



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 17

Commissioner: Honourable Justice Leo Barry

Monday

6 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Well, I apologize if I created too much inconvenience for anybody coming out in this weather, but I think we made the right call as judging by how it looks outside right now.

Mr. Simmonds – you’re not expecting – he’s not snowbound is he, Ms. Breen?

MS. BREEN: No, Mr. Commissioner, we are attempting to appear on our own for various witnesses, so he won’t be here today.

THE COMMISSIONER: Sure, okay.

I should first mention that I’ve pretty well finished my decision on the proposed chair experiment, but because of my computer going down on the weekend and the storm this morning, I haven’t quite finished it, so I’m going to take another little while. It might be another day or so before it’s in written form – I could do it in oral form, but better if I provide written reasons, I think.

I also have some concern, Ms. Rasmussen, a matter of late disclosure. I’m wondering if there’s anything that I can do to, apart from expressing my concern, whether there’s anything I can do to make sure that we have everything we should have from the phone files and the other records. I don’t really understand the reason that was given for our not receiving the last batch. I think it was 59 pages or something, which is –

MS. RASMUSSEN: (Inaudible.)

THE COMMISSIONER: Sorry, go ahead.

MS. RASMUSSEN: I must admit, Mr. Commissioner, (inaudible). I must admit, I’m not totally clear on the ins and outs of what came out when. It was pointed out to me by Corporal Luther just a little while ago that when they sought Constable Smyth’s consent to extract the phone records, the consent was only given for the date range of April 2 to April 24. And so I think – we now have to go back and look at the dates of the so-called missing messages because they may have been outside of the date range that was originally –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. RASMUSSEN: No? Okay.

THE COMMISSIONER: No.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: I understand, counsel, that’s not the case, but –

MS. RASMUSSEN: Okay, I – well, again, I must confess I don’t quite understand, and Corporal Luther is still looking into some of the software issues, but he, he’s not totally clear on it either,

and it may be that some of these group messages had to do with why there were discrepancies between the number of messages shown and the number of messages that appeared. But he's working on it now, and all I can tell you, Mr. Commissioner, is that he's trying to sort it out. He's in contact with colleagues in Ottawa trying to sort out what the software issues might be.

THE COMMISSIONER: They seem to be significant documents. They bear upon evidence previously given and there's some conflict which may have to be resolved. So it's important that we have all the records. And we've got to go through you, so you got to go through and do whatever you have to do in order to make sure that everybody in the RCMP organization knows the importance of what's being sought here.

MS. RASMUSSEN: Yes, and they are working on it –

THE COMMISSIONER: Right.

MS. RASMUSSEN: – even as we speak, Mr. Commissioner.

THE COMMISSIONER: Now we have a new face here. You're –

MS. BUIS: Yes, good afternoon, Commissioner, Amanda Buis. I'm here on behalf of Constable Joseph Smyth.

THE COMMISSIONER: Okay. Mr. Kennedy is not going to be here, is he, today?

MS. BUIS: No, he won't be here today, Commissioner, nor will he be here Friday morning. I'll be appearing on his behalf.

THE COMMISSIONER: Okay, it's not that I'm saying I'm missing him, but I just want to make sure that we're not proceeding when we should be waiting for him. But nothing personal in the other remark either.

Okay. I think we're ready to proceed with Sergeant Tilley, still sergeant is it? Is that correct?

MS. CHAYTOR: I believe it's Staff Sergeant Reg Tilley.

THE COMMISSIONER: Staff sergeant, is it?

SGT TILLEY: Mr. Commissioner, I was staff sergeant at the time –

THE COMMISSIONER: Right.

SGT TILLEY: – but right now I'm a Sergeant; I was filling the role of staff sergeant at this particular time.

THE COMMISSIONER: Okay, very good. Thank you.

MS. SHEEHAN: Do you solemnly affirm that the evidence you shall give shall be the truth, the whole truth and nothing but the truth?

SGT TILLEY: I do.

MS. SHEEHAN: Please state your full name.

SGT TILLEY: My name is Reginald George Tilley.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Good afternoon, Commissioner.

Before we begin, there are a number of exhibits. There are a total of five exhibits that I would ask that we have entered; those are P-0380 through to P-0384 inclusive.

THE COMMISSIONER: Sorry, P-0380?

MS. CHAYTOR: Yes, P-0380 –

THE COMMISSIONER: 0380, yeah.

MS. CHAYTOR: – through to P-0384 inclusive.

THE COMMISSIONER: 0384, okay.

Go ahead; that's so ordered to enter those.

MS. CHAYTOR: Thank you, Commissioner.

Sergeant Tilley, I understand you've been a member of the RNC for 34 years.

SGT TILLEY: I will have 34 years completed this April coming.

MS. CHAYTOR: Okay.

And that you're a sergeant in the Patrol Division.

SGT TILLEY: That's correct.

MS. CHAYTOR: And I understand you were an acting staff sergeant on April 5, 2015.

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay.

And other than a five-year period in your lengthy career, you've spent your entire career in patrol; is that correct?

SGT TILLEY: That's correct. For a period of time between 1998 and 2002 I worked in our Criminal Investigation Division.

MS. CHAYTOR: Okay.

Sergeant Tilley, in your almost 34 years, have you had occasion to draw and point your firearm at an individual?

SGT TILLEY: I've had an occasion to draw my firearm on different occasions, but I have never pointed a firearm at an individual.

MS. CHAYTOR: Prior to the incident that we're going to discuss, how well did you know Constable Joe Smyth?

SGT TILLEY: I have never worked personally with Constable Smyth. I knew him around our headquarters; he was a member of our association for a period of time, but I did not have a close working relationship nor a personal relationship with Constable Smyth.

MS. CHAYTOR: Okay. So it wasn't a person who ever reported directly to you or that you acted in a supervisory capacity over.

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay. And so you knew him the same way you would know any other officer I take it –

SGT TILLEY: Yes.

MS. CHAYTOR: – within the – and no other connection to him.

SGT TILLEY: No other connection.

MS. CHAYTOR: Okay. How did you learn about Mr. Dunphy's shooting?

SGT TILLEY: On April 5 I was at our headquarters, our main headquarters here in St. John's in the, in the sergeant's office and I received a telephone call from a Sergeant Ryan in our Communications Centre. He notified me that there had been a shooting in Mitchells Brook and that Constable Smyth was involved and Mr. Donald Dunphy was deceased.

MS. CHAYTOR: Okay. And so you knew from that first call that Mr. Dunphy was deceased.

SGT TILLEY: I did.

MS. CHAYTOR: Okay. And you would have been notified that day. I take it you were on duty?

SGT TILLEY: I was on duty, yeah.

MS. CHAYTOR: Okay. And we do have, and I'm – it's going to appear in front of you. We have a number of exhibits. So I'm going to ask please to bring up P-0381, and those are two handwritten pages, or two pages of handwritten notes that I understand this is your handwriting Sergeant Tilley?

SGT TILLEY: Yes, it is.

MS. CHAYTOR: Okay.

SGT TILLEY: It's the notes that I made on that particular day.

MS. CHAYTOR: Okay. And right here you have indicated 2:33 p.m. notified by Staff Sergeant Ryan from the Comm Centre. So that's the time you received the call I take it, from the Comm Centre?

SGT TILLEY: That's correct, Mr. Commissioner.

MS. CHAYTOR: Okay. And then upon receiving that call – you've written 2:35 p.m., two more minutes – I notified Adams. And is that Acting Inspector Adams at the time, Mike Adams?

SGT TILLEY: Yes, I immediately notified him. He was the inspector at the time in an acting capacity. He was outside our headquarters. I called him on our telephone and notified him.

MS. CHAYTOR: Okay. And you would have been reporting to him that day. Is that correct?

SGT TILLEY: He was my immediate supervisor.

MS. CHAYTOR: Your immediate supervisor. Okay. All right.

Those two pages, can you tell the Commissioner, when would you have made those? I note that you do have very specific times listed but I don't see a date. Are these made on April 5?

SGT TILLEY: They were. I started making those notes just after I got the very first telephone call. And they were made on a pad of paper that was at my office there.

MS. CHAYTOR: Okay. So it's a pad of paper in your office, not your official notebook pad – or your notebook, not your official notebook?

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay. And we also then have after 20 minutes there's a note here: 2:55 p.m. Adam spoke to – is that Smyth?

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay. And were you present for that discussion?

SGT TILLEY: I was.

MS. CHAYTOR: Okay. And were you present in terms of being in the same office, on a speaker phone? Did you overhear the conversation?

SGT TILLEY: I overheard the conversation. Staff Sergeant Adams was in his office, which is directly off the main sergeant's office, open door. It was – I overheard the conversation. I couldn't – I didn't know what the conversation was but I could hear him speak on the phone.

MS. CHAYTOR: Okay. And then after that conversation did Acting Inspector Adams fill you in in terms of any information that he had received from Constable Smyth?

SGT TILLEY: Yeah. He spoke on the phone for like three or four or five minutes, and he didn't have much more information after he got off the phone other than the fact that Constable Smyth had told him that Mr. Dunphy was deceased and he had fired shots at him after being there regarding a investigation that he was following up on.

MS. CHAYTOR: Okay. And I understand that – and we've already heard from Acting Inspector Adams. I understand that you both then decided to head out to Mitchells Brook to meet up with Constable Smyth. Is that correct?

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay. And if we look at – I guess, what would be your intention in doing that? Why are you going there?

SGT TILLEY: I went along at the request of Staff Sergeant Adams. He is a trained critical incident stress debriefer, and he felt that we should attend there to lend some support, moral support to Constable Smyth at this traumatic time.

MS. CHAYTOR: Okay. And how about your purpose in particular then, as opposed to somebody who knew Constable Smyth better, if it's to lend support or perhaps even the person to whom he was reporting at the time, being Inspector Gullage.

SGT TILLEY: Yes, my purpose there was just to, like assist Sergeant Adams, not to give, get into the debriefing part of it. I'm not trained in that, and he wanted some assistance I guess. He wanted to make some telephone calls on the way out there and whatnot and I drove the vehicle.

MS. CHAYTOR: I'm sorry, you drove?

SGT TILLEY: I drove.

MS. CHAYTOR: Okay.

SGT TILLEY: And as well –

THE COMMISSIONER: Who was in the car with you?

SGT TILLEY: Staff Sergeant Adams.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: Okay.

And Sergeant Tilley, at the top of the same exhibit, P-0381, page 1, we do see reference here. Over on the far right, is this 3 p.m.? There's a time period over here on the far right.

SGT TILLEY: Yeah.

MS. CHAYTOR: That's 3 p.m. Okay. And we have – can you just read out what is written to the left of that page then.

SGT TILLEY: Yeah. Acting Inspector Joe Gullage was notified. I – Staff Sergeant Adams wanted me to look up some telephone numbers, some individuals there that he wanted to notify. Inspector Gullage was notified, and I'm not sure at this particular time if I notified him or Staff Sergeant Adams notified him. I'm thinking it was me, but I can't say for sure 100 per cent.

MS. CHAYTOR: Okay. And the purpose in contacting Acting Inspector Gullage is because I take it he was the direct supervisor of Joe Smyth. Is that correct?

SGT TILLEY: He was Constable Smyth's direct supervisor –

MS. CHAYTOR: Okay.

SGT TILLEY: – in that particular services unit.

MS. CHAYTOR: Okay. And it indicates here Deputy Chief Carroll, is that right, notified?

SGT TILLEY: Yes. A telephone call was made to Deputy Chief Carroll en route to Mitchells Brook –

MS. CHAYTOR: Okay.

SGT TILLEY: – while I was driving. That would have been Staff Sergeant Adams.

MS. CHAYTOR: All right. And how about Deputy Chief Singleton, was there also a discussion with Deputy Chief Singleton?

SGT TILLEY: He was notified as well by Staff Sergeant Adams while we were en route to Mitchells Brook.

MS. CHAYTOR: Okay. And did Deputy Chief Singleton express any concern with you and/or Acting Inspector Adams attending at the scene to support Constable Smyth? Were there any words of – or guidance given to you?

SGT TILLEY: No. Well, I wasn't party to the conversation. He wasn't on the speaker phone, but Staff Sergeant Adams didn't communicate any problems that the deputy chief would have had there.

MS. CHAYTOR: Okay.

SGT TILLEY: He wanted to be updated.

MS. CHAYTOR: He wanted to be updated. Okay. All right.

All right. Then if we look at your notes here it says that at 3:20 myself and Adams left to go to Mitchells Brook. And so in terms of – there's about 20 minutes. You've got your 3 o'clock here, phone calls being made and then 3:20 you're leaving to go to Mitchells Brook at that point in time.

SGT TILLEY: Yeah.

MS. CHAYTOR: Did anything happen in that 20 minute time period, or what's going on? Why is it 3:20 that you're leaving?

SGT TILLEY: Well, I looked up those particular phone numbers from our computer system and I would have had to go and get equipped and get our vehicle and leave so –

MS. CHAYTOR: Okay. Fair enough.

SGT TILLEY: The building is quite large, so, you know, 20 minutes passed by before we actually got on the road there.

MS. CHAYTOR: Okay.

And then the next note that you've written here: Notified en route on Salmonier Line that Sergeant Smyth was en route back to RCMP Holyrood. And who notified you of that?

SGT TILLEY: I think we had – I think there were a couple of calls came in. First of all, we had a call from our Communications Centre. Our Comm Centre called and notified us that Constable Smyth was en route and I do believe there was a follow-up call from the deputy chief advising us of the same thing.

MS. CHAYTOR: Okay.

Did you know before you arrived in Holyrood the name of the individual who was deceased?

SGT TILLEY: Yes.

MS. CHAYTOR: Okay.

And who did – and you knew it was Donald Dunphy?

SGT TILLEY: Donald Dunphy.

MS. CHAYTOR: Okay.

And did Acting Inspector Adams know anything about Donald Dunphy?

SGT TILLEY: No. He was aware of Donald Dunphy's brother. He knew – Staff Sergeant Adams is good friends with Dick Dunphy.

MS. CHAYTOR: Okay.

And was that discussed between you and Acting Inspector Adams before or en route out to Mitchells Brook that day?

SGT TILLEY: Discussed, no – yeah, I was – he told me that he had known his brother, but it was very little discussion about that.

MS. CHAYTOR: Okay. All right. But you knew before you headed out to Mitchells Brook, through Acting Inspector Adams, that Donald Dunphy was Dick Dunphy's brother?

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay.

And you knew that then before you actually met up with Constable Smyth?

SGT TILLEY: Yes, we did.

MS. CHAYTOR: Okay.

You've recorded here the next entry 4:30: I called Warren Sullivan. And he was going to pick up a sandwich, I think it says. And then 4:35: Smyth came into the RCMP headquarters. You don't record the time that you actually arrived at RCMP that day.

SGT TILLEY: No. I don't have a notation of that, but we would have arrived there somewhere in the area of 4:10 to 4:15, would be my recollection of that. We were at the RCMP headquarters about 20 minutes, 15 or 20 minutes before I called Constable Sullivan.

MS. CHAYTOR: Okay.

And then five minutes after that – so you're there 20 to 25 minutes before Constable Smyth arrives?

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay.

What was your purpose in calling – why are you calling Constable Sullivan?

SGT TILLEY: Constable Sullivan is our – at the time, he was the president of our RNC Association and I wanted to notify him of what had transpired.

MS. CHAYTOR: Okay.

In the 15, 20, 25 minutes that you're waiting for Constable Smyth to arrive, what is happening in the Holyrood detachment? Are you having any conversations or discussions with members of the RCMP?

SGT TILLEY: Yes. Once we arrived on the parking lot, the rear parking lot there, we spoke with a couple of members that were just exiting their vehicle. There's no conversation regarding the incident, but they let us in through the back door, Mr. Commissioner, and we followed up and spoke with Staff Sergeant Rod Tiller.

We – I should say Staff Sergeant Adams asked if it would be okay if we spoke with Constable Smyth and he informed him that he wanted him to note that we weren't there to interfere in any way with the investigation and it was just for moral support.

MS. CHAYTOR: Okay. And did Staff Sergeant Tiller express any concern about your presence in Holyrood to meet with Constable Smyth that day?

SGT TILLEY: None whatsoever.

MS. CHAYTOR: Did you have any discussion with either the members who you spoke with on the parking lot or with Staff Sergeant Tiller about the incident?

SGT TILLEY: Pardon me?

MS. CHAYTOR: Did you have any discussion with any of the members who you met that day, either those on – the RCMP members, either those on the parking lot, or Staff Sergeant Tiller about the actual incident?

SGT TILLEY: Only Staff Sergeant Tiller. He had very limited information. He advised that he had members at the scene and I can recall he had – there was a problem. There was like – he said there was 20 or 30 cats at the house and he had concerns of how they were going to contain those cats and protect the scene.

Staff Sergeant Adams had some involvement with our local SPCA and he tracked down a number and gave him so that he could make some contact with the SPCA to rectify that problem. He told us that Constable Smyth was en route back to headquarters there in Holyrood and that Mr. Dunphy was deceased.

Other than that, there's no more other information provided to us than basically what we had.

MS. CHAYTOR: Okay.

And you indicated to him, or you and Acting Inspector Adams indicated to him that you weren't there to try and interfere with the investigation. So you understood at that point in time the RCMP would be carrying out the investigation.

SGT TILLEY: Yeah, I was well aware of that, and it was totally their investigation. We wanted – you know, we wanted it noted that we weren't there to interfere and we didn't want to have any

interference whatsoever. And it was just strictly moral support and see how he was doing, if he needed anything and whatnot.

MS. CHAYTOR: Okay. What kind of investigation would they be carrying out? Did you understand it would be a criminal investigation?

SGT TILLEY: Oh, I knew there would be a criminal investigation carried out with regard – with respect to this going forward, yup.

MS. CHAYTOR: And did you have any concerns yourself that by speaking to Constable Smyth that might be, albeit inadvertently, interfering with the investigation?

SGT TILLEY: At the time, I didn't have any concerns whatsoever on that. You know, my mindset was focusing on his well-being and, you know, it wasn't anything that we – that I could consider of any involvement or interference with that investigation. It wasn't – you know, I didn't think about that at all at the time.

MS. CHAYTOR: Okay, and have you thought about it since?

SGT TILLEY: I did, and I still feel that there was totally no interference with the investigation. I can see how probably that the public, you know, perception could be there, but it was the furthest thing from my mind at that particular day.

MS. CHAYTOR: Okay, and so no concern about Constable Smyth may talk to you, tell you any details of the incident and that you ultimately end up being a witness.

SGT TILLEY: I knew we could possibly be a witness, but – you know, and we'd spoken on the way out that we, you know, we didn't want to get into the information that Joey Smyth had. Very well that he was going to tell us some of the information, but we were prepared not to ask any questions, draw any more information out of him than he was willingly providing.

MS. CHAYTOR: Okay.

All right, and so you indicate here that he arrives at 4:35 into the RCMP – and does this say then you went upstairs? Can you just read out your note here, please? Went upstairs – what's this word?

SGT TILLEY: Yeah, went upstairs – Holyrood, I guess, I was putting there. RCMP Holyrood.

MS. CHAYTOR: Oh, Holyrood, okay. All right. And you went upstairs. Okay.

And so did any member of the RCMP stay with you during your meeting with Constable Smyth?

SGT TILLEY: No. There was the member that brought him in. There was a member that escorted us upstairs and they arranged a room for us to be in, but they didn't stay in the room.

MS. CHAYTOR: Okay. And did you speak to other members, once you went upstairs? Were there other members of the RCMP upstairs?

SGT TILLEY: There were other members in a different room, in a separate room there. They were what appeared to be arranging a team there, I guess, to – investigative team.

MS. CHAYTOR: Okay, and did you have any discussions with them?

SGT TILLEY: The only officer I spoke with there at one or two particular times was Corporal Henstridge.

MS. CHAYTOR: Henstridge, okay. And did – and what was the nature of your discussions with Corporal Henstridge?

SGT TILLEY: He came to me, he came to the room that we were in at one particular time and wondered if we could get a change of clothes for Constable Smyth as he wanted to seize his clothing.

MS. CHAYTOR: Okay, anything else?

SGT TILLEY: And I think when we were leaving we spoke to him, as well, because Constable Smyth had – was wondering about giving a statement, and when we were leaving, myself, or Staff Sergeant Adams or myself – one of us – notified him that Constable Smyth may want to give his statement in the morning or the next day.

MS. CHAYTOR: Okay. And in that, in speaking with him, did he ask you any information about what Constable Smyth may have relayed to you in your meeting?

SGT TILLEY: None whatsoever.

MS. CHAYTOR: Okay.

Your next reference that you've written here, I believe this to say: Critical Incident Stress Debrief. And what's that referencing? Did Acting Inspector Adams actually carry out a CISD?

SGT TILLEY: Well, that's what the intention was and, you know, I'm not trained in Critical Incident Stress Debriefings. I've – in the past I've sat in on a couple. It wasn't really a formal stress debriefing. It was more of a – you know, it didn't really turn out to be a Critical Incident Stress Debriefing, in my opinion.

MS. CHAYTOR: It didn't? Okay.

SGT TILLEY: It didn't. You know, we tried to comfort him as best we could there and, you know, he said that he was fine, he didn't want to go through a formal process and it was more of a casual talk we had with him.

MS. CHAYTOR: Okay. And I believe two days later you gave your statement to the RCMP, is that correct?

SGT TILLEY: Yeah. It was two days later that Corporal Henstridge came to our headquarters. I do believe he called me beforehand. I was working that particular night and he came in and took my statement.

MS. CHAYTOR: Okay. And in that statement I believe you indicated that you didn't take notes and that the reason you didn't have your notebook out and taking notes was because "... we were there for a critical incident stress ... debriefing" Do you recall saying that, or would you like me to bring up the reference on page 11?

SGT TILLEY: No, no, I do recall saying that, and how that transpired was that before we left our headquarters that particular day, Staff Sergeant Adams told me he had been trained in this here and that he was going to go there and do this debriefing. And as part of this debriefing, it

was confidential and we were to take no notes. So I specifically didn't take any notes in my notebook.

MS. CHAYTOR: Okay. All right, because you understood what you were doing there was a Critical Incident Stress Debriefing.

SGT TILLEY: Yeah, I understood that's the reason why we were going there and anything related to that should be held confidential and, you know, he made it clear to me that I was to take no notes and he was my direct supervisor.

MS. CHAYTOR: Okay.

So when you say he made it clear that you were to take no notes, he's your direct supervisor, you mean Acting Inspector Adams.

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay.

And did you see him take any notes?

SGT TILLEY: No.

MS. CHAYTOR: Okay.

And we've seen many pages of notes that Acting Inspector Adams took. There's four bullet points on one page that he indicated were taken while he was in Holyrood, and then there's a number of other pages that he took when you arrived back at headquarters that day.

SGT TILLEY: Yeah. Now, he may have taken some jot notes out there, but there was no notebook notes.

MS. CHAYTOR: Okay.

How was Constable Smyth when you first saw him?

SGT TILLEY: He was upset. You could tell that he had anxiety. His hands were somewhat shaky but, you know, his composure was fairly good.

MS. CHAYTOR: Okay.

And in terms of the reference to Corporal Henstridge about Constable Smyth, timing of his statement, did you give any advice or caution to Constable Smyth as to what – or when he should speak with the RCMP?

SGT TILLEY: No. The issue was raised in the room. Constable Smyth raised the issue of he was going to provide a statement and he was debating: I wonder if it was better for me to do it the next day. And myself and Staff Sergeant Adams said that's how it would be – you know, I can't see that being a problem. There was some discussion around those issues.

MS. CHAYTOR: Okay.

Did you give him any word of caution – Constable Smyth – not to talk to you about what had happened prior to the RCMP speaking to him and taking his statement? Did you give him any caution or words of advice to that effect?

SGT TILLEY: No, no caution but, you know, when he would be relaying information to us I can recall saying, you know, you should probably wait until the RCMP are going to take your formal statement so as to, you know, it will be well documented, audiotaped and whatnot.

MS. CHAYTOR: Okay.

And I believe when we met and did the interview, you indicated you basically told him to wait until the RCMP asked the questions on what happened.

SGT TILLEY: Exactly.

MS. CHAYTOR: And that you were just there for moral support.

SGT TILLEY: Exactly.

MS. CHAYTOR: Okay.

So what was your concern? What was your concern in having him tell you what happened?

SGT TILLEY: Well, the biggest concern I had was that it wasn't going to be documented properly. You know, I wasn't prepared to take notes. And for him to tell his full story and I think it was pretty important to have that documented and audiotaped and what not.

MS. CHAYTOR: Okay. And during your discussion, then, with him that day, did he, in fact, give you some details about what had happened?

SGT TILLEY: Yes, he did.

MS. CHAYTOR: And what did he say?

SGT TILLEY: Well, he – the information that came out there was that he had come to headquarters that particular morning, on April 5, and had signed on as per his normal day's work. He had intended to go to Mitchells Brook to interview this gentleman. He performed some background checks with regard to our computer systems to gain, I guess, as much knowledge or information as he could. He notified the RCMP that he was going to be travelling to Mitchells Brook.

He went there. Before he visited Mr. Dunphy, he had visited the next door neighbours of Mr. Dunphy, which was his brother and his brother's wife, and had a discussion there. He subsequently went to Mr. Dunphy's home and spoke with him, identified himself, went inside the home, spoke with him.

He said the home was in deplorable condition. There was cat feces, garbage. He had concerns. He expressed concerns for Mr. Dunphy's health and well-being. And, you know, at one point he – I remember him commenting that there was some garbage on the floor and he moved it with his foot and there was some bugs, whatnot around the garbage.

And when he – he said that he had expressed concern with Mr. Dunphy about this situation, his well-being, and Mr. Dunphy became agitated, visibly more agitated.

And he also noticed that there was a stick or a bat on the side of the chair he was sitting in.

He had a folder, a file folder that he was taking some notes on, that – and when he was making some notes he noticed out of the corner of his eye that Mr. Dunphy had a long-barrel gun pointed at him. And at first he didn't know if it was a shotgun or a rifle, but then proceeded to say that the barrel was small and he knew it was a rifle.

MS. CHAYTOR: Okay. That's pretty good detail without notes. Okay.

Is that it?

SGT TILLEY: I can recall pretty clearly on what was said there.

MS. CHAYTOR: Is that it? That's everything you remember?

SGT TILLEY: That's basically, that was basically it, yeah.

MS. CHAYTOR: Okay. All right.

And did Constable Smyth mention why it is that he went to visit Mr. Dunphy on that occasion?

SGT TILLEY: Yeah, he said he went there regarding an investigation that he was carrying out regarding some threats on government officials.

MS. CHAYTOR: Some threats on government officials. Okay.

And did he tell you – you mentioned that he said he did some background checks, did he tell you what the outcome of those checks were?

SGT TILLEY: No, he didn't make any comment what the outcome of the checks were.

MS. CHAYTOR: Did he mention whether or not he obtained any background check from the RCMP that day?

SGT TILLEY: He did say that he inquired with the RCMP. I think it was at the same time that he had advised them that he would be travelling there, but I can't recall any, anything that would have been said to him from the RCMP.

MS. CHAYTOR: Okay. And when he mentioned that he had gone to visit the brother next door, was there any discussion or did Acting Inspector Adams speak up at that point and say anything about which brother and that he knew Dick Dunphy?

SGT TILLEY: No, I can't recall any conversation on that.

MS. CHAYTOR: Okay. And did you understand that it was Dick Dunphy or did he just say it was brother next door?

SGT TILLEY: Pardon me? What –

MS. CHAYTOR: Did you understand – did he mention the name of the brother that he visited next door?

SGT TILLEY: Did Constable Smyth?

MS. CHAYTOR: Yes.

SGT TILLEY: No, he said he went and visited the brother and his brother's wife.

MS. CHAYTOR: Okay. And Acting Inspector Adams didn't say anything at that point in time in terms of any connection he had or the fact –

SGT TILLEY: No, no. There was –

MS. CHAYTOR: – that he knew this was Donald – that he knew Donald Dunphy's brother?

SGT TILLEY: No.

MS. CHAYTOR: Okay. Did he mention – did Constable Smyth mention that he actually went to Mr. Dunphy's house, first, before he went to Dick and Debbie Dunphy's house? That he went there and he wasn't at home?

SGT TILLEY: I can't recall if he said that or not.

MS. CHAYTOR: Okay. Did he mention whether or not he had called Donald Dunphy prior to attending at his house?

SGT TILLEY: No, I can't recall that.

MS. CHAYTOR: Okay.

And you did mention something about writing in a file folder.

SGT TILLEY: Yes, he told me he had a file folder that he had been taking notes on there during the conversation with Mr. Dunphy.

I should also add, too, that he told me he was in the house for 10 or 15 minutes before this incident happened.

MS. CHAYTOR: Before the incident happened. Okay. All right.

And no indication as to why Mr. Dunphy became agitated?

SGT TILLEY: He said that the – what he noticed when he mentioned to Mr. Dunphy he had concerns for his well-being and health in the conditions that he was living in, he became upset at that point.

MS. CHAYTOR: Okay. So that's the point in time he became agitated. All right.

And you did mention that he said there was a bat or stick on the side of the chair?

SGT TILLEY: Yeah, he noticed that – yeah, he told me he had noticed that, yeah.

MS. CHAYTOR: Okay.

I'm just going to bring up, please, P-0380. And this is from your RCMP statement and it's page 4, Madam Clerk, of the exhibit.

So that's not the right exhibit number. The exhibit number is page – it is P-0380 though. I have P-0380 being Sergeant Tilley's RCMP statement of April 7, 2015.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: I did. Do you have that exhibit, Madam Clerk? Okay.

Okay. And I believe this to be page 4 of the exhibit, so that's good, right there. And if we just come down, this is your statement and this is Corporal Henstridge that interviewed you that day. And if we come down there's a description of what he further told us.

He was going to the Mitchells Brook conducting an investigation. He had stopped, I think, it was next door and spoke with the family who's the brother of the deceased. I'm not sure if he spoke with the brother or if it was the brother's wife. I think they indicated that he was over in the house or so. He went over to the house and spoke with this guy and from there he had a folder. He told me he had a folder in his hand making some notes and this guy became somewhat agitated. He was getting agitated. He noticed that he had a stick or a bat or something on the side of the chesterfield where he had been sitting, and while in the process of making some notes, he said he got a glimpse out of the corner of his eye, when he looked he had a long, long barrel gun.

And I just want to stop there for a second. He noticed that he had a stick or a bat or something on the side of the chesterfield where he had been sitting. Now, you use the word "chesterfield," and when you say where he had been sitting. And the "he" in this sentence, are you referring to Mr. Dunphy or Constable Smyth?

SGT TILLEY: Mr. Dunphy.

MS. CHAYTOR: Okay. And did you hear Constable Smyth use the word chesterfield, beside the chesterfield?

SGT TILLEY: No, that would have been my terminology.

MS. CHAYTOR: That's your terminology.

SGT TILLEY: I refer to it as a chesterfield.

MS. CHAYTOR: Okay. But it was clear to you that what Constable Smyth had said here was that it was Mr. Dunphy who had the bat or stick on the side of the chair in which Mr. Dunphy was sitting. That's what you were intending to say here?

SGT TILLEY: That's correct.

MS. CHAYTOR: And that's what you understood Constable Smyth to say.

SGT TILLEY: That's correct.

MS. CHAYTOR: And you also used past tense. You say that where he had been sitting. Did Constable Smyth indicate to you that Mr. Dunphy was not seated throughout their interaction?

SGT TILLEY: No, he didn't indicate that.

MS. CHAYTOR: Okay. So you do use past tense, where he had been sitting. Did he indicate whether or not Mr. Dunphy stood up at any point in time during their encounter?

SGT TILLEY: No, he never ever indicated that to me.

MS. CHAYTOR: And what you recall him saying is that it was on the side of the chesterfield where he had been sitting, that's where the stick was located.

SGT TILLEY: That's correct, Mr. Commissioner.

MS. CHAYTOR: Okay. Did Constable Smyth say where the rifle came from?

SGT TILLEY: No, he didn't say where it came from. All he told me was that he had been taking notes and I guess his head was down looking at his notes and out of the corner of his eye he noticed that there was a gun pointed at him.

MS. CHAYTOR: Okay. All right.

And here if we continue on with what you said on April 7, you said that he got a glimpse. And while in the process of making some notes he said he got a glimpse out of the corner of his eye that when he looked he had a long, a long barrel gun and he told me at the time he wasn't quite sure if it was a shotgun or a rifle.

So this is obviously just two days later.

SGT TILLEY: Yeah.

MS. CHAYTOR: So it says when he looked Mr. Dunphy already had the rifle in his hand.

SGT TILLEY: That's correct.

MS. CHAYTOR: Is what you understood him to be saying.

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay. And so no indication as to whether or not he saw where the rifle actually originated. By the time he looks up the rifle is in his hand.

SGT TILLEY: Yeah, the rifle was on him. My, you know, understanding of what he was telling me is that the rifle, when he noticed it out of the corner of his eye the rifle was on him.

MS. CHAYTOR: Okay.

If we go back then please to the notes that you took that day, P-0381, and it indicates that at 5:30 then, that's when Warren Sullivan and Constable Scott Harris arrived. Does that seem about right, in your recollection? That's –

SGT TILLEY: That would be correct.

MS. CHAYTOR: Okay. So you're there with him, 55 minutes with Constable Smyth by the time they arrive.

SGT TILLEY: That would be correct, yes.

MS. CHAYTOR: Okay. And then according to your notes you stayed half an hour? 6 o'clock –

SGT TILLEY: Yup.

MS. CHAYTOR: 5:30 they come in and then 6 p.m. yourself and Acting Inspector Adams leave.

SGT TILLEY: Exactly. We would have been there very close to a half hour. At 6 o'clock we did leave to come back out of it.

MS. CHAYTOR: Okay. And you just indicated Sullivan and Scott Harris arrive and chatted – I think is that word. So was there further in, further discussion of the incident in the presence of all four of you? So once Sullivan and Harris arrive is there a continuation, any more discussion of the incident?

SGT TILLEY: I'm sure there was some more conversation there but I had stepped out of the room a couple of times. I think we were trying to give Constable Sullivan and Constable Harris some time there with Constable Smyth. Like at one point, I had called our Communications Centre to arrange transportation for clothing, and there's another point there that Sergeant Adams took a call from our chief.

MS. CHAYTOR: Okay. And what did you understand? Did you overhear that conversation?

SGT TILLEY: Overhear – no, I knew he was on the phone there. He told me it was the chief on the phone, but I –

MS. CHAYTOR: And did the chief call in to the Holyrood detachment or did that call come through on somebody's cellphone?

SGT TILLEY: I'm not quite sure.

MS. CHAYTOR: Okay. And did Acting Inspector Adams have to step out of the room then to take the call?

SGT TILLEY: Yeah, he stepped out of the room and took that call.

MS. CHAYTOR: Okay. And was it a member of the RCMP who came to tell him that he was wanted on the phone, do you recall that?

SGT TILLEY: I can't recall, Mr. Commissioner, like the situation around that call. I knew – I know that he did speak with the chief on the telephone.

MS. CHAYTOR: Okay. And then did he come back into the room and relay to you or others within the room as to what was said on that call?

SGT TILLEY: Yeah. He told Constable Smyth that he was to take some time off work and spoke about our EAP counsellor.

MS. CHAYTOR: So based on what Acting Inspector Adams said, what did you understand to have been the purpose of the chief calling in to Acting Inspector Adams while he was meeting with Constable Smyth?

SGT TILLEY: Well, I guess the chief wanted to get, like, you know, find out how he was doing I guess and to advise him that, you know, he take some time from work and – he knew it was a pretty traumatic incident and he needed to take some time away from work to deal with that.

MS. CHAYTOR: Okay, so nothing else. There was nothing else related to Constable Smyth?

SGT TILLEY: I can't recall what else would have been related to him, but maybe there was another point or so but I can't recall it at this time.

MS. CHAYTOR: Okay. And in terms of the advice for Constable Smyth to wait to give his statement, you were in agreement with that advice, I take it?

SGT TILLEY: Yes, I was, yeah.

MS. CHAYTOR: Okay. And what was the reasoning for that? Why is it that you thought he should wait?

SGT TILLEY: Well, you know, this incident obviously was, you know, a serious incident happened here, and you know I felt that Constable Smyth's mind would be much clearer with some hours removed away from the incident. All the literature and training that I've been party to concerning memory recall suggests that, you know, a small amount of time away from the incident would, would help with that matter so.

MS. CHAYTOR: Okay, and Corporal –

SGT TILLEY: That was my mindset around that.

MS. CHAYTOR: And Corporal Henstridge was okay with that and agreed with that?

SGT TILLEY: Yeah, he did. He said he thought it was a good idea.

MS. CHAYTOR: Said it was a good idea. Okay.

I just want to bring up too your statement to Corporal Henstridge then two days later. If we could go back, please, to P-380, and this is going to be at the bottom of page 5 of the exhibit, top of page 6.

Okay. I'm just gonna scroll down here, Sergeant Tilley. So here I'm just gonna scroll down. Thank you.

THE COMMISSIONER: What is the number of this one?

MS. CHAYTOR: This is P-380, so this is Sergeant Tilley's statement to the RCMP on April 7, 2015.

MS. SHEEHAN: (Inaudible.)

MS. CHAYTOR: Okay, I'm not sure why that would be.

MR. DROVER: If I could say, I think that when you stamped the exhibits with their actual exhibit numbers nobody bothered to change the original file numbers that had been assigned to them, because I've – for weeks I've been sitting here and looking at the file number on the top of the Adobe file as opposed to on the top of the page, and they haven't been the same number for a very long time.

MS. CHAYTOR: This one doesn't have – yeah, this one doesn't even have a P number on it, but anyhow, we'll make do. So I'm going to go to the bottom of page 6 in this document, because it is the right document.

Thank you, Mr. Drover.

So we'll see what we can do to get that straightened out. So it's the bottom of page 4, here we go. All right. So here we go.

This is your statement; however, even though it has a different number, "I'm not quite sure" – you're saying to Corporal Henstridge – "which one of us had said that to you. And" And Corporal Henstridge says: "And I was more than open, just for the record." And you say: "...and you – and you were open that he – you were quite understandable and whatever was – whatever he, you know, whatever is best for him. It's not – not a problem."

And so in saying that, was it Corporal Henstridge who was saying: Well, you were open to, well, whatever is best for him? That it's, whatever is best for Constable Henstridge if he needed to wait to give his statement?

SGT TILLEY: That's correct.

MS. CHAYTOR: Okay.

I asked you whether or not you had any further discussions with him before you left that day. Did you have any discussions with any member of the RCMP before you left that day, other than what you already indicated in terms of Corporal Henstridge?

SGT TILLEY: No, we didn't.

MS. CHAYTOR: Okay. So did any member of the RNC – RCMP that day ask you what had transpired in the room with Constable Smyth or what had been relayed to you about the incident?

SGT TILLEY: None whatsoever.

MS. CHAYTOR: So between April 5, 2015 and two days later April 7, 2015, did you have any discussions with anyone about what you had learned in the room?

SGT TILLEY: No. The only person I may have, obviously, have spoken to was Staff Sergeant Adams.

MS. CHAYTOR: Okay. And did you discuss the details of what had been said or discuss what had happened during your conversation with Constable Smyth and what Constable Smyth had relayed to you?

SGT TILLEY: No. We never had no direct conversation on that, that I recall, of what was said, but just, obviously, from working with the guy it would be virtually impossible not to speak about the incident.

MS. CHAYTOR: Okay. And did you have any discussions regarding the overall incident with anyone else other than Acting Inspector Adams?

SGT TILLEY: No, I didn't.

MS. CHAYTOR: Okay. So you didn't have to report back to RNC or speak to Deputy Chief Singleton?

SGT TILLEY: No, I didn't.

MS. CHAYTOR: Okay. And on the way back from Holyrood that day, did any further calls get placed by Acting Inspector Adams?

SGT TILLEY: I can't recall any calls that were made en route back to our headquarters.

MS. CHAYTOR: Okay.

SGT TILLEY: There was a – at one point in time, we got – there was another call came in, a totally unrelated call came in –

MS. CHAYTOR: Right.

SGT TILLEY: – that we, we kind of had to deal with –

MS. CHAYTOR: Yes, that's fine.

SGT TILLEY: – a little bit but didn't transpire into anything.

MS. CHAYTOR: So nothing – okay.

SGT TILLEY: Other than that, I can't recall any further follow-up telephone calls.

MS. CHAYTOR: Okay. And no further discussions when you got back at headquarters? Did you and acting Inspector Adams stay and talk after you got back?

SGT TILLEY: No. You know, I would imagine it was probably after 7 o'clock when we got back and our shift was concluded. You know, we probably left and –

MS. CHAYTOR: Okay.

I noticed in Constable Smyth's cellphone records that there was an, there was a text messaging or an SMS messaging between – you shot to him the next day, April 6. And, basically, just telling him everything would be fine and that he had everyone's support.

Other than that, did you have any communications with Constable Smyth in the intervening period between April 5 and April 7?

SGT TILLEY: From April 5 to April 7?

MS. CHAYTOR: Yes.

SGT TILLEY: No, I had no, no communication whatsoever, only for that text message. I did send him a text message.

MS. CHAYTOR: Yes.

SGT TILLEY: And checked on him.

MS. CHAYTOR: Other than that you didn't talk to him on the phone or have other discussion with him before you gave your statement?

SGT TILLEY: None whatsoever.

MS. CHAYTOR: Okay.

Sergeant Tilley, those were the questions I intended, unless there's anything that I have missed.

Is there any other relevant information you have to give to the Commissioner regarding this matter?

SGT TILLEY: No.

MS. CHAYTOR: Okay. All right. Thank you very much.

Some of my, some of my fellow counsel may have questions for you and the Commissioner might as well.

Thank you.

SGT TILLEY: Thank you.

THE COMMISSIONER: Ms. Breen, you're going first.

MS. BREEN: Thank you, Mr. Commissioner.

Sergeant Tilley, Erin Breen for Meghan Dunphy.

Good morning – or, I'm sorry, good afternoon.

SGT TILLEY: Good afternoon.

MS. BREEN: Our late start.

Sergeant Tilley, I just have two very brief questions for you.

The first I wanted to ask you is when you arrived at the detachment, I think you described in your interview with Ms. Chaytor that the RCMP were very friendly, accommodating towards you is that correct?

SGT TILLEY: Yes.

MS. BREEN: There was no issue with the way that that happened was there? There was no problem with getting to see Constable Smyth?

SGT TILLEY: None whatsoever.

MS. BREEN: Okay. And you also reiterated that the RCMP were more than happy to let you see Constable Smyth. They let you speak with him freely and alone. They did stay in the room. Is that correct?

SGT TILLEY: That is correct.

MS. BREEN: Okay. And, in fact, when you gave your police statement as well, do you recall that Corporal Henstridge asked you – I think the last question he asked you in that statement was: Were there any concerns that you had about the way you were treated by the RCMP?

Did you recall that in reviewing your statement?

SGT TILLEY: Yeah, I can recall that. He did ask that question.

MS. BREEN: Okay. Did you, do you know why he asked you that question?

SGT TILLEY: No.

MS. BREEN: Okay. And you had said at time no, everything was perfect. They were more than accommodating.

SGT TILLEY: Yeah. And they were, yeah. There's no question there.

MS. BREEN: Sergeant Tilley, the other area I wanted to ask you about was with respect to what Staff Sergeant Adams had told you about his relationship with Dick Dunphy on April 5.

I understood from your interview that Staff Sergeant Adams had told you that he knew Dick Dunphy and he knew that Donald Dunphy was Dick Dunphy's brother. Is that correct?

SGT TILLEY: That's correct.

MS. BREEN: And that he had known Dick Dunphy because he had a cabin in the area. Is that right?

SGT TILLEY: Yes, that's correct, up around Mitchells Brook or –

MS. BREEN: I'm sorry?

SGT TILLEY: Up around Mitchells Brook or Mount Carmel, somewhere up in that area.

MS. BREEN: Okay.

SGT TILLEY: St. Catherine's.

MS. BREEN: Did he explain to you at that time, Sergeant Tilley, that Dick Dunphy had helped him build the cabin or dug out the land for him? Did you understand that was the, you know, the start of their relationship?

SGT TILLEY: On this particular day, I don't know if I, I did – he did tell me that, I think, he did help him with the excavating of his cabin or something along those lines, but I'm not sure if that information was provided to me on April 5.

MS. BREEN: Okay.

SGT TILLEY: I don't think it was. I think that was afterwards or –

MS. BREEN: Was something that he told you afterwards?

SGT TILLEY: Probably afterwards or something, yeah.

MS. BREEN: Okay, but on April 5 there is no doubt he did tell you about his relationship with Dick Dunphy?

SGT TILLEY: Just –

MS. BREEN: I said on April 5, there's no doubt, on your way or before you got to see Constable Smyth, he had told you about Dick Dunphy and that he knew that Don Dunphy was Dick's brother.

SGT TILLEY: That's correct.

MS. BREEN: Thank you very much.

THE COMMISSIONER: Any other questions?

MR. DROVER: I have some questions, Mr. Commissioner.

Sergeant Tilley, you've told us you were, you've been with the RNC for 34 years?

SGT TILLEY: It will be 34 years this April.

MR. DROVER: And how many of those years were as a Sergeant?

SGT TILLEY: I was promoted to the rank of Sergeant in 2002.

MR. DROVER: And before that, I believe you said you spent some time in Criminal Intelligence.

SGT TILLEY: Criminal Investigation Division, that's from 1998 until 2002, up until the time I was promoted to the rank of Sergeant.

MR. DROVER: So it was in 1998, I believe, that the RNC began carrying their firearms instead of keeping them in the trunk? (Inaudible) box.

SGT TILLEY: I can't recall back the actual date of that.

MR. DROVER: Does it sound about right? About 20 years?

SGT TILLEY: Yeah, probably.

MR. DROVER: So is the reason that you haven't drawn your weapon often and not pointed it because you haven't been a police, a front-line police officer with a weapon for most of that period?

SGT TILLEY: That would be a big part of it, yeah.

MR. DROVER: Or potentially most all of that period, is that correct?

SGT TILLEY: Exactly.

MR. DROVER: Now, you did take a little – some notes on that day on a scrap pad, I think, that was on your desk.

SGT TILLEY: Yes.

MR. DROVER: And you took that with you to make notes throughout the day.

SGT TILLEY: That's correct.

MR. DROVER: But you didn't take any notes in your official notebook.

SGT TILLEY: No, I did not.

MR. DROVER: And is that because you were not the investigating officer or part of the investigation?

SGT TILLEY: Exactly, and there was also – I was also informed not to take notes because of the reason why we were there.

MR. DROVER: In a general sense, would it be common for you not to take notes for things that are not related to your job as an investigator?

SGT TILLEY: Yes, but in this particular situation, if I wasn't there for the reason why we intentionally went there for, I would have taken notes in this particular case.

MR. DROVER: And you were there because you were requested by your supervisor, staff sergeant – or, sorry, Acting Inspector, at the time, Adams, correct?

SGT TILLEY: That's correct.

MR. DROVER: And he needed a driver so he could make some calls.

SGT TILLEY: He did, yeah.

He needed some assistance and suggested to me that we should go out there and ...

MR. DROVER: In your role, both as acting staff sergeant and, I guess, now as a sergeant, how many patrol officers do you have serving underneath you?

SGT TILLEY: Approximately 32 constables.

MR. DROVER: And those officers are front-line officers on street patrol?

SGT TILLEY: They are.

MR. DROVER: Are they single-officer patrols?

SGT TILLEY: For the most part. We have so many two-officer patrols.

MR. DROVER: Okay.

And how many – generally on a shift, how many two-officer patrols would you have?

SGT TILLEY: Approximately three to four.

MR. DROVER: Out of a total of how many patrols?

SGT TILLEY: Approximately 20.

THE COMMISSIONER: I'm sorry, what was that last question?

MR. DROVER: How many patrols in total were there? So there's about 20 patrols, and three to four of them can be two-man patrols.

Are there more two-man patrols at night than during the day?

SGT TILLEY: Minimally.

MR. DROVER: Well, there's only three or four at most, so ...

SGT TILLEY: Yeah, there's not much difference in day and night.

MR. DROVER: Okay. And are –?

SGT TILLEY: I should clarify that. There is somewhat of a difference there, like... Night shift do have more two-man patrols.

MR. DROVER: In your role as sergeant, is it your job to report instances by your patrol officers that might lead to discipline?

SGT TILLEY: That's correct.

MR. DROVER: And is it your job as a supervisor to participate in those investigations?

SGT TILLEY: That would be correct.

MR. DROVER: What would you do in the event that you, during your investigation into some internal matter, if you uncovered some criminal wrongdoing by one of your officers? What would you do?

SGT TILLEY: It would be reported to a higher authority within our organization. And a criminal, you know, investigation would be carried out and any discipline that needed to be handed down would be handed down.

MR. DROVER: And what is your – sorry, were you going to ask a question?

THE COMMISSIONER: No.

MR. DROVER: What is your duty, in general, in terms of reporting crime?

SGT TILLEY: Pardon me?

MR. DROVER: Your duty, in general, in reporting crime. So, if you witness or hear something criminal, what is your duty as a police officer in that regard?

SGT TILLEY: It's to generate a file and report it.

MR. DROVER: And does that make any difference if that's a police officer or a member of the public?

SGT TILLEY: None whatsoever.

MR. DROVER: So this morning – or, sorry, earlier today, earlier in your testimony, you gave a very detailed account of what was said to you by Constable Smyth when you went out to the Holyrood detachment.

SGT TILLEY: Yeah.

MR. DROVER: And that was from your memory?

SGT TILLEY: Yes, it was.

MR. DROVER: And you understood going in to speak to Constable Smyth that you could be called as a witness whether at trial or if there was a commission of inquiry such as this, or

internal – an internal panel set up, a Public Complaints Commission? You understood that you could be a witness?

SGT TILLEY: I did.

MR. DROVER: And did you also understand that if Constable Smyth had revealed anything which suggested criminality that you would have to report that?

SGT TILLEY: I certainly did.

MR. DROVER: There's been a lot of questions throughout the inquiry and put to you about direction to Constable Smyth about when was best to give an interview. Correct?

SGT TILLEY: That's correct.

MR. DROVER: You were asked that question? And you talked about literature and training and stuff that you had received. Are you aware that in major crimes that the suspect is often the last one to be interviewed?

SGT TILLEY: Normally, in a lot of cases, that would be the procedure. The suspect in a case would be ...

MR. DROVER: Can you comment on why that is?

SGT TILLEY: Well, you know, you'd want to gather so much information as possible in order to properly interview a suspect.

MR. DROVER: Now, you said you were permitted to go and speak to Constable Smyth when you arrived in Holyrood.

SGT TILLEY: I was.

MR. DROVER: Was it your – was it your understanding that he was under arrest or being detained in any way?

SGT TILLEY: No, I had no knowledge – I wasn't informed of that, and it appeared to me that he was not under arrest. He wasn't detained and – or even investigative detention. As far as I know, he was just conveyed back to Holyrood there. And I was given no indication that he was under any sort of detention.

MR. DROVER: Those are all my questions, Mr. Commissioner.

THE COMMISSIONER: Thank you, Mr. Drover.

Any other questions?

MS. BUIS: Yes, I have a few, Mr. Commissioner.

Sergeant Tilley, I'm Amanda Buis for Constable Joseph Smyth.

So your evidence today was that you received a call from Sergeant Ryan from the Communications Centre notifying you of this incident?

SGT TILLEY: That's correct.

MS. BUIS: Okay. And it wasn't that Constable Smyth contacted you directly or requested that you go down and speak with him.

SGT TILLEY: No, the call came to our office from our Communications Centre. Constable Smyth had contacted our Communications Centre.

MS. BUIS: But when he contacted your Communications Centre, was it your understanding that he requested for yourself and acting inspector –

SGT TILLEY: No, no. His purpose of contacting our Communications Centre was to report the incident.

MS. BUIS: Okay, and so you're –

SGT TILLEY: He had also advised that he had contacted the RCMP and he had contacted the ambulance department.

MS. BUIS: And that would have been in the normal course of what would happen in an incident –

SGT TILLEY: That's correct.

MS. BUIS: – such as that. Okay.

So yourself and acting inspector at the time, Mike Adams, really took it upon yourself to go down to the Holyrood detachment –

SGT TILLEY: We did.

MS. BUIS: – to see Constable Smyth.

SGT TILLEY: We did.

MS. BUIS: Okay.

And when you arrived at the Holyrood detachment, your evidence was that Constable Joseph Smyth was not there at the time. And you were there for approximately 20 to 25 minutes before –

SGT TILLEY: Somewhere in the area –

MS. BUIS: – he arrived?

SGT TILLEY: – of 20, 25 minutes, yeah.

MS. BUIS: And you had the opportunity to speak to a couple of RCMP officers, as well as Staff Sergeant Tiller before he arrived.

SGT TILLEY: Yeah. The only conversation really we had with Staff Sergeant Tiller was a couple of more younger guys came in there and introduced themselves. I can't recall their names, but there was no discussion of the incident.

MS. BUIS: Okay. But you would have advised them that you were there to see Constable Smyth for support.

SGT TILLEY: Yeah. That was probably advised.

MS. BUIS: And nobody at any time expressed any concern that yourself and Acting Inspector Adams was there.

SGT TILLEY: None whatsoever, no.

MS. BUIS: And nobody said that you weren't able to see him?

SGT TILLEY: No.

MS. BUIS: Nobody mentioned that it could possibly be inappropriate for you to speak with him?

SGT TILLEY: Not at all.

MS. BUIS: And it was also your evidence that you advised both Constable Joe Smyth as well as Henstridge that it was best for Constable Smyth to give his statement the next day.

SGT TILLEY: Yes. When we were leaving I spoke with Constable Henstridge in the doorway there and it was advised – I can't recall if myself or Staff Sergeant Adams communicated that to him but it was – that it was Constable Smyth's wishes to probably give his statement tomorrow.

MS. BUIS: Okay. Was it yourself or Acting Inspector Mike Adams that directly said to Constable Joe Smyth, it's best for you to wait?

SGT TILLEY: No, Constable Smyth raised the question of he's going to give a statement, he's going to have to give a statement and he was just wondering if it was best to do it now or the next day, but he also advised that – he didn't want to be seen as being uncooperative –

MS. BUIS: Uh-huh.

SGT TILLEY: – and that's the reason why he was hesitant about delaying giving a statement.

MS. BUIS: So but your advice to him would have been it's best to delay.

SGT TILLEY: Exactly.

MS. BUIS: Those are all my questions.

Thank you.

THE COMMISSIONER: Any other counsel have questions? Okay.

Anything arising, Commission counsel?

MS. CHAYTOR: No, nothing arising.

THE COMMISSIONER: Okay. Thank you.

You can step down sergeant.

SGT TILLEY: Thank you.

THE COMMISSIONER: Now, are we going to take a break before we proceed with the next witness?

MS. CHAYTOR: It's up to you. It's totally up to you, Commissioner.

THE COMMISSIONER: How long is the next witness?

MS. CHAYTOR: I wouldn't expect the next witness to be any longer. So I would think that we'd get through her quite easily before 5 o'clock.

THE COMMISSIONER: We started at – oh, it's twenty to three; we'll take a break and then continue.

Thank you. A 15 minute recess.

MS. SHEEHAN: The Commission of Inquiry is recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Thank you.

Go ahead when you're ready.

MS. CHAYTOR: Just finding the podium.

Our next witness is Kimberley Harding.

MS. SHEEHAN: Ms. Harding, do you solemnly swear that the evidence you shall give shall be the truth, the whole truth and nothing but the truth?

MS. HARDING: (Inaudible.)

MS. SHEEHAN: Could you please state your full name? Could you turn on your mic there, please. Thank you.

MS. HARDING: Kimberley Ann Harding.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Commissioner, before we get started, I would note that we have Gerlinde Van Driel is present with us. Ms. Van Driel is representing a witness who you will hear from later in the proceedings, Mark Oram. And we gave her notice that she may wish to be present today for the evidence of Ms. Harding because there are some references to her client in this evidence.

THE COMMISSIONER: I saw the email; Ms. Van Driel, how are you?

MS. VAN DRIEL: Very well, thank you. How are you?

THE COMMISSIONER: Good, thanks. Okay. We used to work together, about forty years ago.

MS. CHAYTOR: I do have a few –

UNIDENTIFIED SPEAKER: (Inaudible.)

MS. CHAYTOR: That's right.

I have a few exhibits that I would ask, please, to have entered into evidence. We have P-0017, P-0024, and both of those are policies or portions of policies of the RNC. We also have P-0388, P-0389, P-0390, P-0438 and P-0439.

THE COMMISSIONER: So ordered that they be admitted.

MS. CHAYTOR: Thank you, Commissioner.

Ms. Harding, good afternoon.

MS. HARDING: Afternoon.

MS. CHAYTOR: I understand that you are the director of information services with the RNC?

MS. HARDING: Yes, I am.

MS. CHAYTOR: And I understand you've held that position since 2001?

MS. HARDING: That's correct.

MS. CHAYTOR: And you've also been employed with the RNC since 1989?

MS. HARDING: That's correct.

MS. CHAYTOR: Okay.

And I understand that you report directly to Deputy Chief Ab Singleton?

MS. HARDING: Correct.

MS. CHAYTOR: And that was also the case in April of 2015?

MS. HARDING: Correct.

MS. CHAYTOR: Okay.

And I also understand that approximately 28 people report either directly or indirectly into you?

MS. HARDING: Correct.

MS. CHAYTOR: Okay.

Well, then, perhaps you could tell the Commissioner what is the job of the director of information services with the RNC?

MS. HARDING: My position – I oversee the information management and the information technology programs for the police service.

MS. CHAYTOR: Okay.

And I also understand that in that capacity that you have that you authored the RNC Policy Information Management and Technology?

MS. HARDING: Yes, I did.

MS. CHAYTOR: Okay. And that would be P-0024 in our exhibits. I don't need to bring it up, Madam Clerk, at this point in time, but that is for your reference, Commissioner, and for counsel.

And I understand it's your primary responsibility to oversee that policy. Is that correct?

MS. HARDING: That is correct.

MS. CHAYTOR: I also understand that, P-0017, we have the Criminal Reporting Procedures and that you've had some input into that policy as well and that you have some responsibility for that policy.

MS. HARDING: That is correct.

MS. CHAYTOR: Okay.

And the policy that we have is at P-0017, Commissioner. It's dated December 10, 2013, which would have been the policy in effect at the time of April 2015, but that policy has been updated, and there's an updated policy February 16, 2016. Is that correct?

MS. HARDING: That's correct.

MS. CHAYTOR: That's correct.

And for the purposes, though, of the sections that are relevant in that policy, the sections that are relevant were not changed in the updated policy.

MS. HARDING: That's correct.

MS. CHAYTOR: Thank you.

Ms. Harding, I understand that you have completed coursework with the RCMP, and perhaps you could tell the Commissioner about that.

MS. HARDING: I've completed coursework in the Canadian Police Information Centre System and the Police Information Reporting System, which is referred to as PIRS, which is an old record management system that was maintained by the RCMP.

MS. CHAYTOR: And is that the current, currently referred to now as PROS?

MS. HARDING: PROS is a replacement of the PIRS system.

MS. CHAYTOR: Okay.

MS. HARDING: But it is a similar system, yes.

MS. CHAYTOR: Okay, and the first lot of training that you refer to, that's in the CPIC system. Is that correct?

MS. HARDING: That's correct.

MS. CHAYTOR: Okay.

And I also understand that you sit on a number of working groups with the RCMP. Is that correct?

MS. HARDING: Yes, that is correct.

MS. CHAYTOR: And what are the nature of those working groups?

MS. HARDING: One working group is the criminal record working group, which is responsible for overseeing the policies behind criminal records. They also work – or sit on a POLIS committee, which is a subcommittee of the CACP, which is the Canadian Association of Chiefs of Police, and that oversees police information and statistical information.

MS. CHAYTOR: Okay, thank you.

And now, perhaps, if we could bring up P-0017, please. And this is the Criminal Reporting Procedures, and it's just the first page, I believe, of this policy.

And if we look under section 1.1, it says that "All matters requiring police attention must be recorded within the ... (ICAN) system." Okay.

So was this the same – this is the policy that was in effect in 2015?

MS. HARDING: Yes, it was.

MS. CHAYTOR: Okay, all right. And does that mean that anything that a police officer were to investigate, that a file has to be open in the ICAN system?

MS. HARDING: That is correct.

MS. CHAYTOR: And is there any requirement under this policy as to the timing of when a file would be opened?

MS. HARDING: There is one subsection that basically says that an officer must record the information as soon as possible, or within 24 hours.

MS. CHAYTOR: Okay, and is that also the general practice and expectation, that it would be done as the file – sorry, as soon as the matter is brought to the officer's attention?

MS. HARDING: Yes, it is. It is best practice to have it recorded in the system as soon as possible.

MS. CHAYTOR: Okay. And on occasions when that doesn't happen, is it usually because there's some degree of urgency related to the matter?

MS. HARDING: That is correct, yes.

MS. CHAYTOR: Does it matter, in terms of an officer's ability to open a file, whether or not it's a holiday, such as Good Friday?

MS. HARDING: No, the system is a 24-hour system.

MS. CHAYTOR: Okay. And what options are available to an officer in terms of opening a file on ICAN?

MS. HARDING: So the officer, him or herself, can open a file themselves if they have the security profile; if they don't have the security profile, then they can call into our tele-report centre; or they can call our communication centre and ask for a file to be opened.

MS. CHAYTOR: Okay, so it's three options?

MS. HARDING: There's three options.

MS. CHAYTOR: Okay. And I take it Constable Smyth, in April 2015, had a security profile.

MS. HARDING: That's correct, yes, he did.

MS. CHAYTOR: Okay. So all three options would have been open to him?

MS. HARDING: That's correct, yes.

MS. CHAYTOR: So when the file was open in the ICAN system, I take it that's an electronic file?

MS. HARDING: That's correct, yes.

MS. CHAYTOR: And is there also a physical file that's generated?

MS. HARDING: Sometimes there is paperwork and sometimes it's not. It depends on the case type of the file. So we do have some records that are totally paperless and others that have paper that are submitted as part of the investigation.

MS. CHAYTOR: Okay. And if there is a physical file folder, are there any particular requirements as to, for example, labelling of that file?

MS. HARDING: For the criminal reporting procedure, basically any hardcopies are placed in a white operational file and when it goes back for investigation it is then placed in a brown operational folder which is referred to as the working copy.

MS. CHAYTOR: Okay, so it's a white operational file folder. And would it be labelled in – when we look at a file folder with name, with the Constabulary, you would expect the name of the file to appear and a file number as well?

MS. HARDING: The file number, the case type would be described on the outside of the file folder in the label section and possibly the officer who created the report.

MS. CHAYTOR: Okay. Are there any bright, yellow coloured file folders used by RNC as their hardcopy files?

MS. HARDING: Not to my knowledge, no.

MS. CHAYTOR: In this particular situation, are you aware whether a file was open in the ICAN system regarding Constable Smyth's investigation of Donald Dunphy?

MS. HARDING: Yes, I am. It was opened on April 7.

MS. CHAYTOR: Okay. So it was opened April 7, two days after.

MS. HARDING: That's correct.

MS. CHAYTOR: Okay. And are you able to say what the file number was that was assigned to it?

MS. HARDING: Not offhand, no.

MS. CHAYTOR: Okay. And if I were to tell you that I believe it to be 2015-17896, does that –?

MS. HARDING: That sounds correct, yes.

MS. CHAYTOR: Okay. And I will bring you to a document in a few moments where you can confirm that.

Are you able to tell the Commissioner who opened the file on April 7?

MS. HARDING: Constable Smyth opened the file on April 7.

MS. CHAYTOR: Okay.

And if we could, please, then turn to P-0138. Okay. And this is a document that I understand was prepared for the RCMP during its investigation, Ms. Harding. And I understand it was prepared by RNC employee Dale Evans and I understand that she's one of your direct reports. Is that correct?

MS. HARDING: That is correct.

MS. CHAYTOR: Okay. And I'll just scroll down here to – you can see the document that I'm referring to here. Are you able to tell the Commissioner what this report indicated in terms of searches that were carried out by either Constable Smyth or on his behalf with respect to his investigation of Mr. Dunphy?

MS. HARDING: The report itself is referred to offline reports. So it is a report that identifies who queries the system, the CPIC system.

MS. CHAYTOR: Okay.

And if we could have, please, page 10 of that document.

MS. HARDING: This portion of the report is actually an RMS offline report, and this report will show who queried the records management system of the ICAN system.

MS. CHAYTOR: Okay. And this indicated – it's indicated to be Joe Smyth.

MS. HARDING: That's correct.

MS. CHAYTOR: So these are searches that were carried out by Joe Smyth. And then if – we don't see – this is for April 4 and we see two people, or two different versions of different names. We have a Paddy Daley and we have a Ralph Tucker. We don't see Donald Dunphy's name here. Does that necessarily mean that Constable Smyth didn't query Mr. Dunphy's name?

MS. HARDING: No, it does not.

MS. CHAYTOR: And perhaps you could then explain that to the Commissioner.

MS. HARDING: So if a name is not in the records name, in the records management system, then when we do the offline reports it won't – there's nothing for it to tag. So, therefore, we cannot indicate or confirm whether or not the name was actually queried.

MS. CHAYTOR: Okay. And do you understand that Mr. Dunphy's name was not in your system on April 4?

MS. HARDING: That is correct.

MS. CHAYTOR: Okay. So it might be that he conducted the search but his name wasn't there so then it wouldn't show in this record.

MS. HARDING: That's correct.

MS. CHAYTOR: Okay. All right.

And on the bottom here we see three entries for April 7. Perhaps you could explain to the Commissioner what those three entries mean?

MS. HARDING: So the first entry of – showing April 7 at time 12:50, shows that a text was accessed and created; 13:00, he maintained the file number; and at 13:01 he printed the file number, 2015-17896.

MS. CHAYTOR: Okay. And here we see the file number that I referenced earlier. So that is Mr. Dunphy's file number.

MS. HARDING: That's correct.

MS. CHAYTOR: Okay.

And in terms of what this document says, does this document give any indication whether or not Constable Smyth queried Donald Dunphy's name in the CPIC at this point in time?

MS. HARDING: Not this particular page. No, it does not.

MS. CHAYTOR: Okay. And otherwise in the document where we see this page, on page 9, does this indicate the CPIC searches?

MS. HARDING: These are CPIC searches.

MS. CHAYTOR: Okay.

MS. HARDING: And he did not query the system, the CNI portion of the CPIC system either.

MS. CHAYTOR: Okay.

So those are done by C219, Mark Oram. Is that correct?

MS. HARDING: That is correct.

MS. CHAYTOR: Okay. So there's no indication that on April 4 that Constable Smyth carried out any CPIC searches himself while he's doing the ICAN search.

MS. HARDING: That is correct.

MS. CHAYTOR: Okay.

THE COMMISSIONER: So that, if I understand correctly, that's CPIC, is it?

MS. CHAYTOR: This is CPIC the next day and Ms. Harding will have evidence on this.

THE COMMISSIONER: The 8th, this is the –

MS. CHAYTOR: This is on April 5, 2015. The report is generated April 8 because I understand that that was done by another officer –

THE COMMISSIONER: Right.

MS. CHAYTOR: – or done by Ms. Evans on that date.

MS. HARDING: Ms. Evans, right.

MS. CHAYTOR: Yes, yes, Dale Evans on that date. And what this shows you is that these are the searches which were carried out by Mark Oram on behalf of Constable Smyth. But on page 10 we have that Constable Smyth himself did an RMS query in Paddy Daley, or Patrick Daley and Ralph Tucker. He may also have queried in this system Donald Dunphy but there wouldn't be any, we wouldn't have any record of that if Donald Dunphy's name was not in the system. But there's no evidence that he himself attempted to do or did a CPIC search on Mr. Dunphy.

MS. HARDING: That's correct.

MS. CHAYTOR: The next day then he – we know that he has communications with Mark Oram to do that search. Okay.

Okay. So then if we could have P-0390, please. And this is a report that I believe that you put together for us, Ms. Harding, and perhaps you could tell the Commissioner how and why it is that you came to prepare this report.

MS. HARDING: So I was interviewed by Mr. – Ms. Sandra Chaytor regarding the inquiry, and one of the questions that Ms. Chaytor asked me was whether or not the results of Mr. Oram's CPIC query were available. At the time of questioning I believe that the information was not going to be available. After giving it some thought on my way home I remembered that we had upgraded our system in 2012, and the records management system where the CPIC query was conducted, we had a new audit log. So I contacted our system administrator just to confirm that I – whether or not I answered the question properly, and he confirmed for me that the information was available in the logs of our records management system, from the CPIC system.

MS. CHAYTOR: Okay. And then you indicate that you obtained a copy of the archive CPIC response messages which identify Mr. Oram did complete three CPIC searches on Mr. Dunphy. The responses to Mr. Oram's searches indicated that Mr. Dunphy did have a criminal

background; however, this information was not passed along to Acting Sergeant Smyth by Mr. Oram according to the communication transcription of their conversation on April 5, 2015.

So I take it you also then compared the transcript of what happened between Constable Smyth and Mr. Oram on that date.

MS. HARDING: Yes. In preparing the documents for the inquiry, I had previously reviewed the transcription and I did recall that Mr. Oram had indicated to Acting Sergeant Smyth at that time there was no information on CPIC.

MS. CHAYTOR: Okay.

And before I get you to give us some detail or answer a few questions on this document, are you able to say what a code 10 means when an officer requests a code 10?

MS. HARDING: The 10 Codes –

MS. CHAYTOR: Yes.

MS. HARDING: – or a specific 10 –

MS. CHAYTOR: I'm sorry, the 10 Codes, if an officer were – I'm sorry, yes, thank you – if an officer were to request a 29?

MS. HARDING: So the 10 codes are radio communication codes and a 10-29, from my understanding from when I began working at the Royal Newfoundland Constabulary, it meant a CPIC check and a CIPC check meaning that you would query the person, the CNI which is the Criminal Name Index, followed by a criminal record if the name was matched in the CNI.

MS. CHAYTOR: Okay.

And when we look at – and we have in evidence, I think, P-0215, I don't necessarily want to bring it up because I want to keep on this document here, but 10-29 is shown to just be background checks, okay? But you're saying that it was understood that it included a CPIC check, which would include a CNI, and if there is reference then to go further, a criminal records check?

MS. HARDING: Correct.

So when, again, when I first began working at the RNC, the CPIC was the only national system. It was the only system within the organization. In the late 1990s, we rolled out a new Records Management System. We rolled out a computer-aided dispatch system. So over time, because we had deployed new systems, as well as deployed systems on every officer's desktop including the patrol vehicle, the definition of the 10-29 was broadened to mean more of a background information check on an individual.

MS. CHAYTOR: Okay. All right.

Now, I'm just going to bring you then down through your – and ask you to explain to the Commissioner, you referenced here that there are three databanks of relevance to what we are doing here. And the first is investigative data bank and then identification data bank.

So perhaps if you could just explain this to the Commissioner.

MS. HARDING: So there's – for the purpose of this report, I basically described the investigative data bank is made up of a person's data. And this is the information that the police service may receive from the – first of all, when an accused is charged. That information goes on the investigative data bank, the name of the accused, the date of birth and the charges. Any court orders that are received from the court, probation order prohib, that information is maintained on the investigative data bank.

The investigative data bank is maintained by CPIC operators within a police service, so locally within the organization, a police organization.

The second data bank which is referred to as identification data bank is comprised of three different sub systems: the Criminal Name Index, the Criminal Record Synopsis and the Criminal Records.

So just to explain how the information is captured: when an accused is arrested they're release to appear for fingerprints. And so after they are fingerprinted, the form in which that information is gathered – and again I'm describing it as it would have been in this particular case – the fingerprints are then taken on a form which is referred to as a C-216.

This C-216 is then sent to the, to Ottawa to the Canadian Criminal Real Time Identification Services. They are responsible for maintaining criminal information which are supported by fingerprints. When this form is sent to CCRTIS, which is what it's referred to as, the name is put into a data bank and it's referred to as the Criminal Name Index. So every name is given an index; is indexed.

From the information that's on the C-216, the information is then described, further described as a Criminal Record Synopsis. So the Criminal Record Synopsis is made up of an accused fingerprints, their demographics.

When the C-216 was first opened or the form or the data bank was first opened, any violent or any caution codes that may be there and any alias information that maybe also, basically, indicated on the form.

MS. CHAYTOR: Okay.

MS. HARDING: Once the accused is – the case is finished in court, a court disposition is returned to the police agency. The police agency then takes that information, matches it with the appropriate C-216 which is after being sent back from CCRTIS. That information is then sent back to Ottawa which creates the criminal record which is the third portion of that information. So the criminal record is then the full criminal record which is the date of the court disposition, the final outcome of the case and the charges.

MS. CHAYTOR: Okay. And I'm just gonna take you now then to page 3 where we have a screen shot of CPIC and PERS query screen. And you write here that the application to query the Alias, Known, CNI, FIP – Firearms Interest to Police – and CFRO – Canadian Firearms Registry Online – and the user will complete all mandatory fields as required and submit the transaction.

And so by saying that the CNI, for example, is defaulted on this screen shot towards the left – sorry, my mouse doesn't appear to be working here, but here we go. So CNI says: Yes, FIP: Yes.

MS. HARDING: That's correct.

MS. CHAYTOR: And CFRO: Yes. So what does that mean that it's defaulted to query those?

MS. HARDING: So when the Records Management System is configured, we have the option within the system to default certain fields to yes or no. And because when we do a person's query within the CPIC System, the CNI is always required, then we basically defaulted that system to indicate: Yes.

Same way with FIP, which is Firearms Interest to Police, and CFRO, we basically made a decision back in the, I guess, late 90's, 2000 that because the information was always required it would just make the query itself a lot easier for the member who was doing the query.

If the system wasn't defaulted, they have the option to basically, instead of doing a person's query, they can also go back and do a separate query. So you can do an actual separate CNI query and – but it's just an easy way for the officer to do one search.

MS. CHAYTOR: Okay. And is this then the screen shot then that Mark Oram would have seen on April 5, 2015 when he was carrying out his CPIC search?

MS. HARDING: That's correct. Yes.

MS. CHAYTOR: Okay.

Now, I understand from having spoken with Mr. Oram that the information that he would have gotten back in doing his search would have been by way of three messages and it would have included the – came back to him in what he described as being V mails, and there would have been the investigative, so the person's data, which you've explained to us, and the CNI and as well as the CFR. And so he described those as coming back in three separate V mail messages.

Are you familiar with that and that's how he would have received it back?

MS. HARDING: That is correct.

MS. CHAYTOR: Okay. And basically he says he was asked for the CFRO and he was also asked for a 10-29, which he didn't necessarily think that he would relay on unless he was specifically asked for the CNI.

But your understanding is if you're asked for a 10-29, it would include all of the information?

MS. HARDING: My understanding that you would have to – whatever information that you received back in the V mail that is what you basically relay back to the officer who's looking for the information, yes.

MS. CHAYTOR: Okay.

If we could look at Page 10 then, please, of your report; page 10 here.

Is this then – and I should then start, probably, at the bottom of Page 9– is this then, what we're seeing here, the CNI information? Is that what this is, Ms. Harding?

MS. HARDING: Yes, it is.

MS. CHAYTOR: Okay. And so this includes the fingerprints and the caution flag and CR query recommended. What do you understand that to be saying?

MS. HARDING: The criminal record query is now recommended. So, if in the response from the system, when you see the FPS No. 4373943, all the member would have to do is just double-

click that number and the system will send a message back out to CPIC, which will return the criminal record within the records management system.

MS. CHAYTOR: Okay, and in coming up with this information and what you have here, and I believe this to be your Appendix A to your report, are you able to say whether or not Mr. Oram actually opened the CNI V mail message that you received that day?

MS. HARDING: I can't tell from this record, no, I cannot.

MS. CHAYTOR: Okay, so this archive item here, you can't tell whether or not Mr. Oram actually went into that third piece of information?

MS. HARDING: No, I cannot.

MS. CHAYTOR: Okay.

And, Ms. Harding, is there anything else about your report that you would like to explain? Because otherwise I think those are the main points that I wanted to cover and have you explain. Is there anything else?

MS. HARDING: No.

MS. CHAYTOR: I'll just scroll down through. Is that okay?

MS. HARDING: Just scroll down through.

MS. CHAYTOR: Yes, scroll down through for you.

Actually, you know what I'm thinking ...? We have here (inaudible).

Okay.

And this is your Appendix B. So this is the audit created on this date, Mark Oram. You let me know if you see anything that you wish to speak to. I'll just scroll down to ...

And then we have your Appendix C.

MS. HARDING: So this is the criminal record that would've been returned by selecting the FPS number.

MS. CHAYTOR: Okay, and so, if that had happened, then this is the criminal record that would have been found. And did your audit show whether or not Mr. Oram had done a – gone into the criminal record?

MS. HARDING: The offline report indicated that he did not complete a search of Mr. Dunphy's criminal record.

MS. CHAYTOR: Okay.

And this is what we have here, is now Scott Haye. And Scott Haye, I understand, he's an officer?

MS. HARDING: That's correct.

MS. CHAYTOR: Okay, and so he completed a search of Mr. Dunphy's criminal record on April 5th and the time would be after Mr. Dunphy's death. Is that correct?

MS. HARDING: That is correct.

MS. CHAYTOR: Okay. And the criminal record search, had it been done, would have shown that there are criminal convictions, conditional absolute discharges, so he would have had a criminal conviction in 2001, possession of a schedule 2 substance and producing a schedule 2 substance; and that there was an uttering-threats charge in 2005 that ended, was withdrawn, and that there was a peace bond put in place?

MS. HARDING: Correct.

MS. CHAYTOR: Okay. Thank you.

Okay.

So in terms of the person's check – and, I'm sorry, if you could just bring it back up to the Appendix A, which I think is page 10, Madam Clerk.

So I understand – what do you understand was the result of what Mr. Oram found for the persons check?

MS. HARDING: So, from this report, he basically did three queries of the persons query.

MS. CHAYTOR: Yes.

MS. HARDING: The first one it indicated an error; the second report indicated it was invalid, there was an invalid key; and then the third response, which is just further down, indicated there was nothing on file.

MS. CHAYTOR: Nothing on file. Okay.

Okay, yes, and also the same for the CFRO. Did you see that in the report that nothing on file for the CFRO?

MS. HARDING: Can you just scroll down a couple of more pages?

MS. CHAYTOR: Is it down further?

MS. HARDING: And the firearm's not on file.

MS. CHAYTOR: Firearm's not on file, okay. And so even though that comes after the information that we see here, the violence caution, Mr. Oram would have received that in a separate message. Is that correct?

MS. HARDING: That is correct, yes.

MS. CHAYTOR: Okay, so that doesn't mean that because it appears on this document further down that Mr. Oram would've seen what comes above in this document.

MS. HARDING: Correct.

MS. CHAYTOR: Okay.

If we could have, please, P-0388, I believe it to be. And this is the Communications policy, and I just have a couple of quick questions for you on this, just by way of a clarification, I believe.

And if we look at page 7, please, Madam Clerk, of this document. If I scroll down to section 11.0, it says here: “Only the approved RNC 10 Code signals shall be used by all radio operators.”

Okay, and then if we go to, please, 25.3 of this document, which I’m going to have to scroll down because I don’t know my page number. If you could just do that for me, Madam Clerk.

This is under section 25, Radio Transmission of Confidential CPIC Information. 25.3 says: “Full criminal record information received shall not be communicated over the police radio system.”

So can you just speak to that and what that’s referencing?

MS. HARDING: So, many times when we do a CPIC criminal record on the accused, sometimes the criminal record is very lengthy, it can be done – it can be pages. So the policy – the intent of the policy is that any operator who’s reviewing the information would do a summary of what they’re seeing on the screen.

So if you were, for example, reading the CPIC information over the phone to another officer, you may something like – using a John Doe as an example, you may say something like between 1989 and 1997 the accused was convicted of a number of offences of break and enter, armed robbery in the jurisdictions of St. John’s and Corner Brook, something like that. So you do a synopsis because the operators do not have time for lengthy criminal records to read every single transaction.

If they’re using the radio communication, the 10 Codes are used for when they’re communicating over the radio, and if you look at the 10 Codes, you’ll see that there’s a variety of codes – 10-82, 10-83, 10-84 – that means record of violence or record of a break and enter or record. So, again, they would do a summary of the criminal record and that’s what they would relay to the officer.

This is mostly used when, after the CPIC criminal record is returned, they actually see a very lengthy, detailed criminal record.

MS. CHAYTOR: Okay, and does this policy apply if the communication isn’t over the radio system, but through cellphone? If the communications centre is communicating with an officer by cellphone, would this policy still apply?

MS. HARDING: Yes, it would.

MS. CHAYTOR: Okay.

Okay, I’m going to move on, then, Ms. Harding. In terms of an email that Constable Smyth sent to all staff of the RNC on April 10, 2015, having – and I understand that you prepared, substantially prepared, the disclosure that was required for the inquiry by the RNC. And did you find other information regarding the dissemination of that April 10th email by Constable Smyth that was of concern to you from an information-management point of view?

MS. HARDING: The email that was sent was basically drafted prior to the date that it was sent to all staff. It was drafted from a personal email address and it was sent to other members’ personal email addresses. And this using personal email is a violation of the information management and information technology policy.

MS. CHAYTOR: Okay. So he sent the April 10th 21 email to his own Gmail account? Is that right?

MS. HARDING: He originally sent it from his Gmail account, from his home, from his personal email account to a work email account. And then he sent the email to another personal email account – another member’s personal email account.

MS. CHAYTOR: Okay, and was that Tim Buckle?

MS. HARDING: Yes, that is correct.

MS. CHAYTOR: All right.

Now, I understand that Sergeant Grant Little of the Saskatoon Police Service was retained to do an internal review of the RNC’s policies. He was asked to investigate specifically the actions of Constable Smyth in relation to the incident at Mitchells Brook and to determine whether or not he had breached any RNC policy or section of the RNC regulations.

During the course of Sergeant Little’s review, did you meet or speak with Sergeant Little?

MS. HARDING: No, I did not.

MS. CHAYTOR: Okay. So did he ask your – so you had no communications in terms of he didn’t ask your opinion as to whether any interpretation of the – in particular the Information Management and Technology Policy that you’re responsible for. There were no communications directly with him on that.

MS. HARDING: No, there was not.

MS. CHAYTOR: Okay. And in that report, Sergeant Little found that Constable Smyth had breached section 4.6 of that policy. You’re aware of that?

MS. HARDING: That’s correct.

MS. CHAYTOR: Okay. And if we could bring up, please, P-0024, and if we could see 4.6, please, which would be at page 4, please, of the exhibit.

THE COMMISSIONER: And what number is that again? Twenty-four, is it?

MS. CHAYTOR: This is P-0024; it’s the information and technology policy. If we could make this a bit larger, please. Okay.

And 4.6, I believe that he found that “4.6 The following conditions are unacceptable and will result in discipline up to and including dismissal ... Users must not:” and I think he found that violated “use the Employer’s equipment for personal purposes” and “(12) circulate e-mail to large audiences unless it is business related without proper approval (especially RNC or Government wide distribution).”

And after Sergeant Little filed his report, were you asked your opinion as to whether or not Constable Smyth in fact breached this section of the policy?

MS. HARDING: Yes, I was.

MS. CHAYTOR: And who asked you that?

MS. HARDING: Chief Janes asked me to review the report prepared by the Saskatoon Police.

MS. CHAYTOR: And what was your opinion upon review of the report and the section of the policy? What opinion did you give to Chief Janes?

MS. HARDING: In my opinion, the email that Constable Smyth had written was a business email and that the policy that was – I guess the Saskatoon Police applied was not – the spirit of it was not applied to the email in question. So he used the employer’s equipment for personal purposes. The spirit behind that policy meant that members or employees, both civilian or sworn, basically were not to use equipment for if they owned – if they had their own personal business, they weren’t to come in and use our government assets or equipment to carry out their own personal purposes.

And with regards to email, they weren’t allowed to circulate any emails, for example, if they wanted to sell or rent an apartment. So that was the spirit behind that. So I believe that the policy that the Saskatoon Police report had identified wasn’t applicable to the email that Constable Smyth had written.

MS. CHAYTOR: Okay. And without bringing up the exhibit, but I will note, Commissioner, that it’s P-0389, and it’s on page 2 of a letter by Chief Janes dated October 5, 2015: He writes: I spoke with Kim Harding – and this is a portion of what he writes there – she is of the opinion that Constable Smyth’s actions in this case in circulating the email in question to all staff did not actually violate section 4.6 of the RNC Information Management and Technology policy as it was not the spirit and intent of this policy to restrict an officer’s ability to provide his or her perspective regarding an ongoing investigation by way of email to RNC staff. In Ms. Harding’s opinion Constable Smyth did not violate policy because the email in question was related to RNC business and that although the email conveyed some of Constable Smyth’s personal views, the email did not constitute the use of employer’s equipment solely for personal purposes.

And so I take it that accurately reflects your opinion and the advice you gave to Chief Janes at the time.

MS. HARDING: Yes, it does.

MS. CHAYTOR: Okay. And what RNC business-related – what business-related matter did the email deal with?

MS. HARDING: Well, the email first was related to – first of all, the author of the email was Constable Smyth who was under investigation, or who was completing an investigation into Don Dunphy which was the subject. And the contents of the email identified policing policy regarding protective services and there was a number of other business, I guess, methodologies used within the email that I felt that deemed the email to be business. It was related to the operations of the RNC.

MS. CHAYTOR: Okay. And does it remain your opinion today that Constable Smyth did not violate section 4.6 of the policy?

MS. HARDING: That’s correct.

MS. CHAYTOR: Okay. And what is your opinion in terms of whether Constable Smyth’s actions violated any other section of the policy?

MS. HARDING: So, again, in preparing the documents for the inquiry he, in my opinion, he did violate section – if you scroll up to section 3.1, it reads: “Security is the responsibility of all

employees that have access to, use or manage the information and technology assets of the RNC. Information systems security includes the protection of personal data, systems, documentation, computer-generated information and facilities, from accidental or deliberate threats to confidentiality, integrity or availability.”

If you scroll down further to 3.5 b.(3), it continues to say: “Employees must only use the electronic mail account provided by OCIO/RNC from the network when exchanging email with outside systems.”

If you continue down to 4.5, “Users are required to: (c) safeguard confidential information.” So by using personal email account he violated these subsections of the IMIT policy.

MS. CHAYTOR: Okay. And we also understand that Constable Smyth sent the same email to members of the RCMP. And in that respect, did he violate any policy?

MS. HARDING: To the RCMP?

MS. CHAYTOR: RCMP.

MS. HARDING: If those members, if the members are RNC members seconded to the RCMP then it would not be a violation because there’s joint forces – operations ongoing, and some of our members do have RCMP email accounts. So I would actually have to review each email, type thing.

MS. CHAYTOR: Okay. And one of those was Doug Noel, and I believe it went to his RCMP account but he was seconded to the RNC at the time. And the other one was Sergeant Steven Burke, the lead investigator for the criminal investigation in the matter.

MS. HARDING: So that would be a – that would be a violation of this policy. He’s not a member of the RNC on a secondment. He was doing the investigation.

MS. CHAYTOR: Okay.

So, Ms. Harding, those are all the questions that I had for you. Unless there’s anything else that you would like to add or there’s anything else that you have that may be of relevance to the Commissioner.

MS. HARDING: No, that’s fine for now.

MS. CHAYTOR: Okay. Thank you.

Some of my learned friends may have questions for you, or the Commissioner.

Thank you for your time.

THE COMMISSIONER: Counsel, have any questions?

MS. BREEN: I just have a – oh, Ms. Harding, Erin Breen for Meghan Dunphy.

Good afternoon. I just have one brief question for you.

Ms. Harding, is it common for members of the RNC to use BlackBerry Messenger when communicating with one another?

MS. HARDING: Their BlackBerry Messenger?

MS. BREEN: Yes. BlackBerry – I understand many members of the RNC have a work-issued BlackBerry. Are you aware of that?

MS. HARDING: Yes, I am.

MS. BREEN: Is that the phone that every RNC member had? I know they're somewhat – I don't know if people are using BlackBerries anymore or not, but back in 2015 they certainly were.

MS. HARDING: Right.

MS. BREEN: Are you aware that members were using BlackBerry Messenger to communicate with one another in codes?

MS. HARDING: No, I wasn't familiar with that.

MS. BREEN: Okay. Do your policies that you currently have in existence, do they extend to the use of BlackBerry Messenger or are they just for emails?

MS. HARDING: I would have to review the policy regarding the email messaging. Most of the policy that I can recall deals with email messages.

MS. BREEN: Okay. So is it fair to say that in 2015 there were no policies with respect to BlackBerry Messenger?

MS. HARDING: I would have to check our policy to confirm that.

MS. BREEN: Okay.

And, Ms. Harding, are you aware whether or not BlackBerry Messenger was subject to, for example, disclosure in regular cases.

MS. HARDING: Not to my knowledge, no.

MS. BREEN: Okay. Thank you.

Those are all my questions.

THE COMMISSIONER: Ms. Van Driel.

MS. VAN DRIEL: Gerlinde Van Driel. I am legal counsel to Mark Warren, who has not testified yet, but if I may, just a couple of questions.

You said that, in a question of my learned friend, Ms. Chaytor, when she asked you about the 10 Code, 10-29, your answer was – the question was: What does this mean? You said it means a specific check, and you said: I understand it includes CNI. And you kind of stopped there.

Do you also understand it includes more than just CNI?

MS. HARDING: The 10-29 code, when I began working at the RNC, was the CPIC check, which was the person's CNI and a criminal check if the CNI came out positive, but over the years that changed. The definition of the 10-29 changed.

MS. VAN DRIEL: So how is it changed now, to your understanding?

MS. HARDING: That it would include a query of the records management system. It may include a query of the computer-aided dispatch ticket or the dispatch system. So it was – for the purpose of the members, it was to broaden, to ensure that they did their due diligence in ensuring they're checking all systems to obtain any information.

MS. VAN DRIEL: And you said that was a change in the 1990s?

MS. HARDING: In the late 1990s, we introduced more systems into the organization, yeah.

MS. VAN DRIEL: And did you write that change? Were you involved in writing some of the definitions?

MS. HARDING: No, I – no, no, no. No.

MS. VAN DRIEL: This is just your understanding.

MS. HARDING: This is my understanding of how the 10 Codes work, yes.

MS. VAN DRIEL: Okay.

And did you also say that it is your understanding that whatever comes back in the email will be relayed by the contact to the inquiring officer?

MS. HARDING: That is correct.

MS. VAN DRIEL: So whether or not the inquiring officer asks for it?

MS. HARDING: That is correct.

MS. VAN DRIEL: That is your understanding.

MS. HARDING: That is correct.

MS. VAN DRIEL: And based on what is that understanding?

MS. HARDING: It is based on the training that they received.

MS. VAN DRIEL: And do you do the training?

MS. HARDING: Not myself, no.

MS. VAN DRIEL: No. So it's based on what you understand is the training should be.

MS. HARDING: Correct.

MS. VAN DRIEL: Okay, thank you.

THE COMMISSIONER: Thank you, Ms. Van Driel.

Other counsel? No questions?

MR. AVIS: Sorry, I get to go last, so if no one else, I just have one question. With respect to the opening of the file by Constable Smyth on that day, would he be dealing with a restricted file?

MS. HARDING: Constable Smyth worked in – because Constable Smyth worked in Protective Services, those files are sometimes classified as restricted, yes.

MR. AVIS: And if you are opening a restricted file, are there any limitations on how you can open a restricted file?

MS. HARDING: No. There are limitations on how you can restrict a file, but not on how you can open a file.

MR. AVIS: I see.

With respect to the restricted file, who makes that determination?

MS. HARDING: A restricted file – so Constable Smyth is a member of the Protective Services, which is under the Crim Intelligence Unit, and they have their own policy regarding how the files are deemed restricted or not restricted. I'm not familiar to with what the criteria is in deeming that.

MR. AVIS: Sorry, we seem to be – let's have a little conference.

Can you tell us who determines if the file is a restricted file?

MS. HARDING: Well, if you – underneath the information management and information technology policy, there's different criteria in what – how a file meets a definition of being restricted. But an officer at any time can request that a file be restricted, so he or herself can determine that and seek approval from a supervisor.

MR. AVIS: Okay, I guess what we're trying to get to is: Was Constable Smyth able to determine that day that it was a restricted file, or who would determine that day that it was a restricted file? Who determines it?

MS. HARDING: So the Criminal Intelligence Unit, basically, they restrict all their files within the records management system, with different restriction levels. So I would guess just being part of that unit itself would deem the file restricted.

MR. AVIS: Okay.

I guess the thing is, can he do that by phone, can he do that himself on Easter Sunday, when no one is available?

MS. HARDING: He can create the file in the system, and then I'm not sure if Constable Smyth – if Constable Smyth has the security profile to restrict the file himself, if he would like to restrict the file himself, because he's a member of the – or a member of the intelligence –or the Protective Services division of the intelligence unit. So he can restrict a file himself and determine that himself, but that's criminal intelligence policy. That's not the criminal reporting policy. It's two different policies.

MR. AVIS: Okay.

Thank you.

THE COMMISSIONER: Yes, Ms. Chaytor.

MS. CHAYTOR: Just a point of clarification on that.

Ms. Harding, the file was ultimately opened in ICAN by Constable Smyth.

MS. HARDING: That is correct.

MS. CHAYTOR: And in doing your due diligence in putting together the information for this Commission, was there any evidence that a restricted file is in the RNC system, CIU or otherwise, with respect to Donald Dunphy?

MS. HARDING: Just this particular file in which you – which we've mentioned earlier. That file that Constable Smyth opened on April 7th is now made restricted, yes.

MS. CHAYTOR: Correct. It is now made restricted.

MS. HARDING: Restricted, yes.

MS. CHAYTOR: Yes. Okay. And that happened on April 7th.

MS. HARDING: I know the file was opened up on April 7th. It may not have been made restricted until another date thereafter. I'm not sure of the exact date. I can obtain that information.

MS. CHAYTOR: So there was no file in the system, restricted or otherwise, until April 7th.

MS. HARDING: That's correct.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: So no further questions?

We're going to adjourn until tomorrow at 9:30. And what witnesses are we expecting tomorrow?

MS. CHAYTOR: Tomorrow you'll be hearing from the lead investigator of the RCMP, Corporal Steven Burke.

THE COMMISSIONER: Burke. Okay.

MS. CHAYTOR: And he will be on the stand for the next three days, we anticipate.

THE COMMISSIONER: Three days you have allocated from him?

MS. CHAYTOR: Yes.

THE COMMISSIONER: Okay. Thank you. We'll adjourn now.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now adjourned.