



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 13

Commissioner: Honourable Justice Leo Barry

Tuesday

31 January 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Okay.

Go ahead when you're ready.

MS. CHAYTOR: Good morning, Commissioner.

THE COMMISSIONER: Good morning.

MS. CHAYTOR: Good morning, Constable Sullivan.

CST. SULLIVAN: Good morning.

MS. CHAYTOR: Before we continue on I just want to circle back to the phone call that you had with Joe Smyth. And your recollection was that he was still at the scene and you indicated yesterday that you recall somebody speaking to him at the time that he would shortly be transported from the scene and –

CST. SULLIVAN: That's correct.

MS. CHAYTOR: Okay.

All right, I just want to bring up, please, P-0304 again. And yesterday, Constable Sullivan, when we were doing that I pointed you to a telephone call at, I believe it was 1626, so approximately 4:30.

And if we could just look at that again and if we could make that larger, please. As large as you can there, the full screen. Thank you.

Okay, so page 2. And I believe the call that I pointed out to you was down at 241, this one here, 241. And I've cross-referenced Joe Smyth's cellphone records and you'll see here at 231 and 232 that there are calls incoming to you at 1531, so 3:31 and 1534. And when I crossed-referenced Joe Smyth's cellphone records it appears that there were calls to you at that time from his cellphone.

So, Constable Sullivan, is it possible that you had – these are the phone calls that you had with him while he's at the scene?

CST. SULLIVAN: Yes, that's possible. Sure.

MS. CHAYTOR: Okay. And then you had a later phone call, approximately 4:26 the same day.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay.

And do you know why you had more than one call? What was the purpose of more than one call?

CST. SULLIVAN: I can't recall exactly what. I can't repeat verbatim what was said in those calls, I can only, I can only just assume why we had spoken. And, again, the sole purpose for me going to Holyrood was to be there for Joey, you know, in a supportive role. And I'm only assuming that the conversation would have been around, you know, is there anything that, you know, I can get you or pick up. I know that we did bring him some food. That was probably a question I asked him but I don't exactly recall, you know, saying or asking him specific questions.

MS. CHAYTOR: Okay. Fair enough.

So whatever conversations you had with him were asking him how he's doing and checking in on him as opposed to gathering any information or relaying any information to him. Is that what you're saying, Constable?

CST. SULLIVAN: Yes, that's what I'm saying.

MS. CHAYTOR: Okay. Thank you.

All right, so tell us then, what happened when you and Constable Harris arrived in at the Holyrood detachment that day?

CST. SULLIVAN: Once we arrived we asked for directions in the lobby as to where to go, where Joey was, you know, at the time. We were directed to upstairs and once we arrived up on the second floor there was a – what would appear to me to be an investigative team had formed and they were sitting around a boardroom table.

MS. CHAYTOR: So these were RCMP officers, were they?

CST. SULLIVAN: Correct.

MS. CHAYTOR: And who greeted you at the RCMP detachment?

CST. SULLIVAN: I can't recall.

MS. CHAYTOR: Okay.

Then, do you recall Monty Henstridge? Was he there?

CST. SULLIVAN: Yes. The name Monty is familiar, yes.

MS. CHAYTOR: Okay.

Sorry, continue on. So you saw –

CST. SULLIVAN: So I –

MS. CHAYTOR: – that the investigative team or what appeared –

CST. SULLIVAN: Correct.

MS. CHAYTOR: – to be the investigative team was already assembled.

CST. SULLIVAN: That's correct.

I stopped in the doorway and announced myself, advised them who I was and why I was there and I asked if it would be okay if I could see Joe. And there didn't appear to be any reason why or any hesitation on their part to prevent me from doing that and, hence, myself and Constable Harris were directed down to a room where Joe was situated.

MS. CHAYTOR: Okay.

And so no – what you're saying is no RCMP officer had any issue with you and Constable Harris being there.

CST. SULLIVAN: None.

MS. CHAYTOR: And they showed you where to go to find him.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay. All right.

And do you recall one of the officers greeting you and saying words to the effect that we'll probably have a chat later, saying something like that to you?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. And in your statement to the RCMP I believe you indicated that, that was Monty Henstridge.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay. And what did you understand him to mean by that?

CST. SULLIVAN: I guess, basically, I would have assumed that he would have informed me as to, you know, what would happen, you know, next or what was going to happen – what their intentions were going to be with regards to what was going to happen to Joe.

And I'm assuming that he would have given me a quick briefing to that effect and that's what I assumed. And from what I recall there was no big conversation or a lengthy conversation; there wasn't really a little chat even, so to speak. My conversation with him would have been very brief and periodic.

MS. CHAYTOR: Okay. So you did go have a conversation with Corporal Henstridge after you spoke with Joe Smyth that day?

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay. And do you recall what was discussed?

CST. SULLIVAN: The – what I recall being said was basically, you know, are you going to be here long, is there anything that, you know, we can anticipate to happen here this afternoon or this evening and is there anything that they required us to do. And we were just going to sit tight and wait for any direction that they had. And that was kind of like a – what I would say like, you know, a ground rules thing. We didn't want to step on anybody's toes; we just basically, we wanted to be there to support Joe and anything that he may have needed.

And I note there were arrangements made a little while later for a change of clothes to come out for him and that was arranged through an officer through our communications. I don't know, I can't recall exactly who, you know, made that call but I know that it was done.

And from there that's pretty much it, until the time when, you know, they had said that they were done for now and that he could go.

MS. CHAYTOR: Okay.

So did Corporal Henstridge or any other RCMP member that you spoke with that day relay to you any information about the incident itself?

CST. SULLIVAN: Not that I recall.

MS. CHAYTOR: And you think that's something you would recall if they had told you anything about the incident?

CST. SULLIVAN: Yeah. Yeah, I'm pretty sure I would.

MS. CHAYTOR: Did you understand that the investigation the RCMP would be carrying out would be a criminal investigation?

CST. SULLIVAN: Well, as a police officer my understanding would be, yes, it would be a criminal investigation, but certainly my approach to that day, that was the farthest thing in my mind, that I was attending or interfering in any way in a criminal investigation.

My role was completely as a supportive role. Being in the position, or being a police association business, Mr. Commissioner, I have had on many occasion have heard and have attended many seminars, conferences whereby guest speakers had spoken on PTSD, the effects of PTSD, how it affects police officers after the fact. And it was just through that ongoing conversation, ongoing knowledge, that we were very concerned for Joe Smyth's well-being, and not only then and there, but we certainly wanted to ensure that from that point going forward that his mental well-being was going to be taken care of.

MS. CHAYTOR: Okay. Constable Sullivan, I just want to bring your attention to your answer that you gave in your interview when I asked you the question about your understanding if it was a criminal investigation. And at page 50, this is your interview of December 13, 2016.

Question from myself: And in terms of the investigation, did you understand that this would be a criminal investigation that the RCMP will be carrying out? Constable Sullivan answer: Not at the time. I guess, I mean, again, you know, unless something comes up that leads one to believe that there was something, there was criminal activity, well, then, obviously that's a whole different avenue or a whole different, you know, set of circumstances. And then I asked you: Just explain that to me a bit.

So you didn't understand at the time when you're headed out to talk to him, and I take it when you speak to Constable Smyth that night, you didn't understand it would be a criminal investigation.

You said: It always had the potential. I mean I think we're mixing words here now. I mean, like again, my intent wasn't to try to identify whether this was going to be a criminal investigation or any other type of investigation. At the time, obviously we knew there was an incident, a serious incident and that, you know, Constable Smyth was the subject officer here. I mean our role is

basically supportive. I've continued to say that. Like, I don't understand like your line of questioning as to, you know, what you expect me to say here.

And then my question was, what type of investigation you understood the RCMP. You told me you were going to be – they were going to be carrying out an investigation. Yes. So my question was, what type of investigation did you understand they would be carrying out? Would it be a criminal investigation? And you replied: In my opinion, at that time, basically, what was happening is that this was being investigated as an incident.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Now whether at some point in time it becomes criminal, you know, that's probably later. So that's – and you said: Like, based on what had just took place, obviously someone has to respond, someone has to maintain the scene and someone needs to investigate what happened.

So, Constable Sullivan, at the time that you're meeting with Constable Smyth, was it clear in your mind that this, the RCMP would be carrying out a criminal investigation?

CST. SULLIVAN: It's, it's not really a black and white answer, Mr. Commissioner. The furthest thing, the furthest thing from our minds was the fact that we were actually dealing with a criminal investigation. And I know it's, it's kind of hard to explain, but we – the terminology that we've always, you know, that we're conditioned to is that it's, it's an incident involving a police officer, whether it be a serious incident where someone's harmed or whether it be an incident where a firearm is discharged, someone is seriously hurt; or, unfortunately, in this, in this particular occasion, someone had died.

And, yes, we know the culture. We know that there is going to be an investigation. We know that, yes, this is a criminal investigation, but our thinking at that moment and at that time, we weren't treating it as a criminal investigation. We were treating it as incident involving a police officer. And first and foremost, our thoughts were: how is he feeling, how is he doing, what can we do to help him.

THE COMMISSIONER: Well, isn't that a big part of the problem, Constable, in terms of – I read out yesterday, I guess that was to, to Staff Sergeant Adams was it? Inspector –

MS. CHAYTOR: Yes.

THE COMMISSIONER: – Adams.

MS. CHAYTOR: Staff Sergeant.

THE COMMISSIONER: Hmm?

MS. CHAYTOR: Staff Sergeant Adams.

THE COMMISSIONER: Staff Sergeant Adams. The practice and procedure manual talks about – I don't have it in front of me. Maybe you can check the number on the exhibit.

MS. CHAYTOR: Yes, it's the RNC policy regarding deaths.

THE COMMISSIONER: Yes, the exhibit number? Just for the record, if you can find it for me.

MS. CHAYTOR: I don't have it off the top of my head, but –

THE COMMISSIONER: Or Ms. O'Brien will find it, I'm sure.

But anyhow, that practice and procedure manual talks about all reportable deaths being treated as criminal until otherwise decided by the, I think the major case manager, I think –

CST. SULLIVAN: Yes, Sir.

THE COMMISSIONER: – is the individual. And you'd understand, I assume, the purpose of that, would you not?

CST. SULLIVAN: I would, Sir.

THE COMMISSIONER: But your approach, the first step is the well-being of the officer. That implies that you're going the other way. You're not treating it as a criminal investigation until you find evidence to support that conclusion; whereas, the practice and procedure seems to require just the opposite, that you treat it as a criminal death requiring a criminal investigation until there's sufficient evidence to the contrary and a decision made by the major case manager.

CST. SULLIVAN: Yes, Mr. Commissioner, those statements are correct. But I will qualify that by saying that if there was any issue – I would assume if there was any issue with us being there regarding any type of criminality or any type of interference or obstruction, that we would have been prevented from having access to Joey.

THE COMMISSIONER: Well, maybe the RCMP officers made the same mistake. Maybe they did not treat it as a criminal death. Now I – and Mr. Freeman, at some point I want to address this with you. But we don't have the RCMP practice or procedure in this regard. We don't have the manual stating it because it's supposedly a matter of federal jurisdiction, but we may have to discuss whether that should be available to us just in terms of – not for considering whether it's right or wrong, but for establishing as a fact what the officers in the RCMP should have been thinking when they approached the death of Mr. Dunphy and the interrogation, or questioning of Constable Smyth and what they did in their investigation.

Do you have any comment now on that? Or we can leave it, you don't have to address it now but I'll give your choice.

MR. FREEMAN: Certainly, if I could take that under advisement and we can speak to Commission counsel about –

THE COMMISSIONER: Yeah, it'll be –

MR. FREEMAN: – what it is that's being sought. And as you already said, you know, what use might be made of it –

THE COMMISSIONER: Yeah, were not getting into –

MR. FREEMAN: – that may be a deciding factor.

THE COMMISSIONER: Yeah, we're not getting into, you know, whether that should be amended or changed or something, which would be arguably beyond our jurisdiction. But I'm proceeding now on the assumption that if the RNC say that a report will then, should be treated as a criminal death and a criminal investigation to follow, I'm assuming that the RCMP practice and procedure would be the same. I don't know if that's a correct assumption or not, but I'd like to find out for certain at some point.

MR. FREEMAN: Certainly.

Thank you.

THE COMMISSIONER: So it may be that the RCMP approach was the same approach as yours, which arguably is just the reverse of what the practice and procedure manual require. I'm not saying this critically. There are other – well, it is in one sense, but not on a personal basis. There are other witnesses who would indicate, similar to you, that they didn't see it as black or white. And I'm not saying that in – I'm not saying that the final conclusion might not have been correct; but, in this case, using you as an example, to conclude at the point that you were in Holyrood or on the way to Holyrood, or even after by the time you get back in the office, that you had enough information, or anybody had enough information to decide it was not a criminal debt, wouldn't you think that would be a bit premature, a bit early at that stage?

CST. SULLIVAN: Yes, Sir; I would.

THE COMMISSIONER: So there is some conflict with – and again, I can understand your empathy for, for Constable Smyth and the desire of the association and yourself as a member and president to support him or assist him. But if the investigation goes off the rails right away because it's not approached as a criminal investigation, then this is no good for anybody. It's no good for Constable Smyth. It's not good for the RNC. It's not good for future police officers involved in investigations.

CST. SULLIVAN: I can't argue with that point, Mr. Commissioner. I'm just trying to speak from my own, my own view. It's, it's – I'm not, I'm not the – at this point in time, I'm not the police officer; I'm the president of the association. I'm kind of wearing two hats and it's a dual role, and I know that's probably kind of hard to differentiate but, but my thinking is different.

And I, I have the experience as a police officer to know that yes, there's going to be an investigation conducted and yes, there's going to be a criminal investigation. But my approach to Joe Smyth, and that was my concern at that time it, it – I'm not going to the scene. I'm not interfering –

THE COMMISSIONER: Oh, we understand that. You're not going to get details, and you're not going to participate –

CST. SULLIVAN: Yes, Sir.

THE COMMISSIONER: – in the investigation. However, the standard at which you're going to be measured, or should be measured, is whether your involvement in any way affected a criminal investigation. You know, there's nobody would –

CST. SULLIVAN: Yes, I understand.

THE COMMISSIONER: Nobody would criticize you if they, if there's no criminal investigation obviously, because of some striking bit of evidence which arguably you don't have that early in the exercise, but it may be that there's got to be some protocol worked out to on the one hand let the well-being of the officer be considered but, at the same time, making sure that all parties adopt the view that it's a criminal investigation.

There were certain things done, as will come out, I think, during the evidence here, or things that were not done –

CST. SULLIVAN: Uh-huh.

THE COMMISSIONER: – which runs contrary to the notion that there was a criminal investigation. For example – and we’ll hear about this – the fact that Constable Smyth’s vehicle was not searched, was not treated as part of the scene. Now, that may not have had any adverse consequences in this case, but it’s an example of how being too lackadaisical, in terms of the investigation, may lead people to question the thoroughness of the investigation when everything is said and done.

CST. SULLIVAN: I understand.

THE COMMISSIONER: So it might be that your association will be asked to give some thought to how the balance is met between preserving the integrity of the investigation, and at the same time, letting it do, perform a useful role in considerations of PTSD and the well-being of your officers. Okay.

Ms. Chaytor, go ahead.

MS. CHAYTOR: Commissioner, the exhibit number you were looking for is P-0018.

THE COMMISSIONER: What?

MS. CHAYTOR: P-0018.

THE COMMISSIONER: P-0018, okay.

MS. CHAYTOR: 0018.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Okay.

THE COMMISSIONER: That’s the –

MS. CHAYTOR: That’s the policy on deaths.

THE COMMISSIONER: – statement in the RNC manual that says that reportable deaths shall be treated as criminal until otherwise decided.

CST. SULLIVAN: Yes, Sir.

MS. CHAYTOR: That’s correct.

THE COMMISSIONER: Okay. Go ahead.

MS. CHAYTOR: Before I leave that line of questioning, Constable Sullivan, if this hadn’t been a police officer who did the shooting, so if this had been a civilian shooting, and I had asked you the same question as to whether or not you understood it to be a criminal investigation, what would your answer be?

CST. SULLIVAN: Yes, it would be.

MS. CHAYTOR: Okay.

And I believe you told me when I asked you that question in your interview, absolutely. Is that right?

CST. SULLIVAN: Correct.

MS. CHAYTOR: Yes.

So the confusion in your mind is because this was a police officer who was the shooter.

CST. SULLIVAN: I wouldn't call it confusion. I'm not confused. I don't understand what you're asking me.

MS. CHAYTOR: But your hesitation in saying that yes, this was a criminal investigation from the outset, the difference is this was a police officer who was the shooter versus a civilian.

CST. SULLIVAN: Well, as I stated a little earlier that I know it's a criminal investigation. I knew it was a criminal investigation. All matters, all matters involving police officers are investigated, obviously, criminally if there's an indication that there is or if there's serious harm that comes to somebody at the hands of a police officer.

And again, as I stated earlier though, my approach to that wasn't that though. It wasn't, I wasn't – again, I was wearing another hat and I didn't treat it as a criminal investigation. I was responding there as the president of the police association. And as, Mr. Commissioner, I had stated earlier, now maybe my presumptions were, might have been differently, but certainly I knew in the back of my mind that it was a criminal investigation, nor did I want to interfere in anyway with what the RCMP were doing.

MS. CHAYTOR: Okay. Well, there certainly seemed to be ambiguity in your mind at the time that we met in December. And so am I understanding you to say now that it's clearer in your mind, that it was a criminal investigation back when you were speaking to Constable Smyth in April of 2015?

CST. SULLIVAN: I think the ambiguity was as to my role, I think is where the ambiguity was in my understanding of my role and trying to explain what I was doing there. I think that's where the ambiguity came in.

THE COMMISSIONER: I think it may not necessarily be just because a police officer, but you have a situation where there's a shooting, there's a death resulting, and then there's information provided that the shooting occurred because a police officer had a firearm pointed at him. And that's adopted as correct. And it may be. It may be correct, it may be true and supported by the evidence, but to assume that that's correct immediately does away with the notion of a criminal investigation, doesn't it? Because you're then accepting well, this is self-defence. It's obvious. It's not a crime. And even though the major crime – what's the individual called? The major case manager or the major crime manager, whatever the –

MS. O'BRIEN: The primary investigator of the major crimes unit.

THE COMMISSIONER: Yeah, the exact wording in that exhibit anyhow identifies an investigator who has the authority to say this is not, this is no longer a criminal investigation.

Well, by your adopting or by other police officers adopting the version that it's self-defence, right away it's not a criminal investigation in your mind, is it? If it's self –

CST. SULLIVAN: That's correct, Sir, yes.

THE COMMISSIONER: Pardon?

CST. SULLIVAN: (Inaudible.)

THE COMMISSIONER: It's justifiable, it's a justifiable use of force in that situation as that.

CST. SULLIVAN: Yes, it is.

THE COMMISSIONER: The – go ahead, sorry.

MS. CHAYTOR: Okay. All right.

Okay, we'll move along, Constable Sullivan.

So you were provided a, or you went into the room where Constable Smyth was. And when you met with Constable Smyth, did any member of the RCMP stay in the room or come in the room with you while you were meeting with him?

CST. SULLIVAN: I think I recall that – well, no, they didn't stay there. I think there was a couple of times whereby somebody did come in and just touched in and touched out again. I can't recall exactly what was said but there was – yes, there was an officer who came by a couple of times.

MS. CHAYTOR: Okay. And was Staff Sergeant Tilley and acting inspector then, Mike Adams, in the room when you arrived?

CST. SULLIVAN: They were.

MS. CHAYTOR: Okay.

And what were they doing at the time that you arrived?

CST. SULLIVAN: They were speaking to Joe.

MS. CHAYTOR: Okay.

And how was Constable Smyth when you first saw him?

CST. SULLIVAN: He seemed to be – in my opinion he certainly seemed to be fairly good for, you know, what he was just after going through. I recall from my statement that I did mention the fact that his hands were shaking and – but given the circumstances, you know, I thought that he was in pretty good shape.

MS. CHAYTOR: Okay.

And did he discuss with you and the others present what had happened during his encounter with Mr. Dunphy?

CST. SULLIVAN: He discussed with me?

MS. CHAYTOR: Yes.

CST. SULLIVAN: I recall, I recall him explaining what had taken place, but I really – I'm confused as to when, when I'd refreshed my memory with the statement I gave to the RCMP. I just, I can't recall exactly when it was that Adams and Tilley left the room. So I know that when

Joe explained to me what had taken place, I recall him explaining it but I don't know who was present.

MS. CHAYTOR: Okay.

And did Constable Smyth tell you why he visited Mr. Dunphy that day?

CST. SULLIVAN: Yes.

MS. CHAYTOR: And what did he say?

CST. SULLIVAN: He was doing some follow-up with regards to some threats that were posted by Mr. Dunphy; that he attended the residence and was invited in. And while he was there he was speaking to the gentleman, he, the gentleman became a little agitated. Joe said he was taking, putting notes in his file folder, which is consistent with what a lot of officers do, writing notes when he was – at some point in time there, that he said that Mr. Dunphy had pulled a rifle on him and he responded.

MS. CHAYTOR: Okay. And did he say that the threats were made by social media and that they were made towards the premier?

CST. SULLIVAN: I recall – Yeah. I was of the belief that, yes, there were threats on Twitter and that they were against the premier. I can't recall whether or not that he actually said those words or if that's something that I learned. I just can't recall right now if that was what he stated. I think, I think it was but I can't, I just can't recall exactly.

MS. CHAYTOR: And you told the RCMP when you gave your statement on April 7, two days later, that the individual had made some threats.

CST. SULLIVAN: Yes.

MS. CHAYTOR: And he used the word, "threats."

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay.

Did Constable Smyth indicate what his position was in terms of either standing or sitting while he's speaking with Mr. Dunphy? And what did he say about that?

CST. SULLIVAN: He had indicated that he, he was stood up and that Mr. Dunphy had asked him to sit down several times. And Joe was saying I didn't sit down; I don't understand why I didn't sit down. I recall him saying that I just, I can't, can't – don't understand why I didn't sit down but I didn't. And my response to him was, well, that was your instincts telling you not to sit down.

MS. CHAYTOR: Okay.

And did he mention that he had visited Mr. Dunphy's brother, Dick Dunphy, and his wife, Debbie Dunphy, prior to going to Mr. Dunphy's house?

CST. SULLIVAN: Yes, he did. He had mentioned the fact he went next door and spoke with family members.

MS. CHAYTOR: Okay. And in terms of Acting Inspector Adams being present during that when that was mentioned, is it your recollection that he was present?

CST. SULLIVAN: I don't know exactly if he was present when that was said. And I know that Joey had mentioned the fact that he had spoken to the brother of Mr. Dunphy, and I think I believe it was his wife is what he had said to me at the time.

MS. CHAYTOR: Okay. And do you recall, though, telling me in the interview that you recalled Inspector Adams speaking up and saying he knew Dick Dunphy?

CST. SULLIVAN: Well, actually my time frame there was – I actually in the interview my time frame was a little messed up there. And I don't recall Mike Adams ever saying that he knew – I didn't know Dick Dunphy, the name Dick Dunphy, until later that evening when Mike Adams said call me at home.

MS. CHAYTOR: Okay.

All right, so I'm just going to take you through, then, what you said in your interview about that because I did put this line of questioning to Acting Inspector Adams on the basis of what you said at the time.

CST. SULLIVAN: Right

MS. CHAYTOR: So at page 86 – and this is about Debbie, his visit to Debbie and Dick Dunphy: And did they give him any information? What did you understand? Did he have – and you say: I think he said that there may have been some issues between them; I think he said that they may have indicated that they've had some problems with him. And I asked you: Anything else? And you said: Not that I can recall. I don't specifically recall what they may have been.

And I ask: Is Mike Adams present when he's telling you this? And you respond: I do believe he was. And I said: And did Mike Adams indicate whether or not he knew these relatives that were being discussed? And you replied: Said he knew, yeah. So I guess it would have been the brother, is it? Yeah. Yeah, Dick Dunphy, is it? And I said question: So Mike Adams was there and spoke up and said he knew Dick Dunphy? And you said: Yeah.

CST. SULLIVAN: Correct. That's what I said in my interview.

MS. CHAYTOR: Yes.

CST. SULLIVAN: When I reviewed my RCMP statement I was, you know, trying to recall exactly what was being said and who was there. But I do know Mike Adams called me that night at home and I do – that's when I learned that Mike knew this guy, Dick Dunphy.

And the information – he had relayed some information to me, I'm sure you're going to ask me about that. But he – but that's when I learned that Mike Adams had a cabin down in the area and that's how he knew him. But I really don't recall that being said earlier in the day.

That's – I would have, I just – that's, that's why that was significant to me when Mike called me and that's why it was significant that I called Joe, from what I recall. I, but, I can't specifically recall if Mike Adams and Reg Tilley were there when Joe told me that.

MS. CHAYTOR: Okay.

CST. SULLIVAN: I assumed that they were and in my interview I was assuming that they were.

MS. CHAYTOR: So your recollection in December of Mike Adams speaking up, is there anything that's happened since to make you reconsider that recall?

CST. SULLIVAN: The only, the only thing I did was I, I read my statement and I tried to, you know, trying to recall what I had said a couple days later. That's it.

MS. CHAYTOR: Right, but you didn't say anything different a couple of days later. That question wasn't put to you on April 7.

CST. SULLIVAN: No, but I'm trying to recall, you know – my RCMP statement is the best thing that I have to going back to recollect the events of that day. So I'm just trying to put things in order as to how I found – what I found out and how I found out, in line with what you had asked me.

And when I reviewed my statement to you – I came in blind on that day, I was just going strictly on recollection. So I've been confused on timelines as to who exactly is where, who was saying what because, you know, it's such a time – long time frame. So when I'm reviewing my RCMP statement, I'm trying to put the things in order as to what I best recollect.

I assume that Mike and Reg were there, but when I, again when I went back over my statement to you and I was looking at what I was saying, I assumed that they were there.

MS. CHAYTOR: It was a little more than that. You said you believe they were there and you had a recollection of Mike Adams speaking up and saying that he knew Dick Dunphy.

Have you spoken to Mike Adams about –

CST. SULLIVAN: No.

MS. CHAYTOR: – this since we interviewed you?

CST. SULLIVAN: No, I haven't, no.

MS. CHAYTOR: Okay. And have you otherwise learned what he said about it?

CST. SULLIVAN: No, I haven't. I haven't –

MS. CHAYTOR: So you haven't been following the inquiry –

CST. SULLIVAN: Not at all, no.

MS. CHAYTOR: – or you haven't been told otherwise what Mike Adams's recollection is?

CST. SULLIVAN: I have not. No, I haven't.

MS. CHAYTOR: Okay.

Constable, what was it that – where was it or did you understand from what Constable Smyth told you, I think you indicated that he was writing in his folder. Did you understand that's what he was doing when the rifle was presented?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. And did you understand Constable Smyth to say whether or not he was hit by something?

CST. SULLIVAN: No.

MS. CHAYTOR: Okay. And I'm just going to bring you to that reference in your statement, if we could have please, P-0267. And I believe, Madam Clerk, it's page 7 of this exhibit. This is your RCMP statement of April 7. And let's find the reference.

It's actually page 8 of the exhibit, page 7 of the statement. And the, this is the top entry and you were saying, I was making a note – this is you're quoting or saying what – not quoting but saying what Joe Smyth said.

THE COMMISSIONER: Sorry, can't hear you there.

MS. CHAYTOR: Sorry, it's right here. "... I was making a note in the, you know, making a note in my file folder" And I understand what you're saying here, you're saying what you understood from Joe Smyth, so the I is Joe Smyth. "... I was making a note in the, you know, making a note in my file folder and he said the next thing I got hit, he's putting a gun at me and I reacted."

What did you mean by that, that he – the next thing I got hit.

CST. SULLIVAN: I don't recall saying that and I don't have any meaning for that. And I actually thought it to be a typo. I don't –

MS. CHAYTOR: Okay.

CST. SULLIVAN: I think I might have mentioned that to you in my interview.

MS. CHAYTOR: Next thing he got hit. Yeah. So you think there was a mistake in the transcript here?

CST. SULLIVAN: I think so.

MS. CHAYTOR: Okay. All right. You weren't told anything by Constable Smyth to make you believe that he had some sort of physical altercation –

CST. SULLIVAN: No.

MS. CHAYTOR: – with Mr. Dunphy, or otherwise there was any physical contact with Joe Smyth?

CST. SULLIVAN: None.

MS. CHAYTOR: Okay.

Did Constable Smyth in what he told you transpired, did he say whether or not there were any other weapons or objects in the room that could potentially be used as weapons?

CST. SULLIVAN: Yes. I couldn't recall immediately initially in our interview, but I do believe that during the course of the conversation I recall him saying that there was a baseball bat I think close by.

MS. CHAYTOR: And did he indicate where the baseball bat was, or do you recall that kind of detail at this point?

CST. SULLIVAN: I don't recall that. I believe it was in the vicinity and I also recall Joe had said that he had made some notion or had questioned Mr. Dunphy as to why it was there.

MS. CHAYTOR: And what did he say Mr. Dunphy said, do you recall that?

CST. SULLIVAN: I can't recall.

MS. CHAYTOR: Okay. All right.

Did Constable Smyth say where the gun came from, the rifle? He's putting a gun at me is what you said in the RCMP statement, and maybe that's a typo and maybe that's supposed to be pulling a gun, I don't know. But did he say in your discussion with him where the rifle came from?

CST. SULLIVAN: No, he didn't.

MS. CHAYTOR: Okay.

And do you recall saying that you thought it came from underneath a table?

CST. SULLIVAN: Yes, I thought.

MS. CHAYTOR: Okay.

CST. SULLIVAN: That was my, I guess my own depiction of what may have taken place. I was lead to believe that it came from under the table.

MS. CHAYTOR: Okay, but what lead you to believe that it came from underneath a table?

CST. SULLIVAN: Just from what Joey was saying, the information that he was, about what he was talking about is that it appeared to or it seemed like it came out of nowhere.

MS. CHAYTOR: Okay. And you had no information from anyone else on the circumstances obviously other than Joe Smyth? He's the only one that would have been able –

CST. SULLIVAN: Correct.

MS. CHAYTOR: – to say something to you.

And that's at page 91 of your transcript. You said: Well, he had indicated that he had pulled a rifle from underneath the table. So, you know, my opinion was if Smyth had sat down – again I can't speak on what the intentions are here, but I do know there was a firearm drawn on a police officer. One would conclude that, you know, if anything were to happen and Smyth had been sat down and anything would have happened, Smyth would have been in a very vulnerable position tactically speaking. And that was about his positioning in the room in terms –

CST. SULLIVAN: Correct.

MS. CHAYTOR: – of standing versus sitting. So you seem to have a clear recollection that he had pulled the rifle from underneath the table.

CST. SULLIVAN: That was my opinion, or my interpretation of what took place there.

MS. CHAYTOR: Okay.

So then when I went on to question you on that, I said: Do you know what room in the house this was happening? Did he say? You assumed it was the kitchen that they were in –

CST. SULLIVAN: I did.

MS. CHAYTOR: Okay. And I said: You thought it was the kitchen based on what he said. And you said: Yes. Question: And you specifically remember him talking about a table? And you answered yes. So you assumed it was the kitchen table.

CST. SULLIVAN: Uh-huh.

MS. CHAYTOR: Okay.

And question: And you specifically remembered him saying he pulled the rifle out from underneath the table? Answer: Well, that's what I recall, or that's my depiction of the memory, say, right. And I said: All right. So that's what I was going to ask you, whether or not he said where the rifle came from. And then you said: I don't know. Again, you know what I remember is, or what I believe, is that the rifle came from underneath the table. Question: That's what you recall being said? Answer: Yes.

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. So you seem to have a clear recollection about some table being in play here.

CST. SULLIVAN: Yes.

MS. CHAYTOR: You assumed because it's a table that they're in the kitchen –

CST. SULLIVAN: Yes.

MS. CHAYTOR: – and that it was underneath the table that the rifle came from.

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay.

After hearing Constable Smyth's version of what had happened and what he had told you, did you form any conclusion as to what had occurred and how things had transpired, in terms of Constable Smyth's actions?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. And perhaps you could tell the Commissioner that.

CST. SULLIVAN: It was my belief, Mr. Commissioner, as –

THE COMMISSIONER: Say that again.

CST. SULLIVAN: It is my belief that based on the information that Constable Smyth had given me – I had no reason to disbelieve him. I thought him to be, or I still believe him to be a very credible person. And it appeared to me that this was – at the time it appeared to me that this was an act of self-defence on behalf of Constable Smyth.

MS. CHAYTOR: Okay.

And I believe in giving your statement to the RCMP, to Constable Nippard, you used the words that it sounded textbook to you.

CST. SULLIVAN: Correct.

MS. CHAYTOR: And that's what you told the officer taking your statement.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay.

Did you or anyone else, while you were present with Constable Smyth, provide him any advice as to when he should give a statement to the RCMP?

CST. SULLIVAN: I did.

MS. CHAYTOR: And what was your advice, and why did you give that advice?

CST. SULLIVAN: My advice was that he should take some time to debrief himself, to allow the adrenaline to go out of his body, and to get some rest, and after a night's sleep to try to then attempt to go and speak to the RCMP to provide a statement if they required it at that time.

MS. CHAYTOR: Okay.

And Constable Sullivan, is that in keeping with what you do in giving – taking a statement from a subject in a criminal investigation?

CST. SULLIVAN: If it's a police-officer-involved shooting, it would be a protocol that would be followed and I think, or I do believe that it's quite standard across the country.

MS. CHAYTOR: Okay, so for when it's a police-officer-involved?.

CST. SULLIVAN: That's correct.

MS. CHAYTOR: Okay. But again, not for other subjects in other investigations if it's a civilian who's the subject of the investigation and you can take a statement and they are willing to give a statement there and then –

CST. SULLIVAN: Correct.

MS. CHAYTOR: It's not protocol to wait. Is that correct?

CST. SULLIVAN: That is correct. May I explain why I would suggest that Joe wait to provide a statement, Mr. Commissioner?

THE COMMISSIONER: Go ahead.

CST. SULLIVAN: Through, through my ongoing knowledge and being involved in, in again, police association business, I've learned at numerous conferences listening to guest speakers that a, an appropriate time for a police officer to provide information regarding a critical incident would be, you know, anywhere from 24 to 48 hours after an incident takes place. I will qualify that I'm not an expert in this field and I'm only going by, you know –

MS. CHAYTOR: What you've been told at conferences.

CST. SULLIVAN: What I've learned along the way. And that the reason why that's done is because it allows the officer to have a better recall of what took place and to be able to provide a more accurate depiction of what had actually taken place at the time of the incident.

There are documented cases whereby that wasn't done, and that officers have provided a statement too close to the incident, whereby then there have been inaccuracies. And later in time, officers have wanted to change their statements or they've changed their statements while giving testimony and it has come into question and it has created problems.

MS. CHAYTOR: But why would it be any different for a civilian?

CST. SULLIVAN: Well, it's a good question.

THE COMMISSIONER: Sorry, what was the good question?

MS. CHAYTOR: Why would it be any different for a civilian subject?

CST. SULLIVAN: I don't know if I'm qualified to answer that. It's – an incident involving two civilians, there is a investigative model which is followed for major case management; it is police officers investigating civilians, trying to find out exactly what had taken place. Obviously yes, incidents involving police officers are investigated or – I don't know if they're treated differently, but when it comes to officers providing accuracies as to what had taken place because they're, they've suffered trauma, then they're given the time and allowed the time to be able to have the recall to give a better accurate depiction of what had taken place.

And now I'll qualify again that I'm not the expert here.

MS. CHAYTOR: Right.

CST. SULLIVAN: But that's, but it's quite commonly known and it's a practice that's followed, Mr. Commissioner.

THE COMMISSIONER: Yes, we've had other witnesses say the same thing, but we also, I think, there might be evidence coming that there might be some contradiction involved when the ordinary civilian or member of the general public is expected to give a statement right away. And arguably if it's a traumatic event, the same problems of memory and so forth would occur with a civilian as with a police officer.

CST. SULLIVAN: A civilian has a right to refuse to speak to police and they can at any time, and have legal representation. And police officers have rights as well.

Incidents like this, we want to provide as much information as we can to give, give the accuracy as to what had taken place and the best, and the best thing to do is to allow that officer time to have a better recall.

THE COMMISSIONER: It's an interesting question in terms of what the rights of the policeman is, or police person is, when – I think somewhere in the manual there's a requirement that police officers provide information.

CST. SULLIVAN: Provide a report upon request, yes, Sir.

THE COMMISSIONER: Right. So a civilian doesn't have that obligation.

CST. SULLIVAN: A civilian doesn't have to, no.

THE COMMISSIONER: Okay. Thank you.

MS. CHAYTOR: Right. And so Constable Smyth would be required to file his report within the – to the RNC following his shift, his notes on the incident, that's right. And he did do that, but in terms of Constable Smyth having to give a statement to the RCMP, if he had been asked to provide a caution statement, is it your understanding that he would have had to have done that?

CST. SULLIVAN: No, he wouldn't.

MS. CHAYTOR: No, he wouldn't have.

CST. SULLIVAN: No.

MS. CHAYTOR: No different than a civilian?

CST. SULLIVAN: No different.

MS. CHAYTOR: Right.

I just want to bring up, please, P-0269. And this is a Supplementary Occurrence Report of Monty Henstridge and I just want to allow you an opportunity to speak to it. And maybe it's the same answer that you've already given in terms of what you're referring to here.

If we can make this bigger, please, and we'll go down towards the bottom of the page. And this again is Constable Henstridge, and I understand that Constable Henstridge, you spoke with Constable Henstridge that day and provided or told him what your advice was to Joe Smyth. Is that correct in terms of timing of his statement?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay.

And this is what Constable Henstridge said about that, at 1750 hours – I'm sorry, 17:30 hours, approximate time. He says: "I spoke briefly with Cst SMYTH who had several RNC members with him for support including Warren SULLIVAN of the RNC Association. SMYTH was shaken but cooperative. He stated he very much wanted to provide a statement immediately but would prefer to wait until tomorrow once he settled. SULLIVAN noted that he advised SMYTH of this given the research which showed recall was stronger and more accurate the following day. I agreed and advised that this would not be a problem. I provided my business card and asked Cst SMYTH to contact me as soon as he was up to it in the morning."

So the research that you're referring to here, is that what you've told the Commissioner based on you having attended seminars or conferences in which this issue was discussed?

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay.

And I take it that the RCMP Corporal Henstridge had no issue with Constable Smyth waiting.

CST. SULLIVAN: No, he didn't.

MS. CHAYTOR: Okay.

THE COMMISSIONER: What is that exhibit that's up there now?

MS. CHAYTOR: That is P-0269, Commissioner.

THE COMMISSIONER: 0269?

MS. CHAYTOR: Yes.

How long were you with Constable Smyth in Holyrood that day?

CST. SULLIVAN: Probably about a couple of hours.

MS. CHAYTOR: Okay.

And then did you also drive him back to St. John's?

CST. SULLIVAN: I did.

MR. CHAYTOR: Okay.

And before you left Holyrood detachment, did any of the RCMP ask you, other than your conversation with Corporal Henstridge about not providing the statement right away, did they otherwise ask you any questions about your interaction with Constable Smyth?

CST. SULLIVAN: I don't recall.

MS. CHAYTOR: Okay. All right.

Then your drive back home then with Constable Smyth, did Constable Smyth provide you any further details as to what had happened in his interaction with Mr. Dunphy?

CST. SULLIVAN: Did – I have nothing further than, other than the information that I provided. I know that a lot of the conversation on the way home was again about going forward and ensuring that Joe's health and well-being was going to be the priority here. I had recommended that he should speak or make a referral to EAP first thing in the morning to ensure that he gets an opportunity to speak to somebody.

MS. CHAYTOR: So to do EAP, to do a Critical Incident Stress Debriefing?

CST. SULLIVAN: No. That would be a referral to – basically to speak to a counsellor or a psychologist or what have you. And they would do a – EAP would do, would have a conversation with him and do an assessment and basically point him in a direction where he would utilize resources that he would need, you know, to help him along the way –

MS. CHAYTOR: Okay. And I believe you also –

CST. SULLIVAN: – going forward.

MS. CHAYTOR: I'm sorry; I didn't mean to cut you off.

I believe you also provided him with contact for an officer who had gone through a similar situation –

CST. SULLIVAN: That's correct, I did.

MS. CHAYTOR: – and you did that in the next day or so.

CST. SULLIVAN: I did.

MS. CHAYTOR: So he would have somebody that he could talk to who'd been through a similar experience?

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay. At any point in time during your interaction with Constable Smyth at Holyrood that day, did his demeanor change or did he seem to get angry or mad?

CST. SULLIVAN: He got a little upset at one point. It wasn't alarming to me, but he had indicated that he was, he was mad at Mr. Dunphy for doing what he did, for placing him in that situation. It was certainly a show of emotion. And he indicated: if I could just shake him awake and slap him and ask him, you know, why he did this. And that's the gist of what he said.

MS. CHAYTOR: Okay. And did you understand when he was saying that, that he was mad at that point in time or that he had been angry with Mr. Dunphy during his interaction with Mr. Dunphy.

CST. SULLIVAN: No, it was my – my interpretation of that was right at that moment while he was with me.

MS. CHAYTOR: And he gave you no indication that he had lost his temper or had been upset with Mr. Dunphy during his interaction with Mr. Dunphy?

CST. SULLIVAN: No, I have no reason to believe that.

MS. CHAYTOR: Okay. Now, I'm just going to bring up that exhibit. It's P-0267, and it's a reference in your RCMP statement, and I believe it to be page 9 of your statement. Because I believe this got picked up by someone else who may have interpreted it otherwise so I want to give you a chance to speak to it. And, actually, it begins at the bottom of the previous page.

And you say: And then he – meaning Constable Smyth – he did make, he made a comment a little later than, and you know, I – I think it's – it's natural but, after he calmed down pretty good and then all of a sudden he said, you know, man, he said, I'm mad at him now. He said I'm – and I believe that should be mad.

CST. SULLIVAN: Uh-huh.

MS. CHAYTOR: He said like – he said if I could only shake him alive now, he said, and slap him and say, you know, what the f you doing this – what boy – what you do. What did you do this for?

And is that – that’s the exchange you’re talking about, Constable –

CST. SULLIVAN: Yes, it is.

MS. CHAYTOR: Okay. How did you react when Constable Smyth said that?

CST. SULLIVAN: I said hey, Joe, you know what. It’s okay to feel like that. I think it’s natural for you to feel that way right now. It’s a show of emotion. He’s letting something out of how he feels about the situation.

MS. CHAYTOR: Constable Sullivan, did you report to anyone at the RNC the substance of your interaction with Constable Smyth that day?

CST. SULLIVAN: No.

MS. CHAYTOR: Okay. Did you attend any meetings in which the matter was discussed?

CST. SULLIVAN: No.

MS. CHAYTOR: Okay. Did you give a briefing to the association about your –

CST. SULLIVAN: Yes, I did.

MS. CHAYTOR: – interaction with Constable Smyth?

CST. SULLIVAN: Correct.

MS. CHAYTOR: And when did that happen?

CST. SULLIVAN: That was when we arrived back in St. John’s.

MS. CHAYTOR: So you called your executive together?

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay. And you gave them a briefing as to your interaction and the support you had provided. Is that it?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. And was there any further action deemed necessary to be taken by the RNCA?

CST. SULLIVAN: No.

MS. CHAYTOR: Do you recall attending a meeting with the chief and Constable Smyth a couple of days after the incident?

CST. SULLIVAN: Yes, I do.

MS. CHAYTOR: Okay, and what was the purpose of that meeting?

CST. SULLIVAN: From my recollection, it was meet with the chief and see exactly what Joe's duties were going to be going forward. Chief offered him support, advised him that if there was anything that he needed regarding EAP, any type of support going forward, that they would provide that.

MS. CHAYTOR: And who arranged that meeting? Was that requested by the chief or is that something that you requested as president of the RNCA?

CST. SULLIVAN: I do believe it was at our request.

MS. CHAYTOR: Okay. So in that discussion you're trying to get clarity as to what Constable Smyth's role will be with respect to what?

CST. SULLIVAN: His work duties.

MS. CHAYTOR: His work duties.

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay, so was that – the center of the discussion was around work duties?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. And was there any discussion of any internal review that may take place?

CST. SULLIVAN: I don't recall.

MS. CHAYTOR: Okay. And in that discussion did Constable Smyth relay any details of the incident to the chief of police?

CST. SULLIVAN: I don't recall him specifically saying anything.

MS. CHAYTOR: Okay. And what was decided? Was there any decision made during that meeting as to what role Constable Smyth would play going forward, in terms of his work duties?

CST. SULLIVAN: I think there was, yes, nothing that – I can recall exactly what was defined, but I don't recall exactly what the duties were.

MS. CHAYTOR: Did Constable Smyth come back to you at any point afterwards and ask for assistance from the RNCA because he was dissatisfied with his work duties and the position that he had been assigned?

CST. SULLIVAN: I think as time went on Joe had expressed, I guess, some concern over where he was, up to certain points in time. I don't recall exactly, specifically. I know that he wanted to get back to active duty, obviously, but I can't specifically state – you know, when he wanted to meet or discuss, I can't recall.

MS. CHAYTOR: And were there any other meetings arranged with the chief of police to try to address his concerns?

CST. SULLIVAN: Yes, sorry, I recall one other meeting. And the substance of that, again, I do believe was centered around his duties and his concerns of what he was doing.

MS. CHAYTOR: Okay. And around when was this meeting?

CST. SULLIVAN: This would have been quite some time, probably – well, from my recollection, it would've been months later.

MS. CHAYTOR: Okay. And was there, was there any change in his duties, or what was the outcome of that meeting?

CST. SULLIVAN: I don't think there was. I don't think there was any, any real change from what I recall, up until just recently when he returned to work.

MS. CHAYTOR: Okay, all right.

And I'm going to move on then now to some other messaging that you had. And if we could have, please, P-0268, and this is portions of Constable Smyth's cellphone records. And we'll have page 3, please, of this document, half-way down the page.

And you'll recall, Constable Sullivan, I showed you a portion of this record yesterday, the portion where it was referencing when he's at the scene and you were texting or messaging back and forth at that point. And if we look at April 5, 2015 – so still with the day of the incident, and just let me find the reference for you. And it's right here at – and I'm saying 10:30 that evening, because this is midnight UTC time, so.

You wrote to him and said, I have some info – and I think that should be that, not rat – some info that you may, that you may would like to hear. Call me if you want.

Okay. And I can tell you that within seven minutes of you sending this, the phone records of Joe Smyth indicate that you did have a telephone conversation with him.

CST. SULLIVAN: Uh-huh.

MS. CHAYTOR: There's an outgoing call that he placed to your number.

So is this the information that you wanted to share following from a phone call from Acting Inspector Adams?

CST. SULLIVAN: Yes, it is.

MS. CHAYTOR: Okay. And perhaps you can tell the Commissioner, then, what it is that Acting Inspector Adams told you that evening?

CST. SULLIVAN: He said that he – I think Inspector Adams had said that he had received a couple of calls from Dick Dunphy, who is the brother of Mr. Dunphy, Donald Dunphy, and that he was sympathetic toward Joey. That he was feeling bad about the fact that – he was alluding to I can't believe that he, you know, that he went over there, I can't believe that this happened, I can't believe I let him go over.

It was that type of a conversation whereby Mike was indicating that Dick Dunphy was sympathizing with Joey and he wanted to know how he was feeling, and how he was doing. And I, in turn, relayed that to Joe.

MS. CHAYTOR: Okay.

And do you recall him saying – the gist of what you took from it, that he was saying I can't believe what happened and that he put him in harm's way by letting him go over there.

CST. SULLIVAN: Yes, that's pretty much what Mike was alluding to.

MS. CHAYTOR: Okay. And that's what you told us during the interview.

CST. SULLIVAN: Correct.

MS. CHAYTOR: And that's what you recall Mike Adams saying to you –

CST. SULLIVAN: Correct.

MS. CHAYTOR: – that night.

CST. SULLIVAN: Uh-huh.

MS. CHAYTOR: Okay.

Did Mike Adams tell you anything else about his discussion with Dick Dunphy that night?

CST. SULLIVAN: Well, other than the fact that Mike was explaining how he knew him. And he said I have a cabin down there in that area, that he knew him fairly well.

MS. CHAYTOR: Okay.

I'm going to continue on, then, with your messaging here. And then if we look at April 6, and I believe this is on the same page so I'll just scroll down towards the bottom here, April 6 at 4:57. So this is you to Joe Smyth at 4:57 p.m. on April 6 and you're saying: "Give me a call when you get a chance." And he replies at 5:10 and, again, this is UTC time: "Will do."

And do you recall the discussion, then, you would have had on this day with him? This would be about 3:30 p.m. on April 6. Do you recall the discussion and do you recall where Constable Smyth would have been when you're texting him at that point in time?

MS. O'BRIEN: (Inaudible.)

MS. CHAYTOR: It's what time?

CST. SULLIVAN: I don't recall exactly.

MS. CHAYTOR: 2:30?

Sorry, 2:30. My –

CST. SULLIVAN: Yeah, I don't recall exactly but I do think that's around the time when he may have already, or he was giving his statement to the RCMP.

MS. CHAYTOR: Shortly before, I believe, he gave his statement.

CST. SULLIVAN: Okay.

MS. CHAYTOR: Yes.

CST. SULLIVAN: And I also learned that he had or he was going to a meeting with EAP. That's what I recall.

MS. CHAYTOR: Okay.

CST. SULLIVAN: And I can't – and I don't know if it's specifically this conversation but it's, it is around that time frame.

MS. CHAYTOR: Okay. And my learned friend is right. She's corrected it. It's 2:30 p.m. so I understand that to be shortly before he would have attended at the RCMP.

So did you have a discussion with Constable Smyth shortly before he gave his statement to the RCMP?

CST. SULLIVAN: I don't think so.

MS. CHAYTOR: Do you recall what you did discuss with him that day?

CST. SULLIVAN: I recall my discussion being brief and what I had just recalled was, was that – it was that he was giving a statement or he had given the statement and that he had met with EAP. So I don't know which order that was but I recall that that day that he had done both.

MS. CHAYTOR: Okay. And this is the day before you give your statement to the RCMP.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay.

Did you advise Constable Smyth that you were going to be giving a statement?

CST. SULLIVAN: I don't recall if I did or didn't.

MS. CHAYTOR: Okay.

And if we continue on down, then, the bottom of this page, it's now April 7 and this is now 2:09 p.m. So that would be, if I do my time right this time, is that approximately 11:40, Ms. O'Brien?

MS. O'BRIEN: Right.

MS. CHAYTOR: 2:09 p.m.

MS. O'BRIEN: Yeah.

MS. CHAYTOR: Yeah, so that's about 11:40 in the morning Newfoundland Time. And you're asking him to give you a call again on that day. And I think you gave your statement to the RCMP that afternoon.

CST. SULLIVAN: Yes.

MS. CHAYTOR: Approximately 3 p.m. that afternoon.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Is that correct?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay.

And what is it that you needed to discuss with him on that day?

CST. SULLIVAN: I don't recall.

MS. CHAYTOR: Did you discuss anything to do with his statement and the details of the incident?

CST. SULLIVAN: I don't recall ever speaking to him about his statement to the RCMP.

MS. CHAYTOR: And in terms of you going on the same day that you're texting him and asking him to give you a call, did that have anything to do with the fact that you are going to be going that afternoon to give a statement to the RCMP?

CST. SULLIVAN: Not that I recall, no.

MS. CHAYTOR: Okay. And if we continue on later that evening, I guess this is around 5 o'clock Newfoundland Time, 7:34 UTC, you tell him: "Great press conference this afternoon. Public opinion is changing now."

What did you mean by that, Constable Sullivan? And what press conference are you referring to?

CST. SULLIVAN: I don't know. I can't remember.

MS. CHAYTOR: Can't remember.

CST. SULLIVAN: No.

MS. CHAYTOR: What did you mean by public opinion is changing? I mean you must have some recollection about what you thought public opinion was and what direction it was changing in.

CST. SULLIVAN: Yes. Obviously, I guess, we are always on the defence and we always believe that once something happens, that we've done something wrong. And that usually in the onset, it's nothing but the bad that's reported and usually the police are in the middle of it. And usually, as time goes by, opinions change once the information comes out. And I can't put the time frame to this and even know now why I even made that statement but, I guess, I'm referring to something like that.

MS. CHAYTOR: Okay. And the top of the next page then, he replies to you: "For sure! That was good." And then he tells you that the RCMP want him to go back to the scene to do the re-enactment. And you tell him that's a good thing to do and that another person's told you that that might happen.

And then your comment here is: "You got this nailed. Nobody doubting a thing." What did you mean by that, Constable Sullivan?

CST. SULLIVAN: That we believe everything that you're saying and that this is going to be fine. You're going to come out on – you're going to come out on the right end of this when it's all said and done.

MS. CHAYTOR: Were you aware of any information which would cast any doubt on Constable Smyth's account of what had happened between him and Mr. Dunphy?

CST. SULLIVAN: Not a thing.

MS. CHAYTOR: Are you aware of anything that somebody may have doubted in his account?

CST. SULLIVAN: No, I can't say I do.

MS. CHAYTOR: Constable Smyth – on April 10 we know that Constable Smyth sent out an email to all of his colleagues within the RNC and to a couple of other, or some other individuals outside of the RNC as well. You received that, I take it?

CST. SULLIVAN: I did.

MS. CHAYTOR: Did you receive that email from him prior to him sending that out? And did he ask you any advice in sending out that email?

CST. SULLIVAN: Yes. I couldn't recall the email until you had brought that up in our interview and I struggle with the timing of that and trying to figure out as to exactly what transpired. And I know that when I read the email that my, you know, my initial gut instinct was saying, you know, maybe this is not a good idea.

But, Mr. Commissioner, I would like to bring in – I would like to say something here that I only realized myself, only a short time ago, as to why – like I'm trying to get my head wrapped around this email as to what the events of it were and I really don't understand the significance of it anyway, but that's not for me to decide.

But the morning of the 9th, my father had just passed away so I'm getting my – I'm dealing with that and I'm – so I'm kinda of getting the timeline as to what's transpiring here, you know, a little mixed up. Because I can't recall exactly – I can't recall sending the email or reading it prior to him sending it, but, you know, I just can't recall that myself.

Now whatever the time stamps say, obviously, it is what it is, but –

MS. CHAYTOR: Okay.

CST. SULLIVAN: But I've struggled with that time frame ever since, trying to figure out as to how this – you know, how it was placed, how – my response to that. I think that's probably one of the reasons why I maybe never done enough diligence with the email myself due to that –

MS. CHAYTOR: Your personal circumstances at the time.

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. All right.

We'll just bring up – your advice to him appeared to have been a little late, in any event, it appears. If we look P-0193, and we'll see, if we scroll down here he sent you the email on April

10 at 6:12 a.m. and he says: “Been thinking of sending this to our members... Lots of frustration out there which I’ve had to reconcile myself. Good Idea or not you think ...?”

And then, of course, this is the email of April 10. And then you replied to him at 8:46 a.m. So this is April 10 and you say: “Well said. Well written. Now that you’ve slept on it if it feels like you still want to send it, go ahead.”

And he informs you that with some minor edits, it’s gone and he had bounced it off Tim. And I understand Tim to be Tim Buckle; is that correct?

CST. SULLIVAN: Yes.

MS. CHAYTOR: Okay. All right.

So in terms of you’re telling him that you think it was well written and well said, and to go ahead if he’d slept on it and thought about it.

CST. SULLIVAN: Right.

MS. CHAYTOR: Did you – you didn’t express any concerns to him in a telephone conversation or otherwise I take it?

CST. SULLIVAN: No, I didn’t.

MS. CHAYTOR: Okay.

And did you think it was a good idea to send that email?

CST. SULLIVAN: My gut told me no. My gut was telling me no and this is kind of what I struggled – why I didn’t say to him, you know, maybe you shouldn’t send the email. And maybe it was because I was preoccupied and I didn’t pay enough attention to it; but, I’m well aware that things that get circulated internally, you know, within the workplace, sometimes it ends up outside. And in this particular case, it did, but I can’t say if I thought that after the fact or if it was during. But something about it said to me, maybe it shouldn’t go. But I, obviously I let my heart rule over my gut and, you know, I’d said to Joe, if that’s what you think, then go ahead and do it.

MS. CHAYTOR: Okay. And I think what you’re alluding to in terms of at the interview stage when I first ask you about the email, you said that you hadn’t reviewed it and if you had, you would have told him not to send it.

CST. SULLIVAN: Yes. Yes.

MS. CHAYTOR: And then I showed you where –

CST. SULLIVAN: Right.

MS. CHAYTOR: What you had in fact said to him and it was – obviously he’d already sent it by the time you weighed in.

CST. SULLIVAN: Correct.

MS. CHAYTOR: Okay.

I would like to ask you whether or not along the way Constable Smyth expressed any concern about the association's public communications around this matter and, if so, what concern did he express?

CST. SULLIVAN: I can't – I can't recall any concern specifically that he had, I know that he was expressing frustration over the fact that this was dragging on for much longer than anticipated or certainly that in his opinion should have been. And I know that that was a constant message that I had been receiving from him. I know that, you know I continued to, you know from an association perspective, continued to say that, you know, it's a process and there's nothing that we can do about it and we have to allow the process to unfold and let it happen.

That's pretty much constantly, not only did I express that, well, to Joe, but I also expressed it to, you know, obviously, our own association members.

MS. CHAYTOR: Okay. And so did Constable Smyth speak to you or anyone else in the association and indicate that part of his frustration is that the association or the RNC and these directed just in terms of the RNCA to you, but that the association wasn't speaking out and in particular when certain aspects of the investigation were being discussed, nobody from the association was coming forward and speaking on his behalf?

CST. SULLIVAN: I never got that from him personally, no.

MS. CHAYTOR: And did you hear it otherwise?

CST. SULLIVAN: I can't say I have.

MS. CHAYTOR: Okay.

From the perspective of the RNCA, and I'll ask you as a former president of the RNCA, what would the RNCA like to see come out of this Commission?

CST. SULLIVAN: That's a very good question. Mr. Commissioner, I can certainly speak with confidence in saying that the RNC Association would certainly welcome a civilian oversight body of, of – type of investigation whereby civilian oversight on serious incidents involving police officers. We'd like to be able – for these issues to be more transparent.

Not only would we like to see a civilian oversight body investigate these matters, but we'd also like to see timelines implemented whereby certain aspects of the investigation should be met. And as well, there should be communication strategies set up in order to inform the public as well as any stakeholder that might have an interest in the matter whereby they're fully informed up to the point where it doesn't compromise the investigation.

MS. CHAYTOR: Thank – sorry?

THE COMMISSIONER: (Inaudible) one second now. Go ahead.

CST. SULLIVAN: Sir, the RNC Association would also recommend that, in any instance whereby a police service needs to be called from outside to investigate either, you know, internal or external matters involving the RNC or the RCMP in the Province of Newfoundland, we feel and outside agency should be called in; neither force should investigate each other.

And again, that goes, you know, on the precipice of transparency and credibility regarding criminal or internal investigations.

MS. CHAYTOR: And, Constable Sullivan, is that because of the close working relationship within a relatively small population between those two forces?

CST. SULLIVAN: That would be a fair statement to make. You know, it's quite obvious that, you know both, both police forces work together and jointly; there are numerous joint investigative teams, and I just do believe that it's best when it comes to transparency again – public perception of what takes place.

THE COMMISSIONER: What, what is best? Have another force, not the RCMP?

CST. SULLIVAN: Yes. Mr. Commissioner, like for instance, the RNC has an ongoing memorandum of understanding or agreement with the OPP and we've utilized that on occasions. And, certainly I don't see, you know, why there can't be a similar arrangement for both police forces in times when that's required.

MS. CHAYTOR: Okay. So if I understand that memorandum of understanding, if this shooting had taken place within the RNC jurisdiction, then the OPP would have been called upon rather than have the RNC investigate one of their own members.

So what you're suggesting to the Commissioner is that regardless of where the shooting would take place that an outside police force, such as the OPP, would be called upon regardless of jurisdiction.

CST. SULLIVAN: That's what we would recommend, yes. Correct.

MS. CHAYTOR: Is –

THE COMMISSIONER: Do you see any problems in a – with a civilian-led body having proper investigators available with proper training?

CST. SULLIVAN: Usually, the model that's being used, I know, currently in Atlantic Canada, mostly in Nova Scotia and in Ontario – SiRT it's called in Nova Scotia and SIU, serious incident unit, in Ontario as well as other jurisdictions – a lot of the members that work those particular teams are former police officers with criminal investigative experience.

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: Okay.

Constable Sullivan, thank you. Unless there's anything that I haven't covered with you, is there anything else you would like to add?

CST. SULLIVAN: Not that I – no, not that I can recall.

MS. CHAYTOR: Okay, all right.

Some of the other counsel may have questions for you and the Commissioner may have some additional questions.

CST. SULLIVAN: Sure.

MS. CHAYTOR: So thank you very much.

CST. SULLIVAN: No problem.

THE COMMISSIONER: You going first, Ms. Breen?

MS. BREEN: I certainly can, Mr. Commissioner.

Constable Sullivan, Erin Breen for Meghan Dunphy.

Good morning.

CST. SULLIVAN: Good morning.

MS. BREEN: Constable Sullivan, I'm wondering if we could start by – and perhaps if, Madam Clerk – oh, sorry.

MS. CHAYTOR: Madam Clerk has many duties.

MS. BREEN: She does indeed. If Madam Clerk could bring up Exhibit P-0304.

THE COMMISSIONER: Ms. Chaytor has her mic on I think. Thank you.

MS. BREEN: Constable Sullivan, on your monitor there, I understand that these are your cellphone records that you have provided to the Commission.

CST. SULLIVAN: Yes.

MS. BREEN: And we have noticed that in your records all of your incoming calls appear to be recorded as coming from your own phone number. Do you see that there?

CST. SULLIVAN: Yes.

MS. BREEN: Do you have any – do you understand why that is? Why it would be that incoming calls are not picked up you know; the number?

CST. SULLIVAN: No. I don't know.

MS. BREEN: You didn't notice that yourself, did you, when you were providing them?

CST. SULLIVAN: No.

MS. BREEN: Is this your work phone or is this your personal phone?

CST. SULLIVAN: This was my personal phone. Well, my – well, actually not my personal phone, it was a phone that was paid for by the police association.

MS. BREEN: Okay, but it wasn't your RNC-issued phone?

CST. SULLIVAN: No.

MS. BREEN: Okay. And in terms of getting these records you just took or got these from your cellphone provider, did you?

CST. SULLIVAN: I just –

MS. BREEN: Okay.

CST. SULLIVAN: Correct.

MS. BREEN: And you don't have something – you didn't make an arrangement on your phone so that incoming calls all appear to come from your own number? That's just the way it's billed, is it?

CST. SULLIVAN: Yes.

MS. BREEN: Okay.

CST. SULLIVAN: I assume, yes.

MS. BREEN: Okay. And unfortunately, you know, in terms of trying to determine when certain calls were made to you we, you know, we're having a difficulty now because there is no number noted.

Okay, thank you. I just wanted to bring that to your attention to see if you had any explanation for that.

Madam Clerk, could you bring up Exhibit P-0267. Constable Sullivan, this is the statement that you gave to Constable Nippard on April 7, 2015. And, Madam Clerk, if we could go to page 3 – I'm sorry, page 4 of the exhibit, lines 12 to 20 of that exhibit. Thank you.

Constable Sullivan, you did mention this very briefly on your direct. This is when you were speaking with Constable Nippard, you're talking about a conversation, I believe, you're having by phone with Constable Smyth. He's still at the scene is your understanding and you overheard an RCMP officer, is it, speaking to him?

CST. SULLIVAN: Yes. That's who it was, yes.

MS. BREEN: Okay.

And so at that time and I'll go to line 14, you say: "I could hear him. He said, hey Joe, what we're gonna do is we're gonna bring you back to Holyrood and he said, you know, let you sit back there and, you know, kind of be able to relax a little tiny bit and ..." and then it continues "... you know, wait until we do what we gotta do, type of thing."

So that conversation that you overheard at that time, you could actually hear the officer saying these things to Constable Smyth?

CST. SULLIVAN: Yes, but I won't say that's verbatim what the officer said. It was I'm relaying my interpretation of what he said.

MS. BREEN: Sure. So that would generally be the gist of what the officer was saying to Constable Smyth at that time?

CST. SULLIVAN: That's my understanding, yes.

MS. BREEN: Okay. And clearly at that time, you would have been aware that Constable Smyth was not being detained by the RCMP. It didn't sound like that anyway, did it?

CST. SULLIVAN: No.

MS. BREEN: It sounded more or less they were trying to give him a place to go and, as you said, relax.

CST. SULLIVAN: Correct.

MS. BREEN: Okay.

Now, if we move ahead in that statement, Constable Sullivan – and you’ve had a chance to review the statement before you came today I presume, did you?

CST. SULLIVAN: Yes.

MS. BREEN: Okay.

If we could go, Madam Clerk, to page 7 of the exhibit, lines 23 to 25. Okay.

Constable Sullivan, this is where, I believe, in your statement you indicated what you said to us today on your direct, where while you were at the detachment and you were with Constable Smyth, he told you that he had gone next door and spoke – and, I believe, in your statement you say to the brother and his wife –

CST. SULLIVAN: Yes.

MS. BREEN: – who we now know to be Dick and Debbie Dunphy.

CST. SULLIVAN: Correct.

MS. BREEN: But you say you didn’t know their names on that day.

CST. SULLIVAN: Correct.

MS. BREEN: Is that correct?

CST. SULLIVAN: Yes.

MS. BREEN: And then, Constable Sullivan, Constable Smyth told you this at the detachment. And in your interview with Ms. Chaytor on December 13 you did say that it happened while Staff Sergeant Adams was in the same room. Do you recall that?

CST. SULLIVAN: Yes.

MS. BREEN: Okay.

And when Ms. Chaytor did question you at that time you appear to say that quite – you know, you were under affirmation at that time and obviously you were taking the matter seriously. And you do say at that time that Mike Adams was there and spoke up and said that he knew Dick Dunphy.

CST. SULLIVAN: That’s what I said, yes.

MS. BREEN: That’s what you told her on December 13.

CST. SULLIVAN: Correct.

MS. BREEN: But today you're saying that you're wrong on that now.

CST. SULLIVAN: Well, yeah. When I looked at the RCMP statement, when I see that Mike and Reg had left – until that point, it kind of threw a flag up to me to say that I'm not quite sure if they were there for everything.

So, again, my recollection and at the time of my interview was – I was assuming certain things. That's all I can say is that when I look at the statement, like, I know – what I do know is that the significance of Mike Adams calling me that night was when I learned that he knew the brother and who it was. I couldn't even recall Mr. Dunphy's name when I provided my statement.

MS. BREEN: Yes, and I –

CST. SULLIVAN: Do you know what I'm saying?

MS. BREEN: It certainly appears that you didn't know the names involved –

CST. SULLIVAN: Right.

MS. BREEN: – until that night. Is there anywhere in that statement, though, Constable Sullivan where you discuss with Constable Nippard the fact that Constable – I'm sorry, Staff Sergeant Adams had talked to you about knowing Dick Dunphy?

CST. SULLIVAN: I don't think there is.

MS. BREEN: Okay. And there's nothing in that statement that you gave to Constable Nippard about Staff Sergeant Adams calling you on the night of April 5 to pass on any information to Constable Smyth, is there?

CST. SULLIVAN: No, no. I don't think so.

MS. BREEN: So, since December 13, are you saying that it has not come to your attention in anyway whatsoever that the information you gave at this interview was in conflict with what Staff Sergeant Adams had told the Commission?

CST. SULLIVAN: Yes, that's what I'm saying.

MS. BREEN: Okay. So, no, it was never brought to your attention.

CST. SULLIVAN: No.

MS. BREEN: Okay. So regardless, when Constable Smyth told you about going to see the brother and the sister-in-law on April 5 before the shooting, you would have been aware at that time that these people would have been witnesses in whatever investigation was going to unfold.

CST. SULLIVAN: Correct.

MS. BREEN: Okay. Because you knew, obviously, that Constable Smyth had talked to them. They were the brother and sister-in-law of Mr. Dunphy who was deceased –

CST. SULLIVAN: Correct.

MS. BREEN: – and that he was also the next door neighbour. So for a whole bunch of reasons they are, they would be important witnesses.

CST. SULLIVAN: Correct.

MS. BREEN: Okay. Now you've told us about your conversation with Staff Sergeant Adams that night. We know from the records that you called Constable Smyth at about, or texted him at about 9:30 to say that you had information for him, and that's the information – you're talking about there is the information from Staff Sergeant Adams, correct?

CST. SULLIVAN: Yes, it is.

MS. BREEN: What time was it, do you know, that Staff Sergeant Adams contacted you with that information?

CST. SULLIVAN: It was – it was earlier. I don't know exactly what time, but it was a short time earlier. I would have – well, again I'm going on assumptions as to what I would have done, but I think once I received that information I'd text, I'd text Joe pretty much immediately.

MS. BREEN: Okay –

CST. SULLIVAN: But again, I – you know, I can't, I don't know exactly when it was.

MS. BREEN: Right. And I assume the phone call would have come in on your cellphone, is that right? From Staff Sergeant Adams –

CST. SULLIVAN: That's correct, yes.

MS. BREEN: And unfortunately, because of the way the records are we can't pick it out because it just says incoming call and it says your phone number. But are you saying that you assume once you got that information you would have wanted to get it to Constable Smyth right away?

CST. SULLIVAN: Pretty much, yes.

MS. BREEN: Okay. Now, you didn't take any notes of your conversation with Staff Sergeant Adams that night, did you?

CST. SULLIVAN: No.

MS. BREEN: So what you have told us is basically, I assume, a summary of what you recall now that Staff Sergeant Adams told you on the phone –

CST. SULLIVAN: Correct.

MS. BREEN: – about what Dick Dunphy had said?

CST. SULLIVAN: Yes.

MS. BREEN: We've heard from Staff Sergeant Adams, and it appears that his recollection of what was said to him included more than what you've said. His testimony has included that there was a reference from Dick Dunphy to a gun and whether he had knowledge of his brother having a gun before Constable Smyth went there. Does that jog your memory in any way, whether Staff Sergeant Adams told you at that time that whether or not Dick Dunphy knew that Don Dunphy had a gun?

CST. SULLIVAN: Yes, I do recall, I think, that he did say that he, he didn't, he didn't know there was a gun in the house.

MS. BREEN: Okay. So he did tell you that?

CST. SULLIVAN: Yeah.

MS. BREEN: Okay.

CST. SULLIVAN: Yes.

MS. BREEN: You then call Constable Smyth, or text him, and you relay that kind of information to him?

CST. SULLIVAN: Correct.

MS. BREEN: You knew at that point Constable Smyth had not given his police interview.

CST. SULLIVAN: Correct.

MS. BREEN: And you knew he was going the following day to give an interview.

CST. SULLIVAN: Yes.

MS. BREEN: Okay. You knew that at that time, Constable Sullivan, that these people were witnesses in the investigation. You know that –

CST. SULLIVAN: Yes.

MS. BREEN: – or you knew that then. You didn't take any notes of your conversations.

CST. SULLIVAN: No.

MS. BREEN: You didn't take any notes of what you told Constable Smyth.

CST. SULLIVAN: No.

MS. BREEN: And you didn't mention any of this in your statement to the RCMP.

CST. SULLIVAN: No.

MS. BREEN: Okay. Now, Constable Sullivan, I would suggest to you that this does go beyond your role of offering support as the RNCA president. This is information that would be coming from a witness in a serious investigation.

CST. SULLIVAN: I didn't relay anything other than the fact that Mr. Dunphy was, he was feeling bad about the fact that Joey had left his house and went over there. It was, he was – Mike was relaying the fact that he actually had some sympathy from the family side. That's pretty much what I did.

MS. BREEN: Right, but you've just told us that you recall now that you relayed information about the knowledge of Mr. Dick Dunphy, whether or not he knew his brother had a gun.

CST. SULLIVAN: I didn't relay that to Joe. I, I don't recall ever mentioning the fact that I knew that, or that there wasn't a gun. I really can't speak to that.

MS. BREEN: Okay. But this is information that you just said Staff Sergeant Adams gave you. You said you remember that.

CST. SULLIVAN: Yes.

MS. BREEN: You're saying you left that out when you spoke to Constable Smyth?

CST. SULLIVAN: I don't ever recall, I don't ever recall mentioning that to Joe.

MS. BREEN: So you're saying that Staff Sergeant Adams – and we'll go back and see what you said in response to the questions.

CST. SULLIVAN: Sure.

MS. BREEN: You're saying Staff Sergeant Adams gave you information that you purposefully left out when you contacted Constable Smyth?

CST. SULLIVAN: I don't think I purposefully left anything out.

MS. BREEN: And I don't believe you did either, Constable Sullivan. I'm suggesting to you that you would have told Constable Smyth exactly what Staff Sergeant Adams told you that night.

CST. SULLIVAN: Well, I don't think I relayed everything that he told me.

MS. BREEN: Pardon me?

CST. SULLIVAN: I don't think I relayed everything that he told me.

MS. BREEN: So you're saying now that you purposefully left out information –

MR. DROVER: Mr. Commissioner, he's already said that he didn't purposefully leave out any information, but that he does not recall relaying that particular piece of information. So I think he's answered the question at least two or three times and –

THE COMMISSIONER: Well, let's have it one more time. It's not unduly lengthening the morning.

MS. BREEN: Go ahead, Constable Sullivan, please explain.

THE COMMISSIONER: I think that's the first, at least it's the first time I got in my notes that –

CST. SULLIVAN: Mr. Commissioner, I'm not leaving anything out nor am I trying to mislead anybody here. I'm trying to recollect, you know, what I said and when I said things. And I can honestly say that the only thing I relayed to Joe was the fact that: you know what, this is going to be fine, you're going to be okay. If I thought that – like, I don't even know I would even – if I wanted to tell him that everything was going to be okay and that, you know, this is good and you got it nailed. Well, then I just don't understand – I don't even know why then I would even bring up the fact that, well, there was no gun.

Like, I wouldn't – I just don't understand. I, I can't even recall. I just don't recall – you know, I didn't mention it. I know I didn't mention it to him. And all I recall is saying that: you know what, this is good, you're going to be fine, you're going to be okay. I mean, and that was what my text said. That you got –

THE COMMISSIONER: Well, you – I understood you're saying you were going to call Mr. Smyth to mention that Dick Dunphy, the brother of Donald Dunphy, had expressed concern about the police officer.

CST. SULLIVAN: Yes, Sir.

THE COMMISSIONER: So you'll accept that you probably conveyed that information – do I understand you correctly there?

CST. SULLIVAN: I did.

THE COMMISSIONER: – to Mr. Smyth, Constable Smyth when you spoke with him shortly after the conversation with Mr. Adams.

CST. SULLIVAN: Yes.

THE COMMISSIONER: Now, it's suggested by Ms. Breen that in the normal course of events she'd expect that you would have passed on the reference to Dick Dunphy saying something about the rifle.

I'm not sure how you put it, but what was it you understood he would have passed on?

MS. BREEN: I believe the evidence before the Commission, Mr. Commissioner, came from another witness who had spoken to Constable Smyth and understood that the message was that Mr. Dick Dunphy did not know that Donald Dunphy had a gun, and had he known that, he should have warned the officer.

THE COMMISSIONER: And that supposedly is what Dick Dunphy had said to –

MS. BREEN: Staff Sergeant Adams.

THE COMMISSIONER: – Staff Sergeant Adams, which in turn Staff Sergeant Adams had passed on to –

MS. BREEN: That's correct.

THE COMMISSIONER: – Mr. Sullivan and which in turn you would have expected that you would have passed on to Smyth. So that's the way –

CST. SULLIVAN: Yes, Mr. Commissioner. Actually, I misunderstood the – well, I actually misunderstood Ms. Breen's line questioning. And that's quite possible that – you know what, that's quite possible that I would have conveyed that to –

MS. BREEN: Okay.

CST. SULLIVAN: Joe Smyth.

MS. BREEN: Okay.

CST. SULLIVAN: I won't say that I didn't. That's quite possible. Okay, I understand now.

MS. BREEN: Okay.

Thank you very much.

THE COMMISSIONER: It might be a good time for us to break. It's just after 11 o'clock there now.

MS. SHEEHAN: All rise.

Recess

MS. SHEEHAN: I declare this Commission of Inquiry in session.

Please be seated

THE COMMISSIONER: Ms. Breen, do you have any idea how long you're going to need?

MS. BREEN: I'm finished, Mr. Commissioner.

THE COMMISSIONER: Oh, you're finished are you?

Other counsel?

Mr. Kennedy, just before you start just in terms of scheduling, how long do you anticipate?

MR. KENNEDY: Well, I'd say 10 minutes at the most.

THE COMMISSIONER: So we have another witness who we're anticipating we'd probably finish before lunch but might go over 1:30 a bit. Does counsel have a problem if we go through a bit past—?

UNIDENTIFIED MALE SPEAKER: I'd prefer that personally.

THE COMMISSIONER: And then we'll — the afternoon basically will be free, free to get back and do some other work preparing for tomorrow. So that's suitable for you, Ms. Breen, Mr. Freeman?

MS. BREEN: Yes, I prefer that as well.

THE COMMISSIONER: Right.

MR. AVIS: I prefer it, too, Commissioner.

THE COMMISSIONER: Right. Okay.

UNIDENTIFIED MALE SPEAKER: I'm on board.

THE COMMISSIONER: All right, so you go ahead, Mr. Kennedy, when you're ready.

MR. KENNEDY: Thank you, Commissioner.

Constable Sullivan, you've outlined to the Commissioner some of the things you'd like to see come out of this from an RNCA perspective and I'm not going to go through those with you. But would you not also, do you not think it would be helpful if there was a policy or protocol that would guide individuals, like you found yourself in that day –

CST. SULLIVAN: Absolutely.

MR. KENNEDY: – in terms of the RNC as to when they can attend that scene and offer support for members and how.

CST. SULLIVAN: Absolutely.

MR. KENNEDY: In other words, on the date in question there was no protocol or policy guiding as to whether you should attend or not, what you should do, who you should speak to. There was nothing like that, was there?

CST. SULLIVAN: That's correct.

MR. KENNEDY: There was no policy or protocol outlining the taking of notes.

CST. SULLIVAN: No.

MR. KENNEDY: So what you went – if I understand correctly, Constable Sullivan, you went out there that day, it was from a human perspective, or a – to offer support to a colleague.

CST. SULLIVAN: That's exactly it.

MR. KENNEDY: But also you knew you were going into a situation where there was an investigation.

CST. SULLIVAN: That's correct.

MR. KENNEDY: Yeah. Obviously there had to be an investigation, Constable, when there's a shooting death. You know there's going to be an investigation.

CST. SULLIVAN: Absolutely.

MR. KENNEDY: There was no other – had there been any other officer-related shootings where you had been involved? I mean I know the RNC had one on the West Coast but was there anything that you had been involved in personally while you were there at the RNCA?

CST. SULLIVAN: Not this magnitude.

MR. KENNEDY: Yeah.

CST. SULLIVAN: There was – I believe I gave testimony earlier about an incident that happened at Memorial University where a firearm was discharged.

MR. KENNEDY: Yeah.

Were you aware or was there ever any discussion among the RNC – and I can't remember this totally, Commissioner, but in reading the Reid-Power report I think there was a reference to the fact that a number of police officers who had been in the Power, Darryl Power case, police officers who had been together at the scene, were in a room together afterwards. And there was

some comment, although I don't think there was a recommendation – I'm not familiar if there was a recommendation made.

THE COMMISSIONER: Yeah, I read some time ago. I don't recall now how they dealt with that.

MR. KENNEDY: Yeah. But there was a –

THE COMMISSIONER: We'll check that out.

MR. KENNEDY: Yeah.

So do you know of anything after the Reid-Power inquiry and that reference to police officers getting together; was there ever any discussion that you're aware of in the RNCA?

CST. SULLIVAN: No, none.

MR. KENNEDY: Was there any directive from the chief of police?

CST. SULLIVAN: No, Sir.

MR. KENNEDY: Okay.

Now one of the problems that can be caused inadvertently I would suggest to you, Constable, is that the lack of note taking can affect your memory. Correct?

CST. SULLIVAN: Correct.

MR. KENNEDY: And you're not taking any notes that day or while you're in the room, I understand it, because you're there to offer support and you don't see yourself as being part of any investigation.

CST. SULLIVAN: That's correct.

MR. KENNEDY: Now when you then give a statement to the police a couple of days later, that's when it's freshest in your memory.

CST. SULLIVAN: That's correct.

MR. KENNEDY: Was there or would it not be helpful, Sir, that depending on any protocol or policy that developed, that if you were to meet with an officer, that full notes would be taken as if in any other situation.

CST. SULLIVAN: Correct.

MR. KENNEDY: Would that be helpful, if there was a direction that that's how it's going to play out?

CST. SULLIVAN: Certainly, yes, it would be.

MR. KENNEDY: Yeah.

THE COMMISSIONER: I'm just wondering, I had the impression, I don't know where I got it, that the sort of unspoken rule of not having notes or doing notes was to preserve the confidentiality of the meeting to some extent. Is that – am I wrong there?

CST. SULLIVAN: It would –

THE COMMISSIONER: Patient-doctor confidentiality would apply but I'm not sure that you have –

CST. SULLIVAN: Yeah.

THE COMMISSIONER: – any confidentiality in terms of, you know, peer-to-peer support or even psychologist-to-subject, you know. So is that –

MR. KENNEDY: I'm not aware of any confidentiality –

THE COMMISSIONER: Sorry?

MR. KENNEDY: I'm not aware of any confidentiality.

THE COMMISSIONER: No, so I'm just wondering if there's –

CST. SULLIVAN: Yeah. No, Sir, I'm not aware.

THE COMMISSIONER: Hmm?

CST. SULLIVAN: I'm not aware of any such –

THE COMMISSIONER: Of – well, somewhere there's the rule, whether it's laid down or not, that there not be notes taken.

Sorry, Ms. Chaytor. Go ahead.

MS. CHAYTOR: Sorry.

I think, if I can, shed some light.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: It may be that you're referencing the Critical Incident Stress Debriefing. There was reference in that situation, I believe. Acting Inspector Adams said that he wouldn't normally take notes in that situation and the policy –

THE COMMISSIONER: That he would or would not?

MS. CHAYTOR: That he would not.

THE COMMISSIONER: That he would not.

MS. CHAYTOR: And that he was trying to make it clear that those notes were not taken during any Critical Incident Stress Debriefing with Constable Smyth. So I think that's what you're referencing.

And as well –

THE COMMISSIONER: Well, except it was never a full and proper, arguably, critical stress debriefing in this case.

MS. CHAYTOR: That's correct in terms of what Acting Inspector Adams is saying he did. So that's where you're getting that, and also the policy itself refers to the debriefing being confidential.

But you're right in terms of it being confidential and ultimately being disclosable at law. There wouldn't be any privilege that would attach, to my knowledge, to those particular notes.

THE COMMISSIONER: Right. So I'm just wondering if that's why the RNC Association members, if not the RNC itself, has adopted a safety mechanism to keep things confidential by having no pieces of paper floating around with references to what might be sensitive and personal information.

CST. SULLIVAN: Can I comment on that?

THE COMMISSIONER: You look like you want to say something. Go ahead.

CST. SULLIVAN: Yes, Sir, that would be, I guess, partial of, you know, disclosing it if it's personal information, but I will tell you my role. I'm constantly or I was constantly dealing with people on numerous issues on a daily basis and to be quite honest, you know, my days were totally ad hoc. Like, there was no planning to my day at all; I'd just get hit with one issue after another.

And virtually, if I had to take notes on everything I did I'd need to have somebody with me all the time to be able to take notes. It was virtually impossible for me to do so.

Now in a situation like this, obviously, you know –

THE COMMISSIONER: You'd make time.

CST. SULLIVAN: – what counsel was referring to, if it was mandatory that I would, yes, I would.

THE COMMISSIONER: Okay.

MR. KENNEDY: What I'm talking about is in a situation like this where there's an officer-related shooting, did you not – was there a reason that you didn't take notes? Was there any unwritten policy, as the Commissioner has discussed, that you didn't take notes?

CST. SULLIVAN: There was no reason why I didn't take notes, no.

MR. KENNEDY: Because the one thing you've learned here in this matter is that there is no confidentiality in meetings like that. Correct?

CST. SULLIVAN: Indeed.

MR. KENNEDY: So if there's no confidentiality, then full and proper notes would certainly benefit everyone, wouldn't they?

CST. SULLIVAN: They would.

MR. KENNEDY: Because as you're trying to – when you go to the RCMP interview, that's a couple of days past your meeting with Constable Smyth.

CST. SULLIVAN: Correct.

MR. KENNEDY: But there's a lot happening in those couple of days, isn't there?

CST. SULLIVAN: Yes, it is.

MR. KENNEDY: Yeah.

Did you ever – any of your superiors ever ask you for a – to prepare an occurrence report, a general report, a – call it what you like, anything, in terms of what your interaction was with Constable Smyth on the night in question?

CST. SULLIVAN: No, they didn't.

MR. KENNEDY: Yeah.

So when you go to – even then when you're interviewed by the police, by Constable – and I don't have the – I apologize, Commissioner, I'm using a copy of the statement that's not the exhibit number. Do we know the exhibit number for Constable Sullivan's police statement with Constable Nippard?

UNIDENTIFIED FEMALE SPEAKER: 0267.

THE COMMISSIONER: 0267?

MR. KENNEDY: So if we could actually look at it, it's a fairly short statement, isn't it?

CST. SULLIVAN: It is.

MR. KENNEDY: It's at 3:11 it begins, and it ends at usually 3:25. So 14 minutes –

CST. SULLIVAN: Correct.

MR. KENNEDY: – is the interview.

Your discussion of what Constable Smyth is telling you, or what he told you, if I could first ask you to go – Madam Clerk, if you could go to page 6, please. Yes, that's it. If we could go down to lines 15 to 18.

Sullivan: And he was so badly wanting to tell his story to the boys, right, to, you know, to the investigators, the investigative team.

Joe Smyth wanted to give a statement that night as to what happened. Is that correct?

CST. SULLIVAN: He did.

MR. KENNEDY: However, he followed the advice that was given to him by yourself and Constable Harris?

CST. SULLIVAN: Correct.

MR. KENNEDY: Advice which you say is based on what had you had learned in various seminars and discussions, or with other associations?

CST. SULLIVAN: Correct.

MR. KENNEDY: And what you understood to be best practice at the time?

CST. SULLIVAN: That is my understanding, and is my understanding now, Mr. Commissioner.

MR. KENNEDY: If we could now go to page 7.

'Cause from Constable Smyth's perspective, I'm a bit concerned about the lack of detail in the, in the, in this statement. The bottom of page 7, line 18, you say: But of course he did, he did allude to the fact he was down doing, a, you know, an assessment, a threat assessment.

CST. SULLIVAN: Yes.

MR. KENNEDY: Now, did you know what a threat assessment was when he used that term that day?

CST. SULLIVAN: My understanding was, is that he had been given information and he was going to speak to the individual who was the subject and to determine whether or not there would be any follow-up or any action that would needed to be taken as a result of what was alleged to have been said or done by somebody.

MR. KENNEDY: So he said he had done this assessment, when he got there buddy wasn't home, and I got a Coles Notes version. He went next door, spoke with the brother and his wife, I think his brother's wife.

Next page. And he said he went back there. I was like 30 seconds from being out of there. Like is – you know, could have been gone with the scene, left the scene, he said. Said the guy was home so he went up, identified myself, went in and spoke to him he said and knew nothing, I was making a note in the, you know, making a note in my file folder and he said the next thing I got hit – but that doesn't make any sense does it –

CST. SULLIVAN: No.

MR. KENNEDY: – that term? You think that's a typo?

CST. SULLIVAN: Yes.

MR. KENNEDY: There was a typo somewhere else we saw in the statement, was there not?

CST. SULLIVAN: Correct.

MR. KENNEDY: He's putting a gun at me and I reacted. So that's the only detail that you give to Constable Nippard in terms of what Constable Smyth told you occurred on the date in question?

CST. SULLIVAN: Yes.

MR. KENNEDY: You made no further notes or investigative reports or general occurrence reports, nor were any requested of you?

CST. SULLIVAN: No.

MR. KENNEDY: So then we – that’s on April 7, 2015. So then on December 13, 2016, I suppose, what, a year and a half later, approximately a year –

CST. SULLIVAN: Yeah, correct.

MR. KENNEDY: – eight months, so you give an interview with Commission counsel. Where you’re cross-examined, or excuse me, where you’re examined extensively on what occurred?

CST. SULLIVAN: Yes.

MR. KENNEDY: So in terms of your memory when you’re being examined by Commission counsel, were you having problems with your memory and recollecting what had occurred?

CST. SULLIVAN: I was.

MR. KENNEDY: Yeah. So if there was again a note taking or a note policy in relation to this kind of incident, you would think that’s a good thing, would you not?

CST. SULLIVAN: I agree.

MR. KENNEDY: Because one the incident I want to talk about is the issue of where you say the gun came from, and I’m not clear on this. And I’ll have to go through your interview with Commission counsel on that, but page 94 of your interview with Commission counsel – because this is the first we’ve, this statement of a gun coming from under the table. How did you – when I look at what you’re saying here I – page 94 of your interview with Commission counsel on December 13, 2016.

No, that’s not the – Madam Clerk; this is the actual transcript. Question by Ms. Chaytor at line 6: And you specifically remember saying to him, him saying he pulled a rifle out from underneath the table? Constable Sullivan: Well, that’s what I recall, or that’s my depiction of the memory, say, right.

And Ms Chaytor says: All right. So that’s what I was going to ask you whether or not he said where the rifle came from. Answer: I don’t know. Again, you know, what I remember is, what I believe is, is that a rifle came from underneath the table.

Well, I’m having difficulty when I read that, is that what Constable Smyth said or is this your interpretation of it 17 or 18 months later?

CST. SULLIVAN: It is my interpretation of what I believe to have taken place.

MR. KENNEDY: But Constable Smyth did not say that. Is that correct?

CST. SULLIVAN: It’s quite possible he didn’t.

MR. KENNEDY: When you use words, Constable, like: That’s what I recall or that’s my depiction of the memory, right, what I remember is, what I believed is that a rifle came from underneath the table.

My question is simple: When you tell the police – when you interview with the police officers two days later, you don’t mention that?

CST. SULLIVAN: Right.

MR. KENNEDY: So I'm not clear as to whether or not it's what he said or it's what your interpretation of what he said. Which is it, Sir?

CST. SULLIVAN: It's my interpretation.

MR. KENNEDY: Now, you indicated today that in terms of why Constable Smyth said he didn't sit down. You said because you don't really or there was no explanation or you don't remember what he said on that. Do you remember that?

CST. SULLIVAN: Yeah.

MR. KENNEDY: Saying that today?

CST. SULLIVAN: Yes.

MR. KENNEDY: Was it because, also because if the place was dirty and he didn't –

CST. SULLIVAN: It was – he did allude to the fact the place was filthy.

MR. KENNEDY: Ms. Chaytor referred you also to this issue of Constable Smyth being, the comments he made about being mad. Whether or not it related to the incident itself or in relation to what he said to you in the police station.

And I – the statement you gave to the police, and I'm not going to, for the sake of expediency – he calmed down pretty good and then all of a sudden he said, you know, man, he said I'm mad at him now; I'm mad. I could shake him, something along those lines.

CST. SULLIVAN: Yes.

MR. KENNEDY: Ask him why did you do this?

CST. SULLIVAN: Yes.

MR. KENNEDY: He didn't indicate at any time, did he, that he was angry during the interaction with Mr. Dunphy in the house, but that he was mad now because this had happened. There was a man dead and he was sitting here in this police room.

CST. SULLIVAN: That's correct.

MR. KENNEDY: That's what he was saying, wasn't it?

CST. SULLIVAN: That's exactly how I interpreted it.

MR. KENNEDY: And then during your interview with Commission counsel, at page 131, Ms. Chaytor says to you: Did he express any remorse? Constable Sullivan: There was at one point he said I'm angry at him now for putting me in this position. I recall him saying that, you know, because it's a pretty powerful statement, right. He said: I'm just so angry at him now for putting me here, you know, for making me do this. Do you know what? You then say: I don't know if he made that in a statement or if he said it on the drive home, but he made that comment.

CST. SULLIVAN: He did.

MR. KENNEDY: Okay. So anger at the situation that he now found himself in, or mad at the situation he now found himself in as opposed to being angry during his –

THE COMMISSIONER: I got that noted, Mr. Kennedy.

MR. KENNEDY: I think that – just one second here, Sir.

And that was a question – also at page 132 for reference, Commissioner: If I could only shake him alive. Do you remember him making that comment?

CST. SULLIVAN: Yes.

MR. KENNEDY: Okay.

My last question for you, Sir, is you had contact with Constable Smyth throughout this matter, did you?

CST. SULLIVAN: I did.

MR. KENNEDY: As the investigation – and he was expressing frustration at the length of time it was taking. Do you remember that?

CST. SULLIVAN: Yes, I do.

MR. KENNEDY: Did he also express frustration at what he felt to be the lack of support from the management at the RNC?

CST. SULLIVAN: He did.

MR. KENNEDY: Okay. And did you just tell him, you just got to let the process unfold.

CST. SULLIVAN: I did.

MR. KENNEDY: Okay.

Thank you very much, Constable Sullivan. Those will be my questions.

THE COMMISSIONER: Anything further?

MR. FREEMAN: No questions from us, Mr. Commissioner.

THE COMMISSIONER: Mr. Avis.

MR. AVIS: Just a few. Many of my questions have been addressed, or a number already.

THE COMMISSIONER: Well, between yourself and Mr. Drover you could have resolved those.

MR. AVIS: Yes, I believe we've done that.

Just a few questions. Now, when you went out that day, was it your intention in any way to interfere with the investigation regardless of its nature?

CST. SULLIVAN: Absolutely not.

MR. AVIS: So if it had been a criminal investigation, would you have acted any differently?

CST. SULLIVAN: I think if it was a criminal investigation I would have been – I probably would have been lucky to get inside the door of the RCMP detachment.

MR. AVIS: Okay. But I'm talking about not their conduct so much as yours. Would you still have gone out there for support?

CST. SULLIVAN: Yes, absolutely.

MR. AVIS: And you would have supported him in exactly the same way?

CST. SULLIVAN: Indeed.

MR. AVIS: Whether it was criminal, internal or wrongful death?

CST. SULLIVAN: Yes.

MR. AVIS: Okay. And even if it had been the RNC out there investigating initially, or the medical examiner and not the RCMP, is that correct?

CST. SULLIVAN: Correct.

MR. AVIS: With respect to any information you passed on, was it your intention to try and give Constable Smyth some advantage in any subsequent statement he would give?

CST. SULLIVAN: None.

MR. AVIS: For example, the information that you gave, that Dick Dunphy felt bad and did not know he had a gun. When you passed that information on, what was your purpose?

CST. SULLIVAN: Basically to reassure Joey that, again, we believe everything that he's saying here and that we want, want to let him know that we're behind him and absolutely, unequivocally we believe him.

MR. AVIS: Is it fair to say that at the time every – all the press, all the apparent public opinion was very negative. Correct?

CST. SULLIVAN: Correct.

MR. AVIS: And this was a particularly positive thing because it came from a family member. In other words, that, you know, one of the family members actually had sympathy for him.

CST. SULLIVAN: Yes. I'd like to back up and qualify my statement, though.

MR. AVIS: Sure.

CST. SULLIVAN: This had – I can't say that the public perception at the time was negative, it just had broken but we anticipate that.

MR. AVIS: Okay. Sure.

One last question I have for you, and it's an issue of concern that hasn't been raised to date. When a police officer's use of force is put under such public scrutiny, is there a concern about police officers' use of force in the future?

CST. SULLIVAN: I would –

MR. AVIS: Is that an issue?

CST. SULLIVAN: I believe it is.

MR. AVIS: And why do you believe that's an issue?

CST. SULLIVAN: Mr. Commissioner, I can honestly say that, as I speak, our own members right now – certainly our patrol members, made up mostly of young police officers and a lot of them are inexperienced – are right now, there's discussion around the building that's gotten back to me whereby they're actually – one, well nobody ever wants to be put in this position but they're actually doubting themselves right now. They're doubting the fact of whether they should draw their firearm, when they should and when they shouldn't.

MR. AVIS: I have no further questions, Commissioner.

MR. DROVER: Constable Sullivan, I guess I just –

THE COMMISSIONER: Just before you go, one second.

Well, I think, while I'm going to have to obviously give thought and be concerned about the dampening effect or chilling effect my recommendations might have on young police officers, it, it probably going to be the case that in, particularly in a province this small, if there's an officer-involved police shooting, they're going to have to assume that there's going to be a very heavy scrutiny placed on the actions of –

CST. SULLIVAN: Yes, I agree with that statement.

THE COMMISSIONER: – the members involved.

CST. SULLIVAN: Yeah, and I'm certainly not trying to downplay, you know, anything that's happened with regard to this particular incident, because yes, they are all serious. It, it's, I think it's probably cyclical when things like this happen, but it, but I think it's just, it's unpreventable in police officer psyche when, you know, issues like this arise and they hear what's going on around them and what's going on in social media and in the real media and you know, they're absorbing all of that.

And certainly when there has been a lot of negativity around or reported in the news, over – you know, over such a long period of time and – yeah, I think it does affect them and that's what, that's – you know, I can only speak on what I hear.

THE COMMISSIONER: I know, I – I got the message, but there probably should be some attention paid to recent inquiries into shooting deaths, particularly in Ontario and BC. The Braidwood report or inquiry in BC, the Iacobucci report and Dubé report in Ontario. And both of those, or all three of those focus extensively on police culture and the importance of attitude and the problems that arise if police investigations are not rigorous and properly carried out, keeping in mind that the death, the reportable death should be treated as having been criminal. Rather than the other way of immediately accepting an explanation from an officer and therefore – and believing that without close scrutiny and proceeding in a fashion that is less rigorous.

CST. SULLIVAN: Sure.

THE COMMISSIONER: And that's why I've made comments over the past few days in this regard. Part of my job – and I'll have to do this in my report as well, but I think as the inquiry goes along I have a responsibility to note for the general public how their confidence may fall if they see that an investigation is not rigorous and not by the book.

And so the message, I guess, I'd send back to young police officers is the way of making sure that police have the ability to do their job properly, while ensuring that the public is protected, is to follow the rules and to some extent are laid down already. I don't have to rebuild the wheel.

CST. SULLIVAN: Sure.

THE COMMISSIONER: All I have to do is point to the RNC manual – sorry – and expect that young police officers, as well as more experienced police officers, will follow the protocols, procedures, practices that have been set out for a reason.

And that if all the cards are laid on the table and if the investigation proceeds as a criminal investigation, if they're cleared following the rigorous, proper investigation, then that's not going to hurt them in the long run. But if the practice develops of having, shall we say, a less-than-rigorous or a slipshod investigation, then that's only going to lead to further problems.

And at the end of the day we can recognize that police officers have a difficult job. Young police officers may not fully understand why the rules are there but they have to change their attitude if it's the – how did they refer to it – the solid blue line, police culture, investigation of the boys by the boys. That doesn't work and so, I guess if they understand that and still don't think that they can do the job, well, there's got to be another line of work. Because there's going to be – whatever I say or do, there's going to be very, very intense scrutiny of any officer-involved shooting death in this province, I think.

If you have anything further I'll let you comment on that (inaudible).

CST. SULLIVAN: Well, Sir, I am not going to argue with you on – with that, that's for sure, but I will say that in my time as an association representative, albeit of a, you know, a second vice, first vice-president and president, the matter of police investigating police – but I know like internally at the RNC there's definitely, you know, a perception by our members – is that it's all they see is discipline and that there's, you know, there's always somebody overlooking what they're doing and someone out to get them and so on.

Like, the feel of the thin blue line, when it comes to that type of thing, is not really there. And I'm certainly not diminishing anything that you say, I can't argue with that. And I'm a firm believer of transparency. And I think that there are a lot of ways where our agency can be a lot – you know, certainly more transparent to educate the public in what we do and how we do the work we do.

And I'll just make one quick specific references: Like, for instance if we upgrade to a more powerful weapon, for instance, I don't see why not we cannot bring the media in to show them that this is a new piece of equipment that we use, this is why we're using it and this is how we're training to use it and the training components that go with that.

I see absolutely nothing wrong with informing the public that's what we do so that when someone looks out their window in a beautiful neighbourhood in the City of St. John's, and all of a sudden they see an officer walking up the street with an assault rifle on their hip. And, you

know, all of a sudden they're fearful and, you know, what in the name of God are police officers doing with assault rifles? They have – have no knowledge that we have 'em.

Like, it's just little things like that, I think, that we can help the community understand a little about what we do. And I think that we need to really work in that area.

THE COMMISSIONER: Uh-huh.

Okay, thank you.

Sorry, Mr. Drover.

MR. DROVER: Absolutely no problem, Mr. Commissioner.

Constable Sullivan, yesterday you gave some testimony about your contact over the years with the RCMP surveillance, for instance, with Operation Razorback, having done some training with them and working with them on property issues related to the joint drug task force.

My question is: Did you know any of the RCMP officers who you met on April 5 or through this investigation?

CST. SULLIVAN: No.

MR. DROVER: On April 5 you found out about the incident in Mitchells Brook from the chief of police.

CST. SULLIVAN: That's correct.

MR. DROVER: And he had phoned you.

CST. SULLIVAN: Correct.

MR. DROVER: And you say that was normal practice for the chief to contact you in incidents like this?

CST. SULLIVAN: He has given – yes, that's correct.

MR. DROVER: And I guess why would it be a normal practice or is it a useful practice for the chief to keep you or the RNCA president, whoever it is now, informed about what's happening with the membership?

CST. SULLIVAN: It has to do with – for the most part, it has to do with the well-being of the member. And I know that, you know, I can't put words in the chief's mouth but I know that the chief's concern as well is the well-being of our officers. But he knows that we will advocate – we will advocate on behalf of all of our members when it comes to their mental health and well-being.

MR. DROVER: Because police officers have a tough job.

CST. SULLIVAN: Indeed.

MR. DROVER: And you sometimes are called into very stressful situations where your life could be in danger or some member of the public's life.

CST. SULLIVAN: Yes, absolutely.

MR. DROVER: Gruesome crime scenes, suicides.

CST. SULLIVAN: Not only, you know – and not only just anything like particular to do with a police call, but also I've received a call, you know, from the chief regarding a personal matter, you know; an individual having a personal issue and bringing that to my attention. And the reason for that, obviously, would be we would – the police association utilizes and provides a little, you know – provides resources for our members. And we'll do whatever we can to see and ensure that their health and well-being is looked after and we'll provide them with whatever resources we can.

MR. DROVER: And what – I mean I know you've done a lot of seminars and conferences and whatnot through your time as president and talking about probably mental and emotional well-being of officers. What would be the long-term effect on an officer for not having any support for their mental health?

CST. SULLIVAN: Well, Sir, I can say that the conversation over the years and more recently – I mean if you check the statistics, I won't quote any here, but I know just in the past five years the suicide rate amongst first responders – not just police officers but first responders, that includes police officers – has drastically gone up. And a lot of that's attributed to PTSD, and PTSD is a very big concern, along with operational stress injury, Mr. Commissioner.

And it has become the forefront and one of the main or number one – or one of the main priorities for the police association over the last number of years is to, you know, have an awareness and education on the fact that this is what happens to individuals, this is what can happen and the fact they need intervention and they need support to prevent any long-term trauma, any type of mental illness as a result of the critical incident.

MR. DROVER: And I guess was that part of your reasoning for going and seeing Joe Smyth that day?

CST. SULLIVAN: That was the only, only – that was the number one priority.

MR. DROVER: Okay.

And we have had some discussion certainly since your testimony and throughout this hearing about how a police-officer-involved shooting ought to be treated really in the same way as any other member of the public being involved in this sort of incident.

Police officers are trained in the use hand guns – correct?

CST. SULLIVAN: That's correct.

MR. DROVER: And front-line police officers, patrol, PSU, they have to carry weapon too –

CST. SULLIVAN: Yes, they do.

MR. DROVER: Too – well, with them at all times?

CST. SULLIVAN: Yes.

MR. DROVER: And so a real daily risk for police officers is that they are going to have to draw and use that weapon.

CST. SULLIVAN: Indeed, it is.

MR. DROVER: And that contrasts with a member of the public who does not carry a weapon everywhere they go?

CST. SULLIVAN: That's correct.

MR. DROVER: I am just going to make a quick reference to section 25 of the *Criminal Code* and only to the principle, we don't need it as an exhibit, but I will read it for the record. The principle behind section 25 is: It is in the public interest to ensure that public officers may effectively carry out their law enforcement duties in accordance with the rule of law and, to that end, to expressly recognize in law a justification for public officers and other persons acting at their direction to commit acts or omissions that will otherwise constitute an offence.

So keeping in mind the principle behind section 25 of the *Criminal Code*, does that change your interpretation of the RNC policy and procedure which states that you have to treat every reportable death as a criminal investigation?

CST. SULLIVAN: No.

MR. DROVER: No? If you had gone out to RCMP detachment in Holyrood on April 5, and you were told by the RCMP that you couldn't see Constable Smyth – you'd already said that, you know, that would have been fine; you were half expecting that anyway. But you're told that you can't see him and, in fact, now he is a suspect in a homicide investigation. What action would you have taken?

CST. SULLIVAN: I would have called RNC Association counsel and advised them of what was taking place.

MR. DROVER: And would you have requested that counsel then to come out?

CST. SULLIVAN: Yes, I would.

MR. DROVER: And would it then have been your intent to get Mr. Smyth or Constable Smyth out of custody?

CST. SULLIVAN: Yes. I'm assuming that our counsel would do that.

MR. DROVER: Just going through my notes, Commissioner, bear with me; a lot of these questions have been answered and I don't want to re-ask them.

So there was some discussion around I guess two aspects of giving a statement. One is that a police officer has the same constitutional right to silence as any individual in a criminal investigation – correct?

CST. SULLIVAN: That's correct.

MR. DROVER: But then according to your policy, you have to file a report sort of as soon as practicable –

CST. SULLIVAN: Yes.

MR. DROVER: – outlining the facts.

CST. SULLIVAN: Correct.

MR. DROVER: And I believe, I don't have the case name, but there is Supreme Court of Canada decision that says then that report can be used in a trial against the officer. Are you familiar with that case law?

CST. SULLIVAN: Yes.

MR. DROVER: Are you also aware that section 25.2 of the *Criminal Code* actually codifies that requirement to file a report?

CST. SULLIVAN: I'm not aware of the specific section but –

THE COMMISSIONER: What section is that?

MR. DROVER: 25.2, "Every public officer who commits an act or omission – or directs the commission by another person of an act or omission – ... shall, as soon as is feasible after the commission of the act or omission, file a written report with the appropriate senior official describing the act or omission."

So in fact, your policy, your RNC policy is actually codified.

CST. SULLIVAN: Correct.

MR. DROVER: There was some question about Mr. Smyth, or Constable Smyth – I'm sorry for continuing to call him mister. About Constable Smyth saying that he was getting no public support from the RNCA. Are you aware of, of when that might have happened?

CST. SULLIVAN: No. I've never been given an indication that –

MR. DROVER: It was not while you were president.

CST. SULLIVAN: No.

MR. DROVER: Is it possible that it related in fact to the time that Justice Riche had been in the media making certain comments about the investigation?

CST. SULLIVAN: Yes, that's quite possible.

MR. DROVER: But you're not aware.

CST. SULLIVAN: I wasn't in that role at the time, as president.

MR. DROVER: About your – some questions about your cellphone bill this morning from Ms. Breen. About your incoming calls showing up as your phone number. You obviously have no knowledge of that; is that correct?

CST. SULLIVAN: No.

MR. DROVER: That was your testimony this morning.

CST. SULLIVAN: Yes.

MR. DROVER: It was not your practice then to review your phone bills every month when they came in?

CST. SULLIVAN: I never seen one.

MR. DROVER: So here at the inquiry was the first time you'd ever seen –

CST. SULLIVAN: That's correct.

MR. DROVER: – your phone bill.

Those are all the questions I have.

THE COMMISSIONER: Anything arising, counsel?

MS. CHAYTOR: No, nothing arising.

THE COMMISSIONER: Any other counsel, nothing, okay.

Thank you, Constable Sullivan. I guess we'll be communicating with other officers on some of these points but your comments are duly noted.

CST. SULLIVAN: Thank you, Sir.

MS. CHAYTOR: Commissioner, the next witness is Scott Harris.

THE COMMISSIONER: Sorry?

MS. CHAYTOR: Scott Harris?

MR. DROVER: I'll go get Mr. Harris; he's down in the counsel room.

MS. SHEEHAN: Thank you.

You may be seated, Mr. Harris.

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

CST. HARRIS: I do, Mr. Commissioner.

MS. SHEEHAN: Please state your full name.

CST. HARRIS: Constable Scott William Harris.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Good afternoon, Constable Harris.

Before I get started with your line of questioning, there are a couple of exhibits, Commissioner, that I would ask to have put into evidence. We have P-0272, P-0273, P-0274, P-0430 and P-0431.

THE COMMISSIONER: So ordered.

MS. CHAYTOR: Thank you.

Constable Harris, I understand that you've been a member of the Royal Newfoundland Constabulary since 2007.

CST. HARRIS: Yes, Mr. Commissioner.

MS. CHAYTOR: And that you're currently an investigator in the general investigative unit in the Criminal Investigation Division in break and entry. Is that correct?

CST. HARRIS: That is correct.

MS. CHAYTOR: Okay. And at the time, however, of this incident, you were an officer with the street patrol.

CST. HARRIS: That's correct.

MS. CHAYTOR: Okay. And I understand that on April 5, 2015, you also held an executive position with the RNCA.

CST. HARRIS: That is correct. I was the treasurer at that time.

MS. CHAYTOR: Treasurer. And how long had you been involved at that point in time with the executive of the RNCA?

CST. HARRIS: I would estimate about two to three years.

MS. CHAYTOR: Okay. And other than what every officer receives in terms of use-of-force training, have you received additional training and education in the use of force?

CST. HARRIS: I have.

MS. CHAYTOR: Okay. And perhaps you could then tell us what that training is?

CST. HARRIS: I had completed the use of force instructor's course, as well as the conducted energy weapons instructor's course and less lethal operator's course.

MS. CHAYTOR: And does that mean that you're currently a use-of-force instructor?

CST. HARRIS: I am, yes.

MS. CHAYTOR: And when did you complete that training?

CST. HARRIS: I believe that was January, 2015.

MS. CHAYTOR: And what training did you receive to be able to become a use-of-force instructor for the RNC?

CST. HARRIS: It's a two-week course; we would complete all modules in the use-of-force manual. We would also have to complete lectures, practical lectures to recruits, as well as each other throughout the course.

MS. CHAYTOR: And was that training done internally in the RNC or was there external people who came in to train you?

CST. HARRIS: No, it was done internally.

MS. CHAYTOR: Okay. Does that put you at the level or what – are there different levels? Like, are you at the level where you can train the trainer?

CST. HARRIS: No, I cannot train the trainer. I'm simply an instructor. I would be able to teach other members of the force with regards to use of force. That being said, at my level of knowledge I would not be given independent control of a classroom to teach. I would be teaching under a more senior instructor and providing assistance in the classroom.

MS. CHAYTOR: Okay. And you do teach, though, all modules of the use of force?

CST. HARRIS: I am qualified to teach all modules, yes.

MS. CHAYTOR: Okay. And I understand that module one is the firearms recertification module. Is that right?

CST. HARRIS: Off the top of my head – again, it's been two years since I've done the course and I have not done a whole lot of instruction in the use-of-force instruction. I have only two or three times, Mr. Commissioner, been provided the opportunity to teach. I'm at a point now where I would have to review the manual prior to teaching. So in order to speak to specific sections and where they're located within the modules, I would not be able to, Mr. Commissioner.

MS. CHAYTOR: Okay, fair enough.

Has the use-of-force training course changed since you've become an officer in 2007?

CST. HARRIS: The actual entirety of the use-of-force training, some specific aspects have changed. I know that our use of force, our firearms re-cert has changed. Other aspects, I'm not sure exactly what would have changed. Again, I'm –

MS. CHAYTOR: Okay.

CST. HARRIS: Without having a manual here in front of me, Mr. Commissioner, I wouldn't be able to speak to it.

MS. CHAYTOR: Are you able to speak to what aspect of the firearms recertification changed?

CST. HARRIS: Not in great detail, no. I know we were initially scored. When I trained in as a recruit, Mr. Commissioner, I believe we were scored out of 300. I think we're scored out of 240 now. And certain aspects have changed. Again, in great detail, I wouldn't be able to.

MS. CHAYTOR: Okay. We have Sergeant Bill Janes coming later and perhaps he'll be able to answer those questions for us.

What about since the incident involving Mr. Dunphy in April 2015, are you aware whether or not any aspect of the use-of-force training has changed or is under review?

CST. HARRIS: None that I'm aware of.

MS. CHAYTOR: Okay. And you are familiar of course, though, with the use-of-force model or continuum that is in place?

CST. HARRIS: Yes, Mr. Commissioner, I am.

MS. CHAYTOR: Perhaps we could just bring up, please, P-4321.

Commissioner, you will be getting more detailed evidence on this but I thought it might be helpful for Constable Harris to just speak briefly to this. This is the use-of-force continuum that's contained in the manual, the RNC manual, use-of-force manual.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: It should be P-0431.

UNIDENTIFIED FEMALE SPEAKER: 431?

MS. CHAYTOR: Yes.

Okay. And this is, and maybe a little bit bigger so they all – a little bit smaller so – I know I usually say bigger but it's – there we go. Thank you.

So this is the continuum we understand. Is that right, Constable Harris –

CST. HARRIS: Yes, Mr. Commissioner.

MS. CHAYTOR: – that the RNC use?

CST. HARRIS: Yes, that is correct.

MS. CHAYTOR: Okay. Does any component of the program deal with de-escalating a situation to avoid the use of force?

CST. HARRIS: In the center where you can see, it indicates Assess, Plan, Act with regards to the situation, that's an ongoing – I guess when it comes to de-escalation it's an ongoing principle with regards to use of force. There's nothing on the continuum that specifically states when de-escalation is required. It's simply a principle, an overarching principle that we were required to use the least amount of force appropriate and attempt to, throughout any use-of-force encounter, to de-escalate a situation.

MS. CHAYTOR: Okay. And are officers taught different de-escalation strategies? For example, are they put through various scenarios during their instruction and given options in terms of de-escalation strategies that they could use in those scenarios?

CST. HARRIS: We do scenario training, where we're provided a rough overview of an incident, and you would go in and deal with the incident, supervised by use-of-force instructors and then critiqued at the end of it, Mr. Commissioner. However, when it comes to specific techniques of de-escalation, aside from, you know, verbal de-escalation and practicing, and officer experience, there's no specific course or training that we receive with regards to de-escalation techniques.

MS. CHAYTOR: Okay. And on this part of the ring here where we see Perception and Tactical Consideration, perhaps you could explain what that means.

CST. HARRIS: I guess the best way to describe that would be kind of a filter. That's also tied in with the Officer Presence portion, as the exterior of our use-of-force continuum deals with levels of force used by an officer. Obviously, Officer Presence would continue throughout an incident.

It's also good to think of that as a, I guess kind of a filter where inside, in the interior circle we see the levels of resistance provided by a subject. However, in certain circumstances, those levels of resistance will line up with a specific use of force. So, for example, assaultive would line up with hard physical control and intermediate weapons on the left-hand side. However, if you consider certain types of tactical considerations or the things you would observe in a use-of-force encounter, such as number of officers, the environment you were in, size of the subject versus size of an officer those types of things, that would adjust your use of force accordingly. So that's where, I guess, when I say a filter, that's not the technical term we'd use, but it's the easiest way for me to describe it.

MS. CHAYTOR: Okay. And I take it part of the training is that when an officer is in a situation they're trained to continually reassess and to be scanning their environment. Is that correct?

CST. HARRIS: Yeah, absolutely.

And that's the inner circle where it says assess plan, act in a continual –

MS. CHAYTOR: Okay.

And what are some of the things that – and I understand you haven't had much opportunity to teach at this point, but what are some of the things that you are taught to teach and have been taught yourself in terms of looking for or in doing your reassessment of your situation?

CST. HARRIS: You know it's difficult to say. It depends on the situation. Of course in any use-of-force situation you're looking for, again, those types of issues; you know, demeanour of an individual; verbal cues whether – oftentimes you'll get a subject who may specifically tell you that they're going to become non-confrontational; other subjects, possible subjects in an encounter; the availability of officers; how close your back-up is; whether they're an hour away or whether they're two minutes away.

There are numerous different things that you consider; environmental factors: whether you're outside secluded, whether there is witnesses, whether there's possible civilians who could come to your aid. There's numerous different things that you could look at that would be continuously reassessed in the beginning, whether or not you're going to use force and then, once you're using force, you know, levels of compliance as well from the subject.

MS. CHAYTOR: Okay.

And so you mentioned verbal clues. What about visual clues?

CST. HARRIS: Absolutely. Again, you know physical demeanour, someone with clenched fists; their stance, whether someone adopts a bladed stance, a fighting stance: those types of things would all come into the play in how you would reassess a situation.

MS. CHAYTOR: Okay. And body language of the subject as well?

CST. HARRIS: Yes, absolutely.

MS. CHAYTOR: Okay. And if the person that you're engaged with has a – you mentioned demeanour. So if they have a change in their demeanour and becoming hostile or agitated towards you, the person starts to curse at you, indication of foaming at the mouth, are these the types of cues that would put you on a higher alert?

CST. HARRIS: Yes, Mr. Commissioner.

MS. CHAYTOR: Okay.

Did you hear of Donald Dunphy prior to April 5, 2015?

CST. HARRIS: No, Mr. Commissioner. I did not.

MS. CHAYTOR: And I take it you've had, you have no connection to the Dunphy family?

CST. HARRIS: No, Mr. Commissioner, I do not.

MS. CHAYTOR: And how well did you know Constable Joe Smyth prior to this incident?

CST. HARRIS: I don't know Constable Smyth well, Mr. Commissioner. I've had some involvement with him with regards to our work with the Royal Newfoundland Constabulary Association. I don't know him well personally and I've never worked with him, Mr. Commissioner.

MS. CHAYTOR: Okay, so you've never policed with him?

CST. HARRIS: No.

MS. CHAYTOR: And what about in your interactions with the RNCA? How long would you have worked together in that capacity?

CST. HARRIS: I started as a director on a shift, Mr. Commissioner, and at that time I was on for approximately a year. Constable Smyth was a, was in the treasurer's position at that point until he stepped down. And I ended up taking his position on the executive of the RNCA at that point. We've also done some work together with regards to our finance committee.

MS. CHAYTOR: Okay.

And what's your knowledge of Constable Smyth in terms of his demeanour in the interactions that you have had with him?

CST. HARRIS: Constable Smyth is an intelligent, articulate, level-headed individual. He has a good reputation around our force. I have nothing, nothing negative to say about him.

MS. CHAYTOR: Okay.

And have you had an occasion to witness him in a difficult situation and how he responded in that situation?

CST. HARRIS: No, Mr. Commissioner, I have not.

MS. CHAYTOR: Okay.

Have you ever seen him lose his temper?

CST. HARRIS: No, Mr. Commissioner, I have not.

MS. CHAYTOR: Okay.

When did you learn about Mr. Dunphy's shooting?

CST. HARRIS: I would have learned about that, it was April 5. I believe it was around 2 p.m. in the afternoon. I'm unsure, I believe it was a text message I would have received first. Members of our executive on the RNCA, Mr. Commissioner, we have a, we keep a text message just to keep each other in the loop on things that are happening.

I believe I received a text message first and that would have been shortly after lunch, I'm estimating around 2 p.m. At that point then, shortly after that would have spoken to Constable Warren Sullivan via phone and received some further details.

MS. CHAYTOR: Okay. I'm just going to ask you about your time there. You say 2 p.m. Constable Harris, is it possible that it was later than 2 p.m.?

CST. HARRIS: Absolutely, it's an estimate. I was at a family function and we were having dinner. I remember that it was early to mid-afternoon. I don't recall the exact time.

MS. CHAYTOR: Okay.

And I believe in your RCMP statement which you would have given on April 10, so five days later – I believe in that statement you mentioned 4:30 p.m. Does that seem more accurate?

CST. HARRIS: When I initially heard? I believe around 4:30 is when we began to head out to the Holyrood detachment. I believe my initial contact would have been earlier in the afternoon, if I recall correctly.

MS. CHAYTOR: Okay.

All right, so if that's the time you started to head out, would it seem right to you that it was 2½ hours earlier that you received the call or did you head out pretty quickly after you received the call?

CST. HARRIS: To the best of my recollection I was actually at a family function, I had to go home to get my other vehicle first. So, no, the fact that it might have taken an hour, hour and half to two hours to meet up would not have been surprising.

MS. CHAYTOR: Okay. All right.

And what was your intention in going to meet with Constable Smyth that day? Why are you headed out there?

CST. HARRIS: Again, as a member of the Royal Newfoundland Constabulary Association executive, our role is to provide support and representation to our members. At that point one of our members had been involved in a traumatic incident and we wanted to go out and provide support to him.

MS. CHAYTOR: Okay.

And perhaps, then, you can tell the Commissioner what happened then when you arrived at the RCMP detachment. For example, did you, were you met by any members of the RCMP, and did you know any of those members and what discussion did you have with them?

CST. HARRIS: Initially when we arrived, Mr. Commissioner, we were let in; I believe it was through a back door. That was a member of the RCMP, we never got their name. We were led up to, to the boardroom office where there were multiple members of – again, I do not recall who they were. I'm assuming they were members of the Major Crime Unit from the RCMP.

We were introduced to them but at this point, as I was in my role as an RNCA representative, I was not there as an investigator. I did not make any, any notations, so I don't have any notes to refer to and I do not recall the individuals that we were introduced to, Mr. Commissioner.

MS. CHAYTOR: Okay.

Did any member of the RCMP provide you with any information regarding the incident while you were there that day?

CST. HARRIS: No, not that I recall, Mr. Commissioner. Constable Warren Sullivan was our president at that time. And he was the one who mostly did the communication with the members of the Royal Newfoundland – or the Royal Canadian Mounted Police.

MS. CHAYTOR: Did any member of the RCMP stay in the room with you when you were meeting with Constable Smyth?

CST. HARRIS: No, Mr. Commissioner, they did not.

MS. CHAYTOR: Did any member of the RCMP express any concern about your presence at the Holyrood detachment that day?

CST. HARRIS: Not that was passed on to me and not that I witnessed, Mr. Commissioner.

MS. CHAYTOR: Okay.

And when you arrived were there already other members of the RNC with Constable Smyth?

CST. HARRIS: There were two members; Staff Sergeant Mike Adams and Sergeant Reg Tilley, Mr. Commissioner.

MS. CHAYTOR: And how long did they stay after you and Constable Sullivan arrived?

CST. HARRIS: I believe it was, I would estimate around an hour. Again, I don't have a great detail of recollection with regards to that. You know, I don't have any notes. They did leave prior to us and we were there some time alone with Constable Smyth, but I don't recall the exact moment they left, Mr. Commissioner.

MS. CHAYTOR: Okay. But your recollection is that they stayed on for some time. And were they there most of the time that you were there?

CST. HARRIS: Again, it's hard for me to say whether they were there for half the time, most of the time. I do recall they were there for some time. They did not leave – it wasn't a situation where we arrived and they left immediately after.

MS. CHAYTOR: Okay. And how was Constable Smyth when you first saw him that day?

CST. HARRIS: I guess he – the best way to describe him would be, I guess, down. Constable Smyth is a very personable individual and he appeared somewhat shook up, and it was obvious from his demeanour that he had gone through something traumatic and it wasn't difficult to tell that he was upset by it.

MS. CHAYTOR: Okay. And do you recall then what was discussed with him? When you went into the room, what did you tell him your purpose was to be there and how did the conversation go from there?

CST. HARRIS: We did bring him out some food, Constable Sullivan. And I believe it was Tim Hortons we brought out to him. I don't recall that we announced our presence and the purpose of our visit. That would have been more so implied. A member of our – one of our members seen two – representation – two representatives from their association showing up.

We did have some conversation with him. He provided us a quick overview of what had happened, what he had gone through. Again, we were mainly there to support him. We didn't question him. We didn't get into a great deal of detail in the incident. We provided him some advice, and after that we took him home when we were completed, Mr. Commissioner.

MS. CHAYTOR: Okay. And I will ask you about the advice that you provided him in a little while. I just want to ask you a few specific questions about what he said to you.

And when Constable Smyth is speaking, did he seem coherent to you? Did he seem to be coherent and articulating himself well as to what happened?

CST. HARRIS: He did, Mr. Commissioner.

MS. CHAYTOR: Okay. And did he tell you why he had visited Mr. Dunphy that day?

CST. HARRIS: I believe it was some threatening remarks that had been posted on social media.

MS. CHAYTOR: Okay. And did you understand that he was checking on threatening remarks to the premier?

CST. HARRIS: That was my recollection when I provided my RCMP statement. Again, I would not be able to quote Constable Smyth at this point. I have a general recollection of the story that was told to me and that was my impression.

MS. CHAYTOR: And that was what you told the RCMP five days later.

CST. HARRIS: That's correct, Mr. Commissioner.

MS. CHAYTOR: And those were the words you used, checking on a threat to the premier.

CST. HARRIS: That's correct, Mr. Commissioner.

MS. CHAYTOR: Did Constable Smyth tell you his position and Mr. Dunphy's position during their discussion?

CST. HARRIS: No, Mr. Commissioner, he didn't – not that I recall anyways. He didn't specify where they were. He did indicate that Mr. Dunphy was seated. And I do not recall if he indicated whether or not he had sat down – Constable Smyth indicated whether or not he had sat down at any point or not, I don't recall.

MS. CHAYTOR: Okay. And did you understand him to say that Mr. Dunphy remained seated throughout their interaction?

CST. HARRIS: I do not recall whether or not he indicated if he stayed seated throughout the entire interaction.

MS. CHAYTOR: Okay.

I'm just going to bring up P-0272 and allow you an opportunity to tell me what you meant by a particular comment. This is your RCMP statement. And if we could look at page 4, please, of that statement.

This is where: he talked and he gave a quick overview. He said he was checking on a threat to the Premier, ah, or investigating some comments were made on social media. And he mentioned, I think it was next door, don't quote me on that. We don't take notes for stuff like that. It's his brother, either brother-in-law or brother of the individual involved next door. He spoke to him first. Went over and spoke with the individual involved, and at that point which all he told us was that he was in talking to him, the guy was up and down, all of sudden he was – he was making notes.

I'm just going to stop there for a moment Constable Harris. What did you mean by the reference the guy was up and down? Did you mean physically up and down?

CST. HARRIS: I remember that Constable Smyth had indicated that the individual had become agitated. With regards to my statement at this point, now I cannot recall whether he meant physically up and down or emotionally up and down.

MS. CHAYTOR: Okay. And what did Constable Smyth say that he was doing when he first noticed the rifle?

CST. HARRIS: It's my understanding that he was making some notes.

MS. CHAYTOR: Okay. And I believe you do continue on, you say that here: all of a sudden "he was making notes, saw a barrel come up and drew his firearm at that point, dropped his notebook and started moving towards the door."

Have you heard in your training in use of force and in your training to be able to teach use of force, have you heard of looking down and writing as being a strategy to de-escalate a situation?

CST. HARRIS: I have not heard that, Mr. Commissioner. That being said, officers do develop, I guess, nuances in their behaviour that help them, that they develop through years of experience. But I have never heard that specifically.

MS. CHAYTOR: And I take it it's not something you teach as a use-of-force instructor or have been taught yourself that that's a de-escalation strategy?

CST. HARRIS: No, I have never heard of that, Mr. Commissioner.

MS. CHAYTOR: In fact, Constable Harris, what are you taught and what do you teach in terms of keeping your eyes on a subject and, in particular, on the hands of a subject?

CST. HARRIS: We typically teach, Mr. Commissioner, that it's the hands that'll do harm; to watch the hands. And if a subject became agitated you'd become more focused in keeping an eye on the subject, Mr. Commissioner.

MS. CHAYTOR: So if a subject becomes more agitated you're even more vigilant in keeping an eye on the subject and on their hands.

CST. HARRIS: That is correct, Mr. Commissioner.

MS. CHAYTOR: Do you recall whether or not Constable Smyth mentioned if there were any other weapons in the room or objects that could be used as weapons?

CST. HARRIS: I believe he did indicate there was a bat in the room, Mr. Commissioner.

MS. CHAYTOR: And did he mention the location of the bat?

CST. HARRIS: Not that I recall, Mr. Commissioner.

MS. CHAYTOR: And what do you teach, and what have you been taught in terms of your training if you see one weapon?

CST. HARRIS: We teach as a principle, referred to as a one-plus-one rule, Mr. Commissioner. It would apply both to weapons and subjects. It's essentially an overarching principle that would teach members to become vigilant or remain vigilant. Don't assume that if you find one weapon, you found the only weapon and let your guard down. That's generally it.

MS. CHAYTOR: Okay. And you say that's the one-plus-one rule?

CST. HARRIS: That is correct, Mr. Commissioner.

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

CST. HARRIS: No, he did not, Mr. Commissioner.

MS. CHAYTOR: Okay. And you say here in your statement that we have, "he saw a barrel come" Did he express any doubt that what he saw was actually the barrel of a gun?

CST. HARRIS: None whatsoever, Mr. Commissioner.

MS. CHAYTOR: Okay.

So I'm going to turn now to the advice that you mentioned a little earlier that you provided to Constable Smyth. And perhaps you can tell the Commissioner, what advice did you give Constable Smyth, in consultation with others who were present that day?

CST. HARRIS: The advice that we provided was to wait 24 hours, to get a good night's sleep before providing his statement. The reason for that is in our use-of-force training there is a phenomenon referred to as critical stress amnesia, where a member going through a survival stress situation, essentially go through a sensory overload, and there is often a fixation on a particular object, for example, the barrel of a gun. In that, with regards to critical stress amnesia, under that there is a – some points in our manual that refer to the fact that some memory will be recalled the following day and that the most pure recall will be 24 to 48 hours after the incident.

MS. CHAYTOR: Okay. And I'm going to take you through that section of your manual in a moment, Constable Harris.

Right now, I'd like to just go back to your statement, and a couple of comments that you made. Page 3, I believe it is, in the exhibit. If we can just look at, I believe it's towards the bottom of that page. So you said here, you're speaking to, I believe it was – yes, Constable Nippard you gave your statement to. "You guys were great and realized the fact that, I mean you know, he ... it's not ideal for him to provide a statement at that time. So really we just sat with him while he was waiting ... with his clothing dropped off cause you guys wanted to seize his clothing. Ah, so we sat with him, chatted. I mean ... we didn't enquire as to what happened or anything like that. We didn't question him. We didn't want him talking. I mean, you know ... that's not in his best interest" – you go on to say – "Not in the best interest of the investigation for him to provide a statement at that time."

And, so I just want you to explain, why didn't you want him talking, and how it is that you think it wasn't in his best interest, nor in the best interest of the investigation for him to provide a statement at that time?

CST. HARRIS: And, again, when I refer to talking, I mean for him to provide a statement. That was my intention there.

MS. CHAYTOR: Okay, so you weren't concerned about him talking to you.

CST. HARRIS: No, absolutely not.

MS. CHAYTOR: Your concern was about him talking to the RCMP?

CST. HARRIS: Absolutely, it was the fact that – and, again, going back to the critical stress amnesia portion of our training, we simply, we wanted Constable Smyth to provide a full statement disclosing all details, but we wanted it to be at the point when he had his best recollection of events.

And, again, with regards to not in the best interests of the investigation, I can only imagine the scrutiny that would have – that would have been put on his statement if he had provided a statement at that time and then provide contradictory details that were caused simply by the stress that he had gone through, his inability to recall those, essentially providing two statements with two contradictory accounts. So we wanted him to provide simply one account and, again, that was based on the critical stress amnesia portion of our training and use of force.

MS. CHAYTOR: Okay.

And, Constable Harris, though, why wouldn't you then have concern with him speaking to you? You say you weren't concerned when you're saying we don't want him talking. You're referring to him talking to the RCMP and not to you and the other members of the RNC. But what was going to happen with any information that Constable Smyth said to you that day in that room?

CST. HARRIS: And, again, if he wanted to get something off his chest we weren't going to stop him but, again, we didn't inquire, we didn't question him, we didn't try to go into detail on it. Again, we wanted him to provide a full account of what happened. We just wanted him to do so when he provided – when he was able to do it with the best recall of the events that were available to him.

MS. CHAYTOR: Did you have any concern that anything that he would have told you that day – you are ultimately going to be giving a statement to the RCMP, as you indeed had to do here.

CST. HARRIS: And, again, I was not prepared at that point – again, when I speak to my recall of that conversation, I will freely admit that I've been on the RNCA executive now for five years and this is the first time I've had to recall details of a conversation I've had with a member.

Again, I've never, I haven't been a member for an inquiry before so I, it wasn't go through my mind that day that I would have to regurgitate the statements that were provided to me by Constable Smyth.

MS. CHAYTOR: Okay.

And you say it wouldn't be in the best interests of the investigation. And I understand what you're saying there is that because of the stress he was under, even though you thought he was coherent and he was articulate, and we've heard that he was certainly willing to speak –

CST. HARRIS: Yeah.

MS. CHAYTOR: – and give his statement at that time, isn't it the rule of thumb, though, that the best evidence you can get is the closest in time to the event?

CST. HARRIS: I can only speak to the fact that, you know, in our use-of-force training, again, we are provided the advice – or the information that a member's recall can be affected by a survival-stress scenario. And I believe Constable Smyth himself had indicated to us that he had been checked by paramedics and his blood pressure was up, up around 180 he had indicated, I believe.

So whether he was presenting in a coherent manner, he was definitely going through some physiological issues with regards to a survival-stress situation which any member would react the same way in a survival-stress situation. So it's, again, it's simply those aspects with regards to the critical stress amnesia that we were concerned about.

MS. CHAYTOR: Okay. And so he gave you enough detail that he even told you what his blood pressure was and you can recall that here today what his blood pressure was.

CST. HARRIS: I can, yeah.

MS. CHAYTOR: Okay. And do you recall whether or not he indicated to you he had a second blood pressure check before leaving the scene? And what –

CST. HARRIS: No, I don't recall.

MS. CHAYTOR: Okay. All right.

And in terms of the best evidence in getting your statement as close in time as possible, is that how police are trained to deal with subjects in homicide investigations who are not police officers, that you – if you have a subject who is there, Constable Harris, and willing to give you a statement immediately, what are you trained to do?

CST. HARRIS: It would depend on the situation. And, again, we typically would take a statement as quickly as possible. Again, there are numerous considerations, though, to consider when it comes to the timing of statements.

Often cases, when we're dealing with members of the public, a member's compliance and whether or not they're going to co-operate can change over time as well. That's obviously not an issue here. Constable Smyth was going to co-operate with the investigation and that was our advice, to co-operate with the investigation.

But, again, with regards to detailed statement taking and training, I haven't received any detailed – we do PEACE training, which is a formal way we take statements in the RNC. And I wouldn't be able to speak to that in detail because I haven't done any of those courses.

MS. CHAYTOR: Okay.

And, Constable Harris, do you recall what you told me when I asked you those questions on your interview on December 14, 2016?

CST. HARRIS: No, I do not.

MS. CHAYTOR: Okay. I'll refresh your memory and bring you to it. And we're at page 122, the bottom of 122 into 123.

And in terms of other subjects, you know – so if you have someone who's been involved in a critical, a stressful situation, you know, such as a shooting or any kind, I guess, violent occurrence, is it usual police practice to try and get the subject to speak to you as soon as possible?

Constable Harris answer: Yeah, it is. And it's kind of the irony of this training. And I mean we've actually discussed this on course and brought that exact topic up that, you know, here we are providing this recommendation, and not we as in the RNCA, but our members physically on course talking about that. And the irony of how we'll take someone who's gone through a critical incident as a police force and take a statement off them immediately whereas – and then we provide this training where it's, you know, the best recall is, you know, 24 to 48 hours and not immediately after the incident. So I guess as from the RNCA perspective, we can only provide the advice to our members; we can't control policy decisions from the RNC.

Question from myself: Yes, I understand. Okay. Yes, I understand but it is inconsistent with how you would treat any other subject. Constable Harris: Absolutely, I agree.

THE COMMISSIONER: Oh, sorry. That is where?

MS. CHAYTOR: That is pages 122 to 123 of the interview.

THE COMMISSIONER: Of the –

MS. CHAYTOR: Of Constable Harris on December 14, 2016.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Now, Constable Harris, do you agree with what you told me on December 14?

CST. HARRIS: I do, but I believe the question was different.

MS. CHAYTOR: Pardon me?

CST. HARRIS: I believe the question was somewhat different. You, just at that point you asked me whether or not it would be appropriate in a homicide investigation. Again, I haven't done any significant training with regards to a homicide investigation.

As a street patrol officer, I would 100 per cent agree that it is, it is different. We would typically take a statement immediately. Now there are circumstances, I'm sure, and from speaking to members in the Major Crime Unit and other interviewers that – where they could delay in taking a statement, depending on the circumstances. But absolutely, typically, we would take a statement as quickly as possible.

MS. CHAYTOR: Okay. And my question to you on that date was specific to a shooting or a violent occurrence.

CST. HARRIS: Okay.

MS. CHAYTOR: Constable Nippard, I just want to continue with your statement here. On page 3 of the statement – please, Madam Clerk, if we could go back. Okay.

You indicated – and I may have already actually taken you to this, but on page 3 you indicated a comment along the lines that the RCMP – you guys were great and I took that to mean – yes, here it is: You guys were great and realized the fact.

So I take that to mean that those were the officers in attendance that day you're referring to, the RCMP at Holyrood that day.

CST. HARRIS: That is correct, Mr. Commissioner.

MS. CHAYTOR: Was Constable Nippard one of those officers?

CST. HARRIS: I do not recall, Mr. Commissioner.

MS. CHAYTOR: Okay. So up to the point of giving Constable Nippard this statement, do you recall ever having met him?

CST. HARRIS: No, Mr. Commissioner, I do not.

MS. CHAYTOR: Okay. And he wasn't a friend of yours or anything like that?

CST. HARRIS: No, I did not know him prior.

MS. CHAYTOR: Okay. And I'm just asking because I noticed in his – in the statement he referred to you as buddy.

CST. HARRIS: Yeah.

MS. CHAYTOR: Okay, but you're not friends or any –

CST. HARRIS: I don't know him.

MS. CHAYTOR: Okay.

CST. HARRIS: I'm not friends with him. I don't know him personally at all.

MS. CHAYTOR: Okay.

And I'm going to take you, then, to the critical stress amnesia portion of your training that you've rec – that you've referred to. And I believe that to be P-0430, please, Madam Clerk.

Okay. And I think – this is the section here I take it, is it Constable Harris, Critical Stress Amnesia? Does this look like the –

CST. HARRIS: That is correct.

MS. CHAYTOR: – part of the manual you're referring to? Okay.

And I would ask you if whether or not during your interactions with Constable Smyth that day, did you see him – other than you mentioned he had told you earlier he had high blood pressure. Did you see him display any physiological signs of stress, or did you see him display anything that could be seen to be critical stress amnesia?

CST. HARRIS: No, Mr. Commissioner, I did not.

MS. CHAYTOR: So he wasn't presenting in – the way he presented wasn't causing you the concern for his ability to give a statement?

CST. HARRIS: No, this would be standard. I would have provided this piece of advice regardless of the member. Again, it would simply be a best practice. This isn't a phenomenon that is talked to us in our use-of-force training. So that is the advice I would provide to a member.

MS. CHAYTOR: Okay. And as you said, and in the account he gave you: he was coherent, he was articulate, he's able to give you details such as his blood pressure being 180 and so – and you didn't hear him say anything inconsistent or contradictory in relaying what he was saying? He didn't seem like he was contradicting himself at any point in time?

CST. HARRIS: Nope.

MS. CHAYTOR: Okay.

CST. HARRIS: That's correct, Mr. Commissioner.

MS. CHAYTOR: Okay. So just let me take you through this then. And, "Critical Stress Amnesia can be defined as the physiological basis and the implications of memory loss during extreme survival stress situations. Officers who encounter an extremely stressful situation will consistently exhibit difficulty in transferring information into long term memory. Particular memory related phenomenon in traumatic situations include: During the actual incident there is usually a 'sensory overload' combined with a 'fixation' on some particular aspect of the incident, often to the exclusion of all else."

Did Constable Smyth seem to be doing that? Was he fixating on any particular aspect in his account to you?

CST. HARRIS: I believe that's referring to the actual incident itself and –

MS. CHAYTOR: Oh, when they're actually in the incident, during that. You're right. Okay, sorry.

"Immediately after the incident, 'post-incident amnesia' will often result in a failure to remember the majority of the information observed" And then, "After a healthy night's sleep there is usually a 'memory recovery' which will result in the remembering the majority of what occurred, and this memory is probably" – it says – "the most 'pure.'"

Okay. And then in number 4 it says, "Within 72 hours the final and most complete form of memory will occur, but it will be at least partially 'reconstructed' (and therefore somewhat 'contaminated') after the inevitable process of integrating available information from all other sources."

I guess then my question to you on that, in providing advice to Constable Smyth that day, did you also provide him advice as to take efforts to preserve his memory so that it will be most pure and to not engage in conversations or discussions or obtain information from other individuals?

CST. HARRIS: I do not recall.

MS. CHAYTOR: You don't recall giving him that advice?

CST. HARRIS: I don't recall doing so.

MS. CHAYTOR: So I take what this is saying, that it would be best practice that if you're going to wait to give your statement, best practice would be that you not speak to other individuals or take other measures in the interim that could possibly contaminate your memory. Is that a fair interpretation?

CST. HARRIS: That would be correct, Mr. Commissioner.

MS. CHAYTOR: Constable Harris, if a person is being asked to provide a statement that's not under caution, what do you interpret that to mean?

CST. HARRIS: That is there no suspicion of criminal wrongdoing.

MS. CHAYTOR: Before you left Holyrood detachment that day, did any member of the RCMP speak to you and ask what, if anything, Constable Smyth had relayed to you in the room?

CST. HARRIS: I do not recall them doing so.

MS. CHAYTOR: Constable Harris, we see that you gave a statement five days later on April 10. In the interim, did you have any involvement in this matter?

CST. HARRIS: We did. Our RNCA executive had a meeting, I believe it was on April 7, Tuesday, and that was simply to provide an update to our membership. And there's a few notes in our minutes of our meeting.

MS. CHAYTOR: Okay, and that's April 7. Did you attend the meeting that evening as well?

CST. HARRIS: I did not, Mr. Commissioner.

MS. CHAYTOR: You did not. Do you know if other members of the executive did?

CST. HARRIS: I believe they did.

MS. CHAYTOR: Okay. And other than attend the meeting then, two days later with the RNCA, did you have any subsequent involvement?

CST. HARRIS: No, aside from providing my RCMP statement and there was some communication back and forth with a member of the RCMP, simply trying to arrange a time for a statement; but, beyond that, Mr. Commissioner, nothing.

MS. CHAYTOR: And I take it that's why it took five days. It's not like they didn't contact you till five days later. You were trying to set up a convenient time.

CST. HARRIS: That is correct, Mr. Commissioner.

MS. CHAYTOR: Okay.

And we heard evidence about an email that Constable Smyth sent out to all members on April 10, 2015. Did you receive that email?

CST. HARRIS: I believe it was sent to all members, Mr. Commissioner, so I assume I would have received it.

MS. CHAYTOR: Okay. And were you surprised by, that he had sent that email?

CST. HARRIS: I was, yes.

MS. CHAYTOR: Okay. And why is that?

CST. HARRIS: It was just a large audience and there were concerns with regard to, you know, where that might end up. And in the end it did end up in the media.

MS. CHAYTOR: Okay. So given the large audience that it was sent to, you would have expected it to end up exactly where it ended up.

CST. HARRIS: I don't know if I'd expect it but I would be concerned that it could.

MS. CHAYTOR: Okay. And Constable Harris, you're still on the executive are you, with the RNCA?

CST. HARRIS: Yes, I am.

MS. CHAYTOR: And what's your position? Are you still treasurer?

CST. HARRIS: I'm still the treasurer.

MS. CHAYTOR: Okay. And has any – were any concerns brought to the attention of the RNCA by Constable Smyth in terms of the RNCA's public communications, or lack of public communications regarding this matter?

CST. HARRIS: I never dealt with Constable Smyth regarding this incident. There was some information related to me with regard to our current president, Sergeant Mike Summers. He did bring some issues forward with regard to; I believe it was Justice Riche's comments and concern that Constable Smyth would like to have the report released as soon as possible. And I believe the RNCA, we released a, some information to the media in regard to this, supporting the same.

MS. CHAYTOR: Okay. And so the RNCA did respond to the concern. And what did the RNCA do?

CST. HARRIS: We released a letter to the media, I believe, supporting the release of the report.

MS. CHAYTOR: Okay. Meaning the – do you mean the RCMP report?

CST. HARRIS: Correct.

MS. CHAYTOR: Okay. All right.

And so the RNC responded when it knew of that concern by encouraging the release of the RCMP's investigative report.

CST. HARRIS: That is correct, Mr. Commissioner.

MS. CHAYTOR: Okay.

Constable Harris, have I covered the extent of your knowledge in any matters related to the Commission's mandate?

CST. HARRIS: Yes, Mr. Commissioner.

MS. CHAYTOR: Okay. Those are all my questions.

Thank you very much.

Some of the other lawyers, no doubt, will have questions and the Commissioner may have some more.

Thank you.

THE COMMISSIONER: Any questions?

Oh, Ms. Breen.

MS. BREEN: Constable Harris, good afternoon; Erin Breen for Meghan Dunphy.

Constable Harris, what I'm taking from your testimony, number one, is that – is it fair to say that Constable Sullivan was a more experienced member of the union at this time than you were?

CST. HARRIS: That is correct, Mr. Commissioner.

MS. BREEN: Okay. And in terms of the novelty of the scenario you were facing on April 5, were you relying on Constable Sullivan in terms of what the practice or the expectations upon you were in going out to see Constable Smyth?

CST. HARRIS: That would be correct, Mr. Commissioner.

MS. BREEN: Okay. So the decision not to take notes, we understand it was a conscious decision, but that was one that you had understood at the time to be the practice of the RNCA; is that right?

CST. HARRIS: I don't recall it ever being a discussion or a conscious decision. Again yes, absolutely, it would be practice – we have never taken notes with regards to speaking with members.

MS. BREEN: Okay.

Now, in your statement – and, Constable, did you get a chance to review your police statement before you came here today?

CST. HARRIS: Before I came here today, yes.

MS. BREEN: Okay.

And there's just one portion of your statement that I want to ask you a few questions about. It's Exhibit P-0272, page 4 of the exhibit. Now, before I take you to the portion, I understand what you've said is that when you arrived at the detachment Staff Sergeant Adams and Sergeant Tilley were already there with Constable Smyth. Is that correct?

CST. HARRIS: That was correct.

MS. BREEN: And that when you and Constable Sullivan entered into the room they stayed on with you for approximately an hour.

CST. HARRIS: I'm estimating. Again, I don't know the exact point they left.

MS. BREEN: Okay.

And so this would have been the first time that you saw Constable Smyth.

CST. HARRIS: Correct.

MS. BREEN: And I understand that he was wanting to speak about the incident; is that right?

CST. HARRIS: He had made some comments and again I can't quote him, but they were along the lines of I should just provide a statement and get it over with.

MS. BREEN: And that when you saw him he had recounted, I think you said, in a couple of different ways, basically what had happened earlier in the day.

CST. HARRIS: Yes, a general overview.

MS. BREEN: And I assume that would have happened very soon after your arrival.

CST. HARRIS: I would assume so, yes.

MS. BREEN: That he would be talking about what he did on April 5, in terms of what happened before he got to Mr. Dunphy's house as well as once he got to Mr. Dunphy's house.

CST. HARRIS: That would be correct.

MS. BREEN: Okay.

And is it fair to assume that Staff Sergeant Adams and Sergeant Tilley were still there at that time; I assume this would have taken place while they were there.

CST. HARRIS: Yes.

MS. BREEN: Okay, and you recall that, do you?

CST. HARRIS: I'm estimating – again, you're making statements like with regards to it would be safe to assume. Yes, it would be safe to assume, but I mean I cannot say with any degree of certainty.

MS. BREEN: Okay.

But you have said that you recall that Constable Smyth was telling you what happened – he didn't wait an hour –

CST. HARRIS: No, I agree.

MS. BREEN: He was saying this to you and –

CST. HARRIS: It was fairly quickly, it would have been.

MS. BREEN: Okay.

And if we go to page 4 and we go to lines 8 through 11 of your statement there, you talk about the fact that he had told you, even though you weren't taking notes, you say: And he mentioned that, and you say, I think it was next door; don't quote me on that again. We don't take notes for

stuff like that. Ah, it's his brother, either brother-in-law or brother of the individual involved, next door. He spoke to, with him first. Went over and spoke with the individual involved.

So at that time Constable Smyth had told you that he had actually interviewed someone before going to Mr. Dunphy's house. Do you recall that?

CST. HARRIS: Whether he conducted an interview or not I believe he was over at the next door neighbour's and like I said I believe it's his brother or brother-in-law of Mr. Dunphy.

MS. BREEN: Okay. So you were certainly aware when you gave your statement that there was a witness who was involved here other than Constable Smyth.

CST. HARRIS: Uh-huh.

MS. BREEN: Okay.

Sir, I don't see it in your statement but do you remember at that point whether Staff Sergeant Adams had indicated that he actually knew that person?

CST. HARRIS: No. I do not recall him saying that.

MS. BREEN: You don't remember that?

CST. HARRIS: No, I do not, Mr. Commissioner.

MS. BREEN: Okay.

Now, you have reviewed your statement, I assume, several times before coming in. Does it surprise you, Constable Harris, that your statement with Constable Nippard was less than eight minutes, your interview was less than eight minutes long?

CST. HARRIS: No, it does not surprise me, Mr. Commissioner.

MS. BREEN: Okay.

In terms of the information that you provided to Constable Nippard, do you see anywhere in that statement where he goes back to ask you a follow-up question, or asks you to explain or add further detail to any part of the statement that you've given?

CST. HARRIS: I did not notice, no.

MS. BREEN: No. And basically he says tell me what happened; you go on for a period of time, and the interview ends. If I was to say to you, Constable Harris, that in your training as an RNC officer for interview taking, you receive a different kind of training, don't you, on interview taking from Dr. Snook at Memorial University that is the interviewing techniques that the Royal Newfoundland Constabulary officers receive?

CST. HARRIS: That would be the peace training I referred to earlier.

MS. BREEN: Right. And the goal of that kind of interview technique is to maximize the amount of information that you're getting from the subject; is that correct?

CST. HARRIS: That would be correct.

MS. BREEN: Okay. And that, certainly, technique does not appear to have been utilized with you on April 5; do you agree?

CST. HARRIS: I would agree.

MS. BREEN: Mr. Commissioner, I understand that there is going to be an expert witness called later in the proceedings on use of force. That is correct, right?

THE COMMISSIONER: An expert witness on ...?

MS. BREEN: Use of force?

THE COMMISSIONER: We have at least one, maybe two, is it?

MS. CHAYTOR: Yes. Yes, that would be Michael Massine from the BC institute of justice.

THE COMMISSIONER: Okay.

MS. BREEN: Okay. Thank you. Well, those will be all my questions. Thank you very much.

THE COMMISSIONER: Okay.

Any questions Mr. Kennedy?

MR. KENNEDY: I just have a few questions, Mr. Commissioner.

Constable Harris, do you remember during your interview with Commission counsel being asked if you've ever drawn your weapon as a police officer?

CST. HARRIS: I do recall that, yes.

MR. KENNEDY: And you had been on street patrol how long, Sir?

CST. HARRIS: I had been on street patrol for approximately nine years before going on to the Criminal Investigation Division.

MR. KENNEDY: And you're in break and entries now, are you?

CST. HARRIS: That is correct.

MR. KENNEDY: Now, do you remember telling Commission counsel how often you had drawn your weapon as a street patrol officer?

CST. HARRIS: I did, and that's a complete estimate.

MR. KENNEDY: What did you estimate?

CST. HARRIS: I estimated I think it was a dozen times.

MR. KENNEDY: And then do you remember her going on and asking you whether or not you'd ever pointed your weapon?

CST. HARRIS: I do.

MR. KENNEDY: And do you remember what the answer was there?

CST. HARRIS: Again a half dozen.

MR. KENNEDY: Yeah.

CST. HARRIS: An estimate.

MR. KENNEDY: So there would be a difference – and I don't know the exact terms but I'm sure it is use of force; you can tell me that. But in terms of having your firearm at low ready, is that a term that's used, Sir?

CST. HARRIS: That is correct.

MR. KENNEDY: And when do you do that as opposed as to pointing the firearm?

CST. HARRIS: Again, you would be assessing the situation. If you do not have a target – for example, if I was clearing a residence and I needed to draw my firearm given the circumstances but I was not aware of the specific threat or individual in the residence, I would be clearing it low ready.

MR. KENNEDY: Yeah. Sir, is it also not correct as a street patrol officer that oftentimes one of the most dangerous or potentially dangerous situations you could find yourself going into is a domestic incident?

CST. HARRIS: That is correct.

MR. KENNEDY: And when would you draw your firearm going into a domestic incident or would not going in or would it be in there – what would happen that would cause you to draw your firearm?

CST. HARRIS: There's numerous factors that can come into play. It could be the individuals involved. It could be information received with regards to whether or not there's any weapons involved. The nature of the domestic itself: Is it simply a verbal argument? Is someone being assaulted with a weapon? Those are the type of things that could change whether or not we draw our firearm prior to entering a residence.

MR. KENNEDY: Can you just give me an example or two or give the Commissioner an example or two of when you have actually drawn and pointed your firearm in your career as a street patrol officer?

CST. HARRIS: Recently we were at a standoff and I had to deploy the carbine C8 rifle in our patrol vehicles –

THE COMMISSIONER: Sorry, I didn't hear that; what did you say?

CST. HARRIS: It was a standoff –

THE COMMISSIONER: Right.

CST. HARRIS: – in which an individual had a firearm in the residence.

THE COMMISSIONER: Right.

CST. HARRIS: And at that point I deployed the – we have a patrol rifle, a carbine C8, and I deployed that in that incident.

MR. KENNEDY: Okay. And in terms of your actual, the firearm that you carry on your hip, what's an example of pointing that?

CST. HARRIS: We did a – I believe we were attempting to, in effect, arrest in one circumstance where we had information that the individual was armed with a some possible weapons that they had stolen and we were, they were in the house and we were doing rear containment and the individual exited that residence.

MR. KENNEDY: And was your, did you point your – was it only you or were there other officers present?

CST. HARRIS: It was myself and another officer.

MR. KENNEDY: Okay.

Sir, one of the comments you used to describe, when you were describing Constable Smyth in your testimony – or in your statement to the police – was that you said that Joey was very by the book. Do you remember saying that to Constable Nippard?

CST. HARRIS: Yes, I do.

MR. KENNEDY: What did you mean by that, Sir?

CST. HARRIS: He has a reputation. And, again, I've never worked with Constable Smyth myself, but from talk around our office is Constable Smyth is an officer who does his due diligence and follows the rules.

THE COMMISSIONER: He what? He –

CST. HARRIS: He does his due diligence when he's investigating or working as a police officer and he's an individual who typically follows the rules.

MR. KENNEDY: Sir, in terms of the, then the advice not to give a statement, if we could have Exhibit P-0272 brought up, please. And it's page 6 in mine so it might actually be page 7. No, page 6.

That's your statement, Constable Harris, to the RCMP officer.

CST. HARRIS: That's correct.

MR. KENNEDY: Next page – sorry, page 6. No, it was – sorry. Yeah, it's my page 6, Madam Clerk. Sorry about that. So it would be page 7 at the top of yours.

There's a page difference, Commissioner, between the – so at the top of your, the page there it says: "Like he was sorry for the two hours we were there." What do you mean by that?

CST. HARRIS: Just making comments. And, again, I can't quote any exact comment but, you know, I'm sorry you guys had to come out for this, that kind of thing.

MR. KENNEDY: Do you remember him making a comment somewhere along the line: I can't believe this happened?

CST. HARRIS: Regularly. And, again, when there was lulls in the conversation – again, I can't quote him but things, you know, why did he have to do that, I can't believe this happened, those types of comments.

MR. KENNEDY: Okay.

And so you go on down to say he was telling his – he was continuously telling what happened but he, he was consistent, is what you're saying, in terms of he wasn't changing his story or saying something he hadn't said before is what you tell the police officer?

CST. HARRIS: That is correct.

MR. KENNEDY: And then you went on to say: Nothing he was saying was alarming in any way with regards to something malicious that was done or wrong.

CST. HARRIS: Absolutely. From his description of events and the way he was presenting, there was nothing out of sorts that would suggest any type of wrong doing.

MR. KENNEDY: Did he at any point indicate during the incident that he had gotten angry or that he had gotten mad at the, at Mr. Dunphy?

CST. HARRIS: No, he did not. Not that I recall.

MR. KENNEDY: Okay.

Now, Constable Nippard then says, you'll see at line 8: I got the vibe from the other guys, he was very eager. He wanted to talk or he wanted to get it off his chest. And you say: And that's the thing. We almost had to, I guess, convince Joey to not provide a statement to us.

CST. HARRIS: That is correct. Multiple times, as I indicated, he was making statements such as: I should just provide my statement and get it over with. And, again, due to the incidents surrounding critical stress amnesia, we continually reiterated our advice to him, just hold off, provide it when you have your best recollection of events, which would be after a good night's sleep.

MR. KENNEDY: And, Sir, a couple of last questions for you. In terms of what he said to you about the description of the incident – if I could ask you to go to page 4, Madam Clerk – you indicated there he said he “saw a barrel come up” and – and line 14, he “saw a barrel come up and drew his firearm at that point.”

During your test or your examination by Commission counsel this was also discussed. And at page 81 – sorry, I have the wrong page, it's page 86. You're asked by Commission counsel at page 86, line 7: Okay. Did Constable Smyth tell you where the rifle came from? Constable Harris answer: No.

Ms. Chaytor says to you, question: Did he say he knew where it came from? Your answer: Not that I recall. Ms. Chaytor says to you: Did he state whether or not he had any doubt as to whether it was the barrel of a fire – of a gun that he saw? Constable Harris: No, he continuously said he was, you know, I saw a barrel coming up. So that was the – do you remember that question by Commission counsel?

CST. HARRIS: I do.

MR. KENNEDY: So essentially he said that he saw – didn't know where the rifle came from but he saw the barrel coming up. Is that your understanding of what was said?

CST. HARRIS: That is correct.

MR. KENNEDY: Finally, you indicated during your interview with Commission counsel that you weren't there investigating anything, you were trying – or not trying to get a statement, you were there to offer support to a colleague.

CST. HARRIS: That is correct.

MR. KENNEDY: Did you know at that point, or maybe in hindsight is always wonderful, but that you should have taken notes as to what took place in that room that day, what he said to you?

CST. HARRIS: If I could look back and know where I'd be today, perhaps, yes.

MR. KENNEDY: Did you know at that point whether or not he had been given rights and caution?

CST. HARRIS: I do not, do not recall being told that either way.

MR. KENNEDY: Okay.

Did the RCMP tell you that you couldn't see Constable Smyth?

CST. HARRIS: No, they did not.

MR. KENNEDY: Okay.

Thank you. Those will be my questions.

THE COMMISSIONER: Any other counsel?

MR. FREEMAN: Just a few questions, Mr. Commissioner.

THE COMMISSIONER: Go ahead.

MR. FREEMAN: Good afternoon.

I'm Mark Freeman; I'm counsel with the RCMP.

Would you agree that you're not an expert in interviewing subjects in the context of a serious investigation like this?

CST. HARRIS: I would agree, Mr. Commissioner.

MR. FREEMAN: And I believe you said that already, that your experience was taking statements on the beat, if you will.

CST. HARRIS: Correct.

MR. FREEMAN: Okay. And, so you would defer to somebody from Major Crimes when it comes to questions about interviewing in that context?

CST. HARRIS: That is correct, Mr. Commissioner.

MR. FREEMAN: Okay. And if someone from MCU were to say that often the person that is the subject of an investigation is the last person spoken to as opposed to the first, you would defer to them on that kind of a concept?

CST. HARRIS: I would defer to them.

MR. FREEMAN: Okay. And, so you wouldn't be prepared to generalize that anyone who's the subject of an investigation should be immediately interrogated. You would –

CST. HARRIS: I would agree with that, yes.

MR. FREEMAN: You would say it would depend on the circumstances. And, again, you would prefer to defer to someone from Major Crimes on questions like that?

CST. HARRIS: Agreed.

MR. FREEMAN: Okay.

Thank you. Those are all my questions.

MR. AVIS: I just have a couple, too, Commissioner.

Just – you mentioned a word low ready, and it came up once before. I'd just like you to very briefly describe – perhaps you can even stand up and show what low ready means of your gun.

CST. HARRIS: Would you like me to demonstrate, Mr. Commissioner?

MR. COMMISSIONER: Go ahead, sure.

CST. HARRIS: Our firing stance when we're discharging our weapon, or preparing to discharge our weapon, would be with our arms locked out, looking down the sight of our weapon. Low ready would be a lowered position, slightly lowered where we have a better field of view when we're standing for threats.

MR. AVIS: And the safety is off?

CST. HARRIS: We have no safety for side arms.

MR. AVIS: Okay, a point I wanted to make. And where is your finger in relation to the trigger?

CST. HARRIS: It would be what we refer to as indexed, and so it would be off the trigger.

MR. AVIS: Okay. So what low ready means, you're not pointing at the subject, but you are ready to bring it up and to pull the trigger if necessary.

CST. HARRIS: Correct.

MR. AVIS: Thank you. That's just a clarification.

Now, there's a couple of questions you were asked – and forgive me, I am not trying to minimize your knowledge and background, but, essentially, you are not an expert in use of force, are you?

CST. HARRIS: I would be the first to admit that.

MR. AVIS: Okay. And again, and you are not an expert in critical stress amnesia. Is that fair to say?

CST. HARRIS: That is fair to say.

MR. AVIS: So when you, as a – you know, in your training in use of force, though, you are taught about critical stress amnesia. Is that correct?

CST. HARRIS: That is correct.

MR. AVIS: And so when you are assisting a member who has been through an incident like this, you take that knowledge and apply it. And the general consensus is slow down, don't give a statement right away, collect your thoughts.

CST. HARRIS: Correct.

MR. AVIS: So you're essentially passing on your learning to the person in the situation.

CST. HARRIS: That would be correct, Mr. Commissioner.

MR. AVIS: For example, you were asked by Inquiry counsel whether Constable Smyth said any – showed any signs of critical stress amnesia. Would it be fair to say you don't know what those signs are?

CST. HARRIS: That would be fair enough.

MR. AVIS: Right. So you were asked a question that you really didn't know how to answer. Is that fair to say?

CST. HARRIS: I'm far from an expert, absolutely.

MR. AVIS: Okay. And with respect to this de-escalation strategy, I'm afraid I didn't quite hear it all. You said that people, police officers develop nuances and you'd never heard of making notes as a de-escalation strategy? Did I hear the question correctly?

CST. HARRIS: That is correct.

MR. AVIS: Okay. So one, you'd agree that – would you agree that you're not in a position to analyze what Constable Smyth did that day?

CST. HARRIS: That is correct, Mr. Commissioner, I'm not.

MR. AVIS: But in order to have some appreciation of why he said he looked at his notes or pretended to write notes, you would need to know the full circumstances, wouldn't you?

CST. HARRIS: I would agree, Mr. Commissioner.

MR. AVIS: Okay. Thank you.

Those are all my questions.

THE COMMISSIONER: Mr. Drover.

MR. DROVER: Thank you, Mr. Commissioner.

Constable Harris, you were asked by Commission counsel about a part of your statement to the RCMP at page 4 – you don't need to bring it up – about, and I'll find it, that Mr. Dunphy was up and down.

CST. HARRIS: Correct.

MR. DROVER: And she asked you what that meant.

Can we bring up P-0274?

UNIDENTIFIED FEMALE SPEAKER: 272.

MR. DROVER: No, 274 is another exhibit that you didn't enter but was part of the package entered for Constable Harris.

So this is – Constable Nippard conducted your interview, correct?

CST. HARRIS: Correct.

MR. DROVER: And following the interview he created a synopsis, his notes of what went on that day, or at that interview. And it looks like he did that –

THE COMMISSIONER: That seemed to be a duplication when I was reading it last night. It was a duplication of another one that's in the binder.

Go ahead, Mr. Drover. I won't slow you down there.

MR. DROVER: Okay. Do you need a moment to go through; I don't want to lose your attention.

THE COMMISSIONER: No, I'm just refreshing my memory now. There's – I don't see it there now but I'll find it.

Go ahead –

MS. O'BRIEN: Yes, Commissioner, I can probably explain that for you. I think you're probably looking at tab two of your book, which is Exhibit P-0237 –

THE COMMISSIONER: Right.

MS. O'BRIEN: – which is a Supplementary Occurrence Report that was written, prepared by Constable Nippard, and you are seeing a duplication in the two records because at tab 3 of your book, Exhibit P-0274, that's the daily log which is quite a large – you'll see there at the bottom right-hand corner, it's 493 pages.

THE COMMISSIONER: Page 168 –

MS. O'BRIEN: It's page 168 –

THE COMMISSIONER: – of 493, okay.

MS. O'BRIEN: Exactly. So that 493-page document is a daily log that's being prepared by essentially cutting and pasting from the various officers' reports and putting them all in a chronological order.

THE COMMISSIONER: Okay, so what is tab 2?

MS. O'BRIEN: So yes, tab 2 was actually Constable Nippard's report, his written report, and what he wrote there on April 10 at 9:08 hours would have been cut and paste into the daily (inaudible).

THE COMMISSIONER: They seem to be the same, except the first sentence instead of it saying Constable Nippard began an audio, it says I began an audio.

MS. O'BRIEN: Exactly, so when they prepare the daily report, there was an officer will get a little bit of testimony on this but Jill Lunnan –

THE COMMISSIONER: Right.

MS. O'BRIEN: I forget her rank or what her exact position was, so she would have just made minor changes like that so it read, so you knew who the officer was.

THE COMMISSIONER: Okay, thank you.

MR. FREEMAN: And again, Mr. Commissioner, these are both the same text so we can use either one.

THE COMMISSIONER: Go ahead.

MR. FREEMAN: Either 0274 or 0273.

So one of the notes that Constable Nippard made shortly following your interview with him was Smyth told him, so Smyth told you, the subject's behaviour, being Mr. Dunphy, was up and down and was agitated. So while the transcript itself just says that he was up and down, here we see that the subject's behaviour was up and down.

So I guess my question is: You can't remember exactly what it was on the day that you said to Constable Nippard?

CST. HARRIS: No, I do not recall exactly what I said to him.

MR. FREEMAN: And so you wouldn't know if there's an omission or a mistake in the transcript?

CST. HARRIS: I would have no idea, Mr. Commissioner.

MR. FREEMAN: Or you wouldn't know if you had been making some facial expression or some hand gestures or some body movements or what have you to convey to Constable Nippard that you were talking about behaviour and not physical movement?

CST. HARRIS: I would not be able to clarify.

MR. FREEMAN: Those are all the questions I have.

THE COMMISSIONER: Thank you.

Are we finished; no further questions?

Okay. Thank you, Constable. You may step down there now.

So we adjourn now until 9:30 tomorrow morning. Mr. Freeman, you're going to speak with counsel on a point. I don't know if you have yet or not.

MR. FREEMAN: I am or my co-counsel will actually be replacing me as of tomorrow, so Lori will be here. So we're going to do the hand off but between myself and Ms. Rasmussen, we will be talking to Commission counsel about the question you posed.

THE COMMISSIONER: Okay, thank you.

MR. FREEMAN: Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.