's a little sentence that says,
- 9 "Recommendation 5 Update." That would've
- 10 been added in 2018, and the gap that's
- 11 identified is that "There's no systemic
- 12 process in place to offer early language
- 13 acquisition skills at the preschool level,"
- 14 and later we find out, in 2018, that the
- 15 guidelines for the frequency and intensity
- 16 of that kind of service had not been
- 17 developed. Were you aware that that was—you
- 18 know, during your time or, you know, even up
- 19 until now, were you aware that that was a
- 20 problem within your school district?
- 21 A. In general. The transition between zero to
- 22 five and Kindergarten is a problem in a
- 23 general sense.
- 24 Q. Explain that.
- 25 A. Well, we—in many respects health—the

September 8, 2022

1 Department of Health, Health and Community
2 Services, Justice, all these ministries
3 operate to some degree within silos, so the
4 communication—some of it's due to privacy
5 issues. Now, the communication could be
6 better so that—we rely a lot on KinderStart
7 to view students to ascertain what their
8 needs might be to set ourselves up for
9 potentially putting services in place.

10 Q. And that happens when the students are four,
11 right?

12 A. That's correct, yes. Like—but—and, you
13 know, it's a bit nebulous as to what happens
14 with respect to the provision of services in
15 the zero to five for the children that are
16 deaf and hard of hearing, and, you know, I
17 don't know the level of detail of that, but
18 I've heard—that sort of thing has gotten to
19 my level.

20 Q. Yes, that the provision of these services, I
21 think, to use your word, was nebulous, and
22 that made it difficult to navigate, and some
23 children slipped through the cracks as a
24 result of that, didn't they?

25 A. I don't know if I'd use the term, slipped

September 8, 2022

1 through the cracks. That hasn't been said
2 to me in those terms. What has been said is
3 that it could be better so that we would be
4 positioned to support students when they've
5 come into Kindergarten.

6 Q. Who told you that?

7 A. That would be in conversations most likely
8 with—my level with folks like Georgina Lake.

9 Q. Okay. When would Georgina have identified
10 that issue to you? By year, I'm asking.

11 A. Yeah, no, it would've been post-2019.

12 Q. Post-2019.

13 A. You know, we had—these would've been
14 conversations not necessarily at appointed
15 times or in specific meeting encounters. I
16 couldn't recall. I know that the general
17 theme of that sort of thing would've been
18 something that student services would've
19 flagged.

20 Q. Okay, and so this issue was flagged and
21 raised with you in 2019 some time. Have you
22 done anything since 2019, or have you
23 directed anyone else since 2019 to address
24 that issue?

25 A. Yeah, I think this is where we as a

September 8, 2022

1 leadership team, the district, giving
2 Georgina's input, we quickly moved not long
3 after her appointment to establish
4 leadership in deaf and hard of hearing by
5 creating the director, DHH, and that started
6 initially with Darlene Fewer Jackson so -

7 Q. Okay, and you anticipate that -

8 A. Pardon?

9 Q. You anticipate that Darlene Fewer Jackson
10 and her successor, Alma McNiven, have solved
11 this problem or are working on it? What do
12 you know?

13 A. You know, solving something in education is
14 an elusive goal. There are very few
15 panaceas and silver bullets that address
16 issues completely, but we are a learning
17 organization, and we want to continuously
18 improve to get better and better.

19 Q. Right.

20 A. So, part of that is organizing yourself so
21 that there's leadership in that area at the
22 district level. You know, I don't know in
23 exact terms what went on at the School for
24 the Deaf, but certainly, the School for the
25 Deaf being fragmented, the leadership

September 8, 2022

1 would've been—you know, there's no more
2 principal. Leadership would've been
3 dispersed. Having someone in student
4 services particularly focussed on student
5 services would point out that we need to
6 reconstitute leadership at the district
7 level for the provision of that very
8 important service.

9 Q. So, with regard to this specific issue,
10 guidelines for frequency and intensity of
11 service pre-Kindergarten for deaf students,
12 I mean, Darlene Fewer Jackson said—I think
13 she characterized it in her evidence that,
14 you know, staring at a problem does nothing.
15 You've got to act. You've got to do
16 something.

17 A. Right.

18 Q. So, to your knowledge, has anything been
19 done, or is anything in the works to develop
20 those guidelines?

21 A. And you appreciate I'm seeing this
22 particular document for the first time.
23 Just allow me to read the—so, you're talking
24 about Recommendation 5 Update?

25 Q. But you did tell me you were aware of the

September 8, 2022

- 1 problem from Georgina Lake. That's kind of
2 what I'm asking about, so Georgina Lake
3 comes to you in 2019.
- 4 A. Right.
- 5 Q. Tells you generally—I know you wouldn't have
6 seen this report—
- 7 A. Yeah.
- 8 Q. —but tells you generally that, "Yes, that's
9 a problem," and you understood that's a
10 problem. It's nebulous.
- 11 A. Yeah.
- 12 Q. People aren't being connected with their
13 services—
- 14 A. Yeah.
- 15 Q. —so what gets done from 2019 to present?
- 16 A. We would support Darlene, and now Alma, in
17 any efforts to make inroads with other
18 agencies, with the Department of Education
19 to improve that transition period.
- 20 Q. Okay, so you support Darlene. You support
21 Alma. Beyond that you don't know anything
22 specific.
- 23 A. No.
- 24 Q. Okay. You told me you were aware of this
25 gap in 2019. I understand you prepared a

September 8, 2022

1 briefing note for the Board of Trustees,
2 and, you know, you're the bottleneck—or
3 you're the person who reports to the Board
4 of Trustees, conveys all the information
5 necessary from the district to the board.

6 A. So, just—yes, I would've furnished a
7 briefing note for them, but I would've
8 relied on—at that time I believe it would be
9 Ed Walsh—

10 Q. Right.

11 A. —the associate director, to go and gather
12 the details for that briefing note, yeah, so
13 to correct you, I didn't compile the report
14 myself.

15 Q. Fair, and I suppose in some ways I'm using
16 the royal "you." I understand that in the
17 role that you occupy, the number of
18 responsibilities that you have, you know,
19 you're relying upon a team of people to
20 support you and assist you. Ultimately,
21 though, things like this briefing note,
22 while they might be compiled or drafted by
23 somebody else, it comes from you—

24 A. Sure.

25 Q. —and gets your endorsement that way.

September 8, 2022

- 1 A. Yeah. Yeah, and, again, I'm responsible for
2 what's in it, yeah.
- 3 Q. Right. You sent a briefing note to the
4 trustees, and we'll look at it if need be—
- 5 A. Sure.
- 6 Q. —and you tell them that deaf and hard of
7 hearing children are being supported by
8 itinerant teachers from the time of
9 diagnosis through their education until
10 graduation. Do you recall making any
11 mention to the trustees at that point in
12 time that there was a gap identified by
13 Georgina Lake to you that there had been no
14 guidelines developed for that service?
- 15 A. So, when I say a gap—and, again, I don't—I—
16 or you're saying a gap. What I'm saying is
17 that there's some confusion around that
18 responsibility. Obviously, legislatively we
19 have a mandate for children aged five to 21
20 for a K-12 education. It's not really clear
21 about what our mandate is for zero to five,
22 so that's what I'm referring to, that
23 there's—we know that our deaf and hard of
24 hearing itinerants are involved to some
25 degree in that delivery. It's a little bit

September 8, 2022

1 beyond our legislative scope, but we do it
2 anyway because it's probably a carryover
3 from what occurred in the School for the
4 Deaf.

5 Q. So, if there was a direction from this Human
6 Rights Commission to, you know, the
7 Government of Newfoundland and Labrador and
8 the school district, which may very well
9 soon be the same thing, that the guidelines—
10 or, sorry, the responsibilities and the
11 roles of the district versus the department
12 versus the Janeway, what the role in the
13 education of preschool deaf children, that
14 would be something that would be helpful and
15 appreciated.

16 A. Absolutely.

17 Q. You appointed Darlene—do you recall when you
18 appointed Darlene Fewer Jackson? I mean, we
19 have it in evidence from her.

20 A. It was a few months after—I believe,
21 Georgina was appointed in late spring. It
22 might've been as late as June, and then a
23 few months later would've been—the DHH
24 position would've been constituted.

25 Q. I think it's late summer, early fall 2019—

September 8, 2022

- 1 A. Right.
- 2 Q. –somewhere in that time period, and, I mean,
- 3 Darlene Fewer Jackson gets to work when you
- 4 put her in there.
- 5 A. Yeah.
- 6 Q. She, as I've indicated to you, drafted this
- 7 report we're now looking at for the first
- 8 time in 2011 and updated it in 2018.
- 9 A. We were lucky to get her.
- 10 Q. Absolutely. She comes into that role in
- 11 2019 and says, "Oh my God, all these gaps
- 12 are still there" and gets to fixing them,
- 13 right? Do you know who Kelly Cribb is, an
- 14 itinerant teacher?
- 15 A. No.
- 16 Q. Kelly Cribb—and, again, we can look at the
- 17 e-mail if we have to. Kelly Cribb e-mails
- 18 Darlene Fewer Jackson to say, "Look, these
- 19 children continue—these deaf children
- 20 continue to show up at school with no
- 21 language, and this is going to continue
- 22 unless something is done to fix it." Were
- 23 you aware in 2019—and I would suggest you
- 24 were, and this is why Darlene Fewer Jackson
- 25 is hired—that there were children like

September 8, 2022

- 1 Carter Churchill showing up to school with
2 no ability to communicate with their
3 classmates or their teachers?
- 4 A. I would've been aware that there were
5 concerns. I don't know if I'd categorize it
6 as no ability. I wouldn't have that level
7 of knowledge. As CEO, I don't get embroiled
8 in service delivery to individual students.
9 I can't.
- 10 Q. Right, because there are 60,000 of them? Is
11 that what you said?
- 12 A. Correct.
- 13 Q. Yes, right. Okay, why don't we do this
14 instead? Tell me about the creation of the
15 position that Darlene Fewer Jackson came to
16 occupy, the process by which that position
17 is created and the reasons for it. I assume
18 you were quite involved in the creation of
19 that position.
- 20 A. Yeah, like—yeah, I guess in any government
21 or quasi-government organization, changing
22 your structure is no mean feat. You would
23 need to go and—as I've said before, it's a
24 zero-sum game. There is—we're in a era of
25 constant contraction of resources at the

September 8, 2022

1 management level, you know, since the
2 formation of the district between operations
3 and management. There's been some—since
4 2013—my chief financial advisor briefed the
5 board some time ago there's, like,
6 26,000,000 dollars between operations and
7 management positions that have been cut from
8 the system, so those aspects would've been—
9 we would've had to rob from Peter to pay
10 Paul somehow. Like, the creation of a
11 position like Darlene Fewer Jackson would've
12 had to come some resource inside.

13 Q. Can I interrupt you here—

14 A. Yeah.

15 Q. —because I definitely want to talk about
16 that process and everything, but let's drill
17 down on this, you know, robbing Peter to pay
18 Paul idea. The district is given a budget
19 allotment from the Department of Education,
20 is that correct?

21 A. Correct, yeah.

22 Q. And from time to time we've had some
23 testimony from Bob Gardiner and others to
24 this point. When a need exists that goes
25 beyond the resources that had been budgeted,

September 8, 2022

1 it is not unusual—it's not unheard of,
2 certainly not encouraged, but it is
3 available that the district can go to the
4 department and say, "We need additional
5 resources for such-and-such a program, such-
6 and-such a resource," and that resource,
7 that funding can be made available despite
8 it not being originally budgeted, right?

9 A. In my experience, that did not happen.
10 Never happened.

11 Q. Never? Not once?

12 A. Only recently during the pandemic period.
13 Now, whether or not that was due to federal
14 largesse in the forms of transfers to the
15 province to support a pandemic response—but
16 the only time that I can recall that
17 anything additional like that outside of the
18 normal budgetary process that would get
19 overlaid would be during the pandemic period
20 where we had an absolute need to up our IT
21 game, so additional units were applied to
22 create a virtual school.

23 Q. Right.

24 A. And the only other time, I should say
25 outside of the—it was during the pandemic

September 8, 2022

1 period but—the recent influx of students due
2 to immigration. For the first time in
3 forever that I can recall, decades, we had a
4 surge in enrollment. Like, we started the
5 year—we finished the year with more students
6 than we started.

7 Q. Right.

8 A. In that environment when you go over class
9 cap—and there's a hard cap. Not a lot of
10 people understand. It's a difficult
11 process, but there's planning for soft caps,
12 and then there's a plus-two applied after
13 you've started the year. If you go over
14 that, then—now you're in a situation where
15 you got to do something by putting an
16 additional resource in because you've
17 exceeded the regulated cap. In those
18 circumstances additional teaching units were
19 applied. That's the only time that I can
20 ever recall that additional resources flowed
21 from the department and -

22 Q. In those two instances -

23 A. Yeah.

24 Q. I'm interested in the process. In those two
25 instances where additional resources were

September 8, 2022

1 sought and granted by the department, who
2 would've made that request for additional
3 resources?

4 A. That would've been made right at my level in
5 discussions with the Deputy Minister and the
6 Minister directly.

7 Q. Okay, so if we were to look at, you know,
8 getting additional resources, you know,
9 during the relevant time period for this
10 complaint, that's you sitting down with Bob
11 Gardiner and asking for additional
12 resources.

13 A. So, Bob Gardiner and I would've had many,
14 many conversations over the years. These
15 weren't formal minute-taking minutes or
16 anything. These were frequent dialogue, and
17 we had many conversations about resources,
18 and we—I always made the argument that we
19 would welcome additional resources but—and
20 any time we wanted to—we talked about
21 anything that we'd like to do or that the
22 need—the pressure, for example, student
23 assistant hours, whatever it may be, it was
24 always put back, "What are you going cycle?
25 What are you going to"—well, I call it

September 8, 2022

- 1 cycle. I guess the term I'm using is "What
2 are you going to repurpose from within what
3 you have right now?" Never any -
- 4 Q. "What are you going to redeploy?"
- 5 A. Right. "What are we going to redeploy?
6 What are we going to reinvent? What are we
7 going to take from here to give to there?"
8 That's the milieu we're operating in. It's
9 probably imbedded deep within the culture of
10 the district, that once the budget
11 allocation is there, once the teacher
12 allocation is there, you've got to work
13 within that.
- 14 Q. Bob Gardiner said when he testified that it
15 was never requested. There was never a
16 request made by you or anyone else for
17 additional financial or other kinds of
18 resources from the Department of Education
19 as it relates to providing services to deaf
20 children; and if that request had been made,
21 they would've considered it. Do you
22 disagree?
- 23 A. I wouldn't frame it exactly that way.
- 24 Q. What would you frame it as?
- 25 A. I would say that we had many--again, I'll go

September 8, 2022

1 back to what I said before. We had many
2 conversations about resources, and we always
3 indicated that we would like to have more,
4 repeated conversations about admin support,
5 guidance support, overall ability to support
6 student needs, and then that would inform
7 the budget process. The budget would come
8 down, and we would be left with the pie. In
9 some cases—no, I don't recall ever anything
10 extra coming out of that process, so, no,
11 specifically, I guess, to the letter or
12 what—I don't know what Bob said. You're—I'm
13 relying on what you're telling me what Bob
14 said.

15 Q. Yes.

16 A. I—we may not have had a specific
17 conversation about deaf education in
18 particular. We would've had a more general
19 conversation about student services
20 supports, so I guess in that context he may
21 be—you know, I would agree, but we had—no,
22 like, that just—that's totally contrary to
23 anything that I've understood about
24 resourcing in education up until the point
25 of the pandemic.

September 8, 2022

- 1 Q. Okay, we're going to talk a little more
2 about this. You said you would've had many
3 conversations with Bob Gardiner—
- 4 A. Yeah, Bob would -
- 5 Q. —informal where—
- 6 A. Yeah.
- 7 Q. —you always would've intimated that
8 additional resources would be welcomed.
- 9 A. Right. Bob would come down generally with a
10 scrap of paper and a list of things he
11 wanted to talk about, and I had my list of
12 things in my head, and just about every
13 conversation we had was about resources and
14 how we were challenged.
- 15 Q. And Bob Gardiner said none of those
16 conversations indicated that additional
17 resources were needed for deaf education or
18 were requested or were welcomed for deaf
19 education.
- 20 A. Yes, but -
- 21 Q. He said student services generally but—fair.
- 22 A. Fair, yeah. Any time we had a conversation,
23 it always came back to "What can we cycle?"
24 And what I'd define again by "cycle" is what
25 can we take from elsewhere to make that

September 8, 2022

1 happen, to operate within your resource
2 envelope?

3 Q. So, did you ever go to Bob Gardiner with a
4 deaf education related request, and the
5 response was, "Let's see what we can find to
6 cycle to meet those needs?"

7 A. No.

8 Q. Right.

9 A. But that was not the milieu we were
10 operating in. No matter what the issue was,
11 no matter what the discussion was around
12 resources, it was always about using what
13 you have and repurposing what you have.
14 "This is the allocation. That's it. That's
15 what you get."

16 Q. Okay, but, I mean, we're going to talk about
17 many documents over the course of the next
18 couple of hours.

19 A. Yeah.

20 Q. We've talked about some of them already
21 where there are individuals in your
22 department—or in your district, some within
23 the department, who are coming forward and
24 saying to people who ultimately report to
25 you, to Bonnie Woodland and others, you

September 8, 2022

- 1 know, "We have severe needs here for these
2 deaf children in particular." There's needs
3 everywhere, sure—
- 4 A. Right.
- 5 Q. —but the needs for these deaf children, you
6 know are particular severe, you know, and
7 warrant things like creating satellite
8 classrooms and other things and something
9 that eventually happens, and you're
10 indicating to me that, you know, despite—
11 either those pleas never reached your ears
12 prior to Darlene Fewer Jackson taking on the
13 role, or if they do, you never elevate them
14 to the level where you—don't even request,
15 even suggest that more money could be
16 provided to assist deaf students.
- 17 Q. What I'm saying is that because of the way
18 we have been allocated and the way we have
19 been consistently cut year over year, that
20 the culture within the district at all
21 levels would've been the expectation that we
22 have to operate within our means and
23 repurpose, and that —
- 24 Q. There is a culture of "Don't ask for more."
- 25 A. Yeah, right, because it's pointless, and the

September 8, 2022

- 1 only time that that ever -
- 2 Q. "It's pointless."
- 3 A. The only time, again, that that ever changed
- 4 was during the pandemic.
- 5 Q. It took a pandemic to change that culture.
- 6 A. Yeah. A lot of things changed in the—during
- 7 the pandemic. We've learned a lot, but,
- 8 look, you know, whatever flexibility we had
- 9 in the system, we'd have to derive it from
- 10 within the teacher allocation model that we
- 11 had, so it was—okay, if you're going—it was
- 12 always a zero-sum game, so what you're
- 13 taking either at the executive level,
- 14 repurposing—you're being cut year over year.
- 15 That's the milieu we were operating in.
- 16 Q. I'm just going to jump ahead and then come
- 17 back to this later. When you did establish
- 18 a satellite classroom at Eastpoint
- 19 Elementary—and when I say that, you know
- 20 what I'm talking about.
- 21 A. Yes.
- 22 Q. Where did you have to cut from or repurpose
- 23 from to do that?
- 24 A. I wouldn't know the detail on it, but I
- 25 expect that those would've had to come from

September 8, 2022

1 other resources within the province.

2 Q. And we've had evidence in front of this
3 Commission already that has said, you know,
4 that those resources—it was quite possible
5 to meet those needs by repurposing existing
6 resources, and I think the evidence is—and
7 we'll have to review the transcript once it
8 comes out. I believe the evidence was that
9 there may have been one deaf itinerant
10 teacher that had to be repurposed; but other
11 than that, there was not a loss of services
12 for anyone else.

13 A. Right, and what I understand about that
14 particular thing is, yeah, that's exactly
15 the case.

16 Q. Yes, right. It didn't require a massive
17 rearrangement of the resources that you had
18 deployed in order to implement the satellite
19 classroom, did it?

20 A. What I understand from talking to Georgina
21 Lake was that there was a number of factors
22 that came together. There was a cohort of
23 children at a similar grade level, of
24 course, that could benefit by concentrating
25 the services. They ultimately ended up with

September 8, 2022

- 1 seven students and five adults in that room—
- 2 Q. Right.
- 3 A. —which seems like a lot of resources, but
- 4 when you're able to concentrate them, you
- 5 can provide a better service, so it worked.
- 6 Q. Right. When these students were out in the
- 7 school system in their neighbourhood
- 8 schools, you know, those resources—there's,
- 9 what would you say, economies of scale,
- 10 right?
- 11 A. Sure.
- 12 Q. The resources were distributed out into the
- 13 school district, and so while it seems like
- 14 a high ratio of adults to kids in a
- 15 classroom, that same ratio previously had
- 16 existed, but it was just distributed, right?
- 17 A. Correct.
- 18 Q. So, you pooled the resources together.
- 19 A. Yeah.
- 20 Q. I mean, I put to you that the reason—the
- 21 need for the satellite classroom was
- 22 apparent since at least 2017, probably 2016
- 23 or maybe even 2011, and the only barrier was
- 24 a lack of leadership and creative thinking
- 25 that prevented that satellite classroom from

September 8, 2022

- 1 being created four years earlier.
- 2 A. Those are your words.
- 3 Q. What are your words? What do you think?
- 4 A. Look, as I said before, we're a learning
- 5 organization. We're trying to continuously
- 6 improve. The value of hindsight, yeah,
- 7 maybe it would've been a good thing to
- 8 assemble prior to that.
- 9 Q. Look, I need something stronger from you
- 10 than that.
- 11 A. Yeah.
- 12 Q. Maybe it might've been a good idea to put in
- 13 place or definitely it would've been a good
- 14 idea to put in place earlier?
- 15 A. It would depend on whether that cohort was
- 16 able to be assembled.
- 17 Q. They did exist.
- 18 A. It would -
- 19 Q. I put it to you that they did.
- 20 A. Okay. It would've depended on could we get
- 21 around some of the issues around
- 22 transportation.
- 23 Q. Yes, we've had testimony that have said that
- 24 that was not an insurmountable barrier.
- 25 A. Right, and departmental policies, I believe,

September 8, 2022

- 1 are still the case that we do not bus
2 students outside of catchment, so whatever
3 is happening there, again, is cycling
4 resources. If it's happening now outside of
5 departmental regulation, we're doing it at
6 our—we're finding it somewhere in our
7 system. Something else is giving.
- 8 Q. So, not insurmountable.
- 9 A. Not insurmountable, no.
- 10 Q. Was there another barrier beyond, you know,
11 leadership and creativity?
- 12 A. I think at—you know, you had different
13 people looking at it with various levels of
14 expertise. Certainly getting that student
15 services expertise or that focus and that
16 deaf and hard of hearing expertise in terms
17 of leadership in the district—
- 18 Q. Right, leadership.
- 19 A. —would be able to—yeah, would be able to
20 articulate the case a bit better. Yeah, it
21 was just—it was different circumstances in
22 2017.
- 23 Q. Well, hold on. We got to dig down on that
24 because that's just what we've been talking
25 about—

September 8, 2022

1 A. Yeah.

2 Q. —and I think the evidence I've gotten from
3 you is that the different circumstances from
4 2017—the only thing that changed was the
5 leadership and the vision of someone in a
6 position like Darlene Fewer Jackson. I
7 mean, not to attribute it to her entirely as
8 an individual but the fact that her position
9 existed.

10 A. Yeah, it would've been—look, the other
11 factor, I think, at the time, we're worried
12 about the right of a student to attend their
13 neighbourhood school, and that was counter
14 to that. We're also concerned about things
15 like scalability, so if we can—and we're a
16 provincial system so—and that was early on
17 in the formation of the district. You don't
18 want it to be a St. John's, capital city,
19 centric model, or you're doing things
20 overtly differently. You got to service the
21 whole province, so those lenses would've
22 been factors to consider, I'm sure. Can we
23 scale this? Can we do it elsewhere? And,
24 yeah, I think you're right, somebody that—in
25 a leadership role to articulate the benefit

September 8, 2022

1 and the need changed the outlook, and that's
2 why it was finally implemented.

3 Q. Right.

4 A. And in the value of hindsight, yeah, I think
5 it would've been a value to have earlier for
6 sure.

7 Q. I want to talk to you about one of the gaps.
8 You still got that document in front of you,
9 the report?

10 A. Yeah.

11 Q. Gap 10, which is identified on page 14-

12 A. Yeah.

13 Q. -is the one that says, "There is no formal
14 assessment process in place to determine the
15 proficiency levels of American Sign Language
16 skills for teachers of the deaf and hard of
17 hearing, interpreters or student assistants
18 in Newfoundland and Labrador," and if you
19 look-so, that's the gap identified in 2011,
20 update on Recommendation 10, which is from
21 2018. It's the one that says, "No, hasn't
22 been addressed," and Darlene Fewer Jackson
23 indicates several other areas or testing
24 methods that are available. Were you aware-
25 let's say you-when Georgina Lake comes to

September 8, 2022

1 you in 2018 and starts having these
2 discussions, you know, were you aware that a
3 lack of sign language testing was identified
4 as a barrier to deaf education?

5 A. No, not in so many words. What I would've
6 been aware of was that it was difficult—we
7 had difficulty in recruiting people for
8 these positions.

9 Q. And how is that relevant to testing?

10 A. That you are trying to get the best people
11 possible. It's an HR process. I wouldn't
12 have been aware of whatever HR processes
13 were in place to—what specific levels we
14 were looking at or anything like that. It's
15 a job of HR to determine what skillset
16 they're looking for.

17 Q. Okay. I mean, you have several duties under
18 the Schools Act that focus on, you know, the
19 retention of employees, appointment of
20 employees, assigning employees to positions
21 and duties, providing training to teachers.
22 I mean, which other ones can I pull from
23 here. You know, your responsibilities among
24 other things—I mean, you—I think it's fair
25 to say your responsibilities encompass

September 8, 2022

1 almost everything; but, you know, one of
2 them that is explicitly identified is the
3 assignment of people to positions that's
4 appropriate, and I know that that gets
5 handled by, you know, various other
6 individuals who those tasks are delegated
7 to, but is it Truman who says the buck stops
8 with him? I think it's Truman. You know,
9 but the buck stops with you, right?

10 A. Yes, I've already said I'm accountable for
11 all of it.

12 Q. You are, so I was asking you if you were
13 aware by Georgina Lake or otherwise that the
14 lack of ASL testing had been identified as a
15 problem, and you mentioned something to me
16 about how, you know, there was a supply and
17 demand or supply problem. Fair enough.
18 What I want to know first, though, is did
19 you know that this had been identified as a
20 problem? Did anyone come to you and tell
21 you?

22 A. No.

23 Q. No. Did you know prior to me just putting
24 it to you now, that the lack of ASL testing
25 had been identified as a problem?

September 8, 2022

- 1 A. No.
- 2 Q. No. This is the first time you heard that.
- 3 A. Yeah.
- 4 Q. Hearing it now, does it concern you?
- 5 A. Absolutely, yeah, for sure.
- 6 Q. So, we just need to be very clear on the
- 7 record. The first time that this witness,
- 8 the CEO of the school district, is hearing
- 9 that the lack of ASL testing and inability
- 10 to evaluate the qualifications in ASL for
- 11 teachers of the deaf—the first time he’s
- 12 heard it is here today. It’s concerning to
- 13 you. Would you commit here today to
- 14 changing that?
- 15 A. I have an executive team that I’d go back
- 16 and consult with. I would definitely
- 17 consult with Georgina Lake, and Georgina
- 18 would consult with Alma or the team; and,
- 19 yeah, if it made sense to do that, we’d do
- 20 it, recognizing that we’re not a
- 21 qualification-granting entity.
- 22 Q. No, I understand. I mean, there’s a
- 23 Teachers Certification Act and various other
- 24 legislative provisions. You guys just hire
- 25 them—

September 8, 2022

1 A. Right.

2 Q. -but my concern is that—and the concern
3 that's identified—and they're not my
4 concern, the people who are smarter than me
5 concern is that you have no way of
6 evaluating the qualifications of these
7 individuals. I mean, Darlene—I think it was
8 Darlene—no, it was—Alma McNiven said that,
9 you know, in the absence of testing, the
10 best thing she was able to do was just based
11 on sort of deaf people that she knew or
12 people that she knew who had some degree of
13 qualification in ASL, you know, just sort of
14 draw on her own personal knowledge of
15 people's ASL skills; and the adjudicator
16 asked the question, "Well, what happens when
17 you retire, and we don't have someone who's
18 plugged into the deaf community the way you
19 are?" And there was no real answer to that
20 other than that she hoped the district would
21 do something about it.

22 A. Yeah, and I—we'd have to go back and
23 investigate what—who—is it the Department of
24 Education? Is it colleges, post-secondary?
25 Who actually has this function?

September 8, 2022

- 1 Q. Well, as the school district, you can
2 require a teacher to take the DELF exam for
3 French proficiency, can't you?
- 4 A. That is a requirement for MUN entrance to
5 the French program.
- 6 Q. Right, but as a condition of hire to teach a
7 French position, you can require that a
8 teacher produce a DELF certificate or
9 otherwise be grandfathered, right?
- 10 A. My understanding is that we're more into the
11 grandfathering. The qualification is—it's a
12 MUN aspect?
- 13 Q. No, no. No, no. If a new teacher comes and
14 wants to teach a French Immersion class
15 today, my kid just went to her Grade 2
16 French Immersion class, and, you know, the
17 teacher is young and fresh-faced, and I can
18 tell she's quite younger than me.
19 Guaranteed, that woman had to produce a DELF
20 certificate—
- 21 A. Right, sure.
- 22 Q. —to the school—not to the Government of
23 Newfoundland and Labrador, not to Memorial
24 University, to the school district to teach
25 that class.

September 8, 2022

1 A. Yeah, so if there is an ASL certificate that
2 exists, I guess we could require it.

3 Q. Yes, if there's an ASL that exists, I guess
4 you could require it.

5 A. Yeah.

6 Q. Right, okay. Gap 12 is also on page 15. I
7 think I've had you there already.

8 A. What page, sorry?

9 Q. That is page 15.

10 MR. ANTHONY STACK, CROSS-EXAMINATION BY THE

11 ADJUDICATOR

12 ADJUDICATOR:

13 Q. Just before you move on to another document,
14 Mr. Rees, I had a couple of questions about
15 that that I'm looking to get clarified. The
16 DELF certificate that needs to be obtained
17 for a French Immersion teacher, is that
18 something that is required in hiring, to
19 your knowledge?

20 A. I know it's required for Memorial University
21 for the program, so we're assuming that
22 folks that come out of Memorial would have
23 that. What we've been—my understanding,
24 what I've been aware of, is the waivers when
25 they don't have the DELF, but you're

September 8, 2022

1 probably going to have to ask that detailed
2 question to our HR expert, which would be
3 Mr. Ed Walsh.

4 Q. Okay. Let me see. With respect to ASL
5 proficiency testing for DHH teachers, the
6 deaf and hard of hearing teachers, I think
7 it's been suggested that one of the concerns
8 is that there might be an issue with the
9 union. Are you aware of any issue
10 evaluating proficiency levels of teaching
11 staff?

12 A. It could be. Now, that is a possibility.
13 I'm not aware of anything. Like, normally
14 what we rely on is the certification that
15 comes from the post-secondary institution,
16 so we'll require—or we will advertise for a
17 math teacher who would have a math degree if
18 the major—if that's what the major teaching
19 responsibilities are, but there's no math
20 proficiency test. The only one I'm aware of
21 is the French DELF, but that's a requirement
22 of MUN.

23 Q. And Mr. Rees has asked questions in the past
24 suggesting that there's also a similar
25 standard that can be applied for when

September 8, 2022

1 English is not your first language, that you
2 be proficiency tested in relation to your
3 ability to communicate in English or to
4 teach English.

5 A. Yeah. No, I'm not aware of any testing.
6 I'd have to—we'd have to discuss it with the
7 union if there'd be any issues around
8 requiring proficiency testing. As I say,
9 normally we rely on the academic institution
10 for the qualification, and then we ask for
11 that qualification in the job ads.

12 Q. Are you aware of any problem in terms of
13 conflict with a collective agreement or with
14 a union regarding DELF testing?

15 A. There have been some—I am aware there's been
16 some complaints, grievances related to the
17 requirement for—or maybe our response to not
18 waiving a DELF requirement based on previous
19 experience, that type of thing, but that
20 would be the level that I would understand,
21 yeah. So, for example, if a teacher is
22 objecting to or wanting a waiver in DELF,
23 and we denied that or—because of the length
24 of time since they've been teaching the
25 program, the union might object to that.

September 8, 2022

- 1 Q. Would you be aware if the union had ever
2 objected to DELF testing as a requirement
3 for hiring?
4 A. (No audible response).
5 Q. Is that something that would come to your
6 attention, if there's an issue from the
7 union?
8 A. It would come through the grievance process.
9 I'm not aware of any recent grievances in
10 that regard.
11 Q. Are you aware of any old grievances in that
12 regard?
13 A. No.
14 Q. Are you aware of the union ever objecting or
15 filing grievance in relation—there being an
16 grievance in relation to a request for ASL
17 proficiency testing?
18 A. No, I'm not aware.
19 Q. And I understand there's evidence that some
20 teachers have been tested for proficiency in
21 ASL but not all of them. Are you aware that
22 some teachers are tested?
23 A. Some teachers are what, sorry?
24 Q. ASL proficiency tested.
25 A. I wouldn't know that level of detail, no.

September 8, 2022

1 Q. Okay. Sorry to interrupt the flow of your
2 questions, Mr. Rees, but I wanted to get
3 some clarification around that.

4 MR. ANTHONY STACK, CROSS-EXAMINATION BY MR. KYLE REES
5 (CONT'D)

6 MR. REES:

7 Q. So, you didn't know that testing had been
8 identified as a need. You didn't know that
9 some teachers had, in fact, been ASL
10 proficiency tested, some but not all, and
11 you also don't know one way or the other
12 whether such a proficiency test exists.

13 A. That's correct.

14 Q. And, similarly, you seem to be unsure about
15 whether or not DELF testing is a—or a DELF
16 certificate is a certificate of hire of a
17 new French Immersion teacher. I think
18 you'll agree with me it is now.

19 A. Again, MUN is qualifying—we're getting most
20 of our—well, all of our graduates, they're
21 coming from Memorial University—as part of
22 their program.

23 Q. Yes. Were you aware that under the Teacher
24 Training Act that a teacher who is coming to
25 teach in Newfoundland from an international

September 8, 2022

1 jurisdiction—I'm sure we could count on one
2 hand the number of those—can be required to
3 undergo an English proficiency test if
4 English is not their first language? That's
5 a statutory right the board has?

6 A. It's certainly an area we're going to have
7 to become familiar with.

8 Q. But I guess what I'm saying is is this
9 something you're also hearing from me for
10 the first time?

11 A. Yeah.

12 Q. Yes. Okay, I was going to ask you about Gap
13 12.

14 A. Okay.

15 Q. Gap 12—and, again, I'm going to be asking
16 about when do you become aware that this is
17 a gap because I appreciate that this report
18 itself doesn't get brought to your
19 attention. Gap 12 says, "At the primary,
20 elementary and junior high levels, there is
21 no formal ASL course being taught to hearing
22 peers or staff to facilitate communication
23 in the classroom and to foster meaningful
24 inclusion for deaf students." And if you—
25 you see the Update on Recommendation 12, the

September 8, 2022

1 same page, says, "To date this area has not
2 been addressed," so Darlene Fewer Jackson in
3 2018 is saying, "No, this still doesn't
4 exist." I'd put it to you that as of
5 today's date, that still doesn't exist. Do
6 you agree?

7 A. I agree.

8 Q. Was that ever brought to your attention that
9 that was a problem, that students like
10 Carter Churchill had been attending school
11 like Beach Cove Elementary with 750 hearing
12 peers, none of whom were being taught how to
13 sign with Carter Churchill.

14 A. It wasn't brought to my attention, no.

15 Q. Never brought to your attention. Now that
16 you hear that that's identified as a
17 problem, does that represent a concern for
18 you?

19 A. Again, this is something that—the curriculum
20 is the purview of the Department of
21 Education. Clearly, we'd have to involve
22 them in any discussions around curriculum
23 decisions. You know, the issue at primary,
24 elementary, junior high level is where would
25 you put it into the curriculum, and what

September 8, 2022

1 would have to come out in order for that to
2 go in, and would it be something that is
3 done on a provincial scale for every
4 student, or would it be only something that
5 would be done in a school that may have a
6 student who is deaf and hard of hearing, and
7 what are the implications of that.

8 Q. Right, so, you know, the concern here, I
9 guess, is that, you know, if we were to
10 implement—and you're telling me you didn't
11 know that this was a gap, but, you know, now
12 that you're being told that it's a gap,
13 you're—it strikes you as one of the concerns
14 are going to be, well, what part of the
15 curriculum has to come out in order to put
16 this in?

17 A. Curriculum is the purview of the Department
18 of Education, so the district can add
19 supplemental programs to the—but the
20 curriculum has to exist to begin with, so,
21 for example, if we're doing health
22 curriculum, and I know there's a recent
23 example of that where we had the Kids in the
24 Know program, which is an education program
25 focussed on teaching young children about

September 8, 2022

1 some of the issues around abusive
2 environments that might exist in the home or
3 in the community. That's not in the
4 curriculum, but the health curriculum
5 exists, so therefore you can overlay it as
6 an extra curriculum resource.

7 Q. So, the lack of an ASL curriculum meant that
8 a creation of such a course as part of the
9 standard course load for elementary or high
10 school students wasn't something you could
11 do without approaching the department.

12 A. Correct, or the department, or we would be
13 responsive to the department saying that
14 that's going to be added to the curriculum,
15 but the curriculum is a departmental
16 responsibility.

17 Q. I asked Bob Gardiner about that, and I said,
18 "You know, Bob, is it a top-down thing where
19 the department sort of goes to the district
20 and says, "Look"—and I'd like to take
21 something that I'm sure, you know, would be
22 a recent example—"you know, you must now
23 teach children about LGBTQ issues," right?
24 Does the department just kind of come to the
25 district and say that "That's what you got

September 8, 2022

1 to teach now," or is it more—and I think Bob
2 described it as more of a collaborative
3 process where the department and the
4 district each sort of identify needs and
5 work together to create that curriculum. Do
6 you agree with Bob, or do you have a
7 different view?

8 A. Yeah, somewhat.

9 Q. Okay.

10 A. I mean, Bob would have a particular view on
11 it, but I think generally how curriculum is
12 created, it does flow from the department to
13 us. Now, we could flag it for them
14 certainly, and they would then—you know,
15 curriculum development is a very slow
16 process, generally speaking. It happens in
17 10-year cycles. We could flag it and then
18 see where it goes, yeah.

19 Q. 10-year cycle.

20 A. And they may embrace it, and then—but then
21 we'd have to figure it out in terms of the
22 entire curriculum. Where does it fit, and
23 who does it fit for? There is some
24 contingency for local courses, but they only
25 happen at the high school level.

September 8, 2022

- 1 Q. And even if that discussion does happen, I
2 understand one of the chief concerns is, you
3 know, you only have so many teaching hours,
4 and where do you fit this, right? What has
5 to come out.
- 6 A. Right.
- 7 Q. What if instead of this information being
8 delivered during instructional hours, which
9 are limited, it could be delivered during
10 lunchtimes or free times? I mean, it might
11 not be strictly curriculum, but can't this
12 material--can't students still be educated in
13 this area, you know, as an extracurricular?
- 14 A. Yeah, there's the ability to do that or to
15 continue--you know, it's possible. It would
16 have to be something that--it could be
17 something that would be done on a local
18 level, and we'd be apprised of or, you know,
19 we may be involved in some sort of
20 initiative in that area for sure.
- 21 Q. And, in fact, that's something that Kim
22 Churchill with her Gain a Superpower program
23 tried to do, wasn't it?
- 24 A. Yeah.
- 25 Q. And so when I say "Gain a Superpower

September 8, 2022

1 program," you know what I'm talking about.
2 We've heard about it already.

3 A. Yeah, and I wasn't deeply involved in it. I
4 do know that, like all programs that enter
5 the school has to be carefully vetted. We
6 get a lot of folks from external agencies
7 that have a particular initiative that they
8 want to promote in schools, be that—it could
9 be financial literacy, LGBTQ issues. You
10 name it, and that would have to be vetted by
11 our program staff in detail.

12 Q. How long does the vetting process take?

13 A. It depends on the complexity of the issue.
14 Again, the most recent example I'm aware of
15 is this Kids in the Know initiative, and
16 that took the better part of a year or more
17 to go through the vetting process. If
18 you're going to be providing programming for
19 children, you have to make sure that it's
20 appropriate, appropriate for the appropriate
21 grade level, the people that are involved in
22 the delivery of that have been vetted and
23 that they are the appropriate delivery
24 vehicle if they're involved. There may have
25 to be professional learning associated with

September 8, 2022

1 that for teachers in any type of program, so
2 it's a complex vetting program. Also, there
3 may be collective agreement issues. We got
4 to make sure with the NLTA that there's no
5 issues on that front.

6 Q. There were no collective agreement issues
7 with Gain a Superpower.

8 A. Yeah, it took a while to determine that.
9 The NLTA said that, but they—we feel—I know
10 in conversation with Ed Walsh that trying to
11 get at what exactly—who was doing the
12 program and who was it for, so one of the
13 issues was is it for children who are deaf?
14 Are they going to be involved in the
15 program? Are they going to be part of the
16 class? That could've presented an issue in
17 that we'd be doing the job of a teachers, so
18 we had to be very clear on that. It took a
19 while to get answers back from the NLTA.
20 Ultimately, this was something that—also, we
21 were aware that it needed native signers to
22 be delivering the program, so upon hearing
23 that there was consultations with
24 Newfoundland and Labrador Association for
25 the Deaf. We are aware that NLAD vehemently

September 8, 2022

1 objected to the program, so that put us in a
2 bit of a quandary, but ultimately we
3 approved the program because we felt that
4 the issue of trying to make a more inclusive
5 environment for children that are deaf and
6 hard of hearing was—it was in the best
7 interests of the children to do, so despite
8 the objectives—despite the objections of
9 NLAD, we proceeded, and ultimately blessed
10 the program.

11 Q. It takes longer than a year for that to
12 occur, doesn't it?

13 A. It does, yeah.

14 Q. And by the time it gets approved, you know,
15 we're into COVID then, and the delivery of
16 the program becomes more difficult as a
17 result of health concerns.

18 A. Yes.

19 Q. I'm going to ask Ed Walsh about this, but
20 I'm more curious about your knowledge. I
21 mean, Ed Walsh initially denies the program
22 and says, you know, there's a problem with
23 the collective agreement, that, you know,
24 it's—the collective agreement, teaching, you
25 know, it can't be done. We find out later—

September 8, 2022

1 and I trust you're aware of this—and, again,
2 I'm going to put it to Ed Walsh—that the
3 NLTA indicates that they have absolutely no
4 problem with the delivery of that program.
5 In fact, they'd encourage it, and the
6 justification that the collective agreement
7 was a barrier was a mere smokescreen.

8 A. So, there's lots of examples probably where,
9 you know, we have grievances when unions
10 are—when we're seen to be doing the job of a
11 different union member, so that had to be
12 vetted and ironclad that they understood
13 exactly what was involved because it is
14 possible, despite NLTA guarantees, that one
15 of their members could've grieved a
16 situation like that, and then the NLTA would
17 have to support the grievance despite what
18 they said and—that they endorsed the program
19 because they have a duty to represent, so we
20 wanted to be perfectly absolutely ironclad
21 clear that that was not an issue.

22 Q. How long did it take you to get that
23 clarity, do you know?

24 A. I'm not sure, but it was elongated for sure.

25 Q. "Elongated."

September 8, 2022

1 A. Yeah.

2 Q. Okay, and then once you overcome that
3 alleged barrier, you raise the issue that
4 NLAD had indicated such a program should
5 only be delivered by a—you know, a native
6 signer, by a deaf person, right?

7 A. (No audible response).

8 Q. I asked a previous witness about this—and I
9 didn't—well, I got an answer; I can't say I
10 was satisfied with the answer—to say why
11 would you reject a voluntary program that
12 conveys basic sign vocabulary, not even ASL,
13 just basic—you know, dog, cat, red, blue,
14 one fish, two fish—that because it ought to
15 be delivered by a native signer, you know,
16 the highest level of proficiency in ASL, but
17 not require anything close to those
18 standards for the classroom teachers
19 teaching deaf children? Are you able to
20 square those two things?

21 A. You know—and I don't know who you talked to
22 previously, and I don't know what they said
23 in response, but we are—this is a—not a
24 compulsory program, not a required program,
25 so therefore if we're going to introduce it,

September 8, 2022

1 we got to be very clear that it's
2 appropriate, and where it is something
3 that's optional, that it's vetted
4 appropriately so—and ultimately we did
5 decide that, yeah, you know what, even with
6 the objections, it was appropriate to
7 proceed because that would be in the best
8 interests of -

9 Q. I know you did, but the Churchills—and this
10 has become a common theme in this case—you
11 know, had to pursue offering this free
12 voluntary program, you know, doggedly before
13 ultimately more than a year later it ends up
14 getting approved, and I'd suggest that if
15 they didn't try and try and try again and
16 persist through all the no's that it never
17 would've happened, and, you know, deaf
18 children would still be isolated from their
19 hearing peers. But are you telling me that
20 a higher standard, a higher level of
21 scrutiny is paid to a voluntary non-
22 compulsory program where basic vocabulary is
23 being conveyed to hearing children than the
24 classroom instruction, the only classroom
25 instruction that a deaf child gets, who is

September 8, 2022

1 language deprived as my client indicated, in
2 the classroom setting, that the standards
3 for the people delivering this, you know,
4 lunchtime Sesame Street program are higher
5 than the kind of scrutiny that you're paying
6 to the proficiency levels of those
7 delivering your classroom instruction?

8 A. No. We apply the same level of scrutiny to
9 any program that's coming into the school
10 where it's an outside-sourced program.
11 We've had Kids in the Know—or the folks that
12 do financial literacy or any of these
13 things, that there has to be a level of
14 scrutiny applied and due diligence. Like,
15 the—it's a separate issue in terms of
16 certification of staff. That's an HR
17 recruiting issue. It's an issue of who's
18 out there and who's available. Could there
19 be improvements made? Yeah, likely.

20 Q. There's been a lot of evidence at this Board
21 of Inquiry already, which I appreciate you
22 wouldn't have heard, but I'll describe it
23 for you, that talks about the impacts of
24 language deprivation and cultural
25 deprivation and having a student, you know,

September 8, 2022

1 who's deaf, isolated in a hearing school
2 unable to communicate with their peers. Has
3 the impact of that kind of isolation ever
4 been brought to your attention?

5 A. I think post the hiring of Georgina and
6 Darlene we would've had conversations about
7 that, yeah, and it is a concern for sure.

8 Q. I mean, this program that was being offered
9 by these volunteers that, you know, required
10 such extensive vetting over the course of
11 more than a year was designed to address
12 some of those problems; and, look, I
13 appreciate that, you know, the school
14 district has a safety obligation. You can't
15 just let anyone come into the school and
16 talk about anything. You know, it's a great
17 way to let in a few anti-vaxxers or
18 something to talk about something off the
19 wall; but if it was going to take so long
20 where there was so much concern over how
21 this program was delivered, to your
22 knowledge, did the school district do
23 anything to address the problems that this
24 program was being designed to address,
25 namely the social isolation, because as far

September 8, 2022

- 1 as I understand it nothing gets done to
2 address that until Carter Churchill ends up
3 at a satellite classroom in Grade 4.
- 4 A. Yeah, I would agree with that. That was
5 part of the solution. Now, it's something
6 that's always in view, how we can
7 continuously improve our services in general
8 to special services, so whether it's deaf or
9 BVI or, you know, those students requiring
10 speech language, we're always looking to try
11 to do things better and to integrate. You
12 know, our understanding of inclusion is
13 better now. It is a continuous improvement.
- 14 Q. You have an obligation to provide a safe and
15 caring school, right?
- 16 A. Yes, we do.
- 17 Q. You're familiar with that policy and that
18 motto—
- 19 A. Yeah.
- 20 Q. —and I know that the inclusive education
21 model—I'll read from it because it's only
22 one sentence. "The inclusive education
23 model requires that the students be provided
24 with"—and here's the quote, "'a welcoming
25 school culture where all members of the

September 8, 2022

1 school community feel they belong, realize
2 their potential and contribute to the life
3 of the school.'" And we've had evidence
4 from experts and others, you know, student
5 assistants and things who have been
6 alongside Carter throughout his educational
7 journey, who have said, you know, Carter was
8 denied those opportunities, you know, at
9 least from Kindergarten to Grade 3. Is
10 that—you know, as somebody who is
11 responsible for ensuring that the school
12 environment is safe and caring, that
13 students are free from psychological harm,
14 is it concerning to you to hear that at
15 least one expert and another one to come,
16 has opined that Carter suffered from social
17 isolation?

18 A. Concerning to me when any child has
19 difficulty operating in—what we want for all
20 children is a safe and caring School
21 environment, so when we're made aware of
22 issues, be they bullying or isolation, we
23 want to address them.

24 Q. Right.

25 A. Did we get it—always get it right? Probably

September 8, 2022

1 not. Not.

2 Q. I think my point here, though, is that this
3 isn't just one child who's suffering from
4 bullying, and one child is serious enough,
5 but this is, I think—Alma McNiven described
6 them as two handfuls of children.

7 A. Yeah.

8 Q. There's two handfuls of children who are
9 suffering, the experts have told—like,
10 severe psychological harm, language
11 deprivation, are so far behind in their
12 curriculum that it turns out they can't even
13 be graded when they go to Eastpoint
14 Elementary because they're being taught—in
15 Grade 6 they're being taught Kindergarten
16 reading, and we've been looking at evidence—
17 and I know you're at least aware of some
18 things—that since at least 2017 you're aware
19 that these things are happening, and it
20 takes three years before any steps are taken
21 to address them, and several of these gaps
22 you've told me haven't been addressed yet,
23 and there's no plans in the works. You
24 know, my concern is, like, do you feel that
25 based on—it sounds to me like the limited

September 8, 2022

1 information you were presented with by whom—
2 who dropped the ball on that, I don't know—
3 that you were unable to discharge your
4 statutory duties?

5 A. We're operating in an environment where
6 right now we're getting better. I think the
7 environment that we have Carter in and his
8 classmates is—it's definitely where we want
9 to be. Our intent is to sustain that
10 environment into the long term for as long
11 as it makes sense to do that. Is it
12 possible that some of those children may
13 achieve a level of proficiency where they
14 could operate independently with supports in
15 a classroom outside of that environment,
16 that's possible, so we wouldn't want to rule
17 that out; but as long as it makes sense to
18 keep that cohort together, then we're
19 committed to do that if that's in their best
20 interests.

21 Q. Before I suggest that we break for a second,
22 I'd want to follow up on that, and then I'll
23 move on to another area after the break. I
24 take your comments, which sort allude to the
25 future of the ASL Immersion classroom and

September 8, 2022

1 that the hope—and I think I share that hope
2 with you that some of these students,
3 through the intensive intervention they
4 should expect in this ASL Immersion program,
5 you know, may acquire sufficient language
6 independence that they—you know, they're no
7 longer closing that gap, and they can be,
8 you know, in some way returned to the
9 mainstream where that satellite classroom
10 can be disbanded in some way. But unless
11 you're teaching the other students in that
12 school ASL, that's not going to—you know,
13 having a student proficient in ASL is not
14 going to solve social isolation, is it?

15 A. So, that's again—we talked about curriculum,
16 and we talked about the volunteer aspect of
17 any kind of supplementary program, so those
18 are issues that are going to have to be
19 wrestled. In a perfect world you would have
20 more students in that age group in that
21 school who could communicate with those
22 class members; and, as always, we are
23 committed to trying to do what we can to
24 make that a better environment. We have—
25 this is Grade 6 this year for Carter. We

September 8, 2022

1 got a few good years ahead of us, and I know
2 that folks like Alma and Georgina and all
3 the team connected with him, they're all
4 good people, and they want to do the very
5 best they can.

6 Q. Let's take a 10-minute break?

7 ADJUDICATOR:

8 Q. We'll adjourn for 10 minutes.

9 (OFF RECORD)

10 ADJUDICATOR:

11 Q. Okay, Mr. Rees, I think you were in the
12 midst of some questions there before you
13 asked for that adjournment. Please go
14 ahead.

15 MR. REES:

16 Q. Thank you. We've heard evidence from—just
17 before we move on to my other area I wanted
18 to follow up on the point that you made
19 that, you know, perhaps some day these
20 students will no longer need something like
21 a satellite classroom. They'll be able to
22 go back in the classroom with their hearing
23 peers in high school or junior high or
24 something, and I indicated to you that that
25 would put us back into square one as far as

September 8, 2022

1 the social isolation goes, right? Now, you
2 understand what I mean when I say that?

3 A. I do.

4 Q. And you haven't been presented with any
5 mechanism or any solution that if these
6 children are placed back into a hearing
7 classroom—let's say their ASL and other
8 curriculum improves substantially—of how to
9 address that social isolation in the
10 mainstream classroom, nothing like that.

11 A. No, so that—you know, that would inform any
12 decisions, I guess, with respect to the
13 cohort. You'd have to make decisions at the
14 time, what is best and weigh those things—

15 Q. Right.

16 A. —and, you know, the parental input on such a
17 decision would be important.

18 Q. Sorry, whose input?

19 A. Parental.

20 Q. Oh, parental input, right. I mean, you have
21 an obligation. It's incumbent upon the
22 school district that the environment, that
23 is the classroom environment, that a student
24 is placed into should not negatively affect
25 a student's self-esteem or fail them on

September 8, 2022

1 their social needs, right? That's a
2 principle?

3 A. Yes.

4 Q. Yes, and we've had evidence from one expert,
5 and we're going to have evidence from
6 another expert tomorrow that's going to say
7 that a student being deprived of other peers
8 with whom they can communicate or even -

9 MR. PENNEY:

10 Q. Well, let's just not predict what my expert
11 is going to say.

12 MR. REES:

13 Q. Oh no, I've read your expert's reports.
14 That's what he says, that a student who is
15 placed into social isolation, unable to
16 communicate with their peers—whether or not
17 that's what occurred here maybe the expert
18 is going to differ with me on, but they all
19 agree that that has impacts on a student's
20 self-esteem and causes psychological harm.
21 Do you understand that?

22 A. (No audible response).

23 Q. I asked you about ASL proficiency testing
24 earlier, and you indicated to me that you
25 were unaware that a need for ASL proficiency

September 8, 2022

1 testing had ever been raised. The first
2 time you had heard that ASL proficiency
3 testing should be raised was something you
4 heard here today.

5 A. Yeah, look, those areas would be HR
6 processes in hiring and vetting potential
7 employees, and I'm not an HR expert, but I
8 rely on my HR staff to do those things.

9 Q. Right, and, you know, we're going to speak
10 to, I suppose, one of your HR staff, Ed
11 Walsh, later on in the afternoon. I mean,
12 you know, he's, you know, one step below
13 you, but I understand there are several
14 people reporting to him; but presumably, you
15 know, if there is a substantial problem to
16 the point where several sectors of the
17 education system are coming forward to
18 identify a problem, you know, you would
19 think it would make its way to you, but
20 you're telling me that ASL testing has not.

21 A. No.

22 Q. Did you know that—well, no, in fact, I know
23 you didn't because you said as much. You
24 were also unaware that some of the
25 professionals who worked with Carter

September 8, 2022

1 Churchill were later ASL tested. You
2 didn't—no one had told you that some of
3 these people had actually been ASL tested.

4 A. No, I wouldn't know the specific details on
5 employees like that unless there was—the
6 only time that would be—come to my attention
7 would be potentially through a grievance
8 process or something like that.

9 Q. And even then my understanding is they
10 principally, you know, are still handled by
11 Ed Walsh, right?

12 A. Yes. Ed Walsh is the person that hears the
13 grievance, you know, drafts the
14 recommendations, but I do read
15 correspondence and sign off on
16 determinations on grievances and such.

17 Q. Okay. Tell, me about—if it's a concern to
18 you that an individual who, you know, was
19 assigned—one of the—well, let me just put
20 the fact to you. One of the student
21 assistants that was assigned to Carter
22 Churchill—and this is in the Kindergarten
23 year, 2016-2017, so just before your tenure,
24 but this information comes out following
25 your appointment to the CEO position, your

September 8, 2022

1 hiring in the CEO position—eventually does
2 get ASL tested, and this is someone who had
3 represented—who is actually being relied
4 upon to translate and deliver classroom
5 curriculum to Carter Churchill, as well as
6 interpret what Carter Churchill was saying
7 in sign for the purposes of, you know,
8 safety things and for him to participate in
9 the safety plans, and that individual later
10 gets ASL tested, and it turns out she can't
11 even fingerspell her own name in ASL. In
12 fact, her signing is so poor, I think, that
13 the quote is, "She could not respond
14 appropriately in target language, ASL, to
15 many queries and restricted conversation to
16 predictable topics, which is seen in
17 survival mode." Had anyone told you that
18 "By the time we actually decided to—we ASL
19 tested very few of them; but by the time we
20 actually did ASL tests, one of the student
21 assistants, that was the result?"

22 A. I wouldn't be aware of that detail, no.

23 Q. It was being represented to you, and you
24 were then representing to the Board of
25 Trustees we heard from Mr. Price that the

September 8, 2022

1 supports that had been provided to Carter
2 Churchill were sufficient, but you had no
3 knowledge that that was the result of one of
4 those supports when they were finally ASL
5 tested.

6 A. I would've been privy to the details of the
7 briefing note that we provided to the
8 trustees.

9 Q. And that would not have included things like
10 the results of an eventual ASL proficiency
11 test.

12 A. That level of detail, no, I don't recollect
13 that that would be in there.

14 Q. One of the issues we've been attempting to
15 disentangle during the course of this Board
16 of Inquiry is where the communications—where
17 the miscommunications come from because we
18 understand—and I spoke to Mr. Price, you
19 know, about his reporting to the board and
20 the information that the board would hear,
21 and, you know, Mr. Price would principally
22 get his information either from you or
23 people designated by you to deliver
24 information to him, and I'm trying to find
25 out where you get your information from and

September 8, 2022

1 who does the selection to determine what
2 information you need to know in order for
3 you to be able to inform the board.
4 A. So, the board is a governance board. They
5 have more—technically, one employee. My
6 accountability to them is through the
7 strategic planning process, and also in the—
8 devising, hiring, structuring the level
9 below me, so all the directors, assistant
10 directors, that type of thing, so primarily
11 strategic planning. Everything else is—all
12 those list of things you said are in the
13 Schools Act is in my affidavit I’m always—
14 I’m accountable for and responsible for, but
15 it is delegated responsibility. Most of
16 those things—the detail are delegated to the
17 various positions, be they HR or corporate
18 or whatever function there’s in programs,
19 that’s how it works. Due to—oftentimes what
20 the board would question would be things
21 that percolate up from media, and in this
22 case, you know, we’re aware that the family
23 was quite active in the media, which is
24 their right, and we respect that, so in a
25 non-judgmental professional manner we would

September 8, 2022

1 task staff then—so, that's the associate
2 head or the assistant director for student
3 services, which is now at a provincial
4 level. There's really only me and three
5 people at the provincial level, myself, Ed
6 Walsh for associate programs, Georgina for
7 student services and Terry Hall, who does
8 our—he's the chief financial officer and all
9 the corporate aspects. So, it's small team,
10 and in their various shops they would
11 delegate then to their level, so that's how
12 it works, so if you're asking how the
13 interplay works, that's what it is. There
14 are two committees of the board. There's a
15 Programs and Operations Committee and a
16 Finance and Operations Committee. Most of
17 the work of the board occurs at that
18 committee level. When you have a formal
19 board meeting, you're really just relaying
20 the activities of those two subcommittees of
21 the board, those two standing committees.
22 Most of the work around programs or policy
23 development would occur on the program side,
24 would be Ed Walsh, Georgina Lake with
25 programs and unit resources, and then Terry

September 8, 2022

1 Hall would do all the rest, the financial,
2 so that's how it's structured. Policies
3 would bubble up. Policies would be debated
4 at the board level, tweaked, approved or
5 denied based on the democratic process of 17
6 elected trustees at the time, so that how it
7 worked.

8 Q. Okay. What I'm trying to figure out and—
9 because you've told me that, you know, you
10 never heard the words, ASL testing,
11 proficiency testing, until this morning. It
12 had never been an issue brought to your
13 attention, and the fact that when they had
14 ASL proficiency tested one of the student
15 assistants who was assigned to Carter for
16 safety—and we're going to talk about that in
17 a second—is subsequently tested and found to
18 be, you know, survival-level, can't
19 fingerspell her own name. Whose
20 responsibility would it have been to bring
21 that information to your attention or to
22 decide whether that information should be
23 brought to your attention?

24 A. Depended on the year that that occurred.

25 Q. 2017.

September 8, 2022

- 1 A. 2017, so that would've been prior to the
2 assistant director of -
- 3 Q. Yes, June 2017.
- 4 A. June 2017, so in June 2017 that would've
5 been Lucy Warren at the associate director
6 level who would've had that under her
7 auspices.
- 8 Q. So, it would've been her discretion upon
9 learning that information to bring it to
10 your attention.
- 11 A. If she learned it, and I don't know if she
12 did or what her testimony was in that
13 regard. Then it could've been one of the-
14 again, back in those days student services
15 was regionally focussed, so it might've been
16 Bonnie Woodland, for example, at that time.
- 17 Q. Yes. Yes, never gets brought to your
18 attention.
- 19 A. Not specifically ASL proficiency. Now, it
20 also may have been something that was talked
21 about within the HR division if it related
22 to hiring.
- 23 Q. You're responsible for things like student
24 safety, like, and the buck stops with you,
25 so, you know, a student gets hurt, or it

September 8, 2022

1 turns out that circumstances existed such
2 that a student was able to get hurt while
3 they attended school, that would be
4 something that would, I think, find its way
5 to your desk.

6 A. Not in all cases. If there was a student
7 that was injured, because of the insurance
8 implications and the processing, that may
9 not even go through the programs' loop. It
10 might be on the corporate side.

11 Q. Interesting.

12 A. Yeah, so the individual in the department—
13 the division of finance would've been
14 involved.

15 Q. Well, look, you have a responsibility to
16 provide a safe and caring school, right?

17 A. Uh-hm.

18 Q. I put it to you that it's a safety issue to
19 have a student in your class—you know, in a
20 class in one of your school who is in a
21 wheelchair whose only method of
22 communicating, the only person with whom
23 they can communicate is an adult in the room
24 that's professed to have ASL proficiency of
25 some degree, and that student has a need, or

September 8, 2022

- 1 a safety concern needs to be communicated to
2 that student from a teacher or another
3 adult, and that student is unable to
4 understand that message, isn't the inability
5 or the low ability of that student assistant
6 to be able to communicate with that student
7 a safety concern?
- 8 A. I guess it would depend on the
9 circumstances. Thank you. What type of -
- 10 Q. Tell me what you mean by that.
- 11 A. Well, maybe you could elaborate on what you
12 mean by "a safety concern." Like, in what
13 circumstance?
- 14 Q. Well, one of the -
- 15 A. Like, if there was a fire, for example,
16 you'd evacuate. You know, physically the
17 student assistant would be able to assist in
18 moving the student in the wheelchair.
- 19 Q. Yes. I mean, the student plays a role in
20 all this as well.
- 21 A. Right.
- 22 Q. I mean, the student is not an inanimate
23 object. I mean, one example that was given
24 was—you know, I believe it was Tammy who
25 said Carter couldn't hear the morning

September 8, 2022

- 1 announcements, right?
- 2 A. Okay.
- 3 Q. So, if there's a morning announcement that
4 says, you know, "There's going to be a fire
5 drill later on, and so we need"—I don't know
6 if they warn students about that—you know,
7 "we need you to be prepared," or, I mean,
8 God forbid something as extreme as there's
9 an active shooter or something. There's a
10 safety concern in your school.
- 11 A. Right.
- 12 Q. Everybody, please stay in their classroom.
13 If you can't tell Carter that, how is he
14 supposed—he has to guess based on the
15 behaviour of others in their class, so do
16 you agree with me that it's a safety
17 concern?
- 18 A. Honestly, I don't know. I'd have to—we'd
19 have to look at the actual circumstances.
- 20 Q. I'm shocked that you're equivocating on that
21 point. I think that tells us a lot.
- 22 A. Well, it depends on what you mean by a
23 safety concern. So, if there was a fire
24 drill, then there are people, adults, in
25 that room who could assist in the evacuation

September 8, 2022

1 of children.

2 Q. Okay. All right, I'm going to move on. Did
3 you have any knowledge of the degree of
4 itinerant teacher support that were provided
5 to students and whether itinerant teacher
6 caseloads were within manageable levels?
7 Were concerns about the workload or the
8 caseload of itinerant teachers ever brought
9 to your attention?

10 A. No.

11 Q. They were not, so if I was to tell you that,
12 you know, we've discovered during the course
13 of this hearing and the evidence that had
14 been provided beforehand that Carter's
15 Kindergarten itinerant teacher, who was the
16 only person who would've had, you know, any
17 ability to teach ASL to Carter to assist him
18 in his ASL skills, was only available for
19 45-minute sessions, and there seems to be
20 some dispute in the evidence, but somewhere
21 between 34 and 50 hours—or 50 sessions of 45
22 minutes apiece during the course of that
23 entire school year? Would you have any
24 knowledge of whether that's considered a lot
25 of a few, or you have no idea?

September 8, 2022

- 1 A. I don't get involved in the individual
2 programming for students.
- 3 Q. And what about if itinerant teachers are
4 coming to you, or they're coming to Bonnie
5 Woodland who's coming to you saying, "We
6 can't meet the needs of our children based
7 on our caseloads; there aren't enough
8 hours," does that ever get brought to your
9 attention?
- 10 A. That didn't happen.
- 11 Q. Never did.
- 12 A. No.
- 13 Q. That would've been Bonnie Woodland's
14 responsibility to bring to you?
- 15 A. Bonnie Woodland in the hierarchy at the time
16 or the reporting structure at the time, if
17 that—if we're talking 2017—
- 18 Q. Yes.
- 19 A. —would've addressed that to the associate,
20 which would've been—or—yeah, Bonnie was—no—
21 yeah, working for the associate, not working
22 directly for the associate but through the
23 associate. There's also—again, I'm talking—
24 we're going back to 2017. There was a
25 regional structure at the time, so there

September 8, 2022

1 would've been a regional assistant director
2 of education programs that they would've
3 been interfacing with on a regular basis,
4 who would've in turn then reported to the
5 associate.

6 Q. We found out over the course of this
7 hearing, you know, several attempts by
8 individuals who, in our submission anyway,
9 didn't receive the training they needed to
10 assist Carter Churchill. The various
11 teaching methods being used with Carter
12 Churchill, in our submission, many of them
13 were inappropriate such as, you know,
14 someone-one teacher speaking directly in
15 Carter's face while another teacher, you
16 know, yelled or loudly communicated the
17 lesson into Carter's-one of Carter's ears on
18 the side, you know, sort of being surrounded
19 -

20 ADJUDICATOR:

21 Q. Just be careful in how you're representing
22 what the evidence was. I don't think there
23 was any evidence that anybody was yelling in
24 Carter's ear.

25 MR. REES:

September 8, 2022

1 Q. There was evidence that -

2 ADJUDICATOR:

3 Q. You said yelling in Carter's ear, and I'm
4 just cautioning you. The question and his
5 answers are only going to have value to me
6 if you're accurately reflecting what the
7 evidence was because if you put a
8 hypothetical to the witness that is not
9 consistent with what the evidence was, I'm
10 going to struggle to put weight in the
11 answer, so I'm just cautioning because it
12 increases the value of the answer if you're
13 accurate in the basis for the question you
14 present to the witness.

15 MR. REES:

16 Q. That's a good point. I did incorrectly
17 characterize the evidence as yelling. I
18 think the evidence is that one teacher would
19 speak into Carter's face, while the IRT,
20 Raven Williams, would speak closely in
21 Carter's ear in order to—as one attempt to
22 get the communication across. You know,
23 were any of these attempts to communicate
24 with Carter or other students, like, ever
25 brought to your attention as a concern?

September 8, 2022

1 A. No, that would be mining well into the
2 detail on the individual programing for the
3 student, which is again, not something that
4 this office would do.

5 Q. Were you aware—I think I've asked you this
6 already, but I want to make sure that these
7 details don't reach you through some other
8 manner. Are you aware that in—I think it
9 was December; I know it's December of 2016—
10 several itinerant teachers had a meeting of
11 which Bonnie Woodland was eventually
12 apprised raising, you know, substantial
13 concerns about various gaps in the education
14 of deaf children, many of which are
15 contained in that 2011 document we looked at
16 and that they, you know, very seriously
17 asked individual—or asked their managers to
18 raise these concerns further up the food
19 chain, and they even went so far as to
20 indicate that they felt the gaps were a
21 human rights issue. Did the idea that there
22 was—you know, besides the fact that the
23 Churchills had filed a human rights
24 complaints—that when you took the role over,
25 that there was a potential human rights

September 8, 2022

1 issue and deaf education ever brought to
2 your attention?

3 A. No, not-no.

4 Q. Because ultimately, you know, if there was
5 any kind of adverse finding by a Human
6 Rights Commission or by a court against the
7 school district, that responsibility would
8 rest with you, wouldn't it?

9 A. As I said before, I'm accountable for
10 everything.

11 Q. So, the first time you ever hear about
12 problems in deaf education and the link
13 between deaf education and human rights is
14 when the Churchills' human rights complaint
15 gets brought to your attention.

16 A. Yes.

17 Q. Are you familiar with the education service
18 delivery model for students with
19 exceptionalities?

20 A. Yes.

21 Q. I want to look at it. If you look at Volume
22 of those documents with the coloured tabs
23 there.

24 A. Sure.

25 Q. And it's Tab H as in Hotel.

September 8, 2022

- 1 A. Okay.
- 2 Q. This is the document, right?
- 3 A. Right.
- 4 Q. I know I'm going to struggle to find the
5 page in Chapter 9. Chapter 9 is on page—
6 it's identified as 26 of 59.
- 7 A. Okay.
- 8 Q. And under the heading, "Range of Options for
9 Instructional Settings," these guidelines
10 say, "Instruction is to be offered in the
11 least restrictive, most inclusive
12 environment respecting the dignity of the
13 student," and it indicates requirements that
14 must be met to determine this. The second
15 bullet point indicates, "The environment
16 must include the students' peers to as great
17 a degree as possible while meeting the first
18 requirement, which is meeting learning
19 outcomes and instructional needs." Once the
20 human rights complaint was filed, you know,
21 I assume beyond being apprised that it was
22 filed, you would've done some due diligence
23 to determine, you know, the merits of the
24 complaint beyond just, you know, defending
25 it from a legal perspective. Was it ever

September 8, 2022

1 made apparent to you that the environment
2 that Carter Churchill was in was neither
3 meeting his learning outcomes nor meeting
4 his—nor placing Carter Churchill with his
5 peers, which would be other deaf
6 individuals.

7 A. Can you repeat that question?

8 Q. Yes, so would it have become apparent to you
9 when you became aware of the issues
10 surrounding Carter Churchill when the human
11 rights complaints was filed that the
12 learning environment Carter Churchill was
13 occupying at Beachy Cove Elementary—and at
14 this point he's going to Grade 1, and he
15 remains there for Grade 2 and Grade 3—was
16 neither meeting his learning outcomes; nor
17 was it placing him in a classroom surrounded
18 by his peers, his peers being other deaf
19 children?

20 A. No.

21 Q. have you changed your mind on that now?

22 A. As I said before, with the value of
23 hindsight, is it possible that things
24 could've been better right from the get-go?
25 I think we struggled particularly in

September 8, 2022

1 Kindergarten in understanding Mr.—or
2 Carter's needs. Going forward, things
3 improved and evolved, and we're in a really
4 good place right now but -

5 Q. Who's "in a really good place right now?"

6 A. I think the system—Carter's needs and those
7 of his cohort in that classroom—that that is
8 the environment which is going to assist in
9 their educational programming. That is the—
10 that we have—we've reached a point where the
11 provision of services there are as—best that
12 we can deliver right now. That doesn't
13 close the door to other improvements that
14 could be suggested but -

15 Q. Now, you know that "The services Carter is
16 being provided are the best that we can
17 deliver right now" was a line that was said
18 to Churchills, or something akin to it, in
19 Kindergarten, Grade 1, Grade 2, Grade 3,
20 right? They have been told throughout this
21 entire process that the educators who are
22 educating Carter or the programs that were
23 being delivered to Carter were the best that
24 could be done with the tools that were
25 available, and I think we've demonstrated

September 8, 2022

1 with the establishment of the Eastpoint that
2 that simply is not the case.

3 A. Again, with the value of hindsight and
4 better understanding of the situation and
5 better grouping of resources at the
6 leadership level, yeah, if we had had the
7 structure in place at the time, we might've
8 arrived at a better conclusion.

9 Q. But the school district doesn't need
10 hindsight to do this, does it, because they
11 had substantial foresight on behalf of, you
12 know, Darlene Fewer Jackson in 2011, Darlene
13 Fewer Jackson in 2018, the IRTs in 2016.

14 A. So, just one thing there. Darlene Fewer
15 Jackson in 2011 wasn't an employee of the
16 school district.

17 Q. Correct, yes.

18 A. And nor -

19 MR. PENNEY:

20 Q. Right, and the evidence was that she did not
21 provide the report to the district.

22 MR. REES:

23 Q. That's right.

24 A. Yeah.

25 Q. But, look, you—at the very least when you

September 8, 2022

1 started in 2017 you have—and I don't think
2 you ever hear of this, but, you know, the
3 folks who ought to be reporting to you are
4 being made aware of the concerns of the
5 instructional resource—sorry, the -

6 A. What do you mean by "ought to be reporting"
7 to me? They are. They were reporting to
8 me.

9 Q. Right, but they don't report to you, do
10 they? You've told me already that the
11 concerns that are raised -

12 A. Well, they're handling whatever is happening
13 at their level.

14 Q. Are they handling it, though, or are they
15 failing to handle it because what I've put
16 to you—you've said, "With the benefit of
17 hindsight, we now know that it would've been
18 better to have had something like a
19 satellite classroom in place," and I'm
20 telling you that you don't need hindsight to
21 know this. You had -

22 A. That's your judgment, yeah.

23 Q. Well, and I'm asking your opinion on it, and
24 then eventually we're going to get the
25 adjudicator's opinion on it, that in 2016,

September 8, 2022

1 2017, 2018 and 2019 the people who are on
2 the ground dealing with these deaf children,
3 which wouldn't include you, which wouldn't
4 include Ed Walsh—the only way in which you
5 and Ed Walsh ever know anything about this
6 is because these guys filed a human rights
7 complaint and hold up signs in traffic, and
8 this information is being communicated to
9 these people who eventually through the
10 chain report up to you, and they're
11 identifying all of these problems, so what
12 I'm putting to you is that you don't need
13 the benefit of hindsight in 2017 to know
14 that this was something that was needed
15 because everybody who knows anything about
16 deaf education in 2017 is telling you this
17 is needed.

18 A. Is that a question?

19 Q. It is. Do you agree with it?

20 A. No.

21 Q. You don't. Tell me why. Why is this
22 something only accessible through the
23 hindsight afforded to you through this human
24 rights inquiry.

25 A. As I said before, we're a learning

September 8, 2022

1 organization. We are trying to continuously
2 improve. The structure for leadership
3 around deaf education has been reconstituted
4 over time. The School for the Deaf—the
5 solution is not something that was under
6 district auspices, and we were dealing with
7 the aftermath of that, and now we're in a
8 better place because we've reconstituted
9 some leadership embodied in the deaf and
10 hard of hearing position, and that has given
11 us greater knowledge and insight in order to
12 be able to make appropriate programming
13 decisions.

14 Q. I need to understand some of the statements
15 you just made. One of them is something
16 along the lines of, like, the reason why
17 Carter was in the place he was when he
18 entered Kindergarten was something that
19 didn't fall under the auspices of the school
20 district? Is that what you said?

21 A. No.

22 Q. Okay, sorry. What did you say?

23 A. I said the dissolution of the School for the
24 Deaf is not something that—was something
25 that the school districts didn't—the

September 8, 2022

1 Newfoundland and Labrador English School
2 District didn't even exist at that time.
3 That was a Department of Education decision—
4 or government decision.

5 Q. You don't think the School for the Deaf
6 should've closed.

7 A. I don't—I'm not qualified to answer that.

8 Q. When the School for the Deaf closed, it put
9 an increased burden on the services that
10 were being provided by the school district,
11 though, didn't it?

12 A. It dispersed them, and it—at least at the
13 district—districts, at the time, level, it
14 dispersed the resource—the resources, the
15 people, the human resources. Obviously, if
16 you can concentrate and provide a service,
17 you're going to have economy of scale.
18 You're going to have leadership associated
19 with it, and deaf education—deaf and hard of
20 hearing education was managed exclusively by
21 the Department of Education independent of
22 the school districts.

23 Q. And I would love to make this hearing an
24 inquiry into the closure of the School for
25 the Deaf. My clients would relish it.

September 8, 2022

1 That's not what we're here to talk about as
2 we've been repeatedly reminded.

3 A. Right, and I said I'm not really qualified
4 to answer that question.

5 Q. But the part that I'm interested to know is
6 why—when these problems are being identified
7 in the district in 2016, 2017, 2018, 2019—
8 the district, not the department.

9 ADJUDICATOR:

10 Q. I may have missed it, Mr. Rees, but did you
11 put anything to the witness in terms of what
12 occurred in 2016?

13 MR. REES:

14 Q. I asked about whether they were aware of the
15 concerns—he was aware of the concerns that
16 were raised by the itinerant teachers in
17 2016 at a meeting and whether they
18 eventually—because I know you're not in that
19 role in 2016, but they eventually made their
20 way to you, and you said "No."

21 A. No.

22 Q. Do you still maintain after we've talked
23 about this—and I'm still trying to
24 understand your evidence, why you feel that
25 it is only with the benefit of hindsight

September 8, 2022

1 that we can appreciate that these supports
2 should've been in place for Carter that we
3 could not have known otherwise. When I—I
4 think—we've been talking about it, and I'm
5 telling you the existence of several
6 district employees who are sounding the
7 alarms about these gaps, so do you agree
8 with me that this was a known problem and
9 that there was a ready-made solution to this
10 known problem available?

11 A. The—what it—what I can say is that when a
12 child, any child, comes into Kindergarten,
13 we have in some cases a good understanding
14 of who that child is and what their needs
15 are. In other cases not so much, so it
16 depends on the child. I wouldn't know the
17 individual programming, but in general
18 that's something that has to be sorted out
19 in the first year, and it takes some time.
20 We're in a better position now because we
21 have a responsive teaching and learning
22 policy. Before, you would have to have
23 batteries of tests to determine what the
24 learning needs were, and only then could you
25 really allocate resources based on certain

September 8, 2022

1 levels of testing on abilities, so I'm
2 talking student services in general, not
3 specifically deaf and hard of hearing. Now
4 with a responsive teaching and learning
5 policy, which only came into effect in
6 recent years, you're able to apply services
7 based on judgment, observations of the
8 classroom teacher and the specialists
9 involved without necessarily a—some kind of
10 psychological test or whatever the test may
11 be, so we're in a much better position to be
12 responsive to student needs without an
13 official validation of a learning need—
14 that's only something that's been recently—
15 with the responsive teaching and learning
16 policy, which only came into effect in
17 recent years.

18 Q. Is it your position that the district was
19 not aware of Carter Churchill's needs and
20 the severe language delays and needs of
21 other deaf children until Darlene Fewer
22 Jackson took on that role?

23 A. No. That would be a stretch, but our
24 knowledge of individual students would grow
25 the longer they were within our system, so

September 8, 2022

1 from Kindergarten on we would expand our
2 knowledge and understanding of what the
3 needs were and apply the resources to the
4 best of our ability, given the resources
5 that were available.

6 Q. I agree with you that in many cases,
7 especially when you have a child with, you
8 know, exceptional needs that's unique in
9 some way or has needs that aren't
10 anticipated by the system, you know, you
11 need to give time to have that student in
12 the classroom, have them assessed, have them
13 evaluated, have an understanding of what
14 those needs are. What I'm saying to you and
15 what I'm attempting to get you to
16 acknowledge to little success is that the
17 needs of all—you know, the two handfuls of
18 deaf children -

19 A. What do you mean by "two handfuls?" I'm not
20 sure.

21 Q. Sorry, and I'm using Alma McNiven's word.
22 There's, you know, six to eight deaf
23 children in the metro area that are
24 identified as having this need, one of whom
25 is Carter Churchill.

September 8, 2022

1 A. Right.

2 Q. You know, are known and are identified.

3 Maybe not you but are known and identified

4 by itinerant teachers, to Bonnie Woodland at

5 least by that point in time, so I guess what

6 I'm asking, is the reason you're saying you

7 only know through hindsight is because

8 you're saying the needs weren't known? It

9 wasn't known that there was a need. It

10 wasn't that we couldn't figure out how to

11 address the need. It wasn't appreciate that

12 the need existed?

13 ADJUDICATOR:

14 Q. Mr. Rees, I don't understand your question.

15 I'm going to struggle to have an value in

16 the answer if you—I don't know what time

17 period you're talking about. I don't know

18 if you're talking about a particular

19 decision. You seem to be asking him to re-

20 evaluate the whole way things worked in the

21 past at some point based on what we know now

22 or what was presented to him now. What's

23 the relevance of his opinion on such a

24 general question? Do you want to ask him

25 something specific?

September 8, 2022

1 MR. REES:

2 Q. Well, here's what I'm trying to get to the
3 bottom of. If I hadn't been provided with
4 evidence that said, "Well, with the benefit
5 of hindsight now, we would've done things
6 differently," and it concerns me when I hear
7 that because that indicates to me that he's
8 saying, "Well, if I had known then what I
9 know now, I would've done things
10 differently." And what I'm indicating is
11 the evidence has shown us there is no change
12 in the district's institutional knowledge of
13 the needs of these deaf children, including
14 Carter, from 2017 onwards. The situation,
15 the knowledge situation, doesn't change, and
16 maybe you didn't know it.

17 A. No, I -

18 MR. PENNEY:

19 Q. I totally disagree with this
20 characterization. Carter had individual
21 planning, which was followed. You know,
22 ISSPs throughout. We went through that in
23 the evidence, and the witness has already
24 testified about how—you know, that in 2019
25 Darlene Fewer Jackson comes along in

September 8, 2022

1 leadership there, and they improve. I don't
2 know what else we're going to accomplish
3 with this.

4 MR. REES:

5 Q. I need to know that it was leadership and
6 not knowledge of a problem that led to this
7 change.

8 ADJUDICATOR:

9 Q. Led to what change?

10 MR. REES:

11 Q. The satellite classroom in 2020.

12 A. There was a lot of—a number of factors. You
13 had a Premier's Task Force Report, an
14 education action plan, a recharacterization
15 of what inclusion is. Then there's the
16 individual things around the cohort, the
17 ability to put a cohort together, the
18 ability to find space for a cohort. There's
19 a lot of factors that were in place in 2017
20 versus 2019. In a perfect world, that
21 might've coalesced earlier, but, you know,
22 we programmed for Carter based on what was
23 in place back in 2017; and as we understood
24 Carter better and understood the environment
25 better, I think our provision of services

September 8, 2022

1 improved. I don't know what other way to
2 say it.

3 Q. No doubt they improve. By the time the
4 satellite classroom is established, there's
5 -

6 A. There's improvement, incremental
7 improvements along the way, increased
8 support as the grade levels increased. I'm
9 aware of that much.

10 Q. Why does improvement have to be incremental?
11 Is it because your knowledge of the need for
12 improvement also increases—is also
13 incremental over time, or are you aware of a
14 need, and you just decide to meet it in
15 small steps.

16 A. I don't know. I don't know what that
17 process was. I know that the professionals
18 that were engaged with Carter made those
19 decisions.

20 Q. I think you've indicated that the reason the
21 first time any concerns in the area of deaf
22 education come to your attention is because
23 of the human rights complaint filed by the
24 Churchills, right?

25 A. Correct.

September 8, 2022

1 Q. Beyond the human rights complaint filed by
2 the Churchills and their frequent media
3 campaign, their incessant media campaign,
4 are there any other avenues through which
5 issues with deaf education get brought to
6 your attention? In your mind—I guess what
7 I'm asking you, is, you know, problem with
8 deaf education synonymous with Carter
9 Churchill, or are you hearing about issues
10 of deaf education separate and apart from
11 the Churchill issue?

12 A. That's a chicken and egg question. I'm not
13 sure because due to the media play,
14 questions from the trustees, we would go
15 back and then look for things like briefing
16 notes, have discussions on deaf education in
17 general, not specific to Carter, in all
18 cases, so, yeah, I don't know if I've
19 answered your question, but I know it wasn't
20 always—it mostly wasn't always just about
21 Carter. It was about deaf education in
22 general when there would be discussions.

23 Q. The questions from the trustees—

24 A. Yeah.

25 Q. —something I asked Mr. Price about, and, you

September 8, 2022

1 know, he indicated the only way in which
2 issues around deaf education found their way
3 to the board were through, you know,
4 briefing notes and summaries done
5 summarizing media reports around the
6 Churchill case and that, really, the only
7 involvement that the trustees ever have are
8 the only—it's not even involvement because
9 they were really just being provided this
10 for their information, not for their action.
11 The only information that the Board of
12 Trustees ever really gets on deaf education
13 flows from Todd and Kim Churchill media
14 appearances. Would you agree with that?

15 A. No. No.

16 Q. No?

17 A. Not really. I mean, some—yes, I mean, some
18 of that would engender questions from them,
19 but through the committee process, which
20 I've alluded to, programs and human
21 resources, all matters of programs, French
22 education, student services in general would
23 flow through that Programs and Human
24 Resources Committee of the board, which was
25 chaired by Ed Walsh; earlier than that, Lucy

September 8, 2022

- 1 Warren.
- 2 Q. See that purple binder up there?
- 3 A. Not "chaired," sorry.
- 4 Q. Yes, sorry.
- 5 A. Sorry, I misspoke there. Not "chaired,"
- 6 facilitated because there would be a trustee
- 7 who would chair that.
- 8 Q. I see.
- 9 A. Yeah.
- 10 Q. Grab that purple binder that's up there to
- 11 your right-hand side and flip over to Tab 1.
- 12 That's what we've been calling the rebuttal
- 13 binder.
- 14 A. Okay, it's open.
- 15 Q. And Tab 1 is divided into a series of
- 16 sections by red sheets. Do you see a red
- 17 sheet?
- 18 A. Are we finished with this one?
- 19 Q. For now, yes.
- 20 A. Red sheets?
- 21 Q. So, flip through to the first red sheet.
- 22 A. Yeah.
- 23 Q. I think everyone has a red sheet, yes, and
- 24 it's the first page after that first red
- 25 sheet.

September 8, 2022

1 A. Jamie Snow, Kimberly Churchill, that one?

2 Q. Oh, sorry, there's two red--there's an e-
3 mail. Flip back one.

4 A. Okay, got it.

5 Q. There you go.

6 A. Yeah.

7 Q. So, that's an e-mail from Peter Whittle,
8 right?

9 A. Oh no, sorry, don't have that yet.

10 ADJUDICATOR:

11 Q. Number 30 at the top of the page.

12 MR. REES:

13 Q. That's right, yes.

14 A. Yeah, okay.

15 Q. "ASL in Schools, Peter Whittle, Trustee."

16 A. Yeah.

17 Q. He's one of your trustees, right?

18 A. Correct.

19 Q. Peter Whittle says on this date in April of
20 2019, "I think it's frigging ridiculous that
21 parents have to go to the media to get a
22 hearing and attention paid to issues like
23 this. Why do parents have to fight so hard
24 for supports? We are supposed to have so
25 many professionals engaged. Yet, this ends

September 8, 2022

1 up as a human rights issue," exclamation
2 mark. "How does it get to this point, our
3 local principals, counsellors and SEOs being
4 ignored as well?" I take from that e-mail—
5 and tell me if this fits with your answer to
6 your last question—that the first that the
7 board gets to hear about issues in deaf
8 education come from the Churchills and come
9 from the Churchills' public appearances.
10 Are you telling me that this information was
11 being brought to the board for other
12 reasons?

13 A. What do you mean "for other reasons?"

14 Q. Well, I had asked you if the only reason
15 deaf education was ever brought to your
16 board for information purposes was in
17 relation to public appearances and media by
18 the Churchills, and you said, "No, there are
19 other ways."

20 A. Yeah, so, for example, we would've—one of
21 the big responsibilities that we have is, as
22 I mentioned, the Strategic Plan, so in this
23 Strategic Plan from a couple of years ago we
24 would've flagged our initiative regarding
25 organizing—reorganization the structure. I

September 8, 2022

1 believe it was in an annual report that
2 summarizes a Strategic Plan. A couple of
3 years ago we made reference to the whole
4 institution of the DHH position, so that
5 would've come to the board's attention.
6 Now, that's an example.

7 Q. What did you say back to Mr. Whittle? Did
8 you respond to him?

9 A. Pardon me?

10 Q. Did you respond to Mr. Whittle's e-mail?

11 A. No, I did not. This was dialogue between
12 the—and I was copied on it, but this was a
13 statement to the board in general, so Mr.
14 Whittle had his own opinion and made it—
15 there might've been—others might've have a
16 similar opinion. It was discussed amongst
17 the trustees, Goronwy Price, chair at the
18 time, would've—may have responded. I don't
19 know. I don't see it here. This may or may
20 not have led—I don't know the timing on this
21 one, but it could've been flagged, then, at
22 a subsequent board meeting or board study
23 session for discussion.

24 Q. You mentioned that the board would've had
25 some degree of awareness of issues in deaf

September 8, 2022

1 education as a result of the strategic 5-
2 year plan, right?

3 A. Yeah.

4 Q. I understand as part of the strategic 5-year
5 plan, you know, educators and other
6 professionals who work in schools are
7 assembled together to be able to, you know,
8 provide commentary and insight and help, you
9 know, brainstorm and contribute to that 5-
10 year plan, right?

11 A. Yeah, and there's an--there was an open
12 consultative process where public could've
13 made contributions as well.

14 Q. Much in that strategic 5-year plan on deaf
15 education?

16 A. If it was reported in the annual report,
17 then there would've been something in there,
18 yeah.

19 Q. We had evidence in the first few days of
20 this hearing from Tammy Vaters. You
21 probably wouldn't know her. She's a student
22 assistant who worked with Carter Churchill
23 for several years. She's a deaf person and
24 obviously quite fluent in ASL. She
25 indicates that she was at one of those--what

September 8, 2022

1 did you call it, consultation meetings; I've
2 been calling them brainstorming meetings,
3 but one of those consultation meetings on
4 the 5-year Strategic Plan—

5 A. Sure.

6 Q. —and she in her evidence said that she was,
7 you know, placed into a small group. They
8 break them up into groups and —

9 MR. PENNEY:

10 Q. I think that was a school planning session.
11 I think that's what the evidence was.

12 MR. CHURCHILL:

13 A. (unintelligible) in the evidence.

14 MR. REES:

15 Q. Let's—I mean —

16 MR. PENNEY:

17 Q. Let's pull up the document, and let's be
18 sure. The one on the —

19 MR. REES:

20 Q. Yes, the document —

21 A. I think I know what you're talking about.

22 Q. Okay, you know what I'm talking about.

23 A. That's a local—no, that's not the strategic
24 planning process. That's a —

25 MR. CHURCHILL:

September 8, 2022

- 1 A. (unintelligible) what she calls it.
- 2 MR. REES:
- 3 Q. I mean -
- 4 A. That's a school development meeting.
- 5 Q. Okay. That's what Tammy—and I can take you
- 6 to the document if we need to.
- 7 A. So, she—well, every school -
- 8 Q. She's wrong?
- 9 A. Yeah. Every school has a—so, how it works
- 10 is there's an overarching Strategic Plan
- 11 with three aims, three main goals, and then
- 12 each school in response to that Strategic
- 13 Plan develops their own School Development
- 14 Plan, and oftentimes the goals are very
- 15 closely aligned with what the district goals
- 16 are.
- 17 Q. I see, okay, so that's the confusion. That
- 18 makes sense.
- 19 A. Yeah.
- 20 Q. Just to make sure we clarify it, Volume 4,
- 21 colour tab documents on your left-hand side.
- 22 A. Right. My left-hand side?
- 23 Q. Sorry—yes, your left.
- 24 A. This one over here, volume -
- 25 Q. Yes, Volume 4, Tab N as in November.

September 8, 2022

1 A. Okay, give me a second here now to
2 reorganize.

3 Q. Yes, that's fair.

4 A. Which tab, sorry?

5 Q. This is Volume 4, Tab N as in November.

6 A. I'm glad you're using the phonetic—okay, go
7 ahead.

8 Q. Coincidentally, this letter is dated November
9 19th, 2018. It's a letter that Tammy Vaters
10 writes, and this wouldn't have been a letter
11 you're familiar with, but this just forms
12 the foundation for what I want to discuss
13 with you. She says that she's at the
14 meeting in the first sentence to attend a PD
15 day to focus on the next 5-year Strategic
16 Plan, so I take your point that this might
17 not have been the meeting to formulate the
18 5-year Strategic Plan, but it was related to
19 it, and Tammy Vaters indicates in this
20 letter—and she said as much when she
21 testified here in front of this Board of
22 Inquiry—that while she was in her group,
23 they had come up—their group had come up
24 with several fantastic ideas around
25 addressing issues in deaf education. And

September 8, 2022

1 she indicates—and we haven't had any
2 evidence to refute that this is the case,
3 that Jamie Coady, who was a director of
4 education at that time, interrupted their
5 discussion when he asked what they had
6 produced and indicated that deaf education,
7 the needs of deaf children are not a
8 priority and to focus on something else less
9 challenging, and she—ultimately, the reasons
10 this letter gets generated is because she
11 files a complaint, and he apologizes. So,
12 my question for you is, this 5-year
13 Strategic Plan that you're talking about
14 where, you know, when it's being discussed
15 by Tammy Vaters and others, she gets told by
16 Jamie Coady that the deaf education portion
17 of it, the supports for deaf students, is
18 not a priority, did you have any concerns
19 that that Strategic Plan would not have
20 reflected those needs to your board?

21 A. This—no, I think the Strategic Plan in
22 general is a very general plan. The
23 specifics are developed. Obviously, each
24 school develops some specifics; and, again,
25 the three main goals that we arrived at are

September 8, 2022

1 student achievement, engagement, safe and
2 caring schools and leadership development
3 and organizational efficiency. Underneath
4 all those are some very general things for
5 each division, all aspects of programs,
6 human recourses, the corporate—all the
7 various corporate aspects to transportation
8 right down to finance. All of those would
9 have goals underneath those. For student
10 services, they would be general in nature,
11 not specific to SLP or deaf and hard of
12 hearing. That level of detail would come
13 out in the work plans of individuals in
14 those roles, so you wouldn't necessarily see
15 intricate detail of each subset in an
16 overarching Strategic Plan. That's not to
17 say deaf and hard of hearing is ignored.
18 It's imbodyed in the whole student services
19 initiatives around organizational efficiency
20 or—yeah, that's how it works.

21 Q. Are you tell me you agree with Jamie Coady?

22 A. No.

23 Q. Okay.

24 A. I didn't say that.

25 Q. Okay, good.

September 8, 2022

1 A. In fact, I think what Jamie Coady -
2 Q. You don't know.
3 A. I take it that he apologized. You tell me
4 he apologized, and I do recall something
5 around this, and it might've been a
6 misunderstanding that they're—you're trying
7 to group things similarly, so when you're
8 talking about goals at a school development
9 level, something like deaf and hard of
10 hearing education might've been an indicator
11 of success at a school level rather than an
12 overarching goal. The goals are general, so
13 that's—I think it's just an—maybe a
14 misinterpretation of how school development
15 goals are arrived at. Like, you wouldn't
16 have—there's only one—one, two or three
17 goals at a school. They have to be very
18 general in nature. Underneath that there
19 are a number of indicators of success and
20 priorities, and it's possible that they
21 could be imbedded there, but they wouldn't
22 be an overarching goal. Like, you wouldn't
23 have just a goal—you'd have to have a
24 general student achievement goal, not one
25 specifically related just to math or science

September 8, 2022

1 or deaf and hard of hearing or any-like,
2 they-but they could be imbodyed or
3 referenced in the rest of the School
4 Development Plan. I think it's just a-
5 probably a -

6 Q. A general goal would be something like
7 ensure an inclusive environment.

8 A. Yeah, could be.

9 Q. Right.

10 A. Could be.

11 Q. You indicated-and we can go there if you
12 need to. You provide a briefing note, and,
13 again, these briefing notes-I appreciate
14 your earlier evidence that, you know, while
15 you might not draft them, yourself, you
16 certainly endorse them.

17 A. Yeah.

18 Q. So, a briefing note gets sent in April of
19 2019 to the Board of Trustees. I think this
20 is during a provincial election, and you
21 indicate to the Board of Trustees that for
22 deaf and hard of hearing education that
23 "Services are being provided in accordance
24 with provincial policy commensurate with the
25 students' needs."

September 8, 2022

1 A. Yeah, okay.

2 Q. That sounds like—I mean, I don't think I
3 need to show that. That sounds like
4 something you would've said to them at that
5 time?

6 A. Yeah.

7 Q. Yes. Did you know that after—only a few
8 weeks after you made that statement to the
9 board, you know, in writing in your briefing
10 note that the itinerant teachers come
11 forward with another, you know, identical
12 proposal for a satellite classroom and again
13 list all the same needs that they had been
14 listing since 2018, 2017? Did you know that
15 the satellite classroom proposals were
16 continually being brought forward to Bonnie
17 Woodland?

18 A. No. I think I've indicated in my affidavit
19 that I would've been—after the first
20 discussion I would've had on satellite
21 classrooms would've been Lucy just relaying
22 in—that, you know, there had been some
23 discussion around a satellite classroom, and
24 it wasn't fully formed. She didn't think it
25 was in a position that we could take it

September 8, 2022

1 forward. That was something that she would
2 endorse. That was the level of discussion
3 there, and later when the classroom was
4 finally set up, then Georgina would've
5 relayed the same thing. That would be my
6 level of interaction.

7 Q. And the needs identified in this 2019
8 satellite classroom proposal, did those
9 needs, you know, get brought to your
10 attention then subsequently?

11 A. I don't know what you would mean by
12 "attention?"

13 Q. So, you had indicated that these teachers
14 making this proposal, you know, would find
15 their -

16 A. No, I was not aware of the detail behind why
17 the satellite classroom was being proposed,
18 just that it was—had been proposed and
19 endorsed at that point.

20 Q. Right. I mean, do you feel that you lacked
21 the authority to be able to accurately
22 convey to the Board of Trustees that, you
23 know, students are providing—

24 A. No.

25 Q. —are being provided adequate services and -

September 8, 2022

1 A. No, because the—yeah, it's a governance
2 board, so the board does not embroil itself—
3 I don't—I as CEO can't get involved in
4 individual student programming. It's
5 impractical for me to do so. There are
6 qualified people with training to do that,
7 and the board is a governance board, so they
8 don't mine into operational details. They
9 might have questions that we'd have to
10 respond, but their avenue to deal with
11 something like that would be to call for a
12 policy review or—but they didn't, and that
13 was their purview. Like, they're a
14 governance board that is responsible for
15 development of policies, and how it works in
16 some cases, in most cases, they don't the
17 legwork on the policy development. That's
18 something that the staff does, professional
19 staff. It's brought to committee level. In
20 some cases they may question a word or a
21 thrust or an overall focus of the policy,
22 and they'll send it back for redevelopment.
23 Ultimately, it comes to the board once it's
24 all been approved by the committee, and then
25 they enact it. They vote on it. It's a

September 8, 2022

1 democratic elected board at that time. Now
2 we have an appointed board. So, that's the
3 process, so they can query operational
4 issues, but their vehicle to address change
5 in the district is through policy
6 development. That's their role.

7 Q. But you would provide them with, you know,
8 upon request, detailed information if
9 requested about, you know, ASL supports in
10 the Newfoundland school system, right?

11 A. Right, yeah, so if they had a query and then
12 there would be a briefing note developed.
13 They may have questions. Whoever was in the
14 role at the time would brief the board, and
15 it was—and I'll come back to the
16 organizational change. Generally speaking,
17 at board study sessions, it's limited to the
18 board themselves, so the 17 trustees, myself
19 as CEO; chief financial officer, Terry Hall;
20 Ed Walsh, associate; and student services,
21 so now we had—once we instituted that
22 position, we had elevated student services
23 to a provincial level responsibility that
24 interfaced with the board when they were
25 engaged in study sessions. Prior to that,

September 8, 2022

1 student services would've been imbedded at
2 the regional level, and there wouldn't have
3 been an interface with the board other than
4 through the associate director.

5 Q. Okay, but, I mean, you gave your board at
6 this point in time in April of 2019—you
7 provided an update to your board as per
8 their request in a briefing note—

9 A. Yeah.

10 Q. —that, you know, said, "services are being
11 provided in accordance with provincial
12 policy commensurate with assessed needs,"
13 but then only a few weeks later, you know,
14 you get hit with this other—a fresh
15 satellite classroom proposal that
16 identifies, you know, the same needs that
17 they've identified —

18 A. What year are we talking about now?

19 Q. A satellite classroom proposal gets made in
20 2019—

21 A. 2019, okay.

22 Q. —which is very similar in both description
23 and in needs to the satellite classroom
24 proposals of 2018 and 2017, which in your
25 affidavit you said you were aware of.

September 8, 2022

1 A. Right.

2 Q. And do you feel the need, then, to say, "Mm,
3 the information that I presented to the
4 board about, you know, needs being met may
5 have been inaccurate. I should investigate
6 this further." Does that ever occur?

7 A. No, the-no. The level of detail in the
8 final-I'm-the proposal would've been such
9 that it would've met with the endorsement of
10 Georgina Lake at that point, and Georgina
11 would've approached Ed Walsh and had it
12 endorsed. It wasn't a board process. These
13 were operational functions at that point.
14 Those are operational decisions. They're
15 not board policy decisions, but any time the
16 board requested us to give information on
17 operational issues we would do so.

18 Q. I don't think you are in attendance at the
19 meeting where the satellite classroom was
20 first proposed in 2017-

21 A. No.

22 Q. -and I don't think you were there in 2018.

23 A. No.

24 Q. I think it was an e-mail in 2018. There was
25 a meeting, though, in 2019 where Kim Lawlor

September 8, 2022

1 brings this—oh, in 2017—hold on a second.

2 MR. ANTHONY STACK, CROSS-EXAMINATION BY THE

3 ADJUDICATOR

4 ADJUDICATOR:

5 Q. Mr. Stack, while Mr. Rees is reviewing his
6 notes, I want to see if you can clarify a
7 couple of things for me. When the satellite
8 classroom was proposed in 2017, was that
9 proposal brought to your attention in 2017?

10 A. No, not at—well, I would've had a
11 conversation with Lucy that she had dealt
12 with a proposal. She had made a decision.
13 We would've had a brief conversation about
14 it. That would've been the extent of it.
15 We might've had some discussion around, if I
16 can recall—well, you know, "Lucy, what were
17 the issues with it," and she would've
18 relayed that, you know, there were concerns
19 over the issue of a worry, really, about
20 approaching parents to extract their
21 children from the neighbourhood schools to
22 do this. Would've been—she would've flagged
23 transportation issues because at that time
24 there was no latitude to transport children
25 out of their catchment in terms of—there was

September 8, 2022

1 no budget for that. Some of those—some
2 factors is what I would recall. It was a
3 general discussion. She had already dealt
4 with it, made the decision, which was part
5 of her responsibility, and it would've been
6 just an after-the-fact informing me that she
7 had done so.

8 Q. And I gather there was a second proposal
9 brought forward by the DHH itinerant
10 teachers in 2019. Were you informed when
11 that proposal was brought forward?

12 A. I don't recall a discussion on that one, no.
13 I do recall being apprised when ultimately
14 the decision was made to endorse it, but not
15 the intermediate one, no.

16 Q. And when the -

17 A. Now recognizing that it—and I guess the
18 difference, I should add—sorry, Mr.
19 Adjudicator. The difference, I guess, in
20 the conversation the second time was the
21 level of it. The conversation—Georgina was
22 directly reporting to the associate at that
23 time because that was the new structure.
24 Georgina, although she works in tandem at
25 the provincial level, she is not a direct

September 8, 2022

- 1 report to me. She's a direct report to the
2 associate so—and it's possible -
- 3 Q. And who was the associate at that time?
- 4 A. Ed Walsh. So, prior—the conversation that I
5 would've had with Lucy—there was no student
6 services lead at that time, so the proposal
7 would've come from Bonnie to Lucy. Lucy
8 would've dealt with it and then reported to
9 me. The second time around, when it was not
10 endorsed the first time in 2019, it's likely
11 that Georgina, as the now student services
12 lead taking input from Bonnie or whoever,
13 would've brought that to Mr. Ed Walsh, I'm
14 thinking. That could have happened.
- 15 Q. And so in 2019, did Ed Walsh inform you that
16 a decision had been made with respect to the
17 satellite proposal in 2019?
- 18 A. The final approval of it was a conversation
19 with both Ed and Georgina.
- 20 Q. Yes. When you say "the final approval of
21 it" -
- 22 A. Once it was endorsed. When the endorsement—
23 the decision to endorse the—and proceed with
24 the satellite classroom, it would've
25 included those two folks in a conversation.

September 8, 2022

1 Q. So, between 2017 when you're informed there
2 had a been a proposal-

3 A. Yeah.

4 Q. -and when-I think Darlene Fewer Jackson goes
5 into the role, I think, in the -

6 A. Fall of 2019, yeah.

7 Q. She goes into the role in the fall of 2019,
8 and I think by early 2020, or some time in
9 2020, she puts forward a proposal.

10 A. Right. That one was endorsed. Like,
11 ultimately it was endorsed, and then we had
12 the classroom in place ultimately, so I was
13 aware that -

14 Q. You were not aware of a proposal in between
15 those two proposals.

16 A. No, not in between, no.

17 Q. Go ahead, Mr. Rees.

18 MR. ANTHONY STACK, CROSS-EXAMINATION MR. KYLE REES

19 (CONT'D)

20 MR. REES:

21 Q. The 2017 meeting where the satellite
22 classroom is discussed, you're not there,
23 but you're informed later about that
24 meeting, right?

25 A. No.

September 8, 2022

- 1 Q. Oh, sorry, I misunderstood you.
- 2 A. No, not the meeting. I would've—I was
3 informed by the decision that Lucy Warren
4 had made.
- 5 Q. Okay. Do you ever, when you're informed
6 about the decision—and I think you've
7 described that as, like, the decision to
8 endorse or not endorse, is that correct?
- 9 A. Yeah.
- 10 Q. The decision not to endorse the satellite
11 classroom that's communicated to you by Lucy
12 Warren in 2017, do you ever enquire into the
13 needs that were identified to give rise to
14 that proposal? "You know, okay, I get that
15 for one reason or another this proposal
16 doesn't work. Why was the proposal made?
17 Is there anything else we can do short of a
18 satellite classroom?" Does that discussion
19 ever happen?
- 20 A. Throughout all of this, there were periodic
21 discussions here and there which was in all
22 aspects of student services. How can we get
23 better? How can we do—how can we realign
24 our resources within our resource envelope,
25 which we're—I've already testified we've

September 8, 2022

1 been—we're limited to in practicality, and
2 it—that's a constant theme. How can we
3 regroup? How can we realign? How can we
4 reassign? You know, right down—I'm aware
5 right down to the—I know that the student
6 services folks struggled with this and
7 juggled this every day, and they're juggling
8 it right now. As students move around the
9 province, teachers get assigned because of
10 the way the contract works, and the only
11 flexibility, then, we have is with respect
12 to student assistant hours and where those
13 are allocated. The theme is how can we—what
14 are the student needs? How do we match the
15 needs, and how do we distribute the
16 resources, and that's—that puzzle is
17 something that preoccupies the student
18 services staff.

19 Q. But my question is if as a result of that
20 2017 proposal that, you know, by—it reaches
21 you indicating that it's not endorsed. Do
22 you ever enquire into the needs that
23 engendered that proposal?

24 A. No, not specifically as you address it
25 there, as you describe it there. It would

September 8, 2022

1 be more of, you know, we need to continue to
2 find ways to do things better.

3 Q. Okay. I mean, you are informed that a
4 solution has been proposed but has been
5 rejected, the satellite classrooms, but do
6 you ever ask what problems a satellite
7 classroom—or does anyone ever tell you what
8 problems a satellite classroom was designed
9 to solve in 2017?

10 A. No, but it's pretty self-evident that any
11 time that you can employ economy—the
12 principle of economy of effort and the
13 grouping of assets, it's meant to address a
14 need in an efficient manner, but there may
15 be logistical barriers to that: time and
16 space, resources, the availability of a
17 cohort. Any number of factors could go into
18 that.

19 Q. Yes, and I think we subsequently learned
20 that those are not barriers to the satellite
21 classroom, right?

22 A. (No audible response).

23 Q. Time and space, the cohort.

24 A. I know that those things coalesced in 2019.
25 I don't know to what extent they were

September 8, 2022

1 barriers or what the actual factors were in
2 2017.

3 Q. The barriers that—I mean, we've asked the
4 people who would know what those barriers
5 were, and what Bonnie Woodland has told us
6 is that it was a leadership deficit, that
7 there wasn't somebody like a Darlene Fewer
8 Jackson who was able to sort of take the
9 proposal and run with it.

10 A. I would say this. You know, Bonnie Woodland
11 is a dedicated person who was dealing with
12 an incredible amount of duties and
13 responsibilities, as all of the regional
14 student services were. It was inherited
15 from the amalgamation of the districts, and
16 that's ultimately why—prodded by the
17 Premier's Task Force Report giving us the
18 impetus, the justification, to regroup and
19 realign and take some of that burden and
20 bring it up to a provincial level and a
21 provincial focus—which I say ultimately led
22 to the hiring of the DHH person. And even
23 now, you know, we've confirmed that post for
24 another year, but we're going through
25 another—yet again another depletion of

September 8, 2022

1 resources. The executive structure of the
2 district has been altered by the department
3 as a precursor to us being absorbed; and,
4 you know, the model that was endorsed by the
5 board but compelled by the department calls
6 for all of those functionalities to be
7 grouped under one director, so all—when I
8 say “all those functionalities,” BVI, DHH,
9 SLP—forgive me, I know I’m using
10 abbreviations for it so -

11 Q. I think we’ve -

12 A. Yeah.

13 Q. We’ve got a little appendix.

14 A. And educational psychologists all under one
15 person, and we’ve resisted that, and that’s
16 why—but we can only do it for a year because
17 after that it’s going to be up to the
18 department what happens to that position.

19 Q. Okay, yes, and, okay, let’s talk about that
20 because I find that really interesting. I
21 asked Alma McNiven about it when she was
22 here yesterday, and she indicated—you know,
23 I was asking about the future of the
24 satellite classroom and the existence of the
25 role that she occupies, which, you know, we

September 8, 2022

1 see as being so pivotal to ensuring that
2 deaf students' needs are being met—

3 A. Yeah.

4 Q. —and she indicated, “Look, my contract only
5 goes to August 2023; I would hope to get
6 renewed, but there's no certainty to that,”
7 and you're confirming that's the case.

8 A. It's a 1-year appointment because it's
9 outside the parameters of the structure that
10 we're supposed to be implementing.

11 Q. Right, and so it is entirely possible that,
12 you know, despite the gains that you folks
13 have made since 2020—well, since 2019 with
14 the establishment of Darlene Fewer Jackson
15 in that position, that the continuity of
16 that institutional memory could be lost if
17 that position is eliminated by the
18 department.

19 A. Yeah, that would be my worry. Now, as long
20 as I'm in the post and as long as I have any
21 influence we're going to champion having
22 that as a standalone function. It warrants
23 it.

24 Q. The resources that are provided—the money
25 that's provided to permit the school

September 8, 2022

1 district to have an administrative position
2 like the one that Alma McNiven now occupies
3 is dependent upon the Department of
4 Education for funding, right?

5 A. Correct, so in order to do this, what we're
6 doing this year—it is finding the human
7 resource sourcing for that somehow at the
8 expense of something else, and I'm not quite
9 sure what.

10 Q. "At the expense of something else." I mean,
11 there's a tendency for, you know, the
12 accommodation of the human rights needs of
13 one group to met at the expense of another,
14 and you're telling me you're having to
15 borrow from other administrative positions
16 and administrative duties to attempt to try
17 to sustain this position.

18 A. Yes.

19 Q. And if the district had an award from a
20 human rights Board of Inquiry that indicated
21 how vital that administrative position was,
22 it would make it easier for the board or
23 someone like you in your position to be able
24 to advocate to the district that that
25 position should remain in place, wouldn't

September 8, 2022

1 it?

2 A. That could be. I'm hoping that we don't
3 need to be—I'm hoping that we will be able
4 to convince the folks that are going to
5 implement the new structure—and that's yet
6 to be decided on—we'll hoist that in, the
7 need for that position to be standalone.

8 Q. I'd suggest there's nothing more convincing
9 than an enforceable order.

10 A. Again, you'd know more about that I from the
11 legal perspective.

12 Q. Okay, thanks for telling me about that.
13 That was an interesting area. I want to
14 jump back for a second and talk about once
15 Darlene Fewer Jackson gets established in
16 her position in 2019 and the concerns that
17 get identified, so as I indicated to Ms.
18 Fewer Jackson when she was here yesterday,
19 this is sort of the moment where we start to
20 solve the problem for the first time, right?
21 And Darlene Fewer Jackson comes in, and she
22 produces a—I think it's actually along with
23 the satellite classroom in September of
24 2019. She indicates what the needs are, and
25 so by this point, you know, Darlene Fewer

September 8, 2022

1 Jackson producing a report, identifying
2 needs, saying a satellite classroom is the
3 solution to some of those needs. You're
4 aware of this proposal at that point in
5 time.

6 A. The where/which proposal, that -

7 Q. The satellite classroom proposal in 2019
8 that ultimately gets approved in 2020.

9 A. No, I wasn't aware during the actual
10 proposal. I was aware after the approval of
11 the proposal.

12 Q. Who approves it?

13 A. In that case, that was—that would be Ed
14 Walsh.

15 Q. Ed Walsh, okay.

16 A. Endorsed by Georgina

17 Q. Endorsed by Georgina, approved—you know,
18 I've been saying greenlit—greenlit by Ed
19 Walsh.

20 A. Yeah.

21 Q. Okay, so I should ask Ed about the needs.
22 Do you ever find out about the needs that
23 Darlene Fewer Jackson identifies in 2019
24 that that satellite classroom is meant to
25 resolve? Do you know why you're putting a

September 8, 2022

- 1 satellite classroom in place or just that
2 you are going to be?
- 3 A. I know that's it's an efficient use of
4 resources that gives a -
- 5 Q. Again, I'm sorry, let's back up.
- 6 A. Yeah.
- 7 Q. "An efficient use of resources," tell me
8 what you mean by that.
- 9 A. You're grouping the economy of scale again.
- 10 Q. Right. It's takes no additional resources.
- 11 A. We can pull—my understand is it did require
12 us repurposing resources from elsewhere in
13 the province to constitute, yes.
- 14 Q. But in some areas it's a saving of
15 resources, isn't it?
- 16 A. In some areas it can be, yes.
- 17 Q. Yes, like the number of student assistants
18 required, for instance.
- 19 A. Right.
- 20 Q. Right.
- 21 A. Because you're able to leverage the fact
22 that now those people can support all the
23 children.
- 24 Q. Right.
- 25 A. And, in fact, generally speaking, it's a bit

September 8, 2022

- 1 of a misunderstanding that student
2 assistants get assigned to individual
3 students. They don't. They are assigned to
4 the school, and they can be—
5 Q. Deployed as the school sees appropriate.
6 A. —deployed as required, yes.
7 Q. I'll just take a moment to review my notes
8 here. Okay, the ASL immersive classroom as
9 been greenlit following the needs identified
10 by Darlene Fewer Jackson, greenlit by Ed
11 Walsh and makes its way to you that says,
12 "Look, this has been all approved. You
13 know, this is something we're doing." The
14 parents, including Todd and Kim Churchill,
15 first hear about this proposal—there's a
16 presentation given June 10th of 2020. Were
17 you present at that meeting, or do you know
18 the meeting occurred?
19 A. No, but I would imagine that there would've
20 been some sort of meeting with—either
21 separate meetings with parents or a group
22 meeting with those that were thinking about
23 going into that room.
24 Q. Right.
25 A. I don't know what form that took. You know,

September 8, 2022

1 you're asking them to—again, we were
2 apprehensive about this. We were worried
3 about the whole aspect of coming out of your
4 neighbourhood school, so, you know, you
5 would need parental endorsement obviously
6 for something like this.

7 Q. Right. You'd need parental sign-on.

8 A. Yeah.

9 Q. You did eventually get that parental sign-
10 on, you know, I would say with glowing
11 approval.

12 A. I don't know.

13 Q. You don't know, okay, but let's put it this
14 way. The kids wouldn't be there in the
15 school without parental approval, would
16 they?

17 A. Right. The cohort would've, I think—I'm not
18 sure what the critical mass was; we needed
19 all the parents or—what fraction of the
20 parents. Obviously, couldn't have done it
21 if it was only one or two; but, you know,
22 maybe it would've worked for three. It was
23 going to go ahead if we had—if it made sense
24 to do so, it was going to going ahead. We
25 could get a cohort.

September 8, 2022

- 1 Q. The Churchills testified in their affidavit
2 that, you know, they attend this meeting in
3 June of 2020 indicating that this Eastpoint
4 Elementary ASL immersive classroom is going
5 to be set up for September of 2020. You
6 know, it's good news as you might imagine.
7 They, after attending that presentation and
8 I would say bombarding the presenter with
9 questions, they asked for all of the
10 commitments and descriptions of that program
11 as presented to them in that June meeting to
12 be put in writing. They, you know, had been
13 burned by the district before. They were
14 concerned about that, and do you recall that
15 they e-mailed the Minister, Brian Warr, and
16 asked for those terms and conditions of the
17 satellite classroom proposal to be put in
18 writing? Do you recall that correspondence
19 happening?
- 20 A. It's possible that I was copied. I don't
21 know. I don't recall.
- 22 Q. Okay, I'll put it to you—and I can show it
23 to you if you need to—but they ask Brian
24 Warr to have this put in writing, and Brian
25 Warr e-mails them back and says, you know,

September 8, 2022

- 1 "Copied Tony Stack. He'll follow up with
2 you and let you know." Do you recall that
3 exchange occurring?
- 4 A. I don't, no.
- 5 Q. Okay, I should show you the document, which,
6 is Volume 5 of the coloured-tab documents,
7 Tab Q is as in Quebec.
- 8 A. Okay.
- 9 Q. So, if you look down there, you know,
10 "Please see"—make sure we're all there, yes,
11 at Tab Q.
- 12 A. Yeah.
- 13 Q. "Please see below Minister Brian Warr's
14 response to your e-mail and letter," and he—
15 and the last paragraph of Brian Warr's
16 response, which comes from Janet Cormey, so
17 presumably, you know, sent on his behalf,
18 says, "In your e-mail you expressed concern
19 about conditions for enrollment that were
20 verbally communicated to you versus what
21 NLESD staff maintains were the actual
22 conditions. By copy of this e-mail, I'm
23 bringing this matter to the attention of Mr.
24 Anthony Stack. As chief executive officer,
25 I trust that Mr. Stack will look into the

September 8, 2022

1 matter.”

2 A. Right.

3 Q. Do you recall looking into the matter?

4 A. No, I did not look into the matter, but I do
5 see at the top here that my executive
6 assistant, Elaine Cross, took this
7 correspondence and sent it to the folks that
8 would be involved, and those are none other
9 than Ed Walsh and Georgina Lake, so that's—
10 and she would've followed up, I know,
11 because that's what she does, with a
12 conversation saying, “Please action this.”

13 Q. The satellite classroom wasn't then and
14 isn't now any kind of a guarantee, is it?
15 There's never been a promise made to the
16 Churchills or anyone else that the satellite
17 classroom will continue to exist, that it
18 will have staff of a certain quality, you
19 know, or even the supports that are in place
20 now in Grade 6, you know, will remain in
21 place for the rest of the year. There's
22 nothing that stops the district from
23 changing that program tomorrow, is it?

24 A. No, and the rationale for that is it—we
25 don't know what our allocation is going to

September 8, 2022

1 be year to year. Now, as I said, in a
2 perfect world—and I fully believe that this
3 will be something that will be in place for
4 as long as needed, but to be able to
5 guarantee that is difficult for us to do.
6 We can't—we don't know what the resourcing
7 is going to be, what policy changes might
8 be. You know, the nature of how staffing
9 works is we get an allocation from
10 government, and then you move forward from
11 that year to year. It also is relatable
12 here to what—if there's not a critical mass
13 of parents that decide to keep their
14 children in the program, is it possible that
15 one or more of the children may move out
16 because it now suits—no longer is satisfying
17 their programming. Who knows. I think
18 again—and I shouldn't be making judgment
19 calls here but—or speculation, but nobody in
20 my staff currently believes that this is
21 something that's going to be dismantled any
22 time soon, and in all likelihood it's a good
23 possibility that this will carry on right
24 until the end of schooling for those
25 children.

September 8, 2022

- 1 Q. Right to tend of the—oh, of schooling for
2 those children—
- 3 A. Schooling, yeah.
- 4 Q. —which is graduation from Grade 12 or age
5 21.
- 6 A. Right.
- 7 Q. Right, and that's—you say, you know, it's a
8 good possibility no one in your department
9 believes that's the case. Particularly with
10 the merger, though, with the Department of
11 Education, you have no control.
- 12 A. I don't have control of that, no.
- 13 Q. No English-speaking student has to worry at
14 the start of their school year that they're
15 going to be provided with a teacher that can
16 communicate with them. That's not a concern
17 for any hearing student, is it?
- 18 A. You mean no -
- 19 Q. No hearing—like, I mean, the satellite
20 classroom is—exists only as long as the
21 district wills it, or the department wills
22 it depending on the circumstances.
- 23 A. Or the parents decide to continue with it—
- 24 Q. Right.
- 25 A. —or the children's needs don't radically

September 8, 2022

1 change, yeah.

2 Q. But a hearing child attending school—you
3 know, I sent my child off to school. I
4 never had any concerns over the course of
5 the summer that my child was going to be
6 provided with a teacher that spoke her
7 language, right? That's not a concern any
8 other hearing student ever has, right?

9 A. Sure.

10 Q. Right.

11 A. Now, where they go to school, who their
12 classmates are, that could change. Schools
13 -

14 Q. Oh, look, and sometimes you get better
15 classrooms and worse classrooms, better
16 resources, less resources, but they always
17 get a teacher that can communicate with
18 them, don't they?

19 A. Yeah.

20 Q. Yes, and they're always guaranteed that
21 they're going to have a full-time teacher
22 who can teach in their language, right, in
23 English, the hearing students?

24 A. A full-time teacher, yeah. If they're
25 slated for five hours of instruction, then

September 8, 2022

1 they're going to get whatever is prescribed
2 in the curriculum with a teacher, yeah.

3 Q. Right. There's never the case that, "Look,
4 you know, we couldn't find a teacher for
5 you, so we're going to give you two hours a
6 day in English instruction."

7 A. No, but there are—you know, and, again, it
8 is possible that attendance could be limited
9 to due to behavioural issues; you know, the
10 student can only handle so many hours a day.
11 Those things can happen.

12 Q. And those are based on the student's need.

13 A. Yeah.

14 Q. Understood, and there's never going to be a
15 question that a hearing child attending
16 school in any given year is going to be
17 placed in a classroom where they're able to
18 communicate with their peers while they're
19 in their classroom. That's never at risk,
20 is it?

21 A. No.

22 Q. Even, you know, children who are attending
23 district or children who are attending their
24 educational program while they're in a
25 correctional facility—there are a small

September 8, 2022

- 1 handful of those—they know they're going to
2 get to go to school and interact with their—
3 be able to communicate with their peers,
4 their classmates, right?
- 5 A. Yes.
- 6 Q. Yes, but if Eastpoint Elementary only exists
7 by fiat, only exists—and every year balances
8 on the edge of every budget, balances on the
9 edge of a knife as to whether the department
10 or the district is going to have the
11 resources -
- 12 A. I wouldn't describe it as that precarious.
- 13 Q. It's not that precarious.
- 14 A. No.
- 15 Q. It would be a lot less precarious if there
16 was an order from the Human Rights
17 Commission that that classroom is the only
18 way to meet the needs of these children,
19 right?
- 20 A. I don't know if there could be an order to
21 that effect. I'm not a legal expert, but if
22 the other—if the cohort no longer exists due
23 to people moving elsewhere or needs
24 changing, how can you say that the classroom
25 would stay as it is? Like, it depends on

September 8, 2022

- 1 the -
- 2 Q. Understood. That's not the only risk,
3 though, is it? Budgetary risk, resource
4 risk, that all exists, doesn't it?
- 5 A. Those are—given some of the efficiencies
6 that have been gained here, those are—those
7 risks are mitigated significantly.
- 8 Q. I understand, so there is—it's very
9 unlikely—
- 10 A. Very unlikely.
- 11 Q. —that it will be a drain on resources to the
12 point where that program can't continue to
13 exist.
- 14 A. That would be my assessment.
- 15 Q. Yes. Do you know anything about recruitment
16 efforts to try to recruit, retain, train,
17 qualified individuals to staff a classroom
18 like this? Have you had any involvement in
19 that?
- 20 A. Not specifically. Generally, there are—
21 we've got pervasive recruitment problems
22 right now in education in general. We have
23 to recruit -
- 24 Q. Okay, but you don't know anything about this
25 classroom and recruitment efforts.

September 8, 2022

- 1 A. No, it—I—not specifically this classroom but
2 recruiting in general for qualified people,
3 especially specialist folks, is difficult
4 and challenging.
- 5 Q. Last set of questions I got for you arises
6 out of some fantastic discussion we had
7 yesterday with Alma McNiven and Darlene
8 Fewer Jackson about what the future of this
9 classroom could look like, and, you know, we
10 understand that it's uncertain, but there
11 was communicated, particularly by Alma
12 McNiven, that there was a great need to be
13 able to recruit, retain and train people to
14 staff a classroom like this—
- 15 A. Sure.
- 16 Q. —so that these services, you know, don't
17 dissipate in the future. Without an entity
18 like the School for the Deaf to be a
19 repository of this information and skill,
20 you know, it needs to be maintained through
21 another way. One of the—and I—to the
22 district's credit, Alma McNiven indicated
23 that she felt that she was getting pretty
24 good—pretty good reception, I think, was her
25 phrase from the district these days. When

September 8, 2022

1 she was bringing different ideas forward,
2 she felt she was being listened to, and her
3 ideas were being considered seriously. Have
4 you been a party to sort of any of those
5 discussions, proposals, ideas, to be part of
6 that good reception?

7 A. Overall, as a thrust of, you know, our
8 visioning concept of the district going
9 forward, our values, it's about maximizing
10 students first and doing anything within our
11 capacity to improve their social, emotional
12 learning environment, so we would be open to
13 anything that would enhance that.

14 Q. One of the possibilities for enhancing those
15 opportunities focussed around training and
16 provision of qualified personnel that was
17 endorsed by Ms. McNiven, who indicated she'd
18 be bringing it to you folks, was about in
19 addition to taking existing teachers and
20 upgrading their abilities in ASL and others,
21 I mean, training them to teach the deaf,
22 that you take deaf people and train them to
23 be teachers. Is that an idea that holds
24 sway or holds traction with you?

25 A. Sure. Yes, absolutely.

September 8, 2022

1 Q. You wouldn't be dismissive of that idea.

2 A. No, we would entertain that. We'd have to
3 figure out how to do that, how to support
4 it. We have had discussions actually in a
5 general sense about hard-to-recruit areas in
6 general with the association and with the
7 Department of Education around things like
8 bursaries, incentives, bonuses, whatever we
9 can do to attract.

10 Q. And these would be all things that if there
11 were recommendations from this Board of
12 Inquiry, you would have no objection to
13 evaluating and to looking—and to doing
14 something in that regard.

15 A. Look, if it helps us get around what is a
16 big problem around recruitment, yes.

17 Q. Those are my questions. Thank you.

18 A. Thank you.

19 ADJUDICATOR:

20 Q. Mr. Penney?

21 MR. PENNEY:

22 Q. No.

23 ADJUDICATOR:

24 Q. Mr. Stack, I want to thank you for providing
25 your evidence to the Board of Inquiry this

September 8, 2022

1 morning. You are free to do, and although
2 you indicated you have not watched any of
3 the proceedings leading up to this point, if
4 you so choose, you're welcome to stay or you
5 can go and return to your business, and we
6 will adjourn, but are we adjourning until
7 1:00 P.M.? Have counsel considered we're a
8 little bit into lunch hour, but you still
9 have two witnesses scheduled for the
10 afternoon? Should we truncate lunch a
11 little?

12 MR. REES:

13 Q. I think we're okay to go for an hour. I
14 think I can do it.

15 ADJUDICATOR:

16 Q. Okay. Well, we'll adjourn until 1:15.

17 (OFF RECORD)

18 ADJUDICATOR:

19 Q. Good afternoon, everyone. I believe our
20 next scheduled witness is Mr. Ed Walsh.
21 This is Mr. Walsh, is it?

22 MR. WALSH:

23 A. Yes.

24 ADJUDICATOR:

25 Q. Welcome, Mr. Walsh. Before we hear your

September 8, 2022

1 evidence this afternoon, you have the option
2 of swearing an oath on the Bible or giving
3 your solemn affirmation to tell the truth.
4 The choice is yours to make.

5 MR. WALSH:

6 A. An affirmation, please.

7 ADJUDICATOR:

8 Q. Okay.

9 MR. ED WALSH, (AFFIRMED) CROSS-EXAMINATION BY MR. KYLE
10 REES

11 REPORTER:

12 Q. State your name for the record, please.

13 A. Ed Walsh.

14 Q. Thank you. Mr. Walsh has been affirmed.

15 ADJUDICATOR:

16 Q. So, Mr. Walsh, I expect Mr. Rees is going to
17 have a series of questions for you. Mr.
18 Penney may have some questions after that.
19 I may have some questions for clarification
20 as we go along, or I may have some questions
21 at the end as well.

22 A. Okay, thank you.

23 Q. Mr. Rees, go ahead.

24 MR. REES:

25 Q. Hi, Mr. Walsh. I'm Kyle Rees. We've met

September 8, 2022

1 before. I'm the counsel for the Churchills,
2 Todd and Kim, and they're sitting here to
3 either side of me. As indicated, I'll have
4 some questions for you. I think we had
5 budgeted in—and we're a little behind
6 schedule there. We had budgeted in three
7 hours for you. I don't think I'm going to
8 use quite three hours, but I'm certainly
9 going to use two, so in the event that we
10 need to take a break or anything, that's
11 entirely acceptable. If you need to
12 stretchy your legs or anything, you let me
13 know. If any questions I ask are unclear
14 either in understanding or intent, let me
15 know. I'm happy to repeat and rephrase
16 those questions. We're going to be
17 referring to a lot of documents. I know
18 that you have your affidavit there in front
19 of you, so we'll be talking about that one,
20 as well as some of the other binders that
21 are around you, but we'll—I'll direct you to
22 those as we go through this.

23 A. Okay.

24 Q. You haven't been able to watch any of the
25 proceedings so far. The proceedings are

September 8, 2022

1 being streamed online. You haven't seen
2 them.

3 A. No.

4 Q. And you haven't spoken to anybody else,
5 anyone else at the district or anyone about
6 what their evidence had been or what the
7 evidence was at this hearing?

8 A. I have not.

9 Q. Right, good. Of course, you're an old hand
10 at this by now. In that case, you might be
11 wondering what all the cameras are about.
12 So, the proceedings are being interpreted in
13 ASL, and we see our folks over here to your
14 right-hand side who are doing the live ASL
15 interpretation, and in addition it's being
16 live-streamed, both you and I, video and
17 audio, as well as well as closed captioned
18 fairly accurately through the Human Rights
19 Commission's website at WebStreaming. So,
20 I've been told to ensure I speak slowly and
21 clearly for both the ASL and the closed
22 captioning, and it'll be important for you
23 to do the same. All right, I've got your
24 affidavit. Thanks for that. The opening
25 part of the affidavit describes, you know,

September 8, 2022

1 your employment history; and, I mean, it's
2 fair to say that you've played roles both-
3 within the school system at the district
4 level. You've spent some time as well at
5 the Department of Education, and most
6 recently, by which we mean within the last
7 five years, you're back at the district
8 level again. What's your current title at
9 the district?

10 A. My current title was associate director of
11 education for programs and human resources.

12 Q. Okay, and that's the same position that
13 you've occupied since March of 2019.

14 A. Yes.

15 Q. And that remains your position to date.

16 A. It does.

17 Q. What—and we're going to talk about a lot
18 more of the specifics later, but just by its
19 general nature, you know, in your roles at
20 the Department of Education from, you know,
21 February of 2018 on until present, where you
22 occupied a couple of roles, what would've
23 been your involvement with regard to deaf
24 education or the case of Carter Churchill in
25 a very general sense?

September 8, 2022

- 1 A. Sure, so from about February 2018 I assumed
2 the position of—formally assumed the
3 position of associate director of education
4 for programs and HR. Before that, for about
5 three months before that, I was in a term
6 replacement because my predecessor was on
7 leave, and then she retired in December, I
8 believe, and so it took a couple of months
9 for the board processes to work itself
10 through, so post-February 2018 my role
11 would've been at the executive level
12 obviously providing leadership to a number
13 of different areas inside of the district,
14 so I had a diverse role obviously providing
15 leadership for all human resources in the
16 province but also all programs and legal
17 services. My role, when I assumed the
18 position, was to take stock of what the
19 issues were from a programs perspective.
- 20 Q. To interrupt you there, then, is the
21 position that—when you take over in October
22 twenty—or, sorry, February 2018, is that a
23 new position that's been created, or do you
24 have a predecessor?
- 25 A. So, my predecessor would've had programs and

September 8, 2022

1 facilities as their responsibility. When I
2 was offered the position of programs and HR,
3 what it did was it created a separate
4 executive position—were funded—or are—the
5 number of executive positions that existed
6 in the district are outlined in the Schools
7 Act, and we can't exceed that, so as a part
8 of me assuming the position of programs and
9 HR, we were able to create a vacancy on the
10 executive. That vacancy we determined would
11 be an assistant director of education for
12 student services. That was a part of the
13 analysis of the perhaps—some of the areas
14 that weren't being serviced as much as we
15 thought they should be serviced. It also
16 came out of the education action plan.

17 Q. The Premier's Task Force, yes.

18 A. There was a recommendation there to provide
19 executive leadership for student services or
20 special education at the school district,
21 and we didn't have the flexibility inside of
22 our current allotment of executive
23 positions, and this was a way in which we
24 created one.

25 Q. Okay, we heard from Tony Stack earlier, who

September 8, 2022

1 sort of described a general process of, you
2 know, cutting of administrative positions
3 from the Department of Education on down to
4 the district that resulted in your sort of
5 multifaceted role being created. Is that
6 more or less right?

7 A. I think he may have been talking—when you
8 say an administrative position -

9 Q. Like the positions—the director type of
10 position that you occupied in 2018.

11 A. Right. I think there was, and, again, I
12 wasn't at the district then, but I think
13 there was some realignment of the executive
14 positions in 2016 that created a programs
15 and facilities position. That would've been
16 the predecessor position that morphed into
17 the programs and HR position that I assumed.

18 Q. Okay, and in terms of reporting structure,
19 you know, we've heard from Mr. Price, who
20 told us all about the role of the Board of
21 Trustees and—you know, and that's an
22 oversight board in some ways. Otherwise,
23 Tony Stack is at the top as CEO, the top of
24 the organizational food chain, and you are
25 second. You're one step down from there,

September 8, 2022

1 right?

2 A. In the current structure, there's two of us.

3 Q. Yes. It's myself and Terry Hall. Terry
4 Hall is the chief financial officer and the
5 assistant director of corporate services and
6 finance, and then on the other side of the
7 organization is my position, which is
8 focussed on programs and human resources.

9 Q. Okay, and Mr. Hall would have no
10 responsibility or involvement in the
11 provision of education services, special
12 education for the deaf. It would all be
13 just a financial piece of that.

14 A. For the most part, yes.

15 Q. Right, so with the exception of, you know,
16 Tony Stack, who is, you know, really under
17 the Schools Act responsible for everything,
18 you would be the next in line as people who
19 have responsibility for the deaf education
20 file.

21 A. That would be correct.

22 Q. Right, and that has been the case since
23 February 2018?

24 A. That's correct.

25 Q. Right. You hold no qualifications in the

September 8, 2022

- 1 area of education of the deaf, do you?
- 2 A. I do not.
- 3 Q. And you don't have any experience teaching
4 deaf children or communicating in ASL.
- 5 A. Not teaching deaf children. In my
6 experience as a teacher, I often had
7 children in my class who were hard of
8 hearing, but not teaching deaf children, no.
- 9 Q. Right, and you wouldn't have acquired—or
10 would you have acquired any sign language to
11 be able to communicate with your students?
- 12 A. I do not.
- 13 Q. Right. Do you have any sort of general
14 knowledge of ASL, I mean how ASL is
15 different from signing exact English,
16 grammar, syntax? Like, what would be your
17 knowledge level about ASL? I understand you
18 can't speak ASL or communicate in it. Your
19 knowledge about ASL, do you have some?
- 20 A. Very limited. Very limited to none in terms
21 of the differences between signed English
22 and ASL.
- 23 Q. Darlene Fewer Jackson and Alma McNiven, you
24 know, both acknowledge that, really, up
25 until their involvement, you know, there

September 8, 2022

1 were very few—and I think the evidence is no
2 individuals at the school district
3 leadership level—who have any background in
4 that area. Would you agree with that?

5 A. To my knowledge, that would be accurate,
6 yes.

7 Q. Would part of your role involve oversight of
8 the qualifications and certifications for
9 teachers or other educators with the school
10 system?

11 A. When you say “qualifications and
12 certifications” -

13 Q. Well, let’s use an example. In order to
14 teach a French Immersion class in the
15 English School District, a teacher, a new
16 teacher, would need to hold a certificate in
17 the DELF, right, which is a French
18 proficiency exam, and they would need to
19 furnish—a new teacher would need to furnish
20 the district with that certificate in order
21 to teach a French Immersion class, right?

22 A. So, in—a new teacher today when they
23 graduate from Memorial University have
24 already completed the DELF exam, and they’ve
25 already attained a certain level of

September 8, 2022

1 proficiency, and my understanding of MUN's
2 program is that any program that requires—or
3 any program for which a teacher is going to
4 teach French, they have to complete the DELF
5 exam prior to admission. It is one of the
6 components of admission, so that
7 certification piece is not a responsibility
8 of the district. What we do ensure is that
9 the qualifications that would meet our
10 currently modern standards are adhered to
11 when we recruit for positions.

12 Q. I see, so if a teacher was applying for a
13 job—someone who holds a teacher certificate
14 applied for a job with the English School
15 District to teach a French Immersion class,
16 they either have to have a diploma—sorry, a
17 teaching degree from a program that requires
18 the DELF as part of its test as its
19 graduation criteria, or if they've come from
20 a another program, let's say, you know,
21 graduated from the a university in South
22 Africa or something, they would need to
23 obtain DELF certification in order to teach
24 French Immersion in Newfoundland.

25 A. So, the DELF status in Newfoundland and

September 8, 2022

1 Labrador is relatively new. I think it came
2 into being in about 2016. That's when MUN
3 changed its programs, so as a part of that
4 process, because obviously it's going to
5 take 30 years for people to retire out of
6 the system who might have been teaching
7 French prior to the designation, the
8 district took the steps in concert with the
9 Faculty of Education and the NLTA to
10 grandfather people who had been teaching
11 French Immersion prior to 2016, so there are
12 individuals in the system who are teaching
13 French but do not have a DELF standard, and
14 that's because they were teaching French
15 before that new provision came in.

16 Q. Right, so two things that I want to follow
17 up on that, then. For the individuals who
18 have been, to use your term, grandfathered
19 in, they were all individuals who had to
20 have been teaching French in a school
21 district of Newfoundland and Labrador prior
22 to the implementation of the DELF standard,
23 and they—my understanding is in order to
24 have been teaching French in Newfoundland
25 prior to the implementation of that

September 8, 2022

1 standard, there would've been some kind of
2 less official French proficiency evaluation
3 interview of some sort that would've been
4 conducted in those prior years, right?

5 A. Yeah, the part of the interview process for
6 French candidates would've been questions in
7 French.

8 Q. And they would've been assessed in French.
9 I mean, they wouldn't have been assessed by
10 a school administrator who had no knowledge
11 of French and was trying to read it off the
12 back of a cereal box, right? Like, it
13 would've been administered presumably by
14 somebody who had some French ability, right?

15 A. In most cases, it was a program specialist
16 for French.

17 Q. A program specialist for French would
18 administer that interview. Okay, so that's
19 for the folks who were grandfathered in, to
20 use your term. For any new graduate who's
21 coming in, they're either a graduate from
22 Memorial University, which requires in order
23 to get your degree you need to have passed
24 the DELF certification, or if they're coming
25 from another jurisdiction that doesn't have

September 8, 2022

1 that as part of their education program,
2 they would need to complete that program and
3 present you with a certificate.

4 A. So, it's not one size fits all. Most people
5 would be aware that there is a shortage of
6 supply of French teachers, in particular
7 French Immersion teachers, so while we have
8 the standard that you've just outlined that
9 we expect from individuals, we fill a lot of
10 French positions in the province that do not
11 meet that standard. There is a provision in
12 the collective agreement that allows us to
13 put people in those positions on a term
14 basis.

15 Q. Is that the Emergency Supply Provision?

16 A. No, it's 3701(d) of the collective agreement
17 that allows us—actually tells us that if we
18 can't find a qualified candidate for a
19 particular position, we shall offer them a
20 term contract for the year.

21 Q. Tell me how that is different from the—when
22 I say the Emergency Supply Provision, do you
23 know what I'm talking about?

24 A. Yes, I do.

25 Q. How is that different from the Emergency

September 8, 2022

- 1 Supply Provision? What can you do under
2 emergency supply that you can't do under
3 that section of the collective agreement?
- 4 A. Emergency supply is for—is used for
5 substitute and short-term replacements, and
6 it is an approval process that's conducted
7 by the Department of Education, so anybody
8 who wishes to work as an emergency supply
9 teacher, they have to go through a
10 certification process, and those would be
11 individuals who for the most part—although,
12 we do have some with some post-secondary
13 training, these are individuals with high
14 school graduation.
- 15 Q. Without a teaching degree.
- 16 A. Without a degree at all.
- 17 Q. At all. That would be used very sparingly,
18 I imagine.
- 19 A. The places where we use it in the province
20 currently are places where we have no
21 regular substitutes, no retired substitutes.
22 That's when an emergency supply is used.
- 23 Q. Places of exceptional need.
- 24 A. Exceptional need, and, unfortunately, that
25 need is growing in a lot of parts of our

September 8, 2022

1 province.

2 Q. Okay. The district doesn't administer the
3 DELF test. It is administered elsewhere.
4 When the district requires a DELF
5 certification, you know, it's merely
6 checking the certification. They don't
7 administer the test or make arrangements for
8 the test, right?

9 A. We do not.

10 Q. Right, okay. I understand that the district
11 even has, like, not just a requirement that
12 you complete the DELF test and that you, you
13 know, pass it in some way, but in order to
14 teach different levels of French and French
15 Immersion, you have to score within—and we
16 don't need to go into them, but you need to
17 score within certain thresholds on that
18 test, or you need to get a certain grade to
19 be—on that DELF to be able to teach, let's
20 say, you know, high school French Immersion,
21 what I assume would be the highest.

22 A. So, that standard or that range that you
23 talk about is the admission standard as I
24 understand it for admission into the program
25 at MUN. It is—again, we mirror that in our

September 8, 2022

- 1 job ads that we send out. It's not
2 something that we do. It is a part of the
3 admission into the program.
- 4 Q. Okay. I know that you typically don't have
5 to list in job ads for teachers English
6 fluency as a requirement to be able to work
7 as a teacher in an English school. You
8 know, I know that typically that proficiency
9 is assumed, and in 99.9 percent of the cases
10 I'm sure it can be. If a teacher didn't
11 have, you know, English proficiency, I think
12 it would be fairly quickly identified at the
13 school level once that person starts
14 working, right?
- 15 A. Yeah, that would be correct.
- 16 Q. Has that ever been an issue that's come up
17 where teachers come in, and you realize, "Oh
18 my goodness, we might have an English
19 proficiency problem?"
- 20 A. Not in my experience. I would assume,
21 though, that other jurisdictions in the
22 country have had that issue and that they
23 have the appropriate proficiency tests for
24 that.
- 25 Q. And, I mean, in the event that comes up—and

September 8, 2022

1 you're telling me that it hasn't, but are
2 you familiar with the provisions under the
3 Teachers Certification Act that allows the
4 district to order or require a teacher to
5 undertake an English proficiency test if
6 it's their second language?

7 A. No, I'm not aware of that. I'm not
8 surprised that—if it's there, I'm not aware
9 of it because it's not something that we've—
10 certainly in my career in education that
11 I've had to deal with.

12 Q. You never had to use it.

13 A. No, right.

14 Q. It's there. You never had to use it, right,
15 and it's because people don't—I mean, I can
16 only presume people would generally not
17 apply to teach a course in a language that
18 they're not proficient in. They wouldn't
19 apply to teach a French course if they don't
20 have some degree of proficiency in French.
21 They wouldn't apply to teach science in an
22 English-speaking classroom if they don't
23 have English proficiency, right? That
24 wouldn't make a lot of sense.

25 A. I'm going to have to ask you for

September 8, 2022

1 clarification on that.

2 Q. You know what, I think it's so obvious that
3 I don't need you to agree. I think I'm just
4 talking to myself. Did you know that the-
5 and maybe you're not aware of this document.
6 There's a document referred to as the
7 resource guide for internationally educated
8 teachers that--there's a teacher evaluation
9 and research division that would have that
10 document. Did you know that that document
11 exists?

12 A. No.

13 Q. Okay. I mean, I put it to you that that
14 documents exists and makes sure that in
15 order for a student--a teacher to be able to
16 teach in a classroom, you know, they'd
17 either have--depending on whether--with the
18 French school board or with the English one,
19 that they have ability to teach in English
20 or French. I mean, that would make sense to
21 you, that those guidelines would exist?

22 A. That would make sense.

23 Q. Right. What do you know--and I'm sure, you
24 know, that--this is where I'm going with it.
25 What do you know about the ASL proficiency

September 8, 2022

1 test?

2 A. My knowledge of the ASL proficiency test is
3 what's calls ASLPI, and that's the one that
4 I'm familiar with, although I've been
5 advised that there might be another type for
6 measurement for ASL proficiency, but that is
7 the one that I am most familiar with to an
8 extent.

9 Q. Is this the ASLPI?

10 A. Yes.

11 Q. Right. That's not required to teach in a
12 deaf classroom in Newfoundland and Labrador,
13 is it, taking that test or passing that
14 test?

15 A. No.

16 Q. I know it historically hasn't been used with
17 a couple of exceptions. Is there any policy
18 in place, or is there any policy that the
19 district is in process of putting in place—
20 you're still in your job—of implementing
21 mandatory ASL testing for teachers of the
22 deaf?

23 A. There's no process that I'm aware of at this
24 stage where we're putting in place mandatory
25 testing. In the past couple of years we've

September 8, 2022

- 1 worked with some of our deaf teachers and
2 our DHH teachers asking for them to
3 voluntarily be tested; but mandatory testing
4 at this point, we haven't put that in place.
- 5 Q. Some of the teacher that voluntarily—or in
6 one case a teacher, in another case a
7 learning—a student assistant did volunteer
8 to take the sign language proficiency test.
9 Were you aware of that, that that occurred
10 and what the results were?
- 11 A. I'm not aware of the student assistant. I
12 am aware of the teacher.
- 13 Q. You know that the ASL testing of student
14 assistants is actually mandatory now under
15 the school—did you know that?
- 16 A. No, that's something that I'm not familiar
17 with.
- 18 Q. Okay. I believe it was in 2017 that it was
19 actually made mandatory to test student
20 assistants. Okay, not a policy you're aware
21 of.
- 22 A. Not a policy I'm aware of, no.
- 23 Q. Okay. The testing of teachers in ASL
24 proficiency remains voluntary, and I asked
25 you—and I actually forget what your answer

September 8, 2022

1 was. I asked you were you aware that at
2 least one teacher did submit to a voluntary
3 ASL proficiency interview.

4 A. I am aware of that, yes.

5 Q. And were you aware of the results of that
6 ASL proficiency interview?

7 A. I believe that the results were—I'm going to
8 say a level, but I may not get that right—
9 survival.

10 Q. Yes, I think it was just above survival.

11 A. Right.

12 Q. There was—well, oh, so it was survival.
13 There you go. You and my clients know
14 better than I do. It was survival. It was
15 far below that teacher had anticipated their
16 test result being. When that occurred—and
17 you're telling me you were aware of the
18 results—did that give you any degree of
19 concern that here we have at least in this
20 case—and we haven't tested very many of
21 them. In this case we have one teacher who
22 has been subject to an ASL proficiency test.
23 That test has come out substantially below
24 where it was expected that teacher would
25 test even after training, and a small amount

September 8, 2022

1 of training was offered to that teacher.
2 Did that give you pause for concern and say,
3 "Maybe this is the sign of a larger
4 proficiency problem?"

5 A. I think it's fair to say that learning of
6 those results were a concern. Whether or
7 not at that particular point in time that
8 led me to believe that there was a broader
9 issue with ASL proficiency, I don't know
10 that I could say that, but the individual
11 results themselves, yeah, it's fair to say
12 that that was concerning.

13 Q. Right, I mean, because that was what
14 happened when the ASL proficiency was deemed
15 mandatory for student assistants working
16 with deaf students. There had been a
17 particularly abysmal ASL test result for a
18 student assistant, who as it turned out
19 wasn't able to fingerspell her own name, and
20 following that, a memo was sent by Gary
21 Cahill—you know who Gary Cahill is—

22 A. I do.

23 Q. —that made ASL testing of student assistants
24 mandatory, so you made that change for
25 student assistants. Still no change for

September 8, 2022

1 teachers of the deaf.

2 A. No.

3 Q. We heard yesterday from Alma McNiven, who

4 indicated that, you know, her ability to

5 find what in her view were sort of the best

6 candidates for a teacher of the deaf was

7 really premised on her own personal

8 knowledge from, you know, being in and

9 around the deaf community, that she was able

10 to, you know, find individuals who to her

11 knowledge, even without them being tested,

12 you know, had some degree of ASL

13 proficiency. Substantial concern was

14 expressed by the adjudicator among others

15 that if we are relying upon the personal

16 connection of somebody like Alma McNiven to

17 be able to determine whether the teachers

18 we're hiring to teach in ASL are proficient

19 or have some measure of proficiency, then

20 what do we do when Alma McNiven's position

21 doesn't exist or she moves on or she

22 retires? Has there been any degree of

23 future planning by the district to ensure

24 that we're not just reliant upon the

25 personal connections of one individual to

September 8, 2022

1 assess sign language proficiency?

2 A. So, when you say inside of the community,
3 Ms. McNiven's knowledge of the community,
4 I'm assuming you're talking about her
5 colleagues.

6 Q. Her connection to the deaf community and
7 those who can teach the deaf.

8 ADJUDICATOR:

9 Q. Again, this is sort of the presenting the
10 evidence accurately to the witness issue. I
11 think Alma McNiven's evidence was in
12 relation to her familiarity with the
13 particular DHH teachers' proficiency in ASL
14 as opposed to members of the deaf community
15 at large.

16 MR. REES:

17 Q. Fair point, so I think, Mr. Walsh, actually
18 you were more correct to say that it was
19 about familiarity with her colleagues, if we
20 consider the DHH teachers to be—sorry, the
21 deaf itinerants to be her colleagues, so my
22 question still stands, though. I'm asking
23 about what, if any, succession plans do you
24 have in place for the event that you lose
25 Alma McNiven's knowledge and experience.

September 8, 2022

1 A. At this stage, when you say a defined
2 succession plan, there isn't a written plan
3 as such, but I'm going to rely on Alma's
4 expertise and her knowledge of the skills of
5 her colleagues. I'm going to rely on
6 Georgina Lake, who is the assistant director
7 of education for student services, and when
8 it gets to the point where—well, not when it
9 gets to the point. I mean, we will be
10 actively reviewing the individuals that we
11 have. Our challenge, unfortunately, is that
12 the supply of deaf and hard of hearing
13 teachers across Canada is limited. The
14 number of DHH, or deaf and hard of hearing,
15 teachers who are proficient in ASL, they're
16 really difficult to find, if not at this
17 stage impossible, so as it relates to where
18 we will be in the future, I'm going to rely
19 on Alma in particular up through Georgina to
20 plan for what that succession might look
21 like when and if it comes.

22 Q. Okay, so no plans in place at the moment
23 beyond relying on the individuals who
24 currently exist in those roles.

25 A. That's correct.

September 8, 2022

1 Q. Don't you agree, though, that testing
2 individuals for their ASL proficiency would
3 be important? I mean, you can tell by the
4 questions I was asking you about French
5 proficiency earlier—I mean, it's obviously
6 important to know that somebody is capable
7 of communicating in the language that you've
8 asked them to communicate in, and you have
9 classroom teachers here who are being asked
10 to, to the extent that they can, communicate
11 classroom curriculum in ASL, but you're not
12 testing them to know if, you know, they're
13 good, they're bad, they're medium. You have
14 no idea, and I take your point that it is
15 difficult to find people who are proficient
16 in ASL, absolutely, but how do you know that
17 you got a problem unless you're testing
18 them? How do you know? I mean, isn't
19 testing your first step in diagnosing
20 whether or not you have an HR problem—or a
21 supply problem?

22 A. I don't disagree with your statement that
23 testing is a way in which to determine
24 whether or not there is proficiency. The
25 other question that you're asking is whether

September 8, 2022

1 or not we can make that mandatory. Right
2 now if we're using French Immersion as a
3 comparison, that necessary proficiency is
4 addressed by the training institute
5 themselves. As I understand it currently,
6 the training institutes for a Master's in
7 deaf education does not require that
8 proficiency.

9 Q. Correct.

10 A. When and if—and, you know, they change that
11 requirement, some of the concerns that we
12 have about that proficiency may be
13 addressed.

14 Q. So, you're indicating that your hope, your
15 plan is to rely upon the educational
16 institution that doesn't even know about
17 this issue to make a change?

18 A. No, that's not what I intended—or not what I
19 said. Part of the solution to the problem
20 is the training institutes putting in place
21 the necessary requirements for proficiency
22 to be a part of their program. What we'll
23 do as an organization when we don't get
24 those individuals who are proficient is
25 we'll take the necessary steps to help

September 8, 2022

1 support them gain that proficiency. We've
2 been doing that in the past couple of years
3 and will continue to do that with those
4 individuals who are—I guess for all intents
5 and purposes want to improve their
6 proficiency and their skillset.

7 Q. Okay, let's talk about—and you mean
8 specifically ASL proficiency in that regard.

9 A. Yes.

10 Q. You're not talking about French, okay. What
11 is the school district doing, or what is the
12 school district willing to do to assist
13 those individuals in that training? I mean,
14 right now and, a pre-emptive a couple of
15 things to keep us on track. I mean, I
16 understand that, you know, courses are being
17 paid for and course materials are being paid
18 for with the Newfoundland Association of the
19 Deaf, you know, on sort of a piecemeal basis
20 for anyone who's interested, but I also
21 understand that the school district isn't
22 paying any of these teachers to take these
23 courses. They're doing it sort of
24 voluntarily on their free time, so what is
25 the school district going to do to make it

September 8, 2022

- 1 easier for educators to access ASL training?
- 2 A. One might suggest that for the district
3 paying for all of the resources, paying for
4 the services of the Newfoundland and
5 Labrador Association of the Deaf for those
6 individuals who are interested is a
7 significant step for us supporting the ASL
8 needs of our teachers. In the past two
9 years we've had teachers from Labrador West,
10 Goose Bay, Corner Brook, Gander, and the
11 Whitbourne area participating in these
12 courses that we've supported. I don't have
13 the actual numbers, but I'm told that the
14 number of teachers who have taken advantage
15 of this opportunity are in the hundreds.
- 16 Q. Some of those—and not that there's anything
17 wrong with this. You know, anything is
18 something. Many of these teachers who
19 would've taken these courses are teachers of
20 hearing children, right? I think you're the
21 saying the number is hundreds. I know
22 there's only a few teachers of the deaf, so,
23 you know, the vast majority would be
24 teachers of hearing children. A fantastic
25 initiative but doesn't do a lot—hasn't done

September 8, 2022

1 a lot to increase the proficiency of the
2 teachers who are instructing deaf children,
3 has it?

4 A. That particular initiative, I wouldn't be
5 able to tell you how many of our DHH
6 teachers actually took part in that
7 training. Those that—what I would say to
8 you, though, is that if a DHH teacher
9 approaches us and asks for support to
10 upgrade their ASL skills, we would support
11 that. I'm unsure of the actual topics that
12 were covered, but I know early on in
13 Darlene's tenure she coordinated a
14 significant amount of PL through APSEA for
15 our DHH teachers. I can't tell you if much
16 of that was ASL at that time. I think it
17 might've been more on-the-ground programming
18 issues.

19 Q. Yes, and I think the courses that have been
20 offered through the Newfoundland Association
21 for the Deaf are, you know, very general
22 base-level ASL courses for the population
23 who otherwise doesn't have any knowledge of
24 ASL, the kind of thing you or I would do.
25 Given that the ASL needs of teachers of the

September 8, 2022

1 deaf are a fair bit more advanced than
2 things like basic vocabulary, what has the
3 district done, or what is the district
4 willing to do to encourage, assist, train
5 those teachers in increasing their ASL
6 proficiency?

7 A. So, from the position that I hold I would
8 expect that through Darlene's intervention
9 when she was with the district, and now
10 Alma's position as a director of programs
11 for DHH services, that she's continually
12 communicating with the DHH staff in the
13 province right from here to Labrador; and if
14 the need for that type of professional
15 development comes through the DHH staff
16 through Alma, that will eventually make it
17 to Georgina and then to me, and once that's
18 identified we'll support that just as we
19 would support it for any other teacher in
20 any other area of the district.

21 Q. What does that support look like?

22 A. The teachers themselves would determine what
23 that support is going to look like. Not all
24 teachers, I would presume, would require the
25 same level of PL, but that would be the role

September 8, 2022

1 of the director, to determine what those
2 needs are, and then we would plan
3 accordingly.

4 Q. Okay. I mean, you can understand our
5 skepticism given that—and we're going to
6 talk a little bit about this. You know,
7 there had been several years, 2017, 2018,
8 2019, of the needs of deaf students and what
9 teachers of the deaf need in order to
10 support those students having been
11 identified to the school district either to
12 you or others, and those ideas not really
13 gaining any traction, so are you telling me
14 now that there's been some kind of either
15 ideological shift or attention shift within
16 the district that means you're more
17 receptive to these ideas?

18 A. Well, I think—I don't believe that there's
19 an ideological shift. What has happened is
20 the opportunity to identify resources that
21 placed a specific focus and leadership on
22 issues inside of student services. That
23 began when we were able to create a position
24 for student services. It got further
25 enhanced when we were able to identify

September 8, 2022

1 resources for a director position for DHH
2 services, indigenous education and
3 multiculturalism. I think that has been the
4 turning point in certainly my time back at
5 the district in bringing particular focus to
6 all three of those areas, but in this
7 particular case services for deaf and hard
8 of hearing children. It was the creation of
9 that position and the leadership that that
10 position has been able to provide.

11 Q. I mean, we asked Debbie—I'm sorry, I'm
12 struggling on names—Bonnie Woodland. We
13 asked Bonnie Woodland why, you know, after
14 the satellite classroom was rejected in 2017
15 and 2018 and 2019, you know, why was it
16 finally implemented in 2020? What changed?
17 And the answer that we had from her—and it's
18 been echoed by other witnesses—has been, you
19 know, the needs of the children didn't
20 change. The resources didn't change. It
21 was a sort of leadership and attention that
22 the person who occupied the role that starts
23 with Darlene Fewer Jackson, you know, was
24 able to spend to the issue to get that
25 initiative off the ground. It was a

September 8, 2022

1 difference in leadership is what we've heard
2 from the other witnesses. Do you agree with
3 that? Is that the reason? Is that the
4 difference between satellite classroom
5 rejection in 2017 and satellite classroom
6 opening its doors in 2020?

7 A. I don't know if—I don't know the reasons
8 specifically for the rejection in 2017. I
9 can tell you that in 2019 when the proposal
10 was presented, it was a result of Darlene
11 being—working at the district or Darlene's
12 position and being able to bring a
13 particular focus to the needs of deaf and
14 hard of hearing children in the province
15 that the district was not able to provide
16 prior to that particular position. Her
17 ability to understand the needs of the DHH
18 teachers and our DHH children and bring
19 leadership and bring an expertise to that
20 file that we have not had prior to that,
21 that's a significant reason why we're—we
22 believe that we're moving forward and that
23 we're—you know, we're making positive
24 changes for the education of deaf and hard
25 of hearing children.

September 8, 2022

1 Q. I mean, that's one reason, the creation of
2 the position that Darlene comes to occupy.
3 It's no coincidence, though, is it, that
4 that position gets created while the
5 Churchills—or just shortly after the
6 Churchills have filed a human rights
7 complaint of which you're aware and are
8 generating substantial attention and public
9 pressure on the school district. There is a
10 link between the advocacy of the Churchills
11 and the human rights complaint and the
12 establishment of Darlene Fewer Jackson in
13 her position in the creation of that
14 classroom, right?

15 A. The issues that parents face are always
16 important to the district. There is no
17 doubt that there was a lot of public
18 attention on DHH education in the province,
19 you know, inside of this timeframe, and, I
20 mean, I'm not going to dispute the fact that
21 that brings public attention to the issue of
22 the DHH education. Our, I guess, piece in
23 this is trying to react to the
24 recommendations of the education action plan
25 and seeing an opportunity—

September 8, 2022

1 Q. That's the 2017 plan?

2 A. —correct—

3 Q. Okay.

4 A. —seeing an opportunity when there was
5 restructuring possible inside of the
6 district to create positions to provide
7 leadership. By way of example—and I'm not
8 trying to diminish Mr. and Mrs. Churchill's
9 involvement in this and bringing public
10 focus to DHH education. In the—late 2007,
11 2008, 2009, there was a lot of public outcry
12 around the services for autism, and
13 government and the districts at the time
14 reacted over a period of time with an autism
15 action plan, so parents do play an important
16 role in advocacy for both their children and
17 issues in public education generally, but
18 our response to deaf education at that
19 particular point in time was really focussed
20 on our opportunity to seize on the education
21 action plan and identify resources to
22 provide leadership to this particular file.

23 Q. The education action plan comes out in 2017.
24 Carter is in Kindergarten at that time?

25 Well, I can tell you he's in Kindergarten at

September 8, 2022

1 Beachy Cove, the only deaf kid in a school
2 of 750 children. The only person he can
3 talk to in that entire school is his student
4 assistant for some of the years. At least
5 initially when he's in Kindergarten—would be
6 Tammy Vaters—and even in Kindergarten she's
7 not even there. This doesn't happen until
8 Grade 1. So, the education action plan
9 comes out when Carter is sat by himself in a
10 classroom in Kindergarten. Kindergarten
11 completes. Grade 1 happens. He goes
12 through his Grade 1 year with a similar
13 level of support, though he does get to
14 speak with an adult, Tammy Vaters, a deaf
15 student assistant, going well beyond her
16 role and -

17 MR. PENNEY:

18 Q. You say similar level of support. He had a
19 full-time teacher.

20 MR. REES:

21 Q. Yes, that's for some of the year, but my
22 point being—and this is the social piece I'm
23 getting at—he's still in a school with all
24 hearing children. Some deaf adults come and
25 go during his time there but no other deaf

September 8, 2022

1 children. What in the Premier's action plan
2 that comes out in 2017 causes you to
3 implement the changes to be able to provide
4 a solution to the social isolation for
5 Carter Churchill?

6 A. I don't recall the actual recommendation,
7 but it was founded in some commentary in the
8 plan around the inclusion principle and how
9 inclusion wasn't necessarily working in all
10 areas of the system, so for us, once we got
11 to the point where we could identify those
12 resources, we got engaged with the
13 Department of Education, with the Deputy
14 Minister and the Associate Deputy Minister,
15 who had responsibility for the education
16 action plan, to identify areas inside of the
17 concept of inclusion where there were—where
18 there was, I guess, a lack of attention, and
19 that's part of the reason why we were able
20 to identify those resources, again, to
21 provide leadership for those area.

22 Q. That education action plan, is that the one
23 that's called Now is the Time?

24 A. Now is the Time, I'm thinking, was the
25 original report. The action plan was the

September 8, 2022

1 recommendations that came out of that.

2 Q. Okay. Why does it take two years from that
3 action plan coming out until 2019 when the
4 creation of the position that Darlene Fewer
5 Jackson occupies to occur? I mean, it's the
6 creation of, you know, a management
7 position. You're not building a new
8 building or designing a subway system. I
9 mean, it takes two years from when this need
10 is identified, and many of the needs for
11 deaf children are known before then—or at
12 that time. Why does it take two years to
13 create that position?

14 A. I'd have to—I'm not disputing your timeframe
15 of two years, but that's a 2017, 2019—for
16 some reason, I believe that the education
17 action plan was late 2017, so it might've
18 been in place for September. I'd have to
19 check that.

20 Q. And Darlene comes into place.

21 MR. PENNEY:

22 Q. You might want to just check the dates. The
23 Way Forward is June 2018. The education
24 action plan, sorry, is June 2018. Georgina
25 Lake was hired September 2019, I think.

September 8, 2022

1 That's Darlene, right?

2 MR. REES:

3 Q. Sorry, I thought you were talking about the
4 hiring of Darlene, not Georgina, as being
5 one of the things that you did coming out of
6 the action plan. Sorry, which position is
7 it that you hire arising out of the action
8 plan? Is it Darlene or Georgina?

9 A. Both of them.

10 Q. Both. Which one comes first?

11 A. Georgina.

12 Q. And then Darlene later.

13 A. And then Darlene shortly thereafter.

14 Q. September, I think she said, yes, okay. I
15 appreciate the leadership that a dedicated
16 position like the director of deaf and hard
17 of hearing education was able to bring to
18 bear on the role, but you also would've been
19 aware at that time that the deaf itinerants
20 in the province would have been making
21 satellite classroom proposals for a few—you
22 know, 2017 and 2018. Were you aware—or did
23 you say the only satellite classroom you
24 knew about was in 2019?

25 A. That's the only one that I was aware of. I

September 8, 2022

1 became aware of the other ones after the
2 fact.

3 Q. Okay. When you "became aware of the other
4 ones after the fact"—so, you know, you're—
5 someone is bringing the satellite—presumably
6 Bonnie Woodland, or maybe Darlene, is
7 bringing the satellite classroom proposal to
8 you in 2019, and you learn -

9 MR. ED WALSH, CROSS-EXAMINATION BY THE ADJUDICATOR

10 ADJUDICATOR:

11 Q. Why don't we ask him who brought that to
12 him. Like, when he found out, like, the—
13 let's find out what his evidence is. So,
14 the satellite classroom is proposed in 2017.
15 In 2017 were you made aware of that
16 proposal?

17 A. I wasn't working with the district in 2017.

18 Q. Okay. There's another proposal put forward
19 by the DHH teachers for the 2019-2020 year,
20 so it's in anticipation of that school year
21 coming up. Were you made aware of that
22 proposal at the time that it would've been
23 made in anticipation of the 2019-2020 school
24 year?

25 A. The only proposal that I'm aware of was the

September 8, 2022

1 one that was presented to me by Darlene.

2 Q. So, that proposal—do you recall when you
3 would've become aware of that proposal?

4 A. It would've been the fall of the first year
5 that Darlene was working with us.

6 Q. And would you have been involved in
7 decisions as to whether to implement that
8 proposal?

9 A. I would've been aware of the proposal. The
10 decisions around the components in the
11 proposal would've fallen with Georgina.

12 Q. At the time that you were made aware of that
13 proposal, were you also made aware that
14 there had been a previous proposal put
15 forward by the DHH itinerant teachers in
16 previous years?

17 A. Right. I did become aware of it. The
18 timeframe, I wouldn't be able to say. It
19 was all a part of that conversation that was
20 occurring during the fall of the first year
21 that Darlene worked with us that she had—
22 that this proposal was there and that there
23 had been previous attempts to, I guess,
24 bring this proposal forward or a version
25 thereof.

September 8, 2022

1 Q. So, am I understanding correctly that when
2 you became aware of the proposal for a
3 satellite classroom that Darlene was
4 advancing, you were aware that this was not
5 a new idea. You were made aware this is not
6 a new idea. We've had these proposals
7 before.

8 A. So, I don't know—timing is important here,
9 that when she presented that in the—in that
10 first three months—I don't know when inside
11 of that timeframe I became aware that there
12 were other proposals prior to that one. It
13 probably did occur inside of that September-
14 to-December timeframe.

15 Q. Okay. Thank you. Go ahead, Mr. Rees.

16 MR. ED WALSH, (AFFIRMED) CROSS-EXAMINATION BY MR. KYLE
17 REES (CONT'D)

18 MR. REES:

19 Q. Before Darlene comes to you in the fall of
20 2019 with this proposal for the satellite
21 classroom, had you been aware at any point
22 prior to that that there were issues that
23 were being identified specifically within
24 deaf education by itinerant teachers, some
25 people at the Department of Education, you

September 8, 2022

1 know, otherwise? Is this really the first
2 time that you're hearing, "We have some
3 serious problems in deaf education?"
4 A. Yes.
5 Q. The part that, I guess, is concerning to me
6 and concerning to my clients is that the
7 deaf itinerants, you know, who are working
8 with deaf children every day, have brought
9 forward not just satellite classroom
10 proposals in 2017, 2018 and 2019—and just to
11 be clear, there's a 2017 and 2018 and early
12 2019, and then Darlene Fewer Jackson brings
13 a late 2019 proposal to you, so there's been
14 three prior to this, so that—and I'm not
15 sure, to be honest, Mr. Walsh, whether the
16 first proposal in 2017 actually overlapped
17 with your time in the role; but in any case,
18 it's either during your time or just before,
19 so that there are not just good proposals, I
20 think, being circulated around for three
21 years but a litany of problems that a group
22 of deaf children in the metro area
23 particularly, you know, are facing that this
24 satellite classroom issue was set to
25 resolve. Was anyone bringing these problems

September 8, 2022

1 to your attention?

2 A. So, just for clarity, again, I never came
3 back to the district until February of 2018,
4 and for the first eight months or seven
5 months that I was back at the district, I
6 was in HR, so it would've been the fall of
7 2018 before I assumed on a temporary basis
8 Lucy's position, so the 2017 proposal, I
9 wouldn't have even been at the district
10 then.

11 Q. Okay, 2018 and 2019 proposals, you're saying
12 you never heard about them until Darlene
13 Fewer Jackson brings it to you in the fall
14 of 2019, and you weren't aware that
15 proposals had been made, but what I'm asking
16 you is, you know, were you aware that there
17 were problems in deaf education in
18 Newfoundland and Labrador that needed to be
19 addressed prior to Darlene Fewer Jackson.

20 A. Right. There were no specific issues
21 brought to my attention during that
22 timeframe.

23 Q. Okay. What about the human rights complaint
24 filed by the Churchills, you were aware of
25 that?

September 8, 2022

- 1 A. Yes, I was.
- 2 Q. You know, that predates your time at the
3 department—or predates your time in that
4 role at the department.
- 5 A. No. Actual fact, I was at the department, I
6 think, in March of 2017 when the complaint
7 was received, and I left the department in
8 July.
- 9 Q. Right, okay, and the complaint gets filed by
10 the end of July of 2017.
- 11 A. Right.
- 12 Q. June 2017. You would know. You are aware
13 of this complaint upon your return to the
14 department at the end of February 2018.
- 15 A. I'm aware that the complaint was filed in
16 2018 when I returned, yes.
- 17 Q. And you're not just aware that the complaint
18 has been filed, but you're aware of the
19 substance of the complaint, what is
20 particularly aggrieving the complainants?
- 21 A. No.
- 22 Q. You don't know about the contents.
- 23 A. No.
- 24 Q. Okay. When do you become aware of the
25 contents of the complaint?

September 8, 2022

- 1 A. When I assumed the role from the Lucy
2 Warren.
- 3 Q. Which is?
- 4 A. On a temporary basis in October of 2018 and
5 then permanently in March of twenty-sorry,
6 2019. I might have my dates mixed up there
7 so -
- 8 Q. You start—and just to refer to your
9 affidavit, you start in the associate
10 director of education programs and
11 facilities' role October of 2018?
- 12 A. Right, and that was when I was there on a
13 temporary basis and then permanently the
14 following March.
- 15 Q. So, do you become aware of the substance of
16 the human rights complaint in October of
17 2018 when you take over Lucy Warren's role?
- 18 A. No, not right away.
- 19 Q. When do you become aware?
- 20 A. It probably happens, you know, over the
21 coming months, and then, of course, when I
22 take the job on a permanent basis then I
23 become more aware of the substance of the
24 complaint.
- 25 Q. What's the latest that you'd say that you're

September 8, 2022

- 1 fully aware of the substance of the
2 complaint?
- 3 A. Fully aware?
- 4 Q. And I should—it's a bit of an unfair
5 question for me to ask you this, so let me
6 clarify. When do you become aware that
7 Carter's parents are raising that Carter is
8 socially isolated, unable to access his
9 course curriculum and isn't being taught
10 ASL?
- 11 A. It probably happened over the period of time
12 from January or February of 2019 until the
13 summer.
- 14 Q. Okay, January, February of 2019 until the
15 summer of 2019.
- 16 A. Up until the end of the school year.
- 17 Q. And that's when you sort of fully start to
18 appreciate at least what are—at that point
19 are allegations.
- 20 A. Yes.
- 21 Q. Do you look into those allegations to find
22 out whether they're true?
- 23 A. Once I became aware of the file, I would've
24 started to seek information because at that
25 particular point in time we were immersed in

September 8, 2022

1 this complaint and addressing the complaint,
2 and I would've been prepping along with
3 other staff for some of the mediation
4 sessions that occurs as part of this overall
5 process, and it would be important leading
6 up to that part of the process to become
7 informed, as informed as I could. Of
8 course, prior to me assuming the role, Lucy
9 would've been the lead on that, and so it
10 took a little bit of time for me to fully
11 come up to speed.

12 Q. And while you're catching up with the file
13 from February of 2019 until the summer of
14 2019, do you become aware of the satellite
15 classroom proposals from '17, '18 and early
16 '19 that sought to address many of the same
17 problems the Churchills had raised in their
18 complaint?

19 A. I'm trying to remember all of the files.
20 There may have been a reference in some of
21 the files as I was preparing for some of the
22 sessions to some of the satellite classes
23 previously. There was a lot of
24 documentation, and there may have been some
25 reference in it, but I can't tell you that

September 8, 2022

1 for sure.

2 Q. Okay, so maybe you would've discovered it
3 during your file review, or maybe you
4 would've discovered about the previous
5 satellite proposals from Darlene Fewer
6 Jackson in 2019 because we sort of heard
7 maybe both from you at this point?

8 A. Yeah, and as you're asking me the question,
9 I'm unsure if in the fall discovery whether
10 or not there were references to it or
11 whether or not when Darlene actually
12 presented the proposal there was some
13 reference to previous iterations of that
14 proposal.

15 Q. There was.

16 A. I'm not sure.

17 Q. Yes. Yes, there was. The satellite
18 classroom proposal from Darlene refers to
19 the others. I guess what I'm wondering is
20 do you have in your role an opportunity to
21 do anything to address the problems of deaf
22 education before you hired Darlene Fewer
23 Jackson to fix the problems in the fall of
24 2019? Is there anything that gets done to
25 your knowledge or at your direction by the

September 8, 2022

1 district in that time?

2 A. Specifically, no, other than what I have
3 previously stated around recognizing that
4 there were issues in student services
5 broadly in the district and then seizing
6 upon that opportunity to put the appropriate
7 resources in place to provide leadership.

8 Q. The director of deaf and hard of hearing
9 education in the fall of 2019.

10 A. And the assistant director.

11 Q. Georgina is before that in the summer of
12 2019.

13 A. Correct.

14 Q. Do you remember the proposal for the Gain a
15 Superpower program?

16 A. I do.

17 Q. And to make sure we're on the same page,
18 that's the voluntary program, the product of
19 some work by Kim Churchill and some other
20 volunteers that proposed to bring an
21 introduction to basic sign language
22 vocabulary to hearing children who were, you
23 know, in schools and classrooms with deaf
24 children, right? They had some difficulty
25 getting that program approved when they came

September 8, 2022

1 to you in early 2019 with it. Do you recall
2 that?

3 A. I do recall the submission of the proposal.

4 Q. Yes, sorry, did I say 2019? I meant to say
5 2018. Why was it rejected? Did you reject
6 it or somebody else?

7 A. The initial rejection, I believe, was
8 through Georgina's office, and the initial
9 reason was that there was a belief that the
10 teaching of ASL fell inside of the duties of
11 district staff.

12 Q. You told the Churchills that it couldn't be
13 offered because it conflicted with the
14 collective agreement, and the NLTA didn't
15 agree, right?

16 A. I don't recall actually saying that to the
17 Churchills during that timeframe. The
18 initial review of the program was conducted
19 by Georgina and her staff, and she
20 communicated that, and there might've been a
21 point in time after that where there was
22 communication back and forth that I
23 indicated that because of the determination
24 that it fell inside of the duties of our
25 staff that that may cause a conflict. I

September 8, 2022

1 don't know if I actually had that specific
2 communication.

3 Q. Now, that conflict, that would've been the
4 NLTA's conflict to raise, right? I mean,
5 that would've been the NLTA who would've
6 taken issue with that. This wasn't a
7 collective agreement with any other teaching
8 bargaining unit, right?

9 A. That would've been the NLTA's issue to
10 raise, but there are lots of issues relative
11 to the interpretation of the collective
12 agreement that we engage the NLTA on prior
13 to making a decision, so while it is theirs
14 to raise, it is important to engage in
15 conversations about interpretation prior to
16 getting a grievance filed and then having to
17 backtrack.

18 Q. One hundred percent because you have a duty
19 to consult with them, don't you?

20 A. We do.

21 Q. Yes, a duty to consult, but you didn't
22 consult with the NLTA, did you? You just
23 said, "Nah, it conflicts with the collective
24 agreement. The NLTA won't agree to that.
25 Program rejected."

September 8, 2022

1 A. The specifications on consultation is out of
2 collective agreement. They're--this was us
3 reaching out to the NLTA to say--to give
4 advance notice that our review of the
5 program determined that the duties fell to
6 employees. The duty to consult the NLTA is
7 contained inside of provisions in the
8 collective agreement related to workload and
9 then anything that might affect their
10 economic status.

11 Q. Let's look at a couple of documents. To
12 your left-hand side there are all these
13 documents with coloured tabs. One of them
14 says "Volume 4" on the front, and Tab K as
15 in Kilo. You're at Tab K?

16 A. I am.

17 Q. Flip three pages in, one, two, three.
18 There's a heading up here that says, "E-mail
19 No. 4, December 14th, 2018," and it's "Re:
20 Gain a Superpower." Are we on the same
21 page? No.

22 A. You said three pages in?

23 Q. Yes, I guess I mean four pages in. I don't
24 know if you'd count the page you're looking
25 at or not, "E-mail No. 4."

September 8, 2022

1 A. Just to be sure that I'm in the right place,
2 E-mail No. 4 here says "November 14th?"
3 Q. That's right.
4 A. Okay.
5 Q. So, that's from Dean Ingram to Kim
6 Churchill. You know who Dean Ingram is?
7 A. I do.
8 Q. President of the NLTA, I should know that.
9 That e-mail has "Re: Gain a Superpower,"
10 and it says, "Hi Kim. I and my staff have
11 now had an opportunity to review the
12 documentation you shared with me, which was
13 in response to my request for a copy of the
14 information that CLASS, which is the
15 organization, had provided to the NLESD.
16 We've also reviewed the response you
17 received from Georgina Lake as well as the
18 Department of Education's standard of
19 practice documents referenced by Ms. Lake.
20 Based on our consideration of this
21 information, the association does not
22 consider the scope of practice for any NLTA
23 members to be a barrier to the program
24 proposed by CLASS as by the documentation
25 you provided being offered in any interested

September 8, 2022

1 schools on a voluntary basis. I would
2 assume that CLASS volunteers would be
3 expected to meet the district requirements
4 for volunteers in school. Thanks again for
5 the e-mail." So, I mean, in—and I
6 understand that e-mail eventually gets
7 provided to you because the Churchills are
8 unhappy with your denial based on, you know,
9 the spectre of collective agreement
10 problems. That pretty definitively
11 indicates that the collective agreement is
12 not a barrier, right?

13 A. From the perspective of Mr. Ingram, yes.

14 Q. Who else's perspective would matter?

15 A. The interpretation of the district relative
16 to the duties of the DHH teachers. In this
17 particular instance, they would—they
18 suggested that it didn't. Our initial
19 review of the standards indicated that it
20 did fall inside of the duties of our staff,
21 and at this particular point in time there
22 may have been some clarity required for who
23 was going to be the recipients for the
24 actual program itself, and there were
25 subsequent e-mails between the district and

September 8, 2022

1 Stefanie Tuff, who would've been the
2 individual that I was dealing with at the
3 time relative to getting clarity on what
4 exactly it was that they were saying that
5 they had no problem with.

6 Q. Okay, but, I mean, turn over a few more
7 pages. There's an e-mail called E-mail No.
8 9. I mean, it's so apparent here that the
9 NLTA is not trying to stand in the way of
10 this program, and they take exception to
11 being used this way because—you're on E-mail
12 9? Stefanie Tuff, with the NLTA says,
13 "Hello Ed. Your request was"—and you guys
14 are looking for clarification from NLTA that
15 they don't object—and they say, "I don't
16 think I can say it any more clearly than the
17 president did in his response to Mrs.
18 Churchill. Based on the information we've
19 been told that CLASS submitted to the
20 district and the information Ms. Lake stated
21 was considered in her response to Ms.
22 Churchill, the association sees no
23 barriers/issues/concerns related to the
24 scope of practice of any NLTA members with
25 the proposed class program being offered to

September 8, 2022

1 schools." Over to the next page, and they
2 talk about the district's ability to assess
3 programs and all that because, of course,
4 you know, the NLTA doesn't do the background
5 checks and things that the district does, so
6 that's all fine, and the last paragraph,
7 they say, "Quite frankly, I am at a loss to
8 understand why this particular program is
9 attracting such attention. In my
10 experience, the district does not typically
11 seek the association's consent for its
12 decisions regarding approval of optional
13 activities for students offered by
14 volunteers that take place outside of
15 regular instruction time. Should we be
16 expecting a change or practice in this
17 regard?" Do you still take the position
18 that it was—and this only goes to you two
19 days after that last e-mail. Only a couple
20 of days passed between these e-mails. Do
21 you still think that that was a proper
22 ground to deny the delivery of this
23 voluntary program that sought to end the
24 social isolation of a deaf child?
25 A. One of the things that's unclear at this

September 8, 2022

1 particular point in time—and it does become
2 a little bit clearer in subsequent e-mails
3 from Stefanie—is her position on whether or
4 not the program is delivered to hearing
5 children or whether or not children who are
6 deaf or DHH can participate in the program.
7 This is absent our position that we clearly
8 outlined previously that we feel that if a
9 school has identified a need for ASL
10 instruction, whether that's for hearing
11 children or non-hearing children, that that
12 is the duties of our teachers, so in
13 subsequent e-mails I sought clarity on her
14 statement that they did not have any issue
15 with the provision of the program to non-
16 hearing and hearing children, and that was
17 an important clarification that we required.

18 Q. They sought to deliver this program at
19 Beachy Cove Elementary, didn't they, among
20 others? Well, Beachy Cove was—you know,
21 that's where Carter was.

22 A. I understand, yes. Yeah.

23 Q. That's where Carter was, Beachy Cove, 750
24 students. The only deaf one is Carter
25 Churchill. If Ms. Churchill wanted to teach

September 8, 2022

1 Carter Churchill ASL on his lunchbreak, she
2 could pick him up and take him home and do
3 that, couldn't she? You couldn't stop that
4 from happening.

5 A. That's correct.

6 Q. And she often did teach Carter Churchill ASL
7 on lunchbreaks and evenings and weekends and
8 everything because she had to. What deaf
9 child at Beachy Cove were you worried that
10 she was going to be delivering this program
11 to?

12 A. It wasn't specific to a school. I was
13 looking at it in the context of all of the
14 schools, and, to be honest, there was a
15 concern that if I didn't have clarity on the
16 position of what is the expectations of our
17 DHH teachers, at that particular point in
18 time I couldn't prejudge where things were
19 going to go, but I certainly didn't want to
20 be in a situation where the service was
21 being provided to the classmates or the
22 peers of a DHH student but that the DHH
23 student couldn't participate because the
24 NLTA's position was, "Well, you can teach
25 non-hearing children," to which we disagree,

September 8, 2022

1 "but you can teach—you cannot teach or
2 participate—or you cannot have deaf children
3 participate in this program." That's not
4 somewhere where the district wanted to be,
5 and what I was attempting to do was to find
6 clarity on what their position was.

7 Q. Mr. Walsh, I put it to you that you're not
8 being honest with me. I put it to you that
9 you were looking for an excuse to deny this
10 program because you did not want Kimberly
11 Churchill, who was suing the district in a
12 human rights complaint, from having a
13 further platform to be involved within that
14 school. Do you agree with me?

15 A. I do not.

16 Q. You don't. Let's look at a document. We're
17 going to look at Volume 5, and that's Tab I
18 as in India. The board of trustees wanted
19 to know a little bit about that Gain a
20 Superpower program because the Churchills
21 were being pretty public about it, weren't
22 they? And in this e-mail, which is from you
23 to Tony Stack, and you say, "This is the
24 info on the ASL program I provided to the
25 chair of the Board of Trustees, Mr. Price."

September 8, 2022

1 You know, you go through, and you indicate
2 reasons why this organization didn't meet
3 with approval, and I'm going to take you to
4 the last sentence, the last sentence of your
5 e-mail before your signature. Are you
6 there?

7 A. Uh-hm.

8 Q. It says, "A complicating issue"—you're
9 telling this to Tony Stack at—that you
10 provided to the Board of Trustees on why
11 this program wasn't approved, and you go
12 through those other reasons we've discussed
13 and I think have been shown not to have
14 merit and then say, "A complicating issue is
15 that the district is currently involved in a
16 human rights case with the Churchill family.
17 The district will be attending a mediation
18 session with the family and the Human Rights
19 Commission the end of May. The program
20 (unintelligible) Gain a Superpower will
21 undoubtedly be discussed during the
22 process." So, I put it to you that it is
23 clear for that e-mail—and I'd like you to
24 tell me otherwise—it is clear from that e-
25 mail that you were being sued by the

September 8, 2022

1 Churchill's. You didn't want the Churchills
2 delivering a program advocating for ASL
3 within a school.

4 A. That's incorrect, and I'll explain why.

5 Q. Please do.

6 A. If I accept your premise that the reason
7 that I refused the program initially was
8 because of the human rights case, why did I
9 approve it in July 31st?

10 Q. I would suggest that it's because of ongoing
11 advocacy efforts by the Churchills that put
12 you in a position where you had to.

13 A. I don't agree.

14 Q. You don't agree.

15 A. I don't agree.

16 Q. Okay. Why did you approve it?

17 A. Why did I approve it, because after the
18 back-and-forth with the NLTA and reaching
19 clarity on their position on the teaching of
20 the duties, I invited the proposal to be re-
21 submitted. It was. We evaluated the
22 program. Some of the individuals who
23 evaluated the program outside—remembering
24 that the first step in the process was we
25 didn't approve it because it fell inside of

September 8, 2022

1 the duties. We then received clarity as
2 much as we had. We invited the
3 resubmission. The individuals who reviewed
4 it came back and spoke very highly of the
5 value of the program and the benefits and
6 the support of the district's philosophy on
7 inclusion and that it would assist in
8 limiting the social isolation that children
9 would face in school, and that report was
10 provided to me, and that was the basis for
11 then moving forward with an approval. We
12 did run into another issue with the approval
13 that we had to work our way through, but we
14 did, and on July 31st the program was
15 approved.

16 Q. How long does it typically take to approve
17 an after school or a lunch hour program?

18 A. It depends. In this particular instance it
19 took time because of the issues with the
20 NLTA and seeking clarity. Then there was
21 the secondary review that I talked about and
22 the report that was provided to me on the
23 benefits of the program. There was some
24 subsequent communication with some of the
25 evaluators of the program relative to

September 8, 2022

1 individuals delivering the program having a
2 high level of ASL or being native signers.
3 That in itself then—I don't want to say the
4 word, drove us to; but in trying to
5 understand what that meant, we reached out,
6 and we consulted with the Newfoundland and
7 Labrador Association for the Deaf, and they
8 were not in support of the program because
9 of the fact that there wasn't a guarantee
10 that there would be native signers.

11 Q. Deaf people.

12 A. Yes, and it was—it took some time for us to
13 come to grips with the fact that we were
14 moving in a direction that was counter to
15 what the association wanted us to do. We
16 had spent a lot of time fostering a
17 partnership with them, and we were about to
18 make a decision that was counter to what
19 they wanted us to do. We went ahead and
20 provided the approval, and it, you know, did
21 cause some difficulty with the association,
22 but we've worked our way through that. In
23 the end, there was no other program like
24 this that existed, and we felt that going
25 forward with it was in the best interest of

September 8, 2022

- 1 students.
- 2 Q. The NLTA confusion appears to be clued up in
3 November 2018 with that e-mail that we
4 looked at for the association that says,
5 "Look, we can't be any more clear. I don't
6 understand why this continues to present us
7 a barrier." The program gets approved in
8 July of 2020. More—okay, sorry, July 2019,
9 so we're waiting a long time for that
10 approval to come through, and all the while,
11 of course, there's—you know, the children
12 and Carter's Grade 3 class at that point in
13 time, Grade 3 class, are not being taught
14 any more sign than they tend to just pick up
15 anyway, and, you know, the social isolation
16 program doesn't get resolved. In the
17 meantime while you're addressing these
18 issues with the NLAD and others to make sure
19 you're doing the right thing, is there any
20 attempt by the school district to provide a
21 service like this themselves to—or at least
22 to try to address the social isolation
23 problem that this program was designed to
24 assist with?
- 25 A. There was no specific program like this that

September 8, 2022

1 the district was creating or that it had.
2 There were subsequent communications right
3 up until February with the NLTA. You
4 referenced November the issue being
5 clarified; and from the district's
6 perspective, we feel that we didn't get that
7 clarity until February, so the timeframe
8 there is different than what you've
9 presented. There were communications
10 between myself and Ms. Tuff in January and,
11 I believe, February.

12 Q. And April of 2019 is when you prepare that
13 briefing note that makes its way to the
14 Board of Trustees. The program gets
15 approved, but, you know, this is July 2020.
16 By the time that happens, we're sort of in
17 the COVID world at that point in time, and
18 perhaps even now and makes the delivery of
19 these kinds of programs more difficult. Of
20 course, COVID is no fault of the school
21 district. These things apparently happen,
22 so the program ultimately stumbles finding
23 its legs but doesn't get delivered. Okay.
24 I had—well, maybe I'll just ask you. Can
25 you look at Volume 1, Tab G, as in Golf. My

September 8, 2022

1 question is actually really just an
2 informational one. Do you recognize that
3 this document is written in 2011, and it's
4 then updated in 2018 by Darlene Fewer
5 Jackson and Nora Cahill? It's a document
6 that's generated from the Department of
7 Education. Have you ever seen this
8 document?

9 A. (No audible response).

10 Q. And it's only fair for me to give you a
11 couple of minutes. You'll see if you flip
12 through the document there are several, you
13 know, gaps that are identified in the area
14 of deaf education and updates to those gaps
15 again provided in 2018, and my question is
16 whether you had ever seen it.

17 A. I don't recall seeing this, no.

18 Q. You never saw it during 2011? You never saw
19 it in 2018. Did you see it in 2019 when
20 Darlene Fewer Jackson was preparing her
21 recommendations, was filling her role? Did
22 it ever get brought to your attention?

23 A. I'm not sure if I've seen this one or an
24 updated version of it. When you reference
25 2011, I was working in Central at that time

September 8, 2022

1 as AD of HR, so I wouldn't have had access
2 to this at all so—and, again, to answer your
3 question, I don't know if I saw this after
4 Darlene came to work with the district or a
5 version thereof.

6 Q. Okay. Do you recall—and, look, if you're
7 uncertain of it, I won't ask you to commit
8 to more details because I don't want you
9 just guessing; but if it was brought to your
10 attention, you know, do you recall why or in
11 what context Darlene would've been bringing
12 it to you, what the purpose would've been?

13 A. If she brought this particular document to
14 my attention when she came to work at the
15 district, it would've been in the context of
16 "Here is the updated document. Here is what
17 the new recommendations are."

18 Q. Okay. You don't have any recollection,
19 then, of being surprised that this document
20 existed or, "Oh my God, I can't believe this
21 work has been done before." You don't have
22 any recollection of that kind of thing,
23 okay. I'm going to ask you about ASL
24 curriculum, the development of curriculum,
25 and we've all kind of talked about this, and

September 8, 2022

1 I lose track of which witnesses I've talked
2 to about this and which I haven't because it
3 comes up with everyone. The development of
4 a curriculum is a responsibility of the
5 Department of Education. I think we're all
6 agreed. You understand right now that as of
7 now there still is no ASL curriculum in
8 Newfoundland and Labrador, right?

9 A. The only ASL curriculum in Newfoundland and
10 Labrador that I'm aware of are the two local
11 approved courses. I think one of them has
12 been consistently delivered in Gander; but,
13 then, they are, again, department courses.

14 Q. Those are department courses and not
15 district courses.

16 A. Right.

17 Q. Yes, so I'm asking about, like, a
18 formalized—we have an English curriculum.
19 We have a French curriculum, right?

20 A. Yeah.

21 Q. The development of an ASL curriculum, again,
22 would be a department responsibility. Have
23 you ever taken steps, or have you ever asked
24 any of those who report to you to take steps
25 to develop an ASL or implement an ASL

September 8, 2022

1 curriculum in Newfoundland?

2 A. No.

3 Q. Is there a reason or it? Have you just not
4 gotten around to it, or is it something you
5 don't think we need?

6 A. Normally, things that—like what you're
7 suggesting would come from the system up
8 towards me. It's not normally that I would
9 take the position to drive an initiative
10 down into the system. The development of an
11 ASL curriculum as such would, in my view,
12 come from the system itself, so if there was
13 a—I don't want to say there's a need, but if
14 it was identified by our DHH staff in
15 particular that there was a need for an ASL
16 curriculum, that would in the current
17 context come up through the director and
18 potentially on to Georgina, and then once
19 there was an identified—once that need was—
20 what's the right word—once that need was
21 accepted, then part of my role would be to
22 engage with the department on the need for
23 the creation of that. We depend upon our
24 staff to drive those particular types of
25 issues up to the executive. Normally, it's

September 8, 2022

1 not something that we drive down the other
2 way.

3 Q. Whose responsibility, then, is it to bring
4 that issue to you? Is it Georgina or—
5 Georgina brings it to you, and Alma brings
6 it to Georgina.

7 A. Sometimes, the lines might be a little bit
8 blurred. Sometimes it might be Alma brings
9 the issue to both Georgina and I at the same
10 time; but from a pure organizational
11 perspective, it would flow from the DHH
12 staff, potentially parents who are
13 interacting with the staff, up through Alma,
14 Georgina and then to myself.

15 Q. I don't remember whether it was Alma or
16 Darlene who testified yesterday, one of
17 them, who said it seemed obvious to them
18 that implementing an ASL curriculum would be
19 quite an easy thing to do because there are
20 existing curriculum from BC—I think it was
21 identified—that could with very minimal
22 changes be adopted and adapted in
23 Newfoundland. You haven't heard—you haven't
24 been presented with a proposal yet.

25 A. No.

September 8, 2022

1 Q. You're not opposed to it if ordered to
2 prepare and implement an ASL curriculum?
3 That wouldn't be anything you'd have
4 objection to?

5 A. I would depend on the expertise of Alma and
6 her staff to advise as to whether or not
7 that type of curriculum is required and
8 needed. If they give me the advice and the
9 recommendation that it is, I'm not going to
10 have an issue with that, you know.

11 Q. Tell me about -

12 MR. PENNEY:

13 Q. The witness has been on for about an hour
14 and a half now. I don't know if it's a good
15 time for a break.

16 MR. REES:

17 Q. It's okay for a break, yes, sure.

18 ADJUDICATOR:

19 Q. How long would you like to take?

20 MR. PENNEY:

21 Q. Five minutes? Do you want to come back at
22 3:00?

23 MR. PENNEY:

24 Q. Yes.

25 ADJUDICATOR:

September 8, 2022

1 Q. We'll adjourn until 3:00 P.M.

2 (OFF RECORD)

3 ADJUDICATOR:

4 Q. Okay, Mr. Rees, I think you were in the
5 midst of your questions. Please go ahead.

6 MR. REES:

7 Q. I was. I was just moving on to a new area
8 of questioning that gets into, you know, the
9 eventual approval of the satellite classroom
10 in 2019 as you indicated. Bonnie Woodland
11 indicated to us that, you know, among other
12 things several—one of the areas of concern
13 for her on—and explaining why she would not
14 endorse the satellite classroom in previous
15 years, was because it didn't fit within the
16 existing inclusive education model that, I
17 mean, in her view prioritized placement of
18 students in their neighbourhood schools and
19 that the satellite classroom proposal would
20 run contrary to that. Did you have any
21 concerns in your discussions with Darlene
22 Fewer Jackson, which did lead to the
23 satellite classroom being proposed, about
24 the inclusive education model and whether
25 this proposal flew in the face of that?

September 8, 2022

1 A. I do believe that we did have some
2 discussion about the inclusion model, but
3 our moving in this direction, as I had
4 indicated previously, was a result of some
5 of the commentary that existed in the
6 education action plan regarding how the
7 inclusion model wasn't necessarily working
8 for all children, and that formed the basis
9 of us having the conversation about moving
10 in this direction even though perhaps it
11 wasn't what some would've thought would've
12 been the inclusionary practice or
13 inclusionary model.

14 Q. Right, because, I mean, the inclusionary
15 model is pretty—was kind of vague, wasn't
16 it? I mean, like, the inclusionary model
17 didn't say, "You got to go to your
18 neighbourhood school, no exceptions," right?
19 "You're not allowed to go anywhere else." I
20 understand that in the minds of some people
21 it placed a primacy upon attending the
22 neighbourhood school, but that wasn't—I
23 think I described it to another witness. It
24 wasn't a doctrine that you couldn't depart
25 from, was?

September 8, 2022

1 A. I don't think that was ever the intention of
2 the inclusionary policy. However, as it
3 began to be implemented in the system, that--
4 I guess that point of view developed over
5 time, that that's what it meant, but I don't
6 believe that in its inception the
7 inclusionary policy meant one hundred
8 percent segregation all the time.

9 Q. So, did you have to have any discussions in
10 order to eventually approve the satellite
11 classroom? Any discussions with the
12 Department of Education or others to say,
13 "Listen, we'd like your permission or
14 agreement that we can depart from the
15 historically understood inclusive education
16 model in this case. Like, was that a
17 problem you felt like you had to address?

18 A. That was certainly a conversation that I had
19 to have with the department and the
20 associate director of education, and I did
21 have that conversation with them. I do
22 believe, if I recall correctly, that
23 Georgina actually briefed members of the
24 department on the proposed DHH site and that
25 they were very receptive to the proposal

September 8, 2022

- 1 because, again, it was founded in the
2 findings in the education action plan.
- 3 Q. Okay, so, you know, it required, I suppose,
4 a little bit of consideration, but at no
5 point did you, I guess, meet with resistance
6 imposed by the inclusive education model.
7 Did nobody say, "Listen, you know, we'd like
8 you to go back to the drawing board," or
9 "Can you please tell us how we're allowed to
10 do this under the inclusive education
11 model?"
- 12 A. Not in any of the conversations I had.
- 13 Q. Right. Bonnie Woodland, when she rejected
14 the satellite classroom or didn't endorse
15 the satellite classroom in 2017, indicated
16 in the e-mail that she sent that "Providing
17 exclusionary service is a huge step." In
18 fairness to her, I should read the entire
19 paragraph. "Providing exclusionary service
20 is a huge step, but I see that you are
21 suggesting a model to provide intensive
22 instruction." Do you think that providing
23 exclusionary service was a huge step in the
24 satellite classroom?
- 25 A. No, I don't think it was a big step, and in

September 8, 2022

1 lots of locations inside of the district
2 there are opportunities, not necessarily
3 with providing instruction for the deaf
4 children, where intensive instruction occurs
5 depending upon the exceptionality that the
6 child has.

7 Q. Sorry, I'm just skipping through some
8 questions we've talked about already. I
9 don't want to waste your time. In the
10 proposal for the satellite classroom,
11 Darlene Fewer Jackson—this is in 2019 now
12 when you would've been hearing about this
13 proposal, and it would've been in the
14 process of being approved—she described the
15 circumstances giving rise to the need for a
16 satellite classroom as follows, and I'll
17 quote from you. If you want to look for it,
18 it's in Volume 3. I'll read it to you
19 anyway. I like reading aloud. It's the
20 first document in Volume 3. It says,
21 "Proposal for DHH Education," and under
22 "Current Situation"—yes, you're on the page?
23 Under "Current Situation" it says, "At the
24 present time the majority of deaf students
25 in the province who communicate through

September 8, 2022

1 American Sign Language are located in the
2 Eastern Region. Currently, deaf students
3 are housed in their neighbourhood schools
4 and are being supported by itinerant
5 teachers for the deaf and hard of hearing.
6 Assessment data shows that these students
7 have significant language delay and are
8 struggling to meet the demands of the
9 curriculum. In fact, their language delays
10 are impeding their ability to access the
11 curriculum." Was this bullet point news to
12 you when Darlene Fewer Jackson made the
13 satellite classroom proposal to you, or did
14 you know this was a problem?

15 A. I can't say that I knew that this was a
16 specific problem.

17 Q. Okay, let's talk about the next one. It
18 says, "The amount of service provided by
19 itinerants to deaf students vary and is
20 based on itinerant caseload size, geographic
21 locations, the needs of the students and the
22 advocacy skills of the parents." Were you
23 aware that the amount of service that deaf
24 students received was based on those factors
25 prior to receiving the satellite classroom

September 8, 2022

1 proposal?

2 A. That would've been something that I would
3 have been aware of going back to being a
4 principal.

5 Q. That would've been something you were aware
6 of.

7 A. Yes.

8 Q. Tell me about the advocacy role of the
9 parents. I mean, that always plays a role,
10 doesn't it?

11 A. I certainly believe that advocacy plays an
12 important role in providing services for
13 students, and parents play a really
14 important role, so, yeah, it is important.

15 Q. Do you think that's fair? I mean, the
16 Churchills have—and they've given evidence
17 before this Commission that, you know,
18 they've spent six years prosecuting a human
19 rights complaint. They've spent—by the time
20 proceedings end tomorrow, they will have
21 spent about 100,000 dollars on a lawyer—I
22 don't come cheap—and do you think it's fair
23 that parents' advocacy is a factor that goes
24 into whether or not their child receives
25 appropriate or any services?

September 8, 2022

1 A. I think it's important for parents to be a
2 partner in the education process. Advocacy
3 plays a role in that. What that advocacy
4 looks like looks different depending upon
5 the family, depending upon the needs of a
6 student. Your question about whether or not
7 a family has to advocate for services, and
8 it drives them to this process, that I'm—I
9 don't want to speak for anybody, but on the
10 surface from the outside looking in, that,
11 to me, would seem that the family does not
12 believe that the services being provided are
13 adequate and as a part of the advocacy
14 process they continued to advocate for what
15 they believe is in the best needs of their
16 child.

17 Q. Right. The satellite classroom is the
18 result of several factors, I think,
19 according to your evidence—and you'll have
20 to excuse me because in some places your
21 evidence is blended a little bit with Tony
22 Stack in my head. You've indicated the
23 satellite classroom was the result of
24 several different efforts; I mean the
25 efforts of Darlene Fewer Jackson, but those

September 8, 2022

1 efforts are in turn caused by—or that
2 position is caused by the Premier’s Task
3 Force Report from 2027. Surely, you would
4 also acknowledge the role that the
5 Churchills’ advocacy both publicly and
6 through the human rights complaint, you
7 know, played in attention being focussed
8 upon these issues.

9 A. And I think I answered that previously,
10 that, yeah, parent advocacy plays a role in
11 any change in, you know, educational
12 practice. I think your question previously—
13 I don’t want to misquote you—was that it
14 played a significant role, and my response
15 was that all parent advocacy plays a role.
16 We may disagree on the significance of that
17 role, but parent advocacy is critical to the
18 education of a child.

19 Q. “Is critical.” Now, the other children who
20 are, you know, the beneficiaries of the
21 satellite classroom, as is Carter Churchill,
22 they didn’t file a human rights complaint.
23 I assume they didn’t. Tell me if you know
24 otherwise. I don’t think any of their
25 parents filed human rights complaints

September 8, 2022

- 1 against the district.
- 2 A. No.
- 3 Q. They haven't, and none of them had the same
- 4 public media profile that the Churchills
- 5 did, and I also understand that none of them
- 6 would have gone through the, you know,
- 7 equivalent expenses of hiring a lawyer and
- 8 their efforts in preparing documents and
- 9 things. Nonetheless, they're all the
- 10 beneficiary of the Churchills' advocacy,
- 11 aren't they?
- 12 A. All of the children in the DHH classroom
- 13 will benefit from its creation. The
- 14 advocacy that you're speaking of is part of
- 15 the overall change in our philosophy for
- 16 delivery of services, so, again, the
- 17 difference in the significance of that,
- 18 however you want to rate that inside of a
- 19 spectrum, children will benefit from that.
- 20 Q. On the next page of this document, this—it
- 21 would be the last bullet point, and then
- 22 there's a series of hollow bullet points
- 23 that says, "Our current model of service"—
- 24 and this is in bold—"does not provide deaf
- 25 students the opportunity to learn their own

September 8, 2022

- 1 language, the opportunity to be fully
2 educated in their own language, full-time
3 access to a qualified teacher of DHH, full
4 access to the curriculum or the classroom
5 social environment and the opportunity to
6 communicate or interact with deaf peers.”
7 Do you agree with or have any reason to
8 doubt Darlene Fewer Jackson’s assessment in
9 2019?
- 10 A. No. In 2019, my understanding is that that
11 was the model of service delivery.
- 12 Q. Right. Of course, hearing children in
13 Newfoundland and Labrador didn’t face these
14 issues, did they? All hearing children in
15 Newfoundland and Labrador were and continue
16 to have the opportunity to learn their own
17 language, right?
- 18 A. That’s correct.
- 19 Q. And all hearing children in Newfoundland and
20 Labrador have the opportunity to be educated
21 in their own spoken English—
- 22 A. Correct.
- 23 Q. —or French. All hearing children in
24 Newfoundland and Labrador have full-time
25 access to a qualified teacher except under—

September 8, 2022

- 1 A. Except under exceptions.
- 2 Q. —emergency supply provisions, which are very
- 3 rare. All hearing children have full access
- 4 to curriculum for the—and the classroom
- 5 social environment, don't they?
- 6 A. Yes.
- 7 Q. Even students who are attending a district
- 8 school or students who are in a correctional
- 9 institution still get the benefit of a
- 10 social environment where they can
- 11 communicate with their peers?
- 12 A. That's correct.
- 13 Q. And, well, that's the next point, interact
- 14 with their peers, okay. So, things appear
- 15 to be moving in a positive direction from,
- 16 you know, the adoption of this proposal
- 17 forward; and, you know, I think you'd
- 18 understand that the Churchills don't take
- 19 the position everything is perfect, but
- 20 things are improving. I'm going to show you
- 21 a document in Volume 4. Volume 4, Tab V as
- 22 in Victor, this is a letter—you look at the
- 23 next page. It's signed by you. It's copied
- 24 to a load of people, including people from
- 25 the Department of Education but also

September 8, 2022

1 executive directors of various provincial
2 federations of the deaf. It's a letter
3 dated July 14th, 2020, to Jim Roots. Who's
4 Jim Roots?

5 A. Is the executive director for the Canadian
6 Association for the Deaf.

7 Q. Okay, and you're writing Jim Roots in
8 relation to, I think, concerns that were
9 raised around the Gain a Superpower program,
10 and you alluded to some of these earlier.
11 Some of came from the Newfoundland
12 Association for the Deaf; some came from the
13 Canadian Association for the Deaf around
14 whether or not programs like this ought to
15 be delivered by native signers, deaf people
16 only. That's actually not the aspect of
17 this letter that I want to ask you about,
18 although I acknowledge that that's there.
19 What I want to ask you about is the
20 paragraph in your letter, the second one
21 from the bottom of the first page that says,
22 "For your additional information, the
23 district is moving forward with plans to
24 develop an ASL emergent site at one of our
25 schools. This site will allow for children

September 8, 2022

1 who require ASL to communicate, the
2 opportunity to develop their proficiency
3 along with other deaf peers. The site will
4 be staffed with ASL assistants and teachers
5 who are either native signers or have
6 superior proficiency in ASL." Is that last
7 sentence true?

8 A. That was certainly our intention.

9 Q. And tell me why, you know, your best
10 intention wasn't able to be fulfilled?

11 A. Our best intention wasn't able to be
12 fulfilled because—in its inception, I do
13 believe that we were able to fulfill that
14 particular part of the letter. As time went
15 on—and we spoke about this earlier—our
16 challenge in getting DHH teachers—or
17 teachers of the deaf, sorry, who were
18 proficient in ASL were very, very difficult,
19 if not impossible, so while it was our
20 intention to do this, supply issues that we
21 spoke about earlier have interfered.

22 Q. Look, and I think we all know about the
23 difficulty in attracting and retaining
24 qualified individuals in that regard. How
25 did you find out that you weren't going to

September 8, 2022

1 meet that promise? You know, did you post
2 the job and then, you know, not get the
3 native signer applicants that you had hoped
4 to get, or was this something you found out
5 beforehand? Like, did you post the job and
6 then find out that you didn't get it, or did
7 you sort of know that you would never
8 attract those kind of candidates?

9 A. I think certainly we had an indication that
10 finding those individuals would be
11 difficult. We would have done—we would've
12 posted a job on our own website, which is,
13 you know, publicly available. When we find
14 ourselves in difficulty for really hard-to-
15 fill positions, we advertise them nationally
16 through CareerBeacon; and having monitored
17 some files over the past years with
18 CareerBeacon, those sites are monitored
19 internationally as well, so while we
20 advertised them nationally, we know that
21 people in other countries could see them and
22 apply for the positions, and we would've
23 engaged APSEA looking for their support in
24 identifying any potential candidates that
25 they knew of.

September 8, 2022

- 1 Q. So, you said you knew that you would have
2 difficulty attracting those kind of
3 candidates. Why did you tell the Canadian
4 Association for the Deaf that the classroom
5 would be staffed by native signers or near
6 high proficiency, whatever the number is.
- 7 A. As I indicated when you asked me the first
8 question, the statement is there as a
9 statement of intention.
- 10 Q. It's intention.
- 11 A. That—it's our intention to staff the
12 classroom with those types of individuals.
13 Unfortunately, that hasn't always worked
14 out.
- 15 Q. Sorry, and I was just thinking maybe I had
16 misread the sentence. The sentence says,
17 "This site will be staffed with ASL
18 assistants and teachers who are either
19 native signers or have superior proficiency
20 in ASL." I guess what you're telling me is,
21 like, you meant to say that it is hoped. It
22 is "We are attempting to staff the site with
23 people like that."
- 24 A. I guess, I mean, from our perspective the -
- 25 Q. I mean, you tell me it's aspirational, but

September 8, 2022

1 this isn't aspirational. This is
2 predictive. It says, "This site will be
3 staffed."

4 A. What I can say to you is that it was our
5 intention to staff the unit with qualified
6 individuals. The choice of word might be
7 inappropriate, but it was always our
8 intention to staff it, and, of course, we've
9 run into difficulties with that.

10 Q. Well, two difficulties with that were that
11 your job posting which—I think the job
12 competition ended the same day you sent that
13 letter. The job postings said that ASL
14 proficiency was preferred, i.e. not
15 required. It's preferred. The second thing
16 is you didn't test any of these people. I
17 mean, how did you have any idea whether they
18 were any level of ASL proficiency as you had
19 purported to the CAD you were going to do.
20 I mean, help me understand what -

21 MR. PENNEY:

22 Q. I mean, I think the evidence was that both
23 Alma and Gillian were tested.

24 MR. REES:

25 Q. Oh, that's true. You did test them, didn't

September 8, 2022

- 1 you. It was—yes, you're right. No, you're
2 right, Steve. Steve's got it but—although
3 that's—you don't test them, though, the
4 first year in that satellite classroom. You
5 test them the following year, don't you?
6 You're not sure.
- 7 A. I'm not sure.
- 8 Q. Okay, well, I mean, I think we can sort it
9 out with the documentation. Okay, well, I
10 guess my concern is that when you advertised
11 this position, you don't advertise it as
12 "You got to have superior ASL proficiency or
13 native." It's preferred. It's a preferred
14 characteristic. Why not make it a mandatory
15 characteristic?
- 16 A. Make it a mandatory characteristic?
- 17 Q. Well, make ASL proficiency mandatory to
18 teach, to fill these positions? Why
19 continue to say that it's preferred?
- 20 A. I think at that particular point in time we
21 were concerned about actually finding
22 somebody with the mandatory provision.
23 Preferred is still a high level, but we were
24 concerned that we weren't going to find
25 those individuals, and, you know, I guess it

September 8, 2022

1 was—we were concerned that we weren't going
2 find those individuals, and having the
3 preferred qualification broadened, I guess,
4 a potential pool hypothetically of people
5 who might be interested.

6 Q. Didn't you miss an opportunity here where
7 you could've said to the Canadian
8 Association for the Deaf, "We really would
9 like to fill this position with teachers who
10 have native or near-native, you know,
11 superior proficiency in ASL? We're having
12 trouble finding them. Do you know anybody?"
13 I mean, it was—you copied every association
14 of the deaf in every major province, right?
15 I mean, a bit of a missed opportunity there,
16 right?

17 A. Potentially so. The reason everybody was
18 copied on the letter was that the original
19 letter was CC'd to everybody, so the
20 response that went back to them, rightly so,
21 should've been CC'd as well.

22 Q. I guess, I mean, the letter appears to
23 indicate—and maybe it wasn't your intention,
24 but the letter appears to indicate as though
25 you've already got those people, right? So,

September 8, 2022

1 in my view, it closes the door to CAD
2 helping you find those candidates, right?
3 Tell me about candidate search and about
4 recruitment efforts even, like, now. I'm
5 not so much concerned historically. Tell me
6 about what the school district is going to
7 do differently in the future to ensure that
8 they can either find these kinds of
9 candidates, or if they can't find them how
10 they're going to make them.

11 A. So, we'll continue doing the recruitment
12 efforts that we've used previously, so we'll
13 be, you know, advertising on our website.
14 We'll be using CareerBeacon because that has
15 a wide subscription. In the past, in this
16 past summer, we had an indication from a
17 teacher in Labrador that they were
18 interested in doing a Master's in deaf
19 education. That individual—we approached
20 that individual, and we offered to support
21 them either through tuition or help with
22 other costs associated with doing the
23 program.

24 Q. Do you mean paying full tuition?

25 A. Yes.

September 8, 2022

1 Q. Right.

2 A. So, this was an individual who had expressed
3 interest. Alma took it upon herself to get
4 engaged with this individual, put in—or
5 offered to them that we would assist them in
6 doing the Master's program. We would ask
7 for a return of service specific to the
8 geography, so if we were going to assist
9 someone to do a Master's program, we would
10 want that person to commit to the area for a
11 period of time. Unfortunately, that didn't
12 pan out. We are again still searching, and
13 if teachers come forward to us and say, "We
14 are interested in doing a Master's in deaf
15 and hard of hearing," the same type of
16 provision will exist for them. We will
17 support them with any of the costs
18 associated with doing the program in return
19 for a return-of-service agreement.

20 Q. Sorry, how are you advertising that program?
21 I mean, is that just sort of a, you know,
22 someone who happens to show up on Alma's
23 radar, and we come to them with a bag a
24 money, or are we sort of advertising, "Hey,
25 all teachers who would like to upgrade,

September 8, 2022

1 we're willing to pay," you know, 10
2 applicants.
3 A. Early days.
4 Q. Yes.
5 A. This is only something that came up in June,
6 and it's something that we explored over the
7 past couple of months. We haven't done an
8 all-call to the system for anybody who might
9 be interested in that. Every year we have a
10 provision in the collective agreement for
11 educational leaves, and that's—I'm sure
12 you're aware that what that does is that it
13 provides a salary for teachers who may be
14 interested in going out and doing a Master's
15 degree in areas of need for the district.
16 In the past couple of years we haven't had
17 any interest from individuals that I'm aware
18 of specific to doing a Master's in deaf
19 education. If that happened, and we were
20 aware of someone who was interested, I'm
21 sure Alma would be knocking on my door
22 saying we have a person who's interested.
23 How can we support them getting into the
24 program and taking care of the cost?" So,
25 we're early days. Alma is really connected

September 8, 2022

1 into the system through the DHH teachers
2 that are out there. If the opportunity
3 comes up again to present that type of
4 support to one of our employees, we'll do
5 it.

6 Q. Mr. Walsh, we have a—I would say a uniquely
7 singular opportunity at this moment to make
8 that pitch. We've been told that the
9 livestreaming of this event online is
10 accessed by approximately 2000 people that -

11 A. Uh-hm.

12 Q. I can tell because I've looked at Twitter
13 once or twice. The proceedings are being
14 live-Tweeted and are attracting a
15 substantial amount of interest within the
16 deaf community and especially within the
17 deaf education community. We've already had
18 one. We're about to have a second person
19 who is well-known within the deaf academic
20 community to come in and testify here.
21 You've got your captive audience at this
22 exact moment. What pitch can you make to
23 any of those individuals who are following
24 the proceeding today who may be interested
25 in coming and helping to fill that need here

September 8, 2022

1 in Newfoundland and Labrador as to why the
2 district would support that?

3 A. And I think I just did that by saying that
4 if we have other individuals who are
5 interested, our current employees who are
6 interested in taking on a Master's program
7 in deaf and hard of hearing, that we will
8 support that individual. Of course, Mr.
9 Rees, if we have 200 people come forward, we
10 would celebrate that.

11 Q. That's a good problem to have.

12 A. We would celebrate that, but we might not be
13 able to provide the level of financial
14 support for that; but, again, if there are
15 individuals who are out there that are
16 interested in that, we'll support that.

17 Q. So, in addition to training, you know,
18 existing teachers within the Newfoundland
19 and Labrador school system, you know, within
20 some limits, what about efforts to recruit
21 nationally and internationally individuals
22 who would be qualified who would interested
23 in coming to Newfoundland to fulfill those
24 roles? I mean, are there jobs available for
25 them? Is there interest in having them?

September 8, 2022

1 A. There's certainly interest in having them.
2 Whether or not the—I don't have that
3 information in front of me as to whether or
4 not we have vacancies as such; but when we
5 do, we know that there is going to be
6 difficulty in recruiting individuals for
7 those positions. We don't have a lot of
8 them, so, like, there's not 50 jobs that are
9 available as such, but I—based on our past
10 experience, looking for DHH teachers in
11 particular, there's not a lot of them that
12 are out there, and then, of course, there's
13 not a lot of them that are interested in
14 moving to Newfoundland and Labrador.

15 Q. It seems like the closer and closer the
16 school district got to these proceedings in
17 front of the Board of Inquiry the greater
18 and greater interest the school district had
19 in providing supports to deaf students
20 particularly within the metro area. Is that
21 a coincidence, or is the impact of this case
22 and this complaint and these proceedings
23 still generating improvement to today?

24 A. I would suggest to you that the single
25 biggest impact on our ability to change

September 8, 2022

1 services for deaf and hard of hearing
2 children is the creation of the director's
3 position that has provided leadership to
4 deaf and hard of hearing student issues in
5 this province. In my experience in school
6 districts, we never ever had that type of
7 leadership; and now that we do, I think you
8 can correlate the creation of that position
9 with our movement over the last couple of
10 years.

11 Q. Why couldn't we create that position in 2017
12 when it was identified as a need?

13 A. We don't have the—I can't speak for 2017
14 obviously. I can speculate based on my
15 other jobs that I've had—that we don't have
16 the ability just to create positions without
17 departmental approval. Even in this
18 particular instance when we created this
19 position, that was a result of conversations
20 with the department. They were onside
21 because of the connection to the education
22 action plan, but we don't have the ability
23 to just create positions.

24 Q. That would need to be done by the
25 department?

September 8, 2022

1 A. We would need to engage with them in a
2 conversation about creating a position.

3 Q. Have you had discussions with the department
4 about continuing that position past August
5 of 2023?

6 A. Unfortunately, as most would be aware, we've
7 just gone through a process where government
8 has announced that we are about to be
9 integrated into core government, so in the
10 past year work was underway to look at what
11 that might look like. The district
12 reorganized in June as part of that overall
13 process to get us ready to be integrated
14 into government, and the district argued—
15 argued is a strong word—as a part of that
16 process of determining what that final
17 structure was going to look like, we made it
18 very clear that the director of programs or
19 the director of DHH services was critical to
20 the work of the district going forward. In
21 early June the then board, the school board,
22 trustees, approved the new structure with a
23 director of DHH services entrenched in our
24 organizational chart.

25 Q. So, yes, I just want to make sure I didn't

September 8, 2022

1 misunderstand your evidence because that's
2 what it seems like to my client and I. Are
3 you telling me, sorry, that the Alma McNiven
4 position has been extended past 2023?

5 A. So, previous years that position was on a
6 term basis year to year.

7 Q. Yes.

8 A. In the approved structure by—that was done
9 by the trustees in June, early June—there
10 are two provincial leads, one for deaf and
11 hard of hearing services, and the other one
12 focusses on multiculturalism.

13 Q. Right.

14 A. In that document that was approved at that
15 time there were some other duties associated
16 with those positions, but we have determined
17 that that would make those positions—there
18 would be a loss of leadership if they had
19 too many responsibilities, so we focussed
20 the position that Alma is in on deaf and
21 hard of hearing services, which is exactly
22 what she was doing last year, but now it's
23 entrenched in our organizational structure,
24 and the same thing with the multiculturalism
25 position.

September 8, 2022

- 1 Q. I think Alma thinks her job is ending in
2 August. Is she wrong?
- 3 A. Alma has been appointed to the position on a
4 go-forward basis.
- 5 Q. Okay. Yes, and she testified here to that.
6 Sorry.
- 7 A. So, I might be able to explain some of the
8 confusion.
- 9 Q. Yes. Yes.
- 10 A. Whether or not she's appointed to it on a
11 permanent basis and whether or not she asks
12 for leave from her position in the NLTA are
13 two different things.
- 14 Q. So, the position continues to exist past -
- 15 A. The position itself continues to exist, and
16 it is now a part of our organizational
17 structure.
- 18 Q. Okay, just the last question I want to put
19 to you, the last item that I want to put to
20 you, is that—and I appreciate you're not in
21 the role until 2018, but you, I think, from
22 some historical knowledge understand the say
23 things were going in 2017, right? 2017 and
24 2018 and 2019, problems are being identified
25 in deaf education. Some of them reach you.

September 8, 2022

1 A. Uh-hm.

2 Q. Many of them don't, but, you know, we've had

3 previous witnesses in here who are all

4 district employees who have indicated that

5 they had awareness of these issues. You've

6 attributed the resolution to these issues to

7 a Premier's Task Force Report in 2017, which

8 in turn causes the creation of the director

9 of hard of hearing position, which in turn

10 creates the satellite classroom and has gone

11 on to generate other spinoff benefits. I

12 say to you that these—all of these issues.

13 There's nothing new discovered about the

14 state of deaf education in Newfoundland and

15 Labrador from 2017 until now. The

16 information, the knowledge of need, I would

17 put to you, is the same. The difference is

18 in 2017 alongside this report the Churchills

19 have filed a human rights complaint, and

20 they pushed it, and they've gotten in front

21 of cameras, and they put you in meetings,

22 and they've gotten you at a boardroom table,

23 and they've e-mailed the trustees, and, you

24 know, they've made a public fuss of

25 everything that has eventually led us here

September 8, 2022

1 into this room where, you know, as recently
2 as last week people were getting new jobs
3 sent to them by e-mail while you're on the
4 stand advising them that they had gotten
5 positions that were new positions created,
6 and I say that those benefits have just as
7 much to do with the Churchills as they have
8 to do with any other person. Do you agree?

9 A. No. I think I've answered that several
10 times in my time here, that advocacy plays a
11 role. The significance of that we'll
12 probably agree to disagree on. The only
13 other point that is important to me, while
14 the inclusion philosophy is the umbrella
15 under everything-over which everything
16 operates, in 2019, 2018, 2017 the service
17 delivery model for deaf and hard of hearing
18 students designed by the department was
19 different, and it was focussed on the
20 itinerant model. It was focussed on
21 children being in their neighbourhood
22 schools. The education action plan allowed
23 us the opportunity to start changing that
24 conversation, and that's how we've ended up
25 where we are.

September 8, 2022

1 Q. Education action plan, 2018?

2 A. 2018.

3 Q. Okay. No further questions. Thank you.

4 ADJUDICATOR:

5 Q. Mr. Penney?

6 MR. PENNEY:

7 Q. No.

8 MR. ED WALSH, CROSS-EXAMINATION BY THE ADJUDICATOR

9 MR. PENNEY:

10 Q. A couple of questions that I wanted to ask
11 you, a topic that was covered off—or touched
12 on a while back, the proficiency testing for
13 DHH teachers, the teachers of the deaf and
14 hard of hearing, proficiency testing in
15 specifically ASL proficiency. Some of those
16 teachers have participated in proficiency
17 testing voluntarily.

18 A. That's right.

19 Q. Were all of the DHH—was the entire roster
20 asked whether they would participate in ASL
21 proficiency testing?

22 A. I believe the ones working in Avalon Region
23 were. I'm not sure if the invite went to
24 all teachers in the province.

25 Q. Do you know why that would've been

September 8, 2022

1 restricted to the Avalon Region?

2 A. And, again, I don't know that it was. If it
3 was, it was probably related to trying to
4 identify individuals who may be interested
5 in working in the DHH classroom in
6 Eastpoint.

7 Q. So, is it your understanding, or do you
8 know, whether there was a request sent out
9 to at least a group of DHH itinerant
10 teachers asking if they would participate
11 in—I'm trying to understand. Was this
12 something that was done just for those who
13 were applying to work in the satellite
14 classroom, or was this an effort to see if
15 we can get engagement and, you know,
16 voluntary engagement from the DHH roster?

17 A. My understanding of the reason, that it was
18 sent was to get an understanding of the
19 proficiency of DHH teachers—or DHH staff to
20 identify those individuals who we—as you
21 say, that might get engaged with on whether
22 or not they were interested in working in
23 the DHH classroom.

24 Q. Do you remember when this would've occurred?

25 A. No, I don't.

September 8, 2022

1 Q. Are there any barriers that you are aware of
2 to requiring the roster of DHH itinerant
3 teachers to participate in ASL proficiency
4 testing?

5 A. There's no barriers that I'm aware of other
6 than personal choice.

7 Q. So, the—and I just want to understand, the
8 district does have the authority to require
9 its DHH itinerant teachers to participate in
10 ASL proficiency testing.

11 A. That's a good question because as we've
12 noted, the training programs themselves
13 don't require it, so if—don't require ASL
14 proficiency, and that would be the end goal
15 of testing, so I don't know the answer to
16 that question, if we have that authority or
17 not.

18 Q. Are there other ways which teachers, not
19 necessary DHH teachers but teachers
20 generally, are evaluated from year to year
21 or throughout the year?

22 A. There are—there's two forms that that takes.
23 Brand-new teachers are evaluated in
24 accordance with the evaluation policies of
25 the district, so there's a set set of steps

September 8, 2022

1 before someone becomes tenured, and then
2 there's a rotation once every five years
3 that teachers go through a professional
4 learning process that's tied to performance
5 appraisal, but the one—the process for
6 tenured teachers is more about professional
7 growth than actual appraisal. There is a
8 module in the performance appraisal policy
9 for teachers who are not performing at the
10 level that they want, so I don't mean to
11 confuse you. So, there's a policy for
12 probationary teachers. There's a policy for
13 tenured teachers that focusses on
14 professional growth, and then there's a
15 policy or a module for teachers who are
16 struggling, and that's mirrored across, you
17 know, other areas like admin and so on.

18 Q. So, what sort of evaluations are done in
19 each one of those three scenarios? I'm just
20 trying to get a better sense of what
21 evaluations are happening.

22 A. So, for probationary teachers it would be a
23 creation of a professional learning plan
24 supplemented by classroom visits by an
25 administrator, debriefing sessions with the

September 8, 2022

1 administrator and the team. It could
2 involve outside resources from the district
3 to help a teacher who has identified a
4 particular area that they are struggling
5 with. On the tenured side, classroom visits
6 are not mandatory. Some teachers want them;
7 some teachers don't because the focus in
8 tenured teacher performance appraisal is on
9 professional learning and professional
10 growth. In Module 3, what we call Module 3,
11 which is the one for teachers who are not
12 performing, there is a set set of steps
13 which often include things like classroom
14 visits by an administrator or potentially
15 other district personnel.

16 Q. And the second scenario you discussed for
17 tenured teachers, so you said that's tied to
18 their professional learning?

19 A. Yes.

20 Q. So, is the assessment informing what
21 professional learning opportunities are
22 offered to those teachers?

23 A. So, in each of those different modules, as
24 we call them, there's an opportunity for
25 self-reflection. There's an opportunity for

September 8, 2022

1 those teachers to gather data from students.
2 There's an opportunity for those teachers to
3 gather data in the form of surveys from
4 administrators and so on. As that's
5 collected—because professional learning is
6 self-directed, as that's collected, the
7 teacher then takes that information, you
8 know, under the guidance of the
9 administrator—this is the tenured teacher
10 piece—and develops a professional learning
11 plan, and that professional learning plan
12 might have a number of goals that they want
13 to accomplish over a period of time. Some
14 of that might involve their own individual
15 work, novel studies and so on. Some of it
16 might involve requests for professional
17 learning.

18 Q. And I think you said the professional
19 learning plan is guided by the teacher
20 themselves?

21 A. Yes.

22 Q. Does the district play a role in directing
23 the teachers as to what areas they will
24 receive professional learning?

25 A. Rarely. In Module 3 for those teachers that

September 8, 2022

1 are struggling, there might be more of a
2 hands-on approach with the teacher in terms
3 of what professional learning they require
4 and what professional learning they need.
5 In Module 2 for tenured teachers, it's more
6 collaborative. Because a teacher asks for a
7 certain type of professional learning
8 doesn't necessarily mean that it'll happen,
9 but it's more of a collaborative approach
10 between the principal of the school or the
11 vice-principal and the teacher. Once the
12 teacher has identified their needs and what
13 they want to focus on for that year, then
14 they get engaged with the administrators to
15 what that support might look like. It might
16 not mean professional learning at all. It
17 might mean something completely different.

18 Q. For Module 3 I think you're describing
19 teachers that are not performing up to the
20 level you expect from them.

21 A. Correct.

22 Q. What assessment results in a teacher falling
23 within Module 3, so what has triggered us
24 identifying a particular teacher as needing
25 this mandatory professional learning?

September 8, 2022

1 A. Most often it's performance issues. It
2 would be related to in some cases classroom
3 management, students not performing well.
4 There's a whole host of things that you
5 would consider when you're looking at the
6 performance of a teacher. It could be their
7 preparation for instruction. It could be
8 their interactions with students. It could
9 be how well students are receiving the
10 instruction and the facilitation that the
11 teacher provides, so there's a whole host of
12 things. It's really difficult to narrow it
13 down to just one or two other than
14 performance issues, which is a fairly broad
15 umbrella.

16 Q. And these types of issues are things that
17 are being identified that, from the
18 perspective of the district, can be
19 addressed by providing the teacher with
20 professional learning opportunities to
21 enhance their skillset.

22 A. So, the issues in Module 3 are identified by
23 the school administrator. They are the
24 onsite supervisor, so in cases where we've
25 used Module 3, it is a result of a school-

September 8, 2022

1 based administrator telling us that there
2 are performance issues with a teacher, and
3 then our district staff get engaged, and we
4 follow the steps as outlined in the policy
5 itself.

6 Q. Is there a reason why Module 3 could not be
7 used or adapted to require ASL professional
8 learning for a group of teachers?

9 A. Not a group of teachers because Module 3 is
10 focussed on the individual, and it's
11 specific to their performance itself. I
12 think that teachers requesting training in
13 ASL arrives more out of Module 2, which is
14 the teacher reflecting upon their practice
15 identifying gaps in their abilities and then
16 working with their—in this case it would be
17 working with the school administrator in
18 coming up with a plan to address those needs
19 and gaps.

20 Q. Through either Module 2 or 3, perhaps even
21 one if you had a new teacher, if we're able
22 to identify early on that a particular
23 teacher, who we intended would be delivering
24 instruction via ASL does not have that
25 skillset at the level we want, the district

September 8, 2022

- 1 could mandate and direct that that
2 particular teacher participate in
3 professional learning specifically in the
4 area of ASL.
- 5 A. In the context—inside the context of the
6 policy itself which—from a probationary
7 teacher’s perspective would be your getting
8 to the point where you’re tenured, so part
9 of that process would be we could identify
10 that there is a gap. Again, even in—if—I
11 want to be careful here because even in the
12 Module 1 it’s a collaborative approach.
13 It’s not top-down, so to speak, because
14 ultimately at the end of that 2-year period,
15 which is called the probationary period, the
16 district will make a decision on whether or
17 not that person is going to continue their
18 employment, so part of that process early on
19 might be the identification of deficiencies
20 in ASL proficiency, and then center to all
21 of the areas is the development of a PL plan
22 to address those deficiencies.
- 23 Q. Whether it falls within one of these
24 particular modules or would fall outside of
25 one of these particular modules, I’m not

September 8, 2022

1 hearing—and I want you to correct if I'm
2 wrong. I'm not hearing any barrier to
3 setting up a system specifically related to
4 DHH itinerant teachers where we put in place
5 a mandatory proficiency assessment and then
6 potentially support them by mandatory
7 professional learning to increase their
8 proficiency levels?

9 A. I think that's more applicable to one and
10 three because two is for tenured teachers.
11 It's a little bit more difficult there. If
12 a teacher was struggling, and that's been
13 identified to the supervisor or the district
14 that they have issues with proficiency, the
15 district could as a part of the process of
16 determining whether or not they're going to
17 continue employment with the district, I
18 guess, mandate or insist that part of that
19 work would be getting engaged in PL for ASL.

20 Q. Okay. Follow-up?

21 MR. PENNEY:

22 Q. No.

23 MR. REES:

24 Q. No.

25 ADJUDICATOR:

September 8, 2022

1 Q. I want to take the opportunity to thank you
2 for coming before this Board of Inquiry and
3 providing your evidence today. I know you
4 haven't watched any of the proceedings so
5 far or discussed evidence with anyone who
6 has testified already. Now that you've
7 given your evidence you're welcome to stay
8 and watch the proceedings if you wish, or
9 you're free to go. We do have another
10 witness scheduled, so you're free to step
11 down, and do we want to take a break before
12 we move on to the witness?

13 MR. REES:

14 Q. Just five minutes.

15 ADJUDICATOR:

16 Q. Five minutes?

17 MR. REES:

18 Q. Yes.

19 ADJUDICATOR:

20 Q. We'll adjourn five minutes.

21 (OFF RECORD)

22 ADJUDICATOR:

23 Q. Okay, so the next witness that we have
24 scheduled is Ms. Bernie Ottenheimer, and
25 that would be you, Ms. Ottenheimer? Before

September 8, 2022

1 you give evidence to this Board of Inquiry
2 this afternoon, you have the option of
3 swearing an oath or giving your solemn
4 affirmation to tell the truth, but you must
5 pick between one of those two options.

6 MS. OTTENHEIMER:

7 A. I'll give my solemn acclamation. (sic.)

8 ADJUDICATOR:

9 Q. Okay.

10 MS. BERNIE OTTENHEIMER, (AFFIRMED) CROSS-EXAMINATION

11 BY MR. KYLE REES

12 REPORTER:

13 Q. State your name for the record, please.

14 A. Bernie Ottenheimer.

15 Q. Thank you. Ms. Ottenheimer has been
16 affirmed.

17 ADJUDICATOR:

18 Q. Okay, so Ms. Ottenheimer, I would understand
19 that Mr. Rees will have a series of
20 questions for you after which Mr. Penney may
21 have some questions, and I may have
22 questions as we go along for clarification,
23 or I may save some for the end. Mr. Rees?

24 MR. REES:

25 Q. Thank you. Ms. Ottenheimer, I'm Kyle Rees.

September 8, 2022

1 I'm the lawyer for Todd and Kim Churchill
2 who are sat to either side of me. We have
3 two hours budgeted, and I appreciate that
4 you showed up and were waiting around for a
5 little while while we finished with the last
6 witness.

7 A. Okay.

8 Q. I'm hopeful that I'm going to be quicker
9 than that given that we do have an hour left
10 to the day, so I'm going to see if I can fit
11 the questions that I have to ask for you
12 within the hour we have remaining and
13 therefore avoid going into overtime and/or
14 calling you back tomorrow morning. I might
15 refer you to some documents; and when that
16 moment comes, I'll point those out to you,
17 and then otherwise we'll be referring to the
18 affidavit, which you've provided, so thank
19 you very much for that. Identify for me
20 what your current role is, your current job.

21 A. I'm the manager of student services with the
22 Department of Education.

23 Q. Okay, and I know that you've kind of been in
24 a few places since—I mean, really, the
25 operative time period for us—since, say,

September 8, 2022

- 1 2013, right? So, 2013 to 2017 you're
2 director of student services. Sorry, is
3 that the same or different than your current
4 role?
- 5 A. It's a different role.
- 6 Q. Oh, a different role.
- 7 A. It's a different time.
- 8 Q. So, what does a director of student services
9 do?
- 10 A. Within the Department of Education we have
11 directors of divisions, and I can't remember
12 the dates, but you said them. When I became
13 a manager instead of a director, then
14 student services was no longer a division so
15 -
- 16 Q. I see, and what would be relevant for us in
17 this context is during the time when you're
18 in the director of student services role
19 2013 to 2017. Your dealings with Carter
20 Churchill or the Churchill family would've
21 been in relation to the assignment of
22 itinerant support, is that right?
- 23 A. I don't assign—I've never assigned itinerant
24 support.
- 25 Q. Okay.

September 8, 2022

- 1 A. At the department we write policy, provide
2 guidelines, procedures but not—as either a
3 director or as a manager, I wouldn't assign
4 support.
- 5 Q. You wouldn't be responsible for assigning
6 the support—
- 7 A. No.
- 8 Q. —but the policies and the procedures and the
9 guidelines you and your department would
10 prepare would govern the way that those
11 itinerants function.
- 12 A. Yes.
- 13 Q. Okay, right. Tell me, so that I can—because
14 I'm going to be asking you about two
15 different periods of time. You've occupied
16 the role of manager of student services,
17 Department of Education, since 2017, and
18 you're still there now. What, if any, role
19 would you have had in the Churchill file in
20 that role?
- 21 A. I believe it was 2014, but I don't have any
22 notes with me, so I'm just going from
23 memory, but I did receive an e-mail from
24 Mrs. Churchill, and that, I believe, was my
25 first contact with them. We might've had

September 8, 2022

- 1 some conversations on the phone after that,
2 but it would've been around the same time,
3 the same incident. Other than that, I don't
4 believe we've had any direct contact.
- 5 Q. Okay.
- 6 A. I did—when Carter went to APSEA for a
7 comprehensive assessment, the student
8 support services' budget paid for the
9 family's transportation.
- 10 Q. Okay, so those are the only sort of
11 touchstones, I suppose, to your involvement
12 in the Churchill file.
- 13 A. I believe so, yeah.
- 14 Q. All right, so let's go through each of
15 those. Tell me about that correspondence
16 that you received from Ms. Churchill in what
17 you said you believed was 2014.
- 18 A. Yeah. You probably have it there.
- 19 Q. I don't think it—well, I mean, my note says
20 "September 2013," and that's when DHH
21 services are modified for children in metro,
22 right?
- 23 A. So, I don't think it was in September. It
24 was end of March or something. I think he
25 was four years old so -

September 8, 2022

1 Q. Oh.

2 A. Well, he was a preschooler.

3 Q. Sorry, this is my mistake. I've mixed up
4 the complaint and the thing complained
5 about. You're absolutely right. March
6 2014, she complains to you, and what she had
7 complained to you about was at the previous
8 year, in 2013, that—and up to that point
9 then in March of 2014 when the complaint
10 comes in—that DHH support for children with
11 cochlear implants had been removed. You're
12 shaking your head.

13 A. No.

14 Q. No.

15 A. The complaint was about the service that was
16 meant to be provided by our AVT to Carter,
17 and Andrea Holly at the time was sick a fair
18 bit of time and wasn't available to keep
19 appointments, and Mrs. Carter (sic.)
20 contacted me through e-mail. I think I was
21 copied, actually, on an e-mail to Andrea
22 with some other people as well, and she
23 expressed her concerns for that, rightly so.
24 You know, Andrea wasn't available to provide
25 the services that she expected and felt that

September 8, 2022

- 1 she—that the communication between Andrea
2 and the family wasn't adequate and was
3 frustrated and upset by that.
- 4 Q. I mean, it's unfortunate. These things
5 happen. You know, that's more kind of a
6 human resources, lower-level -
- 7 A. She was sick. It was very unfortunate.
- 8 Q. But what I want to ask you about is that is
9 policy change. What do you know about the
10 change to policy that saw deaf students not
11 being provided with the same level of DHH
12 services as a metro area?
- 13 A. Separate issues, okay? And I believe what
14 you're talking about is a decision made by
15 the NLESD the year previously—
- 16 Q. That's right.
- 17 A. —that children, preschoolers with cochlear
18 implants, would begin to have—be serviced by
19 the AVTs rather than the deaf and hard of
20 hearing teaching itinerants.
- 21 Q. That's exactly what I'm talking about. What
22 was your experience with that policy change?
- 23 A. Nothing until I heard about it.
- 24 Q. Okay, so this policy change gets made.
- 25 A. So, it—well, I guess it was a practice more

September 8, 2022

- 1 so than a policy but -
- 2 Q. Okay. How do you hear about it?
- 3 A. Just, I guess, after the fact when having
- 4 meetings with my AVT-
- 5 Q. Okay.
- 6 A. -with Andrea, and I guess with Darlene
- 7 probably as well, who was on staff then,
- 8 Darlene Fewer Jackson.
- 9 Q. Right. To your knowledge, was there a
- 10 belief that cochlear implants were, you
- 11 know, going to eliminate or substantially
- 12 reduce the need to teach and service
- 13 children in ASL?
- 14 A. I would really be speculating on that.
- 15 Q. Okay.
- 16 A. I know that the intention of a cochlear
- 17 implant was that it would improve a
- 18 student's ability to learn language, spoken
- 19 language. I guess with that there would be
- 20 less need for ASL; but, again, I wasn't part
- 21 of any of those conversations that would be
- 22 based on, you know, medical research and
- 23 decisions.
- 24 Q. Did you approve the decision that Carter
- 25 Churchill would be serviced by Andrea Holly,

September 8, 2022

1 the AVT? That was your decision?

2 A. No. She was an employee of the Department
3 of Education. There was another AVT who was
4 employed by the district, school district,
5 and who served which students in which
6 schools was a decision by the district.

7 Q. Okay. Well, then when there were problems,
8 why were you the one who was contacted
9 through the -

10 A. Because I was Andrea's supervisor.

11 Q. Okay.

12 A. So, there was a very short period of time
13 that one AVT was at the district and one AVT
14 was at the department, and the reason for
15 that, I believe, was because there were more
16 than-it wasn't the NLESD at the time. There
17 were more than one English-speaking school
18 district, and Nora Cahill, I believe, was
19 the AVT employed by the Eastern School
20 District, and we needed an AVT that would
21 work outside of the boundaries of the
22 Eastern School District. At that time that
23 person was employed by the department.

24 Q. Okay.

25 A. In years to come, because the department

September 8, 2022

1 doesn't usually provide direct service of
2 that sort, when the Eastern School District
3 expanded, both AVTs were employed by the
4 NLESD.

5 Q. The practice change is what you described
6 it, not like a policy change or program
7 change—

8 A. Uh-hm.

9 Q. —but a practice change where children with
10 cochlear implants would be, you know,
11 serviced by AVT as opposed to being attended
12 by itinerant teachers of the deaf who would
13 have presumably had some ability in ASL.
14 Was it your evidence that you kind of only
15 heard about that change after the fact, like
16 that you were unaware that that was
17 occurring until the process was well
18 underway?

19 A. Because responsibilities and assignments for
20 teachers are assigned by the school
21 district.

22 Q. Did you have any concern about that when you
23 heard about it? Did it give you any cause
24 for concern?

25 A. No, it didn't.

September 8, 2022

1 Q. I know it was a concern for the Churchills
2 because, you know, Carter, as a result of
3 this policy change, misses out on a year,
4 even more than a year, where he could've
5 been receiving deaf itinerant services,
6 learning sign language. It didn't strike
7 you as concerning in a similar way.

8 A. At the department we don't—we aren't part of
9 decision-making around programming and
10 whether ASL would have been part of his
11 program or not. I wouldn't be able to speak
12 to that.

13 Q. "At the department," and we're talking about
14 the Department of Education.

15 A. Uh-hm.

16 Q. You're not part of the decision about which
17 group those—sorry, I just want to make sure
18 I understood your evidence right. You said
19 you're not part of what decision?

20 A. Around programming.

21 Q. Around programming.

22 A. So, every student who receives special
23 education has an individual education plan,
24 and those decisions are made at the school
25 level by the program planning team; and if

September 8, 2022

- 1 Carter was a preschooler at that time, those
2 decisions would've been made in consultation
3 with other departments such as health.
- 4 Q. You were never asked for your opinion, your
5 insight, your views on that policy change at
6 any point—practice change?
- 7 A. On that practice change, no, I wasn't.
- 8 Q. Were you aware that when the School for the
9 Deaf was in operation, there was a preschool
10 service that offered those kinds of services
11 to the children, and the School for the Deaf
12 was a department-run school.
- 13 A. Uh-hm.
- 14 Q. And the School for the Deaf had a—they
15 called it—an At-Home Learners program, I
16 think, is what they called it.
- 17 A. So, the School for the Deaf was closed in
18 2010, and I was the consultant for safe and
19 caring school at the time, so I wasn't
20 involved in that at all.
- 21 Q. Okay. Did you ever hear, though, when you
22 took over your role with the department that
23 this program had existed in the School for
24 the Deaf, make any enquiries into what
25 replacement -

September 8, 2022

- 1 A. The School for the Deaf had been closed then
2 for a number of years.
- 3 Q. Seven years, yes—eight years. I'm trying to
4 understand—the evidence that you're giving
5 me sort of implies a more minimal role than
6 your copying on the various pieces of
7 correspondence would suggest, and, I mean,
8 maybe you're going to tell me that you
9 shouldn't have been copied on this
10 correspondence, and it was done in error, so
11 maybe we should look at it. I'm going to
12 pass you Kim Churchill's affidavit because I
13 don't actually think you have one up there
14 with you. Do you have a document up there
15 that says "Affidavit of Kim Churchill" on
16 the front? Over to your right-hand side.
17 Over to your right.
- 18 A. Oh.
- 19 Q. Is that Kim Churchill's affidavit?
- 20 A. Yes, it is.
- 21 Q. I think it is.
- 22 A. Yeah.
- 23 Q. Okay. There's a document called Attachment
24 4.
- 25 A. Okay.

September 8, 2022

1 Q. It's Tab 4. A lot of attachments there, a
2 lot of pages.

3 A. Uh-hm.

4 Q. If you flip through to the last page of that
5 Tab 4, it's a big page. It's Page 19. On
6 the top in big letters, "Services for
7 Children Who are Deaf and Hard of Hearing."

8 A. Oh, wait now.**

9 ADJUDICATOR:

10 Q. I think you might be at the wrong tab.

11 A. Yeah.

12 Q. Tab 4 starts—it's a document entitled—in No.
13 15?

14 MR. REES:

15 Q. Yes, that's right, so flip in—I mean, it's
16 double-sided—at least in mine anyway double
17 sided, and you'll see there's kind of a big
18 title page on the last page at Tab 4.

19 A. It says "Summary: Currently Service
20 Offered?"

21 Q. Where are you? Oh yes, okay, that's the
22 last page. Yes, so flip back one. I mean,
23 they're part of the same document.

24 A. Okay.

25 Q. This was a presentation that was given, to

September 8, 2022

- 1 my understanding, by Darlene Fewer Jackson.
- 2 A. I just want to be sure where—because I was
- 3 on the wrong page, which—okay, yeah.
- 4 Q. Yes. This was a presentation that was given
- 5 by Darlene Fewer Jackson September 24th,
- 6 2013. You were forwarded a copy of the
- 7 minutes of that meeting. Does this seem
- 8 familiar to you in any way? I appreciate
- 9 you're just having it put in front of your
- 10 nose now.
- 11 A. So, I wouldn't be able to tell you where
- 12 this occurred now. Do you know where this
- 13 presentation occurred?
- 14 Q. The presentation—"Meeting at the Janeway
- 15 Audiology Clinic regarding services for
- 16 children with hearing loss zero to four
- 17 years old."
- 18 A. Okay.
- 19 Q. "Introductions from"—I'm reading from page
- 20 15.
- 21 A. Uh-hm.
- 22 Q. Okay?
- 23 A. Okay.
- 24 Q. You were copied. If you look at the very
- 25 top of page 15, we can see that you're

September 8, 2022

- 1 copied on it, which is minutes from Darlene
2 and found in one of her e-mail folders from
3 2013, and the question that I have for you
4 is that it indicates—I want to make sure I
5 get the right sentence here for you.
- 6 A. Yeah. I don't see where I'm copied on
7 something.
- 8 Q. Oh, the very top of—there's a page
9 identified as "Page 15."
- 10 A. From Andrea, okay.
- 11 Q. Yes, and then there "To: Bernie
12 Ottenheimer," right? That's you?
- 13 A. Yes. It's from Andrea, though, not from
14 Darlene.
- 15 Q. Correct.
- 16 A. Yeah.
- 17 Q. But it's including—
- 18 A. Yes.
- 19 Q. —the below message, which is from Darlene.
- 20 A. Yeah.
- 21 Q. And if you flip over to page 16, I wanted to
22 read from the e-mail for you that identifies
23 that "Discussion was held about the
24 perception of parents if Janeway were to
25 only service the zero-to-four population,"

September 8, 2022

1 by which they mean through Janeway and not,
2 you know, DHH teachers as well. "Would
3 parents perceive this as a reduction of
4 services? Some parents come to the Janeway
5 for AVT services, and they also have
6 services from the DHH itinerant either in
7 their home or at the child's daycare. If
8 this service is pulled back from DHH
9 itinerants' education, would this be viewed
10 negatively?" Again, and I'm asking you—you
11 were copied on this e-mail. I don't know if
12 there was any role for you to play. I had
13 assumed there was because you were copied,
14 and what I'm asking you is did you have any
15 role in advising, reviewing or otherwise
16 assisting in making the decision to pull
17 that support of DHH itinerants?

18 A. As I said, no, I didn't.

19 Q. Any guess on why you were copied or what you
20 would've done with that correspondence?

21 A. Well -

22 Q. Why are you there?

23 A. I guess because I was Andrea's direct
24 supervisor, and when—so, I'm sorry. I keep
25 changing glasses. In 2013 when she sent

September 8, 2022

1 this e-mail, I think—you know, just trying
2 to read this very quickly while you were
3 pointing—you know, reading something else
4 there—she came across these notes of a
5 presentation that Darlene had sent to Dan,
6 and I guess then she, in reviewing those
7 notes, expressed her own comments and
8 wonderings, and she wondered that to
9 everybody she copied it to, myself and
10 Darlene and Nora, so I guess her wonderings
11 were for us to have—you know, to be aware
12 that she was wondering that, but again, the
13 decision on who within the NLESD is
14 responsible for what was—would be a district
15 decision.

16 Q. Sorry, Ms. Ottenheimer, there's going to be
17 a little bit of silence here while I shuffle
18 my notes because I -

19 A. Yeah.

20 Q. The good news is I think my questions for
21 you are going to be substantially truncated.
22 Okay, I'm going to ask you about a document
23 in that purple binder. You got a purple
24 binder there up to your far right-hand side.
25 It's open, I think. Yes, there you go. Tab

September 8, 2022

1 5, and this is what we've been calling our
2 rebuttal documents. You see that one there?

3 A. Yes.

4 Q. There's an e-mail chain between you and Ed
5 Walsh, and at that time Ed—we just heard
6 from Ed Walsh, but at that time I understand
7 Ed Walsh was with the department, is that
8 right?

9 A. Yes, he was the ADM.

10 Q. He was the Assistant Deputy Minister at the
11 Department of Education.

12 A. Uh-hm.

13 Q. Okay. This is in 2017, and at this point
14 you are providing, I guess, information to
15 either Brad Clarke or Pauline Jackman, but
16 probably Ed Walsh, and he had asked you for
17 information about, you know, what happened
18 to all those teachers from the—NSD is
19 Newfoundland School for the Deaf—"What
20 happened to them? Where did they go, and
21 how can we find them if there's an increase
22 in requests for itinerant caseloads?" Why
23 was this request being made, do you recall?

24 A. I don't recall. I wouldn't assume either
25 why he asked it. The bottom of the e-mail

September 8, 2022

1 is "FYI I believe you asked me lately what
2 has happened to the eight teachers," da-da-
3 da-da. Didn't have an answer to that, and
4 then much of the rest of the e-mail is on
5 another topic.

6 Q. Okay, so there's an indication in this e-
7 mail, though, coming from Ed Walsh, you
8 know, Department of Education Ed Walsh,
9 saying that, you know, there hasn't been any
10 requests from the district, and I'm
11 inferring from the context of the e-mail
12 that you mean for another DHH itinerant
13 unit. He says, "There's been no request
14 from the district," and you said you
15 "thought it was coming, so that's why I
16 figured I'd give you a heads-up," and Ed
17 Walsh, Department of Education Ed Walsh,
18 says, "Thanks. I don't think we can do
19 anything regarding a"—I guess that's
20 additional service unit of some sort—
21 "request after the budget has been approved.
22 We'll wait and see what comes in."

23 A. Uh-hm.

24 Q. Was it typical for requests like this to get
25 made from the district to the department for

September 8, 2022

- 1 additional—you know, additional units,
2 additional human resource units, in order to
3 meet identified need?
- 4 A. Well, I would think so. Those requests
5 wouldn't come to me, but, yes, if the
6 district felt that they couldn't meet
7 service requirements with the resources, the
8 human resources, that they had, yes, that
9 ask would come in. That's my understanding.
- 10 Q. I'm going to ask you some questions about
11 satellite classrooms.
- 12 A. Uh-hm.
- 13 Q. When I say "satellite classroom" you know
14 what I'm talking about?
- 15 A. Yeah.
- 16 Q. You know that one currently exists now at
17 Eastpoint Elementary.
- 18 A. Yes.
- 19 Q. And you probably also know that a satellite
20 classroom had first been proposed back in
21 2017.
- 22 A. I believe, again without my notes here, that
23 when I first became aware of interest in the
24 satellite classroom, I believe it was in
25 2017.

September 8, 2022

1 Q. That's right.

2 A. I wouldn't say that that was a proposal. I
3 think a proposal came a year or two after—or
4 just before the satellite classroom that's
5 now there was a approved. Initially, my
6 awareness of that idea came through an e-
7 mail chain of an e-mail that was sent to me
8 from Darlene Fewer Jackson, which wasn't on
9 that topic. It was on something else, and
10 as I read down through the e-mail chain I
11 saw a note that the deaf and hard of hearing
12 teachers at the district were interested in
13 putting forward that idea, and the -

14 Q. You're talking about, like, in 2019 that
15 idea, are you?

16 A. No, earlier.

17 Q. Okay, because it would've been twenty—yes,
18 let me take you to a document just to ground
19 us all.

20 A. Yes.

21 Q. Affidavit of Kim Churchill, which I had you
22 look at already, the very last tab or—yes,
23 the last tab—last tab, Tab 38 of the
24 affidavit of Kim Churchill.

25 A. Am I in the right one? Uh-hm.

September 8, 2022

- 1 Q. Right. I don't know if this is the e-mail
2 chain you're talking about. It's not
3 Darlene Fewer Jackson.
- 4 A. No, it's not.
- 5 Q. It's Bonnie -
- 6 A. It's a different -
- 7 Q. Okay.
- 8 A. So, yeah, this -
- 9 Q. This is the first satellite classroom
10 proposal in May of 2017, and Bonnie Woodland
11 had only an hour and a half or so earlier
12 received an e-mail from the DHH teachers
13 with—maybe it is overly generous to call it
14 a satellite classroom proposal—certainly the
15 satellite classroom idea and accompanying
16 needs identified, and she says to you, "I
17 think we should discuss. You can put this
18 on the agenda if you wish, or we will
19 discuss. It's a metro response in some
20 cases, still under discussion. Also, we
21 have received a proposal from our DHH
22 teachers for a satellite classroom—for
23 satellite classrooms with full-time teachers
24 of the deaf and student assistants who are
25 proficient in ASL. We are not embracing

September 8, 2022

1 this, but I wonder if we should also discuss
2 at our upcoming meeting or just with you and
3 Paulette." Paulette Jackman, is that who
4 she's talking about?

5 A. Uh-hm.

6 Q. What would your role have been in
7 discussing a satellite classroom proposal
8 with Bonnie Woodland?

9 A. Well, I guess if a proposal was to come from
10 the district, and Bonnie wanted to discuss
11 it with me, then I would presume she wanted
12 to, you know, talk about what a proposal
13 might look like and the process for putting
14 forward such a proposal and what information
15 she would need, and maybe she was going to
16 ask my opinion. I don't know.

17 Q. It's indicated to you in that e-mail, "We
18 are not embracing this," I mean, so not a
19 super positive way to start the discussion
20 about the satellite classroom, I guess. Was
21 it explained to you why it wasn't being
22 embraced at that time?

23 A. No.

24 Q. Did you ask?

25 A. Not that I can recall.

September 8, 2022

- 1 Q. You don't really remember the follow-up
2 discussion about that, do you—
- 3 A. No.
- 4 Q. —that appears to have happened a few days
5 later from the e-mail. Okay. Is that your
6 only exposure to the satellite classroom
7 issue?
- 8 A. Well, I was referencing an e-mail from
9 previous to this one.
- 10 Q. Okay, yes. I don't know if I've seen that
11 e-mail.
- 12 A. Well, as I said, it was a—it was in the
13 history of an e-mail.
- 14 Q. Okay.
- 15 A. The e-mail that was sent to me wasn't
16 necessarily on that topic; but reading back
17 through it, I noted that some teachers
18 employed by the district were interested in
19 exploring the idea of a satellite classroom.
- 20 Q. And why does that stick out in your memory?
21 Why do you remember that?
- 22 A. Because I expected to have questions, I
23 guess—
- 24 Q. Here today.
- 25 A. —around this, so obviously I reviewed some

September 8, 2022

1 of my e-mails and some things that I thought
2 would be relevant but -

3 Q. I see, so this is an e-mail -

4 A. Otherwise, I probably wouldn't remember
5 anything.

6 Q. I understand, so you went home in
7 preparation for this hearing and reviewed
8 some e-mails and things and came across
9 this. I mean, what can you tell me about it
10 beyond the fact that it mentions a satellite
11 classroom? Is there anything else?

12 A. The fact that it mentioned it. It did-
13 within that they referenced it as a
14 proposal. I know that my response to that
15 was that this would not be a proposal. It
16 wasn't even an e-mail sent to me little
17 alone the fact that a proposal for such an
18 idea wouldn't come from the teachers; it
19 would come from the district, and I guess
20 that message somehow was passed along, and
21 then they were talking to Bonnie it would-
22 and, again, I'm only assuming that.

23 Q. Did you see any role for yourself in, you
24 know, helping to bring-in working with
25 Bonnie to help bring that proposal forward,

September 8, 2022

1 to work on that proposal? Did you see any
2 responsibility or role in you to either
3 bring that proposal forward or work to
4 address some of the needs identified?

5 A. If Bonnie or somebody at the district had
6 asked me for some help with something,
7 whether it's this or anything else, then I
8 would expect that my answer would've been,
9 "Yes, I'll give you a hand with it," or
10 "Someone on my staff would give you a hand
11 with it," but that wasn't the case.

12 Q. Did you have any role in assisting the
13 department in a review of curriculum,
14 English, French curriculum? Is that ever a
15 role that you played?

16 A. (No audible response).

17 Q. I think I'm done with this witness,
18 actually. Can I just take two minutes?

19 Thanks.

20 ADJUDICATOR:

21 Q. Did you want to take a brief adjournment to
22 review your notes, say five minutes?

23 MR. REES:

24 Q. That's fine.

25

(OFF RECORD)

September 8, 2022

1 MR. REES:

2 Q. No, I don't have any further questions for
3 this witness. I'm done. Thank you.

4 ADJUDICATOR:

5 Q. Mr. Penney?

6 MR. PENNEY:

7 Q. No.

8 ADJUDICATOR:

9 Q. Ms. Ottenheimer, I'd like to thank you for
10 providing your evidence to the Board of
11 Inquiry this afternoon. It appears there's
12 no further questions for you, and so I would
13 say you're free to stay and watch the
14 proceedings, but you're the last witness
15 scheduled for today, so you're free to go.

16 A. Perfect.

17 Q. And, counsel, are we starting 9:00 A.M.
18 tomorrow morning with Dr. MacDougall, or are
19 we -

20 MR. REES:

21 Q. Kim Lawlor tomorrow morning, I think.

22 ADJUDICATOR:

23 Q. Okay, so we will adjourn until 9:00 A.M.
24 tomorrow morning.

25 (Upon concluding at 4:33 P.M.)

26

September 8, 2022

1

CERTIFICATE

2

3 I, Joan Willmott, do hereby certify that the foregoing
4 is a true and correct transcript of an inquiry on the
5 8th day of September 2022 at Holiday Inn, St. John's,
6 Newfoundland and Labrador and was transcribed by me to
7 the best of my ability by means of a sound apparatus.

8

9 Dated at St. John's, Newfoundland and Labrador, this
10 17th day of September 2022.

11

12 Joan Willmott