

THE PROVINCIAL COURT OF ALBERTA

HER MAJESTY THE QUEEN

- v -

THE SYNERGY GROUP OF CANADA and  
TRUEHOPE NUTRITIONAL SUPPORT

Accused

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T R I A L  
(EXCERPT)

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Calgary, Alberta  
13th, 14th & 15th, 16th, 17th, 20th, 21st,  
22nd, 23rd, 24th, 28th & 29th March, 2006

Transcript Management Services, Calgary



i  
I N D E X

	PAGE
13th March, 2006	
For the Crown	
<u>SANDRA MARIE JARVIS</u>	
Examined by Mr. Brown	36
Certificate of Record	89
<u>SANDRA MARIE JARVIS</u>	
Examined by Mr. Brown	90
Cross-examined by Mr. Buckley	114
Certificate of Record	177
 14th March, 2006	
For the Crown	
<u>SANDRA MARIE JARVIS</u>	
Cross-examined by Mr. Buckley	179
Certificate of Record	285
<u>SANDRA MARIE JARVIS</u>	
Cross-examined by Mr. Buckley	286
<u>MILES BROSSEAU</u>	
Examined by Mr. Brown	290
Cross-examined by Mr. Buckley	330
Certificate of Record	371
 15th March, 2006	
For the Crown	
<u>MILES BROSSEAU</u>	
Cross-examined by Mr. Buckley	390
Certificate of Record	450
Cross-examined by Mr. Buckley	451
Re-examined by Mr. Brown	470



I N D E X

	PAGE
<u>LARRY M. YOUNG</u>	
Examined by Mr. Brown	486
Certificate of Record	516
<u>ALBA TOLEDO</u>	
Examined by Ms. Eacott	521
Cross-examined by Mr. Buckley	533
Re-examined by Ms. Eacott	553
Certificate of Record	560
17th March, 2006	
For the Accused	
<u>ANTHONY FREDERICK STEPHAN</u>	
Examined by Mr. Buckley	576
Certificate of Record	673
<u>ANTHONY FREDERICK STEPHAN</u>	
Examined by Mr. Buckley	674
Cross-examined by Mr. Buckley	724
Re-examined by Mr. Buckley	768
Certificate of Record	776
20th March, 2006	
For the Accused	
<u>DEBRA OXBY</u>	
Examined by Mr. Buckley	788
Cross-examined by Mr. Brown	816
<u>BONNIE JOY KAPLAN</u>	
Examined by Mr. Buckley (Qual)	821
Ruling (Qual)	848
Examined by Mr. Buckley	849
Certificate of Record	890



I N D E X

	PAGE
<u>BONNIE JOY KAPLAN</u>	
Cross-examined by Mr. Brown	961
Re-examined by Mr. Buckley	992
Certificate of Record	997
21st March, 2006	
For the Accused	
<u>RON LAJEUNESSE</u>	
Examined by Mr. Buckley	1001
Cross-examined by Mr. Brown	1039
Re-examined by Mr. Buckley	1049
<u>SAVINE COULSON</u>	
Examined by Mr. Buckley	1054
Certificate of Record	1086
<i>VOIR DIRE</i>	
For the Accused	
<u>SAVINE COULSON</u>	
Examined by Mr. Buckley	1087
Submissions	1088
Ruling	1091
*     *     *	
For the Accused	
<u>SAVINE COULSON</u>	
Examined by Mr. Buckley	1095
<u>AUTUMN STRINGAM</u>	
Examined by Mr. Buckley	1096



I N D E X

PAGE

*VOIR DIRE*

For the Accused

AUTUMN STRINGAM

Examined by Mr. Buckley 1129

Ruling 1130

\* \* \*

For the Accused

AUTUMN STRINGAM

Examined by Mr. Buckley 1132

Cross-examined by Mr. Brown 1143

Certificate of Record 1148

22nd March, 2006

For the Accused

JAMES DANIEL LUNNEY

Examined by Mr. Buckley 1149

Cross-examined by Mr. Brown 1192

SHEILA STANLEY

Examined by Mr. Buckley 1209

Certificate of Record 1238

23rd March, 2006

*VOIR DIRE*

For the Accused

BRUCE DALES

Examined by Mr. Buckley (Qual) 1240

Cross-examined by Mr. Brown (Qual) 1266

Ruling (Qual) 1279

\* \* \*



v  
I N D E X

	PAGE
For the Accused	
<u>BRUCE DALES</u>	
Examined by Mr. Buckley	1280
Certificate of Record	1317
<u>BRUCE DALES</u>	
Examined by Mr. Buckley	1318
Cross-examined by Mr. Brown	1324
Questions by The Court	1328
Re-examined by Mr. Buckley	1330
Certificate of Record	1336
24th March, 2006	

*VOIR DIRE*

For the Accused	
<u>CHARLES WILLIAM POPPER</u>	
Examined by Mr. Buckley (Qual)	1443
Cross-examined by Mr. Brown (Qual)	1354
Ruling (Qual)	1356

\* \* \*

For the Accused	
<u>CHARLES WILLIAM POPPER</u>	
Examined by Mr. Buckley	1358
Certificate of Record	1431
Discussion	1432
Certificate of Record	1434

28th March, 2006

For the Accused	
<u>DAVID LAWRENCE HARDY</u>	
Examined by Mr. Buckley	1437



I N D E X

	PAGE
Certificate of Record	1551
<u>DAVID LAWRENCE HARDY</u>	
Examined by Mr. Buckley	1553
Cross-examined by Mr. Brown	1557
Re-examined by Mr. Buckley	1589
Questions by The Court	1597
Certificate of Record	1633
29th March, 2006	
Argument	1634
Certificate of Record	1726
Argument	1727
Certificate of Record	1816
Certificate of Transcript	1817

EXHIBITS

1	Colour printout off of <a href="http://redumbrellas.ca">http://redumbrellas.ca</a> web page entitled, The New Face of Mental Illness in Canada: depicts The Women of Red Umbrellas and their stories with attachments, dated 2003-06-26	241
2	Certified True Copy of Notice of Application between TrueHope Nutritional Support Limited, David Hardy, John Doe and Jane Doe (Applicants) and The Attorney General of Canada and The Minister of Health of Canada (Respondents) in the Federal Court of Canada - Trial Division filed May 28, 2003	251
3	Certified True Copy of Notice of Motion Between Her Majesty the Queen (Respondent) and The Synergy Group of Canada Inc., TrueHope Nutritional Support Ltd., David Lawrence Hardy and Anthony Frederick Stephan (Applicants) in the Court of Queen's Bench of Alberta, filed September 11, 2003	253



vii  
I N D E X

	PAGE
4 Government of Canada Memorandum dated January 16, 2003, Formerly Exhibit 'I' for Identification	301
5 Formerly Exhibit 'J' for Identification, e-mail from Dennis Shelley to Rod Neske and Miles Brosseau dated 2003/01/22, 9:43 p.m., subject: Synergy Group update, page numbered 000545	301
6 Formerly Exhibit 'K' for Identification, letter dated March 6, 2003, to Rod Neske	411
7 Cardboard Box Containing One Bottle of EMPowerplus Marked E-01; Another Bottle of EMPowerplus Powder Formula marked E-02; An Invoice Which was a Copy of Ms. Jarvis' Invoice Marked E-03; An Issue of a Newsletter Entitled Common Ground Marked by Ms. Jarvis as E-04; A Letter on TrueHope Letterhead Marked as E-05; and a Copy of Ms. Jarvis' husband's Visa Statement Marked by her as E-06, Formerly Exhibit 'A' for Identification	476
8 Formerly Exhibit 'B' for Identification, Document Labelled: Number of Bottles Ordered, Dated March 5, 03, New Participants, Old Participants, also Labelled LY111 and Numbered 00257	477
9 Formerly Exhibit 'C' for Identification, Email from Maximum ASP Billing Labelled LY192, Pages Numbered 006841 to 006854, Sent Thursday, October 31, 2002 to astephan@truehope.com Containing Pages With UniCDomains.com as a header	478
10 Formerly Exhibit 'D' for Identification, Manilla file folder labelled LY194-2 and Orders Jan. 03 Containing Pages Stamped 006974 to 007152	479
11 Formerly Exhibit 'E' for Identification, Manilla File Folder Labelled LY194-3 and Orders February 2003, Containing Pages Stamped 007153 to 007324	479
12 Formerly Exhibit 'F' for Identification, Manilla File Folder Labelled LY194-4 and Orders March, 2003, Containing Pages Stamped 007325 to 007486	479



viii  
I N D E X

	PAGE
13 Formerly Exhibit 'G' for Identification, Manilla File Folder Labelled LY194-5 and Orders April 2003, Containing Pages Stamped 007487 to 007624	480
14 Formerly Exhibit 'H' for Identification, Manilla File Folder Labelled LY194-6 and Orders May 2003, Containing Pages Stamped 007661 to 007834	480
15 TrueHope Employee Phone List, Labelled LY155, Containing Page Stamped 005480	490
16 Document Entitled TrueHope/Synergy Group Corporate Organization, Labelled LY149, Containing Pages Stamped 005401 to 005416	491
17 Document Entitled Synergy Expansion Overview, Labelled LY156, Containing Pages Stamped 005481 to 005486	493
18 Document Entitled Synergy Group of Canada Inc. Labelled LY157, Containing Page Stamped 005487	494
19 Document Entitled Truehope Nutritional Support Ltd. Transactions by Account Report, 6/1/2003 to 6/30/2003, Labelled LY160, Containing Stamped Pages 005490 to 005507	495
20 Purple Folder with Documentation Included, First Page Entitled Synergy Group of Canada Ltd. Income Statement January 1st, 2003 to January 31st, 2003 Labelled LY163, Containing Pages Stamped 005513 to 005524	497
21 Folder and Enclosed Documents, First Page Entitled Income Statements Actual and Proforma, Labelled LY177 Containing Pages Stamped 005538 to 005548	499
22 Folder Containing Documentation, Document Entitled Merchant Activity Statement of Synergy Group of Canada Inc., Labelled LY180, Containing Pages Stamped 005617 to 005790	501
23 Folder and Documents, ATB Financial in the Name of Synergy Group of Canada Inc., Labelled LY181, Containing Pages Stamped 005801 to 005881	505



ix  
I N D E X

	PAGE
24 Folder Labelled Pharos, Labelled LY183, Containing Pages Stamped 006424 to 006504	506
25 Order Forms, Labelled SJ509, Containing Pages Stamped 100,000 to 100,100	510
26 Order Forms, Labelled SJ509, Containing Pages Stamped Numbered 101,000 to 101,100	511
27 Order Forms, Labelled SJ509, Containing Pages Stamped 102,000 to 102,100	512
28 Order Forms, Labelled SJ509, Containing Pages Stamped 103,000 to 103,100	512
29 Order Regarding Disclosure Between Her Majesty the Queen and The Synergy Group of Canada Inc. and Truehope Nutritional Support Ltd., Dated and Signed March 15, 2006	518
30 Black 3 Ring Binder Containing Call Records, Empower Emergency Follow-up Sheets and Statistic Sheets, from a Heath Canada 1-800 Number, Pages Sequentially Numbered 000001 to 000733	572
31 Disk of Program Presentation	675
32 Formerly Exhibit 'P' for Identification - Document Entitled, Planning For Success	686
33 Formerly Exhibit 'L' for Identification - Copy of a Letter Dated April 29th, 2003, From Mr. Stephan and Mr. Hardy on TrueHope Letterhead, to Mr. Neske at Health Canada	686
34 Formerly Exhibit 'M' for Identification - Copy of a News Release	690
35 Formerly Exhibit 'N' for Identification - Cover Letter Dated June 17th, 2002, Including Copies of Other Letters For Proof the Communications Were Made and Not For The Truth of Their Contents	684



x  
I N D E X

	PAGE
36 House of Commons Canada, Standing Committee on Health, HESA, Number 042, 1st Session-38th Parliament-Evidence, Dated Monday, May 16, 2005, Chair Ms. Bonnie Brown, With Two Green Tabs and One Blue Tab	703
37 New Email With an Attached Original Email of March 17th, 2004, from Leanne Moussa to James Lunney, MP	717
38 Product License for Product Number 80000383, with a Brand Name of TrueHope EMP	762
39 Coloured bar graph depicting August and September dates on bottom and lithium amounts, ID Number B074-TB	779
40 Curriculum Vitae of Dr. Bonnie J. Kaplan	822
41 Copy of letter dated April 6th, 2001 from Dr. Bonnie J. Kaplan to Dr. Siddika Mithani	921
42 PowerPoint presentation of Bonnie J. Kaplan	922
43 Document entitled "Request for Additional Information"	930
44 Copy of letter dated October 29th, 2001	934
45 Article entitled, "Treatment of Mood Lability and Explosive Range with Minerals and Vitamins, two case studies in children	956
46 Article in Journal of Clinical Psychiatry, December 2001, entitled, "Effective Mood Stabilization with a Chelated Mineral Supplement, an open-label trial in bipolar disorder	958
47 Article entitled, "Case Report, Improved Mood and Behaviour During Treatment with a Mineral Vitamin Supplement: an open-label case series of children	959
48 Copy of letter dated April 27, 2001 to Dr. Bonnie J. Kaplan from Miles E. Brosseau	978
49 Copy of letter dated December 20, 2001 to Dr. Bonnie J. Kaplan from Robert Peterson	986



xi  
I N D E X

	PAGE
50 Letter dated January 4, 2002 to Dr. Ian Mitchell from Dr. Robert Peterson	987
51 Letter dated October 7th, 2003, from Mr. Ron LaJeunesse to the Minister of Health, Anne McLellan	1034
52 Letter to Mr. LaJeunesse, Executive Director, Alberta Division, Canadian Mental Health Association, from the Minister of Health, Anne McLellan dated November 21st, 2003	1035
53 Copy of the correspondence date stamped December 23rd, 2003, to Mr. LaJeunesse, the Executive Director, Alberta Division, Canadian Mental Health Association, from Diane Gorman, the ADM of Health Canada	1036
54 Resume of Ron LaJeunesse	1036
55 VHS tape in case labelled "Recorded by the House of Commons Broadcasting Service, Press Conferences", dated June 12, 2003	1093
56 CD audio recording of June 6, 2003, of Ms. Stringam's call to the 1-800 crisis line	1132
57 37th Parliament, 2nd Session, Edited Hansard 139, Monday, October 20th, 2003	1163
58 Letter Dated June 3rd, 2003 from Dr. James Lunney to The Honourable Anne McLellan	1180
59 Document Dated June 2nd, 2003 - SO/31 Entitled Edited Hansard Table of Contents 109	1183
60 Document Dated June 12nd, 2003 - SO/31 Entitled Edited Hansard Table of Contents 117	1186
61 Curriculum Vitae of Bruce Dales (Formerly Exhibit 'U' For Identification)	1280
62 Copies of Emails Re: Synergy Group of Canada Dated 05-07-2001	1322



xii  
I N D E X

	PAGE
63 Curriculum Vitae of Charles William Popper, M.D.	1357
64 Publication, Do Vitamins or Minerals (Apart from Lithium) Have Mood Stabilizing Effects? by Charles W. Popper, MD.	1393
65 Green file folder containing Original documents of call records, EMPower Emergency followup sheets and statistic sheets, from the Health Canada 1-800 number, pages 000001 to 000770, very similar to Exhibit 30	1436
66 Letter addressed to The Honourable Pierre Pettigrew from Truehope Nutritional Support Ltd. dated January 16, 2004, subject: Urgent Meeting Request, pages numbered 5895 to 5890, three pages in total, photocopy	1530
67 Formerly Exhibit 'R' For Identification	1550
68 Collection of E-mails Dated May 7, 2001 Directed to Synergy Group of Canada Inc. with Pages Numbered 000155 and 000156	1556
69 Collection of E-mails from Peter Chan to Philip Waddington and from Philip Waddington to Peter Chan Produced in Response to a Court Order	1556

For Identification

A Cardboard box containing: One bottle of EMPowerplus, marked E-01; another bottle of EMPowerplus powder formula, marked E-02; an invoice which was a copy of Ms. Jarvis' invoice marked E-03; an issue of a newsletter entitled Common Ground marked by Ms. Jarvis as E-04; a letter on TrueHope letterhead marked as E-05; and a copy of Ms. Jarvis' husband's Visa statement marked by her as E-06	71
B Document labelled: Number of Bottles Ordered, dated March 5, 03, New Participants, Old Participants, also labelled LY111 and numbered 000257	92



xiii  
I N D E X

	PAGE
C E-mail from Maximum ASP Billing, labelled LY192, pages numbered 006841 to 006854, sent Thursday, October 31, 2002 to astephan@truehope.com containing pages with UNiCDomains.com as a header	94
D Manilla file folder labelled LY194-2 and Orders Jan. 03 containing pages stamped 006974 to 007152	97
E Manilla file folder labelled LY194-3 and Orders Feb. 2003, containing pages stamped 007153 to 007324	98
F Manilla file folder labelled LY194-4 and Orders March, 2003, containing pages stamped 007325 to 007486	100
G Manilla file folder labelled LY194-5 and Orders April, 2003, containing pages stamped 007487 to 007624	102
H Manilla file folder labelled LY194-6 and Orders May, 2003, containing pages stamped 007661 to 007834	106
I Government of Canada Memorandum to Dennis Shelley, operational manager, from Miles Brosseau, compliance officer, dated January 16, 2003, subject: a meeting with TrueHope/Synergy directors at HPFBI-WOC, pages numbered 000537 to 000540	186
J Email from Dennis Shelley to Rod Neske and My Brosseau, dated 2003-01-22, 9:43 p.m., subject: Synergy Group Update, page numbered 000545	191
K Letter from TrueHope to Health Canada, Attention: Mr. Rod Neske, Compliance Officer, dated March 6, 2003, from Anthony F. Stephan and David L. Hardy, numbered 000562	196
L Letter to Mr. Rod Neske, compliance officer, dated April 29, 2003, from Anthony F. Stephan and David L. Hardy of TrueHope Nutritional Support Ltd.	202
M Email labelled: Response, Action taken/measures prises, comments and attachment from Joan Korol with attached press release, pages numbered 000015 to 000017	205



xiv  
I N D E X

	PAGE
N Letter dated June 17, 2002 to Mr. Dennis Shelley of Health Canada from Anthony F. Stephan and David L. Hardy of TrueHope Nutritional Support Ltd. along with a number of letters and enclosures with six coloured tabs	219
O Email to Alexandria Mayar from Joelle Grenier, dated June 10, 2003, subject: EMPowerplus stats, email has yellow highlighting throughout	225
P Booklet Produced by TrueHope entitled The First Step to Recovery - Hope, Healing, Health, Revised April 1, 2003	268
Q Treatment of Mood Liability and Explosive Rage with Minerals and Vitamins: Two Case Studies in Children. A publication in the Journal of Child and Adolescent Psychopharmacology, Volume 12, Number 3, 2002	271
R E-mail dated April 24, 2001 from Philip Waddington to Peter Chan	283
S Article dated Friday, July 18, 2003 from Regina Leader Post newspaper with heading EMPowerplus Supplement could lead to suicide	288
T Letter From Dr. Bonnie Kaplan Dated October 29, 2001 to Dr. Suddika Mithani	468
U Curriculum Vitae of Bruce Dales	1274
V Collection of Slides Referred to as the Chart and the Dam Example	1553



1 Proceedings taken at Trial, in the Provincial Court of  
2 Alberta, Provincial Courts Building, Calgary, Alberta

3 -----

4 \*March 13, 2006 a.m. Session

5

6 The Honourable The Provincial Court  
7 Judge Meagher of Alberta

8

9 K.C. Brown, Esq.) For the Crown

10 E. Eacott, Ms. )

11 S. Buckley, Esq. For the Accused

12 J. Fox Court Clerk

13 -----

14 THE COURT CLERK: Calling the matter of Synergy  
15 Group of Canada Inc. and TrueHope Nutritional  
16 Support.

17 MR. BROWN: Good morning, sir. My name is  
18 Kent Brown. I'm with the Department of Justice. I  
19 appear for the Crown on that matter.

20 This is Erin Eacott. She will also be with me  
21 at least for the Crown's portion of the case.

22 MS. EACOTT: Good morning.

23 MR. BUCKLEY: Your Honour, for the record,  
24 Buckley, initial 'S'. I'm attending as counsel for  
25 the defendants in this matter, the Synergy Group of  
26 Canada and TrueHope Nutritional Support.

27 Just for the record, we've got Tony Stephan -

1 do you want to stand up for a second Tony - is here  
2 as a representative of TrueHope Nutritional Support  
3 --

4 THE COURT: Yes.

5 MR. BUCKLEY: -- and David Hardy, who is  
6 here representing the Synergy Group of Canada this  
7 morning.

8 THE COURT: Thank you.

9 MR. BUCKLEY: I guess you guys can be  
10 seated.

11 MR. BROWN: Thank you, sir. There are a  
12 couple of preliminary things to deal with, sir.  
13 First of all, as you know, sir, it is the Crown's  
14 intention to enter a stay with respect to five of  
15 the six counts that are before the court today, and  
16 I'll direct the clerk to enter the stay on count  
17 number 1, count number 2, count number 4, count  
18 number 5, and count number 6, which means we'll be  
19 proceeding with count number 3.

20 THE COURT: Is that against both  
21 defendants?

22 MR. BROWN: That's correct, sir.

23 THE COURT: Thank you.

24 MR. BROWN: And also, sir, with respect to  
25 this matter, it was our expectation that we would be  
26 dealing with an issue around the search warrant  
27 today, however, after a brief discussion with my

1 friend, it is my understanding that there is not an  
2 issue with respect to documents that I had intended  
3 to enter that were obtained by way of the search  
4 warrant. So, in other words, there will not be a  
5 challenge under Section 8(2) of the search warrant.  
6 Perhaps my friend can confirm that?

7 MR. BUCKLEY: Yeah, that's -- that's  
8 correct, Your Honour, and as my friend can  
9 appreciate, we got notice at the end of last week of  
10 what documents my friend was going to rely on, and  
11 actually, so I didn't even get a chance to go  
12 through the materials that he wanted to enter and I  
13 don't have a concern with them. So, I don't want to  
14 waste the court's time on a Section 8 challenge for  
15 documents that don't concern the defence.

16 MR. BROWN: Yes, and --

17 MR. BUCKLEY: So, I'm not conceding  
18 continuity but we're not going to go through a  
19 Section 8 *voir dire*.

20 THE COURT: That is fine. Thank you.

21 MR. BROWN: And certainly, in fairness to  
22 my friend, sir, I am not suggesting he has sprung  
23 this on the Crown in any way. It's just that we  
24 will need to seek a brief adjournment, sir. My  
25 witness is basically ready to deal with issues  
26 around the search warrant. I'll need to have a  
27 chance to speak with her about the other evidence

1           that we thought probably wouldn't happen until  
2           tomorrow.

3                   I don't think we'll need a very long  
4           adjournment, perhaps a half hour or so, sir.

5   THE COURT:                    You mean right now?

6   MR. BROWN:                   That's what I was hoping to  
7           do, sir, yes.

8   THE COURT:                    And what is the purpose of  
9           this again?

10   MR. BROWN:                   Well, sir, just to -- there's  
11           actually two things: one is my friend has asked me  
12           whether or not we can make certain admissions and I  
13           need to seek some information around that; and two,  
14           is just to confirm with my witness, certain  
15           documents that we intend to enter through her and I  
16           just wanted to make sure that that's all organized  
17           and ready to go, sir. As I said, we thought we  
18           thought we were just dealing with the search  
19           warrant.

20   THE COURT:                    Anything further?

21   MR. BUCKLEY:                  No. I'm in my friend's hands.

22   THE COURT:                    Are there any preliminary  
23           applications made by either party?

24   MR. BUCKLEY:                  Well, when we start, I'm going  
25           to seek an order excluding witnesses with the  
26           exception of Dr. Bonnie Kaplan.

27   THE COURT:                    And the two gentleman you

1 introduced initially?

2 MR. BUCKLEY: Well, I mean that -- that's  
3 the trip. They are going to take the stand but for  
4 all intents and purposes they are the defendants in  
5 this matter. So, although it's two corporations  
6 they are the sole "shareholders and directors" of  
7 both of them.

8 THE COURT: So, you want them to remain in  
9 the courtroom?

10 MR. BUCKLEY: Yes, I do.

11 MR. BROWN: No objection, sir.

12 THE COURT: All right. Well, we will deal  
13 with that. And the two officer's names again? You  
14 said Tony Stephan?

15 MR. BUCKLEY: Yes. And David Hardy.

16 THE COURT: All right. We will deal with  
17 that when we come back.

18 MR. BROWN: Thank you, sir.

19 THE COURT: All right. So you need a half  
20 an hour or less?

21 MR. BROWN: The Crown will need a half  
22 hour, approximately, sir.

23 THE COURT: All right. Because I am -- I  
24 know you are both aware that on the third week that  
25 we are scheduled for that there are some double  
26 booking situations that have arisen.

27 MR. BUCKLEY: Well, my understanding is, the

1           27th there's a double booking.

2           THE COURT:                   Well, on the 30th as well  
3           there is a -- there is a sentencing booked into the  
4           afternoon for an in-custody. There is also a CSO  
5           breach put in, so, that would be on the Thursday.  
6           It will probably make a difference of about an hour  
7           in the afternoon, maybe something somewhat less than  
8           a half hour in the morning, just so you are aware of  
9           that. We can work around but for a half hour or an  
10          hour, we can work around that with the regularly  
11          daily schedule.

12                   And also, with regards to the courtroom, I  
13          believe the clerk has advised you that we have  
14          changed the locks and so on, so, it is a -- it is a  
15          secured facility for documents.

16          MR. BUCKLEY:                Mm-hm.

17          THE COURT:                   Rather than having to move all  
18          of your boxes up and down from the exhibit room on  
19          the -- on the fifth floor, they will be able to stay  
20          in this courtroom. The courtroom has been re-keyed  
21          -- this courtroom has been re-keyed just for that  
22          purpose.

23          MR. BROWN:                 Great. Thank you, sir.

24          THE COURT:                   Just so you are aware of that  
25          for your convenience.

26                   All right. Anything further?

27          MR. BROWN:                 I don't think so, sir.

1 THE COURT: Mr. Buckley, anything?

2 MR. BUCKLEY: No, it's my friend that's  
3 seeking the adjournment, so.

4 THE COURT CLERK: Okay. All right. Call me as  
5 soon as you are ready to proceed, please.

6 MR. BROWN: We'll so, sir.

7 THE COURT: Order in court. All rise.

8 Court stands adjourned for a brief period of time.

9 THE COURT: Thank you.

10 (ADJOURNMENT)

11 THE COURT CLERK: Recalling Synergy Group of  
12 Canada and TrueHope Nutritional Support.

13 MR. BROWN: Thank you, sir, and I  
14 appreciate the adjournment, sir. We had -- took the  
15 opportunity to get some things done at least.

16 Sir, with respect to this matter, the Crown is  
17 prepared to proceed. I note my friend has asked for  
18 an exclusion of witnesses with the exception of  
19 certain witnesses.

20 My first witness is Sandra Jarvis and she is  
21 present in the courtroom and coming forward.

22 THE COURT: All right. Just before we  
23 start then, there will be an order excluding  
24 witnesses with the exception of Mr. Stephan and Mr.  
25 Hardy, who are the officers of the corporate  
26 defendants, and also, as I understand it, Dr. Kaplan

27 --

1 MR. BUCKLEY: Yes.

2 THE COURT: -- who is your expert who you  
3 wish to have present during the course of the  
4 evidence.

5 MR. BUCKLEY: Yes.

6 THE COURT: And there is no objection by  
7 the Crown in that regard?

8 MR. BROWN: No, sir, there's no objection.

9 THE COURT: Thank you.

10 MR. BUCKLEY: Now, so Ms. Stringam are  
11 actually have to go outside, sorry.

12 THE COURT: All right. So, there is an  
13 order excluding witnesses. What that means is any  
14 people who are witnesses here today or during the  
15 course of this trial, whose names have not just been  
16 mentioned by me, and that would Stephan, Hardy and  
17 Kaplan, they should wait outside the courtroom until  
18 the -- until they are called to give evidence.  
19 Thank you.

20 (WITNESSES EXCLUDED)

21 MR. BUCKLEY: Thank you, Your Honour.

22 THE COURT: All right.

23 Now, I have had several occasions to discuss  
24 this trial through a case management function that I  
25 handled with both Mr. Brown and Mr. Buckley. And  
26 having said that, does either one of you wish to  
27 make an opening statement?

1 MR. BROWN: Well, sir, honestly, I hadn't  
2 really considered making one. I don't think I will  
3 at this time.

4 THE COURT: I have some background  
5 obviously from the discussions that we have had  
6 relating to disclosure and other matters in our case  
7 management conference calls that we have conducted  
8 over the last three or four weeks. So, if you could  
9 like to make one, I will extend the opportunity to  
10 both of you, but, I do have the background that I  
11 would usually get in an opening statement anyway.

12 MR. BUCKLEY: Well, probably, you don't have  
13 the whole background.

14 THE COURT: All right.

15 MR. BUCKLEY: And it might actually be  
16 useful to do that at this stage, but --

17 THE COURT: Well, in that case, we will  
18 have your witness step out.

19 MR. BUCKLEY: Yes. That's what I was just  
20 going to ask you, any Health Canada ...

21 Because there is quite a bit of background to  
22 this file and I think as the trial goes on you will  
23 find it helpful to kind of have an appreciation of  
24 the background both for relevance of some of the  
25 issues.

26 But Your Honour, this case goes back to the  
27 mid-1990s and what happened is, is that Mr. Tony

1           Stephan's wife, Debbie, had bipolar disorder and  
2           after years of struggling with that disorder,  
3           despite being put on different drug regimes by the  
4           doctors, she committed suicide. Autumn Stringam --

5           THE COURT:                            Just a -- just a moment,  
6           please. If there is anybody in the courtroom with a  
7           cell phone on, turn it off or leave the courtroom,  
8           and you should know that. There is signs posted in  
9           the courthouse, and so, this will be the only  
10          reminder. The next time one goes off, that person  
11          can leave. Thank you. Go ahead, please.

12          MR. BUCKLEY:                        The lady that I had step out,  
13          whose name is Autumn Stringam, she is actually Tony  
14          Stephan's daughter, and she also had very severe  
15          bipolar disorder, was in and out of the hospital,  
16          quite often on suicide watch, because that's one of  
17          the problems with people with bipolar disorder is,  
18          there is a very high likelihood that you will commit  
19          suicide, and doing quite poorly, despite being  
20          managed on various drug regimes and cocktails.

21                 And also, Mr. Stephan's son, Joseph, is also  
22                 suffering bipolar disorder, which was manifesting  
23                 itself by way of rages. And he was being managed on  
24                 Lithium, but not managed very well. So, they were  
25                 somewhat faced with a crisis in the home as to  
26                 whether or not he would have to go to a group home  
27                 or stay in the home because he couldn't be managed

1 well.

2 He is speaking to David Hardy about this, and  
3 Mr. Hardy had been working for quite a period of  
4 time in the area of animal nutrition, as an animal  
5 nutritionist. And so, he's mentioning to him about  
6 his son Joseph's rage and Mr. Hardy advises him,  
7 Well, when we see rage in pigs, it's nutritionally  
8 based. We don't know what exactly they're missing,  
9 but we supplement their feed with nutrients and we  
10 extinguish the behaviour.

11 It occurs to these gentleman that perhaps  
12 there's a nutritional basis for bipolar disorder.  
13 And what they do is, is they basically take four  
14 products that are on the shelf. They're trying to  
15 -- they do some research into what nutrients they  
16 think are necessary and they're relying on Mr.  
17 Hardy's experience in animal nutrition. And they  
18 basically take four products that are on the shelf,  
19 and they put Joseph on it. And basically, the  
20 symptoms of his bipolar disorder disappear in very  
21 quick order, and he stops taking Lithium, and has  
22 been managed successfully ever since, with the  
23 exception of what everyone has learned is, is this  
24 isn't a cure. Okay. And now at this stage, he is  
25 just on four products that are off the shelf. But  
26 it's not a cure. If you stop taking the nutrition  
27 your symptoms return and they return quite quickly.

1 And also, people who are on this program have  
2 learned, if you get sick so you've got diarrhea or  
3 the flu, your digestive tract is compromised, you'll  
4 also -- your symptoms are going to return because  
5 you're not getting the nutrients you need. So,  
6 there is -- even though, and I'm still talking about  
7 this four product regime, it was effective. There's  
8 limitations. You can't stop taking it or you're --  
9 it's just like if you were being treated with a  
10 psychiatric medication, you can't stop taking it.  
11 Bipolar doesn't ever disappear. It's just, if  
12 you're choosing to be managed nutritionally, instead  
13 of on psychiatric medications you're in the same  
14 boat, you have to keep taking it.

15 Now, these gentlemen were very excited with  
16 what happened with Joseph and Autumn. Some people  
17 in the community have seen what happened and are  
18 basically asking them, Well, what did you guys do?  
19 And they're telling them what they did and other  
20 people are having some success. So, they determine  
21 that they're on to something and they form the  
22 Synergy Group of Canada, basically, to promote  
23 research into nutritional solution for bipolar  
24 disorder.

25 They basically, start knocking doors for  
26 researchers and they eventually connect with a  
27 gentleman called Dr. Bryan Kohl, at the University

1 of Lethbridge. He is a neuroscientist. And he  
2 wasn't willing to run a clinical trial on the  
3 product, but he was willing to basically give them  
4 the advice that they needed in structuring their own  
5 informal trial, so, he basically explained to them,  
6 Well, use these rating scales and collect the data  
7 this way. And then once that was done, he crunched  
8 the numbers for them. And the numbers were  
9 statistically startling.

10 So, he contacts Dr. Bonnie Kaplan, from the  
11 University of Calgary, and basically shares this  
12 information with her and through that, now Dr.  
13 Kaplan is looking at that. She decides to run a  
14 small clinical trial at the University of Calgary,  
15 and this is on these four products that are off the  
16 shelf. The problem is, is halfway through the trial  
17 it became apparent that one of those products was  
18 going up and down in, I guess its purity or its  
19 potency, and you can't be running a trial and have  
20 the ingredients of your trial be inconsistent. So,  
21 that trial was scrubbed.

22 And so, now, it became apparent to Mr. Stephan  
23 and Mr. Hardy, and aside from the fact that people  
24 that were on this protocol were also noticing, Just  
25 wait a second, this isn't as good, that they had to  
26 contract with somebody to manufacture to ensure that  
27 it was reliable. And so, basically what they did is

1 they contracted with a company to mimic these four  
2 products into one product. And out of that we have  
3 the birth of a product called EMPowerplus.

4 Now, that product, you could say it's changed  
5 through the years, or it hasn't changed. It has the  
6 exact same vitamins and minerals that it's always  
7 had, but as they're manufacturing capabilities --  
8 they've changed manufacturers twice. They don't  
9 make the product themselves, they have a contract  
10 manufacturer. But for things like minerals, they  
11 have to be collated so that your body can absorb  
12 them. So, for instance, let's say you were trying -  
13 I'm just picking a figure out of the air - trying to  
14 get somebody to get 100 milligrams of something. If  
15 it's not collated, it's just going to go through  
16 you. If it's collated, you're going to absorb some  
17 of it and if it's really well collated, you're going  
18 to absorb more of it. And so, as their  
19 manufacturing has gotten better they've been able to  
20 reduce some of the levels of the vitamins and  
21 minerals. But basically, the products the same.  
22 Same ingredients. Just as the manufacturing process  
23 improves they are able to reduce, and they're trying  
24 to do that so you don't have to take as many pills.  
25 That's one of the problems was at the beginning, you  
26 had to take an obnoxious number of pills just to get  
27 the nutrients that now you can get in half the

1 number of pills.

2 So, but anyway, Dr. Kaplan runs two more small  
3 trials; one on an adult population and one on a  
4 child population; and the results of those are  
5 published in psychiatric journals, and basically  
6 showing an 80 percent effect rate. So, if you're on  
7 bipolar, statistically speaking, you're going to  
8 show a marked improvement -- 80 percent of the  
9 people are going to show a marked improvement. It's  
10 statistically off the scale.

11 There's also a Dr. Charles Popper --

12 THE COURT: I am sorry, what is that last  
13 name?

14 MR. BUCKLEY: Popper, P-O-P-P-E-R.

15 THE COURT: Thank you.

16 MR. BUCKLEY: He's on the faculty -- he's a  
17 professor on the faculty of medicine at Harvard in  
18 Massachusetts, and he basically, right now he's on  
19 the faculty but not teaching, but historically, he  
20 has taught psychiatrists. Okay. So, he's not  
21 teaching med. students, he teaches psychiatrists as  
22 to how to effectively people with mental disorders  
23 on the drug regimes. And so, there's two major  
24 psychiatric associations in the United States and he  
25 ran both of their courses for a period of time  
26 teaching psychiatrists how to basically manage  
27 children and adolescents with psychiatric drugs.

1 So, he's an expert in how do you treat orders  
2 disorders such as bipolar with drug regimes.

3 And he got drawn into this somewhat  
4 reluctantly. There was a psychiatrist friend of his  
5 whose son was going into rages two or four hours a  
6 day, and basically, calls Dr. Popper in an emergency  
7 saying, You gotta meet with my son today and they're  
8 desperate for something to happen. And Dr. Popper  
9 refuses to put patients -- children, on psychiatric  
10 drugs without two visits. He wants to assess them  
11 one day and he wants them to come back the following  
12 week and assess them again. And out of desperation  
13 suggested, Well, try this.

14 And within four days the child, the psychiatric  
15 father reported that the child was back to normal,  
16 was having no rages. He met with him a week later  
17 and described it as -- as a miracle because what had  
18 -- what had occurred is, is this child that he could  
19 have hospitalized the week before is before him  
20 acting normally with just no sign of bipolar  
21 disorder at all.

22 As a result of that he started offering it as  
23 an option to some of his adult patients that were  
24 not being managed effectively on psychiatric drugs.  
25 So, here we've got an expert in managing patients  
26 with psychiatric drugs, who actually teaches  
27 psychiatrists how to do it, but there's some

1 patients that just will not manage well despite the  
2 drug regimes that you use. And what he discovered  
3 was is that if weaned them off the psychiatric  
4 drugs, put them on EMPOWERplus, that basically, 80  
5 percent of them showed a marked improvement.  
6 Figures -- every time this is -- this is studied and  
7 numbers are crunched, it's showing an 80 percent  
8 effect.

9 And funny little things happened. Like, he  
10 reported to me that all of a sudden he has blank  
11 days in his calendar, because when he was managing  
12 these patients under psychiatric drugs they would  
13 have to come in weekly, because you also have to  
14 counsel them. These are people that are suicidal.  
15 And so he's meeting with them weekly and just trying  
16 to manage them to keep them alive, and now he has to  
17 meet them every other month, and it's basically just  
18 having coffee, Well, what's happening?

19 So, he published, after he had run through a  
20 protocol, this protocol with roughly 22 patients, he  
21 published that in the Journal of Psychiatric  
22 Medicine.

23 Now, these publications, Dr. Popper's and Dr.  
24 Kaplan's are happening at roughly the same time.

25 Now, after Dr. Kaplan's initial trials, the  
26 University of Calgary approaches -- there's a  
27 foundation in the Alberta Government that funds

1 clinical trials. So, I'll refer to it as the  
2 Government of Alberta, but there's a separate  
3 foundation. I'm not -- it's Government money. I  
4 just can't tell you whether it's Heritage Fund or  
5 funded on a yearly basis. But in any event, the  
6 Government of Alberta agrees to fund a large double  
7 blind clinical trial at the University of Calgary.

8 We're now in early 2000, so roughly 2000/2001  
9 when all of this is occurring. Your Honour, at the  
10 time, there is absolute regulatory chaos occurring  
11 in the natural health industry in Canada. There has  
12 been an attempt by Health Canada to impose licencing  
13 fees on the natural health product industry, which  
14 was challenged in court. There was a big outcry by  
15 consumers, and now this became political.

16 So, the then, the minister of health had a --  
17 had the Standing Committee of Health look into this  
18 issue and the Standing Committee of Health came out  
19 with 53 recommendations. And basically, some of  
20 those recommendations included setting up a  
21 different branch of Health Canada with expertise in  
22 natural health products. And the minister of health  
23 accepted all of these, it was Allan Rock at the  
24 time, and so, Health Canada was in the process of  
25 setting up an entire separate division called the  
26 Natural Health Products Directorate. There was a  
27 transition team appointed, and so, we were in a

1 situation where the industry was basically being  
2 told by Government, we acknowledge that the  
3 pharmaceutical drug model. So, the regulations such  
4 as the one that you're facing, don't apply to the  
5 natural health product industry, and we're going to  
6 bring in new regulations to deal with this.

7 And the new regulations -- this charge is for  
8 all of 2003 requiring a drug identification number.  
9 The new regulations came into force on January 1st,  
10 2004. And so, today, because this product is a  
11 natural health product, it doesn't require a drug  
12 identification number, it requires a licence under  
13 the new regulations.

14 Now, in the middle of this political chaos, the  
15 University of Calgary goes to start its trial, and  
16 I've got documents from Health Canada from an ATI  
17 request that illustrate that in Health Canada they  
18 weren't quite sure who had jurisdiction and what  
19 they should do. But in any event, the University of  
20 Calgary starts this trial and in the middle of the  
21 trial Health Canada writes and says, Well, you  
22 really need to have preapproval for trial, we want  
23 you to shut it down. We invite you to apply for  
24 approval and there's an exchange back and forth  
25 between the Faculty of Medicine at the University of  
26 Calgary and Health Canada. And after this drags on  
27 for roughly a year, Health Canada says, No, you stop

1 the trial. And the trial is stopped.

2 Now, curiously that we have the Natural Health  
3 Products Directorate, the same clinical trial's been  
4 approved by them on the same product, and that  
5 clinical trial is proceeding today at the University  
6 of Calgary.

7 So, we've got one branch of Health Canada  
8 saying, No, you can't run a clinical trial on this  
9 product, shut it down, even though it had passed  
10 ethics review at the University of Calgary, even  
11 though it's being run at Children's Hospital, even  
12 though the safety protocols matched those for  
13 pharmaceutical drugs, they're being told to shut it  
14 down. But just so the court's aware, now that we've  
15 got this new branch of Health Canada they gave the  
16 go ahead. So, we've got a branch that actually has  
17 expertise in these products and they said, No, go  
18 ahead, run your trial.

19 Now, back to the Synergy Group. They're  
20 manufacturing this product. They are not offering  
21 it for sale in stores. This product, you could  
22 never go to a health food store and buy this  
23 product. You basically have to join what's called  
24 the TrueHope program to do it. And they screen you,  
25 and they screen you for several reasons because  
26 they've, after doing this for years, have come to  
27 realize that there are a certain number of

1 psychiatric drugs that have very severe withdrawal  
2 symptoms in effect. And when you start taking this  
3 product and it restores you to mental health, the  
4 way that the anti-psychiatric drugs interacts with  
5 you are different. So, if you take a healthy person  
6 and you put them on psychiatric drugs, they're going  
7 to have severe reactions. And likewise, if you take  
8 somebody who is suffering from a mental illness and  
9 you successfully treat it with nutrition, you have  
10 the same problem is, now some of the side effects  
11 from these drugs can be magnified.

12 So, they will not allow you to go on the  
13 product. And in 2003 wouldn't allow you to go on  
14 the product if you were on a list of certain drugs.  
15 You would have to go to your psychiatrist and with  
16 your psychiatrist's agreement, wean yourself off of  
17 those drugs before you could come and join their  
18 program.

19 Now, if you weren't on these what they called  
20 "red flagged drugs", you could join their program  
21 but it involved their interaction with you because  
22 they still wanted to manage you. Because people  
23 that have mental illness can be described as a  
24 fragile group until they're being successfully  
25 treated. So, you would have to be filling out  
26 reporting, you would get calls, they would counsel  
27 you. They basically had a protocol and what to

1 expect, and, in fact, even to this day, they give  
2 advice to doctors and psychiatrists as to how to  
3 manage patients on this product, because they're  
4 isn't -- there isn't another body of knowledge out  
5 there right now. It's basically these fellows and  
6 people like Dr. Charles Popper.

7 So, by the time 2003 rolls around Synergy Group  
8 has been marketing this product to Canadians under  
9 the TrueHope program for several years and there's  
10 roughly a thousand Canadians depending upon the  
11 product for the treatment of severe mental health  
12 conditions such as bipolar. So, when Health Canada  
13 comes along and say, Well, you need a drug  
14 identification number, so, stop selling your product  
15 until you comply with the regulations and get a drug  
16 identification number. That's like saying to a  
17 pharmaceutical company that has thousands of  
18 patients that are being successfully managed, Stop  
19 sale right now, and we'll just let those patients  
20 run out of their medications, and just see what  
21 happens. The Synergy people were saying to Health  
22 Canada, No, people are going to get hurt. They're  
23 going to be hospitalized, we're probably going to  
24 have some suicides if that happens. You can't just  
25 withdraw a product like this from the market.

26 Now, also, the funny thing is, is really they  
27 couldn't get a drug identification number. And I

1 say "really they couldn't". Nothing is impossible  
2 if you have enough time and money and the court's  
3 been alerted to the fact that I'm planning on  
4 calling Mr. Bruce Dales, who's a regulatory  
5 consultant to basically help companies go through  
6 processes such as getting drug identification  
7 numbers, and he has indicated, Well, really, it's  
8 not impossible, it's just not feasible, because it  
9 would take years and years involving things like  
10 clinical trials, which -- so, Health Canada shut  
11 down a clinical trial at the University of Calgary,  
12 the very type of evidence you need to get a drug  
13 identification number, and then is turning around to  
14 the company saying, Well, go get a drug  
15 identification number. Well, you can't have both.  
16 You either got to allow them to run clinical trials  
17 so they could get a drug identification number or  
18 not.

19 But in any event, Mr. Dale says, Listen, it  
20 just wouldn't be feasible and also, we're talking in  
21 the tens of millions of dollars, years to do, but  
22 you don't see anyone in the natural health product  
23 industry do it anyway because you have no  
24 intellectual property rights. So, aside from the  
25 fact in the time frame, 2003, you just couldn't do  
26 it.

27 When Pfizer goes and runs a clinical trial on a

1 synthetic compound that they have patented they will  
2 spend the millions and millions of dollars to run  
3 through clinical trials because they've got patent  
4 protection. But natural health product companies,  
5 aside from the facts is they just don't have the  
6 resources to do it, have no intellectual property  
7 rights at the end. So, any company can then just  
8 make the same product and not even go through the  
9 process, just reference the other drug  
10 identification number.

11 I also expect to raise in the trial that  
12 internally Health Canada didn't think that this  
13 company could get a drug identification number. So,  
14 we have basically a company that's faced with a  
15 choice. We either stop selling and comply with  
16 Health Canada's regulation to have a drug  
17 identification number, and if we do that we fully  
18 believe that people are going to be hospitalized;  
19 we fully believe that there's going to be deaths; we  
20 fully believe that we're going to basically condemn  
21 a significant number of people to go back on  
22 pharmaceutical drugs that have proved to be  
23 ineffective for them.

24 So, we're not here saying they're ineffective  
25 for everyone but for a lot of the TrueHope  
26 participants, they were on the program as a last  
27 resort because they weren't being successfully

1 managed. So, we have a company that's faced with  
2 that choice. Do we stop sale over this regulation  
3 when we believe we're actually going to kill people,  
4 or do we comply with the regulation when a new  
5 regulation is already on the books and it's coming  
6 of course on January 1st of '04, and when that  
7 happens, we don't even have to comply with this  
8 regulation anymore.

9 It's interesting to note that Section 217 of  
10 the *Criminal Code* doesn't create an offence but it  
11 places somebody, an obligation on anyone who  
12 undertakes to do something, to continue to do it if  
13 stopping it would cause harm to anyone else. So,  
14 we've got a company that's got an obligation placed  
15 on them by the *Criminal Code* to continue allowing  
16 Canadians to have access to the product.

17 I also raised the question that the way I read  
18 Section 219 of the *Criminal Code*, which is criminal  
19 negligence causing bodily harm, that if this company  
20 had stopped selling, knowing that Canadians would be  
21 hospitalized and hurt, that that would have shown a  
22 reckless and wanton disregard for the lives and  
23 safety of others, that realistically, they could be  
24 here today facing a criminal negligence causing  
25 bodily harm charge.

26 Now, curiously enough, we have the company  
27 saying to Health Canada, people are going to die;

1 people are going to be hospitalized if we stop  
2 selling. Health Canada basically created a  
3 situation where we could see whether or not that was  
4 true, because this product is manufactured in the  
5 United States, and shipped into Canada to  
6 individuals that order it. And so, Health Canada,  
7 because this company was not complying with having a  
8 drug identification number, directed Customs to stop  
9 shipments that were coming across the border.

10 Now, when that happened it's fair to say that  
11 there was a mass panic among TrueHope participants.  
12 People who had, basically had no lives on  
13 psychiatric drugs because they were not working; who  
14 have been restored to health on the program; who  
15 had, you know, got jobs and started participated in  
16 their families again; who are not being hospitalized  
17 from side effects from psychiatric drugs; who are  
18 now no longer willing to go back to that regime.

19 There were political demonstrations on  
20 Parliament Hill; there were letter writing  
21 campaigns; there were calls and pleads to the  
22 minister of health and Health Canada.

23 The head of the Alberta Mental Health  
24 Association at the time, in 2003, was a Mr. Ron  
25 LaJeunesse. Now, the Alberta Mental Health  
26 Association is not connected in any way with  
27 TrueHope or Synergy. It's an independent national

1 body that they basically promote the well-being of  
2 people that mental health issues. This gentleman  
3 tells me that they were spending a significant  
4 amount of their time fighting with Health Canada to  
5 get shipments released from Customs and across the  
6 border for their own clientele because they had  
7 determined that it was a safety risk not to allow  
8 the product into Canada. And then this gentleman  
9 tells me that two of their clients committed suicide  
10 because of their product being stopped at the border  
11 and he went public. This made major news, national  
12 news, that the Canadian Mental Health Association,  
13 Alberta Branch, was blaming publicly, Health Canada  
14 for some suicides and warning about further  
15 hospitalizations.

16 It's curious that -- now, at the time, even  
17 though we have these new regulations coming into  
18 force, a wide part of the natural health industry  
19 was still concerned about the power that Health  
20 Canada had over the product -- or over these  
21 products largely because of this case. Okay.  
22 Because we have Health Canada stopping a clinical  
23 trial at a university, an independent clinical trial  
24 not connected with the company; we've got Health  
25 Canada raiding the company; we're talking RCMP  
26 officers flown in from as far as Ottawa to raid a  
27 company in Raymond, Alberta; we've got Health Canada

1 stopping product at the border and terrorizing  
2 Canadians.

3 So, as a result, in part, because of this case,  
4 the industry through the then Reform Party  
5 Opposition, sponsored a bill called Bill C420 to  
6 amend the *Food and Drug Act*. And it's curious, when  
7 that bill is introduced into Parliament we've got  
8 the Reform Party in the House of Commons citing this  
9 case as an example as to why they need to amend it;  
10 we've got Liberal members standing up citing this  
11 company as an example of, yes, how there's a  
12 problem. The Bill made it into Committee twice. It  
13 died because elections kept getting called.

14 Last year the Standing Committee of Health,  
15 when this Bill was being reconsidered again, invited  
16 Mr. Stephan and Mr. Hardy to come and testify. The  
17 Bloc member of the Standing Committee of Health  
18 apologized to this company for this prosecution.  
19 The Conservative member apologized and the chair of  
20 the Committee, a Liberal, basically told these  
21 gentleman that the reason -- that they're the only  
22 representatives of a company that makes a single  
23 product that were called to testify in front of the  
24 Standing Committee as a way of apologizing for the  
25 way they've been treated by Health Canada in  
26 relation to this prosecution.

27 The defendants are of the position that it was

1 absolutely necessary for them to ignore this drug  
2 identification regulation and to continue to allow  
3 the product to be sold to people that were on the  
4 TrueHope program.

5 We're also going to be raising, and there have  
6 been some discussions at pretrial conferences about  
7 whether or not some of the evidence that I plan on  
8 calling is going to be relevant or not. I don't  
9 want to go into those submissions yet but I mean I  
10 can. I've got a book of authorities here that  
11 basically, if I'm going to say that it was  
12 necessary, I've got to prove that they were avoiding  
13 imminent harm. In fact, maybe I just -- I will pass  
14 that up because it will speed things along.

15 I'll start first with some authority. The  
16 first thing that I have to show, and I also have  
17 some written submissions just to assist a little bit  
18 with this, and perhaps I'll start ...

19 Your Honour, I've handed up some written  
20 submissions, basically dealing with the defence of  
21 necessity. And it's a somewhat unusual defence but  
22 I start by highlighting that the defence of  
23 necessity is basically premised on the fact that  
24 it's unjust to penalize persons who are acting in a  
25 morally and voluntary fashion. And I given you some  
26 cites from Supreme Court of Canada cases. I don't  
27 think it would be productive just to read that into

1 the record. The cases are there. I just do that  
2 basically to make it quicker for my friend and the  
3 court to see the authority.

4 On the next page I've put in bold that the  
5 Supreme Court of Canada has recognized that actions  
6 can be morally involuntary or normal human  
7 instincts, whether of self-preservation or of  
8 altruism, which is to protect others from harms,  
9 overwhelmingly impel disobedience with the law. And  
10 there again, I cite some parts of the judgments from  
11 Supreme Court of Canada cases.

12 And at the next highlighting or bolding is, is  
13 where I say there's three elements to the defence of  
14 necessity, and I'm citing from the *Latimer* decision,  
15 but they are citing from the *Perka* decision, and if  
16 you flip the page set out there rather neatly, that  
17 the first is, there has to be a requirement of  
18 imminent peril or danger.

19 Secondly, there can't be a reasonable legal  
20 alternative to the course of action. So, it's not  
21 okay to break the law if there's some legal  
22 alternative for you to take.

23 And thirdly, there has to be some  
24 proportionality. You can't create more harm by  
25 breaking the law than you're seeking to avoid.

26 Now, there has been a fair amount of discussion  
27 in the Supreme Court of Canada as to, Well, when

1 we're looking at these elements, do we apply a  
2 subjective test; do we apply an objective test;  
3 where does it fit? And what the law is right now is  
4 for the first two tests, whether there's imminent  
5 peril or danger, and whether there is a legal  
6 alternative, that is what the Supreme Court of  
7 Canada calls a modified objective test. So, the  
8 court looks at it objectively. Okay, was there  
9 imminent danger? Was there a legal alternative?  
10 There has to be objective evidence, but it's  
11 somewhat modified because you also have to consider  
12 the view of the defendants. So, you know, what was  
13 their kind of experience. But it is an objective  
14 test. And the last test of proportionality is  
15 strictly objective. The court is not going to do a  
16 balancing of harm analysis on somebody's subjective  
17 interpretation; it's strictly objective.

18 Now, the curious thing about this defence, if  
19 you flip a couple of pages I have in bold that,  
20 Although the onus is on the Crown to prove the  
21 defendants were not acting out of necessity. There's  
22 actually an evidentiary burden upon the defendants  
23 to raise the defence. And the policy rationale  
24 there is is that in most cases people are assumed to  
25 acting voluntarily. And so, if the defence is going  
26 to suggest to a court, Well, just wait a second. We  
27 weren't acting voluntarily whether you were going

1 for an NCR defence or whether you were saying, No,  
2 this was moral involuntariness. The onus -- the  
3 burden is on the defendants to raise that. Okay.

4 Now, we can raise it through cross-examining  
5 Crown witnesses. We can raise it by calling our own  
6 evidence. But I wanted to draw to the court, just  
7 because my friend had indicated that he was going to  
8 raise an objection to my experts, that I actually  
9 have a burden, an evidentiary burden to call  
10 objective evidence. So, when I'm calling Dr.  
11 Kaplan, and when I'm calling Dr. Charles Popper,  
12 both of them have clinically observed the  
13 effectiveness of the product, the fact that if you  
14 take people off the product that their symptoms  
15 return rather quickly, so you can't just stop  
16 selling the thing. With Dr. Popper I'm going to ask  
17 him, Well, what would have happened if they had  
18 withdrawn the product? And that's not a subjective  
19 analysis. He's going to objectively, as somebody  
20 who teaches psychiatrists how to manage risk with  
21 different treatment modalities, is going to give his  
22 opinion on what would have happened if this product  
23 was withdrawn.

24 So, I'm just pointing out to the court that  
25 when we go there with our defence and on cross-  
26 examination, that according to the Supreme Court of  
27 Canada, I actually have a burden to call that

1 evidence.

2 So, not only can I; I have to; I don't have a  
3 choice. I can't just put Mr. Hardy and Mr. Stephan  
4 on the stand and have them give their subjective  
5 thoughts on the defence of necessity.

6 We're also going to be suggesting to the court  
7 at the end of this proceedings that this -- these  
8 very proceedings are an abuse of process. And it's  
9 clear and we've already discussed how there was a  
10 changing regulatory climate and how there seems to  
11 be a disconnect between the bureaucracy and  
12 Parliament which is criticizing these very  
13 proceedings.

14 But also, in what was very unnerving in going  
15 through the file is, is we've got this bureaucracy  
16 that's charged with protecting the health of  
17 Canadians. And let's just assume that we weren't in  
18 regulatory crisis. Let's assume that the drug  
19 identification number regulation made sense for the  
20 industry and it wasn't too onerous, so, it was  
21 actually possible to go through, because the idea is  
22 a good one. It's -- it's a preapproval process so  
23 that the regulatory body can make sure that  
24 something doesn't enter the marketplace that's  
25 dangerous. Okay. I mean the object behind it is  
26 great. It's just it was written for a chemical  
27 pharmaceutical model and now Health Canada agrees it

1 was too onerous for this type of product and has a  
2 different scheme.

3 But even if you say, okay, this was a valid  
4 investigation when it started. We are pursuing a  
5 legitimate end. Once you are faced with evidence  
6 that actually forcing compliance is going to cause  
7 harm to the health of Canadians and you keep  
8 ignoring that evidence, I mean, it raises the  
9 question, Health Canada had in its files these  
10 clinical studies. And I've asked both researchers  
11 -- well, because I know Dr. Kaplan, she was back and  
12 forth trying to get approval for this clinical trial  
13 but this branch that's investigating this matter  
14 never phones and says, Well, just wait a second. I  
15 mean, are these numbers full of crap? Like, is this  
16 really happening? There's really effect size? Is  
17 there really this problem that when you stop the  
18 product the symptoms returned?

19 Same with Dr. Popper; never any contact. When  
20 Canadians are protesting, giving press conference on  
21 Parliament Hill giving their stories about how they  
22 just basically had no lives and their lives have  
23 come back because they're on a product, there's no  
24 time spent looking into whether any of this is true.  
25 And there's complete disregard for the warnings that  
26 taking the product off the market is going to cause  
27 serious harm, and there's complete disregard for the

1 Canadian Mental Health Association when they're  
2 publicly blaming Health Canada for deaths for taking  
3 the product off the market.

4 And it would just seem to me that if there is a  
5 *Criminal Code* obligation on the defendants not to  
6 show wanton and reckless disregard for the health  
7 and safety of Canadians, that the same has to be  
8 true for the regulatory body when they're being  
9 faced with all of this evidence that taking the  
10 product off the market was going to cause serious  
11 harm. And just in the context of all of this that  
12 these very proceedings, which are based on the  
13 premise that the clients were to break the *Criminal*  
14 *Code* and endanger the lives Canadians, in my  
15 submission at the end of this, we're going to  
16 suggest to the court that that would basically cross  
17 society's lines on the abuse of process.

18 So, that's my opening on kind of where we're  
19 going to go, and hopefully, I've headed off some  
20 objections later on in the trial.

21 THE COURT: Thank you, Mr. Buckley.

22 Mr. Brown.

23 MR. BROWN: Thank you, sir.

24 We're prepared to proceed, sir. My witness has  
25 stepped out of the court, so (INDISCERNIBLE).

26 THE COURT: All right. Call your first  
27 witness then.

1           As previously indicated, there is an order  
2           excluding witnesses other than Mr. Stephan, Mr.  
3           Hardy, and Dr. Kaplan.

4           MR. BUCKLEY:                   Thank you.

5           THE WITNESS:                   S-A-N-D-R-A   M-A-R-I-E  
6                           J-A-R-V-I-S.

7           THE COURT:                   Go ahead, please.

8

9           \*SANDRA MARIE JARVIS, Sworn, Examined by Mr. Brown

10

11          Q           MR. BROWN:                   Now, Ms. Jarvis, I wonder if  
12                       you could explain to the court what your current  
13                       employment is?

14          A           I'm employed as a compliance officer with the Health  
15                       Products and (INDISCERNIBLE) of Health Canada.

16          Q           How long have you been so employed?

17          A           I'm been employed with, in my current position,  
18                       since April, 2001.

19          Q           All right. And what did you do before that?

20          A           Prior to that I was a food inspector with what was  
21                       known the Canadian Food Inspection Agency. Prior to  
22                       that I was a food inspector with Health Canada  
23                       before they became the Canadian Food Inspection  
24                       Agency.

25          Q           So, altogether, how many years have you been in  
26                       inspecting with those various groups?

27          A           I believe it's just over 15.

1 Q Fifteen years?

2 A Yes.

3 Q Now, you've had some involvement with two companies,  
4 Synergy Group and TrueHope Nutritional Support?

5 A Yes.

6 Q And you were involved in inspection with respect to  
7 those two companies?

8 A I would not call it inspection.

9 Q All right. What would you call it?

10 A It was a -- we executed a search warrant at their  
11 facility.

12 Q All right. But before the search warrant was  
13 executed did you have any involvement with the two  
14 companies at all?

15 A I had, I believe it was in -- it could have been  
16 May, 2001 or 2002, I was asked to make -- try and  
17 make an undercover buy by calling the phone number  
18 on what was identified to me as a TrueHope website.

19 Q Okay. I'm sorry, the date that that occurred again?

20 A I believe it was May, 2001 or 2002.

21 Q Okay. Can you describe what you did on those  
22 occasions, please?

23 A I called the number. I identified myself as an  
24 individual who had been newly diagnosed with bi -- I  
25 believe depression, and I was interested in seeking  
26 out an alternative treatment and could they tell me  
27 about their product.

1 Q And what happened from there?

2 A They said they would send me some information by  
3 e-mail. I believe at that time they indicated that  
4 the only way to get the product was to become part  
5 of a research study. I gave them my home e-mail  
6 address and they forwarded me, I can't say for  
7 certain it was the next day, but within -- certainly  
8 within a couple of days they forwarded me some  
9 information and I in turn forwarded that e-mail to  
10 my supervisor at the time, who had asked me to make  
11 the buy or try to make the buy. And I did not -- I  
12 was not asked to pursue that any further.

13 Q Okay. And what other involvement did you have  
14 leading up to the search that was conducted?

15 A I had gone down to the Burnaby office of the Western  
16 Operational Centre of the inspectorate some time in  
17 early May of 2003 and I became aware at that time  
18 that shipments of the product were being imported  
19 into the country and I had, on May 22nd, 2003, an  
20 invoice was faxed to us by an individual at United  
21 Parcel Services indicating that the Synergy Group of  
22 Canada was importing, I can't recall whether it said  
23 vitamin and mineral supplements I believe on the  
24 master invoice, but there was information attached  
25 to indicate that the name of the product was  
26 EMPowerplus.

27 Q And through your experience with this company did

1           you know what EMPowerplus was? Had you heard that  
2           name before?

3       A     I had heard the name and I -- I recollected that I  
4           had had some involvement, but I wasn't familiar at  
5           that point with the investigation that I -- I found  
6           out later was going on.

7       Q     All right. At that point, May 22nd '03, what was  
8           your understanding of EMPowerplus as a product?

9       A     It was my understanding that it was a drug and that  
10          it required a DIN in order to be sold in Canada.

11      Q     And what information did you have that led you to  
12          that conclusion?

13      MR. BUCKLEY:                   Well, I think that might be  
14          hearsay. If he wants to introduce documents it  
15          would be fair.

16      THE COURT:                    Well, let us hear the question  
17          first.

18      MR. BROWN:                    My question was -- my  
19          understanding is the witness has indicated that she  
20          had information that it was a drug. I'm simply  
21          asking her to tell us what her understanding was or  
22          what she based her understanding on.

23      THE COURT:                    Go ahead. You can answer the  
24          question.

25      Q     MR. BROWN:                Yes.

26      A     I was aware of the definition of a drug in the *Food*  
27          *and Drug Act*. I was also aware of, we were using a

1 document called the Therapeutic Products Compliance  
2 Guide to -- it's a document that was used by  
3 inspectors to allow them to assess the type of  
4 compliance action to be taken against products. I  
5 was aware that according to this document vitamins  
6 and minerals were regulated as drugs regardless of  
7 claims, however, some vitamins and minerals were  
8 being treated as what we call "subject to special  
9 measures" in that they were not a focus of priority  
10 of compliance action at that time.

11 Q All right. Now, you said something about vitamins  
12 and minerals being regulated regardless of claims?

13 A Yes.

14 Q Can you tell me what you meant by that?

15 A At that time, I believe it's schedule 'D' in the  
16 *Food and Drug Regulations*, all vitamins and minerals  
17 were being treated as drugs and required DINs prior  
18 to sale in Canada?

19 Q And when you say "a DIN", what do you mean by that?

20 A A drug identification number.

21 Q And so, that's something that's required under the  
22 Regulations?

23 A Yes, at that time.

24 Q All right.

25 A Your Honour, may I ask for a chair?

26 THE COURT: Why, are you having difficulty  
27 standing up?

1 A It's just -- it's a little uncomfortable and I  
2 expect to be here a while.

3 THE COURT: Well, usually witness stand  
4 during their evidence, but I will ask Mr. Buckley.

5 A Oh, that's fine, Your Honour.

6 THE COURT: Mr. Buckley, do you have any  
7 problem?

8 MR. BUCKLEY: No, I -- in fact, Your Honour,  
9 in my jurisdiction there are chairs. So, I was  
10 surprised that there isn't one.

11 THE COURT: I know, I have come across  
12 this in conversations with judges from other  
13 provinces, and they say, What you have your  
14 witnesses stand? Yes, we do.

15 MR. BUCKLEY: So --

16 THE COURT: And the reasons may be -- may  
17 be lost in time, but one of them may very well be is  
18 it is easier to see the responses and the reactions  
19 of a witness of the questions that are being asked.  
20 But, if you do not have any objection.

21 MR. BUCKLEY: No. I don't, and there's, you  
22 know, fairness in that comment when some witnesses  
23 in B.C. go into tic-toc, put their head between  
24 their knees and you can't see them. So, no  
25 objection.

26 THE COURT: All right. If you do not have  
27 any objection, that is fine.

1                   Madam clerk, can we ...

2       A       Thank you, Your Honour.

3       THE COURT:                   That is fine.

4       MR. BROWN:                   Thank you, sir.

5       Q       MR. BROWN:                   Now, I'm sorry, Ms. Jarvis,  
6                   just before we got you the chair, I was asking about  
7                   what you've described as a DIN -- or a D-I-N. You  
8                   indicated that's a drug identification number.

9       A       Yes.

10      Q       Can you tell me just a little bit about what a drug  
11                   identification number is, what's that mean?

12      A       A drug identification number is an eight-digit  
13                   number that's assigned by the Therapeutic Products  
14                   Directorate in Health Canada and it's my  
15                   understanding it's an indication that the product or  
16                   the drug has been reviewed for safety and  
17                   effectiveness and once the drug is assigned that  
18                   number it is to be placed on the label of the  
19                   product, and it's an indication to the consumer  
20                   that, yes, indeed this product has been approved.

21      Q       All right. So, your understanding is, the  
22                   Regulations require that the drug identification  
23                   number will appear on the label of the product?

24      A       Yes.

25      Q       You're not in anyway involved in the actual issuance  
26                   of a drug identification number?

27      A       No, I am not.

1 Q All right. Now, you were speaking about events  
2 happening in May 22nd of 2003, can you proceed with  
3 your discussion, with your interaction with the two  
4 companies, Synergy and TrueHope, and if I say  
5 Synergy and TrueHope you know that I mean Synergy  
6 Group of Canada and TrueHope Nutritional Support?

7 A Yes, I do.

8 Q If you can tell us about your interaction with  
9 Synergy and TrueHope leading up to what I understand  
10 to be execution of a search warrant?

11 A Yes. Sorry, can you repeat the question?

12 Q Between May of '03 and the execution of a search  
13 warrant, which I understood also was executed, can  
14 you tell me about your interactions with Synergy and  
15 TrueHope, what other contact you might have had with  
16 the two companies?

17 A In response to the shipment that I was made aware of  
18 on May 22nd, 2003, I reviewed the documents and made  
19 a decision based on the information that was  
20 presented to me and what I had -- I knew about  
21 previous shipments that had come through. I believe  
22 there was a seizure of a shipment of the product on  
23 April 8th, and I -- I had been advised of that by my  
24 supervisor, Rod Neske. Based on that information,  
25 based on what I knew about the regulation of  
26 vitamins and minerals at that time, I made a  
27 decision to refuse entry of that -- recommend

1 refusal of entry of that shipment into Canada and I  
2 asked Mandy Deall (phonetic), an inspector in our  
3 office, to prepare a report of examination to refuse  
4 the product.

5 Q And can you just describe briefly what a report of  
6 examination entails?

7 A It's a document that we provide to Canada Customs  
8 and it indicates that we have looked at  
9 documentation related to the product. We identify  
10 on the form on what basis we are making a  
11 recommendation to refuse the product into Canada.  
12 We identify the sections of the *Act* and *Regulations*  
13 that we believe have been violated. We put down the  
14 name of the importer and the exporter and we  
15 indicate under what authority we have made that  
16 recommendation.

17 Q All right. And this was, ultimately you made the  
18 decision?

19 A Yes. I made the decision for that shipment, yes.

20 Q And can you please indicate what the grounds or  
21 basis upon which you made that decision?

22 A The basis was that it was importation for sale of a  
23 drug without a DIN number.

24 Q So, it was at that -- at that point you believed  
25 that this product did not have a DIN or a D-I-N  
26 number, or a drug identification number?

27 A That's correct.

1 Q Okay. All right. And after you went through this  
2 process can you describe what happened next?

3 A We became aware, I believe it was of two more --

4 Q I'm sorry say again, you say "we", you mean you?

5 A I can't recall specifically what -- what it was is  
6 the usual practice was for when United Parcel  
7 Service encountered a shipment of goods that  
8 continued what they believed to be a health product  
9 they would fax the invoices to our offices for  
10 review to make some kind of decision as to whether  
11 the product was acceptable or not into Canada, then  
12 we would indicate to them, either we recommend  
13 refusal, we would fax them a copy of this recommend  
14 -- report of examination for Custom entry, or if we  
15 found the shipment to be acceptable, we would stamp  
16 it indicating that we had examined it and that we  
17 had no objection to its entry into the country.

18 Q All right. And so, did you personally participate  
19 in those types of examinations and decisions?

20 A Yes, I did.

21 Q Can you tell us about those, please?

22 A I don't recall the specific dates, but between May  
23 24th and May 26 of 2003, two more shipments of, or  
24 invoices regarding two more shipments of EMPowerplus  
25 were faxed to our office by UPS. I believed they  
26 were not directed at -- the fax didn't indicate that  
27 I -- that they were for me. I believe at that time

1           they were just putting "drug inspector".

2       Q     All right.

3       A     However, I -- I collected them at the fax machine  
4           and I took action on them -- on them. In those two  
5           cases they were accompanied by what we call a  
6           "consolidated invoice details". These were separate  
7           -- what appeared to be separate invoices for  
8           separate parcels indicating that the shipment was to  
9           be split by UPS and the individual parcels shipped  
10          directly to individuals. And we had considered  
11          shipments that were shipped in that way, at that  
12          time, to be personal importations as long as the  
13          volumes fell within a 90-day supply for each  
14          individual.

15       Q     All right. So, for the court's edification, can you  
16           explain that a little bit? What's meant when you  
17           say "personal use exemption" and what was the -- how  
18           did that -- is it a policy?

19       A     We call it a "directive". I believe it falls under  
20          the classification as a policy. It's called a  
21          human, uh -- whoo -- it's a personal use importation  
22          directive for drugs for human use.

23       Q     All right. Can you --

24       A     I can't recall if that's the exact title.

25       Q     That's fine. Can you explain then, just briefly,  
26           what is meant by a "personal use exemption"?

27       A     The policy or directive sets out -- it indicates

1           that an individual may bring a drug into Canada  
2           providing it's not a prescription drug or a  
3           controlled substance, for their own personal use  
4           providing those quantities are in volumes of 90 days  
5           supply or less, and we would determine whether it  
6           was a 90-day supply or less based on the dosage  
7           instructions on the label of the product.

8       Q     And what's the magic 90 days?

9       A     I -- I don't know.

10      Q     If it's more than a 90-day supply and is there some  
11           kind of a calculation?

12      A     Oh, yeah.  If it's more than a 90-day supply there  
13           is the presumption that it's a commercial shipment  
14           and it may be offered for sale in Canada, so, it's  
15           treated as a commercial shipment and it becomes  
16           subject to all the *Food and Drug Act* and  
17           *Regulations*.

18      Q     All right.  So, with respect to this particular  
19           group of -- or this particular shipment rather, what  
20           was the ultimate decision in terms of whether it was  
21           for personal use or not?

22      A     Those two particular shipments, it was determined  
23           that they were for personal use, and so, I stamped  
24           the invoices with our stamp indicating that they  
25           were examined, I initialled it, and faxed it back to  
26           UPS.

27      Q     And so, that particular shipment was allowed to go

1 -- to come into Canada rather?

2 A Yes. There were two -- well, we recommended that,  
3 you know, we had no objection. You know, if Canada  
4 Customs or another agency had an exception, that was  
5 not up to us.

6 Q As far as Health Canada was concerned it was coming  
7 into Canada.

8 A Yes.

9 Q Okay. All right. And can you tell me about any  
10 other involvement you had leading up to this search  
11 warrant?

12 A On May 26, which was the day that I faxed the so-  
13 called release of the two shipments back to UPS, I  
14 was called by Sara Lim (phonetic) at UPS and she  
15 asked why I had released those two particular  
16 shipments but had recommended refusal of the  
17 shipment of May 22nd, and I explained to her that  
18 the two that I had just released were the  
19 information supplied to me indicated that they were  
20 for personal use, whereas the May 22nd shipment did  
21 not have the consolidated invoice details and  
22 appeared to be directed directly to Synergy Group of  
23 Canada in Raymond. Should I go on?

24 Q Yes, please.

25 A She indicated that she did have consolidated invoice  
26 details for that shipment, she just didn't know that  
27 she had to supply them at every -- every time. So,

1 I asked her to fax those to me and I would take a  
2 look at them. She did the same day. I reviewed  
3 them. I determined that I had erred in recommending  
4 refusal of the May 22nd shipment. So, I typed up a  
5 fax indicating that -- that I no longer had an  
6 objection to the entry of the shipment, I had been  
7 notified on May 22nd.

8 Q All right. So, there was a change in the decision  
9 for the May 22nd shipment and that shipment was  
10 deemed to be a personal use shipment as well?

11 A Yes.

12 Q And these products were each shipped in packages  
13 that would be a 90-day supply or less?

14 A Individuals, yes.

15 Q All right. Can you please continue.

16 A It was shortly after the release of the -- the now  
17 -- now three shipments by me that I was informed by  
18 my supervisor, Rod Neske, that they had, based on  
19 information that he and other investigator had  
20 found, they deemed the -- they had determined that  
21 sales of the product were taking place in Canada in  
22 which case personal use exemptions no longer applied  
23 to the product.

24 Q And what was your understanding of the sales  
25 occurring in Canada?

26 A At that time I was not part of the investigation,  
27 so, I -- I -- I didn't quite understand it at the

1 time.

2 Q All right. Did you become aware or did you  
3 understand the basis of that interpretation at a  
4 later date?

5 A Yes. It was shortly, just towards the end of May,  
6 on or about May 30th, I believe that I was asked to  
7 take over the investigation of Synergy Group of  
8 Canada and TrueHope Nutritional Support and begin  
9 collecting information to put together an  
10 information to obtain a search warrant.

11 Q All right. And who did you take the investigation  
12 over from?

13 A I believed Miles Brosseau to be the lead  
14 investigator at that time.

15 Q Okay. And so, as of May 30th or was it shortly  
16 thereafter, that you were able to determine the  
17 basis upon which, or is it a decision that sales  
18 were occurring in Canada?

19 A Yes, I was.

20 Q And what was your understanding of the basis for  
21 making the decision that the sales were occurring in  
22 Canada?

23 A It was information I collected in preparing the  
24 information to obtain, led me to believe that calls  
25 were being placed and orders were being taken in  
26 Raymond, Alberta.

27 Q All right. And what was your understanding of what

1           happened when the call was made to Raymond?

2       A     It -- prior to the execution of the search warrant,  
3           it was the information I had collected led me to  
4           believe that orders were being taken there and those  
5           orders were -- the information for the orders was  
6           either being transmitted electronically or -- or  
7           paper-wise to a company called Pharos DTB in Utah,  
8           and then the product was being shipped from that  
9           location into Canada.

10       Q     On the shipping documents that you saw was there any  
11           mention of Pharos DTB?

12       A     Yes. The master invoices for all of the shipments  
13           that western operational centre was made aware of  
14           around that time, indicated that the product was  
15           shipped from Pharos DTB in Centreville, Utah, and on  
16           that invoice a phone number was also located beneath  
17           that address in Utah and it was the same phone  
18           number that was found on the website that we  
19           believed was operated by Synergy and TrueHope, and  
20           to which number orders were being placed for the  
21           product.

22       THE COURT:                   I am going to ask you if you  
23           could spell the name of the company, please.

24       A     P-H-A-R-O-S and then the initials D-T-B.

25       THE COURT:                   Thank you.

26       Q     MR. BROWN:             I'm sorry. I'm just going to  
27           take you back a second. You said that it was a

1 phone number that was the same as a website -- as on  
2 website?

3 A Yes.

4 Q And which website was this?

5 A It's [www.truehope.com](http://www.truehope.com).

6 Q Do you have any recollection or note of what that  
7 phone number was?

8 A It's 1-888-878-3467.

9 Q Did you ever have occasion to call that phone  
10 number?

11 A I did on, I believe the first time and the only  
12 time, was on November 6, 2003.

13 Q November 6 '03?

14 A Yes.

15 Q And what was the purpose of that phone call?

16 A The purpose of the phone call was to make an  
17 undercover purchase of EMPowerplus.

18 Q Now, when you say "undercover" can you explain what  
19 you mean by that?

20 A I fabricated a story. When I called the order  
21 centre I fabricated a story indicating that I was  
22 newly-diagnosed individual that had depression, my  
23 doctor had recommended Paxil and I was a little  
24 concerned about taking a pharmaceutical and I was  
25 looking for an alternative treatment, and I had  
26 heard about EMPowerplus.

27 Q Did you use your real name?

1 A I used the name Marie Goud.

2 Q And spell Goud please?

3 A G-O-U-D.

4 Q And how did you come up with that name?

5 A That's my husband's last name.

6 Q Goud is your husband's last name?

7 A Yes.

8 Q And Marie is your --

9 A My middle name.

10 Q -- middle name. And so, when you had this  
11 discussion with the individual -- I'm sorry, I'm  
12 going to back up a little bit. The telephone number  
13 that you called was retrieved from the TrueHope  
14 website?

15 A Yes.

16 Q You called that telephone number and spoke to  
17 somebody on the other end?

18 A Yes.

19 Q And you told this person, male or female?

20 A Female.

21 Q You told this female person that you had certain  
22 symptoms or you'd been to your doctor and you wanted  
23 to order some EMPowerplus?

24 A Yes.

25 Q And did you actually place an order for EMPowerplus?

26 A Yes, I did.

27 Q Okay. And that all occurred on November 6 of '03?

1 A Yes.

2 MR. BROWN: Sir, if I might approach the  
3 witness?

4 THE COURT: Go ahead.

5 Q MR. BROWN: Ms. Jarvis, I'm bringing you a  
6 small brown box. There is a note on the side that  
7 says E-01, E-02 and in square brackets, product?

8 A Yes.

9 Q And it's marked, "top". On the top it also says  
10 "E-01 and E-02 [product]"?

11 A Yes.

12 Q And on each side it appears to have a marking of  
13 "top". Do you recognize this box?

14 A Yes. That was the box that my order was shipped in,  
15 or I received my order in.

16 Q All right. Did you ever open the box?

17 A Yes, I did.

18 Q Did you examine what was inside?

19 A Yes, I did.

20 Q Then what did you do with the box?

21 A The -- initially the box was received by my husband  
22 on, I believe it was November 15th, 2003. He called  
23 me at the office, indicated he had received this, it  
24 was in the afternoon that day. I told him to put it  
25 in his office on the top shelf. It was a secure  
26 place we had in the house to store it. The next day  
27 I took it to my office in Edmonton and I placed it

1 in a locked filing cabinet at my cubicle.

2 Q And who had the keys to that filing cabinet?

3 A I did.

4 Q And when you received the box was it taped closed?

5 A Yes, it was.

6 Q You didn't have any indication that it had been  
7 opened at any time?

8 A I believe there was some -- a sticker from Customs  
9 indicating that it was not examined.

10 Q Okay. And when you received this -- sorry, you said  
11 your husband received it originally?

12 A Yes.

13 Q And he put it in a closet in your home?

14 A Yes.

15 Q So, you received it at your home?

16 A Yes.

17 Q And you retrieved it from your husband?

18 A Yes. Or from the top shelf.

19 Q From -- your husband told you where it was?

20 A Yes.

21 Q And you then took the box and opened it?

22 A I took it to work. I opened it at work.

23 MR. BROWN: And Your Honour, if I can have  
24 this witness take a look at the contents of this box  
25 and have her open it.

26 THE COURT: Yes.

27 MR. BUCKLEY: I'm not objecting to her

1           examining that, no.

2       THE COURT:                   That is fine.

3           Just a moment, please.

4       Q     MR. BROWN:            All right.  What have you --  
5           what have you got inside there first of all?

6       A     I have one bottle of EMPowerplus capsules labelled  
7           E-01.

8       Q     And the -- when you say "labelled E-01" is that a  
9           mark that you put on the bottle yourself?

10      A     Yes, it is.  It's an exhibit number I assigned to  
11           it.

12      Q     All right.  And so, you recognize that mark as your  
13           one that the bottle?

14      A     Yes.

15      Q     Okay.

16      A     There's also one bottle of EMPowerplus powder  
17           formula with the exhibit number E-02 on it.

18      Q     All right.

19      A     And I put that number on there.  A Customs postal  
20           import form, I believe this was attached to the box,  
21           on the outside box.  It was not found inside the  
22           box.

23      Q     All right.  And when you say you believe that was  
24           the case, was that still attached to the box when  
25           you first saw the box?

26      A     Yes.  Yes.  That's part of it.  And that's all  
27           that's in this box.

1 Q All right. And if you could just describe, there's  
2 a smaller bottle and a larger bottle. What's the  
3 difference between the two?

4 A One I believe is EMPowerplus in capsule form and the  
5 other is in powder form.

6 Q All right. And did you have an opportunity to  
7 examined those bottles when you first received them?

8 A Yes, I did.

9 Q Did you look for a DIN at all?

10 A Yes, I did.

11 Q Did you find one on the label anywhere?

12 A No, I did not.

13 Q Now, once you had finished examining the bottles,  
14 did you also examined the shipping form?

15 A Yes, I did.

16 Q Can you just describe to us what is on the shipping  
17 form?

18 A The shipping form indicates that the importer's name  
19 is Marie Goud and it has my own home residence, and  
20 the export -- exporter's name is: Pharos DTB, LLC  
21 and the contents of the box, or actually they have a  
22 section here for -- they describe it as the  
23 classification or a description of the product and  
24 it indicates that it is food supplements and there  
25 is a value for duty, a GST amount assigned, and  
26 there's an indication that I owe \$17.74 in GST and  
27 duty.

1 Q All right. And once you have examined the form and  
2 the bottles, what did you do with that package?

3 A The package was placed back in the -- in the locker.

4 Q In --

5 A I examined it before I put it -- or not a locker,  
6 it's a filing cabinet, locked filing cabinet.

7 Q All right. And this locked filing cabinet is in  
8 your office?

9 A A cubicle, yes.

10 Q Okay. And what happened with the box thereafter?

11 A Well, I should say that there were additional  
12 contents and I believe they've been separated.

13 Q Can you tell us what the additional contents were?

14 A I believe there was an article, or what I think is  
15 the TrueHope newsletter entitled Common Ground.

16 There was also an invoice of my order in there and  
17 there -- I believe there was some other article --

18 MR. BROWN: Sir, if I could approach the  
19 witness?

20 A Yeah, I don't -- I don't recall. It's in reference  
21 to James Lunney is all I remember.

22 MR. BROWN: Sir, I'm going to show the  
23 witness E-03 -- the document part, E-03.

24 THE COURT: These are other articles that  
25 she says were found in the box?

26 Q MR. BROWN: That's correct?

27 A Yes.

1 THE COURT: All right. Go ahead.

2 A Yes, this is the invoice that I found in the box  
3 with the bottles of product.

4 Q MR. BROWN: And you marked it as E-03?

5 A Yes, I did.

6 Q And what did you do with that document after you  
7 discovered it in the box?

8 A It was also placed in my locker -- or filing cabinet  
9 in my cubicle.

10 Q All right. Okay. And I'm showing you something  
11 marked E-04.

12 A Yes, that's the issue of Common Ground that was  
13 included in my parcel and I labelled it E-04 as it  
14 indicates here.

15 Q And then what did you do with the document  
16 thereafter?

17 A It was also place in my filing cabinet.

18 Q Locked -- in the locked filing cabinet.

19 A Locked filing cabinet, yes.

20 Q And finally, the document marked E-05 which appears  
21 to have the TrueHope letterhead on the top?

22 A Yes. Now, I recall this document, yes. That was  
23 included in the parcel as well.

24 Q All right. And what did you do with that document?

25 A That was also placed in the locked filing cabinet.

26 Q All right. Now, when you -- after you had put them  
27 in your locked filing cabinet did you do anything

1 with those documents thereafter?

2 A They were on -- I was making a move back to B.C. in  
3 the beginning of August '03, so on July 29th I put  
4 these articles as well as some other exhibits that I  
5 had collected, into boxes. I sealed them with  
6 Health Canada tape, I initialled over the seals and  
7 I sent an e-mail to my supervisor, Rod Neske, as  
8 well as Kim Seeling indicating that I was shipping  
9 exhibits and that they should not be opened, that  
10 they should have my initial on the seals and that  
11 they should be placed in the evidence locker in  
12 Burnaby, B.C.

13 Q And Rod --

14 A And they were shipped via Purolator on that date.

15 Q All right. And Rod Neske and Kim Seeling are in  
16 Burnaby, B.C.?

17 A Yes, they are.

18 Q There's a Health Canada office there?

19 A Yes, that's our -- our Western Operational Centre is  
20 located there.

21 Q All right. And you asked in the e-mail, I believe  
22 you said --

23 A Yes.

24 Q -- you said that you indicated that they should be  
25 placed in a locked cabinet?

26 A Exhibit -- I call it the exhibit locker. We have a  
27 room in Burnaby for exhibits.

1 Q All right. And did you then travel to Burnaby  
2 yourself?

3 A Yes, I did.

4 Q And did you examine or rather find these products in  
5 the exhibit locker?

6 A No, I did not have access to the exhibit locker.  
7 Kim Seeling was our exhibit officer and she had the  
8 key to that locker. I had no reason to go in there  
9 to look at the product.

10 Q All right. So, when was the next time that you  
11 would have seen this product?

12 A Today.

13 Q All right. I'm going to show you one more document,  
14 marked E-06. Take a look at that, please.

15 A This is a copy of my husband's Visa statement,  
16 documenting the purchase of the EMPowerplus. It  
17 indicates that -- I should -- I should backtrack and  
18 indicate that I used my husband's Visa number to  
19 make my purchase on November 6th.

20 Q All right. So, how did that transpire? Tell us  
21 what you did to actually make the purchase. What  
22 did you have to do?

23 A Could I refer to my notes, Your Honour, for that  
24 date?

25 THE COURT: What do you want to refer to  
26 your notes for?

27 A I don't remember --

1 THE COURT: Do you need to refresh your  
2 memory on any particular point?

3 A Refresh my memory -- well, exactly how the order  
4 went through, or how I -- how -- how it came about.  
5 I believe I have names in there as to who I spoke to  
6 as well.

7 MR. BUCKLEY: I'm not objecting, Your  
8 Honour.

9 MR. BROWN: Thanks. The name might  
10 actually prove to be relevant at some point in the  
11 future.

12 THE COURT: Were those notes made at the  
13 time?

14 A They were made immediately after I made the call at  
15 my home -- house, and then I immediately transcribed  
16 the notes into a WordPerfect document on my home  
17 computer.

18 THE COURT: And have there been any  
19 alterations or deletions to those notes since they  
20 were made and you transcribed them?

21 A No, there have not.

22 THE COURT: All right. You can refer to  
23 your notes to refresh your memory on the  
24 circumstances of the use of the Visa.

25 MR. BROWN: Thank you, sir.

26 A When I initially placed the call to TrueHope I was  
27 speaking to a woman who, when I indicated I wanted

1 to order TrueHope she transferred me to someone  
2 named Teresa (phonetic). I indicated to her that I  
3 was interested in order the product. She asked if I  
4 -- well, she said I needed to fill out a personal  
5 information form first, which was on their website,  
6 and I asked if I could do it online -- or with her  
7 over the phone. She said, Yes, so, she asked me a  
8 variety of questions, based on, you know, what other  
9 medication I was taking, my name, my date of birth,  
10 my address, my phone number.

11 She indicated that in order to purchase the  
12 product I had to basically become part of their  
13 program, which involved weekly sort of check-ins  
14 with one of their counsellors. Once I received the  
15 product I was to give them a call back and then we  
16 would schedule regular calls to me to see how I was  
17 doing and that sort of thing.

18 I asked her how much I should order to get  
19 started and she said that in Canada I could only  
20 order a two-months supply. I asked her if I could  
21 try both the powder and the capsules. She said --  
22 she said I should get two bottles of the capsules  
23 and two bottles of powder, and I said that, you  
24 know, I'd like to try one of each to start and see  
25 which one agrees with me the best.

26 Oh, and then she transferred me to a woman  
27 named Kaleen (phonetic) and I didn't get the

1 spelling. I heard the woman, Teresa, say to Kaleen,  
2 This is Marie Goud. Her number is 1-8074, then  
3 Teresa said, Welcome to the program, and then they  
4 said goodbye to each other.

5 So, Kaleen asked me what I wanted to order. I  
6 said, one of the EMPowerplus and one of the  
7 capsules. I said I wanted to give her my husband's  
8 Visa number for payment and I gave her my husband's  
9 name on the card, which is Paul Goud. After taking  
10 the information she went on to say that the order  
11 was shipped by Global Airmail and that once it  
12 crosses into the Canadian border, it's assigned a  
13 GST amount. She said I'd have to pay the GST when I  
14 picked the parcel up.

15 THE COURT: Just before you go on any  
16 further. There is a lot of hearsay going in here.  
17 Do you have any objection to it?

18 MR. BUCKLEY: There sure is. So, Your  
19 Honour, I just assume, in my jurisdiction judges are  
20 very good of allowing things in just for a narrative  
21 and distinguishing what's hearsay and isn't. But we  
22 actually kind of get criticized if we object too  
23 often. I don't know what the practice is here. I'm  
24 assuming that this witness is just -- like, I'm  
25 alarmed that she's reading from her notes as opposed  
26 to refreshing her memory, because --

27 THE COURT: That is a --

1 MR. BUCKLEY: -- she is --

2 THE COURT: That is a completely different  
3 objection you could be making.

4 MR. BUCKLEY: She is just reading. But  
5 clearly, what's said to her is absolute hearsay. So  
6 --

7 THE COURT: The practice in this  
8 jurisdiction is if there is hearsay evidence, I  
9 would expect counsel to object --

10 MR. BROWN: Okay.

11 THE COURT: -- and the objection be put on  
12 the record that the evidence is being allowed not  
13 for the truth of its contents but only for the  
14 continuity or the sake of a narrative. Is that  
15 understood?

16 MR. BROWN: Absolutely.

17 MR. BUCKLEY: Well, then let's register my  
18 objection and it's just going for the narrative and  
19 not the truth of what was said.

20 MR. BROWN: I certainly would have made  
21 that same point, sir, that that is the purpose of  
22 the narrative or of the evidence that my witness is  
23 giving with respect to comments made by somebody  
24 else.

25 THE COURT: Is for the sake --

26 MR. BROWN: Clearly --

27 THE COURT: That those comments are for

1           the sake of a narrative only.

2       MR. BROWN:                   Absolutely.

3       THE COURT:                   All right. Then that  
4           objection is clearly on the record for this witness.

5       MR. BUCKLEY:                 Thank you, Your Honour.

6       MR. BROWN:                   Thank you, sir.

7       THE COURT:                   All right. Very good.

8       Q     MR. BROWN:             Do you want to proceed?

9       A     So, essentially, I gave her the Visa number which  
10           was on the card and the call concluded.

11      Q     All right. Now, the Visa number you gave is your  
12           husband's Visa number?

13      A     Yes, it is.

14      Q     And did your husband receive a statement -- visa  
15           statement?

16      A     Yes, he did.

17      Q     And can you tell us what transpired upon his receipt  
18           of that statement?

19      A     He received it on November 18th. I was there when  
20           he opened his letter. He looked it. When he  
21           noticed that the November 6th purchase was on there,  
22           which he was aware of, he gave me the copy of the  
23           Visa statement.

24      Q     And can you just take a look at that? Is that the  
25           same Visa statement?

26      A     I believe so, yes.

27      Q     Yes. Has it got marked -- it's marked with E-06?

1 A Yes, I put that number there.

2 Q You made that mark on the statement?

3 A Yes.

4 Q All right. And did you examine that statement on  
5 November, sorry, was it the 15th I believe that he  
6 received it?

7 A Eighteenth.

8 Q November 18th. And you examined it on that date?

9 A Yes, I did.

10 Q All right. And can you take a look at it today,  
11 please? And I see you flipped it over.

12 A Yes.

13 Q What are you noting on the back of the document?

14 A These are all his transaction details and on this is  
15 a -- included in that is a transaction date for  
16 November 6th made and it says: Description, The  
17 Synergy Group of Canada, Raymond, AB, a value of  
18 \$211.53.

19 Q And do you recall if \$211.53 represents the amount  
20 that you were charged for the product?

21 A Yes, it was.

22 Q All right. And is there any other entry on the Visa  
23 that indicates anything else paid to Synergy or  
24 similar company?

25 A No, there's not.

26 Q And I think I can see it from here, there's a couple  
27 of things that I think you blacked out.

1 A Yes.

2 Q Can you tell me how that happened?

3 A That was the actual Visa number. I had consulted  
4 with my counsel at Justice at the time, Scott  
5 Couper. I asked him if it was acceptable to scratch  
6 out that number for security purposes because I knew  
7 copies of the brief, and possibly of the evidence  
8 itself were going to be circulated to various  
9 parties, and -- and he said there was no problem  
10 with blacking that out.

11 Q Did you do it yourself?

12 A Yes, I did.

13 Q Did you determine that the number that you blacked  
14 out was actually your husband's Visa number.

15 A Yes, it was.

16 Q Now, we were talking about what you did with all of  
17 this stuff. You placed it back in the box and  
18 locked in your filing cabinet --

19 A Yes.

20 Q -- and then it was shipped to Burnaby.

21 A Yes.

22 Q Under certain instructions that you gave?

23 A Yes.

24 Q All right. Clearly, you don't know exactly what  
25 happened to it in Burnaby when it arrived.

26 A I received an e-mail indicating what days the  
27 evidence arrived.

1 Q All right. That's fine.

2 MR. BROWN: Sir, I'm going to ask that  
3 these -- this collectively be entered as Exhibit 'A'  
4 For Identification purposes. There is -- obviously,  
5 my friend's going to raise a continuity issue, or at  
6 least I expect him to, and I'm going to have to call  
7 another witness to have continuity made out.

8 THE COURT: All right. Well, you want to  
9 -- you want to have them put in as Exhibit 'A' For  
10 Identification purposes?

11 MR. BROWN: That's right.

12 THE COURT: And I will hear --

13 MR. BROWN: Unless my friend's not  
14 objecting.

15 THE COURT: I will hear from Mr. Buckley  
16 now.

17 MR. BUCKLEY: Well, no. I think that that's  
18 wise. I did want to have a look at those --

19 THE COURT: Go ahead.

20 MR. BUCKLEY: -- bottles actually.

21 THE COURT: Take your time. You certainly  
22 have a right and to be given an opportunity to  
23 inspect the documents and the bottles. I would have  
24 expected that you would have received disclosure  
25 with regards to this documentation.

26 MR. BUCKLEY: Your Honour, I had requested  
27 copies of the labels, as well as the bottles. I

1 received some but you couldn't see the whole bottle  
2 and I asked for identification as to which, because  
3 there have been several purchased throughout. So, I  
4 think my friend has tried to comply with that. But  
5 I am in a situation where I need to actually look at  
6 the exhibit.

7 THE COURT: Do you want some time to  
8 review the labelling on the bottles?

9 MR. BUCKLEY: No, I can do that during a  
10 break.

11 THE COURT: All right.

12 MR. BUCKLEY: Thank you.

13 THE COURT: Before we go on, Mr. Brown,  
14 there is -- I anticipate there is going to be --  
15 there will be a number of exhibits during the course  
16 of this trial and my understanding is you want all  
17 of -- all of these to be included as a single  
18 exhibit, as Exhibit 'A'?

19 MR. BROWN: That's right, sir. That would  
20 be --

21 MR. BUCKLEY: And I've got no objection to  
22 that. There's some logic to it.

23 THE COURT: All right. And I really hope  
24 I do not have to give this caution again, please.  
25 There is a trial going on with people talking,  
26 listening.

27 All right. Exhibit 'A' For Identification

1 purposes will be the box received by Ms. Jarvis that  
2 includes certain items, which are described as  
3 follows: One bottle of EMPowerplus, marked E-01;  
4 another bottle of EMPowerplus powder formula, marked  
5 E-02; an invoice, which was a copy of Ms. Jarvis'  
6 invoice marked E-03; an issue of a newsletter  
7 entitled Common Ground marked by Ms. Jarvis as E-04;  
8 a letter on TrueHope letterhead marked as E-05; and  
9 a copy of Ms. Jarvis' husband's Visa statement  
10 marked by her as E-06. All of those will  
11 collectively be described as Exhibit 'A' For  
12 Identification Purposes.

13  
14 \*EXHIBIT 'A' For Identification - Cardboard box  
15 \*containing: One bottle of EMPowerplus, marked E-01;  
16 \*another bottle of EMPowerplus powder formula, marked E-  
17 \*02; an invoice which was a copy of Ms. Jarvis' invoice  
18 \*marked E-03; an issue of a newsletter entitled Common  
19 \*Ground marked by Ms. Jarvis as E-04; a letter on  
20 \*TrueHope letterhead marked as E-05; and a copy of Ms.  
21 \*Jarvis' husband's Visa statement marked by her as E-06  
22

23 MR. BROWN: Thank you, sir. Sir, I know  
24 we haven't progressed all that far this morning, but  
25 it's five to 12:00 and I note your comment on one  
26 our last calls I think you expected to break at  
27 12:00. I'm happy to continue. It is a rather

1 convenient place to stop though if you choose to  
2 stop at noon, sir.

3 THE COURT: Well, my practice and the  
4 practice of these courts is to sit from 9:30 until  
5 12:00 or 12:30 and then from 2:00 till 4:00 or  
6 shortly thereafter, because the clerks, well, have  
7 certain responsibilities to do and closing up the  
8 courtroom and all the rest of it, and I propose that  
9 we can stay on that schedule. If it is more  
10 convenient with any particular witness to break, you  
11 know, 15 or 20 minutes or a half hour early or to go  
12 a little bit longer, providing we keep the court  
13 open, then I am certainly prepared to do that to be  
14 flexible with the witnesses we have got. So, if you  
15 think this is an opportune time for a break then can  
16 take that break, or we can push on for another half  
17 an hour.

18 MR. BROWN: Either way, sir. I say it was  
19 convenient only because I expect to take this  
20 witness back now to the information to obtain a  
21 search warrant and those issues, and I suspect that  
22 will take a little more bit more than -- well,  
23 obviously more than a half hour.

24 THE COURT: Well, her evidence is going to  
25 be split anyway, so.

26 MR. BROWN: That's fine. I'm happy to  
27 continue.

1 THE COURT: You may as well keep going and  
2 let us --

3 MR. BROWN: Sounds -- all right.

4 THE COURT: -- get another half hour in.

5 MR. BROWN: Thank you, sir.

6 Q MR. BROWN: Now, Ms. Jarvis the --

7 THE COURT: Just a moment while we make  
8 some room. Thank you, madam clerk.

9 MR. BROWN: All right.

10 THE COURT: All right. Go ahead, please.

11 MR. BROWN: Thanks.

12 Q MR. BROWN: Now, Ms. Jarvis, I'm going to  
13 take you back in time a little bit now. This  
14 purchase occurred in November of '03. I want to  
15 take you back to a time where you had just got your  
16 evidence speaking to the search warrants that you  
17 were involved in obtaining and an information to  
18 obtain that you as I understand, were involved in.  
19 Can you please describe to the court what your  
20 involvement was and what you did with respect to  
21 those issues?

22 A As I mentioned, it was late May that I was assigned  
23 the task of putting together the information to  
24 obtain. I began by reviewing our files related to  
25 the two companies, Synergy and TrueHope, as well as  
26 what investigation had taken place. Until that  
27 time, I consulted with Miles Brosseau who was the

1 lead investigator prior to date, as well as Dale  
2 Fleury (phonetic), an import surveillance officer in  
3 our Calgary office who had worked with Miles on --  
4 one some of the -- some of the investigation. I  
5 also consulted with various other inspectors that  
6 had, you know, peripheral involvement in the file.

7 Where -- where possible, I started putting  
8 together the ITO and documenting facts that I  
9 believed supported our allegations that the offences  
10 named in the ITO had taken place and that the  
11 information we sought for evidence to prove that was  
12 located at the facility in Raymond, Alberta. Where  
13 there were gaps -- where I thought there were gaps  
14 in information, or where there was information that  
15 had already been gathered but I wanted first-hand  
16 knowledge myself, I went about taking certain --  
17 doing certain things such as looking up corporate  
18 information on the companies, viewing various  
19 websites that had come to my attention related to  
20 EMPowerplus.

21 Q All right. So, you engaged in the process of  
22 gathering information to obtain -- information to  
23 obtain a search warrant.

24 A Yes.

25 Q And when did you begin gathering this information?

26 A I would say on or about June -- well, I started  
27 gather -- reviewing the files the beginning of June

1 and talking with Miles Brosseau and some of the  
2 other inspectors, probably the first two weeks of  
3 June. I started doing my own investigation,  
4 probably around June 16th I believe was the first --  
5 first thing I did.

6 Q And this is June 16th of 2003?

7 A Yes.

8 Q All right. And so, I'm just going to ask you a  
9 couple of questions about the process that you used  
10 to obtain this information. So, what kind of things  
11 did you do? Discuss with the inspectors?

12 A Yes. I spoke to inspectors who had involvement, for  
13 instance with the shipments that had been coming  
14 into B.C. I spoke to my supervisor who had  
15 authorized the seizure of a shipment I believe on  
16 April 8th of May 8th, I can't recall exactly. As  
17 well, I spoke to my supervisor about letters and  
18 correspondence that he had sent and received between  
19 himself and Mr. Stephan, and I believe some of his  
20 -- some of their legal representation at that time.  
21 I also conducted title searches to obtain  
22 information on who the owner of the property at --  
23 in Raymond was, and that property was 680 North 300  
24 East, in Raymond, Alberta. I also did a search for  
25 corporate information on TrueHope Nutritional  
26 Support Ltd. as well as Synergy Group of Canada.

27 Keep going?

1 Q Yes, please. Continue.

2 A I viewed the website, www.truehope.com and verified  
3 that it was indeed, in my view --

4 MR. BUCKLEY: Okay. I'm going to object.  
5 She is going to go into hearsay.

6 THE COURT: All right. Just before you go  
7 further there is an objection --

8 MR. BROWN: Yes, sir.

9 THE COURT: -- based on concerns Mr  
10 Buckley has about this matter going into hearsay --

11 MR. BROWN: Right, sir.

12 THE COURT: -- at this point in time and  
13 as I understood it, she was talking about having  
14 viewed the website and then ...

15 MR. BROWN: Right, sir.

16 THE COURT: Where is this going?

17 MR. BROWN: What I -- ultimately I  
18 expected the witness to indicate that as part of the  
19 information -- information to obtain that she swore,  
20 she relied on information she was provided by other  
21 people, other types of information. I'm just trying  
22 to indicate or have her indicate, rather, what that  
23 information is and what the sources of that  
24 information is.

25 Now, I think what my friend is saying is that,  
26 don't have the witness tell us what they said but  
27 that they -- that she obtained the information from

1           that source.

2       THE COURT:                   Well, what she cannot say is  
3           that somebody else told me.

4       MR. BROWN:                   Yes.

5       THE COURT:                   If she wants to say I made  
6           enquiries --

7       MR. BROWN:                   Right.

8       THE COURT:                   -- and I received information  
9           then that is all right.

10      MR. BROWN:                   Yes, sir.

11      MR. BUCKLEY:                 I wonder why we're even going  
12           through this exercise being that I'm not raising --

13      THE COURT:                   So am I since you are not  
14           challenging --

15      MR. BUCKLEY:                 -- the Section 8 issue.

16      THE COURT:                   -- the search warrant.

17      MR. BUCKLEY:                 So, why not just move there  
18           and go to the search.

19      MR. BROWN:                   All right. That's certainly  
20           find by me, sir, I --

21      THE COURT:                   No, I think what is clear  
22           right at the beginning, Mr. Buckley said that he was  
23           not making a Section 8 challenge on the -- on the  
24           search warrant.

25      MR. BROWN:                   Right.

26      THE COURT:                   I am -- I am not going to try  
27           to direct you as to how to conduct your case.

1 MR. BROWN: Right.

2 THE COURT: If you consider that for the  
3 sake of your case it is necessary to go into this,  
4 go ahead.

5 MR. BROWN: Well, all I was -- it's really  
6 I think just part of the description of events  
7 really, sir, describing what this witness did. It's  
8 not -- aren't going to take a great deal of time for  
9 her to describe the fact that she got certain kinds  
10 of information that led them to obtain a search  
11 warrant, then they executed the search warrant and  
12 certain documents that I will be entering were  
13 obtained as a result.

14 THE COURT: Well, and I understand that  
15 from everything that she said here. She spoke to  
16 different people --

17 MR. BROWN: Right.

18 THE COURT: -- she looked at the website.  
19 She checked the title, so on and so forth, but --

20 MR. BROWN: That's fine, sir.

21 THE COURT: -- do you need more than that?

22 MR. BROWN: I don't think I do. Frankly,  
23 I don't think I do. I'm happy to proceed on the  
24 basis that the search warrant -- the search warrant  
25 was obtained. I'll have her give that evidence and  
26 that a search was conducted as a result and describe  
27 that, sir. Thank you.

1 THE COURT: Well, and as I say, Mr.  
2 Buckley has already informed yourself and the court  
3 at the first instance that he was not making a  
4 challenge under Section 8 of the *Charter*, with  
5 regards to unreasonable search and seizure. And so,  
6 since he is not -- since he is aware of that  
7 possibility and he has made that decision, I do not  
8 think you need to go that much further anyway.

9 MR. BROWN: I appreciate the comment, sir.

10 THE COURT: All right.

11 MR. BROWN: I will continue.

12 Q MR. BROWN: All right. Now, Ms. Jarvis,  
13 you were involved in the actual search at the  
14 location in Raymond?

15 A Yes, I was.

16 Q All right. Can you tell us the date that that  
17 occurred?

18 A July 15th, 2003.

19 Q And can you indicate what your involvement in that  
20 search was?

21 A I was essentially the lead for the Health Canada  
22 employees that were part of the search. I had put  
23 together the team that was involved in the search of  
24 the Health Canada employees. And I was also part of  
25 the search itself. I searched various areas in the  
26 facility, identified documents that I believed were  
27 supporting evidence for the alleged offences. I

1 brought those to the attention of our exhibit  
2 officer and she collected that evidence and recorded  
3 that evidence and put them in evidence bags.

4 Q All right. So, when you say you were the lead for  
5 the Health Canada employees, how many Health Canada  
6 employees were involved?

7 A I believe there were eight total.

8 Q All right. And how is it that you went about  
9 deciding who would do what as far as the search  
10 went?

11 A There were quite a few of us who had never done --  
12 executed a search warrant at all, including myself,  
13 so I tried to pair inspectors up with those that  
14 were inexperienced with someone that was  
15 experienced. And as to where the areas those two-  
16 person teams were to search, it was -- it was just a  
17 random decision.

18 Q All right. So who were you paired up with?

19 A I was paired up with Larry Young.

20 Q And he is also with Health Canada?

21 A Yes, he is.

22 Q Okay. And so, when you say the areas were divided  
23 up, what sort of area did you and Larry Young end up  
24 searching at?

25 A We searched an office area just off the main room in  
26 the facility. We searched a small room, which we  
27 believed to be sort of a stationery-photocopy room

1 type thing. We also searched a larger room that I  
2 referred to as the warehouse room. It was more to  
3 the rear of the facility. It had filing cabinets in  
4 it and a couple of desks. I believe there was also  
5 a room within that room that appeared to be some  
6 kind of computer network centre or where they did  
7 their, you know, computer stuff with computers. I'm  
8 not a technical person.

9 Q So you weren't involved in any kind of a technical  
10 type of search. Your search was relegated to paper?

11 A Yes, it was. The members of the RCMP technical  
12 crime unit that accompanied us took care of all the  
13 technical issues.

14 Q All right. Now, when the two individuals, yourself  
15 and Larry Young, are off searching, did you have  
16 some method of indicating who had obtained what and  
17 tell us what you -- what you found and what you did  
18 with it. Not to document any particulars but how  
19 did that operate?

20 A Kim Seeling, our exhibit officer, had pre made  
21 little labels or stickers with exhibit numbers on  
22 them and she had a record of who she was assigning  
23 those numbers to. So, she would give me a certain  
24 amount of stickers and I was to use those stickers  
25 to place on evidence that I -- I -- what I believed  
26 was evidence, and that I had located, so, if I found  
27 a piece of paper within a file that I wanted her to

1           seize, I would put the sticker on it and -- and, you  
2           know, prop it up outside of the file so when she  
3           came around she could know that that was something  
4           that I wanted to -- for her to see. She -- I made a  
5           record in my book of what the exhibit was in my  
6           notebook and I saw her take a record of it in her  
7           notebook.

8           Q     All right. Now, you describe propping, if it was an  
9           individual piece of paper you described propping it  
10          up I guess in a -- if it's in -- if it's in a folder  
11          for example?

12          A     Yes.

13          Q     And you say Kim Seeling would come by and take that  
14          document away?

15          A     Yes.

16          Q     Did you actually witness her taking the document  
17          away?

18          A     Yes, I did.

19          Q     All right. And that's in every instance when it was  
20          a document you were involved in?

21          A     Yes, I did.

22          Q     All right. So you actually found the document?

23          A     In effect, yes.

24          Q     And then you would somehow contact Kim -- would you  
25          make a signal to her or would she just come by?

26          A     No, we were -- she was working her way through the  
27          facility and I was just waiting for her to get to

1 us.

2 Q All right. And so, describe to us how that  
3 interchange happened.

4 A We, for example, the first room we -- we searched  
5 was the office just off the main area. I believe it  
6 had a desk and there was a laptop and a couple of  
7 filing cabinets. So, myself and Larry Young  
8 searched that area and where I identified exhibits I  
9 would -- I would label them. I believe I had post-  
10 it notes or something that I was flagging items as  
11 well and Kim eventually at some point came into the  
12 room when we were at, you know, however far along in  
13 the search I don't -- I don't recall, and I would,  
14 for each exhibit, I would go up to it and say, This  
15 one, and she would have me read off the exhibit  
16 number and give me the name of what I believed it  
17 was, and I would record that identification, like,  
18 Blue folder containing whatever, and I would record  
19 that in my book. And she -- I don't know if she  
20 recorded the exact words I used, but that was my  
21 understanding was that was what she was doing.

22 Q All right. And so, when you said you had a label, I  
23 believe you described it as, that you were given by  
24 -- given -- Ms. Seeling gave you these labels, were  
25 they identified in any way? Was there anything  
26 unique about any of the labels?

27 A The original intent was that each inspector would

1           have a set of labels with numbers and each number  
2           would be proceeded by the initials of the inspector.

3       Q     Okay. You say the "original intent"?

4       A     Yes.

5       Q     So, can you describe what actually happened then?

6       A     When Kim gave me my set of labels, she gave me some  
7           labels that were labelled with LY and a number  
8           indicating Larry Young --

9       Q     Okay.

10      A     -- and she asked me to use up those numbers prior to  
11           moving onto SJ numbers.

12      Q     All right. So, the original idea was that LY would  
13           refer to Larry Young?

14      A     Yes.

15      Q     But Ms. Seeling -- but you were given those labels  
16           for your use at any rate?

17      A     Yes.

18      Q     All right. So, some of the documents you seized  
19           would have a LY preface?

20      A     Yes, they would.

21      Q     All right. And if you can just describe a little  
22           bit more about how -- what happened with the  
23           documents from the time that you found them to the  
24           time that they were taken away?

25      A     As I said, I would have indicated to Ms. Seeling my  
26           description of the document and the exhibit number  
27           that I had assigned to it, and I saw her -- I

1 believe she was recording that information in her  
2 notebook. She would then take an exhibit bag and  
3 put it in an exhibit bag and then put it in a -- I  
4 can't recall whether she had the -- she had some  
5 large banker boxes. I can't recall if she had those  
6 with her then or she took the bag and put it outside  
7 of my view. I don't -- I don't recall.

8 Q All right. So, did you see the portion of the  
9 transaction where she actually put the item into a  
10 bag?

11 A Yes. And in some cases she would indicate that she  
12 was grouping documents.

13 Q I'm sorry, she was what?

14 A Grouping things.

15 Q Oh grouping.

16 A And assigning it one number.

17 Q All right. And so, how long were you at the  
18 location doing these sorts of transactions?

19 A I believe it was about 18 hours.

20 Q All right. And this began on what date?

21 A July 15th.

22 Q Okay. And so, did it carry over to July 19th?

23 A I'm trying to think. It was 18 hours through, so, I  
24 could refer to my notes and give you the exact date  
25 and time if Your Honour prefers. My memory ...

26 MR. BUCKLEY: If it's relevant, I have no  
27 objection.

1 Q MR. BROWN: If you will take a quick look  
2 at those.

3 THE COURT: If you consider it relevant,  
4 fine. Those are the notes that you said you took at  
5 the time?

6 A Yes.

7 THE COURT: All right. And then you --  
8 then you transcribed them shortly thereafter and you  
9 have not made any changes or alterations to them  
10 since then?

11 A They haven't been transcribed or at least I don't  
12 have a transcription here. I have my original  
13 notes.

14 THE COURT: All right. So, these are --  
15 let us go back then. These are different notes than  
16 you were referring to before?

17 A Yes.

18 THE COURT: When did you make these notes?

19 A These were made at the time of the search warrant.

20 THE COURT: All right. During the course  
21 of the time, I understand from what you said  
22 earlier, that it went on over a number of hours.

23 A Through 18 hours. Through the night.

24 THE COURT: All right. So, were you  
25 making those notes as you were going along?

26 A Absolutely, yes.

27 THE COURT: All right. And have there

1           been any alterations or amendments or changes to  
2           those notes that you made?

3       A     No, there have not.

4       THE COURT:                   All right.  Then you can refer  
5           to those notes for the purpose of refreshing your  
6           memory on the dates and times that the search  
7           warrant was executed.

8       MR. BROWN:                   Thank you, sir, and if I --  
9           I'll just indicate that the only reason I asking  
10          this witness this question is I know my friend may  
11          well raise continuity and I'm trying to button all  
12          of those possible issues down.

13      THE COURT:                   That is fine.

14      MR. BROWN:                   Thank you.

15      THE COURT:                   Go ahead, please.

16      A     It concluded July 17th at 4:00. a.m.

17      THE COURT:                   When did it start?

18      A     July 15th at approximately -- we arrived at the firm  
19           at about 10:10 and Health Canada employees did not  
20           begin their search until just after noon, I believe.

21      THE COURT:                   So that was 10:10 a.m.?

22      A     Yes.

23      THE COURT:                   And it concluded then July  
24           16th at what time?

25      A     July 17th at exactly 4:07 a.m. according to my watch  
26           at the time.

27      THE COURT:                   That is fine.

1 MR. BROWN: Sir, I wonder, I know I've  
2 already raised this. I wonder if we might take our  
3 adjournment at this point for lunch break.

4 THE COURT: All right. That is fine.

5 MR. BROWN: Thank you, sir.

6 THE COURT: All right. Before we do,  
7 anything further everyone, this caution is usually  
8 given just for cross-examination purposes, but I  
9 think in the circumstances, it is -- it is prudent  
10 to give this caution now, even though it is  
11 examination-in-chief, and that is that I am going to  
12 direct you not to discuss the evidence that you are  
13 giving with anyone --

14 A Yes, sir.

15 THE COURT: -- during the break, during or  
16 over the lunch hour, and that is of course to  
17 maintain the credibility of and weight that can be  
18 described to the evidence that you are giving. All  
19 right. So, I am assuming that you have already been  
20 fully briefed. It is not that we are -- we have the  
21 same witness on the stand for a -- for a week and I  
22 would want to have counsel to have the opportunity  
23 to be able to discuss ongoing matters. In these  
24 circumstances, I think it is best just to caution  
25 you not to discuss with anyone --

26 MR. BROWN: That's fair, sir.

27 THE COURT: -- unless you told me that you

1           needed to discuss anything.

2       MR. BROWN:                   I don't anticipate any --

3       THE COURT:                   All right.

4       MR. BROWN:                   -- particular requirement,  
5           sir.

6       THE COURT:                   Okay. So, you understand that  
7           caution?

8       A     I understand, Your Honour.

9       THE COURT:                   Okay. Thank you.

10      MR. BROWN:                   Thank you, sir.

11      THE COURT:                   All right. In that case, we  
12           will stand adjourned then until 2:00 this afternoon.

13      THE COURT CLERK:             Order in court. All rise.

14           Court stands adjourned till 2:00 p.m.

15      THE COURT:                   Thank you.

16      -----

17      PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

18      -----

19

20      \*Certificate of Record

21           I, Jillian Fox, certify this recording is a record  
22           of the oral evidence of proceedings in the Criminal  
23           Court, held in courtroom 413, at Calgary, Alberta,  
24           on the 13th day of March, 2006, and I was in charge  
25           of the sound-recording machine.

26

27

1 \*March 13, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT CLERK: Calling Synergy Group of  
5 Canada and TrueHope Nutritional Support.

6 MR. BROWN: Thank you, sir.

7 Sir, recall Sandra Jarvis.

8 (WITNESS RETAKES THE STAND)

9 THE COURT: Go ahead, please.

10 MR. BROWN: Thank you, sir.

11 Q MR. BROWN: Now, Ms. Jarvis, before the  
12 break we were just getting into a search that you  
13 were involved in and just to go back a couple of  
14 steps, the search took place at, can you tell us the  
15 location again?

16 A It's 680 North 300 East, Raymond, Alberta.

17 Q Okay. And this is the location that you conducted  
18 the search based on the search warrant that you had  
19 obtained?

20 A Yes.

21 Q All right. I'm going to start by showing you a  
22 document. This one is marked LY-111 and we're going  
23 to bring that up to you. Please take a look at that  
24 document?

25 A Yes.

26 Q Do you recognize that document?

27 A Yes, I do.

1 Q Now, can you just tell us a little bit about the  
2 envelope that document was in first?

3 A This is a -- during the search, I was the one who  
4 identified this particular document to Kim Seeling  
5 as a proposed piece of evidence. She, once I  
6 identified it to her, she seized the exhibit and  
7 placed it in this envelope.

8 Q All right. And this is a document, what's the  
9 number on that document?

10 A The number I placed on it is LY111.

11 Q Okay. And there's a page number. What's the page  
12 number?

13 A Are you referring to the stamped --

14 Q Right, I'm sorry, in fact, if you could describe  
15 what that is, please?

16 A It's got a stamp number 000257. It's my  
17 understanding that during cataloguing of the  
18 exhibits other inspectors stamped individual pages  
19 so that there's a -- there was a record of each page  
20 seized during the warrant execution.

21 MR. BROWN: Now, sir, as I understand, my  
22 friend is not -- I should restate it. My friend  
23 will continue to have some argument with respect to  
24 continuity, so, I am going to again ask that each of  
25 these exhibits be marked as an exhibit for the  
26 purposes of identification.

27 MR. BUCKLEY: But Your Honour, if it's any

1 help, I indicated to my friends, I'm not taking an  
2 issue with the continuity during the search, so, I'm  
3 hoping that we don't have to spend time on that. My  
4 issue of continuity is after the search.

5 MR. BROWN: Right.

6 MR. BUCKLEY: So, I agree with my friend  
7 proposing we mark them for identification.

8 MR. BROWN: Right.

9 MR. BUCKLEY: But I'm hoping that we can  
10 move along --

11 MR. BROWN: I don't intend --

12 MR. BUCKLEY: -- at a brisker pace.

13 MR. BROWN: Right. I don't intend to have  
14 my witness go through the process of telling us what  
15 the LY number means on each of these documents, just  
16 for the first one, and then thereafter, she'll  
17 presumably just deal with it on a rather quick  
18 basis.

19 THE COURT: That's fine.

20 MR. BROWN: Sir, and I do have a copy of  
21 this document for the court as well.

22 THE COURT: All right.

23 MR. BROWN: Thank you.

24 THE COURT: So, Exhibit 'B' For  
25 Identification is the document identified as LY111.

26

27 \*EXHIBIT 'B' For Identification - Document labelled:

1 \*Number of Bottles Ordered, dated March 5, 03, New  
2 \*Participants, Old Participants, also labelled LY111 and  
3 \*numbered 000257

4

5 MR. BROWN: Thank you, sir.

6 Q MR. BROWN: So, the next document is  
7 marked LY112.

8 A Am I to open it?

9 Q Yeah, if --

10 MR. BROWN: Madam clerk, have you got some  
11 scissors?

12 A Break the seal? It's an exhibit labelled LY192 --

13 Q MR. BROWN: Yes.

14 A -- and it is a document I seized during the  
15 execution of the warrant on July 15th.

16 Q All right. And what is it that this document  
17 describes?

18 A It appears to be an e-mail from a -- possibly a  
19 billing service to astephan@truehope.com to a  
20 customer, Anthony Stephan, Box 1254, Cardston,  
21 Alberta, and it shows a payment made of \$298 and  
22 appears to be payment for a -- payment to a domain  
23 register service for the maintenance of the domain,  
24 empowerplus.ca.

25 MR. BROWN: So, this is several pages  
26 marked.

27 Q MR. BROWN: Ms. Jarvis, could you take a

1 look at the number near the middle of the top  
2 please?

3 A Yes. It's been stamped number 006841 through to  
4 006854.

5 Q All right.

6 MR. BROWN: Sir, and I'll ask that this be  
7 marked as the next exhibit for identification.

8 A And actually I see now that there are -- it's a  
9 payment for additional domains. Would you like me  
10 to read those out?

11 Q MR. BROWN: No, that's fine. Thank you.

12 THE COURT: All right. Exhibit 'C' for  
13 Identification purposes will be the exhibit that  
14 will be identified as LY192 which is document  
15 reference numbers 006841 to 006854.

16

17 \*EXHIBIT 'C' For Identification - E-mail from Maximum ASP  
18 \*Billing, labelled LY192, pages numbered 006841 to  
19 \*006854, sent Thursday, October 31, 2002 to  
20 \*astephan@truehope.com containing pages with  
21 \*UNiCDomains.com as a header

22

23 THE COURT: Is this a copy for me?

24 MR. BROWN: Yes, it is, sir. Sir, I'll  
25 just indicate that I've taken this manilla folder  
26 out of a plastic bag. Again, sir, this is a copy of  
27 a number of documents in succession. I'm going to

1 ask that they be marked as a single exhibit again.

2 THE COURT: Give me the numbers.

3 A It reads LY194-2 and it's a folder titled "orders,  
4 Jan. 03".

5 Q MR. BROWN: Okay. And if you could just  
6 flip to the next page.

7 A The first page in the folder?

8 Q Yes, at -- yes, that's right. Thank you. And just  
9 tell us first of all, is there a date on that  
10 document?

11 A Yes, it's 02/01/03.

12 Q All right. And what does -- what's written near the  
13 top of the left-hand side?

14 A It says: "number of bottles ordered".

15 Q All right.

16 A And it -- there are two columns, one says "new  
17 participants" the other "old participants" and there  
18 are numbers up to 33 in the column and under various  
19 numbers there is a number identified.

20 Q Now, this --

21 A I'm not sure how to describe that.

22 Q No, that's fine. If there's -- this document starts  
23 at 006974.

24 A Yes.

25 Q Could you please go to 006979? Do you see where I'm  
26 at there?

27 A Yes.

1 Q And see at the top left, can you see what --

2 A Yes.

3 Q -- can you tell us what it says there?

4 A It says "view orders for 1/6/2003".

5 Q And under that there is a series of or a list of  
6 names with a number?

7 A Right there's a --

8 Q Right.

9 A -- there are various columns. There's a number  
10 beside which -- each of which is a name and a total  
11 dollar value, another column titled "handling",  
12 another column titled "discount", another column  
13 titled "subtotal", and additional columns for -- for  
14 tax and total price, US and Canadian.

15 Q All right. And so just to be clear, this is a kind  
16 of document that you -- or this is one of the  
17 documents rather, that you seized at the TrueHope  
18 site in Raymond?

19 A Yes, it is.

20 MR. BROWN: Now, sir, this is, as I said a  
21 fairly significant number of documents. It runs  
22 between number 006974 to 007152. I am seeking to  
23 have those entered as a single exhibit for the  
24 purposes of identification.

25 THE COURT: Did you say 7152?

26 MR. BROWN: 7152, yes.

27 THE COURT: Mr. Buckley.

1 MR. BUCKLEY: I have no objection to it  
2 being entered as a group as just I understand it was  
3 seized as a group, so.

4 THE COURT: All right. Then Exhibit 'D'  
5 For Identification purposes will be those documents  
6 that have been indexed and catalogued as 006974 to  
7 007152.

8

9 \*EXHIBIT 'D' For Identification - Manilla file folder  
10 \*labelled LY194-2 and Orders Jan. 03 containing pages  
11 \*stamped 006974 to 007152

12

13 MR. BROWN: Now, sir, I have a copy of all  
14 of those documents for the court as well. They are  
15 not clipped together however.

16 THE COURT: Thank you.

17 Q MR. BROWN: Ms. Jarvis, (INDISCERNIBLE).

18 A This is exhibit labelled LY194-3.

19 Q And can you just tell us what it reads on the flap  
20 of the folder?

21 A The folder name is "orders, Feb. 2003"

22 Q And the page number on the first page inside there?

23 A 007153.

24 Q And what's the title of the document?

25 A It says "money order statistics, February".

26 Q And if you could flip over to page number 007156, do  
27 you have that?

1 A Yes.

2 Q And the date of that document?

3 A Feb. 28 '03.

4 Q And the title?

5 A Number of bottles ordered.

6 Q And the two columns.

7 A New participants and old participants.

8 Q All right.

9 MR. BROWN: Sir, this is a group of  
10 documents the begins at 007153 and runs through to  
11 007324 and again, we're asking to have them marked  
12 as an exhibit, collectively.

13 THE COURT: All right. Exhibit 'E' will  
14 be those documents that are catalogued as 007153 to  
15 007324.

16

17 \*EXHIBIT 'E' For Identification - Manilla file folder  
18 \*labelled LY194-3 and Orders Feb. 2003, containing pages  
19 \*stamped 007153 to 007324

20

21 MR. BROWN: Sorry, sir, I was admonished  
22 earlier that people in the back row couldn't hear me  
23 and I was just checking to see if they were able to  
24 hear me this time.

25 Sir, with respect to the next document, LY194-  
26 4.

27 A It's a manila folder with exhibit number LY194-4,

1 folder name "orders March, 2003".

2 Q MR. BROWN: And if you could just turn to  
3 the first page inside that folder.

4 A Yes.

5 Q Is there a date on that page?

6 A March 31st '03.

7 Q All right. And the title of the document?

8 A "Number of bottles ordered".

9 Q And there is columns?

10 A Yes. Again, new participants and old participants.

11 Q All right. And the -- what is the page number of  
12 that?

13 A 007325.

14 MR. BROWN: Sir, and this particular  
15 document -- or sorry, this group of documents  
16 rather, runs through to page 007486. And again,  
17 we'll ask to have them entered as a single exhibit  
18 for the purpose of identification.

19 THE COURT: What is the last number again,  
20 0074 what?

21 MR. BROWN: Eight six.

22 THE COURT: Eight six.

23 A I just -- that's not the page I have here.

24 THE COURT: Well, what page do you have  
25 there?

26 A I apologize.

27 THE COURT: Well?

1 A I have 007660?

2 Q MR. BROWN: 007660?

3 THE COURT: You may have been handed more  
4 than one bundle.

5 MR. BROWN: It's possible.

6 A What number did you say you had?

7 Q MR. BROWN: 7486, I'm sorry, you have  
8 what?

9 A Seven -- I'll just go to that page and see what --  
10 after 7486 I have 7625 through to --

11 THE COURT: You may approach and check  
12 what she is looking at.

13 MR. BROWN: It looks like, sir, that part  
14 of the next exhibit probably got into this folder or  
15 more likely, vice-versa, when they were copied the  
16 one from this folder ended up in the other one. I'm  
17 wondering sir, if we could just have the ones marked  
18 to 7486 entered as an exhibit for identification and  
19 not the remaining -- the remaining documents.

20 THE COURT: Well, fine. Separate them out  
21 and we will pass them to the clerk then.

22 All right. Exhibit 'F' will be the documents  
23 catalogued as 007325 to 007486 and described as  
24 orders for March, 2003.

25

26 \*EXHIBIT 'F' For Identification - Manilla file folder

27 \*labelled LY194-4 and Orders March. 2003, containing

1 \*pages stamped 007325 to 007486

2

3

4 MR. BROWN: Thank you, sir. And the copy  
5 I'm handing up to you for your review, sir, ends at  
6 7486.

7 THE COURT: Thank you.

8 Q MR. BROWN: The next one I'm presenting,  
9 Ms. Jarvis, is 194-5 -- LY194-5.

10 A It's a manilla folder with exhibit number LY194-5.  
11 The folder's titled "April orders".

12 Q And the first page inside?

13 A 007487.

14 Q All right. And the date?

15 A April 30 -- 30th '03.

16 Q And the title of the document?

17 A It appears to be "bottle count".

18 Q And this one's a little bit different. Can you see  
19 under new participants there appear to be some names  
20 written under those.

21 A Yes.

22 Q So, we have page numbers 007487 to 007659.

23 A No.

24 Q Okay. There's a problem with that?

25 A The last page I have is 007624. I'll -- you said  
26 007659?

27 Q It's actually 7660, I'm sorry.

1 A This only goes to 7624.

2 THE COURT: All right. What do we have  
3 here, 007487 to 007660?

4 MR. BROWN: Yeah.

5 Q MR. BROWN: And what is the last page you  
6 have?

7 A 007624.

8 Q Right.

9 MR. BROWN: And sir, those are the  
10 documents that I'll ask to have entered.

11 THE COURT: Only to 007624?

12 MR. BROWN: Yeah. The ones that I pulled  
13 out of the last folder appear to be the ones that  
14 would have made up the end of that collection. But  
15 that's all right, sir, we'll just pull them out.

16 THE COURT: All right. Exhibit 'G' will  
17 be -- Exhibit 'G' For Identification purposes will  
18 be those documents catalogued as 007487 to 007624  
19 entitled April orders.

20

21 \*EXHIBIT 'G' For Identification - Manilla file folder  
22 \*labelled LY194-5 and Orders April, 2003, containing  
23 \*pages stamped 007487 to 007624

24

25 MR. BROWN: Sir, I've confirmed there's a  
26 copy for the court that ends at 007624.

27 Q MR. BROWN: I'm providing file number

1 LY194-6.

2 A It's a file folder exhibit number LY194-6. Title on  
3 the folder is "orders May '03".

4 Q Can I get you to turn in to the first page, please?

5 A First page number is 007661.

6 Q And the title?

7 A Bottle count.

8 Q Date?

9 A May 30, 2003.

10 Q And this one has -- appears to have a line partway  
11 down the new participants column?

12 A Yes. It, the title of the document is "bottle  
13 count" and it has the two columns, "new  
14 participants" and "old participants". Approx --  
15 below line -- line 19 under new participants a line  
16 is written and then the word "powder" is written on  
17 top of that line.

18 Q Okay. If you could just turn to page 007662, which  
19 should be the next page?

20 A Yes.

21 Q And can you just tell me what that document says at  
22 the top, the title of the document?

23 A The title of the document is "view sales for  
24 5/30/2003".

25 Q All right. And there's a handwritten name?

26 A Yes. It's handwritten the name "Kaleen".

27 Q Kaleen. And if you'll turn to -- turn two pages to

1 007664, do you see that?

2 A Yes.

3 Q The handwritten name on the top of that document?

4 A Lindsay (phonetic).

5 Q And again, that's "view sales for 5/30/2003"?

6 A Yes.

7 Q Flip two pages, please, 007666.

8 A Yes.

9 Q There's a handwritten name on that one?

10 A Yes, it says "Buffy".

11 Q All right. And if you could take and turn, I think  
12 it's three pages this time to 007669.

13 A Yes.

14 Q And is there a handwritten name there?

15 A Yes, it says Kaleen Hardy.

16 Q All right. And that's, again the document -- the  
17 document is titled "view sales for 5/29/03"?

18 A Yes.

19 Q And if you'll turn two pages please, 007671.

20 A Yes, it has a handwritten name "Lindsay".

21 Q Okay.

22 A And it's titled "view sales for 5/29/2003".

23 Q All right. And if you could turn to page 007677, do  
24 you have it?

25 A Yes.

26 Q And this has a slightly different look to it. Can  
27 you tell me what's on the top left-hand corner?

1 A It says -- it says -- it says "view sales" in the --  
2 in the far top left.

3 Q And below that?

4 A But below that it says "TrueHope support".

5 Q All right. And then is there a handwritten name?

6 A Kaleen Hardy.

7 Q Again, and the title of the document is "view sales  
8 for 5/28/03"?

9 A Yes.

10 Q (INDISCERNIBLE). And if you could look at document  
11 number 00682, do you have that page?

12 A Yes.

13 Q And this document is titled "view sales for  
14 5/28/2003"?

15 A Yes.

16 Q And there's some handwritten words, can you read  
17 that to us?

18 A "Totals are A-okay", and I believe that's a happy  
19 face (INDISCERNIBLE) --

20 Q Yes.

21 A -- and it says "Buffy", I believe it says  
22 "LIVINGROOM".

23 Q All right. And if you could look at document number  
24 007688?

25 A Yes.

26 Q And this, "view sales for 5/27/2003"?

27 A Yes.

1 Q And there's some handwritten notations?

2 A At the very top next to words view sales it says  
3 "totals are fine" and then a happy face, I believe.  
4 It says: "numbers 1007032 plus number 1007045 are  
5 cancellations and I have attached adjust order  
6 papers". And then the name it looks like -- it  
7 looks like just "Buff" to me, and then "LIVINGROOM".

8 Q Okay.

9 MR. BROWN: All right, sir. I'm going to  
10 ask that this collection of documents again be  
11 entered as a single exhibit for identification  
12 starting at 007661 and going to 007834.

13 A Yes.

14 THE COURT: All right. Exhibit 'H' For  
15 Identification purposes will be those documents  
16 catalogued as 007661 to 007834, and described as  
17 orders May '03.

18

19 \*EXHIBIT 'H' For Identification - Manilla file folder  
20 \*labelled LY194-6 and Orders May, 2003, containing pages  
21 \*stamped 007661 to 007834

22

23 Q MR. BROWN: Now, just -- I may have asked  
24 you this already but these are documents that you  
25 actually collected yourself, correct?

26 A Which documents are you referring to?

27 Q All of the documents --

1 A Oh, yeah --

2 Q -- that we've just --

3 Q -- yes, Your Honour.

4 Q -- entered? Yes. And you passed those documents on  
5 to Kim Seeling?

6 A Yes, I did.

7 Q All right. Now, once -- rather, with respect to the  
8 search, did you have any other role with respect to  
9 the search while you were at the Raymond location?

10 A I was the one who read -- identified myself and --  
11 and the fact that we had a warrant to search the  
12 premises signed by a judge and I indicated what we  
13 were authorized to search for and what evidence we  
14 presumed was there.

15 Q All right. And after the search was complete did  
16 you have any contact with the documents that were  
17 seized at the location?

18 A I -- I briefly helped out with the stamping for --  
19 of the pages, for approximately one hour when  
20 someone got tired at the office. I don't remember  
21 which specific documents I stamped.

22 Q Can you describe how the stamping -- how and where  
23 the stamping occurred?

24 A The stamping took place in a -- an office adjacent  
25 to the main office area in our Burnaby office at  
26 3155 Willingdon Green.

27 Q All right. And so, you would, obviously, you

1 travelled to Burnaby and you were -- you  
2 participated in the stamping of the documents.

3 A Yes.

4 Q What was the specifics though of how those documents  
5 were treated while you were there?

6 A As far as my only participation goes, I recall being  
7 asked to come in and assist being presented with I  
8 believe it was file folders of documents that I was  
9 stamping, and I was given the direction by Kim  
10 Seeling to stamp each and every page so it had its  
11 own distinct number.

12 Q All right. Okay. After the conclusion of the  
13 search and after your involvement with the documents  
14 themselves, what other participation or action did  
15 you take with respect to either Synergy or TrueHope?

16 A I did -- I did request some importation documents  
17 from Canada Customs Revenue Agency for the periods,  
18 I believe it was January, 2003, to -- up unto the  
19 date - I can't remember - it's -- it's date for  
20 which the charges cover, I can't remember what the  
21 dates are now.

22 Q Okay.

23 A And those documents were provided to me. Miles  
24 Brosseau picked them up from Tom Vanhusen (phonetic)  
25 and -- and mailed them to me. I also had Elaine  
26 Ridulsky (phonetic), an inspector in our Edmonton  
27 office, printout copies of websites that had been

1 identified as I believe to be associated with  
2 TrueHope and Synergy. I directed her as to which  
3 websites to look up and directed her as to which  
4 pages I wanted printed -- printed, and the -- the  
5 extent of the printing to do.

6 Q All right. And when you say "you directed her",  
7 what do you mean by you directed her? What actually  
8 occurred?

9 A I was working in the adjacent cubicle preparing  
10 information for the brief and I was looking over her  
11 shoulder telling her what pages to -- saying, you  
12 know, print this page, make sure you link to this  
13 page and print this page. I also directed her at  
14 that same time to print who has registration records  
15 for the sites. I wanted to be sure I had those  
16 documents for the same day. And when she had  
17 printed them I was simultaneously collecting them  
18 from the printer and verifying that the contents of  
19 those documents are what I wanted to include as my  
20 exhibit.

21 Q And so, Elaine Ridulsky --

22 A Yes.

23 Q -- she was actually taking direction from you, but  
24 -- and then actually operating the -- was it a  
25 computer she was operating?

26 A The computer.

27 Q And so you are I think how -- describe your physical

1 location, how are you -- how are you situated?

2 A If -- if she were here on her computer we have a  
3 partial divider. The upper half is glass, so, I  
4 would have been able to see what she was doing and I  
5 was coming back and forth and, you know, making sure  
6 she was doing what I wanted, and the printer was  
7 probably five steps away. So, when she indicated  
8 she had finished I would go and pick up the  
9 document, verify it was okay, and I was actually  
10 assigned an exhibit number to it as I received it.

11 Q All right. And were you actually observing or able  
12 to observe what was on the computer screen at the  
13 time?

14 A At various times, yes.

15 Q And do you know which websites it was that you had  
16 asked her to look at?

17 A Yes. I believe there were eight, I think:  
18 www.truehpo.com; www.teretz.ca; bipolar.ca;  
19 manicdepressive.ca I believe; schizoeffective.ca, I  
20 believe it's spelled S-C-H-I-Z-O and the word  
21 "effective" all -- all running together;  
22 empowerplus.ca I believe was one of them;  
23 empowerplus.bus; and I think the last one was  
24 empowerplus.net. That's my recollection.

25 Q All right. Thank you. Okay. So, after you had  
26 involved -- been involved in that particular set of  
27 searches what else did you have as an involvement in

1           this case?

2           A     Well, I had reviewed information that had been  
3           obtained by the RCMP technical crime unit. They had  
4           -- my limited understanding of technical things,  
5           they had captured what they called "ghost images" of  
6           the hard drives from the computers at the -- the  
7           search site. I had identified, at some point, to  
8           Constable Lafontaine (phonetic), who was in  
9           possession of those images, that I had wanted to  
10          search certain computers and I was interested in  
11          getting any e-mail text or e-mail or text files from  
12          those computers. And he did at some point provide  
13          me with disks with that information on it.

14          Q     All right. Now, I'm not sure if I asked this  
15          question, if I can -- sorry, I've got to take you  
16          back just a moment to your involvement with Elaine  
17          Ridulsky. You had her search websites?

18          A     Yes.

19          Q     Is that right?

20          A     Or print them out.

21          Q     Print them out. Okay. And did you take any  
22          particular steps though yourself at that time?

23          A     I -- I -- I took -- what I did is I, on a separate  
24          date, I believe it was mid-December, 2003, I used a  
25          program called Teleport Pro to access the websites  
26          that Elaine had printed for me in addition to the  
27          site truehope.ca, I believe that was one additional

1 one. I used that program to -- what the program's  
2 supposed to do is capture a duplicate image of -- of  
3 the website that you're searching and -- and I  
4 captured it to a CD-Rom and with that, what you're  
5 able to do is view the image of the website that you  
6 captured on that specific day. I don't know if I'm  
7 making sense?

8 Q It makes sense. Do you know what a WHOIS search is?

9 A Yes, I did.

10 Q And have you ever conducted a WHOIS search?

11 A Yes. On the same day I captured those images I also  
12 did a WHOIS registration searches for those websites  
13 and printed them out.

14 Q And can you just --

15 A -- and labelled them.

16 Q -- tell us what those. I'm sorry.

17 A What the websites were?

18 Q No. What -- what is a WHOIS search?

19 A A WHOIS search, in my knowledge when -- when  
20 somebody registers a domain name, which is a unique  
21 address for -- for an internet site, that  
22 information is provided to a domain registrar and  
23 they keep records of the registrants of domains in  
24 WHOIS database servers and those database servers  
25 are accessible to the public to do searches to find  
26 out who registered a specific domain name.

27 Q All right. Do you recall doing a WHOIS search for

1 truehope.com?

2 A Yes, I do.

3 MR. BROWN: Sir, and I'd --

4 MR. BUCKLEY: I'm going to object to you  
5 entering --

6 MR. BROWN: (INDISCERNIBLE) you see this?

7 MR. BUCKLEY: No, I don't have that I don't  
8 believe.

9 MR. BROWN: Sir, my friend advises that he  
10 has not received those as part of disclosure and I  
11 apologize. I was under the impression he had, so,  
12 we will not be seeking to enter those, at this time.

13 Q MR. BROWN: If you could just tell me a  
14 little bit more about the Teleport Pro program and  
15 what you did with that one.

16 A It's been a while since I have used it, but the  
17 Teleport Pro, using the help menu on the Teleport  
18 Pro program, which I had had my supervisor purchase  
19 specifically for this case, one is able to pull up a  
20 website and indicate that you want, in my case, I  
21 asked for a duplicate copy of the website and its  
22 directory, and it's as simple as clicking the "run"  
23 button and it captures that information and you can  
24 save it to your hard drive, to a disk, as I did in  
25 the case -- this case.

26 MR. BROWN: Can I just have a moment, sir?

27 Q MR. BROWN: All right. After you did the

1 Teleport searches, what other activity did you  
2 engage in with this -- with respect to this matter?

3 A Well, as I said, I -- I reviewed the information  
4 provided on the -- provided to me by Constable  
5 Lafontaine and I selected certain e-mails and  
6 records on those disks that I wanted to use as  
7 evidence. It's my understanding that we're not  
8 submitting those, so, I didn't review that --

9 Q That's all right.

10 A -- in all honesty, Your Honour.

11 Q That's fine. Okay. That's fine.

12 MR. BROWN: Thank you, sir. I believe  
13 those are all the questions I have for this witness.

14 Q MR. BROWN: Answer any questions my friend  
15 might have.

16 THE COURT: Thank you.

17 Cross-examination Mr. Buckley.

18 MR. BUCKLEY: Thank you, Your Honour.

19 A Could I ask for some more water, Your Honour, before  
20 we get started? Thank you.

21

22 \*Mr. Buckley Cross-examines the Witness

23

24 Q MR. BUCKLEY: So, Ms. Seeling (sic), if I  
25 understand your evidence, you basically became the  
26 lead investigator on this file?

27 A That's right.

1 Q Okay. And I was disclosed a prosecution brief that  
2 indicated that you prepared that brief?

3 A Yes, I did.

4 Q So, am I correct then when I assume that to prepare  
5 the prosecution brief you had to familiarize  
6 yourself with Health Canada's file in this matter?

7 A Yes, I did.

8 Q And in fact, you were the one that decided what  
9 charges to recommend.

10 A With assistance from various counsel, yes.

11 Q Okay. Your friend, Scott Couper.

12 A Yes. Scott Couper and Michelle Boudreau (phonetic).

13 Q Now, the prosecution brief is something that you  
14 forwarded to the Crown counsel office or Department  
15 of Justice?

16 A Not me personally, no.

17 Q Okay. So, you just forwarded it to some other  
18 people in Health Canada to sign off on?

19 A I -- I was living in Edmonton at the time and I had  
20 flown to Burnaby a few days before I completed the  
21 brief. I was getting a bit of assistance there with  
22 the copying and whatnot, and I left the brief in  
23 Dennis Shelley's office in the evening. I believe  
24 it was -- it was the May long weekend so it was the  
25 Monday evening of the May long weekend, and I left  
26 him with -- with the brief, with the request that he  
27 obtain copies and forward it to the necessary

1 parties.

2 Q Did anyone assist you putting the prosecution brief  
3 together?

4 A Yes. I had input from various parties. I can't  
5 recall specifically if Scott Couper assisted. I  
6 know Michelle Boudreau assisted me in the sense of,  
7 you know, is this the sort of thing I put in; is  
8 this the sort of stuff I leave out; or, what format  
9 should it take, that sort of thing. I also got  
10 assistance from, I can't recall if my supervisor or  
11 operations manager assisted me, but there were  
12 various meetings with personnel in Ottawa as well  
13 and there were comments, you know, that presumably,  
14 I can't recall specifically, but I believe helped me  
15 in putting it together.

16 Q Okay. Who decided what went in and what didn't go  
17 into the prosecution brief?

18 A In terms of evidence?

19 Q Yes.

20 A What -- I believe it was -- I didn't review the  
21 evidence. I was just given the exhibit list by Kim  
22 Seeling. It's my understanding that she and  
23 Michelle Boudreau went through the evidence and made  
24 the decision.

25 Q I just want to make sure that I understand this.  
26 So, you didn't actually review the evidence.  
27 Michelle Boudreau and Kim Seeling reviewed the

1 evidence and then basically told you what to put in?

2 A I thought you meant, you know, what evidence to  
3 submit to counsel, like you know, what --

4 Q Yes. That is what I meant actually.

5 A Okay. So --

6 Q So, I'm trying to figure out --

7 A -- the table of exhibits that you see in the brief  
8 that is -- the decision as what's -- as to what's in  
9 those tables, it's my understanding it's Kim Seeling  
10 and Michelle Boudreau. I reviewed paper copies of  
11 selections of that evidence and those -- those are  
12 the ones that I commented on in the brief.

13 Q Okay. And just let's help the court out because the  
14 court hasn't seen --

15 A Mm-hm.

16 Q -- the prosecution brief and won't see the  
17 prosecution brief, but, there's some tables. So,  
18 for instance, there would be a table saying for  
19 count 1, These are the exhibits we've seized that  
20 are relevant to count 1, is that correct?

21 A Yes.

22 Q And you're telling me that it was Michelle Boudreau  
23 and Kim Seeling who had put a table like that  
24 together to decide what's relevant to a specific  
25 count?

26 A That's my understanding, yes.

27 Q Okay. And you would agree with me that basically,

1 most of the documents in tables were not included in  
2 the prosecution brief?

3 A I -- I'm not sure I understand. The list was there.

4 Q The list, but the documents themselves, did you  
5 actually ever see the documents?

6 A No. I saw selections of them that were photocopied,  
7 ones that I -- I was basically working from the  
8 descriptions that Kim Seeling had entered into the  
9 tables, and there were certain documents that I had  
10 asked to view copies of because I -- I wasn't sure  
11 from the description as to what they were referring  
12 to.

13 Q Okay. So, you received these tables. Do you have  
14 any input into what documents make it into the  
15 prosecution brief or are you completely relying on  
16 Ms. Boudreau and Ms. Seeling?

17 A I reviewed the tables and I -- I didn't have any  
18 disagreement with the tables, but other than that I,  
19 you know, I -- I guess that's my answer. I didn't  
20 -- I didn't have any disagreement with what was in  
21 the tables as to how -- how they -- like you say,  
22 they identified count 3 and then they list.

23 Q It's okay. I'm still no clearer. I'm just trying  
24 to figure out who decided what goes into the  
25 prosecution brief and I'm no further ahead. Are you  
26 telling me that you decided -- you determined it, or  
27 didn't, or it was you and Ms. Boudreau, or you and

1 Ms. Seeling?

2 A Well, ultimately, I suppose I could not have, you  
3 know, I could have made the decision not to put them  
4 in. So, ultimately, it was my decision. But I was  
5 basing my decision on the information provided by  
6 Kim Seeling, which I understand from what she has  
7 told me, she had input from Michelle Boudreau.

8 Q Okay. Now, I want to move to the definition of  
9 "drug" just because for some people in this  
10 courtroom they will have never had to deal with that  
11 definition before, and they may not understand that  
12 it's actually a use-based definition. So, I'm just  
13 going to walk through that with you.

14 So, for instance, if somebody went to a grocery  
15 store and bought a clove of garlic, that's a food,  
16 you'd agree with that?

17 A I would agree with that.

18 Q Okay. Now, if they pressed the oil out of the  
19 garlic and put it in a bottle and call it "garlic  
20 seasoning for salad", and sell it, that's a food, do  
21 you agree with that?

22 A I would agree.

23 Q Okay. But that same garlic oil if they said, Well,  
24 this is to promote cardiovascular health and help  
25 prevent heart attacks, now they've made that a drug,  
26 would you agree?

27 A That's my understanding.

1 Q Okay. And that's because whether or not something's  
2 a drug isn't dependent on what it is, it's dependent  
3 on what claim is made, would you agree?

4 A Something can be a drug in the absence of claims as  
5 well.

6 Q Well, when I look at the definition of "drug" in the  
7 Act, it seems to be completely use based. Would you  
8 agree or not agree?

9 A Yes.

10 Q Okay. When you're referring to the Act, you're  
11 saying that Health Canada for policy reasons is  
12 deeming some vitamins and minerals to be drugs  
13 regardless of whether a claim is made?

14 A That was my understanding of the legislation at that  
15 time, yes.

16 Q Okay. But that's not in reference to the definition  
17 of drug as found in the Act.

18 A It's my understanding, based on I believe it's even  
19 in the Therapeutic Products Compliance Guide, that  
20 something can be a drug based on its pharmacological  
21 activity alone, even in the absence of claims.

22 Now, I wasn't the one who made the legislation  
23 and decided that vitamins and minerals would be  
24 regulated as drugs.

25 Q Okay. But this is important. So, because you are  
26 very familiar with the definition drug --

27 A Yes.

1 Q -- in Section 2 of the Act, correct?

2 A I know it.

3 Q Okay. But this is what you do full time.

4 A Yes.

5 Q Is you interpret the *Food and Drug Acts* in your job  
6 activities as an enforcement officer.

7 A Yes. And where -- where I'm unsure of the  
8 interpretation, I will get assistance from  
9 specialists.

10 Q Okay. But I just want to make sure that I  
11 understand. In this case, this product was being  
12 classed as a drug solely based on claims that were  
13 being made, would that be fair to say?

14 A I don't recall what the original classification  
15 said.

16 Q Okay. When you were dealing with it --

17 A Yes.

18 Q -- you were treating it as a drug, you told us that.

19 A Yes.

20 Q What was the basis for you treating it as a drug?

21 A For me personally, based on the Therapeutic Products  
22 Compliance Guide, vitamins and minerals are  
23 regulated as drugs even in the absence of claims.

24 Q Okay. So, I just want to be absolutely clear. Are  
25 you telling me that you were basing your decision  
26 that this was a drug based on the fact that it was  
27 vitamins and minerals and your Therapeutic Products

1 Compliance Guide, not Section 2 of the Act.

2 A Well, it goes part and parcel I suppose. You know,  
3 I don't know what my frame of mind was at the time.  
4 I do know that claims were being made for the  
5 product, that was my belief. Was -- was my decision  
6 based solely on vitamin and minerals being regulated  
7 as drugs without claims, I don't know. I -- I don't  
8 know what my mind set was.

9 Q Okay. So, you're telling me today you don't know  
10 whether it was just based on your Therapeutic  
11 Products Compliance Guide or based on claims?

12 A I don't know.

13 Q Okay. Because you were actually involved in turning  
14 product away at the border because in your mind it  
15 was a drug.

16 A Yes.

17 Q Okay. At that point you hadn't been looking at the  
18 websites or anything like that?

19 A That's true. I would say in that case, I -- I was  
20 dealing strictly with the Therapeutic Products  
21 Compliance Guide and it did not have it in as it  
22 should have.

23 Q Okay. When is the first time that you became aware  
24 of a therapeutic claim for this product?

25 A I can't say for certain when that date was. Like, I  
26 mean, you could go back to, I believe it was May of  
27 2001 or 2002 when I was asked to make the purchase,

1           whether or not that was in my mind at the time I did  
2           that first release or refusal, I can't remember, I  
3           think it was a refusal, I don't -- I don't know.

4       Q     Okay. Well, let me ask you this question. Were you  
5           aware of therapeutic claims in the year 2003 being  
6           made by either of the defendants?

7       A     2003, yes.

8       Q     Okay. When did you become aware in 2003?

9       A     It would have been at some point between the time I  
10          arrived in Burnaby, which was early May, and that's  
11          when I first found out about the investigation that  
12          was going on. It was between then and between the  
13          end of May when I was assigned the task of preparing  
14          for the ITO. I can't recall the specific date.

15      Q     Okay. Now, you understand that right now this  
16          product is being governed by the Natural Health  
17          Products Directorate, do you agree with that?

18      A     I don't know that this specific product is governed  
19          by it.

20      Q     Okay. Well, would you, in your opinion, is this  
21          product a natural health product as defined by the  
22          *Natural Health Product Regulations*?

23      A     Are -- are you speaking specifically of the  
24          ingredients of the product that we're talking about  
25          in this particular case or --

26      Q     Yes, 2003, the product that you've got marked as  
27          Exhibit 'A'.

1 A It's my understanding that it would actually be  
2 considered a new drug because of the presence of  
3 Boron, maybe one or other ingredients that may have  
4 been -- make it a drug, I can't recall.

5 Q Okay. Does that mean that the Natural Health  
6 Products Directorate wouldn't have the authority to  
7 authorize a clinical trial because it's a new drug  
8 not a natural health product?

9 A That's not my area of expertise, clinical trials,  
10 and ...

11 Q Okay. But you understand how things work in Health  
12 Canada. Isn't it fair to say that the Therapeutic  
13 Products Directorate took the lead in this case in  
14 saying that clinical trial couldn't run?

15 A I wasn't aware that they took the lead.

16 Q Okay. Who took the lead? Who made that decision?

17 A That a clinical trial --

18 Q Yeah.

19 A -- could not run?

20 Q That you're aware that clinical trial at the  
21 University of Calgary was shut down.

22 A So, you're asking who made the decision?

23 Q Yes.

24 A I don't recall.

25 Q Okay. But it was your department?

26 A Health Canada.

27 Q You don't want to break into a department, it was

1 just Health Canada?

2 A They're always changing the names of departments, I  
3 -- I -- don't recall.

4 Q Okay. So, let's -- let's talk about this new drug  
5 thing because you say this, if it has Boron, which  
6 Exhibit 'A' purports to have Boron, that it's a new  
7 drug?

8 A That's my understanding.

9 Q Okay. And you believed that back in 2003?

10 A Yes, I believe I did.

11 Q Okay. Well, you recommended that there be a new  
12 drug charge?

13 A Yes.

14 Q So, tell us again why exactly you felt this is a new  
15 drug just simply because Boron's in there?

16 A I believe there's a -- some type of classification  
17 or status assessment of the drug. I think it was  
18 Chris Turner (phonetic) with the Bureau of  
19 Pharmaceutical Assessment, I'm -- 2001, maybe 2002,  
20 I can't recall. I -- I know I mentioned it in the  
21 brief, and it was his assertion that it was  
22 considered a new drug. In addition, from my own  
23 knowledge I know that Boron was on what the  
24 Therapeutic Products Directorate called their "new  
25 drug list", is a list of substances that in my  
26 understanding there hadn't been a safe history of  
27 use in Canada.

1 Q Okay. So, just, I want to make it perfectly clear.  
2 Your understanding at the time was, this is a new  
3 drug?

4 A At -- in 2003 at some --

5 Q Right.

6 A -- point, yes.

7 Q Okay. Do you still believe it's a new drug?

8 A Are you talking about the current regulatory scheme  
9 or?

10 Q Well, yeah, today. I mean, would you -- would you  
11 believe it's a new drug today?

12 A I think given the formulation today and the -- my --  
13 because, you know, my -- my understanding of the  
14 Natural Health Products Regulations is not as  
15 strong. We're all learning as we go. I would  
16 submit a product classification to -- what I would  
17 typically do is, I submit the classification through  
18 our, oh, what do they call themselves now, a drug  
19 compliance verification investigation unit, and it's  
20 their job to submit that then to Natural Health  
21 Products Directorate and obtain a classification.

22 Q Okay. But I'm asking you right here, right now, do  
23 you believe, do you believe it's a new drug today?

24 MR. BROWN: Sir, I've given my friend a  
25 fair bit of leeway on this area, but frankly,  
26 whether it's a drug today or not is not, frankly,  
27 the question. We're dealing with a charge that

1 arises in 2003; we're in 2006, three years later.

2 My submission is, it's not a relevant question  
3 and it may actually ask expertise of this person  
4 that she doesn't have. But at any rate, it's not a  
5 relevant question. That's my submission, sir.

6 MR. BUCKLEY: Well, Your Honour, as far as  
7 expertise, this enforcement action was ongoing in  
8 part because this particular witness was classifying  
9 this particular substance as a new drug.

10 Now, as far as relevance, it's just part of my  
11 abuse of process kind of prodding and I don't think  
12 I've gone too far, and I think it's a valid  
13 question. So, I don't --

14 THE COURT: So, what --

15 MR. BUCKLEY: -- I don't really, actually  
16 don't understand why my friend would be objecting.  
17 This witness said she considered it a new drug back  
18 in 2003. I am just simply asking her if today,  
19 three years later, she would still consider it a new  
20 drug.

21 THE COURT: I think it is a valid  
22 question. It is relevant. Go ahead and answer the  
23 question.

24 A Can you just repeat it the way you were --

25 Q MR. BUCKLEY: Well, today, so, March 13th,  
26 2006, this product that you -- we have marked as  
27 Exhibit 'A', would you consider it today to be a new

1 drug?

2 A As I said, I would submit for a product  
3 classification because I would be unsure. I am not  
4 aware if the new drug list exists to this day. I  
5 don't know if that list is still valid. Prior, I  
6 knew it was valid prior to -- to the Natural Health  
7 Products Regulations coming to effect but I don't  
8 know if it's valid now and I certainly don't have  
9 the expertise to -- to know if Boron has a history  
10 of safe use in Canada or if, for that matter, if any  
11 of the other ingredients do.

12 Q Ms. Tarmassen (sic), it seems to me that you rely  
13 quite a bit on these policy documents that come out  
14 from time to time, is that fair to say?

15 A Yes.

16 Q That you place heavy reliance upon those to classify  
17 substances that you're dealing with, is that fair to  
18 say?

19 A Yes.

20 Q So, and today, you don't know if it's a new drug  
21 because you would want to rely on some policy  
22 documents and you haven't had the chance to review  
23 them.

24 A I would want to rely on some expertise from the  
25 Natural Health Products Regulations.

26 Q Okay. And you'd agree with me that actually there  
27 is some confusion and has been in the past several

1 years with Health Canada as to who's, you know, how  
2 these natural health products are going to be dealt  
3 with, would that be fair to say?

4 A In my experience there's been -- it's been an issue.

5 Q Okay. Well, I mean I'm looking at this file and in  
6 the ATI it seems to be like Philip Waddington and  
7 guys like that, they're arguing back and forth about  
8 who will even have the authority to approve a  
9 clinical trial for a product like this. You've seen  
10 those documents?

11 A I can't recall I've -- if I've seen the e-mails  
12 you're referencing.

13 Q I will refer you to them later. Now, when you guys  
14 are approaching this company, because you've talked  
15 about your intervention, but Health Canada was in  
16 communication with the defendants basically saying,  
17 Stop selling this product. If they weren't selling  
18 you guys could care a whiff if they had a DIN, would  
19 that be fair to say?

20 A Are you asking, we'd want them -- if we'd want them  
21 to stop selling it if it had a DIN?

22 Q No. In 2003, if they had stopped selling the  
23 product, we wouldn't be here would we?

24 A I would imagine not.

25 Q Okay. Because if you're not selling you don't need  
26 a drug identification number, is that fair to say?

27 A If you're not selling in Canada, yes.

1 Q Okay. And in fact, the reason we're here, this  
2 investigation you undertook consumed enormous  
3 resources for Health Canada, didn't it?

4 A Yes.

5 Q Would it be fair to say this might be the biggest  
6 investigation that you've ever been involved with,  
7 with Health Canada?

8 A It's my second.

9 Q Okay.

10 A So, it's the biggest.

11 Q Okay. But you've seen other investigations. This  
12 has been a huge file hasn't it?

13 A Yes.

14 Q And it very well might be the largest single  
15 investigation that the department you're with now  
16 has ever undertaken.

17 MR. BROWN: He's asking for some  
18 speculation there.

19 MR. BUCKLEY: Well, I --

20 MR. BROWN: And she says she's only --  
21 this is her second investigation, that's what she  
22 knows.

23 THE COURT: As her if she knows.

24 Q MR. BUCKLEY: Do you know?

25 A No, I don't know.

26 Q Okay. But clearly, this has consumed enormous  
27 resources for Health Canada?

1 A I would agree.

2 Q Okay. I mean I noticed after the search you guys  
3 had to keep going back to the justice to get more  
4 time because it was just consuming too much  
5 resources, would that be fair to say?

6 A Yes.

7 Q Okay. I mean like months and months were going by  
8 and you guys were still basically caught cataloguing  
9 the documents you seized.

10 A Yes.

11 Q Even today, some of this stuff hasn't been gone  
12 through, would that be fair to say?

13 A You'd -- Kim Seeling would know, I --

14 Q Okay. You don't know?

15 A I don't know.

16 Q Fair enough. But basically, you guys were taking  
17 these enforcement actions, the search and laying  
18 charges, because the company was not stopping to  
19 sell.

20 THE COURT: Sorry?

21 A Sorry?

22 THE COURT: I was not sure if I missed  
23 your answer or not?

24 A No, I didn't say anything yet.

25 THE COURT: Okay.

26 A It -- it's -- prosecution is our -- our -- our last  
27 enforcement tool, yes.

1 Q MR. BUCKLEY: Right. Okay. And now, we're  
2 actually back to the Therapeutic Products Compliance  
3 Guide because you guys have kind of stages you go  
4 through to get compliance, is that fair to say?

5 A Yes.

6 Q Okay. And the first stage is, is just basically ask  
7 people to stop, that's the first thing you do isn't  
8 it?

9 A It depends on the situation. The policy doesn't  
10 mandate that we do it in a -- in step-bys fashion  
11 that's identified in the -- in the policy. You're  
12 referring to the compliance enforcement policy?

13 Q Mm-hm.

14 A Policy 1. Yes.

15 Q Okay. But this company was asked to stop, weren't  
16 they?

17 A I can't recall the context of the --

18 Q Okay.

19 A -- warning letters.

20 Q But in any event, you'll agree with me, the search  
21 was undertaken in an effort to get this company to  
22 stop selling?

23 A Yes.

24 Q Okay. And these charges were laid in an effort to  
25 get the company to stop selling?

26 A Yes.

27 Q Okay. And would it be fair to say the seizures at

1 the border were also to try and prevent the company  
2 from selling because Health Canada, you told us, you  
3 were interpreting that as they were selling, it  
4 wasn't personal importation.

5 A Yes.

6 Q Now, am I correct in assuming that the mission of  
7 Health Canada is to protect the health of Canadians,  
8 is that a fair comment?

9 A I don't know the mission verbatim, but I believe  
10 that's in there somewhere.

11 Q Okay. Well, I mean I don't want us to speculate  
12 here. Because it sounds --

13 A I haven't read the mission lately.

14 Q Okay. But you go to work for Health Canada, right?

15 A Yes.

16 Q I mean, I'm hoping that's not an oxymoron, Health  
17 Canada. I mean you guys take protecting the health  
18 of Canadians seriously, don't you?

19 A Yes.

20 Q I mean, I'm assuming you guys talk about that at  
21 work?

22 A Yes.

23 Q We're here to protect the health of Canadians, fair  
24 to say?

25 A At times, yes.

26 Q Okay. If I was to say to you, Listen, Health  
27 Canada's mission is to protect the health of

1           Canadians, you wouldn't disagree?

2           A     No, I would not.

3           Q     Okay. Would it be fair to say that everything you  
4           do as a Health Canada employee kind of keeps the  
5           health of Canadians in mind?

6           A     That would be an underlying focus, yes, or I'm not  
7           sure how to word it. That -- that of course is kept  
8           in mind, yes.

9           Q     Okay. Could we go further and say the number one  
10          goal of Health Canada is to protect the health of  
11          Canadians, could you agree with that as a Health  
12          Canada employee?

13          A     Well, there are -- there are -- yes, and there are  
14          other, you know, it's Health Canada's, you know, we  
15          want to make sure that there's access to safe drugs  
16          that have been approved, that's all part of it too,  
17          and that goes back to protecting the health and  
18          safety of Canadians.

19          Q     Okay. I'm just -- I'm a little shocked that there  
20          was some hesitation with --

21          A     Well, I'm -- I'm --

22          Q     -- answering that question.

23          A     Yeah.

24          Q     So, am I wrong, is protecting the health of  
25          Canadians the number one goal, could we go yes or  
26          no, or it's too complicated?

27          A     I can't recall the exact mandate and mission, but I

1 would agree with what you're saying.

2 Q Okay. Now, there seems to be a bit of a  
3 bureaucratic slant here because you as an  
4 enforcement officer and looking at this file, rely  
5 heavily on policy documents?

6 A Yes, I do.

7 Q Okay. But those policy documents don't take  
8 precedence over the actual health of Canadians.

9 A You know, I -- I don't function in a policy role and  
10 I don't write the policies, and it's my  
11 understanding that those policies are written with  
12 that in mind.

13 Q Okay. Now, that's a little step, but you're saying  
14 you trust that people that write the policies have  
15 the health of Canadians in mind, is that fair to  
16 say?

17 A Yes.

18 Q Okay. You trust them. But you're not going to  
19 blindly follow policy if there's evidence in front  
20 of you that that could be harmful to Canadians, are  
21 you?

22 A If a situation were to arise again I have access  
23 through our coordination centre in Ottawa to  
24 specialists within Therapeutic Products Directorate  
25 and now, National Health Products Directorate, so, I  
26 wouldn't say that, you know, we blindly follow  
27 policy. Some things are clear and some things are

1 not, and when they're not we seek advice.

2 Q Okay. So, I mean I -- it sounds very positive. It  
3 sounds like if you're in a situation where enforcing  
4 policy, there's some evidence that that might cause  
5 health concerns, you will personally seek wider  
6 advice within Health Canada, is that fair to say?

7 A Yes.

8 Q I mean, Health Canada isn't this rigid policy  
9 monolith. It can consider things and flex and bend,  
10 would it be fair to say?

11 A I don't know if I can agree with that or not. If I  
12 --

13 Q Now, you don't have the background to look at a  
14 product like EMPowerplus and personally assess  
15 whether or not it's safe, would it be fair to say?

16 A No, I don't.

17 Q Now, you do know from your dealings with the file  
18 that Health Canada's plan in trying to remove this  
19 product from the market was for people in the  
20 TrueHope program to go back onto Health Canada  
21 approved pharmaceutical medications, do you agree  
22 with that?

23 A I don't know if that was Health Canada's plan or  
24 not.

25 Q Okay. Well, you're aware of the 1-800 crisis line  
26 that was set up when you guys started stopping  
27 product at the border?

1 A Yes.

2 Q Okay. You were aware that basically these  
3 counsellors were to tell people that they were to go  
4 back to their doctors, back to the hospital and get  
5 back on other treatments?

6 A I don't recall specifically if I was even told what  
7 these counsellors were explaining to people.

8 Q Okay. Now, this I find a little interesting because  
9 your department is seizing the product at the  
10 border, you told us that.

11 A In one instance I believe a shipment was seized.

12 Q Okay. Well, actually, didn't months go by where  
13 multiple shipments were seized?

14 A There was a recommendation of Customs that shipments  
15 be refused entry.

16 Q Okay. I'm sorry, and I used the wrong term, because  
17 when I said "seized" you thought Section 23 of the  
18 Act, actual seizing the product.

19 A Mm-hm. Yes.

20 Q So, let me move on. I'm sorry. The product was  
21 being turned back at the border on Health Canada's  
22 recommendation.

23 A The recommendation was that it was not allowed in  
24 the country and if Customs allowed it to be returned  
25 or what Customs does with it is up to them.

26 Q Okay. Fair enough. But you know, as a Health  
27 Canada employee, that when Health Canada recommends

1 to Customs that product like this be refused, Health  
2 Canada is expecting Customs to turn it back at the  
3 border and not letting it in Canada.

4 A Yes.

5 Q Okay. And there's no question, the purpose was, is  
6 to basically deny Canadians access to this product.  
7 You guys did not want it sold in Canada.

8 A I would agree that the -- the effect was that the  
9 people who are ordering it were denied access to  
10 their product.

11 Q Okay. And that's not a leap of logic. You stop it  
12 at the border and they're not going to get it,  
13 right?

14 A Right.

15 Q Okay. So, Health Canada was expecting that that  
16 would happen, correct?

17 A Yes.

18 Q Okay. And knowing that would happen, Health Canada  
19 set up a crisis line for these people to call.

20 A I believe that was their reasoning, yes.

21 Q Okay. It was even a toll-free number.

22 A I believe so.

23 Q Okay. When I look at the file, even calls to the  
24 Minister's office were just automatically referred  
25 to this crisis line.

26 A I'm -- I'm not aware of that.

27 Q Okay. So, you and your colleagues have stopped

1 access to the product, you know that there's this  
2 crisis line set up. Did you guys not get feedback  
3 from the crisis line as to how Canadians were  
4 reacting to what you were doing?

5 A I don't recall specifically. I -- I believe I heard  
6 people were upset about it and I might have heard  
7 that some people had trouble getting through and  
8 were unhappy with the responses they were getting,  
9 but I -- I can't recall, you know, whether I got an  
10 e-mail or -- or if I got a phone call from somebody,  
11 I don't recall specifics.

12 Q Okay. So, do you recall how you might have gotten  
13 this information that some people were upset?

14 A I can't recall.

15 Q Okay. But you're tell me you, for sure, didn't get  
16 a briefing on what was happening on the ground, so  
17 to speak, with this 800 line?

18 A We -- we had routine discussions about the case,  
19 people involved, and it -- it could have been that  
20 that was discussed there but I just don't recall.

21 Q Okay. I'm just trying to understand because I would  
22 like to think that if you're stopping access to a  
23 product for a mental -- people suffering from mental  
24 health issues, that you guys would want to know how  
25 that's affecting people that are denied access.  
26 Like, you're communicating to us, you guys didn't  
27 know that.

1 A I'm saying me personally down, you know, in the  
2 trenches so to speak. In Ottawa, I don't know what  
3 was occurring.

4 Q Okay. But it's your department that has told  
5 Customs to stop it at the border.

6 A Yes.

7 Q And you guys don't know how that's affecting  
8 Canadians?

9 A Well, as I said, I -- I mean it was -- I was aware  
10 that it was denied. People were denied access. I  
11 believe there were -- I believe I saw media -- there  
12 may have been some media exposure about it. I  
13 recall, I'm not sure if it was possibly Dan Stephan  
14 who on -- on the odd occasion would forward things  
15 either in the media or letters of complaint. I  
16 can't recall if they came directly to me or -- or  
17 they were forwarded by other individuals in Health  
18 Canada. I just -- I just don't recall specifics.

19 Q Okay. But you're in Burnaby at the time, correct?

20 A Back and forth I think.

21 Q Okay. But, you know, it's you and your fellow  
22 inspectors that have given the orders to Customs to  
23 stop the sale, correct?

24 A Yes.

25 Q And you guys are not being briefed on how that's  
26 affecting Canadians who are not getting the product.

27 A I don't recall any specific briefing about it, no.

1 Q And you didn't seek out that information?

2 A No.

3 Q Okay. I'm going to switch gears and go back to an  
4 earlier part of the investigation because Health  
5 Canada had prepared what's called a Health hazard  
6 evaluation of this product, is that fair to say?

7 A I believe so, yes.

8 Q Okay. Well, you would have reviewed that when you  
9 picked up the file?

10 A Yes.

11 Q Okay. And this is something that Health Canada does  
12 when it's not quite sure what to do with a product,  
13 is that fair to say? It's a step that helps  
14 investigator such as you?

15 A Yes.

16 Q Okay. Because you're not, you've told us you're not  
17 equipped to assess the risk of the product fair  
18 enough?

19 A Right.

20 Q Okay. So, it's referred off to another branch of  
21 Health Canada to say, Can you classify a risk here?

22 A Yes.

23 Q Okay. And so, this was done. It was sent off for a  
24 health hazard evaluation, correct?

25 A Yes.

26 Q Now, health hazard evaluations are not actually in  
27 the regulations are they?

1 A No.

2 Q Okay. They are just found in a policy document  
3 called Product Recall Procedures, would that be fair  
4 to say?

5 A I believe that's the document, yes.

6 Q Okay. I'm just going to show you a document --

7 MR. BUCKLEY: Your Honour, I have one for  
8 the court to refer to.

9 Q MR. BUCKLEY: So, I've just handed you a  
10 document called "Product Recall Procedures". Just  
11 have a look at that and tell me if you recognize  
12 that as the Health Canada document that basically  
13 sets out this health hazard evaluation process.

14 A Yes, I recall this, yes.

15 Q Okay. Well, you're familiar with this document  
16 because you work with documents like this all the  
17 time.

18 A Yes.

19 Q Okay. When you've told us about policy documents,  
20 this is the type of thing you're referring to,  
21 right?

22 A This is a procedural document not a policy document.

23 Q Okay. Now, you read the health hazard evaluation.  
24 There was one done by a Ms. (sic) Thea Mueller do  
25 you agree with that?

26 A I can't recall the name specifically --

27 Q Okay.

1 A -- for this particular one, but it sounds  
2 reasonable, I believe it was her.

3 Q Now, I'm going to refer you to page 5 of this  
4 document. We're in a heading, actually number 4,  
5 Health Hazard Evaluation and Recall Classification.  
6 And on page 5 there's, at the top of the page, the  
7 first full paragraph reads:

8

9 Any conclusion shall be supported as  
10 completely as possible by a  
11 scientific documentation and/or  
12 statements that the conclusion is the  
13 opinion of the individuals making the  
14 health hazard determination.

15

16 But then it goes on:

17

18 The recalling firm is given every  
19 opportunity to contribute to the  
20 information on which the health  
21 hazard evaluation is made by the  
22 Health Protection Branch who, on the  
23 basis of this determination, assigns  
24 the recall a classification, i.e.,  
25 Class I, Class II, or Class III, to  
26 indicate the relative degree of  
27 health hazard of the product being

1           recalled or considered for recall.

2

3           Now, you would have read this part of the policy  
4           document before?

5       A     Yes.

6       Q     Okay.  And so, when a health hazard evaluation is to  
7           be done, it's Health Canada's own policy to contact  
8           the firm involved and allow them to make submissions  
9           and it give information to Health Canada so that  
10          that can assist in preparing the health hazard  
11          evaluation.

12      A     That is done on occasion to my knowledge, yes.

13      Q     Okay.  Well, when I read this policy, when it says:  
14          "The recalling firm is given every opportunity to  
15          contribute to the information ...", I'm not reading  
16          the policy as, well, "sometimes".  It says: "... is  
17          given every opportunity ...".  Okay.  Now, you're  
18          saying that because you know in this case the  
19          Synergy Group of Canada or TrueHope Nutritional  
20          Support was not even told that health hazard  
21          evaluation was being performed.  You understand  
22          that?

23      A     I don't remember.

24      Q     You don't remember.

25      A     I don't remember.

26      Q     Okay.

27      A     It was prior to my involvement in the investigation

1 and I know I -- I did review the file in preparing  
2 the brief, but I don't recall.

3 Q Well, I can almost promise you, you'll be back  
4 tomorrow. So, I'm going to ask you to review the  
5 file tonight. On that question, I'm going to  
6 suggest to you that they weren't even told it was  
7 being done.

8 Now, whether or not they were told it was being  
9 done, you would agree that it's in violation of this  
10 policy if they're not asked to participate in the  
11 process.

12 A I would say it's contrary to the procedure.

13 Q Okay. So, Health Canada isn't a procedural  
14 monolith. Sometimes they deviate from policy.

15 A From procedure.

16 Q Procedure. Okay.

17 A I would agree with that.

18 Q So, now, Dr. Mueller, though or at least the health  
19 hazard evaluation classed this as what's called a  
20 Class II, do you recall that?

21 A Yes.

22 Q Okay. Now, some people won't understand what a  
23 class 2 is but it's found on page 3 of this document  
24 and I just want to make sure that we agree about  
25 what a class 2 health hazard is. And under section  
26 sub paragraph (i)(2) it says:

27

1           Class II is a situation in which the  
2           use of, or exposure to, a violative  
3           product may cause temporary adverse  
4           health consequences or where the  
5           possibility (sic) of serious adverse  
6           health consequences is remote.

7

8           MR. BROWN:                   Actually, sir, the word is  
9           "probability" not "possibility."

10          MR. BUCKLEY:                 Thank you, my friend's  
11          correct.

12

13                   ... or where the probability of  
14           serious adverse health consequences  
15           is remote.

16

17          Q     MR. BUCKLEY:           Now, is this, when you read in  
18           the health hazard evaluation, this is a Class II,  
19           that's what this means, is that fair to say?

20          A     That's my understanding, yes.

21          Q     Okay. Well, and when it's your understanding, I  
22           mean your job basically is sort out what to do with  
23           products in the marketplace based on risk  
24           evaluations, right?

25          A     Right. But I -- I'm having to make the assumption  
26           that Mueller or whoever else is doing the  
27           classification, when they say Class II that they're

1           also referring to the same information or  
2           definition.

3       Q     Okay. Well, are there other --

4       A     I'm not aware of any other ones, but ...

5       Q     Okay. Well, I just want to make sure if there's  
6           potentially a confusion in Health Canada, we should  
7           find out about this.

8       A     I -- personally I don't know what documents they use  
9           in the Therapeutic Products Directorate.

10      Q     Okay. So, just so I'm clear, so when you use,  
11           because you would have relied on the classification  
12           in the health hazard evaluation for your branch and  
13           you personally taking enforcement action?

14      A     Well, I mean, the products still didn't have a DIN  
15           regardless of whether, you know, it was Class II,  
16           Class III or not a hazard at all.

17      Q     Okay. So, just so I'm clear if this -- let's say  
18           this was a no hazard at, basically, a Class I  
19           situation, right?

20      A     Class III.

21      Q     Or, I'm sorry, Class III. So, if this is a Class  
22           III, no harm at all, you guys still would have  
23           organized this big search and laid charges?

24      A     I don't know.

25      Q     Well, you were the lead investigator for most of  
26           this time. You were the one that went through the  
27           work of setting up the search.

1 MR. BROWN: Well, sir, this is certainly  
2 entering the realm of speculation if I've ever seen  
3 it. He's asking, What would have happened if  
4 something different that didn't happen would have  
5 happened. That's essentially what that question is.  
6 That's speculation. He's saying, If she would have  
7 classified it as something else, what would have  
8 happened? Well, she didn't classify it as something  
9 else according to his examination, she classified it  
10 as a Class II, and then certain steps were taken.  
11 That's where we are. Asking this witness to  
12 speculate what might have happened otherwise, I  
13 would submit is ultimate (INDISCERNIBLE).

14 THE COURT: Actually, I will agree with  
15 that objection.

16 MR. BROWN: Thank you, sir.

17 THE COURT: You are asking her to  
18 speculate on the Class I.

19 MR. BUCKLEY: No, and fair enough.

20 Q MR. BUCKLEY: Now, but Ms. Jarvis, I want to  
21 clear up what you thought because you knew this was  
22 classed as a Class II by the health hazard  
23 evaluation.

24 A Yes.

25 Q But you're telling me you don't know if they use the  
26 same classification that you use.

27 A Well, I don't know.

1 Q Okay. So, when you get a health hazard evaluation  
2 that says Class II, you don't even know what that  
3 means?

4 A I think you initially asked me, Was it your  
5 understanding when you saw the -- the outcome of the  
6 health hazard classification as being a Class II,  
7 was it your understanding that it meant this? And  
8 I'm making the -- when I say, Yes, I'm making the  
9 assumption that we're all referring to the same  
10 documents. I mean, I -- I'm not there when Thea  
11 does the evaluation and I have never worked for the  
12 Therapeutic Products Directorate.

13 Q Okay. No, and I understand you can't say what they  
14 do, but I'm just driving home that you are  
15 communicating to us that when a health hazard  
16 evaluation such as the one done here says Class II  
17 that you're not sure if that even means what your  
18 procedure document says it is.

19 A I wasn't saying that I'm not sure. I used the term  
20 "it was my belief" that the Class II meant this, and  
21 I then I believe you questioned, why is that a  
22 belief, instead of you know for certain.

23 Q Okay. Well, I --

24 A I think that's what you were ...

25 Q -- I've read you this definition --

26 A Yes.

27 Q -- because I'm operating under the assumption that

1           when the health hazard evaluation says Class II,  
2           that's what it means.

3       A     I would agree that that's what you believe.

4       Q     Okay. Now, but you --

5       A     I'm not sure what we're --

6       Q     -- but you're not sure about that, right? When you  
7           say --

8       A     Well, I --

9       Q     -- Class II you're not sure that necessarily it  
10          means --

11      A     I meant --

12      Q     -- what is found in --

13      A     Yeah.

14      Q     -- the Product Recall Procedures document.

15      A     I think you're making it sound like I'm not sure.  
16            When I receive health hazard evaluations and they  
17            say Class I, II, III, I take it mean exactly what is  
18            indicated here.

19      Q     Okay. So, well, let's go on from there then. So,  
20            we've read that definition of what a Class II is.  
21            At least, in your mind, that's what you believed the  
22            level of risk was --

23      A     Yes.

24      Q     -- was Class II as read in this definition.

25      A     Yes.

26      Q     Okay. So, now, something cannot be a Class II  
27            health hazard unless the possibility of serious

1 adverse health consequences are remote. Okay?  
2 Because if it's not remote then it moves up into the  
3 Class I, would you agree with that?

4 A Because I -- I can't say for certain because I'm not  
5 the one who makes these classification decisions.

6 Q Okay. But you see, you're the one that makes  
7 enforcement decisions based on the risk  
8 classification. So, it's important for us to figure  
9 out what you think a risk class means.

10 A Okay.

11 Q So, when I read this definition and it says:

12

13 ... or where the probability of  
14 serious adverse health consequences  
15 is remote.

16

17 Common English would suggest to me, Well, okay, if  
18 it's not remote, if there is a probability that  
19 there will be a serious adverse health reaction, it  
20 can't be Class II, just based on these definitions.

21 A I would agree with you.

22 Q Okay. And surely, you have to be operating under  
23 that presumption. When somebody sends you Class II,  
24 well, that means that the probability of a serious  
25 adverse health reaction is remote. It's not closer  
26 than remote, it's remote.

27 A Yes.

1 Q So -- and if it's closer than remote, then it moves  
2 up into a Class I, is that fair to say?

3 A I -- I don't know how -- how close it has to be to  
4 move into a Class I but I would agree with what  
5 you're -- you're saying there.

6 Q Okay. And "remote" isn't defined?

7 A I don't believe so.

8 Q Okay. So, we're really kind of stuck with the  
9 English language what remote means, right?

10 (INDISCERNIBLE) --

11 A I -- I --

12 Q -- have a policy.

13 A Yeah. I don't know if the Therapeutic Products  
14 Directorate relies on -- on, you know, what they're  
15 relying on to -- to make their assessment, so.

16 Q Okay. But I'm not -- I'm not concerned about them,  
17 I'm just concerned about you. When you're looking  
18 at Class II, probability of serious adverse health  
19 consequences must be remote or it's not a Class II.

20 A If -- if you're strictly looking at these  
21 definitions, I would agree with you. But I do not  
22 make the class -- do the classifications, so I, you  
23 know, it would seem that there is some in between  
24 and I don't know how -- how they -- where they draw  
25 the line.

26 Q Okay. In your department, when you're told Class  
27 II, what does that mean to you?

1 A It means what this says here.

2 Q Okay. I think we're saying the same thing.

3 A Okay.

4 Q So -- and there's, as I say, you have no further  
5 policy document on what remote means.

6 A Right.

7 Q So, I looked in the Health Canada and I couldn't  
8 find it, so, I looked in my trusty dictionary,  
9 College English dictionary, and I just want to refer  
10 you to "remote" to see if you agree with the  
11 dictionary definition of remote. And I've  
12 highlighted it for you because we're not talking  
13 about a TV remote or something located far away.  
14 But it seems to me that "remote" in this context  
15 means "slight" or "faint". Does that accord with  
16 your understanding of the English language?

17 A I could agree with that.

18 Q Okay. So, when we're dealing with a Class II, where  
19 the probability of a serious adverse health reaction  
20 is remote, we're also meaning, well, slight or  
21 faint?

22 A We -- yes, if we go by this definition.

23 Q Okay. Now, in fact, as far as you're aware, Health  
24 Canada has not been able to document any serious  
25 adverse health reactions to this product?

26 A I don't know either way.

27 Q Okay. Now, when I was going through the Health

1 Canada file I came across a briefing note from  
2 Miles, do you say Brosseau?

3 A Brosseau.

4 Q Okay, Brosseau, to Dennis Shelley, basically  
5 documenting a meeting in January of 2003.

6 A Yes, I recall that.

7 Q You recall that briefing document?

8 A Yes. It's a memorandum I believe.

9 Q Okay. So, that's something that when you picked up  
10 the file you would have gone through?

11 A Yes.

12 Q I'm just going to give you a copy to refresh your  
13 mind. Oh, the next binder.

14 THE COURT: What were the names of the two  
15 individuals?

16 MR. BUCKLEY: Dennis Shelley and Miles  
17 Brosseau.

18 MR. BROWN: Sir, I believe Brosseau is  
19 B-R-O-S-S-E-A-U.

20 THE COURT: Thank you.

21 Q MR. BUCKLEY: So, I'm just handing you a  
22 memorandum which is on Government of Canada  
23 letterhead, dated January 6 '03, from Miles  
24 Brosseau, compliance officer, to Dennis Shelley,  
25 operational manager. Now, Dennis Shelley is your  
26 boss during this investigation, correct?

27 A Dennis Shelley had taken an extended period of sick

1 leave, so, Rod Neske was my supervisor, was acting  
2 for Dennis --

3 Q Okay.

4 A -- and I was reporting to him.

5 Q So, Dennis left shortly after this memorandum for a  
6 period of time?

7 A I believe so, yes.

8 Q Okay. Now, but you've read this briefing note?

9 A Yes.

10 Q Okay. And you've been briefed by Miles Brosseau  
11 because you've told us that.

12 A Yes.

13 Q Okay. And you trust Miles Brosseau to be accurate  
14 in reporting things like meetings, would that be  
15 fair to say?

16 A Yes.

17 Q Okay. Because in some meetings that you've had with  
18 Mr. Stephan and Mr. Hardy, and Mr. Shelley and Mr.  
19 Brosseau, both you and Mr. Brosseau have made notes.

20 A Yes, a telephone call.

21 Q Okay. And your -- your notes and his tend to be  
22 very similar. Or do you know?

23 A One would hope so, but --

24 Q Okay.

25 A -- you know.

26 Q Now --

27 A I don't recall.

1 Q -- the thing that strikes me about this memorandum  
2 is that Mr. Brosseau is talking about a Laril  
3 Zandberg (phonetic) that came with Mr. Hardy and Mr.  
4 Stephan to meet with Mr. Shelley and Mr. Brosseau.  
5 And Mr. Brosseau is basically finding that she was  
6 very emotional. She's explained she's suffered from  
7 depression, had been taking Zoloft. She said the  
8 drugs are highly addictive and her baby was born  
9 with floppy baby syndrome. Now -- and she  
10 complained she hadn't received warnings about this.  
11 She complained about withdrawal symptoms. She  
12 seemed to have been just passionately explaining to  
13 Mr. Shelley and Mr. Brosseau about how effective  
14 EMPowerplus had been for turning her life around.

15 Now, you would have read this?

16 A Yes.

17 Q Now, when you're reading this, do you -- do you  
18 question that she said it, said those things?

19 A No, I don't.

20 Q Okay. Did you -- did you think that she was lying  
21 to Mr. Shelley and Mr. Brosseau?

22 A No, I had no reason to believe so.

23 Q Okay. Because she -- she's basically outlining and  
24 I mean she is explaining this has been a miracle  
25 treatment for her. Okay. So, you don't doubt that  
26 she said those things. You don't that she is lying.  
27 When you took conduct of the file did you take any

1 steps to contact her and see if you could verify her  
2 story?

3 A No, I did not.

4 Q Okay. Because if that story is true that's kind of  
5 fantastic, isn't it?

6 A For her, yes.

7 Q Okay. For her. But this is a person that when you  
8 guys tell Customs to turn those shipments away, that  
9 isn't going to be able to get the product anymore.

10 A She could have been one of those people, yes.

11 Q Okay. Did that concern you when you guys told  
12 Customs to stop the product at the border?

13 A You know, I -- I thought of it personally, it  
14 concerned me personally. I didn't feel it was  
15 really relevant to the fact that this drug does not  
16 have DIN number. Whether or not it, you know, did  
17 amazing things or not, the fact of the matter is, it  
18 was in violation of law.

19 Q Okay. So, I just -- I want to understand, because  
20 you actually turned your mind to this lady, correct?

21 A I don't know -- I don't know if I -- I thought about  
22 this particular individual but I, collectively as a  
23 whole.

24 Q Okay. So, and actually personally, it troubled you  
25 that they would be denied the product, would that be  
26 fair to say?

27 A Well, I -- yeah, I mean I -- I feel that way

1 whenever we, you know, take that sort of action. I  
2 always feel it's unfortunate that someone's, you  
3 know, they paid for something they're not getting  
4 and whether, you know, I -- I didn't know whether  
5 this worked or not. You know, I -- I don't -- in my  
6 view, testimonials aren't -- aren't as solid as, you  
7 know, science. I have a science background and I --  
8 I believe in -- in science and -- and studies. I  
9 believe testimonials are very subjective.

10 Q This is an unusual file actually, isn't it, in the  
11 amount of pressure Health Canada got from  
12 participants in the program, would that be fair to  
13 say?

14 A I believe so, yes.

15 Q Because Health Canada was getting a lot of pressure  
16 and calls from people on the program, is that fair  
17 to say?

18 A I believe so, yes.

19 Q Okay. Well, you believe so because you've been on  
20 the file, you've reviewed the file --

21 A Yes.

22 Q -- you're aware that this has been in the media and  
23 there's been political protests?

24 A Yes.

25 Q You've read some -- well, you don't know about the  
26 800 number. But in any event, in some cases like  
27 Ms. Zandberg, when you read this memo, you don't

1 take any steps to see if there's any truth to her  
2 claims?

3 A I didn't feel it was relevant to -- I -- I knew the  
4 product didn't have a DIN number and that's what  
5 this case boiled down to.

6 Q Okay. So, from Health Canada's perspective, this  
7 case boiled down to, you have no DIN and that's all  
8 that matters, is that fair to say?

9 A They were concerned about the claims as well.

10 Q Okay. So, really, there's two things: no DIN, and  
11 two claims. And when you say "claims" you mean  
12 these guys are saying, Hey, this treats bipolar, for  
13 example, right?

14 A That would be one of them, yes.

15 Q Actually making mental health treatment claims,  
16 correct?

17 A Yes.

18 Q And that really gets under Health Canada's skin,  
19 doesn't it?

20 A It's -- bipolar or depression is listed in schedule  
21 'A' of the *Food and Drug Act*, or was -- well, still  
22 is.

23 Q Still is.

24 A You know, I -- you know, you make it sound like, you  
25 know, you gotta get these guys and, you know, it --  
26 that wasn't the perception, you know, we -- this --  
27 it was making a serious claim that hadn't been

1           evaluated by Health Canada and the product didn't  
2           have a DIN.

3           Q     The claim was not evaluated by Health Canada was it?

4           A     Well, I don't believe there was any drug application  
5           -- new drug application made or a DIN application  
6           made for the drug.

7           Q     Okay. Now, claims. Just because the court's not  
8           going to be aware, Section 3 of the Act basically  
9           prohibits any health claims that relate to a list of  
10          diseases found in schedule 'A' of the Act, correct?

11          A     Yes.

12          Q     Okay. So, it doesn't matter what the substance is  
13          you can't make a claim for a list of diseases in  
14          schedule 'A'.

15          A     Yeah. I believe that applies to food as well.

16          Q     Oh, yes, exactly, food, drug, it doesn't matter.  
17          Section 3 absolute prohibition. And there's some  
18          strange things on there like hair loss and obesity.  
19          You're familiar with schedule 'A'?

20          A     Yes.

21          Q     So, Canadians are being protected against, you know,  
22          treatments for hair loss and obesity claims, but  
23          also some serious things like depression, correct?

24          A     Yes.

25          Q     Okay. And so, Health Canada's perspective is, is,  
26          hey, you can't make a claim because of Section 3 and  
27          so, that was actually one of the problems on this

1 file is they were making a claim, correct? You told  
2 us that?

3 A Yes. Yes.

4 Q Okay. And it doesn't, just so that everyone  
5 appreciates, doesn't matter if the claim's true or  
6 false, you can't even make truthful claims.

7 A And it would seem so, yes.

8 Q Okay. Well, you've read Section 3, this is your  
9 job.

10 A Yes.

11 Q Doesn't matter if you're telling the truth, you  
12 can't make the claim, correct?

13 A Right.

14 Q Okay. Now, I've noticed, as a lawyer, that Health  
15 Canada will never defend a Section 3 charge in  
16 court. They withdraw them every time I've served  
17 constitutional notice. And you've been involved in  
18 the Strauss file where that happened.

19 A Yes.

20 Q The last time we had occasion to meet. Now, would  
21 it be fair to say that Health Canada has serious  
22 concerns about the validity of Section 3 of the Act?

23 MR. BROWN: That again is asking for  
24 expert testimony that this witness cannot give.  
25 That's a legal opinion --

26 MR. BUCKLEY: Well, actually --

27 MR. BROWN: -- he is asking.

1 MR. BUCKLEY: -- Your Honour, just to give  
2 you some --

3 THE COURT: I will hear him out.

4 MR. BUCKLEY: -- just to give you some  
5 background.

6 THE COURT: Go ahead. And I will hear --

7 MR. BUCKLEY: What has occurred is, is  
8 pursuant to another access to information request  
9 that I made for a separate client, Health Canada  
10 disclosed -- so, what happened is, we get this pile  
11 of information. My file is closed and I just asked  
12 my secretary, we'll copy it, give it to the client.

13 And after it's gone out to the client, Health  
14 Canada contacts me and says, Oops, we disclosed to  
15 you a legal memorandum on whether Section 3 is valid  
16 constitutionally or not. Because the problem is,  
17 from a defence perspective is, if you have an  
18 absolute ban on making a health claim and you've got  
19 in Section 2 of the Constitution the right to  
20 freedom of expression, we have a conflict. And most  
21 people that look at it are of the opinion that  
22 there's just no way Section 3 is going to stand up  
23 to a constitutional challenge because it's an  
24 absolute ban and it's going to fail on the  
25 proportionality test in *R. v. Oakes*. And we have  
26 south of the border, where they have the *DSHEA Act*  
27 where you're allowed to make at least structure

1 function claims. So, we've got some other western  
2 countries where there are limited claims allowed  
3 and, you know, the Americans aren't falling down on  
4 the street type of thing.

5 So, this is disclosed. When that happens,  
6 without reading the memo, I send it back to Health  
7 Canada. I ask my client if they will return it and  
8 they won't. In fact, by then it's already been  
9 distributed out in the natural health community  
10 because there's a whole group of companies that kind  
11 of support themselves in their dealings with Health  
12 Canada.

13 My understanding is, is that this legal opinion  
14 is published on different websites in the internet  
15 and I'm probably the only Canadian interested who  
16 hasn't read it.

17 So, but if this --

18 THE COURT: Well, get back to the question  
19 you were asking.

20 MR. BUCKLEY: Okay. On relevance. So, if  
21 this -- if this investigation is, if we're going  
22 ahead and this is all about, well, not having a DIN  
23 regardless of whether or not it was going to affect  
24 the health of Canadians. And just wait a second,  
25 we're unhappy with the claims and Health Canada  
26 knows when this is going on that that's a bogus  
27 section, in my mind, that creates some problems from

1 a procedural perspective. Because if you're trying  
2 to take enforcement actions based on a law that your  
3 Department of Justice is telling you is  
4 unconstitutional, I've got a problem with that. And  
5 I think that people in the community would have a  
6 problem with that. And so, I think -- I'm not --

7 THE COURT: I am just not quite sure why  
8 you are bringing this up now? This is something you  
9 can -- you can save for argument, that is fine, but  
10 I do not get the point of why you are doing it.

11 MR. BUCKLEY: Well, I'm just --

12 THE COURT: This is -- this is in response  
13 to a question that you asked of her, that the  
14 objection was made that it would require an expert  
15 opinion -- an expert legal opinion.

16 MR. BUCKLEY: Well, no.

17 THE COURT: And so far, I am in agreement  
18 with the Crown on it.

19 MR. BUCKLEY: Well, it's the same --

20 THE COURT: So, do you want an answer to  
21 your question or not? You can save the speech till  
22 later.

23 MR. BUCKLEY: Well, actually, I wasn't going  
24 to speech but --

25 THE COURT: Well, you have and that is why  
26 I'm trying --

27 MR. BUCKLEY: Well, I have. Okay.

1 THE COURT: -- that is why I am trying to  
2 get you back on track here.

3 MR. BUCKLEY: Okay.

4 THE COURT: We are in a trial.

5 MR. BUCKLEY: With regards to the question  
6 on, I'm trying to find out from this witness when  
7 she's in the process of taking enforcement actions  
8 based on claims, has her department already -- has  
9 it been communicated to them that, you know, what,  
10 this Section might not stand up?

11 THE COURT: Is that the question you want  
12 to ask her?

13 MR. BUCKLEY: That's what I'm trying to find  
14 out.

15 THE COURT: Well, ask her that question  
16 then.

17 MR. BUCKLEY: So, and that's actually the  
18 question I thought I -- not with that exact  
19 phrasing. We've gone around in a big circle. But  
20 that's what I thought I was asking, so --

21 THE COURT: Ask the question if she has  
22 been told by her -- by her department that that  
23 Section of the Act is not enforceable.

24 MR. BUCKLEY: Thank you, Your Honour.

25 THE COURT: Can you answer that question?

26 A Say again, Your Honour, or --

27 Q MR. BUCKLEY: Okay. So, we're --

1 THE COURT: Have you --

2 Q MR. BUCKLEY: -- so, we're talking about --

3 THE COURT: -- have you been advised by  
4 other officials in Health Canada that Section 3 of  
5 the *Act* is unenforceable?

6 A I have been advised that there are issues and  
7 problems with enforcing that Section and I know  
8 there have been a lot of legal discussions that are,  
9 quite frankly, over my head, and I don't know much  
10 more. And I know it was an issue in the *Strauss*  
11 case.

12 Q MR. BUCKLEY: Okay. Now, when you mention  
13 the *Strauss* case --

14 THE COURT: Mr. Brown.

15 MR. BROWN: Well, sir, you know, she's  
16 answered the question and I have no problem with  
17 that. Thank you, sir.

18 THE COURT: All right. Thank you.

19 MR. BUCKLEY: I'm just going to --

20 THE COURT: Go ahead.

21 MR. BUCKLEY: -- ask some questions from  
22 point in time.

23 Q MR. BUCKLEY: So, the *Strauss* case, when you  
24 refer to that, that's happening before these charges  
25 are laid.

26 A I believe the charges for *Strauss* were laid January,  
27 2003, if I remember.

1 Q And these are May 28th '04.

2 A I don't think -- I'm not sure -- I was not aware of  
3 the *Charter* problems when I laid the charges with  
4 the *Strauss* case, that came up later. I don't  
5 recall exactly when. And again, you know, I -- I  
6 knew there were discussions going on about it. I --  
7 I, for the most part as far as I recall, stayed out  
8 of those discussions and in most cases I wasn't  
9 invited to those discussions. I can't recall if --  
10 if I knew about it when I laid the charges for  
11 TrueHope Synergy.

12 Q Okay. So, you don't know?

13 A I can't say.

14 Q Okay. Now, back to this memorandum that I was  
15 questioning you about, this January 6th '03 one.  
16 Another thing that jumped out at me there is, is  
17 that it seemed that David Hardy was communicating in  
18 that, that the Minister should allow an exemption  
19 for the products.

20 A Could you point me to which paragraph?

21 Q So, that would be on the third page, the third  
22 paragraph from the bottom.

23 A Oh, it's highlighted. Okay.

24 Q Okay. Do you recall seeing that when you went  
25 through this memorandum?

26 A I believe so, yes.

27 Q Okay. Now, just because some in the court might not

1 know what that is, you appreciate that under Section  
2 30 of the Act the Governor in Council can exempt a  
3 company or a person from parts of the Act or  
4 regulations? Do you have that understanding?

5 A I'm not sure I did. I'm not sure I looked at that  
6 section.

7 Q Okay. Well, and this is actually important because,  
8 you know, you're kind of the enforcement person on  
9 the ground. Were you aware that the Governor in  
10 Council, is what the expression is --

11 A Mm-hm.

12 Q -- could grant an exemption so a company like  
13 Synergy could have been granted an exemption from  
14 the DIN requirement? Were you aware of that until  
15 just now?

16 A I -- if I was aware of it I'd entirely forgotten  
17 because it seems like new information to me.

18 Q Okay. So, when you read something like that in a  
19 memo like this where Mr. Hardy's offering that the  
20 Minister should allow an exemption, do you think  
21 that's even possible?

22 A I -- I would -- I believe at the time I read this I  
23 didn't think it was possible.

24 Q Okay. So, when your department's getting pressure  
25 from people to stop the enforcement actions, it's  
26 not even entering your mind that one solution might  
27 be to get this exempted?

1 A It didn't enter my mind, no.

2 Q Okay. Did you hear any discussion about that?

3 A I don't recall hearing anything.

4 Q Now, we don't operate in Health Canada, but I'm  
5 assuming that the Minister of Health takes kind of  
6 advice from Health Canada as what to do in a case  
7 like this, would that be fair to say?

8 A That's -- that's my belief, yes.

9 Q Okay. So, if there was pressure on the Minister to,  
10 Hey, grant an exemption, the Minister would turn to  
11 Health Canada and go, Well, what should I do? Is  
12 that kind of normally how it happens in your  
13 department?

14 A I'm not sure exactly how it operates. It's --  
15 that's all in Ottawa.

16 Q Okay. Now, in this highlighted section it carries  
17 on, so, it started:

18

19 Mr. Hardy offered that the Minister  
20 should allow an exemption for this  
21 product. Anger and frustration was  
22 evident when both Mr. Stephan and Mr.  
23 Hardy related they had contacted  
24 Health Canada and the Minister's  
25 office many times proposing to meet  
26 with scientists but they had not  
27 received any replies.

1

2 Now, did that surprise you when you read that?

3 A I believe it -- it did. I couldn't believe that,  
4 you know, so many queries had gone unresponded.

5 Q Why didn't you believe that?

6 A Because in my experience, you know, relating to  
7 other files, you know, if -- if someone sends a  
8 letter to the Minister it's -- it's acted on.9 Q Okay. So, this file sticks out as unusual that way,  
10 would that be fair to say?11 A Oh, I don't know that this actually happened --  
12 happened.13 Q Okay. Now, just I'm going to -- just because you've  
14 gone through the file, the Health Canada file, so, I  
15 expect that you've seen this document. It seems to  
16 be -- now, Health Canada operates in e-mails --

17 A Yes.

18 Q -- quite frequently, is that fair to say?

19 A Yes.

20 Q So, you guys on a file like this will e-mail back  
21 and forth and :criminal Code and forward, and  
22 actually, would it be fair to say that probably the  
23 majority of the notes generated on a file are e-  
24 mails?

25 A Yes.

26 Q Okay. So, and this is from an ATI request, and  
27 wonderfully, we don't have the whole thing but it

1           seems to be from Dennis Shelley to Neske and Miles  
2           Brosseau, dated January 22nd '01, but the original  
3           is from a Louis Demant (phonetic), and would it be  
4           fair to say that you've seen this e-mail before.

5           MR. BROWN:                         Sorry, just for a point of  
6           clarification, I think it's dated January 22nd '03.  
7           I believe Mr. Buckley said '01.

8           MR. BUCKLEY:                     Oh, yes, I'm sorry.

9           THE COURT:                      Oh, he is correct.

10          MR. BUCKLEY:                    I thank my friend for that  
11          correction.

12          THE COURT:                      That is fine. Thank you. Go  
13          ahead.

14          Q     MR. BUCKLEY:              Now, Ms. Jarvis, have you seen  
15          this e-mail before?

16          A     I can't recall if I have or not.

17          Q     Okay. Because we're -- we're dealing in the same  
18          month but these gentleman are meeting with Mr.  
19          Brosseau and Mr. Shelley.

20                 Now, Louis Demant, is she from the Minister's  
21          office?

22          A     I don't know.

23          Q     Okay. Do you know whether Cecilia Muir (phonetic)  
24          is from the Minister's office?

25          A     That name I've heard. I -- I don't know.

26          Q     Okay. Because I've highlighted a portion there and  
27          I'll just read it and ask you a couple of questions,

1           because it says:

2

3           The reason of Heather's request is  
4           that Synergy is still requesting a  
5           meeting with the Minister. Before  
6           declining the request (by letter)  
7           Hillary has requested that she gets  
8           an update by the program to get a  
9           better understanding of where we are.

10

11           Now, it just seemed to be alarming because the tone  
12           of that, the way I read it is, is that they are --  
13           they're wanting to decline the request.

14        A    I'm not sure who Heather Watson (phonetic) is or  
15           Hillary, I -- I don't know who those individuals  
16           are, so, I ...

17        Q    Okay. So, if -- I'm just going to give you another  
18           e-mail, which is just a couple of days later,  
19           January 22nd '03, but we're dealing with similar  
20           people, Cecilia Muir, Louis Demant, but I've  
21           highlighted part of a paragraph that reads:

22

23           Could I have your views on this?  
24           What kind of advice can we give to  
25           the Minister's office to ensure  
26           Synergy stops calling?

27

1 And Ms. Jarvis, a couple of things stick out. One  
2 is, is that it's clear from Health Canada's  
3 perspective, that Synergy is really trying to get  
4 the Minister's attention in January of 2003.

5 Now, whether or not you've read these e-mails,  
6 would it be fair to say you were aware from the file  
7 that Synergy was indeed making efforts to contact  
8 the Minister's office in January of 2003?

9 A I can't say for certain. I do recall reading the  
10 file that the -- Mr. Hardy and Mr. Stephan, I seem  
11 to recall, had met with the Minister's office or  
12 made arrangements. I believe Bonnie Kaplan was  
13 involved. I -- I -- it was my understanding there  
14 had been some contact between Health Canada in  
15 Ottawa and the parties involved.

16 Q Okay. Now, if this is truly stuff coming back and  
17 forth from the Minister's office, do you find it  
18 alarming that people in Health Canada are asking  
19 what kind of advice they can give to the Minister's  
20 office to ensure that Synergy stops calling them?

21 A I -- I don't know who these individuals are, so, I  
22 can't be certain that this is coming -- coming back  
23 and forth to the Minister's office.

24 Q Okay. Do you know who would be able to verify these  
25 documents, because all we know is they were  
26 disclosed in an ATI request, that it's clearly  
27 dealing with Synergy and it's dealing with Synergy

1 in January of 2003.

2 A I would imagine somebody who is the recipient of the  
3 message.

4 Q Okay. But are you telling me that you haven't seen  
5 these when you went through the Synergy file? It's  
6 just odd that you, as the lead investigator, would  
7 not be seeing things that are obviously in Health  
8 Canada file if they're disclosed to the Synergy  
9 Group.

10 A I did go through the file. There were, as you  
11 indicated, volumes and volumes of e-mails going back  
12 and forth and I honestly do not recall these two  
13 specific e-mails.

14 MR. BUCKLEY: Your Honour, I see it's 4:00.  
15 I am at a point where I could do a break, so, I'm  
16 not going to ask her any more questions about these.  
17 That said, I'm more than happy to continue on if the  
18 court wants to carry on today.

19 THE COURT: No, that is fine. I think  
20 this is a reasonable place to take a break. From  
21 what you are saying you are moving on to a different  
22 area in your cross-examination?

23 MR. BUCKLEY: Yes.

24 THE COURT: All right. Well, rather than  
25 split that up then we will -- we will take the  
26 afternoon adjournment now and we will adjourn until  
27 tomorrow morning then.

1 All right. Now, the caution I gave you earlier  
2 is even more important now, particularly when a  
3 person is under cross-examination they are not to  
4 discuss the evidence that they are giving or have  
5 given with anyone. Do you understand that?

6 A I understand, Your Honour.

7 THE COURT: Okay. Very good.

8 THE COURT: All right. Then in that case,  
9 I have something in here at 9:00 tomorrow morning  
10 but it should be well taken care of by the time that  
11 9:30 rolls around. It is an adjournment for another  
12 trial -- an application for an adjournment of  
13 another trial. In any event, it will not interfere  
14 with our time -- with our time because I put it in a  
15 half hour ahead of our regular scheduled start time.

16 What do you want done with these?

17 MR. BUCKLEY: Well, Your Honour, because I  
18 might also referring Mr. Brosseau to them, I am more  
19 than happy to re-catalogue them in my binder or, you  
20 know, if you guys want to hang onto them that's fine  
21 too.

22 THE COURT: I will leave them -- I will  
23 leave them here --

24 MR. BUCKLEY: Okay.

25 THE COURT: -- but you are not use -- try  
26 to put them in any fashion, so.

27 MR. BUCKLEY: No. No. If the witness

1           wasn't here I mean, I can tell you why I am having  
2           to go through that, but ...

3       THE COURT:                   All right. That is fine. You  
4           have your reasons and I am just pointing it out in  
5           case this was a time when you wanted to do something  
6           more with them.

7       MR. BUCKLEY:                 Right. Thank you.

8       THE COURT:                   But that is -- that is fine.  
9           In that case we will -- we will leave it to another  
10          time.

11      MR. BUCKLEY:                 Did you want to just leave  
12          them on the table there? Yeah.

13      THE COURT:                   All right.

14                 And madam clerk, I will talk to you just after  
15                 we adjourn. I want to make sure that courtroom is  
16                 secure and documents left around are in the right  
17                 places.

18                 All right. In that case, thank you, gentlemen.  
19                 Thank you, Ms. Jarvis. You can step down.

20      A     Thank you, Your Honour.

21      (WITNESS STANDS DOWN)

22      THE COURT:                   And we will stand adjourned  
23                 until 9:30 tomorrow morning.

24      THE COURT CLERK:             Order in court. All rise.  
25                 Court stands adjourned until tomorrow morning at  
26                 9:30.

27      THE COURT:                   Thank you.

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PROCEEDINGS ADJOURNMENT UNTIL 9:30 A.M. 14TH MARCH, 2006  
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\*Certificate of Record

I, Jillian Fox, certify this recording is a record of the oral evidence of proceedings in the Criminal Court, held in courtroom 413, at Calgary, Alberta, on the 13th day of March, 2006, and I was in charge of the sound-recording machine.



1

2 \*SANDRA MARIE JARVIS, Previously Sworn, Cross-examined by

3 \*Mr. Buckley

4

5 Q Ms. Jarvis, I had given you a memo from -- that went  
6 from Mr. Brosseau to Mr. Shelley. Do you still have  
7 that in front of you?

8 A Yes, I do.

9 Q And we had gone through yesterday some questions  
10 about Ms. Zanberg and we've gone through some  
11 questions about Mr. Stephan and -- or, Mr. Hardy and  
12 Mr. Stephan seeking an exemption from the Minister.  
13 You had indicated to us that you weren't aware that  
14 the Minister could do that, if I recall your  
15 evidence?

16 A That's what I said, yes.

17 Q Okay. Now, that portion that I'd referred you to is  
18 on page 3 and it's -- it's highlighted --

19 A Yes.

20 Q -- and I -- it also notes that they were basically  
21 voicing anger and frustration with the Minister and  
22 we'd gone through that yesterday, do you recall  
23 that?

24 A Yes.

25 Q And you also, if I recall correctly, voiced surprise  
26 that they were having trouble getting access to  
27 having a meeting with the Minister?

1 A Yes.

2 Q Okay.

3 A Or, trouble getting contact with ...

4 Q Okay. Just so I'm clear are you surprised that they  
5 were having trouble getting a meeting with the  
6 Minister or that the Minister's office was not  
7 contacting them back?

8 A That the Minister's office was not contacting them  
9 back.

10 Q Okay. So, you're not surprised that they were  
11 having difficulty actually arranging a meeting with  
12 the Minister of Health?

13 A I just know that in my experience when complaints  
14 have been addressed to the Minister it's my  
15 understanding that they are addressed.

16 Q Okay. So, just so I'm clear so you mean if somebody  
17 was to write a complaint letter to the Minister  
18 saying I've got this problem you would not expect a  
19 meeting with the Minister you would expect a letter  
20 back giving Health Canada or the Minister's  
21 explanation?

22 A All I can say is that it has come to my attention  
23 when -- when an individual complains about a product  
24 or a situation and that that complaint falls within  
25 Western Operational Centre we are contacted by our  
26 office and asked to respond to the complaint to the  
27 Minister.

1 Q Okay. And we kind of went through a bit of that  
2 yesterday that really the Minister's office, which  
3 is the political branch, takes its advice from  
4 branches such as yours as to what to do when --

5 A That's my --

6 Q -- products --

7 A That's my understanding of it.

8 Q Okay. But, it's your understanding --

9 A Thank you.

10 Q -- because you've seen that happen within Health  
11 Canada? The Minister's office asks for advice?

12 A I've heard of it happening.

13 Q Okay. So, just so that I'm clear because you didn't  
14 actually understand yesterday that the Minister can  
15 grant an exemption?

16 A When you asked that question, yes.

17 Q Okay. You've now probably gone and checked out the  
18 Food and Drug Act last night, right?

19 A Yes, I did.

20 Q Okay. And now you're -- you've noticed that there's  
21 actually a specific section where the Minister can  
22 grant an exemption?

23 A Yes, I recollected the section once I read it.

24 Q Okay. So, now that that's back in your mind and now  
25 you recall -- at the time you might not have  
26 recalled so when you're reading this letter and the  
27 file that they're asking for an exemption from the

1 Minister. At that time you weren't thinking that  
2 that was an option that was available?

3 A Exactly.

4 Q Okay. But, now today if somebody had come to you --  
5 or, came to you and said listen we need an exemption  
6 from the Minister would it be fair to say that you  
7 would expect it would be your department that would  
8 advise the Minister as to whether or not an  
9 exemption should be granted?

10 A I'm not sure of the procedure for carrying out -- if  
11 someone came to me and asked for that I would likely  
12 suggest that they write to the Minister. I'm not  
13 sure if there's any -- what the procedure is.

14 Q Okay. Now, right in this briefing note they've  
15 communicated that they wrote three letters to the  
16 Minister and there's been about 20 telephone calls  
17 placed to the Minister's government office and the  
18 constituency office and they've been ignored. Okay?  
19 So, in a situation like that what would you tell  
20 people to do? So, they've already -- it seems  
21 they've written letters, they're placing telephone  
22 calls, so in a situation like that you wouldn't say  
23 well write a fourth letter so what would your advice  
24 be?

25 A Well, when I'm reading this I -- I'm reading  
26 something that Miles said that they said.

27 Q Well, I --

1 A Are you asking if -- if they had directed that  
2 comment to myself?

3 Q Yeah, I'm just -- because you had just said -- well,  
4 I had asked you -- well, what would happen? How do  
5 you go about getting an exemption? And you said,  
6 Well, really if somebody came to me I would tell  
7 them to write a letter to the Minister's office.  
8 So, if, you know, you're at this meeting and it's  
9 being communicated to you well wait a second we've  
10 written three letters already, we've placed around  
11 20 calls, and we're not getting any response what  
12 would be the advice that you would give at that  
13 point?

14 A Well, if my supervisor was, you know, in the room I  
15 would leave it up to him to -- to give the advice.  
16 He'd be more knowledgeable on that area than me.

17 Q Okay. You don't really want to give us an answer  
18 for that question?

19 A Well, I'm -- I -- I can't speculate as to what I'd  
20 do.

21 Q Okay.

22 A I don't know. It's never occurred.

23 Q Okay. So, it's not obvious to you how to -- how you  
24 would address that problem --

25 A No, it's not.

26 Q -- that this company seemed to be facing?

27 A No, it's not.

1 Q Okay. Now --

2 THE COURT: Go ahead.

3 MR. BUCKLEY: Thank you, Your Honour.

4 Ms. Jarvis, I also note that this letter  
5 reports that Mr. Hardy and Mr. Stephan included  
6 articles from psychiatric journals.

7 A With this -- at the time of the meeting?

8 Q Yes.

9 A Can you point me to that paragraph? Oh, I see it.  
10 Third page?

11 Q You're -- you're quicker than me this morning. So,  
12 but my question is, is in reviewing the file you've  
13 actually come across journal publications involving  
14 this product?

15 A I believe I have, yes.

16 Q Okay.

17 MR. BUCKLEY: Now, Your Honour, I'm going to  
18 ask that this be marked as an exhibit. Mr. Brosseau  
19 is going to testify and I'm not seeking for it to be  
20 entered for the truth of its contents but it's  
21 relevant to the fact on a couple of the defences  
22 that there's evidence in Health Canada's file of the  
23 steps that were being taken by the defendants.

24 MR. BROWN: There's no objection to that,  
25 Sir, thank you.

26 THE COURT: Do you wish to characterize  
27 that again?

1 MR. BUCKLEY: I would call it the January  
2 16th, 2003 memo from Miles Brosseau to Dennis  
3 Shelley.

4 A This -- do I provide this copy? Is that --

5 THE COURT: Well, just a moment and you  
6 wanted it to stand not to the truth of its contents  
7 but as evidence that there were --

8 MR. BUCKLEY: Basically evidence that the  
9 communications that Mr. Brosseau recorded for the  
10 Health Canada file were made.

11 THE COURT: And you wish it made an  
12 exhibit for identification purposes only and then  
13 put --

14 MR. BUCKLEY: No.

15 THE COURT: -- it in through Brosseau?

16 MR. BUCKLEY: I'm actually -- if my friend's  
17 not objecting I would rather just enter it as an  
18 exhibit now so that it's said and done.

19 MR. BROWN: Sir, I'm to going to have any  
20 great objection to that. Mr. Brosseau will be  
21 called presumably this afternoon or -- he's my next  
22 witness and he will be addressing this particular  
23 exhibit.

24 THE COURT: All right. You can put it in  
25 through Brosseau. He is the proper person --

26 MR. BROWN: Yes.

27 THE COURT: -- to put it through not this

1 witness.

2 MR. BROWN: Okay. Perhaps --

3 MR. BUCKLEY: Okay.

4 MR. BROWN: -- it should be marked as an  
5 exhibit for identification. Mr. Brosseau will  
6 identify it, Sir.

7 THE COURT: I believe that that is Exhibit  
8 'I', madam clerk?

9 THE COURT CLERK: Yes.

10 THE COURT: Exhibit 'I' for identification  
11 purposes will be the copy of the memo to Dennis  
12 Shelley from Miles Brosseau dated January 16th,  
13 2003.

14

15 \*EXHIBIT 'I' - For identification - Government of Canada  
16 \*Memorandum to Dennis Shelley, operational manager, from  
17 \*Miles Brosseau, compliance officer, dated January 16,  
18 \*2003, subject: a meeting with TrueHope/Synergy directors  
19 \*at HPFBI-WOC, pages numbered 000537 to 000540

20

21 MR. BUCKLEY: Now, Your Honour, when we're  
22 on this point because I'm going to move now and seek  
23 to enter the emails that are clearly in the Health  
24 Canada file and my friend can be obstructionist and  
25 force me to subpoena and call people like Dennis  
26 Shelley or people from the Minister's office but on  
27 the other hand I don't expect when this stuff is

1 disclosed by Health Canada and ATI that my friend is  
2 going to force me to prove that they're legitimate  
3 Health Canada documents because the evidence that is  
4 in the Health Canada file, not for the truth of its  
5 contents but just for the fact that the, you know,  
6 communications of what occurred, are going to be  
7 relevant for painting a picture for one of the  
8 defences. So, just alerting the Court to that.

9 THE COURT: So, once again you want to put  
10 these emails in on the basis of not the truth to  
11 their contents but just the fact that these  
12 communications occurred, is that correct?

13 MR. BUCKLEY: Yeah, I can't enter them for  
14 the truth of their --

15 THE COURT: Is that a yes?

16 MR. BUCKLEY: Yes.

17 THE COURT: All right. And you want to  
18 try to put them in through this witness?

19 MR. BUCKLEY: Well, it's just my friend is  
20 planning on calling four Health Canada witnesses.  
21 This witness is the one that had conduct of the  
22 file, put the prosecution brief together, basically  
23 had to review the entire Health Canada file, and the  
24 other witnesses are not in as good a position.  
25 There'll be the odd document that went to Mr.  
26 Brosseau and I can enter it through Mr. Brosseau but  
27 unless my friend is going to require me to call

1 witnesses that neither he nor I feel any great need  
2 to drag from Vancouver or Ottawa to call just to  
3 enter a document this witness is probably the best  
4 place and most appropriate to do that.

5 THE COURT: If they were going in for the  
6 truth of their contents then they would have to be  
7 tested through cross-examination --

8 MR. BUCKLEY: Yes.

9 THE COURT: -- and you would need those  
10 witnesses here but if they are just going in for the  
11 purpose of establishing that some communications  
12 occurred then it may be possible to put them in  
13 through this witness but you should ask her if she  
14 has reviewed the file and if she is familiar with  
15 it.

16 MR. BUCKLEY: Yes, and so we'll do that.

17 Ms. Jarvis, I'm going to refer you -- there is  
18 a January 22nd, 2003 email in front of you that is  
19 from Mr. Dennis Shelley, who was your supervisor for  
20 part of this file, to Rod Neske who was also your  
21 supervisor for part of this file and cc'd to Miles  
22 Brosseau. Do you have that in front of you?

23 A Yes.

24 THE COURT: Well, just give me a moment  
25 until I get it in front of me. Which one is it  
26 again?

27 MR. BUCKLEY: On the top of the -- or,

1 bottom of page there's the number 000545.

2 THE COURT: All right.

3 MR. BUCKLEY: That's a number -- when Health  
4 Canada discloses under ATI they number their file  
5 pages.

6 THE COURT: Right.

7 MR. BUCKLEY: So, that would be a number  
8 that would be placed on the document by Health  
9 Canada.

10 THE COURT: So, the document you are  
11 referring to is catalogued as 000545?

12 MR. BUCKLEY: Yes.

13 THE COURT: All right. Go ahead then  
14 please.

15 Q MR. BUCKLEY: Now, Ms. Jarvis, have you --  
16 other than yesterday have you seen this in the  
17 Health Canada file to your recollection?

18 A I -- I don't recall.

19 Q Okay. So, you don't recall that and I believe I  
20 asked you because it says in there -- and I'd drawn  
21 your attention yesterday to where it says:

22

23 The reason of Heather's request is  
24 that Synergy is still requesting a  
25 meeting with the Minister before  
26 declining their request (by letter).  
27 Hillary has requested that she gets

1                   an update by the program to get a  
2                   better understanding of where we are.

3

4                   Now --

5       THE COURT:                   Well, just a minute how do you  
6                   expect her to comment on this if she is not aware of  
7                   it? I mean she may have to take an adjournment to  
8                   review the file before she can start commenting on  
9                   it.

10       MR. BUCKLEY:               Well, perhaps --

11       THE COURT:                You have to --

12       MR. BUCKLEY:               Perhaps because what I was --

13       THE COURT:                You have not --

14       MR. BUCKLEY:               -- going to ask her --

15       THE COURT:                -- established that she can --  
16                   that she knows anything about this.

17       MR. BUCKLEY:               No, I haven't.

18       THE COURT:                All right.

19       MR. BUCKLEY:               So, but that said I can bring  
20                   it to her attention and ask her if she knows about  
21                   the subject matter.

22       THE COURT:                Go ahead.

23       MR. BUCKLEY:               And this is a document I am --  
24                   I should be able to enter through Mr. Brosseau  
25                   because it seems that he received a copy.

26                   So, my question to you, Ms. Jarvis, is because  
27                   you're aware by reviewing the file that Synergy was

1           wanting to meet with the Minister. Were you aware  
2           that the Minister's office seemed to be  
3           communicating in the file that they did not want to  
4           meet with the Synergy Group or TrueHope?

5           A     I don't recall.

6           MR. BUCKLEY:                    Now, Your Honour, I'm  
7           wondering if this can be marked for identification?  
8           This is a document, as I say, that I'll put to Mr.  
9           Brosseau because he seems to have received a copy  
10          but I think it would be appropriate for us to mark  
11          it for identification.

12          THE COURT:                    Any objection?

13          MR. BROWN:                    Sir, I have no objection --

14          THE COURT:                    All right.

15          MR. BROWN:                    -- to this being marked for  
16          identification.

17          THE COURT:                    Exhibit 'J' for identification  
18          purposes only and it is the copy of an email of with  
19          the reference page 000545.

20

21          \*EXHIBIT 'J' - For identification - Email from Dennis  
22          \*Shelley to Rod Neske and My Brosseau, dated 2003-01-22,  
23          \*9:43 p.m., subject: Synergy Group Update, page numbered  
24          \*000545

25

26          MR. BUCKLEY:                    Thank you, Your Honour.

27          THE COURT:                    Thank you.

1 Q MR. BUCKLEY: Now, Ms. Jarvis, I'm going to  
2 show you another document that was disclosed through  
3 the ATI request although I also believe it's in the  
4 it may be in the Prosecution brief. It is a March  
5 6th, 2003 letter directed to Mr. Neske who you've  
6 identified as your boss?

7 A Yes.

8 Q And I'd ask you to review that to see if you've seen  
9 that document in the Health Canada file?

10 A I -- I recognize the document, yes.

11 Q Okay. So, this is a document that you've seen in  
12 the Health Canada file is that fair to say?

13 A Yes.

14 Q And so do you recall when you saw it? I mean you  
15 took over conduct of this file shortly after this  
16 letter was sent to Mr. Neske?

17 A It would've been some time after -- I took conduct  
18 of the file, I believe, at the end of May so it  
19 would be -- it would've been after that.

20 Q Okay. Now, when you read this letter in this letter  
21 there is -- maybe we'll just -- we'll turn to page 2  
22 and I believe I've highlighted a portion of it.  
23 This letter basically voices some concerns with the  
24 actions that Health Canada is taking and if we turn  
25 to page 3 I've -- I believe I've highlighted where  
26 it says:

27

1 For hundreds of Canadians who have  
2 found restored mental health through  
3 the TrueHope program this action  
4 denies them the right to health as  
5 guaranteed by the Charter of Rights.  
6 Such action forces these individuals  
7 back onto less effective and more  
8 dangerous medications. Medications  
9 that are clearly addictive or which  
10 dramatically increase the risk of  
11 cancer or liver or kidney failure,  
12 for example. See concern 7.

13  
14 Do you recall reviewing this communication?

15 A Yes, I do.

16 Q Okay. Did Health Canada respond to these concerns  
17 because they're fairly significant concerns?

18 A I don't recall.

19 Q Okay. And I just -- I want to understand when you  
20 say you don't recall because it would appear to me  
21 you reviewed the Health Canada file before coming to  
22 court because you were able to quote dates and list  
23 off website addresses for my friend yesterday. So,  
24 is it fair to say you've studied the file?

25 A In preparation I reviewed the brief. I did not  
26 review all the emails in the file. You know, I  
27 prepared as best as I could.

1 Q Okay. But, in putting together the Prosecution  
2 brief you had to review --

3 A Yes.

4 Q -- basically the entire Health Canada file?

5 A Yes.

6 Q Okay. So, when you say you don't recall whether or  
7 not Health Canada responded to voiced concerns by  
8 this company that you know what taking the product  
9 away is going to create some health risk? You don't  
10 have any memory of Health Canada responding to that?

11 A Well, I can't -- I can't speak for Ottawa. All I  
12 know is I don't recall being made aware of any  
13 response.

14 Q Okay. But, now you personally because it was -- you  
15 had conduct of the file. You told us yesterday that  
16 in preparing for the search warrant going through  
17 that process was basically to take the product off  
18 the Canadian market, correct?

19 A Yes.

20 Q Okay. You understood that taking the product off  
21 the market would deny it to Canadians, correct?

22 A That it could deny access, yes.

23 Q Okay. And you understood that the company, through  
24 letters such as this, was voicing just wait there's  
25 going to be a health risk if you do that?

26 A I understand they voiced those concerns, yes.

27 Q Okay. Did you personally take any steps to

1 investigate as to whether or not there was any  
2 validity to those claims?

3 A No, that wasn't my role.

4 Q Whose role was it?

5 A I don't know.

6 Q Okay. But, you obviously went to Mr. Neske, your  
7 supervisor, and said you know we need to look into  
8 this 'cause we're taking actions to remove the  
9 product from Canadians and the company's saying to  
10 us that's going to create a health risk?

11 A I don't recall any specific discussion like that,  
12 no.

13 MR. BUCKLEY: Your Honour, I would like to m  
14 move to enter this letter as an exhibit not for the  
15 truth of its contents.

16 MR. BROWN: Sir, I'm assuming my friend is  
17 moving to have it entered as an exhibit for  
18 identification. I expect Mr. Brosseau will be able  
19 to speak to this letter better than this witness can  
20 and as I said he will be my next witness.

21 MR. BUCKLEY: Well, I mean I want to enter  
22 it just for the sake of entering it so that it's --  
23 it's there. We can go through the identification  
24 and then seek to enter it later on.

25 THE COURT: This is a letter that this  
26 witness recalls reviewing on the file?

27 MR. BUCKLEY: Yes.

1 MR. BROWN: The only comment I'll make,  
2 Sir, is it was clear from this witness' earlier  
3 evidence that she was not marshalling this file at  
4 the time in March of '03. It wasn't until May of  
5 '03. Mr. Brosseau was marshalling the file in March  
6 of 23 -- 2003 so, frankly it's not, to me, a great  
7 issue whether we mark it for identification or not  
8 but I think that's the proper form. We will just  
9 mark it for identification.

10 THE COURT: I agree. I think it should go  
11 through Brosseau if he was the one marshalling the  
12 file at the time.

13 MR. BROWN: Thank you, Sir.

14 THE COURT: Exhibit 'K' for identification  
15 purposes will be the letter dated March 6th, 2003  
16 from TrueHope to Rod Neske, compliance officer.

17 MR. BUCKLEY: Thank you, Your Honour.

18 THE COURT: Thank you.

19

20 \*EXHIBIT 'K' - For identification - Letter from TrueHope  
21 \*to Health Canada, Attention: Mr. Rod Neske, Compliance  
22 \*Officer, dated March 6, 2003, from Anthony F. Stephan  
23 \*and David L. Hardy, numbered 000562

24

25 Q MR. BUCKLEY: Ms. Jarvis, I'm going to hand  
26 up to you another letter sent to Mr. Neske this one  
27 dated April 29th, 2003 and at this point do you have

1           conduct of this file, April 29th, 2003?

2       A     No, I did not have conduct of the file then.  It  
3           wasn't until the end of May.

4       Q     Okay.  Had you seen this letter in the file?

5       A     Yes, I had.

6       Q     Okay.  So, the letter's familiar to you?

7       A     Yes.

8       Q     Now, this letter is about a detention of product.

9           You're familiar that some product was seized at the  
10          border at that time from your review of the file?

11      A     Yes, I recall a seizure.

12      Q     Okay.  Now, when you say seizure you're not  
13          referring to Customs being told to turn product  
14          around at the border you're referring to Health  
15          Canada actually taking control of a shipment that  
16          came into Canada?

17      A     Yes, it's an administrative seizure.

18      Q     Okay.  And that would be under section 23 of the  
19          Food and Drug Act?

20      A     Yes.

21      Q     Okay.  Now, when something like that happens, so  
22          when Health Canada seizes product, basically Health  
23          Canada takes it and stores it somewhere is that what  
24          happens?

25      A     Yes, depending -- depending on the volume.  If it's  
26          a large volume it -- it can remain at the site.

27      Q     Okay.  This letter says 72 bottles detained.  Do you

1 recall the amount of product that was seized?

2 A That sounds familiar, 72.

3 Q Okay. Do you recall what happened to those bottles?

4 A To the best of my knowledge they were physically  
5 removed from the border and -- and returned to our  
6 Burnaby office with -- with two officers.

7 Q Okay. Would they still be at the Burnaby office?

8 A Well, they've relocated since then so I -- I have no  
9 idea. I -- and I don't work in that office anymore  
10 so ...

11 Q Okay. So, you don't know what's happened to that?

12 A No, I don't.

13 Q Now, when the -- but, you do know that basically all  
14 of these shipments followed a pattern where it comes  
15 in, UPS brings it in, as one big shipment but then  
16 it gets parcelled out and sent out to individuals?

17 A Provided consolidated invoice details are provided  
18 with a master invoice that is how we -- we expect it  
19 to be shipped.

20 Q Okay. But, on this file would it be fair to say  
21 Health Canada had not encountered any shipment that  
22 didn't have a consolidated invoice that was being  
23 parcelled out to individual Canadians?

24 A As of this date I -- I can't say for certain.

25 Q Okay. Now, I've highlighted a portion of that  
26 letter where basically TrueHope's response to Mr. --  
27 to the seizure they say:

1  
2 Please be advised that your actions  
3 in detaining the product are  
4 jeopardizing the health and lives of  
5 those persons who have ordered the  
6 vitamin mineral product, EMPOWERplus,  
7 for their personal health. Many of  
8 these individuals have suffered with  
9 suicidal symptoms in the past and  
10 your actions are placing them at  
11 risk.

12  
13 Now, you recall reading this yourself?

14 A Yes, I do.

15 Q Did you think that they were lying?

16 A That wasn't the thought in my mind, no.

17 Q Okay. Because it was open for you to draw the  
18 conclusion that these people are lying. So, that's  
19 not the thought that occurs to you and I imagine  
20 it's fair to say that you personally never took any  
21 steps to look into whether or not there actually was  
22 a safety risk in seizing the product?

23 A Well, as part of -- part of review of the file I did  
24 read the health hazard evaluation and I trusted in  
25 the assessment of the evaluator.

26 Q So --

27 A I'm not sure if that answers your question.

1 Q Well, that puts us back to the class 2 where there's  
2 a remote -- the probability of a severe health  
3 reaction is remote. Is that -- that's what you're  
4 referring to?

5 A Yes.

6 Q Okay. So, because of that health hazard evaluation  
7 you believed it wasn't necessary to look any further  
8 into these allegations that there's a health risk in  
9 denying the product to Canadians?

10 A It -- it certainly didn't cause me to look any  
11 further, no. Again, that wasn't my role.

12 Q Okay. And so it didn't cause you to look further  
13 and would it be fair to say these types of things  
14 never caused you to even go to your superiors and  
15 say, Do we really want to do a search, do we really  
16 want to keep seizing product at -- or, turning  
17 product around at the border?

18 A I can't say for certain that I had a conversation  
19 like that with him. I can't recall.

20 Q Would it be fair to say you're just taking orders?  
21 I mean you're told, Listen go and do this, prepare a  
22 search warrant, turn stuff around at the border?

23 A Well, you know, I -- I'm taking orders but, you  
24 know, I did review the file and I trusted in the  
25 decision of my superiors number one, in the health  
26 hazard evaluation and number two, in their decision  
27 to proceed with this file in the manner that they

1 did.

2 Q Now, yesterday I'd asked you to review the file  
3 because I was asking about the health hazard  
4 evaluation. We've looked at the policy where --  
5 when a health hazard evaluation is to be done. It's  
6 Health Canada's policy to involve the company and  
7 allow them to make -- share information and make  
8 submissions in that process and I'd asked you to  
9 review the file to see if there's any indication in  
10 the file that the Synergy Group or TrueHope were  
11 given that procedural fairness opportunity.

12 A I -- I don't have the entire file here with me so I  
13 was unable to redo -- review the entire file. I did  
14 review the health hazard evaluation and there was no  
15 indication to me on the evaluation that they had  
16 been given that opportunity. Not from that  
17 document, no.

18 Q Okay. Now, if somebody has been given that  
19 opportunity -- 'cause health hazard evaluations they  
20 actually list their sources of information don't  
21 they?

22 A Yes, I believe so.

23 Q Okay. And so you went back to the health hazard  
24 evaluation and in the list of sources of information  
25 for the evaluation there was no mention at all of  
26 anyone discussing with Synergy or TrueHope?

27 A I don't believe so.

1 Q Okay. And you went to the health hazard evaluation  
2 because that just seemed to be the logical place for  
3 you to answer that question I had asked you  
4 yesterday would that be fair to say?

5 A Yes.

6 MR. BUCKLEY: Now, Your Honour, I'm  
7 wondering if we can mark this April 29th letter for  
8 identification purposes?

9 MR. BROWN: No objection, Sir.

10 THE COURT: Exhibit 'L' for identification  
11 purposes will be the letter dated April 29th, 2003  
12 from TrueHope to Mr. Rod Neske.

13 MR. BUCKLEY: Thank you, Your Honour.

14 THE COURT: Thank you.

15

16 \*EXHIBIT 'L' - For identification - Letter to Mr. Rod  
17 \*Neske, compliance officer, dated April 29, 2003, from  
18 \*Anthony F. Stephan and David L. Hardy of TrueHope  
19 \*Nutritional Support Ltd.

20

21 Q MR. BUCKLEY: Now, I'm going to show you, as  
22 the next document, what I believe to be another  
23 Health Canada email but it doesn't appear to be the  
24 date. This -- you'll see there's numbers on the  
25 bottom of the page which are numbers that came with  
26 an ATI request but there's some stuff blanked out so  
27 we can't tell when the email was but it's talking

1 about a political rally in front of Health Minister,  
2 Anne McLellan's office on May 30th, 2003. Now, have  
3 you seen this? I mean it appears to almost be a  
4 news release and under Joan Korol, on the first  
5 page, it says copy of their news release and then  
6 attaches it.

7 A I -- I seem to recall being forwarded a copy of this  
8 news release. I can't recall who forwarded it to  
9 me.

10 Q Okay. So, whether or not you've seen this  
11 particular email but the news release at least  
12 seemed to have circulated in Health Canada enough  
13 that you received a copy?

14 A Yes.

15 Q Okay. And when you saw the news release was it  
16 obvious to you -- I've highlighted, I believe, on  
17 the second page that Anthony Stephan and David Hardy  
18 of TrueHope were going to be also speaking at the  
19 Minister's office. Were you aware of that when you  
20 read the news release?

21 A I believe so, yes.

22 Q Okay. And then on the last page of that news  
23 release I've -- I've highlighted just part of what's  
24 going on there and they're talking about Bill C-420.  
25 You're aware of that Bill C-420 is?

26 A I -- I'm familiar with it. I haven't read it but  
27 I'm familiar with it.

1 Q Okay. Would it be fair to say that your familiarity  
2 with it is that you understood that it was a bill  
3 that was proposing to amend the Food and Drug Act?

4 A Yes.

5 Q Okay. And amended in such a way to move natural  
6 health products into the food category?

7 A Yes.

8 Q Okay. And you were probably, you know, made aware  
9 that that could change how these products are  
10 regulated by Health Canada?

11 A If it passed, yes.

12 Q Okay. So, that part I highlighted about this would  
13 ensure that natural health products are not  
14 arbitrarily classified as drugs and denied to  
15 Canadians without the scientific evidence to justify  
16 it that's not a surprise to you because you were  
17 aware of the bill would that be fair to say?

18 A I'm not sure I -- I can agree with that statement.  
19 I mean because I don't -- I -- I don't know how that  
20 -- assuming the legislation passed, the change in  
21 legislation, I don't know how that legislation would  
22 be framed.

23 Q Okay. Well, and I don't need you to answer that  
24 question actually because I'm just trying to point  
25 out to you that it seemed to be obvious in Health  
26 Canada's file that not only is this company trying  
27 to get an exemption but they seem to be involved in

1 political process to get out of this quagmire that  
2 they're in with the no din number. Would that be  
3 fair to say that you were aware that they were  
4 involved in that process?

5 A That would be fair to say.

6 Q Okay.

7 MR. BUCKLEY: Your Honour, I'm just  
8 wondering if this could be marked for identification  
9 purposes?

10 THE COURT: Exhibit 'M' for identification  
11 purposes an email attaching a press release I take  
12 it. Is that a proper description?

13 MR. BUCKLEY: Yes.

14

15 \*EXHIBIT 'M' - For identification - Email labelled:  
16 \*Response, Action taken/measures prises, comments and  
17 \*attachment from Joan Korol with attached press release,  
18 \*pages numbered 000015 to 000017

19

20 Q MR. BUCKLEY: Now, Ms. Jarvis, I'm going to  
21 hand to you a letter that I'm fairly certain you're  
22 familiar with because it was in the Prosecution  
23 brief and it is a June 17th, 2002 letter from  
24 TrueHope Nutritional Support to Mr. Dennis Shelley  
25 who you would recognize as your supervisor when he's  
26 not on leave during this period of time. This is  
27 actually before --

1 A This --

2 Q -- you're on the file?

3 A Exactly.

4 Q But, you're very familiar with this letter because  
5 it ended up in the Prosecution brief?

6 A I have reviewed the letter, yes.

7 Q Okay. Well, and you also decided that it was  
8 relevant to disclose to the Crown?

9 A In disclosing this information the purpose was just  
10 to serve as background information for the Crown.

11 Q Okay. Okay. So, that you felt that this -- okay.  
12 No, fair enough. Now, as far as this letter goes  
13 then -- so, you're not going to disclose it to the  
14 Crown without actually having gone through the  
15 letter?

16 A Right.

17 Q Okay. Now, because this is a letter from TrueHope  
18 but it also had attached to it literally hundreds of  
19 letters --

20 A Mm-hm.

21 Q -- from Canadians to be forwarded to Health Canada?

22 A Yes.

23 Q Okay. Now, I've tabbed some of these letters and  
24 the first tab -- now, you see on the top of the page  
25 there's the numbers 1033?

26 A Yes.

27 Q Just so the Court's aware we just number our pages

1           when we get them so that was page 1033 in the  
2           Prosecution brief but the bottom number indicates  
3           this was also disclosed under the ATI request.

4                     Now, but anyway this is a -- this page that's  
5           tabbed, which shows on the top of it 1033, seems to  
6           be a February 15th, '02 letter from a Mary, and I'll  
7           just spell the last name, D-I -- D-Z-I-O-M-Y, but  
8           what struck me is is she is writing to Ms. McLellan,  
9           the Minister of Health, and she identifies herself  
10          as one of the participants in the University of  
11          Calgary study and --

12        A     My --

13        Q     -- and is basically asking the Minister not to take  
14          the product away. Okay? You had read this letter?

15        A     Yes.

16        Q     Okay. Did you contact this person at any time to  
17          verify what was said in the letter?

18        A     No, I did not.

19        Q     Okay. And I'm just going to move to the next tab  
20          which on the top of the page has number 1063 which  
21          seems to be a February 13th, 2002 letter from a  
22          David Gilbert and I've highlighted for you -- but, I  
23          mean you've gone through these letters. Where I've  
24          highlighted where he says:

25

26                     My quality of life and ability to  
27                     function well in this world depends

1           on the continued ability to access  
2           this supplement. Please do not  
3           return me to a life of silent  
4           desperation.

5  
6           There's countless letters in here to that  
7           description aren't there?

8       A     I believe so, yes.

9       Q     Okay.

10      THE COURT:                   Excuse me, Mr. Buckley, where  
11           at you referring to?

12      MR. BUCKLEY:                 Okay.

13      THE COURT:                   I might not have the properly  
14           tabbed --

15      MR. BUCKLEY:                 I --

16      THE COURT:                   -- page here.

17      MR. BUCKLEY:                 It's 1063 is the tab --

18      THE COURT:                   Oh.

19      MR. BUCKLEY:                 -- from the --

20      THE COURT:                   Okay.

21      MR. BUCKLEY:                 -- top of the page.

22      THE COURT:                   What is tabbed at the top of  
23           my page is 1073.

24      MR. BUCKLEY:                 It should be the second tab.

25      THE COURT:                   Well, it is 1073 is what the  
26           second tab is on mine. So, just let me get back to  
27           where you were. Okay. 1063?

1 MR. BUCKLEY: Yes. Yeah, sorry about that.  
2 I guess everyone -- I tabbed everyone's but you're,  
3 Sir, so --

4 THE COURT: All right. Let me just get it  
5 back. 1063 and the name is --

6 MR. BUCKLEY: David Gilbert.

7 THE COURT: -- Fentima (phonetic)?

8 MR. BUCKLEY: No, it should be this  
9 (UNREPORTABLE). Let's see.

10 THE COURT: Let me see where you are.

11 MR. BUCKLEY: It should be but ...

12 THE COURT: Okay. Well, this is where it  
13 was, 1073, and maybe you tend to want to be there  
14 anyway. Here is 1063 and obviously it is a  
15 different one.

16 MR. BUCKLEY: Yes, why don't you use my  
17 copy? It's the one everyone else is working off of.

18 THE COURT: But, you have a different  
19 number. Let me see where you are again. 1063?

20 MR. BUCKLEY: Well, I know that --

21 THE COURT: How did I have a different  
22 number on one brief and --

23 MR. BUCKLEY: Well, I --

24 THE COURT: -- not on the other?

25 MR. BUCKLEY: I'm at a loss of that because  
26 I had my assistant prepare them but we seem to have  
27 three copies that are all in total agreement so ...

1 THE COURT: Just a moment here.

2 MR. BUCKLEY: That's fine. Okay.

3 THE COURT: Okay. Just a moment. 1063?

4 MR. BUCKLEY: Right. Well, Your Honour --

5 THE COURT: No, that is fine the other  
6 number was 1068 that was so faint that I -- it is  
7 difficult to read it from --

8 MR. BUCKLEY: Okay.

9 THE COURT: -- 1063.

10 MR. BUCKLEY: Yeah, because there --

11 THE COURT: I have 1063 and it is the same  
12 so I am going to give it back to you --

13 MR. BUCKLEY: Okay.

14 THE COURT: Thank you.

15 MR. BUCKLEY: Because there shouldn't be  
16 different --

17 THE COURT: I will just move the --

18 MR. BUCKLEY: -- page numbers.

19 THE COURT: -- tab. Yes, the tab was just  
20 tabbed in the wrong place.

21 MR. BUCKLEY: And I have no problem me  
22 working off that other copy. They should all be  
23 identical.

24 THE COURT: Okay.

25 MR. BUCKLEY: So --

26 THE COURT: All right. 1063 is the letter  
27 from David Gilbert?

1 MR. BUCKLEY: Yes.

2 THE COURT: All right. Go ahead.

3 Q MR. BUCKLEY: Now, basically Mr. Gilbert  
4 pleading not the take the product away that's a  
5 theme that's in throughout these letters, is that  
6 correct?

7 A I -- I would say that's fair.

8 Q Okay. You never contacted anyone like Mr. Gilbert?

9 A Actually, I did speak to -- I believe it was the  
10 same David Gilbert --

11 Q Okay.

12 A -- on one --

13 Q So, you did --

14 A -- occasion.

15 Q You did con -- oh. Okay. On another occasion?

16 A Yes.

17 Q Okay. So, this is an occasion where Mr. Gilbert  
18 phones in to you, right?

19 A No.

20 Q Okay. What's the occasion that you spoke to Mr.  
21 Gilbert?

22 A It was in relation to -- I believe I had looked at a  
23 copy of the book, Pig Pills --

24 Q Okay.

25 A -- and his name came up in that document. He was  
26 identified as a medical liaison, I believe that was  
27 the title he was given, for Synergy. I called him

1           some time -- I believe it was June 20 -- somewhere  
2           between June 23rd, June 27th. I had asked --  
3           actually, I think -- I believe I identified myself  
4           as someone with depression and I was interested in  
5           getting the product, EMPowerplus, and he indicated  
6           to me that he was no longer affiliated with that  
7           company. He was actually working for a company  
8           called Evince --

9           Q     Okay.

10          A     -- in the United States.

11          Q     Now, you're familiar with Evince, right? From your  
12                review of the file?

13          A     Somewhat.

14          Q     Okay. When you say somewhat what's your  
15                familiarity?

16          A     It's my understanding that Evince used to supply the  
17                product --

18          Q     Okay.

19          A     -- EMPowerplus.

20          Q     Evince used to manufacture the product?

21          A     I can't recall if it was manufacture or supply --

22          Q     Okay.

23          A     -- or distribute.

24          Q     Okay. Now, did you ask Mr. Gilbert if what he said  
25                in the letter was true?

26          A     I'm trying to recall whether I was aware of this at  
27                the time I spoke to Mr. Gilbert.

1 Q Okay. Because there was -- there were many names in  
2 this attachment?

3 A Yes.

4 Q Okay. In response to these letters -- well, let me  
5 -- let's go to the next tab. The next tab should be  
6 at page 1078 on the top of the page.

7 A There's no number at the top of my page. Is this  
8 the one from Marilyn Anderson?

9 Q That is --

10 THE COURT: I have got a letter from --

11 MR. BUCKLEY: That --

12 THE COURT: -- Dr. Mallard.

13 MR. BUCKLEY: Yeah, that is super curious  
14 because I thought I tabbed these myself.

15 THE COURT: Madam clerk, could you pass me  
16 a sticker?

17 A Let me try the --

18 THE COURT: Do you have one of --

19 A -- last one in this.

20 THE COURT: -- the little ones?

21 A No.

22 Q MR. BUCKLEY: They'll be in chronological  
23 order.

24 A That's fine. That's tab --

25 THE COURT: No, just a second I have to  
26 mark this. Okay. I sometimes need -- okay. That  
27 is what I need thank you.

1 Q MR. BUCKLEY: There it is.

2 A That's -- ah.

3 Q Okay. So, that's a letter from a Colin D. Mallard  
4 PhD and it's dated February 13th, '02. Now, I was  
5 drawing this letter to your attention not because it  
6 says anything differently but just because it seems  
7 to be sent from somebody who -- I don't think  
8 they're purporting to be a medical doctor but  
9 somebody with a PhD who's reporting about somebody  
10 else they've witnessed. So, it's not a personal  
11 testimony so it kind of stuck out as different. It  
12 would be fair to say you never spoke to this Colin  
13 Mallard just to see if there's any truth to this?

14 A No, I did not.

15 Q Okay. Now, I'm hoping, I guess, that the next tab  
16 is 1128.

17 A No, this -- this is the one from Marilyn Anderson  
18 with no number on it. It's 720 -- 1128?

19 Q No, 1128.

20 A That's my next --

21 Q I have it. Just wait that's --

22 A Oh, is it on the back?

23 Q It's right there (UNREPORTABLE). It's tabbed. So,  
24 and this is a letter from a Ruth Biggar dated  
25 February 11th, 2002 and she says, "As a practising  
26 psychiatrist in the Ottawa area I have often  
27 struggled to control the mood ..." I can't read

1 that next word. "... mood cycling from which many  
2 people with bipolar illness suffer." And then she  
3 goes on later on:

4

5 I have been delighted to see several  
6 remarkable outcomes when I have come  
7 to the end of traditional mood  
8 stabilizing medications and tried the  
9 new multiple vitamin and mineral  
10 supplement known as EMPowerplus. It  
11 has allowed several of my patients to  
12 return to a normal life at home,  
13 school, and work.

14

15 Now, that's powerful stuff from somebody purporting  
16 to be a psychiatrist. You would've read this  
17 letter?

18 A I don't recall this specific one. If it was in the  
19 brief then yes, I did review it.

20 Q Okay. Would you have made a note in your file to  
21 contact somebody like Ms. Biggar because she's a  
22 psychiatrist?

23 A No.

24 Q Okay. Because it's clear she's communicating listen  
25 when I've had other drug treatments fail I've been  
26 able to manage patients on EMPowerplus instead and  
27 it's allowed them to live a normal life. She

1 clearly communicates that?

2 A That's what the letter indicates, yes.

3 Q Okay. The next page I want you to refer to, and  
4 there should be a tab, at 1216 -- or, it might be  
5 eight?

6 A Yeah, six or eight.

7 Q Okay. It's from a Dr. Richard Welch dated February  
8 10th, 2002?

9 A Yes.

10 Q And it reads:

11

12 I am a family physician in  
13 Abbotsford, BC. I have a patient  
14 with bipolar disorder who has been on  
15 EMPowerplus for three months. She  
16 has been able to come off Lithium and  
17 has noticed a significant improvement  
18 in her mood, concentration, and  
19 energy. I would recommend it  
20 continue to be available to her  
21 especially since she wants to get  
22 pregnant and other medication used to  
23 treat bipolar disorder is  
24 contraindicated in pregnancy.

25

26 Now, you would've read this because you've told us  
27 you read all of the letters attached, correct?

1 A Yes, if this was in the brief. I -- I don't recall  
2 at the moment but --

3 Q Okay.

4 A -- I'll agree if it was there I did read it.

5 Q Now, in response to reading all of these letters,  
6 including from a psychiatrist and from a medical  
7 doctor, you in response to this didn't contact  
8 anyone to verify the claims?

9 A No, I did not.

10 Q You didn't think anyone was lying in these letters  
11 is that fair to say?

12 A No, I mean that's fair to say.

13 Q And I mean there is just this repetitive theme that  
14 taking this product away is going to severely effect  
15 our health, from these Canadians that are writing  
16 in?

17 A That -- that's what the statements appear to be  
18 saying, yes.

19 Q Okay. Now, I'm assuming there was a whole folder or  
20 separate file in Health Canada to look into this and  
21 address these concerns because there were so many  
22 letters?

23 A Not in our office. I'm not aware of another office  
24 might be doing that or not.

25 Q Well, who else would do that in Health Canada?

26 A I -- I don't know who that would fall to.

27 Q Okay. It's just 'cause you work there and we don't.

1           So, when something like this comes in and there's a  
2           large number of people saying wait second our health  
3           depends on this, you're telling us you're not going  
4           to look into it?

5           A     Not unless I was asked to, no.

6           Q     Okay.  So, you have conduct of the file at some  
7           point and you've read this letter in the file,  
8           correct?

9           A     Yes.

10          Q     It's obvious to you your department hasn't looked  
11          into it?

12          A     I don't -- I -- it wasn't obvious to me either way.

13          Q     Okay.  Well, there was nothing in the file  
14          indicating that even one person had been called?

15          A     I don't recall seeing that, no.

16          Q     Okay.  And you yourself weren't going to do  
17          anything?

18          A     No.

19          Q     And you're not even sure if your department would do  
20          that, right?

21          A     Yeah, I'm not sure.  You're right.

22          Q     Okay.  And so well what other department would?  
23          Like when you get something like this who would you  
24          refer it to to look into ?

25          A     I don't know.

26          MR. BUCKLEY:                   Your Honour, I'm wondering if  
27          this can be marked as an exhibit for identification

1 purposes?

2 THE COURT: Where are we at now, madam  
3 clerk?

4 THE COURT CLERK: 'N'.

5 THE COURT: 'M'? Exhibit 'M'?

6 THE COURT CLERK: 'N'.

7 THE COURT: 'N'?

8 THE COURT CLERK: Yes.

9 THE COURT: What was 'M'?

10 MR. BUCKLEY: 'M' was the press release,  
11 Your Honour. The email with attached press release.

12 THE COURT: Exhibit 'N' will be the letter  
13 dated June 17th, 2002 from TrueHope to Dennis  
14 Shelley with a number of letters and enclosures  
15 attached.

16

17 \*EXHIBIT 'N' - For identification - Letter dated June 17,  
18 \*2002 to Mr. Dennis Shelley of Health Canada from Anthony  
19 \*F. Stephan and David L. Hardy of TrueHope Nutritional  
20 \*Support Ltd. along with a number of letters and  
21 \*enclosures with six coloured tabs

22

23 Q MR. BUCKLEY: Now, Ms. Jarvis, you've told  
24 us about this search on July 15th, 2003 that  
25 basically you were the one that orchestrated that?

26 A Under direction from my superiors, yes.

27 Q Okay. And when you're there conducting the search

1 Anthony Stephan is there?

2 A Yes, he did show up, yes.

3 Q Okay. And Mr. Stephan, would it be fair to say, was  
4 not pleased that you guys were there searching?

5 A That would be fair to say, yes.

6 Q Okay. Because you were interpreting the purpose of  
7 the search was part of enforcement to stop the  
8 product from being sold in Canada?

9 A Yes, it was for gathering evidence to support the  
10 offences.

11 Q Okay. But, you told us yesterday this whole object  
12 of this exercise was to stop selling in Canada while  
13 they're not in compliance with regulations?

14 A Yes.

15 Q Okay. Now, Mr. Stephan told you personally to your  
16 face that he was going to hold you personally  
17 responsible for any suicides that occurred from  
18 Health act -- Health Canada's action in the search.  
19 Do you remember that?

20 A Yeah, I recall that, yes.

21 Q Okay. He actually described what Health Canada was  
22 doing as criminal. Do you recall that?

23 A Not specifically but I will agree with it. I -- I  
24 don't recall the specific words.

25 Q Okay. But, it was clear that he was -- he was  
26 communicating to you that he was thinking that you  
27 guys were going to -- your actions could potentially

1           lead to suicides?

2       A     Yes.

3       Q     Okay.  And not only was he communicating to that he  
4           was taking it a step further and saying he's going  
5           to hold you personally responsible for those  
6           suicides?

7       A     Yes.

8       Q     Okay.  But, there's no question in your mind -- and  
9           I understand that when somebody tries to make  
10          something personal that it might become emotional  
11          but there's not question to you that at least he was  
12          communicating to you wait second there might be  
13          suicides here if you guys keep this up?

14      MR. BROWN:                    I'm going to object to that  
15          particular question because she can't know what's in  
16          his mind and I think that's what this question is  
17          asking.

18      MR. BUCKLEY:                 Well, I can rephrase it  
19          because I'm not --

20      MR. BROWN:                    All right.

21      MR. BUCKLEY:                 -- I can go where I want to go  
22          without my friend -- my friend --

23      THE COURT:                    Well, I agree with the  
24          objection.

25      MR. BUCKLEY:                 So --

26      THE COURT:                    She cannot say what is in  
27          somebody else's mind.

1 MR. BUCKLEY: That's true. That's true and  
2 we have covered what was said so I will move on.

3 Now, I had asked you some questions the other  
4 day about the Health Canada 1-800 crisis line?

5 A Yes.

6 Q And when I say the 1-800 crisis line you understand  
7 that Health Canada set up a crisis line to deal with  
8 TrueHope participants when product was being turned  
9 back at the border?

10 A Yes, people who had concerns.

11 Q Okay. And I'm just going to hand you a document.  
12 This was disclosed to me by my friend I believe on  
13 Friday. It appears to be a Health Canada email  
14 dated June 6th, 2003. Have you seen this document?

15 A I don't recall.

16 Q Okay. So, it wasn't you that was involved in  
17 getting this disclosed to the Crown?

18 A No.

19 Q Okay. So, you've never seen this document and I  
20 believe you even told us yesterday, with regards to  
21 the 800 crisis line, you guys weren't really getting  
22 feedback as to what was being said on that line?

23 A Not specifically, no. I got the sense that people  
24 were -- were unhappy with what was said on the line  
25 and I can't recall where that information came from.

26 Q And just so I'm clear would it be fair to say that  
27 at least that you didn't take any steps to

1 investigate what was being said by people calling in  
2 to the 800 crisis line?

3 A I think I may have asked if anybody knew what kind  
4 of calls they were getting. Not -- nothing that I  
5 would consider part of my investigation more of a  
6 curiosity factor.

7 Q Okay. What -- why would you be curious about that?

8 A Because I -- I liked to be kept apprised of what  
9 was going on in -- in relation to the file even if  
10 it wasn't directly -- you know, it -- it wasn't  
11 evidence per se to support the charges.

12 Q Okay. So, your focus really is, you know when 800  
13 crisis line is set up, is you guys are focussing on  
14 gathering evidence to support charges?

15 A Who do you mean by you guys?

16 Q Okay. I mean well, you personally. That was your  
17 focus?

18 A Yes.

19 Q Okay. There were some other Health Canada  
20 investigators that would assist you on the file?

21 A Yes.

22 Q But, basically you were the lead?

23 A Yes.

24 Q Okay. So, your focus was to gather evidence and  
25 your focus was not to look into the consequences of  
26 denying Canadians access to the product?

27 A Can you rephrase that?

1 Q Okay. Your access was to gather evidence at this  
2 point, in June of 2003?

3 A Yes.

4 Q Okay. You're not focussing at all as to what effect  
5 denying the product to Canadians would have?

6 A I would agree that's not my focus.

7 Q Okay.

8 A It was not my focus.

9 Q And in fact really you guys -- you personally took  
10 no steps to look into that the effect of denying the  
11 product to Canadians was going to have?

12 A No.

13 Q Now, looking at this document I gave you I've  
14 highlighted several things but there's -- these are  
15 itemized points one to six and point number three  
16 reads, "As of today we only got one call that was  
17 identified as a suicidal claim." Had anyone  
18 reported to you that there was a call to the 800  
19 line of somebody that, at least they believed, was  
20 suicidal?

21 A I don't recall one way or the other.

22 Q Okay. And point number five reads that:

23

24 The one question that keeps arising  
25 is whether or not Health Canada will  
26 publish something about the  
27 situation. People are in despair and

1           questioning what to do once they run  
2           out of the EMPowerplus. What are the  
3           alternatives if they cannot access  
4           the product? Counsellors are  
5           suggesting to the seek help from  
6           their family doctors. Most of them  
7           are quite angry at this suggestion.

8  
9           Was anything like that communicated to you?

10        A        Yeah, the -- the last sentence in that paragraph.  
11           When I mentioned that, you know, I recall hearing  
12           that people who were unhappy that -- that -- now I  
13           recall that that was the -- what I heard that they  
14           were unhappy about that they were just being  
15           referred to their doctors.

16        MR. BUCKLEY:                   And, Your Honour, I'm  
17           wondering if I can mark that exhibit for  
18           identification purposes?

19        MR. BROWN:                    No objection.

20        THE COURT:                    All right. The email dated  
21           June 10th, 2003 -- or, the copy of the email dated  
22           June 10th, 2003 will be 'O'. Exhibit 'O' for  
23           identification purposes.

24  
25        \*EXHIBIT 'O' - For identification - Email to Alexandria  
26        \*Mayar from Joelle Grenier, dated June 10, 2003, subject:  
27        \*EMPowerplus stats, email has yellow highlighting

1 \*throughout

2

3 Q MR. BUCKLEY: Now, I had asked you some  
4 questions about this yesterday but in thinking about  
5 it I'm unclear of actually whose decision it was to  
6 start turning the product away at the border. So,  
7 somebody in Health Canada made the decision to  
8 instruct Customs not to let the product in. Do you  
9 recall who made that decision?

10 A I don't think I was part of the discussions as to  
11 that decision.

12 Q Okay. That wasn't my question. Do you know who  
13 made the decision?

14 A Well, I took my order from my supervisor. I don't  
15 know where he got his direction from, no.

16 Q Do you mean Mr. Neske?

17 A Mr. Neske, yes.

18 Q Now, in the Prosecution brief there is a summary of  
19 the investigation?

20 A Yes.

21 Q You drafted that summary?

22 A Yes.

23 Q Okay. And part of that reads, "Health Canada issued  
24 47 refusals for shipments between September 17th,  
25 '03 and December 20th, '03." Does that sound right  
26 to you?

27 A Yes.

1 Q Okay. Now, I wasn't able to glean the total number  
2 of refusals 'cause that just starts on September 17  
3 and as early as May Health Canada was instructing  
4 Customs to turn product around at the border?

5 A Yes.

6 Q Are you able to estimate for us how many shipments  
7 were refused at the border?

8 A I -- I don't know. I can't even recall the number  
9 from the brief.

10 Q Now, but you do recall that basically from May to  
11 the end of 2003 it was Health Canada's policy to try  
12 and deny the product entering into Canada?

13 A Yes.

14 Q And you've already told us that that was in an  
15 effort to take it off the Canadian market?

16 A Yes.

17 Q Now, at some point Health Canada made a decision to  
18 tell Customs it was okay for the product to come  
19 across the border?

20 A I believe that occurred, yes.

21 Q Okay. Do you recall when that occurred?

22 A No, I don't.

23 Q Do you recall why it occurred?

24 A I recall that -- it's my understanding that Synergy,  
25 TrueHope, had made arrangements for all orders go  
26 directly to the US rather than to Raymond, Alberta  
27 and in doing so individuals could then bring in

1           their 90 day supply, or less, under the personal use  
2           importation directive.

3       Q     Okay. So, I just want to understand the mentality  
4           of Health Canada here. Everyone in Health Canada  
5           understands it's the same product, right?

6       A     Yes.

7       Q     Okay. So, we're dealing with the same product.  
8           We're dealing with the same TrueHope participants  
9           ordering the product, correct?

10      A     I -- I would assume so.

11      Q     Okay.

12      A     I can't say for certain.

13      Q     And the only change is is that the phone call  
14           doesn't go to Raymond, Alberta it goes to some place  
15           in the US?

16      A     I believe that was the only change, yes.

17      Q     Okay. And so that change was enough to get over  
18           Health Canada's health hazard evaluation?

19      A     No, the -- the risk still remains.

20      Q     Okay. But, the same product is coming in to  
21           Canadians. They're buying the same product?

22      A     And that's what the personal use importation  
23           directive allows. It's not considered a sale in  
24           Canada.

25      Q     Okay. But, I just want to make sure that we  
26           understand this because I think you agreed with me  
27           yesterday this whole thing is about health and -- of

1           Canadians, right?

2           A     Ultimately, yes.

3           Q     Okay.  And I'm just trying to get my mind around it.  
4           So, the defendants here, if they sell it, there's  
5           enough of a health concern that Customs has to be  
6           told that it has to stop at the border, is that  
7           correct?

8           A     Yes.

9           Q     Okay.  But, if somebody from the United States takes  
10          an order they can ship the same product across and  
11          that's obviously not a health concern for Health  
12          Canada?

13          A     The risks still remain however the policy allows for  
14          the personal importation of a product that's not  
15          sold in Canada even though it's unapproved for sale  
16          in Canada.

17          Q     Okay.  So, this goes back to policy.  That's what's  
18          governing Health Canada?

19          A     That -- in that particular case, yes.

20          Q     Okay.  So, we have a situation where -- 'cause it's  
21          not in the regulations this personal import policy.  
22          It's not a regulation is it?

23          A     No, it's not.

24          Q     Okay.  So, it's just an internal policy of Health  
25          Canada's?

26          A     Yes.

27          Q     Okay.  So, we're in a policy situation where Health

1 Canada is searched -- doing a search of the  
2 premises, where they're telling Customs to stop  
3 shipment, because when the order is taken in Canada  
4 it doesn't fit within this importation policy, is --  
5 would that be fair to say?

6 A Because it's at -- at this point because it's  
7 offered for sale in Canada it's governed by the Food  
8 and Drug Regulations and the Food and Drug Act.

9 Q Okay. And as soon as the call is -- the order is  
10 taken across the border it's not considered a  
11 current in Canada and so it can come --

12 A It --

13 Q -- in freely?

14 A If it's not being offered or promoted for sale in  
15 Canada and the orders are taken in the US then it's  
16 in -- in a sense operating outside our regulations.

17 Q Okay. And obviously that's not a problem for Health  
18 Canada because they're letting the product in even  
19 today under the personal importation policy, is that  
20 correct?

21 A I -- I -- you know, I can -- can't speak for Ottawa  
22 and Health Canada. I don't know.

23 Q Okay. Were you aware, 'cause you were on this file  
24 for the charge period here, 2003 -- you know from  
25 the end of May, was there any discussion at Health  
26 Canada saying, You know what we should revisit our  
27 personal importation policy and perhaps revise it to

1 accommodate a situation like this?

2 A I don't recall the discussion.

3 Q Now, I'm going to show you some documents from the  
4 Prosecution brief and have a look at that and see if  
5 you recognize those documents.

6 A Yes, I recognize it.

7 Q Okay. Ms. Jarvis, and as I say these were in the  
8 Prosecution brief. On the bottom left hand page is  
9 a web address, HTTP:redumbrellas.ca and on the  
10 bottom right it says, "2003-9-26". I'm assuming,  
11 but I didn't put the Prosecution brief together,  
12 that somebody at Health Canada basically printed  
13 this off of the Red Umbrellas website on September  
14 26th, 2003. Does that sound correct to you?

15 A Yes.

16 Q Okay. Did you do that?

17 A I either did or I asked someone to do it for me. I  
18 can't recall.

19 Q Okay. So, whether you did it or not it was done  
20 under your direction?

21 A Yes.

22 Q Now, how did you come across the Red Umbrellas  
23 website?

24 A I can't recall specifically.

25 Q Okay. But, you clearly read this 'cause you printed  
26 this material off and you read it?

27 A Yes.

1 Q Okay. And so you knew who the ladies with Red  
2 Umbrellas were from reading this?

3 A I -- I -- yeah, I knew the names that were  
4 identified on the -- on the page.

5 Q Okay. It talks about them being in Ottawa to pro --  
6 basically protest Health Canada's actions, your  
7 actions, in stopping product at the border back in  
8 June of 2003?

9 A Yes.

10 Q Okay. Now, back in June of 2003 were you aware that  
11 the ladies with Red Umbrellas were in Ottawa on  
12 Parliament Hill protesting your very actions?

13 A I can't recall if I knew at the time or after --  
14 shortly after the fact but yes, I had heard.

15 Q Okay. And that's probably why you went to their  
16 website to download it?

17 A It -- it could've been.

18 Q Okay. Now, I'm not going to read these people's  
19 stories but you've read them, is that fair to say?

20 A I -- I've at least browsed through them, yes.

21 Q Okay. At least browsed them. You don't even --  
22 you're not even sure that you would've gone through  
23 the trouble of reading in detail the stories of  
24 these women that felt compelled to go to Ottawa to  
25 protest your personal actions?

26 A I -- I don't recall if I read them in detail.

27 Q Okay. Would it be fair to say that you recall that

1           they basically relate to some tremendous success  
2           stories of this product changing their lives in an  
3           incredibly productive way?

4       A     Yes, there were some test -- I -- I know that --  
5           that there were testimonials --

6       Q     Oh.

7       A     -- supporting these products, yes.

8       Q     Okay. Were you aware that they gave a press  
9           conference actually in the parliament buildings?

10      A     It -- it sounds familiar, yes.

11      Q     Okay. Did you -- would you have viewed a copy of  
12           that press conference?

13      A     No, I did not.

14      Q     Is there any reason why you wouldn't have if it  
15           seems that you had heard about it?

16      A     I don't think I was even aware there was a  
17           videotaped copy.

18      Q     Okay. But, you were aware that it happened in  
19           Parliament Hill, that there was a press conference?

20      A     I do recall something to that effect, yes.

21      Q     Okay. I'm just assuming a government employee would  
22           understand that it's actually Parliament Hill that  
23           does filming of every press conference.

24      A     I didn't know what.

25      Q     You weren't aware of that? Okay. Now, you did  
26           understand that these ladies were protesting Health  
27           Canada's actions of stopping the product at the

1 border?

2 A Yes.

3 Q You've got conduct of this very file that they're  
4 protesting about?

5 A Yes.

6 Q Okay. Did that lead you to make inquiries of these  
7 women as to why they were taking this action?

8 A No.

9 Q Did that not concern you at all?

10 A I was under the understanding that they were taking  
11 that action because they believed in the -- the --  
12 you know, the effectiveness of the product. It did  
13 not have an impact on -- I didn't believe it had any  
14 support to the evidence of selling a product that  
15 was unapproved which was essentially my role.

16 Q And I think you've made it clear you're just taking  
17 orders from above?

18 A Or, the side.

19 Q (INDISCERNIBLE).

20 MR. BROWN: Sir, I'm not sure that she's  
21 made that clear at all.

22 MR. BUCKLEY: Okay.

23 MR. BROWN: She may have said on certain  
24 occasions she took direction from above but it's  
25 unfair to put it that way.

26 THE COURT: I believe she said from her  
27 superior, is that right?

1 A Yes, and -- and -- yes.

2 Q MR. BUCKLEY: Okay. And so you're telling  
3 us that -- okay. So, you understood they were  
4 protesting because they believed -- at least you  
5 thought they believed in the effectiveness of the  
6 product but that didn't effect your actions -- or,  
7 your enforcement actions because in your mind they  
8 were selling a product that was unapproved, i.e. no  
9 DIN number?

10 A Yes.

11 Q Okay. And just so I'm clear on -- back on this  
12 personal importation policy product to be -- come in  
13 under personal importation it doesn't need a DIN  
14 number?

15 A If it's being brought in for personal use it does  
16 not have to -- it doesn't have to meet the  
17 regulations.

18 Q Okay. Which -- you know, which is somewhat curious  
19 from a policy perspective. So, if a health food  
20 store that might have some expertise in this type of  
21 product was to import it for sale and where they  
22 could advise their customers how to take it and  
23 stuff like that that would -- that would violate  
24 this personal importation policy and not be allowed.  
25 Health Canada's policy is no would that be correct?

26 A If it was a drug, yes.

27 Q Okay. It was this very product without a DIN.

1 Okay?

2 A Yes.

3 Q So, a local health food store in Calgary that had  
4 expertise in natural health products and advising  
5 about vitamins and minerals they couldn't bring it  
6 in to sell to their customers?

7 A If we're speaking about EMPOWERplus, no.

8 Q Okay. But, the customers on their own, without  
9 going to somebody with expertise, they can import it  
10 without a Drug Identification Number for their own  
11 personal use?

12 A A 90 day supply or less, yes. The policy allows for  
13 that.

14 Q Okay. I'm just trying to get my head around this  
15 Health Canada policy. Does that sound safe to you?

16 MR. BROWN: Well, Sir, I have a little bit  
17 of trouble with this line of questioning. It's  
18 verging on asking this witness to make what is  
19 really a legal opinion frankly and my friend is  
20 being somewhat disingenuous in the framing of the  
21 question, I think, because he's familiar with the  
22 policy and what it says and why it says what it says  
23 and it's my submission that the way these questions  
24 are being framed are somewhat disingenuous in that  
25 context.

26 THE COURT: Mr. Buckley, you have already  
27 suggested that you consider this to be a rather

1           curious policy and you are going on and you are  
2           asking this witness as to whether or not -- asking  
3           her to comment as to whether or not this is safe.  
4           In my view you are asking her to give an opinion she  
5           is not qualified to give whether, with as general a  
6           question as that or it is a medical opinion you are  
7           asking for or a legal question you are asking for,  
8           it is too broad and it is out of line. So, rephrase  
9           your question.

10       MR. BUCKLEY:                   Thank you, Your Honour.

11       THE COURT:                    And let us stay to the point  
12           of what this --

13       MR. BUCKLEY:                   Yeah.

14       THE COURT:                    -- case is about.

15       MR. BUCKLEY:                   Yeah.

16       THE COURT:                    I warned you yesterday and I  
17           am going to mention no more after this without  
18           starting to restrict your questions.

19       MR. BUCKLEY:                   Thank you, Your Honour.

20       THE COURT:                    If you want to make broad  
21           policy pronouncements and comments that is fine but  
22           not in the courtroom. This is a trial we are  
23           running. Stick to the issues.

24       MR. BUCKLEY:                   No, and fair enough and I'm  
25           not -- you know, sometimes when you're cross-  
26           examining you do kind of -- you do go on tangents.  
27           You know, I can advise the Court that some of these

1           answers are surprising me and, you know, I'm -- I'm  
2           wanting to kind of pursue them because they go to --  
3           I think the mentality of what was going on in Health  
4           Canada is relevant to this but I appreciate my  
5           friend's objection and it's a correct objection and  
6           --

7       THE COURT:                   All right. Then move --

8       MR. BUCKLEY:                 -- so I'll move on.

9       THE COURT:                   -- on please. Okay.

10      MR. BUCKLEY:                 So, thank you.

11      THE COURT:                   Thank you.

12      MR. BUCKLEY:                 Now, I'm wondering if we can  
13           mark this Red Umbrellas thing as an exhibit and it -  
14           - the reason I'm asking that is this witness  
15           downloaded it. I'm -- it's, you know, evidence of  
16           kind of what was in Health Canada's possession. I  
17           can advise the Court I'm planning on calling  
18           probably three of these Red Umbrellas to give  
19           testimony about their stories but I'm -- I'm not  
20           entering this for the truth of its contents but it -  
21           - the record on the Health Canada file --

22      MR. BROWN:                   I don't have any objection to  
23           it.

24      MR. BUCKLEY:                 -- is it is relevant.

25      MR. BROWN:                   I think this is a --

26      THE COURT:                   I would like to know, if you  
27           are planning on calling three such witnesses, what

1           that has to do with the charge of not having a DIN  
2           or do you want to deal with that particular point of  
3           relevance when you get to it?

4   MR. BUCKLEY:                   Well, actually I'm -- I'm more  
5           than happy to excuse this witness and deal with it  
6           now because it is an important issue. So --

7   THE COURT:                    Well, I am just putting you on  
8           notice that you are going to have to satisfy me of  
9           relevance at the time that you call them.

10   MR. BUCKLEY:                  Well, we may want to satisfy  
11           that before. They're all flying from across the  
12           country so --

13   THE COURT:                    Well, finish --

14   MR. BUCKLEY:                  -- there's --

15   THE COURT:                    -- with this witness who is on  
16           the stand --

17   MR. BUCKLEY:                  Okay.

18   THE COURT:                    -- and under cross-examination  
19           and then if you want to raise the matter then raise  
20           it but again, there are certain specific issues to  
21           be dealt with here in the proof and in the -- and in  
22           the defence of the case which, as I understand  
23           strict liability offences, the only defence  
24           available is one of due diligence. So, you are on  
25           notice as to --

26   MR. BUCKLEY:                  Oh --

27   THE COURT:                    -- what I am looking at down

1 the line --

2 MR. BUCKLEY: Yeah, we'll --

3 THE COURT: -- as to relevance of such  
4 witnesses. Now, you want to put this document in as  
5 an exhibit?

6 MR. BUCKLEY: I do.

7 THE COURT: Ma'am, you have looked at this  
8 and you are satisfied that this is the -- everything  
9 that is attached here is the complete document and  
10 was downloaded by you or under your direction?

11 A Yes.

12 THE COURT: All right.

13 MR. BROWN: No objection, Sir.

14 THE COURT: And you wish to make it a full  
15 exhibit at this time?

16 MR. BUCKLEY: I do, Your Honour.

17 THE COURT: All right. And I believe that  
18 would make it Exhibit 1.

19 MR. BROWN: Yes, Sir.

20 THE COURT: Exhibit 1 will be the document  
21 that has the title page, The New Face of Mental  
22 Illness in Canada, and it has a collection of  
23 documents attached to it that this witness has  
24 indicated that she downloaded for the Health Canada  
25 file or directed it downloaded for the Health Canada  
26 file. So, under those circumstances this document  
27 entitled, The New Face of Mental Illness in Canada,

1 with attachments will be Exhibit 1 in these  
2 proceedings.

3

4 \*EXHIBIT 1 - Colour printout off of  
5 \*<http://redumbrellas.ca> web page entitled, The New Face  
6 \*of Mental Illness in Canada: depicts The Women of Red  
7 \*Umbrellas and their stories with attachments, dated  
8 \*2003-06-26

9

10 Q MR. BUCKLEY: Now, Ms. Jarvis, I'm going to  
11 move you on. In September of 2003, you had a  
12 telephone conference with Mr. Brousseau and with  
13 basically Mr. Stephan and Dennis Shelley. Is that  
14 fair to say?

15 A I believe Mr. Hardy joined the call as well.

16 Q Okay. So --

17 THE COURT: I am sorry. Who was in the  
18 phone call?

19 Q MR. BUCKLEY: Okay. So it should be Anthony  
20 Stephan, David Hardy, Dennis Shelley, Miles  
21 Brousseau and Sandra Jarvis.

22 THE COURT: Okay.

23 Q MR. BUCKLEY: Is that correct, Ms. Jarvis?

24 A Yes. I believe Mr. Hardy was only there for part of  
25 the call. I think there was an initial call and  
26 then a call back, if I remember correctly.

27 Q Okay.

1 A I would agree that there were discussions on that  
2 day involving all four people present.

3 Q Now how did it come about that this conference call  
4 was arranged?

5 A I believe, if I recall correctly, I heard that Mr.  
6 Stephan had attempted to reach Dennis Shelley and  
7 when Mr. Shelley called him back I was invited to  
8 sit in on the call.

9 THE COURT: I am sorry. When was this?

10 A September 18th, 2003.

11 THE COURT: Thank you.

12 Q MR. BUCKLEY: Okay. And would it be fair to  
13 say that during this meeting that Mr. Stephan  
14 communicated a concern that there may have been  
15 suicides because of people were unable to get the  
16 product?

17 A I recall that. Yes.

18 Q And that he was concerned that people were going to  
19 be hospitalized?

20 A Yes. I recall that.

21 Q Okay. Do you recall him voicing to you a concern  
22 about, you know, the fact that they had gotten the  
23 call from somebody who appeared to be suicidal  
24 because they couldn't get the product?

25 A Well, the message, in my view, was being conveyed to  
26 Mr. Shelley. I was simply there to take notes.

27 Q Okay. Fair enough. And now, was there any response

1 by yourself to kind of look into these allegations?

2 A No.

3 Q Okay. Any reason why not?

4 A From my perspective, you know, my role was to gather  
5 evidence for the case and I didn't think there was  
6 any evidentiary value in pursuing that. At least  
7 I'm not sure that that was my thought at the time,  
8 quite frankly.

9 Q Now this talk about the fact that there may have  
10 been suicides because people couldn't get the  
11 product, that wasn't new to you in September, 2003.  
12 You had heard that before.

13 A Yeah. I had heard it voiced. Yes.

14 Q Okay. Where had you heard it voiced?

15 A Mm-mm. I believe even you mentioned it that Mr.  
16 Stephan said that during the execution of the search  
17 warrant he conveyed to me that there would likely be  
18 suicides because of our actions. I don't recall the  
19 exact words.

20 Q Did you know who Ron LaJeunesse was?

21 A The name sounds familiar.

22 Q Okay. I am just going to show you a copy of a news  
23 article and I just want to see if this can jolt your  
24 memory. What I am handing you is a two-page  
25 document. The second page is a full page of the  
26 Regina Leader-Post, Friday, July 18th, 2003, which  
27 basically shows a story about supplement rates that

1 lead to suicide. And the first page is just a close  
2 up of that story.

3 But this is recording that the Alberta Head of  
4 the Canadian Mental Health Association says, Mental  
5 patients may kill themselves as a result of a police  
6 raid that could cut off their supply to a  
7 controversial vitamin supplement. Ron LaJeunesse  
8 says that "he believes the supplement known as  
9 EMPowerPlus has cured patients suffering from mental  
10 illness and that their lives are at risk without  
11 it."

12 And then, "It's going to result in dozens of  
13 suicides" said LaJeunesse, executive director of the  
14 Canadian Mental Health Association, Alberta  
15 division. "I know of two already. If there's no  
16 opportunity for people to take it, at best we're  
17 going to see some mental patients going back to  
18 hospital. At worst, they'll die."

19 Have you seen news stories like this before?

20 A I recall seeing this article. Yes.

21 Q Okay. So you actually saw this article? I am  
22 imagining that this article alarmed you when you  
23 read it.

24 A From a personal view point, yes.

25 Q Now, in reading this article, does it refresh your  
26 memory that Ron LaJeunesse was the Alberta head of  
27 the Canadian Mental Health Association?

1 A Yes.

2 Q Okay. And at the time -- I mean, Health Canada  
3 didn't think that the Alberta branch of the Mental  
4 Health Association was connected with the  
5 defendants?

6 A I don't know.

7 Q Okay. You didn't know either way?

8 A No.

9 Q This is pretty powerful stuff. At least it's  
10 reporting that he's complaining about the search and  
11 that basically Health Canada's actions in denying  
12 the product is creating a real risk.

13 MR. BROWN: Is there a question there?  
14 Because I didn't hear a question for this witness  
15 other than the statement --

16 THE COURT: Yes. Please re-phrase your  
17 question. Or please make the question as opposed to  
18 paraphrasing the risk --

19 MR. BUCKLEY: Yes.

20 THE COURT: -- that you are alleging here.

21 Q MR. BUCKLEY: Was there any response to  
22 this? You told us you've read the article. Did you  
23 take any steps to investigate these claims?

24 A I did not.

25 Q And once again, is it fair to say that's because it  
26 wasn't relevant to your investigation? Gathering  
27 evidence for this prosecution?

1 A I didn't believe so. No.

2 Q Now, Ms. Jarvis, when Health Canada in May of 2003  
3 were starting to stop shipments at the border and  
4 seized that shipment, you were aware that the  
5 defendants went to federal court to challenge what  
6 Health Canada was doing?

7 A Yes.

8 Q Okay. And you were aware of this because you were  
9 actually involved in filing -- in swearing an  
10 affidavit for Health Canada's response?

11 A Yes.

12 Q Okay. So there's no question that you were aware  
13 that basically what you guys were doing in seizing  
14 the product was being challenged in the federal  
15 court of Canada?

16 A Yes.

17 Q Okay. And just so --

18 MR. BUCKLEY: Your Honour, I'll provide  
19 everyone with a copy of the notice of application.  
20 And the original that I'll provide to Ms. Jarvis is  
21 a copy certified by the clerk of the federal court.

22 THE COURT: Thank you.

23 MR. BROWN: Your Honour, I'm just going to  
24 ask before my friend begins to question this witness  
25 on this application, what relevance the federal  
26 claim has to a prosecution that is in this court.  
27 As we know, a claim is nothing more than that - a

1 bunch of claims made by one party or another and  
2 defended by one party or another and I'm just not  
3 certain what the relevance of this particular matter  
4 has to the charge. I'm just wondering if my friend  
5 might be able to speak to that, sir, if you think it  
6 is appropriate.

7 MR. BUCKLEY: I think that's a fair comment.

8 THE COURT: Go ahead.

9 MR. BUCKLEY: Your Honour, because the  
10 defence is running a necessity defence, one of the  
11 things that we have to show -- so we can go back to  
12 the Perka decision which was followed in the Latimer  
13 decision in the Supreme Court of Canada, is that we  
14 have to show that there was no legal alternative  
15 open to the defendants other than breaking the law.  
16 So we basically have to show that they were taking  
17 -- looking at all the legal alternatives and trying  
18 to pursue them.

19 And one of the legal alternatives when you have  
20 a bureaucracy saying, Just wait a second. You can't  
21 do this, is you can go to court and challenge it.  
22 You might be right and you might be wrong. But it's  
23 a legal alternative open. And so if I don't lead  
24 evidence about this, my friend can stand up at the  
25 end of the case and say, Well, you know, there were  
26 other legal alternatives that the defendants could  
27 have taken. And one of those was to go to the

1 courts to seek redress because in Canada, we use the  
2 courts to try and solve problems with how the  
3 government interacts with the citizens.

4 I'm not going to spend a lot of time on this  
5 but actually I feel compelled that I have to lead  
6 this evidence. I can lead it through the defence  
7 but my practice is always to at least give the Crown  
8 witnesses an opportunity in just to acknowledge at  
9 least the correct -- the defence thing so that they  
10 can respond to it.

11 But that's where I view the relevance. If my  
12 friend is willing to concede that the defendants did  
13 not have to show that they were taking every -- at  
14 least that court actions was not an issue that  
15 they're going to raise for a defence, I am more than  
16 happy to not go there, because we also have to go --  
17 it was a clean (INDISCERNIBLE) also.

18 But that's why I'm raising it is just my  
19 interpretation of the evidentiary burden that we  
20 have. I've got to basically show that they were  
21 trying to take every legal opportunity available to  
22 them. And the court process and the political  
23 process is part of that.

24 THE COURT: All right. I understand that  
25 your answer is that you consider it relevant to a  
26 defence if you wish to advance that part of your  
27 case. And under those circumstances I will allow

1           you go ahead with it.

2       MR. BUCKLEY:                    Thank you, Your Honour.  And  
3           as I said, I don't need to spend much time with it.

4       Q   MR. BUCKLEY:                So, Ms. Jarvis, basically you  
5           understood that there was -- that the very  
6           defendants in this case, or at least one of them,  
7           was challenging Health Canada's enforcement actions  
8           at seizing products?

9       A   Yes.

10      Q   Okay.  And you've seen this notice of application  
11           before.  I mean this is a copy.  But I expect you've  
12           seen this court document before.

13      A   Yes.

14      Q   And you recognized it as part of the court process  
15           to challenge what Health Canada was doing in this  
16           case?

17      A   Yes.

18      Q   Okay.  Would it be fair to say that you understand  
19           that that proceeding did not complete in 2003?

20      A   That's my understanding.

21      Q   And would it also be fair to say that despite the  
22           fact that Health Canada knew that their actions were  
23           being challenged in federal court, that that in no  
24           way impeded your investigation.  You continued on.  
25           So you guys didn't stop seizing product.  You didn't  
26           stop turning product away at the border despite this  
27           court action.

1 A No, we did not.

2 Q Okay. And you didn't, say, you didn't stop your  
3 investigation. You continued on with the search  
4 warrant?

5 A That's right.

6 Q Okay. And continued gathering evidence?

7 A That's right.

8 Q Okay.

9 MR. BUCKLEY: Now, Your Honour, I am  
10 actually seeking to enter that as an exhibit. It's  
11 a certified copy by the clerk of the federal court  
12 and under the *Canada Evidence Act* I believe I'm  
13 entitled to enter it.

14 MR. BROWN: Well, I haven't been given  
15 notice of it but -- so normally that would be  
16 required. You are supposed to have reasonable  
17 notice under the *Canada Evidence Act*. But frankly,  
18 I'm not going to object to the admission of the  
19 evidence either way.

20 THE COURT: All right. Exhibit 2 will be  
21 the notice of application.

22 THE COURT CLERK: May I get some --

23 THE COURT: All that you are putting into  
24 evidence here which will be Exhibit 2 is the notice  
25 of application -- notice of an application in the  
26 federal court of Canada, trial division.

27 MR. BUCKLEY: Yes, Your Honour. I don't

1 think it's necessary for me to enter affidavit in  
2 evidence or anything like that. The point -- and I  
3 can do that but just the point is from our  
4 perspective is just to place evidence before the  
5 court that that action was being taken. And  
6 there'll be testimony about that.

7 THE COURT: There is an application filed.  
8 That is all this tells me.

9 MR. BUCKLEY: Yes, and what it was for. And  
10 then the defendants can give testimony about what  
11 occurred.

12 THE COURT: Okay.

13

14 \*EXHIBIT 2 - Certified True Copy of Notice of Application  
15 \*between TrueHope Nutritional Support Limited,  
16 \*David Hardy, John Doe and Jane Doe (Applicants) and  
17 \*The Attorney General of Canada and The Minister of  
18 \*Health of Canada (Respondents) in the Federal  
19 \*Court of Canada - Trial Division filed May 28, 2003

20

21 MR. BUCKLEY: So, and likewise -- and Your  
22 Honour, because I had a problem with the Queen's  
23 Bench (INDISCERNIBLE) a certified copy I don't have  
24 photocopies. So I'm just going to give the witness  
25 a certified copy of a Queen's Bench notice of  
26 motion.

27 Q MR. BUCKLEY: And, Ms. Jarvis, I'll just ask

1 if you've seen that document before?

2 A Yes, I have.

3 Q Okay. And basically it's a Queen's Bench notice of  
4 motion challenging the validity of the search  
5 warrant that you obtained in this matter?

6 A Correct.

7 Q Okay. So you were aware that the validity of the  
8 search warrant was being challenged by the  
9 defendants in this matter?

10 A Yes, I had been.

11 MR. BUCKLEY: Your Honour, I just want to  
12 show that to my friend because I have to.

13 MR. BROWN: I've seen it, sir.

14 MR. BUCKLEY: Okay. I didn't think it would  
15 be a surprise because the Crown was well aware of it  
16 and acted for Health Canada in this matter.

17 And, Your Honour, once again --

18 THE COURT: You are asking for this to be  
19 made an exhibit as well?

20 MR. BUCKLEY: I am, Your Honour.

21 MR. BROWN: No objection, sir.

22 THE COURT: All right. Exhibit 3 will be  
23 the -- the other exhibit, Madam Clerk, Exhibit 2 was  
24 -- appears to have been filed on May 26th, 2003.

25 THE COURT CLERK: May 28th.

26 THE COURT: May 28th?

27 THE COURT CLERK: Yes.

1 THE COURT: 2003?

2 THE COURT CLERK: Yes.

3 THE COURT: All right. And this notice of  
4 motion is in the Court of Queen's Bench of Alberta,  
5 Judicial District of Calgary. A certified true  
6 copy. And it is dated September 11, of 2003. That  
7 will be Exhibit 3.

8 Here. There you go.

9

10 \*EXHIBIT 3 - Certified True Copy of Notice of Motion  
11 \*Between Her Majesty the Queen (Respondent) and  
12 \*The Synergy Group of Canada Inc., TrueHope Nutritional  
13 \*Support Ltd., David Lawrence Hardy and Anthony Frederick  
14 \*Stephan (Applicants) in the Court of Queen's Bench of  
15 \*Alberta, filed September 11, 2003

16

17 Q MR. BUCKLEY: Ms. Jarvis, I questioned you  
18 at length about, you know, the issue of when people  
19 were basically indicating to Health Canada that  
20 there's a health risk if they're denied this  
21 product.

22 What I want to ask now is in denying the  
23 product, was it clear to you that patients would  
24 have -- or TrueHope people that are denied the  
25 product would have to turn to other treatment  
26 options? Had that been part of Health Canada -- was  
27 that part of your, I guess, decision making process?

1 A Not me. No.

2 Q Did you see anything in the file, any kind of plan  
3 as to what's going to happen to people when they  
4 can't get any EMPOWERplus?

5 A I believe there was the 1-800 number to which you've  
6 already referred.

7 Q Okay. So we have the 1-800 - the crisis line.

8 A I believe that's what they called it.

9 Q Okay. Would that be basically the only intervention  
10 that (sic) your review of the file that you saw?

11 A That's all I am aware of.

12 Q Okay. There was never any analysis done into maybe  
13 the risks of forcing people into other treatment  
14 options?

15 A I don't know.

16 Q Now when you searched the TrueHope facility in  
17 Raymond, was there any product there?

18 A Not that I saw. No.

19 Q Okay. Would it be fair to say that it appeared that  
20 they had a call centre there?

21 A Yes.

22 Q Okay. Would it be fair to say based on what you  
23 observed, how it was set up and the documents seized  
24 that they were going through the efforts of actually  
25 tracking TrueHope participants?

26 A It appeared that way. Yes.

27 Q Okay. So in fact there were -- there was a lot of

1 information about people reporting their symptoms  
2 and how they were doing on a week-to-week basis?

3 A It appeared so. Yes.

4 Q There were lots of calls made and notes made during  
5 those calls as to how participants were doing?

6 A I do recall seeing various notes on files.

7 Q Would it be fair to say that Health Canada was  
8 actually impressed at how thorough these people are  
9 at following participants in their program?

10 A I do recall one inspector making that comment to me.

11 Q Which inspector was that?

12 A I believe it was Kim Seeling.

13 Q And Kim Seeling was the exhibit person who had the  
14 thankless task of actually reading the documents  
15 that were seized?

16 A Yes.

17 Q Now before you got on the file there was all this  
18 issue about a clinical trial at the University of  
19 Calgary. You would have seen that when you reviewed  
20 the file.

21 A I recall that. Yes.

22 Q Okay. And by the time you got on the file, that  
23 clinical trial would have stopped.

24 A I believe that was the case.

25 Q Okay. And the reason it stopped was because Health  
26 Canada told the University of Calgary to stop.

27 A I believe so. Yes.

1 Q Okay. I'm just going to pass up a Health Canada e-  
2 mail and I don't know if you've seen this or not.  
3 It wasn't in the prosecution brief. It came through  
4 an ATI and unfortunately most of it has been whited  
5 out. But it appears to be from Brenda LaJeunesse to  
6 Tony Hlasky (phonetic) and Joan Korol, Patricia  
7 Maynard, Danielle DeJong (phonetic) and CC: back to  
8 Brenda LaJeunesse.

9 Now do you recognize Brenda LaJeunesse as a  
10 Health Canada employee?

11 A I recall seeing the name. Yes.

12 Q Okay. In the file?

13 A I don't know if it was in this specific file but I  
14 have seen the name.

15 Q Okay. Now Joan Korol, you recognize her for sure as  
16 being a Health Canada employee?

17 A Yes.

18 Q And in fact recognize her as being involved in this  
19 file?

20 A Yes.

21 Q Okay. She's a superior to you, isn't she? She's  
22 above you in rank?

23 A She works in Ottawa, I believe. She's not somebody  
24 I report to. I believe we were at equivalent levels  
25 at that point.

26 Q Okay. And Patricia Maynard. Do you recognize this  
27 as a Health Canada employee?

1 A Yes.

2 Q And you recognize her as somebody who also worked on  
3 this file?

4 A Yes.

5 Q Okay. Same with Danielle DeJong? Do you recognize  
6 her as a Health Canada employee?

7 A Yes.

8 Q And as somebody who worked on this file?

9 A As somebody who was aware of the file and had input  
10 but I wouldn't say "worked". Not in the sense that  
11 I was working on the file.

12 Q Okay. Now this e-mail which seems to be -- have a  
13 date of September 14th, 2001, the object says, QP  
14 note required. EMPower. Do you know what a QP note  
15 is? Is that question period?

16 A I believe so. Yes.

17 Q Okay. And when I say question period, I mean the  
18 House of Commons questions period?

19 A I believe so.

20 Q Okay. So then it reads, A QP note was requested  
21 this morning on the above noted subject, EMPower.  
22 The issue evolves around the clinical trials  
23 surrounding this drug. Allegedly the clinical trial  
24 is being used as a veil to screen a drug scam.

25 Now have you -- have you seen anything like  
26 this in the file where this University of Calgary  
27 clinical trial is being referred to as a drug scam

1 or supporting a drug scam?

2 A This is the first I've come across this comment.

3 Q Okay. You wouldn't -- you've read documents about  
4 the University of Calgary clinical trials?

5 A Yes.

6 Q Okay. Because there was a mountain of  
7 correspondence back and forth between the Faculty of  
8 Medicine at University of Calgary and Health Canada  
9 on this file.

10 A I can't recall. I can't recall specifically.

11 Q Okay. Well, some of it's in the prosecution brief.

12 A Okay. If it's there, I've reviewed it. Yes.

13 Q Okay. Did you ever contact the University of  
14 Calgary to kind of make inquiries about the research  
15 study they had done and the results?

16 A No, I have not.

17 Q Okay. Now you were aware though that, as we've  
18 already gone through this, that Health Canada closed  
19 down that clinical trial. Were you aware that there  
20 is now a new clinical trial proceeding at the  
21 University of Calgary on EMPowerplus?

22 A I had heard something to that effect. I don't  
23 recall any details.

24 Q Okay. Had you heard which branch of Health Canada  
25 gave that the go-ahead for that trial?

26 A I don't recall.

27 Q Now I'm going to hand out a document to you which I

1 believe to be a Health Canada document prepared by  
2 Marilyn Schwartz on March 7th, 2005, called The  
3 Overview of the Canadian Federal Drug Review  
4 Process. Ms. Jarvis, have you ever seen this  
5 document before?

6 A I do recall seeing it. I don't recall what context.

7 Q Okay. So you recognize it as a Health Canada  
8 document?

9 A Yes, I believe it was a PowerPoint presentation.

10 Q Okay. And I -- do you recognize Marilyn Schwartz as  
11 director of bureau of operational services,  
12 therapeutic products director -- or associate  
13 director?

14 A I recognize the name. I've never met her before.

15 Q Okay. So at least the name's familiar?

16 A Yes.

17 Q Okay.

18 THE COURT: Mr. Buckley, just before you  
19 go any further, if you are going to launch into  
20 further review of this particular document, it is  
21 going to be some time. I am going to take the  
22 morning recess right now.

23 MR. BUCKLEY: Okay.

24 THE COURT: All right. We are going to  
25 take a brief adjournment. It will be for 10  
26 minutes. I will return at a quarter to.

27 Ms. Jarvis, again you are cautioned not to

1 discuss your evidence --

2 THE WITNESS: Yes, Your Honour.

3 THE COURT: -- with anyone during the  
4 break. All right? Very good.

5 Thank you.

6 THE COURT CLERK: Order in court. All rise.

7 This court stands adjourned for 10 minutes.

8 THE COURT: Thank you.

9 (ADJOURNMENT)

10 THE COURT CLERK: Recalling The Synergy Group of  
11 Canada and TrueHope Nutritional Support.

12 THE COURT: Thank you.

13 Go ahead, please, Mr. Buckley.

14 MR. BUCKLEY: Thank you, Your Honour.

15 Q MR. BUCKLEY: Now, Ms. Jarvis, I had given  
16 you the document titled, Overview of the Canadian  
17 Federal Drug Review Process and you've told us that  
18 you've seen that document before. I'm going to have  
19 you turn to the first tab which is on page 7. And  
20 there's a page called, Life of a New Drug.

21 Are you familiar with basically the process  
22 that somebody has to go through to get a drug  
23 identification number if they're classed as a new  
24 drug by Health Canada?

25 A No, I'm not.

26 Q Okay. So what's set out on this page? Does that  
27 have any meaning to you at all? You have no idea at

1 all what the process is?

2 A Well, I can see some of the steps that I see look  
3 familiar to me but I am not aware of the exact  
4 process. I'm not involved in that aspect at all.

5 Q Okay. When Health Canada is taking enforcement  
6 steps to stop sale of the product because there is  
7 no drug identification number, are you aware even of  
8 a rough time frame for somebody to go through the  
9 process of obtaining a drug identification number?

10 A I don't recall.

11 Q Okay. Were you even aware that to obtain a drug  
12 identification number for a new drug that there has  
13 to be a clinical trial done? Were you aware of  
14 that?

15 A I was aware of that. Yes.

16 Q Okay. So on the one hand the problem is there's no  
17 drug identification number and yet on the other hand  
18 Health Canada understands or you understand they  
19 have to have a clinical trial to get a drug  
20 identification number. That's clear to you.

21 A For a new drug, yes.

22 Q Okay. And, in your opinion, this was a new drug.  
23 Right?

24 A That's what I had reason to believe from the  
25 information I read.

26 Q Okay. And Health Canada was treating this as a new  
27 drug. Would that be fair to say?

1 A Yes.

2 Q So -- but we've got the situation where Health  
3 Canada has shut down a clinical trial on this  
4 product.

5 A Is that -- do you want me to agree with you?

6 Q I mean --

7 A The question is -- can you repeat the question?

8 Q I'll rephrase it. But I am just trying to set it up  
9 because on the one hand you understand Health Canada  
10 stopped the clinical trials. Correct?

11 A Yes.

12 Q And on the other hand you know they need a clinical  
13 trial to get a DIN. Correct?

14 A For a new drug, yes.

15 Q Okay. So it seems that they're kind of in a jam,  
16 aren't they. They need a clinical trial to get a  
17 DIN but Health Canada stopped the clinical trials.  
18 Did you think it was feasible for them to actually  
19 comply with the regulations in 2003?

20 A I don't know if it was or not. If they -- I don't  
21 know.

22 Q Okay. And whether or not it was feasible, that  
23 wouldn't affect the enforcement actions that you  
24 were taking?

25 A Well, if it was feasible and they were able to get a  
26 no-objection to the clinical trial, I would assume  
27 there'd be no violation. They would be running an

1 approved clinical trial.

2 Q Okay. You can't sell without a DIN. Correct?

3 A Right.

4 Q Okay. So whether or not there is a clinical trial  
5 running is a little secondary to selling. If you  
6 have a clinical trial running, you still can't sell  
7 without a DIN. Correct?

8 A Oh, I see what you're saying. Correct.

9 Q Okay. So I'm just trying to point out. On the one  
10 hand, Well, stop selling. You don't have a DIN.  
11 But Health Canada stopped the clinical trial that  
12 they need to get a DIN. Did that strike you as odd?

13 A Not really. No.

14 Q Okay. Now you had told us about in November of 2003  
15 you place an order by calling a 1-800 number which  
16 was for TrueHope. Right?

17 A I believe it was 1-888.

18 Q So -- and you got that off the website. Is that --

19 A Yes.

20 Q Okay. So you phone that and you're pretending to be  
21 interested in the program?

22 A Yes.

23 Q Okay. But you weren't allowed to just order. You  
24 were told quite clearly, Well, just wait a second.  
25 You have to fill out a personal information form.

26 A Yes.

27 Q Okay. And you had to get the person to agree to do

1 that on the telephone?

2 A Yes.

3 Q And so basically this person was asking you a whole  
4 bunch of questions about your symptoms and things  
5 like that?

6 A Yes.

7 Q Okay. Now it was also made clear to you that for  
8 you to be in the program that you were going to have  
9 to be filling out forms and submitting them online  
10 or by fax.

11 A Yes.

12 Q Okay. But that was explained to that there was  
13 actually -- you had to participate in what was going  
14 on --

15 A Yes.

16 Q -- to be in the program? Okay. And you were also  
17 told that as part of the program that there would be  
18 a support worker actually contacting you once a  
19 week?

20 A Yes.

21 Q So -- and basically you'd be told, Well, it will  
22 take a couple of weeks for a shipment to come.  
23 Correct?

24 A Yes.

25 Q And this happened -- this conversation, I believe,  
26 November 6, 2003?

27 A Yes.

1 Q Okay. And then a couple of weeks later there's a  
2 call on your answering machine.

3 A Yes.

4 Q Okay. And it's somebody purporting to be from  
5 TrueHope asking you to call them?

6 A I can't remember. Yes, something of that effect.  
7 Yes.

8 Q Okay. And would it be fair to say that for the next  
9 -- the following couple of weeks, there were  
10 multiple calls on your answering machine for you to  
11 get a hold of them?

12 A Yes.

13 Q Okay. And then finally they do get a hold of you?

14 A Yes.

15 Q So they managed to call when you were at home.

16 A Yes.

17 Q And you just say, Listen, I'm not interested any  
18 more.

19 A Right.

20 Q Okay. And that was fine. They didn't push you or  
21 anything. They never called you again after that.  
22 Right?

23 A No, they did not.

24 Q Okay. So at least from your experience, it was  
25 clear that when you first contacted them and they  
26 said, Listen, we'll be calling you and following  
27 through and seeing how you're doing, that appears,

1 at least in your case, to have been quite true.

2 A Yes.

3 Q So I mean, you've spoken to Kim Seeling about -- she  
4 seemed to think that they really followed their  
5 participants and document well, but also your very  
6 limited experience seems to bear that out. Would  
7 that be fair to say?

8 A It would appear so.

9 Q Well, in your investigation -- I mean you were aware  
10 that you couldn't just get this product in a health  
11 food store?

12 A That's right.

13 Q Okay. Your understanding is you actually had to  
14 join this program to do it?

15 A Yes.

16 Q Ms. Jarvis, I'm going to give you a document and it  
17 was in the prosecution brief. But unfortunately  
18 because no one would disclose to me an index for  
19 section 14, I can't tell you exactly how it came  
20 into Health Canada's hands. But I presume that  
21 you've seen this document before.

22 A Yes.

23 Q Okay. Did you know how this document came to be in  
24 the hands of Health Canada?

25 A I don't recall.

26 Q Okay. You've recognized that you put it into the  
27 prosecution brief?

1 A Yes.

2 Q Just for the record, it's called Planning for  
3 Success and it seems to be published by TrueHope.  
4 Have you read this document, Ms. Jarvis?

5 A I can recall reading it. Yes.

6 Q Okay. Although I don't know how it came into the  
7 hands of the Crown, it is in a section of documents,  
8 Section 14 of the prosecution brief which seems to  
9 be documents seized from shipments interacting at  
10 the customs border. Does that sound right to you?

11 A Yes.

12 Q If I was to suggest to you that this document was,  
13 you know, seized or copied by Health Canada as the  
14 document accompanying the shipment of product into  
15 Canada, would you agree with that?

16 A I don't know if that's where it was found. No.

17 Q Okay.

18 MR. BUCKLEY: Your Honour, I'd like to mark  
19 this for identification and then I'm going to ask  
20 the witness if over the lunch break she can try and  
21 endeavour, if that's in fact how Health Canada came  
22 into possession. It was in a section of the  
23 prosecution brief and I requested an index and I was  
24 never given one because I was told it wasn't  
25 relevant. But I'm led to believe that it was  
26 something that was seized from a shipment.

27 MR. BROWN: I don't have any objection to

1           it being marked exhibit for identification, sir.

2       THE COURT:                   Exhibit 'P' for identification  
3           purposes will be a document titled Planning for  
4           Success purporting to be from TrueHope.

5

6       \*EXHIBIT 'P' - For Identification - Booklet Produced by  
7       \*TrueHope entitled The First Step to Recovery - Hope,  
8       \*Healing, Health, Revised April 1, 2003

9

10      MR. BUCKLEY:                And, Your Honour, I'm just --  
11           I'm going to reserve my questioning on that until I  
12           have had an opportunity to verify where it came  
13           from.

14      Q   MR. BUCKLEY:            Now, Ms. Jarvis, I'm going to  
15           give you -- there's been some discussion in  
16           documents in Health Canada file questioning about  
17           some clinical trials that were published. And I'm  
18           going to give you a copy of what looks to be a  
19           publication in the Journal of Clinical Psychiatry,  
20           62:12, December, 2001, titled Effective Mood  
21           Stabilization with an Open Chelated Mineral  
22           Supplement. An Open Label Trial in Bi-Polar  
23           Disorder.

24                   Have you seen this document before?

25      A   I can't say for certain that I've seen this one.

26      Q   Okay. Because you had heard -- in your review of  
27           the file you were aware that the defendants were

1 claiming that there were clinical publications about  
2 the product in journals. Is that correct?

3 A Yes.

4 Q Did you seek out those journal publications to read  
5 them?

6 A I believe there were some -- there was a link on  
7 their website to some. I may have read them there.  
8 Either that or they were in the Heath Canada file.  
9 I just don't recall the specific titles of them so I  
10 can't say for certain that this is one of them.

11 Q Okay. Would it be fair to say that you -- you can't  
12 say whether you read any specific one, can you?

13 A I couldn't give you the titles. No.

14 Q Okay. And when you look at this, does it look  
15 familiar at all?

16 A Vaguely familiar. Yes.

17 Q I'm going to give you some other journal  
18 publications and just see if any of them are  
19 familiar to you.

20 The one I'm giving you right now is from the  
21 Journal of Child and Adolescent Psychopharmacology.  
22 Volume 12, Number 3, 2002. Does this publication  
23 look familiar to you?

24 A This one does look familiar.

25 Q Okay. So would it be fair to say you're confident  
26 that you've read this publication?

27 A Yes.

1 Q Okay. Now it actually lists four different  
2 researchers. You didn't contact any of the  
3 researchers involved in this study?

4 A No.

5 Q Okay. You didn't -- obviously the study indicates  
6 quite a benefit for two children. You're aware of  
7 that?

8 A Yes.

9 Q Okay. You didn't question the validity of this  
10 study?

11 A No, I did not.

12 Q Okay. But this study didn't affect basically your  
13 decision to, you know, stop product at the border or  
14 your investigation?

15 A No.

16 Q Okay. And that's just because it wasn't relevant to  
17 proving that there was no drug identification  
18 number?

19 A That's right.

20 MR. BUCKLEY: Your Honour, I'm wondering if  
21 we can have that one just marked for identification  
22 purposes.

23 Q MR. BUCKLEY: I'm going to take the one you  
24 couldn't recognize back and keep it in my folder for  
25 later.

26 MR. BROWN: No objection, sir.

27 THE COURT: Exhibit 'Q' for identification

1 purposes will be (INDISCERNIBLE) entitled Treatment  
2 of Mood Liability and Explosive Rage with Minerals  
3 and Vitamins: Two Case Studies in Children. A  
4 publication in the Journal of Child and Adolescent  
5 Psychopharmacology, Volume 12, Number 3, 2002.

6  
7 \*EXHIBIT 'Q' - For Identification - Treatment of Mood  
8 \*Liability and Explosive Rage with Minerals and Vitamins:  
9 \*Two Case Studies in Children. A publication in the  
10 \*Journal of Child and Adolescent Psychopharmacology,  
11 \*Volume 12, Number 3, 2002

12  
13 Q MR. BUCKLEY: I'm just going to show you one  
14 other journal publication. See if that looks  
15 familiar to you.

16 This is a publication in The Journal of  
17 Clinical Psychiatry, 62:12, December, 2001 entitled,  
18 Do Vitamins or Minerals (Apart from Lithium) Have  
19 Mood Stabilizing Effects, by Charles Popper.

20 Have you seen this journal publication before,  
21 Ms. Jarvis?

22 A I don't recall. I remember the name, Charles  
23 Popper, but I don't recall.

24 Q Okay. So you may not have seen this at all?

25 A I may not have.

26 Q So it is possible, actually, that out of these three  
27 studies that I've just shown you, that you might

1           actually have only read one of them?

2       A     It's possible.

3       Q     Okay. Now you were aware that there were multiple  
4           journal publications. I've shown you three.

5       A     I believe so. Yes.

6       Q     Okay. But it may be that you didn't feel that it  
7           was necessary to even read the other ones?

8       A     Either that or I didn't see them.

9       Q     Okay. Fair enough. But if you felt they were  
10          important, you would seek them out?

11      A     Yes.

12      Q     You were aware they were out there. Correct?

13      A     Yes.

14      Q     Okay.

15      A     Not necessarily those specific ones but I had heard  
16          there were studies.

17      Q     Right. Because the curious thing about this is --  
18          I'm going to suggest to you that these published  
19          journal articles that I've shown you actually would  
20          be classed as science.

21      MR. BROWN:                    I'm going to object to that  
22          question. I don't think this particular witness is  
23          able to answer that question.

24      THE COURT:                    I agree. I do not think she  
25          is qualified to answer that question.

26      MR. BUCKLEY:                  Well, --

27      THE COURT:                    You are dealing with an

1 investigator here. The lead investigator.

2 MR. BUCKLEY: I'm just mindful of a comment  
3 that she made yesterday in response to some of my  
4 questions that basically she was going to ignore  
5 some evidence because it wasn't science. She has a  
6 science background. And so with that in mind, I was  
7 hoping to just basically ask her if this is the type  
8 of evidence that would impress her.

9 THE COURT: Your question is too general  
10 in asking her if this is science. You want to be  
11 more specific and rephrase it? Fine.

12 MR. BUCKLEY: I can.

13 Q MR. BUCKLEY: So just referring back to the  
14 one article that you did see, this now Exhibit 2,  
15 you don't view basically stories by people as  
16 scientific evidence. Would that be fair to say?

17 A Me personally? No.

18 Q Okay. So -- but when you read about, you know, a  
19 case study in a journal such as what's marked as  
20 Exhibit 'Q', does that qualify in your mind as  
21 science?

22 MR. BROWN: Sir, I am still going to  
23 object to that question. I still don't think that  
24 this is a witness who can talk about -- really what  
25 he's asking is, do you understand the nature of this  
26 clinical trial and do you believe that it was run  
27 properly and do you think that the conclusions from

1           that trial are appropriate. That's essentially what  
2           this question is asking because that's what science  
3           is in this context. And I would submit that this  
4           witness cannot speak to this. That is a question  
5           for an expert that would have to be called.

6       THE COURT:                   The question, once again, is  
7           still too general, Mr. Buckley. You had better try  
8           to rephrase your question if you are trying to get  
9           at something specific.

10       MR. BUCKLEY:               Well, maybe I'll just even go  
11           about it another way.

12       Q     MR. BUCKLEY:           So you do recall yesterday  
13           giving me the comment of basically you look for  
14           science. Do you remember that?

15       A     I believe I said something to the effect that in my  
16           personal view, that I would not -- I think it was in  
17           relation to testimonials. I can't remember my  
18           specific remark.

19       Q     Okay. But I'm just trying to find out from you when  
20           you say something like it's science that matters to  
21           you because you have a science background, what you  
22           mean by that. I'm sorry because I didn't understand  
23           what you meant by that.

24       A     Would it be possible, Your Honour, to have my  
25           statement read back to me?

26       MR. BUCKLEY:               Oh, Lord, that would be  
27           difficult. I'll move on. It's not --

1 THE COURT: Oh, no. It is possible to do  
2 but you are putting a statement to her that I am not  
3 sure she made or not. Obviously she is not sure she  
4 made it or not.

5 MR. BUCKLEY: Yeah, and I think it would be  
6 too troublesome for us to find it on the tape so  
7 I'll move on.

8 Q MR. BUCKLEY: And can I have that Popper  
9 article back? You weren't able to identify it as  
10 something you had read?

11 A No. Not with certainty. No.

12 Q So I'll save it for later.

13 I'm going to pass up to you something disclosed  
14 in the ATI request which appears to be another  
15 Health Canada e-mail, this time from Philip  
16 Waddington dated April 24th, 2001 to Peter Chan.  
17 There's a CC: to Michael Smith, Michelle Boudreau  
18 and Eileen Quinn (phonetic).

19 Now you've identified Michelle Boudreau as  
20 somebody who has been involved in deciding what  
21 charges to lay in this matter.

22 A Yes.

23 Q Okay. And isn't she acting director general of the  
24 inspectors right now?

25 A I believe so.

26 Q Okay. So she's actually head of the directorate  
27 that you're a member of right now?

1 A Yes.

2 Q Okay. Now -- and you know who Philip Waddington is?

3 A Yes.

4 Q Okay. Philip Waddington -- actually he's referred  
5 to as Dr. Philip Waddington, isn't he?

6 A I've never heard him referred that way.

7 Q You've never heard that but he's the guy that Health  
8 Canada hired to set up the natural health products  
9 directorate.

10 A Yes, I believe so.

11 Q Okay. And that's the directorate that has, I guess,  
12 expertise in natural health products. At least, --

13 A That's my belief.

14 Q Okay. So -- and this is dated in 2001. You  
15 understand that Health Canada was in the process of  
16 doing this transition of setting up this natural  
17 health product directorate at the time. Would that  
18 be fair to say?

19 A I'm sorry. I was reading the article. Could you  
20 repeat that, please?

21 Q Okay. Well, this is 2001 and you understand that at  
22 the time, 2001, Health Canada was in the process of  
23 setting up this natural health product directorate.

24 We are in a transition in Health Canada.

25 A Yes.

26 Q Okay. So Philip Waddington is involved in setting  
27 up this directorate. He becomes the head but he's

1 involved in setting it up.

2 A That was my understanding.

3 Q Okay. Now you know who Peter Chan is?

4 A Yes, I can't recall his title, however.

5 Q Okay. But you also recognize him as a senior Health  
6 Canada employee?

7 A Yes.

8 Q Okay. Do you know him as a doctor?

9 A I don't know his background.

10 Q Okay. And then as I say, we've already gone through  
11 Michelle Boudreau who is now head. Do you know who  
12 this -- of your directorate -- do you know who this  
13 Eileen Quinn is?

14 A No, I don't.

15 Q And what about this Michael Smith?

16 A No, I don't.

17 Q Okay. Now turning to -- we'll stay on the first  
18 page of this e-mail then. It seems to be -- the  
19 first page is actually the last page. The way they  
20 are disclosed is it runs from last until first. And  
21 so it seems to be an e-mail from -- although parts  
22 are whited out by Health Canada and the disclosure,  
23 an e-mail from Philip Waddington to Peter Chan. And  
24 I've highlighted where -- and I'll go before there.

25

26 Right now --

27

1 and then it's blank --

2

3 of her order a product was stopped at  
4 the border and she is --

5

6 and then it's blank --

7

8 Apparently it contains vitamins and  
9 minerals, an anti-oxidant (grape seed  
10 extract) and a botanical. I think  
11 that this mixing will not permit the  
12 product to fall under the interim DIN  
13 and would also not permit it to pass  
14 the normal DIN process because the  
15 herb is in the active dosage range.

16

17 And then on the second page of the e-mail which  
18 is actually the first page of what I've given you,  
19 we've got Mr. Chan responding back to Mr. Waddington  
20 and he also seems to be saying that the DIN process  
21 wouldn't apply.

22

23

And TM -- is that therapeutic measures or what  
is that?

24

A I was just reading that. I'm not sure what he is  
25 even referring to there.

26

27

Q Okay. Now were you aware of this e-mail when you  
reviewed the file?

1 A I don't recall specifically. No.

2 Q Okay. But were you aware that within Health Canada  
3 there was some discussion about whether or not the  
4 DIN process would apply to a product like this?

5 A I have some memory of that. Yes.

6 Q Okay. What's your memory about the discussion in  
7 Health Canada about whether a DIN would apply? Or  
8 the DIN process would apply?

9 A Well, I seem to recall seeing an e-mail -- e-mails  
10 with this kind of discussion whether it was this  
11 e-mail or not, I don't recall.

12 Q Okay. Would it be fair to say that in 2003 there  
13 was some uncertainty within Health Canada because  
14 we've got this new directorate coming into place as  
15 to whether or not the DIN process would apply to a  
16 product like this?

17 A You know, I don't like to speak for all of Health  
18 Canada but there was some suggestion in the e-mails  
19 I read that led me to believe that.

20 Q Now when you say there was some suggestion in the  
21 e-mails that led you to believe that, are those  
22 e-mails specific to this file or are they e-mails  
23 that don't relate specifically to this file?

24 A I believe they were in the file I reviewed for the  
25 case.

26 Q Okay. Now -- and you were aware at the time that  
27 there was a Health Canada policy called the interim

1           DIN directive.

2       A     Yes.

3       Q     Okay.  And when I say it's a policy, it actually is.  
4           It's a health policy document that Health Canada  
5           generated.  Is that correct?

6       A     Yes.

7       Q     And I'm not asking you to say whether or not this  
8           product fit under the interim DIN directive.  But  
9           the interim DIN directive -- your understanding was  
10          is because it was this transition period for the  
11          natural health product industry that Health Canada  
12          had a policy of basically cutting companies some  
13          slack and not requiring them to have DINs if they  
14          fit within the policy?

15      A     Yes, if they fit certain -- if the product fell  
16          within certain requirements.

17      Q     Right.  So, for instance, you couldn't have a  
18          product with a prescription drug in there and be  
19          exempted for the policy of having a DIN.  Correct?

20      A     Correct.

21      Q     But the policy -- if you fit within the policy, you  
22          didn't need to have a DIN number as everyone waited  
23          for this new natural health products directorate to  
24          be set up?

25      A     I wouldn't phrase it that way.  The law still exists  
26          that these products that fell within this -- what  
27          they called "products subject to special measures",

1           they still required DINs however they were not a  
2           priority for enforcement action unless a health  
3           hazard was identified or, you know, some other  
4           reason identified.

5       Q     Okay. So you can appreciate for companies out in  
6           the real world that might be a subtle distinction.  
7           So for example, as of January 1st, 2004, you are  
8           aware the new natural product regulations came into  
9           force.

10      A     Yes.

11      Q     Okay. And they require companies to have product  
12           licences. Correct?

13      A     Yes.

14      Q     Okay. But you're aware that for policy reasons,  
15           Health Canada is giving companies a phase-in period  
16           to comply with the regulations?

17      A     Yes.

18      Q     Okay. So even though technically on the books, they  
19           can be breaking the law, the policy is not to take  
20           enforcement steps before certain deadline dates?

21      A     Unless a health hazard is identified.

22      Q     Right. Okay. No. No. I understand that. Health  
23           Canada's hands aren't tied but at the same point,  
24           you understand that when Health Canada has -- no, we  
25           won't go there.

26                    But this interim DIN directorate basically  
27           stated that while we're not going to treat you as an

1 enforcement priority if you fit within this policy?

2 A In essence that's what it says.

3 Q Okay. And you understood that at the time, 2003,  
4 there were many, many, many natural health product  
5 companies with products on the market that didn't  
6 have drug identification numbers?

7 A That is correct in my experience.

8 Q Now Health Canada does not take many cases to court.  
9 Is that fair to say?

10 A You have to define "many".

11 Q Okay. Well, I mean, we've got -- you agreed with  
12 me. I mean there's a whole bunch -- there were a  
13 whole bunch of companies out there without drug  
14 identification numbers that really Health Canada was  
15 leaving alone in 2003.

16 A Unless health risks were identified or other  
17 circumstances. Yes.

18 Q Okay. But really, health risks are identified --  
19 Health Canada would basically respond to complaints.  
20 Right? Would that be fair to say?

21 A That's one of the things we do. Yes.

22 Q Okay. And not necessarily a complaint like an  
23 adverse health reaction but if somebody approaches  
24 Health Canada and says, Hey, look into this product,  
25 Health Canada does.

26 A Well, we'd ask why they wanted -- there'd have to be  
27 some reason.

1 Q Okay. Fair enough. Are you able to estimate in  
2 2003 how many or what percentage of natural health  
3 products didn't have drug identification numbers?

4 A No. I don't know.

5 Q Okay. There's been nothing done in your branch to  
6 that effect?

7 A Not that I'm aware of. I don't know.

8 Q Okay.

9 MR. BUCKLEY: Your Honour, I'm wondering if  
10 I can have this e-mail from -- to and from Peter  
11 Chan and Philip Waddington marked for identification  
12 purposes.

13 MR. BROWN: I don't have any objections,  
14 sir.

15 THE COURT: Exhibit 'R' will be the e-mail  
16 -- what is the date on it?

17 MR. BUCKLEY: I believe it's April 24th,  
18 2001.

19 THE COURT: All right. April 24th, 2001  
20 from Peter -- from Philip Waddington to Peter Chan.  
21 Exhibit 'R' for identification purposes.

22 MR. BUCKLEY: Thank you, Your Honour.

23 THE COURT: Thank you.

24

25 \*EXHIBIT 'R' - For Identification - E-mail dated

26 \*April 24, 2001 from Philip Waddington to Peter Chan

27

1 MR. BUCKLEY: Now, Your Honour, I'm almost  
2 done. I basically would like to over the lunch  
3 break review my notes to determine whether I have  
4 more questions for this witness before I excuse her.

5 THE COURT: All right. Just a moment,  
6 please.

7 That is fine. This is an opportune time to  
8 take our luncheon break. You have specifically  
9 asked if this witness review the file and provide  
10 you with some further information and she can take  
11 that opportunity over the lunch hour if she is able  
12 to find an answer to your question. So that is  
13 fine. This will be an appropriate time to take a  
14 break. We will resume at 2:00.

15 MR. BUCKLEY: Yes, sir. Thank you, sir. To  
16 the --

17 THE COURT: Please do not discuss your  
18 evidence --

19 THE WITNESS: Yes, Your Honour.

20 THE COURT: -- other than if it might  
21 assist in finding the answer to questions you have  
22 been asked.

23 THE WITNESS: Thank you.

24 THE COURT: All right?

25 MR. BROWN: Yes, sir.

26 THE COURT: Very good. Thank you.

27 MR. BUCKLEY: Thank you, Your Honour.

1 THE COURT CLERK: Order in court. All rise.

2 Court stands adjourned until 2:00 p.m.

3 THE COURT: Thank you. That's all.

4 MR. BROWN: Thank you very much.

5 -----

6 PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

7 -----

8

9 \*Certificate of Record

10 I, Jillian Fox, certify this recording is a record  
11 of the oral evidence of proceedings in the Criminal  
12 Court, held in courtroom 413, at Calgary, Alberta,  
13 on the 14th day of March, 2006, and I was in charge  
14 of the sound-recording machine.

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1 \*March 14, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT CLERK: Calling Synergy Group of  
5 Canada Incorporated and TrueHope Nutritional  
6 Support.

7 THE COURT: Just a moment please, before  
8 we go further.

9 All right. Go ahead please.

10 MR. BUCKLEY: Thank you, Your Honour.

11

12 \*SANDRA MARIE JARVIS, Previously Sworn, Cross-examined by  
13 \*Mr. Buckley

14

15 Q MR. BUCKLEY: Ms. Jarvis, during the break  
16 you had the opportunity to basically look into where  
17 that document, Planning For Success, had come from?

18 A Yes, I did.

19 Q Okay. Were you were successful in your quest?

20 A Yes, I was.

21 Q And where did that document -- how did it come into  
22 Health Canada's possession?

23 A It was provided to me by an inspector who indicated  
24 that it had been -- when they were -- down at Canada  
25 Customs -- or the UPS office, looking at a shipment  
26 of EMPowerplus she removed that from one of the  
27 parcels and photocopied it.

1 Q Okay. So just so that I'm clear, this is a shipment  
2 of the EMPowerplus that's coming from the United  
3 States into Canada?

4 A Yes.

5 Q And this document is with that shipment?

6 A Yes. That's my understanding.

7 Q Okay. And so Health Canada copies it and it ends up  
8 in the prosecution brief?

9 A That's where I'm told it came from, yes.

10 MR. BUCKLEY: Your Honour, I'm hoping to  
11 mark that as an exhibit for identification purposes.  
12 Actually I think it is 'P' already.

13 THE COURT: Planning For Success?

14 MR. BUCKLEY: Yes.

15 THE COURT: Exhibit 'P'.

16 MR. BUCKLEY: Now it occurred to me over the  
17 break that the Regina Leader Post article that Ms.  
18 Jarvis identified as having read, I would like it  
19 marked as an exhibit, for identification at this  
20 point.

21 THE COURT: Which article again?

22 MR. BUCKLEY: That is the Regina Leader Post  
23 article.

24 THE COURT: Mr. Brown.

25 MR. BROWN: Well, it's a bit of stretch,  
26 sir, and I'm not sure how we're ever going to end up  
27 being able to identify this document unless my

1 friend intends to call either the author of the  
2 article or Mr. LaJeunesse.

3 MR. BUCKLEY: Well, and actually, and right  
4 now I'm just asking for it to be marked for  
5 identification but the *Canada Evidence Act* actually  
6 allows me to enter a newspaper page, which is why I  
7 had the Leader Post provide the full page.

8 If I determine that I want to do that during  
9 the trial I'm just hoping to have it marked for  
10 identification at this point.

11 MR. BROWN: That's fine, sir. I don't  
12 have an objection.

13 THE COURT: All right. Exhibit 'S' for  
14 identification purposes.

15

16 \*EXHIBIT 'S' - For Identification - Article dated Friday,  
17 \*July 18, 2003 from Regina Leader Post newspaper with  
18 \*heading EMPowerplus Supplement could lead to suicide

19

20 MR. BUCKLEY: Thank you, Your Honour.

21 And I have no further questions of Ms. Jarvis.

22 THE COURT: Exhibit 'S' is an excerpt from  
23 the Regina Leader Post.

24 Any re-examination?

25 MR. BROWN: Sir, just let me have one  
26 minute. I just want to take a look, sir --

27 THE COURT: Yes.

1 MR. BROWN: -- at a couple of notes. I  
2 don't expect to have any questions but I may have  
3 one. Sir, I don't have any questions in re-direct.  
4 Thank you.

5 THE COURT: Thank you, Ms. Jarvis.

6 A Thank you, Your Honour.

7 THE COURT: You are free to go.

8 (WITNESS STANDS DOWN)

9 MR. BROWN: I've spoken to my friend. Ms.  
10 Jarvis wishes to remain in the courtroom hereafter  
11 and I don't think my friend has any objection to  
12 that.

13 THE COURT: Is she going to be subject to  
14 recall?

15 MR. BROWN: I don't anticipate her being  
16 subject to recall, sir.

17 THE COURT: Because her evidence would be  
18 weighed accordingly, if that were the case.

19 MR. BROWN: Of course it would, sir.

20 THE COURT: If it was admitted at all.

21 MR. BROWN: Yes.

22 THE COURT: All right.

23 MR. BROWN: Thanks, sir.

24 MS. JARVIS: Thank you.

25 MR. BROWN: Sir, the next witness I have  
26 is Miles Brosseau. I believe he's ready to go. I  
27 wonder if we should just adjourn for two minutes

1           just to make sure he is ready? He's been waiting  
2           outside the courtroom, sir. Or I can step out and  
3           just confirm that he is ready to go?

4       THE COURT:                        Madam clerk, do you want to  
5           step out to see if Mr. Brosseau is there, please?  
6                        Up here, please, sir.

7

8       \*MILES BROSSEAU, Sworn, Examined by Mr. Brown

9

10       MR. BROWN:                        Thank you, sir.

11       Q       MR. BROWN:                Mr. Brosseau, I wonder if you  
12           could first tell us what your job title is?

13       A       I'm a senior compliance officer with the Health  
14           Products and Food Branch Inspector.

15       Q       And how long have you been in that position?

16       A       I've been with the in Inspectorate -- it's undergone  
17           -- it had various names over the years, but I've  
18           been with the program since April of '96.

19       Q       All right. And you at some point became involved in  
20           this investigation of the Synergy Group and TrueHope  
21           Nutritional Support?

22       A       Yes.

23       Q       All right. And can you just tell us briefly what  
24           your role was when you first are engaged in this  
25           investigation?

26       A       I believe Doctor Peterson, who was the, at that  
27           time, head of, I believe, Therapeutic Products

1 Directorate, was -- had sent a letter to Synergy  
2 Group Canada which came back.

3 And so they had asked me to check out and try  
4 to determine what the correct address was for  
5 Synergy, so I undertook an investigation, late  
6 September, 2000, to determine that.

7 Q So, September of 2000?

8 A Yeah.

9 Q And thereafter you would've taken various  
10 investigative steps and I'm going to ask you  
11 specific questions with respect to a few of them.

12 First of all, have you ever spoken or met with  
13 a Doctor Kaplan?

14 A I've never met with her. I have spoken to her.

15 Q Right.

16 A On the phone.

17 Q And what capacity was she acting in when you spoke  
18 with her?

19 A I believe she was a researcher with the University  
20 of Calgary, using the product in question, to  
21 conduct some research.

22 Q When you say the product in question, do you mean  
23 EMPOWERplus?

24 A EMPOWERplus, yes.

25 Q And do you recall when, or approximately when you  
26 first had contact with Doctor Kaplan?

27 A I believe the first contact that I had was when I

1 sent a letter to her around April 27th, I believe,  
2 2001, advising her that -- of the legal requirements  
3 for the operation of a clinical trial.

4 Q And what was the content of that letter? What were  
5 you referring to?

6 A Basically just advising that the clinical trials  
7 needed to be approved by Health Canada. You know,  
8 that it was a violation to carry out a clinical  
9 trial without that having occurred.

10 Q And at that time was it your understanding that  
11 Doctor Kaplan did not have an approval for a  
12 clinical trial?

13 A That's my understanding.

14 Q And do you recall on that same date, April 27th,  
15 2001, viewing a website belonging to TrueHope or  
16 Synergy Group?

17 A Yes.

18 Q And can you recall what you viewed on that website?

19 A I remember seeing stories on there. Some of the  
20 family history, a bit of history about how  
21 EMPowerplus came to -- how it came to be.

22 Information there about it's usefulness in  
23 treating like bipolar disorder and other diseases.

24 So some testimonial information.

25 Q Right.

26 A And I believe there was some information of, you  
27 know, contact information should you wish to obtain

1           some of the product and things like that.

2           Q     Now, I'm not sure if I asked you -- I asked you what  
3           your role was but did you have -- were you the lead  
4           investigator in this file for any period of time?

5           A     In bits and pieces. I mean I don't know that it was  
6           ever intending to be a long investigation.

7                     The first investigation was to try to determine  
8           where Synergy was located so that they could resend  
9           the letter.

10          Q     Right.

11          A     From Ottawa. The other investigation was to try to  
12          determine -- or basically just to advise them that a  
13          clinical trial, again, could not be operated unless  
14          it had been approved.

15                     In that sense I was the only investigator.

16          Q     All right. So at the time that you are talking  
17          about, around 2001, I guess --

18          A     Mm-hm.

19          Q     -- mid 2001, this is not a big -- you wouldn't  
20          consider this to be a big investigation?

21          A     No.

22          Q     I think you said you were the only investigator at  
23          the time.

24          A     Yes.

25          Q     And between that time and January 14, 2003, is the  
26          next date I want to refer you to, a meeting occurred  
27          on January 14th, 2003 you participated in.

1 A Yes.

2 Q Do you recall that meeting?

3 A Yes, I do.

4 Q And do you recall who was present for the meeting?

5 A Myself, our chief -- the Western Operational Centre  
6 in Burnaby, Dennis Shelley, Anthony Stephan, David  
7 Hardy, and a lady by the name, I believe it was  
8 Laril Zandberg.

9 Q Right.

10 A That was there as -- provide support for them.

11 Q Right. Now do you recall how it was that this  
12 meeting came to pass? Who organized the meeting?  
13 Who asked for it?

14 A I became aware of the meeting rather suddenly but I  
15 had been advised that the meeting had been requested  
16 by Anthony Stephan and David Hardy.

17 Q Okay.

18 A And the request had been made to Dennis Shelley, I  
19 believe.

20 Q Right. What was your understanding of the purpose  
21 of the meeting once you found yourself in it?

22 A My understanding, the purpose was to discuss how  
23 they could become or bring the product into  
24 compliance, or the activities, into compliance with  
25 the *Food and Drug Act* and regulations.

26 I believe that was the main purpose.

27 Q All right. I'm going to just refer you to Exhibit

1 'I' for Identification. It's a memorandum dated  
2 January 16, 2003.

3 MR. BROWN: Now, sir, it's my  
4 understanding that Mr. Brosseau actually has the  
5 original of this memo that he retrieved from his  
6 office and has brought it with him today.

7 I wonder if he could have access to the  
8 original, sir?

9 THE COURT: If he does. Have it with you,  
10 sir?

11 A Yes, I do.

12 MR. BROWN: Thank you, sir.

13 Q MR. BROWN: Now if you could just take a  
14 look at the copy that you have and there seems to be  
15 an attachment to the top of the memo. That copy  
16 that you have. Something stapled to the top?

17 A Yeah. At the meeting Anthony had given me his  
18 business card and so I stapled it to the top of my  
19 copy of the report that I prepared.

20 Q And Anthony --

21 A Which is --

22 Q I'm sorry. Anthony is that Anthony Stephan?

23 A Yes.

24 Q Okay. And what's the business card say?

25 A It says:

26

27 Anthony F. Stephan

1 Co-Founder  
2 TrueHope Nutritional Support Limited,  
3 A Non-Profit Company.  
4

5 A It gives the post office box in Cardston, the web  
6 site, [www.truehope.com](http://www.truehope.com), the office phone number, 1-  
7 888-TrueHope, it gives a fax number, it gives an  
8 email address for Mr. Stephan, where he could be  
9 reached.

10 Q Okay.

11 A And it says on there that is, "TrueHope, providing  
12 participative advocacy, research and support."

13 Q All right. And you in fact recorded the content of  
14 that card in your memorandum?

15 A Yes, I did.

16 Q All right. And do you recall, this memorandum is  
17 dated January 16th, 2003 --

18 A Yes.

19 Q -- and do you recall if that's the date you actually  
20 produced this memorandum?

21 A It was.

22 Q Okay. And can you recall, first of all -- sorry,  
23 I'm going to ask this question first.

24 Do you recall what the outcome of the meeting  
25 was from your point of view?

26 A Well there was a significant amount of discussion  
27 particularly between them and Dennis Shelley, and

1 the outcome was that there was an agreement that  
2 compliance action would be drawn up by Anthony  
3 Stephan and submitted within seven to ten days.

4 Now the action plan was a plan on how they were  
5 going to achieve compliance with the legislation.

6 Q So, your understanding was, the meeting was called  
7 by them to find out how to get -- comply?

8 A Yes.

9 Q And then the outcome of the meeting was that they  
10 would provide you with an action plan on how they  
11 were going to comply?

12 A Not provide me but provide Dennis Shelley.

13 Q Right. An action plan was to be provided?

14 A Yes.

15 Q All right. And -- all right, thank you.

16 And, I'm sorry, I think you said seven to ten  
17 days. It would be provided in seven to ten days?

18 A Yes.

19 Q Okay. Now do you recall whether or not you received  
20 a copy of the action plan?

21 A No. I didn't receive a copy of an action plan.

22 Q Where you ever advised whether Mr. Shelley or anyone  
23 else received a copy of an action plan?

24 A I had been advised by Rod Neske --

25 MR. BUCKLEY: Well, I'm going to object to  
26 that.

27 MR. BROWN: I think, sir, as part of the

1 continuity of this story it will make a fair bit of  
2 sense. Because he takes action -- Mr. Brosseau  
3 actually takes action thereafter.

4 A Well --

5 THE COURT: Why do you not ask him -- just  
6 a minute.

7 MR. BROWN: All right.

8 THE COURT: Why do you not ask him if he  
9 was informed by anyone that -- if he received a  
10 plan?

11 MR. BROWN: All right. I can ask that,  
12 sir, for certain.

13 THE COURT: All right.

14 MR. BROWN: And I'll try to phrase it as  
15 carefully as possible, sir.

16 Q MR. BROWN: Mr. Brosseau, you indicated  
17 earlier that you didn't anticipate receiving the  
18 action plan yourself?

19 A Correct.

20 Q It was your understanding from your participation in  
21 this meeting that it would be sent to Mr. Shelley?

22 A Correct.

23 Q Did at anytime, Mr. Shelley ask you to contact Mr.  
24 Stephan about the action plan?

25 A No.

26 Q Did you ever contact Mr. Stephan about the action  
27 plan?

1 A Yes.

2 Q Why did you do that?

3 A At the request of Rod Neske.

4 Q All right. And what --

5 A The reason for that is that Dennis Shelley had taken  
6 sick so Rod Neske then took over his position.

7 Q And what were you asked to do by Mr. Neske?

8 A To contact Mr. Stephan and just remind him or urge  
9 that the action plan be submitted.

10 Q And do you recall if you made a phone call to Mr.  
11 Stephan on February 6th of '03, to that effect?

12 A Actually I believe Anthony Stephan called me.

13 Q Called you. All right.

14 A And just to advise that he was preparing an action  
15 plan.

16 Q All right. So the meeting took place January 14th  
17 and Mr. Stephan called you February 6th.

18 A Right.

19 Q All right.

20 MR. BROWN: Sir, I'm going to, before I  
21 move on, ask if we can make what is now marked as  
22 Exhibit 'I', the next full exhibit in the trial?

23 MR. BUCKLEY: I've got no objection. It  
24 should probably be the original document.

25 MR. BROWN: The original. Yes. I will  
26 ask for the original.

27 THE COURT: Would you pass me up that

1 document please?

2 This document is not identical to Exhibit 'I'.  
3 It has the card on the front that you referred to.  
4 It has an extra page at the back with further cards  
5 photocopied.

6 MR. BUCKLEY: Right. So perhaps we should  
7 just --

8 THE COURT: So perhaps you better take a  
9 look at it before you decide what you want to do  
10 with it.

11 MR. BROWN: Thanks, sir.

12 THE COURT: Madam clerk, do you want to  
13 pass that (INDISCERNIBLE).

14 Mr. Buckley. Do not approach a witness unless  
15 you asked if you can approach a witness.

16 MR. BUCKLEY: I'm sorry, Your Honour.

17 THE COURT: There has to be a reason for  
18 that.

19 MR. BUCKLEY: I was just having a look at  
20 the document.

21 THE COURT: All right. It is in the  
22 interests of the witness's space.

23 Do you want to take a look at that as well?

24 MR. BROWN: I will take a look at it, sir,  
25 yes.

26 THE COURT: If you want to make it  
27 identical to Exhibit 'I' take off the last page and

1 the business card.

2 MR. BROWN: Right, sir.

3 THE COURT: If you want to put it in that  
4 way then get some agreement between you to that  
5 effect.

6 MR. BROWN: Yes, sir.

7 Sir, we are going to remove the last page and  
8 the card and it will be identical to Exhibit 'I' and  
9 make it Exhibit 4.

10 Right, sir.

11 THE COURT: Do you have it there?

12 MR. BROWN: I believe everybody has a copy  
13 now.

14 THE COURT: Where is it? Do you have it,  
15 madam clerk?

16 MR. BROWN: Madam clerk's got the  
17 original, yes.

18 THE COURT: All right. Then the original  
19 memorandum provided by Mr. Brosseau, dated January  
20 16th, 2003, will be Exhibit 4.

21 MR. BROWN: Thank you, sir.

22

23 \*EXHIBIT 4 - Government of Canada Memorandum dated

24 \*January 16, 2003, Formerly Exhibit 'I' for

25 \*Identification

26

27 Q MR. BROWN: Now, Mr. Brosseau, just before

1 we were dealing with that document you indicated  
2 that you'd received a call from Mr. Stephan on  
3 February 6th, regarding the action plan.

4 A Mm-hm.

5 Q And did you follow up to or with Mr. Stephan  
6 thereafter?

7 A Yeah. I think it was a couple of weeks later,  
8 possibly around February 28th, somewhere close to  
9 that.

10 Q Okay.

11 A I had called and I don't believe I spoke to him but  
12 left a message on his voice mail, just advising him  
13 that the action plan should be sent in as soon as  
14 possible.

15 Q And do you recall what occurred thereafter?

16 A Um --

17 Q Do you recall any -- on March 7th, of '03, somebody  
18 sent into Health Canada an open letter to Health  
19 Canada?

20 A Yeah. I believe Anthony Stephan sent an open letter  
21 to Health Canada about a day or so after an action  
22 plan had been expected. I believe an action plan  
23 was expected approximately a day or two before that.

24 Q Right. Did you ever see an action plan from Mr.  
25 Stephan?

26 A No.

27 Q Were you made aware of Rod Neske receiving an action

1 plan?

2 A No.

3 Q At the point where the open letter came to Health  
4 Canada what were the next steps or what was the next  
5 action to occur? By that I mean what steps were you  
6 involved in directly?

7 A I believe after that I was advised to start doing a  
8 bit more investigation into the operations of  
9 Synergy TrueHope and started doing a corporate  
10 search and web names and website review and --

11 Q And with respect to the website review, do you  
12 remember whether you observed the website again in  
13 April of 2003?

14 A I don't specifically remember if I observed it in  
15 April but I have -- I know I have observed it many  
16 times.

17 Q And the website, just to be clear, is that the  
18 website that is noted on the business card you  
19 received?

20 A Yes, it is.

21 Q And that's [www.truehope.com](http://www.truehope.com)

22 A Correct.

23 Q All right. And when you observed that website, for  
24 example, the business card that you were presented  
25 has what I'll call a letterhead or --

26 A Mm-hm.

27 Q -- corporate symbol or something like that.

1 TrueHope with a --

2 A Right.

3 Q -- lighthouse making the 'O'.

4 A Yeah.

5 Q Did you note that corporate symbol on websites?

6 A Yes.

7 Q And when you observed -- I'm sorry, did you say that  
8 you then again observed the website sometime in  
9 2003?

10 A Yes.

11 Q And what kind of observations did you make at that  
12 time?

13 A Very similar to other times. It was still  
14 testimonial information on there. Stories, contact  
15 information.

16 MR. BUCKLEY: Your Honour, actually I'm -- I  
17 didn't mind when he was talking about 2001, which is  
18 not the offence date, describing what he saw on the  
19 website, so if my friend is going to enter copies of  
20 the website or something like that --

21 MR. BROWN: That's not my intention, sir.  
22 I'm happy to have my witness tell us what his  
23 observations of the website were. He is given us  
24 evidence that he observed the website and some  
25 evidence about it briefly, and I intend to rely on  
26 what he observed.

27 THE COURT: What is the basis for your

1 objection?

2 MR. BUCKLEY: Well, I guess I'll explore in  
3 cross-examination whether he made notes or anything  
4 like that.

5 I'm just surprised that this evidence come in  
6 because I haven't had any copies of websites or  
7 anything like that disclosed to mem. And now, well  
8 that might be wrong but in 2003 I don't believe I  
9 did, so I'm not sure what's going to come out and  
10 I'm feeling a little surprised, so that's why I'm  
11 objecting.

12 THE COURT: All right. Well you have got  
13 cross-examination in which you can explore that  
14 further then, Mr. Buckley, as you have stated.

15 Go ahead.

16 MR. BROWN: Thanks, sir.

17 THE COURT: You can answer questions on  
18 your observations of the website in 2003.

19 MR. BROWN: Thank you, sir.

20 Q MR. BROWN: Mr. Brosseau, if you could  
21 just tell us again, I think you started to tell us  
22 what you observed on the website. If you could just  
23 go through that one more time please.

24 THE COURT: Excuse me just for a minute  
25 further.

26 Can you be more specific as well because the  
27 website can change over the course of 12 months.

1           Are you looking at a particular point in time  
2           or numerous occasions or just where are you going  
3           with this?

4       MR. BROWN:                   I will ask him if he observed  
5           that website on more than one occasion in 2003. I  
6           will confirm again with him that it is TrueHope.com  
7           and I will again ask him what his observations were  
8           each time he observed the websites, sir.

9       THE COURT:                   All right. Go ahead.

10      MR. BROWN:                   Thank you, sir.

11      Q     MR. BROWN:            Now, Mr. Brosseau, I'll ask  
12           this question first. Do you recall whether or not  
13           you observed the website [www.truehoe.com](http://www.truehoe.com) on more  
14           than one occasion in 2003?

15      A     Yes.

16      Q     All right. Now when you observed that website on  
17           each of those occasions did you, for example, make  
18           note of the testimonials? I want to say --

19      A     Eventually I made note. I mean I was --

20      Q     I'm sorry. I mis-spoke. I should have said did you  
21           observe testimonials?

22      A     Yes.

23      Q     Yes. And then did you observe whether or not the  
24           testimonials changed over time?

25      A     I recognized some of them being familiar. I was not  
26           doing a -- like a critique of the website to  
27           actually identify if there had been any changes or

1 not, but just to familiarize myself that it was much  
2 the same or ongoing.

3 Q All right. Did you note then by your observations -  
4 - when you were talking about the 2001 observation,  
5 you said that it -- there was reference with respect  
6 to the treatment of bipolar disorder.

7 Did you note on any of the occasions that you  
8 were observing this website in 2003 whether or not  
9 there continued to be claims about treatment of  
10 bipolar disorder?

11 A I've noticed references to bipolar disorder at any  
12 time that I'd looked at the website.

13 Q At every occasion?

14 A Yeah.

15 Q And was it treatment of bipolar disorder that you  
16 noted?

17 A I would call it treatment, yes.

18 Q What -- do you have any recollection of what the  
19 words were?

20 A No.

21 Q All right. And was it your recollection that that  
22 remained consistent each of the times that you  
23 viewed the website in 2003?

24 A Yes. I thought it was consistent.

25 Q Okay. All right, sir, I think you briefly mentioned  
26 that at some point in 2003 you ordered corporate  
27 records, the corporate records search?

1 A Yes. I believe it was in March of 2003.

2 Approximately March 8th.

3 Q I'm going to show you some records. I'm going to  
4 start with this one first, sir.

5 And I believe Mr. Buckley has copies of these.

6 MR. BUCKLEY: Let's have a look at that last

7 (INDISCERNIBLE).

8 MR. BROWN: This is the original.

9 MR. BUCKLEY: I do have copies of this.

10 THE COURT: You do have copies of that?

11 MR. BUCKLEY: Yes.

12 THE COURT: All right. Is it necessary  
13 for you to approach the witness or can you pass it  
14 up through the clerk?

15 MR. BROWN: I can pass it up through the  
16 clerk, sir.

17 THE COURT: That is what she is here for.  
18 Okay.

19 MR. BROWN: Thank you, sir. That should  
20 be the original copy of the corporate search.

21 THE COURT: Thank you, madam clerk.

22 Q MR. BROWN: Mr. Brosseau, take a quick  
23 look at that one.

24 THE COURT: What do you have there, sir?

25 A Um. It's a certified copy, certificate of, I guess  
26 it'd be from the Registrar of Corporations, there's  
27 a certificate that certifies that the certificate

1 belongs to Synergy Group of Canada.

2 Q MR. BROWN: Can you turn --

3 A Inc.

4 Q I'm sorry, go ahead.

5 A It states that it's a true and accurate copy of  
6 documents which are on the file maintained in this  
7 office.

8 Q Okay. If you could look at the next page please.  
9 What do you see there?

10 A A certificate of incorporation.

11 Q All right.

12 A Which says Synergy Group of Canada was incorporated  
13 on May 23rd, 1996.

14 Q If you could just turn to the next page please.

15 A More information on the business structure it looks  
16 like.

17 Q Okay.

18 A Incorporator names and addresses and classes of  
19 shares.

20 Q All right. And the next page please.

21 A It's called Schedule 'A' to the Articles of  
22 Incorporation. Seems to be again a description of  
23 the shares of the company.

24 Q All right. And can you just see on that page and  
25 the one before, if there is a date stamp or a filed  
26 stamp rather?

27 A Yes.

1 Q And the date?

2 A May 23rd, 1996.

3 Q Okay. And the page before that as well.

4 A May 23rd, 1996.

5 Q All right. Thank you.

6 MR. BROWN: Sir, I'd like to have this  
7 exhibit marked as the next exhibit. I believe it's  
8 number 5.

9 THE COURT: Can you pass it up here  
10 please, sir.

11 Mr. Buckley, you have see this?

12 MR. BUCKLEY: I've see it, Your Honour. I'm  
13 on my feet just simply because I don't know the  
14 answer to a question.

15 Generally speaking something like this is  
16 admissible as -- if it's certified by the Registrar,  
17 as is allowed under the *Land Title Act*. And this  
18 says, *Certified Copy*, but what's confusing me is it  
19 seems to be an electronic copy, and so I'm not sure  
20 what the process in this jurisdiction is.

21 Because under the *Alberta Evidence Act*  
22 electronic copies can be admissible if in the  
23 regular course of business the Land Title office  
24 keeps electronic records that basically -- and  
25 they're in the business of doing that, and I don't  
26 know the answer to that question. So I'm just  
27 raising it if that's not the case. I do want my

1 friend to comply with the *Alberta Evidence Act* and  
2 the *Canadian Evidence Act*.

3 MR. BROWN: Well, sir, my understanding,  
4 and perhaps you can get the witness to give us a  
5 little more evidence about how he obtained the  
6 documents, but they are electronic copies and they,  
7 as you know, in Alberta now, these type of documents  
8 are held by registration, or certified companies  
9 that are Registrars and that's who you go to get to  
10 the documents.

11 I'll just have the witness explain the top page  
12 and that will help us understand what occurred.

13 THE COURT: All right. We will hear some  
14 clear explanation on --

15 MR. BROWN: Sure.

16 THE COURT: -- on this. I want to know if  
17 this is a photocopy or if it is in fact something  
18 that is a original of an electronic copy that he  
19 received.

20 MR. BROWN: Right. That's fine.

21 THE COURT: All right.

22 MR. BROWN: I'll ask him those questions.

23 THE COURT: And it used to be when you  
24 received a certified copy it was actually signed and  
25 dated by a Registrar or someone.

26 MR. BROWN: Right.

27 THE COURT: I note there is nothing like

1           that on here. Just a heading at the top that says,  
2           Certified Copy.

3           MR. BROWN:                               No, sir.

4           THE COURT:                               I mean I will pass this down  
5           to you, sir, and Mr. Brown will ask you some more  
6           questions.

7           MR. BROWN:                               Thank you, sir.

8           THE COURT:                               Go ahead (INDISCERNIBLE).

9           Q     MR. BROWN:                           Now, Mr. Brosseau, when you  
10           engaged in the search to obtain these certificates,  
11           or corporate records, what process did you follow  
12           and what did you do?

13          A     When I requested the registry search I went through  
14           a company called, A Plus Registries, which is a  
15           licensed registry company by the Province of  
16           Alberta.

17                   The reason I went through them as well is the  
18           fact that they have an online request system which  
19           was a matter of convenience.

20                   I put in the information that I was requesting  
21           online, through their website, and payment was made  
22           at the same time, and submitted that and received a  
23           fax back the next day.

24          Q     Okay. And this is the fax that you received from  
25           the company the next day? Is that correct?

26          A     I don't know what this Acusearch (phonetic) is on  
27           here.

1 THE COURT: You are referring to the first  
2 page?

3 A Yeah.

4 THE COURT: In blue.

5 A It says, Acusearch License and Registry Services.  
6 That's not the company that I went through, if this  
7 a registry company.

8 MR. BROWN: Well, sir, I'm going to have  
9 to ask Mr. Brosseau to give me the document back.

10 THE COURT: That is fine. Madam clerk,  
11 you return that document to Mr. Brown.

12 MR. BROWN: Thank you, sir. We'll carry  
13 on then, sir.

14 Q MR. BROWN: Mr. Brosseau, did you at any  
15 point get -- were you ever contacted by an  
16 individual by the name of Norris Leishman?

17 A Yes.

18 Q And what was that about?

19 A I had made contact with him, asking if the town had  
20 issued a license, business license, to Synergy Group  
21 of Canada or TrueHope, and he had responded saying  
22 that, Yes, there was, and gave me the address of the  
23 business.

24 Q Okay.

25 A Which I believe was something like, 680 North 300  
26 East.

27 Q Right. And that was in Raymond?

1 MR. BUCKLEY: Well --

2 A Raymond, Alberta.

3 THE COURT: Mr. Buckley.

4 MR. BUCKLEY: Your Honour, I don't mind that  
5 going in for a narrative, but I object for it going  
6 in for the truth of it's contents.

7 THE COURT: Fine. It can go in for the  
8 narrative. It is otherwise hearsay.

9 MR. BROWN: That's fine, sir.

10 Q MR. BROWN: Did you take any steps after  
11 you received the information from Mr. Leishman?

12 A We decided that a trip -- to make a trip down to  
13 Lethbridge and to Raymond.

14 Q Mm-hm.

15 A We had been aware that they had a location in  
16 Lethbridge that they had been operating from and so  
17 we were interested to see if they were operating out  
18 of both Raymond and Lethbridge.

19 Q Mm-hm.

20 A So when in Lethbridge it was discovered that the  
21 building that was once used as an operation centre  
22 was no longer being used. The had left that  
23 premises and were solely located in Raymond, and  
24 drove to Raymond and actually had a look at the  
25 outside of the building.

26 Q And what did you observe when you looked at the  
27 building?

1 A It looked like it had previously been a -- it looked  
2 familiar to a utility company of some kind. I  
3 believe it was fenced, fairly well groomed. There  
4 was two signs on the outside, one said, TrueHope  
5 Research and another sign said, TrueHope  
6 Administration.

7 Q All right. And was that the address that -- did you  
8 note the address when you were in Raymond?

9 A Pardon me?

10 Q Did you note the address of that building in  
11 Raymond?

12 A We followed the street signs and that's where we  
13 were led to.

14 Q And the address. Do you recall?

15 A Mile 680 North 300 East.

16 Q All right. Now as I understand it, sir, you were  
17 involved in the execution of a search warrant at  
18 that location.

19 A Yes.

20 Q And that was in July of 2003?

21 A Correct.

22 Q And my understanding is that you would've been  
23 involved to some degree with the transfer of  
24 documents from Raymond to Calgary or from Calgary to  
25 Burnaby or some --

26 A Calgary to Burnaby.

27 Q Okay. Well why don't you tell the Court what your

1 involvement with those documents, and when I say the  
2 documents, I mean the ones that were seized during  
3 the search warrant.

4 A Mm-hm.

5 Q Tell the Court what your involvement with those  
6 documents were -- was.

7 A My particular involvement with those documents  
8 really was the transfer of those exhibits from our  
9 lockup here in Calgary to Burnaby, to the care of  
10 Kim Seeling, who was the official document  
11 custodian.

12 Q All right. How did the documents end up in your  
13 lockup in Calgary?

14 A At the end of the execution of the search warrant,  
15 the documents were placed in boxes and they were  
16 loaded into a van. The driver of the van was Larry  
17 Young --

18 Q Okay.

19 A -- from our department, from in Burnaby. And Kim  
20 Seeling accompanied Larry in the van to Calgary.  
21 Then I let them basically into the building.

22 We unloaded the boxes, they were brought up to  
23 our office and were placed into the security lockup.

24 Q How many boxes were there?

25 A Nine boxes.

26 Q All right.

27 A There's two keys to that lockup, both given to Kim

1           Seeling. When she had placed the boxes in there  
2           they had been -- they were sealed, she had her  
3           around to keep the lids on and also to prevent  
4           tampering. She had her initials across the seals,  
5           across the tape.

6                     And she held both keys until such time as she  
7           herself returned back to Burnaby. She took one key  
8           with her. Another one was placed in an envelope  
9           which she --

10       MR. BROWN:                     Just hang on a second. Sorry.

11       MR. BUCKLEY:                  Sorry, Your Honour.

12       Q     MR. BROWN:              Let me just ask you to clarify  
13           a couple of points just to --

14       A     Mm-hm.

15       Q     So everybody is clear.

16                     When you are speaking of Kim Seeling taking a  
17           key and those sort of things, this is still while  
18           the boxes are in Calgary?

19       A     Right.

20       Q     Okay. So the boxes are put in a lockup in Calgary.

21       A     Correct.

22       Q     And there's two keys to the lockup?

23       A     Right.

24       Q     Right. So if you can continue and discuss what  
25           happened with those keys then.

26       A     Well she held both of them.

27       Q     Okay. And when you say, she held both of them,

1           that's while she's still in Calgary?

2           A     While she's in Calgary.

3           Q     Okay.

4           A     When she left to go back to Burnaby, she took one  
5           key with her and left one key in Calgary, in a  
6           sealed envelope, which was locked in a combination -  
7           - combination locked security file cabinet, and  
8           because the exhibits were to be transferred to  
9           Burnaby that was left there so at such time when it  
10          was decided to transfer them, I could open the  
11          envelope, gain access and ship the boxes.

12          Q     All right. And did you do that?

13          A     Yes, I did.

14          Q     All right. Can you explain what you did then.

15          A     When it was requested that I send those boxes to  
16          Burnaby I phoned Kim Seeling up and advised her that  
17          I was now going to open the envelope, and I went to  
18          the security lockup, opened the doors, rechecked all  
19          the boxes, counted them.

20          Q     Sorry, just before you get to that. The key was in  
21          a sealed envelope?

22          A     Yes.

23          Q     Was it still sealed when you went to retrieve it?

24          A     Yes, it was.

25          Q     Okay. I'm sorry. Go ahead.

26          A     I set up the boxes up, took pictures of them. I  
27          labelled them with the Burnaby address. I put on

1 each box stickers that would say that one box was  
2 box 1 of 9, another one was 2 of 9, and so on.

3 I put in big red letters, a date label on there  
4 that said, Not to be opened during transit or on  
5 receipt except by Kim Seeling.

6 Q Okay.

7 A I called FEDEX Courier to come and pick those up for  
8 shipment. The fellow came, filled out some  
9 paperwork on waybill and that kind of thing, and  
10 then he loaded up 4 boxes, I believe, the first  
11 time.

12 I locked the door on the remaining boxes,  
13 followed him down and watched him put the boxes  
14 inside the van which had a -- when you closed the  
15 door it was automatically locked. He demonstrated  
16 that to me.

17 Went back up, got the remaining boxes, made a  
18 second trip down, I watched him put the boxes into  
19 the van, close it up. He gave me a copy of the  
20 waybill and drove away.

21 And then I advised Kim that the boxes had been  
22 loaded and that she could expect them the next day.

23 Q All right. Did you have any other contact with the  
24 boxes or the contents of those boxes thereafter?

25 A Only when they returned here to -- pardon me.

26 No. In September I went out and spent a few  
27 days assisting Kim when she was cataloguing the

1 documents.

2 Q All right.

3 A And which basically was, putting -- stamping a  
4 number on each page.

5 Q Right. And was there some kind of system in place  
6 that you observed of keeping track of what document  
7 went where, while you were in Burnaby?

8 A Kim had developed a spread sheet where she was  
9 cataloguing each item.

10 Q Right. That wasn't your role?

11 A No.

12 Q All right. Well, Ms. Seeling will be called and she  
13 can speak to that then.

14 And so how many days were you out in Burnaby  
15 then?

16 A At least three.

17 Q All right. And did you have opportunity to observe  
18 what was done with the boxes once you were done  
19 cataloguing a box?

20 A Well when I was finished my time there they still  
21 weren't finished cataloguing.

22 Q All right.

23 A So I don't know what happened right at the end, but  
24 I know they were, again, they were kept in a locked  
25 room, again, that only I believe Kim Seeling had  
26 access to.

27 Q All right. I'll asked her to speak that then.

1           At some point did you then again take custody  
2           of these nine boxes?

3       A     Yes.  They were shipped back here to Calgary.  I  
4           received them on Thursday of last week, which I  
5           believe was the 9th.  They arrived at 9:06.  I was  
6           not in the office but I'd already given instructions  
7           to the administration staff there that should they  
8           arrive before I was able to get back, to lock them  
9           into the secure lockup.

10       Q     Right.

11       A     Hold the keys until I got there.

12       Q     Right.

13       A     And they could provide them to me.

14       Q     And when you arrived where did you find the boxes?

15       A     The boxes were locked in the secure cabinet and I  
16           then obtained -- well they advised me that they  
17           received.

18                 I went to the secure lockup with the  
19           administration clerk who was holding the keys and  
20           together she unlocked it and I observed the boxes  
21           and she handed me over the keys, and I examined the  
22           boxes further just to make sure they were secure and  
23           in good shape.

24       Q     All right.  And so did you observe whether or not  
25           the boxes were taped closed, anything like that?

26       A     They were still taped closed.  Kim Seeling's  
27           initials were still on them.  They hadn't been

1           disturbed. At this time there was 17 boxes because  
2           a lot of them were photocopies of the original  
3           documents.

4           Q     Right.

5           A     And I did, again, I took some pictures of the boxes  
6           and then I locked it back up again, and I had both  
7           sets of keys. This time I put both -- locked both  
8           sets of keys up into the combination file cabinet  
9           until I needed them, which was to start pulling some  
10          of the documents for this trial.

11          Q     All right. And when did you do that?

12          A     I did most of that on Saturday. Previously on  
13          Friday I had opened up a box that held some CD's and  
14          started making duplicate copies of those CD's. I  
15          finished that on Saturday and finished repackaging  
16          or packing up the documents we needed on Saturday as  
17          well.

18          Q     Okay. And when you pulled certain documents what  
19          was your -- how did you deal with those documents?

20          A     The original documents were put into boxes by  
21          exhibit number, consecutively.

22                    The copies of those same document were then  
23          placed into binders and the binders were put into  
24          one -- boxed separately from the originals.

25                    There ended up being four boxes of original  
26          documents and four boxes containing binders. And  
27          the boxes were labelled as exhibit documents and the

1 other boxes of the binders were labelled as binder  
2 boxes.

3 Q Okay. And what did you do with the boxes? The four  
4 originals?

5 A Well once I finished repackaging them I put them all  
6 back into the secure lockup and locked them up again  
7 and put the keys back into the combination file  
8 cabinet until yesterday morning when I retrieved  
9 them, put them on a cart, took them down, put them  
10 in a taxi and brought them over to the courthouse  
11 here.

12 Q Thank you.

13 MR. BROWN: Sir, I'm going to ask if we  
14 can maybe take five minutes. I think I'm done with  
15 this witness. I just want to review some notes and  
16 have an opportunity to -- I think I'll be finished  
17 with him briefly.

18 THE COURT: Okay. That is fine.

19 MR. BROWN: Thank you, sir.

20 THE COURT: Can we provide Mr. Buckley the  
21 same opportunity you had before our lunch break so I  
22 see no problem with that.

23 MR. BROWN: Thank you very much, sir.

24 THE COURT: Good opportunity now to take  
25 our afternoon break so I will return at 3:15 and we  
26 will go for a further hour if you have the witnesses  
27 here to go for that period of time, or if you have

1 the questions ready to go for that period of time.

2 MR. BUCKLEY: Right. Right.

3 MR. BROWN: Thank you, sir.

4 THE COURT: All right. Okay. We will  
5 stand adjourned until 3:15. I will return at that  
6 time.

7 THE COURT CLERK: Order in court. All rise.

8 Court stands adjourned until 3:15.

9 (ADJOURNMENT)

10 MR. BROWN: Sir, thank you for the  
11 adjournment.

12 THE COURT CLERK: Recalling Synergy Group of  
13 Canada and TrueHope Nutritional Support.

14 MR. BROWN: Sir, I just have a couple of  
15 more questions I wanted to ask this witness.

16 I'm going to pass the clerk a corporate  
17 registry for Synergy Group and ask Mr. Brosseau to  
18 take a look at that document.

19 Q MR. BROWN: Mr. Brosseau, you have a two  
20 page document before you. Can you just tell us if  
21 you recognize that document?

22 A I'm very familiar with this document.

23 Q Okay. And can you tell us what that is?

24 A It's the document I received from A Plus Registries,  
25 again, describing the Synergy Group of Canada,  
26 registered office, mailing address, the directors,  
27 voting shareholders.

1 Q And who are --

2 A Share structures.

3 Q And sorry. And the directors. Who are the  
4 directors?

5 A David Hardy and Anthony Stephan.

6 Q Okay. Now can you just tell us how it is that you  
7 went about obtaining that document and how it came  
8 to you.

9 A A Plus Registries has a website and on there you can  
10 do -- request documents or search on, like a  
11 corporate search, land titles, vehicles. Just about  
12 anything you want.

13 And they have a -- when you click on the type  
14 of search you want, in this case, a corporate  
15 search, it comes up with a template that you fill in  
16 the blanks along with a method of payment such as a  
17 credit card, and then you submit them -- submit that  
18 to them and once they have gathered the information,  
19 however they do that, then they faxed it to me.

20 Q And can you take a look at the last page of the  
21 document. You should see what looks like a, I guess  
22 I'll call it a stamp, if you can just take a look at  
23 the bottom (INDISCERNIBLE).

24 A It's a -- yeah, Registrar of Corporations stamp.

25 Q And what does -- what's the two lines above that  
26 say?

27 A

1           This is to certify that as of this  
2           date the above information is an  
3           accurate reproduction of data  
4           contained within the official records  
5           of the Corporate Registry.

6

7       Q     So that -- and I believe you said that that document  
8           was actually faxed to you?

9       A     Yes.

10      Q     And can you see at the bottom of the page, there is  
11          writing -- it's upside down.  What's that say?

12      A     It says the date, 5th, I guess it'd be the 8th or  
13          the 5th, I guess, 2003, but it says 05/08/2003,  
14          17:08, 403-288-0391, A Plus Registry, pages 2, 3,  
15          and 4.

16      Q     All right.  And then I'm just show you two other  
17          pages that appear to be emails between yourself and  
18          A Plus Registry.  You recognize those emails?

19      A     Yes.

20      Q     And can you tell me what is referenced in those  
21          emails?  What's the purpose of those?

22      A     The first one is a date of request, May 8th, 2003.  
23          It assigns a file number which shows that on this  
24          particular case the business name is Danford  
25          (phonetic) Industries.  The name Celine C. Huberdo.  
26          Now it's her name that the credit card is under, so  
27          her name is used as the -- for payment purposes.  It

1 has my office phone number on it, my fax number.

2 That's page 1.

3 MR. BUCKLEY: Just so the Court's aware.

4 When my friend goes to introduce these I'm going to  
5 be objecting. So.

6 MR. BROWN: Yes. I just thought I'd have  
7 the witness go through all of the documents first  
8 and then we'd get to his objection thereafter.

9 THE COURT: Go ahead.

10 A Also, there's special instructions there that say:

11

12 Brian, please note, in order to  
13 facilitate payment so you don't have  
14 to wait too long I propose that you  
15 bill our request to our department's  
16 MasterCard, which is ...

17

18 and the MasterCard is under Celine's name of course.

19 Q Do you recognize the content of those emails?

20 A Yes.

21 Q And do they reference your request for and receipt  
22 of the corporate documents that you have in front of  
23 you? In other words, are those emails that you sent  
24 in order to obtain those corporate records?

25 A Yes.

26 MR. BROWN: Sir, I am going to ask that  
27 the first set of corporate records that Mr. Brosseau

1           has identified there be entered as the next exhibit,  
2           which would be number 5.

3       THE COURT:                   It should be number 6 if it's  
4           going in, but let us --

5       MR. BROWN:                   Okay. I'm sorry.

6       THE COURT:                   No. Sorry. Number 5. You  
7           are right. But let us hear what --

8       MR. BUCKLEY:                 And, Your Honour, I actually  
9           need to look at --

10      THE COURT:                   -- Mr. Buckley says.

11      MR. BUCKLEY:                 -- the documents. What's  
12           occurred is, is that --

13      THE COURT:                   Madam clerk, please pass those  
14           documents toward Mr. Buckley.

15                   You have not seen those before I take it?

16      MR. BUCKLEY:                 Well, no. That's not true but  
17           it's just, there was -- with the number of documents  
18           involved my friend just made reference to a wrong  
19           exhibit on the list of documents that was sent to me  
20           last Friday, that he would be relying on. Or last  
21           Thursday.

22                   So my trial books that I brought here  
23           containing the Crown evidence don't have this in it  
24           but this would've been disclosed in the prosecution  
25           brief. Although -- oh.

26      MR. BROWN:                   Sir, I'm just going to --  
27           sorry. I meant to make one more point or ask one

1 more point of the witness.

2 MR. BUCKLEY: We don't know if it's an  
3 original document.

4 MR. BROWN: I just want to ask -- make  
5 sure that Mr. Brosseau can confirm that this is an  
6 original copy. That this is the copy he received.

7 THE COURT: Ask the question.

8 Q MR. BROWN: Mr. Brosseau, can you confirm  
9 whether or not this is the copy that you received  
10 from A Plus Registry? Do you need to see it again?

11 A No, I don't need to see it again. No, I don't know  
12 if that's the original copy or not. It is -- I  
13 don't --

14 Q Do you know --

15 A It is what I received but whether it's the original  
16 I don't know.

17 Q Do you know what you did with the original copy that  
18 you received?

19 A I believe I submitted it for inclusion into the  
20 prosecution brief.

21 THE COURT: Anything further?

22 MR. BROWN: No.

23 MR. BUCKLEY: Your Honour, I've a few  
24 objections to the admission of these --

25 MR. BROWN: Just to be clear, sir, I'm not  
26 going to try to admit the documents.

27 MR. BUCKLEY: Okay.

1 THE COURT: In that case, you are not  
2 going to make your objections then?

3 MR. BUCKLEY: No.

4 THE COURT: No. All right.  
5 Do you have any further questions?

6 MR. BROWN: Oh, I'm sorry, sir. No, those  
7 are all the questions I have of this witness. Thank  
8 you.

9 THE COURT: All right. Mr. Buckley, you  
10 prepared to take the cross-examination?

11 MR. BUCKLEY: Yes, I would, Your Honour.  
12 Thank you.

13 THE COURT: Go ahead.

14

15 \*Mr. Buckley Cross-examines the Witness

16

17 Q MR. BUCKLEY: So, Mr. Brosseau, first of all  
18 I would like to just make sure that I fully  
19 understand how long your involvement in the  
20 investigation went because it seems fairly clear  
21 that you started this back in 2001, was it? Your  
22 first (INDISCERNIBLE).

23 A 2000.

24 Q 2000. Okay. So you've been involved for quite some  
25 time.

26 At some point Sandra Jarvis basically kind of  
27 took over the lead on the file. Would that be fair

1 to say?

2 A Yes.

3 Q And that happened some time in 2003?

4 A Yes. In the spring of 2003.

5 Q Okay. Now would it be fair to say that prior to her  
6 taking over involvement in the file that you were  
7 the lead investigator?

8 A Yeah, if you want to consider it as one big  
9 investigation, yeah.

10 Q Okay.

11 A I would've been the lead investigator originally.

12 Q Well you don't have to agree with me because we  
13 don't know.

14 A Yeah.

15 Q Was it a situation where there was kind of somebody  
16 who had responsibility for conduct of the file or  
17 was it just when something came up whoever had time  
18 like?

19 A If something came up they would ask me to look into  
20 it because I'm the only compliance officer in  
21 Calgary.

22 Q Okay.

23 A And it is from this area, so.

24 Q Fair enough. Now you were actually involved in kind  
25 of being the point guy for shutting down the  
26 clinical trial at University of Calgary. Would that  
27 be fair to say?

1 A (NO AUDIBLE ANSWER)

2 Q Do you know what I mean by point guy?

3 A No, not exactly.

4 Q Okay. The bearer of bad news. Because you --

5 A I'm a messenger, yes.

6 Q Right. You weren't involved in making the decision

7 --

8 A No.

9 Q -- as to whether or not to close down the trial but  
10 it just seems when I'm reading the file that you  
11 kind of got delegated to write the nasty letters at  
12 the end of the day.

13 A Yes.

14 Q Okay. So were you -- or are you qualified with  
15 regards to assessing whether or not a clinical trial  
16 should go ahead or not go ahead or anything like  
17 that?

18 A No, I'm not an evaluator.

19 Q Okay. What is your background by the way?

20 A I have a degree in pharmacy.

21 Q Okay. Now when you say degree, is that a university  
22 degree?

23 A Yes, it is.

24 Q Okay. And where did you get that?

25 A University of Alberta.

26 Q Okay. And did you ever practice as a pharmacist?

27 A Yes, I did.

1 Q And how long did you do that?

2 A '76 to '88.

3 Q Okay. So actually quite some time.

4 A Mm-hm.

5 Q Now would it be fair to say that as a pharmacist one  
6 of the things that you had to do was appreciate side  
7 effects and dangers with some of the drugs that you  
8 were dispensing?

9 A True.

10 Q Okay. And in fact, pharmacists have an expertise in  
11 that. Would you agree with that?

12 A Yes.

13 Q Okay. Now this is an interesting case in many  
14 respects. You are faced with a situation where  
15 Health Canada was getting a lot of calls from people  
16 once compliance action was underway. Would you  
17 agree with that?

18 A I've heard they did, yeah.

19 Q Okay. So for instance did you receive any calls?

20 A Very few. I don't recall receiving any phone calls  
21 with regard to any compliance action.

22 Q Okay. Did you receive any calls from just anyone  
23 out of the blue, saying, What the heck's going on,  
24 we need the product?

25 A I recall getting a call from Anthony Stephan along  
26 that tone.

27 Q Okay. Now is that different than one of the calls

1           you've testified to today? Because you talked about  
2           a conference call you had with Mr. Stephan and Mr.  
3           Hardy --

4           A     Mm-hm.

5           Q     -- and Mr. Shelley.

6           A     No. It wasn't a conference call it was --

7           Q     Or a meeting. I'm sorry.

8           A     Yeah.

9           Q     You also did have the occasion to be involved in a  
10          conference call did you not with Ms. Jarvis and  
11          yourself and Mr. Hardy and Mr Stephan and Mr.  
12          Shelley?

13          A     Yes.

14          Q     Okay. How did that call come about?

15          A     Well, I'm not exactly -- I believe Anthony must have  
16          requested it. I believe he called in to Dennis  
17          Shelley and that particular call I believe I just  
18          happened to be in Burnaby when that call was placed.

19          Q     Okay. And what do you recall about that call?

20          A     Tony was upset about a refusal of a shipment that  
21          Customs did on a client, or a person bringing back  
22          some product from the United States.

23          Q     Mm-hm.

24          A     And Tony was wanting to get the shipment released.

25          Q     Okay. Now at the time did you understand that  
26          Health Canada had directed Customs to stop shipments  
27          at the border?

1 A I believe there was a Customs's alert out already by  
2 that time, yeah. Target lookout.

3 Q Okay. So prior to this call you believe you were  
4 aware of that?

5 A Yes.

6 Q And when you say Customs alert, that is basically  
7 what you term the document that Health Canada sends  
8 to --

9 A CBSA.

10 Q Okay.

11 A Customs Border Services Agency.

12 Q Okay. So that's the document that they send there  
13 to basically recommend that a product such as the  
14 EMPowerplus not come into the country?

15 A No. It's a document that is sent to them to be  
16 aware of and watch for shipments.

17 Q Okay.

18 A Of such products.

19 Q Yes.

20 A Not -- it does not say, Automatically refuse, or  
21 anything like that.

22 Q Okay. But what happens in practical terms then is  
23 that they alert Health Canada, Hey we've received  
24 this shipment, and then Health Canada will either  
25 recommend it enter the country or recommend that it  
26 be refused?

27 A They may contact Health Canada.

1 Q Okay.

2 A They may not.

3 Q Now were you aware at the time of this call that  
4 product was being turned around at the border?

5 A This particular shipment?

6 Q Well, I'm not thinking this particular shipment.  
7 I'm going to suggest to you this call occurred on  
8 September 18th, 2003.

9 A Mm-hm.

10 Q You probably don't recall the date?

11 THE COURT: Is that a yes or a no, sir,  
12 when you go "Mm-hm"?

13 A Yes, it is.

14 THE COURT: Yes. It is a "yes"?

15 A Yes, it is.

16 THE COURT: The answer is yes.

17 Q MR. BUCKLEY: Okay. So I su - okay, so the  
18 call's September 18th, '03. Now, at that time,  
19 before the call, were you aware that shipments were  
20 being turned back at the border?

21 A I was aware some had been, yes.

22 Q Okay. No, fair enough. I mean you don't know  
23 what's happening in Customs, but what I'm trying to  
24 get at is, is there seems to be evidence that Health  
25 Canada had made a decision to try and stop the  
26 product from entering into the country. Now whether  
27 or not that's effective or not, were you aware that

1 Health Canada was seeking to prevent the product  
2 from coming into the country?

3 A Only to prevent (INDISCERNIBLE) commercial  
4 importations of the product.

5 Q Okay. Well, tell us about that. So when you say,  
6 To prevent commercial importation, what does that  
7 mean?

8 A Basically it means to prevent the import of  
9 unapproved product for commercial purposes or for  
10 sale in Canada.

11 Q Okay. So if it was coming into a health food store,  
12 for example --

13 A Mm-hm.

14 Q -- that would be commercial because Health Canada  
15 would be expecting that the store would turn around  
16 and sell it?

17 A Yes.

18 Q Okay. But if it's not coming in for commercial  
19 purposes then Health Canada would let it in?

20 A They may, but it depends on what the product is.

21 Q Okay. Well, we're talking about the EMPowerplus,  
22 back in 2003, September.

23 A Yeah.

24 Q Okay. And I think that you're agreeing with me  
25 that, at least at that time, Health Canada did not  
26 want shipments that were commercial in nature coming  
27 into Canada.

1 A Sure.

2 Q Okay. But is it the case that if they were not  
3 commercial that Health Canada would be letting them  
4 in? Or are you able to answer that question?

5 A I believe that's what they would do, yes.

6 Q Okay.

7 A That's the decision that Health Canada may make if  
8 they were presented with it by Customs.

9 Q Okay. Were you involved in making any decisions  
10 whether or not to allow product in or not, in 2003?

11 A Sometimes.

12 Q Okay. And did you ever decide to allow product in?

13 A Yes.

14 Q Okay. And when you allowed product in, what was it  
15 that made you decide to allow it in?

16 A It meant -- if the shipment met the requirements of  
17 the *Personal Importation Directive*.

18 Q Okay.

19 A A policy that Ottawa had established.

20 Q Now if I suggested to you that basically all of  
21 these shipments came in through United Parcel  
22 Service, UPS, would you agree with that or disagree?

23 A I would disagree.

24 Q Okay. So, you're aware of shipments coming in by  
25 other means?

26 A Yes.

27 Q Okay. What other means are you aware?

1 A Through the postal system.

2 Q Okay.

3 A Through actual people bringing product back across  
4 the border.

5 Q Okay. But no, as far as shipped goes. Just so that  
6 I'm clear.

7 A Oh.

8 Q So you're aware of some coming in, for example, by  
9 Canada Post?

10 A Yes.

11 Q Do you have specific memory of that happening?

12 A Yes.

13 Q Okay. Can you tell us about that?

14 A Well there -- there were many shipments that came in  
15 through the post office. I remember examining them,  
16 making photocopies of packing slips, reviewing the  
17 to and from information on the package, examining  
18 the product itself.

19 Q And this is in 2003?

20 A Yes.

21 Q Okay. And this would be the Calgary Post Office?

22 A Yes.

23 Q And you'd have made copies of any of these  
24 documents?

25 A Some. Some of them.

26 Q Did you ever refuse shipments coming in through the  
27 post office?

1 A Yes.

2 Q And why?

3 A It would've been because they were deemed to be a  
4 commercial shipment rather than personal.

5 Q And what was it about the shipments that made you  
6 deem them to be commercial not personal?

7 A Sometimes it would be quantity. If the quantity  
8 appeared to exceed a 90 day supply.

9 Q Any other reasons?

10 A Sometimes if the payment appeared to be made to  
11 Synergy Group, in Raymond, rather than to an  
12 establishment in the United States.

13 Q Okay. Now are these shipments coming to your  
14 attention because of a Health Care advisory to the  
15 post office?

16 A Partly. Partly because over a period of time the  
17 officers became aware that a lot of those shipments  
18 were commercial and they would make a point of  
19 holding them until we could examine.

20 Q Okay. Were any of these ever to a retail  
21 establishment?

22 A No.

23 Q Now it wasn't you that came up with the decision  
24 within Health Canada to start watching for  
25 commercial shipments coming in and blocking them.  
26 Would that be fair to say?

27 A Right.

1 Q Okay. Who was it that made that decision?

2 A I believe it would be the officials in Ottawa  
3 themselves.

4 Q Why do you believe that?

5 A Because policy is made there. Because I believe the  
6 instructions on these were funnelled down from  
7 Ottawa, to us in the region.

8 Q Okay. And when you say instructions are you  
9 referring to like a memorandum or emails to you?  
10 How would you receive instructions for a file like  
11 this? How did you receive instructions on a file  
12 like this?

13 A Sometimes I received instructions by phone, and  
14 frequently by email.

15 Q Okay. In this case, how did you receive  
16 instructions?

17 A I believe it was by email.

18 Q And do you recall who sent the email?

19 A No.

20 Q Now did this email give instructions as -- or any  
21 indication as to why you were being instructed to  
22 start -- or to stop commercial shipments?

23 A Well commercial shipments would be deemed to be a  
24 violative of the *Food and Drug Act* regulations.

25 Q Okay. But my question to you and I'm sorry if I'm  
26 confusing you, is not, you know, why you think, but  
27 did this email that was sent to you outline the

1 reasons why you were being directed for this  
2 specific product to block commercial shipments?

3 A I believe there were contained within that, a legal  
4 opinion from legal services in Ottawa that the  
5 operations being conducted through the facility in  
6 Raymond were considered to be commercial. It was  
7 considered to be sale of an unapproved product.  
8 Product without a DIN number.

9 Q Okay. Now, so there's unapproved sale of a product  
10 without a DIN number and basically by stopping the  
11 importation that takes an unapproved product off the  
12 Canadian market. Is that the rationale?

13 A It would help, yes.

14 Q Okay. But I mean there has to be a goal, right?

15 A Yeah.

16 Q You guys aren't doing things without a goal.

17 A That would be the objective.

18 Q Okay. So the objective is basically to take the  
19 EMPowerplus that's brought in commercially, off the  
20 Canadian market?

21 A Right.

22 Q Okay. Now, but at this time, would it be fair to  
23 say that your believe was that really the defendants  
24 in this matter were the only source of the  
25 EMPowerplus?

26 A I don't believe they would be the only source. The  
27 way it was structured people had to go through their

1 facility to get it, yes. At that -- under those --  
2 under that structure they were the only source.

3 Q And I think we're saying the same thing. I'm just,  
4 as you can appreciate, we need the Court to  
5 understand what was going on.

6 A Mm-hm.

7 Q Would it be fair to say that your understanding,  
8 based on both your own actions and reading the file  
9 and that, was that to access the product you had to  
10 contact this TrueHope, whether it's called a support  
11 group, or whether it's called TrueHope, but  
12 basically you had to go through this call centre?

13 A That's my understanding.

14 Q Okay. And it wasn't like you could just go to a  
15 health food store and buy this. You actually had to  
16 go through this call centre?

17 A Correct.

18 Q Okay. You had actually ordered product yourself  
19 back in 2000. You kind of did a trial test. Would  
20 that be fair to say?

21 A True.

22 Q And then you're also aware of Ms. Jarvis doing the  
23 same thing in 2003?

24 A Yes.

25 Q Okay. And you would've seen her notes in the file  
26 about how she had to, you know, this is the way I  
27 had to fill out a form and can I do this on the

1 phone, and basically it was right down to them  
2 phoning her back to check if she'd gotten the  
3 product and follow up on the program. Do you  
4 remember reading that in the file?

5 A (NO AUDIBLE ANSWER)

6 Q If you don't it's okay but if you do --

7 A No, I don't.

8 Q Okay.

9 A I remember a little bit but not to that extent.

10 Q Okay. Now when you ordered the product TrueHope  
11 actually, or at least somebody purporting to be from  
12 TrueHope, or identifying themselves from TrueHope,  
13 phoned you at Health Canada.

14 A Mm-hm.

15 Q To follow up to see if you'd gotten the product.

16 A And I was also phoned at home, too.

17 Q Okay. So even back in 2000, when you ordered the  
18 product there was follow up from this TrueHope  
19 program to see if you got the product and then to  
20 kind of follow up on putting you through this  
21 program protocol.

22 A Mm-hm.

23 Q Is that fair to say?

24 A Yes.

25 Q Okay. And you were probably surprised when they had  
26 actually phoned you at Health Canada to see if you'd  
27 gotten the product.

1 A I believe I provided them with that number.

2 Q Okay. So, right. So, at least your understanding  
3 was is that at the time and now I'm talking 2003 --

4 A Mm-hm.

5 Q -- was that you had to access the product through  
6 TrueHope call centre.

7 A Right.

8 Q Okay. Now whether it was shipped from within Canada  
9 or came across the border you still had to place the  
10 order through the call centre.

11 A Correct.

12 Q Okay. So with that in mind wouldn't it be fair to  
13 say that really all the orders coming into Canada,  
14 at least from your understanding, would have to be  
15 orders placed through this call centre.

16 A The orders being shipped I would think so, yes.

17 Q Yes. Okay. Now some shipments might be more. Like  
18 if somebody had ordered a three month supply you  
19 might let that through. Would that be fair to say?  
20 Because it's kind of fits within that personal  
21 importation policy?

22 A It might unless it was obvious that it was ordered  
23 through the call centre.

24 Q Okay. But I guess what I'm trying to get at is, in  
25 a way isn't that -- if you believe they're all  
26 coming through the call centre, the orders, then  
27 really in a way, whether there's documentation in

1 the shipment or not, don't you believe it's all come  
2 from being ordered through the call centre?

3 A You might possible believe that but I never assumed  
4 that. I looked at every shipment.

5 Q Okay. Yeah.

6 A To examine the documentation.

7 Q Okay. so fair enough because you just took the  
8 position, you know, to be extra cautious, if there  
9 was documentation showing it was from the call  
10 centre, you might make a decision, Okay, I'm going  
11 to refuse this.

12 A Mm-hm.

13 Q But if that documentation wasn't there, just to play  
14 it safe, you would let it through. Would that --  
15 was that what you're trying to tell us?

16 A If there was an indication that it was not a  
17 commercial shipment I would let it through, sure.

18 Q Okay. And to be non-commercial it has to be not to  
19 a commercial establishment?

20 A Right.

21 Q Okay. And it has to be a three month supply or  
22 less?

23 A Right.

24 Q And then also if I'm understanding your evidence, no  
25 indication that it was ordered through TrueHope?

26 A Right.

27 Q Okay. So, now would it be fair to say, just so that

1 we're completely clear, there never were any  
2 shipments to like a health food store or commercial  
3 establishment?

4 A Not that I'm aware of.

5 Q Okay. And even there weren't shipments coming in to  
6 the TrueHope or Synergy? Do you know what I mean?  
7 Like you knew they had a place in Raymond. You're  
8 not aware --

9 A Yes.

10 Q -- ever of a shipment coming in at the border and  
11 actually being directed to their facility in  
12 Raymond?

13 A I don't know if any product ever was actually  
14 received there but I had seen documentation that  
15 indicated it was shipped to --

16 Q Okay.

17 A -- that address.

18 Q It's just we got just piles of disclosure on this  
19 and there seemed to be a theme in these shipments,  
20 that maybe you'd get, you know, 40 bottles or 100  
21 bottles, and there would be a single invoice that  
22 would be addressed to either the UPS individual or  
23 Synergy or some other person but then there would be  
24 another consolidated invoice for all these little  
25 individual shipments.

26 Have you ever seen a pattern that didn't match  
27 that? Do you know what I mean?

1 A I never saw that.

2 Q Okay. You never saw that?

3 A Not in Calgary.

4 Q Okay. That's interesting. So --

5 A The ones I saw were through the post office.

6 Q Okay. So would it be fair to say, the ones that you  
7 saw basically were all individual shipments? And  
8 what I mean is you --

9 A Basically, yeah.

10 Q Okay. You don't have like --

11 A They weren't consolidated or bundled up together or  
12 anything like that.

13 Q Okay. I'm wondering if what you saw is kind of  
14 after UPS broke it up at the border. Because you  
15 would be familiar with the Health Canada file I  
16 think. Or not?

17 A Well I don't think through the postal service that  
18 UPS would be handling that.

19 Q Okay.

20 A That I'm aware of.

21 Q Okay. Interesting.

22 A I believe that their consolidated shipments might  
23 have gone through UPS in Vancouver.

24 Q Okay.

25 A But I'm not aware that they went through UPS in  
26 Calgary.

27 Q Now dealing with the post office, you would never

1 see a shipment addressed to Synergy, did you?

2 A Not that I recall.

3 Q Okay. And when you were there to search there was  
4 no product found at the Raymond location?

5 A Just an empty bottle.

6 Q Right. Okay. But, I mean, it would've occurred to  
7 you guys when you're going in and searching that,  
8 Hey we might find, you know, a bunch of stock here  
9 and --

10 A Possibly, yeah.

11 Q -- you know, shipping room and all of that.

12 A Yeah.

13 Q And there was none of that there at all?

14 A Right.

15 Q In fact, would it be fair to say that one thing that  
16 was obvious is there really did seem to be a call  
17 centre set up there?

18 A True.

19 Q You know, right down with little booths with  
20 computer stations and the whole bit?

21 A Mm-hm.

22 Q And actually, just because it's being tape recorded,  
23 I'll ask if you can verbalize, yes or no, instead  
24 of, you know, nod and say, Mm-hm.

25 A Yeah, I agree that's true as well.

26 Q Okay. So did you get an opportunity to view some of  
27 the documents that were seized? You said you spent

1 three days kind of sorting documents with Kim  
2 Seeling in Burnaby. Did you run across documents  
3 about how TrueHope was managing participants in the  
4 program?

5 A I didn't study the documents. When I was in Burnaby  
6 stamping these things, and there was a massive  
7 amount of documents, I wasn't taking time to read  
8 them. I was busy stamping.

9 Q Okay.

10 A I don't recall, you know, analysing the documents at  
11 that time.

12 Q Now when you're in Burnaby, were you actually called  
13 to go there for three days just to kind of help sort  
14 through this pile of documents?

15 A To stamp these things with a unique number, yes.

16 Q Okay. Now when you say, unique number, what do you  
17 mean?

18 A It was a -- like a rubber stamp machine that would  
19 automatically advance the number by one every time.

20 Q Okay.

21 A And by stamping the document it gave it a unique  
22 number from all the other documents.

23 Q Okay. So were you for three days just stamping  
24 pages?

25 A Yes.

26 Q Okay. Who all was there? Because you've got these  
27 documents -- I assume it's a boardroom or something

1           like that?

2       A     Well, it wasn't a boardroom.  It was a -- I'm not  
3           sure what kind of a room.  I guess it's their  
4           official lock up there.  Kim Seeling was in there.  
5           And she had -- she had another staff member, I  
6           believe, helping her.  I don't know who it was.  It  
7           was somebody -- I don't -- I'm not familiar with.  
8           It might have been a summer student or something, or  
9           a student.

10                 I don't know.  But, yeah, that's all we did is  
11           stamp these things.

12       Q     For three days?

13       A     Yeah.

14       Q     Okay.  And I mean obviously you're free to come and  
15           go in that room.  I mean it's --

16       A     Well, I could, yes.  Somebody had to be there.  Like  
17           if Kim ever left, I mean, it was locked.  I think  
18           Kim was there whenever we were there.

19       Q     I'm sorry.

20       A     Kim was there whenever we were there.

21       Q     Okay.  Now was it only the three of you or is there  
22           somebody else there ever?

23       A     I only recall three of us when I was there.

24       Q     Can you describe this room for us?

25       A     A rectangular room.  No windows.

26       Q     How big would it be?

27       A     Eight by twelve, maybe.

1 Q Okay. So -- but somebody was kind of trying to  
2 figure out what documents were and putting them into  
3 indexes, I think you were telling us.

4 A Yeah. Kim had developed a data base to start  
5 cataloguing and recording what the documents were.

6 Q Okay. You weren't involved in that at all?

7 A I did no typing.

8 Q Okay. Now, I just -- I'm going to bounce back. I  
9 just got off a tangent there.

10 I had been asking you about you stopping  
11 shipments at the border and all of that. At some  
12 point you received a direction to start letting  
13 shipments back in, whether you deemed them  
14 commercial or not. Would that be fair to say?

15 A There was some direction later on and I'm not  
16 exactly sure how it came to be, that under certain  
17 criteria, shipments could be released if it met that  
18 criteria. Now at that time I believe all shipments  
19 were then going through BC.

20 Q Okay. First of all, so you're talking about  
21 receiving some direction. Was that by way of email  
22 or letter?

23 A I believe email.

24 Q Do you recall who it was from?

25 A I believe it was Rod Neske.

26 Q Do you recall what the conditions were? Under which  
27 it could be allowed in.

1       A     I believe there had to be -- had to be evidence in  
2             the shipment that the person that it was destined to  
3             had actually placed the order directly to the  
4             facility in the United States.

5             I believe there had to be a copy of the, say  
6             the Visa transaction, or something.

7             I believe there was a declaration in there, by  
8             the person ordering it, that they had placed the  
9             order directly with the facility in the United  
10            States.

11            That's what I can remember.

12       Q     Okay.

13       A     Yeah.

14       Q     Do you recall when this occurred?

15       A     Not exactly, no.

16       Q     Okay. Is it possible that that happened after 2003?

17       A     I believe that it was likely early 2004.

18       Q     Now after that memorandum would it be fair to say  
19             that there were further instructions about allowing  
20             the product in, that basically removed some of these  
21             conditions?

22       A     I don't recall any.

23       Q     You don't recall any?

24       A     No.

25       Q     Now after you received this memorandum, probably in  
26             early 2004, did you ever turn a shipment away again?  
27             Like since then.

1 A I don't believe I ever saw another shipment. Again,  
2 I believe at that time they were all going through  
3 BC.

4 Q Okay. Now in 2003, was your only involvement with  
5 this file, other than you did the search, you went  
6 and you stamped documents for three days and you've  
7 examined shipments coming in to the Calgary post  
8 office? Okay. You've done those things --

9 A Mm-hm.

10 Q -- in 2003, correct?

11 A Mm-hm.

12 Q Were there other activities that you did in '03?

13 A I'd had meetings or conversations with RCMP,  
14 computer forensic people, about the data they were  
15 sorting from copies of the hard drives that were  
16 made during the seizure.

17 I had made contact with a company called, SAID,  
18 S-A-I-D. I forget exactly what the acronym means.  
19 Scientific something.

20 There was a fellow there that could advise me  
21 if certain numbers, who the -- phone numbers, who  
22 the provider was and where the number was located.  
23 I had contacted him and had some numbers tracked.

24 Q Okay.

25 A I remember being involved in preparation of an  
26 affidavit for extension on the seizure of the  
27 products.

1           Another one I believe -- another affidavit, I  
2 believe there was some kind of a discovery, or  
3 something that took place and there was one prepared  
4 for that.

5           I think those are the main activities.

6       Q    Okay.  So, really, I mean you did have fairly  
7 continuous involvement with the file, throughout  
8 2003?

9       A    Yes.

10      Q    Okay.  And so you would've been kept a breast of  
11 kind of what's going on with the file?

12      A    To some degree.

13      Q    Okay.  In some ways this was a bit of an exciting  
14 file for your department, wasn't it?

15      A    I don't know.  I never heard --

16      Q    And I don't necessarily mean that in a --

17      A    -- anybody describe it as exciting.

18      Q    Okay.  Because it's not very often you guys do  
19 searches with a search warrant.  Would that be fair  
20 to say?

21      A    It's not that routine.  I believe that was the fifth  
22 one I'd been on.

23      Q    Okay.  And you'd been there for almost ten years --

24      A    Yes.

25      Q    -- this spring, right?  Okay.  So, yeah, so that's  
26 not very often.  There's actually also kind of a lot  
27 of political pressure on this file.  Would that be

1 fair to say? I mean not from Health Canada but from  
2 outside.

3 A There may have been. Yes, I believe there was. I  
4 mean there wasn't any around our office or anything.

5 Q Okay. The Calgary office.

6 A Yeah. There wasn't any there that I'm aware of.

7 Q But for instance we've talked earlier in the trial  
8 about a rally out in front of Anne McLellan's  
9 office, in Edmonton, in May of 2003.

10 A Mm-hm.

11 Q Were you aware of that?

12 A Yeah. I remember hearing --

13 Q Okay.

14 A -- that there was one, yeah.

15 Q May have been a press conference circling around it?  
16 Or a press release circling around Health Canada  
17 about that?

18 A We probably received an email if there had been one,  
19 yeah.

20 Q Okay. So you remember hearing about that?

21 A Mm-hm.

22 Q Do you remember that it mentioned that Tony Stephan  
23 and David Hardy would be there with James Lunney  
24 talking about basically a bill before parliament?

25 A Yes.

26 Q Okay. So that rings a bell and if I say to you,  
27 Bill C-420, you've heard about that before?

1 A I recognize the number. I'm not exactly sure of the  
2 content.

3 Q Okay.

4 A Yeah.

5 Q But you've heard it talked about within Health  
6 Canada circles. Correct?

7 A Like through the -- maybe the news report on that  
8 demonstration. I haven't heard much inside talk  
9 about 420 itself, no.

10 Q Okay. Now when you know that Mr. Hardy and Mr.  
11 Stephan are going and protesting in front of Anne  
12 McLellan's, or having a political gathering, is it  
13 clear that there's some connection with this  
14 investigation? Because at that point Health Canada  
15 was starting to stop shipments. Was that clear to  
16 you? That there's a connection between the two.

17 A I don't know if they made reference to it during  
18 their demonstration on that but it would seem to me  
19 that would be the -- one of the reasons they might  
20 have a demonstration, yeah.

21 Q Okay. What was there -- were you involved with any  
22 -- because I'm assuming that Health Canada, you guys  
23 can have strategy meetings and talk about what's  
24 happening with files.

25 Was there some discussion about the amount of  
26 political pressure that these guys were attempting  
27 to put on Health Canada to stop?

1 A I believe in one conference call, not that I was  
2 part of every conference call, but I do believe that  
3 I was part of one conference call -- yeah, I  
4 remember them talking about receiving a lot of calls  
5 in Ottawa and I believe having somebody monitor  
6 them.

7 Q Do you remember the discussion of what the calls  
8 were about?

9 A I think they were receiving complaints.

10 Q Now when you say complaints. Is this complaints  
11 from TrueHope participants that are kind of upset  
12 the product isn't getting through?

13 A Well I believe it was but I didn't hear any of them.

14 Q Okay. No, I mean, somebody -- you're just  
15 communicating that there was a discussion on a  
16 conference call that there -- Ottawa's getting a lot  
17 of complaints.

18 A Yeah, I believe somebody answered it, yeah.

19 Q And so I'm just asking if you understood what -- if  
20 it was being communicated to you what the nature of  
21 those complaints were?

22 A I believe the complaints was probably due to the --  
23 some of the difficulty in maybe some people getting  
24 the product.

25 Q Okay.

26 A Getting some of the orders they ordered being  
27 refused.

1 Q Now in a way that makes sense, doesn't it? Because  
2 if orders being turned away by Health Canada  
3 officials who are reviewing them either at the post  
4 office or the border, it makes sense that people  
5 aren't getting product.

6 A Yeah.

7 Q Okay. So now when -- then Health Canada's  
8 discussing, Okay, but the people that aren't getting  
9 the product are complaining to Ottawa about this,  
10 was there any discussion about what to do then? How  
11 to solve that problem of people complaining?

12 A There may have been. I wasn't privy to that.

13 Q Okay. So that wasn't -- you weren't on the call  
14 when that happened?

15 A No.

16 Q So how does this work? These conference calls. Do  
17 people basically -- some people are on them for a  
18 little while and then if it's switching to another  
19 topic, you know, some drop off? Like how does that  
20 work?

21 A Well within -- there are -- I guess you'd call them  
22 committees, a lot of them are management committees.

23 Q Mm-hm.

24 A So lots of times I believe when they're just wanting  
25 maybe to discuss the development of policy or maybe  
26 discuss plans of actions, things like that.

27 Lots of times they could just be a

1 teleconference or meeting between the various  
2 managers and the actual field staff likely wouldn't  
3 be involved in things like that.

4 Q Okay. But you were involved in this one call where  
5 they were talking about complaints?

6 A Yeah, I remember hearing somebody referring to all  
7 that. I don't recall if the teleconference was -- I  
8 don't believe the teleconference was specifically  
9 for that, but I believe somebody from Ottawa on the  
10 call made reference to that.

11 Q Okay. Do you recall who that was today?

12 A No.

13 Q Now were there any other times when there was talk  
14 about the political pressure or other pressure that  
15 TrueHope or Synergy was creating?

16 A Not that I'm aware of.

17 Q So for instance my friend had referred you to what I  
18 believe is Exhibit 1, which is that memorandum that  
19 you drafted about a meeting.

20 A Right.

21 Q No, I'm sorry. That should be Exhibit 4.

22 MR. BUCKLEY: Madam clerk, could you show  
23 this witness Exhibit 4?

24 Q MR. BUCKLEY: Now, for better or worse, you  
25 ended up being at this meeting.

26 A Mm-hm.

27 Q Dennis Shelley is there and he is -- was he in a

1 supervisor role to you at the time?

2 A Yes.

3 Q Okay. And Tony Stephan is there, David Hardy is  
4 there, and you've told us about this Laril Zandberg.

5 A Right.

6 Q Okay. Now in your memo, I mean you describe her as  
7 basically being quite emotional.

8 A I remember that, yes.

9 Q Okay. And she outlined for you, basically, an  
10 extreme success story in using the EMPowerplus.

11 A I remember saying she was benefited but I don't know  
12 if it was put forward as really extreme but.

13 Q Okay. But she had for instance, described to you  
14 that she had suffered from depression, had been put  
15 on Zoloft.

16 A Mm-hm.

17 Q And I'll actually ask there again, just because it's  
18 being tape recorded if --

19 A Yes.

20 Q Okay. Now she had complained about her baby being  
21 born with floppy baby syndrome because of the  
22 Zoloft?

23 A Yes.

24 Q Okay. Now you're a pharmacist. Is that something  
25 that can be a side effect with Zoloft?

26 A I don't know.

27 Q Okay. But when you're hearing that and it's just --

1           it's kind out of your familiarity now because you've  
2           being doing this for awhile, right?

3       A     Correct.

4       Q     But did it surprise you that she was reporting  
5           something like that as a side effect for that type  
6           of drug?

7       A     I don't know if I felt surprised. I probably felt  
8           curious.

9       Q     Okay.

10      A     Whether that was -- as to whether or not that was  
11           actually the fact. I don't know.

12      Q     Okay. Fair enough. And then, you know, she had  
13           expressed that withdrawal was quite something and  
14           that she had some success with the EMPowerplus in  
15           managing her depression.

16      A     Mm-hm.

17      Q     Okay. And --

18      A     Yes.

19      Q     -- just you found it to be quite emotional.

20      A     Yeah. She was crying at times during her --

21      Q     Okay. Now when she's meeting with you and giving  
22           this explanation, you don't think she's lying?

23      A     No, I never thought about whether she was lying or  
24           not.

25      Q     Okay.

26      A     She was just relating her experience.

27      Q     Fair enough. To your knowledge, when Health Canada

1 -- like you heard something like that, nobody ever  
2 like checked into, you know, her medical records or  
3 followed her story to see, you know, maybe there's  
4 something to this? Definitely in response to this  
5 meeting. Would that be fair to say? You're not  
6 aware of Health Canada doing --

7 A Not based on this meeting, no.

8 Q Okay. Well, at any time in this file, did Health  
9 Canada look into whether or not there was something  
10 to all these claims being made?

11 A Well Health Canada has a program called the Adverse  
12 Drug Reaction Program that monitors such things.

13 Q Okay.

14 A So they'll --

15 Q I'm just taking a note. Sorry. Adverse Drug  
16 Reaction Program.

17 A Yes.

18 Q Okay. Go on. I'm sorry.

19 A So the design of that program is such that when if  
20 there are severe side effects noted and reported and  
21 such, that it is documented, and they review such  
22 information and make decisions as they feel  
23 necessary on what actions they make with that  
24 particular product.

25 Q Okay. Now that program is designed really to look  
26 at when there's negative reactions to it -- some  
27 substance. Would that be fair to say?

1 A True.

2 Q Okay. But what I'm trying to get at is, is it just  
3 seems that there were claims being made to Health  
4 Canada that, Wow, this is really something. As a  
5 potential treatment for things like bi-polar  
6 disorder. Would that be fair to say?

7 A True.

8 Q In fact that was one of the problems Health Canada  
9 had was they were saying that.

10 A True.

11 Q Okay. And just so the Court understands, Health  
12 Canada doesn't like people making claims about  
13 depression because of Schedule 'A' of the Act,  
14 right?

15 A True.

16 Q Okay. Now with all this, you know, claims that were  
17 being given to Health Canada, that this might be an  
18 effective treatment for bi-polar, that's kind of a  
19 positive news story.

20 Are you aware of Health Canada ever looking  
21 into that positive news story to see if there's  
22 something to it?

23 A No, I don't believe that's the way they do it or the  
24 way it's done.

25 Q Now what do you mean when you say that?

26 A Well, if there's a product out there that is good  
27 for the treatment of a condition, Health Canada's

1 job is to review the products and review the  
2 information and if it meets certain criteria they  
3 may issue what they call a notice of compliance and  
4 a DIN number for the product.

5 But they base their evaluations on the  
6 information that is presented to them through drug  
7 submission.

8 Q Okay. So just so I understand. Would it be fair to  
9 say that when a situation like this comes up and  
10 there's a whole bunch of good news story coming to  
11 Health Canada that really there isn't kind of an  
12 internal mechanism to investigate it itself? Health  
13 Canada just relies on people making submissions?

14 A That's my understanding.

15 Q Okay. Now you're aware in this case that -- or let  
16 me ask. Because here we're dealing with a drug  
17 identification number.

18 A Mm-hm.

19 Q Correct?

20 A Right.

21 Q Okay. And when somebody in a situation like this,  
22 the drug's classed as a new drug. The EMPowerplus  
23 was considered a new drug by Health Canada? Would  
24 that be fair to say?

25 A Yes.

26 Q Okay. Now in a situation like that, for somebody to  
27 apply for a notice of compliance, isn't it the case

1           that Health Canada wants evidence from a clinical  
2           trial?

3           A     I believe that's true for a new drug.

4           Q     Right.  And well that's part of the problem, right,  
5           is if you're classed as a new drug Health Canada  
6           wants clinical trial evidence?  Correct?

7           A     Correct.

8           Q     Okay.  And Health Canada was viewing the  
9           EMPowerplus, in 2003, as a new drug?

10          A     Correct.

11          Q     Okay.  So, and I know you were just the messenger  
12          for shutting the clinical trial down, but there was  
13          this unfortunate situation that this clinical trial  
14          had been shut down at the University of Calgary.  
15          Right?

16          A     Correct.

17          Q     Okay.  And that happened before 2003?

18          A     Correct.

19          Q     Okay.  Now you're aware now that there's another  
20          clinical trial on the EMPowerplus going on at the  
21          University of Calgary?

22          A     No.

23          Q     Okay.  So you're not aware of that?

24          A     No.

25          Q     Okay.  But back to, you know, them needing to apply  
26          for a DIN number.  Back in 2003, really they were  
27          out of luck weren't they because the clinical trial

1 had been shut down and Health Canada would require  
2 another clinical trial? Would that be your  
3 understanding?

4 A I don't believe they were out of luck, no.

5 Q Okay. But they would have to go through a clinical  
6 trial?

7 A On the basis of the claims they wanted to make, yes.

8 Q Okay. Now I know nothing about clinical trials. Do  
9 you have any idea how long it takes to set up and  
10 run a clinical trial?

11 A No idea.

12 Q Okay. Now you're aware that the Act kind of has a  
13 safety valve in it whereas, I'll say, the Minister,  
14 but it reads Governor and Council, can grant an  
15 exemption to certain parts of the Act and  
16 regulations. Are you aware of that?

17 A Do you know what section number?

18 Q I think it's Section 30(j). I'll just dig it out  
19 for you and see if that helps refresh your memory.

20 And it may be that you're not aware but I'm  
21 just trying to find out if at the time you were.

22 30(1)(j) of the -- I'll just pass up a copy of  
23 the Act for you.

24 A Vaguely familiar.

25 Q Okay. Now might it be possible that in 2003, when,  
26 you know, you had dealings with the TrueHope file,  
27 that maybe you weren't aware that the Governor and

1 Council could grant an exemption?

2 A Yeah. I may or may not have been, yeah.

3 Q Okay. It's just that in that Exhibit 4, you report  
4 that David Hardy is saying that the Minister should  
5 grant an exemption. Okay?

6 A Correct.

7 Q What did you think he meant when he was saying that?

8 A I didn't relate it to this particular section of the  
9 legislation.

10 Q Okay. So were you thinking maybe just politically  
11 that he might --

12 A That's what I was thinking.

13 Q Okay. Now that you're aware of that, there's  
14 actually a part in the Act where the Minister can  
15 grant an exemption.

16 Is it fair to say that in any conference calls  
17 you had or any, you know, strategy meetings on this  
18 file that nobody in Health Canada brought up, Well,  
19 maybe we should look in to granting these guys an  
20 exemption?

21 A Well not in the conference calls that I was part of.

22 Q Okay. Now you've been in the Health Canada -- I'll  
23 call it a bureaucracy, for ten years. I don't mean  
24 that in a negative way but when, you know, the Act  
25 provides that the Minister could grant an exemption,  
26 or the Governor General can grant an exemption, am I  
27 correct in assuming that the Governor and Council

1 means the Minister of Health in a situation like  
2 this?

3 A I'm not sure.

4 Q Okay. You don't know?

5 A No.

6 Q Now would I be correct in saying though that  
7 generally speaking, let's say the Minister of Health  
8 was going to grant an exemption, that probably they  
9 would go to Health Canada, the Minister's office,  
10 and ask, Well, what should we do? Seek advice from  
11 Health Canada?

12 A I don't know the process but --

13 Q Okay.

14 A Yeah.

15 Q Fair enough. I'm just trying to see if you do.

16 Now, in this meeting that you documented, with  
17 Mr. Stephan and Mr. Hardy, you report that they both  
18 seemed angry and frustrated because they were trying  
19 to get a meeting with the Minister.

20 A Yes, I believe they said that.

21 Q Okay. And you don't know if it's true but they're  
22 reporting, Listen, we've written three letters --

23 A Mm-hm.

24 Q -- we've made about 20 calls, and you recorded that  
25 they seemed angry and frustrated so you saw that.

26 Did it surprise you -- I mean they seemed to be  
27 having trouble meeting with the Minister. Did that

1 surprise you?

2 A I don't remember feeling surprised. I don't know  
3 what is the norm in that area.

4 Q Okay.

5 A To know whether it's abnormal or --

6 MR. BUCKLEY: And, Your Honour, I don't know  
7 how late you want to go today. I'm mindful of your  
8 comments and the clerk. I can go for hours or I can  
9 stop now. I'm happy either way.

10 THE COURT: I usually try to stop around  
11 between the 4:00 and 4:30, based on the comments  
12 that I made the other day, about court  
13 administration around here and --

14 MR. BUCKLEY: Mm-hm.

15 THE COURT: -- and their hours of work and  
16 so on. So we have three weeks set aside and this is  
17 a reasonably convenient spot to take a break.

18 (OTHER MATTERS SPOKEN TO)

19 -----

20 PROCEEDINGS ADJOURNED UNTIL MARCH 15, 2006 9:30 A.M.

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1       \*Certificate of Record

2           I, Jillian Fox, certify this recording is a record  
3           of the oral evidence of proceedings in the Criminal  
4           Court, held in courtroom 413, at Calgary, Alberta,  
5           on the 14th day of March, 2006, and I was in charge  
6           of the sound recording machine.

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1 \*March 15, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K. Brown, Esq. For the Crown

7 S. Buckley, Esq. For the Accused

8 J. Fox Court Clerk

9 -----

10 THE COURT CLERK: Calling Synergy Group of Canada  
11 and TrueHope Nutritional Support.

12 THE COURT: Good morning.

13 MR. BUCKLEY: Good morning, Your Honour.

14 MR. BROWN: Sir, I believe we were going to  
15 begin this morning by addressing Mr. Buckley's  
16 intention to call the necessity defence in the  
17 realm of strict liability offences. Both of us  
18 have done some work overnight -- well, mostly  
19 Ms. Eacott has done work for the Crown, and  
20 Mr. Buckley says he was up late dealing with  
21 this matter, and as it turns out, sir, I am going  
22 to suggest that Mr. Buckley is probably correct in  
23 that he has the opportunity to at least call  
24 evidence with respect to the necessity defence. It  
25 has been addressed in a strict liability setting  
26 before, and for those reasons I think it's  
27 appropriate to allow him to at least call the

1           defence. Obviously, we'll make argument with  
2           respect to its propriety later.

3       THE COURT:                    It's been applied in strict  
4           liability offences?

5       MR. BROWN:                    It has, sir.

6       MR. BUCKLEY:                  Your Honour --

7       MR. BROWN:                    In Alberta, as well, sir.

8       MR. BUCKLEY:                  It's been applied in absolute  
9           liability offences.

10      MR. BROWN:                    It has, sir.

11      MR. BUCKLEY:                  And I can provide case law for  
12           that; and then in the book of authorities that had  
13           been provided, the last two cases were instances of  
14           strict liability where the defence of necessity  
15           involved.

16      THE COURT:                    Well, I also took some occasion  
17           to review it, and I am satisfied that you should be  
18           permitted to proceed to present evidence in that  
19           regard, certainly on the basis that the Charter  
20           provides that you are entitled to make full answer  
21           in defence. So I will certainly hear it.

22      MR. BUCKLEY:                  Thank you, Your Honour.

23      MR. BROWN:                    Thank you, sir.

24      THE COURT:                    Okay.

25      MR. BROWN:                    Sir, I believe Mr. Brosseau was  
26           still on the stand and he is outside the courtroom.

27      MR. BUCKLEY:                  And Your Honour, there is one

1 preliminary matter --

2 MR. BROWN: Actually, perhaps Mr. Brosseau  
3 should stay out just for the moment. We'll deal  
4 with this matter first.

5 MR. BUCKLEY: As you're aware, the defence  
6 had requested information that was generated from  
7 this 800 crisis line, and in response to that  
8 disclosure request and some comments made by the  
9 Court during a pretrial conference, my friend was  
10 able to dig up basically a one-page document that  
11 referred to a whole bunch of other documents; and  
12 so throughout the week my friend has been  
13 endeavouring to get from Health Canada that  
14 material, and nobody is denying that the material  
15 exists, but my friend tells me that it is  
16 undiscoverable.

17 THE COURT: It is what?

18 MR. BUCKLEY: Undiscoverable, is what I've  
19 been told.

20 MR. BROWN: Sir, I contacted the person in  
21 Ottawa who has basically been the lead contact in  
22 terms of gathering documents from Ottawa offices of  
23 Health Canada.

24 THE COURT: I just want to go back here --

25 MR. BROWN: Yeah.

26 THE COURT: -- just a sec, now. Make it  
27 clear to me, what document are you referring to?

1 MR. BUCKLEY: Let me dig it out, because part  
2 of the difficulty that we have, without seeing the  
3 documents -- what occurred is is when -- when  
4 Health Canada made a decision to stop these  
5 products coming in from the border, they set up  
6 what was called an 800 crisis line and so that  
7 TrueHope participants that contacted the minister's  
8 office were automatically referred to this, and  
9 participants were encouraged to call in.

10 THE COURT: What is the document you are  
11 looking for that is leading on to other documents  
12 that are undiscoverable?

13 MR. BUCKLEY: I'm just trying to find that,  
14 Your Honour.

15 THE COURT: It has not been put into  
16 evidence yet?

17 MR. BUCKLEY: No, it hasn't been put into  
18 evidence.

19 I'll just refer to my cross-examination notes  
20 to track it down.

21 Actually, it should be marked as an exhibit  
22 because I think I referred Ms. Jarvis to it.  
23 Maybe not.

24 THE COURT: Well, I have all the exhibits  
25 here, so what are you referring to? In fact, I  
26 also have a stack of documents that were not put in  
27 as exhibits that are still here, so --

1 MR. BUCKLEY: Your Honour, it's an e-mail --

2 MR. BROWN: Exhibit 'O'.

3 MR. BUCKLEY: -- Exhibit 'O'.

4 THE COURT: Exhibit 'O'?

5 MR. BROWN: I believe that's the -- I  
6 believe that's the document he's referring to,  
7 sir.

8 THE COURT: Okay.

9 MR. BUCKLEY: Now, this is what was disclosed  
10 to me in response to the request, and you can see  
11 the first paragraph actually refers to a bunch of  
12 other documents.

13 THE COURT: What are you referring to?

14 MR. BUCKLEY: Well, so, for instance,

15

16 Hi, Cecilia, please find enclosed general  
17 statistics that were captured from the  
18 1-800 crisis line from June 5th until  
19 June 8th. We've also divided calls per  
20 provinces and gender. We created up a  
21 follow-up form to capture this  
22 information. We also have sections for  
23 comments. For some of the calls we have  
24 full page comments.

25

26 So --

27 THE COURT: All right, so what are you

1 looking for?

2 MR. BUCKLEY: Well, I'm basically looking for  
3 those documents that were generated in relation to  
4 the calls, and --

5 THE COURT: And when you make that request,  
6 what response are you getting?

7 MR. BROWN: Perhaps I can speak to that  
8 better than my friend, sir.

9 THE COURT: Go ahead.

10 MR. BROWN: I -- Ms. Eacott has been  
11 following up with this matter throughout the last  
12 week, I would think -- actually, a bit more than a  
13 week now -- and we have told them that it's vital  
14 that they track these documents down, and the  
15 person that we've been speaking with has indicated,  
16 as of this morning when I spoke with her, that her  
17 understanding is the person who is in charge of the  
18 documents is no longer with Health Canada, was  
19 actually with the ADM's office at the time.

20 The ADM's office has moved location, and in  
21 the transfer they believe the documents were lost.  
22 That's the last word I have from them, that's why  
23 my friend has, I think, chosen the word  
24 "undiscoverable" -- I think that's the word I  
25 actually gave to him. So our expectation is, based  
26 on the call this morning, that the documents cannot  
27 be produced, and that's where we're left, sir.

1 THE COURT: The documents can't be located  
2 and therefore can't be --

3 MR. BROWN: Cannot be located, sir.

4 THE COURT: -- can't be produced.

5 All right, Mr. Buckley.

6 MR. BUCKLEY: Well, Your Honour, I'm seeking  
7 an order that the Crown disclose that just in the  
8 hope that that might encourage Health Canada to  
9 look a little more vigorously, because I'm somewhat  
10 amazed. I expect that it's a sizable amount of  
11 documents, and I'm somewhat amazed that it's  
12 disappeared.

13 THE COURT: Do you want to make any further  
14 submissions in that regard?

15 MR. BUCKLEY: No, I -- I mean I --

16 THE COURT: As it relates to your ability  
17 to present any of the defences that you've referred  
18 to earlier?

19 MR. BUCKLEY: Well, Your Honour, clearly it's  
20 going to hamper -- it's going to hamper my defences  
21 because the problem is, certainly from a necessity  
22 defence, one of the difficulties that we face is if  
23 we're submitting to the Court, Look, there would be  
24 actual harm, serious harm, and potentially  
25 hospitalizations and suicides, if the clients had  
26 stopped sale of the product, it's one thing for me  
27 to call an expert to say, Well, yes, if you

1 withdraw an effective treatment for bipolar and  
2 other mental conditions that I would expect there  
3 would be suicides, but that's all hypothetically  
4 speaking. That's like me calling a doctor to  
5 say -- to describe -- a male doctor to describe  
6 what it's like to give birth. The doctor can give  
7 us expert evidence about that, but unless I  
8 actually call a woman that's gone through that  
9 process, we don't have the experience.

10 And when Health Canada stopped the product at  
11 the border, basically they created a case study of  
12 what would have happened if my client had stopped  
13 making the product available to people in Canada.  
14 That's one of the reasons why I want to call some  
15 of the Red Umbrellas is basically, without that  
16 actual experience -- because it did create crisis.  
17 I mean, if you want to talk about, you know, the  
18 tort of intentional infliction of mental shock, we  
19 have a case study of it in this scenario, not even  
20 going into further things.

21 We also have a curious situation where what  
22 Health Canada did was force a group of otherwise  
23 law-abiding Canadians to form informal smuggling  
24 rings all across the country because they weren't  
25 willing to give up access to this product.

26 This 800 crisis line is basically probably the  
27 best evidence of how stopping sale of the product

1 was affecting Canadians, and so -- and the reason I  
2 was asking for that evidence is is it is going to  
3 severely prejudice our ability to make full answer  
4 in defence.

5 Now, we're not at the point where we've  
6 concluded the trial without the evidence, which is  
7 why I'm seeking an order that my friend produce it,  
8 but --

9 THE COURT: Sorry, what's that point you're  
10 making?

11 MR. BUCKLEY: Well, we're not at the end of  
12 the trial. We haven't closed my case yet. If my  
13 friend is able to produce it before we close our  
14 case and we can make some use of it -- I am, you  
15 know, prejudiced in not having been able to prepare  
16 the case as well as possible, but I would probably  
17 have difficulty at the end of the case saying,  
18 Listen, we have not been able to make full answer  
19 in defence. So I'm asking for the order so that  
20 we're not in that situation. So --

21 THE COURT: And if, at the end of the Crown  
22 having put their case in, these materials still  
23 have not been provided, I take it you will be  
24 arguing that there should be a stay of proceedings  
25 because of the failure to disclose this information  
26 that your ability to make full answer in defence  
27 has been prejudiced. Is that where you are going?

1 MR. BUCKLEY: It's a decision that I would  
2 have to make. I'm not going to commit to that now,  
3 but that's a real possibility.

4 THE COURT: No, I just want to know where  
5 your you are going with it --

6 MR. BUCKLEY: Yeah.

7 THE COURT: -- and because I think it's  
8 important that the Crown know where you're going  
9 with it.

10 MR. BUCKLEY: Mm-hmm, yes.

11 THE COURT: So back to one of the --  
12 without restricting your choice, that's one of the  
13 arguments that you would make if this documentation  
14 is not provided by the time the Crown closes their  
15 case.

16 MR. BUCKLEY: Well, it's definitely one of  
17 the arguments available, so -- but as I say, I --  
18 my -- I'm putting my friend on notice that that's  
19 definitely something that we're considering. I'm  
20 not -- I'm asking the Court to, you know, order its  
21 disclosure so that we're not placed in that  
22 position, hopefully, and I think if Health Canada  
23 is advised that that's a possibility, perhaps it  
24 might encourage them to look harder for those  
25 documents.

26 THE COURT: Mr. Brown?

27 MR. BROWN: Yes, sir. A couple of points,

1 I think, that I need to make here. With respect to  
2 the documents themselves, I am in absolute  
3 agreement that they should be produced if they can  
4 be found, and if the Court determines that it's  
5 appropriate to actually make that order, I am not  
6 going to make any kind of objection to whether --  
7 to my friend's application to have that order made.

8 But with respect to what the fallout would be,  
9 I -- whether or not it's proper to have the end of  
10 the trial as a result of this document being  
11 produced, that is a different question, and I can  
12 leave that argument to another day, if you prefer.  
13 I certainly would make argument that it's not  
14 appropriate for a judicial stay as a result of  
15 failure to produce these particular documents, but  
16 as I said, I can leave that full argument to  
17 another day.

18 My view is that these documents do not do what  
19 my friend suggests they will do. My argument would  
20 be is that he has to call an expert to discuss what  
21 the effective withdrawal of this particular product  
22 would have, and that's the only evidence that the  
23 Court can actually rely on. Anything else is  
24 anecdotal and is not proof of any kind, and so his  
25 intention to call the Red Umbrellas or his  
26 intention to call references made in these phone  
27 calls is not really evidence of what might happen

1 if the product weren't available. It's what people  
2 might think might be the case, but these people  
3 aren't scientists, they aren't doctors, unless he  
4 calls an expert.

5 So ultimately my submission would probably  
6 come as no surprise to the Court that that is  
7 ultimately the position that I would take is that  
8 an expert can speak to that, possibly, but  
9 certainly a layperson cannot.

10 THE COURT: What about the evidentiary  
11 factual background for an expert to be able to form  
12 an opinion?

13 MR. BROWN: With respect to the withdrawal  
14 of the drug?

15 THE COURT: With respect to the responses  
16 to the 800 line?

17 MR. BROWN: Well, that might indeed cause  
18 us some problems. If that is something that my  
19 friend might ultimately rely on by saying that this  
20 expert needs to be able to know what the callers  
21 said, assuming we can identify the callers and  
22 assuming we can identify what they complained about  
23 if we had the documents -- and I don't know exactly  
24 what the documents will even say; however, the  
25 expert would -- would at least be able to rely on  
26 some of the other types of individual anecdotal  
27 comments made to them and draw what conclusions

1           they may.

2                   I will not disagree that failure to produce  
3 these documents may hamper my friend's case.

4           Whether or not it happens to the point where a  
5           judicial stay is appropriate is another question.

6   THE COURT:                   Thank you.

7   MR. BROWN:                   Thank you, sir.

8   THE COURT:                   Anything further, Mr. Buckley?

9   MR. BUCKLEY:                 No, Your Honour I'm not -- I  
10           agree with my friend that right now isn't the time  
11           to make submissions for a stay or anything like  
12           that, so at this point I'm just seeking an order  
13           that the Crown make that disclosure.

14   THE COURT:                   That's fine; and so I  
15           understand correctly, what you are looking for is  
16           an order of disclosure of the documentation  
17           referred to in Exhibit 'O'.

18   MR. BUCKLEY:                 Yes, well, actually, and I -- I  
19           think that we could go further and ask for all  
20           other documents generated as a result of calls to  
21           the 1-800 line because we can't be confident that  
22           the documents referred to in Exhibit 'O' are the  
23           only documents generated as a result of calls to  
24           that 800 line.

25   THE COURT:                   I want to have a clear  
26           description of what we are looking for in this  
27           order so that there is no doubt in the minds of the

1           representatives at Health Canada what they are  
2           looking for, or what they should be looking for.

3           MR. BUCKLEY:                   Well, Your Honour, perhaps what  
4           we could do is get an order for disclosure of all  
5           documents generated as a results of the calls to  
6           the 1-800 crisis line, including but not limited to  
7           those documents referred to in the attachment and  
8           attach Exhibit 'O'.

9           THE COURT:                   Mr. Brown, do you have any  
10          concerns about how broad that order may be, all  
11          documents generated as a result of the calls to the  
12          800 line? That might possibly include the Hanssard  
13          and committee notes for all I know.

14          MR. BROWN:                   I do -- do I have some  
15          concern. I wonder --

16          MR. BUCKLEY:                   Maybe perhaps if we limited it  
17          to "generated by the people receiving the calls",  
18          because they would be the ones -- basically we're  
19          looking for those frontline notes, because you are  
20          correct, for instance, things like this probably  
21          were referred to in committees, and certainly this  
22          file was mentioned quite a bit in the House of  
23          Commons and in the standing committee of health.

24          MR. BROWN:                   If I understand what my friend  
25          is looking for, he's looking for the forms that  
26          were created to take the calls, any notes that  
27          would have been made on any of those kind of forms,

1           any statistical data that might have been drawn  
2           from those calls --

3       MR. BUCKLEY:                Yes.

4       MR. BROWN:                 -- and I believe, although --

5       MR. BUCKLEY:               Well, and any summaries and  
6           that prepared --

7       MR. BROWN:                 Summaries --

8       MR. BUCKLEY:               -- for the Minister.

9       MR. BROWN:                 For the Minister --

10      MR. BUCKLEY:               Or anyone else?

11      MR. BROWN:                 If we can call it -- if that  
12           can be the list, then I can convey that list to  
13           Health Canada very clearly, indicate that the Court  
14           has made an order that they produce it and indicate  
15           that there may be consequences in their failure to  
16           produce it.

17      THE COURT:                 All right, listen to this and  
18           tell me if it suits the purpose.  So an order to,

19  
20           Produce all documents generated at the  
21           first instance as a result of calls to  
22           the 800 line, including but not limited  
23           to all documents referred to in  
24           Exhibit 'O', and all forms, notes,  
25           summaries, statistical data and other  
26           documents.

27

1 MR. BUCKLEY: Your Honour, could you read  
2 through that again? It was just a little too fast  
3 for us.

4 THE COURT: Okay.

5  
6 ... all documents generated at the first  
7 instance as a result of calls to the 800  
8 line, including but not limited to the  
9 documents referred to in Exhibit 'O', and  
10 all forms, notes, summaries, statistical  
11 data and other documents so created.

12

13 MR. BUCKLEY: I'm satisfied.

14 MR. BROWN: I am satisfied with that as  
15 well, sir.

16 THE COURT: I think that should be  
17 statistically specific.

18 MR. BUCKLEY: Mm-hmm.

19 MR. BROWN: Thank you, sir.

20 THE COURT: All right.

21 All right, well, this is an application made  
22 by Mr. Buckley on behalf of the defendants for an  
23 order for additional disclosure as has been raised  
24 in part by Exhibit 'O' for identification purposes  
25 in these proceedings. Exhibit 'O' in the first  
26 paragraph refers to documentation generated from  
27 calls to the 1-800 number that had been set up by

1 Health Canada.

2 I have been provided with information by the  
3 Crown that they have been seeking that information  
4 from representatives of Health Canada in Ottawa and  
5 have been unsuccessful. They have been advised  
6 that the person who had the documentation, as I  
7 understand it, may have been involved in a move  
8 from the Assistant Deputy Minister's office and the  
9 documentation can't be located.

10 I don't consider that explanation to be  
11 anywhere near sufficient or satisfactory, and at  
12 this stage of the proceedings -- and I say that  
13 because we are -- we're now -- we're now in our  
14 third day of trial -- second day of trial -- no,  
15 it's the third day of trial today -- how time  
16 flies.

17 MR. BROWN: Yes.

18 THE COURT: This is certainly late  
19 disclosure, if, in fact, the disclosure is  
20 provided, but I agree with both counsel that the  
21 appropriate step to take at this stage of the  
22 proceedings is to make an order for the disclosure,  
23 for the production of that documentation.

24 So I am making an order directed to Health  
25 Canada to provide all documents generated at the  
26 first instance as a result of calls to the 1-800  
27 line that had been set up by Health Canada with

1            regards to calls from people affected by the  
2            stoppage of the importation of this product, and  
3            that will include documents referred to in  
4            Exhibit 'O', which can be attached to the order,  
5            but it is not limited to those; documents also to  
6            include, for example, all forms, notes, summaries,  
7            statistical data and other documents so generated,  
8            as I've said, at the first instance by calls to the  
9            1-800 crisis line.

10           Now, Mr. Buckley, I note that Exhibit 'O'  
11           refers to general statistics that were captured  
12           from the 1-800 crisis line from June 5th until  
13           June 8th inclusive, and --

14           MR. BUCKLEY:                    Yes, Your Honour, and I'm  
15           not --

16           THE COURT:                    -- for the sake of clarity, are  
17           you just looking for that time period or for the  
18           whole period of time that the 800 line was open?

19           MR. BUCKLEY:                    For the whole time period,  
20           Your Honour.

21           THE COURT:                    All right, that should be  
22           clear.

23           MR. BUCKLEY:                    That's reasonable, sir, yes.

24           THE COURT:                    All right. So the order will  
25           continue to read,

26  
27           ... and other documents so created during

1           the time period that the 1-800 line was  
2           in operation.

3           And if I have gone too fast with that, we can  
4           always play it back, if you require it. During an  
5           adjournment we can just replay it back if you want  
6           some clarification.

7   MR. BUCKLEY:           I think we've got it, sir,  
8           thanks.

9   THE COURT:            All right. Well, in any event,  
10          I'm sure the clerk has a word marked here if we  
11          need to go back to it, so --

12   MR. BUCKLEY:           Sounds good, thanks.

13   THE COURT:            All right.

14   MR. BROWN:            And sir, I'm going to --  
15          Ms. Eacott can step out to have Mr. Brosseau come  
16          in, and she will make the phone call to our person  
17          in Ottawa and express the need to use speed, sir.  
18          Thank you.

19   THE COURT:            Yes, thank you.

20   MR. BUCKLEY:           Thank you, Your Honour.

21

22          \*MILES BROSSÉAU, Previously Sworn, Cross-examined by

23          \*Mr. Buckley

24

25   THE COURT:            All right, we are going to  
26          resume the hearing of evidence, testimony, here this  
27          morning, and I will just repeat that there has been

1 an order excluding witnesses, so if there are any  
2 witnesses in the courtroom who have not yet given  
3 their evidence, they should leave the courtroom  
4 until such time as they are called upon to give  
5 evidence.

6 Mr. Brosseau has taken the stand.

7 Sir, you are still under oath?

8 A Right.

9 THE COURT: You understand that that oath  
10 is binding on your conscience?

11 A Right.

12 THE COURT: All right.

13 MR. BUCKLEY: Thank you, Your Honour.

14 THE COURT: All right. Mr. Buckley, please  
15 proceed.

16 Q MR. BUCKLEY: Now, Mr. Brosseau, yesterday I  
17 was asking you some questions relating around when  
18 there's a good news story, is there any mechanism  
19 in Health Canada to kind of respond to that. Do  
20 you remember when I was asking you those  
21 questions?

22 A Yes.

23 Q Okay, and using that term; and I seem to recall  
24 basically your evidence was, is, no, there wasn't a  
25 mechanism in place to respond to a situation like  
26 this where there's a lot of good news coming as far  
27 as an internal mechanism in Health Canada.

1 A Can't really speak to that because I don't know  
2 what all is set up in Ottawa, but --

3 Q Okay.

4 A -- I do know they have the Adverse Drug Reaction  
5 Program.

6 Q Right, well, you told us about that, but that's  
7 kind of a bad news story, to use my words, where  
8 somebody has had an adverse reaction to something  
9 and it's reported, correct?

10 A Right.

11 Q Okay. Health Canada doesn't keep track of,  
12 actually, good news stories, so people don't report  
13 to Health Canada, Oh, I tried this treatment or  
14 that treatment, and it's been wonderful. Health  
15 Canada doesn't track that type of information, do  
16 they?

17 A I don't know.

18 Q Okay. To your knowledge, they don't.

19 A I have not been made aware of it, no.

20 Q Okay; but in this case, in your part of this --  
21 well, you're part of the investigation. I think  
22 you've been clear that there was evidence coming in  
23 that this product was actually helping some  
24 people.

25 A The only evidence that I'm aware would be  
26 testimonial evidence such as on the website.

27 Q Okay, but, for instance, you told us about that

1 meeting --

2 A Yeah.

3 Q -- that you had with Mr. Stephan --

4 A Right.

5 Q -- and Mr. Hardy and Mr. Shelley back on January  
6 14th, 2003, correct?

7 A Right.

8 Q Okay, and in your notes you refer to them providing  
9 journal articles.

10 A Right.

11 Q Okay, and you understood that to be actual  
12 publications such as in the Clinical Journal of  
13 Psychiatry, things like that.

14 A Right.

15 Q Okay, and you would have read those journal  
16 articles, I expect?

17 A No.

18 Q Any reason why you wouldn't have read those?

19 A They were presented and held by Dennis Shelley.

20 Q Okay, so just so that I'm clear, so Dennis Shelley  
21 takes those and he doesn't share those with you?

22 A No.

23 Q Okay, so you basically weren't allowed to read  
24 those journal articles?

25 A I wouldn't say I wasn't allowed. I wasn't offered,  
26 and I didn't ask.

27 Q Okay. Now -- but those journal articles made their

1 way into the Health Canada file. Are you aware of  
2 that?

3 A What Dennis Shelley did with them, I'm not aware.

4 Q Okay, so would it be fair to say you never saw them  
5 again?

6 A I never saw them again.

7 Q Were you told what they were about by Mr. Hardy and  
8 Mr. Stephan during the meeting?

9 A I believe they gave a -- small comments about what  
10 they were about.

11 Q Do you recall what those comments were?

12 A No.

13 Q Okay. Now, if you were faced with (INDISCERNIBLE)  
14 and you -- and when I -- if you're faced with  
15 journal articles that, let's say, said that this  
16 was an effective treatment, would there be a  
17 response by you -- and I know I'm somewhat  
18 hypothetically speaking, but would there, in an  
19 investigation like this, be a response where you  
20 guys would check to see if there's some veracity to  
21 it?

22 A Not in my capacity. I'm not an evaluator.

23 Q Right, and I think you've been fair about that, but  
24 I'm just trying to figure out, okay, internally,  
25 what happens when Health Canada employees like you  
26 are presented with this type of information. So  
27 would it be fair to say that you guys don't

1 generally refer that information out to another  
2 department to look into it?

3 A I would refer that information up to my  
4 supervisor.

5 Q Okay, which, in this case, is Dennis Shelley?

6 A Right.

7 Q Okay, and so for these journal articles there would  
8 have been no need to do that because you already  
9 had them.

10 A Right.

11 Q Were you aware of Mr. Shelley taking any action in  
12 relation to those journal articles?

13 A No.

14 THE COURT: Madam Clerk.

15 Q MR. BUCKLEY: Now, Mr. Brosseau, because you  
16 also were present with Ms. Oldberg there -- or  
17 Zandberg, I'm sorry -- giving this emotional  
18 testimony, and I think you've told us in response  
19 to that, basically you guys didn't check out the  
20 good news story.

21 A No.

22 Q Okay; and would it be fair to say that, really,  
23 there's just no mechanism in place in your  
24 department for doing that, that you're aware of.

25 A Not at the level that I'm working at.

26 Q Okay. So would it be fair to say that -- because  
27 you seem to be delegated the responsibility of

1           doing things on this file from above; would that be  
2           fair to say?

3       A     Investigative activities, yeah.

4       Q     Right.

5       A     Yeah.

6       Q     Right, okay, and like I say, you were the messenger  
7           for shutting down the clinical trials and things  
8           like that, correct?

9       A     Correct.

10      Q     Okay, even though you weren't the one responsible  
11           for making those types of decisions.

12      A     Correct.

13      Q     Okay, but -- so when you're faced with information  
14           on a file like this of -- you know, that it's an  
15           effective treatment, is your role just simply to  
16           refer that up above?

17      A     Yes.

18      Q     Okay, to your immediate supervisor.

19      A     Yes.

20      Q     Okay, but you're not aware of any mechanism that  
21           you can start to kind of have Health Canada check  
22           into the truth of claims.

23      A     No, that's not part of my role.

24      Q     Okay, and I seemed to be getting from you yesterday  
25           that, really, the way this regulatory scheme is set  
26           up is that, really, the onus is placed on the  
27           manufacturer to do that anyway.

1 A That's my understanding.

2 Q Okay, and so if I understood your evidence  
3 yesterday, the onus is on the manufacturer to  
4 basically conduct clinical trials and then submit  
5 the evidence to Health Canada for review --

6 A That's my understanding.

7 Q -- and go that way; and that Health Canada isn't  
8 set up to actually react to good news about a  
9 treatment.

10 A Not that I'm aware of.

11 Q Okay. Just so -- we're just trying to understand  
12 how this works.

13 Now, I'm assuming that Health Canada has kind  
14 of a mission statement, that you guys are told,  
15 Hey, we are here to protect the health of  
16 Canadians. Would that be fair to say?

17 A Right.

18 Q Okay. So in your job for Health Canada, you're  
19 basically trying to fulfill that function, protect  
20 the health of Canadians.

21 A Through compliance and enforcement, yes.

22 Q Okay. Now, when you say "through compliance,  
23 enforcement", do you mean basically by trying to  
24 force, whether it's companies or individuals, to  
25 comply with the regulatory scheme? Is that what  
26 you mean?

27 A Yeah, we're there to inspect and try to make sure

1           that products are manufactured according to the  
2           standards laid out in the Food and Drugs Act and  
3           basically try to point people in the right  
4           direction if they're not following that.

5       Q    Okay. Now, in a case like this where you're being  
6           told to take enforcement action -- not you alone,  
7           but other investigators -- but you're faced with  
8           some evidence that perhaps -- that might be  
9           counterproductive from a health perspective, is  
10          there a mechanism in place for you to deal with  
11          that?

12       A    I can't speak to that.

13       Q    Okay. Now, when you say you can't speak to that,  
14           are you just saying you're not aware of a  
15           mechanism?

16       A    Yeah, there may -- I'm not aware of other -- all  
17           the programs and initiatives that go on in Ottawa.

18       Q    Okay, would it be fair to say that you've never  
19           been instructed from anyone in Health Canada of  
20           what to do if it appeared that an enforcement  
21           action might actually be harmful to health?

22       A    Correct.

23       Q    Now, I want to go back to this meeting that you had  
24           with Mr. Stephan and Mr. Hardy; and Madam Clerk,  
25           could the witness be shown Exhibit 4.

26                    Mr. Brosseau, Exhibit 4 is just, once again,  
27           the notes that you made of that meeting --

1 A Mm-hmm.

2 Q -- and I just have them there in case you need to  
3 refer to them, but it seems to me that one of the  
4 things you report is is when there's this  
5 discussion about, Well, how can we comply,  
6 etcetera, one of the suggestions was that they  
7 could relocate into the United States.

8 A Right.

9 Q Okay. Now, that's fairly drastic, asking,  
10 basically, families to pick up and move and  
11 relocate in the States. How did that conversation  
12 come about?

13 A I believe it came about because of discussions that  
14 the sale of the product through the facility in  
15 Raymond was not a compliant activity and that if  
16 all sale activities were removed from Canada, then  
17 there would not be any noncompliance issue there.

18 Q Okay, and I just want to understand that, because  
19 you've been clear that Mr. Hardy and Mr. Stephan  
20 are basically asking for options. What do we do  
21 here to solve this --

22 A Mm-hmm.

23 Q -- this problem, because Health Canada is saying,  
24 You're not compliant, stop. Right?

25 A Right.

26 Q Okay, and there -- your understanding is, well --  
27 any witness, that they're there saying, Well, what

1 are some of the options? What can we do here? You  
2 guys are all brainstorming for answers.

3 A Correct.

4 Q Okay. It's not that you and Mr. Shelley were not  
5 trying to be cooperative. You guys actually were  
6 trying, you know, to assist: Okay, well, maybe you  
7 guys could do this or that, type thing. Is  
8 that --

9 A Correct.

10 Q -- would that be fair to say? And so here we have  
11 Mr. Stephan and Mr. Hardy asking for options: How  
12 do we solve this problem? Was it you or  
13 Mr. Shelley that suggested, Okay, one of the things  
14 you could do is locate to the States?

15 A I believe that was me.

16 Q Okay. So -- now, in suggesting that there could be  
17 relocation to the States, are you thinking that  
18 then, basically, the product could still come into  
19 Canada under a personal importation policy?

20 A Yes, there would be no sale occurring in Canada  
21 then.

22 Q Okay. Right, because -- and I just want to  
23 understand. So from your perspective, because the  
24 sale was occurring in Canada without a drug  
25 identification number, we've got noncompliance.

26 A Right.

27 Q Okay, but under this personal importation policy, a

1           company from the United States can sell to  
2           Canadians.

3           A    True.

4           Q    And the sale isn't -- at least for policy reasons,  
5           it's not considered to occur in Canada?

6           A    If it meets the personal importation directive,  
7           yeah.

8           Q    Okay; and -- because Mr. Hardy and Mr. Stephan are  
9           clear. You know, We want Canadians to still have  
10          access to the product. Would that be fair to say?

11          A    Yes.

12          Q    Okay, and so you, in offering the solution, it's  
13          one solution offered as a way for that to happen  
14          and for them not to be in breach of the regulatory  
15          scheme in Canada; is that correct?

16          A    Correct.

17          Q    Okay. So if the company actually moved to the  
18          United States, like, the actual company, so the  
19          company that was selling was in the United States,  
20          you, as a Health Canada employee, wouldn't deem a  
21          sale by that company as occurring in Canada? Is  
22          that --

23          A    Correct.

24          Q    Okay.

25          A    If there's nobody in Canada involved in the sale.

26          Q    Okay; and then somebody, a Canadian, ordering from  
27          that company, providing it's less than the

1 three-month supply, it would be allowed across the  
2 border.

3 A Right.

4 Q Okay. So if they move to the States, the same  
5 product could be legally brought into Canada by  
6 individuals who are ordering it.

7 A Yes.

8 Q Okay. Now -- and so part of the problem -- this  
9 personal importation policy, that's not a  
10 regulation, is it?

11 A No.

12 Q It's just an internal policy?

13 A Right.

14 Q Okay. In some ways did it seem rather silly to you  
15 that a company would actually have to leave the  
16 country but then could do the very same thing and  
17 have the product come into Canada, because all that  
18 would change was is that they'd be south of the  
19 border.

20 A Yeah.

21 Q Did that seem kind of -- I can withdraw the  
22 question.

23 THE COURT: I don't know --

24 A Yeah.

25 THE COURT: -- why you're looking for an  
26 answer --

27 MR. BUCKLEY: Yeah, so --

1 THE COURT: -- for him to say, Yes, it's  
2 silly, or, No, it's not.

3 MR. BUCKLEY: Yeah. Okay.

4 THE COURT: You might want to rephrase your  
5 question as to --

6 MR. BUCKLEY: Yeah. Thank you, Your Honour.

7 Q MR. BUCKLEY: Now, you suggested this move  
8 across the border. Did you make any other  
9 suggestions?

10 A I believe I suggested they could apply for a DIN  
11 number just on the basis of a vitamin/mineral  
12 preparation with just a -- would be probably easier  
13 to get a DIN number, in my opinion, that way, for  
14 the product.

15 Q Okay. Now, you've actually never been involved in  
16 the approval process --

17 A No.

18 Q -- so it's just -- you're not actually really  
19 qualified to say whether they would or wouldn't  
20 have succeeded. Would that be fair to say?

21 A Correct.

22 Q But you're trying to be helpful. Now, when you say  
23 apply as like a vitamin and mineral, are you  
24 thinking of one of the vitamin and mineral  
25 monographs that are published by Health Canada?

26 A I wasn't specifically thinking of a monograph, but  
27 I'm --

1 Q Okay.

2 A -- I know there is -- are monographs, yeah.

3 Q Okay. Now -- and then you would be aware in --  
4 basically that they couldn't be making a claim as  
5 such as a treatment for bipolar to try and get an  
6 approval as a vitamin or mineral.

7 A True.

8 Q Okay. So basically your suggestion is, Okay, you  
9 guys, stop talking about, you know, treating  
10 bipolar and just try to get it like a multivitamin  
11 you could buy in a health food store, type thing.  
12 Is that --

13 A True.

14 Q -- fair to say?

15 A Yeah.

16 Q Okay.

17 A Yes.

18 Q So -- and when you're making that suggestion, you  
19 actually believed that that might work. Like,  
20 you're not trying to send them, you know, down just  
21 a rabbit trail that they couldn't succeed.

22 A No.

23 Q Okay; because wouldn't it be fair to say that, at  
24 least from your understanding of the regulatory  
25 scheme, if they were just selling it as a vitamin  
26 and mineral supplement that there may not have been  
27 a problem as far as compliance.

1 A Yeah, I believe there may not have been.

2 Q Okay, that really one of the issues -- or big  
3 issues for Health Canada was they were saying what  
4 it's for.

5 A Correct.

6 Q Okay. Now, if they're going to say what it's for,  
7 you guys are treating this as a new drug, correct?

8 A I don't know if that's -- I don't know the basis or  
9 the criteria or the facts that they use to  
10 establish it as a new drug. I would have to -- it  
11 would be an assumption on my part that that was one  
12 of the reasons.

13 Q Okay, because we've got -- you know, we've got the  
14 new drug issue, and we have the DIN issue. If  
15 you're a new drug, you actually have to apply for  
16 what's called a notice of compliance. Are you  
17 aware of that?

18 A Yes.

19 Q Okay, and there was actually discussion at this  
20 meeting that you had with them and Mr. Shelley  
21 about the new drug process. Would that be fair to  
22 say?

23 A I'm not sure that it was specific to the new drug  
24 process but just process -- I think it was just  
25 that they should apply for a DIN number.

26 Q Okay, I'm just -- I'm going to refer you to the  
27 very last page of your notes and just see if that

1 can help refresh your memory. If you could look  
2 at -- Your Honour, do you mind if the witness looks  
3 at Exhibit 4?

4 THE COURT: No. You should have it there.

5 MR. BUCKLEY: Thank you.

6 Q MR. BUCKLEY: So on the very last page, the  
7 third paragraph where it says,

8

9 It is their contention that EMPowerplus  
10 is nothing more than a vitamin/mineral  
11 combination ...

12

13 A Right.

14 Q So it goes on:

15 ... combination product and that similar  
16 products could be picked up in pharmacies  
17 and health food stores. They were  
18 reminded that vitamin/mineral products  
19 were drug products and needed an NOC and  
20 DIN.

21

22 A True.

23 Q Now, does that help you remember that there was  
24 actually a discussion about them needing a notice  
25 of compliance?

26 A Well, for -- my understanding is any product first  
27 receives a notice of compliance before it gets a

1           DIN number.

2           Q    Okay.  So before you get a DIN, you have to go  
3           through and get a notice of compliance.

4           A    True.

5           Q    Okay.  So -- and, Mr. Brosseau, there was actually  
6           talk in the meeting about, Look, if -- you guys  
7           aren't going to be able to get a notice of  
8           compliance.  Like, Mr. Shelley actually told  
9           Mr. Stephan and Mr. Hardy that it was very, very  
10          unlikely they could get a notice of compliance.  Do  
11          you recall that?

12          A    I don't recall that at this moment, no.

13          Q    Okay; and I believe you've indicated to us you're  
14          not that familiar with the process for getting a  
15          notice of compliance.

16          A    True.

17          Q    Okay.  Now, I had asked you some questions  
18          yesterday about, at this meeting, that they were  
19          voicing concern that the Minister's office was not  
20          willing to meet with them, at least according to  
21          your notes.  They had written letters, they had  
22          made calls.

23                        Madam Clerk, could the witness be shown what  
24          is Exhibit 'J' for Identification.

25          THE COURT CLERK:                Sorry, exhibit?

26          MR. BUCKLEY:                    'J'.

27          THE COURT CLERK:                'J'.

1 Q MR. BUCKLEY: So, Mr. Brosseau, I'm just --  
2 Exhibit 'J' should be an e-mail from Dennis Shelley  
3 to Rod Neske, but it indicates that it's also to  
4 you, dated January 22nd, 2003. Now, if you look at  
5 the body of the e-mail, there's a discussion,  
6 basically, about the Minister's office, before they  
7 decline a meeting with Synergy, wanting to get  
8 briefed, and I'm assuming -- by your department.  
9 I'm assuming that's why Dennis Shelley has it and  
10 I'm assuming that's why Rod Neske and yourself are  
11 getting a copy.

12 Now, can you tell us about the discussions  
13 that took place regarding advising the Minister's  
14 office about the Synergy Group?

15 A I was not part of any discussions.

16 Q Okay. Did you speak to Mr. Shelley about this  
17 e-mail?

18 A No.

19 Q So are you getting an e-mail like this just  
20 basically to keep you in the loop as to what's  
21 going on? Is that how something like this works?

22 A That's exactly what he says, "for your information  
23 only".

24 Q Right, okay. So was this type of thing common,  
25 then, that you would get sent e-mails just to keep  
26 you up-to-date with what was occurring with the  
27 file?

1 A It was common.

2 Q Okay. So when you received this e-mail, which is  
3 shortly after your meeting with Mr. Hardy and  
4 Mr. Stephan -- at least it's being communicated to  
5 you, whether it's true or not, that there's  
6 discussions going on as, Well, how do we -- how do  
7 we decline a meeting with these gentlemen. Is  
8 that --

9 A That's what that says, yes.

10 Q Okay, was that your understanding?

11 A I don't remember --

12 Q Okay, so you don't --

13 A -- at the time.

14 Q You don't remember your understanding?

15 A No.

16 Q But you do remember seeing this e-mail.

17 A I don't remember seeing it. Obviously I would have  
18 received it, but I don't remember reading it.

19 Q Now, when you say obviously you would have received  
20 it, why do you say that?

21 A Well, because it's got my name in the "send to"  
22 line.

23 Q Okay; and generally speaking, the Health Canada  
24 internal e-mail is effective?

25 A Yes.

26 Q Okay. Now, you don't delete e-mails from your  
27 boss, Dennis Shelley, when they're sent to you.

1 A Sometimes.

2 Q Without reading them? Okay, just so I'm clear,  
3 because sometimes we read e-mails and then we  
4 delete them, correct?

5 A Correct.

6 Q But you don't -- you don't delete e-mails from your  
7 boss before you've read them. Would that be fair  
8 to say?

9 A Depends what the content is. I mean, I might just  
10 glance at it, scan it, see how relevant it is to  
11 me.

12 Q Okay; and on this e-mail you can't tell us whether  
13 you read the whole thing or not.

14 A No.

15 Q Okay. Now, aside from this e-mail, were you --  
16 were you involved in any discussions about advising  
17 the Minister's office about how to respond to this  
18 company TrueHope and Synergy Group?

19 A No, I wasn't.

20 MR. BUCKLEY: Your Honour, I'm hoping to have  
21 this exhibit entered. I'm not sure that I've made  
22 it or not, just because the witness doesn't recall  
23 reading it, although he does tell us that he's  
24 confident he would have got it and perhaps scanned  
25 it. That's probably enough, so -- because I -- for  
26 me it's relevant that these issues were alive in  
27 front of Health Canada for a couple of reasons. I

1 don't know if my friend objects to it being marked  
2 as an exhibit at this time.

3 MR. BROWN: Frankly, I don't object. If my  
4 friend wishes to have it marked as an exhibit for  
5 what it's worth, then I don't object this one.

6 MR. BUCKLEY: So I would move to enter it as  
7 an exhibit.

8 THE COURT: All right, Exhibit 'J' will now  
9 be -- through this witness who I believe has  
10 admitted receiving it; is that correct?

11 A Correct.

12 THE COURT: It will be Exhibit 5.

13 MR. BUCKLEY: Thank you, Your Honour.

14 THE COURT: Thank you.

15

16 \*EXHIBIT 5 - Formerly Exhibit 'J' for Identification,

17 \*e-mail from Dennis Shelley to Rod Neske and Miles

18 \*Brosseau dated 2003/01/22, 9:43 p.m., subject:

19 \*Synergy Group update, page numbered 000545

20

21 Q MR. BUCKLEY: Madam Clerk, could the witness  
22 be shown Exhibit 'K'.

23 And, Mr. Brosseau, Exhibit 'K' is a March 6,  
24 2003, letter to Rod Neske. Now, first of all,  
25 Rod Neske is also a supervisor of yours; is that  
26 correct?

27 A Correct.

1 Q And, actually, at that time, in March of 2003, has  
2 Mr. Shelley gone on sick leave, and --

3 A Correct.

4 Q Okay, and Mr. Neske is acting in Mr. Shelley's  
5 place.

6 A Correct.

7 Q Okay. So Mr. Neske would actually be the person  
8 you would go to on a file like this.

9 A Correct.

10 Q Okay. Now, have you seen this letter?

11 A Yes.

12 Q Okay, so at some point this letter was circulated  
13 to you. Do you recall how that occurred?

14 A I believe it came through an e-mail.

15 Q Okay, so would this be just, again, Health Canada  
16 has a practice when something like this comes in of  
17 e-mailing everyone involved so that they're up to  
18 speed on the file?

19 A True.

20 Q Okay, and you have a specific recollection of this  
21 letter, so is it fair to say that you read it?

22 A I remember seeing it, so I probably would have at  
23 least scanned it, yeah.

24 Q Okay. In the letter there's a concern expressed  
25 about denying EMPowerplus to Canadians. Do you  
26 recall that?

27 A No.

1 Q Okay. If you'd turn to page 3 of the exhibit, it  
2 should be on the top of the page, a number 4886,  
3 and at the bottom of the page, 00564. Do you see  
4 where I am?

5 A Right.

6 Q I've actually highlighted, you know, where that  
7 concern is voiced. Do you recall now that --  
8 drawing your attention to that, that when you read  
9 the letter it was clear that a concern was being  
10 voiced about the product being denied to  
11 Canadians? Does that help refresh your memory?

12 A No. I remember seeing the letter but I don't  
13 remember the content. I would have to read the  
14 letter again.

15 Q If you read the letter, do you think that might  
16 help refresh your memory?

17 A As to?

18 Q Well, I'm trying to determine whether or not, back  
19 when you received the letter, you were aware that  
20 they were voicing concerns about denying the  
21 product. So I guess I'm just trying to find out,  
22 would it be worth your time to read the letter to  
23 see if that would help you answer that question.

24 A I don't remember looking at it and thinking about  
25 that fact, so whether reading it again would do  
26 that, I don't know.

27 Q Okay, because from time to time when you were

1           dealing with this file, you did actually think  
2           about, you know, the fact that there might be a  
3           health risk, they're denying the product to  
4           Canadians. That did occur to you from time to  
5           time.

6        A    I don't remember.

7        Q    Okay. So you're not saying that it didn't occur to  
8           you; you just have no memory of that today?

9        A    Right.

10       Q    Okay. Now, but one thing is for sure is if you did  
11           read this letter, would it be fair to say that  
12           there was no response by you as a result of reading  
13           this letter?

14       A    I don't recall sending a response of any kind.

15       Q    Now, if you had had a concern that, Just wait a  
16           second, it might be a health risk here, your only  
17           action would have been to talk to Mr. Neske  
18           anyway. Would that be fair to say?

19       A    I would not have brought that up with him.

20       Q    You would not have brought it up with Mr. Neske?

21       A    No.

22       Q    Why?

23       A    Because he already had the letter.

24       Q    Okay, so just so that I'm clear, so if you had a  
25           concern about the enforcement actions that you were  
26           being asked to take, and you already know that your  
27           supervisors are aware of the concerns, you would

1 just leave it at that?

2 A I think so.

3 MR. BUCKLEY: Your Honour, I'm going to ask  
4 that this letter be entered as an exhibit. I am  
5 going to -- well, I may -- I may not be calling any  
6 defence. I would like it to be an exhibit in the  
7 trial. This witness has acknowledged seeing it and  
8 reading it. I'm not entering it for the truth of  
9 what it says, but just for the fact that it --

10 MR. BROWN: That's fine, sir. No  
11 objection.

12 THE COURT: That the communication  
13 occurred, is that your --

14 MR. BUCKLEY: Yes.

15 THE COURT: Mr. Brosseau has admitted  
16 having received it and at least scanned it, so in  
17 those circumstances, as proof that the  
18 communication was made, not for the truth of the  
19 contents, it will now become Exhibit 6.

20

21 \*EXHIBIT 6 - Formerly Exhibit 'K' for Identification,  
22 \*letter dated March 6, 2003, to Rod Neske

23

24 MR. BUCKLEY: Madam Clerk, I'm wondering if  
25 this witness could be shown -- oh, I'm sorry. I'll  
26 let you finish that --

27 THE COURT CLERK: No, that's all right.

1 MR. BUCKLEY: -- shown Exhibit 'L'.

2 Q MR. BUCKLEY: Now, Mr. Brosseau, you've been  
3 handed a document that's an April 29, 2003, letter,  
4 again to Mr. Neske. Is this letter familiar with  
5 you -- or to you?

6 A I don't believe it is.

7 Q Okay. Never seen this before?

8 A Not that I recall.

9 Q Okay. Fair enough. Thank you.

10 Now, you've never seen this letter, but you'd  
11 had communications with Mr. Hardy and Mr. Stephan  
12 in the year 2003, when product was being stopped;  
13 is that fair to say?

14 A Yes.

15 Q Okay, and would it be fair to say that they  
16 communicated to you basically the exact same type  
17 of information, that stopping the product was  
18 jeopardizing the health of Canadians?

19 A Yes.

20 Q I mean, these guys were passionate about  
21 communicating that, weren't they?

22 A Yes.

23 Q Now, were most of these times on the telephone  
24 where they would communicate this to you?

25 A Yes; I only remember one time.

26 Q And that was in 2003?

27 A Yes.

1 Q Okay. So they call you, and they're both on the  
2 phone?

3 A I believe it was just Anthony Stephan.

4 Q Okay; and Mr. Stephan is communicating to you that  
5 he's got a real concern this is jeopardizing the  
6 health of Canadians.

7 A I don't remember if he said that during that call,  
8 because he was addressing a particular shipment  
9 that had been refused entry.

10 Q Okay; because you've told us that they did  
11 communicate that to you personally, that the  
12 enforcement action was jeopardizing the health of  
13 Canadians. So I'm trying to figure out when it was  
14 that they told you that.

15 A Yeah, I don't specifically remember which phone  
16 call.

17 Q Okay.

18 A Yeah.

19 Q But you do remember that basically the same type of  
20 information was communicated to you.

21 A Yes.

22 Q Okay. Now, when it was communicated to you, did  
23 you then pass that on to Mr. Neske?

24 A Yes.

25 Q Okay, and --

26 A Either Mr. Neske or Mr. Shelley. I don't remember  
27 which one. At that particular time I believe

1 Mr. Shelley was back.

2 Q Okay. What were you told?

3 A Actually, I remember sending an e-mail summarizing  
4 the conversation and the issue, and I remember  
5 receiving feedback that the decision that the  
6 shipment had been refused entry was correct.

7 Q Okay, any other communication to you in that -- let  
8 me just ask, first of all, was it an e-mail back to  
9 you?

10 A Yes.

11 Q Okay. Anything else in that e-mail back to you?

12 A No. It was very short.

13 Q Okay, just basically saying your decision to refuse  
14 was correct.

15 A Yes -- not my decision to refuse but the decision  
16 that it had been refused was correct.

17 Q Yes, okay; but you're acting on directions from  
18 above to refuse shipments if it doesn't appear to  
19 be personal importation.

20 A Right.

21 Q Okay, and I think you've been clear about that, but  
22 you had just voiced a concern to your superior  
23 based on your conversation with Mr. Stephan or  
24 Mr. Hardy.

25 A I passed on what their concerns were, yes.

26 Q Okay. Madam Clerk, could this witness be shown  
27 Exhibit 'N'.

1 MR. BROWN: Is that 'N' as in "Nancy" or  
2 'M' as in "Mark"?

3 MR. BUCKLEY: No, I jumped to 'N'.

4 MR. BROWN: Okay.

5 MR. BUCKLEY: 'N' as in "Nancy".

6 Q MR. BUCKLEY: Now, you've been given what is  
7 a June 17, 2002, letter to Mr. Dennis Shelley with  
8 a large number of letters attached to it. Now, I'm  
9 assuming that you've seen this letter before.

10 A Can I examine this?

11 Q Yes, please do.

12 THE COURT: You certainly can.

13 Actually, this might be a good time to take  
14 the --

15 MR. BUCKLEY: Yes.

16 THE COURT: -- morning adjournment --

17 MR. BUCKLEY: Yeah.

18 THE COURT: -- and that will give  
19 Mr. Brosseau an opportunity to peruse through the  
20 (INDISCERNIBLE). We will take an adjournment. I  
21 will return at 11:00. All right, thank you.

22 (ADJOURNMENT)

23 (OTHER MATTER SPOKEN TO)

24 THE COURT CLERK: Recalling Synergy Group of  
25 Canada and TrueHope Nutritional Support.

26 THE COURT: All right, Mr. Buckley, you  
27 were involved in your cross-examination. You were

1 asking Mr. Brosseau about Exhibit 'N'.

2 MR. BUCKLEY: Yes, thank you, Your Honour.

3 Q MR. BUCKLEY: Mr. Brosseau, you've had the  
4 opportunity over the break to read Exhibit 'N'?

5 A Yes.

6 Q Now, I was trying to ascertain from you whether or  
7 not this letter was familiar to you.

8 A The front -- the very first page seems familiar,  
9 yes.

10 Q Okay. So would it be fair to say that you believe  
11 you have seen this letter and at least read the  
12 first page?

13 A Yes.

14 Q Okay. Do you recall when you saw this letter?

15 A The date? No.

16 Q Now, I assume that when you get a letter that's  
17 this thick that you're going to check and see,  
18 Well, why is this thing so large; is that fair to  
19 say?

20 A Yes.

21 Q Okay, because people aren't forwarding you things  
22 like letters and e-mails to waste your time.  
23 You're actually expected to keep up on the file.

24 A Lots of times they're saying, like, for information  
25 to be kept at hand in case I need to use them or  
26 refer to them.

27 Q Okay, but I -- you know, I want to be clear,

1           because in this file you were making enforcement  
2           decisions about whether or not to let product into  
3           Canada, correct?

4           A    Correct.

5           Q    Okay. I'm assuming that you would feel that it's  
6           important in conducting that job to make sure that  
7           you are aware of everything that was happening on  
8           the file and be up to speed on it; is that  
9           correct?

10          A    Well, I wouldn't -- everybody would be made aware  
11          of decisions as far as, you know, refusing products  
12          and such. I mean, it would be -- all inspectors  
13          would be kept up-to-date that way.

14          Q    No, but you can only testify about your own  
15          experience.

16          A    Yeah.

17          Q    And you understand that you're being asked to make  
18          decisions about whether or not to allow a product  
19          that's a treatment for some mental health  
20          conditions. You understand that, correct?

21          A    Mm-hmm.

22          Q    And I'll actually ask --

23          A    Yes.

24          Q    Okay. You understand that there are communications  
25          that some Canadians are very concerned that they  
26          need this for their health.

27          A    Yes.

1 Q You understand that, correct?

2 A Yes.

3 Q Now, in a case such as this, isn't it true that you  
4 would take it very seriously to make sure that  
5 you're reading everything that's sent to you on the  
6 file so that you can properly make decisions that  
7 are -- could be affecting peoples' health?

8 A I would not have used this to make decisions.

9 Q Now, Mr. Brosseau, that wasn't my question. My  
10 question was, basically, that you would make an  
11 effort to read things that are sent to you to  
12 ensure that you've got all of the information when  
13 you're making such decisions; is that fair to say?

14 A Yes, if I'm given a direction or a policy, then I  
15 would read that, yes.

16 Q Okay. So when you say "a direction", you mean a  
17 direction from within Health Canada.

18 A Right.

19 Q Okay, so direction is a document generated by  
20 another Health Canada employee.

21 A Right.

22 Q Okay, and a policy is also likewise a Health Canada  
23 document, correct?

24 A Right.

25 Q Generated within Health Canada.

26 A Right.

27 Q Okay. So you will read every single direction that

1           you get that applies to a file.

2       A    Yes.

3       Q    And you will read every policy that applies to the  
4           file, correct?

5       A    Every policy that I'm using with regard to that  
6           investigation, yes.

7       Q    Okay, but when other Health Canada employees are  
8           sending you documents for you to review in  
9           connection to a file, are you telling us if they're  
10          not a direction or not a policy that you don't make  
11          a point of reading them?

12      A    If it's for information only, I don't read them in  
13          any depth.

14      Q    Now, when you say you don't read them in depth,  
15          what do you mean?

16      A    I might scan them just to get an idea of what  
17          they're about.

18      Q    Okay. Now, is there any good reason why you  
19          wouldn't read an entire document sent to you for  
20          information on a file?

21      A    Because it's not a directive, it's not a -- a  
22          direction to take out -- carry out some kind of  
23          action.

24      Q    Do you assume that when another Health Canada  
25          employee, such as a supervisor, forwards you a  
26          document that they're doing that to waste your  
27          time?

1 A No, I believe he sends it to me for information.

2 Q Okay; because documents like this are actually sent  
3 to you by people like Mr. Shelley.

4 A Yes.

5 Q But when somebody like Mr. Shelley who has given  
6 you tasks to do, such as refusing product at the  
7 border, sends you a document such as this, you  
8 don't feel it's necessary to read the whole  
9 document.

10 A Right.

11 Q Because it's not a Health Canada directive.

12 A Right. It has no bearing on how we approach an  
13 importation.

14 Q Okay. Now, what do you mean when you say that,  
15 that documents such as this letter would have no  
16 bearing on Health Canada approaches and  
17 importation?

18 A We follow the policies and guidelines regarding the  
19 importation, like the personal importation  
20 directive.

21 Q Sorry, I was hoping to make a note. You follow the  
22 policies and guidelines? Is that --

23 A That are issued, yes.

24 Q So in this case, what policies and guidelines have  
25 been issued that you were following?

26 A The personal importation directive.

27 Q Is that the only one? You must have had a

1 directive to tell you to stop non-personal  
2 importation ones.

3 A Well, that is the directive that says what to do if  
4 a shipment is personal or deemed to be commercial,  
5 yes.

6 Q Okay. So just so I understand your evidence, the  
7 sole policy and guideline that you were using in  
8 this file, or following, were the personal  
9 importation policy.

10 A Yes.

11 Q Okay. So when you're telling us that you wouldn't  
12 refer to other documents such as this letter marked  
13 as Exhibit 'N' -- I just want to make sure that I'm  
14 crystal clear in understanding -- you don't think  
15 it's even important to read because you're not  
16 going to pay any attention to it anyway because  
17 it's not a policy or a directive.

18 A It's not addressed to me. It's not something I'd  
19 be taking action on.

20 Q Okay. So if you were sent a document basically,  
21 you know, showing that people were dying because of  
22 what Health Canada was doing -- and I'm  
23 hypothetically speaking, I'm not suggesting that  
24 was before you -- you would just ignore that  
25 because it's not a policy or a directive?

26 A Yes.

27 Q Now, is that because you've been trained that,

1            basically, at all costs just follow the policy and  
2            directives you're given?  Basically you're a foot  
3            soldier, so to speak?  You just do what you're  
4            told?

5            A    We've never been advised in those words.

6            Q    Okay, but you understand my meaning, right, because  
7            some organizations, it's important that when people  
8            are told to do something that they have to go and  
9            do it.  The classic scenario is armies.  You know,  
10           the soldiers -- you're going over that hill because  
11           the army needs you to do that.  You understand that  
12           type of thinking, right?

13           A    We're supposed to follow policy, yes.

14           Q    Okay, so that's what I'm trying to get at, is, has  
15           it -- have you been trained, basically, that, No,  
16           no, it is important, regardless of what you think,  
17           to be enforcing these policies and guidelines when  
18           you're told to do that.

19           A    Yes, my personal opinion doesn't matter.

20           Q    Okay.  Now, Mr. Brosseau, because it was being  
21           communicated to you by various sources in this file  
22           that actions such as the ones you were taking were  
23           creating a health risk; that was communicated to  
24           you.  You've already told us about Mr. Stephan, for  
25           example, communicating that to you, correct?

26           A    Yes --

27           Q    Okay.

1 A -- he communicated that.

2 Q It's been in some of the documents that you have  
3 reviewed. Would that be fair to say?

4 A Yes.

5 Q Okay, like, that's -- when Mr. Stephan communicated  
6 that to you, it wasn't a new theme. You were aware  
7 that there were communications to Health Canada to  
8 that effect, not just to yourself.

9 A Yes.

10 Q Okay. So you knew when you were making your  
11 enforcement decisions, in some cases, to turn  
12 product away at the border that it was being  
13 communicated, Just wait, there is a health risk  
14 here. I'm not saying that you believed the health  
15 risk or anything, but it was being communicated to  
16 you; is that fair to say?

17 A Yes. From both sides.

18 Q Okay. Now, were you aware that when you were in  
19 the process of stopping product at the border that  
20 Health Canada at one point set up what was called  
21 an 800 crisis line --

22 A I was --

23 Q -- for people to phone in?

24 A I was aware they set up an 800 line.

25 Q Okay, how did you become aware of that?

26 A I believe through an e-mail.

27 Q Okay, and what had been communicated to you about

1 this?

2 A I believe that if we received calls, we could refer  
3 people to that number.

4 Q Now -- okay, I'll just stop there because I'm  
5 waiting for some disclosure.

6 Madam Clerk, I'm wondering if this witness  
7 could be shown Exhibit 1 in these proceedings.

8 Mr. Brosseau, I've asked the clerk to hand you  
9 an exhibit which is a printout of a website,  
10 redumbrellas.ca, that appears to have been printed  
11 off on September 26, 2003, and placed in the Health  
12 Canada file. Have you seen this document before?

13 A No.

14 Q Had you heard of the Red Umbrellas before?

15 A Yes.

16 Q Okay, how did you hear about the Red Umbrellas?

17 A I believe there was an e-mail from media that there  
18 had been a demonstration in Ottawa.

19 Q Now, when you say "media", you mean actually  
20 internal Health Canada media; is that correct?

21 A Yes.

22 Q Okay, because Health Canada has its own media  
23 department, and it e-mails people as they need to  
24 know about things that are occurring in the media  
25 environment?

26 A They e-mail a lot of items, not just ones that they  
27 specifically say to you --

1 Q Okay.

2 A -- but, yeah.

3 Q But in any event, you received an e-mail indicating  
4 that there had been a demonstration in Ottawa --

5 A Right.

6 Q -- and indicating that it was a group called the  
7 Red Umbrellas.

8 A Right.

9 Q Now, you understood at the time that that political  
10 demonstration in Ottawa was connected to this file?

11 A Right.

12 Q Okay, and specifically connected to product being  
13 stopped at the border by persons such as yourself.

14 A Right.

15 Q Okay. Now, that has to interest you when there's a  
16 political demonstration basically protesting  
17 something that you personally are doing; would that  
18 be fair to say? It interested you?

19 A Yes, lots of protests interest me.

20 Q Okay, but this is a protest in Ottawa on  
21 Parliament Hill protesting actions you are  
22 personally taking. I mean, that doesn't happen  
23 every day.

24 A I don't think I looked at it as being just me.

25 Q Okay, but you understand what I'm saying, right?  
26 Like, here's a media story about something you're  
27 involved in.

1 A Yeah.

2 Q Okay. I'm just suggesting to you that that must  
3 have captured your interest.

4 A I don't know if "captured" is the word. I was  
5 aware of it.

6 Q Okay.

7 A Yeah.

8 Q So --

9 A I became aware of it and thought, you know, that's  
10 interesting; but "captured" makes it sound like it  
11 was exhilarating or something.

12 Q Right, okay, and it didn't exhilarate you. What  
13 was communicated in this e-mail specifically about  
14 the protest? Obviously it communicated that it was  
15 about this enforcement action of stopping product  
16 at the border.

17 A I don't remember if it said that.

18 Q Okay, but you knew that was what it was about?

19 A I believe so, yes.

20 Q Okay. Did you take any steps to look into that?

21 A No.

22 Q Why not?

23 A Well, it was a demonstration. There was nothing  
24 for me to look into.

25 Q Now, I imagine that because it was a demonstration  
26 basically protesting against the enforcement  
27 decisions that there had to have been some

1           conversations and e-mails back and forth within  
2           your department about this demonstration.

3       A    There may have been, but the only one I recall is  
4           the little report that the media sends out.

5       Q    Okay. So to your knowledge, just so I  
6           understand -- at least to your knowledge, there  
7           was just no reaction in your department that you're  
8           aware of to this political protest.

9       A    Well, not from Calgary.

10      Q    Okay, but your e-mail thing's for your information  
11           on the file, right? That's the practice within  
12           Health Canada? Is that fair to say?

13      A    Yeah, if I receive something, yes.

14      Q    Okay.

15      A    Yeah.

16      Q    But I think we've gone through this. I mean,  
17           you -- you've been identifying documents that are  
18           just sent to you for your information, correct?

19      A    Mm-hmm.

20      Q    And once again, because it's being tape-recorded,  
21           I'll ask if you can verbalize.

22      A    Yes.

23      Q    So because you are involved on the file, you're the  
24           only Calgary guy here on the file, correct?

25      A    Correct.

26      Q    Okay, so you've got to be informed about what's  
27           going on. You're the Calgary man, correct? They

1 can't inform another Health Canada employee in  
2 Calgary.

3 A Correct.

4 Q Okay. So you're kept in the loop, and just what  
5 I'm trying to find out, but it seems to me, just  
6 based on your knowledge, you did not see any  
7 reaction within your department or Health Canada as  
8 a response of this political protest by the  
9 Red Umbrellas.

10 A Probably because the action wasn't directed at  
11 Calgary.

12 Q Okay, but -- and I'm not even suggesting to you  
13 that there wasn't any reaction, but I'm just saying  
14 to your knowledge, you weren't -- there was nothing  
15 to suggest to you that there was any action.  
16 That's all I'm asking.

17 A Yeah, no action other than the media report that  
18 I'm aware of.

19 Q Okay. Now, Mr. Brosseau, you had a telephone  
20 conference call on September 18th, 2003, with  
21 Mr. Shelley, Sandra Jarvis and Tony Stephan. Do  
22 you recall that?

23 A Yes.

24 Q Okay, and when I say you had a conference call,  
25 you're listening in on the call, but are you  
26 participating in the call?

27 A No.

1 Q Okay. So you're listening in on the call, and  
2 actually, your role is to take notes and record  
3 what the call is about?

4 A I don't recall being assigned a role.

5 Q Okay, but in any event, you did take notes  
6 about --

7 A Yes.

8 Q -- and actually, Mr. David Hardy was also a  
9 participant in that call.

10 A Yes.

11 Q Okay. Now, when this call occurs, Health Canada  
12 still has a directive to stop non-personal  
13 importation shipments at the border.

14 A Yes.

15 Q Okay. So -- and basically Mr. Stephan and  
16 Mr. Hardy are asking Mr. Shelley to change his mind  
17 and let shipments through; is that fair to say?

18 A No.

19 Q Okay, they're not? They're not asking for  
20 shipments to be let through?

21 A No, I believe it was regarding one particular  
22 shipment; the discussions.

23 Q Okay, what do you recall about that?

24 A I believe they were angry that a particular  
25 shipment was held at the border by Customs and not  
26 allowed to be brought in and that I had made an  
27 incorrect decision, but in fact, I had not advised

1 Customs to refuse entry, they had made that  
2 decision. I just (INDISCERNIBLE) -- agreed with  
3 their decision.

4 Q Okay. So their specific complaint is about one  
5 shipment, to your recollection.

6 A Yes.

7 Q Okay. Clearly they're communicating they're  
8 unhappy with this whole policy.

9 A Right.

10 Q Okay, and they're also complaining, Well, it seems  
11 to be inconsistent. One shipment will come through  
12 and then another is denied. Do you recall that?

13 A Correct.

14 Q Okay, and there actually was some inconsistency at  
15 that time, wasn't there? Like, some shipments did  
16 get through and some -- some didn't.

17 A I don't know if that was an inconsistency, though.

18 Q Okay. How would you describe it?

19 A Some shipments might have been reviewed and  
20 considered to meet the criteria for release.

21 Q Okay, and we've already gone over that yesterday as  
22 to how you would -- what factors you would apply.

23 A Correct.

24 Q That didn't really change until in '04, there was a  
25 new directive saying if certain conditions are  
26 met, you can let the shipments through; is that  
27 fair --

1 A Correct.

2 Q -- to say?

3 A Yeah.

4 Q Okay. So I don't want to go over that again.

5 Now -- but in this meeting that you have, this  
6 telephone conference call on September 18th, '03,  
7 Mr. Stephan basically claims to be reading from a  
8 medical journal about there being severe angst  
9 about people not being able to get the product. Do  
10 you remember that?

11 A I remember that.

12 Q Okay, because I expect he was quite passionate on  
13 that call about people being extremely concerned  
14 and anxious about not being able to get the  
15 product. Would that be fair to say?

16 A Yes.

17 Q Okay. So he makes it clear, and he's reading --  
18 claims to be reading from the Medical Post.

19 A I don't remember which article --

20 Q Okay.

21 A -- or which journal.

22 Q I'm just going to provide you with a copy of your  
23 notes and see if that helps refresh your memory.

24 I'm just going to show you a document, and I  
25 believe it's -- it's a typewritten document, not  
26 handwritten, but it was disclosed to me purporting  
27 to be your notes, so I'm just going to ask if

1           you'll review that --

2           A    Mm-hmm.

3           Q    -- and see if you can identify that as copy of  
4           notes.

5           A    Yes, it is.

6           Q    Okay.  So now that I've shown that to you, you  
7           recognize that as notes you made.

8           A    Right.

9           Q    And I actually highlighted on the bottom of the  
10          first page, there's an 'S' there, and you've made  
11          kind of a legend in the top half of the page where  
12          you put "S = Anthony Stephan".

13          A    Yes.

14          Q    Okay, and beside 'F' he says:

15

16                   Going to read from the January 2nd issue  
17                   of the Medical Post, severe angst about  
18                   the product not being available.  Success  
19                   not due to placebo effect ...

20

21                   and then he says,

22

23                   I spoke with two families who have lost  
24                   members due to suicides.

25

26                   Now, does that help refresh your memory that  
27                   Mr. Stephan was referring to an article in the

1 Medical Post?

2 A Yes.

3 Q Okay. Now, did you obtain a copy of the Medical  
4 Post to verify --

5 A No.

6 Q -- what he was saying? Why not?

7 A I don't see that it would have served any purpose  
8 other than to verify his story.

9 Q Okay, and you actually already believed  
10 Mr. Stephan. You didn't think that he was lying  
11 about this.

12 A I didn't know if he was or not. I didn't --

13 Q Okay. Well, I'm assuming that if you believe that  
14 the Medical Post was reporting that --

15 activities -- because they're actually talking  
16 about a shipment you were involved in -- but the  
17 very enforcement activity you're involved in --

18 A Mm-hmm.

19 Q -- just -- the record is going to be too  
20 convoluted. Let's start with a new question.

21 If -- okay, so I would assume that if the  
22 Medical Post had criticized -- basically by saying  
23 people are anxious -- enforcement activity that you  
24 are involved in that that's something you would  
25 want to read and look into. Am I incorrect in that  
26 assumption?

27 A I had no desire to read it.

1 Q Why?

2 A It would not have allowed me to make any changes.

3 Q Okay, and so by that you mean regardless of what it  
4 might have said, you are bound to follow the  
5 policy, in this case, the personal importation  
6 directive.

7 A Yes.

8 Q Now, at that meeting Mr. Stephan is also actually  
9 blaming Health Canada for deaths and  
10 hospitalizations. Do you recall that?

11 A Yes.

12 Q Okay. That had to make you angry.

13 A I don't recall feeling any anger, no.

14 Q Okay, now, these types of allegations weren't new  
15 to you, were they?

16 A No.

17 Q Okay. Now, is that why you're not angry, because  
18 it's not new? You've heard allegations such as  
19 that before this meeting.

20 A I don't know if that's the reason. I didn't take  
21 it personally, so I wasn't angry.

22 Q Okay, were you even slightly alarmed that there  
23 were allegations that the enforcement actions that  
24 you were involved in may be resulting in deaths and  
25 hospitalizations?

26 A No.

27 Q It didn't alarm you at all?

1 A No.

2 Q Why not?

3 A I guess because I didn't have any firsthand  
4 knowledge of it.

5 Q And I think you've been clear with us, you were not  
6 going to take any steps to investigate allegations  
7 such as this.

8 A Correct.

9 Q Madam Clerk, could this witness be shown Exhibit  
10 'S'.

11 Now, Mr. Brosseau, Exhibit 'S' is a two-page  
12 document, and actually, if you look at the last  
13 page, it's just a photocopy of a single newspaper  
14 page from the Regina Leader Post, July 18th, 2003,  
15 and then the first page is just a close-up of one  
16 of the stories found on that full page?

17 A Okay.

18 Q So -- now, it's a story about a gentleman named  
19 Ron Lajeunesse who is with the Canadian Mental  
20 Health Association, Alberta Division, basically  
21 voicing similar concerns as you had heard from  
22 Mr. Stephan later about there being suicides in  
23 connection with stopping the product at the  
24 border. Now, have you -- have you seen this  
25 article before?

26 A I don't remember seeing the article, no.

27 Q Okay. Now, surely you had received some e-mails

1 from the Health Canada media department about  
2 stories like this.

3 A Probably, yes.

4 MR. BROWN: Sir, I think in fairness to  
5 this witness, I think my friend has characterized  
6 this article speaking to products being stopped at  
7 the border, and I'm not convinced that that's what  
8 this article speaks to.

9 MR. BUCKLEY: Okay, and if there's any  
10 concern, we can recharacterize. I'm not trying to  
11 mislead the witness.

12 MR. BROWN: No, I don't think that that is  
13 the case --

14 MR. BUCKLEY: So --

15 MR. BROWN: -- but I think what this  
16 article is referring to is actually the search  
17 conducted at the TrueHope facilities, and this  
18 story actually appears the next day in the Ottawa  
19 paper, the day after the search was conducted -- or  
20 perhaps two days later (INDISCERNIBLE).

21 MR. BUCKLEY: And, Your Honour, my friend is  
22 correct about that, and so I think it is  
23 appropriate for us to make that correction.

24 Q MR. BUCKLEY: So, Mr. Brosseau, I had  
25 suggested to you that it was connected to the  
26 stopping at the border, but now that my friend has  
27 reminded me, he's correct, and so I'm going to

1 suggest to you that, as he says, it's a story in  
2 reaction to the search that you were involved in;  
3 okay?

4 A Okay.

5 Q Now, but my question still remains. There's  
6 allegations in there from this Mr. Ron Lajeunesse.  
7 You don't recall seeing the specific story.

8 A No.

9 Q Okay, but these allegations weren't new to you, or  
10 to put it another way, you've already told us you  
11 probably received e-mails by Health Canada media  
12 about this.

13 A Probably, yes.

14 Q Okay, but later on in September, when Mr. Stephan  
15 is basically saying the same thing, it wasn't new  
16 to you at that time. You'd already heard it,  
17 correct?

18 A Yes.

19 Q Okay. You don't recall how you heard it today,  
20 prior to that meeting?

21 A Probably through media releases.

22 Q Okay.

23 A Internally.

24 Q Okay. So fair enough, you do recall that it was  
25 communicated, but you don't recall exactly how it  
26 was communicated to you.

27 A Correct.

1 Q Okay. Now, I imagine -- well, first of all, did  
2 you know who Ron Lajeunesse was?

3 A No.

4 Q Okay. Now, I imagine, though, that this would have  
5 caused a stir in your department when there are  
6 allegations that the activity the department is  
7 taking is causing suicides and hospitalizations.

8 A I don't know if it did.

9 Q Okay, because you've actually been fairly good at  
10 recalling things. Sometimes you take some time to  
11 think to make sure you give us accurate evidence.  
12 If I phrase the question this way: Do you have any  
13 recollection of there being any response within  
14 Health Canada to these allegations?

15 A I was not part of any response. There may have  
16 been, in management. I don't know.

17 Q Okay, so you weren't part of a response, but where  
18 my question is going, I'm just trying to find out,  
19 because you've told us that you're kind of kept in  
20 the information loop, are you aware of any response  
21 to these allegations by Health Canada?

22 A I don't recall any particular response.

23 Q Now, you were aware that in response to a seizure  
24 of product at the border, so there was a seizure by  
25 Health Canada of product at the border.

26 A No.

27 Q Okay, you weren't aware of a seizure of product --

1 I'm not saying you were involved, but I believe Kim  
2 Seeling and another officer in B.C. seized one  
3 shipment that came to the border.

4 A Oh, okay --

5 Q You were aware of that?

6 A Yes.

7 Q Okay; and then all the other shipments that didn't  
8 make it into the country are just turned away,  
9 correct?

10 A Yes, I believe that's what they did.

11 Q Okay. Now, when this started happening, when you  
12 guys started your -- you know, turning product away  
13 and we had this seizure, you were aware that a  
14 Federal Court action was started to challenge the  
15 actions that Health Canada was taking.

16 A I don't know if I was aware at the time or became  
17 aware later.

18 Q Okay, I just --

19 A I don't know when that started.

20 Q Okay. You don't recall the exact date, but you  
21 actually were involved in swearing an affidavit --

22 A Yes.

23 Q -- in that court action.

24 A Yes.

25 Q Okay. So at some point it was brought to your  
26 attention because you were actually asked to swear  
27 an affidavit.

1 A Right.

2 Q Okay. So you actually would have been very heavily  
3 involved in how Health Canada was responding to  
4 that.

5 A I wouldn't agree with that.

6 Q Okay. Was there any discussion of perhaps putting  
7 this on hold until the Court decided whether or not  
8 it was appropriate for Health Canada to be doing  
9 what it was doing?

10 A Not that I'm aware of.

11 Q Okay, and so there was no directive or memo or any  
12 other communication to you to that effect.

13 A To the effect that what?

14 Q Well, that, Maybe we should put this on hold, our  
15 turning product away at the border, until the Court  
16 sorts this out.

17 A Not that I'm aware of.

18 Q Okay, and that's something you would have been  
19 aware of because you told us you read  
20 communications that are directives.

21 A Yes, if it's an order or a direction to do  
22 something, yes.

23 Q Okay. Now, I'd already gone over with you  
24 yesterday -- I mean, it was crystal clear that if  
25 you turn product away that people in Canada don't  
26 get the product. You understood that.

27 A Yes.

1 Q Okay, and there was also an understanding by you  
2 that this product was being used by some of the  
3 participants to treat things like bipolar disorder.

4 A Yes.

5 Q Okay. Was there a discussion within Health Canada  
6 about, Okay, well, these people are going to have  
7 to move to some other treatment options. If we  
8 take this treatment away, they have to go to  
9 another treatment.

10 A I don't recall any particular discussions. I can  
11 remember, you know, thinking that.

12 Q Right, and you actually would be well placed to do  
13 that because you've got a pharmacy background.

14 A Yes.

15 Q Okay. So in your pharmacy background you  
16 understood that, you know, if people are on a  
17 certain treatment regime, you know, that there's  
18 some -- there's some element of risk involved in  
19 switching to other treatment modalities. Would  
20 that be fair to say?

21 A Correct.

22 Q Okay.

23 A A risk always exists --

24 Q Right.

25 A -- in consumption of anything.

26 Q And you also understood with your pharmacy  
27 background that a lot of the drugs that are used to

1           treat conditions like bipolar disorder, in  
2           themselves, have a wide range of side effects.

3           A    All drugs can, yeah.

4           Q    Okay, but I'm asking you specifically, because you  
5           were trained as a pharmacist, you dispensed drugs  
6           for treatments such as bipolar; you would  
7           specifically, when people purchased those from you,  
8           advise them of some -- in some cases, very severe  
9           side effects; is that fair to say?

10          A    Potential, yes.

11          Q    Okay; and, in fact, I mean, Health Canada publishes  
12          warnings about these drugs for the public to view.  
13          You're aware of that?

14          A    Yes.

15          Q    Okay. I'm assuming, in a file like this, that you  
16          would actually, now and again, go and check the  
17          Health Canada websites and, you know, check up on  
18          actually the health risks of these antipsychotic  
19          drugs or other medications that these TrueHope  
20          participants would have to go on?

21          A    Well, we get -- we get copies or e-mails when an  
22          advisory and such is issued.

23          Q    Okay.

24          A    Yeah.

25          Q    Okay, so basically, just so that I understand,  
26          whenever Health Canada issues an advisory, you  
27          receive it.

1 A We get an e-mail advising that one has been issued.

2 Q Okay. Was there any discussion within your  
3 department basically about the risks of forcing  
4 these TrueHope participants into other treatment  
5 options?

6 A Not that I'm aware of.

7 Q I'm just going to give you an e-mail that I believe  
8 you received, and I believe you received it because  
9 it appears that on November 6th, 2003, you sent it  
10 to Sandra Jarvis.

11 A Correct.

12 Q And that you had received it, actually, from  
13 Anthony Stephan. Do you recall this e-mail?

14 A Yes.

15 Q Okay. Now, it appears that Mr. Stephan is sending  
16 you a warning not by Health Canada but by the Food  
17 and Drug Administration of the United States.

18 A Correct.

19 Q Okay, and you would have read that warning.

20 A Maybe.

21 Q Okay, but you're -- well, you're not going to send  
22 something to Sandra Jarvis, are you, that you're  
23 not even aware that it's relevant?

24 A I would have at least scanned it. I mean, it's --  
25 and forwarded it. She was at that time, I believe,  
26 maintaining the file.

27 Q Okay. Wasn't one of the themes that people like

1 Mr. Stephan was communicating to you as they  
2 interacted with you on this file was that not only  
3 did TrueHope participants rely on the product as a  
4 treatment, but there are serious risks of forcing  
5 them into other treatments? Wasn't he  
6 communicating that to you?

7 A Yes.

8 Q Okay, and so when you receive this, and it's kind  
9 of like, you know, Here you go, I'm right, isn't  
10 that what you thought, that he was just kind of  
11 prodding you a little bit?

12 A That's not what I thought.

13 Q What did you think?

14 A This has to do with pediatric patients. I believe  
15 I just would have thought he sent it to me for  
16 information, of course.

17 Q Okay.

18 A Probably to point out that there can be side  
19 effects with antidepressant medications, which I  
20 already knew.

21 Q Right. Okay.

22 MR. BUCKLEY: Your Honour, I see it's 12:00,  
23 and I'm at a point where I actually wouldn't mind a  
24 break, unless we go to 12:30. I'm either/or. It  
25 makes no difference to me. I do want to use the  
26 court time. I'm just used to stopping at 12:00,  
27 so -- but I'll go on.

1 THE COURT: That's fine. You probably  
2 prepared yourself and got set for about this amount  
3 of time, so that's fine. Do you have much to go on  
4 your cross-examination of Mr. Brosseau?

5 MR. BUCKLEY: I think, actually, we're  
6 getting close, so --

7 THE COURT: If you were going to finish in  
8 five or ten minutes, then he wouldn't have to come  
9 back for the afternoon, but if you think that you  
10 are going to be longer than that, then we will put  
11 it over to 2:00. I am thinking of the convenience  
12 to the witness as well.

13 MR. BUCKLEY: Right. Yeah, I can't commit  
14 that it's going to be half an hour, but it could  
15 be. It's just it's tough to estimate, right,  
16 because you don't know.

17 MR. BROWN: Well, sir, I --

18 MR. BUCKLEY: So --

19 MR. BROWN: -- either way, I will have very  
20 little re-direct, just a couple of questions, three  
21 or four questions probably, so I won't take very  
22 long, but -- you know, frankly, there might be some  
23 value in stopping now and having this witness come  
24 back this afternoon either way, now that I think  
25 about it.

26 THE COURT: Well, that's fine.

27 MR. BROWN: Thanks.

1 THE COURT: Mr. Brosseau, once again I am  
2 going to caution you that while you are under  
3 cross-examination you are not to discuss your  
4 evidence with anybody.

5 A Yes.

6 THE COURT: You understand?

7 A Yes.

8 THE COURT: Very good. Thank you. All  
9 right, just give me a moment here.

10 All right, very good. In that case we will  
11 stand adjourned, then, until 2:00 this afternoon.

12 -----  
13 PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.  
14 -----

15  
16 \*Certificate of Record

17 I, Jillian Fox, certify this recording is a record  
18 of the oral evidence of proceedings in the criminal  
19 courts held in courtroom 413 at Calgary, Alberta,  
20 on the 15th day of March, 2006, and I was in charge  
21 of the sound-recording machine.  
22  
23  
24  
25  
26  
27

1 \*March 15, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT: Mr. Buckley?

5 MR. BUCKLEY: Thank you, Your Honour. I  
6 will just indicate to the Court that apparently  
7 there has been a little update that there might be  
8 some disclosure coming pursuant to that order. So  
9 we're just hopeful.

10 MR. BROWN: Sir, I know Ms. Eacott has  
11 taken the point on that matter and I'm hoping she'll  
12 arrive any time soon and can give us an update.

13 THE COURT: All right. Thank you.

14

15 \*Mr. Buckley Cross-examines the Witness

16

17 Q MR. BUCKLEY: Mr. Brosseau, I'm going to  
18 hand you a transcript and, Your Honour, just for the  
19 record, this transcript is from the Standing  
20 Committee of Health regarding testimony that  
21 occurred before them May 16, 2005. They will not  
22 certify copies of transcripts. Anyone can download  
23 them off the internet which is what I did. I've  
24 asked that -- a contact I have in Ottawa today to  
25 see if he can get me a cleaner copy than you get off  
26 the internet. But, so you're aware of -- I mean,  
27 anyone can access this online. It's an official

1 Government Standing Committee of Health website  
2 that's open and so the address at the bottom of the  
3 page is where anyone could find it.

4 Now, Mr. Brosseau, I've handed you a copy of a  
5 transcript from the Standing Committee of Health,  
6 Monday, May 16th, 2005. And you understand what the  
7 Standing Committee of Health is?

8 A Yes.

9 Q Okay. So you understand that that's a committee  
10 within the House of Commons that has expertise in  
11 health matters?

12 A Yes.

13 Q Okay. And that it's a multi-party committee, it's  
14 not just the government that has members but members  
15 from every party sit in that committee?

16 A Yes.

17 Q Okay. And I mentioned to you yesterday about Bill  
18 C420, that bill to amend the Food and Drug Act, do  
19 you remember that?

20 A I mention -- or I remember you saying Bill 420,  
21 yeah.

22 Q Right. Okay. You didn't know the name and if I  
23 recall correctly, you weren't that familiar with the  
24 specifics of the Bill?

25 A No, I'm not.

26 Q Okay. Now -- but I'm just going to refer you to  
27 some things that were said at the Standing Committee

1 of Health on this day because what occurred is, is  
2 that Mr. Hardy and Mr. Stephan were invited as  
3 witnesses to testify.

4 But, comments were made about this  
5 investigation and I want to draw your attention to  
6 them and then ask you some questions about that. So  
7 there's some tabs there and the first tab takes us  
8 to page 22 of 48. And I've --

9 A Page 22?

10 Q It should be -- well, I've have you refer to page 22  
11 of 48. I have a highlighted portion on page 21,  
12 but, I want to draw your attention -- there's a  
13 highlight on that page saying, it starts, Mr. Colin  
14 Carrie, do you see where I'm at?

15 A Mm-mm.

16 Q Now, do you understand that Mr. Colin Carrie, at  
17 that time was a member of the official opposition,  
18 he was a Conservative?

19 A I don't know.

20 Q Okay. Mr. Colin Carrie -- and there is a legend on  
21 the first page. Mr. Colin Carrie says:

22

23 I think if you talk to the members  
24 here we'd all be totally offended --  
25 we are offended that you went through  
26 what you did here. We'd like to see  
27 that not happen to anyone else.

1  
2           Now, I mean I invite you to look in the context  
3 -- look at the transcript, but I'm going to suggest  
4 to you that they're basically addressing this  
5 comment to Mr. Hardy and Mr. Stephan and talking  
6 about the enforcement action including the search  
7 and product being turned away at the border. Okay.  
8 Just to give you the context. But, I'm going to  
9 refer you to some other comments and then just ask  
10 for some feedback from you.

11           The next place I want to refer you to is page  
12 24 and there should be a tab there. This is a  
13 comment from Mr. Bernard Bigras who is with the  
14 Parti Quebecois and he says:

15  
16           Thank you, Madam Chair. Before  
17 coming here today I went quickly  
18 through your documents the treatment  
19 you received since June 2003, is  
20 unfortunate especially with the six  
21 charges against you. I think the  
22 product you developed was not treated  
23 fairly. The fact that your product  
24 is being classified as a drug is  
25 certainly one explanation of the  
26 unfair treatment you experienced in  
27 the last few years. This is the dark

1 side of this case.

2

3 Now, the next comment that I want to refer you to is  
4 at page 40 and at the bottom where it says, "The  
5 Chair", referring to the The Chair of the standing  
6 committee, that's Bonnie Brown who is a Liberal MP  
7 at that time from Oakville, Ontario. And the Chair  
8 says:

9

10 Thank you, Madam Demers. I want to  
11 say to our witnesses that I think all  
12 of us feel badly about the experience  
13 you had. We had many letters from  
14 witnesses who wrote us, such as  
15 Madame Oxby. There was some very sad  
16 stories that we heard from people who  
17 were denied access to your product.  
18 I hope you realize that you are the  
19 only manufacturer of a single product  
20 who has been invited here. I think  
21 this is our way of making a gesture  
22 to you that we do feel badly that you  
23 underwent some pretty unpleasant  
24 times. I want to say that the  
25 unpleasant times you went through  
26 were at a period of time when your  
27 product was under drug evaluation in

1 the drug directorate. The research  
2 was shut down because it was not  
3 fulfilling some of the criteria  
4 required. If that research were  
5 being done today, if you just started  
6 a year or so ago and just got the  
7 research going today under the new  
8 category, it's not a third category  
9 but is almost is a third category  
10 because it has its own bureaucracy,  
11 its own regulations and its own  
12 rules, I don't believe you would have  
13 run into that.

14  
15 Now, Mr. Brosseau, were you aware that  
16 different Members of the House of Commons were being  
17 critical of basically the enforcement activities  
18 that you were a part of in this file?

19 A No.

20 Q You weren't aware of that at all?

21 A Nope.

22 Q So in your experience with this file, you have not  
23 seen anything circulated or sent to you to indicate  
24 that there was criticism in the House of Commons or  
25 the Standing Committee of Health concerning the  
26 activities you were involved with?

27 A No.

1 Q Now, yesterday before you testified you were sitting  
2 outside in the lobby and you were speaking with a  
3 lady, do you remember that?

4 MR. BROWN: You might want to help him out  
5 a little bit and describe where.

6 Q MR. BUCKLEY: I'll break that in it --  
7 yesterday before you testified you were in the  
8 courthouse, correct?

9 A Yes.

10 Q Okay. And part of the time you were in the  
11 courthouse you were just beyond those doors about 20  
12 feet, correct?

13 A Not yesterday, I don't think I was.

14 Q Okay. Were you here yesterday?

15 A Yes.

16 Q Have you ever sat in the chairs just beyond the  
17 doors of this --

18 A Today.

19 Q Today. You didn't do that yesterday?

20 A No.

21 Q Well, yesterday I saw you sitting with a woman.

22 A Oh, I thought I was sitting at the far end.

23 Q Okay. Having a conversation with a woman, what's  
24 the woman's name?

25 MR. BROWN: Well, sir, I wonder -- Mr.  
26 Buckley, do you know who the woman is? Maybe you  
27 could help this witness out.

1 THE COURT: I understood that he said he  
2 was not, so how can you ask him --

3 MR. BUCKLEY: Oh, I'm sorry, I didn't know  
4 he was denying that he was.

5 Q MR. BUCKLEY: So you're saying you were not  
6 sitting outside the courtroom speaking with a women,  
7 either yesterday or the day before?

8 A I remember standing by the elevators and speaking  
9 with a woman the day before.

10 Q Okay. Do you know who the woman was?

11 A No.

12 Q Okay. Were you having a conversation as to why this  
13 case was proceeding?

14 A The conversation I recall was a person said they  
15 were just down offering support.

16 Q Okay. Were you talking about why this case was  
17 proceeding?

18 A No.

19 Q Okay. And I'm not asking you from anything that  
20 might have come from the Department of Justice, but  
21 there have been conversations that you've been  
22 involved with Health Canada employees about why this  
23 case is proceeding, is that fair to say?

24 A When?

25 Q I'm asking you, have you had these conversations?

26 A With Health Canada employees?

27 Q Yes?

1 A Sure.

2 Q Okay. And what was involved in those conversations  
3 what was said to you as to why this is proceeding?

4 A Based on one charge, no DIN.

5 Q Well, that's the charge --

6 A Yeah.

7 Q -- but there was more said, wasn't there?

8 A Not that I recall.

9 Q So who was that conversation with?

10 A I don't recall that either.

11 Q Okay. Because this conversation couldn't have been  
12 that long ago.

13 A Probably not.

14 Q Okay. Well, when was this conversation --

15 MR. BROWN: Well, sir -- sir, the witness  
16 answered that he doesn't recall their conversation.  
17 And Mr. Buckley hasn't made it very clear. He's  
18 asking him if he talked to a woman yesterday. I'm  
19 sure he did. But, perhaps if Mr. Buckley has some  
20 information to provide to this witness to clarify  
21 what the question's about, maybe he'll have an  
22 answer for him. But otherwise it seems like a bit  
23 of a fishing expedition at best.

24 THE COURT: In fairness to the witness,  
25 Mr. Buckley, I understood that he recalled the  
26 conversation but did not recall who it was with.

27 MR. BUCKLEY: Okay. I thought I'd moved on

1 to ask him if he had had conversations with a Health  
2 Canada employee.

3 THE COURT: And you have --

4 MR. BUCKLEY: Right as to why -- why this  
5 was proceeding and I thought, I could be wrong that  
6 he had agreed that he had had a conversation. So I  
7 was asking him about the context of that  
8 conversation.

9 MR. BROWN: Fair enough --

10 THE COURT: Well, he indicated that he did  
11 not recall who with.

12 MR. BUCKLEY: Right. And so I was asking  
13 him when that conversation occurred and I think my  
14 friend just thought I was still talking about the  
15 conversation with the lady.

16 MR. BROWN: Yes, that's fair enough, sir.

17 MR. BUCKLEY: Sorry.

18 THE COURT: All right.

19 MR. BUCKLEY: Okay.

20 THE COURT: So, Mr. Brosseau, can you  
21 answer that question as to when that conversation  
22 took place, not with the lady, with Health -- with  
23 some other Health Canada employees?

24 A I've had conversation with Health Canada employees  
25 about it many times before the trial even started.  
26 What timeframe are you referring to?

27 Q MR. BUCKLEY: Well, I'm trying to find out

1           what the conversations were. So when you say, many  
2           times, can you maybe start from the most recent and  
3           tell us what the most recent conversation you had  
4           with a Health Canada employee about why this is  
5           proceeding?

6        A     I remember talking various times like to Kim Seeling  
7           and Sandra Jarvis and different people about the  
8           upcoming case and about who was coming and when.  
9           And I think we all knew what the trial was for.

10       Q     You mean as to what charge it was?

11       A     Yeah.

12       Q     Okay. But has there been discussion as to why  
13           Health Canada has decided to press ahead with this  
14           prosecution?

15       A     Not that I'm aware of.

16       Q     I'm going to show you a copy of a letter and, Your  
17           Honour, I only have one copy because it occurred to  
18           me during the lunch break that I wanted to cross-  
19           examine on this. But it's an October 29th, 2001,  
20           letter and attachments from Bonnie Kaplan --

21       THE COURT:                    Have you seen a copy this?

22       MR. BROWN:                    Yes, I had a brief look at the  
23           copy just before Court started, sir.

24       MR. BUCKLEY:                  Well, I do not mind standing  
25           -- you know, pursuing this later on if my friend --

26       THE COURT:                    Well, Mr. Buckley, once again,  
27           I am going to say, you do not have to stand beside

1 the witness --

2 MR. BUCKLEY: Okay.

3 THE COURT: -- that is not the practice in  
4 these Courts to do that.

5 MR. BUCKLEY: Okay.

6 THE COURT: It is all right if you want to  
7 hand them off a letter but go back to where you came  
8 from. Okay.

9 MR. BUCKLEY: Okay.

10 THE COURT: It is not the U.S. and we do  
11 respect the right to witnesses to be fairly and  
12 objectively questioned. All right? So you have  
13 given him a letter. Go ahead.

14 MR. BUCKLEY: Yes, I have.

15 Q MR. BUCKLEY: So, Mr. Brosseau, I want you  
16 to look at that letter and tell me if that looks  
17 familiar to you.

18 A No, it doesn't.

19 Q Okay. Because that's like -- it's an October 29th,  
20 2001, letter. It's shortly before you're told to  
21 basically have the clinical trials shut down. I'm  
22 going to have you turn, I think it is, to the last  
23 page. The page number is on the top right and it's  
24 page 5658.

25 And you'll see that there's a highlighted  
26 portion there, basically communicating that there  
27 are two participants left in the clinical study and

1           that they're both slotted to complete the study in  
2           November of 2001, the following month.    Were you  
3           aware of that information --

4           A     No.

5           Q     -- when you shut the clinical study down?

6           A     No.

7           THE COURT:                    If this is a relevant point,  
8           Mr. Buckley, are you going to be calling evidence to  
9           that effect?

10          MR. BUCKLEY:                 Yeah.  Well, I --

11          THE COURT:                    Because otherwise --

12          MR. BUCKLEY:                 -- I was just going to ask --

13          THE COURT:                    -- if the evidence is all  
14          contained in your question then it's not evidence  
15          before the Court.

16          MR. BUCKLEY:                 Right.  I was just going to  
17          ask that it be marked as an exhibit.  It's a letter  
18          from Bonnie Kaplan and I'm anticipating calling her  
19          as a witness and she can testify about the contents.  
20          But, in all fairness, I feel obligated to put stuff  
21          like that to the Crown witnesses so that they have  
22          an opportunity to respond.  So that's the plan.  
23          And, on that note, I'd like to ask that it be marked  
24          for identification purposes.

25          THE COURT:                    Yes, as long as you understand  
26          the point I am making --

27          MR. BUCKLEY:                 Yes.

1 THE COURT: -- that, is that all your  
2 evidence is in your question and you got an answer  
3 that says, no.

4 MR. BUCKLEY: Yes.

5 THE COURT: So do not expect it to be  
6 considered evidence.

7 MR. BUCKLEY: No, it's just -- yeah, it's  
8 just so this witness has an opportunity --

9 THE COURT: Fine.

10 MR. BUCKLEY: -- to respond to it.

11 THE COURT: All right. That is fine.

12 MR. BUCKLEY: And I'll pull that through Dr.  
13 Kaplan when she's on the stand.

14 THE COURT: As long as that is clear when  
15 you ask a question like that you will be expect to  
16 put evidence to that effect in at some later point  
17 in the trial.

18 MR. BUCKLEY: Right. And I am stuck with  
19 his answer. If he's -- if he wasn't aware of that  
20 information, he wasn't aware of it. There's really  
21 not a lot I can do with that.

22 THE COURT: No.

23 MR. BUCKLEY: So --

24 THE COURT: That is fine.

25 MR. BUCKLEY: Yes.

26 THE COURT: Just as long as that is  
27 clearly understood.

1 MR. BUCKLEY: Yes.

2 THE COURT: Now, Mr. Brown, he wishes to  
3 make it an exhibit.

4 MR. BROWN: Well, I understand he's --

5 THE COURT: I am not quite sure how it  
6 gets to be an exhibit. It is a letter -- who is it  
7 to and who is from?

8 MR. BUCKLEY: It's actually to -- what is  
9 happening is, is the Faculty of Medicine -- the  
10 University of Calgary was in a dialogue to try and  
11 get approval for this clinical trial so that it  
12 wouldn't have to be shut down. And so it's just one  
13 of those letters to -- I'll get the pronunciation  
14 wrong, but a Dr. Mithani at Health Canada from the  
15 Faculty of Medicine at the University of Calgary.

16 So and what had happened is, is Health Canada  
17 said, well, I kind of have this issue, this, this,  
18 this. And it's a response addressing some of those  
19 concerns. So --

20 THE COURT: But, in a criminal or quasi-  
21 criminal trial, how do you expect that to be put  
22 into evidence?

23 MR. BUCKLEY: You mean --

24 THE COURT: How do you expect it to be  
25 proven in evidence, sir?

26 MR. BUCKLEY: If I call Dr. Bonnie Kaplan?

27 THE COURT: Yes. Is that how you are

1 going to do it?

2 MR. BUCKLEY: Yes, I thought I'd say that.

3 I'm planning on calling --

4 THE COURT: No, that was with regards to  
5 some of the things you said but with regards to this  
6 particular letter?

7 MR. BUCKLEY: Well, more of the things that  
8 were in the letter. I mean, I don't have to enter  
9 it as an exhibit.

10 MR. BROWN: I understand --

11 MR. BUCKLEY: I'm calling her as a witness,  
12 she can give that evidence.

13 MR. BROWN: I understand, sir, the letter  
14 is from Bonnie Kaplan and I understand my friend  
15 intends to call her. On that basis I'm not going to  
16 object to it being marked as an exhibit for the  
17 purpose of identification.

18 THE COURT: Of identification, fine.

19 MR. BUCKLEY: Yeah, and, I mean, I'm kind of  
20 operating under the assumption that when you've  
21 referred a witness to something and especially some  
22 specific text --

23 THE COURT: Fine.

24 MR. BUCKLEY: -- that's it is nice to have  
25 the Court record clean in case there ever is a  
26 question, Well, what exactly was the witness  
27 referred to there. So just trying to be a little

1 cautious but --

2 THE COURT: Fine. That is fine. You did  
3 not have copies for us but I understand now that it  
4 is a letter to Dr. Kaplan --

5 MR. BROWN: From as I understand it.

6 THE COURT: Form Dr. Kaplan or to? Can  
7 you pass it up to me so I can see it. Since you do  
8 not have copies then we will talk about it some  
9 more. Thank you.

10 All right, this purports to be a copy of a  
11 letter which is unsigned from Bonnie Kaplan, PhD to  
12 a Dr. Suddika Mithani.

13 MR. BUCKLEY: And then there's just a list  
14 of attachments.

15 THE COURT: All right, it is a six page  
16 letter.

17 MR. BUCKLEY: Yes.

18 THE COURT: And you wish this introduced  
19 now as an exhibit for identification purposes?

20 MR. BUCKLEY: Yes.

21 THE COURT: All right. And there is no  
22 objection from the Crown? So this letter that I  
23 have just described will be Exhibit --

24 MR. BROWN: I believe it's 'T', sir.

25 THE COURT: -- 'T' -- Exhibit 'T' for  
26 identification purposes.

27 MR. BUCKLEY: Thank you, Your Honour.

1 MR. BROWN: Excuse me, Your Honour, could  
2 you just tell me what the date is for my records?

3 THE COURT: October 29th, 2001.

4 MR. BROWN: Thank you.

5 THE COURT: Madam clerk, will you please  
6 make copies for everybody?

7 THE COURT CLERK: Yes, Your Honour.

8 THE COURT: All right. Thank you.

9

10 \*EXHIBIT 'T' For Identification - Letter From Dr. Bonnie  
11 \*Kaplan Dated October 29, 2001 to Dr. Siddika Mithani

12

13 MR. BUCKLEY: Now, Your Honour, at this time  
14 I don't have further questions for this witness  
15 except that I'm reserving the right to cross-examine  
16 on the 800 crisis line issue, assuming that there is  
17 going to be disclosure forthcoming.

18 THE COURT: That would be reasonable.

19 MR. BROWN: Yes, sir, I will recall this  
20 witness and Mr. Buckley can cross-examine him on  
21 that record, sir.

22 THE COURT: On the records.

23 MR. BROWN: On the records assuming they  
24 are produced.

25 THE COURT: If there are any relating to  
26 the 800 number, otherwise you are concluding your  
27 cross-examination?

1 MR. BUCKLEY: Yes.

2 THE COURT: All right.

3 MR. BROWN: Thank you, sir.

4 MR. BUCKLEY: Thank you, Your Honour.

5 THE COURT: You understand, sir, that you  
6 may be subject to recall depending upon the  
7 documentation that Mr. Brown is trying to obtain  
8 from Health Canada in Ottawa. And therefore under  
9 those circumstances once again I am going to ask you  
10 that because you -- or direct you that since you may  
11 be subject to recall you cannot discuss the evidence  
12 you have given here until after that determination  
13 is made, do you understand?

14 A Yes.

15 THE COURT: Okay. Thank you very much,  
16 sir. Oh, do you have anything on re-direct?

17 MR. BROWN: Oh, sorry --

18 THE COURT: Before we close off your  
19 rights if you have --

20 MR. BROWN: I actually do have a couple of  
21 questions, thank you sir.

22 THE COURT: All right. If you have any  
23 questions go ahead and ask this witness.

24 MR. BROWN: Thank you, sir. I just have a  
25 couple of question in re-direct.

26

27 \*Mr. Brown Re-examines the Witness

1

2 Q MR. BROWN: With respect to Exhibit 'S', I  
3 wonder if, madam clerk, you can hand him Exhibit  
4 'S'.

5 Mr. Brosseau, I had the clerk hand you what I  
6 understand is an article from the Ottawa Leader  
7 Post, I believe, dated Friday, July 18th, 2003 --  
8 Regina Leader Post, I'm sorry, I moved it east.

9 I just want to point to a couple of things to  
10 you, as my friend has asked you to take a look at a  
11 few specific portions of the article I'm going to  
12 ask you to take a look at a couple other portions of  
13 the article, as well. Now, do you remember this  
14 article and remember looking at it earlier?

15 A Earlier this morning, yes.

16 Q Yes. Yes, all right. And you'll remember then my  
17 friend had highlighted a portion of the article and  
18 had you take a look at that, right?

19 A Yes.

20 Q Okay. I've -- if you can look down below the  
21 highlighted portion, I'll call it the third full  
22 paragraph on the bottom of the first column,  
23 starting with the words, Kaj Korvela, a name.

24 A Yes.

25 Q Do you see where I am?

26 A Yes.

27 Q Can you just take a look at the wording there? I'm

1 going to read it to you and see if you agree that  
2 that's what it says:

3

4 Kaj Korvela the head of the Calgary  
5 based organization for bipolar  
6 affective disorders said he doesn't  
7 believe the supplement is as  
8 effective as its supporters say. He  
9 said some people who drop their  
10 prescribed medications to take a  
11 EMPowerplus didn't have a positive  
12 result.

13

14 You see that?

15 A Yes.

16 Q And do you see below it, it says: "It was too  
17 expensive. It made them worse and most of them went  
18 back on their medication." Do you see that, as  
19 well?

20 A Yes.

21 Q All right. My friend didn't direct you to that  
22 portion of the article?

23 A No.

24 Q All right. I'm going to ask you to look at another  
25 portion --

26 THE COURT: I am sorry, where is that with  
27 that name?

1 MR. BROWN: That's in the first column,  
2 sir, I've called it the third full paragraph from  
3 the bottom of the first column. The name is K-A-J  
4 K-O-R-V-E-L-A, Kaj Korvela.

5 THE COURT: All right. That's fine.  
6 Thank you.

7 MR. BROWN: All right. Thank you, sir.

8 Q MR. BROWN: And the next portion I'm going  
9 to have the witness look at is right near the very  
10 top of the second column, first full paragraph, it  
11 says:

12

13 "Krista Apps (phonetic), Health  
14 Canada spokeswoman said the companies  
15 have yet to provide scientific  
16 evidence the product is safe and  
17 effective."

18

19 Do you see that?

20 A Yes.

21 Q And below that: "We're taking action to protect the  
22 health of Canadians?"

23 A Yes.

24 Q And then she said:

25

26 Employees of TrueHope said they  
27 planned to protest Friday outside the

1                   Edmonton office of Federal Health  
2                   Minister Anne McLellan.

3

4                   See that as well?

5           A        Yes.

6           Q        And then if you'll go down, I guess it's the fourth  
7                   full paragraph from the bottom, you'll see that it  
8                   starts with, "The company claims", do you see that  
9                   paragraph?

10          A        Yes.

11          Q        It says:

12

13                   The company claims the supplement can  
14                   be used to treat bipolar disorders,  
15                   anxiety, panic attacks, attention  
16                   deficit disorder, schizophrenia,  
17                   autism, tourettes syndrome,  
18                   fibromyelga, and obsessive compulsive  
19                   disorder.

20

21                   Do you see that?

22          A        Yes.

23          Q        And below that:

24

25                   Apps said, TrueHope and Synergy have  
26                   never filed a new drug submission  
27                   despite several requests to do so and

1           have refused to comply with its  
2           orders to stop selling EMPowerplus in  
3           the meantime.

4

5           Do you see that, as well?

6       A     Yes.

7       MR. BROWN:                   Thank you, sir. That's all my  
8           questions, sir. Thank you.

9       THE COURT:                   Anything arising?

10      MR. BUCKLEY:                  No, nothing at all, Your  
11           Honour.

12      THE COURT:                   All right. Thank you.

13           Thank you, sir. And again the caution or  
14           direction is not to discuss your evidence until the  
15           matter is -- depending on until the matter is  
16           resolved with regards to further cross-examination  
17           on the documentation pending with relation to the  
18           800 line.

19      A     Okay.

20

21      THE COURT:                   All right. Very good. Thank  
22           you. You may step down.

23           Mr. Brown, the next Crown witness.

24      (WITNESS STANDS DOWN)

25      MR. BROWN:                   Sir, my next witness I intend  
26           to call is Larry Young. But, before we get to that,  
27           Mr. Buckley and I had a discussion with one of my

1 other witnesses, Kim Seeling, who I've advised the  
2 Court I would be calling. She's essentially a  
3 continuity witness only. She was the exhibit person  
4 as a result of the search.

5 As I understand it, Mr. Buckley is prepared to  
6 admit her evidence. And as a result, if that is  
7 indeed the case, I will ask that a number of  
8 exhibits that have been marked for identification to  
9 be made full exhibits in the trial.

10 MR. BUCKLEY: Your Honour, my friend speaks  
11 correctly. We had the opportunity to meet with Ms.  
12 Seeling last night to see if we could get rid of the  
13 need of calling her just for continuity. And I was  
14 satisfied the continuity is met in this case. So my  
15 friend is speaking correctly.

16 THE COURT: Very good.

17 MR. BROWN: So, sir, in that event then I  
18 understand that the following exhibits have been  
19 marked as exhibits for identification and now can  
20 become full exhibits. That would be Exhibit 'A',  
21 Exhibit 'B' --

22 THE COURT: Well, just go slowly, I am  
23 trying to mark them.

24 MR. BROWN: Exhibit 'A' --

25 THE COURT: That is the one I do not have  
26 a copy of that is the --

27 MR. BUCKLEY: That's the box with the

1 product --

2 MR. BROWN: That's the box --

3 THE COURT: With the two products and some  
4 other papers, okay.

5 MR. BROWN: Right.

6 THE COURT: All right. So unless I hear  
7 from you otherwise, Mr. Buckley --

8 MR. BUCKLEY: Oh yeah, no --

9 THE COURT: -- this is by agreement then.  
10 Okay.

11 MR. BUCKLEY: Yes, it is, Your Honour.

12 THE COURT: All right, Exhibit 'A', will  
13 now be Exhibit 7, I believe.

14 MR. BROWN: That's correct, sir.

15 THE COURT: All right.

16

17 \*EXHIBIT 7 - Cardboard Box Containing One Bottle of  
18 \*EMPowerplus Marked E-01; Another Bottle of EMPowerplus  
19 \*Powder Formula marked E-02; An Invoice Which was a Copy  
20 of Ms. Jarvis' Invoice Marked E-03; An Issue of a  
21 Newsletter Entitled Common Ground Marked by Ms. Jarvis as  
22 E-04; A Letter on TrueHope Letterhead Marked as E-05; and  
23 a Copy of Ms. Jarvis' husband's Visa Statement Marked by  
24 her as E-06, Formerly Exhibit 'A' for Identification

25

26 MR. BROWN: The next exhibit would be  
27 Exhibit 'B', which is marked LY111, that's the

1 search document number.

2 THE COURT: Just a moment. Just give me  
3 a moment. I want to see if I, in fact, have a copy  
4 of it.

5 MR. BROWN: Yes. If not, I believe we  
6 handed one up, sir, but if not we'll certainly make  
7 sure that you have one. It should be a single page,  
8 sir. Sir, there is some possibility that I didn't  
9 hand you a copy up -- I'm not certain but --

10 THE COURT: Well, do you have an  
11 additional copy there?

12 MR. BROWN: I do, sir, you can have this  
13 copy right here.

14 THE COURT: All right.

15 MR. BROWN: The next one, sir, should be  
16 LY -- or sorry, Exhibit --

17 THE COURT: Exhibit 'B' will be Exhibit 8.

18 MR. BROWN: Right, sorry.

19

20 \*EXHIBIT 8 - Formerly Exhibit 'B' for Identification,  
21 \*Document Labelled: Number of Bottles Ordered, Dated  
22 \*March 5, 03, New Participants, Old Participants, also  
23 \*Labelled LY111 and Numbered 00257

24

25 THE COURT: Go ahead.

26 MR. BROWN: All right. The next one, sir,  
27 Exhibit 'C' should be marked LY192, it's

1 approximately 13 or 14 pages in length, sir.

2 THE COURT: All right. Exhibit 'C' is  
3 then Exhibit 9.

4 MR. BROWN: Sorry, sir, you didn't receive  
5 copies of that one, either?

6 THE COURT: Oh, just a moment --

7 MR. BROWN: There were the -- I know the  
8 LY194's were -- which I'll be addressing next --

9 THE COURT: Let us just back up here. Yes  
10 because there were several documents or piles of  
11 documents --

12 MR. BROWN: Right --

13 THE COURT: -- sent up to me and, in fact,  
14 I ended up putting them in these binders. So, yes,  
15 I do have them.

16 MR. BROWN: All right. Thanks, sir.

17 THE COURT: They are all right here.

18 MR. BROWN: So if Exhibit 'C' can become  
19 Exhibit 9 then?

20 THE COURT: Okay, just give me a second to  
21 catch up here. All right. So Exhibit 'D'?

22 MR. BROWN: Exhibit 'C' will become  
23 Exhibit 9.

24 THE COURT: Done.

25

26 \*EXHIBIT 9 - Formerly Exhibit 'C' for Identification,

27 \*Email from Maximum ASP Billing Labelled LY192, Pages

1 \*Numbered 006841 to 006854, Sent Thursday, October 31,  
2 \*2002 to astephan@truehope.com Containing Pages With  
3 \*UniCDomains.com as a header  
4

5 MR. BROWN: Exhibit 'D' will become  
6 Exhibit 10, it's the LY194-2.

7 THE COURT: Right.  
8

9 \*EXHIBIT 10 - Formerly Exhibit 'D' for Identification,  
10 \*Manilla file folder labelled LY194-2 and Orders Jan. 03  
11 \*Containing Pages Stamped 006974 to 007152  
12

13 MR. BROWN: Exhibit 'E' would become  
14 Exhibit 11, that's LY194-3.

15 THE COURT: Yes.  
16

17 \*EXHIBIT 11 - Formerly Exhibit 'E' for Identification,  
18 \*Manilla File Folder Labelled LY194-3 and Orders February  
19 \*2003, Containing Pages Stamped 007153 to 007324  
20

21 MR. BROWN: Exhibit 'F' would become  
22 Exhibit 12. That's LY194-4.

23 THE COURT: Yes.  
24

25 \*EXHIBIT 12 - Formerly Exhibit 'F' for Identification,  
26 \*Manilla File Folder Labelled LY194-4 and Orders March,  
27 \*2003, Containing Pages Stamped 007325 to 007486

1

2

MR. BROWN: Exhibit 'G' would become

3

Exhibit 13. That's LY194-5.

4

THE COURT: Yes.

5

6

\*EXHIBIT 13 - Formerly Exhibit 'G' for Identification,

7

\*Manilla File Folder Labelled LY194-5 and Orders April

8

\*2003, Containing Pages Stamped 007487 to 007624

9

10

MR. BROWN: And Exhibit 'H' would become

11

Exhibit 14. That's Ly194-6.

12

THE COURT: Yes.

13

14

\*EXHIBIT 14 - Formerly Exhibit 'H' for Identification,

15

\*Manilla File Folder Labelled LY194-6 and Orders May

16

\*2003, Containing Pages Stamped 007661 to 007834

17

18

MR. BROWN: And those should be all of the

19

exhibits I've had issues with respect to continuity.

20

And just so you know, sir, we've drafted an order

21

from this morning. I've just given my friend a copy

22

for his perusal and hopefully we can sign off on

23

that sometime today.

24

THE COURT: What is that?

25

MR. BROWN: That's the order that you

26

directed this morning.

27

THE COURT: The order for disclosure?

1 MR. BROWN: Yes, sir.

2 THE COURT: Madam clerk, you can give that  
3 back. I already had one --

4 MR. BROWN: Thank you, sir.

5 THE COURT: Now, about the order that is a  
6 draft of the order --

7 MR. BROWN: Yes, it is --

8 THE COURT: -- and Mr. Buckley's had a  
9 chance to see it?

10 MR. BROWN: He's looking at it right now.  
11 I just got it here sir, one minute ago sir.

12 THE COURT: All right. I will want to  
13 take a look at it, as well.

14 MR. BROWN: Yes, sir. Sir, I can advise  
15 that we believe that the documents requested as a  
16 result of this order have been found and are being  
17 faxed to our Calgary office. They will be brought  
18 over here by hand as soon as they're received and  
19 the originals are being couriered overnight.

20 THE COURT: Mr. Buckley, any comments on  
21 the order?

22 MR. BUCKLEY: No, I think that that covers  
23 what was ordered this morning.

24 THE COURT: And I appreciate you raising  
25 me to the position of Assistant Chief Judge for  
26 Edmonton Rural, John Maher, but it's not the correct  
27 spelling of my name. It's a different Maher. Fine.

1

2 MR. BROWN: Sorry about that, sir.

3 THE COURT: That's fine, no problem.

4 You need this I take it because they want something  
5 faxed to them?

6 MR. BROWN: No, sir, I am -- I simply  
7 assume that for the purposes of the record that it  
8 would be appropriate to have the order on the  
9 record.

10 THE COURT: All right. Well, that is  
11 fine. How many copies do you have?

12 MR. BROWN: We have three copies, sir.

13 THE COURT: Do you want it signed now?

14 MR. BROWN: Shall we sign them up?

15 THE COURT: We might as well as do that  
16 now and move on.

17 MR. BROWN: All right. Thank you, sir.

18 THE COURT: Madam clerk, can you see that  
19 these are entered, one is put on the court file and  
20 one is given to each of Crown and defence counsel,  
21 copy to me. You will have to make one more copy. A  
22 photocopy is fine for me.

23 MR. BROWN: Thank you, sir.

24 THE COURT: Thank you.

25 MR. BROWN: All right. Now, sir, my next  
26 witness is Larry Young.

27 THE COURT: Just before you go onto Mr.

1 Young --

2 MR. BROWN: Yes --

3 THE COURT: -- I am wondering if it is not  
4 more effective to make a copy of the order an  
5 exhibit rather than just filing it on the court  
6 file? The point I am making is that the court file  
7 itself may not form part of an official record  
8 involving transcripts and exhibits, that may be  
9 referable to a higher court --

10 MR. BROWN: Yeah, I think --

11 THE COURT: -- where you have matters such  
12 as release documents or whatever. It might not form  
13 part of that record and something just filed on the  
14 court file might not form part of the record.

15 MR. BROWN: I take your point, sir, and I  
16 think it makes sense in the circumstances that  
17 perhaps it should be marked as an exhibit.

18 THE COURT: I think that is what we will  
19 do. So, madam clerk, I want you to have it filed  
20 stamped first with an extra copy made for me and  
21 then when you do that, we will do that on a break  
22 and then after you do that we will make it the next  
23 exhibit.

24 MR. BROWN: Thanks.

25 THE COURT: All right.

26 MR. BROWN: I will call Mr. Young then and  
27 we'll proceed. I can say, sir, that Mr. Young, I

1 don't think is going to be that long. And  
2 unfortunately my next witness I had anticipated  
3 calling either Thursday or Friday. I'm not sure she  
4 is even in Calgary yet. So although Mr. Young will  
5 probably not even take us to -- certainly not till  
6 4:30 and maybe not til 4:00, my last witness won't  
7 be available until tomorrow.

8 THE COURT: You were expecting a longer  
9 cross-examination by Mr. Buckley or --

10 MR. BROWN: I was expecting Ms. Seeling to  
11 take a half day.

12 THE COURT: Yes.

13 MR. BUCKLEY: We did get rid of Ms. Seeling.  
14 It's just after spending time with her to go over  
15 her evidence last night, it really wasn't necessary.  
16 So -- and I don't think courts appreciate going  
17 through evidence that isn't --

18 THE COURT: If it can be reached by  
19 admission by agreement that is obviously preferable.  
20 That is fine.

21 MR. BROWN: Thank you, sir. I expect Mr.  
22 Young will maybe take half an hour, something like  
23 that or less, depending on how much cross-  
24 examination Mr. Buckley needs to do.

25 THE COURT: All right. That's fine.

26 MR. BROWN: I believe Ms. Eacott has  
27 stepped out to bring Mr. Young in.

1 THE COURT: That was certainly in keeping  
2 with the case management conferences and discussions  
3 that we had. Was that if you can in some way  
4 shorten the trial on items where admissions can be  
5 obtained, then that is certainly worthwhile to do  
6 because there is other things that will happen and I  
7 am serious about that. Cross-examinations often  
8 taken longer, examinations in-chief often take  
9 longer than the estimate. So if we can save some  
10 time in a non-contentious matter like this, then  
11 that is good.

12 MR. BROWN: Right. Thank you, sir.

13 MR. BUCKLEY: No and part of the difficulty  
14 was it's just there have some time constraints so --  
15 you know for getting --

16 MR. BROWN: That's a fair comment, sir.

17 THE COURT: I understand. All right. Who  
18 are you calling? Mr. Young?

19 MR. BROWN: This is Mr. Young, Larry  
20 Young.

21 THE COURT: Over here please, sir, on this  
22 side.

23 MR. BROWN: I don't imagine Mr. Young  
24 needs the chair, sir.

25 THE COURT: Around over there. Madam  
26 clerk, do you want to move the chair out of there so  
27 it doesn't get in the way? Thank you. Mr. Young.

1

2 \*LARRY M. YOUNG, Sworn, Examined by Mr. Brown

3

4 THE COURT: Sir?

5 MR. BROWN: Thanks, sir.

6 THE COURT: Go ahead.

7 Q MR. BROWN: Mr. Young, can you tell us  
8 what's your current job position?9 A I'm a compliance specialist. We call it BTOX  
10 compliance specialist. BTOX stands for blood --  
11 blood, tissues, organ and xenograph.12 Q All right. And how long have you been in that  
13 position?

14 A I've been in that position for six years.

15 Q All right. And what did you do before that?

16 A I was compliance officer, working the same  
17 organization.18 Q All right. Now, blood, tissue, organs doesn't quite  
19 seem to fit the nature of this particular case, can  
20 you tell us how you got involved in this matter with  
21 Synergy and TrueHope?22 A Okay. Back in the beginning of 2003, my manager,  
23 Dennis Shelley, was sick at that time. He's being  
24 hospitalized and I was acting as a supervisor in  
25 that capacity for four months starting from February  
26 2nd, 2003 to May 20th, 2003.

27 Q And so in your supervisory capacity what -- what

1 area did you supervise?

2 A Basically, looking after the daily operation,  
3 basically I'm acting for Rod Neske, he was the  
4 supervisor at that time. Because Dennis was sick so  
5 he was acting in Dennis' position.

6 Q Okay. Now, you at some point were directed or asked  
7 to participate in a search at the TrueHope location  
8 at Raymond?

9 A That's right. I got an email from Rod Neske asking  
10 me to be part of the search warrant that was in --  
11 sometime in June 2003.

12 Q Okay.

13 A End of June 2003.

14 Q All right. Now, we've heard some evidence already  
15 about how the search warrant was undertaken. So you  
16 were just one of many people who were involved in  
17 the search?

18 A Yeah, the search was done in the summer. We usually  
19 (INDISCERNIBLE) staff that was pretty low, so in a  
20 small inspection unit like ourselves everybody chips  
21 in. So I got involved.

22 Q Okay. And so when you were actually in Raymond and  
23 conducting part of the search, you were actually  
24 involved in looking for documentary evidence?

25 A Correct.

26 Q Okay. I'm going to show you a series of documents  
27 and I'll just ask you if you recognize the documents

1           and can make some comments on each one. The first  
2           one I'm going to show you is marked as LY155.

3   THE COURT:                           Where is it marked?

4   A    This is LY155.

5   THE COURT:                           And you are pointing to a  
6           stamp across a date that is lettered Health Canada  
7           and that is sealed in a brown envelope.

8   A    That's right.

9   THE COURT:                           And that has initials on it.

10           Okay.

11   MR. BROWN:                          That's right, sir. And  
12           because continuity has been admitted those are Kim  
13           Seeling's initials, so I don't think we need to go  
14           through that process.

15   THE COURT:                           All right.

16   Q    MR. BROWN:                          Perhaps the scissors would be  
17           -- all right, you've opened the envelope?

18   A    Yeah.

19   Q    All right. And if you could just tell me what the  
20           title of the document is.

21   A    The top left hand corner states, "TrueHope  
22           Nutritional Support Limited employee phone list."

23   Q    All right. And do you see the identification number  
24           on the right -- top right?

25   A    Yes, it's LY155.

26   Q    All right.

27   MR. BUCKLEY:                         Your Honour, could I just stop

1 my friend until -- I'm just having trouble finding  
2 that document.

3 THE COURT: That is fine, take a moment.

4 MR. BUCKLEY: Thank you, Your Honour.

5 MR. BROWN: Continue?

6 MR. BUCKLEY: Yes.

7 MR. BROWN: All right. Thank you, sir.

8 Q MR. BROWN: All right, sir, and you've  
9 indicated that on the top right there is an  
10 identification number that's LY155?

11 A Yeah, there's also a stamp -- numerical stamp there.

12 Q Right.

13 A 005480.

14 Q Okay. Now, the LY155, LY that refers to your  
15 initials?

16 A That's right.

17 Q Larry Young, yes?

18 A Yes.

19 Q All right. And so is this a document that you  
20 recall identifying for seizure?

21 A That's right.

22 Q Okay. Thank you.

23 A For the purpose of tracking number of items that I  
24 came across and is relevant to the search warrant.

25 Q Right. Okay. Thank you.

26 MR. BROWN: Sir, I wonder if this could be  
27 marked as the next exhibit, Exhibit 15?

1 THE COURT: Is that our next number, madam  
2 clerk?

3 THE COURT CLERK: Yes, it is.

4 THE COURT: All right. Exhibit 15 will be  
5 the document previously identified as LY155, the  
6 TrueHope Employee Phone List.

7

8 \*EXHIBIT 15 - TrueHope Employee Phone List, Labelled

9 \*LY155, Containing Page Stamped 005480

10

11 THE COURT: I do not know if you need to  
12 keep those envelopes, madam clerk. Do you want  
13 them?

14 A I have no particular need for them.

15 MR. BROWN: For sure, sir, because  
16 continuity has been admitted I don't see that  
17 there's any problem. This is now a full exhibit.

18 THE COURT: Yes, it just makes the  
19 handling of the exhibits a little easier if we do  
20 not have to be dealing with it.

21 MR. BROWN: I certainly don't see any need  
22 for it.

23 THE COURT: Okay. That is fine.

24 Q MR. BROWN: Sir, the next document I'm  
25 handing up is marked LY149. All right, Mr. Young,  
26 if you can just take a look at that document, what's  
27 the title on the top left?

1 A At the top left-hand corner that's the title as,  
2 TrueHope/Synergy Group Corporation Organization.

3 Q All right. And on the top right?

4 A Top right it has my LY149 label.

5 Q Okay. And the page number?

6 A Page number --

7 Q At the top right the sequential numbering.

8 A The sequential number is 005401.

9 Q Okay. And if you could just flip to the back page  
10 and tell us what the sequential numbering ends at  
11 please?

12 A Yes, 005416.

13 Q All right. Thank you.

14 MR. BROWN: Sir, if we could mark that as  
15 the next exhibit, number 16, I believe.

16 THE COURT: All right. The next exhibit  
17 will be Exhibit 16. It will be a document produced  
18 and identified as LY149, it is entitled  
19 TrueHope/Synergy Group Corporate Organization and it  
20 would appear to be 16 pages from 005401 to 005416.

21 MR. BROWN: Thank you, sir.

22

23 \*EXHIBIT 16 - Document Entitled TrueHope/Synergy Group  
24 \*Corporate Organization, Labelled LY149, Containing  
25 \*Pages Stamped 005401 to 005416

26

27 MR. BROWN: Sir, the next document I'm

1           handing up is LY156.

2       THE COURT:                   Mr. Buckley, unless I hear  
3           otherwise, I am assuming there is no objection to  
4           these documents?

5       MR. BUCKLEY:                That's correct, Your Honour.

6       THE COURT:                   All right. Thank you.

7       Q     MR. BROWN:            All right, sir, you've opened  
8           the package of LY156, it is now. Can you tell us  
9           what the title is on the top left-hand corner,  
10          please?

11      A     This is called Synergy Expansion.

12      Q     All right and in the middle the LY?

13      A     Yeah, that's my label LY156.

14      Q     All right. And what's the number at the top right?

15      A     Yes, it's 005481.

16      Q     All right. And the last page?

17      A     005486.

18      Q     And I'm just going to confirm that everybody's is  
19           either -- is everybody's copy double-sided or at  
20           least the pages are all present one way or the  
21           other?

22      A     The document is actually double-sided.

23      Q     Yes, as is my copy. Sir, is your copy double-sided,  
24           as well?

25      THE COURT:                   It is double-sided, upside  
26           down but double-sided.

27      MR. BROWN:                Yes, I appreciate mine is as

1 well, sir. All right. Thank you.

2 THE COURT: That is fine. Exhibit 17 will  
3 be the document previously referred to as LY156,  
4 entitled Synergy Expansion and with the sequential  
5 numbering of 005481 to 005486.

6

7 \*EXHIBIT 17 - Document Entitled Synergy Expansion  
8 \*Overview, Labelled LY156, Containing Pages Stamped  
9 \*005481 to 005486

10

11 Q MR. BROWN: Sir, the next document I'm  
12 handing up is LY157. You should have a one page  
13 document there.

14 A Yes, a one page document.

15 Q And if you can look near the top left there appears  
16 to be something like a logo?

17 A Yes, it's a Synergy logo.

18 Q Yes and beside that can you tell me the name that's  
19 listed there, the full name?

20 A Synergy Group of Canada Inc. --

21 Q Okay --

22 A -- Box 1254, Cardston, Alberta, Canada and then the  
23 postal code.

24 Q All right. And the top right, you'll see the  
25 outline 157?

26 A That's right.

27 Q And underneath the can you read out what's on there?

1 A Phone number 1-888-TrueHope and then with a fax  
2 number below that --

3 Q Yes.

4 A -- 403-758-6073.

5 Q And below that?

6 A Email address TrueHope@truehope.com.

7 Q And below that?

8 A www.truehope.com.

9 Q And the sequential numbering on that document?

10 A 005487.

11 Q Thank you.

12 MR. BROWN: Sir, if we could mark that as  
13 the next exhibit, I believe that's number 18.

14 THE COURT: All right. Exhibit 18 will be  
15 the document formerly described LY157, a one page  
16 document, letterhead of Synergy Group of Canada Inc.  
17 sequential number 05487. It is dated March 20th,  
18 2003.

19

20 \*EXHIBIT 18 - Document Entitled Synergy Group of Canada

21 \*Inc. Labelled LY157, Containing Page Stamped 005487

22

23 Q MR. BROWN: Sir, the next document I'm  
24 handing up is numbered LY160. All right, Mr. Young,  
25 you see on the top left there's a title there, could  
26 you tell us what the title of the document is?

27 A Yeah, TrueHope Nutritional Support Ltd. Transactions

1 by Account Report, 6/1/2003, I suppose this would be  
2 the June 1st, 2003 --

3 Q Right.

4 A -- to June 30th, 2003.

5 Q All right. And just below that it says?

6 A Sorted by transaction number.

7 Q All right. And you see your identifying mark there?

8 A That's right, it's LY160.

9 Q And the sequential numbering?

10 A 005490.

11 Q And the end page sequential numbering?

12 A 005507.

13 MR. BROWN: Sir, I'm going to ask that  
14 those, I believe that's 18 pages, sir, be marked as  
15 the next exhibit.

16 THE COURT: All right. Exhibit 19 will be  
17 the document before me described as LY160, it's  
18 entitled TrueHope Nutritional Support Ltd.  
19 Transactions by Account Report, 6/1/2003 to  
20 6/30/2003, sequential numbering 005490 to 005507.  
21 So that's Exhibit 19.

22 MR. BROWN: Thank you, sir.

23

24 \*EXHIBIT 19 - Document Entitled TrueHope Nutritional  
25 \*Support Ltd. Transactions by Account Report, 6/1/2003 to  
26 \*6/30/2003, Labelled LY160, Containing Stamped Pages  
27 \*005490 to 005507

1

2 Q MR. BROWN: Sir, the next document I'm  
3 handing up is LY163. All right. Mr. Young, I see  
4 that the next document or series of documents is  
5 actually inside a purple folder, correct?

6 A Correct.

7 Q And your identification number is actually on the  
8 outside of the folder?

9 A Yes.

10 Q That's LY163?

11 A That's right.

12 Q And there's a -- what I believe to be a yellow  
13 sticky on the outside of the folder?

14 A Right.

15 Q And do you recall whether or not that yellow sticky  
16 was on the folder when you found it?

17 A Yes.

18 Q Okay. Now, if you could just take a look inside  
19 please.

20 A Okay.

21 Q And if you could just read us the title of the first  
22 -- I guess it would be the first actual page inside  
23 the folder?

24 A Yeah, the first page the left-hand corner, top left-  
25 hand corner, Synergy Group of Canada Limited Income  
26 Statement January 01, 03, I suppose that means 2003,  
27 to January 31, 2003.

1 Q All right. And if you could take a look at the  
2 sequential numbering please?

3 A Okay. The first number on the right-hand side is  
4 005513.

5 Q And the last number please?

6 A And the last number is 005524.

7 Q All right. Thank you.

8 MR. BROWN: Sir, if the folder and  
9 document inside could be marked as the next exhibit  
10 please, I believe it would be number 20.

11 THE COURT: All right. Exhibit 20 will be  
12 the folder with documentation included, sequential  
13 numbering 005513 to 005524. And on the first page  
14 it is entitled Synergy Group of Canada Ltd. Income  
15 Statement January 1st, 2003 to January 31st, 2003.

16

17 \*EXHIBIT 20 - Purple Folder with Documentation Included,  
18 \*First Page Entitled Synergy Group of Canada Ltd. Income  
19 \*Statement January 1st, 2003 to January 31st, 2003  
20 \*Labelled LY163, Containing Pages Stamped 005513 to  
21 \*005524

22

23 MR. BROWN: Sorry, sir, we're just trying  
24 to track down the rest of your copies for the other  
25 documents here.

26 THE COURT: Fine.

27 MR. BROWN: Thanks, sir. You can just

1 hand up my copies of the documents. Sorry, sir, we  
2 don't see to have the binder handy.

3 Q MR. BROWN: I'll hand up the next one  
4 which is LY177.

5 A That's actually inside the folder.

6 Q I see. So, Mr. Young, if you could just tell us,  
7 you pulled out a buff coloured folder?

8 A Yes, the -- on top of the folder is labelled as  
9 LY177.

10 Q All right. And if you could take a look inside in  
11 the top left-hand corner, please?

12 A Yes, Synergy Group of Canada Limited Income  
13 Statement, January 1st, 2003 to February 28th, 2003  
14 actual. The second -- the third line, Income  
15 Statement March 1st, 2003 to December 31st, 2003  
16 Proforma.

17 Q Okay. And if you could just tell us what the  
18 sequential numbering of that document is please?

19 A It starts 005538.

20 Q Right and if you go to the last page, please?

21 A And ends 005547.

22 THE COURT: 47 or 48?

23 Q MR. BROWN: And, sir, you have on the dock  
24 I see a half of page that seemed to fall out of the  
25 envelope --

26 A Oh, right. Sorry.

27 Q -- can you tell me if that's got numbering on it?

1 A It's actually 005548, it fell off.

2 Q All right. Thank you.

3 MR. BROWN: Sir, if that could  
4 collectively be marked as the next exhibit please?

5 THE COURT: All right. Exhibit 21 will be  
6 the folder and enclosed documents, sequentially  
7 numbered from 005538 to 005548, the first page is  
8 entitled, Income Statements Actual and Proforma.

9

10 \*EXHIBIT 21 - Folder and Enclosed Documents, First Page  
11 \*Entitled Income Statements Actual and Proforma, Labelled  
12 \*LY177 Containing Pages Stamped 005538 to 005548

13

14 Q MR. BROWN: Sir, the next document or  
15 group of documents I'm handing up is LY180.

16 A I just opened the envelope labelled LY180.

17 Q All right. Inside you pulled out a buff coloured  
18 folder again?

19 A The cover, yes.

20 Q And it's got your mark on it?

21 A That's right, LY180.

22 Q Okay. And is there any writing on the folder at  
23 all?

24 A The tab of the folder is Synergy CDN, I guess stand  
25 for Canada.

26 Q Okay. And then there's just a serial number or  
27 something like that underneath that?

1 A Oh, yes, that's right.

2 Q That's all right, you don't need to read the number  
3 out, that's fine.

4 A Okay.

5 Q If you can just turn to the next page, please.  
6 Actually I'm going to ask you to turn to the page  
7 after that 005618.

8 A 005618?

9 Q Yes.

10 A Yes.

11 Q And the title of the document?

12 A It's ATB Financial.

13 Q And it's actually in the top right in this case?

14 A Oh, yeah, it's Merchant Activity Statement.

15 Q And the date?

16 A With the statement date 2003 May 31st.

17 Q All right. And just below that on the left-hand  
18 side there's a small serial number and then an  
19 identification number, a group or a company, you see  
20 where I'm talking about there?

21 A Okay. Just above the Synergy Group of Canada Inc.?

22 Q Right, that's what I'm asking you about, the Synergy  
23 Group of Canada.

24 A Yes.

25 Q All right. And the sequential numbering on that  
26 page?

27 A 005618.

1 Q And if you could go -- right if you could go to the  
2 last page then and give us the last sequential  
3 number?

4 A Of the stapled document --

5 Q Of all the documents that you should have --

6 A Okay.

7 Q Yes, all of them together, sir, the very last page?

8 A Yeah, I have a last page here with the serial stamp  
9 005790.

10 Q All right.

11 MR. BROWN: Sir, if that could be marked  
12 as the next exhibit then, number 22, I believe.

13 THE COURT: Are you doing anything with  
14 005617, the first page or --

15 MR. BROWN: Oh, I'm sorry, sir, yes. If  
16 that also could be included 005617.

17 THE COURT: All right.

18 MR. BROWN: Thank you.

19 THE COURT: All right. The next exhibit  
20 will be Exhibit 22, initially identified as LY180,  
21 it's a folder containing documentation sequentially  
22 numbered from 005617 to 005790. And it goes on  
23 document numbered 005618 is entitled, Merchant  
24 Activity Statement in the name of the Synergy Group  
25 of Canada Inc.

26

27 \*EXHIBIT 22 - Folder Containing Documentation, Document

1 \*Entitled Merchant Activity Statement of Synergy Group of  
2 \*Canada Inc., Labelled LY180, Containing Pages Stamped  
3 \*005617 to 005790  
4

5 MR. BROWN: Sir, next document I'm handing  
6 up is LY181.

7 THE COURT: Okay.

8 Q MR. BROWN: Now, sir, before we get too  
9 far into this one, I'm going to ask the witness to  
10 tell us what the last sequential number on his  
11 version is.

12 A You want me to look up the last --

13 Q Can you tell me what the very last page that you  
14 have in that document is?

15 A Okay. The serial number?

16 Q Yes?

17 A Of the last page?

18 Q Yes?

19 A 005896.

20 MR. BROWN: All right. Sir, I had advised  
21 my friend that I only intend to rely on documents  
22 from this group to page 005881. So I am going to  
23 ask the witness if he can find that page and hand  
24 everything else back through the clerk please.

25 THE COURT: All right.

26 A 58 --

27 Q MR. BROWN: 005881 is the last page.

1 A 5881.

2 Q Yes everything after that will be handed back to  
3 madam clerk.

4 A Yeah, I found it.

5 Q All right. If you can keep 5881, everything that  
6 comes after that please hand it to madam clerk.

7 A Keep this one?

8 Q Yes, no -- sorry, I just wanted the last few pages  
9 handed back.

10 A Okay, I got it --

11 Q Thank you.

12 A Okay.

13 Q All right, sir, if you could just -- first of all,  
14 you have a buff coloured envelope there again, is  
15 that correct?

16 A Yes, that's right.

17 Q And the -- you have found your label on it?

18 A At the tab there?

19 Q Yes, on the outside of the envelope or rather the  
20 folder you should have a tab?

21 A Yes, this label is Synergy --

22 Q Yes.

23 A -- with a series of numbers there.

24 Q All right. And what about your identifying mark, is  
25 it on the outside of the folder as well?

26 A Yeah.

27 Q And it's marked as?

1 A The number is LY181.

2 Q All right. Thank you. And if you could turn to the  
3 first page then and can you tell me what the first  
4 page is, first the sequential number?

5 A Yes that's 005801.

6 Q 5801 --

7 A 5801.

8 THE COURT: That is what I have.

9 MR. BROWN: All right. That's fine.

10 MR. BUCKLEY: I have that also, but my books  
11 were just put together my friend provided me a list  
12 of document so I just pulled them out of the file.

13 MR. BROWN: That's fine, sir.

14 MR. BROWN: I think what happened some of  
15 my photocopying got put in the wrong spot, so it's  
16 no problem.

17 Q MR. BROWN: 5801 and the last sequential  
18 number in that document then?

19 A Of this?

20 Q The very last page should be 05881?

21 A That's right.

22 Q Okay.

23 A 005881.

24 Q All right. And just at the top of your first page,  
25 which is 005801, can you tell us what that document  
26 is titled as?

27 A It's got the ATB Financial logo.

1 Q Yes.

2 A And right at the top part, middle of the page is,  
3 Statement of Account.

4 Q Okay. And what's the company name?

5 A Company name is the Synergy Group of Canada Inc.

6 Q All right.

7 MR. BROWN: And if we could have those  
8 pages then marked as the next Exhibit 23.

9 THE COURT: Exhibit 23 will be the folder  
10 and documents included, which are sequentially  
11 numbered 005801 to 005881 and 005801 is an ATB  
12 Financial in the name of the Synergy Group of Canada  
13 Inc. Exhibit 23.

14

15 \*EXHIBIT 23 - Folder and Documents, ATB Financial in the

16 \*Name of Synergy Group of Canada Inc., Labelled LY181,

17 \*Containing Pages Stamped 005801 to 005881

18

19 Q MR. BROWN: Sir, the next document being  
20 handed up is LY183. All right and you have pulled  
21 out a buff coloured folder. What's your  
22 identification -- identifying mark on the front?

23 A That's LY183.

24 Q And is there writing on the file identifying that  
25 file?

26 A Yes, this is labelled as Pharos.

27 Q Pharos. All right. If you can turn to the first

1 page please? Do you find an email or what appears  
2 to be an email there?

3 A That's right, correct.

4 Q And the sequential number?

5 A 006424.

6 Q All right. And if you could go to the end of that  
7 set of documents, what's the last sequential number  
8 you've got?

9 A Yeah, 006504.

10 Q All right.

11 MR. BROWN: Sir, if that collectively  
12 could be marked as the next Exhibit.

13 THE COURT: All right. Exhibit 24 will be  
14 the exhibit previously identified as LY183, it is a  
15 folder with the name Pharos printed on it and it  
16 contains sequentially numbered documents 006424 to  
17 006504. Exhibit 24.

18

19 \*EXHIBIT 24 - Folder Labelled Pharos, Labelled LY183,  
20 Containing Pages Stamped 006424 to 006504

21

22 MR. BROWN: Thank you, sir.

23 Q MR. BROWN: Sir, the next set of documents  
24 are marked as SJ documents. I'll just have Mr.  
25 Young speak briefly to how it is that some of the  
26 documents that we're relying on through him are  
27 marked as SJ?

1 A Yeah, SJ actually stands for Sandra Jarvis.

2 Q Yes.

3 A Sandra actually -- that was the time when I worked  
4 at that particular area that I was doing the search  
5 warrant, Sandra actually joined me and that was the  
6 time well after midnight of that July 15 -- she  
7 joined me and we decided to use her initials rather  
8 than mine. Mine -- I collected probably about 200  
9 items and I think the label was used up and start  
10 using her label SJ label.

11 Q All right. So you're able to identify the SJ  
12 documents, SJ519 that I'm going to show you is  
13 documents that you identified?

14 A Yeah. Actually I have my notes here to compare  
15 that.

16 Q All right. I'll show the documents to you first and  
17 then you can see if you need your notes at all?

18 A Sure.

19 Q All right. The first document I'm going to show you  
20 is actually just marked as a group of sequential  
21 pages because perhaps this requires a little  
22 explaining, sir. The SJ509 is about 3,300 pages in  
23 length. And so rather than put all 3,300 pages into  
24 the record, I've essentially selected four sets of  
25 100 pages from that collection to put into the  
26 record, sir. And I've advised my friends -- my  
27 friend that that was what I was intending to do and

1 I gave him the sequential numbers.

2 THE COURT: Go ahead.

3 MR. BROWN: But I didn't start with page  
4 one, as it turns out that that document -- sorry, at  
5 100, it starts in the 100,000 is the number that it  
6 begins at and goes to 100,100.

7 THE COURT: Are those the sequential  
8 numbers that are --

9 MR. BROWN: That's right. Those are the  
10 sequential numbers --

11 THE COURT: -- printed on them?

12 MR. BROWN: -- that we heard Mr. Brosseau  
13 speak about.

14 THE COURT: All right.

15 MR. BROWN: So I'm going to hand this  
16 document up have Mr. Young take a look at it. Sir,  
17 I'd like to apologize, I don't have any more  
18 (INDISCERNIBLE) copies.

19 Q MR. BROWN: All right. Mr. Young, you've  
20 had a chance to take a look at that.

21 A Yes.

22 Q Do you have any recollection of seizing this type of  
23 document?

24 A Yeah, this the sales orders were actually found in  
25 an office depot copper box and was found at the --  
26 on the floor at the corner, just outside the server  
27 room. The server room is actually part of the

1 warehouse room in the warehouse part of the  
2 building.

3 Q All right, sir, and if you could tell me first of  
4 all, if you'd just take a look at the sequential  
5 numbers, what's the sequential numbering that was  
6 placed on the document, top right?

7 A Yeah, the top right-hand corner there it's got this  
8 number, 100000.

9 Q 100,000?

10 A Yeah.

11 Q And the last page that you have there?

12 A 100100.

13 Q Okay. And if you could just take a look at the  
14 bottom right of the first page, is there a date on  
15 the bottom right?

16 A Yeah, it's 04/03/003 -- I'm not sure if this is  
17 April the -- yeah, it's the April the 3rd, 2003.

18 MR. BROWN: All right, sir, I wonder if we  
19 can have that next group of 100 pages marked as the  
20 next exhibit.

21 THE COURT: Agreed, Mr. Buckley?

22 MR. BUCKLEY: Yes, Your Honour.

23 THE COURT: All right. Exhibit 25 will be  
24 documents identified as part of SJ509 and these  
25 would be sales orders, sequentially numbered 100,000  
26 to 100,100.

27

1 \*EXHIBIT 25 - Order Forms, Labelled SJ509, Containing  
2 \*Pages Stamped 100,000 to 100,100  
3

4 MR. BROWN: I'm handing up the next set of  
5 documents from SJ509, sir, it's 101,000 to 101,100.  
6 I know it's a little complicated, but it's not so  
7 bad when you look at it, it's just when you try to  
8 speak the words.

9 Q MR. BROWN: So, Mr. Young, if you could  
10 just take a look at that document, again that  
11 appears to be an order document.

12 A Yeah, a document the first page is stamped as  
13 101000.

14 Q Okay.

15 A And the last page stamped 101100.

16 Q All right. And that's a similar type of document to  
17 the last group of 100 that you just reviewed?

18 A Yes, they're similar. They're sales -- they're  
19 basically order -- order form.

20 MR. BROWN: All right. Sir, if that could  
21 be marked as the next Exhibit.

22 THE COURT: All right. And, sir, I take  
23 it you have described these as sales orders?

24 MR. BROWN: Order forms I believe, sir.

25 A Yeah, order forms.

26 THE COURT: Order forms, okay.

27 A Yeah.

1 THE COURT: All right. Exhibit 26 will be  
2 order forms, part of SJ509 and these order forms  
3 will be those documents sequentially numbered  
4 101,000 to 101,100. Exhibit 26.

5

6 \*EXHIBIT 26 - Order Forms, Labelled SJ509, Containing  
7 \*Pages Stamped Numbered 101,000 to 101,100

8

9 Q MR. BROWN: And, sir, the next group I'm  
10 handing up to be marked 102,000 through to 102,100.

11 A Okay, the first page that I have in front of me  
12 stamped 102,000, that's the first page.

13 Q Yes.

14 A And the last page stamped 102,100.

15 Q Thank you, sir.

16 A And again this is a sales order.

17 Q All right.

18 MR. BROWN: Sir, if we could have those  
19 documents marked collectively as the next exhibit.

20 THE COURT: Sorry, as you referring to  
21 these ones as sales orders?

22 A That's my term or order form.

23 THE COURT: Okay. So you are using the  
24 same term --

25 A My book says sales orders --

26 THE COURT: -- you are using two terms to  
27 describe the same thing?

1 A Order form would probably be appropriate.

2 THE COURT: All right. And then the next  
3 Exhibit will be Exhibit 27 and that is part of the  
4 Exhibit previously identified as SJ509. And these  
5 are order forms sequentially numbered 102,000 to  
6 102,100. Exhibit 27.

7

8 \*EXHIBIT 27 - Order Forms, Labelled SJ509, Containing  
9 \*Pages Stamped 102,000 to 102,100

10

11 Q MR. BROWN: Thank you, sir. And the next  
12 document I'm handing up should be 103,000 to  
13 103,100.

14 A Yeah the first page is 103000 and the last page of  
15 this pile is 103100.

16 Q And again they look like similar type of order forms  
17 to the last three groups?

18 A Correct.

19 Q All right.

20

21 THE COURT: All right. Exhibit 28 will be  
22 a portion of that exhibit previously referred to as  
23 SJ509. And these are order forms sequentially  
24 numbered 103,000 to 103,100. Exhibit 28.

25

26 \*EXHIBIT 28 - Order Forms, Labelled SJ509, Containing  
27 \*Pages Stamped 103,000 to 103,100

1

2 MR. BROWN: There's a copy for you, sir.

3 THE COURT: Thank you.

4 MR. BROWN: And, sir, those are all of the  
5 documents that I have -- that I seek to have entered  
6 through this witness. And as we've already agreed  
7 on continuity and dealt with that issue, I have no  
8 further questions for this witness.

9 THE COURT: Thank you, Mr. Brown. Mr.  
10 Buckley?

11 MR. BUCKLEY: Your Honour, can we stand down  
12 for five minutes?

13 THE COURT: Certainly. Very good. I will  
14 take a brief adjournment and I will return, actually  
15 it is 25 after now, I will return at 25 to then.

16 MR. BROWN: Thank you, Your Honour

17 MR. BUCKLEY: Thanks.

18 THE COURT: Very good. Thank you.

19 THE COURT CLERK: Order in Court. All rise.

20 (ADJOURNMENT)

21 THE COURT CLERK: Calling Synergy Group of  
22 Canada and TrueHope Nutritional Support.

23 THE COURT: All right. Mr. Brown, you are  
24 finished with your examination-in-chief of this  
25 witness?

26 MR. BROWN: Yes, I am, sir, thank you.

27 THE COURT: Cross-examination, Mr.

1 Buckley?

2 MR. BUCKLEY: Your Honour, I have no  
3 questions of this witness.

4 THE COURT: Very good then. Thank you.  
5 Mr. Young, you can step down. You are free to go.

6 A Thank you, sir.

7 THE COURT: Thank you.

8 (WITNESS STANDS DOWN)

9 MR. BROWN: Now, sir, that leaves us in a  
10 position where I don't have my next witness ready  
11 and --

12 THE COURT: All right. Well, we knew that  
13 with a number of witnesses there would be some gaps  
14 in scheduling, we will keep it as tight as we can,  
15 but --

16 MR. BROWN: Yes, sir.

17 THE COURT: -- you have your witnesses  
18 scheduled for tomorrow?

19 MR. BROWN: I do, sir. I believe she's  
20 now in Calgary, but she was not the last time I  
21 looked for her at lunch. I expect she's here today.

22 THE COURT: All right.

23 MR. BROWN: And will be ready to go  
24 tomorrow morning first thing.

25 THE COURT: Do you need a copy of that  
26 order that I have signed? Do you need it to be  
27 faxed to Ottawa or for any other purpose right now?

1 MR. BROWN: No, I don't, sir.

2 THE COURT: No. All right. Because it is  
3 just being entered now and date stamped and tomorrow  
4 then when we start we will make it an exhibit.

5 MR. BUCKLEY: Thank you.

6 MR. BROWN: What I'll do, sir, is I'll --  
7 I'm going to place a phone call and make people  
8 aware of the situation and when I have a copy of the  
9 order then I can send it off. That's fine, sir.

10 THE COURT: All right. Unless you would  
11 get faster action if you were sending a signed copy.

12 MR. BROWN: Well, sir, my understanding is  
13 that Mr. Buckley is going to receive a copy of the  
14 documents within an hour, I'm hoping.

15 THE COURT: All right.

16 MR. BROWN: And we should have originals  
17 by tomorrow morning.

18 THE COURT: All right. Very good. All  
19 right, well in that case unless there is anything  
20 further?

21 MR. BROWN: I have nothing else, sir,  
22 thank you.

23 THE COURT: No. All right. In that case  
24 we will stand adjourned then until 9:30 tomorrow  
25 morning.

26 MR. BUCKLEY: Thank you, Your Honour.

27 THE COURT: Thank you, gentlemen. Thank

1           you, madam clerk.

2       THE COURT CLERK:                   Order in court, all rise.

3           This court stands adjourned until tomorrow morning  
4           at 9:30.

5       -----

6       PROCEEDINGS ADJOURNED TO MARCH 16, 2006 AT 9:30 A.M.

7       -----

8

9       \*Certificate of Record

10           I, Jillian Fox, certify this recording is a record  
11           of the oral evidence in the proceedings in the  
12           Criminal Court, it was in courtroom 413, at Calgary,  
13           Alberta on the 15th day of March, 2006, and I was in  
14           charge of the sound recording machine.

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1 March 16, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K. Brown, Esq.) For the Crown

7 E. Eacott, Ms.)

8 S. Buckley, Esq. For the Accused

9 J. Fox Court Clerk

10

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11 THE COURT CLERK: The Synergy Group of Canada  
12 Inc. and TrueHope Nutritional Support Ltd.

13 MR. BROWN: Thank you, sir.

14 THE COURT: Gentlemen. Just take a seat  
15 for a minute, please. There are a few things I have  
16 to get organized here.

17 I understand that Madam Clerk has provided both  
18 counsel with entered and filed copies of the order  
19 from yesterday with regards to disclosure of  
20 information.

21 MR. BROWN: Yes, sir.

22 THE COURT: Madam Clerk, you have -- could  
23 I see the copy you have got there, please.

24 All right then, in accordance with the  
25 agreement that we had yesterday, this order will be  
26 made the next exhibit -- will be Exhibit 29 in these  
27 proceedings.

1 MR. BROWN: Yes, sir.

2 MR. BUCKLEY: Yes, Your Honour.

3 THE COURT: Thank you.

4

5 \*EXHIBIT 29 - Order Regarding Disclosure Between Her  
6 \*Majesty the Queen and The Synergy Group of Canada Inc.  
7 \*and TrueHope Nutritional Support Ltd., Dated and Signed  
8 \*March 15, 2006

9

10 THE COURT: All right. Are there any  
11 matters that either counsel want to address this  
12 morning before we proceed with the Crown's case?

13 MR. BUCKLEY: Just to give you an update on  
14 kind of what's occurred since the last court date.

15 I received this material yesterday evening.

16 THE COURT: Now you are pointing out a  
17 very large three-ring binder.

18 MR. BUCKLEY: A very large three-ring  
19 binder. We've had numbered pages -- 730 pages.

20 THE COURT: Seven hundred thirty pages? I  
21 take it that is Health Canada's response to the  
22 order for disclosure of information related to the  
23 1-800 line?

24 MR. BUCKLEY: Yes, which curiously, at least  
25 according to the fax, was started to be faxed at  
26 2:24 p.m. Ottawa time which would be roughly about  
27 12:24 Calgary time. So our undiscoverable documents

1           were discovered very quickly and sent to us.

2           My friend has not had the opportunity to look  
3           at the documents at all. He just received them this  
4           morning.

5       MR. BROWN:                   That's correct, sir. I waited  
6           for the original. I wanted Mr. Buckley to have the  
7           earliest possible opportunity to receive them -- or  
8           to receive the fax copy.

9       THE COURT:                   So when was this documentation  
10          given to Mr. Buckley? Four o'clock yesterday?

11      MR. BROWN:                   I'm not sure what time he got  
12          it, sir.

13      THE COURT:                   After court yesterday, I take  
14          it.

15      MR. BROWN:                   Yes. Absolutely.  
16          Approximately 5:10.

17      MR. BUCKLEY:                 So I've indicated to my friend  
18          that I'm not going to be in a position to continue  
19          cross of Mr. Brosseau today because I want to have  
20          the opportunity to at least read that once. But  
21          apparently Ms. Toledo is here today so we can  
22          proceed with that evidence.

23      MR. BROWN:                   Yes, sir. We certainly can  
24          call Ms. Toledo. She probably won't take that long  
25          to complete her evidence. And obviously, Mr.  
26          Buckley's position with respect to the position of  
27          requiring some time to reviewing the documents is a

1           reasonable one and obviously we'd like some time to  
2           take a look at the documents as well.

3       THE COURT:                        What do you have scheduled for  
4           today, Mr. Brown?

5       MR. BROWN:                        My last witness is Alba Toledo  
6           and we are prepared to call her as soon as we are  
7           ready to start, sir.

8       THE COURT:                        She is your last witness?

9       MR. BROWN:                        She is actually in court and  
10          she is my last witness.

11      THE COURT:                        All right. And after that it  
12          would be a matter of taking an adjournment giving  
13          counsel time to review the late disclosure that has  
14          been provided and then continue with the cross-  
15          examination of Mr. Brosseau.

16      MR. BUCKLEY:                      Brosseau. Yes.

17      MR. BROWN:                        And, sir, that also gives us  
18          an opportunity to make a couple of photocopies of  
19          these documents, one for yourself and one for us and  
20          then the originals for the --

21      THE COURT:                        That is fine. I am sure we  
22          can all put the time to good use.

23                        All right. Anything further?

24      MR. BUCKLEY:                      No, Your Honour.

25      THE COURT:                        Well, in that case I will ask  
26          the Crown to call the next witness.

27      MR. BROWN:                        Yes, sir. And just so the

1 court knows, Ms. Eacott will actually be examining  
2 Alba Toledo.

3 THE COURT: That is fine.

4

5 \*ALBA TOLEDO, Sworn, Examined by Ms. Eacott

6

7 THE COURT: Ms. Toledo, I am going to ask  
8 you to keep your voice up so everybody can hear you.

9 THE WITNESS: Okay.

10 THE COURT: Okay. And I am just going to  
11 repeat before we go on, there was an order excluding  
12 witnesses so any witnesses that have not yet been  
13 called or who are to be recalled should leave the  
14 courtroom.

15 Go ahead, please.

16 Q MS. EACOTT: Thank you, Ms. Toledo. I  
17 understand that you reside in Ottawa. Is that  
18 correct?

19 A Yes.

20 Q Okay. And that you are an employee with Health  
21 Canada?

22 A Yes, I am.

23 Q Okay. How long have you worked with Health Canada?

24 A Six years.

25 Q And what's your current title?

26 A I am a (INDISCERNIBLE) certification specialist. I  
27 am also a supervisor of the DIN unit of the

1 (INDISCERNIBLE) Information Policy Division

2 (INDISCERNIBLE).

3 Q And when you say supervisor of the DIN unit, can you  
4 state what DIN means?

5 A It stands for Drug Identification Number. And what  
6 we do there is once a drug has been approved to be  
7 sold in the Canadian market we issue a Drug  
8 Identification Number in the Drug Product Database  
9 which is a system that we keep in our division and  
10 it keeps information about every single product that  
11 is to be sold in the Canadian market.

12 Q Okay. And I understand the drug product database is  
13 referred to as a DPD?

14 A Yes.

15 Q Okay. And how many people do you supervise?

16 A Approximately ten.

17 Q Okay. And have you been in the same area at Health  
18 Canada for the past six years?

19 A Yes, since I started. Yes.

20 Q Okay. And so you've described that you input data  
21 into the database with respect to --

22 A The drug products.

23 Q Right. Can you describe what type of information  
24 you input into the DPD?

25 A The drug product line. The dosage form. The  
26 (INDISCERNIBLE). The active ingredient. The  
27 strength of the active ingredient. The company's

1 name. The address for the company. The contact for  
2 the company. If the company is a company outside  
3 Canada we have an importer. We have agents. We  
4 have distributors. We also enter information  
5 regarding the schedule. Is it prescription drug?  
6 Is it a OTC drug -- over the counter drug? Is it a  
7 (INDISCERNIBLE) drug? Is it a narcotic?

8 All that information is in the database as well  
9 as we enter the information regarding two different  
10 systems. Two different classifications. One  
11 international one which is given by the WHO, the ATC  
12 and the AHFS code which is an American code. And  
13 the date that the product has been issued a DIN.

14 Q Okay. Are there any other dates that you put into  
15 the system other than the date that the product is  
16 issued a DIN?

17 A Once the product is marketed, then the company has  
18 to let us know within 30 days when the product is on  
19 the Canadian market and then we change the status  
20 from DIN assigned to marketed and notified.

21 Q Okay. And are there any other databases that you  
22 use?

23 A Yes. There is another one which is the DSTS. The  
24 Drug Submission Tracking System. That database  
25 captures the difference between the DSTS and the  
26 DPD. The DSTS captures information for every single  
27 application that is sent to Health Canada for a drug

1           that wants to be sold on the Canadian market. The  
2           DPD captures the information only for products that  
3           are being approved to be sold in the Canadian  
4           market.

5           THE COURT:                                 Just before you go on, please,  
6           just a moment. All right, what is the most recent  
7           database you referred to. The DSTS? What does that  
8           stand for again, please?

9           A     Drug Submission Tracking System.

10          THE COURT:                                 Thank you.

11          Q     MS. EACOTT:                         Ms. Toledo, as His Honour and  
12                counsel are taking notes, if you could slow your  
13                speech down just a little bit, that might assist  
14                them in their note taking.

15          A     Okay.

16          Q     Thank you.

17                And what responsibility, if any, Ms. Toledo, do  
18                you have in making decision as to whether or not a  
19                product is issued a DIN?

20          A     A drug has to be approved by the related area. It  
21                could be biologic if it's a biological drug. Or it  
22                could be a pharmaceutical. I do not have anything  
23                to say once the drug has been approved. We issue a  
24                DIN.

25          Q     So, pardon me if I'm wrong. You're the one that  
26                enters -- your unit enters the database information?

27          A     Yes, we do that.

1 Q Okay. And are the databases searchable?

2 A Yes, it is.

3 Q Okay. And I understand that you did a database  
4 search for the Synergy - TrueHope investigation. Is  
5 that correct?

6 A Yes.

7 Q And who asked you to do a search?

8 A It was Joan Korol.

9 Q Joan Korol?

10 A Uh-huh.

11 Q And what were you asked to search?

12 A I was asked to search for two different companies.  
13 One was TrueHope and the other one was Synergy.

14 Q Uh-huh.

15 A I did the search in the Drug Product Database first  
16 --

17 Q Okay.

18 A -- because that is the most up-to-date system --

19 Q Okay.

20 A -- and I didn't find anything in the database. So I  
21 decided --

22 Q I'm just going to back you up a little bit.

23 A Okay.

24 Q Do you remember when you did this search?

25 A Back in 2004.

26 Q 2004. Do you remember approximately when?

27 A I think it was May or so.

1 Q Okay. And what were you looking for. What did they  
2 ask you to look for when you were searching these  
3 companies?

4 A They were asking me to look for a product name by  
5 the name of EMPowerplus.

6 Q All right.

7 A And I did search by the brand name as well and I  
8 didn't find anything. In the database we have  
9 different type of searches that we can search by DIN  
10 number. Like product name. We can search by active  
11 ingredient. We can search by a company's name. So  
12 I had, in this case, two different types of  
13 information. One was the company name and the other  
14 one was the product name. So I decided to check  
15 both.

16 Q Okay.

17 A The first check that I did was with the company  
18 name. (INDISCERNIBLE) I did not find anything. So  
19 then I went to check with the product name. And in  
20 order to find every single product that has that  
21 particular name, we search with wildcard first and  
22 then you type maybe three or four letters after the  
23 wildcard and then another wildcard. And then you  
24 can get whatever is before the wildcard or after the  
25 wildcard. And I didn't find anything. I did that  
26 for both. Companies and for -- also for the product  
27 name. There was no results.

1 Q Can you tell us what you put in a wildcard and what  
2 letters you put in and then the wildcard for the  
3 companies and the product?

4 A Okay. For the company I started with "Truehop".  
5 Nothing more than that and a wildcard before and a  
6 wildcard after.

7 THE COURT: Okay. I am sorry.

8 MS. EACOTT: Sure.

9 THE COURT: Can she just slow down?

10 MS. EACOTT: Sure.

11 Q MS. EACOTT: If you could slow down a  
12 little bit, Ms. Toledo.

13 THE COURT: Perhaps you could explain what  
14 a wildcard is. Is it similar to --

15 A It's a percentage.

16 THE COURT: A percentage?

17 A Yeah.

18 Q MS. EACOTT: And what does a wildcard do?  
19 Sorry, if you could just clarify that.

20 A It gives you whatever comes before or after what you  
21 are entering. Any letters that you are entering  
22 between the wild cards. So you can get any  
23 information. If there is maybe "apple" before  
24 EMPowerplus that I typed, so then you will get all  
25 the apples before, yeah, if there is a list. If  
26 there is nothing, you are not going to get anything.  
27 So it covers every single angle when you're

1 searching something.

2 Q So if you could explain again what words you used  
3 with the wildcards for the companies and the  
4 product.

5 A Okay. Well, for the company, "TrueHope", like I  
6 said before, I put percentage before.

7 Q Uh-huh.

8 A And "Empowo". E-M-P-O-W-O. And wild card again.  
9 And I didn't get anything. No results came back.

10 Q When you mean no results, what are you referring to?

11 A Nothing show up on the screen.

12 Q For that particular --

13 A For that particular search. Yeah. And then I  
14 decided to type the whole word and I got some  
15 results with "plus".

16 Q EMPowerplus?

17 A No EMPowerplus. Only "plus" that were combined --  
18 that were part of a product name for other multi-  
19 vitamins and minerals. And other products that were  
20 already in the DPD and have a DIN already.

21 Q Okay. And so correct me if I'm wrong, but what I'm  
22 understanding from what you've said is that you were  
23 finding other product names that had the word,  
24 "plus" in them --

25 A Yes.

26 Q -- but not the product name, EMPowerplus.

27 A Uh-huh.

1 Q Okay. And the search that you did with the company  
2 names, what search did you do for those?

3 A For TrueHope I did the same thing. Wildcard before.  
4 Wildcard after. And I didn't find anything. Zero  
5 results came back. I did the same thing for  
6 Synergy. I didn't get any results.

7 Q So did you use the words "TrueHope" and "Synergy" or  
8 did you use a smaller --

9 A The whole thing.

10 Q The whole thing.

11 A I spelled it out. Yeah.

12 Q Okay. Can you tell the court what words you spelled  
13 out?

14 A TrueHope.

15 Q TrueHope?

16 A Yep. T-R-U-E-H-O-P-E.

17 Q Uh-huh. And the other company?

18 A Synergy.

19 Q Okay.

20 A S-Y-N-E-R-G-Y.

21 Q Okay.

22 THE COURT: Excuse me just a moment. I  
23 just wanted to make it clear. At this point in  
24 time, she's only searching one of the databases or  
25 both?

26 A Only one.

27 THE COURT: Which one? DPD?

1 A Yes. DPD. Drug Product Database.

2 THE COURT: Right. Thank you.

3 Q And from what you've said before, this is the  
4 database that has all the products that already have  
5 a DIN number.

6 A All the drugs that have been approved to be sold in  
7 the Canadian market.

8 Q And did you do any other searches when you were  
9 complete with the DPD search?

10 A Yes, because I didn't find anything in that  
11 database, I decided to go back and check the DSTS,  
12 the Drug Submission Tracking System.

13 Q Okay.

14 A Yeah, because like I said before, every single  
15 application that is sent to Health Canada is in that  
16 database regardless if it (INDISCERNIBLE).

17 Q Okay.

18 A So I did want to check and because it's a searchable  
19 database as well, so I did the same type of search.  
20 I did by company name and I did it by product name.  
21 And I didn't find any result. I still got some  
22 results for when I typed "Plus". Same thing like I  
23 did with the DPD and I got some products that came  
24 back with "Plus" as part of the product name for all  
25 the products that have been approved already. But  
26 it wasn't EMPowerplus.

27 Q Okay. And so you found no results from the DSTS?

1 A Uh-uh.

2 Q And what did you do after that? Did you do any  
3 further searches?

4 A We have also a microfiche on the microfilm. And  
5 those are like archives for us because they are  
6 prior to our databases - the DSTS and the DPD.

7 Q Uh-huh.

8 A And I did check by company name and by product name  
9 as well and the companies are listed in alphabetical  
10 order and I glanced at the names in between to see  
11 if I can find something. And there was -- there  
12 were no results. I made some copies to see if I can  
13 find TrueHope in the listing and there was no  
14 TrueHope in the listing or Synergy either.

15 Q And was there EMPowerplus?

16 A As a product name, no.

17 Q And when did the DPD start to be used as a database?

18 A In 1996.

19 Q And what did they use prior to the DPD?

20 A A Drug Notification System. It was an old system.

21 THE COURT: I am sorry. Can she slow  
22 down?

23 MS. EACOTT: Sorry.

24 Q MS. EACOTT: Could you repeat what you  
25 said, -- sorry, after the DPD started in 1996 and  
26 before that, what did you use?

27 A The Drug Notification System. DNS.

1 Q DNS? And was that a computer database system?

2 A No. It wasn't. And it was prior to my time so I am  
3 not very familiar with it.

4 Q Okay. So prior to 1996, this is the data that was  
5 on the microfiche and the microfilm?

6 A Yeah. And some was transferred from the Drug  
7 Notification System to the Drug Product Database.

8 Q Okay. Now did you print a copy of any of the  
9 searches that you did?

10 A There was (INDISCERNIBLE) that came back negative  
11 for the searches that I was performing so I didn't  
12 make any copies because I wasn't asked to provide  
13 any of the (INDISCERNIBLE). They were asking only,  
14 you know, if there is something there and I said,  
15 No, there is nothing. So I didn't print any copies.

16 Q Okay. And after you did the searches, how confident  
17 were you that the product, EMPowerplus, did not have  
18 a DIN number?

19 A I was 100 per cent sure that there was no DIN for  
20 that product.

21 Q Okay.

22 MS. EACOTT: Sir, those are all of the  
23 questions that I have for this witness.

24 Q MS. EACOTT: Ms. Toledo, if you could  
25 please answer any questions that my friend may have.

26 A Uh-huh.

27 THE COURT: Thank you. Mr. Buckley may

1           have some questions.

2       MR. BUCKLEY:                   Thank you, Your Honour.

3

4       \*Mr. Buckley Cross-examines the Witness

5

6       Q     MR. BUCKLEY:            Ms. Toledo, I'm not that  
7            familiar with this DNS.  So you're telling me that  
8            that was a tracking system that Health Canada used  
9            prior to 1996.  Is that correct?

10      A     Yes.

11      Q     Okay.  And that system was not a computer system?

12      A     No.

13      Q     Okay.  So was it --

14      A     It was an approach database.

15      Q     It was a what?

16      A     An approach database.

17      Q     What do you mean when you say, an approach database?

18      A     That the DINS were issued but they were issued  
19            manually.

20      Q     Okay.  So when you say manually, do you mean like it  
21            was just all done on paper?

22      A     It was -- yes.  The moment they came down to us,  
23            they were -- it was one after another.  It's  
24            systematic done.

25      Q     Okay.  So they were ordered numerically, you mean?

26      A     Numerically.  Yes.

27      Q     Okay.  So, you know, if you guys had just completed

1           1,000, then regardless of the name of the next  
2           product, it's 1,001.

3           A     Yes.

4           Q     Okay.  So it's ordered numerically.  So if somebody  
5           has a DIN number and asks you to search that  
6           database, you just look up the number of the DIN  
7           number.  Would that be fair to say?

8           A     No.

9           Q     Okay.  You still have to know what number it fell  
10          into the queue?

11          A     You have to know the product name.

12          Q     Okay.

13          A     And the name of the company too.

14          Q     Now -- and then in 1996, they switched to a computer  
15          model?

16          A     Yes.

17          Q     Okay.  And that's the DPD?

18          A     Uh-huh.

19          Q     You weren't at Health Canada when that transition  
20          occurred?

21          A     No, I wasn't.

22          Q     Okay.  So you can't tell us whether or not the data  
23          from the DNS made it into the DPD?

24          A     I -- there are some records that say that all  
25          products that were approved --

26          Q     Okay.

27          A     -- (INDISCERNIBLE).

1 Q Okay. But you personally don't have knowledge of  
2 this. You just believe that that happened.

3 A I didn't do it. I wasn't there.

4 Q Okay. Now this DPD that is a computer database,  
5 what operating system did it use when it started in  
6 1996?

7 A It's an Oracle database.

8 Q Now when you say Oracle, do you mean the software  
9 company, Oracle?

10 A Uh-huh.

11 THE COURT: You have to answer Yes or No.

12 A Yes. Sorry.

13 THE COURT: It does not pick up the  
14 recording. Okay?

15 A Sorry.

16 THE COURT: Okay. That is fine.

17 Q Okay. Do you know if the software has ever changed  
18 for that database?

19 A New versions are coming up. We update every time.

20 Q Okay. How often have new versions come up while  
21 you've been there?

22 A One.

23 Q Okay. And when did --

24 A Uh.

25 Q When did that occur?

26 A Last year.

27 Q Now is this -- the data in this database stored at

1 your office or is it stored offsite?

2 A It's in our building and in our offices. It's  
3 confidential information.

4 Q You mean the data in it is confidential?

5 A It's confidential. Unless the company requests  
6 information from us we provide it to them.

7 Q Right. Okay. So it's kept -- is it kept on one  
8 computer?

9 A No, it's in different offices and -- for the people  
10 that enter the data.

11 Q Okay. Just so that I understand, how many people  
12 are there that would have computers that would have  
13 some of this data on it?

14 A There are one, two -- the ones issuing the DINS are  
15 four people and they have access just to issuance of  
16 DINS. There are other people that use the database  
17 too and they use it not to issue the DINS but to  
18 market the product. There are different stages.

19 Q Okay. And just so we understand, when you say,  
20 People who issue the DINS, you're not referring to  
21 they make a decision that a DIN is allowed but once  
22 the decision's made, they do the data entry into the  
23 system?

24 A Yes.

25 Q Okay. And then when you say, Market the product,  
26 once again that's just entering the data that now  
27 the product is on the Canadian market?

1 A Yeah, when the company has sent information to us  
2 saying the product is on the market.

3 Q Okay. And so the people that do the market data  
4 entry are different than the people that do the DIN  
5 data entry?

6 A Yes.

7 Q Okay. How many people do the market data entry?

8 A Only one.

9 Q So is it fair to say that right now there are five  
10 different computers in your office that hold the  
11 data for this DPD?

12 A People that have access to enter data in the DPD,  
13 there are more than five. But people who have  
14 access to view the data, there are more than two  
15 hundred. And I am talking about internal people  
16 only. People who work with us.

17 Q Okay. What I'm trying to find out is it seems to be  
18 that there's not a central computer that holds all  
19 of the data. It's broken up into different  
20 computers.

21 A It's (INDISCERNIBLE) in each office. The employee  
22 has access to a computer, a user name, a password to  
23 enter in the data base so that they can have access  
24 to information that they are supposed to capture.

25 Q I think we're talking about different things. So  
26 what I'm trying to find out is when the data's  
27 entered into the database, where is that stored?

1 A In the Drug Product Database system.

2 Q Okay. And where is that?

3 A The system is maintained by our IT people.

4 Q Okay. And where is that computer system?

5 A It's not in our office.

6 Q Okay. Do you know where it is?

7 A It's in another building.

8 Q Okay. So your computers are -- they link into this  
9 computer that's in another building and you have  
10 access through passwords. Is that correct?

11 A Yeah.

12 Q Now how is it that you know that only five people  
13 can enter data into that database?

14 A Because we -- they have a special right. They are  
15 given a special right to enter the data.

16 Q Okay. Are you the person that decides who has those  
17 rights?

18 A Yes.

19 Q Now my friend asked you what a DIN was. Would it be  
20 fair to say that in the use (INDISCERNIBLE) of a  
21 Drug Identification Number, but that's not actually  
22 defined anywhere, is it?

23 A No.

24 Q Right. So in *The Food and Drug Act*, in the Food and  
25 Drug Regulations, there is not a definition of Drug  
26 Identification Number to say what it means?

27 A I can tell you the definition of a Drug

1 Identification Number --

2 Q Okay.

3 A -- because it's on the website. Posted on the  
4 website under Terminology.

5 Q Okay. Can you give us that definition?

6 A Drug Identification Number is an 8-digit number --

7 Q Okay.

8 A -- 8-digit number given by a computer system by  
9 Health Canada for a product that has been approved  
10 to be sold in the Canadian market.

11 Q Can you run through that again because you're  
12 actually giving us an exact definition, aren't you?

13 A I'm --

14 Q Pretty close anyway.

15 A Yeah.

16 Q Okay. So I got that you said it's an 8-digit number  
17 given by a computer system by Health Canada. Am I  
18 correct so far?

19 A Yes.

20 Q And there's a little more, isn't there?

21 A ... for a product that has been approved to be sold  
22 in the Canadian market. Or in Canada. It's not  
23 exact though.

24 Q Okay. For a product that has been approved --

25 A To be sold in Canada.

26 Q Okay. So when you are talking about a Drug  
27 Identification Number, a DIN, that's what you're

1 referring to is that definition that you're aware of  
2 on the website?

3 A Uh-huh. Yes.

4 Q Okay. So you understand that there's not a  
5 definition in *The Food and Drug Act* of a Drug  
6 Identification Number.

7 A Mm-mm.

8 Q Well, if you're not sure --

9 A I'm not sure.

10 Q Okay. Fair enough. So at least for your evidence  
11 today when you're talking about a DIN, you're  
12 talking about an 8-digit number given by a computer  
13 system by Health Canada for a product that has been  
14 approved to be sold in Canada?

15 A Yes.

16 Q Okay. Now you were talking about how -- what type  
17 of information is kept in this DPD. You were saying  
18 the name of the product should be entered in there.  
19 Correct?

20 A Yes.

21 Q Dosage form?

22 A Yes.

23 Q One of the other --

24 A (INDISCERNIBLE) small, little one.

25 Q Okay.

26 THE COURT: I am sorry. What was that?

27 A One dosage form if there is more than one dosage

1 form. Same thing for the (INDISCERNIBLE).

2 Q MR. BUCKLEY: Okay. Now you were talking  
3 about company names and then address for company.  
4 And then you started talking about, Well, okay, but  
5 if they are out of country it could be the importer  
6 or the distributor.

7 A Uh-huh.

8 Q I want to follow up on that. If somebody is  
9 importing a product, they are the ones that should  
10 be registered?

11 A The DIN owner has to be there because that is the  
12 company or the manufacturer that owns the product.  
13 So it should be in the database even though it's in  
14 the United States.

15 Q Okay.

16 A Yeah.

17 Q Okay. But if somebody's importing a product into  
18 Canada and the manufacturer isn't in there, should  
19 the importer be there?

20 A The importer should be in the database --

21 Q Right.

22 A -- as a legal representative of that company.

23 Q Now do you know who it is that assigns DIN numbers?  
24 You guys do the data entry into the system. Is that  
25 correct?

26 A Yes.

27 Q But do you have any knowledge as to who it is that

1 actually assigns the Drug Identification Numbers?

2 Well, let me -- I'll just stop there. Well, no.

3 I'll let you answer that. Okay. So do you know who  
4 assigns the Drug Identification Numbers?

5 A The Drug Identification Number is assigned by the  
6 system because it is the system that gives the name.  
7 Once you enter the product into the database, there  
8 is a box there that you have to pick that says,  
9 Issued. (INDISCERNIBLE) assigned and then the  
10 system automatically gives you the DIN.

11 Q Okay. So it's -- actually it's just done  
12 automatically by a computer system.

13 A Randomly.

14 Q And it's random to boot.

15 A Uh-huh.

16 Q Okay. Now -- and you told us that only five people  
17 have access to this?

18 A To enter the data.

19 Q To enter the data. Now who tells you guys to enter  
20 the data, because once you enter the data it's  
21 assigned. Right?

22 A Uh-huh. Yes.

23 Q Okay. So somebody else tells your department, Okay,  
24 go and enter this.

25 A The reviewers, the ones who have approved the drug.

26 Q Okay. And who are the reviewers?

27 A The reviewers are the people that analyse the drugs

1 and study the drug.

2 Q Okay. But do you know the names of any of these  
3 people?

4 A There are so many. Different areas. Different  
5 Bureaus.

6 Q Okay. So what about -- the Therapeutic Products  
7 Directorate is one of the branches that assigns or  
8 that tells you guys to enter the data. Right?

9 A Yeah. It's one of the Directorates.

10 Q Okay. Who in that Directorate would tell you guys,  
11 Okay, go ahead and enter the data.

12 A Like I said, under that Directorate there are  
13 different Bureaus. I'm going to give you an  
14 example. It could be a prescription drug so then  
15 it's coming from the Prescription Bureau. It could  
16 be a non-prescription drug. Then it's coming from  
17 another Bureau. It could be a gastrointestinal drug  
18 and it's coming from the Gastroenterology Bureau.  
19 So it depends what kind of drug it is.

20 Q Okay. I just -- I want to -- actually can you list  
21 for us the different Bureaus in the Therapeutic  
22 Products Directorate that would be giving you guys  
23 direction to enter into the system?

24 A I cannot answer that question.

25 Q Okay. So you're not, even though you've been  
26 working there for 6 years for one Directorate,  
27 basically be able to outline us the different --

1 A Recently we had a change so the Bureaus changed the  
2 names because we keep on changing internally so now  
3 the Bureaus have changed to different names and we  
4 were given a table that I haven't memorized yet the  
5 names. I have to.

6 Q Okay.

7 A I can provide you with a copy.

8 Q Well, I certainly wouldn't mind that. Perhaps over  
9 a break we'll do that.

10 Now in this Therapeutic Products Directorate,  
11 if we use the old names like, let's say we went back  
12 to 2004 when you did your search, would you be able  
13 to tell us the names of the Directorates in 2004?

14 A They weren't Directorates. They were Bureaus.

15 Q Okay. Bureaus. I'm sorry.

16 A Uh-huh. No.

17 Q Okay. But just so that I understand it, so, like,  
18 do you have any familiarity with the product that  
19 we're dealing with here?

20 A Yes, I did.

21 Q Okay. Would it be fair to say you would expect that  
22 it would be something dealt with by some branch of  
23 the Therapeutic Products Directorate back in 2004?

24 A Yes.

25 Q Or is that even hard to say?

26 A No. If a product comes, it has to go, like I said,  
27 to different Bureaus to be looked after. It can go

1 to the chemistry (INDISCERNIBLE). It has to go to  
2 the clinical part. It depends on what type of  
3 product it is. If it's an OTC drug, if it's a  
4 multi-vitamin, then it's going to go to the Non-  
5 Prescription Bureau.

6 Q Okay. Now, who in the Non-Prescription Bureau back  
7 in 2004 would basically tell your department, Okay,  
8 go ahead and enter the data so the system will  
9 assign a DIN.

10 A Back at that time, the manager was Micheline Ho and  
11 there were people -- different reviewers working for  
12 her. It could be any of them that could have signed  
13 if, you know, the case was that this drug was to be  
14 approved -- or was approved.

15 Q Okay. So Micheline --

16 A Micheline Ho.

17 Q -- I'm sorry. Micheline Ho, for sure, -- basically  
18 she was the head person that would tell you guys,  
19 Okay, go ahead and enter the data.

20 A She is the head. She was the manager at the time  
21 and the reviewer, the one who reviewed the product  
22 is supposed to sign as well as her approving what he  
23 has or she has done.

24 Q Okay. So basically once you guys got the go-ahead,  
25 there would be -- the reviewer would have signed off  
26 saying, Yes, we can enter this.

27 A If the reviewer said, Go ahead and issue the DIN.

1 Q Right. But then also it would be signed off by  
2 Micheline Ho.

3 A Who is the manager. Yes.

4 Q Okay.

5 A Or who was the manager at the time.

6 Q And what about the year 2003? Was Micheline Ho the  
7 person in the Therapeutic Products Directorate that  
8 would sign off?

9 A Yes, she's been there for a long time.

10 Q Okay. So 2004 she was the person. Right?

11 A Yes.

12 Q 2003 it was Micheline Ho?

13 A Yes.

14 Q 2002?

15 A Yes.

16 Q 2001?

17 A I'm not sure of 2001.

18 Q Okay. So not sure.

19 A I can't go that far.

20 Q But 2002 to 2004, for sure if something like this  
21 product was going for approval through the  
22 Therapeutic Products Directorate, any branch,  
23 Micheline Ho was the one who signed off on it  
24 saying, You can go ahead. Enter this into the  
25 system. Correct?

26 A Yes.

27 Q Okay. So regardless of whether we can sort out all

1 the branches, she signed off for all of the branches  
2 of the Therapeutic Products Directorate?

3 A Only for the non-prescription drugs.

4 Q Okay. Only for non-prescription.

5 A For OTC drugs.

6 Q Right. Which is your understanding of where this  
7 EMPowerplus fits in. Or if you're not able to say  
8 that, that's fair.

9 A I am not a reviewer --

10 Q Okay.

11 A -- so I cannot say this is what it is.

12 Q Okay. So Micheline Ho was basically the only person  
13 from 2003 -- I'm sorry, 2002, 2003, 2004 that would  
14 sign off for non-prescription DIN approvals for the  
15 Therapeutic Products Directorate.

16 A Depending on the indication as well what the drug  
17 was meant to be used for.

18 Q Okay. But I just want to be clear because I'm  
19 talking non-prescription.

20 A Yes.

21 Q And obviously if they don't approve a drug, they're  
22 not going to tell you to go ahead. Okay?

23 A Yes.

24 Q So I'm just talking about for every single time that  
25 the Therapeutic Products Directorate for a non-  
26 prescription drug told you guys to go ahead in those  
27 years, 2002, 2003 and 2004, the person signing off

1 giving the authority is Micheline Ho.

2 A If the product according to the indication of that  
3 product, if the product was meant to be as a multi-  
4 vitamin and mineral, yes, but if the product was  
5 meant to be for another indication, then it could  
6 have gone to another Bureau.

7 Q Okay. So then Micheline Ho was only doing this for  
8 the vitamins and minerals?

9 A She was doing -- yeah, for that. Or analgesics as  
10 well.

11 Q Okay.

12 A Sinus creams.

13 Q Sinus creams. Okay. How many --

14 A Acne products.

15 Q Okay. Thank you.

16 A There's a long list. I'm not (INDISCERNIBLE).

17 Q Okay. I don't think we need the list. What I'm  
18 trying to find out just for the Therapeutic Products  
19 Directorate then, how many people were there like  
20 Micheline Ho who could tell you guys to go ahead  
21 with --

22 A Quite a few. I cannot tell you the number exactly  
23 because they keep on changing.

24 Q Okay. If -- we were talking about Micheline Ho.  
25 She would basically be the top person signing. It  
26 wouldn't be somebody else signing above her?

27 A No.

1 Q Okay. So we're just using her as an example. So  
2 basically there would be the reviewer and then  
3 Micheline Ho.

4 A Yeah. The manager. Yes.

5 Q Okay. Likewise for the other people that signed off  
6 in the Therapeutic Products Directorate. You  
7 basically have the branch manager and the reviewer  
8 signing off. Correct?

9 A Yeah, the Director of the Bureau and the reviewers.

10 Q Okay. I mean this doesn't go up to the top. You  
11 don't ever have the Minister of Health signing off  
12 on a DIN, do you?

13 A No.

14 Q Never seen that? Okay. That's almost funny. What  
15 about the Associate Deputy Minister.

16 A No.

17 Q Okay. Ever any Deputy Minister sign off?

18 A No.

19 Q No?

20 A I have never seen that.

21 Q Okay. Have you ever seen Dan Michaels sign off?

22 A For a Drug Identification Number?

23 Q Yes.

24 A No.

25 Q What about Robert Peterson?

26 A They sign when it comes to NOCs.

27 Q Okay. So that's not a Drug Identification?

1 A A DIN has to be issued when it's a new drug --

2 Q Okay.

3 A -- and then it goes to the Director's office.

4 Q That's a different process.

5 A That's a different process.

6 Q Okay. So I'm just sticking on Drug Identification  
7 Numbers. So, no, but he would do NOCs.

8 A Yes.

9 Q Okay. What about Omar Boudreau?

10 A Now he's our DG. Yes. He has to sign the NOCs as  
11 well.

12 Q Okay. So this is NOCs?

13 A Yes.

14 Q But not DINs?

15 A No.

16 Q What about Julia Hill?

17 A She's not with us.

18 Q Okay. But in 2003, was she with you?

19 A She was in DG when she was with us.

20 Q Okay. At any time have you ever seen her sign off  
21 on a DIN?

22 A I -- not that I am aware of.

23 Q What about Pierre Charest?

24 A I don't know that name.

25 Q Okay. But if DINs were coming into your department  
26 signed off by Pierre Charest, then you probably  
27 would recognize the name. Would that be fair to

1 say?

2 A No.

3 Q No? Okay. What about Lynn Bernard?

4 A No.

5 Q Okay. So she's never signed off on a DIN that  
6 you're aware of?

7 A No.

8 Q What about Siddika Mithani?

9 A Siddika -- she was our DG. She's not our DG any  
10 longer so she would sign the NOCs (INDISCERNIBLE).

11 Q When you say "DG", you mean Director General?

12 A Yeah. She was (INDISCERNIBLE), Siddika.

13 THE COURT: I'm sorry. What was that?

14 A An (INDISCERNIBLE) director. DG's office. She's no  
15 longer with us. She's with (INDISCERNIBLE)  
16 Directorate right now.

17 Q What about Elwyn Griffiths?

18 A I don't know that person.

19 Q Okay.

20 A (INDISCERNIBLE)

21 Q Now there is also what's called an NOC database for  
22 a Notice of Compliance.

23 A Yeah. That's new.

24 Q Okay. When you say, That's new, that's for new  
25 drugs?

26 A No. When I say, New, it's a new database that is  
27 available now. It wasn't available before.

1 Q When did it become available?

2 A Last year.

3 Q Okay. And it's specifically designed to track  
4 Notices of Compliance?

5 A Yes.

6 Q And that's for the new drug process?

7 A Yes.

8 Q Okay. Now does your office do the NOCs?

9 A I don't work with that.

10 Q Okay. And obviously Health Canada does but that's  
11 not your department?

12 A Yeah, it's not my part. It's someone else. Another  
13 group of people.

14 Q Okay. So are they in the same building as you at  
15 least?

16 A Yeah, they are.

17 Q Okay. But they're a separate branch?

18 A The NOCs are given again by the reviewers too and  
19 then it has to go to Patents. It has to go to  
20 different areas and it doesn't come to us. We -- to  
21 our unit. It goes to another unit where they have  
22 to enter the information that goes into the NOC data  
23 base.

24 Q Okay. So there's no point in me asking you about  
25 that then.

26 A The only information that we capture in the database  
27 is when the NOCs issue --

1 Q Okay. I'm just -- I don't want you to give evidence  
2 about what another branch does.

3 A Okay. No. I'm just going to tell you that we enter  
4 into the database the NOC date that was issued.  
5 Nothing more for information for our records.

6 Q Okay. Thank you, Ms. Toledo. I have no further  
7 questions.

8 THE COURT: Anything on re-direct, Mr. --  
9 oh, sorry, Ms. Eacott?

10 MS. EACOTT: Thank you.

11

12 \*Ms. Eacott Re-examines the Witness

13

14 Q MS. EACOTT: Ms. Toledo, have you ever  
15 heard of the name, Pharos? P-H-A-R-O-S.

16 A No.

17 MR. BUCKLEY: Your Honour, before she  
18 answers that question, I'm just not sure that the  
19 line of questioning is going somewhere that is new  
20 that I raised on cross-examination. So --

21 MS. EACOTT: That's fine. I can move on to  
22 another question, sir.

23 Q MS. EACOTT: Now, my friend was asking you  
24 questions about the Non-Prescription Bureau. And if  
25 there was a -- you were talking about Micheline Ho  
26 when there was a DIN that had been -- when an  
27 approval had come through and you were to issue a

1           DIN, your department would receive a form saying,  
2           Please issue the DIN.

3           A     Yes.

4           Q     And it would be signed.  Now if there had been a  
5           submission or an application by a company to get a  
6           DIN, not that the DIN had been approved at this  
7           point but there was an application, who would tell  
8           you or tell your department to enter that data from  
9           the application?

10          A     The reviewers.

11          Q     The reviewers.

12          A     It comes down with a file with all the information  
13          in the file.

14          Q     And which database would the application for the DIN  
15          be entered into?

16          MR. BUCKLEY:                   Once again, I'm just going to  
17          object, Your Honour.  My understanding of re-direct  
18          is to explore new areas that were raised on cross-  
19          examination.  Not to basically try and fill in areas  
20          that you've already led the witness through on  
21          direct.  And so there's no question that my friend  
22          brought up this type of information at her direct.  
23          It's not new in cross-examination.  So I'm objecting  
24          to this line of questioning.

25          MS. EACOTT:                    I specifically brought this up  
26          with respect to Non-Prescription Bureau because my  
27          friend raised it in his direct, sir.

1 THE COURT: I will allow it. Go ahead.

2 MS. EACOTT: Thank you.

3 Q MS. EACOTT: So when you received  
4 information from the Non-Prescription Bureau about  
5 an application for a DIN by a company, what database  
6 would this information be entered into?

7 A The Drug Product Database.

8 Q So the Drug Product got it.

9 A That's right. DPD.

10 Q And would it be entered into any other database?

11 A No. That's the only one.

12 Q Thank you. And do you enter data yourself, Ms.  
13 Toledo?

14 A Yes, I did at the beginning.

15 Q Beginning but not now?

16 A No. I do enter -- I enter only the ATC and AHFS  
17 codes. The international and American  
18 classifications.

19 Q And when did you -- do you remember approximately  
20 when you stopped entering data?

21 A I still enter like (INDISCERNIBLE).

22 Q The majority. Yes.

23 A Maybe back in 2004.

24 Q Okay. Thank you very much.

25 MS. EACOTT: Those are all my questions,  
26 sir.

27 THE COURT: Anything arising from that,

1 Mr. Buckley?

2 MR. BUCKLEY: No, thank you, Your Honour.

3 THE COURT: Thank you. All right.

4 Thank you, Ms. Toledo. You can step down.

5 Thank you.

6 A Thank you.

7 (WITNESS STANDS DOWN)

8 THE COURT: Mr. Brown?

9 MR. BROWN: Sir, those are the witnesses  
10 that we have from the Crown with, of course, the  
11 exception of calling -- recalling Mr. Brosseau in  
12 order to have what I anticipate having these  
13 documents entered through him.

14 THE COURT: That would be an essential  
15 question to ask.

16 MR. BROWN: Yes.

17 THE COURT: And Ms. Toledo made reference  
18 to a table.

19 MR. BROWN: Oh, yes. We'll provide that.

20 THE COURT: Are you pursuing that?

21 MR. BUCKLEY: No, I'm not. I was trying to  
22 seek the -- kind of who was signing off on these DIN  
23 approvals so I don't need (INDISCERNIBLE) to outline  
24 the number of branches in Therapeutic Products  
25 Directorate.

26 MR. BROWN: Okay. Then Ms. Toledo is done  
27 then.

1 THE COURT: Yes.

2 MR. BROWN: And she is our last witness,  
3 as I said, with the exception of recalling Mr.  
4 Brosseau to speak to the (INDISCERNIBLE) if that is  
5 what my friend ultimately decides he wants to do. I  
6 am done with Mr. Brosseau subject to anything I'd  
7 like to raise with respect to those documents.

8 THE COURT: All right. So the Crown  
9 cannot close its case until such time as you have  
10 had an opportunity -- both of you have had an  
11 opportunity to review the documents provided on the  
12 1-800 line and Mr. Buckley is given opportunity to  
13 continue cross-examination of Mr. Brosseau in that  
14 regard. So I take it what you are telling me is  
15 that there is not anything further you can do today?

16 MR. BROWN: I believe that is  
17 (INDISCERNIBLE), sir.

18 THE COURT: I see we have a television  
19 monitor. I take it that is for your --

20 MR. BUCKLEY: Yes, Your Honour. And  
21 actually probably because that screen is so small,  
22 we are going to set up a larger screen and use some  
23 different equipment.

24 THE COURT: Madam Clerk, is there anything  
25 bigger in the --

26 THE COURT CLERK: I could call and see.

27 THE COURT: Or if you have made

1 arrangements for something.

2 MR. BUCKLEY: I've already made arrangements  
3 for that in view of the small screen.

4 THE COURT: All right. Because there is  
5 an array of AV equipment available through here.  
6 But that is fine if you have made other  
7 arrangements.

8 MR. BUCKLEY: That's fine. I've got a  
9 screen and a projector and (INDISCERNIBLE) and we're  
10 ready to go.

11 THE COURT: Okay.

12 MR. BUCKLEY: So -- yeah. I figured the  
13 bigger the better as far as everyone having the  
14 opportunity to view.

15 THE COURT: That is fine. All right.  
16 Well, in that case, how long are you going to need  
17 to review the documents?

18 MR. BUCKLEY: Well, Your Honour, --

19 THE COURT: By that I am asking you, are  
20 you going to be ready to go at 2:00 this afternoon  
21 or -- so we do not lose another half day or what?

22 MR. BUCKLEY: I think it is very unrealistic  
23 to think that I would be ready to go at 2:00 this  
24 afternoon.

25 THE COURT: All right.

26 MR. BROWN: I would be, sir, but if my  
27 friend's not, then (INDISCERNIBLE).

1 THE COURT: All right. That is fine. We  
2 have got to give some leeway because of the fact  
3 that we are dealing with a late disclosure. So I  
4 take it that an adjournment until tomorrow morning  
5 will give you sufficient time to review the  
6 documentation?

7 MR. BUCKLEY: That's what I am hoping, Your  
8 Honour.

9 THE COURT: All right. Very good. Then  
10 in that case, this court will stand adjourned until  
11 9:30 tomorrow morning.

12 MR. BROWN: Thank you, sir.

13 MR. BUCKLEY: Thank you, Your Honour.

14 THE COURT: At that time I will expect  
15 that Mr. Brosseau will be here.

16 MR. BROWN: Yes, he will.

17 THE COURT: And, Mr. Buckley, you will be  
18 continuing your cross-examination at that time.

19 MR. BUCKLEY: Yes.

20 THE COURT: Okay.

21 MR. BROWN: Yes, sir.

22 THE COURT: Very good. In that case, we  
23 will stand adjourned then until 9:30 tomorrow  
24 morning.

25 THE COURT CLERK: Order in court. All rise.  
26 Court stands adjourned until tomorrow morning at  
27 9:30.

1 THE COURT: Thank you. Good day,  
2 everyone.

3 -----  
4 PROCEEDINGS ADJOURNED UNTIL 9:30 A.M., MARCH 17, 2006  
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\*Certificate of Record

I, Jillian Fox, certify that this recording is a record of the oral evidence of proceedings in the Criminal Court, held in courtroom 413, at Calgary, Alberta, on the 16th day of March, 2006, and I was in charge of the sound-recording machine.



1 THE COURT: All right. And those are the  
2 documents that you are prepared to admit?

3 MR. BROWN: That's correct, sir. Well,  
4 we're prepared to admit them for a certain -- in a  
5 certain way at least, sir, that they are phone calls  
6 that were made and recorded by Health Canada  
7 employees, phone calls to the crisis line, rather.

8 MR. BUCKLEY: Right. So I mean we accept  
9 the Crown can't admit them for the truth of their  
10 contents.

11 MR. BROWN: Right.

12 MR. BUCKLEY: But the Crown is admitting  
13 that the calls were made and what Health Canada  
14 employees recorded as being said -- were said and  
15 then also the Health Canada employees will say what  
16 they said in the notes and it's evidence that the  
17 Health Canada employees have said what they wrote  
18 down what they said, but not that it's true.

19 MR. BROWN: Right.

20 MR. BUCKLEY: Okay. But -- and we're  
21 proposing to enter this in two ways. My friend has  
22 the actual original documents which are appropriate  
23 to enter as an exhibit but so that, when we get to  
24 submissions we're all able to find things quickly,  
25 I've got a binder of those documents that are just  
26 numbered sequentially. I will provide my friend  
27 with a copy so that if either of us refer to them

1           throughout the trial, instead of saying, Okay, dig  
2           and find, you know, June 16th and count eight pages,  
3           we can say, Well, refer to page 500 type thing. I  
4           don't know if that --

5       THE COURT:                       Well, that is fine. How many  
6           copies do you have that are sequentially numbered,  
7           just one?

8       MR. BUCKLEY:                    No, I've got -- I'm going to  
9           -- I've got four copies --

10      THE COURT:                     All right.

11      MR. BUCKLEY:                    -- so that way -- now I've  
12           only got two with me today so I'll give my friend  
13           one and the clerk one. I'm not going to be  
14           referring to it today, but it just seems to me that  
15           that's a way of saving time later on in the trial.

16      THE COURT:                     It would certainly make a lot  
17           of sense that they were that easily accessible as  
18           opposed to having to hunt around through the  
19           documents by date, so.

20      MR. BROWN:                     Mm-hm.

21      MR. BUCKLEY:                    Right.

22      THE COURT:                     All right.

23      MR. BUCKLEY:                    Mm-hm.

24      THE COURT:                     In any event, these are the  
25           same documents, the same 734 pages of documents that  
26           we received in disclosure yesterday?

27      MR. BUCKLEY:                    Yes.

1 THE COURT: All right.

2 MR. BROWN: Sir, I'm just going to just  
3 hand the clerk the entire package of documents in a  
4 blue-green folder. Those are the originals, sir.

5 MR. BUCKLEY: And I will hand --

6 THE COURT: Well, what do you expect me to  
7 do with them? I have already been putting all of  
8 the Crown's documents into binders for you.

9 MR. BROWN: Well, sir, if -- I don't have  
10 any issue with respect to simply entering the copy  
11 that Mr. Buckley has with respect to the sequential  
12 numbering; that's fine by me. I don't think there's  
13 a lot of magic, frankly, in the originals. So, if  
14 Mr. Buckley is prepared to accept that approach as  
15 well, that's fine.

16 MR. BUCKLEY: I'm actually happier having  
17 the originals entered and --

18 THE COURT: Okay. Then we will have them  
19 numbered because --

20 MR. BUCKLEY: Exact -- yeah.

21 THE COURT: -- we are creating a record  
22 here --

23 MR. BUCKLEY: Yes.

24 THE COURT: -- and I am not going to have  
25 two different ways of referring to the same exhibit.

26 MR. BUCKLEY: No, I think it could be  
27 entered as a separate exhibit as the sequential

1 binder and there can then be no confusion on the  
2 court record about the sequential binder being a  
3 copy of the official documents because, if there was  
4 ever an issue, there --

5 THE COURT: Well, I am concerned about  
6 there being some confusion on the record between the  
7 document that is in the file folder and the document  
8 that is sequentially numbered.

9 MR. BROWN: Yes.

10 THE COURT: That is where I am concerned  
11 about the confusion.

12 MR. BUCKLEY: Right.

13 MR. BROWN: Right, sir.

14 THE COURT: So what I think should be done  
15 is I think that the documents that are in the  
16 original folder should be numbered sequentially  
17 identical to the ones that you have got.

18 MR. BROWN: Right, sir.

19 THE COURT: Otherwise we are putting in --

20 MR. BUCKLEY: Mm-hm.

21 THE COURT: -- the original set of  
22 documents we are putting in a sequentially numbered  
23 binder, but there still has to be some checking  
24 between the sequentially numbered binder and the  
25 original document in the present case in order to  
26 make sure that they are one and the same.

27 MR. BUCKLEY: Right.

1 THE COURT: It would be a lot better if  
2 they were just numbered sequentially so I am going  
3 direct that they be numbered sequentially, the same  
4 as the other --

5 MR. BUCKLEY: Okay.

6 THE COURT: -- the originals be numbered  
7 sequentially identical to the binder that you will  
8 then be providing. Then we will just make the one  
9 an exhibit, unless you -- we can make them both an  
10 exhibit if you want, but it would not --

11 MR. BUCKLEY: No. Well, if we do that, it's  
12 not necessary.

13 THE COURT: No, it is not necessary.

14 MR. BUCKLEY: I'm wondering if you ...

15 MR. BROWN: I'm at the Court's direction  
16 in terms of how that happens, whether it's -- I  
17 retrieve the originals and get the numbering done  
18 over the weekend or if madam clerk is directed to do  
19 it with -- and take one of the binders as well and  
20 number it the same.

21 MR. BUCKLEY: And I don't mind having it  
22 done also, so.

23 THE COURT: Well --

24 MR. BUCKLEY: I'm more comfortable with my  
25 friend doing it. That way there's no issue about  
26 ...

27 MR. BROWN: (INDISCERNIBLE) madam clerk

1 does the --

2 MR. BUCKLEY: (INDISCERNIBLE) so I think  
3 that's -- so --

4 THE COURT: Oh, no, madam clerk is not  
5 going to do it.

6 MR. BUCKLEY: Yeah.

7 MR. BROWN: That's fine, sir. I'll --

8 THE COURT: I can assure you that some  
9 representative of either Health Canada or Department  
10 of Justice can do it.

11 MR. BROWN: That's the way it will get  
12 done then, sir. I'll just retrieve the originals  
13 and I'll take one of Mr. Buckley's binders and --

14 MR. BUCKLEY: You can have that one there.

15 THE COURT: Now, is that going to affect  
16 the flow of the evidence that you wanted to present  
17 today?

18 MR. BUCKLEY: No, it shouldn't affect the  
19 flow of the evidence today at all.

20 THE COURT: Okay.

21 MR. BROWN: So, in that case then, sir, I  
22 guess we should maybe still number this as the next  
23 exhibit though, just for the purposes of having it  
24 entered so that the Crown can close its case at this  
25 point, sir. Either that, sir, or I'm -- I'll make  
26 an application to reopen my case for the purposes --

27 THE COURT: No. Then I am going to be

1 giving you back --

2 MR. BUCKLEY: Well --

3 THE COURT: -- an original exhibit and you  
4 are going to be marking it up.

5 MR. BUCKLEY: Yeah.

6 MR. BROWN: Yeah.

7 MR. BUCKLEY: And we already have on the  
8 record my friend's consenting to its admission --

9 MR. BROWN: Yes.

10 MR. BUCKLEY: -- on the basis that he said  
11 this morning.

12 MR. BROWN: Right.

13 MR. BUCKLEY: So, with that in mind --

14 THE COURT: (INDISCERNIBLE) Yes.

15 MR. BUCKLEY: -- I don't see any reason why  
16 it can't -- the defence can't enter it as an exhibit  
17 in our case.

18 MR. BROWN: That's also acceptable.

19 THE COURT: Or you can close your case  
20 subject to putting that exhibit into evidence on the  
21 next date.

22 MR. BROWN: That's what I'll do, sir.

23 I'll close my case at this time, sir.

24 THE COURT: All right.

25 MR. BROWN: And I will have this entered  
26 based on the agreement that we have between the two  
27 of us.

1 THE COURT: All right. Give me a moment  
2 here please.

3 All right. Thank you, Mr. Brown.

4 MR. BROWN: Thank you, sir.

5 THE COURT: So you have closed the Crown's  
6 case --

7 MR. BROWN: I have, sir.

8 THE COURT: -- subject to the introduction  
9 into evidence by agreement of this original numbered  
10 exhibit on the next date. All right. Thank you.

11 MR. BROWN: Thank you, sir.

12 MR. BUCKLEY: And, Your Honour, the defence  
13 is electing to call evidence so I would like to call  
14 Tony Stephan.

15 THE COURT: Well, you are actually at the  
16 point where you could make an application for a non-  
17 suit if you so -- if you thought that it would be a  
18 reasonable or an appropriate application to make,  
19 before being called upon to present evidence, before  
20 being asked if you wish to call evidence. That is  
21 the normal court --

22 MR. BUCKLEY: Oh, I --

23 THE COURT: In criminal procedure in any  
24 event, that is the normal course.

25 MR. BUCKLEY: I understand that.

26 THE COURT: Do you have an application to  
27 make, Mr. Buckley?

1 MR. BUCKLEY: Your Honour, can we stand down  
2 just for five minutes to consult with my clients.

3 THE COURT: All right. Very good.

4 MR. BROWN: Thank you, sir.

5 THE COURT CLERK: Order in court, all rise.

6 Court stands adjourned for a brief period of time.

7 (ADJOURNMENT)

8 THE COURT CLERK: Recalling Synergy Group of  
9 Canada and TrueHope Nutritional Support.

10 MR. BUCKLEY: Your Honour, there's two  
11 things. First of all, before I make any  
12 application, I want my friend's case to be finished  
13 and so we've, by agreement, just agreed to enter the  
14 original documents as an exhibit in the Crown's case  
15 --

16 MR. BROWN: That's correct, sir.

17 MR. BUCKLEY: -- and not worry about  
18 sequentially paged --

19 THE COURT: Well, but I am concerned about  
20 that. I am concerned about confusion that arises  
21 between the two.

22 MR. BROWN: For identification, you mean?

23 THE COURT: No, because whether we mark it  
24 for identification or the full exhibit, you are  
25 going to want it back, I am going to want you to  
26 have it back and mark it up.

27 MR. BROWN: Right, sir.

1 THE COURT: Once it is entered as an  
2 exhibit, I do not want it marked up.

3 MR. BUCKLEY: Sir, I wonder, it might be  
4 easier then if we enter a copy that's already  
5 numbered and then we don't have to worry about that  
6 and we'll make more copies.

7 THE COURT: And then enter that one, the  
8 original copied, on the next date.

9 MR. BROWN: With -- numbered.

10 MR. BUCKLEY: Sure, that's fine.

11 THE COURT: That is fine. Numbered on the  
12 next date. All right.

13 MR. BUCKLEY: Right.

14 THE COURT: That is fine.

15 What number are we on?

16 THE COURT CLERK: I'll just check. Exhibit 29.

17 THE COURT: Sorry?

18 THE COURT CLERK: Exhibit 29.

19 MR. BUCKLEY: I thought Exhibit 29 was the  
20 disclosure.

21 MR. BROWN: It's should be -- that's  
22 right, it should be number 30 next.

23 THE COURT CLERK: Yes, I think it's 30. Sorry.

24 THE COURT: Yes. So Exhibit 30 will be a  
25 three-ring binder with sequentially numbered copies  
26 of the documents provided in disclosure with regards  
27 to calls received by the -- by Health Canada on the

1           800 crisis line.

2

3           \*EXHIBIT 30 - Black 3 Ring Binder Containing Call  
4           \*Records, Empower Emergency Follow-up Sheets and  
5           \*Statistic Sheets, from a Heath Canada 1-800 Number,  
6           \*Pages Sequentially Numbered 000001 to 000733

7

8           MR. BROWN:                           Thank you, sir.

9                           And that does close the Crown's case, sir.

10          THE COURT:                       Well, no, I still want the  
11                           original to come in numbered.

12          MR. BROWN:                       All right.

13          THE COURT:                       All right. Subject to that,  
14                           the Crown's case is closed.

15          MR. BROWN:                       Right, sir.

16          MR. BUCKLEY:                    Now, Your Honour, just so that  
17                           I'm crystal clear, I am not making an insufficient  
18                           evidence motion so reserving the right to call  
19                           further evidence I'm making a no evidence motion on  
20                           the issue of identity because we're dealing here  
21                           with corporate defendants and it is incumbent upon  
22                           my friend to call some evidence that for the time  
23                           period in question, the year 2003, that they were  
24                           properly incorporated companies or else we don't  
25                           have persons, we don't have defendants.

26                           And so there are documents in court entered in  
27                           the Crown's case regarding names but there's no

1 evidence, no evidence at all upon which a Court can  
2 find that actually there were corporate persons with  
3 those names in the year 2003.

4 THE COURT: Mr. Brown.

5 MR. BROWN: Yes, sir. Sir, with respect  
6 to my submissions on this issue, the test is is  
7 there any evidence that the Court could rely on with  
8 respect to in this case the identity of the accused.  
9 And my submission is that there is some evidence  
10 that this Court can rely on. There are a number of  
11 banking records that name the company specifically,  
12 both companies in fact. The full corporate name is  
13 listed on those banking documents, Synergy Group of  
14 Canada Inc. and TrueHope Nutritional Support Ltd. I  
15 believe is the other name. We also have the  
16 business card that was presented to Health Canada  
17 employees by Mr. Anthony Stephan in January of 2003,  
18 which indicates -- and I'll maybe pull out the  
19 document, sir. I believe it says that he is a  
20 cofounder and describes his title. Thank you.

21 No, I'm sorry, it does say cofounder, sir. It  
22 lists TrueHope Nutritional Support Ltd., a nonprofit  
23 company and then gives an Alberta address. So I  
24 would submit, sir, that that alone gives you  
25 evidence that at least TrueHope Nutritional Support  
26 is a corporate entity in Alberta at the relevant  
27 time. I would submit that the business records that

1           were admitted into evidence that lists Synergy  
2           Group of Canada Inc. that were seized as a result of  
3           the seizure at TrueHope indicate that that is a  
4           corporate entity at the relevant period of time  
5           those documents were dated in 2003 as well.

6                        So my submission is that there is some evidence  
7           that this Court can rely on with respect to the  
8           entity of the corporate accused, sir. Those are my  
9           submissions subject to any questions you may have,  
10          sir.

11       THE COURT:                        All right. Thank you.

12                        Anything in response?

13       MR. BUCKLEY:                    No, I think I've made my point  
14          clear because the problem is that, whether somebody  
15          is representing that a company exists is different  
16          than evidence of whether or not it actually existed  
17          at the time period and that's basically the basis of  
18          my submission, which is why in prosecutions like  
19          this the Crown attempts to lead proof that actually  
20          there was a properly incorporated company at the  
21          time.

22       THE COURT:                        All right. Thank you.

23                        Once the Crown has closed their case, as has  
24          occurred in this case, it is normal in -- it is  
25          normal procedure to consider making an application  
26          for a non-suit, either that evidence is insufficient  
27          or that there is no evidence on an essential element

1 of the offence, as alleged, thereby entitling the  
2 defendant to an order dismissing the charge or  
3 charges.

4 In the present case Mr. Buckley has argued that  
5 his application is based on the submission that  
6 there is no evidence on identity for either or both  
7 of the main defendants and that it is -- he has  
8 argued that the -- it is necessary for the Crown to  
9 prove the incorporation of the defendants at the  
10 relevant time in question. The difficulty with the  
11 argument is that in my view there is some evidence  
12 before the Court upon which the Court can rely in  
13 establishing the identity of the two corporate  
14 defendants.

15 While it is true that a certificate of  
16 incorporation would be proof of incorporation, it  
17 only speaks as to the date it is -- that it is  
18 issued. So that, in my view, could lead to a rather  
19 -- if that was the only way that proof incorporation  
20 be established, it would lead to the situation where  
21 the Crown would have to produce some form of proof  
22 that a company between a certain date and -- between  
23 two dates in time, two certain dates in time, was  
24 incorporated and had not been dissolved or otherwise  
25 dealt with.

26 The point I am making is this. There is more  
27 than one way to establish the identity of a

1 corporate defendant and I am satisfied, again, that  
2 there is some evidence upon which the Court can  
3 rely, both for TrueHope and for Synergy, that during  
4 the relevant time in question in 2003 that they were  
5 (INDISCERNIBLE) active corporation.

6 I am not applying the standard of proof beyond  
7 a reasonable doubt in making that determination. I  
8 am only applying a standard that says that there is  
9 some evidence and that is all that is required at  
10 this stage of the proceedings in order to deal with  
11 the motion for a non-suit on that particular point.

12 So on that basis the application that I invited  
13 Mr. Buckley to make is in fact denied and I will  
14 call upon Mr. Buckley in accordance with accepted  
15 procedure to determine whether or not he wishes to  
16 call evidence at this point in time.

17 MR. BUCKLEY: And, Your Honour, we do wish  
18 to call evidence.

19 THE COURT: All right. Thank you, Mr.  
20 Buckley.

21 MR. BUCKLEY: And I would like to ask Mr.  
22 Anthony Stephan to take the stand.

23

24 \*ANTHONY FREDERICK STEPHAN, Sworn, Examined by

25 \*Mr. Buckley

26

27 THE COURT: I expect you are going to be

1           some period of time?

2       MR. BUCKLEY:                   Yes, I am, Your Honour.

3       THE COURT:                    The reason I am asking that is  
4           that I have afforded the courtesy of allowing people  
5           to sit during the presentation of their evidence if  
6           it is going to be -- if they are going to be on  
7           their feet for a lengthy period of time.

8       A     I'll try this for a while, sir --

9       THE COURT:                    All right. That is fine.

10      A     -- if it's okay.

11      THE COURT:                    And if you do wish to be  
12           seated at some point during it, I am sure there will  
13           be no objections from the Crown.

14      MR. BROWN:                    No, sir.

15      A     Thank you, sir.

16      THE COURT:                    Fine.

17      MR. BUCKLEY:                   Now -- and, Your Honour, just  
18           as also a way of preliminary matter, at some point  
19           in Mr. Stephan's evidence I'm going to ask him to  
20           turn a program on on his computer that's going to  
21           record what he does so that the court record will  
22           have -- we can enter a disk because, rather than  
23           have him just talk about this TrueHope support  
24           program which is going to be relevant to the  
25           defence, I think the best evidence is for him to log  
26           on to the database and show the Court what we're  
27           talking about. And I've already spoken to my friend

1           about this.

2           MR. BROWN:                   Yeah.  And -- yes, sir, and I  
3           will ask to reserve my judgment on that until I see  
4           how it operates, but --

5           MR. BUCKLEY:                 Right.

6           MR. BROWN:                   -- there may be benefit to  
7           having that kind of information.  I just don't know  
8           what we're going to see.

9           MR. BUCKLEY:                 Right.

10          THE COURT:                 So what would be happening in  
11          effect is he would be creating an exhibit during the  
12          course of his evidence.

13          MR. BUCKLEY:                 Yes.  Because the problem is,  
14          if we don't record it -- that's why I'm bringing it  
15          up because you're not really supposed to record  
16          things in court.  But if we don't have the computer  
17          record it, then the court record might be difficult  
18          to interpret if somebody else was looking at it.  
19          But if there's a disk there showing every page and  
20          what he was talking about, then it just seems to me  
21          that that's the best court record that we can  
22          create.

23          THE COURT:                 And what specifically is going  
24          to be the subject matter of the recording?

25          MR. BUCKLEY:                 There's already been some, you  
26          know, testimony about how thorough these -- this  
27          company is about managing participants in the

1 program and we're going to walk through -- they've  
2 changed the name of an actual participant and we're  
3 going to walk through their file and show all the  
4 types of things that they track and how they  
5 actually manage people, and explain why they do  
6 that.

7 And that's actually essential because dealing  
8 with a group of people that are fairly fragile and  
9 this company's developed expertise in managing them,  
10 our necessity defence would fail if this was just an  
11 ordinary product that could be safely provided to  
12 people without being managed because then it was  
13 open to them to just allow somebody else to sell it.  
14 But they don't consider themselves as selling, they  
15 consider themselves as managing a program that  
16 includes the product.

17 And so it's important for the Court to  
18 understand, actually, well what are people talking  
19 about when they say the TrueHope program, what is it  
20 -- what does somebody have to do, what rating scales  
21 are used, what are they looking at to manage. And  
22 it's not going to take that much time but, you know,  
23 a picture is worth a thousand words. And so to  
24 actually look and see what the program is I think  
25 would be very -- the best evidence that we could  
26 place before the Court. And as I say, it's not  
27 going to be very lengthy evidence.

1 THE COURT: My concern is with relevance.  
2 How is it relevant to the defence of necessity? Do  
3 you want to explain that a little further please?

4 MR. BUCKLEY: Oh, certainly will. One of  
5 the elements for the defence of necessity is that we  
6 have to show that there were no legal alternatives  
7 open to the defendants. Because here they are for  
8 an entire calendar year being charged with selling  
9 without a DIN number and they're telling Health  
10 Canada, Well, we can't stop selling, we can't deny  
11 the product of people because there's going to be  
12 harm to them. Now, bearing in mind that if there's  
13 a legal option open to the company that they have to  
14 take it.

15 One thing that just sprung up in preparing for  
16 this case is well why wouldn't they just give, you  
17 know, give the product to some other company to  
18 sell. Like why would they bother selling at all, I  
19 mean because they have a choice, Do we break this  
20 law, do we sell without a DIN number or not. And  
21 why is it necessary for this particular company to  
22 do it as opposed to giving it to somebody else to  
23 do. And the answer to that is that, for the same  
24 reason that you can't go to the health food store  
25 and buy this product, you can only get it when you  
26 participate in the program because there's actual  
27 risk in just letting the product be in the

1 marketplace because, for people that are suffering,  
2 these are very severe conditions where we know  
3 there's a high suicide risk, there is a high risk of  
4 managing people, especially if they're on  
5 pharmaceutical medications to treat conditions like  
6 bipolar.

7 When I call Dr. Charles Popper, he is going to  
8 explain, Yeah, no there's a real risk here in  
9 managing the people and that's the trick. And so he  
10 would even be critical of a psychiatrist that would  
11 just put a patient on there without getting some  
12 guidance from either somebody like himself or the  
13 TrueHope program and how to manage them.

14 This is something that is quite unique as a  
15 treatment option but it's not something you can just  
16 give to people or it's not something you can just  
17 sell to people, which is why it's part of this  
18 program.

19 So our defence fails entirely if this is the  
20 type of product that you can just allow somebody  
21 else to market and sale. I mean they could have  
22 sold it to another company, they could have given it  
23 to another company, but the difficulty that they  
24 faced is that they believe that would have been as  
25 irresponsible as stopping to sale -- sell because,  
26 unless you had this elaborate way of tracking and  
27 counselling and kind of guiding people through

1 things, that that in itself creates a danger.

2 And I don't think there's any way for the Court  
3 to actually appreciate what they do without us  
4 having -- you know, showing the Court how this  
5 program works, what they do. This kind of been some  
6 anecdotal stuff. We know that both Mr. Brosseau and  
7 Ms. Jarvis, when they ordered, that they were told  
8 they had to be part of the program, that there were  
9 follow-up calls, you know, that there was an  
10 elaborate interview process just to access the  
11 product and some anecdotal evidence that, you know,  
12 Ms. Seeling was quite impressed with how thorough  
13 these gentleman are, but that's not as strong as  
14 actually showing, Okay, how do they actually manage  
15 somebody and showing a real case study. And they've  
16 picked a difficult one. Well, what does it look  
17 like when we take a participant and basically walk  
18 the Court through that process. So just in our  
19 minds it's really the best way to demonstrate that  
20 to the Court.

21 And as I say, in the defence opinion our  
22 defence fails if the Court doesn't accept that there  
23 is a risk to just allowing the market on the product  
24 without a thorough plan of managing people.  
25 Similarly to just giving somebody an anti-psychotic  
26 drug and not having them under doctor's care would  
27 be danger, this is a similar type situation. And as

1 I say, when Dr. Popper is here, we are anticipating  
2 that he's going to explain that in spades, but it's  
3 also important to see how the company manages its  
4 participants.

5 THE COURT: All right. That is fine.

6 MR. BROWN: Sir, the only comment, again,  
7 as I said, I'm not sure exactly what we're going to  
8 see and I'm not sure I'm clear as to why the bid --  
9 the created document will be necessary, but perhaps  
10 we can address that once Mr. Stephan has done the  
11 testifying and then we can determine if a disk is  
12 required.

13 THE COURT: Well, I think is reasonable.

14 MR. BUCKLEY: Yes.

15 THE COURT: What I wanted to know was  
16 where you were going with it.

17 MR. BUCKLEY: Well --

18 THE COURT: You have set out where you are  
19 going with it and we will see where it takes us.

20 MR. BROWN: Yeah, that's fine.

21 MR. BUCKLEY: Right. And I just -- I wanted  
22 to alert the Court because it's a somewhat unusual  
23 process to go through.

24 THE COURT: That is fine.

25 Q MR. BUCKLEY: So, Mr. Stephan, you're 55  
26 years of age?

27 A Fifty-three, sir.

1 Q Oh, I'm sorry. Don't draw any conclusions from  
2 that. And you reside in Magrath, Alberta?

3 A I do.

4 Q Okay. And I'm wanting you to describe for us,  
5 because you're involved in the TrueHope program --

6 A I am, sir.

7 Q Okay. How the TrueHope program came to be.

8 A Well, this -- this program had its roots in a lot of  
9 trauma. It was in 1994 -- January 30th of 1994 that  
10 I lost my wife, Debra Cornelius Star Preed  
11 (phonetic) Stephan to a suicide. Debbie had been  
12 diagnosed with Bipolar Effective Disorder I with  
13 rapid cycling, which is the most significant  
14 diagnosis that you can have in the effective type  
15 disorders. She had suffered for a number of years  
16 through severe depression and manic highs, euphoric  
17 highs. That's why they call it bipolar, it has an  
18 upper side or a high a very, very deep low. And she  
19 certainly fit the picture of someone having a very,  
20 very severe disorder.

21 It was very, very disruptive in her life.  
22 Oftentimes she would have fits of raging, explosive  
23 behaviour. Other times she would move into  
24 absolutely sullen, distraught depression where she  
25 would be immobilized. There were some days that I  
26 actually had to assist her in getting out of bed and  
27 getting dressed for the day. She was extremely

1 paranoid and delusional and all of this culminated,  
2 unfortunately, in -- in her loss of life.

3 About three weeks prior to her death she had  
4 been placed on a medication called Prozac and,  
5 although this anecdotal, I believe that that had a  
6 negative effect. Yes, she was very ill, but she  
7 became absolutely delusional and hysterical. I  
8 remember one night waking up in bed with her, about  
9 4:00 in the morning, and listening to her sob and  
10 saying, Deb, what's -- what's wrong. And she  
11 indicated, I don't know who I am anymore. Am I --  
12 am I this person or am I this person? What am I  
13 doing, you know, where are we going?

14 At that time in our life we had some stressors  
15 as well and, of course, that only serves to  
16 exacerbate these -- these symptoms. But  
17 unfortunately on -- on the 30th of January, 1994,  
18 she ended up taking her life. She asphyxiated  
19 herself. I was -- sorry. I was working in the US  
20 at the time of her death and I remember the trauma  
21 that our family went through and it was a very, very  
22 difficult time in our life and it -- and it left me  
23 leaving with some terrible feelings of despair  
24 myself and my children struggled because of it.

25 Q Okay. Now, how many children did you have?

26 A At that time we had 10 children - nine of our own  
27 and -- and one that was adopted. And there were

1           eight children living with me at the time of -- of  
2           her death.

3       Q     Okay. Now, did some of your children have similar  
4           problems?

5       A     Yes. In fact, let -- let me back up for a second.  
6           It's a very genetic disorder, in fact her father  
7           took his life 16 years before she did and there was  
8           no question it was travelling down that family line.  
9           And at that time of her death I had two children  
10          that also suffered with the same diagnosis, Bipolar  
11          Effective Disorder I, with rapid cycling.

12       Q     Okay. And what were the names of those children?

13       A     Joseph Virgil Stephan and Autumn Dawn Stringam.  
14          Autumn of course was married at the time and had a 4  
15          year old boy. Joseph was diagnosed with the same  
16          disorder and -- and was on a drug called lithium, a  
17          prescribed medication, and he took 900 milligrams of  
18          lithium per day as well.

19       MR. BUCKLEY:                    Okay. And just so the Court's  
20          aware, Joseph, do you want to stand up just so the  
21          Court understands that -- who we're talking about.  
22          You can sit down.

23       Q     MR. BUCKLEY:                So can you describe what you  
24          observed of Joseph's condition?

25       A     Well, Joseph -- Joseph was a rapid cycler as well  
26          and every morning that he would wake up, he would  
27          wake up in a very sullen depression and you had to

1 be very careful when you got him up for the day  
2 because, if -- if you went too fast, he move into a  
3 raging episode. He was very dangerous. He was a  
4 big guy. Well, you've seen, 240, 250 pounds. But  
5 Joseph was out of control.

6 By the afternoon time of -- of each and every  
7 day, he would be in a raging manic state. So he  
8 would move from a severe depression in the morning  
9 to an extreme high. He would make a lot of  
10 decisions that would be inappropriate. He had a lot  
11 of violent tendencies.

12 We had a lot of dysfunction in our home. I  
13 need to tell you that it was similar and I'm -- I'm  
14 not being in any way smart when I say this, but --  
15 but it was like living in a mental asylum. And when  
16 you have a situation like that in your home, not  
17 only is the -- the individual sadly enough ill with  
18 mentally -- mental illness, but the whole family  
19 becomes ill because of the dysfunction and all the  
20 pressure and the stress.

21 And he would rage and explode. He would become  
22 extremely delusional. I remember once we actually  
23 caught him in the fireplace and he -- this was at  
24 night. We heard a noise and we went downstairs and  
25 he was covering his face with black ashes from the  
26 fireplace. He was totally dressed in black. He  
27 believed that the Natives -- we live close to a

1 Native Reserve, about a block away. He had this  
2 delusional thinking that they were always going to  
3 come and get him and he always had this idea that  
4 the RCMP and -- and even the FBI - I don't know  
5 where that came from - were always going to come and  
6 get him. And so he would stockpile knives and guns  
7 and this kind of thing. We had to be very, very  
8 careful.

9 And he had assaulted physically my -- my second  
10 wife. I married a good lady about eight months  
11 after my first wife's death and she's been a  
12 blessing and a help in our home, and he would  
13 physically assault her. And he came to me from one  
14 of my son's -- in fact, my son Daniel indicated to  
15 me one day, Dad, you've -- you've got to get him  
16 institutionalized. He's got to go, because you're  
17 going to have a major problem in your home and --  
18 and you can see it coming. And -- and it broke my  
19 heart because here I'd lost my wife and I'm watching  
20 my family literally coming unglued before my eyes,  
21 and I just couldn't do it. And I decided that we  
22 had to -- we had to take some evasive action.

23 The -- the medication that he was on wasn't  
24 working appropriately and my wife and I went to  
25 visit with a very good psychiatrist at the  
26 University of Calgary, Foothills Hospital, and we  
27 visited with her at length. And I remember how she

1 told me that there is no cure for this and what  
2 you're seeing, Mr. Stephan, is basically what you've  
3 got. And I remember her reading to me from what now  
4 I understand is the DSM-IV. It's a diagnostic  
5 statistical manual that's used to delineate or -- or  
6 to appropriately diagnose these -- diagnose these  
7 disorders. And she read to me from there that this  
8 is --

9 Q Okay. I'm just going to focus you.

10 A Sorry. Okay.

11 Q But it had been communicated that there's no cure.  
12 So what happens?

13 A Well, I started looking for some answers. I started  
14 talking to everybody. I visited with a number of  
15 doctors. Everybody had the same thing. There  
16 wasn't an answer for this. And time went on and --  
17 and we struggled through this and -- and about a  
18 year-and-a-half later I met a man named David Hardy.  
19 I took a position as a property manager and I had 26  
20 churches that I was looking after in Southern  
21 Alberta and he was the owner's liaison and David and  
22 I got to know each other. He -- we have some  
23 commonalities, we both have large, large families.  
24 And I remember talking to him about how bad this was  
25 in my home, how -- we -- we were having a terrible  
26 week that week. I had to go pick up Joseph twice  
27 from school. He'd been involved in fighting and

1           this kind of thing. Luckily we had a principal that  
2           was prepared to help him and had some compassion in  
3           trying to help him through this.

4                     But David and I were talking one day as we were  
5           walking down the -- a hall in one of the churches,  
6           talking about different things. And I told him how  
7           bad it was and he said to me, You know, Tony, I  
8           don't know a whole lot about mental disorders and I  
9           don't have a big understanding about these things,  
10          but -- but he said, My wife and my children have  
11          never had one of these issues so I've been very  
12          blessed we've never had to go through.

13                    And he had a lot of sympathy for me and he  
14          said, But you know, I want to tell you something, I  
15          spent 20 years in the agricultural industry  
16          formulating feed for livestock, and he said and  
17          particularly -- particularly in the -- in the hog  
18          population where he looked after thousands and  
19          thousands of hogs through these different farmers  
20          and ranchers. He said, We used to see a disorder  
21          called ear and tail biting syndrome where these  
22          animals would savagely attack one another. They'd  
23          become hyper irritable, and I'm listening to this,  
24          and they would rage explosively. And I'm thinking,  
25          wow, that -- that sounds like my son. It sounds  
26          like the same kind of a condition almost. And he  
27          said, But you know we used to resolve that all the

1 time through nutrition. We would nutrate the  
2 animals, we would supplement them with mackerel and  
3 micro elements, minerals, and we would apply  
4 vitamins to their feed and -- and we could nutrate  
5 it away. And he said it's -- it's understood in the  
6 agricultural industry. And I remember when he told  
7 me that it was like -- like a light switch turning  
8 on and I thought we have to do this.

9 So it was in November of 1995 that David and I  
10 and I guess -- I guess with my passion to try and  
11 find an answer and with -- with his understanding of  
12 nutrition, at least in the agricultural industry,  
13 set out to -- to find something. And with his  
14 information we had these commercially available  
15 products and -- and we put my son on it and --  
16 November, 1995. Didn't work that well. I saw maybe  
17 a 15 to 20 percent change in his demeanour but he  
18 was still taking lithium and still very, very  
19 incorrigible and difficult to deal with.

20 On January 18th of 1996, we made an attempt  
21 with four different products. We -- we had a  
22 product which was a herbal supplement, grape seed  
23 extract, we had a calcium supplement and we had a  
24 product that was a vitamin-mineral supplement and a  
25 liquid mineral. And David recommended these because  
26 -- because he looked at the labels and understood  
27 and he said, Well, these are high quality and he's

1 probably going to need some more of this extra zinc  
2 and this and that. And we -- we put my son on this  
3 and three days later he ran out of his lithium  
4 prescription, my wife was very concerned about that,  
5 and she wanted to refill the prescription. I said,  
6 You know, Barb, go ahead if you want, go -- go  
7 refill the prescription, bring it back and -- but --  
8 but I don't want to put him on it. I want to try  
9 this, because this hasn't worked effectively, and I  
10 was watching what my daughter Autumn was going  
11 through as well.

12 And within 30 days of putting him on those  
13 vitamins and minerals he no longer exhibited any  
14 symptoms of bipolar disorder; he calmed down. I  
15 remember about five weeks into this sitting on the  
16 couch with him and him saying to me, Dad, I don't  
17 understand, where was I, why was I so angry, why was  
18 I so violent all the time. But -- but he improved  
19 and -- and he's never looked back. This is now over  
20 ten years ago and he's never really had a relapse.

21 Q Okay. So now that's your first experience --

22 A That's right.

23 Q -- with using nutrition to try and solve bipolar.

24 A Yes.

25 Q Okay. And these are four products that basically  
26 were just purchased from stores?

27 A Yeah. They --

1 Q Okay.

2 A -- they were human products that were available.

3 Q Now, can you tell us about your second experience  
4 then?

5 A The second experience came with my daughter Autumn.  
6 Autumn had suffered with bipolar for a long time. I  
7 remember when she was about 12, 13 years old, that  
8 my wife and I, Debbie, had a lot of problems with  
9 her. We didn't understand what she was going  
10 through. This was -- this was a very intelligent  
11 girl who had been in the gifted program in Fort  
12 McMurray. I believe it was grade 5 that they  
13 accelerated her right through, they passed her  
14 through and she was in the gifted program. And all  
15 of a sudden when she was 12, 13, 14, all of a sudden  
16 she started to exhibit some behaviour that was  
17 profoundly different. It was like almost that she  
18 was losing cognitive function and she was into a lot  
19 of emotional overflow where she would cry all the  
20 time or she'd have these huge emotional bursts,  
21 making something out of nothing, that kind of thing.  
22 You know, the mountain out of the molehill, and that  
23 carried on.

24 That carried on and she -- she eventually was  
25 diagnosed with depression and then -- and then  
26 Bipolar Effective Disorder I with rapid cycling, the  
27 same as her -- as her mother. She had been in the

1 Walter C. Mackenzie Hospital, which is the  
2 University of Alberta Hospital, under the care of a  
3 Dr. Genniman (phonetic). And Dr. Genniman was doing  
4 everything that he could with her. She had been  
5 through major medication changes throughout a number  
6 of years, trying different cocktails. Some of them  
7 worked for a period of time and then she would go  
8 through what's called a med breakthrough where she  
9 would break through. She was very episodic, very,  
10 very episodic and she also, like her brother, had a  
11 lot of violent tendencies where she would explode.

12 In January when she was released into her  
13 husband's care from Dr. Genniman, he indicated to  
14 Dr. Genniman -- or Dr. Genniman indicated to her  
15 husband Dana that she would have to have 24/7  
16 supervision by an adult because she was incapable:  
17 (1) of looking after herself; and (2) she was a  
18 danger to herself because of her suicidal ideation,  
19 as well as a danger to her young son who at that  
20 time, I believe, yeah, 4 years old.

21 Her mother-in-law cared for her for about two  
22 weeks and then she -- Dana phoned me up and said, My  
23 mom has to go back to work at the University of  
24 Alberta and could you look after Autumn for a week,  
25 I'm on shift and --

26 Q Okay. And just so the Court understands --

27 A Sorry.

1 Q -- Dana is?

2 A Dana is the husband of -- of Autumn - Dana Stringam.

3 Q Okay.

4 A She was married -- she is married to Dana Stringam,  
5 yeah.

6 And so Dana called me and -- and said, Can I  
7 bring her down? I said, Certainly. And so she  
8 brought her down -- he brought her down on I believe  
9 it was February 17th when she came to our home in  
10 1996. This is about a month after Joseph had gotten  
11 onto these different nutrients. And Joseph was  
12 doing well at that time, of course.

13 The -- with Autumn, when she came to stay with  
14 us, on the second day we went to church and she had  
15 an episode where she would actually start to  
16 physically shake because she had so much anxiety.  
17 And I remember saying to her, Look, if you're going  
18 to have a problem, let's go home. So she and I went  
19 home together. I walked home with her. And she  
20 became very, very suicidal and -- and very, very  
21 anxious and was having a major crying fit. And I  
22 had a friend in -- in my home who used to come for  
23 dinner and his name was Bill Mathis (phonetic).  
24 He's a psyche nurse and he worked at the Cardston  
25 Hospital. And Bill was there at the time when she  
26 had this episode and he said, Look, we got to take  
27 her down to the hospital --

1 MR. BROWN: Yeah. Sorry.

2 THE COURT: Please --

3 MR. BUCKLEY: Okay. No, in fact, you can't  
4 be saying what other people said.

5 A Oh --

6 MR. BUCKLEY: Just what you observed.

7 A Sorry.

8 THE COURT: I just want it clear on the  
9 record that I am allowing a certain amount of leeway  
10 with hearsay evidence here but it should be  
11 abundantly clear that it is only for the narrative  
12 purposes --

13 MR. BUCKLEY: Yes. Yes.

14 THE COURT: -- and not for the truth of  
15 the contents because what hearsay evidence is, it is  
16 not admissible evidence --

17 A Okay.

18 THE COURT: -- and it is because it is  
19 what somebody else has said to you and there is a  
20 rule that the Court should have the best evidence in  
21 front of it. And if that person has got something  
22 to say, then they should be put on the stand and  
23 their evidence should be given. Also, if it is  
24 something that somebody has said to you and that  
25 person is not here, then it cannot be tested by  
26 cross-examination by the Crown --

27 A Yes.

1 THE COURT: -- which is part of the trial  
2 process. So that is the reason for why we are  
3 saying, Okay, just a moment, you should not be  
4 telling us what other people have said to you unless  
5 that person is, in fact --

6 A Present.

7 THE COURT: -- present. Basic --

8 A I apologize, sir.

9 THE COURT: No, no, it is not a matter of  
10 apology. I just want you to understand why I am  
11 stopping at this point in time and making a  
12 statement that I want the record to reflect that I  
13 have allowed a certain amount of hearsay evidence in  
14 the evidence that you have given to date, but it is  
15 only for the purpose of the narrative and not for  
16 the truth of the contents. And Mr. Brown, the  
17 Crown's office, was rising to make the same  
18 objection --

19 MR. BUCKLEY: That's right, sir, and thank  
20 you.

21 THE COURT: -- at the same time.

22 A Yes, sir.

23 THE COURT: But it is not something to  
24 apologize for, it is just something that you should  
25 realize that I am not in a position to put any  
26 weight on that type of evidence, other than that it  
27 assists with the narrative of the story you are

1           telling. And Mr. Buckley knows that, in fact his  
2           discussion with earlier witnesses --

3       MR. BUCKLEY:                   Oh, yeah, and I take no  
4           exception at all.

5       THE COURT:                    Yes. No, we have had this  
6           discussion with earlier witnesses and, rather than  
7           keeping interrupting you through the course of this,  
8           I have allowed it go on. But I want the record to  
9           clearly reflect that it is only for the purpose of  
10          the narrative and a certain amount of it is  
11          necessary (INDISCERNIBLE) problems with that.

12                 Anyhow, I will have Mr. Buckley proceed now  
13          (INDISCERNIBLE).

14       A     Thank you, sir.

15       MR. BUCKLEY:                 Okay. Thank you, Your Honour.

16       MR. BROWN:                   Thank you, sir.

17       Q     MR. BUCKLEY:           So, Mr. Stephan, anyway,  
18           you've broughten Autumn -- or Autumn and you have  
19           come home from church because she was shaking --

20       A     Yes.

21       Q     -- and you were indicating that she was having an  
22           episode. So tell us what happened.

23       A     Well, I didn't take her down to the hospital, in  
24           fact, I just thought there's no sense. She's been  
25           through this over and over before, for a good number  
26           of years. And so what I did is I encouraged her,  
27           strongly, to begin taking these same nutrients that

1 Joseph was on. So we did that and -- and she wasn't  
2 really amenable to it, to be honest with you, but I  
3 said, You've got to give this a try, we got to do  
4 something and, you know, your brother's doing so  
5 much better. So we went ahead with that and -- and  
6 over the next couple of days I started to see her  
7 demeanour change somewhat.

8 On the third day I remember her waking up and  
9 calling me and I went into the room and she said to  
10 me, I just feel so over-medicated, I feel over-  
11 sedated, like I've been taking a lot of medications.  
12 And I asked her, I said, Well, did you change your  
13 medications? Did you start taking a whole bunch  
14 more of them? And she said no. And I said, Well,  
15 maybe we have to look at reducing those. So at that  
16 time she was taking Haldol, Rivotril, Epival, Ativan  
17 and Cogentin. And so she dropped four of those  
18 medications and stayed on the Epival.

19 I took her home on day five. She was going to  
20 stay seven days, but instead she only stayed five.  
21 But I was amazed because she actually -- what made  
22 me feel like the thing in -- was starting to turn  
23 around is that she actually showered by herself.  
24 Now, don't take me wrong when I say that, but she  
25 had a terrible fear and a terrible delusion and so  
26 she would shower with her clothing on. She was  
27 incapable of making good, sound decisions. And

1           these fears would -- would just overcome here. But  
2           she showered and looked after herself and made  
3           herself up and I could see some change.

4           On the way home, I took her to my mother's home  
5           where I met with her husband Dana Stingam. On the  
6           way home, she was able to converse much, much better  
7           and I realized that she wasn't totally well by any  
8           stretch of the imagination, but she herself had  
9           great hope because she felt like she was starting to  
10          be able to think and the fog was starting to lift.

11          Her husband Dana was very concerned about this  
12          thing.

13       MR. BUCKLEY:                   Your Honour, just for the  
14          record, Dana is this gentleman in the front row.  
15          I'm not calling him as a witness, but.

16       A       He expressed a lot of concern to me and I said,  
17          Well, Dana, just give it a try, just give it a try,  
18          let's see where it goes; and so he did. And by the  
19          28th of March she was off of all of her medications  
20          and has been off since. It's now been ten years  
21          with her as well.

22          So this was kind of the beginning of it and  
23          David and I looked at that and -- and were shocked  
24          by it. In fact a number of people were -- were  
25          quite surprised by what was taking place here.  
26          Owing to that, we actually had people in the  
27          community who knew our family. We lived in a small

1 community at Cardston, there's about 3,000 people so  
2 you know pretty well, not everybody in town, but a  
3 good number of people and they watched this thing  
4 happen with him. And all of a sudden the principal  
5 is saying, Well, you know, he's -- he's doing so  
6 much better, and I wasn't having complaints at the  
7 school. So people started coming to us and they  
8 said, Well, what are you doing? I've got this child  
9 with attention deficit hyperactivity disorder, go  
10 you think this would work.

11 And so David and I provided these products at  
12 no charge, we -- Give it a try, you know, go ahead,  
13 and it was amazing what we saw. There were people  
14 changing and -- and they were coming out of these  
15 disorders; depression. We had one lady that  
16 suffered with severe schizophrenia for 20 years and  
17 she was in bed for years and years only to rise for  
18 bathroom breaks and to eat. And her good husband,  
19 her faithful husband looked after her all those  
20 years. They never travelled anywhere; they never  
21 had a life. And he heard about it and phone me up  
22 and said, Come over. So my wife and I went over  
23 there and -- and visited and then David and I  
24 started to work with him and it was amazing at the  
25 results we saw there. All of a sudden this lady's  
26 in the community and people are shocked because she  
27 actually attended like a school for the disabled and

1           pretty soon they've got her in the school for the  
2           disabled helping other people. And then she had a  
3           part-time job working at the hospital in the  
4           cafeteria and her -- you know, we saw these kind of  
5           life altering experiences. And so we became very,  
6           very enamoured and excited by this whole thing and  
7           -- and proceeded from there.

8       Q     MR. BUCKLEY:                Okay. Now, at that point  
9           there's not a company called Synergy Group in  
10          place?

11       A     No.

12       Q     Okay. Did that follow shortly after this where you  
13          guys are getting yourselves in the community?

14       A     Yeah, we incorporated the Synergy Group of Canada on  
15          the basis that it would be a research company. That  
16          was our main drive here. I think it was May 23rd of  
17          1996, I think that's when that happened. And we  
18          started visiting with people. We went and visited  
19          with a neural scientist named Dr. Bryan Kolb, very  
20          world renowned, at the University of Lethbridge.  
21          And we talked to him about what we had seen and it  
22          was actually quite amazing because he really had a  
23          difficult time believing it.

24                He and another doctor, Dr. Ian Wishaw, have  
25          written a number of books --

26       Q     Okay. But I'm just going to focus you so we're not  
27          talking about the doctors, but you --

1 A Okay.

2 Q You were going to him to try and do what?

3 A Well, we -- we wanted him to -- to make an  
4 undertaking and research. We wanted him to -- to  
5 look at this to see if there's -- you know, if this  
6 is really happening or whatever, you know.

7 Q Okay.

8 A To see if he could experience the same thing that we  
9 were seeing. And so we approached him and -- and we  
10 told him about different experiences and -- and he  
11 was a bit unbelieving, of course. And so he asked  
12 us if he could visit with -- with Autumn so we had  
13 Autumn come down and -- and David and I and Autumn  
14 visited with him. He interviewed her with Dr. Ian  
15 Wishaw as well and -- I think Autumn is one of your  
16 witnesses, so.

17 Q Right. Okay. Carry on please.

18 A Okay. So they interviewed her, they eventually  
19 looked into her medical records and my -- my  
20 interpretation of it they -- was that they were very  
21 surprised at what they saw. So he indicated to us  
22 that he wasn't able to complete research because  
23 he's an animal trialist and not a human clinical  
24 trialist, but he said, you know, what you could do  
25 is you supply some more of these nutrients to -- to  
26 some people that have ADHD children that haven't had  
27 it yet and he suggested that there was a form that

1           could be used where the parents could do a measure,  
2           it's called the Connors Rating Scale. I guess it's  
3           a very acceptable form in the psychiatric field.  
4           And so we provided those forms to these individuals,  
5           to these mothers, and provided these free nutrients  
6           and they put them on and they monitored the  
7           children. And all the data was gathered and brought  
8           back to him and -- and he did an analysis and he  
9           looked at it and indicated to us that it was  
10          statistically significant. In fact, he was quite  
11          surprised and shocked - that's my interpretation -  
12          of his -- you know, his seeing this. He wanted to  
13          visit with the parents and with the children so we  
14          took him on -- on a tour around Southern Alberta to  
15          visit with all these families and -- and he was  
16          very, very surprised at the -- at the findings.

17                 He, once again being an animal trialist, said I  
18          can't help you any further but I have an associate  
19          at the University of Calgary, Dr. Bonnie J. Kaplan,  
20          and she's the head of the behavioural research unit  
21          for the University of Calgary, a very well published  
22          scientist. And he called her and -- and I think  
23          reluctantly she agreed to meet with us and we went  
24          to visit with her, Autumn and -- and David Hardy and  
25          myself, and I think that she thought that we were --

26          Q        Okay. Let's not go into what she thought.

27          A        Okay.

1 Q But just tell us what happened.

2 A And, anyhow, you know, we had to work through her --  
3 her unbelieving issues but -- unbelief issues here  
4 but, anyhow, we carried on and -- and she thought,  
5 after she talked -- well, I won't say what she  
6 thought, but after she was approached by Dr. Kolb's  
7 data, she decided to give us a try. So she started  
8 working with children with this and started to see  
9 what we believe is the same thing.

10 Q Okay. Now, when you say she started approaching  
11 children with this, what is this?

12 A Well, with these four nutrients, these four  
13 commercially available products, and she started  
14 doing trials on it. I was aware that she had  
15 approached her ethics committee for, of course --

16 Q Okay. But just --

17 A Okay.

18 Q -- we'll let her do that.

19 A Okay. Okay.

20 Q So -- but your understanding is she started working  
21 at trial with these four trials?

22 A Yeah.

23 Q What happened that you're aware of?

24 A Failed.

25 Q Okay. Now, when you say that, can you give us an  
26 explanation?

27 A Yeah. We saw something very mysterious because the

1 people that were -- that we had provided these  
2 products to, all of a sudden we started getting  
3 phone calls from them saying, Hey, Johnnie is going  
4 backwards. Even my own daughter started to  
5 indicate, Hey, there's something wrong here, I'm  
6 starting to lose it again. People started to go  
7 back downhill. And so that kind of put us into a  
8 panic and so, you know, conferring together and of  
9 course David with his knowledge of this thing, we --  
10 we looked at it and three of the products had what  
11 were called a guaranteed analysis so, you know, they  
12 were consistent.

13 Q Mm-hm.

14 A The other product was a liquid mineral and there was  
15 some testing done on different lots and batches of  
16 that mineral that showed that with the different  
17 lots and batches that the amount of mineral was  
18 increasing and decreasing, so it was inconsistent.  
19 So we -- you know, so that's the -- the result of  
20 that I think caused the failure of the trial to a  
21 certain extent and -- and we had to kind of move on,  
22 David and I, in that sense.

23 Q Okay. So, when that happened, when you guys  
24 realized that this program wasn't consistent, what  
25 did you guys -- how did you respond to that?

26 A Well, of course, we conferred a lot about it and --  
27 and realized that we were going to have to have a

1 product that would be consistent, something that  
2 wouldn't change. And so we approached a  
3 manufacturer and they put together a product and --  
4 and we used that for a period of time.

5 Q Okay. Now, was this four separate products or --

6 A No, it was an all-in-one product with a guaranteed  
7 specific analysis on it.

8 Q Okay.

9 A Yeah.

10 Q So you approach a manufacturer to make an all-in-one  
11 and how long did you stay with that manufacturer?

12 A Oh, I would -- I would estimate -- I would say  
13 probably about six, seven, eight months. I'm going  
14 to estimate.

15 Q Okay. Now, why was that so short?

16 A Well, because the -- the manufacturer really wasn't  
17 prepared to -- to blend it according to the  
18 specification that we put together. And of course  
19 when I say that, when I say "we", I mean more David  
20 Hardy. The formulation that we wanted, they weren't  
21 really prepared to -- to use the products that we  
22 wanted. We wanted higher quality things such as  
23 chelates which have a better bio-availability and  
24 they weren't really prepared to go that distance.  
25 So we moved on to -- to another manufacturer at that  
26 time and -- and they were more prepared to entertain  
27 that and allowed us to give suggestions into how

1           this thing should be formulated, what kind of  
2           products, you know, that kind of thing, that would  
3           go the (INDISCERNIBLE) --

4           Q     Okay.

5           A     -- that would go into it.

6           Q     Okay. So you switched manufacturers and how did  
7           that work?

8           A     Actually, that worked quite well for -- for a period  
9           of time. We were with them for a period of time and  
10          then we moved on eventually to another manufacturer,  
11          which has caused even some more improvements in the  
12          product. I would estimate that we've probably been  
13          through about ten generations to -- to get us to  
14          this point.

15          Q     Okay. Now, when you say that, "ten generations",  
16          are the -- because the bottle we've got as an  
17          exhibit, I believe it's Exhibit ...

18          MR. BROWN:                    It's up there. It should be  
19          --

20          MR. BUCKLEY:                 Seven. Madam clerk, could I  
21          have this witness shown Exhibit 7.

22          Q     MR. BUCKLEY:           There's a list of vitamins and  
23          minerals or a list of ingredients. Sir, can you  
24          have a look at that?

25          A     Okay.

26          Q     Okay. Have those ingredients changed through these  
27          generations?

1 A I would have to say very little, but more the  
2 processing and the -- the actual tuning of the  
3 product. We have -- we have decreasing amount of  
4 Vitamin 'A', I'm aware of that. Phenylalanine,  
5 which is an amino acid, we did reduce that somewhat.  
6 But essentially it's the same, with -- with minor  
7 changes. But it's more a process and the form in  
8 which the mineral is to allow for better bio-  
9 availability.

10 Q Okay. But -- so, for instance, if it lists Vitamin  
11 'A', that's always been in there? If it lists  
12 magnesium, that's always been in there?

13 A Oh, yes.

14 Q So you've never actually ever dropped anything off?

15 A No.

16 Q Okay.

17 A No. Just minor adjustments.

18 Q As the manufacturing improves?

19 A I'm sorry?

20 Q As the manufacturer is able to make it better?

21 A Yeah.

22 Q Okay.

23 A Exactly.

24 Q Okay. So you guys had ended up going to get a  
25 manufacturer to make an all-in-one product. Was  
26 that your intention when you guys started --

27 A No.

1 Q -- Synergy Group?

2 A No, we never had a desire to -- to get into this. I  
3 think we were almost forced into it because of the  
4 fact -- and I know it sounds kind of silly, but  
5 because of the fact that all of a sudden these  
6 people have turned around, our families depended  
7 upon this. Yes, we were more interested in actually  
8 getting into the research side of the thing, to  
9 promote research. That's what the Synergy Group of  
10 Canada Inc. was basically set up for. But all of a  
11 sudden we've got all these people that are taking  
12 this product and they're -- and they're doing very,  
13 very well.

14 Q Okay. So you've now got a manufacturer making an  
15 all-in-one product. What happens after that,  
16 because you -- before we left that, you had been  
17 talking about this trial by Dr. Bonnie Kaplan  
18 basically was a scrub because of inconsistency.

19 A Well, all of a sudden we saw consistency and we saw  
20 people being regulated and they were staying steady  
21 on their symptoms. We had good reports coming from  
22 people. The University of Calgary, through Dr.  
23 Bonnie Kaplan, began to do trials on the -- using  
24 the products and -- and there was open case series  
25 taking place. When I say open case series, it means  
26 that these were not double blind studies, but  
27 they're trials that are completed with a population

1 of people and they openly take it and they monitor  
2 symptoms using correct instruments, you see. But --  
3 but --

4 Q Okay. And I'm going to call Dr. Bonnie Kaplan --

5 A Yeah.

6 Q -- to give evidence in the studies, but is it fair  
7 to say that you had read, you know, when the study  
8 got published on the product, you had read that  
9 study?

10 A Oh, yes.

11 Q Okay. In your mind, did it go against what you were  
12 experiencing in the community yourselves?

13 A Not at all.

14 Q Okay.

15 A Not at -- not at all.

16 Q Now --

17 A In fact it was actually validating the experience  
18 that we were having out in the community.

19 Q Okay. Now, somehow through all of this there's a  
20 TrueHope program developed.

21 A Yeah.

22 Q Okay. Can you tell us how that came to be?

23 A Well, we set up a nonprofit, it's not a charitable,  
24 but it's a nonprofit entity. It's incorporated here  
25 in the Province of Alberta, we set this up, in order  
26 to support the people that were coming to us. We  
27 realized very quick into this that these are very,

1 very serious disorders. If I can just impart, just  
2 to show you, to demonstrate this just for a second.  
3 If you were to read the World Health Report from the  
4 World Health Organization, they talk about a million  
5 people globally committing suicide and over 90  
6 percent of those people at the time of their death  
7 have a neural psychiatric disorder. These are  
8 dangerous disorders. It's well held in the  
9 psychiatric industry worldwide that one out of four  
10 people with bipolar will end up suiciding if they  
11 can't control the symptoms. Sorry, I'm going to  
12 back that up. One out of four people with  
13 schizophrenia and one out of five people with  
14 bipolar. So we recognized that and -- and seeing  
15 the effect in our own families, we realized that  
16 these people have to be managed. We approach a  
17 number of doctors about it and they weren't really  
18 prepared to carry that and we realized that you've  
19 got this -- you've got this population of people  
20 that have to be cared for and so we had to develop a  
21 program to care for them, to make sure that they're  
22 managed, protected in that sense. And it included  
23 many, many aspects. It had 911 crisis lines tied to  
24 it in a sense. In other words --

25 Q Okay. Okay.

26 A Oh, I'm --

27 Q Explain that please.

1 A Do you want me to explain that?

2 Q Yes.

3 A In other words, we set it up so that if one of the  
4 people that were taking this product got themselves  
5 into a crisis state - and it has happened, it has  
6 happened - then what we would do is we would set up  
7 a protective system. For instance, there was --  
8 example, there was a man that was about 37 years old  
9 in Vancouver who was taking our program and he got  
10 himself into a major crisis with his medications and  
11 phoned and was suicidal. So immediately we kicked  
12 in, you know. The Vancouver city police were  
13 called, the crisis line in Vancouver was called.  
14 Within 20 minutes there was an ambulance there and  
15 they took him away and they helped him out and so we  
16 had to put in place protective measures.

17 You couldn't just give this product to people  
18 or sell this product to people and walk away; that's  
19 unethical. You could never put this on the shelf of  
20 a pharmacy and expect people to do well because  
21 there are interactions with the medications. And --  
22 and if you want, we can go into that, whatever, but  
23 --

24 Q Well, so this call system that you have -- place and  
25 we'll talk about how it existed in 2003.

26 A Okay.

27 Q Was it just during regular business hours?

1       A     Well, it's -- it's during regular business hours,  
2             but there was emergency lines where people could  
3             call and, for instance, they can access us 24/7,  
4             weekends, holidays, whatever.

5       Q     Okay. So there's always somebody available?

6       A     Always. You have to have that.

7       Q     Okay. So how did this end up getting set up?

8       A     Well, so we set up this -- this nonprofit entity.  
9             We were hoping too that we could get donors. That's  
10            why we actually put TrueHope Nutritional Support as  
11            a nonprofit, so that we could have people that would  
12            donate so that we could support the mentally ill.  
13            All of these people are supported on a 1-800 toll  
14            free line. In other words, supposing Mary Johnson  
15            from Wisconsin - there isn't one - calls in to us  
16            and she wants to visit with us and work with us.  
17            She'll call a toll free line; we pay for that.  
18            We'll answer the line, she can talk to one of our  
19            counsellors and they'll assist her in teaching her  
20            how to use these -- these supplements appropriately.  
21            In working with her medical doctor, were applicable,  
22            and that does happen. We have hundreds and hundreds  
23            of doctors we work with on a weekly basis. Setting  
24            up the program, setting up a support. Mary Johnson  
25            suffers from bipolar and she's struggling so she  
26            needs someone that can help her out - a husband, a  
27            brother, maybe a member of the clergy, somebody

1           there that can help to guide her through. So we  
2           train the support person as well so that he can help  
3           Mary or she can help Mary to be able to walk through  
4           this program so that she will find efficacy and  
5           safety as well. If there's any major problems that  
6           comes to our attention, of course then we direct  
7           them to a hospital, to a doctor, that kind of thing.

8       Q     Okay. There's been some testimony about, you know,  
9           you have to fill out a form and you have to report  
10          things. I'm just wondering -- we're going to have  
11          you kind of walk through us (sic) --

12       A     Okay.

13       Q     -- give us an example of how that works.

14       A     May I step down, sir, to operate the -- the  
15          equipment?

16       THE COURT:                    Sure, go ahead.

17       A     Thank you very much.

18       THE COURT:                    That is fine.

19       Q     MR. BUCKLEY:            Okay. Now, Mr. Stephan, is --  
20          have you turned the recording program on?

21       A     I will turn that on right now. So it will follow as  
22          we do this.

23                    Now that will capture all of the screen shots.

24       Q     Okay. So do you want to log on and perhaps walk us  
25          through --

26       A     Okay.

27       Q     -- and explain how the program works.

1 (COMPUTER RECORDING BEGINS)

2 A Using a VPN, a virtual private network, we are now  
3 logging onto the database located in our offices.  
4 Okay. People in Norway and other parts of the world  
5 also access and use this database.

6 Q So this is the database that the TrueHope program  
7 operates to track its clients?

8 A Yes. Been in place since 2002, I believe, in this  
9 format.

10 Okay. We've now entered the portal for the --  
11 the actual database and we're logging on to the  
12 computer at this time. There we go.

13 (INDISCERNIBLE) close that page. There we go.

14 This is the opening sheet within the database  
15 and, if you like, I'll do a demonstration of a  
16 client. This is a real client, but we've changed  
17 her name in order to protect her confidentiality.  
18 Okay.

19 So what we do is we open the client file here.  
20 There are over 31,000 people in this database from  
21 50 different countries throughout the world. So  
22 we're searching for this fictitious person. No --

23 Q But she's not fictitious, right, this is --

24 A No. No. Changed name, but this is a real case and  
25 we'll show you that. And we didn't select this case  
26 for ease. We wanted to show you this is -- this was  
27 a very difficult case. We didn't want to show you

1 the easy ones, not -- sense.

2 Q Okay. So it's showing a Marge Keller, but that's  
3 not the real name; right?

4 A That's right.

5 Q And the address isn't the real address?

6 A That's right. On -- on this -- should I use a laser  
7 pointer? Would that be appropriate?

8 On -- on the right-hand side it shows -- now,  
9 of course it shows my name because I've been there a  
10 number of times, but it keeps track of every -- yes,  
11 could I use that -- is that okay, sir?

12 THE COURT: That is fine.

13 A Thank you. On the right-hand side it demonstrates  
14 who has -- that doesn't work at all.

15 Q MR. BUCKLEY: It was working.

16 A Oh, the top one. Okay. Who has been in the file.  
17 We always keep track of the counsellor that has been  
18 working. Here we have Marge Keller's information.  
19 This is a true diagnosis. She's diagnosed as  
20 obsessive compulsive disorder. She has depression  
21 and manic depression, as well she suffers with an  
22 anxiety panic disorder and has been somewhat  
23 disabled because of that.

24 What we'll do is we keep notes and -- and track  
25 as we go so we're going to open up her notes. It'll  
26 take a second for that to pull down. And we'll find  
27 out when she actually started the program with us.

1           These are the notes descending through the page  
2           here. So we'll -- we'll drop to the bottom.  
3           Hundreds and hundreds of notes, because she's  
4           phoning us sometimes every day, sometimes every  
5           second day. Sometimes every week we call her as  
6           well and we record this. In this case, her doctor  
7           is working with her. We indicated that she's on  
8           what we call a red flag drug. We've determined that  
9           there are some medications that are extremely  
10          dangerous. We go in line with actually the warnings  
11          that come to us from FDA and Health Canada. In this  
12          particular case she's on a medication that's called  
13          a benzodiazepine, Klonopin. Klonopin can be  
14          extremely dangerous. If you drop that drug, if you  
15          drop that drug you will move into in many cases a  
16          suicidal mode. You'll have extreme anxiety,  
17          vomiting, hysterics. You can actually go into a  
18          shock syndrome where you have -- you have seizures,  
19          this kind of thing. So --

20       MR. BROWN:                        Sorry. I'm sorry. I'm just  
21          going to stop for a second because as I understand  
22          it Mr. Stephan's not trained as a psychologist or a  
23          psychiatrist. My position with respect to the  
24          evidence he's given about withdrawal from certain  
25          drugs is his understanding. It's given as part of  
26          the narrative, again, but it's not entered for the  
27          proof of the statement or the content of the

1 statement.

2 A Sir, could I speak to that?

3 THE COURT: Just a minute.

4 MR. BUCKLEY: Your Honour, it might be  
5 helpful, because Mr. Stephan and Mr. Hardy are in a  
6 somewhat unique situation, in that although they've  
7 not gone and got qualified as psychiatrists through  
8 medical schools, for the last ten years they have  
9 managed probably more individuals withdrawing from  
10 anti-psychotic drugs than any doctor or  
11 psychiatrist. When I have Dr. Charles Popper on the  
12 stand, I don't think he'll have any difficulty in  
13 indicating to the Court that these guys know what  
14 they're talking about with regards to managing  
15 withdrawal. And part of their knowledge is through,  
16 you know, discussions with people like Dr. Charles  
17 Popper.

18 This program is the only one of its type that  
19 exists in the world for managing people with mental  
20 health conditions to kind of go off of treatment.  
21 What we're seeing here does not exist anywhere else  
22 in the world, as I understand it, or any doctor's  
23 office. It's absolutely unique.

24 A That's our understanding.

25 MR. BUCKLEY: I don't need Mr. Stephan to,  
26 you know, talk about different withdrawal symptoms,  
27 but at the same time I think it might be unfair and,

1           if I ask him about his experience, to just assume  
2           that, you know, there's no knowledge there because  
3           in a way they're -- they are experts on how this  
4           works.

5   MR. BROWN:                    If I may, sir.

6   THE COURT:                   Well, we have got --

7   MR. BUCKLEY:                  I don't need --

8   THE COURT:                   There is an issue here.  If he  
9           wants to speak as to his understanding of --

10  MR. BUCKLEY:                  Mm-hm.

11  THE COURT:                   -- what happens, as a layman,  
12           that is fine.

13  MR. BUCKLEY:                  Yes.

14  THE COURT:                   But if you seek to have him  
15           qualified as an expert --

16  MR. BUCKLEY:                  I'm not seeking for that.

17  THE COURT:                   -- then you are going to have  
18           -- you are going to have to do that in the correct  
19           manner --

20  MR. BUCKLEY:                  Right, through the process.

21  THE COURT:                   -- and you may have some  
22           difficulty with it, but I will --

23  MR. BUCKLEY:                  Okay.

24  THE COURT:                   -- certainly entertain it if  
25           you want to make that application, but --

26  MR. BUCKLEY:                  Well ...

27  MR. BROWN:                   Well, and I have never

1 received any notice in advance that this person was  
2 going to be qualified as an expert --

3 MR. BUCKLEY: Okay. And fair enough. I  
4 think we can move on because I'm calling other  
5 experts on that point.

6 Q MR. BUCKLEY: So, Mr. Stephan, I'm not  
7 asking you to stop talking about stuff like that,  
8 but do keep it to a minimum, understanding that  
9 that's not admissible for the truth of what you're  
10 saying.

11 A Yes, sir.

12 Q Okay.

13 A In this case - and I'll move on very quickly here -  
14 here we have where her doctor calls in and they're  
15 working with her doctor actively and coordinating  
16 and the thing. Up here the doctor actually makes a  
17 reduction in the medication. One second. Here we  
18 go. Lithium -- Librium decreased to 40 milligrams  
19 as per Dr. Sageman (phonetic). We actually made the  
20 recommendation in this case based on a protocol out  
21 of the UK that when you're on that particular drug  
22 that the doctor would change you over to another  
23 drug, which is a benzodiazepine, that has a longer  
24 action, life, and that product is called Librium.

25 So the doctor moved her off of Klonopin, put  
26 her on Librium and we suggested a decrease to 40  
27 milligrams to the doctor and the doctor went ahead

1 and did that. Long story short, she's been with us  
2 for -- for over two -- two years. Her file actually  
3 opens up here - one second - on October the 31st of  
4 2003. She remains with us and has been able to have  
5 a baby and doing well. And you can see that there's  
6 hundreds of interactions there as we've talked to  
7 her.

8 If we were to look at some of the other pages  
9 here we would get into the symptoms, charts and the  
10 evaluation forms. On a daily/weekly basis these  
11 individuals come to us and over our web interface  
12 they can put their own symptoms in using a DSM-IV  
13 based form. Now, what that means is there's a  
14 psychiatric manual out there which is worldwide  
15 accepted, it's called the Diagnostic Statistical  
16 Manual, produced by the American Psychiatric  
17 Association and we took -- we took documentation  
18 from these books to develop charts of common  
19 symptoms, you know, for these different disorders.  
20 In other words, bipolar would look like this,  
21 schizophrenia would look like this. So in her case,  
22 because she's diagnosed with anxiety disorder and  
23 bipolar, then she should be filling out those kinds  
24 of forms. So we'll look at the form that would  
25 automatically come up.

26 And -- and our client service individual  
27 counsellor would then -- like this is today's date,

1 March 17th. If we were actually filling this out,  
2 we'd be on the phone with her right now and they  
3 would make evaluations; they would talk to her. Are  
4 you experiencing any shaking or trembling? Zero  
5 stands for not at all; 1 for just a little; 2 for --  
6 for pretty much; and 3 for very much. So they make  
7 that evaluation. The support person often gets  
8 involved when the person's very, very ill. The  
9 doctors are involved in this and we allow the doctor  
10 to go on the database to look and to view their  
11 client's progress on this program; so the doctor  
12 makes recommendations as well. It's a coordinated  
13 effort. And to our knowledge, sir, there isn't  
14 another program like this in existence. And I think  
15 that -- I shouldn't, that's opinion. I won't go  
16 there.

17 Anyhow, so we have that and what it does, it  
18 forms in the end a chart and we'll go there and you  
19 can see that. One second. I just want to take a  
20 second.

21 Q Now, is this the type of thing that a person would  
22 fill in online also?

23 A Yes. In fact, we're going to the online interface.  
24 We -- we have a chart and graph within our database,  
25 but she can come around through the back through a  
26 website called MyTrueHope.net and actually enter her  
27 own information and we have thousands of people that

1 do that every week.

2 Q Okay. Now, how do you guys decide when the support  
3 person should be calling and filling that out versus  
4 when you allow somebody else to do that on their  
5 own?

6 A When they're doing that enough -- well enough that,  
7 you know, they can cognitively work intelligently,  
8 then we'll teach them how to do that. We assign a  
9 password, it's encrypted, it's a very powerful  
10 encrypted program. In fact, this database has cost  
11 us literally thousands and thousands and thousands  
12 of dollars to build this. It's a huge undertaking  
13 and we're constantly modifying it and improving it.  
14 We've had doctors from all over look at it. And  
15 we've actually had doctors come from different parts  
16 of the world to view this.

17 Q Okay. Now, what happens if somebody is not filling  
18 out the forms --

19 A If --

20 Q -- like they're supposed to?

21 A Okay. If -- if we have a -- and this does happen,  
22 unfortunately it does. Sometimes you have people  
23 that are non-compliant or they may act a little bit  
24 reckless and it's not because these are bad people.  
25 These are people that suffer these disorders. But  
26 in order to work with us, you have to have a defined  
27 -- you have to be part of this defined support

1 system for your own safety.

2 In other words, if we have a person that comes  
3 to us and they're on these different medications and  
4 they just jump their medications and run, they drop  
5 them and run, we say to that person, Don't go there.  
6 You follow your doctor's recommendation. The doctor  
7 prescribed you on that, you do it appropriately.  
8 That's a dangerous thing to do; and that is. And  
9 we'll actually sometimes remove them from the  
10 program. We try to work our best with them, we  
11 encourage them, working with doctors, whatever, but  
12 if they won't -- if they're not compliant, then  
13 sometimes we'll actually remove them from the  
14 program because they're a danger to themselves.

15 Q Okay. So there's the example about if, you know,  
16 let's say they're dropping drugs without following  
17 the advice of their doctors. What about if they're  
18 not filling out the forms?

19 A They're not filling out the forms, they can be in  
20 the same state. If we don't get data back, we don't  
21 have a roadmap to help them with; we don't know  
22 where they are. Are they here, are they there, are  
23 they in a dangerous position, are they in a safe  
24 position. So this is one of the requirements.

25 And you can see from this, this is the outside  
26 interface where she would come in, off of her  
27 computer, and enter data, right here.

1 Q Okay.

2 A Here we go.

3 Q So is this the same client that we were looking at  
4 earlier?

5 A Exactly the same. Exactly the same. Here you see  
6 her opening symptoms here. On this chart here you  
7 see sleep. Sleep's a big issue. If they don't get  
8 --

9 Q Okay. So, I'm sorry, you were showing with the  
10 pointer -- so this is a --

11 A This line here --

12 Q Okay. Just hang on. I'm speaking for the record.  
13 This is a bar chart and there's blue bars but there  
14 seems to be an orange line crossing through those  
15 bars. So you're talking about the orange line?

16 A That's -- that -- we're talking about the orange  
17 line and that's a sleep measure - how many hours per  
18 night that you're having sleep. If they don't sleep  
19 well, they suffer and it exacerbates the symptoms.

20 The bottom line here is the amount of  
21 EMPowerplus that she's taking. See it right there?  
22 So you can she's taking a low dose. Why? Because  
23 she's on medications. Now, if she goes too fast  
24 with the EMPowerplus, she's going to move into what  
25 we define as an ADR or adverse drug reaction; okay.  
26 So she has to move slowly while her doctor, in this  
27 case, removes the medication, starts to tune them

1 back, then you'll see this EMPowerplus line start to  
2 come up.

3 Q Okay. So just -- I just -- I want to stop you  
4 there. So how did you guys get to the point where  
5 you're starting people, who are on some psychiatric  
6 medications, with low doses? How did you learn  
7 that?

8 A Through trial and error.

9 Q Okay.

10 A Through experience. In fact, some of the doctors  
11 have been amazed, like they -- they didn't have that  
12 knowledge themselves and, in fact, we train doctors  
13 all over. In San Diego, California next month we're  
14 putting on a symposium for around 250 doctors who  
15 will be taking training on how to do this program.

16 Q And when you say "we", who do you mean?

17 A David Hardy and myself.

18 Q Okay. So this chart is showing a low dose of  
19 EMPowerplus.

20 A With high symptoms. At that point she's not doing  
21 well and you can see the --

22 Q Okay. In this --

23 A -- (INDISCERNIBLE) fluctuants (phonetic), you see.

24 Q The top of the chart shows this is October 30th,  
25 2003 to November 28th, 2003.

26 A That's right.

27 Q So this is when she's just beginning on the program?

1 A That's right.

2 Q Okay. So this would be her first chart?

3 A That would be her first chart.

4 Q And just before you go anywhere --

5 A Okay.

6 Q So this chart is generated from the data entered in  
7 that data entry form that you have shown us?

8 A Exactly. And -- and the -- one -- one of those data  
9 entry forms represents one bar. See how it changes  
10 on a day-to-day basis, which is normal for that type  
11 of disorder, mood fluctuants.

12 Q Okay.

13 A Okay. Through the progression of time and you can  
14 see that she's been with us for quite some time. If  
15 we were to look at -- well, we'll look at the second  
16 to the last chart here and we'll see where she's  
17 gone at that point. And you would expect that you  
18 would see some -- some change. You can see the  
19 EMPowerplus is -- is up. One second, I'll pull that  
20 down for the Court. There we go.

21 The reason why there's no bars here is because  
22 there's no symptoms.

23 Q Okay. So this bottom bar starting at 18th of  
24 February, that's measuring the amount of the  
25 EMPowerplus she's on?

26 A No, this -- this one here is.

27 Q Okay. So what's that bottom bar? Is that the sleep

1 bar?

2 A This one here is, yeah -- actually, you know what, I  
3 better -- I'm going to have to retract that because  
4 in this case data has not been entered for that  
5 period of time. The data begins here again. But  
6 you can see those lines there? That represents zero  
7 symptoms right there, those little tiny ticks there,  
8 and she's on EMPowerplus. So, for some reason --  
9 oh, I'm sorry, I'm going to back up. She was in  
10 hospital having a baby and for -- so for this period  
11 of time probably hasn't entered data because of  
12 that. But you can see that she's substantively  
13 lower there, her symptoms. And then the closing  
14 data that we have at this time. There you can see  
15 these are all zeros. Now that's -- the bars are  
16 bigger because we don't have a full complement of  
17 days there. But these are all zero symptoms. That  
18 in itself would be -- here, just a minute. That's  
19 March 23rd -- or day 23 in March and symptoms are a  
20 3 there.

21 Q Okay. So what does a 3 mean?

22 A A 3 is low, but oftentimes if you look back, she was  
23 running around 24. So, in that case, 3 out of 24,  
24 that's -- whatever percentage that would be, that's  
25 quite low.

26 Q Okay.

27 A She's doing very well there because she's just -- I

1 probably run 3 a day. We all do. Sometimes we have  
2 days we're a little bit irritable and they're --  
3 they're measuring that, you see. Might be a little  
4 anxious. I'm anxious right now.

5 Q Okay. So --

6 A Probably be a 10 on that chart.

7 Q So --

8 A Sorry.

9 Q -- in a case like this where this lady seems to have  
10 been doing fairly well for quite some time, she  
11 still has to be filling out those forms?

12 A Well, you know, to this point I would say no.

13 Q Okay.

14 A She -- she's well. She's well and she's  
15 functioning. She's now taking a job again as a  
16 school teacher and she has this little baby.

17 Q Okay. So, when somebody is doing well, the amount  
18 of management that they need decreases?

19 A Oh, tremendously less.

20 Q Okay.

21 A Yeah.

22 Q But how much attention would have been focussed on  
23 her when she was starting the program?

24 A Oh, tremendous. According to the -- the notes that  
25 we had there. But there were still recent notes in  
26 there but, yeah, in the front end, amazing amount of  
27 work. Yeah, a lot of work, so.

1 Q Okay. Was there anything else that you felt would  
2 be helpful in showing us on this website? Just we  
3 understand the medications. Let's -- can you show  
4 us her medications --

5 A Oh, I'm --

6 Q -- and how you guys chart that?

7 A Okay. I'm sorry. We'll have to just go back here.  
8 I apologize, because I should have -- we should have  
9 done that. So, client information ...

10 Q Okay. So now you're back into your other database.

11 A Now -- now we're back into --

12 Q There's two -- same database but two interfaces?

13 A Two interfaces. This is the interface from the  
14 office. This is the interface that -- that Norway  
15 would use. This is the interface that other  
16 countries -- where -- where they're involved in  
17 this.

18 Let's take a look at -- at her medications for  
19 a short period here. Sorry, I apologize for that.  
20 For instance, here we have Wellbutrin, which is an  
21 antidepressant here, and that is discontinued; we  
22 keep track of that.

23 Q Now, why do you guys keep track of the medications?

24 A It's essential. It's absolutely essential. If I  
25 suffer with bipolar disorder and I'm on a load of  
26 medications, I might have an anti-psychotic, I might  
27 have an antidepressant, which is very, very common,

1           maybe I've got a mood stabilizer like Epival. Okay.  
2           So let's -- I've got three different medications.  
3           And I start to take this nutrient supplement and  
4           let's say it does what we purport it to do. It  
5           starts to affect my chemistry in a positive way. I  
6           start to improve. I have more clarity of thought,  
7           less emotional overflow, more cognitive function.  
8           I'm starting to do better. I'm starting to relate  
9           to my family members better. You see the outside  
10          results. And if I'm still on those medications on a  
11          full load, all of a sudden I'm going to be over-  
12          sedated. It's going to actually take my chemistry  
13          out of balance and so those medications must be  
14          reduced as we see an improvement in the person's  
15          mental state; their emotional state.

16        Q     Okay. And you've already explained that that's done  
17              with her doctor --

18        A     Yeah.

19        Q     -- working through that. Now, there's --

20        A     In this --

21        Q     -- there's some of these have little red flags on  
22              them.

23        A     This is called a red flag medication.

24        Q     Can you just point with your pointer at the red  
25              flags?

26        A     Right there.

27        Q     Okay.

1 A And in this case it's called Klonopin or Clonazepam  
2 and it's a benzodiazepine. Health Canada has put a  
3 number of warnings out about this because it's  
4 extremely addictive.

5 Q Okay. But why do you have red flags on some drugs  
6 and not other drugs?

7 A It's a cautionary. In 2003, before we had this  
8 system fully set up, we turned back around 40  
9 percent of the people that would come to us.

10 Q Okay. So we're talking about the offence dates,  
11 2003. So you're saying when people approached you  
12 guys to join the program, you would turn about 40  
13 percent of people away?

14 A Sadly enough, we would have to do that because we  
15 didn't have a program for dealing with the drug  
16 addiction created by the medication.

17 Q Okay. So just -- I just want us to be crystal  
18 clear. So in 2003, if people were on certain drugs,  
19 you would refuse them entry into the program?

20 A Yes.

21 Q Okay.

22 A For their own safety.

23 Q And what would you tell them?

24 A We'd say, Look, if you can go to your doctor, Dr.  
25 Johnson, and if he's prepared to -- to take you off  
26 of Klonopin and change you out and get that reduced  
27 and you come back to us Klonopin-free, then we can

1 work with you. And some did and some didn't.

2 Q Okay. Now, today if somebody came to you with that  
3 drug, would you turn them away?

4 A No. In this particular case - this -- this is a  
5 good thing you bring this up - you'll notice that  
6 she's taking Librium here. We talk to the doctors,  
7 as showed in the notes, and indicated to Dr. Sageman  
8 about the Klonopin saying that this is going to  
9 create a problem, the doctor acknowledged it and we  
10 asked the doctor to remove her off of Klonopin and  
11 put her on Librium. Longer life, easier to get down  
12 off of, which of course the doctor did do.

13 Q Okay. Now --

14 A So now there was a better program now in this time  
15 than what there was in 2003 as it's developed more  
16 appropriately.

17 Q Okay. But I'm just thinking, in 2003 you did take  
18 some people if they were -- if their doctor was  
19 willing to work with you on the red flag drugs?

20 A Oh, yes.

21 Q Okay. Because she is an example of that, just --

22 A Yes.

23 Q Okay.

24 A Exactly. Exactly.

25 Q But if you didn't have their doctor working with  
26 you, what happened?

27 A Then, I'm sorry, we couldn't -- we couldn't work

1 with them --

2 Q Okay.

3 A -- for the sake of safety.

4 Q Okay. So -- and literally you felt that in 2003 was  
5 about 40 percent of the people that approached you?

6 A Yeah. That would be about it.

7 Q Okay.

8 A It's a very commonly used medication, these -- these  
9 benzodiazepines, especially in the US.

10 Q Okay. So this isn't the situation where it's just  
11 whoever calls can get the --

12 A No. It's about safety. It's about protecting the  
13 public. You have to run it that way. We can't just  
14 take this product, put it on the shelf and say, Hey,  
15 we'll make a dollar off of this and good luck. Let  
16 us know how it worked for you. We don't -- you  
17 can't do that.

18 You need to understand and maybe you don't want  
19 me to say this, but this is an extremely expensive  
20 program to operate because at this time we have 20,  
21 25 counsellors that we're working with, who are on  
22 the phone, that are having to be paid to do eight  
23 hours a day on the phone helping these people, you  
24 see.

25 Q Okay. Well, how much does --

26 A Plus an 800 line.

27 Q How much does somebody like this pay to be managed

1 by this program?

2 A Does it pay?

3 Q No. How much would a client like this have to pay  
4 you to be managed on this program?

5 A The price of the bottle.

6 Q So you guys don't charge for the program?

7 A No. And in addition to that, we also have a  
8 program, it's called the Mental Wellness Fund, where  
9 -- you see this good lady here, her husband had a  
10 job so he was able to support her. We have a lot of  
11 people that come to us that not only are they  
12 mentally disabled but they're financially disabled.  
13 In fact there's people here today that are on that  
14 program where we provide product at no cost and then  
15 we provide the support at no cost. We do the best  
16 that we can.

17 Last year close to a quarter of a million  
18 dollars was tied up in providing that free product  
19 and support for those individuals that couldn't  
20 afford it. We try not to refuse anybody entry into  
21 the program. That's why we believe it's essential  
22 that the provinces eventually take us on. Not that  
23 that's germane to the court case. These people  
24 need help.

25 Q Okay. So you're saying eventually you would like to  
26 see the government take over your support program?

27 A Absolutely. We were put into a position where we

1 had to do this. It was no question.

2 Q Okay. So this --

3 A I'm a property manager, I'm an engineer. This is --  
4 this was not my desire to do this, but when you have  
5 those people and they need help, you just don't  
6 throw them to the wind.

7 Q Okay. So now, right now --

8 A Sorry.

9 Q -- I think you've indicated you're not aware of any  
10 other program that can do this and track the people.

11 A We -- we've never seen a program like it and we've  
12 done a lot of research throughout the world. Once  
13 again, when psychiatrists look at this, they -- the  
14 normal mode is this. Mary Johnson from Wisconsin  
15 suffers with a disorder, she goes to her doctor.  
16 Oftentimes it's so difficult to get in because the  
17 mental system -- mental health system is so  
18 impregnated with -- with labour. I mean there's so  
19 many people that -- that there isn't enough doctors  
20 and so often they have to wait a month -- a month,  
21 two months to get in to see their doctor. When they  
22 see their doctor, they'll have a visit, an opening  
23 visit, he will make a prescription as a diagnosis  
24 comes, that person will go out the door. She or he  
25 may not see the doctor for another month. Not with  
26 us. They're going to visit with us two or three  
27 times that week and, if they've got a problem, we're

1 going to stick and stay. And if it's 2:00 in the  
2 morning, we're going to be there to support them.  
3 And if they get into a crisis, the RCMP are coming,  
4 the State troopers are coming, the 911 crisis system  
5 is going to be in place and they're going to be  
6 hospitalized and then we're going to help them some  
7 more after that. That's our program, public safety.

8 Q Okay. Okay. Thank you, Mr. Stephan. We've  
9 probably, unless you can think that there's  
10 something else that we would need to look at there,  
11 we've probably gotten it.

12 A No, I think that covers it.

13 Q A good taste of that, okay. So, if you can log out  
14 of that and then turn your recording device off.

15 A Okay. And we will save this and call it court file?

16 Q Yes.

17 (COMPUTER RECORDING ENDS)

18 MR. BUCKLEY: And then, Your Honour, unless  
19 my friend objects, what we planned on doing is we'll  
20 just burn three disks so that the Court has a disk,  
21 my friend has a disk and I have a disk. And just  
22 thinking that it was useful for us to go through  
23 this so that the Court can actually understand the  
24 program, but so that the transcript or record of the  
25 court makes sense that there's a recording of the --  
26 what was seen on the screen for the Court to view.  
27 I don't know if my friend objects to that now that

1 he's seen what we're trying to show the Court.

2 THE COURT: Well, you have done a  
3 demonstration of the program, that is fine. Mr.  
4 Brown, would you want to review the disks that are  
5 prepared to ensure that they are, in fact, what they  
6 purport to be?

7 MR. BROWN: That would be helpful, for  
8 sure, sir.

9 MR. BUCKLEY: Mm-hm.

10 THE COURT: Before --

11 MR. BROWN: And then --

12 MR. BUCKLEY: Yeah.

13 THE COURT: Before we go any further with  
14 having them introduced as exhibits, I think that --

15 MR. BUCKLEY: Yes. No, no, that makes  
16 sense.

17 THE COURT: -- I think that would be the  
18 prudent way to go about it.

19 MR. BROWN: Thank you, sir. I expect Mr.  
20 --

21 THE COURT: That would be done in the  
22 normal course any time there is --

23 MR. BUCKLEY: Mm-hm.

24 MR. BROWN: Right.

25 THE COURT: -- such an exhibit prepared.

26 MR. BROWN: That's fine, sir. I expect  
27 Mr. Stephan will be up there for a while and so we

1           may even have a chance to take a look at the disk  
2           before he's done.

3       THE COURT:                   All right.

4       MR. BUCKLEY:                 Yes.

5       THE COURT:                   That is fine.

6       MR. BUCKLEY:                 Yeah, I expect so.

7       THE COURT:                   That is the procedure that I  
8           suggest should be followed --

9       MR. BROWN:                   That's --

10      THE COURT:                   -- before I rule on the --  
11         whether or not they will be included as exhibits.

12      MR. BROWN:                   Thank you, sir.

13      THE COURT:                   All right. That is fine.

14                 Mr. Buckley, I am going to take a morning break  
15                 right now for ten minutes. I will return at 25 to.

16      MR. BUCKLEY:                 Okay.

17      A         Should I make those, sir, now while -- while we're  
18                 on a break?

19      THE COURT:                   I think that would be a good  
20                 idea --

21      MR. BUCKLEY:                 That would be -- yes.

22      A         We will do that.

23      THE COURT:                   -- so the Crown can then  
24                 review them and ensure that what is being provided  
25                 in the disks is in fact what we have seen on the  
26                 screen and then, if the Crown is satisfied, then we  
27                 take the next step to determine whether or not they

1           should be made an exhibit.

2       A     Okay.

3       THE COURT:                   All right.

4       MR. BUCKLEY:                 Thank you, Your Honour.

5       THE COURT:                   So that is the way we will  
6           proceed with it. And I will just caution you, sir,  
7           do not discuss your evidence with anyone while you  
8           are on the stand. All right?

9       A     Yes, sir.

10      THE COURT:                   Thank you.

11      THE COURT CLERK:            Order in court, all rise.

12      THE COURT:                   Court stands adjourned until  
13           25 to.

14      THE COURT CLERK:            Court stands adjourned until  
15           25 to.

16      THE COURT:                   Thank you.

17      (ADJOURNMENT)

18      THE COURT CLERK:            Recalling Synergy Group of  
19           Canada and TrueHope Nutritional Support.

20      THE COURT:                   Okay.

21      (DISCUSSION OFF THE RECORD)

22      Q     MR. BUCKLEY:           So, Mr. Stephan, you had been  
23           telling us, because we -- basically we've got the  
24           Synergy Group of Canada and we've got TrueHope and  
25           you were telling us basically that TrueHope was set  
26           up to run this program.

27      A     That's right.

1 Q Okay. And there was a choice -- a deliberate choice  
2 not to have Synergy do that because --

3 A That's right.

4 Q Okay. Because you guys -- do you want to explain  
5 that?

6 A We -- yeah. We wanted it to be a nonprofit, not a  
7 charitable, but a nonprofit organization in the  
8 hopes that we could have donors, people who were  
9 interested, provide funding to assist with the  
10 support because it is a great financial burden.

11 Q Okay. And then in that way, if people donate to a  
12 not profit, it's not considered to be income; right?

13 A That's right.

14 Q Okay.

15 A Exactly. Whereas if it came through Synergy, it  
16 would be seen as revenue.

17 Q Okay. So that was the reason why there's two?

18 A Yeah.

19 Q Okay. Now, you had made a comment when you were  
20 looking at the product which is Exhibit 7, I think  
21 you mentioned that it was dangerous or that there  
22 was some hazard to it and I'm wanting you to talk  
23 about that. For instance, let's say if somebody  
24 didn't have a mental health issue, are there safety  
25 concerns?

26 A None.

27 Q Okay. None. Why do you say that?

1       A     It's like a lot of the other vitamins and mineral  
2             products that are sold every day on the shelves in  
3             Canada.

4       Q     Okay. So, when you said that there's, you know,  
5             harm, can you clarify what group of people does that  
6             apply to?

7       A     Well, the harm comes from it being used -- for  
8             instance, I use this product every day. It helps --  
9             supports my immune system. That's my own personal  
10            feeling. But for someone that suffers with a mental  
11            disorder that's on medication -- like sometimes we  
12            get newly diagnosed youth that come to us, their  
13            parents bring the youth to us and they're not on  
14            medication. There is no danger. You put them on  
15            the supplement, you see the result, very simply.

16            Whereas, if you have someone that comes that's  
17            been on medications for 15, 18 years and to be quite  
18            frank with you, the greater majority of people that  
19            come to us are the most severe. Why did they come  
20            to us? We're the last ditch. We're the last  
21            resort. And most of these people have -- are -- I  
22            hate this terminology, are the throwaways in the  
23            system. These are the people that you see on the  
24            streets of Calgary pushing carts, the people with  
25            schizophrenia that live on the streets. We get  
26            people like that coming to us occasionally and it's  
27            certainly the most sig -- people with the most

1 significant disorders are the ones that come to us.  
2 The rest stay within the system.

3 Q Okay. So -- but if somebody came newly diagnosed  
4 with something like bipolar disorder and they've  
5 never been on medications, then the way you would  
6 manage them in the program would be different?

7 A Yeah. You just see -- you see a quick response, you  
8 know, if I talk about the average, a very quick  
9 response and the drop of symptoms and they get  
10 better.

11 Q Okay. So at the initial stage, would they be  
12 managed intensively?

13 A Yes. You know, just to make sure everything is  
14 happening the way it should, but -- but certainly  
15 not as much as you would with someone who -- who's  
16 on a very severe cocktail of medications.

17 Q Okay. And it's just -- you know, it's important for  
18 the Court to appreciate that, when you're talking  
19 about there being harm, whether you're talking about  
20 is the product itself harmful or is -- the situation  
21 create --

22 A No. No, the situation -- the product is not  
23 harmful. These -- these are nutrients that are  
24 found in our food. Thirty-five of the 36 nutrients  
25 found in here are found in our food every day -  
26 carrots, lettuce, tomatoes - in varying degrees.  
27 There's one botanical called ginkgo biloba and it is

1 not found in normal food, it's a herbal, a  
2 botanical.

3 Q Okay.

4 A But the others, these are agents that we eat every  
5 day so they're not poisons and they're certainly not  
6 drugs and they're not dangerous.

7 Q Okay. Now, in 2003 Health Canada was basically  
8 telling you guys that you were in violation of this  
9 regulation you're charged with, not having a DIN.

10 A Yes.

11 Q Okay. And they were telling you to stop selling.

12 A Yes.

13 Q Okay. What did you guys do in response to that?  
14 How did you react to that?

15 A We phoned them, we met with them. I remember we  
16 drove out to Burnaby, BC, 12 hour drive, to -- to  
17 meet with them to try and broker a solution that  
18 would be amenable to themselves as well as to  
19 ourselves. We called the Minister's office, we --  
20 we wrote letters, we -- I remember we wrote a letter  
21 --

22 Q Okay. I'm just going to stop you. So you said you  
23 drove out to Burnaby, BC.

24 A That's right.

25 Q Is that Mr. Brosseau -- have spoken about this  
26 January 14th, 2003 meeting? Is that what you're  
27 talking about?

1 A I believe that that's the one, yeah.

2 Q Okay. Well, were there more than one time that you  
3 guys ...

4 A We -- we attended in Ottawa on a number --

5 Q Okay. I'm just -- I'm referring about going to  
6 Burnaby.

7 A Oh, going to Burnaby. I believe that that was the  
8 only trip that we had to Burnaby, BC.

9 Q Okay. Can you tell us about that trip?

10 A Well, we -- we drove out in the hopes, once again,  
11 of brokering a solution. We visited with Mr.  
12 Brosseau. We had a lady named Laril Zandberg who  
13 attended with us and Dennis Shelley and Miles  
14 Brosseau were present, as well as myself, David  
15 Hardy and this lady. We talked at length about what  
16 do we have to do to make this thing comply. Mr.  
17 Shelley indicated to us that it would be best if we  
18 probably move to the US, moved our operation to the  
19 US. I remember asking him specifically what is it  
20 that we need. He indicated that -- that we had to  
21 have an NOC. I asked him, is there an application  
22 form, what do we have to do, because I'm -- you  
23 know, I was somewhat ignorant to that. And he  
24 basically said to us, You're never going to get one.  
25 You're not going to get an NOC on this product. And  
26 that of course precludes the fact that you're not  
27 going to get a DIN either when you can't have an NOC

1 because the product was being used for a therapeutic  
2 use versus just a store shelf vitamin and mineral  
3 product.

4 Q Okay. Well, was that concern to you -- voiced to  
5 you as the concern, that it was not the product, it  
6 was the claim that you were making?

7 A Yeah. Yeah, that was the big thing. In any  
8 correspondence that we've received from them it was  
9 always that this product is being claimed to be used  
10 as a therapeutic to assist people with bipolar.

11 Q Okay. Now, when it suggested that you guys move to  
12 the United States, did you guys consider that?

13 A Yeah. We actually considered it. It would entail  
14 selling off our property, it would entail setting  
15 up. We didn't know if the US would actually have  
16 us. Certainly we don't have a problem with the US  
17 in the sense of the FDA finding this product to be a  
18 problem, but we're talking about immigration here.  
19 We're talking about moving our families, moving all  
20 the -- the assets south. Not having a disruption to  
21 those people that need this every day, that need to  
22 hear from the counsellor on a daily/weekly basis,  
23 that kind of thing. And we just formulated the idea  
24 that it was -- it was unfeasible, it was -- it was  
25 unworkable.

26 Q Okay. So it's not that you guys didn't consider  
27 that as a way --

1 A Oh, we did. In fact, when they took the product  
2 away from us, when they took the product away from  
3 us there was a lot of fear and a lot of my family  
4 members were talking about having to relocate across  
5 the US, into the US, in order to get the product.

6 Q Okay. So we're not talking --

7 A Because they --

8 Q We're not talking about the company moving the whole  
9 program, you're talking about individual family  
10 members?

11 A Oh, we're talking about that as well.

12 Q Okay.

13 A Both. Both. And we didn't have the finances to do  
14 that, to be able to purchase property down there.  
15 The property that we had in Raymond, we were very  
16 blessed to be able to obtain it. It's an old  
17 utility building and we were able to purchase the  
18 thing for probably a quarter of its value if we were  
19 to construct it. But to get that down there, I mean  
20 US dollars, exchange rates and everything else,  
21 there's no way that we could feasibly afford to it  
22 besides disrupting the whole program and injuring  
23 people as a result of it.

24 Q Okay. Now, so there had been the suggestion and  
25 after that meeting you took that suggestion  
26 seriously --

27 A Yes.

1 Q -- the US suggestion. Now, when -- and you told us  
2 that Dennis Shelley communicated to you you guys  
3 needed an NOC.

4 A Yeah.

5 Q When you say NOC, what do you mean?

6 A It means a notice of compliance. My understanding  
7 now, in fact I think I understand it now better than  
8 what I even did then, a notice of compliance is  
9 required when you have a product that's listed as a  
10 new drug, prior to the provision of a DIN number.

11 Q Okay. And basically it's been communicated to you  
12 that you're not going to get that?

13 A Yeah.

14 Q Okay. Now, you had talked about - or Mr. Brosseau  
15 had reported - that you and Mr. Hardy seemed angry  
16 and frustrated at that meeting.

17 A Very much so.

18 Q Okay. Well, why were you angry and frustrated?

19 A Because we weren't able to -- to get a hearing with  
20 the Minister, we weren't able to find a resolution  
21 to this problem. Basically what we were being  
22 instructed to do is shut it down, you're not  
23 prohibit -- you're prohibited from speaking publicly  
24 of the findings of the university studies that have  
25 come forward or any function that you found in this  
26 because that's a claim under section 3(1) and 3(2)  
27 of the *Food and Drugs Act*. So basically we were

1 told to silence this thing; no more research. You  
2 are not -- you are prohibited from researching this  
3 product, you know, take down your website and -- and  
4 basically go away. That was the feeling that we got  
5 from them. There wasn't any - how do I put that -  
6 meeting halfway, some collaborating. We -- we had  
7 seen a tremendous blessing that came to people  
8 through this program and -- and all of a sudden we  
9 have Health Canada, who is not even prepared to  
10 entertain it, look at it, you know, and so it was a  
11 very frustrating experience.

12 Q Okay. Now, what were you guys doing in an effort to  
13 get a meeting with the Minister?

14 A We had written a letter to the Minister I believe in  
15 January of that year. Attached to that we submitted  
16 the clinical publishings that had been made so far  
17 in the Journal of Clinical Psychiatry and I believe  
18 that there was also some attachments there from the  
19 Journal of Child and Adolescent Psychopharmacology  
20 where research had been performed on EMPowerplus and  
21 -- and the results of those -- that that research  
22 was published and -- and we provided that to the  
23 Minister, Anne McLellan at the time. We also  
24 supplied some media stories that had come forward on  
25 the positive effects where people had been  
26 interviewed by the media who talked about how  
27 EMPowerplus had benefited their lives prior to their

1 previous experience on the drug (INDISCERNIBLE). So  
2 we supplied that information and we never had a  
3 hearing.

4 Q Okay. And Mr. Brosseau had mentioned that you guys  
5 complained that you'd been making many calls.

6 A Yes.

7 Q Tell us about that.

8 A Well, we called their assistants and we were very  
9 polite, we -- you know. We worked extensively with  
10 a lady named Heather Watson and then after a while  
11 Heather wouldn't accept our calls anymore and -- and  
12 we were just being ignored. We had called and we  
13 just said, We've sent this memo, we'd like to meet  
14 with the Honourable Anne McLellan, and we were  
15 prepared to come out on our own to -- to Ottawa to  
16 visit with her and make a presentation. And with  
17 that presentation, maybe some of the researchers  
18 that are involved could also talk to Dr. McLellan  
19 and -- or -- or the Honourable Anne McLellan. We  
20 made -- we made that proposal. I think there was a  
21 number of letters that were sent to her office  
22 requesting that kind of thing and certainly many  
23 more phone calls to try and set up an appointment to  
24 see her.

25 Q Okay. Now, there was mention in there about trying  
26 to get an exemption. What were you guys thinking  
27 about?

1       A     Well, we believed because of the safety factoring on  
2             this, the fact that we -- we saw in our own families  
3             and in other people, when you remove the  
4             EMPowerplus, people go backwards.  It's like a drug  
5             in that sense.

6                     If you had someone who was severely psychotic  
7             and they were on Zyprexa olanzapine, an anti-  
8             psychotic, and -- and they were somewhat sedated and  
9             somewhat controlled by that drug and, if you take  
10            that drug away, the person will begin to express  
11            symptomatology again.  Well, it was our same  
12            experience, our profound experience with EMPowerplus  
13            that, when you took the supplement away from people,  
14            they went backwards.

15                    And actually we believed that it was even more  
16            dangerous because of this and this factor alone.  
17            People that come to us, once again, we're the last  
18            ditch resort here, because we're not totally touted  
19            in the medical system at this point.  We think  
20            eventually we will be but at this point, no.  And so  
21            people would come to us and all of a sudden they  
22            would find hope.  People had been ill for 18, 20  
23            years.  They had gotten better on EMPowerplus, they  
24            had been able to remove their medications and now  
25            they have their life, they're back in their career  
26            pursuits, back in their educational pursuits and in  
27            many cases they actually got back into their

1 relationships that were shorn or ripped apart  
2 because of the neural psychiatric disorder. So  
3 they've got hope. Now all of a sudden you take  
4 EMPowerplus away, last ditch resort, the hope is  
5 gone.

6 The chances of suicide, we believe, were  
7 tantamount at that point. Even more so than if you  
8 were to take them off the drug because they'd  
9 already been there. Many of these individuals drop  
10 their drugs because of the severe side effects. And  
11 I'm going on the opinion -- the -- of what -- the  
12 comments that I see from literally thousands of  
13 people in that database who are saying and coming to  
14 us with a very high state of symptomatology. They  
15 don't come to us with a zero symptom base saying, Oh  
16 I just decided that I want to take supplements, I  
17 want to take supplements because I want to do  
18 something natural. They come to us because the  
19 medications are not working and they have a very  
20 high level of symptoms when they come, you see.

21 So we believe that it was a danger. It was  
22 endangering the public by taking this away. And any  
23 chance of taking it away, any hint of taking it away  
24 was a very, very dangerous move against the Canadian  
25 people that were taking this.

26 Q Okay. I want you to talk about, because you had  
27 indicated that you guys had some experience about,

1 when you take the product away, that symptoms return  
2 and I'm wondering if you can explain for us.

3 A Well, we had many cases like that where, for  
4 instance there was a lady in Cardston, her name is  
5 Gloria Cheney (phonetic), 20 years of schizophrenia,  
6 got onto the program, did very well. This is in  
7 beginning stage. Went to zero base, in other words  
8 she expressed no symptoms of schizophrenia, did  
9 very, very well.

10 Q Okay. So, when you say zero base, that would be  
11 based on the type of charting that --

12 A Exactly.

13 Q -- that's done in the database?

14 A Not -- not expressing any symptoms at all. Doing  
15 very, very well. And -- and Ms. Cheney decided that  
16 they didn't want to acquire the product, didn't feel  
17 that she needed it anymore and got off and within  
18 about three weeks was almost back into the exact  
19 same state as she was before. In fact at that point  
20 we took -- Mr. Cheney phoned us, Mr. John Cheney,  
21 and -- and said, Look, I want my wife back, she's  
22 gone backwards. And we said, Hey, look, we didn't  
23 realize that she wasn't taking the product anymore;  
24 we'll help you. And -- and, in fact, we said, Is it  
25 a financial issue? Well, yeah. Okay. No problem,  
26 we'll give you the product and why don't we do this,  
27 why don't we take her to the University of Calgary.

1 And we had a Dr. Cynthia Beck at the University of  
2 Calgary that looked at her and was, I think - I  
3 shouldn't say that - in my opinion the doctor was  
4 impressed because she went back down again to a  
5 very, very reduced state of symptoms.

6 So what it showed is this. We see a U-shaped  
7 curve where a person comes into the program on high  
8 symptoms. The symptoms drop very, very low, as they  
9 stay on this program for a while. If they get off  
10 the nutrients, then we see a rise in symptoms again.  
11 In fact, there's a form of study called ABAB where  
12 they actually do that. Symptoms, put the person on  
13 a program of product, symptoms reduce, take the  
14 product away, symptoms increase and then you go  
15 through the role again, you see.

16 Q Okay. And you're actually referring to a couple of  
17 Dr. Kaplan's studies --

18 A Yeah.

19 Q -- where that was done.

20 A There was two of them in the Journal of Child and  
21 Adolescent Psychopharmacology that demonstrated that  
22 principle, the ABAB principle.

23 Q Okay. So where somebody is -- has symptoms, is put  
24 on the product, the symptoms reduce --

25 A Yes.

26 Q -- the product's taken away, the symptoms go back --

27 A Yes.

1 Q -- the product is reintroduced and the symptoms  
2 reduce again?

3 A Yes.

4 Q Okay.

5 A And that fits the mode of reality in the sense that  
6 this is what people go through.

7 Q Okay. So, by 2003, how many people in Canada are  
8 being managed, and you can't give us an exact  
9 figure, but --

10 A No, but I'm going to estimate that we had about  
11 3,000 families that were -- you know, had children  
12 or a wife, a husband, whoever in the family that  
13 were struggling with this.

14 Q Okay. All being --

15 A Most of our people were from Canada at that time.

16 Q Okay. Now, and so it would be fair to say that by,  
17 you know, January 1st of '03, how much experience  
18 did you guys have in people's symptoms returning  
19 when they reduced or went off the product?

20 A Hundreds of cases.

21 Q Okay.

22 A Hundreds of cases. Let me explain why. Compliance  
23 is a big issue with -- with people, especially  
24 people that suffer with neural psychiatric  
25 conditions and what we found is that people would  
26 get onto the program, they would buy the product,  
27 we'd put them through out TrueHope Support System,

1           they would get better and then they would feel that  
2           there wasn't a need for it anymore and they'd walk  
3           away from it. And we saw hundreds of cases like  
4           that where they would come back within 30 days or 15  
5           days and say, Look, I've got to have it right away  
6           and -- and in many cases we actually had to perform  
7           emergency shipment to people. Okay, we'll get it  
8           out overnight. We're going to get it to you. We're  
9           going to make sure it happens.

10        Q     Okay. So you've given Gloria Cheney as an example  
11           and you've mentioned that -- you asked if there was  
12           a financial concern in that case. Did you find that  
13           there were financial concerns sometimes with people  
14           stopping the product?

15        A     Yes, there was.

16        Q     Okay. Is it that type of thing that led to this  
17           free product program?

18        A     Yes, exactly. We would do whatever we could with  
19           our fiscal budget to allow for that kind of thing.

20        Q     And why?

21        A     Because it's about protecting family. It's about  
22           protecting life. It's not about the dollar. Can I  
23           make a comment on that?

24                    You know if we wanted to make a lot of money,  
25           we shouldn't have done it in Canada. We should have  
26           stayed in the US where -- where the US Government  
27           doesn't impose sanctions upon people for doing what

1 we've been doing. And what we would do if we really  
2 wanted to make a lot of money is put the thing on  
3 the shelf, advertise the heck out of it, don't have  
4 a support system, don't have to pay all those  
5 support workers and just let them go at it in an  
6 irresponsible, unethical way. But we didn't do  
7 that.

8 We took the higher road because we realized,  
9 having been through what we've been through, having  
10 lived through the suicide, becoming an expert on  
11 suicide. You see many of the psychiatrists and the  
12 doctors out there can't make that claim. I can.  
13 I've lived the nightmare. I know the pain of the  
14 family. And so when I look at the people in our  
15 program, they're family to me. And that might sound  
16 kind of, you know, flowery here but I don't care,  
17 that's the way I feel about them because we've lived  
18 through this. When you have to bury someone that  
19 you're deeply in love with because a neural  
20 psychiatric condition took them out of this world,  
21 you think twice about it and you think twice about  
22 making any change whatsoever that would impact upon  
23 those people. That's my sincere belief.

24 Q Okay. So if I understand what you're saying, you're  
25 saying from a business perspective this support  
26 program doesn't make any sense?

27 A Hang the business. That's -- that's a foolish move

1 to make if you're in business to make a dollar.  
2 That just costs you at every corner and the  
3 liability is there. The liability is there, there's  
4 no question.

5 Q Okay. Because you guys are offering support to  
6 people with very serious conditions?

7 A Yes. No question.

8 Q Okay. And giving product away, if I understand you,  
9 you think that's a silly business move?

10 A It is, it's a silly business move.

11 Q Okay.

12 A It's a -- I was -- I was trained as an engineer and  
13 a property manager. It's a lot easier life in that  
14 way -- in that world --

15 Q Okay.

16 A -- than what we've been through with this one.

17 Q And I just want to clarify a comment because you  
18 said "couldn't stay in the US". You -- have you  
19 ever been located in the US?

20 A No.

21 Q Okay.

22 A Never have.

23 Q So what do you mean by that, "couldn't stay in the  
24 US"?

25 A Well, can you rephrase your question?

26 Q Well, I just -- you made the comment. I thought you  
27 made a comment when you were saying a bunch of

1 things.

2 A Oh, if -- if we were able to go down there and set  
3 up down there, that would be the place to do it if  
4 you were going to make a dollar on it.

5 Q Okay.

6 A But that doesn't mean -- that doesn't mean that we  
7 could do that --

8 Q Right. Okay. And you've already --

9 A -- I mean you have to go through all the immigration  
10 and everything else, but.

11 Q Right. Okay. Just wanted to clarify that.

12 A Yeah.

13 Q Now, you had told us that you had this meeting in  
14 Burnaby, you had been -- there'd been calls and  
15 letters to try and get meetings with the Minister.

16 MR. BUCKLEY: Madam clerk, I'm wondering if  
17 this witness could be shown Exhibit 6, which I  
18 believe is a March 6th, '03 open letter to Rod  
19 Neske.

20 Q MR. BUCKLEY: Now, are you familiar with  
21 that?

22 A I am.

23 Q Okay. So -- and your signature's on that document?

24 A It is --

25 Q Okay.

26 A -- I believe, yeah.

27 Q So tell us why this letter is being sent and how it

1           was sent.

2       A     This was in response to the meeting that we held --  
3           or not we held, but we were a part of in Burnaby, BC  
4           when we travelled out there.

5       Q     Okay.

6       A     Yeah.

7       Q     Okay. So -- because you have a very different take  
8           of that meeting than Miles Brosseau who gave  
9           evidence; would that be fair to say?

10      A     Yes.

11     Q     Okay. When you left that meeting, what were you --  
12           how were you thinking about your chances of being  
13           able to comply with the regulations?

14     A     We didn't see a way that we could, because --  
15           because Mr. Shelley indicated to us in that meeting  
16           that there's no way that we could obtain an NOC.

17     Q     Okay. And that's --

18     A     So it was basically, Shut it down.

19     Q     Okay. Or move to the States?

20     A     Yeah.

21     Q     Okay. Now, how was this letter sent?

22     A     This -- this letter was faxed to -- to Mr. Neske.  
23           And I believe Mr. Neske at that time had taken over  
24           -- shouldn't say that. I think he took over for --  
25           for Mr. Shelley and that's why we were writing the  
26           letter to Mr. Neske.

27     Q     Okay. Was that letter faxed to anyone else?

1 A Yeah.

2 Q Okay. Who was that letter faxed to?

3 A Well, it went to over 800 fax machines at Health  
4 Canada.

5 Q Okay. Now, that's quite a dramatic thing to do.

6 A Yeah.

7 Q So you're telling us you faxed that letter to 800  
8 different fax machines?

9 A Yeah.

10 Q Now, why would you guys feel the need to do that?

11 A Because we weren't being heard at all. We weren't  
12 being heard by the Minister's office, we weren't  
13 being heard by the people in Ottawa in Health Canada  
14 who we had contacted, Patricia Menard, Joan Korol,  
15 Danielle Dion, just to name a few. We made every  
16 motion to try and settle this and to work it through  
17 and to find out what was required.

18 Q Okay. I'm just going to stop you there because  
19 you're listing a bunch of names.

20 A Yes.

21 Q So can you go through some of those names again and  
22 tell us who they are?

23 A Danielle Dion.

24 Q Okay. Now, so who's she?

25 A She's a Health Canada agent. I believe that she was  
26 working in the compliance area at that time. I'm  
27 not sure of her exact position.

1 Q Okay. Why are you mentioning her as ...

2 A Because we contacted her.

3 Q And why would you contact her?

4 A Because we wanted -- in fact -- in fact, I remember  
5 phoning her office and -- and being put through to  
6 her and then I had a short discussion with -- with  
7 Joan Korol and -- and the purpose was I told them  
8 that we wanted to comply with -- with the  
9 regulations and that we need to know and understand  
10 exactly what we had to do. And they indicated they  
11 wanted some changes on the website and so we wanted  
12 them to sit with us and show us exactly what things  
13 were offensive to them on the website --

14 Q Mm-hm.

15 A -- you know, under the 3132 thing. And then they  
16 passed me over to Dennis Shelley. And I remember  
17 having a con -- a call with him and he said, Oh, you  
18 want to comply, do you? So the message did come  
19 down. And I said, Yeah, yeah we do, we want -- we  
20 want to work this thing through. We want to  
21 legitimize this program. We want to take this  
22 program and eventually get it into the healthcare  
23 system so we want to legitimize it. And this  
24 meeting was a part of that thinking.

25 Q Meaning the earlier meeting or --

26 A Yeah.

27 Q -- asking for a meeting here?

1 A Yes.

2 Q Okay. Now, so you're actually in -- you guys are  
3 throughout contacting Health Canada employees to try  
4 and see if there's some solution; would that be ...

5 A Yeah.

6 Q Okay. So -- and sending it to 800 fax machines,  
7 that's because?

8 A I guess we wanted them to get the message.

9 Q Okay. So it's -- really it's a way to get  
10 attention?

11 A It is. And maybe, when I think back now, maybe  
12 that's a bit of an immature way of approaching it,  
13 but at that time there was an extreme amount of  
14 frustration.

15 Q Okay.

16 A One of the frustrations that came was the fact that  
17 there was a lot of blurred lines at that time.

18 Q What do you mean?

19 A Well, I mean here you have a regulatory change  
20 coming down the tube, the Standing Committee on  
21 Health had -- had put out their 53 recommendations  
22 with Joseph Volpe, who was the head of -- the chair,  
23 and then those 53 recommendations, those changes  
24 that were recommended by the Standing Committee on  
25 Health would have resolved this problem, had Health  
26 Canada picked that up and done -- and done something  
27 with it at that time.

1           We worked with members of the transition team,  
2 one of them in particular is a fellow named Dale  
3 Anderson. There was a transition team that was set  
4 up to take from TPD, the Therapeutics Products  
5 Division, the drug division, take the -- the natural  
6 health products and move them over to a new office  
7 called the Office of Natural Health Products and  
8 this transition team was set in place by the then  
9 Minister of Health, Allan Rock. And Allan Rock, the  
10 Minister, guaranteed that this was going to happen  
11 and he accepted openly in Parliament the 53  
12 recommendations and those recommendations, once  
13 again, would have eliminated this problem, but there  
14 wasn't anything that was moving on it at all.

15           We clearly could not have fit into the DIN  
16 number issue because of the situation that we were  
17 in. For one thing, they were -- they were operating  
18 under a pharmaceutical standard and not US  
19 pharmacopoeia standard for dietary supplements.  
20 It's nie unto impossible to formulate a product, a  
21 dietary supplement, and make it conform to a drug  
22 standard. Why? Let me explain to you, if I could.

23           If you were to take a product like fluoxetine,  
24 which is commonly known as Prozac, and you produce a  
25 pill that's 20 milligrams in size, almost to the nth  
26 degree you can produce a 20 milligram pill. And  
27 sure, it has magnesium steroids and other products,

1 flow agents for putting -- putting the pill  
2 together, but you could limit it to almost exactly  
3 20 milligrams. With a dietary supplement you can't  
4 do that. It's nie unto impossible. You can't  
5 measure that closely. And so the US standards, US  
6 pharmacopoeia standards dictated that there -- that  
7 there could be, you know, a variance of 10 to 15  
8 percent depending upon whether it's a micro or macro  
9 element, this kind of thing. But in the drug style  
10 program that Health Canada is running, you could not  
11 take that and make it conform on that basis.

12 Q Okay. So just to put this in --

13 A Not to get an 'N' -- to get an NOC, I'm not talking  
14 about just getting a DIN for a product that's on a  
15 shelf.

16 Q Right.

17 A Okay.

18 Q Just to put this into plain English for the rest of  
19 us. Basically there's a pharmaceutical standard  
20 that Health Canada imposes on pharmaceutical  
21 products to go through testing and NOCs?

22 A Yes.

23 Q Okay. You're telling us in your opinion that  
24 standard is impossible for a product like yours to  
25 meet a natural health product?

26 A To get an NOC on? Yes.

27 Q Okay. There is a standard which is called the US

1 pharmacopoeia standard --

2 A Mm-hm.

3 Q -- that applies to natural health products?

4 A Yes.

5 Q Okay. And could I take you further and say now the  
6 new branch of Health Canada for Natural Health  
7 Products Directorate is using this US pharmacopoeia  
8 standard.

9 A Totally.

10 Q But in 2003, no one in Health Canada was accepting  
11 that standard?

12 A That's why we now have an NPN, which is the  
13 equivalent of a DIN number. And that NPN took us a  
14 year and four months of submissions. We had to do  
15 four submissions. We had to provide laboratory  
16 testing on the product to show that it's 200  
17 milligrams of calcium for three caplets. I'm just  
18 making that -- don't quote me on that exactly. I'm  
19 just saying that you have to identify label  
20 standards and prove that your product complies with  
21 the label that you have. We had to laboratory  
22 testing to show that there was no bacteria in the  
23 product, outside independent laboratory testing. We  
24 had to show that there was no heavy metals, that it  
25 was a safe product. We had to provide efficacy  
26 standards and science to prove that they would give  
27 us the claim. In fact, the Office of Natural Health

1 Products allows us to make a claim on TrueHope EMP  
2 that this product supports mental and physical well-  
3 being. I don't know of any product in Canada that  
4 has that prestigious claim. This product supports  
5 mental and physical well-being as approved by the  
6 Office of Natural Health Products, a section of  
7 Health Canada. But our problem was with TPD, the  
8 Therapeutics Product Division, because they were  
9 immovable, they would not flex at all.

10 Q Okay. Now, it's not quite that cut and dried  
11 though, is it, because there have been some  
12 difficulties with the product licencing process;  
13 would that be fair to say?

14 A Yes.

15 Q Okay. So can you tell us, basically you guys submit  
16 the licence application --

17 A Mm-hm.

18 Q -- and something's communicated back to you. What's  
19 the first communication you get regarding whether or  
20 not the licence is accepted?

21 A Well, when we submitted -- I believe it was the end  
22 of February. I mean the law or the regulations came  
23 into effect January 1st of 2004, I believe, and we  
24 submitted our -- our -- for a licence in February.

25 Q Of what year?

26 A 2004. I believe that's the way it was. And we  
27 eventually received it I think May 3rd of 2005. But

1 of course there were some -- there were some  
2 problems because of course we submit a -- when you  
3 provide a submission like that, they're going to  
4 review it and they found that they didn't like this  
5 or they didn't like that and they sent that back and  
6 we had to provide clarification and changes and  
7 changing to the label, the way it read, and -- and  
8 you know, all of the above --

9 Q Mm-hm.

10 A -- which would be expected.

11 Q Right. Okay. But at some point they tell you do or  
12 you don't have a licence and what was that  
13 communication?

14 A Oh. When we received -- when we received the -- the  
15 licence itself, it was approved with exactly the  
16 same components that are found in EMPowerplus.

17 Q Okay. So meaning Exhibit 7 here?

18 A Yeah. Shortly thereafter, in attempting to get a  
19 copy of the NPN, which of course we need, which we  
20 now have, but in trying to have them send that to  
21 us, indicated, Well, there's a problem, because they  
22 said TPD has not approved boron. They're holding it  
23 in -- in their group. They still considered boron  
24 to be a new drug. And so we -- we had some  
25 discussions with Phil Waddington, in fact a number  
26 of discussions. He's the Director General of the  
27 Office of Natural Health Products. We visited with

1           him extensively on that and he indicated that they  
2           would provide us the full licence, they would send  
3           us this NPN on TrueHope PNP with the exception of  
4           boron and, when they had put this through TPD, that  
5           we would be able to have the full licence with boron  
6           in it.

7           Q     Okay.

8           A     Because he didn't see a problem at all. In fact  
9           they originally approved it with boron.

10          Q     Well, that's what I'm trying to get at.

11          A     Yeah.

12          Q     The first communication was that you have a licence  
13          for the exact same product we're dealing with in  
14          this --

15          A     Yeah.

16          Q     -- proceedings?

17          A     Yeah. Exactly.

18          Q     Okay. And then there was a later communication  
19          saying, Wait a second, although we the Natural  
20          Health Products Directorate do not have an issue  
21          with boron, TPD is telling us they do?

22          A     Yes.

23          THE COURT:                   All right. Just stop right  
24          there. What are the -- what is the wording behind  
25          the initials you are throwing out?

26          MR. BUCKLEY:                Okay.

27          THE COURT:                   Including NPN and TPD.

1 MR. BUCKLEY: Okay. The TPD is the  
2 theraproducts issue.

3 THE COURT: TPD.

4 MR. BUCKLEY: Theraproduct --  
5 A Therapeutic.

6 MR. BUCKLEY: Therapeutic Products  
7 Directorate. Thank you.

8 THE COURT: Right. Thank you.

9 MR. BUCKLEY: And natural health products,  
10 people just say NHPs. So NHP stands for natural  
11 health products. And so there's -- well, there's  
12 many directorates, but there's a directorate called  
13 the Natural Health Product Directorate and that's  
14 the new directorate that was set up for natural  
15 health products.

16 THE COURT: With regards to the notice of  
17 the licence, what is that referred to?

18 A NPN.

19 MR. BUCKLEY: Right. Which is -- what does  
20 that stand for?

21 A Natural product number.

22 Q MR. BUCKLEY: So you don't get a drug  
23 identification number, you get an NPN?

24 A Would it be of benefit, if I could ask the Court,  
25 would you like a copy of that NPN, sir?

26 THE COURT: No.

27 A Okay.

1 THE COURT: Thank you.

2 MR. BUCKLEY: Okay.

3 THE COURT: We are going to take a break  
4 here unless you are very close to --

5 MR. BUCKLEY: Oh, no, that's fine. I mean  
6 ...

7 A I'll verify these as well, to make sure that those  
8 disks are all the same.

9 THE COURT: Well, that is what I have  
10 asked the Crown to do, so.

11 A Okay.

12 THE COURT: You can look at it first and  
13 then pass it along to the Crown, but I expect the  
14 Crown to look at that to satisfy themselves that  
15 they are what we have seen because that is really a  
16 question of admissibility and so on, so that is  
17 their job.

18 A Yes, sir.

19 THE COURT: All right. I am going to  
20 break then until 2:00. We will resume at 2:00 this  
21 afternoon.

22 Thank you, sir. Do not discuss your evidence  
23 with anyone during the lunch hour break.

24 A Yes, sir.

25 THE COURT: All right. Thank you.

26 A Thank you.

27 THE COURT CLERK: Order in court, all rise.

1 Court stands adjourned until 2:00 p.m.

2 THE COURT: Thank you.

3 -----

4 PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

5 -----

6

7 \*Certificate of Record

8 I, Jillian Fox, certify this recording is a record  
9 of the oral evidence of proceedings in the Criminal  
10 Court, held in courtroom 413, at Calgary, Alberta,  
11 on the 17th day of March, 2006, and I was in charge  
12 of the sound-recording machine.

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1 \*March 17, 2006 p.m. Session

2 J. Fox/K. Cote

Court Clerks

3 -----

4 THE COURT CLERK: Calling Synergy Group of  
5 Canada and TrueHope Nutritional Support Ltd.

6 THE COURT: Madam Clerk. Go ahead, Mr.  
7 Buckley.

8 MR. BUCKLEY: Thank you, Your Honour.

9

10 \*ANTHONY FREDERICK STEPHAN, Previously Sworn, Examined by  
11 \*Mr. Buckley

12

13 Q MR. BUCKLEY: Mr. Stephan, your computer is  
14 still on?

15 A It is.

16 Q I was going to ask you, because you were talking  
17 about kind of a U-shaped graph earlier, and you've  
18 mentioned the adverse drug reaction, you sometimes  
19 refer to it as an, ADR. I'm wondering if you could  
20 pull up -- because you've got some case studies, and  
21 I'm wondering if you could pull up --

22 A Sure.

23 Q -- a case study for us.

24 A Certainly. I need to stand to --

25 Q Go ahead.

26 A -- bring up the tech.

27 Q Yeah, that's fine.

1 MR. BUCKLEY: Your Honour, I can advise you  
2 during the lunch break my friend and I watched one  
3 of the recordings in its entirety, and we were both  
4 satisfied that it was an accurate reporting --  
5 recording. And we gave that to the clerk.

6 THE COURT: All right.

7 MR. BUCKLEY: And so unless my friend  
8 objects, which I don't think he does --

9 MR. BROWN: I don't have any objections,  
10 sir.

11 MR. BUCKLEY: -- I'm going to move to enter  
12 that as an exhibit. And it plays just on regular  
13 media player. So it should be easy to access.

14 THE COURT: All right. The disk of the  
15 program presentation will be Exhibit 31, I believe.

16 THE COURT CLERK: Yes.

17 THE COURT: Exhibit 31.

18 MR. BUCKLEY: Thank you, Your Honour.

19 THE COURT: And that is by agreement --

20 MR. BROWN: Yes, it was.

21 THE COURT: -- with the Crown, Mr. Brown?

22 MR. BROWN: Yes.

23 THE COURT: Thank you.

24

25 \*EXHIBIT 31 - Disk of Program Presentation

26

27 MR. BUCKLEY: Oh, that's right. Your

1 Honour, we have been giving one of everything for --  
2 as a court exhibit, and an extra for you to have.  
3 So maybe what we'll do is we'll burn another one  
4 before the end of the day.

5 THE COURT: Maybe, if you wish, or I can  
6 always access the exhibit.

7 MR. BUCKLEY: Okay. Either/or, but it -- I  
8 think we've got some more blank disks.

9 THE COURT: All right. That is fine.

10 MR. BUCKLEY: Okay.

11 Q MR. BUCKLEY: So, Mr. Stephan, can you tell  
12 us what this is that you pulled up?

13 A This is the chart of a young man who is under the  
14 care of the house psychiatry for the University of  
15 Utah Primary Children's Hospital.

16 And in the green area --

17 Q Okay. So is this -- this is a chart of, though, the  
18 person joining and being managed on the program?

19 A Exactly.

20 Q Okay.

21 A Exactly. And this was done in conjunction with the  
22 chief of psychiatry in the University of Utah  
23 Primary Children's Hospital.

24 The green area is baseline. Baseline is an  
25 area where the -- and power plus does not apply. In  
26 this case, you could see that there's some  
27 substantive symptoms. The height of the bar tells

1           you the -- the symptoms level, so the higher the  
2           bar, the greater the symptoms. And he's running  
3           around 35, 34, 33, that's fairly significant  
4           symptoms.

5       Q     Okay, now why -- why do you guys -- so is this  
6           baseline, they're doing that reporting form --

7       A     Yes.

8       Q     -- while they're not on the product. Why do you  
9           guys do a baseline?

10      A     In order to establish where the participant is at.  
11           In order to build a road map, you have to find out  
12           where you're at right here. If you're going to make  
13           a road map from here to Edmonton, you start here,  
14           and you draw it. And that's what we've done here so  
15           that we could understand where the symptoms were.

16      Q     Okay.

17      A     The nutrient is applied, the -- this is in days, and  
18           in a matter of, it looks like one, two, three, four  
19           days, we start to see a substantive reduction, down  
20           to 21. We've already lost about one-third of the  
21           symptoms. A couple of days later, a day later,  
22           we're down to one and one.

23                    At that point, we see an increase. We start to  
24           see an increase in symptoms. So the -- the nutrient  
25           supplement has had a profound effect. But we see  
26           the participant started to go backwards. That is  
27           because of the medication. This young man is now

1 becoming over medicated and it's affecting the  
2 neural chemistry.

3 He starts off at -- on Lithium at 450  
4 milligrams a day, okay?

5 Q Mm-hm.

6 A And he's moved down to 300 milligrams on July 20th.

7 Q Now, that's in conjunction with this document?

8 A Exactly. We see that he goes to zero base for a  
9 number of days. In other words, no symptoms. We  
10 see a little spike or two, that's -- that's nothing  
11 to really worry about. Zero, zero, zero, and then  
12 we see -- we start to see an increase.

13 Here we see a major increase coming because of  
14 the advancing adverse drug reaction. It's a  
15 reaction created by the medication. We're starting  
16 to medicate heavily, still, a person who's neural  
17 chemistry is becoming balanced and this is the  
18 result.

19 At this point, this young man went back into  
20 having night cares, he became aggressive again,  
21 somewhat depressed, incorrigible, that kind of  
22 situation. Dr. Ferry, at that point, reduced the  
23 Lithium to zero on September the 2nd, 1999, and we  
24 see the symptoms falling again. Normal behaviour  
25 forward from September 19th.

26 Now, this is very typical. We call this the U-  
27 shape curve. It's very, very consistent in almost

1 every case where there's a drug application. It's  
2 created by the medication, not by the nutrient.

3 Q Now, I notice that even -- so what you would call an  
4 adverse drug reaction, that the symptoms are still a  
5 lot less than the baseline was?

6 A Oh, yes.

7 Q So is that the pattern you've also seen?

8 A Yes. Absolutely. In correlating with the -- the  
9 research that has taken place, the publications, it  
10 indicates about 84 percent efficacy. So about 84  
11 percent of the people will see this. And we're  
12 working to try and discover better ways of doing  
13 this as well.

14 Q But this is a common pattern where there's an --  
15 there's adverse drug reactions?

16 A Very much so.

17 Q And that's what you guys are watching out for to  
18 manage?

19 A Yes.

20 Q And is that, then, one of the reasons why it's so  
21 essential, you won't allow people on the program who  
22 won't be doing the recording?

23 A Let's say that this young man -- I'll give you a --  
24 a scenario, and I think that we can justifiably do  
25 that because of our experience with thousands and  
26 thousands of people.

27 If this young man remained on 450 milligrams of

1           Lithium at this point, those symptoms would exceed  
2           the baseline. He would get worse. We would find  
3           that because of the -- the product that he's on,  
4           Lithium, he would become extremely lethargic. They  
5           would have a difficult time getting him out of bed.  
6           He'd be extremely depressed and most likely, he  
7           would move into a suicidal mode because of that.

8        Q     Okay. So you're basically communicating, without  
9           management in coordination with the doctor, if  
10          they're on drugs, to be reducing things --

11       A     Mm-hm.

12       Q     -- basically it could be making the situation more  
13          hazardous?

14       A     Yes, sir. That's why this product can't be just put  
15          on a shelf and people buy it in a willy-nilly way  
16          and -- and utilize it without having that support  
17          system and that understanding. And this is where we  
18          train practitioners on these types of effects.

19       Q     Now, what do you mean when you say you, Train  
20          practitioners?

21       A     Well, we teach them how to do this. We -- we have a  
22          book that we provide to them. It's called, The  
23          Nutrient Protocol of EMPowerplus. And it deals with  
24          this. It's a -- it's a course, it's about -- I  
25          think it's about 46 pages long. It talks about the  
26          supplement, the research on it, the science behind  
27          the raws, the -- the ingredients. And then it goes

1           into explain how to do this. And, of course, we  
2           work with them on telephone, in -- in personal  
3           visitation, that kind of thing.

4       Q     Okay. So, basically, in developing this program,  
5           you guys have had to develop a way of teaching  
6           doctors and psychiatrists how to manage patients on  
7           this?

8       A     Exactly. Exactly. Because the normal thinking  
9           would be at this point, Don't reduce the drug,  
10          increase it. The symptoms --

11      Q     Okay, and you just pointed on your pointer,  
12          basically the right-hand part of the 'U'?

13      A     Yes. Normally a doctor would look at this, they'd  
14          say, Oh, look at that. The EMPowerplus looks like  
15          it's working, but the symptoms are coming back, so  
16          we better increase the drug. Because when symptoms  
17          increase, you increase the drug. That's in the  
18          normal protocol of the medical system. In this  
19          case, it would be going negative to that. It's --  
20          it's reverse. You have to reduce the medication in  
21          order to bring the person around to a state of  
22          normality. You see?

23      Q     Okay. Now, you had been talking earlier about, kind  
24          of, this regulatory uncertainty and you had  
25          mentioned that there was this transition team that  
26          had been put in place. And you mentioned Mr. Dale  
27          Anderson. Can you explain for the Court the

1           significance of Mr. Anderson?

2           A     Dale Anderson was chosen by the Minister of Health,  
3           the then Minister, Allan Rock, to sit on the  
4           transition team. I believe there was -- oh, that's  
5           a guess, 20 members, sorry. But there was a number  
6           of members that came from consumer groups from the  
7           actual industry and from Health Canada, and they sat  
8           on this transition team and their position was to  
9           take the nutraceutical or the dietary supplement  
10          industry, in a sense, out of the hands of the  
11          Therapeutics Product Division, TPD, the -- the drug  
12          directorates of Health Canada, and transfer it into a  
13          new infrastructure called the Office of the Natural  
14          Health Products.

15                 Dale was -- was from Calgary here and he ran a  
16          -- a story where he sold nutritional things and he  
17          would go to Ottawa, numerous times per year, to sit  
18          on this transition team.

19                 And we had a discussion with him after we  
20          received our first letter from Health Canada  
21          regarding, you know, the requirement to do this and  
22          this and this, and we had quite a discussion. He  
23          said, You don't need the number. There's a new  
24          regulatory scheme coming down the tube. You'll  
25          never be able to fit into there. It will cost you  
26          literally millions by the time you finish it, and  
27          you'll probably never be successful.

1 Q Okay, and it's not for the truth --

2 A (INDISCERNIBLE) area that you're saying.

3 Q Yeah. Yeah. So --

4 A Well, no.

5 Q -- but I think it's important that it was --

6 A I apologize.

7 Q -- those types of communications were made, so I'm  
8 not -- it's not for the truth, but -- but I think by  
9 the end of the case, that type of message was  
10 repeatedly sent out, as to, you know, their chances  
11 and whether or not it was even appropriate to do.  
12 And I think the Court can appreciate that, you know,  
13 as of January 1st of '04, it's wasn't even  
14 necessary.

15 So, but anyway, let's move on, Mr. Stephan.

16 MR. BUCKLEY: Madam Clerk, can I have this  
17 witness be shown Exhibit 'P'.

18 A Thank you.

19 Q MR. BUCKLEY: Now, Mr. Stephan, is that  
20 document familiar to you?

21 A Very much so. It's entitled, Planning For Success.

22 Q Okay. And what is that?

23 A This is a document that's provided to the people who  
24 were new to the TrueHope program. And it's like a  
25 home document where they -- they receive this with  
26 their product and they go through it. They sit down  
27 with a -- a support person, mother, father, brother,

1           sister, whoever is going to help them through the  
2           program, and it's -- it's a book of knowledge and  
3           understanding. It explains how our supportal (sic)  
4           system works, you know, that you'll be receiving  
5           calls, that we're there to help you. It helps them  
6           to identify who can support them, who can help them  
7           through this -- this situation. It -- it goes into  
8           their current and previous medications so that they  
9           learn or have an understanding of the side effects  
10          of the medications. We actually send them to  
11          various websites like -- such as Rxlist.com, which  
12          is a monograph site where you can look at all the  
13          monographs. And they study the different  
14          medications that they're on so they understand how  
15          those medications work and what the effect will be.  
16          So that basically we're -- we're -- we're giving  
17          them knowledge, how to work with the program and how  
18          to work with themselves more effectively.

19        Q     Okay, so that is just one of the other -- I guess  
20              it's just another thing that you guys would do when  
21              somebody joined the program?

22        A     Yes.

23        Q     Is send documents like that out to give them further  
24              information and instruction?

25        A     It works in conjunction with our database program  
26              and our call centre.

27        Q     Okay.

1 MR. BUCKLEY: Your Honour, that had been  
2 identified earlier by Ms. Seeling as something that  
3 had been copied from a shipment that was stopped at  
4 the border from Health Canada coming in. And I  
5 would move to enter it as an Exhibit at this time.

6 MR. BROWN: No objection, sir.

7 THE COURT: All right. The Exhibit 'P',  
8 Planning For Success, Exhibit 'P' for Identification  
9 will now be Exhibit -- we are at --

10 THE COURT CLERK: Thirty-two.

11 THE COURT: Thirty-two. Exhibit 32.

12

13 \*EXHIBIT 32 - Formerly Exhibit 'P' for Identification -

14 \*Document Entitled, Planning For Success

15

16 MR. BUCKLEY: And I'm wondering, Madam

17 Clerk, if he could be shown Exhibit 'L'.

18 Q MR. BUCKLEY: Mr. Stephan, the clerk's just  
19 shown you a document marked as Exhibit 'L'. Can you  
20 identify that document?

21 A This was a -- a letter that David and I, David Hardy  
22 and myself, put together and sent to Mr. Rod Neske  
23 in the Burnaby office.

24 Q Okay. And --

25 A And in April.

26 Q And why was that letter sent?

27 A This is because there was a shipment of product that

1 was destined for Canadians that had been seized.

2 Q Okay.

3 A And we were very, very concerned about that action  
4 because we understood, with all of the experience  
5 that we've had previous to this, that that was  
6 endangering the lives of those Canadians that  
7 required that product in order to maintain proper  
8 mental stability.

9 Q Okay.

10 MR. BUCKLEY: Your Honour, I would also ask  
11 to move that this be entered as an exhibit.

12 MR. BROWN: No objection, sir.

13 THE COURT: All right, Exhibit 'L' for  
14 Identification will now be Exhibit 33. It's a  
15 letter dated April -- a copy of a letter dated April  
16 29th, 2003, from Mr. Stephan and Mr. Hardy on  
17 TrueHope letterhead, to Mr. Neske at Health Canada.

18 MR. BUCKLEY: Thank you, Your Honour.

19

20 \*EXHIBIT 33 - Formerly Exhibit 'L' for Identification -

21 \*Copy of a Letter Dated April 29th, 2003, From Mr.

22 \*Stephan and Mr. Hardy on TrueHope Letterhead, to Mr.

23 \*Neske at Health Canada

24

25 MR. BUCKLEY: And I'm wondering if, Madam  
26 Clerk, if this -- I'll give you a second there,  
27 sorry.

1 THE COURT CLERK: Mm-hm.

2 MR. BUCKLEY: If the witness could be  
3 showing Exhibit 'M'.

4 Q MR. BUCKLEY: Mr. Stephan, have you seen  
5 that document before?

6 A I have.

7 Q Okay. Now, can you tell us about that document?

8 A Well, this was a -- a news release that we put out  
9 about the Health Canada action, and it was inviting  
10 people to come to a -- a protest outside of the then  
11 Minister of Health, Anne McLellan's, constituency  
12 office.

13 Q Okay. Now, I'm just going to stop you because this  
14 appears to be an email generated within Health  
15 Canada, but starting on the bottom of the first  
16 page, which has on the bottom 00015.

17 A Oh.

18 Q It says, Copy of News Release. So is it the part  
19 following that that you recognize as a news release?

20 A Yes. Yes.

21 Q Okay. Now, tell us what this was about?

22 A Well, because product had been taken away and we  
23 felt that there was a danger, we decided to protest  
24 on this issue. It also was done in relationship to  
25 a petition that we had gathered with over 30,000  
26 names in it. It was called, The Food And Not Drugs  
27 action. And this petition ended up going to the

1 House of Commons. Dr. James Lunney who was the  
2 originator of Bill C-420, it was a private member's  
3 bill, that talked about amending the current -- then  
4 the current Food and Drugs Act, and making  
5 amendments to allow for better access, freer access,  
6 to dietary supplements, removing them from a drug  
7 regime and putting them in more as a food. In that  
8 Act as well, that amendment, proposed amendment, it  
9 also talked about repealing Section 31 and 32 of the  
10 Food and Drugs Act, relating to making truthful  
11 claims, as well as removing Schedule 'A', because we  
12 believed that it was outdated and antiquated and  
13 that there needed to be a change. We felt that it  
14 was actually in line with the recommendations, the  
15 53 recommendations that were coming forth.

16 Q Okay, but I'm just going --

17 A Sorry.

18 Q -- stop you and make it even more personal though.

19 A Okay.

20 Q You had indicated earlier that it seemed to you that  
21 part of the problem was that you guys were making  
22 claims. You were speaking about products for  
23 bipolar or mental disorders.

24 A Yeah.

25 Q Okay. When you talk about Section 3 being amended,  
26 that would allow you to make the claims?

27 A Yes.

1 Q Okay.

2 A That -- that was the intent behind it.

3 Q Okay. So in supporting the Bill, you saw that it  
4 actually had an application to help solve Health  
5 Canada saying, Hey, you can't make claims here.

6 A You'll have to pass that --

7 Q Okay.

8 A -- by me --

9 Q I'm sorry.

10 A -- I don't think so.

11 Q So did you see -- did you think that the Bill would  
12 have any benefit for your case?

13 A Totally.

14 Q Okay. Why?

15 A And -- and we supported it totally. Because what it  
16 would do, it would allow us, one, to have the  
17 dietary supplement that would not be regulated as a  
18 drug. People could have freer access to it. And,  
19 two, it would allow us to stand up and speak openly  
20 and publicly about the beneficial -- the beneficial  
21 effects of using this -- this regime of minerals and  
22 vitamins. So we saw that as a necessity, because we  
23 were being told that you can't speak about this  
24 publicly.

25 Q Okay. And so that's why you guys were supporting  
26 that Bill?

27 A Yes.

1 Q Okay.

2 MR. BUCKLEY: Now, Your Honour, I can  
3 appreciate that this exhibit, only part of it was  
4 generated -- the news release part was generated by  
5 the defendants, but I don't think my friend will  
6 object if I move to enter it, even though it's also  
7 in the Health Canada email system.

8 MR. BROWN: I don't have any objections to  
9 this entire document being entered.

10 MR. BUCKLEY: Okay. So I would move that  
11 Exhibit 'M' be entered as an exhibit at this time.

12 THE COURT: All right. Exhibit 'M' for  
13 Identification purposes will now be Exhibit 33 in  
14 the trial, identified as a --

15 THE COURT CLERK: Thirty-four.

16 THE COURT: Thirty-four? Exhibit 34. And  
17 it will be identified as a copy of a news release.

18

19 \*EXHIBIT 34 - Formerly Exhibit 'M' for Identification -

20 \*Copy of a News Release

21

22 MR. BUCKLEY: And Madam Clerk, I'm wondering  
23 if this witness could be -- oh, I'm sorry, I keep  
24 asking you to --

25 THE COURT CLERK: Right.

26 MR. BUCKLEY: -- show things when you've got  
27 to write it down.

1 I'm wondering if this witness could be shown  
2 Exhibit 'N'.

3 Q MR. BUCKLEY: Mr. Stephan, can you identify  
4 this document?

5 A Yes. This -- this is a letter from us, from David  
6 Hardy and myself, to Dennis Shelley.

7 Q Okay. And what was the purpose in writing that  
8 letter?

9 A Well, to try and clarify situations because there  
10 was some things that were raised by discussion. And  
11 so what this letter did is it provided clarification  
12 as to what was taking place. And our concerns, once  
13 again, that, you know, that things were being road  
14 blocked here.

15 Q Okay. Now, there are a large number of letters  
16 attached to this letter to Mr. Shelley. Can you  
17 explain why those were attached?

18 A Well, people were very, very upset with the fact  
19 that product was being taken away, turned back, and  
20 as a result, they wrote letters of concern to the  
21 Minister of Health, they wrote letters to us as well  
22 about this situation. And so we attached those  
23 emails and letters and sent them on to Mr. Dennis  
24 Shelley.

25 Q Okay.

26 A So that he would be apprised of the fact that there  
27 were people here that were saying that they were

1 going to be injured, if not already, by the action  
2 of -- of Health Canada.

3 Q Okay. And you and Mr. Hardy were also making  
4 communications of that nature, were you not?

5 A Oh, yes.

6 Q Okay.

7 A There have been numerous phone calls to Mr. Neske,  
8 as well as others that were involved in that.

9 MR. BUCKLEY: And, Your Honour, I'll ask  
10 that this Exhibit 'N' be marked as an Exhibit.

11 MR. BROWN: Sir, perhaps an exhibit with  
12 some explanation because there are, I think, a  
13 couple of hundred letters attached to this and,  
14 certainly, the Crown is not prepared to have them  
15 admitted for the truth of their content. I don't  
16 think that's my friend's intention, but --

17 MR. BUCKLEY: No. No.

18 MR. BROWN: -- perhaps that should be  
19 discussed.

20 MR. BUCKLEY: No, that can't be the case  
21 because those people aren't here to testify. But it  
22 certainly can be evidence that at least those  
23 representations were communicated, whether they're  
24 true or not.

25 MR. BROWN: That's fine, sir.

26 THE COURT: I note that the other three  
27 Exhibits that you have just put before me are April

1 and May of 2003 --

2 MR. BUCKLEY: And this one -- this one  
3 precedes --

4 THE COURT: -- and this collection is from  
5 prior to June of 2002.

6 MR. BUCKLEY: Yes.

7 THE COURT: And so I just want to make  
8 sure that it is understood that as far as  
9 chronological sequence is concerned --

10 MR. BUCKLEY: I'm out of here order, yes.

11 THE COURT: -- that you are out of order  
12 on it.

13 MR. BUCKLEY: Right.

14 THE COURT: Yes.

15 MR. BUCKLEY: Not out of order, but ...

16 THE COURT: No, you are out of -- you are  
17 out of chronological --

18 MR. BUCKLEY: Yes. Yes.

19 THE COURT: -- order on it.

20 MR. BROWN: Otherwise, sir, I don't have  
21 any objection to this being marked as the next  
22 exhibit, with that understanding.

23 THE COURT: All right. Then Exhibit 'N'  
24 will become Exhibit 35, and it is a -- it is a cover  
25 letter dated June 17th, 2002, and includes copies of  
26 a number of other letters, all of which are being  
27 admitted into evidence on the understanding that

1           they are being admitted not for the truth of their  
2           contents, but for proof that the communications  
3           were, in fact, made.

4       MR. BUCKLEY:                    Thank you, sir.

5       THE COURT:                     Fine.

6

7       \*EXHIBIT 35 - Formerly Exhibit 'N' for Identification -  
8       \*Cover Letter Dated June 17th, 2002, Including Copies of  
9       \*Other Letters For Proof the Communications Were Made and  
10      \*Not For The Truth of Their Contents

11

12      Q     MR. BUCKLEY:            Mr. Stephan, you had spoken to  
13            us about you had also made some trips to Ottawa?

14      A     That's right.

15      Q     And why were those trips made?

16      A     In total, I believe that there was four -- four  
17            trips made. One of them was to -- we were called to  
18            testify before the Standing Committee on Health at  
19            the House of Commons. The other three were made in  
20            order to visit with various MP's on this issue of  
21            Bill C-420, on the issue of Health Canada's actions  
22            against the people that needed the product. There  
23            was a lot of discussion with those various MP's and  
24            it was almost like an all-party venture where we  
25            visited with members of the Liberal Party, NDP's,  
26            all the parties.

27      Q     Okay. Now, it's probably too much to ask if you

1 remember dates, but do you recall in the year 2003  
2 going to Ottawa for those purposes?

3 A Yeah, I believe it was May of 2003. I hope that's  
4 correct.

5 Q Do you have -- do you keep a diary of things like  
6 dates?

7 A I do.

8 Q And how do you do that?

9 A In my Daytimer.

10 Q Do you have that with you?

11 A I do.

12 MR. BUCKLEY: Your Honour, do you object --  
13 he keeps a record of such things on a Blackberry-  
14 type device -- if he refers to that?

15 THE COURT: Does it go back three years?

16 MR. BUCKLEY: It does, actually.

17 THE COURT: All right.

18 MR. BUCKLEY: I'm just asking that because  
19 he was able to --

20 MR. BROWN: With the -- with the usual  
21 questions in terms of made in his own hand, et  
22 cetera, then I don't have an objection to his  
23 referring to it.

24 THE COURT: Well, let's see what he's got  
25 and we will --

26 MR. BROWN: Yeah.

27 THE COURT: -- deal with it then.

1 A Okay. I just have to do a search on this. Okay.  
2 On Monday, May the 12th of 2003, we travelled to  
3 Ottawa, and I have a Marriott Hotel confirmation  
4 here, you know.

5 Q MR. BUCKLEY: Okay. So is this a device  
6 that you would -- you alone make notes into?

7 A Yes.

8 Q Okay.

9 A Yeah, this is my personal thing. I think it  
10 calendars back to 2001.

11 THE COURT: Are those notes made at the  
12 time that the events occurred?

13 A Yes, sir.

14 THE COURT: You make them promptly?

15 A Yeah, because --

16 THE COURT: Yes, all right.

17 A -- what this is, this is like a Daytimer and it's --  
18 it's -- it's, you know.

19 MR. BROWN: That's fine, sir, I have no  
20 problem.

21 THE COURT: That's fine, there's no  
22 objection to that.

23 A Okay.

24 Q MR. BUCKLEY: Okay. So one of your trips  
25 was on May 12th, 2003, then?

26 A That's right.

27 Q And that the best of your recollection that when you

1           went to Ottawa, you basically -- except for when you  
2           went to testify, you were there to support Bill C-  
3           420 and to basically alert MP's about the plight  
4           that you had with Health Canada?

5       A     Yes, exactly.  It -- it -- it was a lobbying  
6           movement.  It was there to apprise them of what was  
7           happening.

8       Q     Yeah.

9       THE COURT:                   I'm just unclear, Mr. Buckley.  
10           Did all four trips take place in 2003?

11      A     No, sir.  There was also a trip on Monday, November  
12           15th, 2004.

13      THE COURT:                   That was November, '04?

14      MR. BUCKLEY:                 Mm-hm.

15      A     That's right.  And I have a trip on Monday, February  
16           21st, of 2005.  And the one in 2005, I also visited  
17           with Mr. Philip Waddington, the Director General of  
18           the Office of Natural Health Products, to check on  
19           the -- in on the status of our application for a  
20           natural product number.

21      Q     MR. BUCKLEY:           Now, I'm going to move you  
22           back to May 12th, 2003.  Did you attempt to meet  
23           with the Minister of Health at that meeting?

24      A     Yes.

25      Q     Okay, and what happened there?

26      A     We were turned away.  We went to the -- to Tunney's  
27           Pasture, which is the Health Canada Area, and we

1           were turned away. We were denied access to -- to  
2           the Minister. Or even a meeting with some of her  
3           delegates, I guess you could say. I also ran into  
4           the Minister of Health in -- on Parliament Hill.  
5           She happened to get on -- on an elevator and I  
6           attempted to make a discussion with her and --

7           Q     And who was the Minister of Health?

8           A     Anne McLellan.

9           Q     Okay.

10          A     And she hurriedly ran down the hall and -- and kind  
11          of avoided me. I -- I went into her office, I  
12          wasn't being abrupt or anything, but I -- I did  
13          leave a -- a document there, but her secretary  
14          indicated that she would be too busy to see me at  
15          that time. May I turn this off now, sir --

16          THE COURT:                    Go ahead.

17          A     -- so it doesn't ring?

18          THE COURT:                    That's right.

19          A     Okay.

20          Q     MR. BUCKLEY:            Now, was that -- did that  
21          happen on the same visit that you had gone to  
22          Tunney's Pasture?

23          A     No. I believe that was the trip afterwards.

24          Q     Okay. Now, you also told us that you had gone to  
25          testify in front of the Standing Committee of  
26          Health?

27          A     That's right.

1 Q Can you tell us how that came to be and what  
2 happened?

3 A Well, a number of the parliamentarians were aware  
4 that -- that we were into these actions. We had had  
5 numerous discussions with all parties, for instance,  
6 MP Savage, who's a liberal. We had visited with the  
7 Honourable Robert Thibeault, the Parliamentary  
8 Secretary for the Minister of Health, Bonnie Brown,  
9 who is the head of the Standing Committee on Health,  
10 numerous MP's, and they were aware of the plight of  
11 -- of the Canadian people. They, themselves, had  
12 heard of concerns regarding the action of Health  
13 Canada in turning back this product, and they  
14 invited us to come and speak at that session. I  
15 believe it was almost the closing session.

16 Q And I'm just going to show you a transcript.

17 MR. BUCKLEY: And, Your Honour, I had given  
18 a transcript of this proceeding earlier to Mr.  
19 Brosseau, but I was able to get, from Ottawa, a  
20 better copy. So -- because if you recall, the  
21 earlier one, I forgot, it was one that you can print  
22 off at the website at the Standing Committee of  
23 Health. They will not certify a copy, but if you  
24 actually work at -- in the parliament buildings, you  
25 can get a cleaner copy and so I've got a contact  
26 there that was able to provide me with a copy. And  
27 I asked somebody today to highlight where I've

1 highlighted the other copy.

2 THE COURT: Go ahead.

3 Q MR. BUCKLEY: So, now, Mr. Stephan, I've  
4 given you what I suggest to you is a transcript from  
5 the Standing Committee of Health dated Monday, May  
6 16th, 2005. Would it be fair to say that you have  
7 read a transcript of those proceedings before?

8 A Yes.

9 Q Okay.

10 A It's been some time, but I have read it.

11 Q Now, and it lists both you and Mr. Hardy as having  
12 testified. I just want you to review that document  
13 and tell me if that looks like it's a transcript of  
14 your testify and Mr. Hardy's testimony?

15 A Yes, I -- I recognize pieces where -- where I recall  
16 Mr. Hardy, as well as myself, making indications as  
17 -- as found in here, yes.

18 MR. BUCKLEY: Now, Your Honour, I've just,  
19 for the Court benefits and my friend's benefit, I  
20 don't pretend to suggest that I can oath out and --

21 THE COURT: That you can what?

22 MR. BUCKLEY: That I can oath out by, you  
23 know, putting in a previous statement that might be  
24 consistent, or that this can go in for the truth of  
25 its contents. But it's relevant to my case on the  
26 abuse-of-process issue to enter a transcript where  
27 basically members of Parliament from every party was

1 actually voicing concern about this very  
2 investigation and the Chair of the Standing  
3 Committee of Health apologizing. And it probably is  
4 the case that under the Canada Evidence Act this is  
5 admissible in any event, but just so that it's  
6 clear, I'm not entering it for the truth of its  
7 contents, but just for some of the communications  
8 and I'm actually interested in the MP's  
9 communications, not Mr. Anthony (sic) or Mr. Hardy's  
10 communications.

11 So the fact that they made those  
12 representations is important, but the truth of them  
13 isn't. And the comments of the MP's, in my  
14 submission, is going to be relevant because the very  
15 nature of an abuse-of-process argument is basically  
16 if it crosses the public's perception. And I think  
17 it's fair to say that members of Parliament in the  
18 House of Commons help reflect the public's  
19 perception. And I don't know if my friend objects  
20 to that or not. It's also a very public record, so  
21 ...

22 MR. BROWN: Well, I guess I'll leave for  
23 argument the value of this document to my friend's  
24 case and whether it speaks to abuse of process or  
25 not. But I don't have any particular objection with  
26 respect to it being marked as an exhibit. It is, at  
27 least purports to be, an official copy of the

1 minutes of this meeting. It certainly can't be  
2 entered for the truth of any of the comments made by  
3 any of the members of Parliament.

4 THE COURT: Sorry, it cannot be ...?

5 MR. BROWN: It's my submission that it  
6 can't be entered for the truth of the content of  
7 these comments. I suppose it may speak to the fact  
8 that the comments were made because Mr. Stephan was  
9 there.

10 MR. BUCKLEY: Well, and I -- I mean, I don't  
11 think my friend would object, even if Mr. Stephan  
12 wasn't there --

13 MR. BROWN: No. No.

14 MR. BUCKLEY: -- to the fact that they were  
15 made.

16 MR. BUCKLEY: No, that's -- that's fair.

17 MR. BUCKLEY: So ...

18 THE COURT: If there's no objection from  
19 the Crown then, the Standing Committee on Health  
20 document entitled, Evidence, Monday, May 16th, 2005,  
21 will be entered into evidence as our next exhibit.  
22 Once again, not to the truth of its contents, but  
23 for proof of the fact that the communications did  
24 occur. And I take it that is what is agreed to by  
25 all parties?

26 MR BUCKLEY: Yes, sir.

27 MR. BROWN: Yes, sir.

1 MR. BUCKLEY: Yes.

2 THE COURT: I note that the date is May  
3 16th, 2005.

4 MR. BUCKLEY: Yes, sir.

5 THE COURT: Exhibit 36.

6

7 \*EXHIBIT 36 - House of Commons Canada, Standing Committee

8 \*on Health, HESA, Number 042, 1st Session-38th

9 \*Parliament-Evidence, Dated Monday, May 16, 2005, Chair

10 \*Ms. Bonnie Brown, With Two Green Tabs and One Blue Tab

11

12 Q MR. BUCKLEY: Now, could I have the witness  
13 shown Exhibit 1.

14 Mr. Hardy (sic), you've been shown Exhibit 1.

15 You've seen that document before?

16 A I have.

17 Q Okay. Tell us about the ladies with the red  
18 umbrellas?

19 A Well, the ladies with the red umbrellas were a -- a  
20 group of ladies that were taking EMPowerplus who had  
21 found a significant answer for their mental --  
22 mental illnesses --

23 Q Okay, I'm just -- I'm going to stop you there. I  
24 don't want you to go through their stories --

25 A Okay.

26 Q -- but, basically, you were involved in getting that  
27 going?

1 A Yes.

2 Q Okay. I want you to tell us why you got that going  
3 and what you did to get it going?

4 A Because we believed that it was important that these  
5 ladies be heard. We had received a lot of phone  
6 calls, a lot of emails, a lot of concerns about a  
7 lot of these ladies were mothers, about what they  
8 were going to do with their family issues.

9 Q Okay, but what was the goal?

10 A The goal was to elicit help - solicit help - from  
11 Parliament in taking a look at this serious issue  
12 that was taking place.

13 Q Okay, so --

14 A The damage to these Canadians.

15 Q So what was happening at the time?

16 A At -- at this time, the product was being turned  
17 back by Health Canada in conjunction with the  
18 Canadian Security Border Agency, I think they call  
19 it. And people, at the very best, would have to  
20 drive to pick the product up at the U.S. border and  
21 bring it across. In many cases they were denied,  
22 even after doing that. I know of a case of one lady  
23 who -- from the Edmonton area, who drove all the way  
24 down to the border south of us here to pick up her  
25 product and was denied access to it. So there was  
26 -- there was great big concern about this issue.

27 Q Okay. So, basically, this was just another effort

1 to put political pressure on the government?

2 A Yes, it was.

3 Q Okay. Now, when product was being seized at the  
4 border, basically what happened to the people who  
5 couldn't get product, that you're aware of?

6 A Well, when the product was turned back at the  
7 border, many of them weren't able to get it. Many  
8 of them weren't able to get it. There was a lot of  
9 people that left the program. There was a lot of  
10 people who were put at risk. I was aware of some  
11 situations where some of these participants actually  
12 smuggled product into Canada in order to keep their  
13 families going.

14 Q Okay. Well, actually, was that, to your knowledge,  
15 common or uncommon?

16 A I think it was common.

17 Q Okay. Well --

18 MR. BROWN: I think that does call for  
19 some speculation, sir.

20 Q MR. BUCKLEY: Well, let me ask what your  
21 knowledge --

22 THE COURT: It certainly does call for  
23 some speculation.

24 Q MR. BUCKLEY: Yeah. Let me ask what your  
25 knowledge was of basically people, to use your  
26 words, smuggling product?

27 A My knowledge?

1 Q Yes.

2 A I was aware of some people that would go across the  
3 border and -- and bring product back. People were  
4 desperate. What we were basically saying is, You  
5 can't have this, so you can crash and go to the  
6 hospital. I don't mean to be rude to the Court, but  
7 that's the bottom line. And there was no  
8 consideration whatsoever if somebody lost their  
9 life. All of our pleadings that went up to Health  
10 Canada were absolutely ignored. And the MP's  
11 themselves, that became involved in -- in -- in this  
12 -- in this act of brutality, I'll call it, against  
13 the Canadian people themselves were incensed. And  
14 they spoke out in Parliament and they -- they --  
15 they were involved. We've talked to lots of MP's  
16 who had constituency members who were at their door  
17 begging for the MP's to do something.

18 MR. BROWN: Sorry, sir, that's also  
19 hearsay at this point --

20 THE COURT: That is a blatant hearsay --

21 A I'm sorry.

22 THE COURT: -- and be disregarded.

23 MR. BROWN: Thank you, sir.

24 A Sorry, sir.

25 THE COURT: Yes.

26 MR. BUCKLEY: Yeah, if it's any help, one of  
27 those MP's will be coming to testify and --

1 A I apologize, sir.

2 MR. BUCKLEY: -- we'll deal with that that  
3 way.

4 Q MR. BUCKLEY: Now, you guys took some court  
5 actions --

6 A Yes.

7 Q -- when are you -- when the product was seized or  
8 turned around at the border?

9 A Yeah, it was -- it was due to a seizure and we filed  
10 in the Federal Courts of Canada.

11 Q Okay. Why did you take that action?

12 A To try and protect the people.

13 MR. BUCKLEY: I was just going to ask the  
14 clerk if the witness could be shown Exhibit 2,  
15 please, sir. We can confirm that's --

16 THE COURT: Fine.

17 MR. BUCKLEY: -- the court action.

18 THE COURT: Exhibit 2, Madam Clerk?

19 THE COURT CLERK: Oh, yes, sorry.

20 Q MR. BUCKLEY: So, Mr. Stephan, you're being  
21 shown Exhibit 2.

22 A Thank you.

23 Q Is that the court action that you were speaking  
24 about?

25 A This is a copy of the -- the filing in -- in the  
26 Federal Courts.

27 Q Okay. So that's the court action you guys started,

1 in your words --

2 A Yes.

3 Q -- to try and protect people?

4 A That's right.

5 Q Now, that started in 2003. Was it able to conclude  
6 in 2003?

7 A No. In fact, it's still outstanding.

8 Q Okay, so it's still running now?

9 A It's still running pending the outcome of this court  
10 case. I believe that's the proper terminology.

11 Q Okay. Now --

12 THE COURT: Just a moment, please, Mr.

13 Buckley. All right, go ahead, please.

14 Q MR. BUCKLEY: Okay. So, Mr. Stephan, I just  
15 want to understand basically what the thinking was  
16 in getting that court action started?

17 A Well, we -- we wanted the court to -- to look at  
18 this situation and to make a judicial review of the  
19 seizures to see if they were illegal and other  
20 things. We also asked the courts, I believe -- it's  
21 been quite a while since I looked at this -- to look  
22 at certain sections of the Food and Drugs Act and  
23 with an eye of whether those were constitutional. I  
24 -- I believe that that's what the case was about.

25 Q Okay. And what was the goal? So from your  
26 perspective in starting that, what was the goal?

27 A Protection for the people that were involved in this

1 program.

2 Q Okay.

3 A Protection for my family. Because I viewed this, as  
4 well, this action, as a threat, a personal threat  
5 against my family and my children.

6 MR. BUCKLEY: Now, Madam Clerk, I'm  
7 wondering if the witness could be shown Exhibit 3.

8 Q MR. BUCKLEY: Mr. Stephan, do you recognize  
9 that document?

10 A Oh, Court of -- Court of Queen's Bench, yes. Yes.

11 Q Okay. So that's another court action that was  
12 started by TrueHope?

13 A That's correct.

14 Q Okay. And what was the goal behind that? That's an  
15 application to quash a search warrant.

16 A We were looking for an order to quash that search  
17 warrant. We felt that it was unjust.

18 Q Okay. Was there any other goal?

19 A Once again, in order to put this thing right and  
20 establish it so people could have the right to take  
21 this product without being interfered by Health  
22 Canada.

23 Q Okay, thank you. Can you tell us about a gentleman  
24 named Ron LaJeunesse?

25 A Ron LaJeunesse was the executive director of the  
26 Canadian Mental Health Association, Alberta region.

27 Q Okay. And how did you come to discover this

1 gentleman's name?

2 A Became aware of Ron when we saw a newspaper article  
3 -- I believe that was the Calgary Herald -- where  
4 Ron talked about two suicides that had taken place  
5 where they had fielded a number of calls from people  
6 who had concerns and emails. He indicated -- well  
7 ...

8 Q Okay, but you come across him -- his name in a  
9 paper?

10 A Yes.

11 Q Okay. Had you ever heard of this fellow before?

12 A No.

13 Q Had you -- had you met him before?

14 A No.

15 Q Okay. Had you guys had any dealings with his branch  
16 of the Canadian Mental Health Association before  
17 reading about him in the paper?

18 A No.

19 Q Okay. So the first time you hear of this gentleman,  
20 he's talking about suicides in the paper?

21 A I believe that's the way it was, yes.

22 Q Mr. Stephan, in 2003 you were told that you needed a  
23 drug identification number to sell the product.

24 Correct?

25 A Yes.

26 Q And you were told by Health Canada to stop selling  
27 the product?

1 A Yes.

2 Q Why didn't you?

3 A Why didn't we?

4 Q Yes.

5 A Because we would have seen a good number of  
6 hospitalizations, and in truth, I believe that we  
7 would have seen a number of suicides resulting from  
8 that. It was a safety issue.

9 Q Now, eventually, there was a solution to this?

10 A There was.

11 Q Okay. How did that solution come about?

12 A There was a change in Parliament that allowed us to  
13 have a new Health Minister, a man by the name of  
14 Pettigrew, Pierre Pettigrew.

15 Q Okay.

16 A When that change took place, we contacted a fellow  
17 named James Anderson, who is, I believe his position  
18 was an executive assistant to the Minister. We also  
19 approached Dr. James Lunney, MP for Nanaimo-  
20 Cowichan, I think it is -- no, Nanaimo Alberni,  
21 about the situation to see if somehow he could set  
22 us up so that we could meet with the Minister. We  
23 never did get a meeting, but my understanding that  
24 Mr. Lunney and Mr. Pettigrew were able to have a  
25 meeting at which time there was an agreement put  
26 together to allow the product to come back into  
27 Canada under certain provisions.

1 Q Okay, so I just want to make sure that I'm clear.

2 So there's a new Minister of Health, Mr. Pettigrew?

3 A Yes.

4 Q And you have been in touch with his assistant, a  
5 James Anderson?

6 A Yes.

7 Q And the purpose was to try and set up a meeting with  
8 the Minister and yourself?

9 A That's right.

10 Q Okay. You were also in touch with James Lunney's  
11 office?

12 A Correct.

13 Q Okay. To see if they would assist in setting up a  
14 meeting with the Minister of Health?

15 A That's right.

16 Q Okay. And you are -- that didn't work out that you  
17 could have a meeting?

18 A No, we never attended to -- to visit with -- with  
19 the Honourable Mr. Pettigrew.

20 Q Okay. But just so I understand your evidence. What  
21 you were lead to believe is, is that James Lunney  
22 met on -- basically on TrueHope's behalf with the  
23 new Minister?

24 A That's right.

25 Q Okay.

26 A And I received an email to that effect and we were  
27 able to -- to move on from that point forward.

1           There was some hoops that the people had to jump  
2           through in order to get the product, but we helped  
3           them to, you know, facilitate them, those hoops so  
4           they could once again receive the product. And that  
5           agreement stands to today.

6       Q     Now, okay, so prior to this meeting with James  
7           Lunney and Pierre Pettigrew, the product was is  
8           being turned away at the border?

9       A     Yes.

10      Q     Okay. And then after this meeting, it's  
11           communicated to you that, basically, a deal has been  
12           struck with the Minister of Health?

13      A     Yes.

14      Q     And so if certain conditions are met, there's an  
15           agreement that the product can come into Canada?

16      A     That's right.

17      Q     Okay. So, basically, there was a political  
18           agreement reached with the Minister of Health?

19      A     Exactly.

20      Q     Okay.

21      MR. BUCKLEY:                   And, Your Honour, I thought I  
22           had three copies here. I just checked and only have  
23           one, but I will endeavour to get some more copies  
24           for next week.

25      Q     MR. BUCKLEY:                   I'm going to show you an  
26           email. Mr. Stephan, do you recognize that document?

27      A     I do.

1 Q Okay. Can you tell us what that document is?

2 A This is -- this is the email that was received from  
3 Dr. James Lunney's office with a forwarding of an  
4 email from a Leanne Moussa of the Minister's office,  
5 Minister of Health. And it outlines the direction  
6 the people had to take in order to obtain product.

7 Q Okay. So is that a copy of the email that  
8 communicated to you this deal that had been reached?

9 A I believe this is, yes.

10 Q Okay. And how is it -- how did it come about that  
11 you got a copy of that email?

12 A This one?

13 Q Yes.

14 A This one was forwarded from Dr. James Lunney's  
15 office to myself.

16 Q Okay. And that occurred yesterday?

17 A Yesterday or the day before.

18 Q Okay.

19 A Yeah.

20 Q So just so that we're clear, that document is a new  
21 email with an old email attached?

22 A Yes.

23 Q And how was it that James Lunney's office came to be  
24 sending you that email?

25 A We requested it.

26 Q Okay. Now, you reviewed it and were you satisfied  
27 that it was a copy of the original?

1 A Yes, I believe that it is.

2 MR. BUCKLEY: Your Honour, I'm going to ask  
3 that that be entered as an exhibit. I have every  
4 intention of calling Dr. James Lunney to testify  
5 about the agreement that was reached.

6 THE COURT: Do you want to give me some  
7 kind of time frame of this solution, this political  
8 solution, and when Mr. Pettigrew became the Minister  
9 of Health? What time frame are we talking about  
10 here? 2004, 2005?

11 A Just into 2004. So I know in January of '04, Mr.  
12 Pettigrew was already Minister of Health. I can't  
13 tell you how -- I would have to go onto the internet  
14 to figure that out or ask the House of Commons for  
15 that.

16 THE COURT: That is fine. I am just  
17 trying to keep in context with the other events that  
18 --

19 MR. BUCKLEY: Right.

20 THE COURT: -- were put into evidence --

21 MR. BUCKLEY: Yes.

22 THE COURT: -- of when this occurred.

23 MR. BUCKLEY: Just to try and be helpful,  
24 yeah, because there was pressure all through '03 to  
25 try and reach a political solution, but it didn't  
26 actually happen until March of '04, when a deal was  
27 struck, which is when this email is dated.

1 THE COURT: Is that the date on the  
2 original email?

3 MR. BUCKLEY: I believe so.

4 Q MR. BUCKLEY: Can you tell us the date?

5 A March 17th, 2004.

6 THE COURT: Two years ago to the day.

7 A Oh, yeah.

8 THE COURT: Fine. That is fine.

9 MR. BUCKLEY: And so I will ask if we could  
10 enter that as an Exhibit. It's fairly significant  
11 because that's how this ended is with a political  
12 solution that stands still today.

13 MR. BROWN: Sir, I am just not sure if  
14 he's asking -- my friend is asking for it to be made  
15 a full exhibit through this witness or marked for  
16 identification and then be made a full exhibit  
17 through Dr. Lunney, who he is intending to call?

18 MR. BUCKLEY: Well, I am asking for it to be  
19 a full exhibit because the original was sent to this  
20 witness. So --

21 THE COURT: He has testified that he  
22 received it, so ...

23 MR. BROWN: That's fine, sir.

24 THE COURT: I am satisfied it could be  
25 made a full exhibit --

26 MR. BROWN: That's fine.

27 THE COURT: -- at this time.

1 MR. BROWN: Yeah, that's fine, sir.

2 THE COURT: All right.

3 MR. BROWN: Thank you.

4 THE COURT: Exhibit 37 will be the new  
5 email with an attached original email of March 17th,  
6 2004, from Leanne Moussa to James Lunney, MP.  
7 Exhibit 37.

8

9 \*EXHIBIT 37 - New Email With an Attached Original Email  
10 \*of March 17th, 2004, from Leanne Moussa to James Lunney,  
11 \*MP

12

13 MR. BUCKLEY: And I do apologize to my  
14 friend --

15 THE COURT: And, now, copies?

16 MR. BUCKLEY: -- I will have him a copy on  
17 Monday.

18 MR. BROWN: That's fine.

19 MR. BUCKLEY: I thought I had -- I know I  
20 printed them off and --

21 THE COURT: A copy for me as well?

22 MR. BUCKLEY: Yes. Yes.

23 THE COURT: Madam Clerk, there you are.

24 THE COURT CLERK: Thank you.

25 THE COURT: Exhibit 37.

26 Q MR. BUCKLEY: Now, so, Mr. Stephan, after  
27 there was word about this agreement being reached,

1           what happened?

2       A     Well, people performed the obligation as listed in  
3           the email.

4       Q     Yes?

5       A     They had to show that the product was purchased on a  
6           1-800 line or whatever in -- in the U.S., that the  
7           money was received in the U.S., and they were  
8           required to even show by telephone bill that they  
9           had made the phone call and -- and there was a  
10          number of stipulations and that put in -- was put in  
11          place.

12      Q     Okay. Now, how long -- so people had to kind of  
13          basically follow the agreement.

14      A     Yes.

15      Q     How long was it that Health Canada -- well, did  
16          Health Canada check and require people to --

17      A     We -- we had problems because at some of the border  
18          crossings product was still being turned back. And  
19          we -- the distributor in the U.S. directed all the  
20          product to flow through the Burnaby -- not Burnaby,  
21          but through Vancouver port. And from that time  
22          forward, there hasn't been a problem. Product was  
23          received as ordered by these individuals in Canada.

24      Q     Okay, and I just -- I want to be clear because when  
25          somebody says a word like, Distributor, we think,  
26          Oh, for somebody else you can get the product  
27          through.

1 A So it's a warehouse in the U.S.

2 Q Okay. But people can only -- what's the only way  
3 people can access the product?

4 A Well, they can only access it through us.

5 Q Okay.

6 A Nobody else.

7 Q So when you say, Distributor, it's just a warehouse  
8 that ships?

9 A Oh, yes, sorry.

10 Q Okay. No, it's just that has a specific meaning.

11 A That's right.

12 Q So --

13 A We would not allow other people to market this  
14 product on our behalf in that sense because of the  
15 inherent risk and danger, as outlined this morning.

16 Q Okay. And so although you guys might set up a  
17 mercantile account in the U.S., it's still can only  
18 be accessed through your program?

19 A That's right.

20 Q So in a way, there hasn't been any -- I mean,  
21 there's maybe -- there's an agreement in place, but  
22 in a way, nothing has changed. Would that be fair  
23 to say?

24 A There's an agreement in place, but it continues  
25 today. Is that your question?

26 Q Well, yes, but the way that you guys conduct  
27 managing the program and --

1 A Oh, totally.

2 Q -- and people accessing the product?

3 A Same -- same -- same standards for working with the  
4 individuals.

5 Q Okay. And so you're saying that agreement that was  
6 struck with then Minister of Health, Pierre  
7 Pettigrew, is still in force?

8 A It is, sir.

9 Q Okay. So you've never -- you haven't received  
10 anything from the Minister's office saying, No,  
11 we're backing out of this deal?

12 A No. But we -- we do note that we're no longer  
13 required to perform those functions as outlined in  
14 that email.

15 Q And what do you mean when you say that?

16 A Well, in -- in the sense of the documentation.  
17 There was a lot of documentation that was required.  
18 The Burnaby office had to be advised before the  
19 shipment came by the consumer. Now, the  
20 notification would go to -- to Dennis Shelley  
21 saying, My name is so and so and -- and I've ordered  
22 four bottles of EMPowerplus and it should be  
23 arriving. So they had to kind of fax that and then  
24 the shipper would -- would have to provide evidence  
25 that the product was purchased there with the credit  
26 card receipts and -- and whatever, right? To -- to  
27 support the fact that the product had been bought in

1 the U.S. But I believe it was probably -- I'm just  
2 going to venture a guess on this one, eight, ten  
3 months after this program was put in place that I  
4 contacted Dennis Shelley and asked him about it and  
5 he indicated to me that it's not required. That was  
6 all there was to it. And so it went away.

7 Q Okay. So you guys haven't reneged on the agreement,  
8 they're just not requiring it to be --

9 A That's right.

10 Q -- they're not doing the steps that they're entitled  
11 to do under the agreement?

12 A That's right. It was a very onerous program, but  
13 nevertheless, we were still grateful for it because  
14 people were able to, once again, get their product.

15 Q Okay. Okay, and so you guys didn't move your  
16 offices? They're still in Raymond, the call centre?

17 A That's right.

18 Q And so people would still have to call in and go  
19 through all the sign-up program? The same --

20 A That's right.

21 Q -- process, right?

22 A Exactly.

23 Q But for actually somebody taking the orders, it's  
24 transferred to --

25 A The U.S. They call the U.S. number --

26 Q Okay.

27 A -- make the order there.

1 Q And so you guys would just have somebody there  
2 process it south of the border?

3 A Yeah.

4 Q Okay. And that was -- that was presented to you as  
5 a political solution in 2004?

6 A That's right.

7 Q Okay. And what happened, then, once this agreement  
8 was reached? Did Health Canada's actions then  
9 change?

10 A Yes. They were no longer turning back product.  
11 And, of course, we moved into that new era where we  
12 obtained the NPN, the natural product number, for --  
13 for product.

14 MR. BUCKLEY: Thank you, Your Honour. I  
15 have no further questions for Mr. Stephan. And, Mr.  
16 Stephan, if you would please answer the questions of  
17 my friend.

18 A I will, thank you.

19 THE COURT: Mr. Brown, I'm just planning  
20 on taking about a ten-minute break here.

21 MR. BROWN: That sounds excellent, thank  
22 you.

23 THE COURT: And then we will give you a  
24 chance to get organized, although I am sure you are.

25 MR. BROWN: I expect I'll be done with Mr.  
26 Stephan today.

27 THE COURT: Okay.

1 MR. BROWN: Yes.

2 THE COURT: Fine. Take a ten-minute break  
3 and then we'll resume. Thank you, sir. Do not  
4 discuss your evidence with anyone --

5 A No, sir.

6 THE COURT: -- prior to your cross-  
7 examination.

8 A Thank you, sir.

9 THE COURT CLERK: Order in court. All rise.  
10 Court stands adjourned for ten minutes.

11 THE COURT: Thank you.

12 (BRIEF ADJOURNMENT)

13 THE COURT CLERK: Recalling Synergy Group of  
14 Canada and TrueHope Nutritional Support.

15 THE COURT: Thank you, Madam Clerk. Mr.  
16 Buckley?

17 MR. BUCKLEY: Your Honour, my friend is  
18 going to start his cross and I've spoken to him.  
19 Because I had the witness refer to this, I'm going  
20 to print off coloured copies of that to enter as an  
21 exhibit on Monday morning. He's not going to object  
22 to that.

23 MR. BROWN: That -- there is no objection.

24 MR. BUCKLEY: Just so the record is clear.

25 THE COURT: Monday morning? Fine.

26 MR. BUCKLEY: Yes. And so for the record,  
27 the document that he had, it's a chart that says, ID

1           number 3074-2D. Just so that we're able to confirm  
2           the --

3           THE COURT:                                 3074-2D.

4           MR. BUCKLEY:                             Thank you, Your Honour.

5           THE COURT:                             All right. That is fine,  
6           thank you. All right, Mr. Brown, are you ready to  
7           proceed?

8           MR. BROWN:                             I am, sir, thank you.

9           THE COURT:                             Go ahead, please.

10

11           \*Mr. Brown Cross-examines the Witness

12

13           Q     MR. BROWN:                     Sir, Mr. Stephan, I have a  
14           number of questions and I'm going to be jumping  
15           around a little bit, so I'll try to be as clear as I  
16           can.

17           A     Sure.

18           Q     If you don't hear me, just let me know. Or if I  
19           speak too quickly, which I sometimes do, just let me  
20           know that I'm speaking too quickly, okay?

21           A     No problem.

22           Q     Great.

23                         Now, I'm going to start you pretty much at the  
24           end of your direct examination, the email that we  
25           spoke about that you received from Mr. -- or Dr.  
26           Lunney as that reflected a brokered deal, as it was  
27           described?

1 A Yes.

2 Q All right. Now, if I understand it correctly,  
3 essentially this brokered deal reflected the 90-day  
4 personal use exemption that had been on Health  
5 Canada's books previously. Did you understand that?

6 A It -- it did, yes.

7 Q All right. So is it fair for me to say, then, that  
8 the 90-day exemption or the personal use exemption  
9 wasn't new information for you?

10 A Well, the PUED, personal use exemption, was not new.

11 Q Right.

12 A But there were a number of attachments to this that  
13 other people who imported product did not have to do  
14 vis-a-vis the, you know, credit card slips, the  
15 notification to Burnaby, this kind of thing.

16 Q Right. What you had to do, or what your clients had  
17 to do, is prove that they purchased the product in  
18 the United States and paid for it in the United  
19 States?

20 A That -- that is correct, sir, yes.

21 Q Is it your understanding of the personal use  
22 exemption that if a product is purchased in some  
23 country other than Canada, as long as it's a 90-day  
24 supply or less, it's deemed to be personal use? Is  
25 that your understand of the policy?

26 A That's my understanding of the PUED, yes.

27 Q Right. And would you agree that, from your

1 understanding of the policy at least, that normally  
2 what happens is somebody is maybe travelling in the  
3 United States and they buy some product and they  
4 bring it back with them?

5 A Not necessarily. As I've read the PUED, it doesn't  
6 necessarily refer to that.

7 Q Right?

8 A I know there are instance where that happens, but --  
9 but it doesn't necessarily drive at that one point.

10 Q Right. But what -- basically what it comes down to  
11 though is Health Canada has always required some  
12 proof that the purchase was made in the United  
13 States, correct?

14 A I won't -- I -- I couldn't say that --

15 Q You don't know that.

16 A -- for sure.

17 Q That's not -- that's not your understanding of the  
18 personal use exemption as you've read it?

19 A I'm aware of the personal use exemption directive,  
20 that it is for importation of products --

21 Q Right.

22 A -- or drug products.

23 Q Right.

24 A But I'm -- I'm -- I'm not aware that -- that Health  
25 Canada has actually enforced that. I know as I've  
26 read the PUED, it indicates directly in it that it's  
27 -- that Health Canada regulates prescribed drugs and

1 the personal use enforcement directive makes  
2 direction towards prescribed drugs, but this is not  
3 a prescribed drug. So if we were to look at the --  
4 and evaluate the actual PUED, I don't believe that  
5 it fits in accordance with this. I think that there  
6 are many ways that it can be interpreted, even by  
7 Health Canada agents. I've had numerous discussions  
8 with various agents and oftentimes there's a  
9 different interpretation.

10 Q One of the examples of a problem that you might be  
11 aware of is -- I think -- I'll see if I can get the  
12 name right. I think it was a young person by the  
13 name of Cody Thompson (phonetic). Are you aware of  
14 that case?

15 A Cody Thompson, yes.

16 Q And that person, his product was stopped at the  
17 border. He wasn't able to -- his mother was not  
18 able to bring that product into Canada, is that  
19 right?

20 A That's right. That's Heather Thompson (phonetic),  
21 yes.

22 Q Right. And did you eventually come to understand  
23 that the reason that Cody Thompson was unable to get  
24 his product was because he did not live with his  
25 mother? Did you understand that?

26 A Yes, but -- I -- I remember Heather calling me  
27 directly and -- and pleading. I -- I know the

1 Thompsons and I know of their case and I know that  
2 he has been suicidal for years and suffered a severe  
3 depression. And while Cody was not residing  
4 directly with his mother, he's been somewhat  
5 dysfunctional, but better, improved, been able to  
6 attend to some schooling, and his product was held  
7 at the Caraway crossing and his mother phoned and  
8 was in tears and asked me if somehow we could assist  
9 her. And, yeah, but I -- I understand too that with  
10 Cody, that he was not residing with his mother and -  
11 -

12 Q And that's -- sorry.

13 A Go ahead, sorry.

14 Q And that's important because the personal use  
15 directive requires that either the product be for  
16 your own use or the use of a family member who  
17 resides in your home.

18 A Okay.

19 Q Is that -- do you agree with that? Do you  
20 understand that to be the policy?

21 A I'm not -- I can't say that I understand that in --

22 Q All right, fair enough.

23 A -- in that vein.

24 Q Fair enough.

25 A I know that was the complaint though.

26 Q Okay. So, but all in all, this personal use  
27 directive, personal use exemption isn't -- wasn't

1 new to you at the time that you received the email  
2 in 2004?

3 A No, it wasn't.

4 Q Okay. You knew of it back in -- when did you first  
5 become aware, do you recall?

6 A I believe -- I'll venture a guess that probably I  
7 was aware of it in -- in 2002.

8 Q Right.

9 A I'm sorry, that's just a guess, but ...

10 Q No, that's fair enough.

11 A Yeah.

12 Q And, in fact, you make mention of -- in the letter  
13 of June 27th, 2002 --

14 MR. BROWN: Madam Clerk, if you could show  
15 the witness Exhibit 35.

16 A Okay.

17 MR. BROWN: Thank you.

18 Q MR. BROWN: If you can take a look at the  
19 paragraph indented, number 2.

20 A Order facilitation?

21 Q Right.

22 A Yes, sir.

23 Q And it says:

24

25 Concern was raised regarding the  
26 TrueHope Nutritional Support Limited  
27 associates facilitation of the

1 ordering process between the U.S.  
2 manufacturer and potential purchases  
3 -- purchasers' residence in Canada.  
4 If it is determined that such a  
5 practice constitutes a sale in  
6 Canada, we are prepared to insure  
7 that every purchaser of product would  
8 order the product himself.  
9 Presently, the majority of purchasers  
10 do order directly from the  
11 manufacturers themselves.

12  
13 That reflects what that paragraph says?

14 A Yes.

15 Q Now, did you write that paragraph -- and this is a  
16 letter from you, right? Signed by --

17 A Yes, this is. That's correct.

18 Q Did you write that paragraph to reflect your  
19 understanding of the personal use exemption?

20 A I wouldn't necessarily say that, but I have -- I did  
21 draft this with Mr. Hardy, and which -- okay.

22 Q All right. At any rate, you don't deny that, at  
23 least in 2002, you were aware of the policy?

24 A Correct.

25 Q The directive, sorry.

26 A Correct.

27 Q Correct.

1 A I -- I -- I will absolutely indicate that to you,  
2 sir.

3 Q All right, thank you. All right. You can set that  
4 down, thanks.

5 A Madam.

6 Q Now, you've had some discussion -- or rather, as  
7 part of the questioning from your counsel, Mr.  
8 Buckley, there has been mention of a Dr. Kaplan,  
9 correct?

10 A Correct.

11 Q You know who she is?

12 A Yes.

13 Q She has, at various times, been either engaged in  
14 some sort of clinical trials with respect to some  
15 form of your product?

16 A That's correct.

17 Q And you will agree with me that the -- I'm going to  
18 call it, The nature of your product, has changed  
19 somewhat? I think you called it ten different  
20 permutations? That might have been the word you  
21 used?

22 A Yeah, there was about ten different generations --

23 Q Generations.

24 A -- as we have improved it.

25 Q Right. And I think in response to questions from my  
26 friend, you said that the basic ingredients stayed  
27 the same?

1 A Yes.

2 Q Right? With some possibility of some change, right?

3 A That's right.

4 Q Vitamin 'A' was reduced, for example. I think  
5 that's the example you used?

6 A Mm-hm.

7 Q And that's a yes? You've got to say yes so that --

8 A Yes.

9 Q -- it can be recorded.

10 A Yes, sir.

11 Q But you did speak about -- I think the word again  
12 is, Chelating, which is a --

13 A Chelating.

14 Q Chelating, sorry. Right. And that's basically to  
15 make the product more bio available, in your words?

16 A That is correct.

17 Q Right. So would you agree that that is a change --  
18 that is a significant change in terms of how the  
19 product is absorbed in the body?

20 A Yes.

21 Q And how the product is absorbed in the body will  
22 affect its function?

23 A Yes.

24 Q Its efficacy, if I can use that word?

25 A Correct.

26 Q Fair enough?

27 A Yes.

1 Q Right. So when Dr. Kaplan was doing her first study  
2 back in 2001, I think it was, correct?

3 A I believe so, yes.

4 Q And this was a product that was -- I don't mean to  
5 be unkind, but was kind of cobbled together from  
6 four different ingredients, right?

7 A Mm-hm.

8 Q That's a yes?

9 A Yes.

10 Q Okay. That was -- did you even call it EMPowerplus  
11 then?

12 A We called -- we referred it -- referred to it as the  
13 Synergy Quad Program, because there was four  
14 components.

15 Q Makes sense. So what Dr. Kaplan was testing back in  
16 2001 in her two fairly small studies, was a product  
17 that wasn't even called EMPowerplus yet?

18 A Yeah. I have to take you back. I believe -- I  
19 believe that she was using the Synergy Quad Program  
20 more in the realm of 1999 into the early part of  
21 2000, if I recall correctly.

22 Q Okay. And so she did some small study, and maybe  
23 that's the study you were talking about where people  
24 seemed to actually not do that well on the product?

25 A Correct.

26 Q Okay.

27 A That is -- that is the one I'm referring to.

1 Q All right, thanks. That clarifies it a bit. So at  
2 any rate, Dr. Kaplan did engage in some studies, at  
3 least partial studies, in 2001, correct?

4 A Yes.

5 Q And she made reports as a result?

6 A Mm-hm.

7 Q And these reports -- that was a yes?

8 A Yes. Yes, sir.

9 Q Those reports were published?

10 A Yes.

11 Q In various medical journals. And you make reference  
12 to those reports quite often?

13 A We do, sir.

14 Q And, now, would you agree that the product that you  
15 sell now as EMPowerplus has gone through some of  
16 those generations since Dr. Kaplan first began her  
17 studies?

18 A Yes, sir, it's greatly improved.

19 Q All right. But you still refer to her studies from  
20 2001 as supporting the efficacy of your product?

21 A We do.

22 Q Right. Understanding, of course, that if she was to  
23 change the product during the course of her study,  
24 that would eliminate the efficacy of a portion of  
25 the study?

26 A It would.

27 Q And possibly even the safety portion, right?

1 A I would disagree with the safety portion because it  
2 would have to pass through an ethics committee --

3 Q Mm-hm.

4 A -- to insure that -- that the product is safe, that  
5 the levels of the various nutrients are -- are  
6 appropriate for use in -- in human consumption.

7 Q All right. And I don't mean to ask you a bunch of  
8 questions about Dr. Kaplan and her studies, because  
9 she's going to be called as a witness and I'll --

10 A Okay.

11 Q -- I'll do that with her. I just wanted to have  
12 some points clarified because, as I said, my  
13 understanding is you do tend to reference Dr. Kaplan  
14 quite regularly, either on your website or in your  
15 talks or in letters that you might send to Health  
16 Canada, for example.

17 A Admittedly so.

18 Q Okay. Fair enough. Now, I'm going to ask you to  
19 take a look at Exhibit 34. And this, I believe, is  
20 an email attached to a notice of a rally.

21 A Right.

22 Q Right? And if you can look at the last page and the  
23 top paragraph, and the first of all sentence starts  
24 with, This would insure. Do you see where I'm at?

25 A Okay, one second, if I could just --

26 Q Yeah. Give everybody --

27 A -- take that in context?

1 Q Sure.

2 A Yes, sir.

3 Q Okay. So, and this was actually, I believe,  
4 highlighted by my friend in our copies. So I'm  
5 going to just read that sentence to you.

6

7 This would insure that natural health  
8 products are not arbitrarily  
9 classified as drugs and denied to  
10 Canadians without the scientific  
11 evidence to justify it.

12

13 A Yes.

14 Q Right? And this -- am I correct to say that you, or  
15 in concert with Mr. Hardy, would have created this  
16 news release?

17 A I don't remember exactly who did, but I -- I would  
18 think that he and I were involved in -- in this.

19 Q All right, thank you. Now, the last portion of it  
20 is what I'm interested in because this is, as I  
21 understand it, from what I've seen, a common refrain  
22 from the two companies that are involved here. That  
23 Health Canada is acting -- and they're not -- they  
24 haven't provided any scientific evidence to you,  
25 your companies, to justify their actions. And that  
26 basic -- is that, in a nutshell, a fair statement to  
27 make?

1 A Oh, we're -- we're saying that to arbitrarily remove  
2 products from the market, for instance, prior to the  
3 Office of Natural Health Products, melatonin was  
4 removed off the Canadian market. It was made  
5 illegal to sell it in Canada. When the Office of  
6 Natural Health Products, and the new regulations  
7 came in, without any further ado --

8 Q Mm-hm.

9 A -- melatonin showed back up on the shelves. And so  
10 this constitutes, to us, an issue where Health  
11 Canada, if they removed it, there must have been a  
12 reason. Was there a danger? Was there a danger to  
13 the populace? If there was, then why did they put  
14 it back on without any further ado?

15 Q And let's be fair --

16 A I'm sorry.

17 Q -- you're speculating as to what actually occurred  
18 and why was it removed and why it was put back on,  
19 right?

20 A Right.

21 Q And in -- if I can just take you back to my  
22 question, though --

23 A Okay.

24 Q -- and I -- and I tried to summarize what I believe  
25 your position to be, and correct me if I'm wrong --

26 A Okay.

27 Q -- but if I understand what your position is,

1 throughout these discussions is, We are confident in  
2 the efficacy of this drug, you guys should prove it,  
3 that it doesn't work.

4 A No.

5 Q Is that fair?

6 A No. I'm -- I'm suggesting that we need to prove the  
7 efficacy. I believe in -- in what's really  
8 happening with the Office of Natural Health  
9 Products. We submitted our product for approval.  
10 We had to show to them that there was efficacy.

11 Q Mm-hm.

12 A We provided hundreds of studies.

13 Q Mm-hm.

14 A Research-based, scientific studies to show that  
15 these vitamins and minerals create a state of  
16 efficacy or a state of -- a positive effect when  
17 applied to the human body. We're not suggesting  
18 that they do the research for us. But what we're  
19 saying is, Don't remove products without providing  
20 scientific evidence of their harm or their  
21 inefficacy. That's -- that's what we're suggesting  
22 here.

23 Q That's exactly what I'm saying is you're putting the  
24 onus on Health Canada to prove that the product does  
25 not work, when you know fully well that the system  
26 that is in place requires the producer of the  
27 product to prove that the product does work. Not

1           only work, is efficacious, but is also safe, right?

2       A     And we're suggesting that there should become a  
3           reverse onus.  If you're going to remove a product  
4           from the market, that there should be evidence  
5           provided by Health Canada to the Canadian public of  
6           the lack of safety of that product.

7       Q     Right.  So you don't agree with the process that was  
8           involved in 2003 and 2002 and 2001 and 2000 while  
9           you were making and producing and selling this  
10          product, that required the producer to prove that it  
11          was efficacious and safe?  You --

12      A     No, I'm not saying that.

13      Q     Well, you --

14      A     I'm suggesting --

15      Q     I'm sorry, you go ahead.  Go ahead.

16      A     I -- I apologize.

17      Q     No, no.

18      A     I'm suggesting here that a company should have to  
19          prove, before they come to market with their product  
20          fully, fully, if you're going to have a -- and  
21          mostly, if you're going to have a -- an NPN, you  
22          should provide that your product is safe.

23      Q     Right.

24      A     There's nothing wrong with that.  We believe in good  
25          manufacturing practices.  We believe in safety for  
26          the public.  What I'm suggesting here though is the  
27          opposite.  Not the opposite of that statement, but

1 the fact that prior to Health Canada arbitrarily  
2 removing any products off the shelves, they should  
3 have to show signs that this product is dangerous  
4 because of the following reasons.

5 Q And that's -- and you said a reverse onus, because  
6 to lawyers, of course, that has a pretty particular  
7 meaning --

8 A Oh.

9 Q -- a reverse onus.

10 A Okay.

11 Q And I think you may have had it right, but I don't  
12 want to put any words in your mouth, so let's make  
13 sure we understand it.

14 A Okay.

15 Q When you say, A reverse onus, that basically means  
16 that you think that there is a burden of proof on  
17 Health Canada to establish why a product is removed  
18 from the shelves, right?

19 A Well, if you're going to remove a product which is  
20 being used by the citizenry of this country --

21 Q Mm-hm.

22 A -- they should be prepared to explain to the  
23 citizens why they've taken that product off the  
24 shelf.

25 Q And let's be abundantly clear here. This is a  
26 product that was provided by a company that had  
27 never gotten any of the required DIN, NOC type of

1 numbers before they began selling the product,  
2 correct?

3 A That's true.

4 Q Okay. And I'm going to just take you through a  
5 couple of questions that are somewhat disjointed.  
6 We're done with that document, thanks.

7 A Okay, thank you.

8 Q They're a little disjointed, but these are things  
9 that I want to cover just to -- as part of my case.

10 You don't deny that in 2003 you were one of the  
11 principals of Synergy Group of Canada Incorporated,  
12 right?

13 A I -- I was then.

14 Q And also the same is with TrueHope Nutritional  
15 Support, right?

16 A Yes, sir, I -- I -- I fully acknowledge that I am  
17 one of the directors of the corporations that you've  
18 listed.

19 Q Right. And those are the corporations incorporated  
20 in Alberta?

21 A Correct, sir.

22 Q They were operating in 2003?

23 A They were.

24 Q And part of the -- what they were operating, what  
25 they were doing, is they were making available a  
26 product by way of sale called EMPowerplus?

27 A Yes.

1 Q Okay. And that product was being sold without a DIN  
2 at the relevant time, right?

3 A We do not have a DIN -- a DIN number.

4 Q Right, okay. All right. Sorry, I'm just going to  
5 retrieve a document I didn't think I was going to  
6 refer to. No, that's fine, I'll just carry on. I  
7 might come back to that.

8 Now, if I could take you back, we had some  
9 discussion -- do you need a moment?

10 A No, I'm okay --

11 Q Oh, you're --

12 A -- thank you.

13 Q Okay.

14 A Right.

15 Q There was some discussion and questioning in direct  
16 between Mr. Buckley and yourself, about a meeting  
17 that happened in January -- I believe January 14th  
18 of 2003. Do you recall that?

19 A This is the meeting Miles Brosseau, Dennis Shelley -  
20 -

21 Q Right.

22 A -- myself, David Hardy and Lauril Zandberg?

23 Q That's the one, yes.

24 A Okay.

25 Q This is the meeting that took place, I believe, in  
26 Burnaby.

27 A That's correct?

1 Q That's correct? All right. And there's something  
2 I'm not exactly clear on and I'm hoping you can  
3 clarify for me. Because Mr. Brosseau appeared to  
4 give different information during his testimony and  
5 I'm hoping to clarify this point.

6 At the beginning of your answers to Mr.  
7 Buckley's question, you made a statement that I  
8 believe was that you talked at length about what to  
9 do to make it apply, and I think you mean  
10 EMPowerplus?

11 A Yeah, our -- our companies, EMPowerplus, yes.

12 Q All right. So you agree that that was, when you  
13 went into the meeting, your understanding of the  
14 meeting?

15 A That was why we drove for 12 hours to -- to do this.

16 Q Right.

17 A In fact, we initiated the calls, sir. We initiated  
18 the whole action.

19 Q Okay. And I'm just trying to make sure I got your  
20 point correct. Because what was said later is where  
21 yourself and Mr. Brosseau differentiated in the  
22 evidence because Mr. Brosseau's understanding, based  
23 on a memo he prepared, was that the purpose of the  
24 meeting or the out -- I'll put it this way, the  
25 outcome of the meeting was that either yourself or  
26 Mr. Hardy or your companies would prepare an action  
27 plan on how to comply?

1 A I recall Mr. Brosseau making that statement, sir.

2 Q Right. Now, you disagreed that that was the outcome  
3 of the meeting?

4 A I -- I do.

5 Q Okay.

6 A Mr. Hardy and -- and myself, upon leaving the -- the  
7 meeting, indicated that we would write a letter of  
8 our concerns and -- and, you know, that kind of  
9 thing and, yeah.

10 Q So, I'm sorry --

11 A But there was no discussion in -- in our minds about  
12 writing an action plan.

13 Q All right. Do you recall, then -- this meeting  
14 happened on January 14th of 2003. Do you recall  
15 contacting Mr. Brosseau on February 6th of 2003, and  
16 frankly, I may have that wrong, it may have been Mr.  
17 Shelley that you actually contacted, but do you  
18 recall making a call on February 6th, 2003, as a  
19 follow-up to this meeting?

20 A I -- I believe that -- that I had called and -- and  
21 there was some -- I can't remember, to be really  
22 frank with you, whether I had talked to Rod Neske or  
23 Miles Brosseau. And I apologize, but --

24 Q No, no, that's --

25 A I -- I -- I think that --

26 Q -- a long time ago.

27 A -- I think there was some discussion then.

1 Q All right. Do you recall any of the contents of the  
2 discussion at all?

3 A I can't, sorry.

4 Q Is it fair for me to say, based on what you told us  
5 moment ago, that the content of the call was not for  
6 your to call or to speak to either Mr. Shelley or  
7 Mr. Brosseau or possibly Mr. Neske, I guess, to say,  
8 We're still working on the action plan? That was  
9 not the content of the call in your recollection?

10 A I would have indicated to him that -- that, I'm  
11 sorry, we haven't put together our reply to the  
12 meeting and -- and we haven't got that back.

13 Q Okay.

14 A You know, at that point.

15 Q All right. At any rate, you ultimately sent out the  
16 open letter to Health Canada where you faxed out 800  
17 copies or to 800 different fax machines, right?

18 A Yeah.

19 Q That was your -- is it fair for me to describe that  
20 as your ultimate response to the meeting of January  
21 14th, 2003?

22 A Well, I mean, we -- we were very frustrated. I  
23 mean, here -- here the Standing Committee on Health  
24 had come down with their recommendations, there was  
25 supposed to be some change taking place, and all of  
26 a sudden we're being pushed down the road in this  
27 opposite direction. There was an interim DIN

1 agreement that was in place and -- and if you looked  
2 at the shelves of the health food stores, you -- you  
3 would probably indicate that at least 60 to 70  
4 percent of all those products were un-DIN'ed.

5 Q Mm-hm.

6 A And there was no Health Canada enforcement action.

7 Q Right.

8 A But because our product was being used on a  
9 therapeutic basis, then all of a sudden the -- the  
10 -- the action kicks in.

11 Q And, well, you've lead me to my next question, so  
12 I'll go there.

13 A Okay.

14 Q The difference, as you understood it, from Health  
15 Canada's view is that you were making these  
16 therapeutic health claims?

17 A Correct.

18 Q I think, in fact, my friend asked you that very  
19 question, that Health Canada was concerned about the  
20 fact that you were making these particular claims,  
21 correct?

22 A That's right.

23 Q You were making claims that this product would --  
24 would treat bipolar disorder?

25 A Yes, we did.

26 Q And that it would treat schizophrenia?

27 A Exactly.

1 Q And ADHD?

2 A Yes.

3 Q And --

4 A These are all neurochemical disorders, yes.

5 Q Right. So the -- there's no denying, of course,  
6 that in 2003 you were making those claims?

7 A We were.

8 Q Right. And --

9 A Because of -- because of what we could see. And  
10 because of the research that was showing, in many  
11 cases, the same thing.

12 Q I understand that you certainly took the position  
13 that not only are we making the claims, but we  
14 believe the claims.

15 A Yes.

16 Q Fair? All right. However, at the meeting in  
17 January of 2003, there's discussion of needing an  
18 NOC.

19 A Yes, there was.

20 Q That's basically if you were going to have a new  
21 drug, you need an NOC, is that basically right?

22 A That -- that -- that was my understanding, that you  
23 were required to have an NOC prior to submission for  
24 a DIN.

25 Q Right. Now, I think you had, in your testimony in  
26 response to questions to my friend, you said that  
27 Mr. Shelley either made reference to or showed you

1 an application form for an NOC?

2 A No. No, he did not.

3 Q He didn't --

4 A In fact, I asked him. He said, You're required to  
5 have an NOC. And I said, Well, how -- how do we get  
6 one? Do you -- do you have an application  
7 available? I wasn't aware of exactly how that  
8 occurred at the time and --

9 Q Sure.

10 A -- you know, did it go by application or what.

11 Q Mm-h.

12 A And he said, You will never get an NOC on this  
13 product.

14 Q All right. Now, did you understand that to mean  
15 that you will never get an NOC on this product  
16 because you don't have any of the required proof to  
17 substantiate the claims, or did he make it clear  
18 what he was talking about?

19 A He -- he never indicated that, but I believe that  
20 there was -- well, maybe I can't say that -- that  
21 there was an intent because in my mind's eye I'm  
22 thinking, Well, you know --

23 Q Well, let me ask this question, it might help you  
24 out. What did you think as a result of that  
25 statement?

26 A Oh, I thought, you know, I mean, in order to have  
27 the NOC, you have to have clinical trials, you have

1 to have all -- all of the above. We'd already  
2 looked at the issue of -- of trying to get approval  
3 on this in the sense of the U.S. Pharmacopeia  
4 Standards versus the Drug Pharmaceutical Standard.

5 Q Mm-hm.

6 A And it appeared to be unworkable. Upon returning to  
7 Alberta from those meetings, we had a long number of  
8 discussions in Calgary here with Mr. Dale Anderson  
9 who has held a good position with the transition  
10 team, you know, and then they eventually came out  
11 with the recommendations that said that they DIN  
12 number program and the NOC program, whatever, should  
13 be scrapped --

14 Q Mm-hm.

15 A -- in favour of a new -- a new directive for health  
16 products. And he suggested to us, as a member of  
17 the transition team, it would be an absolute waste.  
18 He said, Don't do that. Wait. It's going to change  
19 soon.

20 Q All right. Now, who is the person you're speaking  
21 of again?

22 A Mr. Dale Anderson.

23 Q And he --

24 A He sat on the transition team, was appointed by the  
25 Minister --

26 Q Right.

27 A -- Allan Rock --

1 Q All right.

2 A -- at that time.

3 Q Now, this discussion would have happened as you  
4 returned from your meeting in January of 2003?

5 A Yeah, I think within a week or -- or two of -- of  
6 that, you know, we had those discussions.

7 Q Now, you would have been aware, at least in 2002, if  
8 not earlier, that Health Canada believed you needed  
9 a DIN for this product?

10 A I would have to look at the -- at the letters. I  
11 know that we received a warning letter that was  
12 written by Miles Brosseau.

13 Q Yes.

14 A And I believe it -- it outlined in that. It -- it  
15 may have outlined the -- the fact that there should  
16 be a DIN, but I'm -- I'm sorry, I can't tell you the  
17 exact date without looking at the letter.

18 Q That's all right.

19 A There was another -- a number of other concerns that  
20 he expressed in that letter as well.

21 Q Right. And I say at least 2002 because I'm  
22 referring back to this Exhibit 35, which was June  
23 17th, 2002. You seemed to already have an  
24 understanding of what some of the concerns that  
25 Health Canada has.

26 A Yeah.

27 Q Right? That's yes?

1 A I would say yes.

2 Q Do you want to see the letter before you answer?

3 A Why -- why don't -- why don't I do that if --

4 Q Yeah.

5 MR. BROWN: If you could give --

6 A -- if I could, sir.

7 MR. BROWN: -- Madam Clerk, if you could  
8 give him Exhibit 35. Thank you.

9 A Okay. I believe that this letter came forward as a  
10 result of a conference call that was held with a Mr.  
11 Tom Zogg (phonetic) and myself and David Hardy with  
12 -- with Dennis Shelley. And, once again, I believe  
13 that we initiated that call over our concerns and  
14 then we put our concerns in -- in writing at that --  
15 at that point. And this was in the -- in the area  
16 of the time when there was a lot of greying in the --  
17 -- in the boundaries between the -- the new system  
18 that was to come into place and the old system of  
19 the therapeutic product directorate.

20 Q MR. BROWN: But this is certainly 18  
21 months before the new regulations are in place?

22 A That's right.

23 Q And you had been engaged in the sale of this product  
24 since 1999, is that correct? The actual sales for  
25 the Synergy Group?

26 A Yes, I believe 1999, 2000, yes.

27 Q Yes. So before the new regulations were in place,

1           you will agree that you had been selling this  
2           product for close to four years?

3       A     2004, January 1st.  Yes, I would have to agree with  
4           that.

5       Q     Approximately.  All right.

6       A     There you go, Madam.

7       Q     Now, we spoke earlier about Dr. Kaplan's studies and  
8           that in 2001, if I understand correctly, one of her  
9           studies were -- or two of her studies, in fact, were  
10          actually stopped by Health Canada.  Do you recall  
11          that?

12      A     I don't know about two, but I know that one was --  
13          was shut down.  That was an Alberta government  
14          authorized study, yeah.

15      Q     Where they supported it financially?

16      A     Yes.

17      Q     Alberta government, yes?

18      A     Five hundred -- I think it was 554,000 that the  
19          Alberta government provided to her.

20      Q     Right.  And the problem that Dr. Kaplan had -- and  
21          you may not know this, but I'll ask you if you do --  
22          the problem that Dr. Kaplan has is that she never  
23          got any Health Canada approval prior to beginning  
24          the study?  The clinical study?  Is that correct?

25      A     Well, this is what Health Canada is claiming.

26      Q     Okay.  So is it --

27      A     But David Hardy and myself have a different story.

1           Maybe I couldn't speak on his behalf at this point -  
2           -

3           Q     Right.

4           A     -- but we contacted, I believe it was either two or  
5           three times, one of the ladies that sat on the  
6           transition team.

7           Q     Mm-hm.

8           A     Her name is Sharon Chard (phonetic).

9           Q     Yes.

10          A     I believe that she was the director of the Maritimes  
11          East division of the -- of the HPFBI.

12          Q     Right.

13          A     HPFBI, the Health Products Foods Brand Inspectorate,  
14          you know.

15          Q     I believe that's correct, yes.

16          A     I -- I believe that that's the right posting, and we  
17          had a -- a visit with her, and at that time, she was  
18          on the transition team, because we -- we talked this  
19          over with Dale as well. Dale Anderson, who was  
20          another member of the transition team. And he --

21          Q     Right.

22          A     -- pointed us to her because we didn't know of her.

23          Q     Mm-hm.

24          A     He said, You call Sharon Chard and just check it  
25          out, see what she says. And she indicated to us at  
26          that time that the whole thing was in transition,  
27          that there was no need -- that there was no need for

1 a clinical trial approval from Health Canada because  
2 they normally did not get involved in those kinds of  
3 trails, you know, using the nutraceuticals or  
4 dietary supplements. And we had two discussions  
5 with her on that.

6 Q Mm-hm.

7 A Unfortunately, we do not have a letter to that  
8 effect. In our lack of wisdom, we should have -- we  
9 should have actually requested a letter, but in our  
10 lack of wisdom we did not. So it's just on verbal  
11 at that point.

12 Q Right.

13 A But she indicated to us fully that it was not  
14 required --

15 THE COURT: Once again, I am sorry to  
16 interrupt you, but once again, this is all hearsay.

17 MR. BROWN: It is, sir.

18 A Oh.

19 MR. BROWN: I recognize I asked the  
20 question, so I'm not --

21 THE COURT: You ask the question, you get  
22 stuck with the answer.

23 MR. BROWN: Yeah.

24 THE COURT: So I am just pointing out that  
25 it is -- that it is hearsay --

26 MR. BROWN: Right.

27 THE COURT: -- and I am not going to put

1           very much weight on hearsay --

2       MR. BROWN:                    Yeah.

3       THE COURT:                    -- if any.

4       MR. BROWN:                    Thank you, sir.

5       A     I apologize, sir, again.

6       MR. BROWN:                    No, no.

7       THE COURT:                    There's nothing to apologize  
8           for, it is just the situation is such that if there  
9           is evidence to support what you have been saying,  
10          then there is a proper way to put evidence before  
11          the -- that evidence before the Court.

12      A     Yes, sir.

13      THE COURT:                    And if it is not put before  
14          the Court that way, then I do not put any weight on  
15          it. That is the Rules of Evidence.

16      A     Okay.

17      MR. BROWN:                    Thank you, sir.

18      Q     MR. BROWN:                    Sorry, I'm just trying to  
19          backtrack to where I was before we had that  
20          discussion.

21                   This person that you speak of was on the  
22                   transitional team. Was it your understanding that  
23                   this person was employed by Health Canada?

24      A     Yes. We were aware of her position as the -- like I  
25          say, I think it was the director of the Maritime  
26          East jurisdiction for Health Canada. If -- if I --  
27          if my memory serves me correctly, sir.

1 Q Okay.

2 A And we relayed that information to -- to Dr. Kaplan  
3 and she proceeded after she had ethics committee  
4 approvals from various areas.

5 Q Now, in fairness, you weren't actually in charge of  
6 the study, right?

7 A No. No, in fact --

8 Q That's Dr. Kaplan's area.

9 A The research is independent --

10 Q Right.

11 A -- we don't fund it, we -- we couldn't afford it to  
12 be honest with you, but no, it's -- it's -- it's  
13 independent.

14 Q Right. It's independent --

15 A We make reference to it at times, yes.

16 Q Mm-hm.

17 A But -- but it's independent.

18 Q Right. So you had some discussions with this person  
19 on the transition team, but really, this is an  
20 independent study being run by Dr. Kaplan?

21 A That's right.

22 Q All right.

23 A And, of course -- of course, we were supplying,  
24 though, the -- the product for that study.

25 Q Understood.

26 A Yeah. Which -- which is normal with that type of a

27 --

1 Q Sure.

2 A -- scenario.

3 Q Sure. Now, if I can take you to a slightly  
4 different topic.

5 A Okay.

6 Q You mentioned, as part of your direct, that you had  
7 now got a product with an NPN number, which I  
8 understand is a natural products number?

9 A Correct. It's an approval from Health Canada.

10 Q Right. Similar to a DIN, but for an actual health  
11 product.

12 A Yes.

13 Q All right. Now, if I understand correctly as well,  
14 this number would have been received in 2004?

15 A 2004, May the 3rd. It took us four submissions. I  
16 think --

17 Q Right.

18 A -- and please don't quote me on this one, but I  
19 believe that February, late February of 2004, we --  
20 we provided the application to -- to the Director  
21 General of the ONHPD.

22 Q Mm-hm.

23 A And he, of course, put it into the system, I guess,  
24 and -- and we had to make four -- three other  
25 submissions on top of it, you know, corrections --

26 Q Sure.

27 A -- amendments, that kind of thing.

1 Q I understand.

2 A So it took us about a year and three months worth of  
3 work to do this.

4 Q And this product, if I understand correct, is called  
5 TrueHope EMP?

6 A That's right.

7 Q It's a different name than EMPowerplus, but it's got  
8 some similarities, correct?

9 A Yes.

10 Q And, in fact, the product has some similarities?

11 A Well, the product is exactly the same except for the  
12 exclusion of the mineral boron.

13 Q Right. Which I understand was present at about 2.4  
14 milligrams in EMPowerplus, is that right?

15 A I believe on the -- on the -- on the loading dose --

16 Q Loading dose, yes.

17 A -- about 2.4 milligrams.

18 Q And when you talk about a loading dose -- I won't go  
19 into this very far -- but when you talk about a  
20 loading dose, you're talking about sort of an  
21 initial dose that's taken that's higher than the  
22 normal maintenance dose?

23 A Yes, but certainly safe.

24 Q Right. Now, TrueHope EMP got its NPN number with  
25 the statement that it supports mental and physical  
26 well being?

27 A That -- that is the claim that Health Canada has

1 authorized to use on TrueHope EMP.

2 Q Right. It does not say that you -- that it treats  
3 mental health issues or disorders?

4 A No. But there is a Gazette one in place that,  
5 shortly, shortly, there's a change coming, that will  
6 allow us to actually make a treatment claim --

7 Q Okay.

8 A -- or a mediation claim, but not -- but not a cure  
9 claim.

10 Q Okay.

11 A And this is now being Gazetted at this time, it's  
12 out there on Gazette one.

13 Q So you'll be able to make a treatment claim, but not  
14 a Gazette -- or not a cure claim?

15 A A cure claim, yes.

16 Q All right, fair enough. Now --

17 THE COURT: I am sorry, I just want you to  
18 go back a step. It came with the statement -- when  
19 it was first approved, it came with the statement  
20 what? What exactly was said?

21 A Supports mental and physical well being.

22 THE COURT: Supports. All right, thank  
23 you.

24 Q MR. BROWN: Yes. That's -- at least  
25 that's what I wrote down when you were giving your  
26 evidence.

27 A Well, in fact, I have a copy of the license here but

1           it's -- it's right on the license from Health Canada  
2           to us.

3       Q     Right. Okay. Now --

4       THE COURT:                    But is that the wording,  
5           Supports?

6       A     Sir, if you'd like, I can actually pull that  
7           license, if you'd like.

8       THE COURT:                    Why don't you? I am  
9           interesting in knowing --

10      MR. BROWN:                    Sure.

11      THE COURT:                    -- what the exact wording is.

12      MR. BROWN:                    Yeah, sure.

13      A     Would you -- could I be excused for a second, sir?

14      THE COURT:                    Go ahead.

15      A     Thank you very much.

16      THE COURT:                    Sorry to interrupt --

17      MR. BROWN:                    No, no, that's actually --

18      THE COURT:                    -- your cross-examination, but  
19           there are different -- there are different words,  
20           different terminology being used and I would like to  
21           know exactly what it is --

22      MR. BROWN:                    I agree.

23      THE COURT:                    -- and what they are.

24      A     Here you go, sir, and the recommended use or purpose  
25           is here.

26      THE COURT:                    Go ahead, read it out, what  
27           does it say? Does it say, Supports --

1       A     On the -- on the license number 8000383, TrueHope  
2       EMP, authorized for the following dosage form by  
3       capsule, recommended route of administration is  
4       oral, recommended dose, three capsules, three times  
5       a day, in this. Recommended duration of use is  
6       continuous, and the recommended use or purpose,  
7       nutritional support for mental and physical well  
8       being.

9       MR. BROWN:                   All right. Excellent, thank  
10       you.

11       THE COURT:                   Thank you.

12       Q     MR. BROWN:             Perhaps we could -- is that  
13       your only copy?

14       A     Actually, I have three copies and I -- if you'd  
15       like, I would - -

16       MR. BROWN:                   I actually wouldn't mind  
17       making that an exhibit in the trial, sir, if we  
18       could do that?

19       MR. BUCKLEY:                  I have no objection to that at  
20       all.

21       MR. BROWN:                   Thank you, sir.

22       THE COURT:                   All right. Then the next  
23       exhibit --

24       THE COURT CLERK:             Exhibit 38. I'm just stepping  
25       in, I'm hoping (INDISCERNIBLE)

26       MR. BROWN:                   It looks like 38, yes.

27       THE COURT CLERK:             Thirty-eight, thank you.

1 A Thirty-eight. Do you require three, sir?

2 THE COURT: No. Thank you. Exhibit 38  
3 will be -- pass that over here.

4 A Oh, I'm sorry.

5 THE COURT: I just want to see this.

6 A Just read that.

7 THE COURT: Will be the product license  
8 for product number 80000383, with a brand name of  
9 TrueHope EMP. And that will be Exhibit, did we say,  
10 38?

11 THE COURT CLERK: It is.

12 THE COURT: Exhibit 38. Thank you, there  
13 we go.

14 MR. BROWN: Thank you, sir.

15 THE COURT: All right, thank you.

16

17 \*EXHIBIT 38 - Product License for Product Number

18 \*80000383, with a Brand Name of TrueHope EMP

19

20 Q MR. BROWN: Now, sir, this product,  
21 TrueHope EMP, is available for sale if you should  
22 choose to sell it, correct?

23 A It is.

24 Q And you can sell it in Canada?

25 A We -- we have a -- a market authorization from  
26 Health Canada to actually bring it into Canada.  
27 We've -- we've also applied for what's called a site

1 license, which would allow us to actually distribute  
2 it out of our warehouse in Raymond, Alberta.

3 Q Right.

4 A We don't have the site license yet, but -- but we do  
5 have the market authorization.

6 Q So this product is essentially exactly the same as  
7 EMPowerplus, with the exception of boron --

8 A Correct.

9 Q -- which is 2.4 milligrams at the loading dose?

10 A That's right.

11 Q But it makes a different claim, correct?

12 A It makes a different claim?

13 Q It makes a different health claim? It --

14 A No, I -- I believe it's the same claim.

15 Q Well, the claim that you've been permitted to make  
16 is that it -- now I don't have the word again.

17 A Supports -- nutritional support for mental and  
18 physical well being.

19 Q Right, okay. Which is different than saying, Treats  
20 bipolar disorder?

21 A Okay.

22 Q All right? So this -- I'm asking you this question  
23 in particular because I understand one of the  
24 defences that you wish to raise through counsel is a  
25 necessity defence, correct?

26 A I understand that, sir.

27 Q Right. Which, as I understand it, and correct me if

1 I'm wrong, but as I understand it, you felt  
2 compelled -- compelled, to continue to sell  
3 EMPOWERplus even though it didn't have the proper  
4 DIN or other licensing from Health Canada, correct?

5 A Could you tell me, compelled when?

6 Q Well, my understanding is that you felt compelled  
7 all along because you never got the DIN. So from  
8 the time you start selling or sometime shortly  
9 thereafter, but certainly in 2003, you felt  
10 compelled to continue to sell this product without a  
11 DIN?

12 A Absolutely.

13 Q Right.

14 A It was -- it was a choice between either sacrificing  
15 people and lining up the funeral car -- cars, I'm  
16 sorry --

17 Q Mm-hm.

18 A -- or getting a DIN number, which we believed that  
19 we weren't going to get anyways.

20 Q Right.

21 A And that we were advised not to.

22 Q Oh, okay, well, we'll deal with that portion. All  
23 right.

24 A The -- it's interesting to note as well, sir, in  
25 relationship to the NPN, it was approved with boron  
26 in it.

27 Q I understood that originally it had been approved

1 with boron, there was some --

2 A It was --

3 Q -- discussion within Health Canada, apparently?

4 A TPD has -- has kind of put the stops to that for the  
5 -- for the time being.

6 Q The Therapeutic Drug folks think it -- think boron  
7 is a drug, basically? Or should be treated like  
8 one?

9 A Well, the interesting thing though, on discussions -  
10 - maybe this is hearsay though, maybe I shouldn't go  
11 there. But in discussion with --

12 Q Tell us what you --

13 A -- the Office of Natural Health Products --

14 Q Yes.

15 A -- they've approved it at 20 milligrams per day --

16 Q Right.

17 A -- continuous, in line with the United States  
18 National Academy of Sciences dietary reference  
19 intakes, which are also set at 20 milligrams per  
20 day.

21 Q Do you know when that approval was made?

22 A I would say in the last month. We had quite a few  
23 discussions with Dr. Robin Marles, and the acting  
24 Director General of the Natural Health Products,  
25 Julia Hill. Dr. Marles had indicated to us, and I  
26 believe -- I wouldn't want to quote this exactly,  
27 but I believe that they initially approved it for

1 3.6. This is what they had taken to the table, 3.6  
2 milligrams per day, and now they're saying that they  
3 are going to proceed with the -- the same as the  
4 United States National Academy of Science, 20  
5 milligrams on the DRI.

6 Q So your understanding is that over the course of  
7 time, views on boron might have changed and now  
8 Health Canada may well permit boron to be included  
9 in products?

10 A I -- I can't speak to that because I don't know what  
11 therapeutics productions division will do with the  
12 decision.

13 Q Sure. All right, that's fair enough.

14 A This has been one of our concerns in working with  
15 TPV, as well as the inspectorate. And you indicated  
16 earlier about taking products off the market, you  
17 know, and we feel that this is kind of  
18 (INDISCERNIBLE) in that sense.

19 Q Well, I understand that that's your feeling --

20 A Yes.

21 Q -- and that you believe that it was -- there is an  
22 onus on Health Canada to try to provide some proof  
23 for why that should occur --

24 A That's right.

25 Q -- but you still understood that Health Canada had a  
26 particular view of this situation, right?

27 A Yes.

1 Q Their view, as you understand it -- correct me if  
2 I'm wrong -- is that the product you were selling  
3 was a drug and that you didn't have the DIN to see  
4 it?

5 A Yeah.

6 Q That's really, in a nutshell, what it comes down to.

7 A Well, that -- that's their view.

8 Q Right, I understand that. And that -- and you  
9 understood that that was their view?

10 A I understand that that's their view.

11 Q And you understood that in 2003 as well, correct?

12 A Yes, but -- but in line with the thinking of  
13 Parliament in -- in Bill C-420, two votes in the  
14 house showed different. Two votes in the house that  
15 -- that were unanimous -- not unanimous, but -- but  
16 the majority elected to move towards the  
17 implementation of Bill C-420, which would rati -- or  
18 change the regulations --

19 Q Right.

20 A -- and -- and remove those -- those ideas that you  
21 have concern with at that point.

22 Q That Health Canada has concern with?

23 A Yeah, I'm sorry. Yeah.

24 MR. BROWN: Those are my questions, sir.

25 Thank you.

26 THE COURT: Mr. Buckley, any re-direct?

27 MR. BUCKLEY: Yes, Your Honour.

1 THE COURT: Go ahead.

2

3 \*Mr. Buckley Re-examines the Witness

4

5 MR. BUCKLEY: And, Your Honour, I'm just not  
6 sure if I misunderstood the evidence, so I'm trying  
7 to figure out if I need to question. And I'll tell  
8 you what the concern is, is my friend was asking  
9 about the Quad Program and clinical studies. And  
10 the clinical study that got scratched for being  
11 inconsistent was, clearly, the Quad Program. I just  
12 got the impression then when the questioning went  
13 on, that Mr. -- that the questioning and answering  
14 might have been suggesting that the published  
15 studies were on the Quad Program, and I might have  
16 just got it wrong. So --

17 MR. BROWN: Well, sir, that wasn't my  
18 understanding once we clarified which study was  
19 which.

20 THE COURT: Why don't you clarify it.

21 MR. BUCKLEY: Okay, so I will.

22 Q MR. BUCKLEY: So, Mr. Stephan, that one  
23 clinical study got scratched on the Quad Program for  
24 being inconsistent?

25 A Yes. And I believe 1999, Mr. Buckley, somewhere in  
26 there. It might have been even earlier.

27 Q Okay. Now, Dr. Kaplan has published three studies

1 on the product, correct?

2 A Yes.

3 Q Are you able to tell us what formulations?

4 A EMPowerplus.

5 Q Okay. But I guess we're just trying to clarify.

6 Are you able to tell us -- because there have been  
7 some changes since?

8 A Changes to ...?

9 Q To EMPowerplus.

10 A There have been some minor changes.

11 Q Okay.

12 A There's -- there's minor changes.

13 Q Are you able to say -- so we've got Exhibit 6 here,  
14 which is some product purchased in 2003, are you  
15 able to say that it's the same or different or, you  
16 know, as the product that clinical trials by Bonnie  
17 Kaplan was?

18 A It's very, very similar. Yes, the chelates, but you  
19 don't list the chelates as -- as part of the active  
20 ingredients. But --

21 THE COURT: How do you spell that by the  
22 way?

23 A I'm sorry?

24 THE COURT: Chelates?

25 A Oh, C-H-E-A-L-A-T-E (sic), I believe.

26 THE COURT: Thank you.

27 Q MR. BUCKLEY: Okay, can you understand -- or

1 explain to us what chelates are?

2 A Chelate, you -- you take -- let's say you take  
3 calcium, which is a very poorly absorbed mineral.  
4 Most forms that you buy in the store are calcium  
5 carbonate. They're made from limestone. We don't  
6 -- we don't do well with this. In reading the  
7 research on that, probably three to five percent bio  
8 availability, the rest is lost through bio losses.  
9 So you take -- you take the calcium and you bind it  
10 to an organ ligan, such as a dipeptide, part of an  
11 amino acid chain. And when you bond it, it --  
12 through the varying levels of Ph in the upper and  
13 lower intestine and the stomach, you're able to  
14 maintain neutrality, where you don't have a  
15 disassociation of the ions where you have a positive  
16 ion of calcium, a negative ion of carbonate floating  
17 around that can get tied up with -- with, you know,  
18 fardec (phonetic) acids or particles and get carried  
19 out of the back. What you're doing is you're --  
20 you're making -- you're forcing the -- the mineral  
21 to stay in a neutral state so that it can be uptake  
22 and better and not lost. And you -- and you chelate  
23 with an organic bond, an amino acid, dipeptide  
24 chain.

25 MR. BUCKLEY: Okay, thank you. I've got no  
26 further questions of you.

27 THE COURT: Do you have any further

1 questions?

2 MR. BROWN: I do not, sir, thank you.

3 THE COURT: This is -- then I have one  
4 question. What year was it that the clinical trial  
5 -- the one clinical trial that was shut down, what  
6 year was that?

7 A I believe that that was 2002. I would have to --  
8 have to look back and -- and get the exact date,  
9 which I could do, sir. I'm just going to venture a  
10 guess that it was 2002. I believe the early part.

11 THE COURT: Well, I do not want you  
12 guessing at it.

13 A Okay.

14 MR. BROWN: Sir, I know that Dr. Kaplan is  
15 going to testify and I had intended to ask her those  
16 same questions again.

17 THE COURT: All right. Well, that is  
18 fine. I will get the evidence from her then.

19 MR. BROWN: Thank you, sir.

20 THE COURT: Okay, very good. I have no  
21 further questions. Thank you, sir, you can step  
22 down. You are done.

23 A Thank you, sir.

24 (WITNESS STANDS DOWN)

25 THE COURT: Madam Clerk, what do you have  
26 for Exhibit 37?

27 THE COURT CLERK: Thirty-seven.

1 MR. BROWN: Sir, that's the document where  
2 there was only one copy and my friend --

3 THE COURT: All right.

4 MR. BROWN: -- advised and had other  
5 copies made. My friend hadn't had a chance to make  
6 more copies of that particular document, if I  
7 recall.

8 MR. BUCKLEY: No, wait. Well, I don't even  
9 have a copy right now, but I've got it on my  
10 computer, so I -- I know I've printed them off. For  
11 some reason, they didn't make it in my trial binder.

12 THE COURT: Will you see that they are  
13 provided on Monday --

14 MR. BUCKLEY: Yes.

15 THE COURT: -- morning then?

16 MR. BUCKLEY: Yes.

17 THE COURT: All right.

18 MR. BUCKLEY: And then that other document  
19 --

20 THE COURT: Here you are, Madam Clerk.

21 THE COURT CLERK: Thank you.

22 THE COURT: Use it for one of the  
23 exhibits.

24 THE COURT CLERK: Thank you.

25 THE COURT: All right, then that will be  
26 all the evidence that we will hear for today. And  
27 we will adjourn then until 9:30 on Monday morning.

1           How many witness do you expect to have on Monday?

2       MR. BUCKLEY:                   Your Honour, I've got three  
3           witnesses book, although I anticipate that we'll  
4           probably only have time for two of them depending on  
5           how the day goes.

6       THE COURT:                   All right. Fine. All right,  
7           are there any questions?

8       MR. BROWN:                   I'd like to know who the  
9           witnesses are.

10      MR. BUCKLEY:                  Well, I've given my friend a  
11           list in order, so Deborah Oxby, Dr. Bonnie Kaplan,  
12           and if there's time, Savine Coulson, although I  
13           anticipate she will probably start on Tuesday.

14      THE COURT:                   What is he last name?

15      MR. BUCKLEY:                  Coulson, I believe.

16      THE COURT:                   Coulson.

17      MR. BUCKLEY:                  Yeah, I provided my friend  
18           earlier this week with a list of witnesses, and that  
19           hasn't changed. Yes, Coulson.

20      MR. BROWN:                   I didn't realize it was in  
21           order. Thank you.

22      THE COURT:                   What is Coulson's first name?

23      MR. BUCKLEY:                  Savine, S-A-V-I-N-E.

24      THE COURT:                   Have you prepared a witness  
25           schedule for the evidence that you will be calling?

26      MR. BUCKLEY:                  I have. When you say a  
27           schedule, you mean like a formal document?

1 THE COURT: No.

2 MR. BUCKLEY: Or have I just scheduled my  
3 witnesses?

4 THE COURT: Well, have you scheduled -- it  
5 does not have to be a formal document.

6 MR. BUCKLEY: Yes, I've scheduled my  
7 witnesses and I -- as I say, I had given my friend a  
8 list of my witnesses in order. If you want me to  
9 run through them right now, I will.

10 THE COURT: Well, by schedule, I am  
11 talking about days.

12 MR. BUCKLEY: Yeah.

13 THE COURT: Trial days.

14 MR. BUCKLEY: Yes.

15 THE COURT: And the number of trial days  
16 required for the particular witnesses.

17 MR. BUCKLEY: Well, and also a problem that  
18 I have is that most of them are flying in from out  
19 of town. So I have got them kind of pegged in  
20 specific days, which I can give to the Court. I am  
21 very quite anxious that we stick to that schedule  
22 because they're flying in and coming from out of  
23 town.

24 THE COURT: My concern is purely that we  
25 use the trial time allotted and also that you are  
26 aware of the timing and the other restrictions that  
27 -- with regards to the 27th, I believe, and --

1 MR. BUCKLEY: The 27th, I understand.

2 THE COURT: -- and there is another  
3 afternoon where -- I believe it is a Thursday  
4 afternoon, which will --

5 MR. BUCKLEY: The 30th.

6 THE COURT: -- which will be the 30th.

7 MR. BUCKLEY: Yes.

8 THE COURT: That there may be some  
9 difficulties with giving you the full time allotted.

10 MR. BUCKLEY: Yes, I'm aware of that.

11 THE COURT: All right. And, therefore,  
12 are you scheduling for the full two weeks, remaining  
13 two weeks?

14 MR. BUCKLEY: No, I'm hoping that our  
15 evidence will be done, I'm hoping, on the 28th or  
16 29th.

17 THE COURT: The 28th or 29th?

18 MR. BUCKLEY: Yes.

19 THE COURT: Okay. All right. Good.  
20 Anything further?

21 MR. BUCKLEY: No.

22 THE COURT: No.

23 MR. BROWN: No, thanks.

24 THE COURT: That is all. All right, then.  
25 I will say thank you very much all counsel for how  
26 well organized you have been this week in the  
27 presentation of evidence and cross-examination, and

1           we will stand adjourned then until 9:30 on Monday  
2           morning. Thank you, Madam Clerk.

3           THE COURT CLERK:                   Order in court. Please rise.  
4           This court stand adjourned for the day.

5           THE COURT:                        Thank you.

6           -----  
7           PROCEEDINGS ADJOURNED UNTIL 9:30 A.M., MARCH 20, 2006  
8           -----

9

10          \*Certificate of Record

11                I, Karen Cote, certify that this recording is a  
12                record of the oral evidence of proceedings in  
13                courtroom 413, held in Provincial Court, Calgary,  
14                Alberta, on March 17th, 2006, and (INDISCERNIBLE) I  
15                took over at 4:00 (INDISCERNIBLE) had to be  
16                relieved.

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1 \*March 20, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K. Brown, Esq. For the Crown

7 S. Buckley, Esq. For the Accused

8 J. Fox Court Clerk

9 -----

10 THE COURT CLERK: The Synergy Group of Canada  
11 and TrueHope Nutritional Support.

12 THE COURT: Mr. Buckley, Mr. Brown.

13 MR. BUCKLEY: Good morning, Your Honour.

14 MR. BROWN: Good morning, sir.

15 THE COURT: Mr. Brown, do you have the  
16 exhibit for us?

17 MR. BROWN: The numbered exhibit, sir, is  
18 -- I left it in Edmonton to be completed and they're  
19 going to courier it to me as soon as it's done, sir.

20 THE COURT: All right, that's fine.

21 MR. BROWN: I needed to speak with Mr.  
22 Buckley about the numbering system, I just wanted to  
23 make sure it was identical before I had it done.

24 THE COURT: Yes, that is fine.

25 MR. BROWN: So it should be here no later  
26 than Wednesday morning, sir.

27 THE COURT: Okay.

1 MR. BROWN: Thank you.

2 THE COURT: So if Mr. Buckley is going to  
3 be making reference to it I am going to need a copy.  
4 Okay.

5 And did we already make one?

6 MR. BUCKLEY: There's one in the Court  
7 record.

8 THE COURT: As --

9 MR. BUCKLEY: As an exhibit.

10 THE COURT: -- an exhibit. Okay, so --

11 MR. BUCKLEY: Your Honour, here's a copy  
12 we've already entered as an exhibit, the CD of the  
13 website slides that were shown.

14 THE COURT: Right.

15 MR. BUCKLEY: And so I asked Mr. Stephan to  
16 make a copy of that.

17 THE COURT: What is the number? The  
18 exhibit number, do you recall?

19 THE COURT CLERK: It's 31.

20 THE COURT: Thirty-one.

21 MR. BUCKLEY: Now, Mr. Stephan then had also  
22 shown us a slide of a graph titled, ID Number B074-  
23 TB, I'm going to pass up two copies of that. I  
24 would ask that one be entered as an exhibit.

25 MR. BROWN: No objection, sir.

26 THE COURT: All right. And the next  
27 number, madam clerk?

1 THE COURT CLERK: Thirty-nine.

2 THE COURT: Thirty-nine. I am just going  
3 to check my notes on it.

4 THE COURT: All right, Exhibit 39 will be  
5 the chart with the number on it, ID Number B074-TB.

6

7 \*EXHIBIT 39 - Coloured bar graph depicting August and

8 \*September dates on bottom and lithium amounts, ID Number

9 \*B074-TB

10

11 MR. BUCKLEY: And, Your Honour, on Friday we  
12 also entered as an exhibit, an e-mail that Mr.  
13 Stephan had received from James Lunney's office,  
14 basically outlining what the deal that was reached  
15 with Pierre Pettigrew, and --

16 THE COURT: Was that entered?

17 MR. BUCKLEY: I believe it was entered.

18 THE COURT CLERK: Number 37.

19 MR. BUCKLEY: But I didn't have copies --

20 THE COURT: Oh, that is right.

21 MR. BUCKLEY: -- for my friend and the  
22 Court. So I looked and I looked, and I have to  
23 apologize to the Court because on Friday I said I'd  
24 printed off copies and I can't find them, so I  
25 printed off other copies, which should be identical,  
26 except that when you go on your Hotmail account you  
27 have no control over the ad that they put on the

1 banner, but the text doesn't change. Do you  
2 understand what I'm saying, sir.

3 THE COURT: I understand what you are  
4 saying.

5 MR. BUCKLEY: So that's -- that's a copy,  
6 just so that you have reference to the text. But if  
7 we compare it to the exhibit, I expect that the ad  
8 that Hotmail puts on will not be the same.

9 THE COURT: Date.ca.

10 MR. BUCKLEY: Right, right, so --

11 THE COURT: Well the other one had E-Bay  
12 on it, so there you go.

13 MR. BUCKLEY: Yeah, so and we're not making  
14 any suggestions with either ad, so --

15 THE COURT: No, I am sure you are not.  
16 Well just in the interests of having them all  
17 identical, I am going to ask the clerk to photocopy  
18 the exhibit --

19 MR. BUCKLEY: Okay.

20 THE COURT: -- and we will work from that.  
21 Will you do that at our break then please?

22 THE COURT CLERK: Yes.

23 THE COURT: Thank you.

24 MR. BUCKLEY: Now, there's one other  
25 housekeeping thing before we jump into the evidence  
26 this morning, in that I was going to ask for another  
27 disclosure order, and you know, I've been really

1 clear on this trial that when I ask for stuff like  
2 this I no way reflect upon my friend, but it just  
3 does seem to be magical actually in assisting him  
4 getting things done.

5 And I'm going to pass up for you, I've given my  
6 friend a copy, and I'll just -- I'll give you a bit  
7 of background. But this is a -- an internal Health  
8 Canada e-mail that was disclosed under an access to  
9 information request. And on the second page is text  
10 from Siddika Mithani, who is a Health Canada  
11 employee involved in approving applications for  
12 clinical trials.

13 Now, one of the witnesses that I'm going to  
14 call is Dr. Bonnie Kaplan, and she advised me that  
15 when basically they learned that there was a problem  
16 with Health Canada is a shipment was stopped at the  
17 border, and so that they got in contact with Health  
18 Canada. And eventually she got in touch with this  
19 Siddika Mithani, who she would describe as extremely  
20 helpful and wanting to assist in the process. Very  
21 impressed with this lady.

22 So not voicing any concerns, but had a  
23 conversation with this lady, the very first  
24 conversation, where basically it was explained to  
25 Dr. Kaplan that although, you know, we'll take your  
26 submission, because of the nature of the product  
27 you're not going to be able to get approval. And it

1 -- it wasn't in a malicious way or anything like  
2 that, but it's just that they're -- they were using  
3 a pharmaceutical model and it just didn't fit what  
4 they were -- what the University of Calgary would  
5 need to do.

6 Dr. Kaplan was so taken back by this that she  
7 typed out her recollection of the conversation and  
8 faxed it to Siddika Mithani. Siddika Mithani then  
9 got in touch with her and said, listen to me, I'm  
10 ripping up your letter and she could hear paper  
11 ripping up on the phone. She wasn't trying to be  
12 rude but just saying, you know, I don't want there  
13 to be a kind of trail about this in my file, and so  
14 it didn't turn up in the Health Canada file. But  
15 we've got this e-mail under an access to information  
16 request where it seems to be, especially number --  
17 like number three indicates -- seems to corroborate  
18 what Dr. Kaplan was saying, where it -- part of it  
19 says, Based on our discussion, clearly the product  
20 would not meet our requirements. And then it's been  
21 edited out.

22 And then number five says:

23  
24 I indicated to Bonnie Kaplan I don't  
25 have a problem with reviewing her end  
26 submission, however --  
27

1           And then it's edited out. It's edited out  
2           under Section -- the writing on there, this is just  
3           how it comes from the ATI, so we have to assume that  
4           when they edited it out and they write 21 --  
5           20(1)(c), they're referring to the Access to  
6           Information Act, because Section 20 allows them to  
7           edit out some information. But this is supposedly  
8           information which could result in financial loss or  
9           prejudice the competitive position of a third party,  
10          which is very curious, you know, if that's what is  
11          meant when they write 20(1)(c) on there.

12          But in any event, it would seem clear that for  
13          the purposes of this trial, that the edited portions  
14          are likely relevant. And so we're seeking  
15          disclosure of an unedited copy of this e-mail, and I  
16          don't believe my friend is opposed to that.

17          And if I could have madam clerk pass up what's  
18          marked as Exhibit 'R' for identification. And this  
19          is an e-mail, I put it to Miles Brosseau, although  
20          if I recollect correctly, he wasn't really aware of  
21          these communications, but it appears to be a  
22          communication between Philip Waddington, who is the  
23          head of the Natural Health Products Directorate, and  
24          Peter Chan who is also involved in that directorate.  
25          And once again, reference to discussions with Bonnie  
26          Kaplan, and parts edited out.

27          And we're seeking disclosure of unedited copies

1 of that -- those communications. And once again, I  
2 don't think my friend's objecting to that.

3 MR. BROWN: Sir, when I spoke with my  
4 friend about this this morning, and he advised that  
5 he would be making this application for disclosure,  
6 he has in fairness asked for disclosure throughout  
7 this process and we have attempted to meet that.

8 If indeed 21(c) is referring to the Access to  
9 Information Act, I have to agree with my friend that  
10 it's not applicable and would not give Health Canada  
11 grounds for editing -- well, it doesn't appear at  
12 least from the surrounding information that it would  
13 give Health Canada grounds for editing out this  
14 information. Perhaps what should occur is the  
15 information should be disclosed and if there is an  
16 issue once I receive it, then I can make my argument  
17 at the appropriate time.

18 MR. BUCKLEY: That's very appropriate.

19 THE COURT: That is fine.

20 MR. BUCKLEY: Mm-hm.

21 THE COURT: All right, there is an  
22 application by counsel for the defendants for  
23 disclosure of unedited copies of some documents, e-  
24 mails that are in the possession of Health Canada.  
25 And I am prepared to make such an order that  
26 unedited copies be disclosed. There can hardly be  
27 considered to be fully disclosure if Health Canada

1 is editing copies that have been disclosed to  
2 defence in this action, which is basically the  
3 prosecution of a quasi criminal action.

4 So in those circumstances there will be an  
5 order for the disclosure of unedited copies of the  
6 following documents. An e-mail from Siddika  
7 Mithani, M-I-T-H-A-N-I. Dated 2001/05/07 at 0206  
8 time, the subject, it is to Joan Korol, K-O-R-O-L,  
9 with a c.c. to Michelin Ho, H-O. The subject is re  
10 Synergy Group of Canada.

11 The second document is an e-mail from Philip  
12 Waddington, the date is 2001/04/24 at 03:09:14 p.m.  
13 to Peter Chan, the c.c. is blank, the subject is re  
14 clinical trials. That is the first item on that  
15 page. There is a second e-mail referred to on that  
16 page, which is the one that we want to have access  
17 to. Actually there is three. The second one is to  
18 Philip Waddington from Michael J. Smith, Michelle  
19 Boudreau and Eileen Quinn, the subject is re  
20 clinical trials, the date on that is 04/18/2001, the  
21 time is 05:01:34 p.m.

22 And the third one, and this is a chain or a  
23 string of e-mails, the third one is to Peter Chan  
24 c.c. Michael J. Smith and Michelle Boudreau, the  
25 subject is clinical trials. And that has a  
26 handwritten date in the top right hand corner of  
27 April 18/01.

1           There will be an order for the production of  
2           unedited copies of those documents from Health  
3           Canada.

4           MR. BROWN:                   Thank you, sir.

5           MR. BUCKLEY:                 Thank you. And, Your Honour,  
6           that clears up the preliminary matters.

7           THE COURT:                 Okay, just give me a moment  
8           please.

9           Because these two different sets of e-mails  
10          that we're looking for are chained together and I  
11          just want to make sure that they are properly  
12          described.

13          Are you going to be preparing a written order?

14          MR. BROWN:                 I will attempt to have my  
15          assistant put one together, sir.

16          THE COURT:                 Well for clarity, the order --  
17          I think perhaps the clearest way to reference it is  
18          to use the sequencing numbers in the top right hand  
19          corner?

20          MR. BUCKLEY:               Actually the top right hand  
21          corner will be numbers that I assigned to my file,  
22          but the bottom right hand corner are numbers are  
23          assigned by Health Canada when they were disclosed  
24          under an access to information request.

25          THE COURT:                 All right, then for greater  
26          clarity in the order, because on further review it  
27          appears that there are three or four e-mails strung

1 together on each of the sets of documents that we  
2 are looking for, they are more specifically  
3 described with the Crown numbering system of  
4 documents, 000129 and 000130, and 000155 and 000156.

5 So I think that should be sufficient  
6 particularity, Mr. Brown --

7 MR. BROWN: Yes, sir.

8 THE COURT: -- for them to be located.

9 Okay, there is Exhibit 'R', madam clerk, I am  
10 giving that back to you. All right, Mr. Buckley,  
11 are you ready to proceed?

12 MR. BUCKLEY: Yes, I am, Your Honour.

13 THE COURT: All right.

14 MR. BUCKLEY: Your Honour, I'd like to call  
15 Ms. Debra Oxby to the stand. So, Deb, if you want  
16 to come forward and take the stand in the box there.

17 THE COURT: And this is just a reminder,  
18 that there is an order excluding witnesses. So any  
19 witnesses other than those who have been given  
20 permission to stay in the courtroom can leave the  
21 courtroom now and you will be called when your time  
22 comes, thank you.

23 (WITNESSES EXCLUDED)

24 THE COURT: Go ahead please.

25

26

27 \*DEBRA OXBYP, Sworn, Examined by Mr. Buckley

1

2 Q Ms. Oxby, you are 49 years of age?

3 A Yes.

4 Q And you actually live in Nova Scotia near Kentville?

5 A Yes, I do.

6 Q Yeah, actually you're on a rural property in the  
7 South Berwick area?

8 A That's correct.

9 Q Okay. You have two children, two boys?

10 A Yes, I do.

11 Q The oldest is 21 years of age right now?

12 A Right.

13 Q And the youngest is 14 years of age?

14 A Correct.

15 Q Okay. You by training, you have a bachelor of  
16 science degree from McGill University in Montreal?

17 A Yes, I do.

18 Q And you work for Agriculture Canada as a researcher?

19 A Yes, I do.

20 Q Okay. And you've actually been asked that we give a  
21 disclaimer on your evidence by your employer?

22 A That's right.

23 Q Okay. So we're supposed to make it clear to the  
24 Court you're attending as a private citizen?

25 A Yes.

26 Q That you are in no way representative of the  
27 Government of Canada this morning?

1 A That's true.

2 Q And you are testifying without intending to  
3 criticize the Crown or its policies?

4 A Absolutely.

5 Q Okay. Now what branch of Agriculture Canada do you  
6 work for?

7 A I work for the research branch, the food quality and  
8 safety team.

9 Q Okay. And you've got in your family, a history of  
10 bi-polar disorder?

11 A Yes, I do.

12 Q Okay. Can you tell us starting with your brother,  
13 just basically what your observations have been?

14 A My brother was diagnosed with bi-polar disorder in  
15 1993, at the time he was employed as an engineer in  
16 the States, he had a very good job. He has been  
17 unable to work since the diagnosis, and unable to  
18 work because of the bi-polar, but also because the  
19 medication that he takes for the bi-polar makes it  
20 difficult for him to think clearly enough to work.

21 Q Okay. Now I just asked you about him, but to your  
22 knowledge it goes above him, it just kind of flows  
23 through your family; would that be fair?

24 A We can see the disorder clearly --

25 Q Okay.

26 A -- flowing through the family, as you put it, yes.  
27 My father, my grandfather.

1 Q Okay. Now it's also affecting one of your sons?

2 A It is.

3 Q Okay, and that's your youngest son?

4 A Yes.

5 Q Can you tell us basically, kind of at the beginning,  
6 how you became aware of it, there was a difference  
7 and your observations?

8 A He -- he was dramatically different from his brother  
9 in terms of temperament, he was consistently  
10 oppositional, defiant, confrontational, everything  
11 that you would need to do in the normal course of a  
12 day was a pitched battle with him, be it getting up,  
13 getting dressed, eating, everything that you could  
14 make into a battle he did. He could only be  
15 described -- he could best be described as being  
16 very angry, all the time, but the anger wasn't  
17 directed at something, or it wasn't because of  
18 something, it was just that's just the way he was,  
19 he was angry at everybody and at nobody and  
20 that's --

21 Q Okay, when did that start?

22 A It was like he -- he had the terrible twos like all  
23 children have, but instead of growing out of it, it  
24 got worse. Instead of growing out of the terrible  
25 twos it went into the terrible threes, fours and the  
26 older he got the more angry and difficult he became  
27 to deal with.

1 Q Okay. Now what happens when he gets to be of school  
2 age?

3 A In school he had a lot of trouble learning in  
4 school, he wasn't keeping up with his classmates in  
5 terms of reading skills. He tended to clash with  
6 the kids in his class that were the most likely to  
7 clash with him, so that he would be butting heads  
8 with bullies in the class. And we were getting --  
9 we would get calls from the school on a regular  
10 basis that -- that he was in trouble.

11 Q Okay. Did he have any friends in school?

12 A No, he had no friends, he didn't form friendships.

13 MR. BROWN: Sir, I wonder, before we go  
14 much further with this particular examination, I'm  
15 going to submit that everything we're hearing this  
16 morning is essentially hearsay. Now, I understand  
17 that this witness is likely to have made some of her  
18 own observations, but so far everything we have  
19 heard is essentially hearsay. She's spoken about  
20 her brother and the problems her brother has had,  
21 that's hearsay. Other than she hasn't spoken even  
22 about her own observations of her brother, only what  
23 she -- I guess her brother may have told her, I  
24 don't even know where that information might have  
25 come from. And even speaking about her son, granted  
26 there may be some of her own observations here, but  
27 we haven't heard that's the case. What we have

1 heard, I would submit, is strictly hearsay, sir.

2 I understand that my friend may have a purpose  
3 for calling this evidence this way, instead of  
4 calling her son himself, and I don't mean to tell my  
5 friend how to run his case, but we are dealing with  
6 a hearsay situation here, sir.

7 THE COURT: Mr. Buckley?

8 MR. BUCKLEY: Well, Your Honour, certainly  
9 when something like if the school calls that's  
10 hearsay, and I think it's helpful for the narrative,  
11 but the observations that this person makes of her  
12 own son when the son's an infant, are direct  
13 observations. If somebody who is a mother isn't  
14 qualified to come and say, okay, this is what I  
15 observed my child doing, and it's direct evidence,  
16 it would be difficult to do that. I can't call a  
17 kid to say, well when I was six or seven, you know,  
18 I didn't compare with other children.

19 So really, this is the best witness for me to  
20 get that evidence.

21 I appreciate, and as I say and my friend and I  
22 have been on one page completely about when  
23 witnesses for narrative purposes say, well somebody  
24 said this, that it's hearsay. But her observations  
25 of her son and what -- what she dealt with are not  
26 hearsay.

27 THE COURT: I agree with that. But, Mr.

1 Buckley and, Mr. Brown, there may be some instances  
2 that approached hearsay in the evidence that this  
3 witness has been giving so far, but generally she  
4 has been giving observations with regards to her  
5 brother and her son. And I do not consider those to  
6 be hearsay.

7 MR. BROWN: Thank you, sir.

8 THE COURT: All right.

9 MR. BUCKLEY: Thank you, Your Honour.

10 THE COURT: But I will be vigilant and  
11 watchful for any hearsay, and if it goes in, we will  
12 just note that it is for the narrative and not for  
13 the truth of the --

14 MR. BROWN: That's fine, sir.

15 MR. BUCKLEY: Right.

16 MR. BROWN: Thank you.

17 MR. BUCKLEY: Okay.

18 THE COURT: All right, go ahead.

19 Q MR. BUCKLEY: So --

20 THE COURT: Just a moment. What is  
21 plugged into the wall over there?

22 MR. BROWN: Sir, that's my Blackberry  
23 organizer. It's turned off though. It's not  
24 recording or anything. Do you want me to unplug it  
25 and remove it.

26 THE COURT: I would prefer it if you  
27 would, thank you.

1 MR. BROWN: I apologize. I will do that.

2 THE COURT: Mr. Buckley?

3 MR. BUCKLEY: Thank you, Your Honour.

4 Q MR. BUCKLEY: So, Ms. Oxby, you were telling  
5 us that he didn't have any friends. Now was that  
6 just limited to school?

7 A No, he didn't have friends outside of school either.  
8 He couldn't get along with children his own age, or  
9 well, he couldn't get along with anyone.

10 Q Okay. Now when I asked you about school I was being  
11 a little general, so I'm assuming grade one that's  
12 the type of problems that you were observing?

13 A Yes.

14 Q Okay. Was he ever -- did the school ever indicate  
15 to you about a learning disability?

16 A At the beginning of grade two --

17 MR. BROWN: I appreciate that --

18 THE COURT: No, now you are getting into  
19 hearsay, that is --

20 MR. BUCKLEY: Right. But it's just then her  
21 observations about him not being able to read and  
22 stuff like that at home or --

23 THE COURT: Well ask her about her  
24 observations and his ability to read then.

25 MR. BUCKLEY: Okay.

26 Q MR. BUCKLEY: So can -- what were your  
27 observations about his ability to do school work and

1 get through things?

2 A By the beginning of grade two a child should be  
3 reading, should be starting to learn how to read,  
4 but he was not able to read at all at the beginning  
5 of grade two.

6 Q Okay. And how did grade two go for him?

7 A Well again, at the beginning of grade two we got a  
8 call from the teacher saying that his behaviour in  
9 the classroom made her concerned that he needed to  
10 be tested for attention problems. So we initiated  
11 testing to see if he had ADHD, and we also had  
12 cognitive testing done to determine why he was not  
13 reading.

14 Q Okay.

15 A And that was at the beginning of grade two.

16 Q Now he is seven in grade two; right?

17 A Yes.

18 Q Okay. Did he start saying things unusual in grade  
19 two?

20 A Yes. At Christmas time of grade two, on Christmas  
21 day he stood in front of my mother and I and held an  
22 imaginary gun to his forehead and said, I'm stupid,  
23 I'm stupid, I don't deserve to live. And this was  
24 the first indication that I had had from him of just  
25 how seriously he was beginning to feel -- how ill he  
26 was becoming. That his self esteem was  
27 deteriorating to the point where he felt he didn't

1           deserve to live. And he was only seven.

2           Q     Okay. Now was that the only time he said anything  
3           like that?

4           A     That was the first time, and over the next two and a  
5           half years that those kinds of thoughts would become  
6           more persistent with him until he was almost  
7           obsessed with those kinds of thoughts, of taking his  
8           own life, of not deserving to live.

9           Q     You know --

10          A     Of not wanting to live.

11          Q     -- what did you observe that made you think that he  
12          was obsessed with suicide?

13          A     He would write notes and he would leave them around  
14          the house saying that he wanted to die, that he  
15          wanted to kill himself. He got -- he got to the  
16          point where he would beg me to kill him on a regular  
17          basis.

18          Q     Okay. And how would he do that?

19          A     He would just ask me, why don't you kill me.

20          Q     Okay, and how often would he be saying things like  
21          that?

22          A     Towards the end of his illness, it would be many  
23          times a day. It started out -- he started out at  
24          seven and a half it was an isolated incident, and we  
25          took it very seriously, but it -- it gather momentum  
26          over the next couple of years until he got to that  
27          point where that seemed to be all he thought about.

1 Q Okay. So when you say that he would beg you to kill  
2 him several times a day, you mean it reached the  
3 point where it wasn't even once a day, it was  
4 just --

5 A That's correct.

6 Q Okay. So how did you guys react to that?

7 A He had always required a great deal of supervision  
8 from the time that he was two. He required almost  
9 increasing amounts of supervision, because he was  
10 extremely active, he was hyperactive. He was always  
11 doing things that could be detrimental to himself or  
12 others, so we had to watch him. We had to be  
13 vigilant in -- in watching him, and supervising him.  
14 When he started expressing suicidal thoughts, it  
15 just made it that much more critical that we never  
16 allow him out of our sight. He was always -- either  
17 my husband or I was with him at all times.

18 Q Okay. Now did the nature of his suicidal  
19 expressions change at some point?

20 A He had had a -- a very difficult year in grade three  
21 in school, he clashed constantly with his classmates  
22 and his teacher. And I took him out of school early  
23 in grade three, because it was pointless to leave  
24 him there. He -- but as the grade four year started  
25 to approach toward the end of August, his behaviours  
26 began to worsen dramatically, his anger, his rages  
27 at us, until Labour Day weekend when he told us his

1 -- it changed from just a concept of wanting to kill  
2 himself to him forming a plan by -- by which he  
3 would end his life. And that weekend he started  
4 telling us that he was going to hang himself in our  
5 barn, and our barn is 42 feet high. There were  
6 plenty of opportunities for him to do that if he  
7 ever got out of our sight.

8 Q Okay, now what year is this?

9 A Grade four. That would have been five years ago,  
10 that would have been 2000 -- the year of 2000.

11 Q Okay. So Labour Day weekend on the year of 2000?

12 A That's correct.

13 Q Okay. Now, that led you guys to do something?

14 A I -- I knew I couldn't put him in school in the  
15 shape that he was in, he -- I knew he -- there was  
16 -- we couldn't put him in school, he was too angry,  
17 he was -- he was just -- my only option I felt was  
18 to -- was to medicate him with Ritalin, and we asked  
19 the doctor at the end of August for a prescription.  
20 And within 15 minutes he calmed down and it was the  
21 first time we had ever seen him calm, from the  
22 effects of the medication.

23 Q Okay. So was he able to go to school then?

24 A He was. He was able to go to school, he stopped  
25 clashing with kids in his classroom, we stopped  
26 getting phone calls from the school that he was  
27 getting into fights. I had in grade -- in grade two

1 I had started trying to teach him to read at home.  
2 The psychologist who did the cognitive testing said  
3 that the approach that they were using in school,  
4 the whole language approach would not work on him at  
5 all, and -- and she felt that he might not ever  
6 learn to read and held out the only hope for that  
7 would be if I taught him phonics at home. And so  
8 his schoolwork was beginning to improve, he could  
9 actually get work done in school when he was on the  
10 Ritalin.

11 Q Okay. So the Ritalin seemed to have solved a lot of  
12 the school problems?

13 A It did.

14 Q Did it solve the home problems?

15 A No. The disorders continued to worsen and we  
16 observed this at home as the affects of the Ritalin  
17 would wear off, he would -- his rages intensified  
18 that fall and he became just completely impossible  
19 to reason with, to deal with. We had to -- in order  
20 to get him to eat, I would get up earlier in the  
21 morning and make a big breakfast for him. I should  
22 also say at this time he's nine and a half years  
23 old, and he's wearing a size six clothing. So he's  
24 very small for his age, very, very small for his  
25 age. He's the smallest kid in the class.

26 And I knew that the Ritalin was an appetite  
27 suppressant, so -- and that was the effect that it

1           was having on him, he didn't eat during the day  
2           while he was under the affects of the Ritalin. So  
3           we couldn't -- I didn't give him any more than he  
4           absolutely needed in order to function at school,  
5           because I needed to get nutrition into him after  
6           school and in the evening.

7                     The other problem with the Ritalin is that it's  
8           a stimulant and now we were having to stay up even  
9           later with him at night, we would be up until  
10          midnight, because he would be too over stimulated to  
11          sleep. So his rages lasted longer in the evening,  
12          because he was up longer.

13        Q        Okay. You decided to actually try EMPowerplus then?

14        A        Yes.

15        Q        Okay. Tell us what happened there?

16        A        In October of that year, he started on the Ritalin  
17          on Labour Day weekend, so early September. In early  
18          October of that year I saw a piece on CTV news about  
19          EMPowerplus and that it might be an effective  
20          treatment for bi-polar disorder, which I knew my  
21          brother had at that time. So I decided to  
22          investigate on behalf of my brother, it was -- and  
23          so I -- I watched the piece and they didn't give any  
24          contact information, so I sent an e-mail to CTV  
25          News, and I asked them if they could give me contact  
26          information, and they provided me with a website. I  
27          sent an e-mail to the website, and within a couple

1 of weeks I was contacted by a man by the name of  
2 Philippe Jeunesse (phonetic) in Ottawa, who worked  
3 for the -- for TrueHope in Ottawa.

4 Q Okay.

5 A And ordered -- and as -- as we talked on the phone,  
6 he told me that they were also --

7 Q Okay, just -- the Court doesn't want us to talk  
8 about what other people said.

9 A Okay.

10 Q So if we can try and keep your story to kind of what  
11 you did in response to things that were said?

12 A I decided to get the supplement for my son to see if  
13 it would have some benefit on his disorders.

14 Q Mm-hm, and how did that go?

15 A He -- my son started taking the supplement in early  
16 November and we saw no change in him for November  
17 and December, so he continued to take the Ritalin on  
18 school days and was taking the supplement at the  
19 same time, but I had been told that at some point he  
20 was going to have a bad reaction to the Ritalin, as  
21 the supplement started to take -- have an effect on  
22 him, and we would see him have a bad reaction to the  
23 medication.

24 Q Okay.

25 A And that was going to be the indication to us that  
26 he would have to stop or taper off on the  
27 medication.

1 Q Okay. Who was telling you that?

2 A Philippe Jeunesse in Ottawa.

3 Q Okay. How much contact were you having with  
4 Philippe?

5 A I spoke to Philippe at least once a week, from the  
6 moment that my son started taking the supplement I  
7 started keeping a record, a daily chart that I would  
8 fill out that had -- it listed all of his symptoms  
9 and it gave an area for each symptom where I could  
10 rate it as to the severity of the symptom on that  
11 day. And I charted him day after day after day.

12 Q Okay, and where did that chart come from?

13 A The chart, it was something that I downloaded off  
14 the website, it was a physical -- a form that I  
15 downloaded off the website, and I just kept copies  
16 of it at home and then every week when I spoke to  
17 Philippe, we would -- I would give him the numbers,  
18 the chain numbers, the degree of severity of his  
19 symptoms for that week.

20 Q Okay. Now so your son's on the program, you're  
21 doing this charting. What types of things did you  
22 observe?

23 A His -- is chart, I'll say, didn't move for the month  
24 of November and December. And then on January his  
25 first day back at school, we took him off Ritalin  
26 over the Christmas break so that he could eat, so  
27 that he would eat. On his first day back at school

1 he resumed his regular Ritalin medication, but he  
2 had a horrendous day at school and we got a call  
3 from the school, he had to be -- they asked us to  
4 come and take him home. And so the next day he went  
5 -- that was the last day that he ever took Ritalin.  
6 He went to school the next day and all he had was --  
7 all he was taking at that point was the supplement.  
8 His -- his days -- he was not having as good a days  
9 at school, in January and February, as he had been  
10 having when he was on the Ritalin.

11 Q Okay. Now so carry on, just about your observations  
12 about him being on the product. So --

13 A The -- we started getting increasing complaints of  
14 bad behaviour from the school, and it got to the  
15 point where I went to the principal and explained to  
16 him what we were trying to do, that we had him on a  
17 -- a vitamin and mineral regiment, that we believed  
18 would -- would help him, but that it needed more  
19 time. He was not responding as quickly as we had  
20 hoped. And the school told us that they would give  
21 us a few more weeks and see if his behaviours in the  
22 classroom improved. And in early -- by early March  
23 of that year his behaviour wasn't improving in the  
24 classroom and they gave us an ultimatum that we  
25 either put him back on Ritalin or take him out of  
26 school. I chose to take him out of school.

27 I believed that -- I knew that if he went on

1 the Ritalin that -- that we would go back -- that  
2 that would just probably be the beginning of the  
3 medications he would have to take, I could -- I  
4 could see him having to take.

5 Q Okay. But just carry on with what your observations  
6 were. So in March you have an ultimatum, did things  
7 get better or worse after March?

8 A His behaviour at home began to improve in January,  
9 even though his behaviour at school was worse  
10 because he wasn't on the Ritalin, because he wasn't  
11 on the Ritalin his behaviours at home, or because he  
12 was now on the supplement, his -- and because he was  
13 getting more sleep and because he was getting better  
14 nutrition, his -- his behaviours at home were  
15 starting to improve. So that after school he was --  
16 became a little bit easier to live with everyday,  
17 just incrementally, we saw incremental improvements  
18 at home. But in the classroom all they could see  
19 was -- was problems.

20 Q Okay. What types of things would you see at home?

21 A The problems we were seeing at home would be the  
22 uncontrollable rages, constant.

23 Q Okay, but I'm --

24 A (INDISCERNIBLE).

25 Q -- I'm trying to find what changes you saw though?

26 A The improvements in the rages, improvements in all  
27 of the symptoms that we were -- that I had been

1 charting, I was starting to see some of his numbers  
2 would go down occasionally. They would go back up,  
3 but I was seeing them come down more often than all  
4 the time, so that the number for each day, the total  
5 numbers, if you looked at each day he was in the  
6 high twenties to begin with, and then he'd start --  
7 that total number of symptoms a day started to  
8 decline very slowly.

9 Q Okay. How did that affect your life?

10 A Well by April of that year he stopped expressing  
11 thoughts about suicide, and he stopped leaving notes  
12 around the house. And we started seeing small  
13 improvements, we started seeing things that we could  
14 do with him that we were never able to do before.  
15 We could take him shopping, we could -- we could go  
16 to a movie.

17 Q What do you mean you couldn't do those things  
18 before?

19 A We -- we couldn't take him out in public, because we  
20 couldn't control him. We had no idea when he would  
21 fly into an uncontrollable rage, that it was not  
22 predictable, and it wasn't --

23 Q Okay.

24 A -- it was just easier to stay home than it was to  
25 take a chance of going out with him and have him  
26 lose control.

27 Q Now, what happens by the time the next school year

1 rolls around?

2 A The next school year rolls around and he's been on  
3 the supplement for nearly a year. I had taken him  
4 out of the public school in March and I taught him  
5 at home, so that he was able to pass grade four, by  
6 home schooling.

7 Q Mm-hm.

8 A We took him out of the public school system and put  
9 him into a small private school where he wouldn't  
10 have the history of bad behaviour. His behaviours  
11 by then had diminished to the point where the new  
12 school observed no problems in his behaviour. I was  
13 continuing to chart his symptoms on a daily basis  
14 and I was continuing to talk to Philippe on a weekly  
15 basis, but his numbers were in the low -- in the  
16 high single digits at that point.

17 Q Okay. So you're not getting reports from the new  
18 school of problems?

19 A I never got a report, I've never gotten a report  
20 from the new school --

21 Q Okay.

22 A -- of bad behaviour at school.

23 Q And how many years has he been in that school?

24 A He started in grade five and he's just completing  
25 grade nine this year.

26 Q Okay. And since April of 2001, no suicide?

27 A No talk of suicide, no threats, no -- no mention

1           that he wished he was dead or that he wanted to die.  
2           That -- that's gone completely.

3           Q     Okay.  And how is he doing in school?

4           A     When he first started at his new school, his marks  
5                 were in the -- his average was in the low sixties,  
6                 and five years later his average is in the high  
7                 seventies, and it's continuing to improve.  He does  
8                 better in the subjects that he likes, so that he  
9                 sometimes comes home with marks in the high  
10                nineties, which were impossible for him to even  
11                contemplate before.

12          Q     What about you had described problems at home with  
13                 anger and things like that?

14          A     I'm sorry?

15          Q     Well when he was -- you've described problems with  
16                 him at home with being constantly angry and things  
17                 like that?

18          A     Oh, yes.

19          Q     Did that change?

20          A     Yes.  Over the course of that first year, as the --  
21                 as the disorders began to fall away, a personality  
22                 emerged that we had had no glimpses of up until that  
23                 point, so he was 10.  And the person that he became  
24                 after being on the supplement for a year, was --  
25                 really had no similarities to the child he had been  
26                 up until that point in his life.  He -- he had a  
27                 wonderful sense of humour, he had a ready smile, has

1 a ready smile. We had never seen him laugh up until  
2 that point.

3 Q You mean --

4 A There was no joy in his life before then, nothing  
5 made him happy and nothing made him laugh, and he  
6 just became a normal kid for the first time.

7 Q Okay, so you mean up until he was age 10, you had  
8 never seen him laugh at anything?

9 A Never.

10 Q Now how did it affect his social life?

11 A He formed friendships with his classmates at the new  
12 school immediately. And he continues to have  
13 friendships with those kids, those friendships have  
14 lasted. He's never clashed with any of those  
15 children. He would constantly clash with -- with  
16 children up -- up until that point.

17 Q Okay. Has he ever stopped taking the EMPowerplus?

18 A He's very self conscious about having to take the  
19 supplement, he's very self conscious, he just wants  
20 to be thought of as a normal kid, so he doesn't want  
21 anybody to know that he has to take vitamins. So a  
22 couple of times when he's gone to a friend's house  
23 for the weekend he has not taken his vitamins,  
24 rather than be -- allow himself to be caught taking  
25 them. And his symptoms have started to return. The  
26 first time that he was gone for a day and when he  
27 came home -- he was gone for 24 hours, after the 24

1 hours he told me that he was getting angry and knew  
2 that he had to start taking the -- the supplement  
3 again, so he came home. And that happened twice,  
4 and that was enough to -- to tell him that -- that  
5 he just had to continue to take the supplement, he  
6 couldn't drop back or skip days.

7 Q Okay. Now you got involved in a group called the  
8 Red Umbrellas?

9 A Yes.

10 Q Can you tell us how that came about?

11 A I got a phone call from someone in the TrueHope  
12 office in Alberta, and he -- the fellow that I was  
13 talking to told me that the -- Health Canada wasn't  
14 letting the supplement come into Canada anymore, and  
15 he told me that I should call -- he suggested -- he  
16 gave me the phone number for Health Canada, and  
17 suggested that I call them and explain to them that  
18 -- that we couldn't -- that my son couldn't get  
19 along without this supplement. So, I did call and  
20 spoke to someone and I explained to them that they  
21 -- my son has just become well, and I explained to  
22 them that they -- they had no idea what the  
23 consequences would be, just to my family, of  
24 stopping access to this -- to this supplement. I  
25 just -- I can remember saying over and over again to  
26 this poor woman, you have no idea what the  
27 consequences are going to be.

1 Q Well what would be the consequences?

2 A I knew in my son's case that he would immediately go  
3 back to the place where he had been, that he would  
4 pick up where he had left off with the disorders,  
5 they would start to return. He would -- I knew  
6 there would be a sequence of events, that he would  
7 lose his mental health, he would lose his friends,  
8 he would lose his self esteem, his dignity, he would  
9 lose hope and he would lose his will to live again.

10 Q Okay. So this -- this became a very serious issue  
11 for you then?

12 A This became a matter of life and death for my son.

13 Q So what did you do?

14 A Autumn called me, Tony Stephan's daughter called me  
15 within a couple of days of that phone call,  
16 informing me that the shipments had stopped, and she  
17 told me that Health Canada wasn't explaining to  
18 anybody why they were no longer allowing it to come  
19 across the border and she asked me if I wanted to --  
20 to go to Ottawa with a group of women and see if we  
21 could get an answer from the Health Minister as to  
22 why the -- why we would no longer have access to  
23 this product in Canada.

24 Q Okay. And you did go to Ottawa?

25 A I did go to Ottawa, I took my son with me. And we  
26 were there to try and find out what the rationale  
27 was behind such -- behind a move that would have

1           such chilling consequences to those of us who relied  
2           on the product, or whose family relied on the  
3           product to maintain their -- their mental health.

4       Q     Okay, and what happened when you were in Ottawa?

5       A     We met with MPs, we -- it was raining the -- the  
6           first day that we were there, so somebody went out  
7           and got a bunch of umbrellas, and they happened to  
8           be red, and we all walked up to Parliament Hill and  
9           sat down on the little piece of wall that was across  
10          from the doors that the MPs came and -- and went  
11          from, when they were going to move from the  
12          Parliament buildings. And we tried to engage them  
13          in conversation and explain to them what our  
14          situation was, that this supplement had been  
15          stopped, we didn't know why it had been stopped, and  
16          asked if they could help us find out why. We -- we  
17          made it known that we wanted to -- to talk to the  
18          Health Minister and see what -- what reasons they  
19          had for stopping it. And we stayed for two and a  
20          half days, and received no audience with the Health  
21          Minister the entire time we were there. We spoke to  
22          a lot of opposition MPs and a few Liberals.

23       Q     Okay. There was a press conference?

24       A     Yes.

25       Q     Okay. You weren't involved in that press  
26          conference?

27       A     I wasn't involved in the press conference, no.

1 Another -- another lady that was with us, two of us  
2 decided to stay on the wall because we -- our intent  
3 was to -- to make our presence felt on the hill  
4 until the Health Minister spoke to us. So two of us  
5 stayed behind on the -- on that wall that we had  
6 been sitting on, as an indication to the  
7 Parliamentarians that we had still not been granted  
8 access to the Health Minister, we still had no  
9 answers to our questions or our pleas, that -- that  
10 we be heard.

11 Q Okay. Now, so that ended without a meeting with the  
12 Minister of Health?

13 A Yes. It ended with us believing that we would have  
14 our access back to the product. It was informally.  
15 We -- we didn't get a -- a formal guarantee that we  
16 could have access again, but we were led to believe  
17 that we would have access restored?

18 Q Okay, how were you led to believe that?

19 A It was hearsay, I -- I --

20 Q Okay. Now, at a later date you ended up testifying  
21 in front of the Standing Committee of Health?

22 A Yes, that was in May of 2005.

23 Q Okay, how did that come about?

24 A I had been in constant touch with my MP, who at that  
25 time was the Parliamentary Secretary to the Health  
26 Minister, and I knew he was on the Standing  
27 Committee on Health, and I wanted to find out --

1           there was a piece of legislation before the  
2           committee at that time, Bill C-420, and I wanted to  
3           know what was the status of that Bill, because I  
4           knew that -- that that -- that if -- that the  
5           decisions that were being made about Bill C-420  
6           directly affected my son and his future access to  
7           the supplement. So in the course of my discussion  
8           with my MP, he asked me if I would like to appear  
9           before the Standing Committee myself, and I said  
10          that I would. I felt the Standing Committee needed  
11          to hear my son's story, and what -- the way I  
12          phrased it to my MP was that I felt that if -- if  
13          Canadian laws were being used to deny my son access  
14          to something as simple as vitamins and minerals,  
15          that I felt that those laws needed to be changed.  
16          And I felt my son needed to have a voice at that  
17          committee.

18        Q     Okay. And who was your MP at the time?

19        A     Robert Thibeault.

20        Q     Okay. Did you have any safety concerns about giving  
21              your son the product?

22        A     At -- when -- the first time that I spoke to  
23              Philippe Jeunesse back in 2000 and he explained to  
24              me how many of these capsules my son would have to  
25              take, I was a little alarmed. But he also explained  
26              to me --

27        Q     Okay, I don't want you to tell me --

1 A Okay.

2 Q -- what he told you?

3 A Okay.

4 Q But what did you do?

5 A Because of my nutrition background, I was able to --  
6 to research -- I knew what the levels of the -- I  
7 knew what the ingredients were and I knew what their  
8 levels were, I knew what the -- I could look up what  
9 the recommended daily allowances were, I could look  
10 up most especially what the toxic levels of the  
11 different vitamins would be, in the literature, in  
12 scientific literature, and -- and was able to  
13 satisfy myself that -- that they were well within  
14 acceptable limits. That the ranges of the different  
15 vitamins and minerals were well within acceptable  
16 limits. So I -- I didn't have concerns.

17 Q Okay. Did you observe any ill side effects with  
18 your son?

19 A I did observe side effects. After he had been on  
20 the supplement for three years, he -- he was -- he  
21 had caught up to his classmates in school in terms  
22 of growth, so his growth rate doubled in the first  
23 three years that he was on the supplement. In three  
24 years he went from a size six to a size 12 in  
25 clothing. And the other thing that we observed was  
26 from infancy he had -- he had always been prone  
27 to respiratory infections and ear infections and was

1 antibiotics and off antibiotics and colds and flus,  
2 he was sick constantly. Within six months of taking  
3 the supplement that stopped, so that he didn't have  
4 to visit a -- he would be in and out of the doctor's  
5 office three and four times a winter for  
6 antibiotics, and he went for four and a half years  
7 without having to see his doctor, after he had been  
8 on the supplement. And the only reason that he had  
9 to go back to his doctor is because he needed  
10 stitches. So his cycle of colds and flus and  
11 infections is broken.

12 Q Okay, because when I was asking you about side  
13 effects, I was meaning negative?

14 A He's had no negative side effects, none whatsoever.

15 Q Now you've told us, you know, how serious it was  
16 that you -- you guys continue to have access to the  
17 product. What would have happened if the product  
18 remained unavailable in Canada? Not meaning -- what  
19 would have you done?

20 A My son had to have access to the product, that was  
21 -- that was my -- that was my bottom line, my son  
22 had to continue to have access to that product,  
23 because he depended on it. And if it meant that I  
24 had to bring it across the border myself, I was  
25 going -- I was prepared to do whatever I had to do  
26 to ensure that my son maintained his mental health.

27 Q Okay. So you mean even if it was illegal in Canada,

1           you would smuggle it across the border?

2       A     Without hesitation.

3       Q     And you had already thought about that?

4       A     Oh, yes.

5       Q     Did it get to the point where you had to do that?

6       A     It didn't. In 2003 we knew that new regulations  
7           were coming out governing natural health products,  
8           as the new regulations would be coming out as of  
9           January of 2004, and I became concerned that with  
10          any kind of upheaval that -- that something might  
11          happen and that we might again lose access for some  
12          bureaucratic reason again. So I started stock  
13          piling in the fall of 2003, just in case anything  
14          happened, I didn't want my son to have as much as a  
15          day of concern that he might not have access to  
16          supplement, that was not going to happen.

17      Q     Thank you, Ms. Oxby, I don't have any further  
18           questions, but I expect my friend is going to have  
19           some questions of you.

20      THE COURT:                    Mr. Brown?

21      MR. BROWN:                    Yes, sir, I just have a couple  
22           questions actually.

23

24      \*Mr. Brown Cross-examines the Witness

25

26      Q     You indicated that you removed your son from school  
27           in grade four, he was in grade four at the time?

1 A The first time I removed him from school was the end  
2 of grade three, and then I removed him again in  
3 March of grade four.

4 Q So what in essence happened is you had taken him off  
5 the Ritalin; right?

6 A Yes.

7 Q You were home schooling him?

8 A Yes.

9 Q So by removing the Ritalin you believed that he was  
10 sleeping better; correct?

11 A Yes. He -- he was sleeping much better.

12 Q And he was at home with you all day long?

13 A He -- I worked half time at that time, so he was  
14 home with me on the days that I was not at work, and  
15 he was with my mother on the days that I was at  
16 work.

17 Q All right. So instead of being at the school where  
18 you indicated he was in pretty regular conflict with  
19 other students, now he's at home and that conflict  
20 has been removed at least; right?

21 A Yes.

22 Q And he's no longer being teased by these other  
23 students; correct?

24 A Correct.

25 Q Not being bullied by the other students?

26 A Correct.

27 Q Not getting into fights with these other students?

1 A Correct.

2 Q And he's being home schooled until you put him back  
3 into a -- I think you described it as a private  
4 school in the fall; is that right?

5 A Yes.

6 Q And I think you said it was a small school?

7 A Yes, small class, smaller classroom sizes.

8 Q Right. So smaller class, more attention from the  
9 teacher, more care taken of your child; correct?

10 A Correct.

11 Q And near to the end of your evidence this morning  
12 you mentioned also that your son had been on a  
13 number of antibiotics I believe you said; correct?

14 A From early childhood, yes.

15 Q Okay. And once you started the supplement, you  
16 stopped giving your child these -- these kind of  
17 antibiotics and similar types of drugs?

18 A He didn't need them.

19 Q You stopped giving him those drugs?

20 A Yes, I stopped giving them, because he didn't need  
21 them.

22 Q Those are my questions.

23 THE COURT: Anything arising?

24 MR. BUCKLEY: No, Your Honour.

25 THE COURT: Thank you, Ms. Oxby, you can  
26 step down.

27 A Thank you.

1 (WITNESS STANDS DOWN)

2 MR. BUCKLEY: Is Bonnie back? Oh, actually  
3 I didn't see Dr. Kaplan. We had -- Your Honour, I'd  
4 like to call Dr. Bonnie Kaplan to the stand. We had  
5 a bit of a glasses crisis this morning, where her  
6 husband drove off with her reading glasses. Did we  
7 resolve that?

8 DR. KAPLAN: We did.

9 MR. BUCKLEY: So --

10 THE COURT: Over here please.

11 DR. KAPLAN: May I bring --

12 MR. BUCKLEY: Yeah, actually, Your Honour,  
13 could we have a small break. Dr. Kaplan thought  
14 rather than -- that it might be easier for her to  
15 communicate to us if she used some Power Point  
16 slides as opposed to walking us through some papers.

17 MR. BROWN: I have no idea what that will  
18 look like, so I will make any comment I might have  
19 once they're up, but I have no objection to the  
20 brief adjournment, sir.

21 THE COURT: Has Dr. Kaplan been in the  
22 courtroom the other days of trial?

23 MR. BUCKLEY: She was only on the very first  
24 day of trial.

25 THE COURT: On the first day?

26 MR. BUCKLEY: Yes.

27 THE COURT: And a little bit this morning?

1 MR. BUCKLEY: A little bit this morning.

2 MR. BROWN: She was one of the witnesses  
3 that was not excluded though, sir.

4 THE COURT: That is right, I am just  
5 making sure. All right, that is fine. I will take  
6 an adjournment, I will return at 11:00, and we will  
7 proceed then.

8 MR. BROWN: Thank you, sir.

9 THE COURT: If you need some time to set  
10 up then --

11 MR. BUCKLEY: Thank you, Your Honour.

12 THE COURT: -- talk to madam clerk and  
13 perhaps she will assist you. Oh, and if you can  
14 produce copies, if not, I will be back at 11:00.  
15 All right.

16 THE COURT CLERK: Order in Court, all rise.  
17 Court stands adjourned until 11:00 a.m.

18 THE COURT: Thank you.

19 (ADJOURNMENT)

20 THE COURT CLERK: Recalling Synergy Group of  
21 Canada and TrueHope Nutritional Support.

22 THE COURT: Mr. Buckley?

23 MR. BUCKLEY: Your Honour, I'd like to call  
24 Dr. Bonnie Kaplan to the stand. Ms. Kaplan, if  
25 you'd like to step into the box.

26

27 \*BONNIE JOY KAPLAN, Sworn, Examined by Mr. Buckley (Qual)

1

2 MR. BUCKLEY: Now, Your Honour, the first  
3 step is, is I'd like to qualify this witness as an  
4 expert. My friend -- I'm just going to pass up a  
5 CV. And I'll just provide a copy to Dr. Kaplan.

6 My friend isn't objecting to her being  
7 qualified as an expert, but I do want to indicate  
8 the areas I want her qualified in and to have her  
9 identify her CV and we'll enter it as an exhibit.

10 MR. BROWN: That's correct, sir. There's  
11 no objection (INDISCERNIBLE).

12 THE COURT: That is fine. But I also  
13 understand why he may wish to put it on the record,  
14 so let us do it.

15 MR. BUCKLEY: Yes.

16 THE COURT: Go ahead.

17 MR. BUCKLEY: So -- and I'm seeking to  
18 qualify her as an expert in two areas, and the first  
19 is, is on the effect of nutrition on mental health  
20 conditions. And, Your Honour, when you peruse her  
21 resume you'll see that actually for decades she has  
22 been publishing in peer review journals, basically  
23 clinical research in that area.

24 And then the second area as an expert is  
25 basically in the running and interpretation of  
26 clinical research. And when you see her resume, in  
27 which basically been doing that for decades and

1 decades.

2 Q MR. BUCKLEY: So, Ms. Kaplan, I've handed  
3 you a document, can you tell us what that is?

4 That --

5 A That's my curriculum vitae.

6 Q Okay.

7 MR. BUCKLEY: And, Your Honour, I'll ask  
8 that that be entered as an exhibit.

9 MR. BROWN: No objection, sir.

10 THE COURT: All right, Exhibit 40 will be  
11 the curriculum vitae of Dr. Bonnie J. Kaplan.

12

13 \*EXHIBIT 40 - Curriculum Vitae of Dr. Bonnie J. Kaplan

14

15 MR. BUCKLEY: And, Your Honour, I did want  
16 to just clarify a couple of things, just because I  
17 think it will help us flow into her evidence.

18 Q MR. BUCKLEY: But basically, Dr. Kaplan, you  
19 ended up moving to Calgary in 1979?

20 A That's right.

21 Q Prior to that you were at Yale University in their  
22 Faculty of Medicine, doing a post doctoral  
23 fellowship?

24 A Well immediately prior I'd finished my post doctoral  
25 fellowship and I was on the Research Faculty.

26 Q Okay, at Yale Medical School?

27 A Right.

1 Q And then basically you were asked to set up in  
2 Calgary and become the Director of the Behavioural  
3 Research Unit at Alberta Children's Hospital  
4 Research Centre?

5 A Exactly.

6 Q And you actually did that from 1979 to 2005?

7 A Through 2005, yes.

8 Q Okay. And presently you're a professor of  
9 paediatrics at the University of Calgary?

10 A That's correct.

11 Q Okay.

12 A And cross appointed in the Department of Community  
13 Health Sciences, also in the Faculty of Medicine.

14 Q Okay. And you've stepped down as Director of the  
15 Behavioural Research Unit, but you're still working  
16 there conducting --

17 A That's correct.

18 Q -- clinical research?

19 A I just relinquished the title to my closest  
20 colleague there.

21 Q Okay. Now do you have any ties to either of the  
22 defendants in this matter, the Synergy Group of  
23 Canada, or TrueHope Nutritional Support?

24 A I have known them for 10 years, but I wouldn't say  
25 they are ties. I'm not sure what you mean by a tie.

26 Q Okay. Well tell us how you came to know them?

27 A Going back to -- would you like me to review the

1 first contact through Dr. Cole?

2 Q Yes, I think that would probably help.

3 A Okay.

4 THE COURT: Just before you go on to that.

5 A Yes.

6 THE COURT: I just want to peruse the  
7 first couple of pages of your CV.

8 A Sure.

9 THE COURT: So your doctorate is in  
10 criminal psychology?

11 A Correct. And my post doc is in neurophysiology.

12 THE COURT: All right, thank you. Go  
13 ahead with your question then.

14 MR. BUCKLEY: Thank you, Your Honour.

15 A So you'd like me to recap the history from when I  
16 first heard from Dr. Brian Cole. Do I need to  
17 explain who Dr. Cole is?

18 Q MR. BUCKLEY: Perhaps that would be helpful,  
19 because I'm just -- I'm trying to kind of get out  
20 how you got --

21 A Got involved.

22 Q -- involved in doing research in this matter?

23 A I had been doing research in nutrition before, but I  
24 was not familiar with the people who became TrueHope  
25 until -- I'm pretty sure it was May of 1996, I  
26 received an e-mail from Dr. Brian Cole. I no longer  
27 have that e-mail, but I'm pretty certain of the

1 month. Dr. Cole, who's on the faculty at the  
2 University of Lethbridge, he's also a physiological  
3 psychologist, neuroscientist, who I had known since  
4 I had moved to the Province, we'd served on a  
5 variety of committees together and so forth. So Dr.  
6 Cole knew that I had an interest in nutrition, he  
7 knew that I had been studying children with ADHD and  
8 mood problems and so forth, and he e-mailed me and  
9 said, there are some people in my office who I think  
10 you should meet, they believe that they're helping  
11 -- I think at that time the focus really was  
12 children, I don't know why in that particular  
13 conversation, helping children with ADHD using some  
14 nutritional intervention, vitamins, minerals,  
15 whatever. And I e-mailed back saying I didn't want  
16 to meet them, and what we all recall my having said  
17 was that I had met with every flake in Alberta, and  
18 I didn't want to deal with any more flaky people,  
19 because I was tired of doing nutrition research, it  
20 seemed to bring out a kind of person I didn't enjoy  
21 working with, so I refused to meet with them. But I  
22 said, Brian, if you want to work with them I will  
23 fax you some questionnaires that are kind of state  
24 of the art questionnaires for what we're using in  
25 our studies with ADHD, and I did that.

26 Q Okay.

27 A I faxed him the questionnaires and totally put it

1 out of my mind. That was in May and I literally  
2 forgot about it until August 11th, 1996, when I  
3 received a fax from Dr. Cole consisting of a  
4 statistical analysis of a small group of children,  
5 and on the graph that he faxed to me it just said  
6 vitamins and nothing more. And I was surprised  
7 because I, certainly in 1996, did not believe that  
8 vitamins could affect -- any kind of vitamin  
9 supplement could affect mental health, could affect  
10 ADHD, in fact, I would say that I was quite closed  
11 minded about it.

12 At any rate it was startling enough, because it  
13 was statistically significant that I picked up the  
14 phone and called him and said, who are these people  
15 and what are they doing? And he actually wasn't  
16 sure, he says they're giving kids a bunch of pills  
17 and liquids, and I don't know what all is in them,  
18 and, Bonnie, you know more about nutrition, why  
19 don't you meet with them. And that's how I agreed  
20 to meet with the people who eventually became  
21 Synergy and TrueHope, is that --

22 Q Okay. And when you say people, you mean Tony  
23 Stephan and David Hardy?

24 A Exactly.

25 Q Okay.

26 A Actually at that first meeting Autumn was present  
27 too, Autumn Stringham.

1 Q Okay. So -- so you meet with them, what came out of  
2 that?

3 A Well I guess the biggest thing that came out of it  
4 was that --

5 Q And I'll just stop you at that point, you say the  
6 people who became --

7 A Yes.

8 Q So --

9 A They -- they hadn't formed TrueHope then, I don't  
10 think they were even using the name Synergy in 1996,  
11 they were just a couple of guys from Southern  
12 Alberta, who believed that they had helped people  
13 with mental problems. They believed they had made a  
14 breakthrough and they were going around to people  
15 like me, searching for scientific validation. They  
16 just wanted people to do research on what they  
17 considered to be a breakthrough, I mean that -- they  
18 didn't have a company or anything.

19 Q Okay. So what happened then?

20 A Well I guess the most important thing that happened  
21 was that I decided I shouldn't be closed minded,  
22 we're not supposed to be in science, and I could see  
23 that these three people at that first meeting, were  
24 not scam artists, I guess is the way I would  
25 describe it, that they were quite genuine. They  
26 were describing observations that they were quite  
27 certain they had seen, for Autumn her own personal

1 experiences were very, very compelling. And it --  
2 my conclusion was it warranted research, and I knew  
3 that I was at that time, and possibly even  
4 currently, the only experimental psychologist in  
5 Canada, studying nutrition and behaviour. It's not  
6 exactly a crowded field. And I was extremely busy  
7 with other research, but I agreed to do a little  
8 pilot study and pursue the topic.

9 It was hard after hearing their stories not to  
10 get involved.

11 Q Okay. So -- so you start -- you basically set up a  
12 little research study or what?

13 A We did. We set up a little study that went from  
14 about September '97 to June of '98. It takes a  
15 while to get these things started and write a  
16 protocol and get it approved by our Ethics  
17 Committee, et cetera, and that's why it didn't start  
18 until '97, and it was in 12 children.

19 Do you want me to describe the design, I'm not  
20 sure there's any point.

21 Q No, not really, because something -- something  
22 happened to that study; right?

23 A That's right.

24 Q Okay. So what happened?

25 A At that time there was no supplement that we now  
26 call EMPowerplus or E-EMPowerplus or anything. Mr.  
27 Stephan and Mr. Hardy were using pills and liquids

1           that they had bought through stores, and so we were  
2           using that program, pills and liquids. But none of  
3           us had any control over the ingredients.

4           Part way through the trial, in fact it was  
5           December of '97, we started to hear reports from  
6           people not in our study, but people in Alberta who  
7           were taking these supplements that the liquid, which  
8           was a mineral solution was no longer helping and  
9           that it even tasted different and it appeared to be  
10          extremely watered down. We kind of panicked, I mean  
11          we had a study dependent upon this that, you know,  
12          assuming that the ingredients would not change. The  
13          TrueHope people -- well they weren't -- again, they  
14          weren't the TrueHope people then, I should say Mr.  
15          Stephan and Mr. Hardy called the company that made  
16          the liquid, tried to get information about what had  
17          changed in the formula, they didn't get anywhere. I  
18          became very worried, I think in January I called the  
19          company, it was down in Florida, and explained that  
20          unbeknownst to them, we were using their product in  
21          a study at the University of Calgary and our study  
22          depended upon there not being any change in the  
23          ingredients and could they please talk to me about  
24          it and what had changed and so forth, and they --  
25          they refused to. They -- this was not a company  
26          that was particularly inclined toward being involved  
27          in research, and they really had no interest in

1 talking to us whatsoever.

2 We were very close to completing our data  
3 collection by about January/February, so we  
4 finished. But we all had this sinking feeling that  
5 -- that we didn't know anymore what our intervention  
6 was, which made it scientifically invalid.

7 Q Okay, so just to put it in plain English.

8 A Yeah, sorry.

9 Q If you're testing a substance to see if it has an  
10 affect --

11 A Yeah.

12 Q -- and the substance changes in the middle of the  
13 trial, then basically it's meaningless, the trial?

14 A It's meaningless. So all the investigators, there  
15 were several of us investigators, a couple of  
16 psychiatrists, the head of the Department of  
17 Psychiatry, Dr. Cole from Lethbridge and myself, and  
18 we got together and looked at the data and it was  
19 uninterpretable, it wasn't that we had found  
20 positive findings or we had found negative findings,  
21 it was simply uninterpretable, which we assumed was  
22 in part because the supplement had changed, we had  
23 no control. And that was one of the hardest things  
24 I've ever experienced in my research where actually  
25 was having to meet with the 12 families and  
26 apologize to them and explain that we just didn't  
27 know, at the end of that study we didn't know

1           whether or not their children's behaviour could be  
2           helped by nutritional supplementation.

3           Q     Okay.

4           THE COURT:                    Mr. Buckley, just a moment  
5           please.

6                         Perhaps this is part of your qualification of  
7           this expert witness, and you intend to get back to  
8           that point. In the normal course what I would do in  
9           qualifying an expert witness is I hear all of the  
10          evidence with regards to qualification and then make  
11          the finding and then go on with --

12          MR. BUCKLEY:                 Oh, and I'm sorry, I --

13          THE COURT:                    -- the evidence and you have  
14          just gone right into the evidence and --

15          MR. BUCKLEY:                 Well, I did --

16          THE COURT:                    -- I have not made any finding  
17          of whether or not --

18          MR. BUCKLEY:                 Right, okay, because my --

19          THE COURT:                    -- she is an expert in those  
20          areas other than to ask her, and she had her  
21          doctorate in experimental psychology.

22          MR. BUCKLEY:                 Right, okay, and we did --

23          THE COURT:                    So I would like to conclude  
24          that part before you go on with any further  
25          evidence.

26          MR. BUCKLEY:                 And you're absolutely correct,  
27          Your Honour.

1 THE COURT: Is there anything further you  
2 wish to ask, or I will ask some questions and then  
3 we will deal with it that way.

4 MR. BUCKLEY: Well I think I will, because  
5 actually when my friend was consenting I just kind  
6 of got in my head we are through that. And I thank  
7 you for stopping me before we went too far.

8 THE COURT: All right, go ahead.

9 MR. BUCKLEY: So --

10 Q MR. BUCKLEY: And, Dr. Kaplan, I apologize  
11 to you, still we need to sort out your expert  
12 qualifications. So I'm just wondering and rather  
13 than just tediously go through your resume, I think  
14 it might be helpful if you give us an explanation of  
15 your educational background and kind of a summary of  
16 your career.

17 A Sure.

18 Q And then we can focus you.

19 THE COURT: And, Dr. Kaplan, I have had an  
20 opportunity to read the first couple of pages of  
21 your curriculum vitae and that is why I asked you  
22 those additional questions, but we had not really  
23 finished.

24 I note that the next, off of pages 3 to 31,  
25 would appear to be studies, awards, grants,  
26 publications and so on.

27 A Right.

1 THE COURT: And I will take a look at  
2 those when I have a moment. But what I would like  
3 you to do is just answer briefly, any questions that  
4 I've asked that Mr. Buckley asks you so we can deal  
5 with the question of qualification first, and then  
6 go on.

7 A Okay.

8 THE COURT: Have you been qualified to  
9 give expert evidence in the Courts before?

10 A No, I haven't. But there aren't a lot of trials on  
11 nutrition and mental health.

12 THE COURT: All right, that is fine. That  
13 is a very standard question a judge would ask --

14 A Yes, sir.

15 THE COURT: -- have you been qualified to  
16 give expert evidence in a Court before.

17 MR. BUCKLEY: And so, madam clerk, I'll ask  
18 if the witness could be shown Exhibit 40.

19 A Okay. Could I give a (INDISCERNIBLE) comment of my  
20 training?

21 Q MR. BUCKLEY: Yeah, let's do that first.

22 THE COURT: Yes, please.

23 A Okay. So my -- I grew up in the States and my  
24 undergraduate degree was at the University of  
25 Chicago, my major was in psychology and I thought I  
26 was headed toward a clinical career. When we hear  
27 the term psychologist, most people think of the

1 people who are out there doing therapist -- therapy,  
2 but that is not the direction I took. I had a very  
3 big interest in the physiological basis of mental  
4 health, and I always you know, took courses in  
5 neuroanatomy and neurophysiology and so forth.

6 So when I went to graduate school, I went to  
7 Brandeis University, which is in Boston, and I often  
8 say that my masters in PhD were from the City of  
9 Boston, because my degrees were from Brandeis  
10 University in experimental physiological psychology,  
11 but I took courses at -- I attended all the  
12 neurology rounds at the Veteran's Hospital in  
13 Boston, I did my research at the Bedford Veteran's  
14 Hospital, I was always in a hospital environment. I  
15 took my neuroanatomy and neurophysiology courses at  
16 Harvard Medical School. I went to Tuss (phonetic)  
17 University for courses, et cetera. You can do that  
18 in a City where there are a lot of universities. So  
19 by then I clearly was interested in pursuing an  
20 academic research career, and I knew that I was  
21 interested in the scientific basis of behaviour, but  
22 I didn't feel I had adequate training in some  
23 aspects of neurophysiology, and so I sought a post  
24 doctoral fellowship, which is a very common kind of  
25 training step that people take when they're headed  
26 toward a scientific research career.

27 So I went to Yale University and I did a post

1           doctoral fellowship that was sponsored by the  
2           Veteran's Administration Hospital, and I worked in  
3           two settings. In the neuropsychology laboratory at  
4           the Veteran's Administration Hospital affiliated  
5           with Yale Medical School, and in the Neurology  
6           Department at Yale Medical School.

7           And in both of those settings I studied -- I  
8           know that this is jargon, and I don't know how to  
9           simplify it, but I was studying single cell  
10          recording, neurophysiology, seizure models, because  
11          that's one way of understanding how the brain works,  
12          is to understand how it -- how it goes wrong when  
13          there are seizures. And so I was in the clinical  
14          world of studying clinical research, but often with  
15          animal models.

16          I finished my post doctoral fellowship and I  
17          went on to the research faculty and that was within  
18          -- in the neurology department at Yale, and would  
19          have I guess gone on there for a long time studying  
20          seizure models, except that I was becoming a little  
21          bored, and wanted to get back to -- remember I  
22          started out with clinical training, wanted to get  
23          back to some clinical research.

24          Now all along, I had had this interest in  
25          nutrition, and in fact when I was still a graduate  
26          student, my very first publication in 1972 was in --  
27          on nutrition and mental deficiency. And I even

1 interviewed for post doctoral training at Columbia  
2 University in New York, to study nutrition and  
3 behaviour. I chose not to do that, I chose to go to  
4 Yale instead, and so that took me way from nutrition  
5 for a little while, although as you'll see I came  
6 back.

7 Am I being too detailed.

8 Q No, no, just -- no, not at all.

9 A Is that --

10 THE COURT: No, keep going.

11 A Okay. So I finished at Yale -- well, I heard about  
12 the job at the University of Calgary, it was a boom  
13 time here, there was a lot of hiring going on, both  
14 at the University and the Children's Hospital, and  
15 in 1978 I was offered the position to set up a new  
16 research unit, the Behavioural Research Unit at  
17 Alberta Children's Hospital Research Centre. So I  
18 came out here in 1979. For me it was an opportunity  
19 to get back to more human, and I really didn't want  
20 to pursue animal models anymore, so it was clinical  
21 research in a clinical setting, hospital setting,  
22 which is what I wanted, and it was an opportunity to  
23 set my own research agenda, which was very exciting.  
24 It was a lot more freedom than someone my age  
25 usually would have in an older institution like  
26 Yale, so it was very good opportunity.

27 I didn't immediately go back to studying

1 nutrition, that took a few more years. But in the  
2 1980's a very -- well, I'm sorry, if I could start  
3 that sentence again. What I was focussing on a lot  
4 were the developmental problems that you find in a  
5 Children's Hospital, and those include Attention  
6 Deficit Hyperactivity Disorder and learning  
7 disabilities.

8 So I have spent a great deal of my career  
9 studying learning and attention disorders. A huge  
10 topic of interest in the 1980's in the area of ADHD  
11 was nutrition and behaviour, and in particular the  
12 Finegold (phonetic) diet, you may never have heard  
13 that term before, but Finegold was an allergist in  
14 the United States who believed that you could help  
15 the behaviour of children, not by supplementing, but  
16 by restricting their food, but restricting it to  
17 healthy food. He believed that children did better  
18 if you took them off of artificial colours,  
19 artificial flavours, preservatives, all those kinds  
20 of chemical foods and put them on natural, whole  
21 foods.

22 So we did a clinical trial of that in the  
23 1980's, it was actually I think one of the largest  
24 such trials that's ever been done on that approach  
25 to helping children with ADHD with their behaviour,  
26 and I pursued a few other studies in relationship to  
27 nutrition and behaviour around that time in the

1 1980's. That is when I found that this field of  
2 nutrition and behaviour really does draw and attract  
3 people who have very strong beliefs. I always say  
4 you can study genetics, as I've done, I've studied  
5 the genetic basis of dyslexia for a number of years,  
6 and most people don't have an opinion, but everyone  
7 has an opinion about nutrition and behaviour,  
8 because we all eat. Everyone is actually rather  
9 rigid, I think, in terms of their opinions, and I  
10 found it very difficult to deal with that kind of  
11 fanaticism that I encountered. I think that might  
12 be in part why when I first heard about Mr. Stephan  
13 and Mr. Hardy, I really just didn't want to deal  
14 with anymore of it.

15 And so I -- at the end of that set of studies  
16 on nutrition and behaviour in the 1980's, I think  
17 the last one was published in about '92, okay. I  
18 went back to behaviour genetics, understanding the  
19 biological basis of learning and attention problems,  
20 which to me is a very important area of research and  
21 kept me happily employed for a few more years until  
22 I heard about this work.

23 Does that --

24 Q MR. BUCKLEY: Yes, I think that's a good --

25 A Okay.

26 Q -- summary.

27 MR. BUCKLEY: Your Honour, I don't -- I

1 don't see the need of going through her different  
2 publications on nutrition and things like that, so I  
3 have no further questions in the area of qualifying  
4 her as --

5 THE COURT: What was the study again of  
6 the (INDISCERNIBLE), you said it was a very large  
7 clinical trial study in the '80's on ADHD?

8 A Right. Right. Do you want me to describe it?

9 THE COURT: Just tell me --

10 A Just briefly?

11 THE COURT: -- briefly what it was?

12 A This was in preschool aged boys, they were aged  
13 three to five. Although it was a very large study  
14 there were only 24 children, and it's just that what  
15 was extraordinary about it was that we provided all  
16 the food for the entire families of all 24 boys for  
17 I think it was two and a half months, in plain brown  
18 wrappers. That's not my work, that's the dietician  
19 I worked with was extraordinary. And the idea was  
20 that they would not be able to guess the ingredients  
21 of what they were eating, and that was a really a  
22 herculean effort.

23 What we found is also very interesting. We  
24 found that roughly 50 percent of the boys  
25 experienced roughly a 50 percent behavioural  
26 improvement when on a clear, healthy diet, clear of  
27 the additives. That was a dramatic improvement to

1 many of these families. And in terms of the  
2 scientific literature on additives and behaviour it  
3 was a -- a very large magnitude of fact. But there  
4 was such a bias in the scientific and political  
5 world, that it was a situation where was the glass  
6 half empty or half full. A lot of people dismissed  
7 the role of additives saying, well you know, only  
8 half the kids just got partially, we didn't cure  
9 them, they weren't transformed.

10 So it was -- it was very interesting to see how  
11 that was interpreted through, you know, bias in my  
12 opinion. Is that enough detail?

13 THE COURT: Yes. No, that is enough on  
14 that particular study.

15 A Sure.

16 THE COURT: I am just going to take a  
17 moment --

18 MR. BUCKLEY: Thank you.

19 THE COURT: -- with your CV here?

20 A Sure.

21 MR. BUCKLEY: Ms. Kaplan, can you turn to  
22 page 9.

23 THE COURT: Oh, just a moment.

24 MR. BUCKLEY: So --

25 THE COURT: I am going to take a look at  
26 it first --

27 MR. BUCKLEY: Okay, thanks.

1 THE COURT: -- sorry.

2 MR. BUCKLEY: Yeah.

3 THE COURT: And for the record, I have  
4 reviewed the narrative part of the curriculum vitae  
5 dealing with her educational -- or Dr. Kaplan's  
6 educational and professional background. I note a  
7 rather impressive few pages with regards to awards  
8 and grants that she has been awarded and  
9 participated in. Also a number of scientific review  
10 committees, and other institutional committees.

11 The summary of her publications and original  
12 articles begins on page 7, and runs through to page  
13 14, where it continues but with more specific  
14 headings.

15 And as Dr. Kaplan has indicated, her first  
16 publication was 1972 in the Psychological Bulletin  
17 entitled, Malnutrition and Mental Deficiency.

18 It appears she also did several studies  
19 relating to bio feedback in epileptics. I am not  
20 about to detail the 85 some articles and  
21 publications that are described over the course of  
22 the next several pages, except to state that I am  
23 satisfied from reviewing that, that Dr. Kaplan has  
24 done considerable research in the areas involving  
25 matters such as nutrition and behaviour in children.  
26 The studies stem to adults as well.

27 A Actually only so -- probably from 2001, it has been

1           mostly in children otherwise.

2           THE COURT:                   I note as well on page 14  
3           there is a list of publications where she has  
4           written or contributed to the chapters of a number  
5           of books, and again, I am not going to go through  
6           them in any detail, but I note the seventh one  
7           listed deals with adult learning disorders and  
8           contemporary issues, and that is in the  
9           Neuropsychology Handbook Series.

10                   There are further books, publications,  
11           abstracts and reviews as described on page 15  
12           onwards in her CV, all dealing with the fields of  
13           experimental psychology and neuropsychology.

14                   All right, now do you have any questions, any  
15           further questions you wish to ask of this witness.  
16           I have already asked her with regard to a previous  
17           -- whether or not she has been previously qualified  
18           to give expert evidence in Court, and I have the  
19           answer. Do you have any further questions you  
20           wished to ask?

21           MR. BUCKLEY:                   I did, Your Honour.

22           THE COURT:                   Go ahead.

23           Q     MR. BUCKLEY:           So if I could refer you to  
24           page 9 of your CV, Ms. Kaplan, and it's -- page 9 is  
25           a section involving publications. My first question  
26           is really a general question as to whether or not  
27           when you seek publication you're selective in the

1 types of journals that you will publish in?

2 A Well one always tries to publish in the best  
3 journals, one is not always able to do that. Some  
4 work that scientists do you kind of know, well this  
5 is not a blockbuster, so I'll send it to kind of a  
6 second line journal. But by and large, I've  
7 published in very good journals.

8 Q Okay. Now in number 23 cites a 1988 study called  
9 The Relevance of Food for Children's Cognitive and  
10 Behavioural Health?

11 A Mm-hm.

12 Q Is that the study that you were talking about with  
13 the food additives?

14 A No, that is a summary commentary two down, number  
15 25, that was published in a major journal called  
16 Pediatrics.

17 Q Mm-hm.

18 A That's the journal of the American Pediatrics  
19 Society. That is the primary research paper from  
20 that study.

21 Q Okay, and what about 26?

22 A Twenty-six was -- well the second author there, Jane  
23 McNichols (phonetic), the dietician that I referred  
24 to.

25 Q Yes.

26 A And we were able to take a look at over -- how --  
27 how children eat in preschool. So sometimes when

1           you do a major study line number 25, the clinical  
2           trial, you're collecting data on some subsidiary  
3           questions that you're able to publish, and that's  
4           one of them.

5                     Journal of Abnormal Child Psychology is a major  
6           journal, it's part of the American Psychiatric -- or  
7           American Psychological Association.

8       Q       Okay, and is --

9       A       Number 27 is a similar story by the way.

10      Q       Okay. What about number 37?

11      A       Oh, that was a follow up. We -- the kids that we  
12           studied, those 24 children, we studied them again in  
13           1992, and asked the question you know, now that  
14           we're no longer providing food for the families in a  
15           plain brown wrapper, are parents following the  
16           diets, are they still -- you know, those whose  
17           children got better, were they able to comply with  
18           that kind of diet.

19      Q       Okay.

20      A       You don't want to know the answer. It was a little  
21           disappointing. It's just a struggle to control what  
22           your child eats, that's the bottom line.

23      Q       Okay. What about number 78?

24      A       This is one of two articles on Germanium  
25           (INDISCERNIBLE) oxide, which number 78 and 79, and  
26           these articles were prepared as a result of the  
27           Health Canada Challenge to the EMPOWERplus

1 supplement. Now I haven't been in Court all last  
2 week, so I don't know if you covered that?

3 Q No, but anyway, but you had to do a bunch of  
4 research into Germanium?

5 A I did. And now an experimental psychologist is a  
6 world expert on Germanium, not that I ever chose to  
7 be, but there are only a handful of people who care  
8 about this dietary ingredient, and we found that  
9 there was an error in the literature, in the  
10 scientific literature coming out of Japan in 1987,  
11 which had misled both the Canadian and the US  
12 Government into thinking that Germanium  
13 (INDISCERNIBLE) oxide was unsafe. We found that in  
14 1988 the error had been corrected in the scientific  
15 literature, but the people -- the FDA and at Health  
16 Canada had never noticed that correction, so we  
17 wrote two articles, one on the chemistry and the  
18 potential positive effects of Germanium, in fact the  
19 anti-cancer effects. And in fact, I've interested  
20 some oncologist recently to do research on Germanium  
21 as a result of that.

22 And number 79, if you'll notice the sub-heading  
23 is, Scientific Error as an Obstacle to Progress, and  
24 it was just like a detective story, finding out how  
25 a mistake in the medical literature has led to all  
26 kinds of problems all along the way. It was very  
27 interesting, but we published those in the

1 Alternative Health Care Journal, because those are  
2 the people who are particularly interested in  
3 natural ingredients.

4 Q Okay. On page 14, as far as publications, the  
5 Court's referred you to number seven, so  
6 publications, books, chapters, but I see number  
7 three that you have written a book chapter on Issues  
8 and Design and Data Analysis?

9 A In relationship to nutrition and behaviour, that's a  
10 text that was -- this is a little old now, this is  
11 back in 1984, but it was a European textbook on  
12 studying nutrition.

13 Q Okay, so basically --

14 A So --

15 Q -- it was on how to design and do data analysis --

16 A Yeah.

17 Q -- for nutrition studies?

18 A Right.

19 Q Okay. And then number four is a chapter called,  
20 Food, Nutrition and Mental Health?

21 A Yes. I was delighted to write that, that's the  
22 encyclopaedia of mental health and I was asked to  
23 write that chapter.

24 Q On page 16, it's in the section, publications,  
25 abstract reviews and commentaries. Number 15 you've  
26 written, it's called, Nutrition and Behaviour, How  
27 to Interpret Data Collected with the Challenge

1 Paradigm. What's that all about?

2 A Well this is -- you know, it's one thing to do  
3 clinical trials where you put people in groups and  
4 you try to interpret group data. But what we find  
5 in the nutrition field is there is a lot of  
6 heterogeneity or individual differences. And  
7 certainly when we were looking at food additives,  
8 which is not the topic of this trial, I know, but in  
9 the food additive realm it seemed as if there were a  
10 lot of individual differences that would be best  
11 studied within one single subject design, using  
12 challenges. So you put them on a healthy diet and  
13 then in a blinded fashion you challenge the system  
14 by giving them some additives and they wouldn't know  
15 when it was, when they were getting the real thing  
16 and when they were getting a placebo.

17 Q Okay.

18 A So we had a lot of hopes of using that design in  
19 nutrition and behaviour.

20 Q Okay, so basically it was to address some -- some  
21 clinical research problems that are faced when  
22 you're studying nutrition?

23 A Right, a methodological kind of problem, right.

24 Q And number 18, you have publication, Effects of  
25 Comprehensive Dietary Intervention on the behaviour  
26 of Hyperactive Boys.

27 A Well now what you're getting into is some overlap,

1           because these are the abstracts.  Some overlap with  
2           -- these are like preliminary reports --

3           Q     Mm-hm.

4           A     -- because they're abstracts, they're what you go to  
5           conferences and present at meetings.  The full  
6           report was in the previous pages.

7           Q     Okay, fair enough.

8           A     Okay.

9           Q     And those are my questions, I don't know if my  
10          friend has any questions.

11          THE COURT:                     Mr. Brown?

12          MR. BROWN:                    No, sir, I think frankly that  
13          both yourself and Mr. Buckley have covered the CV  
14          quite well, and I don't have any additional  
15          questions.  I was a little surprised, I didn't  
16          realize that Dr. Kaplan hadn't been -- hadn't  
17          testified before, I hadn't asked Mr. Buckley that  
18          question, but at any rate, I continue to have no  
19          objection with her being sworn in as an expert, as  
20          my friend outlined earlier.

21          THE COURT:                    Thank you.  All right, I am  
22          satisfied on the evidence given by Dr. Kaplan and on  
23          the review of her very impressive curriculum vitae  
24          that she will be qualified today as an expert in  
25          experimental psychology and neuropsychology, and in  
26          particular to answer questions and provide expert  
27          opinion answers in two areas, and they include the

1 effects of nutrition on mental health conditions,  
2 and also in running and the interpretation of  
3 clinical research.

4 MR. BUCKLEY: Thank you, Your Honour.

5 THE COURT: All right.

6 MR. BROWN: Yes, sir.

7

8 \*Mr. Buckley Examines the Witness

9

10 Q MR. BUCKLEY: So, Dr. Kaplan, I'm going to  
11 take you back because we did kind of go into  
12 evidence that didn't have to do with your expertise,  
13 but we're not going to walk through that again. But  
14 you had explained about how there was this trial  
15 starting in the fall of '97 and ending in I think it  
16 was June of '98, that basically became  
17 uninterpretable, because the nutritional supplement  
18 had changed?

19 A Right.

20 Q Okay. So what happens after that?

21 A Well that was pretty upsetting, and I'd say for  
22 quite a few months I just went back to doing what  
23 I'd been doing, my other -- my real career, as I  
24 thought of it at the time, studying kids with  
25 developmental problems, and in particular the  
26 genetic basis of dyslexia, which I was focussing on  
27 at the time. And I wasn't in touch for I think

1 quite a few months with either Mr. Stephan or Mr.  
2 Hardy, and at a certain point it became clear that  
3 there was no way I could continue studying their  
4 idea unless I had a -- I'll call it a product,  
5 although I don't think I was thinking in those terms  
6 then, but some kind of intervention which was  
7 constant, which had reliable ingredients, which --  
8 where you knew exactly what the ingredients were and  
9 they didn't decay with time and they didn't change  
10 over time. And so that conversation I'm sure went  
11 on at some point with Mr. Stephan and Mr. Hardy,  
12 around the same time they were for other reasons I  
13 think, coming to the conclusion that they would have  
14 to design a product.

15 Q Okay. So what happened?

16 A So they did, they went out and -- I'm sure they can  
17 tell the story better than I --

18 Q Okay, but, yeah, because --

19 A -- but somehow designed the product, got one made  
20 and asked me to study it.

21 Q Okay, so they ask you -- they come back and say,  
22 we've got a product, will you study it?

23 A That's right.

24 Q Okay, so what happened then?

25 A Well the pause gave me an opportunity to step back  
26 and say, let's go with this a little more gradually.  
27 So what I've tried to follow now is a systematic

1 program of research with case studies, open label  
2 case series and then randomized control trials, and  
3 I'll explain each term, but I need -- I know it's  
4 jargon, but I'm afraid I need to use it. A case  
5 study means where you're with a single individual  
6 child in this case, monitoring carefully their  
7 reaction to an intervention, studying it carefully,  
8 quantifying it, observing it, et cetera.

9 Case series is a group of people, you could say  
10 a case series is a bunch of case studies put  
11 together, but there's something similar about them  
12 so that you group them. And open label means that  
13 they can see the label, they know what they're  
14 getting, there's no placebo. So everybody can read  
15 what they're getting, everybody knows what they're  
16 getting, they're all getting the real thing, no  
17 placebo. And then the third and final step is a  
18 randomized control trial, we call them RCTs. What  
19 we mean by an RCT is people are randomly assigned to  
20 get either active or placebo. It's controlled in  
21 the sense that it's placebo controlled and it's  
22 fully blinded, meaning the person taking the pills  
23 doesn't know what they're getting, the people  
24 assessing them don't know what they're getting, the  
25 psychiatrists treating them don't know what they're  
26 getting. It's sometimes called double blind, it's  
27 really kind of triple blind, because there are lots

1 of people involved and everybody is blinded. It's  
2 only a pharmacy that makes up a code that knows what  
3 bottle holds what. That's what I have on the slides  
4 are those three steps.

5 MR. BUCKLEY: Okay, and, Your Honour, I'm  
6 just -- Dr. Kaplan has had to present this type of  
7 information before and she's developed some slides  
8 for doing that. And I think her evidence will just  
9 flow a lot easier if we allowed her to use slides.  
10 I've given my friend a copy of -- she actually  
11 usually uses quite a few more but I've had her pare  
12 them down. And I don't think my friend objects. I  
13 just think the evidence would flow better.

14 MR. BROWN: That's right, I took a look  
15 through this when my friend handed it to me around  
16 the beginning. And Dr. Kaplan's evidence may very  
17 well be useful in terms of a visual aid. I am  
18 interested in getting the best evidence before this  
19 Court possible, and my friend is -- and Dr. Kaplan  
20 believe that these slides will do that, then there  
21 may be value in having it before the Court. How it  
22 will ultimately end up in the record I'm not  
23 certain. I guess the slides will be made an exhibit  
24 at some point and Dr. Kaplan will have spoken to it,  
25 so if that's the point, I don't have any objection  
26 to these slides ultimately becoming an objection  
27 (sic), if that's what my friend intends to do.

1 MR. BUCKLEY: It is. I think so that the  
2 record's clean, and that's why I have colour copies  
3 that mirror exactly the slide she's going to refer  
4 to, because if you're going to refer to a slide in  
5 the record that we're observing, I think the Court  
6 record has to have a copy of it.

7 THE COURT: Is Dr. Kaplan going to be  
8 referring to every one of the copies that you have  
9 here?

10 MR. BUCKLEY: Yes.

11 THE COURT: And you just reproduced the  
12 (INDISCERNIBLE) Power Point --

13 MR. BUCKLEY: It is, it's actually just a  
14 print out of the slides that she was planning on  
15 using.

16 THE COURT: Of every (INDISCERNIBLE) on  
17 the slides?

18 MR. BUCKLEY: Yes.

19 THE COURT: All right, that is fine. I do  
20 not have any difficulty with that, I think it would  
21 be very effective, both for presentation in the  
22 courtroom and also for the sake of the record by at  
23 some point in time, making these copies an exhibit  
24 in the proceedings.

25 MR. BUCKLEY: And what I will do is I will  
26 give Dr. Kaplan a copy of these slides, and just as  
27 she goes through her Power Point she can confirm

1           that they're the same slides and then we'll enter  
2           her copy.

3       A     Okay.

4       THE COURT:                   Thank you.

5       A     Okay, thank you.  The point of the first slide is to  
6           show you the five scientific publications that I'm  
7           going to be referring to, and I would like to draw  
8           two points to your attention.  First of all, that  
9           three of the studies there, numbers one, three and  
10          five, are from my -- myself and my colleagues at the  
11          University of Calgary.  Items two and four are  
12          replications, independent replications from the  
13          States.  And I actually don't remember why I put  
14          these in that exact order, but I'll be talking about  
15          the replications last, very briefly.

16                 The second point I wanted to draw to your  
17                 attention from this slide is that these are all  
18                 first line, major medical journals.  The Journal of  
19                 Clinical Psychiatry is one of the most widely read  
20                 psychiatric journals in the world, certainly in  
21                 North America.  The Journal, Child and Adolescent  
22                 Psycho-Pharmacology is also a major journal, and the  
23                 only reason I make this point is that it matters to  
24                 me a great deal that -- that this research all be  
25                 published in -- oh, let me start that sentence  
26                 differently.

27                 If we are going to continue to be able to show

1 the validity of the observations made by Mr. Hardy  
2 and Mr. Stephan, then we want it to be drawn to the  
3 attention of establishment science and medicine, and  
4 we don't want to publish in the -- there are all  
5 kinds of journals out there in complimentary and  
6 alternative medicine, there are companies that  
7 publish magazines that they call journals. I don't  
8 want anything out there, I want it in traditional,  
9 major medical journals. So I'm just drawing to your  
10 attention that all of these have been peer reviewed  
11 in major medical journals.

12 Q Now when you say peer reviewed, what's the --

13 A Yes.

14 Q -- what process does that involve?

15 A Well, actually I'm glad you asked me, because only  
16 four of the five were peer reviewed. Dr. Simmons,  
17 number four, is actually a letter to the editor, so  
18 it's reviewed only by an editor. But the others are  
19 peer review, which is the way in which science  
20 works, or sometimes works sluggishly. It's  
21 everything that we apply for in the way of funding  
22 is reviewed by other scientists, so they decide  
23 whether we get the money, and when we go to publish  
24 our work and we submit to say the journal of  
25 clinical psychiatry, the editor sends it out to  
26 experts around the world who are our peers, and they  
27 decide whether or not it's publishable, whether it

1 has to be edited and so forth.

2 Q Okay.

3 A That's our peer review. Okay. So --

4 Q I was also just going to stop you, you made a  
5 comment that two of those publications are basically  
6 independent confirmations.

7 A Yeah. Yeah.

8 Q And what -- why would that be significant to your  
9 research?

10 A Oh, it's significant in science. If you can't -- if  
11 it isn't replicated independently in other  
12 laboratories, it's not real, it's not valid, it's  
13 not acceptable, it's extremely important.

14 Q Okay.

15 A In -- in any area, okay. Okay, so I'm going to  
16 start out with two case studies, they're the only  
17 two we published, and each one is a very special  
18 young boy. We were studying them as part of the  
19 open label case series that I'll be talking about  
20 that they couldn't go on and be included in those  
21 databases, because of something that happened in  
22 each of their lives, and that is you know, you can't  
23 -- you can't control children's lives, and although  
24 we asked families to keep everything constant, in  
25 both cases the boys were taken out of regular  
26 classrooms and put into special settings  
27 independently of each other. And so there was a

1 major environmental shift, and that affected the way  
2 we studied them. I think I can explain it best by  
3 showing -- showing you that individually.

4 So the first boy was a child who was initially  
5 diagnosed as having autism when he was very young.  
6 And a couple of years later, by about the age of  
7 five, they had decided that he was on the -- what we  
8 call the autistic spectrum, PDD, which stands for  
9 Pervasive Developmental Disorder, but he probably  
10 had high functioning autism, which we now tend to  
11 call Asberger's Syndrome. He certainly met criteria  
12 for a very severe form of Attention Deficit  
13 Hyperactivity Disorder, he had severe learning  
14 disabilities, he had huge rage attacks. When I say  
15 mood problems there, he had just explosive rage, and  
16 would go running down the street to the 7-11 and  
17 calling 9-1-1 and calling -- reporting his parents  
18 for child abuse, or reporting his teachers or  
19 whatever. He was very difficult to manage, and in a  
20 regular school he had a full time teacher's aid. So  
21 frankly, this child was costing a lot of money and  
22 grief to family and the school system.

23 I need to show you on the next slide, I might  
24 come back to this, what happened to him when we put  
25 him on the supplements. Now this was EMPowerplus,  
26 the version of the 32 capsule version, which has  
27 been mentioned in the courtroom has it?

1 Q Well don't worry about what's been mentioned --

2 A Okay.

3 Q -- but just tell us what you were using.

4 A Okay. All five of the articles that I was talking  
5 about, all of them used what we now think of as an  
6 old version of EMPowerplus, which was 32 capsules.  
7 For this child, a priori, we decided that what we  
8 were most interested in were mood and temper, and  
9 they were monitored by the parents on a scale, where  
10 the maximum score was three. At base line, before  
11 the child was given any supplementation, he was in  
12 terms of mood, he had a pretty severe score of about  
13 a two and temper outbursts also relatively high.  
14 This means it's a degree of severity, so he was a  
15 big problem.

16 After he went on the supplements, his mood was  
17 way down, much less of a problem and he just wasn't  
18 having temper outbursts much at all, and then he  
19 changed schools. And so this is -- he's in a very  
20 interesting family, his mother's a special education  
21 teacher and who devotes her life to helping kids  
22 with problems like these and is very understanding,  
23 in fact, I've often thought that many other parents  
24 would have had him up at a three, not a two. But  
25 she's, you know, she's used to dealing with these  
26 problems. And he also has three older siblings, who  
27 have been extra parents for him, so it's a very

1 supportive family environment.

2 Now the family came to me and said, we're so  
3 impressed, he's so much better and we have no idea  
4 why. Is it because of the supplements, or is it  
5 because of the change in school. And the only way  
6 -- I mean, we weren't going to take him out of the  
7 new school placement, so the only way we could  
8 address that question was to take the supplements  
9 away from him.

10 The parents wanted us to continue to collect  
11 the data, which we did, and I asked permission to  
12 graph it and publish it and that's what we did here.

13 So the next bar on the graph is what happened  
14 when he was still in his good new school placement,  
15 but he didn't have supplements anymore.

16 Q Now when you say supplements you mean the  
17 EMPowerplus?

18 A The EMPowerplus.

19 Q Okay.

20 A May I use the word supplements --

21 Q Yes.

22 A -- somehow I use it a lot. Okay. The same thing  
23 with his temper, right back to base line, huge  
24 problems in the new setting. And then we put him  
25 back on his supplements and you can see that he  
26 returned very -- very close to zero, I mean he did  
27 really, really well.

1           This child -- that's why I have my reading  
2 glasses, that's why I don't do that. Can I just  
3 ignore the menu? Will the menu go away by itself,  
4 Ian?

5 UNIDENTIFIED SPEAKER:       If you press the menu button  
6 it should disappear again.

7 A   Okay, thank you.

8 Q   MR. BUCKLEY:            Okay, so you're back now to  
9 your first slide called, Case Study?

10 A   I am back to the first slide, because I didn't  
11 remember the number I'd put on here.

12 Q   Or second slide, same case study?

13 A   Right. I -- I just wanted to make a point that this  
14 was pretty amazing data to show a reversal design  
15 like that, and to show on/off control of symptoms in  
16 a child who had so many problems. So before we  
17 published the data we monitored him for four years,  
18 and I actually have followed the family longer than  
19 that now, and he has continued to do quite well. He  
20 is not a normal child, he still has Asberger's  
21 Syndrome, he still has some difficulties, but he's a  
22 -- a --

23 Q   No, but when you say you followed him --

24 A   Yeah.

25 Q   -- is that on the supplement, off the supplement?

26 A   He -- well that's an interesting question. This  
27 family is a little bit disorganized sometimes, as

1 many families are with four children, and they  
2 sometimes have run out of supplement and have called  
3 me in a panic and said, do you know anybody in  
4 Calgary we can borrow some from until ours arrives,  
5 and because he's really regressing. So they  
6 themselves continue to do, accidentally, if you  
7 will, kind of on/off experiments with this young  
8 man. He's now -- he's now in grade 12, finishing  
9 highschool, and by the way, there was a time when I  
10 don't think any of us thought he could finish  
11 highschool, and he's doing very well, and I think  
12 he's now kind of taken responsibility and he makes  
13 sure that his mother gets it ordered, okay.

14 Q Okay.

15 A So he's -- okay. So the second boy I'd like to tell  
16 you about is a little more complex.

17 Q I'm just going to say for the record --

18 A Yes.

19 Q -- you're referring to a slide that has on the top,  
20 Boy H-8.

21 A This boy was described as being a very normal and  
22 happy child until the age of four. He comes from a  
23 family that I would describe as very mellow,  
24 frankly, very soft spoken parents. Mother is an  
25 elementary school teacher, father has done a variety  
26 of different jobs, but they are quiet people, and  
27 when their son started changing I think it was

1 extremely overwhelming and they were in the mental  
2 healthcare system for the four years before he came  
3 to me, and to our study.

4 He certainly was -- he had -- he had a number  
5 of symptoms, which together added up to something  
6 very scary. He had what is called atypical  
7 obsessive compulsive disorder, typical OCD,  
8 obsessive compulsive disorder involves both  
9 obsessions and compulsions. The obsessions are  
10 thoughts that ruminate in your head that you can't  
11 stop, the compulsions are behaviours, you feel  
12 compelled to do certain things like tapping or  
13 tapping windowsills or flicking light switches off  
14 and on seven times, that kind of thing, those are  
15 compulsive behaviours. This child had no compulsive  
16 behaviours that we were ever able to detect, his  
17 psychiatrist therefore diagnosed him as having  
18 atypical OCD, because he clearly had the obsessions.  
19 His obsessions were with guns and knives, and it was  
20 so out of character because he -- he really was a  
21 very sweet, gentle little boy, but all the words  
22 that came out of his mouth was about knives and  
23 guns.

24 Then by the age of six he was having explosive  
25 rage attacks, where they've bout in public and just  
26 nothing, some little thing would set him off, and  
27 the family, by the time they came to me, I actually

1 got an independent phone call from the grandmother  
2 in I think it was Nova Scotia saying, you have to  
3 understand that they're afraid to be in the house  
4 with him, he's only eight, he's a sweet little boy,  
5 but when he has these rage attacks and all he can  
6 talk about are guns and knives, they're really  
7 beginning to wonder if they can keep him at home.  
8 So it was a very frightening combination.

9 Now I put the word bi-polar here in quotation  
10 marks, and I need to say a word about that, that  
11 will be relevant to all the rest of my work.

12 Bi-polar disorder technically is an adult  
13 diagnosis, not a child diagnosis. And when I say  
14 technically, I say according to the American  
15 Psychiatric Association, whose diagnostic categories  
16 are in something called the DSM, the Diagnostic and  
17 Statistical Manual, which is in the fourth edition,  
18 so we call it the DSM-IV.

19 Bi-polar disorder is more and more being  
20 diagnosed in children, but sometimes it's a little  
21 hard to do because some of the criteria are not  
22 child behaviours, like excessive sexuality, for  
23 example.

24 So at the time that we were seeing this child,  
25 bi-polar disorder, I had not yet found a child in  
26 Calgary who had been diagnosed with bi-polar, I'd  
27 never heard of it yet. Now I'm beginning to hear it

1 a little bit more, but it's still very contentious,  
2 okay.

3 This child, the reason I put it in quotation  
4 marks, is that he certainly had all the symptoms of  
5 adult bi-polar disorder that you could see in a  
6 child, the irritability, the explosive rage, being  
7 the kind of manic symptoms, and intense depression  
8 and withdrawal. His teachers were especially  
9 concerned about his depression at times.

10 So again I'm going to jump forward to the graph  
11 and show you what happened, and then I'll come back  
12 for the final two bullets here. No, I keep getting  
13 forward and reverse. I'm not sure how well that  
14 shows up for you.

15 I'd like to talk to you about the red line,  
16 you've got the print out there, Your Honour. The  
17 red line is from a measure of OCD, the Yale Brown  
18 Obsessive Compulsive Scale, using only the  
19 obsessions, there was no point in interviewing him  
20 for the compulsions. He had an extremely high  
21 score, on a maximum of 14 he was right up there near  
22 the top. So he had severe obsessions.

23 He started to get a little bit better at our  
24 second visit, each one of these is an interview at a  
25 visit. And right around here, what happened was  
26 that he was informed that he was going to be moved  
27 out of his school and into a new one, and that

1 really raised his anxiety and made him worse in lots  
2 of ways, and so there's this little bit of bouncing  
3 going around here, but you can see that he's a boy  
4 who is not in very good shape. He started the  
5 supplements, sorry, I should have told you that  
6 first. He started the supplements immediately after  
7 our first visit. So it would have been nice to have  
8 a straight downward line here, but there was a lot  
9 of agitation going on here in his life, he didn't  
10 want to change schools, as so many children don't.

11 He did change schools, continued on the  
12 supplements, and as you can see his score came way  
13 down. So I met with the family, remember the mother  
14 is a school teacher who has of course a lot of  
15 faith, as I think we all do who have been parents,  
16 in the importance of a school environment affecting  
17 a child's behaviour, and they said to me, he's  
18 great, the obsessions are almost gone and I could  
19 see that myself from the interview I was doing, the  
20 Yale Box, but we don't know why. Is it because he's  
21 in the new school, or is it because of the  
22 supplement.

23 And so I was in the exact same position I'd  
24 been in with the other child, I was saying I can't  
25 prove it either way myself, you aren't going to put  
26 him back in the first school, there's only one way  
27 for us to try to sort this out together, and that is

1 to stop the supplements, and may I continue  
2 interviewing him, and would you continue keeping  
3 track of the data, and they were very pleased to do  
4 that.

5 So what you have here is a reversal, we stopped  
6 the supplements and his behaviour started to get  
7 worse. And, oh, I'm sorry, I shouldn't have called  
8 it behaviour, it was really obsessional thinking,  
9 started going back up. At this point, which was  
10 September of 1999, the family panicked. They were  
11 so frightened of going back to you know, what it had  
12 been up here, that they called me and said we just  
13 -- we're too scared to see what's happening with  
14 him, we can see it coming back, we can't talk to  
15 him, everything is about guns and knives, he turns  
16 everything into a gun or a knife, every toy becomes  
17 a tool, a weapon, and he's having rage attacks too  
18 again, although moderate compared to initially. And  
19 they said, we have to go back on the supplement.  
20 And so we put him back on the supplement here,  
21 sorry, here, and as you can see, he improved again.

22 Now before I tell you a little bit more about  
23 him, let me point out what the yellow dots are. The  
24 yellow dots refer to a broad spectrum behavioural  
25 inventory that we often use. It's one of the most  
26 validated measures out there for child behaviour  
27 called, The Child Behaviour Checklist, or the CBCL,

1 and it's going to appear in some other slides, so I  
2 would like to just describe it to you very briefly.

3 It consists of eight sub-scales, and some of  
4 them will be on future slides, and they -- they  
5 assess a child's attention problems, aggression,  
6 delinquent behaviour, withdrawn behaviour,  
7 depression, et cetera. Okay.

8 So what this is showing you is that of the  
9 eight -- of the eight sub-scales, seven of them were  
10 in the clinically elevated range, and the clinical  
11 elevation is two standard deviations, can I say  
12 that, above the mean for normal children. So it's a  
13 very severe score.

14 So the maximum on this graph of what this boy  
15 could have for the CBCL is an eight, and he was at a  
16 seven.

17 Then as he responded to the -- we can't -- oh,  
18 you can't administer the CBCL too often, Your  
19 Honour, because it's so tedious, a parent can't fill  
20 it out at every visit, it's very lengthy. So we did  
21 it at base line, and then as you see, when he came  
22 back and was doing very well, not a single one of  
23 his scales was clinically elevated, it was down to  
24 zero. So in other words, he looked like a normal  
25 child in terms of attention, behaviour, depression,  
26 et cetera.

27 And then when they were panicky and came back

1 for this appointment, I asked the mother to fill it  
2 out again, and three of the scales were elevated and  
3 as I recall, they were essentially anxiety,  
4 depression and aggression.

5 There should have been a fourth data point with  
6 the child behaviour checklist, that would have been  
7 ideal, but to be honest with you when I asked the  
8 parents to fill it out one last time, they kind of  
9 groaned and said, oh, do I have to, it's really  
10 tedious. And of course they didn't have to, they're  
11 -- everybody's who's in research is a volunteer and  
12 so that's why we don't have a final data point.

13 Q Now, Dr. Kaplan --

14 A Yes.

15 Q -- before you switch slides, just because this is  
16 being tape recorded, I just want to make sure that  
17 our record's clear. So there's a first yellow dot  
18 on -- there's a date two -- I guess it would be  
19 February 25th, 1999?

20 A That's right, that's base line.

21 Q Okay. And there's a second yellow dot between May  
22 25th, 1999 and June 25th, 1999?

23 A Right.

24 Q Okay. Now just above that yellow dot is basically  
25 the bottom of the red lines that represents the  
26 YBOCS?

27 A Right.

1 Q Okay. That is where the child stopped taking the  
2 supplement?

3 A Well immediately after that, yeah.

4 Q Okay. And then the second yellow dot is at  
5 September 25th, 1999.

6 A The third one.

7 Q Or I'm sorry, the third. That represents when the  
8 child went back on supplement?

9 A That's correct.

10 Q Just so that if somebody's reading the record, they  
11 can interpret what you've said.

12 A That's -- that's correct, where he was regressing --

13 Q Okay.

14 A -- again.

15 Q Thank you.

16 A Sure. So again, I just wanted to point out that we  
17 followed this child for a long time before  
18 publishing the data for two and a half years. We  
19 realize that this is a little bit novel, new and  
20 might not be believed, even though it's within --  
21 what we call within subject reversal design, which  
22 is very, very strong. But one of the things I --  
23 and I'm not sure why I put this on the slide, except  
24 I'm speaking in Calgary, and 'W' Cluster is the  
25 mental health cluster at Children's Hospital, where  
26 the really severely disturbed young children are  
27 seen. He was a familiar face at 'W' Cluster from

1 the ages of four and eight, and he hasn't been back,  
2 and that's -- I've actually followed the family for  
3 a little bit longer than that now and he's done  
4 pretty well. He actually was sustained on just a  
5 quarter of a dose for quite a few years and then he  
6 hit puberty. When he hit puberty at the age of 12  
7 they found had to increase it a bit, and they could  
8 see some of the symptoms coming back, because he was  
9 growing, he's quite a large fellow, and they needed  
10 to increase the dose and then he was doing well  
11 again.

12 Q Okay, so just so I'm clear, when you say --

13 A Yeah.

14 Q -- you followed for two and a half years and now a  
15 little longer --

16 A Yeah.

17 Q -- you're following him, he's remaining on the  
18 supplement for that period?

19 A He is, yeah.

20 Q Okay.

21 A Okay. So what I wanted to tell you about these two  
22 cases, it's a very powerful design even though it's  
23 only two children, when you can show on/off control  
24 of symptoms. And then the other point I wanted to  
25 make was that some of this experience guided me  
26 toward focussing -- what to focus on in the rest of  
27 the research program. I did not pursue

1 obsessive/compulsive disorder, for example. But it  
2 seemed to me that what we were seeing in these  
3 children and the others I'm going to be showing you  
4 is that explosive rage and irritability were the  
5 symptoms which were most likely to improve when  
6 supplemented. So that's what we tracked.

7 This is the open label case series with  
8 children, and this is a group of children who were  
9 admitted to the study when their paediatrician or  
10 psychiatrist said this is a child I'm having trouble  
11 managing because they have mood or anxiety problems.  
12 So they -- I put bi-polar symptoms in quotation  
13 marks, because again, none of them back in the year  
14 -- this would have been about 2000, children in  
15 Calgary were not being assigned that diagnosis.

16 This is an overview of the sample and the  
17 procedure. There were nine children, there were  
18 actually two drop outs, we started out with 11  
19 children, but there were nine children who -- who  
20 stayed a week (INDISCERNIBLE).

21 Q Let me just stop you there.

22 A Yeah.

23 Q The two drop outs are these two that you followed?

24 A No, actually they're not --

25 Q Oh, okay.

26 A -- no, they were two children who just totally  
27 dropped out, 32 capsules is a lot for children to

1 swallow, and there were some other issues too. You  
2 can't do this kind of research and not expect a  
3 certain number of drop outs.

4 Q Okay.

5 THE COURT: I am sorry, when you say 32  
6 capsules is a lot for a child to swallow?

7 A Mm-hm.

8 THE COURT: Over what period of time is  
9 that?

10 A In a day. Four -- four doses of six each.

11 THE COURT: Thank you.

12 A Large capsules.

13 THE COURT: Thank you.

14 A Yeah. All of them had a mood or an anxiety  
15 disorder, but they had lots of other diagnosis.  
16 Several of them met criteria for Attention Deficit  
17 Hyperactivity Disorder, a number of them met  
18 criteria for Oppositional Defiant Disorder. We had  
19 one child with Patter Willy Syndrome, which is a  
20 deletion on chromosome 15, which is associated with  
21 cognitive impairment, short stature, a lot of  
22 emotionality, and overeating is one -- the thing  
23 it's most known for. These are children who have to  
24 put locks -- the families have to put locks on all  
25 the food cabinets because they -- there's something  
26 wrong with the pathways in the brain that signal  
27 when you're full.

1           So if you've heard of Patter Willy Syndrome, it  
2           probably would have --

3       Q     MR. BUCKLEY:           Now --

4       A     -- been in that context.

5       Q     -- did you select these?

6       A     No. They were the first ones who were referred. We  
7           just kind of put the word out amongst our -- you  
8           know I was in a -- I am in a department of  
9           paediatrics, let our number of developmental  
10          paediatricians and child psychologists know that we  
11          were doing preliminary pilot work on nutritional  
12          supplementation, we were looking for some kids who  
13          had big mood or anxiety problems, who they hadn't  
14          been able to manage well. And we didn't care what  
15          the other diagnosis were.

16      Q     Okay, so you weren't trying to be selective in who  
17          you got?

18      A     We didn't select anyone, we -- they were the -- they  
19          were the first consecutive -- 11 consecutive  
20          referrals.

21      Q     Okay.

22      A     Yeah. Oh, so the next point --

23      Q     Oh, there we go.

24      A     -- unselected samples. Okay. The protocol, of  
25          course all these protocols are reviewed and approved  
26          by the Ethics Committee at the Faculty of Medicine  
27          at the University of Calgary, which is called the

1 Conjoint Health Research Ethics Board.

2 So the protocol that was approved was that we  
3 would assess them simply at entry and then after  
4 eight weeks of treatment, a very simple design. Our  
5 outcome measures, well here's that child behaviour  
6 checklist that I was telling you about before. And  
7 also we used a measure that is for adults, called a  
8 Young Mania Rating Scale, but there -- there really  
9 is -- at that time there was nothing for children  
10 with mania or anything like this.

11 And then we used another questionnaire called  
12 the Youth Outcome Questionnaire, which is a very  
13 broad brush stroke kind of thing, very much like the  
14 Child Behaviour Checklist.

15 Now this looks like a busy slide, but I can  
16 simplify it for you pretty easily I think. First of  
17 all, ignore the dotted line. The solid line across  
18 tells you that everybody above it is so clinically  
19 impaired that they should be receiving treatment.  
20 And what it is, is the Child Behaviour Checklist  
21 with the eight scales. So they're labelled briefly  
22 here. Oh, you can hardly read it there can you?  
23 I'll read them to you.

24 Withdrawn, which is the kind of depression  
25 scale. Somatic complaints, that's how much a child  
26 complains of tummy aches and headaches, and I'll  
27 just point out that the kids in our sample didn't

1 have headaches or tummy aches more than other  
2 children, that one's not elevated at all. Anxiety  
3 is here, social problems is here, thought problems,  
4 meaning they can't think clearly, like the child  
5 with Patter Willy Syndrome certainly had thought  
6 problems. Attention problems, delinquent behaviour  
7 and aggression, those two are somewhat similar.

8 What this shows is that pre-treatment these  
9 children were above -- well first of all, they were  
10 really clinically elevated on many of the scales,  
11 especially attention problems and aggression, social  
12 problems and so forth. What it shows is that after  
13 treatment, which is the blue bars, they became  
14 significantly better, and in fact, not a single  
15 scale is above that -- that clinical range anymore,  
16 they came down into the normal range for all the  
17 scales for the group data.

18 The asterisks referred to statistical  
19 significance. Shall I explain what 'P' levels are?

20 Q Yeah, I think you should.

21 A Okay. When we collect data, we -- there is always  
22 the possibility that the results that you analyse  
23 you have found by chance. You will always find some  
24 things by chance. And so a 'P' level, like a 'P'  
25 less than .01 means that there is less than one in  
26 100 chances that your results were by chance alone,  
27 were a fluke finding. In other words, with a 99

1 percent probability, this improvement in social  
2 behaviour was real, and this improvement in thought  
3 processes was real, and the improvement in attention  
4 problems, delinquent behaviour and aggression. And  
5 by scientific standards 'P' less than .01 is an  
6 impressive result. 'P' less than .05 is the  
7 convention that we use in every branch of science,  
8 and it's the same thing, it's that there's a 95  
9 percent probability in this case that anxiety really  
10 did improve.

11 One of the things that affects the 'P' level is  
12 the variability of your data, how much it's waxing  
13 and waning, and that's why even though this  
14 difference looks bigger on anxiety than this  
15 difference on social problems, this one is actually  
16 statistically clearer, it's because of the  
17 background variability, okay. Is that clear?

18 Q Right, and that's why you have those asterisks. So  
19 where you have above the chart, two asterisks, that  
20 refers to 'P' is less than .01?

21 A Mm-hm, yes.

22 Q And where you have a single asterisk, that's 'P' is  
23 less than .05?

24 A Right.

25 Q Okay.

26 A And that's conventionally used in charts. So there  
27 are two things to take away from this graph, number

1 one is that our results were statistically  
2 significant, which is very difficult to achieve in a  
3 small sample, I'll talk about that later. And  
4 secondly, that they came down from the clinical  
5 range into a normal range, which is very impressive.

6 This is the same data in a table form, and so  
7 you may want to ignore the first few lines, it's  
8 giving the 'T' test results of those same scales,  
9 that those are the eight scales we just talked  
10 about, okay.

11 This is the other two scales that we use, the  
12 Youth Outcome Questionnaire, and it was also  
13 significant, actually at a higher level, 'P' less  
14 than .001, which means there's a 999 percent  
15 probability, not percent, that only one in a 1,000  
16 -- it was by chance only one in a 1,000 times.  
17 Okay. You would get this result by chance one in a  
18 1,000 times. And the Young Mania Rating Scale,  
19 which we were never real happy about, because we  
20 were adapting it from adults to children, it was  
21 still statistically significant.

22 But what I really -- the reason I kept this  
23 table in, even though it's redundant with the graph,  
24 is that I wanted you to see the effect sizes. Now,  
25 I don't know if people are too tired of jargon to  
26 understand this. May I explain effect sizes?

27 Q Oh please do?

1       A     Okay. I always use a rural analogy, probably  
2             because I don't know anything about growing corn.  
3             But I think the corn usually grows to be about six  
4             feet tall. And so if someone came to you and said,  
5             I have a chemical that's going to make it grow an  
6             extra inch let's say, and suppose that one inch  
7             means that the corn will be healthier, stronger and  
8             will give you better corn, well you know that the  
9             corn plants don't all grow to six feet in height,  
10            there's variability. To see that one inch change on  
11            the background of six feet, you would have to plant  
12            acres and acres of corn the old way, and acres and  
13            acres of corn with the new ingredient to see that  
14            one inch change, that is a small effect size, and  
15            you need a large sample. You could not see that one  
16            inch change in just a row of corn. You need to  
17            plant a lot.

18                    In contrast, a large effect size would be if  
19                    someone came to you and said, I have something  
20                    that's going to make your corn double in size. And  
21                    again, let's assume that doubling in size is good.  
22                    I have no idea if it is, but let's say it makes for  
23                    better corn. And so you just want to see the  
24                    difference between six feet and 12 feet. It doesn't  
25                    matter how variable your corn is, you don't have to  
26                    plant acres and acres of corn, you can plant one row  
27                    of corn the old way and one row of corn with this

1 new ingredient and you will see the difference  
2 between six feet and 12 feet, okay.

3 When you have a large effect -- and that's  
4 called a large effect size. When you have a large  
5 effect size, you do not run a lot of subjects, you  
6 don't collect data on a lot of people, you stop with  
7 your small sample, especially because we weren't  
8 funded, this was pilot, we had no money, we were  
9 doing this practically in our spare time. When you  
10 have a large effect size in a small sample, that's a  
11 very, very powerful statement. And a lot of people  
12 tend to -- people who didn't know, like the media  
13 that was calling me, tended to dismiss these results  
14 because they said, oh you have only, you know, nine  
15 kids, and they -- I had to teach them what an effect  
16 size was and why that was important to find that in  
17 nine children. Is that clear?

18 Q I think so.

19 A Okay.

20 Q So we're all getting educated this morning.

21 A Okay.

22 Q So carry on please, Dr. Kaplan?

23 A Okay. So we had a large effect size, which really  
24 was impressive and --

25 Q Well and I just will stop you about that.

26 A Yeah.

27 Q Because it -- because we do think you know, let's

1 say the one trial study with nine, well who cares if  
2 it's only nine kids. But you're telling us that  
3 when kind of scientific statistical analysis was  
4 applied to the results, that actually it was  
5 scientifically significant?

6 A Very. Especially because they were unselected. If  
7 we had selected the children in any way that would  
8 have biased the results, then you would properly  
9 question that. They were the first children who  
10 were referred to us, we took them all. We didn't --  
11 one child declined because he was afraid of needles,  
12 and we were doing blood tests to make sure they were  
13 healthy. But otherwise, there was no selection  
14 factor. So it was a big effect.

15 Q Okay. So carry on, you've moved to the next slide  
16 called, Improvement on --

17 A Well --

18 Q -- why --

19 A -- this is just graphing the data for the Youth  
20 Outcome Questionnaire and the Young Mania Rating  
21 Scale. And just showing you that it was a very  
22 significant change that we found in both of them.

23 Q Okay, so the previous slide that was kind of a row  
24 of numbers, this is it put into chart form?

25 A It is.

26 Q Okay.

27 A It is a little redundant, but sometimes they say a

1 picture is helpful. Okay, shall I go onto the adult  
2 case series?

3 Q Yes.

4 A Okay. So the adult case series was very similar in  
5 concept to the children case series, small group of  
6 people, unselected, first ones that were referred to  
7 us. I'll show you the design in a minute, but it  
8 was incrementally better in one very important  
9 feature, and that is you can diagnose adults with  
10 bi-polar disorder, we have criteria set out in the  
11 DSM. We have structured interviews, which our  
12 psychiatrists were able to use, and confirmation of  
13 diagnosis is very, very important in the scientific  
14 literature.

15 So this graph is just showing you that he 11  
16 patients who stayed in the trial, there were three  
17 drop outs in this one, so there were actually 14  
18 that we started with. And again, just that's what  
19 happens when you do research. They all met criteria  
20 for bi-polar, and I don't think you're at all  
21 interested I knowing the difference, but bi-polar is  
22 divided into bi-polar one, two, mixed and NOS, which  
23 stands for not otherwise specified, so miscellaneous  
24 bi-polar. So this just characterizes the sample  
25 according to very strict DSM criteria, and again  
26 unselected sample.

27 The measures for adults, we have very clear

1           measures, the Hamilton Depression Scale, the Young  
2           Mania Rating Scale and then this overview called a  
3           Brief Psychiatric Rating Scale. Our patients were  
4           assessed at base line and periodically by  
5           psychiatrists who were participating in the study,  
6           and we had an algorithm for how often to assess  
7           them, weekly for the first four weeks and then some  
8           of them had this continue for weekly appointments.  
9           But if their scores, if their symptoms had dropped  
10          low, so they had gotten much better in terms of  
11          their BPRS or Hamilton Depression Scale, then we  
12          switched them to a monthly schedule. And frankly  
13          again, we had no funding for this, so that was for  
14          convenience, and it was also for safety, the  
15          psychiatrists then were comfortable that the  
16          patients were well enough that they didn't have to  
17          be seen on a weekly basis.

18        Q    Right, now they're participating in the study, but  
19              they're still under the regular care of their  
20              psychiatrist in any event. This is in addition to  
21              their --

22        A    No, during the -- for the duration of the trial they  
23              only saw -- sorry, they only saw the research  
24              psychiatrist.

25        Q    Okay.

26        A    Yeah. Okay. So here's a graph of these results,  
27              and now you know what statistical significance is,

1 so I don't have to explain it. But for both the  
2 depression scale and the mania scale, 'P' was less  
3 than .01, which is highly significant.

4 Q Okay, so you're just -- I'll just stop you, you're  
5 looking at a --

6 A Yeah.

7 Q -- a slide called, Results Pool and Symptom  
8 Reduction?

9 A Yes.

10 Q Okay.

11 A And so the first set of bars is the symptom of  
12 depression, the second set of bars is the symptoms  
13 of mania, and the BPRS is this overview of mental  
14 health, okay.

15 Q Now, you've got the 'P' scales to tell us whether or  
16 not these are by chance or not.

17 A Yes.

18 Q But are the changes in the ratings significant? So  
19 for instance, the HAM-D seems to have come down from  
20 20 to around seven or eight?

21 A Yes, I'm glad you asked that because I didn't  
22 specify this. The statistical analysis are of the  
23 change, okay. So what's that saying is that the  
24 intervention resulted in a significant change. Now  
25 some people would also say, but is it a clinically  
26 meaningful change? And maybe that's what you were  
27 getting at, Mr. Buckley?

1 Q Mm-hm.

2 A Going from a 20 down to I think it was about a nine,  
3 is a clinically meaningful change, same thing for  
4 the mania rating. So these are statistically  
5 significant and clinically meaningful.

6 You can have statistical significance that's  
7 not clinically meaningful.

8 Q Okay.

9 A Maybe the best example is height. If you measure  
10 the height of a 100 people from Holland where they  
11 seem to grow very tall and compare them to a 100  
12 people from another European country where they  
13 aren't quite as tall, you will get a statistical  
14 difference, but it's probably of no clinical meaning  
15 of any kind, okay.

16 Q Okay.

17 A I don't know if that was a good analogy. Most --  
18 about half of these patients were on psychiatric  
19 medications when they entered the trial, and so it  
20 was very important for us to educate the  
21 psychiatrists as to the importance of lowering  
22 medications as they increased the supplement.

23 Q Okay, now I'm going to stop you there --

24 A Yeah.

25 Q -- because why did you guys feel it was necessary or  
26 important to lower the amount of medications as the  
27 supplement was being taken?

1       A     Because we were first of all taught this by Mr.  
2             Stephan and Mr. Hardy, that if this did not happen  
3             there would be adverse reactions. They showed us  
4             data to prove it. We heard many cases that  
5             convinced us of it, and some of the people working  
6             with me had seen examples where that was found.

7       Q     Okay, so I just want to be clear, because basically  
8             you're working at the Faculty of Medicine at the  
9             University of Calgary?

10      A     Mm-hm.

11      Q     And you are basically -- you and the psychiatrists  
12             running the study, are taking advice from Mr. Hardy  
13             and Mr. Stephan on this protocol; is that fair to  
14             say?

15      A     That is fair to say.

16      Q     Okay. In observing the data that they had, what  
17             were your thoughts about it?

18      A     That I wished we could study people who had never  
19             been on any medication, first of all, because it  
20             appeared to be very convincing that there were  
21             adverse reactions until medication was out of the  
22             way, and the world being the way it is, people would  
23             attribute the adverse reactions to the supplement,  
24             when in fact, when the supplement was given to  
25             people who weren't on medication there were no such  
26             reactions.

27      Q     Okay. But anyway, I'm trying to --

1 A I'm not sure where you're getting --

2 Q -- get a quality assessment of the data, because  
3 they're coming with you at -- with data to convince  
4 you of a protocol?

5 A Mm-hm.

6 Q And you had to examine the data?

7 A Yes.

8 Q And what were your thoughts about the quality of the  
9 data that Mr. Hardy and Mr. Stephan --

10 A Oh, the quality that they -- oh, the case studies.  
11 Oh, I think we were all very impressed with them, we  
12 used them as pilot data to get the -- when we  
13 submitted for competitive review for funding for the  
14 next clinical trial, the RCT, that we'll talk about  
15 later. I -- I mean, it was kind of amazing, I'd  
16 never heard of a company monitoring its customers  
17 that way, I don't have any -- anything to relate it  
18 to in my experience. I know that when they first  
19 started doing that, I'm pretty sure it was Mr.  
20 Stephan, asked me for advice on how to put the DSM  
21 criteria into scales so that they could monitor  
22 their patients, and we talked about typical, what we  
23 call Lycert Scales (phonetic), kind of scaling from  
24 zero to five or zero to seven, that kind of thing,  
25 which he subsequently used. So I helped him with  
26 the concept of scaling. But I mean it's -- it's  
27 amazing to me, and it still is, that they -- they

1 monitor symptoms in the people who buy their  
2 products.

3 Q Okay, and basically their data convinced you and  
4 your colleagues about following a protocol they've  
5 given you?

6 A That's correct. I -- I think -- I don't know if I'm  
7 allowed to refer to this, but in the publication of  
8 these data, we actually referred to that. May I --  
9 may I turn to a reprint of -- of my article, there  
10 are two sentences where we mention that?

11 Q I have no objections.

12 THE COURT: Go ahead.

13 A Is that -- okay, I think I have it right here in  
14 front. This is in the discussion section of the  
15 article published on these data, December 2001 in  
16 the Journal of Clinical Psychiatry, we just noted  
17 that:

18  
19 The observation made by many patients  
20 and clinicians who have used this  
21 preparation, is that the supplement  
22 interacts with psychiatric  
23 medications. The distributor --

24

25 We referred to them as the distributor, I'm not  
26 even sure if that's technically correct:

27

1                   -- the distributor recommends  
2                   decreasing psychiatric medications in  
3                   this situation and despite  
4                   significant concerns about safety, we  
5                   have found that this seems to be a  
6                   reasonable approach.

7

8       Q     Okay.

9       A     So for what it's worth we put it in the medical  
10            literature.

11      Q     Okay.

12      A     Okay.

13      MR. BUCKLEY:                   Your Honour, I don't know if  
14            you want to take a break, I kind of stopped this  
15            witness and went off on a different track, so it  
16            might be a good time, or do you want me to just  
17            plough through?

18      THE COURT:                    Well I think that is right, I  
19            think we will take our break for lunch now, and I  
20            take it this is as reasonable a place as any to  
21            start back up again at 2:00?

22      A     Sure.

23      THE COURT:                    Sure.

24      A     Sure.

25      THE COURT:                    I am sure you will get us up  
26            to speed at 2:00.

27      A     Okay.

1 THE COURT: All right, very good. Thank  
2 you, Dr. Kaplan. I will ask you not to discuss the  
3 evidence you have given with anyone over the course  
4 of the lunch hour and that is not absolutely  
5 necessary in dealing with an examination-in-chief,  
6 but it is important to protect the validity and the  
7 credibility of the evidence you are giving.

8 A Okay.

9 THE COURT: Okay.

10 A Sure.

11 THE COURT: All right. And that is fine,  
12 we will stand adjourned then until 2:00 this  
13 afternoon, and we will resume with the examination  
14 and continue the examination-in-chief of Dr. Kaplan.  
15 Thank you, Dr. Kaplan.

16 A Thank you.

17 MR. BUCKLEY: Thank you, sir.

18 THE COURT CLERK: Order in Court, all rise.

19 Court stands adjourned until 2:00 p.m.

20 THE COURT: Thank you.

21 -----

22 PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

23 -----

24

25

26

27

1       \*Certificate of Record

2           I, Jillian Fox, certify this recording is a record  
3           of the oral evidence of proceedings in the Criminal  
4           Court, held in courtroom 413, at Calgary, Alberta,  
5           on the 20th day of March, 2006, and I was in charge  
6           of the sound-recording machine.

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1 \*March 20, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT CLERK: Recalling The Synergy Group of  
5 Canada and TrueHope Nutritional Support.

6 (WITNESS RETAKES THE STAND)

7 Q MR. BUCKLEY: Now, Dr. Kaplan, before the  
8 break you had a slide that's currently up, saying,  
9 "results medication reduction", and I had  
10 interrupted you. Can you just kind of follow on and  
11 pick up with what you wanted to tell us about this?

12 A Sure. I think what I was saying was that the  
13 psychiatrists had been instructed to decrease  
14 medications whenever possible. And other than that  
15 they were given free reign to medicate, not  
16 medicate, etcetera.

17 But they were very cooperative in following the  
18 guidelines that we'd been given from the TrueHope  
19 group. And so what they found is, as they increased  
20 the supplement they were able to manage the patients  
21 on half the medication with a 50 percent drop over  
22 that time period.

23 The reduction was statistically significant and  
24 very clinically meaningful to people who liked to  
25 minimize their medication exposure and side effects  
26 and so forth. And in addition, those who were on  
27 medication were often taking a lower dose.

1 Q Okay.

2 A The side effects of the supplement were minor and  
3 transitory is how we described them. Basically,  
4 when we were dealing with that old version of  
5 EMPowerplus, 32 capsules, we had a lot of difficulty  
6 with nausea. The most -- the best way to prevent it  
7 was making sure the people took the capsules on a  
8 full stomach. But even so, some people really  
9 struggled with nausea for a few days. And usually  
10 it would go away then, after a few days.

11 Compliance was remarkably good given that we  
12 were asking people to swallow 32 capsules a day. I  
13 look back at it and I'm kind of amazed at how they  
14 were compliant with that.

15 But most importantly, once again we had a large  
16 effect size. Which, if you remember my corn  
17 analogy, means, that we did not need a large sample  
18 size to see the effect because the change, the mean  
19 change, was so great relative to the variability of  
20 the group. And so getting a large effects size in a  
21 small sample is a very powerful finding.

22 We followed these people for more than two  
23 years before we tried to publish. I keep  
24 emphasizing follow-up, and I would just like to  
25 mention that that is -- that's not done in a lot of  
26 medication research. But we knew that, even though  
27 this was preliminary, that people would say, we're

1 just not going to believe it until you have placebo  
2 controlled data. And so we felt it was very  
3 important to show that this was not a transient  
4 treatment effect. And that's why we had these  
5 exceptionally long follow-up periods.

6 I have not mentioned any of my co-authors or  
7 co-investigators --

8 Q Okay.

9 A -- so --

10 Q I'm going to just back you up --

11 A Okay.

12 Q -- because you're talking about a two year follow-up  
13 on this adult study.

14 A Right.

15 Q What did the follow-up show?

16 A It showed that most of the people remained well who  
17 stayed on the supplement. There were difficulties  
18 in paying for it. That's what we keep bumping into,  
19 is people who can get healthcare coverage for -- for  
20 psychiatric medication cannot get healthcare  
21 coverage for the nutritional supplement. And so  
22 there certainly were people who went off of the  
23 supplement and went back on medication.

24 The TrueHope people have a charitable arm and  
25 they often help people like that. I'm not sure that  
26 -- how many people, I'd have to go back and look at  
27 the individual cases, I'm not sure how many went

1 onto the TrueHope charitable program versus went  
2 back to medication.

3 Q Okay.

4 A So it was a mixed bag. But certainly those -- I  
5 guess the important point, though, is that those who  
6 stayed on the supplement, their symptoms did not  
7 return, which argues that it was not a placebo  
8 effect. Placebo effects don't last two years, you  
9 know.

10 Q Okay. Now, you've got -- you were talking about --

11 A Yeah.

12 Q -- collaborators.

13 A Well, I just -- I don't like to present our data as  
14 if it's all me. These kinds of studies are always  
15 multi-disciplinary and involving lots of people.  
16 And especially because all the work that I've  
17 described so far was basically unfunded, we needed a  
18 lot of goodwill and a lot of support.

19 Dr. Steve -- should I go through them do you  
20 think? Or just --

21 Q If you want. I don't think it'll take long.

22 A Well, Dr. Steve Simpson is a -- has a PhD in  
23 biochemistry and an MD, he's a psychiatrist on the  
24 faculty at the University of Calgary. He's an  
25 associate professor in the department of psychiatry.  
26 He has been my collaborator all along and he  
27 continues to be my primary collaborator here in

1 Calgary.

2 Dr. Chris Gorman and Dr. Dave McMullen are  
3 practising psychiatrists. Dr. Gorman has actually  
4 moved to California recently and so is not  
5 continuing with us. And Dr. McMullen is still here  
6 in Calgary.

7 Dr. Ferre collected some of the data for that  
8 adult open-label case series in Sault Lake City in  
9 his private practice. The children's data, Dr.  
10 Jennifer Fisher was the psychiatrist who did all of  
11 the -- the physical exams, the heart rate, blood  
12 pressure, interpreted all the blood tests, made sure  
13 the children stayed well.

14 Susan Crawford is our study coordinator masters  
15 level psychologist and also a trained bio-  
16 statistician. Catherine Field is -- has a PhD and  
17 is also a registered dietician. She's on the  
18 faculty at the University of Alberta in Edmonton,  
19 and she continues to be a co-investigator on our  
20 research.

21 Dr. Brian Kolb I've mentioned before. He's at  
22 the University of Lethbridge, so that we have all  
23 three universities involved in this. And Dr. Sarah  
24 Rose (phonetic) is a PhD level bio-statistician here  
25 in Calgary. And Dr. Ellen Burgess (phonetic) is a  
26 nephrologist who is involved in our work currently  
27 making sure that all the blood tests show the kidney

1 and liver function are fine etcetera. So she  
2 reviews all that data.

3 That's our -- our cast of senior characters.  
4 There are many people in the cast who are more  
5 junior characters of research assistants etcetera  
6 that I didn't list.

7 So I have a little summary slide here, just  
8 what I want you to take away from these two open-  
9 label case series. What we showed was that in both  
10 children and adults the EMPowerplus supplement shows  
11 promise for the treatment of unstable mood. And  
12 from the scientific viewpoint the next two points  
13 are the -- the other two bullets are the important  
14 points. One is that a randomized placebo controlled  
15 trial is warranted, and that there was a large  
16 effect size, which suggested that it had some  
17 potential clinical value, if we could proceed and  
18 prove it.

19 And so we proceeded to apply for and receive a  
20 grant from the province of Alberta. I didn't put  
21 the agency name up there because it's changed names,  
22 but in 1999 it was called the Alberta Science and  
23 Research Authority. It now is called Alberta  
24 Innovation and Science.

25 So the province of Alberta said they would fund  
26 a clinical trial. This is what we call a clinical  
27 trial, when it's fully randomized and blinded,

1           etcetera and placebo controlled. It was approved by  
2           the ethics committee in the faculty of medicine.  
3           The data collection started in late 2000.

4                     And in March of 2001 Health Canada stopped it  
5           and told us we had to take everyone out of the trial  
6           and send them back to their regular psychiatrists to  
7           go back on medication. I guess we'll talk about  
8           that later.

9                     Then in 2004, late 2004, the new Natural Health  
10          Product Directorate approved the -- we were very  
11          fortunate, the clinical trials stopped in 2001 and  
12          the government didn't take our money away. That was  
13          extraordinary. They let the money sit there and  
14          wait until we could re-start the study.

15                    So we started up, we were approved in 2004. We  
16          had to go -- we had to revise a lot of things,  
17          things change in science, methodology changes, we  
18          had to make some changes. Went back to our ethics  
19          committee in 2005 and we began our data collection  
20          last summer. So we are currently doing a randomized  
21          placebo controlled fully blinded trial in adults  
22          with bipolar disorder, that we should have had  
23          finished in 2002, but we're trying again.

24                    Now, the other slides, Mr. Buckley, are the  
25          replications from Dr. Popper and Dr. Simmons. Do  
26          you want me to go on with those?

27          Q        I do, actually, if you wouldn't mind.

1       A     Okay.  I'll be very brief.  These are both  
2             published.  It was -- because we were delayed for  
3             four years sitting around doing nothing with this  
4             data, it was a great relief to have our results  
5             confirmed by someone else since our hands were  
6             completely tied.  We couldn't do anything.

7                     So what I'm going to show you are the two  
8             independent case series that have been published.  
9             The first one is from Dr. Charles Popper at Harvard  
10            Medical School.  And I understand that he will be  
11            here on Friday, but I'm showing his slides.  I hope  
12            that's okay.  As I say, this is in the public  
13            record, it's published data.

14                    He published this in the Journal of Clinical  
15            Psychiatry as a commentary on one of our studies.  
16            And he described his first experience with  
17            EMPowerplus with a 10-year old boy who had bipolar  
18            disorder.  In Boston, I should point out, they do  
19            use the diagnosis bipolar disorder for children  
20            routinely.  So you'll hear Dr. Popper do that on  
21            Friday.

22                    And he achieves complete symptom remission in  
23            four days, which he was rather astounded at.  The  
24            parent of this boy was also astounded.  He, himself  
25            is a psychiatrist.  And I received a copy of the e-  
26            mail from him where he described what had happened  
27            with his son.  And it was a -- a real wow

1           experience, I guess, seeing a boy with two to four  
2           hour rage attacks suddenly behave normally in four  
3           days.

4           So Dr. Popper proceeded to collect data  
5           systematically in his private prac - well, it's a  
6           private practice but it's at McLean Hospital in --  
7           at Harvard Medical School. On 22 patients with  
8           bipolar disorder -- he treats people of all ages, so  
9           these are children, adolescents and adults, and he  
10          found there were -- was a positive response in 86  
11          percent of them.

12          I have a few other details here, but I think  
13          I'll go forward to the graph because it shows it  
14          really well. This was not done in a research  
15          setting, this was done by a clinician. And so the  
16          way clinicians monitor an open-label case series, it  
17          tends not to be with the kinds of questionnaires and  
18          so for that we use.

19          But this is a -- a common metric that they use.  
20          They label people as -- their change is mild,  
21          moderate or marked. And you'll see that in -- in  
22          physical health. I mean, you can be reading an  
23          article about arthritis and you'll see the same  
24          categories, mild, moderate or marked response.  
25          Okay? And what this shows is a response rate of 86  
26          percent, but no response in 14 percent.

27          The last bullet on the previous slide, I'll

1 just mention that he was working with people who  
2 were also on medication. Two-thirds of his patients  
3 were on medication, the last bullet here. And he  
4 had them down to zero medication in six to nine  
5 months on half of those. Okay?

6 The other clinical case series was from Maine.  
7 And this was an interesting one because Dr. Simmons  
8 is in private practice in Brunswick, Maine, he's not  
9 affiliated with a university or anything. One of  
10 his patients, who Dr. Simmons had not been able to  
11 get well, a patient who was very, very difficult to  
12 manage, went searching on the internet, as so many  
13 people do these days for virtually anything, but  
14 certainly people who are looking for help. And this  
15 patient came to Dr. Simmons and said that she wanted  
16 to try this supplement.

17 And being a very open-minded fellow he worked  
18 with her --

19 Q I'm just going to stop you there.

20 A Yes.

21 Q But it's Dr. Simmons that's telling you this?

22 A That's correct. Dr. Simmons called and told me this  
23 story in April about 2004 I think. Okay? Is that  
24 all right to go ahead?

25 Q Yeah. And we're going to go into the fact that you  
26 looked at this data and then why this is important  
27 to you.

1       A     Okay.  Okay.  So whenever any psychiatrist calls me  
2             and tells me they had this interesting response, I  
3             say, please wait, don't go away, let's talk about --  
4             about whether you can collect some data.

5                     And people who are pure clinicians like Dr.  
6             Simmons are not inclined to follow through with  
7             that.  It's -- it's too much work, it's -- it's not  
8             their world to collect data.  They're really  
9             clinicians at heart.  And that's great, we need  
10            clinicians at heart, but I'm always trying to twist  
11            arms to collect data.

12                    Dr. Simmons, when he told me about this woman  
13            and how well she had done, when he called, actually,  
14            she was symptom free for seven weeks and completely  
15            medication free, and he had struggled through I  
16            think it was over 60 different combinations of  
17            medications to help her and had never gotten her  
18            well.  So he was pretty impressed by that.  
19            Impressed enough to call and tell me about it and  
20            introduce himself and all.

21       MR. BROWN:                     Sir?

22       THE COURT:                    Mr. Brown, that is fine.  I  
23            was going to put the qualifier in in any event --

24       MR. BUCKLEY:                  Mm-hm.

25       THE COURT:                    -- that any discussion that  
26            you have had with Dr. Simmons is considered hearsay  
27            evidence and --

1 A Okay.

2 THE COURT: -- I am allowing it in for the  
3 sake of the narrative, and I know Mr. Brown is in  
4 agreement with that, but not for the truth of the  
5 contents. You will have to address the specific  
6 facts within the case --

7 MR. BUCKLEY: Mm-hm.

8 THE COURT: -- that Dr. Kaplan is  
9 referring to in another matter.

10 A Okay.

11 THE COURT: Or another manner I should  
12 say. Sorry. Go ahead.

13 A No, it's okay.

14 THE COURT: Yes.

15 A You have your jargon and I have mine.

16 MR. BUCKLEY: Mm-hm.

17 A Right?

18 THE COURT: Yes.

19 A Okay. At any rate -- so I -- I did the usual pitch  
20 with Dr. Simmons and said, please go collect some  
21 data if you're so impressed. Try it out on some  
22 other patients.

23 Most of the time people don't follow through.  
24 I was amazed to discover that he did. And he  
25 collected data on 19 patients with bipolar disorder,  
26 and this is what he found. It's in graph form on  
27 the next slide.

1           And you can see that he also had a response  
2 rate in the low 80 percents, very similar to Dr.  
3 Popper, an 84 percent response rate. And if I may  
4 go back one slide again, just to point out that he  
5 also was starting out the majority of his patients  
6 on medication, so he had to decrease their -- he did  
7 decrease their medications. And in fact he, I  
8 believe, got all of those off of medication. I  
9 think at the time he published his article they were  
10 all medication free.

11           So again mild -- oh, did I go backward? I did.  
12 I'm sorry. Mild, marked -- moderate and marked  
13 response rate as shown here. And this shows the  
14 ability to eliminate meds. It took an average of  
15 five weeks 'til he got them off meds, but I think by  
16 the time he published they were all off.

17           So those are the two confirmatory case series.  
18 I have --

19 Q MR. BUCKLEY:           Okay. And I --

20 A I have just a couple more --

21 Q I just want you to explain again --

22 A Yeah.

23 Q -- why that's significant that some other people are  
24 getting results that are similar?

25 A Because in science, if only one person gets the  
26 result it means nothing. I mean, it -- it just --  
27 it could mean that -- that -- I mean, it could mean

1 the way Kaplan is doing things is unique, maybe  
2 there's some kind of bias or whatever.

3 You have to have things replicated  
4 independently by other groups of people for them to  
5 be accepted as being valid.

6 Q Okay.

7 A It's -- I can't overestimate it, it's really  
8 important. Okay? And in our case, it was hugely  
9 important emotionally, frankly, because we were so  
10 frustrated at not being able to continue our  
11 clinical trial, it was good to have other people  
12 collecting data.

13 Should I go ahead?

14 Q Yes, please.

15 A Okay. So this kind of brings us up to the present  
16 time. In November of 200 -- oh, I'm sorry. Sorry.  
17 This is just telling you what else we're doing in  
18 addition to the current clinical trial in Calgary.  
19 It's a few other odds and ends that I just thought  
20 might add to the information here.

21 We decided that we wanted to do still another  
22 clinical trial in the states, and got partial  
23 funding for it and went to the FDA, the Food and  
24 Drug Administration, and applied for an  
25 investigational new drug, it's called an IND, for  
26 research. And it was -- I'm mentioning here that it  
27 was approved in November of 2004.

1           The reason I'm mentioning it is that the FDA  
2           also scrutinizes a compound very, very carefully.  
3           We had to present volumes of information on  
4           toxicology and on safety toxicity assays, stability  
5           of the product, all that kind of material. So they  
6           did give us permission in November 2004, but it  
7           hasn't begun. We have never achieved adequate  
8           funding to start that trial, not yet anyway.

9           And I just mention here that there are other  
10          research teams looking at collecting data and  
11          developing proposals for formal studies in several  
12          other countries. I don't know if that adds to the  
13          discussion or not. And that was it for my formal  
14          presentation.

15        Q    Now, when you were talking about the clinical study  
16              that was shut down.

17        A    Yes.

18        Q    You indicated you were thankful that the government  
19              left money there, but was there a waste?

20        A    Oh, tremendous waste. The majority of money for any  
21              clinical trial is very heavily loaded on the front-  
22              end. You're hiring people and training people and  
23              working out all your procedures, so your first year,  
24              or certainly for six months, is the most expensive  
25              period.

26              So we lost -- when Health Canada shut that  
27              down, we lost I think our award was roughly \$550,000

1 and I think we had spent down to about \$380,000, so  
2 you do the math. And that is money right down the  
3 drain, unfortunately.

4 Q Okay. Now, because it's going to be asked, at some  
5 point Health Canada indicates that you guys --  
6 there's a problem with the clinical study, is that  
7 --

8 A No, they never said anything was wrong with the  
9 clinical trial as it was going on. You mean  
10 methodologically?

11 Q Well, let me just back up. What's the first  
12 indication of a problem?

13 A Oh. The first indication we had of a problem -- may  
14 I look at my notes for this? If I explain that  
15 document, the key dates, would that be --

16 Q Well, first of all --

17 A So I can quote the date?

18 Q -- tell the court what document you want to refer  
19 to.

20 A Okay. A couple of years ago I myself was getting  
21 confused about everything happening, and I put  
22 together just a short 3-page Word document that I  
23 called, "Health Canada key dates", so that I could  
24 get the chronology of what was going on, and I only  
25 added to it once, actually, when we finally got  
26 Health Canada approval. So otherwise it's an  
27 original little 3-page thing.

1 Q And --

2 A Is that all right?

3 Q -- I certainly have no objection, if my friend  
4 doesn't.

5 A So just so that I can give you the context --

6 Q We have to wait for the judge to say that you can --

7 A Yeah.

8 THE COURT: It is more of this jargon  
9 again.

10 A Okay.

11 THE COURT: When referring to notes, we  
12 have to ask certain questions. It actually involves  
13 whether or not a person is dealing with a memory  
14 revived or memory recorded. And it has a lot to do,  
15 then, with assessing weight to the evidence that is  
16 given.

17 A Mm-hm.

18 THE COURT: Whether or not you are  
19 referring to your notes to refresh your memory or  
20 whether or not you do not have a memory of  
21 something, but in fact are just reviewing notes that  
22 you have recorded. In that situation the test used  
23 in a criminal trial system such as cross-examination  
24 are not as effective.

25 So we go through these questions. And the  
26 questions are simply this, were those notes made by  
27 you?

1 A Yes.

2 THE COURT: And were they made at the time  
3 or shortly after the incidents recorded?

4 A They were made on August 24th -- or 25th, 2004,  
5 spanning the period from August '99 up to August  
6 2004, a five year period.

7 THE COURT: All right. And have there  
8 been any alterations or amendments or additions to  
9 those notes since you made them?

10 A From August 25th, 2004 I just added that the final  
11 approval line, September 30th, 2004, which is when  
12 Natural Health Products Directorate approved our  
13 current clinical trial.

14 THE COURT: What was the date of that?

15 A The final approval?

16 THE COURT: Yes.

17 A Was September 30th, 2004, approval of the new trial.

18 THE COURT: Mr. Brown, do you have any  
19 questions with regards to Dr. Kaplan referring to  
20 her notes to refresh her memory?

21 MR. BROWN: Well, sir, as you've indicated  
22 before you began questioning Dr. Kaplan, part of the  
23 -- the purpose of referring notes and having notes  
24 is that they record the current events that they are  
25 intended to reflect.

26 As best I can understand Dr. Kaplan's comments,  
27 these notes were made some four or five years after

1           some of the events actually occurred. So there may  
2           be some value I suppose in asking Dr. Kaplan whether  
3           she used any particular resource in order to make  
4           those notes, and I'll those questions, sir, if I  
5           might?

6           THE COURT:                           Go ahead.

7           MR. BROWN:                         Dr. Kaplan, if I could just  
8           ask you a couple of questions with respect to how  
9           you created these notes, whether or not you had  
10          letters or other correspondence available to you to  
11          use to record the -- what I understand is basically  
12          a chronology. Is that a proper way to refer to  
13          this?

14          A        It is.

15          MR. BROWN:                         Okay.

16          A        It's a chronology. Yes, actually, for example, the  
17          one that I was just going to cite, when Health  
18          Canada stopped the shipment at the boarder, I have  
19          the original note from my research assistant in  
20          here, typed out to me. But I thought it was too  
21          much detail so I took all of that kind of thing and  
22          put it into a chronology.

23          MR. BROWN:                         Sir, as I said earlier, I'm  
24          interested in having the best possible evidence  
25          before the court. And I think if these notes are  
26          going to assist Dr. Kaplan, I have no doubt that  
27          either my friend or myself will be showing her most

1 of the correspondence that will be reflected in that  
2 chronology, so there may be some value in having  
3 this witness refer to it. I don't think it's the  
4 best set of notes that we could have, but I'm not  
5 going to object to her referring to the notes.

6 MR. BUCKLEY: I just wanted her to refer to  
7 it, too, for the date, just so we're clear on that.  
8 I don't mind her digging through her file and  
9 finding the original --

10 A I can do the original notes, no problem.

11 MR. BUCKLEY: -- and giving us the date.  
12 So I wasn't asking her to refresh her memory on the  
13 contents --

14 A Right.

15 MR. BUCKLEY: -- but just, she doesn't  
16 remember the specific days. So either/or, I'm --

17 THE COURT: Well, I am satisfied with the  
18 thoroughness of the preparation of the notes.  
19 Usually when we are dealing with notes we are  
20 dealing with investigations, and they are made at  
21 the same time or within --

22 A Yes.

23 THE COURT: -- hours or a few days --

24 A Yeah.

25 THE COURT: -- not spanning over a period  
26 of four or five years. But from the evidence that  
27 you have given here today, the chronological summary

1           you have was prepared in reference to other notes  
2           and documentation that you have collected over that  
3           period of time. And so I am satisfied for that  
4           purpose you can refer to the chronology to provide  
5           the dates and other information asked by Mr.  
6           Buckley.

7           A     Okay.

8           THE COURT:                   All right. Thank you.

9           MR. SMITH:                   Thank you, sir.

10          Q     MR. BUCKLEY:           So, Dr. Kaplan, I just asked  
11           because I'm just -- you weren't remember the dates.

12          A     Right.

13          Q     So if you could just tell us what the date was when  
14           you first indicated that there was a problem.

15          A     We had no idea until March 29th, 2001, when my  
16           research coordinator, Susan Crawford, received a  
17           telephone call from the University of Calgary  
18           purchasing department saying that a shipment of the  
19           supplement had been stopped at the border.

20                   We were going along collecting data, we had no  
21           idea that there was any difficulty until that date.

22          Q     Okay.

23          A     And then we thought it was just some bureaucratic  
24           snafu.

25          THE COURT:                   What was that date again?

26          A     March 29th, 2001.

27          THE COURT:                   Thank you.

1 Q MR. BUCKLEY: Well, why did you think it was  
2 just some bureaucratic snafu?

3 A Well, because we had -- you know, from our  
4 perspective we had full approval to do the study and  
5 to bring the supplement in. We had been reviewed --  
6 peer reviewed, and funded by the province, we had  
7 been reviewed and approved by our university ethics  
8 committee and we had been told by the transition  
9 team of the Natural Health Product Directorate that  
10 there was no need to do anything further.

11 We also -- I had been in touch with the Natural  
12 Health Product Directorate people and had spoken to  
13 Dr. Peter Chan in January -- on January 15th, 2001  
14 about what we were doing. So Health Canada was  
15 informed, they knew what we were doing, we had  
16 approval, so why in the world would our supplement  
17 be stopped? It made no sense.

18 So I had no idea what we were headed for.

19 Q Okay. When you talk about the transition team what  
20 are you talking about?

21 A Sorry. I'm not the best authority on this, but --  
22 because I wasn't paying a lot of attention to how  
23 the Natural Health Product Directorate was set up.  
24 But when the government put together a tran -- they  
25 put together a team of people who decided to create  
26 the Natural Health Product Directorate.

27 What -- what the government was saying was that

1 the current directorate, Therapeutic Products  
2 Directorate -- used to have a different name, but  
3 that's what we call it now -- should stick with  
4 medicine and medical devices -- pharmaceutical  
5 agencies -- or agents and medical devices, and that  
6 Canada needed -- Health Canada needed a new  
7 directorate for natural health products.

8 They thought, optimistically, it wouldn't take  
9 long to put that directorate together. And they --  
10 the government put together a transition team --

11 Q Okay. Now, when you say, "they thought" --

12 A They.

13 Q -- did you -- did somebody at the Directorate give  
14 you a date of when they would be up and running and  
15 --

16 A Oh, more than once.

17 Q Okay.

18 A Do you want me to quote any of those?

19 Q Probably we want you to refer to original documents  
20 for that, if -- but we have to go through this test  
21 again.

22 A Okay.

23 Q So --

24 A I -- I keep a telephone note page on every one of  
25 these calls, and so I can find the original which  
26 went into my chronology whenever you like.

27 MR. BROWN: I have no problem if Dr.

1 Kaplan wants to simply refer to the chronology --

2 THE COURT: Yes.

3 MR. BROWN: -- at this point sir.

4 THE COURT: And I have already made that  
5 ruling.

6 MR. BROWN: Okay. That's fine.

7 THE COURT: You can refer to the  
8 chronology.

9 A Okay.

10 THE COURT: I am satisfied with the way it  
11 was put together.

12 A Well, on January 15th, 2001 Dr. Peter Chan and the  
13 Natural Health Product Directorate was hopeful that  
14 they would be ready to review clinical trials  
15 September of 2001. I put that in my notes. And may  
16 I remind you, they didn't start until January of  
17 2004, in reality.

18 There were other -- there were other telephone  
19 conversations I didn't put into the chronology,  
20 where they kept saying, well, we think it'll be  
21 another year, another year. It just dragged on and  
22 on.

23 Q MR. BUCKLEY: Okay. Now, after this  
24 shipment is stopped what did you do?

25 A I called the head of the Therapeutic Products  
26 Directorate Clinical Trials Division, Dr. Siddika  
27 Mithani. And I finally reached her on April 6th,

1 2001, so that was about a week later, and asked her  
2 what was going on and explained our situation, and I  
3 didn't understand why our shipment would have been  
4 stopped.

5 She informed me that it would have been the  
6 inspectorate that stopped the shipment, but that we  
7 would have to be reviewed by Therapeutic Products  
8 Directorate.

9 Well, this didn't make sense because in January  
10 Dr. Chan had said that we should keep Therapeutic  
11 Products Directorate informed, but that he wasn't  
12 sure that it made sense for us to be reviewed by  
13 them because Natural Health Products Directorate  
14 would be up and running soon, he thought. And may I  
15 use the abbreviation TPD for Therapeutic Products  
16 Directorate?

17 THE COURT: That is fine.

18 A TPD had no history of reviewing natural health  
19 products. I mean, we have decades of research in  
20 this country of people studying vitamin D, calcium,  
21 etcetera, for osteoporosis, studying nutritional  
22 supplementation for a variety of different kinds of  
23 disorders. And these studies are not -- have not  
24 historically been reviewed by Health Canada, at  
25 least not -- it was not the norm, because all we had  
26 was TPD and TPD didn't review vitamins and minerals.

27 So I told Dr. Mithani the situation. She said,

1           for the amounts and types of data that we had it  
2           would probably require a drug review, meaning TPD.  
3           But she also said there was no chance that we would  
4           get approved by her division.

5   THE COURT:                    Just noted for the record,  
6           this is all hearsay as well.

7   MR. BUCKLEY:                 Yes.  But we're just -- we're  
8           going to go a little further with that --

9   A    Yeah.

10   THE COURT:                   It is hearsay and it is only  
11       going in for the sake of a narrative --

12   MR. BUCKLEY:                 Yes.

13   THE COURT:                   -- not for the truth of the  
14       contents.  If you want to put this evidence in you  
15       have got to put it in in another fashion than --

16   MR. BUCKLEY:                 Oh.

17   THE COURT:                   -- what is currently before  
18       the court.

19   MR. BUCKLEY:                 Yes.  Clearly for the truth of  
20       its contents.

21   Q   MR. BUCKLEY:               So was anything else said to  
22       you?  Because, even just the fact it was said is  
23       important for this proceeding.

24   A   Well, you know, Dr. Mithani was a kind-hearted  
25       person.  She wanted -- she could see that we were,  
26       you know, in a bind.  We were being told that we  
27       couldn't do the study without an additional review

1           that we had not known about. And yet she knew that  
2           we wouldn't get approved by her division. So she  
3           did suggest that maybe there could be a joint review  
4           by TPD and the -- I guess I could call incipient  
5           Natural Health Products Directorate, which was being  
6           developed but wasn't fully formed or empowered yet.

7           Q     Okay.

8           A     So that was her suggested solution.

9           Q     Now, how did you -- what did you do in response to  
10          this conversation?

11          A     Well, I thought it was a pretty important  
12          conversation because I have not had many dealings  
13          with Health Canada, and I was a little startled to  
14          see that a clinical trial that had -- was following  
15          all the rules, from my perspective, was going to be  
16          I thought just stalled, little did I know it was  
17          going to be stopped, was going to be stalled by a  
18          section of my government that was telling me, we  
19          have to review it, but there's no chance we're going  
20          to approve it.

21                 So I put her conversation in writing. I  
22          transcribed my telephone notes, I wrote it in a  
23          letter to her and I sent it to her. And I said, I  
24          appreciate all your help, but I just want to make  
25          sure that I heard you right, and this is my  
26          understanding of our situation.

27          Q     Okay. And it's because you found it so fantastic?

1 A Yeah, fantastic is a good word.

2 Q Okay. I'm just going to hand you up a document and  
3 ask you if you can identify that?

4 A This is the letter that I wrote on April 6th, 2001.  
5 And I sat on it for a few days because I guess I  
6 just felt I needed to think about it. I faxed it to  
7 her on April 11th.

8 Q Okay. So on the letter there's -- it looks like --  
9 it says, "post-it fax note"?

10 A Right.

11 Q It has date, 4/11?

12 A Mm-hm.

13 Q So you would have filled that out?

14 A Yes.

15 Q And you faxed it personally?

16 A Right.

17 Q Okay.

18 THE COURT: Just give me a moment, please?

19 All right. Go ahead.

20 Q MR. BUCKLEY: Now, was there any response to  
21 this letter?

22 A Yes. Dr. Mithani telephoned me and my telephone  
23 notes were on the back, which I can dig it out of  
24 here or I see it sitting right there.

25 Q Right. Well, I'm not going to seek to enter your  
26 telephone notes.

27 A Okay.

1 Q But --

2 A Well, she was -- do you want me to give you the  
3 gist?

4 Q Yes.

5 A She was fairly upset at the third paragraph, where -  
6 -

7 THE COURT: I have cautioned people before  
8 about having their telephones on, because it  
9 disrupts the flow of the evidence and the questions  
10 and answers. So if people insist on doing that I am  
11 going to have to have people checked at the  
12 courtroom door before they come in.

13 So this is the last time I am going to say  
14 this, I said it two or three times last week. And  
15 if people cannot be responsible with those kinds of  
16 devices then they should not come into the  
17 courtroom. Or, I will arrange for a CAPS officer to  
18 check people coming in.

19 Go ahead. I am sorry.

20 A That's okay. So in answer to your question, Mr.  
21 Buckley, she was agitated I would say when she  
22 received my letter because of paragraph 3, because  
23 it's accurate. It did accurately describe what she  
24 said, and I think I accidentally embarrassed her by  
25 putting in writing -- you know, sometimes we say  
26 things a little more tactfully and -- or kind of  
27 carefully in writing than we do verbally. And she

1           was very, very candid with me, and I must have made  
2           her feel that her position might have warranted  
3           being more tactful than she was.

4                     And she said to me, Bonnie, this is not good to  
5           have in writing. I'm going to continue to help you  
6           but I'm going to tear this up. And she -- she said,  
7           can you hear me?

8       Q        Could you hear?

9       A        And she made a ripping -- I heard the paper being  
10       torn and she asked me to tear up my copy. And I  
11       didn't. I felt it was -- I didn't fully understand  
12       the implications of what was going on, but I felt I  
13       wanted to have a record of what I knew to be true.

14      Q        Okay. At least what was said to you in  
15       conversation.

16      A        What was said to me, which is, I was being sent down  
17       a garden path to apply for something where there was  
18       no chance of being approved. And most of us don't  
19       have time for that.

20      MR. BUCKLEY:                     Your Honour, because this is  
21       the author of this April 6th, 2001 letter I'm going  
22       to ask that it be made as an exhibit?

23      MR. BROWN:                     No objections, sir.

24      THE COURT:                     All right. It will be Exhibit  
25       41, will be a copy of the letter dated April 6th,  
26       2001 from Dr. Bonnie J. Kaplan to Dr. Siddika  
27       Mithani.

1

2 \*EXHIBIT 41 - Copy of letter dated April 6th, 2001 from

3 \*Dr. Bonnie J. Kaplan to Dr. Siddika Mithani

4

5 A Were you supposed to take that back too?

6 MR. BUCKLEY: Oh, we can do that now, too.

7 THE COURT: That is fine. We will do it

8 now.

9 A Okay.

10 MR. BUCKLEY: So -- I'll just the clerk

11 catch up here.

12 Q MR. BUCKLEY: Now, Dr. Kaplan, there's a

13 group of colour copies that are representations of

14 the slides that you showed the court?

15 A Right.

16 Q And have you reviewed those just to confirm that

17 they are the slides that --

18 A They are.

19 Q -- you've showed us?

20 A Yes.

21 MR. BUCKLEY: And, Your Honour, I'd ask that

22 we move to enter those as an exhibit, just so that

23 the court record can make sense if anyone has to

24 review it.

25 MR. BROWN: No objections.

26 THE COURT: Yes, we discussed that

27 earlier, and I am satisfied now that Dr. Kaplan has

1 had an opportunity to give us the presentation and  
2 we have all had an opportunity to follow along slide  
3 by slide, that it would be appropriate and for the  
4 completion of the record to include that collection,  
5 the copies -- the colour copies of the slides that  
6 we have seen as Exhibit 42.

7 MR. BUCKLEY: Thank you, Your Honour.

8 THE COURT: Collectively.

9

10 \*EXHIBIT 42 - PowerPoint presentation of Bonnie J. Kaplan

11

12 Q MR. BUCKLEY: Now, Dr. Kaplan, what happened  
13 then? So you've had this conversation with Siddika  
14 Mithani, who you described as actually trying to be  
15 helpful?

16 A I think she was. I think she understood that we  
17 were caught, so to speak.

18 Q Okay. So what happened next?

19 A Well, there were two -- there were like parallel  
20 tracks going on. While I was working with Dr.  
21 Mithani and we had to apply to TPD, and so that was  
22 TPD, the Inspectorate was doing things like sending  
23 us double registered letters telling us we were  
24 illegally importing it, and so forth, and our  
25 university lawyers got involved. I don't know if I  
26 need to go any -- into any of that.

27 We just decided we would try to get approval.

1 Q Well, just, you know, one point on the Inspectorate  
2 issue. Did you have to take any action in response  
3 to the number of letters?

4 A Oh. Yes, I did. You mean from the Inspectorate?

5 Q Yes.

6 A Well, I didn't know that you knew -- anybody else  
7 knew about this. But I did report one of the  
8 individuals from the Inspectorate to his superior  
9 because I felt harassed. It was strange. I  
10 remember one 24-hour period getting two phone  
11 messages and an e-mail. And we were doing  
12 everything. And I just didn't understand, I felt  
13 hounded. Is that what you're referring to.

14 Q Yes.

15 A Shall I name names?

16 Q Please do.

17 A The inspector, I think he's an inspector, who kept  
18 e-mailing and phoning and sending letters was a Mr.  
19 Miles Brosseau. And I reported him to his superior  
20 whose name I had one moment ago -- Dion -- I'm going  
21 to have to refer to my notes, it's not coming to me.  
22 And it's not in my chronology, I don't think.

23 Q Well, I'm less concerned about -- I'm more concerned  
24 about just how you felt by your treatment with TPD.  
25 What were you doing as far as trying to sort out  
26 getting approval? So you'd basically been told you  
27 wouldn't get it.

1 A Right.

2 Q But you guys still took steps to try and get it, did  
3 you?

4 A Well, we had no choice, 'cause they were telling us  
5 we had to or stop the trial. So we set up a tele-  
6 conference with people in Ottawa and people here in  
7 Calgary. The people here in Calgary were Dr.  
8 Simpson and myself, and our university counsel, Lynn  
9 McRae, sat in on that.

10 And then in Ottawa there were Dr. Mithani, Dr.  
11 Phil Waddington, who was the then new head of the  
12 Natural Health Products Directorate, Dr. Mona  
13 Akoury, Dr. Pat Houston (phonetic), whose names I'll  
14 be using in a moment, and someone else named Dr.  
15 Hiney (phonetic) who I never encountered again, I  
16 don't recall his title.

17 Q Okay. Now, I think you might have called it a tele-  
18 conference.

19 A Yes.

20 Q But was it a video conference?

21 A It was a video conference, we could see each other.

22 Q Okay. And --

23 THE COURT: The people you have just  
24 named?

25 A Yes.

26 THE COURT: I am sorry to interrupt. But  
27 they were in Ottawa?

1 A That's correct.

2 THE COURT: All right. And who else was  
3 in on the call?

4 A It was just -- the group at Health Canada was in  
5 Ottawa, and then there were the three of us in  
6 Calgary. In Calgary it was Dr. Simpson and myself  
7 plus Lynn McRae. She's -- we have a number of  
8 lawyers at the University of Calgary, and she is the  
9 one in the medical faculty.

10 THE COURT: Thank you.

11 Q MR. BUCKLEY: Okay. And what was the  
12 purpose of having this video conference?

13 A Well, that's a good question, because in our mind it  
14 was to try to explain to them why we should not have  
15 to be reviewed by TPD, because we had been told that  
16 we wouldn't meet their criteria. They're used to  
17 looking at drugs, not vitamins and minerals. So it  
18 was to try to prevent -- try to explain to them why  
19 this was an important new development, we should be  
20 permitted to continue, we already had all these  
21 other approvals in place and we should not have to  
22 submit, through a process, where we were doomed to  
23 failure. That was our perspective.

24 Q Okay.

25 A I don't know what their perspective was. They were  
26 an extremely uncommunicative group. And I think in  
27 my notes I said something like, our information

1           seemed to fall on deaf ears.  They -- it was -- I  
2           think it's important that it was a video conference,  
3           to mention that, Mr. Buckley, because you've never  
4           seen a group of people who looked so bored.  As if  
5           they were just putting in their time there.

6                     This is my interpretation, I hope I'm allowed  
7           to say it.  But it was quite striking that they  
8           simply were not interested in what we had to say and  
9           their minds were made up.  And at the end of the  
10          call they said, thank you very much but you're  
11          required to apply to TPD.

12        Q        Okay.  And so you guys did apply?

13        A        Well, of course we did.  Now, in the meantime the  
14          director general, who is over all of those people at  
15          TPD, sent us a letter giving us a deadline of  
16          October 18th to submit.  So he gave us four weeks.  
17          We did get our submission in, and actually ahead of  
18          time, by October 12th, which was considerable effort  
19          because drug companies that do this all the time  
20          have an entire branch devoted to clinical trial  
21          applications for TPD.  And we had nothing like that  
22          at the university.

23                     But we submitted a four volume -- it's called a  
24          clinical trial application and got that in on  
25          October 12th.  They wrote and acknowledged it four  
26          days later.

27        Q        Okay.  And then what happened?

1       A     We then received a review on October 25th that was  
2             done by Dr. Mona Akoury, who was one of the people  
3             in that video conference, that was a poorly -- in my  
4             opinion, a poorly informed and biased review. It  
5             -- it's no understatement to say that it enraged  
6             everybody at the University of Calgary because it  
7             did not show knowledge or competence in the areas of  
8             mental health, bipolar disorder in particular, or  
9             certainly vitamins or minerals. And it appeared at  
10            times as if she had not read it, to the point where  
11            before I -- and by the way, we were required to  
12            answer it within four days, and there were 21  
13            categories of comments.

14                    So before answering it I telephoned her  
15                    directly and I just asked her -- I -- I really  
16                    thought when I got her review, I thought she  
17                    couldn't have been given all four volumes. I  
18                    thought there had been an oversight that maybe not  
19                    all the materials had gotten to her. So I just  
20                    politely asked her how many volumes she had gotten.  
21                    And she said, all four. And I asked if she'd had  
22                    time and had read them all. And she said, yes. And  
23                    I said, thank you. And that was a very short  
24                    conversation.

25       Q     I'm just going to show you a letter, which I presume  
26             is the letter that you're talking about.

27       A     Her review? Yes. It was faxed on October 25th,

1           2001. And the relevant comments are the first page  
2           and a half. I -- perhaps I could explain for the  
3           record, Mr. Buckley, that at that time we  
4           simultaneously asked approval to do a different -- a  
5           second clinical study in fibromyalgia, a totally  
6           different condition.

7           Q     Okay.

8           A     Which we later dropped. And it would just kind of  
9           muddy the waters here, but you may notice that the  
10          second half page of comments relate to something  
11          other than bipolar disorder --

12          Q     Okay.

13          A     -- so you could ignore those.

14          Q     So this is the letter that you received that you  
15          indicate basically enraged everyone at the  
16          University of Calgary?

17          A     It did. Well, she used even loaded language. She  
18          called the doses excessive. That's a pre-judgment,  
19          is it not? That we were using excessive daily  
20          doses. She had made up her mind that it was  
21          inappropriate.

22          Q     Okay.

23          A     That's how we read it.

24          Q     Okay. Now, you indicated to us that you phoned her.

25          A     Yes.

26          Q     And then what happened?

27          A     After phoning her?

1 Q Yes.

2 A I had three and a half days left to answer all 21  
3 questions, so I did. And then I submitted them to  
4 the university counsel because I recognized that I  
5 had been very angry at getting a review that I  
6 thought showed lack of competence. I thought at  
7 that level of government we should have been  
8 reviewed by an expert.

9 So I gave my reply to Lynn McRae who toned it  
10 down a little bit. And then we sent it in.

11 MR. BUCKLEY: And perhaps before I show you  
12 that, Your Honour, I'm going to move that we enter  
13 the October 25th letter not -- sent by Dr. Akoury,  
14 not for the truth of its contents, but just as, you  
15 know, a record of what Dr. Kaplan received.

16 THE COURT: So you want it go in for  
17 identification purposes only?

18 MR. BUCKLEY: I definitely at least want it  
19 in for -- yeah. I mean, identification purposes  
20 will work fine.

21 THE COURT: Well, she received it.

22 MR. BUCKLEY: That way the record's clear.

23 THE COURT: She received it --

24 MR. BUCKLEY: Yes.

25 THE COURT: I -- what is --

26 MR. BROWN: And, sir, I think --

27 THE COURT: I do not see a problem.

1 MR. BROWN: I don't see a problem with it  
2 going in as a full exhibit. As my friend has said,  
3 Dr. Kaplan received it so she can identify the  
4 document. But it doesn't go in for the truth of any  
5 --

6 MR. BUCKLEY: No.

7 MR. BROWN: -- of the contents.

8 MR. BUCKLEY: No.

9 MR. BROWN: Simply that she received these  
10 comments.

11 THE COURT: That is fine. All right. The  
12 document entitled, "request for additional  
13 information", addressed to Dr. Kaplan will be  
14 Exhibit 43. And again, it is being entered for the  
15 sake of the narrative, that comments were received,  
16 and not for the truth of those comments.

17

18 \*EXHIBIT 43 - Document entitled "Request for Additional  
19 \*Information"

20

21 Q MR. BUCKLEY: Now, Dr. Kaplan, I'm going to  
22 show you a letter dated October 29th.

23 A Okay. Do you want me to explain what this is?

24 Q Yes, please.

25 A This is my reply. If you turn -- starting on page 2  
26 it's a reply to all of the comments from Dr. Akoury.  
27 The cover letter asks -- well, if I may read one of

1 my sentences:

2

3

The nature of the questions you posed  
4 indicates that either the reviewer  
5 did not read the material provided,  
6 or the reviewer lacks the expertise  
7 to understand the material.

8

9

10

And I mention there are at least 30 places in  
our reply where we point out to the reviewer where  
11 the information was there, it's as if she just  
12 didn't read it.

11

12

13

And so the point of this cover letter then was  
14 to ask that we be reviewed fairly by someone with  
15 expertise in nutrition and clinical trials of adult  
16 bipolar disorder, because we felt she lacked -- Dr.  
17 Akoury lacked the experience in those areas.

14

15

16

17

18

And in addition, I should point out, there was  
19 no evidence from Dr. Akoury's review that Natural  
20 Health Products Directorate had had any input  
21 whatsoever. And that had been the agreement, was  
22 that they would at least try to incorporate Natural  
23 Health Products Directorate input so that we would  
24 be reviewed by people who knew something about  
25 vitamins and minerals.

19

20

21

22

23

24

25

26

There was no evidence that Dr. Akoury had  
27 sought or received any such expertise. And so we

27

1           also asked formally, would you please honour that  
2           commitment, to have Natural Health Products  
3           Directorate involved.

4       THE COURT:                           All right. Just give me a  
5           moment, please?

6       A     Sure.

7       THE COURT:                           I find the -- I was just  
8           reviewing the cover letter, I have not looked at the  
9           comments. Are you going to refer at all to the  
10          general comments, Mr. Buckley?

11      MR. BUCKLEY:                        Yes, I think that I will.

12      Q     MR. BUCKLEY:                And so, Dr. Kaplan, I'm not  
13          wanting to go through all of the comments, but if  
14          you can pick a couple to give us kind of an  
15          indication as to why -- because this is your  
16          response to, you know, Exhibit 43, which you said  
17          basically made the University of Calgary angry.  
18          You guys felt that you hadn't had a fair review.

19      A     Well, for example, she went on and on about how all  
20          patients had to be 18 years or over. Well, in the  
21          method section we have our inclusion and exclusion  
22          criteria. And the very first one is, "all patients  
23          will be 18 years or over". She just didn't look at  
24          the most basic elementary thing that you look at in  
25          methodology, which is your inclusion, exclusion  
26          criteria.

27                                        She seemed to not understand that people with

1 bipolar disorder are often suicidal. She said we  
2 should have turned this into an in-patient study.  
3 This was an out-patient study that we were running.  
4 We should make it in-patient and exclude anyone who  
5 was a potential suicide risk. Well, if you exclude  
6 anyone who is a suicide risk, you're not studying  
7 mental illness. Certainly, not bipolar disorder.  
8 That revealed to us that she didn't understand it.

9 She wanted to know if patients would be  
10 receiving counselling therapy. Well, that would be  
11 what we call an experimental confound. You don't  
12 introduce two interventions at once, so of course  
13 not. Why would we? It would ruin the study. And  
14 that meant to us that she didn't understand how  
15 clinical trails are run.

16 She asked for information regarding the  
17 frequency of patient assessment. Well, it was right  
18 in the protocol, that they would see their  
19 psychiatrist every week. And by the way, that is  
20 higher than the standard of usual care. So it  
21 seemed very odd that she wouldn't have noticed that.

22 Shall I go on?

23 Q No, I think you've made your point.

24 A Okay.

25 Q So basically you drafted this letter?

26 A Yes.

27 Q And what you drafted in there, you still hold that

1           it's true today?

2       A     Absolutely.  And Dr. Simpson would have reviewed  
3           that also, by the way.

4       MR. BUCKLEY:                   And, Your Honour, I'll ask  
5           that it be marked as an exhibit.

6       MR. BROWN:                    No objection, sir.

7       THE COURT:                    Exhibit 44 will be the copy of  
8           the letter dated October 29th, 2001 to Dr. Mithani  
9           from Dr. Kaplan with comments attached.

10

11       \*EXHIBIT 44 - Copy of letter dated October 29th, 2001

12

13       MR. BUCKLEY:                   Thank you, Your Honour.

14       Q     MR. BUCKLEY:            Now, sending this letter,  
15           after that what happened?

16       A     Well, it did have an impact.  I believe they -- I  
17           mean, no one ever said, oh, we're sorry, and Dr.  
18           Akoury never said she was sorry.  But they suggested  
19           we have another conference call, this one was by  
20           telephone, to discuss where to go from there.  And I  
21           think, again, this was Dr. Mithani really trying to  
22           figure out a way out of this impasse and what to do.

23                   And in preparation for that conference they  
24           asked Dr. Pat Houston to review the proposal.  She  
25           did not provide anything in writing to us, but over  
26           the telephone Dr. Houston presented some of her  
27           concerns.  And it was wonderful.  She was

1            knowledgeable. I wouldn't say she showed any kind  
2            of bias whatsoever, and she raised some very good  
3            points.

4                       So we agreed in that phone conference, that was  
5            on November 5th, 2001, we agreed that we would  
6            withdraw our clinical trial application without  
7            prejudice, and would revise it in accordance with  
8            Dr. Houston's comments and re-submit.

9            Q        Okay.

10          A        Okay.

11          Q        And did you do that?

12          A        We did that on November 20th. We re-submitted a  
13          second version of the entire clinical trial  
14          application, all four volumes, all the cover forms.  
15          And in addition, because they had raised concerns  
16          about three ingredients, we had a 7-page cover  
17          letter demonstrating the safety of those three  
18          ingredients and the scientific literature that we  
19          didn't think they had looked into adequately at that  
20          time. Those -- do you want to know what those three  
21          ingredients were?

22          Q        Sure.

23          A        Germanium, vanadium and boron, dietary minerals.

24          Q        Okay. Now, what happened? What response did you  
25          get back?

26          A        We submitted it on November 20th and on December  
27          20th Dr. Peterson wrote to indicate that it had been

1 rejected. It was a very short letter, very short  
2 review. They pinpointed germanium in part, saying  
3 that was a problem. And so I followed up by writing  
4 a 45-page document on the safety of germanium, and  
5 sending it to Dr. Peterson, which he ignored.

6 Q Okay.

7 A I mean, he didn't ignore my letter, he ignored the  
8 data, in my opinion.

9 Q Okay.

10 A He acknowledged the letter.

11 Q Because you indicated earlier in your testimony,  
12 because you've actually now published two articles  
13 --

14 A On germanium.

15 Q -- on germanium.

16 A Yeah.

17 Q And this is where that came out of, is --

18 A Absolutely. I mean, that's when we really started  
19 to dig in the literature on germanium and found that  
20 there was no reason to think it was unsafe. If  
21 anything, it appears to have very positive value for  
22 immune system. There is really no research on it in  
23 relationship to mental health, but it certainly  
24 looked like a healthful ingredient and nothing to be  
25 afraid of.

26 Q Okay. And this is the substance where there had  
27 been an error in the literature?

1 A Right. An error in the scientific literature in  
2 1987.

3 THE COURT: I am sorry. Did you say you  
4 did not hear anything further from Dr. Peterson?

5 A He did acknowledge the letter. I'm sorry, I didn't  
6 -- I was a little unclear there. Actually, his  
7 letter proposed that -- that we study it  
8 differently. And I guess we'll get into that now  
9 because we then went to a teleconference, again, a  
10 conference call between our group and TPD in April,  
11 where they came up with a whole new design for us.

12 And it just -- it was very frustrating because  
13 it never made sense to me from their perspective our  
14 ours. They said, well why don't you do a little  
15 pilot study where you have just 45 people, 15 get  
16 placebo, 15 get EMPowerplus and 15 get EMPowerplus  
17 minus germanium.

18 Well, it made no sense because if they were  
19 certain that we were endangering the lives of  
20 Canadians with exposing anyone to germanium, why did  
21 they let us -- or suggest that we have one arm --  
22 one arm of the trial of people getting germanium.  
23 And it made no sense scientifically because that's  
24 what's called an underpowered study. We would not  
25 have an adequate sample size to ask the question at  
26 the end, was nutritional supplementation better than  
27 placebo? It wasn't -- so we wouldn't prove

1 anything.

2 We really got the feeling they were just  
3 scrambling to come up with something to get us off  
4 of their -- I don't know, out of their e-mail, their  
5 telephone conferences. We were taking up a lot of  
6 their time.

7 Q Okay. So how did you guys respond to these  
8 comments?

9 A Well, by then we were getting a little depressed and  
10 so we didn't know what to do. But in the fall of  
11 2002 I figured, well, nothing was happening, Natural  
12 Health Product Directorate wasn't up and running  
13 yet, so I would try writing the proposal for the  
14 three group design. Okay? Placebo, EMPowerplus,  
15 EMPowerplus minus germanium.

16 So I did and I submitted to our ethics  
17 committee, which promptly rejected it as being  
18 scientifically invalid, which I knew. It was not a  
19 valid design that they were heading us toward.

20 I explained to them that I knew that, but that  
21 it was the only design that Health Canada seemed to  
22 be willing to let us try. And so our ethics  
23 committee did approve it. But I'm mentioning that  
24 for you because I just wanted you to know that there  
25 are a few people in Calgary who I think know a  
26 little bit more about the validity of data sometimes  
27 than some of the people we were dealing with in

1 Health Canada.

2 So we decided to go ahead and submit it to  
3 Health Canada, but actually we didn't. We thought  
4 we were going to, and then in October of 2003 it  
5 became clear because Dr. Waddington phoned me, that  
6 the regulatory framework for reviewing Natural  
7 Health Product Director -- natural health product  
8 clinical trials would be law on January 1. And he  
9 invited us to submit.

10 So we had basically been spinning our wheels  
11 for, I don't know what that was, three or four  
12 years.

13 Q Okay. So what happened at -- so January 1st of '04  
14 this new directorate comes into --

15 A Right.

16 Q -- I guess official existence. And what happened?

17 A We applied for what's called pre-clinical trial  
18 application hearing and were awarded one. And on  
19 February 12th, 2004 Dr. Steve Simpson and I went to  
20 Ottawa, sat down with the Natural Health Product  
21 Directorate people, talked about the design, talked  
22 about the chemistry, talked about some assay  
23 information that we were missing, talked about how  
24 they wanted more blood tests than we had been  
25 planning to do, etcetera.

26 We came home and wrote it up as a formal  
27 clinical trial application, submitted it on April

1 25th, using the requirements that they had placed  
2 before us. There was some back and forth then for a  
3 couple of months, they needed more assay data, they  
4 needed more stability data, in part, because by then  
5 just to complicate matters, TrueHope had changed  
6 from the 32 pill supplement to the 18 pill  
7 supplement. And so we had to make sure that our  
8 assay and stability data were appropriate for the 18  
9 capsule supplement. So that slowed us down a few  
10 months.

11 Q Okay. Now, did you eventually get approval?

12 A We did. On September 30th, 2004.

13 Q Okay. Did -- were you frustrated with how you were  
14 treated by the NHPD?

15 A I think you could say that.

16 Q No, not TPD --

17 A Oh, NHPD.

18 Q -- NHPD.

19 A Thank you. No. NHPD was really refreshing to deal  
20 with. First of all, when we walked into that  
21 meeting in Ottawa there were experts around the  
22 table in vitamins, in minerals, in botanicals,  
23 people who knew that you don't have to be afraid of  
24 vitamins and minerals. They knew that all the  
25 ingredients we were studying were below what are  
26 called the tolerable upper levels, which are the  
27 levels where there's potential for toxicity. We

1           were below all of that.

2                     They weren't worried about the ingredients.  
3           And they just wanted to make sure that the product  
4           that we were studying had -- you know, was stable  
5           and that everything that we said was in every  
6           capsule really was in every capsule, that type of  
7           thing.

8                     So they were a pleasure to deal with.

9       Q       Okay. So the Natural Health Product Directorate was  
10           a pleasure to deal with?

11      A       Sure.

12      Q       Okay. How would you describe your experience with  
13           TPD?

14      A       Well, it was very frustrating because they told us  
15           from day one that they were not expert in the field  
16           of natural health products, and then they reviewed  
17           us without getting in put on natural health  
18           products. They told us that there was no way a  
19           complex compound of 36 ingredients could meet the  
20           pharmaceutical system's standards. And those were  
21           the only standards that they were allowed to use. I  
22           mean, their hands were tied too, you know. And yet  
23           they told us we had to apply them. It was totally  
24           bizarre.

25                     When I look back at it I'm not even sure why we  
26           ever submitted our first clinical trial application  
27           to them. You know, when someone tells you that it

1 can't pass, why do you do it? You don't have to  
2 answer that.

3 Q So now this new trial is actually up and running?

4 A It is. It's going on right now.

5 Q And it's completely blind so you can't tell us about  
6 any of the results because you don't know, right?

7 A I have no idea.

8 Q Okay. But it's an eight weeks participation?

9 A That's correct. Eight weeks ran -- it's called a  
10 randomization phase, where in the first eight weeks  
11 people have a 50 percent chance of getting the  
12 active supplement and a 50 percent chance of getting  
13 a placebo.

14 Q Okay.

15 A And it's followed by -- may I tell -- explain it?

16 Q Yes, that's where I'm going.

17 A Okay.

18 Q So --

19 A Well, I think that it's important to understand, is  
20 that when you do that kind of study, people don't  
21 want to be in it because of course they want to try  
22 the real thing, understandably. So the way we  
23 accommodate them and also collect some interesting  
24 information is that we follow the eight weeks  
25 randomization period with a second eight weeks  
26 period. And it's called an open-label extension.

27 So when someone finishes the first eight weeks,

1 if they care to continue, and so far everyone is  
2 continuing, we give them more capsules that we  
3 guarantee are real. And we continue monitoring  
4 their blood tests, they continue seeing a  
5 psychiatrist, and we continue evaluating their  
6 symptoms.

7 Q Okay. Now, where I'm trying to go is, is because  
8 you've given us some evidence with your case studies  
9 that when people stop taking the product that they  
10 regress?

11 A Yes, they do.

12 Q Okay. And is there -- has there been any evidence  
13 of that coming out of this open-label extension?

14 A There have been two cases that I could describe in  
15 the current clinical trial, where they stopped the  
16 supplement and regressed. One was after the open-  
17 label extension but in the period where I -- I'm  
18 obligated to follow up, and the other was during the  
19 open-label extension. Do you want me to go into  
20 detail?

21 Q Sure. Just quickly. I mean, not too much detail.

22 A Just quickly? Okay. One woman went all the way  
23 through, all 16 weeks, was doing very well. For a  
24 variety of reasons she -- I mean I don't understand,  
25 when people are doing well they like to stop their  
26 pills. She stopped her pills and she got very much  
27 worse. The reason I know this is that when you've

1 exposed someone to a test substance in a clinical  
2 trial you are obligated to follow up a month later  
3 and see how they're doing and make sure that they're  
4 still okay.

5 So I recontacted her and found out she was in  
6 very bad shape. She was also -- she had hoped to go  
7 back to work, and it looked like she was heading  
8 back to work. That had fallen apart. And I  
9 connected her with the TrueHope charity arm because  
10 she is very poor.

11 And my understanding from her is that they've  
12 helped her get back on the supplement. And about  
13 two weeks ago she e-mailed me that she's doing  
14 really well.

15 The second case in some ways we have more data  
16 on. This is a young man who started the open-label  
17 extension and was doing really well. And so he  
18 decided to stop taking his pills, because when  
19 you're feeling well I guess that's what people do.  
20 And he was -- during a period -- it was during a period  
21 of time in the open-label when he wasn't going to  
22 see his psychiatrist again for a few weeks, because  
23 we don't monitor them quite as often during the  
24 open-label extension.

25 So he came in for his final appointment and I  
26 was there because I attend every final appointment  
27 in the study. And he walked in and said, I'm back

1 on the supplement and I'm okay. But let me tell you  
2 what happened last week. He had gone off the  
3 supplement, had gotten quite manic and was feeling  
4 pretty good, because usually the beginning of mania,  
5 people can enjoy and feel rather energized and happy  
6 and so forth.

7 And he said, but he started to get anxious  
8 because he was spinning out of control, those were  
9 his words. And he knew that that is always followed  
10 by a crash. And sure enough he crashed and was  
11 extremely depressed and put himself -- and he said  
12 it took four days -- put himself back on the  
13 supplement. So he'd been back on it for another I  
14 think week by the time we saw him, and he was  
15 pulling himself back together. He says he will now  
16 continue taking it.

17 Q Now, I wanted to go back a little bit over something  
18 that I covered earlier, about basically Mr. Stephan  
19 and Mr. Hardy. I'll call them the TrueHope people  
20 because I think that's what you called them.

21 A Okay.

22 Q But basically, being very clear, that you guys --  
23 meaning the fact that the medicine had to follow a  
24 protocol that they were giving you?

25 A Yes.

26 Q And you took them very seriously?

27 A Yes.

1 Q Now, why did you take that seriously?

2 A I'd like to mention, we took it so seriously that in  
3 our current clinical trial we are not taking in  
4 anyone who is on medication. These are all medica  
5 -- people who have chosen not to take medication,  
6 because we've seen it ourselves. People who are on  
7 medication and don't know that they need to decrease  
8 their meds as they go on this supplement become  
9 worse.

10 It's perfectly logical, based on what we know  
11 about what vitamins and minerals do in the brain,  
12 but that's probably a lecture you don't want to  
13 hear.

14 Q No. And you'd indicated that you have actually used  
15 some of the data that TrueHope has collected?

16 A Yes, we have.

17 Q Okay. And what have you used it for?

18 A We used it as pilot data to help us get the half  
19 million dollar grant from the Alberta government.

20 Q Okay. To do that did you have to review it and  
21 assess it?

22 A We did. And we -- I looked at how they collect  
23 their data. And we used some of their case reports,  
24 their -- their graphs of individual patients, and  
25 showing the sometimes daily sometimes weekly data  
26 collection of the progression of symptoms as they go  
27 on the supplement, and what happens if they don't

1 decrease their meds. We had examples of all of  
2 that.

3 Q Okay. Can you give me your comments on, you know,  
4 how you felt about their data collection?

5 A It's very impressive. I mean, what I said earlier  
6 today I think is true, I -- I just can't think of  
7 any company that monitors its customers the way  
8 TrueHope does. It makes their lives a whole more  
9 difficult than all the other hundreds of thousands  
10 of supplement companies out there. But they are  
11 systematically monitoring people to care for them.

12 Q Okay.

13 A And to manage them.

14 Q You get calls from psychiatrists basically seeking  
15 advice about this product?

16 A Yes.

17 Q Okay. Do you ever refer those out to other --

18 A To?

19 Q Other people or groups?

20 A Well, I usually send them to the TrueHope people.  
21 Because -- well, the phone calls that I get, they're  
22 probably two categories. One is psychiatrists who  
23 have heard about the supplement through their  
24 patients, and these are usually people in North  
25 America, although sometimes from other countries.

26 And they're calling me, although they don't say  
27 it, the kind of the underlying message is, is this a

1 fraud? And, who are you? You're an academic, why  
2 would an academic be tied in with a fraud? And I  
3 think they really want to hear that we have a  
4 legitimate research program going on, and that the  
5 reason we have it going on is because the TrueHope  
6 people wanted scientific validation, that they're  
7 not just out there to make a buck. So I describe  
8 the research program, etcetera.

9 The other category of phone call I get are from  
10 psychiatrists and patients who want to talk to other  
11 people, want to know how to use the supplement, who  
12 -- patients who want to find a psychiatrist in their  
13 area who might work with them.

14 And, you know, as a non-psychiatrist I -- a  
15 non-physician, I don't talk about medication, I  
16 don't give advice about medication. And so I  
17 usually refer all those people to TrueHope.

18 Q And are you comfortable doing that?

19 A I'm 99 percent comfortable.

20 Q Okay.

21 A I'm sure that there are things that -- there are  
22 individual people at TrueHope say that I might not  
23 agree with. But ...

24 Q Now, how do you feel about -- because you're aware  
25 of, the product's managed through a program, it's  
26 not just --

27 A That's right.

1 Q How do you feel about that?

2 A Well, I think it's unfortunate, but it's necessary.

3 I mean, it's -- the -- the TrueHope program, my  
4 interpretation is that it is in place because the  
5 medical community is not yet ready to accept the  
6 idea that vitamins and minerals are relevant to  
7 brain function, even though they learned it in  
8 medical school.

9 And -- and so someone has to help these  
10 patients who is open to this information. And of  
11 course the weight on my shoulders is that I feel  
12 that these people would be more open to it if our  
13 clinical trial had been finished, the one that we  
14 started.

15 Q Right. Now, in conducting your case studies --

16 A Mm-hm.

17 Q -- and you guys have had to do several safety  
18 protocols?

19 A Yes.

20 Q Including blood work --

21 A Right.

22 Q -- and urine work?

23 A Heart rate, blood pressure in the first group of  
24 children, yeah.

25 Q Okay. Can you tell us about that and whether or not  
26 it showed basically any evidence of harm for taking  
27 the supplement?

1 A No, there's never been any evidence of harm in all  
2 the data we've collected, heart rate, blood  
3 pressure, blood samples, urinalyses. We've  
4 submitted all of that to Health Canada in the  
5 toxicology review. And there is no evidence that  
6 the supplement has ever hurt anybody.

7 Q Now, that's stuff that basically you guys did as  
8 part of your protocol, right?

9 A Oh, yeah.

10 Q Okay.

11 A I mean, our ethics committee would not have approved  
12 any of our research if we hadn't done it.

13 Q Okay. Now, also, have you had the opportunity to  
14 basically review data from TrueHope participants  
15 that haven't been part of your study?

16 A Yes. There was a point in time where we wanted more  
17 long-term data to submit to Health Canada. And we  
18 didn't have anyone in University of Calgary research  
19 who had been on it long-term since we hadn't been  
20 permitted to do that.

21 And so the TrueHope people said, well, they had  
22 people who had been taking the supplement for years,  
23 maybe they could ask some of them to go to their  
24 doctors and ask for kidney and liver function tests,  
25 and all -- these are all blood tests and urinalyses.

26 So they did that. And Dr. Simpson and I  
27 compiled that data on -- as I recall it was on about

1 27 people who had willingly gone through blood tests  
2 and urinalyses to make sure that their health was  
3 okay. And they were all fine.

4 And I'm sorry, I don't recall right now how  
5 long-term their exposure had been, but some of them  
6 were several years.

7 Q Now, you've talked about how your first work was  
8 done on a version of the supplement where you needed  
9 32 capsules?

10 A Right.

11 Q And now you're running a trial on a version where  
12 you need fewer capsules?

13 A Right.

14 Q But you're actually very, very familiar with kind of  
15 the different versions of this product?

16 A Right.

17 Q Can you comment, I mean is it the same product, is  
18 it different, do these results mean anything for the  
19 product in 2003?

20 A Oh, it's the same product. We actually -- we  
21 selected a research name for the product as part of  
22 our way of trying not to be involved with the  
23 commercial end, and to try to be arms length away  
24 from the TrueHope people. We call it MCN-36, which  
25 stands for micronutrients, 36 ingredients.

26 So there are 36 micronutrients in it. And  
27 they're the same 36 micronutrients that were there

1 ten -- eight years ago, whatever it was, seven years  
2 ago. So that has not changed.

3 The change had to do with the bio availability.  
4 They -- they changed companies -- should I be  
5 telling this, or maybe --

6 Q Well --

7 A -- this is the TrueHope people.

8 Q But you've actually observed the product?

9 A Yes.

10 Q So tell us what you've observed and what you've been  
11 told? What you've observed is true, and what you've  
12 been told is what you've been told.

13 A Okay. What I've observed is that it's the same  
14 ingredients, same 36. So the recipe is the same.  
15 What I've observed is that the number of capsules  
16 has gone down from 32 to 18 in the version we're  
17 using in our clinical trial now. And I'm not sure  
18 what else --

19 Q Okay.

20 A -- I observed.

21 Q Were you given an explanation as to why the capsules  
22 went down?

23 A Yes. Yes. They had said to me, many times in my  
24 presence, that they felt that the large particles in  
25 the supplement were probably not absorbed by the  
26 gastrointestinal system very well, and that they  
27 really wanted to bring the particle size down.

1           And they changed manufacturers to a company  
2           that had a fancy machine. The way it was described  
3           to me is it pulverized the large chunky particles to  
4           a very, very fine powder. And you can see the  
5           difference, by the way. If you opened one of the  
6           older capsules, they were large -- it was like  
7           grains of sand, really chunky mineral components.  
8           And if you open one now it's a very, very fine, like  
9           a baby powder.

10           And they then -- they always have thought that  
11           they could bring the content down then of the  
12           minerals. If they were absorbed better by the gut,  
13           then you wouldn't need as large a dose. So they  
14           brought the mineral content down by about a third.

15           And the minerals are the bulky component in  
16           this supplement, the bulkiest component, because  
17           vitamins are a small molecule and that's not a  
18           problem.

19        Q     Okay. So --

20        A     So that was a big change.

21        Q     Just so that I understand this --

22        A     Yeah.

23        Q     The 36 ingredients have never --

24        A     Never changed.

25        Q     They've always been there?

26        A     Right.

27        Q     There's been some variations in the amounts?

1 A Right.

2 Q Okay. So, but really, doesn't -- do those changes  
3 invalidate the research that you've done, if we were  
4 to compare it with --

5 A No, I don't think anyone would think that. You  
6 know, what we're studying is a concept. And the  
7 concept is that multi-ingredient supplementation  
8 with all the vitamins and minerals that people eat  
9 at relatively large doses but not toxic levels, will  
10 affect unstable mood.

11 And the supplement itself is the same broad  
12 array of all the vitamins and the broadest array of  
13 dietary minerals that I've seen in any product.  
14 They've just brought some of the mineral content  
15 down, and that's it. To me it's not at all  
16 invalidated.

17 I mean, we certainly, in the world of multi-  
18 ingredient research, if I cite, like, Dr. Bernard  
19 Gesh's work at Oxford University, he's used a broad  
20 array of vitamins and minerals, everybody would see  
21 that as very similar import as our work on a broad  
22 array of vitamins and minerals, and not say, well,  
23 you know, he had five milligrams more of vitamin C  
24 or something. It's not -- not the point. It's all  
25 the same concept.

26 Q Okay. And Dr. Kaplan, you've referred to some  
27 clinical studies that you've published. I'm just

1 going to give you a document that --

2 A Yes.

3 Q -- is titled, "Treatment of Mood Lability and  
4 Explosive Rage with Minerals and Vitamins, two case  
5 studies in children". Now, that title also showed  
6 up on your very first slide in your PowerPoint --

7 A Right.

8 Q -- presentation. Is this a copy of the abstract  
9 that you're one of the authors of?

10 A It's not the abstract, it's the full article,  
11 actually.

12 Q I'm sorry.

13 A Yeah. This is the full published article. We call  
14 it a re-print.

15 Q Okay. So this basically is what you published in  
16 response to your explanation to us today about  
17 studying those two children?

18 A That's right.

19 Q And the information in this is true?

20 A That's correct.

21 MR. BUCKLEY: Your Honour, I'd ask that this  
22 be entered as an exhibit?

23 MR. BROWN: No objection, sir.

24 THE COURT: That is fine. Exhibit 45 will  
25 be the article in the Journal of Child and  
26 Adolescent

27 A Psycho --

1 THE COURT: -- Psycho-pharmacology --

2 A Psycho-pharmacology.

3 THE COURT: -- from Volume 12, number 3,  
4 2002, entitled, "Treatment of Mood Lability and  
5 Explosive Rage with Minerals and Vitamins, two case  
6 studies in children". And that will be Exhibit 45.

7 THE COURT CLERK: It's in as ident already.

8 THE COURT: Is it in as ident already  
9 (INDISCERNIBLE)?

10 MR. BUCKLEY: No. My friend pointed out to  
11 me the other day that there was a page missing in  
12 the one marked for identification.

13 MR. BROWN: That's right.

14 THE COURT: That is fine.

15 MR. BUCKLEY: And so I thought, rather than  
16 just have us add a page, I would just cleanly --

17 THE COURT: That is fine. Exhibit 45.  
18 Now, you have a copy there, madam clerk?

19 THE COURT CLERK: Yes.

20 THE COURT: All right.

21

22 \*EXHIBIT 45 - Article entitled, "Treatment of Mood  
23 \*Lability and Explosive Range with Minerals and Vitamins,  
24 \*two case studies in children

25

26 Q MR. BUCKLEY: And, Dr. Kaplan, I'm going to  
27 show you another publication.

1 A Okay.

2 Q And this one is called, "Effective Mood  
3 Stabilization With a Chelated Mineral Supplement, an  
4 open-label trial in bipolar disorder". That again  
5 matches one of the titles that you've had in your  
6 first page of your PowerPoint presentation. Is this  
7 an accurate copy of the publication that you were  
8 referring to?

9 A Yes. Although you made me think I should check that  
10 no pages were missing. Or have you done that  
11 already?

12 Q Oh well feel free.

13 A Yes, it's all here.

14 Q Okay.

15 A Yes.

16 Q Now, you had testified today about an adult case  
17 study that you did.

18 A Case series.

19 Q Or case series, I'm sorry.

20 A Right.

21 Q And that's the case study that's described in this  
22 publication?

23 A Yes.

24 Q And you're one of the authors of this publication?

25 A Correct.

26 Q And the publication is true?

27 A Yes.

1 MR. BUCKLEY: And, Your Honour, I'd ask that  
2 it be entered as an exhibit?

3 THE COURT: Exhibit 46 will be the article  
4 in the Journal of Clinical Psychiatry, December  
5 2001, entitled, "Effective Mood Stabilization with a  
6 Chelated Mineral Supplement, an open-label trial in  
7 bipolar disorder". Exhibit 46.

8

9 \*EXHIBIT 46 - Article in Journal of Clinical Psychiatry,  
10 \*December 2001, entitled, "Effective Mood Stabilization  
11 \*with a Chelated Mineral Supplement, an open-label trial  
12 \*in bipolar disorder

13

14 Q MR. BUCKLEY: And Dr. Kaplan, finally, I'm  
15 showing you another publication, this one titled,  
16 "Improved Mood and Behaviour During Treatment with a  
17 Mineral Vitamin Supplement: an open-label case  
18 series of children".

19 Now, this is a publication that you're an  
20 author of?

21 A Mm-hm. Yes.

22 Q And this basically is a publication based on the  
23 same evidence you've told us today about the case  
24 series involving children?

25 A Yes.

26 Q And this publication is true?

27 A Yes.

1 MR. BUCKLEY: Your Honour, I'd ask that it  
2 be entered as an exhibit?

3 THE COURT: Mr. Brown?

4 MR. BROWN: No objection, sir.

5 THE COURT: All right. Exhibit 47 will be  
6 the article entitled, "Case Report, Improved Mood  
7 and Behaviour During Treatment with a Mineral  
8 Vitamin Supplement: an open-label case series of  
9 children". Exhibit 47.

10

11 \*EXHIBIT 47 - Article entitled, "Case Report, Improved  
12 \*Mood and Behaviour During Treatment with a Mineral  
13 \*Vitamin Supplement: an open-label case series of  
14 \*children

15

16 MR. BUCKLEY: And Dr. Kaplan, those are all  
17 the questions I have for you. I expect that my  
18 friend is going to have some questions for you.

19 THE COURT: Just before we commence with  
20 the cross-examination by Mr. Brown, I am going to  
21 take a brief 10 minute adjournment, give people a  
22 chance to perhaps get some exercise or stretch or  
23 whatever and then come back in.

24 And Dr. Kaplan, I will ask you not to discuss  
25 your evidence with anyone until after Mr. Brown has  
26 had an opportunity to conduct a cross-examination.  
27 And I was remiss in asking you earlier today, that

1           if you wanted to sit down during part of your  
2           testimony, if you are tired of standing, then just  
3           say so and madam clerk will put a chair up in the  
4           --

5   THE WITNESS:                   Okay.

6   THE COURT:                    -- spot for you.

7   THE WITNESS:                   I think I will.

8   THE COURT:                    You think you will?

9   THE WITNESS:                   Sure.

10   THE COURT:                    Because you have been on your  
11       feet for a while today.

12   THE WITNESS:                   Yes.

13   THE COURT:                    All right. Very good. We  
14       will take a brief adjournment. I will return at a  
15       quarter to and we will proceed from there. All  
16       right.

17   MR. BUCKLEY:                   Thank you, sir.

18   THE COURT:                    Very good.

19   THE COURT CLERK:               Order in court. All rise.  
20       Court stands adjourned until quarter to.

21   (ADJOURNMENT)

22   THE COURT CLERK:               Recalling Synergy Group of  
23       Canada and TrueHope Nutritional Support.

24   THE COURT:                    Mr. Brown?

25   MR. BROWN:                    Thank you, sir.

26   THE COURT:                    Please.

27

1 \*Mr. Brown Cross-examines the Witness

2

3 Q MR. BROWN: Now, Dr. Kaplan, I am going to  
4 be hopping around from topic to topic a little bit,  
5 more than your organized presentations. So if you  
6 don't understand a question I've asked, please let  
7 me know. I'll try to rephrase it. Or, I have a  
8 habit of speaking quickly, so if I'm speaking too  
9 quickly just let me know and I'll try to slow down.  
10 Okay?

11 A Mm-hm.

12 Q All right. Thank you. The first question I want to  
13 ask you is about the presentation you gave us this  
14 morning, the coloured document which is now Exhibit  
15 number 42. I wonder if madam clerk can show you  
16 that?

17 A Thank you.

18 Q And I'm going to just ask you to turn to the past  
19 page of that document. And the first point says,  
20 approved in November 2004 -- and this is under the  
21 heading, "other new developments":

22

23 Approved in November 2004 in the US  
24 by the Food and Drug Administration  
25 for a research investigational new  
26 drug.

27

1 A Yes.

2 Q That's a pretty similar title to what you were  
3 seeking in Canada, an investigational new drug. You  
4 needed an IND, correct?

5 A The terminology within the Natural Health Product  
6 Directorate, however, is CTA.

7 Q Right.

8 A Right.

9 Q But at the time you were seeking the -- or going  
10 through this process that you went through with  
11 Health Canada, at that time it was still under the  
12 therapeutic products branch --

13 A Right.

14 Q -- and it was an IND, correct?

15 A That's correct.

16 Q So a pretty similar term to what you've obtained in  
17 the Unites States, correct?

18 A Yes.

19 Q Okay. Thank you. And it's actually --  
20 investigational new drug, so that's actually the  
21 term that they used in -- by the FDA?

22 A Well, they call everything a drug. The FDA does not  
23 have a second natural health product branch, as you  
24 may know.

25 Q Okay. Now --

26 THE COURT: Sorry. What does it stand  
27 for? The IND?

1 MR. BROWN: Investigational New Drug.

2 THE COURT: Is that right?

3 Investigational?

4 A Yes.

5 MR. BROWN: That's the word, yes.

6 THE COURT: All right.

7 MR. BROWN: That's correct.

8 THE COURT: Thank you.

9 Q MR. BROWN: Now -- I'm sorry, before we  
10 leave that exhibit, there was one question that I  
11 had also. On the second page, right inside the --  
12 and the first, under number 1, case studies, it  
13 says:

14

15 Two children studied serendipitously  
16 in reversal designs with the  
17 EMPowerplus.

18

19 A Right.

20 Q I'm sorry, I just --

21 A I didn't explain why it was serendipitous, did I?

22 Q Right. That's --

23 A Yeah.

24 Q -- the question --

25 A Okay.

26 Q -- I have. What is the -- what's the purpose of  
27 that particular term?

1       A     If we had gone to the ethics committee  
2             (INDISCERNIBLE) and said, we would like to study  
3             children, treat them with something that we think is  
4             going to help them, and then take it away, we would  
5             not have gotten ethics approval.

6       Q     Right.

7       A     However, circumstances intervened. We gave them a  
8             product, they did get better, but their parents  
9             said, we want to stop it because we can't figure out  
10            whether it's the cause of their being better.

11      Q     Right.

12      A     And all we said was, may we continue to monitor the  
13             children? So it was serendipitous that enabled us  
14             to do an on/off design.

15      Q     Right. So this was -- it was serendipitous because  
16             it was essentially prompted by the parents?

17      A     That's correct.

18      Q     And the -- if I understood your evidence correctly,  
19             they had had other life changes that you were  
20             concerned might effect the results of your testing?

21      A     That's correct.

22      Q     All right. Thank you. Now, at one point during  
23             your testimony you were speaking about some  
24             investigation into these products by a Dr. Popper?

25      A     That's correct.

26      Q     And I understand Dr. Popper is going to attend so I  
27             won't spend a lot of time on this. But I think the

1 context of the discussion, if I recall correctly,  
2 was, you had made comments about other laboratories  
3 had been doing research, etcetera, into similar  
4 products, correct?

5 A Well, it wasn't a laboratory, he was a clinician.

6 Q And this is the point I wanted to try to clarify --

7 A Oh.

8 Q -- in my mind, because --

9 A Mm-hm.

10 Q -- I understood that was the setup to the discussion  
11 you had said that you were happy other laboratories  
12 were engaging in similar research because yours had  
13 essentially been stopped at that time?

14 A If I used the word "laboratory" in that context I  
15 shouldn't have.

16 Q Okay.

17 A It's just good to have your intervention results  
18 replicated. In this case it was by two clinicians.

19 Q Right. And that's basically what I was attempting  
20 to clarify, is, Dr. Popper wasn't working in a lab,  
21 he was -- he's a clinician?

22 A That's correct.

23 Q He was working out of his office, as you understood  
24 it?

25 A Correct.

26 Q Okay. Thank you. Now, one thing that you have  
27 raised quite -- a couple of times is the effect size

1 --

2 A Mm-hm.

3 Q -- of the testing that you have been able to  
4 complete. And if I understood correctly from -- you  
5 give an excellent example of the corn fields --

6 A Mm-hm.

7 Q -- helped us to understand what you meant by effect  
8 size. That even if you have a small sample, a large  
9 effect size is important?

10 A Mm-hm.

11 Q Does that sound correct?

12 A Mm-hm.

13 Q Sorry, you have to say yes because we're recording  
14 it.

15 A Oh, I'm sorry. Of course you do. Yes.

16 Q No problem. Now, you'll forgive me for using this  
17 phrase, but I've heard, and maybe you haven't, but  
18 I've heard this phrase, something like there are  
19 lies, bloody lies in statistics. Have you heard  
20 that one before?

21 A Of course.

22 Q Okay. Because you're a statistician, at least as  
23 part of your work?

24 A Yes.

25 Q Okay. So I ask this question because you indicated  
26 that there are some people who may be sceptical  
27 because it's a very small sample size. Is that

1 fair?

2 A Oh, absolutely.

3 Q Okay. And if I understand correctly, the -- their  
4 concern is that, yes, these first nine people had  
5 these kind of results, but I suppose it's possible  
6 that the next nine might have opposite results?

7 A Yes.

8 Q Is that fair?

9 A Yes.

10 Q Okay. Thank you.

11 A That's why it was important to do the clinical trial  
12 that Health Canada stopped --

13 Q Yeah --

14 A -- because it was going to gain a large sample.

15 Q -- I understand that, and we'll get to that in a  
16 second if we can. But I do understand and  
17 appreciate what you're saying, is that this is a  
18 preliminary study, if I could put it that way?

19 A That is exactly what we call it.

20 Q Right. And in fact --

21 A That our three publications are preliminary data.

22 Q Right. And in fact if I can have you take a look at  
23 Exhibit number 45, which is treatment of mood  
24 lability and explosive rage, that one?

25 A Yes.

26 Q This is the Journal of Child and Adolescent  
27 Pharmacology?

1 A Yes.

2 Q And I'm looking at page 218, which is the second  
3 last page of this.

4 A Okay. Yes.

5 Q And, I'm sorry, just -- here we go. I'm looking at  
6 the last paragraph above the word  
7 "acknowledgements".

8 A Yes.

9 Q And so it says, and you'll read with me:

10

11 Much research still needs to be done  
12 before the impact of these  
13 preliminary findings can be properly  
14 evaluated.

15

16 A Yes.

17 Q So -- and in fact, at the time when you published  
18 this, which is in 2002, you still believed that you  
19 were in the very early stages?

20 A I still believe that.

21 Q Right. Okay.

22 A That this is preliminary data.

23 Q All right.

24 A By any scientific standards, this is labelled  
25 preliminary data.

26 Q Right.

27 A It's what you do to prepare for a randomized control

1 trial.

2 Q Right. Exactly. This is part of the ongoing  
3 process of science. You start --

4 A That's right.

5 Q Normally, I suppose, you might start with some sort  
6 of a, as I understand it at least, you start with a  
7 small animal type of study, maybe a large animal  
8 type of study, then you move into the human type  
9 study.

10 A Mm-hm.

11 Q Is that the usual plan?

12 A If you were studying a drug --

13 Q Right.

14 A -- yes.

15 Q And I understand that by some definitions this isn't  
16 a drug, by others it may be. Is that fair enough?

17 A Well, yes. And I -- in one -- may I point out the  
18 very important way in which that comment is  
19 relevant?

20 Q Sure.

21 A Vitamins and minerals have been studied for hundreds  
22 of years in animals.

23 Q Right.

24 A Whereas when -- I don't know -- Eli Lilly comes up  
25 with a new drug, it has to be studied first in  
26 animals.

27 Q Right.

1 A Yeah.

2 Q That's -- I understand that, and that's a fair  
3 comment. Is it fair to say, though, that the way  
4 vitamins and minerals have been studied in the past  
5 have been single ingredient at a time, like other  
6 drugs?

7 A By in large. Less so in agricultural literature,  
8 where they tend to study dietary interventions.

9 Q Right.

10 A Yeah.

11 Q And ironically the source of this information  
12 originally came from agriculture, as you -- did you  
13 understand that at all?

14 A I -- I did. I'm not sure I would call it irony so  
15 much as appropriate.

16 Q All right. Fair enough. Now, as I understood,  
17 again, the adult study that you were involved in, I  
18 think your words were -- and I'll see if I have it  
19 here -- am I correct that -- to say that you -- your  
20 position was that most of the people in the study  
21 had lowered their pharmacological drugs during the  
22 course of the study?

23 A In the open-label series --

24 Q Yes.

25 A -- in adults?

26 Q Yes.

27 A Yes, there was about an average of a 50 percent

1 drop.

2 Q And if I understood correctly as well, the reason  
3 that you engaged in having these patients lower  
4 their drugs is because that was -- as part of the  
5 instruction from Mr. Stephan and Mr. Hardy, or  
6 information from Mr. Stephan and Mr. Hardy?

7 A It was their information. It was also, you know, we  
8 were beginning to get reports from psychiatrists out  
9 there who were using it also.

10 Q All right.

11 A Yeah.

12 Q So you took some -- you took information from  
13 various sources, amalgamated it, made it part of  
14 your process?

15 A Yes.

16 Q And that was the process you followed in this study?

17 A Yes.

18 Q Did you have concern that this was a change that was  
19 occurring during the course of the study that may  
20 have raised alarm bells in anybody who looked at the  
21 study after it was completed?

22 A I'm not sure I understand the question.

23 Q Certainly. I'll see if I can rephrase it. During  
24 the course of a medical study like this one, it's  
25 important to keep things the same?

26 A Mm-hm.

27 Q Yes?

1 A Mm-hm. Yes.

2 Q Yes. The dosage is important, to keep that the same  
3 throughout, correct?

4 A Yes.

5 Q And in fact you actually abandoned the early study  
6 because you didn't know that the one set of  
7 ingredients remained the same throughout?

8 A Correct.

9 Q Okay. So as I'm understanding it, it's important to  
10 keep everything on the same level -- level's a bad  
11 word, but to keep them consistent?

12 A Yes, that's correct.

13 Q All right. And so what we're doing in this  
14 particular test is actually changing one of the  
15 factors. Is that correct?

16 A Yes, but we're not changing what we call the  
17 independent variable.

18 Q All right.

19 A Do you want me to explain --

20 Q I do.

21 A -- a little bit?

22 Q Yeah, please do.

23 A Let me see if I can think of an analogy. I'm having  
24 trou -- I was trying to think of a blood pressure  
25 analogy or something, where if you -- suppose you  
26 figure out that yoga helps people with blood  
27 pressure problems. Maybe it does, why not? That

1           you were doing a study on yoga.

2           Q     Mm-hm.

3           A     And you're monitoring blood pressure, and people's  
4           blood pressure is dropping. You have to take them  
5           off of their anti-hypertensive medication or  
6           decrease it, or they could go dangerously low.

7                     So in that sense you're independent variable is  
8           your yoga.

9           Q     Mm-hm.

10          A     Okay? And you're only -- you have only one  
11          independent variable so you are scientifically  
12          sound, as we were. We have one independent  
13          variable, which is the nutritional supplement.  
14          Being able to manage your hypertension on less  
15          medication, that's an outcome. And so it's not a  
16          confound, which is what I think you were kind of  
17          implying.

18          Q     That is what -- I wasn't trying to imply --

19          A     Okay.

20          Q     -- anything. I was simply trying to determine if  
21          you had any concerns as part of your test, that this  
22          was a variable confound, is that --

23          A     Confound is what we call -- an experimental  
24          confound, yeah.

25          Q     So this was not the kind of thing that you would  
26          consider to be an experimental confound?

27          A     No.

1 Q Okay.

2 A No. It's an outcome.

3 Q And did you ever have anybody in your community, and  
4 by that I mean the people that do similar work, ever  
5 express any kind of concern about that, as a  
6 possible confound or some kind of an issue to be  
7 taken into consideration?

8 A Not as a confound. Yes, as an issue.

9 Q Al right.

10 A You have to understand, in the psychiatric community  
11 this was iconoclastic to suggest that when a patient  
12 gets worse, instead of increasing meds, decrease  
13 their meds.

14 Q Right. All right. So it was an issue that people  
15 raised perhaps for further consideration as you do  
16 further studies. Is that fair?

17 A Yes. And -- yes.

18 Q Okay. Thank you. Now, you described to us a series  
19 of events, I'll call them, that you referred to your  
20 chronology that you created. These are essentially  
21 letters and/or e-mails or phone calls that have gone  
22 back and forth between yourself -- or the University  
23 of Calgary, and Health Canada?

24 A Yes.

25 Q And I just want to make sure I've got my information  
26 correct, first of all. You would have been first  
27 advised that you -- there was a problem with the

1 clinical trial in 2001 around late March, early  
2 April of 2001?

3 A Well, I wish we had been informed there was a  
4 problem with the clinical trial. We weren't. They  
5 just stopped the shipment at the border.

6 Q All right.

7 A I mean --

8 Q That's fair enough.

9 A -- it seemed like a very peculiar way to interfere  
10 with our research.

11 Q All right. And as you understood it -- well, let me  
12 ask it this -- the question this way. Is it fair to  
13 say that you understood that it was the inspectorate  
14 that had stopped that shipment?

15 A Yes --

16 Q Okay.

17 A -- that is my understanding.

18 Q And that's -- well, we'll drop that word. So it was  
19 not until you actually were contacted by the  
20 inspectorate that you understood why they had  
21 stopped the product from entering Canada. Is that  
22 fair? Maybe I can help you out here.

23 A Yeah, I'm not sure when I figured out what -- I  
24 really thought it was just a bureaucratic error at  
25 first --

26 Q Right, that's -- that I understood.

27 A -- because no one had told us there was any problem.

1 Q Right. And you were operating under the impression,  
2 as I gather, that you weren't required to apply for  
3 a clinical trial, you didn't have to make an  
4 application for your clinical trial?

5 A That's correct.

6 Q All right. And so when you got a letter, I think  
7 dated April 27th, 2001, saying that you did need  
8 approval of your clinical trial, now you're aware of  
9 what the problem is?

10 A Right. That would have been the letter from Miles  
11 Brosseau.

12 Q Right. Exactly. So I'm going to just show you the  
13 letter because I'm not sure that it has been entered  
14 into evidence at this point. I think a copy may be  
15 marked for identification, sir, but I'm not sure.  
16 It's dated April 27th to Bonnie Kaplan. No, it  
17 doesn't look like it. All right.

18 I'm going to hand a copy up through madam  
19 clerk.

20 THE COURT: Thank you.

21 A Thank you.

22 Q MR. BROWN: All right. Do you recognize  
23 this letter?

24 A Yes.

25 Q This is the one that you're speaking of, from Miles  
26 Brosseau of April 27, 2001?

27 A Yes.

1 Q Now, if you could just take a look -- if you want to  
2 look at the first page, that's fine, but I'd like to  
3 direct your attention to the second page, the very  
4 top.

5 A Mm-hm. Yes.

6 Q The first paragraph reads:

7

8 The Food and Drugs Act and  
9 Regulations require that an  
10 investigational new drug submission  
11 be filed for evaluation prior to  
12 initiating a clinical trial.

13

14 A Yes.

15 Q Right? And that's -- so this is your first  
16 confirmation or information that you needed to file  
17 for an IND?

18 A Yes.

19 Q Okay. And then they indicate that a no objection  
20 letter would be issued if they agree that it's  
21 appropriate?

22 A Yes.

23 MR. BROWN: Okay. Now, sir, I wonder if  
24 this could be marked as the next exhibit? This is a  
25 letter to Dr. Kaplan, she has identified it, sir.

26 THE COURT: Dr. Kaplan, you have had an  
27 opportunity to review that letter, and that is a

1 copy of the letter that you received?

2 A Yes, it is.

3 THE COURT: Including attachments?

4 A Yes.

5 MR. BROWN: Thank you, sir.

6 THE COURT: All right. I believe that is  
7 48, is that right, madam clerk?

8 THE COURT CLERK: Yes, sir.

9 THE COURT: All right. Exhibit 48 will be  
10 the copy of the letter dated April 27th, 2001 to Dr.  
11 Bonnie J. Kaplan from Miles E. Brosseau of Health  
12 Canada -- sorry, Health Products and Food Branch  
13 Inspectorate of Health Canada.

14

15 \*EXHIBIT 48 - Copy of letter dated April 27, 2001 to Dr.

16 \*Bonnie J. Kaplan from Miles E. Brosseau

17

18 Q MR. BROWN: Now, I don't intend to take  
19 you through all the details of all of the meetings  
20 and all of the letters that went back and forth. I  
21 think you made it pretty clear in your testimony  
22 that efforts were made by yourself or your  
23 colleagues --

24 A Mm-hm.

25 Q -- and counsel from the University of Calgary to  
26 clarify what needed to be done --

27 A Mm-hm.

1 Q -- to get an IND. Is that correct?

2 A That is correct.

3 Q Okay. Ultimately -- and sorry, I'm going to step  
4 you back a little bit, because originally Mr.  
5 Brosseau advised you that May 31st was going to be  
6 the deadline for your clinical trial?

7 A Yes.

8 Q That's of 2001?

9 A Right.

10 Q Eventually that date got moved?

11 A Lynn McRae, our university lawyer, wrote a letter,  
12 arguing with it, basically.

13 Q All right. Okay. Trying to put forward a position  
14 that you guys are wrong, you don't know what you're  
15 talking about, and we don't need an IND. Fair  
16 enough?

17 A No, I don't think that was the gist of her letter.

18 Q Okay.

19 A But I haven't re-read it lately.

20 Q All right.

21 A Do you want me to --

22 Q No, that's fine.

23 A -- pull it out? Or --

24 Q I'm not as concerned about the content of her letter  
25 as I am just with the -- to make sure I understood  
26 what happened. And what -- as I understand it,  
27 there was a decision after the April 27th, 2001

1 letter to extend the deadline of your clinical  
2 trial. You can agree with that part?

3 A Yes. That was based more on -- on patient  
4 management. I mean, he couldn't just dump 28 people  
5 on the streets, kind of thing.

6 Q Sure.

7 A Yeah.

8 Q Okay. And the original letter was suggesting, look,  
9 get your people back to their psychiatrists and  
10 psychologists, have them cared for in whatever  
11 manner is appropriate, but the trial is ending May  
12 31st?

13 A Yes.

14 Q That was the original position?

15 A Yes.

16 Q The reason I'm -- I'm kind of harping on this, I  
17 understand, but originally -- I'm sorry, my point is  
18 that the clinical trial itself actually continued on  
19 for some period of time after April the 27th, 2001?

20 A Yes.

21 Q It was December, in fact, when the final word came  
22 down. Is that your recollection?

23 A No, it was September 10th. Oh, sorry. No, that was  
24 when I -- the deadline for submitting -- sorry.

25 Q Right. You were given four weeks to file your --

26 A Yeah.

27 Q -- clinical trial on that date?

1 A So you may be right. Was it December?

2 Q Well, I don't know for sure, I'm asking you that.

3 A Okay. All right.

4 Q But my understanding --

5 A Hold on --

6 Q -- is that --

7 THE COURT: Well, let her answer the  
8 question.

9 A Yeah.

10 THE COURT: She is looking for an answer.

11 MR. BROWN: I'm sorry. Sorry.

12 A This is where my chronology is too synthesised and I  
13 would need to go pull out his letter.

14 MR. BROWN: I actually have a copy that I  
15 can provide her, sir.

16 THE COURT: Why do you not show it to her  
17 and let her see if that is the same letter that she  
18 is thinking of.

19 MR. BROWN: I'll pass forward a letter,  
20 sir, dated December 20th, 2001 to Dr. Bonnie Kaplan.

21 A This is a rejection of the clinical trial  
22 application, it is not the letter that said, your  
23 clinical trial is now over, put your patients under  
24 the care of their physicians, which probably  
25 followed this.

26 It was important --

27 Q MR. BROWN: All right. Yes. You're

1 right. So the December 20th letter is basically  
2 saying, you've sent us the material we've asked for  
3 but we're rejecting it on a certain basis.

4 A Right.

5 Q Right?

6 A Yes.

7 Q Okay. And this letter is dated December 20th, 2001?

8 A Yes.

9 Q And I believe then you will have received a letter  
10 of January 4th, 2002 where the actual trial is  
11 ceased I suppose you --

12 A Could be. I don't have that in my chronology, yeah.

13 Q I'll send this one forward to -- January 4th, 2002.

14 This actually was not addressed to you --

15 A Yes.

16 Q -- but I'm going to ask you whether --

17 A Actually --

18 Q -- you saw it or not?

19 A I did see it, many months later.

20 Q Oh. Okay.

21 A They didn't think to send it to me, they went it to  
22 the head of our ethics -- bio-ethics office --

23 Q Right.

24 A -- Dr. Ian Mitchell.

25 Q Right.

26 A And Dr. Mitchell of course had assumed that I would  
27 have seen it.

1 Q I see. All right. You can confirm that you did see  
2 this letter?

3 A I did eventually see it.

4 Q All right. So is it correct for me to say that the  
5 clinical trial itself actually ceased as of -- well,  
6 what date did it cease?

7 A Well, probably right after this letter.

8 Q You would have had some kind of communication from  
9 Dr. Mitchell then?

10 A I would think so.

11 Q All right.

12 A I could probably dig that out of the binder. I  
13 think the point you're making though is that it went  
14 on for a while, while we went through the process of  
15 clinical trial application. And that is accurate.

16 Q Okay. And that is ultimately what I was seeking to  
17 clarify, is that I got the sense from the earlier  
18 testimony that April 2001, the trial is ceased. But  
19 in fact it carried on until at least January 2002?

20 A I am unwilling to confirm the latter part of your  
21 sentence --

22 Q Okay.

23 A -- unless you let me dig up the date.

24 Q Please -- if you have it, please go ahead and do  
25 that.

26 A I'm pretty sure I do.

27 THE COURT: Please go ahead. And take

1           your time to look it up.

2       A     You know, this might take a few minutes.

3       MR. BROWN:                    That's all right.

4       THE COURT:                    That is fine. Take your time.

5       A     You would think this would be a date that I would  
6           remember so well. And I don't even have it  
7           earmarked. This is going to take -- I don't know if  
8           I'm going to be on the stand tomorrow, but would it  
9           be possible for me to pull this out overnight and --

10      THE COURT:                    Well, let us just see what is  
11           required here.

12      MR. BROWN:                    Yes.

13      THE COURT:                    What is your question again?

14      MR. BROWN:                    Sorry, it's been a while since  
15           I asked it, sir.

16      THE COURT:                    I mean, if you are just trying  
17           to approximately --

18      MR. BROWN:                    Right.

19      THE COURT:                    -- nail down the date or a  
20           month when the trial was stopped.

21      MR. BROWN:                    Exactly.

22      THE COURT:                    Is that what you are after?

23      MR. BROWN:                    That's essentially what I was  
24           attempting to have the witness confirm.

25      Q     MR. BROWN:                    And perhaps I can phrase it  
26           this way, Dr. Kaplan.

27      THE COURT:                    You may not have to do all

1           that digging.

2       A     All right.

3       MR. BROWN:                   Right.

4       THE COURT:                   I think Mr. Brown can get the  
5           information he is looking for --

6       MR. BROWN:                   Right.

7       THE COURT:                   -- perhaps in another way than  
8           you having to find that letter.

9       MR. BROWN:                   Right.  I --

10      A     Okay.

11      MR. BROWN:                   I don't want you to have to  
12           come back tomorrow, Dr. Kaplan, because I don't  
13           expect to need you tomorrow.  So --

14      A     Okay.

15      MR. BROWN:                   -- let's see if we can get  
16           this straightened out.

17      Q     MR. BROWN:                   What I'm attempting to  
18           confirm, and I think you basically have, is that you  
19           first became aware of a problem some time around  
20           April of 2001 with the clinical trial, correct?

21      A     Mm-hm.  March 29th.

22      Q     Okay.  And then some time after December 20th at  
23           least of 2001 was when the trial was actually -- you  
24           were told to cease the trial?

25      A     I believe so.

26      Q     Okay.  That's the best you -- that you can recall?

27      A     I believe so.

1 Q Okay. Fair enough. You've had a chance to take a  
2 look at the December 20th, 2001 letter that I handed  
3 up there? There's a small A-17 in the top right  
4 hand corner?

5 A Yes.

6 Q And do you recognize that letter?

7 A Yes.

8 MR. BROWN: I wonder, sir, if we could  
9 have that marked as the next exhibit?

10 MR. BUCKLEY: I assume we're just marking it  
11 for the fact that it was sent, not for the truth of  
12 its contents?

13 MR. BROWN: That is true, sir.

14 MR. BUCKLEY: Then I've got no objection to  
15 that.

16 MR. BROWN: Yup.

17 THE COURT: All right. The copy of the  
18 letter dated December 20th, 2001 to Dr. Bonnie J.  
19 Kaplan from Robert Peterson, director general of the  
20 therapeutic products division will be Exhibit 49.  
21 Again, for proof that the communication took place,  
22 but not for the truth of the contents.

23

24 \*EXHIBIT 49 - Copy of letter dated December 20, 2001 to

25 \*Dr. Bonnie J. Kaplan from Robert Peterson

26

27 MR. BROWN: Thank you, sir. And, sir, the

1 next letter, I believe the witness confirmed that  
2 she has seen this letter. Is that correct?

3 A That's correct. The one to Dr. Mitchell.

4 MR. BROWN: Again, if this one could be  
5 marked as a full exhibit, but again not for the  
6 truth of its contents, merely that it was sent to  
7 the University of Calgary and this witness did  
8 observe it.

9 THE COURT: Agreed, Mr. Buckley?

10 MR. BUCKLEY: Yes.

11 THE COURT: Exhibit 50, dated January 4th,  
12 2002 to Dr. Ian Mitchell, the director of the office  
13 of medical bio-ethics, University of Calgary, from  
14 Dr. Robert Peterson, director general of the  
15 Therapeutic Products Directorate. That will be  
16 Exhibit 50. Again, for proof that the communication  
17 occurred, not for the proof of its contents.

18

19 \*EXHIBIT 50 - Letter dated January 4, 2002 to Dr. Ian

20 \*Mitchell from Dr. Robert Peterson

21

22 Q MR. BROWN: And again, Dr. Kaplan -- I  
23 apologise for jumping around a little bit, I should  
24 have asked this question earlier when we were  
25 talking about changes to what you call confounds.

26 A Mm-hm. Yes.

27 Q Now, I believe my friend asked you about different

1 versions of the product, and you referred to it as  
2 the product so I will, that have -- there's been  
3 variations over time?

4 A Correct.

5 Q All right. And as I understood from your evidence,  
6 one of the variations is that the minerals have  
7 basically been pulverized so they're smaller, fewer  
8 capsules, correct?

9 A Correct.

10 Q But you also used the word "bio-availability".

11 A Oh.

12 Q Right?

13 A Yes.

14 Q And so as I understand that, and please help me out  
15 of I'm wrong, bio-availability means that more of  
16 the intended target mineral in this case is absorbed  
17 by the body than if it's less bio-available?

18 A Yes.

19 Q So even though your answers to my friend were that  
20 essentially nothing has changed because the  
21 ingredient list has basically remained the same,  
22 correct?

23 A Mm-hm. Yes.

24 Q Would you agree that bio-availability is a  
25 significant difference in terms of how this -- these  
26 ingredients would effect the body, or how they would  
27 be absorbed?

1 A That's why the mineral content was decreased.

2 Q So is it -- so am I to understand that to mean,  
3 then, that the mineral amount was actually decreased  
4 because the body was absorbing more?

5 A Yes.

6 Q And that --

7 A It is an inference.

8 Q Okay.

9 A But it's based on some knowledge of physiology.

10 Q Okay.

11 A May we make up some numbers here? If you have, say,  
12 100 milligrams of calcium and it's very large  
13 particle size, and if you pulverize it to a finer  
14 powder so it's absorbed better, then what the  
15 TrueHope people apparently found is you could cut it  
16 down to 67 --

17 Q Okay.

18 A -- milligrams, by a third, and get the same  
19 behavioural response.

20 Q Okay. So you -- and is it fair for me to say you  
21 were relying on the information obtained by the  
22 TrueHope folks to determine that essentially you  
23 were dealing with the same product?

24 A That's correct. They do -- you know, like any  
25 company, I guess it would be called beta testing,  
26 experimenting, having people try it out. We  
27 researchers have never had anything to do with the

1 formulation.

2 Q Right.

3 A Yeah.

4 Q You are, however, concerned that -- to make sure  
5 that the formulation remains consistent. That's  
6 important for you?

7 A That it's the same 36 ingredients is very helpful.

8 Q Right. And not only that they're the same 36, but  
9 they have the same bio-availability. That also  
10 makes -- is important?

11 A No. No.

12 Q That's not important?

13 A No. Because having the improved bio-availability of  
14 the smaller particle size enabled them to bring the  
15 number of pills down.

16 Q I think I --

17 A So -- yeah.

18 Q I think I asked that question incorrectly. I'm  
19 trying to -- what I'm trying to say is that, to  
20 ensure that the same amount of the product is  
21 absorbed by the body is important. Is that the  
22 proper way to sa it?

23 A Well, yes. But because these are human beings, we  
24 can't prove that. That would require a lot of  
25 animal studies.

26 Q Which weren't completed with these products?

27 A With the 36 ingredients in this formulation, no.

1 Not in a way that would answer that question.

2 Q In fact this is somewhat unique research because you  
3 are dealing with a diversified product, 36 --

4 A Yes.

5 Q -- ingredients instead of one or maybe two?

6 A Yes. But we're not alone in the world. I could  
7 cite you other research that is doing that or has  
8 done that.

9 Q And that --

10 A Some in Canada.

11 Q That is the current or the newer approach to looking  
12 at these types of products?

13 A Well, it's recognizing that in fact it can be  
14 harmful to -- if you're studying nutrition, to  
15 change one ingredient at a time because the body  
16 needs things in certain balances.

17 Q Right.

18 A And so it's important to provide a broad spectrum.  
19 That's being studied in people -- elderly people  
20 with memory problems and prison populations and so  
21 forth, of, you know, young people -- that was  
22 Bernard Gesh's work that I referred to --

23 Q Right.

24 A -- with emotional disturbances. So we're not alone.

25 Q No. And I wouldn't suggest that you were.

26 MR. BROWN: Sir, if I might just have one  
27 moment. I think I may be almost done. Those are my

1           questions, sir. Thank you.

2           THE COURT:                   Anything arising, Mr. Buckley?

3           MR. BUCKLEY:                   Yes, there's a couple of  
4           things arising, Your Honour.

5

6           \*Mr. Buckley Re-examines the Witness

7

8           Q     MR. BUCKLEY:           Dr. Kaplan, my friend referred  
9           you to the fact that the FDA uses the same term, IND  
10          for an (INDISCERNIBLE).

11          A     Yes.

12          Q     So what was the FDA experience like?

13          A     It was very impressive, they're very professional.  
14          I did not ever sense any kind of bias, no  
15          harassment, they were reasonable and scientific.  
16          Didn't agree with everything, but they were very  
17          competent.

18          Q     And would it be fair to say that that experience was  
19          similar to when you finally dealt with the Natural  
20          Health Products Directorate?

21          A     Yes. In both cases -- the FDA, I should point out,  
22          does have expertise, they have people with expertise  
23          in vitamins and minerals and nutrition. And, yes,  
24          it was comparable to Natural Health Product  
25          Directorate.

26          Q     And then the next thing is, as I'm just thinking  
27          that you might have gotten a little bit confused

1 about dates, because my friend showed you an April  
2 27th letter from Miles saying, you need to get an  
3 approval. But you'd already, on April 6th, spoken  
4 with Dr. Mithani?

5 A Yes. Thank you for bringing that out. I mean as  
6 early as January I had talked to Dr. Peter Chan, in  
7 December, the previous December, I had tried to  
8 reach Dr. Phil Waddington.

9 So we were trying to make Health Canada aware  
10 of what we were doing, and to get their guidance as  
11 to whether there was some interim procedure by which  
12 we could be reviewed, you know, prior to the Natural  
13 Health Product Directorate being fully up and  
14 running.

15 So I think, in a way, Mr. Buckley, both things  
16 are -- are true. We certainly were aware that there  
17 were concerns, and we were trying to work on the  
18 concerns. Mr. -- the letter from Mr. Brosseau was  
19 the first kind of written statement that we had from  
20 Health Canada.

21 Q Okay. And the clinical trial kept going, but did  
22 you guys keep admitting new people?

23 A This is what's troubling me, that I -- I can't ever  
24 look through papers and think at the same time. And  
25 I cannot recall when we actually stopped recruiting.  
26 I'm sorry, I just --

27 Q Okay.

1 A -- don't recall.

2 MR. BUCKLEY: No, that's fine. And thank  
3 you.

4 THE COURT: Mr. Brown, do you have  
5 anything further?

6 MR. BROWN: I do not, sir. Thank you.

7 THE COURT: Dr. Kaplan, I am seeking a  
8 qualification from you as well. In your examination  
9 in-chief you were talking about the Therapeutic  
10 Products Directorate. And you indicated that from  
11 the first they said they were not experts, but they  
12 were reviewing your clinical trial anyway?

13 A Yes.

14 THE COURT: And I understood you to say  
15 that they could not review complex standards. Now  
16 --

17 A Oh.

18 THE COURT: -- I may have missed  
19 something. I think you went on to refer to 32  
20 something or other. Could you just explain to me  
21 what you were saying there?

22 A They felt they could not review a complex  
23 nutritional supplement that had as many complex,  
24 meaning 36 ingredients, by drug standards.

25 I think I could illustrate this pretty simply,  
26 Your Honour. If you had a new pharmaceutical that  
27 had two ingredients, you would have to test

1 ingredient 'A' compared to ingredient 'B', compared  
2 to ingredient 'A' plus 'B'. And that is the  
3 standard at Therapeutic Products Directorate.

4 Well, by that -- that standard we would have to  
5 compare ingredient 1 to 2 to 3 to 4, all the way up  
6 to 36, and then every combination. What is that,  
7 36 permutations? I've never added it up.

8 And they didn't know how to get around that.  
9 They -- they just had no -- their requirements were  
10 that we would have to do that. They didn't know how  
11 to get around that.

12 THE COURT: They did not know how to do  
13 that?

14 A They did not know how to get -- how to review  
15 something that wouldn't require that many different  
16 groups of patients. That was only one problem,  
17 there were others where their standards for drugs  
18 are not appropriately applied to a complex  
19 nutritional supplement.

20 THE COURT: And you finished off your  
21 commentary right at that point by saying something  
22 to the effect, you could not succeed?

23 A Dr. Mithani, the head of the TPD clinical trials  
24 division, told us that she couldn't figure out how  
25 our application could be successful.

26 THE COURT: Mr. Brown, any questions  
27 arising out of that?

1 MR. BROWN: No, sir. Thank you.

2 THE COURT: Mr. Buckley?

3 MR. BUCKLEY: No, Your Honour.

4 THE COURT: Dr. Kaplan, thank you very  
5 much. It has been a long day for you and I  
6 appreciate the fact that you have been on the stand  
7 for the day, and the evidence that you have put  
8 forward to the court today.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you very much.

11 THE WITNESS: You're welcome.

12 THE COURT: I appreciate it.

13 (WITNESS STANDS DOWN)

14 THE COURT: All right. Anything further,  
15 gentlemen, for now?

16 MR. BROWN: No, sir.

17 THE COURT: All right. In that case this  
18 court will stand adjourned then until 9:30 tomorrow  
19 morning madam clerk. Thank you, gentlemen. Thank  
20 you, madam clerk.

21 THE COURT CLERK: Order in court. All rise.

22 Court stand adjourned until tomorrow morning at  
23 9:30.

24 -----  
25 PROCEEDINGS ADJOURNED UNTIL 9:30 A.M. MARCH 21, 2006  
26 -----

27

1       \*Certificate of Record

2           I, Jillian Fox, certify this recording is a record  
3           of the oral evidence of proceedings in the Criminal  
4           Court, held in courtroom 412, at Calgary, Alberta,  
5           on the 20th day of March, 2006, and I was in charge  
6           of the sound-recording machine.

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1 \*March 21, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
 4 Judge Meagher of Alberta

5

6 K. Brown, Esq. For the Crown

7 S. Buckley, Esq. For the Accused

8 J. Fox Court Clerk

9 -----

10 THE COURT CLERK: Calling the Synergy Group of  
 11 Canada and TrueHope Nutritional Support.

12 THE COURT: Good morning, gentlemen.

13 MR. BROWN: Good morning, sir.

14 MR. BUCKLEY: Good morning, Your Honour.

15 THE COURT: Madam clerk, what was the  
 16 exhibit number, if we put one on, on the call  
 17 records for the 800 call line? It would be a big  
 18 binder like this.

19 MR. BUCKLEY: I believe it's Exhibit 30,  
 20 Your Honour.

21 THE COURT CLERK: Yes. Exhibit 30.

22 THE COURT: Exhibit 30. Thank you.  
 23 Mr. Buckley.

24 MR. BUCKLEY: Your Honour, my first witness  
 25 this morning is going to be Mr. Ron LaJeunesse.  
 26 Now a few minutes ago my friend just handed me  
 27 some disclosure concerning Mr. LaJeunesse, and so

1 before I call him I want the opportunity to go over  
2 it with Mr. LaJeunesse, and so I'm seeking an  
3 adjournment, probably in the neighbourhood of 15  
4 minutes to half hour.

5 THE COURT: Mr. Brown.

6 MR. BROWN: Yes, sir.

7 THE COURT: We are still getting  
8 disclosure a week and a half into the trial?

9 MR. BROWN: Sir, these are -- this is --  
10 I'll say first of all that we had no idea that Mr.  
11 LaJeunesse was going to be called as a witness, as  
12 you know.

13 I asked on more than one occasion in pre-trial  
14 conferences for, not only the defences that Mr.  
15 Buckley was going to rely on but what witnesses he  
16 intended to call.

17 Mr. Buckley, as is his right, chose not to  
18 advise of those things. The other day he told me  
19 that Mr. LaJeunesse was going to be one of our  
20 witnesses, one of his witnesses rather.

21 When I learned that I advised my client and my  
22 client, last night, told me that there was some  
23 letters that they understood had been received by  
24 him, that is Mr. LaJeunesse. They were faxed to me  
25 this morning, sir.

26 THE COURT: Mr. Brown, are there any  
27 representatives of Health Canada present in court?

1 MR. BROWN: I'm glad you asked that, sir,  
2 because my advice to my client, and I'm prepared to  
3 divulge it, was to have somebody here from Health  
4 Canada.

5 There has been a representative, a media  
6 representative from Health Canada all along. This  
7 morning I anticipate somebody from Health Canada  
8 will actually be present in court, and I believe for  
9 the rest of the trial.

10 THE COURT: Thank you.

11 MR. BROWN: And I obviously have no  
12 objection to the adjournment, sir.

13 MR. BUCKLEY: And I'm not pointing a finger  
14 at my friend so.

15 THE COURT: I appreciate that, Mr. Brown.  
16 And I also appreciate the position that you are  
17 apparently in.

18 MR. BROWN: Thank you, sir.

19 THE COURT: All right, Mr. Buckley, I will  
20 give you an adjournment.

21 Call me when you are ready to proceed.

22 MR. BUCKLEY: Thank you, Your Honour.

23 THE COURT CLERK: Order in court. All rise.  
24 Court stands adjourned for a brief period of time.

25 THE COURT: Thank you.

26 (ADJOURNMENT)

27 THE COURT CLERK: Recalling Synergy Group of

1 Canada and TrueHope Nutritional Support.

2 THE COURT: Mr. Buckley.

3 MR. BUCKLEY: Your Honour, thank you for the  
4 brief adjournment. And we're prepared to proceed  
5 this morning.

6 I would like to call Mr. Ron LaJeunesse to the  
7 stand.

8 THE COURT: Go ahead. Mr. LaJeunesse,  
9 step forward here please, sir.

10

11 \*RON LAJEUNESSE, Sworn, Examined by Mr. Buckley

12

13 THE COURT: Just a moment, Mr. Buckley,  
14 please.

15 MR. BUCKLEY: Do you want that chair moved,  
16 Mr. LaJeunesse, if it's in your way. I can take it  
17 off that now.

18 THE COURT: All right. Go ahead.

19 THE WITNESS: I think it's okay.

20 MR. BUCKLEY: You okay.

21 THE WITNESS: Yeah.

22 MR. BROWN: Sir, before my friend begins  
23 his examination you asked me before the break  
24 whether there was a representative of Health Canada  
25 here and I said there was on their way. Michelle  
26 Boudreau from Health Canada is present. She's  
27 sitting in the front row, sir.

1 THE COURT: Thank you.

2 MR. BROWN: Thank you.

3 THE COURT: And what position does  
4 Michelle Boudreau hold with Health Canada?

5 MR. BROWN: Michelle, could you please  
6 just give your title.

7 MS. BOUDREAU: Oh, sure. I'm currently the  
8 acting Associate Director General and Health  
9 Products and Food Branch Inspector at Health Canada.

10 THE COURT: Thank you.

11 MS. BOUDREAU: You're welcome.

12 MR. BROWN: Thanks.

13 THE COURT: Go ahead, Mr. Buckley.

14 MR. BUCKLEY: Thank you, Your Honour.

15 Q MR. BUCKLEY: Now, Mr. LaJeunesse, I'm going  
16 to go through your background, and just to help  
17 facilitate that I'm going to show you a document  
18 which I believe is an abbreviated resume that you  
19 had prepared.

20 And I'm kind of going to go in reverse  
21 chronological order and fill in some gaps.

22 But basically starting in 1965, and for four  
23 years, to 1969, you had worked for the Psychiatric  
24 Services Branch of the Government of Saskatchewan?

25 A That's correct.

26 Q And part of that was actually doing community  
27 working.

1 A That's correct.

2 Q Okay. So you were actually nursing. You were  
3 actually on the street, working with people?

4 A That's also correct.

5 Q Okay. But you also would do some instructing to  
6 teach other nurses.

7 A That was really a later position following my  
8 community work.

9 Q Okay.

10 A As a nursing instructor.

11 Q And that was dealing with, in your community  
12 nursing, it was dealing with people that had  
13 psychiatric issues?

14 A Saskatchewan was beyond other provinces, or earlier  
15 than other provinces, in their institutionalization  
16 plan and my responsibilities were to help move  
17 people to the community and maintain.

18 Q Okay. So out of psychiatric units and then to help  
19 manage them in community?

20 A That's correct.

21 Q Okay. Now then you end up moving to Calgary and  
22 your resume shows 1970 to '81, that you taught at  
23 Mount Royal College, in Calgary.

24 A That's also correct. However, there's a missing  
25 piece in there. I was also employed by the Canadian  
26 Mental Health Association as their Regional  
27 Executive Director at that same time, so I really

1 held two positions, one at Mount Royal as a  
2 sessional instructor in humanities, and I was  
3 Executive Director of CMHA in the Calgary region.

4 Q Okay. So as far as teaching in the humanities you  
5 taught psychology to nurses, police officers, and  
6 social workers (INDISCERNIBLE).

7 A That's correct.

8 Q Okay. And then as Executive Director of the Calgary  
9 region of the Canadian Mental Health Association,  
10 would it be fair to say you started in December of  
11 1969?

12 A I believe that's correct.

13 Q Okay. And that went to 1981?

14 A That's also correct.

15 Q Okay. So almost a 12 year period you're in that  
16 position?

17 A Right.

18 Q Okay. And that's a full time position isn't it?

19 A It is.

20 Q Now when you're in that position what types of  
21 things are you doing?

22 A I was a senior administrator for an organization  
23 that had a range of activities, from public  
24 education to some research and study, to providing  
25 drug services to people, particularly housing once  
26 they left institutional facilities.

27 And I was also responsible for advocacy, that

1 is, representing the interests of ill people, or  
2 helping to design a better service system for the  
3 Calgary region.

4 Q Okay. And when you're talking about ill people and  
5 housing services, this is all for people with mental  
6 illness?

7 A That's correct.

8 Q So for this period of time you are basically heading  
9 the Calgary branch of an organization that deals  
10 strictly with mental health people?

11 A I was the senior administrator for the branch that  
12 provided a range of services for the people with the  
13 most severe illnesses.

14 Q Okay. Now would it be fair to say that during that  
15 period of time you still had hands on experience  
16 with people that had mental illness?

17 A Absolutely. I'll always maintain that.

18 Q Okay. Now in 1982 to 1984 your position changes,  
19 and so now instead of being just head of the Calgary  
20 region you become the Provincial Executive Director  
21 for the Canadian Mental Health Association, for the  
22 Province of Alberta.

23 A That's correct.

24 Q Okay. Now what types of -- what did that entail?

25 A Essentially it moved me away from the direct service  
26 provision, moved me into the design of education  
27 programs rather than the delivery of them, and it

1 increased my administrative responsibilities, but  
2 it's most importantly and the largest part of the  
3 job was really to advocate on behalf of people with  
4 mental illnesses in terms of both individual  
5 advocacy and more importantly the design and  
6 improvement in mental health services for the entire  
7 province.

8 Q Okay. Now, so you're actually involved in designing  
9 educational programs to help people with mental  
10 illnesses function in the community?

11 A Correct.

12 Q Okay. So at this point you've got a lot of  
13 expertise in how to manage those types of people?

14 A I believe I do.

15 Q Okay. Now, you ended up being hired by the  
16 Government of Alberta.

17 A That's correct.

18 Q Can you tell us about that?

19 A As Executive Director of CMHA I built strong  
20 relationships with senior bureaucrats within the  
21 government and with senior ministers, particularly  
22 Health ministry but also Justice and others, and as  
23 the Government of Alberta was going through a de-  
24 centralization plan, one of my recommendations was  
25 that Mental Health Services not be de-centralized  
26 immediately because they are in a state of disarray.

27 That was accepted by the government, and the

1 Deputy Minister of the day invited me to come to  
2 work within the branch as Executive Director of the  
3 Mental Health Division to assist them at reform  
4 structure.

5 Q Okay. And that happened in 1994.

6 A That's correct.

7 Q So what were you doing in that role?

8 A I was essentially helping develop a mental health  
9 board that was separate from the regional health  
10 authorities and assisting in dismantling,  
11 essentially, the mental health branch of the  
12 government so that they could be ultimately placed  
13 out within the regional health authority structure.

14 Q Okay. So you had spoken like early on, Saskatchewan  
15 kind of long ago was taking this de-centralized  
16 approach?

17 A Yes.

18 Q And now you're being invited by the Province of  
19 Alberta to assist them in that type of transition?

20 A That's correct.

21 Q Okay. Now you were there for a year and then you  
22 stayed within the Alberta Government but your  
23 position changed.

24 A Yes. The government at that point in time had  
25 formed the Alberta Mental Health Board that would  
26 assume interim responsibility for the overall design  
27 and delivery of mental health services in the

1 province.

2 They appointed a board of directors responsible  
3 for that, a board similar to what now exists for all  
4 the health authorities in the province and that  
5 board approached the minister and asked that I be  
6 transferred from within the department to serve as  
7 CEO of that structure.

8 Q Okay. And so you accepted that. You became the  
9 chief executive officer of the Alberta Provincial  
10 Mental Health Board?

11 A That's correct.

12 Q And at the time that board then had authority,  
13 basically for all of the Government of Alberta  
14 mental health programs in the Province of Alberta?

15 A That's correct. It was over \$200,000,000 in  
16 services.

17 Q Okay. So for -- at that time you're running the  
18 whole show. As far as mental health services --

19 A I'm running -- I'm sorry?

20 Q You're the head of all of the mental health service  
21 or programs under the Government of Alberta at that  
22 time?

23 A That's correct.

24 Q Okay. Now you leave that and you go back to the  
25 Canadian Mental Health Association?

26 A That's correct.

27 Q And that happens in 1997.

1 A Right.

2 Q And you stay there until 2003?

3 A That's also correct.

4 Q Okay. But almost for all of 2003?

5 A Yes.

6 Q And you left just because you thought it was time to  
7 retire?

8 A It was retirement time.

9 Q Okay. But you've since then got a little bored and  
10 now you've got a consulting business going.

11 A I started that prior to retirement because I knew  
12 personalities like mine didn't do well as couch  
13 potatoes.

14 Q Okay. So now you've also written a book called,  
15 Political Asylums, which is basically about the  
16 delivery of mental health in the Province of  
17 Alberta.

18 A It was a 100 year examination. I maintained records  
19 throughout my career, and this book was an  
20 examination of a 100 years of service delivery  
21 within the Province of Alberta. The basic thesis  
22 being that services have largely been influenced by  
23 politics rather than by science.

24 THE COURT: Sorry. What was the name of  
25 the book?

26 A Political Asylums.

27 THE COURT: Thank you.

1 Q MR. BUCKLEY: Now did you win an award for  
2 that book?

3 A I did. In fact, I won the Grant MacEwan Literary  
4 Award which is Alberta's top award for a book each  
5 year.

6 Q Now you're aware that in 2003 some issues arose  
7 concerning the product EMPowerplus but before that  
8 would it be fair to say you had heard about the  
9 product EMPowerplus?

10 A Part of my responsibility as Provincial Director was  
11 to spend time around the province in our various  
12 branches and regions and through that contact CMHA  
13 has many members, many clients and -- in the  
14 thousands, and I would present at community forums  
15 and meetings.

16 I would meet with community representatives and  
17 through those meetings I became aware of TrueHope  
18 and the EMPowerplus, largely due to the testimonials  
19 of individuals, family members and individuals  
20 themselves, who described huge change in their  
21 behaviour. People principally who suffer bipolar  
22 depression.

23 Q Now in the Court context, what people say to us  
24 doesn't carry a lot of weight, but what about in  
25 your context, in the mental health context, when  
26 somebody is telling you about something that might  
27 be working? Is that important in that context?

1       A     Absolutely.  I think there's an increasing movement  
2             throughout the mental health system to place great  
3             credence in the views of the consumer as they're  
4             currently known, or the client, or the patient,  
5             where historically I think we were far more  
6             paternalistic.  I believe the physician knew all.  I  
7             think currently the approach really is to listen to  
8             the individual and the family in terms of their own  
9             experience.

10       Q     Okay.  Now, but you also have had some change to  
11             observe people with mental health conditions before  
12             they started the EMPOWERplus and then after.

13       A     I knew a number of members of our association very  
14             well.  Some have served on directors -- as directors  
15             of regional boards and I knew their families, and I  
16             was acquainted with a number of individuals who, I  
17             observed their children, in particular, or their  
18             spouses who exhibited very difficult bipolar  
19             depressive behaviours, manic phases, spending money,  
20             acting out, striking family members and so on and  
21             following the use of the EMPOWERplus I also observed  
22             these individuals with huge, huge change in their  
23             behaviour.  Calm, looking for jobs, a return to  
24             school, and I did personally observe a number of  
25             people.

26       Q     Okay.  And this is before, really, 2003 --

27       A     That's correct.

1 Q -- comes along. Okay. So you had personally  
2 witnesses that, at least for some people, this  
3 seemed to be an effective treatment?

4 A Yeah. In fairness to other individuals who suffered  
5 schizophrenia, that reported far less --

6 Q Right.

7 A -- active --

8 Q Okay.

9 A -- change.

10 Q Now in 2003, the Canadian Mental Health Association  
11 became aware of a problem. Can you tell us about  
12 that?

13 A I indicated earlier that one of the responsibilities  
14 of our provincial office was to advocate on behalf,  
15 largely systemically, but also on behalf of  
16 individuals, we began to receive calls from our  
17 regional organizations expressing concerns from  
18 their own clients, and we received direct calls and  
19 emails from individuals, saying that there was a  
20 problem with accessing the product provided by  
21 TrueHope.

22 They indicted that there were -- there was  
23 great angst, frankly, because these families had  
24 experienced years and years of serious problems,  
25 attempts at resolving those problems through  
26 conventional psychiatry, none of which had been  
27 successful and the EMPowerplus was making the

1 difference and they were concerned both about the  
2 inability to access the product and they also  
3 expressed concern about the fear, in the future they  
4 could not access the product.

5 Q What types of things would be said on the phone  
6 because --

7 A You know, essentially, as I've just reported, people  
8 would say, My family member has had years and years  
9 of horrible experience with bipolar depression,  
10 since beginning on this product life has changed  
11 entirely for both he or she and the entire family,  
12 and if they're off this product we're going to  
13 return to a life of hell.

14 Or alternatively, they may die because frankly  
15 bipolar depression is frequently a fatal disease.

16 Q And this is important. If people communicate to the  
17 mental health association that there was a suicide  
18 risk --

19 A Yes.

20 Q -- or a death risk.

21 A Well not only was there communication that there was  
22 such a concern but I received two calls from family  
23 members who indicated that there were in fact  
24 deaths. In one occasion --

25 Q Okay. And I'm going to stop you there.

26 A Okay.

27 Q We'll get there later but --

1 A Okay.

2 Q -- I'm talking about -- because at some point you  
3 guys took some action, as an organization.

4 A Yes.

5 Q And so I'm just trying to get at why you guys  
6 would've taken some action.

7 MR. BROWN: Sir, before my friend moves on  
8 with those questions, again, I think it's necessary  
9 to make it clear that these are -- information that  
10 he is going to discuss, as I understand it, about  
11 phone calls and information he received is clearly  
12 going in only for the narrative purpose and not for  
13 the truth of those statements.

14 MR. BUCKLEY: Oh, and that's a given so --

15 THE COURT: Well it is not a given, Mr.  
16 Buckley.

17 MR. BUCKLEY: Okay.

18 THE COURT: While I agree with Mr. Brown  
19 that it should be -- we will have to continue to put  
20 it on the record if you continue to present evidence  
21 that is hearsay evidence we are going to have to  
22 continue to place the caution on --

23 MR. BUCKLEY: Yes.

24 THE COURT: -- and a notation on the  
25 record that it is not for the truth of the contents  
26 but purely for the sake of the narrative.

27 MR. BUCKLEY: Mm-hm.

1 THE COURT: And if you wish to put that  
2 evidence directly before the Court then put it in as  
3 direct evidence.

4 MR. BUCKLEY: Right. Right. Which I am  
5 endeavouring to do in this trial but for this  
6 witness it's, you know, if he's talking about calls  
7 that were placed and I'm not calling those people,  
8 obviously I'm not putting it in for the truth of the  
9 contents.

10 But it is very important for the Court to  
11 understand how this organization got involved in and  
12 why. So my friend and I have been on the same page  
13 as far as what's hearsay and what isn't.

14 THE COURT: That is fine. Just stay on  
15 the same page with me that whenever you get to  
16 hearsay there is going to be a notation placed on  
17 the record that is --

18 MR. BUCKLEY: Okay.

19 THE COURT: -- not going in for the truth  
20 of it's contents but purely for the narrative.

21 MR. BUCKLEY: Yes. And that's fair enough.

22 MR. BROWN: Thank you, sir.

23 THE COURT: And you were just getting very  
24 close to going into that there. He was about to  
25 refer to two phone calls or two discussions of  
26 conversations he had with people with regards to  
27 suicide.

1 MR. BUCKLEY: Mm-hm.

2 THE COURT: If you want to put that  
3 evidence in, put it in directly.

4 MR. BUCKLEY: Well, and actually because  
5 when we get to that point, because I'm trying to go  
6 chronologically with this witness, when we get to  
7 that point, actually those calls that he received  
8 and fielded are important for kind of why his  
9 organization turned up in the heat in trying to  
10 create a political solution.

11 So unless I call family members because I can't  
12 call people that aren't around anymore, it's not for  
13 the truth, but it is important, you know, for the  
14 Court to understand because this organization got  
15 very excited at some point in trying to broker a  
16 political solution and you know it would be  
17 sterilized if we don't put that in for the narrative  
18 purposes. Why this witness believed it was so  
19 important to be getting involved. If this was a  
20 jury trial I'd be very concerned about prejudice but  
21 because this is a judge alone trial I'm not -- I  
22 don't hold that concern so. But I don't want to shy  
23 away from that evidence.

24 THE COURT: Well perhaps it is in the way  
25 you asked the questions.

26 MR. BUCKLEY: Yes.

27 THE COURT: What information did you

1 receive?

2 MR. BUCKLEY: Yes.

3 THE COURT: Go ahead.

4 MR. BUCKLEY: Thank you, Your Honour.

5 Q MR. BUCKLEY: So, Mr. LaJeunesse, I'm trying  
6 to just, at this point, focus you before you best  
7 took any action.

8 A Right.

9 Q And you'd indicated that you were receiving some  
10 calls and I was trying to focus you as to, before  
11 you took action, were there some people basically,  
12 at least saying that there was a suicide risk?

13 A Yes. Family members were calling or individuals  
14 were calling and saying that this product was vital  
15 to their life.

16 Q Now at this point you've been working since, I think  
17 it is 1965, with people with mental health problems.  
18 When people tell you that their life might be on the  
19 line, do you take that seriously, based on your  
20 experience?

21 A You always need to take that seriously, even if  
22 people don't intend to kill themselves, the  
23 declaration that they might do so is always a risk.  
24 Always a risk. Because if they don't receive the  
25 help they may take the next step.

26 Q Now, so you guys were getting these calls. What  
27 does your organization do?

1       A     Well, as I indicated, at the provincial level, one  
2             of my major responsibilities was to ensure that  
3             people receive appropriate and adequate service for  
4             whatever their difficulties are.

5                     Part of that is re-design an overall system,  
6             part of that is representing individuals around  
7             specific problems. For example, we've advocated on  
8             behalf of people who have indicated they've been  
9             held in hospital against their will and  
10            inappropriately. We found solicitors to represent  
11            them so there's a range of work that we've done with  
12            individuals who are unhappy about the treatment they  
13            receive or alternatively are fearful that the  
14            treatment they receive will or may contribute to a  
15            worsened illness or in fact death.

16       Q     Okay. Now in this case, what did your organization  
17             decide to do?

18       A     Our approach was really three fold. First we wanted  
19             to try to work with our political contacts because  
20             we felt the quiet way of resolving the problems  
21             might work well for us and a number of our  
22             organizational members, including myself, had built  
23             a strong relationship with the federal Minister of  
24             Health at the time, and so thought we might be able  
25             to use that particular connection to do three  
26             things.

27                     One, to accelerate the, what appeared to be,

1           stalled efforts to do additional research to test  
2           this product at the University of Calgary.

3           The second was to try to broker improved  
4           communication between the Department of Health and  
5           the people at the EMPower -- at TrueHope, because we  
6           were beginning to receive information that that was  
7           not going very well.

8           And most importantly we wanted to ensure that  
9           the individuals who had expressed concern about  
10          being unable to access their product would continue  
11          to be able to access that product.

12         Q    Now at this point, so before you guys take any  
13               steps, had you even been in contact with anyone at  
14               TrueHope or Synergy Group?

15         A    No, we had not.

16         Q    Okay. So you'd never ever spoken to or met Tony  
17               Stephan?

18         A    Well we did following our decision but in fact our  
19               research prior to making the decision to move ahead  
20               was largely based on the complaints of families and  
21               clients who wanted to access the product.

22               History, in terms of what we knew about the  
23               product, contacts with Bonnie Kaplan at the  
24               university and internet searches but no, I had not  
25               met either of those principals prior to the decision  
26               to take action.

27         Q    Okay. Now your organization doesn't go and endorse

1 products.

2 A No.

3 Q Is that part of the reason why then -- because you  
4 guys make a decision and you have no connection at  
5 all with the Synergy Group or TrueHope?

6 A You know the credence I guess, and the basic  
7 information behind the decision is that individuals  
8 and family members are expressing a concern that  
9 they are not able to receive service.

10 Q Okay. So you guys decide to take a low key approach  
11 and kind of work the political contacts.

12 A Correct.

13 Q So tell us what you did.

14 A Contacted Anne McLellan directly. Discussed the  
15 issues. She referred me to her executive assistant  
16 of the day and she and I met and looked at what  
17 individuals within the Department of Health were  
18 principally responsible, what issues could be  
19 resolved by whom, and then I began working with  
20 other department officials.

21 Q Okay. Who was the assistant at Anne McLellan's that  
22 you worked with?

23 A Rosemary Tremblay.

24 Q Okay. So you met with Rosemary Tremblay and  
25 basically came up with a strategy to try to solve  
26 this?

27 A Yes.

1 Q Okay. Now was part of that strategy, a strategy to  
2 get the product across the border if there was a  
3 problem?

4 A That was a huge part of it. That was principally  
5 the access problem. And the commitment from the  
6 minister's executive assistant and later from the  
7 Minister, because I had a second meeting with her,  
8 was that the product ordered by individuals would be  
9 unimpeded over the border.

10 And I was given a contact person within the  
11 Department of Health who I could work with. In fact  
12 we received specific reports of product being  
13 impeded.

14 Q Okay. So this Rosemary Tremblay and then later Anne  
15 McLellan herself, is telling you that basically it  
16 would be unimpeded?

17 A Correct.

18 Q Okay. Now, so then what would happen if people  
19 phoned your organization and said, Our product's  
20 been stopped.

21 A I would contact the representative from the  
22 Department of Health and she would ask me where,  
23 that is, what location, or the name of the  
24 individuals and of course I received Release of  
25 Information prior to that, and said that she would  
26 deal with it, and in each case referred to her, she  
27 in fact did so.

1 I later wrote the Minister commending her  
2 action. And the families reported that in fact they  
3 did receive product.

4 Q Okay. So basically you had been given a contact  
5 person to phone to get product released.

6 A Correct.

7 Q Okay. And who was that person?

8 A I'm going to have to refer to a name if that's okay.

9 Q Well first we have to go through that. So what is  
10 it you want to refer to there?

11 A I just don't recall the name of that individual  
12 right at this point.

13 Q Well I understand that but you have a document  
14 there.

15 A Oh --

16 Q Just trying to --

17 A -- just some personal notes that --

18 Q Okay. When did you make those notes?

19 A Yesterday.

20 Q And what did you use to make the notes?

21 A Some from memory, some from earlier files.

22 Q Okay.

23 MR. BROWN: Sir, I note that he's actually  
24 opening it already.

25 Q Yes. Don't look at --

26 A I'm sorry.

27 Q It's okay.

1 A I'm sorry.

2 Q So, you have some files?

3 A I have some personal files, yes.

4 Q Okay. And -

5 A I earlier indicated I maintained files throughout my  
6 career as part of the approach to writing a book.

7 Q Okay. So what files would you have referred to get  
8 this name of this person?

9 A Simply just personal notes that I would maintain in  
10 a diary of contacts.

11 Q Okay. So this is a handwritten diary?

12 A Yes.

13 Q So it's kind of a daytimer thing?

14 A Yes.

15 Q And when you make notes in that daytimer are they  
16 made on the day that they happened?

17 A That's correct.

18 Q Okay.

19 MR. BROWN: Sir, I'm not going to object  
20 to having him look at these notes. As I've said on  
21 a couple of occasions yesterday, I'm interested in  
22 the best possible evidence.

23 The name -- the fact that he has to look at the  
24 notes for the name I don't find any great  
25 consequence, sir, and so.

26 THE COURT: All right. I am satisfied  
27 that those notes were made -- the original notes

1           were made in close proximity in time to when the  
2           events occurred and in those circumstances he can  
3           refer to those notes to refresh his memory as to the  
4           name of the person who was his contact with Health  
5           Canada where stoppages occurred.

6                        Go ahead.

7       MR. BROWN:                        Thank you, sir.

8       A       Heather Watson was the name.

9       Q       MR. BUCKLEY:                Okay. So, and just so I'm  
10           clear, so this contact name was given to you by  
11           Rosemary Tremblay, as the person to phone to get  
12           shipments cleared.

13      A       Correct.

14      Q       Okay. So every time a shipment was -- you were told  
15           the shipment was stopped, you would phone this  
16           Heather Watson.

17      A       That's correct.

18      Q       And if I understand your evidence, in each case that  
19           you phoned, the shipment was released.

20      A       That's correct.

21      Q       Are you aware of any time that your organization had  
22           a shipment where you tried to get it released and it  
23           -- you were unsuccessful?

24      A       No, I'm not aware.

25      Q       Okay. So if you made the call it got through, to  
26           your knowledge?

27      A       That's correct. Now not all families reported back

1           although I would say the vast majority did. Those  
2           who didn't report back, I made assumptions that they  
3           received their product.

4       Q     Okay. Fair enough. Now and again the press would  
5           call you about what was happening with this product.

6       A     That's correct.

7       Q     And you made some comments to the press. Would it  
8           be fair to say that some of them were very serious  
9           allegations?

10      A     Yes. I made comments to the press that some very  
11           ill people with potentially fatal diseases required  
12           to access this product and failure to do so could  
13           result in a return of the illness, re-  
14           hospitalization and in some cases possibly death.

15      Q     Okay. Would you make -- do you make comments like  
16           that lightly to the press?

17      A     Absolutely not.

18      Q     Okay. So -

19      A     I'm not a sensationalist.

20      Q     Okay. So -- and you didn't seek out the press?

21      A     No, I did not. They approached us.

22      Q     So why would you, in this instance, make such strong  
23           comments?

24      A     Because I was very fearful. We were receiving an  
25           increasing number of calls. When we began looking  
26           at the issue, there were approximately 20.

27           Ultimately over a 100, from individuals who were

1           expressing severe concerns about their health and  
2           their ability to, frankly, survive.

3       Q     Okay. So you just thought it was a crisis so you  
4           had to make dramatic comments.

5       A     A very serious issue.

6       Q     Now you were in the process of having product  
7           released but you do get some reports. And now we're  
8           at that point. I'll try to phrase my questions at  
9           --

10      MR. BUCKLEY:                   First of all, Your Honour,  
11           I'll put on the record I'm going to elicit some  
12           things that were said to this very witness, not for  
13           the truth of their comments, but that for the fact  
14           that they were said, so that I can go through and  
15           then ask the witness what he did in response to  
16           those.

17      THE COURT:                    Go ahead.

18      Q     MR. BUCKLEY:            So, Mr. LaJeunesse, you  
19           received some calls that alarmed you greatly, and I  
20           want you to describe those for us.

21      A     Well the calls were to the effect that either a fear  
22           about being unable to get the product would result  
23           in a return of the illness. Received those from  
24           family members and individuals.

25                   Several expressing concern that if they had to  
26           return to their state of bipolar depression prior to  
27           taking this product that they no longer wanted to

1 live. Life was not worthwhile.

2 And received concerns about individuals that  
3 said they could no longer obtain the product and  
4 were off the product and a family member was getting  
5 ill again.

6 Q Okay. But then you also received some calls about  
7 deaths.

8 A Yes.

9 Q And can you tell us about those.

10 A Two family members called. In one instance a mother  
11 who indicated that her daughter had been off the  
12 product for a week and a half, was beginning to  
13 exhibit severe depressive symptoms and had suicided  
14 by taking a large of quantity of medication that she  
15 had been on previously. I was invited to the  
16 funeral of that family.

17 The second call came from a father who  
18 indicated that his son had suicided as a result of  
19 not wanting to return to the state of illness that  
20 he had been prior to taking this product.

21 Q How did you react to that?

22 A Obviously, upset. Offended that a system, I guess,  
23 would be such that a product that should be  
24 available would be denied to people that have  
25 obviously found it to be of value.

26 I expressed sympathy and discussed the death  
27 issues with the family and well I was more motivate

1 than ever to try to find a resolution to the  
2 problem.

3 Q Okay. So what steps did you take then to try and  
4 resolve the problem?

5 A Well, essentially additional meetings with Rosemary  
6 Tremblay to try to ensure that first of all the  
7 discussions between Health Canada and TrueHope  
8 people -- some resolution could be found and we  
9 offered to broker meetings between the parties.

10 And a strong push for the -- what appeared to  
11 be, bureaucratic stoppage of research at the  
12 University of Calgary, could in fact be accelerated  
13 and that that could move ahead.

14 Hoping that the evidence provided in that  
15 research would either assist Health Canada in  
16 approving the product for future use.

17 Q Okay. Were you also working on the access issue?

18 A We were. But by and large we assumed that the  
19 access issue was resolved because the number of  
20 complaints we received there were small and they  
21 were resolved by the contact with Health Canada.

22 Q Okay. And you've been very clear that in every case  
23 when you've called it was released.

24 A Yes.

25 Q Now my friend provided me this morning some letters.  
26 I'm just going to show you what appears to be a  
27 October 7th, 2005 letter, or 2003 letter, to Anne

1           McLellan, from yourself.

2                    Have you seen that letter before?

3       A        Yes. I wrote this letter.

4       Q        Okay. Now why were you writing this letter?

5       A        By early October, again, we -- I wanted to reinforce  
6            the informal discussion I'd had with the Minister  
7            through a more formal letter, because the research  
8            on the EMPowerplus, in terms of the double blind  
9            site at the University of Calgary appeared to be  
10           continually bogged down and I wanted to ask the  
11           Minister to meet with myself and Doctor Bonnie  
12           Kaplan, which I understand she agreed to do but we  
13           never able to find the available time and the  
14           problems between TrueHope and Health Canada, in  
15           terms of the conflict, continued, appeared to  
16           continue and again, I wanted to reinforce that we  
17           were prepared to broker something and wanted her  
18           involvement in that as well.

19                    And I wanted, like I say, a broader assurance  
20           that the importation of the product from the US  
21           would continue unimpeded rather than just dealing  
22           piecemeal with individual complaints.

23       Q        Okay. Now did you -- you didn't receive a reply to  
24           this right away by letter. Would that be fair to  
25           say?

26       A        Not immediately. I think it was about a month  
27           later.

1 Q Okay. But did you meet with Anne McLellan after  
2 writing this letter?

3 A I did. I saw her at a social event.

4 Q Okay. And I just -- if you could describe for us,  
5 because you actually knew Anne McLellan.

6 A Yes.

7 Q Did you feel that you kind of had an inside track  
8 with --

9 A I felt I had a very positive relationship with the  
10 Minister. I had a great deal of confidence in her  
11 ability.

12 Q Okay.

13 A Great deal of respect for her and I felt that that  
14 was reciprocal.

15 Q And you would run into her in the social setting?

16 A Yes.

17 Q Okay. So when you told us --

18 A Social or political.

19 Q I'm sorry. When you told us that you had an earlier  
20 meeting with her, was that at her office or was that  
21 at just an event?

22 A That was at a political event.

23 Q Okay. And then your second meeting about this,  
24 after you wrote this letter, was that at a political  
25 event?

26 A It was at a social.

27 Q Okay. What happened at that second meeting?

1       A     I had an opportunity for a private discussion with  
2           her. I indicated that I appreciated the involvement  
3           of her staff. I complimented Heather Watson in  
4           terms of her ability to assist around resolving  
5           individual complaints. I indicated the problems  
6           persisted and we still needed to move ahead on the  
7           three points I indicated earlier.

8                     She asked again that I meet again with Rosemary  
9           Tremblay and I believe she asked me to put it in  
10          writing this time as well, but I'm not sure about  
11          that.

12       Q     So what happened after that?

13       A     I was -- I received -- very little happened at that  
14          time. We attempted to set up a meeting with Doctor  
15          Bonnie Kaplan on several occasions and each time the  
16          Minister's venue changed or something got in the  
17          way, a Cabinet meeting or what have you and so that  
18          never did occur.

19                    I then received a letter from the Minister  
20          thanking me for my earlier letter and my concerns,  
21          acknowledging, as I recall, that she understood  
22          them, and referring her -- referring me to her  
23          assistant Deputy Minister, Diane Gorman, I believe  
24          was the individual.

25       Q     Okay. I'm just -- I'm going to hand you a letter  
26          and I'm just wondering if this is the letter you're  
27          referring to?

1           It's a letter that's stamp dated November 21st,  
2           2000, to you by Anne McLellan.

3       A     Yes. That's the letter I'm referring to.

4       Q     Okay. So you received this November letter, which  
5           is telling you to basically seek out Diane Gorman?

6       A     Correct.

7       Q     Okay. So what did you do then?

8       A     I attempted to phone Diane Gorman on several  
9           occasions. I received calls back from her  
10          assistants and we were, again, never able to put  
11          together a meeting in spite of my offers to come to  
12          Ottawa anytime.

13                I felt like I was being delayed.

14      Q     Were you able to ever actually speak with Ms.  
15          Gorman?

16      A     No, I was not.

17      Q     So you're saying that you were communicating, you  
18          were willing to go to Ottawa to meet. That was not  
19          to Diane Gorman herself?

20      A     No, that was to her assistants.

21      Q     Okay. And how long were you trying to set up a  
22          meeting with Diane Gorman?

23      A     Probably about a month.

24      Q     And in that period of time you weren't even able to  
25          speak to her on the phone.

26      A     I was not.

27      Q     Okay. Now politically something was happening in

1 December of 2003.

2 A Yes.

3 Q Okay. So what was happening?

4 A The Minister was shuffled to a different portfolio.

5 Q Okay. So you mean Anne McClellan?

6 A Yes.

7 Q So she's moved off of the Health Portfolio.

8 A Correct.

9 Q And is no longer Minister of Health.

10 A Correct.

11 Q Okay. Now eventually you received a letter from, I  
12 will say Ms. Gorman. And I'm just going to show it  
13 to you.

14 But I say Ms. Gorman because I'm going to ask  
15 you to look at the signature. I'm just handing you  
16 a letter that stamp dated December 23rd, '03, to  
17 yourself from Diane Gorman but it seems to be signed  
18 by somebody else. Have you seen this letter?

19 A Yes, I have.

20 Q Okay. Now what did you think when you received that  
21 letter?

22 A Well frankly I wasn't surprised because I felt a  
23 cooling of the department as soon as the Minister  
24 moved to a different portfolio, and this letter was,  
25 as I say, not even signed by Diane Gorman and really  
26 I think was a bit boiler plate, putting me off, and  
27 my interpretation of it was, I know longer had the

1 importance that I once had.

2 Q Okay. So were you ever able to actually set up a  
3 meeting with Diane Gorman?

4 A I was not. In fact did not attempt after this  
5 letter. I was also moving into retirement.

6 Q Okay.

7 MR. BUCKLEY: Your Honour, I'm going to seek  
8 -- we'll go back in chronological order, but to  
9 enter the October 7th, 2003 letter, written by Mr.  
10 LaJeunesse to Anne McLellan.

11 THE COURT: You wish to have it entered as  
12 an exhibit?

13 MR. BUCKLEY: I do, Your Honour.

14 THE COURT: What is the next number, madam  
15 clerk?

16 THE COURT CLERK: Fifty-one, sir.

17 THE COURT: Fifty-one.

18 MR. BROWN: No objection, sir.

19 THE COURT: Exhibit 51 will be the copy of  
20 the letter dated October 7th, 2003, from Mr.  
21 LaJeunesse to the Minister of Health.

22 Exhibit 51.

23

24 \*EXHIBIT 51 - Letter dated October 7th, 2003, from Mr.

25 \*Ron LaJeunesse to the Minister of Health, Anne McLellan

26

27 MR. BUCKLEY: Your Honour, with regards to

1           the November 21st, 2003 letter, we can't enter that  
2           for the truth of it's contents but we can enter it  
3           as a record of what was communicated to Mr.  
4           LaJeunesse and for that purpose I would seek to  
5           enter it as an exhibit.

6       MR. BROWN:                        No objection, sir.

7       THE COURT:                       All right. Exhibit 52 will be  
8           the letter to Mr. LaJeunesse, as the Executive  
9           Director, Alberta Division, Canadian Mental Health  
10          Association, from the Minister of Health, entered as  
11          proof that the communication occurred but not truth  
12          of the contents.

13

14       \*EXHIBIT 52 - Letter to Mr. LaJeunesse, Executive  
15       \*Director, Alberta Division, Canadian Mental Health  
16       \*Association, from the Minister of Health, Anne McLellan  
17       \*dated November 21st, 2003

18

19       MR. BUCKLEY:                    And similarly, Your Honour,  
20           the December 23rd, 2003 letter, we can not enter for  
21           the truth of it's contents but would seek to enter  
22           it as a record of what was communicated to Mr.  
23           LaJeunesse from Diane Gorman's office.

24       MR. BROWN:                        No objection, sir.

25       THE COURT:                       Exhibit 53 will be the copy of  
26           the correspondence date stamped December 23rd, 2003,  
27           to Mr. LaJeunesse, the Executive Director, Alberta

1 Division, Canadian Mental Health Association, from  
2 Diane Gorman, the ADM of Health Canada. Again  
3 entered for proof that the communication occurred,  
4 not for the proof of the contents.

5 And that is Exhibit 53.

6

7 \*EXHIBIT 53 - Copy of the correspondence date stamped

8 \*December 23rd, 2003, to Mr. LaJeunesse, the Executive

9 \*Director, Alberta Division, Canadian Mental Health

10 \*Association, from Diane Gorman, the ADM of Health Canada

11

12 THE COURT: Just a minute before you go  
13 any further.

14 Mr. Buckley, did you intend to put Mr.

15 LaJeunesse's curriculum vitae in as --

16 MR. BUCKLEY: Oh, I should do that, Your

17 Honour, and I did intend to do that. Thank you.

18 THE COURT: All right. Any objections?

19 MR. BROWN: No, sir.

20 THE COURT: Exhibit 54 will be the resume  
21 for Ron LaJeunesse.

22 Exhibit 54. Three page document.

23

24 \*EXHIBIT 54 - Resume of Ron LaJeunesse

25

26 MR. BUCKLEY: Right. Your Honour, I already

27 pointed out that the 1969 to December '81, him being

1 the Regional Head of the Calgary Branch of the  
2 Canadian Mental Health Association does not show up  
3 on the resume but we've pulled that out of his  
4 testimony.

5 THE COURT: What were those dates again?

6 MR. BUCKLEY: That would be -- I'll give you  
7 the exact dates.

8 THE COURT: Let me just see.

9 MR. BUCKLEY: So --

10 THE COURT: It would have been 19 -- when  
11 was that?

12 MR. BUCKLEY: It would be 1969 to December  
13 of 1981. Executive Director of Calgary Region of  
14 the Canadian Mental Health Association.

15 Q MR. BUCKLEY: Is that correct, Mr.  
16 LaJeunesse?

17 A That's correct.

18 THE COURT: I'm sorry. That was for the  
19 Calgary Region?

20 MR. BUCKLEY: Yes.

21 THE COURT: Just give me a moment before  
22 you go ahead, Mr. Buckley.

23 All right. That is fine. Thank you, Mr.  
24 Buckley. Go ahead please.

25 MR. BUCKLEY: Madam clerk, could this  
26 witness be shown Exhibit 53 again which is the  
27 December 23rd letter.

1 Q MR. BUCKLEY: Mr. LaJeunesse, this letter,  
2 in the first paragraph refers to the former Minister  
3 of Health, the Honourable Anne McLellan. When you  
4 received this letter was that your understanding  
5 that by the time this letter came that Anne McLellan  
6 was no longer --

7 A Yes.

8 Q -- Minister of Health?

9 A Correct.

10 Q And then basically, at least it's communicated to  
11 you that because this matter's before the courts  
12 they don't really want -- Ms. Gorman doesn't really  
13 want to meet with you.

14 A That's correct.

15 Q Okay. How did you react to that?

16 A Frankly I didn't understand. I was not involved in  
17 the court case and why she couldn't meet with me to  
18 discuss some of the issues we raised, but I'm not a  
19 lawyer.

20 Q Okay. And thank you. I have no further questions.  
21 I expect that my friend might have some questions  
22 for you.

23 THE COURT: Mr. Brown.

24 MR. BROWN: Please.

25 THE COURT: Cross-examination please.

26 MR. BROWN: Thank you, sir.

27

1 \*Mr. Brown Cross-examines the Witness

2

3 Q MR. BROWN: Good morning, Mr. LaJeunesse.  
4 I'm going to ask you a few questions about the  
5 evidence you've given this morning and I'm going to  
6 be jumping around a little bit so it won't be quite  
7 as easy to follow as the direct was this morning,  
8 but if you don't understand what I'm asking just let  
9 me know and I'll try to re-phrase my question, okay?

10 A Thank you.

11 Q When you were giving your evidence this morning you  
12 were talking about what I understand to be your  
13 understanding of the effectiveness of this product.  
14 Is that fair to say?

15 A It's fair to say.

16 Q You don't have a research background. Is that  
17 correct?

18 A That's correct.

19 Q And so any information you might've received about  
20 the effectiveness of EMPowerplus was strictly  
21 antidotal. Is that correct?

22 A No. It was personal reports from individuals and I  
23 take great credence in that.

24 Q Okay. So is this just a different use of terms  
25 then. When I say antidotal I'm talking about  
26 something that somebody's told you.

27 A Correct.

1 Q So that would be correct in my understanding.

2 A Well I also though did, as I indicated earlier,  
3 observe individual behaviours and significant change  
4 in those behaviours.

5 Q All right. So you actually saw people before they  
6 were on the EMPowerplus and after they started  
7 taking it?

8 A That is correct.

9 Q All right. So you made your own personal  
10 observations in the field, if I can put it that way?

11 A That's fair.

12 Q All right. As opposed to any clinical trial, is  
13 what I'm getting at.

14 A That's correct.

15 Q Okay. And I think at one point you indicated that  
16 you appeared to see effectiveness with respect to  
17 the treatment for bipolar disorder. I'm correct in  
18 that?

19 A That's correct.

20 Q But less so for the treatment of schizophrenia?

21 A That's correct.

22 Q And my understanding is that in 2003 these  
23 organizations were advertising and promoting this  
24 product for the treatment of schizophrenia. Were  
25 you aware of that in 2003?

26 A I was.

27 Q Did that concern you at all?

1 A Yes, it did.

2 Q All right. Now you talked about some phone calls  
3 that you received from individuals, family members,  
4 about individual and some of your phone calls, the  
5 people on the other side said that they were  
6 concerned about the family members and that there  
7 may be deaths as a result of the lack of access to  
8 EMPOWERplus.

9 A That's right.

10 Q And you in fact indicated through your testimony  
11 that you received comments from family members that  
12 family members had actually committed suicide.  
13 Correct?

14 A Correct. On two occasions.

15 Q All right. Now is it fair for me to say that  
16 suicides would not be a rarity in your field? Is  
17 that fair?

18 A That's also correct. Unfortunately.

19 Q Unfortunately indeed. I agree. And regardless of  
20 treatment suicides do occur. Is that fair?

21 A Yes. But not in the numbers when treatment is not  
22 available.

23 Q That makes sense to me. And that's something you  
24 have seen traditionally over time, from 1965, when  
25 your involvement in the mental health field.

26 A Absolutely.

27 Q Okay. Now you were told by these family members on

1 two occasions that individuals had actually taken  
2 their life. Correct?

3 A That is correct.

4 Q All right. And it was your understanding from what  
5 you were told that this was as a result of access to  
6 EMPowerplus.

7 A On one occasion, due to a lack of access. In the  
8 other situation, due to a fear of lack of access.

9 Q So did you understand that in the second occasion  
10 the person was still taking the EMPowerplus but  
11 there was a fear that they would not have access to  
12 it in the future?

13 A That's right.

14 Q Were you advised of the diagnosis for each of these  
15 two individuals?

16 A Yes, I was.

17 Q Can you tell us what that was?

18 A Bipolar disorder.

19 Q And that was true in both case?

20 A That's correct.

21 Q Your understanding was that EMPowerplus was a  
22 treatment for bipolar disorder? At least that was  
23 the claim?

24 A My understanding was that it was used -- it was  
25 effective in some situations of bipolar disorder,  
26 yes.

27 Q In some situations. In other words you had heard

1 where it was not effective as well.

2 A Actually I had no reports of it not being effective  
3 in bipolar disorder.

4 Q Now you took it upon yourself and correct me if I'm  
5 wrong here but as I understand it you are acting as  
6 an advocate for individuals, as a liaison between  
7 yourself and the government. Is that correct?

8 A Or other parties. In this case, yes.

9 Q And in fact one of the other parties, I suppose,  
10 would be the Canadian Mental Health Association.

11 A Who I was representing.

12 Q That's who you were representing exactly, right, so  
13 that was one of the parties that you put forward as  
14 a participant in these discussions. Is that  
15 correct?

16 A That's correct.

17 Q Okay. Now did you understand by, certainly October  
18 of 2003 when you wrote the first letter, that  
19 EMPowerplus was considered to be a drug by Health  
20 Canada? Did you understand that?

21 A I did understand that.

22 Q And did you understand that this drug had not  
23 received an IND? Do you know what an IND is?

24 A Yes, I do, and I do understand that.

25 Q All right. And so you understood that it also did  
26 not have a DIN, or Drug Identification Number?

27 A That's correct.

1 Q Right. So you understood that from Health Canada's  
2 perspective at least that this was a drug being sold  
3 illegally. Did you understand that?

4 A That's my understanding.

5 Q So you are advocating on behalf of an illegal  
6 substance, at least as far as Health Canada's  
7 concerned.

8 A I'm advocating access to a substance that I  
9 understood, if received directly to the individual,  
10 was a legal process.

11 Q All right. Well, so your main goal, if I can put it  
12 that way, given what you've just told me now, was to  
13 ensure that individuals continued to receive the  
14 drug through the personal use exception.

15 A They continue to receive the EMPowerplus. That's  
16 correct.

17 Q And in fact you were quite successful in that goal.  
18 Correct?

19 A In a limited number of cases, yes.

20 Q Well you correct me if I'm wrong, sir, but you told  
21 us that in every case, when you received information  
22 and made a call that product came across the border.

23 A I was very successful in a limited number of cases  
24 because we're only talking about ten or so cases  
25 that she represented and there are thousands of  
26 people taking that product.

27 Q Were you receiving information that other people

1 were not getting the product?

2 A Antidotal.

3 Q So people didn't call you directly and ask you to  
4 intervene?

5 A No.

6 Q If you received these antidotal calls would you  
7 offer to intervene?

8 A Absolutely.

9 Q Did you intervene in those cases?

10 A In the cases I received calls I did.

11 Q In every case then when you were asked to intervene  
12 and did intervene the product was accessible.

13 A Correct.

14 Q Okay. That to me sounds like a success in the --  
15 one of the named goals that you had in your letter  
16 of October 7th, 2003.

17 A I acknowledge that, yes.

18 Q All right. Thank you. And in fact, you did have  
19 access as you've discussed to the Minister.  
20 Correct?

21 A I did.

22 Q I suppose in part because you had a personal  
23 relationship with her. Is that fair? And when I  
24 say personal I mean, obviously, on a social level.  
25 Correct?

26 A Yes.

27 Q And even on a political level you'd had interaction

1 with the Minister for quite a number of years I  
2 understand.

3 A I did.

4 Q All right. You knew one another to see each other.

5 A Correct.

6 Q Right. And so you were able to take advantage and I  
7 don't mean that in a negative way, but you were able  
8 to take advantage of that relationship with the  
9 Minister.

10 A Absolutely.

11 Q Right. And the Minister was quite accommodating in  
12 providing you access to, I think, I forget Rosemary  
13 Tremblay's title, but one of her assistants. Is  
14 that correct?

15 A Executive Assistant.

16 Q Executive Assistant.

17 A Yes.

18 Q And so you were able to contact her and through  
19 Rosemary Tremblay were able to access Heather  
20 Watson?

21 A Correct.

22 Q Right. So the political solution that you talked  
23 about, at least to some degree, was moving forward  
24 through your relationship with Anne McLellan.

25 A It appeared to be but again on a limited scale.

26 Q Okay. Fair enough.

27 A And that was only one dimension I must acknowledge.

1 The issue of accelerating or moving ahead on the  
2 research --

3 Q Oh, we'll get to that.

4 A -- (INDISCERNIBLE) make little progress.

5 Q I intend to ask some questions about that in a  
6 second.

7 So one of your goals as you've just said, a  
8 second goal was to attempt to accelerate the  
9 research on the product, EMPowerplus. Correct?

10 A Correct.

11 Q You understood by 2003 that the clinical trial that  
12 Bonnie Kaplan had engaged in had been stopped by  
13 Health Canada.

14 A That was my understanding.

15 Q That was -- that's what you understood to have  
16 occurred. Were you aware of whether or not there  
17 had been any further applications for clinical  
18 trials in 2003?

19 A I believe there were a couple of applications but --

20 Q But you're not sure if it was in 2003 or any other  
21 time?

22 A No.

23 Q All right. Fair enough. Now when I understand you  
24 to say that more research is one of your goals, is  
25 it correct and fair for me to say that you believed  
26 that more research was required?

27 A Yes.

1 Q All right. And the, I think what you've said and  
2 again correct me if I'm wrong, is your goal in  
3 trying to get this research moved ahead was so that  
4 Health Canada could use it to either give it a DIN  
5 or permit it to be sold. Is that correct?

6 A In some way allow access, yes.

7 Q All right. However, that's kind of pre-judging the  
8 issue isn't it, because --

9 A Mm-hm.

10 Q -- frankly the research could have said, This stuff  
11 is not safe. Is that fair?

12 A That's possible.

13 Q Sure. And in fact that's why you do the research.

14 A Yes.

15 Q And in fact you were advocating for this product  
16 without knowledge of what that research might turn  
17 up.

18 A I was aware of the research done to date. You're  
19 right. I was --

20 Q You'll agree that --

21 A And I was aware of the impact on individuals.

22 Q But you'll agree that the research that was  
23 conducted up to date was very limited.

24 A Yes.

25 Q And that research itself spoke about the need for  
26 additional research.

27 A Yes.

1 Q Were you aware of those things?

2 A Yes, I'm aware.

3 Q All right.

4 MR. BROWN: Sir, I just need one moment to  
5 look through my notes.

6 Sir, those are all of my questions. Thank you.

7 THE COURT: Thank you, Mr. Brown.

8 Mr. Buckley, anything arising?

9 MR. BUCKLEY: Yes, sir.

10

11 \*Mr. Buckley Re-examines the Witness

12

13 Q MR. BUCKLEY: Mr. LaJeunesse, I'm just  
14 wanting to ask you, because my friend asked you  
15 about advertising for schizophrenia. Did you have  
16 any personal knowledge of that? See any advertising  
17 for schizophrenia?

18 A My recollection of the material provided by one of  
19 my researchers from a website search indicated that  
20 it might be effective in the treatment of  
21 schizophrenia or in --

22 Q Okay. And you wouldn't be able to tell us today  
23 what website that was?

24 A No.

25 Q And also were you actually aware of whether or not  
26 this had a drug identification number?

27 A My understanding it did not.

1 Q Okay. Based on what?

2 A Information received I believe from my researcher.

3 Q Okay. And thank you. I have no further questions.

4 THE COURT: Mr. LaJeunesse, you described  
5 your interventions to have the product released as  
6 being on a limited scale, and I understood you to  
7 say that you intervened on ten cases. Is that  
8 correct?

9 A That's correct, Your Honour.

10 THE COURT: That is the total number of  
11 cases that you intervened on through Heather Watson?

12 A That's correct.

13 THE COURT: I just wanted verification on  
14 that point, Mr. LaJeunesse.

15 Any questions arising out that, gentlemen?

16 MR. BROWN: No sir. Thank you.

17 MR. BUCKLEY: No.

18 THE COURT: Thank you, Mr. LaJeunesse.

19 You can step down.

20 THE WITNESS: Thank you, Your Honour.

21 THE COURT: I appreciate your evidence  
22 here today.

23 (WITNESS STANDS DOWN)

24 THE COURT: All right. I am going to take  
25 a brief adjournment.

26 It seems I continue to put together binders of  
27 documents here, gentlemen. We will have to -- I am

1 at six already.

2 MR. BROWN: You're still lucky, sir.

3 THE COURT: And growing.

4 All right. I will take a brief adjournment. I  
5 will return at 25 after 11, and we will proceed with  
6 Mr. Buckley's next witness.

7 MR. BROWN: Thank you, sir.

8 MR. BUCKLEY: Thank you, Your Honour.

9 THE COURT: Thank gentlemen. Thank you,  
10 madam clerk.

11 THE COURT CLERK: Order in court. All rise.

12 Court stands adjourned until 11:25.

13 THE COURT: Thank you.

14 (ADJOURNMENT)

15 THE COURT: Please be seated.

16 MR. BROWN: Thank you, sir.

17 THE COURT CLERK: Recalling Synergy Group Canada  
18 and TrueHope Nutritional Support.

19 THE COURT: For the record, counsel, and I  
20 address myself both to Mr. Brown and to Mr. Buckley.

21 There has been a considerable amount of hearsay  
22 evidence presented to the Court over the course of  
23 the last seven or eight days, and it should be clear  
24 to counsel, and from the various interactions or  
25 objections, or comments, that counsel have made  
26 during the course of that, that where there is  
27 hearsay evidence it not going in for the proof of

1           it's contents but only for the sake of the narrative  
2           or to explain why one act has led to another act.

3           So unless there is a specific indication from  
4           counsel that hearsay is tendered for the truth of  
5           it's contents and the issue is dealt with at that  
6           particular instance, then all such hearsay evidence  
7           is going to be dealt with as either narrative or to  
8           explain one act leading to another act.

9       MR. BROWN:                    Thank you, sir.

10      MR. BUCKLEY:                  Mm-hm.

11      THE COURT:                    Is that clearly understood?

12      MR. BUCKLEY:                  Yes, it is, and --

13      THE COURT:                    And Mr. Brown as well?

14      MR. BROWN:                    Yes, it is, sir, and I'll take  
15           that to mean that I don't need to stand up and put  
16           that comment on the record from this point forward,  
17           sir.

18      THE COURT:                    Well, yes, and I do not want  
19           to be continually interrupting --

20      MR. BROWN:                    Exactly.

21      THE COURT:                    -- either counsel in that  
22           regard as well. I just want it to be clear --

23      MR. BUCKLEY:                  Mm-hm.

24      THE COURT:                    -- that you understood.

25      MR. BROWN:                    Fair enough, sir. Thank you.

26      MR. BUCKLEY:                  No, and it is an unusual case  
27           where actually it, you know, is -- I think it would

1           be much less intelligible without kind of a record  
2           that things were communicated whether they're true  
3           or not. So we do appreciate. This is a somewhat  
4           unusual case, both for the Court and for counsel  
5           that have to present so.

6   THE COURT:                   And that has become apparent  
7           over the --

8   MR. BUCKLEY:                 Yes.

9   THE COURT:                   -- course of the trial. But  
10          that is fine. You know on the one hand, strictly  
11          speaking, the objections could be made every time --

12   MR. BUCKLEY:                 Mm-hm.

13   THE COURT:                   -- hearsay is introduced. It  
14          would interrupt the flow of the trial and I  
15          appreciate that counsel will not want to be doing  
16          that to each other either, where it is clearly  
17          understood what the purpose of the hearsay evidence  
18          is for.

19   MR. BROWN:                   Yes, sir.

20   THE COURT:                   And I do not want to be  
21          continually interrupting you either or feel that for  
22          the sake of the record I have to make that  
23          interruption every time --

24   MR. BUCKLEY:                 Mm-hm.

25   THE COURT:                   -- and make that stipulation  
26          every time there is hearsay evidence, and yes, I  
27          have considered this trial and the way the evidence

1 is going in, in this trial compared to a number of  
2 other trials that I have done. And it is unusual in  
3 the amount of hearsay but there is a reason for that  
4 and I appreciate that from both counsel.

5 All right. Just so that is clear then --

6 MR. BUCKLEY: Yes.

7 THE COURT: -- with regards to the hearsay  
8 evidence throughout the -- for the conduct of the  
9 evidence here.

10 MR. BUCKLEY: Thank you, Your Honour.

11 MR. BROWN: Thank you, sir.

12 THE COURT: Okay. Thank you, gentlemen.

13 MR. BUCKLEY: And, Your Honour, the next  
14 witness that I would like to call is a Ms. Savine  
15 Coulson. (INDISCERNIBLE) name come up.

16 And, madam clerk, she is going to affirm.

17

18 \*SAVINE COULSON, Affirmed, Examined by Mr. Buckley

19

20 THE COURT: Go ahead, Mr. Buckley, please.

21 MR. BUCKLEY: Thank you, Your Honour.

22 Q MR. BUCKLEY: Ms. Coulson, you are 43 years  
23 of age.

24 A Mm-hm.

25 Q And I'll actually ask -- this is being tape recorded  
26 so when we do a response we have to use words. If  
27 we say, Mm-hm, then when somebody reads the

1 transcript they don't know whether you're agreeing  
2 or disagreeing.

3 A I am 43 years old.

4 Q Okay. And you've come out from Pembroke, Ontario,  
5 for this testimony.

6 A That's correct.

7 Q Okay. You take the EMPowerplus.

8 A Right.

9 Q Okay. But there was a time where you didn't take  
10 the EMPowerplus, and I want you to describe for the  
11 Court, basically, the conditions that you have and  
12 the experience that you had prior to taking the  
13 EMPowerplus.

14 A Okay. I've been officially diagnosed with a couple  
15 of different conditions. One being a rapid cycling  
16 bipolar disorder and a second condition being  
17 obsessive-compulsive disorder.

18 I went for many years before I was actually  
19 diagnosed with those illnesses. Starting in my  
20 early childhood, having you know, many different  
21 symptoms but at the time didn't realize had anything  
22 to do with mental illness but once as an adult I  
23 became more ill and started to receive treatment.

24 When I was able to look back and see that some  
25 of these really unusual behaviours in my childhood  
26 were indicative that you know something was not  
27 right from the very beginning.

1           So it wasn't until after the birth of my second  
2 child, when I was in my early 20's that I was first  
3 being seen for what they thought at the time was  
4 depression and I was treated with a drug of choice  
5 at that time, which didn't really prove to be very  
6 successful.

7           I went on to have another child and over the  
8 next few years started just to have a deteriorating  
9 mental stability problems that eventually led to  
10 having to be hospitalized and now they were looking  
11 at really trying to find from good combinations of  
12 medications that they thought, you know, would  
13 stabilize me mentally.

14       Q    Now what types of things would lead to you being  
15 hospitalized?

16       A    I was hearing voices that were telling me that I  
17 really should not be alive. I really had no right  
18 to be alive and that everyone would be much better  
19 off if I was not alive.

20           I had very self destructive behaviour. I felt  
21 the only way I could counteract the emotional pain  
22 that I was feeling was by causing myself physical  
23 pain, so many times I would smash my head into the  
24 wall until I would knock myself unconscious or I  
25 would cut myself.

26           I attempted many times to just cut through  
27 veins in my wrists and wasn't necessarily suicidal

1 but it was just some strange feeling that, you know,  
2 physical pain was going to block out this intense  
3 emotional pain that I was feeling.

4 Q What do you mean when you say, Intense emotional  
5 pain? Because we don't understand what --

6 A Yeah. It's a feeling that's very, very hard to  
7 describe and if you've never felt that way it might  
8 be hard to imagine, but it's a feeling of such  
9 intense anxiety and panic, where nothing feels real.  
10 You feel very isolated. You don't feel like you  
11 belong anywhere or that you have anything that's  
12 worth living for.

13 All you feel is this feeling that I don't  
14 belong. I don't know what to do. I can't handle  
15 this. I can't handle these feelings that tell me I  
16 should be dead.

17 I had a lot of paranoid feelings as well where  
18 I felt that, including members of my own family were  
19 plotting against me and the only way that I could  
20 stop that was to try to harm myself, and so at many  
21 times it did seem -- the thought of death was the  
22 thought of relief, just from this intense feeling of  
23 anxiety and pain.

24 Q Was it common for you to be in the hospital?

25 A Oh, yes, it was. I was in the hospital many times  
26 and at some point in time my husband actually sat  
27 down and calculated that I had spent more than ten

1 percent of our married life institutionalized.

2 And there was many times where I was on what's  
3 called a form where it was no longer a voluntary  
4 stay in the hospital for me. It was that I was  
5 involuntarily being committed and did not have the  
6 choice to leave and at one point I was in the  
7 hospital without even a day pass for three months.

8 Q Three straight months?

9 A Three straight months. I could not leave the ward.  
10 I did not feel safe.

11 Q Was that a voluntary or an involuntary stay?

12 A It started as a voluntary and then became an  
13 involuntary when they, you know, some of the  
14 behaviours that started happening in the hospital  
15 caused them to have to put me into restraints. And,  
16 you know, have five orderlies jump on me and doctors  
17 jabbing me full of (INDISCERNIBLE) because they  
18 couldn't control me. At that point then they  
19 decided they better put a form that would not allow  
20 me to leave. I did try to escape on several  
21 occasions and they had the police out looking for  
22 me.

23 It just became -- I just didn't belong anywhere  
24 at -- I wasn't being helped in the hospital but I  
25 also couldn't cope on the outside so I was really  
26 stuck somewhere that -- in fact, I had no where to  
27 go because nothing was helping.

1 I was a model patient. I took all the  
2 medications that they gave me and I took them the  
3 way that they told me to take them and I was still  
4 getting sicker and sicker all the time, which would  
5 lead to these, you know, horrible fits of rage  
6 because I couldn't deal with that I wasn't getting  
7 better. And that in turn would lead to them putting  
8 forms on me that didn't allow me to leave the  
9 hospital even if I wanted to.

10 Q Okay. What do you mean when you say, Rage?

11 A An uncontrollable rage as in where I felt that I had  
12 to hurt myself or smash everything around me and I  
13 did on a couple of occasions do destructive damage  
14 in the hospital wards because it just -- it's a -- I  
15 can't describe what makes you do that. It's just  
16 you're screaming at the top of your voice and all  
17 you're feeling is just this black intense pain and  
18 the only way that you're getting any emotion out is  
19 by allowing this rage to come out, but at the same  
20 time you really don't have any control over it.

21 Q Okay. Now you told us that you would take your  
22 medications --

23 A Mm-hm.

24 Q -- as prescribed.

25 A Yes.

26 Q Were there any health affects to basically the  
27 treatments that you were getting?

1       A     Yes, there were. Because of the fact that I was  
2            really not responding well to any of the drug  
3            combinations that I was being given, I found a  
4            doctor that was very proactive in medicating  
5            patients.

6                        She was a very well known in the area as a mood  
7            disorder specialist and it was her firm belief that  
8            high, high dosages would probably be beneficial to  
9            me and she was a very, very caring psychiatrist.  
10           She looked after me really well. I had her home  
11           telephone number because I trusted her implicitly  
12           and I know that it was a real desire on her part to  
13           help me.

14                       However, I was put on such high, high dosages  
15           of anti-psychotics, anti-convulsants, drugs to  
16           counteract the effects of those high dosages that on  
17           one occasion I ended up in the cardiac care  
18           intensive unit for one week because I had some heart  
19           disturbances, and the cardiologist actually made the  
20           comment that these dosages are frightening and I  
21           cannot believe that you're alive on these dosages.  
22           The reply of my psychiatrist was, This is the only  
23           way we know how to keep her alive, because that's  
24           the only way we can, you know, drug her enough, keep  
25           her calm enough to prevent her from killing herself.

26                       But I also had some other health issues. I  
27           became a diabetic because I gained a 100 pounds

1 within a short period of time of being put on some  
2 of these cocktails. I had liver damage. I had  
3 blood work done routinely to try to keep sort of  
4 tabs on the enzymes of my liver that were very  
5 highly elevated. My whites of my eyes were getting  
6 jaundiced.

7 I lost half of my hair as a result of one of  
8 the combinations. My hair was falling out but it  
9 wasn't really caught that this drug was making me  
10 very sick until I could no longer feed myself.

11 My husband had to feed me and I wore a bib  
12 because if I were to try to feed myself I was  
13 shaking so much that the food would fall off before  
14 it would reach my mouth.

15 So at that point, that in combination with the  
16 fact that I was very quickly becoming bald, they  
17 decided that, you know, they needed to pull me off  
18 that medication and try something else.

19 I was also bedridden for at least three years.  
20 I spent 20 hours a day in bed. The only time I got  
21 up was to eat and to go to the bathroom. And during  
22 that time I developed what's called osteopinia  
23 (phonetic), which is a first stage of osteoporosis,  
24 and it's when your bones and your body has a total  
25 lack of exercise. Your bones become brittle so I'm  
26 now taking medication to try to prevent my back from  
27 fracturing when I sneeze.

1 Q Okay. This is your experience before you're on the  
2 EMPowerplus

3 A Yes.

4 Q Tell us about -- because you started taking the  
5 EMPowerplus -- when was that?

6 A That was in March of 2001, so it's just five years.

7 Q Okay. And what was your experience?

8 A Well, my experience at the time was very surprising  
9 because -- because I'd been on medications for so  
10 long and nothing had ever worked, I guess I really  
11 wasn't expecting to find something that would work.

12 But within a very short period of time, within  
13 the first couple of months I noticed that there were  
14 days when I actually got up in the morning and had a  
15 shower, and got up and went to the kitchen and  
16 washed up a couple of dishes.

17 And did things that were so normal for everyone  
18 else but for me they were a miracle, because I  
19 wasn't capable of doing those things before. So I  
20 thought, well there is really definitely something  
21 positive happening here. And --

22 Q Okay. And I just want to stop you there because  
23 that does seem unusual for us. Just getting up.

24 A Yeah.

25 Q Having a shower, having dishes.

26 A Yeah.

27 Q So what do you mean that that was unusual for you?

1 A Well because I spent so much time in bed I just  
2 couldn't get up. I couldn't make myself to do  
3 anything. I couldn't go and have a shower.

4 There was times when I would go for a month and  
5 have never picked up a toothbrush or gotten into the  
6 shower until my husband would forcibly drag me in.  
7 And make me have a shower.

8 And at that time I was so weak that at one  
9 point I actually collapsed in the shower and broke  
10 four ribs and was hospitalized. Anytime I tried to  
11 do anything normal such as step outside my front  
12 door and take my dog out I would -- I was so weak  
13 that I would fall and a couple of times I broke  
14 bones just from falling when I was stepping outside  
15 my front door.

16 So it was really amazing to get up and just  
17 feel -- to get up and not think for the -- have that  
18 first thought in the morning be, Why did I wake up.  
19 You know, why didn't I just die in my sleep. Like  
20 another day having to feel like this.

21 So it was amazing. It was just amazing. I  
22 felt like a human being for the first time in a long  
23 time.

24 Q Okay. So little things started happening. Tell us,  
25 basically, how you progressed.

26 A How I progressed was that I was able to keep going  
27 with these supplements and I was able to have enough

1 of a change that when I had really bad days I could  
2 tell myself I really think there's something  
3 happening and if I make it through this day maybe  
4 tomorrow is going to be another good day.

5 And eventually those good days just became more  
6 and more and those really bad days became less and  
7 less and within, you know, a few months I, for the  
8 first time was able to -- I went out and got myself  
9 a part time job. That was the first ever for me.  
10 So I felt well enough that I could make the  
11 commitment of being somewhere a couple of times a  
12 week and doing something. I couldn't have committed  
13 to having a shower the next day before these  
14 supplements.

15 Q Okay. Now how many years would it have been since  
16 you had -- because you would have had some part time  
17 jobs as probably a teenager or type thing?

18 A I had one part time job when I was in university and  
19 I really didn't -- couldn't really cope well with  
20 that so this -- I'd never had -- I'd never held down  
21 a job.

22 Q Okay. So you started a part time job. What was  
23 that?

24 A I started -- I always had a love for horses and as a  
25 teenager spent a lot of time riding so I got a job  
26 as a -- working at a riding stable. Working with  
27 horses. Felt that being around animals was like

1 really rewarding and therapeutic for me.

2 Q Okay. And did you stay there long?

3 A I stayed there for about a year and then one of the  
4 ladies whose children I was instructing was a  
5 veterinarian at a local animal hospital and she told  
6 me that there was a position opening there and if I  
7 was interested she thought I should apply, which I  
8 did and I did get that position and I've been there  
9 for four years.

10 Q Is that a full time position?

11 A Yes, it is.

12 Q Okay. And how is that going?

13 A That's going really well. Within about the first  
14 eight months of being there I was promoted up into a  
15 management type of position. I did that for about a  
16 year and then just felt that, you know, management  
17 really wasn't what I wanted to do so I composed a  
18 different position in the hospital for myself, which  
19 they happily accepted and after a year of doing that  
20 they were so thrilled with my job performance that  
21 they are now paying for a university education  
22 internship to get me a degree in veterinary  
23 technology.

24 Q Okay. So they're actually paying for you -- you're  
25 still working there.

26 A Oh, yes.

27 Q But they're paying for you to go and get this

1 veterinary certificate.

2 A That's right.

3 Q Now would that type of thing been possible for you?

4 A No. I couldn't have worked in a Tim Horton's. I  
5 couldn't have shown up anywhere. I couldn't have  
6 made a commitment that I could say, Yes, I will be  
7 there tomorrow and I couldn't have -- there's  
8 nothing I could've done because I couldn't commit to  
9 my own family. I couldn't commit to them that I  
10 would make them a meal. So I just never thought  
11 this would happen and I am very grateful that it  
12 did.

13 Q What happened to the medications that you were  
14 taking?

15 A What do you mean?

16 Q Well you were -- when you started taking the  
17 EMPowerplus were you on medications?

18 A Yes, I was. I was still at -- at this point we had  
19 recently moved to Pembroke from an area closer to  
20 Hamilton and that was about an six and a half hour  
21 drive away. At this point I was still driving to  
22 see my psychiatrist once a month and I had told her  
23 about this product and she says, Oh, okay. That's  
24 the pig study. And she said, Well, I think -- I  
25 think you might as well try it.

26 Nothing we've done is helping you and the  
27 medications are making you very, very sick, and she

1           says, You know, you really don't have anything to  
2           loose so she said, You have my blessing. You go  
3           ahead and try it. And I did.

4                     I would've stayed probably under closer  
5           supervision with her if it hadn't of been that we  
6           lived so far away. But I did stay in contact by  
7           phone and so over a, you know, a gradual time period  
8           I was able to wean off my medications safely.

9        Q        Now have there -- has your health changed in other  
10       ways. So you've described basically you're able to  
11       do things and work and things like that.

12       A        Mm-hm. Mm-hm.

13       Q        But has your health changed in other ways?

14       A        Yes, it has. I'm no longer a diabetic. I was  
15       getting five needles of insulin a day. I haven't  
16       used insulin in a number of years. I'm not even on  
17       an oral medication for that. That's completely  
18       cleared up.

19                     My live has regenerated to the point of where  
20       my blood work now comes back as being normal. I've  
21       lost 60 of the 100 pounds that I had gained so I've,  
22       you know, seen added health benefits from that.

23                     I'm physically active. I'm active as a  
24       volunteer in the community. I just -- I feel like  
25       my life is just beginning.

26       Q        How would you feel if the supplement was taken away  
27       from you?

1       A     I know how I would feel because I spent the majority  
2             of my life with these paranoid delusions and these  
3             feelings and I know that they would come back  
4             because I know that illness is still there.

5             I can cope with the symptoms that I do have  
6             now, which are very mild, but I know that the  
7             symptoms are still there. I know that within a  
8             short period of time I would return to what I was  
9             before, which is not living.

10            I was existing. I was alive but I was -- I did  
11            not have a life. And the thought of that is scarier  
12            to me than anything you could possibly imagine.

13       Q     Have you had, since you've been on the supplement,  
14             have there been instances where you're unable to  
15             take it?

16       A     Yeah. On one occasion I was hospitalized for what  
17             they thought might possibly be appendicitis so I was  
18             put on intravenous fluids and I wasn't allowed to  
19             take anything by mouth for about three or four days  
20             just in case they would have to do an emergency  
21             appendectomy and so during that time I did not take  
22             the supplements at all.

23       Q     Okay. And so in that three or four days what  
24             happened to you medically?

25       A     The first couple of days I really didn't notice  
26             anything at all. By the third day I could tell that  
27             I was getting depressed and that my thinking was

1 getting a little disorganized and that I just wasn't  
2 really feeling myself.

3 And by the fourth day I was clinging to knowing  
4 that once I got back on to the supplement my sanity  
5 would return. Because I knew that -- why those  
6 feelings were back. Those feelings of, I can't live  
7 like this. I shouldn't be alive. I don't deserve  
8 to live. All of these things. They all came back.

9 But knowing what I did of how much the  
10 supplement had helped me I just coached myself and  
11 my husband did the same thing, you know, that as  
12 soon as you get back on the supplements, a few days  
13 of getting that into your system, your brain will --  
14 you get the food of needs and you'll be able to  
15 think normally again.

16 Q Okay. So these thoughts are returning. Was there  
17 anything else returning?

18 A The suicidal feelings.

19 Q Okay. Did you ever see or hear things when --  
20 before you started taking the supplement?

21 A Yes, I did. I heard voices. Those came back by the  
22 fourth day.

23 Q Okay. So --

24 A They were there.

25 Q So when you were in the hospital and off it for  
26 fourth day you started hearing voices again?

27 A Yes, I did.

1 Q Can you tell us about that?

2 A Yeah. The voices were there and it was very  
3 familiar voices because I heard them for many years  
4 and it was the same things of saying of, you know,  
5 You don't deserve to live. You have ruined your  
6 family's life. You would be doing everyone a  
7 favour.

8 They would reason with me as to why really it  
9 would be advantageous for everyone involved if I  
10 just committed suicide, but at this point there was  
11 another voice and that was that voice of reason.

12 I guess I had enough period of time where I was  
13 feeling well but I just told myself, This is not  
14 real. This is the illness. You will get back to on  
15 track. You will get back to where you can control  
16 this and you will feel well again and so I just --  
17 that's what I kept telling myself. Over and over.  
18 And I made it.

19 Q Okay. So when you're telling us that you feel that  
20 the illness is still there --

21 A Mm-hm.

22 Q -- is it based on experiences like this?

23 A Yeah. It's based on things such as situational  
24 things. If I'm under a lot of stress, a lot of  
25 emotional stress, if I get a flu bug and -- or any  
26 kind of an illness I find that I become mildly  
27 symptomatic. They come back for whatever reason.

1 And so I know that the illness is there. It's just  
2 that I can manage it. I can manage my life with the  
3 extent of the symptoms.

4 Q Okay.

5 A On the supplement.

6 Q Now you've told us you had, in the past, had  
7 multiple hospitalizations. How frequent would those  
8 be before you started the supplement?

9 A It was hard to say. I was in the hospital a lot.  
10 Sometimes there would be a few weeks in between.  
11 Sometimes there would be a couple of days in  
12 between. Sometimes there would be a few months in  
13 between. And when I wasn't hospitalized for mental  
14 illness then often times I was hospitalized because  
15 of the physical problems I developed on the  
16 medications. So I was in the hospital a lot.

17 Q Okay. Now after you started the supplement, you  
18 told us that you were in the hospital for what they  
19 thought was appendicitis.

20 A Mm-hm.

21 Q Did your hospital visits change?

22 A Oh, yes. I'm not known there by name as I was in  
23 most of the other towns we lived in. I, you know,  
24 if -- I'm hardly ever there. It's very unusual for  
25 me to have to go to the emergency and if I do it's  
26 because maybe I've, you know, cut myself or injured  
27 myself. It's not at all for the same types of

1 reasons.

2 Q Okay. So after taking the supplement have you been  
3 involuntarily committed to a hospital?

4 A No. I was at one point under a lot of stress and I  
5 could not sleep. When I couldn't sleep I went to  
6 the doctor who told me, you know, take some Ativan,  
7 which I did.

8 I took the Ativan and I had a horrible reaction  
9 to it and I went psychotic while I was on the  
10 Ativan, which was in the course of one day.

11 And to the point of such rage and self  
12 destruction in my house that my husband called the  
13 police and the police forced me to go to the  
14 emergency where they put a form on me and  
15 hospitalized me, but I was only there for a day.  
16 Within a day that stress resolved itself and I  
17 continued to take my supplements while I was in the  
18 hospital. And this was in the early stages of  
19 starting it, and that was the only time.

20 Q Okay. So how many years has it been since you've  
21 been to the hospital for any mental health issue?

22 A I would say four.

23 Q Four years.

24 A Yeah.

25 Q And so prior to taking the supplement what would be  
26 a long break between going to the hospital for  
27 mental health reasons?

1       A     A long break would probably be a month.  And if I  
2             could go a month I was still seeing the  
3             psychiatrist, you know, once or twice a week in  
4             between.

5       Q     Okay.  Now do you have any experience with the  
6             TrueHope support program?

7       A     Yes.

8       Q     Can you tell us about that?

9       A     Well they've been phenomenal.  They've been so  
10            helpful and I've never been afraid to ask for help.  
11            That's why I had good doctors and I followed their  
12            advice and that's what I found with TrueHope.

13            They were so willing to, you know, walk and  
14            talk me through a lot of things that I was  
15            experiencing and I found that by working with them I  
16            was able to just overcome any of the obstacles that  
17            were there

18            They've certainly gone what I would call above  
19            and beyond the call of duty.

20      Q     How much contact was there with them?

21      A     Well when I first found out about the group I was  
22            set up and there were many times when, especially  
23            when I was having difficulties in the beginning,  
24            where I was on the phone with them every day and  
25            that gradually as I got better, you know, weaned  
26            down to maybe once a week and then it every two  
27            weeks and then once a month and then.  But whenever

1 I've needed more support it's been there.

2 Q Okay. Have there been times where you've had  
3 trouble affording the supplement?

4 A Yes.

5 Q And what's happened then?

6 A Well what happened at that point was that these kind  
7 people decided that they would help me out by giving  
8 the supplement to me at a 50 percent discount and if  
9 I hadn't been able to afford that I could've  
10 received them for free.

11 Q Okay.

12 A I much appreciated that because for me it was a  
13 matter of life and death. Without the supplements  
14 it would've been death. Death of my mind, death of  
15 the life as I know it now.

16 So when, you know, financial difficulties arose  
17 it was amazing to know that this was not about the  
18 money, this was about helping me. I counted.

19 Q Okay. Now at some point there was problems getting  
20 supplement.

21 A Yes.

22 Q Okay. Tell us about that. What happened there?

23 A Well, I really wasn't aware of anything behind the  
24 scenes so to speak. I wasn't aware that any of the  
25 issues involved so I was blissfully, happily getting  
26 my supplement, taking it and then I received a phone  
27 call three years ago, from a support worker, and he

1 stated that there could be potential difficulties in  
2 getting the supplement and would I be willing to  
3 possibly tell my story in order to show that, you  
4 know, this isn't an effective treatment for mental  
5 illness.

6 Would I be willing to just share that and I  
7 said I would be willing to do that because this  
8 means everything to me and I have way too much to  
9 loose, not to stand up and speak out for myself.

10 Q So what happened?

11 A Well, in the end there were a couple of occasions  
12 where the product was seized at the border and we  
13 were told that it wasn't going to be coming to our  
14 door, so my husband and I were reduced to what I  
15 consider dishonest means where we found a depot near  
16 the American border, across from Cornwall, which is  
17 near Ottawa.

18 There's the river and you go across and you are  
19 in the United States so we had the supplements  
20 shipped there and we went across the border and I  
21 guess you could say we smuggled them back which did  
22 not make me feel very good about myself but I knew  
23 that if I didn't I would be back in the hospital and  
24 my family would lose a wife and a mother and I would  
25 lose any quality of life so I was perfectly willing,  
26 if I had to do that, I was going to do it.

27 And at one point I was sent to a veterinary

1 conference in Florida along with my employer and his  
2 wife and another co-worker and I also -- that was in  
3 the same time period. I also had supplements sent  
4 to the hotel there and then proceeded to turn my  
5 employer into a dishonest person by asking him to  
6 please bring -- be willing to put some of the  
7 bottles of supplements in his suitcase and his  
8 wife's suitcase and we just bring them across and  
9 hope that there would be no questions asked.

10 Q Okay. So when you were doing this you knew you were  
11 basically smuggling?

12 A Yes. But I -- the way that I looked at it was that  
13 I felt that smuggling was a lesser offence than if I  
14 went off the supplement and became psychotic and  
15 killed my husband which I did attempt once in the  
16 past or killed myself.

17 I felt that this was, you know, the lesser of  
18 two evils and if that's what I had to do then I was  
19 going to do that.

20 Q And in fact you did do it.

21 A I did do it. And I think that, you know, I felt  
22 very insulted because I cost the system so much  
23 money when I was hospitalized and all the  
24 medications that I was on.

25 And now here I was a tax payer for the first  
26 time in my life and I was a contributor to society  
27 and I'm paying for this out of my own pocket and

1           then, you know, I basically was reduced to feeling  
2           like a criminal which I didn't want to.

3                       This was about making my life something  
4           positive, not about something negative so I felt  
5           degraded having to do hat.

6       Q     Now if TrueHope had stopped selling to you what do  
7           you think would've happened?

8       A     Well, no one can say for sure but --

9       MR. BROWN:                        I think, sir, that is going to  
10           speculation on the part of this witness. She has  
11           discussed what did happen when she couldn't get the  
12           supplement. I think this is in the area of  
13           speculation, sir.

14       THE COURT:                       Mr. Buckley, do you care to  
15           address that or do you care to re-phrase your  
16           question?

17       MR. BUCKLEY:                     I'll approach it a different  
18           way.

19       THE COURT:                       Go ahead.

20       Q     MR. BUCKLEY:               Because when you first learned  
21           that a shipment was stopped --

22       A     Mm-hm.

23       Q     -- how did you feel about that?

24       A     I was so stressed out because it was still hard to  
25           believe -- it's still, after five years, hard to  
26           believe that I was going to have a quality of life,  
27           that I was going to have a career and I was going to

1 have a good marriage and I was going to be a person.

2 It was really hard to believe that this could  
3 be true and when I found out that the supplements  
4 were being stopped I thought this was too good to be  
5 true and I was never meant to, you know, you just  
6 start -- you start just breaking down and it just  
7 felt -- it was so stressful that I became  
8 symptomatic because of the situation.

9 I started to become very depressed and very  
10 paranoid and it was just because I felt that, you  
11 know, this -- the source of my life was coming to an  
12 end and I was not willing to go back. I came to  
13 grip with death a long time ago because to me death  
14 was a relief from the kind of pain and suffering  
15 that I went through, so it was much more scary to me  
16 to think about having to live the way that I did and  
17 I was not willing to do that so while I was well, I  
18 was formulating plans, thinking that if I cannot get  
19 these supplements I'm not doing this to myself. I'm  
20 not doing this to my family. And I will end my life  
21 if I have to but I don't want to. I want to live.  
22 That's why I'm here. But I want to live like a  
23 human being. I want a quality of life.

24 I want to be able to be somebody and do  
25 something with my life. I don't want to be a sick  
26 or a nut bar, locked away, because that's not who I  
27 am anymore.

1           As a matter of fact most people that know me  
2           that didn't know me before these supplements, they  
3           have difficulties believing me when I tell them my  
4           story. They don't think that I could be like that.

5           They see me as very intelligent, rational,  
6           thinker, and I'm not and I'm sorry about being  
7           emotional but it's -- it's scary. It's very scary  
8           to think that this could come to an end because I  
9           love my life the way it is now. And I hated it  
10          before.

11         Q     Now you got involved in a group called the Red  
12                Umbrellas.

13         A     Yes, I did.

14         Q     Can you tell us how that came about?

15         A     Well, it came about by great big coincidence really  
16                if you want to get right down to it. When I was  
17                asked if I would be willing to go to Ottawa and tell  
18                my story in hopes of ensuring that this supplement  
19                would be available I did so and that was the first  
20                time that I met a number of women that also were on  
21                these supplements, one of them being a mother that  
22                had a son that was on the supplement and we were all  
23                there for the same reason.

24                That was just to tell our story and say, Please  
25                listen to us. This is helping us. You know we have  
26                a life. We're able to do something, and please make  
27                sure that this is not discontinued for us.

1           And so we met and the weather wasn't very great  
2           so we decided that we wanted to be noticed. It was  
3           very difficult to be noticed. Many people go on  
4           Parliament Hill and you know, you're always seeing  
5           people with signs or protesting this or that.

6           We didn't want -- we weren't there to protest,  
7           but we wanted to be noticed. We wanted someone to  
8           pay attention to us and listen to us and listen to  
9           our stories and so we decided that since it was  
10          raining and we all needed an umbrella, why didn't we  
11          just go and get a colour that was the same because  
12          if these people are looking out their windows and  
13          they see a group of people that all have the same  
14          colour of umbrella maybe they would take a second  
15          look and they would say, You know what, what is this  
16          about and maybe we would get some attention and have  
17          the chance to tell our stories and that's how it all  
18          came about.

19        Q     Okay. So what happened when you were up on the  
20              Hill?

21        A     Well, at first, not much. Some security people came  
22              out and told us, you know, that they were very  
23              concerned that we were there and that we were a  
24              possible threat and they asked us to move back from  
25              the building which we did and we only moved as far  
26              as they told us that we had to go.

27              We tried to stay as close as we could because

1 we knew we had to get heard, and so then we were  
2 able to meet with some of the MP's and tell our  
3 story and it ended up that some press came by and,  
4 you know, interviewed some of us and we were able to  
5 tell our story in front of the camera but I don't  
6 believe that that was ever -- went anywhere which is  
7 a big disappointment.

8 Q Okay. So you mean outside of Parliament Hill?

9 A No. I mean at Parliament Hill. We were brought  
10 into a room that all of these cameras were there and  
11 we were -- a few of us were able to just tell our  
12 story in a nutshell and we were so excited because  
13 we thought, you know, this is a way that this story  
14 is going to get out and when you've been so sick and  
15 you become well I guess you are sort of naive in a  
16 way because you think everyone is going to be happy  
17 and everyone is going to jump on the bandwagon and  
18 everyone's going to say, We're going to help you.  
19 But that's not the way it is so we felt that maybe  
20 by telling our story in a nutshell we could get some  
21 attention and that there be enough people out there  
22 that could relate to us and that -- felt that we  
23 were worth fighting for.

24 Q Okay. So were you actually in the Parliament  
25 Buildings where -- in front of TV cameras --

26 A Yes.

27 Q -- doing this?

1 A Mm-hm.

2 Q And I'll ask, because it's being tape recorded.

3 A Yes. I'm sorry. Yes, we were.

4 Q Okay. So you guys had been invited into the  
5 Parliament Buildings?

6 A Yes, we were.

7 Q How did that come about?

8 A I believe that was due to Doctor James Lunney sort  
9 of, you know, took our cause and helped us out and  
10 he was able to -- I honestly don't know exactly the  
11 arrangements that he made or who was all involved  
12 but I know that he was a part of that and so we were  
13 told that there were a few of us that could go into  
14 the Parliament Building and into -- I don't know  
15 what the room was called, there's a name for it.

16 It has all the flags and normally when you  
17 watch TV you see your Prime Minister standing in  
18 front of them so it was very exciting. But we were  
19 invited into that room and in front of all of these  
20 cameras we were allowed to give our view and that  
21 was very, very exciting but unfortunately I don't  
22 believe that anything became of that.

23 MR. BUCKLEY: Your Honour, this would be an  
24 appropriate time for us to take a break.

25 THE COURT: Thank you, Mr. Buckley.

26 All right. It is 12:15 so we will adjourn for  
27 lunch. We will resume at 2:00 this afternoon.

1           Ms. Coulson, I am going to give you a caution  
2           which we usually give under these circumstances.  
3           Although it is usually given just for cross-  
4           examination, I am going to suggest to you that you  
5           should not discuss the evidence that you have given  
6           here so far today, with anyone --

7       A     Okay.

8       THE COURT:                   -- until after your  
9           examination in chief and cross-examination are  
10          concluded.

11      A     Okay.

12      THE COURT:                   Okay. And that is to preserve  
13          the integrity of the evidence you are giving.

14      A     Yes. I will do that.

15      THE COURT:                   Okay. All right that is fine.

16           All right. In that case I take it you have  
17          further questions on examination in chief?

18      MR. BUCKLEY:                 I do. And also, you know,  
19          I've got a bunch of witnesses talking about this  
20          press conference. It's a very short press  
21          conference. I have a copy from the House of  
22          Commons. You know case law allows me to have this  
23          witness verify it. I think that it's more  
24          appropriate for her to see what they were trying to  
25          do. And like I say, it's not very long. So I'm  
26          planning on having this witness verify that so --

27      MR. BROWN:                   As always, sir, we'll wait to

1           see what it looks like and then have whatever  
2           discussion necessary thereafter.

3       THE COURT:                       All right.

4       MR. BUCKLEY:                    It entails entering a voir  
5           dire, so it just seemed to be an appropriate time to  
6           break.

7       THE COURT:                       Sure.

8       MR. BUCKLEY:                    It entails entering a voir  
9           dire is my understanding. Because we actually need  
10          a witness to verify that it's an accurate record of  
11          what she witnessed.

12      THE COURT:                       Do you agree with that  
13          procedure?

14      MR. BROWN:                     That's fine, sir. And  
15          frankly, sir, I think if the witness verifies it in  
16          advance we can save some court time and if she takes  
17          a look at over lunch I'm happy to have her say she  
18          reviewed it and it's accurate and we can have  
19          entered if there is no other --

20      THE COURT:                       Without having to go through  
21          the whole voir dire process. That is fine.

22      MR. BROWN:                     Assuming there's no other  
23          objections, sir.

24      THE COURT:                       Well there is an hour and  
25          forty-five minutes so.

26      MR. BUCKLEY:                    Yes. That's fine. So, I  
27          mean, I'm just mindful of madam clerk needs a lunch

1 break so, I mean, we can ask the witness and I can  
2 be here to run through it at any time the Court  
3 suggests we should be here.

4 THE COURT: Well usually our courts come  
5 back by quarter to or ten to, in order to ensure the  
6 courtroom is open and everything is running  
7 properly. Is that right, madam clerk?

8 THE COURT CLERK: (NO AUDIBLE ANSWER)

9 THE COURT: So how be it if your tape is  
10 five minutes long --

11 MR. BUCKLEY: It's longer than five minutes.  
12 It was about four people. I think it's about 20, 25  
13 minutes long so.

14 MR. BROWN: Well perhaps we're going to be  
15 stuck with looking at during court time, sir. As I  
16 said I'm happy whatever procedure we can to try to  
17 shorten things up.

18 THE COURT: That is fine. Well we will do  
19 it in a voir dire in court time and then if there is  
20 --

21 MR. BUCKLEY: Yes. We wouldn't replay it  
22 unless my --

23 THE COURT: -- if there is any issues then  
24 we will deal with that and as both of you are well  
25 aware at the conclusion of a voir dire, if the  
26 evidence is ruled admissible there is usually an  
27 agreement that it then becomes part of the trial so

1           you do not have to repeat that part of the trial so  
2           I suggest we look at that procedure.

3       MR. BROWN:                       That is fine, sir.

4       THE COURT:                      All right.

5       MR. BUCKLEY:                    Yes.

6       THE COURT:                      Okay. Then we will do that at  
7           2:00.

8           All right. Very good. We stand adjourned  
9           until 2:00. Thank you.

10      MR. BUCKLEY:                    Thank you.

11      THE COURT:                      Madam clerk, can I see you for  
12           a moment.

13      THE COURT CLERK:               Order in court. All rise.

14           Court stands adjourned until 2:00 p.m.

15      THE COURT:                      Thank you.

16      -----

17      PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

18      -----

19

20      \*Certificate of Record

21           I, Jillian Fox, certify this recording is a record  
22           of the oral evidence of proceedings in the Criminal  
23           Court, held in courtroom 413, at Calgary, Alberta,  
24           on the 21st day of March, 2006, and I was in charge  
25           of the sound-recording machine.

26

27

1 \*March 21, 2006 p.m. Session

2 J. Fox/L. Chernicki

Court Clerks

3 -----

4 THE COURT CLERK: Calling Synergy Group of Canada  
5 and Truehope Nutritional Support.

6 THE COURT: Mr. Buckley.

7 MR. BUCKLEY: Again, Your Honour, I'd like to  
8 recall Savine Coulson to the stand, please.

9 And, Your Honour, I'd like us to enter a voir  
10 dire to determine the admissibility of a videotape.

11 THE COURT: All right, that's fine.

12 MR. BROWN: Yeah, that's fine, sir, as  
13 discussed beforehand, prepared to enter a voir  
14 dire.

15 THE COURT: Just for the record, then, a  
16 voir dire is a trial within a trial to determine  
17 the admissibility of evidence. We will preview the  
18 evidence. There will be submissions made with  
19 regard to its admissibility, and I will make a  
20 ruling as to whether or not it is admissible.

21

22 \*SAVINE COULSON, Previously Sworn, Examined by  
23 Mr. Buckley (Voir Dire)

24

25 (VIDEOTAPE PLAYED)

26 Q Ms. Coulson, we've reviewed a videotape, and does  
27 that videotape accurately show the press conference

1           that you were telling us about on Parliament Hill?

2           A    Yes, exactly.

3           Q    And there's a person in there; you're actually  
4           shown on the tape --

5           A    Yes, I am.

6           Q    -- a couple of times; and that accurately portrayed  
7           what you said at that --

8           A    Yes, it did.

9           Q    -- press conference.

10          MR. BUCKLEY:                    Your Honour, I am going to move  
11          that we enter this as an exhibit. It has a label,  
12          "Recorded by the House of Commons Broadcasting  
13          Service, June 12, 2003". My understanding of  
14          the case law -- and I can pass some up -- is that  
15          basically we're in the same situation as if we were  
16          trying to verify a photograph, that we have to  
17          show that it's accurate, that we have to show that  
18          it's -- it's not being entered for an intention  
19          to mislead in any way, and somebody under oath  
20          able to verify it.

21                 Now, I pass up -- the leading case is actually  
22          an Alberta Court of Appeal case, Regina v. Leeney  
23          (phonetic), and I'll also -- it was appealed to the  
24          Supreme Court of Canada for some different -- it  
25          was appealed to the Supreme Court of Canada on  
26          several different issues, but they don't -- the  
27          Supreme Court of Canada didn't take issue with the

1           admissibility, so -- so the Alberta Court of Appeal  
2           stands, and if you pull out a Watts on Criminal  
3           Evidence, it will list this as one of the leading  
4           cases.

5           And it's a unanimous decision of the Alberta  
6           Court of Appeal, and basically it was a situation  
7           where a crime-in-progress had been filmed, and so  
8           it was actually a much more pressing issue because  
9           the issue is, is could that be admitted not --  
10          basically this comes up for identification  
11          purposes, so can a trier of fact rely upon a  
12          videotape of a crime-in-progress for the purpose of  
13          identification; and I printed this off of Quick  
14          Law, but it's reported at 1997 AJ 930, and on page  
15          7 of -- at printout --

16       THE COURT:                   All right.

17       MR. BUCKLEY:                -- and I'm not sure if I  
18                                    highlighted it or not, but about -- a little bit  
19                                    past halfway down, there's a very short paragraph  
20                                    that begins:

21  
22                                    Leeney's third ground of appeal is that  
23                                    the videotape of the Dollar Drugstore  
24                                    break-in should not have been admitted as  
25                                    evidence because the Crown failed to lay  
26                                    a sufficient foundation for its accuracy,  
27

1 And the Court goes on to say:

2

3 There is little Canadian case law  
4 including what must be proven in order  
5 for a crime-in-progress videotape to be  
6 admitted into evidence;

7

8 And I won't do the cites, but they quote from  
9 Regina v. Creamer and Cornier, where it was  
10 held:

11

12 All the cases dealing with the  
13 admissibility of photographs go to show  
14 that admissibility depends on: 1, their  
15 accuracy and truly representing the  
16 facts; 2, their fairness and absence of  
17 any intention to mislead; 3, the  
18 verification on oath by a person capable  
19 to do so.

20

21 And then the Alberta Court of Appeal goes on:

22

23 In my view, this is a proper test for  
24 determining the admissibility of a  
25 crime-in-progress videotape. The party  
26 seeking the admission of the video must  
27 prove that it is accurate and fair

1 through the verification evidence of a  
2 witness or witnesses under oath. In most  
3 situations this will be easily done.

4  
5 And so I just provide that case and submit  
6 that in a case like this that the test for  
7 admissibility -- weight is a very different matter,  
8 but the test for admissibility, basically, is as  
9 set out here; so is it accurate in truly  
10 representing the facts, is there an intention to  
11 mislead or not, and verification under oath of a  
12 person capable of doing so, and in my submission,  
13 that's done with the testimony of Ms. Coulson who  
14 was there in person and is actually depicted on the  
15 tape.

16 THE COURT: Mr. Brown, do you have any  
17 submissions you'd like to make?

18 MR. BROWN: Well, sir, I think my  
19 submissions will primarily go to weight, frankly.  
20 With respect to admissibility, although there's all  
21 sorts of things on the tape that, frankly -- well,  
22 complicate the issue, but that goes to weight, I  
23 think, and I'm not going to take any position with  
24 respect to not having this tape admitted into the  
25 evidence proper in the trial, and I'll deal with it  
26 as part of my argument on weight.

27 THE COURT: All right, this is my ruling on

1 the voir dire. I am satisfied that the defence has  
2 made the proper evidentiary foundation for the  
3 admissibility into evidence of this videotape of a  
4 press release from June 12th, 2003, through the  
5 evidence of this witness, Ms. Coulson, who has  
6 stated the accuracy of the tape; and there is  
7 certainly no suggestion of any intention to mislead  
8 in the presentation of the videotape, and once  
9 again, this witness, Ms. Coulson, is capable and  
10 has verified under oath as to the accuracy of the  
11 tape. So I am satisfied all of the requirements  
12 for admissibility have been met.

13 I agree as well with Mr. Brown, though, that  
14 one should not confuse admissibility with the weight  
15 that can be given to any particular evidence. That  
16 has been admitted in the course of a trial. Weight  
17 may deal with matters such as some of the comments  
18 may be hearsay, some of the observations may be  
19 caught by exception, some may not, and so on.

20 So I will allow the admission of the tape into  
21 evidence, and as I say, Mr. Brown will certainly  
22 have the opportunity, as will Mr. Buckley, to argue  
23 just what weight can be attributed to any part or  
24 all of the evidence contained on the videotape.

25 What is the next exhibit number, Madam Clerk?

26 THE COURT CLERK: 55.

27 THE COURT: All right. Now, I take it,

1 gentlemen, that for the sake of the record, all of  
2 the evidence introduced in the voir dire will form  
3 part of the trial proper, including the testimony  
4 given by Ms. Coulson?

5 MR. BROWN: That's correct, sir.

6 THE COURT: And the tape itself.

7 MR. BROWN: Yes.

8 THE COURT: All right, thank you.

9 With that agreement, then -- what did you say  
10 the exhibit number was?

11 THE COURT CLERK: 55.

12 THE COURT: Exhibit number 55 will be the  
13 videotape from June 12th, 2003, of the press  
14 release, and it will form evidence in the trial  
15 proper on the basis of the agreement made prior to  
16 the commencement of the voir dire and the  
17 subsequent confirmation by Mr. Brown.

18

19 \*EXHIBIT 55 - VHS tape in case labelled "Recorded by the

20 \*House of Commons Broadcasting Service, Press

21 \*Conferences", dated June 12, 2003

22

23 MR. BUCKLEY: Your Honour, I've also burned a  
24 disk just for the Court, for your records. My  
25 friend already has one, just so that everyone has a  
26 copy of the exhibits that I --

27 MR. BROWN: I do have a copy, sir, yes,

1           thank you.

2       THE COURT:                    Are you proposing to make this  
3           an exhibit or --

4       MR. BUCKLEY:                 No, no, but it's just --

5       THE COURT:                    All right.

6       MR. BUCKLEY:                 -- you've got a complete record  
7           of the court record, and my friend and I have been  
8           very diligent in ensuring that there's an extra  
9           copy, so --

10      THE COURT:                    All right, that's fine.

11      MR. BUCKLEY:                 I just thought, in fairness,  
12           that I should be providing you and my friend with a  
13           copy of that exhibit.

14      THE COURT:                    Well, it is not an exhibit.

15      MR. BUCKLEY:                 Not the exhibit, the  
16           understanding.

17      THE COURT:                    For some reason you are giving  
18           me the disk so I can preview it on my own computer  
19           as opposed to having to use a --

20      MR. BUCKLEY:                 Yes.

21      THE COURT:                    -- VHS machine.

22      MR. BUCKLEY:                 Yes.

23      THE COURT:                    That's fine. Have you had a  
24           chance to look at it?

25      MR. BROWN:                    I haven't, actually, checked to  
26           see if my disk is exactly the same, but I'm going  
27           to assume that it is, and if not, I'll speak with

1 Mr. Buckley about it.

2 THE COURT: In any event, I will rely upon  
3 the original exhibit.

4 MR. BROWN: Fair enough, sir.

5 THE COURT: I still have the technology do  
6 that as well.

7 MR. BROWN: And I have a pretty good memory  
8 of what happened.

9 THE COURT: All right, Mr. Buckley.

10 MR. BUCKLEY: Thank you, Your Honour.

11

12 \*Mr. Buckley Examines the Witness

13

14 Q MR. BUCKLEY: Ms. Coulson, in that -- the  
15 video that we watched, you made some comments. Are  
16 those comments true?

17 A Yes, they are.

18 Q Thank you, and I have no further questions, but my  
19 friend will probably have some questions for you.

20 MR. BROWN: Sir, if I could just have a  
21 moment to take a look through my notes. I may not  
22 have questions.

23 THE COURT: All right.

24 Do you want to take a few moments? I can take  
25 a break now rather than 15 or 20 minutes from now.

26 MR. BROWN: I'm only going to need one  
27 minute to review my notes, sir.

1 THE COURT: All right, go ahead.

2 MR. BROWN: I won't be very long.

3 Sir, I don't have any questions for this  
4 witness. Thank you.

5 THE COURT: All right, very good.

6 Thank you very much, Ms. Coulson. You can  
7 step down.

8 (WITNESS STANDS DOWN)

9 MR. BUCKLEY: And, Your Honour, I would like  
10 to call Autumn Stringam to the stand, but I expect  
11 that she is outside. She was excluded. Can  
12 somebody go out --

13 THE COURT: Over here, please.

14

15 \*AUTUMN STRINGAM, Sworn, Examined by Mr. Buckley

16

17 THE COURT: Mr. Buckley, go ahead, please.

18 MR. BUCKLEY: Thank you, Your Honour.

19 Q MR. BUCKLEY: Ms. Stringam, how old are you?

20 A Thirty-three.

21 Q Okay, and you reside in Coaldale, Alberta?

22 A Yes.

23 Q Which is about 12 kilometres east of Lethbridge.

24 A About that.

25 Q Okay, and you live with your husband, Dana?

26 A Yes.

27 Q And you have four children.

1 A I do.

2 Q Okay. Your part of this Truehope story, can you  
3 tell us your part?

4 A Sure. Do you just want me to start with the very  
5 beginning?

6 Q You might as well.

7 A When I was a young child I had symptoms of  
8 illness. I remember getting in trouble in  
9 Kindergarten and elementary school for being hyper  
10 and causing disturbance in my dance class and  
11 things like that. Mom said I could never listen,  
12 and I know that I had problems back then.

13 By the time I hit puberty, I went from being  
14 an honor student -- and they had done a bunch of  
15 academic testing, and I had done really, really  
16 well in school -- academically, anyway. I went  
17 from that to being completely scatterbrained and  
18 unable to -- well, eventually, by the end of high  
19 school I couldn't even tell time on a conventional  
20 clock.

21 Q What do you mean?

22 A Just a lot of confusion, a lot of -- like, I look  
23 back now, I think I would call it attention  
24 problems, just -- a lot of thoughts, a lot of  
25 racing thoughts; and through high school I went  
26 through a lot of different cycles where I would  
27 just be really, really depressed, unable to get out

1 of bed. My mom would come -- she -- I don't know  
2 what it is that she gave me, but there were a few  
3 times, for final exams, where she gave me pills to  
4 get me out of bed to go and write my exams.

5 I'd go from being just totally alone and not  
6 functional, falling asleep on my desk in class --  
7 the school counsellor had me in looking for  
8 suicidal signs. They were monitoring my art from  
9 art class. Still have one of my big paintings  
10 where they called me in and asked me about my  
11 thoughts because I guess it was pretty dark.  
12 Things like that. I think there were a lot of  
13 flags, a lot of signs of problems.

14 Q Okay, so what happened after you left school?

15 A After what?

16 Q After you left high school.

17 A I moved out almost immediately after graduation,  
18 and I moved to Edmonton and went through six  
19 boyfriends in two months and two jobs and two  
20 apartments; and then I met a young guy that  
21 realized that I was in trouble, and he packed me up  
22 and moved me back to my parents' home.

23 And I was pretty delusional right then, and I  
24 crashed; and I didn't have a bedroom anymore  
25 because I'd moved out, so I moved into the laundry  
26 room closet, which wasn't long enough for my body,  
27 so I had to curl up in a ball; and somewhere in the

1 house I found a bunch of little sample tiles from  
2 the tile store -- my mom had had a bunch of samples,  
3 and I got some glue and spent two weeks gluing  
4 a mosaic on the bottom of the laundry room closet.

5 Q Okay, continue.

6 A And then I came out of the closet and went manic  
7 again and started all over again.

8 Q What do you mean when you say you went manic?

9 A Well, my mania then, I think there was a lot of  
10 paranoia, but more than that, just wild, grandiose  
11 thoughts and ideas; moving in and out of the house  
12 and probably driving my parents crazy; couldn't  
13 keep a job, couldn't function; and then I calmed  
14 things down for a little bit, probably about a  
15 week. I met my husband, and we were engaged two  
16 months later and married within six months of  
17 meeting.

18 And at that point during our dating year -- or  
19 dating year, what am I saying -- dating a couple of  
20 months, he -- he told me that he thought I needed  
21 to see a neurologist. He could see that there was  
22 something not quite right because I was describing  
23 different things to him.

24 I had a problem then where I often felt like I  
25 was in a glass box, and so I'd become really  
26 aggressive, and really, really hypersensitive. I  
27 always thought he was making fun of me, or

1           whatever, at that point; and so I described the  
2           glass box to him once, and he suggested I go see a  
3           neurologist, so I went to my GP just before we were  
4           married --

5           Q    Mm-hmm?

6           A    -- and he attributed my behaviour to being nervous  
7           about getting married, and that was it for a little  
8           while --

9           Q    Okay.

10          A    -- about a year and a half --

11          Q    What happened after a year and a half?

12          A    Well, when we were married for seven months, I got  
13          pregnant and started having a lot of problems after  
14          that; and there was some pretty major stressors in  
15          our marriage, obviously. I don't think Dana really  
16          knew what he was getting into when he married me,  
17          because my swings were pretty severe and we had  
18          some pretty violent moments.

19                And I ended up in the hospital with premature  
20          labour, and they put me on a medication that is  
21          known to cause some depression. It was to stop the  
22          labour, and I just went really downhill from there  
23          and ended up quite psychotic. I think that my  
24          first -- I won't say it's the first time that I  
25          thought about suicide, but I think it's the first  
26          time I really meant it, was in the hospital.

27                I thought about suicide a lot as a teenager,

1 but I think it was more of a -- I didn't mean it  
2 like I did in the hospital. I actually thought  
3 that I was going to kill myself in the hospital.  
4 In fact, I remember looking at the menu that they  
5 let me choose from and trying to figure out which  
6 item on the menu would let me have a sharp knife,  
7 because I had a lot of visions of stabbing through  
8 my belly and stabbing the baby and then bleeding  
9 out. I had it all planned out.

10 Q Okay, so carry on.

11 A So I ended up having the baby, and within a few  
12 weeks I went right over the top.

13 Q What do you mean?

14 A I just thought that my husband was planning my  
15 death, and I remember laying in bed every morning.  
16 It would kind of go through this strange cycle  
17 because every morning I would wake up just  
18 paranoid, and our baby was sleeping in the crib in  
19 the other room, and my husband was in school, and  
20 so he would leave before I ever got out of bed; but  
21 I would hear him close the door behind him and then  
22 lock it and take the key out, but I had it in my  
23 head that he was actually unlocking it, like,  
24 locking it to trick me and then unlocking it so  
25 that the killers could come in; and then one day he  
26 forgot his books, and so he went down to the  
27 parking lot and came back up, and I met him in the

1 hallway and just beat the heck out of him. I  
2 thought he was a killer coming to kill me.

3 Q Okay, so this is part of a paranoia?

4 A Yeah, and it was, like, one that I had been kind of  
5 keeping going. It had been, I'm sure, a couple of  
6 weeks that I was, every morning, going through this  
7 cycle of paranoia and then, you know, getting up  
8 after my son would scream long enough, and then I'd  
9 go and try and take care of the baby, and by the  
10 afternoon I was out of that and feeling pretty good  
11 about things, and by the time Dana came home from  
12 school, he was the best guy on the planet. So it  
13 was just this weird cycle --

14 Q Okay.

15 A -- that I would go through.

16 Q Now, when this happened where you beat him up where  
17 he came back in, did that cause you guys to make  
18 some changes?

19 A Well, he picked me up and hauled me to the bed. He  
20 thought I was kidding -- I think he thought I was  
21 kidding, because he laughed, and then he realized  
22 that I wasn't laughing, I was crying and  
23 hysterical, and so he said, You have to go to the  
24 doctor. Like, you're sick.

25 Q Mm-hmm.

26 A So he sent me to my GP who decided that that was  
27 called postpartum depression, and they started me

1 on an antidepressant, and the doctor told me not to  
2 make any major changes because it would take about  
3 six weeks to kick in --

4 Q Mm-hmm?

5 A -- and before the six weeks were up, I'd already  
6 packed up our house and moved us across town, just  
7 decided that we needed to move, and started a  
8 massive weight loss program and decided that I was  
9 going to be the best housekeeper ever, and really --  
10 like, getting up at 4:00 in the morning to  
11 clean the house. I just went really, really manic,  
12 unending energy and a lot of violent thoughts that  
13 went with that.

14 Q What do you mean, "violent thoughts"?

15 A Extremely agitated, like -- like, put the baby on  
16 the floor in the middle of the night when he won't  
17 nurse properly. I remember one night in  
18 particular, because Dana was so verbal about it  
19 later, but trying to nurse the baby. He wasn't --  
20 it wasn't working out, and I just -- rather than  
21 throwing -- because I thought, I don't want to go to  
22 gaol -- so I put him down and then just went back  
23 to bed and said, Your son's on the floor; but it  
24 was everything I could do to control these really  
25 violent urges, and I had a lot of thoughts about  
26 hurting myself and a lot of thoughts about hurting  
27 my son.

1 Q Okay.

2 A And then one morning I woke up at about 4:00 and  
3 cleaned the house and went out for my run, and I  
4 ran until my leg was numb. I had a problem at that  
5 point. They were checking me out for possible  
6 multiple sclerosis because I had a problem with  
7 numbness in one of my legs; and ran until I  
8 couldn't run anymore and then shuffled back to the  
9 house, and it was about 8:00 in the morning on  
10 Saturday, and my husband was still in bed, so I  
11 burst into the room and screamed and yelled at him,  
12 and then I couldn't stop. I just started into kind  
13 of a flapping thing that kind of became a  
14 characteristic of my illness after that, and he was  
15 concerned enough to take me to the hospital --  
16 well, to the doctor.

17 Q Okay, when you say you started screaming and you  
18 couldn't -- or yelling and you couldn't stop, what  
19 do you mean by that?

20 A I think it's like -- there's so much in your head  
21 when you're manic, there's so many thoughts, and  
22 everything is so intense and so loud that you just  
23 can't keep it to yourself anymore, and it just  
24 bursts, and for me, the bursting came out in, like,  
25 raging, but then flapping was -- like, I would just  
26 have a physical outburst --

27 Q Okay.

1 A -- that was really violent.

2 Q Because I don't understand when you say  
3 "flapping".

4 A Like, it would start with -- any time I was under  
5 real pressure or stress, or when the mania was  
6 getting too much, it would be like -- I'd start  
7 with repetitive movements, so, you know, so I start  
8 with this, and then I'm doing this, and pretty soon  
9 I'm following the same movement over and over  
10 again; and then that -- and then that comes down  
11 to, you know, touching, and pretty soon I'm doing  
12 this, and then it's like crazy flapping, scratching  
13 my face, and I can't get it under control. It  
14 doesn't matter what I'm doing, I --

15 The first time he took me in, I flapped like  
16 this for the 40-minute drive all the way, all the  
17 while talking to the -- and I hadn't seen them at  
18 this point, but I knew that there were people that  
19 were mocking me, always on this side, and they  
20 would, you know, Hey, throw yourself out of the  
21 car, you dumb bag, you know, you don't deserve to  
22 live, and, like, a lot of taunting and stuff like  
23 that --

24 Q Okay, let's just stick with the flapping right  
25 now.

26 A Okay. So I flapped and flapped until they would  
27 give me a shot in the bum.

1 Q Okay, and who is "they"?

2 A The doctor. I went in several times for flapping.

3 It happened -- it got to the point where it was  
4 happening weekly.

5 Q Would that always happen at home?

6 A No, it happened in restaurants and church, you  
7 know, the garden show, pretty much any public place  
8 where I could just be totally mortified. If there  
9 was too much music, too much going on, if I just  
10 started to cycle into a manic phase, because I  
11 would go around every day several times between  
12 depression and mania. It was just like the height  
13 of mania for me; and if I was in the wrong place  
14 while I was going through a change, it was  
15 uncontrollable. I just -- and as much as I didn't  
16 want it to happen, I'd -- you know, like, I  
17 remember being in a restaurant with my husband, and  
18 it was like a special date, and I must have  
19 embarrassed the crap out of him, but I had to go --  
20 sorry.

21 Q Do you need a Kleenex, Ms. Stringam?

22 A Sorry. I'm telling a lot of things that I don't  
23 tell; but having to leave the dinner table because  
24 I could feel it coming, and I was doing my agitated  
25 leg and started, you know, going like this, and I  
26 couldn't stop it, and I realized I was going to go  
27 all the way over because the music in the

1 restaurant was too much, and there was voices, and  
2 just the clinking of -- like, everything just was  
3 overwhelming.

4 And so, even having to go to the bathroom and  
5 lock myself in the stall until it ended, and it  
6 just -- it was horrible. We just got to the point  
7 where I didn't drive the car, and he never took me  
8 out. We couldn't -- we couldn't go to public  
9 places if I was even close to unstable because it  
10 always ended badly.

11 Q Okay. You -- when you started talking about this  
12 flapping, you were describing voices --

13 A Yeah.

14 Q -- but you'd said that you didn't -- there was a  
15 point where that started.

16 A It started with the antidepressants. That was the  
17 first time I ever experienced that kind of  
18 heightened sensitivity, like, where I actually felt  
19 like it wasn't just in my head. I felt like it was  
20 external.

21 Q Okay, so would you hear voices before in your --  
22 before that --

23 A No.

24 Q -- in your head? Okay.

25 A Oh, no.

26 Q So -- well, tell us about the antidepressants and  
27 then when you started hearing what you perceived to

1 be external voices.

2 A Well, the first day when I was flapping and he  
3 realized that I was over the top on that Saturday,  
4 he took me to the doctor, and at that point the  
5 doctor said, Who is bipolar in your family, because  
6 he realized it wasn't just postpartum depression.  
7 He said that, and then it all kind of came together  
8 because I knew that my mom was, and she was still  
9 living at the time.

10 And so he gave me some sort of a shot, a  
11 sedative, and I slept for about three days, and  
12 then I started on Lithium treatments and a  
13 different antidepressant. He took me off of the  
14 one because I had responded so badly.

15 Q Okay, and how did that go?

16 A I gained 30 pounds in 28 days, and I was sick,  
17 really sick.

18 Q Okay.

19 A I wanted off the drugs. I asked him many times if  
20 I could come off the drugs.

21 Q What about for your symptoms, though?

22 A I don't think that it really ended the symptoms  
23 because I was still having to go in for sedative  
24 shots, so I was still having -- he called them med  
25 breakthroughs where I could just -- it wasn't quite  
26 working, so then I'd suddenly have a big outburst,  
27 and so -- it was just -- it just kind of became a

1 pattern that we'd go in.

2 I was seeing him weekly, maybe every couple of  
3 weeks. If I was lucky, I could skip a week, but it  
4 was just a regular thing for us to be going to the  
5 doctor and getting shots and -- started getting  
6 baby-sitters in for our son, and I just wasn't  
7 functional at all. At all.

8 Q Okay. Did you ever hear voices again?

9 A Oh, yeah.

10 Q Okay, can you tell us about that?

11 A Well, it never ended after that. I -- there were  
12 many times when I would just have to go in the  
13 closet and try and hide. It became such a constant  
14 companionship for me, but I got to the point where  
15 I wasn't able to shower naked. I needed to wear  
16 clothing in the shower because the taunting was  
17 just so bad --

18 Q What do you mean?

19 A -- it was really embarrassing. Just feeling like  
20 someone is in the shower with you. It's not a good  
21 feeling. So it actually got to the point where my  
22 husband would come -- he had to escort me into the  
23 bathroom. This is, like, probably a year into my  
24 treatment, so we'd been trying a couple of other  
25 medications and things too.

26 But I was paralyzed in this thing. I would  
27 sit on the couch and play solitaire all day, and --

1 in my pajamas, and he'd come home and ask me if I'd  
2 gone to the bathroom, and he'd have to escort me  
3 there, and he'd have to get in and shower me, and  
4 it was just -- it was really dysfunctional. The  
5 whole -- couldn't even care for myself. We had to  
6 put our son in care. We had baby-sitters and  
7 eventually daycare.

8 Q Okay, what would these voices say to you?

9 A That I was the devil, that I was ugly, that I  
10 should kill myself, that Dana wants to kill me; a  
11 lot about Dana wanting to kill me. Just ugly  
12 stuff.

13 Q Okay. Did you ever see anything?

14 A Yeah. It got to the point where -- just before my  
15 first hospitalization, I had visions of these  
16 little -- they looked like little crayon sketchy  
17 faces. They were pointy at the top and pointy at  
18 the bottom, and they would be in the mirror, so --  
19 or a reflective glass, and sometimes my face looked  
20 like that, like, really dark, hallowed out, caved  
21 in eyes, doggy teeth, and so I would have to cover  
22 the glass.

23 It became so disturbing for me, the reflective  
24 glass and mirrors, that if I was alone, there were  
25 times when I actually had to go to the -- use the  
26 kitchen sink as a toilet because I couldn't go into  
27 the bathroom. That's pretty low. That's pretty

1           embarrassing.

2           Q    You spoke about a hospitalization.  Can you tell us  
3           about your experience with hospitals?

4           A    Yeah.  The first time -- I had a really bad day the  
5           one day, and I had had a shower with my clothes on,  
6           and I was trying to get functional, and -- I was  
7           trying to do everything with my eyes closed because  
8           the crayon faces were, you know, around me, and I  
9           knew it, and they were trying to look in my eyes.  
10          So the voices were, you know, Look into her eyes  
11          and then you'll know the way to kill her, and all  
12          of this kind of stuff, so I was trying to do  
13          everything looking down and with my eyes closed,  
14          and I just knew I wasn't going to make it through  
15          the day.  Like, it just -- I wasn't going to make  
16          it.

17                    And I had my son over at my sister's house,  
18          but I was afraid to be alone, so I called her and  
19          had to pretend that things were great, so -- so  
20          that she would know that she needed to come over.  
21          Like, I couldn't acknowledge that I knew that the  
22          faces were there because if I did, then they would  
23          know I knew that they were there, and it was --  
24          that wouldn't be safe.  That was the logic.  And so  
25          I --

26          Q    I just --

27          A    Sorry.

1 Q -- want to make sure that I understand you. So are  
2 you saying you're lying on the phone so that the  
3 voices aren't --

4 A Yeah.

5 Q -- the faces aren't hearing you? Or understanding  
6 you know they're there?

7 A Yeah. So the call goes, Hi, everything's really  
8 good here. Why don't you come over, because if I  
9 say, The voices and the faces are here, then  
10 they'll know that I know that they're there, and I  
11 couldn't acknowledge that because then they'd be  
12 able to hurt me, right? It was strange logic, but  
13 it made perfect sense to me.

14 And so she came over and saw that I was in  
15 really bad shape because I'm drenched and my  
16 clothing are wet from having been in the shower,  
17 and I'm singing really loud, and I've got sheets on  
18 the pictures in the livingroom and everything is  
19 covered up; and she tried to get a hold of my  
20 husband but she couldn't find him, so she got a  
21 hold of one of the guys from church, and they came  
22 over and they managed to stay with me while she  
23 tracked down my husband.

24 And then he went to take me to the doctor for  
25 a shot, right, a sedative shot, and the doctor had  
26 gone on holidays, so we went to a Medi-Centre, and  
27 the Medi-Centre doctor took one look at me and

1           said, What are you doing in a GP's care? And so he  
2           had me admitted to the hospital at the University  
3           of Alberta Hospital, and -- under a specialist's  
4           care, Dr. Genniman, who was a specialist in  
5           schizophrenia and bipolar.

6           Q    Okay, and so what happened there?

7           A    So they interviewed me and determined that I had to  
8           be certified, so they put the animal print bracelet  
9           on me to say that I can't get out, and Dana had to  
10          leave me in the psych ward, and I stayed there for  
11          a month.

12          Q    You were there for a full month?

13          A    Yeah. They put me on -- it was a few days short of  
14          a month. They put me on a bunch of different  
15          medications. There were 13 in total that were  
16          tried, and at one point I went really toxic on the  
17          medication, and I woke up and my hands were so  
18          puffy I couldn't bend my fingers. They were just  
19          so -- everything was fat, my face, everything had  
20          just blown up; and so then they took me off of all  
21          the medications and started me on another bunch of  
22          them, and I had a lot of ups and downs in there.

23                I remember one time just getting really manic  
24          and starting to run around the nurses' station, but  
25          the hall went around it, and running until I was  
26          flapping, and then I'm running and screaming and  
27          flapping around the nurses' station, and so they

1 had to get a male nurse to come up and tackle me  
2 and haul me back into my bedroom and give me a shot  
3 and, you know -- and then you're out for a few days  
4 again.

5 Q Okay. Was that the only time that you were --

6 A Hospitalized?

7 Q Yes.

8 A No, there was another hospitalization three months  
9 after that, after I was released, and it was on a  
10 suicide watch, and this time I was put in the  
11 lock-down room with the window that goes into the  
12 hallway, and -- you know, no electrical outlets and  
13 you get the short toothbrush so you can't do any  
14 damage.

15 Q Okay --

16 A That was really scary.

17 Q How did you end up in there that time?

18 A Well, I wanted to kill myself, and I was trying  
19 to.

20 Q What do you mean?

21 A Well, I always had a different plan. Any time I  
22 had a med breakthrough, the idea was -- to have a  
23 med breakthrough, the first thing you think is, I've  
24 got to get out of this hell. Like, I can't live  
25 like this, because then you realize that you're not  
26 living anyway, and so I would --

27 Q Explain that med breakthrough to us.

1 A You're really sedated on the medication. For  
2 example, one of the combinations I was on was  
3 Halodol, Rivotrol, Ativan, Epival and Cogentin.  
4 That's a lot of drugs, and you can't really --  
5 like, you just sit, right?

6 So I would sit, you know, fall out of my  
7 chair, and they'd have to pick me up and put me  
8 back in. I remember a time at my mother-in-law's  
9 house, she -- she's crying on the floor because I  
10 fell over and was drooling on the carpet, and she  
11 didn't know what to do because it -- it was just  
12 really bad; and then all of a sudden it's like you  
13 wake up, and you're a raging manic and desperate,  
14 because it's not like you don't know you're sedated  
15 when you're sedated. You just can't do anything  
16 about it. It's just like being put into a gaol,  
17 and you sit there and wait until you can break out  
18 of it.

19 Q Okay, and that's why you use the term  
20 "breakthrough"?

21 A Yeah. Well, the doctor called it a med  
22 breakthrough.

23 Q Okay. So you had come out of a med breakthrough  
24 and then tried to kill yourself.

25 A I had a thing about sharp knives.

26 Q Okay, and so you end up back in the hospital. Do  
27 you remember --

1       A    Well, I had a big fight with my husband first.  I  
2       had woken up at, like, 3:00 in the morning and took  
3       a belt sander to the kitchen table, and that's what  
4       woke him up, because I was redesigning our  
5       furniture with the belt sander, and then he offered  
6       me a whole bunch of Ativan, and I accused him of  
7       being a killer, and then I was freaking out and  
8       flapping, and I ran off and tried to lock him out  
9       of our bedroom, and then he came in, and it was  
10      like tackle and haul me to the hospital.

11                And this time he had to put me in the back  
12      seat, in the child lock, so that I couldn't open  
13      the door because this had happened a few times  
14      before, when we got on the freeway, where I would  
15      decide to bale on the freeway, and so he'd be  
16      holding me in with the seat belt, trying to hold  
17      the seat belt down and drive and get off the  
18      freeway until he could subdue me enough to get back  
19      on the road again.

20      Q    Okay, I just -- I didn't quite understand that.  
21      What do you mean you would try to bale on the  
22      freeway?

23      A    Throw myself out of the moving vehicle.

24      Q    And why would you try to do that?

25      A    Because there were other cars on the road and then  
26      I would die, and that's -- that's what you do when  
27      there's voices telling you to do it and you

1 actually have the wherewithal to make it happen.

2 Q Okay.

3 A Immediate, med break.

4 Q So he takes you to the hospital this second time,  
5 and how long are you there?

6 A I think it was only four days.

7 Q Okay.

8 A And then we had a meeting with my psychiatrist, and  
9 the psychiatrist and Dana made a plan that I would  
10 have 24-hour adult supervision or that I'd have to  
11 go to the long-term care facility.

12 Q Okay.

13 A So he agreed to arrange it with our parents, when  
14 he was working midnight shift, that he'd have  
15 somebody with me at night so that I wouldn't be  
16 alone, because I had a lot of problems in the night  
17 where I would just wake up and do stuff, and that's  
18 how I ended up at my dad's house on -- in his  
19 care.

20 Q Okay, because you're on 24-hour watch.

21 A Adult supervision. I wasn't allowed to be alone  
22 with my son, and I wasn't allowed to be alone  
23 without an adult, and they arranged that to keep me  
24 out of a long-term care.

25 Q Okay, so tell us about going to your father's?

26 A I went to my dad's, and he had told me --

27 Q Just for the record, your dad is Tony Stephan?

1 A Right.

2 Q Okay.

3 A He had told me about a week before that my brother,  
4 Joseph, was off of his medication because he had  
5 found an answer for our problem, the bipolar, and I  
6 was really angry with him, and I thought that was  
7 the dumbest thing I'd ever heard of. So Dana and  
8 I agreed on the way down that we wouldn't be doing  
9 the vitamins and minerals because we really  
10 believed that the -- my specialist said it would  
11 just take a couple of years to find a combination  
12 that would work for me, and I was trying to wait  
13 that long, and we ended up --

14 I had a med breakthrough at my dad's house. I  
15 was there for Saturday, and on Sunday he took me to  
16 church, and then halfway through the meeting I was  
17 flapping. So he removed me from church and brought  
18 me home, flapping, and then he gave me some Ativan  
19 and put me to bed, and then I woke up really manic,  
20 and came out, and I -- he had a friend of his there  
21 that was a psych nurse, and when I went for the  
22 knife drawer, he and his friend forced me to take  
23 the supplements.

24 Q Okay, and then what happened?

25 A And then I went to sleep. I think they gave me  
26 more sedatives with the supplements -- and I went  
27 to sleep and I woke up, and he kept coming home

1 from work, making sure that I was taking it for the  
2 first day or so, and then it -- I just started  
3 noticing a change in my cycle where I wasn't going  
4 between the depression and the mania really fast.

5 And the vulnerability -- like, I used to think I  
6 had a hole in my chest when I was really manic. It  
7 kind of went with the flapping and paranoia and  
8 stuff, but it was like a hole would open up, and  
9 that happened all the time. Like, every day when I  
10 was cycling, I would experience this, and then the  
11 one day it didn't happen.

12 Q Okay, and I just want to -- so when you're in the  
13 depressed cycle, you don't have a hole there.

14 A No, no hole.

15 Q Okay, but then when you're in the manic cycle, the  
16 hole opens up?

17 A Yeah.

18 Q Okay.

19 A And that's where, like, music notes would fly in  
20 and voices. It's like how they'd get in my space.  
21 There's this big gaping hole.

22 Q Okay. So you notice a difference in your hole.

23 A Yeah, it didn't open one day. I think it was like  
24 day 2. It didn't open, and I told my dad it didn't  
25 open, and so he was really happy about that, and  
26 then the next day I woke up feeling different,  
27 like, calm in my head, and then I took my

1 medication and just -- it knocked me out.

2 So then I went to sleep all day, and he was  
3 watching me, and he said every time -- well, every  
4 time I took my medication, it was knocking me out,  
5 and so I didn't take my medication. Like, I went  
6 off of three of the five drugs right away and then  
7 the fourth one by the end of the week, and I stayed  
8 on one of them. I guess my husband wasn't  
9 convinced it wasn't a good idea just yet.

10 Q Okay, and so then what happened?

11 A So by the end of the week I'd had a shower without  
12 my clothes on, and --

13 Q Now, is that significant?

14 A That was huge. That was like celebration time.  
15 Autumn had a shower without her clothes. It was a  
16 really big deal because it had become quite a  
17 problem for me.

18 Q Okay, now, why were you able to do that?

19 A I didn't have my hole, and I didn't have the --  
20 without the hole, you don't hear the voices and you  
21 don't get the taunting thing, and I just felt safe.

22 Q Okay.

23 A So I was able to have a naked shower; and then they  
24 decided that they'd keep my son in daycare, and I  
25 would be allowed to come home and just try it out,  
26 day times by myself, and I did that and took two  
27 months to wean off of my last medication, and on

1 March 28th, 1996, I took my last dose.

2 Q I'm sorry, what was the date?

3 A March 28th, 1996. It's my sister's birthday, so I  
4 remember it.

5 Q Okay, so have you taken medications for mental  
6 illness since?

7 A No.

8 Q Okay. Well, how are you doing, then? So March  
9 28th, '98, what was your health like?

10 A '98?

11 Q I'm sorry, '96.

12 A Oh, '96. If you'd asked me, I would have told you  
13 I was doing all better. When I look back now I  
14 realize there's just been so much improvement, over  
15 the years even. Over the first year, it was  
16 phenomenal improvement. I -- you know, just not  
17 hallucinating, I thought that was as good as it  
18 could get. I didn't realize I was going to be able  
19 to read again and tell time and, you know,  
20 concentrate right.

21 I never thought that I'd ever have any more  
22 children. They had told me I needed to have my  
23 tubes tied because of the combination of  
24 medications I was on, because it's just dangerous  
25 to have a baby when you're on five drugs -- like,  
26 they said I wouldn't be able to do it, and so, you  
27 know, I never thought that I'd ever go there again,

1 but three, three and a half years onto the program,  
2 we felt confident enough to go there.

3 And there was some struggle through those  
4 years with autoimmune problems, allergies and  
5 things like that that -- that I attribute to the  
6 use of the medications. It took a long time to get  
7 over that part --

8 Q Okay.

9 A -- where I took a while to get my health back and  
10 to feel strong at all, but once I did, we decided  
11 to start having a family again, and I've had three  
12 daughters, three healthy, beautiful daughters since  
13 then.

14 Q Okay. Do you hear the voices anymore or anything  
15 like that?

16 A No. I don't.

17 Q What about the flapping?

18 A No. You know, I -- there was a little while, like  
19 a transition time for a few months after the  
20 medications where, if I was faced with something  
21 that was really stressful, I would still flap, for  
22 a lack of knowing what else to do, I think, and  
23 then I kind of got to this point where I realized,  
24 Geez, you know, that's not okay anymore, and so I  
25 had to figure out other ways to deal with it, deal  
26 with stress or whatever, and all those habits have  
27 just kind of fallen off, you know. Over the first

1 couple of years, there was just massive  
2 improvement.

3 Q Okay. Do you need people to care for your children  
4 like you did when you were --

5 A No. No. I'm a stay-at-home mom, and I'm a writer,  
6 and I help support other people who want to go  
7 through the same process that I go through, so I do  
8 mentoring, and I volunteer in my community, like,  
9 at the Figure Skating Club. I do a lot of really  
10 normal things. I teach Sunday School.

11 I just -- I am involved in a full, normal life  
12 in a great marriage with four great kids, and a  
13 four-year-old and a two-year-old and a  
14 six-year-old. That's not really easy to deal with,  
15 but I'm doing it, and I love it. It's everything I  
16 ever wanted.

17 Q Okay, so do you still spend the day in bed or  
18 anything --

19 A Never. That would be a luxury. No, I get up with  
20 the rest of the world, and I function all day, plus  
21 some.

22 Q Okay. At some point availability to this  
23 supplement changed. Can you tell us about that?

24 A The first that I heard about that -- I don't even  
25 know what year that was -- 2000 and -- I don't know  
26 what year it was. I was pregnant with my daughter,  
27 with Megan. I was six months pregnant, and --

1 Q Okay. Well, when was Megan born? We can figure  
2 this out.

3 A She was born in 2003.

4 Q Do you remember her birth date?

5 A Yeah, August 15th.

6 THE COURT: Mr. Buckley, before you go into  
7 this particular area of your examination-in-chief,  
8 I am going to take a break. I expect you are  
9 going to be a few minutes longer, and then Mr. Brown  
10 is going to want to cross-examine.

11 MR. BUCKLEY: Yeah.

12 THE COURT: We are going to take a brief  
13 break, give you a brief break off the stand --

14 A Thank you.

15 THE COURT: -- for a few minutes. Don't  
16 discuss your evidence with anyone --

17 A No.

18 THE COURT: -- during the break, and I will  
19 return at 20 to 4, in ten minutes, and we will  
20 resume then. All right, very good. Thank you.

21 (ADJOURNMENT)

22 THE COURT: Take the stand, please. Yes.  
23 Thank you.

24 THE COURT CLERK: Recalling Synergy Group of  
25 Canada and Truehope Nutritional Support.

26 THE COURT: Go ahead, Mr. Buckley, please.

27 MR. BUCKLEY: Thank you, Your Honour.

1 THE COURT: You were questioning on the  
2 availability of the supplement in 2003.

3 MR. BUCKLEY: Yes.

4 Q MR. BUCKLEY: So, Ms. Stringam, just before  
5 we broke, I was basically trying to get from you  
6 about when the supplement became unavailable, and  
7 we were trying to figure out when it was based on  
8 you were six months pregnant --

9 A Right.

10 Q -- and your child was born on August 15th of '03.  
11 So what happened? Like, how did you become aware  
12 of it --

13 A Well --

14 Q -- that there was a problem?

15 A With all of my babies, I've had a little bit of  
16 premature labour stuff, so I was a little bit busy  
17 with this baby, and my husband and family, my dad,  
18 decided to kind of leave me out of the loop just  
19 because I didn't need to be bothered with it, I  
20 guess.

21 So the first I heard about it was when the  
22 product was actually being seized or turned back at  
23 the border, or whatever, when people were actually  
24 running out, and I just figured they could handle  
25 all of that and didn't want to be involved with  
26 anything.

27 I had Samantha and Melanie at home, as little,

1 little girls, four and two, and my son was in upper  
2 elementary school, and I was just really busy being  
3 a mom and dealing with this pregnancy, and so I  
4 just -- I didn't have a whole lot to do with it  
5 until my dad called me the one day and said that I  
6 needed to get involved and that --

7 And he gave me some telephone numbers to  
8 call. He said, You know, you need to check this  
9 out because this stuff is being turned back, and if  
10 you don't step up, somebody has got to do something  
11 about this, and they're not listening to me, so  
12 maybe you need to step forward and at least make  
13 some phone calls and figure that -- you know, try  
14 and do it from a -- from my place as a user of the  
15 product.

16 And I didn't really want to get involved with  
17 anything, but he convinced me to come out to dinner  
18 with him and my husband and kind of updated me on  
19 everything that had happened up to that point and  
20 asked me to do whatever it would take to get some  
21 help for the people that were running out of  
22 product.

23 And anyway, I didn't think much of that until  
24 I went home, and the next morning it was bugging  
25 me, so I woke up and made a couple of phone calls,  
26 and I ended up calling Ann McClellan's office just  
27 to ask, you know, what's going on, and as soon as I

1 mentioned the -- I didn't even say "EMPowerplus", I  
2 said, I'm just calling about the availability of a  
3 vitamin and mineral supplement, and the woman on  
4 the phone flipped me over to a mental health crisis  
5 line, and I wasn't in a mental health crisis, I was  
6 just calling to find out what was going on.

7 And a woman named Chantal answered the crisis  
8 line, and by the end of the call I understood that  
9 I was mentally ill and that this was not allowed to  
10 be used in Canada. She -- it was an illegal drug,  
11 apparently, and that there was some danger  
12 associated with taking it, but she wouldn't tell me  
13 what the danger was.

14 And I explained to her that I had been well  
15 for seven and a half years, that I hadn't seen a  
16 psychiatrist for seven and a half years, that I had  
17 two daughters since and was six months pregnant,  
18 and it wasn't an option for me to go without the  
19 supplements, so what could she do for me, and the  
20 bottom line was, Consult with your physician and  
21 use safe and effective treatments, and that made me  
22 really mad because I already tried the safe and  
23 effective treatments and none of them were safe or  
24 effective as far as I was concerned.

25 Q Okay, did you end up making another call to that  
26 line?

27 A Yeah. I called my dad. I was really mad, and he

1 got on the phone with me -- and I think David Hardy  
2 was on that call -- and he recorded it, and I ended  
3 up getting Chantal again. So I talked to her  
4 again.

5 I didn't give her my name. She asked for my  
6 name, and I chose not to give it because at that  
7 point I thought -- I remembered being certified,  
8 and I thought, You know what, if they're so  
9 convinced that I'm mentally ill and they're not  
10 going to hear me out -- I was afraid if I  
11 identified myself, you know, what if they just come  
12 and decide to take the crazy pregnant lady and put  
13 her back in the hospital. That was -- it was just --  
14 I was just suddenly very afraid, because it  
15 just didn't seem logical to me, and it didn't --  
16 none of it sat well. I just -- they weren't  
17 hearing me. It didn't seem to matter what I said,  
18 the answer was the same.

19 MR. BUCKLEY: Your Honour, I wonder if we can  
20 enter a voir dire. I want to play that recording  
21 of that second 800 call.

22 MR. BROWN: Well, sir, I guess that's the  
23 process we should follow with respect to this  
24 recording.

25 THE COURT: All right, we will go into a  
26 voir dire with regard to the admissibility of, I  
27 take it, an audio recording that you are now going

1 to play for us?

2 MR. BUCKLEY: Yes.

3 THE COURT: All right.

4

5 \*Mr. Buckley Examines the Witness (Voir Dire)

6

7 Q So, Ms. Stringam, I'm just going to play something  
8 and I'd ask you to listen, okay?

9 A Okay.

10 (AUDIOTAPE PLAYED)

11 Q MR. BUCKLEY: Ms. Stringam, do you recognize  
12 that conversation?

13 A Yes.

14 Q And what conversation is that?

15 A That's the conversation that I had after I called  
16 for the first time and called them again with my  
17 dad and David Hardy on the phone.

18 Q Okay, so now, there was a voice at the beginning  
19 basically as almost a narrator giving who's on the  
20 call and the times. What voice is that?

21 A That was my dad, Tony Stephan.

22 Q Okay, and then you're the lady caller?

23 A Yes.

24 Q Did that recording accurately record the  
25 conversation?

26 A Yes.

27 MR. BUCKLEY: Okay, and I've got no further

1 questions, Your Honour. I don't know if my friend  
2 does.

3 MR. BROWN: No, I don't, sir, and I'll save  
4 my friend from making the same argument he made  
5 earlier today on the other item. I'm not objecting  
6 to its admission. I'll save my comments for  
7 argument, sir. Thank you.

8 THE COURT: That's fine. On this voir dire  
9 for determination on the admissibility of the voice  
10 recording from June 6th, 2003, I am satisfied with  
11 the evidence of this witness and the circumstances  
12 under which the recording occurred as well as the  
13 accuracy of the recording as this witness has  
14 testified under oath. So in those circumstances, I  
15 am prepared to find that the recording is  
16 admissible; and once again, admissibility is not to  
17 be confused with weight, and of course, Mr. Brown  
18 will be arguing with regards to the weight and  
19 possibly the relevance of this evidence to these  
20 specific charges before the Court at later date;  
21 but in any event, as far as admissibility is  
22 concerned, I am satisfied that this is the tape  
23 that was made on that date and that it is accurate  
24 on the basis of the evidence given by  
25 Ms. Stringam.

26 MR. BUCKLEY: And, sir, for further  
27 clarification, any comments she's made also become

1 part of the record of the trial.

2 THE COURT: All right. As in the earlier  
3 voir dire, then, all of the evidence in the voir  
4 dire, including the testimony given by  
5 Ms. Stringam, will form evidence in the trial  
6 proper, together with, of course, the recording  
7 which has now been digitally transcribed on our  
8 court system.

9 MR. BUCKLEY: Here's an extra copy for the  
10 Court.

11 THE COURT: Thank you.

12 Now, do you wish to make it an exhibit?

13 MR. BUCKLEY: Not the extra copy. I gave the  
14 clerk the one that we actually listened to, and  
15 it's got an 'M' on it. So that's the one she's  
16 making an exhibit. I just provided an extra one --

17 THE COURT: All right, well --

18 MR. BUCKLEY: -- so Your Honour would have  
19 it.

20 THE COURT: -- that's what I want to know.

21 MR. BUCKLEY: Yes.

22 THE COURT: The one that you are making an  
23 exhibit -- what exhibit is it, Madam Clerk?

24 Number?

25 THE COURT CLERK: 56.

26 THE COURT: 56. All right, Exhibit number  
27 56 will be the CD audio recording of June 6th,

1           2003, of Ms. Stringam's call to the 1-800 crisis  
2           line.

3

4           \*EXHIBIT 56 - CD audio recording of June 6, 2003, of  
5           \*Ms. Stringam's call to the 1-800 crisis line

6

7           \*Mr. Buckley Examines the Witness

8

9           Q   MR. BUCKLEY:           Now, Ms. Stringam, so this  
10           second call, would it be fair to say it was much  
11           like the first? You didn't get an explanation as  
12           to what the harm was?

13          A   Yeah.

14          Q   Okay.

15          A   It was probably longer than the first call, because  
16           I had questions.

17          Q   Now, what -- so you make this call, and we were  
18           talking in the context of steps that you were now  
19           taking. So what did you do after that?

20          A   I called the Truehope Centre and asked for names of  
21           other people who were either out of product or who  
22           had reported making calls to that line, and then I  
23           called a whole bunch of women and asked them if  
24           they would join me and just go and try and plead  
25           our case face-to-face.

26                    Because you can't prove what you're saying  
27           over the phone, you know, and I think -- I think I

1           sounded fragile on the phone, and we thought if  
2           they won't hear us and they won't answer our  
3           letters and everything is falling on deaf ears,  
4           then maybe if they see us, they'll think  
5           differently, or at least consider what we're  
6           saying. So we made plans, and I had all of the  
7           ladies -- I ended up getting eight other women to  
8           agree to come, and one of them agreed to bring her  
9           young boy.

10          Q    And who was that who brought the boy?

11          A    Debra Oxby brought her son, Shane.

12          Q    Okay.

13          A    And everybody wrote their stories and sent a  
14               picture, and then my husband and I compiled  
15               everything into a package that we prepared so that  
16               we could give it to Members of Parliament, if they  
17               would talk to us; and then David Hardy had been  
18               talking to Dr. Lunney, the MP, and he told --

19          Q    Okay --

20          A    Oh, sorry.

21          Q    -- we have to be careful not to say what other  
22               people said.

23          A    Oh, okay.

24          Q    So if you can just tell us what happened, though.

25          A    I ended up talking to Dave McEachern from  
26               Dr. Lunney's office --

27          Q    Mm-hmm?

1 A -- and we made arrangements to meet on Tuesday  
2 night. This was all being done on Friday and  
3 Saturday; and then there was another MP that we  
4 made arrangements to meet as well, and then we flew  
5 out to Ottawa for Tuesday.

6 Q And what happened in Ottawa?

7 A We got to the hotel, and there was some man there  
8 with TV cameras, and he whisked us up to our rooms  
9 and asked us our stories, and then we went to the  
10 meetings with the two MP's, and they were very kind  
11 to us, but we all had a bit of a -- at least, my  
12 eyes were opened to the process. Like, I suddenly  
13 realized they can't do anything for us; and  
14 Dr. Lunney was talking about Bill C-420, but the  
15 vote wasn't to be taken for months, and there  
16 really wasn't anything that they could do to impact  
17 the availability of the product, and so we all  
18 became very concerned. I was very concerned. Some  
19 of the women were crying. There was a lot of  
20 emotion. We went back to the hotel room.

21 Q I'll stop you. Why were you very concerned?

22 A Because I -- I thought that we would just go into  
23 the MP's office and say, Hey, we're sane and we  
24 need this stuff, and could you please just maybe  
25 talk to Ann McClellan or somebody and let her know,  
26 because she won't answer our calls, and I thought  
27 that that's what would happen; and then when it

1 became evident that they could be compassionate and  
2 very nice to us but really couldn't do anything to  
3 effect change, then I think the desperation set in,  
4 started to realize, Okay, this isn't going to be a  
5 quick fix.

6 Q Okay.

7 A So we went back to the hotel and kind of tried to  
8 gather ourselves and made a plan to try and get  
9 meetings with more MP's the next day in the hopes  
10 of maybe just getting a bunch of them to go and  
11 address the issue for us.

12 And when I woke up the next morning, it was  
13 raining, and Parliament Hill was huge and the  
14 buildings -- we just didn't know where to go, and  
15 we stood in the window and cried for a while and  
16 then realized that when it rains you get  
17 umbrellas. So we went to the store and got  
18 matching red umbrellas.

19 And then I called that press guy that did our  
20 first interview and asked him where we would stand  
21 if nine people with red umbrellas were going to get  
22 noticed, and he was excited -- well, I shouldn't --  
23 he said for -- he told me where the doors were that  
24 the MP's came in and out of, and so we walked up  
25 there with our packages in the hopes of seeing some  
26 MP's and stood across the street from the door with  
27 our red umbrellas.

1 Q Okay, and what happened?

2 A Dr. Lunney came off of the little shuttle that they  
3 take and saw us over there and asked us what we  
4 were doing, and we just said we're just going to  
5 stand here until somebody cares that we're here.

6 And we were -- he started bringing some people  
7 over off of the trolley -- or, the shuttle to meet  
8 us, and we were passing our packages to them, and  
9 then the RCMP came and said that we weren't allowed  
10 to stand there, and I asked him why, and he said  
11 that we were a threat to the Prime Minister, and I  
12 just said, Well, I'm a pregnant woman with a red  
13 umbrella and this is where I want to stand.

14 And so he said we weren't allowed to pass out  
15 our packages anymore unless someone asked for  
16 them. So if the MP's came over and asked for them,  
17 then we could give them our package.

18 Q Okay.

19 A But we stood there for two and a half days.

20 Q And then what happened?

21 A Well, a lot of MP's came to talk to us, and a lot  
22 of press came to see what we were doing, and we  
23 just told our stories and just said we're just  
24 trying to get somebody's attention, if anybody  
25 cares, and then we ended up doing a press  
26 conference in the Charles Lynch room with  
27 Dr. Lunney and Mr. Reid Ellie, both of them MP's.

1 Q Okay. Then you eventually left Ottawa; is that  
2 correct?

3 A Yeah.

4 Q What -- I guess I want to ask, the product became  
5 restricted. Did you have problems getting your  
6 product?

7 A Yes.

8 Q Okay, and what did you do in response to that?

9 A Well, when we left Ottawa, we kind of thought that  
10 things were going to move in our favour, just from  
11 what some of the MP's had indicated, and when I  
12 went home, I ordered, and I got a letter a few  
13 weeks later saying that my product had been turned  
14 back at the border because it was illegal.

15 Q Okay.

16 A So I was concerned about that, and after several of  
17 the other women that I met on the Hill had the same  
18 experience, we decided we needed to just go and try  
19 again for Ann McClellan, that maybe in her home  
20 office she'd be more willing. So I made several  
21 calls to her home office to ask for help and was  
22 denied a meeting, and so then we just told -- I  
23 told her office person that we would be coming and  
24 on what day. We were trying to be respectful about  
25 it, and we showed up there with a bunch of other  
26 people as well and stood with our red umbrellas,  
27 and then --

1 Q And what city was that?

2 A Edmonton.

3 Q Okay, and any idea when that was?

4 A Would have been August -- or, no, sorry, July of  
5 2003.

6 Q Okay, and did you succeed in meeting with  
7 Ann McClellan?

8 A Not voluntarily. We -- she wasn't at her other --  
9 she wasn't at her office. It turns out she was  
10 down at Canada Place, and when we went there, the  
11 security said that she had requested not -- like,  
12 that nobody could find out where her office was,  
13 but a courier told us her address.

14 And so -- we decided we didn't want to be  
15 intimidating, so Sheila Stanley, one of the  
16 original women from the Hill, and a gentleman named  
17 Grant Miller, and I decided to just go and find  
18 that office ourselves, just to deliver our package,  
19 and we wanted to deliver our original letters that  
20 we had on the Hill as well as a copy of our press  
21 conference and a red umbrella pin. We thought she  
22 might want one of those.

23 So we went outside, and as we were walking out  
24 the door, I walked into kind of an entourage of  
25 people, and Ann was there with all of her people;  
26 and she recognized me. She called me by name, and  
27 I said, I've been trying all over this country to

1 just meet with you for just a few minutes and plead  
2 my case, if you could just please help us out, and --  
3 and she declined, said that we had already met  
4 with her people, and we all protested and said, No,  
5 you haven't, and then she took the package and  
6 walked away and passed it off to somebody on her  
7 way down the sidewalk.

8 Q Okay. Did that kind of end your political  
9 efforts?

10 A Well, a couple days after that, the Truehope Centre  
11 was -- I don't know if you'd call it raided, but  
12 that's when Health Canada came in with the RCMP,  
13 and all the files and stuff were pulled, so, yeah,  
14 we didn't do anything after that.

15 We've written letters to the MP's. On the  
16 second vote back in February of '05, we wrote  
17 letters again and had a whole picture campaign and  
18 stuff of other families that have been affected and  
19 that desire access to the product, and we sent that  
20 to all the MP's with pins.

21 Q The red umbrella pins?

22 A They wore -- a lot of them wore them on the vote  
23 the first time. In October, 2003, they wore them.  
24 I thought that was nice.

25 Q Now, did you have to take any steps to ensure that  
26 you had access to the product?

27 A Yes, I did.

1 Q What did you have to do?

2 A Well, we have family members in the States, and we  
3 chose to have product sent State-side and then  
4 bring it across quietly.

5 Q Okay, how did that make you feel having to do  
6 that?

7 A That's degrading. I -- I'm an honest person,  
8 and -- like, I really believe in obeying the laws  
9 of the country. I -- I think that it's a good  
10 system, and so it's degrading when you have to  
11 break the law and try and conspire to get vitamins  
12 and minerals, but I didn't feel I had another  
13 option; and we distributed -- when people were  
14 desperate, we distributed it to our friends and  
15 other people that we knew. When their product  
16 wasn't making it across the border, we shared  
17 ours.

18 Q Why do you say you didn't feel you had another  
19 option?

20 A Because if I can't get it, my only other option is  
21 to get sick, and I've tried it. Like, I have --  
22 it's been ten years. It's -- I know when I'm  
23 slipping, and -- it only takes three days with  
24 diarrhea and vomiting. If I get a good flu, I will  
25 absolutely have symptoms back, and that's just not  
26 a place I can go, not when I have four kids to care  
27 for. It's not a thing I want to put my husband

1 through again. It's just -- it's not an acceptable  
2 option for me to get sick again; and I know my body  
3 well enough to know that -- since we've tried it a  
4 few times, by getting sick, or taking antibiotics  
5 or anything that creates diarrhea, I just -- I  
6 don't do well.

7 Q Okay. Can you explain that for us, just so we can  
8 understand what you mean when you say you don't do  
9 well?

10 A Well, the first thing that happens to me when I  
11 start getting sick again is I can't concentrate.  
12 Like, I can't follow a recipe. That's kind of the  
13 first hint for me is that I'm on the edge if I  
14 can't concentrate enough to follow a simple recipe,  
15 or if I'm having to read lines in a book over and  
16 over and keep on going back and forth. So that's a  
17 big hint. If that happens to me, I increase my  
18 supplement because I know that something is going  
19 on and I need to take more, and that's usually  
20 where my symptoms will stop.

21 If I have diarrhea or if I'm vomiting, if I'm  
22 in my last trimester of pregnancy and I get really  
23 constipated and everything is all messed up  
24 nutritionally, anything that affects my digestive  
25 system, if I'm not getting the supplements in, I  
26 start to go that way, and if I don't catch it on a  
27 day when I have the attention problems, then it

1 just gets worse. I get into agitation, I can't  
2 sleep, I start to become really quick to anger, and  
3 then I start getting paranoid.

4 We have to close our bedroom curtains very,  
5 very carefully, overlapping them, because -- and  
6 the blinds in the bathrooms because then I'm sure  
7 someone is peeking through the window, and that  
8 just gets -- that's really bothersome. That's no  
9 way to live; but that's the early, early stages.

10 And there have been a few times when I've  
11 gotten so far as to where I could call myself sick  
12 again, like, where I've gone beyond that into rages  
13 and really severe mood swings, and it's not -- I  
14 understand why it's happening, and when I know that  
15 I can fix it with a supplement, then there's still  
16 some peace in it. Like, I can -- I can deal with  
17 that. It's -- but with the thought of not having  
18 the supplement, then I know there's no out for me.  
19 As soon as I go there, what are my -- I have no  
20 options.

21 Q All right. Thank you, Ms. Stringam. Those are my  
22 questions. My friend might have some questions for  
23 you.

24 THE COURT: Mr. Brown, do you want to start  
25 now, or do you want to start tomorrow morning?

26 MR. BROWN: I will be brief. I can finish  
27 today, sir.

1 THE COURT: That's fine. Go ahead, then.

2 Please answer the questions from Mr. Brown.

3 A Yes.

4 MR. BROWN: Thanks.

5

6 \*Mr. Brown Cross-examines the Witness

7

8 Q Ms. Stringam, I just have a few questions,  
9 really. When you were first placed on the product,  
10 this was early days in the evolution of this  
11 product, correct?

12 A Yes.

13 Q And if I understand it correctly, this was -- and I  
14 don't mean this in any derogatory way, but this was  
15 basically a product that was cobbled together by  
16 your father and Mr. Hardy; is that fair?

17 A It was.

18 Q It was, I think, three different sources of  
19 vitamins and minerals plus a liquid product.

20 A Yes.

21 Q It worked for you pretty quickly; did it?

22 A It did.

23 Q Why didn't you go back to that when you couldn't  
24 get EMPowerplus again?

25 A Because about a year into it, the liquid -- call it  
26 a mineral -- that was a part of it, became unstable  
27 and wasn't working, and I went from taking two

1 bottles in a month to taking six and up and down,  
2 and that still wasn't holding me well enough; and  
3 my understanding is that when the batches were  
4 tested, they weren't the same. So it wasn't good  
5 enough.

6 Q But it worked originally, right?

7 A Yes, but the original product wasn't available  
8 anymore.

9 Q Well, was it that you couldn't get it at all or  
10 that you didn't think it was as good as the  
11 original?

12 A Even six bottles of the original colloidal mineral  
13 wasn't enough to hold me, which is why my dad went  
14 looking for another option from the manufacturer.

15 Q Well, it's interesting to me that you seemed to  
16 have great success with the original product, the  
17 original bottle of product, and then suddenly it's  
18 not useful when EMPOWERplus becomes available.

19 A It wasn't the same product anymore. The -- the  
20 original product came from New Vision, and there  
21 were dramatic differences in even the taste and the  
22 colour. Everything changed. When their demand  
23 went up, they switched minds, and it was not the  
24 same product; and in fact, we went to two other  
25 liquid minerals before there was a manufacturer  
26 available for a stable product that actually worked  
27 without the ups and downs.

1 Q So this stable mineral would have been available  
2 then.

3 A The stable mineral being the all-in-one product,  
4 EMPowerplus.

5 MR. BROWN: Those are my questions, sir.  
6 Thank you.

7 THE COURT: Mr. Buckley, anything out of  
8 that?

9 MR. BUCKLEY: No, nothing arising,  
10 Your Honour.

11 THE COURT: Thank you very much.

12 A Thank you.

13 THE COURT: I have no further questions for  
14 you, and apparently neither does the Crown or your  
15 counsel, so you are finished with your testimony,  
16 and you are free to go.

17 A Thank you.

18 THE COURT: Thank you. You can step down  
19 from there.

20 (WITNESS STANDS DOWN)

21 THE COURT: All right, Mr. Buckley, what do  
22 you have planned for tomorrow?

23 MR. BUCKLEY: I'm hoping to start with  
24 Dr. James Lunney tomorrow. I have Mr. James Lunney  
25 booked, and the last Red Umbrella I was planning on  
26 booking, and then that would take us to Thursday.  
27 I was hoping to have Mr. Bruce Dale's, who is a

1 regulatory expert.

2 THE COURT: And Friday is Dr. --

3 MR. BUCKLEY: Charles Popper.

4 THE COURT: -- Popper.

5 MR. BUCKLEY: That's the plan. I'm -- it's  
6 worked out really well so far, the number of  
7 witnesses that I've had. I mean, we are just kind  
8 of guessing in advance how long people will take,  
9 so --

10 THE COURT: What is the purpose? Give me a  
11 brief overview of the evidence with regards to the  
12 doctor, Lunney, and how it is relevant to this --  
13 to the one remaining charge that is before the Court.  
14 I understand the evidence of the Red Umbrellas --

15 MR. BUCKLEY: Right.

16 THE COURT: -- and Doctor -- and  
17 Bruce Dale's and Dr. Popper. What is the point of  
18 having the Member of Parliament on the stand?

19 MR. BUCKLEY: Well, one of the keys for  
20 Dr. Lunney is is that he's actually the guy  
21 that's -- that finally solved the problem. So -- I  
22 mean, because the defendants were obligated to try  
23 to take every legal avenue available to try and  
24 solve the problem, and one of those was to put  
25 political pressure on the Minister and try and get  
26 an exemption; and he's the gentleman that struck  
27 the deal with then-Minister of Health Pierre

1           Pettigrew that is still in effect today, and my --  
2           and neither Mr. Stephan or Mr. Hardy was there for  
3           that meeting in striking the deal, so Mr. Lunney  
4           was doing it on their behalf; and then he also  
5           just, you know, can corroborate about the political  
6           pressure that was evident on the Hill and the  
7           efforts that he took at the request of the  
8           defendants to try and reach a political solution.  
9           So that's my purpose in calling him.

10          THE COURT:                    Mr. Brown, any comments?

11          MR. BROWN:                   No, sir. I'm assuming that  
12           this -- what my friend intends there is to have  
13           Dr. Lunney's testimony go towards his necessity  
14           defence. If that's the case, we have already  
15           agreed that his necessity defence is one that he  
16           can call, and so if that's the case, then I guess  
17           we'll hear from Dr. Lunney.

18          THE COURT:                    All right, very good.

19          MR. BROWN:                   Thank you, sir.

20          THE COURT:                    I just wanted clarification  
21           there.

22          MR. BUCKLEY:                  Mm-hmm.

23          THE COURT:                    All right, in that case we will  
24           adjourn court, then, until 9:30 a.m. tomorrow  
25           morning.

26                    Thank you, Mr. Buckley; thank you, Mr. Brown.

27          MR. BROWN:                   Thank you, sir.

1 MR. BUCKLEY: Thank you, Your Honour.

2 THE COURT: We will stand adjourned, then,  
3 until 9:30 a.m. tomorrow morning. Madam Clerk,  
4 thank you.

5 -----

6 PROCEEDINGS ADJOURNED TO 9:30 A.M. 22ND MARCH, 2006

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8

9 \*Certificate of Record

10 I, Lena Chernicki, certify that this recording is a  
11 record of the oral evidence of the proceedings in  
12 the Provincial Criminal Court, held in courtroom 413,  
13 at Calgary, Alberta, on the 21st day of March,  
14 2006, and I, along with Jillian Fox, were in charge  
15 of the sound-recording machine.

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1 \*March 22, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K. Brown, Esq. For the Crown

7 B. Buckley, Esq. For the Accused

8 J. Fox Court Clerk

9 -----

10 THE COURT CLERK: Synergy Group of Canada and  
11 TrueHope Nutritional Support.

12 THE COURT: Mr. Buckley?

13 MR. BUCKLEY: Good morning, Your Honour.

14 THE COURT: Good morning. Ready to go?

15 MR. BUCKLEY: I am ready to go.

16 THE COURT: All right.

17 MR. BUCKLEY: And I would like to call the  
18 Honourable Dr. James Lunney to the stand and madam  
19 clerk he'll swear.

20 THE COURT: Fine over here please, sir.

21

22 \*JAMES DANIEL LUNNEY, Sworn, Examined by Mr. Buckley

23

24 Q MR. BUCKLEY: Dr. Lunney, you are presently  
25 a Member of Parliament?

26 A Yes.

27 Q And you've been a Member of Parliament since the

1 year 2000?

2 A Yes.

3 Q By way of background you in 1972 graduated with a  
4 Bachelor of Science from the University of Manitoba?

5 A Yes.

6 Q And then you went on for four years of further  
7 training to become a Doctor of Chiropractic?

8 A Yes.

9 Q And then you practised for 24 years as a Doctor of  
10 Chiropractic?

11 A Correct.

12 Q And during that period of time you also took  
13 continuing education?

14 A Yes.

15 Q And in your practice you extensively used what you  
16 call nutritionals?

17 A Yes.

18 Q Okay. Can you just -- just so that we understand  
19 your background, did you have a strong interest in  
20 what you call nutritionals? I'm wondering if you  
21 could just briefly tell us about your use of  
22 nutritionals in your practice and your training in  
23 that area?

24 A Well, we studied, of course. I had a Bachelor of  
25 Science Degree, Biochemistry and Zoology was my  
26 university degree. So I'm interested in human  
27 biology per se in managing sickness and disease, our

1 primary focus was structural. But, when we used  
2 nutritionals to compliment the structural work we  
3 got phenomenal results with our patients in a wide  
4 range of illness.

5 Q Okay. Now, in your role as a Minister of Parliament  
6 you came into contact with TrueHope Nutritional  
7 Support, the company?

8 A First of all, you probably want to call me a Member  
9 of Parliament rather than a Minister.

10 Q Okay.

11 A Which has a different connotation.

12 Q That's true, I apologize. So, in your role as a  
13 Member of Parliament did you have occasion to become  
14 aware of TrueHope Nutritional Support Limited?

15 A Yes.

16 Q And can you tell us a little bit about that?

17 A Well, it -- the way I came in contact with TrueHope  
18 was frankly through a Bill that I had sponsored. It  
19 was called Bill C420, which was an Act to amend the  
20 Food and Drugs Act and change the way natural health  
21 products were regulated.

22 Q Okay. I'm just -- I'm going to show you a copy,  
23 it's one that I just downloaded off the Parliament  
24 of Canada website but it might helpful. It's a very  
25 short Bill, if we could look at it and you explain  
26 what you're trying to accomplish. First of all does  
27 this -- have a look at that and tell us if that

1 looks like the Bill that you introduced?

2 A Yeah, other than it's a larger font and it took it  
3 onto to a second page, it was a very tight Bill  
4 other than the cover page, it was only a one page  
5 Bill.

6 Q Okay. And can you tell us what you were trying to  
7 accomplish with that Bill?

8 A Well, it was a simple -- there are clauses that are  
9 considered antiquated clauses in the Food and Drugs  
10 Act, go back to 1934 as best we can determine.  
11 Section 3.1, 3.2 and Schedule 'A' of the Food and  
12 Drugs Act, that the natural health products world  
13 has felt it had been used by Health Canada to  
14 obstruct, first of all information that the public  
15 -- would be beneficial to the public and to actually  
16 take off the market products that would be  
17 beneficial to the public. And so this Bill --

18 MR. BROWN: Sir, sorry, I'm going to  
19 object to this testimony, sir. This sounds to me  
20 like hearsay. He's talking about the natural health  
21 products groups, I guess, he's talking about not  
22 anything that he necessarily knows himself or if he  
23 does know it, it's something he's been told by  
24 somebody else. I'm going to object to this  
25 testimony.

26 And quite frankly, sir, what he intended to do  
27 with Bill C420 is also, in my view, quite

1           irrelevant. Thank you.

2           THE COURT:                           Mr. Buckley?

3           MR. BUCKLEY:                        Your Honour, I'm wanting to go  
4           through this evidence and actually not thinking that  
5           it's going to take very long. But, I'm wanting to  
6           go through it because the problem that the  
7           defendants faced in the year 2003 that we're dealing  
8           with, is that they felt that they had no way out of  
9           this kind of regulatory environment that was being  
10          imposed on them. And they saw Bill C420 as a way of  
11          kind of -- a legal way of taking that yolk off of  
12          their shoulders.

13                        And so -- and Mr. Stephan has already testified  
14          that that is why that they were supporting Bill  
15          C420. And so it is actually important for the Court  
16          to understand whether that that was the intention of  
17          the Bill and whether or not, that would be the  
18          effect of the Bill.

19          THE COURT:                        All right. My ruling on the  
20          objection is this. I am going to allow this line of  
21          questioning. I want you again to avoid hearsay, but  
22          since Dr. Lunney was involved in the creation of  
23          this Bill, then I am satisfied he can testify as to  
24          the intent behind it. I am concerned with Mr.  
25          Brown's objection particularly when Dr. Lunney was  
26          making statements, such as the previous Act was  
27          being used to obstruct provision of information and

1 to take products off the market that should not be  
2 taken off the market. Those suggestions would  
3 appear to be based in some form of hearsay. If he  
4 is going to make those statements, he is going to  
5 have to support them. All right.

6 MR. BUCKLEY: Well, and you know just --  
7 because I'm going to be asking this witness some  
8 questions, I think one of the problems that somebody  
9 like a Member of Parliament has, if you're going to  
10 introduce a Bill, you're doing it in reaction to  
11 what is being communicated to you by different  
12 groups. It's not something that just comes out of a  
13 vacuum. And by definition that's hearsay.

14 I'm not entering it for the truth of its  
15 contents, but just to explain his motivation because  
16 he then takes steps to assist this company. And it  
17 seems to me I think his evidence will be more  
18 understandable in that context. So --

19 THE COURT: Well, appreciate my concern  
20 with the hearsay.

21 MR. BUCKLEY: Yes.

22 THE COURT: When it goes in for narrative  
23 and not for the truth of its contents that is one  
24 thing. But, it is another thing when that narrative  
25 is somehow intended to slag another party or another  
26 interest.

27 MR. BUCKLEY: Right.

1 THE COURT: And there is a danger and I am  
2 cautioning myself against it, there is a danger that  
3 that kind of impression can be created.

4 MR. BUCKLEY: Right. Okay. So, we will try  
5 and be careful.

6 Q MR. BUCKLEY: So, Dr. Lunney, I do not know  
7 if you can appreciate that in the Court context,  
8 things that other people communicate can't be  
9 entered for the truth of their contents. So, they  
10 can be discussed just for narrative, but need to be  
11 careful not to, you know be trying to slag another  
12 party, to use --

13 A Could I provide a couple of examples?

14 Q Yes, please do.

15 A Of what I'm referring to other than --

16 THE COURT: I am not getting into a  
17 discussion or an argument here.

18 MR. BUCKLEY: Okay.

19 A Okay.

20 THE COURT: All right. What I want to  
21 hear about this Act is why it is being introduced  
22 and I want it from the point of view of improvement  
23 to the Food and Drug Act.

24 MR. BUCKLEY: Okay.

25 THE COURT: All right. Let us hear why  
26 you want to change the definition. That is what I  
27 want to hear.

1 Q MR. BUCKLEY: So, Dr. Lunney, can you  
2 address that issue for us?

3 A Well, if I can review a little bit of history, going  
4 back to -- around 1997, Health Canada had moved to  
5 bring all natural health products under a drug style  
6 of regulation. And the effect of that was there was  
7 a huge public outcry on the order of a million  
8 people communicated with the government of the day,  
9 it was before I was elected, and the intent was that  
10 people wanted natural products regulated in the  
11 third category, not food, not drugs, but, as  
12 something other than drugs.

13 They did not want their natural products  
14 regulated under a drug style regime. So the health  
15 committee of the day was commissioned to investigate  
16 this, they had public hearings across the nation, a  
17 report was tabled in 1998. The Chair of that  
18 committee was Joe Volpe, the Honourable Joe Volpe.

19 And out of that 53 recommendations, Health  
20 Canada appointed a transition team of some 17  
21 experts to guide the change in regulations or the  
22 new body that would come in. It was then called an  
23 Office of Natural Health Products and out of that  
24 came a new department, called the Natural Health  
25 Products Directorate ultimately.

26 One of the recommendations of the transition  
27 team was that these clauses that I've introduced in

1 the Bill would be eliminated because they were  
2 antiquated and no longer served the public interest.  
3 That is public testimony on the record and it has  
4 been referred to many times in the House of Commons  
5 and at committee.

6 Q Okay.

7 A So the intent of the Bill was to alter the way that  
8 Health Canada approached, managed and regulated  
9 natural health products, to a manner that people  
10 concerned felt would be more in the public interest.

11 Q Okay. So how was the Bill going to do that?

12 A Well, it would have taken the whole Directorate out  
13 from under the food style, excuse me, the drug style  
14 regulation and moved it under a food style of  
15 management, which is more consistent with the  
16 natural nature of the products, since they're low  
17 costs, they're low risk and non-patentable, unlike  
18 prescription drugs which have a whole different  
19 range of issues and therefore responsibilities.

20 Q Okay. So you introduced this Bill with that purpose  
21 and in that process you've come into contact with  
22 the TrueHope Group?

23 A That was ultimately how we -- the group of people  
24 that were advocates and interested in pursuing this  
25 different style of regulation, TrueHope -- I came in  
26 contact with TrueHope through that venue.

27 Q Okay.

1 THE COURT: Just a moment, Mr. Buckley  
2 please. Go ahead please.

3 MR. BUCKLEY: Thank you, Your Honour.

4 Q MR. BUCKLEY: So Dr. Lunney, you introduced  
5 this Bill in the 37th Parliament and you came into  
6 contact with the TrueHope Group. I'm just going to  
7 show you part of the Hansard from October 20th,  
8 which I understand involves second reading of this  
9 Bill. And I just want to ask you about some  
10 comments that you made in the Hansard.

11 So I've handed you a document that purports to  
12 be a -- it says edited Hansard number 139, contents  
13 Monday, October 20th, 2003. I just want to be clear  
14 that the Hansard isn't necessarily verbatim, would  
15 that be fair to say?

16 A It's usually pretty accurate, might be a minor word  
17 or two that's changed or slightly rearranged the  
18 phrase, but, by and large it's a fairly accurate  
19 transcript.

20 Q Okay. And, Your Honour, I just bring that up before  
21 the Court because if we were to watch a tape of this  
22 and read the transcript what we find is, is that  
23 whoever does the transcript actually corrects  
24 English and kind of tidies up sentences. So the  
25 meaning is not lost. But, I want the Court to  
26 appreciate whenever somebody uses a Hansard it's not  
27 necessarily word for word.

1           So, I'm referring this witness to comments that  
2 he's purported to have said concerning this Bill,  
3 but, I'm not purporting to the Court that it's exact  
4 word for word. Just so that the Court is aware of  
5 that.

6           Now, Dr. Lunney, on the second page of that --  
7 third page of that transcript I have a tab and I've  
8 just highlighted some of the parts. I'm just going  
9 to read to you some of your comments and then I'm  
10 going to ask you why you made them. And this --  
11 these are comments you made in the House of Commons,  
12 is that correct?

13       A     Yes.

14       Q     Okay. So you said:

15  
16           A mineral supplement which was  
17 developed in Alberta called  
18 EmPowerplus has been helping  
19 Canadians with a mental illness known  
20 as bipolar disease or manic  
21 depression. There's a tremendous  
22 costs to the individuals and there is  
23 a high risk of suicide. We actually  
24 have people in the House today who  
25 are here because they're concerned.  
26 They're watching the debate and many  
27 are watching across the country

1 because they are concerned. They  
2 feel their lives are being threatened  
3 because Health Canada has taken the  
4 products off the market simply  
5 because people began to tell others  
6 that this could help them with their  
7 mental illness. There are over 3000  
8 Canadians receiving help from this  
9 product and yet Health Canada would  
10 move to take it off the market. They  
11 want to know why would Health Canada  
12 do this when there is evidence of  
13 benefit. I would like to give an  
14 example. There was a lady from  
15 Ontario who has been on psychiatric  
16 drugs for 18 years. Her husband has  
17 been on suicide watch for many years.  
18 She has been taking this vitamin  
19 mineral product for about two and a  
20 half years and she is off her  
21 psychiatric drugs. She is not trying  
22 to kill herself or her husband any  
23 more. She is holding down a job,  
24 paying taxes and she is volunteering.  
25 She wants to know why would Health  
26 Canada take this away from her.  
27 Frankly, so do I.

1

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9

There's another paragraph about folic acid and then another paragraph where you're talking about Shakespeare and you refer to a police raid on TrueHope. And then you go on and say, refer to the study at University of Calgary. I want to ask you, you refer to people being in the House that day, what were you referring to there as far as people being there watching the Bill being introduced?

10

A

Well, around the same time the group known now as the Red Umbrellas had shown up on the Hill to take their concerns about Health Canada's actions on the TrueHope and EMPowerplus file to raise the profile and attention of the issue on the Hill. And I had met with members of the Red Umbrella group and in fact had around the same time arranged a press conference for them.

17

Q

Now, why --

18

A

Some of them were there in the House as this debate was going on.

19

Q

Okay. Why are you choosing to refer to this TrueHope example when you're introducing the Bill?

20

A

Well, there are other examples from a number of years frankly that are similar and others concurrently, as well. But, this particular example because the research was fairly significant, advanced and was ongoing when Health Canada actually

21

22

23

24

25

26

27

1           intervened to shut down the study. And the actions  
2           of Health Canada in sending the RCMP to raid the  
3           company and take the computers and contact Canadians  
4           ordering them back on their psychiatric medications,  
5           under what they termed proper medical care, even  
6           though some of them were, in fact, taking the  
7           product with the approval of their medical doctors,  
8           is I think an example of the type of concerns that  
9           Canadians have had with the way natural products  
10          were being managed. Which many perceive to be  
11          contrary to the public interest and certainly I have  
12          concerns about this, as well.

13        Q     Okay. So you basically -- would it be fair to say  
14              you have concerns and that's why you were raising  
15              this as an example in the House?

16        A     Exactly.

17        Q     Okay. And, Mr. Lunney, with the proviso of my  
18              earlier comments that the Hansard isn't exactly word  
19              for word, would it be fair to say that you would  
20              accept this to be an accurate transcript of your  
21              comments on October 20th, 2003 in the House?

22        A     I would.

23        MR. BUCKLEY:                    And, Your Honour, I'm going to  
24              ask that this be marked as an exhibit.

25        THE COURT:                      Mr. Brown?

26        MR. BROWN:                      I have no objections, sir.

27        THE COURT:                      All right, three page document

1           entitled edited Hansard 139, Monday, October 20th,  
2           2003 will become our next Exhibit, which I believe  
3           is Exhibit 57.

4           THE COURT CLERK:                   Yes.

5           THE COURT:                         Exhibit 57.

6

7           \*EXHIBIT 57 - 37th Parliament, 2nd Session, Edited

8           \*Hansard 139, Monday, October 20th, 2003

9

10          Q     MR. BUCKLEY:                 Now, Dr. Lunney, what happened  
11               -- so that's in the 37th Parliament what happened to  
12               Bill C420?

13          A     Well, we had a vote at second reading, 124 to 85, in  
14               favour of having that Bill sent to committee to be  
15               examined by committee. It was at committee at the  
16               time the House dissolved for the election of 2004,  
17               June 2004.

18          Q     Okay. So it basically died in committee because an  
19               election was called?

20          A     Exactly.

21          Q     Now, was that the end of Bill C420?

22          A     Well, after the election the Bill was tabled again.  
23               It was tabled by a colleague from Oshawa, a newly  
24               elected Conservative MP, Colin Carrie, Dr. Colin  
25               Carrie. And I -- he did this at my request to get  
26               it back on the order paper because of the way  
27               private member's business is managed in the House,

1 there's a lottery basically and even though I was  
2 drawn number 75 of 308 MP's, Mr. Carrie or Dr.  
3 Carrie was drawn number seven.

4 So he came up much earlier on the order of  
5 precedence in the minority Parliament. I wouldn't  
6 have had a chance to introduce it beyond the first  
7 reading stage. So it was reintroduced in the new  
8 House the 38th Parliament, by Dr. Carrie. In  
9 further discussion it went to committee again on  
10 division with agreement from all parties and it was  
11 discussed at committee which eventually resulted in  
12 some changes to the regulations.

13 Q Okay. Now, I'm going to refer you to another  
14 Hansard, this one is November 29th, 2004. And it's  
15 titled Volume 40. Your Honour, I'm going to advise  
16 you I'm just giving the first eight pages of this  
17 Hansard. I have probably about 75 more. But, it  
18 was only the first eight pages that this Bill was  
19 dealt with and then the government moved on to other  
20 -- other issues.

21 Now, I've placed some tabs in -- or one tab in  
22 there, but -- and where the tab is in dealing with  
23 some comments that you made. But, I was wondering  
24 if you could turn first to what's page 2000. And  
25 this is Mr. Colin Carrie speaking so that's the  
26 gentleman that you had reintroduce the Bill. And do  
27 you see where I've highlighted that just under where

1 it says 11:15?

2 A Yeah.

3 Q And so Mr. Carrie is saying:

4

5 Let us take for example a product  
6 developed in Alberta EMPowerplus.  
7 This product has been helping  
8 patients with bipolar disease and  
9 manic depression. People with these  
10 problems are at a high risk of  
11 suicide and are sometimes not very  
12 productive in their lives. There are  
13 over 3000 Canadians finding a benefit  
14 from this product. The Province of  
15 Alberta initiated a scientific  
16 response to this product and the  
17 Alberta Science and Research  
18 Authority approved and funded a  
19 \$554,000 study. Preliminary results  
20 have already been published in at  
21 least four peer reviewed psychiatric  
22 journals. Amazingly Health Canada  
23 interpreted news of this success as a  
24 subsection 3 sub (1) violation and  
25 shut the study down. Last July  
26 Health Canada while accompanied by  
27 the RCMP raided the company's offices

1 and began obstructing access to the  
2 product. This makes no sense at all.

3

4 Do you recall MP Carrie making these comments  
5 in the House when that Bill was spoken to on  
6 November 29th, 2004?

7 A Yes I was present for the debate.

8 Q Okay.

9 A One correction, of course when you mentioned the  
10 amount there, it was \$544,000 study I think is what  
11 the record actually says.

12 Q Oh, I'm sorry, I got that wrong. I'm going to have  
13 you flip to page 2002 and a third of the way down  
14 that page in bold says, Honourable Robert Thibeault  
15 parliamentary secretary to the Minister of Health  
16 and then LIB. That's means Liberal is that correct?

17 A That's right.

18 Q And you are very familiar with Mr. Thibeault?

19 A Yes.

20 Q Okay. And so the Hansard reads:

21

22 Mr. Speaker, I'm fully aware of the  
23 EMPOWERplus situation. I know a  
24 number of people who have  
25 successfully controlled their  
26 afflictions with that product. It  
27 bothers me as it does the Member that

1           there would be difficulty getting  
2           this product to the market.

3

4           I'm going to stop there. Do you recall Mr.  
5           Thibeault making those comments?

6           A     Yes.

7           Q     And then I've highlighted Mr. Colin Carrie's  
8           response at 1125, where he says:

9

10           Mr. Speaker, I really do not know of  
11           other means to get this product out  
12           to the general public. The way the  
13           regulations are written now because  
14           this is under the Drug Directorate,  
15           Health Canada has interpreted this to  
16           be a violation of subsection 3(1) and  
17           has actually shut down the company.  
18           In many cases, people who are relying  
19           on this product and have had  
20           wonderful results are now worried  
21           about not getting it anymore.

22

23           Do you recall Mr. Carrie making that response?

24           A     Yes.

25           Q     Now, where I've tabbed this is at page 2007. These  
26           are your comments that I'm highlighting --

27

THE COURT:                   Just before you go to that,

1 just give me one moment Mr. Buckley.

2 That is fine. For the record I wanted to  
3 complete reading the comments by The Honourable  
4 Robert Thibeault before Mr. Carrie's response there  
5 was a paragraph there, a large paragraph that had  
6 not been read into the record and I wanted to make  
7 sure I had it in complete context.

8 All right. Go ahead you are over on page 2007?

9 Q MR. BUCKLEY: 2007. So, Dr. Lunney, this is  
10 -- you're now addressing the debate. And I've  
11 highlighted a portion after 11:55, the fourth  
12 paragraph after that heading, where you say:

13

14 A couple of members mentioned the  
15 EMPowerplus. We have principally  
16 women come here who had been impacted  
17 by bipolar disease, as well as, many  
18 men and an 11 year old boy was here.  
19 He came with his mother from Nova  
20 Scotia. He had only been able to go  
21 to school for a year and a half  
22 because prior to that he was trying  
23 to get -- trying to hurt himself all  
24 the time. This product has had a  
25 phenomenal effect on people with  
26 bipolar disease, in particular. Why  
27 is it that Health Canada would send

1 in the police to raid this little  
2 company with no evidence of harming  
3 anybody and tremendous evidence of  
4 benefit, steal its computers and  
5 contact 3,000 Canadians to tell them  
6 to get back on their psychiatric  
7 drugs and off this natural vitamin  
8 and mineral based compound.

9  
10 Do you recall making those comments to the  
11 House of Commons?

12 A Yes.

13 Q Now why would you make those comments?

14 A Well, I think as I mentioned earlier that I think it  
15 illustrates something is out of order, my view as my  
16 own role as a Member of Parliament and having public  
17 servants there, they're actually to address the  
18 public needs and concerns. And it seems to me that  
19 the concern of government ought to be the best  
20 management of public affairs. And many people,  
21 which was really the genesis of the Bill, are  
22 concerned that there's something in Health Canada  
23 that was misdirected and somehow lost track of that  
24 very crucial concept that we're all here to serve  
25 the public interest.

26 Q Now, at the time you are serving in the standing  
27 committee of Health, is that -- is that the case?

1 A Yes.

2 Q Okay.

3 MR. BUCKLEY: And Your Honour I'm actually  
4 going to ask before I forget to enter this Hansard  
5 as an exhibit.

6 MR. BROWN: No objection, sir.

7 THE COURT: Are you asking that it be  
8 adopted for the proof of contents?

9 MR. BUCKLEY: It cannot be adopted for the  
10 truth of its contents only as a record of what was  
11 said in the House of Commons by the various  
12 individuals as this Bill was debated on November  
13 24th.

14 THE COURT: Does it have the effect of  
15 repeating the allegations in the House of Commons  
16 outside of the protection of the House of Commons?

17 MR. BUCKLEY: So you mean from a House of  
18 Commons privilege perspective?

19 THE COURT: I will tell you exactly what I  
20 mean. There is an allegation here that the -- that  
21 Health Canada sent in police to steal the computers  
22 of --

23 MR. BROWN: Sir, I can say I intend to  
24 cross this witness.

25 THE COURT: All right. So you just, I  
26 think, may want to take under advisement whether or  
27 not you want that statement made.

1 MR. BUCKLEY: Right, no and I appreciate  
2 Your Honour drawing that to my attention. And with  
3 that in mind I will not move to enter that as an  
4 exhibit because of that allegation in there.

5 Q MR. BUCKLEY: And Dr. Lunney, where I'm  
6 wanting to go because I'm going to refer you to some  
7 standing committee transcript, is there was  
8 opposition to Bill C420, there were -- reasonable  
9 people disagreed about whether that was the  
10 appropriate way to go?

11 A Yes.

12 Q But, I'm going to refer you to some parts of the  
13 standing committee transcript because the thing that  
14 seems striking in reviewing this transcript that I'm  
15 going to suggest to you is that -- but there did  
16 seem to be consensus about this investigation? And  
17 so what I will do is just find that transcript.  
18 Madam clerk, could this witness be shown Exhibit 36?

19 A Thank you.

20 Q Now, Mr. Lunney, you've been shown what is a May  
21 16th, 2005 transcript from the standing committee on  
22 Health, 38th Parliament, 1st Session. And you're a  
23 member of the standing committee of health?

24 A Yes.

25 Q And you were actually a member of the standing  
26 committee of health in the 37th Parliament?

27 A Yes.

1 Q Now, there's various tabs -- I'm going to ask you  
2 though to turn to page six. Now, you were present  
3 on this date and Mr. Stephan and Mr. Hardy had  
4 testified before the standing committee?

5 A Yes.

6 Q Okay. And on page six near the bottom of the page  
7 and it should be highlighted, is a comment where Mr.  
8 Colin Carrie says:

9  
10 I think everybody who's heard your  
11 story sees how the status quo right  
12 now is just an absurd enforcement of  
13 these regulations.

14

15 THE COURT: Do I already have a copy of  
16 this?

17 MR. BUCKLEY: You should have a copy of it.

18 MR. BROWN: Yes, sir, it should be Exhibit  
19 36.

20 THE COURT: Exhibit 36?

21 MR. BUCKLEY: Yes.

22 THE COURT: Just a moment please. Thank  
23 you.

24 MR. BUCKLEY: And Your Honour we're on page  
25 six.

26 THE COURT: Good. Thank you.

27 Q MR. BUCKLEY: Sir, do you recall Mr. Colin

1 Carrie making those comments?

2 A Yes.

3 Q And then on the next page on page seven, where I've  
4 highlighted Mr. Colin Carrie says:

5

6 I think if you talk to the members  
7 here we'd all be totally offended, we  
8 are offended that you went through  
9 what you did here. We'd like to see  
10 that not happen to anyone else.

11

12 Do you recall, now that you're reviewing the  
13 transcript that being said?

14 A Yes.

15 Q And I've also highlighted on that page from Mr.  
16 Bernard Bigras, Rosemont La-Petite-Patrie PQ, where  
17 he says:

18

19 Thank you Madame Chair. Before  
20 coming here today I went quickly  
21 through your documents. The  
22 treatment you received since June  
23 2003 is unfortunate, especially the  
24 six charges against you. I think the  
25 product you developed was not treated  
26 fairly. The fact that your product  
27 is being classified as a drug is

1           certainly one explanation of the  
2           unfair treatment you experienced in  
3           the last few years. This is the dark  
4           side of this case.

5

6           Do you recall those comments being made?

7    A    Yes.

8    Q    The next page I'd like to refer you to is page 14.

9           And I understand the Chair is Ms. Bonnie Brown who  
10          is a Liberal candidate from Oakville, Ontario.

11   A    Liberal member, yes.

12   Q    Okay. And I've highlighted where the Chair says:

13

14           Thank you Madame Demers. I want to  
15           say to our witnesses that I think all  
16           of us feel badly about the experience  
17           you had. We had many letters from  
18           witnesses who wrote to us such as  
19           Madame Oxby. There were some very  
20           sad stories that we heard from people  
21           who were denied access to your  
22           product. I hope you realize that you  
23           are the only manufacturer of a single  
24           product who has been invited here. I  
25           think this is our way of making a  
26           gesture to you that we do feel badly  
27           that you underwent some pretty

1           unpleasant times. I want to say that  
2           the unpleasant times you went through  
3           were at a period of time when your  
4           product was under drug evaluation in  
5           the drug directorate. The research  
6           was shut down because it was not  
7           fulfilling some of the criteria  
8           required. If that research was being  
9           done today, if you just started a  
10          year or so ago and just got the  
11          research going today under the new  
12          category, it's not a third category  
13          but is almost is a third category  
14          because it has its own bureaucracy,  
15          its own regulations and its own  
16          rules, I don't believe you would have  
17          run into that.

18  
19          Do you recall the Chair making those comments?

20        A       Those were remarks of the Chair, yes.

21        Q       Okay. The Chair seems to be, on behalf of the  
22                committee that you are a member of, expressing  
23                concern or apology to Mr. Stephan and Mr. Hardy for  
24                the way that they have been treated. Can you share  
25                with us kind of -- was there a consensus among the  
26                committee about how this had gone for these two  
27                gentlemen or --

1 A I think --

2 MR. BROWN: Well, sir, I'm going to object  
3 to that question. That requires some speculation,  
4 unless the witness is going to tell us that  
5 everybody on the committee spoke to that effect. He  
6 has to speculate as to, whether or not, there was  
7 consensus unless he actually is going to be aware  
8 that everybody spoke and said --

9 MR. BUCKLEY: I can rephrase the question.

10 THE COURT: All right. Please do.

11 Q MR. BUCKLEY: You heard the Chair say this  
12 to these two gentlemen, did you as a member of the  
13 committee disagree with those comments?

14 A Well, I think what's -- you've already indicated  
15 here, you've read from a Liberal member, Mr.  
16 Thibeault and from Madame Demers spoke as well from  
17 the Bloc, Mr. Bigras from the Bloc and then myself  
18 and Dr. Carrie as Conservative members. Certainly  
19 there was agreement from many of the members, I  
20 can't say every member, but, we would agree with  
21 those comments.

22 Q Okay. But, you personally when you heard that as a  
23 member of that committee?

24 A Yes, I would suggest that that was the Chair's  
25 intent in making that remark. And frankly the  
26 committee was under pressure with a lot of other  
27 Bills that we needed to deal with. And the fact

1 that TrueHope was the -- one of the very few  
2 companies invited to come as a witness, when the  
3 committee frankly had limited the time to hear  
4 witnesses at this stage, in view of the fact that  
5 the committee had already spent considerable time on  
6 this matter in the previous House and most of the  
7 members were quite familiar with the file.

8 But, they felt that this particular company  
9 deserved to have a voice to air their concerns. And  
10 also at Mr. Thibeault's request, the only witness I  
11 believe to appear was Mrs. Oxby who came from his  
12 own riding in Nova Scotia.

13 Q Okay. Because we don't really understand the time  
14 pressures that a committee like the standing  
15 committee of health has. So you're communicating  
16 that it's very exceptional for somebody like Mr.  
17 Hardy and Mr. Stephan, at that time, to be called as  
18 a witness?

19 A Well, I think it indicates that the committee  
20 members regarded this particular case as  
21 particularly egregious in some regards.

22 Q Okay. Now, moving off from Bill C420, you've  
23 learned the story because TrueHope was supporting  
24 the Bill, is that fair to say?

25 A Yes.

26 Q And you actually decided to take some steps to  
27 assist TrueHope, would that be fair to say?

1 A Yes.

2 Q Okay. Can you tell us basically the steps that you  
3 took?

4 A Well, we had direct communications with the Minister  
5 of Health of the day, that would have been The  
6 Honourable Anne McLellan. And we had written to  
7 Anne on this subject a number of times on behalf of  
8 the Red Umbrellas and many like them who were  
9 concerned.

10 But, also on behalf of one of my own  
11 constituents who had contacted my office in Nanaimo,  
12 a young woman, 22 years old, who had been diagnosed  
13 bipolar when she was 16 and had remarkable  
14 transformation in her own circumstances, who wrote  
15 concerned to my office and presented herself asking  
16 for our help because the product that had helped her  
17 recover her life was being denied at the time.

18 Q Okay. I'm just going to show you a June 5th, 2003  
19 letter and ask you if that's what you're referring  
20 to?

21 A So, yes, this is the letter that was written to The  
22 Honourable Anne McLellan specifically about my  
23 constituent who had contacted us.

24 Q Okay. So, you're writing this basically in response  
25 to one of your constituents who has -- did you meet  
26 with person personally?

27 A Actually, no, it was communicated to my office while

1 I was in Ottawa and I actually -- it came in through  
2 my office staff.

3 Q Okay. But, you felt it was important enough to  
4 write Anne McLellan about?

5 A Exactly.

6 Q Mr. Lunney, I'm -- or Dr. Lunney, I'm going to show  
7 you -- because you indicated that you had written a  
8 letter on behalf of TrueHope. I'm going to show you  
9 a letter dated June 3rd, 2003 from yourself to Anne  
10 McLellan and just ask if you can identify that?

11 A June 3rd being the date, yes. That is the letter we  
12 forwarded to The Honourable Anne McLellan.

13 Q Okay. And just so I understand your evidence, what  
14 was the purpose? So when you're sending this letter  
15 to Anne McLellan, what are you hoping to accomplish?

16 A Well, without reading the entire text of the letter  
17 this is in response to Health Canada's act to block  
18 products at the border that many people were  
19 depending upon. And we were asking to ask her to  
20 intervene, to ensure that the health and well being  
21 of Canadians is not threatened.

22 Q Okay. So this is the letter that you referred to as  
23 one of the steps you took?

24 A Yes.

25 Q Okay.

26 MR. BUCKLEY: Your Honour, I'm going to ask  
27 that that letter, the June 2nd, letter be entered as

1 an exhibit.

2 THE COURT: The June 3rd letter?

3 MR. BUCKLEY: The June 3rd letter, I'm  
4 sorry.

5 THE COURT: All right. Comment Mr. Brown?

6 MR. BROWN: Just if I may have one moment,  
7 sir. No objection sir. Thank you.

8 THE COURT: All right. Thank you. All  
9 right, the next exhibit, Exhibit 58 will be the copy  
10 of the letter dated June 3rd, 2003 from Dr. James  
11 Lunney, MP to the Minister of Health, The Honourable  
12 Anne McLellan, dated June 3rd, 2003.

13

14 \*EXHIBIT 58 - Letter Dated June 3rd, 2003 from Dr. James

15 \*Lunney to The Honourable Anne McLellan

16

17 Q MR. BUCKLEY: Now, Dr. Lunney, you indicated  
18 that you also had some contact with Anne McLellan,  
19 can you tell us about that?

20 A Spoke to the Minister personally, you know, I'm sure  
21 on numerous occasions but on one that I remember  
22 unmistakably on an aircraft actually between Ottawa  
23 and Vancouver, about this particular file when we  
24 were both not distracted by other concerns as the  
25 normal extent of busyness in the House.

26 Q Okay. And what was your purpose in speaking to her?

27 A Well, I simply wanted to again, personally raise the

1 profile of the issue with the Minister and inquire  
2 as to why Health Canada would take such severe  
3 measures for something that had offered such hope  
4 and promise to so many and in fact, was threatening  
5 the health of people who were already benefiting.

6 Q Now, did you also ask questions in the House of  
7 Commons about -- to raise this profile?

8 A I recall making statements in the House, which is  
9 part of -- just the first part of Question Period.

10 Q Okay.

11 A It's not actually the same as a directed question  
12 the Minister can respond to directly, but, it is a  
13 statement into the record to raise the profile of an  
14 issue.

15 Q Okay. So these are things that are basically just  
16 read into the House of Commons records so that the  
17 House is aware of an issue?

18 A Exactly. And it's a format that is used, it's  
19 called an SO/31 to raise the profile of an issue and  
20 draw it before the attention of other Members of the  
21 House and an issue that we believe is concern to  
22 Canadians and something the government should be  
23 taking action on.

24 Q Okay. Now, you provided me yesterday a piece of  
25 paper which you told me is one of the statements you  
26 read into the House. I'm just going to give you a  
27 copy back and ask you if you can identify that.

1 A Yes that would be a copy of the statement made on  
2 the date June 2nd, 2003.

3 Q Okay. So this -- would this be something that you  
4 would personally read to the House?

5 A Yes.

6 Q Okay. So on June 2nd, 2003 you read to the House:

7

8 Mr. Speaker, one in five Canadians  
9 experiences mental illness at some  
10 point in their lives. The cost to  
11 family and society is enormous.  
12 Bipolar disease results in manic  
13 depressive swings and people in the  
14 depressive phase of the illness are  
15 at high risk of suicide.

16

17 In fact I'll stop, I think I'll just enter it  
18 as an exhibit, as opposed to read it in. But, your  
19 purpose in doing this, was it to create political  
20 pressure?

21 A To raise the profile of the issue. And to -- I  
22 believe we would have put out a press release  
23 following this again to raise the profile of the  
24 issue and to again encourage both a public response  
25 and media attention to help encourage the Minister  
26 to take some action to correct the issue.

27 Q Okay. So this -- this is to put pressure on the

1 Minister?

2 A Ultimately, it is to help advance the concern.

3 Q Okay. And you're satisfied that the document you're  
4 holding is an accurate representation of what was  
5 read in to put pressure on the Minister?

6 A Yes.

7 MR. BUCKLEY: Your Honour, I'd ask that it  
8 be entered as an exhibit.

9 THE COURT: Just a moment please. All  
10 right you wish it to be made an exhibit as proof of  
11 the fact that the comments were made, not for the  
12 truth of the contents?

13 MR. BUCKLEY: Yes.

14 THE COURT: All right. On that basis  
15 carrying along with the blanket statement in that  
16 regard on hearsay evidence that I made the other  
17 day, this exhibit will become Exhibit 59. And what  
18 it is, is it is a document that is identified in  
19 handwriting with June 2nd, 2003 SO/31. Exhibit 59.

20

21 \*EXHIBIT 59 - Document Dated June 2nd, 2003 - SO/31

22 \*Entitled Edited Hansard Table of Contents 109

23

24 Q MR. BUCKLEY: Now, in that statement you  
25 refer to being in Edmonton the week before. Can you  
26 tell us about what that was?

27 A TrueHope had organized a protest in front of the

1 Minister's office in Edmonton. And I was invited to  
2 attend. And in that capacity I was in Edmonton to  
3 address the concerns of the people demonstrating.

4 Q Okay. Why would you choose to do that?

5 A Well, it's a fair question as much as it's not my  
6 riding, again this was an attempt by TrueHope to try  
7 and raise the profile of their concern. And to  
8 encourage the Minister to take the issue seriously  
9 and of course there was media present. I was there  
10 to address the concerns as a Member of Parliament  
11 and as a concerned Member who is trying to see some  
12 action that by and large was supported by the people  
13 in attendance.

14 Q Okay. And then you one more time basically put into  
15 the House of Commons records another statement,  
16 would that be fair to say?

17 A I believe there was at least one other occasion.

18 Q Okay. I'm just going to hand you -- you had  
19 provided me last night with what you had indicated  
20 was a June 12th, 2003 statement. Dr. Lunney, does  
21 that look like an accurate transcript of the  
22 statement that you read into the House of Commons on  
23 June 12th, 2003?

24 A It is.

25 Q And once again, your purpose of doing that was just  
26 to raise political pressure on the Minister?

27 A Well, in this particular instance, it was to draw

1 attention to the Red Umbrella group --

2 Q Okay.

3 A -- who were present at the time and also to  
4 highlight their concerns and their story and also to  
5 draw attention to the clinical studies on the  
6 subject that had already been published or the peer  
7 reviewed articles. Again, to appeal to the Minister  
8 to ensure that access to the product is not impeded  
9 and the right to freedom of choice in personal  
10 health care was respected.

11 Q Okay. Now, the Red Umbrellas, so they were actually  
12 at the House of Commons that day?

13 A I presume so since I refer to them.

14 Q Okay. And you arranged -- you're not sure of the  
15 dates, but, you arranged for a press conference for  
16 the Red Umbrellas?

17 A Well, it would have been the day they were there --  
18 well, they were actually there more than one day, so  
19 on or about the 12th we had a press conference in  
20 the Charles Lynch Press Gallery that I arranged for,  
21 yes.

22 Q And what was your purpose in arranging that press  
23 conference?

24 A Well, again, I felt that the concerns of these  
25 people coming to Parliament asking that their  
26 concerns be addressed by Members, I had the occasion  
27 to introduce them to many Members from all parties

1           actually, on their way to the House that particular  
2           day when they were present.

3                       We also presented a large number of petitions  
4           on and around that time from thousands of Canadians.  
5           And I took advantage of their being there to again  
6           raise the issue for the House officially on the  
7           record and to again ask the Minister to make sure  
8           that their concerns were addressed and that people's  
9           lives were not actually -- and their health and well  
10          being not endangered by the department's actions.

11       MR. BUCKLEY:                       Your Honour, I'd ask that that  
12                       statement be entered as an exhibit, not for the  
13                       truth of its contents, but, just as a record of  
14                       communication that was read to the House of Commons.

15       THE COURT:                         Mr. Brown?

16       MR. BROWN:                         No objections.

17       THE COURT:                         All right. Exhibit 60 will be  
18                       the excerpt that has a handwritten notation June  
19                       12th, 2003 SO/31.

20

21       \*EXHIBIT 60 - Document Dated June 12nd, 2003 - SO/31

22       \*Entitled Edited Hansard Table of Contents 117

23

24       Q     MR. BUCKLEY:                       Now, Dr. Lunney, you weren't  
25                       actually able to solve this issue with Anne  
26                       McLellan, would that be fair to say?

27       A     It seems -- no there was no real progress at that

1 time.

2 Q Now, at some point The Honourable Pierre Pettigrew  
3 became Minister of Health?

4 A That would have been on or around the 12th of  
5 December 2003, when The Honourable Paul Martin  
6 became leader of the government and Prime Minister  
7 and the new Minister was appointed.

8 Q Okay. Tell us what you did with the new Minister of  
9 Health to try and solve this?

10 A Well, again, we began to contact the Minister,  
11 probably first in the House, a lot of informal  
12 communications take place during question period  
13 whether a courier or one of the -- one of the young  
14 -- what do you call them not -- pages will deliver a  
15 note across to a Minister, that's often an effective  
16 way to get the Minister's attention on a matter.

17 So I believe that that's the pattern probably I  
18 followed with Mr. Pettigrew that I would have  
19 communicated with him that I had a concern I'd like  
20 to speak to him about. I had a face to face  
21 interaction with him and asked for a meeting to  
22 discuss an issue more thoroughly. And out of that a  
23 meeting was subsequently arranged by his staff.

24 Q Okay. So, you were making efforts to arrange a  
25 meeting with the Minister of Health?

26 A Yes.

27 Q And then you did have a meeting with the Minister of

1 Health?

2 A Correct.

3 Q So who was at this meeting?

4 A Well, the Minister's executive assistant would be  
5 Jim Anderson, my own assistant, Dave McEachern, the  
6 Deputy Minister Ian Green was in attendance. And  
7 there were a couple of other officials there whom  
8 I'm sorry, I can't remember their names offhand.

9 Q And then yourself and Pierre Pettigrew?

10 A Yes.

11 Q Do you recall the date of that meeting?

12 A I believe because I wrote to the Minister the  
13 following day, and I think the date of my  
14 correspondence was February 25th, that the meeting  
15 probably was February 24th.

16 Q Okay.

17 A That would be now '04.

18 Q I'm just going to provide you with a copy of a  
19 February 25th letter and just ask you if that's the  
20 latter you're referring to the Minister of Health?

21 A It is.

22 Q And so does that help you basically confirm that the  
23 meeting was February 24th?

24 A It sure does. The opening statement draws that  
25 attention, "I'm writing to thank you for taking time  
26 on February 24th to meet with me regarding --"

27 Q Okay. Now, as a result of that meeting and the

1 follow up letter, do you recall what happened?

2 A It was a short time before we had communication from  
3 the Minister's office that the personal import  
4 policy would be respected, although a rather  
5 complicated formula was provided by Health Canada  
6 for TrueHope to make the product available for  
7 personal import.

8 Q I'm wondering madam clerk if this witness could be  
9 shown Exhibit 37.

10 A Thank you.

11 Q Dr. Lunney, I'm going to suggest that this is  
12 originally an email that went to your office. And  
13 on page 2, kind of the second paragraph says,  
14 "original message from Leanne Moussa and there's an  
15 email address, sent March 17th, 2004, 6:18 p.m. to  
16 Lunney, James MP, c.c. Jim Anderson, subject,  
17 EMPowerplus. And then it says, "Hi Dave".  
18 Now, who is Dave?

19 A Dave would be Dave McEachern my legislative  
20 assistant.

21 Q Okay. And in there it seems to -- it's an email  
22 purports on the first to be sent by Leanne Moussa  
23 and then at the end it says, Leanne. Who is Leanne  
24 Moussa?

25 A Leanne Moussa is the legislative assistant to the  
26 Minister of Health.

27 Q Okay. And do you mean --

1 A Or was at that time.

2 Q -- Pierre Pettigrew?

3 A Yes.

4 Q Okay. And this seems to be setting out a kind of  
5 structure for TrueHope to be or for people to be  
6 able to get the product into Canada?

7 A Correct.

8 Q Does this look like -- I'll say the agreement that  
9 was put forward to you as a way of this -- of your  
10 concerns being addressed?

11 A It was the proposal from the Minister to make the  
12 product available.

13 Q Okay. So when you were telling us in your testimony  
14 that the Minister did get back to you with a  
15 proposal, this accurately sets out what the proposal  
16 was?

17 A Yes, it does.

18 Q Okay. And so what was your understanding then after  
19 your office received this proposal?

20 A Well, you know, we certainly welcomed it at least as  
21 providing some relief to people suffering that there  
22 was a mechanism for them to get the product. I  
23 certainly felt it was a very obstructive sort of  
24 solution that it wasn't -- it was a lot of hoops for  
25 people to jump through when, in fact, I was simply  
26 asking that they lift the embargo and allow people  
27 to get the product while they investigated the

1 merits. And since nobody had raised serious  
2 concerns about any harms, it seems to me Health  
3 Canada would have an interest in investigating the  
4 merits.

5 Q Okay. But, as far as the agreement goes, so you  
6 weren't terribly happy with it, but at least this is  
7 what it was?

8 A That's right, at least it made the product  
9 available.

10 Q Okay. Well is that your understanding, after that  
11 did you have to take any more steps to try and get  
12 the product flowing?

13 A Well, I think that we carried on with our pursuit  
14 legislatively of the Bill at the time, C420.

15 Q Yes?

16 A Which was still working its way through and probably  
17 our attentions were more focussed on other aspects  
18 of the issue and other concerns, other people also  
19 suffering from concerns with the regulatory process.

20 Q Okay. But, as far as -- because you were raising  
21 profile to try and get the access issues solved --

22 A Right.

23 Q -- would that -- okay. In your mind then did this  
24 basically put -- solve that issue, maybe not just  
25 the way you would want it, but it solved it?

26 A It was certainly a temporary fix that we were  
27 satisfied at least -- relieved the greatest part of

1 the distress -- that even though it was complicated  
2 people were able to access the product.

3 MR. BUCKLEY: And thank you, Dr. Lunney.  
4 Those are my questions. I expect my friend will  
5 have some questions for you.

6 THE COURT: Mr. Brown?

7 MR. BROWN: Thank you, sir.

8

9 \*Mr. Brown Cross-examines the Witness

10

11 Q MR. BROWN: And, Dr. Lunney, I'll start  
12 you at the -- where my friend left off with Exhibit  
13 37, do you still have it in front of you? It's the  
14 series of emails --

15 A Okay.

16 Q -- the colour --

17 THE COURT: That is it.

18 Q MR. BROWN: Now, if you can take a look at  
19 what's called page two of three at the top. And  
20 there is some comment near the bottom, there's two  
21 small paragraphs number one and two?

22 A Yes.

23 Q

24 Health Canada will permit individuals  
25 to import a three month or 90 day  
26 supply of EMPowerplus under the  
27 directive ...

1

2 And we're talking about the personal use exemption  
3 directive there?

4 A Right.

5 Q

6 ... provided the individual can  
7 demonstrate that the order was placed  
8 directly with the United States  
9 company and payment for the product  
10 was made to the United States  
11 company.

12

13 Do you see where I'm looking at there?

14 A Yes.

15 Q Now, you've indicated in your evidence I think that  
16 this was the deal that was struck between yourself  
17 or your group and Pierre Pettigrew the Minister at  
18 the time, correct?

19 A It might be construed that way. All I can say is  
20 this was what was offered back after our meeting,  
21 raising the concerns. This was presented back  
22 afterwards as a solution from the Minister's office  
23 directly to my staff.

24 Q Was your understanding of the personal use directive  
25 that a person could bring any product from the  
26 United States, as long as it was purchased in the  
27 United States and as long as it was a 90 day supply

1 or less?

2 A I understand that for personal use, even  
3 prescription drugs are available to -- that are not  
4 available in Canada are available --

5 Q Right.

6 A -- which is why I had trouble understanding why the  
7 previous Minister had said the personal use  
8 directive would be honoured and yet it didn't seem  
9 to be happening from the department.

10 Q Okay. Well, let me take you back because I don't  
11 think you've answered my question and we'll see if  
12 we can -- I can be a little more clear. What I'm  
13 asking, sir, is that this agreement appears to  
14 actually reflect what the directive says, the  
15 personal use exemption directive, do you agree with  
16 that?

17 A Except for the providing evidence that it's ordered  
18 from a US company rather than a Canadian company. I  
19 mean I wouldn't purport myself to be an expert on  
20 actually how the personal import rules had applied.  
21 There have only been a couple of occasions when I've  
22 actually inquired about personal use and some of  
23 them are since this happened.

24 Q All right. So you have a somewhat more limited  
25 understanding of the personal use exemption  
26 directive and so you can't tell me, whether or not,  
27 this would, these two paragraphs reflect what

1 personal use exemption directive would purport to  
2 allow importation through?

3 A No, I wouldn't say that I could, in terms of a drug  
4 or what the format exactly would be.

5 Q All right. Now, I'm going to have you take a look  
6 at a couple of other exhibits and documents that  
7 have been placed before the Court this morning.  
8 I'll have you take a look at first -- I'm going to  
9 have you take a look at the Hansard from the 38th  
10 Parliament, this is on that was not made an exhibit,  
11 sir. It's dated November 29th, 2004 if you have it  
12 before you.

13 A Maybe it's this one -- November 29th, '04?

14 Q That's correct, Monday, November 29th, 2004?

15 A Yes.

16 Q All right. And if you could take a look at page  
17 2002, I believe, my friend referred you to a  
18 highlighted section, Mr. Colin Carrie is speaking.

19 A Yes.

20 Q Sorry if you could just read that paragraph, sir,  
21 just to yourself please.

22 A Yes.

23 Q Now, do you recall Mr. Carrie saying this in the  
24 Commons debate in your presence?

25 A Yes.

26 Q Now, you'll see there's a portion that says,  
27

1 Health Canada has interpreted this to  
2 be a violation of subsection 3(1) and  
3 has actually shut down the company.

4

5 Do you recall Mr. Carrie saying that?

6 A Yes.

7 Q You understood at the time that that was not  
8 correct?

9 A Well, there certainly appeared to be -- that was Mr.  
10 Carrie's remarks --

11 Q I understand --

12 A -- and in debate there's no direct means of  
13 intervening or remarking on that.

14 Q All right. But, you do speak soon thereafter  
15 because you appear on page 2006, your name is  
16 highlighted and then there is highlighted portion of  
17 comments that you make and you have referred to on  
18 page 2007?

19 A Yes.

20 Q Right, so you're speaking shortly after Mr. Carrie?

21 A It would -- it would have been in an hour of debate  
22 so I would have been probably within 40 minutes of  
23 his comments.

24 Q All right. You didn't take the opportunity to  
25 clarify that the company actually had never been  
26 shut down other than for the day that the search was  
27 actually ongoing?

1 A No, I did not.

2 Q Now, I understand that in Commons there are certain  
3 protections about the information that's provided  
4 and you're not necessarily compelled to correct him,  
5 but, you didn't take the opportunity to correct him?

6 A I had very limited time to make my own points.

7 Q And the points that you make are highlighted on page  
8 2007, do you have them there?

9 A Yes.

10 Q And the second paragraph indicates:

11

12 Why is Health Canada -- why is it  
13 that Health Canada would send in the  
14 police to raid this little company  
15 with no evidence of harming anybody  
16 and tremendous evidence of benefit,  
17 steal its computers and contact 3000  
18 Canadians to tell them to get back on  
19 the psychiatric drugs and off this  
20 natural vitamin and mineral based  
21 compound.

22

23 Do you recall making those statements?

24 A Yes.

25 Q Now, you understood that the RCMP entered these  
26 offices under a search warrant, yes?

27 A Correct.

1 Q And so you understand that when you say, "steal its  
2 computers", that's incorrect?

3 A I would simply say many people would perceive it to  
4 be that way.

5 Q Well, this is your statement, sir, did you perceive  
6 it to be that way?

7 A Steal is a matter of interpretation, but, I think  
8 many people would perceive that to be exactly what  
9 happened.

10 Q Is that what you perceived it sir?

11 A Yes.

12 Q Even though they were under a search warrant?

13 A Yes.

14 Q And they didn't actually take any computers but they  
15 took copies of hard drives, you understood that, as  
16 well?

17 A Well, okay, you're arguing whether it's a hard drive  
18 or a computer.

19 Q Oh, okay.

20 A I accept your point.

21 Q A copy of a hard drive, in fact did you understand  
22 that to be the situation, sir?

23 A The net effect is that they took the data.

24 Q Yes, they did. Now, you also reference many times  
25 in your correspondence and the House that there is  
26 tremendous evidence of benefits, these are comments  
27 that you make pretty much every time you raise this

1 issue, correct?

2 A Correct.

3 Q Now, you reference in fact, studies done by the  
4 University of Calgary and studies down at Harvard  
5 University, correct?

6 A I believe I referenced Dr. Charles Popper who is on  
7 faculty on Harvard.

8 Q And do you recall if you, at any time when you are  
9 describing these -- the research that has been  
10 conducted at Harvard as you have in Exhibit 58,  
11 maybe you can take a look at Exhibit 58 first. Have  
12 you got that before you, sir?

13 A Product is known in your department, it's been the  
14 subject of research in the University of Calgary and  
15 at Harvard.

16 Q Right. So you specifically mention those -- those  
17 two institutions, correct?

18 A Correct.

19 Q And you refer to subject of research at those  
20 institutions and you specifically mention Harvard  
21 that's -- am I correct to say that you mean to refer  
22 to Dr. Charles Popper's word in that context?

23 A Correct.

24 Q And is it fair for me to say, well in fact if you  
25 take a look at Exhibit 59 next -- you see in the --  
26 well I'll go to the first full paragraph:

27

1                   Researchers at the University of  
2                   Calgary led by Dr. Bonnie Kaplan  
3                   have documented the phenomenal  
4                   results, findings have been published  
5                   in peer reviewed psychiatric journals  
6                   and repeated by Harvard researcher  
7                   Dr. Charles Popper.

8

9           A        Correct.

10          Q        Did you understand at the time that the work done by  
11                   Dr. Popper was actually not laboratory research?

12          A        Fair to say.

13          Q        And in Exhibit 60, if you could take a look at that  
14                   one please? I'm looking at, well I'll call it the  
15                   second paragraph from the bottom, beginning with  
16                   clinical studies do you see where I'm at there, sir,  
17                   second paragraph from the bottom?

18          THE COURT:                    Sorry, what exhibit are you  
19                   on?

20          MR. BROWN:                   60.

21          THE COURT:                    Okay. Thank you.

22          Q        MR. BROWN:            This is an excerpt from  
23                   Hansard as I understand it, dated June 12th, 2003.  
24                   This is the day that the ladies with red umbrellas  
25                   are -- are present at the House. You say:  
26                   "Clinical studies have been published in peer  
27                   reviewed journals," you see where I'm reading there?

1 A Yes.

2 Q All right. Now, it's fair to say is it, that this  
3 is preliminary research and that you don't ever  
4 refer to this research as preliminary? In every  
5 case you refer this as simply as research or  
6 clinical studies, would you agree with me?

7 A Correct.

8 Q Did you feel that it was important to clarify for  
9 people that might be listening that these studies or  
10 study that had been conducted by Dr. Kaplan at the  
11 time, was very much a preliminary study?

12 A Those are concerns to some people in the research  
13 community. But, frankly when we're talking about  
14 evidence that something is helping, for most  
15 people's intent, purpose and understanding the fact  
16 that there's evidence that is respected by  
17 authorities, is evidence that should be  
18 investigated, or evidence that there is benefit to  
19 the product.

20 Q Well, I'm going to ask you about your first comment  
21 because you said it's evidence that studies should  
22 be continued, is that basically what your point was?

23 A Exactly.

24 Q But you didn't at any point clarify that this was  
25 preliminary studies and that further research was  
26 required and in fact, that the studies that you  
27 refer to both say that further research is required,

1 but, these are very preliminary studies?

2 A I think if you look at my remarks you'll see it's  
3 very clear that I raised objections to the fact that  
4 research at the University of Calgary had been shut  
5 down by Health Canada.

6 Q Did you at any time clarify that that research was  
7 shut down because the application that was provided  
8 to continue clinical studies, that had not  
9 originally received an IND -- do you know what an  
10 IND is, an -- I can't remember the name myself, but,  
11 it's a number --

12 A Investigation for a new drug.

13 Q -- you get to do a drug study. Investigation for a  
14 new drug, exactly, thank you. Sorry, I'm going to  
15 get the question again.

16 Did you understand that the research you're  
17 referring to that was shut down Health Canada did  
18 not have an IND, did you understand that?

19 A That is a technicality that is of less concern to  
20 me.

21 Q Right. And it's of less concern to you that the  
22 research was actually begun without the IND?

23 A As far as I'm concerned we're talking about vitamins  
24 and minerals.

25 Q No, I understand that but --

26 A Which is public domain, which is available on  
27 shelves of any store across the country, pretty

1 well.

2 Q So it's your understanding that the product that  
3 these people are providing to Canadians is available  
4 on any store shelves in Canada?

5 A The components, individual components.

6 Q Components are, yes the individual components.

7 Including --

8 A And they're for public domain and had been available  
9 to the public for a long time.

10 Q Including germanium 132?

11 A I can't say I'm aware of restrictions on germanium  
12 132.

13 Q Are you aware of restrictions on boron?

14 A I'm aware of restrictions on a whole lot of things  
15 that are actually good for people.

16 Q Well, can you answer the question first, are you  
17 aware of restrictions on boron?

18 A No.

19 Q Were you aware that there were restrictions on the  
20 sale of boron in 2003?

21 A Interestingly enough if I can answer that this way,  
22 I would say we repeatedly asked Health Canada to  
23 provide us with a list of things that are restricted  
24 and we could never get one.

25 Q All right.

26 A Chromium picolinate that helps people with --  
27 regulate blood sugar, simple mineral supplement and

1 supposedly banned, but, we can never get a list of  
2 the things that they disapprove of, which I found  
3 problematic. It would have been helpful to have a  
4 list like that.

5 Q Now, if you could take a look at Bill C420, this is  
6 the Bill that you introduced into the House in the  
7 37th Parliament. Do you have a copy of that in  
8 front of you?

9 A Yeah.

10 Q It was not made an exhibit, sir, if you can just  
11 take a look at it then. Now, correct me if I'm  
12 wrong, but I believe the purpose of introducing this  
13 Bill was to change how the Food and Drug Act read,  
14 is that fair enough?

15 A It was to change the way that natural health  
16 products were regulated.

17 Q Certainly, it was -- the intent was to change how  
18 certain things were defined, in fact that's really  
19 what the first page talks about is definitions of  
20 certain things, correct?

21 A Mm-mm.

22 Q That's a yes?

23 A Yes.

24 Q Sorry, we're recording so you need to actually say  
25 yes or not. That's a yes?

26 A Yes.

27 Q All right. Thank you. And under the definition

1 under subsection 1(2) of your proposal, the idea was  
2 to include dietary supplements in the definition of  
3 food?

4 A Correct.

5 Q But, that didn't happen, correct?

6 A Correct.

7 Q Were you aware that because you had some  
8 considerable concern about what you perceived to be  
9 haphazard application of the personal use directive  
10 by Health Canada, in other words, they stopped --  
11 seem to stop some shipments and not others, is that  
12 fair for me to say?

13 A I'm not sure exactly what the intent of your  
14 question is?

15 Q Well --

16 A Can you rephrase it or try to --

17 Q -- I can clarify the question then. When you were  
18 speaking with the Health Minister at the time,  
19 Pierre Pettigrew about trying to broker a deal, if I  
20 can put it that way, did you understand that at the  
21 time some shipments were being stopped -- some  
22 shipments of the EMPowerplus were being stopped,  
23 but, others were being permitted to go through into  
24 Canada?

25 A We were concerned about the ones that were being  
26 stopped.

27 Q All right. Did you understand at the time that

1 Health Canada's view was those were drugs that were  
2 actually sold in Canada, as opposed to being sold in  
3 the United States? Did you understand that?

4 A I see no purpose -- I saw no purpose or reason for  
5 obstructing the product in the first place.

6 Q That's not the question I asked though, sir. In  
7 fairness, I asked you if you understood whether that  
8 was the reason Health Canada gave, was that your  
9 understanding?

10 A That -- would you repeat it?

11 Q That product was actually sold in Canada not in the  
12 United States and that's why it was stopped at the  
13 border?

14 A I can't that that was my understanding because I  
15 believe the product is being sold in the United  
16 States, as well, and I think Health Canada would  
17 have been aware of that.

18 Q Did you understand that that was the case in 2003?

19 A I can't say that I did.

20 Q Fair enough.

21 MR. BROWN: Those are my questions, sir.

22 Thank you very much.

23 THE COURT: Mr. Buckley, any redirect?

24 MR. BUCKLEY: No, nothing arising, Your  
25 Honour. Thank you.

26 THE COURT: Thank you, Dr. Lunney, for  
27 your attendance here today and for the evidence you

1           have given. Please step down.

2       A     Thank you.

3       THE COURT:                   Thank you.

4       (WITNESS STANDS DOWN)

5       THE COURT:                   An opportune time to take the  
6           morning recess?

7       MR. BUCKLEY:                 And, Your Honour, just off  
8           topic and I don't know if it's just me, but, I smell  
9           overpowering, smells like raid pesticide. Is it  
10          just me --

11      MR. BROWN:                   My friend asked me earlier if  
12          I smelled it and honestly I don't --

13      MR. BUCKLEY:                 Sorry --

14      MR. BROWN:                   -- so perhaps he's having an  
15          aneurysm and he should go to the doctor this  
16          morning.

17      MR. BUCKLEY:                 -- maybe that's right. I  
18          might need Exhibit 1.

19      THE COURT:                   Well, I do not notice it  
20          either, Mr. Buckley --

21      MR. BUCKLEY:                 Okay, that's why I'm asking --

22      THE COURT:                   -- so I do not know quite how  
23          to answer that. I can assure you that I have not  
24          had a bad experience in these courtrooms before, not  
25          to say that it could not be occurring. Madam clerk?

26      THE COURT CLERK:             Nothing.

27      MR. BUCKLEY:                 Okay. There we go.

1 THE COURT: I do not have an explanation  
2 for you, Mr. Buckley. But, perhaps what we will do  
3 is we will take a break and leave the door open and  
4 I will ask madam clerk if she will make an inquiry  
5 of building maintenance. Would you do that?

6 MR. BUCKLEY: Thank you, Your Honour.

7 THE COURT: See if there is a problem  
8 somewhere. All right. I am going to take a fifteen  
9 minute break I will return at five after 11:00 then.  
10 Thank you, gentlemen. Thank you, madam clerk.

11 THE COURT CLERK: Order in court all rise.  
12 Court stands adjourned for a brief period of time.

13 (ADJOURNMENT)

14 THE COURT: Mr. Buckley, the results of  
15 our investigation are it is probably perfume.

16 MR. BUCKLEY: Right. Right, okay. I've  
17 learned over the break I'm not alone, but somebody  
18 actually had to leave. So -- but in any event, as  
19 long as it's nothing to worry about, that's good  
20 news.

21 THE COURT CLERK: Recalling Synergy Group of  
22 Canada and TrueHope Nutritional Support.

23 THE COURT: I do not think it is o/c spray  
24 or anything like that.

25 MR. BUCKLEY: Right. And, Your Honour, I'd  
26 like to call Sheila Stanley to the stand.

27 THE COURT: All right.

1

2 \*SHEILA STANLEY, Sworn, Examined by Mr. Buckley

3

4 Q MR. BUCKLEY: Ms. Stanley, you are 51 years  
5 of age?

6 A That's correct.

7 Q And you've come from Toronto to testify today?

8 A Yes.

9 Q And you are presently an editor and writer for a  
10 magazine called Teen Glow?

11 A Yes, that's one of the magazines I work on.

12 Q Okay. You also work on -- as editor of a magazine  
13 called, Look Good Feel Better?

14 A Correct.

15 Q And you are involved in doing advertising for  
16 several miscellaneous clients, so for example, the  
17 Toronto Zoo is one of your clients?

18 A Yes.

19 Q Okay. So, you're a writer and editor?

20 A That's right.

21 Q And you're actually now in the process of setting up  
22 as an editor a new magazine that's been  
23 commissioned?

24 A Yes, yes.

25 Q Okay. And you've been doing that since about 1980?

26 A Yes.

27 Q Okay. And you're a mother of two children?

1 A Mm-mm.

2 Q And the one of your children is named Rene?

3 A Yes.

4 Q Okay.

5 A My older daughter.

6 Q Now, you understand that you're here today because  
7 of the EMPowerplus, like that's an issue that we're  
8 dealing with.

9 A Mm-mm.

10 Q Can you tell us in the context of your daughter,  
11 what your experience has been?

12 A Well, my daughter was always kind of a difficult  
13 child. She was very cheerful and happy-go-lucky,  
14 but, she was -- in school we noticed that she had a  
15 lot of problems focussing, paying attention. When  
16 she was a baby, she had a lot of colic and she was  
17 always very active, she didn't like to sleep, she  
18 didn't like taking naps. Getting her to sleep at  
19 night was difficult. She had a lot of things like  
20 nightmares and night terrors which were very  
21 difficult to wake her up out of.

22 And you know that was sort of what she was like  
23 in her childhood. As she got older the problems in  
24 school got worse, we took her to a psychologist who  
25 said that she was -- had ADD. And she'd eventually  
26 ended up with -- we ended up having special tutoring  
27 for her.

1           And then when she was in high school she  
2 started to get things like depression and she would  
3 -- she would often get very giddy and she would  
4 continue to have nightmares. She would often have  
5 -- she would sometimes have panic attacks. Usually  
6 at night and she would be crying and this was when  
7 she was a teenager in high school.

8           And she -- we became concerned about her. But,  
9 you know, we don't want to -- we didn't want  
10 pathologize being a teenager. Teenagers do  
11 sometimes have angst and things like that. So we  
12 didn't want to -- you know we didn't want to over  
13 analyze what was going on with her. But, we noticed  
14 that as she got older, you know, into her final year  
15 in high school that she -- she started -- rather  
16 than getting better, you know the moods and things,  
17 rather than getting better we noticed that it was  
18 getting worse.

19           And usually you would think for a teenager, you  
20 know approaching 18, 19 that you kind of start to  
21 come out of that teenage turmoil. And with her it  
22 was just the opposite it was getting much worse. In  
23 her final year in high school she was so distraught  
24 that she just -- she couldn't focus, she couldn't  
25 study, she was having at terrible time. She was you  
26 know, dramatic meltdown and tears and we really  
27 didn't know what to do with her.

1           We had -- when she had been seeing the  
2           psychologist and when she was being tutored for ADD  
3           which did help her but, you know, it was at the  
4           expense of her having to basically have someone do  
5           her homework with her every night. So we -- she was  
6           having, you know just regular tutoring to try and  
7           help her through. But, when she was in you know,  
8           what concerned us was that she was -- we noticed  
9           that she was having these extreme rages and a lot of  
10          anger.

11          So the person -- the psychologist that we had  
12          deal with before, she had suggested that Rene be put  
13          on Ritalin when she was -- when we were talking  
14          about ADD. We didn't want to do that. We preferred  
15          to try and work with cognitive methods. And so when  
16          we noticed that she was having these mood swings and  
17          you know, at this point my husband had been  
18          diagnosed with bipolar and was taking various  
19          psychiatric medications for that. We did end up  
20          taking her to the doctor that the psychologist had  
21          recommended she see. And his feeling was that she  
22          was -- that it wasn't ADD that it was most likely  
23          bipolar and that perhaps she should be on lithium.  
24          And we really had a terrible time accepting that  
25          because of course, we knew what a life of  
26          psychiatric medications meant.

27          And so I noticed that there was an article in

1 the paper around the same time about the EMPowerplus  
2 and my husband and I just decided, well, you know  
3 let's try the least invasive thing first. And if it  
4 doesn't work the medications will always be there,  
5 they're not going to go away and if it doesn't work,  
6 you know, then we'll move to Plan B. But, you know,  
7 let's try the least harmful, the least invasive  
8 thing first.

9 And that's what we did. She started I guess in  
10 -- she started on the EMPowerplus in early spring.  
11 And she had -- we noticed that she got -- we didn't  
12 really realize the extent to which she was suffering  
13 until she started filling out these psychiatric  
14 charts from TrueHope because they were -- you know  
15 they were quite extensive, they were -- you know I  
16 think there's a bipolar section and then there's an  
17 anxiety, they track all sort of psychiatric  
18 symptoms.

19 And we didn't -- we had no idea that she was --  
20 we really didn't realize that she was suffering to  
21 the extent that she was until we saw the charts.  
22 And as a mother that just -- I mean it was like a  
23 knife in the heart, it was horrible. I had, you  
24 know, I felt terrible that my child had been  
25 suffering that much and I didn't realize how bad it  
26 was and she was, you know, she's -- later on she  
27 told me that she had -- she had thought that

1           everybody had to deal with these kinds of things and  
2           that, you know that everyone was coping with this  
3           kind of stuff.

4                        So she --

5       Q     I just want to stop, so you had to be filling out  
6           charts and --

7       A     Correct.

8       Q     How often were you guys having to do that?

9       A     She filling the charts out every day, you know I had  
10           the clipboard with the little charts that I'd hound  
11           her with and make her fill them out. And at this  
12           point it wasn't online, you couldn't do this by --  
13           you couldn't do it electronically so --

14      Q     What year is that?

15      A     That was 2002.

16      Q     Okay. And -- but you still, you had to fill them  
17           out?

18      A     Yes.

19      Q     And then what did you have to do with the  
20           information?

21      A     Well, you added up all the scores and at the end of  
22           it you got -- the way the charts work is that a zero  
23           for each particular symptom, zero indicates there is  
24           -- you know you don't have that symptom and I think  
25           a three is you know -- so it's a range of from zero  
26           to three. So, I think one is -- you sort -- you  
27           know there's some symptoms, two is yes definitely --

1 Q What I'm trying to get at --

2 A Sorry.

3 Q -- is what did you have to do with the data? So you  
4 had to collect it?

5 A Yes, we had to collect this and we submitted this to  
6 TrueHope on a regular basis every week.

7 Q Was TrueHope having any contact with you?

8 A Oh yes constantly they were great. They were --  
9 very available and I had a lot of long conversations  
10 with our -- the person that was our contact person,  
11 Phil.

12 Q Okay. And what did you think of that?

13 A What did I think of it?

14 Q Yes?

15 A It was very helpful because you know it's -- it's  
16 hard to do something like that, but, when there's --  
17 you know, there's not a whole lot of -- you know you  
18 don't read a lot about it, you don't -- you kind of  
19 need -- you need someone to help you through it.

20 Q Okay. So she starts taking the product and then  
21 describe what happens?

22 A Well, with the -- speaking from the charts it --  
23 they total -- you have to add up the total number.  
24 So a higher number indicates a lot of symptoms. A  
25 lower number indicates normal. Just to see, I  
26 filled it out myself, I filled up the charts myself  
27 for a week just to see, you know, what it would be

1 and it's you know, around five -- the normal score  
2 for me was around five, you know, maybe a bad seven,  
3 better day three.

4 Her scores at the beginning were 27, you know,  
5 37 sometimes up to 40 and they were always up there.  
6 Occasionally she'd have a good day and it might go  
7 down to like 19, but, it was you know pretty  
8 consistently high scores. And I noticed over the  
9 weeks the scores just went down, down, down. Over  
10 the course of maybe a couple of months until she was  
11 in the normal range and it go so we kind of got  
12 spotty about filling out the charts because they  
13 were normal.

14 Q Okay.

15 A By the summer.

16 Q What did you observe, did you observe any behaviour  
17 changes?

18 A Oh yeah. Yeah. You know, she stopped having all  
19 these panic attacks. She was able to focus. She  
20 was able to pull things together at school. She was  
21 -- one of the things was that she really -- she  
22 really desperately wanted to go to university. She  
23 really did. And she was just so upset that she  
24 wanted able to, sort of, to get things together and  
25 to -- because she knew how much pressure there was  
26 to do well in order to get into a university.

27 And by the end of her term she did -- she

1 managed to pull it all together and you know was  
2 able to focus and was able to get her work done and  
3 she had a choice of three universities that she got  
4 into. So that was a really positive thing.

5 Q Okay. What about you had spoken of that she had had  
6 panic attacks before?

7 A Yes. She had -- the panic attacks you know sort of  
8 subsided, I think she stopped having them really.  
9 She stopped -- she said she stopped thinking about  
10 death all the time.

11 Q Okay. Now, you haven't told us about that?

12 A Yes, well this was something that sort of came out  
13 of looking at her charts when you know, seeing  
14 thoughts of suicide, thoughts of death and I started  
15 asking her about that. And this was -- I can't tell  
16 you how disturbing that was a mother to see that and  
17 to talk to her about it. And she said, yeah, that  
18 she you know, she thought about dying all the time.

19 Q Okay. What about because you had spoken about  
20 angry outburst?

21 A Yes, that's something that we noticed that year.  
22 Her last year of high school when she was 19, 18 --  
23 19. And she had -- as I said, she'd always been  
24 very positive, you know and she'd been kind of a  
25 pain, but she was you know, a very happy kid and she  
26 started having these irrational outbursts of rage  
27 and she would -- she would punch her sister to the

1 point she'd get bruises, she'd just fly off the  
2 handle for something extremely trivial that had no  
3 relationship to, you know, the reaction. It was  
4 just like this volcanic outburst. You know and  
5 she'd throw things and slam doors and that sort of  
6 thing.

7 Q Okay. But, once she started taking the supplement  
8 what --

9 A And then afterwards she'd been weeping because she  
10 had been so out of control and she -- you know, she  
11 didn't know how to control the anger and the rage.  
12 And then after several months on the EMPOWER that  
13 just disappeared.

14 Q Now how long ago was that that she started?

15 A She started in the spring of 2002.

16 Q Okay. Now, since that time how has she done?

17 A She's done really well. She's done amazingly well  
18 in university and we're really proud of her. She's  
19 in honours program. She has -- she's taking a  
20 double major in international developmental and  
21 sociology. She's doing a thesis. She's been  
22 getting A's, it's great. She's very happy with her  
23 academic career.

24 In terms of friendships, when she was younger  
25 in high school, she had real difficulty in  
26 maintaining friendships. She would typically get  
27 really close to someone, kind of over do it and then

1 push them away because -- out of anxiety. We  
2 noticed that she was able to -- she seemed to have a  
3 stable core of friends that she was able to maintain  
4 friendship with.

5 Q Okay. So that was a change?

6 A And that was definitely a change. She had a  
7 relationship, she had a boyfriend that she -- they  
8 went out together for I think three years which was  
9 really unusual for her. She would usually just kind  
10 of you know, she said she would get really anxious  
11 and push people away.

12 Q Okay. Have there been any -- any kind of times  
13 where some of her symptoms came back?

14 A Yes, actually quite recently that she had more of  
15 the EMPowerplus than she did. She thought she had  
16 an extra bottle. And so she had to, you know, when  
17 it takes awhile to order it takes like a week, two  
18 weeks to get -- actually get the product, so she --  
19 she was rationing and she was -- she was only taking  
20 four pills a day and it was funny because she  
21 started phoning me and she was -- she'd be upset  
22 about having -- she was starting having night  
23 terrors again. She was having -- she said she was  
24 having a -- she'd had a panic attack. She was  
25 afraid that -- she said that there was -- she kept  
26 waking up and thinking that there was -- there was  
27 somebody in her room that there was some man

1 threatening her in his room.

2 And at one point she told me that she thought  
3 that the ghosts from the graveyard across the street  
4 were getting into the house. So it seemed pretty  
5 paranoid.

6 Q That -- did that strike you as out of character for  
7 the time?

8 A Absolutely, yeah.

9 Q Okay. Now, did that resolve?

10 A Yes. And when she got -- so we -- we had some --  
11 some of the EMPowerplus so I FedExed it to her, she  
12 got it the next day because she hadn't told me that  
13 she was doing this, you know, she was embarrassed  
14 that she had run out and she was running out. And  
15 so I just said, that's ridiculous so I FedExed her a  
16 bunch of the EMPowerplus and she -- so she upped her  
17 dose back to the normal level and you know a little  
18 bit more just to get her back on track. And so  
19 she's -- and she's fine now.

20 Q Okay. Now, tell me about your husband because you  
21 told us was diagnosed bipolar.

22 A Yes. Yes. I would say that he was -- he's always  
23 been somebody that's very high energy. He's a  
24 creative person, he's an art director in magazines.  
25 We noticed -- he started having problems, I guess in  
26 his late 30's. He was attributing it to job stress,  
27 he started getting very depressed. And our family

1 doctor put him on Prozac which sort of worked for  
2 awhile and then he became extremely manic. He  
3 stopped taking the Prozac and went even more manic.

4 Q What do you mean, manic?

5 A He wasn't sleeping, he was hearing voices, he was  
6 mumbling under his breath. He started drinking  
7 heavily as well. He would do things like -- I  
8 remember one episode he was -- he was in the morning  
9 he was out wandering around the neighbourhood in  
10 just his bathrobe and he was naked underneath and he  
11 was -- he said that he was chatting up the  
12 neighbours, which was more like scaring them off and  
13 not making -- from what I could tell he wasn't  
14 making any sense.

15 And it just really odd behaviour. And as I  
16 said, he wasn't sleeping he would be -- he was very,  
17 very anxious. It was really impossible to have a  
18 conversation with him because he was just bouncing  
19 all over the place. At night he couldn't -- he  
20 wasn't sleeping, he was -- I couldn't sleep in the  
21 same bed with him, he would just -- I mean he would  
22 start pounding the bed and shouting all the sudden  
23 and then he'd like -- he'd wake me up because you  
24 know, what was I doing sleeping while he was having  
25 a problem. And he would want to go and wake the --  
26 our daughters up, you know, because they didn't care  
27 about him because they were sleeping, in the middle

1 of the night.

2 It got to the point while I actually put up a  
3 little mattress in their bedroom so that I could get  
4 some sleep, you know, it was terrible. He would  
5 wake up in the middle of the night -- he'd go to bed  
6 and then maybe like 12:00 he'd sleep for maybe an  
7 hour and then he'd wake up and he'd -- I remember in  
8 one instance where he -- he wanted to get up and go  
9 out and find somebody that he knew ten years ago and  
10 find them and beat them up. And this was at 12:30  
11 at night. And then he did -- he got up and just  
12 disappeared, I don't know where he went. I don't  
13 know he did. It was terrifying because I -- I had  
14 no idea where he was and what he was doing. It was  
15 really quite scary.

16 Sometimes I'd be afraid to go out to just, you  
17 know, get some milk because I'd come back -- I  
18 didn't know what I'd come back to. He was talking  
19 about, you know, his life was over and then he just  
20 wanted -- we'd be so much better off without him.  
21 He told me that he had his suicide all planned. He  
22 was going to drive the car into the side of a bridge  
23 and so that, you know, we would get -- so it  
24 wouldn't look like a suicide so we would get the  
25 insurance money. And I told him that, you know, we  
26 didn't want insurance money we want him to be there  
27 and he just seemed to not even be able to digest

1           what I was saying to him.

2           Q     Okay. Was he ever hospitalized for this?

3           A     He was not. Maybe he should have been I don't know,  
4                 I really resisted at one point, our doctor wanted  
5                 to, suggested that we have him committed against his  
6                 will. And I just couldn't do that to him. I was  
7                 fortunate enough to be freelance, working freelance  
8                 at the time at home, so I felt I'd rather, you know,  
9                 do what I could from home because I think it would  
10                have -- it would have just killed him to have that  
11                -- something like that happen to him. So we held  
12                out as long as -- as long as I could -- until we  
13                could.

14          Q     Okay. Now, at some point this changed and how did  
15                it change?

16          A     Well, he was -- you know, he was on various  
17                medications, sometimes it was okay, sometimes it  
18                wasn't. He would, you know, even with various -- I  
19                mean he was on all sorts of stuff, he was on Epival.  
20                He was on Wellbutrin. He had had Prozac as I  
21                mentioned. Lithium, actually out of all the  
22                medications, I would say Lithium was probably the  
23                least offensive. But, you know he'd suffered a lot  
24                of -- a lot of physical problems.

25                         As a result he was always, you know, at one  
26                         point he started to go -- what they call, he started  
27                         to have the Lithium poisoning when we were off

1 camping. And he was, you know, sort of getting  
2 dizzy and that kind of woozy feeling and this  
3 metallic taste in his mouth. And I had read about  
4 these symptoms so I immediately called our doctor  
5 and we had to come home, you know, reduce the --  
6 he'd stopped taking -- he reduced his Lithium and  
7 anyway, there were physical problems along with  
8 that.

9 Q Okay. How was his ability to work at that time?

10 A Oh, he -- it was just -- it was really sad. He was  
11 not able to be creative. The drugs just -- they  
12 just killed his creativity, which was very important  
13 to him because as -- you know, as a creative person  
14 that really was something that really kept him  
15 going. I don't know if you've seen the movie Ray,  
16 but, that's very true but it's -- you know with  
17 creative people their work is everything. And to  
18 not be able to function, to not be able to come up  
19 with ideas, I mean it just about killed him. It was  
20 awful.

21 And I was, sort of, you know doing damage  
22 control with our company and trying to -- you know  
23 I'd hired, you know, would get a freelance designer  
24 to try and come in and you know kind of get things  
25 out the door, at least. But, he was just -- it was  
26 just getting worse and worse and he was -- he just  
27 starting withdrawing into himself. He would just,

1 he would go in the basement and he would just, no  
2 contact, I mean he was I guess according to  
3 psychiatrists he was --

4 Q No, just want you observed.

5 A Okay. Okay. And he was withdrawn and he just -- he  
6 told me that you know he didn't -- he was just  
7 getting to the point where he didn't care whether he  
8 lived or died. And it wasn't a question of being  
9 depressed, you know, because he was on a whole bunch  
10 of medications and he wasn't clinically depressed he  
11 just said that, you know, he couldn't feel anything  
12 -- he was just and it just wasn't worth living for  
13 him. And I was really concerned that he would --  
14 you know that he would try to commit suicide.

15 Q Okay. Now, at some point he made a decision to do  
16 something about this?

17 A Yes, he had, after seeing Rene and you know how much  
18 improved Rene was and how much better she felt, I  
19 think it kind of -- he started thinking about it and  
20 he decided that he wanted to try this as well.

21 Q Okay. What happened?

22 A Well, he went through a lot of drug withdrawal. He  
23 -- even though he stepped down slowly and withdrew  
24 it slowly, he still had things like joint pains and  
25 pain in his -- he told me that he had pain in his --  
26 felt like in his bones, his skin hurt --

27 Q Okay. What about his behaviour changes?

1 A Well, I noticed that he became -- he seemed to kind  
2 of come to life. He was -- he was very -- he wasn't  
3 sleeping so he was pretty strung out from that.  
4 That lasted two months. But, he would -- it was  
5 funny because he was -- in my office I have a white  
6 wall behind me and he was sitting there in the  
7 middle of all of this and said, "You know, it's  
8 really annoying but that wall behind you is just  
9 crawling."

10 And I -- he was sitting there and usually if  
11 somebody who is bipolar says that to you they are in  
12 outer space, they're bouncing of the walls, they're  
13 not making any sense. They're, you know, they're  
14 talking to people that aren't there. And he was  
15 absolutely perfectly normal and he was just -- we  
16 were having this normal conversation, he wasn't  
17 bouncing around. He was -- you know, we were  
18 talking rationally and reasonably and he just made  
19 this comment that, you know, that it was like in the  
20 hallucination on this wall and it was really  
21 annoying.

22 Q Is that when he was going through the drug  
23 withdrawal?

24 A Yes, yes.

25 Q Okay.

26 A And that all went away. He was -- I would say for  
27 about six months he was maybe -- what I noticed was

1 the cycling didn't just sort of abruptly stop, like  
2 because it's not like taking a drug where you -- you  
3 know you take a pill and then two hours later, you  
4 know, you feel the effects. It took awhile. He --  
5 I noticed that the cycling -- the highs were lower  
6 and the lows were higher.

7 So it kind of went like -- it was compressed.  
8 So it became less extreme at either end, in terms of  
9 his mood swings. I would say after about six months  
10 he was a little -- maybe a little bit on the low  
11 side, but after maybe by the end of summer he'd  
12 started, he'd stopped taking medications in  
13 November. By next summer he was starting to feel  
14 good. His work started to improve. And he started  
15 doing things, he was just interested in life, he was  
16 interested in people.

17 Everyone that saw him commented on how amazing  
18 he looked. He looked -- he really does look ten  
19 years younger. I mean I feel like I've had -- I  
20 feel like I've got him back from the dead. That's  
21 really how it feels.

22 Q Now, what would happen -- what do you think would  
23 happen if you couldn't get EMPOWERplus any more?

24 A Oh boy --

25 MR. BROWN: Sir, I know I've objected to  
26 these kinds of questions because they do require  
27 some speculation the part of the witness.

1 MR. BUCKLEY: I can go about it a different  
2 way.

3 THE COURT: Why do you not ask the  
4 question that you have asked before --

5 MR. BUCKLEY: Yes.

6 THE COURT: -- and that is, if at any time  
7 she has made observations where he reduced his  
8 intake or stop his intake of EMPowerplus?

9 MR. BUCKLEY: Thank you, sir.

10 A Well, I think I can answer that in one way. My  
11 husband has told me that he would never go back to  
12 drugs, that he would rather die than go back to  
13 drugs. He said, I would rather be dead, I would be  
14 sick and eventually you know just -- I would rather  
15 be dead, you know. I'd rather be sick, I'd rather  
16 have symptoms and I would die before I'd go back to  
17 taking drugs again.

18 Q MR. BUCKLEY: Now have you ever had --

19 THE COURT: I appreciate that Mr. Brown is  
20 making an objection, but, we will note it is  
21 hearsay. Go ahead.

22 Q MR. BUCKLEY: Yes. Have you ever had  
23 problems getting the supplement?

24 A Yes.

25 Q Okay. Tell us about that.

26 A There was a point where we could not get the  
27 supplement into Canada that I had a shipment that

1 was stopped and sent back. And that made life very  
2 difficult. What we ended up doing was -- we ended  
3 up smuggling it which was horrible, it was just  
4 awful. I mean I just -- to do something like that I  
5 felt like I was smuggling heroin, it was just awful  
6 to -- my parents live in the States, they were able  
7 to order it. I was -- my father had -- he had a  
8 client in Niagra Falls, we would meet in Niagra  
9 Falls, I mean honestly, it felt like a drug deal, it  
10 was horrible.

11 And (INDISCERNIBLE) I'd have to go across the  
12 border and you know lie to Customs, it was awful.  
13 And then not only that, but, I was terrified that  
14 they were going to find the -- find the EMPowerplus  
15 and confiscate it, which would then we'd really be  
16 in big trouble.

17 Q Why did you go through all that trouble?

18 A Because I love my family and I don't want to see  
19 them sick and suffering. I'm a mother, I'll do  
20 anything to protect my child and my husband, as  
21 well.

22 Q Okay. Did you take some -- some steps to kind of  
23 ensure that you wouldn't have to do that type of  
24 thing?

25 A Well, that's why I went to Ottawa to protest and to  
26 see what we could do about convincing our government  
27 to take another look at this.

1 Q Okay. Tell us about that.

2 A That was when I think you've heard from other Red  
3 Umbrellas, we formed a group, we had a -- I had  
4 mentioned to Phil who was my contact at TrueHope,  
5 the person that had been helping us, that I was very  
6 concerned about this situation. I said I was really  
7 appalled and that I would, you know, I would be  
8 willing to get involved in something to try and  
9 convince Health Canada to relent.

10 And we ended up having a conference call of  
11 several women and we just decided that we had to do  
12 something. We couldn't -- we didn't -- we weren't  
13 sure what we were going to do, but, we thought well  
14 first step is to go to Ottawa. So we all went to  
15 Ottawa and it was raining and so we ended up with  
16 red umbrellas and we stood outside the Members  
17 entrance.

18 A lot of the Members of Parliament came over  
19 and talked to us because of course, we weren't allow  
20 to solicit anything. But, they were interested  
21 enough to come and talk to us. And the more they  
22 talked to us, the more people were interested in it  
23 because it was pretty appalling.

24 And the media then noticed that there was  
25 something going on so we got some media coverage  
26 from that. And I think we were -- you know, at  
27 least able to bring some awareness to this.

1 Q Okay. Now, you got involved with the Red Umbrellas  
2 at a later time, too?

3 A Yes. We -- at one point we -- I flew to Edmonton at  
4 my own expense and we were trying to get in -- we  
5 thought well maybe if we got into see Anne McLellan  
6 and actually talked to her face to face, that she  
7 would realize that you know, maybe she had been  
8 getting mis-information. We just wanted to talk to  
9 her and because we had just been so stonewalled with  
10 all our efforts to try and get any kind of message  
11 across, to try and you know, get through to anybody,  
12 it was just like a brick wall.

13 So, we thought well maybe if we went person to  
14 person that she would see that we're not just, you  
15 know, this isn't some sort of psychotic delusion.  
16 And so we went to Edmonton, there were several other  
17 people from the Red Umbrellas there, so we just --  
18 we went out -- we were outside her constituency  
19 office with our Red Umbrellas and we thought, well if  
20 we're there enough and if she sees us enough, maybe  
21 she'll come and talk to us.

22 And we kept trying, we talked to -- kept trying  
23 to talk to the secretaries. And they basically  
24 stonewalled us and finally when we did -- we managed  
25 to get through to them that you know, because I  
26 think Autumn said to one of the secretaries, what  
27 would you do if this was your child? What would you

1 do if this was you? You know, would you just go  
2 home and say, okay, I'll go back to a life of pain  
3 and misery. Could you do that? And I think they  
4 realized that there was something -- there was  
5 something here.

6 Q Okay. But, you ended up somewhere else.

7 A And so anyway, so we -- they told us that Anne  
8 McLellan was actually at the -- there's a Block of  
9 Parliament -- or there's some Health Canada offices  
10 and they told us that she was at her office there.  
11 So we decided to go there and see if maybe we could  
12 get up and into her office and maybe try and get to  
13 see her that way and if nothing else, drop off some  
14 information.

15 So we arrived at the government -- at these  
16 Health Canada -- or the government block and we were  
17 -- we asked where we could find Anne McLellan's  
18 office and we were told that nobody could go up that  
19 there was some sort of protest group that they were  
20 very concerned about and that they weren't letting  
21 anyone up.

22 And we looked around and we didn't see any  
23 protestors, so we assumed maybe it was us. So, we  
24 -- so we were kind of stumped from there and then  
25 there was -- we noticed a courier, a FedEx guy  
26 leaving and we asked him whether he knew where Anne  
27 McLellan's office was. And he said, oh, yeah, it's

1 just in a different building. So he kind of  
2 directed, told us that it was in a building that  
3 had, I think seven stories.

4 So Autumn and I and there was another person  
5 decided, well maybe we can figure out where this  
6 building is. So -- because we were looking around  
7 us and we said we're clearly not in the right place.  
8 So we went out the door and -- to see where, try and  
9 figure out where this building was. As we walked  
10 out the door, we walked right in between Anne  
11 McLellan, some of her handlers and two security  
12 guards.

13 And I honestly -- if we had planned it -- it  
14 couldn't have -- it couldn't have -- you couldn't  
15 have even staged something like that. It just -- it  
16 was very strange. And so we obviously caught her  
17 completely off guard and she was kind of sputtering  
18 and didn't quite know what to say to us and then we  
19 asked her, we'd really like to get to know -- we'd  
20 really like to see you, we're just trying to get to  
21 talk to you. That's, you know, we're not trying to  
22 intimidate or anything, we just want to talk.

23 And so she kind of tried to fob it off to you  
24 know bureaucratic scheduling problems and tried to  
25 squirm out of it that way. We all knew that was  
26 silly because we'd been trying and trying. And she  
27 said, oh, yes, my people have been trying to get in

1 touch with you, which is nonsense. So and then she  
2 tried to tell us that she would instruct them to  
3 talk to us and kind of hurried off.

4 Meanwhile the -- I looked up and the security  
5 guard was kind of motioning to her and it was kind  
6 of comical. But, anyway of course, so then she  
7 left, we left and she continued to stonewall us.

8 Q Okay. Have you ever phoned that 1-800 number?

9 A The Health Canada number?

10 Q Pardon me?

11 A Set up by Health Canada?

12 Q Yes?

13 A No.

14 Q Okay.

15 MR. BUCKLEY: Thank you. Those are my  
16 questions. I anticipate that my friend will have  
17 some questions for you.

18 THE COURT: Will you please answer any  
19 questions from Mr. Brown? Mr. Brown?

20 MR. BROWN: No questions for this witness,  
21 sir.

22 THE COURT: Thank you, Ms. Stanley, you  
23 can step down you are free to go.

24 A Okay.

25 (WITNESS STANDS DOWN)

26 MR. BUCKLEY: Your Honour, I don't have any  
27 further witnesses today and I apologize to the

1 Court. When I was doing my schedule and trying to  
2 anticipate because we booked flights weeks ago, how  
3 long Mr. James Lunney was going to take, I was  
4 anticipating covering some areas that I didn't  
5 cover. And so although up until today I've been  
6 pretty good at keeping us actually a little  
7 overtime, today I do apologize that I don't have  
8 another witness lined up.

9 THE COURT: You expected your examination-  
10 in-chief and the cross-examination of Dr. Lunney to  
11 be longer?

12 MR. BUCKLEY: Well, yes, when I was first  
13 you know, doing my schedule. Because as I -- I  
14 think you can appreciate we're not dealing with  
15 local witnesses, we have to book flights. And one  
16 of the worries too is, when you're doing that, do  
17 you have people commit to stay over for two days of  
18 potential testimony, so you're wanting to fill them  
19 in.

20 But, I -- you know, I'm trying to communicate  
21 it really is a honest error I'm not trying to waste  
22 Court time or anything like that so --

23 MR. BROWN: Certainly I would never take  
24 that position, sir. I think Mr. Buckley has made  
25 every effort to keep us going and we've done our  
26 best with the scheduling.

27 THE COURT: We have done in the scheduling

1 of witnesses over the first eight days that we have  
2 been going. And this can be expected when we have  
3 to work around several witnesses coming from out of  
4 town. So I do not have any problem with it.

5 MR. BUCKLEY: Thank you, Your Honour.

6 THE COURT: I have other matters to work  
7 on, as well.

8 MR. BUCKLEY: Okay.

9 THE COURT: So I am not --

10 MR. BUCKLEY: Mr. Brown wasn't complaining  
11 to me when I told him.

12 MR. BROWN: No, I was not, sir.

13 THE COURT: You are not complaining  
14 either, Mr. Brown?

15 MR. BROWN: I can certainly use the  
16 afternoon to do other things as well -- well, other  
17 things on this file, as well, sir.

18 THE COURT: All right. Well, that is  
19 fine. So that is it for today. You have given me a  
20 schedule of witnesses for tomorrow and Friday.

21 MR. BUCKLEY: And that -- that hasn't  
22 changed. So --

23 THE COURT: Do you expect both those days  
24 to be full?

25 MR. BUCKLEY: I expect Charles Popper on  
26 Friday to be about the same length as Bonnie Kaplan.  
27 And she took most of the day.

1 THE COURT: She was a good day, yes.

2 MR. BUCKLEY: So, yes, so I anticipate,  
3 that's my anticipation. With Mr. Bruce Dales  
4 tomorrow, boy it's hard to -- it's hard to predict  
5 because I've got no idea how long my friend is going  
6 to be with him. He's kind of bringing a different  
7 dimension to this case that's quite important  
8 actually. So --

9 MR. BROWN: Frankly, sir, I expected Mr.  
10 Dales to be longer than Dr. Popper.

11 THE COURT: Oh is that right?

12 MR. BROWN: But, I do not really know. So  
13 he may end up going over to Friday, I don't know.

14 THE COURT: Where is Mr. Dales coming  
15 from?

16 MR. BUCKLEY: Well, he's actually coming  
17 from Winnipeg although he lives in Vancouver.  
18 That's -- he just happened to be visiting his  
19 parents in Winnipeg so --

20 THE COURT: All right. That is fine.  
21 Thank you for informing me as where you see these  
22 scheduled witnesses going in the next couple of  
23 days. And as I have noticed, Mr. Brown certainly  
24 does not have any objection either.

25 MR. BROWN: No sir.

26 THE COURT: And we can all use our time  
27 either on this file or on others. So in that case I

1 will thank the people who have attended, witnesses  
2 and so on and we will stand this matter adjourned  
3 then until 9:30 tomorrow morning in this courtroom.  
4 All right, madam clerk, we will stand adjourned.

5 THE COURT CLERK: Thank you.

6 THE COURT: Thank you Mr. Brown, Mr.  
7 Buckley.

8 MR. BROWN: Thank you sir.

9 MR. BUCKLEY: Thank you.

10 THE COURT: Madam clerk, thank you.

11 THE COURT CLERK: Order in Court, all rise.

12 Court stands adjourned until tomorrow morning at  
13 9:30.

14 THE COURT: Thank you. Good day.

15 -----

16 PROCEEDINGS ADJOURNED TO MARCH 23rd, 2006 9:30 A.M.

17 -----

18

19 \*Certificate of Record

20 I, Jillian Fox, certify this recording is a record  
21 of the oral evidence in the proceedings in the  
22 Criminal Court, held in courtroom 413, at Calgary,  
23 Alberta on 22nd day March, 2006 and that I was in  
24 charge of the sound-recording machine.

25

26

27

1 \*March 23, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K. Brown, Esq.) For the Crown

7 E. Eacott, Ms.)

8 S. Buckley, Esq. For the Defendants

9 J. Fox Court Clerk

10 -----

11 THE COURT CLERK: Calling Synergy Group of  
12 Canada and TrueHope Nutritional Support.

13 MR. BUCKLEY: Good morning, Your Honour.

14 THE COURT: Good morning, Mr. Buckley.  
15 Mr. Brown.

16 MR. BROWN: Good morning, sir. I see Ms.  
17 Eacott has returned to the fold, sir.

18 THE COURT: Good. Does this mean she  
19 brought an exhibit that was numbered?

20 MR. BROWN: No, not yet, sir. Sorry.

21 THE COURT: No? Okay.

22 All right. Mr. Brown, are you ready to  
23 proceed?

24 MR. BUCKLEY: Mr. Buckley.

25 THE COURT: Sure. Mr. Buckley, are you  
26 ready to proceed?

27 MR. BUCKLEY: And I am, Your Honour.

1 THE COURT: Okay.

2 MR. BUCKLEY: I'd like to call Bruce Dales  
3 to the stand.

4 THE COURT: Mr. Dales, please come up  
5 here. Thank you.

6

7 \*BRUCE DALES, Sworn, Examined by Mr. Buckley (Voir Dire)

8 \*(Qual)

9

10 A I have a request, Your Honour.

11 THE COURT: What is that?

12 A May I be seated during the proceedings?

13 THE COURT: I expect you are going to be  
14 here for a while today. Is that right, Mr. Buckley?

15 MR. BUCKLEY: I anticipate that is the case,  
16 Your Honour.

17 THE COURT: Any objection?

18 MR. BROWN: I have no objection with that,  
19 sir.

20 THE COURT: No, that is fine.

21 A Thank you very much.

22 MR. BUCKLEY: And, Your Honour, I'm going to  
23 pass up a resume. I'm going to seek to qualify Mr.  
24 Dales as an expert in the area of the *Food and Drug*  
25 *Act and Food and Drug Act Regulations.*

26 THE COURT: Want to do that now? Then we  
27 will enter into a voir dire on his qualifications.

1 MR. BUCKLEY: Yes.

2 THE COURT: All right. So you have passed  
3 up a CV.

4 MR. BUCKLEY: Yes.

5 THE COURT: Go ahead.

6 MR. BUCKLEY: And so, Your Honour, I'm  
7 seeking to qualify him as an expert on *Food and Drug*  
8 *Act* and *Food and Drug Act Regulations*, including the  
9 process for obtaining drug identification numbers  
10 and notices of compliance, and including the  
11 classification of substances under the Act and  
12 Regulations.

13 Thank you, Your Honour.

14 Q MR. BUCKLEY: Mr. Dales, and I start off by  
15 asking is there anywhere you can go to school and  
16 get trained or any courses training in the *Food and*  
17 *Drug Act* and *Regulations* that you're aware of?

18 A No --

19 Q Okay.

20 A -- absolutely not.

21 Q So somebody has to go through this process,  
22 basically you learn on the ground so to speak?

23 A That's right.

24 Q Okay. I want to go through some of your background  
25 because you had a goal early on of getting into drug  
26 research; is that ...

27 A That's correct.

1 Q Okay. And so in 1981 to 1983 you worked for  
2 Agriculture Canada?

3 A That's right.

4 Q And you would have been described as a biochemical  
5 technician for them?

6 A That's right.

7 Q And basically you were working at what was called  
8 the Cereal Research Branch?

9 A Yes.

10 Q And one of the things that you were doing is you  
11 analyzed proteins biochemically?

12 A That's correct.

13 Q Okay. And I don't even want to say what the lab  
14 work was called. Can you ...

15 A Polyacrolein gel electro freezes --

16 Q Okay. Can you just --

17 A -- and isoelectric focus.

18 Q Okay. Can you tell us what that entails? Just give  
19 us a rundown.

20 A The project was part of what's called the green  
21 revolution which was at the time analysing the  
22 biochemistry and the genetics of wheat and barley in  
23 order to have higher yield crops so that third world  
24 countries could help feed themselves and first world  
25 countries could increase their -- their capacity for  
26 growing grain to feed the world. What we would do  
27 is we would look at the products from a genetic

1 basis as well as from a protein basis. The  
2 polyacrolein gel electro freezes and the isoelectric  
3 focussing was looking at them from a protein base.  
4 So we would combine them to come up with better and  
5 better cultivars. And it was very, very effecting  
6 in increasing the grain yield worldwide.

7 Q Okay. Now, when you finished with them from 1984 to  
8 1987, you worked at the Faculty of Medicine at the  
9 University of British Columbia?

10 A That's right.

11 Q And again, you were in a technician role?

12 A That's right.

13 Q And you started in the anatomy department at the  
14 University of British Columbia?

15 A That's correct.

16 Q Okay. And what you were doing was studying muscular  
17 dystrophy?

18 A That's correct.

19 Q Can you tell us what your role in that was?

20 A What it was was we were looking at a mouse model for  
21 muscular dystrophy under the assumption that the  
22 human model would be very, very similar and, again,  
23 it was involving polyacrolein gel electro freezes  
24 and isoelectric focussing.

25 Q Okay. And then after a couple of years you moved to  
26 what was called the Children Research Unit at the  
27 University of British Columbia?

1 A That's correct.

2 Q And you were studying mononucleosis?

3 A That's correct. Yeah. The same thing, biochemical,  
4 biochemistry, polyacrolein gel electro freezes,  
5 isoelectric focussing.

6 Q Okay. Now, in 1988 and in -- continuing until 1993  
7 you went to a compounding pharmacy?

8 A That's correct.

9 Q Okay. Called Finlandia?

10 A Yes.

11 Q And tell us briefly what was involved in working in  
12 that compounding pharmacy.

13 A I transferred to a compounding pharmacy because my  
14 initiate was to get into drug research. At the time  
15 I thought I had enough chemical background and  
16 biochemistry background to do that. I wanted to get  
17 more familiar with drugs with natural health  
18 products. Within that pharmacy I managed the -- the  
19 store for three years and as well as that what I did  
20 as well is I dealt a lot with -- with manufacturing  
21 companies, natural health product manufacturing  
22 companies, some drug manufacturing companies, as  
23 well as with physicians providing reliable  
24 information on the products as well.

25 Q Okay.

26 A So it was a very large learning curve in the area of  
27 drugs and natural health products.

1 Q Now, then --

2 A And also it was --

3 Q Sorry.

4 A -- it was a compounding pharmacy so what we did was  
5 we actually compounded drugs and natural health  
6 products from scratch within the pharmacy.

7 Q Okay. So you were able to learn about that process?

8 A Yes.

9 Q Now, in 1993 and continuing until 1998 you moved to  
10 a company called Flora.

11 A That's correct.

12 Q And Flora is an international company that  
13 manufactures natural health products.

14 A Yes, it is.

15 Q And nutritional foods.

16 A Yes.

17 Q And they also import --

18 A Mm-hm.

19 Q -- these products; is that correct?

20 A That's correct.

21 Q Okay. So they both make and import?

22 A Yes.

23 Q And you basically were the person in charge of  
24 regulatory compliance?

25 A You got it. That's correct.

26 Q So you were the *Food and Drug Act Regulation* person  
27 for that company?

1 A That's correct.

2 Q And --

3 A If -- okay.

4 Q Yeah. Go ahead.

5 A If the company was considering bringing in a food  
6 for import or producing a food, I was in -- very,  
7 very closely involved within the process. I would  
8 look at the labels, I would describe the  
9 manufacturing standards that were necessary and also  
10 be more or less very closely involved in the  
11 production of it or the importation of it, as well  
12 as that continue -- I was the person that Health  
13 Canada would phone if they had any concerns about  
14 anything.

15 Q Okay. And in your role there you led the company  
16 through some drug identification number  
17 applications.

18 A Definitely.

19 Q And that basically was your responsibility?

20 A That's correct. Drug identification. But it was  
21 more than that, in that what happens is that, if you  
22 have product come in for import, the product would  
23 be put in front of me and they would say, We want to  
24 know what our options are. In other words, can we  
25 sell this as a natural health product.

26 Q Okay. But this is back before those regulations  
27 were imposed.

1       A     That's true. That's true. In other words, they  
2             would say, Is this a food, is this a prescription  
3             drug, is this an over the counter drug, what are  
4             options for selling it and legally what claims can  
5             we make on the product.

6       Q     Okay. And then once an option was picked, you would  
7             basically go through the regulatory compliance test?

8       A     Well, once an option was picked, they would either  
9             drop the product or go through. I mean, if it was  
10            clear that it wasn't feasible to carry the product,  
11            then they -- they would know that they would not  
12            carry it normally. If it was feasible to -- to go  
13            through the drug and go through food or something  
14            like that but, you know, some of the products coming  
15            out there could have a restricted substance in it or  
16            something like that. So I mean it's pretty clear,  
17            if something is restricted, you don't want to carry  
18            it in Canada unless you go through proper measures.

19      Q     Okay. And as I was trying to bring out, is in your  
20             role as the regulatory person for Flora, you  
21             actually went through the drug identification number  
22             application process.

23      A     A number of times in a number of different ways.

24      Q     Okay. And we say a number of different ways, you're  
25             speaking monograph and non-monograph; is that  
26             correct?

27      A     That's correct.

1 Q Can you explain for the Court basically what a  
2 monograph process means and a non-monograph process  
3 means?

4 A Health Canada puts out templates for a number of  
5 different compounds so, in other words, if you're  
6 getting a monograph product, more or less you -- you  
7 have a template for the product, you go by the  
8 template, you send the template in, they give you a  
9 drug identification number for it.

10 Q Okay. And I'm just going to --

11 A That's a monograph.

12 Q -- going to try and put this in English for us. So  
13 let's say a template might say you can have a  
14 certain amount of Vitamin 'A', 'B', 'C', 'D' and  
15 that would be the template; correct?

16 A That's correct.

17 Q And as long as you stayed within the amounts and  
18 ingredients they said, that would be a monograph  
19 application?

20 A That's correct.

21 Q Okay. Is that a simpler application than a non-  
22 monograph?

23 A It's dramatically simpler than the non-monograph.  
24 There's -- there's several forms of non-monograph  
25 applications. One of the forms it -- one of the  
26 forms is at the time there was very, very, very  
27 restricted claims allowed for traditional medicines

1 so that could be argued non-monograph. And you'd  
2 more or less put a couple of things together and it  
3 wasn't really all that difficult to apply. And of  
4 course you'd have other non-monograph forms of  
5 applications that were tremendously difficult to  
6 apply -- apply with.

7 Q Okay. Now, you were also involved in ensuring that  
8 their manufacturing processes met the regulatory  
9 standards?

10 A That's right. In fact, at Flora, before going there  
11 and when I first got there, they did not have GMP.  
12 I did have a lot of input --

13 Q And just -- can you explain to the Court, when we  
14 use terms like GMP, what on earth does that mean?

15 A GMP means good manufacturing practices. It's a  
16 practice that, you know, hopefully, you know, across  
17 the world drugs are made by -- it ensures safety and  
18 potency of a drug and it also ensures that they're  
19 not adulterated.

20 Q Okay. But just so the Court understands, there's  
21 actually like a whole detailed list of requirements  
22 to get that certification; right?

23 A Dramatic --

24 Q It's not just a company saying, Oh, we have good  
25 manufacturing practices. It's actually an audited  
26 standard; is that --

27 A Definitely. Definitely. Drug GMP is an audited

1 standard.

2 Q And so you guys actually have to have outside  
3 auditors come in --

4 A It's Health Canada auditors --

5 Q Okay.

6 A -- that we had come in to give us that drug GMP --

7 Q Okay. And so I just want us to appreciate it's a  
8 very difficult and complex process; is that ...

9 A Yes, it is. And the reason that we wanted to go by  
10 that process is that it was so internationally well  
11 accepted. If you went and said that you had drug  
12 GMP, it helped our export department a lot in the  
13 fact that you could claim this product is made by  
14 drug GMP and so places, whether it be China,  
15 Thailand, Australia, New Zealand, they would  
16 recognize that and they -- it was a big plus. And  
17 plus, you know, obviously, you know, domestically it  
18 was a big plus as well.

19 Q Okay.

20 A So it was difficult to obtain, however, it was very,  
21 very good to get.

22 Q And then also you would ensure that all the products  
23 complied with the labelling regulations, just to  
24 give examples of the types of things that you do.

25 A Yeah. Yeah. I mean the reality in the marketplace  
26 is unfortunately there's not one company out there,  
27 there's not one manufacturer out there that's 100

1 percent compliant for labelling in particular. It's  
2 an arduous process. You know -- you know, let's  
3 face it, you know, it's easier to criticize somebody  
4 else's work than to better yourself, but the -- the  
5 reality is that, based on what I've seen, you have a  
6 -- you have a massive marketplace, particularly at  
7 that time there's very, very few companies actually  
8 regulatory compliant so you were as regulatory  
9 compliant as you could be. But if you were  
10 perfectly regulatory compliant on labelling in  
11 particular, you know, I think you might be out of  
12 business.

13 Q Okay. But you had to understand what the  
14 requirements were and basically --

15 A Definitely.

16 Q -- provide advice?

17 A And, you know, you had to understand it was very,  
18 very difficult because you -- you had to understand  
19 the labelling requirements and you had to understand  
20 what really non-compliant labelling was in the fact  
21 that nobody was compliant on the marketplace. I  
22 think what I'm trying to say, it was -- it's a  
23 difficult process to -- to work as a regulatory  
24 person within a company that size when the whole  
25 marketplace is basically non-compliant on a  
26 regulatory basis. But at the same time you had to  
27 be as compliant as you could be.

1 Q Okay.

2 A So you had to be extremely thorough in the  
3 understanding.

4 Q Now, getting back to identification numbers, you  
5 were also involved in applying -- in the US they're  
6 not called drug identification numbers, they're just  
7 called drug numbers.

8 A Mm-hm.

9 Q And because this is being tape recorded, you can't  
10 go "mm-hm".

11 A Pardon?

12 Q Because this is being tape recorded, we can't go  
13 "mm-hm", because we don't know if you're agreeing or  
14 disagreeing.

15 A Oh, I apologize. That's correct.

16 Q So -- but in the US they're called drug numbers?

17 A Yes.

18 Q And you were involved in walking Flora through drug  
19 number applications in the United States as well?

20 A Yes.

21 Q And then also you've been involved in new drug  
22 submission process?

23 A Yes, I have.

24 Q Okay. And for Flora, you were involved actually in  
25 a number of countries?

26 A Yes, I have.

27 Q Okay. You went through the process for them in

1 Russia?

2 A Yes, I did.

3 Q And you went through the process for them in Mexico?

4 A The new drug -- the new drug process is very  
5 different than the herbal process in that new drug  
6 applications internationally are very, very similar.  
7 In other words, it's a similar sort of -- it's a  
8 similar sort of protocol. So, you know, when you go  
9 and say, you know, I've had experience in new drug  
10 process, you know, you can say that internationally,  
11 you know. Unfortunately, when you go and say that,  
12 I know the *Food and Drug Act and Regulations*,  
13 obviously the regulations in Canada vary -- US, you  
14 know, than from China, et cetera. And also the way  
15 that vitamins and herbs are handled here varies from  
16 country to country. But when you talk about the new  
17 drug process, it's pretty consistent between  
18 countries. So, when you say that -- you know, I  
19 have experience in the new drug process in any  
20 country, that's the new drug process.

21 Q Okay. So I'm making it sound more dramatic than it  
22 is if I list off different countries because it's a  
23 similar process?

24 A Basically the same.

25 Q Okay. But just for the record, you've also been  
26 involved in that process for Flora in the United  
27 States?

1 A Yes.

2 Q Okay. Now, while you were at Flora, the United  
3 States doesn't have an organization called Health  
4 Canada. What would their equivalent be?

5 A National Institute of Health.

6 Q Okay. You were approached by the National Institute  
7 of Health and asked to come as an expert?

8 A That's right.

9 Q Can you tell us about that?

10 A Basically what happens is that the National  
11 Institute of Health, their department of alternative  
12 medicine, had a very, very large interest in trying  
13 to find a way for what we would refer to as natural  
14 health products to become part of -- part of more of  
15 the regime that's used, particularly for cancer.  
16 So, in other words, what happens is that they  
17 contacted 120 experts worldwide, 114 were from US,  
18 six were from outside of US. Out of the 114 in US  
19 it was basically the who's who of medical schools,  
20 many of the deans from medical schools. Outside of  
21 US there was six people chosen. I was one out of  
22 the six from outside of US to fly in to be part of  
23 this group to help develop a protocol to take these  
24 alternative medicines and hopefully find a way to  
25 put them through -- through some sort of new drug  
26 process or altering new drug process, to become part  
27 of the cancer regime.

1 Q Okay. And you had some other involvement with the  
2 National Institute of Health?

3 A Yeah. They had also -- they -- they had ran a  
4 seminar on alternative medicines and they had asked  
5 me to be part of that. There was a number of  
6 medical positions there. It was accredited if you  
7 were a medical stu -- medical physician to get  
8 medical credits to go there and to listen to more or  
9 less the seminars on drug development of -- of these  
10 alternative medicines --

11 Q Okay. And what were you giving seminars on?

12 A I was giving seminars on specific drug development  
13 work, new drug development work that I had been  
14 doing with the Russian Ministry of Health.

15 Q Okay. And -- okay. So you were basically  
16 explaining the new drug development work you've been  
17 doing with the Russian Ministry of Health.

18 A That's correct.

19 Q Okay.

20 A There's -- there's two main types of new -- new drug  
21 development. One is mass screening of plants. More  
22 or less you take a plant and you do mass screening  
23 of -- of every single chemical in there and you put  
24 it through some in vitro test, then you move on to  
25 animal studies and that. There's also -- the second  
26 type is you actually deal with shaman and get  
27 information from the shaman, get more information on

1 the herb and try and develop the drug from that.  
2 And the new drug development at that time that I was  
3 dealing with was more on the second model than the  
4 first.

5 Q Okay. Now, also at one time you were -- you spoke  
6 in front of the Standing Committee of Health on the  
7 drug identification process?

8 A That is correct.

9 Q Okay. Basically the application process and ...

10 A Yeah. I at the time had some -- I had some concerns  
11 with the drug application process and, you know,  
12 let's face it, the only way to do improvements is to  
13 indicate and voice your concerns. You know, just  
14 like when you go to your mechanic, unless you tell  
15 him what's wrong with the car, he can't fix it,  
16 right.

17 Q Okay. Now, in 1998 you started a company called  
18 Dales Product Development and Regulatory Services.

19 A Yeah.

20 Q And --

21 A Specialists, actually.

22 Q Okay.

23 A Yeah.

24 Q And you are still doing that. So from --

25 A That's correct, yeah.

26 Q -- 1988 to today you've been doing that. And would  
27 it be fair to say that, really, you're doing the

1 same thing you were doing at Flora but now just  
2 companies come to you and seek regulatory advice on  
3 *Food and Drug Act and Regulations*?

4 A That's correct.

5 Q Okay. So, basically, companies will put products in  
6 front of you and say, Give me my options?

7 A That's basically in (INDISCERNIBLE). Some of them,  
8 as well as that, will come to me and say, Hey look,  
9 you know, we want a site licence or an establishment  
10 licence, can you come and do an internal audit for  
11 us and bring us up to speed. So, in other words,  
12 before possibly inviting Health Canada in, they'll  
13 invite me in to look through everything to help  
14 improve their situation so the fact that they can  
15 get whatever licence that they need.

16 Q Okay. And just so the Court understands. So an  
17 establishment licence, for example, is something  
18 that a manufacturer of natural health products needs  
19 to comply with the natural health product  
20 regulations; is that correct?

21 A Yeah.

22 Q And site licence is basically referring to the same  
23 thing, but for the normal drug regulations?

24 A Mm-hm. Yes.

25 Q Okay. So you're brought -- some companies bring you  
26 in basically to advise them as to what they need to  
27 comply with those parts of the *Food and Drug Act*

1           *Regulations*; is that fair?

2       A     Yes.  Correct.

3       Q     Okay.  Now --

4       A     Hold on.  Hold on.  I think we -- the ...  Yeah,  
5           that's correct.

6       Q     Okay.  Do companies hire you to give them advice on  
7           the drug identification application process?

8       A     Definitely.

9       Q     Okay.  And do they hire you to actually prepare the  
10          applications and go through the process?

11      A     Well, sometimes they hire me to do the application;  
12          sometimes they just want information.

13      Q     Okay.  Basically for you to teach them how to do it?

14      A     Yeah.

15      Q     Okay.  What about for labelling?  Are you -- people  
16          approach you for advice on that?

17      A     Definitely.

18      Q     Okay.  What about for these good manufacturing  
19          practices?

20      A     Definitely, yeah.

21      Q     Okay.  What about new drug submissions?

22      A     Yeah.  I've given an (INDISCERNIBLE) on new drug  
23          submissions before.  Keep in mind, though, that in a  
24          case of a new drug submission it's long and it's  
25          very, vary arduous so there's many people that give  
26          information for new submissions.  I don't know of  
27          anybody in the world that could single-handedly do a

1 new drug submission. You know, it's not something  
2 that you wake up at 9:00 a.m. in the morning and do  
3 it, you know, get one done by 5:00 p.m. There's  
4 toxicologists involved --

5 Q Okay. Well, we'll go --

6 A -- there's patent lawyers --

7 Q Okay.

8 A -- there's -- okay.

9 Q Oh well, carry on. I didn't mean to stop you.

10 A Okay. There's patent lawyers, there's toxicologists  
11 involved, there's pharmacologists involved, there's  
12 statisticians that -- involved, there's people that  
13 set up medical trials involved, there's physicians  
14 involved that actually do the medical trials, and a  
15 lot of the time there's many other people involved  
16 in it as well.

17 Q Okay. But companies come to you and basically seek  
18 your advice as to how -- what the process is --

19 A That's correct.

20 Q -- and help them manage the process?

21 A Yeah.

22 Q And to do some steps in the process?

23 A Definitely.

24 Q Okay. What about if we've got in January 1st of  
25 2004 this new *Natural Health Product Regulations*?  
26 Have you been involved in the licencing of these  
27 types of drugs?

1 A Definitely, yeah. I have been involved a lot in the  
2 licencing on *Natural Health Product* applications.

3 Q Okay. And then I think I've already covered like  
4 you are involved in categorizing products.

5 A Definitely.

6 Q Now, can you explain why that's important?

7 A Well, what happens is that it's important in that  
8 companies want to be as compliant as they possibly  
9 can on the market and they want to know their legal  
10 options. I mean an example is Acerola Cherry.  
11 Depending on the way you label it, depending on the  
12 way you sell it, depending on the claims that you  
13 put on a product, they can be either a food or a  
14 natural health product. You know, that's an example  
15 of the options.

16 Q Okay. So somebody coming to you, you have to have  
17 expertise to know to say, Okay, you have this option  
18 and here are the requirements, you've got option --  
19 another option and there's different requirements.

20 A Exactly.

21 Q Okay.

22 A And also you obviously have to indicate to them  
23 that, if they do have a natural health product or a  
24 drug, that it's just not a matter of making it in  
25 your basement or your bathroom, you have to have  
26 manufacturing standards involved. And also, for  
27 example, if there's a product coming from Thailand

1 or China, they -- they have to realize that their  
2 manufacturing standards there are not the same as  
3 the ones here so, you know, they have to understand  
4 the procedure to go to upgrade their manufacturing  
5 standards before they can even sell a drug or a  
6 natural health product in Canada. It's not just a  
7 matter of applying for a product licence, you've got  
8 to actually -- you've got to know the manufacturing  
9 involved.

10 Q Okay. So it's -- but that's an important process of  
11 what you're doing for companies?

12 A It's vital to them.

13 Q Okay.

14 A You -- you don't want to be spending \$1 million on  
15 marketing of a natural health product and then  
16 realize that the manufacturing standard they're  
17 using in Thailand is not appropriate and the product  
18 is adulterated.

19 Q Now, you basically cover all of the *Food and Drug*  
20 *Act Regulations* --

21 A That's --

22 Q -- not just drugs, but the food part.

23 A That's correct.

24 Q Are you aware of anyone else in Canada that is doing  
25 all of the regulations?

26 A No, I'm not. Now, that being given, I don't do  
27 biologics --

1 Q Okay. What is --

2 A -- or radiopharmaceuticals.

3 Q What is biologics?

4 A Well, they're -- it's difficult to describe.

5 They're -- radiopharmaceuticals, biologics, they're  
6 -- they're tracing compounds to go through the body.

7 Q Okay.

8 A But the -- the reality is, if you have a food or  
9 drug or a natural health product, that's where my  
10 expertise is. I don't want to claim any expertise  
11 within biologics or radiopharmaceuticals.

12 Q Okay.

13 A Okay. That's -- that's out of my --

14 Q Okay.

15 A I can't claim I'm an expert on those.

16 Q Now, in the area of foods, drugs and natural health  
17 products, are you aware of another consultant such  
18 as yourself that does those three?

19 A No, and I'm not aware of anyone in Canada that --  
20 whether it be within Health Canada or outside of  
21 Health Canada that can do the same quality of work  
22 on those three that I can. In other words, if you  
23 put a product in front of anybody in Canada and say  
24 that's a food, a natural health product or a drug or  
25 a prescription drug, I don't know of anybody with  
26 the same expertise that I have in that area.

27 Q Okay. Now, you have also done some teaching, other

1 than the Natural Institute of Health, for the  
2 British Columbia Institute of Technology --

3 A That's correct.

4 Q -- for the years 2002, 2003 and 2004. You basically  
5 taught students on doing research and development  
6 work?

7 A That's correct.

8 Q Okay. And now that was in a project that was called  
9 Directed Studies.

10 A That's correct.

11 Q And basically these students would work through  
12 projects that you would present as options for them  
13 to work through?

14 A That's correct.

15 Q And so that would involve basically research and  
16 development on drug products?

17 A That's right. I would say that involved research  
18 and development more than anything on natural health  
19 products.

20 Q Okay. Now, you've also been involved in some  
21 committees in the regulatory context.

22 A That's correct.

23 Q In 1998, the Therapeutic Products Directorate  
24 approached you --

25 A Yes.

26 Q -- and asked you to form a liaison committee.

27 A That's correct.

1 Q Can you explain for me what that entailed?

2 A What happened is I met with the director of western  
3 region and he had asked me to form a liaison  
4 committee, choose some members of the industry in  
5 order to meet with them on a regular basis in order  
6 to go through some of the regulation that was being  
7 proposed by Ottawa and give feedback.

8 Q Okay.

9 A So, in other words, at the time what was being  
10 proposed is that Ottawa comes up with the  
11 regulations. Instead of them blindly trying to  
12 impose it on us, what they would do is they'd meet  
13 with us regarding it and say, Hey look, is this  
14 feasible, is it possible, and we'd work with them  
15 side by side in dealing with Ottawa. That was what  
16 was being proposed at the time.

17 Q Okay. And it was Health Canada that approached you  
18 and asked you to put that committee together?

19 A That's correct.

20 Q And then also there's --

21 THE COURT: Excuse me. What were the  
22 regulations -- what were the proposed regulations  
23 for?

24 A The proposed regulations were for drugs at that time  
25 and also foods. The drugs at that time I would say  
26 primarily involved natural health products and foods  
27 or healthy foods.

1 THE COURT: What was Health Canada working  
2 towards at this time? Was this the development of  
3 the Natural Health Products Directorate?

4 A Yeah. Well, at the time they were working on  
5 options. In other words, they at the time didn't  
6 really know what to do with these products and so  
7 one of the things they were trying to get from  
8 industry was some options or a workable format they  
9 could even present to Ottawa in order to -- to  
10 develop something like the Natural Health Product  
11 Directorate, some sort of workable format.

12 THE COURT: Thank you.

13 MR. BUCKLEY: Okay.

14 Q MR. BUCKLEY: And then also there's an  
15 industry organization called the Canadian Health  
16 Food Association.

17 A That's right, yeah.

18 Q And it's basically -- it's got members that are  
19 manufacturers, health food stores, it's a wide  
20 organization as far as membership?

21 A Yeah.

22 Q Okay. But they from time to time have regulatory  
23 committees that members can participate in?

24 A That's correct.

25 Q And you have over the years participated in various  
26 regulatory committees with that organization?

27 A Yeah, I have. I have represented companies before

1 on the committees, yeah.

2 MR. BUCKLEY: Okay. Your Honour, for the  
3 purposes of the voir dire, those are my questions.  
4 So, Mr. Dales, my friend may have some questions  
5 concerning your qualifications.

6 A Sure. I should say go ahead, sorry.

7 THE COURT: Mr. Brown.

8 MR. BROWN: Just a couple questions --

9 THE COURT: Questions in the voir dire?

10 MR. BROWN: Yes. And if I might just have  
11 a couple questions, sir.

12

13 \*Mr. Brown Cross-examines the Witness (Voir Dire) (Qual)

14

15 Q MR. BROWN: Mr. Dales, just for my  
16 clarification. As I understand it, you worked  
17 towards a bachelor of science degree but did not  
18 complete it; is that correct?

19 A That's correct.

20 Q And so whatever experience or whatever knowledge, I  
21 should say, you have is as a result, as you say, of  
22 your experience; is that correct?

23 A The -- the reality is I do have a strong university  
24 base in chemistry. The one -- in other words,  
25 within the chemistry program I've fulfilled all  
26 chemistry requirements. So, in other words, within  
27 that program the -- the only course I had left is an

1 option course. So, in other words, I haven't  
2 fulfilled the requirement of 20th Century literature  
3 or fulfilled the requirement of astronomy or  
4 fulfilled the requirement of other options, however,  
5 I've fulfilled all the chemistry requirements of  
6 that degree.

7 Q You chose, for whatever reason, not to complete the  
8 --

9 A The -- the reason I cho -- the reason that I have  
10 not completed it --

11 Q Mm-hm.

12 A -- is because of the fact that I've had a tremendous  
13 amount of work in this area and what happens is  
14 within this area I don't want to turn down the work  
15 in the fact that the -- my qualifications are a lot  
16 stronger from doing work in the area than taking the  
17 astronomy course. In other words, when companies  
18 approach me, they -- they don't even ask if I have a  
19 degree. What they say is, Do you know the *Food and*  
20 *Drug Act*, can you help us fill out an application,  
21 have you filled out a Natural Health Product  
22 application before --

23 Q Mm-hm.

24 A -- can we send -- can we see your brochure --

25 Q So what --

26 A -- have you filled out DIN applications before.  
27 That's what they ask me. They -- they don't

1           actually ask me that.  If the -- last credit, that  
2           degree, if I could take a *Food and Drug Act* course  
3           and that was the only thing lacking on that, I would  
4           say that that would -- that would be meaningful in  
5           that, however, there's no *Food and Drug Act* course  
6           you can take.  You can only learn the stuff through  
7           -- through working on it.

8        Q     All right.  And when you began working at it, for  
9           example you're working at a company called Flora and  
10          I think you said you were managing the pharmacy at  
11          the time; correct?

12       A     The -- the situation at -- at Finlandia Pharmacy  
13          where I was --

14       Q     Mm-hm.  Right.

15       A     -- I was managing the store at the time.  I was --  
16          within the pharmacy section of a pharmacy, only a  
17          pharmacist can manage that.

18       Q     Okay.

19       A     Okay.  I don't know if that's Alberta law, but that  
20          is BC law.  So I can't say that I was managing that  
21          pharmacy section.

22       Q     Right.

23       A     I can say I was overseeing the store and was  
24          managing the store as a whole.

25       Q     Mm-hm.  And so a pharmacist would have been in  
26          charge of all of the things related to the pharmacy  
27          itself?

1 A Well, let's put it this way, they overlook that  
2 within the pharmacy itself. In other words, when a  
3 prescription is handed out, when a prescription  
4 itself is handed out, the pharmacist is responsible  
5 for that. However, for other information for the  
6 store for over the counter products, a pharmacist --  
7 you know, generally their training is not in the  
8 area of natural health products or that sort of  
9 thing so they -- they would not be looking after  
10 that section.

11 Q So what I'm trying to get clarified, though, is that  
12 the training that you have indicated that you have  
13 and the expertise that you say that you have has not  
14 -- has never been subject to testing, if I can put  
15 it that way. Nobody has ever provided you with  
16 information and said, Do you understand how this  
17 works?

18 A So I'm just trying to clarify here. When I send out  
19 an invoice to a company, as I do regularly, that --  
20 that's not subject to testing? In other words, the  
21 companies I deal with regularly, if I don't provide  
22 a service --

23 Q Mm-hm.

24 A -- they don't provide -- they don't pay an invoice.  
25 I mean that's the way it works for them.

26 Q Sure.

27 A So, when you say it's never been subject to testing,

1 I don't agree at all. I mean it's subject to  
2 testing all the time. If I can't provide a service  
3 to my customers, then there's no way that they're  
4 going to pay the bill. So I would disagree totally.  
5 I think it's subject to testing all the time.

6 And, furthermore, what -- there -- there is --  
7 what's imperative to mention is there is no *Food and*  
8 *Drug Act* course you can take to learn the *Food and*  
9 *Drug Act*. So, when you say it's not subject to  
10 testing, what course would you recommend that I take  
11 in the *Food and Drug Act* in order to be tested?

12 Q Have you ever been sworn in as an expert in court  
13 before?

14 A No, I haven't. However, the -- the situation is  
15 that I haven't been part of a prosecution trial  
16 either.

17 Q This is your first experience in that format?

18 A Yes.

19 Q And so the first portion of your work experience  
20 from about 1981 through 1988, would I be correct --  
21 if I understood it correctly, that's essentially  
22 genetic engineering kind of stuff; is that it?

23 A No.

24 Q That's not right?

25 A That's not true.

26 Q All right.

27 A What I -- what I was more involved with was

1 selective breeding --

2 Q Okay.

3 A -- if you're -- if you're speaking of the work at  
4 Agriculture Canada.

5 Q Right.

6 A There's a big difference in genetic engineer and  
7 selective breeding.

8 Q You're not taking a gene from one product and  
9 putting it another, you're just cross-breeding the  
10 same thing?

11 A That's right. I mean it's much safer that way in  
12 the fact that all we're doing is what nature would  
13 do normally. What we're doing is we're trying to  
14 find a species that is more resistant, that has  
15 higher yields and more resistance to pests and also  
16 rust.

17 Q Sure. And let me be clear, I'm not trying to be  
18 offensive by using the term "genetic engineering", I  
19 was just trying to clarify in my mind what was --  
20 what you were --

21 A You know, I -- I'm not offended at all. I'm just  
22 clarifying the situation as I'm obligated to under  
23 oath.

24 Q Right.

25 A So I have no problem with you saying that. Go  
26 ahead.

27 Q And so it was approximately -- you left -- if I

1 understood correctly, you left Finlandia in 1993; is  
2 that correct?

3 A Approximately, yeah.

4 Q And it was that time -- at that point where you  
5 started working with Flora?

6 A Yes.

7 Q And that's the time when you really start to get  
8 into this -- you're -- you get involved in working  
9 in a regulatory compliance scheme?

10 A Well, keep in mind when you're working at a  
11 compounding pharmacy and Finlandia is not a normal  
12 pharmacy in the fact that it doesn't carry  
13 cigarettes, it doesn't carry greeting cards or jelly  
14 beans.

15 Q Right.

16 A What it does is it carries natural health products,  
17 some food, some healthy foods, very few, and  
18 pharmaceuticals. So within the period of time at  
19 Finlandia it's true that I wasn't as involved with  
20 regulatory as with -- with Flora, as well as on my  
21 own. However, at the same time, the learning of  
22 pharmaceuticals, the learning of natural health  
23 products or at the time they were called, I guess,  
24 OTC drugs, was actually extremely high. The  
25 learning curve was extremely, extremely high there.

26 MR. BROWN: Sir, for the purposes of the  
27 voir dire, those are all the questions that I have.

1 THE COURT: I am going to take a brief  
2 adjournment. I want to look over my notes and I  
3 will look over the curriculum vitae as well.

4 All right. We will stand adjourned for about  
5 -- take 20 minutes. I will return at 20 to 11.

6 Thank you, sir. Don't discuss your evidence.

7 THE COURT CLERK: Order in court, all rise.

8 A Pardon me?

9 THE COURT: Do not discuss your evidence  
10 with anyone until I return.

11 A Okay. Sure. I apologize.

12 THE COURT CLERK: Court is adjourned until 20 to  
13 11.

14 MR. BUCKLEY: Thanks.

15 A Thank you.

16 THE COURT: Thank you.

17 (ADJOURNMENT)

18 THE COURT CLERK: Recalling Synergy Group of  
19 Canada and TrueHope Nutritional Support.

20 THE COURT: Mr. Buckley, was it your  
21 intention to introduce the curriculum vitae in  
22 evidence in the voir dire?

23 MR. BUCKLEY: Yes, I was, Your Honour.

24 MR. BROWN: No objection.

25 THE COURT: Do you want it numbered or  
26 just for identification purposes?

27 MR. BUCKLEY: It's really only relevant to

1           the voir dire, as far as that goes, so we can mark  
2           it for identification.

3       THE COURT:                   All right.  What is the next  
4           identification number, madam clerk?

5       THE COURT CLERK:            'U'.

6       THE COURT:                   All right.  The curriculum  
7           vitae for Bruce Dales will be Exhibit 'U' for  
8           identification purposes.

9

10       \*EXHIBIT 'U' For Identification - Curriculum Vitae of  
11       \*Bruce Dales

12

13       MR. BUCKLEY:                 Thank you, Your Honour.

14       THE COURT:                   All right.

15                 This has been a voir dire with regards to the  
16                 qualification of Mr. Bruce Dales as an expert  
17                 witness.  A voir dire is a trial within a trial to  
18                 determine the admissibility of evidence or to  
19                 determine the qualifications of a person as an  
20                 expert in order to permit them to provide opinion  
21                 evidence, otherwise opinion evidence would be  
22                 considered a form of hearsay and would not be  
23                 admissible.  So the only time that that opinion  
24                 evidence can be admissible and not excluded as  
25                 hearsay evidence is if the person providing it has  
26                 been qualified as an expert in a particular field or  
27                 in a particular area or to deal with a particular

1 issue. This will depend on the question, or the  
2 scope of the expertise perhaps is a better way to  
3 describe it, that a person is sought to be qualified  
4 in.

5 In the present case, Mr. Buckley seeks to have  
6 Mr. Dales qualified as an expert to give opinion  
7 evidence on the *Food and Drug Act* and the *Food and*  
8 *Drug Regulations* and the process or processes for  
9 obtaining drug identification numbers and notices of  
10 compliance and the classification of substances  
11 under the Act and Regulations. And I am not  
12 prepared to find that Mr. Dales is an expert in the  
13 *Food and Drug Act* and *Regulations* such that he can  
14 give opinion evidence on that legislation. I am not  
15 satisfied that there is a sufficient background  
16 established in the evidence presented in the voir  
17 dire basically to qualify Mr. Dales to provide legal  
18 opinions on the *Food and Drug Act* and the Food --  
19 and the *Regulations*. In that regard, the defence is  
20 seeking too broad a scope of expertise and seeking  
21 to qualify Mr. Dales to give opinion evidence in too  
22 broad a range, in my view, both in the way the  
23 expert opinion has been described and in the  
24 background.

25 I would expect, in order to qualify a person as  
26 an expert to give expert opinion evidence on the  
27 *Food and Drug Act* and the *Food and Drug Regulations*,

1 I would expect to see legal qualifications and  
2 possibly publications before I would consider a  
3 person an opinion to give -- or an expert to give  
4 opinion evidence on the law.

5 However, I have considered the second part of  
6 what the defence seeks to qualify Mr. Dales as an  
7 expert in. As I have said, I consider there is not  
8 enough background in evidence and the application is  
9 too broad with regards to the Act and Regulation,  
10 however, I have considered the second part that Mr.  
11 Buckley seeks the qualification of Mr. Dales as an  
12 expert in and that is in the process for obtaining  
13 drug identification numbers and notices of  
14 compliance and the classification of substances  
15 under the Act and Regulations.

16 I note Mr. Dales has a background in chemistry.  
17 I note in particular his employment record from '81  
18 through '93 working with various companies from  
19 Agriculture Canada to the -- working at the Faculty  
20 of Medicine at UBC, the anatomy department also in  
21 children's research and also working for a  
22 compounding pharmacy from '88 to '93 where he gained  
23 experience in the area of drugs and natural food  
24 products. In particular, in the period from 1993 to  
25 1998, Mr. Dales was at a company identified as Flora  
26 and during that period of time, on the evidence  
27 before me, he was extensively involved in regulatory

1 compliance matters involving the *Food and Drug Act*  
2 and the *Regulations* and according to his evidence he  
3 did applications for drug identification numbers  
4 during that period of time.

5 He also did some applications in the United  
6 States for that employer. Those were new drug  
7 applications and he was also involved with some drug  
8 applications for the Russian Federation.

9 In his curriculum vitae he describes on the  
10 second page his regulatory experience for a period  
11 of 12 years and I am not going to read it in in  
12 detail, but I will indicate that, according to his  
13 curriculum vitae, he had been on the front line of  
14 responding to Health Canada's regulatory  
15 requirements for over a decade. He sat on a number  
16 of committees and meetings to give feedback and  
17 input on the regulations and compliance strategies  
18 and he also indicates that he was a key industry  
19 representative responsible for putting together the  
20 Western Region Liaison Committee to give feedback  
21 and proposals on compliance strategies. And I  
22 understand his involvement in this was either  
23 initiated or invited by Health Canada.

24 He has been involved in committees and  
25 conferences dealing with the development of policies  
26 or strategies for dealing with drugs, natural food  
27 products and foods in Canada and the United States.

1           He has -- in addition to appearing before the  
2 Standing Committee on Health in Canada, he has  
3 appeared before the Canadian Health Food  
4 Organization representing companies in their  
5 submissions before that organization.

6           I will also take notice and I do take notice of  
7 the fact that since 1998 he has conducted a  
8 successful business in consulting for companies who  
9 are seeking information and access to Health Canada  
10 and also seeking drug identification numbers and  
11 various forms of acceptances, approvals or  
12 notifications required through existing federal  
13 legislation. And I do find that the fact that he  
14 continues in business in this regard is the test of  
15 real life experience as to his abilities and  
16 knowledge in that area.

17           So, having said that, I am prepared to accept  
18 Mr. Dales as an expert for the purposes of providing  
19 opinion evidence with regards to the process or  
20 processes for obtaining drug identification numbers  
21 and notices of compliance under the *Food and Drug*  
22 *Act* and *Regulations* and the classification of  
23 substances under the *Food and Drug Act* and  
24 *Regulations*.

25           And I have taken into account that Mr. Dales  
26 has not previously been recognized as an expert to  
27 give opinion evidence in any court and I have taken

1           that factor into account, however, I consider on the  
2           basis of the comments I have made, with his work  
3           experience with Flora, his involvement in the  
4           industry and his own experience as a consultant,  
5           that he is qualified to give opinion evidence in the  
6           restricted area that I have described.

7       MR. BUCKLEY:                    Thank you, Your Honour.

8       MR. BROWN:                     Thank you, sir.

9       A       Thank you, Your Honour.

10      THE COURT:                     Okay.

11      MR. BUCKLEY:                   Your Honour, I think my friend  
12           will consent to us rolling the voir dire evidence in  
13           as trial evidence.

14      MR. BROWN:                     Yes, that's agreeable, sir. I  
15           think it's appropriate to have all the evidence he  
16           gave as part of the voir dire to become an -- this  
17           morning as an expert to become part of the trial  
18           proper.

19      THE COURT:                     It is primarily background  
20           information on experience in any event.

21      MR. BROWN:                     Right. There are a couple  
22           points, sir, that I think actually are important to  
23           the trial proper so I have no objection, clearly, to  
24           having the evidence become part --

25      MR. BUCKLEY:                   It's clearly my preference for  
26           it to be rolled in.

27      THE COURT:                     All right. Well, that is

1 fine. Rather than pick and choose, it is just -- or  
2 select parts and get into that discussion, with the  
3 agreement of the Crown then, the evidence on the  
4 voir dire will become evidence in the trial proper.  
5 And in that regard, the -- I will give the  
6 curriculum vitae an identification number, the next  
7 consecutive identification number in the trial. So  
8 the evidence in the voir dire on agreement becomes  
9 evidence as part of the trial and Exhibit 'U' will  
10 now become Exhibit - what is the number, madam  
11 clerk?

12 THE COURT CLERK: Sixty-one.

13 THE COURT: Exhibit 61.

14

15 \*EXHIBIT 61 - Curriculum Vitae of Bruce Dales

16 \*(Formerly Exhibit 'U' for Identification)

17

18 MR. BUCKLEY: Thank you, Your Honour.

19 THE COURT: All right. Mr. Buckley, are  
20 you ready to proceed?

21 MR. BUCKLEY: Yes, I am. Thank you, Your  
22 Honour.

23 THE COURT: Go ahead please.

24

25 \*BRUCE DALES, Previously Sworn, Examined by Mr. Buckley

26

27 MR. BUCKLEY: Madam clerk, could we show

1 this witness Exhibit 7 in these proceedings.

2 A Thank you.

3 Q MR. BUCKLEY: And, Mr. Dales, there's -- I  
4 think there's another bottle in there too. I'm  
5 going to ask you to take a minute and look at both  
6 of those.

7 Now, Mr. Dales, you've looked at Exhibit 7,  
8 which is two bottles of a product labelled  
9 EMPowerplus. In 2003, if those were placed before  
10 you, how would you have classified that product?

11 A In 2003, the classification would have been very,  
12 very difficult. The reason being is that there's  
13 two -- I mean it's difficult because more or less  
14 the only way I could see -- what you would -- if you  
15 applied for -- as per the labelling standard,  
16 according to Health Canada's labelling standard on  
17 this product, they would consider it a new drug.  
18 So, in other words, what I would advise a company at  
19 that time is, Yeah, you can apply as per the  
20 labelling standard, however there's certain  
21 ingredients in here that Health Canada would  
22 automatically put into a new drug regulation. So  
23 the likelihood of actually, if we filled the forms  
24 out as per the labelling standard to get a DIN on  
25 this, I would rate as extraordinarily low and they  
26 would come back and they would claim the fact that  
27 it would be a new drug, I believe.

1 Q What are the ingredients that would cause it to be a  
2 new drug?

3 A The ingredients I see offhand here that would  
4 definitely class it, ironically enough grape seed at  
5 the time was allowed on food -- as a food on the  
6 market, however for some reason, again, you know, I  
7 don't mean to be critical of Health Canada again, in  
8 the fact it's easier to criticize some  
9 (INDISCERNIBLE) job than do better themselves but  
10 for some reason if you had a vitamin-mineral product  
11 together with grape seed, what would happen is they  
12 didn't allow it. They referred to it as a new drug.

13 Also, within there is boron so they would  
14 consider that a new drug as well. And I believe at  
15 the time as well they would consider geranium a new  
16 drug. And also at the time as well you have a  
17 situation, ginkgo biloba in the product and they  
18 were having a similar situation with ginkgo biloba.  
19 It was allowed at the time to be sold as a food, but  
20 for some reason, as soon as you combined it with  
21 vitamins and minerals, they would consider it a new  
22 drug.

23 So on a product like this, I believe that it  
24 would be very high probability -- I can't see Health  
25 Canada approving a product like this through --  
26 through their labelling standard. I never saw in  
27 2003, in fact I saw the office had continual

1 problems with submitting products like this. They  
2 would clearly put it into a new drug category.

3 Q Okay. So 2003, would it be fair to say your opinion  
4 is that would be classed as a new drug?

5 A Yeah. The other thing that may class it as a new  
6 drug would be a claim associated with it. On a  
7 vitamin-mineral product basically they were -- very  
8 general claims allowed on them. You know, health,  
9 Vitamin 'C' might have maintained good teeth or  
10 something, but on something like -- something like  
11 bipolar claim, again they wouldn't allow that. They  
12 would consider that a new drug as well because of  
13 that. So there's a number of things right away I  
14 can see that it would clearly classify as a new drug  
15 --

16 Q Okay.

17 A -- according to their opinion at the time.

18 Q Now, in 2003 if you're a new drug, how do you go  
19 about getting a drug identification number?

20 A Well, the new drug regulations at the time, as they  
21 still are, they're targeted and they're -- they're  
22 targeted to fit the pharmaceutical industry. So, in  
23 other words, there's -- I think as I mentioned  
24 earlier there's two different ways that the  
25 pharmaceutical industry identifies active compounds  
26 to -- to patent or to make analogs of in the patent  
27 in order to put through a new drug submission.

1           One of the first things in any new drug  
2 submission that's very, very important would be some  
3 sort of patentability for the product because the  
4 problem with, of course, a new drug submission is  
5 the fact that -- the different testing involved and  
6 the different fees involved for the submission are  
7 very, very substantial. So what happens is that you  
8 have to have that patentability in order to find a  
9 way to recover costs.

10           Keep in mind there's drugs available in the US  
11 that aren't available here. I mean some of them  
12 cost \$60,000 per year US to purchase. They have to  
13 have patent protection in order to -- in order to  
14 get that sort of product. You're not going to have  
15 a generic on the market.

16       Q     Okay. But when you have a new drug, do you apply  
17 for a drug identification number?

18       A     Well, what happens is that if you have a new drug,  
19 you put an application together to get a notice of  
20 compliance to -- to get a drug number. So, in other  
21 words, it's called a new drug, you put an  
22 application together, a new drug submission it's  
23 called in order to get a notice of compliance in  
24 order to sell the product.

25       Q     Okay. And I just want the Court to understand. So  
26 you don't apply for a drug identification number for  
27 a new drug?

1 A You put a new drug submission in, eventually you get  
2 a notice of compliance and, after you get a notice  
3 of compliance, you go through a couple of different  
4 steps and then they give you a DIN number.

5 Q Okay. So you'd have to go through this to get a  
6 notice of compliance first?

7 A That's correct.

8 Q And you told us, to do that, you go through the new  
9 drug submission process?

10 A That's correct. If it's a new drug, yes.

11 Q Okay. So how then do you go through this new drug  
12 submission process to get a notice of compliance?

13 A Well, again, if you're a pharmaceutical company, the  
14 first step you do is you find the compound that you  
15 want to work on and you patent the compound. That's  
16 -- that's the first step. If you cannot patent your  
17 compound or you don't have intellectual property --  
18 very, very strong intellectual property protection  
19 on your compound, going through a new drug  
20 submission I think it's, for lack of a better term,  
21 suicide because you're putting a lot of money out  
22 but you're not getting the likelihood of being -- to  
23 get the money back is very, very low.

24 Q Okay. But what's the process? So we'll just ignore  
25 whether a substance is patentable or not. What does  
26 the company actually have to do to go through this  
27 new drug submission process to get a notice of

1 compliance?

2 A Well, the first step that they would have to do --  
3 we're going to go under the assumption that they  
4 have a patentable product, okay, if it has strong  
5 patent protection. If it has strong patent  
6 protection, the first thing would be you would need  
7 to do is you would need some sort of evidence of  
8 consistent biochemistry of the product.

9 And keep in mind, to get consistent  
10 biochemistry, if you have an isolated compound, one  
11 compound such as for example acetylsalicylic acid,  
12 having consistent biochemistry is much easier than  
13 having a huge amount of compounds within the same  
14 product as well as that having -- having a number of  
15 herbs within the same product.

16 If you have a huge amount of compounds within  
17 the same product, the vitamins is the main thing  
18 that you would need to worry about because, for the  
19 most part, many of these vitamins are single entity.  
20 You would have to come up with some sort of  
21 reasonable guidelines for -- manufacturing  
22 guidelines. So, in other words, for example, the  
23 labelling standard at the time of Health Canada had  
24 a certain window. For example it was a window of I  
25 believe 135 to 90 percent on a lot of the compounds.

26 Q What does that mean, because we --

27 A Well, that means when you manufacture the compound

1 and when you're testing it, whenever you test it  
2 during the entire shelf life of the compound as per  
3 label claim, for example, if the label claim is 100  
4 milligrams, the maximum it tests for at the  
5 beginning of the shelf life is 135 milligrams. The  
6 minimum at the end of the shelf life is 90  
7 milligrams.

8 My understanding with TrueHope was --

9 Q Okay. And I just want you to go through the general  
10 --

11 A Okay. Sure.

12 Q -- the general process.

13 A I'll go through the general process, but I think  
14 that it's important to realize that you have to have  
15 manufacturing standards that are reasonable to meet.  
16 Now, on the vitamins, if they could have had a  
17 manufac -- if there's a manufacturing standard  
18 that's reasonable to meet, then for most of them  
19 it's not so difficult. On the herbs it's going to  
20 be more difficult because what you're going to have  
21 to do is you're going to have to have some sort of  
22 standard HPLC or something to present to Health  
23 Canada that they're going to find reasonable.

24 And keep in mind, good or bad - I'm not saying  
25 it's good or bad - but keep in mind in the case of  
26 Health Canada that they do rely a lot on cost  
27 recovery money. So, if you're -- vitamins, I don't

1 know of any vitamin product that's ever gone through  
2 a new drug submission so this is going to be  
3 something very, very new to them. If you say, Hey  
4 look, we want to put out a new drug submission, get  
5 it for this and we want to know specifically -- we  
6 want you to take a look at it and give us an idea of  
7 a manufacturing standard that's reasonable for  
8 something like citrus bioflavonoids or grape seed.  
9 You know, keep in mind that under cost recovery,  
10 according to the latest document I read, Marilyn  
11 Schwartz claims they get \$16 million in cost  
12 recovery money so, if you have a pharmaceutical  
13 company that's paid say a quarter of a million  
14 dollars --

15 Q Okay. And I just --

16 A -- (INDISCERNIBLE) --

17 Q I just want us to understand the process though. Is  
18 -- because some of this is new to us.

19 A Okay.

20 Q So for a vitamin or something, you run a lab test  
21 and it shows a certain level of vitamins.

22 A Yeah.

23 Q And you think that that's probably doable in a  
24 product like this; correct?

25 A Let's put it this way, at least there's one compound  
26 there. At least you're only working with one  
27 compound in the vitamins. On product like this it

1           wasn't doable at the time because the manufacturing  
2           standards set out for Health Canada on this product  
3           -- I don't think it was doable anyway at time this  
4           because the manufacturing standards set out on this  
5           product, from my information, was 90 to 110 percent  
6           for the vitamins.

7           Now, I'm not sure why Health Canada chose that  
8           standard because the *Food and Drug Act* for vitamins  
9           gives a much wider window. And labelling standard,  
10          interestingly enough, gives a wider window than even  
11          the *Food and Drug Act* and *Regulations*. So they  
12          chose -- I don't think it -- I think it would be  
13          very difficult to meet because everybody else is --  
14          that has -- going by the labelling standard, has a  
15          window this big. Okay. As soon as you narrow the  
16          window down, the analyzes become harder and harder  
17          to meet within a more and more narrow window.  
18          That's the reason the window is wide enough as it  
19          is, so that companies can have a chance to meet the  
20          window.

21        Q     Okay. And I just -- I want to put that in plain  
22           English and tell me if I'm right or wrong. When you  
23           talk about a labelling standard, that's like a  
24           policy monograph?

25        A     Yeah, it's a policy monograph. That's right.

26        Q     Okay. That lists certain vitamins and minerals that  
27           you can put in a product and nothing else?

1 A Yeah. That's correct.

2 Q And so for that product monograph that you refer to  
3 as the labelling standard, there's a pretty wide  
4 margin. So, if a company was to analyze it in year  
5 1 and analyze it in year 2, you're saying it was --  
6 that was doable, the margin of amount of a vitamin  
7 or mineral in there that a lab would have to see was  
8 wide --

9 A Vitamins in particular we should refer to because  
10 vitamins are -- a mineral shouldn't go anywhere,  
11 right, unless you're having a nuclear reaction in  
12 the product, which hopefully isn't happening, but  
13 the mineral shouldn't go anywhere. It should still  
14 be there. In the case of a vitamin product,  
15 unfortunately they do go down after time. And if  
16 you have a huge amount of products like this, the  
17 other problem is that it's -- it gets very difficult  
18 to get an accurate -- more and more difficult to get  
19 an accurate measure of the vitamin in the product.

20 Q Okay. So just so we understand. Let's say it was a  
21 single Vitamin 'A' product, it would be easy for a  
22 lab to analyze and figure out how much Vitamin 'A'  
23 is in it?

24 A Certainly easier, yeah.

25 Q Okay. But if it's a multi ingredient product, it  
26 becomes more difficult for a lab?

27 A That's correct.

1 Q Okay. So you're saying in a product with this many  
2 ingredients, it could be quite difficult?

3 A Well, in the case of the labelling standard window,  
4 yeah, I think it's doable. In the case of the  
5 window that was presented of 90 to 110 percent, I  
6 don't think it was doable.

7 Q Okay. Well, is --

8 A I don't think there's a lab that would do that.

9 Q Is that the standard in the Regulations?

10 A No, it's not.

11 Q Okay. Well, what's the standard in -- I just want  
12 to worry about what's in the Regulations.

13 A What's in the Regulations, I have actually with me.

14 This is what's in the Regulations for vitamins,  
15 right here.

16 Q Okay. So what -- but just -- the amounts that are  
17 in the Regulations for vitamins --

18 A Yeah.

19 Q -- would that have been doable for a product like  
20 this as far as --

21 A I think there's -- they'd stand a fighting chance,  
22 yeah.

23 Q Okay. So that's -- I just want to stick to --

24 A Sure.

25 Q -- what's in the Regulations.

26 A Yeah.

27 Q Okay?

1 A I think we stand a fighting chance with what's in  
2 there.

3 Q Now, but for the botanicals you are saying that's a  
4 bit different situation?

5 A Well, yeah, because what happens is that it's a  
6 negotiation thing with Health Canada. In other  
7 words, what I would -- there's no real standard set  
8 by Health Canada on something like grape seed  
9 extract of what is the biochemistry acceptable. So,  
10 in other words, if I see an HPLC peak like this, or  
11 just a standard amount of polyphenyl in there, I  
12 might say that's great. Okay. They're perfect. We  
13 don't need anything else. But Health Canada may  
14 turn around and say, Hey look, we don't like that.  
15 Your HPLC peak and your polyphenyl levels aren't  
16 enough. We need -- you know, we need some other  
17 form of analysis as well.

18 So it's not a standard thing put together by  
19 Health Canada for herbs. It's -- it's a difficult  
20 situation. It would take a lot of back and forth  
21 feedback in order to have Health Canada agree to a  
22 manufacturing situation on herbal compounds. And,  
23 you know, the reality is Health Canada isn't --  
24 they're not sitting by the phone hoping that a  
25 company phones or sends in information. They're not  
26 sitting there not doing anything all day, or at  
27 least I hope they're not. They have a lot of

1 information to go through and they have cost  
2 recovery so, if you have this pile of information --  
3 again, if you have this pile of information from  
4 Hoff Morrosh (phonetic), a drug that's paid a  
5 quarter of a million dollars, or this pile of  
6 information from a company that hasn't paid  
7 anything, they're just trying to get manufacturing  
8 standards straight, unfortunately the company that's  
9 just trying to get manufacturing information  
10 straight, that hasn't paid a fee, I don't think  
11 they're going to get priority.

12 MR. BROWN: Well, sir, I'm going to object  
13 to that evidence.

14 MR. BUCKLEY: Okay. And that's fine. I  
15 don't need that evidence.

16 MR. BROWN: Well ...

17 THE COURT: I will disregard it. Go  
18 ahead.

19 MR. BROWN: Yes, sir.

20 Q MR. BUCKLEY: And I just want to focus you,  
21 Mr. Dales, because the first step is biochemistry --

22 A That's true.

23 Q -- in the new drug submission process and you've  
24 explained for us that there are some set tolerances  
25 for vitamins --

26 A That's correct.

27 Q -- that may -- could be doable in a case like this,

1 but that because there's herbal products there's not  
2 basically a set way of Health Canada saying, Oh yes,  
3 well we agree you've shown us that the product  
4 contains what you say it contains. Would that be  
5 fair to say?

6 A That's correct. Yeah.

7 Q So the first step there is you have to negotiate  
8 with Health Canada for an agreed standard before you  
9 go into your testing?

10 A That's correct. You -- you would have to -- in the  
11 case of this, you would need to renegotiate the  
12 standards as per the regs. You would have to  
13 somehow convince them the standard within the  
14 regulations is what they need to agree to. And the  
15 second step, you would have to negotiate, as you've  
16 said, regarding the herbal compounds, they have some  
17 sort of biochemistry that would be acceptable to  
18 them.

19 Q Okay. So taking grape seed as an extract, there are  
20 just many compounds in there and so there would be  
21 an agreement, Okay, we're going to test and look for  
22 this marker compound. That's how, you know, the  
23 company and Health Canada will both satisfy  
24 themselves that a certain quantity is in there? Is  
25 that what you're trying to say?

26 A Yeah. Well, certainly when I was -- when I was  
27 hired as an expert by the NIH, that's what we had

1 determined we had to do with a herbal compound.  
2 What you do is you have a mark, you'd have a  
3 standard HPLC and you'd also have a certain level of  
4 it in there. So that was what we had determined  
5 would be the most rational course of action.  
6 However, I can't speak for Health Canada --

7 Q Okay.

8 A -- they may or may not accept that. They may want  
9 something more, they may want something less.

10 Q But just your point is the first thing, if you were  
11 trying to walk through the process with this  
12 product, is negotiate an agreed standard to measure  
13 the biochemistry of the product?

14 A That's correct.

15 Q Okay. So that's step 1. And then is -- in this  
16 biochemistry then you actually have to test the  
17 product to the agreed standard; is that right?

18 A That's right. You have to indicate -- somehow  
19 indicate that you have consistent biochemistry with  
20 the compound. And when I say consistent  
21 biochemistry, over the life cycle of a product, in  
22 other words if it's two years, you would have to do  
23 a shelf life study, a real time shelf life study  
24 over two years to prove that that -- that compound  
25 meets that standard.

26 Q Okay. So just so that we're clear. So, once you  
27 have the standards you analyze the product; correct?

1 A Mm-hm.

2 Q This is being tape recorded so you can't say --

3 A Yes. Yes, that's correct.

4 Q And then --

5 A I apologize.

6 Q And then you basically, for the shelf life of the  
7 product, analyze it after that shelf life has  
8 passed?

9 A Yeah. You would analyze it during the shelf life to  
10 -- to see a curve. In other words, you would  
11 analyze all the compounds in there and watch to see  
12 if they dropped within there. And hopefully they  
13 wouldn't drop to the point where you would have to  
14 start over again if you had a volatile compound in  
15 there or something. I mean hopefully it would all  
16 work out.

17 Q Okay. And so when you talk about kind of windows,  
18 you're talking about let's say for Vitamin 'A' it  
19 has to be -- point 'A' and point 'B' for the entire  
20 shelf life?

21 A That's correct.

22 Q So it can start a shelf life at the high part of  
23 that window and end the shelf life at the low part  
24 of the window, but it has to be within a set limit?

25 A That's correct. And you need analytical evidence to  
26 prove that.

27 Q Okay. Now, so that's step 1, the biochemistry.

1 A Yeah.

2 Q What is step 2 then? So you've satisfied the  
3 biochemistry, which you've told us involves waiting  
4 for the shelf life. What's step 2?

5 A Assuming you look at the shelf life over several  
6 years and everything works out perfect, the next  
7 step that you would need to do in a new drug  
8 application, the general step would be toxicology.  
9 And toxicology generally involves two forms of lab  
10 animals and it involves acute and chronic  
11 toxicology.

12 Q Okay. What is acute toxicology?

13 A Acute toxicology is over a very, very short time how  
14 much of the compound it takes to kill half of the  
15 species of the animal and how much of the compound  
16 it takes to kill 90 percent of the species of the  
17 animal.

18 Q Okay. And you use two different types of animals  
19 for it?

20 A That's correct, yeah.

21 Q Okay. And what's chronic toxicology?

22 A Chronic toxicology is over a long term period of  
23 time, how much of the compound it would take, again,  
24 to kill 50 percent and 90 percent of the animal.

25 Q Okay. Do you need approval to do this toxicology  
26 work?

27 A It would be very prudent to get approval from Health

1 Canada or some sort of written explanation from them  
2 why you don't need approval. You would need  
3 something from Health Canada. I mean I wouldn't go  
4 ahead with any sort of toxicology experiments  
5 without notifying the fact that you -- you were  
6 doing them.

7 Q Okay. So that's step 2 and then what's the next  
8 step that you would take in going through this new  
9 drug submission process?

10 A The third step is generally pharmacology, which I  
11 guess a big -- is a big word to -- for saying  
12 efficacy. Again, generally you would use two animal  
13 species. Keep in mind that within a new drug  
14 submission I don't know anybody at all in the world  
15 that is qualified to do a new drug submission all  
16 themselves, period. Okay. So, in other words, when  
17 I say that, for the toxicology you would need to  
18 consult a toxicologist, somebody with a PhD in  
19 toxicology to figure out the animal species, to do  
20 the curves and actually -- actually do the  
21 experiment on the toxicology.

22 The pharmacology is the same thing. You need a  
23 pharmacologist to pick out an animal model that  
24 would be -- it would be induced with whatever --  
25 whatever would be -- indicate some sort of similar  
26 condition that you would want to treat in humans.

27 So, if you wanted to induce depression in

1 something, you may actually even -- you may actually  
2 give it, I don't know, a drug or something to induce  
3 --

4 Q Maybe pick an easy example for us. So let's say you  
5 were studying a drug that would reduce pain. So  
6 somebody has to construct an animal model to see if  
7 the drug reduces pain in the animals; is that ...

8 A Well, one of the -- one of the models for that,  
9 actually, that was used a number of years ago that's  
10 still sometimes used is, believe it or not, the hot  
11 plate test. It may not be a pleasant test, but  
12 basically what that takes is what they would do is  
13 they would put the animal on a hot plate without the  
14 drug and see how long it takes him to react to the  
15 heat, and with the drug to see how it would react to  
16 the heat.

17 Q Okay. So just -- so the pharmacology, somebody has  
18 to come up with a model to see if it works on  
19 animals; is that ...

20 A That's right. And within the pharmacology generally  
21 what would happen as well is they would do some sort  
22 of kinetics and they would want to find the ideal  
23 dose for the rat. So, in other words, you know, if  
24 you're talking about a hot plate test, you know, you  
25 would give a certain amount to the rat to see what  
26 -- when it performed best, a bit more, a bit more,  
27 just so you can get an ideal amount for that rat, to

1 figure out what's the ideal amount for him to take.

2 Q Okay. And you call that kinetics?

3 A Yeah.

4 Q Is this the type of thing that you would seek  
5 approval for also?

6 A Definitely. It would be a very good idea to notify  
7 Health Canada for approval for that.

8 Q Okay. Now, when the pharmacology testing is done,  
9 what would be the next step in seeking a notice of  
10 compliance for a new drug?

11 A Well, what happens is that, assuming that you make  
12 it all through those steps, generally what you would  
13 do is you would go into a phase 1 clinical trial  
14 and, again, you would need Health Canada approval  
15 for that, or I would highly recommend to get Health  
16 Canada approval for that. As well as that, you  
17 obviously would need Institutional Review Board  
18 approval for that, a new hospital or anything, you  
19 would have that take part in.

20 And obviously, again, you would have trained  
21 experts look at the toxicology, you know, based on  
22 the animal weight. You have trained experts at the  
23 same time look at the pharmacology based on the  
24 animal weight. And then through the human trial try  
25 and come out with some sort of idea of an ideal dose  
26 of the compound to take.

27 Q Okay. And you've caused -- called this phase 1 and

1 that's really a toxicology study?

2 A Yeah. Primarily in phase 1 usually -- I mean these  
3 com -- you know, we're going through a very general  
4 phase to this, but phase 1 generally is toxicology  
5 usually.

6 Q Okay.

7 A It's usually looking at just the safety of the  
8 product.

9 Q Now, so you say phase 1. What's the next phase  
10 then?

11 A Phase 2. Phase 2, again, Health Canada approval,  
12 Institution Review approval would be needed and that  
13 would be some sort of efficacy experiments on the  
14 product.

15 And, you know, again you would have experts  
16 look at the -- the other information from the  
17 toxicology of animals, the pharmacology of animals,  
18 as well as the phase 1 toxicology just to get an  
19 idea how to set up the experiment properly to go  
20 through to phase 2.

21 Q Okay. And is there another phase then to this stage  
22 of --

23 A Yeah. Usually the -- the final phase is called  
24 phase 3. Usually that entails double blind clinical  
25 trials. It involves obviously human species. You  
26 would, again, want Health Canada approval for that,  
27 as well as Institutional Review Board and double

1 blind clinical trials. And based on what I've seen  
2 normally, you have to do two of them to a 95  
3 percentile level in order to submit.

4 Q What do you mean, 95 percentile level?

5 A In other words, there -- within statistical you'd  
6 have a statistical person look at all of your  
7 sampling and say, Okay, based on my statistical  
8 projections there's 95 percent chance that this  
9 product works twice. And that's generally looked at  
10 as sufficient that it wasn't just going to Vegas on  
11 the product. In other words, it wasn't a matter of  
12 luck. It was a matter of the product really does  
13 work.

14 Q Okay. Now, you don't mean the effect size of 95  
15 percent?

16 A No. I -- what I mean -- what I mean is basically,  
17 again, a statistician looks at the product and they  
18 just, you know, through all their statistics and  
19 that and there's, again, a new drug -- a new drug  
20 application takes a multitude of different people,  
21 including a medical statistician, and they would  
22 determine whether or not it was statistically  
23 significant.

24 Q Okay. But you mean a 95 percent chance that this  
25 didn't just occur randomly --

26 A That's correct. Yeah.

27 Q -- that it was actually the drug --

1 A That's right.

2 Q -- or the substance being testing?

3 A That's correct. Yeah.

4 Q So --

5 A Yeah. I'm -- it doesn't mean the fact that it -- it  
6 cures 95 percent of the patients, okay. What it  
7 means is the drug compared to the placebo, if the  
8 placebo only cures 40 percent and the drug cures 70  
9 percent, you can still have a 95 percent likelihood,  
10 if the sample size is high enough, that the drug  
11 works.

12 Q That wasn't a chance.

13 A That's right.

14 Q Okay.

15 A Yeah.

16 Q So that's what you're talking about?

17 A That's correct.

18 Q Okay. So now where for these phase 1, phase 2,  
19 phase 3 do the humans that are participating in the  
20 trials come from?

21 A That depends where the trials are norm -- are done.  
22 A lot of the time they are done at hospitals and of  
23 course part of the problem is getting the select  
24 group of patients you want, particularly for the --  
25 some of the lower phases of the trial because what  
26 happens is that, as per the Institution Review  
27 Board, you don't -- the argument has to be that

1           you're not putting a patient in trouble, okay. So,  
2           in other words, if -- if the patient is going to be  
3           in trouble or -- in some way or if the patient's at  
4           risk of taking the medicine, then you know they're  
5           -- they're not going to want to put them in the  
6           middle of a trial. The trials are set up,  
7           particularly the low levels ones, to -- to have low  
8           risk to the patients. And a lot of the time that  
9           can be very, very difficult on the trial because  
10          sometimes the patient sample size isn't big enough.  
11          You have trouble recruiting patients to be part of  
12          the trial. It can be a problem.

13        Q     Okay. So these things don't necessarily just fall  
14              into place?

15        A     No. No. You know, what we've done here is we've  
16              really, really simplified the process involved.  
17              It's -- it's a very, very time consuming and  
18              extremely expensive process. You know, it's -- now,  
19              it's -- it's not -- you don't get something done in  
20              30 days or even a year in a new drug application.  
21              If you're -- you're starting out from scratch from  
22              the biochemistry, it takes a long time. It's very  
23              involved.

24        Q     Okay. Well, what do you mean it takes a long time?  
25              So, if you were starting at the beginning --

26        MR. BROWN:                    Sir, I'm going to -- I mean  
27              I'm not sure, my friend seems to be getting a bit

1 far afield from what this expert has been sworn to  
2 testify for and give opinion on. He's talking about  
3 clinical trials and what's involved in a clinical  
4 trial. He's not been sworn to give expert evidence  
5 in what a clinical trial, how you set one up or what  
6 you might discover. My understanding is his  
7 evidence is going to be how do you maybe take that  
8 information and move forward from there. If he's  
9 going to continue to give information with respect  
10 to how a clinical trial is set up, what a medical  
11 statistician might find from that, I'm going to  
12 object to that kind of evidence, sir.

13 THE COURT: Well, I am allowing him to  
14 give expert opinion evidence with regard to what is  
15 involved in the process or processes and such  
16 applications so he is going to have to touch to some  
17 extent on things such as clinical trials and their  
18 existence. And I do not think that the -- I do not  
19 think that a question with regards to the amount of  
20 time it would take to make such an application is  
21 irrelevant. I think it is too broad.

22 And we have already heard of different  
23 variables depending upon the number of compounds and  
24 the risk involved in getting people for an adequate  
25 sample size and so on. So I think it is a very  
26 difficult question for this witness to answer, even  
27 qualified as an expert. I think it appears from

1           what we have heard so far to be something that vary  
2           considerably from product to product.

3                        So I think the question is too broad to say how  
4           long would it take.

5   MR. BUCKLEY:                        Mm-hm.

6   THE COURT:                        So, in that regard, I am going  
7           to sustain the objection that the -- in that it does  
8           get fairly far afield, but -- both with regards to  
9           the contents of the question and the ability of this  
10          witness to answer that question. So you may want to  
11          rephrase it.

12   MR. BUCKLEY:                        Yes.

13   MR. BROWN:                        Thank you, sir.

14   MR. BUCKLEY:                        Thank you, Your Honour.

15   Q   MR. BUCKLEY:                        So, Mr. Dales, in your  
16          experience, what's the minimum time it takes, you  
17          know, from starting at the beginning to going to the  
18          end, to go through this process?

19   A   Let's put it this way. I can comment on the  
20          published literature by pharmacology companies so,  
21          in other words, I'm referring to what's in the  
22          literature and they claim it takes a minimum ten  
23          years. That's what they're claiming within their  
24          own literature.

25   Q   Okay. Now, you've had some experience.

26   A   I can't possibly in my own mind possibly think --  
27          could take five years; it would take well over five

1 years. I mean if a company said to me that they  
2 were planning to do all that in five years, God  
3 bless them, but I can't see how it could ever be  
4 done.

5 Q And you mean basically getting from step 1 to 4, so  
6 going through biochemistry, toxicology, pharmacology  
7 and the human trials?

8 A That's correct.

9 Q Okay. Now, once you're through all the steps, what  
10 do you do then? So there's a fifth step after that;  
11 is that correct?

12 A That's correct. You would file a new drug  
13 application with Health Canada then, yes.

14 Q Okay. So, after you've gone through those steps,  
15 now you're filing an application?

16 A That's correct.

17 Q And then when that happens, what occurs next? So  
18 you've filed that application.

19 A According to Health Canada documents put out by  
20 Marilyn Schwartz, unless it's thought of as a very,  
21 very, very urgent product, provided all the ducks  
22 are lined up perfectly and they agree with  
23 everything within there, I think they're claiming a  
24 330 day turnaround. That's according to what she  
25 has published.

26 Q Okay.

27 A That's assuming everything is perfect.

1 Q That's today, right?

2 A Well, that's what she had published. I can look at  
3 the date of her publication, but that's the most  
4 relevant information --

5 Q Okay.

6 A -- that I know, to get from Health Canada on  
7 turnaround times.

8 Q Now, if you were submitting in 2003 a new drug  
9 submission, would you expect a turnaround any  
10 quicker than that from Health Canada?

11 A I wouldn't. I would not anticipate that. However,  
12 in all fairness, Health Canada within their own  
13 regulations do state the fact that, if it's a very,  
14 very urgent product, I think that they're looking at  
15 make it 200 -- over 200 day turnaround. But I  
16 wouldn't bet on that either, even if it's an urgent  
17 product, because everything has to be totally 100  
18 percent put together even to meet those quicker time  
19 frames. So I think that you would be looking more  
20 like the other time frame of 330 days.

21 Q And just so I'm clear, that's actually days after  
22 it's filed. You've already done the first four  
23 stages?

24 A That's correct.

25 Q Now, you were mentioning that this type of product,  
26 which is Exhibit 7, that you think there -- things  
27 might be slowed down a little bit because Health

1 Canada is not familiar with this type of product in  
2 '03.

3 A Well, that's correct. What happens is that the new  
4 drug applications that go through are basically  
5 single entity pharmaceutical products. So, as soon  
6 as you have a multi entity natural health product  
7 with herbs in there, as soon as you -- you go and  
8 say, Okay now we actually have to figure out a  
9 standard biochemistry for these herbs, I would  
10 anticipate that it would slow down, that's correct,  
11 because they -- you know, they -- they do have an  
12 onus in order to, you know, make sure the product is  
13 efficacious. So they want to -- they want to even  
14 find a new way to even evaluate those herbs and look  
15 at those, which isn't going to be overnight in all  
16 likelihood.

17 Q Okay. So you're actually talking about, you know,  
18 their role, that they actually have a responsibility  
19 to ensure that it is efficacious?

20 A Well, certainly that's what the department is there  
21 for. You know, certainly, you know, it could be  
22 argued at times that they do fall short, however,  
23 obviously that department -- the mandate of that  
24 department is to have safe and efficacious drugs on  
25 the market.

26 Q Okay.

27 A So they would have a right to try to negotiate the

1           biochemistry to make sure it is safe and efficacious  
2           and I can see them doing that, most certainly.

3           Q     Now, I think you indicated that, if they come to you  
4           with that product in '03 -- or I'll ask you the  
5           question.  If somebody came to you with that product  
6           in '03 and said, How do I get this on the market?

7           A     I would tell them it's not feasible.  The reason I  
8           would say it's not feasible is because, if they  
9           apply for it with a labelling standard, then it's  
10          going to be declared as a new drug and the first  
11          question I would have is I'd say, Look, I mean I  
12          don't see anything in here that you have very, very  
13          strong patent protection for.  I would recommend  
14          that they -- they get their patent work done first.

15                 And if they don't have very, very strong patent  
16          protection, I would highly recommend that they wait  
17          a year until the Natural Health Product Directorate  
18          comes in with guidelines that are more user friendly  
19          to a product like this so they can actually -- it's  
20          -- within the Natural Health Product Directorate  
21          they're still going to have to do a lot of work, but  
22          it's not going to be nearly as much as a new drug  
23          submission and it's set up so that products like  
24          this at least have a fighting chance.

25          Q     Okay.  So you're referring to the Natural Health  
26          Product Regulations that came in January 1st, '04?

27          A     That's correct.

1 Q Would this product fall within the definition of  
2 natural health product?

3 A That is -- I think that they would stand a fighting  
4 chance if they put a submission in to get this  
5 through. I think they would stand a fighting  
6 chance. I can't see any other category that --  
7 within the regulations where they would actually  
8 stand a fighting chance.

9 Q Okay. So, when you say you don't -- can't think of  
10 anywhere else in the regulations they'd stand a  
11 fighting chance, you mean if they're not classed as  
12 a natural health product then they have to be in the  
13 regular drug category; is that what you mean?

14 A That's what I mean. In other words, I just can't  
15 see how it would be feasible to put that product  
16 through a new drug submission because of the --  
17 because of the areas that I've already mentioned.

18 Q Now, back in 2003, was it unusual for a natural  
19 health product to not have a drug identification  
20 number?

21 A It was more common for them not to than unusual. In  
22 other words, all of the products that are classified  
23 right now or wanting to be classified as natural  
24 health products I think back in 2003 probably 5 to  
25 10 percent of them -- maybe 5 to 10 percent of them  
26 had DIN numbers on them or legal DIN numbers on  
27 them; maybe 5 to 10 percent.

1 Q When you say legal DINs, what do you mean?

2 A Well, one of the tricks back then the companies  
3 would use would be that they would get a DIN number  
4 for the product and then change the formula. So  
5 they'd get a DIN number for one formula and then  
6 change it to another formula, but still use the DIN.

7 Q Okay. So in '03 it was unusual for a natural health  
8 product to actually have a DIN?

9 A Yeah. The vast majority do not have DINs.

10 Q And was there any reason for that?

11 A Well, the reason was very, very simple and that is  
12 that the Therapeutic Product Program, there was --  
13 the reason the Natural Health Product Directorate  
14 was formed was the Therapeutic Product Program  
15 industry and the general public had a lot of issues  
16 with them handling these products. They didn't  
17 think that they were set up to, they didn't think  
18 that they had the knowledge base to, and they --  
19 they didn't think that -- they thought it was like  
20 putting a round -- round peg into a square hole.  
21 And I certainly by no means am insinuating there's  
22 not very qualified people -- some very qualified  
23 people within that directorate, there are. You  
24 know, I understand that Thea Mueller was here  
25 earlier.

26 Q No.

27 A I think she's a very qualified and good person. But

1 the qualifications -- you can qualify in one area  
2 but not qualify in another words. So, in other  
3 words, I think that they're good people within --  
4 within doing pharmaceutical applications, but the  
5 reason there was such a huge backlash is because --  
6 within the natural health products, there's a huge  
7 backlash because the industry and the general public  
8 was saying, Listen, this is absolutely ridiculous --

9 MR. BROWN: Well, sir --

10 MR. BUCKLEY: Okay. I'll stop you there --

11 MR. BROWN: That is hearsay, sir --

12 MR. BUCKLEY: -- because I don't need to go  
13 there.

14 MR. BROWN: -- for the second time.

15 THE COURT: Yes, it is hearsay and it is  
16 -- I will disregard it.

17 MR. BROWN: Thank you, sir.

18 THE COURT: Let's just stay on point with  
19 --

20 MR. BUCKLEY: Yes.

21 A I apologize, Your Honour.

22 THE COURT: -- how they are not able to  
23 qualify them.

24 A Okay.

25 THE COURT: You were talking about the  
26 Natural Health Product program is not set up to  
27 handle a natural health product.

1 MR. BUCKLEY: Yes.

2 A That's correct. In other words, the Natural Health  
3 Product Directorate, when they came into being they  
4 set up a formula where these products would stand a  
5 fighting chance. In other words, you were still  
6 submitting your toxicology, you were still  
7 submitting pharmacology, you were still submitting  
8 evidence, but the evidence fit into these compounds  
9 dramatically different than what the Therapeutic  
10 Product Program was putting them into. I mean more  
11 or less, again, they were wanting to put a round peg  
12 into a square hole and it just didn't work. And  
13 because of that, industry had insisted on a  
14 different directorate.

15 MR. BUCKLEY: Your Honour, I'm trying to  
16 decide if I want to ask this witness some other  
17 questions. Could we take the lunch break and come  
18 back at 2:00?

19 MR. BROWN: That's fine by me, sir.

20 THE COURT: That is fine.

21 Mr. Dales, although this is usually done in a  
22 case of cross-examination, actually required for  
23 cross-examination, I occasionally do it with regards  
24 to people who are under examination-in-chief  
25 (INDISCERNIBLE) just on the stand for a day or two  
26 and what it is is this. I am going to advise you  
27 not to discuss your evidence with anyone until after

1           you have completed your examination-in-chief and  
2           cross-examination.

3           A     Most certainly.

4           THE COURT:                   All right.

5           MR. BUCKLEY:                 Your Honour, I'm wondering if

6           I can have permission to speak with this witness.

7           There's just -- I've got -- I've stuck to be general

8           because I've had -- have not had the disclosure

9           necessary to give the witness the background on this

10          specific case, but I did want to -- I've received a

11          couple of emails pursuant to your disclosure request

12          a couple of days ago and I just wanted to be able to

13          address that over the lunch break with this witness.

14          I don't think it would affect this in any case.

15          THE COURT:                   Well, that is fine. I will

16          say with the exception of discussions with your

17          counsel and, if Mr. Brown sees --

18          MR. BUCKLEY:                 I'm not his counsel, for the

19          record, so --

20          THE COURT:                   Except with discussions with

21          defence counsel. Mr. Brown?

22          MR. BROWN:                  I have no objection, sir. No.

23          THE COURT:                  Mr. Brown has no objection to

24          that. In fact, Mr. Brown could cross-examine him on

25          that later if he wishes --

26          MR. BROWN:                  I may well do, sir.

27          MR. BUCKLEY:                 Mm-hm. Yes. Yeah.

1 THE COURT: -- to determine what the scope  
2 of those discussions are, but in any event that is  
3 the way we will handle it. Do you understand that,  
4 sir?

5 A Yes, I do. In other words, I -- yeah, I could  
6 answer the --

7 THE COURT: You can have discussions with  
8 Mr. Buckley.

9 A Yeah. That's right. Okay.

10 THE COURT: All right.

11 A Thank you.

12 MR. BROWN: Thank you, sir.

13 MR. BUCKLEY: Thank you, Your Honour.

14 THE COURT: Anything further at this point  
15 in time?

16 MR. BROWN: No, sir.

17 THE COURT: All right. Very good. We  
18 will stand adjourned then until 2:00. Thank you.

19 THE COURT CLERK: Order in court, all rise.  
20 Court stands adjourned to 2:00 p.m.

21 -----

22 PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

23 -----

24

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27

1 \*Certificate of Record

2 I, Jillian Fox, certify this recording is a record  
3 of the oral evidence of proceedings in the Criminal  
4 Court, held in courtroom 413, at Calgary, Alberta,  
5 on the 23rd day of March, 2006, and I was in charge  
6 of the sound-recording machine.

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1 \*March 23, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT CLERK: Calling Synergy Group of  
5 Canada and TrueHope Nutritional Support.

6 THE COURT: Mr. Buckley, proceed whenever  
7 you are ready.

8 MR. BUCKLEY: Thank you, Your Honour.

9 Q MR. BUCKLEY: Mr. Dales, I'm going to pass  
10 up to you what I believe to be a series of emails  
11 that occurred within Health Canada. Have you seen  
12 that document before?

13 A Yes, I have. This is the document that you had  
14 presented to me over lunchtime.

15 Q Okay. Now, you can't tell us whether or not it is  
16 indeed emails within Health Canada, but I'm going to  
17 ask you to turn to the second page and there appears  
18 to be an email from a Siddika Mithani dated 2001-05-  
19 07 to Joan Korol.

20 A Mm-hm.

21 Q Subject Re: Synergy Group of Canada, which reads in  
22 part:

23 Joan, as per my earlier conversation,  
24 I would like to clarify a few things:

25 1. I have spoken to Bonnie  
26 Kaplan. She has called me to talk  
27 about IND submissions. She indicates

1           that prior to initiating the trial  
2           her group had spoken to OHNP (I  
3           believe in 1999/2000) where she was  
4           advised that clinical trials were not  
5           required for natural health products.  
6

7           Down to 3 it says:

8  
9           3. When we discussed the possibility  
10          of filing an IND submission, I  
11          outlined all the requirements and the  
12          elements that we review in terms of  
13          proposed clinical trials which would  
14          include preclinical, pharmacology/  
15          toxicology, pharmacokinetics, etc.  
16          Based on our discussion, clearly the  
17          product would not meet our  
18          requirements because she does not  
19          have that data.  
20

21          Now, you can't tell us about the truth or anything  
22          like that, but when you read an email outlining  
23          things that are required for an IND submission, how  
24          do you interpret things like pharmacology and  
25          toxicology and pharmacokinetics?

26        A        I interpret them the same way as I presented  
27                earlier. I mean this -- what they're asking for in

1           this IND submission before doing a clinical trial  
2           basically is exactly what I was indicating for a new  
3           drug is necessary before doing clinical work.  It's  
4           the same thing.

5       Q     Okay.  So, when you read this, it falls in line with  
6           your own experience; is that ...

7       A     Definitely, same thing.

8       Q     Okay.  I'm just carrying on at number 5 in the same  
9           email.  It's number 5:

10

11                   5.  I indicated to Bonnie Kaplan that  
12                   I don't have a problem in reviewing  
13                   her IND submission, however, they do  
14                   not have the data that is required to  
15                   assess the rationale of this clinical  
16                   trial.

17

18           Then going to the first page in response to that  
19           email, it appears that Joan Korol sends an email  
20           back to Siddika Mithani on 05-07-2001 subject Re:  
21           Synergy Group of Canada saying:

22

23                   Thank you for providing the summary,  
24                   Siddika.  Just one more question  
25                   regarding your last point.  Could you  
26                   elaborate on "They do not have the  
27                   data that is required to assess the

1           rationale of this clinical trial."

2

3           And then Siddika Mithani seems to respond to that  
4           email, again on 05-07-2001, subject Re: Synergy  
5           Group, where she seems to say:

6

7           They do not have preclinical  
8           toxicology/pharmacology or any  
9           pharmacokinetic data to support the  
10          proposed trial. This is because it  
11          is a natural health product and it's  
12          not been developed like a  
13          conventional drug product.

14

15          Once again, does that all seem to be in line with  
16          your experience of what -- the types of things that  
17          are required?

18        A     Oh, totally, 100 percent in line. The only thing  
19          that he's -- Sik -- I'm sorry, I cannot pronounce  
20          that name.

21        Q     Siddika.

22        A     The only thing he's missed there is the -- the fact  
23          of the biochemistry. They have to -- they -- they  
24          have to agree to the biochemistry data as well. But  
25          with excep -- you know, and I think probably what he  
26          was thinking is, Look, I mean I don't have to  
27          mention everything, the point is it doesn't fit.

1           They don't have the data there. But that fits in  
2           perfectly with -- with what I was mentioning earlier  
3           of what's required for a new drug submission.

4       MR. BUCKLEY:                   Your Honour, I'm going to move  
5           that that be entered as an exhibit. I believe that  
6           my friend is not opposed to it being entered just  
7           for the fact that it was communications made within  
8           Health Canada by those persons in the email, but not  
9           for the truth of its contents.

10       MR. BROWN:                    That's correct, sir.

11       THE COURT:                    All right. That is fine.  
12           Exhibit 62 will be the three pages of copies of  
13           emails subject Re: Synergy Group of Canada and  
14           covering the period or periods -- what were the  
15           dates you had there?

16       MR. BUCKLEY:                   They seem to be occurring on  
17           05-07-2001.

18       THE COURT:                    All right. 05-07-2001 are the  
19           two that you referred to. I am sorry, the three  
20           that you referred to.

21

22       \*EXHIBIT 62 - Copies of Emails Re: Synergy Group of

23       \*Canada Dated 05-07-2001

24

25       MR. BUCKLEY:                   Thank you, Your Honour. And  
26           they are all stapled together as one exhibit.

27       Q       MR. BUCKLEY:            Now, Mr. --

1 THE COURT: Once again, for the -- as  
2 evidence that the emails and the comments occurred,  
3 not for the truth of their contents.

4 Go ahead please.

5 MR. BUCKLEY: Thank you, Your Honour.

6 Q MR. BUCKLEY: Mr. Dales, would it be fair to  
7 say that with regards to Exhibit 7 that you had seen  
8 earlier, without actually going through all the work  
9 and contracting, you couldn't give us what it would  
10 cost to go through a clinical trial -- or through  
11 the new drug submission process?

12 A Well, what happens is, if they -- if the company  
13 said, Hey look, I want to go through that process,  
14 what I would do -- you know, I would indicate the  
15 fact it would be very expensive, but what I would do  
16 then is to give them a really accurate figure, I  
17 mean a really accurate figure. I would contact the  
18 biochemistry labs, I'd contact a toxicologist, I'd  
19 talk -- talk to the pharmacology people, I'd talk  
20 about what sort of human trials, I'd get a lot more  
21 information on the product to give a really, really  
22 accurate, accurate estimate.

23 Q Okay.

24 A You know, and -- you know, I would warn the company  
25 just out of pure, you know, ethics the fact is that  
26 it's not going to be in the 10s of thousands, I  
27 would be shocked, it's going to be in the millions.

1 Just so the fact that, you know, at the end of it  
2 all they wouldn't say, Hey look, you wasted our  
3 money, you know, we were expecting it, you know, to  
4 cost \$40,000 or something. I'd have to give them  
5 some sort of warning that they're talking about  
6 millions, they're not talking about thousands.

7 Q Okay. Are you able to give us an idea even what the  
8 cost is for, once it's all done and you're just  
9 apply for a notice of compliance?

10 A Oh, it will be over 100,000.

11 Q And that's to Health Canada?

12 A Yeah. Well over.

13 MR. BUCKLEY: Thank you, Mr. Dales. I have  
14 no further questions, but I expect my friend Mr.  
15 Brown will have some questions for you.

16 THE COURT: All right. Mr. Brown.

17 MR. BROWN: Thank you, sir. I actually  
18 only have a couple questions. It shouldn't take me  
19 too long.

20

21 \*Mr. Brown Cross-examines the Witness

22

23 Q MR. BROWN: Mr. Dales, I'm going to just  
24 take you back, if I can, to the discussion we had  
25 this morning when you were being sworn in as an  
26 expert as part of the voir dire; do you recall that?  
27 You recall your testimony this morning? Yes?

1 A Mm-hm.

2 Q Sorry, you've got to -- as my friend said this  
3 morning, you have actually verbalize yes or no for  
4 the Court.

5 A Yes, I do. I --

6 Q Thanks. Thank you. Now, one of the things you were  
7 talking about is -- do you recall GMP, good  
8 manufacturing processes?

9 A Practices.

10 Q Practices, right. GMP, good manufacturing  
11 practices. And you said that what happens, if I  
12 understand correctly, is basically Health Canada  
13 will come in and audit a location to determine if  
14 they're following good manufacturing practices.

15 A Well, what happens is the following. If you have a  
16 drug and you're applying for establishment licence,  
17 they will come in and audit.

18 Q Right.

19 A If you're selling an NHP, they will - and it's a  
20 site licence - they don't come in and audit in order  
21 to give you the site licence.

22 Q Right.

23 A At the time of Flora, there -- there was no choice,  
24 okay, there -- there was no NHP --

25 Q Right.

26 A -- so we were audited in order to get the  
27 establishment licence.

1 Q Okay. And I think what you said and I hope I didn't  
2 miss it, but I think what you said is words to the  
3 effect that these kind of audits are internationally  
4 well accepted. Those are the words that I wrote  
5 down. Do you recall saying something like that,  
6 internationally well accepted?

7 A Well, yeah, they're becoming more and more so.

8 Q Right.

9 A What happens is that there's such a thing called MRA  
10 or mutual recognized agreements.

11 Q Okay.

12 A And, for example, is you look into PIC, which is the  
13 Pharmaceutical International Convention --

14 Q Right.

15 A -- it's just becoming more and more that way and  
16 more officially that way. They'll have a list of  
17 countries of PIC --

18 Q Right.

19 A -- and, for example, if I'm in the middle of China  
20 and I've been audited by the TGA --

21 Q Right.

22 A -- and I want to sell a product in Canada, that goes  
23 a long way in the fact that they've audited me and  
24 it's cool.

25 Q Sure.

26 A Okay. So it's -- it's becoming more and more that  
27 way and more and more officially that way. At the

1 time it was that way but, you know, both officially  
2 and unofficially.

3 Q Okay. So, if I understand correctly, Canada would  
4 be considered to have very high standards in these  
5 kind of audits; is that fair?

6 A Overall I think that that would be a fair  
7 assessment. I think for a GMP audit that they --  
8 they would be internationally recognized. That's  
9 correct.

10 Q And --

11 A For the most part.

12 Q And that really speaks to another comment that you  
13 made and I'll -- I don't have the exact words in  
14 front of me, but you said something about Canada's  
15 -- or Health Canada being responsible for the safety  
16 and health of Canadians. That is their mandate;  
17 right?

18 A Totally.

19 Q Right. And so one of the things that they do to  
20 ensure the safety and health of Canadians is to do  
21 that kind of an audit; is that fair?

22 A Totally. I agree totally.

23 Q And they do other things, including screening drugs  
24 and other types of products; right?

25 A Yeah.

26 MR. BROWN: Sorry, sir, I'm just checking  
27 my notes really quickly here. I don't think I have

1 any other questions, but I'm just checking.

2 Those are my questions. Thank you.

3 THE COURT: Thank you, Mr. Brown.

4

5 \*The Court Questions the Witness

6

7 Q THE COURT: Mr. Dales, I have just a  
8 qualification I wanted to enquire. Right at the end  
9 of your examination-in-chief you stated you would  
10 give a really accurate figure. What were you  
11 referring to? That figure ultimately you indicate  
12 to be in the millions, not the thousands, what were  
13 you referring to?

14 A When I was referring to that, to go through the  
15 whole process of a new drug submission on the  
16 EMPowerplus product that you -- that was shown to  
17 me, you know, again I can't give a fully accurate  
18 figure without doing a full assessment of the  
19 product, you know, talking to pharmacologist,  
20 figuring out targets and that. However, you know, I  
21 would need to warn the company it's going to be in  
22 the millions in order to put that through a new drug  
23 submission, not in the thousands.

24 Q So what you are referring to when you are talking  
25 about a new drug submission is not purely an  
26 application for a new drug identification number but  
27 the process right from --

1 A From start to finish.

2 Q -- start to finish.

3 A That's correct. Yeah.

4 Q And when you referred to the second item of costs,  
5 you referred to -- was the --

6 A The cost recoveries, the --

7 Q -- it was \$100,000 --

8 A Minimum. Bare minimum.

9 Q But what is that? What are you referring to? Is  
10 that the cost of just the application for the DIN or  
11 is it something else?

12 A That's the cost recovery fee that Health Canada  
13 would -- would charge --

14 Q Ah.

15 A -- to look at the product.

16 THE COURT: That is fine. Thank you.

17 A And that would be a very conservative estimate.

18 THE COURT: Anything arising out of that,  
19 first of all, Mr. Brown?

20 MR. BROWN: No, sir. Thank you.

21 THE COURT: Mr. Buckley?

22 MR. BUCKLEY: Yeah, just a clarified --  
23 clarification, just based on your question, Your  
24 Honour.

25

26 \*Mr. Buckley Re-examines the Witness

27

1 Q MR. BUCKLEY: Because, Mr. Dales, the  
2 question was asked about that second \$100,000 fee,  
3 whether that was the cost for the DIN and I just  
4 want to clarify do you actually apply for a DIN when  
5 you're going through the new drug process?

6 A Well, when you're going through the new drug  
7 process, it's part of the application so there's a  
8 number of steps in the new drug process to get the  
9 DIN. You apply for the -- I guess the notice of  
10 compliance and then the notice of compliance you  
11 send in and you get the DIN.

12 Q Okay. But you need the notice of compliance first?

13 A That's correct.

14 Q Okay. And it's -- that \$100,000 fee is to file to  
15 get the notice of compliance?

16 A That's correct. Yeah.

17 MR. BUCKLEY: Thank you.

18 MR. BROWN: I have nothing further, sir.

19 Thank you.

20 THE COURT: Thank you, Mr. Dales. That is  
21 all. You can step down.

22 A Thank you, Your Honour.

23 THE COURT: Thank you.

24 (WITNESS STANDS DOWN)

25 MR. BUCKLEY: Now, Your Honour, I wasn't  
26 sure how long Mr. Dales was going to be today so he  
27 was my only witness. I have Charles Popper tomorrow

1 as my witness and I expect that he'll be like Bonnie  
2 Kaplan, that he would take most of the day.

3 THE COURT: Most of the day.

4 MR. BROWN: Yes, sir. I actually expected  
5 Mr. Dales to take the full day too, but as it turns  
6 out it's a bit quicker than we anticipated.

7 THE COURT: All right.

8 MR. DALES: Your Honour, it's a relief to  
9 me I didn't take the whole day.

10 THE COURT: Well, you are fortunate then  
11 that Mr. Brown did not extend his cross-examination.  
12 It is always a trying experience under cross-  
13 examination.

14 All right. Well, let's tidy up a few things or  
15 get some clarification on a few things. The --

16 MR. BROWN: The numbered documents, sir?

17 THE COURT: The binder with the  
18 chronologically numbered documents --

19 MR. BROWN: Sir --

20 THE COURT: -- it is on its way, I take  
21 it?

22 MR. BROWN: Yeah. What happened, sir, is  
23 we copied the originals and gave those to, I think,  
24 yourself and to Mr. Buckley. Mr. Buckley had  
25 numbered the original faxes, the copy that he got,  
26 they don't match. I'm going to take the original --  
27 the copy of the originals. They're being sent to

1           Edmonton, my assistant is going to copy them with  
2           the numbers printed on, ship them back. So they  
3           will be here no later than Tuesday to be entered as  
4           an exhibit.

5       THE COURT:                   All right. So whose numbering  
6           system are we using?

7       MR. BUCKLEY:                We're going to use my friend's  
8           for simplicity.

9       MR. BROWN:                 Yeah.

10      THE COURT:                 The original one that you use  
11           --

12      MR. BROWN:                 The one that's on the original  
13           copies, yes.

14      THE COURT:                 The six-digit one?

15      MR. BROWN:                 Yeah. They are a six-digit  
16           number, exactly.

17      THE COURT:                 All right. That is fine.

18      MR. BROWN:                 Yes. They start at 1 and go  
19           to 763 I believe it is.

20      THE COURT:                 All right. All right,  
21           gentlemen, is there anything further at this point  
22           in time?

23      MR. BUCKLEY:                I don't think so, Your Honour.

24      MR. BROWN:                 I don't think I have anything,  
25           sir.

26      THE COURT:                 All right. In that case, we  
27           will stand adjourned then until 2:00 -- ready to get

1           going again. Until 9:30 tomorrow morning and that  
2           will be for Dr. Popper then.

3       MR. BUCKLEY:                   And, Your Honour, am I correct  
4           in assuming that next Monday there is not court?

5       MR. BROWN:                    Right.

6       THE COURT:                    No.

7       MR. BUCKLEY:                   I'm not correct in assuming  
8           that or there's not court?

9       THE COURT:                    No, there ... I have to  
10          attend to a sentencing matter on circuit at the  
11          Siksika First Nation on a person that I found guilty  
12          of certain series of offences last December and the  
13          person is still being held in Remand type custody  
14          because of difficulties with scheduling in order to  
15          get time to do the sentence. So, in fact, a special  
16          sitting of the court was arranged for that date and  
17          unfortunately through our case management office it  
18          overlapped this. I tried to change it but, because  
19          of the amount of time, because we have a person in  
20          custody, because of the amount of time that has gone  
21          on, it takes priority to deal with on Monday.

22       MR. BUCKLEY:                   Yes, I understand that.

23       MR. BROWN:                    Under --

24       MR. BUCKLEY:                   And I think we're --

25       THE COURT:                    So no, as far as this court  
26          sitting on this matter on Monday, we will not be  
27          sitting on this matter, but I have given

1 instructions as well that this courtroom is to  
2 remain secured. It will -- there will not be  
3 another judge put in here and another 'X' number of  
4 cases because basically we have turned -- and we do  
5 this where the need arises, we turn this courtroom  
6 into one large exhibit room.

7 MR. BUCKLEY: Mm-hm.

8 THE COURT: So that I believe that the  
9 practice may include keying the locks and everything  
10 else so that this courtroom will not be used for any  
11 other purpose and will not be accessed by any other  
12 person other than the clerk or myself --

13 MR. BUCKLEY: Right.

14 THE COURT: -- during the -- over that  
15 time period. What I am saying is, if you want to  
16 leave things here --

17 MR. BUCKLEY: Right. Yes.

18 THE COURT: -- books or materials or  
19 equipment, I do not mean to presume that you would  
20 not be looking at them over the weekend, but if you  
21 presume to -- you want to leave them here, that is  
22 fine.

23 MR. BUCKLEY: And, Your Honour, you know,  
24 kind of reporting on the time, it looks like  
25 actually we're progressing through the evidence  
26 rather quickly so I'm anticipating that Dr. Popper  
27 will be -- take up tomorrow or most of the day

1           tomorrow. Then I would anticipate throwing Mr.  
2           Hardy on the stand on Tuesday and probably closing  
3           the defence case after Mr. Hardy. So that gives us  
4           plenty of time for submissions.

5   MR. BROWN:                                 Right.

6   MR. BUCKLEY:                             And so just reporting to the  
7           Court that it seems that things have been  
8           progressing at a good clip as far as the time  
9           allotted.

10   THE COURT:                             All right. Pretty well on  
11           schedule.

12   MR. BUCKLEY:                             Yes.

13   MR. BROWN:                             Right, sir.

14   THE COURT:                             All right. Very good. In  
15           that case, if there is nothing more, then the court  
16           will stand adjourned until 9:30 tomorrow morning.  
17           All right.

18   MR. BROWN:                             Thank you, sir.

19   THE COURT:                             All right. Thank you.

20   THE COURT CLERK:                       Order in court, all rise.  
21           Court stands adjourned until tomorrow morning at  
22           9:30.

23   -----

24   PROCEEDINGS ADJOURNED UNTIL 9:30 A.M., MARCH 24, 2006

25   -----

26

27

1       \*Certificate of Record

2           I, Jillian Fox, certify this recording is a record  
3           of the oral evidence of proceedings in the Criminal  
4           Court, held in courtroom 413, at Calgary, Alberta,  
5           on the 23rd day of March, 2006, and I was in charge  
6           of the sound-recording machine.

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1 \*March 24, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K.C. Brown, Esq.) For the Crown

7 E. Eacott, Ms. )

8 S. Buckley, Esq. For the Accused

9 J. Fox

10 Court Clerk

11 -----

12 THE COURT CLERK: Synergy Group of Canada and  
13 TrueHope Nutritional Support.

14 MR. BUCKLEY: Good morning, Your Honour.

15 Your Honour, I would like to start today by  
16 calling Dr. Charles Popper to the stand.

17 THE COURT: Go right ahead.

18 MR. BUCKLEY: So, Dr. Popper, if you want to  
19 come into the stand there.

20 THE WITNESS: Charles William P-O-P-P-E-R.

21 THE COURT: Good morning.

22 MR. BUCKLEY: Your Honour, I'd like to enter  
23 a *voir dire* to seek to qualify Dr. Popper as an  
24 expert and I've kind of got a long list which, you  
25 know, may be covered by my first point, but I do  
26 want the court to appreciate kind of some of the  
27 areas I want to touch in his evidence. So, I'm

1 going to attempt to qualify him in all areas of  
2 psychiatry. The next one would include the  
3 diagnosis of mental illness, which really is covered  
4 by the first one. Thirdly, in the treatment of  
5 mental illness, which again, seems to be covered by  
6 psychiatry. But the fourth one is a little  
7 different. I want to qualify him as a specialist in  
8 basically drug treatments in children and  
9 adolescents. And then the fifth one, which would  
10 fall under all areas of psychiatry, benefits and  
11 risks of different treatments for mental illness.

12 THE COURT: Sorry, what is the last one  
13 again, please?

14 MR. BUCKLEY: Benefits, and risks of  
15 different treatments for mental illness.

16 And Dr. Popper, you've got a resume in front of  
17 you. I'm just going to give you one without  
18 highlighting because that may become an exhibit.

19 And Your Honour, I'll pass one up for the  
20 court.

21 THE COURT: Well, Mr. Buckley, I have a  
22 question. If you are seeking to qualify him as an  
23 expert to give opinion evidence on these various  
24 areas --

25 MR. BUCKLEY: Yes.

26 THE COURT: -- I am not quite sure why you  
27 would want to try to qualify him as a specialist in

1 drug treatments in children and adolescence. If he  
2 is an expert, he is a specialist.

3 MR. BUCKLEY: Yeah. Actually --

4 THE COURT: And I'm not in a position at  
5 law to start -- to start determining if people are  
6 specialists or not.

7 MR. BUCKLEY: Well --

8 THE COURT: The purpose -- the purpose of  
9 the *voir dire* is to qualify him to give expert  
10 evidence not specialist evidence.

11 MR. BUCKLEY: Your Honour, where the  
12 evidence is going to go is, Dr. Popper has a long  
13 history of teaching psychiatrists at Harvard Medical  
14 School. So, he doesn't teach the medication.  
15 students, he teaches psychiatrists. But he also  
16 then has a clinical practice, and at McLean  
17 Hospital, which is the Harvard Hospital, pioneered  
18 work. When he started working they basically didn't  
19 use drug models for children. And so he pioneered  
20 different diagnoses of bipolar and depression in  
21 children and how to apply the drug model to them.  
22 And because the field was so new, became a founding  
23 editor of the Journal of Child and Adolescent  
24 Psychopharmacology, and he is now basically the  
25 troubleshooter. So, when other psychiatrists can't  
26 solve problems in children and adolescents they get  
27 referred to him as a specialist among psychiatrists.

1           So, it is kind of odd that I am -- I am wanting  
2 to qualify him as a psychiatrist but I'm hoping that  
3 the evidence at the end of the *voir dire* will show  
4 that actually even among psychiatrists they have  
5 specialists.

6           So, I'm not just calling a psychiatrist. I am  
7 calling a psychiatrist that in the field of  
8 psychiatry is probably, you know, the leading expert  
9 in that area. And it will become germane to his  
10 evidence for the trial.

11 THE COURT:                   Well, that is fine --

12 MR. BUCKLEY:                 Yes.

13 THE COURT:                   -- but you will have to  
14 convince me that in addition to finding, if I do  
15 that he is an expert to give expert opinion  
16 evidence, you will have to satisfy me that it has  
17 ever been done, that the court then goes on to  
18 declare somebody to be a specialist.

19 MR. BUCKLEY:                 Okay.

20 THE COURT:                   That is not my role. That is  
21 the -- that is the -- whatever the qualification  
22 board is with regards to doctors and psychiatrists  
23 in whatever jurisdiction he is in.

24 MR. BUCKLEY:                 And Your Honour, it may just  
25 be schematics, because I'm just wanting this witness  
26 to be able to give expert evidence on the different  
27 drugs and treatments that are available. And so --

1 THE COURT: Well, qualify him as an expert  
2 then.

3 MR. BUCKLEY: -- I think we really are -- we  
4 are just dealing with schematics. So, I will avoid  
5 that term "specialist" and then we will move on from  
6 there.

7 THE COURT: He can certainly, if he  
8 qualifies, as I expect he will as an expert to give  
9 opinion evidence in court, I am sure then that as an  
10 expert he can give evidence as to whether or not he  
11 is a specialist or not.

12 MR. BUCKLEY: Thank you.

13 THE COURT: But do not ask me to make that  
14 finding --

15 MR. BUCKLEY: Yes. No.

16 THE COURT: -- because the ruling that a  
17 court makes is whether or not a person is an expert  
18 to give opinion evidence so that it does not get  
19 excluded as hearsay.

20 MR. BUCKLEY: And that's fair enough.

21 THE COURT: We have been through this.

22 MR. BUCKLEY: Yes. Thank you, Your Honour.  
23 Sir, I'm sure we'll be back into the hearsay think,  
24 but we will try and clarify it for the record.

25 THE COURT: Oh, I am sure we will.

26 MR. BROWN: Before my friend proceeds, I  
27 agree, sir, that it's -- I don't anticipate having

1 any objection to this person being sworn in as an  
2 expert in psychiatry and the diagnosis of mental  
3 illness. I don't expect to have any objection to  
4 that, although I do agree with your comment, sir,  
5 that -- and I did express some concern with my  
6 friend's intention before we began, but I don't  
7 anticipate having any objection to this person being  
8 sworn in as an expert.

9 THE COURT: I am sure, in any event, that  
10 Mr. Buckley wants to put the qualifications on the  
11 record.

12 MR. BUCKLEY: I do.

13 MR. BROWN: I'm sure he does.

14 THE COURT: All right.

15 MR. BUCKLEY: Thank you, Your Honour.

16 THE COURT: Good morning and we will now  
17 proceed. Mr. Buckley is going (INDISCERNIBLE). A  
18 *voir dire* is a trial within a trial to determine the  
19 -- either the admissibility of evidence or  
20 qualifications of a person to give expert opinion  
21 evidence, and for other matters. But basically it  
22 deals with being a trial within a trial to determine  
23 the admissibility of the certain type of evidence,  
24 and in your case, Mr. Buckley wants to be able to  
25 elicit opinion evidence which would otherwise be  
26 hearsay evidence. So, in order to come within an  
27 exception to the hearsay rule, he has to satisfy me

1 on the examination he is going to do of you and I  
2 have to make ruling with regards to whether or not  
3 you can give expert opinion evidence at these -- at  
4 these proceedings. So, we will just get on with it  
5 then.

6 THE WITNESS: Thank you.

7 MR. BUCKLEY: Thank you, Your Honour.

8

9 \*CHARLES WILLIAM POPPER, Affirmed, Examined by

10 \*Mr. Buckley (Qual) (Voir Dire)

11

12 Q MR. BUCKLEY: So, Dr. Popper, you have a  
13 copy of your curriculum vitae in front of you.  
14 Perhaps we should just start at the beginning and if  
15 you could explain for us basically what the "current  
16 activities" section refers to and means?

17 A My predominant activity is being a private  
18 practitioner in psychiatry with a specialty in child  
19 psychiatry and child and adolescent  
20 psychopharmacology. I am also a faculty member at  
21 Harvard Medical School and my practice is located at  
22 McLean Hospital, which is the main psychiatric  
23 hospital at Harvard Medical School.

24 Q Can you describe for us as a clinical instructor in  
25 psychiatry, who you teach and what that involves?

26 A My predominant teaching activities at McLean have  
27 involved teaching residents in psychiatry and child

1 and adolescent psychiatry. Because the work that I  
2 do in medications and children is so specialized, I,  
3 rather than teaching medical students or other  
4 people training at the university, I work very  
5 specifically with people who are most likely to use  
6 the treatments in the course of their professional  
7 work. So, that would mean most of my teaching is to  
8 residents in child and adolescent psychiatry, and  
9 then in addition to residents in psychiatry before  
10 they become they become child and adolescent  
11 psychiatry residents.

12 Q Okay. And just so the court understands. When you  
13 say "resident" who -- what is a resident?

14 A A resident is a physician who's completed medical  
15 school so they have their M.D. degrees. They  
16 typically have done at least some half-year or year  
17 of general medicine and then they are in a special  
18 training program to become a psychiatrist and that's  
19 called a residency training program.

20 Q Okay.

21 A And then the child psychiatrists are people who have  
22 typically completed their training as psychiatrists  
23 and are then going on to further specialty training  
24 as a child and adolescent psychiatrist. So, most of  
25 my training is directed at people who are already  
26 psychiatrists.

27 Q Okay. And then the next heading there you have is,

1 "private practice in child and adolescent  
2 psychiatry", and then "child and adolescent  
3 psychopharmacology". Can you tell us about that?

4 A Yes. That's where I spend most of my time. About a  
5 third of my practice is children, meaning pre-  
6 pubertal, about a third is adolescent, about a third  
7 is adult. I certainly use medications in the course  
8 of those treatments. In addition, I do  
9 psychotherapy and general management of patients.  
10 There is a fair amount of consultative work that I  
11 do, meaning, they're not actually my patients to  
12 treat, but I am consulting to other doctors about  
13 either the psycho pharmacologic aspects of the  
14 treatment or other aspects of the psychiatric  
15 treatments.

16 Q Okay. Because you had referred -- heard me refer to  
17 earlier that basically some psychiatrists refer to  
18 you. Is that what you're referring to?

19 A Yes. If a psychiatrist, typically child and  
20 adolescent psychiatrists, have questions about  
21 what's going on in the treatment, typically around  
22 medication management, or diagnosis, but sometimes  
23 about other aspects of treatment, I get consulted by  
24 those psychiatrists to advise them on the  
25 treatments.

26 Q Okay. And let's move on to your "background and  
27 training" section. Can you give us a rundown of

1 your background and training?

2 A Sure. I got my undergraduate degree at Princeton  
3 University, medical degree at Harvard Medical  
4 School. I did my -- I did one year of my general  
5 psychiatry training at the Massachusetts General  
6 Hospital, and then completed my general psychiatry  
7 training and did my child and adolescent training at  
8 McLean Hospital. All of that's within the Harvard  
9 system.

10 In addition to that, I took three years away  
11 from Harvard at a certain point to do research at  
12 the National Institute of Mental Health, which is a  
13 highly regarded, very well-funded research medical  
14 facility in the Washington, D.C. area.

15 Q Okay. And --

16 A I might also mention, I'm certified in both general  
17 psychiatry -- Board certified in general psychiatry  
18 and in child and adolescent psychiatry.

19 Q Now, moving on to your "past activities", can you  
20 just give us some comments on that?

21 A Sure. At McLean Hospital, after I finished training  
22 at McLean I have stayed there since that time. For  
23 about 12 years or so I started the child and  
24 adolescent psychopharmacology program at McLean, and  
25 ran it for approximately 15 years. As a part of  
26 that program, I supervised residents in child and  
27 adolescent psychiatry on the management of their

1 cases. I also gave what was actually the first  
2 course for residents in child and adolescent  
3 psychiatry in the United States.

4 At different times, I was also a consultant to  
5 other Harvard hospitals including Children's  
6 Hospital in Boston, and the Massachusetts Mental  
7 Health Centre in Boston. At a certain point I was  
8 on the governor's, in the State of Massachusetts, I  
9 was on the Governor's Task Force on the mental  
10 health of children and youth, which was basically an  
11 advisory group to the governor.

12 And the other main past activity that I've been  
13 involved in was in establishing -- in starting the  
14 Journal of Child and Adolescent Psychopharmacology,  
15 and I was the editor of that for its first seven  
16 years. That was the first journal to specialize in  
17 the biological aspects of child and adolescent  
18 psychiatry.

19 Q And is that a peer review journal?

20 A It was a peer review journal and we very rapidly got  
21 a large, for the field, large circulation. The  
22 journal itself was also -- is one of the journals  
23 indexed by Index Medicus, which is the main -- the  
24 central organization that allows physicians to be  
25 able to access the main journals in medicine. And  
26 it is quite pleasing to us for our journal to be  
27 able to get into that because it was considered an

1 extremely specialized journal, and for it to get  
2 that recognition during that period was very  
3 unusual.

4 Q Now, when you talk of child and adolescent  
5 psychopharmacology for those of us who aren't  
6 familiar with the term "psychopharmacology", what  
7 are you referring to?

8 A Psycho -- "pharmacology" refers to the study of  
9 drugs, medications, and "psychopharmacology" refers  
10 to drugs that influence the mind, behaviour,  
11 feelings and thinking. So, the clinical field,  
12 which is the part that I am involved in, asks  
13 questions about how different medications can be  
14 utilized to treat adults or children who have mental  
15 illnesses.

16 Q Okay. Now, you had mentioned that you set up the  
17 first course in child and adolescent  
18 psychopharmacology in the United States. Was it --  
19 was it a new field then?

20 A When I was finishing my own residency it was a very,  
21 very small field. Essentially, the only common  
22 treatment for children at that time, medication  
23 treatment, was the use of psycho stimulants to treat  
24 attention deficit disorder. My interest at the time  
25 was in bringing all of the various types of  
26 medications that were being used to treat adults  
27 with mental illness into the field of child

1 psychiatry. So, my initial years in the field were  
2 very much oriented toward helping develop adult  
3 treatments for the use of children, which involved a  
4 variety of different technical alterations in the  
5 way the medications were managed, and also  
6 identifying syndromes in children that could be  
7 effectively treated by the medications that were  
8 being used in adults.

9 Q Okay. Can you give us a couple of examples of where  
10 you, you know, been involved with that and what the  
11 results were?

12 A At the time that I was in residency in the late 70s  
13 there was a general belief in psychiatry that  
14 children could not get depressed; that children did  
15 not get depressions. And in fact, we were taught  
16 all kinds of different theoretical reasons why one  
17 would not expect children to have depressions. It  
18 was just the way the field understood childhood  
19 depression.

20 When I was interviewing patients, even though I  
21 was being taught that children don't have  
22 depression, it struck me that there were certain  
23 children who might conceivably be depressive even  
24 though they didn't have the same syndromes that  
25 adults with depression would show. So, for example,  
26 adults with depression have a variety of very  
27 specific cardinal symptoms of depression, which are,

1 and especially then were used to help identify which  
2 adults with depression would respond to medication  
3 treatments. For example, inability to enjoy  
4 activities that they would previously have enjoyed,  
5 various sleep symptoms, including difficulties with  
6 arousal in the morning, waking up feeling more  
7 tired, more grumpy, less clear-headed, less -- less  
8 of a sense of well-being, with that -- with those  
9 bad feelings in the morning improving over the  
10 course of the day. So, a person might wake up, for  
11 example, very grumpy or irritable, and then several  
12 hours later become decreasingly less moody.

13 Children don't show that symptom, but they do  
14 show a variety of other kinds of sleep and appetite  
15 and general energy symptoms, similar to adults, but  
16 different. Adults will have their own sleep,  
17 appetite and general energy symptoms; children have  
18 different symptoms.

19 So, part of what I was doing early in my career  
20 was identifying the child-specific symptoms of  
21 depression, which then allowed us to use  
22 antidepressant drugs to treat a group of children  
23 who previously would not have been identified as  
24 depressive.

25 And similarly, in the area of bipolar disorder,  
26 children get bipolar disorder but their symptoms  
27 look quite different than the classical symptoms of

1 adults, and in a similar way, I worked from the  
2 knowledge of what the syndrome would look like in  
3 adults to developing a model for what bipolar  
4 children -- what children with behaviour disorders  
5 or understood as having various kinds of conduct  
6 problems, identifying a group of them who in fact  
7 had specific symptoms that would suggest that they  
8 either had bipolar disorder, or really more  
9 usefully, would respond to the kinds of medications  
10 that are used to treat bipolar disorder.

11 So, in effect, this was another example in  
12 which by defining in effect a new syndrome in  
13 children, we were able to expand the number of  
14 patients who are able to benefit from the use of  
15 Lithium.

16 Q So, just so that I can sum up in English for those  
17 of us not familiar. Psychopharmacology refers to  
18 the use of drugs for the treatment of mental  
19 disorders?

20 A Yes.

21 Q And you were involved in child and adolescent  
22 psychopharmacology, basically at a very early stage  
23 and were instrumental in helping to identify  
24 childhood conditions and then being able to create a  
25 model for treating them with some psycho -- or  
26 psychopharmacology. Okay.

27 I'll have you turn to page 3 of your resume and

1           you've got in there a heading "additional education  
2           activities", and I'm just wondering if you could go  
3           over that for us?

4           A     Yes.  Let me select out certain parts of that.  The  
5           American Psychiatric Association is the main  
6           national professional organization of psychiatrists,  
7           similar to the Canadian Psychiatric Association.  I  
8           was asked to organize a course for the American  
9           Psychiatric Association to teach child and  
10          adolescent psychopharmacology to psychiatrists at  
11          the national level and that was a course that I  
12          organized, led, taught in for 15 years.

13                     Similarly the main child psychiatry national  
14          organization, The American Academy of Child and  
15          Adolescent Psychiatry, also asked me to organize  
16          their course on child and adolescent  
17          psychopharmacology to teach child psychiatrists  
18          about the field and I ran their national course for  
19          several years as well.

20                     After several years of doing that within the  
21          child and adolescent psychiatry group, I began  
22          running as an alternative, a more specialized, more  
23          advance study group for child and adolescent  
24          psychopharmacologists who are already well-trained  
25          and advanced in their fields, and I led that group  
26          of sub-specialists in child and adolescent  
27          psychiatry.

1 Q And that's the heading 1994-2002?

2 A Yes.

3 Q Okay. If you can flip the page over to  
4 "publications", I'll just ask if you have any  
5 comments on things that we should be aware of there?

6 A I could mention a couple of books that I've written.

7 Q Okay. So, on page 6?

8 A On page 6. Yes. One was a book that I edited  
9 almost 20 years ago on various aspects of, not so  
10 much the clinical side of child and adolescent  
11 psychopharmacology, but more the basic sciences that  
12 would underlie those fields. So, it was a book that  
13 was about the development of the nervous system, the  
14 way that drugs are managed by children's bodies  
15 differently from the way that adult bodies would  
16 manage the drugs; different effects that the drugs  
17 have in children's organs as opposed to adult  
18 organs. And we also had a chapter in that book  
19 about the ethics of treating children with psycho  
20 activations.

21 The other book is really a manual for medical  
22 students giving them an introduction to child and  
23 adolescent psychiatry, not just psychopharmacology  
24 but the field of child and adolescent psychiatry,  
25 and that's the second book that's listed on that  
26 page.

27 There, under the textbook chapters, I authored

1 the chapter on child analysis and psychiatry  
2 disorders for the American Psychiatric Association  
3 textbook of psychiatry over the course of, I think,  
4 16 years or so. There were various editions that we  
5 were updating. So, I was the author of that entire  
6 section on psychopathology disorders, psychiatric  
7 disorders in children and adolescents.

8 And there are also, I have written chapters on  
9 child and adolescent psychopharmacology for  
10 basically all five of the main textbooks in the  
11 field of psychiatry.

12 The CV also lists a variety of other  
13 publications that -- that I've had as well.

14 Q Thank you, Dr. Popper, those are the questions I  
15 have in this *voir dire*. My friend, Mr. Brown, may  
16 have some questions though.

17  
18 \*Mr. Brown Cross-examines the Witness (Qual) (Voir Dire)

19  
20 Q MR. BROWN: Sir, the only question I have  
21 is whether or not you have ever been qualified as an  
22 expert to testify in court?

23 A I have, actually one time in a malpractice trial as  
24 an expert witness, and when I was a resident I was  
25 qualified to provide psychiatric testimony in maybe  
26 50 trials at the Hospital for the Criminally Insane  
27 in Massachusetts.

1 Q That's all the questions I have, sir, thank you.

2 THE COURT: During the course of your  
3 professional practice, I take it that you have had  
4 many occasions to assess these benefits and risks of  
5 different treatments for mental illness, for  
6 children, adolescents and adults?

7 A Yes. Predominantly.

8 THE COURT: Is that predominantly part of  
9 your private practice or?

10 A My private practice is largely an innovative  
11 practice in that I often use new treatments that  
12 have not been established in the medical literature.  
13 Obviously, I would use established treatments when  
14 they're known to be effective but most of my  
15 practice has been looking at individuals who have  
16 not responded to medication treatments, and so, it  
17 involves newer types of treatments.

18 THE COURT: So, you are doing, basically,  
19 a comparative analysis of different treatments as  
20 part of your practice?

21 A Yes.

22 THE COURT: Thank you.  
23 Anything arising?

24 MR. BROWN: No, sir. Thank you.

25 THE COURT: And sir, this is your  
26 curriculum vitae and you prepared it?

27 A Yes.

1 THE COURT: All the information in here is  
2 accurate and correct?

3 A As far as I know.

4 THE COURT: All right.

5 This is an application on a *voir dire* to have  
6 Dr. Charles William Popper qualified as an expert to  
7 give expert opinion evidence in all areas of  
8 psychiatry and the diagnosis of mental illness and  
9 the treatment of mental illness and drug treatments  
10 in children and adolescents and with regards to the  
11 benefits and risks of different treatments for  
12 mental illnesses.

13 I am satisfied on the review of Dr. Popper's  
14 curriculum vitae, his extensive experience, in fact  
15 pioneering in the field of child and adolescent  
16 psychiatry and psychopharmacology, that he is  
17 qualified to give expert opinion evidence on the  
18 areas that I have just described.

19 I note as well his answers in response to  
20 questions by counsel and also that he has previously  
21 been qualified to give expert evidence in courts in  
22 the past, and I am satisfied that he is an expert in  
23 the areas that I have just described and he should  
24 be permitted to give expert opinion evidence in  
25 those areas in this trial. So, I find him qualified  
26 to give that expert evidence here today.

27 All right. Thank you.

1 MR. BUCKLEY: Your Honour, I was going to  
2 ask that his CV be marked as an exhibit. My  
3 preference would be for his evidence in the *voir*  
4 *dire* to be rolled in as evidence at trial.

5 MR. BROWN: No objection, sir.

6 THE COURT: All right. Then the evidence  
7 given by Dr. Popper on the *voir dire* will form  
8 evidence in the trial proper, and his curriculum  
9 vitae will be Exhibit 61 in the trial.

10 THE COURT CLERK: Sixty-three, sir.

11 THE COURT: Oh, sorry, 63, in the trial.

12

13 \*EXHIBIT 63 - Curriculum Vitae of Charles William Popper,  
14 \*M.D.

15

16 THE COURT: Thank you, madam clerk. Do  
17 you have a copy, madam clerk?

18 THE COURT CLERK: I do.

19 THE COURT: All right. Thank you.

20 MR. BUCKLEY: Thank you, Your Honour.

21 THE COURT: Thank you.

22 MR. BUCKLEY: Your Honour, I'm just going to  
23 state for the record that I'm going to be asking  
24 this witness to explain how he got involved with the  
25 supplement we're dealing with, and just for the  
26 record, it's going to entail some hearsay of what he  
27 observed other people saying. I'm not attempting to

1 get anything that anyone else said in for the truth  
2 of its contents, just so that the witness' narrative  
3 can flow, but his observations obviously for the  
4 truth for their contents. So, just putting that on  
5 the record before I ask the question.

6 THE COURT: That is fine.

7 MR. BUCKLEY: Thank you.

8

9 \*Mr. Buckley Examines the Witness

10

11 Q MR. BROWN: So, Dr. Popper, I'm going to  
12 ask you, you're familiar with a product called  
13 EMPowerplus?

14 A Yes.

15 Q And I'm going to ask you, how did you first get  
16 involved or introduced to this supplement?

17 A Somewhat reluctantly actually. At the discussion  
18 previously as indicated, I have for my entire career  
19 been very much the sort of mainstream child and  
20 adolescent psychopharmacology psychiatrist/physician  
21 who paid, frankly, next to no attention to  
22 nutritional factors either in my professional life  
23 or in my personal life. It just was not an area  
24 that struck me as of interest.

25 One day out of the blue I received a phone call  
26 from Dr. Marcel Kinsbourne, who is one of the  
27 leading neuropsychiatric researchers, saying that he

1 had gotten a call from a former graduate student of  
2 his, Dr. Bonnie Kaplan. He said that Dr. Kaplan has  
3 described getting some interesting new findings on  
4 the treatment of bipolar disorder using vitamins and  
5 minerals and asking if I would be interested in  
6 coming and hearing what she would have to say.

7 Dr. Kinsbourne and I have taught many times  
8 over the years about various new treatments in  
9 psychiatry and child psychiatry. So, when he heard  
10 about this as a new treatment he called me and  
11 asked, would I want to sit in. It turned out that  
12 Bonnie Kaplan was going to be coming to Boston  
13 around Thanksgiving. She was -- her family lived  
14 nearby and she was coming around for the holidays  
15 and she had made arrangements to meet with Dr.  
16 Kinsbourne to describe her new findings. The  
17 question was, would I be willing to come and listen.

18 So, I told Marcel, no thanks. It's a little  
19 strange. It's outside my field. It wasn't  
20 something, at least I thought of it was outside my  
21 field. I explained to him vitamins and minerals  
22 don't mean a whole lot to me. I wouldn't really  
23 understand what it quite meant anyway. But thanks  
24 for calling and have a nice holiday. So, I figured  
25 that was that.

26 And I then a few days later got a call from Dr.  
27 Andrew Stoll, who is one of my colleagues at McLean

1 Hospital, and he is the psychiatrist who developed  
2 the -- initially developed the Omega 3 fatty acid  
3 treatment for bipolar disorder, so, he had an  
4 interest in nutrition and its effects in bipolar  
5 disorder. He called me and said, Charlie, this  
6 sounds like what Marcel is talking about. It might  
7 be interesting. Why don't you come, just come and  
8 take a look at the data. It would be useful to hear  
9 what you think about it.

10 So, I explained to Andy Stoll that this isn't  
11 something I would really quite know what to make of.  
12 Life is short; it's around the holidays; I had other  
13 plans for holiday time. Thanks very much. Have a  
14 good holiday.

15 A few days later I got a second call from Dr.  
16 Kinsbourne and he basically said, Look, Charlie, I  
17 want you to be there. Just come. I understand you  
18 don't think this is going to have much value but I  
19 just want you to be come and take a look. And  
20 frankly, at that point I figured, Look, this is  
21 three phone calls so far, I don't know how much long  
22 -- you know, every time that I'm on the phone with  
23 them, you know, there's more to the talk. I speak  
24 with them for 20 minutes. I figured, you know, if  
25 he's going to keep this up, it's just easier to go;  
26 sit in the damn room -- sit in the room for an hour,  
27 and, you know, be done with it.

1           So, I told Marcel or -- or, yes, I would go and  
2 hear what Dr. Kaplan would have to say. I didn't  
3 know Dr. Kaplan or the work. And so, I wound up  
4 going and as it turned out, Dr. Kaplan came to  
5 McLean Hospital with David Hardy and Tony Stephan.  
6 The three of them made a presentation to Marcel  
7 Kinsbourne, Andy Stoll and I, and several other  
8 people, I think we were the three physicians, and I  
9 listened to what they had to present.

10           And they described and had, you know, Tony and  
11 David described a lot of anecdotal experience that  
12 they had had using this treatment in a fairly large  
13 number of people; I think there were like two or  
14 3,000 people with bipolar disorder that they had  
15 treated at that time, which was an enormous number  
16 of treatments. And they were describing, you know,  
17 their findings.

18           Dr. Bonnie Kaplan came. She had a small number  
19 of cases which she had worked with in a more  
20 academically systematic manner, and had some  
21 patients that had been treated under blind  
22 conditions that would increase the validity of the  
23 observations. And I heard what they had to say and  
24 it struck me as very strange. You know, the data  
25 was not perfect; it was far from perfect data; but  
26 it was, you know, good enough to get some general  
27 idea of what was going on, and it looked like that

1 had an effect.

2 And you know, as a journal editor, I've seen  
3 plenty of treatments; plenty of writeups of  
4 treatments that look as though they have an effect  
5 that may or may not really be very promising. They  
6 can get something that looks good on paper or that  
7 you can talk about that involves a change but it  
8 doesn't really translate into anything very  
9 clinically meaningful. So, I was not that impressed  
10 by the data that they had to show; although it was  
11 okay data.

12 But as I listened to them they made some claims  
13 about this treatment that struck me as pretty  
14 obviously ridiculous. For one thing, they said that  
15 this treatment when -- when applied to a group of  
16 bipolar patients would effectively treat around 80  
17 percent of bipolar patients. And, you know, when I  
18 heard that I said to myself, Well, you know, jeez,  
19 Lithium, which at the time was the best of the  
20 treatments, had something in the range of a 65 or 70  
21 percent response rate, and for them to be claiming  
22 80 percent struck me as, well, you know, they're  
23 amateurs; they're enthusiasts; they look at the data  
24 sort of in a way that somebody who might be in a  
25 more objective position would, and in fact, even  
26 among psychiatrists when they report on a new  
27 treatment before it goes into formal clinical

1 trials, they often have slightly higher response  
2 rates than what they turn out to have once their in  
3 clinical trials. So, the 80 percent just struck me  
4 as wrong, inflated, but not absurd just as, you  
5 know, unlikely. And I had questions of -- that's  
6 comparing it to Lithium, which is the best of the  
7 treatments and I had very serious questions. There  
8 was certainly no theoretical reason to think that a  
9 treatment like that would work. There was nothing  
10 in psychiatry that was even looking in that general  
11 direction. So, their claim of an 80 percent  
12 response rate struck me as bogus. False.

13 Second, they made a claim -- and I was very  
14 sceptical. I should say that 80 percent number  
15 really struck me as, you know, this is just what I  
16 was afraid I was going to hear if I went and  
17 listened to what these people were going to have to  
18 say.

19 They then had a second claim. Their second  
20 claim that struck me as important was that when they  
21 treated patients who were not previously on  
22 psychiatric medications with this EMPower (sic)  
23 stuff, that they could see clinical improvement  
24 within five says.

25 Now, we don't have anything in psychiatry that  
26 works that fast. Lithium takes five to ten days  
27 once you've taken the week or two or three weeks to

1 get the doze up to an adequate blood level, and at  
2 that point it still takes five or ten days. So, for  
3 them to say that they can start a treatment and five  
4 days later see an improvement, struck me as  
5 ridiculous. We just don't have anything in that  
6 direction.

7 So, in my own mind I was thinking, you know,  
8 that's strike two. That's -- that's just two strong  
9 claims they're making that are obviously false.

10 Then they had a third claim, and their third  
11 claim was that when you give the EMPowerplus to  
12 patients already on psychiatric drugs that the --  
13 that the vitamins and minerals amplify the effects  
14 of the psychiatric drugs to such a degree that you  
15 had to lower the doses or otherwise the patients  
16 would get sick or side effects from their  
17 psychiatric drugs. Well, nothing like that, no  
18 suggestive data even slightly in that direction in  
19 the field of psychiatry; nothing.

20 As it turns out a couple of years ago there was  
21 one 'B' vitamin that was found to have a very small  
22 potentiating effect on antidepressant effects. It's  
23 still the only thing, even now, several years later  
24 that is even remotely in that direction. But their  
25 claim was totally different. Their claim was that  
26 adding EMPowerplus to somebody on a stable  
27 psychiatric regimen would make them so intolerably

1 sick that you had to lower doses.

2 So, I had a very clear response to that one.  
3 That one to me was strike three. And what am I  
4 doing in this room? And I've been in this room for  
5 an hour. And life is short. And I gotta get out of  
6 here.

7 So, you know, I sat there for a minute trying  
8 to figure, how do I get out of this small group  
9 without appearing too offensive. So, what I said  
10 was, Well, jeez, you know, I have a patient at 2:00,  
11 which I didn't. I had allotted two hours to hear  
12 these people but I had had enough. And I -- I said,  
13 Jeez, well, you know, this is all very interesting.  
14 I have a patient at 2:00, so, I have to go. Could  
15 you give me a list of the ingredients just so I can  
16 sort of think about this and read up about these  
17 different minerals and vitamin effects on mental  
18 functioning; stuff that psychiatrists, I and other  
19 psychiatrists, pay a minimum of attention to, and  
20 certainly does not enter into normal psychiatric  
21 practice in any form.

22 So, I asked a list of ingredients and I figured  
23 they'd give me a piece of paper, and I could say,  
24 Gee thanks, you know, I'm carrying something out.  
25 It looks as though I'm sort of taking what they  
26 saying seriously.

27 But they said they didn't have a copy of it,

1 but here take this bottle; it came with a bottle of  
2 the stuff and they said, Here, why don't you take  
3 this bottle. And I said, No, no, no, no. I knew  
4 that the bottle cost \$75. I didn't want to trouble  
5 them wasting \$75 on me. I said, No, no, just e-mail  
6 me with a list of your ingredients and that'll be  
7 great. But David Hardy was pretty insistent. He  
8 said, Here's the bottle, just take it, it's fine.  
9 We have plenty of them. Just take the bottle.

10 So, I figured, you know, I'm not going to get  
11 into a thing around that. I took the bottle, said  
12 thanks, walked out of the room, and as soon as I was  
13 outside the room, closed the door, had my jacket on,  
14 I literally took the bottle and put it under my  
15 coat, because I was going to be walking through  
16 McLean Hospital and I didn't want people seeing this  
17 bottle. And they wouldn't have known what it meant,  
18 but I just didn't want to take any chance of  
19 somebody asking me, What is that? Or worse, they  
20 actually recognizing my having this bottle in my  
21 hand. So, I walked, I literally had it in my coat  
22 and walked back five minutes to get back to my  
23 office. And when I got to my office I took the  
24 bottle and stuck it behind a stack of journals,  
25 because I was afraid some parent might see the  
26 bottle, or that some kid wandering around would pick  
27 up the bottle and say, you know, Look mommy, what's

1 this, or that the cleaning lady at the hospital  
2 overnight would see the bottle. I just didn't want  
3 it in sight. So, I stuck it there and left it.

4 Well, a really strange thing happened that day.  
5 It's very odd. That evening around 5:00 I got a  
6 call from one of my child psychiatry colleagues who  
7 said, Could you please consult on my child as soon  
8 as possible, like, right now? And frankly, if it  
9 was anybody else I'd say, Well, jeez, you know I can  
10 certainly see you in a couple of months or three  
11 months or something like that, but this was somebody  
12 who I had trained with and, you know, had -- knew  
13 very well, and was a colleague and a friend. And I  
14 said, Sure, and made an arrangement to see the child  
15 and both parents that evening.

16 The child was a 10 year old who had been having  
17 temper tantrums, severe temper tantrums for two to  
18 four hours a day, every single day for about four  
19 months. These were really severe tantrums; the kid  
20 spinning on the floor, just sort of not even having  
21 body -- bodily control enough to stand up. And when  
22 I -- when I heard that, you know, I've seen enough  
23 bipolar kids, frankly, I knew that that was a  
24 bipolar child. There was nothing else -- there is  
25 nothing else in child psychiatry that can create  
26 that kind of a clinical picture, apart from bipolar  
27 disorder, except maybe if he had severely overdosed

1 on cocaine or some abusable drug that had made him  
2 extremely psychotic very suddenly. But it wouldn't  
3 do it everyday for four months, and you know, this  
4 was a 10 year old child of a psychiatrist and social  
5 worker, and you know, their kid was not using  
6 cocaine. It just wasn't a part of the story. So, I  
7 knew the kid had bipolar disorder, but I went ahead  
8 and did the sort of a more complete evaluation just  
9 because it's appropriate and to fill out the  
10 clinical picture.

11 So, I told the parents that, you know, just as  
12 they feared, the child definitely did have bipolar  
13 disorder and that the treatment was going to be long  
14 and involved, and involved medications. And it  
15 would take quite a while to get medications that  
16 would really - the child psychiatrist knew all of  
17 this but is sort of going through it for the -- for  
18 his wife - that this was going to be a complicated,  
19 difficult treatment, and that the odds were going to  
20 be very good and something could be done to improve  
21 the situation but it would be still leaving a fair  
22 amount of psychiatric symptoms even after we've done  
23 everything we can with typical psychiatric  
24 medications.

25 So, we started discussing the options but I  
26 explained to them that I didn't want to start  
27 anything that day because in a child, I always

1           insist on seeing a child a second time, at least,  
2           before starting a serious psychiatric medication.  
3           So, you know, I -- I suggested that we could meet in  
4           a week and that would give me a second look at the  
5           kid in a different mood or a different frame of  
6           mind, and then we can make a decision about what  
7           drug to use, which, you know, the child psychiatrist  
8           knew perfectly well was the appropriate thing to do,  
9           and undoubtedly would have been what he would have  
10          done. But the parents, I guess, because they knew  
11          they had a little bit of extra leverage with me, the  
12          father said, Isn't there anything we can do? I mean  
13          we just -- we can't get through another week with  
14          this. And I really didn't want to give any because  
15          I wanted to see the kid clean and get a clean  
16          reading on what the child looked like at a different  
17          point of time.

18                 So, we had this sort of discussion about, Well,  
19                 you know, I don't want to use this drug; I don't  
20                 want to use that drug; that'll change the picture  
21                 too much. What can we use that's lightweight, that  
22                 won't really -- can we do anything at all to take  
23                 the edge off, and there really wasn't anything that  
24                 I wanted. Eventually, I said, Hey, you know, what  
25                 you could use is Omega 3 fatty acids because they  
26                 are, on the one hand there had been Andy Stoll's  
27                 recent publication that they were effective, and on

1 the other hand I had never found them to be very  
2 effective except in a very small number of patients,  
3 and I figured, Well, that would sort of give them  
4 the feeling that there was a treatment without  
5 really clouding the picture clinically so that I  
6 could get a clean (INDISCERNIBLE).

7 So, unfortunately, the father knew that the  
8 Omega 3 fatty acids were not a very effective  
9 treatment, and said, No, thanks, that just is sort  
10 of a waste of time. What else is there? And we sat  
11 there for a few minutes sort of with this impasse,  
12 with they're really wanting is something, and I'm  
13 really not wanting to do anything whatsoever, and  
14 yes, the kid might have wound up hospitalized if we  
15 had -- if they had tried to go.

16 So, I said, Look, you know, I heard about this  
17 really weird treatment today, and if you want to  
18 hear about it I can tell you about it. And so, I  
19 explained to them about these three Canadians coming  
20 here to tell us about this really weird-sounding  
21 treatment. I went through the whole story with  
22 them. I told them about all three strikes and was  
23 very clear about my attitude about the treatment,  
24 but the parents felt, Look, it's something. Let's  
25 give it a try. I told them, frankly, if I were in  
26 their position I wouldn't do that. They wanted to  
27 do it.

1           So, I took the bottle out from behind the  
2 journals and handed to them. I was just thrilled to  
3 get it out of my office. Just delighted, I was so  
4 -- I remember thinking, the cleaning lady and not to  
5 have to have that discussion.

6           So, I gave them the bottle. I said, you know,  
7 here's how you start up. I'll see you in a week and  
8 we'll see where things are. And I was perfectly  
9 satisfied that I was going get a clean reading on  
10 the kid.

11           So, the father calls four days later and he  
12 says, The tantrums are gone, not better, not a lot  
13 better, gone. And that the kid wasn't even  
14 irritable.

15           Well, I thought to myself, that's not the --  
16 that's -- that's not a psycho pharmacologic affect,  
17 that's a placebo effect. You know, we see that  
18 occasions; very unusual to see a placebo effect of  
19 that magnitude in a kid with two to four hour a day  
20 temper tantrums. But I thought the vitamins and  
21 minerals obviously, would not have done that; no  
22 drug would have done that. This has to be a  
23 psychological effect of the kid coming and sitting  
24 with a psychiatrist serving out his water, feeling  
25 for maybe some hope for treatment or whatever.

26           So, I said to myself, this is a placebo, clear  
27 and simple. And I said to them, Oh, that's

1 wonderful. That's great. Keep that treatment going  
2 and I'll see you in three days and we'll take a  
3 look. And I figured, a few more days that placebo  
4 effect is going to wear off, I'll get my nice clean  
5 look at the kid and see what he's about.

6 So, I saw the kid three days later at the  
7 seven-day point, and he was a different kid. The  
8 first time I saw him he was surly, nasty, everything  
9 out of his mouth was, if it wasn't a curse it felt  
10 like a curse, snarly, didn't really like the kid.  
11 The second time, he was warm, thoughtful,  
12 intelligent, organized, very complex sentence  
13 structure, very aware of the complexity of his  
14 feelings, very articulate about it; was a totally  
15 different child.

16 So, I was floored and said to myself -- said to  
17 myself, this is still a placebo. Placebos can last  
18 up to a couple of weeks in child psychiatry, that's  
19 not so unusual, and okay, we're at the seven day  
20 point. This is a placebo I said to myself. To them  
21 I said, Isn't that wonderful, keep the treatment  
22 going. And set an appointment to see them a week  
23 later.

24 When I saw him a week later he was just like he  
25 was that second time: bright, articulate,  
26 sensitive, the whole bit. Very impressive kid. I,  
27 you know -- you know, they had that they had ordered

1 up new bottles because the bottle that I had given  
2 them was a two week supply. So, they had ordered up  
3 a new supply from Canada and were waiting for its  
4 arrival. And you know, I said, well, you know, I  
5 still want to follow this closely and I was  
6 expecting the kid to break lose within a few days so  
7 would set the appointment another week.

8 The father called a couple of days later and  
9 said, You know, we ran out of the EMPowerplus, the  
10 bottles never -- they didn't arrive. And so, the  
11 kid's been off. And he called me at the 48-hour  
12 point and he said, the tantrums are back full force.  
13 And I said, again to myself, this doesn't make a lot  
14 of sense to me but that is very strange that when  
15 they started the treatment it worked very well, and  
16 when they stopped the treatment pretty quickly it  
17 reversed. And they were dealing again with a kid  
18 who is temper tantruming for two to four hours a  
19 day, a complete reversal of symptoms upon stopping  
20 the treatment.

21 So, I said, Jeez, well, you know, we can -- we  
22 can get conventional psychiatric medications going  
23 now if -- you feel, you know, if you want to do  
24 that, or if you want you can wait for when the  
25 bottle arrives and you can retry the stuff, although  
26 I was definitely leaning toward conventional  
27 treatment. And they said, No, they wanted to wait.

1 The stuff had been shipped. It should be arriving  
2 any day.

3 Well, it was around -- it was approach -- you  
4 know, it was in the Christmas season. The package  
5 must have gotten lost in the mail. It didn't  
6 arrive. So, the kid continued with these temper  
7 tantrums every single day for about a week. And the  
8 family was about to go on vacation. They didn't  
9 know what to do. The stuff hadn't arrived. So, I  
10 had a list of the ingredients by that point and I  
11 said, Look, I'll tell you what. I'm going to go our  
12 local health foods store and start pulling  
13 ingredients off the shelf to try to approximate some  
14 mix of what was in the EMPowerplus formula. It's  
15 not that I believed it; it's just that they were  
16 going to wait anyway, so, I may as well at least try  
17 to get some portion of that vitamin/mineral  
18 treatment to them.

19 So, I went -- I went to the -- to the health  
20 food store and frankly sort of made a scene by  
21 pulling off -- buying a hundred bottles to try and  
22 get the various ingredients in the right forms in  
23 the right proportions correct, and to try and get a  
24 reasonable balance. I could only get about 28 of  
25 the 36 ingredients in the product. And the portions  
26 weren't particularly a good match to the original  
27 formula. But it was an approximation. So, I bought

1 up the pile of bottles. I gave them to my friend  
2 and said, You know, why don't you try those, it's  
3 the best we can do. If we're lucky the stuff will  
4 come from Canada soon. And I said to myself, this  
5 is totally ridiculous but, you know, it's going to  
6 help the family through this time.

7 So, they gave the kid this, you know, a mess of  
8 pills. It was a huge number of pills. They went on  
9 their -- they went on a vacation. They called me  
10 from vacation to say, You know, the kid is a -- this  
11 is not like the original formula, but -- but he's  
12 about 60 percent better than he was, and that's  
13 making the vacation workable.

14 That was the first time I began to believe that  
15 maybe there was something to this, maybe. Because  
16 there, the ingredients for once, they were off the  
17 shelf from the health food store. This wasn't some  
18 strange thing arriving from elsewhere. I mean, who  
19 knows, they could have had Zyprexa, or Lithium, or  
20 Thorazine in the pills that were being labelled  
21 EMPowerplus; I didn't know. But here, we knew what  
22 was in the bottles. They were labelled in a  
23 legitimate health food store. And they claimed they  
24 were getting a 60 percent effect out of it. So,  
25 that began to dawn on me that maybe this wasn't a  
26 placebo.

27 They came back from their vacation. The

1 package still hadn't arrived. He went off to --  
2 went back to school and interestingly, the teachers  
3 said that he was about 60 percent better, entirely  
4 on their own. And then a few days after that the  
5 package arrived. He went, the child went back on  
6 EMPowerplus and the father called me four days later  
7 and said, The tantrums were gone; totally gone.

8 Now, that's actually pretty good evidence.  
9 That's -- that's the kind of thing we often do in  
10 clinical practice to try to prove that a treatment  
11 works where you apply a treatment, see an effect,  
12 withdraw, lower the dose or withdraw a treatment,  
13 see a return of symptoms, put back -- in this case,  
14 we had certain intermediate product, to which the  
15 child improved again, and then the actual product  
16 where the kid got his full response back. So,  
17 that's several reversals and each reversal  
18 strengthens the case that there's a causal  
19 relationship between the drug treatment and the  
20 response. So, that, at that point was really  
21 extreme strong evidence and it really made me pay  
22 attention.

23 Over the course of time the child stayed on  
24 EMPowerplus from approximately the beginning of  
25 January out into the summer vacation and while I was  
26 -- while I was away on summer vacation the family  
27 decided, you know, this is a lot of pills. This was

1 back in the days when it was 32 pills a day that  
2 this 10 year old was taking. And the family and the  
3 -- you know, the child didn't want to take all the  
4 pills. The family figured, you know, we can try --  
5 try lowering the dose little by little. And what  
6 they reported to me in September was that over the  
7 summer they had tried lowering the doses. They got  
8 down from 32 to 24 pills and at that point the  
9 symptoms began coming back. Didn't come back all  
10 the way but it was beginning to come back. So, they  
11 just put it back to 32 and left it there.

12 He stayed on it for maybe another year. Zero  
13 tantrums. Zero over that entire period of time.  
14 And then again, they decided, hm, so many pills.  
15 It's been such a long time. Maybe he can do with a  
16 few less. So, again, they try to lower the number,  
17 and again, they got into the mid-20s and they found  
18 that the child needed to full dose. And he improved  
19 again.

20 So, every single time there was a stopping or a  
21 reduction of the dose, every single time there was a  
22 return of these obviously unmistakable symptoms, and  
23 every time he went back on the product he improved  
24 and his symptoms were gone.

25 A couple of years later he decided he just  
26 doesn't want to do the pills; he wants to give  
27 conventional medications a try. And so, I work with

1 the child and the family. We discontinued the  
2 EMPowerplus. He went on conventional medications  
3 and he did not badly with them. But they didn't  
4 work as well. He -- he became sort of chronically  
5 irritable; not terrible, but definitely not like his  
6 old self; absolutely unmistakably not his old self.  
7 And he complained that the medicines made his mind  
8 foggy, that he couldn't think as clearly on the  
9 conventional medications. And this was, you know, a  
10 star student and, you know, he really cared a lot  
11 about his brain working as well as it could. And he  
12 said, You know, he just doesn't like it. He doesn't  
13 want it.

14 So, after several months, I think it was six or  
15 eight months on conventional meds., he decided he  
16 wanted to go back on EMPowerplus. The parents  
17 supported it. They agreed with the observation that  
18 he was not as well controlled on the conventional  
19 medications, and he went back to EMPowerplus. He  
20 made the transition back to EMPowerplus and he's  
21 been fine ever since. No tantrums. He's not  
22 messing with the dose. And he is a superstar  
23 student.

24 So, that was the case that got me interested  
25 and when I -- when I had seen the initial response  
26 when he went back on the -- at the end of that  
27 winter vacation when he went back on EMPowerplus and

1 he had that full -- return of full control again, as  
2 I say, that one really caught my attention. And I  
3 figured, you know, this doesn't make a lot of sense  
4 to me but I really have to, you know, I have other  
5 patients who are not doing great on conventional  
6 medicines. I really owe it to them to at least  
7 inform them about the treatment and I can, you know,  
8 I started telling certain of my very -- some of my  
9 patients who even on good conventional medication  
10 therapy were having a hard time. I told them, you  
11 know, I told them about the treatment. I gave them  
12 all the provisos. I gave them all my doubts. I  
13 told them about the one case. And I said, you know,  
14 I don't know, I just don't know, but this is a  
15 choice that you can make. If you want to give it a  
16 try we can give it a try. If you want to stick with  
17 the conventional meds. that's absolutely a  
18 reasonable decision.

19 Some of them chose to try; some of them chose  
20 not to. And so, again, little by little, to have  
21 some experience with other patients, converting them  
22 from their prior regimen -- prior medication  
23 regimens to EMPOWERplus.

24 And as I began to work with other patients and  
25 seeing that it worked and getting more experience, I  
26 found several things. One was those three strikes.  
27 It did look like about an 80 percent response rate.

1 For the people that went EMPowerplus who were not  
2 previously on medications they did show a response  
3 within a small number of days, faster than Lithium,  
4 faster than the drugs. And most baffling, that when  
5 we added EMPowerplus to a psychiatric regime that  
6 they would get flooded with side effects and we had  
7 to reduce -- side effects of the psychiatric  
8 medications that they were on, and that we really  
9 had to reduce the doses of conventional psychiatric  
10 medications if they were going to be on even a  
11 moderate dose of EMPowerplus. So, all three  
12 strikes. The things that got me out of the room  
13 initially, all three of them were true.

14 And over the years, subsequently that I've been  
15 working with it, those initial findings that were  
16 being described by Bonnie and Tony and David,  
17 they've all held out.

18 It took me a very long time to not be extremely  
19 suspicious of the treatment. Even as I was using it  
20 and seeing it work I kept thinking to myself, Hm, am  
21 I losing it? Am I -- am I -- I really honestly  
22 questioned my sanity. But it was so consistent and,  
23 you know, we did the kinds of things I've always  
24 done in developing new treatments of trying various  
25 manoeuvres to verify, you know, making variations in  
26 the protocol to try optimize the treatment. And,  
27 you know, the way it do it now, differs very very

1 slightly from the method that -- that I understand  
2 they use at TrueHope. But in essence, what they  
3 were describing was -- was absolutely right.

4 My findings are basically -- my observations  
5 are basically those of a clinician, albeit trained  
6 to sort of work with new treatments and observe the  
7 subtleties of treatments that aren't well  
8 understood, they're still the observations of one  
9 clinician. We don't have any completed control  
10 trials. We don't have the kind of scientific data  
11 that would allow me to recommend to my colleagues  
12 that this is a treatment that ought to be used. And  
13 certainly, I hope that nothing that I say today is  
14 construed as suggesting that I would recommend the  
15 treatment and whenever I present the story to  
16 patients currently, I always explain to them, you  
17 know, this is a treatment for which there are no  
18 controlled trials. We have only preliminary data.  
19 We have lots of established conventional treatments,  
20 and many of the patients that I discuss this with  
21 choose conventional treatments; some of them choose  
22 this very screwy-sounding treatment and I help them  
23 use it.

24 But I myself, my own opinion is, that this  
25 stuff works in many cases dramatically and much  
26 better for many people than conventional medications  
27 have.

1 Q Dr. Popper, I'm just going to stop you and clarify a  
2 couple of things, because you're telling us the  
3 truth here today in your observations, is that fair  
4 to say?

5 A Yes.

6 Q But you don't think it's fair for anyone to give  
7 medical advice without actually sitting down with a  
8 patient and going through with them the various  
9 treatment options, is that what you're trying to  
10 communicate?

11 A Hm. Actually there were two things I was trying to  
12 communicate.

13 Q Okay.

14 A Yes. The point that you are making, that I wouldn't  
15 -- to recommend a treatment for an individual  
16 patient, the clinician has to really know that  
17 individual patient, meet with the patient, evaluate  
18 the patient, know the medical factors, evaluate the  
19 entire psychiatric picture before making any kind of  
20 recommendation to an individual. So, obviously, I'm  
21 not examining any individual today. I am not making  
22 any recommendation about the use of the treatment to  
23 any individual.

24 I was also saying something slightly different,  
25 which is that I would not at this stage say that  
26 based on my anecdotal -- my own clinical observations,  
27 that this is a treatment that I would recommend as

1 an established treatment. You know, in medicine we  
2 want strong data before we recommend a treatment as  
3 an established treatment and that's not what we have  
4 here. And when I talk with my patients, I am very  
5 clear that this is some experience that I've had  
6 that looks encouraging and that I'm convinced that,  
7 you know, some day when the trials and the control  
8 trials are there, I think I know what they are going  
9 to show. But it's not like we have the control  
10 trials and I can go to my colleagues and say, Here  
11 is a treatment you ought to be using with your  
12 patients. We are nowhere near that.

13 Q Okay. And is that because for any treatment,  
14 whether it's effective or not, basically, a certain  
15 type of evidence is looked at before it goes to  
16 mainstream, is that what you're trying to  
17 communicate?

18 A Yes, and especially for something that is as  
19 unlikely sounding as this, one wants to have very  
20 strong convincing solid scientific data before  
21 recommending other physicians incorporate this into  
22 their practice. So, that's not what I'm saying at  
23 all.

24 Q Okay.

25 A On the other hand, I continue to use it in my own  
26 practice. And there are individual physicians who  
27 have approached me about it and who have asked to be

1           educated on how to use it and who do use it in very  
2           small numbers. But I have not and would not at this  
3           stage get up in front of an audience of  
4           psychiatrists and talk about this treatment, even  
5           remotely, in the same manner in which I would talk  
6           about, you know, the other hundred or so  
7           pharmacological treatments we have in medicine.

8        Q     Okay. Now, I want you to tell us about your second  
9           patient. So, this 10 year old boy was your first  
10          patient that tried the EMPowerplus. Do you remember  
11          your second patient? Where I'm trying to go is, is  
12          you --

13       A     I don't know that I do.

14       Q     -- you studied a number of patients and then wrote  
15          an article. And so, I'm just --

16       A     Oh. Oh, oh.

17       Q     -- I'm wanting you to describe kind of that group of  
18          patients and how you ended up writing the article  
19          and ...

20       A     Got it. Okay. Yeah. After that first patient, as  
21          I say, I began to use this in some other patients,  
22          initially very, very, I think I had one patient I  
23          worked with for three or four weeks who got enough  
24          of an effect, not as dramatic as that 10 year old,  
25          this was an adult with a super resistant bipolar  
26          disorder. But we -- we transitioned her from her  
27          psychiatrist regimen over to EMPowerplus, and she in

1 fact was better. And she preferred it. Again, it  
2 was by no means an elimination of the symptoms in  
3 the way that it was for the 10 year old, but it was  
4 encouraging enough for me to say, okay, I'm going to  
5 try this on another one, and then another one. And  
6 over the course of about six months, I had about 20  
7 patients with bipolar disorder who were in various  
8 stages of trying the supplement.

9 And after seeing, within this period of time,  
10 and actually for considerably longer after that, I  
11 knew rationally that this was a treatment that  
12 worked. I still, as I said for a long time, was  
13 questioning my sanity, but I sort of knew that was  
14 just my questioning my sanity, and that, okay, this  
15 is just too hard to believe and I'm going to  
16 question it. But in terms of what I could observe  
17 and using the methodology that I have used  
18 throughout my career, my impression was that this  
19 stuff was clearly working.

20 And my impression was that this is something  
21 that ought to be researched, that it ought to be  
22 studied. And that this wasn't just a treatment that  
23 sounded vaguely possibly, or probably promising, but  
24 one that struck me as having extremely high  
25 potential, that justified the allocation of  
26 significant monetary -- of -- of grant money to  
27 support research of that type, and I became

1 interested in trying to get other people to begin  
2 studying, which, as it turned out is extremely hard  
3 for all of the obvious reasons. People, you know,  
4 my colleagues will look at this on the one hand, and  
5 they -- and I've literally heard a hundred times,  
6 colleagues saying, You know, if I heard this from  
7 anybody else, I would laugh at them.

8 But even after saying that, to then -- for my  
9 colleagues to then and invest their own time and  
10 resources and researching something like this, is --  
11 is somewhat of a bigger step.

12 But, something else happened. Bonnie Kaplan  
13 had reached the point, this is about six months  
14 after that presentation at Des Plaines, had decided  
15 to write up several of her initial patients for a  
16 scientific article and she called me and asked, you  
17 know, where would be -- you know, what kind of  
18 journal might publish something like this and, you  
19 know, I knew Charles since I was an editor and, you  
20 know, I thought with her about what the options  
21 were. I recommended the Journal of Clinical  
22 Psychiatry because it has the second largest  
23 circulation among psychiatrists of any of the  
24 psychiatric journals. It's a peer review journal  
25 and I knew the editor very well and so I suggested  
26 she submit there but I also sent an email to the  
27 editor and said, You're going to be receiving this

1 paper that you're probably going to want to not even  
2 bother reviewing. You'll probably look at it and  
3 say, This goes directly back to the author, we're  
4 not going to get peer review on this 'cause it's  
5 just too ridiculous, Sam. I told him, That is  
6 likely what you're going to be tempted to do when  
7 you take -- when you get this paper but let me  
8 suggest take a very serious look at this, I know  
9 this treatment, I've worked with it enough for me to  
10 believe that this -- this is actually worth  
11 pursuing. So, he got the paper. He did send it to  
12 reviewers. It came back with basically favourable  
13 reviews and before he wrote back to Bonnie he called  
14 me and said they are prepared to publish that paper  
15 on the condition that I write an editorial style  
16 statement explaining why they were going to publish  
17 that paper and that if I wasn't willing to write  
18 that they were not going to publish it.

19 Q Now, Dr. Hubbard, can I just stop you? Is that just  
20 because the idea of treating mental illness with  
21 vitamins and minerals is just so off the wall in the  
22 mainstream psychiatric community?

23 A Exactly. It would've been looked at as ridiculous.  
24 What's wrong with that journal editor to publish a  
25 paper like that.

26 Q Okay.

27 A So, he figured if I wrote a note of explanation

1 people knew me. They would see what I would have to  
2 say about the treatment. So, I wrote a paper that I  
3 believe has been made available to the Court. A  
4 little short three page extended editorial  
5 commentary basically giving some background to make  
6 it at least seem plausible that maybe there ought to  
7 be a reason for physicians to look at this.

8 Q Doctor --

9 A And --

10 Q -- I'm just going to show you a document and ask you  
11 if that's the document you're talking about?

12 A That is the editorial commentary that I wrote that  
13 accompanied the first publication on this treatment  
14 by Bonnie Kaplan.

15 Q Okay. And it's titled, Do Vitamins and Minerals  
16 (Apart from Lithium) Have Mood Stabilizing Effects,  
17 and it outlines your own clinical experience to the  
18 time? Would that be fair to say?

19 A Well, no the production -- actually, the -- the --  
20 yeah, well yes and no. What the paper -- what --  
21 what the commentary really was about was just to  
22 make it -- was to cover the editor's reputation so  
23 that it -- to make it seem plausible to give them  
24 some scientific credibility to the idea that these -  
25 - such a treatment might be worth pursuing and at  
26 the same time to express -- express a fair amount of  
27 scepticism about the treatment but where the basic

1 bottom line of this state -- of the statement is  
2 this is a treatment that deserves being researched.  
3 I was not recommending clinical treatment but I was  
4 saying, Here is something that crazy as it may sound  
5 ought to -- ought to be getting the attention of  
6 researchers and getting the money to support that.  
7 So, I sent the -- I sent the manuscript back to the  
8 editor for it to be published with Bonnie Kaplan's  
9 paper. They called me and said, You know, it's fine  
10 but could you include a little bit of information  
11 about your own clinical observations with it? I  
12 didn't initially want to put that in there because I  
13 didn't want anything that might have been construed  
14 as if it were a recommendation for a clinical  
15 treatment so I talked more around the subject. But,  
16 the editor said he felt that I really needed to say  
17 something about my own observations because that's  
18 really what lends credibility to the treatment. So,  
19 I reluctantly, but -- but at his direction, put in I  
20 think two paragraphs. One a paragraph that  
21 described very briefly that ten year old, the first  
22 page, that I had had and the second paragraph that  
23 described that first group of 21 -- that group of  
24 the first 21 patients in which 17 of the 21 had  
25 shown a positive response to EMPower and with those  
26 two paragraphs added the editor approved the  
27 commentary and Bonnie's paper went ahead and was

1 published in the same issue of this -- and the  
2 commentary appeared in the same issue.

3 Q Okay. Now, that happened in 2001?

4 A Right.

5 Q Okay. When that's published. What happened after  
6 2001? What's been your experience?

7 MR. BUCKLEY: And actually, Your Honour, if  
8 you want to take the morning break it would be --

9 THE COURT: It is already in as an  
10 exhibit?

11 MR. BUCKLEY: It's not in as an exhibit yet  
12 so --

13 THE COURT: Do you intend to put it in as  
14 an exhibit?

15 MR. BUCKLEY: I do so we could do that and  
16 then ...

17 Dr. Popper, the document that I've handed you  
18 that's the document that you wrote?

19 A Yes.

20 Q And the document's true or is your -- you're  
21 hesitating because your opinion's changed a bit or  
22 ...

23 A That's what I'm trying to remember -- remember what  
24 I was saying then if anything that I actually wrote  
25 here would have changed. I -- actually, this is one  
26 of the very, very few things I've written where five  
27 years later I think I would say I wouldn't have

1 written it differently. Yeah, I think --

2 Q Maybe we will break and you can read it during --

3 THE COURT: That is fine.

4 Q MR. BUCKLEY: -- the break and I'll ask you  
5 that question again.

6 THE COURT: Yes, in all fairness to give  
7 Dr. Popper a chance to take a look at it and --

8 A I'll take a look at it.

9 THE COURT: -- then we will deal with the  
10 exhibit when we return. All right. We will take  
11 our morning recess right now and give everybody a  
12 chance to stretch their legs and so on and I will  
13 return at a quarter after. Well, make it 20 after.  
14 We will take a 15 minute break or so. All right?  
15 Please do not discuss your evidence with anyone  
16 until after you have finished your testimony. All  
17 right? All right.

18 (ADJOURNMENT)

19 THE COURT: Mr. Buckley?

20 MR. BUCKLEY: Thank you, Your Honour. Your  
21 Honour, my reluctance -- actually, I have some  
22 reluctance in entering this just because most of it  
23 is hearsay. There's really only about two  
24 paragraphs but I will enter it but where he's  
25 talking about David Hardy and their experience. I  
26 do understand that that won't be for the truth of  
27 its contents.

1           So, Dr. Popper, you've had the opportunity to  
2           read the article, Do Vitamins or Minerals (Apart  
3           from Lithium) Have Mood Stabilizing Effects?

4           A     Yes, I did.

5           Q     And you recognize that as the article that you  
6           wrote?

7           A     Yes.

8           Q     And is it true?

9           A     Yes, actually I -- going through it now, five or so  
10          years after writing it, there actually isn't  
11          anything I would change in the sense of there being  
12          no statements in here that are incorrect or that  
13          would even need modification.

14          Q     Okay.

15          A     I remember when I wrote it I was very thoughtful  
16          that people were going to go every word of this and  
17          pick at it so I wrote it very conservatively.

18          Q     Right and that's as you were saying about the bias  
19          in the psychiatric community towards vitamins and  
20          minerals as a treatment?

21          A     Yes.

22          Q     Okay.

23          MR. BUCKLEY:                    And, Your Honour, I would ask  
24          to enter this as an exhibit.

25          MR. BROWN:                     I have no objection, Sir.

26          THE COURT:                     All right. Exhibit 64 then  
27          will be the document entitled, Commentary: Do

1 Vitamins or Minerals (Apart from Lithium) Have Mood  
2 Stabilizing Effects? And that was published in the  
3 Journal of Clinical Psychiatry December, 2001?

4 A Yes.

5 THE COURT: Exhibit 64.

6

7 \*EXHIBIT 64 - Publication, Do Vitamins or Minerals  
8 \*(Apart from Lithium) Have Mood Stabilizing Effects? by  
9 \*Charles W. Popper, MD.

10

11 Q MR. BUCKLEY: Now, Dr. Popper, when that  
12 article was published you were summarizing your  
13 experience up to that time?

14 A Yes, I think it was completed around August or so of  
15 that year.

16 Q Okay. Now, you've continued to have experience with  
17 EMPowerplus?

18 A Yes.

19 Q Can you tell us roughly how many of your patients  
20 have chosen to try that supplement?

21 A I guess as an approximate number I'd say 100. I  
22 haven't actually kept count since writing this  
23 statement but I would guess it would be in the range  
24 of 100 maybe 150 and there have been a much larger  
25 number that I've consulted on that other doctors  
26 have treated but that I have been advising them on.  
27 That might be another 300 or 500.

1 Q Now, so as your experience with the supplement has  
2 increased has the numbers of about assisting 80  
3 percent held up?

4 A That seems to be about right. Yeah, it does seem to  
5 be about 80 percent for people with bipolar  
6 disorder.

7 Q Okay. Now, typically if you had a patient who was  
8 choosing this as a treatment option, who was not on  
9 medications, can you describe for us typically how  
10 that looks of -- and what that entails?

11 A In terms of the -- you know, what I say to them and  
12 how I prepare them or how --

13 Q Well, I'm less --

14 A -- the drug treatment --

15 Q -- concerned about --

16 A -- how the treatment itself has worked?

17 Q Hey, I'm less concerned about what you'd say with  
18 them but if you -- you've had patients that are not  
19 on psychiatric meds choose this supplement as a  
20 treatment, correct?

21 A Yes.

22 Q And how that works is very different than if you  
23 have a patient that's on medications that chooses  
24 the supplement, is that correct?

25 A Okay. So, the technical management of the  
26 supplement --

27 Q Yes.

1 A -- for the patient? Okay.

2 Q Yes, so I'd like to -- if you could describe first  
3 of all what does patient management look like when  
4 the -- when the patient is not on medications when  
5 they choose to start the supplement?

6 A Okay. Once all the initial psychiatric evaluation  
7 and medical evaluation, blood tests and all are  
8 completed, the start up protocol is quite simple.  
9 Usually I bring them up to full doses within a week.  
10 I have done it differently with different patients  
11 just to get a feeling for what works better and  
12 worse but overall I basically bring them up to, at  
13 this point, the full 15 pills a day typically within  
14 three to five days. Start low and work up fairly  
15 quickly.

16 Q Okay. In your patients that are bipolar and you  
17 start them that way how long does it take for you to  
18 see any response?

19 A Any response we usually do see some improvement  
20 within five days and certainly by ten. By the tenth  
21 day we often have pretty substantial increase. Not  
22 just an incremental change that we might see within  
23 the first couple of days or so but we can get a  
24 pretty complete response from many of them within a  
25 week or two at the most.

26 Q Okay. And what does that mean when you're getting a  
27 response? Like what does that look like?

1 A Complete -- basically, it's a reduction in their  
2 symptoms. Each patient with bipolar disorder will  
3 have their own characteristic symptoms but for --  
4 actually, I should qualify. I'm not sure I  
5 adequately did. When I said bipolar what I meant  
6 was a bipolar patient who is in a manic high energy  
7 state rather than in a depressive state.

8 Q Okay.

9 A Usually the manic state would involved -- again,  
10 it's -- the symptoms are quite age dependent but  
11 what one would be looking for would be a reduction  
12 in impulsive behaviour, in an angry mood, in the  
13 clarity of thinking, ability to concentrate,  
14 improvement in sleep symptoms, insomnia would  
15 resolve. Those would be the major kind of hallmark  
16 symptoms that one would look at.

17 Q Now, for somebody who hasn't been on meds, who is  
18 responding well to the treatment, how often  
19 generally do you have to see that patient to manage  
20 them?

21 A On EMPower?

22 Q On EMPower.

23 A It varies. At the beginning I usually see them once  
24 weekly partly because it's likely to be a new  
25 patient. I mean if it's a new patient to me I want  
26 to get to know them and would be meeting with them  
27 on a weekly basis just for my being able to

1 understand the clinical situation, they're beginning  
2 to develop a relationship me. Typically if the  
3 treatment goes well we can then taper down,  
4 depending on how quickly they respond, to maybe once  
5 a month within a couple of months and then again  
6 depending on how stable they are I might follow them  
7 at monthly intervals or at three monthly intervals  
8 or every six months. That would be essentially  
9 unheard of with conventional psychiatric  
10 medications. There a once a month medication check  
11 would be a minimum.

12 Q And you say a minimum?

13 A Right often one would have to see -- no, if they're  
14 very -- doing very well and they're stable once a  
15 month -- once a month check might be adequate but  
16 many patients on conventional psychiatric drugs  
17 continue to have symptoms and it's often preferable  
18 to see them every two weeks, sometimes even every  
19 week, in order to manage the five points of their  
20 medication to do fine medication adjustments.

21 Q Okay. Now, if your -- one of your patients is  
22 already on medications and they want to transition  
23 to the supplement that's a very different process  
24 than if they're not on medications?

25 A It's a very different process and it is much more  
26 complicated and much trickier. The issue is that  
27 when one -- basically, the overall protocol is that

1 one -- in that -- a situation like that the EMPower  
2 is increased not over two days or four days or five  
3 days but over a matter of weeks occasionally even  
4 months. Typically the way I would normally do it I  
5 would take about one month to bring them up to full  
6 doses. So, increasing by one pill every other day  
7 up to 15 pills. From the time that we begin the  
8 first EMPower I begin to reduce all of the other  
9 psychiatric medications that they're on gradually in  
10 very small steps, all of the medicines in parallel,  
11 so that they come off of most of the medications by  
12 the one month point. So, it's a cross-taker with  
13 EMPower going up, the conventional medications going  
14 down, both over a four week period. There are some  
15 exceptions where particular medications the tapering  
16 needs to be more gradual or done with some  
17 adjustments but that's the basic structure of what  
18 the transition would look like. When -- about two  
19 weeks or so into the process many patients begin to  
20 have either an increase in symptoms of their bipolar  
21 symptoms or an increase in the side effects of the  
22 psychiatric drugs that they are being tapered off of  
23 or withdrawal effects from the psychiatric drugs  
24 that they had been on. So, there are varying  
25 competing processes each of which can aggravate the  
26 clinical situation and the adjustments that are then  
27 required are either to increase or decrease the

1 speed of reduction of the psychiatric drug  
2 medications or increase or decrease the increase in  
3 the EMPower dose. In certain places we break from  
4 the parallel reduction of all of the psychiatric  
5 drugs at the same rate. We might withdraw certain  
6 drugs more quickly, other drugs more slowly, in  
7 order to be able to keep the patient's side effects,  
8 withdrawal effects, and psychiatric symptoms at a  
9 minimum but all the patients, at least in my  
10 experience, all, literally very last patient except  
11 one, has had one of these kind of clinical  
12 complications during the course of the transition.  
13 So, it takes a clinician with a pretty good  
14 familiarity with the transition process. This is  
15 not something that a psychiatrist, even a well  
16 specialized psychopharmacologist, if just given  
17 material would be able to use in a safe and  
18 effective way because the varying -- the whole  
19 notion of the -- of the vitamins and minerals  
20 amplifying the effects of the psychiatric drugs  
21 would be foreign and even a little difficult to  
22 believe using the conventional models of treatment  
23 so that knowing how to make -- knowing that one has  
24 to make adjustments, let alone how to make the  
25 adjustments, in reducing the psychiatric drug doses  
26 would not be a simple extension of normal  
27 psychopharmacologic thinking based on conventional

1 medications.

2 Q Okay. So, for example, when the symptoms of bipolar  
3 in this transition increase what would be the  
4 typical response that a psychiatrist or child  
5 psychopharmacologist would want to do if symptoms  
6 increased?

7 A Of the manic symptoms --

8 Q Yes.

9 A -- for example? Almost invariably they would think  
10 to increase the dose of the psychiatric drugs or if  
11 they thought of EMPower as being just like any other  
12 psychiatric drug they might try to run the EMPower  
13 dose up more quickly. Both of those moves would  
14 aggravate the clinical situation. It would be  
15 exactly the opposite of normal psychopharmacologic  
16 thinking to reduce the dose when a manic symptom  
17 gets worse.

18 Q I'm sorry can you say that again?

19 A It -- it would be exactly the opposite of normal  
20 psychiatric -- psychopharmacologic protocol or  
21 thinking to reduce the dose of a medication if manic  
22 symptoms gets worse unless when we're using, for  
23 instance, an antidepressant or a stimulant drug that  
24 might itself drive the mania. It's -- with that  
25 exception in general if you start getting symptoms  
26 you increase the drug treatment.

27 Q Okay. And that was kind of the model that you

1 believed in before you ran into this supplement?

2 A Exactly.

3 Q Okay. So, how did -- who trained you in to how to  
4 manage this transition?

5 A I took a lot of signals actually from that  
6 presentation that I walked out of that Bonnie Kaplan  
7 and David Hardy and Tony Stephan made a complaint.  
8 That presentation basically laid out the structure  
9 of what that treatment would look like. As I then  
10 began doing it -- doing the treatment on my own I  
11 consulted with David and Tony -- David Hardy and  
12 Tony Stephan and Bonnie Kaplan on getting their  
13 opinions on how to manage the transition. So, most  
14 -- the people that I've learned from are those three  
15 people. As I've developed my own experience I have  
16 -- I've been able to draw on that and at times, as  
17 with any aspect of medicine, different observers  
18 will have different opinions and I've developed some  
19 of my opinions that are slightly different from  
20 theirs but not markedly and so I can draw on some of  
21 my own experience but in terms of who I learned from  
22 I learned from them.

23 Q Okay. And have there been situations where you've  
24 been in the middle of managing a patient and you've  
25 had to call them for advice?

26 A Oh, yes absolutely. I still do that occasionally  
27 now.

1 Q Okay. Because some of us might find it odd somebody  
2 with your experience and credentials would call  
3 somebody like Tony Stephan or David Hardy to talk  
4 about a case and get advice. Can you explain for us  
5 why you feel comfortable doing that?

6 A David Hardy's knowledge of nutrition is vast. He's  
7 very knowledgeable. Frankly I have found consulting  
8 with him about nutritional issues to be more useful  
9 than most of the nutritionists that I've consulted  
10 with at Harvard and elsewhere. He has a different  
11 understanding of the major interactions among  
12 nutrients which is something that I have found very  
13 hard to find. His -- his observations although at  
14 times hard to believe have been extremely reliable  
15 and he's helped me through a lot of situations.

16 Q What did --

17 A He functions very much the way a psychopharmacologic  
18 consultant would help me if I find myself in a  
19 difficult situation. I understand he doesn't have  
20 the credentials that, you know, a PhD or MD might  
21 have but in terms of knowledge and useful guidance  
22 he and Tony and Bonnie are very, very helpful.

23 Q Okay. Now, when you're talking about transitioning  
24 somebody off meds and we've discussed that you  
25 actually consider the Truehope people to be -- would  
26 it be fair to say you consider them to be experts in  
27 that field?

1 A They are the experts, yes.

2 Q Okay. You used the words 'the experts'. Why do you  
3 say that?

4 A Well, there are very few people who are really  
5 knowing the ins and outs of the treatments and  
6 certainly their experience is vastly larger than  
7 mine and as far as I know I have been having more  
8 experience in using this treatment than other  
9 physicians at least in the United States.

10 Q Okay. And I think you've explained for us that it's  
11 not a small matter to transition somebody who's on  
12 medications onto the supplement. Would -- is that  
13 fair to say? Like you --

14 A It's extremely tricky and there are times when it's  
15 sufficiently tricky that it just cannot be done.  
16 Typically the problem that creates the most  
17 difficulty is -- are the withdrawal effects in those  
18 patients who had previously been in psychiatric  
19 drugs. In psychiatry there are a very small number  
20 of drugs that are recognized as having withdrawal  
21 syndromes. Typically they're the benzodiazepines  
22 like Valium. I don't know is that the trade name  
23 here?

24 Q Yes.

25 A Okay. Or, the serotonin reuptake inhibitors  
26 such as Prozac. Those two classes of drugs are  
27 understood in psychiatry as having withdrawal

1 effects. Under the amplifying effect of the  
2 vitamins and minerals several other drug categories  
3 turn out to have withdrawal syndromes as well and  
4 where we tend to run into difficulties in the  
5 transition are with those withdrawal syndromes and,  
6 you know, we -- there are a variety of manoeuvres  
7 that I do, some of which I've learned from Tony and  
8 David and some of which I've worked -- developed on  
9 my own, but there are times when they don't work and  
10 the transition just can't be completed and the  
11 patients will go back to psychiatric drugs. But,  
12 even doing that kind of management involves a whole  
13 style of thinking and knowledge and specialized  
14 technique that is not remotely a part of routine  
15 management of conventional psychiatric medications.  
16 It's one the -- I think in that little commentary  
17 that you just had me reread I made a very specific  
18 statement that a psychopharmacologist, who reading  
19 Dr. Kaplan's report, would infer that they can start  
20 using the treatments using their basic knowledge  
21 would run into quagmires. It would not work.

22 Q Okay. They would need further education?

23 A They would need specialized education. Many  
24 treatments require specialized education. This one,  
25 at least in the field of psychiatry, requires much,  
26 much more specialized knowledge to manage this  
27 particular treatment --

1 Q Okay.

2 A -- than other kinds of conventional medications.

3 Q Okay. So, just a regular psychiatrist or  
4 psychopharmacologist is not really equipped without  
5 training to manage that transition --

6 A Exactly.

7 Q -- with this product?

8 A Exactly.

9 Q Okay. And so you were trying to prevent that from  
10 happening by putting a caution in your article?

11 A Yes.

12 Q You were also talking about withdrawal effects and  
13 saying well some are known to psychiatry to have  
14 withdrawal effects but I got the impression you were  
15 talking about through your experience with this  
16 product it seems that there are some other drugs  
17 that have -- seem to -- appear to have side effects.  
18 Are they known to psychiatry to have these side  
19 effects?

20 A There are drugs that do appear to have at times very  
21 dramatic withdrawal effects where it's just not  
22 recognized at this stage in psychiatry. I might  
23 mention that around 2001/2002 I remember Tony and  
24 David saying the two drugs in particular Venlafaxine  
25 and Paroxetine --

26 Q Okay. Can you --

27 A -- have --

1 Q -- spell those for us because we're going to miss  
2 it?

3 A Venlafaxine is V-E-N -- 'V' like Victor, 'E', 'N'  
4 like Nancy, L-A, 'F' like Frank, A-X-I, 'N' like  
5 Nancy, 'E'. And the brand name do you care about?

6 Q No.

7 A And the other drug is Paroxetine, 'P' like Peter, A-  
8 R-O-X-E, 'T' like Thomas, 'I', 'N' like Nancy, 'E'.  
9 Those are both drugs, at least generally, in that  
10 antidepressant category that have properties of  
11 Prozac. Around 2001/2002 they alerted me that those  
12 two drugs had very prominent withdrawal effects and  
13 at the time there was, as I recall, just one article  
14 suggesting that very occasionally one can see  
15 Paroxetine withdrawal effects. Just one article in  
16 the medical literature and nothing about Venlafaxine  
17 and certainly they were not recognized as common  
18 phenomenon by child -- by psychiatrists. They were  
19 viewed very rare phenomenon now that's completely  
20 changed. Virtually every psychiatrist is very  
21 familiar with both Paroxetine and Venlafaxine having  
22 very prominent withdrawal syndrome -- withdrawal  
23 syndromes that come up in many of the patients who  
24 are on -- who have discontinued those drugs. It's  
25 likely that these other drugs that they are now  
26 identifying and are now identifying as having  
27 withdrawal syndromes will, I would guess, in several

1 years be recognized by others. The difference --  
2 the reason we are able to see it sooner is because  
3 EMPOWER magnifies those effects of the psychiatric  
4 drugs even in withdrawal.

5 Q Okay. So, just so that I understand your evidence  
6 it was actually Tony and David that alerted you to  
7 the fact that these two drugs have withdrawal side  
8 effects?

9 A I had seen the one article on Paroxetine that was, I  
10 think, describing three patients and it sounded like  
11 an extremely rare phenomenon but to hear about it as  
12 a common problem and with Effexor I did first hear  
13 about it from them. There was nothing in the  
14 literature at that point or in my experience or that  
15 I had heard from others.

16 Q Okay. And now as time has gone by that's become --

17 A Established.

18 Q -- accepted?

19 A Yeah.

20 Q Okay. So, these gentlemen are, in your opinion,  
21 right on top of withdrawal and drug side effects and  
22 things like that?

23 A Yes.

24 Q Okay. Enough so that you feel comfortable talking  
25 to them as -- basically as equals, would that be  
26 fair?

27 A Yeah.

1 Q On that topic?

2 A Sure.

3 Q Okay. Would it be fair to say that you've learned  
4 from these gentlemen?

5 A A lot, yeah. Yeah, and on the one hand, you know,  
6 there's the technical usage of EMPower and learning  
7 about nutrition in general but there's actually a  
8 fair amount about psychopharmacology itself that  
9 I've learned from either them or from observing  
10 effects of EMPower combined with conventional  
11 medications. Things like withdrawal, various types  
12 of withdrawal, amplification effects of various  
13 aspects of psychiatric -- of drug action, that are  
14 really basic, important, critical findings that have  
15 not yet made their way into the medical mainstream.

16 Q Okay. You've kind of -- you've indicated that there  
17 would be a caution of a psychiatrist without this  
18 training going and managing a patient. So, what  
19 would your preference be a psychiatrist without that  
20 training managing somebody transitioning on EM or  
21 the Truehope program? Do you understand that  
22 question?

23 A For a patient who's being managed on EMPower would I  
24 prefer a psychiatrist with conventional psychopharm  
25 training but without EMPower training --

26 Q Yes.

27 A -- versus one of the Truehope non-medical people?

1 Q Yes.

2 A If that were the choice I would prefer the EMPower  
3 people doing it.

4 Q Why is that?

5 A Given more of a choice I'd prefer the EMPower people  
6 working with the physician because I would much  
7 prefer to have someone that really knew the drugs  
8 backwards, forwards, up, down, and although I think  
9 they know a great deal I think it's only fair to a  
10 patient to have someone who's formally, fully --

11 Q Right.

12 A -- trained, credentialed, and involved in that kind  
13 of treatment. But, if it were a choice in the way  
14 that you framed it between someone who didn't know  
15 EMPower and someone who did know EMPower absolutely,  
16 definitely, somebody with EMPower training.

17 Q Okay.

18 A Knowledge.

19 Q Now, you've talked about when you're transitioning  
20 somebody off of medications and on to EMPowerplus  
21 that there can be withdrawal symptoms. Can there be  
22 withdrawal symptoms if you're -- EMPowerplus isn't  
23 in the picture but you are basically withdrawing  
24 medication from a patient?

25 A Yes, it depends on what the agent is, which  
26 particular medication it is, but yeah certainly with  
27 Effexor, with Venlafaxine and Paroxetine, you know,

1 we very commonly see patients discontinuing those  
2 drugs without EMPower in the picture who get  
3 withdrawal syndromes. We see it with other drugs in  
4 that category. We're seeing it now with  
5 antipsychotic drugs. I'm beginning to see it with  
6 antipsychotic drugs because I've been alerted to it  
7 by the experience with EMPower but I've never heard  
8 of a colleague comment on an antipsychotic  
9 withdrawal syndrome.

10 Q Okay. Now, as far as your experience with  
11 transitioning off of medications and onto  
12 EMPowerplus I think you've indicated that that's  
13 usually successful. You're able to do a transition?

14 A Usually.

15 Q Okay.

16 A Yeah.

17 Q What does it look like then once the trans -- if the  
18 transition has been successful what do you observe?  
19 So, for instance, you told us without meds, you  
20 know, the symptoms go away. What do you observe  
21 when you -- when you've had successful transition  
22 with somebody who had been on medications?

23 A Okay. Completely through all the transition --

24 Q Yes.

25 A -- processes, all the withdrawal, whatever, all of  
26 that's out of the way?

27 Q Yes.

1       A     Typically what we find is a very stable patient with  
2            essentially no or a minimum of symptoms.  A more --  
3            that's -- that is a more complete resolution of the  
4            psychiatric symptoms than we typically see with  
5            psychiatric drugs.  We also have much fewer side  
6            effects to deal with and that's a very dramatic  
7            difference.  A lot of the week to week and month to  
8            month management of conventional medications  
9            involves dealing with side effects.  There's next to  
10           none of that with EMPower.  It requires much less  
11           physician time to manage.  The patients all describe  
12           that they feel more clear headed on EMPower.  You  
13           know, for years I've prescribed conventional  
14           psychiatric medications and, you know, we all knew  
15           there was a little bit of -- little bit of mental  
16           fogging or look -- you know, a little bit less the  
17           mental clarity, mental energy, and things for  
18           patients on those drugs but it was obviously worth  
19           it as a cost for being able to keep the major  
20           psychiatric symptoms in control.  What I didn't  
21           realize until I heard patients who had completed  
22           their transitions how strong those mental clouding  
23           effects of conventional psychiatric drugs are.  They  
24           were surprised and I was surprised by how much  
25           different -- how much difference they experienced  
26           between conventional medications -- any of the  
27           conventional medications and the lesser or minimal

1 degree of cognitive interference that they would get  
2 with the vitamin mineral treatment and one of the  
3 things that is most striking about it is that every  
4 last patient who I've had, who has converted over to  
5 EMPower, describes this improvement in mental  
6 clarity.

7 Q Now, you talked about less side effects. What are  
8 the side effects that you see let's say if somebody  
9 is on EMPowerplus?

10 A Initially there, in some patients, is a softening of  
11 their stools. It's not really diarrhea in most  
12 cases but it's really just a softer stool. Usually  
13 the stool remains formed -- formed but it's softer  
14 and may be that way for a week or two weeks or a  
15 month and then typically resolves and goes back to  
16 normal. Some patients get some degree of nausea  
17 from taking so many pills at once, most likely, and  
18 usually that can be taken care of by having them  
19 take the EMPower with food. It's very similar to  
20 what we do with conventional psychiatric drugs that  
21 cause nausea. They take the pills with food that  
22 will typically reduce. Occasionally there are  
23 headaches. If they take the pills too late in the  
24 evening some patients will get insomnia. The 'B'  
25 vitamins are known to interfere with sleep in  
26 certain patients and for that we just have them take  
27 the pills earlier in the day. Have their last dose

1 taken earlier in the day. Some patients have noted,  
2 if their dose is a little too high, that they get  
3 something like agitated or anxious and in those  
4 cases we just lower the dose. It means that the  
5 dose has been a little too high in many of -- in  
6 many of those cases and that will resolve the  
7 problem. Of course there are other cases where  
8 there are anxieties due to other things and not have  
9 to do with EMPower but that is a potential side  
10 effect if the dose is too high. Occasionally the  
11 patient will have flatulence. That's pretty  
12 unusual. There's some other -- those would be the  
13 clinical side effects. I might be leaving something  
14 out but those are the typical ones that -- that I  
15 recall of knowing. There are also some changes that  
16 we've noticed in the -- in the laboratory work that  
17 we obtain on these patients. As a matter of routine  
18 I ask all of my patients who are on EMPower to get a  
19 pretty comprehensive series of blood tests both  
20 before they start on EMPower and then every six  
21 months during the time that they're on EMPower.  
22 It's a very -- it's a pretty extensive set and  
23 that's done because we don't have control of trials  
24 at this point to guide us on safety. So, not really  
25 knowing what to look for I've just been running a  
26 pretty comprehensive medical screen. I also have  
27 them get a physical exam every six months.

1 I've been doing that, as I say, with all of my  
2 patients for some years now and from those data we  
3 have had a couple of observations suggesting that  
4 EMPower does have some effects. The one is that it  
5 looks as if there is a very slight increase in blood  
6 sugar that I believe we're seeing in the EMPower  
7 patients. It's a very small increase probably  
8 averaging two or three units which clinically for  
9 most patients would have no implications and even  
10 for a diabetic patient a change like that would have  
11 no -- would normally not require an adjustment in  
12 their insulin -- in their diabetes medications. So,  
13 it's a very small change but I believe it's there.  
14 The other thing that we're picking up in the lab is  
15 a very slight degree of anticoagulation. So, the  
16 blood clotting takes slightly longer. It's the --  
17 the lengthening is about equivalent to what we might  
18 get if one were taking a baby aspirin for cardiac  
19 preventative purposes. So, it's again a very small  
20 change, very slightly beyond the normal clotting  
21 parameter, normal limits of standard clotting, but  
22 in no way the kind of problem -- the kind of  
23 clinical problem that one would really need to  
24 monitor or to be concerned about even in a stroke  
25 patient.

26 Q Okay. What about the kind of traditional  
27 medications? I don't want, you know, a detail but

1 if you can just kind of give us an appreciation of a  
2 comparison for side effects? Do you know what I  
3 mean? So, you've given us the side effect rundown  
4 for EMPowerplus but generally speaking what are  
5 typical side effects that one might encounter with  
6 other treatment --

7 A Oh.

8 Q -- medication treatments?

9 A That is a huge field. Of course it depends on the  
10 medication and the dosage and the individual but say  
11 for the typical anti-mania treatments the kinds of  
12 things that we typically expect would be clinically  
13 significant weight gain on the order of five to ten  
14 pounds. Up to 40 pounds at times but five to ten  
15 would be fairly routine. That results in an  
16 increase in diabetes. There are -- for Lithium are  
17 thyroid -- anti-thyroid effects that we need to  
18 sometimes supplement with thyroid hormones. Acne,  
19 skin changes. Kidney changes are a particular  
20 concern especially in the long run. There are data  
21 suggesting that long term treatment with Lithium can  
22 have potentially permanent effects on the efficiency  
23 of kidney functioning. With a drug like Valproate  
24 there's a huge weight gain. Polycystic -- there are  
25 an increase in androgens that can effect the  
26 development of children or in adult woman can induce  
27 polycystic ovary syndrome. Seizures can be induced.

1           The antidepressants there are typically  
2           problems with -- typically not the occasional  
3           problems we see with EMPower but typically problems  
4           with insomnia, anxiety, headaches, nausea. A major  
5           effect on sexual energy and functioning. With  
6           Lamictal, one of the new popular treatments, there  
7           are -- is a rare but potentially lethal skin  
8           reaction that can occur. So, it's -- it's just a  
9           totally different kind of picture in contrast to  
10          EMPower where, you know, the symptoms I mentioned  
11          are basically either a nuisance, minor, symptoms  
12          that don't -- that barely need any ongoing  
13          management or just clinically insignificant changes.  
14          So, it's -- it's extremely different.

15        Q     Okay.

16        A     It takes much more time to manage -- physician time  
17          -- much more physician time and healthcare costs to  
18          manage conventional psychiatric medications. I can  
19          give -- actually, I can -- can I comment on that?  
20          When I began using EMPower before that point I had,  
21          you know, a very full busy clinical practice, no  
22          free hours, everything was filled, long waiting  
23          lists. After several months of working with EMPower  
24          I had this huge number of patients that had required  
25          weekly or alternate week management that I was now  
26          seeing once every month or three months or six  
27          months and for the first time in over 20 years I

1 actually had occasional free hours during the day.  
2 That had literally never happened so the level of  
3 management that's required -- and I could see new --  
4 you know, I could do things that I just couldn't do  
5 before. So, it -- it's a completely different type  
6 of management.

7 Q Okay. And I just want to make sure that I  
8 understand. So, you're talking about some patients  
9 you would have to see weekly. Why would that be?

10 A Either to manage their residual psychiatric  
11 symptoms, the symptoms that the conventional drugs  
12 helped but didn't help enough, so their -- you know,  
13 their mania or their depression might be 60 percent  
14 better or 80 percent better but they were still  
15 having trouble and so we would work to manage to try  
16 to keep those symptoms minimized or they were having  
17 side effects of their psychiatric drugs that would  
18 need management. Many of these -- I mean certain  
19 patients you can put them on a regiment and they're  
20 okay and you can follow them once a month but not  
21 less but many of the patients, especially the type  
22 that I see, require much more fine management  
23 because they're so treatment resistant because of  
24 the referral network that I have.

25 Q Okay. And so we understand that it's basically you  
26 get the hard cases that other psychiatrists have  
27 difficulty managing?

1 A I'm getting treatment resistant cases that have  
2 failed on other treatments and so they're -- require  
3 much more intensive treatment than some patients but  
4 those very patients, when on EMPOWER, can and often  
5 do so much better that they require that much less  
6 clinical management time.

7 Q Okay. So, you've -- you've got more time now in  
8 your practice because you're not having to intensely  
9 manage so what did you do? Did you start golfing or  
10 ...

11 A I really have to admit this. I started seeing more  
12 patients.

13 Q Okay. So, and you weren't able to do that before --

14 A No.

15 Q -- because all your time --

16 A No.

17 Q -- was being --

18 A No.

19 Q -- consumed?

20 A Yeah, it was very hard. I mean for years it was  
21 very hard for me to see any new patients. I'd maybe  
22 see one or two new patients a year myself and I'd  
23 consult occasionally briefly but to actually take a  
24 new patient of my own -- as my own one or two a year  
25 for some probably ten years running before that.

26 Q Okay. So --

27 A And that all changed. That completely changed.

1 Q Okay. Now, you've told us about, you know, your  
2 very first patient where, you know, there was kind  
3 of an on/off design by accident. Has there been  
4 other evidence of where -- and you told us about  
5 some patients you kind of wean off a little bit and  
6 the symptoms come back but I'm trying to ask if you  
7 can comment on if the supplement is withdrawn what  
8 happens?

9 A Withdrawn?

10 Q Yes.

11 A Without other treatment being put in place?

12 Q Well, either/or.

13 A Okay.

14 Q I'm just trying to find out what your observations  
15 have been.

16 A Well, it's very much like any other effective  
17 psychiatric pharmacologic treatment. If a treatment  
18 is working and you withdraw it the symptoms come  
19 back. These are -- you know, these are psychiatric  
20 conditions that are essentially all chronic  
21 conditions. It's extremely rare, if ever, that the  
22 conditions just resolve themselves. They're  
23 basically lifetime conditions. So, if you withdraw  
24 an effective treatment of course the symptoms come  
25 back. The timing of the symptoms can vary. It  
26 depends very much on the -- on the patient.  
27 Sometimes they get their symptoms within a day or

1 two, sometimes within a week or two or a month or  
2 two, statistically in the literature within two  
3 years of withdrawing treatment a minimum of 70  
4 percent of patients get a return of symptoms.

5 Q Okay.

6 A Clinically though it looks like that number is  
7 higher. I think all psychopharmacologists would  
8 agree with that.

9 Q Now, you were telling us about, you know, your first  
10 case, this ten year old boy, that it was an  
11 extremely large number of capsules, 32 --

12 A Right.

13 Q -- and you have seen that number of capsules change  
14 over the years?

15 A Yeah, Truehope has got a variety of different  
16 technological -- excuse me, technological changes  
17 that have allowed the capsule number to reduce.

18 Q Okay. But, have you seen any change in your  
19 practice with your patients as the number of pills  
20 go down?

21 A Just that they like taking fewer capsules or --

22 Q Okay. This is what I'm trying to find out. Like,  
23 for instance, right now it's down to 15 pills,  
24 right?

25 A Yeah.

26 Q The --

27 A Well, you know, to a degree. I mean most patients

1 will say 15 pills is a lot of pills and patients who  
2 don't like taking pills will sort of choke on the  
3 idea of taking 15 pills. More patients choke on the  
4 idea of taking -- used to take on the idea of taking  
5 32 pills. It's -- it's different. It's not that  
6 dramatically different. Most patients, if they  
7 decide they want this treatment, will put up with  
8 whatever the number of pills will be in order to not  
9 have to use psychiatric medications.

10 Q But, I guess what I'm trying to get at is did the 32  
11 work the same as the 18, as the 15? Like have you  
12 seen any change --

13 A In the --

14 Q -- in that product?

15 A -- effectiveness?

16 Q Yes.

17 A The effectiveness seems the same.

18 Q Okay. So, the only change you've observed is the  
19 number of pills?

20 A It's more user friendly.

21 Q Okay.

22 A Also, I do believe there's been a reduction in the  
23 amount of nausea as well especially with the last  
24 change. That particular symptom seems to be  
25 lessening.

26 Q Now, what would happen in your practice if all of a  
27 sudden your patients couldn't access EMPowerplus

1           anymore?

2           A    We've been scared about that a lot.  A lot of  
3           patients are worried.  Parents are very worried.  I  
4           have parents that stockpile the stuff six months or  
5           a year ahead on the offhand chance that there might  
6           be some interruption in delivery.  They've known  
7           about the issues raised in Canada.  They've been  
8           afraid of what would happen if EMPower were  
9           unavailable.  If it were unavailable I would  
10          probably -- I would guess that some of the patients  
11          would want to go to the health food stores, like I  
12          did with that ten year old, and get some  
13          approximation as best they could of it.  We would  
14          certainly have to reintroduce psychiatric drugs.  
15          The changeover would be pretty chaotic.  All of  
16          these patients that I, you know, have not had to see  
17          that frequently would suddenly arrive on my doorstep  
18          and I wouldn't have a prayer of being able to manage  
19          all of them.  So, I'd have to -- you know, refer  
20          patients who I've been seeing for years to other  
21          people.  The volume would just be -- I mean if the  
22          simpler question is would there be a return of  
23          symptoms?  Definitely.  Would they be problematic?  
24          Of course.  There would be -- there's no question  
25          that there would be depressions emerging.  There  
26          would be suicides.  There would be hospitalizations.  
27          There would be violent attacks, probably some

1           jailing's, and I wouldn't have a prayer of being  
2           able to manage it. I'd have to select a relatively  
3           small number to manage myself and just refer the  
4           others for conventional treatment.

5        Q     Okay. Now, those of your patients that didn't  
6           manage well on medications that managed well on  
7           EMPowerplus what would you anticipate they would be  
8           facing? You've had some patients that didn't manage  
9           well on medications but you've told us they managed  
10          well on EMPowerplus.

11       A     Well, what would happen to the ones that had not  
12          done particularly well on conventional medications  
13          and they had to go back to it?

14       Q     Yes.

15       A     Well, they would probably go back to having not a  
16          very good course of treatment. I mean they would  
17          have their treatment but they wouldn't -- they would  
18          go back to having ongoing symptoms that would  
19          require a lot of high maintenance professional time  
20          to -- to manage.

21       Q     Okay. What about, you know, from a stability  
22          perspective? Would there be a comparison between,  
23          you know, before with EMPowerplus and after without  
24          it?

25       A     Yes, they would be less stable. Most of them would  
26          be less stable if they had to go back to  
27          conventional treatments.

1 Q And what do you mean by stable?

2 A Their psychiatric symptoms would be in less  
3 effective control. You know, they would go again  
4 from a 95 or 100 percent symptom resolution back to  
5 a 40 or a 60 or 80 percent resolution of their  
6 symptoms. So, they'd be living with some degree of  
7 depression, some degree of mania, some difficulty  
8 concentrating, some impairment of work and school  
9 functions. They might be able to manage but it  
10 would not be the same. There are -- I should say  
11 there are some that probably would do -- there --  
12 there were some, you know, that did reasonably well  
13 on conventional meds less in my practice but more  
14 the people I consult to who probably could do okay.  
15 Again, not as well but it may not be a particular  
16 disaster but there is definitely the -- I would say  
17 the majority of the patients would have more  
18 psychiatric symptoms ongoing for years -- or, their  
19 lives and there would probably during the transition  
20 be some disasters.

21 Q What do you mean?

22 A Suicides, suicide attempts, assaults,  
23 hospitalizations.

24 Q You've described for us in some detail about that  
25 there's -- there's quite a trick to managing  
26 especially if somebody's on meds that -- a  
27 transition and I imagine that kind of the tricky

1 periods can last for some period of time?

2 A They -- you know, if a patient is lucky it might be  
3 a couple of days. It can be a couple of weeks.  
4 Probably in most cases I would say the transition  
5 period of difficulty is about two weeks but --

6 Q Okay.

7 A -- most are able to continue in school or continue  
8 in their jobs.

9 Q These are people without medications?

10 A No, even with the medications.

11 Q Okay.

12 A If it -- if they're managed properly most of them  
13 can continue on their jobs or in school.

14 Q Okay. On EMPowerplus?

15 A On the transition from conventional meds --

16 Q Okay.

17 A -- to psych -- to EMPower.

18 Q Now, you don't -- for you patients you don't  
19 recommend that they take one treatment over another  
20 treatment?

21 A No, for a variety of reasons. The fact remains that  
22 the conventional treatments are the standard of  
23 practice. They're the established treatments.  
24 They're the ones that have control trials. They're  
25 the ones that have strong data behind them. So, no  
26 whenever I have that kind of discussion with a  
27 patient I make that point extremely clearly that

1           EMPowerplus is an alternative, it's not established,  
2           it does not have the same kind of data behind it at  
3           all, and that it -- that matters because we don't  
4           have controlled data either on effectiveness or  
5           controlled data on safety and that it's going to be  
6           years before we really have adequate data of that  
7           sort. But, I also say that I have had my own  
8           experiences. I describe what they are and I  
9           consider it a sign of success in discussing the  
10          options with patients if they have to really think  
11          if it's not remotely obvious to them what to do.  
12          Some will say I don't want to think about anything  
13          alternative, conventional treatment, standard of  
14          practice, that's what I want period. Some will do  
15          that --

16        Q     Mm-hm.

17        A     -- but, you know, if a patient says gees, EMPower  
18               sounds great, I want to do that, I tell myself we  
19               haven't had a complete enough discussion.

20        Q     Okay.

21        A     They really need to wrestle with the decision at  
22               this stage given the lack of data. They need to  
23               understand there is nothing straightforward about  
24               that kind of decision.

25        Q     Okay. And your object there is to make sure that  
26               your patients can make an informed choice as to what  
27               to do?

1 A Yes.

2 Q Okay. And the point I'm trying to get at is for  
3 ethical reasons you don't choose for the patients?

4 A I never choose for patients.

5 Q Okay. So, you can't tell us what you would choose  
6 for a patient but I'm going to ask you if you came  
7 down with bipolar what would you do after you got  
8 over your panic?

9 MR. BROWN: Well, Sir, it is a little  
10 speculative but I want to hear the answer to that  
11 question.

12 THE COURT: So do I but if Dr. Popper is  
13 not comfortable giving an answer then ...

14 A I -- let me think it through. I'm -- I might decide  
15 I don't want to answer that but let me -- let me  
16 just think it through.

17 THE COURT: Do you want to take a break?

18 A So, I can get -- no. No, I can just -- let me just  
19 -- so, this is after I get over my reaction to  
20 getting the diagnosis?

21 Q MR. BUCKLEY: Mm-hm.

22 A And the reaction to your question? I actually  
23 probably would choose EMPower.

24 Q Okay.

25 A I know the trials aren't there but I've seen it and  
26 I think given the choice between committing myself  
27 to a lifetime of lesser stability and mental fogging

1 I would first want to try EMPower.

2 Q Now, you're aware of the Truehope program and how it  
3 manages patients -- or, participants as I've been  
4 calling them, is that fair to say?

5 A To a degree. I have some general familiarity with  
6 it.

7 Q Okay. Do you think that it would be safe for the  
8 product to just be available perhaps by somebody  
9 else without this program to manage them?

10 A How would they get educated on how the use the  
11 treatment?

12 Q Well, this is what I'm -- I'm trying to create a  
13 scenario for you. So, the product right now, if it  
14 was out on the marketplace without this Truehope  
15 support program managing people -- you're shaking  
16 your head?

17 A No, that couldn't or shouldn't happen. For one  
18 thing if you try to have doctors manage it, given  
19 their current familiarity with it, they would get  
20 into huge trouble every time they tried to  
21 transition somebody from conventional psychiatric  
22 medications to EMPower. That would be a total  
23 disaster. If you could get the doctors educated on  
24 how to do the transition that would be fine but to  
25 put it out without the instructions that means that  
26 anybody that's currently on psychiatric meds would  
27 just walk right into a wall. So, this is not a

1 product that will ever be over the counter.

2 Q Okay. And you just say that because it is so  
3 important that people be managed through the  
4 transition?

5 A Yes. Yes, well there are other reasons too. I mean  
6 if it were -- if it were available over the counter  
7 one could imagine people with serious psychiatric  
8 illnesses trying to treat themselves which I don't  
9 think make sense. I think there are a lot of other  
10 parts of psychiatric treatment apart from the  
11 medical management -- medication management side of  
12 it that those people would be needing. So, an over  
13 the counter treatment for a major medical disorder  
14 doesn't make any -- a major psychiatric disorder  
15 makes no sense to me.

16 Q Okay. So, just shutting down the Truehope program  
17 but having it available by somebody else in the  
18 marketplace in your opinion wouldn't be a safe  
19 alternative?

20 A Unless there were a Truehope like program added to  
21 whatever that other group was doing.

22 Q And where could they get expertise to do this?

23 A From David Hardy and Tony Stephan and -- and Bonnie  
24 Kaplan. From the people that know the treatment. I  
25 guess I could advise them but they would need that  
26 expertise and it would take them quite a while to  
27 get it.

1 THE COURT: Mr. Buckley, I am prepared to  
2 break for the --

3 MR. BUCKLEY: No, that would be fine --

4 THE COURT: (INDISCERNIBLE).

5 MR. BUCKLEY: -- because I'm -- I'm at the  
6 point where I am just trying to -- wanting to review  
7 and see if I have more questions so this would be an  
8 appropriate time to break.

9 THE COURT: All right. I am going to take  
10 a break now. We will take the lunch recess and we  
11 will return at 2:00 at which time we will continue  
12 with Mr. Buckley's questions (INDISCERNIBLE) of Dr.  
13 Popper and then Mr. Brown will have an opportunity  
14 to cross-examine you on the evidence you have given.  
15 I will ask you not to discuss your evidence with  
16 anyone over the lunch hour.

17 A Right.

18 THE COURT: All right. Very good. All  
19 right. In that case we will stand adjourned then  
20 until 2:00 thank you.

21 -----  
22 PROCEEDINGS ADJOURNED UNTIL MARCH 24, 2006 AT 2:00 P.M.

23 -----

24  
25  
26  
27

1       \*Certificate of Record

2             I, Jillian Fox, certify that this recording is a  
3             record of the oral evidence of proceedings in the  
4             Criminal Court, held in courtroom 413, at Calgary,  
5             Alberta, on the 24th day of March, 2006, and I was  
6             in charge of the sound-recording machine.

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1 \*March 24, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT: Mr. Buckley?

5 MR. BUCKLEY: And, Your Honour, I have no  
6 further questions for this witness so thank you.

7 THE COURT: Thank you. Dr. Popper, please  
8 answer questions by Mr. Brown on cross-examination.

9 MR. BROWN: Well, Sir, I'm just going to  
10 say that, Dr. Popper, thanks for your attendance. I  
11 appreciate that the integrity with which you  
12 answered my friend's questions and I have no  
13 questions, Sir.

14 THE COURT: No questions?

15 MR. BROWN: No questions.

16 THE COURT: Very good. Well, I do not  
17 have any questions for you either at this stage, Dr.  
18 Popper, and as expressed by counsel I appreciate  
19 your attendance here today and the evidence that you  
20 have given to this Court to assist it in making a  
21 determination on these matters. So, thank you very  
22 much and have a good day.

23 A Okay.

24 THE COURT: You are free to --

25 A Thank you.

26 THE COURT: -- leave or stay in the  
27 courtroom.

1 A Okay.

2 THE COURT: All right. Thank you, Dr.  
3 Popper.

4 A Thank you.

5 THE COURT: Have a good day.

6 (WITNESS STANDS DOWN)

7 MR. BUCKLEY: Now, Your Honour, because I  
8 anticipated that this witness would probably take  
9 all day I do not -- I'm not in a position where I'm  
10 ready to call another witness. I only have one  
11 witness left but I haven't prepped Mr. Hardy to take  
12 the stand.

13 THE COURT: All right.

14 MR. BUCKLEY: So, my intention is to put him  
15 on the stand on Tuesday morning when we reconvene.

16 MR. BROWN: Again, I have no difficulty  
17 with that position, Sir. We've been moving ahead  
18 pretty quickly.

19 THE COURT: All right. Very good. All  
20 right. Well, in that case we will stand adjourned  
21 then until Tuesday morning at 9:30 in this courtroom  
22 and as I mentioned yesterday the courtroom will  
23 remain secured and it will not be available for any  
24 other court matters on Monday. I have that  
25 instruction, I want to be clear, and so if you wish  
26 to leave any matters here or your materials or  
27 whatever you can feel free to do so. If you wish to

1 take them with you that is fine as well but the  
2 courtroom will be locked and secured for the weekend  
3 until Tuesday morning for 9:30. All right. Very  
4 good. Thank you very much. Good afternoon and have  
5 a good weekend.

6 MR. BUCKLEY: Thank you, Your Honour.

7 THE COURT CLERK: Order in court. All rise.

8 Court stands adjourned until Tuesday at two p.m. --  
9 or, 9:30, sorry.

10 THE COURT: Tuesday, 9:30 a.m.

11 THE COURT CLERK: Thank you.

12 THE COURT: Very good.

13 THE COURT CLERK: It's been a long week.

14 THE COURT: Thank you, madam clerk.

15 -----

16 PROCEEDINGS ADJOURNED UNTIL MARCH 28, 2006 AT 9:30 A.M.

17 -----

18

19 \*Certificate of Record

20 I, Jillian Fox, certify that this recording is a  
21 record of the oral evidence of proceedings in the  
22 Criminal Court, held in courtroom 413, at Calgary,  
23 Alberta, on the 24th day of March, 2006, and I was  
24 in charge of the sound-recording machine.

25

26

27

1 \*March 28, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K.C. Brown, Esq.) For the Crown

7 E. Eacott, Ms. )

8 S. Buckley, Esq. For the Accused

9 J. Fox Court Clerk

10 -----

11 THE COURT CLERK: Calling Synergy Group of  
12 Canada and TrueHope Nutritional Support.

13 MR. BROWN: And sir, a little bit of  
14 housekeeping before we move forward, sir. We've  
15 been waiting to produce the crisis line 1-800 call  
16 documents, some 770 pages. I have now got the  
17 original numbered and copies also numbered and they  
18 match, fortunately, sir. I'm going to send up to  
19 madam clerk, the originals and a copy for yourself,  
20 sir.

21 THE COURT: All right.

22 MR. BROWN: And I've given my friend a  
23 copy as well.

24 THE COURT CLERK: These are the originals?

25 MR. BROWN: Those are the originals in the  
26 bluish. And I believe it should be marked as  
27 Exhibit 30, sir.

1 THE COURT: I am sorry?

2 MR. BROWN: Exhibit 30, I believe is the  
3 one that -- we had entered the binder at some point  
4 as an exhibit and I think it was Exhibit 30, yes.

5 THE COURT: We will have to check and see.

6 MR. BUCKLEY: It was, and I have got no  
7 objection to substituting the originals for what was  
8 exhibit or, you know, alternatively as a separate  
9 exhibit. It makes no difference to me.

10 THE COURT: I would just as soon make it a  
11 separate exhibit.

12 MR. BUCKLEY: Okay.

13 MR. BROWN: That's fine, sir.

14 THE COURT: All right. The original  
15 documents, which are the records from the crisis  
16 line calls will be the next exhibit, which is  
17 Exhibit -- what is it madam clerk?

18 THE COURT CLERK: Sixty-five.

19 THE COURT: Exhibit 65.

20

21 \*EXHIBIT 65 - Green file folder containing Original  
22 \*documents of call records, EMPower Emergency followup  
23 \*sheets and statistic sheets, from the Health Canada  
24 \*1-800 number, pages 000001 to 000770, very similar to  
25 \*Exhibit 30

26

27 MR. BROWN: Thank you, sir.

1 THE COURT: Thank you.

2 Mr. Buckley.

3 MR. BUCKLEY: Your Honour, I'd like to call  
4 David Hardy to the stand.

5 THE COURT: Go ahead.

6 Mr. Hardy.

7 THE WITNESS: David L-A-W-R-E-N-C-E  
8 H-A-R-D-Y.

9 MR. BUCKLEY: Your Honour, do you have any  
10 objection if Mr. Hardy sits, or?

11 THE COURT: No, that is fine.

12 THE WITNESS: Oh, thank you.

13 THE COURT: It is the convention we have  
14 been following during this trial so, we will stick  
15 with it.

16 THE WITNESS: It makes my legs less shaky.

17 THE COURT: All right. Mr. Buckley.

18 MR. BUCKLEY: Thank you, Your Honour.

19

20 \*DAVID LAWRENCE HARDY, Sworn, Examined by Mr. Buckley

21

22 Q MR. BUCKLEY: Mr. Hardy, we're here about  
23 EMPowerplus and I'm wondering if you can explain for  
24 us, kind of your background and how you got involved  
25 from a background perspective, what background you  
26 brought to the development of this product.

27 A Okay. It seems like a lot of the experiences that

1 I've had in my life have kind of led to this,  
2 interestingly enough. After I graduated from high  
3 school, I attended university and got a degree in  
4 education with a major in biological sciences, and  
5 taught high school biology and science for a number  
6 of years and then left teaching and went into  
7 business in the agricultural sector, in the animal  
8 feed area. And that's the area that I would say,  
9 well, no, there's no question that my schooling  
10 background was significant to what we've gone  
11 through. But I think it was the 20 years that I  
12 spent in the animal livestock industry that gave me  
13 the greatest background on nutrition.

14 And animal nutrition is different from humans,  
15 at least it's -- the research into it is different.  
16 The focus is different in the following way. I  
17 always say that, you know, human nutrition is -- is  
18 way behind animal nutrition and I -- I believe that.  
19 In animals, nutrition is so fundamental to financial  
20 success, and so, the emphasis is on nutrition a  
21 great deal.

22 And you know, through the years I had observed  
23 very significant -- you know, you pick up  
24 experiences and you study and you learn different  
25 things and I don't think people are aware of how  
26 significant trace elements can be in animals.

27 For instance, on a -- on a wet year in Southern

1 Alberta, the grass grows rapidly in the springtime  
2 and there's all kinds of grass and the cows are  
3 full, their bellies are full of this grass. But  
4 they die with a full belly because there is  
5 insufficient magnesium in that grass. You see, when  
6 the grass grows rapidly, it's not able to  
7 concentrate enough magnesium in its content to -- to  
8 sustain life. So, animals get what is called "grass  
9 tetanus". They -- they sometimes call it the "blind  
10 staggers". The animal starts to stumble and stagger  
11 and fall and goes into convulsions and this is  
12 strictly a lack of magnesium. There just is  
13 insufficient in that food. Although it's good whole  
14 food, insufficient, and the animal dies.

15 In desert situations the opposite is true.  
16 There's not much to eat but what is there is loaded  
17 with goodies because the plants grow slowly and  
18 concentrate a lot of nutrients. So, there's a lot  
19 of nutrient density in what they eat.

20 You know, I watched animals -- by the way, if  
21 you could inject, and this has happened, if you  
22 catch those animals within the first half hour of  
23 those convulsions, if you can inject magnesium into  
24 the jugular vein, they'll get up and walk off as if  
25 nothing had happened in just about five minutes.  
26 It's that dramatic.

27 So, of course I, in that animal livestock feed

1 business, I supplied farmers and ranchers with the  
2 nutrients that were needed to prevent those kinds of  
3 problems. Grass tetanus rarely occurs on the Milk  
4 River Ridge anymore in Southern Alberta because  
5 those ranchers know that they have to supplement  
6 something like I used to sell them with, you know, 3  
7 or 4 percent magnesium in it so that they don't --  
8 their animals don't die from -- from grass tetanus.  
9 It was very significant financially. You don't take  
10 a loss like that. I remember one purebred herd  
11 owner down there with about 200 head of purebred  
12 Angus cattle that lost between 20 and 30 of his  
13 animals to grass tetanus in one year. You don't  
14 suffer that loss without learning pretty quickly.  
15 It's a -- it's a harsh environment to learn is, but  
16 -- but I mean that's the reality.

17 I watched calves being born to cows that didn't  
18 have enough Vitamin 'A' and the calves were born  
19 blind. I watched, just west of Highway 2 in  
20 Alberta, the soils are deficient in selenium  
21 significantly. That deficiency creates a situation  
22 called "white muscle disease" and the animals die  
23 because their heart muscle is weakened and ruptures  
24 and they die of heart attacks. And so, animals in  
25 that area had to be supplemented with selenium or a  
26 grass tetanus was -- not grass tetanus, sorry, white  
27 muscle disease was a real problem.

1           And you live with that and, you know, I studied  
2           and learned what was necessary for me to be  
3           successful in that feed business. I began to  
4           consult with livestock producers. We would  
5           computer-balance the rations. I would go into the  
6           rations and particularly in swine, where the  
7           nutrition is absolutely essential. They're mono  
8           gastric. They're not able to break down rough feeds  
9           like cows are, and so, you have to supply everything  
10          in their diet. And in Alberta, swine are grown in  
11          confinement. That means that they are -- they are  
12          kept indoors. They are not able to root in the dirt  
13          or things to get minerals that they may need out of  
14          the soil and that sort of thing. That's why pigs do  
15          root in the dirt by the way is, they're picking up  
16          things they need out of the roots and other things  
17          that they dig into in the soils. You know, they'll  
18          eat coal because it contains certain minerals that  
19          are ...

20                 So, in -- in pigs, we would test the feed that  
21          was raised on the same land that grows feed for  
22          humans, right? And we would determine, because  
23          these animals live on cereal grains and beans,  
24          actually a similar diet to what humans eat, and pigs  
25          have often been compared to humans because their  
26          blood is similar and their -- their body makeup is  
27          similar, and their nutritional requirements are very

1 similar. So, that was a good laboratory for me to  
2 experiment in, in those days. And I -- and I saw  
3 the significance of what adding trace minerals to  
4 that good whole feed.

5 I mean, a lot of times in human nutrition we  
6 think, well, you know, you get everything you need  
7 out of what you eat. That's -- that's pretty  
8 commonly stated. But it's absolutely unsupportable  
9 by good science these days and --

10 Q I'm just going to stop you because you were going to  
11 explain to us what you do, like if you were hired by  
12 a pig person, you said you would analyse the feed,  
13 and I'm --

14 A That's right.

15 Q -- wondering if you can explain for us what that  
16 entails.

17 A Well, we would -- we would take the feedstuffs and  
18 send them into the laboratory for analysis. We'd  
19 test them out for fat, fibre and protein, which are  
20 the basics of good nutrition, and then we would also  
21 test them with an extensive analysis on trace  
22 elements, macro and trace elements particularly, and  
23 we would determine which of those elements when we  
24 put the entire ration together, because we would  
25 test every part of that ration. So, we'd plug it  
26 into the computer and -- and on the basis of past  
27 experience and information that had been gleaned

1 over the years, we could tell what was deficient in  
2 that ration or at least sufficiently deficient that  
3 these animals wouldn't perform optimally. And you  
4 know, in order to stay in business I had to prove to  
5 the farmer or rancher that we could improve the  
6 performance of those -- of their livestock to the  
7 point that it would pay them to add these things and  
8 to use me as a consultant to do that. And it was  
9 pretty easy to do. It made huge differences.

10 So, we would determine the deficiencies and we  
11 determined that there were multiple deficiencies in  
12 every case. There wasn't just one or two elements  
13 that we had to supplement. There were out of 15  
14 that we normally tested for in terms of the macro  
15 and trace elements, sometimes we tested for even  
16 more depending on what the situation was. There  
17 were -- there were normally seven to 11 of those  
18 elements that had to be added to the ration in order  
19 to optimize the performance of -- of the livestock.

20 And that -- that kind of thinking just is not  
21 present in -- in human nutrition. And the kinds of  
22 differences that it would make in pigs became very  
23 obvious economically. When you added those -- those  
24 trace elements to -- to the ration, you would see a  
25 number of things occur.

26 The one that was perhaps the most significant  
27 and the most obvious was that the mother pigs would

1 give birth to more live baby piglets. When a --  
2 when a sow is bred, usually about 23 embryos implant  
3 in the uterus and depending on the nutrition that  
4 the pig's body perceives some of those embryos are  
5 expelled or don't grow. And some of them that begin  
6 to grow, if there's insufficient nutrition, actually  
7 become mummified. So that then the animals gives  
8 birth you get this little black sack of a -- of a  
9 partially developed pig that because there was  
10 insufficient nutrition to keep all of it alive,  
11 somehow in nature's way that those pigs don't all  
12 develop. And in an unsupplemented animal, you would  
13 normally get about six or seven live baby piglets  
14 born to a sow. And in many cases there would be one  
15 or two piglets that were poor doers among the seven.  
16 And economically, that just doesn't make good sense,  
17 because there are other producers out there that  
18 when supplemented properly these animals will give  
19 birth to 12 or 13 baby piglets; all of which are  
20 healthy and all of which the pig can keep alive.

21 A mother pig milks heavier than a Holstein cow,  
22 and so, the drain on her body is absolutely  
23 incredible. If you don't supplement an animal  
24 during lactation, a pig for instance, she'll become  
25 osteoporotic so rapidly because her body goes into  
26 the bones and pulls out the calcium and phosphorous  
27 and other macro elements that are needed to keep

1 those baby pigs alive, and of course, there's a lot  
2 of calcium and phosphorous in the milk and that  
3 comes from somewhere. It has to come from -- from  
4 what that animal eats or from her bones. So, if you  
5 don't supplement her, her bones become brittle.  
6 Within two weeks she'll become so osteoporotic that  
7 her bones will break. The weight of her body,  
8 several hundred pound animal, you know, three or 400  
9 pound animal in many cases, her bones will break and  
10 you'll have to shoot them because that's all you can  
11 do for an animal whose bones are broken.

12 So, that background taught me how significant  
13 nutrition is. And I don't really think that humans  
14 are that different from livestock. But certainly,  
15 the way that we approach nutrition is different and  
16 -- and we're not used to thinking that we need to  
17 supplement our diet in any way.

18 I started researching --

19 Q Can I just stop you and ask if you can -- because  
20 this has been referred to as "pig pills".

21 A Mm-hm.

22 Q Can you explain for us kind of how -- where that  
23 comes from?

24 A Well, I guess my experience in the livestock  
25 industry caught the attention of the media and they  
26 picked up on --

27 Q But I mean the example of your ear and tail biting

1 syndrome.

2 A Oh, okay. Yeah. The -- one of the other things  
3 that we see, and of course Tony mentioned this in  
4 his testimony, that when I first met him one of the  
5 first things that he mentioned in relation to his  
6 children and what they were experiencing, I couldn't  
7 really relate to in humans particularly at that  
8 point in time. I certainly can now. But I thought  
9 I could relate to it in the pigs, because I'd  
10 watched in some of these swine herds that I was in  
11 charge of, and you know -- you know, on some  
12 occasions the producers would have problems and so  
13 they'd give me a call. That was what kept me in  
14 business. And so, we'd go out and check things out.  
15 And when we would see ear and tail biting syndrome,  
16 which is an interesting phenomenon, it's described  
17 in the swine literature, and there's a lot of  
18 speculation on what causes it. But I was  
19 particularly interested in that, and the industry  
20 had kind of come to the conclusion that a lot of it  
21 was nutritional because adding zinc and other trace  
22 elements would often improve the outcome of that.  
23 And I took a particular interest in that because I  
24 had a few customers who had had that problem in the  
25 past. I remember one day going out and sitting in  
26 the smelly pig barn watching these animals, a group  
27 that had expressed ear and tail biting syndrome. It

1 was kind of devastating to the producer because  
2 these animals would savagely attack one another. In  
3 some cases I've see instances where they would  
4 actually tear open the hind quarters of a -- of a  
5 pen mate. They would tear off the ear or a tail and  
6 what's why it's called ear and tail biting syndrome.  
7 Pigs often do that in play, but -- but in these  
8 instances it became serious and they would  
9 physically attack.

10 And I -- I sat in -- in a pen one time and just  
11 watched different animals that -- that were in the  
12 pens doing this and -- and, you know, the  
13 description that I got in my mind was, this was  
14 hyper irritability. There was something irritating  
15 and agitating these pigs somehow that made them  
16 super irritable.

17 And when Tony described his son to me and hyper  
18 irritability, of course, now I understand, is one of  
19 the principle symptoms of bipolar illness and I  
20 thought, gee, you know, that's funny because those  
21 pigs fit that description. They would stand there  
22 and any little thing that their pen mate did that  
23 would bother them, they would just savagely attack.

24 And my experience of seeing that disappear by  
25 adding simple trace elements to the feed led me to  
26 believe that we needed to try that with Tony's kids.  
27 There had to be a reason. You know, in my simple

1 mind, I'm not necessarily the brightest bulb on the  
2 tree, but in my simple mind, you know, there had to  
3 be a reason why these kids were normal when they  
4 were young and now they had symptoms that made them  
5 completely dysfunctional. And they were so  
6 irritable and so agitated and aggravated and  
7 delusional and all of that. Something's -- there's  
8 got to be a reason for that. And it just struck me  
9 that nutrition might be that reason; that it was  
10 worth a try; nothing else had worked. You know,  
11 even the medications that they were on weren't  
12 really helping them that much. So, that -- that's  
13 where that comes from.

14 And of course, we never put together a product  
15 that I'd ever -- a formulation that I'd ever  
16 formulated for pigs. That wasn't the issue at all.  
17 But certainly, the principles that I'd learned in  
18 the -- in the years in the animal feed business, we  
19 applied to humans and the idea was simply to put  
20 together something that was as complete as possible  
21 that would take care of as many deficiencies as  
22 possible. And we didn't test the foods that Joseph  
23 and Autumn ate, like we were able to do in pigs, but  
24 I was very familiar with the levels of nutrients  
25 that were essential for pigs and -- and humans --  
26 humans have a very similar requirement in terms of  
27 nutrition. I'd learned that in the -- in the

1 courses that I'd taken in animal nutrition that this  
2 was very similar to human nutrition.

3 And I knew -- I knew also too that the balances  
4 of different nutrients were absolutely essential.  
5 You get imbalances of calcium and phosphorous and  
6 magnesium for instance in animals and -- and it  
7 produces some really strange things, some very  
8 serious things economically for these animals. You  
9 get cows that are fed an imbalance of calcium and  
10 phosphorous when they give birth and start to  
11 lactate, they get milk fever. And that too can send  
12 them into convulsions and you can lose an animal  
13 because of that. And that's simply an imbalance of  
14 calcium and phosphorous. So, there were balances  
15 that I'd learned in nutrition.

16 In human nutrition that's not talked about a  
17 lot. We talk about what the basic requirements are  
18 in human nutrition but we don't talk about the  
19 balances. And in my experience in animals, the  
20 balance was as important as the presence of the  
21 elements, and that's not really understood in human  
22 nutrition.

23 Another difference in human and animal  
24 nutrition is that in animals we tend to push for  
25 optimal nutrition. We're not just concerned what  
26 will prevent a deficiency disorder like blindness  
27 from Vitamin 'A' -- through Vitamin 'A' or like

1 grass tetanus, but we're interested in what will  
2 happen if you take that same element and elevate it  
3 enough that the animal will actually perform at a  
4 level that's superior to what he would perform at if  
5 you just have enough to prevent the deficiency  
6 disorder. And that's not -- that's not well  
7 understood in human nutrition either.

8 So, you know, I used -- because it really  
9 became evident to me, and I -- and I think this is  
10 important in this defence of necessity because, you  
11 know, we live that defence. It wasn't something  
12 that we understood was -- could be executed in a  
13 court of law at sometime in the future, you know,  
14 but that's exactly what we experienced. And part of  
15 my background and what I understood was significant  
16 enough in my mind that I thought, you know, this --  
17 this is -- this is important.

18 The analogy of the dam that I told you about,  
19 can we talk about that?

20 Q Yeah, we can.

21 MR. BUCKLEY: Your Honour, we've resisted  
22 the temptation to have a PowerPoint presentation but  
23 Mr. Hardy did want to refer to a couple of slides  
24 that he traditionally has set up to explain because  
25 the concept isn't one that readily jumps to mind  
26 when it's just spoken about.

27 Q MR. BUCKLEY: So, Mr. Hardy, you've got some

1 slides and these are things that you have prepared,  
2 right?

3 A That's right.

4 Q And you just use these to try and help people  
5 understand what you now want to explain to us?

6 A Exactly. The first page comes from extensive  
7 research into what the U.S. Department of  
8 Agriculture has done. That group has done more in  
9 human nutrition than any group in the world. Walter  
10 Mertz produced a series of volumes, just big heavy  
11 volumes on -- entitled, Human and Animal Nutrition,  
12 and over the years the six different centres on  
13 human nutrition in the United States, have produced  
14 more of what we know about trace element nutrition  
15 in animals and humans than -- than anything else.  
16 So, this comes from those sources.

17 This is human nutrition and this first chart  
18 shows a bar graph of the percentage of the U.S.  
19 population not meeting the dietary reference intake  
20 for specific nutrients. So, that's kind of the --  
21 the minimum requirement that you would take in, in  
22 order to avoid deficiency. And it's pretty shocking  
23 when people see this because I don't think most  
24 people in the population recognize that these kinds  
25 of deficiencies have actually been scientifically  
26 investigated and proven.

27 If you look at that chart there are five

1 elements including calcium, folic acid, magnesium,  
2 Vitamin 'A' and Vitamin 'E', that more than 50  
3 percent of the U.S. population do not get enough of  
4 on a daily basis according to the studies that have  
5 been done. And you can see on that chart that there  
6 are another five elements that over 30 percent of  
7 the population do not get enough of, and the rest of  
8 them still are not taken in in sufficient quantities  
9 each day by 100 percent -- by all of the population.

10 Well, what that tells me is that in humans,  
11 it's exactly what we saw in pigs and in livestock.  
12 The tests that we did in the feedstuffs for  
13 livestock weren't sufficiently dense in these  
14 nutrients to meet their needs, and that's exactly  
15 what this chart shows for humans.

16 So, as I was thinking about this and wondering  
17 why it is when we first started to see this response  
18 in humans in Tony's two children, my thinking said,  
19 Well, why is it that science has missed this? I  
20 mean, I have a scientific background. I taught the  
21 scientific method in my highschool biology class. I  
22 knew the scientific method. And I said, What is it?  
23 Why is it that all this research has been done but  
24 we missed the forest for the trees. And I think it  
25 relates to the very scientific method. And that is,  
26 that in the scientific method we tend to examine one  
27 variable at a time. I would often ask my highschool

1 students, Well, you know students, how many  
2 variables are there in a scientific experiment? And  
3 the answer of course, Well, Mr. Hardy, there's one  
4 variable. Why is that class? Because if there's  
5 two variables you don't know which variable it is  
6 that's -- that's causing the difference.

7 That -- that is sound in one way of thinking  
8 but when it comes to nutrition it's not sound. And  
9 I -- I put together this little analogy of the dam  
10 and it's not necessarily new to me. The principle  
11 of the first limiting nutrient in animal nutrition  
12 is well established in that.

13 But if you take this chart of deficiencies in  
14 humans from the U.S. Department of Agriculture and  
15 you -- you take the analogy of a dam. When a dam is  
16 whole, it holds water, and when the body is whole,  
17 it functions very well. When we gave those animals  
18 everything that they need they functioned at an  
19 optimum level that was -- was incredibly  
20 significant.

21 You look at the next chart and you superimpose  
22 that deficiency chart now upside down on the dam,  
23 which is -- which is what I've done here.

24 THE COURT: Just before we go to this, do  
25 you want to lay the background for the -- for the  
26 chart here?

27 MR. BUCKLEY: The deficiency chart?

1 THE COURT: Yes.

2 Q MR. BUCKLEY: So --

3 THE COURT: And I am wondering whether or  
4 not you are going to try to qualify this witness as  
5 an expert.

6 MR. BUCKLEY: I'm not. The witness is  
7 trying to explain, and it's just kind of their  
8 theory behind the product because it goes to, you  
9 know, why they believed it was essential and we're  
10 also then going to kind of then go back into the  
11 history. And what he's trying to explain just using  
12 these charts, is that what the scientific method  
13 does is just take one thing at a time but doesn't  
14 study kind of the whole broad spectrum at once,  
15 which is --

16 THE COURT: I have got that point. The  
17 point I want to know is what is the basis for the --  
18 for the statistics in the charts?

19 MR. BUCKLEY: Okay.

20 THE COURT: Where did he draw them from  
21 and what is his ability or expertise that allows him  
22 to do that.

23 MR. BUCKLEY: Okay.

24 A These -- these charts are taken from statistics from  
25 the U.S. Department of Agriculture website. They're  
26 taken exactly. The -- the percentages are exact.  
27 They can be found on, the reference is -- is right

1 down there that we took them from, the -- that's the  
2 exact reference as to here they came from.

3 We put them into graph form but that's the only  
4 change. This is -- this is given in the  
5 epidemiological studies on nutrition that the U.S.  
6 Department of Agriculture has done. And, you know,  
7 these are things that I'd studied in Walter Mertz's  
8 work, extensively, in -- in going through the -- the  
9 several volumes of work that he did. But this is  
10 specific to humans and this is up-to-date. This is  
11 the most recent information that the U.S. Department  
12 of Agriculture has. They're doing a new study to  
13 update this, to expand it, but this is the most  
14 recent data that's available from this website, on  
15 the U.S. Department of Agriculture site, if that's  
16 --

17 THE COURT: Do you know what that means?  
18 Are you talking 1995 or 2001?

19 A The exact date of these studies and the data that  
20 they collected to put this together -- I haven't  
21 reviewed that recently enough to know the exact  
22 year, but this was up to I think about 1999. So,  
23 this is fairly recent data. The -- the new  
24 information that they're collecting they haven't  
25 summarized yet. And I'm not -- I'm not certain if  
26 1999 is the exact date or not. But it's -- they  
27 talk about that and where it's collected from on --

1 on their website.

2 Q MR. BUCKLEY: Okay. And this is the data  
3 that you are looking at kind of throughout this  
4 process?

5 A Mm-hm. Exactly. And I only use this for -- to show  
6 a difference in -- in our approach and a difference  
7 in the kind of research that we've been trying to  
8 initiate with our supplement.

9 Is it okay to go ahead, Your Honour?

10 THE COURT: Go ahead.

11 A Thank you. This chart, when you put it upside down  
12 on a dam, you can kind of think of it as -- well, if  
13 you -- if you turn the next page and make -- get  
14 into holes in the dam, it kind of explains that if  
15 there are deficiencies in the cement in the dam it  
16 doesn't work; if there are deficiencies in the basic  
17 elements of life in the human body it doesn't work  
18 either. And this principle of the first limiting  
19 nutrient is well established. And what science has  
20 tended to do, you see, is -- is take a single  
21 element amidst all these multiple deficiencies and  
22 examine it.

23 So, if you turn the next page you see that  
24 these holes, of course, cause leakage in the dam and  
25 -- and water of course drains out the first hole,  
26 the hole that's deepest in the damn. The first  
27 limiting factors in that dam is -- is the first

1 hole.

2           So, science goes in and an analogy and wipes  
3 out that single deficiency and then they measure the  
4 difference in the performance of the body. In this  
5 case, you could measure the difference in the  
6 performance of the dam and you can see that if you  
7 just take care of that one deficiency and then you  
8 measure the difference in the performance of the  
9 dam, it doesn't change very much. It does a little  
10 bit. And there are thousands of statistically  
11 significant studies that have been purported. One  
12 -- one summary of that is in Melvin Werbach's book,  
13 he's the assistant clinical professor of medicine at  
14 UCLA, and we have studied his book. On mental  
15 illness he has -- he put out a book called,  
16 Nutritional Influences on Mental Illness, and there  
17 are over 2,500 studies on nutrition that he reports  
18 on in that book that show in many cases  
19 statistically significant differences of single  
20 elements in -- in mental illness cases.

21           But going back to the analogy and completing  
22 that, when you -- you measure the performance of the  
23 dam it doesn't change very much. And that's what I  
24 believe science has been seeing as they tinker with  
25 single element nutrients in human nutrition. You're  
26 measuring the difference between the first limiting  
27 nutrient and the second limiting nutrient. You're

1 really not determining what the total benefit of  
2 that and importance of that trace element is to --  
3 to function of the body.

4 You can go through and take care of a few more  
5 of those deficiencies as you turn the page and take  
6 care of more of the holes in the dam. And the dam  
7 still doesn't work that well, because it still only  
8 functions to the level of the first limiting factor  
9 or nutrient in the body, the first hole in the damn.

10 It's not until in the last slide, you take care  
11 of every one of those holes and plug them all up  
12 that you see the potential of what total nutrition  
13 does. And you see with -- with Tony's kids what I  
14 was trying to do is approach what I've just gone  
15 over in this dam. We were trying to plug up all the  
16 holes.

17 So, we tried to find some nutrition that was  
18 complete that would take care of all of the  
19 deficiencies that I had become aware of in the  
20 animal livestock industry and provide those to his  
21 kids. When we first tried it we failed because we  
22 didn't -- we didn't really go far enough. I  
23 suggested in very quick order that he try a few  
24 products that weren't complete, but they were  
25 partially complete, and I knew that they were fairly  
26 bio-available, meaning that they were more effective  
27 in the body than the just raw nutrients, and it made

1 a little bit of difference. And that was -- that  
2 encouraged me enough to indicate to him at that time  
3 that we needed to go beyond that. We need to -- to  
4 really find what would plug all of the holes in the  
5 dam as it were.

6 And so, when we put that initial quad program  
7 together, those four commercially-available  
8 nutrients together that was in that attempt. And we  
9 understand now how fortunate we were in -- in adding  
10 particularly that -- that liquid mineral to that  
11 concoction because we found out later that the  
12 consistency of -- of that kind of product just  
13 wasn't there.

14 Q MR. BUCKLEY: Okay. Well, maybe go into  
15 that for us because that's one of the reasons why  
16 you guys had to start formulating. So, can you  
17 explain for us kind of what happened and the steps  
18 you guys took?

19 A Sure.

20 THE COURT: Just before you go there, I  
21 want to -- I want a clarification on the chart.  
22 Percentage of U.S. population not meeting DRI is  
23 that department of recommended input or something?

24 A Dietary reference intake.

25 THE COURT: All right. Thank you.

26 A It's a -- it's a measure that different scientific  
27 boards around the world have determined is essential

1 for -- it -- it's made up of a number of factors but  
2 this is the most recent reference that nutritionists  
3 around the world now use to determine the essential  
4 amount of intake required for, you know, to keep  
5 people healthy.

6 Q MR. BUCKLEY: Okay. And you distinguish  
7 "essential" from "optimum"?

8 A Yes. Yes. This is not a measure of -- this is the  
9 percent of the U.S. not meeting the -- what they  
10 have said is kind of the minimum limit, not the  
11 optimum limit.

12 This is -- this is really easy to understand.  
13 I mean, calcium, for instance, is very easy to  
14 understand. Calcium deficiency, everybody knows  
15 there is calcium deficiency. There is so much  
16 osteoporosis amongst women in our society that it's  
17 -- it's blatantly obvious that they're not getting  
18 enough calcium.

19 Q Okay.

20 A That's a simple calcium deficiency.

21 Q I'm just going to refocus you --

22 A Okay.

23 Q -- because I was asking you about, you had -- you  
24 had said that you guys were fortunate to get this  
25 colloidal mineral --

26 A Mm-hm.

27 Q -- but I wanted you to explain for us kind of what

1 happened with that and then the steps you guys took  
2 with regards to that, because a problem arose.

3 A Well, the first colloidal mineral that we used was  
4 produced by a company called New Visions and their  
5 product, we found later, was from several different  
6 mines.

7 Now, I need to explain what a colloidal mineral  
8 is. That was the term used to refer to these  
9 elements in -- in a liquid suspension. But what it  
10 refers to are trace elements that have been up-taken  
11 by plants, anciently. Those plants have died and  
12 they've been preserved in a layer, in this case it  
13 was in Emery County in Utah, very highly mineralized  
14 soil, and when these plants died, the minerals that  
15 they had up-taken into the plants had been preserved  
16 in the plants, and then they were mined and  
17 extracted from these plants. So, they're in a --  
18 they're in an organic form. Plants do not uptake  
19 minerals from the soil in the raw elemental form,  
20 zinc and copper and in their charged nature,  
21 otherwise, when they're sent up the psyllium and  
22 phloem of a tree, for instance, up a hundred feet,  
23 they would combine together chemically and render  
24 them ineffective.

25 When they're combined with organic molecules in  
26 a process that we call chelation, then they're given  
27 a similar charge and -- and normally, positively and

1 negatively charged ions that would combine together  
2 do not, and they're able to be taken into the cell  
3 and utilized in that form.

4 MR. BROWN: Sir, before Mr. Hardy goes too  
5 much we do seem to be getting into an area that  
6 requires expertise and expert testimony.

7 MR. BUCKLEY: Well, maybe we should -- maybe  
8 we should go there.

9 MR. BROWN: Well, sir, if my friend does  
10 intend to have this person sworn as an expert,  
11 again, I have not been given notice of that  
12 intention. I've been advised that Mr. Hardy was  
13 going to be called as an ordinary witness and I have  
14 no difficulty with that. Obviously he is certainly  
15 free to call him, but I was not advised that he'd be  
16 called as -- called as an expert at any time,  
17 including at the end of my case, sir, so, I would  
18 have some objection to this person being sworn as an  
19 expert witness in those circumstances.

20 And I think what he's starting to talk about  
21 requires an expert witness.

22 MR. BUCKLEY: Well, I don't need to go into  
23 the molecular plants, but it is germane, his  
24 understanding and belief on why colloidal minerals  
25 were important and what happened with the program.  
26 So --

27 A I can -- I can try and stay away from that.

1 MR. BUCKLEY: Okay.

2 THE COURT: Well, let us get a  
3 clarification on this.

4 MR. BROWN: Yes.

5 THE COURT: This witness is giving  
6 evidence about nutrients, about statistics from the  
7 Department of Agriculture in the United States and  
8 so on. How far are you prepared to accept that as  
9 the evidence of an ordinary witness as opposed to an  
10 expert witness?

11 MR. BROWN: Well, sir, it comes to the  
12 point where he's going to start to talk about how,  
13 like for example, how a mineral is basically  
14 created. I'm not certain that an ordinary witness  
15 is going to be able to talk about that.

16 He certainly can talk about what his  
17 understanding of what the effect might be, based on  
18 what knowledge he's got from his industry, and why,  
19 more importantly, why he chose to include it in this  
20 product that was originally or potentially created.

21 I think if he's going to talk about certain  
22 affects and how he -- how he came to understand what  
23 the effect of certain things would be, that may well  
24 get him into the area of expertise. It's a little  
25 hard for me to say in a -- in a vacuum of course,  
26 so, what is going to be appropriate and what's not.  
27 I'm just trying to avoid having to stand up every

1 couple of minutes and object to points that the  
2 witness might be trying to make, sir. I guess, all  
3 I'm asking was --

4 THE COURT: Well, that is -- that is fine,  
5 but I also have a responsibility to ensure that the  
6 evidence that goes before a court and comes before  
7 the court and forms part of the record, is evidence  
8 that would be considered to be admissible and  
9 acceptable on review.

10 MR. BROWN: Right, sir.

11 THE COURT: I have a responsibility for  
12 that regardless of what you two agree to.

13 MR. BROWN: I agree, sir.

14 THE COURT: All right. And I have been  
15 struggling with that over the course of this trial,  
16 as you have often heard my interruptions with  
17 regards to hearsay evidence.

18 All right. Well, we are getting close to  
19 getting into that area right now.

20 MR. BROWN: Right, sir.

21 THE COURT: I can see where this witness  
22 can give evidence with regards to collecting  
23 statistics and their -- and to some extent their use  
24 and function --

25 MR. BROWN: Right.

26 THE COURT: -- also his observations with  
27 regards to his work, both as a -- as a teacher and

1 in the livestock business. But when we start  
2 getting much further out beyond that, then this  
3 witness is going to have to be qualified as an  
4 expert witness.

5 MR. BROWN: Right, sir.

6 MR. BUCKLEY: Right. And I take my friend's  
7 objection on the notice thing.

8 Q MR. BUCKLEY: So, Mr. Hardy, with those --

9 A You let me know when I'm crossing --

10 Q -- comments --

11 A -- crossing the line and I'll try and avoid it.

12 Q So, Mr. Hardy, I'm going to ask you because it's  
13 important for you to explain to us what happened  
14 with the product, but perhaps we can refrain from,  
15 you know, the explanations other than why a  
16 colloidal mineral is important on the bio  
17 availability.

18 THE COURT: Well, first of all, you want  
19 to spell that and explain exactly what terminology  
20 you are referring to, because, again, I'm here with  
21 Tabula Rosa. I have not -- I have not dealt with  
22 this before --

23 MR. BUCKLEY: Right.

24 THE COURT: -- so let us hear it. And I  
25 am sure other people, some of the people in the  
26 courtroom are as well.

27 MR. BUCKLEY: Right.

1 Q MR. BUCKLEY: So, Mr. Hardy, we do want to  
2 understand what was in your mind with regard to this  
3 colloidal mineral and why you thought it was  
4 important.

5 A Mm-hm.

6 Q If you can explain to us why you thought this source  
7 was important and then move to the problems that you  
8 encountered and the steps you took.

9 A Well, these -- this particular product that we used  
10 contained essentially every trace element and macro  
11 element on earth, as you would find in plant  
12 material that would be analysed. But the difference  
13 is, that this was concentrated and it had a lot of  
14 these elements that we'd seen in the -- in the  
15 animal industry, would have been deficient or  
16 potentially deficient. So, to -- to have them in  
17 presence with the other macro elements that we were  
18 providing in the other three products that we gave  
19 Tony's children, it -- it completed a wholeness to  
20 what I felt would -- would do what this dam analogy  
21 does, you know --

22 Q Okay. And I'm --

23 A -- make up all of the deficiencies.

24 Q I'm going to stop you because I want you to go a  
25 little further. If you can just explain, you know,  
26 can humans absorb this raw minerals versus minerals  
27 that come from plant sources type thing?

1 A Now, there's --

2 Q Just so we understand that that's important.

3 A -- there's an incredibly different ability to -- to  
4 absorb different sources of minerals. Some minerals  
5 absorb quite well in their elemental form, but most  
6 minerals do not.

7 For instance, calcium carbonate is absorbed  
8 very poorly by the body. For that reason we -- and  
9 we use that in the animal industry because its so  
10 cheap. You can buy calcium carbonate extremely  
11 cheaply. It's cheaper than topsoil. So, we use  
12 that as a source of calcium to supplement animals,  
13 but they have to eat incredible amounts of it. For  
14 instance, a hundred pound pig to meet its calcium  
15 requirements, we'd give the equivalent of about  
16 nearly 50, 1,500 milligram tablets of calcium  
17 carbonate, you know, the big horse pills of calcium  
18 that you buy in the store. That's about how much  
19 calcium you'd get from the calcium. And then they'd  
20 get extra calcium from the -- the dicalcium  
21 phosphate that we would feed them as a source of  
22 phosphorous as well.

23 So, you know, you're not going to get a human  
24 to eat 54 capsules or tablets of these horse pills  
25 to get the amount of calcium they need. And if they  
26 ate only one, it really isn't doing them a whole lot  
27 of good. So, there is a huge difference in bio-

1           availability of nutrients and I'm just saying that  
2           -- I was just trying to point out that what plants  
3           uptake that enter into the human food chain is a lot  
4           more valuable in the form that a plant has absorbed  
5           it than the raw element just from the -- from the  
6           dirt or from the calcium supplements.

7           Q     Okay.  So, that's what you were trying to explain.

8           A     That's what I was trying to explain.

9           Q     Okay.  And this colloidal mineral came from plant  
10          material.

11          A     Exactly.  So, it's value to the animal would be much  
12          more effective than just raw elements from, you  
13          know, flushed into Salt Lake, which is full of, you  
14          know, different minerals for instance.

15          Q     Okay.  So, you thought you guys were fortunate to  
16          try this colloidal mineral.  What happened?

17          A     Well, we tried it and the effect on Tony's kids is  
18          -- is a matter of what has been testified to already  
19          in the courtroom.  It was -- it was pretty  
20          phenomenal.  We were quite shocked at -- at the  
21          response and, you know, kind of a never-before-seen  
22          response with these disorders.  They don't remit.  
23          They don't go away.  They were getting the best help  
24          they could from the -- from the system but this  
25          obviously was -- was doing something way different.  
26          We didn't know what it was doing except, you know,  
27          from a very superficial standpoint of nutrition and

1 providing nutrition, it was obviously doing  
2 something in the metabolic pathways of -- of those  
3 -- of the makeup of these kids and it -- it was  
4 effective. And it was shocking. It shocked us how  
5 effective it was at first.

6 It's important I think that we, because there  
7 has been some discussion about, you know, why we  
8 moved on from colloidal minerals. The important  
9 thing to recognize with those colloidal minerals  
10 were that -- is that they were mined from specific  
11 sources and the source that New Visions was getting  
12 this mineral from, we determined, was from a mine in  
13 -- in Emery County in Utah, called the Clark Mine,  
14 and they were buying material from this mine and  
15 putting it into their product and -- and it was  
16 effective.

17 There were, at the same time, other mines  
18 throughout the United States that were producing  
19 these minerals and, you know, they were somewhat  
20 effective. But -- but there was a difference in  
21 effectiveness because there was a difference in the  
22 mineral content of -- of -- from these particular  
23 products. And we found after a time of being on the  
24 New Visions product that we had to -- to switch  
25 because it became less effective. We saw people  
26 faltering.

27 Q Okay. How many people at that time were on this

1 Quad program?

2 A Not very many, but you know. Probably, oh, I don't  
3 know, I guess, you know, we started tinkering around  
4 and I -- and I do want to -- to talk about that and  
5 some of the things that impressed my mind so  
6 significantly at first.

7 Q Well, we will but just let's deal with this one  
8 point about --

9 A Okay. I'll -- I'll get finished --

10 Q -- about the colloidal mineral first.

11 A -- with the colloidal minerals. The mineral from  
12 this company we started to see, you know, people  
13 faltering on it. And so, we switched companies.  
14 The demand for this product through this company  
15 became overwhelming and -- and we found out that  
16 they had switched sources of where they got their  
17 mineral from because they couldn't meet the demand  
18 from -- from the one source. And so, that seemed to  
19 make it different.

20 We switched to another company who was buying  
21 from this same source, and that worked. A product  
22 called Body Symptoms International out of Florida,  
23 they produced a colloidal mineral as well. And for  
24 a time, that product you was effective, and then it,  
25 too, became inconsistent, and we found that they  
26 were adding to the sources that they were getting  
27 these colloidal minerals. So --

1 Q But when you say it was "inconsistent", how did you  
2 guys observe that?

3 A Well, we saw it first in -- in the way that it  
4 performed in -- in the people whose lives had been  
5 altered by it. There's no magic to this. If it  
6 didn't work it didn't work. And you know, we  
7 determined that you can't just give any combination  
8 of minerals and vitamins to -- to people with  
9 bipolar disorder and they're going to get better.  
10 It just -- it just isn't going to happen.

11 Q Okay. But did you see changes in them? That's what  
12 --

13 A Yes, we did.

14 Q What did you see?

15 A Saw increase of return of symptoms in, you know,  
16 Tony's kids began to falter a little a bit in -- in  
17 their mood stability and we suspected that, you  
18 know, we asked ourselves, because this was just kind  
19 of a trial and error, What's going on? And we  
20 traced it to the -- the trace element. The other  
21 elements had remained constant. The other pills we  
22 were guaranteed analysis and -- and they had  
23 remained constant. And so we -- we felt that the  
24 changes in sources as we looked into it of these  
25 products became significant. And -- and it made us  
26 real nervous because, you know, we started to wonder  
27 where this is going. Are we going to be able to

1 keep these kids stable. Because body systems too  
2 became ineffective in -- in -- to some degree, not  
3 totally ineffective but partially ineffective. It  
4 became more difficult to manage these kids and --  
5 and their symptoms and ...

6 And as we looked into it we, you know, we found  
7 the source, the Clark Mine. We went down and  
8 visited the people in the Clark Mine and got the  
9 history of this. They had a very interesting  
10 anecdotal history of, you know, giving this mined  
11 mineral to --

12 Q Okay. But we don't want the history, but you guys  
13 went to the mine. Why did you feel the need to  
14 actually go down to the mine yourself?

15 A Well, to -- to see if -- if -- if we could determine  
16 that there was going to be a steady enough supply of  
17 this, this product. Because we traced the  
18 beneficial, the most beneficial mineral to this  
19 mine. It was supplying several other places,  
20 several other of these companies, and so, we  
21 wondered just exactly where it was and -- and it was  
22 in Emery County in Utah. And it made a difference,  
23 they told us, even which layer of plant material  
24 they extracted from, and they had described how this  
25 had been mined for a number of years and how the  
26 demand had become extensive and how a lot of these  
27 deposits had become depleted.

1           So, we switched in final -- the final switch we  
2 made was to the Clark mineral itself, which was  
3 effective. But you know, they too had to start  
4 gathering these minerals from different sources. We  
5 began then analysing this stuff to see what it was  
6 that was effective and -- and in changes what it was  
7 that was ineffective in these minerals, because we  
8 had run a little trial on that Quad program --

9       Q     Okay. Would it -- would it be fair to say one batch  
10 would be okay, and then the next batch --

11       A     Exactly.

12       Q     -- wouldn't be and --

13       A     Exactly.

14       Q     -- on and on.

15       A     It just depended on which -- which batch and -- and  
16 where they had taken it from. So, we started to do  
17 some actual chemical analysis on this, because by  
18 this time we were convinced that the only way that  
19 we were going to keep this stable for those that  
20 were on it, and -- and Tony's children, was to put  
21 together an all-in-one product that we could  
22 guarantee the analysis of. And we didn't know if we  
23 could put that together or not.

24           So, we started to do extensive study again,  
25 into the literature, into all that had been by the  
26 U.S. Department of Agriculture. We phoned Walter  
27 Mertz who is a world expert on -- from the U.S.

1 Department of Agriculture and talked to him, and got  
2 ideas from his work and other work that had been  
3 done at the -- the Human Nutrition Research Centres  
4 in -- in the U.S. and every other source that we  
5 could find, to find as much information as we could  
6 as we began to put this together.

7 And then we approached a manufacturer to put  
8 our first all-in-one product together. We also  
9 realized, because by this time we're interested in  
10 research. It was just something that was in me.

11 Q Okay.

12 A I had enough of this background that -- that I knew  
13 we wanted to do some -- some research on this  
14 because of the phenomenal results that we'd seen.

15 Q Okay. And then so, maybe we'll back up, because you  
16 guys never intended on actually making a product, is  
17 that correct?

18 A Not really. We walked into this step-by-step, and  
19 you know, the further we got into it the more we  
20 could see that -- that we couldn't back out. I  
21 mean, it wasn't our intent to make a business out of  
22 this at first, we were just trying to help Tony's  
23 kids.

24 But when we saw the response that we got with  
25 them, something in my mind said, My golly, Hardy,  
26 good grief, this looks like it's -- it's something  
27 really significant that you stumbled onto. What are

1           you --

2       Q     And so --

3       A     -- going to do with it?

4       Q     -- so what happened then?

5       A     Well, as we -- as we investigated this a little  
6           further, I mean, we decided that it needed to be  
7           investigated, that this could really be of some  
8           benefit to humanity, because some of what we'd seen  
9           really was some pretty phenomenal -- pretty  
10          phenomenal things.

11                 We talked about a case study, and maybe this  
12           would be a good time to go over this. Tony showed a  
13           case study of the first schizophrenic that we tried  
14           this product on and if I could just, for the sake of  
15           effect of -- of showing what impact that had on my  
16           thinking as we -- would it be possible to go through  
17           that? Sorry, I don't know.

18       Q     You're wanting me to give you a case study that you  
19           prepared --

20       A     Yes.

21       Q     -- just to explain, because it was important to your  
22           thinking?

23       A     Exactly.

24       THE COURT:                         Well, just before you go on to  
25           that, and I do not like to interrupt but I want to  
26           have a clarification here. You are referring to the  
27           Clark Mine and you are referring to colloidal

1 minerals.

2 A Mm-hm.

3 THE COURT: And I just want to make sure  
4 that my understanding is correct. You have got  
5 three elements that are guaranteed, you have one got  
6 element that you are not sure of, it is a liquid  
7 mineral, and I take it that it is in some form of  
8 layered plant deposit in a mine, is that what you  
9 are telling me?

10 A That's right.

11 THE COURT: All right.

12 A And -- and the minerals were extracted from that.  
13 The other three --

14 THE COURT: And the minerals are extracted  
15 from the mine or from the -- from the -- from what  
16 was extracted from the mine?

17 A Well, these were deposited in layers. So, the plant  
18 material that had grown in this -- this mineral-rich  
19 soil had died and -- and was layered and hadn't  
20 really completely decayed. So, it was like thousand  
21 year old hay, I guess. It was -- it was loaded with  
22 these trace elements and what they do is they  
23 extract the minerals from that material. It's --

24 THE COURT: All right. That is fine.  
25 That explains (INDISCERNIBLE).

26 A Yeah. The other mineral -- the other materials that  
27 we were using, by the way, on Tony's children were

1 all multiple ingredient products as well. They were  
2 mineral vitamin products that were multiple  
3 ingredients, so ...

4 THE COURT: But you had guaranteed  
5 analysis on those.

6 A That's right. We had a guaranteed analysis on  
7 those. We knew that we could rely on those in terms  
8 of what was -- what was in the product. And they  
9 were in a format that was -- that is chelated,  
10 meaning that the -- the minerals had been combined  
11 with an organic molecule that made it more  
12 absorbable by -- by humans and that's, and you know,  
13 I'd seen that in -- in the livestock industry for  
14 years and years. When we used chelated elements you  
15 didn't have to use nearly as much to have the same  
16 effect and they just absorbed better and were a lot  
17 more effective.

18 Q MR. BUCKLEY: Okay. And just so that the  
19 record's clear. When you had done a three product,  
20 the first trial on Joseph, that didn't include this  
21 colloidal mineral?

22 A No.

23 Q So, the only change when you went from a tri-product  
24 to a Quad program with the addition of this  
25 colloidal mineral --

26 A That's right.

27 Q -- from the Clark Mine.

1       A     The addition of the colloidal mineral.  And that --  
2             that, you see, made it complete enough, I guess it  
3             was like the analogy of the dam, that was the last  
4             straw that kind of made it complete.  It had many  
5             trace elements in that were not present in the other  
6             three ingredients that we had provided.  So, that  
7             kind of made it a whole product.  And we were very  
8             fortunate to -- to stumble across that initial  
9             product because in our trials later, in trying to  
10            substitute other colloidal minerals for that  
11            mineral, a lot of them were just were ineffective at  
12            all.  They didn't contain the same elements that --  
13            that obviously were essential to complete the -- the  
14            dam analogy.

15       Q     Okay.  Because just while we're still on that, when  
16             you were going through this Clark Mine problem you  
17             were searching for other products that you could  
18             substitute?

19       A     Frantically.  Yeah, this was important to the health  
20             of those that -- that were there.  We didn't want to  
21             see Joseph and Autumn go back to what they'd  
22             experienced before and ...

23       Q     Now, was it just Joseph and Autumn at that time?

24       A     No.  There -- there were others that we had done  
25             studies on, and -- and that's that case study that I  
26             -- that I prepared.  If we could talk about that, if  
27             that's okay?

1 Q And you just feel that it would be easier for you to  
2 share this with us, but it's personal knowledge that  
3 you have?

4 A Yes. Absolutely.

5 Q Okay.

6 A Yeah, this is --

7 Q So, tell us about this lady. Don't read this to us,  
8 but tell us about your experience and then you can  
9 refer us to this document.

10 A Well, this -- this is one of the first people that  
11 we tried this combination of products, is this was  
12 the Quad program with the colloidal minerals and  
13 everything on. After we tinkered with Tony's --  
14 Tony's children and -- and had seen the change, and  
15 you know, it was my curiosity from my scientific  
16 background if this would be beneficial to others. I  
17 felt it would be because of the huge significance  
18 that we'd seen, and we didn't know. We didn't know  
19 if it would be helpful, but this was a neighbour of  
20 Tony's. He knew these people personally. This  
21 lady, whose name we use with permission. She is now  
22 not alive. Her husband is still alive and has given  
23 us permission to use this in any way that we see  
24 fit.

25 But this particular case made an impression on  
26 me that was indelible.

27 Q Okay. So, describe. Describe what happened.

1       A     This is a lady who had been diagnosed with  
2            schizophrenia almost 20 years earlier from the time  
3            that we contacted him and her symptoms were  
4            significant. Dr. Popper the other day in his  
5            testimony described how when people are on  
6            medications they often have very significant  
7            symptoms in spite of the best that can be done with  
8            the medications. That's a reality. And this lady  
9            was there. She was on a number of different  
10           medications, I think five at the time if I remember  
11           right, oh, they're right there.

12       Q     Okay.

13       A     Yeah, there were -- there were five that she was on,  
14            actually only four that were psychiatric  
15            medications, but -- but these are anti-psychotics  
16            and things that would normally be given to someone  
17            with schizophrenia, in spite of that, you have  
18            realize how significant her dysfunction was, in  
19            spite of the best that could be done for her.

20                 And so, we made up these little charts and I  
21                 was enough of a scientist to know that we needed  
22                 some kind of measure of what she was experiencing.  
23                 So, we went into the diagnostical statistical manual  
24                 and prepared this chart on schizophrenia that gave  
25                 the symptoms that are used to determine the  
26                 diagnosis of it. And we'd learned from, you know,  
27                 talking to researchers how they make up these charts

1 where you -- you actually give weight to what the  
2 person is experiencing. So, in this particular  
3 case: "not at all" we would give a zero to, that  
4 meant that you were not experiencing the symptoms at  
5 all; "just a little" you'd give a 1 to because  
6 that's not very significant; "pretty much" you'd  
7 give, if that was their determination you'd give a  
8 weight of 2 to that; and -- and if it was "very  
9 much" you'd give a weight of 3. And in this  
10 particular case, we had this little hand chart that  
11 we ...

12 So, we sat down with this lady and -- and her  
13 husband and determined what her beginning symptoms  
14 were, where she was at, because you're not going to  
15 be able to tell where you're going unless you can  
16 measure where she's at. So, this is the -- this is  
17 her symptoms as we measured it. Hallucinations or  
18 delusions --

19 Q So, you're referring to page 2 of that document?

20 A Page 2 of the document.

21 Q Starting symptoms December 13th '96.

22 A Starting symptoms December 13th, 1996.

23 Q Okay. So, you're actually there meeting with her  
24 and going through to try and evaluate the symptoms  
25 according to this diagnostic tool.

26 A That's right. So, she was hallucinating and  
27 delusional. She would feel that there was bugs

1 crawling on her body or on the wall of her bedroom  
2 everyday of the world. We had determined that in  
3 spite of the medications that she was given and the  
4 many changes that she'd been through over the years,  
5 her diagnosis of schizophrenia, that she hadn't been  
6 a single day free of -- of hallucinations and  
7 illusions. Now, sometimes those medications are  
8 able to remove those delusions and hallucinations to  
9 some degree, but she still experienced hers in spite  
10 of the medications. That was "very much" so that  
11 was a 3.

12 Extremely disorganized thoughts. That was --

13 Q I don't want you to walk through the whole chart.

14 Okay.

15 MR. BROWN: And sir, just before we  
16 continue too far, I'm going to assume that my  
17 friend's putting this before the witness, none of  
18 which of course is for the truth of its content or  
19 even for that matter the diagnosis is made for the  
20 truth of its content; rather that, this -- there are  
21 observations I guess that this witness has made and  
22 he's going to tell us about those, sir.

23 But with respect to the rest it's all, of  
24 course, strictly hearsay. I know we have I guess an  
25 agreement in terms of how hearsay is going to be  
26 accepted but I think it needs to be made clear in  
27 this particular case study because this individual's

1           neither an expert with respect to case studies, nor  
2           with respect to -- and rather, and the basis of the  
3           rest of it, of course, is hearsay, sir.

4       THE COURT:                       Mr. Buckley, with regards to  
5           this objection, you are on rather thin ice, if I can  
6           --

7       MR. BUCKLEY:                    Mm-hm.

8       THE COURT:                    -- use that term, right from  
9           the starting line "diagnosed with schizophrenia". I  
10          do not know how you expect to get this evidence  
11          before the court because it is hearsay evidence.

12      MR. BUCKLEY:                   It is, and I'm -- I'm having  
13          the witness go through this solely because this was  
14          kind of -- this was pivotal for his belief. So, I  
15          mean, to kind of explain how they got where they  
16          were going and why they felt they couldn't turn  
17          back, kind of at each step. I don't need it in for  
18          the truth of the diagnosis, just for the fact that  
19          for him it was his observations of what occurred  
20          were pivotal.

21                So, I take my friend's objections to heart  
22          there.

23      THE COURT:                    Well, you can make this -- he  
24          can make these observations.

25      MR. BUCKLEY:                   Mm-hm.

26      THE COURT:                    He can make an observation  
27          that they worked with a neighbour who they

1           understood had been diagnosed as schizophrenic and  
2           then made observations after that with regards to  
3           having administered the nutrient supplement.

4       MR. BUCKLEY:                   Mm-hm.

5       THE COURT:                    But as far as whether or not  
6           -- I cannot take this as hard evidence before me  
7           that she was schizophrenic --

8       MR. BUCKLEY:                   No, and at --

9       THE COURT:                    -- from --

10      MR. BUCKLEY:                   -- and at the end --

11      THE COURT:                    -- from --

12      MR. BUCKLEY:                   -- of the trial --

13      THE COURT:                    -- from --

14      MR. BUCKLEY:                   -- I'm not -- right.

15      THE COURT:                    -- from the starting point,  
16           right from there.

17      MR. BUCKLEY:                   Right.

18      THE COURT:                    So, everything that he is  
19           going through, as I say, is thin ice.

20      MR. BUCKLEY:                   Yes, it is. And I mean I --

21      A       And I agree. I mean --

22      THE COURT:                    I am glad you agree.

23      MR. BUCKLEY:                   And I'm not going to --

24      THE COURT:                    But I did not ask you.

25      MR. BUCKLEY:                   Yep.

26      THE COURT:                    I am talking to him.

27      MR. BUCKLEY:                   No, and Your Honour, like I

1 say, I'm not standing up at the end of the trial  
2 saying, Oh, rely on Gloria Cheney's (phonetic)  
3 diagnosis. I have got some expert evidence before  
4 this court that subjective on issues like that.

5 THE COURT: Yes, you have.

6 MR. BUCKLEY: The only reason this is  
7 important is it really was kind of the, Oh, my gosh  
8 I can't sit on this for this witness.

9 And so, I think this witness understands that  
10 I'm just wanting his observations. The court and my  
11 friend understands why I'm calling this, or you  
12 know, trying to go through this, although I was, I  
13 don't have control of how the witness starts talking  
14 about something, so we, you know, by necessity have  
15 to stop and focus at times.

16 THE COURT: No, I appreciate that and you  
17 have some hard evidence, you have some expert  
18 evidence --

19 MR. BUCKLEY: Yeah.

20 THE COURT: -- from very credible experts  
21 before the court here today. Why you want to go  
22 into this right now, I am not sure. I still do not  
23 understand what you are trying to do with it.

24 A Can I explain that?

25 Q MR. BUCKLEY: Yeah. Can we -- can we just  
26 not refer to this document and you tell us the  
27 experience. I think that would speed things up

1           wonderfully for us.

2       A     Okay.  Sure.  Well, this was just a particularly  
3           pivotal case.  I mean, after we --

4       Q     And just your observations.

5       A     After our observations with Tony's children, I  
6           wanted to -- to know if this could possibly be  
7           effective with something else.  And you know, we --  
8           we talked to Gloria about who had diagnosed her with  
9           schizophrenia, that the doctor's name is there, and,  
10          you know, we -- we tried to --

11      Q     Okay.  But --

12      A     That's -- that's irrelevant.

13      Q     -- we're not --

14      A     Okay.  Let's not go there.

15      Q     I don't -- I even want you to turn the document  
16           upside down.

17      A     Okay.

18      Q     And just tell us your experience.

19      A     Okay.  Well, what we had determined is that -- so,  
20           we actually tried to measure in our feeble way, what  
21           -- what she was experiencing.  And it was obvious  
22           that it was significant.  I mean her -- her  
23           disability was to the point that she was only able  
24           to arise for meals and bathroom breaks.  She stayed  
25           in bed most of the day.  She'd -- she was just  
26           completely dysfunctional.  It was not a good life.  
27           She'd attempted suicide on a couple of occasions her

1 husband told us, and she had thoughts of -- of death  
2 and suicide all the time she told us, as we took  
3 these symptoms of -- of hers as we wrote them down.

4 So, we put her on the supplement --

5 MR. BUCKLEY: This isn't going in for the  
6 truth just this witness's belief, just for the  
7 record.

8 A It's a difficult -- and I'm not sure where I'm  
9 stepping over the line, Your Honour, so.

10 But we started her on the supplements and it  
11 was very obvious that her symptoms began to improve.  
12 We took them, one month, we used the same chart, the  
13 same kind of questions, one month later and they had  
14 dramatically changed. And then the month beyond  
15 that they dramatically changed again. And at the  
16 end of 90 days she reported to us that she wasn't  
17 experiencing any of those symptoms that she'd  
18 experienced for 20 years at all. And it was obvious  
19 in her countenance, in her ability to -- to speak,  
20 to communicate, to laugh, to emote properly. Her  
21 husband was absolutely thrilled. He says, This is  
22 the lady that I married. I've got my wife back. I  
23 can't believe that these symptoms that she's  
24 experienced for these 20 years are gone.

25 When we started her -- I won't go there. But  
26 that's -- and then the interesting thing to me too,  
27 was that she -- she remained on the supplements that

1 we had given her for a period of about eight-and-a-  
2 half months, and during that time she didn't  
3 experience any of those symptoms. And then she  
4 quit. She quit taking the supplement. And, you  
5 know, this is germane I think to my -- my feeling as  
6 we went through this in the future. And why I  
7 wanted to refer to this case was because of this.  
8 She quit taking the supplement. She got her  
9 symptoms back. She was hospitalized. She was put  
10 back on medications and her symptoms at that time  
11 were about where they had been for the 20 years that  
12 she'd been on medication. She wasn't well. She  
13 wasn't functioning. And her husband called us up  
14 and said, It was so good to have my wife back, I  
15 want her back again. And we indicated that --

16 Q MR. BUCKLEY: Okay.

17 A -- she'd have to --

18 Q Well, I don't think we need to go into that, but how  
19 did this case affect you?

20 A Incredibly. Incredibly so. I need to go just one  
21 step further if I can -- can I do that? Because we  
22 put her back on the supplements. We took her to a  
23 doctor at the University of Calgary this time  
24 because I didn't know if I could trust what I  
25 seeing. Okay. So, we took her to a psychiatrist in  
26 Calgary who watched her as she went from symptoms of  
27 severe schizophrenia once again to being well. And

1           that impressed -- that made an indelible impression  
2           upon my mind that I just couldn't ever forget.

3                         Here was a lady that had lived her life for the  
4           last 20 years with severe symptoms of these  
5           illnesses and all of a sudden something happened to  
6           reverse that. I just couldn't see how that could  
7           happen without what we were doing being significant.  
8           Of course, we'd seen it in Tony's kids, and as we  
9           started to do this with more and more, we -- we saw  
10          more and more of the same experience.

11                        And I was saying to myself, Oh, my gosh, what  
12          have we got ourselves into here? We've got to make  
13          a decision here. We've got to determine that we're  
14          going to do something with this or let it be,  
15          because this isn't a place that we'd predetermined  
16          that we were going to go and make a big business or  
17          a business out of providing these things but -- but  
18          I thought, wow, this is something that's -- that's  
19          significant.

20                        And the more I thought about it the more I  
21          realized that -- that we couldn't leave this.  
22          Morally, we couldn't leave this alone. It's not  
23          like we could stumble across the truth here and --  
24          and hurry off as if nothing had happened. I think  
25          somebody mentioned one time, you know, it often  
26          happens, just I felt that this needed to be  
27          investigated. It needed to be studied by -- by

1 scientists.

2 So, we approached some scientists. We  
3 approached Bryan Kolb, and started to talk to him  
4 about it and -- and got him interested in what we  
5 were doing as much as we could. And we found that  
6 the more that we showed them this anecdotal evidence  
7 from our experience the more impressed they were  
8 that we might have something here. So, we had to --  
9 it seemed like we had to accumulate some of this  
10 material in order to interest the scientists.

11 And you know, at that point in time we set up  
12 the Synergy Group of Canada, which was intended  
13 originally as a -- as a research idea, that the more  
14 we -- the more we went through this kind of thing,  
15 and in each case, we tried to follow their symptoms  
16 in an organized fashion. It wasn't what a trained  
17 scientist like Bonnie Kaplan would do -- Dr. Kaplan  
18 would do perhaps, but it was, you know, the  
19 principles were there and we were trying to follow  
20 sound scientific principles.

21 So, we set up the Synergy Group of Canada, not  
22 like I say intending to move into this great  
23 business, but we -- we were intending to -- to if  
24 possible attract funding that -- that would allow us  
25 to continue to investigate this and to go and -- and  
26 convince doctors and researchers that we'd stumbled  
27 onto something significant.

1           And Kolb was encouraging. Dr. Kolb was  
2 encouraging. He's the one, as Tony described in his  
3 testimony, that he had talked to in trying to  
4 understand the death and suicide of his wife,  
5 because this man was an expert in that area.

6       Q     Okay. But just your experience. So, he was  
7 encouraging and then what happened?

8       A     He was encouraging and he helped to set up a little  
9 trial with some kids. We were collecting the data.  
10 We just told him -- and he says, Well, if you did it  
11 this way you might be able to collect something that  
12 I could help you summarize in terms of analysis and  
13 we could do that.

14           So, we --

15       Q     Okay. And I actually want to skip through that,  
16 because Mr. Stephan had covered that already.

17       A     That's right.

18       Q     So, and I'm wondering if we can skip forward to when  
19 you guys -- you had trouble with the colloidal  
20 mineral.

21       A     Mm-hm.

22       Q     And at that point I was trying to get an  
23 appreciation, because you guys weren't selling  
24 product at that time.

25       A     No.

26       Q     But there were more than just two or three people on  
27 this Quad program?

1 A Mm-hm.

2 Q Can you give us an appreciation or?

3 A Well, it did. It had expanded by that time to, you  
4 know, probably a hundred or more people and -- and  
5 so the deeper we got into it the less we felt we  
6 could back out, because -- well, let me describe it  
7 this way. You know, people that have come to us  
8 over the last ten years, we see, as we've  
9 experienced in our own lives and I haven't talked  
10 about, you know, the central nervous system  
11 disorders that -- that showed up ironically in -- in  
12 my own family after we had started this.

13 Q Okay. We'll come to that later, so --

14 A Mm-hm.

15 Q -- but there's about a hundred people on this Quad  
16 program when you guys are having --

17 A Yeah.

18 Q -- the problem with the mineral?

19 A That's right. Well, and we wanted to find a way to  
20 keep this so that it was constant. We knew that a  
21 guaranteed analysis of -- of all of these elements  
22 that were obviously in this combination that we'd  
23 put together, if we could duplicate that combination  
24 we'd have something effective. And so we, like I  
25 said, we researched that and we spent hours and  
26 hours in libraries and pouring through books and  
27 everything that we could study to find out as much

1 as we could, and we put together and went to the --  
2 the first manufacturer that put together a product  
3 for us, and we brought that out, and we never did  
4 sell that product. To my recollection, this company  
5 believed some of the anecdotal evidence that we'd  
6 told them that this might be significant ...

7 Q Okay. And I don't -- I don't need what they  
8 believed. But you had a manufacturer make a first  
9 version that you never sold.

10 A That's right.

11 Q Okay.

12 A He was willing to give us some money to -- to pursue  
13 this a little bit, because he was curious about it  
14 too. And he was kind of a philanthropic guy and so,  
15 he thought that maybe this would work.

16 Q Okay.

17 A And we also had been talking to researchers, and it  
18 was evident that if we could produce this all-in-one  
19 product it would be a much easier study because it's  
20 so much easier to produce a placebo on a pill than  
21 it is a liquid product and a combination of, you  
22 know, three or four different ingredients, so --

23 Q Okay. So, there were two reasons for getting a  
24 stable product: one, the safety of keeping people  
25 stable; and, the second, to study it.

26 A Right.

27 Q Okay.

1 A And by that time we had been referred to Dr. Kaplan  
2 from the University of Calgary, from Dr. Bryan Kolb  
3 and you now, we'd had discussions to that nature  
4 that an all-in-one product would be much easier to  
5 study.

6 Q Okay. So, there's a first manufacturer and that's  
7 never sold. How did that work out though as a --

8 A Well, we were given product that we gave away and it  
9 worked. We were -- we were excited about it, but  
10 there were some problems with the -- the product,  
11 gastro-intestinally, it produced a lot of  
12 gastrointestinal upset. You know but it was  
13 effective. I mean it -- it seemed to hold the  
14 symptoms of people that had been taking the Quad  
15 program, and so, in that way, it -- it duplicated it  
16 quite well. And so, we were encouraged by that  
17 experience. We were encouraged that we could put  
18 together an all-in-one product that would work.

19 Q Okay. But you moved on to a different manufacturer.

20 A We moved on to a different manufacturer. The first  
21 manufacturer just wasn't flexible enough to -- to  
22 change and alter things in the way that we wanted,  
23 and so, we found another, Cornerstone Labs in -- in  
24 Utah there is a contract -- large contract  
25 manufacturer. And they -- they too -- I mean, we  
26 didn't have any money. So, we had to find a  
27 manufacturer who was willing to kind of foot the

1 bill of doing this and -- and this manufacturer was  
2 willing to do so and create it so that it could be  
3 sold. We didn't have a way to -- to really market  
4 the product.

5 So, Cornerstone Labs, the president of  
6 Cornerstone Labs, who's a great guy, decided that --  
7 that he would put together a little company that  
8 would actually -- where you could actually market  
9 this product and -- and you know, get some money  
10 back from the sale of the product to continue on  
11 with the research.

12 And the product that we were able to put  
13 together there, was superior to the product that  
14 we'd produced with the first manufacturer. We made  
15 some changes in -- in different chelates and sources  
16 of ingredients that -- that made it better. It was  
17 less gastro-intestinally upsetting and -- but it was  
18 still a lot of product.

19 You had to understand, when you deal with  
20 chelate products it's bulky. A very small portion  
21 of a chelated mineral is the actual mineral you're  
22 trying to -- to give to the -- to the body. The  
23 rest of it is, you know, 80 to 90 percent of it or  
24 more is -- is the organic molecule that it's tied  
25 to. So, it's very bulky and you had to take a lot  
26 of this stuff to get the little bit of mineral that  
27 you wanted to get out of it. And so, the 32 pills

1           that --

2           Q     Okay.  But this --

3           A     -- we started with there was kind of onerous.

4           People had a hard time taking that many -- that many  
5           pills.

6           Q     Now, are you guys selling at this point?  So, how  
7           did the sale of this product take place?

8           A     We didn't sell.  This manufacturer was willing to  
9           foot the bill for this.  He was willing to pay us  
10          for our time.  But he set up a company called Evince  
11          that was designed to market the product.  They had,  
12          you know, a merchant account that they were able to  
13          sell product through and that's -- that's how the  
14          product was sold is through Evince and it was  
15          shipped into Canada from them and in the United  
16          States as well.  They were the ones that -- he set  
17          up, he actually contracted with a group that took  
18          order.

19                 What we provided at that time, because by that  
20          time we had gained some experience in -- in managing  
21          people with central nervous system disorders, so we  
22          were providing the -- the support.  Our support was  
23          in -- in its infancy stage at that time but -- but  
24          it had developed to the point where we provided that  
25          kind of expertise and he paid us enough to -- to  
26          keep that going because the support cost was  
27          significant and -- and we had people that were

1 helping us. By this time we had quite a number of  
2 people and -- and some people that we were using to  
3 assist us who -- whom we had kind of trained and  
4 worked with to understand what we had seen. So,  
5 with -- with this manufacturer, Cornerstone Labs,  
6 and the Evince that they set up to sell this  
7 product, you know, it was taking another step ahead.

8 Q Okay. So, this Evince was going to be marketing --  
9 or, did the -- I guess the sale taking and all of  
10 that?

11 A They did the orders and all of the -- the selling  
12 and -- and marketing, yeah.

13 Q Okay. Did they have -- what was the product called  
14 at that time?

15 A EMPowerplus.

16 Q Okay. Was there a brand name or anything like that?

17 A Yeah, we had -- they -- they actually suggested that  
18 we choose kind of a brand name for this so that's  
19 where the name Truehope came from and they had --  
20 they applied for a trademark for -- on -- on  
21 Truehope I believe in Canada and the United States  
22 at that time and so they were able to trademark the  
23 name Truehope.

24 Q Okay.

25 A They held that -- they held that trademark.

26 Q Now, you guys moved on to a different manufacturer  
27 though?

1 A That's true.

2 Q Now, why did you guys do that?

3 A Well, there were multiple reasons. The manufacturer  
4 -- the owner of -- of Cornerstone Labs was a fellow  
5 who had been used to taking businesses and -- and  
6 making them successful and then selling them and  
7 that was his plan with Cornerstone Labs as well so  
8 we knew that he didn't plan to stay in the business  
9 that much longer. But, we were trying to convince  
10 him and his experts as a manufacturer to improve the  
11 product in some ways that we felt it could be  
12 improved. We were a little dismayed at the volume  
13 and -- and we felt that we had some ideas that would  
14 be effective at reducing the amount of pills that  
15 people would have to take by some additional  
16 processing and they just weren't set up to do that.  
17 So, to simplify a complicated story and make a long  
18 story short we agreed, reasonably amicably, to -- to  
19 separate and at -- he would let us go on to another  
20 manufacturer who could work with --

21 Q Okay. I'm trying to find --

22 A -- putting together some of the changes that we  
23 wanted to improve the product.

24 Q Okay. So, you moved to another manufacturer?

25 A Yeah.

26 Q Okay. And did they continue to sell for you?

27 A No, they didn't and that was -- you know, I don't

1 know that we'd really thought through that -- that  
2 step that well at that time but at that time it  
3 became apparent to us that -- that somebody had to  
4 sell and so we decided that we would have to take on  
5 that function and so in order to do that and to see  
6 the improvements in the product that we wanted the  
7 tradeoff was that we had to set up a marketing arm  
8 of what we were doing and we went out and raised  
9 capital by selling shares in -- in the Synergy Group  
10 of Canada and approaching people on what had been  
11 done and what we'd seen in research and showing them  
12 the potential of this. Some of these people had had  
13 children whose lives had been altered.

14 Q Okay. I'm just trying to find the steps here.

15 A Mm-hm.

16 Q So, you guys moved to another manufacturer and you  
17 have to -- you set up to sell now for the first  
18 time?

19 A Yeah.

20 Q Okay. So, how did the third manufacturer work out?

21 A Very well.

22 Q Okay.

23 A We're still with that third manufacturer. They  
24 changed their name but it's -- it's the same.

25 Q Okay.

26 A A very -- a very large contract manufacturer in --  
27 in Los Angeles, California.

1 Q So, now -- so, now the Synergy Group is doing more  
2 than just pushing for research though?

3 A Yeah, I guess we walked into that. It -- it became  
4 apparent to us that in order to protect the lives of  
5 the people who needed this product we had to have a  
6 viable business. We had to be able to ensure that  
7 the product would be available because at any time  
8 that this stopped -- and of course a certain  
9 significant consideration was our own children but  
10 at any time that this stopped we knew that there  
11 were going to be lives lost and -- and suicides and  
12 let me -- let me make the description that I've  
13 thought about on a number of occasions of -- of the  
14 people that do come with this. It's people that  
15 come to us are desperate. It -- it's as if they're  
16 in a burning building and they're in the middle of  
17 the fire and without help they're going to die.  
18 That's the long and the short of it. We don't get  
19 people coming to us, for the most part, that are  
20 satisfied with what they've been able to get in  
21 terms of assistance from the medial system. These  
22 are people that it hasn't work for. These are  
23 people that are absolutely desperate and their lives  
24 are at stake and, you know, with the right coaching  
25 we found that -- that we could get those people out  
26 of the burning building. You see we could tell them  
27 to get down on the floor and not inhale the smoke so

1 badly and crawl out through it. But, we were really  
2 stuck at that point in time and that's what I --  
3 that's why I say we lived the necessity by defence.  
4 By this time we were deep enough into it that we  
5 couldn't -- we didn't feel that we could morally  
6 back out and put these people back in the fire that  
7 they were in and let them die.

8 MR. BROWN: Yes, Sir, I'm just going to  
9 note an objection that this witness has provided an  
10 opinion that people are going to die as a result of  
11 the lack of having this product available and I just  
12 wanted to note that that is an opinion that he not  
13 qualified to give and I would ask the Court to  
14 disregard that comment, Sir.

15 MR. BUCKLEY: And --

16 A You -- you had that in Dr. Popper's testimony.

17 MR. BUCKLEY: Yes, hang on thanks. Your  
18 Honour, when we're dealing with the necessity  
19 defence and the belief -- or, the issue of whether  
20 there was imminent harm if you recall from the  
21 submissions I had given earlier it's a modified  
22 objective test. So, there actually has to be some  
23 objective evidence on that point but when the  
24 Court's considering it the Court actually considers  
25 it through the eyes of the defendants what they  
26 knew, what their experience was, and then, you know,  
27 bearing in mind there's special circumstances and

1 then tries to look at it objectively through their  
2 eyes. So, actually I'm obligated to have this  
3 witness' opinion and him explain why he held that  
4 opinion just for that element. So, I can appreciate  
5 what my friend's saying because I haven't qualified  
6 this witness as an expert and that's why I've called  
7 some different witnesses but to say that's not  
8 relevant what this person thought and believed and  
9 his reasons for that I disagree with.

10 THE COURT: All right. On the objection  
11 my ruling is this, I am going to allow the question  
12 and the answer on the basis that it is relevant what  
13 was this person's state of mind at the time of this  
14 work was going on and so I will allow it recognizing  
15 the necessity of the defence and the tests that Mr.  
16 Buckley has described and has earlier provided me  
17 with information of cases on it. So, I will allow  
18 the question and the answer, the answer being his  
19 opinion that he thought that people would die.

20 Q MR. BUCKLEY: And, Mr. Hardy, while we're on  
21 that point perhaps you can give us your reasons for  
22 holding that opinion that if at any point you guys  
23 kind of pulled the pin and stopped this enterprise  
24 that people would be in danger?

25 A Well, as things progressed along and as we had more  
26 and more experience it became very obvious that --  
27 that when this regime was discontinued, as Dr.

1 Popper testified, that since --

2 Q Well, just your observations.

3 A -- symptoms returned. That's what I observed in  
4 this case that when -- when she discontinued her --  
5 supplementing her -- herself she went back to  
6 symptoms and --

7 Q You mean Gloria Cheney.

8 A Gloria Cheney.

9 Q -- just for the record?

10 A And -- and in every case -- I mean I don't want to  
11 indicate that in every case it would result in death  
12 but -- but it would result in a life that, you know,  
13 was very little better than death.

14 Q Okay. And in 2003 how many Truehope participants  
15 would you estimate were in Canada alone?

16 A Well, about 3,000 and I -- you know, we haven't  
17 verified that exactly from our database but that --  
18 that would be a rough figure.

19 Q Okay. So, by 2003, the time we're dealing with, how  
20 much experience had you had with participants  
21 perhaps stopping taking the supplement and things  
22 like that?

23 A Lots.

24 Q And what was the observations that you had with that  
25 occurred?

26 A Well, their -- their symptoms would return and like  
27 I say it -- it would -- it -- it is like putting

1           them back in a burning building. They were -- they  
2           -- they were -- their lives became desperate again.  
3           That -- I -- I admit that that's not the case in --  
4           in every case of mental illness across the  
5           population but we call it -- the -- the people that  
6           came to us this was a last ditch effort for them.  
7           They really were in the fire. By that time we had  
8           dealt with doctors themselves who were in that case,  
9           on medications, the medications were not working for  
10          them, they came to us for help because they'd heard  
11          about this program and -- and came to us for help  
12          and so we were even helping the doctor out of the  
13          same fire --

14        Q     You mean --

15        A     -- because --

16        Q     -- as a Truehope participant?

17        A     As a Truehope participant.

18        Q     Now, before we kind of got off topic we were talking  
19          about how now you guys had set up the Synergy Group  
20          was now selling and what was Truehope Nutritional  
21          Support then doing because it's already in  
22          existence, right?

23        A     That's right. It was in existence and when we first  
24          set it up we set it up to -- to expand our support  
25          program. We recognized how very significant it was  
26          and we -- we just got into this deeper and deeper.  
27          It wasn't necessarily our intent but -- but as we

1 got into to deeper and deeper we knew we needed to  
2 have --find better and better ways to support these  
3 people and give them all the help that we could and  
4 once we were committed and once we made that -- that  
5 determination then we -- we felt forced to press  
6 onward. I mean looking back on it some of what  
7 we've experienced in -- in the interim I -- I  
8 sometimes wonder if we wouldn't have been better to  
9 -- you know, to not get ourselves into this but no,  
10 I don't regret it. I believe that it's -- it's my  
11 belief that -- that we have seen a great many lives  
12 benefited because of this and -- and it's been very  
13 gratifying. You've heard from some of them in this  
14 courtroom.

15 Q So, those are two companies and they're both  
16 incorporated in Alberta?

17 A Yeah.

18 Q You -- did you guys set up another company?

19 A We did. In Canada and the United States we set up -  
20 - again in an effort to help as many of these people  
21 as possible because not -- in -- in so many  
22 instances these are the outcasts of society, right?  
23 These people with mental illness they -- they can't  
24 work and they don't have any money so we set up a  
25 charity called the Truehope Institute in the United  
26 States, a 5013C company, a true charity, and that  
27 took a that took a long time and -- and quite a bit

1 of money to -- to get that going but it -- it is  
2 functioning now and -- and our intent is to bring  
3 money. In the United States a charitable  
4 organization can raise money for research which we  
5 were interested in. It also can raise money for  
6 education and for -- you know, money could be used  
7 to -- to purchase product to give to people that  
8 couldn't afford it and -- and so that was our -- and  
9 we -- we started the same kind of idea in Canada  
10 with the Truehope Institute in Canada as well. We  
11 incorporated it. It was incorporated as -- as a  
12 national corporation instead of a provincial  
13 corporation and the trademark that -- that Evince  
14 held that they didn't need anymore they gave to us.  
15 The Truehope trademark. That was put into that  
16 national company so that, you know, the trademark  
17 could be administered across Canada. Unfortunately  
18 we were never able to complete that company to make  
19 it a registered charity in Canada. I -- I still  
20 hope that we can do that. It's still our intent to  
21 do that but -- but all of that paperwork still has  
22 not been completed.

23 Q Okay. So, the company's still running --

24 A Yes.

25 Q -- but one of its purposes was to become a  
26 registered charity and it's not registered yet?

27 A That's right.

1 Q There's steps that have to be -- go through but it  
2 still holds the trademark to enforce it nationally  
3 as opposed to a provincial company provincially?

4 A That's right.

5 Q Okay. Now, so this business model's now been set up  
6 and this is before 2003, is that fair to say?

7 A Yes.

8 Q Okay. So, now when we approach 2003 did you feel  
9 that you could kind of dismantle this?

10 A Couldn't -- couldn't see how.

11 Q Okay.

12 A Not -- not with, like I say, sending people back  
13 into the burning building. That -- that was our --  
14 our big frustration with -- with Health Canada. We  
15 knew that Health Canada had the option to give us a  
16 ministerial exemption. That seemed appropriate. I  
17 just couldn't wrap my mind around something that had  
18 as much evidence as this did coming forward in -- in  
19 scientific evidence and, you know, at least -- at  
20 the very least it -- it should've been protected so  
21 that research could've gone forward but it -- the --  
22 the approach of Health Canada, the options as we saw  
23 them anyway, was just this needed to be shut down  
24 because you're violating these regulations and that  
25 just morally was not an option for us. We couldn't  
26 see and we -- we discussed this. We -- we took it  
27 very seriously. I mean I don't think I have a

1 history of adverse to the law and, you know, I feel  
2 badly even when I file my income tax late not -- not  
3 even so much for the fact that I have to pay the --  
4 the penalty but -- but that I should've got it in on  
5 time. But, the frustrating part of -- of this with  
6 us was that it -- it just didn't seem like we were  
7 heard and -- and that option that seemed so evident  
8 to us that could've gone forward. I mean if they  
9 would've come forward and talked to us and said,  
10 Look we can see maybe that you've got something here  
11 that -- that's valuable, that -- that research could  
12 be pushed forward and in Canada and -- and we see  
13 that maybe this is absolutely essential to -- to  
14 some people's lives and we're going to see that this  
15 is available to people and that research can go  
16 forward on this to bring it forward and in an  
17 appropriate manner and that our own children's lives  
18 would be protected. Because you see to shut this  
19 down almost became a personal death threat to our  
20 children and it's just unacceptable. I couldn't  
21 imagine that a country of -- of the nature of Canada  
22 that we live in -- I mean I love our country and I  
23 just couldn't imagine that somewhere in the laws of  
24 this country there wasn't something other than to  
25 jeopardize the lives of people in -- rather than,  
26 you know, keep this regulation. That could've had a  
27 simple ministerial exemption to exclude it but we

1           couldn't get in to the Minister at that time. I  
2           don't know what -- how she had been prepped but she  
3           was totally unresponsive to any kind of pleading.  
4           Letters were written to her she ignored. Hundreds  
5           of letters she ignored. People -- people pleading,  
6           you know, to not take away their right to this  
7           because they needed it. The -- I read the evidence  
8           that came in on that crisis line and we had received  
9           calls in our own centre at that time that were just  
10          desperate. People crying and -- and pleading for  
11          their -- tell me this isn't happening. Tell me  
12          that, you know, my children --

13        Q     Okay. I just --

14        A     -- don't have to be without a mother. Those are the  
15          kinds of statements that were made and those are the  
16          statements that appear as I read it in that 800 -- I  
17          had to put that down the other night. I -- I just  
18          couldn't read it. Surely law in a free country does  
19          not demand that. I -- I just could never understand  
20          how it could be so difficult to do something right.

21        Q     Okay. And I just want us to be clear. So, you're  
22          telling us that you guys are receiving -- you've  
23          read the 800 calls but you guys were receiving  
24          similar calls?

25        A     That's right. Desperate, desperate, desperate  
26          calls.

27        Q     Okay. And this is when product was being stopped --

1 A That's --

2 Q -- in 2003?

3 A That's right.

4 Q So, in a way reading the 800 stuff was deja vu for  
5 you?

6 A That's right and when we tried to get hold of the  
7 Minister and others somehow they had it so that when  
8 they got calls from us we were just referred to the  
9 crisis line too. So, we couldn't get through.

10 There was no oversight and that was another  
11 frustrating part of this. There was no ombudsman.  
12 There was no one that we could complain to. It --  
13 it seemed so ridiculous that -- that there was ...

14 Q Okay. Well, I want to go through some of the things  
15 that you were trying to do. So, obviously you guys  
16 were trying to set up a meeting with the Minister?

17 A That's right.

18 Q Okay. And there had been talk -- I remember Miles  
19 Brosseau talking about in January of 2003, January  
20 14th, there was a meeting with you and Mr. --

21 A In Burnaby, yeah. We set that meeting up and went  
22 to it.

23 Q Okay. What was the purpose of that?

24 A Oh, we were hoping that we could talk some sense  
25 into them and we hoped that we could get someday  
26 that they would take this to the Minister and allow  
27 an exemption or something that was appropriate. We

1           took Laril Zandberg to make them aware that -- that  
2           people's lives were at stake here and -- and we were  
3           hoping. I mean our intent in going there -- and --  
4           and remember that we set up the meeting. They never  
5           initiated it. There wasn't ever anything initiated  
6           from Health Canada's standpoint in all of our  
7           experience towards this. It -- it just seems so  
8           inappropriate but we drove out there and -- and at  
9           the end of the meeting, you know, Tony as he  
10          mentioned in his testimony the other day in the  
11          court it was -- there was some indication of that we  
12          were going to go home and -- and put together some  
13          sort of forward movement. Well, we did that except  
14          as we started thinking about what had been offered  
15          us in that meeting Dennis Shelley said, You're not  
16          going to get an NOC. We'd asked him about making  
17          changes to our website, how we could do that. He  
18          indicted that we -- we asked him if he -- if he  
19          could provide us with somebody that could help us  
20          make changes to our website appropriately and he  
21          said, Well, I think we can do that. That never  
22          happened. They -- they never came forward with the  
23          name of somebody who could go over our website and  
24          take off what they felt was claims.

25        Q       Now, I'm just going to stop you there but did you  
26                guys make changes on your own?

27        A       We did. We -- we tried to sanitize the website to

1           some degree. I mean we saw what we were providing  
2           on that website I think as -- as our true experience  
3           and, you know, it -- it seemed strange to me that --  
4           that -- it seemed that we were being prohibited from  
5           -- from making our experiences being known.

6       Q     Okay. But, al the same when that became an issue  
7           you guys did make changes that you --

8       A     We did. We did make some changes, yeah.

9       Q     Okay. And you asked Health Canada to provide  
10          somebody to kind of tell you if anything more needed  
11          to be done?

12      A     That's right.

13      Q     And you're telling us that they never followed  
14          through with that?

15      A     No, he -- he thought that he could find someone but  
16          -- but they didn't follow through.

17      Q     Okay. So --

18      A     And so, you know, in addition to that as we were --  
19          as we went home and as we discussed it I realized  
20          that -- that there was really no way any different  
21          than we'd seen in the past. Our only option was  
22          really to shut down and to quit manufacturing the  
23          product or at least bringing it into Canada and so  
24          the only option that we saw it was to move to the  
25          United States and -- and as I thought about that  
26          option it -- it just made me angry that I had to  
27          leave the country that I was born in that my

1 grandfather came and at the turn of the century and  
2 built up and -- you know, and that I would have to  
3 leave it and pull up my family and besides that as I  
4 got thinking about it that really wasn't an option  
5 because we just couldn't sell the assets that we had  
6 and get a dime on a dollar for them and go down and  
7 set up in the United States. It just wasn't  
8 economically feasible to pull up family and -- and  
9 the people that were -- were with us and were  
10 helping us and to find new people to -- that -- that  
11 could support these folks in -- in the US. It just  
12 wasn't -- and nobody knew if -- if we would even be  
13 allowed in the US. We weren't US citizens and that  
14 just wasn't -- didn't seem to be any kind of an  
15 option at all and so I -- I phoned Mr. Shelley at  
16 that time and said, Dennis, we're not going to be  
17 able to -- to get you a way that we can see that we  
18 can comply with these regulations because it doesn't  
19 leave us anyway out but I'm -- but I'm so  
20 frustrated. I've got these -- these things in my  
21 mind that -- that I want to write up and I -- can  
22 you get them to Ottawa. He said he would get them  
23 to Ottawa. So, that's when we wrote that open  
24 letter to Health Canada. That took us days to  
25 generate that stupid letter and it -- it outlined  
26 some of our frustration and some of the reasons that  
27 we specified before as to why we felt that -- that

1           this was just not right.

2           Q     Now, I'm just going to stop you.

3           MR. BUCKLEY:                    Madam clerk, can you show the  
4           witness Exhibit 6?

5                     I just want to see if that Exhibit 6 is that  
6           open letter that you're referring to.

7           A     I think it had eight different points on it or  
8           something. Yeah, that's it. It was -- it was  
9           addressed to Mr. Neske because Dennis Shelley became  
10          sick shortly after our meeting. He became ill and  
11          Rod Neske took over his position.

12          Q     Okay. And --

13          A     That's it.

14          Q     And you said it took days to come up with this  
15          letter?

16          A     It did. We -- we -- we thought about it, we fraught  
17          about it, we stood over it, and just determined once  
18          again that we couldn't send people back to that  
19          burning building, not our own children, not others,  
20          couldn't happen.

21          Q     Now, when you wrote that letter then you were  
22          thinking that it would probably be passed on to  
23          Ottawa because of an earlier conversation with Mr.  
24          Shelley to that effect?

25          A     The telephone conversation that I had with Dennis  
26          was that he would see that it got to Ottawa.

27          Q     Okay. So, it's addressed to Mr. Neske but the hope

1 was that it would go further up?

2 A That's right.

3 Q Okay. Okay. And so you guys were basically trying  
4 to get a reevaluation still?

5 A We'd done everything we could all along to try and  
6 get out of the position where the only option we had  
7 was to shut down and -- and make the product  
8 unavailable for who knows how many years. Maybe  
9 forever. You know, that -- that was all that we  
10 could see and we had -- you know, we had to maintain  
11 the viability of -- of the business economically too  
12 and that was -- that was difficult to do. I mean in  
13 the early days of doing this, when we were at the  
14 mercy of the benevolent people to -- to give us  
15 money to proceed on, I mean it was pretty lean.  
16 There were days when the wolf was at the door and  
17 you could see his teeth and smell his breath and as  
18 that went on, as we set up our own business to sell  
19 it, it's been a struggle to maintain the viability  
20 of that as well but we knew that we had to do that.  
21 I mean in -- in 2003 if you -- if you look at our  
22 financial statements you can see that we were  
23 probably half a million dollars down at -- at that  
24 particular point. So, this -- this -- this has  
25 never been a role in the dough business. So much of  
26 the business, a significant portion of it, millions  
27 of dollars have gone into supporting these people at

1 no charge to them and doing the best we could to  
2 give as many people free product as we could.

3 Q Okay. What do you mean free product?

4 A Well, when people can't afford it and they're  
5 desperate there again you go back to the burning  
6 building. You can't just let them burn so if they  
7 couldn't afford it we would provide product at no  
8 charge and we would provide support at no charge and  
9 as they got better, as they were able to work a  
10 little bit, we would ask them to -- to pay for what  
11 they could and with the idea that eventually when  
12 they were well and -- and were working again that  
13 some of them may be able to contribute money back  
14 into the fund so that others could receive the same  
15 benefit and some have done that. Not many but some  
16 have done that but certainly a portion of those  
17 people as we work it, you know, pay a certain amount  
18 of -- of the value of the product.

19 Q Okay. So, you guys have written this open letter,  
20 you've been trying to get a meeting with the  
21 Minister --

22 A Yeah.

23 Q -- and you also participate in some political  
24 activity?

25 A That's true.

26 Q Okay. Now, you guys actually have a long -- had a  
27 long history of being involved in kind of the

1 industry fighting for a different regulatory scheme?

2 A That's true.

3 Q Okay. So, when did you guys start to get involved  
4 with that and why?

5 A Well, very early. I mean as soon as we saw the  
6 effects on Tony's children of this combination of  
7 products we became aware of what was happening and  
8 in that industry and it wasn't all good and -- and  
9 there was a real sense out there that the Food and  
10 Drug Act was outdated and needed to be updated and  
11 there were things being done, Health Canada was  
12 moving in to take products off the shelf, and we  
13 were concerned that -- that the movement in Canada  
14 would be similar to what it was in other countries  
15 to make these products, even minerals and vitamins  
16 and, you know, just the basic ingredients of life,  
17 unavailable to the general public in -- in any kind  
18 of quantity, that they would be controlled and  
19 regulated and that access to them would be if not  
20 eliminated restricted so severely that -- that we  
21 wouldn't be able to -- to see a continued benefit  
22 with what we were doing. So, we got involved in  
23 that early. We collected thousands of names, at  
24 least 30,000 names, on a -- on a petition that --  
25 that foods were not drugs that was tabled in the  
26 House of Commons. We got involved with --

27 Q And this --

1 A -- the industry.

2 Q This is pre year 2000 you isn't it?

3 A That's right.

4 Q And you guys aren't even selling at this --

5 A No.

6 Q -- stage?

7 A No, but the -- the -- our involvement in that was  
8 extensive so we were -- we were very aware of the  
9 changes that were proposed when a lot of people in  
10 Canada got excited about it and created enough of a  
11 stir that it became a political thing and, you know,  
12 several seats were lost over that issues. It -- it  
13 was believed so. You know, it -- it became a  
14 significant political issue and of course the then  
15 Minister, Allan Rock, indicated to the -- to  
16 Canadians that things were going to change and  
17 that's when the Standing Committee came up with  
18 their 53 recommendations and that -- that changed  
19 into the transition team and we knew members of --  
20 of that transition team and Dale Anderson from  
21 Calgary here was the one that we conferred with most  
22 and so we were very aware of that movement and what  
23 was happening across Canada. We were very aware of  
24 the change that was coming in the regulations that  
25 Allan Rock had said that these 53 recommendations  
26 are -- are essentially law and as soon as we can  
27 implement them they're going to be in. So, you

1 know, a lot of our experience too was anticipation  
2 that -- that there would now be a regulatory body  
3 put in place that we could reasonably comply with  
4 and -- and that we fit as was --

5 Q Okay.

6 A -- testified in this court.

7 Q So, if we were going to go back to let's say the  
8 year 2001 or 2002 did you guys believe that you  
9 would even need a DIN number by the time 2003 rolled  
10 around?

11 A Not really. It -- it was -- it seemed from what  
12 Allan Rock was saying that -- that those things  
13 would be able to be implemented soon and it took  
14 years to implement those so it was that waiting  
15 process that we were waiting with bated breath but  
16 we found out that we couldn't hold our breath  
17 because it was a long process but they came and, you  
18 know, the Office of Natural Health Products was set  
19 up and it was a breath of fresh air. We talking  
20 with Bill Waddington as he came across Canada and  
21 met with people and we were excited about what we  
22 were hearing and what we were promised and some of  
23 that has been realized. I mean it -- it's certainly  
24 -- as soon as that opportunity was available we made  
25 application. I think our application was probably  
26 one of the very first made to the Office of Natural  
27 Health Products to get a natural product number

1 license for this product. Our -- our product was  
2 more complex than most of them. Most of them were  
3 simple applications that would require only a 60 day  
4 evaluation because they were based on Health Canada  
5 monographs that were kind of already pre-approved.  
6 So, that was just a short 60 day evaluation. Ours  
7 took a year and four months and a number of  
8 submissions and lots of data and cost us \$60,000 or  
9 so to -- to make that submission but --

10 Q And why were you -- why was -- were you guys so  
11 quick in trying to file an application?

12 A Well, we were anxious to -- to see this legitimised  
13 and we did want to be compliant. Here was a way the  
14 first time that something was really offered us that  
15 we could see that we could accomplish and so we were  
16 anxious to do that. We believe in good  
17 manufacturing practices that what is stated on the  
18 label should be in the bottle. You know, people  
19 shouldn't be able to put these products together in  
20 their bathtub and -- and sell them with bacterial  
21 content and everything like that. All of that, you  
22 know, we paid attention to and, you know, the  
23 manufacturers that we -- we had chosen in the States  
24 practised those practises and --

25 Q Okay. And I just want to clarify 'cause earlier in  
26 your testimony you had said quit manufacturing but  
27 you guys never actually ever did manufacture

1 yourselves?

2 A Yeah, that's true. I -- when I say that it -- it --  
3 it meant, you know, quit --

4 Q Bringing it --

5 A -- bringing --

6 Q -- or selling it --

7 A -- the product -- or, yeah we've never manufactured.  
8 We've never had that expertise. That's very  
9 expensive to set up and even though we've considered  
10 that it's -- it's just unfeasible. These -- these  
11 manufacturers have invested millions and millions  
12 and millions of dollars. The current -- our current  
13 lab in the States that manufactures for us is a huge  
14 facility. It takes up nearly a city block and their  
15 -- their facility to analyse product and -- and all  
16 of that and to be compliant with the strictest of  
17 regulations in the US.

18 Q Okay. So --

19 A It would be difficult.

20 Q Now, you were explaining to us when the new regs  
21 came into force you guys were quick off the start to  
22 file a product license application and you believe  
23 you were one of the absolute very first?

24 A I -- I believe we were. Our number was number 363  
25 or something like that indicating that we were the  
26 363rd to be approved and remember that most of the  
27 applications were this quick two month review so

1           there were a lot of those products that got in ahead  
2           of us but -- but now, you know, there are thousands  
3           that have been approved now and -- but they're still  
4           backlogged. There's a lot of products out there --  
5           there that are being reviewed and part of the  
6           industry's discontent with what's happening is that  
7           these products haven't been able to be reviewed fast  
8           enough.

9           Q     Okay. Now, you recall when Bruce Dales was on the  
10           stand he said that roughly 90 percent of natural  
11           health products didn't have drug identification  
12           numbers and you guys had been involved in the  
13           industry. Were you surprised by that testimony of  
14           his?

15          A     Not at all. We've been in the health food stores  
16           and examined the products that are the shelves and  
17           estimated the percentage of products that were  
18           unDINned and, you know, so we felt to some degree  
19           singled out and picked on because certainly Health  
20           Canada was not enforcing those regulations against  
21           most of the products that were on the shelves and we  
22           pointed that out in -- in essentially every letter  
23           we wrote, I believe, to Health Canada that it -- it  
24           just seemed unfair.

25          Q     Okay. Now, getting back to the types of things you  
26           guys did. So, I'd asked you that you guys were  
27           politically involved and then had to give kind of

1 your background so the Court appreciates that this  
2 didn't just start when Health Canada was telling you  
3 to stop selling but you had been involved basically  
4 because you saw that the regulations didn't fit?

5 A Well, we -- we were concerned about some of the  
6 things that Health Canada was doing prior to -- to  
7 when they approached us.

8 Q Right but --

9 A It was evident that the industry was experiencing  
10 some problems.

11 Q Now, in 2003 though, as you were taking political  
12 efforts actually basically so that you could keep  
13 selling?

14 A Exactly. Every -- every legal means that we could  
15 think of we employed.

16 Q So, can you tell us, you know, from a political  
17 perspective what steps you guys were trying to do  
18 and why?

19 A Well, politically we made trips to Ottawa, Tony more  
20 than myself, but -- but I accompanied him on a  
21 number of occasions and we would meet and -- and try  
22 and get our situation heard by as many MP's as  
23 possible and -- you know, James Lunney who -- who  
24 testified in this courtroom was one who listened to  
25 our pleas and particularly some of the members of  
26 the then opposition gave us time and -- and listened  
27 to us and became sympathetic to our cause. They --

1           they believed that what we had was indeed  
2           significant and --

3       Q     Okay.  But, I'm less concerned with their response  
4           was but to the efforts you took.  There was some  
5           talk about a rally and Anne McLellan's in May of  
6           2003 were you involved in that?

7       A     Yes.  Yes, I was.

8       Q     Okay.  And why were you guys doing stuff like that?

9       A     We weren't able to get attention in any other way so  
10          we thought that that might be appropriate and James  
11          Lunney indicated that he would attend that and, you  
12          know, add whatever -- I -- I'm not certain that in  
13          hindsight that that was beneficial.  I don't know.  
14          Maybe it -- maybe it made Anne McLellan more angry  
15          at us and more determined that she wasn't going to  
16          meet with us.  I don't know.

17      Q     Okay.  But, I'm just trying to figure out what your  
18          -- what the end goal was 'cause you guys were taking  
19          efforts?

20      A     The end goal was to get someone who -- who would sit  
21          down and -- and speak with us and tell us why it is  
22          that we couldn't get a ministerial exemption for  
23          what we felt was a very, very significant medical  
24          breakthrough.  It seemed like we had a lot of  
25          evidence, that that evidence was -- was shared by  
26          people with credibility like Dr. Kaplan and -- and  
27          others, and we had some of that evidence at that

1 time to present and it -- it just seemed like for  
2 the most significant cost to the medical system in  
3 Canada, which is mental health --

4 Q No, I don't want you to there.

5 A Okay.

6 Q So, I just want you to talk about the efforts. So,  
7 there were, you know, some comments during this  
8 trial with Mr. Stephan that you guys supported Bill  
9 C-420?

10 A That's true.

11 Q And why were you guys doing that?

12 A Because Bill C-420 would take away some of the areas  
13 of the antiquated Act that we were told would be  
14 eliminated in the 53 recommendations when the  
15 transition team came and took the 53 recommendations  
16 and then made additional recommendations. Those  
17 recommendations were signed off by the then Minister  
18 and he agreed with them and he told us that they --  
19 they would happen. Some of those didn't happen.  
20 Schedule 'A' and section 3(1) and 3(2) are still in  
21 the Act and yet the recommendation was there and the  
22 industry was told that those would disappear. They  
23 still haven't completely. So, that was -- that was  
24 a disappointment. It was to us a betrayal of what  
25 we were told and what we felt and ...

26 Q Okay. What about the Ladies with the Red Umbrellas?  
27 What was the purpose of supporting that effort?

1 A Well, these were -- these were participants, Tony's  
2 daughter being among them, you know which they have  
3 been criticized for because she was bias but, you  
4 know, her life was at stake too and she didn't want  
5 to go back to the burning building either and so  
6 these -- these were people who had --

7 Q Okay. Now, I'm just trying to figure out why you  
8 guys were supporting it. That's why I'm --

9 A Because --

10 Q -- asking this question.

11 A -- we were supporting the -- of their right to -- to  
12 have access to a product like ours to -- to save  
13 their lives. It wouldn't have matter if it would've  
14 been our product or another, you know, I think we  
15 would've been supporting that cause.

16 Q And you mentioned that you guys were basically  
17 trying to take every legal alternative you could  
18 think of, that you guys started some court action?

19 A We did.

20 Q Okay. And was that just one of the legal options  
21 that you guys thought of?

22 A There was no oversight. We -- we hadn't been able  
23 to get through to the Minister. There was -- there  
24 was no one really that we could talk to. There was  
25 no ombudsman in place. They talked about that.  
26 It's still not in place with Health Canada so what  
27 do you do? If -- if -- if a segment of -- of

1           bureaucracy is -- is in your opinion out of line and  
2           out of control, if there's no oversight, it's just a  
3           very frustrating position to be in and so court  
4           action was deemed to be one of the only legal  
5           options we had and that obviously wasn't very  
6           effective because we were unfamiliar with -- I mean  
7           it -- it's cost us an incredible amount to -- the --  
8           the legal fees that we have incurred and -- and it  
9           hasn't been very successful because it's been --  
10          it's taken years to get anything into court.

11         Q       Okay.  So, for example, the Federal Court action  
12                 that was started --

13         A       Mm-hm.

14         Q       -- that's still going on isn't it?

15         A       It is.

16         Q       So, you guys started in 2003 in the hopes that maybe  
17                 you could settle this problem?

18         A       That was -- that's right.  We -- we came -- became  
19                 somewhat disillusioned with that just because of the  
20                 time that it took to -- to get this into the court  
21                 so we were forced to go on and, you know, our whole  
22                 intent in this was to -- and it still is to this  
23                 very day.  We want to take this that we have learned  
24                 and give it away.  We want to -- to give our  
25                 database capability of the tracking and -- and the  
26                 procedures that we've found and learned and  
27                 appropriately teach doctors and psychiatric nurses

1 and others that people would recognize more clearly  
2 than ourselves and, you know, put this into the  
3 system and I -- and I -- I believe that that's  
4 possible. I believe that that will still happen. I  
5 hope that that will happen. I hope that we won't be  
6 prevented from doing that. Dr. Popper made some  
7 comments on that in his testimony but that -- that  
8 has been our -- our desire and, you know, that --  
9 that has been held up. We've had too many  
10 diversions. I guess it's the old statement that  
11 when you're up to your neck in alligators it's hard  
12 to remember that your initial objective was to drain  
13 the swamp and that's where we've been, up to our  
14 neck in alligators, trying to get through this in a  
15 -- in a way that would be acceptable and -- but --  
16 but just unable to accept the idea of putting  
17 people's lives at risk, sending them back to the  
18 burning building. How -- how can you put people in  
19 the fire?

20 Q Now, eventually an agreement was reached with a  
21 Minister of Health?

22 A That's right. After Minister McLellan we found that  
23 -- Mr. Pettigrew to be much more approachable and  
24 efforts from James Lunney to reach his office  
25 reached with a breath of fresh air. He said, I  
26 don't see why -- why this shouldn't be available.  
27 And so we were able to quite quickly at least broker

1 a deal whereby he would -- he said that this product  
2 could continue to be made available at least to  
3 those people who needed it and -- and that little  
4 deal I guess was worked out. It's already been  
5 described in the court so I don't think I need to  
6 describe it. It was a bit onerous but it was at  
7 least a way for ...

8 Q Okay. I'm just going to show you a January 16th  
9 letter to Pierre Pettigrew I believe from yourself  
10 and Mr. Hardy. Now, do you recall that dated  
11 January 16th of '04?

12 A From myself and Mr. Stephan?

13 Q Yes, I'm sorry --

14 A Yes.

15 Q -- I said yourself and Mr. Hardy didn't I?

16 A Yeah, from myself and myself, yeah. Yes, I  
17 recognize this letter.

18 Q Okay. So, what was the purpose of this letter?

19 A Well, it was to try and convince the Minister that  
20 this was once again something significant to -- to  
21 look at and --

22 Q Okay.

23 A -- once again make an effort to -- to do whatever  
24 was necessary to see this through.

25 Q Okay. So, still in early '04 you guys are trying to  
26 reach out a political agreement?

27 A That's right.

1 Q Okay. And the subject is urgent meeting request but  
2 did the Minister actually ever agree to meet with  
3 you?

4 A He didn't but he did agree to meet with -- with  
5 James Lunney who -- who at this point in time I -- I  
6 would say, you know, brokered through a deal and we  
7 accepted that. We -- we still would've loved to  
8 have met with Mr. Pettigrew. These people are busy.  
9 I guess there are things more significant in -- in  
10 their view than -- than a meeting but --

11 Q Okay.

12 A -- but I think he felt that -- that he accomplished  
13 -- he accomplished part of what we were requesting  
14 through -- through the meeting with James Lunney.

15 MR. BUCKLEY: And, Your Honour, I'm going to  
16 ask that that be entered as an exhibit. It says one  
17 of the authors and it's just a record of the efforts  
18 they continued to take.

19 MR. BROWN: No objections, Sir.

20 THE COURT: Exhibit 66 will be the copy of  
21 the letter dated January 16th, 2004 to the  
22 Honourable Pierre Pettigrew from Mr. Stephan and Mr.  
23 Hardy.

24

25 \*EXHIBIT 66 - Letter addressed to The Honourable Pierre

26 \*Pettigrew from Truehope Nutritional Support Ltd. dated

27 \*January 16, 2004, subject: Urgent Meeting Request, pages

1 \*numbered 5895 to 5890, three pages in total, photocopy

2

3 Q MR. BUCKLEY: Now, as a result of that  
4 agreement that was struck between James Lunney and  
5 Mr. Pettigrew basically you guys had to set up an  
6 agent, is that ...

7 A We had to set up in the United States a merchant  
8 account which is difficult to do but we were able to  
9 do that reasonably quickly and product was -- was  
10 ordered and shipped in from the United States which  
11 seemed a little ridiculous in -- in some ways but in  
12 other ways if that satisfied the need that -- that  
13 was what had been brokered anyway and -- and we  
14 complied and did that.

15 Q Right. Okay. You guys were going to do anything  
16 that would allow access basically?

17 A Yes, we were --

18 Q Okay.

19 A -- happy for that.

20 Q Right. So, did people still have to access it  
21 through the Truehope program though?

22 A Yes.

23 Q And why is that?

24 A Well, without the -- without the support as Dr.  
25 Popper testified, you know, this couldn't just be  
26 given to doctors. The whole thinking is different.  
27 If -- if they've trained in it -- I mean you -- you

1 want to -- you know, I don't -- I don't necessarily  
2 like to consider myself as anything special but we  
3 had accumulated a degree of knowledge that was  
4 certainly what we felt was significant. We didn't  
5 feel we were practising medicine or anything like  
6 that we were practising nutrition and -- and we knew  
7 something about nutrition and doctors aren't trained  
8 in nutrition and -- and this -- this whole concept  
9 of -- of the transition away from the medications,  
10 as Dr. Popper described in his testimony, is very  
11 significant and without the -- it -- it just  
12 would've been dangerous to offer this without that  
13 support so ... You know, and -- and I believe that  
14 in large measure we have been successful and I think  
15 the proof of the pudding, the proof that -- that  
16 this has been carefully and cautiously done and well  
17 thought out, is -- is the fact that we haven't had  
18 numerous suicides on this program. We -- there is  
19 always the risk. We recognized that from the  
20 beginning. We knew that there would -- could be  
21 potential great liability in -- in doing what we're  
22 doing and still determined that we couldn't bear to  
23 see people just burned. So, we took that on and  
24 like I say I -- I think the proof is in the pudding.  
25 There have been a lot of people successfully  
26 transitioned from what to them has been ineffective  
27 treatment and medication. We had -- we had a

1           psychiatrist in the city of Lethbridge who was  
2           really critical of what we were doing at first and I  
3           don't blame him. He didn't understand what we were  
4           doing and but you know as he watched a number of  
5           patients that came to him for care that he was --  
6           they were very difficult for him to manage and  
7           people that were seemingly resistant to treatment on  
8           medications that he watched them get well. He sent,  
9           in the end before he moved to Edmonton, 29 of his  
10          patients to us for help because he says you can help  
11          them and I can't and --

12         Q     Now, with regards to the program Mr. Stephan had  
13                testified that in 2003 you guys were still turning a  
14                fair number of people away who came to you. Can you  
15                --

16         A     That's true.

17         Q     Can you explain to us why you guys were doing that  
18                at the time?

19         A     In 2003 we were turning people away who were on  
20                significant addictive medication that we had  
21                discovered, from what we had done, was very  
22                difficult to transition people away from. We didn't  
23                really feel that we had an adequate program to  
24                address the way out of these extremely addictive  
25                medications but, you know what? As time went on we  
26                -- we again, because we got so many calls from these  
27                people and again these -- there were desperate

1 people in burning buildings right, and -- and we  
2 determined that we needed to try and find some way  
3 to help them because it -- it just isn't fair to --  
4 to see lives be lost and that -- that's where these  
5 people were going. They were at the greatest risk  
6 of suicide of anyone in the mental health system and  
7 so we approached and -- and did some research. We  
8 approached Dr. Heather Ashton in the United Kingdom  
9 who in 1982 set up a program for removing people  
10 from highly addictive Benzodiazepines that many  
11 people are on and looked at how she had -- at the  
12 program that she had developed and talked to her  
13 about that and determined that we could probably try  
14 that with a number of people and with the help of --  
15 of Dr. Popper who understands the medication so  
16 well. We got information from him as to how this  
17 would occur and how best to -- to probably  
18 transition. He suggested that, you know, the -- the  
19 move to a longer acting drug that wouldn't give jags  
20 of withdrawal while you're withdrawing from the  
21 medication would be better and so we took all of  
22 that into consideration. That's what Heather Ashton  
23 was using too. She was doing that and so with the  
24 help of -- of doctors and the cooperation as much as  
25 possible of these people we started to -- to work on  
26 a program of -- of transitioning people from these  
27 what we call red flag medications.

1 Q Okay. So, that -- but, the point is you guys  
2 haven't remained static? The program's kept you --  
3 your expertise -- you've continued to develop it?

4 A As -- as we felt comfortable with more experience  
5 and more knowledge yeah, we've move forward and we  
6 have a better program now than we've ever had.

7 Q So, in 2003 when I think Mr. Stephan used the term  
8 red flagged drugs, when you guys were reluctant to  
9 do certain red flagged drugs, you guys were  
10 basically just trying to stick with what you felt  
11 you could comfortably handle?

12 A That's true. There -- there is still times when we  
13 have to turn people away unfortunately. If -- if  
14 they don't have an individual or a doctor that will  
15 support them and help them, a loved one that can be  
16 with them all of the time, we -- we don't take on  
17 the most significant mental health cases and try to  
18 work through it just with the individual themselves.  
19 In -- in most of those cases these people would be  
20 so delusional and so dysfunctional that they  
21 wouldn't be able to follow instructions anyway and  
22 it would be absolutely dangerous to take them on.  
23 So, unfortunately for some we still have to watch  
24 them burn.

25 Q Okay. Now, you have alluded to earlier in your  
26 testimony about you've had some own -- your own  
27 family experience which you said was somewhat

1           ironic?

2           A     That's true.

3           Q     And why do you call it ironic?

4           A     Well, it was ironic because when I first started  
5           talking to Tony about his kids it was real easy to  
6           deal with. I didn't -- I'd never experienced any of  
7           this in my own family and never dreamed that some  
8           day some of these disorders would haunt my family.  
9           I'm sorry to get emotional about it but my son,  
10          Landon, is here in the courtroom and just around his  
11          18th birthday I came home one day and found him in a  
12          -- what I then recognized, after having looked into  
13          this and dealt with it for a long time, in a  
14          completely psychotic state and in looking back there  
15          were some warning signs. I guess he'd -- he'd been  
16          moving into kind of a manic state and as we looked  
17          into it from his school classes and school teachers  
18          he was writing things that didn't make sense and --  
19          and so I suppose we should've seen that but somehow  
20          when you're close to it you don't always see these  
21          things and there was no indication at all from  
22          friends, teachers, or anything else that this was a  
23          drug induced condition as it sometimes is but this  
24          is how schizophrenia happens. It's -- it's often  
25          around that 18th year of age that a psychotic break  
26          can occur and obviously that's what he had. He was  
27          completely delusional. He wasn't making sense

1 beginning of that evening. He wasn't taking the  
2 supplement. Most of our family was. He just didn't  
3 feel he needed it and it was an expense to give this  
4 even to our own family and so he -- he wasn't taking  
5 the supplement at that time. But, to experience  
6 that firsthand and -- and to have to try and help  
7 him through that I mean he -- we -- we brought him  
8 in to our bedroom because he couldn't sleep at  
9 nights and he'd thrash around at first believing  
10 that there were saw cutting him in half or -- or  
11 snakes biting him or some other delusion or -- and,  
12 you know, to see him in -- in that state was, I can  
13 say without any hesitation, the most devastating  
14 experience of my life and all of a sudden I knew on  
15 a -- on a firsthand basis because I -- you know, I  
16 was never as -- as passionate about this as Tony  
17 was. Unless you've lived it -- sorry.

18 Q There is a box of Kleenex beside you if you need it.

19 A Unless you've lived it it doesn't have the same  
20 meaning.

21 MR. BUCKLEY: Your Honour, do you want us to  
22 take a break? I do note we didn't have a break at  
23 all this morning. Perhaps we could break for lunch?

24 THE COURT: Well, we have not. Do you  
25 want to take a break now for a few minutes and then  
26 we can resume?

27 MR. BUCKLEY: Yes, we could do that.

1 THE COURT: All right.

2 A I'm sorry.

3 THE COURT: A ten minute break. We will  
4 take a ten minute break and we will resume at five  
5 after 12.

6 (ADJOURNMENT)

7 THE COURT: Mr. Buckley?

8 MR. BUCKLEY: Thank you, Your Honour.

9 THE COURT CLERK: Calling Synergy Group of  
10 Canada and Truehope Nutritional Support.

11 Q MR. BUCKLEY: Mr. Hardy, before the break  
12 you were discussing your son, Landon, and I'm not  
13 thinking that we need to go into a whole lot of  
14 detail but would it be fair to say that he had had  
15 some significant mental health challenges prior to  
16 2003?

17 A No.

18 Q Okay. What do you -- what part of that do you  
19 disagree with?

20 A Oh, prior to 2003, yes. Oh, I -- I thought you were  
21 meaning prior to his -- his initial break. That was  
22 prior to 2003.

23 Q No. No, because you were saying that in 2003 this  
24 was also kind of protection of family as part of  
25 your thinking?

26 A Oh, absolutely. Oh, yes. Oh, yes and my daughter  
27 as well by 2003. Sorry, yeah experiences are a hard

1 task master with these illnesses and my daughter,  
2 upon the birth of her first baby, had as a response  
3 to that was terms postpartum psychoses. It's not as  
4 common as postpartum depression but it -- it's  
5 becoming more and more common and she too became  
6 delusional. Frightening kinds of delusions. Like  
7 she would look at a picture on a wall and it would  
8 grow claws in her mind or she would -- she described  
9 laying next to her husband who -- who she said  
10 seemed to grow fangs and it just terrified her. She  
11 would look at a bag in the closet and it would take  
12 shape and move and take form and just terrifying  
13 experience of --

14 Q Okay. I don't want you to get upset again. So, can  
15 we summarize this to say there were some real  
16 challenges for two of your children? Were those  
17 challenges addressed by the supplement?

18 A Yes, they were. Landon is here today and he's  
19 married and has a little baby and he's been stable  
20 for a long time. He had one -- he had one relapse.  
21 We -- we don't have all the answers and this has  
22 been a learning experience all along. I -- I  
23 learned more from the experience with my children  
24 than -- than I did in all of the other experiences  
25 that we -- we had, I believe, and of necessity, you  
26 know, my understanding of these disorders has  
27 dramatically deepened through that experience but

1 Landon at one point was hospitalized, put on  
2 medications, you know, diagnosed and released. The  
3 supplement has appeared to be an answer to his  
4 issues and he hasn't had any relapses since. The  
5 relapse that he has was -- was completely -- you  
6 know, made sense in relation to -- to what we  
7 understand with the nutritional -- you know, he has  
8 some gastrointestinal problems, had constant  
9 diarrhea, and as a result wouldn't have been  
10 absorbing what he was taking from the supplement and  
11 that seemed to send him into relapse. So, yes the -  
12 - the supplement has rendered both my daughter and  
13 my son functional.

14 Q Okay. And so it just made it that much more real  
15 what you had already learned with other  
16 participants?

17 A A lot more real.

18 Q Okay. Now, I believe my next set of questions you  
19 might've already addressed but unfortunately I  
20 didn't take adequate notes and I just want to make  
21 sure that we cover it because you guys had said that  
22 you were kind of trying to think of every legal  
23 alternative and so I'm trying to figure out well why  
24 didn't you guys just give the product to somebody  
25 else to sell?

26 A Well, I think that -- I -- I think from Dr. Popper's  
27 testimony you can surmise the -- the answer to that.

1 He suggested that --

2 Q But, your --

3 A -- he --

4 Q Your own thinking not his thinking.

5 A Well, my thinking concurs with him. He -- it -- it  
6 couldn't be given to anybody without the experience  
7 of -- of what we had been through without it being a  
8 disaster not even a medical professional because  
9 although they're experts in what they do they're not  
10 experts in this and that's -- it -- it's only been  
11 experience and in relation to my own family, hard  
12 experience, has taught what we know about this and  
13 so, yeah. The transition into the medical system --  
14 the appropriate transition of this into the medical  
15 system has to come from -- from someone like Dr.  
16 Popper who understands it, who can teach physicians  
17 appropriately about it, and who can make that --  
18 that transition and we intend to do all that we can  
19 to see that that happens.

20 Q Okay. But, in 2003 that hadn't happened?

21 A That -- that was not a -- that was not an option. I  
22 mean we were moving towards that but, you know, we  
23 had to maintain what was -- what was there at the  
24 time. We didn't see any option to that. If -- if  
25 something would've been offered to us at that time,  
26 if anyone was -- would've suggested a way out of  
27 that -- that that made sense to us without stopping

1 the availability of the product in Canada, we  
2 would've considered that absolutely.

3 Q Okay. Was there also maybe an economic problem with  
4 giving it to somebody else to sell and maintaining  
5 this program?

6 A Well, if to give it to someone else is to -- I mean  
7 we're pretty protective, I guess, because of our  
8 experience with our families. We want to make sure  
9 that this is available in a workable format for  
10 those members of our own family but as well to those  
11 whom -- who have come to trust us to provide this  
12 for them and -- and, you know, there certainly have  
13 been numerous participants who felt that they had to  
14 stockpile this to ensure that they would have access  
15 to it and, you know, that's --

16 Q I guess what I'm --

17 A -- that's important.

18 Q -- trying to ask is would you guys have been able  
19 finance the support program without having proceeds  
20 from sales?

21 A No, absolutely not. As -- as the support system  
22 grew and as -- you know, as more people came to know  
23 about this -- and we didn't advertise it was just  
24 word of mouth. It was just somebody's success and  
25 they told their neighbour and, you know, so we're  
26 phoned up and their neighbour now wants the same  
27 help and, you know, they're in a burning building

1 too and so we just kept expanding that and -- and as  
2 it grew and as the support system grew it was  
3 obvious that we had to keep our -- a viable business  
4 in order to continue to offer this to people and,  
5 you know, that's -- as I mentioned that -- that has  
6 not been just a cake walk. We faced some -- you  
7 know, some serious problems. One of -- one of the  
8 things that we faced was the drop in the US dollar,  
9 for instance. We were selling our product in -- in  
10 US dollars and, you know, the value of the US dollar  
11 used to be at \$1.60 CDN. When that came back into  
12 Canadian funds it was much easier to operate than --  
13 than today where the same amount of money comes back  
14 in, you know, \$1.10. So, there was a significant  
15 drop in -- in income from that and, you know, all of  
16 those kinds of things we just had to work through  
17 and make sure that -- that our business remained  
18 viable because unfortunately the healthcare system  
19 isn't paying for this yet and without a viable  
20 business we couldn't make any -- either the product  
21 or the support available to those who needed it.

22 Q Okay. Now, did you guys, you know, search for  
23 alternatives consider trying to get a drug  
24 identification number? I mean I can appreciate in  
25 '01 and '02 you guys thought by '03 you wouldn't  
26 need to but did you guys actually consider trying to  
27 get a drug identification number?

1       A     Well, absolutely. Yeah, we looked into it. We  
2             talked to people about it. We talked to Dale  
3             Anderson about it. We talked to others who -- you  
4             know, and -- and including the meeting with Dennis  
5             Shelley who said that, you know, you're never going  
6             to get an NOC and therefore you will never get a DIN  
7             -- a DIN number. We looked into it. I -- I don't  
8             suppose that I've ever understood how completely  
9             impossible it was until I heard Bruce Dale's  
10            testimony the other day but we certainly had enough  
11            of that that although we considered it seriously we  
12            -- we were told that -- not -- not to do it because  
13            we wouldn't get it and we were also told in  
14            anticipation of those regulations changing that we  
15            would never get it before those regulations were  
16            changed. It -- it took -- it was too long and  
17            there's too much cost involved and, you know -- and  
18            that's absolutely right. The -- the looking into it  
19            that we did do indicated that, as Bruce Dale's  
20            pointed out, that -- that TPD, the Therapeutic  
21            Products Division, of Health Canada was looking at  
22            this in a drug model and some of the vary analysis  
23            that had to be performed in that I knew didn't fit  
24            with -- with how you could analyse this. I mean  
25            I've analysed nutritional products for years and  
26            years and years in labs and -- and I know what labs  
27            are capable of doing and what they're not and the --

1 the kind of analysis in -- and exactness that they  
2 were demanding with a single element in analysis  
3 just is impossible for a lab to do on a multiple  
4 ingredient product like ours, you know, let alone  
5 the -- the other stringent requirements that -- that  
6 were required. So, yeah we -- we did look into it.  
7 We -- we considered every -- I mean when we got the  
8 letter we didn't -- didn't just -- from Health  
9 Canada indicating that -- that a DIN number was  
10 required we didn't just throw it in the garbage.  
11 You know, those -- those -- those were long well  
12 thought out deliberations and it was only when we  
13 came to the conclusion that this meant that we would  
14 have to shut down and make the product unavailable  
15 to people, which was once again unacceptable to us  
16 as an alternative, that it -- it wasn't until we  
17 came to that conclusion in every -- in every time  
18 that -- that we concluded that that isn't something  
19 that we would pursue and we didn't want to and we  
20 couldn't afford to spend hundreds of thousands of  
21 dollars in -- in pursuing something that we could  
22 never achieve and wouldn't be given anyway. So, we  
23 believed the people that were advising us like Dale  
24 Anderson who was familiar with the process and on  
25 the transition team that had been called in by the  
26 government to be an expert on -- on these issues  
27 and, you know, he'd been involved for years and

1 years on this very issue.

2 Q Okay. Well, we don't need -- we don't need to go  
3 with Mr. Anderson but people were telling you and  
4 you believed them?

5 A Yeah.

6 Q Now, you guys had also been making access to  
7 information requests with Health Canada?

8 A That's true.

9 Q And I'm just going to show you a letter and I'm just  
10 doing that because I'm fairly sure you won't be able  
11 to give us a date unless I show you this letter.  
12 But, it appears to be a letter from Marjorie  
13 Schneider dated February 17th, '02 which appears to  
14 be a cover letter with -- from access to  
15 information?

16 A Yes.

17 Q Okay. So, would it be fair to say in May of '02 you  
18 guys had received a package from Health Canada in  
19 response to an access to information request?

20 A That's true.

21 Q Okay. And I'm going to show you --

22 MR. BUCKLEY: Well, madam clerk, could you  
23 show this witness Exhibit 'R'? Your Honour, I've  
24 got another copy if you have trouble fishing your  
25 copy out.

26 THE COURT: I have it.

27 Q MR. BUCKLEY: Now, Mr. Hardy, on the bottom

1 of -- bottom right of Exhibit 'R' there's a number,  
2 00129, and then the next page a 00130. Did the  
3 access to information request information's come  
4 numbered like that or do you recall today?

5 A I believe they did.

6 Q Okay. Have you -- have you seen this email before?

7 A Yes.

8 Q Okay. And that was in response to the access to  
9 information request?

10 A I believe so.

11 Q Okay. Well, did Health Canada send you emails at  
12 any other time?

13 A Once again, sorry?

14 Q Well, did Health Canada ever send you emails for any  
15 other purpose other than access to information?

16 A Not that I can recall.

17 Q Okay. Exhibit 'R' I believe has some yellow  
18 highlighting on it?

19 A Yes.

20 Q And the yellow -- the parts that are highlighted  
21 seem to indicate -- well, first of all let me stop.  
22 Philip Waddington is listed as one of the senders  
23 and recipients of this Exhibit 'R'?

24 A Right.

25 Q Did you know who Philip Waddington was --

26 A Definitely he was --

27 Q -- back in May of '02 when you guys received the

1 access to information request?

2 A Yeah, Philip was the one that came across Canada.  
3 He wasn't then appointed -- well, I don't think he  
4 was appointed -- well, he wasn't because they didn't  
5 have the Office of Natural Health Products but he  
6 was the one that the government had go across Canada  
7 and -- and tell about the -- the new Office of  
8 Natural Health Products was going to be set up and  
9 gave us an overview of what that would entail and he  
10 became the director general of the Office of Natural  
11 Health Products.

12 Q Okay.

13 A We've talked to him on a number of occasions.

14 Q Right. Now, back in May of 2002 you guys knew that  
15 he was heavily involved in this new transition to  
16 Natural Health Products?

17 A Definitely.

18 Q Okay.

19 A He -- and he is -- he is an expert on -- on natural  
20 health products as opposed to -- to drugs, yeah.

21 Q Okay. Did you know who Peter Chan was who's the  
22 other sender and recipient in this email?

23 A Yes.

24 Q Okay. And who did you understand Peter Chan to be?

25 A Well, Peter Chan was working for the -- then for the  
26 -- for TPD. I -- I believe Peter was moved to the  
27 Office of Natural Health Products, if I'm not

1 mistaken, when it was set up. But, Peter -- Peter  
2 was someone that we were familiar with from little  
3 we had to do with TPD.

4 Q Okay.

5 A Therapeutic Products Division.

6 Q Now, if you want to review the email because it  
7 seems to suggest that these gentlemen are saying you  
8 guys wouldn't have succeeded in the DIN process. I  
9 want you to review that.

10 A Mm-hm. Okay.

11 Q Okay. When you go through a document like this  
12 that's come in the ATI does that effect your  
13 decision that you guys would've -- would not have  
14 been able to get a DIN?

15 A Absolutely. This was only one of many indications  
16 that we -- we couldn't have got a DIN number -- not  
17 a notice of compliance which precedes the DIN.

18 Q Okay. But, I'm just talking about your belief.  
19 Okay? Because you've got -- you were telling us you  
20 considered it as an option and I'm just trying to  
21 find out if when you guys received material like  
22 this --

23 A Well, when you hear Health Canada telling you -- you  
24 that you can't qualify for it, yeah. I suspect that  
25 that influences your belief and it certainly did  
26 ours.

27 Q Okay.

1 MR. BUCKLEY: And, Your Honour, I'm going to  
2 ask that this be entered as an exhibit not for the  
3 truth of its contents but for what was communicated.

4 THE COURT: All right. Exhibit 67 will be  
5 copies of the emails with the chronological -- or,  
6 sorry the sequential numbering 000129 to 000130 and  
7 again these emails are copies of emails that are  
8 being admitted not for the truth of their contents  
9 but only for the fact to establish that the  
10 communications occurred.

11

12 \*EXHIBIT 67 - Formerly Exhibit 'R' For Identification

13

14 MR. BUCKLEY: And, Your Honour, I'm  
15 wondering if we could stand down for lunch? I'm not  
16 finished with this witness. I do want to discuss a  
17 couple of points with this witness before we  
18 continue and it's now an appropriate time to take a  
19 lunch break.

20 THE COURT: All right. Very good we will  
21 stand adjourned until 2:00 this afternoon thank you.

22 -----

23 PROCEEDINGS ADJOURNED UNTIL MARCH 28, 2006 AT 2:00 P.M.

24 -----

25

26

27

1       \*Certificate of Record

2           I, Jillian Fox, certify that this recording is a  
3           record of the oral evidence of proceedings in the  
4           Criminal Court, held in courtroom 413, at Calgary,  
5           Alberta, on the 28th day of March, 2006, and I was  
6           in charge of the sound-recording machine.

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1 \*March 28, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT CLERK: Recalling Synergy Group of  
5 Canada and Truehope Nutritional Support.

6 MR. BUCKLEY: Thank you, Your Honour.

7 Your Honour, I'm wondering -- there's a couple  
8 of things that I would just like marked for  
9 identification. I don't want or feel the need to  
10 enter them as exhibits but just so that the record  
11 makes some -- more sense.

12 One would be this, these slides of the dam that  
13 Mr. Hardy was using to just kind of be a tool to  
14 help explain things.

15 MR. BROWN: I have no objection.

16 THE COURT: Would 'U' be the  
17 (INDISCERNIBLE)?

18 MR. BUCKLEY: I think 'U' was the CV of  
19 Bruce Dales that was later --

20 THE COURT CLERK: Yeah, it would be.

21 THE COURT: What would it be? 'V'? All  
22 right. No objection by the Crown. Then Exhibit 'V'  
23 for identification purposes is the collection of  
24 slides referred to as the chart and the dam example.

25 MR. BUCKLEY: Thank you, sir.

26 MR. BROWN: Thank you, Your Honour.

27

1 \*EXHIBIT 'V' for Identification - Collection of Slides

2 \*Referred to as the Chart and the Dam Example

3

4 \*DAVID LAWRENCE HARDY, Previously Sworn,

5 \*Examined by Mr. Buckley

6

7 Q MR. BUCKLEY: Now, Mr. Hardy, I'm going to  
8 show you another e-mail that was in the ATI  
9 materials. Just have a look at that and tell me if  
10 you recognize that. I'll ask you to ignore the  
11 yellow highlighting.

12 A This looks like what was disclosed to us.

13 Q Okay. I want you to flip to page 2 and look at  
14 number 3 and after you've reviewed that e-mail,  
15 basically it's the same question that I've asked you  
16 with an earlier one. When you received stuff like  
17 this, did it affect your belief that you guys would  
18 not be successful in obtaining a DIN?

19 A Well, as we reviewed the submissions we looked for  
20 little points that meant something and, you know, we  
21 did pick up on this based on our discussion.  
22 Clearly the product would not meet our requirements.  
23 So yeah, that strengthened my belief that we would  
24 not get a DIN number. Absolutely.

25 MR. BUCKLEY: Your Honour, I'll ask that  
26 that be marked as an exhibit not for the truth of  
27 its contents but for the fact that it was

1           communicated through an ATI request.

2           MR. BROWN:                   No objection, sir.

3           THE COURT:                   All right. No objection taken  
4           by the Crown. Then on that basis these copies of e-  
5           mails with the (INDISCERNIBLE) numbers of 000155 and  
6           156 will be our next exhibit. Exhibit 67. Is that  
7           right?

8           THE COURT CLERK:             (INDISCERNIBLE)

9           THE COURT:                   68? Exhibit 68. Exhibit 68.  
10          Thank you.

11          MR. BUCKLEY:                Your Honour, just so that you  
12          understand some of the exhibits, Exhibit 62 is the  
13          (INDISCERNIBLE) version of this e-mail that was  
14          disclosed pursuant to a court order last week.

15          THE COURT:                   (INDISCERNIBLE). That is  
16          fine, Madam Clerk. All right, Mr. Buckley, go  
17          ahead.

18          MR. BUCKLEY:                Okay, yeah. So just -- so the  
19          highlighting on 68 is just highlighted where  
20          information was edited out which is found on Exhibit  
21          62.

22          THE COURT:                   Are you giving that evidence?

23          MR. BUCKLEY:                No, but I just want you to  
24          understand that they are the same e-mail, those two  
25          exhibits. One was just as it appeared in the ATI  
26          and the other as disclosed under a court order.

27          THE COURT:                   Sorry. Is that 67 again?

1 MR. BUCKLEY: Not 67.

2 THE COURT: 68?

3 MR. BUCKLEY: 68.

4 THE COURT: Yes.

5 MR. BUCKLEY: And 62 --

6 THE COURT: 62.

7 MR. BUCKLEY: -- are the same e-mail. Just  
8 that 68 was disclosed under an access to information  
9 request.

10 THE COURT: All right.

11 MR. BUCKLEY: 62 was pursuant to your court  
12 order last week when we asked for an unedited copy  
13 of this one.

14 THE COURT: All right. Thank you.

15 MR. BUCKLEY: And, Your Honour, I've spoken  
16 to my friend because I was also going to see we have  
17 entered as 67 the ATI edited version of that e-mail  
18 but pursuant to a court order last week, an unedited  
19 version has been provided which will be relevant to  
20 an abuse of process argument. And I don't believe  
21 my friend is objecting to us entering as a separate  
22 exhibit the unedited version of this disclosed  
23 pursuant to a court order.

24 MR. BROWN: And it is understood that it  
25 again is just being entered for the fact that  
26 certain indications took place, not for the truth of  
27 the content.

1 MR. BUCKLEY: Yes.

2 MR. BROWN: I have no objection on that  
3 basis.

4 THE COURT: Yes, that is fine on that  
5 basis. Thank you.

6

7 \*EXHIBIT 68 - Collection of E-mails Dated May 7, 2001

8 \*Directed to Synergy Group of Canada Inc. with Pages

9 \*Numbered 000155 and 000156

10

11 THE COURT: So then is this an e-mail?

12 MR. BUCKLEY: Yes, it is.

13 THE COURT: Do you wish it to be Exhibit  
14 -- the next one, 68?

15 MR. BUCKLEY: It actually will be 69.

16 THE COURT: 69. Right. All right. 69  
17 then is the, I am sorry, two pages, two copies of e-  
18 mails produced in response to a court order. Peter  
19 Chan to Phil Waddington. Phil Waddington to Peter  
20 Chan. 69.

21 MR. BUCKLEY: Thank you, Your Honour.

22

23 \*EXHIBIT 69 - Collection of E-mails from Peter Chan to

24 \*Philip Waddington and from Philip Waddington to

25 \*Peter Chan Produced in Response to a Court Order

26

27 MR. BUCKLEY: And I have no further

1 questions of this witness. So, Mr. Hardy, if you  
2 will please answer questions of my friend.

3 THE COURT CLERK: So does he have  
4 (INDISCERNIBLE)?

5 MR. BUCKLEY: No, he doesn't. I just handed  
6 it to you.

7 THE COURT CLERK: Okay.

8 MR. BUCKLEY: Oh, I have an extra copy, I'm  
9 sorry, so that His Honour has one.

10 THE COURT: Mr. Brown, are you ready to  
11 proceed with your cross-examination?

12 MR. BROWN: I am, sir.

13 THE COURT: All right. Go ahead, please.

14

15 \*Mr. Brown Cross-examines the Witness

16

17 Q MR. BROWN: Mr. Hardy, good afternoon.

18 Now, sir, you have heard me do this a couple of  
19 times before and I always like to tell witnesses  
20 that I sometimes speak a little too quickly and  
21 maybe not clearly so if you don't understand the  
22 question, please make sure you just let me know.  
23 Okay?

24 A I'm slightly hard of hearing.

25 Q All right. I'll try to speak up then.

26 A Okay. Thank you.

27 Q And also I usually tell witnesses that I tend to

1           jump around a little and again that might lead to  
2           certain confusion so again, just let me know if that  
3           is any kind of a problem and we'll try again. All  
4           right?

5       A     Okay.

6       Q     And you're able to hear me okay at that level?

7       A     So far.

8       Q     Okay. All right, I'll just take you back to sort of  
9           the beginning of your testimony then when you were  
10          talking about your 20 years in animal livestock  
11          work. What is the position you were in?

12      A     When I left teaching I set up my own feed business  
13          called Hardy Feeds Limited. That's the name of the  
14          company. That company still exists but I haven't  
15          been active in that since I've been doing this. And  
16          so it was the sale and distribution of feed  
17          additives to livestock owners as well as the  
18          consultation that went along to assist them with the  
19          rations.

20      Q     Okay. So it's not that you were making bulk feeds.  
21          You were only working in the additives.

22      A     That's correct.

23      Q     And you have described certain parts of southern  
24          Alberta you working in. Can you just give us an  
25          idea of where that was again.

26      A     The area that I covered was all of southern Alberta.  
27          I went as far north as Hanna, all down through

1 southern Alberta. A lot of those rural roads became  
2 quite familiar to me.

3 Q And what years were you doing this?

4 A After I quit teaching, oh, let's see. What years  
5 would that be. About 1978 to '98. I was still  
6 doing some of my feed business for support while we  
7 were starting with this effort.

8 Q Okay. And so did you actually have your own mills  
9 for making these additives or pre-mixes or did you  
10 buy them from somebody else?

11 A No. No. We purchased them.

12 Q And so when you talked about testing pig feed for  
13 certain ingredients like fat or fibre, et cetera,  
14 where was that testing going on?

15 A Where was the which going on?

16 Q Where was that testing going on?

17 A Those samples of the feeds that we took were  
18 representative samples that we would take from the  
19 feed products that the livestock owners had on their  
20 farms. We would send them into analytical  
21 laboratories and I used a number of such  
22 laboratories in the US mostly for those analyses.  
23 Paid for them and then we'd get them back and adjust  
24 the rations accordingly.

25 Q So you would get some kind of a report back saying  
26 certain -- the feed is deficient in certain products  
27 and you would make recommendations based on that

1 report.

2 A Exactly. We wanted to set the energy levels to a  
3 certain level because that affected weight gain. We  
4 set the protein level at a proper level so that they  
5 would perform. So we took care of those basics and  
6 then more particularly, I spent a lot of time  
7 dealing with the trace element analysis.

8 Q Right. And what you were attempting to achieve for  
9 the farmers that you worked for was to achieve  
10 optimal performance, I think were the words that you  
11 used. Is that correct?

12 A That is correct.

13 Q And you described what was the optimal performance  
14 in certain types of livestock. Pigs, for example,  
15 was one of the ones you used. And optimal  
16 performance in those cases is maximum weight gain  
17 and maximum number of live births per sow. Is that  
18 correct?

19 A That's part of it. Healthiness and thriftiness of  
20 the animals and their overall general health was of  
21 prime importance. If they were sick, they didn't do  
22 well at all.

23 Q But you'll agree that optimal performance for humans  
24 would not include weight gain, for example.

25 A That's probably true. Yes.

26 Q All right. So you're looking at different things  
27 even though pigs and humans have a lot of similar

1           qualities.

2       A     Well, you're dealing with animals that are growing.

3           I mean, you definitely would be looking at weight

4           gain if you're dealing with a young person who is

5           growing and that's really kind of the area that a

6           lot of these farm animals are treated at. You're

7           looking at them when they're young and you want them

8           to grow and you want their bones to form properly

9           and all of that and those are very similar. You do

10          want weight gain in a young person. There's no

11          question.

12       Q     But not maximum weight gain like you'd like in a

13          pig.

14       A     You're not necessarily trying to make them fat. No.

15       Q     Right. Exactly. All right.

16       A     We did that -- the fatness was added on the energy

17          end of the equation, not the mineral end of the

18          equation.

19       Q     Right.

20       A     You'd add the fat to optimize the weight gain.

21       Q     Okay. If you can take a look at, I think it's

22          Exhibit 'V', the charts that you had prepared. I

23          believe you have them in front of you now?

24       A     Yes.

25       Q     Now there are lists of vitamins and minerals

26          actually. Can you tell me if that's what it is? It

27          looks like a list of vitamins and minerals across

1 the bottom of the chart.

2 A Absolutely.

3 Q Okay. And there's reference to the FDAs -- that's  
4 the US Food and Drug Administration. Is that the  
5 reference at the top?

6 A The --

7 Q Sorry. I'm sorry. Not the top. At the bottom.

8 A USDA?

9 Q Yes. USDA.

10 A US Department of Agriculture.

11 Q Yes.

12 A I referred to the six centres they have in the  
13 United States investigating human nutrition. They  
14 are called Human Nutrition Research Centers.

15 Q Right.

16 A There are six of them in the US.

17 Q And so basically you were able to go to a website as  
18 printed near the bottom there and obtain the  
19 information that makes up this chart. Is that  
20 right?

21 A That's correct.

22 Q And in this chart there are, as you say, a number of  
23 minerals and vitamins that are listed and these are  
24 vitamins and minerals that according to the USDA,  
25 percentages of the population don't meet in their  
26 diet.

27 A That's correct.

1 Q And is it correct to say that these are the  
2 essential minerals and vitamins according to the  
3 USDA?

4 A They are some of them. There are obviously a lot  
5 more than this but these are the ones that were on  
6 their website. We've reviewed literature on every  
7 mineral and vitamin from them that's in our product.

8 Q All right. But is this the -- when you say some of  
9 them, is this the information that you actually got  
10 from their website?

11 A Yes.

12 Q So these are the ones that they consider to be  
13 essential.

14 A They are among the essential elements. They are not  
15 all of the ones that the USDA considers essential  
16 but these are the ones that evidence was collected  
17 on, obviously.

18 Q All right. Well, you say, obviously, but it's not  
19 as obvious to me because --

20 A Okay.

21 Q -- I am operating under the assumption that you  
22 printed off this chart to show what was important to  
23 the USDA in determining where deficiencies lie. Is  
24 that correct?

25 A Yeah, I would say that that's what the research was  
26 pointing out that there are significant deficiencies  
27 evidenced in the current dietary intake of --

1 Q Of these (INDISCERNIBLE).

2 A -- the US population -- of these ingredients.

3 Q Of these ingredients. Right.

4 And what they don't list in this list of  
5 ingredients, for example, is germanium.

6 A That's not listed here. No.

7 Q Right. And they don't list boron.

8 A That's true. Because they're not listed here, it  
9 doesn't mean that they haven't done work with those  
10 products. They have.

11 Q That's understood. Now when you were talking about  
12 colloidal minerals and the uptake of minerals, if I  
13 understood correctly, what you said was when plants  
14 grow they absorb or take up minerals from the soil  
15 as they grow. Is that right so far?

16 A They have to.

17 Q Yeah.

18 A They are the essential ingredients of life.

19 Q Right. Exactly. And what I think I understood you  
20 to say is with colloidal minerals, basically plant  
21 material that you can extract minerals from. Is  
22 that right? And tell me if I'm wrong because I may  
23 have misunderstood you.

24 A Yeah, that's not right. Colloidal minerals are the  
25 -- is the way that the minerals in this product that  
26 we were using were referred to. I'm not certain  
27 that that's really a correct term but that's how

1           they were referred to. But what they were were  
2           minerals that were collected from plant material  
3           that had already been uptaken by the plant and  
4           therefore rendered more useful. More bio-available  
5           to the human body.

6        Q     Right. And that's kind of what I was trying to  
7           determine because when you said that, I thought,  
8           okay, so plants take minerals up into themselves --

9        A     Sure.

10       Q     -- and then those minerals become available to us.

11       A     Yes.

12       Q     So if I eat broccoli, I get certain minerals and  
13           vitamins from the broccoli.

14       A     Absolutely.

15       Q     Calcium for example from broccoli. Right?

16       A     Sure.

17       Q     So it is possible to obtain calcium from eating  
18           broccoli, for example.

19       A     That's true. However, --

20       Q     Okay. Go ahead. Go ahead.

21       A     Can I answer the however?

22       Q     Yeah. Go ahead.

23       A     In Lyndon Berek's (phonetic) book they show that  
24           over a 36 year period from 1963 to 1999, that the  
25           amount of calcium in broccoli on average analysis  
26           has decreased by 50 per cent or more. So we're not  
27           getting as much of these nutrients in our food as we

1 used to.

2 Q You mean we need to eat more broccoli.

3 A Apparently.

4 Q Yes.

5 A These things don't -- I mean our soils have been  
6 farmed for so many years that the 8 inches of  
7 topsoil don't contain all that they used to.

8 Q All right. I understand that that's an argument  
9 that you might have made in the past. Right?

10 A Yes.

11 Q Okay. Now when you were talking about the early  
12 stages of creating what eventually became  
13 EMPowerplus, you talked about this liquid source and  
14 it seemed to be inconsistent. Right? This was a  
15 liquid source of minerals?

16 A Right.

17 Q And it was inconsistent. And your, if I understood  
18 correctly, your observations were that depending on  
19 what batch it was, it may be more or less effective.

20 A Yes, because they were taken out of different  
21 deposits in the ground and all of those would be  
22 different.

23 Q So you made certain assumptions about that cause and  
24 effect situation.

25 A Well, when we saw the lack of continued  
26 effectiveness, we thought that that either had to be  
27 explained some way or -- so we looked at that -- the

1 potential inconsistency of that product which would  
2 very obviously, according to the area that it was  
3 mined out of, as being the most likely source. And  
4 that appeared to be true in our observation and  
5 investigation.

6 Q Now you were telling us also about those early days.  
7 Going through one manufacturer and another. But  
8 what I wasn't certain of was some of the dates of  
9 some of these events. For example, you used the  
10 manufacturer called New Vision. Do you recall that?

11 A New Vision was the -- not a manufacturer of -- well,  
12 it was a manufacturer, I guess, of one of the  
13 colloidal mineral products.

14 Q Okay.

15 A When we found that one had been altered because they  
16 quit getting it from the same source that they  
17 started with, we went to a different manufacturer of  
18 colloidal minerals. It was still a colloidal  
19 mineral.

20 Q I'm just curious about the date. When did this  
21 happen?

22 A Oh, the date?

23 Q Yeah. Sure.

24 A Oh, goodness. The New Vision product would have  
25 been 1996. Right from the very first. I mean that  
26 was the very first one that we used so the exact  
27 date when we started Tony's children on them, that

1 would have been a New Vision product. We probably  
2 would have used that product for the better part of  
3 a year, perhaps, and then we changed to Body  
4 Systems. That would have been used -- I can't  
5 remember the exact time that we switched to the  
6 Clark Mineral. By that time we were looking for  
7 some alternative because if they had been to the  
8 mine area and it looked like a lot of that deposit  
9 had already been mined and they were starting to dig  
10 into a different layer that was quite different.

11 Q All right. And one of the next manufacturers you  
12 used was a company called Evince?

13 A Well, Evince was not a manufacturer of colloidal  
14 minerals. Evince is the company -- the second  
15 manufacturer we turned to after to get an all-in-one  
16 product.

17 Q Right.

18 A Well, Evince was not -- it was actually Cornerstone  
19 Labs that we turned to as a manufacturer. Evince  
20 was the company they set up to market this product.

21 Q Right. And you said something I wasn't completely  
22 clear on as part of their relationship. First of  
23 all, Evince -- was that company in Utah as well or  
24 is that someplace else?

25 A Cornerstone Labs was in Farmington, Utah, and Evince  
26 was the same.

27 Q Okay. So Evince was a US company and then you said

1 something about how they paid you. Did you mean  
2 yourself and Tony were being paid some kind of  
3 stipend or whatever to run the program?

4 A That's right. They paid us, you know, they collect  
5 -- they sell the product. They collected the  
6 proceeds from the sales of the bottles.

7 Q All right.

8 A And we were paid a small portion of that to keep us  
9 going and to do what we did and to keep the support  
10 program alive too because during that time we and  
11 the people that we had trained provided -- continued  
12 to provide the support for these people.

13 Q So you were able to provide the support through what  
14 eventually became Truehold by receiving money from  
15 Evince.

16 A We started to develop -- well, we set the Truehope  
17 name in place while we were there. I mean, Evince  
18 put that trademark in place.

19 Q And this was in the early stages of your program, if  
20 I can call it that. Is that correct?

21 A Yeah. Concerning the, you know, the all-in-one  
22 product. Yes. Absolutely.

23 Q Great. Okay. After the end of that relationship,  
24 you eventually created a company called Synergy  
25 Group of Canada.

26 A Now the Synergy Group of Canada was a company that  
27 was incorporated long before we went to Evince.

1 Q Right.

2 A It was incorporated, you know, in the very early --  
3 I can't remember the exact incorporation date but it  
4 was incorporated long before we even -- you know,  
5 while we were doing the Quad program.

6 Q Right. Okay. Ultimately when sales were made from  
7 the Raymond location though, the money went to  
8 Synergy Group of Canada. Is that correct?

9 A Yes, that's correct because Synergy was the only  
10 company that we had that was set up to be a for-  
11 profit company. Truehope Nutritional Support  
12 Limited that we set up was a not-for-profit  
13 corporation.

14 Q And so until the mercantile accounts were set up in  
15 the United States which was in 2004 if I understand  
16 it correctly, --

17 A Yes.

18 Q -- Synergy Group of Canada was the company receiving  
19 money for the sales of EMPowerplus.

20 A After we left Cornerstone Lab and Evince, that's  
21 correct.

22 Q So once you were on your own -- going on your own,  
23 you -- Synergy Group was receiving the money from  
24 the sales.

25 A That's correct.

26 Q And that includes 2003.

27 A Mm-mm. Yes. After we left Evince. That's correct.

1 Q Okay. And that's -- the phone centre in Raymond was  
2 the basis of your support centre - the Truehope  
3 support centre. Correct?

4 A Uh-huh. Yes.

5 Q And it was also an order centre where you take --  
6 where orders could be placed for more EMPowerplus.

7 A At the time we were taking orders there as well.

8 Q And that was in 2003 as well?

9 A Yes, it was.

10 Q Okay. Now you discussed some involvement with Dr.  
11 Kolb at the University of Lethbridge --

12 A Yes.

13 Q -- and again, I wasn't certain of exactly what year  
14 this occurred. Can you tell me that?

15 A Well, involvement with Dr. Kolb was right from the  
16 very beginning after we -- after we saw the response  
17 in Tony's children we went and talked to Brian Kolb.  
18 This was the second time that Tony had talked to him  
19 because he had approached him earlier after the  
20 death of his wife long before we were involved  
21 together -- or before we were involved together.

22 Q Okay.

23 A But, yeah. Brian Kolb was one that we sat down with  
24 and shared our experience that this seemed unusual  
25 and wondered what he thought about it.

26 Q Okay. Do you recall the year, approximately?

27 A I think that was still in 1996.

1 Q So this was early on?

2 A Yes. Very early.

3 Q And so you have only had a few people actual  
4 experience the product.

5 A That's true at that time.

6 Q But at some point you had talked about how you had  
7 approximately one hundred people on the product. Do  
8 you recall that?

9 A Well, after we talked to Dr. Kolb we did a little,  
10 as I suggested, we set up a little kind of  
11 experiment with some children in the area which he  
12 helped us kind of set up and we conducted it. He  
13 didn't. But he said he would help us analyse the  
14 data to see if there was anything significant and  
15 there was.

16 And so that effort initiated a lot more  
17 interest and during that time we were also  
18 continuing to try and assist other people that were  
19 interested and investigate this and see what the  
20 response would be. It was during that time period  
21 that the example that I went over was carried out.

22 Q Yes. So, forgive me, Mr. Hardy, but basically you  
23 had engaged at that time in a series of human  
24 clinical trials without any of the clinical  
25 safeguards. Do you agree?

26 A No, you couldn't call these human clinical trials.  
27 I say this was giving people minerals and vitamins

1 and examining the results. In my experience this --  
2 I mean you have to recall I was used to doing this  
3 for animals for 20 years and I had never seen any  
4 adverse event from giving animals minerals and  
5 vitamins. All that I saw was positive and, you  
6 know, once we had seen the response in Tony's  
7 children I didn't have any hesitancy to do it. I  
8 mean the safety of these products had been looked  
9 into and examined for years and this is one of the  
10 things that, you know, that always affected how I  
11 felt about this. You know, some say that you have  
12 to do a clinical trial to prove safety. Right?

13 Q Uh-huh.

14 A You have to go through these formal steps. But in  
15 our observation, that didn't work for many of the  
16 drugs because there had been quite a number of drugs  
17 that had been taken off the market like Vioxx.  
18 After it's introduced to the market things are found  
19 that weren't brought forward in the clinical trials.  
20 So the safety of that product was not established in  
21 the clinical trials.

22 The difference between that and minerals and  
23 vitamins is that these products have been used  
24 safely for 40 to 100 years. You talked about boron,  
25 for instance. When I talked to Forest Nielson the  
26 other day, he said that boron was originally used as  
27 a food additive -- food preservative, rather, in the

1 form of boric acid and sodium borate for years and  
2 years before it was ever investigated as an  
3 essential element which his work essentially proved.  
4 And he said in all of that time there was no  
5 evidence of adverse reaction to that product even  
6 though it was used at a much higher level than it's  
7 been approved at now by the bodies that review this  
8 for optimum -- I mean for what they call a safe  
9 upper limit. And the safe upper limit in these  
10 products refers to the level at which people can  
11 take this. And you wouldn't expect any adverse  
12 event at all.

13 Q Is it safe for me to say then that you don't think  
14 clinical trials were even necessary in this case?

15 A I don't believe that clinical trials in the safety  
16 of minerals and vitamins would reveal anything that  
17 a 100 years -- or 40 to 100 hundred years of use  
18 have not revealed. I believe that if there were  
19 going to be adverse events with these products, they  
20 would have been seen and noted before. And that's  
21 generally accepted. And that's why the entire  
22 industry was adverse to the drug style  
23 administration by Health Canada of these products  
24 when they are clearly of a safety nature that is  
25 generally accepted to be in a category much  
26 different than the drugs.

27 Q You'll agree with me that there was some

1           disagreement between yourselves and Health Canada as  
2           to the safety of certain elements of EMPOWERplus  
3           including Vitamin A for example. Do you agree with  
4           that?

5           A     They challenged the levels of Vitamin A. We had  
6           been through the literature and, you know, we had  
7           lots of studies that we looked at on the safety of  
8           Vitamin A. There is, I think, a lot of  
9           misinformation out there about what is acceptable.  
10          We're certainly, you know, the levels that we were  
11          dealing with were within the generally recognized  
12          safe upper limits of Vitamin A. I know that Vitamin  
13          A has been injected in babies in the past at  
14          millions of IUs and killed them. That doesn't make  
15          it dangerous at lower levels. And those kinds of  
16          events with these products are very rare.

17          Q     Mr. Hardy, you just said that there was lots of  
18          misinformation around at those times. Do you recall  
19          saying that a minute ago?

20          A     I did.

21          Q     And so there was some disagreement among people,  
22          including yourselves, as to what was safe and what  
23          was not safe at the time. Correct?

24          A     Uh-huh.

25          Q     So -- that was a Yes?

26          A     No, there still is some disagreement between --

27          Q     I just want to make sure that that was a Yes, first

1 of all, that you agreed with me that there was  
2 disagreement among people about what was safe and  
3 what was not safe. You agree with that? Because  
4 you just said --

5 A Well, I did say it. But I need to qualify that, you  
6 know, to answer a complete Yes. Let me give you the  
7 example because you mentioned boron. I'm glad you  
8 brought it up because that's a particular stickler.

9 Q Yes, it is.

10 A I talked to Forest Nielson who is one of the best  
11 experts in the world. He's written more of the  
12 papers on boron than any other man alive. It was  
13 his work that entered boron into nutritional  
14 supplements in the United States in 1987. He has  
15 since followed work all around the world. In my  
16 conversation with him on the phone the other day he  
17 said, I can't understand why any group on earth  
18 would challenge the work that has been done and  
19 corroborated around the world on boron.

20 Q You'll appreciate where -- you're telling us what he  
21 told you.

22 A Yes, that's right.

23 Q Right.

24 A This was told to me in a personal conversation with  
25 him and I swear that it's true.

26 Q You understand that there's a difference between  
27 evidence that you can give and hearsay.

1 A All right. If that's hearsay, I'm sorry --

2 Q Yes.

3 A -- but I'm reporting what I actually experienced in  
4 conversation with him.

5 THE COURT: Just purely for the record,  
6 what he said to you is hearsay. So it affects the  
7 weight that I can put on that evidence.

8 A Okay. Well, here is what I, you know, someone that  
9 I consider to be an expert and -- but the safe upper  
10 limit on boron has been set at 20 milligrams per day  
11 by review boards that involve many, many people and  
12 that's been corroborated around the world. The  
13 Office of Natural Health Products also indicated to  
14 us, Dr. Robin Marles who sits on -- that their  
15 office was prepared to accept that because it's the  
16 best scientific evidence around the world. TPD is  
17 still challenging that on the basis of what  
18 scientific evidence no one really knows.

19 Q All right. Well, let's jump right ahead to  
20 something I was going to ask you in a few minutes  
21 about the product that you ultimately got an NPN  
22 for. A Natural Products Number. Correct?

23 A Okay.

24 Q This was indicating you were one of the early ones  
25 in -- 363, you said?

26 A Uh-huh.

27 Q Does that product have boron in it?

1 A The product that we submitted had boron in it.

2 Q Does the product with the NPN have boron in it?

3 A Once again, the NPN submission that we sent in had  
4 boron in it. And we were told by the Office of  
5 Natural Health Products that they had approved it as  
6 we sent it in with boron in it at the level that  
7 boron was approved.

8 And then we got another word back saying that  
9 there was some challenge by TPB, and why they had  
10 jurisdiction over that I'll never know because it's  
11 obviously a natural health product. But they came  
12 back and said, No, there's some consideration in  
13 other areas. This is being reviewed.

14 And it's been reviewed for over a year. That's  
15 why I initiated the call with Forest Nielson and the  
16 Office of Natural Products to try and connect them  
17 to some information that may be helpful. I think  
18 they had most of it.

19 Q Let me ask a really simple question, Mr. Hardy.  
20 Does the product you have an NPN for have boron in  
21 it. Yes or No?

22 A Well, the answer is No, it doesn't at the moment.  
23 We haven't --

24 Q Right.

25 A However I've got to tell you that the submission  
26 that we put in had boron in it --

27 Q Yes. I understand that.

1 A -- and the Office of Natural Health Products  
2 approved it. Otherwise you're not understanding the  
3 truth --

4 Q I understand.

5 A -- of what was sent in.

6 Q Now you talked about the meeting with Mr. Shelley  
7 that happened in January 2001. That's Dennis  
8 Shelley? You recall the meeting?

9 A Yes.

10 Q And you said that Mr. Shelley had indicated he would  
11 help you -- sorry, let me take you back. First of  
12 all you had agreed that when you left, you were  
13 going to try to put a plan together. You agree with  
14 that?

15 A We talked about that. Yes, we did.

16 Q A move-forward plan if I can put it that way.

17 A Yeah.

18 Q All right.

19 A Exactly.

20 Q And you also said that Mr. Shelley had indicated he  
21 would help you with your website. Right?

22 A That was one of the questions that we asked him.

23 Q Right.

24 A I can't remember if that was recorded in the notes  
25 that Miles Brosseau took or if it was, you know, in  
26 conversation as we were leaving. But we asked him  
27 specifically that question, if he could put us in

1 touch with someone that could assist us in altering  
2 our website so that it was acceptable to  
3 (INDISCERNIBLE).

4 Q And you were here listening to some of the earlier  
5 testimony so you know that Health Canada's position  
6 was that they were waiting for you to put this plan  
7 forward, your go-forward plan, and it never came.  
8 Do you agree with that?

9 A Well, our go-forward plan did come. I mean we were  
10 trying to -- there was some spirit in that meeting  
11 of cooperation. I think that Dennis Shelley was  
12 being honest with us when he told us we wouldn't get  
13 an NPN. I think he was sincere in what he said that  
14 if we moved to the States it would work. He didn't  
15 see it happening in Canada. So he was being  
16 somewhat helpful to us.

17 We wanted to see if there wasn't some way that  
18 we could work out and, you know, frankly at that  
19 time I hadn't had time to consider the option of  
20 moving to the States in great depth so we thought  
21 maybe we could come up with something. But I phoned  
22 him and said, Mr. Shelley, we've been deliberating  
23 about this. We've been talking about it. We've  
24 been stewing over it. We can't really find a way  
25 that's going to satisfy you because in my view it  
26 means that we're going to have to move to the  
27 States. It's about the only option we have and that

1 just didn't seem to be a realistic and viable  
2 option. And so I told him, I said, Mr. Shelley,  
3 what you're going to receive is not a forward plan  
4 because once again, we had come up with what appears  
5 to be brick wall and there is no forward plan except  
6 to shut it down. And as I've stated many times  
7 already, it was unacceptable to us.

8 Q Okay.

9 A So we put together that letter in response. And he  
10 said, Fine, put that together than and we'll see  
11 that it gets sent on.

12 Q There was some agreement that you would send it to  
13 him and he would get it to the people in Ottawa.

14 A That's what he indicated, that he would see that  
15 they got a copy of it.

16 Q Okay. You sent it to eight hundred fax machines.

17 A They got it.

18 Q Well, you'll agree that that open letter was sent to  
19 eight hundred fax machines?

20 A I think that's the letter that was -- that Mr.  
21 Stephan -- that Tony faxed to a number of Health  
22 Canada fax machines. Yes.

23 Q Thank you. Now you did say that you tried to  
24 sanitize the website to some degree on your own.  
25 Correct?

26 A We did.

27 Q But I note that there's a couple of wigggle-words in

1           there if I can use that. You tried and "to some  
2           degree". In other words, you weren't prepared to do  
3           anything like remove specific references to the fact  
4           that this product, in your mind, treated bi-polar  
5           disorder or schizophrenia or ADD or fibromyalgia.  
6           Correct?

7           A       Well, those were mentioned on the website as  
8           experiences that we had had and --

9           Q       You knew that Health Canada --

10          A       -- we felt that it wasn't against the law to tell  
11          the truth of what you experienced.

12          Q       I understand. I understand you had your own view --

13          A       Yeah.

14          Q       -- of what the law was. You knew full well that  
15          Health Canada had considerable concerns about the  
16          treatment claims. That was their main concern about  
17          that. That was expressed to you on more than one  
18          occasion that their main concern was that you were  
19          making these health claims on your website and  
20          elsewhere. Correct?

21          A       I would love to challenge the constitutionality of  
22          Section 31 and 32 in a courtroom.

23          Q       Well, I'm not talking about Section 31.

24          A       That's what I'm talking about because that's the  
25          claim section. Right?

26          Q       Well, I'm asking you whether or not you were aware  
27          that Health Canada's position was that health claims

1 are a problem and that is our essential -- our main  
2 focus. You were aware of that?

3 A We were aware that the claims were a problem.

4 Q Okay. And you were not prepared to change your  
5 website to remove those claims. Correct?

6 A We changed some of them.

7 Q All right. But you did not remove the claims that  
8 your product, EMPowerplus, would treat bi-polar  
9 disorder. That was not removed from your website.

10 A I don't know that -- I'm not exactly sure of how  
11 significant those claims were but I know that we had  
12 case studies on the website of what we had  
13 experienced.

14 I guess in the same way that we felt that this  
15 was significant and that truthful observations, we  
16 felt, had a right to be stated so that this could go  
17 forward. I mean it definitely seemed like Health  
18 Canada was just putting a brick wall and a damper on  
19 anything that would have forwarded the research  
20 and/or the possibility that these things could  
21 actually be helpful to people.

22 And, I'll, you know, if you're sequestered  
23 enough, if people have a way that they can hold back  
24 and keep you from telling the truth, no major  
25 breakthrough in science or anything would ever come  
26 forward if that's the intent. So, yeah.

27 Q Is it fair to say that that was not something that

1           you were prepared to do is stop making those claims  
2           regardless of Health Canada's views?

3           A     We felt that we had the right to tell the truth.

4           Q     Fair enough.  What percentage of your sales in 2004,  
5           for example, were of the new product you have an NPN  
6           for as opposed to EMPowerplus?

7           A     In 2004?

8           Q     Yes.

9           A     None.  We didn't get our NPN --

10          Q     In sometime in 2004.  Correct?

11          A     Mm-mm.  I can't remember exactly when we got that  
12          but we haven't sold the new NPN product at all.  No.

13          Q     Okay.  And have you ever applied for an NPN for  
14          EMPowerplus?

15          A     We applied for an NPN on TRO-EMP (phonetic) which is  
16          was an identical formulation to EMPowerplus.  
17          Identical.

18          Q     Did you get the NPN?

19          A     As you pointed out, they haven't given us boron yet  
20          for whatever reason I don't know.  Nor do those  
21          (INDISCERNIBLE) around that world that we've  
22          contacted, they don't know either.  And neither does  
23          the Natural Health Products know.  We were told that  
24          we would get it within a couple of weeks after we  
25          applied for it and that hasn't happened and it's  
26          been months and months and months and they're still  
27          deliberating on why -- I mean on whether they're

1 going to give it to us or not. Why that is so I  
2 don't know 'cause there's clear evidence in the  
3 literature that boron is incredibly valuable to  
4 humans. For instance, one important study shows  
5 that you get a reduction of 64 percent in the  
6 possibility of getting prostate cancer by  
7 supplementing with boron. That is of huge value to  
8 humanity but obviously somebody in TPD feels that  
9 that's not a worthwhile benefit to society.

10 Q Now you'll agree with me, Mr. Hardy, that during  
11 your testimony today and throughout the literature  
12 you produced around EMPOWERplus and the talks you've  
13 given about EMPOWERplus, you have often referred to  
14 this as a medical breakthrough. You have talked  
15 about the science that has been conducted with  
16 respect to your product. Do you recall that?

17 A We refer to it as a breakthrough. I believe it is.

18 Q All right.

19 A And I believe that there's evidence to support that.

20 Q And you will agree with me that you have often  
21 referred to Dr. Popper's clinical trial, if I can  
22 call it that, as part of the support for your  
23 position. Do you agree with me?

24 A His experience in his own clinic -- he didn't run a  
25 clinical trial. I think he made that clear in his  
26 testimony. But his experience in his own clinical  
27 practice that he published in a peer review journal

1 is public domain and, yeah, we referred to that.  
2 Absolutely.

3 Q Now you'll agree when Dr. Popper testified that he  
4 said as part of that published journal, much more  
5 research is required --

6 A Sure. I agree. I whole --

7 Q -- for both the safety and the efficacy of the  
8 product. Do you recall that?

9 A Yes. I recall.

10 Q And you will recall from Dr. Popper that he does not  
11 recommend this treatment to anybody. Correct? Do  
12 you recall that?

13 A In the way that he described it? Yes. Obviously  
14 they are his patients that are using it so he allows  
15 it to go forward.

16 Q Sure. In fact his words were, I don't recommend  
17 this product to anybody. Do you recall that?

18 A He also described to you how much inherently safer  
19 the product is than the medications that he  
20 prescribes routinely. And he also described how  
21 efficacious it's been on the people that have tried  
22 it. That it seems to assist him in managing his  
23 patients in a much better way and that, to me,  
24 spells that there's huge advantage to society in  
25 investigating that.

26 He has to be -- he has to be very, very, very  
27 cautious in his position and from his university in

1           what he states about safety and efficacy. The  
2           typical way of testing these products is what TPD  
3           was demanding. And we're just saying that there is  
4           another way of looking at the safety of these  
5           products.

6                     And I submit to you that that is -- that the  
7           safety of these products has been well established  
8           by their long term use. You don't get a better  
9           safety indication than a hundred years of safe use  
10          of a product. It didn't happen in Vioxx. It only  
11          lasted on the market 3 or 4 years before they had to  
12          take it off in spite of the clinical studies.

13                    So it's my belief that long term use is the  
14          best indication of safety and no further clinical  
15          trials are going to really extend that proof  
16          anything beyond what has already been shown.

17          Q        This is your personal belief?

18          A        That's my personal belief.

19          Q        Okay. Have you ever had anybody in authority ever  
20          tell you that if you stopped selling this product,  
21          you would be at risk of a criminal offence?

22          A        If we stopped selling it that we would be at risk of  
23          criminal offence?

24          Q        That's right. Again, it's a pretty simple question  
25          as long as you can recall Yes or No. Did anybody  
26          ever say that to you?

27          A        Well, we looked at that in preparing --

1 Q It's a simple question. It's a very simple  
2 question.

3 A Some simple questions can't be answered and tell the  
4 truth by just a simple Yes or No.

5 Q Well, all I want to know is, Did anybody in  
6 authority ever say you will face criminal charges --

7 A No.

8 Q Okay. Thank you.

9 Now you eventually set up a US mercantile  
10 account. That was in 2004, I believe.

11 A That's right. We set it up after Minister Pettigrew  
12 was approached and his deal was brokered and they  
13 set up a series of complex requirements for ordering  
14 the product and that required setting up a merchant  
15 account in the US.

16 Q All right. And you understood --

17 A That wasn't our merchant account, by the way. That  
18 was someone else's merchant account.

19 Q All right. But you understood that the reason that  
20 the account was set up was so that it would be  
21 certain that the sales occurred in the United  
22 States.

23 A That's true.

24 Q If you had done that in 2002, it would have been the  
25 same. It would have been certain that the sales  
26 were occurring in the United States, not in Canada.  
27 Right?

1 A I suppose. Until we -- until we left Evince, the  
2 sales were being made in the US. And, you know, it  
3 was Evince's merchant account. They had collected  
4 the money. They sold the product. We received  
5 something back from that. And so until we left  
6 Evince, we didn't have a necessity or an intention  
7 to set up such an account.

8 Q Right.

9 MR. BROWN: Sir, if I might just have one  
10 moment to look through my notes. I think I may be  
11 done.

12 Q MR. BROWN: Sir, those are my questions.

13 A Okay.

14 THE COURT: Anything arising, Mr. Buckley?

15 MR. BUCKLEY: Yes, there are two areas that  
16 I want to canvas.

17 THE COURT: These are arising out of  
18 matters raised in cross-examination for the first  
19 time?

20 MR. BUCKLEY: I am not sure that they are  
21 so perhaps I'll explain where I want to go.

22

23 \*Mr. Buckley Re-examines the Witness

24

25 Q MR. BUCKLEY: So, Mr. Hardy, please  
26 understand that you can't answer any questions  
27 unless the judge said that you can.

1 THE COURT: I will go one step further  
2 than that. Perhaps he can leave the courtroom while  
3 we discuss this.

4 MR. BUCKLEY: Sure. Sure.

5 THE COURT: Please wait in the hallway.  
6 We will call you in just a moment, sir.

7 (WITNESS STANDS DOWN)

8 THE COURT: Okay.

9 MR. BUCKLEY: Your Honour, obviously when we  
10 get to ask the court to determine what to do on this  
11 necessity defence, the available legal options are  
12 going to be very important. And I'm concerned that  
13 Mr. Hardy did not understand where my friend was  
14 going with a couple of questions.

15 And the first centred around the website. And  
16 I think it's the way the -- and my friend wasn't  
17 trying to be misleading but I know from speaking  
18 with Mr. Hardy that I was surprised by some of the  
19 answers.

20 The way the questions were asked left me with  
21 the impression that it was being suggested to him  
22 that there's just no way you guys would have made  
23 changes to the website if Health Canada recommended  
24 there be changes. And Mr. Hardy got off on this  
25 Section 3 (sic) rant. And I just think that he did  
26 not appreciate actually where the questioning was --  
27 what my friend was getting at.

1           I think my friend's going to stand up tomorrow  
2           and say, These guys would have refused to make  
3           changes to the website, as if that would have solved  
4           the problem as a legal option.

5           So I'm just concerned that perhaps he did not  
6           understand --

7           THE COURT:                   Mr. Hardy's evidence was that  
8           they made some changes to the website.

9           MR. BUCKLEY:                   Right. Okay.

10           The second that I'm concerned --

11           THE COURT:                   I do not know if that resolves  
12           your concern but --

13           MR. BUCKLEY:                   Mm-mm. I'm just left by the  
14           cross-examination with the feeling that he was  
15           communicating to the court, No, we wouldn't have  
16           made changes if they said, Make these changes. So  
17           --

18           THE COURT:                   That is a different question.

19           MR. BUCKLEY:                   Yes, it is.

20           THE COURT:                   If Health Canada said, Make  
21           these changes, and they did not make the changes --

22           MR. BUCKLEY:                   Yes, it is a different  
23           question. But I just -- as I am writing notes,  
24           sometimes you go, Oh, is that leaving the wrong  
25           impression? So I just wanted to clarify that. It  
26           may not be proper for re-direct.

27           THE COURT:                   Is that one of the questions

1           you want to ask?

2       MR. BUCKLEY:                   Yes, it is.

3       THE COURT:                    If Health Canada made these  
4           suggestions or directed that these changes be made,  
5           would you have made the changes? Is that the  
6           question you want to ask?

7       MR. BUCKLEY:                   That wasn't exactly the  
8           question I was thinking. I was just trying to -- I  
9           was hoping to kind of re-direct him but perhaps I  
10          will just leave that alone and go to the next point.

11                 So the next thing that concerns me is with this  
12          mercantile account. And what concerns me is this,  
13          is that this last line of questioning seemed to  
14          suggest, Okay, set up in '04. If you had set it up  
15          in '02, then basically the sales would have been in  
16          the US.

17                 The problem that I have with that line of  
18          questioning is that it is okay if the Minister of  
19          Health, as part of an agreement, says, Let's play  
20          this game where you set up an agency in the US but  
21          the money comes funnelling back to you. But if  
22          you're not -- if the Minister felt that Health  
23          Canada doesn't know that you're doing that, then  
24          really you're being fraudulent to try and get around  
25          the regulations.

26                 So -- but perhaps it's not necessary for me to  
27          go there. I mean he -- the questions that my friend

1           asked was basically, Did you understand that the  
2           reason -- Anyway, that was my concern. Perhaps I  
3           don't have to go about it. I can just deal with it  
4           in submissions.

5       THE COURT:                   What do you want to do with  
6           this second concern or area of concern that you have  
7           with regards to the mercantile account?

8       MR. BUCKLEY:               Well, I --

9       THE COURT:                   The implication is that if  
10          that had been set up in 2002, then sales could have  
11          been done through the US and everything was fine --  
12          would have been fine. Are you concerned about that  
13          implication?

14      MR. BUCKLEY:               Well, I mean for that to occur  
15          without telling the Minister of Health or Health  
16          Canada, the problem that I have is that really would  
17          be fraudulent, would it not? Do you know what I  
18          mean? Like --

19      THE COURT:                   You are the one that brought  
20          the word "fraudulent" up. It would be fraudulently  
21          trying to get around the regulations.

22      MR. BUCKLEY:               Right.

23      THE COURT:                   That was not a suggestion made  
24          by the Crown.

25      MR. BUCKLEY:               No, it wasn't. It wasn't.  
26          And that's why I'm saying the way it was left, I'm  
27          having a concern that that's basically what was

1 being suggested to the witness. If you're selling  
2 in Canada, I mean the evidence has been clear.  
3 These orders are taken through the Truehope program  
4 which is located in Alberta. That's the problem  
5 from Health Canada's perspective. If you have to  
6 take -- if you have to clear this program in Alberta  
7 to access the product you're selling, that's the  
8 Crown's case.

9 And how this was eventually settled is very,  
10 very unusual because certainly if you have a company  
11 in Alberta that is controlling everything and they  
12 set up a fake front in -- fake might be the wrong  
13 word -- but you set up an agency to take orders but  
14 you've got absolute control, does that mean you're  
15 not selling in Canada?

16 THE COURT: Does that not mean you are  
17 doing indirectly what you would be prevented from  
18 doing directly?

19 MR. BUCKLEY: Well, exactly. You see, you  
20 kind of try to skirt around the regulatory  
21 requirements if you're just -- if you're doing that  
22 without telling the regulatory bodies. It's very  
23 different if the Minister of Health says, Okay, to  
24 settle this, let's do it this way, because then  
25 you're not doing anything behind anyone's back.

26 Under the agreement that exists today, it's not  
27 like Health Canada could come up to them and say,

1           You know, really, you guys are just trying to trick  
2           us here by making it appear that you're not selling  
3           in Alberta anymore because you've set up this front.

4           Do you understand where I'm going? If they did  
5           this without Health Canada's knowledge I think it  
6           would be a colourful attempt to skirt the  
7           regulations. When you do it with the Minister's  
8           knowledge, it's just a part of an agreement. It's  
9           not like they could turn around and say, Well,  
10          you're kind of being tricky here to skirt the ranks.

11          So when my friend is saying, Well, you could  
12          have done this in '02, set up, you know, an agent in  
13          the US, I'm concerned that Mr. Hardy doesn't  
14          appreciate that it's being suggested to him, Well,  
15          do that without the Minister of Health and Health  
16          Canada knowing.

17        THE COURT:                       Well, you are anticipating the  
18          argument --

19        MR. BUCKLEY:                    That's all I'm doing.  
20          Exactly. Exactly.

21        THE COURT:                       -- because the question is  
22          that.

23        MR. BUCKLEY:                    And it may not be proper for  
24          re-direct and that's why we've had this discussion.  
25          It definitely isn't something that was raised on  
26          cross-examination for the first time.

27        THE COURT:                       Well, I take it, Mr. Buckley,

1           that as far as the first area of concern you  
2           mentioned with regards to whether or not they would  
3           have made changes to the website if directed by  
4           Health Canada, I take it you have decided you do not  
5           want to go there with that question.

6   MR. BUCKLEY:                            yes.

7   THE COURT:                            All right. With regards to  
8           the second question, and that is the setting up of  
9           the mercantile account. The question that was asked  
10          by the Crown was, Could it have been done in 2002?  
11          And Mr. Hardy answered, Yes. And he went on to talk  
12          about this was being done (INDISCERNIBLE) and so on.

13                 I do believe that that opens a door for you. I  
14          do not believe that the issue of when -- the  
15          question of when the mercantile account could have  
16          been set up was something that was raised in the  
17          examination-in-chief as something that comes out of  
18          cross-examination. So if you want to cross-examine  
19          further on it, I will certainly permit you to do so.

20   MR. BUCKLEY:                            Thank you, Your Honour.

21   THE COURT:                            Now do you --

22   MR. BROWN:                            (INDISCERNIBLE)

23   THE COURT:                            Do you want to do that now or  
24          do you want to take a 10-minute break and then you  
25          can do it?

26   MR. BUCKLEY:                            I'm in the court's hands. We  
27          could definitely take a break.

1 THE COURT: Well, I think I will take the  
2 adjournment now so you can make it clear in your own  
3 mind exactly what questions you want to ask him and  
4 then we will proceed with it after that. I, as  
5 well, may have some questions when you are finished.

6 All right. Madam Clerk, I will see you  
7 (INDISCERNIBLE).

8 THE COURT CLERK: Order in court. All rise.  
9 Court stands adjourned for a brief period of time.

10 THE COURT: Thank you.  
11 (ADJOURNMENT)

12 THE COURT CLERK: Recalling Synergy Group of  
13 Canada and TrueHope Nutritional Support.

14 MR. BROWN: Your Honour, I've decided not  
15 to ask Mr. Hardy any further questions.

16 THE COURT: All right. We will see Mr.  
17 Hardy back here in any event because I may have some  
18 questions for him. Over here, Mr. Hardy, please.

19

20 \*The Court Questions the Witness

21

22 Q THE COURT: I have a few questions, just  
23 for clarification, arising out of the examination-  
24 in-chief and cross-examination.

25 The Crown was attempting to establish some  
26 chronological sequence of events and I was not clear  
27 on one point when he was attempting to do that.

1           When did you leave Evince? What year?

2       A     That was October of 2002, I believe. Is that right,  
3           Tony?

4       THE COURT:                   No.

5       A     I'm sorry.

6       THE COURT:                   You cannot do that. You  
7           cannot do that.

8       MR. STEPHAN:                 I can't help you.

9       THE COURT:                   That is your answer, you are  
10           stuck with it. Although your counsel can always ask  
11           for further redirect after I finish with my  
12           questions. So there is a way.

13      A     There's -- there's a lot of dates in there, so ...

14      THE COURT:                   There is a way -- there is a  
15           way for that to be dealt with --

16      A     Okay.

17      THE COURT:                   -- if necessary.

18      Q     THE COURT:             And did I understand your  
19           answer correctly, when you were asked in the cross-  
20           examination that there have been no sales of the new  
21           product that has the NPN?

22      A     That's true. We're -- we're still operating under  
23           the Personal Use Enforcement Directive on the other  
24           product.

25      Q     On the original EMPowerplus product?

26      A     That -- that's right. We --

27      Q     That is fine. You do not have to go any further

1 than that.

2 A I don't have to go any further?

3 Q No.

4 A Yeah, we're awaiting boron, yeah.

5 Q I understood that.

6 A Yeah.

7 Q What did you refer to it as? As the Ministerial  
8 directive or something, Ministerial directive?

9 A Ministerial exemption.

10 Q Exemption?

11 A Yeah. And Dale Anderson made us aware of that and  
12 felt that that would be the most appropriate thing  
13 for us to seek in our case and that's, you know,  
14 that, that simple initiative that could have been  
15 taken by Health Canada always seemed like it was --

16 Q Well, is what --

17 A -- just can't promise.

18 Q -- oh, I am not going to go there.

19 A Okay.

20 Q Your answer is good enough, sir. I do not want you  
21 giving me --

22 A An expose on it, okay.

23 Q I do not want you giving me too long an answer in  
24 case you get into some area that I really do not  
25 want to hear about.

26 A Okay.

27 Q All right? No, I just wanted to know about when you

1 left Evince and what happened to the product with  
2 the new NP on it. I just wanted to make sure that I  
3 understood correctly that that was not being sold,  
4 and EMPowerplus was still being sold under what you  
5 are describing as a Ministerial exemption.

6 A That's -- that's true.

7 Q Okay.

8 A Well, it -- that was -- well, I mean, I don't know  
9 that he gave us really a Ministerial exemption, but  
10 it was -- I don't know that it was a formal  
11 Ministerial exemption, but it was certainly a deal  
12 struck -- approved by the Minister as a way forward  
13 from where we were.

14 Q All right, that is fine.

15 A Okay.

16 Q Okay, and now if I understand the Mercantile account  
17 correctly then, phone calls ordering the products  
18 are now made to the United States, is that correct?

19 A That's still true.

20 Q Yes, but the support system through TrueHope is  
21 still operating out of a call centre here in Canada?

22 A In Raymond, that's correct.

23 Q All right. That is fine.

24 THE COURT: I do not have any further  
25 questions, and I will ask first, Mr. Buckley, if you  
26 have anything arising out of my questions?

27 MR. BUCKLEY: No, because I think the only

1           thing that jumps to mind is about the supporting  
2           coming in Raymond. I think both Mr. Stephan and Mr.  
3           Hardy has made it clear that you still have to clear  
4           the program. So I don't think I need to clarify  
5           that.

6       A     Can -- can I make a comment?

7       THE COURT:                   Well, just a moment.

8       A     Okay, sorry.

9       THE COURT:                   It has long been a practice  
10           when talking to a witness is to say to answer your  
11           questions briefly. And that is why I keep saying, I  
12           do not want you to go any further.

13           I will get you in just a minute, Mr. Brown.

14       MR. BROWN:                   Thank you, sir.

15       THE COURT:                   Mr. Brown, do you have  
16           anything arising out of my questions?

17       MR. BROWN:                   I don't, sir, thank you.

18       THE COURT:                   Thank you, Mr. Hardy. You can  
19           leave the witness stand and you can take a seat.

20       A     Thank you.

21       THE COURT:                   You are welcome. Thank you.

22       (WITNESS STANDS DOWN)

23       THE COURT:                   Mr. Buckley, do you have any  
24           further witnesses?

25       MR. BUCKLEY:                  And I do not have further  
26           witnesses, although I am going to be seeking to  
27           enter some documentary evidence before I close my

1 case.

2 THE COURT: Is Mr. Brown aware of this?

3 MR. BUCKLEY: I don't believe so.

4 MR. BROWN: No, I -- as far as I know, I  
5 am not, sir. I haven't had any information to that  
6 effect, sir. I'll be interested to see what it  
7 looks like.

8 MR. BUCKLEY: It's stuff that was in the  
9 Crown file, except that it's -- I obtained certified  
10 copies. So I'll indicate to you what it is and then  
11 we can argue about whether it is or isn't  
12 admissible. And I also have some case law I could  
13 provide on that point. So the information won't be  
14 new to the Crown because I first found it in the  
15 Crown disclosure, the brief.

16 But basically, it's trademark materials and  
17 I've just obtained a certified copy from the Office  
18 of Intellectual Property of both the trademark and  
19 of the trademark file. Because under the Trademark  
20 Act, the Registrar is obligated to provide certified  
21 copies.

22 MR. BROWN: Well, sir, I would like to  
23 hear my friend's position with respect to his  
24 ability to have these documents entered. I can say  
25 I have two issues with respect to them. One is that  
26 with certified copies, normally the other party gets  
27 notice. Whether I'm aware of them or not is not the

1 issue. I should have received notice that my friend  
2 intended to rely on certified copies. Secondly, I  
3 don't understand why these documents would not have  
4 been entered through a witness. He had Mr. Hardy  
5 and Mr. Stephan both on the stand and certainly  
6 could have entered these documents through either of  
7 those witnesses and then had -- I would have the  
8 opportunity to cross-examine those witnesses on  
9 whatever my friend hopes to make of that.

10 So those are the two points that I would make.  
11 My friend may have some position to enlighten us  
12 with.

13 MR. BUCKLEY: And, actually, because neither  
14 Mr. Hardy or Mr. Stephan filed any of these  
15 documents, that it was all done by lawyers, I'm not  
16 sure that I could enter them through those  
17 witnesses, as far as that goes. And I did bring out  
18 with Mr. Hardy, actually, the history of kind of the  
19 trademark, with Evince starting it.

20 In fact, as far as the trademark file goes, I'm  
21 just doing that for a complete record because  
22 trademarks are deemed to have started from the date  
23 that they're filed.

24 And so if I just file the certified copy of the  
25 trademark, which shows a filing date, it leaves an  
26 erroneous impression that TrueHope Institute had it  
27 at that date. Because it was filed in 2001, and

1 TrueHope Institute did not have the trademark in  
2 2001. It obtained it at a later date.

3 And so it seemed to me that it was prudent to  
4 have a certified copy of the entire file so that it  
5 was clear that it started with Evince and then was  
6 transferred to TrueHope Institute.

7 As far as the --

8 THE COURT: Is that what is contained in  
9 this file?

10 MR. BUCKLEY: Yeah. What it is is it -- is  
11 the first thing is just a certified copy of the  
12 trademark. That's the three-page document. And  
13 then the other one is just a certified copy of --

14 THE COURT: Right, showing that it was  
15 filed on the 16th of May, 2001, and registered on  
16 the 25th of November, 2004.

17 MR. BUCKLEY: Right.

18 THE COURT: All right.

19 MR. BUCKLEY: Right. But the -- do you see  
20 what I'm saying? When it -- it's showing the  
21 registration date. The way the trademark law works  
22 is, is you're deemed to have a trademark under the  
23 Act from the date that it's filed. Under the common  
24 law, you have the right to it as soon as you start  
25 using it in the marketplace. But if I just filed  
26 the trademark material, then it looks TrueHope  
27 Institute had this trademark back to 2001, and so I

1 think that it's more appropriate for the Court to  
2 have the whole file, which basically has everyone's  
3 filings, has the trademark history.

4 THE COURT: With this --

5 MR. BUCKLEY: Yes.

6 THE COURT: -- assuming that it is  
7 admissible as a certified copy, it shows that the  
8 trademark is filed the 16th of May, 2001. So it is  
9 a legal argument that it is effective from that date  
10 on. What is your concern with the intervening  
11 process?

12 MR. BUCKLEY: Well, and it may not be. I  
13 just don't want the Court to be misled into  
14 thinking that because somebody, Evince  
15 International, held the trademark prior to TrueHope  
16 Institute.

17 THE COURT: Prior to 2001?

18 MR. BUCKLEY: No, starting in 2001.

19 THE COURT: All right. So they filed in  
20 both Canada and the United States at the same time?

21 MR. BUCKLEY: I can't say what they did for  
22 the United States because I haven't searched those  
23 records and they weren't provided to me in the Crown  
24 brief.

25 THE COURT: But Evince filed -- it may be  
26 a different filing, is that what you are telling me?

27 MR. BUCKLEY: Yes.

1 THE COURT: All right.

2 MR. BUCKLEY: Yes. Which shows up in the  
3 second document. So ...

4 THE COURT: Well, from this documentation,  
5 it appears that this was signed sometime in 2002,  
6 July, 2002.

7 MR. BUCKLEY: Yes.

8 THE COURT: All right, Mr. Brown has made  
9 two objections. First of all, that he has received  
10 no notice that you were going to intend to put these  
11 documents into evidence as certified copies and  
12 without them being tested by cross-examination, and  
13 in fact, that is his second objection. If they were  
14 entered through a witness, then he could cross-  
15 examine on them. But you have a witness that you  
16 could recall who could provide information with  
17 regards to this documentation, so that -- so that  
18 the concern of all of this information going in --  
19 and I might point out that this file from the  
20 trademark office, the Canadian Electoral Property  
21 Office, is, you know, a half an inch thick or more.  
22 So do you have a witness that you could put it to?

23 MR. BUCKLEY: Your Honour, could I provide  
24 you some case law? Because there's case law on  
25 people -- or the right that parties have to enter  
26 public documents, which it basically follows and  
27 mirrors the laws that relates to entering court

1 documents. And usually when we're in this  
2 situation, it's actually a Crown wanting to enter  
3 evidence. And it comes up in the context of the  
4 Canadian Evidence Act, because there's some  
5 provisions under the Canadian Evidence Act of just  
6 admitting it without a witness if you give notice or  
7 if you fit under some of the criteria of the Canada  
8 Evidence Act.

9 And the first case I wanted to refer to is R. v  
10 C.(W.B.). It's a 2000 case of the Ontario Court of  
11 Appeal found at 142 C.C.C (3D) 490. It was affirmed  
12 very briefly by the Supreme Court of Canada found at  
13 2001 SCJ 16. And basically what happened is this.

14 There was a sexual assault trial and the Crown  
15 sought to enter as evidence a similar-fact evidence  
16 of an assault on somebody else, a third party to the  
17 proceedings. And the accused in that case had  
18 previously plead guilty to that other similar-fact  
19 sexual assault. And the Crown was basically trying  
20 to enter the transcript of that sentencing  
21 proceedings, as similar-fact evidence, and the trial  
22 judge held that was not admissible under the Canada  
23 Evidence Act.

24 And so on appeal to the Ontario Court of Appeal  
25 dealing with the issue, Well, is this transcript of  
26 a prior court proceeding admissible, I wanted to  
27 refer the Court to sections of that discussion

1 starting at paragraph 29. And this is Justice  
2 Weiler. You see there's a heading halfway down the  
3 page before paragraph 29, Admissibility of the 1991  
4 transcript at common law. And paragraph 29 reads:

5  
6 Section 36 of the CEA provides that  
7 Part I, which includes ss. 23 and 28,  
8 is in addition to, and not in  
9 derogation of, any powers to prove  
10 documents "existing at law". This  
11 includes the power to prove documents  
12 at common law.

13  
14 And refers to the other case that I've given you to  
15 R. v. Tatomir, And that paragraph ends after the  
16 citations.

17  
18 Thus the CEA is not an exclusive code  
19 with respect to proof of documents.

20  
21 It goes on in paragraph 30,

22  
23 Before us, the Crown maintained that  
24 the transcript was admissible at  
25 common law on two bases. The first is  
26 under the Khan exception to the  
27 hearsay rule which requires that the

1 necessity and reliability of the  
2 proposed evidence be established. The  
3 second is that the transcript is a  
4 public document at common law. I  
5 prefer to call the transcript a  
6 record of a judicial proceeding. The  
7 criteria for admissibility at common  
8 law of a public document and a  
9 judicial proceeding are the same and  
10 legal writers, such as Wigmore, make  
11 no distinction between them.

12  
13 I'm not going to read the rest of that paragraph,  
14 but where I've highlighted at the bottom of the page  
15 is actually a quote by Laskin in R. v. P.(A.), where  
16 he says, by Weiler, J.A.:

17  
18 This exception --

19  
20 And they're referring to this public document  
21 perception.

22  
23 -- is 'founded upon the belief that  
24 public officers will perform their  
25 tasks properly, carefully, and  
26 honestly.' Sopinka et al, The Law of  
27 Evidence in Canada.

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Public documents are admissible without proof because of their inherent reliability or trustworthiness and because of the inconvenience of requiring public officials to be present in court to prove them.

Paragraph 31 continues:

The inconvenience of requiring a public official to attend in court to prove a public document or of requiring a court reporter to prove a prior judicial proceeding makes it necessary to admit the document or transcript.

Now, I'm just going to stop there because the law as it relates to the admissibility of public documents and the hearsay exception in *R. v Khan*, both follow the tests of necessity and reliability. And I'm just stopping there because we have the Ontario Court of Appeal actually a standard for necessity, which is a lot lower than we would expect in a *R. v Khan* type of situation. Then versus *Khan*, if the

1 evidence is otherwise admissible, you bring the  
2 witness in, you don't rely on a statement.

3 But the Ontario Court of Appeal is seen in  
4 paragraph 31 that as far as necessity goes, it's  
5 basically just the inconvenience of having to call  
6 the public official into court that satisfies that  
7 test or that branch of the test. And so the real  
8 question then becomes the reliability, and that is  
9 dealt with in paragraph 32. And so turning to  
10 reliability, paragraph 32 it holds:

11  
12 In *R. v. P. (A.)*, *supra*, at 390,  
13 Laskin J.A. articulated four criteria  
14 for the admissibility of a public  
15 document or, in this case, a judicial  
16 record. These criteria which all  
17 relate to the reliability of the  
18 record are:

- 19 (i) the document must have been made  
20 by a public official, that is a  
21 person on whom a duty has been  
22 imposed by the public;  
23 (ii) the public official must have  
24 made the document in the discharge of  
25 a public duty or function;  
26 (iii) the document must have been  
27 made with the intention that it serve

1 as a permanent record, and  
2 (iv) the document must be available  
3 for public inspection.  
4

5 Although later on in paragraph 36, the court calls  
6 into question whether or not it's still necessary  
7 for there to be a public inspection requirement.

8 I'm just looking for my copy of the Act,  
9 because under the Trademark Act, actually, the file  
10 is open for public inspection.

11 So I'm basically seeking to admit it as a  
12 public document under just common law principles for  
13 proving that. As I say, usually this is done by the  
14 Crown trying to get documents in, in a prosecution,  
15 not by the defence, but the law is the same for  
16 both.

17 And so the proper person or witness to get this  
18 through would be for me to call the Registrar of the  
19 Intellectual Properties Office and have that person  
20 basically say that this is a true copy of those  
21 documents. Instead of doing that, for public  
22 documents, the case law allows us to enter them if  
23 we meet the test of reliability and necessity.

24 THE COURT: Well, that is fine, but why  
25 did you not give notice to Mr. Brown for the Crown  
26 if you want to do this? We had discussions during  
27 case management meetings that there would be no

1           surprises and if there were, they could be subject  
2           to adjournment.

3                   And the second question I have is, What is the  
4           relevance?

5       MR. BUCKLEY:                   The relevance to this is --  
6           and it's an argument that I am hoping to make in  
7           submissions, although it's not my strongest  
8           submission -- is if you look at the charging  
9           section, it actually doesn't refer to a person, it  
10          refers to manufacturer. Okay. So one of the  
11          elements to this offence --

12       THE COURT:                    Just a moment, let me catch up  
13          to you. What were you looking at?

14       MR. BUCKLEY:                   Okay, that is C.01.014.

15       THE COURT:                    I do not know if I have it.  
16          Just give me a moment.

17       MR. BUCKLEY:                   I will be providing the Court  
18          tomorrow with a copy of the reg's. I didn't bring  
19          them but I can pass mine up.

20       THE COURT:                    All right, pass yours up.

21       MR. BUCKLEY:                   Yeah, I'll just get you the  
22          page. So this is the regulation that we're dealing.  
23          And though the count isn't articulated that way, so  
24          it's C.01.014, it's about a third of the way down  
25          the page, subsection (1), where it says:

26

27                   No manufacturer shall sell a drug in

1 dosage form unless a drug  
2 identification number has been  
3 assigned for that drug and the  
4 assignment and the number has not  
5 been cancelled pursuant to  
6 C.01.014.6.

7

8 So the charging section only applies to  
9 manufacturers, so it's actually an element of the  
10 offence for the Crown to prove that these two  
11 accused were the manufacturer.

12 Now, where this gets tricky is, is that  
13 manufacturers, for the purpose of these regulations,  
14 isn't what we think it is. Okay, because when we  
15 hear the word manufacturer, we think that's the  
16 person that makes it.

17 But manufacture is actually a defined term in  
18 the regulations.

19 THE COURT: Yes, go ahead.

20 MR. BUCKLEY: You have to flip -- we're in  
21 the (c) part of the regulations. At the (a) part of  
22 the regulations, which would just be an earlier tab,  
23 there'll be some regulations that start (a). And if  
24 necessary, I can find those for you, but ...

25 THE COURT: Yes.

26 MR. BUCKLEY: Okay. So if you look at  
27 A.01.010, and that's basically the part of the

1 regulations that sets out definitions that apply  
2 throughout the regulations. And the definition of  
3 manufacturer there actually refers to the party that  
4 controls the brand name or trademark. It lists them  
5 by their things. And there's some good policy  
6 reasons for this. So it applies to the  
7 manufacturer. Manufacturer is a defined term, which  
8 has direct bearing on what the party is that has the  
9 trademark.

10 Now, that's why it's relevant.

11 THE COURT: I am not conceding to the  
12 argument, but I will --

13 MR. BUCKLEY: Okay.

14 THE COURT: -- I will --

15 MR. BUCKLEY: Well, yeah, that's --

16 THE COURT: -- I will recognize the  
17 relevance of the evidence on that basis. All right.

18 MR. BUCKLEY: So, and the concern from the  
19 defence perspective is, is I don't -- I don't feel  
20 any obligation, as a defence counsel, to have the  
21 Crown fill in elements to the Crown's case. And I  
22 don't think that's an unfair approach for me to  
23 take. So I'm not to educate the Crown as to the  
24 elements of the Crown's offence prior to the close  
25 of the Crown's case.

26 THE COURT: All right. I will hear from  
27 Mr. Brown.

1 MR. BROWN: Thank you, sir. There are a  
2 couple of issues I take with respect to this matter.  
3 You noted yourself, sir, that this matter has been  
4 subject to pretrial conferences and my friend did  
5 not necessarily need to put me on notice as to why  
6 he wanted to enter this document. He didn't need to  
7 go through the whole spiel in terms of what his  
8 argument might be, but he still could have given us  
9 notice that he intended to have this document  
10 entered by way of not -- not by way of witness, but  
11 by way of simply having it put into evidence, as he  
12 is attempting to do now.

13 It's my submission that he certainly could have  
14 provided us notice. And it's also my submission  
15 that he could have also put this witness -- or  
16 rather, this document in through one of the  
17 witnesses.

18 I do not agree that the only person that can  
19 speak to this document is the public official. That  
20 would be an unusual position to take in the nature  
21 of this case, the way it's gone, and the number of  
22 documents that have been entered into this case  
23 throughout the trial. I would submit that all sorts  
24 of documents that might not normally be entered into  
25 evidence have found their way into evidence by way,  
26 either of agreement, or by way of argument. And I  
27 would submit that this particular document is no

1 different.

2 When my friend refers to the cases, it speaks  
3 of the necessity -- it's necessary to call or allow  
4 this document -- this type of document to be entered  
5 instead of calling a public official. That makes  
6 sense. However, when you've got a witness that can  
7 actually speak to the document, that doesn't make as  
8 much sense. Whatever necessity argument might have  
9 applied no longer applies.

10 I would submit that it would have been more  
11 appropriate for my friend to have attempted to enter  
12 this document by way of one of his witnesses and  
13 allowed a cross-examination on that basis.

14 Those are my submissions, sir.

15 THE COURT: Thank you.

16 Defence counsel seeks to admit the two sets of  
17 documents, one, a certified copy of a trademark  
18 registration and the other the certified copy of the  
19 supporting file. Both reports would be under the  
20 signature, original signature, of a certifying  
21 officer of the Canadian Intellectual Property  
22 Office.

23 Issue has been taken with the fact that no  
24 notice was provided to the Crown of this, nor --  
25 well, firstly, that no notice was given to the  
26 Crown, and secondly, that these documents should  
27 have been entered through a witness.

1           I questioned defence counsel on the relevancy  
2 of the documents. He satisfied me that they are  
3 relevant, and the next question is once you  
4 determine relevancy, you still have to look at  
5 issues of admissibility.

6           On the issue of admissibility, I am satisfied  
7 on the case law provided that although the Canada  
8 Evidence Act and other statutes, such as the  
9 Criminal Code, prescribe notice periods for  
10 documents, either court documents or public  
11 documents being put -- being put before them, there  
12 is -- there is clear case law in the Supreme Court  
13 of Canada and in -- and in the Alberta Court of  
14 Appeal that the common law exemptions still apply --  
15 or the common law rules still apply and that a court  
16 may exercise a discretion to determine whether or  
17 not -- and decide to allow those documents to be  
18 admitted into evidence in the circumstances.

19           I note that the courts have seen fit to make  
20 that finding in favour of the Crown in the Court of  
21 Appeal decision of R. v. Tatomir and it would apply  
22 equally to the defence.

23           So I am satisfied that as far as a lack of  
24 notice is concerned, that for the admissibility of  
25 these two sets of documents, that the common law  
26 does not require any notice, and I am prepared to  
27 allow them in the interest of the defence being

1 permitted to make full answer in defence, and also  
2 on the clear understanding that we have had  
3 throughout the case management conferences that Mr.  
4 Buckley, on behalf of the defence, is not required  
5 to fill in the Crown's case or to disclose, for that  
6 matter, where the defence was proceeding.

7 That deals with the notice aspect of the  
8 argument, and on that basis I would allow the  
9 documents to be admitted. I will, however, point  
10 out that it is one thing where you are dealing with  
11 a certificate with regards to the prohibition from  
12 driving or a certificate that says, Yes, this is the  
13 name of an individual who holds a particular right.  
14 It is another thing where there is a file provided  
15 which has numerous items of correspondence,  
16 applications, solicitors' correspondence, and so on,  
17 and it is put before the Court in such a manner that  
18 its truth cannot be -- the truth of the contents of  
19 any of that documentation cannot be tested through  
20 cross-examination.

21 So I will allow the documents, but that being  
22 said, I will find that they are admissible and they  
23 will be admissible only for the fact that, as far as  
24 the Trademark Office file is concerned, that those  
25 documents are communications that exist on the file  
26 and not for any other purpose because they cannot be  
27 tested for any other purpose.

1 MR. BUCKLEY: Right. Now, but would that  
2 apply to the trademark certification? Because  
3 there's really two sets of --

4 THE COURT: No, I said that applied to the  
5 file.

6 MR. BUCKLEY: Okay. Thank you, Your Honour.

7 MR. BROWN: Thank you, sir.

8 THE COURT: All right. So the next  
9 exhibit, the trademark certification, and I will  
10 accept it for the truth of the contents that are  
11 there in the normal course, and it will be the next  
12 exhibit, which would make it Exhibit 70.

13

14 \*EXHIBIT 70 - Trademark Certification

15

16 THE COURT: And then the -- what I have  
17 been referring to as the Trademark Office is now  
18 called the Canadian Intellectual Property Office,  
19 and the second certified copy, it is described as a  
20 certificate of authenticity, and it would appear to  
21 be a certified copy of the contents of the file in  
22 the Canadian Intellectual Property Office. In fact,  
23 it states that it is a true copy of file number  
24 1,103,282 relating to the application for  
25 registration of the trademark TrueHope & Design.  
26 And that is Exhibit 71.

27

There you are, Madam Clerk.

1

2

\*EXHIBIT 71 - Certificate of Authenticity re Canadian

3

\*Intellectual Property Office file 1,103,282 Relating to

4

\*the Application for Registration of the Trademark

5

\*TrueHope & Design

6

7

MR. BUCKLEY: Thank you, Your Honour.

8

THE COURT: Okay. I am returning this to

9

you, Mr. Buckley, please. Thank you.

10

MR. BUCKLEY: And I do have a -- I will

11

provide the Court with a copy of the regulations

12

tomorrow.

13

THE COURT: Fine. Thank you.

14

MR. BUCKLEY: I just didn't think that I

15

would be having to refer to them yet today. And,

16

Your Honour, that closes the defence case, with the

17

exception, I will be providing the Court also with a

18

copy of the Natural Health Products regulations,

19

which are gazetted. And I'm going to take the

20

position that under the Canada Evidence Act, the

21

Court has to take judicial notice of that entire

22

presented piece, which includes the regulatory

23

impact statements that are mandated by law. Like,

24

they have to gazette them, so -- and I don't expect

25

that there will be any fight over that.

26

MR. BROWN: I don't expect there will be,

27

but I guess you never know. Take a look at them

1 tomorrow, sir.

2 MR. BUCKLEY: Well, I can tell my friend why  
3 I'm saying that. It's just I had forgotten when Mr.  
4 Dales was on the stand (INDISCERNIBLE), when he was  
5 saying, like, 90 percent didn't have DIN's. Well,  
6 what does that mean? Like, are there ten products  
7 in the Canadian market? Are there 100? Like,  
8 depending on the number, kind of affects the weight  
9 of that evidence. And according to those -- the  
10 regulatory impact statement, I mean, they're  
11 basically citing a figure of 50,000 at the time. So  
12 I think it's important for the Court to appreciate  
13 the large numbers that were out there without DIN's,  
14 and I would have -- I would find it interesting of  
15 Her Majesty the Queen would say that her gazetted,  
16 you know, regulatory impact statement was incorrect  
17 and that the Court couldn't rely on that, so ...

18 THE COURT: Well, I disagree. Did you say  
19 it was required?

20 MR. BUCKLEY: It's required. When Mulroney  
21 was in, he passed laws which require regulatory  
22 impact statements to be part of the gazetting  
23 process in order to create better feedback of  
24 regulations. It was kind of part of this  
25 transparency thing. So you will note that just as  
26 of a certain date, all regulations go through this  
27 process now and that it's been that way for quite

1           some time.

2           MR. BROWN:                    Like I said, sir, I don't  
3           anticipate there's going to be an issue. I'll think  
4           about it overnight though.

5           THE COURT:                    We will deal --

6           MR. BUCKLEY:                  It's actually part of --

7           THE COURT:                    -- we will deal with it --

8           MR. BUCKLEY:                  Yeah. It's actually --

9           THE COURT:                    -- when it arises.

10          MR. BUCKLEY:                  -- part of the regulations.

11          But that's where I'm going, just so that my friend

12          --

13          THE COURT:                    Well, that is what --

14          MR. BUCKLEY:                  -- can't say --

15          THE COURT:                    -- I am trying to determine --

16          MR. BUCKLEY:                  Right.

17          THE COURT:                    -- if it is part of the  
18          regulations then, and if it is required by law, that  
19          is one thing.

20          MR. BUCKLEY:                  It's required by law, so ...

21          And --

22          THE COURT:                    Anything further, Mr. Buckley?

23          MR. BUCKLEY:                  -- with that caveat, that  
24          closes the defence case, Your Honour. So ...

25          THE COURT:                    All right. Thank you.

26                    Since the -- do you have anything at this  
27          point?

1 MR. BROWN: I have nothing else to say,  
2 sir, thank you.

3 THE COURT: No? I did not think you would  
4 at this point. Perhaps tomorrow you will have lots  
5 to say.

6 MR. BROWN: Yeah.

7 THE COURT: All right. Since the defence  
8 has chosen to call evidence, then the defence will  
9 be presenting argument first tomorrow. And if you  
10 have any materials with regards to that argument,  
11 please bring them with you and provide adequate  
12 copies tomorrow and we will deal with it. How long  
13 do you expect your submissions to be, Mr. Buckley,  
14 and Mr. Brown? Do you need a half a day each?

15 MR. BUCKLEY: I sure will. I for sure will  
16 need at least half a day. And I will try to keep it  
17 at half a day.

18 MR. BROWN: I will --

19 THE COURT: I am just trying to get a --

20 MR. BROWN: Yeah.

21 THE COURT: -- reasonable estimate of the  
22 time required.

23 MR. BROWN: I won't need more than two  
24 hours, max.

25 THE COURT: Well, that is the -- that is  
26 what an afternoon is.

27 MR. BROWN: Exactly.

1 THE COURT: All right.

2 MR. BROWN: I am certain that I will -- if  
3 I start at 2:00, I'm certain I'll be done by 4:00,  
4 sir.

5 THE COURT: All right.

6 MR. BUCKLEY: And I'm not certain if I start  
7 at 9:30, I'll be finished by 12:30, but by gosh,  
8 we'll try and focus.

9 THE COURT: No, that is fine. You take  
10 the time you need to put --

11 MR. BUCKLEY: Mm-hm.

12 THE COURT: -- your arguments in.

13 MR. BUCKLEY: I know my friend and I are --  
14 we'd both be very happy to be finished our part of  
15 the trial tomorrow. So if that's possible.

16 THE COURT: Well, subject to what I hear  
17 in your submissions tomorrow, if -- since my  
18 schedule has basically been set up to be reserved  
19 for this trial until the end of the week, it might  
20 be possible, depending upon the length of the  
21 submissions, it might be possible to give a decision  
22 sometime on Friday.

23 MR. BUCKLEY: Mm-hm.

24 THE COURT: If I had -- if I had a day or  
25 perhaps a day and a half to do the review of the --  
26 of the submissions that you make --

27 MR. BUCKLEY: Mm-hm.

1 THE COURT: -- and the evidence that you  
2 refer to. But, again, that is only in trying to  
3 stay within the time we have got and to take best  
4 advantage of it.

5 MR. BUCKLEY: Right.

6 THE COURT: Because I know that if we  
7 finish tomorrow, they will not be able to schedule  
8 me for anything else on Thursday, other than what  
9 they have already scheduled me for.

10 MR. BUCKLEY: Right, that about hour and a  
11 half of time, that's --

12 THE COURT: Yeah. So anyhow, I just  
13 mention that, and that is why I asking you the  
14 amount of time it will take. I want you to take the  
15 time that you feel that you require and if I  
16 determine that time constraints will not allow me to  
17 render a decision by sometime on Friday, then I  
18 would reserve the matter. But if it gets reserved,  
19 it will be reserved for two or three months because  
20 I have --

21 MR. BUCKLEY: Right.

22 THE COURT: -- other matters on reserve  
23 here right now that I am working on.

24 MR. BUCKLEY: And, Your Honour, I could take  
25 about 10 minutes this afternoon to kind of -- I --  
26 earlier in the trial I had provided some written  
27 submissions kind of on making sure that I could call

1           necessity evidence to point out that objectively we  
2           had to do that. I've modified it because there's  
3           kind of two points I want to make on the case law,  
4           which I could do this afternoon and then just march  
5           into the evidence tomorrow.

6       THE COURT:                    Is this with regards to the  
7           submission that you gave me earlier?

8       MR. BUCKLEY:                 Well, I've got -- I've  
9           modified them, so I would hand you different  
10          submissions, actually. Because points have changed.  
11          Because with the other submissions, concern was  
12          emphasizing that from an objective standpoint, we  
13          had an obligation to call evidence. And what I want  
14          to emphasize now, because I think on the necessity  
15          thing, the real fight is going to be on the second  
16          element.

17       THE COURT:                    So you wish me to disregard  
18          the -- other than what I have already read, the  
19          submission that you have here? And --

20       MR. BUCKLEY:                 Yeah, and relying on those  
21          cases, but this is --

22       THE COURT:                    All right.

23       MR. BUCKLEY:                 -- this is written submissions  
24          concerning the defence of necessity, which a lot of  
25          it is the same. Like, I don't need to go through  
26          rationale of the defence, I've set that out and it's  
27          identical to the first one I gave you. But I -- if

1           you could turn to that page 3 of that, Elements of  
2           the Defence of Necessity, and I don't think that  
3           there's going to be any disagreement between my  
4           friend and myself that these are the three elements.  
5           So, you know, the first one that is required -- a  
6           requirement of imminent peril or danger. Second,  
7           that there's can't be a reasonable legal  
8           alternative. And third, basically, proportionality.  
9           So you can't create more harm than you're trying to  
10          avoid and expect the Court to excuse that behaviour  
11          under the defence of necessity.

12                 As I say, I expect that my friend is going to  
13          focus on the second one, is there a reasonable legal  
14          alternative. And so I really wanted to make two  
15          points because first of all, when we're dealing with  
16          that, the Court has to appreciate that it's the  
17          modified objective test. See, the third test is  
18          just strictly objective. Like, I need to rely on  
19          people like Dr. Popper or actual observations to --  
20          you know, for us to be there. But the second test,  
21          it's a modified objective test, so when the Court is  
22          asking the question, Has the Crown proven beyond a  
23          reasonable doubt that this second element isn't  
24          made, it's through the eyes of the accuseds and  
25          their experiences, okay, so it's modified  
26          objectives. So it's people that have gone through  
27          their experience and are in their situation

1 objectively speaking with that in mind, what  
2 reasonable legal alternatives were there. It's not  
3 strictly objective. We don't just stand back and  
4 ignore the situation that they've been in and the  
5 history they're gone through when we're addressing  
6 that test.

7 THE COURT: And does that apply to all  
8 three elements or --

9 MR. BUCKLEY: No, only the first and second.

10 THE COURT: All right.

11 MR. BUCKLEY: The third, for policy reasons,  
12 has to be strictly objective because you can't --  
13 then an accused could subjectively think that he's  
14 causing less harm by breaking the law, than would  
15 have been avoided. And for policy reasons, the  
16 Court won't stand for that. For third, it's  
17 strictly objective, but for the first two, it's from  
18 the position of the accused. And so that's very  
19 important for the Court to appreciate is what test  
20 to apply to the different elements.

21 And then the second point that I wanted to make  
22 is actually a couple of pages over. It's part 4.  
23 And that's just to stress who holds the burden in  
24 this, because we've got to raise it as an  
25 evidentiary issue to make it a live issue. But once  
26 that's done, we're back into the regular criminal  
27 trial process, where the Crown bears the burden

1 beyond a reasonable doubt to disprove the defence of  
2 necessity. Now, I accept in doing that, the defence  
3 -- or the Crown just basically has to kill one of  
4 those three elements. But the burden is beyond a  
5 reasonable doubt. So the Crown --

6 THE COURT: And the only basis on you is  
7 an evidentiary burden to raise it?

8 MR. BUCKLEY: To raise it. And I cite there  
9 authorities for that from the Supreme Court of  
10 Canada. So, yes, I just have to raise it. And, in  
11 fact, burden would be the wrong -- kind of in that  
12 grey, misty area where the defence has to make it a  
13 live issue and courts argue about whether it's an  
14 onus or a burden. But we just have to make it a  
15 live issue.

16 So, for instance, if this was a jury trial, the  
17 question that we'd be arguing in the absence of the  
18 jury is, is, Well, have we called enough evidence or  
19 raised it through the Crown witnesses that this is  
20 actually a live issue that should go to the jury.  
21 That's what we have to do. So if we've called  
22 evidence to make this a live issue, the Crown bears  
23 the burden beyond a reasonable doubt to satisfy the  
24 Court that the accused were not acting out of  
25 necessity.

26 And as I say, if the Crown satisfied you beyond  
27 a reasonable doubt that any one of those three

1           prongs isn't there, it's done then. But --

2       THE COURT:                       So it is not unlike self-  
3           defence or raising an error --

4       MR. BUCKLEY:                    Exactly.

5       THE COURT:                       -- (INDISCERNIBLE)

6       MR. BUCKLEY:                    Exactly. And so, but I did  
7           just want to emphasize that once we've raised it,  
8           the burden is definitely squarely back on the  
9           Crown's shoulders and so we're in a regular onus of  
10          proof here. So that's just basically what I, from  
11          case law perspective, wanted to bring to the Court's  
12          attention because the burden is very important and  
13          then the tests. So you're applying that burden, the  
14          test is obviously very germane, this modified  
15          objective test. So ... And those are my  
16          submissions on that point.

17      THE COURT:                       That is fine.

18      MR. BROWN:                      I suspect I'll be making my  
19          submissions tomorrow afternoon.

20      THE COURT:                       That is fine. I did not  
21          expect you to in the first place.

22      MR. BUCKLEY:                    Yeah, I just thought -- you  
23          know, I actually thought that Mr. Hardy was going to  
24          finish a little earlier than he did today, and I  
25          thought, Gee, it would be a good opportunity to get  
26          that out of the way and then tomorrow I can just go  
27          into submissions based more on the evidence.

1 THE COURT: The Book of Authority for me  
2 is the same. There is nothing --

3 MR. BUCKLEY: Yes. Exactly the same. No  
4 change there. Basically, they're just the leading  
5 cases and then I had thrown in a couple of strict  
6 liability cases just in case that came up, which it  
7 did. So ... And that's all I have to do today.

8 THE COURT: All right, that is fine.

9 MR. BROWN: That's fine, and I look  
10 forward to tomorrow, sir.

11 THE COURT: And tomorrow will be a day for  
12 argument and submissions. All right, thank you,  
13 counsel. I thank you both for the -- or all three  
14 of you, for the detailed work that you have put into  
15 the presentation of this case, both the prosecution  
16 and the defence. You have done an excellent job and  
17 you have generally tried to cooperate throughout,  
18 which makes life a little easier for a trial judge.  
19 Although, I probably could have made clear rules  
20 with regards to hearsay, I think that is another  
21 matter. We will have to deal with it as we go  
22 along. It has been a unique case in the way in  
23 which a lot of the defence evidence has been  
24 presented, in particular. And it is unique -- not  
25 solely unique, but it is somewhat unique in that  
26 regard. And I will expect counsel, in making their  
27 submissions, to insure that points of evidence that

1 are being held out as the truth have, in fact, been  
2 established for the truth of their contents in the  
3 course of the evidence that has been presented to  
4 the Court. But apart from that, I just wish to say  
5 I think you have all done an excellent job. You are  
6 very clear and concise in your -- in your questions  
7 and I expect the same standard of clarity and reason  
8 tomorrow. All right? So thank you.

9 MR. BROWN: Thank you, sir.

10 MR. BUCKLEY: Thank you, Your Honour.

11 THE COURT: You have done a good job. We  
12 stand adjourned until tomorrow morning at 9:30.  
13 Thank you, Madam Clerk.

14 THE COURT CLERK: Order in court. All rise.  
15 Court stands adjourned until 9:30 tomorrow morning.

16 THE COURT: Thank you.

17 -----  
18 PROCEEDINGS ADJOURNED UNTIL 9:30 A.M., MARCH 29, 2006  
19 -----

20  
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\*Certificate of Record

I, Jillian Fox, certify that this recording is a record of the oral evidence of proceedings in the Criminal Court, held in courtroom 413, at Calgary, Alberta, on the 28th day of March, 2006, and I was in charge of the sound-recording machine.

1 March 29, 2006 a.m. Session

2

3 The Honourable The Provincial Court  
4 Judge Meagher of Alberta

5

6 K. Brown, Esq. For the Crown

7 S. Buckley, Esq. For the Accused

8 J. Fox Court Clerk

9 -----

10 THE COURT CLERK: The Synergy Group of Canada  
11 and Truehope Nutritional Support.

12 THE COURT: Good morning, Mr. Buckley.

13 MR. BUCKLEY: Good morning, Your Honour.

14 THE COURT: Mr. Brown.

15 Today is the day for submissions of argument.

16 Defence having called evidence will lead.

17 MR. BUCKLEY: Thank you, Your Honour.

18 THE COURT: Go ahead, please.

19 MR. BUCKLEY: Your Honour, I'm going to  
20 start by just indicating I will be giving the court  
21 a copy of transcripts of cross-examination of Ms.  
22 Jarvis and Mr. Brosseau. I do that simply because  
23 when you are cross-examining, your ability to make  
24 accurate notes is somewhat limited. And in my  
25 submissions to the court today, for a lot of the  
26 evidence I'm relying on my notes. And I have, you  
27 know, endeavoured to be as accurate as I can but I

1 don't pretend to be a transcriber. And so just have  
2 that proviso.

3 And also as I'm giving submissions, I'm not  
4 going to refer to both defendants. I'll either  
5 refer to Synergy or Truehope but I mean, obviously,  
6 I'm referring to both of them really as a pair  
7 whenever I do that.

8 And then finally, in my submissions, I'm out of  
9 necessity going to have to be dealing with some  
10 subject matter that is quite serious. I don't do  
11 that lightly. I notice that many of my witnesses  
12 had difficulty with some of the subject matter and  
13 it is difficult but we are going to go through it.

14 And I'm going to start this morning on the  
15 issue of necessity. I'm then going to proceed to  
16 abuse of process. Then I'm going to proceed to the  
17 manufacture issue.

18 I wanted to provide the court -- I don't read  
19 notes and I am not using written submissions but I  
20 follow notes and there is so much subject matter  
21 that I have on this matter that it just might be  
22 helpful to the court to have a copy of what I'm  
23 following. And the advantage, obviously, for me is  
24 that if I miss something you've got a note of what I  
25 was planning on covering and I think that that might  
26 be helpful to the court.

27 THE COURT: This note (INDISCERNIBLE) is

1 part of your argument?

2 MR. BUCKLEY: That's part of my argument.

3 Yes. It's just not a formal, written argument.

4 THE COURT: That's fine.

5 MR. BUCKLEY: I make no representations on  
6 grammar and spelling because it's not a written  
7 argument that's been proofed for that purpose.

8 THE COURT: Let me just take a look at it.

9 MR. BUCKLEY: But what it is is kind of a  
10 point form list of my topics and the evidence that I  
11 plan on covering.

12 THE COURT: All right. Just let me take a  
13 look at it, please.

14 MR. BUCKLEY: Yes. Yes.

15 THE COURT: What you have provided me with  
16 here basically --

17 MR. BUCKLEY: Those are my computer notes.

18 THE COURT: -- deals with the necessity  
19 defence --

20 MR. BUCKLEY: Yes.

21 THE COURT: -- and I note that it starts  
22 with Part 5.

23 MR. BUCKLEY: Part 5. You see, yesterday I  
24 gave you Parts 1 to 4 as written submissions so in  
25 my own computer notes.

26 THE COURT: That is fine.

27 MR. BUCKLEY: Right.

1 THE COURT: Okay.

2 MR. BUCKLEY: Yeah, and I thought it might  
3 be helpful because as I say, I don't read and you  
4 don't necessarily cover every point when you're  
5 making submissions. You just kind of go with it.  
6 But these are the notes that I work off of. And  
7 because we've covered so much evidence in this  
8 matter, I thought it might be helpful for the court  
9 to have those to consider. So it's just offered as  
10 a tool.

11 But I did deal with the other points 1 to 4  
12 yesterday. So now I want to turn to -- we've got  
13 these three elements of the defence of necessity and  
14 the Crown basically has to satisfy the court that  
15 one of those elements is not made out and the test  
16 is the regular criminal law test beyond a reasonable  
17 doubt.

18 So I am going to start with the element of, Was  
19 there imminent peril or danger? (INDISCERNIBLE)  
20 emphasized the burden is on the Crown and I brought  
21 to the court's attention yesterday that in this  
22 test, in this element it's the modified objective  
23 test that applies.

24 So in determining whether there's imminent  
25 peril or danger, the court looks at it through the  
26 situation that the accused were in and then  
27 objectively tries to determine, Well, was there

1 imminent peril or danger?

2 And I wanted to drive home the point that  
3 realistically here the options open to the  
4 defendants were, Stop selling, or Ignore this DIN  
5 regulation that they are charged with.

6 I mean it really was an either/or. They were  
7 taking other steps to try and accommodate the Crown  
8 but the choice placed before them if they were going  
9 to comply was basically to stop selling. So that's  
10 the choice.

11 On the evidence of the defendants, because we  
12 do look at it through their experience and their  
13 eyes, Mr. Stephan was very clear that in his mind  
14 this was a safety issue and he had explained to the  
15 court that basically the people that come to them  
16 tend to be the people that are on kind of their last  
17 efforts to find a solution to the problems that they  
18 are having. That they get the worst case scenarios.

19 And that in his mind for these type of people  
20 that were their participants, the suicide risk was  
21 of paramount concern. He also has personal family  
22 experience that was tempering how he was viewing  
23 this matter and legitimately so.

24 And he had an enormous amount of experience  
25 with the Truehope participants. And that experience  
26 isn't just simply hearing about it. He's -- we  
27 showed the court by logging on how they managed

1 these people and even though his evidence can be  
2 construed as subjective, I do want to point out to  
3 the court that because of the way they managed this,  
4 by having people fill out established rating scales  
5 and creating the tracking system that they do and  
6 the charts that they do, also it seems a fair  
7 submission to say that he had objective evidence.  
8 That if they stopped selling, that would cause a  
9 serious safety concern.

10 He had also pointed out that in the midst of  
11 this when Mr. LaJeunesse is making the press with  
12 his allegations against Health Canada that he  
13 believed that. I mean it fit in line with what he  
14 would have expected in any event but he believed  
15 that.

16 It's no accident that this company has taken  
17 some very unusual steps from a business perspective.  
18 They have set up a support program that is very  
19 expensive, very labour intensive but necessary  
20 because of the safety issue involved. These are  
21 participants that need to be managed. It's also no  
22 accident that they give free product away and once  
23 again he explained it's a safety issue.

24 So from his subjective perspective and we can  
25 say the exact same of David Hardy because their  
26 experiences are similar. Different in the family  
27 context but very similar in the program context. So

1 when we're assessing whether or not there was  
2 imminent peril or danger, we are doing it from the  
3 perspective of the defendants who had been dealing  
4 with this for years. Had been dealing with the  
5 Truehope participant program having set it up and  
6 worked it and were very alive to the fact that if  
7 people stopped, if the supplement became  
8 unavailable, that there would be extreme risk.

9 Now I had called Savine Coulson and Autumn  
10 Stringam who are both participants in the Truehope  
11 program who both explained to the court that they  
12 have experience of if the supplement is taken away  
13 or they are not absorbing it for things like  
14 diarrhea or et cetera, that the symptoms rapidly  
15 return.

16 We also have the testimony of Debra Oxby and  
17 Sheila Stanley who are not Truehope participants but  
18 who have family members who are Truehope  
19 participants and that they have observed the exact  
20 same pattern that symptoms rapidly return when the  
21 supplement is taken away.

22 Because this is a modified objective test,  
23 there was onus on us to also call objective evidence  
24 and in my submission the evidence of Savine Coulson,  
25 Autumn Stringam, Debra Oxby and Sheila Stanley also  
26 fit into that.

27 But we have Dr. Charles Popper who was

1 qualified as an expert witness in the area of  
2 psychiatry and who told us about his very first  
3 experience with that 10 year old boy. And if you  
4 recall after the 14 days, which is all that a bottle  
5 lasts for ran out, that within 2 days of that the  
6 symptoms came back with these 2 to 4 hour tantrums  
7 raging in full force within 2 days. And then again  
8 later on in the summer when the parents started to  
9 reduce the amount of supplement, the symptoms  
10 returned.

11 He was very clear to the court that things like  
12 bi-polar disorder are chronic conditions. They're  
13 not cured. They're chronic. So if you withdraw an  
14 effective treatment, symptoms come back. That's not  
15 just to this supplement. It's any effective  
16 treatment. And he had told the court that he has  
17 between a hundred and a hundred and fifty patients  
18 on the supplement. He runs a clinical practice and  
19 he consults on three hundred to five hundred  
20 patients.

21 Now out of this relatively small sample size  
22 that he has he was very clear to the court that if  
23 the supplement became unavailable there would be  
24 suicides. There would be hospitalizations. There  
25 would be assaults. And he said possibly some  
26 incarcerations.

27 He had explained that the patients that he had

1 that did not manage well on medications would have  
2 to go back basically to doing poorly. He was clear  
3 that there is a huge stability difference between  
4 managing patients on the traditional medications  
5 versus the supplement so much so that if the  
6 supplement was taken away that he would have to  
7 refer patients out because the need to manage them  
8 again intensively under the medication treatments  
9 would come back. I mean, if you recall, he talked  
10 about patients who would have to meet weekly but  
11 when they're managed on the supplement successfully,  
12 he's meeting monthly or bi-monthly which is unheard  
13 of in his practice for any other treatment.

14 We also have the evidence of Dr. Bonnie Kaplan.  
15 And if you recall, she did the case study of the two  
16 boys who, because they changed schools the parents  
17 wanted to know, Well, was it the supplement that was  
18 causing the dramatic reduction in symptoms or was it  
19 the fact that they changed schools.

20 And so we-- the University of Calgary had the  
21 opportunity to do what we call an ABAB design study  
22 where they're taken off the supplement. The  
23 symptoms rapidly returned. They're put back on the  
24 supplement and the symptoms go away. Once again  
25 objective evidence that if you withdraw the  
26 treatment symptoms return.

27 Dr. Bonnie Kaplan also told us that in the

1 current study running at the University of Calgary,  
2 that after the double blind portion is finished,  
3 that they have what's called an open label  
4 extension. And in that open label extension, which  
5 is a voluntary extension, the people know that  
6 they're taking the supplement and that she has had  
7 experience with two people that stopped taking the  
8 supplement, symptoms returned and then went back on  
9 the supplement and symptoms went away.

10 So we have two expert witnesses who have  
11 objectively outlined for the court the very real  
12 situation that this really is just a treatment of a  
13 chronic condition. If you withdraw the treatment  
14 the symptoms return and they return rapidly.

15 I'd also submit to the court that the evidence  
16 of Mr. Ron LaJeunesse can be taken as objective  
17 evidence. This gentleman has an enormous history,  
18 hands-on experience of dealing with mental health  
19 patients. He has an incredible history of managing  
20 and designing programs for these people. He managed  
21 all of the mental health programs for the Province  
22 of Alberta. And he had extensive experience working  
23 with the Canadian Mental Health Association  
24 including heading it in Alberta.

25 It's interesting that he had (INDISCERNIBLE)  
26 connection at all with the defendants, had never  
27 spoken to the defendants, and yet his organization

1           came to the conclusion that they needed basically to  
2           protect access to the supplement. He made it very  
3           clear that he was worried about suicides and, in my  
4           submission, he is a gentleman that the court can  
5           accept was knowledgeable about the risks of  
6           withdrawing an effective treatment.

7                        So when assessing from the defendant's  
8           perspective, well, was this reasonable for them to  
9           have this in their heads that there was imminent  
10          peril or danger? It's quite germane that somebody  
11          independent such as Mr. LaJeunesse with incredible  
12          experience in the field came to the exact same  
13          conclusion.

14                       In my submission there is overwhelming evidence  
15          in this case that there was a risk of imminent and  
16          serious harm of withdrawing this product from the  
17          market. And if we recall that the burden remains on  
18          the Crown to prove beyond a reasonable doubt that  
19          there was no risk of imminent or serious harm, that  
20          in my submission is just simply not made out. The  
21          evidence is overwhelming on this point.

22                       Now I'm going to move on then to another  
23          element and as I say, except -- the Crown only has  
24          to disprove one of the elements. But dealing with  
25          that element, my submission is the evidence is  
26          overwhelming.

27                       I want to turn to the issue of proportionality.

1           Because the law does not excuse somebody --

2       THE COURT:                   Excuse me. I just want you to  
3           go back. What is your point with regards to the  
4           risk of imminent harm. You are saying the Crown has  
5           to prove that beyond a reasonable doubt?

6       MR. BUCKLEY:                Prove that it wasn't there.

7       THE COURT:                   Prove that it was not there  
8           beyond a reasonable doubt?

9       MR. BUCKLEY:                That it wasn't there. Yeah,  
10           because as I indicated, and those are in my written  
11           submissions. The defence bears the evidentiary  
12           burden of making this a live issue and there are  
13           three elements to the defence. But once it is  
14           raised as a live issue, then the Crown has to  
15           disprove it.

16           Well, for the defence to apply, there has to be  
17           risk of imminent harm. So the burden is on the  
18           Crown to show, No, there was not risk of imminent  
19           harm.

20       THE COURT:                   You think the Crown has to  
21           prove that beyond a reasonable doubt?

22       MR. BUCKLEY:                Yes, the standards beyond  
23           reasonable doubt but I'm being clear, they only have  
24           to disprove one of the elements. And that's -- I've  
25           actually given you some cites in the written  
26           submissions from the Supreme Court of Canada. I've  
27           referred to two separate Supreme Court of Canada

1 cases there where they make it clear that it's the  
2 standard onus beyond reasonable doubt.

3 THE COURT: Now that is clear. Go ahead.

4 MR. BUCKLEY: So I wanted to turn then to  
5 the proportionality element because the law  
6 reasonably does not allow you to create more harm by  
7 breaking the law than you're trying to avoid because  
8 necessity works as an excuse. You've broken the law  
9 but you're saying that the harm that you were trying  
10 to avoid exceeded the harm caused by breaking the  
11 law.

12 Now the first point I want to make is that  
13 really there was no harm by not having a DIN number.  
14 I mean, we know from the evidence of Bruce Dales  
15 that 90 per cent of the Natural Health Product  
16 industry did not have a DIN.

17 And this isn't a case of the industry making a  
18 decision to just ignore regulations. What we have  
19 here is we have a situation where the regulation  
20 requiring a Drug Identification Number did not fit  
21 the natural health product industry. It's made for  
22 pharmaceutical industry. It makes a lot of sense  
23 for the pharmaceutical industry but it does not fit  
24 the natural health product industry which is why we  
25 have a new set of regulations for the natural health  
26 product industry.

27 So it is important to recognize when we say,

1 Well, okay. If 90 per cent of the industry didn't  
2 have a DIN, there is a reason for that. It's not  
3 the industry just being cavalier about adhering to  
4 the law. The reason is it didn't fit.

5 So we've got basically an entire industry in  
6 non-compliance. And for this case, you know, if we  
7 ask the rhetorical question, Well, what harm was  
8 caused by them not having a Drug Identification  
9 Number? Because it is proportional. So we do have  
10 to identify, What harm was caused?

11 I mean when you're -- one of the classic  
12 necessity situations that I sometime referred to in  
13 the case law is breaking into a cabin so you don't  
14 freeze to death. Well, the harm is that you caused  
15 damage to the cabin but you were trying to avoid the  
16 harm of freezing to death and you do this  
17 proportionality analysis.

18 But here I have to say that we've had trouble  
19 trying to figure out what the harm was especially in  
20 the context of the industry being in non-compliance  
21 because they couldn't be. Now the harm that the  
22 defendants were seeking to avoid though is the most  
23 serious harm possible because we are talking about  
24 death and we are talking about severe incapacitation  
25 due to mental illness.

26 We have Mr. Stephan's evidence. His experience  
27 with his daughter, Autumn, and his son, Joseph. We

1 have Mr. Hardy and his experience with his son,  
2 Landon and his daughter. We have both Mr. Stephan's  
3 and Mr. Hardy's experience with thousands of  
4 Canadian participants in the Truehope program and  
5 their knowledge is both subjective and objective.

6 Now this element is purely objective. Okay?  
7 If the court just looks at objective evidence, but  
8 in my submission the evidence of Mr. Stephan and Mr.  
9 Hardy, because of their observations and the  
10 Truehope program, also fall into that objective  
11 category.

12 The evidence of Autumn Stringam fits in there.  
13 And when we're talking about proportionality, if you  
14 accept her evidence that if she can't get the  
15 supplement, she's going to go back to the way that  
16 she was, then the reality is that she would go back  
17 to not being able to care for her children. She  
18 would go back to basically not being to go out for  
19 dinner and things like that.

20 If you recall her evidence, it just became too  
21 embarrassing when she went into what she called  
22 flapping. She would go back to being drugged out,  
23 back to being hospitalized and suicidal. Back to  
24 being placed on suicide watches. And her family  
25 that currently has a competent mother would lose  
26 that.

27 With regards to Debra Oxby, if you accept her

1 evidence, then from a proportionality perspective,  
2 she would be back to the situation where her son is  
3 begging her to kill him several times a day because  
4 that was her evidence. She was clear and she kind  
5 of gave us a descending scale of what would happen.  
6 That her son would lose his mental health first.  
7 Then he would lose his friends. He would lose his  
8 self-esteem, his dignity and finally his will to  
9 live. If you accept her evidence on those points,  
10 that is incredibly powerful objective evidence of  
11 harm.

12 Ms. Stanley, if you accept her evidence, her  
13 daughter, Renee, would go back to panic attacks,  
14 rage, depression and suicidal thoughts. Her husband  
15 would become incapacitated. If you recall, his work  
16 was suffering. He was depressed. He was hearing  
17 voices. Unable to sleep. Unable to feel emotion.

18 Ms. Savine Coulson, if you accept her evidence,  
19 and it was perhaps the most dramatic of all -- if  
20 you recall, she is the lady that to deal with  
21 depression would hurt herself. She would bang her  
22 head into the wall until she was unconscious. She  
23 would deliberately cut herself and continue doing  
24 so. She was repeatedly and voluntarily committed.  
25 At one point unable to eat because of convulsions.  
26 She would lose her career. If you recall, she's the  
27 one that works in the veterinary hospital whose

1 employer is paying for her to go to school because  
2 it's working out so well. She would lose her career  
3 and she would become useless. And she's the one  
4 that indicated to the court that basically she had  
5 formulated a plan to kill herself before she lost  
6 her mental health.

7 Now those witnesses are not subjective  
8 witnesses. They are not the defendant's. They are  
9 called basically so that the court can have an  
10 appreciation in real life of what the cost would be  
11 if the supplement was withdrawn.

12 We have Dr. Charles Popper and I've already  
13 gone through his evidence on an earlier point, but  
14 it's pure objective evidence that he was clear. If  
15 the supplement was made unavailable, just to repeat  
16 what I've already said, there would be suicides.  
17 There would be hospitalizations. There would be  
18 assaults and possibly some incarcerations. He was  
19 extremely clear on those points and it corroborates  
20 in a very strong way the evidence of Ms. Stringam,  
21 Ms. Oxby, Ms. Stanley and Ms. Coulson.

22 The proportionality here is just so out of line  
23 because, as I say, there's no harm in having a DIN  
24 versus the most serious harm that we can imagine.  
25 That every single moral code in existence would  
26 require the defendants to ignore the DIN  
27 requirement.

1           And this is doubly so in the regulatory  
2 environment where 90 per cent of the industry did  
3 not have a DIN because it just didn't fit. This is  
4 an element where there is no evidence to suggest  
5 that the harm of not having a DIN came close to  
6 exceeding the harm they sought to avoid.

7           And so, in my submission, Crown has not proven  
8 beyond a reasonable doubt that the harm they sought  
9 to avoid was less -- was greater than the harm -- or  
10 I'm sorry, less than the harm they caused by not  
11 having a DIN. With this element, it's just crystal  
12 clear.

13           Now I want to move onto the next element  
14 because that's where I suspect the Crown submissions  
15 are going to focus and that's where the battle is.

16           And that is, is there a reasonable legal  
17 alternative? In my written submissions I try to  
18 make two points -- or, I'm sorry, my notes. I try  
19 to make two points.

20           And the first is we're not talking about any  
21 legal alternative. And when you look at the case  
22 law, it's a reasonable alternative. So, you know,  
23 we're not to ask, Well, is there anything possible?  
24 It has to be reasonable. Was there a reasonable  
25 alternative?

26           And the second point that I want the court to  
27 appreciate is back to, we're not in an objective

1 standard anymore. We're into a modified objective  
2 standard. So when we're assessing, Is there a  
3 reasonable legal alternative, we're doing that from  
4 the perspective, standing in the shoes of the  
5 defendants with the experiences that they've had,  
6 with the knowledge that they had, with the situation  
7 they're in, what were their reasonable alternatives  
8 from that perspective. We look at it then  
9 objectively but from their shoes.

10 Now bearing that in mind that that's the test  
11 and it's a reasonable alternative, there are several  
12 points that need to be made.

13 And the first point is that Health Canada's  
14 purpose here was to get the defendants to stop  
15 selling. And I bring you back to Sandra Jarvis's  
16 evidence. On cross-examination she made it very  
17 clear that the steps they were taking, the seizures,  
18 the search of the premises and the laying of this  
19 charge was to get the defendants to stop selling.  
20 Okay? So that's the goal?

21 The second point that I want to make is, Okay,  
22 the goal is to get them to stop selling. But this  
23 isn't selling that we normally think of. Usually  
24 when you think of selling, you think of somebody who  
25 is just -- anyone can come and buy a product, pay  
26 the money and walk away. There was selling here but  
27 only within the Truehope program.

1           This was a program. The program included  
2 getting product but it was a program and you were  
3 screened. And this is the interesting thing. I  
4 mean, you could sell this product as a vitamin  
5 supplement and there's nothing unsafe about it. But  
6 if you have a severe mental illness, you have to be  
7 screened. And you have to be managed and you can  
8 only get the product within the program.

9           And the evidence on that point that this was  
10 necessary was very clear. Now just walking through  
11 the evidence, Mr. Stephan actually gave us the best  
12 evidence on that point and it was unusual. We had  
13 him log onto their website. But we wanted to do  
14 that because if you just talk about, Oh, yeah, we've  
15 got this web design program and people fill out  
16 forms and we charge them, I don't think the court  
17 could really have appreciated just how thorough and  
18 how detailed their management of people within this  
19 program is.

20           And so he walked you through the adverse drug  
21 reactions and how they watch for that. He walked  
22 the court through the support notes. We entered as  
23 Exhibit 39 that chart showing the 'U' shape so that  
24 what an adverse drug reaction looks like can be  
25 appreciated.

26           We entered as Exhibit 32, Planning for Success  
27 which was just part of the program, part of the

1 introduction. He told you that in 2003, about 40  
2 per cent of the people that approached them were  
3 turned away 'cause their problem was they are trying  
4 to manage only people that they felt they were  
5 competent to safely manage. And that's an  
6 appropriate step for them to take. And in fact,  
7 Section 216 of the *Criminal Code* mandates that if  
8 you're going to do something in a medical area, you  
9 have to be confident. You can't see what your  
10 abilities are. And so in 2003, they were turning 40  
11 per cent away.

12 This doesn't make good business sense. The  
13 expense of having this program doesn't make good  
14 business sense as Mr. Stephan explained but it was  
15 necessary.

16 Dr. Bonnie Kaplan explained that the defendants  
17 basically trained the university on how to manage  
18 participants in their studies on the supplement and  
19 that the psychiatrists had to agree to reduce  
20 medications when symptoms increased.

21 Dr. Charles Popper explained basically how  
22 tricky it is to manage people who are on medications  
23 to do this transition. And he explained that he  
24 learned how to do this basically from the defendants  
25 and from Dr. Kaplan. He was clear this could not be  
26 an over-the-counter product. He was clear that it  
27 had to be managed by persons such as the defendants

1 who, in his mind, had clear expertise. I mean, he  
2 went so far to explain that he's basically been  
3 taught by Mr. Stephan and Mr. Hardy in this  
4 protocol. He gave examples of basically how they  
5 have taught him things about withdrawal. He used  
6 two drug names. I won't pretend that I can  
7 pronounce them but they are in my notes. And he's  
8 found Mr. Hardy in particular to be extremely useful  
9 in consulting with him.

10 It's significant that we have a Harvard  
11 psychiatrist who teaches psychiatrists who go to the  
12 defendants for advice and consultations in managing  
13 some of his own patients.

14 So this is not sale in the ordinary sense.  
15 It's participation in a program and it has to be  
16 managed in a program and I'll just point out that  
17 even the Crown evidence is clear that this is  
18 managed in a program because both of the Health  
19 Canada inspectors, Ms. Jarvis and Mr. Brosseau, had  
20 made undercover purchases and both of them had to,  
21 you know, had to go through the interviewing process  
22 to get approved.

23 Both of them were not pretending to be on  
24 medications or anything like that. Both were  
25 advised they would have to fill out the evaluations.  
26 That they would have to submit them. That they were  
27 going to be contacted by the Truehope people. And

1 then there were numerous calls to both of them to  
2 follow up. Ironically Mr. Brosseau actually finally  
3 being caught up with Health Canada.

4 So even the Crown evidence demonstrates that  
5 this was a program. It wasn't a sale. So the  
6 Health Canada inspectors had to go through the  
7 screening process to agree to be part of the program  
8 and then were followed up on.

9 So the third point -- the second point is that  
10 this isn't just selling. It's part of a program.

11 But the third point is that it had to remain as  
12 a program for safety reasons. So when we're looking  
13 at -- we're standing in the shoes of the defendants  
14 and we're saying, What reasonable legal alternatives  
15 did they have, the court cannot lose sight of the  
16 fact that it had to remain as a program for safety  
17 reasons. Any reasonable legal alternative had to  
18 include the program.

19 And the problem is, and if you recall Mr.  
20 Hardy's evidence, the goal is for this to be taken  
21 over by the medical community. But we're not there  
22 now and we weren't there in 2003. And that was also  
23 Dr. Popper's opinion. It still has to be managed by  
24 people like the defendants and there's nobody else  
25 out there.

26 Okay. My fourth point is -- so I'm submitting  
27 to the court that any legal alternative has to

1 include this Truehope program.

2 My fourth point is the Court also now has to be  
3 (INDISCERNIBLE) that there were some other legal  
4 duties placed upon the defendants to continue with  
5 the program. And those are duties placed under the  
6 *Criminal Code of Canada* because there -- by 2003 and  
7 that's the offence period we're in, this program had  
8 been running for a long time. There are thousands  
9 of people in it.

10 And the defendants are well aware that if they  
11 pull the pin on it, if they stop, there's going to  
12 be, as Dr. Popper says, deaths and hospitalizations.  
13 The defendants know that.

14 Section 217 of the *Criminal Code* places an  
15 obligation of duty -- a legal duty on anyone who  
16 undertakes to do something to continue with it if  
17 stopping would be dangerous.

18 I'm just checking. I might have the wrong  
19 Section here. 217's the right Section but --

20 So there's a legal obligation on them. If --  
21 yeah, that's right. My notes are correct.

22 If they stop in that legal obligation, then  
23 they are setting themselves up for being charged  
24 with criminal negligence causing bodily harm and if  
25 we accept Charles Popper's evidence, death. Because  
26 with what they knew in 2003, stopping would show  
27 wanton or reckless disregard for the lives or safety

1 of other people.

2 So what is occurring in 2003 is not in a legal  
3 vacuum. It's not just the *Food and Drug Act* that  
4 applies to the defendants. They're in a situation  
5 where they are constantly managing thousands of  
6 people that are fragile, that need to be managed and  
7 that need to have continued access to this  
8 supplement.

9 And we can't lose sight of the fact that there  
10 were other legal obligations also put upon them. So  
11 when we're looking at other reasonable, legal  
12 alternatives for the defendants in 2003, we can't  
13 lose sight of the fact they also have to comply with  
14 obligations and duties placed upon them by the  
15 *Criminal Code*.

16 So I want to go through some potential legal  
17 alternatives that I'm just anticipating my friend  
18 might raise. And the first one was, Well, they  
19 could have gotten a Drug Identification Number.  
20 That would be the obvious one. Right? They are  
21 charged with not having a Drug Identification  
22 Number.

23 Isn't there a reasonable legal alternative for  
24 you to get a DIN? And the evidence has been clear  
25 right from Sandra Jarvis -- she indicated she  
26 thought it was a new drug. And this is so important  
27 for the court to appreciate because if you're a new

1 drug, you do not apply for a Drug Identification  
2 Number. You get it only after you've gone through  
3 the New Drug Submission Process. And Mr. Dales  
4 outlined what that process is. So once you  
5 successfully go through the new drug approval  
6 process, you get a Notice of Compliance and then you  
7 automatically get a DIN. You don't apply for a DIN.  
8 That's just the way the regulations are set up.

9 So this was a new drug. Mr. Bruce Dales who  
10 was qualified as an expert in this process and in  
11 identifying products indicted very clearly this was  
12 a new drug and he gave several reasons why in 2003  
13 it would have been considered a new drug. He also  
14 explained that you do go for a Notice of Compliance,  
15 not a DIN, and went through the fairly elaborate  
16 process.

17 We broke it into five parts just kind of for  
18 ease of reference but there's just numerous steps.  
19 And he made it clear that it was minimum a 5-year  
20 process. Minimum. He made it clear he thought it  
21 would be slower for this type of product. And if  
22 you recall the reasons there were -- just because it  
23 wasn't the type of product that that branch was set  
24 up to evaluate. So it would have caused -- his  
25 evidence was it would have been slower because it  
26 would have meant a whole bunch of adjustments. It  
27 would have been measured in the millions of dollars

1 and that, in his opinion, it wasn't feasible.

2 Mr. Stephan also made it clear he didn't  
3 believe that they fit within the Drug Identification  
4 Number process. And remember, this is a modified  
5 objective standard so their subjective belief is  
6 relevant when assessing what their alternatives were  
7 relevant to his subjective belief was. At least he  
8 testified they were told by Dennis Shelley, You  
9 wouldn't get an NOC.

10 And both him and Mr. Hardy referred to Mr. Del  
11 Anderson. That's not for the truth of its contents  
12 but it does go to their subjective belief as does  
13 when Mr. Hardy was explaining about the Access to  
14 Information materials. Edited though they were,  
15 there was still enough there, you know, to give an  
16 indication that they would not have succeeded in  
17 going through this process.

18 So was getting a DIN a reasonable alternative?  
19 The reality is it wasn't feasible. It couldn't have  
20 happened. Even if they had started earlier, it  
21 couldn't have happened. And then also is it a  
22 reasonable legal alternative in the regulatory  
23 climate? So they're in 2003. Mr. Hardy's evidence  
24 was that they thought the new regulations would have  
25 been in effect before then. As it turns out, they  
26 weren't in effect until '04 but in my submission, it  
27 just simply was not what you would consider to be a

1 reasonable legal alternative in 2003 especially  
2 considering the new regulations were already  
3 gazetted and clear for everyone to see. They were  
4 going to be in force on January 1st, '04.

5 Now, moving on then to other potential legal  
6 alternatives, being a lawyer, it obviously occurs to  
7 me, Well, why didn't you go to court and fight this?  
8 And they did go to court. So as soon as product was  
9 being seized and turned away at the border, the  
10 defendants started a federal court action.

11 That federal court action was started, as I  
12 say, as soon as those things started to occur and  
13 it's still outstanding. It never did finish in '03.  
14 So they did what I think, that they had an  
15 obligation, if this defence was to succeed, to do is  
16 to try and get the courts to adjudicate on it, and  
17 that's still outstanding. In my submission it's not  
18 surprising that a court action might not finish in  
19 one year.

20 They also started a Court of Queen's Bench  
21 action to challenge the search. So they weren't  
22 sitting and not trying to get the court process  
23 involved to have a look at and evaluate what was  
24 going on. And in my submission I'm not sure what  
25 else they could have done than the steps they took  
26 in that avenue.

27 So I'll move on then to another option that

1           they had. An option that they had was to try to  
2           negotiate with Health Canada to reach an solution.  
3           Because we couldn't stand before the court and say,  
4           Well, they took all reasonable steps that they could  
5           to find an alternative if they didn't try to  
6           negotiate with the regulator to come to some  
7           accommodation.

8                     Do you want to take a break?

9           THE COURT:                     No. Go right ahead.

10          MR. BUCKLEY:                  Okay, 'cause I'm doing fine.

11          THE COURT:                     That is fine. You are in a  
12                     very important part of your argument.

13          MR. BUCKLEY:                  Yes.

14          THE COURT:                     So press on.

15          MR. BUCKLEY:                  Mr. Stephan made it very clear  
16                     that he felt that Health Canada basically wasn't  
17                     meeting them halfway. That they were being ignored  
18                     despite calls, letters, faxes. In my submission it  
19                     would be fair to describe the defendants' actions to  
20                     get Health Canada's attention as very significant.

21                     We don't have a company that would just place  
22                     one call now and again or write a letter and not try  
23                     to get the attention of the regulatory body. I mean  
24                     we know in 2003 that in January, the very first  
25                     month, they're driving out to Burnaby to meet with  
26                     Mr. Shelley, who was then the acting (INDISCERNIBLE)  
27                     region to try to see what could be worked out.

1           Now there's some conflicting evidence of what  
2 was or wasn't said in that meeting but the  
3 defendants were clear that they were as a result of  
4 that meeting trying to figure out, What the heck --  
5 what are our alternatives? How can they come to a  
6 meeting of the minds without Health Canada?

7           And, you know, I know my friend's going to  
8 stand up and say, Well, they could have moved south  
9 across the border earlier. They could have changed  
10 their website. Blah, blah, blah.

11           But where's the evidence where Health Canada is  
12 saying, Okay, here's some options. Like the  
13 defendants were clearly approaching Health Canada  
14 and voicing real concerns about the prospect of  
15 stopping selling. But where was Health Canada  
16 saying, Okay, if you do this or this, that will be  
17 okay and we'll, you know, treat you like the rest --  
18 90 per cent of the industry that doesn't have DINs.

19           We don't see that in the evidence. And Health  
20 Canada seemed to be ignoring just an enormous amount  
21 of activity to get their attention. I mean, the Red  
22 Umbrellas? It's not just (INDISCERNIBLE) for  
23 attention. Obviously it's hoping to get back to the  
24 regulatory body. We've got this Exhibit 35 where  
25 they send a letter and they attach all those other  
26 letters from people writing in basically saying, Let  
27 us have access to the product, clearly to get the

1 regulatory body's attention and see if something --  
2 some agreement can be reached.

3 We have the 800 crisis line calls in as an  
4 exhibit just for that they were communicated, not  
5 for the truth. But we've got -- and we also have  
6 the tape of the 800 line call that Autumn Stringam  
7 made. Health Canada was at least -- it was at least  
8 being communicated to Health Canada in other ways  
9 that there was a problem here that needed to be  
10 addressed and that was ignored.

11 I'm just bringing that up to say there's lots  
12 of evidence that Health Canada basically was not  
13 just ignoring the defendants in this matter but  
14 ignoring other people that were attempting to get  
15 their attention.

16 In preparing these submissions, it seemed to me  
17 that it was also relevant to talk about Dr. Bonnie  
18 Kaplan's experience in trying to get approval to run  
19 that clinical study because it seems to show a bias.  
20 Because there really is a pattern on this whole file  
21 of one branch of Health Canada just being inflexible  
22 and not willing to move at all in any area  
23 concerning the (INDISCERNIBLE), and then when we get  
24 this new branch of Health Canada that has expertise  
25 in this area, seems to be working with everyone, not  
26 just the defendants but they worked with Dr. Bonnie  
27 Kaplan.

1           So I mean we have night and day and not for the  
2 defendants but everyone's experience having to do  
3 with this product and the one branch of Health  
4 Canada was absolutely negative. Everyone ran into a  
5 brick wall. So, and I'm not going to go into detail  
6 through my notes on Dr. Kaplan but I can summarize  
7 by saying it really does paint a picture of just an  
8 unwillingness to, you know, accommodate the  
9 University of Calgary through that process. And it  
10 is germane that as soon as we have the new branch,  
11 that they were able to get through that process.

12           We have the experience of Mr. Ron LaJeunesse  
13 who again, another independent person, who seemed to  
14 be put off. A most blatant example is Ms. Gorman  
15 who, if you recall, would not return his phone calls  
16 and that he couldn't arrange to have a meeting with  
17 her even though he was making it clear he would  
18 travel to Ottawa to do so.

19           And again, it's a third party not connected  
20 with the defendant, that seemed to be just running  
21 into an unwillingness to negotiate on this. Okay?  
22 Because that was his goal - to negotiate a solution.  
23 And he couldn't get the meeting that he needed to do  
24 that.

25           And we also, and I'm not going to go into  
26 detail because I go into detail in another part of  
27 my submissions, is we really do have on this file a

1 blind following a policy in this investigation  
2 leading up to this court process where there just  
3 seems to be a single minded focus to gather evidence  
4 for prosecution but, you know, not to consider other  
5 flags that are going up and to do a re-think.

6 So we've got the defendants really were making  
7 efforts to try and, Okay, let's work something out.  
8 And my point is, this is in the year 2003 -- on all  
9 of the evidence it appears that Health Canada was  
10 not willing to come to an agreement.

11 So, you know, it's one thing to say, Okay, well  
12 they could have negotiated an agreement with Health  
13 Canada. Now they don't have to do everything  
14 perfectly. But in my submission it can't be said at  
15 the end of the day that they didn't try and that the  
16 whole picture seems to indicate an unwillingness.

17 Now turning to another point, another legal  
18 option would be to get a ministerial exemption. And  
19 what that is, -- Your Honour, there's a section of  
20 the *Act*, Section 30, that allows the Governor in  
21 Council to make regulations. And one of the  
22 regulatory powers is to grant an exemption from any  
23 part or the whole *Act* or regulations. So there's a  
24 safety mechanism built into the *Act* to allow the  
25 Minister if it just doesn't fit, to grant an  
26 exemption. So it's not rigid. The *Act* isn't  
27 designed to be rigid. And the defendants had

1 indicated to the court that they knew about this  
2 because Del Anderson had said to them, Hey, just as  
3 an option, you guys should try to get a ministerial  
4 exemption. That was a reasonable legal alternative  
5 to being in non-compliance with the DIN regulations.  
6 But in my submission it was not something that was  
7 available to the defendants in the year 2003.

8 It is interesting that both Ms. Jarvis and Mr.  
9 Brosseau didn't seem to know what the defendants  
10 were talking about when in that January, 2003  
11 meeting they were saying we should get a ministerial  
12 exemption. But at least the defendants were doing  
13 what they were supposed to be doing. They were  
14 communicating, Why don't you guys give us one of  
15 these?

16 Tony Stephan on this point was indicating, you  
17 know, they were calling, writing, protesting. They  
18 couldn't get a meeting with the Minister. They went  
19 to Ottawa. They supported Red Umbrellas. They  
20 supported Bill C420 which was another option  
21 available to them because that Bill, had it passed,  
22 would have solved this problem.

23 Mr. Hardy was clear they couldn't get a  
24 meeting. James Lunney who kind of adopted the cause  
25 on behalf of the defendants gave extensive evidence  
26 that he was trying to reach an agreement with then  
27 Minister of Health, Anne McLellan. And he went to a

1 rally in Edmonton that the defendants had put  
2 together to try and put pressure on the Minister.  
3 We have entered as Exhibit 58 a letter he wrote to  
4 her in June. Exhibits 59 and 60 - statements he  
5 made at the House of Commons.

6 And I don't care about whether he adopted them  
7 are true or not true. It's just -- it's evidence  
8 that there were communications being made and his  
9 motivation was to try to put pressure on the  
10 Minister to sit down and reach an agreement.

11 So -- but it really does seem on all of the  
12 evidence that a political solution was not available  
13 in 2003. So it was a legal alternative open to the  
14 defendants and really, I wouldn't be out of line to  
15 say that the defendants were rather exceptional in  
16 their ability to generate political attention and  
17 pressure. And what more were they supposed to do to  
18 try to get a ministerial exemption than what they  
19 did?

20 Now the eventual solution here -- I don't -- I  
21 just have it under the heading, The Eventual  
22 Solution, but in our submission we don't really  
23 consider it even though it's the eventual solution  
24 as a reasonable legal alternative in 2003.

25 And why I say that is because it really is one  
26 thing for the Minister of Health, then Pierre  
27 Pettigrew, to communicate to Mr. Lunney on behalf of

1 the defendants. Okay, we will basically stop  
2 turning product away at the border if you, you know,  
3 set it up so that the money's being taken across the  
4 border. So it's a matter of somebody answering the  
5 phone across the border and taking the money. If  
6 that happens, we'll stop turning it back. 'Cause  
7 that was the concern, okay? It was still being  
8 stopped at the border.

9 So -- but we don't view that in 2003 as a  
10 reasonable legal alternative because if the Minister  
11 wasn't saying, Do this, or Health Canada wasn't  
12 saying, Do this, in my submission it would have been  
13 a very dishonest approach. Because if you just had  
14 a company to try and skirt the regulatory  
15 environment, set up, you know, a fake front to make  
16 it look like they're not selling in Canada, that  
17 that's not necessarily what we would consider a  
18 legal alternative.

19 Is it legal to pretend that you're not doing  
20 something that you're actually doing so that  
21 regulations don't apply? Because really nothing's  
22 changed. It's the same product. It's the same  
23 participants. It's the same access point. You can  
24 only access it through the Truehope program which is  
25 basically in Alberta.

26 But in any event, this agreement did come. It  
27 was -- the terms were proposed by the Minister. The

1 Defendants have accepted the terms and the product  
2 is flowing. It is curious to note, though, that  
3 under the terms of the agreement participants were  
4 supposed to basically give Health Canada evidence  
5 before it comes across the border.

6 And Health Canada no longer seems to be  
7 enforcing that part of the agreement. So -- but the  
8 defendants are still, you know, they're not the ones  
9 that are sticking up to the agreement. But it is  
10 just curious. So now really nothing's changed.  
11 Even those steps are out of the way. And the  
12 product's coming in freely across the border which  
13 does raise the question, why they were going through  
14 this and we're going through this?

15 But in any event, this wasn't available in 2004  
16 (sic). They were trying to reach an agreement with  
17 Health Canada and the Minister in 2003 and it just  
18 didn't happen until 2004. But not for want of  
19 trying.

20 THE COURT: Are you saying that they were  
21 trying to make that agreement with the Minister in  
22 2003?

23 MR. BUCKLEY: Well, it wouldn't be that  
24 specific an agreement. That's kind of my point.  
25 But they were trying to reach an agreement. Because  
26 what eventually happened was an agreement. I mean  
27 it should have been properly gazetted and been an

1 exemption. So, you know, what we have proposed by  
2 the Minister of Health isn't really -- well, maybe  
3 it fits in with their internal policy but it's not  
4 really what the Act envisions when if you're going  
5 to be exempted from something, you gazette it.

6 So, yeah. They were trying to reach an  
7 agreement but my thing is the agreement that was  
8 eventually reached, I don't think -- well, it wasn't  
9 proposed by anyone until Pettigrew proposed it. So  
10 the defendants weren't saying, Well, let us set up  
11 -- let us pretend that we're taking orders across  
12 the border and have an agent do that for us. And if  
13 they had done that without Health Canada knowing, I  
14 think that wouldn't have affected this trial at all  
15 if they were charged with selling.

16 Do you know what I mean? Let's say an  
17 agreement was never reached with the Minister.  
18 Let's say in 2003 when they were being told to shut  
19 down they said, Oh, well, we're just going to float  
20 off Canada. We'll set up an agent across the border  
21 and this trial was run and the Crown proved that  
22 that's all they were doing is that they just set up  
23 an agent that they controlled across the border,  
24 took the orders and sent the money back, the Crown  
25 could credibly say to this court, No, they're still  
26 selling in Canada. It's just they made this  
27 colourful attempt to make it look like they didn't.

1           But in any event, they were trying to get an  
2 agreement both by Health Canada, by the Minister in  
3 2003 and just the way it worked didn't happen until  
4 2004.

5           Now I'm going to move on to what I anticipate  
6 might be another legal alternative. Okay?

7           I'll stick on that point for a minute then  
8 because couple of pages over I had -- I just jumped  
9 ahead of myself.

10       THE COURT:                        So your argument on this  
11 particular point, and that is setting up an agent in  
12 the States to receive calls and accept orders, your  
13 argument that that was not a reasonable, legal  
14 alternative in 2003 was that they were trying to  
15 reach some kind of agreement or nobody had thought  
16 of it or they would just end up getting charged  
17 anyway as an attempt to do indirectly what they  
18 could not do directly?

19       MR. BUCKLEY:                    Well, clearly my submission is  
20 really all of those things because as I say, if we  
21 had a company in Canada that did not want to adhere  
22 or wanted to get around the regulations but they are  
23 located in Canada, and they're aware of this  
24 personal importation policy, if they're trying to  
25 skirt the ranks and so they just set up somebody to  
26 take orders, okay, but they're making the decision  
27 of who can order in Canada. So not just anyone can

1 order. They're the ones making the decision. The  
2 agent's sending the money back to them and they have  
3 absolute control over the agent. Are they not  
4 selling in Canada?

5 So can I have an agent in Holland where you can  
6 buy narcotics that are legal in Canada, take orders  
7 from Canadians in Holland and totally controlled by  
8 me and ship into Canada and I'm not trafficking in a  
9 narcotic? I'm not sure that type of argument would  
10 fly in a court because you are just deliberately  
11 trying to get around the regulatory or legal  
12 requirements that apply to you in a creative way.

13 Now --

14 THE COURT: But in fact was this not what  
15 was happening with Evince in October -- until  
16 October, 2002?

17 MR. BUCKLEY: Well, but Evince, and I don't  
18 think we went into enough there. I'll make some  
19 submissions and you'll have to decide if the  
20 evidence is there because if Evince is actually a  
21 company set up to do the marketing and the selling,  
22 and so on the evidence I believe of Mr. Hardy, they  
23 are doing -- managing the Truehope program but it's  
24 a business partnership. So the manufacturer there  
25 wanted to be able to sell the product 'cause these  
26 guys didn't have the money to develop it. So the  
27 manufacturer was selling the product. It was a

1 business venture.

2 In that case, it's not a skirting. We have a  
3 US company setting up a US -- a separate US company  
4 so that a product they are manufacturing can be  
5 sold. You do have this limitation that it's only  
6 through this program but you're doing it as a  
7 business venture. That's great. Certainly the US  
8 company isn't doing anything colourful. Arguably  
9 the defendants might still be selling in Canada  
10 because they're the ones saying Yes or No.

11 THE COURT: Fine. I see the distinction  
12 you are making. Go ahead.

13 MR. BUCKLEY: Now I do have a heading,  
14 Personal Use Issue (INDISCERNIBLE). I covered most  
15 of it but a couple of points there that are  
16 important is always to bear in mind the illness,  
17 okay, because here I'm trying to justify that this  
18 wasn't a legal alternative for the defendants but I  
19 don't want the court to lose sight of the fact that  
20 actually, you know, if you even have a reasonable  
21 doubt on that issue, the Crown hasn't satisfied you  
22 that it was a reasonable legal alternative.

23 THE COURT: I will not lose sight of that  
24 fact.

25 MR. BUCKLEY: Okay. No. No. I'm just  
26 trying to do my job too. Right?

27 So no witness was given this personal

1 importation policy because that is what it relies on  
2 is this personal importation policy.

3 THE COURT: So are you moving on to  
4 another point?

5 MR. BUCKLEY: No. Same point --

6 THE COURT: Same point? All right. Go  
7 ahead.

8 MR. BUCKLEY: -- because they really are  
9 related. At least in a way they may be related  
10 because my friend might say, Well, this satisfies  
11 the personal importation policy. There's a policy  
12 in place -- I'm just trying to anticipate what my  
13 friend might say. It's a policy in place and so it  
14 should have been obvious, Well, they could just set  
15 up this thing across the border and then people  
16 could import it freely as personal use.

17 And -- now, no witness was given a copy of the  
18 policy. No witness was actually given that specific  
19 hypothetical and said, Would that satisfy the  
20 policy?

21 Asked about the policy, Mr. Stephan thought it  
22 only applied to Schedule 'F' drugs. Mr. Lunney,  
23 when cross-examined on that, said he wasn't an  
24 expert on it. Sandra Jarvis had some things to say  
25 about it but not really too helpful here. She  
26 talked about, Well, if it's less than 90 days it can  
27 be personal use. If it's more than 90 days supply

1 coming in it's basically deemed to be commercial.

2 And we know that the product was being stopped  
3 under this policy. So it's one thing for the Crown  
4 to say, You know, this was an option but the reality  
5 also is that under this policy, shipments were being  
6 stopped.

7 Now I wanted to switch to another topic.

8 THE COURT: Just a moment before you do.

9 MR. BUCKLEY: Uh-huh. And that was the  
10 moving to the United States option.

11 Okay. I'm sorry.

12 THE COURT: Do not go there yet.

13 Do you draw the distinction in your argument  
14 between a regulation and a policy?

15 MR. BUCKLEY: Well, the problem with a  
16 policy is it's not -- it's not law. It's something  
17 that can be changed at the whim of Health Canada.  
18 So when the defendants are making efforts to try and  
19 strike a deal with Health Canada, I think it has to  
20 be implied that it's open to the bureaucracy to  
21 amend their policy.

22 So if you're going to turn around and say,  
23 Well, they didn't comply with this policy, and, you  
24 know, they kind of had to shoehorn themselves in to  
25 fit, but the bureaucracy isn't willing to work with  
26 them to either amend the policy or fit in, that's  
27 really -- it takes away from the defendants that

1 legal alternative because the defendants -- they  
2 only have control over what they do. Okay? So they  
3 have control over trying to communicate the  
4 problems. Trying to communicate, you know, why this  
5 was so important, you know, to sit down and try and  
6 amend policy or to reach an accommodation. But they  
7 have no control over how the bureaucracy responds to  
8 that. But clearly, policy is (INDISCERNIBLE). It's  
9 not clear what the policy was. In my submission  
10 it's far from clear that that was a reasonable legal  
11 alternative.

12 THE COURT: Thank you. Go on.

13 MR. BUCKLEY: Okay. So I want to move them  
14 to the issue of moving to the United States. And  
15 there again, I'm just trying to anticipate that my  
16 friend might say, Listen, it was not necessary for  
17 them to comply with this regulation. They could  
18 have moved the whole outfit to the United States as  
19 a reasonable legal alternative.

20 And it was clear that that was suggested to  
21 them at one point.

22 Now bearing in mind this is a modified  
23 objective test, so standing in the shoes of Mr.  
24 Stephan and Mr. Hardy, we know from their evidence  
25 that they considered it. They considered, Can we do  
26 this? Can we move this to the United States?

27 It's clear on all of their evidence. They were

1 adamant. The product's got to be available somehow  
2 so they're considering this as an alternative and  
3 both of them were clear they didn't know, first of  
4 all, would the US allow them to do it and then Mr.  
5 Hardy was clearer than Mr. Stephan but they just did  
6 not have the finances to do that. That it wasn't  
7 feasible.

8 I don't think it's fair for us to say, -- well,  
9 I think it's fair for us to say. Also, it's not any  
10 alternative. It's a reasonable alternative. Okay?

11 Is it reasonable to ask people living in Canada  
12 to move to the United States to comply with the  
13 regulation that 90 per cent of the industry doesn't  
14 comply with because it doesn't fit and which we know  
15 is being replaced on January 1st of '04. So in 2003  
16 it is an alternative but is it a reasonable  
17 alternative? So is it reasonable to ask them to,  
18 you know, pack up and move across the border,  
19 assuming it's possible, in those circumstances?

20 And in any event, the only evidence on that  
21 point was it just wasn't feasible financially. And  
22 there was also a concern that their support people  
23 wouldn't be able to move or wouldn't be willing to  
24 move. And it's not just Mr. Hardy and Mr. Stephan.  
25 They've got this whole support system and they need  
26 those people.

27 I'm going to move on to another point which I

1 call the Off-The-Shelf Argument. I'm just  
2 anticipating that my friend might say, You know what  
3 -- and it's actually my last argument on this topic.  
4 So after that would be a great time to break.

5 So I anticipate my friend might say, Well,  
6 really, they had this experience with the Quad  
7 program working, so it was a reasonable legal  
8 alternative for them to allow people to just access  
9 it. To access other products.

10 And I got both my friends suggesting that they  
11 access other products through the defendants because  
12 that would be a funny situation if the defendants  
13 couldn't sell this product but could cobble together  
14 something similar and that would be the reasonable  
15 legal alternative. Do you know what I mean?

16 So I don't think my friend's going to suggest  
17 that.

18 THE COURT: I do not think he could  
19 because that would have to have a DIN --

20 MR. BUCKLEY: Well, --

21 THE COURT: -- according to the Crown's  
22 position.

23 MR. BUCKLEY: Yeah, and I mean just the  
24 whole thing. So -- but as far as sending other  
25 people away -- okay, you go find the alternatives.  
26 We're talking about thousands of people all across  
27 Canada and so there's some assumptions there that

1           it's going to be available to all of these  
2           thousands. That what they cobble together is going  
3           to be safe and effective because we're dealing with  
4           people that need to be managed and we're dealing  
5           with a protocol that has to be effective.

6                     And then we also have the problem of who is  
7           going to manage that because Mr. Hardy made it clear  
8           that in '03, especially, they were losing money and  
9           they definitely needed the sales to manage this  
10          program. The idea of having a viable business was  
11          just as necessary as anything else to ensure that  
12          the product be available.

13                    And then bearing in mind, you know, the burden  
14          that's on my friend, we have the evidence of Autumn  
15          Stringam that this New Vision mineral just wasn't  
16          working because she was cross-examined on this. And  
17          we have the evidence of David Hardy about the  
18          efforts that they undertook when they started having  
19          problems with the off-the-shelf products.

20                    I mean, it's not like they had problems with,  
21          you know, one product and said, Oh, heck, we have no  
22          alternative. We're going to have to make our own  
23          product. They didn't want to make their own  
24          product. So isn't it exceptional that they find out  
25          where this New Vision product was coming from? When  
26          they find out they are no longer getting it from the  
27          Clark Mine or that they're also getting it from

1 other sources, they switch suppliers and then  
2 eventually go to the mine itself to learn about the  
3 mine and learn about what the problem is and then  
4 start using that mine's product.

5 Like these are not guys that didn't consider  
6 that as an option themselves. Those are pretty  
7 demanding steps to try and actually keep that to be  
8 a viable alternative. But at the end of the day the  
9 evidence is that wasn't a viable alternative and  
10 that's what pushed them into creating their own  
11 product.

12 So -- yeah, so just at the end of the day, the  
13 evidence really is that's not viable. And then as I  
14 say, it's making assumptions about the availability  
15 of the program and the fact that we've got thousands  
16 of people that that would have to work for.

17 So just in my submission, that would be very  
18 difficult for a court to be satisfied beyond a  
19 reasonable doubt that that was a reasonable legal  
20 alternative when this whole thing is about safety.

21 And now would be a good time to take a break.

22 THE COURT: I have a question for you.

23 MR. BUCKLEY: Okay.

24 THE COURT: Are you not going to go over  
25 the personal use issue, the fake front, or are you  
26 satisfied that you covered it?

27 MR. BUCKLEY: I'm satisfied that I covered

1           it. I jumped ahead but really I talked about pretty  
2           well everything, you know, on that page.

3           THE COURT:                           All right.

4           MR. BUCKLEY:                        So my friend has a copy of  
5           these submissions but I definitely invite the court,  
6           you know, to rely on them for my submissions. But I  
7           think I've already, you know, covered that fairly  
8           thoroughly.

9           THE COURT:                        Well, that is right. You had  
10          covered it and I did ask you some questions on that  
11          particular area as well. All right.

12                        This would be a good time to take a break. We  
13          have been going for an hour and 20 minutes or so.  
14          So we will take an adjournment and I will return at  
15          11:15 and we will continue with your argument.

16          MR. BUCKLEY:                        Thank you, Your Honour.

17          THE COURT:                        Thank you.

18          THE COURT CLERK:                   Order in court. All rise.

19                        This court stands adjourned until 11:15.

20          THE COURT:                        Thank you.

21          (ADJOURNMENT)

22          THE COURT CLERK:                   Recalling Synergy Group of  
23          Canada and TrueHope Nutritional Support.

24          MR. BUCKLEY:                        Your Honour, I want to move on  
25          to Abuse of Process.

26                        I think on the necessity thing I've anticipated  
27          what the Crown's going to say. If the Crown comes

1 up with some other things I'd like to reserve the  
2 right, you know, to address at the end of the Crown  
3 submission but I think I've covered everything that  
4 could reasonably be guessed.

5 I also have, kind of my computer notes of where  
6 I'm going to go on Abuse of Process that maybe  
7 helpful for the Court. My friend already has a  
8 copy.

9 And I was going to pass up some cases also,  
10 that I'll be relying on. And then perhaps finally,  
11 I've provided my friend already the transcript of  
12 the cross-examination of Ms. Jarvis and Mr.  
13 Brosseau.

14 I'm not going to, in my submissions, be  
15 referring to specific pages but in my computer notes  
16 at times I put the page number and line number and  
17 at times I put the text. So --

18 THE COURT: I am just making room for the  
19 extra materials here. I have to rearrange things.

20 All right. Go ahead, please.

21 MR. BUCKLEY: And, Your Honour, I want to  
22 refer to the case of R. v. Peoski (phonetic), which  
23 is a 1998 decision of the Supreme Court of Canada,  
24 found at 1988 SCJ number 28.

25 And why I want to do this is this. The leading  
26 case that's always cited for the test is R. v.  
27 Young, which is another case I provided you.

1           But R v Young, basically Abuse of Process has  
2 two branches, and it can be either or, it doesn't  
3 have to be both.

4           But R v Young uses the word, 'and', between the  
5 two and so I want to point out that Supreme Court of  
6 Canada that's adopted R v Young uses 'or'. Okay.  
7 Because that's important for the Court to know.

8           If you look at Young which is the cite of test  
9 saying well you can either do this and this to the  
10 Abuse of Process for the Supreme Court -- it's  
11 important to appreciate the Supreme Court of Canada  
12 says, No, no. It can be 'A' or 'B' and so I've  
13 tabbed for you and had the computer highlight it and  
14 change the font colour to emphasize that 'or'.

15           In R v Peoski - we're at paragraph 2, Justice  
16 Wilson writing for the Court, cites the test. And  
17 she says:

18  
19           The availability of a stay of  
20 proceedings to remedy an Abuse of  
21 Process was confirmed by this Court  
22 in R. v. Jewett (phonetic). On that  
23 occasion the Court stated that the  
24 test for Abuse of Process was that  
25 initially formulated by the Ontario  
26 Court of Appeal in R v Young. A stay  
27 should be granted where compelling

1           and accused to stand trial would  
2           violate those fundamental principals  
3           of justice which underlie the  
4           community sense of fair play and  
5           decency ...

6  
7       MR. BUCKLEY:                   And then she says:

8  
9           ... or where the proceedings are  
10          oppressive or vexatious.

11  
12       MR. BUCKLEY:                   She goes on to say:

13  
14          The Court in Jewett also adopted the  
15          caveat added by the Court in Young  
16          that this is a power which can be  
17          exercised only in the clearest of  
18          cases.

19  
20       MR. BUCKLEY:                   So the first point that I  
21          wanted to make is just to address to the Court what  
22          the tests are that have been adopted and to point  
23          out that it's one or the other.

24                I mean obviously if both are met, great, but --  
25          and the test is this is so when the proceedings  
26          violate those fundamental principals of justice  
27          which underlie the community sense of fair play and

1           decency. So if that happens it's an Abuse of  
2           Process or where the proceedings are oppressive or  
3           vexatious.

4           I'm using my submissions and the caveat that,  
5           you know, it's only suppose to be used in the  
6           clearest of cases, is probably more just a signal of  
7           the Court, you know, Be sparing here. Because I  
8           think once a Court, for example, finds that it's  
9           proceedings before it are vexatious or oppressive,  
10          you usually would be in a clearest of cases  
11          situation at that point.

12          So it's not a test to be taken lightly. But  
13          it's also not, you know, not something that a Court  
14          should shy away from. So if there was a finding  
15          this is oppressive or vexatious, or that it violates  
16          the fundamental principals of justice underlying the  
17          community sense of fair play and decency, then in my  
18          submission the Court should step in.

19          So I kind of ask the rhetorical question, Why  
20          are we here? Because I'm seeing this as an Abuse of  
21          Process. We're in a criminal proceeding and we know  
22          that for the time period involved, 2003, 90 percent  
23          of the natural health product industry was non-  
24          compliant and I've pointed out earlier that it's not  
25          like the industry was non-compliant because they  
26          were, you know, thumbing their noses at the  
27          regulations. The regulations didn't fit.

1           So if 90 percent of the industry is non-  
2 compliant and there's a reason for it, that it  
3 doesn't fit, why on earth is this company here?

4           And we also know we're in a transition period.  
5 We're moving from one regulatory regime that was  
6 unsuccessfully imposed on the industry into a new  
7 regulatory regime that fits the industry and 2003 is  
8 a transition period. The new regulations are  
9 already on the books. And so it really begs the  
10 question, Why are we here?

11           And if there was evidence of harm this would  
12 make sense. Because you've got all these products  
13 out on the market place, non-compliant with the drug  
14 identification number. If Health Canada had  
15 evidence that one of those was creating harm well  
16 then it makes sense.

17           But we don't have that here. And in fact we  
18 have the opposite. We have evidence that  
19 withdrawing the product from the market, so singling  
20 this product out, out of the 90 percent, would  
21 actually cause harm.

22           So we're in a situation where if you were going  
23 to say, Well which one should we single out,  
24 realistically we should say, Well certainly not this  
25 one.

26           So why are we here? I've already pointed out  
27 in my necessity thing that on the evidence before

1           this Court we are here because this process was  
2           started in an effort to get the defendants to stop  
3           selling.

4           I'm on page 2 of my submissions. So I've got a  
5           heading there:

6  
7           The Purpose of These Court  
8           Proceedings is to Get TrueHope to  
9           Stop Selling.

10  
11           That's on the evidence of Sandra Jarvis and  
12           it's good evidence because she had conduct of the  
13           file. She was the one that did the search warrant.  
14           She was the one that put the prosecution brief  
15           together. And she told this clearly under cross-  
16           examination that the seizures were to get them to  
17           stop selling. The purpose of executing the search  
18           warrant was to accomplish that goal to get them to  
19           stop selling.

20           And that the charges, that is be it this very  
21           Court process, is to get the defendants to stop  
22           selling.

23           THE COURT:                            Just a moment please.

24           Madam clerk, do you want to step out there and  
25           see what is going on.

26           (Other matters spoken to)

27           THE COURT:                            Okay. Let us go ahead.

1 MR. BUCKLEY: Thank you, Your Honour.

2 So the evidence clearly is, because as I say,  
3 Ms. Jarvis was the correct person to give us that  
4 information.

5 The purpose of the charge, so the purpose of  
6 this proceeding, from Health Canada's perspective,  
7 is to get the defendants to stop selling the  
8 product. That is clear evidence.

9 Now that means that this court process is being  
10 used to get the defendants to stop selling. I can  
11 appreciate that the Court can't make that order at  
12 the end of it but from Health Canada's perspective,  
13 the purpose of this, it's just part of a process to  
14 put pressure on the company to stop selling. And  
15 that's the clear evidence.

16 Now Health Canada does not have evidence of  
17 harm. There is clear evidence that if they stopped  
18 selling, that would create harm and death.

19 There is an agreement with the Minister of  
20 Health to allow sale, which has not been revoked.

21 The regulation they're charged with no longer  
22 applies to them. And these are very strong words  
23 but it is the ultimate Abuse of Process to use the  
24 court for a purpose that will cause harm.

25 And I'm not trying to be dramatic but we have  
26 Doctor Popper's evidence and the other evidence that  
27 that's what the result of stopping sale would be.

1           So the purpose behind these proceedings is a  
2           purpose that will cause harm and in my submissions  
3           there can be no greater abuse of the court's process  
4           than to seek a purpose that is harmful.

5           I will come back to that later but I'm going to  
6           deal with some specific --

7           No. It's just that you seem to be thinking and  
8           I was respecting that.

9           THE COURT:                                I was.

10          MR. BUCKLEY:                            So --

11          THE COURT:                            I was thinking that when you  
12           are talking about using the court process to cause  
13           harm --

14          MR. BUCKLEY:                            Mm-hm.

15          THE COURT:                            -- are you suggesting that  
16           this prosecution today, at this time, if successful  
17           by the Crown would cause harm?

18          MR. BUCKLEY:                            Let me give the Court an  
19           analogy. And I'm also want to be clear on the  
20           record, when I speak of Health Canada or I speak of  
21           the Crown I'm not referring to my friends at the  
22           table with me.

23          THE COURT:                            I appreciate that.

24          MR. BUCKLEY:                            So just -- okay.

25          THE COURT:                            I am sure the Crown does as  
26           well.

27          MR. BUCKLEY:                            By analogy courts often find

1 it's an Abuse of Process if a criminal process is  
2 started with a civil purpose in mind such as  
3 collecting a debt.

4 That's often where this comes up. It doesn't  
5 mean in that criminal process that there isn't  
6 evidence of an offence. And -- do you understand  
7 what I'm saying?

8 Like you could have fraudulent transaction or  
9 anything like that and the evidence before the Court  
10 could actually show that an offence is made out and  
11 it's not that you couldn't argue, because often then  
12 it's the Provincial Crown running it and it's just -  
13 - but if the Court concludes -- well just wait a  
14 second.

15 At the back of, you know, the beginning of this  
16 it was started with some different purpose in mind.  
17 Like, I mean, at the end of my submissions I'm going  
18 to go through -- let's look at the sentencing  
19 principals and see how they just do not apply in  
20 this case.

21 But when we have -- because the problem is, is  
22 this whole thing doesn't make sense. Which is why I  
23 ask the question, What are we here? Like it really  
24 does not make sense why this product is singled out,  
25 out of the 90 percent, when from the harm  
26 prospective it's backwards. Like you'd make sense  
27 if the product was harmful to take it off the

1 market.

2 But when the evidence is the reverse it just  
3 doesn't make sense. And what are we to do with the  
4 investigator who put together the search warrant,  
5 who put together the Crown prosecution brief, when  
6 she says clearly the purpose here was to get the  
7 company to stop selling. That's why the charge was  
8 laid. Okay.

9 THE COURT: All right. So you are saying  
10 that it is an Abuse of Process at the time that it  
11 occurred. You are not suggesting that that harm --  
12 it was a potential for harm to have resulted then  
13 but today you are not stating that the harm would  
14 occur if they were successful in this prosecution.

15 MR. BUCKLEY: Well this Court can't -- I  
16 don't think this Court can order the company to stop  
17 selling.

18 Just like when somebody conducts a search  
19 warrant that doesn't force the company to stop  
20 selling. Just like when you turn product away at  
21 the border that doesn't stop the company from stop  
22 selling.

23 But if the purpose, because there's no question  
24 that Health Canada is the driving force behind this  
25 prosecution, if the purpose of all of that process  
26 is to reach a goal where the company stops selling,  
27 I mean if --

1 THE COURT: Well what I am asking you is,  
2 would a conviction for this offence today, working  
3 either by itself or in conjunction with other  
4 factors, lead to the -- or cause the company to stop  
5 selling today?

6 MR. BUCKLEY: I don't think it would.

7 THE COURT: No. Neither do I.

8 MR. BUCKLEY: So I don't think it would.

9 But does that detract from the fact that that's --  
10 well in my submission that's why we're here, is just  
11 part of the pressure that is being put on the  
12 company.

13 And it's still being put on the company because  
14 we're here.

15 THE COURT: All right. Well let me ask  
16 you this.

17 MR. BUCKLEY: Mm-hm.

18 THE COURT: In a normal case then would  
19 not an Abuse of Process argument be made at the  
20 beginning of a trial to prevent the trial from going  
21 on but not at the end of the trial?

22 MR. BUCKLEY: In fact in a perfect world you  
23 should be doing it before arraignment. That is a  
24 perfect case scenario and I wasn't counsel there. I  
25 got this file at the end of November so I'm still  
26 not ready for the trial but in any event in a  
27 perfect world, yes. And that's the proper time.

1           Sometimes if definitely occurs that the evidence of  
2           Abuse of Process starts to come out during the trial  
3           and it certainly doesn't foreclose a Court at any  
4           step of the proceedings, but no, I fully agree.

5           The best time to do this would be before  
6           although we didn't have Sandra Jarvis's evidence  
7           that the purpose was to get them to stop selling  
8           until she was cross-examined. Well, I mean -

9           THE COURT:                               Well as often is the case --

10          MR. BUCKLEY:                            -- of other evidence.

11          THE COURT:                            -- there is a number of  
12           different ways --

13          MR. BUCKLEY:                           Yes.

14          THE COURT:                            -- that this kind of relief  
15           could arise, either before trial --

16          MR. BUCKLEY:                           Mm-hm.

17          THE COURT:                            -- perhaps as a Charter  
18           argument during the trial, right during the trial,  
19           or after a trial.

20          MR. BUCKLEY:                           Yes.

21          THE COURT:                            So but with Abuse of Process  
22           the relief you are looking for is a stay, is that  
23           not right?

24          MR. BUCKLEY:                           Yes. Yes, it is.

25          THE COURT:                            Yes. Go ahead.

26          MR. BUCKLEY:                           So, and it's my understanding  
27           that I have the burden to show on a balance of

1 probabilities, that either of those two tests are  
2 met. That's my understanding.

3 Now I wanted to move on to some different  
4 points. And the way these are ordered are not  
5 necessarily in the order where I think they're the  
6 most important. It's just the way it worked out  
7 when I was preparing.

8 But I want to do the point that laying charges  
9 following an agreement with the Minister is an Abuse  
10 of Process.

11 That alone and I wanted to rely on the case of  
12 R v Young to help illustrate that point, and I don't  
13 know if the Court's familiar with that case but what  
14 happened is, is in Ontario there was an Act where if  
15 some work was done on land before it was transferred  
16 you could avoid some of the tax.

17 And so a lawyer was involved in the transfer of  
18 property where there was commitment to get some work  
19 done. And he swore an affidavit that really was  
20 false, saying that, you know, the work was done when  
21 it hadn't been yet, but he hadn't been acting in bad  
22 faith but it was a false affidavit. He just didn't  
23 plan on it being used until everything had gone  
24 through.

25 This happened in 1977 and the purchaser  
26 actually went to the Ministry of Revenue and the Law  
27 Society of Ontario with this, saying, you know, this

1 is false. And they both look into it because what  
2 could have happened is the Ministry of Revenue had  
3 the option of then reimposing the tax and of  
4 charging him under this *Land Speculation Tax Act*.

5 And the Law Society investigated and did  
6 nothing and so time went by and then years later, in  
7 1982, the police end up getting a copy of this  
8 affidavit and they press him with -- they press  
9 fraud charges under the Criminal Code.

10 And at that time there was a six year  
11 limitation under the other Act had expired.

12 Now I'm going to refer the Court to a couple of  
13 sections because what happened is, is that the  
14 Ontario Court of Appeal found it very important that  
15 at an earlier date the Executive had basically made  
16 a decision not to do anything and then another  
17 branch of the Executive turned around and pressed  
18 charges and that weighed very heavily on the mind of  
19 the Ontario Court of Appeals, saying, Well, just  
20 wait a second. We think this is an Abuse of Process  
21 when you've got the Executive turning their mind to  
22 an issue and resolving it but then later on another  
23 branch deciding to press ahead and lay charges. And  
24 in that case the Crown had said, Well, we're talking  
25 about different branches of the Executive.

26 Now this is a case that is not set out  
27 paragraph numbers so I've put a tab for page 28.

1           And I've highlighted a paragraph there and I  
2           want to read it and then go on to a couple of  
3           paragraphs on the next page, just to illustrate that  
4           point and then explain why I think it applies to  
5           this case on that point.

6           And so where I've highlighted and the Court is  
7           saying:

8  
9           However as STJ (phonetic) stated in  
10          Amato (phonetic) there is a  
11          distinction to be drawn where the  
12          institution of the proceedings is  
13          valid and the only issue is to lay  
14          prejudicial to the accused and the  
15          case where the Executive action  
16          leading to the institution of  
17          proceedings is offensive to the  
18          principals upon which the  
19          administration of justice is  
20          conducted by the courts. I think  
21          this is such a case.

22  
23          I then also highlight on the next page where  
24          the Court said:

25  
26          It was urged by Crown counsel that  
27          the determination of the matter in

1 1997 by the Ministry of the Crown  
2 responsible for the administration of  
3 the *Land Speculation Act, 1974*, was  
4 irrelevant and the matter should be  
5 viewed as if the investigation first  
6 commenced in 1982 when the provincial  
7 police constable was first brought  
8 into the picture. With respect, I do  
9 not agree for these purposes I think  
10 the Executive is indivisible.

11  
12 And then there's another paragraph where I highlight  
13 where it says:

14  
15 Mr. Young is disposed to the  
16 prejudice which he has suffered by  
17 the institution of the current  
18 proceedings, all of which appears to  
19 have been accepted by the trial  
20 judge. The prejudice is not confined  
21 to the impairment of his ability to  
22 make full answer in defence although  
23 such impairment is claimed.

24 Prejudice asserted to goes beyond  
25 that. His life has once again been  
26 disrupted. His reputation in the  
27 community which he lives again

1           damaged and his career put in  
2           jeopardy with respect to a matter  
3           which arose in 1976 and which in 1977  
4           had already been resolved by the  
5           Executive so far as he was personally  
6           concerned in his favour.

7  
8           There was argument about institutional delay  
9           there but when you read the decision what impressed  
10          the Ontario Court of Appeal was that we have the  
11          Executive resolving the matter, and not making a  
12          formal decision, just deciding, We're not going  
13          ahead. And then later on a different branch of the  
14          Executive saying, No, no, we're going to go ahead.

15          In my submission that has direct application  
16          here although it's even stronger in this case  
17          because by March of 2004, the defendants had  
18          resolved the selling without a DIN issue with the  
19          Minister of Health.

20          And not by the Minister of Health not just  
21          deciding, I'm not taking action, or he's not taking  
22          action, but actually by reaching an agreement. And  
23          I think it's fair to say that the Minister of Health  
24          had to feel it was in the public interest to reach  
25          this agreement or else why would the agreement be  
26          reached.

27          So we have an agreement, a formal agreement

1 reached and it's followed and after the agreement is  
2 reached which settled this issue, and legitimized  
3 the company selling without a DIN, in May 28th of  
4 '04 charges are laid.

5 And so, you know, relying on the principal in  
6 Young that it's an Abuse of Process to proceed with  
7 charges when the Executive's already resolved the  
8 issue, if you can appreciate in Young, it wasn't  
9 actually a formal decision made they just decided  
10 not to go ahead. In this case there was a formal  
11 agreement made and the Crown decided to go ahead.

12 And it's not a separate Executive. So in Young  
13 there were different branches of the Executive. In  
14 this case there isn't that disconnect. We have the  
15 Minister of Health and Health Canada. So we're  
16 dealing with the same branch of the Executive.

17 So -- I mean, just to put it in context back to  
18 why are we here, is so what would the community  
19 think when we've, you know, got regulatory  
20 transition period, 90 percent of the industry in  
21 non-compliance, product singled out without evidence  
22 of harm. That product is basically then allowed on  
23 to the market despite not having a DIN by agreement  
24 and then after all of that Health Canada lays  
25 charges.

26 So does that make sense to the community? Does  
27 that fit in with fundamental principals of justice

1 and the community sense of fair play and decency?  
2 In my submission that is extremely problematic.

3 I've also referred a case called R. v. Lapensay  
4 (phonetic) which is a 1993 decision of the Ontario  
5 Provincial Court, which is a very curious decision.

6 What had happened is, is that somebody  
7 basically gave information to a police officer that  
8 this gentleman was driving while impaired.

9 And he wasn't driving while impaired. He  
10 wasn't driving at all. But the officer didn't know  
11 that and based on all the information the officer  
12 had -- Court actually found the officer had  
13 reasonable and probable grounds to make a breath  
14 demand.

15 And this gentleman refuses the breath demand  
16 and so he's charged with impaired driving, leaving  
17 the scene of an accident and refusing to provide a  
18 breath sample.

19 By the time this gets to trial, at trial the  
20 Crown now knows that he wasn't driving so the Crown  
21 can't go ahead with the impaired driving and leaving  
22 the scene of the accident, so the Crown stays those  
23 charges but decides to go ahead with the failing to  
24 blow.

25 Now in considering whether or not that was  
26 abusive it is very clear that the trial judge was  
27 not sympathetic to this gentleman. He found the

1 officer had reasonable probably grounds, basically  
2 found, you know, there was really, there was no  
3 lawful excuse for not giving the breath sample and I  
4 was just left with the impression that the gentleman  
5 didn't do himself any favours in this matter but  
6 despite all of that -- so he's clearly guilty of not  
7 providing a breath sample and at law could've been  
8 found guilty because it wasn't a lawful excuse once  
9 the officer had reasonable probable grounds that  
10 according to this provincial court judge.

11 Okay. We may disagree but according to this  
12 provincial court judge in his mind it's all made out  
13 and this was all reasonable and so the only issue  
14 is, Well would the community be shocked knowing that  
15 I wasn't driving, so despite the fact that he's  
16 guilty for failing to provide a breath sample, would  
17 the community be shocked with the Crown proceeding  
18 when the Crown knows he wasn't driving.

19 Okay. Like, yeah, he's guilty but usually  
20 we're here because in that type of thing because the  
21 guy was driving. Okay. So would the community be  
22 shocked. I'm not going to read it but I've tabbed  
23 the paragraph where the Court in Lapensay said, No,  
24 no, this would be oppressive and offensive is  
25 basically the conclusion.

26 THE COURT: I will take a quick read of --

27 MR. BUCKLEY: Yes.

1 THE COURT: -- paragraph 41 here.

2 MR. BUCKLEY: Your Honour, my submission.

3 The reason why that type of case would offend  
4 the community is, he's there simply because a  
5 mistake's made. It's not that he didn't commit the  
6 offence but he shouldn't have even been asked to  
7 give a breath sample. So it just doesn't seem fair  
8 in that context.

9 Now in this case, like Lapensay, there is not a  
10 DIN number. They're selling without a DIN but we  
11 have, in my submission, a company that is singled  
12 out for no good reason and in fact, as I say, once  
13 evidence becomes clear, because there was evidence  
14 in the Health Canada file that stopping this could  
15 cause harm, that that becomes problematic. The  
16 decision to single this company out. It also  
17 becomes problematic to then again be laying charges  
18 once the Minister of Health validated the selling by  
19 breaching an agreement.

20 Because there really is no other way to  
21 construe it. If the Minister of Health reaches an  
22 agreement, it's validating what's going on so.

23 Now I want to move on to my next point. And  
24 because when we have an investigation like this  
25 where in my submission it was really just blind  
26 following of policy. Okay.

27 I'm going to go into the evidence of where

1 Health Canada just seemed to be determined to gather  
2 evidence that the company was selling without a drug  
3 identification number and ignoring evidence that  
4 blindly following that policy could be problematic.

5 Following this to it's logical conclusion and  
6 obtaining a conviction which is the Crown's goal  
7 will be signalling an endorsement of this  
8 investigation and in my submission and I'm going to  
9 go into some details that this was a type of  
10 bureaucratic behaviour that would shock the Canadian  
11 public. That's my submission and I will explain why  
12 and give details and I'll start with the evidence of  
13 Sandra Jarvis.

14 Because if you recall in her cross-examination  
15 that what we did was we would basically bring out  
16 that there was at various times evidence brought to  
17 her attention and in the Health Canada file that  
18 preceding and stopping this product would cause harm  
19 and they ignored it. They continued in the face of  
20 all efforts by the defendants to show that stopping  
21 selling would create harm.

22 She was referred to the fact that there's this  
23 1-800 line. Now she was not aware of the  
24 communications made on the line except that people  
25 were upset if I recall her evidence correctly.

26 It doesn't matter whether those calls to the  
27 800 line are true or not true. The fact is, is that

1 Health Canada was getting communications by a large  
2 number of people who were communicating in very  
3 clear way that their health was dependant upon  
4 continued access to this product.

5 One would expect that when a bureaucracy is  
6 pursuing an investigation without evidence of harm  
7 and they're getting communications of that type that  
8 some mechanism would kick in to check that out and  
9 it appears that nothing is done.

10 Ms. Jarvis was clear that she was forwarded  
11 media stories. She was forwarded letters of  
12 complaint.

13 Exhibit 4 which is Mr. Brosseau's notes of this  
14 meeting in January of '04, involving Laril Zandberg.  
15 She was asked about whether she was aware of that.  
16 She was and if you recall because even Mr.  
17 Brosseau's notes, I mean it was quite a story in the  
18 notes of the product being tremendously effective.

19 Ms. Jarvis did not think that Ms. Zandberg had  
20 lied. But she didn't think that that situation was  
21 relevant to whether or not there was a DIN.

22 I reproduce from page 44, line 8 of the  
23 transcript, where she said:

24

25 You know I though of it personally.

26 It concerned me personally. I didn't

27 feel it was really relevant to the

1 fact that this drug does not have a  
2 DIN number. Whether or not it, you  
3 know, did amazing things or not the  
4 fact of the matter is it was in  
5 violation of the law.

6

7 Now that is a theme throughout both Ms.  
8 Jarvis's testimony and Mr. Brosseau's testimony that  
9 they are looking at whether or not the actions of  
10 the defendant violated this DIN regulation.

11 And they're pressing ahead. It didn't matter  
12 that there was evidence being placed in front of  
13 them that the product was effective or that people  
14 depended on the product or that there was a health  
15 risk.

16 I was horrified where right after that she  
17 makes a comment that she basically thought it was  
18 unfortunate that people paid for something they  
19 weren't getting.

20 And I say I was horrified because we know from  
21 all of the evidence at this trial that there was a  
22 tremendous health risk involved in withdrawing the  
23 product. We know that.

24 And there was evidence in front of Health  
25 Canada that that was the case and then to make a  
26 comment like it's unfortunate that people weren't  
27 getting something they paid for is very alarming.

1           But what we have is, is just continually  
2           pressing ahead, ignoring, almost like a horse with  
3           blinders on, they're just looking down the road to  
4           get evidence that there's no drug identification  
5           number but they're ignoring everything else that's  
6           being put in front of them.

7           Another theme and I'm not going to go through  
8           every point is, when there was evidence of harm and  
9           this came out with both Ms. Jarvis and Mr. Brosseau,  
10          is there seemed to be no mechanism in place to look  
11          into the issue of whether or not what they were  
12          doing was harmful. Okay.

13          Because it's one thing for us to say, Well, you  
14          know, a bureaucracy like Health Canada is going to  
15          come with policies and as good intentioned as they  
16          are, there's going to be the odd time where the  
17          policy is destructive and there seemed to have been  
18          no mechanism in place at all for when there was  
19          evidence that actually taking enforcement action was  
20          being harmful for re-evaluating. She didn't know  
21          who's role it was, she wouldn't know who to refer it  
22          to and Mr. Brosseau was in the exact same situation.

23          Now in my mind it doesn't excuse somebody who  
24          is involved in directing seizures at the border to  
25          say, Well, it wasn't my job to look into evidence of  
26          harm.

27          Okay. If we've got somebody who is making

1 decisions to turn product away at the border and  
2 there is evidence continually placed before that  
3 person that their actions could be causing harm it  
4 is not an excuse to say it was somebody else's job.  
5 It is not an excuse to say, Well, I didn't know  
6 who's role it was. It is not an excuse to say, It  
7 wasn't relevant to the fact of whether or not they  
8 were committing an offence.

9 That's not okay and you see that's the problem  
10 is, is that this proceeding, the whole proceeding, I  
11 mean, we can't exercise little bits. All of this is  
12 part of a process in which the bureaucracy was  
13 actually causing harm by their actions, and ignoring  
14 evidence. I mean I -- when -- and it's not in my  
15 notes but when she was -- when I was talking to her,  
16 I believe it was about Ms. Zandberg, she wanted to  
17 discount that because it wasn't scientific evidence.

18 And as I thought about that since, in a way  
19 it's horrifying, because if you're an average  
20 Canadian whose health depends on something and  
21 Health Canada is taking enforcement actions that are  
22 going to harm you, you can't run a clinical study or  
23 create scientific evidence. The only thing you can  
24 do is you can go to Health Canada and meet them.  
25 You can write letters, you can call. That's how  
26 citizens interact with their government. That's how  
27 they communicate with their bureaucracy.

1           And it's not done in a scientific way. So  
2 there really is a problem with a statement like,  
3 Well, it's antidotal. It's non-scientific. Because  
4 that's how average Canadians are going to interact  
5 with their government when they're worried about  
6 harm.

7           Now, I'm going to jump ahead because I don't  
8 want to go through every little instance I cite here  
9 but Exhibit 1, the Red Umbrellas website materials,  
10 which she was clearly aware of because she either  
11 downloaded them herself or had somebody else  
12 download it, and there again, I reproduced from page  
13 119, line 11, where again there's this communication  
14 that effectiveness doesn't matter because it's not  
15 relevant to whether or not it's approved and she  
16 said:

17  
18           I was under the understanding that  
19 they were taking that action ...

20  
21 meaning the Red Umbrellas were protesting,

22  
23           ... because they believed in the --  
24 the -- you know, the effectiveness of  
25 the product. It did not have an  
26 impact on -- I didn't believe it had  
27 any support the evidence of selling a

1 product that was unapproved which was  
2 essentially my role.

3

4 September 18th, '03 there's a conversation with  
5 Mr. Stephan, Mr. Shelley and Ms. Jarvis, and Mr.  
6 Brosseau, and Mr. Stephan is talking about suicides.

7

8 Ms. Jarvis didn't think there was any  
9 response into those allegations and  
10 her role ...

11

12 and I don't do the quote but I give you it's at page  
13 128, line 5:

14

15 ... her role was to gather evidence  
16 for the case. There was no  
17 evidentiary value in looking into  
18 allegations of suicide.

19

20 And that's exactly the problem with the  
21 bureaucratic behaviour that we had in this file  
22 because you know what, it's true.

23

24 When you're investigating whether or not a  
25 company has a drug identification number,  
26 allegations that your enforcement actions of  
27 stopping the product at the border may be causing  
suicides, have no evidentiary foundation at all, to

1 the charge. They don't. She's absolutely right.

2 But it taints the process. Okay. It taints  
3 the process. It doesn't affect whether or not the  
4 company was selling without a DIN number, but when  
5 you have a bureaucracy in the middle of their drive  
6 to stop the sale of this product, ignoring evidence  
7 of harm and saying things like, There was no  
8 evidentiary value in looking at allegations of  
9 suicide, that's not the type -- that's exactly the  
10 type of behaviour that would shock the community.  
11 That's exactly the type of bureaucrat behaviour that  
12 Canadians would expect courts not to tolerate.

13 Again, she was aware. So that was when Mr.  
14 Stephan was warning. She knew about news stories  
15 where Ron LaJeunesse was making the same allegations  
16 of suicide. She told us it alarmed her from a  
17 personal view point. She took no steps and I give  
18 you where it is in the transcript, page 130, line  
19 26. She didn't believe that was relevant to the  
20 investigation of the prosecution, and she's  
21 absolutely right. Some third party unconnected to  
22 the defendants at all publically blaming Health  
23 Canada for suicides for actions she's involved with  
24 have no relevance at all to whether or not the  
25 defendants had a DIN number. None. But it taints  
26 the process.

27 When referred to the studies that were

1 published by Doctor Kaplan, although those were  
2 scientific now, it didn't affect Ms. Jarvis because  
3 they were not relevant to proving there was no DIN.  
4 It's just there's a pattern.

5 Miles Brosseau, the other investigator who at  
6 times had conduct of the file and who was also  
7 involved personally in making decisions to turn  
8 product away gave similar evidence.

9 Now also he had never been told what to do if  
10 enforcement action seemed to be causing harm.  
11 There's just an absence of any mechanism here.

12 I'm not going to go through all of this but  
13 responding to that June 17th, '02, letter where  
14 there were these hundreds of attached letters from  
15 Canadians, he didn't read it in depth was his  
16 evidence because it wasn't a directive to take  
17 action. And it had no bearing on how they would  
18 approach an importation and I cite the transcript,  
19 page 250, line 10, where he gives the evidence that  
20 basically if a hypothetical was put to him that if  
21 he had the document that people were basically dying  
22 if he was taking enforcement action, that he'd  
23 ignore it because it's not a policy or a directive.

24 So it wasn't put to him that that's what he was  
25 doing but the hypothetical was put to him and he  
26 agreed.

27 Now that does not affect whether or not the

1 defendants had a DIN number but my submission, it  
2 taints this process and it would shock Canadians to  
3 learn that some Health Canada employees are telling  
4 this Court that they would proceed in the face of  
5 harm and ignore evidence because it's not a policy  
6 or directive.

7 On September 18th, of '03, there's a conference  
8 call that Mr. Brosseau and Ms. Jarvis are part of  
9 with Mr. Stephan, Mr. Hardy and Mr. Shelley, and  
10 that's the one where Mr. Stephan's reading from the  
11 medical post about severe angst being caused with  
12 the product not being available. He's speaking of  
13 suicides and Mr. Brosseau when asked:

14  
15 He didn't verify the Medical Post's  
16 story as it would not have allowed  
17 him to make any changes.

18  
19 At page 263, line 12, of the transcript:

20  
21 He communicates to us, it didn't  
22 alarm him that his enforcement  
23 actions may be leading to deaths and  
24 hospitalizations and this is because  
25 he did not have first hand knowledge.

26  
27 Your Honour, it is alarming to me that a Health

1 Canada employee would press ahead with enforcement  
2 actions that may be causing deaths and  
3 hospitalizations regardless or whether or not he had  
4 first hand knowledge.

5 And in my submission this evidence is chilling.  
6 This bureaucratic behaviour is wrong and that's the  
7 lightest word I can choose. This is exactly the  
8 type of bureaucrat behaviour that would shock the  
9 communities sense of fair play and decency and if a  
10 Court allows this process to go on and register a  
11 conviction, that it will send a message to the  
12 community that this type of bureaucratic behaviour  
13 is okay.

14 And it would be sending that message in the  
15 context of just a clear absence of any public policy  
16 purpose for proceeding with this prosecution, as I  
17 say, with the transition period and 90 percent of  
18 the industry not being in compliance and this  
19 company being granted an agreement to continue on.

20 So it would seem like a needless validation of  
21 frightening bureaucrat behaviour.

22 Now I want to move on to a different point  
23 concerning Abuse of Process.

24 And that is that there's been no real change  
25 and that this is only an illusion to satisfy policy.

26 THE COURT: Sorry. I did not hear you.  
27 What was your last line?

1 MR. BUCKLEY: That this is only an illusion  
2 to satisfy policy. Okay. Because really on the  
3 evidence nothing has changed.

4 Like we're saying, It's okay. I was touching  
5 on this in my necessity argument but it's valid here  
6 also. Because the Crown's pressing ahead to get a  
7 conviction which has to be saying, What you were  
8 doing in 2003 was not okay. But yet as of, you  
9 know, March of 2004, really nothing changed but it's  
10 okay.

11 And it doesn't fit and the evidence is really  
12 clear that really this is just an illusion or shell  
13 game that's been played. It's the same product, the  
14 same participants, the same company approving sale  
15 and the same company managing the program. I've  
16 gone into the point that if the defendants came up  
17 with this arrangement on their own it would've been  
18 dishonest.

19 And the only reason it's not dishonest for them  
20 is that it was suggested to them by the Minister so  
21 they're not hiding anything. They're not -- I mean,  
22 they're participating in this because they want to  
23 do whatever's necessary to have the product flow  
24 across the border but even the settlement itself is  
25 rather bizarre, isn't it?

26 We're pretending that policy is satisfied when  
27 nothing's changed and so we're pressing ahead saying

1 this was wrong in '03 but it's okay in 2004 and to  
2 today.

3 Now I'm going to switch points and this is a  
4 due diligence argument that is relevant to Abuse of  
5 Process and what this is, is that Health Canada  
6 basically sabotaged the defendants efforts on due  
7 diligence and hid information on that point, because  
8 this is strict liability offence. The obvious  
9 defence is due diligence. That's the first one that  
10 comes to people's mind is due diligence.

11 THE COURT: So you are moving away from  
12 your Abuse of Process?

13 MR. BUCKLEY: This is part of my Abuse of  
14 Process --

15 THE COURT: Part of your Abuse of Process?

16 MR. BUCKLEY: -- argument but I'm just --  
17 I'm going to adopt it as a separate argument of due  
18 diligence but for time I'll do the both at the same  
19 time because the due diligence part actually fits in  
20 to the Abuse of Process, because it's such an  
21 obvious defence.

22 But we know from the evidence it was not  
23 feasible for them to get a DIN. Okay. It wasn't.  
24 So the only due diligence they could do, the only  
25 options they had to be in compliance was to get a  
26 Ministerial exemption or to try to reach some  
27 agreement with Health Canada that, you know, would

1 be okay and keep them out of court.

2 Okay. So for them to exercise due diligence  
3 for an offence like this they've got two options.  
4 So then the question is, is well were they duly  
5 diligence. But the problem is, and they were. They  
6 were trying to get a Ministerial exemption, writ  
7 (INDISCERNIBLE). I mean they could be a case study  
8 in how to try to create political awareness and  
9 pressure on government to do something. And they  
10 were trying to reach an agreement with Health Canada  
11 and trying to get attention.

12 That's the due diligence part but isn't it --  
13 doesn't this process of trying to convict them for  
14 not having a drug identification number then become  
15 abusive when you're sabotaging their due diligence.  
16 Okay. The Minister was not willing to meet with  
17 them and let them present evidence and comply with  
18 the law.

19 Okay. They're doing everything they can to  
20 comply. They're doing their due diligence. There  
21 has to be, if the Crown's going to proceed, and say  
22 you didn't have a DIN. You weren't complianced.  
23 There has to be a corresponding obligation on Health  
24 Canada and the Minister to take those approaches  
25 seriously and consider whether there should be a  
26 Ministerial exemption. You can't have it both ways.

27 You can't say, It's wrong for you to not have a

1           DIN, not be in compliance, and then deny them the  
2           opportunity to be in compliance. The only  
3           opportunities that they had in 2003 was Ministerial  
4           exemption or an agreement with Health Canada and it  
5           was a brick wall with both the Minister and with  
6           Health Canada. There seemed to be an absolute  
7           reluctance to consider, I mean, there was an  
8           actually on Health Canada's part, it appears from  
9           Brosseau and Jarvis, they didn't even understand  
10          what an exemption was.

11                 So it's somewhat alarming that you'll say,  
12          Well, we're going to prosecute you for not having  
13          DIN and we don't even know what your other options  
14          are and we're sabotaging your due diligence.

15                 And in my mind, that is abusive. It violates  
16          fair play and decency. And so, as I say, the  
17          defendants were absolutely diligent in the only  
18          means open to them and they were blocked.

19                 So, now there's also a problem in that it  
20          should've been known to Health Canada that the  
21          defendants could not get a DIN number. Okay. I'm  
22          going to invite this Court to find that there was  
23          just no way. I mean to accept Bruce Dales evidence  
24          that there was no way they could get a DIN number.  
25          That is was not feasible.

26                 So if it's not feasible for them to get a DIN  
27          number, Health Canada which sets up the procedures

1 and sets up what they had to do, had to have known  
2 that they couldn't get a DIN number which creates  
3 problems on it's own, from you know, the community  
4 looking at this. So we're charging the company with  
5 not having a DIN number which you know carries a  
6 stigma if they're convicted when you know they  
7 couldn't have gotten a DIN number.

8 I mean it's more offensive in the climate of  
9 the time with 90 percent of the industry being non-  
10 compliant because they couldn't comply but even  
11 aside from that, in this specific case it's a  
12 problem.

13 I don't think the community would understand  
14 how this is just or fair. Because why even pretend  
15 that you can and Health Canada knew they couldn't  
16 get a DIN and that shows up in the emails. It shows  
17 up in the discussions with Doctor Kaplan, whether  
18 they're true or not. I mean in the discussions with  
19 Mr. Stephan and Hardy. I don't need them for the  
20 truth of the contents. It's just as abusive if  
21 Health Canada's communicating amongst themselves and  
22 lying that these guys can't get DIN numbers.

23 Or Bonnie Kaplan, the University of Calgary,  
24 can't get an IND. I mean I don't care if they're  
25 truthful or lying, it's just as offensive that the  
26 communications are occurring and it's also offensive  
27 that those were not disclosed in a fair and frank

1 way.

2 So we have for example, Exhibit 68, which was  
3 disclosed pursuant to an access to information  
4 request and it was edited to remove the  
5 communication that was given to Doctor Kaplan by  
6 Mithani, that she couldn't get an IND. Okay. so  
7 it's --

8 THE COURT: Just stop right there for a  
9 minute. I want to take a look at that.

10 MR. BUCKLEY: You want to look at 67 and 69.  
11 So 67 will be the edited one and 69 will be the one  
12 that's unedited that was obtained during the trial  
13 pursuant to a court order.

14 THE COURT: And I take it you are  
15 referring me to the highlighted areas in 69?

16 MR. BUCKLEY: I believe I highlighted the  
17 areas that were not disclosed, that were edited out.

18 THE COURT: All right. Just a moment  
19 please.

20 MR. BUCKLEY: Your Honour, I just see that  
21 I've referred you to the next set but it's still  
22 there. A more dramatic set is 62 and 68.

23 THE COURT: All right. Just a moment.

24 MR. BUCKLEY: Sixty-eight being the edited  
25 one. That was disclosed pursuant to an access to  
26 information request. Sixty-two being the one that  
27 was disclosed pursuant to Court order during the

1 trial.

2 And so in 68 I've highlighted where the edited  
3 parts are taken out. I'm not sure that in 62 I've  
4 highlighted the missing parts.

5 THE COURT: Just a moment. Let me get to  
6 it. It is a little more difficult because --

7 MR. BUCKLEY: Yes, but they don't follow the  
8 same pages.

9 THE COURT: -- they are formatted  
10 differently.

11 MR. BUCKLEY: Yes.

12 THE COURT: So I have to get the date and  
13 the parties. And the time.

14 All right.

15 MR. BUCKLEY: So --

16 THE COURT: Your point is. Go ahead.

17 MR. BUCKLEY: My point is, is if you're  
18 preceding on a trial, saying that a defendant  
19 doesn't have drug identification number, and it's  
20 clearly relevant to due diligence and to the Court's  
21 understanding of the reasonableness of the  
22 proceedings, whether or not they could have gotten a  
23 drug identification number, I mean, that's important  
24 for a court to know, and it's important for  
25 defendants to know whether or not the Crown thinks  
26 they could've gotten one because that affects how  
27 you would approach a due diligence defence and what

1 options are available.

2 I mean, why go through a court proceeding  
3 pretending that you could've gotten a drug  
4 identification number if the Crown doesn't think you  
5 could get a drug identification number.

6 Now those emails should've been disclosed when  
7 charges were laid. And they should not have been  
8 edited under the access to information request.

9 Now but isn't it curious that what's edited out  
10 because the part about, you know, whether Doctor  
11 Kaplan could get an IND is relevant. If you can't  
12 get an IND you can't run a clinical trial and you  
13 can't get a DIN so why is it that that information  
14 was attempted to be edited out in materials  
15 disclosed under an Access to Information request  
16 when they were directly relevant and why weren't  
17 they disclosed in criminal proceedings when it's  
18 relevant. It's directly relevant.

19 So on the one hand we have a proceeding where  
20 the -- where Health Canada -- well they couldn't. I  
21 mean, they couldn't get a DIN and Health Canada knew  
22 or should've known they couldn't get a DIN and  
23 they're hiding information from the defendants that  
24 that's what they believed.

25 And my point is that this makes this seem more  
26 unfair and vexatious because it's already absurd in  
27 the first place. Singling a company out when the

1 whole industry can't comply but more so when you  
2 know that they can't and you're hiding information  
3 that you know that they can't.

4 So it just keeps adding on and on and on. Now  
5 on the point of not having full disclosure I am also  
6 troubled with this 800 crisis line materials.

7 Now there is no question that that disclosure  
8 is chilling and probably embarrassing for Health  
9 Canada but that's the exact type of evidence that  
10 should've alerted Health Canada to the point that  
11 maybe there was something wrong with how they were  
12 having conduct of the file and that maybe there was  
13 a problem with proceeding in this court.

14 Now they should have been disclosed without a  
15 disclosure request. They certainly should've been  
16 disclosed once there was a disclosure request and in  
17 our minds, the defence minds, it is highly  
18 suspicious that within an hour of -- well we were  
19 told they were undiscoverable and within in an hour  
20 of the Court making an order for their disclosure  
21 they are not undiscoverable anymore. They're  
22 magically discovered.

23 But they should've been -- even if there's no  
24 malfeasants (phonetic) on Health Canada's part and  
25 they honestly couldn't find them until an hour after  
26 the Court ordered their disclosure, even if that's  
27 true, it doesn't change the fact that they should've

1           been disclosed long before.

2                   Another troubling factor with this file is the  
3           double standard that was applied for Ron LaJeunesse.

4                   So we have somebody who every time he calls to  
5           intervene on behalf on one of his clients of the  
6           Canadian Mental Health Association, every time, 100  
7           percent, Health Canada releases those shipments.

8                   So while we have, you know, Red Umbrellas,  
9           protesting in Ottawa, and hundreds of calls to the  
10          1-800 crisis line, people writing letters, people  
11          phoning, we have, if you happen to be lucky enough  
12          to phone Ron LaJeunesse you're going to get your  
13          product. There was a non-level playing field.

14                  And it raises the question, Well how come it  
15          was okay from a policy perspective or a safety  
16          perspective to allow shipments across the border  
17          every time he phoned but that otherwise it wasn't  
18          okay.

19                  And it's just another part of these proceedings  
20          that just seem to be, in my submission, offensive  
21          because we've got all this evidence of harm and yet  
22          somebody who happens to be politically connected  
23          gets doors opened and if you're not politically  
24          connected you don't get your product and you have to  
25          turn to smuggling and things like that.

26                  I'm going to turn to another point about the  
27          Health Hazard Evaluation and Health Canada's

1 assessment risk.

2 I can take a break. I'm happy to proceed  
3 though, too (INDISCERNIBLE).

4 THE COURT: I think it is a good spot to  
5 take a break.

6 MR. BUCKLEY: Okay.

7 THE COURT: Twenty-five to one. We will  
8 return at 2:00 and you will continue on then with  
9 your next section of argument, the Health Hazard  
10 Evaluation.

11 MR. BUCKLEY: Thank you, Your Honour.

12 THE COURT: Okay.

13 THE COURT: All right. Court stands  
14 adjourned then until 2:00.

15 THE COURT CLERK: Order in court. All rise.  
16 Court stands adjourned until 2:00 p.m.

17 THE COURT: Thank you.

18 -----

19 PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.

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1       \*Certificate of Record

2             I, Jillian Fox, certify this recording is a record  
3             of the oral evidence of proceedings in the Criminal  
4             Court, held in courtroom 413, at Calgary, Alberta,  
5             on the 29th day of March, 2006, and I was in charge  
6             of the sound recording machine.

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1 \*March 29, 2006 p.m. Session

2 J. Fox

Court Clerk

3 -----

4 THE COURT CLERK:                   Recalling Synergy Group of  
5                   Canada and TrueHope Nutritional Support.

6 MR. BUCKLEY:                   Thank you, Your Honour.

7                   The next topic that I wanted to address in the abuse  
8                   of process argument was the topic about the health  
9                   hazard evaluation and Health Canada's assessment at  
10                  risk.

11                  And it's part of the wider picture because  
12                  there's a pattern going on. We learn from Sandra  
13                  Jarvis that Health Canada's policy is to give the  
14                  party the opportunity to contribute information  
15                  going into the health hazard evaluation. That would  
16                  make sense to most of us in the court process  
17                  because that's a procedural fairness safeguard  
18                  that's built into their policy. And it also is just  
19                  good policy to -- if you're going to evaluate the  
20                  safety of something to actually have all of the  
21                  information you can.

22                  And so, in a case like this, the defendants  
23                  should have been given the opportunity to share  
24                  information with Health Canada as they're preparing  
25                  what they call, a health hazard evaluation. And we  
26                  know that this wasn't done. And we know not only  
27                  was this not done, but then when the company want to

1 meet with Health Canada and share its scientific  
2 information that met with resistance. So throughout  
3 2003 that met with resistance.

4 Now, even without the company being invited as  
5 they're supposed to participate in this process we  
6 arrived at the situation where Health Canada said,  
7 okay, we're type two. So that means that the  
8 probability of any serious health consequences had  
9 to be remote. So we're in a very low category to  
10 begin with and then we're also faced with a  
11 situation, if you recall when Ms. Jarvis was on the  
12 stand where she seemed to be confused -- there  
13 definitely was confusion as to whether or not the  
14 department that does the health hazard evaluation  
15 and her department uses the same categorization of  
16 risk, if you recall that part.

17 So amazingly we have what should be a risk  
18 based enforcement policy where the investigator, Ms.  
19 Jarvis, who is pushing this file for a lot of its  
20 life cannot even be sure that she appreciates what  
21 level of risk was being assigned by Health Canada.  
22 This makes proceeding and taking enforcement action  
23 in the face of evidence of harm, even more  
24 unacceptable than it otherwise would.

25 And I'm mindful that it seems at no point was  
26 Health Canada willing to communicate what the  
27 supposed harm was. And we have as an example that

1 800 call that Autumn Stringam taped where she's  
2 asking the 800 crisis line lady what's the harm?  
3 What evidence of harm is there and no answer was  
4 forthcoming and that seemed to be a theme throughout  
5 this file.

6 Now, I'm going to move onto another heading and  
7 this one is very significant. And that is, is that  
8 the Court is being asked to endorse the turning of  
9 law abiding citizens into smugglers. As I've  
10 already indicated that the purpose behind these  
11 proceedings was to take another step to get the  
12 company to stop selling.

13 We know that if the company had stopped selling  
14 in Canada that that would have created a situation  
15 where people were smuggling. And we know that  
16 because when Health Canada started stopping  
17 shipments at the border and turning them around that  
18 what occurred was, is that people across the company  
19 ended up smuggling. Now, I had Debra Oxby on the  
20 stand from the Food Safety Branch of Agriculture  
21 Canada, she said she didn't smuggle because she  
22 stockpiled, but, she would have smuggled if she ran  
23 out.

24 We had Sheila Stanley tell the Court that she  
25 did smuggle. That she ended up lying to Customs and  
26 that when she did that, she felt like she was  
27 smuggling heroin. We had Savine Coulson indicating

1 to the Court that she ended up smuggling three  
2 times, twice at Cornwall and once from Florida. And  
3 we also had Ms. Autumn Stringam explain to the Court  
4 that she also ended up engaging in smuggling to  
5 ensure that they had access to the product.

6 Now, when we're in a situation that enforcement  
7 action is putting ordinary Canadians in the  
8 situation where they have to smuggle in order to  
9 protect their health, that creates a problem.

10 There's a severe problem if enforcing a regulation  
11 that didn't fit an industry is going to put other  
12 people in a situation where they're having to commit  
13 crimes just to protect their health. And that's  
14 just another part of this investigation that taints  
15 it.

16 Now, I want to move onto my next heading which  
17 is, would the defendants have been able to use the  
18 need to comply with this DIN regulation as a defence  
19 to the charge of criminal negligence. And I've  
20 already outlined for the Court how Sections 216 and  
21 217 of the Criminal Code create duties which apply  
22 to the defendants.

23 And we know that the defendants were very aware  
24 that taking the product from the marketplace would  
25 create, to use Dr. Popper's words, deaths,  
26 hospitalizations, assaults. Now, let's say the  
27 defendants had listened to Health Canada. So they

1 get a cease and desist order, stop selling because  
2 you do not have a drug identification number. And  
3 knowing what they knew in 2003, they stopped selling  
4 and that there were deaths and there were  
5 hospitalizations.

6 And let's say they're charged with criminal  
7 negligence. And now what we have is, is we have the  
8 Crown actually running the defence case that  
9 happened here. So the Crown is calling people like  
10 the ladies from the Red Umbrella to explain how  
11 harmful this was. The Crown is calling experts like  
12 Dr. Popper and Dr. Kaplan to explain how if you  
13 withdraw this treatment this is what happens.

14 So we're in a situation where basically the  
15 evidence the defence has called in this trial is  
16 facing them in the face. We've got people like Mr.  
17 LaJeunesse who, you know, says, Well, yeah, I mean,  
18 it was obvious that this was going to happen. Could  
19 the defendants basically justify their actions? So  
20 could they stand in front of jury and say, you know  
21 what, yeah we knew that we were going to cause death  
22 and harm, but, we had this DIN regulation, yeah we  
23 know that 90 percent of the industry didn't comply  
24 and we know that it was for a pharmaceutical model  
25 and it didn't fit us, but, we had to comply.

26 And, in my submission, there's not a jury in  
27 Canada that would accept that as an excuse for

1 causing death and bodily harm. It's laughable. And  
2 if -- if there's no jury in Canada that would accept  
3 that as an excuse then that raises the question is,  
4 well why are these proceedings going ahead? What  
5 I'm trying to illustrate to the Court that this is  
6 vexatious and oppressive, that this basically goes  
7 against the community sense of fair play and  
8 decency. When we turn it around it becomes very  
9 clear.

10 I'm not going to deal with my next heading.  
11 I'll just leave my notes on that. But, I will move  
12 onto outside criticisms. And some of these outside  
13 criticisms, the people were here and explained why  
14 there were doing criticisms and some they weren't.  
15 So they're not for the truth of their contents.

16 But when a Court is trying to assess whether or  
17 not a certain proceeding, kind of crosses the  
18 community line of fair play and decency, in my  
19 submission it's germane what other people have said  
20 about the proceedings. So when we have people like  
21 James Lunney criticizing these proceedings in the  
22 House of Commons or the Standing Committee of  
23 Health. When we have members of the Standing  
24 Committee of Health, although not for the truth of  
25 its contents, but basically apologizing to the  
26 defendants for the treatment they received at the  
27 hands of Health Canada, in my submission, that at

1 least raises alarm bells about whether or not its --  
2 these proceedings are appropriate.

3 And then also when we have the former Head and  
4 was Head at the time, of the Canadian -- Alberta  
5 Branch of the Canadian Mental Health Association,  
6 basically also criticizing Health Canada in a very  
7 public way, in my submission, that sends a message  
8 as to whether or not, these proceedings are  
9 appropriate.

10 Now, the next issue I wanted to address is, is  
11 that none of the sentencing of principles in section  
12 718 of the Criminal Code apply. And there are no  
13 sentencing principles in the Food and Drug Act. And  
14 with Criminal Code procedures apply to these matters  
15 and it's somewhat germane because when we go through  
16 a criminal process there's objects at the end.

17 So assuming you start a process with the  
18 assumption that you can secure a conviction, then  
19 whether or not you would fit into some of the  
20 sentencing principles of Section 718 are very  
21 germane. And we have here, 718 reads:

22

23 The fundamental purpose of sentencing  
24 is to contribute along with crime  
25 prevention initiatives to respect for  
26 the law and the maintenance of a  
27 just, peaceful and safe society by

1           imposing just sanctions that have one  
2           or more of the following objections.  
3

4           And the first one is, "to denounce unlawful  
5           conduct". Okay. So the first sentencing principle  
6           is to denounce unlawful conduct. If the Court  
7           accepts our submissions that the defendants really  
8           did not have much of a choice here because if they  
9           had stopped selling in 2003, they would have caused  
10          incredible harm to the participants that were no  
11          longer able to get the product.

12          Well, even though that might be unlawful in the  
13          sense of not having a drug identification number,  
14          that's not the type of behaviour we'd actually want  
15          to denounce. Because we actually want people when  
16          faced with, well do I violate a regulation or do I  
17          ensure that people are safe, we actually we want  
18          them to choose the later. So, in my submission,  
19          this isn't a situation where if the Court convicted  
20          that it would be appropriate to denounce the  
21          conduct.

22          The second sentencing principle is, "to deter  
23          the offender and other persons from committing  
24          offences." Now, it's not talking about offences  
25          generally, it's talking about as applies to that  
26          case. So in the case, do we want to send a message  
27          to other people that might be in a situation of

1 applying a regulation that really isn't adhered to  
2 by an industry and causing harm and death or you  
3 know, ignoring the regulation for safety reasons.  
4 We don't want to deter the decisions like the  
5 decisions made by the defendants in this case. I  
6 mean we don't.

7 The next sentencing principle is, "to separate  
8 offenders from society where necessary." And I  
9 don't need to spend a lot of time on that. On the  
10 facts of this case, there's really no reason at all  
11 why the defendants, let's just ignore that there's  
12 corporations if you were dealing with Mr. Hardy and  
13 Mr. Stephan, this is not the type of situation where  
14 we could incarcerate them.

15 "d) to assist in rehabilitating offenders."  
16 The problem with that is, is as I've indicated with  
17 the earlier ones if we'd have to make a choice we'd  
18 actually want to encourage the behaviour of the  
19 defendants. So, we don't want to rehabilitate them  
20 to not make decisions like they made.

21 "e) to provide reparations for harm done to  
22 victims or to the community." That's not  
23 appropriate because their actions didn't cause any  
24 harm. Their actions were to prevent harm.

25 And then "f) to promote a sense of  
26 responsibility in offenders and acknowledgement of  
27 the harm done to victims and to the community." And

1 again this is backwards. It's absolutely backwards.  
2 Because they didn't cause any harm to the community  
3 because they were in violation of the DIN.

4 And they didn't -- they didn't cause harm  
5 because they were acting responsibly and taking  
6 responsibility and I've already gone through that  
7 there were legal duties placed on them under the  
8 Criminal Code.

9 Now, if you're in a criminal proceeding and  
10 none of the sentencing principles apply and in fact,  
11 they seem to be almost backwards, then in my  
12 submission that kind of renders this whole process  
13 rather, I'll use the word, silly, but it -- it just  
14 once again it makes no sense because what's the  
15 ending?

16 Court proceedings are not undertaken just for  
17 purpose of doing something. They're supposed to be  
18 a principled ending assuming that the Crown can make  
19 out its case. And when you're in a situation where  
20 the principled ending doesn't fit -- where the  
21 principles of sentencing don't apply and actually  
22 suggest that this is inappropriate, then in my  
23 submission, it is inappropriate.

24 Now, the last heading I have is somewhat tied  
25 to my first heading that allowing this to proceed to  
26 a possible conviction validates some of the actions  
27 that occurred. So, we have here as I say, just an

1 absolute incredible investigation. And I'm not  
2 going to go back into that how they were just  
3 ignoring evidence of harm, but, it's absolutely  
4 incredible. And it taints these proceedings. That  
5 investigation in stopping product at the border  
6 caused panic and harm. It turned Canadians into  
7 smugglers.

8 In my submission, it endorses the goal of  
9 Health Canada to stop selling when that goal leads  
10 to serious consequences. And Your Honour you raised  
11 the point earlier this morning that, you know, the  
12 Court can't stop selling so the Court process going  
13 ahead isn't really endorsing that end.

14 And I'm hoping the Court can keep in mind and  
15 as I say, I've drawn analogies to basically civil  
16 process being used in the criminal sphere. That --  
17 this Court can't order the defendants to stop  
18 selling, but, Health Canada can't make that order  
19 either. So Health Canada has to go through  
20 processes like this Court process to try and impose  
21 its will. Okay, and there's nothing -- Health  
22 Canada can't just order a company to stop selling  
23 (INDISCERNIBLE).

24 So we're in a situation where the Court is  
25 somewhat reluctant to accept my submission that the  
26 purpose of these proceedings is to try and get the  
27 defendants to stop selling and I'm just indicating

1 that really there's not a lot that Health Canada can  
2 do in the actions that it takes. And this is --  
3 this is the most significant part of their  
4 enforcement arsenal and urge the Court not to ignore  
5 Sandra Jarvis' own evidence that that's why these  
6 proceedings were commenced, to encourage the company  
7 to stop the sale.

8 And when I'm talking about different matters  
9 tainting these proceedings, the Court should bare in  
10 mind that one of the purposes of an abuse of process  
11 consideration is so that the reputation of the Court  
12 is protected. It's actually a mechanism that the  
13 Court has to protect its own reputation. And when  
14 we have things happening in a file that, you know,  
15 you could argue well okay, turning Canadians into  
16 smugglers, fine that happened with the enforcement  
17 they were taking but, you know, it's not really  
18 connected to what the Court has to consider in  
19 trying to figure out whether there's a DIN.

20 You could make that argument on several things,  
21 but now we're in the type of argument that Sandra  
22 Jarvis and Miles Brosseau were using when they were  
23 ignoring evidence of harm. Because it's not -- that  
24 stuff's not relevant to the investigation of the  
25 DIN. The problem with protecting the Court's  
26 reputation is that the public is going to have  
27 trouble drawing those subtle distinctions. And in

1 my submission, we're in a situation where there's  
2 just so many problems with the file that the whole  
3 process just has this taint to it. And, I mean, the  
4 ultimate validation in a criminal proceedings is a  
5 conviction. It does serve to validate for the  
6 community that the Crown was right and I don't mean  
7 my friend, when I say Crown. And that -- those are  
8 my submissions on abuse of process.

9 I was going to move then to a different point.  
10 Your Honour, I've provided my friend with this  
11 earlier today. I had made illusion to it yesterday  
12 about the issue of manufacturing.

13 THE COURT: You had another page to your  
14 submissions.

15 MR. BUCKLEY: On the abuse of process?

16 THE COURT: Yes, Health Canada's not  
17 following DIN regulations, it is in non-compliance.

18 MR. BUCKLEY: Yeah, I wasn't going to go  
19 into that, but I'm just not sure how strong it is.  
20 The problem is, is that the word DIN isn't defined.  
21 So you can't find in the Act or regulations what a  
22 definition of a DIN is. So you just kind of have to  
23 look at the regulations covering DINS.

24 And basically how that works is, is the  
25 Director basically can approve DIN numbers.  
26 Director is a defined term to mean Assistant Deputy  
27 Minister, Health Protection and Food Branch. And I

1           was just going to point out that it seemed on the  
2           evidence of Alba Toledo that that never occurs.  
3           But, the weakness in that argument is, is that I  
4           can't show that there wasn't delegation.

5           THE COURT:                           All right.

6           MR. BUCKLEY:                       Now turning to the issue about  
7           manufacturer and Your Honour attached to that I  
8           include the sections of the regulations that apply  
9           and also the section of the Trademark Act that  
10          applies.

11                   And I -- I've indicated to the Court yesterday  
12           that if you actually look at the charging Section  
13           which is C.01.014(1) it refers to manufacturing. So  
14           it's not a general prohibition to anyone to sell  
15           without a DIN it only applies to the manufacturer.  
16           And so then that obviously raises the question  
17           because that's an element of the offence the Crown  
18           has to prove, is was either of the defendants the  
19           manufacturer?

20                   And I'd also alluded to the Court yesterday  
21           that the term, manufacturer, doesn't mean what we  
22           think it does based on common language, that it's  
23           actually defined in A.01.010 of the regulations to  
24           basically mean the party that controls the trademark  
25           or brand name under which it's being sold. And in  
26           my written submissions I -- I break down the  
27           elements of that. But, the key one is, is the issue

1 of control.

2 And I indicate to you in my written submissions  
3 that from a policy perspective this actually makes  
4 some sense. Because the person who has control of a  
5 trademark or a brand name is the person that  
6 controls the product in a marketplace.

7 THE COURT: Just give me --

8 MR. BUCKLEY: Yes.

9 THE COURT: All right. Go ahead with your  
10 control argument, please.

11 MR. BUCKLEY: So, there's actually some  
12 sound policy reasons for that. Because a person who  
13 controls the brand name controls -- can you can them  
14 license out the trademark or brand name to various  
15 people. And so that's the likely target to ensure  
16 that this DIN process is gone through. Because the  
17 rationale for the DIN process, just ignoring that it  
18 didn't work for natural health products is kind of a  
19 pre-market vetting. So there's -- I mean I'm not  
20 criticizing the DIN regulations for pharmaceutical  
21 model at all, it makes a lot of sense.

22 So the only problem is, is it didn't fit this  
23 new industry that's all. So in any event there's  
24 some policy reasons for limiting it to the  
25 manufacturer. So, for example, if a health foods  
26 store was selling product without a DIN the Crown  
27 couldn't turn around and charge the health foods

1 store because the health foods store has no control  
2 over the trademark and you wouldn't put the  
3 responsibility on a health foods store to go through  
4 that process.

5 Now -- and I didn't write the regulations, we  
6 just live with how they're there. They're  
7 specifically written to limit the application of  
8 this charge to manufacturers. It's an element of  
9 the offence and the term is clearly defined to be  
10 limited to the persons that control the brand name  
11 or trademark. Now, the trademark -- a certified  
12 copy of which is entered as Exhibit 70, you will  
13 note right down to the logo is identical to the  
14 trademark shown on Exhibit 7 which are the bottles  
15 purchased by Ms. Jarvis.

16 We know that that trademark is licensed to  
17 TrueHope Institute and we know that because the  
18 Intellectual Property Offices trademark tells us  
19 that and Mr. Hardy also explained that in his  
20 evidence. I don't have to go and rely on the rest  
21 of the file for the truth of its contents. Mr.  
22 Hardy explained that a Vince had taken out the  
23 original trademark and then that was transferred to  
24 TrueHope Institute. I will just point out and I do  
25 in my written submissions that under section 3 of  
26 the Trademark Act:

27

1 Trademarks deemed to have been  
2 adopted by a person either when the  
3 predecessor in title commenced use of  
4 it or when the person or predecessor  
5 filed an application for its  
6 registration.

7

8 And I've given you a copy of that, I reproduced  
9 it in my written submissions. So that means that  
10 TrueHope Institute on the evidence is the  
11 manufacturer. And in any event, there's no  
12 wholeness on the defence to prove who the  
13 manufacturer is, the burden remains on the Crown  
14 beyond a reasonable doubt. And the Crown hasn't  
15 done that in this case and as I say, there's  
16 evidence to the contrary.

17

18 Now that said, having made those submissions  
19 the defence would actually -- and these are valid  
20 submissions that the Crown has not proven the  
21 element of manufacturer. Because of the nature of  
22 this file, if the Court agrees with this submission  
23 we would still invite the Court to give reasons on  
24 the other defences. And then we're also in the  
25 situation where we've run this trial for three weeks  
26 with this constitutional thing still out there and  
27 my friend and I, I believe are in agreement on this,  
the Court can come back and acquit accepting one of

1 the defences.

2 And really there's four. There's the  
3 necessity, there's the abuse of process, there's the  
4 due diligence which I made in the abuse of process,  
5 because it also applies there. And there's this  
6 manufacturer situation. But, if the Court comes  
7 back and rejects all those defences then we're still  
8 in the situation to determine whether or not the law  
9 is valid, I think that's where we're at.

10 So it's not a matter of coming back and  
11 convicting because you can't convict without knowing  
12 whether the law applies. So -- and those are my  
13 submissions Your Honour.

14 THE COURT: Thank you, Mr. Buckley.

15 Mr. Brown, are you ready to proceed?

16 MR. BROWN: Sir, I'm going to -- I know  
17 it's a little early for the break, but I'm going to  
18 ask you if I can have until quarter to 3:00? I will  
19 finish this afternoon if I can get started about  
20 quarter to 3:00, sir.

21 THE COURT: Well, that is fine. I am not  
22 going to suggest to you that you have to finish  
23 today anyway.

24 MR. BROWN: No I am certain I will --

25 THE COURT: We have got two more days of  
26 this courtroom reserved and it is not likely in the  
27 present situation I am going to try to -- with what

1 I also have in here tomorrow --

2 MR. BROWN: Right --

3 THE COURT: -- it is not likely I am going  
4 to have time to give a decision by Friday.

5 MR. BROWN: Right, sir.

6 THE COURT: And I did not -- as a matter  
7 of fact, I will not be. So I will be reserving in  
8 any event so do not feel pressured by time.

9 MR. BROWN: No, I don't, sir. But, as you  
10 probably have seen throughout the course of this  
11 trial I tend to be a little briefer than my friend  
12 and I expect that I should finish by 4:30. I  
13 suppose it's possible I may not, I anticipate I will  
14 be done by 4:30, sir.

15 THE COURT: All right. That is fine and  
16 you want what?

17 MR. BROWN: Just til quarter to, sir. I  
18 just need to check one thing and I should be ready  
19 to go.

20 THE COURT: All right. Ten minutes I will  
21 be back at ten to.

22 MR. BROWN: Thank you.

23 THE COURT CLERK: Order in Court, all rise.

24 Court stands adjourned for ten minutes.

25 THE COURT: Thank you.

26 (ADJOURNMENT)

27 THE COURT CLERK: Recalling the Synergy Group of

1 Canada and TrueHope Nutritional Support.

2 THE COURT: Mr. Brown?

3 MR. BROWN: Yes.

4 THE COURT: Sorry I was somewhat delayed,

5 I had to check on a couple of cases, including a

6 recent one of the Alberta Court of Appeal on

7 sentencing in regulatory offences that I wanted to

8 get a copy of. But in any event, that has been

9 done, and as I said to you earlier, if you require

10 more time than what is permissible or allowable for

11 this afternoon, fine, we have tomorrow and the next

12 day.

13 MR. BROWN: Right.

14 THE COURT: And I am sure that they will

15 find other work for me in any event, if you do

16 finish on time.

17 But the other thing that we will have to do at

18 some point in time is arrange for a continuation

19 date for a decision, and if that is not done by

20 quarter after 4:00 or through our case management

21 office, then I will expect counsel to come back here

22 tomorrow morning at 9:30 and have it done then.

23 MR. BROWN: All right.

24 THE COURT: All right.

25 MR. BROWN: Thank you, sir.

26 THE COURT: All right. Mr. Brown, just

27 before you start.

1 MR. BROWN: Yes, sir.

2 THE COURT: And sorry to keep interrupting  
3 you. But at the beginning of this trial, I believe  
4 you indicated to me that the offence that the Crown  
5 proceeded with on, which I believe was Count number  
6 3 --

7 MR. BROWN: That's right.

8 THE COURT: -- on the Information, carried  
9 a maximum penalty of \$500?

10 MR. BROWN: That's correct, sir.

11 THE COURT: But I also understood you to  
12 say it had another provision in there that would  
13 say, and/or up to what, six months imprisonment?

14 MR. BROWN: Yes, that's correct, sir,  
15 there is a provision for imprisonment as well, sir.  
16 But as my friend indicated, he'd be surprised if I  
17 sought a period of incarceration for either of these  
18 corporations. And he's correct, that it certainly  
19 would not be my submission at the end of the day,  
20 sir. But it is a penalty that is available as well,  
21 is that a period of imprisonment is available as a  
22 punishment in this matter.

23 THE COURT: That is what I want to know,  
24 Mr. Brown, that is why I am asking this question.

25 MR. BROWN: Yes, sir.

26 THE COURT: I wanted to know what  
27 Parliament determined was the maximum penalty

1 available for this type of offence.

2 MR. BROWN: Right, sir.

3 THE COURT: Because that would certainly  
4 give me an indication of the seriousness with which  
5 Parliament viewed this particular provision of the  
6 regulations.

7 MR. BROWN: I understand --

8 THE COURT: Right. That is exactly what I  
9 want to know for. Do you have a copy of it?

10 MR. BROWN: I have Section 31, I can read  
11 to -- read to --

12 MR. BUCKLEY: Your Honour --

13 MR. BROWN: -- but you actually have the  
14 section as well, I believe my friend gave you --

15 MR. BUCKLEY: I have a copy of the Act and  
16 the Regs for you.

17 THE COURT: All right.

18 MR. BROWN: And Section 31 is the relevant  
19 section, sir.

20 THE COURT: All right, that is fine then.

21 I will not ask you to go to it any further.

22 MR. BROWN: Yes.

23 THE COURT: And it is all contained in  
24 Section 31?

25 MR. BROWN: Yes, sir, the -- it's under  
26 the heading, Offences and Punishment, under the Act,  
27 sir.

1 THE COURT: All right, no more talking in  
2 the courtroom, because I am having enough difficulty  
3 sometimes hearing what counsel have to say. All  
4 right.

5 Again, now, Mr. Brown, Section 31, what is the  
6 heading?

7 MR. BROWN: Offences and Punishment, sir.  
8 That's the title, and then on the side there's the  
9 Contravention of Act and Regulations.

10 THE COURT: I am sorry. Did not realize  
11 it was the clerk who was indicating (INDISCERNIBLE),  
12 I just heard this voice from somewhere, all right.

13 And both -- is it always in the same section or  
14 is it in different sections?

15 MR. BROWN: It's all under Section 31,  
16 sir --

17 THE COURT: Okay, that is fine.

18 MR. BROWN: -- and it's a term of three  
19 months imprisonment or \$500 or both.

20 THE COURT: All right, Mr. Brown, thank  
21 you very much for that information. Mr. Buckley,  
22 for the copies of the Act and the Regulations, and  
23 now we will proceed with the Crown's argument.

24 MR. BROWN: Thank you, sir.

25 Sir, it's my intention to begin with where my  
26 friend left off, he dealt lastly with the matter of  
27 the trademark, and I intend to deal with that first.

1 I don't think that this is a matter that's going to  
2 take a great deal of time to deal with.

3 I can say, sir, that I'm slightly surprised  
4 that the interpretation that my friend asked the  
5 Court to apply to the wording of the relevant  
6 section, and I'll read to you what the section says:

7

8 Manufacturer or distributor means a  
9 person, including an association or  
10 partnership, who under their own name  
11 or under a trade name, design or work  
12 mark, trade name or other name, word  
13 or mark, controlled by them sells a  
14 food or drug.

15

16 So if you take out a lot of that and just read,  
17 a manufacturer or a distributor means a person,  
18 including an association or partnership who under  
19 their own name sells a food or drug. That's all you  
20 really need for this case. Now the rest is also  
21 relevant if trademark becomes an issue, but my  
22 submission is that it is not an issue in this case.  
23 That at the very least, the Synergy Group of Canada  
24 fits the title of manufacturer or distributor, a  
25 person as you know, includes a corporation under the  
26 definitions that are applied to the regulations,  
27 sir. And so a person can be a corporation who under

1           their own name, that is Synergy Group of Canada,  
2           sells a food or drug. And that's how I -- I submit,  
3           is the proper way to read this section, sir.

4           The or under a trade, design or work mark is an  
5           alternative, sir. And so I would submit that it's  
6           quite clear on the language and I don't think my  
7           friend provided any case law to argue differently,  
8           that it should be read in any way other than the  
9           clear language of the section, sir. So it's my  
10          submission is that the trademark issue is a non-  
11          issue in this case, and that Synergy Group of Canada  
12          at least -- and also TrueHope would -- should be  
13          found to be manufacturers under the definition.

14        THE COURT:                            Okay, go ahead.

15        MR. BROWN:                         All right. Now having dealt  
16          with that portion of my friend's argument, sir, my  
17          understanding is that he has conceded the rest of  
18          the elements of the offence. In other words, he's  
19          conceding that sales occurred in Canada at the  
20          relevant times by these corporations, and that no  
21          DIN was in place at the relevant time.

22          And that the sale was of a substance or mixture  
23          of substances for which a treatment claim was made.  
24          Those are the elements of the offence, sir, and I  
25          understand that my friend concedes those. Therefore  
26          this case becomes about the defences raised by my  
27          friend.

1           And as I understand it, with the exception of  
2           what I've already dealt with, we're basically  
3           dealing with three defences. The first one I intend  
4           to deal with is the necessity defence. The second  
5           one I intend to deal with is the abuse of process  
6           defence. And lastly, I'll deal with the due  
7           diligence defence, that's more or less the same  
8           order my friend dealt with them.

9           Now I'll deal with each of them in that order.  
10          And I will deal with necessity by covering the three  
11          elements that my friend also dealt with that are  
12          necessary in the necessity defence, and it will  
13          ultimately be, in my submission, that the defence  
14          has failed to raise sufficient evidence to succeed  
15          in all three of the elements that are raised, or  
16          rather, that are essential in the necessity defence.

17          Although as my friend also said, it's only  
18          necessary for the Crown to convince the Court that  
19          one of the three has not been met.

20          And I'll also discuss the abuse for -- or  
21          sorry, discuss the test for abuse of process, and I  
22          will confirm for the Court that there is a very high  
23          hurdle indeed for the defence to meet in order to  
24          have an abuse of process finding by the Court. It's  
25          only in the clearest of cases. And I would submit  
26          that that is a very high hurdle.

27          And I will go on from there, sir, and argue

1 that a stay of proceedings is yet another hurdle  
2 even above that, that my friend needs to meet, in  
3 order to have the Court stay these proceedings.  
4 Again, it's only in the clearest of cases, but  
5 again, it's my submission that just finding an abuse  
6 of process does not automatically lead to a stay of  
7 proceedings, there are differences. And I will  
8 submit ultimately that the stay of proceedings test  
9 is separate and higher. And I'll provide some  
10 Supreme Court case law that I intend to rely on for  
11 those submissions, sir.

12 And finally, I'll argue that the defence, with  
13 respect to due diligence has failed, as I'm sure  
14 you're fully aware, sir, in the due diligence  
15 defence it's necessary for the defence to indicate  
16 that they took all reasonable steps to comply with  
17 the regulations, and I'll submit that they've fallen  
18 short of that test.

19 So that in a nutshell is what I intend to  
20 discuss with you this afternoon, sir.

21 Now, during my submissions, sir, I will ask the  
22 Court to keep a couple of things in mind, one of  
23 which is we've got a lot of evidence before the  
24 Court obviously, and some of that evidence relates  
25 to some of the events around Dr. Kaplan and her  
26 clinical trials. And I'm going to submit that Dr.  
27 Kaplan's interaction with Health Canada is actually

1 a separate set of interactions, and that the  
2 Synergy/TrueHope Group, have a set of interactions  
3 that are separate and apart from Dr. Kaplan, and I'm  
4 going to ask you on a couple of occasions to recall  
5 that in my view, and in my submissions, sir, those  
6 are separate sets of events, tied together to some  
7 degree, but they are separate for the purposes of  
8 whether or not a breach of the regulations occurred.

9 And ultimately, having said all of those  
10 things, sir, I'm going to submit that this is a  
11 relatively simply case, not an easy one, but a  
12 relatively simple one when it's pared down to its  
13 bare bones. It comes down to the simple fact that  
14 these two companies failed to comply with the Food  
15 and Drug Act and Regulations and that they refused  
16 to take reasonable steps to become compliant.

17 And I will also ask the Court to consider that  
18 the situation in which the companies find themselves  
19 was to a large degree of their own creation. And I  
20 say that, meaning when this company first started  
21 providing -- I'll say providing this product to  
22 other individuals, they never took any steps or any  
23 actions to become compliant with the regulations.  
24 I'm talking about 1996, 1997, 1998, 1999. They're  
25 already giving this product, distributing this  
26 product to friends, family, individuals that they  
27 came across. They never took any steps to make sure

1           that there were any regulations that they should  
2           have been trying to comply with. And I would submit  
3           that they were not completely naive of the  
4           situation, and that they should have been at least,  
5           or should have made themselves aware of the  
6           regulations for which they had to comply. They took  
7           none of those steps, sir, and as a result they then  
8           find themselves in a situation where they claim that  
9           they must continue to sell the product illegally in  
10          order to substantiate this necessity defence. And  
11          that brings me to the necessity defence, sir.

12                 Now as you know, the necessity defence  
13          basically has the three elements, three elements to  
14          it. And it comes out of -- primarily out of the  
15          decision of Perka from the Supreme Court of Canada,  
16          and I believe my friend's provided you with a copy  
17          of the case. I don't intend to direct you to any  
18          particular portion of the Perka decision, I know you  
19          have it.

20                 So when we talk about the three portions of the  
21          test, the first portion of the test is imminent  
22          peril. So what does imminent peril mean? Well,  
23          first of all, I'm going to submit that the defence  
24          fails on this part of the test. That in order for a  
25          peril to be imminent, it must be immediate and it  
26          must be unavoidable. Those two are essential  
27          elements of what imminent peril is.

1           The evidence that we have before this Court  
2 does not meet either of those criteria. The  
3 evidence is that if the product became unavailable,  
4 at some point there may be some -- there may be  
5 suicides, and therefore the evidence lacks the  
6 element of immediacy. I also submit that is not  
7 unavoidable. It's not like a sinking ship, a  
8 charging bear or even a burning building, to use Mr.  
9 Hardy's analogy. And I'm going to refer to two  
10 cases that I believe shed some light on the  
11 different scenario, because I think as you're aware,  
12 sir, normally a necessity defence is raised in a  
13 truly an emergent situation, like a sinking ship in  
14 Perka, or in some of the regulatory cases that you  
15 may find, it's where a bear is shot in a National  
16 Park because the bear is literally charging at the  
17 person with the gun. Or another scenario where a  
18 cougar was shot in the backyard of somebody's home,  
19 however the defence of necessity was not found to be  
20 viable there, because the determination was that the  
21 peril was not immediate, because they had waited for  
22 three hours and basically took pictures of the  
23 cougar in the meantime.

24           At any rate, I will address the Court's mind to  
25 two cases, sir. The first case is a copy of R v.  
26 Morgantaler from the Ontario Court of Appeal. Now,  
27 sir, this case did go up to the Supreme Court of

1 Canada, but I submit that the findings from the  
2 Ontario Court of Appeal that we are going to  
3 reference are still -- were upheld and that it was  
4 overturned on another basis, sir.

5 And the reason that I rely on Morgantaler in  
6 part, is as you may be aware, sir, Morgantaler is a  
7 situation where he ran an abortion clinic and he was  
8 providing abortions for women, and the claim was  
9 that this was a necessity to provide this service to  
10 these people, and that -- sorry, it was necessary to  
11 provide service to the people and that some of the  
12 women actually were in peril, and that their own  
13 health would actually be in peril if they didn't  
14 seek the abortion, that was the argument that was  
15 put forward. And that's where the necessity portion  
16 of the argument came up. And it was found by the  
17 Court of Appeal that this did not meet the test of  
18 necessity.

19 Essentially the Court said that the operation  
20 of a clinic -- the operation of a clinic is not an  
21 involuntary response to imminent peril. And that's  
22 the portion of the case that I would submit is  
23 important.

24 I have to apologize, sir, the portion -- or  
25 rather, the copy of the case that I provide to you  
26 is from Quick Law, but the case numbers -- or page  
27 numbers rather, are actually in small square

1 brackets on the page, it's a little bit difficult to  
2 read. But if you look at the top right hand corner  
3 you'll see page 60 of 66, and then near the bottom  
4 you'll see in the square brackets, page 428 and  
5 that's the portion of the case that I ask you to  
6 take a look at.

7 THE COURT: Let me just see if I can  
8 follow along what you are saying there?

9 MR. BROWN: Yeah, at page 60 of 66 first,  
10 sir.

11 THE COURT: All right.

12 MR. BROWN: All right, so and then if you  
13 look near the bottom about five lines up or so in  
14 square brackets in bold it says page 428. And it  
15 says --

16 THE COURT: Right.

17 MR. BROWN: -- with respect -- you're  
18 there, sir? Thank you.

19

20 With respect we think that the  
21 defence of necessity was  
22 misconceived, as has previously been  
23 noted before a defence of necessity  
24 is available, the conduct of the  
25 accused must be truly involuntary in  
26 the sense ascribed in that journal  
27 the precedent's cited. There was

1 nothing involuntary in the agreement  
2 entered into in the case by the  
3 respondents.

4

5 And then if you flip over to the next page the  
6 sentence continues after a couple dashes:

7

8 All of these are incompatible with  
9 the uncalculating response essential  
10 to involuntary conduct. Furthermore,  
11 there must be evidence that  
12 compliance with the law was  
13 demonstrably impossible, there was no  
14 legal way out. Not only did the  
15 defendants fail to make every  
16 reasonable effort to comply with the  
17 law, but they consciously agreed to  
18 violate it.

19

20 I submit that's rather important in the current  
21 case, sir.

22

23 Their dissatisfaction with the state  
24 of the law, although perhaps relevant  
25 to the issue of motive, afforded no  
26 basis for the defence of necessity.

27

1           That's at the top of what's numbered 61 of 66.  
2           I would submit that that has a significant degree of  
3           relevance with respect to the case before you.

4       THE COURT:                   I just want a clarification.  
5           You said that this is the Ontario Court of Appeal  
6           decision?

7       MR. BROWN:                   Yes.

8       THE COURT:                   And it went to the Supreme  
9           Court of Canada?

10      MR. BROWN:                   Yes, sir. This portion of the  
11           decision was upheld and it was overturned for other  
12           reasons, sir.

13      THE COURT:                   All right, thank you.

14      MR. BROWN:                   All right. I submit that we  
15           have a similar situation here in Morgantaler too, to  
16           the extent obviously that there is deliberation and  
17           planning by the companies involved here, sir. That  
18           there was an intention not to comply with the  
19           regulations, and that there was deliberation and  
20           planning that went into the design and creation of  
21           the products, the companies and even the peril  
22           itself, sir, if indeed there could be determined to  
23           be peril, at least it is not imminent peril, sir.

24           Now, sir, the next cases I'm going to refer you  
25           to is R v. Krieger. Now, the one that I'm passing  
26           up to you, sir, there are actually --

27           (INDISCERNIBLE) there. Actually it turns out to be

1 three cases. I give you the Court of Queen's Bench  
2 decision only because it has the factual background  
3 attached.

4 The long and the short of the facts of this  
5 case, sir, are is that Mr. Krieger set up a  
6 foundation for the sale of medical marijuana, he  
7 intended to sell it at a cheaper price so that the  
8 clients -- his clients could afford to purchase it,  
9 and it was being sold to people who had AIDS or  
10 cancer or other medical illnesses that wherein they  
11 claimed that medical marijuana provided assistance  
12 to them, sir.

13 Now what's interesting is first of all the  
14 defence of necessity was raised in the case, and it  
15 was not even put before the jury, sir. It was  
16 rejected as there was no air of reality to the  
17 defence of necessity. That essentially this was  
18 again a situation similar to Morgantaler where a  
19 foundation was actually created, the sale of the  
20 product was through this foundation, and therefore  
21 there was no imminent peril and there was no  
22 unavoidable action that needed to be taken, or  
23 involuntary action that needed to be taken by Mr.  
24 Krieger, and I'd submit that's the part that's  
25 important with respect to the case at hand. And you  
26 will see that in the appeal cases they're very  
27 brief, they basically uphold that portion of the

1 decision, they overturned other portions of the  
2 decision, sir, but they uphold the necessity portion  
3 of the decision saying there was no air of reality,  
4 there was no error in even refusing to put it to the  
5 jury.

6 And it is, I'm not sure if I said this already,  
7 sir, but it is somewhat interesting to note in the  
8 Krieger case, that both Mr. Krieger and some of his  
9 clients claimed that they either had attempted to  
10 commit suicide or they would attempt to commit  
11 suicide, if they did not have access to the medical  
12 marijuana, which they claimed was their only source  
13 of relief from their pain. And again, the defence  
14 of necessity was not put before the jury.

15 So it is my submission, sir, that the defence  
16 has failed to establish imminent peril in this case.  
17 And I recognize that there is an onus on the Crown  
18 to establish on a balance of probabilities that the  
19 defence -- that portion of the defence fails,  
20 however, sir, it is incumbent upon the defence to  
21 put in or put forward sufficient evidence to support  
22 it first, and I submit that has not been done.

23 And I further submit, sir, that all of the  
24 above assumes the defence of necessity is even  
25 available to Synergy and TrueHope at all. They  
26 essentially, if I understand correctly how my friend  
27 is creating this argument, is that Synergy and

1 TrueHope were not in any peril themselves, that's  
2 quite clear. They were not facing any kind of any  
3 imminent danger or imminent peril, it is third  
4 parties who are facing this imminent peril. And  
5 therefore in order to make this defence fly, the  
6 defendants have to somehow connect themselves to  
7 these third parties and they have attempted to do  
8 that through this use of the Criminal Code section,  
9 sir. And I would submit that this argument fails,  
10 and that it doesn't fit the necessity situation.

11 And my friend has read to you or provided to  
12 you rather, Section 217 of the Criminal Code, I'm  
13 going to see if I can just track it down here,  
14 because that's one of the sections that he refers  
15 to, or relies on rather, sir.

16 Sir, unfortunately the pages that my friend has  
17 provided don't have numbers, but I'll just read the  
18 section to you, Section 217 of the Criminal Code.  
19 The way it reads is as follows:

20  
21 Everyone who undertakes to do an act  
22 is under a legal duty to do it if an  
23 omission to do the act is or may be  
24 dangerous to life.

25  
26 That's the section upon which he relies. I'm  
27 going to ask the Court to do one thing. When it

1 says, everyone who undertakes to do an act is under  
2 a legal duty to do it, I'm going to suggest that the  
3 Court read it this way, everyone who undertakes to  
4 do a legal act is under a legal duty to do it. And  
5 I would submit that that makes it quite different  
6 from the case at hand, and I'll try to provide the  
7 Court an example of what I mean by that.

8 Take for example the situation where a person  
9 is a cocaine dealer and he has people who are  
10 addicted to cocaine. He is not committing a illegal  
11 act, but he may be engaged in an undertaking, and if  
12 he stops selling that drug to those people they may  
13 well undergo withdrawal symptoms which could be  
14 dangerous to them. I'd submit that there is no one  
15 here that would suggest that he should continue to  
16 sell cocaine. Now obviously I'm not suggesting that  
17 the TrueHope or Synergy folks are in any way akin to  
18 cocaine dealers, I use it merely as the -- for the  
19 purposes of illustration, sir, that it's incumbent  
20 upon the Court to read the word legal before the  
21 word act, in Section 217.

22 And because these companies were not engaged in  
23 a legal act, that they cannot rely on Section 217,  
24 and therefore do not have available to them the  
25 defence of necessity at all. Further, sir, even if  
26 the Court doesn't accept that interpretation of the  
27 Section and doesn't accept that that's a proper

1 reading of the section or the proper interpretation,  
2 I would submit that there is no valid reason for  
3 this company in 2003 to have believed that they  
4 would have been subject to any kind of prosecution  
5 under the Criminal Code, based on failing or  
6 stopping the sale of this product to their clients.

7 You will recall, sir, I asked Mr. Hardy if he  
8 had ever been advised by anyone in authority that  
9 they may be in peril of a Criminal Code charge if  
10 they stopped the sale, and he grudgingly agreed and  
11 ultimately had to say that, no, no one in authority  
12 had ever made any such suggestion, sir.

13 So keeping all those factors in mind, sir, it's  
14 my submission that the defence of necessity is done.  
15 However, in the event that you disagree, sir, I will  
16 continue to deal with the second portion of the  
17 necessity defence, which is the no legal alternative  
18 portion of the test.

19 Now as I said, sir, it's my submission we don't  
20 even get here, but in the event I understand, sir,  
21 that you have to go away and provide a decision, so  
22 it would make sense for me to go ahead and give you  
23 my thoughts on this portion of the argument just the  
24 same.

25 THE COURT: All right, the second element  
26 then?

27 MR. BROWN: Right. Sir, it is my

1 submission that there were viable options available  
2 to this company that were within the law, and that  
3 should have been undertaken. And I will say this,  
4 sir, it's important to remember that questions or  
5 issues of economics are not a valid consideration of  
6 necessity. You can never say, I wouldn't do it  
7 because it would have cost me money, or I wouldn't  
8 do it because I didn't have the money. That's not  
9 an available portion of the defence.

10 So we have possible options, and I should make  
11 it clear here, sir, that I do not believe that it's  
12 the Crown's duty to come up with possible options  
13 for the company, that is their duty. They are  
14 required to think about, consider, conceive and  
15 undertake all of the legal alternatives that are  
16 available to them in order to avoid a breach of the  
17 law, all reasonable ones.

18 So, what are some of the possibilities? I've  
19 got two or three that I'll provide to the Court. I  
20 know my friend went through some of them. One of  
21 the possible alternatives was that essentially Dr.  
22 Popper in his evidence said that he concocted a  
23 mixture of ingredients from the natural health food  
24 store that gave about 60 percent effectiveness, and  
25 you'll recall that is his evidence.

26 He didn't give any evidence that it was all  
27 that difficult to do, and that he simply went to the

1 nearest health food store to come up with this  
2 concoction, I'll call it.

3 Now it was open, I would submit, for Synergy or  
4 TrueHope to encourage people to do something  
5 similar, that they could have told them what they  
6 thought the essential ingredients were and that they  
7 could have gone to the natural health food store to  
8 obtain those ingredients, and I would submit it's  
9 not up to the Crown to say whether or not those  
10 products would be widely enough available in Canada  
11 for them to meet this test, however, certainly on  
12 many occasions on Springham -- Stringham rather,  
13 sorry, Anthony Stephan, Mr. Hardy, they have all  
14 said, we're not selling anything that's any  
15 different than on any health food store shelf.

16 Now my friend I would guess would make  
17 something of the fact, well this is all part of a  
18 program and you can't just have the product without  
19 the program. Well, sir, I know that my friend will  
20 say you needed the sales to continue the program to  
21 go, and that's why I prefaced this portion of my  
22 comments with, economics are not a valid  
23 consideration. If the company felt it was important  
24 enough and that they had a duty to continue to run  
25 the program, economics was not an issue. In other  
26 words, they are compelled to continue to do it if  
27 they feel they have a duty to do it.

1 THE COURT: Do you have any authority for  
2 what you are saying?

3 MR. BROWN: I believe actually in the  
4 Perka decision, sir. Sorry, I don't have the  
5 reference, but I certainly will make sure I provide  
6 it to you, sir, with respect to the economics not  
7 being part of the defence.

8 I'm sorry. If it's okay I'll continue and I'll  
9 provide that to you, sir.

10 THE COURT: That is in Perka?

11 MR. BROWN: I believe it is, sir, and I --

12 THE COURT: If that is where it is, that  
13 is fine.

14 MR. BROWN: -- I'll make certain of that,  
15 sir.

16 THE COURT: Just a moment.

17 MR. BROWN: It should be found in the  
18 portion of the discussion where Chief Justice Dixon  
19 is talking about kinds of alternatives that are  
20 reasonable and unreasonable, like you can't blow up  
21 an entire town to save yourself from breaking a  
22 finger, you may recall that portion of the decision.  
23 I believe it's in there, sir, but again I'll make  
24 sure that it is before I continue -- or before I  
25 close.

26 THE COURT: Well, just while you are on  
27 that point.

1 MR. BROWN: Yes, sir.

2 THE COURT: You are basically saying that  
3 he fact that the program would have required --  
4 because economics is not a defence, they cannot use  
5 that to say that they needed to sell the product in  
6 order to maintain the program.

7 MR. BROWN: Right.

8 THE COURT: But in fact there is something  
9 other than economics involved here, is there not,  
10 that the program needed to be maintained in order to  
11 protect people?

12 MR. BROWN: Well, and what I'm saying is,  
13 if your defence is necessity and part of your  
14 necessity defence is we need to protect these  
15 people, then you do what is required to make the  
16 defence -- or make the product available or make the  
17 program available, sorry. But that doesn't mean you  
18 have to sell the product and break the law.

19 Now quite frankly, sir, I'll say that I do not  
20 believe that that is the strongest options that were  
21 available to this company, there are others. But it  
22 is one that I wanted to address because I know my  
23 friend addressed it.

24 One of the other options, and again, sir, I  
25 will reiterate that it's not incumbent upon the  
26 Crown to come up with the options, it is incumbent  
27 upon the defence to raise, review, concede and

1 attempt reasonable options.

2 Now --

3 THE COURT: Well it would be prudent  
4 though to anticipate what they are and address them.

5 MR. BROWN: Certainly attempted to do so.

6 THE COURT: All right.

7 MR. BROWN: Now the second possible  
8 option, sir, is that the treatment claims could have  
9 been removed, boron could have been removed, and  
10 possibly even germanium could have been removed from  
11 this product. It is my submission that it was very  
12 clear to the Synergy and TrueHope folks that the  
13 treatment claims in particular were of concern to  
14 Health Canada. That's what made this product  
15 especially unique among some of the other products,  
16 is that they made this treatment claim, and they  
17 were very aware from Health Canada that that was the  
18 main concern. So they could have removed that  
19 treatment claim. What would the result have been?  
20 Well, sir, that would have made it difficult I  
21 suppose to get new clients. That would not  
22 necessarily have prevented sale to current clients  
23 because they would have already understood why they  
24 were buying the product. And what I mean by that,  
25 sir, is you don't need to have treatment claims to  
26 continue to convince people that have already  
27 purchased the product to continue to purchase the

1 product.

2 THE COURT: But you started off by  
3 addressing boron and germanium?

4 MR. BROWN: Right, sir, and I'm about to  
5 also address that.

6 THE COURT: Oh, all right. Thank you.

7 MR. BROWN: And --

8 THE COURT: Just I thought you skipped  
9 right over that --

10 MR. BROWN: No, those are also options  
11 that were available to this company is to remove  
12 boron and germanium from the product, because they  
13 also were very, very aware that those were two of  
14 the products that Health Canada had concerns about.  
15 They were told on more than one occasion that if --  
16 that boron was a concern and that germanium was a  
17 concern. And that continues to be true even today,  
18 frankly. The product that was ultimately registered  
19 was registered without boron, and was -- and when I  
20 say registered, was given a new natural product  
21 number, was without boron and without the health  
22 treatment claims. It has some general health  
23 claims, sir, but it does not have the treatment  
24 claims, right.

25 So I would submit that this -- these companies  
26 were fully aware of what the main concerns were for  
27 Health Canada and could have addressed those

1 concerns, and they chose not to do that, sir.

2 So my submission, sir, is that their refusal to  
3 even attempt this -- that approach, removing boron  
4 and germanium, removing the treatment claims,  
5 compromises their use of the necessity defence and  
6 makes it inapplicable.

7 Now the last example I have, sir, of a possible  
8 option that was available to this company is that  
9 they could have sold the rights for the sale of  
10 EMPowerplus to United States company, and even my  
11 friend I think in his submissions conceded that, if  
12 that situation occurred, that EMPowerplus was  
13 actually being sold by a US company, then they're no  
14 longer in breach of the regulations. And what would  
15 have been not that difficult, I would submit, to  
16 create a contractual relationship in which a company  
17 in the United States sells the product, markets,  
18 sells the product and pays to TrueHope and Synergy  
19 some portion of those sales to continue to run the  
20 program. And, sir, that might even sound familiar,  
21 because frankly that's exactly what happened when  
22 Evince (phonetic) was running the sales and  
23 marketing of the product. It was a situation, as I  
24 understood it, from Mr. Hardy's evidence, that  
25 Evince was the company responsible for marketing and  
26 selling EMPowerplus and they paid some money to  
27 Synergy and TrueHope to run the TrueHope program.

1           Now when we talk about the modified -- sorry,  
2           modified objective test, that needs to be applied in  
3           these -- in this portion of the test, this second  
4           stage of the test. You consider, well from an  
5           objective test that seems to make sense, and from a  
6           modified objective test all that seems to make  
7           sense, because this was in no way out of the realm  
8           of possibility as far as this company was concerned.  
9           It certainly should have been in their -- on their  
10          radar screen if I can put it that way, because this  
11          situation was occurring not so long before the  
12          charges arose.

13                 So I would submit on that example alone, the  
14          defence of necessity fails. That this was a very  
15          reasonable, legal alternative, open to these  
16          companies that did not involve a breach of the  
17          regulations.

18                 Now the last part of the -- or last element of  
19          the necessity defence, sir, is that the response  
20          must be proportionate to the harm. And again, it's  
21          my submission that we don't even get to this portion  
22          of the test, but we'll deal with it.

23                 And my friend made submissions that if you look  
24          at the harm that is done by failing to have a DIN  
25          and sell a product without a DIN there really is no  
26          harm in his view. But I'd submit that that's a  
27          slightly narrow view of what we're trying to deal

1 with here. That the regulatory scheme, this one in  
2 particular, and regulatory schemes in general, are  
3 important to the governance of this country,  
4 frankly. That there are -- one of the cases that  
5 I'm going to show you, R v. Wholesale Travel, I give  
6 it to you primarily because it has an interesting  
7 note in there. It talks about that in 1983 when a  
8 survey was conducted there was some 97,000  
9 regulations that applied to any Canadian at any  
10 given time, both Federal and Provincial.

11 And --

12 MR. BUCKLEY: Sorry, what case is this?

13 MR. BROWN: That's Wholesale Travel. I  
14 think I gave you a copy.

15 MR. BUCKLEY: You may have. Let me see.

16 MR. BROWN: Okay.

17 MR. BUCKLEY: Yes, I do, thank you.

18 MR. BROWN: And, sir, if you take a look  
19 at page 50 and 51, starting at paragraph 134, that's  
20 the first paragraph that deals with the number of --  
21 got it? That talks about the number of regulations  
22 that apply to Canadians at any given time.

23 THE COURT: Sorry --

24 MR. BROWN: It should be --

25 THE COURT: -- page 50 of 78 --

26 MR. BROWN: That's right, sir.

27 THE COURT: -- paragraph 134?

1 MR. BROWN: Yes, that's right, sir.

2 THE COURT: All right.

3 MR. BROWN: And then if you -- that's  
4 really just talks about the statistics. And  
5 paragraph 135:

6  
7 Statistics such as these make it  
8 obvious that government policy in  
9 Canada is pursued principally through  
10 regulation. It is through regulatory  
11 legislation that the community seeks  
12 to implement its larger objectives  
13 and to govern itself and the conduct  
14 of its members. The ability of the  
15 government effectively to regulate  
16 potentially harmful conduct must be  
17 maintained.

18  
19 Now it then goes on to speak about how  
20 regulations play a vital role in our lives. I would  
21 submit that that is the bigger picture that the  
22 Court needs to take into consideration when trying  
23 to determine whether or not the harm is in any way  
24 proportionate to the harm that was to be avoided. I  
25 would submit that for example, if -- I would again  
26 be somewhat surprised that anyone in the room would  
27 think that it made sense for a pharmaceutical

1 company to create a new drug and then say, you know,  
2 we think this works. We should sell it and see what  
3 happens, and avoid the regulatory scheme all  
4 together. My submission is that would be  
5 inappropriate.

6 However, if the Court determines that necessity  
7 applies in this case because the harm was  
8 disproportionate to the harm to be avoided, there's  
9 significant peril to the regulatory scheme, not only  
10 with respect to the Food and Drugs Act, but in  
11 general. My submission is that a larger view of the  
12 role of regulations and the regulatory schemes in  
13 Canada need to be taken into consideration as part  
14 of this case, sir.

15 And it's not to be forgotten, sir, that these  
16 companies were responsible for creating the risk  
17 that they now raise necessity as a defence to.  
18 Again, their complete failure to attempt to abide by  
19 the regulations at any point, is ultimately what has  
20 led to their claim that they must raise necessity.

21 So with respect to necessity, it's my  
22 submission that all three portions of the test must  
23 fail. I'd submit that they do not -- have not shown  
24 that there is imminent peril that is immediate and  
25 unavoidable. That there were legal alternatives  
26 that they chose not to take, and that there is a --  
27 when one measures the proportionality in the way

1 that I've submitted is appropriate and all three  
2 portions of the test of necessity fail.

3 Now, sir, the next portion of my friend's  
4 argument that I intend to deal with, and the  
5 defences he's raised is abuse of process. Now I'm  
6 hoping to understand it correctly, my understanding  
7 of what the defences that are raised is that Health  
8 Canada is -- the first one is that Health Canada  
9 essentially gave these companies the run around, and  
10 that that amounts to an abuse of process. In other  
11 words, as my friend has characterized it, that they  
12 were told they needed a DIN, there was no way they  
13 could get a DIN, that's basically just treating them  
14 poorly and that's an abuse of process. That's what  
15 I understand the essence of my friend's argument.

16 Now, don't take that to mean that I agree with  
17 my friend's submission with respect to that point.  
18 My submission is that when one reads the e-mails in  
19 particular, that my friend has relied on, Exhibit  
20 62, 67, 68 and 69, which are the e-mails and then  
21 their unedited versions, sir, that frankly what  
22 they're talking about is the lack of proof that the  
23 companies have come forward with to enable them or  
24 to enable Dr. Kaplan more particularly, to get the  
25 IND.

26 And I'll just refer you to Exhibit number 69 in  
27 particular, and the highlighted portion that my

1 friend has highlighted this portion:

2  
3 Then was informed they would have to  
4 apply for an IND and told they would  
5 not pass because they do not have all  
6 the correct background information.

7  
8 I would submit that's quite a bit different  
9 than just saying we're going to just give them a run  
10 around, play with them, tell them that they need a  
11 DIN and know that we're never going to give them  
12 one.

13 Now my friend has made a number of comments  
14 about the fact that this is an industry that just  
15 refuses to comply. Well it is generally speaking an  
16 industry that refuses to comply. And he says, it's  
17 essentially not feasible to get -- to comply with  
18 the regulations, and he has quoted a number of 40 to  
19 50,000 drugs that are on the shelves, or products  
20 rather that are on the shelves, and only 10 percent  
21 comply. Well that's four to 5,000 products that are  
22 in compliance. That's a long ways from not being  
23 feasible, sir.

24 Now the second portion of my friend's argument  
25 dealing with abuse of process, is that the  
26 prosecution itself is an abuse of process because  
27 this company is being singled out. Now I'll deal

1 with that as we go along.

2 The first element is the one I'll deal with  
3 first and that's the sort of getting the run around,  
4 and again, I'm going to remind the Court that in my  
5 view, and in my submission, the events surrounding  
6 Dr. Kaplan's application for the clinical trial is  
7 separate from what was happening with TrueHope and  
8 Synergy and whether or not they were in compliance.

9 Now if you recall the evidence of Bruce Dales,  
10 he says that he is an expert and he was sworn in as  
11 an expert, and he says as an expert he's often  
12 approached by companies for advice on entering the  
13 market. And his comment was, and I'm paraphrasing  
14 of course, but he said, I will tell them how to  
15 proceed or not to proceed. I submit that's  
16 important. Telling them how to proceed of course  
17 that makes sense, but telling them not to proceed  
18 also makes sense. In other words, there are going  
19 to be products that are not going to be able to  
20 comply for a variety of reasons. So what does Mr.  
21 Dales advise them to do if they're not going to  
22 comply. He doesn't tell them to go ahead and sell,  
23 he doesn't tell them to bring this product into the  
24 market, he says don't bother. Those are his words.

25 And then when he's asked about EMPowerplus,  
26 what did he say? If you were shown this bottle in  
27 2003, what would you say about that? And is

1 response was, again I'm paraphrasing, either make it  
2 patentable to protect your investment, or wait a  
3 year to enter the market. By that I believe he  
4 means, wait until the National Health Product  
5 Regulations are in place, those are options  
6 available to Synergy/TrueHope, neither of which  
7 speak to abuse of process.

8 And when Mr. Dales was speaking about this  
9 product gaining acceptance under the National Health  
10 Products Regulations, he talked about it as having a  
11 fighting chance.

12 THE COURT: The National --

13 MR. BROWN: The National Health Products  
14 Regs, sir.

15 THE COURT: That they would have a  
16 fighting chance in 2004?

17 MR. BROWN: That's right. Not that it  
18 would be automatic, but they'd have a fighting  
19 chance.

20 And in fact ultimately the company did get a  
21 natural product number, but without the claims, the  
22 treatment claims and without boron. I submit that  
23 shows that Health Canada was actually genuine in  
24 their concerns over those elements and that TrueHOpe  
25 knew that they were genuine, and they knew certainly  
26 what the concerns were.

27 I would submit that failure to provide the DIN

1 in these circumstances cannot amount to abuse of  
2 process. And it's my understanding, sir, and I  
3 think my friend agrees that he has the onus in this  
4 situation.

5 Now, then we -- I'll deal with the prosecution  
6 as an abuse of process. My friend has, and I think  
7 to some degree rightly so, concentrated on some  
8 comments by Sandra Jarvis, but I think it would be  
9 unfair to concentrate on only one thing that she  
10 said throughout, I think it was about a day and a  
11 bit of testimony, so she was on the stand for quite  
12 some time. And so she certainly said more than all  
13 we wanted to do was stop them from selling. I'm not  
14 disputing my friend's interpretation of what she  
15 said, or obviously I agree she said it, and I don't  
16 disagree with my friend's emphasis on that point,  
17 however she did say many things. And one of the  
18 things that she said was that there was an interim  
19 DIN directive in place, and that only products that  
20 raised a safety concern would be subject to  
21 enforcement at the time. The reality is there was a  
22 flood of products attempting to get onto the market,  
23 and they were trying to do what they could at the  
24 time to control them, and it's my submission that  
25 this product did raise safety concerns, and I've  
26 mentioned it many times already that boron and  
27 germanium and the treatment claims were the safety

1 concerns that Health Canada had. And my friend may  
2 dispute whether that was correct or not, whether  
3 they should have had health -- or safety claims for  
4 boron or germanium, but it's my submission that they  
5 did have claims and that it was legitimate for them  
6 to have those claims at the time. That the science  
7 was not established at the time.

8 And again, as my -- as has been stated earlier,  
9 there's been reference to the 50,000 products that  
10 may be available. We have no evidence before us of  
11 what any of those products were made up of, and  
12 there's no evidence of what claims those products  
13 make.

14 Now as I indicated, sir, at the beginning of  
15 the abuse of process discussion, or actually the  
16 beginning of my discussion, abuse of process can  
17 only be found in the clearest of cases. And it will  
18 be my submission that the defence has failed to meet  
19 the threshold of the clearest of cases. And I'm  
20 going to give you two cases, both Supreme Court of  
21 Canada, one from 1994, R v. Power, and one from  
22 2002, R v. Regan.

23 And, sir, I don't intend to read out the  
24 relevant portions, I just -- I will simply address  
25 you to certain portions of the discussion. R v.  
26 Power comes up first, sir. And again, this is page  
27 12 of 40, R v. Power. I'm just going to have you

1           look at two paragraphs, paragraph 12 and 13.

2       THE COURT:                   Go ahead.

3       MR. BROWN:                  All right.  So paragraph 12:

4

5           To conclude that the situation is  
6           tainted to such a degree that it  
7           amounts to one of the clearest of  
8           cases as the abuse of process has  
9           been characterized by the juris  
10          prudence requires overwhelming  
11          evidence that the proceedings under  
12          scrutiny are unfair to the point that  
13          they are contrary to the interests of  
14          justice.

15

16          Now if you go down to paragraph 13:

17

18          Applying this test to the facts of  
19          this case --

20

21          That's obviously in Power:

22

23          -- is evident that in no way did the  
24          conduct of the prosecution meet the  
25          high threshold required to constitute  
26          an abuse of process.

27

1           I just point that out, sir, to make it clear  
2           that it is a very high threshold and that indeed it  
3           is only to be used, it being abuse of process, is  
4           only to be used in the clearest of cases.

5           Now, sir, I've also handed up R v. Regan, which  
6           is a 2002 case from the Supreme Court of Canada, so  
7           it's one of the more recent decisions on this topic.  
8           And much of what happens on pages 16 and 17 are --  
9           is a review of the general abuse process argument.  
10          So I'm not going to take you through that part. But  
11          at about paragraph 53 is the stay of proceedings  
12          portion. And I bring that to your attention, sir,  
13          relatively briefly.

14  
15           A stay of proceedings is only one  
16           remedy to an abuse of process, but  
17           the most dramatic one, that ultimate  
18           remedy as this Court in Tobias called  
19           it. It is ultimate in the sense that  
20           it is final. Charges that are stayed  
21           may never be prosecuted, an alleged  
22           victim will never get his or her day  
23           in Court, society will never have the  
24           matter resolved by a trier of fact.  
25           For these reasons a stay is reserved  
26           for only those cases of abuse where a  
27           very high threshold is met. The

1 threshold for obtaining a stay of  
2 proceedings remains under the Charter  
3 as under the common-law doctrine of  
4 abuse of process, the clearest of  
5 cases.

6  
7 Now if you go to paragraph 54:

8  
9 Regardless of whether the abuse  
10 causes prejudice to the accused  
11 because of an unfair trial or to the  
12 integrity of the justice system, a  
13 stay of proceedings will only be  
14 appropriate when two criteria are  
15 met.

16  
17 And then it's over to the next page:

18  
19 The prejudice caused by the abuse in  
20 question will be manifested,  
21 perpetuated or aggravated through the  
22 conduct of the trial or by its  
23 outcome, and no other remedy is  
24 reasonably capable of removing that  
25 prejudice.

26  
27 So this is when -- when I was referring earlier

1 to you have a threshold for abuse of process, but  
2 then you have another threshold for the stay of  
3 proceedings. It is not, in my submission, an  
4 automatic result from an abuse of process finding.  
5 And clearly that in my submission that there should  
6 not be an abuse of process finding, but even if  
7 there were, it's my submission that a stay is not  
8 the automatic result.

9 And, sir, the last of the defences that I  
10 intend to deal with is the defence of due diligence.  
11 And I have to apologize, this will be a little  
12 repetitive from the necessity defence, because some  
13 of the evidence overlaps and these defences do  
14 overlap somewhat. But they are separate and they  
15 need to be kept separate.

16 I have a copy of Sault Ste. Marie, and it of  
17 course just speaks to the defence of due diligence  
18 in strict liability cases.

19 THE COURT: I think I have it already, do  
20 I not?

21 MR. BROWN: You may.

22 THE COURT: All right, just a moment. I  
23 thought Sault Ste. Marie was already passed up.

24 MR. BROWN: No.

25 THE COURT: And I thought you already read  
26 from it?

27 MR. BROWN: I don't think I have, sir, but

1           it's possible my friend did, I don't know. It's  
2           nothing groundbreaking at any rate, sir, this just  
3           speaks to --

4       THE COURT:                       Well Sault Ste. Marie is a  
5           groundbreaking case.

6       MR. BROWN:                      Well it was at the time,  
7           certainly. It certainly was at the time.

8       THE COURT:                      It is probably one of the most  
9           cited cases, if not the most cited case in --

10      MR. BROWN:                     Indeed.

11      THE COURT:                     -- dealing with strict  
12           liability offences and due diligence. Wholesale  
13           Travel.

14      MR. BROWN:                     Oh, yes.

15      THE COURT:                     You have got there, Sault Ste.  
16           Marie --

17      MR. BROWN:                     Sault Ste. Marie, yeah.

18      THE COURT:                     -- which was before Wholesale  
19           Travel.

20      MR. BROWN:                     It was indeed, sir, and  
21           certainly Wholesale Travel is normally a due  
22           diligence case, but I actually gave it to you as  
23           part of my necessity argument.

24           I only -- really I only give you Sault Ste.  
25           Marie just because it speaks to the doctrine that in  
26           order to raise the defence of due diligence, which  
27           it was found does apply in a regulatory scheme, that

1           it is incumbent upon the defendant to show that all  
2           reasonable steps were taken to comply.

3           THE COURT:                           All right.

4           MR. BROWN:                        And again, sir, I'm going to  
5           address some of the issues as I already have, with  
6           respect to what steps could have been taken by the  
7           company, in order to take all reasonable steps in  
8           this (INDISCERNIBLE), I don't intend to spend a  
9           great deal of time on this.

10                   As I said near the end of my last submissions,  
11           one of the things that they certainly could have  
12           done was removed the ingredients that Health Canada  
13           was concerned about, primarily boron and germanium.  
14           Those products could have been -- or those  
15           substances could have been removed from the product,  
16           they were not. They could have removed the  
17           treatment claims, they knew Health Canada had  
18           significant concerns with the treatment claims.  
19           Those claims were not removed.

20                   You'll recall Mr. Hardy said, well we did some  
21           tinkering with our website, some tinkering with our  
22           website, but certainly the treatment claims were  
23           never removed. They could have retained an expert  
24           like Mr. Dales to assist them in trying to comply.  
25           However, we know what Mr. Dales would have told  
26           them, that you can't just go ahead and sell this  
27           product. That if you want to comply you either get

1 a patentable product and go through the process, or  
2 you wait until the National Health Product  
3 Regulations are in place.

4 It's also possible, sir, that they could have  
5 stopped selling the product. That is one possible  
6 response as part of the due diligence defence. They  
7 could have stopped selling the product.

8 These are all reasonable options that are  
9 available to the company. Now, sir, those are the  
10 submissions I -- that I intend to make with respect  
11 to these matters. And it ultimately will be my  
12 submission that a conviction should be entered on  
13 this case with the proviso that my friend made  
14 earlier with respect to the constitutional argument  
15 of course. And subject to any questions, those will  
16 be my submissions, sir.

17 THE COURT: Just with regards to the  
18 various onuses involved, there are different onuses  
19 depending upon the defences that are being  
20 considered. With regards to the defence of  
21 necessity, the onus is on the Crown to prove the  
22 case beyond a reasonable doubt.

23 MR. BROWN: Right.

24 THE COURT: All that the defence has to do  
25 is to raise in evidence the possibility that the  
26 defence of necessity may apply.

27 MR. BROWN: Yes, sir. I'm trying to

1 remember the exact wording that was used. The  
2 defence has to have an air of reality, sir. That's  
3 I think the phraseology that's used. And I would  
4 submit that in the case at hand, that given all of  
5 the evidence that's before the Court, and not  
6 intending to take one small piece out here or there,  
7 that the defence has not met that onus with respect  
8 to raising the defence, or conversely, certainly  
9 that through cross-examination and other evidence,  
10 the Crown has met its onus with respect to the  
11 defence.

12 THE COURT: But you agree that in fact  
13 there is no onus on the defence to lead evidence in  
14 that regard?

15 MR. BROWN: Well, sir, because it's a  
16 defence, there is an onus to at least lead some  
17 evidence.

18 THE COURT: But it could be raised by  
19 cross-examination.

20 MR. BROWN: It certainly could I guess.  
21 That in fact I think that is actually in the cases,  
22 sir. And you can raise it through cross-  
23 examination.

24 It still has to have the air of reality at the  
25 end of the day.

26 THE COURT: But in any event, it is very  
27 clear law that there is no shifting of the burden,

1 the onus is on the Crown beyond a reasonable doubt  
2 throughout, to prove the case. And that includes  
3 the voluntariness once the defence of necessity is  
4 raised, if it is raised to the point of being an air  
5 of reality.

6 MR. BROWN: Right.

7 THE COURT: Which basically means like  
8 self defence, once it has been put in play by some  
9 evidence before the Court. Would you agree with  
10 that?

11 MR. BROWN: Yes, I do, sir.

12 THE COURT: All right.

13 MR. BROWN: Yes.

14 THE COURT: However, with regards to the  
15 abuse of process defence and the due diligence  
16 defence, which is the more conventional defence in  
17 strict liability defences.

18 MR. BROWN: Yes, sir.

19 THE COURT: The onus is in fact on the  
20 defence on a balance of probabilities.

21 MR. BROWN: That's correct, sir, yes. And  
22 I will say, in response to that, sir, of course  
23 balance or probabilities has been found to be sort  
24 of a sliding scale, and I would submit that with  
25 respect to abuse of process, when they talk about  
26 it, it's a very high standard, that that moves into  
27 the higher end of the balance of probabilities

1 scale.

2 THE COURT: Well proving the abuse of  
3 process is on the balance of probabilities, whether  
4 or not a stay of proceedings is the appropriate  
5 remedy after that is another point.

6 MR. BROWN: Yes, it is.

7 THE COURT: And by your submissions, that  
8 has a higher standard.

9 MR. BROWN: Yes, sir.

10 THE COURT: And the phrase, the clearest  
11 of cases, is drilled into the law --

12 MR. BROWN: Yes.

13 THE COURT: -- when it comes to dealing  
14 with stays of proceedings?

15 MR. BROWN: It is. I'd say it's  
16 essentially self evidence I guess.

17 THE COURT: That probably is as concrete  
18 black letter law as you can get.

19 MR. BROWN: I agree, sir.

20 THE COURT: Right. That is fine, Mr.  
21 Brown. I have a number of questions but I am going  
22 to have to resolve them without asking you to assist  
23 me. You have made your submissions and you have  
24 presented your cases and I will certainly take them  
25 under consideration the same way I will be taking  
26 into account the submissions and cases provided by  
27 Mr. Buckley.

1           No, I have no further questions for you with  
2           regards to your argument. It was precisely to the  
3           point as you indicated it would be.

4       MR. BROWN:                    Okay. Thank you, sir.

5       THE COURT:                    Mr. Buckley, I will give you  
6           an opportunity to reply --

7       MR. BUCKLEY:                  Thank you, Your Honour.

8       THE COURT:                    -- if you wish.

9       MR. BUCKLEY:                  I do. And I'm going to start  
10           with my friend's last submissions on due diligence,  
11           because my friend was submitting that if they had  
12           removed boron and germanium, and if they had stopped  
13           making treatment claims, that that could have  
14           satisfied it. And the problem that I have with that  
15           submission is, is if they had done both of those  
16           things they still need a DIN.

17           So, with a charge of not having a DIN, what  
18           difference does it make whether they had boron and  
19           germanium, or made not treatment claims at all.

20       THE COURT:                    Sorry?

21       MR. BUCKLEY:                  Or made no treatment claims at  
22           all, just it doesn't matter. When you look at the  
23           definition of drug, it's manufactured, sold or  
24           represented, basically for a therapeutic purpose.  
25           So you don't have to be making claims at all to be a  
26           drug for the purposes of the Act, if you're selling  
27           or manufacturing, and selling includes distributing.

1 If they're not selling, then the Crown hasn't made  
2 out its case and my submissions don't matter.

3 So but if they're selling for a therapeutic  
4 purpose, then it's a drug and they would need a DIN.  
5 I'd love for the Court to find that they weren't  
6 selling or that it wasn't a drug. But my friend  
7 saying that they were selling and it was a drug, and  
8 so they need a DIN and it doesn't matter whether  
9 they had boron or didn't, or what claims they were  
10 making. And then for due diligence my friend says,  
11 well another option is they could have stopped  
12 selling. And I find that wonderfully curious,  
13 because for due diligence the person's always broken  
14 the law, they've always done something. And if the  
15 option was well not to have done what you were  
16 doing, then there would never, ever be a due  
17 diligence defence, because the option was in acting  
18 due diligently we didn't have to break the law in  
19 the first place. Do you see what I'm saying?

20 THE COURT: No, you better take me through  
21 that again?

22 MR. BUCKLEY: Okay, well if you're raising  
23 due diligence you've broken some law, you've done  
24 some positive act. And if the Crown could defeat a  
25 due diligence defence by saying, well you shouldn't  
26 have done the act, you would always be precluded by  
27 succeeding on that defence.

1           So logically then there would be no due  
2 diligence of defence, because you could always have  
3 not done what you're saying. Yes, you were doing  
4 it, but you had done everything you could to comply  
5 otherwise. So it's just very curious, we would be  
6 breaking new law, brave new ground.

7       THE COURT:                        Breaking new law or making new  
8 law?

9       MR. BUCKLEY:                   Well we'd be making new law,  
10 that's right, it would be a brave new world in  
11 strict liability. So we could replace Sault Ste.  
12 Marie as the leading case. So I just found that  
13 very curious, and logically it didn't make a lot of  
14 sense.

15           Now, with regards to my friend's comments, I'm  
16 now going to go to the beginning of his thing about  
17 he's saying, on my manufacturing argument that you  
18 should read that to mean its own name, okay, instead  
19 of trademark, and it is somewhat conjunctive. But  
20 the problem with my friend's argument is, is when  
21 you pull out Exhibit 7 and look at the bottles, it  
22 is sold under the name TrueHope with the exact same  
23 logo that is trademarked, that's what it's sold  
24 under. You call it what you want, but you will not  
25 see it sold under the name TrueHope Nutritional  
26 Support limited or the Synergy Group of Canada. But  
27 you will see it sold on the exhibit, exactly as

1 found in the trademark. Like right down to this  
2 lighthouse symbol shown on the trademark. It's  
3 identical.

4 So and there again the burden is on my friend,  
5 not upon us, so clearly it would raise a bit of a  
6 reasonable doubt.

7 Now my friend in his submissions on necessity  
8 was stating, well the defendants got themselves into  
9 this own mess by what they were doing before. I  
10 mean, the charge is 2003, and really it's their own  
11 fault. And it does raise an interesting question is  
12 does it matter, because the implication is, is that  
13 they were acting legally before, and now here they  
14 are in '03 saying, well, yeah, it was necessary. So  
15 does it matter that maybe their activity was deemed  
16 as illegal before.

17 If you have that book of authorities that I  
18 gave you, the first case, R v. Perka, if you could  
19 page -- turn to page 12, that was raised there  
20 because the problem with Perka is, is these people  
21 are involved in shipping cannabis from Columbia to  
22 Alaska and they run into mechanical problems and so  
23 they ditch in Canadian waters and run aground. So  
24 they were involved, and it was raised in that, well  
25 if you're involved in illegal activity before, so  
26 you kind of got yourself into your own mess, is  
27 necessity not applicable, and that is dealt with

1 squarely by the Supreme Court of Canada, and they  
2 say, no, it doesn't matter and they explain why it  
3 doesn't matter. And that starts with the paragraph,  
4 were it indeed accurate, that the fact of doing some  
5 illegal when the (INDISCERNIBLE) circumstances  
6 arise, we'll deny one the benefit of a necessity  
7 defence.

8 It goes on for a couple of paragraphs. I'm not  
9 going to read that into the record, but just so the  
10 Court's aware, the Supreme Court of Canada dealt  
11 with that issue head on and basically found that it  
12 didn't matter, and explains why it doesn't matter.  
13 So I just thought the Court should be aware of that.

14 Now my friend was talking about how also with  
15 necessity, this issue of urgency, and it is a rather  
16 interesting issue and something that we actually  
17 wrestled with, because often in necessity you're  
18 actually doing some positive act to break the law,  
19 like you're, you know, driving when you're impaired  
20 or you're breaking into a cabin so you don't freeze.  
21 You're not saying, no, we actually shouldn't have  
22 just made any change to what we were already doing  
23 and have been doing, which is kind of more of a -- a  
24 passive approach. But I do want the Court to be  
25 aware that there are a lot of cases out there where  
26 this immediacy thing didn't seem to matter so much.  
27 So even in R v. Ruzic, where the person comes from

1 Yugoslavia bringing drugs with her because of  
2 threats to her mother back in Yugoslavia. That made  
3 it all the way to the Supreme Court of Canada on  
4 that immediacy thing, because Section 17 of the Code  
5 require an actual present harm. And there -- so  
6 immediacy is a somewhat flexible thing. And then  
7 also in the case of Langois, that's the security  
8 guard or penitentiary guard that was caught bringing  
9 drugs into the penitentiary and had been doing that  
10 over a couple of week period. Again, not with  
11 immediate threats.

12 So there's some flexibility because the focus  
13 is on moral involuntariness. Now and I'm not trying  
14 to minimize this issue of urgency, but the problem  
15 that the defendants had is it didn't matter what day  
16 in 2003 if they stopped selling, within a couple of  
17 days there's problems. Like as soon as people run  
18 out there's problems, and that didn't change whether  
19 you were January 1st or December 31st.

20 And I don't think my friend's going to say,  
21 well, no, you could have stopped selling on, you  
22 know, December 28th and picked up again on January  
23 1st. I mean, we're not being silly here. But  
24 really the harm didn't change throughout the offence  
25 period, okay. And I'm just bringing to the Court's  
26 attention that there is some flexibility on the  
27 urgency, although some cases seem to have strong

1 words about it.

2 When my friend presents some cases like  
3 Morgantaler, when I look at the facts of that case  
4 it doesn't seem like it was necessary, I mean he set  
5 up a clinic and was running illegal abortions, and I  
6 -- just on the facts that seems a reasonable  
7 decision, because a lot of these things are fact  
8 specific, same with R v. Krieger. I think that  
9 would have been a very hard argument to make, even  
10 just knowing how prevalent marijuana is and how it's  
11 available in the community.

12 So I look at those decisions, they seem to me  
13 to be decided well on their facts and don't have any  
14 issues with them, but we're dealing with different  
15 facts.

16 My friend said that the defendants themselves  
17 were not in any peril, and so they're trying to  
18 connect the defence of necessity through some duty  
19 imposed on the Criminal Code. When you look at my  
20 written submissions on the defence of necessity,  
21 I've actually specifically picked quotes where  
22 Courts were referring to also not just self  
23 preservation but altruism, which refers to  
24 protecting the health of others. So and indeed it  
25 would be interesting policy if you could only act  
26 out of necessity for self preservation, as opposed  
27 to preserving others. And that would be a policy

1 argument that I don't think would stand up.

2 With regards to Section 217, when my friend is  
3 saying --

4 THE COURT: Just before you go there --

5 MR. BUCKLEY: Okay.

6 THE COURT: -- give me a moment. All  
7 right, Section 217.

8 MR. BUCKLEY: Okay. My friend's suggesting  
9 that we should read into the term there or the  
10 section, legal. So basically do some -- some  
11 redrafting of that legislation. The problem is, is  
12 if the Court has to understand is if we're going to  
13 narrow that duty on Section 217, we are also going  
14 to change what can -- is or isn't criminal  
15 negligence, because that's why Section 217 and  
16 Section 216 are there.

17 So they define duties that then kick in to the  
18 offence of criminal negligence. So what would be  
19 basically in effect happening is, is the Court would  
20 be adding a limitation and creating a defence to the  
21 defence (sic) of criminal -- or the offence of  
22 criminal negligence, because then people who are  
23 charged with criminal negligence can say no, no,  
24 this duty in Section 217 only applies to things that  
25 we could call legal acts. And if Parliament wanted  
26 that limitation it would be there, and in my  
27 submission would be quite dangerous to amend it.

1 And as I say, you have to bear in mind that would  
2 then affect also what is and isn't criminal  
3 negligence.

4 My friend says there was no reason -- that they  
5 had no reason to believe that they were going to  
6 face criminal charge. And I'm just wondering well,  
7 really, who cares. I can't run a criminal  
8 negligence defence saying, oh no, no, it's okay,  
9 they didn't know they had this duty on them, because  
10 ignorance of the law means nothing, whether you know  
11 or don't know, the Criminal Code has imposed some  
12 duties and obligations. And if it was the case that  
13 they actually had to be actually aware that maybe  
14 they could be charged with criminal negligence, as I  
15 say, that would affect that charge. So for policy  
16 reasons that is a little difficult.

17 On the no legal alternative thing, my friend  
18 was saying the issue of economics are not part of  
19 necessity. And I think what -- where he may be  
20 correct in, is when you're trying to assess harm.  
21 So for instance I don't think you can create damage  
22 to somebody else's property to protect your own  
23 property. Do you know what I mean? Or create harm  
24 if you're trying to protect an economic interest.  
25 But that's a very separate matter than what we're  
26 facing here, because here the only place where  
27 economics came in is if you accept that the

1 defendants had to maintain this program, it can't be  
2 maintained if they go bankrupt. So it's not that  
3 they're trying to protect their economic interests,  
4 but to say that they're supposed to do things that  
5 aren't economically possible when assessing, well  
6 what is a reasonable legal alternative standing in  
7 their shoes. And in my submission my friend is just  
8 absolutely wrong.

9 My friend says the Crown does not have a duty  
10 to come up with legal alternatives. My friend is  
11 free to take that position, but because the burden  
12 remains on him to satisfy the Court beyond a  
13 reasonable doubt, that there wasn't a reasonable  
14 legal alternative, I suggest he does that at his  
15 peril.

16 I've already dealt with the name change thing.  
17 And just to kind of fill in on that. So I've  
18 already explained to the Court with this name -- or  
19 dropping claims is a bit of a red herring, because  
20 it's still a drug and it would still need a drug  
21 identification number. And it also doesn't fit with  
22 Sandra Jarvis's evidence that when she was being  
23 cross-examined about, well there's evidence of harm  
24 here and evidence of harm there, and she's talking  
25 about, no, that's not relevant collecting evidence  
26 about whether or not they had a drug identification  
27 number, seems to suggest that that actually was very

1           pressing for Health Canada. So at least in that  
2           respect they've been consistent in pursuing this  
3           matter.

4           THE COURT:                           What is your point?

5           MR. BUCKLEY:                       Well my friend I think is  
6           suggesting that one of the reasonable legal  
7           alternatives is they could have just stopped making  
8           claims, and that somehow this would have gone away,  
9           because he's saying that's the main concern of  
10          Health Canada was the claims. So stop making  
11          claims, and then that was your reasonable legal  
12          alternative. So my first point earlier was, well  
13          you're still a drug if you're making claims, that  
14          doesn't change whether you need a DIN or not under  
15          the definition of drug. And then my second point  
16          is, is that doesn't fit my friend's claim that this  
17          issue of the claims of therapeutic purposes was the  
18          main concern of Health Canada, doesn't fit with  
19          Sandra Jarvis ignoring evidence of harm so that she  
20          could gather evidence about a DIN violation. And it  
21          also doesn't fit with Health Canada not then  
22          basically assisting them with amending their website  
23          as David Hardy indicated that they had said they  
24          were willing to do and communicated to Health  
25          Canada.

26                       Now my friend says that the reasonable legal  
27          alternative would have been to sell basically the

1 rights to have the product to somebody else, to a US  
2 company, and I found that very interesting because  
3 it's got to be a reasonable legal alternative, not  
4 just any alternative. And so as my friend brought  
5 evidence before the Court that there would be  
6 somebody willing to take the liability of selling  
7 something for mental health patients, without having  
8 control or expertise of the program. And that that  
9 would have been a safe approach to take.

10 And --

11 THE COURT: Well I do not think that he  
12 said that, find a buyer who would sell the product  
13 without the program.

14 MR. BUCKLEY: Oh, without the program. Oh,  
15 and I address -- if that's what he was saying, I  
16 addressed that in earlier submissions. So -- and  
17 that's fine, I thought he was suggesting by -- with  
18 the program.

19 When my friend was talking about how there  
20 really was a harm to selling without a DIN because  
21 we had to -- there's a value to regulatory scheme  
22 and we have to basically protect that. The problem  
23 is, is aside from the fact that we're talking about  
24 death and serious harm, is the regulatory scheme was  
25 changing, and there's not protecting applying drug  
26 identification numbers to natural health products.  
27 There's no integrity of the system there to protect,

1 it's changed, and they knew it was changing in '03.

2 When my friend is saying, and he refers to  
3 these e-mails, Exhibit 62, 67, 68 and 69, and saying  
4 you know, we should interpret them different than a  
5 run around. Those were his words. But if we're  
6 going to interpret them different and say, this  
7 isn't a run around, the question that just begs to  
8 be asked is, so why edit that material out? If  
9 we're not doing a run around, why edit that material  
10 out?

11 When my friend is talking about the number of  
12 products in compliance, he's kind of turned that  
13 around, so I'm talking 90 percent and he's saying,  
14 yeah but there's 10 percent compliant. And, you  
15 know, when the defence is complaining about these  
16 guys being singled out, you know, Dales is going to  
17 tell them not to proceed, and some products can't  
18 comply. But I don't think we should lose sight of  
19 the fact that the industry norm, we're talking 90  
20 percent of the products without DINs, these are  
21 products sold in the marketplace, these are products  
22 on the drawing board, 90 percent of the industry was  
23 in non-compliance. And it's not -- I don't think  
24 it's fair for the Court to conclude that the  
25 industry was being irresponsible. We don't have the  
26 evidence before us there.

27 So just the fact was this was the norm, this

1 was the status quo, and to say it's unreasonable in  
2 light of the fact that new regulations came in, I  
3 think just goes in the face of the regulatory  
4 reality that now exists.

5 Now I do take exception with my friend talking  
6 about safety concerns raised by boron and germanium,  
7 because he made a specific decision not to call  
8 evidence about the safety of the product, and he  
9 told me that before he ran his trial, and I've had  
10 expert witnesses that could have been asked about  
11 this boron and germanium safety. And so to raise it  
12 in submissions, just in my view, is not a lot of  
13 weight can be given to that. I mean, there isn't  
14 evidence that boron and germanium are not safe.

15 THE COURT: Well there was some evidence  
16 put in the trial, I believe by one of your witnesses  
17 with regards to boron studies and the opinion,  
18 medical opinion in the field having changed  
19 considerably over the course of a few years.

20 MR. BUCKLEY: We're referring to Mr. Hardy,  
21 who my friend would not have let me qualify as an  
22 expert. So that's all I'm saying is, is I  
23 haven't --

24 THE COURT: Did Dr. Popper not make some  
25 reference to that?

26 MR. BUCKLEY: I don't think he said that  
27 boron was dangerous.

1 THE COURT: No, I do not think he did  
2 either.

3 MR. BUCKLEY: So that's all I'm saying is,  
4 is just seeing my friend was saying in his  
5 submissions there were safety concerns of boron and  
6 germanium. But --

7 THE COURT: And the boron issues are still  
8 unresolved --

9 MR. BUCKLEY: They are --

10 THE COURT: -- with the new product?

11 MR. BUCKLEY: -- they are unresolved, and --

12 THE COURT: Still.

13 MR. BUCKLEY: -- still. There we go. Yeah,  
14 I mean this product is still being sold under the  
15 agreement with the Minister.

16 THE COURT: The product with boron in it  
17 is still being sold --

18 MR. BUCKLEY: Yeah.

19 THE COURT: -- with the agreement of the  
20 Minister?

21 MR. BUCKLEY: Yeah. And the question was  
22 never asked of any witness because Mr. Hardy was  
23 asked, well, have you sold it without boron, and he  
24 said, no?

25 But the question was -- the next question  
26 wasn't asked, and I guess we don't ask when you're  
27 not sure what the answer is going to be, well, why

1 not? So we're left to speculate about the  
2 importance of boron in the product, but in any event  
3 it's legally on -- or it's on the market pursuant to  
4 the agreement with the Minister of Health.

5 THE COURT: So that should address your  
6 concerns with regard to the safety concerns argument  
7 raised --

8 MR. BUCKLEY: Yes.

9 THE COURT: -- or implied by the Crown?

10 MR. BUCKLEY: Yes, because clearly the  
11 Minister of Health can't be making that agreement if  
12 he's got safety concerns, and LaJeunesse being able  
13 to get it a 100 percent of the time didn't -- seems  
14 to address that too.

15 So those are my submissions, thank you, Your  
16 Honour.

17 THE COURT: In strict submission style, in  
18 this situation, it is defence, Crown and reply, but  
19 I usually give Crown a further opportunity to reply  
20 if they wish to do so?

21 MR. BROWN: Only one point, sir.

22 THE COURT: Go ahead.

23 MR. BROWN: My friend referred you back to  
24 the Perka decision because I had indicated that  
25 these people have basically put themselves in their  
26 own situation and my friend has said, well that was  
27 addressed by Perka, and it was. And he is mostly

1 correct in his interpretation. I can't remember  
2 what pages he referred you to though, sir. So I'll  
3 just simply ask you when you have an opportunity to  
4 look through Perka, on what -- I don't know what  
5 numbering you've got, it's either at the bottom of  
6 page 403 or it's in the middle of page 15 of 26,  
7 depending on which numbering -- page numbering  
8 you've got, there's a particular paragraph that I  
9 would reference you to, and perhaps I'll just read  
10 very briefly from it.

11 THE COURT: Well let me see if I can pull  
12 it out while we are at it.

13 MR. BROWN: Sure.

14 MR. BUCKLEY: So what page is it again,  
15 sorry?

16 MR. BROWN: Page 15 of 26 or the bottom of  
17 page 403, depending on which numbering you've got.

18 MR. BUCKLEY: Okay, I'm referring to a --

19 MR. BROWN: Well I'm trying to -- yeah,  
20 see if you've --

21 MR. BUCKLEY: -- maybe it's in a different  
22 copy.

23 MR. BROWN: -- got 15. Sir, if you've got  
24 the -- it should be page 13, about the middle, the  
25 paragraph beginning with, In my view.

26 THE COURT: All right.

27 MR. BROWN: And this is talking about a

1 situation where the fault of the wrongdoer is being  
2 discussed as my friend read in a couple of  
3 paragraphs earlier. This paragraph says:

4  
5 In my view, the better approach to  
6 the relationship of fault to the  
7 availability of necessity as a  
8 defence is based once again on the  
9 question of whether the actions  
10 sought to be excused were truly  
11 involuntary. If the necessity of the  
12 situation was clearly foreseeable to  
13 a reasonable observer, if the actor  
14 contemplated or ought to have  
15 contemplated that his actions would  
16 likely give rise to an emergency  
17 requiring the breaking of the law,  
18 then I doubt whether what confronted  
19 the accused was in the relevant  
20 sense, an emergency. His response  
21 was in that sense not involuntary.  
22 Contributory fault of this nature and  
23 only of this nature is a relevant  
24 consideration to the availability of  
25 the defence.

26  
27 That's what I was referring to, sir. That's

1 the only submission I had, thank you.

2 THE COURT: All right, thank you.

3 MR. BUCKLEY: I'm wondering if we have time  
4 to reschedule, because I think my friend and I both  
5 want to leave town.

6 THE COURT: You both want to leave town?

7 MR. BUCKLEY: Well --

8 MR. BROWN: Well not that Calgary isn't  
9 lovely, but --

10 MR. BUCKLEY: If we're not getting a  
11 decision on Friday, I think neither of us are  
12 anxious to be here tomorrow.

13 THE COURT: For Edmonton and Kamloops, I  
14 am offended.

15 MR. BROWN: Especially of Edmonton, I'm  
16 sure, but at any rate --

17 THE COURT: All right. Well the  
18 difficulty you have is the case management office  
19 closes at quarter after 4:00 --

20 MR. BUCKLEY: That's a difficulty.

21 THE COURT: -- if you want to go up there  
22 and see if you can get a continuation date, fine. I  
23 do not think you can do it. It takes you about a  
24 half an hour --

25 MR. BUCKLEY: Right.

26 THE COURT: Twenty minutes to a half an  
27 hour, they have to coordinate your schedules with

1 available courtrooms and with my schedule. And as I  
2 have said, with my schedule you are going to have to  
3 look in July.

4 So you can try, madam clerk, do you want to  
5 call up and see if there is anybody there.

6 THE COURT CLERK: Sure I can call.

7 THE COURT: In case they are working late  
8 on some other project. Although our Courts usually  
9 will sit until 4:30, 4:00 to 4:30, in fact the  
10 clerks and the administration is usually over about  
11 quarter after 4:00 from the time they start in the  
12 morning, and it is unfair to expect them to  
13 continually be working overtime, and the demands  
14 quite frankly, are continual.

15 MR. BROWN: Yes.

16 MR. BUCKLEY: Is it possible for counsel to  
17 attend by telephone?

18 MR. BROWN: I must say I'm with Mr.  
19 Buckley on this one, if we can make other  
20 arrangements, sir.

21 THE COURT: I am not aware of it ever  
22 being done.

23 MR. BUCKLEY: Okay, well maybe it's not --

24 MR. BROWN: Well then perhaps we're here  
25 tomorrow.

26 THE COURT: Well that is not to say that  
27 it cannot be done.

1 THE COURT CLERK: No answer.

2 THE COURT: No answer.

3 MR. BUCKLEY: Tomorrow morning it is.

4 THE COURT: Well I am trying to see if  
5 there is a way around that, but -- no, you are going  
6 to have to be here. The case is going to have to be  
7 put over. The difficulty as I see it, is that there  
8 has to be a Court appearance for the setting of a  
9 return date.

10 MR. BUCKLEY: Okay.

11 THE COURT: And if you are not here, there  
12 is no Court appearance.

13 MR. BROWN: Right.

14 THE COURT: I can sit here and talk to  
15 myself, but that is not a Court appearance, so --

16 MR. BUCKLEY: So tomorrow morning at 9:30?

17 THE COURT: Tomorrow morning at 9:30. And  
18 what I would suggest you do, is the case management  
19 office opens I think at 8:00, madam clerk, quarter  
20 after 8:00?

21 THE COURT CLERK: Quarter after 8:00.

22 THE COURT: Quarter after 8:00. And  
23 sometimes you know, there will be -- there may be a  
24 rush of lawyers in and around that time, because  
25 they are all trying to get continuance of dates, or  
26 they may be trying to get continuance dates for  
27 matters that were on this afternoon, that they were

1 not able to get rescheduled on time.

2 MR. BUCKLEY: Right.

3 THE COURT: So I am just suggesting that  
4 if you get there at a reasonable time I can deal  
5 with you at 8:30, and I will deal with you first at  
6 8:30, sorry at 9:30, and you can be on your way.

7 MR. BUCKLEY: Right, okay. So where is her  
8 office?

9 THE COURT: Fifth floor.

10 MR. BUCKLEY: And she opens at 9:00?

11 THE COURT: 8:15.

12 MR. BUCKLEY: I'll be there -- or 8:15?

13 THE COURT CLERK: 8:30 --

14 THE COURT: Pardon me, madam clerk?

15 THE COURT CLERK: I believe 8:30.

16 THE COURT: Is it 8:30? All right, aim  
17 for 8:30.

18 MR. BROWN: Yes, sir.

19 THE COURT: And if you do that, although  
20 there may be other lawyers seeking continuance dates  
21 so that they can also get into Court at 9:00 or 9:30  
22 and move their matters along, I am sure that if you  
23 are there at that time somebody will be able to  
24 attend to you and you will be able to set your dates  
25 right at 9:30, and I will see that you are called  
26 first, and you can be on your way, but I did not see  
27 any other way around it. A Court appearance is

1 required.

2 MR. BUCKLEY: And, Your Honour, I anticipate  
3 us attending as agent for both accused tomorrow  
4 morning.

5 THE COURT: That is fine, they are summary  
6 conviction matters, I do not think the Crown would  
7 have any objection to that.

8 MR. BROWN: No objection at all, sir.

9 THE COURT: All right, that is fine.

10 MR. BUCKLEY: Thank you, Your Honour.

11 THE COURT: All right, very good. Before  
12 I finish for the day though I would like to say  
13 again to both Mr. Buckley and Mr. Brown, that I have  
14 appreciated the high degree of professionalism and  
15 organization that you have both brought to the  
16 presentation of your respective cases. It is a  
17 difficult case, both for the Crown in my view, and  
18 for the defence. And you have both done very well,  
19 I believe, both in the presentation of evidence and  
20 in the cases and in the arguments that you have  
21 submitted to putting your cases forward in the best  
22 possible manner. So for that I thank you, and we  
23 will stand adjourned then until 9:30 tomorrow  
24 morning.

25 MR. BROWN: Thank you, sir.

26 MR. BUCKLEY: Thank you, Your Honour.

27 THE COURT CLERK: Order in Court, all rise.

1 Court stands adjourned until tomorrow morning at  
2 9:30.

3 THE COURT: Thank you. Good afternoon,  
4 everyone. Drive safely. Madam clerk, could I see  
5 you for a moment please?

6 -----

7 PROCEEDINGS ADJOURNED MARCH 30, 2006 AT 9:30 A.M.

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10 \*Certificate of Record

11 I, Jillian Fox, certify this recording is a record  
12 of the oral evidence of proceedings in the Criminal  
13 Court, held in courtroom 413 at Calgary, Alberta on  
14 the 29th day of March, 2006 and I was in charge of  
15 the sound recording machine.

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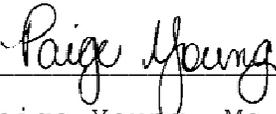
27

1 \*Certificate of Transcript

2 I, the undersigned, certify that the foregoing pages  
3 are a true and faithful transcript of the contents  
4 of the record, including the certificate of record  
5 given orally by the court official, recorded by  
6 means of a sound-recording machine.

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Paige Young, Ms.

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Page by Paige Transcribers

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12 /Date April 5, 2006

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