

DAY 5

NOVEMBER 14, 1995

WESTRAY MINE

PUBLIC INQUIRY

HEARD BEFORE: The Honourable Justice K. Peter Richard,
Commissioner

PLACE: Stellarton, Nova Scotia

COUNSEL:

Solicitor for the Commission: Mr. J. Merrick, Q.C., and
Ms. Ena MacDonald, document coordinator

Solicitor for the Department of Justice Canada: Ms. L.
Gillis

Solicitors for the Department of Justice Nova Scotia:
Messrs. R. Endres, Q.C., J. Traves, and Wm. Wilson, Q.C.

**Solicitors for the United Steelworkers of America and the
Nova Scotia Federation of Labour:** Messrs. Raymond
Larkin, Q.C. and Mr. David Roberts

Solicitor for the Bank of Nova Scotia: Mr. M. MacDonald
and Mr. A. Barry

Solicitor for the Westray Families Group: Mr. B. Hebert

Solicitor for the Town of Stellarton: Mr. P. Rafuse and
Mr. John Murphy, Town Councillor

Representing the Canadian Union of Public Employees: Mr.
R. Wells

INDEX

<u>Witness</u>	<u>Page</u>	<u>Volume</u>
Mr. Adrian Golbey		
Examination by Mr. Merrick	747	5
Examination by Mr. Larkin	807	5
Examination by Mr. Wells	905	5
Examination by Mr. Hebert	916	5
Discussion	940	5

1 November 14, 1995 - 9:35 a.m.

2 COMMISSIONER Good morning.

3 ALL Good morning.

4 COMMISSIONER Okay, Mr. Merrick.

5 **MR. ADRIAN GOLBEY**, recalled, previously affirmed,
6 testified as follows:

7 EXAMINATION BY MR. MERRICK

8 MR. MERRICK Thank you, Mr. Commissioner. Mr. Golbey,
9 there are just a few points I wanted to finish off on
10 this morning before I ask you some general questions and
11 then that was going to be the end of my examination of
12 you.

13 One detail that we did not cover off, last Thursday
14 before we broke we had talked about the commercial
15 production test that the bank required. But another
16 deadline and another milestone date, if you will, would
17 be that of construction completion which is also referred
18 to in the financing agreements. Can you turn to Exhibit
19 18 at tab 2 and tell me if that relates to what we're
20 talking about as far as construction completion.

21 A. Yes, it does, Mr. Merrick. It's exactly as it said:
22 Certificate of substantial construction complete and is
23 signed by AMCL, the bank's independent engineer.

24 Q. Now this would be the construction completion date
25 as referred to in the loan agreement with the bank?

MR. GOLBEY, EXAM. BY MR. MERRICK

1 A. It would, and it follows the prescribed form as at
2 the back of the loan documentation.

3 Q. And when it says construction -- or "Certificate of
4 substantial construction complete" that would be of the
5 main tunnels and the surface facilities, basically?

6 A. Yes, it would.

7 Q. And the date on that would then -- would be
8 effective as of August the 27th, 1991?

9 A. It was, yes.

10 Q. All right. That's one point I wanted to clear up
11 with you.

12 The second point deals with the apparent decision by
13 Curragh and Westray not to put any more money into the
14 Westray project themselves, and we looked briefly last
15 week at some documents that indicated that. Can you take
16 a look at Exhibit 21 and this is the Curragh Resources
17 Inc. 1991 budget.

18 A. Yes, it is.

19 Q. Then you flip over on the first tab, I guess it is,
20 which is the executive summary. And let me just find the
21 points that I'm looking for. Hang on a second. Perhaps
22 you can assist me, Mr. Golbey. I'm looking for the major
23 -- oh yes, tab 2. Sorry. "Major Objectives." This was
24 a budget that was prepared at the end of 1990?

25 A. It was.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. And it would reflect the corporate state of mind, if
2 you will, in December of 1990?

3 A. Yes.

4 Q. And under tab 2, does it reflect there the
5 corporation decision to avoid putting any further funds
6 into this project themselves?

7 A. Yes, it does. Item five: "Require no further funds
8 from Curragh Resources than those that existed in the
9 project as of December the 31st, '90." And that's point
10 five.

11 Q. So that as of that date, the end of December 1990,
12 this appears to have been the corporate position?

13 A. Yeah, it would appear so. Yes.

14 Q. And you had given as evidence last week that on the
15 statements that you had reviewed there was some
16 indication that Curragh had put about \$9 million into it,
17 including the cost of acquisition? Thereabouts.

18 A. That's been a fairly consistent figure, yes.

19 Q. All right. Can you turn to, and just give me a
20 second because this -- Exhibit 64. And I just will have
21 to take a minute to find it. This is one of the more
22 recent exhibits that's just been given to us. Actually,
23 I'll have to come back to that because they're still
24 being out photocopied apparently. Take a look at Exhibit
25 35-B.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 COMMISSIONER "B"?

2 MR. MERRICK "B" at page 78. In fact, this document
3 will basically take us to where we need to go anyway.
4 And I believe we may have looked at this briefly last
5 week. I just want to close off the point. I take it it
6 reflects how Curragh was attempting to have the
7 production costs, I guess, or the costs incurred
8 subsequent to construction completion financed out of the
9 loan done with the Bank of Nova Scotia as opposed to
10 being incurred themselves out of their operating capital.
11 Is that fair?

12 A. I think that's fair, yes.

13 Q. Explain to me what they were doing.

14 A. In essence, the substance of your question, which
15 was to move what could be described as "operating costs"
16 into the development or capital, particularly the capital
17 cost category, which then would make them eligible to be
18 covered by the Bank of Nova Scotia loan.

19 Q. As I understand, it the Bank of Nova Scotia loan as
20 originally structured, the proceeds of that loan were to
21 cover the capital costs of initial construction.

22 A. Yes, they were.

23 Q. And in reality they came in somewhat under budget on
24 those costs?

25 A. Yes.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. Which left some money not drawn down on the \$100-
2 million capital loan -- credit facility that had been
3 made available to them?

4 A. Yes. And I, through reading the documents, would
5 think there are some items, which it is not totally
6 unusual, are on the borderline between capital and
7 development, in which case negotiation on that point is
8 not unusual.

9 Q. Yes. But the original intent was, I assume, that
10 after the capital, the originally budgeted capital costs
11 were paid for by the bank loan that Curragh would then be
12 picking up its pre-development or development costs and
13 operating costs from other sources, probably its cash
14 flow?

15 A. That would be the anticipation, yeah.

16 Q. All right. But rather than proceeding as originally
17 contemplated, and I appreciate what you say, that this is
18 not too unusual, Curragh then began to finance its pre-
19 development costs out of the bank loan as opposed to out
20 of its own coffers or out of its own cash flow?

21 A. Yes.

22 Q. And can you tell me what this letter tells us as far
23 as how much they were drawing down to cover these
24 operating costs or pre-production costs?

25 A. They were intending to draw down the full amount of

MR. GOLBEY, EXAM. BY MR. MERRICK

1 the 100 million.

2 Q. Yes?

3 A. And this is -- okay. And the 4.4 million of
4 operating credit which is mentioned would have been of
5 the 10 million additional tranche that would have been
6 available or additional loan that would have been
7 available following commercial completion or commercial
8 production.

9 Q. Okay.

10 A. And that, I think as we've noted previously, was
11 renegotiated to be available following substantial
12 completion.

13 Q. So this was the application for expenditures by
14 Westray and the "AFE" as it's referred to, which would
15 have requested the complete balance of the hundred
16 million dollar loan --

17 A. Yes.

18 Q. -- to cover their operating costs. And are you able
19 to tell me how much they have identified their operating
20 costs at for the period up to January '92 from that
21 letter or its enclosures?

22 A. I have, but it would take a moment to find it.

23 Q. Well, let me assist you. How about switching over
24 to page 83.

25 A. Thank --

MR. GOLBEY, EXAM. BY MR. MERRICK

1 COMMISSIONER While we're doing that now, am I correct
2 in assuming that the 4.4 million is in addition to the
3 100?

4 A. Yes, it is.

5 COMMISSIONER Okay. Thank you.

6 MR. MERRICK Just explain that 4.4 to me for a moment.
7 We had the hundred million dollar capital loan, but in
8 addition, there was another credit facility made
9 available to them?

10 A. Yes, there was. And that was an amount, a maximum
11 amount of \$10 million that would have been available
12 after the production test or completion test of 174,000
13 tonnes of coal in 90 day -- in 90 days at 110 per cent of
14 estimated budget had been completed by Curragh. Sorry,
15 by Westray.

16 Q. Let me just make sure I've understood you then. So
17 there was an additional 10 million dollar on top of the
18 hundred million --

19 A. Yes.

20 Q. -- to be made available by way of an operating line
21 of credit type of thing?

22 A. Yes, it was.

23 Q. And according to the original agreement with the
24 bank, it was to become available to Curragh once they had
25 met the commercial production test?

MR. GOLBEY, EXAM. BY MR. MERRICK

1 A. That's correct.

2 Q. Which we know they never met.

3 A. Right.

4 Q. Had there been a change made between Curragh and the
5 bank as to when Curragh could get access to that 10
6 million?

7 A. Yes. Curragh had -- or rather, Westray had applied
8 to the bank to change the timing from production -- from
9 the production test to the substantial completion test,
10 which, in fact, is a test we looked at earlier this
11 morning.

12 Q. So that the substantial construction completion
13 deadline was then the date when Curragh could draw on the
14 \$10-million operating line of credit?

15 A. Yes, it did.

16 Q. And that would have been in August of 1991?

17 A. It would.

18 Q. Okay. So they started to draw on that and according
19 to this letter they would still have 4.4 million to go?

20 A. Yes.

21 Q. They've applied for the balance of the hundred
22 million. And does page 83 tell us how much of the
23 balance of the hundred million they were looking for to
24 cover their operating costs to January of '92?

25 A. Well, it -- under "Description of the item or

MR. GOLBEY, EXAM. BY MR. MERRICK

1 activity" it shows "Mining pre-production costs to be
2 financed by the bank until the construction loan is fully
3 utilized to be 5.3 million in 1991 and 1.8 in 1992."

4 Q. Yes?

5 A. And then it shows other pre-production costs of 3.7
6 in '91 and .4 million, 400,000, in '92.

7 Q. When it --

8 A. So in total we're looking at 11.2 million.

9 Q. Of which 7.1 million was to be paid for or funded by
10 the balance of the hundred million --

11 A. That's right.

12 Q. -- bank loan?

13 A. Yes.

14 Q. When you see them referring to the phrase "Finance
15 by project cash," what do you understand "project cash"
16 to be?

17 A. It's a revenue from coal sales. From product sales.

18 Q. And according to the information that you've given
19 us last week and on everything that you know, did they
20 ever generate project cash?

21 A. There was revenue being generated towards the end of
22 '91, yes.

23 Q. But no net cash flow?

24 A. But it was insufficient to cover operating costs so
25 there was no net cash flow.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. All right. So that as we come into the early months
2 of 1992, Curragh has obtained authorization to draw down
3 its full hundred-million-dollar loan, is looking to
4 utilize the last of its 10-million-dollar line of credit,
5 and has reached the decision to put no more money in
6 itself corporately, has to rely completely on the funding
7 of ongoing operational costs out of cash flow, and wasn't
8 generating sufficient cash flow to cover operating costs.
9 Is that a fair summary?

10 A. I believe it to be, yes.

11 Q. All right. Now let's -- I want to deal with two
12 minor points for a moment. Were you able to obtain any
13 information from the documents that you were given as to
14 whether Curragh was -- we see where they were coming
15 under pressure from a cash position and a cash flow
16 problem. Did you see any evidence that the Nova Scotia
17 Power Corporation was putting pressure on them to get
18 their deliveries up to the quantities that were being
19 requested -- or that were obligated under the contract?

20 A. Overall, I would not say it was pressure; they
21 expressed concern that Westray's operation was taking
22 longer to come into production than they had anticipated.

23 Q. Can you look at Exhibit 64 and turn to tab 10.
24 That's a letter from the Nova Scotia Power Corporation to
25 Westray. And I'll give you just a moment to look at

MR. GOLBEY, EXAM. BY MR. MERRICK

1 that. In fact, it's two letters. One follows the other
2 in that tab. Actually, the reality is they're a series
3 of letters all dealing with the same issue. Just look at
4 all of them in that tab just for a moment.

5 These documents, over the period of time that
6 they're dated, and it's basically '90, '91, indicate that
7 the Power Corporation was concerned about the possibility
8 that Curragh would not be able to supply the quantities
9 called for in the contract.

10 A. That's correct.

11 Q. But their concern seemed to be more just of being
12 advised what was going to be the actual delivery so that
13 if necessary, they could make arrangements for alternate
14 supplies from other sources.

15 A. Yes. And that's why I said earlier they were
16 expressing a concern rather than applying severe
17 pressure.

18 Q. I don't see, from these documents at least, any
19 indication that the Power Corporation was threatening
20 anything more drastic against Curragh for failure to
21 deliver quantities, contractual quantities, other than
22 they would have to replace it for it -- until Curragh was
23 able to come up to full volumes?

24 A. That's correct.

25 Q. And is that consistent with what you have been able

MR. GOLBEY, EXAM. BY MR. MERRICK

1 to determine as being their position from your review of
2 the documents?

3 A. It has been. There was some further documents I
4 saw, and I cannot remember precisely where, that also
5 indicated Nova Scotia Power's rate load had decreased
6 towards 1992. So, again, it was of a concern for late
7 delivery but not vital.

8 Q. Yes. I do note, if you turn to -- the pages under
9 that tab are numbered, and if you turn to page five we
10 see in, I guess this is November of '91, queries by
11 politicians inquiring about the production or delivery
12 schedule of Westray and the position of Nova Scotia
13 Power.

14 A. In fact, in a way that letter of the 5th of November
15 is actually supportive of, in a sense, of the operation
16 because the second line of the second paragraph states
17 "We are not overly disturbed because of the following,"
18 overly disturbed about late delivery of coal, that is,
19 and then give what can be some mitigating reasons. And
20 then on the second page, the penultimate paragraph: "I
21 should point out quite clearly that while the coal is
22 being received is less than we had anticipated in
23 quantity, it does meet our ash quality specifications."
24 So there was a -- well, again, it doesn't express great
25 concern or alarm about late delivery.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. It does, however, that letter and the following
2 ones, I suggest to you, though, do indicate that there
3 were some political, what's the word, "sensitivity" to
4 this issue?

5 A. That -- from the -- that following correspondence,
6 yes.

7 Q. Have you been able to find in the documents anywhere
8 any indication that there may have been political
9 pressure being put on Westray to try to meet the demands
10 of the contract with Nova Scotia Power Corporation or to
11 establish that it was going to be producing at the levels
12 that it had promised to be?

13 A. Not specifically, John.

14 Q. Let me move on to another point. We saw during the
15 documents that you referred us to last week, a number of
16 occasions where Westray and Curragh in the planning
17 stages of this mine would refer on occasion to the
18 experience that the company and its personnel had in coal
19 mining and underground coal mining, using words like "the
20 extensive experience" and "wealth of experience." Were
21 you able to locate in the data banks of the Commission
22 some information describing the company and its personnel
23 and their experience in coal mining?

24 A. Yes. And those documents were primarily an offer
25 document for Curragh Resources and an offer document for

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Westray Coal.

2 Q. Can you turn in Exhibit 64 to tab 11. Are they
3 excerpts from the documents to which you refer?

4 A. They are.

5 Q. The first one has got the facing page on it of an
6 annual information form. And can you identify for me on
7 the next page, it's the exhibit stamped "page 2," page 14
8 of the document, which of the individuals named there
9 show any indication that they've had experience in
10 underground coal mines?

11 A. Specifically, none of them.

12 Q. What about -- now that covers Mr. Frame, Mr. Benner,
13 Mr. Hendry, Mr. Jilson, a Mr. Kastelic, a Mr. MacDonald
14 and a Mr. Pelley?

15 A. Yes, it does.

16 Q. I notice in Mr. Pelley's description at the bottom
17 of the page, it refers to the fact that he was involved
18 in all phases in mine and plant engineering from
19 construction through start-up and full production for
20 that company's 6.5-million-tonne coal project in the
21 Province of British Columbia. Do you know what kind of a
22 project that was?

23 A. That was a very large open pit operation.

24 Q. So that wasn't an underground coal mine?

25 A. It was not underground.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. The last sentence says, "Mr. Pelley has over 18
2 years experience in underground and open pit mining." Do
3 you know what, if any, underground experience they could
4 be referring to?

5 A. Based on the brief resume here, no, I do not.

6 Q. All right. Let me turn you over to the next page
7 which is a cover page from a offering memorandum for --
8 at a point when Curragh was anticipating to do a share
9 offering or a public offering.

10 A. Yes, it was.

11 Q. And then if you turn to the next page in sequence,
12 it's exhibit stamped "page 4." This is some descriptive
13 information on additional individuals in the company
14 involving Mr. Phillips, Mr. Forbes, Mr. MacDonald, Robert
15 Parry, Roger Parry, Kevin Atherton and Mr. Karasiuk, I
16 guess. Which of those individuals apparently had
17 experience in underground coal mining?

18 A. Mr. Phillips, Robert Parry, Roger Parry and, I
19 believe, that was all.

20 Q. So according to this data, at least, there were
21 essentially three people in the corporate structure of
22 Westray that we can identify that seem to have had some
23 degree of underground coal mining experience?

24 A. Yes.

25 Q. Apart altogether from whatever miners might have

MR. GOLBEY, EXAM. BY MR. MERRICK

1 been hired who had mining experience?

2 A. Yeah. I suppose I should have really excluded
3 Robert Parry as he was more related to maintenance and
4 the surface areas. So, although he may have worked
5 underground, it would have been in a mechanical or
6 maintenance function as opposed to a mining function.

7 Q. Are you aware of any information, either from the
8 printed material that has been made available to you or
9 your general knowledge in the industry, to indicate
10 whether any of these individuals associated with Curragh
11 or Westray had prior experience in the actual
12 establishment and planning and development of an
13 underground coal mine?

14 A. None that I'm aware of had gone all through those
15 phases of an operation. No.

16 Q. And as you indicated to us last week, the skills and
17 abilities and experience of a person who develops a coal
18 mine may be different and there may be different
19 requirements for somebody who then subsequently operates
20 a coal mine?

21 A. That's correct, yes.

22 Q. What is your own general knowledge of Curragh in the
23 industry and the nature of its operations?

24 A. Curragh was formed originally to develop a lead-zinc
25 oper -- open pit operation in Faro and at that time, most

MR. GOLBEY, EXAM. BY MR. MERRICK

1 of the personnel involved with it were open pit, people
2 with open pit experience in the base metal mining.

3 Q. Yes?

4 A. And its main operating base was in the Faro region
5 and in northern British Columbia where it was intending
6 to open an additional open pit lead-zinc operation.

7 Q. So that it had its interests in B.C. in that kind of
8 a minerals operation?

9 A. That was the base of the company, yes.

10 Q. Did it ever express any interest in other mining
11 endeavours other than Westray?

12 A. Through an early relationship with, oh, which one
13 was it, Giant, it had corollary interests in gold,
14 underground gold mining.

15 Q. To your knowledge, had Curragh or any of -- had
16 Curragh shown any interest in or inclination to become
17 involved in underground coal mining up until the time
18 that it became involved in Westray?

19 A. I'm not aware of any interest.

20 Q. So that to the best of your knowledge, both derived
21 from your industry knowledge and what you've seen in
22 documents, the first and only time that Curragh showed
23 any interest in underground coal mining was the Westray
24 mine?

25 A. That's what I believe, yes.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. There is one document that I want to draw your
2 attention to as we talk about Curragh's experience that
3 bothers me a little bit and it's still in Exhibit number
4 64. This time it's at Tab 1. This purports to be an
5 interoffice memorandum of Westray, dated June the 21st,
6 1990. Can you tell me briefly what this memorandum is
7 purporting to do?

8 A. It is reviewing the work by Kilborn and/or other
9 contractors, subcontractors, with the development of what
10 became the Westray Mine.

11 Q. And I take it that there's discussion here as to how
12 to divide up the work and what they should continue to
13 have their consultants, Kilborn, do and what they should
14 take over and do themselves?

15 A. That is correct, yes.

16 Q. Turn to page 2. There are two paragraphs there that
17 I've noted. The third paragraph down which reads, "Also,
18 I..." now this is a memorandum from Mr. Phillips, right?

19 A. It is.

20 Q. So Mr. Phillips is saying, "Also, I would be
21 prepared to have Kilborn purchasing involved in the
22 purchase of the continuous miners and the other
23 underground equipment we require. Westray would do all
24 of the specifications and the detailed work, but we could
25 do the purchasing through a Kilborn purchasing agent on

MR. GOLBEY, EXAM. BY MR. MERRICK

1 site at the Westray Mine, again giving the impression
2 that Kilborn is not only responsible for the surface
3 operation but also the underground operation. That
4 should be good public relations for Jack in the future."
5 Do you know who Jack is that he's referring to?

6 A. That is Jack Mitchell of Kilborn who is actually
7 mentioned in full on the first -- oh, in the paragraph
8 above.

9 Q. All right. Oh, yes, in the second paragraph --

10 A. Yes.

11 Q. -- down, "Jack Mitchell." So just keeping that
12 comment in mind, that they -- this would allow them to
13 give the impression that Kilborn is responsible for the
14 surface and underground operation, go to your next
15 paragraph. It reads, "In our capital-cost budget we have
16 significant dollars for engineering work. As you will
17 note in the table..." and he's referring to the attached
18 table which is on the next page, I take it.

19 A. I presume so.

20 Q. "As you will note in the table, we have a lot of
21 construction management costs in our capital cost budget.
22 It is one area in particular I feel we should try to
23 achieve major savings. In the Administration Building
24 where we expect to save one million, the management and
25 engineering costs are all built into the engineering

MR. GOLBEY, EXAM. BY MR. MERRICK

1 costs limited. If Westray saves 1 million plus we should
2 see a reduction in the engineering work that Kilborn
3 originally proposed." Do you know what he's meaning by
4 "engineering work?" Would this include in any way the
5 planning for the mine itself and the layout of the mine?

6 A. In the -- talking about office buildings and things
7 like that, in this context, I would assume it doesn't.
8 But it's possible it could be an element of that million
9 that would inevitably would be used for underground or
10 other engineering costs.

11 Q. Well, let's look at the Table. And it's divided
12 into two major columns with three subcolumns in each.
13 And it purports, I assume, to set out a proposal made to
14 Westray by Kilborn as to who should do certain aspects of
15 the work and what Westray's proposal should be as to who
16 should do certain aspects of the work?

17 A. And on that basis, if you move down the table until
18 "service building" where the Westray taking that is
19 indicated by the two stars in the extreme right-hand
20 column, coming back to your previous question, it would
21 be -- it would certainly still be my impression that the
22 million dollars referred to would refer to that building
23 and/or ancillaries to that building.

24 Q. All right. Now I'm particularly interested in the
25 bottom part of that table where it says, "Numbers 1 and 2

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Tunnels, mine design and planning, mining method, mine
2 ventilation, mining equipment, production scheduling, and
3 mine electrics." I take it from that that the proposal
4 had been that Dames & Moore, a well established
5 consulting firm --

6 A. Yes.

7 Q. -- would have been responsible for each of those
8 items, whatever specific work would have been referred to
9 in each?

10 A. Yes.

11 Q. But certainly they would have been involved in mine
12 design and planning, mining method, and mine ventilation.

13 A. They were -- I know in an earlier exhibit we
14 introduced there was a Dames & Moore title block on the
15 drawing.

16 Q. But Mr. -- but Westray management's position appears
17 to be that they'll take this away from the consultants
18 and do it themselves?

19 A. From this table, that would certainly indicate that.

20 Q. And what from what you have seen of the
21 documentation, particularly as you were tracing through
22 the various changes that were being made to the mine
23 layout and diagram -- the plans, et cetera, that were
24 being done, what would you say as to who took on the
25 responsibility for mine design and planning and mining

MR. GOLBEY, EXAM. BY MR. MERRICK

1 method?

2 A. I would say it was being done more and more by
3 Westray than in its indication -- in the way this table
4 would indicate. They seem to be assuming that role.

5 Q. That, in fact, whatever the proposals had been to
6 have this done by consultants, experienced consultants,
7 it was a decision of Westray management to do more and
8 more of it inhouse?

9 A. That certainly comes across, looking at the
10 documents, yes.

11 Q. All right. Now let me come to a couple of general
12 areas that I just want to get your comments on, based on
13 your experience in the industry. First, on the quality
14 or degree of planning that appears to have gone into this
15 mine, what level or degree of engineering and planning
16 would you expect to see from a reasonably prudent
17 operator, prior to that operator actually beginning
18 construction or driving of the tunnels?

19 A. Certainly prior to driving the tunnels there should
20 be -- it should have at least gone through a detailed
21 engineering stage. And the feasibility study, as was
22 mentioned last week, would have certainly given the
23 overall layout and a lot of the base data upon which
24 various decisions and plans had been made but prior to
25 the actual digging of the access; that would have been

MR. GOLBEY, EXAM. BY MR. MERRICK

1 final design stage.

2 Q. And have you been able to find any evidence that
3 such a detailed engineering stage was done prior to
4 commencement?

5 A. No, I haven't.

6 Q. You did refer to the fact that Norwest had done a
7 study that had been considered -- that you considered a
8 fairly comprehensive study?

9 A. Yes.

10 Q. Why would that not have been a useful background for
11 how they actually did this mine?

12 A. I think it would have been an extremely useful
13 background, but it stopped short of being a detailed
14 engineering -- an engineering plan which would include, I
15 believe, as I mentioned last week, almost which size
16 nuts, bolts, screws and so on would be used in certain
17 aspects of the operation.

18 Q. And to what extent would the Norwest Study have been
19 of limited utility because of the fact that it was
20 recommending a short longwall method of mining?

21 A. In terms of access to the mine, it really would make
22 no difference. In terms of the overall plan, although
23 that was one of the recommendations of Norwest, they also
24 did note that opening an area by room-and-pillar, prior
25 to installing a short longwall system, would be prudent

MR. GOLBEY, EXAM. BY MR. MERRICK

1 to confirm ground conditions and similar matters.

2 Q. Having observed or reviewed the changes that were
3 made to the main access tunnels and to at least the
4 initial layouts of the panels where they began to work in
5 the Southwest and the Southeast districts, what comments
6 do you make as to the planning process? @

7 A. It appeared to be ad hoc in that the original plan,
8 in approximate terms, commenced operation at the northern
9 end of the mine and, by inference, moving south and, in
10 fact, in practice, the mine started operating in the
11 south presumably with the intention of moving north. And
12 initially, from what I can see, particularly of Norwest,
13 there was no detailed layout done of the Southwest area.

14 A. I may have asked you this question last week and, if
15 so, my apologies. Are you aware in your experience of
16 any other mine, coal or any other underground mine, that
17 went through this kind of changes in its main access
18 tunnels prior to basically commercial production?

19 A. I'm not aware of any mine that has made those sort
20 of changes that early, no.#

21 Q. Can you turn to Exhibit 21, please. That is again
22 that 1991 budget that we looked at a few minutes ago.
23 And if you turn to Tab 2, the last page. And this whole
24 tab is a section entitled, "Major Objectives." I see
25 there, under 13, that one of the major objectives as

MR. GOLBEY, EXAM. BY MR. MERRICK

1 early as December, 1990, was to have set up and in place
2 by June 1st, 1991, an efficient mine-planning and
3 budgeting system. And what do you understand him to mean
4 by an efficient mine-planning system?

5 A. In those words, I'm not certain. I would make the
6 assumption that it could be a small collection of people
7 which may include the underground mining staff, the
8 planning staff, and, at times, even the coal preparation
9 personnel who would work together to determine what coal
10 is required at the surface which is where the coal
11 preparation engineers become involved, almost working
12 backwards to going to the underground development stage
13 to what would be called the "coal release," the actual
14 areas the coal is mined from to provide the coal
15 required.

16 Q. Yes?

17 A. So and it's -- so it would be a longer-term detailed
18 planning function.

19 Q. And you would expect to see this then corporately
20 that this group of people would come together and prepare
21 longer-term plans?

22 A. In my opinion, at least a five-year plan. Ideally,
23 a 10-year plan. But that is sometimes, again,
24 operationally dependent, a little difficult to achieve.
25 But I would think a minimum of a five-year plan.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. What would you --

2 A. And the importance of that is not necessarily that
3 is exactly where you will be at the end of five years,
4 but it's to determine the directions, maybe define
5 additional engineering studies that are required, the
6 development required to get to a common point.

7 Q. To what extent would you expect them to do a
8 collection and compilation of existing technical data?

9 A. Stepping outside of the Commission documents, very
10 often a company will almost keep a running file of
11 previous corporate history or experience in areas so it
12 acts as a data bank upon which the planning group can
13 base its future operation. And for a longer-term mine
14 that becomes of value because if staff change it means
15 the base is available to them. Here I have not been able
16 to find any evidence of keeping anything approaching a
17 data bank like that, so the comment about compilation of
18 data, I think, would be a good place to start so they --
19 so it would enable the staff to at least see what they
20 have and where they are prior to further planning.

21 Q. And you've had access to the hard copies, the
22 papers, from the Westray files that came into the
23 possession of the Inquiry. And you've also had access to
24 data that was on computer systems of Westray that was
25 acquired by the Inquiry. And you've seen nothing like

MR. GOLBEY, EXAM. BY MR. MERRICK

1 this where they have tried in any organized fashion to
2 compile or keep track of their technical information?

3 A. Not as I would view it in a recognized data-base
4 manner, no.

5 Q. Have you seen any indication from this information
6 that they were organizing a planning function. For
7 example, were you seeing minutes of planning meetings?
8 Were you see internal corporate memorandum setting up
9 planning structures or groups? Have you seen anything
10 indicating that there were actually meetings and
11 correspondence or dialogue between the various people in
12 the organization to generate a cohesive mine plan?

13 A. There are some memos and notes indicating that that
14 process was commencing in that there have been -- I found
15 some handwritten notes which would indicate planning was
16 being considered. And there are, disjointed in a time
17 sense, memos referring to joint meetings and planning
18 meetings. And there was one handwritten file I found on
19 the sequence of drawing numbers.

20 Q. Yes?

21 A. But not -- if I can come back, there is no -- there
22 seems to be no master overall index or data base file.

23 Q. Or what about a master overall planning process
24 internally in the company?

25 A. I'm not aware that -- I'm not aware of one.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. When did you see these evidences of individual or
2 some initiative at planning? Over what time frame would
3 these be?

4 A. It was commencing more towards the end of 1991.

5 Q. All right. Can you go back to Exhibit 64 for us,
6 please, and turn to Tab 3. This is a briefing note,
7 dated April the 9th, 1992. And I don't think I referred
8 this to you last week. I'm interested in the comment in
9 the third paragraph. Actually, let's just take a look at
10 the second paragraph while we're here. That paragraph
11 notes that, "during the last week the mine experienced a
12 significant but hopefully only a temporary setback caused
13 by roof-and-pillar failures in the mine production
14 areas." I assume what they're talking about there is the
15 decision to have to abandon at the end of March that
16 whole Southwest 1 area, particularly the finger pillars?

17 A. I presume that's what caused the decision to be
18 made, yes.

19 Q. The memo notes that, "the company estimates that it
20 will take approximately one month to reestablish the
21 production rates they had already achieved and during
22 this period daily production will fall to between 1,000
23 to 1500 tonnes per day."

24 A. And to some extent there was a shortfall shown in
25 production from mining faces in the monthly report of

MR. GOLBEY, EXAM. BY MR. MERRICK

1 that month.

2 Q. And that would be because they had established sort
3 of a production process in the finger pillars and were
4 operating on actual coal production but then got chased
5 out of there and had to establish a new area?

6 A. Yes.

7 Q. And as we look at the plan, we see where they were
8 going up into Southwest 2. They would have to establish
9 those two main roadways. And I assume that production
10 drops when you're doing your development.

11 A. It generally does, yes.

12 Q. So that at a point where they have this cash-flow
13 problem and they're seeking to get their production up as
14 high as possible, they're going to have this difficulty
15 in April and possibly May of dropping that because they
16 have to do a whole new area?

17 A. Yes.

18 Q. Now let's look at the third paragraph. And that
19 reflects "Our main concern is that the company has not
20 yet defined reliable design criteria for room spans or
21 pillar widths that are suitable for the mining system
22 they have in place. Even though the mine is at an early
23 stage of operation, the company should be achieving
24 improved stability of their mine openings. Westray
25 officials have advised that they're undertaking a re-

MR. GOLBEY, EXAM. BY MR. MERRICK

1 evaluation of their mine plans and they'll be submitting
2 a request to change their existing layout by the end of
3 April." Do you know what change they were referring to
4 there or what they must have been referring to there?

5 A. Well, I assume it was going into the extreme
6 Southwest area.

7 Q. The Southwest 2 area?

8 A. The Southwest 2 area.

9 Q. So they were planning to submit a request to change
10 their existing layout by the end of April. But as we can
11 see from our diagram, the colour-coded one, they actually
12 were in there in April?

13 A. Yes.

14 Q. What do you say as to the comment that was made in
15 this memo that even though the mine is at an early stage
16 of operation, the company should be achieving improved
17 stability of their mine openings?

18 A. I agree with the wording "stability" in "mine
19 openings," because where they were operating in the mine
20 they were making openings that would have been there for
21 a considerable period. In that if you open a district to
22 be mined, you expect to be there for a matter of months
23 and at times, if not years. So it therefore to me seems
24 obvious you would try and ensure that whatever openings
25 would be stable and be supportive during that period. An

MR. GOLBEY, EXAM. BY MR. MERRICK

1 observation I will make from this is given the apparent
2 frequent changes of mine layout, and I'm sure other
3 witnesses can speak to this in more detail, it would
4 appear that they were changing so frequently, there was
5 no one common base against which they could measure the
6 effectiveness, or not, of all their changes.

7 Q. That's an interesting comment that we may hear Mr.
8 Salamon comment on. All right.

9 COMMISSIONER What was that again? Which two --

10 MR. MERRICK To compare.

11 A. To compare whatever changes they make. For example,
12 the original Kilborn layout, as indicated in blue on the
13 top exhibit may ultimately have proven not to be the
14 best, but at least it gives a base against which future
15 mining or changes of orientation can be compared.

16 COMMISSIONER Okay. Thank you.

17 MR. MERRICK All right. Can you turn to Exhibit 35-A,
18 please. At page 47.

19 COMMISSIONER What was the tab? What was the exhibit
20 again, please?

21 MR. MERRICK 35-A.

22 COMMISSIONER 35-A.

23 MR. MERRICK And at page 47, it's a letter December the
24 31st, '91, from the Department of Natural Resources that
25 we looked at last week. This is a letter that they wrote

MR. GOLBEY, EXAM. BY MR. MERRICK

1 after their exchange or communications with mine
2 management at the end of that year in which they purport
3 to set out a methodology, I guess, if you will, by which
4 the Department will exercise its regulatory review.

5 A. Right, yes.

6 Q. And they -- on page 2 they set out the suggested
7 procedure. What do you say as to whether that's a
8 reasonable methodology that's proposed there, for the
9 exercise of a regulatory agency's review jurisdiction?

10 A. I think it is a realistic approach in that a company
11 will provide a plan which, to a degree, can then be
12 discussed amongst technical and the professional staff of
13 each entity to come to the conclusion as to whether it
14 would be accepted or not.

15 Q. I notice there in Item 1 that management, Westray,
16 was to submit a revised plan any time that you make
17 changes to the location of main entries, mining blocks or
18 other features. So I take it from that any changes you
19 submit. And the Department would then make the
20 determination whether they considered the change
21 significant enough for it to be considered a revised mine
22 plan?

23 A. Yes. And, in fact, Westray did that when they
24 encountered the steep slope on the East Mains, and they
25 submitted a change of plan which, in that case, was

MR. GOLBEY, EXAM. BY MR. MERRICK

1 regarded by the Ministry as not being a major change.

2 Q. You're talking there about in the North Mains where
3 they came around and came back up?

4 A. That's correct, yes.

5 Q. Yeah. Essentially following the same mine plan that
6 had been approved but merely coming at it from a
7 different direction?

8 A. Exactly. And I think, coming back to this paragraph
9 one here, that shows that the system could work quite
10 efficiently, and it's not -- my impression is it's not up
11 to the Department to be a mine planner, but could --
12 actually could be usefully used as a check, almost a
13 check against the plans and almost an umpire.

14 Q. So that under this methodology the company was being
15 very clearly told that they've got to submit a plan any
16 time they make any changes?

17 A. That's my reading of this, yes.

18 Q. And I note under paragraph two they're saying
19 "submit a detailed plan or layout for each of the mining
20 blocks before entering the block." And then if there's
21 any change in how they were going to develop that area
22 they should also attach a letter explaining the changes?

23 A. That is so.

24 Q. So the onus is on the company to advise the
25 Department of any changes. First, to provide details

MR. GOLBEY, EXAM. BY MR. MERRICK

1 before they get into an area and if those details change
2 in any way from the approved mine plan to submit a full
3 explanation of the changes?

4 A. That's as I read this as well, yes.

5 Q. And the Department would then make the determination
6 whether it was a significant change?

7 A. Yes.

8 Q. And, finally, in paragraph three I see that the
9 management is being requested every three months, or not
10 less than every three months, to submit an overall mine
11 plan and a plan for each active mining block.

12 A. And from my knowledge of the industry in general,
13 that should not have been a particularly onerous
14 imposition because, generally, as openings are made, they
15 will be surveyed. So there would be almost a
16 continuously updated master plan available.

17 Q. All right.

18 COMMISSIONER Mr. Golbey, just to clarify that -- when
19 you say or when you -- they refer to here "an overall
20 plan," would this mean a plan that would involve showing
21 where the room-and-pillars were going to be placed, where
22 the ventilation would be set for that, how the roof
23 bolting would be done during the course of the
24 development of room-and-pillar and even to the extent of
25 how they would accomplish retreat pillars?

MR. GOLBEY, EXAM. BY MR. MERRICK

1 A. No, in this context, I would read that as being a
2 plan almost in a manner of a city map, showing the areas
3 they are operating, where the pillars are --

4 COMMISSIONER Just kind of like the blue here?

5 A. Similar to that type of opera -- that type of plan.
6 More of, if you like, a geographic plan rather than the
7 technical ventilation.

8 COMMISSIONER But isn't it normal in mining operation
9 for companies to submit a ventilation plan and a bolting
10 plan periodically?

11 A. I've been more familiar with just submitting a
12 layout, if you like, a mining layout plan, but it should
13 not be, in my opinion difficult, very difficult, to add a
14 ventilation plan because presumably there is an engineer
15 whose job it is to look after ventilation and so would be
16 monitoring it on a periodic basis. So that type of
17 record could be included.

18 COMMISSIONER Okay, thank you. But you're not in a
19 position to say it's the norm or not?

20 A. It would depend -- I believe it would depend upon
21 the circumstances and generally a company would keep that
22 information. So it's almost to the point of -- I was
23 going to say photocopying another copy of that plan to
24 send in.

25 COMMISSIONER Okay, thank you.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 MR. MERRICK I take it from what you've said that
2 obviously before a prudent company goes into a panel, for
3 example, not only will they have laid out geographically
4 or city map-wise-like how they're going to do it and
5 that's filed with the Department, but they obviously
6 would have done a -- figured out how they were going to
7 ventilate that district? Both main ventilation system
8 and auxiliary system.

9 A. Yes, because opening a new area immediately would
10 have very little effect on the ventilation, but as they
11 move further into the panel and possibly away from the
12 main access tunnels, there would be auxiliary systems
13 required and calculations required to support moving fans
14 and so on.

15 Q. And prior to going in they would have had to figure
16 out how they were going to run their electrical system in
17 there as that panel develops? Or district develops.

18 A. Yes. And in electrical, it may be as simple as just
19 the equivalent of adding an extension cord or it may
20 require a more complex system.

21 Q. And so all of that information should have done, in
22 existence and could be copied for a department if a
23 department requested it?

24 A. Certainly the base details are -- should be
25 available, yes.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. Bearing in mind that this was the methodology to be
2 used, or the Department's clarification or specific
3 description of the methodology to be used, as of December
4 31st, 1991, and on your review of how the company
5 operated in the first four months of the year, together
6 with the changes that we've seen that they made as to
7 which district they were going into and how they were
8 going to go in there, what do you say as to whether they
9 were in compliance with this methodology?

10 A. I do not see them, to use your term, "being in
11 compliance with this methodology."

12 Q. In fact, did they really do anything in compliance
13 with this methodology on the changes as we've seen them
14 on the documents available to date?

15 A. The -- I suppose pointing out the change that was
16 subsequently viewed to be minor, there is an indication
17 there was a move towards attempting to follow this --

18 Q. You're talking about in the North now --

19 A. In the North.

20 Q. -- coming around the Southeast?

21 A. On the North drivage.

22 Q. Yes?

23 A. On the Southwest, Southwest 2, there appears to be,
24 or I've not found any documentation that would say that
25 this approach had started to be being followed.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. And as we look at Southwest 1, we see the roadways
2 that they were driving in September of '91, in the light
3 green. They, of course, are part of plans that were
4 approved, but when we get up into the top portion of that
5 and you see the somewhat unusual pillar that they drove
6 in the light blue, this would be in January of '92, sort
7 of an odd layout, did you see where that or those series
8 of roadways or headings were ever submitted or approved -
9 - submitted, period?

10 A. I'm now trying to remember if they were on the last
11 plan that was submitted shown as a dashed line.

12 Q. And do you know if they made any attempt to submit
13 to the Department a plan of how they were going to go
14 into the finger pillars before they went in there in
15 February?

16 A. Before February, no.

17 Q. And do you have any indication that they submitted a
18 plan to the Department that they were going to go into
19 Southwest 2, before they did, in April?

20 A. I've not found such a plan.

21 Q. Have you found any record of the first of these
22 overall mine plans that were to be submitted every three
23 months and would have been due by the end of March?

24 A. No, I haven't.

25 Q. Let me take you now to a few comments on the

MR. GOLBEY, EXAM. BY MR. MERRICK

1 financing of this mine. The federal assistance that was
2 offered of the loan guarantee of 85 per cent of a hundred
3 million and the interest buy-down. What comment do you
4 make as to whether that is usual or typical and the
5 appropriateness of that kind of assistance in this kind
6 of a project?

7 A. Well, both of those are federally administered plans
8 or schemes, and it is my understanding that any entity
9 that fulfils the guidelines under those two schemes can,
10 in fact, apply and use them. So, in a sense, if
11 management of a company is aware of them and they fall
12 within those guidelines, then they're there for their
13 use.

14 Q. So that is -- the rules of the game are all laid
15 down publicly. It's an established program and if you
16 can comply, you can get it?

17 A. That's my understanding of those programs, yes.

18 Q. What about the bank financing that was obtained in
19 this case? How typical and appropriate do you consider
20 it for this kind of a project?

21 A. In that all financings are ultimately tailor made
22 for each specific loan, there are obviously elements in
23 it that follow that. But overall, from my experience, it
24 follows a fairly standard type of loan for an operation
25 of this type.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. So that most operators who might want to set up a
2 coal mine in this province or other provinces, that is
3 not an usual kind of financial assistance to look for and
4 ultimately obtain?

5 A. No. And referring to the bank financing, the doc --
6 or the outline of the loan, and the actual loan is quite
7 similar to those I'm aware of in other mining or
8 minerals-related loans on the properties.

9 Q. And we know from the agreement with the bank that it
10 had the power to review the development of this project
11 as it went and that any changes in design had to be
12 submitted for approval. Having looked at the documents
13 that we have as to what the bank did to exercise its
14 power of review and its due diligence, I guess, review,
15 what do you say as to whether the bank exercised what
16 would be a normal due diligence review function?

17 A. I believe, overall, it did, which it did through the
18 hiring of an independent engineer. And so, in essence,
19 it was using AMCL as its eyes and ears and its technical
20 advisor.

21 Q. Just on an aside for a moment --

22 COMMISSIONER Before you go on the side, I'd like to
23 take that one step further. Maybe I'm anticipating you,
24 Mr. Merrick. Would you see, or in your review of the
25 materials, did you see anything different in the bank's

MR. GOLBEY, EXAM. BY MR. MERRICK

1 review or control or supervision of this loan that would
2 suggest their approach was different because of the
3 federal loan guarantee?

4 A. In the, if I can call it the "technical
5 administration of the loan" no, I saw no difference.

6 COMMISSIONER Okay.

7 MR. MERRICK Just explain why you limited your answer
8 or qualified it that way.

9 A. Because I'm not certain if it would have influenced
10 the Bank of Nova Scotia's internal credit review and
11 management review of how they viewed the loan.

12 Q. In other words, if the federal government hadn't
13 guaranteed 85 per cent of it, they may or may not have
14 granted it?

15 A. Precisely. And it's -- I just can't answer that
16 presumption. Or assumption.

17 Q. Sure makes it easier to borrow money from a banker
18 when you've got the federal government guaranteeing at
19 least 85 per cent of it.

20 A. I've not been in that position, but I assume it
21 would.

22 Q. No. But that goes with the territory, I guess. If
23 the federal government has an established guarantee
24 program then, obviously, if you can get it, you may get
25 credit given to you a little easier?

MR. GOLBEY, EXAM. BY MR. MERRICK

1 A. I think logically that would be the case.

2 Q. But having been granted the loan, you've seen
3 nothing to indicate that the bank eased off and said to
4 themselves well, listen, we don't have to worry too much
5 about reviewing this operation because if it goes under
6 we've got 85 per cent of our loan covered anyway?

7 A. No, I -- I think through the periodic reports by
8 AMCL and, indeed, some of the submission of AFE's to the
9 bank, it would indicate that they were administering --
10 administering it in a traditional matter. And the fact
11 that there was a loan guarantee there was not really
12 influencing the loan administration.

13 Q. All right. The sort of independent observation that
14 I just wanted to run by you, if you look at Exhibit 18,
15 that's the volume that contains the AMCL reports to the
16 bank. In fact, we have only a few of them because in the
17 beginning of that Exhibit 18 we start with progress
18 report number 11. So, obviously, there were 10 progress
19 reports prior to that?

20 A. There were.

21 Q. And as we flip through the ones that we've got in
22 this volume, the next tab is, of course, the certificate
23 of substantial completion which is sort of a -- one of a
24 kind and then the following tabs show further progress
25 reports. But they're dated about a month apart.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 A. Approximately.

2 Q. And as we just thumb through any one of them to see
3 what kind of a report they were getting, I notice that it
4 basically summarizes operations to date, gives an
5 indication of what area the company is operating in,
6 usually sets out some kind of a district plan of whatever
7 district they happen to be in at the time, this is, of
8 course, the company has provided them with the correct
9 information, and a little bit of a, sort of numbers
10 analysis and that sort of a thing.

11 A. Yes.

12 Q. So that the bank, every month, is getting one of
13 these things?

14 A. Approximately every month.

15 Q. It strikes me that the bank was getting better sort
16 of day-to-day reporting than the Department was?

17 A. Viewed in that way, it possibly was, yes.

18 Q. That would be because the bank was requiring these
19 periodic reports on almost a monthly basis. What do you
20 say as to the appropriateness of a regulatory agency, by
21 its legislation, being required or entitled to receive
22 more current and better sort of up-to-date reporting
23 similar to what the bank operated here?

24 A. I think, apart from an immediate thought, we could
25 have an interesting discussion on how much legislation or

MR. GOLBEY, EXAM. BY MR. MERRICK

1 government review there need be of private companies.
2 One thing which the bank did not have, which I believe
3 the legislation does, is almost the power to go in and
4 examine at any time.

5 Q. Yeah.

6 A. So, in that sense, arguably, the Department could
7 have had somebody inspecting the mine, being slightly
8 absurd, every day. And I --

9 COMMISSIONER Mr. Golbey, one of the prime functions of
10 this Inquiry is to review and make recommendations on the
11 amount of supervisory control ought be exercised by
12 legislation in circumstances such as this. It seems to
13 me that it wouldn't be unreasonable for a regulatory body
14 to require reports of this nature providing the
15 legislation was in place authorizing them to do so.

16 A. But what is also going through my mind, Mr.
17 Commissioner, is if, for example, you have a mine with a
18 mine life of 20 years, the legislation provides for
19 annual reports. And towards the end of a 20-year mine,
20 one year becomes very similar to the next year. So in
21 that circumstance, possibly an annual report would
22 suffice.

23 COMMISSIONER Yeah, we're talking about the development
24 stage now.

25 A. But now -- yeah, that's where I'm -- I'm now working

MR. GOLBEY, EXAM. BY MR. MERRICK

1 backwards in a sense. So that -- I don't know whether
2 the legislation will be worded "in the early stages" more
3 frequent reports would be required or whether in fact
4 that would just be left maybe through regulations or
5 through even department policy to require such more
6 frequent reporting.

7 COMMISSIONER We'll see about that.

8 A. Because what I was trying to do is mentally balance
9 almost what would be reporting overkill at the end of an
10 operation.

11 COMMISSIONER Quite so.

12 A. So this is maybe a little too infrequently at the
13 beginning.

14 COMMISSIONER Yeah. Thank you.

15 MR. MERRICK But let me pick up on that. From your
16 experience both in the industry as a consultant and in
17 your regulatory experience with the Conservation Board in
18 Alberta, am I understanding your evidence correctly that
19 in the initial life of a mine, particularly when it's
20 getting going and laying out its panels and getting its
21 mining methods worked out and overcoming initial ground
22 control problems and everything, that there is more of a
23 need for regulatory review at the beginning?

24 A. I would say there's more need for review the -- by
25 the -- in a sense, by the company's own staff or by a

MR. GOLBEY, EXAM. BY MR. MERRICK

1 regulatory agency, or, if the operation is being
2 financed, by those providing the finance.

3 Q. And that seems to be common sense as we've heard the
4 evidence, that everybody, operator, financing institution
5 and regulatory agency, has got to be on their toes more
6 in the first couple of years than in the last few years
7 of a mine's operation. Possibly?

8 A. I think that would be a fair observation.

9 Q. Or at least in the years that the mine has been
10 established and everything has settled down?

11 A. Yes.

12 Q. So that the regulatory jurisdiction perhaps should
13 be flexible. Front-end loaded, if you will. Are we
14 still all up -- [room lights flickering]

15 COMMISSIONER Oh yes. It didn't affect anything here
16 anyway.

17 MR. MERRICK So let me ask you this question, do you
18 think then that that is a consideration that should be
19 thought about as far as possible recommendation that the
20 regulatory review be designed in a way that there is a
21 more careful review in the beginning than necessarily at
22 another stage? In other words, there's not going to be a
23 flat, even review all the way through.

24 A. I think a provision like that would be of benefit.

25 I can see there being some opposition from mine

MR. GOLBEY, EXAM. BY MR. MERRICK

1 developers in that they have enough work to do at the
2 early stages of their operation and the last thing they
3 want to do is write yet another report or another report
4 for another agency. One method, and this is well outside
5 the Commission, that I utilized with some clients during
6 my lending period, was I would accept a photocopy of an
7 internal corporate report, assuming there was nothing
8 particularly proprietary in it, on the basis it contained
9 a degree of information I did not require. But it was
10 easier to photocopy one report than it was have one
11 especially written.

12 Q. To what extent, on what we know so far of the
13 Westray experience, had Nova Scotia had a regulatory
14 regime where there was a very close up front scrutiny at
15 the beginning, so that every single time that mine
16 decided to change anything in its layout, its plan, its
17 ventilation, whatever, there had to be full and complete
18 dialoguing with the Department before anything was done,
19 do you think that kind of a very detailed, regulatory
20 regime at the beginning would have made a difference in
21 how this mine got set up and the various changes that
22 we've seen?

23 A. I think it most probably would have made a
24 difference and if only for the reason I come back to
25 having a history of events or almost a data base to work

MR. GOLBEY, EXAM. BY MR. MERRICK

1 from. I can also perceive again, an industry view, that
2 if they have to submit almost every move they make to a
3 government agency, it could be a question of who is
4 actually supervising and/or running the operation: is it
5 the regulators or is it the company themselves.

6 Q. But surely from what we've seen here, with the
7 fluctuating layouts of districts in the Southwest
8 changing almost, and maybe this is a little extreme, but
9 almost weekly, with layouts being started before
10 approvals or even submissions had been made to the
11 regulatory agency, shouldn't somebody have said stop,
12 figure out what you're doing and do it right? Now
13 whether that was the operator or the regulatory agency or
14 the bank, shouldn't somebody have done that?

15 A. Unfortunately, I believe it's, with hindsight, easy
16 or relatively easy for us to be here and come to that
17 conclusion. I think during the mine development there is
18 the pressure to get something going so that is possibly -
19 - that was possibly not in the forefront of someone's
20 mind.

21 Q. Should it have been?

22 A. In a sense -- in a sense I'm coming to some well
23 worn territory, which is that of an overall plan, and
24 comparing that which is currently being done to some base
25 data. And in that sense, yes, I think it should have

MR. GOLBEY, EXAM. BY MR. MERRICK

1 been being done.

2 Q. Because I guess where I'm coming from, Mr. Golbey,
3 and you set me straight if I'm wrong because I'm not
4 experienced in mining manners; I'm looking at this as a
5 lay person would. From what I've seen so far on the
6 documents available to us, these changes going on, the
7 "let's try this and if it doesn't work we'll try this
8 over here, and if that doesn't work let's try something
9 else that we think of only as we get into it," just isn't
10 the right way to do it.

11 A. I find it an extremely unusual way for a mine to be
12 developed, certainly.

13 Q. And somebody, operator, finance institution, or
14 regulator, should be able to correct that?

15 A. Of the three, the easiest to be able to correct it
16 should have been the operator because --

17 Q. But --

18 A. -- they were there working with it every day.

19 Q. But this brings me to the basic sort of question
20 that I wanted to deal with now briefly, just how much
21 power and how much intrusion into an operator's business
22 do you think a regulatory agency should have, bearing in
23 mind that one of the primary objectives of a regulatory
24 agency is the safety of the workers.

25 A. The -- in that sense, look -- as you said, the

MR. GOLBEY, EXAM. BY MR. MERRICK

1 safety of the workers would -- well, be it a mine or
2 presumably a car plant or even a local hardware store,
3 should be paramount. I think one of the difficulties in
4 dealing with a mine is, to a degree, not unforeseen, but
5 unusual circumstances which abet. And this, in a way,
6 comes back to which plans get submitted. Mr.
7 Commissioner earlier mentioned roof bolting and
8 ventilation plans as, perhaps, a quarterly submission.
9 Maybe it's along the lines of if that is shown to be not
10 particularly well done and/or a problem in some areas,
11 then that's an indication that's an area that should be
12 more heavily supervised, if I can use that word.

13 And this is moving a little way from your question
14 but is coming back, perhaps just keeping a more open
15 dialogue and relationship between a legislative group --
16 or a regulatory group and an operating mine is the most
17 effective way of doing it.

18 Q. Well, we've certainly seen where the bank was
19 getting monthly reports, but they were getting reports
20 indicating mining going on in layouts that didn't exist
21 other than on the pieces of paper being given to the bank
22 which would indicate that while there may have been a
23 review of documents, there wasn't much on-site or there
24 may have been a limited on-site investigation being done.
25 What you're saying is that wherever we draw the line as

MR. GOLBEY, EXAM. BY MR. MERRICK

1 to the amount of regulatory jurisdiction given, and
2 however detailed that may or may not be exercised on
3 reviewing the nuts and bolts of how an operator is going,
4 that you've got to have communication, an awareness of
5 what that operator is actually doing on-site this week,
6 next week, that sort of thing?

7 A. I would -- if we're looking at times, I would say
8 this month. And, if necessary, have the type of
9 relationship where you could -- where an operator could
10 phone the relevant regulatory body and say we have had to
11 change whatever it is; these are the reasons why. Either
12 do you want to come and look at it or what do you need in
13 support. And I think the mining industry in other areas
14 has developed along that type of rapport. And if done
15 well, it doesn't weaken the regulators.

16 Q. But --

17 A. And it -- but it means that they can give a more
18 informed decision or approval because they've been
19 advised of everything as the operation progresses.

20 Q. But if you leave it completely informal, you run the
21 risk then of it being completely discretionary. I
22 suppose the scenario could develop where, for one reason
23 or another, the person exercising the regulatory function
24 may decide not to be that thorough in the exercise of it.

25 A. I --

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Q. You leave it to the discretion of the individuals
2 then?

3 A. I agree. That's the other extreme, and I would
4 suggest that that's possibly not -- that's too far an
5 extreme in the opposite direction in terms of over --
6 over formal regulation.

7 Q. You've seen our --

8 A. It's a question of where is the boundary.

9 COMMISSIONER Mr. Golbey, could I just add to that for a
10 moment. Now my specifics might be a little bit off here,
11 but I understand that under the Ontario mining
12 legislation that they have a tripartite committee set up
13 of union management and government who continually review
14 mining regulations on a four times a year, once a month,
15 or as required, to improve regulations and upgrade them
16 to suit new technology and new mining methods. That, it
17 seems to me, would take away the attitude or the
18 requirement of having to stop a certain operation or slow
19 down an operation to get the necessary approval.

20 Now I understand from one of the people on that
21 committee who I've spoken to that it works very
22 effectively, and it has the advantage of, indeed, not
23 slowing down operation and providing for tripartite input
24 to any of these regulatory changes. Would something like
25 that not be an advantageous thing to have in this sort of

MR. GOLBEY, EXAM. BY MR. MERRICK

1 a mining environment here? I know that's a large
2 question, but --

3 A. For once I think a short answer, yes, I think it
4 would be. And this is always the problem of if one
5 slavishly follows the -- either the law or the system
6 from somewhere else it may not be locally applicable, but
7 I think in that case that would be certainly a good place
8 to look and start.

9 COMMISSIONER Okay. Thank you.

10 A. However, I don't think that gets over Mr. Merrick's
11 main point or one of his points of if one is faced with a
12 really constantly changing operation, then how detailed
13 should the monitoring be. And I must admit, in my own
14 mind I'm wrestling exactly with whether a department
15 should have a daily report, a weekly report or --

16 COMMISSIONER Well, see we aren't --

17 A. -- the ability to --

18 COMMISSIONER I don't want to argue with you. What I'm
19 mainly trying to do is develop my own appreciation for
20 the evidence you are giving. But we aren't talking about
21 a mine in operation, we're talking about a mine in
22 development.

23 A. Correct.

24 Q. Where, presumably, very detailed development plans
25 based upon very detailed engineering studies have been

MR. GOLBEY, EXAM. BY MR. MERRICK

1 provided, and now we are getting very, very rapid changes
2 to these plans. Up until the time we get a smooth
3 operation going in this mine, is it not prudent to
4 require in the development stages, I emphasize, a
5 reporting scheme of changes that take you away from the
6 original plan?

7 A. Yes. I agree. I think a more frequent reporting
8 would be advantageous.

9 COMMISSIONER Okay. Yeah.

10 A. It's just a question of how frequent is "frequently"
11 in that case.

12 COMMISSIONER In the development stage only?

13 A. Yes, in the development stage.

14 COMMISSIONER Yeah. Okay. Thank you.

15 MR. MERRICK I think, Mr. Golbey, you're identifying an
16 important point, that the degree of monitoring obviously
17 is different for a developer between when they're getting
18 their mine set up and when they've got their mine
19 operating. In fact, you talked about different teams and
20 different skills and experiences often being utilized.
21 So that same concept should be carried over into the
22 regulatory regime.

23 Let me ask you this, in your opinion were the things
24 that were happening with this mine in the latter part of
25 1991 and the early part of 1992, and by that I mean not

MR. GOLBEY, EXAM. BY MR. MERRICK

1 just the changes taking place but the fact that the
2 changes were being done almost indicating a lack of
3 planning. We saw the original application back in, I
4 think it was October of '91 showing one kind of a layout,
5 and before the Department got a chance to finally approve
6 it, the company had changed that layout indicating that
7 there was no commitment to their plan when they made it.
8 It was ad hoc and then altered.

9 Also you're aware of, and we're going to hear
10 evidence on the number of falls that they were having and
11 the ground control problems they were having, it is it
12 fair to say that those kinds of things should also have
13 triggered a higher degree of supervision and care by both
14 management and regulatory agency?

15 A. I believe they should have done, yes.

16 Q. In other words, were there indicators of problems
17 here? Unusual problems?

18 A. I think in -- and this is because you mentioned it
19 referring to roof falls, which I believe another witness
20 will be speaking to, it is certainly an indication that -
21 - quite a dramatic indication, as you are following it,
22 is not working -- or, sorry, your method, as you are
23 following it, is not working or is not -- most probably
24 the most effective plan to follow.

25 Q. All right. Now let me just finish that point. To

MR. GOLBEY, EXAM. BY MR. MERRICK

1 come back to the basic issue we're struggling with, if
2 there are indicators that the operator's plan is not
3 working, what authority and involvement should the
4 regulatory agency have to step in and deal with that? Or
5 should that be left to the operator?

6 A. I suppose the most extreme authority a regulator
7 could have is to close the operation until whatever cause
8 or effect has been made good. Now that, I appreciate, is
9 a drastic measure, but it might be necessary to go that
10 far.

11 Q. I have just two other questions on this point and
12 maybe I'll get them in before we break. Knowing -- based
13 on the documents that you put out before us last week on
14 the application for the mining plan and the data that was
15 submitted and subsequently the changes that were -- for
16 which approval was sought and the data that was
17 submitted, and if you can answer this, please do. And if
18 you can't, I'll understand. Based on your experience
19 with the Energy Conservation Board in Alberta which, in
20 effect, had the same kind of regulatory jurisdiction as
21 the Department of Mines had here, in your opinion, had
22 Westray submitted a mine plan or an application for a
23 mining lease, as they did here, with the initial
24 application and then the sending along of box loads of
25 feasibility studies, do you think the Board would have

MR. GOLBEY, EXAM. BY MR. MERRICK

1 granted approval?

2 A. I certainly agree with your start to the question.
3 That is an extremely difficult question to answer because
4 of time and jurisdictional -- some jurisdictional
5 differences. I anticipate the Board would not have
6 approved it on the information they had in front of them
7 following some correspondence or identification of areas
8 they would have had difficulty, it may well have been
9 approved but that is pure supposition.

10 Q. And what about the changes? I'm thinking here -- I
11 know that some of them were relatively minor, but let's
12 take one of the more significant ones and that's that
13 change that was applied for on October of '91 and
14 subsequently ultimately granted in December of '91, that
15 dealt with the final jog in the main tunnels and a
16 proposed layout, as we see in black, on our exhibit up
17 there. How would the -- would the Alberta Board have
18 considered that that was sufficient information and would
19 they have approved that change based on that information?

20 A. I think the answer that comes to mind is, as I've
21 seen it, I just don't know. So, I just find that a very
22 difficult question to answer in any other way.

23 Q. Let me give you my last question and this is
24 probably even a tougher one. Although you've only
25 testified to certain parts of the evidence in this case,

MR. GOLBEY, EXAM. BY MR. MERRICK

1 you and, as well, many of us are familiar with a lot of
2 the other evidence that we'll be hearing about in the
3 public hearings. We know that this resulted in an
4 explosion on May the 9th. Do you think that that
5 explosion could have been prevented by doing something
6 different in the way this mine was planned or laid out or
7 in its planning process as we've seen it described?

8 A. I think the difficulty in answering is following any
9 accident, be it this one or two cars colliding on a
10 street, it's easy to think of a myriad of reasons as to
11 why something shouldn't have occurred but, at the same
12 time, you know very well it has. So, in that sense, it's
13 just very difficult for me to see if a change of layout
14 would have been a significant factor. It may; it may not
15 have been. There are just so many inter-related items, I
16 find it difficult to answer that.

17 Q. Or a change in the approach to how well you should
18 plan it out in advance?

19 A. Unfortunately, planning, of itself, may not prevent
20 an accident, but having planned, it means that, in my
21 opinion, it's less likely to have occurred.

22 MR. MERRICK Those are all the questions I have, Mr.
23 Commissioner.

24 COMMISSIONER Mr. Merrick. We'll recess for 15 minutes.

25 INQUIRY RECESSED (TIME: 11:08 a.m.)

MR. GOLBEY, EXAM. BY MR. MERRICK

1 INQUIRY RESUMED (TIME: 11:24 a.m.)

2 COMMISSIONER We were almost going to start without you,
3 Mr. Golbey.

4 A. Well, I think you knew where I was.

5 COMMISSIONER Mr. Larkin?

6 A. Sorry, if I can just come back to a question --

7 COMMISSIONER But we're all through direct examination,
8 I believe. Maybe, Mr. Merrick, you might want to
9 perhaps --

10 MR. MERRICK Well, if you want to just complete an
11 answer, please.

12 A. Yes, it was a question you made, Mr. Commissioner,
13 about the number of, as you say, plans or regulatory
14 review during the early stage of an operation. One thing
15 which I did not recall until during the recess was at the
16 time of application the company would have provided the
17 regulatory bodies with a ventilation plan and electrical
18 plan and so on. So any changes during the early stage,
19 say in a quarterly report, could always be compared back
20 to those plans.

21 COMMISSIONER Did you say "would have" or "did?"

22 A. Well, I believe, the way the regulations are worded,
23 they should have been provided at the time of an
24 application for a mine license.

25 COMMISSIONER I see. Okay. Thank you.

MR. GOLBEY, EXAM. BY MR. MERRICK

1 A. Should have.

2 COMMISSIONER Should have.

3 A. Okay.

4 MR. LARKIN Thank you, Mr. Commissioner.

5 EXAMINATION BY MR. LARKIN

6 Q. Mr. Golbey, I would like to start by clarifying a
7 distinction that you make in various places in your
8 written report. And that distinction is one that you
9 make between mine plans with detailed engineering and
10 mine plans using generalized parameters. You return to
11 those contrasts again and again. And I would like to
12 clarify that perhaps by referring to a couple of the
13 areas in your report which is Exhibit 57. I don't know
14 if you have it there. And in particular I would like to
15 start, if you're looking for the reference, to comments
16 that you make on page 30 and 31. This is one of your
17 addendums.

18 A. That would be at the end of Tab 3 in the --

19 Q. At the end of Tab 3, yes.

20 A. -- the report I have or the copy I have.

21 Q. As I read the addendum overall, it's an effort that
22 you make to explain by using one example, the kind of
23 detailed level of planning that you would hope would be
24 done in advance of a mine being constructed?

25 A. That's correct.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. And you give the example here by taking the
2 diagrammatic section of drill hole 398, you point out
3 that in that drill hole and, I guess, certainly in other
4 drill holes that were in the Commission's files, there's
5 a line of ironstone and pyrite that can be found between
6 the D and E Level?

7 A. Yes.

8 Q. And you mention that part of the material that
9 Westray would have had was mining reports from the Allan
10 Mine indicating that the preferred roof was either one
11 formed by coal or one formed by ironstone bands?

12 A. That's as I have read in reports, yes.

13 Q. Okay. And so by using this example of some data
14 that the company would have had, on the second page, page
15 31, you, in your comment section, you refer to the
16 desirability of looking at the question of whether or not
17 the mining method should be planned to have either the
18 ironstone band as a roof or as a floor. And you point
19 this out as an example of the kind of detailed technical
20 but critical question that would affect the overall
21 efficiency and safety of the mine.

22 A. Yes, that's correct.

23 Q. I understood that correctly?

24 A. Yes.

25 Q. And then you make the comment in the second

MR. GOLBEY, EXAM. BY MR. LARKIN

1 paragraph or third paragraph of your comment you say,
2 "During my examination of the feasibility studies in
3 corporate data, I haven't found any material which deals
4 with mine or production planning at this level of
5 detail." And I take it you stand by that comment today?

6 A. I do, yes.

7 Q. Now, as I understand it, then what you're pointing
8 out is the detailed engineering plans part of your -- the
9 two things you contrast, relates to very specific
10 questions about exactly how you're going to go about
11 doing a particular portion of the operation, in this case
12 mining the coal from either a floor or a roof of
13 ironstone. And that you expect before a mine will start
14 production that that kind of detailed engineering
15 planning will be done so that it's not left to accident
16 or happenstance later on in the operation. Is that
17 basically what your position is?

18 A. Yes, that's a fair reading of that, yes.

19 Q. As compared to what you often refer to as the
20 generalized, if I can say that, parameters that seem to
21 be typical of the planning used by Westray in the
22 development of this mine, is that fair?

23 A. Yes, I suppose what you've just said would be more
24 of the feasibility study level using this type of detail
25 as opposed to the overall more notionalized study which

MR. GOLBEY, EXAM. BY MR. LARKIN

1 would be a prefeasibility, as I defined it last week.

2 Q. Yes, but just speaking generally about the way this
3 particular mine was planned and developed, this
4 particular mine seemed to operate from the beginning on
5 generalized parameters of planning as opposed to the
6 detailed engineering plans of the sort that this is an
7 example.

8 A. That's been my impression of it, yes.

9 Q. Yes, and you go on to say in the fourth paragraph of
10 your comment here -- well, in the second paragraph --
11 third paragraph of the comment you say "During my
12 examination of the feasibility studies, I didn't find
13 material that deals with production planning at this
14 level of detail." And then in the next paragraph they go
15 on to say "I consider the detailed engineering stage of a
16 project is the second opportunity to initially plan these
17 items with the feasibility study presenting the first
18 opportunity." And both of those were absent here in the
19 case of the Westray Mine, right?

20 A. Or not being able to substantiate their having been
21 done.

22 Q. Exactly. Everything you're saying is based on your
23 review of the documents in the hands of the Commission.

24 A. It is.

25 Q. But from that review of the documents that was never

MR. GOLBEY, EXAM. BY MR. LARKIN

1 done?

2 A. Right.

3 Q. And then you go on to say -- you express an opinion.
4 You say "I am of the opinion that neglecting or failing
5 to appreciate the consequence or significance of detailed
6 planning as outlined above is a major contributory factor
7 to the operation's failure to attain a reasonable
8 production rate in a relatively short period." And I
9 take it that's still your opinion today?

10 A. It is, yes.

11 Q. Now I want to go to another example, if I can, by
12 way of continuing to develop my understanding of the
13 distinction between detailed engineering and generalized
14 parameters, and refer you to a portion of your report on
15 page 9, again in tab 3. This is where you're dealing
16 with the application by Westray on February 15, 1989 to
17 alter the alignment of the tunnels from the tunnels that
18 had been laid out in the first Kilborn report --

19 A. That's right.

20 Q. To the tunnels laid out in the second Kilborn
21 report.

22 A. Right.

23 Q. And you -- again in your comments section, you say
24 "The second part of Westray's request indicates that a
25 detailed geological control has not been achieved. And

MR. GOLBEY, EXAM. BY MR. LARKIN

1 if I may, you're referring to the reason that was quoted
2 in the letter. It's quoted in the last part of the
3 paragraph just above there where they're saying "It could
4 provide access to coal at drill hole 269 if the projected
5 fault is not present at this location." Is that what
6 your reference is?

7 A. Yes, it is.

8 Q. Which is referring to the fact, it's kind of funny
9 to be proposing a change based on an unknown as to
10 something as important as to whether there's a fault
11 present at the place where you're going to make the turn.
12 Is that basically the comment your making?

13 A. Yes, it is.

14 Q. Now you go on to say "This development could be
15 interpreted as an instant change with a minimum of
16 technical justification prior to its being implemented."
17 And by that I take it that you mean that the minimum of
18 technical justification related to the lack of geological
19 information that would be necessary to make that
20 decision?

21 A. Right, no, I believe in discussion last week part of
22 this was covered as well.

23 Q. And you go on to say "As the declines would be
24 required for the life of the mine, traditional practice
25 would suggest that detailed engineering be conducted

MR. GOLBEY, EXAM. BY MR. LARKIN

1 prior to determining their location and any alteration
2 being contemplated." Now I would like you to explain if
3 you would in this context, for example, what's the
4 detailed engineering that you would expect to be done, or
5 perhaps even examples to it as opposed to an exhaustive
6 answer, in determining the location of the declines.
7 What kinds of detailed engineering would you expect to be
8 done?

9 A. Using "engineering" in a slightly wider sense, and
10 in fact was done, there were nine drill holes originally
11 pretty well along the line of the initial declines. And
12 the use of nine drill holes there would give a greater
13 degree of geological control. Much as geology at times
14 is a precise science, faults, unfortunately, wonder
15 around, so their exact location cannot be pinpointed.
16 But certainly to within a meter or two, they should be
17 able to. So with that series of drill holes, the geology
18 could be interpreted well. The rest of the plan of the
19 mine would indicate that that was a good position for the
20 declines to be placed in that they would serve the mine
21 throughout the life of the operation. And then the
22 detailed -- if you like the engineering aspect would come
23 back into how was it going to be developed, and
24 ultimately what sort of fittings and fixtures were going
25 to be placed in those tunnels.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Well, for example, what type of conveying system
2 would be used to take ore out of the mine, what kind of
3 transfer stations would there be between elements of the
4 conveying system? There would be a lot of detailed
5 engineering related to the most effective way to operate
6 the transportation system?

7 A. That's correct, yes.

8 Q. And that would relate to the design of the tunnels,
9 would it not?

10 A. Yes. I mean, being fairly simplistic, the wider the
11 conveyor belt, for example, the wider the tunnel, because
12 you need room for that and either other vehicles or
13 maintenance teams and so on.

14 Q. So if I understand your contrast between detailed
15 engineering and generalized parameters, using this
16 example, is that the design of the tunnels would be
17 something that you would want detailed engineering of
18 that sort because it's going to make it more efficient
19 during the life of the mine and potentially a better
20 mine, a more safe mine, for people to work in?

21 A.

22 Q. Now again with regard to the design of the tunnels,
23 was there ever the kind of detailed engineering done that
24 you can determine from your review of the records?

25 A. I have not found any.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Let me go to another example. I'm sorry, just to
2 finish off this point. You make a related point to the
3 discussion on page 9, at the bottom of page 14 of your
4 report, carrying over on to the top of page 15. At the
5 bottom of page 14 under your "Observations" heading, the
6 second paragraph there, you say, "Virtually all of the
7 planning after the Kilborn Study appears to be of a very
8 short term, almost ad hoc basis rather than as part of a
9 well-defined long-term strategy. This is demonstrated by
10 Westray changing the grade and direction of the declines
11 before they even commenced developing them and then not
12 applying for the required permits until they were
13 immediately required rather than on a long-term basis."
14 Do I take it what you're saying is that this concept of a
15 well-defined long-term strategy is very closely tied to
16 your notion of having detailed engineering plans for how
17 a mine is to be constructed and developed. Is that fair?

18 A. It's related to it. I would put it in the context
19 of, say, having an overall five to 10-year plan to show
20 you, within reason, where the mine is going and where
21 production will be coming from. And then the detail for
22 the next maybe year or two to -- describe in detail and
23 demonstrate exactly how those plans are going to be
24 carried out.

25 Q. Okay. And you're contrasting that with what you've

MR. GOLBEY, EXAM. BY MR. LARKIN

1 observed from reviewing the Westray documents that the
2 planning, if you can use that term, really, was of a very
3 short-term almost ad hoc basis?

4 A. Yes.

5 Q. In other words, done with a minimum of technical
6 justification, a minimum of engineering and without
7 really any relation to some kind of base in terms of a
8 five-year plan or something of that sort?

9 A. That's as -- I've been able to determine, yeah.

10 Q. Yes. Now I want to go to this -- the contrast
11 between detailed engineering and generalized parameters
12 to take one further example, and that's ventilation.
13 That's not one that you discuss in your report. But you
14 were referred to some of the materials in the feasibility
15 studies from Norwest and Placer and the Kilborn review
16 about this. And I would like to refer you now, if I
17 could, to Exhibit 4, which is the first volume of the
18 Kilborn -- the second Kilborn report. And these pages in
19 Kilborn are a little hard to find. Page 3-8 and 3-9.
20 Have you got it there?

21 A. Yeah, they're approximately one third through the
22 document.

23 Q. I have it, thank you. Now this section, number 3.5,
24 starts at the bottom of 3-8 and goes over to 3-9. I
25 guess, basically, one full page on mine ventilation in

MR. GOLBEY, EXAM. BY MR. LARKIN

1 the Kilborn -- the second Kilborn report, right?

2 A. Yes.

3 Q. And this is it, as I understand it, from my looking
4 through the document, this is what's in this study on
5 ventilation, am I right?

6 A. That's what I've been able to find as well, yes.

7 Q. Okay. And the second Kilborn report was basically
8 as close as Westray came to having an initial mine plan,
9 as far as I've been able to determine, is that right?

10 A. I think that's -- I think we found the same thing,
11 yes.

12 Q. Okay. And, actually, it was used kind of in a cut-
13 and-paste method to be provided to the government in the
14 application for a lease later on that year?

15 A. Yes, it was.

16 Q. Okay. Now in this section on mine ventilation I'm
17 struck by the fact, for example, there isn't any analysis
18 of some kind of ventilation network or process over the
19 full life of the mine or at various stages of the mine.
20 Am I right on that?

21 A. I would agree with you. And apart from making an
22 observation on its size and length, I think if you have
23 specific ventilation questions then, obviously, another
24 witness is going to be better able.

25 Q. Yes, I appreciate that. I'm more looking at in

MR. GOLBEY, EXAM. BY MR. LARKIN

1 terms of planning as opposed to suggesting anything --

2 A. The detail --

3 Q. -- that involves an expert opinion --

4 A. Right.

5 Q -- on the quality of the -- or the nature of the
6 things that are analyzed. But wouldn't you say, for
7 example, that there's nothing in here that you would
8 consider a plan for the life of the mine on the
9 ventilation side. There's something on the type of fan
10 that's needed and the fact that auxiliary fans are
11 needed. But that's it, isn't it, essentially?

12 A. In large measure, that's about the plan, yes.

13 Q. So would you agree with me that, for example, that
14 this would be another example of the lack of detailed
15 engineering plans. This is definitely not that, would
16 you agree?

17 A. I agree.

18 Q. And, you know, aside from the merits of these
19 points, you might expect to see some calculations done on
20 the methods that would be used to prevent the
21 accumulation of methane on the roof of the mine, for
22 example? You're nodding, you mean yes --

23 A. I --

24 Q. -- with respect to that?

25 A. I would expect to see that that had been taken into

MR. GOLBEY, EXAM. BY MR. LARKIN

1 account.

2 Q. Exactly.

3 A. But at the same time and being familiar with some of
4 these type of documents, it is also not unusual industry
5 practice to have a volume such as this that does not
6 contain the detailed mathematical calculations and so on
7 partly because it really, to me, makes quite boring
8 reading and, to be honest, I don't understand, in terms
9 of ventilation, some of the calculations. In that case,
10 I would expect to see a reference --

11 Q. Exactly.

12 A. -- to the technical volume or their backup document.
13 And this is no such reference.

14 Q. You would expect to see a reference to the
15 calculations being done somewhere else?

16 A. Yes.

17 Q. Because, for example, it will be an issue in this
18 Inquiry about whether the ventilation system was adequate
19 to deal with the problem of methane layering on the roof
20 of a mine. You would expect in a properly planned mine
21 plan that there would have been calculations done on the
22 velocity of air needed to prevent that or the volume of
23 air needed to prevent that, isn't that right?

24 A. Be it through -- yes, through describing whatever
25 mechanism they consider was appropriate to prevent that

MR. GOLBEY, EXAM. BY MR. LARKIN

1 occurrence.

2 Q. Right. So what you have here again in the
3 ventilation section is another example of your general
4 paradigm here is you have generalized parameters. You
5 have something quite general, really, and then you have
6 an absence entirely of the detailed engineering plans
7 that you expect to be in place before you start digging
8 the hole in the ground --

9 A. And this is why I believe I referred to this study
10 more as a prefeasibility than a feasibility style of
11 document.

12 Q. In order for this mine to be properly planned,
13 there's something missing here and that something that's
14 missing is the detailed engineering to show exactly how
15 you're going to meet the various obstacles to successful
16 operation of the mine, essentially?

17 A. As I see it, yes.

18 Q. And this would be -- this would also be tied to
19 something that was a long-term plan, I think, not to
20 forget that, something that doesn't just look the first
21 year or the first couple of years but looks beyond that.
22 You're saying five years. It would be better to have 10
23 but five years would be something that you would expect,
24 is that right?

25 A. I would expect at least five, yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Yeah. Now the Kilborn Study, I won't take you back
2 to the actual document, but you'll recall in the second
3 Kilborn Study, the layout, the mine layout, basically was
4 a plan for three years. They identified in '91, '92, and
5 '93 where they were going to get the coal.

6 A. They did.

7 Q. That's as far as they looked ahead, right? Am I
8 right about that?

9 A. That's right, yes.

10 Q. And in a sense, it was still the kind of general
11 thing because they put it on a mine lay-out plan but
12 there wasn't supporting documents anywhere for exactly
13 why they were going to start in a particular are and how
14 they were going to work it for the first year and the
15 second year and the third year. It was more kind of
16 notional or general, isn't that right?

17 A. That's my interpretation of that plan.

18 Q. Okay. Now somewhere here in documents that I think
19 you haven't been referred to yet, in Exhibit 64 at Tab
20 13, I believe, in the new documents today -- it's --
21 there's two documents stuck in there, page 10 at Tab 13,
22 there's a document here from Gerald Phillips, the General
23 Manager of the Pictou office of Westray Coal to Mr.
24 Forgaard, the President of the Toronto Office, and it's
25 called "Design Criteria, Westray Mine." Have you seen

MR. GOLBEY, EXAM. BY MR. LARKIN

1 this before?

2 A. I have, yes.

3 Q. Yes. And I don't want to take you through it in
4 detail, but I want to ask you in general would you say
5 that if these were the design criteria for the Westray
6 Mine that they fit your category of generalized
7 parameters as opposed to detailed engineering plans?

8 A. I would say "generalized parameters" is a fair
9 description.

10 Q. And would you agree with me as well -- certainly not
11 the basis for beginning the construction of an
12 underground mine, that other steps needed to be taken?

13 A. I think they would be, yes, more used at a
14 prefeasibility study stage.

15 Q. Now from your review of the Westray documents in the
16 possession of the Commission, did Westray ever go beyond
17 these initial design criteria to the more detailed of
18 criteria or planning that you're saying is needed?

19 A. From other documents and some of the latter
20 handwritten notes that I found which was mentioned in
21 answering a question from Mr. Merrick earlier today,
22 there was indications they were moving towards that way.
23 I found no, if you like, similar study -- similar formal
24 studies, say an update to a Kilborn, for example, that
25 would indicate they've used that.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Okay. So you concluded that they may have been
2 moving toward the more detailed engineering or more
3 detailed planning, but you found no evidence that they
4 actually did?

5 A. Correct.

6 Q. Okay. Now were you able to tell whose notes they
7 were that you were referring to, the handwritten notes
8 that you mentioned in answering to Mr. Merrick's
9 question?

10 A. No, they were not. They were handwritten and
11 unsigned.

12 Q. Handwritten and unsigned. All right. I want to go
13 to another area, if I may. You told us in your testimony
14 about the cash-flow problems encountered by Westray in
15 1991 and 1992. And one aspect of that I would like to
16 get as clear as I can. And that's the question of when
17 Westray actually produced or first produced saleable
18 coal. Now if I could start, the diagram -- I'm not sure
19 -- this model up here --

20 A. Yes.

21 Q. -- has something called "start of recoverable coal"
22 and an arrow which goes to the area between No. 9 and No.
23 10 Crosscut?

24 A. Yes, it does. And I think that same document for
25 everyone else is reproduced in Exhibit 35, Tab 8. Yes,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 it is.

2 COMMISSIONER In which crosscuts?

3 MR. LARKIN Between Number 9 and 10 Crosscuts.

4 MR. MERRICK Do you want the pen?

5 MR. LARKIN Oh, okay. I don't know if I'll be able to
6 -- detailed engineering is not my --

7 COMMISSIONER You haven't had a course on that --

8 A. It's 45, Tab 8.

9 MR. LARKIN Yes. 45, Tab 8, it's the same diagram?

10 A. Yes, it is.

11 Q. And someone has put an arrow there, "start of
12 recoverable coal." Now from your review of the Westray
13 documents in the possession of the Commission, is this
14 indication on the document or on the plan, is that an
15 accurate indication?

16 A. In allowing a meter here or there which is not
17 unusual, yes.

18 Q. Okay. I'm sorry, I didn't hear --

19 A. It would be the start of where coal would have been
20 encountered in that development.

21 Q. Okay. Do you know -- and now we know from, I guess,
22 from the other plan which is immediately below that and
23 which is also reproduced as Tab 9, I guess, in the
24 Exhibit 4508, that it was July of 1991 when Westray
25 reached the area between No. 9 and No. 10 Crosscut?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. Yes, it was.

2 Q. Okay. From your review of the Westray documents, is
3 it a correct conclusion to say that it was in July of
4 1991 when Westray reached recoverable coal?

5 A. From these documents, yes.

6 Q. Okay.

7 A. And that, of course, is recoverable in a mining
8 sense.

9 Q. Yes. Well, tell me what that means. Sorry, I
10 don't --

11 A. Which means that it can be physically dug from
12 underground. The coal would then have to be taken to
13 surface and processed through the coal preparation plant
14 prior to being of a quality for sale.

15 Q. Yes, of course. Now is recoverable coal, in this
16 context, the same thing as saleable coal? Is this when
17 they first got saleable coal?

18 A. No, because it would have to be treated through the
19 preparation plant.

20 Q. Yes, but what I'm trying to get at it when --

21 A. Oh.

22 Q. -- when they first took coal out of the ground, that
23 eventually, after being cleaned in the preparation plant,
24 got sold. Do you know when that was?

25 A. It's because of the use of stockpiles on surface and

MR. GOLBEY, EXAM. BY MR. LARKIN

1 they would have encountered coal in other areas, it's
2 very difficult to say which coal physically from
3 underground was the first through the plant. And I think
4 to some extent it would be better just to look at what
5 went through the preparation plant rather than what
6 specifically came from -- or an area from specific
7 places underground.

8 Q. Okay. But let me try -- I would like to keep
9 working on this a little bit though, if I may. Can I
10 refer you to Exhibit 17 which is one of the volumes of
11 "AMCL Monthly Reports."

12 A. Which it seems I don't readily have up here at the
13 moment but --

14 Q. Exhibit 17.

15 COMMISSIONER Just wait until I've got it. Thank you.

16 MR. LARKIN Exhibit 17 at Tab 2 is one of the Monthly
17 Reports prepared by AMCL on March 25th, 1991.

18 A. Yes, it is.

19 Q. Now the pages don't seem to be numbered here, but if
20 you get past the initial cover page and covering letter,
21 there's a -- it begins --

22 COMMISSIONER Is that Tab 2?

23 MR. LARKIN It's at Tab 2. Exhibit 17.

24 COMMISSIONER Mine are numbered.

25 MR. LARKIN Oh, yours are numbered. Well, you're the

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Commissioner.

2 COMMISSIONER Yeah, that's right.

3 MR. LARKIN In any case, I'm going to be referring you
4 to page 2 of the report proper where in the middle of the
5 page 2 -- this is the page that starts, "Westray
6 continues to plan improvements to their mine layout." Do
7 you have that?

8 A. I have the page, yes.

9 Q. The second paragraph says, "As the development
10 proceeds north, the Foord seam quality is improving. In
11 a further 200 meters to 300 meters, it's probable that
12 the coal quality will be such that the development output
13 will be stockpiled for future washing, thus providing
14 early revenues." Do you have that reference there?

15 A. Yes, I have.

16 Q. Okay. Now I have concluded from that that as of
17 this stage, as of March 25th, 1991, they were 200-300
18 meters away from getting any coal that could be
19 stockpiled and later washed. Is that --

20 A. It would -- yeah, from this that would be their
21 interpretation.

22 Q. Okay. So it would appear that, at least as of the
23 end of March, 1991, they hadn't reached what I'll call
24 any saleable coal?

25 A. Right.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Okay. Now there's another thing I just want to draw
2 your attention to here. It makes reference, two
3 paragraphs down, to the change from CMD to Westray
4 control was anticipated on around March 28th, 1991.
5 That's referring to the fact that Westray had
6 subcontracted the construction of the tunnels to Canadian
7 Mine Developments Limited?

8 A. That's it.

9 Q. But at this time they had -- they were taking over
10 from CMD to drive the rest of the tunnels themselves?

11 A. They were, yes.

12 Q. And I think there is reference, if you look at page
13 4 of the report, it's referred to again. There's a
14 record of how far the slopes had advanced. Have you got
15 it --

16 A. Yes, there is.

17 Q. And then it's talking about, "total advance since
18 our last report is 257 meters in 31 days."

19 A. Yes.

20 Q. So if Westray was able to keep up that same level of
21 driving, then they were a month or more away from any
22 saleable coal as of March the 25th?

23 A. Yeah.

24 Q. Is that fair?

25 A. Yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Okay. All right.

2 COMMISSIONER March 25, '91?

3 MR. LARKIN 1991.

4 A. 1991.

5 COMMISSIONER Yeah.

6 MR. LARKIN Now do you know when Westray first sold
7 any coal? And I may be able to help you. This morning
8 Mr. Merrick referred you to Exhibit 64 at Tab 10. And --

9 A. It's page 5.

10 Q. Yes, page 5 is the letter is to Mr. Boudreau, the
11 MLA for Cape Breton - The Lakes.

12 A. Yeah.

13 Q. And it refers to the fact that in August of 1991,
14 that they delivered 251 tonnes of coal to the Trenton
15 generating station. Is that your understanding of the
16 first sale of the coal?

17 A. That's the first record I have -- I've seen of that,
18 yeah, or I've seen of sales, yes.

19 Q. Okay.

20 A. Of the record of the first sales.

21 Q. So 251 tonnes, that would represent coal that came
22 out of the coal wash plant, presumably coal that had been
23 stockpiled so that it could be processed --

24 A. Yes.

25 Q. -- either in the month of July or August --

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. Yeah.

2 Q. -- 1991? And they didn't sell coal to anyone else
3 other than Nova Scotia Power, did they?

4 A. That's right. It was all going on the train to Nova
5 Scotia Power.

6 COMMISSIONER What was the date of that 251 tonnes?

7 MR. LARKIN It just says August of 1991.

8 COMMISSIONER Okay. Okay.

9 MR. LARKIN It doesn't have a date. Now while we're
10 on Exhibit 64 I'd like to refer you to tab 13, page one.
11 And this is a letter from the Registrar of Mineral and
12 Petroleum Titles of the Department of Mines and Energy,
13 dated August 7th, 1991, right?

14 A. Yes, it is.

15 Q. And it encloses mining permit number 0017 to Curragh
16 Resources?

17 A. It does.

18 Q. In accordance with Section 181(1) of the Mineral
19 Resources Act, right?

20 A. Yes.

21 Q. And what follows is a mining permit with quite a bit
22 of detail as to the various conditions before being
23 permitted to mine?

24 A. Yes, it does.

25 Q. Now in your review of the documents in the control

MR. GOLBEY, EXAM. BY MR. LARKIN

1 of the Commission, did you ever come across an
2 application for this permit?

3 A. Specifically something saying "application," no. Oh
4 now -- no.

5 Q. As opposed to specifically something saying
6 "application" --

7 A. Or --

8 Q. -- did you come across anything that seemed to be an
9 application for this permit?

10 A. No.

11 Q. No?

12 A. [No audible response]

13 Q. Okay. Or did you come across any correspondence
14 related to this permit?

15 A. Not that I can immediately recall, no.

16 Q. Nothing you can recall. Okay. Now the next
17 questions I want to ask you are questions I'm going to
18 ask you to assume a few things to -- for ease. If you
19 assumed that Westray required this permit, or required a
20 mining permit, and that an application was required for
21 it, I'd like to take you Regulation 63 which, I think, is
22 in a short package of excerpts of statutory material that
23 has been handed around to everyone. I believe it was.

24 COMMISSIONER Regulation 63 of what?

25 MR. LARKIN There was a -- we made a short copy of a

MR. GOLBEY, EXAM. BY MR. LARKIN

1 set of excerpts from the mine -- Mineral Resources Act
2 and Regulations. That will be the old Act, Mr. Chairman.

3 COMMISSIONER Okay. 1990?

4 VOICE '92.

5 COMMISSIONER Okay.

6 MR. LARKIN This isn't the whole Act or Regulations,
7 Mr. Golbey, but it's just excerpts. And the second part
8 of the package is an excerpt from the Regulations.

9 A. Right. It's at the back of the --

10 Q. Yeah, just skip through the excerpts from the
11 statute and then you'll get a portion of Regulations.
12 And there's a section in the Regulations, number 63,
13 under the heading "Mining Permit."

14 A. Yes, there is.

15 Q. Okay. Now assuming that Westray had to apply for a
16 mining permit, I want to review basically the factual,
17 some of the -- whether some of the factual aspects
18 required here had been provided or could have been
19 provided. It's -- Regulation 63(1) requires "That an
20 applicant for a mining permit made pursuant to the lease
21 to provide a report to the Registrar that describes in
22 detail all aspects of the mining operation, including..."
23 and if you could just skip over to the second page under
24 the heading of "Mining Plans" it has -- it says "Mining
25 plans which shall contain..." and then there's a list,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 right?

2 A. Yes.

3 Q. And I'd just like to refer you to a couple of things
4 on the list. We'll take number (v), subparagraph (v):

5 "For underground operations, the engineering drawings and
6 description for ventilation, roof support, de-watering
7 and distribution of services during each phase of the
8 development."

9 @ Now from your review of the documents in the
10 possession of the Commission, did you ever find any mine
11 plans filed with the Department, for example, containing
12 engineering drawings and description for ventilation
13 during each phase of development of the mine?

14 A. No, I didn't.

15 Q. Did you ever find any engineering drawings and
16 description for roof support during each phase of
17 development of the mine?

18 A. No.

19 Q. Or, indeed, any engineering drawings of the
20 nature --

21 A. Of the type in sub five?

22 Q. -- like the ones listed?

23 A. No.

24 Q. And -- in -- under the same section, a little bit
25 further up, paragraph (iii), it's a little confusing. It

MR. GOLBEY, EXAM. BY MR. LARKIN

1 says:

2 "Mining plans which shall contain engineering
3 drawings, a description of the proposed mining methods,
4 and schedules for all surface and underground development
5 work including the methods and procedures for the removal
6 of ore and waste rock."

7 Was anything of that sort, did it ever turn up in
8 your review of the Westray documents?

9 A. No, there wasn't.

10 Q. Now would you -- would it be sound or prudent for a
11 regulator to require this information in advance of
12 issuing a mine permit?

13 A. I believe it would be.

14 Q. Would you say that this kind of information was
15 needed in order to determine if a mining project would
16 result in efficient and safe mining?

17 A. I would, but because without this detail you cannot
18 arrive at the conclusion.

19 Q. That's right. You can't make a determination that a
20 project will result in efficient and safe mining without
21 this detail?

22 A. Exactly.

23 Q. To put it perhaps in a slightly different way, the
24 determination of whether a project would result in
25 efficient and safe mining depends on the preparation of

MR. GOLBEY, EXAM. BY MR. LARKIN

1 the fully engineered mining plans that you discussed in
2 your report, and we talked about earlier?

3 A. Yes, it does.

4 Q. Now if I could refer you back to the material that
5 you've got to section -- the excerpt of Section 90 of the
6 Act, this is the Mineral Resources Act of 1990. Mr.
7 Golbey, you'll see that the scheme of the Act as it's
8 laid out here, did you find Section 90?

9 A. Yes, I have. I was --

10 Q. Just above that, Section 89 provides that "No person
11 except in accordance with a mining permit, shall mine a
12 mineral." So the basic rule is you've got to have a
13 permit. And then Section 90 is the procedure for getting
14 a permit and the criteria for granting it. And you'll
15 see it provides that "Where an applicant for a mining
16 permit required by clause (a) files with the
17 registrar..." and then "it's an application in prescribed
18 form." Then it says, "the prescribed documentation."
19 Take it, if you would, that Regulation 63 describes the
20 prescribed documentation.

21 A. Yes.

22 Q. So if Westray had applied for a mining permit under
23 this section, it certainly could not have provided the
24 prescribed documentation because it never prepared it.
25 Isn't that right?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. That would be a fair surmise.

2 Q. And over on the -- at the end of Section 90 there is
3 a general requirement. It says, "And the Minister is
4 satisfied that the project will result in efficient and
5 safe mining, the Minister shall issue a mining permit in
6 the prescribed form."

7 You'd agree with me, wouldn't you, that if Westray
8 had been required to apply under this section, and had
9 applied with what we know they had available, that there
10 would have been no basis for the Minister to be satisfied
11 that the Westray Mine would result in efficient and safe
12 mining?

13 A. Obviously, one can't answer for a Minister, but I
14 think he would have found it difficult to make such a
15 decision.

16 Q. Well, I don't really want you to answer for the
17 Minister.

18 A. But --

19 Q. What I'm asking you and suggesting to you, and this
20 is, I think, something that you can answer for, is that
21 there was no basis for the Minister to determine that the
22 project would result in efficient and safe mining?

23 A. That's correct.

24 Q. Now we know, because we've seen it, a permit was
25 issued?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. Yes.

2 Q. And on the face of it, it wasn't issued under
3 Section 90; it was issued under Section 181(1). So if
4 you'd turn to that, please. When you go to that section
5 of the Act you'll see, looking just ahead of it, Section
6 180, there's a provision that says "A lease in good
7 standing at the coming into force of this Act is and is
8 deemed to be a lease issued pursuant to the Act for the
9 remainder of its term upon the coming into force of this
10 Act."

11 So take it from me, if you would, that the Act came
12 into force on March the 6th, 1991. And we'll see
13 elsewhere in the material here that that's the date it
14 was proclaimed.

15 A. Yes.

16 Q. All right. Now -- so under Section 180, Westray had
17 a lease and so that lease would, in effect, be
18 grandfathered upon the coming into force of the new Act.

19 A. Right.

20 Q. Right? Now Section 181 deals with permits. And it
21 starts saying, "Subject to Section 1 of Section 92,"
22 which you can forget for the purpose of my questions,
23 "...a mining permit shall be issued pursuant to this Act
24 to all lessees..." and you jump down to the next line,
25 "...in respect of the mine in production at the coming

MR. GOLBEY, EXAM. BY MR. LARKIN

1 into force of this Act." Right? That's the scheme
2 there?

3 A. [No audible response]

4 Q. Now on March the 6th, 1991, this section poses the
5 question as to whether Westray -- or Westray had a mine
6 in production at the coming into force of the Act, right?

7 A. [No audible response]

8 Q. Now the word "production" is defined. Now if you
9 can just -- if you keep your finger in there and go back
10 to the first part of the excerpt from the Act, where
11 you'll see Section 2, there's a whole lot of definitions,
12 and number (A)(h) is the one I'm interested in.

13 "Production" means the winning, taking, or carrying away
14 for sale or exchange of a mineral." Carrying away for
15 sale of a mineral. We know that as of March 6th, 1991,
16 Westray had not yet reached any saleable coal?

17 A. Right.

18 Q. And, indeed, was some two- to 300-meters away from
19 any coal that could be stockpiled, right?

20 A. Yes.

21 Q. And so that it was not in production under this
22 definition on March the 6th, 1991?

23 A. That's right.

24 Q. And so going back to Section 181(1), Westray was not
25 a mine in production on March the 6th, 1991, am I right?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. Using that definition, certainly it was not.

2 Q. And so if I've been correct in -- we've been correct
3 together in this analysis of these provisions, Westray
4 had no right to a permit under Section 181(1) and ought
5 to have had applied and gotten a permit under Section 90?
6 It would appear to be the case.

7 A. It would appear so.

8 Q. But we know that it never did apply under Section
9 90, right?

10 A. That's right.

11 Q. You're nodding your head, right?

12 A. Yes, I'm nodding.

13 Q. And if it had applied under Section 90, it neither
14 had the prescribed documentation that was required nor
15 could it satisfy the Minister that it would result, the
16 project would result, in an efficient and safe mine?

17 A. Well, it had never presented the documentation.
18 I --

19 Q. Nor was there documentation in existence that could
20 have satisfied the Minister --

21 A. Yeah, I --

22 Q. -- that it would result in efficient and safe mine.

23 A. -- I think that was --

24 Q. Am I right?

25 A. It was most unlikely there was that documentation.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Well, from your review of the material --

2 A. There --

3 Q. -- it did not exist?

4 A. Right. It was -- mainly, it's the Kilborn Study.

5 Q. So unless there's something we don't know, Westray
6 did not have a valid mining permit to operate this mine.
7 Isn't that right?

8 A. The mental problem I'm facing is if I read a sheet
9 of paper, then they have a valid permit. I think what
10 we're having difficulty is finding out the basis upon
11 which that permit was issued.

12 Q. Fair enough. We seem to have discovered though that
13 there was no proper basis under Section 181 to issue the
14 permit and nor was there a proper basis under Section
15 90 --

16 A. Right.

17 Q. -- to issue the permit. Now if that's -- if that's
18 correct, then these men who were working in the Westray
19 Mine on May the 9th, 1992, were working in a mine for
20 which there had been no proper basis for a permit to be
21 issued?

22 A. On that basis, your statement is correct.

23 Q. And I know I'm jumping way ahead on this. Those men
24 were working in the Westray Mine on May the 9th, 1992,
25 not only where there was no valid permit for the mine,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 based on what we've said, but in an area for which there
2 had never been an approved plan to mine. Southwest 1
3 Section.

4 VOICE Two.

5 MR. LARKIN Southwest 2 Section.

6 A. Southwest 2, right.

7 Q. Okay. Let me go to another area if I may. I want
8 to go back to 1988 when the lease was issued. You told
9 us the other day that the lease was authorized on
10 September the 8th, 1988, and it's in Exhibit 51
11 somewhere; we can find it --

12 A. Yeah.

13 Q. -- if we need to. And you told us -- in answer to
14 questions from Mr. Merrick, you described the failure of
15 Westray to respond to requests for technical information
16 from the Department of Mines and Energy, but,
17 nonetheless, the lease was granted?

18 A. [No audible response]

19 Q. Okay. Now I want to refer you to some other
20 material and I'd like you to go, if you would, to Exhibit
21 35-C. On page 15 of Exhibit 35-C there's a document I'd
22 like to refer you to. You've seen this document before?

23 A. I have, yes.

24 Q. This is an internal memo in the Nova Scotia
25 Department of Mines and Energy, it's dated March the 9th,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 1988 and it's from Robert Naylor, who's a project
2 geologist, right?

3 A. It is, yes.

4 Q. And it's to someone named "Ed Bain." I don't know
5 who he is; do you know who he is?

6 A. I don't know who he is either.

7 Q. You can only assume from the letter that he appears
8 to be one of his superiors in the Department?

9 A. Yes.

10 Q. And in this memo, Mr. Naylor says in the second
11 paragraph, he says: "I suggest that before mining in the
12 Foord seam proceeds it should be deemed viable by both
13 the geological and engineering staff of the Nova Scotia
14 Department of Mines and Energy." Then he goes on to say:
15 "In my personal opinion, the Foord seam project is very
16 high risk with respect to geology as it's presently
17 understood and further drilling is definitely required."
18 Right?

19 A. Yes, he says that.

20 Q. Now, Mr. Naylor's name appears in a lot of other
21 documents; he gets referred to as a geologist who's
22 especially knowledgeable about the Pictou coalfield, is
23 that right?

24 A. He does, yes.

25 Q. So for Mr. Naylor to say that the Foord seam project

MR. GOLBEY, EXAM. BY MR. LARKIN

1 is very high risk with regard to geology is a very
2 significant statement, isn't it?

3 A. I think it's also significant he says, "as it is
4 presently understood."

5 Q. Exactly. And, indeed, he goes on to say, "and
6 further drilling is definitely required."

7 A. Which ties into the "as currently understood"
8 comment.

9 Q. Exactly.

10 A. Yeah.

11 Q. Now for someone with the experience and knowledge of
12 Mr. Naylor to make that comment though is quite
13 significant because it indicates that before this project
14 is considered viable, you've got to understand the
15 geology better, and to do that you've got to do more
16 drilling. Isn't that right?

17 A. As he says in his opinion that's what is required.

18 Q. And I know you're not a geologist yourself, but
19 would you say that his opinion deserves at least some
20 attention? Given his background?

21 A. It would deserve attention, and it would either lead
22 to somebody reinterpreting the geology to see if they
23 agree with his opinion which may lead to more drill holes
24 or it may even lead to some other work.

25 Q. Now let me just ask you this, from your review of

MR. GOLBEY, EXAM. BY MR. LARKIN

1 the records, was there any drilling done between March
2 the 9th, 1988 and September the 8th, 1988 when the lease
3 was granted?

4 A. Not --

5 Q. Or when the commitment was --

6 A. Certainly none that I can recall.

7 Q. Do you know whether the geology was reinterpreted or
8 the -- or his advice that further drilling be done was
9 dealt with any way after this memo and before the lease
10 was granted?

11 A. I've seen no formal reports on the geology having
12 been reinterpreted. And I replied that way because they
13 may have been working on it. It had long since been lost
14 or it may have been discussed informally. But I've seen
15 no record of it.

16 Q. Okay. You found no record of it. But let's go
17 through what was done in terms of geology after that
18 date. I'd like to be as clear about this as I can. In
19 Exhibit 35-C, that's the book we're on, on page 30, we
20 have the Westray Coal application for a lease and it's
21 dated March 14th, 1988, about a week after Mr. Naylor had
22 issued his warning. And we've already gone through this.
23 It appears to incorporate in over the next 60 or so pages
24 there, the Kilborn report. The second Kilborn report.
25 Now we know that there was no drilling done by Kilborn,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 isn't that right?

2 A. That's right.

3 Q. And you told us in your direct examination, we
4 needn't go back to it, that Kilborn very carefully
5 qualified their report, saying something to the effect
6 that neither Kilborn nor Dames and Moore had examined the
7 drill cores or interpreted the geological data but had
8 accepted the data as it had come to them.

9 A. That's right.

10 Q. So -- and they said they were anticipating future
11 work I think is what --

12 A. Along those lines, yes.

13 Q. So it's safe to assume, based on this application,
14 that there hadn't been any current drilling done in the
15 period, I don't know, a year and a half or so before this
16 application for a mining lease. Because their first
17 report was January of '88. I'm sorry, I've got my times
18 wrong.

19 A. It's --

20 Q. January of '88. So from January of '88 until this,
21 the application, they wouldn't have been drilling down in
22 that --

23 A. Right.

24 Q. -- period?

25 A. That's --

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. And none done while they --

2 A. That's right.

3 Q. -- were preparing the report, right?

4 A. They -- right. As I said, they didn't do any.

5 Q. Now we know because it's been referred to us before
6 and, again, I refer you to page 96 and 97 of this
7 booklet. Of Exhibit 35-C. That Mr. Jones, or Dr. Jones,
8 of the Nova Scotia Department of Mines and Energy, one of
9 the things that he was looking for was, and first on his
10 list, was updated geological information. Right?

11 A. He was.

12 Q. And there's no indication that he ever got that, is
13 there?

14 A. I'm not aware that he ever received any.

15 Q. Okay. There's a suggestion there of a meeting with
16 Dr. Hans Bielenstein. He's the geologist for AMCL,
17 right?

18 A. Yes, he was.

19 Q. Or he was. Is there any indication that there was
20 ever such a meeting?

21 A. I don't know of such a meeting.

22 Q. You never found any record --

23 A. I --

24 Q. -- of such --

25 A. I didn't find any records of it or other reference.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Okay. Now we know that, well, I'll refer you to it,
2 AMCL actually did a report on coal reserves in March of
3 1988 and the reference to that is Exhibit 16, tab one.
4 Now you don't need to dig it out if you can --

5 A. Okay.

6 Q. -- answer this question for me from memory. In the
7 AMCL report, they expressly said that it was based on the
8 same data as in the Placer Study as opposed to any new
9 data that they generated themselves. Right?

10 A. Right.

11 Q. So that the geological information that AMCL was
12 working on was what appeared in the Placer Study in 1987?

13 A. Yes.

14 Q. Is that -- is your recollection --

15 A. Yeah.

16 Q. -- to that effect?

17 A. That's my recollection, yes.

18 Q. Okay. So it would certainly appear that since the
19 Placer Study at least, there hadn't been any additional
20 geological work done other than reproducing what had been
21 done by Placer?

22 A. That very much seems to be what was happening.

23 Q. And, indeed, Placer was kind of a review of what had
24 gone on before because Placer was a result of a corporate
25 change involving --

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. It was, but Placer, if I recall, also put down at
2 least four of their own drill holes.

3 Q. They had their own four drill holes.

4 A. So --

5 Q. Right.

6 A. -- in terms of looking at interpretation, I think
7 the Placer interpretation was, if you like, the last real
8 interpretation.

9 Q. That's right. And it would appear that that was the
10 last geological work done before the granting of this
11 lease?

12 A. It would seem -- yes, it would seem so.

13 Q. Now to just keep it all in perspective, let's bear
14 in mind that AMCL, and again you may not want to -- need
15 to go to this document to remember this, we looked quite
16 hard the other day at the AMCL report to Mr. Phillips in
17 support, or supposedly in support, of the first change in
18 the direction of the inclines. Would you like me to get
19 the document for you?

20 A. It's all right. So far I can remember it.

21 Q. And in that document, AMCL sounded quite a strong
22 warning about the lack of the geological updating that
23 had been done.

24 A. They did, yes.

25 Q. I think perhaps for everybody's reference we should

MR. GOLBEY, EXAM. BY MR. LARKIN

1 go to that. Just to be sure about it. It's in Exhibit
2 35-A and pages seven and eight. Just so everybody's in
3 context, this was Mr. Phillips -- or Westray in February
4 had asked permission to change the alignment of the mine
5 tunnels. Mr. -- Dr. Jones had expressed concern about
6 the technical soundness of that request, and then Mr.
7 Phillips eventually wrote back, attached this letter, to
8 respond --

9 A. Yes, he did.

10 Q. -- to Mr. -- Dr. Jones?

11 A. Yes.

12 Q. Okay. And on the second page of this letter from
13 AMCL, and the last paragraph, they say, "Gerald, remember
14 that the geology interpretation for Placer Development
15 was carried out under rather stringent time constraints."
16 So Placer's four holes had been carried out under
17 stringent time constraints. So they were even
18 questioning the Placer data, is that fair?

19 A. In -- I think in the tenor of this letter, they're
20 questioning whether the overall interpretation, if you
21 like, could benefit from a longer -- a longer look rather
22 than just a quick interpreta -- or a relatively swift
23 interpretation that would have been done based on those
24 four drill holes and whatever other data was there at the
25 time.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Right. And they go on to say that. They say "Now
2 that the Pictou project is a reality, the geological data
3 base and its reinterpretation must be high on your
4 priority list." Pretty direct statement.

5 A. That's what's said.

6 Q. And they go on to say that "It must include the
7 following..." And then there's geophysics and drilling
8 for mine planning.

9 A. Yes.

10 Q. So, in effect, they're saying something very similar
11 to what Mr. Naylor had said back in March of 1988, that
12 really nothing had changed between the time he sounded
13 his warning and on March the 23rd, 1989. Is that right?

14 A. Geologically, it would appear very little had
15 happened.

16 Q. Well, is there any indication of anything happening,
17 geologically?

18 A. Not -- no, I think Bielenstein would have recorded
19 the true state of -- as he saw it at that time.

20 Q. Yeah. So turning around, looking at this from the
21 point of view of the Department or the regulator, you'd
22 have to agree with me, wouldn't you, that Mr. Naylor's
23 warning about the very high risk of the Foord seam and
24 the definitive need for more drilling is borne out by
25 what these other consultants, in effect, have said at

MR. GOLBEY, EXAM. BY MR. LARKIN

1 other times?

2 A. There --

3 Q. Right?

4 A. Yes, there's agreement that at least further
5 interpretation would be required --

6 Q. And further drilling.

7 A. And further drilling, yes.

8 Q. Right.

9 A. Well, interpretation, using whatever techniques are
10 available, which is as mentioned. It could be drilling
11 or geophysics or --

12 Q. Well, they say geophysics and --

13 A. -- whatever techniques --

14 Q. -- drilling, right?

15 A. Or, presumably, any other techniques that may be
16 deemed appropriate.

17 Q. But I'm just wondering though whether you agree with
18 me or not that Mr. Naylor's strong warning is really
19 being borne out by the --

20 A. It's --

21 Q. -- development of the -- appreciation of the
22 technical prob -- geological problems in this mine?

23 A. I haven't seen any recent geological
24 interpretations. So answering it in that narrow way, I
25 don't know. It is conceivable that some of the geology,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 or the, if you like, what I was going to call them
2 microgeology, some of the dips and strikes, and we've
3 heard about deep slopes that were not anticipated, that
4 sort of thing may have been able to being better foreseen

5 Q. Yeah, but let me just -- perhaps I should focus my
6 question better. As of March of 1989, Mr. Naylor's
7 warning had been borne out?

8 A. Yes, it had.

9 Q. Yes.

10 A. Yes.

11 Q. We might have learned something since, but as of
12 that time it had been borne out. And the Department,
13 they had this strong warning from their geologist, who is
14 an expert in this field, as I understand it, and that's
15 confirmed by the consultants that are being used by the
16 developer.

17 Q. Yeah, the two conclusions are virtually identical.
18 Yeah.

19 Q. So I know that this is March of '89 and we're
20 talking about the issuance of the lease, but apparently
21 this lease was granted by the Department knowing that the
22 Foord seam project had a very high risk and that more
23 updated geological information was required. Right?

24 A. That would follow in the chronology and details we
25 have, yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. And, indeed, Dr. Jones, to his credit, recognized
2 that and requested updated geological information.

3 A. He did.

4 Q. And he didn't get it?

5 A. I'm not aware of him receiving any.

6 Q. But yet the lease was granted?

7 A. It was.

8 Q. And none of the drilling was done that had been
9 recommended at least before the lease was granted?

10 A. That's right. #

11 COMMISSIONER Would this be an appropriate time to
12 break?

13 MR. LARKIN Yes.

14 COMMISSIONER Inappropriate or appropriate --

15 MR. LARKIN It's a good time, thank you.

16 COMMISSIONER Okay. We'll recess till two o'clock,
17 thank you.

18 INQUIRY RECESSED (TIME: 12:31 p.m.)

19 INQUIRY RESUMED (TIME: 1:59 p.m.)

20 COMMISSIONER Mr. Larkin?

21 MR. LARKIN Mr. Golbey, just before the break we were
22 talking about the issuance of the lease and in your
23 examination the other day with Mr. Merrick you -- he took
24 you through the filing of the application for lease, the
25 questions raised by Mr. Jones, the response that came

MR. GOLBEY, EXAM. BY MR. LARKIN

1 through from Curragh. And I guess, what I could say
2 generally about your evidence, you indicated that Curragh
3 didn't -- or Westray didn't respond to the request for
4 better information about the geology or about the mine
5 plan. Is that it, in a nutshell, of what you were
6 telling Mr. Merrick?

7 A. That which we presented was what what I've been able
8 to find -- [mic not turned on for this answer]

9 Q. Exactly. Now if I could refer you to Exhibit 35-C,
10 there's a document starting on page 5 of that volume
11 which is a memo from Mr. Phalen, the Director of
12 Engineering with the Department of Mines, to the Deputy
13 Minister.

14 A. Yes, there is.

15 COMMISSIONER What page was that again?

16 MR. LARKIN Page 5.

17 COMMISSIONER Page 5. Thank you.

18 MR. LARKIN And although this memo was done on
19 December 11th, 1990, it --

20 A. [Witness adjusting mike]. That should have done it.

21 Q. Okay, although this memo was prepared on December
22 11th, 1990, it appears to be photocopies of excerpts form
23 some kind of monthly director's reports that Mr. Phalen
24 had been doing all along since 1987. Do I --

25 A. Yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. You read it the same way I do?

2 A. Yes, I do.

3 Q. Okay. So in on page 7 or the third page of that
4 document, there is a record of -- and over on to page 8
5 there's a record of what was going on in 1988 in relation
6 to this project.

7 A. Yes, there is.

8 Q. And in the first paragraph under April of 1988, he
9 refers to the fact that the company submitted additional
10 information for their application. And then he goes on
11 to talk about discussions with other government bodies
12 and he says, "The project appears to be technically
13 sound, but we are further investigating mining
14 subsidence, permission to mine under private properties
15 and the economic feasibility of the project. We're still
16 awaiting further information on ownership control of
17 Westray and the financing and economic feasibility of the
18 project." Do you know what further information he's
19 referring to and whether such further information was
20 received? Let me ask it --

21 A. I --

22 Q. -- an easier way. Other than any further
23 information on issues of subsidence and mining under
24 private properties, was there any further information
25 after April of 1988 about geology or mine planning ever

MR. GOLBEY, EXAM. BY MR. LARKIN

1 sent to the Department?

2 A. Not that I recall, no.

3 Q. Okay. But it does appear, if you look down on June
4 of '88 and July and August '88, that there was
5 correspondence relating to the form of the lease and
6 certain issues related to that. Are you familiar with
7 that documentation from your review --

8 A. No, I'm not.

9 Q. -- to some degree? It appears, for example, that
10 some documents we got today that indicated there was
11 concern about the terms of the lease, whether the
12 province would be liable for subsidence and trespass and
13 things like that. Have you looked at that stuff at all?

14 A. I only received that virtually as recently as you
15 did.

16 Q. Okay, all right. But in terms of reviewing what you
17 received recently, there was nothing more in that about
18 geology and mine planning?

19 A. No, there wasn't.

20 Q. Okay. Now it indicates here, down under the August
21 and September, it says, "On September the 1st Westray
22 announced publicly that they would be proceeding with the
23 project." And that's, I guess, September 1st, 1988.

24 A. I presume that from where it is, yes.

25 Q. And they're saying and this appears to be something

MR. GOLBEY, EXAM. BY MR. LARKIN

1 that was being written at that time, "The following items
2 appear to be outstanding items for Westray, DREE funding,
3 environmental approval, NSPC contract, mine lease and
4 mill license, right?

5 A. Yes.

6 Q. I guess you could add to that bank financing because
7 that wasn't cleared up for a year after that.

8 A. In -- yeah. I assume the list was more provincial
9 than other agencies but, yes.

10 Q. Okay. Although "DREE" is there which is federal.

11 A. All right.

12 Q. Would it be unusual for this type of announcement to
13 be made with most of the key pieces of the puzzle still
14 outstanding?

15 A. I think that just becomes a matter of corporate
16 policy and at times announcements like that are made
17 ahead of actual receipt of certain documents. Surmising
18 it could have been even a stock exchange or an
19 announcement that was driven by some reason on the stock
20 exchange or to take advantage of something like that. Do
21 you know if it was a coincidence that there was a
22 provincial election on September the 6th, 1988, and that
23 this mine was being announced for the riding of the
24 Minister of Industry, Trade & Technology?

25 A. As a nonresident of the province, I will accept that

MR. GOLBEY, EXAM. BY MR. LARKIN

1 piece of historic information.

2 Q. But you don't have any information from reviewing
3 the files about the coincidence of the dates, September
4 the 1st, '88, announcing the mine and September the 6th,
5 the election?

6 A. No.

7 Q. Okay. Now we know that certain things happened on
8 September the 8th, 1988, and I would like to refer you to
9 Exhibit 51. If you could just maybe keep this other book
10 there, we'll come back in a few minutes. And Exhibit 51,
11 I believe it's Tab 13 -- 33 -- this is the volume that
12 doesn't have the tabs on it. It's the yellow pages. Tab
13 33, virtually at the back. In fact, it's the last tab.

14 This is -- Mr. Golbey, this is the letter from
15 Donald Cameron, the Minister of Industry, Trade &
16 Technology, writing to Westray Coal on September the 9th,
17 1988?

18 A. It is.

19 Q. Right. And it basically refers to the decision of
20 the province which was made the day before, September the
21 8th, to grant the mining lease, to grant a loan of \$12-
22 million and to enter into a take-or-pay contract?

23 A. It does, yes.

24 Q. Right. And attached to the letter is a schedule
25 which outlines in considerable detail all of those

MR. GOLBEY, EXAM. BY MR. LARKIN

1 items --

2 A. It does, yes.

3 Q. -- in some kind of legal --

4 A. Yes.

5 Q. Okay. Now September the 8th, 1988, the Cabinet
6 meeting in which this was approved was two days after the
7 Provincial election, right? And it's Mr. Cameron who is
8 the Minister of Industry, Trade & Technology writing the
9 letter to Westray as opposed to the Minister of Mines who
10 had been dealing with the application up until then. Do
11 you think that there's any coincidence there about the
12 approval of this project and the granting of financing
13 and the take-or-pay so close to the recent re-election of
14 the government?

15 A. As in many things, there's always that possibility.

16 Q. Okay. Now I think you told Mr. Merrick the other
17 day that in your search of the documents in the
18 possession of the Commission there was no application for
19 this \$12-million loan. Am I -- did I understand you
20 correctly?

21 A. I haven't yet found an application in the way that
22 you would to a bank, for example. And am I right as
23 well, I don't know if Mr. Merrick asked you, that there
24 wasn't any application for the take-or-pay contract in
25 that sense?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. From recollection, there was not.

2 Q. Was there any correspondence at all before the
3 provincial election, September the 6th, 1988, about the
4 \$12-million financing or the take-or-pay contract?

5 A. The hesitancy is I've seen such a multiplicity of
6 documents refer to this --

7 Q. Yes.

8 A. -- and I'm having difficulty remembering exact dates
9 of when I've seen some of these notes. But I don't
10 recall anything of a substantive nature. I suppose if
11 there was, somebody can produce it for us but --

12 A. Or by now I'm certain, given what became an
13 expanding list of exhibits, I would have had it here.

14 Q. It doesn't appear, at least, in the documents that
15 we've had access to, that there was, you know, some
16 documentary record leading up to the \$12-million
17 financing in the take-or-pay contract. Would that strike
18 you as an unusual way to deal with matters of such
19 importance?

20 A. Using -- because we've referred to it -- or the Bank
21 of Nova Scotia as an example, as -- there was, as we saw,
22 an initial term sheet, and there was some changes made in
23 the final loan documentation. And that's the traditional
24 way of doing it. So in answer to your question, it would
25 not be unreasonable to expect there to be correspondence

MR. GOLBEY, EXAM. BY MR. LARKIN

1 of that nature.

2 Q. Okay. Now the -- it appears from other documents
3 that we've got is that the Nova Scotia government, the
4 Cabinet, when it makes a decision would have before it
5 something called -- I think they called it an "R and R,"
6 report and recommendation. We've seen several in here.

7 A. We have, yes.

8 Q. For example, there's the one for the granting of the
9 lease was referred to in evidence. Did you, in your
10 search of the Westray documents, find any R and R, any
11 report and recommendation, related to the \$12-million
12 loan or the take-or-pay contract?

13 A. From memory, no. And, again, I am certain if we had
14 it, it would have been here as an exhibit because it
15 would have been a substantial item to have.

16 Q. Okay. So would it be fair to say that the
17 background to the \$12-million loan and the \$275,000
18 tonnes take-or-pay contract appears to have been dealt
19 with entirely at the political level as opposed to at the
20 Departmental level where you would expect to see some
21 documents.

22 A. As there are no -- as we haven't found documents, I
23 don't know which level it was dealt with.

24 Q. Well, I guess we know it was dealt with at the
25 political level because we have the Minister of Industry

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Trade & Technology writing a letter telling them they had
2 it, right? We know at least it was dealt with there.

3 A. They -- right, they were told they have it from that
4 level, but how it was organized before that, no, we have
5 no evidence.

6 Q. Okay. Now when Mr. Merrick asked you about the
7 take-or-pay contract, he asked you about whether it was
8 unusual and so on, and you indicated in your experience a
9 major -- let's say a major power producer might, indeed,
10 enter into a contract of this sort with a coal mine to
11 make sure that they kept a steady supply.

12 A. Yeah, that's -- well, not totally unusual, yes.,

13 Q. Okay. But I think you agree with him; it would be
14 unusual for a coal supplier to enter into this kind of
15 agreement with a provincial government who didn't have
16 any particular use for coal directly?

17 A. Well, it's certainly unusual in my experience, yes.

18 Q. Yes. Now in the letter that -- in the Schedule A
19 that's attached to Mr. Cameron's letter of September 9th
20 to Mr. -- to Westray, in the second paragraph it refers
21 to what I take to be the purpose of the take-or-pay
22 contract. It says, "Westray requires certain assistance
23 from the province as herein set out in order to make the
24 project viable."

25 A. That's what it says, yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. And then what follows is the rest of the things that
2 were offered including the take-or-pay contract.

3 A. Yes.

4 Q. So it would appear to be a device that the
5 government and Westray have agreed upon to make the
6 project viable?

7 A. That seems to follow from this, yes.

8 Q. So a form of subsidy, I suppose, would be another
9 way of looking at it for this coal mine?

10 A. Subsidy, help, aid, a number of terms, yes.

11 Q. Yes. And let me just -- I want to get one thing
12 clear. It's not a big point with me, but I was perhaps
13 going to deal with it later. I'll deal with it now. You
14 said that the form of the bank financing here was not
15 unusual for this type of project?

16 A. The -- right, the overall form is not unusual.

17 Q. But you would agree with me, wouldn't you, that it
18 was quite unusual though anyway. Let me suggest why.
19 Curragh had very little equity compared to the overall
20 cost of this project. They had basically \$9-million they
21 had come up with to buy the stuff from Suncor. And there
22 was a pretence of another \$6-million in management fees
23 but that wasn't --

24 A. Right.

25 Q. -- money. That was -- so they only had \$9-million

MR. GOLBEY, EXAM. BY MR. LARKIN

1 in a project that cost \$142-million to build. Now are
2 you -- I presume you could tell me whether or not that's
3 fairly low equity on this type of project?

4 A. I would consider it low equity, yes.

5 Q. Now just give me an idea qualitatively on that.

6 Like, how unusual would it be for a project of that size,
7 \$142-million, to be developed by a company that had such
8 a low amount of capital in it?

9 A. I would say a more usual level of equity would be
10 around 25 percent.

11 Q. So in this case that would be --

12 A. Would be something --

13 Q. -- 35-million?

14 A. -- over -- 25, 25ish million.

15 Q. All right. So from a banking perspective, and you
16 had your 12 years of looking at these projects, you
17 wouldn't look twice at a project that you had such low
18 equity in, unless there was something else there, isn't
19 that right?

20 A. Unless there was something else there.

21 Q. And the something else that was there was the
22 guaranteed sales. Is that basically right?

23 A. It was the guaranteed sales. I'm sure, although
24 it's difficult to speak for others, the federal support
25 through the two devices there would have given added

MR. GOLBEY, EXAM. BY MR. LARKIN

1 support or comfort to the bank as well.

2 Q. Right.

3 A. Yes, it was -- if I can put it another way, it was
4 the support from the public sector and let me list off
5 that support, the 85 percent guarantee, the interest
6 write-down that was worth --

7 A. Yes.

8 Q. -- \$8 1/2-million or so from the federal government,
9 the Nova Scotia provincial loan of \$12-million, the Nova
10 Scotia interim financing of \$8-million and the contract
11 with a public Crown corporation, Nova Scotia Power, and
12 the take-or-pay agreement by which the Province agreed to
13 make sure they could sell all their production. That's
14 the total contribution from the public sector that we
15 know of, right?

16 A. Yes. I would slightly debate though the Power
17 utility contract in that that was dealt with as a utility
18 requiring fuel and it happened that the Power utility was
19 provincially owned.

20 Q. Yes, well --

21 A. And in that respect, that's where maybe we would
22 slightly differ.

23 Q. Well, you may have the disadvantage of not being
24 from Nova Scotia and having seen the way the Power
25 Corporation and the governments have interacted over the

MR. GOLBEY, EXAM. BY MR. LARKIN

1 years, but at least you would agree with me on this that
2 it was a public Crown corporation --

3 A. Certainly, yes.

4 Q. -- that agreed to purchase 675,000 tonnes a year?

5 A. Yes. No, I was thinking more of a contractual
6 style. But, yet.

7 Q. So from a banking perspective, this project would
8 never have been financed except for the contribution from
9 the public sector, taken as a whole.

10 A. From experience, it's always difficult and at times
11 surprised by what is or what is financed for a variety of
12 reasons. I presume, like yourself, conclude that, if you
13 like, various federal or provincial background [sic]
14 inordinately would have helped the financing. So what
15 I'm saying it's impossible to know whether it would or
16 wouldn't have been financed without it, but it sure
17 helped.

18 Q. Well, with \$9-million in equity as opposed to \$25-
19 million in equity, can you really seriously suggest that
20 the bank would take the whole risk of something like
21 this?

22 A. I find it difficult to think the bank would.

23 Q. Yeah. Okay, I want to go on to something different.
24 I want to ask you some questions about the permission to
25 change the alignment of the tunnels on May the 26th,

MR. GOLBEY, EXAM. BY MR. LARKIN

1 1989, the first change in the orientation of the tunnels.
2 And that decision -- that permission -- it appears in
3 Exhibit 35-A. It's on page 12. All right, and just so
4 I'm clear because there was a little confusion on the way
5 through, this was permission -- I'll get my chance to use
6 this [refers to laser pointer] -- this was permission to
7 change from the straight line to -- into the mine to --
8 from the portals to drill hole 411, I think it was, that
9 was in the Kilborn report, to this --

10 A. That's --

11 Q. -- constellation there?

12 A. That's the one, yes.

13 Q. And I guess, in a sense, we've already talked about
14 this this morning by way of a general example, and maybe
15 I can just take you back to it. I'm sorry to be a little
16 bit off here. I need Exhibit 57.

17 COMMISSIONER Of your report?

18 MR. LARKIN And we already -- I referred you earlier
19 to page 9. I just want to go back there for a minute.
20 We talked -- when we're talking generally about the
21 difference between detailed engineering and general
22 parameters, we talked about your assessment of this
23 change, and I referred you in the middle of the page to
24 the sentence where you say, "This development could be
25 interpreted as an instant change with a minimum of

MR. GOLBEY, EXAM. BY MR. LARKIN

1 technical justification prior to it's being implemented."

2 A. Yes.

3 Q. -- that's your take on that change?

4 A. Right.

5 Q. And, as well --

6 COMMISSIONER Is this page 9?

7 MR. LARKIN Page 9.

8 A. Of Tab 3, page 9.

9 COMMISSIONER Oh, I'm sorry. I've got the wrong tab.

10 Okay.

11 MR. LARKIN Yes, I'm sorry. I'm referring to the
12 final form, Mr. Chairman, sorry. In the middle of the --

13 COMMISSIONER Okay, thank you.

14 MR. LARKIN -- comment.

15 A. Uh huh.

16 Q. And I also referred you this morning to your
17 comments at page 14 under the "Observations" heading in
18 which you gave as an example, you gave this change in
19 direction as an example of a very short-term almost ad
20 hoc planning.

21 A. Yes, I did.

22 Q. Okay. Now, again, we can go to the documents if we
23 want, but I think you'll remember them, is that this
24 change was made in the light of the objections stated by
25 Dr. Jones in his March 17th, '89, letter.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. Yes.

2 Q. I'll call it the "fault" letter which I think you
3 told us basically were not answered when Mr. Phillips
4 replied on March 27th, 1989, were not answered
5 satisfactorily?

6 A. Right. That's correct.

7 Q. Okay. So there appears to be here the absence of a
8 valid technical justification for this change in the
9 tunnel alignment, to summarize it?

10 A. That's a fair assumption.

11 Q. And also the absence of the kind of detailed
12 engineering of the tunnels that was needed before you
13 would actually start --

14 A. I would agree with that.

15 Q. -- digging the tunnels. Now what I want to go to is
16 that Mr. Phalen, who gave the permission, later on in
17 Exhibit 35-A, it's page 39. 39, this is -- do you recall
18 this memo to his deputy in November of '91? He referred
19 back, eh, where he says, "Before starting the
20 construction of the slopes, the company submitted a
21 revised plan showing a new location for the main slopes.
22 I approved this plan, but in hindsight realignment of the
23 tunnels has not been in the best interests of the
24 company."

25 A. That is written there, yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Now I guess -- and if I could just complete the
2 record of what was being discussed then, if you look on
3 page 36, the immediate previous document, in a memo from
4 Dr. Jones to Mr. Phalen, he talks about that change too.
5 He says in the middle of the paragraph there on -- the
6 first paragraph on page 36, he says, "However..." I'm
7 sorry, I'll take the next sentence. He said, "If the
8 original tunnel alignment had been maintained, the major
9 fault zone recently intersected which necessitated the
10 turning of the main access slopes would not have caused
11 the major ground control problems that were encountered."
12 So he's referring back, I guess, to his own warning in
13 '89 that they were going to have problems. I guess what
14 I'd like to suggest to you is that Mr. Phalen's comments
15 in his memo were not really a matter of hindsight. What
16 they were were a matter of inadequate geological
17 information at the time in March of 1989?

18 A. I suppose, strictly speaking, his comments were
19 hindsight, but it was based on the lack of information
20 that, as you said, goes back to the time the tunnels were
21 being inplaced.

22 Q. But my point is if the Department knew they had a
23 lack of geological information at that time; it had been
24 pointed out by Mr. Naylor, by Mr. Jones, by AMCL. They
25 knew they didn't have the geological information, but yet

MR. GOLBEY, EXAM. BY MR. LARKIN

1 they gave the approval for the change in the tunnels?

2 A. That certainly seems to be the course of events.

3 Q. If you look at this decision to permit the change in
4 the turning of the tunnel, wouldn't it have been prudent
5 of the government to require more detailed geological
6 justification for the decision to realign the tunnels?

7 A. I think it would have been, yes.

8 Q. Would such detailed geological information be needed
9 to determine whether that change would permit a more
10 economical and efficient prosecution of the work while
11 preserving safety to life and property?

12 A. I believe I understand the question where you're
13 coming from. I think in a -- it's really coming back to
14 was there sufficient original detail to be able to, in a
15 sense, the feasibility or detailed engineering level of
16 information required prior to putting the declines in
17 which, in turn, ties in to having a reasonable mine plan
18 so that a change in any one area can then be compared to
19 a base document.

20 Q. I'm kind of coming at it from a different direction
21 which is the direction looking at it from the point of
22 the view of the regulator as opposed to the point of view
23 of the regulated, the company. And I'm suggesting to you
24 that this kind of technical justification by way of
25 geological information was needed in order to make the

MR. GOLBEY, EXAM. BY MR. LARKIN

1 determination as to whether this was a good change?

2 A. Yes, it would have been.

3 Q. And in -- so what I'm suggesting and I'm choosing my
4 words somewhat carefully, and I know that you're
5 responding carefully, is that the determination on
6 whether this change would permit a more economical
7 efficient prosecution of the work while preserving safety
8 to life and property, required this additional detailed
9 information.

10 A. It would have done, yes.

11 Q. Okay. Now I would like to take you to the old Act,
12 Section 84 of the old Act, which should be among your
13 materials there somewhere. And when I'm saying "the old
14 Act," it's the Mineral Resources Act that was in effect
15 prior to March 6th, 1991. Do you have your copy there?

16 A. There are some extracts from it, yes.

17 Q. Oh, some extracts from it, okay. Section 84, I
18 believe, is what I wanted to refer to. And just to
19 situate you in the scheme of the old Act, you can see
20 that under Section 82 of the old Act, you're not allowed
21 to operate a mine without getting a lease.

22 A. Right.

23 Q. And under Section 83 there's the procedure for
24 applying for a lease. It basically requires certain
25 reports and plans. And in the subsection 2 of Section

MR. GOLBEY, EXAM. BY MR. LARKIN

1 83, to get the lease, the plan had to be accompanied by a
2 report and it has a whole variety of the elements of
3 mining --

4 A. Which I have in front of me, yes.

5 Q. Okay. Now under the old Act, that's the mine plan,
6 I believe, that has to be approved, all right? Now under
7 Section 84 of the Act it deals with changes in the plan?

8 A. It does.

9 Q. And it provides that if there's any unforeseen
10 difficulty arising during the progress of the mining
11 operation carrying out any approved plan and the lessee
12 can show to the satisfaction of the Minister why the plan
13 approved should be modified to permit the more economic
14 and efficient prosecution of the work while preserving
15 safety to life and property, the Minister may approve
16 such modification. And then in Subsection 2, it provides
17 that if any alteration or addition is purposed, a further
18 plan or report shall be submitted --

19 A. It does.

20 Q. -- for approval and such alternation or additions
21 shall not be started until after the approval has been
22 obtained. That's basically the scheme in the old Act.
23 Now just I want to explore with you certain factual
24 aspects of this in this particular case. In relation to
25 the change that was -- the permission granted on May the

MR. GOLBEY, EXAM. BY MR. LARKIN

1 26th, 1989, there was no unforeseen difficulty arising
2 during the progress of the mining operation, was there?

3 A. At that time I recall there was none.

4 Q. Right. There was no report or plan submitted in the
5 sense that appears to be contemplated here if you look
6 back up at the contents of the report required when you
7 applied for a lease. There was simply a letter.

8 A. It was a letter.

9 Q. Yeah. And it also appears, we can look at this for
10 a moment, that they actually started on the new realigned
11 tunnels before they got any permission from the Minister,
12 although that might just be technical in the sense that a
13 verbal permission was given by the Department?

14 A. I would agree that's possibly more technical than
15 procedure on verbal from experiences not that uncommon.

16 Q. Okay. All right. Now -- but on the nub of the
17 approval of this change, you would agree with me that
18 there was insufficient basis for the Minister to make the
19 determination that this change in the alignment of the
20 tunnels would permit the more economical and efficient
21 prosecution of the work while preserving safety to life
22 or property?

23 A. I would agree with that.

24 Q. But nonetheless the Minister approved the change?

25 A. He did.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Okay. Now, if I may, I want to go forward to the
2 next approved change which I believe was March 7th, 1991.
3 The one that I'll refer to as "turn north sooner."

4 A. Yes.

5 Q. And the documents relevant to that are in Exhibit
6 35-A. The actual approval is at page 15 of Exhibit 35-A.

7 A. It is, yes.

8 Q. Now the first thing I want to draw your attention to
9 is the date, March 7th, 1991.

10 A. Yes.

11 Q. You recall from earlier, the new Act came into force
12 on March 6th, 1991. So this letter is written after the
13 new Resources Act had replaced the old Resources Act and
14 you'll see that Mr. Phalen in granting the permission,
15 second paragraph, appears to do it under Section 93 of
16 the new Act.

17 A. He -- that's the --

18 Q. Not under 84 --

19 A. -- reference. Right.

20 Q. -- of the old Act. Okay. And -- but just to
21 confuse it a little bit, on page 13 the application that
22 was made, in this case by Mr. Atherton for Westray, was
23 made on February the 25th, 1991 when the old Act was in
24 force.

25 A. It was.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Now this was the second change in the tunnel
2 alignments, right?

3 A. It was.

4 Q. And it was one that eventually led to a lot of
5 problems, right?

6 A. Yes.

7 Q. And if I could just illustrate that. If you took
8 Exhibit 45 and tab 14 -- and this is the geological map
9 of the Westray Mine?

10 A. Yes, it is.

11 Q. And the -- this -- the tunnels turn kind of in -- a
12 little off the middle of the diagram there. That's the
13 "turn north sooner" turn --

14 A. That's correct, yes.

15 Q. -- right? And then the roadways carry on to the
16 right of this map up to a point where they intersect a
17 major fault coming out of the Allan Mine.

18 A. They do.

19 Q. And this is a, we don't have the dimensions here,
20 but it's quite a substantial fault that's coming sort of
21 straight, almost straight down into this new set of
22 roadways.

23 A. It is, yeah.

24 Q. And you'll know from your reviewing the file that
25 the result of encountering that fault in that way was

MR. GOLBEY, EXAM. BY MR. LARKIN

1 tremendous problems with roof control and problems with
2 the floor. They had very difficult problems arising out
3 that, right?

4 A. Yeah.

5 Q. And so as it turns out, "turn north sooner" was a
6 very bad error. Put it that way.

7 A. As it -- yes. As it --

8 Q. As it turns out.

9 A. -- demonstrated --

10 Q. They not only encountered this fault and had all the
11 troubles that went along with that but then they had to
12 then turn east later on to get out of that fault and then
13 turn north again so that you have a situation for the
14 life of the mine that your main roadway has got one, two,
15 three turns in them, which is not really very desirable.

16 A. Right.

17 Q. Right?

18 A. And we've discussed that somewhat earlier as well.

19 Q. So -- now there was no technical report of any sort
20 submitted in support of the application by Westray to
21 make this change?

22 A. There was none that I'm aware of.

23 Q. Yeah, there's none which we've -- that you found, or
24 that we've found. And the approval came about very
25 promptly, I guess, within two weeks?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. Yes, it did.

2 Q. And the application refers to, in the second to last
3 paragraph of the letter from Mr. Atherton, on the first
4 page, he says:

5 "The revised alignment has been developed after
6 considering the latest geological information available
7 from drill holes 425 and 428, geologic mapping in the
8 tunnels, and the latest geological interpretations."
9 However, none of this information for mapping or
10 interpretations were provided to the Department?
11 Apparently.

12 A. I've not seen evidence of that.

13 Q. Okay. And yet permission was granted?

14 A. It was.

15 Q. Now what I'd like to do is ask you to assume for the
16 moment, I'm going to go through each of the old statute
17 and the new statute, the appli -- how they might apply to
18 the circumstance. If you assume for the moment that
19 Section 84 of the old Act applied because that was the
20 law when the application was made, then you'd agree with
21 me that there was no unforeseen difficulty that they
22 identified for the -- if we can go right back to the
23 language. Let me get it here.

24 A. It's "any unforeseen difficulty arises during a
25 progress," and so on.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. The old Act, Section 84, if you have it there, said
2 "If any unforeseen difficulty arises during the progress
3 of the mining operation..." Mr. Atherton's request
4 doesn't refer to any such unforeseen difficulty that had
5 arisen?

6 A. Not -- no, not directly. I --

7 Q. Essentially, he's saying "I'd like to turn north
8 sooner so that when we get to drill hole 418 we can begin
9 recovering coal"?

10 A. Coal. Right. He does.

11 Q. Secondly, in relation to the old Section 84, there
12 doesn't appear to be any further plan or report submitted
13 with the application?

14 A. That's correct.

15 Q. And, in fact, by the date of February 25th, 1991,
16 they had already turned north sooner, I believe. Let me
17 take you, perhaps Exhibit 45 is easiest for everybody
18 to --

19 A. To work from.

20 Q. -- address this. It's tab nine of Exhibit 45. It's
21 the chronology map.

22 COMMISSIONER Exhibit, please?

23 MR. LARKIN 45.

24 COMMISSIONER 45?

25 MR. LARKIN Sorry. Did I say "49"? Sorry. It's tab

MR. GOLBEY, EXAM. BY MR. LARKIN

1 nine. I'm going to assume for a moment that whoever
2 prepared this had correct information, all right?
3 Prepared this document at tab nine. Whoever prepared it
4 has indicated the -- what was being done in each month.
5 So, for example, when you -- at the 02/91 they're right
6 at the one, two, three, four, No. 5 Crosscut --

7 A. Yes.

8 Q. -- on --

9 A. Yeah.

10 Q. -- on Tunnel No. 1 and they're below No. 5 Crosscut
11 on Tunnel No. 2 --

12 A. Yes.

13 Q. -- right?

14 A. Right.

15 Q. So -- and then the work in March of '91 started
16 almost to No. 6 Crosscut in both of those tunnels?

17 A. Yes, it did.

18 Q. And this application was filed on February 25th,
19 '91, just about the end of the month. So if this -- the
20 information on this map is complete, they had already
21 turned north when they made the application?

22 A. That's so.

23 Q. Now you've looked at the monthly reports, I think,
24 prepared by the company. And you may have just looked at
25 them for financial reasons, but do you know whether the

MR. GOLBEY, EXAM. BY MR. LARKIN

1 information on this map is accurate as a reflection of
2 the monthly reports that were being prepared?

3 A. I've not reviewed the monthly reports recently, but
4 I believe this to be, again, allowing for a few metres
5 here or there, correct.

6 Q. Okay. So based on that assumption, we would have --
7 we would conclude that they had already made the
8 alteration or change for which they were making
9 application?

10 A. Yes.

11 Q. And contrary to Section 84 of the old Mineral and
12 Resources Act, if, indeed, that applied?

13 A. Yes.

14 Q. Okay. And would you agree with me that if, indeed,
15 Section 84 applied, that there was an insufficient basis
16 for the Minister to conclude that this further
17 modification in the declines would permit a more
18 economical and efficient prosecution of the work,
19 preserving safety in -- to life and property?

20 A. I would agree with you on that.

21 Q. Okay. All right. Now, on the other hand, if
22 Section 93 applied, let's have a look at Section 93 of
23 the new Act which we haven't looked at before now. And
24 Mr. Phalen gave us permission under Section 93 and -- so
25 it may indeed have applied. Section 93(1), the scheme of

MR. GOLBEY, EXAM. BY MR. LARKIN

1 it is "That the mining permit holder shall conduct mining
2 operations in conformity with the approved mining plan as
3 revised from time to time." And the approved mining plan
4 was the Kilborn second report plan that had been filed
5 with the application for lease?

6 A. With the one change for the second decline -- or the
7 second variation of declines.

8 Q. Okay. So part of the scheme is that the -- Westray
9 was supposed to operate in conformity with that approved
10 plan?

11 A. Yes.

12 Q. And then under subsection (2), and here's the
13 critical thing, it says, "Before the mining permit holder
14 makes any alteration or addition to the mining operation
15 or change the method of working the mine, the mining
16 permit holder shall..." and basically get approval.

17 Now would a change in the direction of the declines
18 be a change, an alteration or addition in the mining
19 operation or a change to the method of working the mine?

20 A. I think it would come under my understanding of
21 that, yes.

22 Q. Okay.

23 A. Major change.

24 Q. So if that applied, then their obligation was to
25 submit a revised mining plan to the Director of Mines.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Did they do that here?

2 A. Again, not that I'm aware of and we haven't exhibits
3 to show that.

4 Q. Okay. They're supposed to provide the information
5 required by the Director of Mines; he never required any,
6 so --

7 A. Well, as far as we know he never requested any so
8 they did -- couldn't supply any.

9 Q. And they had to obtain the approval of the Director
10 of Mines for the alteration or addition to the mining
11 operation or a change in the method of working the mine.
12 So they had to get his approval for that change?

13 A. Yes.

14 Q. Okay. Now -- my documents. And in subsection (3)
15 it goes on to say, "Where the approval of the Director of
16 Mines is not obtained pursuant to clause 3 of Section 2,
17 the mining permit may be forfeited." So --

18 A. It does say that, yes.

19 Q. -- it kind of underlines the requirement of
20 subsection (2) that you've got to get permission first.
21 Do you agree?

22 A. I do.

23 Q. Okay. Now just to round out the scheme that was
24 operating around this decision, under Section 94(1), "The
25 Minister shall review the mining permit..." so there's a

MR. GOLBEY, EXAM. BY MR. LARKIN

1 requirement, a mandatory requirement, to review the
2 mining permit in certain circumstances, "...that is,
3 where the permit holder..." and there's a list of things,
4 but I'm interested in subsection (c) here today,
5 "...where the permit holder fails to conduct mining
6 operations in accordance with Section 93." Right?

7 A. I can see that, yes.

8 Q. So would -- it would appear that if the -- if a
9 mining permit holder makes a change in the mining plan
10 without permission, that that triggers an obligation on
11 the Minister to review the permit?

12 A. That's, as I follow it through it through as well,
13 yes.

14 Q. And then under subsection (2) there are certain
15 powers the Minister has in conducting that, what they
16 refer to as a "mandatory review"?

17 A. There are, yes.

18 Q. Right. Okay. Now in your search of the Westray
19 documents, is there any indication that the Minister
20 conducted a review of the sort contemplated under Section
21 94 in the face of Westray's turning north sooner without
22 permission?

23 A. I found no evidence to that effect at all.

24 Q. Instead, what they did was approve the change?

25 A. The change was approved, certainly.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. Even though it had already been done. Now I would
2 suggest to you that in the absence of the geological
3 information that had been referred to by Mr. Atherton in
4 his application, that there was an insufficient technical
5 basis to sensibly approve the change in direction. The
6 "turn north sooner."

7 A. I would agree with your view.

8 Q. And that's particularly so in light of the history
9 of this, the warnings about geology, back to Mr. Naylor,
10 back to Jones, back to AMCL, right?

11 A. That's been a consistent theme, yes.

12 Q. So what we have here is a further change in the
13 tunnels without any clear technical basis or without an
14 engineering rationale in support of it?

15 A. That's correct.

16 Q. All right. I'd like to leave that and go to the
17 decision on December 20th, 1991, to approve another
18 change in the mining plan. This is -- appears at Exhibit
19 35-A, page 46. So this was the decision by Mr. Phalen to
20 approve the new mine development plan and to approve a
21 short-range plan for the Southwest Block?

22 A. It is, yes.

23 Q. Okay. That's -- the combined total of those two is
24 what appears in black up on the upper report --

25 A. Yeah, that's the black on --

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. The black.

2 A. -- and it's also 45-A.

3 Q. Okay. So this -- so to summarize the substantive
4 approval here, they were approving another change in
5 tunnel alignment? This time they're going to jog to the
6 east and then turn to the north again.

7 A. Yes.

8 Q. They were -- and approving plans, essentially, for
9 the Southwest Block?

10 A. They were. Or he -- the Minister was, yeah.

11 Q. And then as I recall your evidence the other day,
12 several of the blocks were all realigned. Were turned 45
13 degrees or 90 degrees and that changed --

14 A. Some angle, yes.

15 Q. Yes.

16 A. The black on the blue you can see the changes.

17 COMMISSIONER You're starting to get fairly repetitious
18 now, Mr. Larkin.

19 MR. LARKIN I'll try to avoid that --

20 COMMISSIONER Please.

21 MR. LARKIN -- Mr. Commissioner.

22 COMMISSIONER I can tell because all the things you've
23 referred to in the last 10 minutes I've already had
24 highlighted.

25 MR. LARKIN Well, I was hoping I was going at a

MR. GOLBEY, EXAM. BY MR. LARKIN

1 different aspect of them, but I'll try to avoid that.

2 Can I refer you to Exhibit 35-A, page 39. And we
3 already looked at one aspect of it. I'd like to refer
4 you to another aspect of this memo. Just below the part
5 we referred to before where Mr. Phalen says, "Since then
6 the company have proceeded to develop the mine in a
7 manner that differs from the approved plan."

8 A. I found that section.

9 Q. All right. Now he was clearly right on that because
10 the approved plan was basically the Kilborn plan from
11 back in January of '89 and there were really significant
12 differences to the -- to what they were now up to. There
13 was a -- in the Southwest section, for example, in the
14 Kilborn plan there was a triple entry from the east and
15 now there was a -- and there was an east-west orientation
16 of the rooms-and-pillars, but now under this new plan
17 there was -- they were coming up from the South and the
18 main roadways were going north and south.

19 A. Yeah. There was considerable differences. I think
20 we can say, yes.

21 Q. Would you say that's -- those are significant
22 differences? Changing the number of entries and changing
23 the direction of the room-and-pillars?

24 A. I would consider it a significant difference.

25 Q. And you've already pointed out that there was a

MR. GOLBEY, EXAM. BY MR. LARKIN

1 pretty significant change from Kilborn in that they --
2 Kilborn had projected in '91 they'd be mining up in the
3 North as opposed to down here at all.

4 A. Yes, they were. Or, Kilborn did, yes.

5 Q. And so Mr. Phalen is clearly right in saying that
6 they had proceeded to develop the mine that differs from
7 the approved plan and he goes on to say "Westray are
8 clearly in violation of the Mineral Resources Act." Is
9 there any indication that you found that that the
10 Minister conducted a mandatory review under Section 94 in
11 view of the clear indication and correct indication that
12 Westray wasn't operating in accordance with the --

13 A. I found no evidence of that.

14 Q. Would you agree with me that in view of all that had
15 been going on with this mine, this was a good opportunity
16 for the Department to bring Westray into line, if I can
17 call it that, and make this a safer mine?

18 A. I think it was a suitable opportunity, yes.

19 Q. Not to say that they ought to have forfeited the
20 lease, of course, but this procedure in Section 94
21 permitted some pretty tough scrutiny to be put on the
22 company and this opportunity was there?

23 A. I agree it was a good opportunity to start
24 developing that, yes.

25 Q. And on -- but yet on page 46 of the booklet on

MR. GOLBEY, EXAM. BY MR. LARKIN

1 December 20th, Mr. Phalen approved the plan changes.

2 They took no action to do a review, right?

3 A. That is the evidence I found.

4 Q. Do you agree with me that this was a striking change
5 in position by Mr. Phalen from his memo to the Minister,
6 the Deputy, and his approval?

7 A. It does seem to be something of a shift of position,
8 yes.

9 Q. You're given to understatement sometimes. It was
10 quite a dramatic change in position, wasn't it?

11 A. I think so.

12 Q. And did you find anything in your review --

13 COMMISSIONER That's not to say that counsel is not
14 inclined to --

15 MR. LARKIN Overstate.

16 COMMISSIONER -- overstate at times.

17 MR. LARKIN Well, it's hard to overstate it with
18 Westray, My Lord. Did you find anything in the documents
19 to suggest that Mr. Phalen was told by his superiors to
20 approve this change?

21 A. No, I haven't.

22 Q. Do you see anything in your review of the documents
23 which would justify Mr. Phalen's change of position?

24 A. No, I don't.

25 Q. Now I want to move on to the changes in the mine

MR. GOLBEY, EXAM. BY MR. LARKIN

1 plans that took place in the Southwest Section in March.

2 I didn't see the documents the other day, but Mr. Merrick
3 referred you to Exhibits 65 and 66 which were some new
4 plans that were filed with the Department but in relation
5 to which there weren't any approvals sought or given.

6 A. That's right.

7 Q. And one of those plans, I forget which one, included
8 mining the Southwest 2 Section where this disaster
9 eventually occurred?

10 A. Yes, it did.

11 Q. And you've made it clear that no approval was ever
12 given to mine in that Southwest 2 Section?

13 A. I've found no evidence of any approvals.

14 Q. And you'd agree with me that if that's so, that it
15 would be a clear breach of Section 93 of the Act to be
16 mining in the Southwest Section?

17 A. It would be.

18 Q. Now we know from documents that you referred us to
19 this morning that the Department knew that they were
20 mining in Southwest 2?

21 A. It did.

22 Q. We don't necessarily need to go back to it, but
23 there was the briefing note for the Minister telling him
24 about having to withdraw from the Southwest 1 Section.
25 And we know from what you told Mr. Merrick this morning

MR. GOLBEY, EXAM. BY MR. LARKIN

1 that at the end of March, I think if we look at the
2 colour code on the document here, on March the 28th they
3 were in red, which meant that from then until May the 6th
4 that they were mining in this Southwest 2 Section without
5 approval and in clear violation of the Mines Act?

6 A. They were, yes.

7 Q. The Natural Resources Act.

8 A. They were.

9 Q. Now I believe the evidence is going to be that there
10 were inspectors who visited the mine during that period?

11 A. I understand that to be so, yes.

12 Q. And an inspector going into that mine, who actually
13 did an inspection, would know they were in the Southwest
14 2 District?

15 A. I think that's a fair assumption.

16 Q. So the Department knew that Westray was mining,
17 contrary to the Act, in the Southwest 2 District during
18 the period from, we don't know exactly when they first
19 knew, but April the 8th was the memo to the Minister, for
20 the month before this mine blew up?

21 A. Yes.

22 Q. And there's no indication anywhere that you've found
23 that during that period the Department did anything about
24 it?

25 A. That is correct.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. There's no indication that the Department conducted
2 a review under Section 94 in view of the clear breach of
3 Section 93?

4 A. That too is correct.

5 Q. Would you agree with me that the Department failed
6 in its duty under Section 94 to call Westray into account
7 for mining in the Southwest 2 District?

8 A. I would.

9 Q. Okay. Now I want to go to another area which
10 relates to the questions that Mr. Merrick asked you about
11 the memo from Mr. Benner to Mr. Frame. And so I think
12 the starting point for that is Exhibit 35-B, page 195.
13 This is Mr. Benner, who I understand at the time was the
14 person in charge of the Westray division?

15 A. I think that's a fair description of his position.

16 Q. Okay. To Mr. Frame, who pretty much was the owner
17 of the parent company, Curragh Resources?

18 A. Yes, he was.

19 Q. And he, as Mr. Merrick got you to explain, there was
20 a requirement in the agreement with the Bank of Nova
21 Scotia that commercial production be achieved by July
22 31st, 1992?

23 A. There is.

24 Q. And that commercial production was producing 174,000
25 tonnes of coal within a certain cost parameters over 90

MR. GOLBEY, EXAM. BY MR. LARKIN

1 days?

2 A. Yes.

3 Q. I don't know that Mr. Merrick asked you this, as I
4 understand the credit agreement with the Bank of Nova
5 Scotia, failure to achieve commercial production on July
6 31st, 1992, would be a default of the loan.

7 A. That's as I read the loan agreement as well.

8 Q. And just for reference although I won't -- for
9 others, Exhibit 20, pages 71 to 74 are the pages that --
10 in the credit agreement that show the events of default.
11 And we know as well that the bank was already quite
12 concerned about Westray's performance here, isn't that
13 right?

14 A. It was, yes.

15 Q. And I'd like to refer you to Exhibit 35-B, page 15.
16 This is -- the first page is a cover sheet to Associated
17 -- AMCL, expressing some -- I guess, some pretty hard
18 questions about what was going on in this mine?

19 A. It is, yes.

20 Q. Right? And then the next page is a letter from the
21 bank to Curragh Resources, December 13th, 1991.

22 A. It is.

23 Q. Right? And I -- you were the banker, you can tell
24 me, but I would interpret this as a very tough letter to
25 get from your bank, do you agree?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. As a borrower I would not appreciate receiving one,
2 certainly.

3 Q. In the first paragraph it says:

4 "We would like to discuss the following concerns
5 with regards to the Westray Coal operation. We believe
6 it is imperative that these issues be addressed
7 immediately as they could potentially affect the
8 continued development and operation of the project."

9 That's about as tough a letter as you're going to
10 get from a bank other than they send you -- send in the
11 receivers, isn't that right?

12 A. It's just about that category.

13 Q. Yeah. Okay. So reading the memo from Mr. Benner to
14 Mr. Frame in the context of the concerns expressed by the
15 bank, Westray was in a very dire position if they could
16 not get commercial production by July the 1st, 1992,
17 isn't that right?

18 A. I would agree with that.

19 Q. Now there's another document that was written in
20 response to that memo by another company official and
21 it's in Exhibit 64, the binder, at tab number 16, and
22 this appears to be a memo from the vice-president and
23 treasurer of Curragh to the author of the previous memo,
24 Colin Benner --

25 A. Yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. -- right?

2 A. Right.

3 Q. Dated April 20th, 1992, in which he makes two quite
4 important points about Mr. Benner's memo. Number one he
5 says, essentially, that the product from the open pit
6 couldn't be considered part of the commercial production
7 test of 174,000 --

8 A. He says that.

9 Q. Yes, without -- and, basically, without an amendment
10 to the agreement with the bank.

11 A. Right.

12 Q. And the federal government, right? And number two,
13 he makes, I think, an equally important comment that "The
14 operating cost portion of the test is \$50.86 per tonne of
15 coal available for sale, and we're currently spending at
16 about budgeted levels in the underground and producing
17 much less than budgeted production. All open pit costs
18 will be incremental. Therefore, without improved
19 underground production, I will be very concerned about
20 the ability to meet this portion of the test." That is,
21 the 110 per cent of costs proportion of the test, right?

22 A. Yes, it is.

23 Q. Now it's interesting here, and I think maybe someone
24 else will show this later, there's comments by Mr. Frame,
25 his initials appear to be in the top left corner --

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. They do.

2 Q. -- to Colin, in which he says very significant
3 comments.

4 A. He does.

5 Q. And then someone else who, I don't know if we can
6 identify, at the bottom says, in referring to paragraph
7 two says "Highly relevant. I've never see the combined
8 figures on a 90-day base." It would appear at the
9 highest level of this company that, if you read the two
10 memos together, the Benner to Frame memo and this memo,
11 that they did not see anyway to get to commercial
12 production by July the 31st, 1992.

13 A. I think that's a good interpretation of these two.
14 Yes.

15 Q. And that accordingly, they would be in default of
16 their loan with the bank on that --

17 A. They would --

18 Q. -- date?

19 A. They would then be in default.

20 Q. This would put the company in a very serious
21 situation, Curragh as a whole, isn't that right?

22 A. It would.

23 Q. And I won't go into Curragh's other dealings but I'm
24 sure you've looked at the documents on the file. They
25 were in trouble already in Faro. They had limited equity

MR. GOLBEY, EXAM. BY MR. LARKIN

1 in all of their holdings. They were quite overstretched
2 and this was a very, very serious problem they were
3 facing.

4 A. They were.

5 Q. Now just below this document there's another
6 agreement -- document here called a "Management
7 Agreement" with C.H. Frame Consulting Services?

8 A. I have that.

9 Q. And you will recall from, I think, some of Mr.
10 Merrick's questions to you that part of what they
11 considered the equity of the owners was some deferred
12 management fees that were due to C.H. Frame Consulting
13 Services?

14 A. Yes, they were.

15 Q. Which is a company owned by Mr. Frame?

16 A. Yes.

17 Q. Right? Now if I could refer you to page five of
18 this -- no, I'm sorry, paragraph five of this agreement,
19 the pages aren't numbered in my version, in which it
20 defines the fees, it indicates in paragraph five, "Fees:
21 Contingent upon and only in the events described in
22 paragraph five and (b) occur below." And (a) is "The
23 commencement of commercial production from the Westray
24 Mine at a rate of 174,000 tonnes of coal over a 90-day
25 period." That's the same definition as in the bank

MR. GOLBEY, EXAM. BY MR. LARKIN

1 agreement?

2 A. Well, almost.

3 Q. Yes.

4 A. They've left the 110 per cent of production costs
5 off.

6 Q. Oh, they didn't add that one, that's right. And
7 (b) basically compliance with the -- that the payment
8 would be in compliance with the various agreements with
9 the financing people?

10 A. Yes, that's correct.

11 Q. So Mr. Frame's consulting company was only entitled
12 to the fees if they could achieve commercial production
13 at the rate of 174,000 tonnes over a 90-day period?

14 A. That's as I read this, yes.

15 Q. And you can see below it says "When those events
16 happen, the company shall pay in whole or in part, from
17 time to time, an aggregate management fee to Frameco for
18 the services provided by Frameco hereunder of \$8,275,000
19 together with interest," basically from the date of
20 commercial production.

21 A. That's as I read this.

22 Q. Would you say, just looking at it overall, that the
23 situation described by Mr. Benner to Mr. Frame in his
24 memo in April of '92 was a pretty good indication to Mr.
25 Frame that he wasn't going to get his \$8,750,000?

MR. GOLBEY, EXAM. BY MR. LARKIN

1 A. I think that would be an easy comment to see, yes.

2 Q. Now in your report you refer to the -- you make an
3 observation about the effect of these kind of pressures
4 at the top, and perhaps if I could find the page, at page
5 17 of your report. So that would be tab three of Exhibit
6 57, page 17. Excuse me, I have lost the page reference
7 here. This is going to take me a minute. Sorry, I wrote
8 down the wrong page of the -- I'll find it eventually,
9 Mr. Commissioner, I seem to have written down --

10 COMMISSIONER Perhaps we'll take a 10-minute break and
11 you can find it on your own time.

12 MR. LARKIN That would be very helpful, yeah.

13 INQUIRY RECESSED (TIME: 3:06 p.m.)

14 INQUIRY RESUMED (TIME: 3:18 p.m.)

15 COMMISSIONER Mr. Larkin?

16 MR. LARKIN Thank you. Mr. Golbey, I did find the
17 reference I was looking for, it's on page five of your
18 report at tab 3.

19 COMMISSIONER That's Exhibit 57 at tab three?

20 MR. LARKIN Yes. Where you make an observation, one,
21 two, three, four, the fifth paragraph down:

22 "Such a push to obtain production should not result
23 in poor working practises but invariably the pressures
24 are informally transmitted throughout the workforce and
25 poor practice in one area makes it harder to control

MR. GOLBEY, EXAM. BY MR. LARKIN

1 elsewhere."

2 A. I wrote that, yes.

3 Q. Yes. I take it that what you're referring to is
4 that the kind of pressure that would appear to be on the
5 top management of this company in light of the things we
6 just talked about, has its way of working down through
7 the company informally, in terms of pressure on everybody
8 down the line?

9 A. I think that's seen in a variety of companies in a
10 variety of industries, yes.

11 Q. And so you had a situation here where the management
12 at the operational level were likely under very, very
13 strong pressure to get their production to meet the
14 company's requirements?

15 A. I think they'd be facing quite a challenge in
16 getting production, yes.

17 Q. And does it often happen when that kind of pressure
18 is there for production that there develops a "production
19 first" mentality as opposed to other considerations?

20 A. Again, I think that's been the experience of -- in a
21 number of industries and a number of companies. So yes,
22 there -- that can develop.

23 Q. And when that develops, production first, then
24 safety becomes secondary, doesn't it?

25 A. That's usually the result of that approach, yes.

MR. GOLBEY, EXAM. BY MR. LARKIN

1 Q. All right. One last area I want to work through
2 with you. Coal mining --

3 COMMISSIONER Quickly, I hope.

4 MR. LARKIN Yes, I'm -- I -- thank you, Mr.
5 Commissioner. Coal mining has a reputation as a
6 dangerous occupation. Would you agree with that?

7 A. There is a -- I would say there's a public
8 perception of that.

9 Q. But would you also agree with me that a properly
10 planned and a properly run coal mine need not be
11 especially dangerous?

12 A. Not only a coal mine, any mine of itself need not be
13 a dangerous place to work.

14 Q. So that a worker getting a job in a properly planned
15 and properly run coal mine, or any mine, should not be in
16 fear of getting killed on the job?

17 A. I -- if I was going back into mining I would not
18 consider -- put that high on my list of concerns.

19 Q. Okay. Now here's the problem that I have about this
20 because normally, the coal worker, the miner, the person
21 who works underground, a maintenance worker underground,
22 they are not a geologist, they're not an engineer, right?
23 They don't have --

24 A. Generally, they're not.

25 Q. They don't have access to all the documents like

MR. GOLBEY, EXAM. BY MR. LARKIN

1 we've been poring over this week, here. So they're not
2 in a position to evaluate whether a mine has been
3 properly planned or even if it's being properly run from
4 a geological or from a technical point of view. Isn't
5 that right?

6 A. That's right in that they wouldn't have some of the
7 background information or, in some cases, the training.
8 Yes.

9 Q. So the worker, the coal worker, has to rely on the
10 operator to do these things, planning and design and so
11 on, competently?

12 A. He would.

13 Q. And if there's anything that we've learned from this
14 Westray experience, the reality also is that the worker
15 has to rely on the government to scrutinize mine planning
16 and mine design to ensure that the operator does these
17 things competently. Isn't that right?

18 A. As a further part of the check process, yes.

19 Q. And would you agree with me as well that much of the
20 key to the safe operation of a coal mine is the planning
21 and the design of the mine itself? For example, such
22 things as the plans for roof control, for ventilation,
23 and for dust control and so on.

24 A. The plan can certain -- all right. The plan of
25 itself is not going to make a safe operation, but by

MR. GOLBEY, EXAM. BY MR. LARKIN

1 having a plan you can -- or the operator can see often
2 the critical areas and ensure that such critical areas
3 are given more attention if they deserve it or other
4 support. "Support" is a poor word possibly, or other
5 attention as those areas need it.

6 Q. Well --

7 A. A plan is not going to make it safe, but it's going
8 to give you a very good vehicle which will help to keep
9 the operation safe.

10 Q. Yes. But for the mine to be safe, it has to be
11 planned properly. It may not be enough. It may not be
12 sufficient for the mine to be safe, but it's necessary
13 for the mine to be safe?

14 A. Yeah.

15 Q. That it be planned properly?

16 A. Yes.

17 Q. Right?

18 A. Yes.

19 Q. For example, the ventilation has to be planned
20 properly or it will not be safe, this mine.

21 A. It certainly won't be effective ventilation which is
22 coming, in a large measure, back to your point, yes.

23 Q. Now -- so would you agree with me that the coal
24 worker has a legitimate expectation that his or her mine
25 is planned with appropriate safety considerations in

MR. GOLBEY, EXAM. BY MR. LARKIN

1 mind?

2 A. I think -- yes, I think that's a fair statement.

3 Q. And that the coal worker has a legitimate
4 expectation that the government regulators will
5 scrutinize carefully mine plans and changes to mine plans
6 with an eye to the safety of the worker?

7 A. All right. They may not phrase it in quite that way
8 but, yes.

9 Q. And -- though, in fact, I think to me this is the
10 important point: the worker has to rely on the government
11 regulator for that because they don't have the means to
12 explore it or to decide it themselves. Isn't that right?

13 A. That's right.

14 Q. And wouldn't you agree with me that the Nova Scotia
15 regulators, in the case of the Westray Mine, failed to
16 meet these legitimate expectations of the Westray coal
17 workers, in light of all we've talked about today.

18 A. I would say in the research I've done, I haven't
19 found, often, supporting documents to show that, for
20 example, concerns may have been acted upon or in some
21 cases, may have been recorded.

22 Q. But would you agree with the proposition I'm saying
23 that if you look at it generally, overall, in light of
24 all the things we've talked about, which we don't --
25 obviously don't want to repeat at this late time, that

MR. GOLBEY, EXAM. BY MR. LARKIN

1 the Nova Scotia regulators failed to live up to that
2 expectation that the coal worker at Westray would have
3 that this mine would be planned competently and that the
4 government would make sure it was planned competently?

5 A. It's --

6 COMMISSIONER Mr. Larkin, I really think it's too early
7 in the day to pose such a broad, wide-ranging question as
8 that to a witness who is basically here to give evidence
9 as to the financial planning of the mine. It's a
10 legitimate question, no question, but I'm just wondering
11 if the time is right for it.

12 MR. LARKIN I'll wait for another day.

13 COMMISSIONER Okay.

14 MR. LARKIN And that's all my questions. Thank you --

15 COMMISSIONER I think we probably --

16 MR. LARKIN -- Mr. Commissioner.

17 COMMISSIONER -- all will, yeah.

18 MR. LARKIN Yes.

19 COMMISSIONER Yeah. Thank you, Mr. -- oh, I'm sorry.
20 Mr. Hebert, I believe you deferred to Mr. -- to CUPE --

21 EXAMINATION BY MR. ROBERT WELLS

22 MR. WELLS Thank you, Mr. Commissioner. Mr. Golbey, as I
23 look through your report and the limited time I've had
24 with the other documentation, the question that I was
25 looking for an answer: Is there a dollar value that this

MR. GOLBEY, EXAM. BY MR. WELLS

1 project was worth to the Province of Nova Scotia? Did
2 you develop a dollar value for the mine and the whole
3 project and the supply of coal and --

4 A. I have not developed such a number, and it's most
5 probably well outside of the scope of my immediate
6 commission here. I -- it would not surprise me, in fact,
7 if the Province has done as part of a, from my knowledge
8 of other provincial governments, do such things to see if
9 industries are beneficial to the province, but I have not
10 done that.

11 Q. Okay. Looking at the two -- I just did some rough
12 calculations, and I saw that there was a value for
13 different types of coal, number five and number six coal
14 and then took an average of those. And I'm just cutting
15 this a little bit short. They wanted to produce a
16 million tonnes of coal a year, is that correct?

17 A. That was the ultimate plan, yes.

18 Q. So if they had an average price of coal at \$65 a
19 tonne, \$65.59 or whatever, we'd be looking at 65 -- I'm
20 having difficulty with figures, but \$65 million a year?

21 A. Yes, in -- for a simple calculation, that would be
22 reasonable.

23 Q. And they were hoping to run for 15 years, was it?

24 A. Yes.

25 Q. Okay. The -- when we looked at the presentation to

MR. GOLBEY, EXAM. BY MR. WELLS

1 the Bank of Nova Scotia on document -- or Exhibit 35-A,
2 page 77, they said there was 47 million tonnes of coal
3 available and that -- well, first of all, I guess the
4 question on the 47 million tonnes is what portion of that
5 would they be able to plan on taking? Was that 50 per
6 cent of that that they could take or?

7 A. I -- working from memory rather than looking that
8 up, it would have be -- the figure of 17 or 19 million
9 tonnes comes to my mind and the number is less than the
10 44 because that would include, if I can use a term, "all
11 geological coal" which would include small seams that
12 would -- or stringers above and below the main seam which
13 would not be practical to mine.

14 Q. In that same presentation on page 88 it talked about
15 the cost of mining underground coal would be \$20.21 per
16 tonne. Would that -- and that was for underground mining
17 costs. Would that also include the washing and
18 processing and delivering afterwards or --

19 A. No, if it stated "as underground mine costs," that's
20 exactly what it would be.

21 Q. What -- is there -- would there be a percentage of
22 the costs on top of that then that we could expect after
23 it was brought above ground?

24 A. There would be above -- yes, coal preparation costs
25 and generally there would be applied an administration

MR. GOLBEY, EXAM. BY MR. WELLS

1 cost to carry the cost of office and general
2 administration, stores and maintenance and items like
3 that.

4 Q. I also notice in the report they were expecting to
5 have 241 people working at the project when it was
6 complete. Would it be normal to assume that a project of
7 that size that you would have somewhere in the terms of
8 probably four-to-one or more people working as spin-offs
9 from that type of work?

10 A. Do you mean on the property or --

11 Q. Not on the property but in the area, a spin-off to
12 the economy?

13 A. I've see figures ranging from three-to-one, to six-
14 to-one. And I think in one extreme case, seven-to-one.
15 So it's very much community dependent.

16 Q. Just for the sake of a figure, I took four to one
17 at, say, a \$30,000 job range, and I came up with a figure
18 somewhere in the range of \$36-million a year that it
19 would put into the economy having the mine running, if
20 that sounds reasonable. I'm not being -- I'm not
21 exaggerating then at that figure then?

22 A. I wouldn't think so, not on the way the number was
23 calculated.

24 Q. So what scale of a project, in looking at projects,
25 sir, for financing one thing and the other, where does

MR. GOLBEY, EXAM. BY MR. WELLS

1 this mine fall? Is it a big-scale project, small scale?
2 What are we talking about in terms of national type of
3 work?

4 A. In terms of underground coal mining, it would be, if
5 we can use a scale like it, a sort of small/medium
6 producer. It would not be a particularly large
7 operation.

8 Q. Would it be -- I would assume then that it's large
9 enough though for the type of dollar value in this
10 economy that it would be something that the regulatory
11 bodies, the Province of Nova Scotia, would want to
12 protect?

13 A. I think that would be a fair judgment.

14 Q. So I'm thinking of in losing the mine such as we
15 did, I was looking at the -- you know, we had the serious
16 potential in losing a mine of the health and safety risk
17 to 240 people working at the site. The potential of
18 losing the whole ship, as we did, which could later have
19 been even more, I would think, people. The loss of
20 livelihoods, possibly up to 1,000 families. The \$142-
21 million capital. The Province had \$12 million of that
22 itself. Potential sale of coal, I guess, over a period
23 of time of perhaps up to \$1 billion, if we look at the 65
24 times 15 or whatever.

25 A. Yes.

MR. GOLBEY, EXAM. BY MR. WELLS

1 Q. That would seem like it was a very significant piece
2 of real estate that required a lot of thought and a lot
3 of protection.

4 A. I think that -- I think you've come to a reasonable
5 conclusion.

6 Q. Mr. Larkin has taken us through a number of stages
7 that brings us to where we can see that the project was
8 in trouble. And I think for a lot of us we may have
9 envisioned -- there are visions of people bending over
10 backwards to help this project along. But what would
11 have been the worst thing that could have happened had
12 somebody said, no, enough is enough, you have to slow
13 things down and bring things in line here and they
14 defaulted on the loan?

15 A. The hesitancy in answering your question is that
16 it's -- that can almost be answered on many levels of
17 just what just straight technically would be involved,
18 what would be the effect on a community and many levels
19 like that. I suppose, in a sense, the simplest and most
20 direct would just be for the mine to have been, in a
21 sense, go into bankruptcy and just shut down.

22 Q. The --

23 A. And just cease operating.

24 Q. Yes. But the infrastructure, the tunnels and things
25 that would have been put in place, be it that they maybe

MR. GOLBEY, EXAM. BY MR. WELLS

1 weren't done as somebody would want them, that added
2 infrastructure would still make it something that --
3 another interest or even Curragh, if they could find
4 their funds again, would want to continue, in your
5 estimation?

6 A. It would make it more attractive for another entity
7 to look at it. But even though the infrastructure is
8 there, it would not guarantee that somebody would come in
9 and will continue running it. It would make it easier to
10 do an assessment, but it wouldn't, as I said, guarantee
11 that there would be an investment made.

12 Q. All right. We heard this morning that the bank was
13 getting a report from this engineering firm, and it was
14 suggested that possibly the Crown should also have been
15 getting that report. Who is paying for that report?

16 A. The company was.

17 Q. So this is something that the company had to supply
18 in order to fulfil it's -- the mortgage or --

19 A. Yes. Yes.

20 Q. -- its loan guarantees?

21 A. In essence, yes.

22 Q. All right. Thank you. Also it came to me this
23 morning during that testimony that we have in a fisheries
24 industry, in order to protect the fish and protect the
25 integrity of the industry, we put inspectors on every

MR. GOLBEY, EXAM. BY MR. WELLS

1 fishing vessel now.

2 And our Province puts asphalt inspectors on the road
3 to ensure that they get the quality on the road and the
4 asphalt.

5 Would it seem reasonable, during the development
6 stages of the mine such as this, that perhaps there
7 should be a full-time inspector in the mine for the
8 regulatory bodies to make sure that the development is
9 going as intended?

10 A. It's not a practice I know of that's being done
11 anywhere, but I'm sure Mr. Commissioner would duly note
12 that and it could certainly be an approach to consider.

13 Q. In doing up a feasibility study and then looking
14 into the details of mining, what steps do you take to
15 determine the numbers of miners and the categories of
16 people you need in the project?

17 A. It would start with a notional production plan which
18 eventually becomes more refined. In other words, the
19 much discussed feasibility study or a study of that level
20 from which the type of equipment to be used would be
21 derived, and then knowing the type of equipment, the
22 number of people required to operate that can be worked
23 out. And the number of people that other operations or
24 even operations by the same company have employed to run
25 certain things such as conveyor belts or keeping

MR. GOLBEY, EXAM. BY MR. WELLS

1 electrical supply going and thing like that can all be
2 known from an industry data base.

3 Q. Would it also be known --

4 COMMISSIONER What you seem to be asking, Mr. Wells, is
5 what comprises a feasibility study. Is this about it?

6 MR. WELLS Well --

7 A. It's certainly all -- it would -- it's certainly all
8 part of completing the feasibility study. Because to get
9 at the end number of how many people, you have to go
10 through that exercise as Mr. Commissioner has pointed
11 out.

12 MR. WELLS In the feasibility study, would you also look
13 at what qualifications you need for the -- for these
14 people?

15 A. I have seen feasibility studies that have, in some
16 cases, been as extreme as doing a thumbnail sketch of the
17 background of employees. It's not common practice, but I
18 have seen it done.

19 Q. And at what point would you look at the training at
20 these -- if you're looking at qualifications, would you -
21 - well, I guess, first of all, would you assume in your
22 feasibility study that you would have to supply a certain
23 amount of training?

24 COMMISSIONER Mr. Wells, I'm going to interrupt you here
25 the same way I did Mr. Larkin. I think some of these

MR. GOLBEY, EXAM. BY MR. WELLS

1 questions are better asked of other witnesses. And,
2 heaven knows, we've got a lot more coming. And I think,
3 in the interests of getting the matter on the go, I have
4 to exercise my discretion in limiting the cross-
5 examination, particularly germane to the interests of
6 this witness which is the financial planning of the mine
7 which we've gone through over the last two or three days.
8 So if your questions aren't touching just directly on
9 that, then maybe save them for another witness.

10 MR. WELLS Excuse me, sir. I think I am. I guess you're
11 to be the judge of that, but I'm trying to get to the
12 point where I don't believe, from what I understand,
13 there's been much evidence of their being training shown
14 in any feasibility study or any of the documents of
15 Westray.

16 COMMISSIONER Well, all I'm saying is this perhaps is
17 not the appropriate witness for that. And we will have
18 others on those specific programs or areas of
19 investigation. Certainly, the mine planning from the
20 point of view of miner training is critical to the
21 mandate of this Inquiry.

22 MR. WELLS But wouldn't it be built into the -- I won't
23 argue with you, but I was thinking it would be built into
24 this end of it, that it would be planned, and built in,
25 and --

MR. GOLBEY, EXAM. BY MR. WELLS

1 COMMISSIONER The witness has already said that he's
2 seen that in certain plans. In this one, obviously, it
3 wasn't here.

4 A. Excuse me. there was a reference to a training
5 scheme in the Kilborn Study. I believe what I said is in
6 -- I have, in feasibility studies, seen as extreme a case
7 as writing a thumbnail job description for people. That
8 is not common practice. But, if I may, just for a
9 moment, the study itself did consider that training would
10 be needed for some people and gave an indication, I
11 believe, of how many of those people might be able to be
12 hired locally.

13 MR. WELLS Okay. In looking at, again, Exhibit 35-A, page
14 136, it's talking about the Bank of Nova Scotia study
15 again. And there was mention in that study of health and
16 safety deficiencies.

17 A. Okay.

18 Q. Do we have any indication what the health and safety
19 deficiencies would have been? 137, I guess it's on.

20 A. These? You're referring presumably to the letter
21 from Scotia Bank to Mr. Phillips saying that certificate
22 of substantial construction complete has been received?

23 Q. Yes.

24 A. In that case, I refer you to Exhibit 18 or 18, Tab
25 2, which has the complete report --

MR. GOLBEY, EXAM. BY MR. WELLS

1 Q. So that --

2 A. -- printed in it. And that list goes through and in
3 appendices lists every item they found. In some cases
4 it's as minor as paint on a railing was not completed.

5 Q. I only had a chance to look at 18. It was not
6 copied for us at noon hour, but I believe everything that
7 they listed there then was above ground?

8 A. I believe so, yes.

9 Q. So we don't -- we don't have any record of whether
10 they looked at deficiencies below ground or not?

11 A. I immediately did not recall any without rereading
12 the document.

13 Q. No further questions.

14 COMMISSIONER Mr. Hebert?

15 EXAMINATION BY MR. HEBERT

16 Q. Earlier on in your testimony, sir, you indicated
17 that in the course of your duties with the Energy
18 Resources Conservation Board of Alberta you were familiar
19 with -- part of their job was to inspect mining
20 operations?

21 A. Yes, it was.

22 Q. And I take it that was from the -- was that from a
23 worker health and safety aspect or a compliance with
24 mining regulations aspect?

25 A. It was compliance with the mining regulations

MR. GOLBEY, EXAM. BY MR. HEBERT

1 aspect.

2 Q. Those sorts of matters that we've been dealing with
3 this morning and, indeed, yesterday, that Mr. Larkin took
4 you through in detail?

5 A. Yes.

6 Q. All right. And at that time in your testimony, you
7 indicated that it was the practice of that Board to
8 conduct unannounced investigations of a mining site?

9 A. Yes.

10 Q. Right. And in your review of the Westray
11 documentation that's been made available to you, have you
12 seen any evidence of any unannounced visits or
13 investigations of the Westray site by the Department of
14 Mines and Energy people?

15 A. I found some references to site inspections. And by
16 "unannounced," what I meant -- and this is digressing
17 slightly, by "unannounced," I mean we would phone a
18 property maybe a day or two before going to ensure that
19 an ERCB inspection was not going to cause problems in the
20 sense that if they just had a piece of equipment
21 delivered and were concerned about getting it up and
22 running, they didn't really need any more people at an
23 operation at that stage. It's been our experience that
24 in two days a mine can't, if there is anything to put
25 right, they can't do it that quickly.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. I see. So rather than absolutely no
2 preannouncement, you're referring really to a short
3 announcement?

4 Q. An extremely short, yes.

5 Q. Are you suggesting that a two-day period would allow
6 any kind of inconvenience, anything that might affect the
7 inspector showing up and not being able to conduct the --

8 A. Right.

9 Q. -- conduct the inspection.

10 Q. And it was partly to ensure that anybody -- any of
11 the technical staff we wanted to discuss matters with
12 would be on site as opposed to, say, at a corporate
13 meeting or something like that.

14 Q. And can you just indicate -- did yourself conduct
15 these inspections?

16 A. I did.

17 Q. All right, what would they consist of?

18 A. It would be a physical inspection of the operation.

19 Q. Okay. Was that a thorough investigation or was it
20 selective?

21 A. It partly depended on the size of the property and
22 how long since the previous investigation. Or if -- or
23 if, indeed, the Board had a particular concern at that
24 time, and then it would involve discussing the plans with
25 whichever technical people were required.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. All right. "Plans" referring again to the mining
2 plans?

3 A. Mining plans.

4 Q. Right. And "technical people," these would be, for
5 example, the ventilation --

6 A. Well, in the fact that these were open-pit mines,
7 obviously ventilation --

8 Q. Oh, I see.

9 A. -- for once was not a problem. But it would -- may
10 include their geologist or, if necessary, geotechnical
11 people for slope stability.

12 Q. In terms of the -- so I take it you haven't
13 inspected any underground coal mines, is that correct?

14 A. I was with an inspectorate, inspecting underground
15 in Alberta.

16 Q. All right. And who --

17 A. I believe -- see, we sort of had a main area that we
18 would be in control of and understudy in a different
19 area. I was underground as an under -- in sort of
20 understudy position.

21 Q. And would there be any particular differences
22 between the inspection of the underground site as opposed
23 to the open pit?

24 A. In outline, no.

25 Q. You would still talk with the key professionals

MR. GOLBEY, EXAM. BY MR. HEBERT

1 involved?

2 A. Yes.

3 Q. And in this particular case, let's use the Westray
4 mine as an example, if an inspection were to be made, who
5 would you expect the Board to be dealing with? Assume,
6 first of all, this is a first inspection and we know the
7 size of the mine, and you want a comprehensive
8 inspection?

9 A. I would -- looking at it as we were from the mining
10 regulations as opposed to occupational safety and health,
11 we would tend to deal with geology, mine planning,
12 layouts. And it could go into the positioning of
13 conveyors, in the sense of are they moving coal from the
14 face in a workmanlike manner. I think things like
15 ventilation and other aspects would be left more to the
16 labour, or the worker safety and health group.

17 Q. I see. And specifically, if you were to -- if I
18 could put you back at the time that the Westray Mine was
19 operational, who would you be requesting to deal with
20 with respect to the geology of the mine plan?

21 A. Whoever their project or mine geologist was.

22 Q. And -- but you've reviewed the documentation; who
23 was that?

24 A. I don't know of anybody specifically by that name.

25 Q. So there would be nobody that you could identify,

MR. GOLBEY, EXAM. BY MR. HEBERT

1 even after reviewing the documentation, as to who you
2 would want -- as a government inspector, want to sit down
3 and talk to about the geological mine plan? Or the
4 geology of the mine plan.

5 A. Not -- not as far as I can recall, a Westray person.

6 Q. Was there any other person that you would want to
7 meet with if you went to inspect the mine?

8 A. If -- it would be the mine planning group and again,
9 it depended partly which year -- which individual one
10 would speak to, as positions slightly change in an
11 organization.

12 Q. And perhaps just leading up into the -- from January
13 '92 onwards, who would those people have been? Have you
14 identified them?

15 A. One of the key people, I believe, would be David
16 Waugh. And the usual way of doing it would be discuss
17 something with a, as he was, manager of engineering or, I
18 cannot recall his precise title, and then would use him
19 to identify which specific individuals had worked on
20 whichever aspect we were interested in.

21 Q. Now Mr. Merrick asked you earlier whether the
22 Energy, Resources, Conservation Board of Alberta would
23 have approved the mine plan based on the information
24 provided by Westray. You remember that question?

25 A. I do, yes.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. And I'm just interested in your first comment in
2 response, was that there were jurisdictional differences
3 between Alberta and Nova Scotia.

4 A. It's --

5 Q. What were those jurisdictional differences that you
6 were referring to?

7 A. All right. I -- that may be a poor choice of words.
8 There are -- it is two different jurisdictions and so
9 it's extremely difficult to judge, having worked in one,
10 what the prevailing views or feelings of another
11 jurisdiction would be.

12 Q. So it was really an implementation or policy
13 differences that might exist?

14 A. That could be the case, yes.

15 Q. Were those the sorts of jurisdictional differences
16 you were referring to?

17 A. Yes.

18 Q. It's the personnel involved. You've seen, and Mr.
19 Larkin has reviewed some of the criterion or requirements
20 of the Mineral Resources Act and subsequent legislation.
21 Is there anything major in those that would differ from
22 the Alberta regulatory regime?

23 A. In overall intent, no.

24 Q. Okay. Now in direct response to Mr. Merrick's
25 question, you indicated that the Board would have some

MR. GOLBEY, EXAM. BY MR. HEBERT

1 areas of difficulty with the information and the plan as
2 presented. And I don't think that you specified what
3 those areas of difficulty were, perhaps -- you've
4 identified them, certainly, in your testimony, but just
5 perhaps to give me a brief summary of what those areas of
6 difficulty would be.

7 A. Well, I think even using the current legislation and
8 many of these have been alluded to before, such as the
9 ventilation and electrical plan, proposed production
10 areas --

11 Q. Sorry, proposed?

12 A. Production areas. And I think to some extent,
13 although it wasn't quite intended as such, using what
14 amounts to the checklist in the Regulations of the Act
15 is, I think, a very good guide as to the information
16 required.

17 Q. All right. And that -- we looked at that checklist
18 earlier, I think, the first day of your testimony?

19 A. Well, I've spent more time reviewing it since then,
20 but no, I consider it a good list and it is certainly not
21 designed, and I am certain, not intended to be a "check-
22 a-box" type of list, but it -- and that's why I refer to
23 it as a good list of items to be considered.

24 Q. And in almost every area that's on the checklist,
25 there were deficiencies?

MR. GOLBEY, EXAM. BY MR. HEBERT

1 A. Yes.

2 Q. Okay. Now -- also in your -- Mr. Merrick followed
3 up with a question as to whether or not the Board in
4 Alberta would have approved some of the changes that
5 we've seen here. And I think your answer at that point
6 was that you -- it would be speculative, in essence, and
7 you couldn't do that?

8 A. It would be because, again, going into the
9 background for the changes and providing technical
10 backup.

11 Q. But would you agree with me that the criterion used
12 for the original plan, that would have some bearing on
13 the changes? That the same, similar criteria, would be
14 used? Those which would apply to the change?

15 A. Yes, I would. I think that's -- again, I don't want
16 to get into the --

17 Q. Sure.

18 A. -- check-a-box, but it's certainly a good indication
19 of the type of information the province would be looking
20 for.

21 Q. And, again, using that check-a-box or that checklist
22 in a flexible way, I take it, based on your responses to
23 Mr. Larkin's question, that again many or a substantial
24 portion or most of those items would not have been
25 filled? Even on the applications for changes that we

MR. GOLBEY, EXAM. BY MR. HEBERT

1 reviewed this morning?

2 A. On what I saw, I would have difficulty as a
3 reviewer --

4 Q. Approving the -- ?

5 A. -- easily going through and approving.

6 Q. My understanding is is that the last plan which was
7 submitted and approved basically showed the mains going
8 through to the North without any specification as to the
9 method of room-and-pillar operation. Was that -- am I
10 right in that?

11 A. That's -- yeah, that's correct, in summary.

12 Q. Have you ever seen anything, a plan such as that,
13 ever approved by any provincial body that you've been
14 involved in?

15 A. No, I haven't and that again gets back to mainly
16 dealing with open pit style of operations where --

17 Q. All right.

18 A. -- fairly obviously, that type of layout would not
19 be appropriate.

20 Q. I would expect, based on your earlier evidence, that
21 you would anticipate that that kind of a plan would run
22 into some major resistance in the -- from the Alberta
23 Energy, Resources, Conservation Board?

24 A. I would have anticipated that it would, yes.

25 Q. It's really akin to writing a blank cheque, isn't

MR. GOLBEY, EXAM. BY MR. HEBERT

1 it?

2 A. [No audible response]

3 Q. Here's the plan, you fill in the pieces. Have you
4 ever heard of that before in terms of these mining plans?

5 A. No, I haven't.

6 Q. Now I believe a question was posed to you earlier
7 today whether or not -- whether, I think Mr. Merrick
8 asked you, whether proper planning and layout could have
9 prevented the disaster. I think that was the thrust of
10 his question. And again at that time, you indicated it
11 was difficult to, at this point in time after the fact,
12 reconstruct how those two might have had some interplay.
13 But in your report at -- I believe you do suggest that
14 there were significant factors which come into play. And
15 my understanding was that you were relating these factors
16 to this particular disaster. Maybe we can just look --
17 I'm looking at page 26, and I believe it might be tab
18 two. Yeah. At page 26, it's tab three, I'm sorry. Your
19 -- I guess it's your -- it's the last paragraph in your
20 report. You indicated that in your opinion:

21 "There is no single factor that can be identified as
22 being significant in the events leading up to the mine
23 explosion; however, the delay in achieving commercial
24 production is the easiest to identify, although even with
25 that, it is virtually impossible to identify any key

MR. GOLBEY, EXAM. BY MR. HEBERT

1 factors, but I would include lack of original mine plan
2 and its attendant detail studies, coupled with a tight
3 mine development schedule, and a management group that
4 had limited experience in mine start-ups as major items."

5 I'm just wondering if you could for me, if you could
6 link those three factors to, in particular, to the
7 explosion and this disaster in a little bit more detail?
8 how are --

9 A. The --

10 Q. -- these -- perhaps you can explain the significance
11 of these with respect to the explosion.

12 A. Well, I believe as I said earlier, of itself, a plan
13 is not going to prevent such an event, but it is going to
14 ensure that sufficient elements are there to minimize the
15 event, the likelihood of all the contributory factors
16 occurring at the same time.

17 Q. All right. Can you -- I'm sorry. @

18 A. In the sense that if you have an extremely good
19 ventilation system, you may prevent buildup of methane.
20 Or, alternatively, if there happens to be a buildup of
21 methane, an extremely good rock dusting program would
22 minimize the effect should the methane be ignited. And
23 so that's where in a small area, where the benefit of
24 planning and -- both operationally and in production,
25 would minimize these events.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 And what I'm saying here is with the delay in
2 achieving commercial production, there is inevitably
3 pressures, written or otherwise communicated, to get
4 production at, I hesitate to say at any cost, but as
5 quickly as possible.

6 Going back to other comments I've made about having
7 staff with expertise at various stages of an operation
8 who can identify problems and then can act on them given
9 their own experience. So the difficulty I'm facing is
10 there is no one easy answer because mining happens to be
11 such an -- use such an interrelation of many events. So
12 as of this, there is no one, maybe one or two items, that
13 can be really chosen, but all have a bearing on it.

14 Q. And all of those require the planning, as you've
15 identified earlier?

16 A. Yes. #

17 Q. I just want to turn to the role of AMCL. It strikes
18 me that in your report you are somewhat critical of their
19 performance in the context of this project. Is that fair
20 to say? That you had some criticisms of them?

21 A. Yes, I did.

22 Q. All right. And perhaps again just to -- for
23 convenience, can you identify the criticisms that you
24 have of AMCL and their role in this project?

25 A. The -- I suppose in a way a problem I was facing is

MR. GOLBEY, EXAM. BY MR. HEBERT

1 that they have in fact been involved in the project for
2 many years for a number of different parties. And while
3 I believe each of their staff is extremely professional
4 and would consider very carefully whom their client was
5 at that time, it is -- there are difficulties in totally
6 dissociating your thinking from those of other clients,
7 other reports, or other information.

8 Q. But other than that, I mean, that's a, I guess you
9 might refer to it as an apprehension of a conflict as
10 opposed to an actual conflict leading to an actual
11 problem that you've been able to identify. And I think
12 you've actually pinpointed some in your report, and
13 perhaps we can turn to that if you want.

14 For example, at page, I believe it is, nine of your
15 report under tab two. Am I in the right tab? I'm using
16 the first report. There's a comment, "AMCL gave no
17 explanation for comparing the mining plan as presented to
18 the Bank of Nova Scotia with the 1987 study prepared by
19 or for Placer." Again, I take it that you would see that
20 as a deficiency in their report?

21 A. I would in that there was an intervening report done
22 by Kilborn which Westray was then using, as far as we can
23 tell, for presentations to other parties. For example,
24 we know it was, in large measure, presented to the bank
25 and to government groups.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. And you would expect, given a reasonable standard of
2 professional engineering, you would expect that it would
3 be the most current plan which would have been identified
4 to the Bank of Nova Scotia and used in the report?

5 A. Yes.

6 Q. But that wasn't done?

7 A. For some reason it wasn't.

8 Q. And there's absolutely no explanation that you can -
9 - that you've been able to determine?

10 A. I've not found an explanation for that.

11 Q. There's also a -- in your report, you identify an
12 over optimistic, or an over enthusiastic view of
13 production schedules and financial projections. And that
14 was -- I took your comments to be on the part of --

15 COMMISSIONER Where are you reading from, Mr. Hebert?

16 MR. HEBERT I believe it's at page five, if you want
17 to turn to it, but -- "Westray's budgeting and
18 performance estimating, at least until later 1991, appear
19 to have been unrealistically optimistic." That refers to
20 the company itself. But isn't it true that AMCL would
21 have access to all the information that the company would
22 have had access to?

23 A. They should have done, yes.

24 Q. So not only was Westray being overly --
25 unrealistically optimistic, but in endorsing the project

MR. GOLBEY, EXAM. BY MR. HEBERT

1 would you agree that AMCL, assuming that they were using
2 the same information as Westray had, that they too would
3 have been unrealistically optimistic?

4 A. On that basis, yes.

5 Q. And one might expect a company who's developing the
6 project and seeking financing to be overly optimistic
7 because they've got a financial interest in persuading a
8 bank that they should have financing, correct?

9 A. Yes.

10 Q. But one expects that the role of a professional
11 engineer would be to, in a sense, to act as a barrier or
12 put a damper on the over optimistic approach and provide
13 realistic figures?

14 A. Yes, that's so.

15 Q. And I would suggest to you that was a major
16 deficiency, a major lapse of duty, if you will, on the
17 part of AMCL. Would you agree with that?

18 A. It's -- the problem is, to a degree, until there are
19 some bench marks to measure against, it is difficult to
20 know whether a budget is totally optimistic or not, in
21 that, the initial business plan can look reasonable and
22 if, for example, for whatever factors only ever half the
23 rate that can be mined is determined, you don't have any
24 history to change until you discover that you can only
25 mine at half the rate.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. But I took your comments at page five as indicating
2 that even at the time that these figures were being
3 prepared, there was unrealistic optimism.

4 A. There -- all right. Yes, there was a degree of
5 optimism in them, certainly.

6 Q. Well, you said "unrealistic."

7 A. Unrealistic.

8 Q. And I take it you've reviewed the various reports,
9 the subsequent reports of AMCL?

10 A. I have.

11 Q. And is there anything in there to suggest that AMCL
12 alerted the Bank of Nova Scotia to the fact that these
13 estimates were unrealistically optimistic?

14 A. There were, I won't say warnings. At times there
15 were cautions, in that progress was not as forecast and
16 wording to that -- of that type.

17 Q. Would you agree with me though that the cautions
18 were somewhat understated, given the degree of over
19 optimism?

20 A. Well, they certainly weren't put in bold type or
21 anything like that, I'll agree with.

22 Q. And I take it in preparing the reports for the Bank
23 of Nova Scotia, it would be their duty, AMCL's duty, they
24 were really working for the bank even though you
25 indicated earlier they'd be paid by the company --

MR. GOLBEY, EXAM. BY MR. HEBERT

1 A. Yes, they were working --

2 Q. -- they were there to protect the bank's interests
3 and provide the bank with some expertise and
4 understanding of the -- of their financial risk?

5 A. Yes, that's correct.

6 Q. Now all of the information that we've reviewed this
7 morning, or that you reviewed this morning with Mr.
8 Larkin, the deficiencies in the mining plan, the various
9 changes, I suggest to you that those were also known to
10 AMCL.

11 A. They were because at times AMCL, in fact, reported
12 on them.

13 Q. They were -- and they were involved. Indeed, they
14 were involved in some of those processes, were they not?

15 A. It's my understanding they were, yes.

16 Q. They were providing some -- we saw letters from AMCL
17 to Westray so that in addition to advising the Bank of
18 Nova Scotia, they were also at the same time engaged as
19 technical consultants for the company. Is that
20 consistent with your review of the documentation?

21 A. I'm trying to think of the timing of certain letters
22 and when they're -- and the actual date they commenced
23 their independent engineering role with B.N.S. And I'm
24 sorry, off the top of my head I just can't recall those
25 dates.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. Well, the documents are there and they can speak for
2 themselves in terms of the timing. And I just want to be
3 clear, we saw some documentation where AMCL was involved
4 in meetings between Westray and departmental officials.

5 A. Yes.

6 Q. Where there was some indication from the department
7 that there was noncompliance and concerns. But it's my
8 understanding that the information with respect to
9 noncompliance did not come from AMCL but came instead
10 directly from the department. Is that your understanding
11 from reviewing your records?

12 A. Yes. it is.

13 Q. Have you found any evidence where AMCL provided
14 information to the bank with respect to the noncompliance
15 that it was aware of?

16 A. Not that I can immediately recall.

17 Q. Now, indeed, in your report -- let me just get the
18 quote here but perhaps you can remember it, but in your
19 report --

20 COMMISSIONER What's the page, please?

21 MR. HEBERT I'm just searching for that now, Mr.
22 Commissioner. I thought it was at page 12. You
23 commented -- well, perhaps I'll find that in a second.
24 Ah, page 17, I believe it is, under Tab 3. You make the
25 -- you doubted whether or not AMCL really believed that

MR. GOLBEY, EXAM. BY MR. HEBERT

1 the project was viable.

2 COMMISSIONER Is there a question?

3 MR. HEBERT I just wanted to confirm that, Mr.
4 Commissioner.

5 A. Yeah, I wrote, "I do not find AMCL's report to be a
6 particularly strong document." And it also goes on,
7 "...and perhaps with a touch of hindsight question if
8 AMCL did truly believe in the viability of the project.

9 Q. And I just wanted to determine your basis for that
10 statement?

11 A. The -- going to the paragraph above, "AMCL believe
12 the project as a whole to be technically sound and
13 economically viable..." and they continue after that for
14 awhile. They did, however, at the same time, and I
15 cannot recall verbatim, have a number of cautions and
16 concerns, one of which, for example, I know was no float
17 in the program and some other concerns which would
18 indicate they weren't overwhelmingly endorsing.

19 Q. Okay.

20 A. But on the data provided, as they said, it was
21 technically sound at the time and, on that data,
22 economically viable.

23 Q. Now I just wanted to go back, it's been a couple of
24 days and I haven't -- I confess I haven't reviewed the
25 transcript, but my understanding is that AMCL did not do

MR. GOLBEY, EXAM. BY MR. HEBERT

1 a feasibility study, but they did it for the bank. Would
2 you have classified that as a prefeasibility study?

3 A. AMCL did a project review for the bank.

4 Q. Yes.

5 A. And that would be in the manner of the risk
6 assessment or a review of technical parameters used. It
7 was never intended to be in the manner of a feasibility
8 study.

9 Q. Certainly, okay. I take it then with respect to the
10 feasibility of the mine itself that AMCL would be in no
11 better position to determine that than anybody else at
12 the time because, as you've indicated earlier, there was
13 no feasibility study.

14 A. Right. They could have -- they would have used the
15 then available information which was --

16 Q. Correct.

17 A. -- Kilborn of '89.

18 Q. All right. And, again, those -- I think you've
19 indicated that those were really pre-feasibility studies?

20 A. Yes.

21 Q. All right. So in essence, the bank through AMCL was
22 in no better position to determine the actual feasibility
23 with any kind of a hard plan to look at than any other of
24 the actors in this drama.

25 A. They had exactly the same information as everybody

MR. GOLBEY, EXAM. BY MR. HEBERT

1 else.

2 Q. And with respect to the advancing of funds, and I
3 can understand that there would be this technical review
4 or project review and there would be advice to the bank,
5 okay, this looks like it's going to be a good project, go
6 ahead and commit the funding. And within the bank
7 document there would be some protection for the bank in
8 the event the project didn't unfold as planned. And my
9 question was is it generally a requirement of financial -
10 - of lending institutions that there be some hard
11 feasibility study at some point before funds are
12 advanced? Would the bank be looking for your feasibility
13 study which you've indicated was not here?

14 A. That's a general requirement. I come back, every
15 institution has and every -- for every loan they have
16 their own way of dealing with that one particular
17 project. But, overall, the rule of thumb would be a
18 feasibility study would be the document required.

19 Q. All right. Because really it's only with the
20 benefit of that feasibility study that really a final
21 assessment of the economic risks can be determined before
22 construction begins. And, obviously, accepting any
23 overruns or problems you find in the construction or
24 development phase.

25 A. Right.

MR. GOLBEY, EXAM. BY MR. HEBERT

1 Q. Okay.

2 COMMISSIONER This is getting repetitious now, Mr.
3 Hebert. I would like you to get further on, if you can?

4 A. I was just about to wrap up, Mr. Commissioner.
5 With respect to insurance on the property, did you have
6 any occasion to review documentation concerning that?

7 A. You mean what I would traditionally call sort of
8 fire, theft, floods and so on?

9 Q. Yes.

10 A. That style of insurance? No, I haven't reviewed
11 that.

12 Q. All right. Fair enough. And with respect to the
13 open pit mine, there was some evidence that some coal
14 from that operation or that test, I guess it was referred
15 to, was used by Westray and sold to Nova Scotia Power.
16 And my question was are you aware of any commitments by
17 the Provincial government going back to the 1987 or '88
18 period that Westray would be able to have access to the
19 pit in the event of a major disruption of the underground
20 operation?

21 A. I do not recall such documentation.

22 Q. Okay. Did you see anything in your review of the
23 documentation to suggest that Premier Cameron was
24 attempting to obtain free electricity, electricity at a
25 no-cost basis for the Westray Mine?

MR. GOLBEY, EXAM. BY MR. HEBERT

1 A. That's the -- that actually comes as news to me.

2 No, I haven't.

3 Q. Well, I'm not suggesting that has --

4 A. No, I haven't found documentation on that.

5 Q. All right. And have you come across any
6 documentation to suggest that Premier Cameron was
7 prepared to have Nova Scotia guarantee the \$100,000 loan
8 if, in fact, the Feds didn't do so?

9 COMMISSIONER You're saying 100,000 of petty cash in
10 the --

11 A. No, the -- again, I don't recall having documents.
12 It's all so --

13 COMMISSIONER Are these suggestions that you're coming
14 forward with, Mr. Hebert, or are they just --

15 MR. HEBERT I'm asking the witness, obviously, on
16 behalf of our clients, whether or not he in his review of
17 the documentation, has seen any documents to suggest
18 that.

19 A. I haven't made note of them and they're not here as
20 exhibits so --

21 Q. All right.

22 MR. MERRICK Mr. Commissioner, it would be appropriate
23 to point out to all status parties that if there is a
24 certain set of facts that they understand to be the case
25 and if they have any evidence indicating it or proving

DISCUSSION

1 it, I would expect that they will make that evidence
2 available to the Commission and would have done so by
3 now, indeed, before they would explore it with witnesses.

4 COMMISSIONER Most assuredly.

5 MR. MERRICK Mr. Hebert, do you have evidence of that?

6 MR. HEBERT I don't have. I haven't seen any
7 documentation to that effect. My understanding is is
8 that there may be a documentation to that effect. That's
9 all I know at this point.

10 MR. HEBERT Those are my questions, Mr. Commissioner.
11 Thank you.

12 COMMISSIONER Department of Justice? No questions?
13 Thank you. Mr. MacDonald?

14 MR. MACDONALD No questions, Mr. Commissioner.

15 COMMISSIONER Okay. Town of Stellarton?

16 MR. RAFUSE No questions, Mr. Commissioner.

17 COMMISSIONER Is the Province going to follow suit on
18 that? Well, you can always try.

19 COMMISSIONER Mr. Endres?

20 MR. ENDRES If I could just make an observation in the
21 light of Mr. Merrick's comment just a few minutes ago.
22 It may be more in the nature of a question. There's been
23 a lot said about what officials of the Government of Nova
24 Scotia did or didn't do. And many times over the
25 question was asked, have you come across, witness, any

DISCUSSION

1 additional documents and the answer was, no, I have not,
2 which seems to put a burden on us, the Crown lawyers, to
3 come up with additional documents. That's getting to be
4 a very difficult task considering the volume of evidence
5 or exhibits that are already around, considering the
6 volume of documents that the Commission has. That's one
7 difficulty we have.

8 That is the downloading of a burden --

9 COMMISSIONER Just -- may I just respond to that?

10 MR. ENDRES Yes.

11 COMMISSIONER As far as I'm concerned and I'm the one
12 that's going to make the final judgement in this, I have
13 not taken the position that these questions or innuendoes
14 or whatever were aimed directly at the Department. From
15 the knowledge I have as to what has been going on to this
16 date is that we had a document hearing; the Crown
17 undertook to provide the documents, and, as far as I'm
18 concerned, we have them. The only reference that Mr.
19 Merrick made to the -- made the other day was to
20 documents which perhaps were in our data base but he had
21 overlooked in preparing the witness.

22 Q. All right.

23 COMMISSIONER Not that we didn't have them.

24 MR. ENDRES And that's a very well made comment.

25 Now, in addition to that, as an expansion of that con --

DISCUSSION

1 that idea, is what we faced over the weekend is what we
2 will probably -- the way it's going -- the way it seems
3 faced continuously at least during the month of November,
4 and that is have I failed, Mr. Merrick, have I failed to
5 refer to any relevant documents which still puts us to
6 the task of having to review the data base of the
7 Commission which, as you say, contains all the documents
8 that the government had to make sure that there weren't
9 additional documents that Mr. Merrick did not refer to.
10 And over the weekend we came up with a number of them and
11 we provided them last night -- of course, we had no
12 secretarial support over the weekend to work with. They
13 hadn't been copied. They were copied for this hearing
14 this morning, and, in fact some of them were referred to
15 by Mr. Larkin early on. This is getting to be a burden
16 that we find very difficult to deal with, but we'll
17 continue to do it. I just want you to be aware that this
18 isn't a simple task.

19 COMMISSIONER Well, it's a burden faced by all of us
20 because I know --

21 MR. ENDRES Yes, it is.

22 COMMISSIONER -- the other night our staff here worked
23 till about midnight trying to get a compilation of
24 documents which constituted Exhibit 64. And it wasn't
25 until 11 or 11:30 the next morning that they were

DISCUSSION

1 physically able to get these all copied and distributed
2 to the parties. But we did the best with what we have.
3 I assume that you're going to do the same, okay?

4 MR. ENDRES Sure, and that's all I really want to say,
5 that we are trying to do the best we can. If we do not
6 come up with documents that some people might expect to
7 be there, then it may not. That doesn't necessarily mean
8 they're not there. It just means that neither Mr.
9 Merrick nor any of the other parties have found them in
10 the data base. They may well be hidden in that 350,000
11 documents.

12 COMMISSIONER Could very well be catalogued under some
13 sort of an arcane logo that --

14 MR. ENDRES Sure. And I --

15 COMMISSIONER -- we wouldn't find.

16 MR. ENDRES And I appreciate that you see it that way.

17 The other comment that, as a general comment, having
18 heard Mr. Merrick speak about -- specifically asking, Mr.
19 Hebert, do you have any additional evidence or do you
20 have any evidence pertaining to these questions. I think
21 that causes me some difficulty because there is
22 undoubtedly evidence coming forward by government
23 officials. They will be called, I presume. And so the
24 answer to that, invariably, is yes, yes, we do have
25 additional evidence. And I cannot, of course, now answer

DISCUSSION

1 for these witness and say and that evidence is going to
2 be one, two, three. I am not these people. I cannot
3 speak for them. I do not know exactly what their
4 evidence is going to be, and I can't be surely expected
5 to deliver that at this stage. But that seems to be what
6 Mr. Merrick is asking for, and I just want to be sure
7 that we're not going too far down this road because that
8 would create an onus on us that we simply cannot meet.

9 COMMISSIONER Mr. Merrick, do you -- I haven't taken
10 that but --

11 MR. MERRICK I'm having some difficulty here. Each of
12 us comes into this hearing having some understanding of
13 what the facts are and some appreciation of what we think
14 the evidence may establish. What we have asked for is if
15 you do know, to some extent, by some review of the
16 documents what you understand the facts to be, and if you
17 note that they are not in accordance with what we are
18 introducing or the position that we are taking, we are
19 asking that you advise us of that.

20 The question I put to Mr. Hebert a moment ago was
21 dealing with a specific situation where he put a question
22 to a witness which suggested that there was, in fact, a
23 factual background. If counsel are going to put
24 questions to witnesses suggesting that a certain set of
25 facts are so, I'm asking that you advise us if you know

DISCUSSION

1 whether there's any evidence to establish those facts.
2 And, in fact, that should advise us in advance so that
3 the witness can be warned about it. Otherwise it leaves
4 the impression that there is evidence out there that
5 proves that fact but that, for some reason, is going
6 undisclosed. I don't think there's anything magic about
7 this. There's nothing rocket science about it. All
8 we're saying to people is this, if you know something
9 that's relevant to this Inquiry, a certain piece of
10 evidence, or a certain allegation, or a certain set of
11 facts, please ensure that you make us aware of it in case
12 we've missed it.

13 COMMISSIONER And if you -- I'll just follow up on that
14 from my point of view. If anyone has evidence at this
15 time or before the evidence is called and does not
16 disclose it, it might not get in because that is -- I
17 said at the beginning that this was a nonadversarial
18 proceeding. We are after the truth, and we are after it
19 through Commission counsel. So if you have anything,
20 deliver it. That's the bottom line.

21 MR. ENDRES I think, if I could just reply to that.

22 COMMISSIONER Yeah.

23 MR. ENDRES Because that will clear it up, I think.
24 If Mr. Merrick and with your comments, Mr. Commissioner,
25 if you're thinking in terms of documentary evidence, then

DISCUSSION

1 I understand the rule. The rule is produce it when you
2 come across it which we are doing. And that is where --
3 we are now providing additional documents which are
4 already part of the Commission data base. There's
5 nothing new. They are part of the Commission data base.
6 We're producing documents that were not referred to which
7 we think should have been referred to in order to
8 establish the full sequence of events. But I see that
9 quite differently and I agree there's nothing rocket
10 science about that as long as we use the right
11 terminology.

12 I see it quite differently when it comes to oral
13 testimony which is going to have to come from the
14 witnesses who can speak to it.

15 COMMISSIONER Yes, but the witnesses will be speaking in
16 response, basically, to Mr. Merrick's questioning. And,
17 presumably, Commission counsel or Commission
18 investigators will be given the opportunity of a full
19 interview with these witnesses to avoid any possibility
20 of being ambushed or taken by surprise. I mean, I don't
21 think it's Mr. Merrick's intention to put witnesses on
22 the stand cold unless there's no alternative. And that
23 could, on occasion, arise. But we hope it doesn't.

24 MR. ENDRES Yeah. There is one problem yet with that
25 and that is that I still do not quite appreciate, and I'm

DISCUSSION

1 not trying to be difficult, whether or not Mr. Merrick is
2 indeed, or the Commissioner is putting the onus on the
3 parties' solicitors to deliver oral evidence as opposed
4 to letting the witnesses who the Commission will call
5 give their evidence, whatever their evidence may be. And
6 I say this particularly in the context of Mr. Merrick's
7 response to Hebert, say, well, do you have any evidence?
8 If he had said do you have any documentary evidence,
9 there would have been no question on my part. If he says
10 do you have any evidence, that raises two problems with
11 me. Number one, documentary evidence; number two, oral
12 evidence. Certainly we are expected to respond to
13 documentary evidence and we're prepared to do that. But
14 I don't see how we can respond to oral evidence that may
15 come forward.

16 COMMISSIONER Let's take a purely hypothetical and I
17 underline "hypothetical," we have a government witness
18 who has been interviewed by Mr. Merrick in preparation
19 for his testimony here. You, at some other time, have
20 been told something by this witness that is a surprise
21 matter and it's going to take the Inquiry by surprise. I
22 think there is a burden on you to disclose this to Mr.
23 Merrick.

24 MR. ENDRES Yes, I agree with you.

25 COMMISSIONER Okay? That's --

DISCUSSION

1 MR. ENDRES Yes. No --

2 COMMISSIONER That's all that --

3 MR. ENDRES As long as the burden is not that I would
4 be expected or any one of us lawyers would be expected to
5 somehow state the oral evidence which a witness might
6 give.

7 COMMISSIONER Oh, I don't think that's the -- no, no.
8 No.

9 MR. ENDRES Well, that's the way I understood Mr.
10 Merrick's response to Mr. Hebert.

11 COMMISSIONER Mr. Merrick, there's no intention of that.

12 MR. ENDRES He's talking about evidence.

13 COMMISSIONER Yeah.

14 MR. MERRICK Evidence is evidence. Whether a witness
15 gives it, or a document proves it, or a piece of material
16 establishes it, the onus is on you to make sure that all
17 relevant evidence, however you want to define the term,
18 is brought forward so that it can be produced. There are
19 some subheadings of that. We want to make sure that if
20 you know of a piece of evidence that a particular witness
21 may be asked on on cross-examination, that it be
22 introduced in advance so that the witness not be
23 blindsided. But, generally, the onus is on you to ensure
24 that if you know of any evidence that's relevant to the
25 terms of reference of this Inquiry, that you ensure that

DISCUSSION

1 it be brought to our attention.

2 Now, we're not expecting counsel to guarantee that
3 they have, in fact, found all relevant evidence. The
4 mass of documents is so great that none of us would want
5 to take on that undertaking. But we want to make sure
6 that if you are aware of relevant information, layman's
7 term for evidence, that you ensure that you bring it to
8 our attention and that you do not use it by way of a
9 blindside or a surprise.

10 COMMISSIONER And we've managed to take up the last 10
11 minutes of the afternoon. I presume you can withhold
12 your cross -- your few minutes of cross-examination until
13 the morning?

14 MR. ENDRES What I could do is just indicate to you
15 and to the witness the volumes, the documents that I
16 think I need to rely on tomorrow so we can sort that out
17 first thing.

18 COMMISSIONER Fair enough.

19 MR. ENDRES And we don't waste a lot of time tomorrow
20 morning.

21 COMMISSIONER That would be helpful.

22 MR. ENDRES And I don't mean to debate the issue
23 again, I'm frankly still at a loss at my -- Mr. Merrick's
24 response. It just doesn't seem to answer my concern
25 whatsoever. Volumes 35-E.

DISCUSSION

1 VOICE D?

2 MR. ENDRES "E," like in "east."

3 COMMISSIONER Yes.

4 MR. ENDRES 35-C, 51, 57. 1, 2, 3 which, by the way,
5 we still have not been provided with. I don't have them
6 but I will try to refer to them.

7 COMMISSIONER Exhibit 1, 2, 3?

8 MR. ENDRES Yes.

9 COMMISSIONER Oh.

10 VOICE It's the feasibility study.

11 MR. ENDRES 63, 35-A, 4. 65, 66 which are the two
12 blueprints. 10, 45, 64 and 16. And I apologize for the
13 lengthy list of documents but -- the lengthy list of
14 exhibits, but then it wasn't my doing as to how they were
15 ordered either. And my colleague tells me 35-B as well.
16 So it will be all the 35 Volumes.

17 MR. MERRICK Can you provide an estimate as to the
18 length of your cross that you expect, just for time?

19 MR. ENDRES An estimate?

20 MR. MERRICK Just for so we can know scheduling.

21 MR. ENDRES Well, the way I see it, it will take
22 probably the good part of a day to do that, probably.
23 And I say this with a certain amount of hesitation,
24 knowing what the Commissioner has said to other counsel,
25 and I appreciate the need to get on with it. On the

DISCUSSION

1 other hand, I think we also understand that there have
2 been many things said about the involvement of
3 government, sometimes referred to as the Department or
4 whatever, whether it is with the mine approval itself, a
5 lot of debate about that, feasibility study or no
6 feasibility study, first change in the alignment, second
7 change in the re-alignment, the third change in the re-
8 alignment, mine methods, declines, crossing at right
9 angles. We have to look at these things because,
10 frankly, we have some difficulties with a lot of that
11 evidence.

12 COMMISSIONER Will a lot of those difficulties be
13 resolved when the government witnesses come forward at
14 some time in the future?

15 MR. ENDRES Oh, yes, a number of these matters can be
16 cleared up through the government witnesses depending on
17 how the examination is conducted, yes. But on the other
18 hand, I think it is equally important that we do not
19 depart with this witness with leaving all these things in
20 place as though they were definitively established to
21 your satisfaction or anyone else's.

22 COMMISSIONER Well, this is a significant area of
23 examination, there's no question about that. Mr.
24 Golbey's evidence has been quite wide ranging, and I am
25 going to allow some latitude, as I have, in cross-

DISCUSSION

1 examination this time, but if it -- I'll give you fair --
2 everyone fair notice that if this continues with each
3 witness, then I'm going to impose limits. And they'll be
4 stringent limits. And you're going to have to live with
5 them, but not with this witness. Thank you.

6 INQUIRY ADJOURNED (TIME: 4:36 p.m.)

REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of the evidence taken by way of recording and reduced to typewritten copy.

Margaret E. Graham

DATED this 14th day of November, 1995, at Stellarton,
Nova Scotia.