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Department of Transportation and Works
Humber Valley Paving Ltd. – Project Number 1-12PHP

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Honourable Wade Verge, MHA

Public Accounts Committee

Chair: Jim Bennett, MHA

Vice-Chair: Ray Hunter, MHA

Members:

Eli Cross, MHA
George Murphy, MHA
Tom Osborne, MHA
Kevin Parsons, MHA
Calvin Peach, MHA

Clerk of the Committee: Elizabeth Murphy

Appearing:

Office of the Auditor General

Terry Paddon, Auditor General
Sandra Russell, Deputy Auditor General
John Casey, Senior

Department of Transportation and Works

Lori Anne Companion, Deputy Minister
Gary Gosse, Deputy Minister, Transportation
Paul Smith, Assistant Deputy Minister, Corporate Services

Department of Justice and Public Safety

Todd Stanley, Assistant Deputy Minister, Courts and Legal Services
Denise Woodrow, Solicitor (embedded in the Department of Transportation and Works)

The Committee met at 9:00 a.m. in the House of Assembly Chamber.

CHAIR (Bennett): Good morning.

This is a meeting or, more appropriately put, a hearing of the Public Accounts Committee. The Public Accounts Committee today is going to be reviewing the findings of the Auditor General related to the Department of Transportation and Works, and this is dealing with the Humber Valley Paving contract report that the Auditor General did that was called by former Premier Marshall.

For viewers, my name is Jim Bennett; I am the Chair. My Committee members are the Vice-Chair, Mr. Hunter, and with him other members: Mr. Parsons, Mr. Peach, Mr. Cross, Mr. Osborne, and Mr. Murphy. We have with us the Auditor General and his staff. We have a number of individuals who are here as witness or support people today, and I will call on them to identify themselves momentarily.

The format that we follow with these hearings is that individuals who have not been sworn and who are to give evidence are sworn, although people who appear before us regularly and who have appeared during this session of the House of Assembly in the last just under four years, if they are already sworn, they do not need to be re-sworn. So, there is nothing unusual about that. They are deemed to have remained sworn.

The questioning that we pursue is members go in rotation with approximately ten minutes each. They ask whatever questions they feel the need to ask and then it rotates to another member and another member and another member. We typically take a break after all members have asked questions, which puts us around mid-morning, around 10:30 or so, then we will break midday for lunch. If we go into the afternoon, if that is necessary – we never know for certain if it is or not – then we will have a mid-afternoon break.

Usually we also provide an opportunity for the Auditor General just to give some background and explanation, not just to jump in and then people will not know why you are asking all of these questions. So, background can be useful

for anybody who may come upon us and wonder what we are doing here today.

When individuals speak, particularly witnesses, it is important to say who you are – it is being recorded – so the people who are preparing a transcript from Hansard know who is making what statements. Otherwise, they will have to go back and try to figure out who said what. It is more helpful for them if you identify yourself in answering any questions.

I think I will go to the Clerk, if anybody needs to be sworn, or have all witnesses already been sworn?

Our Clerk is Ms Murphy.

Swearing of Witnesses

Mr. John Casey
Ms Lori Anne Companion
Mr. Gary Gosse
Mr. Todd Stanley
Ms Denise Woodrow
Mr. Brad Power

CHAIR: Thank you, Ms Murphy.

I will ask Mr. Paddon if he would like to give us some background, him or his Auditor who actually conducted the audit, whatever his preference is.

MR. PADDON: Thank you, Mr. Chair.

Just to introduce, Sandra Russell is the Deputy Auditor General. She has appeared before this Committee on numerous occasions. John Casey was the Audit Senior involved in the conduct of this review.

Just by way of background, we were asked on May 8, 2014 by the Lieutenant Governor in Council to inquire and report into any and all aspects of a contract between the Department of Transportation and Works and Humber Valley Paving Limited, related to Project Number 1-12 PHP. The any and all, obviously, is a fairly broad mandate, so we, over the course of our planning, put some parameters around that – and I will talk about that in a second.

Just for a bit of context, Project Number 1-12 is related to a contract for paving and related work on seventy-six kilometres of the Trans-Labrador Highway and ran basically between Happy Valley-Goose Bay and Churchill Falls. Part of our planning process, we tried to put some scope around the any and all aspects of the contract. So in our judgement, we thought that five objectives would satisfy the Lieutenant Governor in Council's objective of our review.

The five objectives that, in our wisdom, we settled on were: one, to determine whether the original tender and contract award were conducted in accordance with the provisions of the Public Tender Act; two, whether progress payments made were properly supported; three, whether any change orders or other adjustments to the contract were appropriately documented and authorized. Those three were more around the administrative process of the contract.

The fourth objective was to determine whether the decision to mutually agree to cancel the contract related to Project 1-12 was appropriately evaluated and authorized; and our last objective was to determine whether there was any evidence of undue influence in the evaluation or timing of the decision to cancel the contract related to Project 1-12.

As part of normal auditing standards, we would review these objectives with the person that engaged us or the organization – in this case, the Lieutenant Governor in Council. We reviewed those objectives with the Premier, more just to ensure they were complete as opposed to negotiate the objectives at the end. They were the objectives that in our professional judgement were appropriate to the engagement.

We did reach some conclusions against those five objectives, and I will just talk briefly about those for the context of the hearing. In terms of Objective 1, which was the contract being let in accordance with the provisions of the Public Tender Act, we did find that the contract was awarded in accordance with those provisions. So we did not find any issues in terms of the contract award.

In terms of progress payments made in connection with the contract, we did find that they were properly supported and paid only for

work completed under the contract. There was an issue related to payments being made on a biweekly basis that were not consistent with the contract terms. We had some findings around that and some recommendations.

In terms of Objective 3, "Change orders and other adjustments ... were appropriately documented and authorized." Really, they were minimal in this case anyway.

Objective 4, which was the process around the decision to mutually terminate the contract; we did determine that there was not appropriate documentation in terms of the decision to mutually agree to terminate the contract.

Our conclusion also says that, "The urgency to conclude an agreement on March 13, 2014 resulted in an evaluation that, with the benefit of more time, may have more fully considered all options available to the Department."

We also indicated that, "Additional time may have allowed ... (the Department) to consider other factors during the evaluation of the decision to cancel the contract related ... " – around the decision to cancel the contract – "however, we cannot determine whether more time would have resulted in a different decision."

Even though they may have had more time to evaluate other options, they still may have reached the same conclusion. We really could not determine whether another outcome would have been better or worse.

"The decision by the Minister of Transportation and Works was within the scope of his authority and the decision was properly authorized."

In terms of Objective 5, which is the issue around undue influence, we determined, "There is no documentary evidence of undue influence in the decision to mutually terminate the contract related to Project 1-12."

"We have not able to satisfy ourselves why two Ministers, within ½ hour, independently contacted the Deputy Minister of Transportation and Works to enquire about the status of HVP on the morning of March 13, 2014."

“We have not able to satisfy ourselves why the process to come to an arrangement with HVP to terminate the contract ... had to be concluded the day before nominations closed for the leadership of the Progressive Conservative Party of Newfoundland and Labrador.”

Those were our conclusions related to our objectives. We did have a number of findings as we went through, and those findings totalled about thirty-three – not about thirty-three, there were thirty-three findings. At the end of the report we did make a number of recommendations, five in total, around processes with the Department of Transportation and Works.

Thank you.

CHAIR: Thank you, Mr. Paddon.

Before we beginning questioning it is customary, at least in this Committee, to offer the department an opportunity, if they wish, to make some sort of an opening statement by way of background. It could be who you are or it could be detailed, it could be short, it could be long, or you do not need to do one if you do not want to.

So I will call on the department person, the deputy minister, I believe, is Ms Companion.

MS COMPANION: Good morning.

I would like to introduce my colleagues: Gary Gosse, Assistant Deputy Minister of Transportation; Todd Stanley, Assistant Deputy Minister of Justice and Public Safety; Paul Smith, Assistant Deputy Minister, Department of Transportation, Corporate Services; Denise Woodrow, Legal Counsel for the Department of Transportation through the Department of Justice and Public Safety; and, Brad Power, our Communications Manager.

I am Lori Anne Companion. I am the Deputy Minister of Transportation and Works.

Thank you for the opportunity to appear before the Public Accounts Committee to discuss the Auditor General’s report and review of Humber Valley Paving Limited. The department welcomes the findings and the recommendations

of the Auditor General. We view them as valuable insights into how we can better carry out our work. I am pleased to advise the Public Accounts Committee that all five recommendations contained in the report have been acted upon as follows.

In November, 2014, the Clerk of the Executive Council provided a protocol for informing the Premier and ministers of significant developments and issues within departments in the event that they are asked to address such developments in a public forum. In addition, the Clerk of the Executive Council met with deputy ministers to reiterate the importance of ensuring the conveyance of sensitive information through our normal protocols and processes, which are through briefing notes, information notes, and decision notes. That is how we make decisions in government.

Briefing notes and decision notes are fundamental decision-making tools for the public service. I have ensured these tools are used for decision making and information exchange in the Department of Transportation and Works.

In response to the remaining four recommendations of the Auditor General, on August 21, 2015, I distributed four new policies to all department senior management staff for immediate implementation. These were then discussed at our senior management meeting in May. We do regular and periodic reviews to ensure implementation is followed.

In response to the Auditor General’s recommendation with regard to tender closing dates, we have implemented a policy which ensures that each tender close is reviewed to determine whether we need to stagger the tender closing dates based on a particular circumstance, or we need to bundle them, as we have to do in some situations. Each individual one is reviewed and assessed from that perspective.

We developed and have implemented a policy for the adherence to payment terms of contracts which requires contract payments on a monthly basis, except in exceptional circumstances, which would be outlined in the contract under special payment terms.

Management of contract and agreement records policy; through our document control processes and our TRIM administrations, we have a strong policy which requires that appropriate documentation be in place to support all key decisions on contracts, especially when they are significant changes to the contract or contractual relationship between government and the contractor or consultant.

Finally, for the department's communications protocol, and specifically for the cancellation of awarded contracts, it provides a clear process and steps required for public communication upon cancellation of a project and a contract. I provided a copy of these protocols to the Public Accounts Committee and the correspondence the minister provided in late June.

The department remains committed to continued adherence to these policies. We follow up with our staff regularly and we monitor in this regard on an ongoing basis. We are confident that the measures we have put in place will sufficiently address the Auditor General's findings and recommendations.

We will be pleased now to accept any questions from the Committee.

CHAIR: Thank you, Ms Companion.

I will go to the members.

Mr. Osborne, if you would like to begin – and approximately ten minutes.

MR. OSBORNE: Does Mr. Hunter want to –

CHAIR: Oh, I am sorry. I think maybe Mr. Parsons was going to open for government.

MR. K. PARSONS: Good morning, everybody.

I would like to welcome you here this morning to our second hearing this week of Public Accounts. On behalf of the members over here on this side, I hope we do not be too hard on you.

I just want to welcome you all here this morning, and we will have questions, and like the Chair said, it will be ten minutes at a time from each one of us asking questions. We may

go past this afternoon, or we may continue whenever.

Anyway, I just wanted to welcome you all here this morning.

Thank you.

CHAIR: Thank you, Mr. Parsons.

Mr. Osborne, if you would like to begin.

MR. OSBORNE: Thank you.

I wanted to start, first of all, by welcoming everybody today. I thank you for appearing before the Public Accounts Committee.

I would like to ask Ms Companion, the witnesses from the Department of Transportation and Works were chosen by you to attend here today. Is that correct?

MS COMPANION: Yes.

MR. OSBORNE: Okay.

Did you also choose the witnesses from the Department of Justice and Public Safety?

MS COMPANION: Yes.

MR. OSBORNE: Okay, thank you.

Why did the two ministers within a half an hour independently contact the Deputy Minister of Transportation and Works to inquire about the status of Humber Valley Paving on the morning of March 13, 2014?

MS COMPANION: I will speak to that. I am unaware of why they would have, except what is noted in the Auditor General's report, Mr. Osborne. The Auditor General noted from the communication from the deputy minister of the day that both ministers contacted regarding Humber Valley Paving and wondering if there was some concern with their contract.

MR. OSBORNE: Okay.

The Auditor General's office was not able to satisfy themselves as to why the process to come to an arrangement had to be concluded on the

same day, March 13, 2014, the day before the nominations closed for the leadership of the PC Party. Can you tell me the answer why did this have to be done so quickly on the day before the PC leadership?

MS COMPANION: I will ask Gary to speak to that. He was around at that time.

MR. GOSSE: It is my understanding that in the conversation our deputy at the time had with Minister McGrath that morning was that he wanted that matter concluded that day. Why it had to be concluded that day, I guess only Minister McGrath at the time could answer that.

MR. OSBORNE: Okay, thank you.

MR. GOSSE: The direction was to do it that day.

MR. OSBORNE: The contract was cancelled for more than a month before it was made public. The AG said that there was a lack of transparency. Who made the decision not to make public the fact that the contract had been cancelled?

MR. GOSSE: I can only assume that the decision was made between the communications people and the minister's office.

MR. OSBORNE: Okay, thank you.

There was no documentation prepared to support the decision to terminate the contract between Humber Valley Paving and the department. Did the minister fully evaluate all of the ramifications of the cancellation of that contract?

MR. GOSSE: We discussed the options at the time. There was no documentation because of the time frame. The people who were involved in that file were very familiar with contracts being – the deputy at the time, myself, who has been dealing with contracts for over thirty years, and our solicitor at the time who is also very well versed in contractual law.

MR. OSBORNE: Okay. So did the minister himself evaluate all of the ramifications of cancelling it?

MR. GOSSE: We discussed the options available to us with the minister.

MR. OSBORNE: Okay.

A key criterion of the minister, as communicated by the minister, was to ensure that the outcome was not injurious to Humber Valley Paving. Was this the sole decision of the former minister, or did the deputy agree with this criteria as well?

MR. GOSSE: I cannot speak for the deputy at the time. It was a consideration, I can say that.

It is important to know that when this occurred there was no indication that Humber Valley Paving had any issues other than on this one project. They had 300 employees. They were, as far as we knew at that time, a viable competitive company and did good work for us. There was no desire, I do not believe, on anybody's part to do something that we thought would injure the company and put somebody out of business and put 300 people out of work.

At the time there was no indication that there was an issue with the company itself other than on this one project. It was a project-specific issue.

MR. OSBORNE: The former Minister McGrath had contacted Deputy Minister Meade and called him to meet outside the Cabinet room on two occasions within about an hour-and-a-half of each other on that morning. What explanation did the former Minister McGrath give to the deputy outside the Cabinet room?

MR. GOSSE: I cannot answer that. I was not there.

MR. OSBORNE: Okay.

What explanation or what response did the former Deputy Minister Meade give to the minister outside the Cabinet room?

MR. GOSSE: Again, I was not there; I do not know exactly what was said. All I could say is what was in the Auditor General's report.

MR. OSBORNE: Okay.

Deputy Minister Meade was instructed by the minister not to inform the Premier's Office or Cabinet Secretariat. Was this instruction made to ensure that there was nothing in writing?

MR. GOSSE: Again, I cannot answer that.

MR. OSBORNE: Okay.

What was the nature of the conversation that the Minister of Advanced Education and Skills had with Deputy Minister Brent Meade?

MR. GOSSE: Again, I can only repeat what was in the Auditor General's report. I was not there for that conversation.

MR. OSBORNE: Okay.

What was the advice given by Deputy Minister Brent Meade to Minister O'Brien?

MR. GOSSE: It would be hearsay on my part. From the Auditor General's report I believe the conversation had to do with we are aware of the situation and the conversation ended.

MR. OSBORNE: Okay.

MR. GOSSE: Again, I was not there.

MR. OSBORNE: Do you know what the response was by Minister O'Brien to Deputy Minister Meade?

MR. GOSSE: I believe that was when the phone call ended and there was no further contact from Minister O'Brien at the time. That is my understanding.

MR. OSBORNE: Okay.

Mr. Chair, it is quite obvious this morning, the Auditor General had sixteen witnesses present or that he had interviewed. Only two of those witnesses are here today. It is quite obvious to me that without those other witnesses here – and I wish to continue today, I think there are important questions and I think we will continue to probe.

It is quite obvious to me, Mr. Chair, that without all of those witnesses here, we are going to hear a lot of hearsay. We are going to hear I cannot

speak to that. Only former Minister McGrath can speak to that. Only former Deputy Minister Meade can speak to that. It is very unfortunate.

I will ask Ms Companion: Why was David Jones, for example, not called to be a witness here today?

MS COMPANION: Mr. Jones has left the employ of the public service. He now works with a private company.

MR. OSBORNE: Okay.

Well Mr. Ross Reid had left as former chief of staff to the Office of the Premier, but was still called as a witness by the Auditor General. I will ask why Julia Mullahey was not called as a witness today.

MS COMPANION: Mr. Osborne, the reason we chose who is here today is in response to the Auditor General's report. My role, I had acted when I became Deputy Minister of Transportation and Works in January. It was my responsibility to ensure that we acted upon the recommendations of the Auditor General and I can certainly speak to those and what I did and what we did.

Gary was here at the time. I felt that Gary was a relevant and a very important part of our group. From our legal perspective, Todd is the ADM to whom David reported at that time. Denise is our new legal counsel. Paul Smith is our director – Paul is our ADM who is responsible for policy who was responsible for working with me to implement those changes in policy. Brad is our communications person. That was the logic and the decisions for why we chose who was here today.

MR. OSBORNE: So far I have not gotten a lot of answers and we are only ten minutes into this hearing today. I do not believe the proper witnesses were called. That is very disappointing. I do not believe that the witnesses here can answer for former Minister McGrath, or former Minister O'Brien, or former Deputy Minister Meade, or other public servants who are still employed with the public service.

Mr. Chair, I move that the persons listed in Table 1 on page 13 of the Auditor General's

report of September 2014, a Review of Humber Valley Paving Ltd. – Project Number 1-12PHP, be invited to attend a hearing of the Public Accounts Committee which will deal with this matter as soon as can be arranged by the Clerk of the Public Accounts Committee.

That is seconded by my colleague, the Member for St. John's East, George Murphy.

CHAIR: Mr. Osborne, I do not have any difficulty with such a motion, maybe at the end of the day, maybe late in the day. At this point we have assembled a whole array of individuals. By we, I mean the Committee and the taxpayers, and if we –

MR. OSBORNE: If I could intervene for just a moment, Mr. Chair – I am wishing to continue with this today. This motion that I am putting forward is to call an additional hearing of the Public Accounts Committee as soon as can be arranged by the Clerk. I do wish to continue today. I believe that there are some questions that can be answered today, but obviously within the first ten minutes we can see that not all answers that we need will be answered today, the witnesses clearly are not here.

So I do not want to adjourn this particular hearing. I am passing a motion now that I believe is in order, I believe can be passed at any time during this hearing, to have an additional hearing of the Public Accounts Committee.

CHAIR: I think we have done that before, but your motion right now I would look at that more of a notice of an intent to have a motion. Previously, this Committee has done sixteen or so, counting yesterday, and on one occasion we had to have somebody back, and that was the forestry diversification. That was in the case of the Roddickton pellet plant.

When we got late into the day and we realized we did not have enough evidence then we continued it at a later date. We may need to do that. Your motion at that point, it can be put before the Committee and voted on, but I do not think that really it is fair and necessary to Committee members to have to entertain a motion this early. If you want to call it a notice of motion for later in the day, fine, that makes

absolute sense to me, and our rules are relatively flexible.

One item that Mr. Gosse mentioned is that he said if I said it, it would only be hearsay. Well, that is fine, we can hear hearsay, but how we deal with it and what weight we give to it may be of little consequence; but if everybody tends to say the same thing that someone else said, then it is probably what happened. If there is a conflict, then that is another issue, but for our purposes I think we should continue with the examination to the next member.

Mr. Osborne, later in the day, before we arise, certainly if you want to have your motion – and if you have it in writing, that would clarify exactly who is saying what and what is being voted on. There may need to be amendments made. I think we will treat it in the ordinary course as we would in the House if it was any other committee, or Committee of the Whole for that matter.

I would like to move on to a government member for questioning. Mr. Parsons has indicated that he would like to lead off.

MR. K. PARSONS: Okay, good morning.

Just to follow up with what Mr. Osborne just – was asking some questions there that time. Was the department aware of the financial situation of Humber Valley Paving at the time?

MR. GOSSE: No, when this issue became – well, when it became an issue to us it was a project specific issue. There was no indication that Humber Valley Paving was in any sort of financial trouble.

In fact, just weeks before this occurred, a senior person at Humber Valley Paving had called me to ask me when the next tenders were being called. So there was an expression of – on their part at that time, they were still interested in bidding on more work. There was no indication there was any financial difficulty or any issues, other than on the one project in question.

MR. K. PARSONS: Had you known they were in financial trouble, would it have made any difference on your decision?

MR. GOSSE: It would have certainly been something different to consider. I guess had we known the situation they were truly in, then harming the company would not have been a consideration because the harm was already done.

MR. K. PARSONS: I want to go to the point where the project itself was underway at that time. I think there were four different projects on the go for Humber Valley Paving?

MR. GOSSE: They had four active projects on the Trans-Labrador at that time, plus others on the Island.

MR. K. PARSONS: On the Island, okay.

Circumstances with Humber Valley Paving, they have been doing business with the department for how many years?

MR. GOSSE: I am going to say seven or eight years. They had quite a history with us. They were around a while.

MR. K. PARSONS: Yes.

Did the department have any issues with Humber Valley Paving before any of this?

MR. GOSSE: No.

MR. K. PARSONS: None whatsoever?

MR. GOSSE: No, they generally did quality work. They were a very co-operative contractor.

MR. K. PARSONS: Okay.

Circumstances around the forest fires; I read in the Auditor General's report there were twenty-five – they said approximately twenty-five tankers of liquid asphalt, and that had to come from Quebec, I believe.

MR. GOSSE: The liquid asphalt was being trucked in from Quebec. That is correct.

MR. K. PARSONS: Okay.

Liquid asphalt, because I do not know, how does it work? It said something about cooling and stuff like this?

MR. GOSSE: It has to be kept hot to be pumpable out of the truck. Once it cools off it becomes, basically, a solid and you cannot get it out of the trucks anymore. It is heated, put in tankers, and transported to the asphalt plant where it is unloaded into other tanks and heated again.

MR. K. PARSONS: Heated up again, okay.

The forest fires during that period of time, what was the time frame? How long did it delay the project itself?

MR. GOSSE: There were numerous times where Humber Valley Paving had to evacuate camps. They had to take people off the road because the fires were so close. It happened basically between the middle to the third week in June up until about the middle of July in that summer.

MR. K. PARSONS: What would be the cost of liquid asphalt say for – I do not know, there are twenty-five tanker loads, approximately. What would be the cost?

MR. GOSSE: I would not know what Humber Valley Paving paid for the liquid. I know we pay about \$1,000 a ton for liquid down there. There would be thirty-two to thirty-five tons on a tanker.

MR. K. PARSONS: So you are looking at about \$800,000.

MR. GOSSE: It is about \$35,000 a load, and there were twenty-five loads that were turned back.

MR. K. PARSONS: Also, during the time when all this was happening the workers were away from the project. So the project –

MR. GOSSE: Workers were taken off the road. They were actually evacuated from camps. These were isolated projects, so they had construction camps that they worked from and stayed in, ate in, slept in.

There were times when they had to actually move their staff back to – I believe they went to Happy Valley-Goose Bay. They had to take

them out of the camps because the fires were so close.

MR. K. PARSONS: Okay. So with the four projects on the go at the one time, was this the only area that was affected or were all four of them affected?

MR. GOSSE: There were varying degrees on all projects, but other projects were in different stages of completion. So the other three projects actually did get completed.

MR. K. PARSONS: Okay.

MR. GOSSE: This was the one that was the last to be started and of course the biggest impact because of the stage of the work.

MR. K. PARSONS: So 61 per cent of the project was completed, right?

MR. GOSSE: Approximately, yes.

MR. K. PARSONS: Approximately 61 per cent. The total cost to Humber Valley Paving was paid to Humber Valley Paving. Was that for completion of the work they had done? Was there any additional money given to them?

MR. GOSSE: The \$11 million in round numbers that was paid to Humber Valley Paving was for work they had actually completed. It was documented, as verified by the Auditor General in his report.

MR. K. PARSONS: The Auditor General recognized that the – and I know you spoke about it earlier, Deputy Minister, about the biweekly payments. It was kind of a disadvantage to anyone who was doing the tender. If they all had to know the money was coming forth that they would – what was the reason for the biweekly payments?

MR. GOSSE: The biweekly payments were intended originally just to cover the liquid asphalt. It was an arrangement that was made after the tender closed. So it did not give anybody an unfair advantage from where I sit. The asphalt suppliers were demanding payment for their liquid asphalt – which is a very costly item – on a biweekly basis.

MR. K. PARSONS: Okay. Was that an overlook where everything was paid biweekly? Is that normal?

MR. GOSSE: It grew into biweekly payments for everything. When I became aware of that I stopped it.

MR. K. PARSONS: Okay, all right.

The mechanics' lien; I heard the minister the other night, actually, talking about it on the Open Line show. The mechanics' lien is 10 per cent of the total cost of what you pay. When you pay off so many bills you pay 10 per cent, and that is held for a mechanics' lien, is that correct?

MR. GOSSE: For every payment that is made, every progress payment that is paid on a contract – and the normal cycle is once a month. For every payment that is made, 10 per cent of what is completed is held back and parked into what is called the holdback account. So money is actually taken out of the project and set aside in a separate account in the contractor's name. That is the mechanics' lien holdback, and 10 per cent is what is in the act.

MR. K. PARSONS: Okay. Can you give us an update on where we are with the mechanics' lien? Because I know there was a big concern with a lot of small companies that were owed money. Where we are, who is paid, and who is not paid, and if there are small companies that are still owed money?

MR. STANLEY: The 10 per cent holdback account that the Province had for contract 1-12 had in it – at the relevant times the amount was \$1.180 million basically. The Province received a number of contacts from various people claiming they were owed money by Humber Valley Paving. Those creditors were advised that there is nothing the Province could do in respect of the holdback funds.

The holdback funds were to be held both under the mechanics' lien legislation and under our contract with Humber Valley Paving. The holdback funds were held for work performed and liens claimed in respect of contract 1-12.

Everyone who called the Department of Transportation and Works – and Gary can speak to this – were advised that they should go get legal advice and pursue their debts against Humber Valley Paving. Government was not in a position to be basically arbiter of their debt claims against Humber Valley Paving or to pay them out of the holdback funds.

Government knew of and received claims against the mechanics' lien fund, the holdback account. Over time, we determined that there was a claim from CRA, Revenue Canada. There was also a claim that Humber Valley Paving owed money to the Workplace Health, Safety and Compensation Commission.

We also received a claim, starting in January of this year – and I think this was disclosed in the answers provided to the Committee; I think in response to Question 5 of the written response. We received a demand from HSBC, as the bank for Humber Valley Paving, demanding the return and payment to HSBC of all monies held by government for Humber Valley Paving, as secured creditor, and they provided evidence for the security and there is no issue around that.

So, to additionally complicate matters, in April there was a decision out of the Newfoundland and Labrador Court of Appeal called Brook Construction which confirmed or found something that was a bit of a surprise to TW, that the Mechanics' Lien Act does not apply or bind government. Therefore, amounts that we hold back for 10 per cent that are held in anticipation of a mechanics' lien, the Brook Construction case found they cannot be liened in our hands.

What ended up is a situation where there is no longer a Mechanics' Lien Act in place over this money, and HSBC had a secured creditor claim to the funds. On the thirtieth of June, the Province actually made an arrangement with HSBC and the funds that we had in the holdback account were paid out to HSBC on certain conditions.

The first condition was that – we actually paid the CRA demand on that money, and I have actually some paper I will distribute here. The CRA demand was approximately \$75,000. So that was paid, because that ranked ahead of

HSBC. There was a holdback of \$55,000 that we did not pay because of an outstanding mechanics' lien claim that had been started by Mercer Consulting, which I will talk about in a second.

The remaining money was paid over to the solicitors for HSBC. They undertook to provide and did provide a clearance for the workers' compensation. They paid approximately \$23,000 to workers' compensation. They also provided payment – and this was part of the arrangement that government negotiated with HSBC – to twenty-five unsecured creditors of Humber Valley Paving that Humber Valley Paving had confirmed with HSBC were actually unsecured creditors who were owed money in respect of Project 1-12. So the total amount of those payments that HSBC undertook to make to those twenty-five creditors was approximately \$95,000. HSBC has confirmed to us that twenty-four of the twenty-five have been paid. They had trouble finding one of the individuals for an amount around \$11,000.

After those unsecured creditors were paid off as part of that arrangement, the remaining funds went to HSBC that also has a demand in place against government for any additional monies which we may have owing to Humber Valley Paving in the future.

MR. K. PARSONS: Right now is there anybody else who is left owing money, any small contractors or anything knowing left owing money now on this?

MR. STANLEY: Well, we do not know if there are people who may or may not be pursuing legal action against Humber Valley Paving in respect of one particular contract or any contracts or services they may have provided to Humber Valley Paving.

We are aware that there are people who started legal proceedings, but none of them progressed to the point where they had the power to effect or had a right to the funds that were in government's hands. We never received anything to that extent at all. Even if they had, it would be a question of whether that would trump the rights of HSBC as Humber Valley Paving's secure creditor to those funds.

Government had no grounds. Once the Mechanics' Lien Act was deemed not to apply to government and we only had one mechanics' lien that was received, upon Humber Valley Paving providing us with a statutory declaration that their creditors in respect of Project 1-12 would be paid off, government had no grounds to hold onto or withhold the remaining funds.

MR. K. PARSONS: Okay.

CHAIR: Mr. Murphy, please.

MR. MURPHY: Thank you very much, Mr. Chair.

Good morning to the respective witnesses who came to give us evidence today. Thank you very much to the Auditor General and his team for the report that they have, for the work that they have done, and for also agreeing to be here today. I would say that you have done a fine job when it comes to the report here today that we are dealing with under the scope of the broad scope that you were given to do.

We have here today a minister who resigned before he was fired, but we still have a great degree of uncertainty around the questions that were asked. I think that is one of the reasons why we are here today too, is to get clarification on some of these questions. I will be very interested as regards to some of the recommendations that you did come out with, some questions around that.

I want to come over back to – I guess I will call it – the political decision or the decision, I should say. I will drop the political. How the minister actually arrived at the decision that there would be a mutual agreement to shut down the contract. Just the evidence that I am hearing now and just the supposition of what is happening and what I have been finding out over recent days, I have to ask the department how the department came to the decision that it would not make any adjustments for Humber Valley Paving due to the conditions that happened around the contracts and the difficulties that they were having in fulfilling some of the requirements of the contract.

For example, when I see the case where there was upwards of five weeks that were lost in

doing the work, and Humber Valley Paving is going ahead and looking to government for recouping some of these costs; costs that were outside of their control. I wonder why, for example, the department would not agree to the basis of some of these claims. I wonder if somebody can answer that first.

MR. GOSSE: There was no formal claim made by Humber Valley Paving for the losses due to the fires. There was a conversation held between me and Gene Coleman, February of that year, about the claim. I told him he could make the claim if he like; I could not see how it would be supported. There was nothing that we did that caused any damages to the company. I think that is the right position to take in the beginning.

That view was shared by the deputy at the time, it was shared by our solicitor at the time, and it was shared by Minister McGrath. Again, based on what the Chair said a little while ago about hearsay, it is my understanding that Gene Coleman actually met with Minister McGrath at the time in the Goose Bay airport and made the same pitch to Minister McGrath that he made to me. They were looking for a figure of \$2 million.

Of course my initial response was: Gene, we are not responsible for that, but feel free to make your claim in writing. Formalize it and send it in. We will look at it, but I do not see that we are responsible for it. There was no formal claim made against that project.

MR. MURPHY: In this particular case, from what you are saying then, even though there was a conversation that happened between Mr. Eugene Coleman and Mr. McGrath at –

MR. GOSSE: Correct. It is my understanding that they met at the airport in Goose Bay, yes.

MR. MURPHY: It is an unusual case.

MR. GOSSE: It was not a prearranged meeting. It was a meeting – as Minister McGrath said, Mr. Coleman just happened to show up at the airport and caught me getting on a plane.

MR. MURPHY: It seems unusual, but anyway, any place at all for a meeting. Has there been

any reasoning from Humber Valley Paving why they did not submit a claim?

MR. GOSSE: No.

MR. MURPHY: No reasoning at all?

MR. GOSSE: No.

MR. MURPHY: We have not heard anything and of course well they are not there today so I guess –

MR. GOSSE: No, they did not follow through with that formal claim. The next contacts, basically, on that were around March 13 when we were told to call Mr. Coleman to see what was up with Humber Valley Paving. That followed from the initial meeting with Minister McGrath and Deputy Minister Meade outside the Cabinet room.

MR. MURPHY: Okay. Mr. McGrath and Mr. Meade are not here today, so they obviously cannot answer to the questions here. That would obviously be one cornerstone as regards to why they ended up making the other decision that they did then.

MR. GOSSE: Potentially.

MR. MURPHY: That both would mutually agree to terminate the contract.

MR. GOSSE: With any construction project there is a claim process.

MR. MURPHY: Right.

MR. GOSSE: You cannot just agree to do something without proper documentation.

MR. MURPHY: No, right.

MR. GOSSE: So they did not even follow – you cannot even agree to paying it based on a conversation. It needs to be documented.

MR. MURPHY: Yes, exactly. In this particular case, though, it just seems unusual that they would not have made a claim. I think that given the nature of the forest fires there, it was probably something understandable. If they

went to argue their case, I believe it probably would have been supported.

Just looking at it myself, if this is the case where forest fires knocked them out of commission for five weeks, that they would not have been able to get any kind of an extraordinary sum like possibly that is brought down here on page 42, the \$2 million that you are talking about, in order to carry over and have the completion of the project. I find that a bit odd that they did not submit a claim, number one.

The claims around the heated tankers and the liquid asphalt, I wanted to get into a conversation about that. It says here, “There were approximately 25 loads of liquid asphalt which, either were too cool to use, or which could not pass through areas of forest fires and had to return to Quebec.”

I can understand here that if it was forest fires that made the rigs turnaround, it is totally understandable again, but my degree of understanding, liquid asphalt – basically at what temperature. I have heard different numbers.

MR. GOSSE: I cannot give you a number as to where it cannot come out of the tanker anymore, Mr. Murphy.

MR. MURPHY: Yes, okay.

MR. GOSSE: You cannot, obviously, leave it in a tanker for a week and expect to get it out.

MR. MURPHY: No, and –

MR. GOSSE: It would depend on outside temperatures, a whole series of things.

MR. MURPHY: Yes, my understanding from the industry, for example, just from the loading point to the drop-off point, if you consider it being about a 1,450 kilometre trip, you would probably lose about seventy degrees in temperature over the trip. They lose about five degrees Fahrenheit every hour. It is about seventy degrees Fahrenheit; I should make that clarification too.

MR. GOSSE: Yes, that would depend on the size of the truck and the volume of liquid that was in the truck.

MR. MURPHY: Did Humber Valley Paving have the ability to reheat the product once it got on site?

MR. GOSSE: Once it was out of the truck and into their plant they could reheat it.

MR. MURPHY: So they had the ability there.

MR. GOSSE: The issue would be heating it in the truck. I do not think they had the ability to be able to heat it in the tanker itself to be able to pump it off.

MR. MURPHY: Right.

MR. GOSSE: There are no heaters in the tankers.

MR. MURPHY: Yes, some of the companies I have talked to have the ability to maintain the heat in the tankers and everything.

MR. GOSSE: Some, yes.

MR. MURPHY: What equipment they use, I do not know. Just according to the loss of temperature, what I found in my study of this issue was roughly about 5 degrees Fahrenheit per hour, assuming that some of these tankers were held off site because of forest fires. Do we know delivery times and everything? Has the department looked at the delivery times when the tankers would have been dropped off, the timeline of the actual construction as it was ongoing?

MR. GOSSE: We do not record when tankers arrive on site, no.

MR. MURPHY: No, that would obviously be up to Humber Valley Paving –

MR. GOSSE: Yes.

MR. MURPHY: – then they would not have to disclose that to the department.

MR. GOSSE: Yes, it is an arrangement between Humber Valley Paving and the supplier and their trucker, if there were three different entities involved.

MR. MURPHY: Okay, all right. Thanks for that, I appreciate that.

What we are looking at here now, there was obviously an added cost to the execution of project 1-12 according to the Auditor General's report. It says, "Labour, transportation and accommodation costs were still being incurred ..." Okay, and obviously because of the fires and pulling out crews and everything, getting them out of danger. I can totally understand that.

"A camp was evacuated due to its proximity to the fires which also added to HVP's cost of executing the Project. There were also extra costs due to the return of liquid asphalt."

Like I said, I beg the question at the same time – like I said, the former minister is not here, and I wish he was. I am trying to find out if this was obviously one of the cornerstones that were considered in his decision. It appears to me right now that it is, without him being here.

MR. GOSSE: The delays were legitimate. I mean, there is no question. We cannot argue that they were not delayed. Our contracts generally put us responsible for delays that are caused by us. Acts of nature or anything else outside of our ability to control, we are not responsible for.

MR. MURPHY: Okay.

MR. GOSSE: That is what prompted my first response to Gene Coleman. We understand you are delayed. We understand there was a cost, I understand there was a cost, but we are not responsible, and that had to be my first response.

MR. MURPHY: Right.

MR. GOSSE: That was without having the benefit of seeing anything in writing that shows how they got to where they were.

MR. MURPHY: Okay, all right.

MR. GOSSE: And \$2 million just seemed to be such a convenient number to throw out that –

MR. MURPHY: Yes.

MR. GOSSE: You need to see documented evidence to show where the delays were and how we would have been responsible for those delays.

MR. MURPHY: Yes. Okay, all right.

I will come back to the start of the report. I just wanted to get that matter clarified first.

CHAIR: Mr. Murphy, we will go to a government member.

MR. MURPHY: Time? There you go, okay.

MR. HUNTER: Yes, I would like to go back and forth a little bit so that –

CHAIR: Oh, for sure. If government members want to divide up into ten, or twelve, or fifteen minutes – the important thing I think, is to get the questions asked and make sure no one is left behind on asking questions.

MR. HUNTER: Okay. I do have a question pertaining to the options available to the department. When it was brought to your attention that Humber Valley wanted out of the contract, wouldn't you automatically set some priority, some options, whether it be to increase the amount of the contract to Humber Valley or to evaluate the situation on site pertaining to liquid asphalt? Were there options discussed immediately?

MR. GOSSE: The options that were discussed were options on a way forward when Humber Valley did not want to continue – when we were informed that Humber Valley Paving did not want to continue with the contract. We did not look at other options as far as paying them extra – well, I guess that is not really true either. It was all considered.

We did not discuss options with Humber Valley Paving. We discussed options internally ourselves with how we proceed from this point. Do you call a bond? Do you cancel a contract?

MR. HUNTER: So it is a common practice, in a case like this, to automatically arrange a meeting with the contractor, engineers, and the department people to get them together automatically ASAP to discuss some options? If

they were asking for something verbally without putting it in writing –

MR. GOSSE: It is difficult to say what would be the norm because it is very seldom that we cancel a contract or are faced with the option of, or the decision of cancelling a contract. In that regard, we are kind of all working our way through things because it is not a normal occurrence.

In the normal handling of claims, that is second nature to us and we work through those. Had they followed through with the claim that we discussed a little while ago, for the \$2 million for delays, we would have worked through that in a well-documented and processed manner. It is a very rare occurrence that we cancel a contract.

MR. HUNTER: Wouldn't it start out with a meeting first with all the stakeholders and say here is our plan –?

MR. GOSSE: In this particular case there was instruction to do it that day. It did not allow time or opportunity to get people together and have meetings to discuss options, other than the people who were involved, being the deputy, myself, our solicitor, and the minister.

MR. HUNTER: What would happen in the past in a case where a contractor could not fulfill the contract in the time frame and needed an extension and extra funding to continue? It does not have to be a forest fire.

I know in the fall of the year there are usually lots of cases and circumstances where the weather plays a big factor. You can only lay asphalt, I think, at seven degrees or higher.

MR. GOSSE: That is correct.

MR. HUNTER: There are lots of days when they are on site and the temperatures drop below two degrees down to zero degrees and liquid asphalt is on site, all the men are on site. What do they do in the case – in the past what was the norm scenario of a job if you have a week of really cold weather in September, we will say? Do the contractors come back and negotiate? Or do you meet with the contractors and say here is what we will do for you.

MR. GOSSE: The normal process in that exact scenario you described there, Mr. Hunter, would be for us to formally, in writing, give them extensions to their completion dates. If we have identified a completion date of the end of September, it would not be uncommon for us to tell them in writing that, yes, we will extend your completion date to the middle of October; or sometimes, in some occasions, even into the next season if we know that it cannot be done and cannot get a quality job going. We never discuss increases in prices or payments to cover off extra costs because they have not been able to complete on time.

MR. HUNTER: Did Humber Valley Paving notify in writing that it could not deliver that liquid asphalt to the site of their plant; or it is just a phone call made saying that we cannot, we have to turn back?

MR. GOSSE: I do not know that I ever saw in writing that there were twenty-five loads of liquid asphalt sent back. They did ask for extensions during completion dates which we did give them.

MR. HUNTER: So if they got an extension, they would have still had to send the asphalt back?

MR. GOSSE: Yes. The extensions that we gave them went into the following year, which is when they eventually terminated the contract or asked for the contract to be terminated. They were originally supposed to finish the contract the fall before.

Because of the fires, it was justifiable and reasonable to give them an extension to go into the next season. We knew they were delayed by four to five weeks, so it was a reasonable decision at that time to extend their completion date into the following year, which we did. We did it in writing, but they did not come back to work.

MR. HUNTER: Were there any red flags that came up, that you knew, that they were not going to fulfill the contract pertaining to their financial position?

MR. GOSSE: No. As I said there earlier, it was only a couple of weeks before that Eugene

Coleman called me personally and asked me when the next tenders were coming out. So indications to us at that time were, well, business as usual for them. There was no indication, other than the conversation in February, that said that it cost them \$2 million because of the fires.

MR. HUNTER: It seems awfully strange there was a major restructuring or financial problem to arise that quickly.

MR. GOSSE: It occurred within days of the cancellation of this contract. That is when we became aware of it.

MR. HUNTER: George was talking about the liquid asphalt. Being around construction, I know that asphalt plants, in my past career, I have seen cases where the liquid asphalt was on site at colder temperatures and there was a mechanism that some of the contractors had to heat the asphalt to get it out. I am not sure if Humber Valley could answer that question. I mean, were they asked that question? Can you deal with this problem if you had to move the liquid asphalt to the site in a week's time or whatever?

MR. GOSSE: No, that was a business decision they made to either send the liquid asphalt back or – that was their decision to make. Some contractors do have the ability to be able to heat – most of them would have the ability to heat the asphalt if it is unloaded into their asphalt plants.

MR. HUNTER: Yes.

MR. GOSSE: Some would have the ability to be able to heat it in tankers, not all.

MR. HUNTER: In some cases in government contracts the progress payments would be based on some of the materials landed on site and not installed. Would that have been a case for liquid asphalt if they said liquid asphalt is on site and it is, say, 5 per cent of the job, so they send in a progress payment for 5 per cent?

MR. GOSSE: We do not normally pay for liquid asphalt until it is incorporated (inaudible).

MR. HUNTER: That is just pertaining to liquid asphalt?

MR. GOSSE: Yes.

MR. HUNTER: So what about crushed stone and class A and class B and all that stuff?

MR. GOSSE: Yes, if there is materials crushed and stockpiled and we have control of it, then we will pay for that, in part, before it is put on the road.

MR. HUNTER: It does not include liquid asphalt?

MR. GOSSE: It does not include liquid asphalt, no.

MR. HUNTER: Okay.

MR. GOSSE: We require all crushed materials to be done up front. So we know that there is a cost to them to doing that. Typically what we would pay, if the material is all crushed and in a stockpile and just left to be put on the road, we would pay two-thirds of whatever their contract price was – and that is documented right on the progress payments as to what is being paid for.

MR. HUNTER: So were they immediately stopped on the site, on the job itself, immediately stopped and not to do anything further on the site? In cases that I have seen done, once the company said they are not going to fulfill a contract and wanted out of the contract, then a stop was put to everything.

MR. GOSSE: We would not have stopped them there, that was their decision, and the right decision for safety reasons to stop because of the fires. It was not us that stopped them from doing work.

MR. HUNTER: Well that is, Mr. Chair, a couple of questions I had – I would like to come back to a few more later on.

CHAIR: Oh, for sure, you can ask on another round.

MR. HUNTER: Yes.

CHAIR: We are about eight minutes in if you want to go back to another member, if a government member wants to ask a few more

questions. I do not want you to be cut short on time.

MR. PEACH: I just want to follow up on what you are saying there with regard to the contractor. The request came in from the contractor himself, was it, to cancel the project? It was not the government just cancelled it; the request came in from the contractor?

MR. GOSSE: Absolutely, yes. There was a discussion that was held early on the morning of March 13.

MR. PEACH: After the forest fires and all the losses that they gained.

MR. GOSSE: The forest fires were the previous season.

MR. PEACH: Yes. I was listening to the questions and the answers and I was saying to myself that if you were a good business person and you were accruing all these losses – with regard to the forest fire, the twenty-five loads of liquid asphalt that had to be sent back and all the people out of work and evacuating the camps and everything, on the company side it would not be uncommon for somebody to say well, look, we are losing a lot of money here. Are we going to continue or are we going to make a decision to request it?

I was just wondering then if the government, based on the claims that they were looking at putting in – you said that there was nothing in writing, but there were some claims that had been discussed by Eugene Coleman of somewhere around \$2 million. It is a lot of money. It does not sound like a lot of money, but it is a lot of money.

MR. GOSSE: It is a lot of money –

MR. PEACH: I am just wondering when the request came in if that was one of the main factors for the government to make a decision to cancel the project.

MR. GOSSE: No, it was not. The \$2 million, as I said, Mr. Peach, was never formally put there. Although when we agreed to cancel the contract, we made it very clear in our letter that one of the reasons or one of the conditions was

that they drop any claims that they see they may have had against us for that.

The other thing that was in that letter, of course, was that they would be responsible for any warranty work on the work they had completed. Had we known they were in financial difficulty and the company probably would not be around, then that was a moot clause. It was fully our understanding that they were still a viable company. There was no indication that there was a financial issue whatsoever, other than on one project-specific issue.

MR. PEACH: So then the decision to cancel the project, that was just a decision of the minister, I guess, in his authority and the department, based on a request from the company.

MR. GOSSE: Correct.

MR. PEACH: There were no other circumstances around it, was there?

MR. GOSSE: No.

MR. PEACH: Okay, thanks.

I will come back to some – I have a few more questions here, but I will come back to it later.

CHAIR: I am going to go back to Mr. Osborne.

MR. PEACH: I do not want to take up more of my time.

MR. OSBORNE: Thank you.

I am going to try to tailor my questions as much as I can to avoid that question is better asked of another witness, because we know the other witnesses are not here. I will say this is the second day in a row we have had a hearing that the proper witnesses were not here. Yesterday, member after member after member displayed their disappointment that Memorial University did not show up.

I want to say again on record that the proper witnesses were not called here today. We obviously cannot ask all of the questions today, so again, I will try to tailor my questions around the fact that we have only got certain witnesses here today.

The lack of transparency in the communication of this decision to terminate the contract, why was there no communication for well over a month after the termination of this contract and the time the general public became aware?

MS COMPANION: I will answer that question, Mr. Osborne.

The decision to enter the contract was the decision of the minister's, and the decision to cancel the contract was a decision of the minister. It was well within his right and authority to do so. At the time, there was no communication plan put in place to announce the cancellation of the contract for Humber Valley Paving.

I am not sure if previous to that there had been communication on any contracts that had been cancelled. What I can say is that, from here on in, if there are any contracts that are cancelled there will be a very robust communications plan in place.

MR. OSBORNE: Okay.

Was part of the reason for not communicating the decision to terminate the contract to the general public made to protect Humber Valley Paving?

MS COMPANION: I believe – I will answer what I know. There was no information flowed to the centre or to the Premier's office, so the decision was made by the department to cancel the contract and there was a view that no further communication would have been necessary at that point.

MR. OSBORNE: So the people of Labrador who relied on this road and the expectation of the commitment to have this road done, there was no need to communicate to the people of Labrador that the contract was cancelled?

MS COMPANION: The work was being rebundled – right Gary?

MR. GOSSE: Correct.

MS COMPANION: Do you want to speak to that?

MR. GOSSE: As far as completing the contract on the road was concerned, I mean that was fully our goal, and we just about met our goal – we were eleven kilometres short at the end of the season from having that work finished. That work has since been finished, so the road between Western Labrador and Central Labrador now is fully paved.

The commitment to the people in Labrador, to me it does not matter how we got that work completed, whether it was Humber Valley Paving or whether it was another contractor that did it. The commitment was the commitment to have the road paved, and that was met.

MR. OSBORNE: So there were suppliers and subcontractors to Humber Valley Paving. Would they not have benefitted from the understanding that this contract was cancelled?

MR. GOSSE: I do not believe so. The reason why I say that is because whether it is a mechanics' lien or a claim against the Labour and Materials Bond, there were time frames associated with those – there were statutes of time where they had the ability to be able to make a claim, and those time frames had all expired by the time the contract was cancelled. Whether the contract was cancelled or Humber Valley just decided to carry on and not pay them, I believe – and it is probably a question that Todd can answer better – that they had already missed the opportunity to make a claim in any case.

MR. OSBORNE: Okay.

MR. GOSSE: Bonds clearly say from the time they supply a labour or a good, they have 120 days to claim. That had passed. There is thirty days to file a mechanics' lien in the act and that had passed. There were no liens filed when the contract was terminated. We did check at the Registry of Deeds, there were no liens filed.

MR. OSBORNE: Okay, so legally they may not have benefitted by being able to file a mechanics' lien. Ethically, morally, perhaps they would have benefitted by knowing that – if they were thinking they were going to return to work to do work for Humber Valley, or continuing to supply to Humber Valley, perhaps

by knowing that this contract was cancelled they would have been given a heads up.

This was not communicated to anybody, not members of the House, not the general public, not the people of Labrador, not the people who were doing business with Humber Valley Paving. Why was it not communicated?

MS COMPANION: Absolutely. There is a need to communicate major decisions of that nature, Mr. Osborne. We fully understand that, as was highlighted in the Auditor General's report in one of the recommendations and findings in his report.

It was not communicated and it was not communicated to anybody, not to the public, not internally up and down. It just was not communicated. That obviously was an issue highlighted by the AG which we take very seriously. It is very serious.

MR. OSBORNE: It was a major oversight.

MS COMPANION: Right.

MR. OSBORNE: This was a company that the former head, about to become the head of the Province, the head of government, was involved with. Obviously it is a very sensitive issue.

MS COMPANION: Very sensitive.

MR. OSBORNE: Obviously very sensitive and no communication to anybody. That to me is unexplainable. Who made the decision? Was it the minister who made that decision?

MS COMPANION: I am going to tell you what I think. I do not think that there was a conscious decision to not communicate that. I think it was an oversight. He was in his authority to be able to sign the contract and close the contract, and there is no documentation, nothing to show that there was a conscious decision not to communicate that information; but, as you and the Auditor General have indicated, that definitely is an oversight.

MR. OSBORNE: I mean, that leads me to another question. There is a lack of documentation both the day the decision was made, and in the Auditor General's report the

decision from the very start of the day to the time the contract was cancelled was seven-and-a-half hours. In fact, it was less than four hours from the time the minister made first contact with the deputy minister and the decision was made to cancel the contract. So there was a lack of documentation that day, but what surprises me is there was a lack of documentation the day after, the week after, the month after on such a very sensitive issue.

MS COMPANION: Right.

MR. OSBORNE: There was no documentation.

MS COMPANION: No.

MR. OSBORNE: There was no documentation at all. Why was there no documentation following – we can explain away that the decision was made in haste and it was a very quick decision and the minister had said that he wanted that decision concluded that day, there was an urgency, and we can surmise it is because the former head of that company now about to become the head of the Province was involved and that the deadline for the PC nomination was the following day.

That might be the explanation for the day the decision was made. Is that also the explanation for the day after, the week after, the month after that there was no documentation – the sensitivity around the issue?

MS COMPANION: There were two pieces of documentation that are in the files, and I think they were attached to the Public Accounts letter. One was a briefing note that went to Cabinet Secretariat and to the Premier's Office. It was in late April or early May – I can find the date – and another piece was an email outlining the circumstance of the decision from David Jones, the lawyer on the file at that time. Those were the two pieces of correspondence that were prepared after that decision had been made.

MR. OSBORNE: One of those was almost a month-and-a-half later, and the other one was almost two months after the fact, though.

MS COMPANION: Right.

MR. OSBORNE: Ordinarily, after a major decision like this, the ordinary route, the normal route in a department is to have briefing notes done to outline the pros and cons – to have a briefing note, to have other documentation, to do a proper assessment of the decision, and to do a communications plan. Anybody who has served in a department knows that those are normal procedures, and none of those were done.

Did the minister make the decision that there would be no communication? Was it Deputy Minister Meade who made the decision that there be no documentation? Who made that decision?

MS COMPANION: How we do business as the public service – those are our tools for decision making; our information notes, if we are going to exchange information about a decision that has been made so that everyone is aware and in the loop. The other is a decision note which outlines all of our alternatives, assesses our pros and cons, and makes some recommendations and weighs the recommendations – weighs the alternatives.

The decision being made on that day, that work was not completed, the decision-making note or process. After the decision had been made it was to the point that there was information sharing and that information note was prepared. That is the note I would have attached that was prepared and sent to the centre. The whole decision-making process of the analysis and alternatives is a process we use prior to a decision being made, right.

MR. OSBORNE: Okay. The earliest documentation after this was more than a month and a half later. That is certainly not normal within a department or certainly not normal for public servants. It is not normal for the bureaucrats. Is that correct?

MS COMPANION: Right. We function and we use information and briefing notes. They are our tools, definitely.

MR. OSBORNE: Okay.

CHAIR: Mr. Osborne, if you are not finished that line of questioning I will let you continue with that. If it is something new you want to go

to, I would prefer to go to a government member and then take our morning break.

MR. OSBORNE: No, that is fine. We can carry on.

CHAIR: Okay.

I think Mr. Cross does not have questions yet.

Mr. Peach was already asking before. Go ahead, please.

MR. PEACH: I just have a couple of questions. As the day goes on I am sure some of the questions we have noted are going to be duplicate questions from some of the other members that have already been asked before. So, I just have a couple of questions of understanding.

When the gentleman there was speaking about the mechanics' lien he mentioned about the claims to the Canada Revenue Agency, and also to Workplace Health, Safety and Compensation Commission. Did I understand correctly that there were claims put in to those people?

MR. STANLEY: If it helps, I actually have a handout with some of the numbers on it that might – it is just that I am not sure (inaudible).

MR. PEACH: I am referring to statutory claims, right.

MR. STANLEY: Yes, there were two statutory claims of which the department was aware. There was a claim received from CRA – there was a claim demand that the Department of Finance received a garnishment order or an interception order from CRA for any amounts payable to Humber Valley Paving. That claim demand was in the amount of \$75,477.

We were also aware that there was an amount payable to the Workplace Health, Safety and Compensation Commission of \$23,300-and something. The numbers are on the document you are getting there now.

So, yes, those two had been received. The way the law works is they would trump secured creditors or anybody else. In particular, CRA gets paid ahead of anybody else.

MR. PEACH: Okay. Can you give me some information on those claims? What were they for?

MR. STANLEY: Well, no, that we would not know.

MR. PEACH: How did they arrive at it as a claim?

MR. STANLEY: The CRA claim, I am aware of the amount, but I am not actually sure what it would be for. CRA claims like that can be for a couple of things. Failures to remit, withholding tax payments, or employee deductions on salary, that sort of thing, or HST remissions. There are a number of ways a CRA claim can arise. I do not know the details of that one. I am not sure that CRA would disclose that to us.

MR. PEACH: Yes, or it could be not paying in enough Canada Pension, and things like that, right?

MR. STANLEY: Yes. Canada Pension would be the employee deductions – yes, if they have not submitted that.

The workers' compensation amount that was outstanding, which was around \$23,000, would be a lien for unpaid employer premiums on workers' compensation.

MR. PEACH: Okay, thanks.

Another question I had is on page 32, Findings 8 and 9 of the AG – and maybe this is a question for the AG, I am not sure. It was noted that "HVP would have had knowledge of the bi-weekly payment practice from previous contracts with the Department." I am just wondering, is that previous contracts from Humber Valley Paving or are we talking about previous contracts from other contractors?

MR. PADDON: It was my understanding, from the discussions we had and the interviews at the time, contracts that Humber Valley previously had with the department, there was the arrangement for biweekly payments related to liquid asphalt. At some point they did, as Mr. Gosse had stated, morph into biweekly payments for the full contract, not just liquid asphalt.

I guess our concern was that potentially if Humber Valley Paving knew that this arrangement for biweekly payments was in place, based on previous contracts, that when they bid new contracts they may have built that knowledge in and it might affect their pricing. If you had a contract where the gap in prices was very narrow, it has the potential, or had the potential to affect the price on bids.

In this particular case it likely did not because it was a large enough gap that this probably would not have affected it. It is more of a principle thing than anything else that makes sure that who is bidding on the contract is aware of all the nuances around payments under contracts. That was the point we were trying to make.

MR. PEACH: Yes. That was the next question that I had. So you pretty much clarified it there where you had stated that it may have a competitive bidding advantage over other contractors.

MR. PADDON: It may have, but not likely in this case, but more from a broad principle basis, just to ensure that there is a level playing field.

MR. PEACH: Okay.

Just a question on the sixty kilometres of highway. What is the status on that now? Is that completed now or is it something ongoing, or is it retendered? What is happening with it?

MR. GOSSE: That sixty kilometres was retendered and it has now been finished. It was finished in July of this year. The last eleven kilometres was done this summer.

MR. PEACH: Okay.

I have some more questions here, but I will come back to them later, Mr. Chair. If Eli wants to ask a few –

CHAIR: Okay.

Mr. Cross, did you want to use up a little bit of the time Mr. Peach would have had?

MR. CROSS: Yes, okay, we can move ahead.

Obviously, we might have been a little more organized if we all got together and planned our questions as such, but geography of where we reside does not give us that all the time. Some of the things are jumping back and forth, and things that I had, that I was identifying, Mr. Peach just hit on.

I was looking at some of the findings and comments that were there – and I do not know if I could ask the Auditor General. As we are looking through, some of the findings that are here – Finding 6 on page 31 has to do with the mechanics' lien. It says: There was a lack of transparency in the communication of the decision to terminate the contract. This had the potential to impact the ability of sub-contractors and suppliers to file a claim under that mechanics' lien.

The whole issue of the lack of transparency – how does that play here; what would lead you to make that comment?

MR. PADDON: I guess our concern was if there is a time frame for any supplier or any sub-contractor to make a claim for any reason, if they are unaware that the contract is being cancelled then they are unaware that the clock may have started ticking. Now, I accept the comment that was made earlier by one of the witnesses – I just cannot remember – that in this particular case it may not have made any difference because the clock may have started ticking the summer before; but, conceivably, you could have a circumstance where the contract is cancelled fairly soon after the goods or services are delivered and if there is no awareness that the contract is cancelled, then they may not have the ability to launch any legal avenues that are available to them.

That was really the point we were trying to make here is to make sure that everybody is aware what is happening with a particular contract so any legal avenues they may have available to them are not diminished or compromised.

MR. CROSS: Okay.

Connected to that then – because I was looking to a couple of the next findings or previous finding that says no claims had been filed in the period subsequent to this – in the progress

payments to Humber Valley, at this point I think 62 per cent of the original work was complete. So it would only be in that portion of work there would be claims against, or would there be claims further to the amount of work that was left to be completed because Humber Valley may have entered into a contract with someone to do some of the future work for them but at this point they cancelled the contract – I not know; I am sort of puzzled, and I do not know who I am asking this to –

MR. PADDON: Well, for us, Finding 5, at the point in time when we did our report, it was really just a statement of fact. The circumstances around how companies may, in fact, get to the point of filing a mechanics' lien claim was not really the issue; it was the fact that there were none at that time. There were indications that people were looking at claims, but I do not think there were any formal claims under the Mechanics' Lien Act.

MR. CROSS: Okay.

I think I will pick up a little later on. I just wanted to conclude some of time that Mr. Peach had with a couple of these, but I will reorganize to come back.

CHAIR: Thank you, Mr. Cross.

The Clerk advises that there is coffee in the Speaker's Boardroom which is straight out through here. I think yesterday there was some confusion about where we ought to have gone or could have gone. We will break and come back probably around 10:50 p.m. or 10:55 p.m., and we will resume with Mr. Murphy.

Recess

CHAIR: Thank you.

We are resuming, and we will continue with Mr. Murphy.

MR. MURPHY: Thank you very much, Mr. Chair.

It is good to be back and to get a few questions answered. I will start off on a couple of questions around the communications end of things before I come back to the conclusions,

and a couple of questions for the Auditor General and anybody else who can answer them.

I want to ask when it comes to the handling of this affair, when it comes to the communications end of things; obviously we have an issue now that the minister has decided that the issue is done. He has come to a decision there is going to be a mutual agreement, obviously, and this now has to be communicated. To whom would he have sent that message to at that particular time, that there was going to be a mutual agreement? Because obviously a lot of people here had to go to work, number one.

Were there lawyers who were going to be drawing up some form of a mutual contract? Number two, I guess there would probably have to be notification to the Premier's Office. Communications people would be involved. Who were the communications people who would have been involved here in this process?

MS COMPANION: In the normal course of process, once a decision is made, prior to we would prepare a decision note. We would outline the pros and cons, alternatives, make some recommendations. Once a decision is made then we would engage our communications people. They would develop some key messages. If a decision was significant that we needed to send an information note to inform the Premier and the Clerk of the Executive Council prior to any communications happening, then we would do that.

If it was of a regular course of business, which the departments have authority to make decisions, then we would develop a communications activity and we would inform the central communications branch, and the Premier's Office would be informed.

MR. MURPHY: Okay. Was there a communications person at that particular time who would have been there with the minister – Mr. McGrath at the time, and again, I am sorry he is not here to answer the question. Would he have, under normal processes, communicated this message to a communications person so that it would be gone out to the various – we will call it target audiences in this particular case –

people who would have had to be informed of it?

MR. GOSSE: Normally, if a decision of the magnitude of this one was made, there would be a series of people involved. You would have the minister, you would have the deputy, you would have the assistant deputy, most likely, who was responsible for that area – in this case it would have been me – potentially the assistant deputy for Strategic and Corporate Services, and a communications person.

They would be involved in the initial stages of discussion and figuring out the path forward. That is when the communications person would be certainly aware that messages need to be developed, and who is going to do the necessary steps to make sure that others were informed who needed to be informed.

MR. MURPHY: Okay. Who was at that particular meeting at that particular time? Once the minister made his decision, who was there at that meeting?

MR. GOSSE: Once the decision was made, I believe it was only the minister and the deputy. The direction from the minister was to terminate the contract, get it done that day. Besides the deputy, after that it was essentially myself and the solicitor for the department.

MR. MURPHY: Okay. The deputy minister at the time would have been?

MR. GOSSE: Brent Meade.

MR. MURPHY: Brent Meade, and he is not here to answer any questions either. I would be curious too, if he would have communicated that sort of message to a communications person so that they would be able to undertake some responsibilities of informing the various people concerned. Again, we do not know what happened in the dissemination of the message and whether it would have gotten up to the Premier's Office. Who was the communications person at the time there?

MR. GOSSE: I do not remember if it was Scott Barfoot or Carol Ann –

MR. MURPHY: Can we find out?

MR. GOSSE: I can, yes.

MR. MURPHY: I think it is kind of an important piece of information here in order to find out the actual chain of events. Who was the communications person say in the Premier's Office who would have had the responsibility of picking up that message too from the communications person at Transportation and Works?

MS CAMPANION: We will find out those two individuals for you.

MR. MURPHY: Yes. Can we have that possibly for this afternoon, if we go into an afternoon session, but as soon as possible anyway? I think it is kind of important.

We have a case here where we do not know if the message was communicated between the Premier's Office and through a communications person, or would this message possibly have been conveyed from Mr. Meade, for example, to the Premier's Office directly after the –

MS CAMPANION: I will speak to that. No, that is not the way we would normally do business. The communication to the Premier's Office is through the Clerk of the Executive Council –

MR. MURPHY: Right.

MS CAMPANION: – and any communication from the deputy minister would have been through the Clerk. On this occasion that we are speaking of today, no communication went to the Clerk.

MR. MURPHY: No communication went to the Clerk at all?

MS CAMPANION: No.

MR. MURPHY: Would you view that as a failure in communications that that message did not get through?

MS CAMPANION: Right. That was identified as an omission. The Clerk followed up on that quickly after the Auditor General's report and met with deputy ministers to remind them of the importance of decision notes, information notes

of major decisions that would affect the Premier's Office, or affect government in general, or the public in general and identify the protocol to ensure that that happened.

MR. MURPHY: That protocol is in place now?

MS COMPANION: Right. It is.

MR. MURPHY: Okay. Thanks for that.

I will leave that for now, but see if you can come up with the names of the communications people who were involved. I might have further questioning on that later on this afternoon.

MS COMPANION: We will.

MR. MURPHY: I want to come back to the conclusions now and ask a few questions around that. Under Objective 2, on page 2 of the report, under progress payments, they were not made in accordance with the terms of the contract for Project 1-12 and lacked consistency and transparency. I have just a couple of more questions around that, if I could.

They are reviewed as unfair because the payments, for example, were made every two weeks it was seen to be giving Humber Valley Paving an unfair advantage. In your search, did you find any other times where the bimonthly payments were made to any other companies in any other circumstance, or did you just look at Humber Valley Paving and find that one example there? Obviously there might have been others you ran into.

MR. PADDON: Of course, our focus was on Humber Valley Paving and this particular contract itself, and sort of some tangent issues around that. We did not see any other evidence of bimonthly payments.

There were two issues that we raised here. One was that the contract itself called for monthly payments. This was inconsistent with the contract. So that was one issue. Whether that was a major issue, that is a question of judgment I suppose, but the fact remains that it was not part of the original contract.

The other issue was the one I had spoken about before the break, which was it has the potential –

if somebody is aware that there is sort of an understanding around bimonthly payments that other people are not aware, it could affect your bids and it has the potential to impact sort of your relative position in the bidding process. Our only point was if your contract has monthly payments specified in it, well then that is what it should be so everybody knows what the lay of the land is.

MR. MURPHY: There does not seem to be anything as regards wrongdoing done here. It did not give anybody else (inaudible) –

MR. PADDON: Based on the discussions we had, particularly with Mr. Gosse in this regard, the rationale for the bimonthly payments was really to provide some measure of relief, if you wanted to call it, just because the significance of the liquid asphalt as a cost and just to facilitate some cash flow I guess. It was probably done for the right reason, but at the end of the day it was still inconsistent with the contract terms.

MR. MURPHY: So I guess the question is for Mr. Gosse: Any other tenders that were out there that were being addressed by government, did other companies to get that advantage of the bimonthly payments because of liquid asphalt costs?

MR. GOSSE: No, there were not, but there were no other companies in similar situations where they had massive paving projects where there were millions of dollars of payments made each month to them.

MR. MURPHY: Okay.

MR. GOSSE: There have been instances in the past where you have made what we call an interim progress payment in the middle of a month for a certain circumstance that happened in a project. For example, a contractor pours a bridge deck, which is a big cost on a bridge project, shortly after progress payments – progress payments are normally made at the twentieth of the month. So if a contractor poured a bridge deck, for example, on the twenty-fifth it would not be unheard of to pay for that bridge deck before the twentieth of the next month.

MR. MURPHY: Okay.

MR. GOSSE: Because it is a substantial outlay and most contractors have to pay their bills ten, fourteen days – it depends on the contractors and what arrangements they have with their suppliers.

MR. MURPHY: I can understand with asphalt because it was particularly costly in 2012-2013 up until –

MR. GOSSE: It is still costly.

MR. MURPHY: Yes, it still is –

MR. GOSSE: Regardless of the price of oil, asphalt did not come down.

MR. MURPHY: Well it came down a little bit, but we will get into that some other time.

Yes, I can understand that. So it has been done under –

MR. GOSSE: Certain –

MR. MURPHY: – certain conditions where there was a high amount of asphalt that was needed for a project – or liquid asphalt I should say, the binder. It has been done for other cases like that.

MR. GOSSE: Yes.

MR. MURPHY: Okay. So we are not seeing anything exceptional here –

MR. GOSSE: No.

MR. MURPHY: – but it was granted – well, it is still sixty kilometres of road and you are talking twenty-five loads. It is an immense cost; I can understand that.

Thanks for the clarification on that by the way.

CHAIR: Mr. Murphy, before we go, if you would hold that thought, I would like to go to a government member now (inaudible) eleven minutes or so.

MR. MURPHY: I am finished that section.

Thanks.

MR. K. PARSONS: Thank you very much, Mr. Chair.

Let me state first, before we go forward that I, too, would like to see more witnesses here this morning. I am not sure who we could have had available or not here this morning, but some of the questions are being asked and there are answers that cannot be given. So I, too, would like to be able to see if we had more people here to answer the questions.

As a member of the Public Accounts for the last seven years, most of our meetings that we have done were a review of the Auditor General's report and the recommendations of the Auditor General and what he has put forward to make changes that should be made. That is what we normally review under these hearings. I commend the deputy minister for your opening statement of all the recommendations that the Auditor General; you addressed every one of them. That is usually what we do at most of these hearings, but again, there are some questions that need to be answered and we need appropriate people to answer those questions.

I want to go back to the contract a little bit and the tender – I know that on July 11, Humber Valley Paving made a request for an extension of the contract. At that time, what was the discussion? Was it we were losing 'megadollars', was any of that involved; or was it just look, we cannot do this, it is impossible because of the five weeks we have lost; or how was the discussion at that time with Humber Valley Paving?

MR. GOSSE: Not a lot of discussion, actually, other than the delays that were the result of the fires – because July 11, if I recall correctly, there were still fires burning. It was not only in Labrador; it was in Quebec as well.

MR. K. PARSONS: Quebec, yes.

MR. GOSSE: Of course, there is only one route, and the fires in Quebec actually stopped some of the trucks as well.

So the only issue – no discussion of extra costs at that time other than challenges they would have in getting the project finished, and a request to extend the completion date into the

following year. We responded to that, I believe, sometime mid to late August and approved the extension – although we had verbally agreed to it before that time.

MR. K. PARSONS: Contracts that are done on the Trans-Labrador Highway, obviously the distances are huge; you are looking at hundreds and hundreds of kilometres out to be able to do this section and that section. With looking at the Labrador climate in the wintertime – and I know just from experience down at the Torbay Bypass Road, which I tormented you a lot about, there was a plant set up. It had to be all set up and it was a big operation just to bring all that in and put it there, and then there was a major concern that they wanted to get it out of there before the winter months came.

Is there a major cost to the actual set up of these plants and stuff like that? So, my question is around if you do a project such as on the Trans-Labrador Highway and it is in such a remote area, hundreds of kilometres away from everything, obviously a plant has to be set up, all this stuff has to be set up, and I do not know if they decided to leave it there during the winter or do they take it out – what is the cost of something like that?

MR. GOSSE: They would not have demobilized their asphalt plants for the winter. They would have winterized it and left it in place for the following year.

MR. K. PARSONS: Okay.

MR. GOSSE: Normally to set up one of those plants it is, ballpark, about a week to set it up, so it is a week's labour plus the equipment used to set it up. It is a substantial cost to setting up an asphalt plant. On an eighty kilometre paving project, they would either have two plants or they would move it once. They would not try to haul – it is cheaper to move the plant than haul asphalt.

MR. K. PARSONS: So they have a lot of these mobile plants now that they can move in and out, is that the way it works?

MR. GOSSE: They have mobile plants – well, they are mobile, but it takes a week to set it up.

It would probably be on seven or eight tractor trailer loads of material. It is a big set-up.

The same would go then for their crushing operations as well; that is another set-up.

MR. K. PARSONS: A question for the Auditor General: When you said in the report about the two tenders coming out and closing on the one day, did you look at the other bidders? Were all the other bidders bidding on both projects or was it just the one?

MR. PADDON: We did not look at the other bidders.

MR. K. PARSONS: There were five other bidders, I believe.

MR. PADDON: Yes, but whether they bid on both I could not tell you right at the moment.

MR. K. PARSONS: Okay.

Granted, it is not considered a bundle. It would not be considered a bundle, but a lot of times when you look at people bidding if they get two – the price of the bid on the first one, if you can bid low enough on that and low enough to get two of them, it would be really good for the company.

I do not know if Mr. Gosse can answer that question or not because it was interesting to see the difference between the bid that Humber Valley received and the second bid was almost \$5 million. I was wondering, was that a factor? Would that be a reason why you open two of them on the one day or put them out the same time for basically the same area?

MR. GOSSE: There are pros and cons to closing big projects on the same day versus opposite days. In this particular case here we actually had a request from a contractor, not Humber Valley Paving, to close both on the same day because they were keenly interested in – if they had to mobilize to Labrador it had to be worth their while, so they wanted to have a real good run at both projects.

MR. K. PARSONS: Okay.

MR. GOSSE: There are times, as you said, Mr. Parsons, that if you close projects on opposite days and a losing contractor on the first day really wants work then he sharpens his pencil good for the second day and lowers his prices. It can work both ways, if it is in an isolated area like Labrador and some will need to make it worthwhile to go there and it also gives them the opportunity of combining, for want of a better term, their mobilization cost.

MR. K. PARSONS: Okay.

MR. GOSSE: If they get both projects, they only have to move the gear up there once, basically.

MR. K. PARSONS: Once, yes.

MR. GOSSE: So they will see economies on that that would be reflected in their bids in an effort to get the work.

MR. K. PARSONS: Yes. Do you know if all the bidders bid on both (inaudible)?

MR. GOSSE: I can get that list. I do not have them right here.

MR. K. PARSONS: Yes, okay, because when I look at the bids, the first bid is \$21,582,000, and if you look at the fifth bidder, the number five person, they were at \$45 million. When I looked at this I said, wow, there is a huge range in the difference. Even from first to second, it was \$5 million on a \$20 million project. That seemed to be very, very high to me. Is there a difference in why the bids are so different? I am just asking the question, because –

MR. GOSSE: Yes. I can only surmise as to how it got there, but Humber Valley Paving was already mobilized in Labrador.

MR. K. PARSONS: Okay, so they had –

MR. GOSSE: They had other projects that they were working on. So that would give them a competitive advantage because they already have their gear there.

MR. K. PARSONS: Okay, yes.

Auditor General, your assumption was that two of them should not be opened or done on the one day. What is your rationale?

MR. PADDON: I guess really our suggestion was that the department should consider whether it is appropriate to have them done on the same day, particularly in a circumstance where you have large contracts. I recall during the interview with Mr. Gosse he had indicated that by and large these projects in Labrador were some of the largest paving projects that the department had let, just by their very nature, and the location.

I guess the concern was that because of the size of the individual projects, if you have one contractor who is successful on both but may stretch their capacity to deal with both, you may end up running into problems just as an administrator, as government, in terms of dealing with a contractor then who may have stretched themselves a little too far.

MR. K. PARSONS: Okay.

MR. PADDON: That was the point we were trying to make.

MR. K. PARSONS: Yes, okay. The point which Mr. Gosse is making, that sometimes if they think they can get both of them then the bids will come down a little lower than the way it is. So maybe that is the way the bids work.

I just want to get back to a little bit about Minister McGrath at the time and his decision to, what I call rush the decision. Your experience of thirty years will probably tell you – you are after dealing with a lot of politicians over the years and the importance of getting projects done on time. The options that were available to the department, whether it be cancelled or a third party come in and take over the contract or whatever, what do you see to be a better option or is there no better option, or do you look at everything? Because sometimes when it goes back to retendering, and I know this through personal experience, that when a bid comes in too high and it goes back, it could be delayed for a year or two years.

What we have done this year, even in my district – two years ago the bid was way too high. This

year I bundled with a neighbouring and the bid came in. There were more bidders and stuff like that. I just want to know what your experience is of how this process – what do you think of the process?

MR. GOSSE: I have kind of lost track of your question.

MR. K. PARSONS: My question basically is by bundling, by taking this tender and saying, okay, the best way to get this completed on time would be –?

MR. GOSSE: The best way of getting this completed on time and of getting the best price for getting the work completed was doing exactly what we did, including it with other work, because this was an isolated section in the middle of Labrador.

MR. K. PARSONS: Say, for example, to go back and do sixty kilometres – obviously, when contracts come out they look at the amount of work that is there, and 61 per cent of this work was already done. Would it be difficult to get someone to go in and do that at the same similar price that you were looking at?

MR. GOSSE: In my opinion, it would be impossible to get someone to do it at the same price.

MR. K. PARSONS: Okay.

MR. GOSSE: The best way of completing it was doing it as we did it and putting it with a much bigger piece of work because now it is of interest to a contractor to get that bigger piece of work.

MR. K. PARSONS: Okay.

MR. GOSSE: Included with this one, besides the sixty kilometres, was another eighty kilometres of full paving heading down the southern part of the TLH from Goose Bay South, and there was work in Goose Bay as well.

MR. K. PARSONS: Yes, I was just using my own personal experience. That is what I was explaining. You know that sometimes when you bundle it seems like you get more bidders, better price, and stuff like that.

CHAIR: Mr. Osborne.

MR. OSBORNE: Thank you.

Just on that note before I move on to where I was going to go with the questioning.

Mr. Gosse, you had indicated that the best approach was for the department to do exactly what the department had done. I just want to ask the Auditor General, because I know in your review of the possible options, one of the options was to pay the claims that Humber Valley Paving had made against government.

Mr. Gosse, what is the status of the claims that Humber Valley Paving had made against government? Have any of those been paid?

MR. GOSSE: On Project 1-12 or overall?

MR. OSBORNE: Overall.

MR. GOSSE: There are still two outstanding claims that we thought we had agreements on, and they are legitimate. They were for extra work. There was a differing in opinion of what the true extra cost was to the contractor. We settle claims, legitimate claims all the time, and it is not uncommon to deny a claim that we feel is not legitimate. Then contractors of course have the option of taking us to court, and some will do that. We will take on those battles when it is right to do so.

In this case here, there were claims totalling on two projects, from 2010 that had just finished that year – they were started in 2011 and finished in 2013 – claims totaling roughly, in round numbers, \$600,000. We had reached an agreement – and we did our documentation, our analysis and documented everything. We had our consultant who was looking after the work document it. We made offers on both of those of about, one was \$94,000-and-change and one was \$95,000-and-change. Humber Valley Paving had originally accepted those and then their board of directors withdrew the acceptance.

MR. OSBORNE: Okay.

So on the other claims that you say were legitimate, I believe – and the Auditor General can correct me if I am wrong, but when I read

the report there was no analysis or no consultation with Humber Valley Paving as to whether the legitimate claims, if they had been paid, whether that would have been enough to convince Humber Valley Paving to go back into Labrador. Is that correct Mr. Paddon?

MR. PADDON: Yes, that was the point we made. Well, the complete point was in the fullness of time had it been available to conduct the analysis that may be something the department could have explored with Humber Valley.

We acknowledge that Humber Valley was looking for more money to go back to Labrador. In order to pay more money there would have to be some legitimate reason for the department to do that if a contract was in place. If there were legitimate claims that were being I guess considered, that may have been an option to go down that road, but given the amount of time that was available that was not something that was done.

MR. OSBORNE: If that option had been explored, Mr. Gosse, with Humber Valley Paving, and we understand that it was not through the findings of the Auditor General's report, but there were legitimate claims.

MR. GOSSE: There were two legitimate claims that we had made offers on that were accepted by Humber Valley Paving. Right around this time or prior to that, one of them was accepted prior to this that were subsequently rejected by the board of directors for Humber Valley Paving. We had made offers on those two claims that were legitimate.

MR. OSBORNE: Okay.

Why were they rejected? Were they looking for additional money?

MR. GOSSE: I cannot answer that – honestly, I cannot answer that. They had originally accepted them and it was all documented as to where – the justification for those claims. I mean, we knew there was extra done. We knew there was something owed to Humber Valley Paving.

MR. OSBORNE: So, if you were able to reach an agreement with them on that, in the fullness of time, if that option were explored, was there a possibility that the work could have been done cheaper than it was done when it was retendered if Humber Valley Paving had gone back to Labrador to do the work? Because that was one of the options Humber Valley had presented to the department – there were two. One was that they get out of the contract; two was that they receive additional or some compensation and they would go back and complete the contract. Is that correct?

MR. GOSSE: Partly – just let me clarify. The extra payment they were looking for to go back to Labrador referred back to the \$2 million we talked about earlier this morning. Those two claims were on different projects and had nothing to do with 1-12.

The extra money they were looking for was the \$2 million. To me, it is a number they picked out of the air and said this is what we need, this is what our losses are, and that is what we want to be paid for. So there was no formal claim made for the \$2 million.

On the two legitimate ones – the offers that we made on the two claims that we made offers on were what we could rationalize as being the legitimate extra costs. I do not know that we ever would have agreed to go beyond that on those two claims. From the information we had and from the analysis that we did and the analysis that our consultant did, that was the maximum that we would go to on those two claims.

MR. OSBORNE: Okay.

The Auditor General, on page 43, they found that there was no evaluation or discussion with HVP as to the amount of additional resources it may have taken to allow them to return. Claims related to Project 139-10 and 140-10 were being negotiated. There was evaluation whether a settlement of these claims would have been sufficient to allow HVP to return to Labrador.

So, is the Auditor General correct in that, or are you correct in what you are saying there?

MR. GOSSE: I think it is a combination of both. I do not think either one of us is wrong. We could not evaluate, nor would we try to tie two or three different contracts together – it is difficult to do that. I do not know if you can do it, from a legal perspective. We deal with it contract by contract by contract.

MR. OSBORNE: Okay.

MR. PADDON: (Inaudible).

MR. OSBORNE: Sorry, go ahead.

MR. PADDON: I think that sort of goes to the point that we were trying to make. There is certainly uncertainty surrounding this, as Mr. Gosse is saying. Because of the shortness of the time, there was no attempt to consider whether that was a viable option. I think this is really the issue that we are trying to get at: Because everything was compressed into that seven-and-a-half or four-hour time frame, you do not really get to explore an option that, at the end of the day, may not have been a realistic option, but at least you could have fully considered it and say no.

MR. OSBORNE: I mean, the reality is Humber Valley themselves did put forward two options to the department: either out of the contract, or negotiate an additional settlement. We would have known the answer to that question in the fullness of time if the department had, in fact, negotiated with Humber Valley – and we do not know whether or not that would have been a less expensive option than retendering as a bundled contract because that negotiation did not take place. Is that correct?

MR. GOSSE: In the fullness of time, we would have had time to consider any claim that they made for the delays – and back to the \$2 million again, there was no justification to increasing the offers on the previous two settlement offers based on the information we had. To me, it would be improper to pay them for something that they did not do or did not deserve on two other contracts to have them come back to work on a third one.

MR. OSBORNE: Okay.

When you provided evidence to the Auditor General, did you make these comments at that time?

MR. GOSSE: I do not recall.

MR. OSBORNE: Okay, because there is a bit of a contradiction.

MR. GOSSE: We did talk about the claims on 139 and 140, no question. Whether we tied the two of those together with 1-12, I do not recall that conversation. That does not mean it did not happen.

MR. OSBORNE: Okay. I do not recall reading anything about what you just said in the findings.

MR. GOSSE: There was no analysis done between the two claims that were made and we could legitimize in relation to 1-12.

MR. OSBORNE: Okay.

MR. GOSSE: The claim on 1-12 that was not settled was the one that was never formalized, notionally put forward by Humber Valley Paving to be \$2 million.

MR. OSBORNE: Okay.

I am going to come back to this issue because I do have several more questions on this particular issue. Brad Power is now the Communications director for Transportation and Works. You were not in the department at the time of this?

MR. POWER: I was not, no.

MR. OSBORNE: Okay.

To the Auditor General, did you interview the Communications director at that particular time?

MR. PADDON: No, we did not.

MR. OSBORNE: Okay.

Just for the record, Mr. Chair, if we do have an additional meeting, based on my motion earlier, I think the Communications director at that time should perhaps be called as well.

CHAIR: Do we know that person's name?

MR. MURPHY: I think they are looking for that now.

CHAIR: Okay.

MR. OSBORNE: Okay.

MS COMPANION: The Director of Communications at the time was Scott Barfoot, and he currently works with the Communications Branch with the Executive Council.

We were also asked to find the person in the Communications Branch who this communication would have gone to, and it would have been Milly Brown.

MR. OSBORNE: Okay, thank you.

CHAIR: Mr. Osborne, we should go to a government member now.

MR. OSBORNE: My time is up already?

CHAIR: It is up –

MR. MURPHY: Time flies when you are having fun, Tom.

CHAIR: Unless you continue with the same line of questioning, but I thought you arrived at a conclusion.

MR. OSBORNE: Well, no, I am going to come back to that. We are going to be here for a week, Mr. Chair.

CHAIR: Well, no, Mr. Osborne, you are the last person that I can favour with time, being with same party.

A government member, please.

MR. HUNTER: Yes, I have a question. I will get back on the liquid asphalt, because it seems to be a lot of input by the AG there. On page 32 of the AG's report: "The Assistant Deputy Minister, Transportation branch originally approved bi-weekly progress payments related only to the liquid asphalt payments for Labrador projects."

Was that asphalt already used or was it tracked so that we know that it was gone to the particular job that it was supposed to go to, or just the company decided to store it or use it wherever they want to use it? How was it tracked?

MR. GOSSE: We pay for liquid as it goes into the asphalt and it is incorporated into the work. So that would have been done biweekly instead of monthly, per the normal. So, only what was incorporated into the work in that two-week period was paid for, not what was delivered.

MR. HUNTER: So there was an inspector on site that said yes, this two loads of asphalt was used on this site and that is what –

MR. GOSSE: We have inspectors on site every (inaudible) –

MR. HUNTER: So what you paid for is what was used?

MR. GOSSE: What was paid for is what was used.

MR. HUNTER: If it was not used at that particular time, were there still payments made for liquid asphalt?

MR. GOSSE: No. They were only paid for what was used in that two-week period.

MR. HUNTER: In the next year when they had to send back the twenty-five loads, there was no consideration given to any payments of liquid asphalt –

MR. GOSSE: Absolutely not.

MR. HUNTER: – because it was not used.

MR. GOSSE: Correct.

MR. HUNTER: So before that, it was paid – but was it strange, or is this unusual for an assistant deputy minister to sign off on those kinds of payments, or is that the norm?

MR. GOSSE: I do not think so. It is a contractual issue that I felt I had the authority to do.

MR. HUNTER: Okay, that was one question that I had there that was still bothering me. Going back earlier with the options – and I know some of the questions were already asked here, but it still seems unusual that right at the beginning when it was known that the contract wanted to be cancelled there was not an ASAP meeting to discuss the options.

In your point of view, at the time, there was no other way that this project could proceed with Humber Valley Paving because they wanted out; or did you just give up on trying to discuss an option with Humber Valley Paving; or was it you want out, we will give you out?

MR. GOSSE: The indication at the time was that Humber Valley Paving, on that day, was not going back to do any more work, and that the direction from the minister was to terminate the contract.

MR. PEACH: Mr. Chair, I can use up the rest of the time, for sure.

CHAIR: Mr. Peach.

MR. PEACH: First of all, Mr. Chair, I have to say that this is the second day now that we have been in sections where we do not have the witnesses across the way to ask the questions, so I am struggling to get questions that I want to ask as to what I would have asked if other people were here.

I just have a couple of questions on staggering tender dates. Staggering the tender dates, would that cause a monetary cost to the department, like closing dates?

MR. GOSSE: It can work either way. As I said earlier, in some cases, staggering your closing date will cause a contractor that was unsuccessful up to that point to perhaps do a better price. In some cases, closing them on the same day will allow a contractor to avail of combining or thinking he can combine some of his mobilization costs and reduce his costs that way. It can work either way. There are pros and cons to both.

MR. PEACH: I just want to touch a bit on the bonds. Earlier you mentioned that the contractor did show on site when it reopened. Default

called bonds, was there any claims under the default bonds do you know? They requested to have the contract cancelled. Once the contract was cancelled if they never showed up on site, then there could be a claim put in, if I understand it correctly.

Maybe we should ask the AG to give us some insight on the bonds, how it works, because I am not 100 per cent sure. I was a mayor for ten years, but we always had bonded clerks and things like that. I do not know if it worked in the same way or not so I wondered – because it mentions three different kinds of bonds there.

MR. PADDON: I would suggest that Mr. Gosse is probably better positioned to talk about the bonds.

MR. PEACH: Well, Mr. Gosse – either or.

CHAIR: Maybe even legal counsel probably would be quite familiar with the bonding process.

MR. PEACH: Yes, well, I do not know who the question could be directed at, but I just –

MR. GOSSE: There are essentially two bonds, not three.

MR. PEACH: Okay.

MR. GOSSE: One is a Performance Bond, and that is, for all intents and purposes, an insurance policy for, in this case, government to make sure work gets done. The other one is a labour and materials bond, and that protects suppliers to the project.

The way a Performance Bond works – both bonds are valued at 50 per cent of the original contract cost. So in this case, about \$9.5 million each. The Performance Bond, if you call the bond, the Performance Bond will cover additional costs to get the work done that was in the original contract. It will not cover extra costs or extra work. It will not cover extra quantities. It does not cover anything that has already been paid for. The labour and materials is again, in this case, about \$9.5 million, 50 per cent of the original contract cost. That will cover anything, payments due to suppliers, or

providers of labour that the contractor does not pay.

Both of those have a limitations period identified in the bond. For the labour and materials, from the time that the goods were provided, or the materials were provided, or the time that the labour was provided, those service providers or labour providers have 120 days to make a claim.

In the case that we are talking about here, the termination date of the contract was not the governing date; it was the date that work was last done. It is incumbent, I think, upon the suppliers, both of materials and labour, to be aware of what their responsibilities are when they are doing work.

By the time that this contract had been terminated by the department and Humber Valley Paving, the 120-day time period had expired. So, anybody making a claim under the labour and materials bond had no recourse anyway. On the Performance Bond, it only protected government, and by mutually agreeing to the termination it basically voided anything that we would have had to claim under the Performance Bond anyway.

I do not know if Todd can expand anymore on that, or add more insight; but, from the contract point of view, that is how I see it.

MR. PEACH: That leads me up to the next question there under Finding 21 on page 49. It says, “The Department did not pursue the option of calling the Performance Bond because this risked Project 1-12 not being completed in 2014 and would have negatively impacted HVP.” How?

MR. GOSSE: By calling the Performance Bond, we would basically be putting Humber Valley Paving in default. As I said earlier, up until this point in time it was our view and our opinion, and based on the knowledge we had, Humber Valley Paving was still a viable, functioning company. We did not want to put them out of business for reasons of competition and for reasons of putting 300 people out of work. Calling the bond would have made it very difficult for them to get bonding in the future; hence, it effectively would have likely put them out of business.

The other thing to remember here, had we called a bond – fourteen months ago we called a bond on another project. To this date, we do not have an answer from the bonding company. Had we waited to call the bond, work would not have been done last year. It would not be finished now. We would still be waiting on the bonding company to do an analysis and likely come back at the end of the day and deny it anyway.

In the one instance where we called a bond, we have carried on and completed work ourselves because it was essential that we do so. It was on a bridge repair so it had to be done, but fourteen months later we still do not have an answer from the bonding company as to whether they are going to accept the claim or not.

We have had experience with bonding companies. We knew where we were headed. Had we called a bond on this project, we would end up in court probably next year sometime still fighting over who was responsible for what. If and when the bonding company won their case – which likely they would have because they did have the forest fires to go back on, and their argument would have been without doubt that it was not Humber Valley Paving’s fault that they could not go back and finish – we would be tendering that sixty kilometres of work on its own and paying a premium to have it done.

MR. PEACH: So while this ongoing then, you would not have been able to call a tender for the remainder of the work that was done?

MR. GOSSE: It would put us in an awkward position.

MR. PEACH: You would not be able to call the tender?

MR. GOSSE: It would have been very awkward to do so because technically we still had a contract to have it done. So we would have two contracts now for the same piece of work.

MR. PEACH: Okay.

I am a little bit confused, but maybe I am not understanding your answer. Humber Valley Paving requested to cancel the contract, right?

MR. GOSSE: Correct.

MR. PEACH: So once the contract got cancelled then the next season – I thought you mentioned earlier – they did not show up on the site. Didn't that then put you in a position that you could claim under the bonds, under the Performance Bond?

MR. GOSSE: They requested that the contract be cancelled on March 13. They did not come back to work that year.

MR. PEACH: Okay, I misunderstood you.

MR. GOSSE: That 2014 would have been the final year of that contract. So they did not go back for the last year.

MR. PEACH: I misunderstood your question.

The four contracts that were mentioned by Humber Valley Paving, were they all in Labrador or were they all over the Province?

MR. GOSSE: They had four ongoing projects in Labrador. They had others on the Island part of the Province as well.

MR. PEACH: So some of them were subcontracted out or their company was doing it?

MR. GOSSE: The one big project that they had outstanding was subsequently assigned to another contractor, and that is a different process altogether.

MR. PEACH: Okay.

That is it for me right now.

CHAIR: Mr. Murphy.

MR. MURPHY: Thank you very much, again, Mr. Chair.

A question for Mr. Gosse – this one is bugging me a little bit – government, I guess, in this particular instance when they arrived at their decision, they did not want to put the company out of business. I heard that right, right?

MR. GOSSE: That is correct.

MR. MURPHY: Did the department have some sort of an understanding that they were in a financial crisis when they made that decision, that they did not want to put this company out of business?

MR. GOSSE: At the time that this decision was made we were not aware that they were in any financial difficulty. In fact, only weeks before this decision was made they had called wondering about when the next work was going to be tendered. There was no indication that this was widespread, other than one contract-specific issue.

MR. MURPHY: The reason why I ask that question – I do not know if it is apparent to anybody else, but we have a company that certainly sounds to be financially viable, number one; number two, I find it odd that government did not want to put the company out – that they would actually think about that. Not that that is a bad thing, but I am thinking about it in this context, that it actually came to somebody's mind that we do not want to harm the company, even though the company tendered – it probably would have been self-inflicted, had the company closed up.

The other thing that leads me to believe that they were financially viable in the first place is that, number one, they put in two claims against your department, they had initially agreed to it and then withdrew it on a previous contract; they also had the quote, unquote, the opportunity to put in a claim for five weeks of work that was put aside, but they did not submit a claim. So it could not have been about the viability of the company, and government should not, I do not think, would have had any worry about putting the company under. If the company really wanted the money, they would have put in the claim for it. I wonder if you can explain that.

MR. GOSSE: I cannot explain it. I guess, Mr. Murphy, those were some of the things that we considered too when we were making our decision to cancel. There are a limited number of people in the paving industry. Competition always keeps your prices down.

MR. MURPHY: Right. Yes.

MR. GOSSE: You would not want to injure what you feel is a viable company that does good work for you and is a very co-operative contractor. You would not want to impact them negatively by doing something like calling their bond when we could see that there were likely legitimate reasons for their delays.

We all knew the fires happened. We had our own staff involved in fighting fires from our Air Services side. They were there for weeks, months, so we knew what was going on. The fires were real. We knew they were impacting on Humber Valley Paving. The fact that they were not reaching out and grasping at that \$180,000 we offered them on the other two projects, they did not formalize a claim on 1-12 and were interested – when other work was being tendered, were talking about going back to work on the project on the Island, there was absolutely no indication that there was any reason why Humber Valley Paving would not still be working the following month.

MR. MURPHY: Yes.

Again, I have to say the minister is not here to answer the questions around that. I would like to know – I do not know if you were there at the time when that decision was made. I think I am starting to get a picture that you were. Would I be right on that? What was the minister's reasoning for thinking that he would be harming the company if they had to go the way they did?

MR. GOSSE: That probably came from just a general conversation we had about the pros and cons of cancelling the contract. There was a discussion with myself, the deputy, and the minister. That was one of the things that we talked about. Humber Valley Paving does good work. They are a sound company, so we thought.

MR. MURPHY: Yes.

MR. GOSSE: I had to look at the website actually. They list 300 employees on their website so we had that information. We knew that they had planned on going back to work on the Island project and we knew they were inquiring about other work. They did good work. As, I think the Auditor General, Mr. Paddon said, or someone said earlier, their bid

on that job was \$5 million less than the second bidder.

MR. MURPHY: Yes.

MR. GOSSE: They were doing good work and they were competitive prices.

MR. MURPHY: Yes. Just looking at the tenders, I wanted to talk about the competition aspect of it too. I cannot remember what page it is now. The most expensive bid at that time was about \$45 million, and the – there you go, page 26 for the other Committee members, Table 4, the Tender Summary from April 24, 2012.

We had Humber Valley Paving in at \$21 million, a second, third, fourth, fifth bidder – so five companies basically after this contract. If they were not in the marketplace I do not know where prices would have gone, but do you feel that there still would have been robust competition amongst the four companies that were there?

MR. GOSSE: Any time that you can get four bidders on a project then I would consider you have a good competition.

MR. MURPHY: Right.

MR. GOSSE: Having said that, the second bidder was still \$5 million over the low bidder.

MR. MURPHY: Yes. I saw the \$45 million figure. I would like to know where they came up with that one, but I am not party to that. Thank you for that.

I will always have that question in my mind when it comes back to Humber Valley, why they did not submit a claim and why they – I hate to say it, but it looks like they gave up. The timing of it makes it look particularly odd when we talk about the March 13 cut-off time and where some people were when it came to their politics. I will not get into that yet.

Mr. Chair, also when it comes to witnesses I think that Tracy Boland was also press secretary in the Premier's Office at that time. Perhaps we might be able to have a conversation with her. Besides Milly Brown, I think the question would go to Lori Anne Companion.

Ms Companion, I also have to ask the question, just to clarify, why Mr. McGrath, Mr. Meade, and Mr. Jones were not asked to come and appear as witnesses here to the Public Accounts Committee.

MS COMPANION: Mr. Jones was asked to come, but he had left the public service. When I contacted him afterwards, he was reluctant to appear as he was not a public servant.

I did not contact Mr. McGrath, nor did I contact Mr. Meade to present and to prepare. Mr. Gosse is the assistant deputy minister who was in the department at the time and who was a part of and involved in the decisions. As I indicated, the other people here are a part of what we are doing to make sure that this issue does not resurge.

I felt that we would be able to answer the questions that the Committee may have. In hindsight, I could have invited Mr. Meade and Mr. McGrath. If you wish to arrange another Committee meeting, I can invite them.

CHAIR: Ms Companion, on that note, do you think they might be in the building or nearby? Would they be available in the afternoon?

MS COMPANION: I do not know. I can check.

CHAIR: It might be a bit of short notice, but if they are here and if they are available, it might be more useful than to wait until a later date and go through all the machinations of writing them and going back and forth, if they are available. They may be next door and say, well, you did not ask me. I would have attended had I been asked. It might be worthwhile to check into it over our break.

MS COMPANION: Absolutely.

MR. MURPHY: Is Mr. Jones in town as well? Can we ask if he would be available for that? Obviously the legalities around the drawing up of the contract, I think, is kind of important.

MS COMPANION: Mr. Jones –

WITNESS: To my knowledge, Mr. Jones is not in the country right now.

MR. MURPHY: He is not in the country?

WITNESS: No. That is what I (inaudible).

MR. OSBORNE: Mr. Chair, in addition to those individuals just named, there are other individuals who should be appearing to answer questions.

CHAIR: If there are others who are available to save us going over to another date. I am less concerned about person A or person B. I am more concerned about who knows the stuff, who was there, who can tell us whatever.

Some of it seems to be absolutely first hand. Former Minister McGrath, O'Brien, and former Deputy Minister Meade, they would seem to be absolutely critical because they are referenced in the Auditor General's report. Nobody can ask what was in somebody else's mind with any assurance that they are going to get a response.

I would not say not to invite the others because they may have valuable information. If they are available, we should consider that for the afternoon to have them show up and provide some information. I would not see any anomaly there.

They are not under subpoena; we have no power to subpoena. We also do not want them to say if you had asked me I would have shown up and spent a couple of hours with the Committee and straightened all this out. Maybe that is optimistic, but they should be given the opportunity.

I think we were with Mr. Murphy.

MR. MURPHY: Yes, Sir. Thank you very much again.

Before I go on, Ms Companion, is there any reason why you thought that Mr. McGrath or Mr. Meade would not be significant to this hearing today, the reason why you would leave them out? I am trying to figure out the process.

MS COMPANION: No, there would be no reason in particular. Mr. Gosse is the assistant deputy minister in the department who is currently there and currently an employee. We had prepared and discussed who we thought

would be relevant and who could answer the questions to the Committee. There was no other reason than that.

MR. MURPHY: Okay, all right. I will leave it for now. We will see if we can get him in and have a chat with him.

I want to move on now to the –

CHAIR: Mr. Murphy, I may have used up some of your time.

MR. MURPHY: Sorry, that is okay.

CHAIR: What I will do is go to a government member and then break for the lunch break and come back –

MR. MURPHY: Yes, I will digress.

CHAIR: – in the afternoon and begin with Mr. Osborne, like we did this morning.

MR. MURPHY: Yes.

CHAIR: We may have a government member.

MR. CROSS: Just one thing we can conclude with before lunch and it should not take too long. In looking at all of the options that were potentially on the table on March 13, or the time leading into March 13 – March 13 was the actual date that the decisions were made. In the findings – it is on page 40 – there was some consideration that they wanted to make sure the project was completed in 2014, the least amount of harm to HVP and the employees of Humber Valley Paving, and ensuring the project was completed at the contract cost. These were some of the criteria or some of the thoughts that would go into the four options.

How did all this weigh into the four options, and was everything decided on that day or was this a period of time that led into March 13?

MR. GOSSE: If we look at completing the work and not injuring Humber Valley Paving, and add in there the cost of completing the work as well, the four options that were available – and it is on page 39 in the Auditor General's report. I am assuming (inaudible).

MR. CROSS: Then continue on, it takes up four or five pages here, but just concisely.

MR. GOSSE: The assignment of a contract to a third party; that is not something we can do. That is something for contractors to take on themselves. We did not think, and we are pretty confident, that was not a viable option for Humber Valley Paving or any other contractor. When you assign a contract, a new contractor takes on – you basically just substitute the names in the contract, contractor B for contractor A. It is the same prices –

MR. CROSS: A quick question, do they assume then for the early part of the contract, or you had two different parts of the contract (inaudible).

MR. GOSSE: They would have to take the whole contract.

MR. CROSS: Okay.

MR. GOSSE: So, a lot of the easier work, for want of a better term, was already done on this contract. A lot of the grunt work was done, a lot of the money was already paid out. So there would not have been enough of an incentive for another contractor to take on what was left at the contract prices that were there. It was just too far advanced to be able to do that. That really was not an option, and it was not something we could push or insist on in any case.

Provide additional funding to Humber Valley Paving; that goes back to the \$2 million they were talking about with the claim. We could not rationalize that. There were no grounds for us, based on a phone conversation, to agree to an extra payment of any quantum because we had seen nothing in the way of a formal claim.

Mutually terminate the contract; well, let's skip that one for now.

Consider Humber Valley Paving in default; well, let's go back to terminating the contract. That was probably the least painful for both us and Humber Valley Paving in the sense of getting the work completed, because we did have an opportunity to bundle it with the project we eventually bundled with.

The other project was effectively ready to tender. There was a lag between the time we terminated and actually calling a new tender because we had to quickly go back and rejig what was left to do on Humber Valley's project and incorporate it into the contract and get our conditions and that in there.

That did allow us to finish the work. It should have been last year, no question, but unfortunately it was the wettest summer on record in Labrador. It also allowed us to get the best price because you were doing it with a bigger piece of work. It would not have injured Humber Valley Paving because you were not calling the bond.

As we have said many times now, we felt they were still a viable company because they were asking about other work. In fact, somebody had asked a question of whether Humber Valley Paving would still be able to bid on the new work. Had we terminated and re-tendered, could Humber Valley Paving still bid on it? There was no indication that we would have been harming them doing that.

The final one, consider Humber Valley Paving in default and call the bond basically; work would not be finished today. We are still waiting on a much smaller claim fourteen months later. The smaller claim we are talking about is in the \$200,000 range.

It would have injured Humber Valley Paving because they would not have been in good standing with their bonding company anymore. Had the bonding company then been successful in arguing against their responsibility under the bond, it would have resulted in us tendering that piece of work on its own, likely next year or the year after, and the prices would be nowhere near what we had it done for.

All of those options were considered in each of those four. Very quickly mind you, but more time, I do not think, would have resulted in a different outcome and impact in each of those four options.

MR. CROSS: That was going to be a follow-up question if there was more time. It was like six weeks or five weeks before any of the extra work had continued, going from March 13 to

April 20-something, knowing that Easter and everything was in between there. There was time off.

With all of that, would that have changed do you think? My question was going to be – because I know some of this led into March 13. How much of it was actually the nuts and bolts of March 13, the seven-hour period being referred to?

MR. GOSSE: Yes. That was a short conversation. I think we covered all the bases without writing it all down. I just summarized what the options or what the impacts would have been on each of those three criteria on the four options that we had available to us.

I do not think the outcome would have been any different had we had more time to consider. The fact that there was a delay between March 13 and when we actually tendered in April – that was time we took getting the new quantities together – and realize there was still snow on the ground and winter conditions in Labrador when we were out trying to make sure we had everything covered off that needed to be included in a new contract.

MR. CROSS: Okay.

MR. GOSSE: So it did take us time to do that.

MR. CROSS: I may have others after lunch when we come back, but that is a good time frame to go now I guess.

CHAIR: Okay. Thank you.

Yes, we can take a lunch break. If we can get back at 1:30 o'clock or longer, what would you prefer? Different people have other things to do, phone calls and getting away from the building for lunch and so on. Getting in and out takes a bit of time. So 1:30 o'clock would be good.

Recess

CHAIR: Good afternoon, we are back on being recorded. Before we broke, there was some discussion about the potential for any other people to appear this afternoon. Ms Companion, what sort of headway did you make, if any? Did you find anybody?

MS COMPANION: Oh, I did. In a follow-up to our discussions, I can confirm that Brent Meade is in Confederation Building, and the Clerk of the Executive Council. Scott Barfoot, who was the Director of Communications at the time, and Milly Brown, who was in the Premier's office at the time, they are in Confederation Building and at work today.

I also relayed the Committee's message that they wish for some people to appear to both Mr. Meade and to the Clerk – those were the two people that I spoke to – and the wish for them to appear to speak to this issue. They indicated they have no hesitation whatsoever in appearing before the Committee, but they have asked if they could have a day to review their notes and get themselves back up to speed so they can appropriately be in a position to best respond to the Committee – but they have no hesitation in coming to meet with the Committee at the Committee's call.

CHAIR: Okay.

I guess for timeliness we have to confer probably the Clerk and other witnesses and Committee members, because when we arrange for another day, usually it takes multiples of weeks to get everybody pulled together. Although, we are all here, there is no reason not to go over to tomorrow, but other people may have other commitments, so I do not really know about that.

Maybe some of the Committee members might have some observations.

MR. PEACH: We have meetings tomorrow afternoon from 1:00 to 4:00, myself, Eli, and Ray.

CHAIR: I think that if they –

MR. K. PARSONS: Mr. Chair, if I may. I know this morning it is not only the two that we talked about earlier this morning, but Mr. Osborne made a suggestion that we contact all the people that were questioned by the Auditor General, and then I think you added on another two also. So my suggestion would be to do what we normally do. What we did in the past was that we went ahead and we had an extra hearing, and the Clerk sent letters to the people

asking them to appear, because – and you can correct me on this – no one is required if they do not want to come, or whatever. Their lawyer may say no, you do not need to come to appear or whatever.

So, we should have a general idea of everyone. Even if we do a meeting with these two, I am sure that the member here, and the members behind, and myself, there are other people on that list. So then we are going to do another meeting and try to get everybody there. I would prefer that we sent letters to these people, get the Clerk to decide when there is a time and a date that is suitable for the Committee, and we have another full meeting with them.

I think that is what you are looking for, isn't it?

MR. OSBORNE: Absolutely. I think that is reasonable. I think there should be a formal invitation, perhaps, sent to each of the people who were witnesses under oath with the Auditor General, as well as other people that the Committee feel may be worthy of being witnesses. We identified, for example, the communications director at that time as one.

I think it is only a matter of later on this afternoon, if we conclude, that we set aside a date or a couple of dates and give options to the Clerk and the Clerk can send invitations.

CHAIR: Mr. Murphy, what are your thoughts?

MR. MURPHY: I am of the same thinking, Mr. Chair. I will tell the Clerk right now that my schedule is completely free, except for September 18. So whatever the Committee deems necessary as regards to dates, I am fully agreeable to.

MR. OSBORNE: We have all of the rest of September. We have all of October before the provincial election is called. So I think there is plenty of time.

MR. MURPHY: I think there is plenty of time.

Did we include Mr. McGrath, by the way, in that list as well?

AN HON. MEMBER: (Inaudible).

MR. MURPHY: Yes.

CHAIR: I think where we are with respect to the list is that the list that was interviewed by the Auditor General, plus additional names have come up. Clearly, we would not be able to hear from that many people, but if we got five or six or three or four of the right ones – not the right ones but the ones with the best information, but we would do that in the ordinary course. The Clerk would ordinarily look after the scheduling and expediting it and basically put it together. Even though we sit here, the Clerk does all of the coordinating and an awful lot of the work.

MR. K. PARSONS: The other thing too is some witnesses, if they wish not appear, then it gives us a time frame to say what is our next step to do this to make (inaudible) because there are a lot of witnesses there. I am sure the Clerk is probably the best person to contact them and say we are here now from September to the end of October and here is what we – a time frame like that.

CHAIR: I think that even if many of the others could not or did not want to return, based on Ms Companion's information with the people she spoke of, with them being available, it would be worthwhile to come back because we could fill the seats and not have enough time to get to all of them anyway. So that would be enough to certainly make it worthwhile to come because they seem to be critical players with the pieces of information.

MR. K. PARSONS: There are a lot of critical players on the list there.

CHAIR: You know that I like for every member to speak or not speak if – Mr. Hunter, what is your view?

MR. HUNTER: I have no objection to doing that. The thing is I am not sure what days I am going to be available in September or October.

CHAIR: Okay.

Mr. Peach?

MR. PEACH: I am on the same line as Tom, Kevin, and George. I think that we should send out a letter to the individuals and request if they

could make it to another date, if we can get a timeline that we can use, and send the letters out and see how many people we can get together. We may not get them all together, but a good many of them may be able to come.

What if we do not get the key people? Then, are we going to keep on going until we get them? How is that going to happen?

CHAIR: The ones who responded today seemed – Mr. Meade – to be really important. So I think it would probably flow in the ordinary course. There is a big enough field of individuals that we would easily get enough people for most hearings.

MR. K. PARSONS: Can I make a suggestion?

CHAIR: Sure. Let's go to Mr. Cross. He has not spoken.

MR. K. PARSONS: Go ahead, Mr. Cross.

MR. CROSS: Okay. No, I agree. Calvin probably took most of the comment that I would have made. The thing is we want to do the best job that we can do as a Committee. In doing so, I think that is the best choice, to have as many possible and to adequately have time to prepare for it, both us and them.

CHAIR: Mr. Parsons.

MR. K. PARSONS: Yes, the only thing I would like to just add – and I agree with everyone and what we are saying here. I think once the Clerk gets her responses of who is available and stuff like that, it would be a great idea for the Committee to either meet – and we do not need to come to St. John's or anything like that, just get on the phone and have a conference call someday and say listen, these are the people we have. Are these the ones we really want there or is there somebody else who we need to add to that?

CHAIR: Ordinarily what we would do is we give Ms Murphy dates to work with.

MR. K. PARSONS: Yes.

CHAIR: We usually give her, as you know, our dates first and say here is a block of three days,

here is a block of three days. It gives her a bunch of dates to work with because some of them may be out of the country or might have a medical procedure, like a witness.

If we give her a couple of blocks of days – September will get used up pretty quickly so maybe late September or sometime in October. Then she will contact the witnesses and see as to their availability on those dates and then we would know.

MR. OSBORNE: Mr. Chair, I think it seems like we have consensus. I am going to read my motion into the record again.

I move that the persons listed in Table 1 on page 13 of the Auditor General's report of September 2014, a Review of Humber Valley Paving Ltd. – Project Number 1-12PHP, be invited to attend a hearing of the Public Accounts Committee which will deal with this matter as soon as can be arranged by the Clerk of the Public Accounts Committee. Furthermore, that other witnesses who may be identified by the Committee throughout the day be added to that list.

That is seconded by the Member for St. John's East.

CHAIR: Do we want to deal with the motion now and then just continue with the time we have?

MR. OSBORNE: I think so.

MR. K. PARSONS: (Inaudible) we are going to get the Clerk to contact them, invite –

MR. OSBORNE: Invite the list of people who were interviewed by the Auditor General, as well as others who may be identified throughout the day.

MR. K. PARSONS: Okay.

Can we review the response from the people who are there so we will know who is coming, so we will not have the same situation that we had today?

MR. OSBORNE: Yes, absolutely.

CHAIR: Ms Murphy can easily confirm the attendance of different people and not necessarily wait until the end. She will say I have such-and-such a person attending, such-and-such a person is attending. We do that fairly regularly when it comes back.

Quite often, departments will say do you want us to send this person. My standard response is we want you to send the person with the information. We do not want to say send this person and that one does not know anything. We want you to send – and clearly we do not have enough individuals today.

MR. K. PARSONS: Have we ever gone back to somebody and said we want this person available for the meetings?

CHAIR: We can do that.

MR. K. PARSONS: Have we done it? We have never done it in the past, though, have we?

CHAIR: We have never identified a specific person. We do not have the power to subpoena them; we need to go out to the House. There might be someone else who might know more information. We have rarely – actually not until this week have we had a situation where we did not get the witnesses that were sufficient.

MR. K. PARSONS: Yes, the first time.

CHAIR: We had to have a second go-round in the forestry diversification with the Roddickton pellet plant, but mostly that was because, I think to a large degree, the witnesses maybe were not prepared. There were issues. We did not get much out of that whole day. Other than that, we have always gotten the witnesses who were able to give us whatever information was available.

MR. OSBORNE: I think there is a general feeling amongst – I just kind of got a nod from my colleagues, both the PC members, myself, and Mr. Murphy. I think we just deal with this now, vote on it, get it done, and get back to business, Mr. Chair.

CHAIR: Does anybody have any further discussion, debate? We will entertain the motion –

MR. MURPHY: I am just wondering, Mr. Chair, about the timeline to taking the vote. I tend to think that while I am seconding the motion, I think that if some other names come up or some other train of thought comes up that perhaps we should leave it to the end. We might be better off doing that for now.

CHAIR: I think that we are more or less in agreement right now.

MR. MURPHY: Yes.

CHAIR: I think we should take the thirty seconds left –

MR. MURPHY: Okay.

CHAIR: – and push it through rather than five minutes to talk about it all over again. If another name comes up, the Clerk can simply add it.

MR. MURPHY: Perfect. Okay.

MR. PEACH: Mr. Chair, didn't you also say at the end that we would add names that would come up today? That would pretty much cover the whole thing anyway.

MR. MURPHY: I did not know if they had to be named or not.

MR. PEACH: No.

CHAIR: Are we ready for the question?

In favour?

SOME HON. MEMBERS: Aye.

CHAIR: Opposed?

Unanimous.

Before we return to Mr. Osborne, does anybody else have any questions or we will get right back into your questioning?

Please continue.

MR. OSBORNE: Thank you, Mr. Chair.

I would like to focus a little now on the performance and labour and material bonds, and

the fact that once the contract was cancelled they provided no guarantee against the contract; that it was no longer in effect. That has been determined already. I think we are all in agreement with that. The department did not pursue the option of calling the Performance Bonds because they felt that it risked Project 1-12 not being completed in 2014 and would have negatively affected Humber Valley Paving.

On that note, I am just wondering, did the minister have anything to say about the fact that the labour and material and the Performance Bond were not going to be called? Was he aware that these bonds would no longer be effective once the contract was cancelled?

MR. GOSSE: I believe he was aware of that.

MR. OSBORNE: Okay.

If the bonds were called, that would have provided protection to suppliers, subcontractors, as well as to the Province. That is presuming that of course the bonding company accepted the fact that the bonds were called.

Why was there not more focus put on the option to call the bonds, ensuring that there would be no additional cost to the Province to retender this as a bundled tender; as well, instead of just focusing on providing protection to Humber Valley Paving, knowing that there were several small companies, large companies as well, but there were several companies, suppliers, subcontractors, that would be adversely effected by not calling the bonds?

MR. GOSSE: Had we called the bond, the only bond that we could call was the Performance Bond. That has nothing to do with the labour and materials bond. The period of limitations under the labour and materials bond had already expired. There was no recourse under that bond in any case. The Performance Bond only protected us to the extent that we discussed earlier this morning.

MR. OSBORNE: You are saying that if the labour and materials bonds had been called that there was no company or supplier, no subcontractor who would have benefited from that?

MR. GOSSE: We, as a department, could not call the labour and materials bond. That was not there for our protection. That was there for the protection, as you suggest, of other suppliers of both materials and labour.

Under the labour and materials bond, there is a 120-day time frame from the time that those suppliers supplied the goods or labour for them to make the claim, and that 120 days had expired. So, for all intents and purposes, the labour and materials bond, whether they had gone back to work or not, was void until more work had started on that project in any case. There was no recourse for someone who had no work the previous November to claim under the labour and materials bond in March or April.

MR. OSBORNE: Okay.

Under the Performance Bond, what was the additional cost, for example, to the Province by retendering and bundling the work that was left uncompleted?

MR. GOSSE: The analysis we have done indicates an extra cost of about \$1.7 million. That included some extra work that was not in the original contract. We think that had the bonding company accepted the claim, the very maximum they would have reimbursed us for was about \$1.25 million.

MR. OSBORNE: Okay.

So there would have been a savings. Now, if you took the additional work out that was not part of the original tender, there would have been a savings of at least \$1.25 million.

MR. GOSSE: About \$1.25 million.

MR. OSBORNE: To the taxpayers of the Province.

MR. GOSSE: Assuming the bonding company had accepted that claim.

MR. OSBORNE: In the aftermath of the decision to terminate the contract, along with the associated release of the bonds, Mr. Coleman acknowledged – Frank Coleman, that is – that he had been a guarantor to the bonds and could

have benefited as a result of the bonds being released. Was the department aware of that?

MR. GOSSE: We were not aware of the guarantors, and are never aware of guarantors on bonds, or if indeed there are guarantors. All we ask for is a bond.

MR. OSBORNE: Okay.

Was the minister aware of –?

MR. GOSSE: I do not know.

MR. OSBORNE: So, we know that Mr. Frank Coleman benefited as a result of the bonds being released, because he was a guarantor. We know that Humber Valley Paving benefited as a result of cancelling the contract, and all of this happened the day before he announced he was going to seek the leadership of the PC Party. Are you aware of the conversation that took place between Minister McGrath and Deputy Minister Meade?

MR. GOSSE: On that morning?

MR. OSBORNE: Yes.

MR. GOSSE: I am aware of the conversation. I was not there, but I am aware of the conversation.

MR. OSBORNE: Okay.

During that conversation I know that Deputy Minister Meade mentioned to the minister, cautioned him that this was a very sensitive issue because of the fact Mr. Coleman was involved and suggested that a briefing note be prepared for Cabinet Secretariat and the Premier's Office.

MR. GOSSE: That is my understanding, yes.

MR. OSBORNE: Minister McGrath said: no, do not prepare a briefing note.

MR. GOSSE: That is my understanding.

MR. OSBORNE: Okay.

So did this not raise any alarms with yourself or any of the other staff within the department?

MR. GOSSE: I am not sure that would have raised any alarms with me. My deputy was in conversation with the minister and took instructions from the minister. I am not sure that an alarm would be the right word. Sensitive, yes; as Deputy Minister Meade indicated, it was a sensitive time.

MR. OSBORNE: Okay.

Even still, we know that at least on one occasion Minister McGrath had shut down the idea of having a briefing note done which would have been something on paper. Are you aware of any other occasions when Minister McGrath would have stopped any action to have information put on paper, analysis put on paper, or any advice put on paper?

MR. GOSSE: In frequent discussions with Minister McGrath, while he was our minister, there were oftentimes that briefings were just verbal.

MR. OSBORNE: That was to avoid having them on paper?

MR. GOSSE: He was just content with verbal briefings. He did not need to see stuff in writing.

MR. OSBORNE: Okay.

I will go back to a question I had asked earlier this morning of Ms Companion. I mean generally speaking, whether it is a direction of the minister or not, public servants through due course and proper carrying out of their duties would ensure that there was information put on paper, analysis would be put on paper, correspondence would be put on paper, even emails back and forth between officials within the department, and none of this happened. Do you have any explanation as to why that did not happen?

MR. GOSSE: There is no explanation for that other than the tight time frame. There was no analysis per se done because time did not permit it.

MR. OSBORNE: Okay. That was on the day that –

MR. GOSSE: The day of.

MR. OSBORNE: On the day of, when in less than four hours the contract was cancelled.

MR. GOSSE: That is correct.

MR. OSBORNE: In the subsequent five to six weeks since that day, and the very first piece of correspondence on this particular topic, there was nothing. Do you yourself have any explanation as to why that would be the case?

MR. GOSSE: I cannot explain why that was the case, Mr. Osborne, I am sorry. It was not done. The decision was already made, so there was no analysis done in retrospect. You cannot do an analysis in retrospect to make a decision when a decision is already made.

Minister McGrath was briefed orally many times. As you know, the House was in session, so there were briefings every day. He was certainly aware of where we were. It was not uncommon for him to do things verbally.

MR. OSBORNE: A deputy minister is appointed by the Premier and answers to the Clerk of Executive Council. The normal course of action for a deputy minister – because what happened here was exceptional. The normal course of action would be for a deputy to inform the Clerk of Executive Council, especially with a situation as sensitive as this. That did not happen.

Just knowing how the process is supposed to work and the obligation – Ms Companion, you are now deputy minister, so you are aware of that obligation to report to the Clerk of Executive Council.

MS COMPANION: Absolutely.

MR. OSBORNE: I am finding it difficult to rationalize why a deputy minister who is obligated to report to the Clerk of Executive Council, who had informed the minister that this was a sensitive issue – the deputy minister knew this was a sensitive issue. Obviously, the minister knew it was a sensitive issue; yet, the deputy did not inform the Clerk of Executive Council or the Premier's Office. Ultimately, the deputy is responsible to the Clerk of Executive

Council and to the Premier. On something so sensitive, why would that integral piece of the puzzle be missing?

MS COMPANION: The only thing I can offer is if the deputy minister would have thought that the Premier's office or the Clerk had been involved in that discussion or had been informed by the minister. In our normal course of business, deputy ministers definitely advise the Clerk of sensitive issues that need to be brought to the attention of the Premier's office.

MR. OSBORNE: Okay.

CHAIR: Mr. Osborne, we should go to a government member.

MR. OSBORNE: Yes, okay. Thank you.

CHAIR: Mr. Parsons.

MR. K. PARSONS: Just continuing with Mr. Osborne's questions there, to the Auditor General, when you interviewed the Deputy Minister of Transportation, he was under the belief that the minister already contacted the Premier's office?

MR. PADDON: I do not think it was a question of contacting the Premier's office. I think the way the report reads, which reflects the discussion with Deputy Meade, was that two discussions between the deputy and the minister occurred outside the Cabinet room. There was a Cabinet meeting that morning.

My understanding is that a deputy met the minister outside the Cabinet room and had the impression that the information, perhaps, was taken back inside the Cabinet room and discussed.

MR. K. PARSONS: He was thinking that was the way everything was communicated that morning then.

MR. PADDON: I mean, I do not want to put words in his mouth, but that was certainly the impression I had from the discussion from that, yes.

MR. K. PARSONS: Okay.

I just want to go back to the question I had about the bonds. Did Humber Valley Paving get any additional money or anything from the bonds? Was any money paid out from bonds at all?

MR. GOSSE: There was no money paid to Humber Valley Paving by releasing bonds. Contrary to popular belief, there was no money involved. A bond is an insurance policy.

MR. K. PARSONS: Okay, because when you listen to the media, listen to reports, and your Open Lines and everything else, you hear about Humber Valley Paving and the \$19 million, but there was no monies –

MR. GOSSE: That is not the case, absolutely not.

MR. K. PARSONS: Okay.

The way the bonds work, like you just said it is an insurance. Half the insurance is for protection of people who are supplying the materials.

MR. GOSSE: If you look at it as an insurance policy, there are two separate policies.

MR. K. PARSONS: Yes.

MR. GOSSE: One to protect us as the owner of the work and one to protect suppliers of goods or services to the general contractor.

MR. K. PARSONS: Okay. The initial time that all this started was back when Humber Valley looked for an extension, that was the first time that the department had any concerns over this particular project?

MR. GOSSE: Even at the time that they asked for the extensions to the project, there was really no concern. There was an acknowledgement on our part that they were frustrated in completing their contract because of the fires. That is why we agreed to the extension into the following year, which would have voided them having to pay penalties for being late finishing.

MR. K. PARSONS: Okay. You had absolutely no knowledge of the financial situation?

MR. GOSSE: Absolutely none.

MR. K. PARSONS: None whatsoever.

MR. GOSSE: No.

MR. K. PARSONS: Okay.

MR. GOSSE: Everything indicated to the contrary.

MR. K. PARSONS: Okay.

When the project started up with the next tender that came out and it was bundled together, there was twenty-eight kilometres done that year? How did that work?

MR. GOSSE: At the time that the report was done I believe there was twenty-eight kilometres out of the sixty finished. By the time the season finished, there was forty-nine kilometres out of the sixty finished. So at the end of last season, even though we had hoped that the paving would be finished, there was eleven kilometres left to pave.

MR. K. PARSONS: Okay.

When the contract as terminated you had legal advice that day from Mr. Jones, right?

MR. GOSSE: Correct.

MR. K. PARSONS: He determined that as long as the two parties agrees to terminate the contract that everything would be –

MR. GOSSE: It is a legitimate and a legal process that two parties can mutually agree to terminate a contract with certain conditions as the two parties choose to have inserted. Our two contingents, of course, was that Humber Valley Paving continue to be responsible for any warranty issues that arose and that they drop any further claims associated with that project.

MR. K. PARSONS: When you determined that and had your meeting then – so the criteria that you looked at then was harm to the company and its employees, and what was the best possible way to complete the project.

MR. GOSSE: Correct.

MR. K. PARSONS: Yourself, the deputy minister, and attorney determined that?

MR. GOSSE: Given the circumstances and the evidence, for want of a better term, that we had, and knowing that the contract had been frustrated by the fires, we felt that this was an appropriate way to proceed.

MR. K. PARSONS: Okay.

When you were in the meeting was it the three of you and the minister, or was it just the three of you?

MR. GOSSE: I do not recall if the minister was there for that meeting. It was mostly myself, Brent, and David Jones who advanced things that day after the minister instructions to do so. We had talked to the minister earlier in the day.

MR. K. PARSONS: Okay.

When you spoke to Minister McGrath, was his major concern to just get the project done?

MR. GOSSE: That seemed to be his focus: get the work done.

MR. K. PARSONS: Okay, and then knowing if you called in the bonds that, to your experience, you would have known that –

MR. GOSSE: It would not be done today.

MR. K. PARSONS: It would not be done today. Did you give him that advice that day?

MR. GOSSE: I think we talked about past experience with bonding companies.

MR. K. PARSONS: Okay.

Is it normal whenever a contract – there must be lots of contracts that need extensions, and then there are different costs related to it. I know when we looked at the bypass road in my area, the costs escalated. Did this cost escalate any from the original tender to at the end? I know there were a couple of change orders on a couple of more tenders.

MR. GOSSE: There were a couple of change orders. In the second contract that we called –

the bundled one, we will call it – there were ere extra conditions that we had put into that contract that were not in the original one.

MR. K. PARSONS: Okay.

There were a total of four tenders that were called, so all of them, other than the one, were completed on time and did not need any extensions?

MR. GOSSE: I cannot say for sure that one or more of the other three did not need extensions, but they were done to our satisfaction.

MR. K. PARSONS: On budget?

MR. GOSSE: No, because there were cost overruns, quantity overruns on each of – many of our projects there are quantity overruns. You do an estimate based on what you know at the time, and frequently – it is kind of like doing renovations on your house. You go in and you are going to replace a bit of Gyproc, and when you tear out the old piece –

MR. K. PARSONS: There is something else –

MR. GOSSE: – there is something you did not know about.

MR. K. PARSONS: Yes, but in this project, the one that we are talking about, Project 1-12, there was 61 per cent of it was completed, and the project's total cost was \$11,805,000 and we had a holdback of \$1.8 million.

MR. GOSSE: Yes.

MR. K. PARSONS: So, the additional money that was there just went on to the next, when you retendered the bundle?

MR. GOSSE: Yes. So, the \$11 million was paid to Humber Valley for the 62 per cent, or 61.8 per cent of the work they had done, and the rest of it was just rolled back into the budget then and went to offset the cost on the new contract. So we had identified the extra \$8 million, give or take, in our budget for the following year anyway.

MR. K. PARSONS: Okay.

I am just going back to the holdback. So everyone that Humber Valley owed money to as a result of this project have been paid?

MR. GOSSE: Everyone that Humber Valley Paving has identified as a legitimate claimant against this project, it is our understanding that they have been paid. There was twenty-five that they identified.

MR. K. PARSONS: Is it Humber Valley that decides that, or is it the Department of Justice?

MR. GOSSE: It was a part of our negotiation between – well, mostly between David Jones and the solicitor for HSBC. One of the terms we had in our agreement with them to release the holdback in trust for HSBC was that they take care of these twenty-five smaller creditors. They were smaller creditors, a little over \$90,000 in total.

MR. K. PARSONS: You say the negotiations. Is that something that is not done? What is the norm?

MR. GOSSE: It is not normal that we get into a situation like this.

MR. K. PARSONS: Okay, but is it normal that when there is a holdback the creditors are the ones who hold the purses and say who gets paid and who do not get paid?

MR. GOSSE: Normally, if there is a claim – I think I am going to let Todd speak to how a mechanics' lien is addressed.

MR. STANLEY: Ordinarily, the person with the holdback for mechanics' liens is just essentially the holder of the funds. They do not get involved in any of the issues between the contractor and their subcontractors in terms of the existence or validity of debts.

The only issue for the person with the holdback is whether or not they receive a notice of a mechanics' lien, how much the mechanics' lien notice is for, and then at the end of the period you would release the difference. So if you had notice of two or three mechanics' liens you would hold enough money to pay those and you would release the remainder to the contractor.

In this case, as Mr. Gosse said, it was pretty unusual. We had a holdback for an extended period of time because Humber Valley Paving had not requested payment. Then when they had requested it, they had not quite requested it in the appropriate manner. HSBC, as the secured creditor for Humber Valley Paving, were the ones making the request for the holdback funds. That is not the normal run of business for this at all. Ordinarily, we would not be involved in any negotiations.

In this point, Mr. Jones was able to negotiate with HSBC. I think the idea may have originated with HSBC to pay off the twenty-five unsecured creditors in exchange for the rest of this matter just flowing, as opposed to there being need for court actions and the like.

MR. K. PARSONS: Was there any legal cost to the small companies that were involved here? I think the suggestion was made earlier that they can contact their solicitors to make claims and whatnot. The legal cost to these companies, was that a part of the adjustment or was it (inaudible)?

MR. STANLEY: There was no adjustment paid or made, or accounting made for the legal costs to anybody outside of – well anybody other than to government. If a small company is owed money by Humber Valley Paving, it is up to that small company to go exercise their remedies to get that money. That is the cost of business of the small companies. We would never step in and start paying people's legal bills.

MR. K. PARSONS: Okay.

MR. STANLEY: Particularly, as Mr. Gosse said, because the labour and materials bond had already expired. There is nothing that we – it had effectively already run its course for work to date, so there was no negative effect to people for our cancellation of that.

The mechanics' lien holdback had been in place. We had only received (inaudible) claim. So there was no one to whom it was perceived we owed any funds to account for legal expenses.

MR. K. PARSONS: Okay.

That is it for my line of questioning, Mr. Chair.

CHAIR: Thank you, Mr. Parsons.

Mr. Murphy.

MR. MURPHY: Thank you very much, Mr. Chair.

I guess I will come back to some of the objectives here, Objective 5. The question would be directed to the Auditor General. At the same time, I guess, Lori Anne Companion might be able to address some of the questions that I will be coming around here with.

Mr. Paddon, in Objective 5, page 3 of the report, it says here, "There is no documentary evidence of undue influence in the decision to mutually terminate the contract related to Project 1-12." While there is nothing there documented on paper, do you feel that under the guides you were given, the scope you were given, under page 12 where you received the information – for example, I am wondering if the scope that you were given gave you permission to look outside of where government resources might have been. For example, instead of government email, was private email looked at, this sort of thing? Did you have the scope to look at that?

MR. PADDON: Had I had the scope – well, I will start by saying we focused on correspondence within government, the email system.

MR. MURPHY: Right.

MR. PADDON: There was no indication in any of that documentation that we saw of anything originating from outside that was indicating undue influence. In the absence of any evidence, I do not know where I would go. Then it just becomes a random exercise of looking at emails.

MR. MURPHY: Yes.

MR. PADDON: You have to have some objective when you start to look outside the government system.

MR. MURPHY: Okay.

MR. PADDON: In the absence of any evidence, we did not go there.

MR. MURPHY: Okay. So it was mainly within whatever would be sheltered under the government umbrella more or less.

MR. PADDON: That is correct, yes.

MR. MURPHY: Okay. So you could not go outside and see, for example, if people were using an outside email address, rci.rogers.com address or something like that, you could not do that, but you could certainly look at emails that would be under the Government of Newfoundland and Labrador heading?

MR. PADDON: That is correct.

MR. MURPHY: Okay.

The question is then to Lori Anne Companion, one of the tools that you would use, obviously, are emails to go back and forth on a communications perspective. Is it a habit of government people who might be working to have an outside email address or anything working to pass along information outside of government email addresses, for example?

MS COMPANION: No, not to my knowledge. Our email and communication for business is all through our government email addresses. Not to my knowledge do any of our employees use personal email addresses for the exchange of government business.

MR. MURPHY: Okay, all right.

The reason why I ask that is because of course there are times when you cannot get communications people through one means and you may have to go through another means to get it.

MS COMPANION: Right.

MR. MURPHY: This seems to be – well, I will put the word crisis on it. I do not know if it was a crisis. I think the Auditor General interprets it as being a crisis that was created by the simple fact that they did not give it enough time to reach a decision. To me, it amounts to that.

So, I would like to know, from a communications perspective then – and right now we do not have the communications people

we want to talk to – if the communications people were talking with you or talking with the Premier's Office on this issue as being a matter of concern in the Premier's Office? Would that have been a concern, the contract on the day of when the communications people would have found out about this?

MS COMPANION: It would have naturally raised some concern, yes.

MR. MURPHY: Okay.

So there would have been an exchange of emails, obviously, between communications people, if not direct phone calls that would have happened between the communications people?

MS COMPANION: I do not know if the communications people were engaged at the time, then that would have raised some issues for them. Whether the communications staff – and I will just ask Gary if communications staff were engaged in the discussions end of the contract.

MR. GOSSE: I do not believe they were on that first day. They certainly became engaged subsequent to the decision to terminate.

MR. MURPHY: On day two they would be.

MR. GOSSE: On day two they were.

MR. MURPHY: Absolutely.

Okay, I guess we will leave that to, if we have that future hearing or not.

Mr. Paddon, I want to come back here again under Objective 5 on page 3. You say here, on the second bullet, "We have not been able to satisfy ourselves why two Ministers, within ½ hour, independently contacted the Deputy Minister of Transportation and Works to enquire about the status of HVP on the morning of March 13, 2014."

In your opinion, obviously the two ministers knew that there was an issue. How would that have been communicated to the two ministers? How would they have found out? How would the other person have found out? Obviously, there was nothing documented so it could only

be done verbally, assuming that there were no email done.

MR. PADDON: I cannot engage in speculation as to how. The facts that I do know is that two ministers contacted the deputy minister that morning within close proximity.

MR. MURPHY: Right.

MR. PADDON: That is a fact.

We did interview both Minister McGrath and Minister O'Brien and asked that question as to what prompted the calls. The answers were, essentially, answers such as: I was hearing rumblings in my district or I was hearing things from maybe people in caucus, that sort of thing, but we could not get any more specific answer than that.

MR. MURPHY: Nothing specific from Mr. O'Brien as regards to where he heard it?

MR. PADDON: No.

MR. MURPHY: Okay, I wonder because it is not his district and he was –

MR. PADDON: Minister O'Brien did make a comment that he was the Minister Responsible for Fire and Emergency Services the year before.

MR. MURPHY: Fire and Emergency Services. Yes, he would have been.

MR. PADDON: When the fires were occurring.

MR. MURPHY: Okay.

The question then to Mr. Gosse: When it comes to Fire and Emergency Services and the knowledge of the fires then, there obviously had to be some sort of concern; would the department, for example, have asked Mr. O'Brien about the impact of these fires at the time on the possibility of disruption to some of the projects that Transportation and Works were undertaking in Labrador at the time?

MR. GOSSE: There would not have been any contact certainly between officials and Minister O'Brien on that. Had there been any concerns, it

would have been from officials to officials with Fire and Emergency Services.

In that particular case there, we did not ask what their option was on it, but we knew what the impact of the fires was. We knew trucks were stopped. We knew camps were evacuated. So our contact, if any, between us and Fire and Emergency Services would have been more to do with the air services side and our air tankers, our water tankers.

MR. MURPHY: Right. So there would have been some concerns that were there but not necessarily, in your purview, where the air services would be separate?

MR. GOSSE: Correct.

MR. MURPHY: Okay.

I am trying to figure out then – obviously there seems to be, between the two ministers then, at the same time, within a half an hour that there was previous knowledge. That there is no doubt, Mr. Paddon, about the two ministers knowing that there was certainly an issue. We just do not know definitively how they heard about there being an issue, in particular, Mr. O'Brien.

MR. PADDON: That is correct.

MR. MURPHY: Okay.

Where did you look? When it came to trying to find evidence of that, if indeed you were looking for evidence of it, where did you look when it came to trying to find evidence?

MR. PADDON: We looked at all emails that went through Minister O'Brien and Minister – well, not just limited to those, but all ministers and all senior civil services who would have had any reasonable contact or anything to do with this particular project. We inquired of the directors of Humber Valley Paving and we inquired of the solicitor for Humber Valley Paving.

MR. MURPHY: Okay.

We do not know, for example, if Mr. O'Brien might have even been informed at a Cabinet-

table setting, or a meeting that both might have been at where this might have come up?

MR. PADDON: I do not know.

MR. MURPHY: Yes. We simply do not know.

You also say here too we have not been able to satisfy ourselves – in the third bullet, I will skip on down. It had to be concluded the day before nominations closed for the leadership of the Progressive Conservative Party of Newfoundland and Labrador. Was this just coincidence?

MR. PADDON: That is a question I cannot answer. Perhaps it was coincidence; perhaps it is not. I do not know. I guess the real issue is: Did it have to be concluded that day?

MR. MURPHY: Right.

MR. PADDON: Once you look in retrospect, and if you accept the issue that bundling was the way to go and arguably it may have been, there was still plenty of time between March 13 and April 27 or the date that –

MR. MURPHY: Thirty-seven days or something.

MR. PADDON: Yes. It did not have to be done that day within four hours. It could have been done the next day or Monday or Tuesday.

MR. MURPHY: Okay. So we are still left with the question what it was that drove Minister McGrath to make the decision that he did. It still seems open ended here.

I will carry on over to questions about the holdback. It may have already been answered. I think, Mr. Gosse, you were addressing this earlier, about twenty-five claims under the Mechanics' Lien Act. There are no outstanding claims now, right? Or do we know?

WITNESS: (Inaudible).

MR. MURPHY: Or Todd, okay.

MR. STANLEY: There was one remaining outstanding mechanics' lien. There was a company that filed a mechanics' lien claim

against Humber Valley Paving in, I believe, June last year: Dallas Mercer Consulting. Humber Valley Paving was contesting that claim in court. So Dallas, the part of the mechanics' lien process is they have to file a notice of the mechanics' lien claim and then they had to start a statement of claim to sue Humber Valley Paving.

That proceeding is still going on; but, as of yesterday, Dallas Mercer Consulting issued a notice of discontinuance against the Crown and the holdback that we still had – we have \$55,000. That comes a result of the Court of Appeal decision in Brook Construction I was talking about this morning.

MR. MURPHY: Yes.

MR. STANLEY: As a result of that Court of Appeal decision, the funds that the Province has actually no longer qualifies under the Mechanics' Lien Act, so they cannot lien it in our hands. So it has taken this long for us to get Dallas Mercer Consulting to agree and acknowledge that and discontinue the action against the money. They are still suing Humber Valley Paving, as I understand it, but the \$55,000 that we have is no longer liened, and as a result the next step will be that we will be paying that money over to HSBC because they have demanded all funds that would otherwise be payable to Humber Valley Paving.

MR. MURPHY: Okay, so now the fight is going to be between Humber Valley Paving and Dallas Mercer?

MR. STANLEY: Yes, for however much they say they are owed.

MR. MURPHY: So government is clear of it right now?

MR. STANLEY: Yes.

MR. MURPHY: Okay.

CHAIR: Mr. Murphy, we should go to a government member now.

MR. MURPHY: Okay.

MR. PEACH: I just have a couple of questions coming out of some of the other questions that were asked. I guess March 13, 2014 is the date that we are looking at here. I am just wondering: In the decision to terminate the contract on that date, was there any discussions with Gene Coleman or anybody else before that date, with regard to cancelling the contract?

MR. GOSSE: There were no discussions on cancelling the contract prior to March 13.

MR. PEACH: There were no discussions at all?

MR. GOSSE: There were discussions on the claim, but not on cancelling the contract.

MR. PEACH: Now, on the roadwork that is being done, you have engineers all the time from the department on site –

MR. GOSSE: Correct.

MR. PEACH: – making sure the work is being done and testing the liquid asphalt that goes down and different things like that.

MR. GOSSE: With the exception of work in Labrador, where we do not have our own employees, we have a consultant retained to look out for our interests for us.

MR. PEACH: Okay, so you did not have any department engineers –

MR. GOSSE: We have actually a consultant that looked after the work.

MR. PEACH: – on site?

MR. GOSSE: Yes.

MR. PEACH: That was my question I was going to ask, so you answered it for me.

I have nothing further, at this point anyway.

CHAIR: Is there another government member who would like to pose some questions?

We will go back to Mr. Osborne.

MR. OSBORNE: Mr. Gosse, in questions to one of the previous members of the Committee

regarding communications, you said on the day the decision was made communications were not involved but they were on the second day. Can you elaborate on that?

MR. GOSSE: I do not recall communications people being involved in our discussions on March 13. They were primarily between the minister and the deputy, and to a certain degree between the minister and the deputy, myself and David Jones, our solicitor, and then between the three executive, being myself, the deputy, and David Jones. I do not recall any communications people being involved on that first day.

MR. OSBORNE: Okay.

On the second day?

MR. GOSSE: On the second day when we did our briefing, as we always do when the House is open, communications people would have been there.

MR. OSBORNE: Okay.

Can you elaborate on what transpired during that briefing?

MR. GOSSE: I do not recall the exact conversations from that day. The briefings from that point onwards were always focused on whatever the issue of the day was. I do not recall specifically that HVP or the cancelling of the contract, when those conversations occurred. I do know that communications people were involved the day after.

MR. OSBORNE: Okay.

Communications were involved the day following, so that would have been –

MR. GOSSE: They were always involved in the briefings.

MR. OSBORNE: So that would have been the fourteenth.

MR. GOSSE: The fourteenth I expect, yes.

MR. OSBORNE: Obviously, communications staff would have had knowledge at that point of

the fact that the contract was cancelled. In fact, it was the very next day that Mr. Coleman had made his intentions known to seek the PC leadership. The fact that it was a sensitive issue, do you recall any of the conversations that had taken place regarding communications?

MR. GOSSE: I do not.

MR. OSBORNE: Okay, but you know they were involved and updated on the issue.

MR. GOSSE: I know that communications people were at the briefings always, and I know we had briefings every day.

MR. OSBORNE: Okay. So there were briefings on the issue.

MR. GOSSE: On any issue that potentially was an issue for the minister to address in the House.

MR. OSBORNE: Okay.

During those briefings, did the issue of Humber Valley Paving come up?

MR. GOSSE: Humber Valley Paving was a frequent topic of discussion and briefings after the thirteenth. Whether or not it was the fourteenth or fifteenth, Mr. Osborne, I could not say. I know once the decision was made, and from the next day onward – well, there were briefings every day. We know Humber Valley Paving and the contract was an issue. I cannot imagine that it was not discussed.

MR. OSBORNE: Okay.

It is pretty standard that ministers have written briefings in preparation for the House.

MR. GOSSE: Written briefings?

MR. OSBORNE: Yes.

MR. GOSSE: It depends on the minister. Some do not want written briefings.

MR. OSBORNE: Okay.

Did Minister McGrath ever have a written briefing for the House?

MR. GOSSE: He preferred verbal/ oral briefings.

MR. OSBORNE: Okay.

I know he preferred those, but did he have any written briefings for the House?

MR. GOSSE: I am not aware that he ever had written briefings. They would have been done more likely through the communications people after our briefings. I am not aware of him having any written briefings.

MR. OSBORNE: Okay.

A question for the Auditor General; the conversations with the two ministers that you had, their testimony that they provided under oath, are you able to elaborate on those conversations any further?

MR. PADDON: Well, it depends on where your question is, I guess.

MR. OSBORNE: Okay.

During those conversations, how long would those conversations have been?

MR. PADDON: I do not recall. Minister McGrath was likely a couple of hours, in that range – I do not know if you can remember, John. Minister O'Brien was probably somewhere between half an hour and forty-five minutes, give or take.

MR. OSBORNE: Okay.

Did you ask either of the two ministers whether or not the issue of Humber Valley Paving on March 13 had been discussed at the Cabinet table?

MR. PADDON: Yes, I did.

MR. OSBORNE: Okay.

Was the issue discussed at the Cabinet table?

MR. PADDON: Not that I am aware of. There was no evidence to suggest it was, so the answer would have been no.

MR. OSBORNE: So both ministers would have said no to that question?

MR. PADDON: I do not recall if I asked Minister O'Brien, but we did ask Minister McGrath.

MR. OSBORNE: Okay.

So he specifically stated that it was not discussed at the Cabinet table?

MR. PADDON: That is correct.

MR. OSBORNE: Okay.

Did they discuss whether or not other Cabinet colleagues were aware of the issue, other than Minister O'Brien?

MR. PADDON: The general thrust of the questioning was what was the impetus for the call to the deputy, or the calls to the deputy? There were no specific individuals indicated as being the source of the information other than a general comment about just hearing things around, we are hearing rumblings, those sorts of things, but no specific names.

MR. OSBORNE: Okay.

Are you prepared to provide to the Committee transcripts of those interviews with the two ministers?

MR. PADDON: We generally do not provide information that is contained in our audit files.

MR. OSBORNE: Okay.

Under this particular circumstance, would you provide those transcripts?

MR. PADDON: I think I would have to take advice on that.

CHAIR: If I may, I actually have reviewed the Auditor General Act and I spoke with the AG about this source of information. Section 21 deals with confidentiality. Even more so, section 22 deals with "Audit working papers of the office shall not be laid before the House of Assembly or a committee of the House of Assembly."

If the Auditor General took the position, as I am certain the people who were interviewed under oath did, their position likely would be that the interviews would constitute working papers, or the same as working papers. Absent a court order, I doubt the Auditor General would be – without some advice from Justice, I think the more appropriate response is to either the consent of the people who were interviewed under oath or an order from the court.

MR. PADDON: Before I answer the question, I would certainly need to seek some advice on this.

MR. OSBORNE: Okay.

Auditor General, you indicate that there is no documentary evidence to indicate what prompted the ministers to call the Deputy Minister of Transportation within a half hour of each other. Outside of documentary evidence, was there any other evidence? Was there verbal evidence? Was there any indication from anybody as to what prompted those calls?

MR. PADDON: The only indication was the discussions I had with each minister, Minister McGrath and Minister O'Brien, and the questions that were put to both of them as to what prompted the calls. The answers were home specific, I guess.

MR. OSBORNE: Okay.

There is no documentary evidence of undue influence. Outside of documentary evidence, did you get any indication – generally speaking, and I think even in your report you outline what constitutes undue influence, I can locate that –

MR. PADDON: Page 53.

MR. OSBORNE: You know your report better than I do.

MR. PADDON: No, it was just luck.

MR. OSBORNE: Undue influence can generally be considered as improper use of power or trust by a person who has authority over somebody who serves under them, I guess, to paraphrase what you have there. Obviously a minister advising a deputy minister not to

prepare a briefing note to Cabinet Secretariat or to the Premier's office would probably be undue influence. Now, that is not documentary but it is

—

MR. PADDON: It would certainly be influence. Whether it is undue, I guess, could be subject of debate. It is certainly influence, whether it is undue or outside the normal course. Deputies, I would argue, have a working relationship with their ministers so there is a dialogue and discussion on a constant basis. It would be sometimes difficult to say whether that is undue. They are taking instructions from a minister, whether that is undue influence or that is just instructions is a nuance really.

MR. OSBORNE: For a deputy minister to know that as part of their duties – part of their responsibility is to inform Cabinet Secretariat or to inform the Premier of sensitive issues. For a minister in that particular case to instruct the deputy minister not to inform Cabinet Secretariat or the Premier's office, in my mind, would probably go a little beyond just influence.

MR. PADDON: That is an instruction as opposed to influence.

MR. OSBORNE: Okay.

MR. PADDON: You have a reporting relationship between a deputy and a minister versus somebody who is not a direct report where sort of the undue influence might come, depending on the nature of the person. It is, I would suggest, a little bit different when you have a reporting relationship between two individuals whether it was influence or just the normal course of the business relationship.

MR. OSBORNE: Okay.

Did you –

MR. PADDON: We would have been looking for, in this particular regard, whether there was any influence from outside the department, essentially.

MR. OSBORNE: Okay.

MR. PADDON: Or outside government.

MR. OSBORNE: There was no documentary evidence of that. Did you get any indication that there may have been?

MR. PADDON: No.

MR. OSBORNE: Okay.

CHAIR: Mr. Osborne, we should go either to a government member or to Mr. Murphy.

MR. K. PARSONS: I just have a question. It is a normal question that I usually ask the Auditor General.

As we heard this morning from the deputy minister, what is your response to the recommendations that you made and the responses that were given to you by the department? Are you satisfied with what they have put in place?

MR. PADDON: Well, certainly based on what I read in the response and Ms Companion's testimony this morning about the process that both the department and the Clerk of the Executive Council have gone through, it would certainly appear that the recommendations are being acted on and being considered and appropriate change, where necessary, is being made.

MR. K. PARSONS: Okay. Perfect. That is all I have.

CHAIR: Mr. Murphy, do you have questions?

MR. MURPHY: Thank you, Mr. Chair.

I guess this question – Todd, might be able to answer this one. As regards to the Humber Valley Paving cancellation of the contract on March 13, just for my own clarity in this particular case, when was the first claim filed against Humber Valley Paving? Filed against the bond, I should say in this particular case, by people who would have been unsecured.

MR. STANLEY: There were no claims filed against the bond, as far as we know, at all. The mechanics' lien claim that was filed, the one by Dallas Mercer Consulting – I think I have the name right.

MR. MURPHY: Yes.

MR. STANLEY: I believe it was filed in June 2014. Humber Valley Paving ceased work around November 2013 so there was an issue and Humber Valley Paving was contesting the validity of the mechanics' lien itself as to whether or not it was a valid lien on the basis that it was filed too late.

MR. MURPHY: Yes.

MR. STANLEY: Whether or not there is an amount owing from Humber Valley Paving to DMC, I am going to call it, that is a separate issue. Whether there is a simple debt between the two of them, they can work that out. The actual claim against the mechanics' lien holdback that we had I think arrived in June 2014.

MR. MURPHY: Okay, so the people then who were making claims against Humber Valley –

MR. STANLEY: Yes.

MR. MURPHY: – it was happening well before March 13. Am I right on that? Mr. Gosse, maybe you –

MR. GOSSE: Yes, there were many phone calls and letters to the department saying that Humber Valley Paving had owed them money. There was no certainty as to what the money was owed for or what project it was related to.

MR. MURPHY: Okay, so you had phone calls from people who were owed money obviously.

MR. GOSSE: We had phone calls and we had correspondence that we received.

MR. MURPHY: You knew that there was an issue then with Humber Valley Paving, right?

MR. GOSSE: Yes.

MR. MURPHY: It is easy to assume that if you have all these people lining up looking for money, either (a) Humber Valley was not addressing the issue, or (b) they were trying to recoup some of their lives too at the time. So, obviously there was an issue here.

MR. GOSSE: There was an issue with claims against Humber Valley Paving, no question.

MR. MURPHY: Right, back in 2013 so –

MR. GOSSE: No, 2014.

MR. MURPHY: In 2014, sorry; I will get it straight one of these days. I keep getting mixed up in years. I keep forgetting how old I am, but anyway needless to say there was an issue previous to March 13?

MR. GOSSE: No.

MR. MURPHY: No?

MR. GOSSE: No. This came into April of 2014.

MR. MURPHY: People were calling – when did they start calling your office expressing that there was an issue?

MR. GOSSE: When it became public knowledge that the contract was cancelled.

MR. MURPHY: Okay.

So it was only from there on –

MR. GOSSE: From there on was when we started getting phone calls and letters.

MR. MURPHY: That is what I was trying to establish, okay.

That was when the communications people obviously would have been all over this and talking and going to whoever they thought they would figure would be their target audience and respected people that would have to know about this.

MR. GOSSE: Correct.

MR. MURPHY: All right, thank you for that.

I wanted to come back to, at the same time, as a bit of a formality and my own knowledge as well, but in number 12 on page 5, under Documentation, it says, in the Auditor General's report: "There was no documentation prepared on March 13, 2014 to support the decision to

terminate the contract between HVP and the Department related to Project 1-12.”

Perhaps you can explain the process – obviously if both mutually agree, it is not necessarily on paper at that particular time, it could be done in a handshake, it could be done in a phone call that they agreed, it could be an exchange of emails; but either way, from there, somebody would obviously be given the go ahead to draw up the appropriate paperwork and everything.

Can you explain to me what the process was that was used to do that? Who would have done that and what kind of formalities, if you will, or what kind of process would have been used to draw up that written decision and how long it took?

MR. GOSSE: The decision I guess, Mr. Murphy, to terminate the contract followed from the 9:15 o’clock, thereabouts, call from Deputy Minister Meade and myself to Eugene Coleman when we were told to contact them and see. The direction was through Deputy Minister Meade at the time – he had me sit in on a phone call, and we frequently do that. We try not to be giving direction or taking instructions on your own, for various reasons.

MR. MURPHY: Yes.

MR. GOSSE: The indication from Mr. Coleman – Eugene Coleman at that time – was that they were not going back to Labrador. They could not go back to Labrador. They wanted to terminate the contract. That was relayed back in the second meeting, as I recall, between Deputy Minister Meade and Minister McGrath at the time, of what Humber Valley’s wishes and desires were.

We knew that there was nothing illegal about mutually agreeing to terminate a contract.

MR. MURPHY: No.

MR. GOSSE: First decision, any illegal, absolutely not. When the minister was aware that we could do that as one of the options that was the option he wanted to pursue.

As I recall, Deputy Minister Meade on that day had an outside appointment in the afternoon. I did the original letter. It was reviewed by David

Jones, our solicitor. We tweaked it, added clauses, crafted it the way that we wanted it to look, and sent it to Deputy Minister Meade for his review.

He approved it. I signed it. Unfortunately, I did not date it because I do not usually sign and date letters. That is usually done by the secretary, the dating part. It is stamped. She was gone and of course it just was not in my mindset to put a date on the letter because it is always stamped.

MR. MURPHY: Was that done the same day?

MR. GOSSE: That was done the same day. That was March 13.

MR. MURPHY: March 13, so that letter would have gone out.

MR. GOSSE: The letter was done and printed by me, signed by me after David’s and Brent’s approval, and sent to Gene Coleman by email.

MR. MURPHY: That was sent to him by email. Did he have to sign anything and return it too (inaudible)?

MR. GOSSE: It was not him, it was signed for the board – it was actually signed by Eugene with the approval of the board of directors.

MR. MURPHY: Okay.

MR. GOSSE: That was not done until March 21 as I recall, eight days later.

MR. MURPHY: On March 21, okay.

MR. STANLEY: Sorry, if I could. Just for clarity, a copy of that letter was included as Appendix 3 in the response that was provided by the department to the Committee.

MR. MURPHY: Yes.

MR. STANLEY: So that one-page letter – or essentially two-page letter – is actually in the materials that were sent.

MR. MURPHY: Yes. We have a copy of the letter. I just wanted to know about the process itself and what had happened over that particular period of time.

MR. GOSSE: That is how the letter came into being.

MR. MURPHY: Sorry?

MR. GOSSE: That is how the letter came into being.

MR. MURPHY: Right. Okay, thanks for that.

MR. GOSSE: The dates were right.

MR. MURPHY: All right. So this was all done by a phone call. Everything was all done within the seven-and-a-half hours?

MR. GOSSE: Their desire was clear; they wanted the contract to be terminated.

MR. MURPHY: It sounds so odd, to me anyway. I am just curious, did the department at that particular time, yourself, or Mr. Meade, or even the minister, suggest that there might have been other options there, that they wanted to talk about it, that you might have wanted a little bit more time to discuss this? Was that option brought up to Humber Valley Paving? Was it so immediate that they had to get out of it then?

MR. GOSSE: I can tell you that the board of directors for Humber Valley Paving were meeting on that day.

MR. MURPHY: Yes.

MR. GOSSE: I can tell you that Eugene Coleman stepped out of that board of directors meeting to take the phone call. So, there was an urgency on their part. I cannot tell you why.

MR. MURPHY: Yes, it is kind of mystifying. Anyway, Humber Valley Paving obviously then had conveyed the message to the minister, and there was no way that the minister could convince Humber Valley Paving that there are other possibilities here – that was just out the window, that was not an option.

MR. GOSSE: I do not know if that discussion was had between them or not, or if those discussions were had.

MR. MURPHY: Okay, and Mr. McGrath is not here to –

MR. GOSSE: His instruction to us was clear.

MR. MURPHY: Get it done –

MR. GOSSE: Do it that day.

MR. MURPHY: – finally, and then get into bundling the other part of the contract, and so it went. Okay.

So in June, 2014, if I can carry on further down here – the same page, page 5, number 18: “In June 2014, the Department estimated an additional cost of approximately \$1.5 million to complete work relating to Project 1-12 - a 20.6% increase in the cost remaining on the Project.”

Why was the cost increased, and what was that particular part of the contract?

MR. GOSSE: On the bundled contract we had a number of different terms and conditions put in there.

MR. MURPHY: Yes.

MR. GOSSE: For one, it was what we call an end-result project. So that left the asphalt design, some of the testing and that, to the contractor, which meant he had to hire a consultant himself. So that was an extra cost to him.

MR. MURPHY: Yes.

MR. GOSSE: We had a different grade of asphalt in the second contract, which was more of a premium grade product. We required them to have what we call a construction safety officer now, and that was a new initiative that we just started last year, or certainly after the original tender for 1-12. That is just so that we can at least try to address our safety concerns on projects.

MR. MURPHY: Okay.

MR. GOSSE: All positive things, in my mind, but they added to the cost of the second one over and above what the first one would have been.

MR. MURPHY: Okay.

Coming over to –

CHAIR: Mr. Murphy, before you begin another area maybe we should go to another member, a government member?

MR. MURPHY: Sure.

MR. PEACH: (Inaudible) looking through the findings here and a question popped to my mind. When Mr. Marshall, then Premier, called the AG to do an investigation into the allegations that were made and tried to determine the dates and when Frank Coleman ran for the leadership, they were saying in all the investigations the AG did, on page 56 there is a sentence there at the end of the paragraph, it says, "There is no evidence to suggest the HVP asked for a decision on March 13, 2014."

In all your investigations that you did, with all the people that you had talked to, there was nothing to show there was any evidence whatsoever that would correspond with the date of March 13, 2014 and to the same time that Frank Coleman was, I guess, trying to become Premier of the Province. Is that right?

MR. PADDON: I guess the point I am making here is that there is no evidence that Humber Valley Paving absolutely had to have a decision on the thirteenth. We did not see any evidence of that. They may have wanted it, but there was no evidence that they wanted it. Certainly, based on the discussions I had with both Frank and Eugene Coleman, there was no indication from them that the decision had to be made on the thirteenth.

MR. PEACH: Okay. In my own mind, I am just reading it and looking at it and I am saying if there was no evidence on March 13 and nothing to correspond with the leadership at that time, then I am just wondering if all the –

MR. PADDON: The evidence is clear that the decision was taken on the thirteenth and it was communicated to the deputy to get it done on the thirteenth from the minister. The only point is we did not see any evidence to suggest that Humber Valley Paving wanted it done that day.

MR. PEACH: Wanted it done, that urgency –

MR. PADDON: Now, they may have, but there was no evidence that is all.

MR. PEACH: Okay, thanks.

That is all I have right now.

CHAIR: Any other government member?

I will go back to Mr. Osborne.

MR. OSBORNE: Thank you.

I have a question for the Auditor General. When you were speaking with the solicitor for Humber Valley Paving to determine the level of contact that Frank Coleman may have had with elected officials of the Progressive Conservative Party or members of the party or departmental officials, the solicitor did not waive the client privilege in that particular instance. Is that correct?

MR. PADDON: That is correct, yes.

MR. OSBORNE: Okay.

In other words, the solicitor for Humber Valley Paving had indicated that they would not share any information?

MR. PADDON: No, that is not quite how I would read it. I would have to think a little bit about what that – perhaps there are some solicitors in the room who could explain it a little better than I could.

As I recall, John, he did answer questions but he did not waive client-solicitor privilege.

CHAIR: Mr. Paddon, are you saying that he said I am not going to tell you what my lawyer told me? I will answer some questions.

MR. PADDON: Hold on now. Mr. Coleman answered questions. We interviewed both Mr. Colemans; Frank and Eugene.

MR. OSBORNE: Okay.

MR. PADDON: We asked the solicitor for Humber Valley Paving a number of questions around contact with government officials or with the Conservative Party.

MR. OSBORNE: I guess just to read the paragraph involved, "We also contacted the

solicitor for HVP to determine the level of contact he may have had with elected officials, Progressive Conservative Party members or Departmental officials. Solicitor-client privilege was not waived in this instance.”

MR. PADDON: Yes. I would have to check just to make absolutely sure, but I do believe the solicitor for Humber Valley Paving did answer our questions but I will check to make sure. I just cannot remember it.

MR. OSBORNE: Okay.

If the solicitor-client privilege was not waived, I would have taken that to mean they invoked solicitor-client privilege. Am I misreading that or –?

MR. PADDON: You may be. There may be a nuance here that I am not, at this point, confident enough to talk about. I will just have to do a little bit of research and get back to you.

MR. OSBORNE: Okay.

I guess a question for Mr. Gosse. During your conversation at 9:15 a.m. between yourself, the deputy minister, and Eugene Coleman there was a feeling that Mr. Coleman did not want the Performance Bond called.

MR. GOSSE: That is correct.

MR. OSBORNE: Can you elaborate on that?

MR. GOSSE: They wanted to mutually terminate the contract without – if we were going to call the bond in, it is not terminating the contract. If you are going to call the bond in you are going to put them in default. By terminating the contract there was an inference that the bonds were going to be released anyway. That was their understanding as well.

MR. OSBORNE: Okay.

As found by the Auditor General, “The criteria of inflicting the least amount of harm to HVP and its employees would require some knowledge of the current financial or operational position of HVP. There is no evidence that the Department sought any documentation regarding HVP’s current position.” Is that true?

MR. GOSSE: We did not ask Humber Valley Paving what their financial position was, no. I am not sure they would have told us had we asked.

MR. OSBORNE: Okay.

Ordinarily – I guess anybody in business, or certainly at the ADM or the deputy level – if a company, such as Humber Valley Paving, had indicated they do not want to go back to Labrador, they want to cancel the contract – they do not want the bonds called; they just want the contract cancelled. Wouldn’t that have raised a great level of concern with the department as to whether or not there were other issues with Humber Valley Paving?

MR. GOSSE: There was no evidence that there was any issue with Humber Valley Paving, as we have said multiple times this morning. The inference was – it was project specific. There was no issue with any of the other projects they had, and no indication there was any issue with any of the other projects or with the company itself. In fact, they had inquired about when the next round of tenders was coming out for the Trans-Labrador Highway.

We knew there were issues with 1-12 because of the fires. We knew they were delayed. We knew they asked for extra time. We knew they were hampered from completing the work the year before because of that.

Knowing what we knew and knowing they were frustrated in completing their contract, we felt that was the reason they were asking. There was no evidence there was any financial difficulty with the company.

MR. OSBORNE: Okay.

The sixty kilometres on Phase I of the Trans-Labrador Highway, that is from Happy Valley-Goose Bay to Labrador West, correct?

MR. GOSSE: That was in that section, correct.

MR. OSBORNE: It was in that section.

MR. GOSSE: That is Phase I.

MR. OSBORNE: There was still several hundred kilometres in Phase II and III between Cartwright Junction and Happy Valley-Goose Bay that had yet to be done.

MR. GOSSE: Correct.

MR. OSBORNE: Okay.

What was the urgency in cancelling the contract as opposed to calling in the bonds, or cancelling the contract to ensure a political commitment that that section of highway would be completed as opposed to looking out for the best interests of the taxpayers and the people of the Province?

MR. GOSSE: I believe that if you look at the big picture, we were looking out to the interests of the taxpayers as well. This was the least-cost option that we could guarantee of getting that work done. Had we called the bond, there was no guarantee – if I was to bet, the bonding company would deny that claim and would be successful in court in denying that claim. Then the interests of the taxpayers of the Province would be gone through the roof. This was the best cost option.

MR. OSBORNE: Was that legal advice that you were provided to say that that bond would likely not be successful in being called?

MR. GOSSE: That was a discussion we had, absolutely.

MR. OSBORNE: A discussion with whom?

MR. GOSSE: With myself and solicitor David Jones for sure. Brent was involved in that discussion as well having dealt with bonds and a bonding company. I will refer back again to the conversation we had this morning, about fourteen months later on a \$200,000 claim we still do not have an answer on, and it is highly unlikely that the bonding company is going to accept that claim.

MR. OSBORNE: I just want to go back to March 13. On March 13, the day the decision was made – not subsequent to that. I am not talking about March 14 or later, but on March 13, the day the decision was made, are you telling me you had legal advice saying that that

bond would likely not be successful if you had called in the bond?

MR. GOSSE: On March 13 there was a discussion and the result was there is a very good chance that we would not be successful in making a claim against the bond.

MR. OSBORNE: Okay.

Now, when you cancelled the contract you put in as part of the condition that the company, Humber Valley Paving, would guarantee the work they had already done.

MR. GOSSE: Correct.

MR. OSBORNE: That guarantee is only as good as Humber Valley Paving is still in operation.

MR. GOSSE: I will say again, the indications were at the time that Humber Valley Paving was still a viable company. We felt, knowing their history, knowing the ethics they applied normally, that we were in good stead and they would stand up to any warranty claims we would have had.

MR. OSBORNE: Okay.

MR. GOSSE: Equally, we put in the clause about you have to drop that claim for the \$2 million because of the fire.

MR. OSBORNE: I am not calling into question your observation of it, but in hindsight – and we all know hindsight, I guess, is twenty-twenty – the fact that the deadline was the following day and that it was very public knowledge that Frank Coleman was going to put his name forward for the leadership of the PC Party, there were no red flags?

MR. GOSSE: My objective and my advice would have still been getting that project finished at the least cost to the Province.

MR. OSBORNE: Okay, but were there red flags, in your opinion?

MR. GOSSE: Concerns, I think, is what we referred to it as earlier today, sensitivities – I do not know that I would call it a red flag. There

were things that people should have been aware of, absolutely; and, to the best of our knowledge, the people who should have been aware were aware.

MR. OSBORNE: Okay.

If government had called the bond – there was a possibility that that bond may have been called and been successful. We do not know that for sure –

MR. GOSSE: We will never know that for sure.

MR. OSBORNE: No, we will never know that, unfortunately, because it was not called. If the bond had been called, knowing there were several hundred kilometres of highway still to be paved on Phase II and Phase III – I know now from speaking to people in Lab West that they are upset at the way this transpired. I am not sure if they would have been more or less upset if that sixty kilometres had not been completed because there was a legitimate reason, the company defaulted on the contract and government called in the bond and waited for that process to unfold.

MR. GOSSE: My experience with that is people have very short memories when it comes to having sixty kilometres of gravel road in the middle of nowhere. Three years out, when you are still fighting in the court system about having it done, people's memories will be short.

It also makes it very challenging for maintenance when you are trying to maintain an isolated section of gravel road on what is predominately a paved road. There were other issues that would have evolved from not having that done as well, not only from a goods and people transport and comfort perspective but from a maintenance perspective.

MR. OSBORNE: Okay.

So all of this analysis was done on the thirteenth?

MR. GOSSE: The analysis that we did on the thirteenth, I have gone through on at least two occasions now today and I looked at each of the criteria, the cost of completing the work and the

impact on Humber Valley Paving, and each of the four options that we had available to us.

MR. OSBORNE: Can you honestly say that there was full due diligence on March 13 in investigating whether or not there were better options than what was carried out?

MR. GOSSE: I can say that we did the best we could, given the time frame that we had. Had we had more time, we may have analyzed it a little more. I do not know that the recommendation would have been any different, if you call it a recommendation. I do not know that the outcome would have been any different. I still think that what was done was the best alternative.

MR. OSBORNE: Okay.

What else transpired during the discussion at 9:15 a.m. on March 13 between yourself, the deputy, and Eugene Coleman?

MR. GOSSE: Well, from that phone call we got the indication from Gene Coleman that they wanted to terminate the contract. Once we confirmed with the minister that that was the way he wanted to proceed, well then the rest of it was crafting that letter and making sure that we got in the conditions that we needed to protect us as much as we could.

MR. OSBORNE: Okay.

Now when you say protect us, you mean protect the Province –

MR. GOSSE: Protect the Province.

MR. OSBORNE: – and the taxpayers.

MR. GOSSE: Eliminating any future possibility of claims against the department or government for the forest fires – for that \$2 million that they kept talking about.

MR. OSBORNE: Knowing the urgency to cancel the contract, both by the minister and by Humber Valley Paving, the two conditions that were in the letter – one was the guarantee of the work and the other was no claims against the fire.

MR. GOSSE: Correct.

MR. OSBORNE: There were other claims that were still in dispute with the department. Why were those claims not a part of that letter, knowing that there was an urgency?

MR. GOSSE: Those other two claims were not in relation to this project. This was project specific. The other two claims were on two separate projects entirely. They were still on the TLH, but two separate contracts.

MR. OSBORNE: Okay.

You indicated that Humber Valley Paving was inquiring about other work on the Trans-Labrador Highway when those tenders would come out.

MR. GOSSE: Correct.

MR. OSBORNE: So is it customary for government to entertain another tender proposal from a contractor who just basically defaulted on roadwork on the same highway?

MR. GOSSE: I cannot say it is customary because it had not happened before.

MR. OSBORNE: Okay.

Has the Province ever called in a bond on another contract before?

MR. GOSSE: We have, most recently fourteen months ago. We still have not got an answer.

MR. OSBORNE: Okay.

CHAIR: Mr. Osborne, we would move to a government member or to Mr. Murphy.

MR. OSBORNE: Thank you.

CHAIR: Mr. Murphy.

MR. MURPHY: Thank you, Mr. Chair.

I have a question of clarification here. Mr. Gosse, earlier we were talking about you having a meeting with Eugene Coleman and they wanted out.

MR. GOSSE: Correct.

MR. MURPHY: No ifs, ands, or buts. March 13 that happened.

MR. GOSSE: That call at 9:15 a.m. that we made to them, they made it clear.

MR. MURPHY: That was at 9:15 a.m. So they were perfectly clear that they wanted out and it was mutually agreed that you would proceed to cancel the contract.

MR. GOSSE: Not at that point.

MR. MURPHY: Not at that point?

MR. GOSSE: At 9:15 a.m. they made it clear that they were not going back to Labrador and they wanted out of the contract.

MR. MURPHY: Okay.

MR. GOSSE: Deputy Minister Meade then went back to Minister McGrath at the time to advise him of what the result of that conversation was. That is when we pursued the option of mutually terminating the contract.

MR. MURPHY: Okay. So it was first suggested at the department to do that mutually? I am just trying to establish –

MR. GOSSE: They wanted out. They wanted the contract cancelled.

MR. MURPHY: They wanted out –

MR. GOSSE: So then the second party, when they say yes, we will do it, that is a mutual agreement.

MR. MURPHY: Okay.

MR. GOSSE: Humber Valley Paving at the 9:15 a.m. call were the ones who made it very clear they could not go back to Labrador and they wanted out of the contract.

MR. MURPHY: He was called out of the meeting of the board of directors and that is when he –

MR. GOSSE: He stepped out of the meeting for the board of directors and took that call.

MR. MURPHY: He stepped out – okay, so a question then for Mr. Paddon. Mr. Paddon, you mentioned that you had talked to Gene Coleman and to Frank Coleman and they were not in any rush to get out of the contract. Am I right on that?

MR. PADDON: No, I am not quite sure I would characterize it like that.

MR. MURPHY: Well no, not like that. I am trying to find my words here.

MR. PADDON: There was no indication from them that they needed it dealt with that day.

MR. MURPHY: Did they give you any indication that they could have waited?

MR. PADDON: That they could not wait?

MR. MURPHY: That they could have waited a little bit longer for the termination of the contract.

MR. PADDON: That was the indication from them, that they did not need it that day. Clearly, I think they wanted it dealt with.

MR. MURPHY: Okay, but they were not in a rush at that particular time?

MR. PADDON: That was the indication from them, yes.

MR. MURPHY: That was the indication from them. We have a contrary opinion from Mr. Gosse that they wanted out on that particular day. What day was it that you had talked to Frank Coleman and Eugene Coleman on that?

MR. PADDON: What day?

MR. MURPHY: It was obviously sometime after when you started your investigation.

MR. PADDON: Today that is –

MR. MURPHY: That was on – right?

MR. PADDON: I spoke to the Colemans on August 5.

MR. MURPHY: Yes, so it is sometime after obviously and there is a differing opinion that is coming from Mr. Coleman on exactly when they wanted out. We hear from Mr. Gosse that they wanted out on March 13 and that was it. We hear from your report that they were not in a rush to do it. Am I right in saying that?

MR. PADDON: No, I would not say that they were not in a rush. Then you have to define what rush means.

MR. MURPHY: Well, it did not have to be done right away. It could have waited until next week or if the department –

MR. PADDON: That was certainly the indication we got from the Colemans, yes.

MR. MURPHY: So there was more than enough indication here that the department – or the minister, I should say, could have taken some more time to arrive at his decision. There is more than enough evidence here to say – my interpretation – that he could have taken his time in exploring other options.

MR. GOSSE: There was a phone call from Gene Coleman to me that afternoon asking if we were getting the letter today. So that was reaffirming their sense of urgency to have that done that day.

MR. MURPHY: Okay.

So they had a sense of urgency then, but then we were getting – I am getting the feeling from Mr. Paddon's report and from his interview that they were not in an immediate rush. I will use that term, immediate rush. They could have waited some time and that probably would have freed up the minister to explore the other options.

MR. GOSSE: That was not the indication at 9:15 and it was not the indication when he asked me if we were getting the letter today.

MR. MURPHY: Okay; and the minister was at that meeting that you referred to?

MR. GOSSE: He was not at the phone call.

MR. MURPHY: He was not at the phone call. How did you get that message to Minister McGrath that they wanted to get out of that contract right away?

MR. GOSSE: That was relayed by Deputy Minister Meade when he went back for the second meeting with Minister McGrath outside the Cabinet room.

MR. MURPHY: Okay, all right.

I am just trying to corroborate what had happened in the investigation process of the report versus what is happening here. I am still seeing some difference here – I do not know if it is just me or not – having to do with that particular fact. Let me get my thought together on this one.

Do we have any other further supporting evidence that – did they exchange writing with you or anything like that saying we were not in a rush to do this? It was just the verbal interview that you had?

MR. PADDON: (Inaudible).

MR. MURPHY: Mr. Paddon.

MR. PADDON: Just the interview, yes.

MR. MURPHY: Just the interview, yes, okay.

MR. PADDON: Or two interviews.

MR. MURPHY: Right. Okay, thanks.

Mr. Gosse, so we can safely assume from what you are saying that they wanted out right away?

MR. GOSSE: They wanted out that day.

MR. MURPHY: Okay.

MR. GOSSE: Again, surmising on my part, and knowing they were having their board of directors meeting, they wanted it for the board of directors.

MR. MURPHY: Yes.

MR. GOSSE: Even though they did not countersign on the agreement until eight days later.

MR. MURPHY: Are we aware of who is on the board of directors of Humber Valley Paving? We are aware of that?

MR. GOSSE: I am not aware of that.

MR. MURPHY: I am just wondering as regards to the decision they might have come to, and obviously – well, they are not here to answer the questions as regards to that either. We have a little bit of a hole here I think that we would have liked to have asked Humber Valley Paving, even some of the questions on this, or even the minister as regards to what he might have heard. Okay, I will leave that for now, but it is in the back of my mind here on that.

I will come back to the report again. On page – lots of questions – Effect of Urgency. Again, this part of it jumps out at me. In section 25(a) on page 6, “The option of assigning the contract for Project 1-12 to a third party contractor for completion. While this would be a business-to-business arrangement outside the control of the Department, there is no evidence that HVP was asked if this is an option they could pursue.” Again you said they wanted immediately out of it, but were they asked?

MR. GOSSE: To assign?

MR. MURPHY: Yes.

MR. GOSSE: They were not.

MR. MURPHY: They were not?

MR. GOSSE: No.

MR. MURPHY: Why weren't they asked?

MR. GOSSE: We feel that it is not something we would initiate as a department in any case. That project was so far advanced that it was not viable for another company to jump in and do what was left that the contract (inaudible).

MR. MURPHY: Understandable because of geography, that sort of thing, and the cost and everything.

MR. GOSSE: Yes. It just was not a viable solution.

MR. MURPHY: I can understand where you came from on that. Okay.

MR. GOSSE: Had that happened at the very beginning of the contract, well then there is some liability to it, but not at the stage it was at.

MR. MURPHY: All right.

Mr. Chair, at this present time I do not have any further questions. I will say that loosely. I know there are plenty of other questions that I think we need the other witnesses for, if we can get them. I have nothing right now, at least for the next five minutes anyway.

CHAIR: That being the case, we should take the afternoon break. We started at 1:30 p.m. so we have been going for a while. How about 3:30 p.m.? We will be finished by 4:30 p.m., or do we want to go longer?

MR. MURPHY: No, I think we can probably be done at least today by 4:30 p.m., but all of it is going to be contingent of course on calling (inaudible).

CHAIR: Yes, we do not need to, but the witnesses may be planning their lives. They might like to know.

MR. MURPHY: Yes, there is nothing else we can do today based on the witnesses.

CHAIR: So not past 4:30 p.m. in any event?

MR. MURPHY: Yes.

CHAIR: If we conclude earlier, so be it.

MR. MURPHY: Okay.

CHAIR: Okay, we will return at 3:30 p.m.

Recess

CHAIR: We are not on video we are on audio. That is probably better. It means you can do anything you want, you just cannot say too much.

Before we broke, Mr. Murphy was concluding. The Auditor General advised us that he has a follow-up on the question about solicitor-client privilege that Mr. Osborne had. So I will let the Auditor General resolve that or provide that information, then go to a government member, and then to Mr. Osborne.

Mr. Paddon.

MR. PADDON: Thank you, Mr. Chair.

What I will indicate now is my accountant's explanation of solicitor-client privilege or certainly in the context here. We did pose a series of questions to the solicitor for Humber Valley Paving. The solicitor did respond to those questions, and in responding to those questions indicated that the response to those questions did not constitute a waiver of solicitor-client privilege.

Really, in my understanding he is saying, fair enough, I am answering these specific questions but by answering these questions does not constitute a broader waiver of solicitor-client privilege. So that was why we specifically indicated it in the report that it was not waived, but they did answer the questions.

The only response that piqued our curiosity or that was at odds with anything else is outlined on page 38, in the middle, where the solicitor indicated he had spoken to Mr. Gosse the day before on March 12, and the solicitor had indicated it was about not returning to Labrador. We had indicated that we followed up with Mr. Gosse, and Mr. Gosse had indicated that his recollection was, it was a conversation about claims. That is outlined in the report.

CHAIR: We can next go to a government member, if a government member has questions.

We will go to Mr. Murphy.

No, we finished with Mr. Murphy. We will go to Mr. Osborne now.

MR. OSBORNE: Thank you.

I was not going to argue with you, Mr. Chair, but I knew the difference.

Mr. Gosse has been indicating that Humber Valley Paving wanted out of the contract and that that was evident at the 9:15 a.m. meeting that day – just on a line of questioning that the Member for St. John’s East had a few moments ago.

In the Auditor General’s findings: “HVP raised the possibility of additional compensation to allow them to return to Labrador in 2014.” There is a contradiction there. “Additional compensation could be provided if the Department was prepared to accept a legitimate claim by HVP related to any additional costs incurred on any of the projects.”

A further observation by the Auditor General: “There was no evaluation or discussion with HVP as to the amount of additional resources it may have taken to allow them to return.” I wanted to point out that just for the record, Mr. Chair. It is not just the Member for St. John’s East, but I, myself, see that as somewhat contradictory. I did not have a question on it; I just wanted to raise the point so that it is on record.

There was no single option that could satisfy all three decision drivers as found by the Auditor General. They go on to say, “In fact, in our view, none of the options available to the Department could provide certainty that the remaining work on Project 1-12 would be completed on time” which was Minister McGrath’s primary consideration.

If we go to 11:30 a.m. that day, “the Deputy Minister of Transportation and Works met with Minister McGrath outside the Cabinet room to brief him on the discussions and evaluation conducted by Departmental officials throughout the morning.” I still find it very odd that departmental officials had conducted evaluations, but there was nothing in writing other than verbal.

I am going to ask Mr. Gosse: Were you a part of the decision to cancel the contract with Humber Valley Paving? Was that your recommendation to the minister?

MR. GOSSE: We did not make a recommendation on how to proceed, as I recall. We outlined the options and likely repercussions

from each, and the minister made the decision to terminate carry on.

MR. OSBORNE: Okay.

It certainly appears that Deputy Minister Meade was concerned with the decision of the minister. To your knowledge, did Deputy Minister Meade agree with the decision of the minister outside the Cabinet room or was he simply taking direction?

MR. GOSSE: I believe he took direction, knowing the minister had the authority to be able to do that and that there was nothing illegal about doing what we did.

MR. OSBORNE: Okay.

You stated in an answer to Mr. Murphy during his questioning, and I will quote, I wrote down what you had said: When we made the decision to cancel the contract based on the 9:15 a.m. telephone meeting.

That 9:15 a.m. telephone meeting was prior to Deputy Minister Meade approaching the minister outside the Cabinet room. So was there a decision made as a result of the 9:15 a.m. meeting or was it direction from the minister?

MR. GOSSE: From the 9:15 a.m. call, we got feedback from Humber Valley Paving of what they wanted.

The instruction for the 9:15 a.m. call from the minister was to call them and see what is up, basically. We did that – we being myself and Brent. I do not believe David Jones was at that first call. We got an indication from Humber Valley Paving of what they wanted. They were not going back to Labrador. They wanted to terminate. That went back to the minister indicating what the results of that conversation were.

MR. OSBORNE: Okay.

What did you mean when you said: when we? I take “we” as collective.

MR. GOSSE: Collective we, as a department.

MR. OSBORNE: Okay.

So was it the minister's decision or was it the department's decision?

MR. GOSSE: At the end of the day, I guess it was the department's decision under the minister's direction.

MR. OSBORNE: Okay, but was it clearly the minister's decision?

MR. GOSSE: The minister – and I think it is noted in the Auditor General's report here, the minister told Brent to just get it done. Get it done today.

MR. OSBORNE: Okay.

MR. GOSSE: So it was the minister's direction. Had there been any reason for us not to proceed in that direction, such as any legalities or the minister did not have any authority to give that direction, then it would have stopped there. There certainly would have been more discussion.

The minister gave the direction to proceed in that direction.

MR. OSBORNE: The deputy minister was given instructions by the minister that reinforced his earlier instruction to deal with the termination of the contract that day. There was no supportable reason for the urgency for that decision. There was no supportable evidence or reasons provided for that decision to be made.

I am just trying to get to the root. I know there was an urgency. I know it had to be done that day. That has been documented. It is a finding of the Auditor General.

Was it clear at the 9:15 a.m. meeting that the contract would be cancelled that day?

MR. GOSSE: No. At the 9:15 a.m. we made no commitments to Humber Valley Paving. At 9:15 a.m. we collected information from Humber Valley Paving to see what they wanted, what was their expectation, what were they asking.

So that was the information we got from the 9:15 a.m. call. That was the initial call to Humber Valley Paving that day.

MR. OSBORNE: Okay.

When was Humber Valley Paving informed of the decision?

MR. GOSSE: I am going to say sometime shortly after noon, early afternoon.

MR. OSBORNE: Okay.

So they would have been informed shortly after noon and at 2:30 p.m. that day you got a call from Eugene Coleman wondering if they were going to get the letter that day.

MR. GOSSE: It was in the afternoon. I do not know if it was 2:30 p.m. or not. It was in the afternoon that Eugene Coleman called and said: Are we getting our letter today?

MR. OSBORNE: I apologize; I thought you said it was 2:30 p.m. in your earlier response.

MR. GOSSE: No, it was in the afternoon.

MR. OSBORNE: Okay.

That afternoon he called, within two hours or two-and-a-half hours of receiving the news that the contract would be cancelled.

MR. GOSSE: I do not recall the time, Mr. Osborne. I know it was in the afternoon. He called and said: Are we getting our letter today? He asked a question.

MR. OSBORNE: Okay.

I mean, there was certainly an urgency there on Humber Valley Paving's part as well.

MR. GOSSE: There is absolutely no question there was urgency on their part.

MR. OSBORNE: Okay.

Do contractors generally influence the decision of the department as a result of the urgency that they were putting forward?

MR. GOSSE: It would depend on what the issue was. If there was an issue that we could address and avoid a delay, then absolutely we would consider it to be urgent. We deal with

contracts every day; we know what is urgent and what is not. There are some things that you can address quickly.

MR. OSBORNE: How much of a role do you believe that Humber Valley Paving themselves as a result of the 9:15 a.m. call, the sense of urgency that they had placed on this – how much of a role did that play in the decision having to be made that day?

MR. GOSSE: They certainly made it very clear to myself and Deputy Meade that it was urgent and needed to be addressed. I do not know if they had contacted anybody else to express the urgency to them or not. They did let us know very clearly that it was urgent; they needed an answer.

MR. OSBORNE: Were you prompted to act sooner because of the urgency relayed by Humber Valley Paving?

MR. GOSSE: To act or to terminate – anytime anybody expresses an urgency with anything, we act quickly. That does not mean that you make rash decisions or make a decision right away. You always act as soon as you need to, but that does not mean that a decision is made immediately that may not be the right one.

MR. OSBORNE: Okay, but the decision made on March 13, I believe, was a rash decision. It was made very quickly without all of the due diligence required. So this is sort of what I am getting at. I mean, obviously Humber Valley Paving played a role in the urgency behind the decision that had to be made.

MR. GOSSE: They certainly expressed the urgency to us and the urgency was relayed back to us by the minister in his instructions to get it done that day, so we were getting urgency from two directions.

MR. OSBORNE: Okay.

Is it commonplace for officials within the department, upon getting a call from a contractor, to act urgently and to do something such as terminating a contract, in the case of Humber Valley Paving – is it commonplace for officials within the department to act this quickly?

MR. GOSSE: Officials in the department always act quickly. I will say again, you act quickly, you start analyzing and you look at your options, what is the real issue. It does not mean that you have to respond quickly. We always act quickly.

MR. OSBORNE: Okay.

MR. GOSSE: We do not let stuff sit on the corners of desks.

MR. OSBORNE: Okay, then let me rephrase then. Is it commonplace for officials within the department to respond in such a way that they responded to Humber Valley Paving with such urgency at the beckoning of the company?

MR. GOSSE: It is not commonplace that we terminate contracts. It is commonplace that officials respond to calls from contractors. We have contracts. We have obligations with them. We have an obligation to make sure that they are not frustrated in any way or delayed in any way from completing the work that we expect them to do.

MR. OSBORNE: Okay.

MR. GOSSE: Once we are seen as delaying a contractor, well then he is open to making claims against us for delays, which is not a very wise use of taxpayers' money either.

MR. OSBORNE: No, but I would put forth that – I mean, the findings of the Auditor General's report were that this decision was made very hastily without due diligence, without all of the homework done, without all of the i's dotted or the t's crossed, without even a piece of correspondence for a full five weeks after the decision was made.

Is there a concern in the department? Should we be concerned that officials within the department make these types of decisions when a contractor calls and says we need a decision made today?

MR. GOSSE: You cannot categorically answer that question as a definite yes or a definite no. It depends on the situation.

MR. OSBORNE: That would cause me great concern, if decisions were being made like this.

This one has obviously become a very public issue. It was the issue of an Auditor General review. It is the issue of a Public Accounts Committee review.

MR. GOSSE: That is why I am trying to say, Mr. Osborne, that it depends on the situation. It could be as simple as extending the completion date for a contract by a week. That could be an urgent issue for a contractor on a particular day.

Terminating a contract is not a common occurrence. Since this happened, as Deputy Minister Companion said this morning, we have put policies in place to ensure that this does not happen again. We have followed through and done everything, met every recommendation that the AG has made on this file.

MR. OSBORNE: Okay.

Knowing that cancelling a contract is not a common occurrence – you were getting pressure from the company, you were getting pressure from the minister. Knowing that this is not a common occurrence and knowing that there were sensitivities, why was there not more due diligence performed on this particular decision?

MR. GOSSE: I think we did our due diligence the best we could, given the time frame we had to deal with it.

MR. OSBORNE: Why were you forced to make the decision in such a short time frame then?

MR. GOSSE: That was the direction we were given by the minister: Do it today.

MR. OSBORNE: Also, the company.

MR. GOSSE: That was the direction given by the minister: Do it today.

MR. OSBORNE: Okay.

CHAIR: Mr. Osborne, we should go to another member.

MR. OSBORNE: Thank you.

CHAIR: Does a government member have questions?

MR. PEACH: I have one coming out of the discussions that Mr. Osborne made. I am just wondering, when the decision was made to cancel the contract and they said that they did not want to go back to Labrador, was that based on probably the discussions that you had with them or the department had with them with regard to not absorbing the costs, the overrun costs of the \$2 million – was that part of the reason why they did not go back?

MR. GOSSE: I do not know if that is why they did not go back or not, Mr. Peach. I know that they did say or indicate that it was a drain financially – the delays because of the fires hurt them financially on that project. Whether or not we had agreed to – they never ever submitted a claim on that project.

MR. PEACH: No, they discussed it with the department.

MR. GOSSE: They discussed it with me. They broached it initially in February, they broached it with the minister around the same time, and they mentioned the same figure to both of us: \$2 million. After I had the call, I went out to spoke to Minister McGrath at the time and his comment was that was interesting; and then he described the meeting where, paraphrasing, he felt that he was kind of ambushed at the airport in Goose Bay. The \$2 million was the same figure that Eugene mentioned to him that he talked to me about.

That was in February and there was no other mention of that until March 12 when their solicitor, Ray Connors, called me, and then there is a differing opinion of what my recollection of that call was and what Mr. Connors told the Auditor General.

My recollection of that call was solely to do with the delays and the claim; no discussion on cancelling contracts. I can tell you what time of the day it was; it was lunchtime. I remember the call.

MR. PEACH: I am good. I just wanted clarification on that; that is all.

CHAIR: Mr. Murphy.

MR. MURPHY: Thank you, Mr. Chair.

Mr. Gosse, I have to come back to the 9:15 a.m. meeting again. You mentioned a sense of urgency in cancelling the contract, so everything was all set to go, to progress down that road towards cancelling of the contract. Is a phone call all the department needs in order to cancel a contract, or wouldn't they want to get something in writing that stipulates that the contract is wanting to be cancelled here now by a particular party?

MR. GOSSE: To initiate that process, no. The phone call was the phone call; that was the direction: Call them to see what their issue was. We called them at 9:15 a.m., found out what their issue was or what direction they wanted to go in, and back to the minister for direction from him.

In writing – I mean, they countersigned the letter that we sent to them with the terms on the termination. That was the only piece in writing. It was our letter, offering on these conditions and their countersigning, accepting those conditions. That was it.

MR. MURPHY: Okay, but nothing stipulating that they would have to sign something that says we want out, bang, that was it.

MR. GOSSE: No.

MR. MURPHY: Okay.

MR. GOSSE: Well, the fact that they signed this proposal was an indication that they wanted out.

MR. MURPHY: Okay.

For clarification again, at the 9:15 a.m. meeting there is yourself, Eugene Coleman on the phone because he just came out of the board of directors meeting, Mr. Meade, and Mr. McGrath. Correct?

MR. GOSSE: No, Mr. McGrath was outside the Cabinet room.

MR. MURPHY: He was outside the Cabinet room.

MR. GOSSE: Minister McGrath called Deputy Meade to come down to the Cabinet room.

MR. MURPHY: Right. Okay.

MR. GOSSE: He gave him instructions to go back and call Humber Valley Paving to see what their issue was. Something was up.

MR. MURPHY: Okay, so there was a Cabinet meeting that was already ongoing and Mr. McGrath got called out?

MR. GOSSE: Correct.

MR. MURPHY: Okay.

MR. GOSSE: Mr. McGrath stepped out. Mr. McGrath called Deputy Meade and stepped out of the Cabinet meeting to have that discussion with Deputy Meade.

MR. MURPHY: So my interpretation of that would be that it is not a normal process to have to just simply walk out of a Cabinet meeting for – well other than using the bathroom, I cannot see why you would not be called out, unless it was an emergency, right?

MR. GOSSE: Well he was not called out, he stepped out.

MR. MURPHY: He stepped out.

MR. GOSSE: He called Deputy Meade, asked him to come down, and he stepped out of the Cabinet meeting.

MR. MURPHY: Okay.

MR. GOSSE: So the inference for us was that it was a discussion that was occurring.

MR. MURPHY: You think that there was a discussion occurring around the Cabinet table around this issue?

MR. GOSSE: That was our inference, Mr. Murphy.

MR. MURPHY: That would be your inference.

MR. GOSSE: Indications are now that it was not discussed at the Cabinet table.

MR. MURPHY: Okay.

MR. GOSSE: The fact that he called, stepped out of a Cabinet meeting, had that discussion and went back in, and then stepped out again later to give us direction –

MR. MURPHY: Right, would certainly point –

MR. GOSSE: The assumption was that –

MR. MURPHY: – that it was discussed at the Cabinet table at that particular time.

MR. GOSSE: It was discussed and people were aware.

MR. MURPHY: If people look at the evidence from what you just said, then it can be assumed by everybody that, yes, it was brought up at the Cabinet level.

MR. GOSSE: I think Mr. Paddon also says in his report that was a reasonable assumption to make at the time.

MR. MURPHY: That was a reasonable assumption to make.

MR. GOSSE: Obviously not the right assumption, but it was a reasonable one at the time.

MR. MURPHY: Yes, and I guess it is what it is.

I am just wondering here too now on a different line; the Minister of Transportation and Works at the time, Mr. McGrath, told reporters at that time that he had negotiated personally with Gene Coleman. He was out there in the public as saying that.

I have to come back to that at the same time because it was all regarding HVP being let out of the contract. Yet the former owner of the company – Mr. Coleman at the time – told reporters that company representatives dealt with officials and their legal counsels to reach a conclusion.

So we have two divergent opinions here, or two divergent comments. We have Minister McGrath saying that he personally negotiated, which would probably be unusual, given the facts, and we have you saying that of course,

there was another meeting. I wonder if you can quantify that or explain that.

MR. GOSSE: There is no way that I confirm that there was a negotiation between Minister McGrath and anybody from Humber Valley Paving. The discussions on that day happened between myself and Deputy Minister Meade, and Eugene Coleman, and nobody else from Humber Valley Paving.

MR. MURPHY: Okay.

Can you explain the nature of all the conversations that the company had with MHAs? Obviously you cannot, right?

MR. GOSSE: I cannot.

MR. MURPHY: I guess I will read out the question: Can you explain the nature of all the conversations that the company had with MHAs and government officials leading up to the abrupt cancellation of the contract? I think that you have already done that, so I am just rehashing some of these notes that I still have on this to make sure they are covered.

Yes, that is about it. I still have to come back to the briefing note, too, on the basis of why that briefing note was not written. Again, was that because the minister explicitly said that he did not want a briefing note written, or did he come out and say no, I have already talked to Cabinet about this, so you do not have to write a briefing note?

MR. GOSSE: He did not have that discussion with me. Brent, when Brent is available, or when it is reconvened again, may be able to answer that question.

MR. MURPHY: Okay.

MR. GOSSE: I do not know how that transpired.

MR. MURPHY: Ms Companion, that would not have been in your purview at the time, or would it?

WITNESS: (Inaudible.)

MR. MURPHY: Okay, so we do not know if it was one or the other, at the same time.

MR. GOSSE: I do not know.

MR. MURPHY: Mr. Chair, that is all I have right now, considering that we have to talk to witnesses on this. I think that is probably about it for now.

CHAIR: Would a government member like to ask any questions?

I will go back to Mr. Osborne.

MR. OSBORNE: Thank you.

I am going to go back to the fact that the tender call for the subsequent bundled roadwork in Labrador under Project 7-14 was not made until April 19, 2014. I am reading directly from the Auditor General's report: "Based upon this, there was no urgency to conduct the analysis and reach a decision on March 13, 2014. Sufficient time existed to allow for a broader evaluation and consideration of the issues."

Mr. Gosse, you have defended the decision that was made on March 13 here today. Do you personally agree with the decision? Let me rephrase that: Do you personally agree with having made the decision on March 13?

MR. GOSSE: I do not necessarily think that it needed to be made on March 13. I do not think the decision, had we waited until March 23, would have been any different.

MR. OSBORNE: Okay.

MR. GOSSE: I do not think we would have come to a different conclusion. The fact that we did not actually call tenders until sometime in April, it did not mean we could wait until April to make that decision. It took us three to four weeks to revise – we had a tender ready to go for the eighty kilometres south of Goose Bay and the work in Goose Bay. That tender was ready to go, or within days of being ready to go.

We had to take that back, include the extra work on the sixty kilometres, and determine what was left to be done – because there were parts of the work that were done. For example, this morning

we talked about all the material being crushed and being paid for. Well that was a different process now and a different spec, to take that crushed material and place it on the road.

There was a whole series of things that we had to do to reorganize and reformat that tender and get it in a condition that we could use it as a tender call. There was a lot of work that had to be done to add that work to a tender that was already ready to go. The longer you waited to make that decision, the longer you were getting the work out the door and getting any work done that year.

MR. OSBORNE: Okay.

You had indicated that Eugene Coleman at the 9:15 a.m. meeting had indicated they wanted out of the contract. That is correct?

MR. GOSSE: That is correct.

MR. OSBORNE: You had indicated that later on that day, at some point after the lunch period, Eugene Coleman had called asking if they were getting the letter that day.

MR. GOSSE: Correct.

MR. OSBORNE: Okay.

When you were testifying under oath to the Auditor General, did you express those two issues to the Auditor General?

MR. GOSSE: I do not know that the phone call came up from either of us. I do not remember if I mentioned that or not, quite frankly.

MR. OSBORNE: Okay. Because I know in the Auditor General's report, and I am reading directly from the report again: There is no evidence to suggest that Humber Valley Paving asked for a decision on March 13, 2014.

MR. GOSSE: I think that was a result of – not putting words in Mr. Paddon's mouth, but that was from the conversation they had with the Colemans. They did not express any urgency. There was certainly an urgency expressed by them to us, and by the minister to us.

MR. OSBORNE: Okay.

I am just going to go back to what had transpired outside the Cabinet room. Reading again from the Auditor General's report: "We believe that the Deputy Minister was convinced, based on the Minister's response, the appropriate people in the Premier's Office had been made aware of what was occurring. This view would have been reinforced by the fact that the meeting with Minister McGrath occurred outside the Cabinet Room while a Cabinet meeting was in progress." Not only once, but twice I believe, Deputy Minister Meade had been called to the Cabinet waiting area – or the waiting area outside the Cabinet room – to meet with Minister McGrath.

MR. GOSSE: Correct.

MR. OSBORNE: Okay.

"Minister McGrath was briefed by his Deputy Minister outside the Cabinet Room on March 13, 2014 and had every opportunity to raise this issue in Cabinet or with the Premier's Office." It goes on to say, "While the Minister had the authority to make the decision" – and we understand that legally he had that authority – "it is difficult to understand, given the potential political sensitivity of this issue, why he would not have discussed this with his colleagues in Cabinet or the Premier's Office."

I guess what I find puzzling is the fact that it was not just Minister McGrath who had called Deputy Minister Meade to the waiting area outside the Cabinet room twice, but it was also Minister O'Brien who had contacted the deputy minister. Both calls were within a half an hour of each other.

I do not have a particular question. I do not know if anybody wants to make a comment on this. I find it difficult to believe that with two calls to a deputy minister on the same morning within a half an hour of each other, and the minister requesting the presence of the deputy minister outside the Cabinet room on two occasions that day, I find it difficult to believe that nobody else inside that Cabinet room, other than those two ministers, had knowledge of what was happening with Humber Valley Paving.

I will invite comments if anybody wishes to do so. Nobody is going to touch it with a ten-foot pole, are you?

MR. GOSSE: I will say what I have already said. It was the assumption on our part that other people knew. I think that was the conclusion the Auditor General found as well, is that it was a reasonable assumption.

MR. OSBORNE: Okay.

Well, based on that, Mr. Chair, I do want to thank – I know I have asked some tough questions today. I want to thank the witnesses who responded to my questions. I look forward to another hearing of the Public Accounts Committee with other witnesses.

Thank you all for coming out and taking a grilling. Sometimes you do not always understand what it is like to sit in the House and be grilled, but I guess you got that opportunity today.

CHAIR: I have a few questions –

MR. MURPHY: I have just one, too.

CHAIR: Mr. Murphy.

MR. MURPHY: Did you want me to go first before you?

CHAIR: Go ahead.

MR. MURPHY: Okay. I have just one question for clarity sake, I guess, again.

In the Auditor General's report on page 38, in the 9:15 a.m. time frame, it says, "HVP suggests that this issue was first raised with an official of the Department the previous day, March 12, 2014." I would presume it would be an issue with, like it says in the previous paragraph, Project 1-12. "The official, while acknowledging contact with the solicitor for HVP on March 12, 2013, does not recall a discussion related to HVP not returning to Labrador in 2014 but felt the discussion related to the potential of a claim resulting from the forest fires in 2013."

Which official was that? Do we know? It was you.

MR. GOSSE: It was me.

MR. MURPHY: Okay.

When you got that phone call, Mr. Gosse, who would you have informed? Would you have informed the minister that this call came through, that there was all of a sudden a concern or alarm bells or anything going off?

MR. GOSSE: I do not know that I spoke to anybody about that phone call, Mr. Murphy. It was a phone call, as I understood it, on the claims that we had talked about previously, the \$2 million claim. It was just another phone call. It really did not even – it was not worthy of mention until the next morning when we were told to contact Humber Valley Paving to see what was on the go.

MR. MURPHY: What time of the day was that, that you got that phone call?

MR. GOSSE: It was around lunchtime.

MR. MURPHY: It was around lunchtime on March 12?

MR. GOSSE: Yes. I remember the phone call.

MR. MURPHY: You got the phone call dinnertime but you did not tell the minister that day that the phone call came in, you waited until the next day for it.

MR. GOSSE: No. It was a phone call like many others that you get through the run of a day talking about contractual issues.

MR. MURPHY: Yes, okay.

MR. GOSSE: But there was nothing in that phone call that caused me any concern other than, well, maybe they are going to formalize that claim now and we are going to see something that we can analyze.

MR. MURPHY: Yes, but what I am thinking is even though the minister did not have the basis to make any kind of a decision yet, because it still was not March 13 – it was only March 13 that the decision was made. Was the decision to allow the contract – do you think that your minister came to the decision the day before about the cancellation of the contract because you had received this phone call about some

issues or that it might have been a concern to the minister? Why would the minister not have been told about that particular phone call if there was a financial concern there?

MR. GOSSE: Because, like I said, it was just another follow-up phone call, as I saw it, from the solicitor for the construction company – which is not uncommon – on an outstanding claim issue.

MR. MURPHY: Okay, so –

MR. GOSSE: My perception of that phone call is well, now we are going to see something that we can analyze. We will determine where we go with that \$2 million. Once that was formalized, well then deputies and ministers certainly would have been aware of it.

MR. MURPHY: Okay, because it was a \$2 million “ask” –

MR. GOSSE: Request.

MR. MURPHY: – request on the part of the company, and it does not seem like it would be alarming enough to tell the minister; that is what I am wondering about.

MR. GOSSE: The minister was already aware of the \$2 million request –

MR. MURPHY: He was, yes.

MR. GOSSE: – because was confronted at the airport in Goose Bay, plus I had already told him about the phone call I had from Eugene Coleman on the \$2 million claim.

MR. MURPHY: Okay, so something was –

MR. GOSSE: This was another phone call on the same issue that –

MR. MURPHY: Something was happening then that was really getting the pot going on March 12, instead of March 13 when the final decision came.

MR. GOSSE: Yes, so that looks like it may have started on the twelfth; but, from where I sat, it was an advancement of that claim they were going to make.

MR. MURPHY: Okay. Just –

MR. GOSSE: We deal with claims all the time. It does not mean that you brief a minister every time you get a construction claim.

MR. MURPHY: Yes, okay.

All right, thank you for that. Mr. Chair, I will leave it at that for now. Like you said, we will have a discussion about the witnesses and everything after.

CHAIR: Thank you.

Page 40 of the AG is a discussion of four options the department used. The department used three criteria. The first was: Ensuring the project was completed in 2014. So was it completed in 2014?

MR. GOSSE: It was completed July of this year, 2015.

CHAIR: Okay.

MR. GOSSE: There were eleven kilometres that were not completed in 2014. Having said that, 2014 was the wettest summer on record for Labrador, so I do not think it mattered who was doing that work, it was not getting finished, regardless of plans.

CHAIR: Okay.

The second one: Inflicting the least amount of harm to Humber Valley Paving and its employees. At the time the decision was arrived at, was Humber Valley Paving actually operating? Was it paving?

MR. GOSSE: At the time this decision was made, Humber Valley Paving would have been in what we would normally consider to be their winter shutdown period. They were still active, they were still calling, and they were still wondering about tenders that were coming out. As I understand it, they were still taking out tender documents. So they were still operating and functioning as you would expect them to be functioning in March.

CHAIR: Okay, but most of its employees were laid off?

MR. GOSSE: Most construction employees are seasonal employees; they would not be back to work yet.

CHAIR: Humber Valley Paving ultimately, I think, went into receivership or made an arrangement with creditors?

MR. GOSSE: They are restructuring. I do not think that they are actually in receivership.

CHAIR: So are the employees still working for Humber Valley Paving?

MR. GOSSE: I cannot imagine where or how. They are not actively doing any work.

CHAIR: The third one was: Ensuring the project was completed at contract cost. It went over cost, how much?

MR. GOSSE: It cost us \$1.7 million more than what it would have cost us at Humber Valley Paving's prices.

CHAIR: Essentially, none of the criteria were met?

MR. GOSSE: No.

CHAIR: On page 49, at the top of the AG report, it said, "Calling any Performance bond would likely have been damaging to the reputation of the company and its relationship with the bonding company. This outcome was inconsistent with the Minister's desire that any solution not be injurious to HVP and its employees. However, no assessment of the financial condition of HVP was made."

Was any consideration given to the effect on the tendering process with other contractors who would be bidding on similar work in competition with Humber Valley, if their view was Humber Valley is getting a preference? Was that a consideration in the department's mind?

MR. GOSSE: I am going to say no, it was not one of the considerations that we had.

CHAIR: In one of the methods of paying, you can pay every two weeks for liquid asphalt. I think that was outside of the terms of the

contract. It was a benefit that was conferred, I believe, on Humber Valley Paving. That was not generally made available to other bidders on the contract. Is that correct?

MR. PADDON: That is my understanding.

CHAIR: Has the department made any assessment as if there has been any harm done to the general tendering of paving contracts in the Province because of the fallout from this Humber Valley Paving issue?

MR. GOSSE: If you look at tenders that we have called since that time and the number of bidders that we get and prices that we get, there has been no harm done. We have a very good relationship actually with the Heavy Civil Association that is made up of all heavy civil contractors, including paving contractors, in the Province. We have grown that relationship over the last number of years.

CHAIR: On page 50, in the middle of the page, the Auditor General reports: "As part of his discussion with the Minister, the Deputy Minister asked if he should prepare a briefing note and 'move this up the line.' The Minister's answer was – 'no, move on it.' "

If, in fact time, had been taken to move it up the line in, what I will call, the ordinary course, how long would it have taken to wrap it up?

MS COMPANION: Normally, to get a briefing note up the line, an urgent matter such as a decision that would have very serious sensitivities, we can get a note prepared and approved by the minister and get it within a day to Cabinet Secretariat with everyone focused on getting it there.

CHAIR: So it could have been documented within, I will say, your standard processes, but on an expedited matter within a day or two?

MS COMPANION: Right.

CHAIR: So all that was really saved was a day or two?

MS COMPANION: In a day or two, we would be able to get a note to Cabinet Secretariat and to the Premier's office, yes.

CHAIR: Of course that day was a critical day because it was the close of a certain nomination proceeding.

MS COMPANION: For the department to get the note there, it would take a day. For the Premier's office, if it was a decision note, if we were looking for a decision, that takes a varying amount of time, depending on the urgency, of course and the number of issues that are going through the centre; but, from our end, we would get our work done to get to the Premier's office and to Cabinet Secretariat.

CHAIR: I can understand and appreciate from one of Mr. Gosse's earlier answers that it is really not much point in doing a briefing note. If I am wrong on that, you can correct me. After it is already done, you do not really need a briefing note on the points of doing it or not doing it, and I would understand that. However, it would be common, I think, in some offices to have a note to file after the fact. So you have a note to file, which is to summarize what you just did, even though it is not a briefing note.

Was there any such note to file prepared?

MS COMPANION: No, the note that was prepared on this issue was an information note that was sent to Cabinet Secretariat on this decision that had been taken and that was in April. I think it was in April – mid-April or late April. A copy was provided to Public Accounts. I will check the date.

It was April 29, sorry.

CHAIR: Now there was a holdback I think of \$1,118,000, in that range. My thought would be that if there is a holdback and the owner is the government, and the government does not own the money, that somebody would have made a recommendation to pay the money into court just to get the government out of it, in some court processes done in an interpleader. Send the lawyers down to the courthouse and say: hey, Judge, this is not our money. We want nothing to do with it. Give us an order, if we want to pay it in court we clean our hands.

I would cringe every time I would think that if it was my client that he would be paying certain creditors and maybe giving a preference and

maybe exposing my client to more risk on a longer basis and more legal fees. Was there any consideration to just pay the money in a court and back up, get out of the game?

MR. STANLEY: No, that was actually actively considered a couple of times to assess whether – the Province had possession of the holdback funds for more than a year. There was consideration as to whether or not we should go down and do an interpleader and pay it all into court. The problem was usually that is used in the context, we have multiple people claiming or fighting over the same amount of money.

We were actually in the position where we did not have multiple people claiming or fighting over the money because we were not receiving demands or claims for the funds, other than from the secured creditors. So we actually did not think the court would entertain an interpleader because we did not have two parties – usually an interpleader is where you have two parties claiming against you. You are just the custodian of the funds. You say to the court, I do not know which one of these two own it. I know I do not own it. So I am going to pay it into court and I am going to walk away and let them fight it out.

We did not have that scenario. So we were not sure the court would let us pay it into court on an interpleader and on the issue of ensuring that we did not do anything that created artificial creditor preferences. This is why we were pretty careful when we were going down through the priorities of who the money would be paid to. We were reassessed and it is pretty clear under law. There is not much dispute that intercepts requests from CRA and a payment outstanding workers' comp requirement.

Our workers' comp lien had to be satisfied. After that an assessment was done as the only secured creditor, because we searched to check in behind, HSBC had the claim for the funding.

CHAIR: So there were statutory liens from workers' comp and CRA?

MR. STANLEY: There was a statutory lien for workers' comp and there was basically a garnishment or interception demand from CRA

that we received, I think through the Department of Finance.

CHAIR: Okay. So they got their money first.

MR. STANLEY: They got their money first, yes.

CHAIR: Many lawyers cry over that when CRA shows up, when they have won a judgment. CRA gets all the money.

MR. STANLEY: Yes.

CHAIR: I think I heard earlier in Mr. Gosse's evidence that one of the bonds actually had no liability attached to it. I do not understand if that was because it was a two-year coverage but with a 120-day rolling window when you could claim.

What was happening there? If there was no liability attached to that particular bond, there would seem to be no downside to releasing it in any event, but then there was the other one.

MR. STANLEY: I can try to answer that. The two bonds that the Province got on this project when the tender was put in place – which it does on, I think, every tender project – was a Performance Bond and a Labour and Materials Bond. They are very different documents.

The Performance Bond is essentially an insurance policy against there being a performance problem on the contract, so that in theory you have a bond available if you want to call on the bond and get the contract completed. It is the sort of an insurance policy that has to be triggered to kick in. It has been discussed by Mr. Gosse, that the decision to trigger it has a number of implications.

The Labour and Materials Bond is almost like a facility that you get put in place that is available during the life of the contract. While the bond is in place it is available to third-party contractors that if they – it is a little bit complicated in its interaction with mechanics' liens. You can have individuals who, if they are in a position to get a mechanics' lien, or even if they have missed the mechanics' lien period, they still have a position where they can claim against the Labour and Materials Bond to have a means to get paid.

They still have to pursue their lawsuit against the company and then the bond will kick in. So it is an ongoing facility that is available if people avail of it during the period of time.

The issue is that when the contract was terminated in the middle of March, under the Labour and Materials Bond you have to make a claim within 120 days for work that was done within ninety days of – so you have to make a claim within 120 days of work that you had done within like a ninety-day period. There are two time frames there. If you do not make the claim under the Labour and Materials Bond within those time frames, you cannot claim later on. So six months later you cannot go back and claim under the Labour and Materials Bond.

At the time that we terminated the contract, it had been more than 120 days since anybody had performed services to Humber Valley Paving under contract 1-12. So there would have been nobody out there who would have been able to make a legitimate claim against the Labour and Materials Bond. That was the legal assessment done at the time on that day, and we have not seen anything to change our mind on that.

CHAIR: So when the lien claim is filed within the ninety days, does it then have to be perfected with a statement of claim?

MR. STANLEY: Yes, the Labour and Materials Bond, the terms of the bond require people to file a notice with the bonding company of their claim for bond funds for something they were not paid for where services were provided within the last ninety days or 120 days to the company. Then they have to go and still maintain a lawsuit and prove that claim. The bond company just does not pay out on the basis of a claim. The bond company wants to see that you have run it through court and exhausted your remedies through court.

It does not actually say they only pay out on judgements, but that is sort of the idea. That if you manage to get a judgement against a company for the amount of money you are owed, the Labour and Materials Bond will kick in to pay that judgement as opposed to you having to chase the company for it.

CHAIR: Is there any requirement or mechanism for, I will say the owner, the Province to give notice to anybody who is a potential claimant that we are going to discharge a particular bond so they can file their claims?

MR. STANLEY: There is nothing in the bond form itself that I am aware of, no.

CHAIR: So there is no potential liability for the Province for having released the bond and a third party who is innocent may show up and say, hey, we did not know and you did not tell us, now we are going to sue the Province.

MR. STANLEY: Our starting position on any such claim would be, no, we have no liability for that – and we do not have a claim in front us. Nobody has come forward with any kind of a legal action on that basis.

CHAIR: Mr. Gosse had an explanation about progress payments, which I understand a little bit about. To do progress payments for amounts of work, is it done with like an engineer's certificate of partial completion? How do you know how much to pay them?

MR. GOSSE: On our certificates of payment, or on the progress estimates, a certificate of payment has one signature, and that is mine, and initials by the Director of Highway Design and Construction. To get to the certificate of payment, there is a progress payment sheet which lists all the items in the contract, the quantities and the prices, and the extended value, and that is done each month. So it is updated each month, and the previous quantities are deducted. That is how you determine this month's payment.

That is signed by four people. That is signed by the engineer on the job; it is confirmed by the regional engineer, or in his absence the regional director; then it is signed by the Director of Highway Design and Construction; and the fourth signature is mine, or the assistant deputy minister's.

CHAIR: If payment is advanced toward materials that are on site, crushed or whatever, how is that secured so they do not run off and use it on another job while they have your money?

MR. GOSSE: Well, we have it in a secured site. If they are doing work on two different areas, they keep the stock piles of materials separate. They know that is ours; do not touch it. We have people on the job who make sure they do not go off with our materials.

The other piece of materials, of course, that we often pay for is components that would come in – for example, take the Placentia Lift Bridge, where we are getting all the mechanical and electrical components in now. We require them to be put in a secured yard that we pay \$1 to lease the space to us, so it is our property. It is stored on our property and we pay for the materials that way, based on the invoices and not what the contractor's bid prices are.

So if he bid, for example, \$1,000 for an item and the item cost \$500, once it is delivered, we pay the \$500. When it is installed and operational, then we pay the other \$500.

CHAIR: There were two other claims that you guys had settlements worked out with –

MR. GOSSE: Correct.

CHAIR: – and the company backed out of it. How could they back out? Did you have a signed deal or was it only a handshake?

MR. GOSSE: We had an agreement with them to do that. We would have paid those on the same basis as a progress payment. So we were in the process of doing up our progress payment sheets, with the change order on the bottom covering off the extra costs, when they called and said: No, we are withdrawing our agreement to that. We do not want you to do that anymore. So we just stopped.

CHAIR: Okay. You did not have actually a signed –

MR. GOSSE: No, there was an email that said: Yes, proceed. Then another – I do not recall if it was an email or a phone call that said: No, we are not in agreement with that anymore; stop.

CHAIR: What happened to those claims? Are they finalized now or are they still outstanding?

MR. GOSSE: They are still outstanding.

CHAIR: How much are they?

MR. GOSSE: The two claims – one originally was about \$200,000 and the other was about \$400,000, in round numbers. The settlement offers on both were in the \$94,000 to \$95,000 range. The value of those would have been confirmed by our consultant on the project. As I said earlier, we had a consultant looking after that work for us. It was confirmed by our people at the regional office in Labrador and then sent to the Director of Highway Design and Construction.

CHAIR: Okay, thank you.

I do not have any more questions. I do not know if other members may have questions arising from any of these.

Usually we turn to Mr. Paddon and see if there is anything he would like us to ask that we might have missed; things we did not ask three times.

MR. PADDON: No, I think it has been fairly comprehensive.

Thank you.

CHAIR: In that case, just a bit of housekeeping, Ms Murphy is asking about dates, so I think she will communicate directly with members and get available dates. Whatever dates people have that are available any time over the next few weeks to come back, or the next two, or three, or four, or five weeks, everybody should just give her the dates. She will match us all up and then we will move forward, depending on whatever we come up with.

Our proposed discussion is that we have a notice, a request to appear, and that we would get the people's email addresses and scan it and send it to them by email so they would have it as quickly as possible. It will be a scan, a legitimate thing. If we send letters, that means mail. It could be a while. Ms Murphy is quite proficient with doing this and we would have a record of it having gone to them.

MR. K. PARSONS: (Inaudible) and whatnot like that so we can look at who is available and who is not.

CHAIR: Yes, we can do that, but we need to supply dates to Ms Murphy. I would ask all members to provide her with whatever dates either you have available or you are not available for the next, whenever it is.

MR. MURPHY: Any time, except September 18, for me. I am good.

CHAIR: Okay.

MR. OSBORNE: Any time, except for the last three weeks in November, for me.

CHAIR: It has been a long day. I would like to thank all of you for coming. I think to the extent that you have had information that you have been able to provide it quite willingly, and freely and openly shared it with the Committee. I think for that we are grateful. The fact that we may want to hear more from other people is no reflection on the people who came. My view is that you were very forthcoming, so thank you.

I have minutes from yesterday. Can we have a motion?

MR. HUNTER: So moved.

CHAIR: So moved by Mr. Hunter.

MR. MURPHY: Seconded.

CHAIR: Seconded by Mr. Murphy.

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

CHAIR: Anyone opposed?

Carried.

On motion, minutes adopted as circulated.

The Committee adjourned.