



COMMISSION OF INQUIRY  
RESPECTING THE DEATH OF DONALD DUNPHY

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Transcript

Volume 9

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*Commissioner: Honourable Justice Leo Barry*

Wednesday

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**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

**THE COMMISSIONER:** Good morning.

Ms. Chaytor, you had something before Mr. Flaherty.

**MS. CHAYTOR:** Good morning, Commissioner.

Yes, our very astute Chief Administrative Officer, Diane Blackmore, tells me that we missed putting into evidence one of our exhibits, and it would be P-0291.

**MR. COMMISSIONER:** 0291.

**MS. CHAYTOR:** And that was the use-of-force manual.

**MR. COMMISSIONER:** Okay.

**MS. CHAYTOR:** Thank you.

**MR. COMMISSIONER:** That's entered.

Okay, Mr. Flaherty, when you're ready.

**MR. FLAHERTY:** Good morning, Constable Smyth.

Yesterday, when we left off I was questioning you about – talking about the assessments or considerations you may have had prior to your interview with Don Dunphy with respect to the impact of (inaudible) on Don Dunphy's safety and health.

And getting to that, I just want to backtrack to your manual, and go to page 48 of the manual, not of the exhibit, page 48 of the manual.

So, Madam Clerk, if we could go back to page 48 of the manual; the one we had up yesterday, exhibit – I believe it was 218.

**THE COMMISSIONER:** Which manual, Managing –?

**MR. FLAHERTY:** Managing Targeted Violence; the one that we left off with yesterday.

**THE COMMISSIONER:** About the use of force, okay.

Can't find that one? Anybody have the right number there?

**MS. CHAYTOR:** 218.

**THE COMMISSIONER:** 218?

**MS. CHAYTOR:** Yes.

**MR. FLAHERTY:** Not of the exhibit, of the actual manual itself. So I believe the exhibit would be somewhere between – the page of the exhibit would be somewhere between 45 and 51.

**THE COMMISSIONER:** Are we talking about the lower right-hand corner, Mr. Flaherty?

**MR. FLAHERTY:** Lower right-hand corner.

**THE COMMISSIONER:** Yes, okay; so the Purpose of Protective Intelligence Investigative Strategies.

**MR. FLAHERTY:** Yes, and we're going into some of the case studies that Mr. Smyth would've – sorry, Constable Smyth would've reviewed during the course of his training.

So just to provide a bit of background; this is a case study with respect to a person who sent repeated, inappropriate communications to a judge saying that the judge was associated with Satanists and the world was evil because the judiciary did not take action to clean up the streets.

**THE COMMISSIONER:** That's just a lucky guess.

**MR. FLAHERTY:** The police had been in contact with this person following previous letters and they're aware that the person suffers from paranoid schizophrenia.

So I'm looking at the notes now that you've written yourself and so you have – it identified as number one preliminary assessment. So am I meant to – is that meant to mean that everything below that is part of your preliminary assessment?

**CST. SMYTH:** No.

**MR. FLAHERTY:** Okay. So what's number one preliminary assessment? What does that mean?

**CST. SMYTH:** That would be inclusive of just some of the cursory background checks.

**MR. FLAHERTY:** So cursory background checks. And what is the difference between a cursory background check and a full background check?

**CST. SMYTH:** A full background check could be inclusive of interviewing a broader range of individuals who are known to the particular person you are doing the background checks on. It may be inclusive of taking into consideration previous work history, interactions with other agencies, discussing – having interviews with persons that he's perhaps had other inappropriate communication and contact with. It could be an evaluation of psychiatric involvement with police, mental health issues, those kinds of things.

**MR. FLAHERTY:** Okay. Now you say that; however, when I look at your notes there doesn't appear to be a differentiation between preliminary assessment and everything that follows below that. Under preliminary assessment you have not noted what actions you would take as part of that preliminary assessment. Correct?

**CST. SMYTH:** Yeah, sure. Those are jot notes, absolutely.

**MR. FLAHERTY:** And so after you do your cursory background check, what is the next part of a preliminary assessment?

**CST. SMYTH:** I think it depends on the circumstances. This is –

**MR. FLAHERTY:** What are the potential steps –

**CST. SMYTH:** This is a very different –

**MR. FLAHERTY:** – that you’re taking in your preliminary –

**CST. SMYTH:** This is a different scenario and situation that I was dealing with, with Mr. Dunphy in terms of the available information and previous dealings and what is known in terms of mental health background. So the next step for me in this particular case for Mr. Dunphy was to do the personal interview.

**MR. FLAHERTY:** So I would put it to you that actually what’s described here and what you knew of Don Dunphy are actually quite similar. Would you not agree that this person has a grievance against the judiciary, based upon this case study?

**CST. SMYTH:** This case study, yes, he has a grievance against the judiciary.

**MR. FLAHERTY:** And there’s elements of unreal – there’s unrealistic elements of this obvious grievance. Essentially he’s saying: this judge is a Satanist; judges are evil ’cause they don’t clean up the streets. That’s unrealistic, isn’t it?

**CST. SMYTH:** I would think so, yeah.

**MR. FLAHERTY:** Okay. So, and like you said earlier, Don Dunphy had unrealistic elements, in your opinion, with respect to his grievance.

**CST. SMYTH:** Correct.

**MR. FLAHERTY:** Okay. And he sent repeated inappropriate communications.

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** And I’m speaking of the case study. And in Don Dunphy’s case, as you said, you went back a year and were able to identify repetitive, inappropriate communications in your opinion.

**CST. SMYTH:** Correct.

**MR. FLAHERTY:** So there’s a lot here that’s similar.

**CST. SMYTH:** There is.

**MR. FLAHERTY:** Now one thing that is this similar is that there was some indication as to the person’s mental health.

**CST. SMYTH:** Yes, it appears to be that they had a diagnosis.

**MR. FLAHERTY:** And in Don Dunphy’s case you never made any kind of inquiries into what his mental health was.

**CST. SMYTH:** I was not aware of any specific diagnosis, no.

**MR. FLAHERTY:** Were you aware of any evidence that suggested there might be an issue with mental health?

**CST. SMYTH:** Other than what I might glean from his commentary.

**MR. FLAHERTY:** What about Debbie Dunphy – did she say anything that would probably –

**CST. SMYTH:** (Inaudible.)

**MR. FLAHERTY:** – (inaudible) with respect to what Don Dunphy’s mental state was?

**CST. SMYTH:** She felt he suffered from mental health issues, yes.

**MR. FLAHERTY:** Okay. So you have your own opinion based upon your extensive one-hour review of a year’s worth of tweets, and you have the man’s next door neighbour saying I think he has mental health issues – that doesn’t provide you any tip that, you know what, I should assess what the mental health issues are before I interview the person?

**CST. SMYTH:** Well, that is part of the assessment. I think you answered your own question.

**MR. FLAHERTY:** I guess I’ll rephrase that question. You didn’t bother take any other steps to gather information with respect to his mental health, even though his Twitter suggested to you he might have mental health issues, and his next door neighbour, who had lived there for years, suggested he might have mental health issues.

**CST. SMYTH:** Sorry, what’s your question?

**MR. FLAHERTY:** You didn’t consider or make any other inquiries into Don Dunphy’s medical health even though in your opinion his Twitter suggested he might have mental health issues, and even though his next door neighbour – next door neighbour for years, if not decades – had said, I think he has a mental health issue. You didn’t take any steps to ascertain whether or not he did?

**CST. SMYTH:** At that stage, no. We’re limited in being able to solicit specific diagnosis. There is issues of doctor-patient confidentiality that that in the absence of a judicial order that we can’t necessarily –

**MR. FLAHERTY:** Okay.

**CST. SMYTH:** – gain access to.

**MR. FLAHERTY:** So you would only consider official diagnosis when assessing what a particular subject’s mental health may be?

**CST. SMYTH:** No, that’s not what I said.

**MR. FLAHERTY:** Okay.

**CST. SMYTH:** I was trying to answer your question.

**MR. FLAHERTY:** So, so you didn’t attempt to get an official diagnosis, but did you attempt to elicit information, say, from his daughter?

**CST. SMYTH:** Not at that stage, no.

**MR. FLAHERTY:** Why didn’t you? You didn’t know what his mental health was, but you had warnings that he might have a mental health issue.

**CST. SMYTH:** Yes, which would lend to a broader-based threat assessment, but at that time there was still no –

**MR. FLAHERTY:** Oh, we're not talking about –

**CST. SMYTH:** – indication of –

**MR. FLAHERTY:** – I'm not – not in respect to your broad-based threat assessment, with respect to your assessment of whether or not it's prudent to go interview this person alone.

**CST. SMYTH:** I didn't think it was necessary prior to speaking to Mr. Dunphy, no.

**MR. FLAHERTY:** Even though your training tells you that your presence at an interview may anger a subject, and this person might even have a mental illness and you don't consider what you should do, you don't consider what impact you'll have, you don't consider that you might need more information before you go into that meeting.

**CST. SMYTH:** I do absolutely consider that a person may be angered by our presence, of course. That's why go there with specific training and use-of-force options.

**MR. FLAHERTY:** Specific training. And yet somehow this man who got agitated by your presence – a 60-year-old, disabled man, with no history of gun use, was able to get the hop on you and get a gun trained on you without your knowledge. So you were prepared? You were prepared –

**MR. KENNEDY:** Is that a question, Commissioner –

**MR. FLAHERTY:** Yeah, that's a question.

**MR. KENNEDY:** One second please – Commissioner, you've indicated on numerous occasions that repetition and – you're going to control repetition somewhat. The sarcastic nature of Mr. Flaherty's questioning, the questioning with his own answers, I would suggest to you is inappropriate. My client has now been on the stand, this is his sixth day and I would suggest, Commissioner, that having regard to the way these issues have been canvassed, that there has to be some control of the, of the – I'd ask you to control the questioning.

**MR. FLAHERTY:** Are you suggesting the Commissioner doesn't have control of the proceedings?

**THE COMMISSIONER:** Just a second now, Mr. Flaherty. There is, there is an element of sarcasm from time to time which I've been letting go, I know, yesterday more so than this morning, Mr. Flaherty, and I've given you some leeway in that regard, because although Constable Smyth has been on the stand for, what's this – the fifth day now Mr. –

**UNIDENTIFIED MALE SPEAKER:** Sixth day.

**THE COMMISSIONER:** Sixth day now – I lose track. Mr. Flaherty has not had a long time to question him, and your comment is noted, and I think Mr. Flaherty will note that in terms of sarcasm is not an appropriate form of rhetoric in cross-examination. But at the same time, I don't want to unduly limit Mr. Flaherty's questioning. He doesn't and he won't have all that much more time, I suspect.

So with that, Mr. Flaherty, continue.

**MR. FLAHERTY:** You had other avenues to assess what Mr. Dunphy's mental health was. You decided not to take those avenues and get more information as to his mental health before you interviewed him – correct?

**CST. SMYTH:** At that stage, yes, you are correct.

**MR. FLAHERTY:** And would you not agree that you were unprepared for the situation you found yourself in, given that a 60-year-old, disabled man, with no history of gun use, was able to get a rifle trained on you from a seated position – would you not agree that that shows you were unprepared?

**CST. SMYTH:** I did think I was prepared.

**MR. FLAHERTY:** You thought you were prepared. Now that we have the ability to look back at the situation, would you not agree that you were unprepared for the situation that you faced?

**CST. SMYTH:** No, I don't agree. If I was unprepared – if I wasn't prepared, I may not be here to have this conversation.

**MR. FLAHERTY:** It's by the grace of God that he wasn't able to shoot you – correct?

**CST. SMYTH:** Yes, I agree with that.

**MR. FLAHERTY:** The evidence was that he had the gun trained on you before you had your gun out.

**CST. SMYTH:** Correct.

**MR. FLAHERTY:** Okay.

I just want to briefly go to slide 49, page 52 of the manual – oh sorry, before we leave that preliminary assessment, the preliminary assessment page shows that you would look into medical health. You didn't take all those steps, but then it says, your note says, examination of written or verbal communication. So what would be part of that examination?

**CST. SMYTH:** In Mr. Dunphy's case it would be –

**MR. FLAHERTY:** But in this case and does it relate to Mr. Dunphy's case?

**CST. SMYTH:** There may be some connection depending on what the communication is. The examination of written and verbal communication would be, in Mr. Dunphy's case, a consideration of his social media feed. Subsequent to that, there likely would have been some follow-up with other elected officials to determine what other forms of communication he had with them.

**MR. FLAHERTY:** Wasn't that review of his – or examination of his written communications, was that not part of your preliminary assessment?

**CST. SMYTH:** In this case it was, yes, but you would do a more thorough examination of that communication and what other forms of communication he may have had with other persons afterward.

**MR. FLAHERTY:** And what are you examining? Are you examining intent that you can glean from the written communications?

**CST. SMYTH:** Well both. Intent of the actual communication would form a part of that, yes. Also, there may be components of what ideation it may determine if there's been any planning process put in place to carry out an act of targeted violence. There's a number of factors that you may consider when examining all their forms of communications.

**MR. FLAHERTY:** So what you're saying is that you would do a full examination of written/verbal communication after a preliminary assessment.

**CST. SMYTH:** Correct.

**MR. FLAHERTY:** So you didn't really do a full examination of the Twitter commentary during your preliminary assessment.

**CST. SMYTH:** I wouldn't say it was full; I think a full one would have been going back through all of his communications in its entirety, all 27,000 or more tweets – I can't remember how many there were.

**MR. FLAHERTY:** And so, and then your next note says interviewed associated individuals and the subject, or it says Thompson but he's the subject – correct?

**CST. SMYTH:** Correct.

**MR. FLAHERTY:** So is this a second interview that your notes are contemplating here with Mr. Thompson?

**CST. SMYTH:** That would be – yes, it would be an interview from a threat assessor versus – I think what they're referring to previous contact with Thompson may have been for other reasons.

**MR. FLAHERTY:** But I'm talking about yourself. If you're looking at this case study, you're saying here that I would – that you would interview the subject after the full background check which followed the preliminary assessment.

**CST. SMYTH:** The – again, the circumstances are different.

**MR. FLAHERTY:** But what are –

**CST. SMYTH:** There had been –

**MR. FLAHERTY:** What are the major differences? What are the major differences which would in this case allow you to have an interview after your preliminary assessment, but in Mr. Dunphy's case required an interview during the preliminary assessment. What are the differences?

**CST. SMYTH:** Well, it may be time, opportunity, how extensive the previous inappropriate contact and communication is, what, what exactly was said and done in the previous police contact. What –

**MR. FLAHERTY:** Now I don't see those notes forming your notes here.

**CST. SMYTH:** Well, these are notes.

**MR. FLAHERTY:** I know, but –

**CST. SMYTH:** And I'm explaining them to you.



**MR. FLAHERTY:** – you’re trying to learn and it doesn’t say anything about I’m doing an interview at this point because of this information in my case study.

**CST. SMYTH:** Right. Okay, these are notes and they don’t necessarily speak to a specific order that needs to be done in this particular case.

**MR. FLAHERTY:** They evidence your training, don’t they?

**CST. SMYTH:** Pardon me?

**MR. FLAHERTY:** They evidence your training. These are your notes –

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** – that you took when you were training. Does this not evidence what you were being trained in and how you were trained?

**CST. SMYTH:** Sure. There’s a very small portion of it, yes.

**THE COMMISSIONER:** So just to, for my information, Mr. Flaherty, these are, these are the actual notes you took during your course. Was it a basic course or a refresher course?

**CST. SMYTH:** Yeah, this is the basic Managing Targeted Violence course. These are some notes that are taken in relation to this specific scenario.

**THE COMMISSIONER:** Yeah. And they were taken by you during the course of your training.

**CST. SMYTH:** Correct.

**THE COMMISSIONER:** Okay.

**MR. FLAHERTY:** Madam Clerk, move on to slide 49 at page 52 of the manual, 52 in the lower right-hand corner.

Okay. Inappropriate Communications is what the slide says. The first bullet says: “Not all communications are inappropriate.” You would agree with that, wouldn’t you?

**CST. SMYTH:** Of course.

**MR. FLAHERTY:** Okay.

It says: “People have the right to communicate to public officials and organizations.” Correct? You would agree with that.

**CST. SMYTH:** Absolutely.

**MR. FLAHERTY:** “Communications may be based on a reasonable grievance.” You obviously agree with that.

**CST. SMYTH:** Of course.

**MR. FLAHERTY:** It says: Communications – it says may contain strong language, be ongoing and repetitive. This seems to be a description of Donald Dunphy’s Twitter history.

**CST. SMYTH:** It's a partial description, sure.

**MR. FLAHERTY:** So someone can use the word "prick" and it not fall within the definition of inappropriate communication.

**CST. SMYTH:** I think that may be accurate but when you start – when that gets repetitive and when it's also inclusive of words like dead, when you make reference to firearms, when you make reference to previous assassinations, those things become problematic.

**MR. FLAHERTY:** Previous assassinations?

**CST. SMYTH:** Yeah, Mr. Dunphy –

**MR. FLAHERTY:** What was the context of the comments on previous assassinations?

**CST. SMYTH:** Mr. Dunphy had a particular tweet that made reference to some who kill put a notch on their gun; you should put a notch on your keyboard for the kills you've made – something to that effect.

**MR. FLAHERTY:** Something to that effect. So you don't know exactly –

**CST. SMYTH:** I can find it. I can find it, no problem.

**MR. FLAHERTY:** During re-examination your counsel will give you that opportunity.

So what this line here says: Communications may be repetitive.

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** Okay. So the repetitive nature of Mr. Dunphy's Twitter commentary, how does that all of a sudden turn into an inappropriate communication, just by the nature of it being repetitive?

**CST. SMYTH:** Just by the nature of it being repetitive, it doesn't.

In examining Mr. Dunphy's repeated commentary, however, the nature of some of the comments and the tone, if it wasn't a public official where the threshold is perhaps much higher, he would likely be subject to charges of criminal harassment.

**MR. FLAHERTY:** So you saw evidence that he was engaging in criminal harassment and you decided not to take him to task on that. You decided not to inform the RCMP: Donald Dunphy is engaging in criminal harassment.

**CST. SMYTH:** No, I'm talking about having the opportunity to review it more extensively since this incident, but in considering the communications that he had on his social media, and in particular what I read in a statement provided by Minister Kent, he could have been subject to a criminal harassment investigation, yes.

**MR. FLAHERTY:** So in the – but you did an assessment of a year's worth of tweets. Was there anything in that that suggested he may be guilty of criminal harassment?

**CST. SMYTH:** There were elements of that, yes, but of course the –

**MR. FLAHERTY:** No, but not elements. Was there anything there that was evidence that he engaged in criminal harassment?

**CST. SMYTH:** I need to finish my original answer.

**MR. FLAHERTY:** Well, you can just say yes or no because that's –

**THE COMMISSIONER:** Mr. Flaherty, let the constable follow – finish the answer.

**CST. SMYTH:** It wasn't a yes or no question.

The elements of criminal harassment are inclusive of the commentary having caused fear to the subject individual, reasonable fear. So without, in this particular case, having information from the targeted individual of whether or not that fear was established, I can't at that moment in time determine whether or not he's met all the criteria for criminal harassment.

**MR. FLAHERTY:** So you can't say that you saw anything in his Twitter which would lead to a charge of criminal harassment, based on the information you had?

**CST. SMYTH:** It could have potentially led to a criminal harassment investigation.

**MR. FLAHERTY:** Now, inappropriate communication is defined on slide 50, and it talks about special history, special destiny, religious and historical themes which are meant to cause the recipient to be fearful or concerned, or death or suicide.

Now what, in that list, can you draw back to an inappropriate communication that Don Dunphy made?

**CST. SMYTH:** I think there were absolutely communications that were likely intended to cause fear and anxiety, such as the one I referenced about a notch on a gun. You should put a notch on a keyboard. It didn't have, to me –

**MR. FLAHERTY:** But aren't you engaging in a dangerous exercise by all of a sudden trying to glean what the intent of the messages are? I mean, you didn't really go into an examination of intent of the tweet that Donna Ivey sent ya, did you?

**CST. SMYTH:** Well, that's part of the interview with Mr. Dunphy. Not only is it an exercise, it's an obligation on us to provide that opportunity to the author of this information to allow us to identify what the intent of the messages are.

**MR. FLAHERTY:** But he doesn't have to tell you what the intent was.

**CST. SMYTH:** No, he does not.

**MR. FLAHERTY:** Okay. So what does special history mean?

**CST. SMYTH:** Pardon me?

**MR. FLAHERTY:** What does special history mean?

**CST. SMYTH:** Special – I'm not sure, I don't recall.

**MR. FLAHERTY:** Okay. What does special destiny mean?

**CST. SMYTH:** A reference to individuals maybe having a feeling that they have a destiny to carry out an act or a particular meeting. Sometimes it's –

**MR. FLAHERTY:** And you didn't see any tweets that showed special destiny?

**CST. SMYTH:** Not that I recall, no.

**MR. FLAHERTY:** You didn't see any tweets that talked about suicide?

**CST. SMYTH:** Yeah, I believe I did, yes.

**MR. FLAHERTY:** Suicide; okay, which ones?

**CST. SMYTH:** I don't know specifically but there was, I think – I don't recall the exact verbish but I think if I had the opportunity to go back through it, I think there may have been some reference to suicidal ideation, whether or not it was for him or whether it was acceptable.

**MR. FLAHERTY:** Okay. Not only did you have evidence of inappropriate communication on Twitter, not only did you have evidence from Debbie Dunphy that there might be a mental health issue, you're telling us today that you saw evidence of suicidal ideation, you didn't call a doctor. You didn't call any other officers in to check on this man. He's exhibited evidence of suicidal ideation and you did nothing about that.

**CST. SMYTH:** I went to visit him. That's what we do –

**MR. FLAHERTY:** So you are trained to resolve issues of suicidal ideation?

**THE COMMISSIONER:** Now, Mr. Flaherty, that's an example of not permitting – moving into the second question before you get the answer to the first.

Go ahead, Constable.

**CST. SMYTH:** The answer to that question, Mr. Commissioner, is yes. And we're – as police officers we're asked to do that on an almost daily basis to respond to persons in mental health crisis and determine what potential avenues are available to them to assist in resolving that.

**MR. FLAHERTY:** So when you have to go see people in mental health crises, they're generally an urgent or emergent situation. If you can't call a doctor or anything like that, if you have to go there without the presence of a doctor or medial staff, wouldn't that be an urgent situation or is this just one of your as soon as practicable situations?

**CST. SMYTH:** I'm sorry; can you clarify what your question is?

**MR. FLAHERTY:** You – okay, are you trained in order to help someone who is suffering from suicidal ideation?

**CST. SMYTH:** I don't think suicidal ideation itself is something you suffer from. Suicidal thoughts maybe or the associated mental illness perhaps with that, but, yes, we are. I mean, we are trained to recognize if somebody is in a crisis to the point where they may be in a position to cause harm to themselves or somebody else as a result of their mental health and implement a certain course of action as a result.

**MR. FLAHERTY:** When you have evidence of suicidal ideation, what does your training tell you to do? What is the step-by-step process when you see evidence that someone's contemplating suicide?

**CST. SMYTH:** To speak to that person and identify whether or not that ideation is entrenched enough that they may in fact be in a position to cause harm to themselves or somebody else.

**MR. FLAHERTY:** With all due respect, you're not a psychiatrist or a psychologist, so how are supposed to assess the depth or how entrenched suicidal ideation is?

**CST. SMYTH:** Well, the assessment in that situation is based on your observations of whether or not somebody's in crisis. And while, absolutely, you're correct that we're not looking to diagnose an individual with a specific mental illness, it's simply to ascertain whether that person is in a state of crisis whereby they may potentially cause harm to themselves or somebody else. That's our threshold.

**MR. FLAHERTY:** Someone exhibits suicidal behaviour or behaviour that suggests suicidal ideation; does that not affect your risk assessment with respect to an interview with that person?

**CST. SMYTH:** It depends, I guess, on the extent of it, the time. If they make reference to suicidal ideation – and again, I recall seeing something to that effect, I think it was very general and it would have been made in months before. You can safely say that given the time associated to that, that may not be a significant factor.

**MR. FLAHERTY:** So in your expert opinion you decided that the opportunity, or the threat of suicide has lessened based upon your review of Twitter.

**MR. KENNEDY:** Again, Mr. Commissioner, Constable Smyth has not put forward any expert opinion and for this – for the counsel to refer to him in your expert opinion –

**THE COMMISSIONER:** Yeah, there is a bit of a dismissive – again, that's an example, Mr. Flaherty, whether you intend it or not, but that's an example of –

**MR. FLAHERTY:** I'll walk it back.

**THE COMMISSIONER:** Sorry?

**MR. FLAHERTY:** I'll walk it back. I'll walk it back.

**THE COMMISSIONER:** Yeah, it's close to sarcasm, I think. I forget the first description and your first objection, Mr. Kennedy. What was the term used? Anyhow the question is somewhat dismissive before you get the answer.

And I think we'll see from other witnesses apart from Constable Smyth that police officers are – whether they're adequately trained or not will be a subject for examination. I refer specifically to the report by Justice Iacobucci for the Toronto Police services and by the report of the Ontario Ombudsman, Mr. Dubé, where they had inquiries that were addressed directly at that question of what shall we expect when there are encounters between the police and the mentally ill.

**MR. FLAHERTY:** Uh-huh.

**THE COMMISSIONER:** And the issue of mental illness arises peripherally here. There's no clear evidence. There'll be a doctor who'll be coming in to testify that there was no – at least one

doctor, maybe two, who I understand will be testifying that there was no record of mental illness in, as far as a medical diagnosis was concerned.

There will be some reference, if not by individual witnesses, by myself in terms of what the somewhat sad history has been in Newfoundland up to the Luther and Power – sorry, the Luther inquiry, which involved the shooting deaths of Mr. Reid and Mr. Power within the space of six months of each other. And shortly after the Newfoundland Constabulary was given the authority to bear arms, although I'm told, I see references to where that might not have been as significant as some of us in the general public might have thought, in that police officers before they had the right to carry arms under certain conditions, usually had them in a lockbox in the trunk of their car and could get permission very quickly to access them. But they moved on from that, shortly after moving from that to being able to bear arms with training and the use of them.

There were two shooting deaths; the – in those cases, both of the individuals had lengthy histories of mental illness as we will see, and despite that the police officers ended up in a position where, in order to avoid injury to themselves or the general public, were left with very little choice – arguably no choice, but to shoot the individuals, which resulted in their deaths.

We don't have mental illness as being the focus of this inquiry, but because of aspects of Mr. Dunphy's personality and because of evidence we have regarding his – what some might say arguably would be his quick temper, although exhibited generally in a non-violent way up to the time of this incident, I thought there was enough there to permit as I am here now, permitting the parties to get into the question of the way in which the police should react with the mentally ill.

**MR. FLAHERTY:** Just to say, Mr. Commissioner, for the record – I don't think there's any evidence here to suggest that there's any kind of clinical mental health issue, at this point.

**THE COMMISSIONER:** Well, what I'm saying to you is that the evidence is coming in to indicate – there was evidence that there was not –

**MR. FLAHERTY:** No, and I understand. But just to say, I don't think Donald Dunphy had a mental health issue; however, as we can see in the training, evidence of mental health issues is a live issue with respect to interviews and how you deal with potential threateners.

**THE COMMISSIONER:** Uh-huh.

**MR. FLAHERTY:** And we understand that Mr. – or sorry, Constable Smyth never had an accurate picture of what the mental health state of Mr. Dunphy was. And so through that lens, I'm attempting to assess whether or not the steps he took were reasonable. Based upon the fact that he had no idea, really, of what the health was, but did have evidence of suicidal ideation and other little pieces of –

**THE COMMISSIONER:** I understand, and that's why I've considered your –

**MR. FLAHERTY:** But I just want it –

**THE COMMISSIONER:** – questions –

**MR. FLAHERTY:** – clear for the record.

**THE COMMISSIONER:** – relevant – and go ahead.

**MR. FLAHERTY:** I am not attempting to make anyone believe that Donald Dunphy was in fact mentally ill.

**THE COMMISSIONER:** All right. But now, there's also the problem of at times we want our cake and we want to eat it too when we want to bring out the, we'll say, erratic nature of someone's activity to allege – I'm speaking generally now – to assert that a police officer has not acted reasonably; whereas, at the same time, if some action were not taken, the submission would be that it was unreasonable not to take action, whatever the action might be. But go ahead with your –

**MR. FLAHERTY:** Sure.

**THE COMMISSIONER:** I took this as an opportunity to indicate, you know, I'll say the peripheral nature of mental illness in the inquiry.

Go ahead.

**MR. FLAHERTY:** So just, not belabour your training manual, but just to go to slide 91 on page 100 of the manual.

**UNIDENTIFIED FEMALE SPEAKER:** It's page 103 of the exhibit.

**THE COMMISSIONER:** Almost there, yeah. You're at 99 now, two more pages – 100, one more.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. FLAHERTY:** I'm sorry, slide 91 and 92 on exhibit, page 103, manual page 100.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**THE COMMISSIONER:** What is your heading, Mr. –

**MR. FLAHERTY:** The heading is Subject Interviews and it goes into advantages and disadvantages.

**THE COMMISSIONER:** Okay, thank you. That's the one we were looking at yesterday.

**MR. FLAHERTY:** So we've already talked about the high physical danger associated with subject interviews and the fact that a subject interview may also make a subject angry – and you would agree with that?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** What did you do to prepare for potential complaints arising from your interview?

**CST. SMYTH:** We didn't do anything to prepare for a potential complaints. Again, putting the whole training into context, this is also related to being given to civilian groups and entities. What that refers to is that speaking directly to an individual about certain behaviours may result in actual complaints of the fact that you've even spoke to them.

**MR. FLAHERTY:** Yes, and so did you take any steps to deal with the issue of whether or not if Donald Dunphy had made a complaint to the RNC or whomever about your conduct during this interview – did you take any steps?

**CST. SMYTH:** No. I would just always endeavor to act professionally, not to give him a reason to complain about my conduct.

**MR. FLAHERTY:** We're not talking about whether or not there's a reasonable complaint or not, we're talking about whether or not a complaint is made. It could be an unreasonable complaint; it could be a reasonable complaint. What do you do to try to protect yourself in that situation from complaints?

**CST. SMYTH:** Act professionally.

**THE COMMISSIONER:** Mr. Flaherty, I don't see where this – I may be wrong, I might put it, Constable Smyth, but I don't see in terms of the way it's set out there that they're saying you shouldn't do anything to avoid complaints. It may be just something –

**MR. FLAHERTY:** Is there anything you can do?

**THE COMMISSIONER:** Sorry?

**MR. FLAHERTY:** Is there anything you can do to avoid potential complaints or deal with potential complaints?

**CST. SMYTH:** Be professional.

**MR. FLAHERTY:** Is there anything you can do to deal with unreasonable complaints and how to deal with unreasonable complaints when they're made? What can you do to address that?

**CST. SMYTH:** You articulate the nature of the incident to whoever is investigating the complaint and let them deal with it.

**MR. FLAHERTY:** So you just expect – if a complaint was put into the RNC, you just expect for them to take you at your word, I was professional?

**CST. SMYTH:** Do I –

**MR. FLAHERTY:** If there's a complaint made against ya and you never had any notes, you don't take notes during these interviews, the only way that you'd be able to defend against a complaint would be take my word for it; I didn't do anything wrong.

**CST. SMYTH:** And what is the complaint, that I was inappropriate or is it –

**MR. FLAHERTY:** Whatever.

**CST. SMYTH:** - a complaint of excessive use of force?

**MR. FLAHERTY:** Your training tells you there's a potential for complaints. There's been a complaint made, whether it has merit or not is irrelevant. There's been a complaint made against you; what steps do you take to deal with complaints?

**CST. SMYTH:** I tell the investigator the truth, what happened.

**MR. FLAHERTY:** But notes would help, wouldn't it?

**CST. SMYTH:** Yes. They would be provided a narrative summary as to what occurred.



**MR. FLAHERTY:** Okay, I just want to talk briefly about de-escalation. What de-escalation techniques were you trained in?

**CST. SMYTH:** In what context?

**MR. FLAHERTY:** In the context of dealing with an angry interview subject, what de-escalation techniques were you trained in?

**CST. SMYTH:** In dealing with somebody who's just agitated, depending on what specifically is agitating them, attempt to provide alleviation to that. In Mr. Dunphy's case, he was agitated specifically by me looking around his house, looking out around the living room, looking down at the floor, looking out towards his hallway.

So one of the things I did, outside of verbal interaction with him, asking him to calm down, reassuring him that I'm not there to arrest him, I'm not there to give him a hard time, I'm simply there, you know, for a specific reason. And if he – in this particular case, he was agitated by me looking around and I tried to stop that to alleviate his agitation.

**MR. FLAHERTY:** So your training in de-escalation techniques was just a general, just a general training statement, I guess you could say, saying that well, whatever is agitating the person, try to stop doing that. That's the depth of your training?

I want to know exactly what the techniques are that you're trained in de-escalation and, in particular, to the circumstances you found yourself in, in Don Dunphy's living room. What is the exact training you received?

**CST. SMYTH:** In – specifically, if the, what he's being agitated by, if it's within your control to alter that behaviour, if it is your behaviour that is part of that agitation, then if you can reasonably alter and change that behaviour, then you should do so.

If they're being agitated by another individual, you know that might correlate to domestic situations; you would try to separate the individuals. If it's a need for a specific item that's causing them agitation, you would try to get that item for them. In this case, it was my behaviour that was agitating him and I was making efforts to alter that.

**MR. FLAHERTY:** So how long was it from when he became agitated until when you shot him? How many minutes?

**CST. SMYTH:** I think from the point that he started to get agitated to the point where he had reached his peak of agitation and ultimately brought a firearm into the equation, it was probably at max, seven minutes; six, seven minutes.

**MR. FLAHERTY:** Okay. Six or seven minutes doesn't sound like a lot, but it actually is a long time conversationally.

**CST. SMYTH:** Sure.

**MR. FLAHERTY:** So, what we can take is seven minutes before the death of Donald Dunphy, from when he drew his firearm, you had identified that your behaviour of looking around his room was agitating him.

**CST. SMYTH:** No, that was the final seconds of that interaction.

**MR. FLAHERTY:** Okay. So what was it – so it wasn't looking around that agitated him. What agitated him?

**CST. SMYTH:** Previous to that?

**MR. FLAHERTY:** Well, what are all the things that agitated him, that you identified, and what were the corrective measures that you took.

**CST. SMYTH:** I think the reference to the reason why I was there eventually seemed to agitate him. I think my presence, of being a government official got to a point where that was creating agitation. The topic of discussion seemed to be causing some agitation. Probably some of the reference I made to the condition of his home perhaps led to some agitation.

**MR. FLAHERTY:** Okay. So your mere presence was an agitating factor. Wouldn't common sense say that the way to de-escalate the situation then is just to leave?

**CST. SMYTH:** Not at that stage, no.

**MR. FLAHERTY:** None of your de-escalation techniques appear to work over a period of six to seven minutes.

**CST. SMYTH:** Well, if he's agitated by my presence and it's getting to a point of, of crisis, it's not appropriate for me to just say, sorry, and walk out.

**MR. FLAHERTY:** Really.

**CST. SMYTH:** No.

**MR. FLAHERTY:** If someone is agitated by your presence in their own home, it's not a reasonable decision just to say, you know what, I'm sorry, sir, it appears I've upset you, I'm going to leave. I'll probably give you a call later on. That's not a reasonable course of action.

**CST. SMYTH:** I'm making an inference that my presence was agitating him by the fact that he was referring to me as a puppet and an arm of the government –

**MR. FLAHERTY:** And asking who sent you.

**CST. SMYTH:** Correct. But at no point in time did he ever say get the hell out of my house, you're not welcome here. If he had of said those words, I would have left.

**MR. FLAHERTY:** You didn't understand everything that man was saying did you?

**CST. SMYTH:** There were elements of the conversation that were very disjointed, sometimes he mumbled.

**MR. FLAHERTY:** Okay. So it's possible that he could have said, you know, get out. And you just didn't – you didn't hear it, you didn't understand.

**CST. SMYTH:** I don't believe that's possible. He –

**MR. FLAHERTY:** Even if he mumbled, you don't know what he's saying when he mumbled, correct?

**CST. SMYTH:** Right. But when he was speaking directly to me, he was clear and concise. He often mumbled and muttered under his breath, it didn't seem to be directly to me. I think if he was making a specific request for me to leave, I think that would have been clear. He didn't seem to have a problem articulating himself.

**MR. FLAHERTY:** So when he was agitated, were you there then still to build rapport, or were you there then to ensure the safety of someone experiencing a mental health crisis? What are you doing at the six-minute point, when he's been agitated for six minutes and none of your actions are calming? What are you doing there at that point?

**CST. SMYTH:** I'm still hoping to glean information that would assist in the threat assessment, yes.

**MR. FLAHERTY:** And agitating him and making him aggressive, that would provide you with information, wouldn't it?

**CST. SMYTH:** I don't think valuable information.

**MR. FLAHERTY:** No. You don't think that seeing a possible threat or an agitated state is going to show you really what he's made of, whether or not he's willing to go on a pathway to violence?

**CST. SMYTH:** I don't think pushing somebody to that brink in those circumstances would be an appropriate course of action. It doesn't do anything to assist their – perhaps their capacity to react to being around the intended targeted politician. In this particular case, it would perhaps give you information about how they might react to you personally in that situation, but it's not, certainly not the goal.

**MR. FLAHERTY:** He said you're a puppet of the government. He said you were a puppet. He said you're an arm of the government. Is it not reasonable to infer that he saw you as an agent of the government at that point?

**CST. SMYTH:** Yeah, I think that's reasonable.

**MR. FLAHERTY:** So you made some comments during your testimony about uniforms and multi-officer situations. Where in your training – where from your training did you take that uniforms are likely to impede your ability to interview someone. Where does that come from in your training?

**CST. SMYTH:** That's – persons who either have a hatred for police or a distaste, a dislike or a dislike from government, is not necessarily founded in a particular element of our training. It's common sense. If they don't like police, they don't like government, than a symbol of government, a symbol of authority is likely to cause some anxiety to that person.

**MR. FLAHERTY:** And I would say common sense would say that if he didn't like – if Donald Dunphy didn't like a symbol of authority or someone associated with government, no matter what you showed up in, dressed up in that day, once he knew you were a police officer, if he really hated police officers and the government, he would still react negatively to your presence. Would he not?

**CST. SMYTH:** Probably so, yeah.

**MR. FLAHERTY:** Okay. So your decision not to wear a uniform was yours and yours alone, not based upon any research or training suggesting that you shouldn't wear uniforms in those types of interviews.

**CST. SMYTH:** I don't wear a uniform in that particular duty.

**MR. FLAHERTY:** You never wear a uniform?

**CST. SMYTH:** In that particular role, I hadn't worn a uniform I think since 2007 at that point.

**MR. KENNEDY:** Mr. Commissioner, I wonder if I could raise an issue. Mr. Flaherty has now been an hour and a half in cross-examination of Constable Smyth. The counsel who are sitting around me, their cross-examinations are usually restricted to their interest in what's going on here.

**THE COMMISSIONER:** No, no, not – they could be, but –

**MR. KENNEDY:** So, I mean this community coalition, I mean it's never been made clear to us who –

**THE COMMISSIONER:** It's a bit late for that now –

**MR. FLAHERTY:** (Inaudible) in particular, Mr. Commissioner.

**THE COMMISSIONER:** Mr. Flaherty has been given standing. You're wondering who the members are. From communication that was given early on when he applied for standing, he indicated they were concerned members of the Mitchells Brook, Mount Carmel community. And I'm not – I don't see why he should be unreasonably restricted because we don't have any more specific identification.

But go ahead. What am I missing, Mr. Kennedy? Is there something there more than that?

**MR. FLAHERTY:** That the community coalition's interests is to find out what happened that day.

**THE COMMISSIONER:** All right. And that's the interest of the general –

**MR. FLAHERTY:** The best way to find out and if they're testing credibility and testing –

**THE COMMISSIONER:** That's the interest of the general public throughout the Province of Newfoundland and Labrador, Mr. Flaherty. And we're not going to have all 500,000-and-some-odd in here. So you are precisely indicating, you know, representation of individuals I'll say in the Mitchells Brook area.

**MR. FLAHERTY:** Yes.

**THE COMMISSIONER:** I don't want to be excluding St. Catherines or other areas but, being too narrow.

I will note, Mr. Flaherty, that we've spent a fair bit of time so far and there are going to be other witnesses, police officers and Commission witnesses, who also happen to be retired police officers, I think in both cases, who will be testifying extensively with respect to one in particular, with respect to the use of force and I think targeting, managing targeted violence. So, how much more do you think –? Sorry?

**MR. FLAHERTY:** Fifteen more minutes.

**THE COMMISSIONER:** Fifteen minutes after this, that's not unreasonable.

Go ahead, Mr. Flaherty.

**MR. FLAHERTY:** Okay. You were speaking with Constable Cox when you were driving out to see Donald Dunphy. Correct?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** Did you ask if anyone at the RCMP station in Holyrood was familiar or had an existing rapport with Mr. Dunphy?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** And what did he say?

**CST. SMYTH:** No.

**MR. FLAHERTY:** No one there had any rapport with him.

**CST. SMYTH:** He wasn't aware of them.

**MR. FLAHERTY:** He wasn't aware.

**CST. SMYTH:** And he viewed their PROS system and it seemed like their interaction was limited.

**MR. FLAHERTY:** But he never had an opportunity to talk to any other officers.

**CST. SMYTH:** Well, that's what he gets from their online system that documents any calls for service related to Mr. Dunphy.

**MR. FLAHERTY:** But at the same time, I mean, police officers are members of the community; someone there could have had an existing rapport with Don Dunphy.

**CST. SMYTH:** I guess that's possible.

**MR. FLAHERTY:** And wouldn't the presence of someone with an existing rapport help you in establishing a rapport with Mr. Dunphy?

**CST. SMYTH:** If that person existed, absolutely.

**MR. FLAHERTY:** But you didn't take the time to find out if that person existed.

**CST. SMYTH:** I had no information to suggest that that person existed at the time.

**MR. FLAHERTY:** It's pretty hard to get that information when you're on your way out to Salmonier Line to see Mr. Dunphy, not much time to get that information.

**CST. SMYTH:** Well if I had some indication that that was the case, I would have solicited input from that person.

**MR. FLAHERTY:** You didn't want to take Constable Cox because he would be in uniform.

**CST. SMYTH:** That's correct.

**MR. FLAHERTY:** And you cannot point to anywhere in your training that suggests that uniforms should not be worn in interviews.

**CST. SMYTH:** I've articulated to you why in this particular case I felt it wasn't a good course of action, to keep Mr. Dunphy at a level where he would speak frankly and openly.

**MR. FLAHERTY:** But how you felt isn't based upon anything you were taught, is it?

**CST. SMYTH:** We're taught to take into consideration a myriad of factors associated to how we can get the best results of an interview. It might be environment; it might be location; it might be any number of factors. That was one that I considered for this particular case.

**MR. FLAHERTY:** But in the myriad factors that you were taught to deal with, was that a factor that you were taught to consider, the presence of uniforms?

**CST. SMYTH:** I don't remember addressing that specific, particular part, but it does lend to some of the reasoning why our criminal investigation division which carries out a broader-based interview process with suspects and witnesses are indeed in plain clothes. It has the tendency to set people at ease. Whether that person is a victim or a witness, a plain-clothes member has a less of an intimidating factor associated to it.

**MR. FLAHERTY:** And that's based upon research?

**CST. SMYTH:** Probably so, but it's probably also based on common sense.

**MR. FLAHERTY:** Probably so. Okay.

Wouldn't a police officer going in plain clothes – doesn't that somewhat obscure or conceal the identity of the police officer?

**CST. SMYTH:** If the police officer chose not to identify themselves and they were wanting to act surreptitiously, sure.

**MR. FLAHERTY:** But it's fair to say it's common sense that when someone sees a uniform they, they're pretty – they can be pretty sure they know who they're dealing with. There's no ambiguity; you're dealing with a police officer.

**CST. SMYTH:** Correct.

**MR. FLAHERTY:** Is there anything in your training to suggest that having multiple officers present at a interview is a consideration that you should consider before you go into your interview?

**CST. SMYTH:** If there are factors that would suggest there's a propensity for violence, then yes.

**MR. FLAHERTY:** Now, correct me if I'm wrong, but in supplemental materials of the targeted or Managing Targeted Violence training, it goes through a case study interview. That interview occurs with the presence of two officers at the office of the police. Do you recall that?

**CST. SMYTH:** There was a number of scenarios that we went through. I don't know the specifics of the one you're referring to.

**MR. FLAHERTY:** So that, that scenario, where there's two officers at their own office, that is about as far removed from the course of action that you ultimately took and it's about as far removed from your interview that occurred, is it not?

**CST. SMYTH:** I don't know the factors of this scenario you're referring to.

**MR. FLAHERTY:** Okay.

What if I told you that there was no evidence of violence in that scenario? What would your comment be then about two officers at their own office interviewing someone?

**CST. SMYTH:** What would I say to that?

**MR. FLAHERTY:** Yeah, is that appropriate way to interview?

**CST. SMYTH:** Well, I don't think it's necessarily inappropriate depending on what the other circumstances are. Is it related to workplace violence, is it a domestic violence-based interview. If that's the case, then you would probably want to remove the subject from the environment where that domestic relationship exists.

If it's a workplace environment, you may want to ensure that it doesn't happen at the workplace. If they have, if the inappropriate communication potentially puts family members at risk or a relationship at risk, attending their home and exposing personal family members to that – immediate family members, sorry, to that process, may create additional anxiety and anger that might not be appropriate.

**MR. FLAHERTY:** Okay.

So when you went to Don Dunphy's house you were there to build a rapport for intelligence purposes.

**CST. SMYTH:** Yes

**MR. FLAHERTY:** And immediately you possibly offend the man by not taking a seat when he asks you to have a seat in his living room.

**CST. SMYTH:** He may have been offended by that, yes.

**MR. FLAHERTY:** Yeah. Common sense would suggest that someone would likely be offended. And if – and if you offend someone right from the get-go, that's a pretty poor rapport-building strategy, isn't it?

**CST. SMYTH:** Yeah, the goal certainly would not be to offend someone immediately.

**MR. FLAHERTY:** So, instead of taking a seat, you decided to walk back and forth in front of the man, looking around his room, looking around his house.

**CST. SMYTH:** Well, originally I had just stood by the mantel in as casual a fashion as I could.

**MR. FLAHERTY:** And not only would you not take a seat when he asked you to take a seat, you then started making comments about the state of his home. Is that a good rapport-building strategy?

**CST. SMYTH:** Well, it could be. I was expressing concern for the state of his home, and offering, or potentially, with the goal of offering suggestions as to how you might be able to deal with this, that it was, to me, a very challenging situation to, to live in and that concern was empathetic, it wasn't intended to offend.

**MR. FLAHERTY:** It wasn't intended, but you could see how someone could take comments about their house being in squalor or being in filth or being concerned about their conditions. One could reasonably take that to be an offensive remark, could they not? I know you didn't intend it, but one could take that to be an offensive remark.

**CST. SMYTH:** They could, and I've certainly heard evidence that he was a prideful man that would have probably taken offence to any reference to that, sure.

**MR. FLAHERTY:** So that's, so that was another potential barrier of establishing a healthy and cordial rapport?

**CST. SMYTH:** Perhaps.

**MR. FLAHERTY:** And not only are you walking around and – you actually said that you kicked garbage on his floor.

**CST. SMYTH:** Oh, I moved it with my foot.

**MR. FLAHERTY:** And how were you equipped to address the squalor that you saw Mr. Dunphy in? How were you going to fix that for him?

**CST. SMYTH:** Can make recommendations to various community groups that might be able to lend support in such dire situations. To me it's a, it was a situation where social services should have been put in touch with Mr. Dunphy, and he should have been perhaps provided some support in that realm.

I would have likely followed up with an interview with his more immediate family, in this case, his daughter, to determine what the level of relationship was there. You know, it may have very well been a case that he was an individual who refused to be helped. And that's, that's very challenging too. If you have an individual that is in crisis and may need help, we're not always able to force that help. So I don't want to necessarily pass judgement there, either. It might be easy to be on the outside and look in and say, well, where was the immediate family; why didn't they do anything. That's not always as simple as that. There's often dynamics that could be prohibitive in alleviating that particular issue.

**MR. FLAHERTY:** And so –

**THE COMMISSIONER:** I think in the Reid and Power, Luther inquiry, there was some graphic examples of that on both sides. In one situation, they – some members of the family had tried to help and had been turned down. I think it was in the case of Mr. Reid.

But there's also an example of Mr. Reid needed \$35 to have the electricity turned on in his home. It had been wired, I think, with social service's assistance but the fee for turning on the electricity was \$35. And he had gone for, I think, a year or more without receiving this – being



turned down by social services, living in an unheated home, as I understand it, for that reason so

**CST. SMYTH:** And that's a good example of a systemic failure where the police being made privy to that, we sometimes can have a significant impact when we make a phone call to a service – a social service and say: Look, I'm here at this residence. This is a serious issue; it needs to be dealt with immediately. It can sometimes expedite those types of concerns. And it's absolutely something that I would have considered in that particular situation.

**MR. FLAHERTY:** Okay.

So just to talk about the bat briefly. You potentially walked over what looks to be about a four-foot bat when you walked into the living room and you didn't notice it.

**CST. SMYTH:** I did notice it. I addressed it with Mr. Dunphy.

**MR. FLAHERTY:** As soon as you walked in the room, you addressed it?

**CST. SMYTH:** It was pretty soon thereafter. The entire conversation was only 15 minutes.

**MR. FLAHERTY:** That's a long time for a conversation.

**CST. SMYTH:** Early on in the conversation I addressed the bat with him. I asked him about it and told him it wasn't an issue as long as it stayed where it was.

**MR. FLAHERTY:** And, and do you not see that comment as being potentially provocative?

**CST. SMYTH:** Well, I think –

**MR. FLAHERTY:** Who are you – and this is the question: Who are you to go in to some man's house and say, as long as you don't touch your bat, we won't have a problem? How is that building rapport?

**CST. SMYTH:** Well, regardless of whether or not that has a positive impact on building rapport, it does need to be made clear to subjects that picking up a weapon in the, in that particular situation would have a negative result.

**MR. FLAHERTY:** Why? Why can't he – okay, why would it have a negative result? If he wanted to pick up his own bat in his own living room, why was there going to be a negative result?

**CST. SMYTH:** Well, that would give an indication for a potential for violence. If he picks up a bat and acts aggressively in any way then that's a problem.

**MR. FLAHERTY:** Well if that could have been a problem and it could have required you to take some physical action, maybe you should have called in additional officers at that point. Would you not agree?

**CST. SMYTH:** He hadn't picked up the bat.

**MR. FLAHERTY:** But we're talking about this in the context of rapport building. You walked into the man's house unannounced and you say, as long as you don't touch your piece of property, your bat, we won't have a problem.

**CST. SMYTH:** I didn't do that –

**THE COMMISSIONER:** Mr. – isn't that a not a matter of common sense? You know even though somebody might be somewhat offended by it, the fact of the matter is a police officer is in your home, most people will have sense enough I think to realize they should not grab something that might or pick up something that might appear to be a weapon.

**MR. FLAHERTY:** Well, we're talking about this in the context of rapport building and right off the bat, he's identified a bat – right off the bat. Immediately he's identified a bat and he's saying as long as you don't pick up your own property, we won't have a problem.

**THE COMMISSIONER:** Carry on.

**MR. FLAHERTY:** It's just – there's a bit of common sense involved here, but I mean common sense would also dictate then that you would ask, well you have four-foot fashioned wooden bat, three, four-foot fashioned wooden bat, what other weapons do you have? You didn't ask that, did you?

**CST. SMYTH:** At that stage, no?

**MR. FLAHERTY:** Common sense and your training would suggest that you should have.

**CST. SMYTH:** Okay.

**MR. FLAHERTY:** Yes or no?

**CST. SMYTH:** At some point in the conversation we probably would have got there, but I didn't want to agitate him any further than what he was.

**MR. FLAHERTY:** Well no, but he wasn't agitated at this point because when you talked about the bat, you just said it was very early on in the conversation.

**CST. SMYTH:** Well –

**MR. FLAHERTY:** When you walked in you talked about the bat, so he wasn't agitated.

**CST. SMYTH:** That's true.

**MR. FLAHERTY:** Okay. So then you just said I didn't want to agitate him further. So if he wasn't agitated, how were going to agitate him further by asking him a common-sense question: Do you have any other weapons in your house?

**CST. SMYTH:** It may just agitate from the start.

**MR. FLAHERTY:** That's not what you said.

**CST. SMYTH:** No, you're right and I've corrected it.

**MR. FLAHERTY:** When someone is frothing at the mouth, that's a pretty significant threat to you.

**CST. SMYTH:** Potentially.

**MR. FLAHERTY:** It is a threat cue, is it not?

**CST. SMYTH:** It can be a threat cue in combination with other factors. In this case, I did consider it a pretty solid sign of agitation.

**MR. FLAHERTY:** Well, at that point you could probably describe him as appearing rabid, could you not?

**CST. SMYTH:** Not to that extent. I think his daughter's testimony described the same thing that I saw, dried saliva – I called it foam. It wasn't extensive. It wasn't foam pouring out of his mouth.

**MR. FLAHERTY:** Once you had shot Mr. Dunphy, the RCMP came to the scene. You told RCMP officers that you were there due to threats to the premier. Correct?

**CST. SMYTH:** I may have used that language. I said that, yeah.

**MR. FLAHERTY:** And wouldn't that provide them a misleading notion of what was actually occurring at that residence before they got there?

**THE COMMISSIONER:** Sorry, misleading – who are you referring to, Mr. Flaherty?

**MR. FLAHERTY:** The RCMP who showed up were told – may have been told (inaudible).

**THE COMMISSIONER:** After the incident, after the shooting –

**MR. FLAHERTY:** After the incident –

**THE COMMISSIONER:** – in what I recalled, okay.

**MR. FLAHERTY:** – that there was a threat to the premier. And my question to Constable Smyth is: Would that not mislead the RCMP and could that affect their assessment of the situation?

**CST. SMYTH:** (Inaudible.)

**MR. FLAHERTY:** Your immediate assessment?

**CST. SMYTH:** I don't believe so, no.

**MR. FLAHERTY:** Really? So the RCMP are there and they've been told that an officer shot someone in self defence and that officer was there due to threats made to the premier. That wouldn't affect how they look at the situation in any way, you don't think?

**CST. SMYTH:** If the specific language was I was in the process of conducting a threat assessment on this individual, I was interviewing him and he brandished a firearm, or if the language was I was investigating threats made towards the premier, I was interviewing the subject and he brandished a firearm, I believe neither one of those would have any impact on how the RCMP followed up their investigation.

**MR. FLAHERTY:** Okay.

Now did I hear you say, Constable Smyth, that you were, that you were deaf after you shot Don Dunphy?

**CST. SMYTH:** I don't think I used the word deaf.

**MR. FLAHERTY:** You didn't?

**CST. SMYTH:** I think I said I – once the first shot was fired that I definitely was not taking in any much in the ways of auditory –

**MR. FLAHERTY:** Okay.

**CST. SMYTH:** – elements so.

**MR. FLAHERTY:** What was the, what was the impact of those four gunshots on your hearing?

**CST. SMYTH:** I wasn't hearing very well.

**MR. FLAHERTY:** Okay. How long did that last for?

**CST. SMYTH:** I'm not exactly sure, but it seemed like maybe two or three minutes.

**MR. FLAHERTY:** Okay. I believe your evidence was that within a minute of shooting Donald Dunphy you were calling the RCMP, you were trying – you were calling in the event.

**CST. SMYTH:** I think I said within two or three minutes.

**MR. FLAHERTY:** Well, it could have been a minute.

**CST. SMYTH:** It could have been, yes.

**MR. FLAHERTY:** So you could have been making a call to the RCMP at a time when you may have been deaf or at the very least had impaired hearing.

**CST. SMYTH:** Yeah, I don't think there's any doubt that my hearing was impaired from that, but it didn't prohibit my ability to –

**MR. FLAHERTY:** I can revisit the record but I'm pretty sure I heard you say that you were deaf. And it's not uncommon for people –

**CST. SMYTH:** It's possible.

**MR. FLAHERTY:** – to experience deafness and tinnitus from gunshots without taking proper protection of their ears. Correct?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** Had you ever experienced gunshot related deafness or tinnitus in your history as a police officer?

**CST. SMYTH:** Not that I can recall. We're usually using ear protection.

**MR. FLAHERTY:** Not that you recall, but you could of?

**CST. SMYTH:** I guess so.

**MR. FLAHERTY:** Are you taught anything about gunshot related tinnitus or deafness?

**CST. SMYTH:** Just that it can happen.

**MR. FLAHERTY:** Were you ever told how long the effects of that can last?

**CST. SMYTH:** I think residual effects could last for an extended period.

**MR. FLAHERTY:** Is it your evidence now, that you remember, that you have a vivid memory of un-holstering your weapon?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** What process – where's your hand to or where can you vividly remember your hand, initially, in your memory of your hand going to your holster?

**CST. SMYTH:** I pulled my jacket back.

**MR. FLAHERTY:** Okay. What happened to the pen that you were using to write in your folder?

**CST. SMYTH:** Don't know.

**MR. FLAHERTY:** So that part of the process you have no memory of.

**CST. SMYTH:** I remember dropping it. I don't know what happened to it.

**MR. FLAHERTY:** So you just dropped it straight down. You didn't throw it?

**CST. SMYTH:** I didn't – well, it may have been thrown as I moved my hand.

**MR. FLAHERTY:** Okay. I'm going to stop here now.

And you were writing on your folder in an attempt to de-escalate the situation? Is that your evidence?

**CST. SMYTH:** I was pretending to write.

**MR. FLAHERTY:** Okay.

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** Well, I would say that common sense suggests if someone's paranoid or agitated by you and they voice that agitation that you beginning to make notes is not a reasonable de-escalation technique. Would that not actually agitate the person further?

**CST. SMYTH:** Don't know.

**MR. FLAHERTY:** In your re-enactment you said it took Don Dunphy 10 to 15 seconds to get to his front door after you knocked on the window. Do you recall saying that?

**CST. SMYTH:** Probably so, yes.

**MR. FLAHERTY:** And do you recall later saying that it could have been anywhere from 30 seconds to two minutes?

**CST. SMYTH:** I probably said that, yes. I know there was a period of time – a relatively brief period of time from when I knocked on the window to the time that he came to the front door.

**THE COMMISSIONER:** What was the last time that you suggested?

**MR. FLAHERTY:** Two minutes.

**THE COMMISSIONER:** Three minutes?

**MR. FLAHERTY:** Or two minutes is what I recall as being along the bounds –

**MR. KENNEDY:** Will we be given references of that, Commissioner?

**THE COMMISSIONER:** Well, if we have – we're not going to slow down now for that. We have the –

**MR. FLAHERTY:** Well, it's on the record here.

**THE COMMISSIONER:** The transcript will confirm whether or not that's an accurate basis for the question.

Go ahead.

**MR. FLAHERTY:** And if I'm to be corrected, I take it and I sincerely apologize. But, in any event, there's a big difference between 10 seconds and two minutes.

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** When did you ask RCMP police about whether or not the video cameras were working? When did you ask?

**CST. SMYTH:** During my interview with them.

**MR. FLAHERTY:** Your initial interview.

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** At what point in the interview?

**CST. SMYTH:** I don't know.

**MR. FLAHERTY:** Now, I believe your evidence was here today that you just wanted to aid the RCMP; that you just wanted to make sure that they found potential video evidence. Is that why you asked about that?

**CST. SMYTH:** My hope was that the cameras were functioning. I was hoping they would say yes, they're functioning.

**MR. FLAHERTY:** But you didn't say that in the interview.

**CST. SMYTH:** I think I did.

**MR. FLAHERTY:** Hey guys, I'm hopeful that they were working. Were they working?

**CST. SMYTH:** I don't know if I used that – I didn't use that particular verbage but the intent, and I believe it's articulated in the interview as well, is that I was hoping it was.

**MR. FLAHERTY:** Well, I mean at some point you were going to be advised if it was working or not, correct? At some point during the investigation that would be brought to your attention.

**CST. SMYTH:** I don't know.

**MR. FLAHERTY:** You don't know. Do you believe that the RCMP was competent enough to identify that there were video cameras and then to check and see whether or not the video cameras were functioning?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** Okay. In asking during your initial interview whether or not there's video evidence available, when the RCMP said to you they're not functioning, what does that tell you at that time?

**CST. SMYTH:** It tells me the cameras weren't functioning.

**MR. FLAHERTY:** And it tells you that there's no, there's going to be no other evidence out there that corroborates or opposes the evidence you're about to give, correct?

**CST. SMYTH:** No, I don't think it says no other evidence, there's –

**MR. FLAHERTY:** But you knew there wasn't video evidence. You would know that, wouldn't you?

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** For the rest of your interview, you would know there's no video evidence that can contradict the evidence I'm about to give.

**CST. SMYTH:** I believe the cameras were outside.

**MR. FLAHERTY:** You don't even know what times, really, you were in and around the Dunphy house, do you? And that actually –

**CST. SMYTH:** I've provided times.

**MR. FLAHERTY:** Pardon?

**CST. SMYTH:** I've provided times.

**MR. FLAHERTY:** And you provided different times over time.

**CST. SMYTH:** That's correct.

**MR. FLAHERTY:** Correct. If you were interviewing a subject of a criminal complaint or a criminal investigation, and they said, Constable Smyth, can you tell me if the security cameras in and around the place that I potentially committed a crime – can you tell me if they were working or not? Would you give them a truthful answer and tell that subject, no, don't worry about it, or no, no, there's no video evidence? Would you tell someone that?

**CST. SMYTH:** I think it would depend on the nature of the conversation and the – or sorry, the nature of the investigation.

**MR. FLAHERTY:** So you would provide the subject of a criminal investigation a truthful answer as to whether or not there's video evidence.

**CST. SMYTH:** I didn't say that.

**MR. FLAHERTY:** But would you? Okay, I've rephrased it now. Would you do that?

**CST. SMYTH:** It depends on the nature of the investigation.

**MR. FLAHERTY:** What it would depend on? What's, what are the factors that would suggest that it makes any sense to tell the subject of a criminal investigation that there is or isn't evidence that may account for their actions. What factors can you come up with?

**CST. SMYTH:** If there was an investigation being carried out whereby self defence was a possibility, then, if there was video evidence it would be prudent to probably show that video evidence to the individual and discuss their movements, if they were captured, and compare it to a previously provided statement.

**MR. FLAHERTY:** Now –

**CST. SMYTH:** But there may also be occasion to not be truthful in the situation and say the video didn't exist in an effort to get their truest version of events, and then potentially compare it to what the video evidence was available. And if they differed, then you would confront –

**MR. FLAHERTY:** So what you're suggesting is that maybe the RCMP should have said to you, the videos were taken and we will review them with you at some point.

**CST. SMYTH:** Probably –

**MR. FLAHERTY:** Because they would have ensured that you would have provided a truthful account of events, wouldn't they?

**CST. SMYTH:** It's probably a question you should ask the RCMP.

**MR. FLAHERTY:** I'm asking you as a police officer. How long have you been a police officer?

**CST. SMYTH:** How long have I been a police officer?

**MR. FLAHERTY:** Yeah.

**CST. SMYTH:** Sixteen years.

**MR. FLAHERTY:** Criminal Investigation Unit, you were with them?

**CST. SMYTH:** Yeah.

**MR. FLAHERTY:** You were with the PSU.

**CST. SMYTH:** Yes.

**MR. FLAHERTY:** So I'm asking you in your opinion, based on all your experience, should the RCMP have told you the videos were working in order to ensure a truthful account of the evidence from you?



**CST. SMYTH:** It wouldn't have altered my statement.

**MR. FLAHERTY:** No, I'm not, that's –

**THE COMMISSIONER:** We're circling around again. Constable, wouldn't it be, as general practice, leaving aside extraordinary, exceptional circumstances – general practice, it's not good police procedure to release information to a subject of an investigation that they don't have to release.

**CST. SMYTH:** Correct.

**THE COMMISSIONER:** Would that be a fair, a fair –

**CST. SMYTH:** Yes.

**THE COMMISSIONER:** – generally the rule would be tell 'em nothing.

**CST. SMYTH:** Yes.

**THE COMMISSIONER:** Okay.

**MR. FLAHERTY:** And I'll leave my examination with that good question.

Thank you.

**THE COMMISSIONER:** All right.

Mr. Williams.

**MR. WILLIAMS:** Good morning, Constable Smyth.

My name is Tom Williams and I'm sure you're aware I'm here in my capacity as representing former Premier Paul Davis. So my area of interest in terms of questioning is going to be a little different than probably some of the other counsel. I'm not concerned so much as the events of what unfolded on April 5, but more pertaining to the relationship between the Protective Services Unit and the Premier's office. All right.

And you're probably aware that under the Terms of Reference the Commissioner has been tasked with the responsibility of looking at the policies, the protocols and the manuals in force within the Premier's office at the material time. So I'd want to kind of concentrate on that with respect to security relating to the premier, other public officials, as well as the monitoring and the response to social media. Okay. So that's basically where I'm coming from.

So I'd like to start off, Constable – there's been much talk in the media about your being – quote – the premier's bodyguard, but has been disclosed through the Commission so far you're a member of the Protective Services Unit.

Can you outline for me, and for the benefit of the Commissioner, the responsibilities of the Protective Services Unit over and above the aspect of protection and personal security for the premier of the province?

**CST. SMYTH:** The particular mandate is outlined relatively clearly in our policy and procedure. It's, for the most part, broken down into two parts. One, being the close protection component that would be inclusive of a bodyguard role but would also take into account various other roles

of events and also carrying out operational plans in preparation for events, movements, travel, those kinds of things.

The second component being carrying out intelligence-based investigations into persons of interest or groups that may potentially cause harm or indirect harm to the premier, the Office of the Premier, or other elected officials.

**MR. WILLIAMS:** Okay.

Can you tell me when the unit was actually formed? I know we have had entered into evidence the policy, the RNC policy, which I think is dated – you participated in an assembly in June of 2013. But I believe there may be evidence let later in the inquiry from others that there was somewhat of an ad hoc protection service provided for earlier premiers.

**CST. SMYTH:** Correct.

**MR. WILLIAMS:** Was there a point in time where there was a formal establishment of a protective services unit within the RNC and within the premier's unit – the Premier's office?

**CST. SMYTH:** I'm not sure if they had been any previous semblance of that unit, but while I was there it was formally adopted and put together around 2011.

**MR. WILLIAMS:** Okay. So it would be more along the lines of the actual form of the unit coming to structure in 2011.

**CST. SMYTH:** Correct. Where you worked particular shifts and carried out regular duties versus, you know, for shorter periods of times, depending on a threat assessment or a particular event.

**MR. WILLIAMS:** But then the actual policy, the RNC policy was not adopted until 2013. Is that correct?

**CST. SMYTH:** Correct.

**MR. WILLIAMS:** Would it fair to say that the operation of the unit then, having been only established in 2011 and policy put in place in 2013, was somewhat evolving during that period of time?

**CST. SMYTH:** It was. There was a period of time where there was some overlap between the intelligence investigative side was often being carried out by the criminal intelligence unit and the, initially the duties for protective services were primarily, solely the close protection component.

**MR. WILLIAMS:** Okay. With respect to – that's the first two years where the unit was in place. With the, with respect to the next two-year period, which takes up until at least April of 2015, were there still changes being implemented and adoption of new practice and polices with respect to the operation of the unit that you're aware of?

**CST. SMYTH:** I'm not aware of new policies in particular that were being adopted. The structure of the unit was probably one that was continually monitored and evolving, depending on what the needs were at any given time.

**MR. WILLIAMS:** So would it be fair to say, to categorize it as a relatively new beast within the RNC as well as the operations of government and the Premier's office?

**CST. SMYTH:** In the capacity that it was at that point, yes.

**MR. WILLIAMS:** Okay.

Constable, with respect to Mr. Davis, he took office as premier, I believe, in September of 2014. Can you outline for me what, if any, instruction or information was provided to Premier Davis and/or members of his senior staff with respect to the role of the Protective Services Unit and their operations vis-à-vis the Premier's office?

**CST. SMYTH:** The premier, Mr. Davis in this case, would have received a briefing by me in terms of what our method of operation was, some of our protocols and procedures, why we did certain things and what we would perhaps want and expect and hope from him as we tried to carry out those roles.

He was made aware that we also did the investigative side because that wouldn't necessarily be something that was done when he was employed by the RNC in that capacity. His staff would have received similar briefings, but in a different light because they didn't necessarily have to follow our lead and our protocols in the same fashion, but they were given very specific instruction as it related to persons of interest, groups of interest and to always forward us anything that felt was of any level of concern.

**MR. WILLIAMS:** Okay.

Was there any actual written documentation or any manuals, with the exception of the RNC procedure that we've already spoke to, that outlined the role of the Protective Services Unit and the expectations of senior staff or the premier themselves in terms of vis-à-vis the ongoing role of the PSU?

**CST. SMYTH:** Yes, there have been at times documents drafted to outline the history and the role in the form of a briefing. But the expectation of other staff was kept relatively broad. We didn't want it to be too overly cumbersome by design. We didn't want the interpretation of whether something, they felt something was inappropriate or not; we just wanted to leave it at if it was of concern, then please forward it to us, allow us to do the further examination through the databases that we have access to, to see if there is a more underlying concern that you may not even be privy to.

**MR. WILLIAMS:** And would these be, these circulars, would these be with respect to current event matters that may arise or would they be with respect to more routine procedural matters that may apply to any point in time?

**CST. SMYTH:** It would be both.

**MR. WILLIAMS:** Okay.

Can you describe for me what your relationship would have been like with members of the premier's staff – and I'm referring to basically senior staff that you would have interaction with. Just describe the nature of that interaction.

**CST. SMYTH:** It was strictly professional. Solicit information from them as to what movements were, receiving event scenarios so that we could augment our plans accordingly. We may update them on what our movements were so they could also make appropriate plans, but it was strictly a professional relationship.

**MR. WILLIAMS:** (Inaudible.)

**THE COMMISSIONER:** Mr. Williams, I might say, I recall Constable Smyth going over the workings of the PSU earlier on, unless I was dreaming about it. I think –

**MR. WILLIAMS:** What I'd, I'd like to do is just –

**THE COMMISSIONER:** – it might have been Mr. Simmonds who brought it through it, but I don't mean to cut you off, but, you know, going into any lengthy description –

**MR. WILLIAMS:** I'm not going to go –

**THE COMMISSIONER:** – I think it's there.

**MR. WILLIAMS:** I have one or two questions, Mr. Commissioner, in this area. I just want to get a sense, for example, for what the day to day – I'll clarify one aspect that you brought up. I trust that you had no personal or social relationship with any members of the senior staff of the premier and themselves outside of your duties.

**CST. SMYTH:** No.

**MR. WILLIAMS:** I'll just clarify that.

**CST. SMYTH:** No.

**MR. WILLIAMS:** Okay.

But I want to get a sense of – and we don't need to go long and I'm not planning on going down the road far with this – but the day-to-day operation. You've shown up for work, your office was in the premier's – within the Confederation Building. You showed up at 9 o'clock in the morning, how did you know what your duties, vis-à-vis the Premier's office, were going to be for a particular day?

**CST. SMYTH:** It depended. Sometimes our mornings, depending on who the premier was and what the day was going to unfold with, but often our day started with picking up the premier at the residence or another venue. And some of our instructions for their schedule came directly from them.

But in other cases, if that wasn't the situation, we would usually go directly to the Premier's office and ensure we were up to date with what the day's events were going to be as that was something that was always evolving too.

**MR. WILLIAMS:** Did you have advance notice of the premier's schedule? Did you have to find that out on a daily basis or would you have notice of that in advance? For example, what he had on his agenda for the, for the week.

**CST. SMYTH:** Right. We had access to his schedule for – we had access to his professional schedule so I could view that from our office at any given time to see upcoming trips and events. If there was anything significant I would usually follow up with a staff member to see how concrete that trip was so we could start planning accordingly.

**MR. WILLIAMS:** And what staff members in particular would you have had involvement with in terms of filling that role?

**CST. SMYTH:** It was one of several. For travel and schedule it was largely Catherine Evans, she was the administrative assistant. Also, the – for Paul Davis, his executive assistant was Veronica Hayden.

**MR. WILLIAMS:** Did you ever receive specific direction with respect to security measures from Premier Davis directly or from his Chief of Staff Joe Browne?

**CST. SMYTH:** No.

**MR. WILLIAMS:** Did they maintain an arm's-length relationship with you with respect to what you determined were necessary security measures for operation within the Premier's office?

**CST. SMYTH:** Yes, I did.

**MR. WILLIAMS:** Okay.

You alluded to in your earlier evidence that you would have communicated the expectations of the PSU to senior staff. Was this ever done in a formal fashion, meaning a meeting at the outset of when they came to, came into office as to a meeting with all senior staff, here's our role, here's our responsibilities, here's our expectations?

**CST. SMYTH:** That would be the ideal situation. That never happened with Premier Davis, the schedule just never permitted for it. I did have a formalized meeting with just him and I in his boardroom where I went over some of those factors.

**MR. WILLIAMS:** Okay.

Constable, during the testimony of Ms. Ivey, for which you had the benefit of sitting through, she indicated, and I'm paraphrasing, that she'd been instructed by you on more than one occasion that if there was ever any matter for which she felt was of concern from a security perspective, that she was to forward it along to the PSU for purposes of their review and necessary action.

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** Would that be a similar instruction that would have been provided to all senior staff within the Premier's office?

**CST. SMYTH:** Yes, it would be.

**MR. WILLIAMS:** Including the premier.

**CST. SMYTH:** Yes, of course, yes.

**MR. WILLIAMS:** You feel that the members of the senior staff and the premier had a clear understanding of what their role and responsibilities were, vis-à-vis the expectations of the Protective Services Unit?

**CST. SMYTH:** I believe they did, yes. That direction was also provided to some family members as well, as they often found themselves the recipient of –

**MR. WILLIAMS:** How was that received? Was it received openly? Was there any resistance ever expressed by the premier, family members, any of the staff for the suggestions that you had from a security perspective?

**CST. SMYTH:** No, I don't recall ever receiving any resistance or – no.

**MR. WILLIAMS:** With respect to Premier Davis and his Chief of Staff Joe Browne, did either one of these gentlemen ever exert or interfere with your role as a member of the Protective Services Unit, based upon their police background or their experience?

**CST. SMYTH:** No, they didn't.

**MR. WILLIAMS:** Okay. Do you ever feel that Premier Davis or any of his staff ever overreacted in terms of security concerns or referral of matters to the Protective Services Unit for action?

**CST. SMYTH:** No, definitely not; probably the contrary.

**MR. WILLIAMS:** In light of the events that led up to April 5 in the matters where we're – brings us to the point we are today. Do you feel that there could have been any additional efforts taken in respect to informing, educating or instructing public officials, members of the premier's staff, or the premier themselves with respect to the necessary security requirements that are related to their responsibilities?

**CST. SMYTH:** I'm sorry, can you repeat that?

**MR. WILLIAMS:** In light of the events that we've come here today and the nature of the inquiry, do you think there's any additional steps that could be taken on a go-forward basis with respect to educating or informing public officials, members of the premier's staff, the premier themselves – the premier of the day at the time – as to what could be done in terms of security measures? Do you think they're well informed with respect to requirements?

**CST. SMYTH:** Well, I think it – it sincerely reinforces the importance of it, and, you know, maybe even more from a public education perspective, the – to reinforce the fact that this is a reality and this is a constant issue that elected officials deal with, and where that unit is in place to offer some service to allow them to carry out what their actual role is unencumbered by concerns for their safety and that of their families.

**MR. WILLIAMS:** The impression to date is somewhat that there was a bit of an ad hoc relationship as between security – while I know you've mentioned that you did advise or members of the PSU have advised senior staff, the evidence of Ms. Ivey was that she remembers on one particular occasion. You made reference to her to send matters of a security nature along when you were at an event at the Fairmount Hotel I believe. You had a discussion in the lobby there.

Do you think that there should be an actual formal procedure put in place for new administrations, Premier Davis came in midway through a term, so that senior staff, public officials are acutely aware of security measures and what is to be done in particular instances when security or concerns arise?

**CST. SMYTH:** Yeah, I do. Especially in light of, you know, the coverage of this particular incident over the past number of years. I think there's going to be an inherent reluctance on behalf of those staff members and people that might become privy to these types of behaviours to forward it to the necessary investigative body because of the attacks they found themselves under, wrongfully so and unnecessarily.

So now they'll have to struggle with I think, you know, taking appropriate action or potentially dealing with the negative public commentary and potential political impact. I think, yeah,

probably it should be formalized at this stage to say you have to do that, so that it removes, you know, the – that ambivalence from the particular individual.

They're obligated to forward it versus making some of their own assessment in making that apply in their own discretion to it. I think maybe in light of this, some of that should be removed.

**MR. WILLIAMS:** Um, there was some discussion within the evidence of Ms. Ivey with respect to whether she interrupted the tweet in question. Who do you feel its responsibility is to interrupt matters of a security concern? Should they be left within the gamut of government officials or they should be within the auspices of the PSU?

**CST. SMYTH:** I think it should be definitively made at this point known that it is not their role and they should not take on that responsibility and make any effort to interpret concerting information that it should go to the body that has both the training and the capacity and the access to resources to not only interpret but delve into the issue further.

**MR. WILLIAMS:** Madam Clerk, I'm wondering if we could bring up exhibit P-0071, please.

This is the email of January 25, 2015, that has been brought to your attention I believe in your direct evidence.

In the second paragraph, full paragraph, of that exhibit I want to refer you to the line: "No circumstance is too small to bring to our attention."

Now this email came from yourself to Mr. Davis and to members of the senior staff. Can you elaborate on what you intended to mean by that line, "No circumstance is too small to bring to our attention"?

**CST. SMYTH:** I think it lends to the understanding of potential behaviours that might be exhibited by a person on path of intended violence, but yet, within and of themselves, within a silo, don't appear alarming to an individual who is not aware of the broader aspects.

So it's just a call to staff who may see these behaviours but not be, not think it's worthy of follow-up, to let them know that we still want that information, we still want to have these issues brought to our attention so that we can look at it in its totality.

**MR. WILLIAMS:** Madam Clerk, can I bring up exhibit, please, P-0076. This is the email of February 4, 2015, which is in bullet form. I don't intend to take you through this, Constable. But I'd like you to address for the benefit – I'll wait now till it comes up now and you'll have a chance.

**THE COMMISSIONER:** Sorry, what was the prior exhibit? I forgot to note it.

**MR. WILLIAMS:** I'm looking for the emails – maybe I have the wrong reference here or if it's down further. It was the second email of February –

**THE COMMISSIONER:** Yeah, I want to get the number of the first.

**UNIDENTIFIED FEMALE SPEAKER:** P-0071.

**THE COMMISSIONER:** P-0071. Thank you.

All right. Go ahead.

**MR. WILLIAMS:** Maybe, actually, the Commission counsel may be able to assist me in this. I'm looking for the email of February 4, 2015, a bullet-form email that was circulated. I thought it – I may have written it down wrong. I thought it was P-0076.

**CST. SMYTH:** Sorry, that last message too – just for clarity – referenced specifically physical behaviours in certain events that could be considered surreptitious or considered an effort to probe potential security measures. Those are the behaviours that I was referencing and while, to an untrained eye, they may seem potentially just as somebody being a nuisance, but they could also be the final stages of somebody planning an act of targeted violence. And if we're able to – if that particular element is brought to our attention and we can examine whether or not the other factors are already in place, then we can carry out a more thorough threat assessment.

**UNIDENTIFIED FEMALE SPEAKER:** P-0072.

**MR. WILLIAMS:** P-0072, okay, my apologies followed immediately after. And again, I'm not going to take you through this email in any detail, but you do highlight a number of points of interest there. And again, it's to similar recipients. I don't think the – Mr. Davis is included in this one at this point in time. Yes, he is, I'm sorry; it was cc'd to him.

But can you explain to the Commission what was the purpose of circulating this particular email?

**CST. SMYTH:** Just to create awareness. To be, you know, maybe heighten some vigilance with certain behaviours and that if they're observed to bring them to our attention.

**MR. WILLIAMS:** So was the purpose of these two emails and any others that may have been sent – was this for ongoing education for the sake of another term? Was this the means in which you had to update members of senior staff in the Premier's office with respect to ongoing concern – security concerns?

**CST. SMYTH:** Yes, it would be the more formalized, I guess, aspect of it because I hadn't – I wasn't able to have a formal meeting as a group with his staff. But this was also an email that was prompted by ongoing current affairs in the country. I think it might have been previous to the premier planning a trip to Ottawa, if I recall correctly, as well.

**MR. WILLIAMS:** So this would be the mechanism in which you would – any updated matters, any new information, any issues of concern, while there may not have been any formal meetings, this would be the manner in which you would get information out –

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** – to members of senior staff.

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** Would these type circulars be given to any other public officials?

**CST. SMYTH:** They could be, yes.

**MR. WILLIAMS:** Okay. Do you have any recollection of your ever having to extend these kind of messages to any other individuals within government?



**CST. SMYTH:** Yes, I've had dealings with the minister of Justice who was dealing with a similar type of situation, a person who was causing concern; the minister of Child, Youth and Family Services in various –

**MR. WILLIAMS:** Constable Smyth, I want to turn to the tweet in question with Ms. Ivey. Now, again, I'm not going to go through this in any great detail, I know you've seen it a number of times in your five days on the stand or six days on the stand.

But do you have any specific recollection, having spoken with Ms. Ivey prior to this incident arising, with respect to what she was to do if she saw any matters of concern?

**CST. SMYTH:** To send it to me.

**MR. WILLIAMS:** Yes.

**CST. SMYTH:** Yes, that was the instruction.

**MR. WILLIAMS:** Okay.

**CST. SMYTH:** Absolutely.

**MR. WILLIAMS:** So do you feel that Donna Ivey and other members of the senior staff had a clear understanding of what their role and responsibilities were when they saw these type of matters arise?

**CST. SMYTH:** Yes, as it, as it related to that it was always kept very simple by design. If you have, you come across information or you observe something of concern, send it to us.

**MR. WILLIAMS:** Okay. And was this an isolated occurrence where this happened or had she or any other member of senior staff sent this, sent similar type information to you on other occasions?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** Okay. And I trust – and, again, we won't belabor this, but I trust that while there's been much made of the fact that Ms. Ivey only forwarded to you one of the tweets sent by Mr. Dunphy, were you aware that this was one of a series of tweets?

**CST. SMYTH:** Yes, absolutely.

**MR. WILLIAMS:** And, again, you had the opportunity to review, not only the series of tweets, but from your evidence, a number of tweets that had been forwarded by Mr. Dunphy over the period of a year prior to your taking any action pertaining to Mr. Dunphy.

**CST. SMYTH:** Correct.

**MR. WILLIAMS:** And would it be fair to say that the fact that only one line of the tweet, of the series of tweets, was forwarded to you, this did to give you any misunderstanding or did not misguide you in terms of your subsequent actions in investigating this particular matter.

**CST. SMYTH:** No, it did not.

**MR. WILLIAMS:** And I trust from the exhibit that has been entered, being your yellow folder that is in the hearing room today, not only did you review those, you in fact printed them off and assembled them in the order in which they would be logically read. Is that correct?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** So was the exercise by Ms. Ivey of sending along this tweet to you totally in keeping with the instructions that you had provided her?

**CST. SMYTH:** Yes, it was.

**MR. WILLIAMS:** Okay. And while you indicated in your direct evidence, or it may have been in cross-examination by Mr. Simmonds, you indicated that the tweet at issue could be interpreted as pertaining to – and I believe I have your quotation correct here, you said: It could be pertaining to hurting the feelings of the family of the two dead MHAs.

Would you also agree with me that the use of the word “hurt” may also have another interpretation which could possibly be some form of physical harm?

**CST. SMYTH:** Yes, absolutely.

**MR. WILLIAMS:** Okay. And again you used the words – given the possible mixed interpretation – you used the words: It led to a heightened concern.

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** Would that be correct?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** So, again, being a heightened concern, do you feel it was proper for Ms. Ivey to forward it at the time in which she did?

**CST. SMYTH:** Absolutely, I think it was beyond proper. I think she had been – it was a responsibility.

**MR. WILLIAMS:** Constable, would you also agree with me that despite continued media reports to the contrary, the tweet in question never contained a threat or a concern as against then Premier Davis, nor was it ever presented to you by Ms. Ivey as being a threat or concern as leveled against the premier?

**CST. SMYTH:** Well, absolutely, it didn't contain any criminal threat, but I do feel the language was concerning. Yes, I do.

**MR. WILLIAMS:** The language concerning, but I guess the point I'm trying to make is that nothing contained within the tweet itself referred directly to then Premier Davis or any concern pertaining to him directly.

**CST. SMYTH:** No, I don't think so.

**MR. WILLIAMS:** And would you – I'm sorry.

**CST. SMYTH:** He was mentioned in it so, you know, the intent was that he heard it just by virtue of having him mentioned in it.

**MR. WILLIAMS:** And that it was referenced by way of a tag to his PremierNL account. Is that correct?

**CST. SMYTH:** Correct.

**THE COMMISSIONER:** Mr. Williams, how much time are you going to need? We're going to take a break shortly.

**MR. WILLIAMS:** I – probably 10, 15 minutes.

**THE COMMISSIONER:** Yeah, well, why don't we just take a break now and then you can come back and finish off –

**MR. WILLIAMS:** Sure.

**THE COMMISSIONER:** – and then will be – Mr. Kennedy, you're the only one left then, I think, is it?

All right, we'll take our mid-morning recess.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is recessed.

**Recess**

**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry in session.

Please be seated.

**THE COMMISSIONER:** Okay.

Mr. Williams, go ahead.

**MR. WILLIAMS:** Ready to continue, Mr. Commissioner?

**THE COMMISSIONER:** Uh-huh

**MR. WILLIAMS:** Constable Smyth, when we finished off we were speaking specifically regarding the tweet that had been forwarded to you by Ms. Ivey, and I only want – one aspect with respect to that left. There's only one question. I'm wondering if I can have P-0009 brought up, please.

And this is the series of tweets that was done. I don't want to go through them in all but if we scroll down through this number of tweets starting from the bottom – again, I don't need to read them all out but if we can, if Madam Clerk could just bring us back up, then, to the next page. If you look through these, nowhere in the body of any of those tweets is the, the reference to Paul Davis. Would that be correct?

**CST. SMYTH:** Correct.

**MR. WILLIAMS:** So when Ms. Ivey forwarded on this tweet of concern to you, it wasn't her intention that it was a tweet of concern specifically regarding a threat as against Paul Davis?

**CST. SMYTH:** Well, I think @PremierOfNL being held by Paul Davis at the time, they become

–

**MR. WILLIAMS:** But, but – and I guess what I'm alluding to is that Paul Davis and Sandy Collins and Sherman Downey are all tagged on that tweet so –

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** – being that it was forwarded to all these. But in terms of the content of the tweets, there's been a perception that a member of the premier's staff forwarded along a threat, a tweet that was a threat regarding the premier himself. But in the body of those tweets nowhere is it indicated that there was even – regardless of the interpretation that you put on them is there a threat directly against the premier himself.

**CST. SMYTH:** No.

**MR. WILLIAMS:** Would that be correct?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** So public perception that a staff member forwarded a tweet that was a direct threat against the premier of the province would not be correct.

**CST. SMYTH:** No, it's absolutely incorrect.

**MR. WILLIAMS:** Okay, moving on.

That's all I required of the exhibit. Thank you.

In your experience, having worked with the Protective Services Unit and having served under premiers Dunderdale, Marshall and Davis, did you have occasion to review other postings or emails that may be considered matters of concern related to these particular individuals?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** And did any of these issues ever require personal visits with the individuals involved?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** And without going through any particulars in relation to these, how many occasions would that have occurred in your estimation?

**CST. SMYTH:** Probably upwards around 30.

**MR. WILLIAMS:** Okay, approximately 30 over your four-or-so-plus years with the unit?

**CST. SMYTH:** Yes.

**MR. WILLIAMS:** Okay.

And was your practice in investigating any of these, what I'll call, matters of concern for any of these premiers being Dunderdale or Marshall any different than you did exercise in relation to concerns regarding Premier Davis?

**CST. SMYTH:** No.

**MR. WILLIAMS:** So did you treat your threat assessment any different for Premier Davis than you would for Premiers Marshall or Dunderdale?

**CST. SMYTH:** No.

**MR. WILLIAMS:** Okay.

In your tenure working with the PSU under these three separate administrations, would there have been any one administration that may have been subject to more matters of concern than another?

**CST. SMYTH:** Yes, I believe so.

**MR. WILLIAMS:** And can I ask you which, which premier?

**CST. SMYTH:** I believe Premier Dunderdale was subject to a higher number of these types of incidents and perhaps the victim of more very personal, explicit type of commentary.

**MR. WILLIAMS:** Is there any rational basis which you could connect to why there would be an increase with Premier Dunderdale as opposed to Marshall or Davis?

**CST. SMYTH:** I think the fact that she was female had some impact on that.

**MR. WILLIAMS:** Okay.

**CST. SMYTH:** She was there longer and she also went through a few periods of reduction in services which tend to heighten that. But I think in terms of the more personal type of hateful commentary, often was related to her being female.

**MR. WILLIAMS:** And so you feel that there may be some gender basis in which some of these messages were communicated.

**CST. SMYTH:** For her it seemed to be, yes.

**MR. WILLIAMS:** Okay.

Are you able to give the Commissioner any sense, in terms of your job responsibilities – and you've indicated, obviously, close protection work would have been a large portion, attending events and travelling with the premier. How much of your time was actually involved in having to review these type matters, what I'll call matters of concern, whether they're emails or tweets or Facebook messages? Is there – what portion of your time do you think is spent in that regard?

**CST. SMYTH:** It's challenging to give you anything specific but, you know, perhaps 25 per cent of the time.

**MR. WILLIAMS:** Okay. And I know that's a rough estimation; I'm not trying to tie you to anything there.

What I want to go to is while we've spent a fair amount of time – and obviously part of the mandate of the inquiry is to look at issues pertaining to social media. With respect to just matters of a security nature for public officials, are there many occasions where you're left dealing with matters of, what I'm describing as in-person or in-your-face security concerns, being matters, for example, of a stalking nature or matters where there may be physical confrontation while you're providing personal protection?

**CST. SMYTH:** There has been occasion but they've been very limited and have been dealt with through –

**THE COMMISSIONER:** Very limited incidents regarding what?

**MR. WILLIAMS:** Any other matters with respect to what I've described and it's my words, not Constable Smyth's. What I've described as in person, being issues, for example, like stalking or physical confrontation while, you know, participating in an event or a demonstration, things of that nature.

**CST. SMYTH:** Yes. That has occurred, yes.

**MR. WILLIAMS:** Okay.

Constable Smyth, with respect to the operation of the Protective Services Unit, are you aware whether or not any such other type units exist in other provinces within Canada?

**CST. SMYTH:** Yes, there are.

**MR. WILLIAMS:** And can you just elaborate on that a little as to what provinces or – I don't need the list but are they – this type service in most provinces?

**CST. SMYTH:** To some extent or another, yes. Full-time units exist within Ontario, Quebec, and British Columbia and Alberta. There are units of varying capacities in most other provinces that I'm aware of. I think probably the only ones I haven't dealt with would probably be the Prairie provinces.

**MR. WILLIAMS:** In terms of the staffing and the mandate –

**THE COMMISSIONER:** (Inaudible) are the only ones you haven't dealt with.

**MR. WILLIAMS:** Oh, sorry.

**CST. SMYTH:** It would be the Prairie provinces.

**THE COMMISSIONER:** Right.

**CST. SMYTH:** I don't think I've had reason to interact with them.

**THE COMMISSIONER:** And you're saying full time – as you understand it, full-time units are in Ontario, Quebec, BC and Alberta.

**CST. SMYTH:** Correct.

**THE COMMISSIONER:** So there would not be full-time units in the Atlantic provinces as far as you know?

**CST. SMYTH:** I believe the RCMP has the mandate for close protection for the premiers in New Brunswick – well, I know they do, sorry – New Brunswick, Alberta and – or sorry, Nova Scotia and PEI. To how much of what exactly their mandate is, I'm not sure, but I've dealt with those persons on numerous occasions.

**THE COMMISSIONER:** Uh-huh.

**MR. WILLIAMS:** Are they dedicated units in those provinces, in the Atlantic provinces?

**CST. SMYTH:** I believe they are. They are dignitary protection units, but I think – you know, I'm speaking now on what I believe, not what I know – I think their mandate may be inclusive of dignitaries that would fall under federal jurisdiction as well in terms of visiting heads of state.

**MR. WILLIAMS:** Do you have any idea with respect to what the staffing complement would be in respect of these units?

**CST. SMYTH:** No, I don't. No, I know they are multiple persons because I've periodically dealt with different persons within those units for the same event.

**MR. WILLIAMS:** Do you ever have occasion or did you ever have occasion over your tenure with the unit to do, have to meet with these other units across the province for purposes of information sharing, educational training, things of this nature?

**CST. SMYTH:** Not across the province; in interprovincially, yes, regularly we dealt with, you know, especially the Atlantic provinces because there was a council – there is the Council of Atlantic Premiers that meet, I believe, at least a couple of times a year. So we usually conduct a threat assessment or contribute to a threat assessment depending on where that meeting is being held. And, of course, we'd always national meetings around Council of the Federation and other meetings between different premiers that would involve integration and discussion between the various close protection units.

**MR. WILLIAMS:** How would you describe the adequacy of the protection unit that we have in Newfoundland in comparison to those that you've been exposed to in other provinces?

**CST. SMYTH:** Very different. I think it inherently has always had to be structured differently based on, you know, available resources. We can't compete or compare ourselves to what the OPP or the Sûreté du Québec have at their disposal because they're just a significantly larger province. And I think it would only be reasonable to recognize that the percentage of resources they could dedicate to a specialized unit such as that are going to be naturally be very different than what we can in this province.

So, yeah, they differ. We try to accomplish similar mandates with less resources, but that's just an unfortunate reality of –

**MR. WILLIAMS:** Is there anything that you could specifically state that you would see as a recommendation for improvement for the Protective Services Unit within the province that you think it's something that's missing, whether it's due to financial restraints or otherwise?

**CST. SMYTH:** I think the dedicated presence and dedicated structure around what the resources would be, both personnel and equipment-wise, and that, you know, you'd have that static in such a way that politicians don't have to fear the optics and the personal attacks for having security and having that expenditure, that it becomes as necessary an element in doing their job as is having a desk.

**MR. WILLIAMS:** In your experience in travelling with three premiers, did you get a sense that there was a public perception that this was an excessive benefit that is provided to public officials being, you know, close protection?

**CST. SMYTH:** Yes, people often thought that it was unnecessary. They didn't feel it should be there. It was an unnecessary expenditure, depending on a person's point of view or what their sentiments were around how government funds should be expended. They were constantly dealing with that particular sentiment, I think, yes.

**MR. WILLIAMS:** Over your tenure with the Protective Services Unit did you see an increase in the amount of material that was circulated on social media which would give rise to matters of concern for which you had to address, so was there an increase from when you came with the unit in 2011 up to when you finished up with the unit in 2015?

**CST. SMYTH:** I think there was always ebbs and flows in that particular medium depending on what the particular situation was with a premier or current affairs. I think social media in general has – that communication platform has definitely increased, absolutely, as a medium.

**MR. WILLIAMS:** And keeping along that thought train, in recent months there's been some attention paid by public officials to issues surrounding cyber-bullying and that's been a matter of topic, of concern in the press in recent weeks and months. And I know you've expressed some concern with respect to the increase related to previously Premier Dunderdale.

Do you think the issue of cyber-bullying and the impact that it may have on public officials is a matter that should really be looked into further?

**CST. SMYTH:** Absolutely. I think it plays a significant role in their capacity to do their jobs without concerns for their personal safety and that of their families. I think the recognition that there are dedicated professionals that are there to mitigate those kinds of issues may provide some solace and the ability to focus on what their duties are. I would hope that was always what one of our goals were. So without that, it must make their job more challenging for sure.

**MR. WILLIAMS:** And do you feel more efforts could be made to assist public officials in dealing with matters such as cyber-bullying and other issues of concern that are raised as a result of social media, given the fact that is a relatively a new trend that we're being confronted with?

**CST. SMYTH:** Yes, absolutely. I think it's become prolific in its nature and, you know, the perception is that because they are public officials they have to be subject to this kind of vitriol, but the – and of course the threshold is very different and people are, and we don't want to alter people's right to free speech and to complain and offer criticism, but there is absolutely a boundary where it does become harassing and bullying and the intent is no longer to effect a change in a particular program. It becomes an intent to simply alter behaviour through fear, harassment type of methodology.

**MR. WILLIAMS:** You mentioned in your response to that last question the issue of boundaries. While there's been much concentration and attention paid to the issues regarding security matters pertaining to public officials, from your experience, does this overflow into their families, to their children, to their personal residences?

**CST. SMYTH:** Definitely. Their –

**MR. WILLIAMS:** Have you – I am sorry; go ahead.



**CST. SMYTH:** Yes, their families are inherently impacted by the comments that are made directly to them but, on occasion, the families are also subjected to actual security concerns as a result of the public figure's position.

**MR. WILLIAMS:** And I don't want you to get into specifics with respect to particular individuals, but can you give us a sense of that, how you've seen in your experience, how the families have been affected directly as a result of security-related matters?

**CST. SMYTH:** Some family members have been targeted specifically through the knowledge that they are, you know, a spouse or a sibling or a child. They've been – of course, they also often find themselves alone and without the public figure in their residence and they've been subject to persons attending the home to have a conversation with the public figure and they're not home, so they have to engage our services for situations such as those too.

**MR. WILLIAMS:** Okay, Constable, just one last area that I want to touch on before we finish. You've indicated in your evidence that you didn't have a personal relationship or social relationship outside of your responsibilities with Premier Davis, but given the close nature of the contact that you had from a security perspective and that you obviously did a number of public events, travelled with him out of province, did you develop a rapport with the premier over that period of time?

**CST. SMYTH:** Sure, of course, yes.

**MR. WILLIAMS:** Okay. And with respect there to the telephone call that was made to you on the evening of April 5, by Premier Davis – did I hear your evidence correct in that at that – the nature of that call was to express concern regarding how you were personally doing as a result of the events that took, unfolded that afternoon?

**CST. SMYTH:** Yes, for sure. I think that type of sentiment would have been expressed by any of the premiers who I worked for, because you do naturally develop, you know, a rapport in a relationship with that individual. So yeah, that, that –

**MR. WILLIAMS:** During the nature of that – during the tenor of that conversation, was there any details talked to, referred to specifically regarding the events that unfolded –

**CST. SMYTH:** No.

**MR. WILLIAMS:** – at Mr. Dunphy's home?

**CST. SMYTH:** No.

**MR. WILLIAMS:** With respect to the telephone call, you refer that you attempted to make, or were going to make to Chief of Staff Joe Browne following the incident. Am I correct in stating that you gave that second thought and never in fact spoke with Mr. Browne?

**CST. SMYTH:** Correct.

**MR. WILLIAMS:** Did you ever at any point, subsequent to April 5, ever discuss the particulars of the events that unfolded in Mr. Dunphy's home with Mr. Browne?

**CST. SMYTH:** No, I never have.

**MR. WILLIAMS:** At any point in time, after April 5 or – from April 5 henceforth, did you ever discuss particulars of the events that unfolded in Mr. Dunphy’s home with any member of the premier’s senior staff?

**CST. SMYTH:** No, I have not.

**MR. WILLIAMS:** In summary, with the exception of the tweet being forwarded to you by Ms. Ivey, and the subsequent exchange of emails pertaining to the same by Ms. Ivey and Mr. Browne that we’ve had in evidence and your follow-up call from Premier Davis, would you agree with me, that to the best of your knowledge, with the exception of these matters, there was little or no other involvement in the events that unfolded on April 5, 2015, by Premier Davis or his staff?

**CST. SMYTH:** I would agree that I don’t think there was any involvement, I think there was none.

**MR. WILLIAMS:** Based on the information that you’re aware of, was Premier Davis aware of any matters pertaining to Mr. Dunphy, the tweets in question, or of your visiting his home at any time prior to the events that unfolded on the afternoon of April 5, 2015?

**CST. SMYTH:** Absolutely not by me, no.

**MR. WILLIAMS:** Okay, fine.

Thank you. That’s all the questions I have.

Thank you, Constable.

**THE COMMISSIONER:** Okay.

Mr. Kennedy.

**MR. KENNEDY:** Thank you, Commissioner.

Thank you, Mr. Williams.

Constable Smyth, why did you become a police officer?

**CST. SMYTH:** I think it’s the, for me in all sincerity, it was an exciting career option to effect a positive change in your community.

**MR. KENNEDY:** Was it something, Sir, that you’d always dreamed of or was it something that just happened?

**CST. SMYTH:** No, I had always desired to follow that career path.

**MR. KENNEDY:** And, Sir, when you became a police officer and – were you aware of the inherent dangers and risks in that job?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Sir, if I were to ask you to describe some of the traits of a good police officer, what would you say?

**CST. SMYTH:** I think empathy, intelligence, common sense, honesty.

**MR. KENNEDY:** What about courage, Sir, having to go into unknown situations on a daily basis?

**CST. SMYTH:** Sure, it has to be a factor, of course.

**MR. KENNEDY:** But does that courage or having courage also mean you don't have fear at times?

**CST. SMYTH:** No, absolutely not. I think it means appropriately dealing with that fear. I think the –

**MR. KENNEDY:** And is there training, Sir, for dealing with courage, fear, how to act in situations that are inherently dangerous?

**CST. SMYTH:** To a certain extent, yes. I mean, we run through scenarios that try to recreate critical incidents whereby you can control your fear and still act appropriately and within the mandate of what your training is.

**MR. KENNEDY:** Sir, is good judgement – where would good judgement fit in terms of the spectrum of required traits or desired traits for a police officer?

**CST. SMYTH:** It would be very high at the top.

**MR. KENNEDY:** We've talked about your educational and training background, Sir. I wonder if I could have Constable Smyth see the P-0118 brought up, please.

**THE COMMISSIONER:** P-0 –?

**MR. KENNEDY:** 118.

I want to refer to your CV, but also talk about the nature of policing, Constable Smyth. Is it something that you learn in a classroom or in training manuals or do you learn it on the street?

**CST. SMYTH:** I think it's a combination of both.

**MR. KENNEDY:** You became a member of the Royal Newfoundland Constabulary I think before the Memorial University program came into place, did you?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** And do you know when that program came into place?

**CST. SMYTH:** I think it was 2005.

**MR. KENNEDY:** Do you know what the difference would be in terms of the requirements to become a police officer when you joined as opposed to after 2005?

**CST. SMYTH:** No, I don't.

**MR. KENNEDY:** Okay.

In terms of – there's been reference to training manuals, as a police officer do you continuously update your training, take new courses, develop new interests?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** We'll see from your CV that you worked in different aspects of policing. Is that correct?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Could you just again – we've gone through this, so I don't want to spend a lot of detail, but outline the various sections in which you worked.

**CST. SMYTH:** Well, as you can see here, I spent several years in our Protective Services Unit. I was investigator with our Criminal Investigation Division in a couple of different roles, from about 2008; that was Criminal Intelligence Unit and the General Investigation Unit. General Investigation Unit, while I was there I was largely assigned to the investigation of armed robbery.

**MR. KENNEDY:** Do you have any idea how many armed robberies you would have investigated?

**CST. SMYTH:** Not off the top of my head. I wasn't in that unit for an extended period of time before I went to criminal intelligence, but maybe in the area of 40.

**MR. KENNEDY:** When you're investigating an armed robbery or any crime that's already been committed, it's reactive policing isn't it?

**CST. SMYTH:** Yes, it is. You do try to apply elements of intelligence led policing once the investigation is initiated but, yes, it is largely reactive to a specific incident.

**MR. KENNEDY:** So along with your training as being important, how important is experience as a police officer whether it be in the CID, on patrol or in forensic sections?

**CST. SMYTH:** I think it's very important. You naturally develop a higher acumen for, you know, dealing with individuals, recognizing certain human behaviours, traits and trends in criminality, these kinds of things.

**MR. KENNEDY:** Do you find, Sir, that going to court as an investigator and being cross-examined, does that help you as a police officer?

**CST. SMYTH:** Absolutely.

**MR. KENNEDY:** Sir, where would common sense fit into the spectrum in terms of, along with training, experience and understanding of human nature?

**CST. SMYTH:** I would like to think it rates fairly high. Of course it's a challenging trait to quantify, but it's there.

**MR. KENNEDY:** So along with the general principles of policing that you're taught in a classroom setting or a training session, along with the, what you learn from experience, did you as a police officer or do police officers – are they encouraged to develop an individual approach to the application of these general principles?

**CST. SMYTH:** I think within reason. We all have different, I think, abilities in certain areas where we're better than others. So within reason, yes. I, you know, I had probably an acumen for cultivating human sources and developing relationships; hence, a movement to Criminal

Intelligence I think was the impetus for that. And others don't necessarily have an interest in that aspect of policing.

**MR. KENNEDY:** So when you're dealing with human sources, Sir, are there issues of trust? Do you have to develop trust with the individual?

**CST. SMYTH:** Yes, absolutely.

**MR. KENNEDY:** You also have to be aware of their circumstances.

**CST. SMYTH:** Of course. All those things are paramount in recognizing, you know, what their personal situation is, what their personal challenges are and, in most cases, offering some level of support where you can.

**MR. KENNEDY:** So you've indicated that you had a particular interest in developing intelligence or criminal intelligence or sources. Do police officers – are there opportunities in a police force to go into the area in which attracts you such as forensic investigation or identification, CID, Criminal Intelligence. Are those opportunities available to police officers?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So what led you towards – or what – how did your interest in criminal intelligence, how did that develop?

**CST. SMYTH:** Well, I recognized the value in intelligence-led policing and gathering information and creating intelligence as a means of being an efficient police service. And you can apply that same philosophical approach in almost every aspect of policing, including front line. Having, you know, a core knowledge or a heightened knowledge of criminal trends just allows you to react to an incident in a more efficient manner, to end it successfully.

**MR. KENNEDY:** Now you've used the term – and we're going to go through this in more detail, but you've used the term on a number of occasions, intelligence-led policing. Is that a new form of policing? Is it, is it something that's developed over the years or was it just a new name for something that's been around forever?

**CST. SMYTH:** I don't think it's new. I think, you know, the adoption of it in all aspects of policing has been an ongoing effort.

**MR. KENNEDY:** So in terms of the, what you did in Criminal Intelligence, or the Criminal Intelligence Unit, were these techniques that you learned there, were these ones that also were helpful when you became a member of the Protective Services Unit?

**CST. SMYTH:** Definitely, in a number of different ways. From an investigative aspect, yes; in developing relationships with people, yes. And also dealing with, you know, persons such as ones Mr. Williams brought up in an event where somebody maybe agitated and confrontational in recognizing what their, what the causation may be for it and trying to mitigate that as best you can.

**MR. KENNEDY:** Sir, when we look at your CV, is there anything that comes to your mind, and I can point them to you if you want, but in terms of where you've given either presentations, spoke on the subject of criminal intelligence or taught a course, for lack of a better term?

**CST. SMYTH:** Yes, I've provided training and presentations on that very topic. It was usually to new recruits or outside agencies.

**MR. KENNEDY:** And what outside agencies – I'll just get you some, we'll just go down here – could we just keep moving, Madam Clerk, please, to Training and Seminars – or, no, sorry. Can I just see that there (inaudible)? If I could just ask if we could go to pages 3 and 4 and – yeah, 3 and 4 of the exhibit, please. Just keep going down somewhat, please.

Is there anything that – they're in there somewhere, Constable, I'm having difficulty with the screen – is there anything that comes to your mind in terms of actual presentations or lectures you've given on criminal intelligence?

**CST. SMYTH:** I think they're down lower. I think you keep going down, next page, it would be –

**MR. KENNEDY:** Okay.

**CST. SMYTH:** – the presenters down at the lower portion there.

**MR. KENNEDY:** Yeah, okay, you see Presenter: Department of Fisheries and Oceans – Intelligence Led Policing in 2011. Is that the kind of thing you're talking about?

**CST. SMYTH:** Yes, yes. Airport Security and Intelligence.

**MR. KENNEDY:** And so what would you be talking about in a presentation or a lecture like that?

**CST. SMYTH:** Many of the things we just spoke about: the methodology and the philosophy behind utilizing intelligence as a means of more effectively and efficiently carrying out your law enforcement mandate and some of the components that are involved in that to achieve that goal.

**MR. KENNEDY:** One of the terms that we're going to see a little later, as we go through this today, Constable Smyth, is proactive policing. So what would you or how would you define or describe proactive policing?

**CST. SMYTH:** It's identifying trends in your community that may be and show signs of leading to various elements of criminality or other issues that may fall within our policing mandate, that we can potentially identify before it becomes problematic and implement mechanisms where we can stop them from happening.

**MR. KENNEDY:** So is there an element of intervention inherent in proactive policing?

**CST. SMYTH:** Yes. Absolutely.

**MR. KENNEDY:** Now, we've talked about and I'm going to move on too, very shortly on this topic, but we've talked about the inherent risk or danger in policing in general. Sir, if you attend a domestic violence situation, you pull over a car for a highway traffic act, is there always a potential for violence?

**CST. SMYTH:** Yes, of course.

**MR. KENNEDY:** And how do you train, or what training can there be given for that, or is it a combination of all the characteristics that we've already talked about that prepares you?

**CST. SMYTH:** It is a combination; we'll go through scenarios that try to mimic as best you possibly can, those very situations – high-risk vehicle stops, or what might be considered a

routine traffic stop that of course turns into one that's high-risk or violent and dealing with what would also be potentially considered routine police investigations that potentially turn violent.

Something as benign as a complaint of a suspicious person may involve, you know, looking for a person in a particular vehicle or in a particular residence that might be exhibiting behaviours to some that's suspicious to the point that they feel there's criminality. We have absolutely no idea what that person is doing. It may be that they are legally and legitimately where they are, or it may be that they're up to – there for a more nefarious purpose and it can go either way.

**MR. KENNEDY:** Sir, on the date that you visited Mr. Dunphy's house, there was a, Mr. Dunphy was identified as low risk, correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** There was low risk for your safety?

**CST. SMYTH:** I had believed so.

**MR. KENNEDY:** At that time. Would you describe this as a routine visit in terms of your role within the Protective Services Unit?

**CST. SMYTH:** Very much so.

**MR. KENNEDY:** Sir, in terms of demeanour and dealing with people, is there any particular approach that you've attempted to develop or cultivate over the years? And I'll give you just a couple of examples: we can have the calm, conciliatory police officer; we can have the more aggressive police officer; we could have a tough, no-nonsense police officer or individuals in general. Is there any one that you lean towards more than the other?

**CST. SMYTH:** Absolutely. For me, what comes naturally is the calm approach, empathetic and trying to relate to the individual; apply elements of reciprocity. Anything else for me is an act and most people can, can pick up on the act.

**MR. KENNEDY:** Sir, we know that oftentimes – and you've discussed this over the last period of a week or more – that police officers often attend situations by themselves.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** If someone were to suggest that there should be two police officers at every house visit, every police stop, would you think that would be a good idea?

**CST. SMYTH:** We would be very excited about that.

**MR. KENNEDY:** But would there not also be significant resource issues involved.

**CST. SMYTH:** I would suggest it's – there would be unrealistic resource limitations.

**MR. KENNEDY:** Sir, there's been – now, I'm going to move to this whole area of intelligence-led policing and proactive policing.

There's been much discussion of the Managing Targeted Violence manual, and I think you've indicated on a number of occasions that people having to start from the beginning, they're quoting isolated passages or pages from the text itself. Correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** I'm going to go – let's start from the beginning, Sir. If I could ask that P-0218 now be brought up on the screen.

Constable Smyth, when you develop a certain interest or a particular interest in an area of policing, do you then seek training or further training in that area? Is that one of the things – an opportunity that's available to you as a police officer?

**CST. SMYTH:** Yes. We can express an interest and ask for additional training or we can take it upon ourselves to do that as well.

**MR. KENNEDY:** Again, you can refer to your CV if necessary, but I understand that – and we're going to talk about the Managing Targeted Violence course that you did. You also did courses with the OPP and in Nova Scotia relating to similar or related topics. Is that correct?

**CST. SMYTH:** Yes, the OPP course was specifically related to dignitary protection. The course completed in Nova Scotia was through the Criminal Intelligence Service Canada which was a criminal intelligence-based investigation – course, sorry – that did largely focus on threat assessments. Albeit for a slightly different process, some of the methodology would be very much the same.

**MR. KENNEDY:** Now I know that you discussed with Commission counsel the OPP course and the dignitary protection. But, again, just to refresh my memory, how long was that course, Sir?

**CST. SMYTH:** The dignitary protection course was two full weeks.

**MR. KENNEDY:** And there was firearms training and exercises involved in that?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** How many – were there different instructors or was it simply one instructor did the whole thing?

**CST. SMYTH:** No, no, there was multiple different instructors –

**MR. KENNEDY:** When – sorry. When did you do that course, Constable?

**CST. SMYTH:** 2012.

**MR. KENNEDY:** Is two weeks a long time for a course in policing or is that a – are there lots of courses like that?

**CST. SMYTH:** There are a lot of training that they try – that would be for that period, the two-to three-week period. They're usually intensive training, you know, early mornings, long evenings, weekends, to try to get as much in as they possibly can.

**MR. KENNEDY:** And where did this course take place, sorry?

**CST. SMYTH:** Orillia, Ontario

**MR. KENNEDY:** Orillia. Okay.



Now, in terms of the dignitary protection course were there also elements of proactive policing or intelligence-led policing discussed there?

**CST. SMYTH:** In the OPP course?

**MR. KENNEDY:** Yeah.

**CST. SMYTH:** It was touched on; it wasn't something we went into extensively.

**MR. KENNEDY:** Okay, so this was more the close protection aspect of your duties as a member of the (inaudible).

**CST. SMYTH:** That was the primary focus of that, yes.

**MR. KENNEDY:** Now, when did you do the criminal intelligence course in Nova Scotia?

**CST. SMYTH:** I believe it was 2010, maybe.

**MR. KENNEDY:** Okay. So that would have predated –

**CST. SMYTH:** Yes.

**MR. KENNEDY:** When did you join the Protective Services Unit?

**CST. SMYTH:** 2011 I started there in a part-time capacity, 2012 full time.

**MR. KENNEDY:** So were you in the Criminal Intelligence Unit when you did the course in Nova Scotia?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** In terms of the course in Nova Scotia, how long was that?

**CST. SMYTH:** It was two weeks as well.

**MR. KENNEDY:** And what was the nature of this course? I think you said it dealt with threat assessment but in a somewhat different context?

**CST. SMYTH:** A threat assessment insomuch as cultivating threat assessments for organized crime, drug-related information, threats towards public safety versus threats towards an individual.

**MR. KENNEDY:** Okay.

And at the – first, let's deal with this course. How many participants would have been at this course?

**CST. SMYTH:** I would guess around – for the criminal intelligence course?

**MR. KENNEDY:** Yes, the criminal intelligence.

**CST. SMYTH:** Probably around 30.

**MR. KENNEDY:** And were they all police officers?

**CST. SMYTH:** Yes, I believe they were. I think there were some criminal analysts that also attended, would have been civilian staff.

**MR. KENNEDY:** Were they from across Canada or simply the Atlantic provinces or?

**CST. SMYTH:** I think this course was for Atlantic Canada.

**MR. KENNEDY:** So how would – would this course then relate to your subsequent duties in the Protective Services Unit?

**CST. SMYTH:** There was some overlap. Yes, absolutely.

**MR. KENNEDY:** Now the Managing Targeted Violence course you do in 2012 –

**CST. SMYTH:** 12.

**MR. KENNEDY:** Is that correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So you're already a member of the Protective Services Unit at that point.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** If I could ask you to look at – ask you to look at page – it'd be actually pages 7 and 8, Commissioner, of the manual but the – obviously, the numbers could be a little bit different here when it comes on screen.

Okay, right there, please. Thank you.

So we see there's a course agenda. It's outlined for four – four days. A course agenda, do you see that?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** Okay.

Was it a four-day course or was there a introductory day, a summary day?

**CST. SMYTH:** No, it was a full four days.

**MR. KENNEDY:** And when you say a full four days, when would you begin and when would you end?

**CST. SMYTH:** I think it was like a nine-to-five type of situation

**MR. KENNEDY:** Okay. And who taught this course?

**CST. SMYTH:** It was a superintendent out of British Columbia. I think he was seconded at the time to the RCMP Behaviour Sciences unit.

**MR. KENNEDY:** And what was his name?

**CST. SMYTH:** Mark Beaulieu.

**MR. KENNEDY:** Did you have any knowledge as to Superintendent Beaulieu's background, which police force or what training he had?

**CST. SMYTH:** Yes, he was a designated threat assessment expert. He had completed, I believe, a two-year understudy program related to the threat assessment process.

**MR. KENNEDY:** Do you know, Sir, if there's a Canadian association of threat specialists or something along those lines?

**CST. SMYTH:** Yes, I believe there is. That's –

**MR. KENNEDY:** Do you know what that's called?

**CST. SMYTH:** I think you might have just named it.

**MR. KENNEDY:** Oh, okay.

**CST. SMYTH:** That's the closest I would come with it.

**MR. KENNEDY:** Now, one of the questions that has continuously arisen in this matter from day one, and has been significant questioning at this inquiry, is why did you go to Mr. Dunphy's house on the date in question. Do you agree with me that that's been a consistent and recurring theme?

**CST. SMYTH:** Yes, it has.

**MR. KENNEDY:** So let's just now look at this course. It's a four-day course that – is it specifically dealing with – when you say Managing Targeted Violence, is that specifically geared towards a Protective Services Unit member or are there other entities or units that can also avail of that training?

**CST. SMYTH:** Yeah, there are other agencies that could avail of it. I do, however, think it was primarily focused on specifically what our mandate was. There is no doubt that other agencies could yield great benefit from it.

**MR. KENNEDY:** How many people attended this course, Sir?

**CST. SMYTH:** I think maybe about a dozen.

**MR. KENNEDY:** And do you know how many police officers or people from other entities would be present?

**CST. SMYTH:** I think it was about half police, half civilian staff from Eastern Health.

**MR. KENNEDY:** Was there any other – were there any other members of the Protective Services Unit present with you?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And who was that?

**CST. SMYTH:** Constable Tammy Madden and Constable Andrew Warren I believe were both there.

**MR. KENNEDY:** How long did Constable Madden work in the Protective Services Unit with you?

**CST. SMYTH:** She had joined just previous to taking that course and – I can't recall the exact date she finished up, but it was probably around 2013.

**MR. KENNEDY:** In terms of the course itself, we see there's a four-day program, was there a discussion, were there seminars, were there one-on-one meetings, was there – we know there were written exercises, which we'll come to shortly, was that the general nature of the course?

**CST. SMYTH:** There was a lot of group/instructor presentation coupled with smaller group exercises.

**MR. KENNEDY:** And you see there earlier today, you were referred to some of the written exercises or some of the exercises in which you made notes?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So were those notes, what the instructor was saying about those specific scenarios or were the notes your answer or your attempt to answer the problems, or the problem posed?

**CST. SMYTH:** If I recall, it was just notes based on the discussion within the group and from the instructor. I don't think that involved any of the testing phase.

**MR. KENNEDY:** How did you find this course? Was it helpful?

**CST. SMYTH:** Yes, very much so.

**MR. KENNEDY:** Did it supplement or assist in terms of the job that you had to do, in terms of your knowledge and experience in your job?

**CST. SMYTH:** Definitely.

**MR. KENNEDY:** So at this point, when you're now a member of the Protective Services Unit, how long has your career been focused on criminal intelligence, intelligence-led policing?

**CST. SMYTH:** The focus I guess would have been since 2008. So four years.

**MR. KENNEDY:** So did that focus or job in the Criminal Intelligence Unit naturally lead to the Protective Services Unit, or, again, was that an opportunity that just arose?

**CST. SMYTH:** A bit of both. There had been an overlap in Criminal Intelligence Unit I guess to take on that role, but within that it was asked of me. So, yeah, it would have been an additional opportunity that presented itself.

**MR. KENNEDY:** And is it something that interested you?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Now the close protection or the security being provided was that also something that you were interested in or was it a combination of all of it?

**CST. SMYTH:** I think it was a combination of all of it. I think either one of the items would have been of interest but there's pros and cons of both. The combination of two made it probably more interesting.

**MR. KENNEDY:** Sir, in terms of the close protection duties, is that something where you blend into the wall or into the background or is it something that you are front and center with the person that you are assigned to protect?

**CST. SMYTH:** Largely, the goal was to try to be very much out of the way and blend into the background as much as you could. There was occasion, depending on the environment and the situation that you had little choice but to be extremely close, but there were still efforts made to blend in, to appear as a staffer as much as a security member.

**MR. KENNEDY:** Did you ever have situations, Sir, when you were providing close protection duties where you would have to talk to irate individuals and –

**CST. SMYTH:** Yes.

**MR. KENNEDY:** – tell them to stop, calm down. What would you – how often did that happen and what did you do?

**CST. SMYTH:** It didn't happen often. Usually the person who's being confronted, I guess the politician, the premier or minister – it was usually the premier that we would have had to deal with in that type of situation. We're more than apt at dealing with the situation. It may be just that we get a little bit closer in case there was a sign of violence, but there was occasion where, you know – there has been many occasions, I should say, where the premier has made it clear that that individual, this conversation has spiralled and it's not going to continue and they would turn and walk away. And if the person continued to approach, we may identify ourselves and say the premier has expressed that they're not willing to carry on this conversation right now, it needs to stop.

**MR. KENNEDY:** Were you ever challenged by individuals at all, Sir?

**CST. SMYTH:** No, no. People were always compliant to that request. I think the realization that they might be overstepping that bound was sufficient.

**MR. KENNEDY:** Sir, we'll see in this particular manual that there are eight modules, and I'm not going to certainly go through all the modules, but what was contained or do you understand or have any knowledge as to why it was broken down, this course was broken down the way it was?

**CST. SMYTH:** I'm not sure of the specific reasoning for it, other than to just provide structure to the training.

**MR. KENNEDY:** At page 10 – if I could just have, Madam Clerk, page 10 brought up, please.

Yes, that's good, okay. No, page 10, sorry. It would be page 10 at the bottom corner.

Okay. You'll see the Introduction and Overview. Is there anything you want to comment there before I refer you to, specifically, the next page?

**CST. SMYTH:** No, I don't think so. I think the, they speak for themselves.

**MR. KENNEDY:** Because the Commissioner has referred to the terms threat assessment and risk assessment. We now have here on this page, the purpose of threat management. And you'll see it says that, "Participants will safely and effectively learn how to assess and manage potential incidents of targeted violence."

How does threat management fit into what we've been talking about for the last – since January 23 – January 16, sorry?

**CST. SMYTH:** I think threat management then takes into it more holistic view of the fact that you've identified a potential threat, a person of concern, and that then the process of managing that and implementing potential strategies so that person has alternatives to potentially carrying out an act of targeted violence.

**MR. KENNEDY:** At page 12 of the manual, please. Again, the bottom right-hand page, Madam Clerk.

In here, in this section, the Evolution of Threat Management: "In the past most law enforcement – I'm going to ask if you agree or disagree with this statement. "In the past most law enforcement officers felt powerless to do anything about an individual's potential for violence unless that individual broke the law. Too often, that meant waiting too long to prevent any violent acts. Now however, law enforcement, school administrators, social agencies," et cetera, "have learnt that they cannot afford to ignore the lessons being drawn from contemporary threat management. The research has grown too extensive and the practical experiences too many and too frequent for anyone to hide behind claims of" innocence – or ignorance, excuse me.

Do you agree with that statement, Sir?

**CST. SMYTH:** Yes, absolutely. It speaks to the fundamental reasoning for it that we're learning from the past in terms of how to implement new strategies that avoid these types of incidents from occurring again.

**MR. KENNEDY:** I'm now going to jump ahead a little bit to pages 15 and 16. And my plan, Commissioner, is not to duplicate the questions or areas that have already been covered other than to clarify – I am dealing now with what leads to those other chapters.

Look at page 15, and these are the Protective Intelligence Gathering Principles. Again, we're now seeing terms like protective intelligence. We've seen proactive investigations, intelligence-led policing. What does this term mean?

**CST. SMYTH:** Protective intelligence?

**MR. KENNEDY:** Yes.

**CST. SMYTH:** It is intelligence that basically relates to the protective component of threat assessment.

**MR. KENNEDY:** I think you've already said this at some point, but under 1. Investigative skill: "A primary task of the investigator is to gather information, some of which may later be used as evidence to determine whether the individual poses a threat to a protected person."

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Did you – have you referred to that earlier?

**CST. SMYTH:** I don't think specifically to that in verbatim, but fundamentally, yes.

**MR. KENNEDY:** Okay.

Page 16, Common sense: "Protective intelligence investigations, by their nature, involve considerable discretion and judgment on the part of the investigator. Thus, common sense is necessary."

Do you agree with that statement?

**CST. SMYTH:** Absolutely.

**MR. KENNEDY:** Would that statement in fact apply to a lot of different areas though of policing?

**CST. SMYTH:** I would say every area of policing.

**MR. KENNEDY:** If I could now move to page 18. We see some definitions there. Investigation, again, refers to a systematic process you've talked about before. The statement investigates – investigations are reactive in that they occur after the event. We discussed that earlier today, Sir. Do you agree with that statement?

**CST. SMYTH:** I think investigations can actually occur previous to that. I mean, in essence, a threat assessment does take in elements of an investigation. I appreciate what they're trying to say there but I think it's partially true.

**MR. KENNEDY:** So in terms of preparing or helping you do your job as a, in the Protective Services Unit, is there any requirement that you agree with everything in this manual or adopt it verbatim?

**CST. SMYTH:** No, certainly not. It goes back to even the common-sense approach, that you apply it at its fundamental root and core. But there are, there are natural deviations in the process depending on the factors of any different circumstance.

**MR. KENNEDY:** We'll see that information is defined as: "Data; written, oral or in electronic form, that has been gathered or received. Information may include evidence, rumor, innuendo, conjecture obtained from sources."

Do you agree with that statement?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Is that something that in the Criminal Intelligence Unit you would also have utilized these sources of information?

**CST. SMYTH:** Yes. It speaks to information being very different than intelligence. That, yes, you can gather this type of data and information but it's important that it goes through a process to create intelligence and corroboration perhaps being one of the most vital elements of that.

**MR. KENNEDY:** Would intelligence then be different than evidence?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And what would the difference there be for you?

**CST. SMYTH:** Intelligence is the culmination of that information process that permits you to direct an investigation and hopefully glean evidence.

**MR. KENNEDY:** If we could now look at page 27 and this is where it seems to – the instructor seems to be bringing the PowerPoint together for the first – for this first module. If I’m wrong, please correct me on that. But you’ll see at page 27, Intelligence Fundamentals. “Protective Intelligence and Threat Assessment are ...” – and just have a look at that. Is there any comments you have on that?

**CST. SMYTH:** I think they speak for themselves largely.

**MR. KENNEDY:** Okay. And then equals – so protective intelligence and threat management equal – excuse me – protective intelligence and threat assessment equal threat management.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Now, I’m going to skip over the next number of modules and I’m going to go to page 60, and that’s where we’re into, Commissioner, the definitions of threat, threat assessment and threat management. I just want to – I know this was raised with you, Constable; I just want to see if you’ve either had the opportunity to think about, if there’s anything else you’d like to add. So if we could look at page – and I should ask you by the way what’s on the screen there now, is that your writing?

**CST. SMYTH:** Yes, it is.

**MR. KENNEDY:** So the writing in this particular manual is your writing, your handwriting?

**CST. SMYTH:** Sadly, yes.

**MR. KENNEDY:** Okay.

If we can now look at pages 60, 61, 62, 63 –

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** The page on the bottom, please, yes.

This is Module 5, assessing persons of violent intent. Now the end of this module says you will be able to define the difference between a threat assessment and a risk assessment. The next two or three pages go on with discussing Threat & Risk: Same or Different?

You were taken through this yesterday, so I don’t plan to take you through it in great detail but if you look at threat and risk, the first page – go down a little bit, please – you’ll see there, there appear to be either definitions or descriptions of threat, threat assessment, threat management. You were referred to those before; is there anything you’d like to add or clarify in relation to those particular definitions?

**CST. SMYTH:** No, just that I recognize that there does tend to be some confusion and overlap in those areas in that risk forms part of a threat assessment. And that most importantly it’s the process that you follow that is the most important part. The goal of the threat assessment perhaps is the most important part than the particular definitions but –



**MR. KENNEDY:** Now you indicated earlier when you were in Nova Scotia doing your criminal intelligence course that there was a different type of threat assessment you were looking at there.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** In terms of organized crime. I guess, I don't know if I call them more general or broader threat assessments is that –

**CST. SMYTH:** That's probably fair, yeah.

**MR. KENNEDY:** Okay.

In terms of what you're doing in the Protective Services Unit, is it that broader or more general threat assessment or more geared towards the individual?

**CST. SMYTH:** Well, it can be both. Sometimes we'll conduct what would be a broader-based threat assessment on a specific premier, or based on events of the – or current affairs, as to whether or not there's a need for heightened security concern and added resources.

**MR. KENNEDY:** Okay.

I'm now going to move to Module 6 which is the Confrontational vs. Non-confrontational Threat Management Strategies that there was quite a lot of discussion about yesterday and this morning.

**THE COMMISSIONER:** What page, Mr. Kennedy?

**MR. KENNEDY:** That would be pages 92, 93, 94. And there's reference – Mr. Simmonds also questioned you on some of this. So the bottom of the pages would be 92, 93 and 94.

No, that's it there, Commissioner, that's good. Sorry, no, no, no.

Again, just look at the – you can read that to yourself if you wish, but this is where the Threat Management Strategies start with the least intrusive and escalates to the most invasive. You see that?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And do you remember Mr. Simmonds questioning on the most invasive?

**CST. SMYTH:** I think it was Mr. Flaherty, but maybe they both did.

**MR. KENNEDY:** Okay.

If we look at the next page, the flow chart in Threat Management Strategies. And you'll see that it appears to go from the least intrusive to the most invasive. Is that what it appears to you, Sir?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Now, under Non-confrontational in this flow chart, and I'd ask you if you agree with this, you'll see there is the: take no further action; watch and wait; third party control or monitoring. Then the subject interview is under the Non-confrontational aspect of this flow chart. Is that correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** A little later I think it says, though, a subject interview can also be part of a confrontational threat management strategy. Correct?

**CST. SMYTH:** Well, I think it recognizes that any interview of that nature could turn confrontational, as we've seen it has, but it's never the intention.

**MR. KENNEDY:** Under subject interview, you have information gathering; refocus or assist. Is any of this relevant to the interview that you wanted to conduct with Donald Dunphy on April 5, 2015?

**CST. SMYTH:** Yes, of course it was.

**MR. KENNEDY:** Perhaps you could explain briefly.

**CST. SMYTH:** Well, you know, assist with his situation. Are there, are we able to intervene in such a way that might be able to provide him with supports whereby he sees alternatives to carrying out an act of violence.

And, again, I was never at a point to assess him to be a person that was definitively on that path, but the reasoning for conducting the subject interview, going to see him personally, is to hopefully offer some mitigation strategies and refocus his energies and assist in any way we can. That's, that's just a fundamental aspect of why we would go visit somebody in those circumstances.

**MR. KENNEDY:** Under confrontational you'll see administrative action, civil order, mental health commitment and arrest. Now, there's been questions here, raised about Mr. Dunphy may have been suffering from a mental health issue.

What's your understanding, Sir, of the powers of a police officer to arrest, commit or do anything with a person who suffers from a mental health issue?

**CST. SMYTH:** They have to exhibit signs that they are in a position to cause harm to themselves or somebody else.

**MR. KENNEDY:** And are you aware, Sir, if there's legislation which governs that or is it simply a general police policy?

**CST. SMYTH:** No, there is legislation. It's the *Mental Health Care and Treatment Act*.

**MR. KENNEDY:** Can you simply arrest a person who's displaying those symptoms, or what is the process that you have to engage in?

**CST. SMYTH:** If a person says to us, gives us reason to believe that they are going to cause harm to themselves, then, yes, we can detain them.

**MR. KENNEDY:** Detain. Yes, okay.

Now, the last or the – in terms of the Threat Management Strategies under invasive would be arrest.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You've maintained, I think you've testified on numerous occasions, that you had no intention or reason to arrest Donald Dunphy on that day (inaudible).

**CST. SMYTH:** No, I did not.

**MR. KENNEDY:** Sir, if I could now, the last – one of the last areas I want to touch on this, if I can look at – this was referred to, I think, by Mr. Flaherty; page 101 at the bottom of the page.

Excuse me, start with page 100. When you see the Third Party Control and Monitoring would that be what we've heard or similar to what Workers' Compensation were doing, Sir?

**CST. SMYTH:** Yes, it would be. It wouldn't generally be a strategy I would be too keen on utilizing in the, in the circumstances of our mandate.

**MR. KENNEDY:** Okay. So if you look at – and, again, I'm not going to go through all of this, I'm just going to refer you to some pages and ask if you have comment. Under the heading Subject Interviews, the advantages: Information directly from the subject; opportunity to discuss and stop problem behaviours; allows for direct confrontation with the suspect.

First, do you agree with those terms? And secondly, what's your understanding of the word "confrontation" in that context?

**CST. SMYTH:** I don't like the use of the word "confrontation" in that context. I'm not sure, you know – perhaps it does fit within the dictionary definition of it, but confrontation to me has that adversarial connotation that I don't subscribe to.

**MR. KENNEDY:** The next slide: When to Interview.

**CST. SMYTH:** I think what it should say is: Allows for direct communication with subject. And may very well just actually be a typo, but I don't know that.

**THE COMMISSIONER:** Sorry, what did you say you thought of it?

**CST. SMYTH:** To me, if it said: Allows for direct communication with the subject.

**THE COMMISSIONER:** Right.

**CST. SMYTH:** That, to me, is a more proper way of describing what the goal is here.

**MR. KENNEDY:** Sir, in the next slide there's reference to IC&C ambiguous. What does I – that term is used a number of times throughout this manual. What does IC&C refer to?

**CST. SMYTH:** IC&C is just an acronym for inappropriate contact and communication.

**MR. KENNEDY:** Okay.

If we go to the next page, "Interview Strategies: Information gathering, Refocus and assist, Warning or confront." Did any – were any of those applicable to your interview or your intent, in terms of having the interview with Mr. Dunphy on the date in question?

**CST. SMYTH:** Well, the first two, for sure. I never got to a part where I could have an open discussion around how his – some of his behaviours may be getting to a point of criminal harassment or potentially threats. That would be a standard kind of warning, if you will, in the circumstances, to make sure people understood that while, yes, free speech is important and that you should take advantage of that, ensure that you understand what the elements of criminal harassment are and what constitutes uttering a threat.

**MR. KENNEDY:** The last area I want to refer you to in this book is Module 8, if I could go to pages 124-126 at the bottom of the, of the page. And this is the Intervention Strategies and the Path to Intended Violence. And these are terms, I think, or – I think you’ve called it a pathway to violence, have you?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Okay.

If you could look at there, Sir, as soon as we get it – sorry; intended violence – down a little bit please. You see the comment: “Intended violence is a process of integrated behaviours that shifts the focus from what an individual says – the threats they may make – to emphasising what individuals do.” It talks about a process of behaviours.

Then it says in the next paragraph: “Since the process resembles a path, the subject can move in either direction along it ....” What – is this what you’ve been talking about or is it something different, in terms of the pathway to violence and where that person is going?

**CST. SMYTH:** Yeah. No, absolutely, this is, this is what I’m talking about. The Path to Intended Violence is a pattern of behaviours that have been identified through previous acts of targeted violence whereby there are commonalities in those behaviours.

They all start with a grievance and, again, that grievance doesn’t need to be real. And we recognize, in Mr. Dunphy’s case, of course, it was real but sometimes grievances are just simply perceived.

And the next step to that path would be ideation. Has that person exhibited ideation for violence, do they have a history of violence, being an indicator of potential for future behaviour. And then they get into the more physical elements of it: planning, actual security breaches and right up to the actual act of carrying out the violence. But, of course, the part of the threat management process is to identify if a person is on that path, where they might be on that path, and what intervention strategies can we apply to see that they go back on the path and not forward to the act of targeted violence.

**MR. KENNEDY:** You’ve used the term, ideation, on a number of occasions. Does that refer to thought patterns and behaviours? What is ideation? What does, exactly, does it mean?

**CST. SMYTH:** Yeah, I think you, you covered it off. It is, you know, do they identify with certain behaviours and relate to them.

**MR. KENNEDY:** The last page or last reference in this manual there’s a reference to JACA, at pages 132-133 and there’s reference to inhibitors. Do you know what –?

**CST. SMYTH:** JACA is just an acronym for some elements that you would consider in the threat assessment process; the J being justification. Does the person feel justified in resorting to violence? Do they feel that they have been – has there been a sense of injustice committed against them by the person they’re referring to?

Alternative would be the A. Does this individual see any alternatives to carrying out an act of targeted violence. And alternatives may be seeking, soliciting services from other entities and agencies. It may also be the inhibitors. Carrying out an act of targeted violence, of course, has consequences of some sorts. So are there inhibitors, whether that be positive or negative, that exist that will either prevent them from carrying out that act or potentially be a causation.

So, you know, personal relationships would be something that would be prohibitive, whereas maybe a recent loss of life in their world or a recent diagnosis of terminal illness could be an impact. They're leading down the road of that they have nothing else to lose.

So after that the C would be consequences. Does this person understand the consequences of carrying out an act of targeted violence? And do they consider the consequences being a viable option to still carrying out the act of targeted violence, insomuch that is prison and prosecution a consequence that they would consider as being reason not to proceed.

And the last being, relating to ability; do they have the ability? Do they perceive themselves to having the ability? The history of violence again; have they exhibited any previous history of violence whereby they might go down that path again.

**MR. KENNEDY:** Okay, the next area I'd like to go to – and Mr. Williams has actually covered a lot of it in terms of the Protective Services Unit. And I'd like to finish up this area before lunch, Constable.

You've indicated that the number of full-time members of the Protective Services Unit varied under different premiers, that under Premier Williams it was more ad hoc to the best of your knowledge. There were no – either no full-time members or members came from the Criminal Intelligence Unit. Is that correct?

**CST. SMYTH:** They didn't necessarily come from the Criminal Intelligence Unit –

**MR. KENNEDY:** No.

**CST. SMYTH:** – because the duties were separate. The close protection component for Premier Williams was carried out by specific officers that weren't necessarily connected to the Criminal Intelligence Unit. But the investigative side of the threat assessment component was done through the Criminal Intelligence Unit.

**MR. KENNEDY:** So at that point it was done, the intelligence side was done through the Criminal Intelligence Unit.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Okay.

Now, under Premier Dunderdale, how many full-time members of the Protective Services Unit were there?

**CST. SMYTH:** It eventually had four full-time at the –

**MR. KENNEDY:** That would have been –

**CST. SMYTH:** – its onset.

**MR. KENNEDY:** Who would have been the four when you were there?

**CST. SMYTH:** That varied. It was myself and two other RNC officers and one other RCMP officer. And there was some turnover in those other members.

**MR. KENNEDY:** Now you've referred to the fact that under Premiers Marshall and Davis there were only two members.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And that perhaps related to how the premiers viewed the use of the Protective Services Unit themselves.

**CST. SMYTH:** I think so. I think it was a combination of their own personal desires and what they wanted around, and perhaps the pressures that they may have perceivably been under, that I sensed at times, for that particular expenditure.

**MR. KENNEDY:** Now there's been reference to 2013 and the – Premier Dunderdale and the – your reference to how you perceived the way she was dealt with. Were there at that time – and I think you referred to this in your operational plan, we don't need to bring it up but it's P-0212 – Facebook groups which were very critical and –

**CST. SMYTH:** Yes.

**MR. KENNEDY:** – caused concern?

**CST. SMYTH:** Yes, there were Facebook groups that were critical. And while that was fine, it was something that we did monitor for a period of time because within that there were individuals that we would have classified as persons of interest and –

**MR. KENNEDY:** Sir, was it not correct that – if it's around this time or somewhere along this time there were two different Child, Youth and Family Services ministers who either had to avail of security or the police, the Protective Services Unit had to visit people as a result of potential criminal threats?

**CST. SMYTH:** Yes. One was criminal harassment and I believe another may have been just vague, veiled threats that resulted in a protective detail assigned to the minister.

**MR. KENNEDY:** In the previous year or two, or maybe it's a few, had there not been charges laid in relation to incidents at Minister Marshall's office in Corner Brook?

**CST. SMYTH:** Yes, there has.

**MR. KENNEDY:** And do you know what the charges were laid and, without getting into great detail, the circumstances?

**CST. SMYTH:** The circumstances would actually be somewhat similar in that there was a very long-standing grievance against government; this one I think was related to liquor licensing, and it was unresolved for I think 20-plus years. And this individual had made multiple inappropriate contact with the minister – the Premier's office, and while he was a minister in Corner Brook, had made a number of approaches to his constituency office and it got to a point where he was calling his residence directly. And I think at one point in time may have attended his residence while he wasn't home. Ultimately, criminal charges were laid in that situation.

**MR. KENNEDY:** Were there also charges laid at one point in relation to an individual threatening either Premier Williams or premier – one of the premiers?

**CST. SMYTH:** Yes, for Premier Williams, while I wasn't directly involved in those, there were charges laid I think for being unlawfully in a dwelling. They had unlawfully entered his home.

**MR. KENNEDY:** So isn't not – is it simply a situation where there's harassment and bullying and cyber-bullying or have there been, as you've indicated, situations in the past where there've

actually been criminal investigation and criminal charges laid as a result of actions against public officials?

**CST. SMYTH:** Yes, absolutely there has been. And there's been criminal situations that we haven't laid charges because of just reluctance for politicians to engage in that type of proceeding against constituents.

**MR. KENNEDY:** There's one more area that I can, I think I can quickly finish off before we, before lunch in terms of home visits. You've indicated, I think, that there were, out of the approximately or upwards of 30 similar situations to Mr. Dunphy, there were, approximately half of those could be home visits?

**CST. SMYTH:** Correct. That's an estimation, yes.

**MR. KENNEDY:** And how many of those home visits would you have done, personally?

**CST. SMYTH:** Probably half of those again.

**MR. KENNEDY:** And how many would you have done by yourself?

**CST. SMYTH:** That's what I mean, that many. I've probably done seven or eight home visits by myself.

**MR. KENNEDY:** Do you know if any other members of the Protective Services Unit had completed or done home visits by themselves?

**CST. SMYTH:** Yes, I believe so.

**MR. KENNEDY:** Would the circumstances been similar in the ones in which you found yourself with Mr. Dunphy?

**CST. SMYTH:** One I'm thinking of in particular would have been fairly similar. The communication, I think, was by – the initial inappropriate communication contact I think was via telephone, but it had been an ongoing behavioural trend.

**MR. KENNEDY:** Now we know that Constable Eddie Benoit of the RNC is scheduled to testify at this inquiry. Was Constable Benoit a member of the Protective Services Unit?

**CST. SMYTH:** Yes, he was.

**MR. KENNEDY:** And if so, for how long?

**CST. SMYTH:** I think maybe for approximately a year and a half or so, two years.

**MR. KENNEDY:** We know that Corporal Doug Noel of the RCMP is also scheduled to testify. How long was Corporal Noel a member of – and he was with, he was the other member at the time of this incident. How long was Corporal Noel with the Protective Services Unit, do you know?

**CST. SMYTH:** Corporal Noel came on when his predecessor had retired in, I think, December of 2014 and then he was there –

**MR. KENNEDY:** And who was his predecessor when you say?

**CST. SMYTH:** Corporal Lindsay Anstey.

**MR. KENNEDY:** And do you know how long Corporal Lindsay Anstey would have been at the Protective Services Unit?

**CST. SMYTH:** I think probably less than a year before he actually retired.

**MR. KENNEDY:** Now we're going to hear from Constable Benoit and Corporal Noel. Do you know if either one of them did any home visits by themselves?

**CST. SMYTH:** I'm not sure. I know Corporal Anstey did. I'm not sure if the other two did.

**MR. KENNEDY:** So you know – how do you know that Corporal Anstey did home visits by himself?

**CST. SMYTH:** Because the one I was just thinking of was done by him.

**MR. KENNEDY:** Were there any home visits that you're aware of in relation to tweets or – first, in relation to tweets?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Do you know how many?

**CST. SMYTH:** I, I did four or five myself.

**MR. KENNEDY:** Were the – what would be the nature of the comments, the tweets that would – led to you going to the home?

**CST. SMYTH:** They ranged and varied. Some of them were – I think I touched on a scenario where the actual, an actual threat, albeit the lower level of a threat, was made towards a minister, saying they were going to punch him in the face the next time he saw him.

There were other veiled threats such as I would like to snipe her. Sometimes it was just similar commentary to what Mr. Dunphy had made; aggressive language and coupled with a repetitive and ongoing history that would have been the causation.

**MR. KENNEDY:** Did any of those home visits, in relation to these tweets, lead to criminal charges?

**CST. SMYTH:** No.

**MR. KENNEDY:** What was generally the result of the home visit in relation to these tweets?

**CST. SMYTH:** I think most people maybe appreciated the magnitude of what they were doing when they received a visit and they received some education around harassment, threats, the potential consequences, and sometimes it was even just the realization that these people do see it and that it has a personal impact.

Some of the ones that we, you know, we followed up on for Premier Dunderdale, they were very sexually explicit in their nature and I think when you brought it to the attention of the individual to determine what their intent was in sending this, I think there was a lot of remorse in realizing that, you know, I said this, you know, without giving it a whole lot of thought, perhaps in haste



and, you know, I see that it has an impact on the person and their families. And they were generally compliant after that.

**MR. KENNEDY:** Sir, we know that email – I assume that email would be a more common form of communication around that time. Were there emails in which resulted in home visits?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Again the emails wouldn't be restricted by the number of characters: 144.

**CST. SMYTH:** No.

**MR. KENNEDY:** Would that make any difference in terms of being able to gather further context?

**CST. SMYTH:** Yes, yes it could. Sometimes there was significantly more information in an email about their train of thought, some of their behaviour patterns.

You know, I know of some that, that originated on the Northern Peninsula and we weren't in a position to do the personal visit ourselves and the RCMP had carried that out for us.

**MR. KENNEDY:** Okay. So there's an incident occurs in the Northern Peninsula or – was it email or tweets, do you know?

**CST. SMYTH:** This one I'm thinking of was email.

**MR. KENNEDY:** And so you couldn't carry out the home visit so you got the RCMP to do the home visit?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Was that a common occurrence also?

**CST. SMYTH:** Not overly common. We would always try to do those ourselves, if we could, but, you know, you'd have to consider what our current workload was and what our resource restrictions were. Probably not feasible for me to get on a plane and take two or three days to do a home visit for this one, albeit concerning, wasn't criminal, so it was carried out by the RCMP in those circumstances.

**MR. KENNEDY:** Sir, was there any policy or procedure, in terms of written policy or procedure, in the Protective Services Unit around the making of home visits?

**CST. SMYTH:** No.

**MR. KENNEDY:** So would that have been back to the use of discretion or that term we'd referred to earlier in the manual?

**CST. SMYTH:** Well, yeah, some of that, I mean even beyond that, some of that is fundamental police operation procedure in investigation. That type of process applies to almost every element of policing, whether it be criminal investigation division or frontline. Having to use your discretion as to how you're going to proceed with an investigation. There are too many variables to take into consideration in different incidents that might change the steps and progress?

**MR. KENNEDY:** Commissioner, I was going to move onto a new area. I don't know if this would be an appropriate time for a –

**THE COMMISSIONER:** It's a good place to break for lunch for one hour until 1:30.

Thank you.

**Recess**

**MS. SHEEHAN:** I declare this Commission of Inquiry in session.

Please be seated.

**MR. WILLIAMS:** Mr. Commissioner, in the interest of time, knowing that Commission Counsel may have other witnesses called, and in the event that Mr. Kennedy finishes up before the break, I just wanted to make one comment for the record and bring it to the attention of the Commission, that I do not intend on staying for all witnesses during the course of the inquiry.

I would outline for the Commissioner that obviously, you know, Mr. Davis, anybody in his office and people pertaining to him and the Protective Services Unit, I will be here for.

**THE COMMISSIONER:** Right.

**MR. WILLIAMS:** But nuances with respect to medical evidence, particulars regarding the investigation, I will not be, but I would note that obviously some aspects of the investigation and review of the investigation would be important given public criticisms that have been levied against my client and the Office of the Premier. So I trust that the Commissioner will give me discretion to use professional judgement as to what we feel are relevant and not relevant with (inaudible) –

**THE COMMISSIONER:** Well, that was the basis on which you were granted standing originally, Mr. Williams, so it won't be taken as a lack of interest in other matters, but in the interest of trying to control costs, I've encouraged any counsel who are not – who's client is not directly affected by the testimony by a particular witness, then not to attend, unless it's something that, you know, they – part of staying on top of the whole thing.

**MR. WILLIAMS:** Sure, and I just wanted that on the record so that the absenteeism was noted.

**THE COMMISSIONER:** Yeah. I appreciate it. Thank you.

**MR. AVIS:** Commissioner, if I may just, tomorrow I have a specialist appointment and Ms. Zdebiak will be here in my stead if that's –

**MR. COMMISSIONER:** Okay.

**MR. AVIS:** Is that fine with you?

**THE COMMISSIONER:** Yup, thank you.

Go ahead.

**MR. KENNEDY:** Yes, thank you, Commissioner.

So one of the – we went through this morning, Constable Smyth, the question of why did you go there in the first place? Another issues or question that has been raised is: Why did you go there on Easter Sunday? Now, you've already given your answer on that, so I just want to pinpoint a couple of issues that have arisen during your examination, cross examination.

This was a regularly scheduled work day for you, April 5th, 2015, is that correct?

**CST. SMYTH:** Yes, it was.

**MR. KENNEDY:** The shift scheduled in between yourself and – it is only you and Corporal Noel there?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** So what are the shift schedules? Are there three on, two off; two on, three off? How does it work?

**CST. SMYTH:** That's correct. It was what we refer to a two-and-three schedule, so we revert back and forth between two days on, three on, three off, two on.

**MR. KENNEDY:** So what days were you now scheduled to be off after Easter Sunday?

**CST. SMYTH:** I would've been off Monday and Tuesday.

**MR. KENNEDY:** And so Corporal Noel would work, then, what days?

**CST. SMYTH:** Monday and Tuesday.

**MR. KENNEDY:** Okay. So then you would be back Wednesday?

**CST. SMYTH:** Correct. Wednesday and Thursday.

**MR. KENNEDY:** Yeah.

In terms of closed protection duties, Sir, I take it that the premier or various premiers are inclined to on the spur of the moment decide they're going to travel somewhere. That can happen, can't it?

**CST. SMYTH:** Yes, it can.

**MR. KENNEDY:** And if –

**THE COMMISSIONER:** Preferably somewhere warm.

**MR. KENNEDY:** Bad things happen when you go to warm spots.

Corporal – Constable Smyth, the issue then of leaving this for Corporal Noel. Did it matter to you whether it was Easter Sunday, Saturday or a Wednesday?

**CST. SMYTH:** No. It can't. I mean, you border on dereliction of your duty to leave something that's mandated for you to do because of the day of the week or a holiday.

**MR. KENNEDY:** At this point there are two of you in the Protective Services Unit. If you're doing closed protection duty with the premier, is there any time frames? Is that a regular schedule? Is it a six-hour day, an eight-hour day, or could it be 12 or 14 hours?

**CST. SMYTH:** It's scheduled 12 hours. It – what was scheduled and what we actually worked tended to fluctuate by just the nature of the position. So, you know, there was some flexibility afforded to us to permit that.

**MR. KENNEDY:** So was there any way of knowing whether or not on Monday or Tuesday Corporal Noel would have other duties to perform?

**CST. SMYTH:** Not definitively, no. We can look at the schedule to see if there's anything there that we know he will have to address, however, we also recognize – especially on weekdays – that that schedule tends to be very fluid and we could be tasked on a moment's notice.

**MR. KENNEDY:** Now during – and this might have been examination with – it was actually, examination with Commission Counsel – there was a question of how – was it urgent? And I think you defined urgency in police terms. If you could just, again, summarize briefly what you meant by that.

**CST. SMYTH:** I think if something is urgent in that role it means that you see it through and you work on it until it's brought to fruition and that usually means not going home, staying late, evenings, overnight and ensuring that task is complete. That is what I would classify as urgent.

**MR. KENNEDY:** And then in terms of as soon as practical, or as soon as practicable, are those the same terms and, if so, what do they mean?

**CST. SMYTH:** Yeah, sure, they're similar and as soon as you can, within the scope of what your schedule is and what your other duties are in terms of prioritizing those. You know, if I can articulate that I had higher priority duties that day, then that may very well be acceptable given the nature of what we were dealing with.

**MR. KENNEDY:** Sir, in terms of the two of you working – you referred at one point to trying to avoid officer burnout. I'm not sure if that was – you expressed why you didn't ask Corporal Noel to go in, or go with you that day. What did you mean by trying to prevent officer burnout?

**CST. SMYTH:** It's an ongoing consideration that when you're limited in your personnel resources that, you know, if you're constantly asking people to work on their days off, or what is perceivably a routine matter, then you run the risk of burnout in so much that the long-term viability of an employee in that section is lessened, and you then experience staff turnover, which has other issues with efficiencies.

**MR. KENNEDY:** So in a unit with two people, is there a heightened risk that that can happen then in other units of the police force, for example, where there could be 20, 30 people?

**CST. SMYTH:** Absolutely, especially in that unit where the schedule is tough to set down.

**MR. KENNEDY:** Now, I don't think you've said this, but I want to clarify – there's been discussion. Was it the issue of resourcing that led to you not taking another police officer? Or if you wanted another police officer, would there have been someone available?

**CST. SMYTH:** Yes, someone would have been available. That's never been a restriction placed on me. Whenever I've ever asked for additional personnel resources, I've never been restricted in any way. Any restrictions imposed in that area were self-imposed restrictions.

**MR. KENNEDY:** Earlier today we talked about, we went through the Managing Targeted Violence manual. On a number of occasions, I think it was Mr. Simmonds, on at least, I noted two, three, could be four or more occasions, he referred to a threat being imminent, or an imminent threat. Is that any consideration or do you even know what that means?

**CST. SMYTH:** I know what it means, yes.

**MR. KENNEDY:** What does it, how – what does it mean, and how did it play into this situation? Was there any imminent threat?

**CST. SMYTH:** There was an imminent threat to me when a gun was presented, but in terms of, are you relating to the investigation beforehand?

**MR. KENNEDY:** Yeah, yeah.

**CST. SMYTH:** No. Not at that level, that's part of what that process is trying to identify. If there is a threat that exists and, if so, is it potentially imminent? But I was nowhere close to coming to that conclusion.

**MR. KENNEDY:** Now, Sir, I don't know if this is an issue in protective policing, or if it's an issue in policing in general. But the situation that – it's almost, and I'm trying to find the proper terminology, I don't think it's a big swear word but I don't like to use it, but it's like you're damned if you do and you're damned if you don't. Does that play into protective policing, or is that police officers in general, in terms of if you hadn't acted, if you hadn't gone out there and something had happened?

**CST. SMYTH:** Yeah, for sure. It's – you know, you try to apply the hindsight perspective to these things I guess, and consider what are the ramifications if something happens, as a result of your inaction. And you – was it within the scope of your duties and your mandate to have done something previous to that and if the answer's yes, then you should consider that perspective and carry out your mandate accordingly.

**MR. KENNEDY:** And – can you make any comment as to whether you feel you carried out that duty in this case?

**CST. SMYTH:** Yes, I believe I did. I think based on the information that I had up to that point I was justified in visiting Mr. Dunphy, and I think the hindsight perspective there, that I would apply in those circumstances is if he was indeed at a point in time where he was planning to carry out an act of targeted violence – and I have no reason at this point to suggest he was – but if he was and he did, then I would be held responsible. It's very clear in my mandate that I was provided with a piece of information that was concerning and there was an onus on me to follow up on that. If I didn't do that, it would have been very clear dereliction of my duty.

**MR. KENNEDY:** So you could be giving evidence at a different type of inquiry.

**CST. SMYTH:** Absolutely.

**MR. KENNEDY:** I want to move now, Sir, to your contact with Workers' Compensation. Did Mr. Mahoney, because there's some question, I – again, please correct me or explain to the Commissioner. I know Commission counsel dealt with this, but Mr. Mahoney provided you with a name and address; is that what I understand he gave you?

**CST. SMYTH:** Well, I had the name and address. What he provided was some confirmation on that which Don Dunphy definitively I was looking to speak to.

**MR. KENNEDY:** And did he indicate to you that there were any concerns; if so, did he identify those concerns?

**CST. SMYTH:** He did say there had been previous dealings and that they did have concerns with the individual. He didn't get into explicit details, no.

**MR. KENNEDY:** Did he, for example, there were no – okay, sorry; so there were no specific details, were there?

**CST. SMYTH:** Not specific. He led me to believe that there were some related to, making reference to an employee of theirs and that there might be some civil liability I think around a defamation issue, but there had been no violence or direct threats made to them, no.

**MR. KENNEDY:** If I could ask for Exhibit P-0081, at page 6. This is Mr. Mahoney's police statement or RCMP statement which Mr. Simmonds referred to. This was the conversation about consequences; do you remember being cross-examined on that?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** It would be page 6 of the actual statement, so it could be page 7 here.

Okay, stop right there, please, yeah.

Okay, this is Mr. Mahoney "... and up to the moment I spoke to Joe on Saturday, we had no indication that anything had changed, ahm, so he said ...," He, being you; is that your understanding?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You know, the worst thing about these situations is these guys you know tend to be in their house, they tend to feel the freedom to say what they like and they don't realize that there are consequences for these statements and I said yeah, we certainly deal with that.

So Mr. Simmonds then, do you remember the examination or the cross-examination then on free speech and democratic rights and consequences – do you remember all that?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** I'm going to read you, Constable Smyth, for your commentary, the testimony of Mr. Mahoney on January 10, 2017 at page 37. Mr. Mahoney says – this is dealing with by Commission counsel a conversation with Constable Smyth.

Ms. Chaytor: And he notes that you 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 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 to bring them to my attention has caused – you know, some of what caused some concern. That is what I said.

This is the part I want you to pay attention to, Constable: And I said – this is Mr. Mahoney's testimony. "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."

Mr. Mahoney in this transcript says that he made that comment, not you. What's your recollection, Sir, of that conversation and who made the comment about consequences?

**CST. SMYTH:** I, I didn't – I don't recollect making that comment myself, but I readily admit that that is the type of conversation I would have with, you know, another professional person. And it's by no means to impede or make any insinuation that we want to impede a person's right to free speech.

Police have benefitted from the right to free speech just as much as anybody else has in this country and we don't want to stop that. It's just a reference to the fact that social media platforms give that level of perceived anonymity and comfort that people seem to cross the line from free speech into potentially committing criminal acts such as criminal harassment and threats and acts of intimidation, and even elements have saw bullying as we tend to experience in school-aged children. It's not meant to say anything you say the police are going to show up at your door and intimidate you because we don't like what you're saying.

But – so I honestly don't recall who said that. All I can – I don't recall it being said, period. It's not language I wouldn't use and it's not a topic of conversation that I wouldn't engage in.

**MR. KENNEDY:** Okay. I'm next going to refer you, Sir, to – there's been discussion, Mr. Flaherty, in terms of your reviewing tweets over the previous year. And I just want to refer to a couple of them that are contained in the Workers' Compensation file to see if you had knowledge of them at the time of your assessment.

The first exhibit is Exhibit P-0085.

That doesn't appear to be – this would be one of the Workers' Compensation tweets dated December 12, 2014, Exhibit P-0085.

I'm looking at the exhibit number, the green exhibit number. No, that's (inaudible).

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**THE COMMISSIONER:** (Inaudible.)

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** No. Excuse me; it's a tweet that was in the Workers' Compensation file. I'm looking at the CIDDD number at the top, Exhibit P-0085.

**THE COMMISSIONER:** Uh-huh.

**MR. KENNEDY:** No, this is the one I'm looking for.

You see this: My effing “workers comp injured workers roof blew of last night & I'm in a drained swimming pool not a house this morning, hope all Whscc die.”

Do you remember seeing that, that tweet at the time of your review?

**CST. SMYTH:** I can't recall specifically if I saw that during my review. It's, it would be similar to some of the sentiments that I did view. I would consider that a concerning tweet that speaks to issues of ideation.

**MR. KENNEDY:** If I could ask the next exhibit to be P-0087. And this is when you talked about, again, some of the issues that arose, whether unrealistic expectations. This is an email where there's reference to – and this is a three- or four-page email – causing him to, Mr. Dunphy, to end up on welfare and two bankruptcies.

Do you remember seeing anything like that during your review of the tweets?

**CST. SMYTH:** A lot of reference to blaming Workers' Compensation for his financial situation; bankrupt and reference to being on welfare which resulted – I think he felt then led into feeling they were responsible for his wife's death.

**MR. KENNEDY:** In terms of specific references to politicians of the day, if I could have P-0109, page 2 of that. The date of this is December 12, 2014.

You'll see the picture there. Is – that appears to be the entrance to Mr. Dunphy's house. Is that –?

**CST. SMYTH:** Yes, and I recall –

**MR. KENNEDY:** Do you recognize that?

**CST. SMYTH:** – seeing these.

**MR. KENNEDY:** Okay.

Then you'll see the one below that after being put into two – bankruptcy two times. Do you remember even seeing either of those pictures or that reference?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** Then the next page – and you were asked this again, I think, during direct, or excuse me, during examination by Commission counsel: The deputy premier of NL can't get WHSCC to fix a wrong done to an injured worker in Canada and WHSCC rules in NL.

Did you see anything like that?

**CST. SMYTH:** Yes, I remember seeing –

**MR. KENNEDY:** Do you remember who the deputy premier of Newfoundland and Labrador was on that date?

**CST. SMYTH:** Steve Kent.

**MR. KENNEDY:** If I could now ask you to go to – or if I could ask the Madam Clerk to go to Exhibit P-0010.

**UNIDENTIFIED FEMALE SPEAKER:** Is there a specific (inaudible).

**MR. KENNEDY:** It's exhibit – no, Exhibit P-001 – 0110 is the tweet, yeah.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible) 0010 –

**MR. KENNEDY:** Is the – yeah.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)



**MR. KENNEDY:** Sorry about that – 0110.

You see again there's pictures of the house and the comment that injured workers live worse than wild animals in caves. Do you remember seeing anything like that, either pictures or comments of that nature?

**CST. SMYTH:** Yes, I do. I remember seeing a series of photos that, I guess, would lead the reader to believe they may have been his home.

**MR. KENNEDY:** I'm going to ask you a question in terms of potentially tying these together; if we could now go to Exhibit P-0111 – 0111.

These are dated January 16, 2015. You'll see that there's specific – or they are sent to or copied to, whatever the terminology is. Do you know the proper terminology?

**CST. SMYTH:** A mention.

**MR. KENNEDY:** They're mentioned. What does that mean? Does it mean it goes to Paul Davis and Steve Kent?

**CST. SMYTH:** Yes. It means it would be picked up by their account as being mentioned in this particular tweet.

**MR. KENNEDY:** So when you're doing your review on that Saturday, do you remember if you noticed that there, that there were tweets specifically going to the premier and deputy premier of the day?

**CST. SMYTH:** Yes, absolutely. There was a lengthy history over a period of months where these two particular user identities, @PaulDavisNL and @stephenkent, were mentioned.

**MR. KENNEDY:** If we could now go to Exhibit P-0112 – and I've only got a couple of more to go through, Commissioner.

You'll see in this one that's dated February 3 there's reference to politicians or MHAs or someone making \$150,000 a year. And then it's sent to @VOCMNEWS: "the ppl should bring back hot tar & feathers for these blind greedy politicians of NL Canada."

Did you, do you remember seeing that particular email or ones like that?

**CST. SMYTH:** Yes, I do. Yes.

**MR. KENNEDY:** What – in terms now of where we are in December, the comments sent to the deputy premier and the premier, the comments made about blind, greedy politicians being tarred and feathered, does this play into your decision to have a discussion or further – take further steps in relation to Mr. Dunphy?

**CST. SMYTH:** Yes, they all played a role in solidifying that particular decision. Yes.

**MR. KENNEDY:** The next reference I want to make and I'm, I'm – we didn't fully identify, Commissioner. This was one where you – we didn't know if it was a repost, a re-tweet or whatever it was. And I'd ask – Constable Smyth might be able to help us here, Exhibit P-0113.

In this ref– this is the quote that Mr. Mahoney was referred to: “The most dangerous creation of any society is the man who has nothing to lose.” Do you remember if you saw that in your review?

**CST. SMYTH:** Yes, I did.

**MR. KENNEDY:** Now, can you tell – how does that end up on Mr. Dunphy’s Twitter feed? Do you know that?

**CST. SMYTH:** That’s an actual photograph that he would have to attach to a tweet. So the link that you see above that is the attached photo that you see then below it.

**MR. KENNEDY:** Does he then send that out or is this sent out? How – do you know what, what happens?

**CST. SMYTH:** It’s sent out the same way a tweet would be.

**MR. KENNEDY:** And this was –

**CST. SMYTH:** So I would take this note differently than if he just wrote that verbiage that’s in it, whether he quoted James Baldwin or not. It would be one and the same.

**MR. KENNEDY:** Last reference I want to make to you are Exhibits P-0114 and 0115. And these are on March 3 and 4, 2015.

I don’t know, Madam Clerk, if you – you probably got to put one up at a time, but this is the one – you see the pictures of the house, Constable?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** The next page: “Now they murder us especially in Newfoundland Canada ....” The bottom comment: It’s better to shoot yourself if hurt – if seriously hurt on the job.

In terms of the role that you’re playing in reviewing Mr. Dunphy’s tweets on that Saturday, do these – do you remember seeing these and, if so, what impact, if any, they would have had on your decision-making process?

**CST. SMYTH:** Yes, I did. And, again, they play into that – the factors that you consider for the threat assessment. And you would take this as both the previous one around having nothing to lose and making reference to suicidal ideation as the alternatives component, what alternatives exist in this person’s life whereby he may carry out an act or not carry out an act of targeted violence. And we would consider these as potential, the lack of alternatives or consequences.

**MR. KENNEDY:** At page 3: “Every working person in Newfoundland should carry a gun so they can shoot themselves if seriously hurt on” the job. Again, did you see that comment and, if so, what role or part did it play in any in terms of your decision in how to proceed?

**CST. SMYTH:** The same as the last; you know, potential for violent and suicidal ideation. But, you know, again, I would apply the same critical analysis to this as I did the original tweet.

Just because it’s there doesn’t mean I believe definitively that he feels this way. And it’s another reason why you want to give the person the opportunity to speak to this and others. I want to be able to ask him, does he feel suicidal as a result of his current situation. I don’t take this information as gospel, as some might seem to believe that we do.

**MR. KENNEDY:** Okay. So now the same, the next – we don't need to refer to this one but the exhibit – the next exhibit of 0115 refers to the mass murder of injured workers and the death penalty being abolished. Again, do you remember seeing those and, if so, did they play any part in your assessment?

**CST. SMYTH:** Yes, I do. And, again, it's back to the original grievance and whether or not his sense of injustice is founded completely in reality. Or is he just speaking out in anger to bring extra attention to his point. I don't know the answer to that. That's part of the personal interview.

**MR. KENNEDY:** I now, Sir, want to move to – I'm not going to go through this in detail, I just want to – these are steps, they've been put out to you. I don't know if they've ever been summarized sort of in the order that I'd like to put it to you.

So over – on Friday, April 3, you get the tweet of concern from Donna Ivey.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Over the next three days, until you attend at Mr. Dunphy's house, you read the tweets in context.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And it was not a threat.

**CST. SMYTH:** No.

**MR. KENNEDY:** You reviewed his tweets, number 2, some of which we've outlined here.

**CST. SMYTH:** Yes, I have.

**MR. KENNEDY:** You went back to the Premier's office seeing if anyone had any further information and asking if there were any *Open Line* transcripts. Correct?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** You did ICAN searches for, number four, for Paddy Daly and Ralph Tucker in trying to find further information.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Again, I think it's fairly obvious, but if you could outline, you're looking for *Open Line* transcripts and to speak to Paddy Daly. What's the purpose of that?

**CST. SMYTH:** I wasn't looking for transcripts from him. I didn't think that that would necessarily be in his purview, but –

**MR. KENNEDY:** No, excuse me. You were seeking *Open Line* transcripts from members of the Premier's staff –

**CST. SMYTH:** Right.

**MR. KENNEDY:** – and you were seeking to speak to Paddy Daly. I shouldn't have put those together. Sorry, about that.

**CST. SMYTH:** I was looking to speak to him potentially for the same reason I was looking to speak to a member of Workers' Compensation. At that time, I wasn't sure if I was going to be successful in speaking to anybody, but looking for some information or indication to firm up which Don Dunphy fell into this category or was very likely to be the person that was on Twitter.

So if Paddy Daly was familiar with the character or – sorry, the individual for having multiple conversations on his show, he might be able to say what region of the province he believed he lived in. This was the only information I'd be looking for from him.

**MR. KENNEDY:** Okay. So then if we – I'm not clear, and perhaps you could outline. We know you spoke to an Owen Todhunter at the RNC Comm Centre. Was that on Saturday or Sunday or both?

**CST. SMYTH:** I believe it was both. I spoke to the RNC Comm Centre on both occasions. I don't remember – on both days, sorry. I don't remember who it was I spoke to which day, or if it was the same person both times.

**MR. KENNEDY:** Next, you did RNC searches with Motor Registration Division for both vehicles registered and for driver's licence.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You did a firearms' check.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And you thought you did a CPIC check or asked for a CPIC check, did you?

**CST. SMYTH:** Yes, I asked for a CPIC check, yes.

**MR. KENNEDY:** Again, Ms. Chaytor reviewed with you the information, though, that you weren't provided –

**CST. SMYTH:** Correct.

**MR. KENNEDY:** – the CNI.

Have you had an opportunity to think about that and whether or not in your career you've ever had to – when you ask for a CPIC, you also have to ask for CNI?

**CST. SMYTH:** No, I don't know if I've ever asked for them in that sequence. The 10-29 has always been, to me, inclusive of that. That's actually the more vital information. If you're asking for a 10-29, especially in the role of doing a cursory background check on an individual you're about to visit, those potential cautions are the vital piece of information that you're looking for. Actual criminal convictions, while important, are not as vital as that piece.

I think you actually – my understanding is when you do that query it's automatic that the CNI is inclusive and that you would actually have to click a box to take it off so it wasn't included.

**MR. KENNEDY:** Okay. And then you answered Commission counsel as to the impact that that would have on you.

You next spoke to Constable Cox and did a – is it PROS or POS, how do you pronounce that?

**CST. SMYTH:** PROS as far as I know.

**MR. KENNEDY:** And we're going to refer to that a little later on. So he did – that's the equivalent of ICAN –

**CST. SMYTH:** Correct.

**MR. KENNEDY:** – with the RCMP.

**CST. SMYTH:** That's my understanding, yes.

**MR. KENNEDY:** You tried to phone Mr. Dunphy when he wasn't home at first.

**CST. SMYTH:** Yes, after I attempted to speak to him at his residence, yes.

**MR. KENNEDY:** Sure, after the first – you visited Dick and Debbie Dunphy.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** After you visited Dick and Debbie Dunphy, where was Mr. Dunphy now, Donald Dunphy, in terms of the risk factor or your own risk assessment and personal safety?

**CST. SMYTH:** I don't think it really had changed.

**MR. KENNEDY:** Sir, if you – and I think again you stated this – if a threat was made or you were going to arrest, you would have taken another officer.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Did you have any intention to, when you went there that day; you were going to be arresting Donald Dunphy?

**CST. SMYTH:** No.

**MR. KENNEDY:** Had he committed any criminal offence at that time?

**CST. SMYTH:** Not that I had been aware of, no.

**MR. KENNEDY:** The next area I want to move with, Sir, and there's – and I just want to outline for these, we're not going to go through them all, but I want to outline and then ask a number of questions to make sure we have it sequentially.

You provide a case narrative, or prepared a case narrative on April 6, 2015.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Do you remember – that would have been the day after the incident – what time of day you prepared that case narrative?

**CST. SMYTH:** I prepared it at my residence, first thing in the morning after I got up.

**MR. KENNEDY:** What was the purpose of preparing a case narrative?

**CST. SMYTH:** Well, I have to prepare that narrative for our own RNC records and file to outline the specifics of the incident; and, of course, I had intended also to submit it to the RCMP.

**MR. KENNEDY:** Sir, when you prepared that case narrative, did you know that you were going to be giving a statement to the RCMP later that day?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You gave a statement to the RCMP that day on April 6, 2015, between 1530 and 1706; it appears to be about an hour and 40 minutes. Does that accord with your recollection?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** On April 8, 2015 – if I get, make sure I have these numbers or these dates correct, Officer – that’s when you did the re-enactment that didn’t properly videotape.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** On April 10 is the Friday you did the re-enactment, the one that we’ve, we’ve seen here in this inquiry.

**CST. SMYTH:** Yes. Correct.

**MR. KENNEDY:** Sir, was there any onus or legal onus or obligation on you to provide any of those statements or do any of those re-enactments?

**CST. SMYTH:** No. Not that I’m aware of, no.

**MR. KENNEDY:** You gave a statement to the Saskatoon Police on June 17, 2015, that went from 9:10 to 11:16.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So again two hours and six minutes. You gave a statement on August 25, 2015, to the RCMP.

**CST. SMYTH:** Yes, I did.

**MR. KENNEDY:** Another statement on September 14, 2015, to the RCMP.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Did you also give a statement in relation to the anonymous letter?

**CST. SMYTH:** Yes, I did.

**MR. KENNEDY:** So did you, at any time, refuse to provide any statements requested by the RCMP or the Saskatoon Police, in this case, or to co-operate with the police?

**CST. SMYTH:** No, I did not; of course not.

**MR. KENNEDY:** I first want to deal now with your emotional state in the days after the incident, especially in terms of the first statement and the – the first statement and the days

thereafter. There's the, it's a confidential exhibit and I'm trying to remember the number. I think it's C-0006, I am not sure of that. I've got it written somewhere but I don't know where.

**THE COMMISSIONER:** What do you expect that to be?

**MR. KENNEDY:** That would be a letter from Marina Hewlett, psychologist, who Mr. Smyth saw in the days after the incident. I think it's C-0006.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** Okay. Thank you.

Can we put that up on the –

**THE COMMISSIONER:** Is that a confidential one?

**MR. KENNEDY:** I –

**UNIDENTIFIED FEMALE SPEAKER:** Yes.

**THE COMMISSIONER:** Okay.

**MR. KENNEDY:** It's listed as a confidential exhibit. It's a letter from a psychologist. I'm not –

**THE COMMISSIONER:** Yeah, it is confidential.

**MR. KENNEDY:** Okay.

Yeah, I'm going to get that. Sure.

Okay. So if you could put that up, please, yeah.

So who was Marina Hewlett of Accord Consulting and Psychological Services and how did you come to see her?

**CST. SMYTH:** She was recommended by or I guess I was referred to her by Inspector Shawn O'Reilly who was in charge of our EAP program.

**MR. KENNEDY:** And, Sir, did you consent to this information being provided to Commission counsel via – for Ms. Hewlett to provide whatever information they had to Commission counsel?

**CST. SMYTH:** Yes, I did.

**MR. KENNEDY:** I want to refer you, Sir, to the last paragraph on page 1. It says on April 21 2015, Constable Smyth had a third session with me. He was clearly demonstrating the symptoms of acute stress disorder: eye movement desensitization – excuse me, eye movement desensitization reprocessing therapy, recent event protocol was used to treat the nightmares and flashbacks that he was reporting.

Did you have any idea or do you know today what that acute stress disorder or the symptoms of acute stress disorder were?

**CST. SMYTH:** I did. I don't remember specifically what – I know she told me what they were.

**MR. KENNEDY:** It's – referring here, Sir, it was used to treat the nightmares and flashbacks that he was reporting.

What were the nightmares and flashbacks that you were reporting at that point, Sir?

**CST. SMYTH:** Of being shot; of the feeling of being shot.

**MR. KENNEDY:** So in this week, after the incident, were you sleeping at night?

**CST. SMYTH:** Very poorly.

**MR. KENNEDY:** In fact, I think you indicated that you were – or firstly, how do you normally sleep?

**CST. SMYTH:** Normally fairly good compared with that.

**MR. KENNEDY:** So can you estimate as to how much sleep you were getting this week in terms of number of hours or how it would compare to your normal sleeping pattern?

**CST. SMYTH:** Sometimes it was – it felt like no sleep. It was drifting in and out of very light sleep and some nights it was two, three hours –

**MR. KENNEDY:** Sir –

**CST. SMYTH:** – four hours.

**MR. KENNEDY:** Sorry.

Now, did I understand you, and I wasn't clear on this and perhaps you could clarify the Commissioner, for the Commissioner: Were you supposed to be off work? Is there a mandatory time off work after an incident like this?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And how many – when were you supposed to be off work on either stress management, or whatever it's called, Sir, I don't know what it's called.

**CST. SMYTH:** I believe it's three days. Maybe four days, I'm not sure.

**MR. KENNEDY:** So during that three to four days, how many statements did you give to the police or re-enactments did you provide?

**CST. SMYTH:** During that week?

**MR. KENNEDY:** Yeah.

**CST. SMYTH:** It would have been the statement I prepared for the RNC, the RCMP statement that I gave in person and then the two re-creations that week.

**MR. KENNEDY:** So we've got those statements. Did you ever refuse a statement when the police asked you?

**CST. SMYTH:** No.



**MR. KENNEDY:** We then have, Sir, in December, three days of individual Commission counsel.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Okay. And your testimony here before the inquiry.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** I want to now go to the next page of C-0006 because this appears to come to a head. I think this was referred to with Ms. Chaytor.

The top of the page there's reference to Ms. Hewlett meeting with you again November 10. You were reporting secondary symptoms of trauma, apparently due to the long delays in the investigative process and from social media postings which included a picture of his young son.

Could you just outline again, I don't want to go into a lot of detail, but what's going on in your life at that point and how did young son, picture of your son end up on social media?

**CST. SMYTH:** It was posted by an individual in New Brunswick and shared by others. And there was a reference within the same feed, there was pictures of me that were cropped from group pictures or a picture with my wife that were captioned with being a steroid monkey or someone that was on roid rage. There was wanted posters made for murder, reference to assassin with my picture.

So you know the, I think the pictures of my child was certainly the culmination of that creating a high degree of stress and concern for the safety of my family. If – you know, it led to significant increased security measures at my home. It led to having briefings with his school, his teachers, his principal, having to increase security measures at his school.

**MR. KENNEDY:** How old was your son then, Sir?

**CST. SMYTH:** He was five.

**MR. KENNEDY:** Was your wife also on these pictures?

**CST. SMYTH:** I think so, yeah.

**MR. KENNEDY:** So the delays in the process, the social media postings, is everything starting to get to you at this point?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So as a result of that Ms. Hewlett recommends that you go off duty until the external investigation is completed, correct?

**CST. SMYTH:** Yes, that was coupled with the fact that I really wasn't doing anything meaningful or 'productful' or meaningful at work. So I think that was lending to increased stressors. It seemed almost pointless for me to be there. If anything, at times I felt unnecessarily taking up space in an office and being burdensome to an otherwise productive unit.

**MR. KENNEDY:** So the next time that – and I don't know if it's the next time but you're – you have a similar reaction approximately a year later when some comments are made public?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And what was that about?

**CST. SMYTH:** Those were the comments from David Riche.

**MR. KENNEDY:** And, Sir, this was touched on briefly the other day and we can – I don't see the purpose of going through the report, we can, but what particularly bothered you about the steps taken by retired Justice Riche?

**CST. SMYTH:** Well, everything. Everything he said publicly was false and defamatory. It categorized me as somebody who I'm not, and I think the most challenging part of the fact that he was saying this is that he had a perceived level of credibility in the community, one, by virtue of his background and position as a former justice, and two, by the fact that he was actually privy to the facts of the incident, but yet his report would indicate quite the contrary. It was ripe with speculation, his own opinion that was, to me, in essence founded in no understanding of the situation, let alone the law. It seemed more of a narrative from a Sherlock Holmes movie than it was what you'd expect from somebody of his stature and background.

It was extremely difficult to have that out there, and that was amplified by the fact that my own organization didn't say anything in defence to it. It attacked some of the fundamental principles of use of force that are well established and understood in this country and have been for a very long time. So it was difficult for me to hear that from an educated person because it lacked objectivity and understanding. But then, secondly, my own organization permitted that information to be – to proliferate unchallenged and allow public confidence to be eroded in our organization and me, personally.

**MR. KENNEDY:** So we're now up to November 2016, correct – or September? Do you know the exact time frame? I'm –

**CST. SMYTH:** Yes, that was –

**MR. KENNEDY:** September.

**CST. SMYTH:** – middle of September of 2016.

**MR. KENNEDY:** September 2016. Had you been briefed by the RCMP at that point that there would be no charges laid?

**CST. SMYTH:** I don't recall specifically when the RCMP released that component.

**MR. KENNEDY:** Sir, in terms, then, of when retired Justice Riche made his comments, had any RCMP or other ASIRT or other reports been released at that point?

**CST. SMYTH:** None of the reports had been released, no, absolutely not.

**MR. KENNEDY:** So was this the first specific information which was out in the media and given to the public?

**CST. SMYTH:** Yes, it was.

**MR. KENNEDY:** So what effect did this have, Sir, on your emotional, mental, and psychological state?

**CST. SMYTH:** A very bad one.

**MR. KENNEDY:** So then you talked about the – your own organization not dealing with this?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Again, you went through that email the other day.

You made a comment to the Commissioner the other day and I'd like to follow up on it. You said what you'd like – again, please make sure I'm correct on this – that you'd like to see reports released in situations like this.

**CST. SMYTH:** Yes, absolutely.

**MR. KENNEDY:** Sir, what is your understanding of your police force in terms of releasing reports in investigations where there's a decision made not to lay charges? Have you ever seen that happen?

**CST. SMYTH:** Perhaps not all the explicit details where an investigation into a police officer is involved, but I think when it involves an internal police investigation, there's been instances where they've released more details and afforded the media an opportunity to ask questions and offer details around that. As it relates to members of the public, I'm not really sure.

**MR. KENNEDY:** Would you have preferred –?

**THE COMMISSIONER:** Sorry, I didn't hear what you said there.

**CST. SMYTH:** I'm not really sure if there's specific incidents where charges haven't been laid in – against members of the public, yet they've still released details. Surely there are, without compromising the confidentiality of the people, whether it be suspects or accused, or witnesses, but they've definitely communicated to the public to try to alleviate community concerns, whether it be around, you know, sexual predators as an example, habitual break and entries or home invasions, these kinds of things.

**CST. SMYTH:** Sir, are you aware – sorry.

**THE COMMISSIONER:** It doesn't strike me that it's all that simple, but it would seem that I'm going to have to address this and comment at least. One of the questions I have is concern about the contamination of memory. Now, presumably that decreases as individuals become fixed in their recitation of facts by the fact that they've given statements – more than one statement in many cases, including this one. I guess the risk of contamination of memory is reduced as time passes as well.

Do you see any problem with that?

**CST. SMYTH:** With releasing specifics of an incident?

**THE COMMISSIONER:** Well, will there be any interference, from your perspective, with the investigation itself? Is there a risk of interfering with the investigation if information is released because it might contaminate memories or give individuals an opportunity to frame their evidence in line with someone else's?

**CST. SMYTH:** I think if they speak to specifics of the incident, yes, absolutely.

**THE COMMISSIONER:** Right.

**CST. SMYTH:** But in terms of what I'm referring to as it relates to David Riche, a lot of his commentary could have been addressed without any compromise or reference to specific facts of that case: some fundamental components of use of force or intelligence-led policing, threat assessments describing the process and, you know, the onus that lies with police and the responsibility that lies in these types of circumstances versus anything specific.

No, I don't think it would be responsible at that level, prior to an investigation being complete, to speak to the specifics, no.

**MR. KENNEDY:** At this point, though, when retired Justice Riche made his comments, the decision had already been made not to lay a charge. Is that correct, Commission counsel? I think it –

**THE COMMISSIONER:** The decision not to lay a charge was the 23rd of September, wasn't it –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** – I believe? When would that be, 2015 or 2016?

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**THE COMMISSIONER:** (Inaudible.)

**MR. KENNEDY:** And I think it's subsequent to that decision that Justice Riche released information to the public.

**THE COMMISSIONER:** Yeah, I don't recall the date on it –

**MR. KENNEDY:** Yeah. I think you're –

**THE COMMISSIONER:** – but that's all on the record.

**MR. KENNEDY:** So, and I don't know, Mr. Jones might be able to help us with this, Commissioner, but my understanding is that the special investigative reserve – the special instance review team in Nova Scotia, SIRT, has a website where they post summaries. I don't know what the special investigation unit in Nova Scotia – in Ontario – does.

But I think one of the difficulties you had here, Constable – or, please, you tell me – was that Justice Riche's was the first public commentary on the evidence that came out, was it?

**CST. SMYTH:** Yes. He gave some facts, but they were also shrouded in his twisted interpretation versus an actual objective reporting. That was the challenge and, of course, it increased my desire for the actual factual findings to be released.

Now, I also appreciate the Catch-22 that the RCMP found themselves in with an impending inquiry, releasing details previous to an inquiry even being confirmed. Back to your words, you're potentially damned if you do and damned if you don't. And I don't know if – there was no win there for them either.

**THE COMMISSIONER:** Well, I'm just thinking aloud here now. Arguably there might be less risk when you release information before an inquiry in that, again, you have statements and

reports and decisions made previously, in your case that no charges would be laid. And it might be that there would be less interference with an impartial, independent hearing with the release of information. In that situation, then, there would be, if it was before the time when a decision was made, not to lay charges. Would you –

**CST. SMYTH:** I certainly would have –

**THE COMMISSIONER:** – agree with that?

**CST. SMYTH:** Yeah, for sure, absolutely. I agree wholeheartedly and I wish that was the case. I wish it was. I wanted it to be, to be released in its totality, but, I guess, all I'm saying is I understand the dilemma that they faced as well. Perhaps it would have been simply alleviated by, you know, a discussion with the Commission, the Commissioner, once it was established.

**THE COMMISSIONER:** Yes, and I have a note here, the co-operation of the RCMP, RCMP counsel, as things progressed. I think most of the reports were released at the one time and then there was delay in one of the – well, we had a delay caused by this anonymous letter.

**MR. KENNEDY:** Yeah.

It might – again, I just throw this out, Commissioner, I don't know if it's something that you might want to consider, but in circumstances like these, if a decision is made, is there a situation where, unlike their normal situation where information is not let out to the public, should there not be exceptional circumstances where the police can release, not the specific details of the decision but the reason why they made their decision with some facts to support the reason for making their decision? So at least the public then has information which they can look at and make determinations for themselves.

**THE COMMISSIONER:** Uh-huh. That's something that I'll have to deal with.

**MR. KENNEDY:** Okay, thank you, Sir.

Which is contrary to normal practice, I think you understand that, do you, Constable?

**CST. SMYTH:** I think largely it is. It seems to be an entrenched process within the policing community to release as little amount of information that they possibly can. Personally, it's not one that I understand. I think in this day and age more information, more transparency, more frank discussion about the realities of those investigative processes and the realities of what's going on in one's community are healthy, but that's just my personal point.

**THE COMMISSIONER:** I think that probably the easy way out is to, not to release anything. That's sort of the –

**CST. SMYTH:** It's a myopic view of communications with your community. It's – it may be easier in the short term but if it permits, if it creates erosion in confidence in your police service, in the long term it creates bigger challenges.

**MR. KENNEDY:** Constable Smyth, is this the – in retired Justice Riche's report, is this the first time the 12 minutes between the time of the shooting and the calling of the RCMP surfaced? Is that –

**CST. SMYTH:** Yes, it is.

**MR. KENNEDY:** Did that cause you any particular concern?

**CST. SMYTH:** It caused me great concern.

**MR. KENNEDY:** Because what was it that you read into this 12-minute allegation?

**CST. SMYTH:** Well, it, it left ambiguity around what I was doing for 12 minutes after the shooting occurred. And it, of course, was perhaps lent to a number of theories that were completely erroneous.

**MR. KENNEDY:** The next area I do want to move in with you, Commissioner – I have two areas left. One is what I'll call the timing incident. If I could have Exhibit P-0104 put on the screen, please. That would be the timeline prepared by Wanda Richards of the RCMP.

Now, to be clear also before I go to this specific document as to when we saw this, did you at any time or did the RCMP at any time show you any statements, any reports, anything during the – while the investigation was ongoing?

**CST. SMYTH:** No. The first time I saw this was in the public release of the documents.

**MR. KENNEDY:** In fact, I think at one point you got a little bit mad at Corporal Burke because he wouldn't provide you with information, didn't you?

**CST. SMYTH:** Yes, I did. Well, I was actually more along the lines of wanting to just release the information, period.

**MR. KENNEDY:** Okay.

So when is the time that you first see this timeline, do you remember? Is it during, after the information was provided by the Commission? I –

**CST. SMYTH:** Yes, it was. It was in November when it was released from the Commission. It would have been the same time that the public had access to it.

**MR. KENNEDY:** Yes, it was attached to the – I think Commission counsel can correct it, but it was actually attached to the RCMP report, is it?

**CST. SMYTH:** Yes, it is.

**MR. KENNEDY:** Yeah, okay. Right, okay.

And Justice Riche had specifically referred to it in his report; is that correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Okay.

So this timeline is premised on you being at Debbie and Dick Dunphy's; you'll see it's the third box in the second period, second line, at approximately 1:30 p.m.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Now, we know when the call to the RCMP was made, it was 2:27, if I remember correctly, 2:27:01. Correct?

**CST. SMYTH:** Correct, yes.

**MR. KENNEDY:** Prior to the phone calls, the Dunphy phone calls being identified by, the times being identified during the meeting with Commission counsel, you didn't have a start time, did you?

**CST. SMYTH:** No, I didn't.

**MR. KENNEDY:** We know that the last call made is 1:39:39 – correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So whatever takes place, takes place between 1:39:39 and 2:27:01?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Yeah.

Was the times that are referred to in terms of those phone calls, was that helpful to you?

**CST. SMYTH:** Yes, it was, very.

**MR. KENNEDY:** And I think as you pointed out to Commission counsel, it's not that the RCMP missed it, because they had you at 1:39:39 in the fourth box on the line saying you calling Colin Dinn.

**CST. SMYTH:** Right.

**MR. KENNEDY:** Now, when you saw that on that timeline, did it mean anything to you?

**CST. SMYTH:** I had no idea what they were, they were talking about. I didn't know who Colin Dinn was.

**MR. KENNEDY:** Okay.

So 1:39:39, now –

**CST. SMYTH:** What I thought, actually, I thought they might have made a mistake in putting my name there. My assumption was it was supposed to read Dunphy made several outbound calls to Colin Dinn.

**MR. KENNEDY:** I think actually if you look at the next box – and this is a helpful time frame, as point out by Mr. Simmonds, at 1:36:34, Mr. Dunphy texts Colin Dinn.

**THE COMMISSIONER:** Sorry, when is that, 1–

**MR. KENNEDY:** The next box, Commissioner.

**THE COMMISSIONER:** Yeah, oh, it's too small to read, but –

**MR. KENNEDY:** Oh, it is pretty small.

**THE COMMISSIONER:** – go ahead, I'll get up close.

**MR. KENNEDY:** At 1:46:34 –

**THE COMMISSIONER:** Yeah.

**MR. KENNEDY:** – Dunphy texts Colin Dinn. It's referred to as a cryptic text. I don't think there's much cryptic about it. Can you bring down – do want to come down for a load of wood, the money sign, and you, so inviting him to his residence to smoke marijuana. So we know that that takes place at 1:46:34. I could be wrong on this, and Commission counsel, but I thought that Mr. Dinn had said he'd seen Mr. Dunphy drive by around the same time.

**THE COMMISSIONER:** I think so.

**MR. KENNEDY:** Is that correct, yeah?

**THE COMMISSIONER:** We'll check the record, but I think so, yeah.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. SIMMONDS:** Oh, it's just, just before, he drives past, blows the horn, then goes on home and sends the –

**MR. KENNEDY:** Yeah, okay.

So Mr. Simmonds – and we're going to come back to this in a second. But Mr. Simmonds put forward the proposition that you and Mr. Dunphy could have actually crossed paths. And we'll come back to that in a second, but the 1:46. At 1:39:39 there was examination by Commission counsel, very thorough, cross-examination by Mr. Simmonds. What's your recollection after how long, or what's your evidence as to how long after you made that call at 1:39:39, how much longer were you on the side of the road before you went to Dick and Debbie Dunphy's?

**CST. SMYTH:** It's difficult for me to say definitively. I know I didn't immediately hang up the phone and put the car in drive and drive up there. It could have been as low as two minutes; it might have been as high as five.

**MR. KENNEDY:** Okay. So in any event, by 2:41 to 2:45 – or, excuse me, 1:45, you could be at Dick and Debbie Dunphy's?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You would've had to get out of the car; drive the car, get out of the car and go up to the house.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Okay.

Now on your, in your testimony on January 17, that would have been direct exam – or examination by Commission counsel, you indicate that you spent time on the side of the road trying to think of the next course of action before going to Dick Dunphy's.

**CST. SMYTH:** Yes, and that's what I'm referring to, whether two minutes or five minutes, I don't know.

**MR. KENNEDY:** So how long were you parked on the side of the road in total, do you think?

**CST. SMYTH:** Maybe 10, 15 minutes.



**MR. KENNEDY:** Okay. The phone calls are in the middle of that.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** All right. Now, the time frame, Sir, you've indicated on numerous occasions that, I think you used the word guesstimate, approximate, that's fair?

**CST. SMYTH:** That's fair, yes.

**MR. KENNEDY:** Do you know if the stress incident, the trauma affected either your memory or had any effect on time distortion?

**CST. SMYTH:** I suspect so, but it's hard for me to – I'm the one experiencing it. It's hard to say, you know, it's specifically distorted because of that. I don't know, and it's hard for me to give you a definitive answer on that.

**MR. KENNEDY:** In terms of when – how long you were at Dick and Debbie Dunphy's, in your interview with Commission counsel on day two, at page 12, you said 15, 20 minutes. In statement number 21 – in statement number one, you said you were there for 25 minutes hyphen, comma 20 minutes.

**THE COMMISSIONER:** Sorry, one second now. The first, this is at Dick and Debbie's.

Okay, go ahead.

**MR. KENNEDY:** Yeah, that's in the interview with Commission counsel on day two, which would have been about December 22. I'm not sure of the exact – I know we were very close to Christmas and we were still doing interviews. The 22nd he said you were there for 15 to 20 minutes. In statement number one, which was given on April 6 at approximately 3:30 to 5:06, something like that, he said he was there – at page 26, he said he was there 25 minutes, and then comma, 20 minutes.

**THE COMMISSIONER:** And now that – which is that, the transcript again?

**MR. KENNEDY:** That would be the transcript. Statement number one to the RCMP on April 6, 2015, at approximately 3:30; yeah, at 3:30 to 5:06.

**THE COMMISSIONER:** I'm sorry, I missed the date on that Mr. –

**MR. KENNEDY:** Sorry; April 6, Commissioner, 2015.

**THE COMMISSIONER:** And all this will all be in the record. We'd like to have it.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** Yeah, okay.

**MR. KENNEDY:** April 6, 2015.

**THE COMMISSIONER:** Yeah.

**MR. KENNEDY:** It's the first statement to the police –

**THE COMMISSIONER:** Yeah.

**MR. KENNEDY:** – on Monday afternoon between 3:30 and 5:06. And then before this inquiry on the second day of examination by Commission counsel on January 17, at pages 82 to 84, you indicated 15 to 25 minutes.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** So if we use, if you arrive at – what time should we use in terms of you arriving at Dick and Debbie Dunphy’s?

**CST. SMYTH:** 1:43.

**MR. KENNEDY:** Okay. If you use 15 minutes, you would be finished there at 1:58. If you use 20 minutes, you would be finished there at –

**CST. SMYTH:** 2:02.

**MR. KENNEDY:** Yeah.

**CST. SMYTH:** 2:03.

**MR. KENNEDY:** And if you use 25 minutes, you would arrive there at Mr. Dunphy’s at –

**CST. SMYTH:** 2:08.

**MR. KENNEDY:** – leave Dick and Debbie Dunphy’s.

You’ve always, or what you’ve maintained, I think throughout this, that you called the RCMP within two to three minutes of the incident after you did this. You went to the porch, came back in, did some preliminary, not clearing, but checking on Mr. Dunphy and your first call was to the RCMP. Correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** That’s at 2:27 the call is made.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So if you’re at Mr. Dunphy’s house at 2:05 to 2:10, is there a 12 minute gap?

**CST. SMYTH:** No.

**MR. KENNEDY:** In your testimony at January 17, 2017, at pages 87, 88, you refer to being at Dunphy’s at 2:05 to 2:10. If you’re in the house 15 minutes, which you’ve always maintained – correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** And if you arrive at 2:10 that would put you there at 2:25. Correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Calling the RCMP at 2:27.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** If you're there at 2:05, 15 minutes – 2:20. Call the RCMP a few minutes later. Those times that you put forward, how firm are you on the time that you were in Mr. Dunphy's house?

**CST. SMYTH:** It's always been a guestimate, in the 15 minute range. It may have been a little bit less; it may have been a little bit more. If anything, I guess, it's gonna be a little bit distorted and maybe those times around there, but I don't know to which end.

**MR. KENNEDY:** You, in fact, broken down your attendance at Mr. Dunphy's house in two separate time frames. The rapport building and then escalation or aggravation to agitation, call it what you like. Correct? Is that correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** In your first statement of April 6, 2015, at page 32, you said that from your initial contact to noticing the firearm was 15 minutes. You go on to say: But it's a real guestimate because I hadn't looked at times.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** So that could be a couple of minutes either way.

**CST. SMYTH:** Yes. And that's standard in that type of investigation. It's just when you're carrying out that type of role, investigative role, I would have never in my career made those types of detailed notes around times in that situation.

Now, of course, everything changed once the firearm was presented, and the situation changes dramatically in terms of how your note taking should be. But up to that point, I would have made notes at the end of that day to say on this day I spoke to this person and gleaned this information and this is what I did. It might never, at any point in time, refer to a specific time. It certainly wouldn't refer to the amount of time I spent in somebody's house. It just would have been inclusive of the fact that the conversation took place with who and what it was they said.

**MR. KENNEDY:** Because if you add a couple of other variables now, you leave Debbie Dunphy and Dick Dunphy's, you – how long would it take you to drive up the driveway and get to Donald Dunphy's house?

**CST. SMYTH:** Two minutes, maybe three – one minute.

**MR. KENNEDY:** Then you're outside, you knock on the door. It takes whatever period of time for him to answer. He comes outside.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** There's some conversation outside where you back off, show him your badge, tell him who you are.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You go in the hallway. There's a couple of minutes conversation in the hallway, isn't there?

**CST. SMYTH:** Yes, there is.

**MR. KENNEDY:** Yeah. So do you know how the RCMP analyst came up with these time frames?

**CST. SMYTH:** To assign definitive numbers in this fashion, not really. I mean, I don't think it was done with the intent of it to provide this level of detail. I would hope it wasn't anyway. There's too many variables left out.

**MR. KENNEDY:** Because when we started out, a minute or two to get from Debbie Dunphy's to Donald Dunphy's, the minute or two outside, a minute or two in the hallway. They start to add up, those minutes or two, don't they?

**CST. SMYTH:** Sure.

**MR. KENNEDY:** Sir, I want to now – I've asked you was there any possibility, or this is effective of the incident on time. I want to refer you to a couple of statements and ask you to explain them to the Commissioner.

In statement number one at page 39, statement number one, Commissioner, being the August – the April 6 statement between 1530 and 1706. At page 39, you say that some things seemed to happen in the flash of an eye; other things felt like an eternity.

You refer to that, I think at one point, as being a contradictory concept. Could you explain that for his Commissioner – to the Commissioner – what you meant with that?

**CST. SMYTH:** Well, I think it's, you know, specific to the actual period where the shooting was taking place, it's – well, you know, I recognize that it happens very quickly in a matter of a few seconds, but what you're perceiving is almost happening in slow motion. And also afterwards, you know, the time I spent initially at the front porch going through some tactical decision making around reloading and these kinds of things, there's a lot of information going through your head.

But time itself is – it happens in a very short period of time. So, again, I am challenged to effectively articulate that feeling, but I think the best as I can do.

**MR. KENNEDY:** At pages 39 to 40 of that statement – of statement number one, the April 6 statement, you said: I felt like I was in the house for 15 minutes before I ever came out. And then you go on to say but you can tell me – but you might tell me it's 10 minutes.

Again, the impact in the shooting taking place, but the overall time, how do you – what do you mean by that comment: I felt like I was there for 15 minutes, but you might tell me it's 10 minutes?

**CST. SMYTH:** It just – again, it refers to perhaps specifically afterwards when I was stood up in that porch, it did feel like an absolute eternity that you're just stood there and there's a lot of things going through your head. And they range from tactically related thought processes, to thoughts of family, to you name it.

And it's challenging, I guess, in that situation when you're experiencing a lot of physiological effects – your heart rate's very high and there's shaking – to actually assign a definitive time to that. My thought process wasn't: Look at your watch and make sure you're accurate on your time frames. It was –

**MR. KENNEDY:** When you're looking out through that, you're in that back porch after the incident and you're concerned that Dick Dunphy, or the brother, I think, is going to come across

and that you could be – you had to be ready in case he does, that there could be – in your mind, there's another potential confrontation, isn't it?

**CST. SMYTH:** Yes, in my mind. And I appreciate that Dick Dunphy never gave me a reason to truly believe that, but at that time, you know, that all changed. I obviously don't know who's next door on the other side and what they heard and what they perceive and what their reaction to that might be. At that time, I was in a very high-alert level, if you will.

**MR. KENNEDY:** Sir, then we get to the actual incident itself. And in your September 14th statement to the RCMP, at page 9, you say: It's hard to dissect what I did in milliseconds. What did you mean by that? Could you explain that to the Commissioner?

**CST. SMYTH:** Well, I guess I've always been asked to dissect the moment that that firearm – that I saw that firearm and what I did in the proceeding few seconds, and it is milliseconds. I've always been asked to walk through it step by step when it does create challenges because it literally is milliseconds. So to create a step-by-step description of what occurs is very challenging because it's very quick and it's very dynamic. And what you're perceiving is limited in its scope because I'm very much focused on a gun that's pointed at me and what else is going on in that room I can almost offer no description to, but obviously only description as to how I'm reacting physically.

**MR. KENNEDY:** So in terms of the time frames that we have, the 1:39:39 and the 2:27:01 are the times in which you were?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** In your case narrative, which was prepared on the morning of April 6th, you indicated at page 3 that you immediately called the RCMP. When you use the term immediately in that context on that morning, what were you talking about?

**CST. SMYTH:** Well, immediately in when I felt I could. You know, once, you know, I was able to get my breath, address any potential for other eminent threats and as soon as I could. It was very quick. I felt I called the RCMP was the first course of action I took after feeling somewhat safe in that environment.

**MR. KENNEDY:** When you phoned the RCMP, did you know whether or not there could be an RCMP car up the road in the neighbouring community, or did you think they'd have to come from Holyrood or did you know?

**CST. SMYTH:** I had no idea.

**MR. KENNEDY:** Was there any way for you to know that?

**CST. SMYTH:** No.

**MR. KENNEDY:** In terms of the RCMP arriving, you've again given estimates of that. You've indicated you were in the back porch looking out. You went out and you were up against your car. Any idea how long it took for the RCMP to arrive?

**CST. SMYTH:** The front porch, I think, you're referring to; I was in the front porch looking out.

**MR. KENNEDY:** Front porch, sorry.

Sorry, front porch – couch, chair.

**CST. SMYTH:** Again, that – that’s another time that I find challenging to give anything specific to. It’s another one of those times that felt like an absolute eternity.

My – I remember hoping that they would be just up the road but, of course, it felt like I was there for forever. But on reflection, it was probably, you know, as low as 15 minutes or low as – maybe even 10 minutes, but it could have been upwards of 20, 25, I –

**MR. KENNEDY:** Sir, in terms of the shooting incident itself, from the time that Mr. Dunphy presented the firearm until the time the fourth shot was fired, what’s your estimate as to the length of time that took?

**CST. SMYTH:** Sorry, can you repeat that?

**MR. KENNEDY:** Yeah. From the time that Mr. Dunphy presented the firearm until the time the fourth shot was fired, what’s your estimate of the time involved in those – firing those four shots?

**CST. SMYTH:** Two and a half, three seconds.

**MR. KENNEDY:** I’m going to move now into my last area –

**THE COMMISSIONER:** How long do you think you expect to be?

**MR. KENNEDY:** It will be 15-20 minutes; shouldn’t be any more than that, Commissioner.

**THE COMMISSIONER:** Yeah, I’m just looking at our time. We’re going to break now at 3 o’clock and then 3:15 – so that’ll give us time. We have two, two witnesses particularly we want to get in if we can.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** And we – just checking the timeline. Just go ahead – go ahead.

**MR. KENNEDY:** Okay.

Let’s – I’m going to now get into the situation in the room. During the re-enactment – do you remember the re-enactment? At one point you’re standing by the mantelpiece and you do a demonstration of looking around. Do you remember that?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** Sir, was there a period of time that you took your eyes off Mr. Dunphy, other than just looking at the folder? Was there a period of time that you weren’t looking at Mr. Dunphy?

**CST. SMYTH:** Yes, there was several.

**MR. KENNEDY:** Sorry?

**CST. SMYTH:** Yes, there would have been several times I looked behind me, down the corner of, the back corner of the room, I guess, and looking out towards the hallway. Yes.

**MR. KENNEDY:** When you were doing that, did you still consider Mr. Dunphy a low risk?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** In terms of then, the rifle and where it came from, you've always indicated that you just knew it came from the right. Is that correct?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** And that the demonstration might have helped somewhat in terms of other possibilities.

**CST. SMYTH:** I think that it helped a great deal, actually.

**MR. KENNEDY:** I want to look at the, some of the photographs now to try to figure out where you were at this point. If we could have, I think it's P-0100. Is that correct, Commission counsel?

**MS. CHAYTOR:** What is it you're looking for?

**MR. KENNEDY:** The photographs?

**MS. CHAYTOR:** Photos (inaudible).

**MR. KENNEDY:** It'd be P –

**MS. CHAYTOR:** P-0010.

**MR. KENNEDY:** P-0010. Okay.

**MS. CHAYTOR:** And then which number.

**MR. KENNEDY:** Yeah, okay. Get to the numbers.

I just want to make sure too they're not confidential. So I'm going to need to see Photos 037, 038, 039, 044, 045, 095, 096, 103, 104. I'm not sure if any of them are confidential. Does anyone know?

**MS. CHAYTOR:** Say it slower.

**MR. KENNEDY:** 045 –

**MS. CHAYTOR:** 045.

**MR. KENNEDY:** – 037, 038, 039, 040, 044, 095, 096, 103, 104 and I think it's 133.

**MS. CHAYTOR:** 037 is (inaudible).

**MR. KENNEDY:** Okay.

While the photographs are being loaded let me ask you this question because you were asked earlier today about the cameras and you were – hope the cameras were working. What about a body camera? Did anyone ever ask you did you have a body camera? Do you remember Commission counsel asking you that?

**CST. SMYTH:** Yes, it was never, it's never been afforded to us as an option.

**MR. KENNEDY:** And I think on that particular date when Commission counsel asked you is – that’s a confidential photo I think. No? Okay.

**MS. CHAYTOR:** (Inaudible.)

**MR. KENNEDY:** Okay good.

When you were asked about it you said you wished it was an option. Why would you wish it was an option?

**CST. SMYTH:** Because we probably wouldn’t be here today.

**MR. KENNEDY:** Again, I don’t know if that’s recommend – or something to consider, Commissioner.

**THE COMMISSIONER:** Sorry, what are you saying? What was it on?

**MR. KENNEDY:** The body cameras that police sometimes now wear.

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** And I’m asking – it was put to him by Commission counsel whether or not –

**THE COMMISSIONER:** Yeah. He said, I think, words to the effect that he wished he did have one.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** (Inaudible.)

**MR. KENNEDY:** Yeah. And your answer – and I asked him: Why did you wish you would have one?

**CST. SMYTH:** Well, I guess the obvious answer is it would provide all the details that I’m trying to explain. So it would give you a first-hand view of what I’m seeing. There’d be no question of timelines; there’d be no question of what I saw. There’d be no question of probably much of anything.

**MR. KENNEDY:** While, Sir, there are, there would be issues of resources, an issue of constitutional rights in terms of wearing of body cameras, would you support police wearing body cameras?

**CST. SMYTH:** Yes, absolutely.

**MR. KENNEDY:** So now if we look at the –

**CST. SMYTH:** I’ve inquired to buy one myself.

**MR. KENNEDY:** Sorry?

**CST. SMYTH:** I’ve inquired to buy one myself.

**MR. KENNEDY:** This is Photo 045. We’ve gone through that in some detail. I don’t – the only thing I want to refer you to there, Constable Smyth, you’ll see there the white bucket. And I



think at one point you indicated you didn't remember the white garbage can being there. Correct?

**CST. SMYTH:** When we were doing the re-creation, I didn't remember the white garbage bucket –

**MR. KENNEDY:** Yeah.

**CST. SMYTH:** – being there, period. I certainly didn't recall it being so close to the chair.

To me, there's almost a discrepancy in what I see here and what I saw on the video of the, of the re-creation. It just may be a matter of perspective but it, it seems to me that maybe it had been moved. But perhaps if the camera angle was further to the left of what I'm looking at here now, it may very well be the exact same as what it was in the re-creation.

**MR. KENNEDY:** What I want to refer you to – and I think there's a close up of this picture. You see in the back there appears to be a blanket or a coat or something – yeah, right there.

Do you have any knowledge of seeing, recollection of seeing that that day?

**CST. SMYTH:** No. No.

**MR. KENNEDY:** (Inaudible) now ask to bring up Scenes 037 – pictures 037, 038, 039 and 040 in terms of the mantelpiece. So we start with 038.

**MS. O'BRIEN:** 038 is a public exhibit.

**MR. KENNEDY:** Okay.

**MS. CHAYTOR:** 038 is fine.

**MR. KENNEDY:** I'll go through them one on one so Commission counsel can indicate.

**MS. CHAYTOR:** And 037 is fine as well.

**MR. KENNEDY:** Okay; if we start with 037, Madam Clerk.

What I'm trying to do, Constable, is get a picture of where you were standing in terms of the mantelpiece and what you could see. So I'm flipping through these – I want to go through these various pictures because I'm trying to find one that best outlines your position or you can show us where you were standing.

So if we start with photograph 037.

**MS. CHAYTOR:** It may take a – it may take a while because –

**MS. O'BRIEN:** (Inaudible.)

**MS. CHAYTOR:** Yeah. She wasn't advised she was going to need them so it will take a while.

**MR. KENNEDY:** Why don't – do you want to take the break now, Commissioner, where I can move through that fairly quickly.

**THE COMMISSIONER:** Will that –

**MR. KENNEDY:** Or I can go to another area.

**THE COMMISSIONER:** Will that help to take the break now?

**MS. SHEEHAN:** Yes.

**MS. CHAYTOR:** Yes.

**THE COMMISSIONER:** Okay, yeah.

Let's take a break for 15 minutes.

Thank you.

**MS. SHEEHAN:** All rise.

**Recess**

**MS. SHEEHAN:** The inquiry is now in session.

**THE COMMISSIONER:** (Inaudible) Ms. Breen is not here either so.

Okay, I think we came back a little early. We'll give other counsel a couple minutes.

Okay, Ms. Breen, we were back a bit early so we were going to wait for you.

We're a little early, Mr. Simmonds. Sorry.

Okay, we'll get back with Mr. Kennedy.

**MR. KENNEDY:** Yes, Commissioner.

Just talking to Commission counsel, we're going to try to do the non-confidential photos.

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** And then the confidential.

**THE COMMISSIONER:** Okay.

**MR. KENNEDY:** Okay.

If I could have Photo 037 brought up, please.

What I'm trying to do, or what I'd like for you to do, Constable Smyth, is try to give the Commissioner – we're trying to get the perspective as to the mantel and there's a picture there that shows the mantelpiece and what you could see from where you were standing.

So could you outline for the Commissioner where you were standing? You've indicated that there was a radius in which you were moved and how far you would have gone towards the other end of the room.

**CST. SMYTH:** So most of my time was spent on the corner of the mantel where you see the multiple books –

**THE COMMISSIONER:** The left corner, right.

**CST. SMYTH:** Right, this corner where the cursor is now. And I would have made my way, probably as far over as the other corner.

**THE COMMISSIONER:** Over as far as what?

**CST. SMYTH:** The other corner of the mantel.

**THE COMMISSIONER:** Okay.

**CST. SMYTH:** I don't think I would have traveled much beyond that. I think there was a chair there and I probably didn't even go quite that far.

**MR. KENNEDY:** So when you would have gone to the other corner, you would have had a view of the chair in which Mr. Dunphy was seated in, would you?

**CST. SMYTH:** Yeah, I would have been looking probably – if I had of stood straight onto to him, I probably would have been looking directly at him, straight across from him.

**MR. KENNEDY:** Okay.

In terms of where you are looking at the folder when, prior to the firearm being presented to you or pointed at you, where would you have been standing then?

**CST. SMYTH:** Facing this mantel here now, it would be to our left of the, the left-hand corner. Yes, where the cursor is now.

**THE COMMISSIONER:** So it's the left-hand corner where the two or three or three or four books are?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** You've indicated that there was a, a radius you were walking and looking around at some point or doing it all at the same time. Where would you have been going to at that point?

**CST. SMYTH:** Back and forth again to the other side of the mantel but probably not all the way to the end of the mantel.

**MR. KENNEDY:** Okay. How long or what's the length of that mantel? Can you approximate that? I'm sure we'll find it probably later on.

**CST. SMYTH:** Probably six feet.

**THE COMMISSIONER:** How much?

**CST. SMYTH:** Six, seven feet.

**MR. KENNEDY:** So your estimate then that from the mantel where the books are to Mr. Dunphy's chair was how much?

**CST. SMYTH:** I said 10 feet. I think it's been corrected to nine.

**MR. KENNEDY:** Okay.

If we could now look at, there's a photo taken that's not confidential, photograph 045.

**THE COMMISSIONER:** That was the one put in yesterday or the day before to show the position of the gun, I think.

**MR. KENNEDY:** Now 45 was Corporal Saunders of the RCMP who stood at a certain point and looking at the middle, I think. Ms. Chaytor, correct me if I'm wrong, but he's standing at the middle of the mantelpiece taking a picture.

**THE COMMISSIONER:** Right, but I think it's the one I put in when the request was for 44 and I –

**MR. KENNEDY:** Oh, yes, that's – oh, yes, you're right.

**THE COMMISSIONER:** It's a public exhibit, that's – go ahead.

**MR. KENNEDY:** You're right, Commissioner. Thank you.

Okay. Let's now go to, we now have to go to the – 39 and 40. We're now going to go to the confidential photos. So 39 would be the first one.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** Yeah, finished with the – yes, there's two other ones that, I'm sorry, I'm going to need, I'd – would be photos 42 and 102. I'm sorry.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** No, not now but I will need it before, after I finish with these. Sorry about that.

So if we could now go to photograph, it's photographs 39, 40.

**UNIDENTIFIED FEMALE SPEAKER:** This would be two (inaudible).

**MR. KENNEDY:** Okay 40 –

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** No.

**THE COMMISSIONER:** 42, you were going to come to that later, I think?

**MR. KENNEDY:** Yeah, that was 40 actually. Okay, I'm just gonna have to look at my notes. Sorry.

Let's use 42 while we have it up here. So 42, again, to put it in perspective the broom is by mantelpiece, correct?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** So the mantelpiece is around at that point, you would have been standing, is that correct?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Okay.

Now, let's go to the – if we could start with the 39 and 40 would be the confidential photographs, sorry. Again, these are just for perspective of the mantelpiece, Constable Smyth, because in the re-enactment you outlined – okay, so now this is –

**THE COMMISSIONER:** Is it a confidential –

**THE KENNEDY:** This is a confidential photo, Commissioner, C-0001, Photo 039.

Do you know where you're, what part of the room that is?

**CST. SMYTH:** That looks like it would be taken from the area where I would have spent most of my time around the mantel, but to me it looks like it's further forward, as in closer to him, but that just may be a lens issue.

**MR. KENNEDY:** Okay. Because in that picture there's no view of the right side of the chair, is that correct?

**CST. SMYTH:** That's correct.

**MR. KENNEDY:** If we could go to Photo 040. That's also a confidential photograph, Mr. Commissioner.

Again, we see the table there that indicates it's around the mantelpiece. Can you give us a perspective as to where that photograph or where you would have been standing in relation to that photograph?

**CST. SMYTH:** It seems like the photograph would be taken from a very similar position to where I would have been stood.

**THE COMMISSIONER:** That's where you'd be stood for most of the time, you said on the left side of the mantel?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Again, there's no, for the record, there's no view of the right hand, or the floor on the right-hand side of the chair there, correct?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** If we could now look at photograph 044, that's also a confidential exhibit.

It now looks to be we're centred more in the room. Can you tell or do you have any recollection of any time having that straight-on view of the right-hand side of the chair?

**CST. SMYTH:** I probably would've come that far over in the room. You know, I don't recall specifically standing straight on to him and, and looking, but I would have had that view available to me, I would think.

**MR. KENNEDY:** And do you see the, what appears to be a blanket or a coat there in the, on the right-hand side of the chair next to the plug?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** Did you see that at any time?

**CST. SMYTH:** I never noticed it, no.

**MR. KENNEDY:** If we could now go to photographs 095 and 096, where they're both confidential, Mr. Commissioner.

Okay. Now that one shows us the mantelpiece, it's a different angle; can you orientate yourself with that photograph, Constable Smyth?

**CST. SMYTH:** Where I would have been at what time, when the –

**MR. KENNEDY:** Yeah, like in a general way, again we're looking at a different angle of the room –

**CST. SMYTH:** Right, so it's the same. I would have been –

**MR. KENNEDY:** Okay.

**CST. SMYTH:** – where the cursor is there now and a couple, several feet to the right of that at times.

**MR. KENNEDY:** So when the gun came up, do you know where you were standing by the mantelpiece?

**CST. SMYTH:** I was right around where that cursor is in that area.

**MR. KENNEDY:** Do you remember –

**THE COMMISSIONER:** (Inaudible) the left side of the mantelpiece – go ahead.

**MR. KENNEDY:** Do you remember if you had a view of the right-hand side of the chair at the time the gun came up?

**CST. SMYTH:** No, I didn't.

**MR. KENNEDY:** If we can now look at photograph 096. Okay again, we see the mantelpiece; we see the yellow folder. That looks like – or can you tell what part of the mantelpiece that is, Constable Smyth?

**CST. SMYTH:** The corner that's visible would be further to the right, almost directly across from where he sat.

**MR. KENNEDY:** Okay.

The last photo in this series would be Photo 133.

**THE COMMISSIONER:** Sorry, are you saying you could or could not see from 046 where you were?

**MR. KENNEDY:** 096, Commissioner, sorry?

**THE COMMISSIONER:** The last one.

**MR. KENNEDY:** Yeah, the last one was 096.

**THE COMMISSIONER:** 096 (inaudible). No, that is not the one. That is 0001 – okay, Photo 096.

**MR. KENNEDY:** Photo 096, yes 0001, Photo 096, Commissioner.

**THE COMMISSIONER:** I'm not sure what was the point of that? What was your question regarding that?

**MR. KENNEDY:** I'm just asking can he orientate himself in terms of that picture where he was standing at various times.

**THE COMMISSIONER:** And you indicated by the left side of the mantel, was it?

**CST. SMYTH:** Yeah, the left side I guess is not in view there but –

**THE COMMISSIONER:** Roughly where the cursor is.

**CST. SMYTH:** Right, in that area.

**MR. KENNEDY:** Now, you see there's a pair of glasses – sorry, can you go back to that for a second? You see there's a pair of glasses there on the table.

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** Did you see those glasses at any time?

**CST. SMYTH:** I never noticed the glasses, no.

**MR. KENNEDY:** Last photo in this series will be Photo 133. Again, it's a confidential picture. That's a photograph of the chair with the right-hand side of the chair; do you see that, Sir?

**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** Do you remember ever having that view of the chair?

**CST. SMYTH:** No.

**MR. KENNEDY:** Do you remember seeing, for example, what's in the side pocket?

**CST. SMYTH:** No.

**MR. KENNEDY:** When you did the re-enactment do you know if those materials were still in the right-hand side of the pocket?

**CST. SMYTH:** I don't recall.

**MR. KENNEDY:** Okay. Now – and I apologize, Commissioner, counsel told me that there were two other, that I had to give the photographs in advance.

**THE COMMISSIONER:** Uh-huh.

**MR. KENNEDY:** I'll move on to another area of questioning, but there's only two photographs, Photo 030 and scene – photo, scene, Photo 030 is the front steps. I'd just like to get a picture of the front steps. I'll just make sure here, Commissioner, is all. And the other one would be – Scene 102 would be the bullet on the table. It's actually Scene 033. If we could get that one, it would be the one I'm looking for. Either one of them are fine, though.

When Mr. Dunphy came to the door, Sir, and answered the door, you identified yourself, he invited you in. Did you go up over those steps?

**CST. SMYTH:** To get into the house, yes.

**MR. KENNEDY:** Do you know if there was another entrance to the step – to the house?

**CST. SMYTH:** I do now. I mean I realize there's rear access to the house. I don't know if it was utilized.

**MR. KENNEDY:** Okay. In terms of – Mr. Dunphy has been described at various times by Mr. Simmonds and Mr. Flaherty as being disabled, partially disabled. Did you ever see him climb those steps?

**CST. SMYTH:** I didn't see him climb the steps, no.

**MR. KENNEDY:** How did you find climbing those steps yourself?

**CST. SMYTH:** They were rickety. I didn't necessarily put a lot of faith into them, but they weren't overly difficult to navigate.

**MR. KENNEDY:** Scene 102 would be the photo of the bullet, Commissioner; this will be the last photograph. And I take it that that's the bullet found on the, on the table. It appears to be found by an asstray. Would you know, Constable Smyth, what kind of bullet that is?

**CST. SMYTH:** It appears to be a .22 round.

**MR. KENNEDY:** Can you tell anything about the age of that bullet, or do you know anything about the age of that bullet?

**CST. SMYTH:** It looks old, but I don't know, it could have been exposed to weather. I don't know. It looks –

**MR. KENNEDY:** Did you see that at any time?

**CST. SMYTH:** No, absolutely not.

**MR. KENNEDY:** Okay, the couple of last issues I want to go through very quickly. You've indicated, Sir, in examination by Commission counsel, that once the firearm came up, that you were fully focused on the firearm and what was going through your head was you were going to be shot. I'm going to be shot; this is going to hurt.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Do you remember that clearly?



**CST. SMYTH:** Yes, I do.

**MR. KENNEDY:** What was going through your head at that point? Was there anything besides I'm going to be shot, I'm – it's going to hurt.

**CST. SMYTH:** It's going to hurt.

**MR. KENNEDY:** You indicated by the time you were fully focused on the firearm it was pointed at you.

**CST. SMYTH:** Yes.

**MR. KENNEDY:** Is there any doubt in your mind about that, Sir?

**CST. SMYTH:** No, Sir.

**MR. KENNEDY:** You then said that you were – and I'd ask you to explain this comment, it's at page 5 of day three of examination by Commission counsel – you were focused just strictly on the gun. You saw no face; saw nothing other than the gun pointed directly – directed – pointed at you, sorry – pointed directly at you.

**CST. SMYTH:** Correct.

**MR. KENNEDY:** What did you mean by that?

**CST. SMYTH:** It's hard to describe. It's almost as if your peripheral vision disappears. I saw the gun in his hands and it moving, but I was no longer taking in anything in from my periphery. If you had asked me what facial expression he had or if he was saying anything I could – no way I could answer. It's as if there's no face at all.

**MR. KENNEDY:** Sir, in terms of the drawing of your firearm, did you draw your firearm before the rifle was pointed at you?

**CST. SMYTH:** No.

**MR. KENNEDY:** Did you have time to get out of that room, Sir.

**CST. SMYTH:** No.

**MR. KENNEDY:** Did you have any time to take any other steps?

**CST. SMYTH:** Definitely not.

**MR. KENNEDY:** If I could now have – and this is the last – about two minutes, three minutes left, Commissioner. If I could have Exhibit P-0141 brought up. That is the – do you pronounce it “pross” or “pros”? The second time today I've asked you this, the RCMP report.

**CST. SMYTH:** I believe PROS.

**MR. KENNEDY:** The PROS report from the RCMP.

Do you remember Commission counsel during your interview in December asking you whether or not it was possible that Mr. Dunphy had been tipped off as to your arrival?

**CST. SMYTH:** I remember them asking me that, yes.

**MR. KENNEDY:** And do you remember if that was asked in the context of making your phone calls of whether or not he actually knew he saw an unknown number. Do you remember that?

**CST. SMYTH:** I believe that was the reasoning for the question.

**MR. KENNEDY:** We know that at 1:46 – whatever it is, 1:46:34, Mr. Dunphy texts Mr. Dinn.

**CST. SMYTH:** Yes.

**THE COMMISSIONER:** What is it, 1:36 –?

**MR. KENNEDY:** 1:46 –

**THE COMMISSIONER:** 1:46 –

**MR. KENNEDY:** – 34.

**THE COMMISSIONER:** – 34.

Thank you.

**MR. KENNEDY:** We know that around the same time frame you're still either on the road, on your way to Debbie Dunphy's or in the immediate area. Correct?

**CST. SMYTH:** Correct.

**MR. KENNEDY:** Mr. Simmonds asked you whether or not it was – or he suggested, I don't know if he asked you it – that you almost crossed paths. Do you remember him suggesting that to you?

**CST. SMYTH:** He made that suggestion, yes.

**MR. KENNEDY:** Yeah.

If you look at Exhibit P-0141, this is a – could you scroll down a bit, please? Go back, I'm sorry. This is – okay, good, stop there for a second. Up a little, sorry. Under 4, Mr. Dunphy is the –

**THE COMMISSIONER:** It has a life of its own.

**MR. KENNEDY:** He's the complainant in an impaired operation – it appears to me what it's saying here, he's a complainant in an impaired operation of a motor vehicle. He suggests that someone is constantly driving drunk; he said something else that's redacted. Dunphy stated that everyone knows when the police are in town – okay, and go – and the police need to come in an unmarked car.

Now, what were you driving that day?

**CST. SMYTH:** A unmarked, black GMC Yukon.

**MR. KENNEDY:** And is the black, unmarked GMC Yukon, is that something that would commonly be known as a police car, or a police or potential police?

**CST. SMYTH:** I think the vehicle is pretty indicative of one for police operations, yes.

**MR. KENNEDY:** So is it possible, Sir, that Mr. Dunphy did know you were there, and was expecting you?

**CST. SMYTH:** I don't know.

**MR. KENNEDY:** Did he appear surprised to you when you showed up at his doorstep?

**CST. SMYTH:** No, he didn't appear surprised, no.

**MR. KENNEDY:** If we know he arrives home shortly after 1:46 or shortly after that, then there would be a period of time that elapses before you come to his house; is that correct?

**CST. SMYTH:** Yes, it is.

**MR. KENNEDY:** When you came into this house and you're in the hallway, Mr. Dunphy went directly to his chair, didn't he?

**CST. SMYTH:** Yes, he did, after we had a brief conversation in the hallway.

**MR. KENNEDY:** Where you were standing didn't give you – I'm not saying that at point – but it didn't give you a clear view of the right side of that chair, did it?

**CST. SMYTH:** No, it didn't.

**MR. KENNEDY:** Were you present, Sir – and again, I'd have to get the exact, I'm paraphrasing somewhat, but I'd rather have the exact statement. But Colin, and this was put to him yesterday, that Colin Dinn said that they were gonna come, or someone was going to get him, or someone come to see him because of his tweets, and his comment was let 'em come. Do you remember that?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** In line with everything else you've seen in his Twitter feed, your comments with Debbie Dunphy, or your conversation – did you have any way to know whether or not Donald Dunphy was expecting you?

**CST. SMYTH:** No.

**MR. KENNEDY:** Sir, Mr. Simmonds has put it to you that it's unbelievable that you didn't see where the rifle came from but you saw the rifle in his hands. What have you always said about seeing the rifle?

**CST. SMYTH:** I saw the rifle when it was in his hands and pointed at me.

**MR. KENNEDY:** Sir, was there a period of time where you weren't looking at Mr. Dunphy prior to seeing the firearm?

**CST. SMYTH:** Yes.

**MR. KENNEDY:** You looked down at the file, was there a period of time where – you had indicated once you kicked some garbage and saw –

**CST. SMYTH:** I moved garbage with my foot and I – there was a period where I looked down at the folder and he was in my peripheral vision, yes.

**MR. KENNEDY:** Sir, looking back on it now, should you have taken your –

**CST. SMYTH:** Pardon?

**MR. KENNEDY:** Looking back on it now, should you have kept your focus on Mr. Dunphy?

**CST. SMYTH:** Knowing what I know now.

**MR. KENNEDY:** Yeah.

Sir, did he at any point in time that day threaten you or –

**CST. SMYTH:** No.

**MR. KENNEDY:** – tell you to leave his premises?

**CST. SMYTH:** No.

**MR. KENNEDY:** Is there anything else, Sir, that you could have done on this date in question, other than use your firearm?

**CST. SMYTH:** I don't believe so, no.

**MR. KENNEDY:** Constable, it's been suggested to you or implied that you're not telling the truth. What do you have to say to that, Sir?

**CST. SMYTH:** It's tough to hear.

**MR. KENNEDY:** Pardon?

**CST. SMYTH:** It's hard to hear, but I understand from, you know, a family member that what happened may be difficult to, to believe. It's –

**THE COMMISSIONER:** I'm sorry, I can't hear you.

**CST. SMYTH:** It's really hard to hear. It's very, extremely challenging to hear that the suggestion that I may have staged a crime scene or that I shot him for no reason or – those are very difficult to digest, but at the same time I understand it if family or close friends have difficulty believing this so I'm – yeah.

**MR. KENNEDY:** Those are my questions, Constable Smyth. Is there anything else you'd like to add for the Commissioner?

**CST. SMYTH:** No, thank you.

**MR. KENNEDY:** Thank you, Mr. Commissioner.

**THE COMMISSIONER:** Okay.

Now, I believe, Ms. Chaytor, you had a couple of minor questions you were wondering if you could put, just to tie up a couple of loose ends.

**MS. CHAYTOR:** Yes, thank you, Commissioner.

**THE COMMISSIONER:** I don't think counsel should have any problem but if there this, if there are, just raise it.

Go ahead.

**MS. CHAYTOR:** Yes, they're not technically redirect. They're questions that haven't been asked so perhaps counsel might want an opportunity to also follow up.

**THE COMMISSIONER:** Yep.

**MS. CHAYTOR:** But one is, Constable Smyth, I know I asked you a lot of questions about whether or not you had any – your notebook with you, or anything else in terms of materials other than what's in your yellow folder. And you indicated you did not.

**CST. SMYTH:** Correct.

**MS. CHAYTOR:** Okay.

And not necessarily specific to Mr. Dunphy but did you have any other files or documents in your vehicle that day pertaining to any other cases?

**CST. SMYTH:** I don't believe so. It's possible but I don't recall that, no.

**MS. CHAYTOR:** Okay.

So if there – I just wanted an opportunity to put that to you so if another witness were to suggest that you were concerned about files left in your vehicle, would that be right?

**CST. SMYTH:** That would make sense. It wouldn't be uncommon for me to carry a couple of files. I may have indicated to the officer picking up the vehicle – I don't recall this, but it would make sense for me to say if there's any files bring them into the office, but I don't recall that.

**MS. CHAYTOR:** And you didn't retrieve anything out of your vehicle that day after the shooting?

**CST. SMYTH:** Other than a bottle of water, no.

**MS. CHAYTOR:** And to your knowledge, did anyone else do that on your behalf?

**CST. SMYTH:** No.

**MS. CHAYTOR:** Okay.

And the last thing, the last question is in terms of your own eyesight – of course you're wearing glasses, and are those glasses for seeing at a distance?

**CST. SMYTH:** I had a stigmatism, so it's not really required for distance. It's a minor correction. It's not a requirement to my driver's licence. I'm correctable at 20/20.

**MS. CHAYTOR:** Okay.

And were you wearing your glasses during your encounter with Mr. Dunphy?

**CST. SMYTH:** Yes, I was.

**MS. CHAYTOR:** Okay.

Thank you. Those are my questions.

**THE COMMISSIONER:** Any questions arising? No. Okay Constable Smyth, you may step down. There are no further questions.

Thank you.

**CST. SMYTH:** Thank you.

**MS. O'BRIEN:** Thank you, Commissioner.

Our next witness will be appearing by phone, so we'll just – one moment while they connect.

**THE COMMISSIONER:** Oh, this is the person that I should caution Counsel concerning not to use his name.

**MS. O'BRIEN:** That's correct. This witness is referred to as Witness X, or Constable X, and we will not be using his name.

Constable X, can you hear me? It's Kate O'Brien speaking.

**WITNESS X:** Yes, I can.

**MS. O'BRIEN:** Thank you.

I'm now going to ask that Madam Clerk affirms your testimony.

**MS. SHEEHAN:** Do you affirm that the evidence you're giving will be the truth, the whole truth and nothing but the truth?

**WITNESS X:** Yes, I do.

**MS. SHEEHAN:** Thank you.

**MS. O'BRIEN:** Thank you.

Commissioner, before I begin with Constable X, I'd like to enter the following exhibits: P-0105, 0106 and 0107.

Thank you.

Constable, what was your position with the RCMP on April 5, 2015?

**WITNESS X:** I was a general duty constable stationed in Ferryland.

**THE COMMISSIONER:** What was the last thing you said?

**WITNESS X:** Sorry, I was on speaker phone. I was a general duty constable in Ferryland.

**THE COMMISSIONER:** Ferryland. Good.

Okay.

**MS. O'BRIEN:** And just very briefly, Constable, what were your routine duties in that position?

**WITNESS X:** General duty policing, answering to calls from the general public and traffic concerns.

**MS. O'BRIEN:** Had you ever had any specialized training in homicide investigations?

**WITNESS X:** No, I have not.

**MS. O'BRIEN:** Prior to April 5, 2015, had you ever been involved in the investigating of a – investigation of a shooting incident?

**WITNESS X:** No, I had not.

**MS. O'BRIEN:** Prior to April 5, 2015, had you ever been involved in the investigation of a use-of-force by a police officer incident?

**WITNESS X:** No.

**MS. O'BRIEN:** Constable, have you been watching any of the proceedings of the Commission of Inquiry to date?

**WITNESS X:** No, I have not.

**MS. O'BRIEN:** Okay.

Prior to April 5, 2015, Constable, did you know Constable Joseph Smyth of the RNC?

**WITNESS X:** No, I didn't, not personally. I saw his name on a few documents throughout service.

**MS. O'BRIEN:** Okay. Had you ever had any professional dealings with him?

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** Okay, and no personal dealings?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay.

Prior to your involvement in this case, were you ever asked by a superior officer about your relationship with Constable Smyth and whether or not you knew him?

**WITNESS X:** No.

**MS. O'BRIEN:** Prior to April 5, 2015, did you know Mr. Dunphy or any of the members of his family?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** Prior to your involvement in this case, were you ever asked by a superior officer about whether or not you knew Mr. Dunphy or any member of his family?

**WITNESS X:** No, I wasn't.

**MS. O'BRIEN:** Prior to April 5, 2015, had you ever been involved on or in any joint operation or task force with a member of the RNC?

**WITNESS X:** No, I wasn't.

**MS. O'BRIEN:** Constable, were you working regular duties on April 5, 2015?

**WITNESS X:** Yes, I was.

**MS. O'BRIEN:** All right. Could you please tell the Commissioner how you became involved in this matter?

**WITNESS X:** I believe I was in the office in Ferryland when I heard a call that there was shots fired in the Mitchells Brook area and Holyrood was responding to it. I asked them if they needed assistance, and I believe it was Constable Cox asked me to head that way.

**MS. O'BRIEN:** How far a drive would it have been for you to get from where you were in Ferryland to Mitchells Brook?

**WITNESS X:** I can't answer that. I don't know the time or the distance at this time.

**MS. O'BRIEN:** Sorry, you're a little hard to hear Constable.

**WITNESS X:** I don't know the time or the distance that it would take to get from Ferryland to Mitchells Brook.

**MS. O'BRIEN:** Okay. Do you know what time you received the, when you heard – what time you heard the call that shots had been fired?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Constable, have you had an opportunity to review your notes –

**WITNESS X:** I'm looking at my supplementary report. It was approximately 2:30 –

**MS. O'BRIEN:** Okay.

**WITNESS X:** – when I heard the dispatch.

**MS. O'BRIEN:** At approximately 2:30 that you heard the dispatch?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. Thank you.

When you said, looking at your Supplementary Occurrence Report – Commissioner, just to be clear, that's the document that's been entered as P-0106. And, Constable, as you're giving your testimony, if at any time you need to refresh your memory by looking at your notes, either your



typed notes or your written notes, handwritten notes, could you please alert us that you're doing so, and otherwise, I'd asked that you not read from the notes –

**WITNESS X:** Okay.

**MS. O'BRIEN:** – in giving your testimony.

**WITNESS X:** Okay.

**MS. O'BRIEN:** Thank you.

All right. So on getting this call you say you made contact with Constable Cox?

**WITNESS X:** Yes.

**MS. O'BRIEN:** All right. And then you headed towards Mitchells Brook. Is that right?

**WITNESS X:** Yes.

**MS. O'BRIEN:** All right. Did you have any further communications with anyone from the RCMP while you were en route?

**WITNESS X:** I had contact with Corporal Williams to ask him to come out and to cover calls for the Ferryland area.

**MS. O'BRIEN:** Okay. And Corporal Williams worked with you in Ferryland?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

**WITNESS X:** Also, there was general conversation to find out if I was still needed on the scene or if there was anything else needed.

**MS. O'BRIEN:** Were you in uniform?

**WITNESS X:** Yes, I was.

**MS. O'BRIEN:** And was your vehicle marked or unmarked vehicle?

**WITNESS X:** It was a marked vehicle.

**MS. O'BRIEN:** Marked?

**WITNESS X:** Yes.

**MS. O'BRIEN:** And were you alone in that vehicle?

**WITNESS X:** Yes, I was.

**MS. O'BRIEN:** What time did you arrive on the scene?

**WITNESS X:** I arrived on the scene – I'll have to look at my notes. That's my handwritten notes.

**MS. O'BRIEN:** Okay.

**WITNESS X:** At approximately 3:15.

**MS. O'BRIEN:** Okay. Thank you.

What did you see when you arrived on the scene?

**WITNESS X:** I saw that Constable Cox and Downey were present on the scene with Corporal O'Keefe in charge.

**MS. O'BRIEN:** Okay. So you saw Constable Cox and Downey, and you saw Corporal O'Keefe.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. Did you see anyone else?

**WITNESS X:** There was people in the area, no one that I could identify.

**MS. O'BRIEN:** Sorry, I didn't hear the last part of your answer.

**WITNESS X:** Sorry. There was people in the area, nobody that I could identify.

**MS. O'BRIEN:** Were they police officers?

**WITNESS X:** I don't believe so. There was nobody in uniform, other than the members that I have mentioned.

**MS. O'BRIEN:** All right. So there was other people there besides the uniformed officers who you have mentioned, who were not in uniform?

**WITNESS X:** Yes, they were near the scene.

**MS. O'BRIEN:** And how many people were they, at the scene?

**WITNESS X:** I have no idea.

**MS. O'BRIEN:** Okay. So what were the people that you were able to see, what were they doing when you arrived?

**WITNESS X:** I don't remember what they were doing.

**MS. O'BRIEN:** What did you do when you arrived?

**WITNESS X:** I spoke to Corporal O'Keefe and asked him what he needed done on the scene.

**MS. O'BRIEN:** Okay. And what did he tell you to do?

**WITNESS X:** He asked me to direct traffic and keep traffic out of the area.

**MS. O'BRIEN:** So he asked you to direct traffic and –?

**WITNESS X:** Keep them out of the area.

**MS. O'BRIEN:** Okay. So what did you do as a result of that?

**WITNESS X:** I did what I was asked to do, I kept traffic out of the area. I didn't let anybody through.

**MS. O'BRIEN:** Okay. So can you just give us a little bit of detail of where you posted yourself, what exactly you were doing?

**WITNESS X:** It would be the side of the scene coming from St. John's. I just parked my car on the side of the road and I stopped any traffic from entering the scene and had them turn around.

**MS. O'BRIEN:** Okay. And when you say you stopped, to prevent people from entering the scene, what are you referring to as the scene?

**WITNESS X:** The area where Corporal O'Keefe, Constable Cox, and the other officers were standing.

**MS. O'BRIEN:** Okay. And we know they were there at Mr. Dunphy's home. So were you stopping traffic on the road that goes in front of Mr. Dunphy's home?

**WITNESS X:** Yes, I was.

**MS. O'BRIEN:** Okay. So you stopped your vehicle on the side of the road, to the St. John's side of Mr. Dunphy's home on the road. Is that what I'm to understand?

**WITNESS X:** That's correct.

**MS. O'BRIEN:** Okay. And then you were stopping traffic.

**WITNESS X:** Yes.

**MS. O'BRIEN:** And were you preventing all traffic from going through?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

And was any other officer assisting you with this duty?

**WITNESS X:** Not at the – not beside me, no. I don't know if there was another officer in the same area.

**MS. O'BRIEN:** Okay.

What was Constable Downey doing at this time?

**WITNESS X:** I don't know. You'd have to ask her.

**MS. O'BRIEN:** Okay.

So you were stopping traffic coming from St. John's and preventing them from going through. What about people who lived further down the road?

**WITNESS X:** There would have been somebody – actually nobody got through. Nobody tried to get down because they lived in the area.

**MS. O'BRIEN:** Okay. All right.

Had – did you see – had any police tape been placed around or near Mr. Dunphy's home at this time?

**WITNESS X:** I don't remember any.

**MS. O'BRIEN:** Okay.

Did you ever enter Mr. Dunphy's house?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** Did you ever go enter onto Mr. Dunphy's driveway?

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** All right.

And are you suggesting that in this area that there were other non-uniformed people in the area that you've described as the scene by this time?

**WITNESS X:** I do believe so.

**MS. O'BRIEN:** Okay. But you don't have any idea what number?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Okay.

**WITNESS X:** They would have been back from the scene.

**MS. O'BRIEN:** All right.

And when you say you do believe so, is that a – is that a, you know, a firm memory? Are you actually remembering people there?

**WITNESS X:** I remember people as I approached the scene. They weren't on the scene, they were back from it.

**MS. O'BRIEN:** Okay.

**WITNESS X:** I don't know who they were.

**MS. O'BRIEN:** Okay.

Did you see Constable Smyth on the scene?

**WITNESS X:** At one point I remember seeing him in a marked police vehicle.

**MS. O'BRIEN:** Okay. And had you ever seen him before this –

**WITNESS X:** No.

**MS. O'BRIEN:** – before this day?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay. How did you know it was Constable Smyth?

**WITNESS X:** I didn't know it was Constable Smyth at the time. I, I know it now.

**MS. O'BRIEN:** Okay. When did you learn it was Constable Smyth?

**WITNESS X:** When I was asked to transport him to Holyrood detachment.

**MS. O'BRIEN:** Okay.

Okay. Prior to you transporting him to Holyrood detachment did you, did you have an opportunity or did you speak to Constable Smyth while he was on the scene?

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** Did you ever overhear him speaking to others while he was on the scene?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay.

Did you, did you meet or see Meghan Dunphy on the scene?

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** Okay.

Now, I'm going to take you to the point just before you left the scene and with – when you were asked to transport Constable Smyth. So I'm going to take you right before that time, all right?

**WITNESS X:** Okay.

**MS. O'BRIEN:** So just before you left, what did you understand the situation to be there that day? What did you understand had happened?

**WITNESS X:** To my understanding there had been a shooting. Who was involved I did not know.

**MS. O'BRIEN:** Did you know a police officer had been involved?

**WITNESS X:** I heard on the radio as I was – that there was a police officer shooting. That's correct.

**MS. O'BRIEN:** Okay. So you knew it was a police officer shooting.

**WITNESS X:** Uh-huh.

**MS. O'BRIEN:** Did you know that, that someone had died?

**WITNESS X:** I didn't know they were deceased.

**MS. O'BRIEN:** You – sorry?

**WITNESS X:** I did not know they were deceased.

**MS. O'BRIEN:** Did you know that there had been a civilian victim of the shooting?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** Did you know there had been a victim of the shooting?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. How did you know there'd been a victim of the shooting?

**WITNESS X:** Because I was called to a shooting where someone had been shot. I didn't know they were deceased.

**MS. O'BRIEN:** Did you know it was the police officer who had done the shooting?

**WITNESS X:** I didn't at that point. No.

**MS. O'BRIEN:** When did you learn it was a police officer who did the shooting?

**WITNESS X:** I'm not sure when I found out it was a police officer shooting.

**MS. O'BRIEN:** Okay. Well, was it that day?

**WITNESS X:** I would say, yes.

**MS. O'BRIEN:** Okay. Was it prior to you transporting Constable Smyth?

**WITNESS X:** No, it wasn't.

**MS. O'BRIEN:** So prior to you transporting Constable Smyth, you knew it was a police-involved shooting, but you didn't know the police officer had done the shooting.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

Up until the time that you were asked to transport Constable Smyth what were you doing?

**WITNESS X:** Directing traffic.

**MS. O'BRIEN:** Okay. So you directed traffic the full time?

**WITNESS X:** Yes.

**MS. O'BRIEN:** What time were you asked to transport Constable Smyth?

**WITNESS X:** Slightly before I transported him.

**MS. O'BRIEN:** Okay. So what time would that have been?

**WITNESS X:** According to my written notes I left at 4:10, so just moments before that.

**MS. O'BRIEN:** Okay, so just moments before 4:10 you were asked. And who asked you to transport Constable Smyth?

**WITNESS X:** Corporal O'Keefe.

**MS. O'BRIEN:** So at that time you knew it was a police-involved shooting and you knew that – you knew that someone had been – you knew that there was a victim of a shooting, someone had been shot.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

Had you seen any emergency services like ambulance on site? Did you see any ambulance or paramedics on the scene?

**WITNESS X:** There was an ambulance there. I'm not sure how many. There was at least one.

**MS. O'BRIEN:** What was it doing while you were sitting there?

**WITNESS X:** It was parked on the side of the road.

**MS. O'BRIEN:** Was it still there when you left the scene at 4:10?

**WITNESS X:** I can't answer that. I don't know.

**MS. O'BRIEN:** Okay.

Do you recall seeing the ambulance's lights and sirens going?

**WITNESS X:** I don't remember.

**MS. O'BRIEN:** At this time, Constable, at 4:10 or just before 4:10 when you're being asked to transport Constable Smyth, did you understand that a police investigation was ongoing?

**WITNESS X:** No I didn't, not in regards to Mr. Smyth.

**MS. O'BRIEN:** Sorry? Can you repeat that last portion of your answer, please?

**WITNESS X:** I said, no, I didn't. Not in regards to Mr. Smyth or the person that I was transporting.

**MS. O'BRIEN:** So you didn't know a police investigation was ongoing, are you saying, in regards to Constable Smyth?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Did you know that a police investigation was going otherwise?

**WITNESS X:** Yes, I was sort of on the scene.

**MS. O'BRIEN:** So you understood there was a police investigation but you didn't understand who was being investigated. Is that what you're telling me?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** Okay.

Did you understand that it was a criminal investigation that was ongoing?

**WITNESS X:** I didn't know what the aspects of the investigation was. I showed up and was told to direct traffic and then transport Mr. Smyth.

**MS. O'BRIEN:** Okay. So you didn't know, you didn't know whether or not it was a criminal investigation, is that –

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** Okay. Did you know whether or not it was a homicide investigation?

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** Okay.

**WITNESS X:** But like I said, at that time I didn't know anybody was deceased.

**MS. O'BRIEN:** Okay. And did you know who might be the subject of that investigation?

**WITNESS X:** No.

**MS. O'BRIEN:** All right.

Where did Constable Smyth sit in the vehicle?

**WITNESS X:** In my vehicle?

**MS. O'BRIEN:** Yes.

**WITNESS X:** In the front seat, passenger side.

**MS. O'BRIEN:** Was that your choice to offer him that seat or did someone else give him that seat or did he just take that seat?

**WITNESS X:** I don't remember that.

**MS. O'BRIEN:** Sorry, Constable, I'm just going to ask you to wait one moment, I have to check my transcript there. That's why the pause.

**WITNESS X:** Sure.

**MS. O'BRIEN:** I know you can't see me.

Constable, on – do you recall being interviewed by me on December 5, 2016?

**WITNESS X:** Yes, I do.



**MS. O'BRIEN:** Do you recall me asking you at that time who made the decision to put Constable Smyth in the front of your vehicle as opposed to the back of your vehicle?

**WITNESS X:** I don't remember.

**MS. O'BRIEN:** Okay. You don't remember me asking you that question?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Well, I guess you don't remember what your answer was.

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Okay.

I'm just going to read out what your answer is according to my transcript and you can tell me if it was accurate.

**WITNESS X:** Okay.

**MS. O'BRIEN:** The question from me: Okay, who made the decision to put Constable Smyth in the front of your vehicle as opposed to the back of your vehicle? Answer: That would have, that would have been probably Corporal O'Keefe maybe. They both walked toward the vehicle and Constable Smyth got in the front.

**WITNESS X:** And that's possible.

**MS. O'BRIEN:** Okay. Do you have any memory of that now?

**WITNESS X:** Again, I don't know whose decision it was to put him there. If I remembered at that time that they both walked there and went in there, then I'm assuming that's what I remembered at that time.

**MS. O'BRIEN:** Okay, but today as you're giving your evidence here before the Commission of Inquiry, can you remember Corporal O'Keefe walking Constable Smyth to your vehicle?

**WITNESS X:** I remember walking there, I don't know whose decision it was to place him in the front seat or how he got in the front seat.

**MS. O'BRIEN:** Okay. So you – but you do remember Corporal O'Keefe walking him over to the vehicle.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

What was, what was Constable Smyth wearing at this time?

**WITNESS X:** Plain clothes, that's all I can say. What exactly he was wearing I don't know.

**MS. O'BRIEN:** Okay. Do you recall if he was wearing a hat?

**WITNESS X:** I don't believe he was wearing a hat.

**MS. O'BRIEN:** What about gloves?

**WITNESS X:** I don't remember seeing gloves.

**MS. O'BRIEN:** What about glasses?

**WITNESS X:** I don't remember glasses.

**MS. O'BRIEN:** Pardon?

**WITNESS X:** I don't remember glasses.

**MS. O'BRIEN:** And other than plain clothes, do you remember anything else about what he was wearing?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Okay.

What discussions did you have with Constable Smyth while you were driving to Holyrood detachment?

**WITNESS X:** I just remember general conversation about different people that we may have worked with or how long we had been working in the various forces.

**MS. O'BRIEN:** Okay, what do you recall Constable Smyth telling you about where he had worked and what people he worked with?

**WITNESS X:** I don't remember the specific people that he had worked with. I believe he may have said that he worked with the Criminal Investigation Unit, the exact thing I don't know.

**MS. O'BRIEN:** Pardon, I missed the last part of your answer.

**WITNESS X:** I, I don't know what he said specifically.

**MS. O'BRIEN:** Did you have any other conversation?

**WITNESS X:** Just general conversation.

**MS. O'BRIEN:** And you don't now remember any other conversation you had with Constable Smyth?

**WITNESS X:** Is there anything that you want in particular?

**MS. O'BRIEN:** Yes, anything you remember.

**WITNESS X:** I remember him saying at one point, all he had time to do was say no, no, no.

**MS. O'BRIEN:** Okay. So you remember at one point him saying that all he had time to do was say no, no, no?

**WITNESS X:** Yes.

**MS. O'BRIEN:** What did you understand him to be talking about?

**WITNESS X:** At that time, I didn't know.

**MS. O'BRIEN:** So you didn't know what he was talking about at all at that point?

**WITNESS X:** No, no.

**MS. O'BRIEN:** Anything else that you remember him saying?

**WITNESS X:** Can I refer to my written notes?

**MS. O'BRIEN:** Yes, if you want to take a moment to review your notes and refresh your memory, that's fine.

You can just let me know when you've had an opportunity to do that, Constable.

**WITNESS X:** Sure, I'm doing that right now.

He had mentioned something about him working with the JFO Premier's security and that there were threats made on social media. He said that no matter how confident you are about defusing a situation, it's different when it happens to you.

**MS. O'BRIEN:** Okay. So I'm going to get you go over that a bit more slowly. He said he worked with?

**WITNESS X:** He worked JFO Premier's security.

**MS. O'BRIEN:** What's JFO?

**WITNESS X:** Joint force operations.

**MS. O'BRIEN:** And what did you understand that to be?

**WITNESS X:** He was on the Premier's detail. That's all I know.

**MS. O'BRIEN:** Okay. And what did you understand joint force operations to mean?

**WITNESS X:** It was between the RCMP and the RNC.

**MS. O'BRIEN:** Okay. So he told you where he worked and you said – what did he tell you he was doing?

**WITNESS X:** He didn't say what he was doing, he said there were threats made on social media. I didn't know what he was referring to.

**MS. O'BRIEN:** Okay.

**WITNESS X:** I was driving the vehicle trying to manoeuvre through traffic.

**MS. O'BRIEN:** Okay. So he told you that there were threats made on social media. Did he say who the threats were against?

**WITNESS X:** No, he didn't.

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**MS. O'BRIEN:** Yeah.

And you said now – you made another comment that he said no matter how confident you are – can you just take us over, take me over that again, please?

**WITNESS X:** I'm not sure if those are his exact words but his remarks – it's what I remember as I was driving. I may have paraphrased. It was that no matter how confident you are at diffusing a situation, it's different when it happens.

**MS. O'BRIEN:** So no matter how confident you are about diffusing a situation –

**WITNESS X:** Yes.

**MS. O'BRIEN:** – it's different when it happens?

**WITNESS X:** Yes.

**MS. O'BRIEN:** What did you understand him to be talking about?

**WITNESS X:** Again, I didn't know what he was talking about, I just remember him saying something along that lines. And I made note of it in my notebook when I took my notes.

**MS. O'BRIEN:** And when did you take your notes in your notebook?

**WITNESS X:** That would have been after I had arrived at the Holyrood detachment.

**MS. O'BRIEN:** Sorry, I didn't hear your answer, Constable.

**WITNESS X:** Sorry. That would have been when I arrived at the Holyrood RCMP detachment.

**MS. O'BRIEN:** So when you arrived at Holyrood?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. And those would be your handwritten notes we're talking about now?

**WITNESS X:** Yes, it is.

**MS. O'BRIEN:** All right.

And just for the record, Commissioner, the constable's handwritten notes have been placed into evidence at P-0105.

Okay. Do you remember any other details of your conversation with Constable Smyth?

**WITNESS X:** No, that was it.

**MS. O'BRIEN:** Okay.

What was Constable Smyth's demeanour like when he was in the car with you?

**WITNESS X:** He appeared to be shaken up.

**MS. O'BRIEN:** And what did you observe to lead you to come to the conclusion that he appeared to be shaken up?

**WITNESS X:** He was just looking out the window and he was rubbing his hands. That's all I remember.

**MS. O'BRIEN:** Looking out window and did you say rubbing his hands?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

How was his voice? Did you notice anything unusual or different about his voice?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay. So when you say he appeared shaken up, you're referring to looking out the window and rubbing his hands?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. How long were you in the vehicle with Constable Smyth?

**WITNESS X:** From the time I left the scene, I stopped for gas, and then continued on to Holyrood. I'd need to look at my notes to see what time I arrived at Holyrood.

**MS. O'BRIEN:** Yes. Yes, yup you can refresh your memory with that and just let us know what time did you arrive at the Holyrood detachment.

**WITNESS X:** I left at 4:10 and – bear with me –

**MS. O'BRIEN:** Constable, does 4:50 sound correct to you?

**WITNESS X:** I'm just – yes, I see it there. Approximately 4:50 I arrived at Holyrood.

**MS. O'BRIEN:** All right so about 40 minutes en route, and you're saying you made one stop during that period of time?

**WITNESS X:** Yes, I did.

**MS. O'BRIEN:** And that was to get gas you just said, was it?

**WITNESS X:** Yes, I needed gas.

**MS. O'BRIEN:** Okay. And did, did you get out of the car to pump the gas?

**WITNESS X:** Yes, I did.

**MS. O'BRIEN:** Did Constable Smyth get out of the car?

**WITNESS X:** I don't remember.

**MS. O'BRIEN:** You don't remember?

**WITNESS X:** I don't remember him getting out of the car.

**MS. O'BRIEN:** Okay. Approximately how long would it have taken you to get out of your car and get the gas? Approximately.

**WITNESS X:** A couple of minutes? Two to five minutes?

**MS. O'BRIEN:** Okay.

So for the rest of that time that you were in the car with Constable Smyth, were you talking with him the whole time or were there long periods of silence, or how do you remember the discussion going during that period?

**WITNESS X:** For the most part it was silent, like I said it was just general conversation about who we may have known and how long we've been in each force.

**MS. O'BRIEN:** Okay.

Did – sorry, I didn't mean to cut you off, Constable.

**WITNESS X:** It was just general conversation like I said about who we may know from each force and that was it.

**MS. O'BRIEN:** Did Constable Smyth use his cellphone during that period of time?

**WITNESS X:** I don't remember that.

**MS. O'BRIEN:** Okay. Do you remember him having a cellphone?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** So you don't remember him texting on the phone?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Don't remember him making any calls.

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Okay, what about you? Did you have any other communications with anyone en route either over your police radio or using a cellphone?

**WITNESS X:** I don't remember any other communications.

**MS. O'BRIEN:** You don't remember any other communications?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay.

Do you recall contacting Constable Downey who was on the scene in Mitchells Brook to advise that the media were en route?

**WITNESS X:** I don't remember.

**MS. O'BRIEN:** Okay.

Do you recall passing any media vehicles while you were driving to Holyrood?

**WITNESS X:** No, I don't remember any.

**MS. O'BRIEN:** All right.

I just have a couple of questions about your type-written notes.

**WITNESS X:** Okay.

**MS. O'BRIEN:** Constable, could you please go to your supplementary occurrence report?

**WITNESS X:** Okay.

**MS. O'BRIEN:** And, Commissioner, this supplementary occurrence report has been entered as P-0106. And I'll ask Madam Clerk to please bring up that exhibit. Thank you.

All right. Constable, I am looking at the report itself and it has a report time of April 4 –

**WITNESS X:** Yes.

**MS. O'BRIEN:** – at 14:30, or 2:30 in the afternoon. Is that an accurate date?

**WITNESS X:** That would be the date that was generated from the system.

**MS. O'BRIEN:** Okay. It's saying April 4 and if you just look at the top here, I'm noting that the occurrence here, which is cited as pointing a firearm, if you look at the top –

**WITNESS X:** Uh-huh.

**MS. O'BRIEN:** – it's on April 5 of 2015 at 14:28.

**WITNESS X:** Okay.

**MS. O'BRIEN:** And then down below there is – on your supplementary occurrence report there is a report time of April 4 at 14:30.

**WITNESS X:** Okay.

**MS. O'BRIEN:** So is that an accurate date?

**WITNESS X:** I may have typed that in. Like I said, I thought it was system generated but I may have typed it in as the 4th instead of the 5th.

**MS. O'BRIEN:** Okay.

What day – what date did these activities take place?

**WITNESS X:** April 5.

**MS. O'BRIEN:** Okay.

And so when we go down here to the first line of your report where it says at approximately 14:30 on April 4, 2015 that should read April 5, 2015?

**WITNESS X:** Yes, it should.

**MS. O'BRIEN:** All right. Thank you.

The second date towards the top of the report here under entered time – do you see that?

**WITNESS X:** Yes.

**MS. O'BRIEN:** It's on April 4 – sorry, April 10, 2015.

**WITNESS X:** That would have been the time that I generated my report; it was entered into our system.

**MS. O'BRIEN:** Okay. So that would have been the time you typed up these notes?

**WITNESS X:** Yes.

**MS. O'BRIEN:** All right.

So when you typed up these notes you would have been relying on your handwritten notes that you took that day, is that right?

**WITNESS X:** Yes, I would.

**MS. O'BRIEN:** Okay and then – and your memory as well?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Did you rely on any other information?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay.

I'm just looking at the bottom of this report. I see you, you, there – it's concluded with a couple – there's a couple of initials here, one is NFA by writer. Did you type that?

**WITNESS X:** Yes.

**MS. O'BRIEN:** And what does that mean?

**WITNESS X:** No further action required.

**MS. O'BRIEN:** Okay.

And then three lines up from the bottom of the report there's a CH. Did you write that?

**WITNESS X:** That would be concluded here.

**MS. O'BRIEN:** Okay, concluded here. And you would have written that?



**WITNESS X:** No, I didn't write that.

**MS. O'BRIEN:** Okay, who would have written that?

**THE COMMISSIONER:** Where, where is that?

**WITNESS X:** Whoever reviewed the report and concluded my task.

**MS. O'BRIEN:** Okay. So in this case would that have been Corporal Burke, to your knowledge, looking at this document?

**WITNESS X:** From looking at that he would be the undersigned, yes.

**MS. O'BRIEN:** Okay. All right.

So is it fair to say that the line here that was written on April 13, 2015, and the notes below that line, those are not your typed notes. Is that correct?

**WITNESS X:** No, they're not.

**MS. O'BRIEN:** Okay. So that line and everything below that: task reviewed and concluded, CH and the two other lines below are not yours.

**WITNESS X:** No.

**MS. O'BRIEN:** Okay. Everything else in the report, is that yours?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay.

Now, when we looked at your handwritten notes – and I'm going to leave this up on the screen, please, Madam Clerk. When I looked at your handwritten notes, Constable, you – when you made a note in your handwritten notes about what had – about this, you made a note at 16:20.

**WITNESS X:** Okay.

**MS. O'BRIEN:** And – actually maybe I should bring it up to assist people.

Madam Clerk, can you bring up Exhibit P-0105, please. Thank you. Can you make it a little bit bigger? Thank you. Even bigger again, it's hard to read. Thank you.

Okay. So I'm looking here – sorry, I'm looking here at the – I'm looking at your field notes, Constable, on the note you started making at the time entered is 16:20 or 4:20.

**WITNESS X:** Okay.

**MS. O'BRIEN:** And you start with: Stop for gas at North Atlantic on Salmonier Line.

**WITNESS X:** Okay.

**MS. O'BRIEN:** Can you read that?

**WITNESS X:** Yes, I can.

**MS. O'BRIEN:** Continued on to Holyrood.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Conversation with Smyth was about where we worked and members we knew, the only comment from Smyth about the incident happened when writer asked if he still worked with CID.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. So here you note about the incident.

**WITNESS X:** Okay.

**MS. O'BRIEN:** So what incident did you understand when you were writing these notes?

**WITNESS X:** The details of the incident, I didn't know. I knew that I was at a – a situation that I had been called for service.

**MS. O'BRIEN:** Okay. So you didn't –

**WITNESS X:** I guess it refers to the general call for service.

**MS. O'BRIEN:** Okay. So you still didn't know any other details than what you've already given us?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay. Smyth stated he worked JFO?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Which you've already explained, premier's security. There were threats made on social media by the deceased.

**WITNESS X:** Okay.

**MS. O'BRIEN:** So here you wrote the note deceased.

**WITNESS X:** I did not know he was deceased at that time. These notes were made after I got back to Holyrood.

**MS. O'BRIEN:** Sorry? Can you – I'm, I'm – it's the connection, Constable, it's –

**WITNESS X:** I apologize. These notes were made after I got back to the Holyrood detachment.

**MS. O'BRIEN:** Okay. So when did you learn that there was a deceased?

**WITNESS X:** I don't know exactly when I learned it. I did not know it when I was on scene, or I didn't know it when I was in the car.

**MS. O'BRIEN:** Okay. So you learned it some time when you got back to the Holyrood detachment you're saying.

**WITNESS X:** That's the only thing I can – believe that I understood when I got back at the detachment.

**MS. O'BRIEN:** Okay. Do you remember who told you?

**WITNESS X:** No, I don't.

**MS. O'BRIEN:** Was it, or could it have been Constable Smyth?

**WITNESS X:** I don't remember him saying that to me.

**MS. O'BRIEN:** You don't remember him saying that to you.

**WITNESS X:** No.

**MS. O'BRIEN:** He went on to say that – and please correct me if I'm reading incorrectly – no matter how confident you are about defusing a situation, it is different when it happens. Said he, quote, only had enough time to say no, no, no and that was it. End quote.

**WITNESS X:** Okay. As I stated earlier, the – he went on to say that no matter how confident you are, I don't know if that was my paraphrasing of what he had said. Like I said, I was driving. We weren't in a conversation about anything other than general conversation, but when he uttered something to that effect, I then heard him say: only had enough time to say no, no, no and that was it. That was a direct quote.

**MS. O'BRIEN:** That was a direct quote. Is that what you're saying?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. So what we see there in quotation marks was a direct quote.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. All right.

Madam Clerk, can I get you to bring up the exhibit we just had up a few minutes ago, please, it's P-0106. Thank you. You can make it a little bit bigger. That's great, thank you.

I'm now looking at the bottom of the first page of your Supplementary Occurrence Report, Constable.

**WITNESS X:** Okay.

**MS. O'BRIEN:** It says: Smyth at one point said, quote, no matter how confident you are about defusing a situation it is different when it happens. End quote. Would that be a direct quote from Constable Smyth?

**WITNESS X:** That may be me – actually, it's me putting in what he had said from my notes. The quotation marks I may have put in there incorrectly.

**MS. O'BRIEN:** So you're saying you don't know whether or not that's an exact quote?

**WITNESS X:** No, it is from my notes. It's not an exact quote. The only exact quote that I have is: only had time to say no, no, no, and that was it.

**MS. O'BRIEN:** Okay.

All right, and there is a slight difference between your handwritten notes and your typed notes on the second part of the quote because your handwritten notes were: only had enough time to say no, no, no and that was it. And your typed notes just say: only had time to say no, no, no and that was it.

I know it's not a big difference, but would it be your handwritten notes that were more accurate or your typed notes?

**WITNESS X:** It would be my handwritten notes.

**MS. O'BRIEN:** Your handwritten notes, okay.

Now on the next page of your Supplementary Occurrence Report, right at the top, it said: writer quickly diverted the conversation away from the comments and back to years of service, general conversation. Can you please tell me what that means?

**WITNESS X:** During the ride, I didn't know what his involvement was. I knew there was a situation. Ah, I didn't have enough information to, ah, question him or understand what his involvement was. So rather than interject and possibly cause any issues with recollections, I didn't continue a conversation with respect to anything that he was saying.

**MS. O'BRIEN:** So you didn't continue a conversation about anything he was saying.

**WITNESS X:** In respect to his comment of no, no, no.

**MS. O'BRIEN:** And here it says you quickly diverted the conversation. And that's your notes here which, when reading it, would sound like you, you know, proactively tried to shut down the conversation and get it moving on to another topic.

**WITNESS X:** Not necessarily. I didn't know what he was talking about and rather than talk about something I didn't know anything about, I just went on to something else. The quickly diverted, it is just the way I worded it.

**MS. O'BRIEN:** Sorry? What did you just say about your use of the words, quickly diverted?

**WITNESS X:** That was just my simple way of wording going on to another conversation.

**MS. O'BRIEN:** Okay, all right.

You're saying it's just your simple way of going on to another conversation. Were you trying to prevent, were you trying to stop Constable Smyth from talking about whatever had just happened to him?

**WITNESS X:** No. But again, like I said, I didn't know what he was talking about, and not having any understanding of what he was talking about I didn't want to get involved in a conversation like that.

**MS. O'BRIEN:** Okay. Did it ever cross your mind that whatever Constable Smyth might be saying in the vehicle – you know, providing he was just saying it spontaneously and you weren't actively questioning him – did it ever occur to you that might be valuable information for whoever was doing an investigation?

**WITNESS X:** Again, I didn't know there was an investigation on the go.

**MS. O'BRIEN:** Okay. But you knew there was some sort of police investigation on the go, didn't you?

**WITNESS X:** We were on scene for an officer-involved shooting. Who had done the shooting, I didn't know.

**MS. O'BRIEN:** I know you didn't know who had done the shooting, but did you know that there was a police investigation?

**WITNESS X:** I knew there was a police investigation, yes.

**MS. O'BRIEN:** You knew there was a police investigation. Right?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. Did it ever cross your mind that whatever Constable Smyth might have just spontaneously said in the car might be valuable information for those police investigators?

**WITNESS X:** Yes, and that's why I wrote it down and said it was a direct quote.

**MS. O'BRIEN:** Did it ever occur to you just to let Constable Smyth speak, if that's what he wanted to do?

**WITNESS X:** I did not stop him from speaking. I just started talking about something else. If he, he was free to talk whichever way he wanted to.

**MS. O'BRIEN:** At any other time have you ever transported a – and now I'm going back to a subject of an RCMP investigation. I do understand that your evidence here is that you didn't understand or know that Constable Smyth was the subject of any investigation. But have you ever, when you have known that that was the case, transported the subject of an investigation in the front seat of your police unit?

**WITNESS X:** Without knowing specifically, I probably have.

**MS. O'BRIEN:** You probably have?

**WITNESS X:** I don't remember anybody specifically.

**MS. O'BRIEN:** Okay. You can't remember doing it specifically.

Where's the normal place – if you were taking the suspect of a criminal investigation from a scene, where's the usual place that they would sit in your police vehicle?

**WITNESS X:** The usual place would be in the rear of the vehicle.

**MS. O'BRIEN:** Pardon?

**WITNESS X:** In the rear seat of the vehicle.

**MS. O'BRIEN:** The rear seat of the vehicle.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. When you arrived back at the detachment, did you enter the building with Constable Smyth?

**WITNESS X:** Yes, I entered the rear building – the rear door of the building.

**MS. O'BRIEN:** And it was – would that be the usual door that you would approach that detachment on?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. And who was at the detachment when you arrived?

**WITNESS X:** Staff Sergeant Tiller and there I believe there were several RNC members.

**MS. O'BRIEN:** Okay did you – several RNC members, do you know how many?

**WITNESS X:** Maybe two.

**MS. O'BRIEN:** Okay, did you know them?

**WITNESS X:** No, I didn't.

**MS. O'BRIEN:** Did you know their names?

**WITNESS X:** No.

**MS. O'BRIEN:** Did you get their names at any time?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** Okay, so what did you do immediately when you arrived?

**WITNESS X:** I spoke to Sergeant Tiller and proceeded to take my notes.

**MS. O'BRIEN:** So that's when you took your notes?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay, what did Constable Smyth do when you arrived?

**WITNESS X:** He was standing with Sergeant Tiller and the two RNC members. I believe they may have went upstairs.

**MS. O'BRIEN:** You saw them go upstairs?

**WITNESS X:** I don't remember seeing them; I believe that they did.

**MS. O'BRIEN:** Okay. Did you see Constable Smyth again after that?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** All right. So after you finished your notes, what did you do then?

**WITNESS X:** I would have been off shift and went home.

**MS. O'BRIEN:** Did you have any other involvement in this matter, Constable?

**WITNESS X:** Later that night, I went back to the scene for scene security.

**MS. O'BRIEN:** And we, we're going to get some other testimony in this from other officers, but I understand doing scene security there was a scene log that was kept.

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay, and that was a notebook or notepad that was passed from officer to officer; is that right?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay. So would you have just recorded your notes from that activity when you were doing scene security in that scene log?

**WITNESS X:** Yes.

**MS. O'BRIEN:** Okay, would you have any other notes?

**WITNESS X:** On page 77 of my notes at 2215 I believe it is, I just made a note that I took over the log from Constable Cox.

**MS. O'BRIEN:** Okay. And that's this, the note there. And that, was that the only time you did site security on the scene?

**WITNESS X:** Yes, it was.

**MS. O'BRIEN:** When you were doing scene security, what did that entail? I mean, where were you, where were you standing when you were doing the security?

**WITNESS X:** I was in a vehicle, pretty much near the same place that I was when I did traffic; it was just monitoring who was entering and leaving the scene.

**MS. O'BRIEN:** Okay, so you were sitting in your vehicle. Were you pulled over to the side of the road, is that what you're saying?

**WITNESS X:** Yes, I was.

**MS. O'BRIEN:** Okay. And when you were doing scene security, would you have been the only officer on doing scene security or would there have been other officers also doing the same thing at the same time?

**WITNESS X:** Oh, there was another officer.

**MS. O'BRIEN:** Pardon?

**WITNESS X:** There was another officer.

**MS. O'BRIEN:** There was another officer during that time?

**WITNESS X:** I believe so.

**MS. O'BRIEN:** And where was that officer?

**WITNESS X:** That would have been at the other side of the scene, the other side of the roadway.

**MS. O'BRIEN:** Okay. The other side of the roadway. You mean stopping traffic in the other direction, or –

**WITNESS X:** Yes.

**MS. O'BRIEN:** Watching the scene from the other direction?

**WITNESS X:** Watching what came from the other direction, I guess.

**MS. O'BRIEN:** Watching the scene from the other direction. Do you know who was working in that other vehicle while you were doing scene security?

**WITNESS X:** I don't remember.

**MS. O'BRIEN:** You don't remember? Okay.

When you were doing scene security, do you ever get out of your vehicle and walk around, say, to the back of the house, or do any walking or foot patrol?

**WITNESS X:** No, I did not.

**MS. O'BRIEN:** Okay.

Constable, did anyone ever ask you to provide any additional detail to your notes?

**WITNESS X:** Yes, Constable Fudge had asked to take a statement at back in September.

**MS. O'BRIEN:** Okay. So did Constable Fudge ask you to give any, to make further notes or was he just asking you for more detail about your notes?

**WITNESS X:** He asked that I give a statement regarding my involvement.

**MS. O'BRIEN:** Okay.

And, Commissioner, that exhibit has been entered at P-0107, and Madam Clerk can bring that up.

So when did Constable Fudge take this statement from you?

**WITNESS X:** That would have been on September 1, 2016.

**MS. O'BRIEN:** Okay. And when he came to take the statement from you on that date and since the last time you had any activity on the file, had you discussed the incident with anybody?

**WITNESS X:** No. My only involvement was, or my last involvement was scene security the night of.

**MS. O'BRIEN:** Okay.

Did you know why at this time Constable Fudge was coming to take a statement from you?



**WITNESS X:** No. He just said he needed to take a statement.

**MS. O'BRIEN:** Okay. Did you know Constable Fudge?

**WITNESS X:** Not personally.

**MS. O'BRIEN:** Had you ever been interviewed by a police officer in relation to your work on a police file previously?

**WITNESS X:** No.

**MS. O'BRIEN:** Okay.

Did you ask Constable Fudge why he was taking the statement?

**WITNESS X:** I don't remember.

**MS. O'BRIEN:** Right now today, do you understand why he took that statement?

**WITNESS X:** Just as an interview of the persons involved on the scene. That's my only understanding.

**MS. O'BRIEN:** All right, Constable, thank you very much. Those are my questions but please stay on the line as –

**WITNESS X:** Sure.

**MS. O'BRIEN:** – other counsel present may have some questions for you.

**WITNESS X:** Okay.

**MS. O'BRIEN:** Thank you.

**MS. BREEN:** I am just waiting for the lectern, Mr. Commissioner. Thank you.

Constable, this is Erin Breen speaking. I am counsel for Meghan Dunphy.

**WITNESS X:** Okay.

**MS. BREEN:** I'm going to try not to repeat areas where Ms. O'Brien has already taken you. Once you got the message regarding the Mitchells Brook incident on April 5, I understand from your general occurrence report that you were actively monitoring your radio communications; is that correct?

**WITNESS X:** I was listening to them.

**MS. BREEN:** And that by the time you arrived, I'm going to suggest to you, Constable, that by the radio communications it had become clear that there was an RNC officer involved in a shooting and that someone was deceased. Do you recall that?

**WITNESS X:** I don't recall who was involved and anybody being deceased.

**MS. BREEN:** Okay, and we do have about 40 radio communications that were disclosed in the RCMP disclosure, but also according to your notes when you arrived, you did speak with

Corporal O'Keefe who you did understand to be the officer in charge of some kind of an investigative scene; isn't that right?

**WITNESS X:** Yes.

**MS. BREEN:** And that at that time we also understand from Constable Williams and other officers who attended around the same time as first responders that Corporal O'Keefe did tell you that Constable Smyth was the RNC officer involved. That he had shot Mr. Dunphy, the homeowner, and he was dead inside.

**WITNESS X:** I don't remember that.

**MS. BREEN:** You don't remember that?

**WITNESS X:** No.

**MS. BREEN:** Okay.

Regardless, you knew that this was an officer involved shooting.

**WITNESS X:** Yes.

**MS. BREEN:** I'm going to suggest you possibly knew that this was a homicide at that time. Were you given any instructions whatsoever by Corporal O'Keefe as to what to do?

**WITNESS X:** When I arrived on the scene, I asked him what needed to be done and he said to direct traffic. Keep traffic out of the area.

**MS. BREEN:** Okay, and then later he did ask you to take Constable Smyth to the detachment; is that correct?

**WITNESS X:** Yes.

**MS. BREEN:** Did he explain to you why you were bringing him to the detachment?

**WITNESS X:** There was no explanation, other than to transport Mr. Smyth from the scene to the Holyrood detachment.

**MS. BREEN:** Did he tell you what to do once you got him to the detachment?

**WITNESS X:** No.

**MS. BREEN:** Did he explain to you whether or not Constable Smyth was being detained by the police?

**WITNESS X:** I don't remember that.

**MS. BREEN:** You don't remember that?

**WITNESS X:** No.

**MS. BREEN:** Did you make any assumptions as to whether or not Constable Smyth was being detained by the police at that time?

**WITNESS X:** I can't make assumptions. I was just asked to transport Mr. Smyth from the scene to Holyrood.

**MS. BREEN:** Okay, and you were a general duty officer in Ferryland. You would have been used to transporting people arrested at scenes to detachments, would you not?

**WITNESS X:** Yes.

**MS. BREEN:** And normally if a person is detained, do they sit in the front seat with you?

**WITNESS X:** Not normally, but it has happened.

**MS. BREEN:** Okay, normally, are they, you know, are they handcuffed or are they free, are their hands free?

**WITNESS X:** Normally you see if a person is detained or arrested, or sorry, arrested, they're placed in the rear seat.

**MS. BREEN:** Okay, did Corporal O'Keefe explain to you what kind of investigation was ongoing there? You said you did know it was some kind of an investigation.

**WITNESS X:** Well, there was an investigation because we were called to a scene. The exact particulars of the situation I didn't know, other than there was a police shooting and that was it.

**MS. BREEN:** Okay, so you didn't understand whether it was an RCMP criminal investigation, whether it was some kind of investigation of a sudden death, you – that was not explained to you at that time, was it?

**WITNESS X:** From the radio communications I understood there was a shooting, yes. Who was involved, I did not know.

**MS. BREEN:** Okay, no, and I understand that, but I'm asking you, did you understand whether or not there was a *Criminal Code* investigation ongoing at that time?

**WITNESS X:** At the time that I transported Mr. Smyth, no, I wasn't sure what the investigation was at, what level.

**MS. BREEN:** Did you ask Corporal O'Keefe what kind of investigation was going on?

**WITNESS X:** No, I did not.

**MS. BREEN:** Did Corporal O'Keefe instruct you to bring Constable Smyth to a medical facility for any kind of assessment?

**WITNESS X:** No, he didn't.

**MS. BREEN:** You remember Corporal O'Keefe walked Constable Smyth to your vehicle, you do remember that, is that correct?

**WITNESS X:** I'm, I'm going to say yes.

**MS. BREEN:** Did you ask Corporal O'Keefe if Constable Smyth had been cautioned or read any kind of caution at that time?

**WITNESS X:** Again, I did not know Constable Smyth was under investigation or anything, so there was no reason for me to ask what he had taken place with him.

**MS. BREEN:** Okay. And as an officer who was used to regularly transporting people arrested from scenes to the detachment, wouldn't that be one of the things you would be asking about, whether or not you had any responsibility to read him a caution or to facilitate any kind of contact with legal counsel?

**WITNESS X:** If he was an arrested suspect, yes I would. At the time that I transported Constable Smyth I did not know he was a suspect in anything.

**MS. BREEN:** Okay. So you didn't caution him yourself?

**WITNESS X:** No.

**MS. BREEN:** Did you ask any questions yourself as to what to do with Constable Smyth once you got to the detachment?

**WITNESS X:** No, I was just told to take him to the detachment.

**MS. BREEN:** Okay. And, Constable, we have a Constable Kelly Downey who's going to be testifying later.

**WITNESS X:** Okay.

**MS. BREEN:** According to her notes, at 1609 she indicates that you and Constable Smyth left the scene, and that at 1613 you then advised her that news crews were on the way.

**WITNESS X:** I don't, I don't remember that.

**MS. BREEN:** Sorry?

**WITNESS X:** I don't remember that.

**MS. BREEN:** Okay. Where would that information have come from, Constable? Did it come from – were you talking to anyone else other than Constable Smyth at that time?

**WITNESS X:** No. I don't remember talking to anyone other than Constable Smyth as I was transporting.

**MS. BREEN:** Okay. But you did say that you were communicating with other members via the radio, is that right?

**WITNESS X:** I don't believe so, when I was transporting Constable Smyth.

**MS. BREEN:** Okay. But would have been – would you have communicated that to Constable Downey as she notes?

**WITNESS X:** I don't remember it. If there's a communication that says I did then I want to take that as what happened, but I don't remember it.

**MS. BREEN:** Okay.

Now, you have indicated to us that you did know who Constable Smyth was; you did know him in a professional capacity. You said you knew him from seeing his name on some RNC bulletins, I believe.

**WITNESS X:** Yes.

**MS. BREEN:** So you considered him, at that time, to be a professional colleague, is that correct?

**WITNESS X:** I knew he was a member, yes.

**MS. BREEN:** Okay. And you have also indicated that he did start talking about the incident to you.

**WITNESS X:** He had uttered, like I said, the no, no, no comment.

**MS. BREEN:** Okay. And he noted to you that he went there that day due to threats made on social media. Is that correct?

**WITNESS X:** I don't remember exactly what he said. At that time I was driving and I wasn't really paying that much attention to him.

**MS. BREEN:** Okay. We have been, we have seen the exhibit of your general occurrence report –

**WITNESS X:** Yeah.

**MS. BREEN:** – where that is stated there, so that would be accurate would it, Constable?

**WITNESS X:** Which statement are you looking at?

**THE COMMISSIONER:** The second last paragraph on your statement.

**MS. BREEN:** So Supplementary Occurrence Report, Exhibit P-0106.

**WITNESS X:** Okay.

**MS. BREEN:** And if you go to the bottom of the first page, Constable.

**WITNESS X:** Okay.

**MS. BREEN:** You say: Smyth then stated that he was part of the close protective unit. He said that was what brought him there as there were threats on social media.

**WITNESS X:** Yes.

**MS. BREEN:** Okay. Writer did not question it further.

**WITNESS X:** No.

**MS. BREEN:** Okay. And I understand that you proactively didn't ask any questions of Constable Smyth.

**WITNESS X:** Again, I didn't know what the investigation was so I couldn't just interject questions –

**MS. BREEN:** Okay.

**WITNESS X:** – that I don't know anything about it.

**MS. BREEN:** But as he appears to have been spontaneously speaking about the event, you do note that you quickly diverted the conversation away. So you changed the subject.

**WITNESS X:** I went on to something that I – just general conversation. I didn't know what he was talking about so I couldn't comment on what he had just said.

**MS. BREEN:** But Constable you had just – you knew you were there at the scene of an officer-involved shooting, that you were taking Constable Smyth, who was the RNC officer involved, to the detachment. So you did know generally what he was speaking about.

**WITNESS X:** I knew I was on scene of a call for service. I did not know what Constable Smyth's involvement was at the time.

**MS. BREEN:** Okay. But you are the one who changed the subject, do you agree, according to your own notes; according to your own general occurrence report on the top of page 3?

**WITNESS X:** Yes.

**MS. BREEN:** Okay. And I'm going to suggest to you, you did that because you didn't want him to speak about it at that time?

**WITNESS X:** As I said, I didn't know what he was talking about so rather than continue a conversation about something that I didn't know anything about, I just went on to something else.

**MS. BREEN:** Okay. And would you not agree that normally police do not divert conversation away from the incident that they are investigating?

**WITNESS X:** If I was investigating something. No, I wouldn't.

**MS. BREEN:** And normally police want to gather the information because any kind of spontaneous utterance could be used as evidence, you're aware of that, right?

**WITNESS X:** If I was involved in an investigation, yes, I would.

**MS. BREEN:** Okay. And when you say, if I was involved in the investigation, I understand that you had not been assigned any kind of formal role, but you were there as a police officer with the, with the RCMP, correct?

**WITNESS X:** Yes.

**MS. BREEN:** And you had been asked to do this by the officer in charge at the scene, is that right?

**WITNESS X:** Yes.

**MS. BREEN:** Okay.

Now, when you get back to the detachment, who is it that was in control at that point? Was it Sergeant Tiller?

**WITNESS X:** I believe it was Staff Sergeant Tiller.

**MS. BREEN:** Staff Sergeant Tiller, okay.

Finally, Constable, as of April 5<sup>th</sup>, 2015 had you received any training in responding to or investigating police officer involved shootings?

**WITNESS X:** No, I didn't.

**MS. BREEN:** Where you aware of any kind of protocol in place with the RCMP at that time?

**WITNESS X:** Not specifically in regards to police officer shootings.

**MS. BREEN:** Okay. Have you since received any training of that kind?

**WITNESS X:** No.

**MS. BREEN:** Okay. Thank you very much.

**WITNESS X:** Okay.

**THE COMMISSIONER:** Now, do we have any further cross-examination of this witness?

**MR. KENNEDY:** I just have three points.

**THE COMMISSIONER:** Mr. Kennedy?

**MR. KENNEDY:** Good afternoon, Constable.

It's Jerome Kennedy here. I'm counsel for Constable Joe Smyth.

**WITNESS X:** Okay.

**MR. KENNEDY:** I just have three or four questions for you, Sir.

**WITNESS X:** Sure, no problem.

**MR. KENNEDY:** So, basically, Mr. or Constable Smyth spontaneously uttered something along the lines: no matter – I'll look at your notes: no matter how confident you are about diffusing a situation, it's different when it happens. Said he only had time to say no, no, no and that was it?

**WITNESS X:** Yes.

**MR. KENNEDY:** So your – that's been both your notes, it's in your Supplementary Occurrence Report and you gave testimony to that effect before Commission counsel, correct?

**WITNESS X:** Yes.

**MR. KENNEDY:** You've indicated, Sir, in both your notes and before Commission counsel, that he looked – and I'm looking at your notes again, Sir – that Smyth was visibly shaken by the matter. Do you remember that being in your notes?

**WITNESS X:** Yes.

**MR. KENNEDY:** You indicated in your testimony before Commission counsel that that included looking out the window, rubbing his hands, and – do you remember saying that?

**WITNESS X:** Yes.

**MR. KENNEDY:** Is that accurate?

**WITNESS X:** Yes.

**MR. KENNEDY:** And also that his voice was a little shaky.

**WITNESS X:** I don't remember saying his voice was shaky but –

**MR. KENNEDY:** Okay.

**WITNESS X:** (Inaudible.)

**MR. KENNEDY:** Okay, just I can refer you, Sir. At page 49-50 of your interview with Commission counsel on December 5, 2016, you're asked: How did his voice sound. Your answer: A little shaky, that's the only way I'd describe it.

**WITNESS X:** Okay.

**MR. KENNEDY:** Okay. So do you accept that as being accurate, Constable?

**WITNESS X:** Yes. That's what I said in the interview.

**MR. KENNEDY:** Finally, Sir, in terms of your notes, you indicate that you don't remember exactly – or your notes, yeah, you didn't know exactly what Mr. Smyth said, or Constable Smyth said, because you were driving.

**WITNESS X:** Yes.

**MR. KENNEDY:** So when he talked about threats on social media do you know if he used the words "threats" or "threat assessment," or would it make any differ – would they mean anything different to you?

**WITNESS X:** That was in my notes as a paraphrase of what I heard him say. The only direct quote that I remember him saying was only had enough time to say no, no, no and that was it.

I do remember – I don't remember if it was threats or threats assessment.

**MR. KENNEDY:** Okay.

**WITNESS X:** All I heard was threats and social media.

**MR. KENNEDY:** Yeah. So you heard the word "threat."

**WITNESS X:** Yes.

**MR. KENNEDY:** Okay.

And, Sir, in terms of the – if I understand correctly, you simply followed the instructions that were given to you, did you, to bring Constable Smyth to the police station.



**WITNESS X:** That's correct.

**MR. KENNEDY:** Okay. Thank you, Sir.

Thank you, Constable.

**THE COMMISSIONER:** Any further questions?

**MR. AVIS:** I have no questions, Commissioner.

**THE COMMISSIONER:** Sorry?

**MR. AVIS:** I have no questions, Commissioner.

**THE COMMISSIONER:** Go ahead.

**MR. FREEMAN:** Thank you Commissioner.

Mark Freeman here.

Constable X, can you hear me okay?

**WITNESS X:** Yes I can.

**MR. FREEMAN:** Okay.

I just have one question for you. Can you elaborate for us; you mentioned that you moved the conversation away from the incident in the car. Correct?

**WITNESS X:** Yes.

**MR. FREEMAN:** Can you just elaborate on why, why it is you would do that and whether that's in keeping with your training and your experience as – in good policing.

**WITNESS X:** Again, as I mentioned earlier, I did not know what he was talking about, how – what his full involvement was. As a general duty officer, if there's an ongoing investigation and there's something, a conversation that takes place, there is a concern that it may taint the investigation from the lead investigator's point of view. So rather than taint any information that would have been divulged in an investigation, I didn't take part in a conversation that I didn't have any accurate information on.

**MR. FREEMAN:** Okay. Thank you.

And those are all my questions for you. So unless the Commissioner or Commission counsel have anything, you may be almost done.

**THE COMMISSIONER:** Thank you, Mr. Freeman. No.

Mr. Avis, did you say you had something?

**MR. AVIS:** No, I'm sorry. I said I had no questions for the Commission, yeah.

**THE COMMISSIONER:** Oh, you – I'm sorry, I didn't hear you. Okay.

All right, so no further questions from counsel. I guess we can release Constable X.

I should have introduced myself; I'm the Commissioner, Constable. So this is the end of your examination now.

Thank you very much.

**WITNESS X:** Okay. Thank you.

**THE COMMISSIONER:** Okay, now we have about 15 minutes if we – we have one further brief witness, do we, or –

**MS. O'BRIEN:** We – their next witness is Corporal Trevor O'Keefe. And I understand he's here, Commissioner, if you want to start on him lastly.

**THE COMMISSIONER:** Well, I might as well get 10 minutes in, I guess.

**MR. FREEMAN:** Mr. Commissioner, he's in the parking lot. I've just texted him to come on down. So he said he could be here in two seconds.

**THE COMMISSIONER:** Okay, if you could text him.

**MR. AVIS:** Commissioner, if I may, while we're waiting just to use the time – I mentioned earlier because I suddenly remembered it, I had a specialist appointment but I also have court commitments. So –

**THE COMMISSIONER:** You don't know what?

**MR. AVIS:** I have various court commitments, some of which were set May of last year. I actually won't be back 'til Tuesday, to try and deal with those, but Ms. Zdebiak will be here.

**THE COMMISSIONER:** Right.

**MR. AVIS:** You know, that was the idea when –

**THE COMMISSIONER:** Sure.

**MR. AVIS:** I cancelled as much as I can, of course, but some you just can't and you can't pause some.

**THE COMMISSIONER:** Yeah. No, I understand. That's fine.

**MR. AVIS:** But we do have a second counsel.

**THE COMMISSIONER:** Okay. As long as you don't delay us, that's fine.

**MR. AVIS:** That's –

**THE COMMISSIONER:** You can stay away until Easter – I'm only joking.

**MR. AVIS:** I won't be billing you for her time either.

**THE COMMISSIONER:** Pardon?

**MR. AVIS:** I won't be billing the Commission for her time.

**THE COMMISSIONER:** Okay.

Now, the – we have Corporal O'Keefe, is it? He's scheduled for –

**MS. O'BRIEN:** Yes, I believe he's on his way actually.

**THE COMMISSIONER:** Okay.

**MS. O'BRIEN:** I can – sorry, Commissioner, prior to him getting here, Corporal O'Keefe arriving, I can ask that the following exhibits be entered: P-0226 to –

**THE COMMISSIONER:** Sorry, give me that again.

**MS. O'BRIEN:** Yes, P-0226 to P-0232 inclusive, and P-0283 and P-0302, if those could be ordered entered, please.

**THE COMMISSIONER:** Okay. So ordered

**MR. KENNEDY:** Excuse me, Commissioner, while we're – I'm not getting any red lights.

**THE COMMISSIONER:** Can we have lights on?

**UNIDENTIFIED MALE SPEAKER:** (Inaudible.)

**THE COMMISSIONER:** Okay.

**MR. KENNEDY:** While we're waiting, I wonder if Commission counsel could indicate the witness we expect for tomorrow. I know there's a new schedule put up, but I think it was only put up today. I'm not sure.

**THE COMMISSIONER:** There have been a couple of small changes, I think. Go ahead, Ms. O'Brien.

**MS. O'BRIEN:** So thank you. Obviously we'll be continuing on with Corporal Trevor O'Keefe and then the next witness that's expected to be called is Corporal Dion Foote.

And I believe the next one on the schedule then – I can confirm that with the office, but it may be Rita Farrell, I think.

**MR. KENNEDY:** So Corporal O'Keefe –

**THE COMMISSIONER:** I think perhaps maybe you should drop by the desk as you're going out because when we left during the break, there was some discussion about – counsel had thought somebody was coming on and there was a change so – we're changing on the fly so as to try and utilize our time as best we can and not inconvenience witnesses.

With 50-something schedules to try and work around is difficult sometimes.

Take a seat, Corporal.

**CPL O'KEEFE:** Thank you very much.

**THE COMMISSIONER:** Are we understanding that you were waiting out in the car? Sorry we didn't have better accommodation for you. And we won't have much time other than to get you introduced and a few preliminary questions, but we thought just to save whatever time we can.

**CPL O'KEEFE:** Sure.

**THE COMMISSIONER:** Go ahead Ms. – this is Ms. O'Brien.

**CPL O'KEEFE:** Ms. O'Brien?

**MS. O'BRIEN:** Yes, thank you. Corporal O'Keefe and I've met before. I'm going to ask to have you affirmed, your evidence affirmed, Corporal O'Keefe.

**CPL O'KEEFE:** Absolutely.

**MS. SHEEHAN:** Corporal O'Keefe, do you solemnly affirm that the evidence you shall give will be the truth, the whole truth and nothing but the truth?

**CPL O'KEEFE:** I do, so help me God.

**MS. SHEEHAN:** Please state your full name.

**CPL O'KEEFE:** It's Trevor O'Keefe.

**MS. SHEEHAN:** Thank you.

**CPL O'KEEFE:** Thank you.

**MS. O'BRIEN:** Thank you.

Corporal O'Keefe, how long have you been a member of the RCMP?

**CPL O'KEEFE:** Almost 17 years, since March 2000.

**MS. O'BRIEN:** Okay, and what's your current rank?

**CPL O'KEEFE:** It's Corporal.

**MS. O'BRIEN:** Okay.

Now, I know that all RCMP receive a certain amount of basic training.

**CPL O'KEEFE:** Yes.

**MS. O'BRIEN:** Have you had any specialized training, so over and above your basic training that would be relevant to the role that had with respect to this investigation?

**CPL O'KEEFE:** Well, I guess throughout the years I've had supervisory development training. I've also – I'm a member of the tactical team. So I've had some training with regards to riot training and these types of things.

**MS. O'BRIEN:** Anything else that comes to mind?

**CPL O'KEEFE:** Not off the top of my head, no.

**MS. O'BRIEN:** Okay.

Have you ever had any specialized training in homicide investigations?

**CPL O'KEEFE:** No. No, I have not.

**MS. O'BRIEN:** Okay.

Have you ever had any specialized training in the investigation of a use of force by a police officer type incident?

**CPL O'KEEFE:** No, I haven't.

**MS. O'BRIEN:** Okay.

What was your position with the RCMP on April 5, 2015?

**CPL O'KEEFE:** I was the corporal in charge of one of the support units out of Holyrood detachment, where I had been seconded to the detachment operations at the time in Holyrood.

**MS. O'BRIEN:** Okay. So you had been seconded to detachment operations (inaudible).

**CPL O'KEEFE:** Yes. So instead of working out of the support unit, I was working right at the detachment on the shift.

**MS. O'BRIEN:** Okay.

And who was your immediate supervisor?

**CPL O'KEEFE:** That would have been Staff Sergeant Rod Tiller.

**MS. O'BRIEN:** And prior to April 5, 2015 had you ever been involved in the investigation of a homicide?

**CPL O'KEEFE:** Yes.

**MS. O'BRIEN:** Okay.

How many homicides had you been involved in investigating?

**CPL O'KEEFE:** Well, I was file manager on one out of Arnold's Cove quite a few years ago.

**MS. O'BRIEN:** Okay. Was that a shooting incident?

**CPL O'KEEFE:** Yes.

**MS. O'BRIEN:** Okay. So that – is that the only homicide investigation that you've been involved in previously?

**CPL O'KEEFE:** Yes.

**MS. O'BRIEN:** And your role was file manager you said.

**CPL O'KEEFE:** Yes.

**MS. O'BRIEN:** Okay.

Prior to April 5, 2015, had you ever been involved in the investigation of a use of force by a police officer incident?

**CPL O'KEEFE:** No. No, I haven't.

**MS. O'BRIEN:** Prior to April 5, 2015, did you know Constable Smyth or any member of his family?

**CPL O'KEEFE:** No. No, I did not.

**MS. O'BRIEN:** And prior to your involvement in this incident or any time during your involvement in this incident, were you ever asked by a superior officer whether or not you knew Constable Smyth or his family?

**CPL O'KEEFE:** No. No, I did not.

**MS. O'BRIEN:** Prior to that date, did you know Mr. Donald Dunphy or any member of his family?

**CPL O'KEEFE:** No, I did not.

**MS. O'BRIEN:** And prior to your involvement in the incident or any time during your involvement, were you ever asked by a superior officer whether or not you knew Mr. Dunphy or his family?

**CPL O'KEEFE:** No.

**MS. O'BRIEN:** Have you ever been on any joint operation or any joint task force with a member or members of the RNC?

**CPL O'KEEFE:** No, I haven't.

**MS. O'BRIEN:** Have you ever done training with RNC members?

**CPL O'KEEFE:** Yes, I have, years ago.

**MS. O'BRIEN:** Do you remember approximately how many times you would have done training with RNC members?

**CPL O'KEEFE:** No, not off – it's not a lot, no.

**MS. O'BRIEN:** Okay.

April 5, 2015, was an Easter Sunday. Were you working regular shift duties that day?

**CPL O'KEEFE:** Yes, I was.

**MS. O'BRIEN:** And were you working at the Holyrood detachment?

**CPL O'KEEFE:** Yes.

**MS. O'BRIEN:** Okay.

So, Corporal O'Keefe, if you could tell us, what's the first thing that you recall relevant to this event?

**CPL O'KEEFE:** The first thing I do recall is speaking to Constable Adrian Cox who was the constable on shift with me. And he approached me stating that he had received a phone call from Mr. Smyth stating that he was going to be coming into our area to conduct an investigation.

**MS. O'BRIEN:** Okay. So you recall speaking to Constable Smyth, that he had a phone call. Did you overhear his phone call with –

**CPL O'KEEFE:** Constable Cox.

**MS. O'BRIEN:** So you recall speaking with Constable Cox. Do you recall – did you overhear Constable Cox's phone call with Constable Smyth?

**CPL O'KEEFE:** No, I did not. My office was down the hall.

**MS. O'BRIEN:** Okay. And did you speak to Constable Smyth directly yourself?

**CPL O'KEEFE:** No, I did not.

**MS. O'BRIEN:** And do you remember what time of day this was, approximately?

**CPL O'KEEFE:** Approximately, I think it was 10:30, 11 o'clock. It was later on in the morning.

**MS. O'BRIEN:** Okay. So you spoke to Constable Cox. He tells you that he's received a phone call. What else do you remember?

**CPL O'KEEFE:** Well, Constable Cox approached me and he said he was speaking with Constable Smyth and that he was going to be coming into Mitchells Brook to see Mr. Dunphy. And he was going to be investigating a threatening tweet against the premier, which was on Twitter.

**MS. O'BRIEN:** Okay. And this is as reported to you by Constable Cox?

**CPL O'KEEFE:** Yes, that's right.

**MS. O'BRIEN:** Okay. All right.

What next?

**CPL O'KEEFE:** Well, myself and Constable Cox – he gave me that information. I had asked if he needed the car – Constable Smyth needed our assistance in any way. Constable Cox said no, he didn't ask for us to go down to Mitchells Brook with him. He didn't ask for us to attend. So what we did, we went to my office and we looked on our computer system, our PROS system as we call it, just to check Mr. Dunphy's name and see if there was anything that would raise any concerns.

**MS. O'BRIEN:** Now –

**THE COMMISSIONER:** Maybe we should leave it there; we only have a couple of more minutes. So rather than get into an intricate line of questioning – sorry, we don't have more time this afternoon –

**CPL O'KEEFE:** No, that's fine.

Thank you, Mr. Commissioner.

**THE COMMISSIONER:** We've been here since 9 o'clock, so I think everybody is ready to go home. So we'll see you at 9:30 tomorrow morning, if that's all right?

**CPL O'KEEFE:** Absolutely, thank you.

**MS. O'BRIEN:** Thank you.

**THE COMMISSIONER:** Okay. Thank you.

**MR. FREEMAN:** Mr. Commissioner, I'm sorry to interrupt. A quick question – right here – will anybody need the exhibits tomorrow? We've had a member here every day with the exhibits, and maybe tomorrow will be a day when those are not required.

**THE COMMISSIONER:** These here?

**MR. FREEMAN:** Yes, the rifle and the stick and whatnot.

**MS. O'BRIEN:** I do not need them for the witnesses that I'm anticipating calling tomorrow.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MS. O'BRIEN:** Yeah, and I can only speak for me.

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. FREEMAN:** They can be brought back if notice is given.

**THE COMMISSIONER:** Thank you, Mr. Freeman.

No, that's fine. Thanks for asking.

**MR. FREEMAN:** Thank you.

**MS. SHEEHAN:** All rise

I declare this Commission of Inquiry closed.