



COMMISSION OF INQUIRY RESPECTING THE DEATH OF
DONALD DUNPHY

Transcript

Volume 2

Commissioner: Honourable Justice Leo Barry

Tuesday

10 January 2017

MS. SHEEHAN: All rise.

I declare the Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning.

I think we had Ms. Ivey on the stand. If she could step up again. Thank you.

And I think Ms. Chaytor, you had a couple of points that you wanted to include in your examination which were not dealt with because of the sudden changes we had to make in the witness list, amongst other things.

MS. CHAYTOR: Okay. There are a couple of points actually, but the first –

THE COMMISSIONER: Just before – I know you want to enter some exhibits first which was not done yesterday. So do you have the numbers there?

MS. CHAYTOR: Yes, yes, and I apologize for the oversight yesterday but the exhibits that we wanted to enter through Ms. Ivey are P-0009, and then P-0068 through to P-0080 inclusive.

THE COMMISSIONER: Counsel have any problem with those exhibits that are mentioned. They're the ones that were dealt with individually. There was just never a request to have them entered as exhibits. So, for the record, we'll clean that up.

MS. CHAYTOR: Yes.

THE COMMISSIONER: No objections being raised. I guess it's ordered that those exhibits be entered.

MS. CHAYTOR: Okay. And Commissioner I did have a couple of questions but I can either do that in redirect or if, in fairness to the party, she would like me to ask them now and then parties can have an opportunity to respond if need be.

THE COMMISSIONER: Yeah. Like, where did we stop the last day? We had – Ms. Breen, I think you were in the process of finishing your –

MS. BREEN: Yes, I have more questions for Ms. Ivey.

THE COMMISSIONER: You have more questions. I understood that, yeah.

So if you – what Ms. Chaytor is suggesting is that rather than come back and then having you, or some other counsellor get up later to follow-up on your additional questions, it might be better if she just put the points to the witness now and then you can deal with them in your remarks if you wish.

MS. BREEN: I'm fine with that, judge (inaudible).

THE COMMISSIONER: Okay. All right, Ms. Chaytor, if you would go ahead.

MS. CHAYTOR: Okay, then; if we could please bring up P-0009.

Ms. Ivey, this is the string of Mr. Dunphy's tweets that I showed you yesterday that we went through. And there's one – if we could just go to where Mr. Dunphy starts weighing in on the conversation here. So we have Sandy Collins tweet, and we can see that Sandy Collins "Traveled with @PremierOfNL" and he puts in @ShermanDowney and then #ListenLocal.

And then when Mr. Dunphy weighs in, we have @SandyRCollins @PremierOfNL @ShermanDowney and then he does #nlpoli, and he continues that throughout his string of tweets. Is that of any significance to you? Do you know what #nlpoli refers to?

MS. IVEY: Yes. It's a hashtag that –

MS. CHAYTOR: Can you put on your mic, please.

MS. IVEY: It's a hashtag that is used to tag political related tweets that are provincial in nature; provincial politically related tweets.

MS. CHAYTOR: Okay. And does that then give him – does that then broaden the audience for his conversation that he's having here?

MS. IVEY: It does.

MS. CHAYTOR: And were you given any instructions in terms of what you were being asked to do in monitoring social media to keep an eye out for certain things, such as whether or not somebody does #nlpoli?

MS. IVEY: No.

MS. CHAYTOR: Did that have any significance to you then in doing your job? Did that make this of a higher concern to you?

MS. IVEY: Not at all.

MS. CHAYTOR: I also wanted to clarify something with you that I understood you to say to me yesterday. I asked you a question that in your time in your position with the Premier's staff, did you sense any change in the tone of the Protective Services Unit or the Premier's office regarding security issues. You told me yesterday, no to that question. And I just want to bring you back to – do you recall me asking you the same question on December 7, 2016?

MS. IVEY: I believe so, yes.

MS. CHAYTOR: Do you recall what your answer was to me at that time?

MS. IVEY: No, I don't.

MS. CHAYTOR: Okay. So I'll take you through a string of questions at that time. Question: And in the time that you were there from September 2014 up until April of 2015, did you sense any change in the tone or the messaging of the Protective Services Unit in that respect regarding security issues? Answer: Yes. Question: And do you want to tell me a bit about that? Answer: And I think there were – it was based various events that were taking place in the world, in the country. There were some emails that had been sent through and select staff in the Premier's office from Protective Services Unit regarding events that were happening, potential risks that were happening in locations that the Premier may be travelling, such as Ottawa. Corporal Cirillo, I can't remember his name, the gentleman who got shot in Ottawa. Question: Yes?

And then you continued: That trigged a little bit of a heightened security I guess for all officials in all governments. Then we continue on a little bit further down. Question: Okay, all right, and so based on that there was a sense of heightened awareness? And you answered me: And not just that event, there were I think a series of things that were happening that I did feel a sense I guess of heightened security.

So now Ms. Ivey I'd like to give you an opportunity to explain and perhaps answer the question for me, that in your time in your position did you sense any change in the tone of the Protective Services Unit or the Premier's office regarding security?

MS. IVEY: There may have been a slight adjustment in tone, in terms of, I guess, a heightened awareness, particularly when the premier was travelling out of province. But I, I didn't sense a major concern or a, or a an adjustment in tone for inside the province.

MS. CHAYTOR: Okay, thank you. Those are my questions.

THE COMMISSIONER: Okay, Ms. Breen, you go ahead when you're ready.

MS. BREEN: Thank you, Mr. Commissioner.

Ms. Ivey, we left off yesterday, I believe chronologically we had at the point where you had told Commission counsel on your direct evidence that you had attended a meeting at the Premier's office on, I believe it would have been April 6, 2015. Is that correct?

MS. IVEY: I – yes, that Monday morning following.

MS. BREEN: And soon thereafter Premier Davis gave a press conference. Do you recall that?

MS. IVEY: Vaguely, yes.

MS. BREEN: Okay. And do you recall hearing Premier Davis's comments about the fact that his wife and his mother did not sign on for this?

MS. IVEY: I don't recall that specifically.

MS. BREEN: Okay, do you recall him talking about family members of MHAs, of elected officials?

MS. IVEY: Again, I don't recall specifics of the press conference.

MS. BREEN: Okay, do you recall, after hearing his comments at the press conference, whether you had any concern about his understanding of what had occurred in terms of the tweet or what it meant?

MS. IVEY: I don't think there was any misunderstanding on his part.

MS. BREEN: Okay, so he was talking about the fact that there was some kind of an implied threat to family members or his family. So you're satisfied that that's what you had, cause I had understood from your testimony yesterday that you did not understand the tweet to be any kind of a threat?

MS. IVEY: No, I did not.

MS. BREEN: Okay, so what I'm suggesting to you is that after – if that was the case, after hearing Premier Davis's comments, did that cause you a concern?

MS. IVEY: No, and he and I didn't talk directly about that following the incident.

MS. BREEN: But did you not attend the meeting the next morning with him?

MS. IVEY: I did, but there were a lot of people around the table. There wasn't any direct discussion between he and I.

MS. BREEN: Okay, but was the, was the cause or the, I guess, the tweet that had commenced this whole chain of events, was it discussed at the meeting?

MS. IVEY: No.

MS. BREEN: No one discussed the tweet?

MS. IVEY: No.

MS. BREEN: Are you certain of that?

MS. IVEY: I'm – again, that was almost two years ago, so I'm not sure of the details surrounding the meeting and what was discussed, but I do not recall specifics such as the tweet being discussed.

MS. BREEN: Okay. I believe at one point you have said that there was security concerns – I believe you said that yesterday in your testimony that there was some security concerns discussed at the meeting. Is that correct?

MS. IVEY: I believe it was brought up briefly.

MS. BREEN: Okay, what was the security concern about?

MS. IVEY: I think the discussion centered around – and, again, I'm not 100 per cent sure because it was almost two years ago. That I think they just – they talked about, briefly, whether there was a need for heightened security.

MS. BREEN: Okay, a need for heightened security in relation to the Premier's office I presume.

MS. IVEY: Yes.

MS. BREEN: And that would be as a result of what?

MS. IVEY: As a result of, I guess, the public commentary that was coming out as a result of the incident.

MS. BREEN: Okay. Now, so again at the meeting there was no discussion of the tweet.

MS. IVEY: No.

MS. BREEN: And there was no discussion of the fact that the tweet had been perceived as a threat.

MS. IVEY: No, not at all.

MS. BREEN: And yesterday, Ms. Ivey, I understood your testimony basically that you had read the series of tweets a couple of times –

MS. IVEY: Yes.

MS. BREEN: All the tweets. That you had read them in the order that Commission counsel read them to you.

MS. IVEY: I did.

MS. BREEN: That you did understand them to be a continuous chain, did you not?

MS. IVEY: That's right.

MS. BREEN: So that that singular tweet would have context?

MS. IVEY: Yes, absolutely.

MS. BREEN: You were aware of that at the time.

MS. IVEY: Yes.

MS. BREEN: But that you maintained yesterday that you had no interpretation, you just had concern.

MS. IVEY: Yes, again, because of the tone, because of the language. It was different than what I was accustomed to seeing from Mr. Dunphy.

MS. BREEN: Mr. Ivey, do you recall giving a statement to Corporal Monty Henstridge of the RCMP?

MS. IVEY: I do.

MS. BREEN: Okay and that would have been on April 7, 2015?

MS. IVEY: Yes.

MS. BREEN: So this would have been two days after Mr. Dunphy was killed.

MS. IVEY: Correct.

MS. BREEN: Madam Clerk, I'm wondering could we bring that exhibit up. I believe it is Exhibit 0068. And if we could bring up page 3 of that exhibit, please.

Ms. Ivey, have you had a chance to review this statement prior to your testimony?

MS. IVEY: Yes.

MS. BREEN: Okay. Would you like a chance just to review this section? I'm going to be referring you to your reply to Corporal Henstridge which appears at lines 5 and down to about line 19.

Ms. Ivey, from what I can read there Corporal Henstridge has come to question you after – and this is in the midst of the RCMP investigation. And he's asking you about your involvement and you are providing him with the information. And there at line 5, you're talking about – and what you say is: But one of those tweets stood out to me and I read it several times because it could be interpreted different ways.

So you read that particular tweet several times is what you're telling Corporal Henstridge.

MS. IVEY: As well as the series.

MS. BREEN: Okay. Do you read that – did you isolate that tweet to read it more than you did the whole chain?

MS. IVEY: Perhaps. I guess because of the wording in it, I –

MS. BREEN: Okay, so that was your focus, was that particular tweet?

MS. IVEY: No, the focus was on the words in that – in that particular tweet, I guess.

MS. BREEN: Right.

MS. IVEY: And the tone of the entire chain.

MS. BREEN: Sure. And you go on to say – and you do explain that – but given his tone in that series of tweets and his tone in the past he’s – he did seem to be an angry individual so I took it to mean when he said for it to hurt, I took that to mean physical injury – uh-huh – or harm to the family members.

Do you recall telling Corporal Henstridge that?

MS. IVEY: I do, but I also went on to say it could have meant it to hurt somebody’s feelings.

MS. BREEN: Right.

MS. IVEY: And, again, I wasn’t sure of – of what he meant.

MS. BREEN: And you do – you talk about an alternative interpretation, but, I guess, it could have been interpreted as, I guess, to hurt their feelings, but then you continue to say the family members’ feelings. But I didn’t interpret it that way when I read it.

So what I’m gathering from your response to Corporal Henstridge is you’re clearly telling him that when you read that, you perceived that tweet as being a threat to the elected Member’s family or a potential threat.

MS. IVEY: No, I didn’t perceive it as being a threat. I was just – I was very confused as to, I guess, the intention or the meaning of the wording. And, again, it was just – it was just very strong and –

MS. BREEN: But, Ms. Ivey – and I’m going to refer you back to lines 8 and 9 – you very clearly say: I took it to mean when he said for it to hurt, I took that to mean physical injury or harm to the family members.

So it doesn’t appear to be, at that stage, on April 7, that there was any confusion or that you were confused. You were focused on the word “hurt” and you were focused on the fact that that could mean physical injury to the family members.

MS. IVEY: Yes, it potentially could.

MS. BREEN: So that would be a potential threat to the family members.

MS. IVEY: Again, it wasn’t perceived as a threat. I didn’t know what it was he meant. That’s why I passed it off to somebody who could do proper review.

MS. BREEN: And I understand that you are not responsible for the final interpretation, but what I’m talking about is your perception at the time and why you passed it on to Constable Smyth.

MS. IVEY: It caused me concern enough to flag it and to, to pass it on.

MS. BREEN: And as a potential threat is what you are describing to Corporal Henstridge I’m putting to you.

MS. IVEY: I wouldn't say threat. No, it was concern. If I thought it was a threat I would have picked up the phone and called the premier immediately, but that wasn't – that was nowhere near what I thought it was.

MS. BREEN: And at page 8 of that statement, Madam Clerk, if we could bring that up. Madam Clerk, I'm noticing that the exhibit I have that was copied is different in terms of the lines on the page than the exhibit that is being shown on the screen.

THE COMMISSIONER: I'm sorry, what – you're referring to, your exhibit is different, has some markings on it or –

MS. BREEN: No. Mr. Commissioner, it's different. Just the page numbers are different and the line numbers are different from what I have here.

THE COMMISSIONER: Okay, well I have what's on the screen as page 8.

MS. BREEN: Yes.

THE COMMISSIONER: And is it a different page for you?

MS. BREEN: Okay, no, I apologize. That's my error.

THE COMMISSIONER: At the top of the page?

MS. BREEN: That's my error.

THE COMMISSIONER: Okay.

MS. BREEN: I apologize. What – where I want to go to, I apologize, Madam Clerk, is page 7, the top of page 7.

And this would appear, Ms. Ivey, when page 7 comes up at lines 4 through 8 beginning really at line 3. This is Corporal Henstridge when he is summarizing what you have told him for, I presume, a point of clarification.

He says to you: One of the tweets in particular concerned you primarily as I understand it because of word hurt which you agreed could mean a variety of things to you, but to you it mean – I guess that's a typo – it mean physical harm which is certainly reasonable and understandable. And ah, you passed it on.

Now, you did not correct Corporal Henstridge at that time. You agreed with how he was paraphrasing what you had told him. Do you accept that?

MS. IVEY: I do.

MS. BREEN: Okay. And then if we could, Madam Clerk, go to page 10. And this appears at lines 17 and 18 of the transcript.

Okay, I think the confusion, Mr. Commissioner, is that it appears as page 10 in green at the top and then page 9 in the top right-hand corner. So we're going by the green, I assume, are we?

THE COMMISSIONER: Could you move it down a bit; I don't see the top there. Okay, so I have page 10 – well, it's page, page 11 at the very top in green and then page 10.

MS. CHAYTOR: That’s right, because that’s the exhibit page number. The first page of this exhibit is the banner page received from the RCMP. This is an exhibit from the RCMP so that’s why –

THE COMMISSIONER: Well, that would be P-0068, page 10.

MS. CHAYTOR: Right. So that’s the reason for the discrepancy. It’s exhibit page 10 because the first page of the exhibit is the banner page from the RCMP.

THE COMMISSIONER: Okay.

MS. CHAYTOR: But it’s page 9 in this statement.

MS. BREEN: Okay, thank you.

So, again, Ms. Ivey, there you are talking to Corporal Henstridge and you say: “Ah, as I said, things of this nature that we perceive as a possible threat, and again it’s not for us to evaluate”

So, again, at that point on April 7, 2015, you are clearly telling Corporal Henstridge that by reading this tweet you had perceived it as a threat.

MS. IVEY: No, I didn’t perceive it as anything. I was unclear as to its intent and meaning, but it – I guess it was a concern.

MS. BREEN: You say: We perceived it as a possible threat.

MS. IVEY: Emotions were running high, I guess, immediately after that, but I, I, I – I would not use the word “threat.” I don’t know why I used it there. It was a concern to me. It was enough of a concern to, to flag it.

MS. BREEN: And Ms. Ivey, you would agree that, you know, this statement was given on April 7, 2015 – I understand you saying emotions are high. But normally that’s when we get the best information from a person is closest in time to the event as to the accuracy of what you were thinking on when you flagged the tweet.

THE COMMISSIONER: Yes, Ms. Breen, I think we’re going around in circles here and to some extent it’s a matter of interpretation of the language. When Ms. Ivey says it’s a matter of concern, why is it a concern? It’s a concern because it’s a potential threat. That’s inherent in the use of the word “concern” it would seem to me.

I think as she reiterates: Again, it’s not for us to evaluate; we’re just the staff. And, again, it sounds reasonable. And, I mean, I think you made your point in terms of the comments that might have been made at the meeting regarding concern or threat and I’ll consider that, but I’m not sure –

MS. BREEN: Mr. Commissioner, if you are –

THE COMMISSIONER: I’m not going to foreclose you from continuing but –

MS. BREEN: No, no, and that’s fine –

THE COMMISSIONER: – it seems to me we’re spinning our wheels a little bit here.

MS. BREEN: I had taken Ms. Ivey to say yesterday that, to very much say that this was not at all, could not have been interpreted as a threat. I know she said she had multiple interpretations, but I checked her testimony yesterday when I questioned her and I asked her that specific question as to whether it was

perceived as a possible threat and her response was no. So that's why I've taken her to the transcript today. But if you feel I've made my point, I will certainly move on.

THE COMMISSIONER: Well again, maybe an appropriate question would be: Why would she consider it a concern?

MS. BREEN: And I think she's already explained that it was strong language that was in that particular tweet; however, I think that –

THE COMMISSIONER: Which could mean that there was a potential threat. I mean, the only reason that she's passing it on to the PSU is because she has a concern that there might be a potential threat that should be looked into because of the strong language that comes out of that message.

MS. BREEN: Right. And the questions I had asked her yesterday was with respect to the physical harm, whether it was a concern about physical harm to the premier or elected officials; I certainly didn't receive that from her testimony yesterday. That's why I've taken her directly to these points.

THE COMMISSIONER: Go ahead; I'm not foreclosing, as I say, but there's only so far that we can go in terms of coming back to the same thing.

MS. BREEN: Ms. Ivanney – I am sorry, Ms. Ivey, then after this date I understand that you did leave your employment with the Premier's office sometime, it was December of 2015; is that correct?

MS. IVEY: Yes, that was after the provincial election and the change in administration.

MS. BREEN: Okay. And I will ask you, I understand you did play a role in the election campaign; you were a member of the campaign team –

MS. IVEY: Yes, I was.

MS. BREEN: – and you worked publicly as comms persons in that same year.

MS. IVEY: Yes, and all political staff are expected to do so.

MS. BREEN: Okay. Did that – were those meetings or was the campaign team, had that met prior to this event?

MS. IVEY: I hadn't met with any committees or anything prior to this.

MS. BREEN: Okay. So it was not your role at that time, was it, to be monitoring anything in terms of a re-election campaign or any kind of campaign?

MS. IVEY: No.

MS. BREEN: Final area of questioning I have for you, Ms. Ivey, is: At around this time, do you recall getting a call from the RCMP regarding another, I guess, Facebook issue for the Premier's office?

MS. IVEY: Yes, I do.

MS. BREEN: Okay. And I don't want to name particularly the person who it involves, but I will just generally describe it just so we're sure we're talking about the same issue.

MS. IVEY: Yes.

MS. BREEN: Do you recall receiving – first of all, do you recall who called you from the RCMP?

MS. IVEY: No, I don't recall the name.

MS. BREEN: Do you recall what section of the RCMP it was that was calling you?

MS. IVEY: No.

MS. BREEN: Okay. Do you recall why they called you?

MS. IVEY: They were trying to locate a comment that was posted somewhere on the premier's personal Facebook account that they weren't seeing visibly on, I guess, what was accessible to the public.

MS. BREEN: And did you locate that message for them?

MS. IVEY: I did.

MS. BREEN: And how did you locate that message?

MS. IVEY: It was contained in his personal inbox within the Facebook account.

MS. BREEN: Okay, and did – what did you understand the purpose for the contact from the RCMP? What kind of an investigation were they doing?

MS. IVEY: My understanding was that somebody, I don't know who that was, had contacted the RCMP to, I guess to have a look at this, this particular comment.

MS. BREEN: Okay, but was – did you review the comment yourself?

MS. IVEY: Yes, I did.

MS. BREEN: Was it – and I, I understand the Commissioner's point. Was it one of these situations of a concern for the safety of an elected official?

MS. IVEY: Not at all.

MS. BREEN: What was the nature of the comment?

MS. IVEY: I don't recall the, I guess, the subject matter, but I did forward it on to the, the RCMP officer who had requested it. But I told them that I didn't see anything there that was of any concern.

MS. BREEN: And did anyone – do you have any understanding of what occurred after that or what was the outcome of that issue?

MS. IVEY: No, I have no knowledge of that.

MS. BREEN: Did you discuss that with the Premier?

MS. IVEY: No.

MS. BREEN: And do you know what time frame this happened?

MS. IVEY: I can't recall exactly. It was, I believe it was sometime during the summer of 2015, but I don't know. I can't even – I can't tell you which month or anything.

MS. BREEN: Okay.

THE COMMISSIONER: It was after the death of Mr. Dunphy.

MS. IVEY: It was.

THE COMMISSIONER: Yeah.

MS. BREEN: Are you certain of that, Ms. Ivey?

MS. IVEY: Not 100 per cent.

MS. BREEN: Okay.

MS. IVEY: Again, the time – the time frames are kind of, are vague.

MS. BREEN: Okay. My understanding, from the documentation that we've received from the Commission's documents, is that the message itself was sent sometime around March 31, 2015. Do you recall that? So that would have been prior.

MS. IVEY: Yeah, I can't recall the date.

MS. BREEN: Those are all my questions. Thank you.

THE COMMISSIONER: So, I've forgotten. Ms. Breen, you were the last person, were you, in this, or were you?

The – okay, Mr. Drover is next. I have the default list here –

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Sorry?

UNIDENTIFIED MALE SPEAKER: Ms. Breen was first.

THE COMMISSIONER: Oh, she was first. Okay.

UNIDENTIFIED MALE SPEAKER: Yes.

THE COMMISSIONER: Very good. So the default list kicks into play, I take it, does it?

UNIDENTIFIED FEMALE SPEAKER: So Mr. Kennedy is next.

THE COMMISSIONER: Mr. Kennedy will be next.

MR. KENNEDY: I don't have any questions for Ms. Ivey, Commissioner.

THE COMMISSIONER: Okay. Thank you.

Next?

MS. RASMUSSEN: We have no questions for Ms. Ivey.

THE COMMISSIONER: Thank you, Ms. Rasmussen.

UNIDENTIFIED MALE SPEAKER: I have no questions, Commissioner. Thank you.

THE COMMISSIONER: Okay. Anybody?

Mr. Drover, do you –

MR. DROVER: I just have maybe one or two questions.

Ms. Ivey, it seems to me your instructions were simply to report suspicious activity.

MS. IVEY: Yes, anything that I was unsure of.

MR. DROVER: And you had read that tweet. Nowhere in your emails with Constable Smyth or anybody else did you use the word threat or threatening.

MS. IVEY: Exactly.

MR. DROVER: You just passed it on.

MS. IVEY: Yes.

MR. DROVER: And that would be in accordance with your instructions to pass along suspicious activity.

MS. IVEY: Correct.

MR. DROVER: Thank you.

THE COMMISSIONER: Did we get everybody? Mr. Williams and Mr. Flaherty, is it?

MR. WILLIAMS: I'm not sure if Mr. Flaherty has any questions or not or –

MR. FLAHERTY: I thought I was last.

THE COMMISSIONER: You – sorry, Mr. Flaherty, do you have any or – just a question in order –

MR. FLAHERTY: I just had one quick question with respect to the type of tweets that you would report. My friend here, Mr. Drover, said suspicious tweets, but when we're talking about potential threats or potential harm, are we talking about politically threatening or politically harmful tweets –

MS. IVEY: No, not at all.

MR. FLAHERTY: – that are to be sent on to the PSU?

MS. IVEY: No.

MR. FLAHERTY: Okay. In my review of the RCMP file – and forgive me, I don't have the date and the officer in front of me, but an officer stated that you had told him that disparaging tweets would be forwarded on. Do you have any recollection of that?

MS. IVEY: No, none at all, actually.

MR. FLAHERTY: Okay. Thank you.

MR. WILLIAMS: Ms. Ivey, I just have a couple of quick questions for you.

In terms of just trying to put this in perspective with respect to your overall job responsibilities, you indicated for Commission counsel early in your testimony what your job description was. Of all your responsibilities in full, how much of your job would be entailed in the area of media monitoring?

MS. IVEY: In terms of the monitoring itself, aside from the posting, maybe 5 per cent. It was very, very minor.

THE COMMISSIONER: How much you say?

MS. IVEY: Maybe 5 – I would estimate 5 per cent.

THE COMMISSIONER: Thank you.

MS. IVEY: It was a very, very minor portion of my role.

MR. WILLIAMS: And I take it from your evidence yesterday, and in particular when you happened to come upon the tweet in question, much of this may have been done in your free time. It wasn't like you would segregate portions of your day to do media monitoring.

MS. IVEY: No, most of the workday just didn't permit the time to go through and do the monitoring as it properly – as it should have been done, I guess.

THE COMMISSIONER: But you say you could do most of it during your workday? Was that –?

MS. IVEY: Oh no, actually, it couldn't be done during the workday.

THE COMMISSIONER: Oh, it couldn't be. Okay, sorry.

MR. WILLIAMS: And would there be others within the office who would also – being senior staff who would also take on responsibilities with respect to media monitoring?

MS. IVEY: I think just about all the senior staff read through Twitter and monitored it the same way I did, in our free time or when time permitted. And I did have, I guess, some support as well, some backup support, from the communications staff in the Government Members' Office when I was off on vacation or sick.

MR. WILLIAMS: Okay. And you'd indicated yesterday that there was no formal training, you know, provided to you when you entered the position with respect to responsibilities or tasks in regards to media monitoring?

MS. IVEY: No.

MR. WILLIAMS: But despite this lack of training, did you feel like you had a level of comfort of what you were to do if, in the event when you were performing that function, you came across an issue as we described of concern?

MS. IVEY: Yes.

MR. WILLIAMS: Okay. And were you satisfied in your informal discussions with Constable Smyth that he had provided you with sufficient information to indicate what you were to do if in the event you came across a matter of concern?

MS. IVEY: I did. I felt comfortable. I knew if there was anything that I was unsure of, that either he or Corporal Noel would help address that.

MR. WILLIAMS: Okay. And did you feel it was any part of your responsibilities in the capacity of media monitoring to either assess, interpret or pass judgment on it, or would – outside the normal course of having read about a tweet or a Facebook entry. Did you feel that was a specific part of your job to do that?

MS. IVEY: Not at all. I was instructed and advised that it was the PSU who would take on that role.

MR. WILLIAMS: And I – am I clear to understand that in discussing the series of tweets that was entered by Mr. Dunphy, or who had been submitted by Mr. Dunphy at the inquiry, that it was the indications of hurting family members that raised the concern for you regardless of how that is to be interpreted?

MS. IVEY: Yes, that and the dead MHAs warning.

MR. WILLIAMS: Okay. And it was that that –

MS. IVEY: That caught my attention.

MR. WILLIAMS: That caught your attention to forward it along.

MS. IVEY: Yes.

MR. WILLIAMS: Okay. And with respect to your direct testimony as well at the Commission counsel, did you feel that your responsibility was solely with respect as it related to just Premier Davis. Or if you had seen anything in your media monitoring that was of concern to public officials or to individuals that you, in fact, would have forwarded that along.

MS. IVEY: Yes, I think it was not only my job to protect the Premier, but the public in general and the elected officials.

MR. WILLIAMS: Okay. That's all the questions I have of the witness. Thank you.

THE COMMISSIONER: No other external counsel have any questions? Okay.

Ms. Chaytor, you –

MS. CHAYTOR: Just one question to follow-up from what you just answered to Mr. Williams. You said most of your monitoring couldn't happen during your workday, there just wasn't enough time or enough hours, I guess.

MS. IVEY: Correct; exactly.

MS. CHAYTOR: You did – and I wrote down that you said that it didn't permit doing the monitoring perhaps properly as it should have been done. Ms. Ivey, would you, if you had more time to commit to this task of monitoring, have done a more thorough job of reviewing Mr. Dunphy's Twitter messages that day?

MR. WILLIAMS: Mr. Commissioner, I don't know if that's really a fair question in the context of what that witness said to be honest.

MS. CHAYTOR: Well, she said she didn't have enough time or enough hours –

MR. WILLIAMS: I don't have a problem with the idea –

THE COMMISSIONER: Well, I think it's fair to clarify what the witness meant when she said that – when she referred to in the way that it should have been done, Mr. Williams.

MR. WILLIAMS: I think, in fairness to the witness, she was talking about the system as opposed to her own evaluation.

THE COMMISSIONER: Well, let's let the witness answer the question if it is.

MS. IVEY: I don't know if it would have changed that particular situation, but I just think the monitoring itself requires a lot of time, time which we did not have during the workday.

MS. CHAYTOR: Okay. And then perhaps you could answer, what did you mean by properly as it should have been done?

MS. IVEY: Again, well the monitoring – there were four accounts to monitor and to adequately address constituency concerns, and something may have gotten missed.

MS. CHAYTOR: Okay, thank you.

THE COMMISSIONER: I'm sorry; I didn't catch the last part. There were four accounts to monitor.

MS. IVEY: Yeah, there were four accounts that I monitored and because of the lack of time that was available, things could have gotten missed; constituency issues could have gotten missed.

THE COMMISSIONER: An issue could have gotten missed, but not in this situation that you're aware of.

MS. IVEY: No.

MS. CHAYTOR: Thank you, Commissioner.

THE COMMISSIONER: Okay. Thank you, Ms. Ivey. I think that's all the questions that we have for you. You may step down. Thank you.

Do we have our next witness?

MS. CHAYTOR: Yes, our next witness is Tom Mahoney. I would ask, please, if Mr. Mahoney could take the stand.

THE COMMISSIONER: Is somebody gone to get him? Is Mr. Mahoney outside?

MS. CHAYTOR: Mr. Mahoney is here. I saw him earlier this morning.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: While the Clerk is finding Mr. Mahoney – oh, here is he. Okay.

Mr. Mahoney –

MS. CHAYTOR: I'm sorry, Commissioner, were you going to say something?

THE COMMISSIONER: Yes, I was just going to say that we'll have witnesses here that are overlapping. Now – sorry, does that – not just referring to Mr. Mahoney but generally. And I think that's one of the things we might have forgotten was to set up a witness room.

I just wanted to see if there's any concern about the fact that witnesses may end up sitting in the hearing itself, in this room, while other witnesses are testifying. In court, that's generally avoided. It's not absolute. There is a risk – if there's a difference of testimony between two witnesses and one has been listening to the other testify, then, the person who has been listening may have the effect of his or her evidence testimony reduced if it – if, as I say, there's a contradiction of what's being said. So I just ask counsel to remain alert and aware of that.

Mr. Kennedy, do you have any point to make there?

MR. KENNEDY: Yes, I do, Commissioner.

Constable Smyth was present yesterday and is present again today. I'm assuming that –

THE COMMISSIONER: No, that – I should make it clear –

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: – when a person who, as in Mr. Smyth's case, has a significant interest at stake, shall we put it that way, would be entitled to hear all testimony that's expressed concerning the incident.

Mr. Simmonds, do you have –

MR. SIMMONDS: (Inaudible) yes, Sir, it's a live stream so –

MS. CHAYTOR: Yes, and –

MR. SIMMONDS: – I mean the witnesses could be home watching it in their (inaudible).

THE COMMISSIONER: They could be; they could be. I'm aware of that. And I had a brief discussion with Commission counsel on that point, but I just wanted to make sure that all counsel are of the same view that, first of all, it's an inquiry, it's not a trial; and, secondly, we do have a situation where to ensure we meet the transparency criteria that the public believes is entitled to. We are webcasting. People can be home watching. There is nothing we can do about that.

Mr. Avis, you have a –

MR. AVIS: Yes, I have a concern that Judge Riche is here. I realize it can be streamed, but I would have thought that a witness in this inquiry, as witnesses in trials, should, even if it's being live streamed, perhaps be advised that they shouldn't even be watching the live streaming.

I have a big problem now. He's here – it'll be one of my first questions, but I think it's going to seriously – I think it impacts the transparency of the Commission, but I will deal with it in cross.

THE COMMISSIONER: Right.

Mr. Avis, I guess the point that I made before or while you were standing, you might want to address, which is do you see any difference in the situation where it's an inquiry from where it's a trial; and, secondly, shouldn't we be looking at the nature of the testimony to be expected and whether, in fact – and

it might help if you can point to and identify in the report of Justice Riche as to where there might be some lessening of impact of anything to be coming out of that report because of his presence.

MR. AVIS: Well, at this stage, of course, I haven't prepared for my examination; but, in the report, there was reference to opinions on how things occurred, what people said. The report was based upon the investigation. I believe the report went far beyond what was expected (inaudible) –

THE COMMISSIONER: Well, that would be fair game for you in terms of your –

MR. AVIS: Right.

THE COMMISSIONER: – cross-examination of the author of the report –

MR. AVIS: Yes.

THE COMMISSIONER: – but that doesn't really – the matter of Justice Riche being in the courtroom or in the inquiry room doesn't really impact on that in itself.

MR. AVIS: All I'm saying judge – sorry, Commissioner – I do leave it up to the Commission. I did raise it with Commission counsel yesterday and, of course, they reminded me that it's being streamed and I thought, look –

THE COMMISSIONER: Right.

MR. AVIS: Certainly I forgot about that. But, you know, I don't know that this is – there's a fact-finding issue here where credibility is very significant. I realize that Justice Riche – but he's commented on that too. He has a lot of opinions and he seems to embrace almost being giving a decision on what happened.

THE COMMISSIONER: Well, you're going to be entitled to cross-examine and ask –

MR. AVIS: Right, and I'm –

THE COMMISSIONER: – ask whether there's a basis for the opinions drawn or whether it's just a personal opinion based on speculation.

MR. AVIS: Well, I simply say judge – sorry, Commissioner – while this isn't, strictly speaking, a trial, we have a witness who has, at least on the face of it, significant evidence that may have some significant impact on this, listening to the entire testimony. And I believe that will impact his credibility. Perhaps, I won't know until I get to question (inaudible) –

THE COMMISSIONER: Well, I guess the –

MR. AVIS: He's really the (inaudible) –

THE COMMISSIONER: That will be something for Justice Riche to consider from this stage on. I'm not sure whether there's much occurred in the witnesses we've heard so far that would be of great concern in that regard but, again, I'll hear you on that at the appropriate time.

MR. AVIS: Yes.

THE COMMISSIONER: Judge Riche will make up his own mind as to whether he takes a chance on his – on the weight of his evidence being reduced by the fact that he's in the inquiry room while witnesses are testifying.

MR. AVIS: Right. And I thought I would raise it as a matter of courtesy to Judge Riche. You've raised it, does anyone have a problem, so I just –

THE COMMISSIONER: No, that's fine.

MR. AVIS: Sorry, I can't articulate it as well but I think we're speaking in the abstract at this stage and it will only – it's a risk that's being taken.

THE COMMISSIONER: Right.

MR. AVIS: And we won't know whether the risk is a good or a bad one until it's all over.

THE COMMISSIONER: Okay.

Commission counsel had something to add to that.

MS. O'BRIEN: Thank you, Commissioner.

Just for the record so the public is aware, to the extent that Commission counsel has communicated to the counsel withstanding on this issue, we have said that there is no prohibition to any witness being in the hearing room or watching it from their home over their computers, if they so wish. We have left that. In being clear, we have left that to counsel withstanding to advise their own clients on the point.

We had been clear that it would always be a fair question for any party to ask a witness whether they had been present or seen in advance a particular – all the evidence or any particular section of evidence, as they're asking their question. And I think all counsel would be aware that those types of questions would be posed to a witness to raise concerns about credibility at that time that witness is giving their statements.

With respect to witnesses who are not represented by counsel, we have not had any communication on the point with those witnesses. And just for the point that Mr. Avis has just raised about credibility, I think, Commissioner, you said that you felt it was appropriate, of course, for Constable Smyth to be here in the hearing room, and he has been here and everyone knows he's here.

And, of course, if there's any witness whose credibility is at issue, it is Constable Smyth's and his counsel has had him sit, sit in. And, Commissioner, your comments just then were that you felt that was reasonable. And so that would be – you know, so I don't see it as quite the concern that Mr. Avis does for those reasons.

Thank you.

THE COMMISSIONER: All right. Well, at the appropriate time we'll look at it with respect to a more specific or detailed situation. We'll know presumably what witness it might relate to and/or witnesses and what the issue might be that the evidence may lose weight concerning the particular issue.

Okay, we'll move on to hear from Mr. Mahoney once he's been affirmed.

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

MR. MAHONEY: I do.

MS. SHEEHAN: Thank you. Could you please state and spell your full name.

MR. MAHONEY: My name is Thomas Gregory Mahoney, T-h-o-m-a-s G-r-e-g-o-r-y M-a-h-o-n-e-y.

MS. CHAYTOR: Commissioner, there a number of exhibits that I would ask to have entered through Mr. Mahoney. Those are P-0081 through to P-0093 inclusive.

UNIDENTIFIED MALE SPEAKER: Excuse me, counsellor, could you just repeat that?

MS. CHAYTOR: P-0081 through to P-0093.

UNIDENTIFIED MALE SPEAKER: Thank you.

MS. CHAYTOR: And as well, we have P-0108 through to P-0116 inclusive.

UNIDENTIFIED MALE SPEAKER: Thank you.

THE COMMISSIONER: Okay, now, we'll take the same approach. They'll be provisionally entered and will go into evidence unless there are specific concerns raised during the course of the testimony by counsel.

MS. CHAYTOR: And I would just mention that the, the second set of numbers, those exhibits are for Mr. Kennedy's benefit. Those are the exhibits that he identified and asked to have put into evidence.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Okay, good morning, Mr. Mahoney.

MR. MAHONEY: Good morning.

MS. CHAYTOR: What is your educational and employment background?

MR. MAHONEY: My educational background is I have a bachelor of arts degree majoring in psychology, I have a master's degree in education in post-secondary education and I have a Ph.D. in law.

MS. CHAYTOR: Okay. And where did you do your Ph.D. in law?

MR. MAHONEY: I did my Ph.D. in law at the University of Manchester in the United Kingdom.

MS. CHAYTOR: And was there any particular focus in your study?

MR. MAHONEY: Yes, the particular focus of my study really was a examination of criminological theory, looking at the impact deterrence theory has on how we conduct fraud investigations in workers' compensation frameworks.

MS. CHAYTOR: Okay, and then your employment background.

MR. MAHONEY: My employment background; prior to my current employment, I was the director of the Learning Resources Program, John Howard Society, which is a treatment program for, for various offence types and for offenders. I worked there for approximately 10 years.

And for the last, almost 12 years, I've been the executive director of Worker Services with WorkplaceNL, Workers' Compensation as it's most commonly known.

MS. CHAYTOR: Okay. And so what are your job duties in that role?

MR. MAHONEY: In that job I am the executive director of Worker Services, meaning I have the responsibility for all of the case management staff who provide compensation, wage-loss compensation, and health care benefits to injured workers. As well as I'm responsible for the Health Care Services department which includes physicians, physiotherapists, chiropractors, occupational rehab professionals, but I also have the responsibilities for Client Services and Corporate Services which does include corporate security.

MS. CHAYTOR: And what does it mean: corporate security?

MR. MAHONEY: Corporate security really is an examination of any issue to determine whether there is a threat to the staff who provide the services to injured workers, employers, as well as provide health care services.

MS. CHAYTOR: And perhaps you could then tell the Commissioner how do you go about doing that aspect of your job?

MR. MAHONEY: That aspect of my job usually comes to my attention through a concern raised by our communications staff or by our investigators in the legal department and/or a staff member themselves who has received a threat or has received some information which they may perceive as a threat. That information then comes to me for an examination to make a determination as to whether or not the police need to be contacted. And, then, if a decision is made for the police to be called, then we meet with the police and then the police take the investigation and the interaction from there.

MS. CHAYTOR: And so do you have any particular background that would enable you to make that type of a risk assessment or determine whether or not it's something that needs to be brought to the attention of the police?

MR. MAHONEY: Yes, risk assessment was a big part of my previous job, and certainly not just risk assessment, but various types of risk assessment; certainly risk assessment for recidivism, comparing an individual with all other like individuals inside the prison system to see the probability that they will recidivate. But, certainly, also had experience in conducting judicial education with the National Judicial Institute, worked with the Canadian Association of Provincial Court Judges throughout Canada, also with Trial Division, Queen's Bench and Court of Appeal assisting with judicial education, primarily focusing on what are these different assessment types. So an appropriate risk assessment for domestic violence and appropriate risk assessment for sexual recidivism, for a person who's been convicted of a sexual offence, and also just looking at general risk assessments around the probability that someone will reoffend.

MS. CHAYTOR: Okay. And so did you have occasion that things would be brought to your attention that you would have to call the police?

MR. MAHONEY: Yes, that is not – not a very common occurrence. In the 12 years that I've been there we have had to contact the police on several occasions. Those contacts have resulted in three individuals being charged and convicted for making threats to staff at WorkplaceNL, previously the Workplace Health, Safety and Compensation Commission.

But also in many cases where these are brought to me, there's a group of people I would bring together with me to discuss the case, to discuss the interactions, discuss the context. The context is always very important when we're looking at the issues of risk. So there was probably even more than those three or four cases where we would actually do a review and make a determination the police did not need to be called.

MS. CHAYTOR: Okay, all right. And I'll ask you a series of questions related specifically to Mr. Dunphy a little later, but I take it out of the three individuals that you are thinking about, none of those were Mr. Dunphy.

MR. MAHONEY: No, they were not.

MS. CHAYTOR: You never brought Mr. Dunphy to the attention of the police.

MR. MAHONEY: We did not.

MS. CHAYTOR: Okay, all right. And who did – so you were in this position for 12 years, so you were obviously there in April 2015.

MR. MAHONEY: Correct.

MS. CHAYTOR: And was – corporate security was part of your job at that point in time as well?

MR. MAHONEY: It was.

MS. CHAYTOR: Okay. And who did you report to in your position?

MR. MAHONEY: In my position as executive director I would have reported through to the CEO. Leslie Galway was the CEO at that time.

And oftentimes, in the absence of the CEO, it was my responsibility, even in my job description, to become the acting CEO in the absence of Leslie. And then I would report through to Mr. Ralph Tucker who was the chair of the board.

MS. CHAYTOR: Okay, so there were times when Ms. Galway wasn't present or available and you would fill in.

MR. MAHONEY: Correct.

MS. CHAYTOR: I take it like for her annual leave or other events that may occur that prevents her from being able to respond.

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay. And you would report, then, you said in to the board chair?

MR. MAHONEY: Correct.

MS. CHAYTOR: And who was that person?

MR. MAHONEY: That was Mr. Ralph Tucker.

MS. CHAYTOR: Okay. And what is the role of the board of directors?

MR. MAHONEY: The role of the board of directors is primarily a governance role in our organization. It is basically to review recommendations coming from the management of the organization, in particular the executive, in all lines of business.

So I would, for example, bring forward recommendations regarding a policy change, regarding a program and it would be the board's responsibility to either confirm that recommendation or to send it back for further work or for further cost analysis. So it's primarily a governance role.

MS. CHAYTOR: Okay. And was the board at all involved in operations?

MR. MAHONEY: Absolutely not. No.

MS. CHAYTOR: So in terms of knowledge of clients or anything like that, would the board be involved in that?

MR. MAHONEY: They wouldn't be involved in it, but it would not be uncommon for a board member to be approached or a board chair to be approached by an injured worker, an employer, a citizen asking a question and it was incumbent upon those board members to pass that over to operations. And if it involved Worker Services or if it involved an injured worker, it was incumbent upon those board members to provide that to me to deal with. There would be no personal information shared back with board members, other than to say that it's being handled by the operational area.

MS. CHAYTOR: Okay. And we'll have some more questions about that and how that came to be relevant in this particular circumstance.

It is known of course that Mr. Dunphy had been quite vocal regarding a longstanding grievance that he had with Workers' Compensation. Did you ever meet or speak to Mr. Dunphy?

MR. MAHONEY: I did not.

MS. CHAYTOR: Did you otherwise know of him?

MR. MAHONEY: Yes, I did. I was aware of Mr. Dunphy primarily through social media and in particular Open Line, and as well when tweets became more common and particular in the latter part of 2014 and early 2015. There were some tweets that were brought to my attention that originated from Mr. Dunphy.

MS. CHAYTOR: I'm sorry, what was the time frame for that?

MR. MAHONEY: Around the end of 2014. In particular, the month of December of 2014, and then again in February of 2015 there were some matters brought to my attention.

MS. CHAYTOR: Okay. So there was more than one occasion which his tweets were brought to your attention?

MR. MAHONEY: Yes.

MS. CHAYTOR: Okay. And the first that you're remembering is December of 2014?

MR. MAHONEY: Correct.

MS. CHAYTOR: All right. So what did you know in terms of his demeanour in dealing then with Workers' Compensation staff?

MR. MAHONEY: Actually, Mr. Dunphy in his interactions with the staff, in the case management staff, it was a very easy interaction. I mean for the most part, when I would talk to staff in the area they would say, you know Mr. Dunphy was usually very cordial on the phone. He was appropriate. There was never any hostile or tense relationship between case management staff. And actually, because of the nature of his involvement with WorkplaceNL, and given the long history of that claim there was various people involved, and nothing really stood out for any of those case managers in terms of risk or in terms of threat or hostile interaction.

MS. CHAYTOR: Okay. So you weren't aware of any incidents in which Mr. Dunphy threatened anyone at WorkplaceNL?

MR. MAHONEY: He hadn't threatened anybody at WorkplaceNL, but we had received tweets which remarks were made about particular staff members. And in the case of December 2012, it was a particular manager that was being named. He went to his director – so that was Mr. Steve Philips. He went to his director, Craig Noseworthy, who reports to me, and Mr. Noseworthy came to me and said that one of the managers had a concern about something that was being said on Twitter naming him. And he wanted to know if there was anything that could or would be done to stop that or to address it.

MS. CHAYTOR: Okay. And so the nature of the concern was more that it was disparaging remarks, I think –

MR. MAHONEY: Correct.

MS. CHAYTOR: – as opposed to nothing threatening.

MR. MAHONEY: There was no – in my review of those tweets, both that particular one and other types of comments that were being made in a thread, there was no threat made.

MS. CHAYTOR: Okay. And so what was – what did you do when – let's go back to December of 2014. Is that the time period when the manager first brought this forward?

MR. MAHONEY: Yes, that was –

MS. CHAYTOR: That's those tweets, is it?

MR. MAHONEY: Correct.

MS. CHAYTOR: As opposed to then later on in 2015, there's –

MR. MAHONEY: Correct.

MS. CHAYTOR: – a second set. Okay.

MR. MAHONEY: Yeah.

MS. CHAYTOR: So what did you do?

MR. MAHONEY: So what I did –

MS. CHAYTOR: You would read it, I take it.

MR. MAHONEY: – at this point is I reviewed it for risk consideration to see if there was risk. Upon my determination that there really was no threat made and therefore no need to contact the police and therefore it was not really a corporate security issue, I asked that manager to meet with our legal department and just review it over there with them to see if there was any issue around defamation, see if there was an issue around using his name.

And, you know, we had a conversation between myself and that manager when he came back from the legal area. And basically the use of his name – and my recollection of this conversation includes the term, it's for business card information. Meaning the use of your name – our names are on our website. So Mr. Philips' name, Mr. Noseworthy's name and my name are all on our website and forward facing to the public and, I guess, any employees of WorkplaceNL. For someone to use your name was not considered to be anything out of the ordinary and just really fell under the category of what we would refer to as business card information.

MS. CHAYTOR: Okay. And you mentioned the name, a Mr. Philips. I understand that was the case manager in question?

MR. MAHONEY: It was the manager of the case manager.

MS. CHAYTOR: Or the manager. Okay.

MR. MAHONEY: And it was a remark made about historical involvement dating back into the '80s and talking about a role that that manager may have played in the lifecycle of Mr. Dunphy's claim. And I do believe that he was just making remarks about what he perceived to be the role of that person and certainly the authority that comes with such a role.

MS. CHAYTOR: Okay. And I believe you also mentioned a Mr. Noseworthy. So perhaps you can tell the Commissioner who's Mr. Noseworthy.

MR. MAHONEY: Mr. Noseworthy is the director of Compensation Services. So he would have primary responsibility for all of the claims staff, both – at that time he had the responsibility for our most seriously injured workers who received long-term disability as well as our short-term disabled clients who receive TEL. So he'd have a team of about a hundred people, including management staff, who reported to him.

MS. CHAYTOR: Okay. So other than in December of 2014 asking – doing a review yourself of what was said and asking that legal department do a review to see if there's any issues of defamation, did you instruct anything else to happen at that point in time with respect to Mr. Dunphy's Twitter account?

MR. MAHONEY: Yeah, I did. Usually the issue for us is that things can start relatively low, meaning low in terms of the injured worker being agitated and/or saying things that they may actually regret later. So one of the things that we try to do is do early intervention. Things that we'd refer to as, try to get at this at an early stage before things escalate. But, you know from my perspective, all I asked was for people to review the tweets that were taking place in that social media environment just to see if there was any change in tone and/or content that may indicate escalation. And I just wanted that brought to my attention if anything happened.

And that was primarily an ask that I made of our legal investigators, or the investigators who are housed in our legal department. And I just asked them to monitor Twitter to see if there was any evidence of escalation.

MS. CHAYTOR: Okay. And so you asked your investigators to keep an eye on it. And was there anything that got brought to your attention in terms of any escalation?

MR. MAHONEY: Between December when the initial event happened, and up to and including February, there was basically nothing said and/or nothing said that was of any concern or brought to my attention.

There was a matter brought to my attention in February which had to do with an incident that upset Mr. Dunphy regarding his own home. I believe the circumstance was the roof blew off his house. And that precipitated another set of tweets that came from Mr. Dunphy that, again, started talking about WorkplaceNL, Workers' Compensation, and that was brought to my attention. But again, there was no threats there. It was just a reference to us, and there was no escalation of tone and no escalation of content.

MS. CHAYTOR: Okay. And again then, and I'll take you through a little more detail on that particular tweet that you're referencing. And then from February onwards until Mr. Dunphy's death in April of 2015, was there anything else brought to your attention?

MR. MAHONEY: Nothing that I can recall.

MS. CHAYTOR: Okay. And do you think that in the circumstances that you would have recalled?

MR. MAHONEY: Yes, I do.

MS. CHAYTOR: You recalled the two incidences of December 2014 and then again in February 2015.

MR. MAHONEY: Right, and the reason why I say recall is because I have been advised not to read anything, read any reports involving the media, anything streaming, any of the reports that were released publicly. So when I say that I recall, I really do mean from my own memory. And we are going back now close on a couple of years.

MS. CHAYTOR: And we had a pretty detailed interview. And we went through, in your interview, the documents that we had –

MR. MAHONEY: Yes.

MS. CHAYTOR: – and there's nothing in the documents to suggest anything else had ever been brought to your attention.

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay. If I could please have exhibit number 85.

Okay. I think one, I think, Mr. Mahoney, may in fact reference the roof.

MR. MAHONEY: Yes.

MS. CHAYTOR: This is an email, and this is December 12, 2014.

MR. MAHONEY: Right.

MS. CHAYTOR: So it is possible – is it possible then, that in terms of what happened, the roof incident is December and then the –

MR. MAHONEY: Correct.

MS. CHAYTOR: – instance regarding Mr. Philips is in –

MR. MAHONEY: February.

MS. CHAYTOR: – February.

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay, so we had –

MR. MAHONEY: Yeah.

MS. CHAYTOR: You had reversed those?

MR. MAHONEY: Right.

MS. CHAYTOR: Okay, all right.

So in December 12, 2014, we see here that there is an email from Carla Riggs to you and also to Mr. Noseworthy, and Carla Riggs is indicated to be the director of communications –

MR. MAHONEY: Yes.

MS. CHAYTOR: – for the then-known as Workplace Health, Safety and Compensation Commission.

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay. And this is, it appears to be from Mr. Dunphy’s Twitter account?

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay. And this is the email I take it, that you got brought to your attention regarding his roof.

MR. MAHONEY: Right.

MS. CHAYTOR: His roof has blown off last night and he’s – he indicates he’s “in a drained swimming pool not a house this morning” Okay, all right.

So tell the Commissioner then, in receiving this, this email ends with the wording, “hope all Whscc Die” and I understand that to be Work Health, Safety and Compensation Commission.

MR. MAHONEY: Right.

MS. CHAYTOR: Was that wording of any concern to you or the Workers’ Compensation Commission?

MR. MAHONEY: It was brought to my attention because of the final statement hearing, “hope all Whscc Die.” But I was trying to explain to staff that it’s quite a difference to say, I hope you all die, versus saying I’m going to do something to make that a reality. And there was – there was a hope here, not an intent. There was a – certainly viewing us negatively, but there really was nothing here that I could earmark as saying, you know, this is a threat to our staff or anyone in particular. And when you say all, I mean there’s approximately 380 staff, and hoping that we went away, and hoping, you know, and wishing ill will, it was not something that we took as a threat. We do know where we work, and these are not – I wouldn’t want to say uncommon, but they’re certainly concerning when people say it because it upsets people, but from a corporate security perspective, this was not viewed as a direct threat.

MS. CHAYTOR: Was this anything, Mr. Mahoney, that you or anyone at Workers’ Compensation brought to the attention of the police?

MR. MAHONEY: No, it’s not.

MS. CHAYTOR: Okay. If we could have, please, Exhibit P-0087.

And this will be the email then dealing with the February time frame, Mr. Mahoney.

MR. MAHONEY: Okay. Right.

MS. CHAYTOR: Okay. And so this is now February 23, 2015.

MR. MAHONEY: Right.

MS. CHAYTOR: And it's a – from Shawn Pelley, and perhaps you could explain, who is Shawn Pelley?

MR. MAHONEY: He's the team lead in the investigative unit housed in the legal department of WorkplaceNL which at that time was Workplace Health, Safety and Compensation Commission.

MS. CHAYTOR: Okay.

MR. MAHONEY: And he is the person that I asked to monitor these tweets to see if there was any change in tone, whereas the – as Carla's role would have been more to just monitor Twitter for references to our organization, whereas it was Mr. Pelley I had the conversation with regarding escalation. And as you can see, he begins this with: "Just to update you ..." which is when I asked if there was something that came out, I wanted to know what it was and if there was anything I needed to further review.

MS. CHAYTOR: Okay. And he says, "Just to update you on the monitoring of the Twitter pages as per your concerns today." So what were your concerns at this point in time?

MR. MAHONEY: I think –

MS. CHAYTOR: Is it the time frame –

MR. MAHONEY: It's the wording of the sentence. What he's saying is I'm trying to update you on your concerns but I'm updating you today. I didn't really have any concerns on that –

MS. CHAYTOR: Okay. So the today is misplaced in the sentence?

MR. MAHONEY: Yeah. He's just saying I'm updating you today. This was –

MS. CHAYTOR: Oh, so you didn't have any particular concerns on this day?

MR. MAHONEY: No.

MS. CHAYTOR: Okay. So is this the time period – and perhaps we can look at it. I understand that there are a series of tweets, if we just read through what he said here.

"This person is very general in his comments, even though he sometimes uses WHSCC staff names. He is not making any direct threats, but he certainly is opinionated in his comments. There is actually a response to one of his comments stating he is being 'defamatory'" – in quotation marks – "I do not think the police will act on the comments made today, but they were personal against one of our Managers. Let me know if you wish to discuss this matter."

So is this when it's being brought to your attention about the manager that we spoke about earlier?

MR. MAHONEY: Yes. And, again, this is where I asked him to discuss this with legal and to go down and have a discussion, in particular, words like liable and defamation and slander were being used. Meaning we were looking at it more, with a more civil lens than a criminal lens involving police at this point. And this necessitated a conversation between Mr. Philips and our legal folks. And when he came back to me he said: you know, I understand again that this is – he's just using my name, there's nothing we can really do.

Some of the things that were talked about at that point is, you know, can you shut down the Twitter account, et cetera. And those were all viewed as not necessarily the appropriate responses from an organization such as ours. So he basically came back and said I understand that there's little, if anything, we can do here.

MS. CHAYTOR: Okay. And it's noted here, Mr. Pelley describes it basically as Mr. Dunphy not making any direct threats. Certainly opinionated in what he has to say but not making any direct threats. And was that, generally, your understanding throughout of Mr. Dunphy's commentary? Is that a fair characterization?

MR. MAHONEY: And I think opinionated certainly would have been a word that was used, say, between the period of October – December and February here, in that he's expressing opinions. And he certainly had strong opinions and he was expressing them using Twitter.

MS. CHAYTOR: Okay.

He does say here, "I do not think the police will act on the comments made today" Was the matter referred to the police?

MR. MAHONEY: It was not. Again, it's typical of these types of situations where we do the review. The review is to determine what, if any, next steps need to be made. And usually, collectively, we make this decision; but again, Shawn Pelley is indicating to me that based upon the nature of the comment, which he's sharing, he doesn't even believe that the police will act.

And from our experience, there's times when we have contacted the police in similar situations and they basically would say that there's nothing that they could do in that situation. So we've learned from those and certainly want to make sure that in every instance where someone says something in social media that we don't respond. But certainly if there was a threat, we would; but, as you can see from Shawn here, this was categorized as an opinionated comment.

MS. CHAYTOR: Okay.

I understood you to say that there was never, at any point in time, that WorkplaceNL brought Mr. Dunphy to the attention of the police.

MR. MAHONEY: We did not.

MS. CHAYTOR: Okay.

So you asked, though, after this, in February – did you ask that the monitoring still continue?

MR. MAHONEY: Yes, I did.

MS. CHAYTOR: Okay, and up to the time of his death did – for example, the tweets that caught Donna Ivey's attention, did that catch the attention of anyone in your office?

MR. MAHONEY: It did not. And I – the day when I received a phone call regarding a tweet in the Premier's office, I hadn't had a copy of that and nor was I advised of what specifically was said. But no, I hadn't received anything up to that point.

MS. CHAYTOR: And would your staff also be able to monitor from home? For example, I understand the day that Ms. Ivey found that tweet was Good Friday, so it would have been a holiday. Did your staff also carry out the monitoring while they were at home?

MR. MAHONEY: I don't believe our staff carry out any monitoring while they're home.

MS. CHAYTOR: Okay.

So you did mention that you gave examples that you have dealt with circumstances of clients that get to a point where the police have been notified. Those have been rare occasions, but it has happened.

MR. MAHONEY: Yes, it has.

MS. CHAYTOR: Okay.

In terms of comparison of those people and the types of issues that came to your attention, how would Mr. Dunphy's case and his commentary compare?

MR. MAHONEY: I, I characterize Mr. Dunphy's interaction with us through social media as low risk for a specific threat to our staff.

MS. CHAYTOR: Okay.

MR. MAHONEY: When I compared his tweets and his circumstances to the others where we had called the police and/or where we had others charged, there certainly was little comparison.

MS. CHAYTOR: Okay.

And do you remember, and I won't bring you to it, but do you remember saying that you would put it on the lowest end – and I have a quote written down here from you: There just wasn't anything there.

MR. MAHONEY: There just wasn't anything there, exactly. Yeah, we need to have something to point to when we call the police because they want to know what is the threat and who was it made to. And it was really on the lowest end.

MS. CHAYTOR: Okay.

If we could bring up, please, Exhibit 0086. And this is an email – and you're not actually, Mr. Mahoney, included in this email, although your name does appear in the body of the email. So I'm just going to take you through this.

It begins from a Rob Stead, who's an appeals officer, Government Members' Office. And the date of the email from Mr. Stead is to Angela Connolly. And if we look up the email trail, we can see that Angela Connolly is constituency assistant at the time to the hon. Steve Kent.

MR. MAHONEY: Okay.

MS. CHAYTOR: And this email from Rob Stead to Angela Connolly on January 8, 2015, the subject line is: RE: Tweet from @sculpen – Don Dunphy. "Hi Angela and Happy New Year,

"I regret I have nothing of significance to report at this time. As I previously advised there was very little in the way of information in a file for Mr. Dunphy.

"According to the November 7, 2014 email you forwarded to me, Mr. Strong had indicated he was prepared to contact the Executive Director with WHSCC and present his case. However in checking with Mr. Tom Mahoney, Executive Director-Worker Services WHSCC, apparently Mel did not get the opportunity to meet with him prior to his termination, as he had no knowledge of this case. He indicated to me however he is willing to sit down and discuss this matter with me."

Mr. Mahoney, first of all, can you tell us who would Mel, Mel or Mr. Strong be in this circumstance?

MR. MAHONEY: Mr. Strong would be in a similar role here as Mr. Stead, meaning he would have been in the employ of the provincial government and would be someone who would meet with injured workers and provide advice to them and/or support as they work their way through the various elements of the system.

MS. CHAYTOR: Did you have any contact from either Mr. Strong or Mr. Stead regarding Mr. Dunphy in this time frame?

MR. MAHONEY: No, I don't think so. No.

MS. CHAYTOR: Okay.

Do you have any idea what this email is about or what – why they would be referencing and suggesting that they had checked with you.

MR. MAHONEY: I would suggest here and, again, speculative, that what would happen – if an individual worker contacted Mr. Strong, it was not uncommon for Mr. Strong to reach out directly to me and ask for a meeting with me to review a particular issue in a claim, a particular set of issues inside a claim and ask for my thoughts on whether I was willing to ask our case staff to reopen, re-hear, re-examine the issue under authority under the legislation.

And that did happen while Mr. Strong was there. It happened probably on three or four occasions, but not regarding Mr. Dunphy.

MS. CHAYTOR: Okay.

So did you at any point in time have any discussions with anyone in government regarding Mr. Dunphy?

MR. MAHONEY: Not to my recollection.

MS. CHAYTOR: Okay.

And in particular anything to do with his Twitter, his tweets?

MR. MAHONEY: Again on this date here – what date was this?

MS. CHAYTOR: This is now we're into – this is January 8, 2015 and we've seen that he has come to your attention, Mr. Dunphy, in December of 2014 and, again, in February of 2015. So this would be in the middle of that. Do you recall –

MR. MAHONEY: I'm not really familiar with this email.

MS. CHAYTOR: Okay.

My question then was whether or not you had any discussions with anyone in government regarding Mr. Dunphy and, in particular, with respect to his tweeting?

MR. MAHONEY: Nope, no.

MS. CHAYTOR: Okay.

MR. MAHONEY: And again, the reason why I say that part emphatically is because all of the details of Mr. Dunphy's claim were, for the most part, unknown to me. So an interaction with Mr. Strong or other

government officials regarding details of a claim would have brought to my attention much more specifics, to which I'm not aware.

MS. CHAYTOR: Okay, and you had no discussions I take it then with Steve Kent about this?

MR. MAHONEY: No, no.

MS. CHAYTOR: Okay, all right.

And so if they're also looking at tweets from Mr. Dunphy, you had no knowledge of that?

MR. MAHONEY: This particular one, no, no – I, I don't even see the tweet here; it's just something in a subject line.

MS. CHAYTOR: Okay.

And any particular – but any particular tweet, where you aware whether or not anyone in government other than we've had some evidence from Donna Ivey, but you were aware of anyone in government looking at tweets from Mr. Dunphy?

MR. MAHONEY: No.

MS. CHAYTOR: Okay.

Mr. Mahoney, I understand that you were contacted on April 4, 2015 –

MR. MAHONEY: Yes.

MS. CHAYTOR: – regarding Mr. Dunphy, so perhaps you could take the Commissioner through that and tell what the contact was and the purpose of the contact to you.

MR. MAHONEY: At about 3:30 on April 4, Commissioner, I received a phone call from the chair of our board, Mr. Ralph Tucker, and, at that time, he advised me that he was trying to reach the CEO, Leslie Galway, to do some follow-up on a request for some information. But he was unable to reach her, so he made the decision then to call me, as the executive director and the person who does step in, in the absence of the CEO.

It was at that point that he asked me if I was able to provide him with information confirming the address of a Mr. Dunphy. At that time, I told the chair of the board that, as I stated earlier, that his role is in governance and that I don't have the authority to pass information from operations over to the chair of the board. But if there was an investigation and if he was prepared to connect me with the person conducting the investigation, then, under ATIPPA and, in particular, section 39 would give me the authority.

If I believe that there was a legitimate investigation involving the police that would lead to or could result in a criminal proceeding, that I was authorized to provide only the limited amount of information that would be necessary to conduct that phase of the investigation.

Which Mr. Tucker said I completely understand and he told me at that point that what he would do would be – that he had received an email. He was going to copy me on it and he was going to email as well the investigating officer to let them know that an ask had been made of me to confirm an address. And that he would give me a copy of that email that was sent to him so then I could receive a phone number where I could get in touch with the officer who was conducting the investigation.

MS. CHAYTOR: Was that an unusual request for Mr. Tucker to make of you?

MR. MAHONEY: Again, as I stated, it's not uncommon for board members to have things asked of them in their role. And, again, it would be not uncommon for the chair of the board or a board member to say, you know, I was talking to this person wondering about what you could do here. This particular one was different because it was a phone call at home on my cellphone on a Saturday. And I –

MS. CHAYTOR: Saturday of the long weekend.

MR. MAHONEY: A Saturday of that long weekend, yes, being April 4. And I didn't necessarily get – but when the chair of the board calls and I see his name on the phone, I mean I stopped exactly what I was doing and answered it.

So, you know, not a common thing, but certainly a little bit more out of the ordinary. But when the chair of the board or the CEO calls, that's the reason why we have the cellphones, so we can answer it. There really is no sort of nine to five, Monday to Friday; it's whenever these issues arise, you have to answer the phone.

MS. CHAYTOR: I understand. So did you take from that, that there was some urgency with this request?

MR. MAHONEY: I did because he used the term, as soon as possible. He asked me, he said – he said there was someone from an investigative unit who was looking to speak with Mr. Dunphy as soon as possible and wondering if I could – they had reason to believe that it was someone that I would be familiar with because they were an injured worker. And then I probably would have received similar tweets because not only did they have issues with the Workplace Health, Safety and Compensation Commission at the time, but his being an injured worker would have also been the source of his frustration with government as the government, the provincial government, would have been responsible for the legislation.

MS. CHAYTOR: Okay.

And you mentioned that there were times when – you know, two or three times when something came to your attention that you had to – you were concerned about it and had to notify the police. Had it ever happened the other way around, that the police notified you and came looking to you for information?

MR. MAHONEY: Not to the best of my knowledge, no. No, I don't think that ever happened.

MS. CHAYTOR: So this was a rare occurrence.

MR. MAHONEY: It was, yes.

MS. CHAYTOR: Okay.

Did Mr. Tucker tell you how he had become aware of this? Who had contacted him?

MR. MAHONEY: He stated that a Constable Smyth, Officer Smyth, had contacted him. He actually gave me his first name and last name. And he just said that he was contacted and asked for confirmation of an address and it was an investigation by a security detail attached to the Premier's office at that time.

And I said, Ralph, is there any further information that you can give me because if I'm to conduct this conversation over the phone, I'd like to have some information about who I'm going to be speaking to? So he said, what I'll do is I'll forward you the email and include you in it so you can see that there's identification at the bottom of the email that identifies the person, meaning Officer Smyth, and his title and his actual cellphone number was actually at the bottom of that email.

MS. CHAYTOR: Okay.

And how Mr. Tucker may have come to be contacted by Constable Smyth, did Mr. Tucker tell you that? Who had –?

MR. MAHONEY: He did. He said that he was contacted by email and he said that the ask was that: Sorry for bothering you on a, on a long weekend.

MS. CHAYTOR: Okay, yes, I'm sorry, but about the – how Constable Smyth would know to get in touch with Mr. Tucker?

MR. MAHONEY: I didn't ask that question.

MS. CHAYTOR: Did know that, all right

MR. MAHONEY: I just know that I received that email from Mr. Tucker, who received an email from Officer Smyth and that email just was basically to him and he forwarded to me which was – I didn't question Mr. Tucker as to how he came to get that phone call.

MS. CHAYTOR: Okay.

All right, if we could look at, please, Exhibit P-0088, and I believe this to be the email that you're referencing, Mr. Mahoney?

MR. MAHONEY: Yes, this is it.

MS. CHAYTOR: Okay.

MR. MAHONEY: Yes.

MS. CHAYTOR: And it begins with the email from Joe Smyth, April 4, 2015, to Ralph Tucker, subject: Don Dunphy. Good afternoon, Mr. Tucker, Sorry to bother you on a long weekend; however, I'm looking to speak to a Mr. Don Dunphy as soon as possible and I suspect your office may be able to assist me in confirming who the individual is. Mr. Dunphy has made some disconcerting comments via social media directed towards elected officials. Dunphy is apparently an injured worker, which is also the source of grievances towards government.

It is likely that Mr. Dunphy has regular contact with your organization, and he's hoping then that someone can help provide some contact information.

Then that email is forwarded to you –

MR. MAHONEY: Yes.

MS. CHAYTOR: – at 3:35 p.m. from Mr. Tucker to Joe Smyth. And by now, you've already had a telephone conversation, you're saying, with Mr. Tucker?

MR. MAHONEY: Yes, Mr. Tucker called me at 3:30.

MS. CHAYTOR: Okay.

And he advises: I have been speaking with Tom Mahoney, executive director with the Commission, and he's procuring the information for you and will be in contact with you asap. Let me know if there is anything else I can do. All the best, Ralph.

And Mr. Smyth comes back and thanks all for the help, at 3:37 p.m., and then you forward that on to Craig Noseworthy.

MR. MAHONEY: Right.

MS CHAYTOR: So I just have a series of questions for you regarding this. So you can see that Mr. Tucker is telling Constable Smyth at 3:35 p.m. that you are procuring the information. Did you start to procure the information without first speaking to Constable Smyth?

MR. MAHONEY: Yes, I did.

MS. CHAYTOR: Okay. And what did you do to procure that information?

MR. MAHONEY: I contacted the director, Craig Noseworthy, who has a laptop with him at home that allows him to access the system. That's a function that I don't have because his role is more particular to claims. So I contacted Craig and I told him what was being requested, which is for us to provide contact information. But I asked him to provide that information to me.

So this was sent to provide him with some context. I actually called him also to let him know that I needed the information, if he could get it to me as soon as possible, that I would be – once I received that, that I would reach out and call the number that was at the bottom of that thread which was a cell number for, for –

MS. CHAYTOR: Yes.

MR. MAHONEY: – for Joe Smyth.

MS. CHAYTOR: I think it's blocked out, for our purposes.

MR. MAHONEY: Right.

MS. CHAYTOR: But we have a cell number, had been communicated.

MR. MAHONEY: Right, exactly, where it says: Thanks, Joe, and that cell number, that's where it was.

MS. CHAYTOR: Okay.

All right, so also copied at 3:35 p.m. from Mr. Tucker, he copied Leslie Galway, and there's a Helen Kavanagh. Who is Helen Kavanagh?

MR. MAHONEY: Helen Kavanagh is the executive assistant to the CEO and the board chair.

MS. CHAYTOR: Okay.

Did Ms. Galway contact you upon receipt of these emails or at any point in time prior to Mr. Dunphy being shot?

MR. MAHONEY: No, she did not.

MS. CHAYTOR: Okay.

And then, so you also had a telephone conversation you said with Craig Noseworthy.

MR. MAHONEY: I did.

MS. CHAYTOR: And you asked him to give you the information directly.

MR. MAHONEY: To email it to me, yes.

MS. CHAYTOR: To email it to you, okay.

All right, then if we could see, please, P-0089. And at 4:04 p.m. we have an email from Craig Noseworthy to you and it says: contact information. And the information that is on the claim regarding Mr. Dunphy includes a P.O. Box, a Mount Carmel address, and then there's a telephone number on your system and one that he's indicated to be on a medical report.

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay. Is this all of the information that you received that day about Mr. Dunphy?

MR. MAHONEY: It is.

MS. CHAYTOR: Okay. And is this the information then that you would have forwarded on to Constable Smyth?

MR. MAHONEY: No, I did not forward it, and nor did Constable Smyth ask me to forward it. What basically happened now is when I received this I scrolled down to the bottom of that email where I got his cell number and I called him. And I identified myself, and he confirmed that I was speaking with Joe Smyth, and I told him that I was returning the call based upon the email and the communication I had with the chair of the board, and that I had the information that would confirm the contact information as asked of me.

All I said was at this point, Mr. Dunphy. I said the P.O. Box number and the town. And he said thank you very much, that's all I need. And I said, you know, I can certainly forward this to you. He said, no, no. No need, I have all the information that I need at this time.

MS. CHAYTOR: Okay. So you gave him P.O. Box and the town being Mount Carmel?

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay.

MR. MAHONEY: Now I did say the phone numbers as well, because I think I read those out. And again, to the best of my recollection, which could have also been from the transcript that I've read of my own evidence that I provided to the RCMP, that I believe I was informed at this point that one was probably a home number and the other one being more probable, probably a cell number.

MS. CHAYTOR: Okay. And do you recall telling us in your interview that it seemed that Ms. – Constable Smyth already had information and –

MR. MAHONEY: Yeah, I think –

MS. CHAYTOR: – perhaps you could tell the Commissioner about that.

MR. MAHONEY: I think, Commissioner, that what I meant there was when I was asked to confirm information, I wasn't being asked to provide the information. It appeared to me that the person I was speaking with had many Donnie Dunphys that he could consider, and when I provided this information for this Mr. Dunphy it seemed to confirm or identify some information that – again, these are my assumptions based upon the conversation that I was having. Because when I asked, do you want me to

send this? He said, no, absolute – no, I’m good. That’s all I need. It was my assumption that there was other information available to Joe that he was considering as I was providing this for his information.

MS. CHAYTOR: Okay. And I understand at the time that you were interviewed by the RCMP that you still had your phone records of the timing of the various calls that you took on that day or made on that day, and according to that – and I don’t need to bring it to you unless there’s any issue, but at 4:07 p.m. you would have had your discussion with Constable Smyth.

MR. MAHONEY: Correct.

MS. CHAYTOR: Does that seem about right?

MR. MAHONEY: That is correct.

MS. CHAYTOR: So three minutes after receiving the (inaudible).

MR. MAHONEY: Shortly after I received this, yeah.

MS. CHAYTOR: Okay.

MR. MAHONEY: And I would have been waiting, you know, sort of looking at my BlackBerry for this to come in, waiting for the light to flash, because I did know that when you get a call from the chair of the board saying we need things as soon as possible that it did require my complete and full attention. So I was doing nothing else at home but waiting for this information to come in.

MS. CHAYTOR: And again, a sense of urgency on your part.

MR. MAHONEY: Absolutely. Yes.

MS. CHAYTOR: Okay, all right. And then at 4:15 p.m., according to the records that you had of your cell, at that point in time you spoke again to Mr. Tucker.

MR. MAHONEY: Yes.

MS. CHAYTOR: Do you recall that conversation?

MR. MAHONEY: Yes, I do. Yeah.

I advised Mr. Tucker that all that he had asked me to do had been completed, that I had gotten in, received the information from Craig Noseworthy. I had provided it verbally to the officer as he requested and asked him was there anything further at that time that he required of me or could I go back to doing what I was doing on Saturday. He thanked me for my help and just said, you know, carry on doing what you were doing, which I did.

MS. CHAYTOR: Okay. And the reference here to a P.O. box number – and I’m still looking on the exhibit that’s on the screen.

MR. MAHONEY: Right.

MS. CHAYTOR: And Mount Carmel, was there any discussion or information regarding Mitchells Brook given to Constable Smyth?

MR. MAHONEY: There was not. This was the only information that I was privy to.

MS. CHAYTOR: Okay. And if we could bring up, please, Exhibit 0092.

And in this exhibit, if we look at the middle paragraph here, these are notes that we understand were prepared by Constable Smyth two days after, April 7. I believe he may have worked on them the next day and they were submitted on April 7, 2015.

And it says: I obtained contact information for officials with WHSCC. At approximately 4 p.m. I spoke with Tom Mahoney –

MR. MAHONEY: Yes.

MS. CHAYTOR: – and provided him a brief of my investigation and the disconcerting comments made by Dunphy via social media. He advised that he was familiar with Dunphy and that he has multiple interactions with WHSCC staff, some of which caused them concern. And then Mahoney advised that the Don Mahoney I was looking for was from Chapel's Cove and he provided me with contact telephone numbers.

Was there any discussion of Chapel's Cove with Constable Smyth?

MR. MAHONEY: The only information that I had to provide is the information that was in that email. And I – Chapel's Cove, I don't know.

MS. CHAYTOR: Okay. And in writing this, Constable Smyth has referred to his conversation with you.

MR. MAHONEY: Yes.

MS. CHAYTOR: And he notes that you had said there were concerns with Mr. Dunphy as well. Is this an accurate summary of your discussion or what you have told him?

MR. MAHONEY: Absolutely. That is the discussion that we had because what I had stated is that the interactions that we had regarding social media, as we've discussed earlier regarding the naming of individuals, people being concerned bringing them to my attention, has caused – you know some of which caused some concern. And that is what I said.

And I said part of the problem is that from my perspective – is that sometimes people sitting in their own home, expressing themselves, don't necessarily realize the consequences of their actions. And this was the kind of conversation that was taking place between myself and the officer on the phone that, you know, people sitting in their homes sometimes expressing themselves don't necessarily realize how this is going to be read. Sometimes the written word is viewed differently than the spoken word.

MS. CHAYTOR: Did Constable Smyth tell you what the disconcerting comments – he refers to them here as disconcerting comments; did he tell you what they were?

MR. MAHONEY: He didn't tell me the exact wording just that – to the best of my recollection, again, it was the term disconcerting statements made regarding elected officials is what comes to mind. And I think primarily that's why that stands out in my mind is because I've read my own transcript of what I said to the RCMP.

So I would have said something more specific, if I was aware. It's just that some statements had been made in Twitter or in social media because I'm not even really sure we were talking about Twitter or tweets – all of this space, the social media space was relatively new to me at this time, so it was a whole new sort of other form that we were learning to have to deal with, and that was even part of our conversation.

MS. CHAYTOR: And did you tell Constable Smyth that you, too, were monitoring Mr. Dunphy's tweets?

MR. MAHONEY: Yes, yep.

MS. CHAYTOR: And did you tell me that there hadn't been anything of any nature that you, from your perspective, warranted notifying the police?

MR. MAHONEY: Just the officer did ask me – he said, you know, when you look at this individual compared to the others that you've talked about, where do you see him? And I did explain to him about my experience and my background and that, from my perspective, he would certainly be on the lower end of the spectrum, certainly from a risk perspective of doing harm to us.

And the only statement really made to me at that point by Joe Smyth was that, you know, I'm – now that I have the contact information, I think I have to pay Mr. Dunphy a visit.

MS. CHAYTOR: Okay –

THE COMMISSIONER: Sorry, what was the last part of that?

MR. MAHONEY: I think I have to pay Mr. Dunphy a visit.

THE COMMISSIONER: Okay.

MR. MAHONEY: Pretty much that would have been what was said. And again, to the best of my recollection, that would have been consistent with when I talked to you earlier about individuals we have contacted the police, usually that's what happens. They just really attend at their door and caution them that these things are causing some concern for a public agency. And when that was said to me, that sounded, you know, about right because I had no – where I had no specific knowledge of what he was investigating, just that there was a tweet and where a threat was made to elected officials, it's the same kind of thing that I would have to do, review it for a relevant risk and to make a determination about next steps.

MS. CHAYTOR: And so –

THE COMMISSIONER: Ms. Chaytor, I don't know how much longer you have (inaudible) question –

MS. CHAYTOR: Okay yes, we'll take a break.

THE COMMISSIONER: But it would be an appropriate place to break, I think.

MS. CHAYTOR: Yes, we will take a break.

Thank you – I lost track of time, thank you.

THE COMMISSIONER: Okay. So we're going to break for 15 minutes.

Mr. Mahoney, thank you.

MR. MAHONEY: Thank you.

THE COMMISSIONER: We'll recess.

Recess

MS. SHEEHAN: All rise.

The Commission is now in session.

Please be seated.

THE COMMISSIONER: Now before we continue with the examination of Mr. Mahoney, an administrative matter, the – we're moving more quickly than staff can keep up and more quickly than we can reorganize witnesses, which is a good thing. It's a function of the new technology I think to our extent that we are able to get so many exhibits in so quickly, cutting edge technology. On the other hand it's deceptive, because behind the scenes, in order to get these exhibits out as quickly as we have been, we have people working who need time – we're finding more time than we originally allotted – in order to prepare a set of exhibits for each witness who is anticipated to testify.

So to cut it short, we've been unable to get several witnesses that we were expecting this afternoon. In one case because of illness I believe, in another case because the person is out on another commitment. But I mention this now just because I don't know if we're going to finish before our usual time of 12:30, but if we don't – if counsel are able to do so, I'd recommend that we continue until we finish with Mr. Mahoney to avoid the necessity of anybody coming back, and then we'll be recessing until tomorrow morning.

Tomorrow, it looks as though we may have a similar problem. It's not clear yet, but we're still trying to track down certain witnesses. As you can appreciate, with the large number of witnesses that we have, individuals have been given a time when they're expected to appear. They're not all sitting around for the six or seven weeks or longer that we have anticipated the inquiry will take. So we have to give them notice as to when they're going to be called. And when we try and change the order of witnesses or the timing that they appear, we find that they may already have, in the ordinary course of events, made commitments they can't get out of.

So we have to do the best we can. We'll get the benefits of the new technology but at times we will end up with certain blank periods of the day where we adjourn early. Now I'm going to be fighting that as far as I can, in that I want – I'm glad to see that we're ahead of schedule. I want us to stay ahead of schedule, at worst stay on schedule, and I think we're in a position to do that.

Any counsel have any problem with going over, this morning, past 12:30? I'm not sure, but I don't think it'll be – depending on Mr. Kennedy, I think, most likely how long we would anticipate going, but if there's no objection, I'd recommend that we go past 12:30.

Ms. Chaytor, do you have something to add?

MS. CHAYTOR: No, I don't. And we may not even go past 12:30. The only –

THE COMMISSIONER: Okay. I have one further thing to mention and –

MS. CHAYTOR: Oh, I'm sorry. One other thing, though, Commissioner –

THE COMMISSIONER: Yeah.

MS. CHAYTOR: – if I may.

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: I think we're okay for witnesses tomorrow. We have been able to make some rearrangements there. So it's only today I think that we –

THE COMMISSIONER: Okay, I just wanted to give counsel –

MS. CHAYTOR: – may have some time to spare.

THE COMMISSIONER: – a heads up just in case.

All right, so it sounds good if we get our witness. It was 1 o'clock in the afternoon, I wasn't sure we were going to find – so we'll hopefully get in a full day tomorrow.

Now, just to show the power of social media; during the break I was informed that we had an anonymous caller who asked us to look into the relationship between counsel and the witness. I think I can make everybody – Mr. Williams is smiling. I don't think anybody here would probably be surprised to know that there's a relationship between the Mahoney family and the Williams family. I think it was the Galway connection.

So I'm just mentioning this to assure all those out there – what do they call them, listening and watching audience, that while we're not monitoring our tweets, we do get our messages fairly quickly. And if there's something of particular significant we'll respond to them.

I'm not going to ask Mr. Williams to respond to that particular one because there's nothing in terms of that type of personal relationship that would cause me any concern nor I expect counsel in terms of the manner in which Mr. Mahoney will be examined and cross-examined.

So with that, Ms. Chaytor, you can go ahead.

MS. CHAYTOR: Okay. Mr. Mahoney, I'd just invite you to answer a question then on that respect. In terms of how you handled the inquiry that came to you from Ralph Tucker on April 4, 2015, was that at all influenced by any family connection you may have to the Williams family?

MR. MAHONEY: Absolutely not.

MS. CHAYTOR: Okay. Did you know Joe Smyth before April of 2015?

MR. MAHONEY: I don't believe we had ever met, and I don't believe I was familiar with the name.

MS. CHAYTOR: Did you have any connection whatsoever with Joe Smyth?

MR. MAHONEY: No.

MS. CHAYTOR: Okay. I'd like to drill down a little bit and ask you whether – about what exactly Constable Smyth told you when you spoke with him that day. What did he tell you that he needed the information for and what words did he use?

MR. MAHONEY: Yep. Again, you know, it was a relatively short conversation, but he did state to me – first of all, he thanked me for getting back to him and for procuring the information as instructed by Ralph. At that point, he did state that there was some concern that they had, meaning the RNC or the protective detail had, regarding something that was said or allegedly said by Mr. Dunphy to elected officials.

When I made the statement of, you know, my determination of risk being on the low end of the spectrum and certainly being low risk, you know, I wanted to make that clear to Officer Smyth that at that point that I was referring to the information to which I was privy.

And I was never really described or had the opportunity to have described what the tweet was that he was investigating; just that he was investigating a tweet that had to do with elected officials. And, as a security detail, it was his mandate to conduct the investigation. And that was all I was told was, was happening.

MS. CHAYTOR: Did Constable Smyth use the word “threat”?

MR. MAHONEY: I think – I’m going to use the word “disconcerting” because I think that that is the term that kept coming up; it was a disconcerting email. And there may have been a reference to a threat against elected officials.

But, you know, to the best of my knowledge it was just something that, you know, I guess similar to the things that I would have to look at. You know, something said, we’re wondering what it is. And, you know, I think there was an allegation made. And, to the best of my knowledge, the officer described his role as an investigator and certainly hadn’t reached any real conclusion at that point.

MS. CHAYTOR: Okay –

THE COMMISSIONER: I think the language of the email referred to disconcerting comments.

MR. MAHONEY: Yes.

MS. CHAYTOR: Yes.

MR. MAHONEY: It did.

MS. CHAYTOR: Yes. Do you recall in your statement to the RCMP saying that Constable Smyth indicated that he was investigating a threat that had been made?

MR. MAHONEY: Yes. And I think that – and that would have been – and I think your question was did he say the word “threat” to me. When I described that back to the RCMP that was I’m sure the way that I was describing it. Something had been said, you know, that was perceived to be threatening and he was investigating to determine whether it was a legitimate threat or not.

MS. CHAYTOR: Okay. All right.

Did you – did anything you told Constable Smyth about Mr. Dunphy – do you think anything that you told him in terms of your knowledge of Mr. Dunphy, would that have heightened Constable Smyth’s concern?

MR. MAHONEY: Actually, when we talked on the phone it was very much in the tone that he was presenting as someone who was an investigator, basically asking questions, you know, what was my involvement, you know, how did I see the things that have been said down at our organization – you know, I deal with this often. We had this sort of interaction on the phone that sort of explored why I would be in a position to be able to advise him that it was low risk. And I think that, you know, it’s just very much a conversation where he was explaining he was on a fact-finding mission and the first piece of information that he wanted from me, and really the only thing that was asked of me up front, was for the address. And I think then, while I was on the phone, it was more just a probing of, you know, what were, what were our interactions.

And I do remember the conversation coming to this whole new arena we are working in now where social media's such a big part of it, the technologies and the platforms revolving, and it's not uncommon now that we have to look into things that we probably wouldn't have even looked at 10 years before, because the platforms and the opportunities didn't exist.

And in that, we were referring to people sitting at home, frustrated and/or angry, making comments and not realizing that the consequences of that may be different than expected when they don't realize how what they are saying is actually perceived when it's read.

MS. CHAYTOR: Okay.

And did you understand Constable Smyth, in carrying on with his investigation, that he would be doing that on behalf of the Workers' Compensation, or any of the concerns that you had?

MR. MAHONEY: No, it was not a follow-up to any of the concerns connected to WorkplaceNL, no.

MS. CHAYTOR: Okay. And if Constable Smyth had not made contact with Workers' Compensation at that time, was – it wasn't your intention, I understand –

MR. MAHONEY: It was not.

MS. CHAYTOR: – to lodge any complaint against Mr. Dunphy?

MR. MAHONEY: Correct.

MS. CHAYTOR: Okay.

Perhaps you could tell me then when and how you learned about Mr. Dunphy's shooting?

MR. MAHONEY: It was Sunday. I had family over for supper, and it was about shortly after 6 o'clock that I received a phone call from Leslie Galway, who was the CEO. This – you asked me earlier if I had spoken to Leslie Galway on that day. No, I did not, but the first time I did hear from Leslie was when she called about 6 o'clock on Sunday, Easter Sunday, being the 5th of April, to advise me that there had been a shooting and that, as a consequence of that, Mr. Dunphy was no longer alive.

MS. CHAYTOR: Okay. And how did you understand that Ms. Galway came to know this information?

MR. MAHONEY: Again, I think she had a phone call from somebody in government. Probably the minister's office, I believe, is what she may have said, is that she was made aware that there's something that played out in the town, and she just wanted to advise me that Mr. Dunphy was deceased.

And the primary purpose of that call was to tell me that when we went into work on Monday, that obviously I have responsibilities to the information that was contained in that person's file. And again, not only medically but there is prescriptions that are authorized and some of those things. So it was also to advise me so when we went into work Monday, I could authorize the appropriate steps to be taken to sort of lock down and close out that file as well, too. But to tell me the outcome of the activities that was involved on the prior day, the outcome of that was that Mr. Dunphy was deceased.

MS. CHAYTOR: Yes, I take it the closing down of his file could have waited till Monday morning.

MR. MAHONEY: Correct, but it was – while we were on the phone, she did tell me that, you know, that we now have to make sure that we secure that information.

MS. CHAYTOR: Fair enough.

And did she ask you to contact anyone else about this, or to do anything?

MR. MAHONEY: No, she did not.

MS. CHAYTOR: Okay.

And did she ask you to forward your email communications on this to her?

MR. MAHONEY: No. She had been included in the email communications that day. I don't remember anything that she asked me to forward to her.

MS. CHAYTOR: Okay.

If we could bring up, please, P-0093. This is not one of your documents. You'll see your name on the front page. This is a document that we received from the RCMP and you'll see your name here, Tom Mahoney, and Monty Henstridge.

MR. MAHONEY: Right.

MS. CHAYTOR: What I understand this to be then, it's called a Supplementary Occurrence Report and it is a – it's basically a summary of your statement.

Corporal Henstridge is saying that he's attended at the work, health, safety commission office and obtained an audio recorded statement from you. And if we come down through he refers to here, the last bullet: "On Sunday at 6:07 p.m. he received a call from Leslie GALWAY who is the CEO of the commission. She asked him to forward his email correspondence to her as there had been a shooting involving Mr. DUNPHY."

And you're saying you did not – she did not ask that of you.

MR. MAHONEY: Well, actually this was a discussion that took place between myself and the officer from the RCMP. She said if there's anything that I don't have –

MS. CHAYTOR: Yes.

MR. MAHONEY: – make sure I have a copy of everything that was involved here. And I advised her that the information that had gone on during the day, she was copied on all of that.

MS. CHAYTOR: Okay.

And I did review your statement. I couldn't see anything where you spoke to, in your statement, spoke to this where Leslie Galway asked you to forward anything on.

MR. MAHONEY: No, as a matter of fact, what I did tell the officer, Officer Henstridge, was that when Leslie called me she said: Tom, you know, unfortunately, this is a really unfortunate incident. And even if Ralph had gotten a hold of me on Saturday, I still would've had to contact you because this would fall under your area of responsibility and it would only be you and your staff who'd be able to procure this information for Constable Smyth. That was really the nature of our conversation.

MS. CHAYTOR: Okay. And I take it you didn't have any communication with Corporal Henstridge other than what is contained in your RCMP statement?

MR. MAHONEY: Correct. He came to my office at 12 o'clock and I think shortly after 12:30 he was gone.

MS. CHAYTOR: Okay. Other than Ms. Galway, did you have any discussions with anyone else in the immediate aftermath of the shooting?

MR. MAHONEY: No.

MS. CHAYTOR: Or the ensuing days regarding Mr. Dunphy's shooting?

MR. MAHONEY: I think that my wife at that point, because I had family over, and I had just received this information over the phone. She knew there was some distressing news and I excused myself from the room. My wife followed me outside the room to ask me was I was okay, and I just said that there was an unfortunate consequence that happened at work. I couldn't get into it. I don't talk about work at home, but there certainly was some follow-up with my wife just to make sure that I was okay. When you hear this type of news it certainly is distressing.

MS. CHAYTOR: Okay, fair enough. Nobody – I take it no communications with anyone in government?

MR. MAHONEY: Absolutely not.

MS. CHAYTOR: Okay. If we could bring up, please, P-0084. I understood from your evidence today Mr. Mahoney that the authority on which you relied to release the information, Mr. Dunphy's contact information to the police, you referred to section 39 of the ATIPP legislation.

MR. MAHONEY: Yes.

MS. CHAYTOR: And I understand that would have been the 2002 legislation.

MR. MAHONEY: It is yes, not the current version.

MS. CHAYTOR: Right. Okay. So at Exhibit P-0084 here, we have – and the police also, obviously the RCMP asked you for this as well.

MR. MAHONEY: Yes.

MS. CHAYTOR: So we have the section that I understand you would have relied upon, section 39(1). If we look at section 39(1)(n) –

MR. MAHONEY: Right.

MS. CHAYTOR: – it refers to: “A public body may disclose personal information only (n) to a public body or a law enforcement agency in Canada to assist in an investigation (i) undertaken with a view to a law enforcement proceeding,” – now of course in this case there wasn't already a law enforcement proceeding – “or (ii) from which a law enforcement proceeding is likely to result.”

My question to you is: What information did Constable Smyth give you to lead you to believe that a law enforcement proceeding was likely to result from his investigation?

MR. MAHONEY: He stated that he was conducting an investigation into a social media tweet that had some comments in it that – again, I'm using the word threat – that there were threats made or disconcerting comments made regarding elected officials it was his role to conduct an investigation. It was reasonable for me, because when I looked down at the bottom of the email, it identified the unit that he was attached to, that he was a member of the RNC. I think his badge number, to tell you the truth, if my memory serves me correctly there was a bad number there.

So I knew I was dealing with an officer, and he was using the words “investigation.” He was asking me to confirm the address of an individual. It was really only that information that would have been in my possession that he asked me for. And you can see from that original email to Ralph Tucker that that’s consistent with the information that he asked me for, which is the contact information, the confirmed contact information.

MS. CHAYTOR: Okay. And I understand, then, how you satisfy yourself that you were dealing with a law enforcement agency and that it was an investigation. But what was it that he told you that satisfied you as to 39(1)(n)(ii) that a law enforcement proceeding was likely to result?

MR. MAHONEY: A law enforcement proceeding, in my subjective view at that point, was including an investigation. So law enforcement was triggered when the statement was made that I’m going to have to go pay a visit to see that man.

That seemed to me to be consistent with what I would understand to be the probability that there was a law enforcement proceeding. Not necessarily a court proceeding, but certainly the enforcement of the law, meaning an investigation to determine if – what if any threats and/or harassments or other comments were made.

MS. CHAYTOR: Okay. Thank you.

Those are all my questions, Commissioner.

Thank you very much.

MR. MAHONEY: If I could add to that, that under section 39, that’s (1), but under section 39(2) it also states that I am responsible to make sure that the information I provide is limited to only that which is necessary for the activity of law enforcement. And that’s why I made sure there was nothing else other than what was provided to me by Mr. Tucker – by Mr. Noseworthy was provided to Constable Smyth, other than my subjective review of previous tweets. So there was no other personal information shared, nor was it even asked for.

MS. CHAYTOR: Okay, fair enough.

Is there anything else Mr. Mahoney that I may have forgotten to ask you or anything you’d like to add?

MR. MAHONEY: No, nothing.

MS. CHAYTOR: Okay.

Thank you. Those are my questions.

THE COMMISSIONER: Thank you.

Cross-examination – now, are we in our default mode here, in which case it would be Ms. Breen, I think, that would be going first. Is that right? Or Mr. Simmonds – sorry.

MS. BREEN: Thank you, Mr. Commissioner.

Mr. Mahoney, I’m Erin Breen. I represent Meghan Dunphy.

Good afternoon.

MR. MAHONEY: Good afternoon.

MS. BREEN: Mr. Mahoney, do you know if the term that you referred to in section 39 of the act is defined law enforcement proceeding in the act?

MR. MAHONEY: No, I don't. No.

MS. BREEN: Okay. Have you checked that?

MR. MAHONEY: No, I haven't. No.

MS. BREEN: Okay. In terms of your understanding of the term law enforcement proceeding, where did that come from or is that just your interpretation?

MR. MAHONEY: No, that comes from – my work on my doctoral dissertation really did require an examination of how WorkplaceNL – or Workplace Health, Safety and Compensation Commission at that time – was able to participate and/or provide information to police during an investigation. So when I was doing my doctoral dissertation and looking at how investigations are conducted, and in particular, this case would be a fraud investigation, how information is shared with the police, it was in the context of investigation.

So when I talk about law enforcement proceeding, it was that enforcement of the law, the investigation of the law, the determinations of what, if any, statutes had been violated and/or breached. That was my understanding of the meaning of law enforcement proceeding.

MS. BREEN: Okay. And have you checked since to see if it is defined in the act?

MR. MAHONEY: No, I have not.

MS. BREEN: Okay.

MR. MAHONEY: No.

MS. BREEN: When you gave your statement to police back in April of 2015, and this was the statement to Corporal Henstridge April the 9th, and I would like to refer you to that statement, if I could. I know you have reviewed it prior to coming in today.

MR. MAHONEY: Okay.

MS. BREEN: The exhibit number, Madam Clerk, is P-0081.

And the page I would like to refer to is page 24. And the lines would be, Mr. Mahoney, 612 to 619. And I'm sure you've likely reviewed that before coming here today.

MR. MAHONEY: Yes.

MS. BREEN: And, Mr. Mahoney, would you agree that when you were speaking to Corporal Henstridge at that time you were very clearly saying that you were told that Constable Smyth was investigating a threatening tweet, a threat of a general nature to politicians?

MR. MAHONEY: Yes.

MS. BREEN: Okay. And this statement was taken on April the 7th?

MR. MAHONEY: April the 9th, I believe.

MS. BREEN: I'm sorry, April the 9th.

So, you know, you strike me as a careful man.

MR. MAHONEY: Uh-huh.

MS. BREEN: In terms of your use of the – or the description of your conversation with Constable Smyth at that time, one would assume that the interview you gave at that time would be the best evidence or the best evidence of your recollection of what actually occurred. Do you agree?

MR. MAHONEY: I do agree.

MS. BREEN: Okay. So, what I'm asking you, cause what you have described for the Commissioner, I think you've been interchangeably using the terms disconcerting comments versus, you know, possibly a threat. Is there a difference in your mind? Were the comments being used interchangeably at the time?

MR. MAHONEY: If I could clarify what I mean here is that when I'm provided with something that I can make a determination, well, then I can make a determination of what I believe it does or does not constitute a threat.

What I was trying to say here is that, when I was speaking to the officer, he was telling me that generally there was a tweet that – when I say threaten generally, I mean it wasn't really described to me explicitly as a threat. It was like, he was saying there was something said, it was disconcerting.

And I even state here that I was not even aware of the nature of the threat because I was never told exactly what this statement was or what was written or what was verbally spoken. I was just able to say that, you know, we were talking about it, it was about, generally, a threat made to senior government officials and that he was investigating that.

So, you know, it was – I guess my hesitation in using the word “threat”; that's not my word. It's what I was described what was being investigated. That's the law enforcement proceeding I believe that we were involved in.

MS. BREEN: So that's – and that's what you got from the conversation with –

MR. MAHONEY: Yes, it is.

MS. BREEN: – Constable Smyth.

The other –

THE COMMISSIONER: Ms. Breen, I might mention, I'm sure you're aware, that the actual language of the email, I think from Constable Smyth, refers – or from somebody in the process – referred to disconcerting comments. That was in one of the exhibits that we –

MS. BREEN: Yes, I'm aware of that, Mr. Commissioner.

THE COMMISSIONER: – had earlier.

MS. BREEN: Yes, but in addition there was a telephone conversation –

THE COMMISSIONER: Sorry?

MS. BREEN: In addition to the email –

THE COMMISSIONER: Oh, yes –

MS. BREEN: – there was a telephone conversation which I understand it was a conversation during that conversation which lead Mr. Mahoney to come to the conclusion that he had the authority to release the information. So I do think it is an important point.

THE COMMISSIONER: Okay. So I wasn't aware – you're going now to the line of questioning started by Ms. Chaytor in terms of the authority to investigate under section 39 of ATIPPA. Is that –

MS. BREEN: Yes, I'm – so Mr. Mahoney, what I'm gathering from the information that you gave to the RCMP in April was that you were certainly under the impression that Constable Smyth was investigating a threat.

MR. MAHONEY: Yes.

MS. BREEN: Okay, and you have reviewed with us earlier, in your line of work, you're used to really the reverse process happening, being you're contacting the police.

MR. MAHONEY: Right.

MS. BREEN: You're saying, I've done my review, you know what the criteria are, you need to have something that is a threat and you need to know who it is being directed towards. Would that be accurate?

MR. MAHONEY: Yes.

MS. BREEN: Okay.

In this case, you had the police officer contacting you.

MR. MAHONEY: Yes.

MS. BREEN: And not giving you a copy, for example, of what it was he was referring to?

MR. MAHONEY: Correct.

MS. BREEN: You had no specific knowledge of what it was. Were you assuming from the conversation that Constable Smyth had made the determination that what he had reviewed had actually been a threat?

MR. MAHONEY: I think it was that I was convinced by the officer that he was investigating this, and I don't believe that he said to me that there was any determination made. He said I'm conducting an investigation regarding officials and just need to get to the bottom of this.

MS. BREEN: Okay.

MR. MAHONEY: It was very much active and I think that that spoke to the urgency. I don't think that there was anything that the officer said that led me to conclude that he had made the determination nor did he share with me the specifics of what it was that he was investigating, nor did I ask.

MS. BREEN: Okay, fair enough.

But you took from the conversation that there was certainly an urgency to the matter?

MR. MAHONEY: Correct.

MS. BREEN: Okay.

Did you draw any assumption from the fact that it was an urgent matter?

MR. MAHONEY: No, just that given the nature of a police security detail attached to a government office was calling me and I certainly believe there must have been something that was said, but the exact specifics of that I don't know, Ms. Breen.

MS. BREEN: Okay.

You had never had this happen before.

MR. MAHONEY: No.

MS. BREEN: Would it be incumbent upon you, do you think now, to have sought more information from Constable Smyth at that time?

MR. MAHONEY: I don't – and I've asked myself that question, was I satisfied in my authority under 39, is that something that I should have done and asked a specific question. But I don't think that I would do anything any differently. I was being asked to confirm information, to which I believe was part of an active investigation.

And under my understanding of section 39, I believe that is all that was required. I don't believe it was my role or nor was I even believing that it was something or even appropriate for me to turn the questioning around to the officer. It was more that I was being asked questions and as much as I have been involved in the system, when you're on the receiving end of the phone call, as you rightly described, he was doing the question asking and I was doing the answering. I did not turn that around while we were on the phone.

MS. BREEN: Okay.

Mr. Mahoney, one final question. If – have you read the series of tweets that are before the Commissioner?

MR. MAHONEY: Yes.

MS. BREEN: Have you read them in sequential order from bottom to top?

MR. MAHONEY: Probably back at the time – you know, when we're talking that December to February kind of time frame, yes, I would have imagined I would have looked at them in some sort of sequential order.

MS. BREEN: Okay.

Madam Clerk, I'm wondering could we bring up the exhibit of the full series of the tweet.

MS. SHEEHAN: Could I get the number of the exhibit?

MS. BREEN: I'm sorry; if Commission counsel could assist me with that.

MS. CHAYTOR: It would be in the tray of your exhibits from Ms. Ivey this morning. Do you still have that there?

THE COMMISSIONER: It may be P-0109?

MS. O'BRIEN: P-0009, I believe.

MS. BREEN: It was a Ms. Ivey exhibit, I know that.

MS. O'BRIEN: Yes, P-0009.

THE COMMISSIONER: P-0009?

MS. O'BRIEN: P-0009.

THE COMMISSIONER: Okay.

MS. BREEN: And perhaps, Madam Clerk, if we could go to the first tweet in time which would, I believe, be Mr. Collins's tweet. So Mr. Mahoney, you haven't seen this on this projector in a while or the tweet in a while; you're seeing it on this for the first time.

MR. MAHONEY: What dates are these tweets?

MS. BREEN: The – I believe, is the date – is it March 31 or is it April 3?

MS. CHAYTOR: April 3, I believe –

MS. BREEN: April 3.

MR. CHAYTOR: – is the Sandy Collins that starts this.

MS. BREEN: Yes.

MR. MAHONEY: Ms. Breen, I would not have been aware of these nor reviewed these. The information that I'm aware of would have been up to and including around the time of the roof coming off and tweets that were sent to our organization. This information I see here, I haven't seen this before.

MS. BREEN: So after this all occurred and Mr. Dunphy was killed, did you never go back to review what it was that had led Constable Smyth to his door?

MR. MAHONEY: Absolutely not.

MS. BREEN: Okay. Well if – Mr. Mahoney, I'd like you to review it now, if you will. It is before you. So I believe the – everyone here accepts that the first tweet in time was the tweet of Mr. Collins, which appears at the top of your screen.

MR. MAHONEY: Okay.

MS. BREEN: Okay. Madam Clerk, if we could go to the next page.

Mr. Mahoney, if you go to the bottom, you will see the response of Mr. Dunphy.

MR. MAHONEY: Where the highlighting is going on here?

MS. BREEN: Yes.

MR. MAHONEY: (Inaudible) yes, yeah.

MS. BREEN: Okay. And then if you move up to the middle, you will see that that tweet continues on.

MR. MAHONEY: Right.

MS. BREEN: And then to the top.

Madam Clerk, if you could go to the first page of the tweet series.

MS. SHEEHAN: (Inaudible.)

MS. BREEN: The bottom, Mr. Mahoney, would be the next one in the sequence and then the middle.

MR. MAHONEY: Yes.

MS. BREEN: And then if you could go – at the middle, the last line, it says I won't mention, and then at the top. That would be the last tweet: "Won't mention names this time, 2 prick dead MHAs might have good family members I may hurt."

MS. BREEN: So have you read the entire tweet in context?

MR. MAHONEY: I've read this here now, yes.

MS. BREEN: Okay.

MR. MAHONEY: Yeah.

MS. BREEN: My question to you – and Mr. Mahoney, if you want a minute to think about it, because I understand you're reading this for the first time –

MR. MAHONEY: Uh-huh.

MS. BREEN: – but if you had, had this information at the time – and you'll see the tweet says, "I hope there is a God, I think I c him work on two garbage MHAs who laughed at poor ppl ... he got them before they got to enjoy the pension they didn't deserve, i won't mention names this time, 2 prick dead MHAs might have good family members I may hurt."

MR. MAHONEY: Yes.

MS. BREEN: Okay. Had you had a copy of the tweet or had you been provided with that at that time, do you feel that you would have had the authority to release Mr. Dunphy's personal information to Constable Smyth?

MR. MAHONEY: Yes.

MS. BREEN: How so?

MR. MAHONEY: Two reasons; one, I do believe that the thinking that I had was that there was an investigation ongoing and I was being contacted by the police. So that was the law enforcement proceeding, not that I needed to be satisfied that the police officer had made a determination about what was appropriate.

My concern about this, in hindsight, is that this is using an "I" statement. And that's a little different than what I was saying was said earlier to our organization, meaning an "I" statement, meaning the individual. The author of this is saying I may hurt. That is expressing an intent, a behavioural intent.

When we looked at the tweet that was sent to my organization it was more of a general statement: I hope you all die.

MS. BREEN: Right.

MR. MAHONEY: That was a hoax statement. When you see I may hurt, that's a statement more indicative of intentionality. And I think that this would have just probably re-enforced the reason to which I provided the information.

Again, I want to state that it was limited to the contact information which I was asked. There was nothing else asked of me. But I do believe if I had to read this, or if I had to be told that, it would have just re-enforced the reasons for which I provided the information under section 39.

MS. BREEN: And Mr. Mahoney, I accept your answer; however, would you not agree that the context of this tweet and this comment, I may hurt, leading up through the tweets, clearly indicates that there was no threat by Mr. Dunphy?

MR. MAHONEY: I'm sorry, Ms. Breen. I'm not privy to what it is that you're saying that says clearly. I think that what I would suggest to you, if I had received this tweet, this probably would have been a circumstance where I may have had to call the police and ask them to go attend at the person's door. Because this is what I said happens all the time.

When we have people who make these kinds of statements, this goes beyond the general from my perspective, because it's saying: I may hurt. There's a statement here of intent and maybe even a future intent. So from my perspective, it is this potential future that is of concern. And to tell you the truth Ms. Breen, in my situation I am always asked to look at everything forward, as if I'm looking at it in hindsight.

So, for example, if someone attended our building and drove their van into the front of the building after making a statement: I may come down and drive my van in. I'm looking at that situation saying, listen, I'm going to be asked if this happens, what if anything I did to keep the staff safe. So from my seat in charge of corporate security, I suggest that this type of statement, if it was brought to my attention or if this had to have been a statement about the staff at WorkplaceNL, and I know it was not, but your question to me was if I read this and in this context, would that have encouraged me to continue to provide the information or not. I would suggest that it is, from my reviewing of this, in the context in which you provide me now, that I'm saying that I think that this would warrant further follow-up.

MS. BREEN: Okay, further follow-up. And I believe earlier Mr. Mahoney you had said that your first step when someone flags a social media complaint is to conduct a review.

MR. MAHONEY: Yes.

MS. BREEN: The review would determine number one, whether there was a threat and who that threat was directed towards.

MR. MAHONEY: Correct.

MS. BREEN: Okay. So you have focused very heavily on a phrase, I may hurt, as a perspective intention of hurting someone physically, I assume.

MR. MAHONEY: Based upon your request for me to look at this and analyze it in light of what would I have done retrospectively, yes.

MS. BREEN: Okay. But would you be suggesting, Mr. Mahoney, that in your course of your review that you would not utilize common sense in terms interpreting what was before you?

With the greatest of respect, I think that the common person who reads this statement from start to finish can clearly see that Mr. Dunphy is saying that he doesn't want to speak ill of the dead because they have family members who are still here who he would hurt their feelings.

MR. MAHONEY: I think Ms. Breen I've answered your question. I'm not sure what it is you're asking me because using words like common sense and these types of things, all I'm telling you is that from my review and if I was to look at this in the seat in which I was in, I would see it as something a little bit more serious than the emails that I saw, which we talked about earlier, where I had made a decision not to contact the police.

MS. BREEN: Mr. Mahoney, we saw the tweet that you referred to earlier in December where Mr. Dunphy had said something to the effect of: I hope WHSC dies, or something of that nature.

MR. MAHONEY: Yes.

MS. BREEN: Okay. And I would – or I'm putting to you that the common person would probably find that tweet more troubling than what we have before us here. Do you agree?

MR. MAHONEY: No.

MS. BREEN: You don't agree?

MR. MAHONEY: No.

MS. BREEN: And, Sir, you have given us testimony about, you know, the fact that you had asked for monitoring of Mr. Dunphy for a period of time –

MR. MAHONEY: Yes.

MS. BREEN: – to determine what would happen before you would go to the police.

MR. MAHONEY: Yes.

MS. BREEN: So why on this occasion are you saying if I had this right now I'd take this to the police?

MR. MAHONEY: (Inaudible.)

MS. BREEN: I understood that's what you would say, if this was before me, in fact, I would contact the police.

MR. MAHONEY: And I – and I just wanted to tell you that as I'm reading this now, you're asking me these questions, that I would say if this was a tweet that came to my attention, and yes, given the fact that I would call people into my office to have a discussion about the context in which it was said, I would want to do further follow-up on that last part of that last sentence.

You know, I understand what you're saying and you're talking about, you know the common person and a person reading this. Well, I'm talking about me. And yes, I tend to probably have more of a eye on the intentionality piece, but it is I who's answering your question. And I'm not sure that it's fair to say that, you know, I would represent the common person having a look at this. I do – would happen to have been looking at it for issues of security and safety.

MS. BREEN: Okay. So you're saying to us that had you had this tweet –

MR. MAHONEY: Yes.

MS. BREEN: – you would have taken further steps with it.

MR. MAHONEY: Yes.

MS. BREEN: What do you mean by that?

MR. MAHONEY: I think I would want to know – like, for example, in these situations it's not uncommon for us to ask a case manager to call the person and say: You said this, well, what do you mean? Who are you referring to? Is this something we need to be concerned about? Are you planning on hurting yourself or others? Because it is incumbent upon us as a public entity to reach out to individuals in distress, to find out if they are at risk of hurting themselves and/or others. It's just a part of what we would expect our staff to do. So that might have been one of the first things I would ask to be done. I might ask a manager or a director to go meet with the case manager to see if we can put this in context. But I certainly would ask for some further follow-up.

MS. BREEN: Okay.

MR. MAHONEY: And if, if I was still concerned, it's easier for me to get the facts and make a determination than it is for me to walk away and go, you know what, I'm still concerned about this and I'm not doing anything. So I think, you know to be honest, I would do further follow-up to find out what this actually –

MS. BREEN: And I have no problem with that. I understand that –

MR. MAHONEY: Yes.

MS. BREEN: – you would do further follow-up. But in terms of, I think you had earlier said I would take this to the police, where I had understood you before to say very clearly that we do a review. We know from the police that unless we have a threat and we know who it's directed towards, the police don't take action.

MR. MAHONEY: But as you can see, even from the email I received from Shawn Pelley you can see that there's people who are aware of what the police may act on or what the police may not act on.

MS. BREEN: Correct.

MR. MAHONEY: By calling the police and asking to have a discussion about it, it's only for the determination of whether they think it's something to act on or not. It's just getting another set of eyes, more of a police set of eyes, if I may, an investigative set of eyes to see what, if anything, may need to be done.

MS. BREEN: Okay.

MR. MAHONEY: It would be, I would suggest to you, that it would be incumbent on me to make sure that I am satisfied and that would be part of the process in being satisfied.

MS. BREEN: Fair enough. And that would take some time, I presume.

MR. MAHONEY: Yes, yes, for sure.

MS. BREEN: And it would be, as we saw with what you did with Mr. Dunphy's tweets before, I believe you monitored him for, how long?

MR. MAHONEY: It was for a couple of months. So we started in December and I said I – and it wasn't me who was doing the monitoring, I did ask our investigator to do it, and I said I just want you to keep an eye on the Twitter space to see if there's a sign of escalation. That usually is another sign of risk and there was no sign of escalation of the information that I was privy to.

MS. BREEN: So you would suggest, as a first step, it would be a monitoring situation that you normally use at Workers'.

MR. MAHONEY: Yes.

MS. BREEN: Is that correct?

MR. MAHONEY: That is correct.

MS. BREEN: Then you meet with a case manager or whoever's doing the monitoring. Then you make a determination as to, really, whether or not this is a potential threat or if it's something else.

MR. MAHONEY: That's the internal process at our workplace, yes.

MS. BREEN: Okay, and is there a reason why you take that time to make that kind of an assessment?

MR. MAHONEY: I think, from my perspective, I need to gather the facts. I need to make a determination about what, if anything, needs to be the next step, up to and including calling the police.

As an agency of government, we don't necessarily use that as our first step. We have to be satisfied that there's something of real concern here, but there have been times when we've called the police and the police look at it and go, you know what, I understand why you're concerned but that's really not something we can act on.

MS. BREEN: Okay.

MR. MAHONEY: So it is sometimes just to get that extra set of eyes on what we are talking about to see what, if anything, needs to be done.

MS. BREEN: Thank you very much.

Those are my questions.

MR. MAHONEY: You're welcome.

MR. KENNEDY: Good morning, Mr. Mahoney.

My name is Jerome Kennedy. I'm counsel for Constable Joe Smyth. I do have some questions for you, Sir.

MR. MAHONEY: Okay.

MR. KENNEDY: Mr. Mahoney, you're – you are aware, I take it, that the files which have been provided to the Commission – sorry – the files which have been provided to the Commission by Workplace Newfoundland and Labrador include a legal file.

MR. MAHONEY: Yes.

MR. KENNEDY: An investigations file.

MR. MAHONEY: Yes.

MR. KENNEDY: Corporate security file.

MR. MAHONEY: Yes.

MR. KENNEDY: And records in possession of the CEO's office.

MR. MAHONEY: Correct.

MR. KENNEDY: Have you reviewed all of those documents, Sir?

MR. MAHONEY: Yes, at some point in time I have reviewed pretty much all of those tweets.

MR. KENNEDY: So I'll have some questions on some of those as we move along.

MR. MAHONEY: Okay.

MR. KENNEDY: In terms of your process of threat assessment, which you've described, do you know if that's the same process that would be utilized by, for example, a police force or the premier's security detail?

MR. MAHONEY: No, I would not.

MR. KENNEDY: No, because you wouldn't have access to databases, police databases that they would have access to – correct?

MR. MAHONEY: Correct.

MR. KENNEDY: And that would be very important in terms of doing a threat or risk assessment, wouldn't it?

MR. MAHONEY: Yes, it would.

MR. KENNEDY: Sir, do you see a difference between a threat assessment and a risk assessment?

MR. MAHONEY: Yes.

MR. KENNEDY: What would be the difference?

MR. MAHONEY: The threat assessment is really to determine the nature of the threat, the intent behind the threat. The risk assessment, for me, is that probability that the person will act on the threat.

MR. KENNEDY: Okay.

MR. MAHONEY: And, as I stated earlier, when you compare this individual to other individuals who have carried out those actions, how does this person appear, are they more dissimilar or more similar.

MR. KENNEDY: So in terms of a threat assessment, would there be proactive steps required before you get to the stage of assessing risk?

MR. MAHONEY: Could you be more specific?

MR. KENNEDY: Yeah, in terms of a threat assessment you take certain steps –

MR. MAHONEY: Yes.

MR. KENNEDY: It's only after taking these steps that you can perform a risk assessment – correct?

MR. MAHONEY: Yes.

MR. KENNEDY: So there's the difference between a threat assessment and a risk assessment.

MR. MAHONEY: Correct.

MR. KENNEDY: Okay.

So when you see the comment, hope all WHSCC people die –

MR. MAHONEY: Right.

MR. KENNEDY: The first step is to look further into it –

MR. MAHONEY: Yes.

MR. KENNEDY: – monitor it –

MR. MAHONEY: Yes.

MR. KENNEDY: – and determine whether or not there is a risk.

MR. MAHONEY: Correct.

MR. KENNEDY: Sir, you've also indicated that in terms of doing these kinds of investigations that there can be early intervention.

MR. MAHONEY: Yes.

MR. KENNEDY: And the early intervention could be at the stage of finding out why the person said what he or she said.

MR. MAHONEY: Correct.

MR. KENNEDY: In other words, especially with social media – and I think you referred to the fact that the written word being open to interpretation.

MR. MAHONEY: Correct – and perception.

MR. KENNEDY: And perception.

MR. MAHONEY: Yes.

MR. KENNEDY: And that becomes especially important with social media being a relatively new platform.

MR. MAHONEY: Absolutely.

MR. KENNEDY: Because when you did your training back in the – for your Ph.D. or did your Ph.D. there wouldn't have been any social media at that time (inaudible).

MR. MAHONEY: Correct, yep.

MR. KENNEDY: And one of the proactive steps that can be taken, I think you indicated, has been utilized at Workplace Newfoundland and Labrador, is a visit to an individual.

MR. MAHONEY: That would be correct. When we contact the police that's usually the first step that takes place is the police officer attends at the door and speaks to the individual.

MR. KENNEDY: I think you've indicated, Sir, that there were a number of times when the police were called and charges were laid.

MR. MAHONEY: Yes.

MR. KENNEDY: You also indicated in your discussion with Commission counsel that there were situations where the police would visit an individual.

MR. MAHONEY: Yes.

MR. KENNEDY: In other words, you would provide the information to the police and they would visit an individual.

MR. MAHONEY: That is correct.

MR. KENNEDY: Sir, how many occasions are you aware of that happening?

MR. MAHONEY: I think I said earlier this morning approximately about as many times as happened with people being charged. So if there was two, three or four that were charged, there was two, three or four that the police would have attended at the door to have a discussion with the person who made the statement.

MR. KENNEDY: So in attending at the door, are they still – would the – is this a part of the process of threat assessment?

MR. MAHONEY: It's part of the process then of determining what steps, if any, we need to make –

MR. KENNEDY: Right.

MR. MAHONEY: – from a corporate security perspective; do I need to put a flag on the file; should we put this person on written correspondence only because they may be more likely to say things verbally. If they have said things written, then maybe we will encourage them to have an authorized rep. So our determination of threat and risk is about what, if anything, is in our power to deal with this.

MR. KENNEDY: Yep, because –

THE COMMISSIONER: Sorry, Mr. Kennedy, can I just clarify something?

Are you saying that in the time that you've been involved with corporate security at Workers' Compensation, I'll call them that, there've been three times when there've been charges laid and convictions –

MR. MAHONEY: Yes.

THE COMMISSIONER: – and you're saying and there'd been three other times where a visit by police to the door of the individual was sufficient to have the matter resolved.

MR. MAHONEY: Yes.

THE COMMISSIONER: So about three and three. Okay.

MR. MAHONEY: Yep.

MR. KENNEDY: Did the police then report back to you and indicate the results of their discussion?

MR. MAHONEY: They did, yep.

MR. KENNEDY: Now, you indicated, Sir, again, it's either in your statement or maybe it's in your interview with Commission counsel, that when Constable Smyth said I'll think I'll pay, or I'll have to pay the man a visit, whatever the words were –

MR. MAHONEY: Yes, yep.

MR. KENNEDY: – that he was going to visit Mr. Dunphy, you thought that was an appropriate step?

MR. MAHONEY: It sounded like the next kind of natural step that would take place if I had of been the person who contacted the police, yes.

MR. KENNEDY: Because there's disconcerting comments that you interpret could relate to the threats –

MR. MAHONEY: Yes.

MR. KENNEDY: And so visiting the individual would be a step that, an early intervention step that could prevent escalation.

MR. MAHONEY: Yes, and I think that that statement that the officer made to me was in response to me saying that there was relatively low risk of him carrying these threats out down here. So again, that sounded completely congruent with what I would have thought.

MR. KENNEDY: And it would have been a step that you would consider yourself?

MR. MAHONEY: Correct. I would consider it myself in contacting the police and ask them to attend at the door.

MR. KENNEDY: You've also indicated in your testimony here today that Constable Smyth – your impression, or your interpretation, that he was engaged in an investigation that had not made a determination as to whether or not the disconcerting comments were a threat.

MR. MAHONEY: And I think that that was very much the nature of the conversation. It was, you know, the word investigation was used several times.

MR. KENNEDY: Yep. And so, in terms of the factors that you consider at Workplace Newfoundland and Labrador, they may not be the same factors considered by the premier's security detail in conducting a threat or risk assessment.

MR. MAHONEY: And I tried to make that clear when I was speaking to Constable Henstridge. I actually said that I was talking to him about the tweets to which I was privy. And because I was not privy to what it was he was investigating, I couldn't make any comment whatsoever about that.

MR. KENNEDY: Yeah. And then in terms of your investigation at Workplace Newfoundland and Labrador you had engaged, or the legal department was engaged –

MR. MAHONEY: Yes.

MR. KENNEDY: The – there was monitoring of the tweets, Mr. Dunphy's tweets –

MR. MAHONEY: Yes.

MR. KENNEDY: – by your staff.

MR. MAHONEY: Yes, absolutely.

MR. KENNEDY: And we see in one email, I think it's Mr. Pelley who says I don't think the police will act on this.

MR. MAHONEY: Right.

MR. KENNEDY: So there's consideration of going to the police?

MR. MAHONEY: Yeah, and there always is when we are doing this monitoring. We don't implement the monitoring unless there is something happening that means we have to keep an eye to what is going on here.

MR. KENNEDY: So on the three occasions where the police have attended at the door and it essentially resulted in, I don't know of solving the matter, or at least reducing the concern.

MR. MAHONEY: It certainly de-escalates, yes.

MR. KENNEDY: So escalation is or de-escalation is an important term, is it?

MR. MAHONEY: It is.

MR. KENNEDY: And early intervention can do that.

MR. MAHONEY: Yes.

MR. KENNEDY: Okay, thank you.

A lot of that, though, will depend on the context in which the investigation or review is being conducted – correct?

MR. MAHONEY: Correct.

MR. KENNEDY: Sir, there were also in – I'm going to refer you to some documents now that are, have been, some of which you've been provided. They all come from the Workers' Compensation file. We've gone through P-0085, which is the comment of December 12th, all – "... hope all Whscc Die."

MR. MAHONEY: Right.

MR. KENNEDY: That's a general comment, which in your opinion monitoring is sufficient at that point.

MR. MAHONEY: Correct.

MR. KENNEDY: Now, there's some other, if I could just ask the witness to see, or if we could put up, Madam Clerk, Exhibit P-0118.

MS. SHEEHAN: 108?

MR. KENNEDY: Zero, one, zero, eight – so I guess it'd be 108.

THE COMMISSIONER: Uh-huh.

MR. KENNEDY: Now, Commissioner, I will make clear that you'll see some yellow – I didn't realize this would come out on the actual scan – those yellow highlighting –

THE COMMISSIONER: Right.

MR. KENNEDY: That was mine, Sir. That's not meant to highlight anything; that's simply my notes. And as I determined which exhibits I'd like put forward, unfortunately at 10:30 last night I didn't have a whole lot of time to try to find the (inaudible).

THE COMMISSIONER: Just as long as you don't expect me to read this.

MR. KENNEDY: Well, it's actually – what I'm interested in here is the time frames. There was – do you know whose notes these are, Sir?

MR. MAHONEY: Yeah, I believe these are Shawn Pelley's notes of the monitoring, I believe.

MR. KENNEDY: And have you seen these before?

MR. MAHONEY: I have, yes.

MR. KENNEDY: And you'll see that these notes are, they start from December 12th –

MR. MAHONEY: Yeah.

MR. KENNEDY: – they go right up to December 31st –

MR. MAHONEY: Yes.

MR. KENNEDY: – off and on, not every day –

MR. MAHONEY: Yes.

MR. KENNEDY: – and they're specifically being monitored for threats, aren't they?

MR. MAHONEY: Yes, they are.

MR. KENNEDY: Yeah.

Again in January they pick up, three days in January there's monitoring –

MR. MAHONEY: Yes.

MR. KENNEDY: And then in February there's monitoring.

MR. MAHONEY: Yes.

MR. KENNEDY: And, in fact, I'm going to show you – it appears to be monitoring going into March.

MR. MAHONEY: Yep.

MR. KENNEDY: So if I could ask – and these are just for general comments, Sir, if I could ask if Exhibit P-0109 could be put up. Sir, these are also some other tweets from December 12th that are found in the Workers' Compensation file. Have you – are you familiar with these?

MR. MAHONEY: I would be, yes.

MR. KENNEDY: The complaint now on December 12th is in relation to the roof caving in and he says that if he had stayed on welfare, my home would be fixed. See that?

MR. MAHONEY: Yes.

MR. KENNEDY: So that is generally consistent with the complaints that Mr. Dunphy has made in relation to Workers', his dealing with Workers' Compensation – correct?

MR. MAHONEY: Correct.

MR. KENNEDY: The next tweet: He's been forced into bankruptcy by Newfoundland and Labrador WHSCC.

MR. MAHONEY: Yes.

MR. KENNEDY: The next page, and this is again on December 12th, the second tweet there, Donahue2DonDunphy @sculpen: "The deputy Premier of NL can't get Whscc 2 fix a wrong done to a injured worker"

Do you see that?

MR. MAHONEY: No, I don't.

MR. KENNEDY: Okay.

The second page – sorry, you got to bring up the next page –

THE COMMISSIONER: Page 11, is it?

MR. KENNEDY: It's page 2 of exhibit – this is it, Sir, yep.

THE COMMISSIONER: Got it, okay.

MR. KENNEDY: Okay, you see that second tweet there, Sir?

MR. MAHONEY: Yep.

MR. KENNEDY: "The deputy Premier of" Newfoundland and Labrador, or NL, "can't get Whscc 2 fix a wrong done to a injured worker in" Newfoundland Labrador ..."

MR. MAHONEY: Right.

MR. KENNEDY: Did you know at that point who the deputy premier of Newfoundland and Labrador was?

MR. MAHONEY: At that point, I would have, yes.

MR. KENNEDY: Pardon?

MR. MAHONEY: At that point, I would have known who the deputy premier was.

MR. KENNEDY: And do you know today who – Steve Kent ring a bell?

MR. MAHONEY: I would suggest, yes, yep.

MR. KENNEDY: The next reference – and I just, for the record, Sir, I don't need to go into, Commissioner, Exhibit P-0110. There's simply appears to be picture of Mr. – or pictures of Mr. Dunphy's house. Are you familiar with those?

MR. MAHONEY: Yes, I am.

MR. KENNEDY: He did put pictures up on Twitter of his house – correct?

MR. MAHONEY: Yes, he did.

MR. KENNEDY: If we can now go to, Madam Clerk, Exhibit P-0111.

Do you have that in front of you, Sir?

MR. MAHONEY: I do.

MR. KENNEDY: Again, forget the yellow marking, the – what was found in Workers' Compensation file would be the document itself.

It's addressed to PaulDavisNL@stephenkent. Are you aware of, at that point – and, Sir, this is December 16 –or January 16, 2015, the role was occupied by Paul Davis and Stephen Kent?

MR. MAHONEY: Yes.

MR. KENNEDY: And what were their roles at that point?

MR. MAHONEY: At that point, Paul Davis was the premier, and Steve Kent was the deputy premier.

MR. KENNEDY: If you look at the second tweet there, Sir, "Animals in" Newfoundland and Labrador" Canada have better life than injured workers, animals r healthy & can hunt food." Do you see that?

MR. MAHONEY: Yes, I do.

MR. KENNEDY: Again, that's consistent with the other complaints by Mr. Dunphy – correct?

MR. MAHONEY: Absolutely consistent, yes.

MR. KENNEDY: Does that cause you any concern at all as you're reading that?

MR. MAHONEY: No, from a risk or threat perspective, no. And I think that that's consistent with what we described Mr. Dunphy as. These were his opinions –

MR. KENNEDY: Okay.

MR. MAHONEY: – and that would have been how I would have categorized these. These were his opinions.

MR. KENNEDY: Okay.

If we could now go to exhibit, Madam Clerk, Exhibit P-0112; these are tweets from February 3, 2015 – they're going to come up in a second, Sir.

MR. MAHONEY: Okay.

MR. KENNEDY: From Mr. Dunphy, Donahue2DonDunphy @sculpen. There's now – these two tweets refer to politicians, if you just have a look at them, making the money they make and “know NL ppl live in tents” The bottom one, to VOXM News, “The ppl should bring back hot tar & feathers for these blind greedy politicians of NL Canada.”

Have you seen those before?

MR. MAHONEY: Yes, I have.

MR. KENNEDY: Do they cause you any concern in terms of a risk assessment, and now they're talking about politicians?

MR. MAHONEY: No, that didn't cause me any concern. It was again the – these would be relatively consistent. It wouldn't be just Mr. Dunphy in the public space making these kinds of comments across the country. These would be similar to the types – as I stated earlier in my discussion with Constable Henstridge, I'm also part of a national group that looks at these issues for all Workers' Compensation boards and commissions across the country, and each one of us, in sharing the kinds of things that we are dealing with, would have had these kinds of things said about government officials –

MR. KENNEDY: Okay.

MR. MAHONEY: – but not specifically naming a particular official.

MR. KENNEDY: If you see a particular official's name, does that cause any concern?

MR. MAHONEY: Yeah, it does, because it may be now – the question is, is there a threat directed to that particular individual.

MR. KENNEDY: If I could ask the witness if we could put up Exhibit P-0113. This appears to be a retweet – one second now; I have to wait for it to come up. This appears to be a retweet of a quote. Are you familiar with that quote?

MR. MAHONEY: Yes, I am.

MR. KENNEDY: And what does that quote say, Sir?

MR. MAHONEY: “The most dangerous creation of any society is a man who has nothing to lose.”

MR. KENNEDY: That's on February 16, 2015. When you see a comment like that, does that cause you any concerns in the context of the previous texts – or, excuse me – tweets that have come before it?

MR. MAHONEY: I would state to you that I would be more concerned if this wasn't an image and a capture and a reference made to another individual. If it was the individual who said it themselves, I certainly would be more concerned.

THE COMMISSIONER: Just – have you been able to confirm whether it is in fact a retweeting by Mr. Dunphy, or is it possibly just something that landed on his Twitter feed and – you know, if he did something either in putting it on originally or retweeting it, then we can, I think, infer that he was adopting the point that's being made by James Baldwin in it.

MR. KENNEDY: Can you tell if that's a retweet, Mr. –

THE COMMISSIONER: Where Mr. Baldwin –

MR. MAHONEY: I really don't know. I rely on really the communications people and investigators to deal with that. I am so non-techie, and social media is not my strength for sure.

THE COMMISSIONER: It may be a matter, Mr. Kennedy, of just getting together with counsel and trying to reach agreement. I don't know myself.

MR. KENNEDY: It appears to be a retweet to me, in my limited experience.

THE COMMISSIONER: Yeah, the only reason I'm hesitating is because there are other tweets there where at the top of them it specifically does say retweet or retweeted. I don't know if I can put my finger on them now, what I looked at. I saw some earlier this morning, and –

MR. KENNEDY: You are correct, Commissioner, there are other ones, yeah.

THE COMMISSIONER: Sorry?

MR. KENNEDY: You are correct, there are other ones (inaudible).

THE COMMISSIONER: Yeah, I don't have them right in front of me there now, but –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – and I don't want to delay matters by bringing them up.

MR. KENNEDY: We'll have to come back to it.

THE COMMISSIONER: But I will say that there are some that we have filed where it expressly says across the top –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – retweeted by Mr. Dunphy, and this one does not have that. That's not to say that it may not have been retweeted by him.

MR. KENNEDY: It's something we can certainly check on, Sir, but from your – this is found in the Workers' Compensation file. If I understand you correctly, Mr. Mahoney, what you're saying is that if this comment was made by the individual, him or herself, it would cause you significant concern?

MR. MAHONEY: That is correct, yeah. It would certainly be a concern, because the nothing to lose component of that, but what is not a concern here is it's a generalized statement to societies in general, the most dangerous creation of any society is a man who has nothing to lose. The individual here has not stated I have nothing to lose. But yes, if this was written in the person's own pen – I know that's not even the right word – but if the person typed this themselves and said, I am dangerous because I have nothing to lose, then that certainly would be different.

MR. KENNEDY: But it would also be something that would have to be looked at in the context of other information and what's come before that, correct?

MR. MAHONEY: The context is very, very important.

MR. KENNEDY: Yeah. If I could ask the witness now to be shown P-0116. This appears to be part of the earlier series of tweets that were shown to you by Commissioner counsel, Commission counsel. If I could just – there are handwritten notes on that. Those are not mine, Commissioner. Do you know whose handwritten notes are those?

MR. MAHONEY: They may be from the director of communications because I see the name Carla Riggs there, February 24, and she would be the director, but I can't confirm whose pen and penmanship this is.

MR. KENNEDY: In terms of monitoring tweets, how often has your office or have you given direction for tweets to be monitored in your experience?

MR. MAHONEY: Very limited cases. When there tends to be a lot of it, and coming from one individual, it usually means we have someone who is of concern or of particular interest to make sure that they don't become more of a concern. And if my recollection serves me correctly, the issue here, in this pen here was – and, again, I'm – I want to clarify or probably apologize for the fact that I am not any expert in social media, but my staff would tell me how many followers they have, how many times they read tweets, what retweeting means, is this person an opinion leader or an opinion follower. So that seems to be not an opinion setter, and more – you can see down here at the bottom – more making noise here with this. So this is the kind of discussion that the communications people are having. There's noise in social media, but it doesn't seem that there's many people following or retweeting.

MR. KENNEDY: But if you're looking at a determination of a risk assessment or a threat assessment in terms of the individual making the comments, it's the comments that you look at, correct?

MR. MAHONEY: True, yes.

MR. KENNEDY: Not how many followers they have or how often –

MR. MAHONEY: No, this was a communications lens on this particular document here.

MR. KENNEDY: The third – and the series of tweets, if I remember correctly, we had entered earlier and you were questioned on by Commission counsel were around the same time frame.

MR. MAHONEY: Yes.

MR. KENNEDY: The third tweet refers to, "that's how Whscc look at us, liars & abusers of the system." Mr. Dunphy making the comment.

MR. MAHONEY: Yes.

MR. KENNEDY: That's a common theme, isn't it?

MR. MAHONEY: Yes.

MR. KENNEDY: If you go to the next page, and he's engaging in a conversation with another individual here it appears to be – we'll wait for the page to come up. Again, forget the yellow markings – that's mine. Everything else came from the WorkplaceNL file.

He's engaging in a conversation, it appears now, with other individuals or directing his comment towards other individuals. The third or second tweet, he says "they crucify u to drive u away" See that comment there?

MR. MAHONEY: I do, yes.

MR. KENNEDY: That would be a comment theme also, would it?

MR. MAHONEY: Again, yes.

MR. KENNEDY: The next tweet, Sir, Mr. Dunphy says, "Whscc killed my wife in 1990 after 2 months waiting for them to reopen my claim, had no\$ & she was Diabetic."

MR. MAHONEY: Yes.

MR. KENNEDY: Have you seen that tweet?

MR. MAHONEY: I have.

MR. KENNEDY: Does that cause you any concern in terms of a threat or risk assessment?

MR. MAHONEY: No.

MR. KENNEDY: Okay. At the last one – the next – the last one on that page, there's a reference to – and again, he's engaging in a conversation with a number of individuals. "Ed Maynard was CEO of Whscc here in NL & he was sued not Whscc for what he put the injured through." Do you see that?

MR. MAHONEY: Yes, I do.

MR. KENNEDY: Do you – are you familiar with an Ed Maynard?

MR. MAHONEY: I am, just from (inaudible) he would have been the CEO that predated me. And exactly what dates, I wouldn't be able to tell you. But he would have been the CEO.

MR. KENNEDY: The last tweet I want to refer you to on this page, Sir – the next page, excuse me. So it would be page –

UNIDENTIFIED MALE: Four.

MR. KENNEDY: No, this is the right page here now. The third tweet he refers to going bankrupt, or Whscc "... ppl like me had to refinance 4 times & go bankrupt." The litany of concerns – excuse me, you see that there?

MR. MAHONEY: Yes, I do; yes.

MR. KENNEDY: Have you seen that before?

MR. MAHONEY: I have.

MR. KENNEDY: The litany of concerns expressed by Mr. Dunphy in these tweets now in February – and we’re dealing with an incidence in April – does that cause you any concern that there is any type of escalation here or that there is a, the potential threat is increasing?

MR. MAHONEY: From my perspective, and when I was reading these, and reading them, you know, not all at the same time but reading some on – some in December, some in January, and again some in February. It seemed to be, and I’ll use the words consistent theme. There was a consistent theme of financial hardship. There’s reference to a number of claims, there’s reference to the staff overruling doctors. But again, my impression of this is that it is the man’s opinion about how he perceives his experience in relation to his dealings with Workers’ Compensation.

And, you know, there’s no question that Mr. Dunphy identified in his tweets sentiments of financial hardship.

MR. KENNEDY: I have two more tweets to refer you with and I’m finished with these. If I could have exhibit, Madam Clerk, 114 put up, please. This is a series of three pages. Do you see that, Mr. –

MR. MAHONEY: I do.

MR. KENNEDY: – Mahoney. The – these are – this first one begins at 8:53 on simply a picture of a house.

MR. MAHONEY: Yes.

MR. KENNEDY: Can you tell in any way if that’s Mr. Dunphy’s house?

MR. MAHONEY: No, I can’t and – no, I can’t.

MR. KENNEDY: If we go to the next page, there are a couple of more tweets. Again, they appear to be Mr. Dunphy’s. The first one: “Now they murder us especially in Newfoundland Canada.”

Do you see that one?

MR. MAHONEY: Yes.

MR. KENNEDY: To put that in context, go to the bottom of the page. “Its better to shoot yourself if seriously hurt on a job in Newfoundland Canada, cause Whscc in” Newfoundland and Labrador “will make you suffer more.”

Do you see those comments?

MR. MAHONEY: I do.

MR. KENNEDY: Whenever you see, in your job, tweets, letters, conversations where words like “murder” or “shoot yourself” are used, does that cause any concern in terms of a threat assessment?

MR. MAHONEY: That certainly does.

MR. KENNEDY: Okay.

So do you specifically remember seeing these tweets?

MR. MAHONEY: Yes, I do.

MR. KENNEDY: And these are March 3, approximately a little less than a month before the incident which we are dealing here at this inquiry.

MR. MAHONEY: Yes.

MR. KENNEDY: The next page, Sir, same date, 9:09 p.m. – there appears to be a series of these tweets. Donahue2DonDunphy, “Every working person in Newfoundland should carry a gun so they can shoot themselves if seriously hurt on” – the – “job.”

Do you see that?

MR. MAHONEY: I do.

MR. KENNEDY: Does that or did that at the time cause you any concern in terms of a threat or risk assessment when a person is talking about carrying a gun so they can shoot themselves?

MR. MAHONEY: This would have been more of a concern regarding is the person saying here that they are going to harm themselves. And that certainly from a case management perspective is just as much a concern. So yes, this is an escalation of sentiment about harm. But, in particular, this one here refers to probably a global perspective that instead of being seriously hurt, you know, suicide is another option.

And unfortunately, this is difficult to read because, from a WorkplaceNL perspective, this is the opposite of what we want. We want to provide the coverage that they’re entitled to. And this is what I meant by Mr. Dunphy having his own opinions. And this here is one of the ones that certainly did cause us concern because I was talking to staff at this point about are we getting any suicide litigations. And I was satisfied, at that point, that that was not the case, from a case management perspective.

MR. KENNEDY: Sure.

The last exhibit I want to refer you to, Sir, is Exhibit P-0115, if we could have that put up, please.

This is the next morning now at 7:10 a.m., March 4. The emails we had seen – or excuse me, the tweets we had seen the previous night, one has 8:56 p.m. So the next morning at 7:10, the first page “Mass murder of injured workers by starvation in Newfoundland Canada.”

In the context of what you had seen in the previous tweets and previous over the period of months, did this cause you any concern in terms of a risk or a threat assessment?

MR. MAHONEY: Yeah, certainly in terms of risk, because the person is now talking about more than one person and mass murder. But more again, more again I would see this as consistent with the financial deprivation opinion that Mr. Dunphy constantly brought forward. But yes, it certainly would be, it certainly did catch my attention because I did read it when it did happen.

MR. KENNEDY: The next page, then, and the last reference I want to make, in terms of the exhibits – it’s apparently about an hour and a half later, an hour and 29 minutes later. The “death penalty was abolished in Canada for murderers, but Govt’s kept death penalty in place for injured” workers.

Correct – see that?

MR. MAHONEY: Yes.

MR. KENNEDY: Does that again cause you concern, that kind of –

MR. MAHONEY: This one seemed to be dropping the perspective on government and keeping injured workers in real financial hardship. Again, this is not uncommon, Mr. Kennedy, that when we see tweets or we see an injured worker talking about the system that they make reference to government, that they make reference to mass murder and/or, you know, the death penalty. These, there's no question that these are concerning comments; there's no question.

MR. KENNEDY: When you see the, here at this last tweet I referred you to, hashtag – pound sign – #nlpoli?

MR. MAHONEY: I do.

MR. KENNEDY: Do you know what that represents?

MR. MAHONEY: I do not.

MR. KENNEDY: I think if you go back through a number of the other, some of the other tweets you also see that reference, but you don't know what that represents, do you?

MR. MAHONEY: I don't know what that means, no.

MR. KENNEDY: So this was on March 4. Do you know if there was any, anything that occurred between March 4 and the date of Mr. Dunphy's death on April 5? Was there any further monitoring?

Yeah, in fact, if I could – I'll help you out there, Sir. If I could have Exhibit P-0108 put up for a second.

THE COMMISSIONER: Mr. Kennedy, just on scheduling, how much time do you think –

MR. KENNEDY: I'll be 10 or 15 minutes more.

Exhibit P-0108. Okay, to save some time, Commissioner, I can refer to it as Exhibit P-0108, the last page, it's the handwritten notes that appears to be someone in your office, and the last entry – okay, here we go, sorry. Thank you.

If we could go to page 4, please. The last entry – again, forget the yellow highlight – March 19. Do you see that?

MR. MAHONEY: Yes.

MR. KENNEDY: So it appears that Workplace Newfoundland and Labrador was monitoring Mr. Dunphy up until March 19 at least.

MR. MAHONEY: Yes.

MR. KENNEDY: The notation here, same old comments – and please correct me if I don't have the handwriting proper, interpreted properly: no personal names used; comments about WHSCC killing people – is that what I read there?

MR. MAHONEY: Yes, yes.

MR. KENNEDY: Et cetera; no threats.

MR. MAHONEY: Right.

MR. KENNEDY: So comments about killing people, though, would have to cause a concern?

MR. MAHONEY: Absolutely, and I was looking for it. When I asked the staff in the investigative area to do the monitoring I was asking them for – I wanted to be made aware if there's any escalation or any statements made by Mr. Dunphy that he's targeting an individual and/or individuals in our workplace.

The statement that's being made is WorkplaceNL, or WHSCC, or Workers' Compensation starves people; they make reference to mass murders, those types of things. So I think the comment here that's coming from Mr. Pelley is these are consistent with the comments from before.

THE COMMISSIONER: What's the last word there on that?

MR. MAHONEY: Killing people, et cetera; no threats.

THE COMMISSIONER: Yeah, and the next line.

MR. MAHONEY: I don't know what that is. Looks like fine?

THE COMMISSIONER: Can anybody make it out?

MR. KENNEDY: It looks fine to me too, but I don't know.

MR. MAHONEY: I don't know what that means, Commissioner.

THE COMMISSIONER: Fine, probably satisfactory maybe. Okay.

MR. KENNEDY: Mr. Mahoney, I listened, I've read your transcripts, I've listened to your testimony carefully. You appear, Sir, to be a careful person in terms of compliance with your – not only your job but with legislation in terms of the release of information – correct?

MR. MAHONEY: Absolutely correct.

MR. KENNEDY: You wouldn't even release – you told the chair of the board that you could not release any information to him.

MR. MAHONEY: That is correct.

MR. KENNEDY: Okay.

So in your conversation when Mr. – Constable Smyth asked you about concerns you would have, you said you would put him, Mr. Dunphy, on the low risk –

MR. MAHONEY: Yep.

MR. KENNEDY: Yep.

That's based on the information that you have in your file and essentially, in this case, a lot of the monitoring of social media – correct?

MR. MAHONEY: Correct.

MR. KENNEDY: So when Constable Smyth says I think I'll have to visit this gentleman that sounds to you like a person – a perfectly reasonable step –

MR. MAHONEY: Correct.

MR. KENNEDY: – in all of the circumstances that you were aware of.

MR. MAHONEY: Absolutely.

MR. KENNEDY: Would you have done the same thing?

MR. MAHONEY: When I talked to the constable on the phone, we were talking about a set of circumstances; we were speaking the same language. If – all I can tell you is that he was presenting to me that he had to investigate to determine the level of risk and the level of severity of this threat, and I completely understood what he meant. And when I spoke to the constable to tell him that this was a similar situation down at our place and that we did have concerns, I was being very clear that we did have concerns. And, for all intents and purposes, we did have concerns up to and including a couple of weeks before because we were still checking to see for escalation.

MR. KENNEDY: But that he had not made a determination he was going to investigate.

MR. MAHONEY: Yeah, he was going to investigate. He was going to further follow-up with the individual, and that was really the way he said it. He didn't say it in any disparaging terms. He didn't say that fella or anything that sounded derogatory. He actually made it sound very professional, very sort of matter of course, sort of the next step in the chain of events.

MR. KENNEDY: In terms of – actually, on that point. In terms of your dealings with Constable Smyth, you referred to him as being professional. And is there anything else you can say about his demeanor, tone, comments that day?

MR. MAHONEY: I think that the things that he said were in two themes. One was protective detail, wanting to make sure that there was no risk to the elected officials. And the second theme in our conversation was investigation. And when I hung up the phone from that individual, I guess professionalism probably would have been a word that came to mind as it related to the conversation we had just had at a moment in time on the phone. That is how I perceived it.

MR. KENNEDY: And, Sir, in previous years are you – it's still your job, but you had a lot of training in risk assessments and threat assessments. Did Constable Smyth appear to you to understand what was involved in a threat assessment or a risk assessment?

MR. MAHONEY: Yes, he did.

MR. KENNEDY: So you had no concern about fishing expedition or a lack of knowledge or anything like that?

MR. MAHONEY: No, I did not.

MR. KENNEDY: Okay. Those would be my questions.

Thank you, Mr. Mahoney.

THE COMMISSIONER: Any further questions by counsel? Sorry?

MR. FLAHERTY: I have no further questions.

THE COMMISSIONER: Mr. Flaherty, okay.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Okay. Who's the order now? Normally Mr. – the counsel for the RCMP have no questions, I take it. I saw Ms. Rasmussen shake her head.

Mr. Avis?

MR. AVIS: I have no questions.

Thank you, Commissioner.

THE COMMISSIONER: None. Mr. Drover?

MR. DROVER: No questions.

THE COMMISSIONER: None. And then normally it would be Mr. Williams, then Mr. Flaherty.

Go ahead when you're ready.

MR. FLAHERTY: My name is Cletus Flaherty. I'm counsel for the Don Dunphy Community Coalition.

I just have some questions, essentially meant to clarify in my mind some of your testimony. In particular, there's some confusion caused to myself anyways with respect to what appears to be an interchangeable use of threat and risk assessment. Although based upon your evidence, they're two different things correct?

MR. MAHONEY: Yes.

MR. FLAHERTY: Threat assessment, then risk assessment, correct?

MR. MAHONEY: Correct.

MR. FLAHERTY: Okay. When you were assessing the tweets – geez, they're part of the exhibits for Ms. Ivey. The string of tweets during P-009, Exhibit P-009. During Ms. Breen's cross-examination, were you viewing the tweets and her questions in the frame of a risk assessment or a threat assessment?

MR. MAHONEY: Well, first of all, I would've made a determination of is a threat being made. And I think I spoke to that by saying: I may hurt. So I used the word intentionality. I'm really looking at is this a threat? And then second of all, is the person making some statement about their intent to do harm to another person or themselves? So the risk is about that second piece, the extent to which it is more probable than not that they will act on such a thought.

MR. FLAHERTY: And I would agree with you that there obviously is an element of intention there. And I can see why, based upon your evidence, why you would hone in on that. And that may hurt, may be looked upon as being a threat. However, can you point to any grammatical, contextual clues, either in that tweet or the preceding two tweets, which suggest what type of hurt is being threatened?

MR. MAHONEY: No, I think that what I would do here is because – for lack of a better term, I don't have a crystal ball. I don't know what the individual means. I would ask people to ask him, what do you mean here? Is this your intent to do harm to another person? Are you saying you don't want to do anything because you may hurt somebody?

So instead of keeping myself in the chair of wondering about what does the person actually mean, I would ask. There'd be enough of a concern raised by me that I would ask people, we need to take the necessary steps. And that's on a continuum from a case manager phone call up to and including the police, to

determine how we go about finding out and clarifying what the individual means by those last, say, five or six words.

MR. FLAHERTY: So then when you're viewing a statement, either on a letter or in a tweet, you do not attempt to look for grammatical, contextual clues as to what the threat is or what the threat entails –

MR. MAHONEY: Yeah.

MR. FLAHERTY: – you just see that there is evidence of a threat and then you take the next step?

MR. MAHONEY: Correct, because then it becomes more about what my lens is rather than about trying to understand what the person may be saying.

MR. FLAHERTY: Uh-huh. So at that – at that part in the threat assessment, is it fair to say that you've determined that there is a threat?

MR. MAHONEY: Could you ask me that question again? I don't think I understand.

MR. FLAHERTY: At that part in the threat assessment – so we see that there has been an identification of an intention to take an act to hurt someone. So when you move on to the next stage in your process, is it fair to say that you've determined – whether it's a preliminary or a final determination, I'll leave that up to you – you've determined that there's a threat at that point?

MR. MAHONEY: Yeah, I think that's fair to say, yes. I think that I would have to at least reach some sort of conclusion about what the person may have meant, and that's exactly how I would describe it. But by asking people to do the appropriate follow-up, I would be looking to either prove them right or disprove them.

MR. FLAHERTY: Okay. And so with respect to follow-up, I understand that it is the WorkplaceNL practice to have case managers contact clients, I guess I'll use for lack of a better word, and that sometimes these contacts can lead to de-escalation.

MR. MAHONEY: Yes.

MR. FLAHERTY: Are you aware of the case managers being trained in how to de-escalate –

MR. MAHONEY: No.

MR. FLAHERTY: – situations?

MR. MAHONEY: No, they aren't. We certainly are training our staff consistently on how to deal with disruption or people who present with aggression –

MR. FLAHERTY: Uh-huh.

MR. MAHONEY: – or people who tend to have difficulties communicating, and sometimes it's because they have an aggressive communication style.

MR. FLAHERTY: Uh-huh.

MR. MAHONEY: So we spend a lot of time with our case managers trying to help them understand how people communicate.

MR. FLAHERTY: Yes.

MR. MAHONEY: But certainly when it gets to a certain stage we ask for communications to be stopped –

MR. FLAHERTY: Yes.

MR. MAHONEY: – and then for appropriate case management tactics and clinical interventions to take place. And that did not happen here.

MR. FLAHERTY: Okay. Earlier on you said it was a perfectly reasonable step for Mr. Smyth – Constable Smyth, sorry – to visit Don Dunphy, based upon what you knew when you had – well, based upon what you know now, it was a perfectly reasonable step?

MR. MAHONEY: I think that what I said was there was a – I assumed that it was a perfectly reasonable step for him to take when he said I'm going to go and visit that gentleman, meaning I'm going to carry on with the investigation. That would not be an uncommon step for me to take, so I don't know why I would preclude an investigator from taking that next step.

MR. FLAHERTY: Okay.

During Mr. Kennedy's line of questioning – and particularly with respect to Exhibits 116, 114, 115, 110, when you discussed monitoring, is that part of a risk assessment or was that part of a threat assessment?

MR. MAHONEY: At that point it's really part of a threat assessment because what we have determined is no specific threat has been made, so I was looking for indications of escalation –

MR. FLAHERTY: Uh-huh.

MR. MAHONEY: – to see that it's more probable than not that a threat will be coming. And if we make a determination that a threat is made, then we will do a risk assessment to determine the extent to which we believe that the person will act on it.

MR. FLAHERTY: So in your organization generally – or in your job, if you see aggressive language tied to a person that may require additional monitoring to see if an actual threat becomes apparent or is made.

MR. MAHONEY: Yes.

MR. FLAHERTY: Because earlier in your testimony you said that – I mean the police would not be contacted –

MR. MAHONEY: Right.

MR. FLAHERTY: – unless you could identify a threat and who the threat was to.

MR. MAHONEY: Yes.

MR. FLAHERTY: Okay.

So when WorkplaceNL is, is engaged, it's not necessarily a reasonable step for the police to show up at someone's door unless WorkplaceNL has identified a threat and identified who the threat was made to.

MR. MAHONEY: Yeah, I think that that's the first step in it. Because we've had police attend at our office and we've showed them what we're concerned about and they may even say, listen, you know, there's no sense in us even taking this next step.

MR. FLAHERTY: Yep.

MR. MAHONEY: So that has happened as well, too. But my responsibility is to make the best decision about the information that's available to me and not think that my authority goes behind that. I have the authority to make the determination about the extent to which I see a threat. From a corporate security perspective, I have a responsibility to make sure the staff are safe and/or the claimant is safe, if the person is alleging self-harm, and then, more importantly, to take the appropriate action with third-party others sometimes.

MR. FLAHERTY: Uh-huh.

And so, based on your conversation with Constable Smyth can you tell if he said, or can you tell by how the conversation went – was he engaged in a threat assessment or a risk assessment?

MR. MAHONEY: I think that all I really said about – the officer said he was conducting an investigation.

MR. FLAHERTY: Okay.

MR. MAHONEY: I'm not sure how the police are trained and certainly a security detailed – obviously, I was aware that there was a connection to the RNC. How the police do their job was not something I directed my mind to.

MR. FLAHERTY: Okay, so you can't say if he was engaged in –

MR. MAHONEY: No, exactly.

MR. FLAHERTY: It was investigation as far as you knew.

MR. MAHONEY: It was an investigation – fact-finding I probably would say more than anything.

MR. FLAHERTY: And when Constable Smyth was talking to you, did it appear that he had determined that there was a threat made and he wanted to see what the rest of the threat being carried out was?

MR. MAHONEY: I think that's reasonable to say.

I'm not sure all these, the statements that you're making about what I was thinking at a moment in time necessarily reflect what I was thinking. I was having a conversation with a person regarding an investigation and what the person was saying to me seemed reasonable. I really wasn't spending any time critically evaluating what another person may or may not do.

MR. FLAHERTY: Uh-huh.

MR. MAHONEY: It was, I was asked to confirm an address and basically that's how the conversation started.

MR. FLAHERTY: Okay, no, thank you very much.

Those are all my questions.

MR. MAHONEY: Okay.

THE COMMISSIONER: Okay, are there any further questions by anyone? Ms. Chaytor, did you have –

MS. CHAYTOR: No, nothing arising.

THE COMMISSIONER: I thank you, Mr. Mahoney, for your testimony.

Though before we break, we'll be breaking until 9:30 tomorrow morning, I take it, and we're hoping, expecting, we'll have a full day of witnesses for tomorrow. Okay.

All right, thank you. We'll break, recess, now until 9:30 tomorrow morning.

MS. SHEEHAN: All rise (inaudible).