



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 23

Commissioner: Honourable Justice Leo Barry

Wednesday

15 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good afternoon and thank you all for making the effort to get here through the snow.

Sorry – Mr. Simmonds.

MR. SIMMONDS: No, I just wanted to say please excuse my dress but I'm here.

THE COMMISSIONER: No, you could be wearing a bearskin for all I care, Mr. Simmonds. As long as you're here, that's the main thing.

And, Superintendent, glad to have you as well. It looked a little dicey there for a while but we may get lucky and be able to get home out of it.

So anything before we start? Now, we're just for the record here, we have a couple of – Mr. Drover and who else is missing here?

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Mr. Flaherty is not here. Okay.

MR. SIMMONDS: Ms. Breen wasn't coming.

THE COMMISSIONER: Yeah, no. And they would have let us know, I think, if there was any problems. So we'll assume that they have no objections to our proceeding in their absence.

Okay, go ahead when you're ready, Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner.

I'll ask the witness, Chief Superintendent Andrew Boland, if he could just press the button there on the front of his mic and activate it.

CHIEF SUPT. BOLAND: Yeah.

MS. O'BRIEN: Thank you very much.

And Madam Clerk is going to have you affirm your evidence.

CHIEF SUPT. BOLAND: Okay. Thank you.

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

CHIEF SUPT. BOLAND: I do.

MS. SHEEHAN: Could you please state your full name?

CHIEF SUPT. BOLAND: My first name is Andrew; last name is Boland, B-o-l-a-n-d.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

Before we begin, Commissioner, I seek to have an order to have the following exhibits entered: Exhibit P-0466, P-0473, P-0476, P-0477, P-0479, P-0480, P-0565, P-0580 and P-0626.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

Chief Superintendent Boland, I understand that you joined the RCMP on or about 1982 and that you have just recently retired. Is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And when did you retire?

CHIEF SUPT. BOLAND: I retired in August of 2016.

MS. O'BRIEN: Okay.

THE COMMISSIONER: 2016?

CHIEF SUPT. BOLAND: '16. Yes, Sir.

MS. O'BRIEN: And on retirement your rank was chief superintendent. Is that correct?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay.

And at that time what was your position?

CHIEF SUPT. BOLAND: When I left the RCMP I was the OIC – sorry, officer in charge of Criminal Operations for the RCMP in Newfoundland and Labrador.

MS. O'BRIEN: Okay. Thank you.

And I understand that's sometimes known as the CROPS officer. Is that right?

CHIEF SUPT. BOLAND: Yes, that's correct.

MS. O'BRIEN: Okay.

And I'm just going to ask, Madam Clerk, to bring up Exhibit P-0308 which is just an organizational chart, Chief Superintendent, for the relevant time in April 2015.

And for some of this evidence here at the beginning of your testimony I'm going to lead you through it a fair bit just so we can get on to the more relevant information that you have to give. Some of this is sort of background information.

So this is the – this is an org chart that we were provided showing the chain of command for the Major Crime Unit East. And so here you are there, second to the top. And I understand from this that at this time you would have been a direct report to the commanding officer of the B Division which would have been Assistant Commissioner Tracy Hardy. Is that right?

CHIEF SUPT. BOLAND: Yes, that's correct.

MS. O'BRIEN: Okay.

And so Commanding Officer Hardy would have been, at that time, the highest-ranking RCMP member in Newfoundland and Labrador.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: All right.

And I understand from our pre-hearing interview that essentially Assistant Commissioner Hardy would have had two streams reporting up to her, an administrative stream and an operations stream. And you would have been the top of that operations stream. Is that right?

CHIEF SUPT. BOLAND: Yes, that's correct.

MS. O'BRIEN: Okay.

And so, just briefly, can you tell us what your duties as the CROPS officer would have entailed?

CHIEF SUPT. BOLAND: So my position was the, as you know, the second most senior position in the province, so my primary duties were overseeing the operations of the RCMP in the province. And I also had administrative duties and responsibilities when it came to budgets, personnel and issues like that.

MS. O'BRIEN: Okay. Thank you.

And, again, we're only looking at one stream reporting up to you but I'll just review that very quickly. So what's shown here as being the next direct report up to you is the provincial policing officer, who at that time I understand that Pat Cahill was acting in that position. Is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: And at this time in April 2015 I understand Inspector Cahill was in fact taking up two positions on this chart. He was also the inspector in charge of Major Crime Support.

CHIEF SUPT. BOLAND: So I would describe it as the – his, Inspector Cahill's substantive position was the major crimes officer –

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: And you're right, he was acting in the provincial policing office work – officer position at the time. The incumbent had just retired and the position hadn't been staffed yet.

MS. O'BRIEN: Okay.

And we will see in some of the documentation Staff Sergeant Boyd Merrill mentioned in some of the emails that we're going to go through today with you. And I understand it's at around this time Pat Cahill is just transitioning in to this inspector position and Boyd Merrill was transitioning out at the time.

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay.

And so here then we go down from Inspector Cahill, we go to Sergeant Kent Osmond and then down to Steve Burke and the MCU East which we've already reviewed in some detail.

Now, from your position here, as I said, there's only one stream we're showing reporting to you, but I understand that you would have, at that time, had essentially four major streams reporting to you, Chief Superintendent Boland. And I'll just take you through those and you can just confirm if I have them correct.

CHIEF SUPT. BOLAND: Sure.

MS. O'BRIEN: You would have had a secretariat-type office reporting to you and that would have been Staff Sergeant Chris Fitzgerald in charge of that.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay. And he's sometimes referred to as the reader, and he does a lot of memo drafting, re-drafting, letter drafting and that kind of thing as support for you at the time?

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: Okay. And another stream reporting directly to you would have been the district operations for the province. And that would be, essentially, the day-to-day policing operations that were taking place in the three districts in Newfoundland and Labrador, being Labrador, Newfoundland East and Newfoundland West.

THE COMMISSIONER: Labrador – what did you say?

MS. O'BRIEN: Labrador, West and East. I understood they would be the three district, the three districts for our province.

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: And that would have been, the district operations would have reported up to you?

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: Okay.

And then the third one I recorded, Chief Superintendent Boland, that would have reported up to you would have been federal policing. And federal policing in this province would have been things like drug work, customs work, immigration work, and these would largely be plainclothes officers doing that type of work.

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And then the final chain that would have reported up to you would have been what was known as provincial policing. And that would have included the FIS, the Forensic Identification Section that we've seen already, the MCU that we've seen already, and the canine unit, and there may be some others.

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay.

So briefly, prior to becoming Chief Superintendent in this province, can you give the Commissioner just a short overview of your background in the RCMP before you took that role?

CHIEF SUPT. BOLAND: So when I retired in the month of August, it was the anniversary of my 34th year of service. So over those 34 years, I started after basic training at our academy in Regina. I was posted to British Columbia, and I was in British Columbia for nine years and worked in three different detachments there and worked in duties, general duties, our front line policing, and also a highway patrol unit, which was still front line policing but focused on traffic and highway work.

Then I transferred to the arctic, and I was in the arctic for 10 years and in five different locations, three front line general duty detachments. And I was posted to our headquarters in Yellowknife, our division headquarters in the Northwest Territories in Yellowknife, and worked in three different functions there. Two of them were human resources, administrative functions, and then in charge of Yellowknife detachment for a short period of time.

Prior to transferring to Nunavut, the territory had just, was about a year old when I transferred to Nunavut. And I was the advisory NCO for the territory overseeing the operations of the 25 detachments we had in Nunavut.

Then I transferred to Vancouver, and that's where I was commissioned. I received my commission into – our HR office is in Vancouver and I was in charge of recruiting, a policy program; an official languages for the RCMP for British Columbia. I wasn't there very long, about a year and a half, and I asked for a transfer to Newfoundland and Labrador for compassionate reasons and transferred to St. John's into the Integrated Proceeds of Crime program, or Unit. And I was there for about a year, and then transferred into human resources again, in charge of staffing and recruiting. From that position, I was promoted to a regional human resources position in Regina, Saskatchewan, overseeing the staffing and recruiting and training programs for three Prairie provinces, two territories and our training academy.

In 2010, I was transferred back to St. John's into the – at the time it was a support services position, and we've since changed the name of that from support services to provincial policing. That was done after I left the position. While I was in support services, I was there for a couple of years and then promoted into the criminal operations position from which I retired.

MS. O'BRIEN: Thank you.

Now, during our pre-hearing interview, Chief Superintendent Boland, we had the opportunity to review, or I had the opportunity to review with you some of the ways in which the RNC, the Royal Newfoundland Constabulary, and the RCMP work together in this province. And so I've done a bit of a summary of the, a summary of the – Madam Clerk was just bringing down the exhibit. I've done a summary of that, of our discussions on that day, and so I'd like to go through it –

CHIEF SUPT. BOLAND: Sure.

MS. O'BRIEN: – and just get you to confirm, make sure I have summarized correctly.

So I understand that the RNC and RCMP officers meet in, say, official capacities at ceremonial type functions – like Remembrance Day ceremonies, award ceremonies and that type of thing – fairly frequently. And I think in our interview you estimated two to three times a week. Does that sound right?

CHIEF SUPT. BOLAND: So that would – so certainly on an average.

MS. O'BRIEN: Yes.

CHIEF SUPT. BOLAND: We could go for a couple of weeks without, three weeks without seeing each other but during the fall when Remembrance ceremonies are underway, in the summer when there's other activities underway, it could be on a case of a couple of times a week.

MS. O'BRIEN: Okay.

And I also understand that higher-ranking members of both forces would also meet regularly at other formal meetings having to do with policing in the province. And those meetings might be with the Department of Justice and Public Safety, it could be also with other law enforcement agencies in the province such as the Sheriff's Office or people working with the HMP, Her Majesty's Penitentiary, and those type of meetings could take place, you estimated at that time probably on, you know, again as an estimate, once a month. And those might be on budgetary issues or operations matters having to do generally with policing in the province. Is that right?

CHIEF SUPT. BOLAND: That's correct. They're always – those meetings are always fairly, fairly high-level meetings. We would be meeting oftentimes with representatives, organizations like Canada Border – the Canada Border Services office, CSIS, some of these other agencies as well.

MS. O'BRIEN: Okay. And I also understand that there are a number of joint operations that take place between the RNC and the RCMP, and you discussed some of them with me. So one of them was the Combined Forces Special Enforcement Unit, which I understand was created around, approximately two to three years ago. And that unit was created to bring resources of the RNC and the RCMP together to address some very serious, serious-type crime issues in our province, and that that force is still operating. It would have approximately 30 members, half from each force. And when I say serious, they're looking at things like organized crime, high-level drug trading that type of thing.

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And another joint initiative that we discussed was Crime Stoppers. And I understand that it's actually a civilian-driven entity but there are both RNC and RCMP officers assigned to Crime Stoppers.

CHIEF SUPT. BOLAND: One of each I believe, yes.

MS. O'BRIEN: Okay. We also discussed ViCLAS which is a violent classification linkage system, and that was created to collect data and to analyze it to look for linkages between different incidents of violent crimes. And I understood that there is currently, you know, RCMP officers posted with ViCLAS. That you were not sure when I was interviewed whether there was any active RNC member posted to ViCLAS at that time, but there is a position there at least available for an RNC officer. Is that right?

CHIEF SUPT. BOLAND: So there hasn't been an RNC person in that program probably since shortly after I arrived, around 2010, 2011. And it's not something you would see as formal as an org chart, if the RNC had an opportunity to put somebody to do that program, if they chose to. And so to the best of my memory, I don't think there's anybody there now and there wasn't anybody when I left. But you're right, it's a program that they do work together.

MS. O'BRIEN: Okay.

Another one that we discussed was the National Sex Offender Registry and I understood that this was actually a three-person entity: one of the people is a civilian; one would be an RCMP member; and the other would be an RNC member. Is that right?

CHIEF SUPT. BOLAND: That's correct. That's a more formal program. The National Sex Offender Registry is a nationally mandated program –

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: – for all police services.

MS. O'BRIEN: Okay.

We also talked about dog-handler units. So both forces have a canine- or dog-handling unit, and the canine units train together on a regular basis, so sort of a weekly type basis.

CHIEF SUPT. BOLAND: I believe so, yes.

MS. O'BRIEN: Okay.

We also talked about a provincial search and rescue group and that includes people from other backgrounds, not just RNC and RCMP, but there are both RNC and RCMP members of the provincial search and rescue group.

CHIEF SUPT. BOLAND: So those duties – I know in our case of our officer, the search and rescue file is one of many on the fellow's desk. So it's – they tend to see each other at search and rescue meetings: provincial, national. And I'm sure that they discuss perhaps best practices and policies from time to time.

MS. O'BRIEN: Okay.

You also gave me some information that on the technical side of things, the RCMP provides what you estimated as about 98 per cent – I don't know how exact that was, but, you know, close to all the technical support for the RNC's radio systems in the province. Is that right?

CHIEF SUPT. BOLAND: So that's pretty close. The provincial radio system is something that our tech folks and the towers – we have numerous sites across the province, including here in the Northeast Avalon. So they don't – they work together, but they don't. It's kind of an odd anomaly. They're technical people who just keep the radio systems running.

MS. O'BRIEN: Okay.

And another integrated unit that we discussed and we already heard a lot of evidence about it here at the inquiry but that would be the PSU or the premier's security unit. So that would be another example of an integrated unit between the two.

CHIEF SUPT. BOLAND: So I wouldn't call it an integrated unit. To my understanding, it's a Royal Newfoundland Constabulary unit and program. And the – any officers we've had working with it have been seconded to the unit or seconded to the program. They're not what I would call – so the CFSEU is truly an integrated unit but the premier's security detail was an RNC program with a secondment of a position by our organization.

MS. O'BRIEN: Okay.

And when you just said CFSEU, you're referring to the Combined Forces Special Enforcement Unit we referred to earlier.

CHIEF SUPT. BOLAND: That's correct. I'm sorry; I'll try to stay off the acronym route here.

MS. O'BRIEN: That's okay, thank you.

The last thing that we discussed in our interviews was that on a regular basis that there is training courses offered to police officers. You know, RCMP would be offering training to their members on a regular basis. And fairly frequently, if there are extra seats available for that training, if you haven't filled all the spots, you would offer those places to other law enforcement agencies in the province, including the RNC, but that also might be Canada border service, wildlife, or other organizations.

CHIEF SUPT. BOLAND: Fisheries and Oceans. No, you are correct.

MS. O'BRIEN: Now, I understand that this type of interaction between police officers when we are looking at training specifically, you have had an opportunity to work in other provinces other than Newfoundland and Labrador and some of the provinces you have worked in had been provinces that had more than one police force active in the province. That type of getting together for training exercises or training opportunities, would you have seen the same thing in the other provinces that you policed in?

CHIEF SUPT. BOLAND: Very much so. Training dollars are always challenged to make them stretch as far and wide as we can. And sometimes when we have training programs, empty seats occur, so we try to get the most bang for our dollar when it comes to having the seats full and the classrooms full.

MS. O'BRIEN: Okay.

Having gone to that list, have we touched on the significant joint operations and regular interactions between the RNC and the RCMP in this province, to your knowledge?

CHIEF SUPT. BOLAND: I would say so. Yeah, it is good reflection, yep.

MS. O'BRIEN: Okay.

Prior to April 5, 2015, I understand that you did not know Mr. Dunphy or any member of his family. Is that right?

CHIEF SUPT. BOLAND: That is correct.

MS. O'BRIEN: I do understand that you had some prior interactions with Constable Smyth, and I'll just again summarize those and you can just tell me if I have it correct. One interaction that you described took place in 2010, it was a very short encounter, it had nothing – you were just a

civilian, Constable Smyth was acting as a police officer and you had a very brief interaction with him in 2010. Is that right?

CHIEF SUPT. BOLAND: That is correct.

MS. O'BRIEN: The other two interactions that you had with Constable Smyth were of a more significant nature and that, both of them, had to do with the PSU –

CHIEF SUPT. BOLAND: Uh-huh.

MS. O'BRIEN: – and I understand that it came down to two meetings with Constable Smyth where you were as well, one of them was in 2012, and that was I think the time the PSU was being more formalized in the province, taken from the sort of its ad hoc form and brought into a more formalized unit, as it was in 2015, and that meeting was about assigning a RCMP police officer to that unit. Is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And how long would that meeting have been, approximately?

CHIEF SUPT. BOLAND: It would have been fairly, fairly short. Discussing what the, what the requirement was for identifying personnel, what kind of criteria they were looking for in personnel.

MS. O'BRIEN: And so for in terms of how long – are we talking a half day, an hour?

CHIEF SUPT. BOLAND: Oh gosh, I would say between 30 and 60 minutes, roughly, roughly an hour.

MS. O'BRIEN: Okay.

And again there was one, a second meeting you described that took place in December of 2014. And that was a meeting, you recall, at Confederation Building that took place with premier's – members of the premier's staff and Constable Smyth, and this had to do with a new RCMP officer being assigned to the PSU, and I believe that's the time that now Sergeant Noel was assigned to that unit. Is that correct?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And again, approximately how long would that meeting have been?

CHIEF SUPT. BOLAND: That was in the same time frame, roughly 30 to 60 minutes, in the area of an hour or so.

MS. O'BRIEN: Okay.

Are those all the interactions that you had with Constable Smyth prior to April 5, 2015?

CHIEF SUPT. BOLAND: Prior to April 15, that's correct, yes.

MS. O'BRIEN: Okay.

Chief Superintendent Boland, how did you first learn about the shooting in Mitchells Brook?

CHIEF SUPT. BOLAND: So I received a telephone call from our district officer, Superintendent Jamie Zettler, who informed me of what was unfolding. It was Sunday afternoon; I was in my garage at the time doing some work and my phone rang.

MS. O'BRIEN: Okay. District Officer Jamie Zettler would have been in Holyrood; is that right?

CHIEF SUPT. BOLAND: No, Clarenville.

MS. O'BRIEN: Oh, in Clarenville.

CHIEF SUPT. BOLAND: So the head, the district office for East district for the RCMP is in Clarenville, so he telephoned me, I'm assuming, from Clarenville.

MS. O'BRIEN: Do you recall what information he was able to give you at that time?

CHIEF SUPT. BOLAND: He told me that there had been a fatal shooting of an individual in the Mitchells Brook area, in Holyrood detachment's area, and that there was an RNC officer involved.

MS. O'BRIEN: Okay. Do you recall what information, if any, you would have given to Zettler at that time?

CHIEF SUPT. BOLAND: So our immediate concern was responding to our investigation responsibilities. So we had a brief discussion about resourcing who would – Holyrood detachment members had responded front-line response, and that we were going to assign our Major Crime Unit to the investigation.

MS. O'BRIEN: Okay. So at that point you were making a decision that the RCMP Major Crime Unit would be doing the investigation?

CHIEF SUPT. BOLAND: That's, it's the beginning of the – certainly the initial part of that decision process.

MS. O'BRIEN: Okay. And as CROPS officer, would that have been your decision to make?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: Okay. Do you recall what you did next?

CHIEF SUPT. BOLAND: So the discussion with Superintendent Zettler was very brief. I got off the phone with him and contacted our commanding officer and informed her of what Superintendent Zettler had told me. We had a brief discussion about the matter and what to, what route to investigate it, and we continued on with the process of investigating the incident ourselves.

MS. O'BRIEN: So when you say, and this is with, this is with Commanding Officer Hardy, Tracy Hardy, and so you're saying what route to investigate. So is the discussion with her about the RCMP conducting the investigation?

CHIEF SUPT. BOLAND: Yes, it is. It's a brief discussion about what information I received from Superintendent Zettler, and then a very brief discussion around if we should have an outside police – you know, an outside, I don't even think we discussed police service, but an outside agency investigate, and I suggested that it was within our jurisdiction. We weren't involved and that we certainly had the capability and the resources to carry out the investigation.

MS. O'BRIEN: And when you say we weren't involved, what do you mean by that?

CHIEF SUPT. BOLAND: So when Superintendent Zettler told me there was a one, to the best of his knowledge at the time, there was no – there were no RCMP involved, and I don't even think at that time I knew how many people were involved. I was just advised that there was no RCMP at the scene or involved in the matter in Mitchells Brook.

MS. O'BRIEN: Okay. At that time did you know that the RNC officer involved was a member of the PSU, which would be a unit that had an RCMP officer seconded to it?

CHIEF SUPT. BOLAND: Superintendent Zettler told me who it was, and I knew where Constable Smyth worked.

MS. O'BRIEN: Okay. So obviously that did not factor in, or that didn't change your decision that the RCMP would investigate knowing that it was a PSU, a unit that had an RCMP officer on it.

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay. And at that time did you know that Constable Smyth had contacted the RCMP detachment at Holyrood prior to making his visit to Mitchells Brook to get information about Mr. Dunphy to assist him with his risk assessment?

CHIEF SUPT. BOLAND: No, I wasn't aware at that time.

MS. O'BRIEN: Okay. If you did know that information at that time, would that have affected your decision to keep this as an RCMP investigation?

CHIEF SUPT. BOLAND: Well, so I always have difficulty with going back to what I would have done differently at the time in the circumstances but I think it certainly could have. I think it could have tipped the, changed the course but it wasn't that significant. Also, at the time we didn't have that information but it's hard to see if that would've caused me to change and go external.

MS. O'BRIEN: When you – I take it you ultimately became of that information?

CHIEF SUPT. BOLAND: Yes, I became aware of it later. I believe the next day, when some of the information from the initial investigation started to come into our office.

MS. O'BRIEN: Okay. So I'll come to that in just a few minutes then.

CHIEF SUPT. BOLAND: Sure.

MS. O'BRIEN: Okay. So after you had that phone call you just described with Commanding Officer Hardy, what was the next action that you took?

CHIEF SUPT. BOLAND: After I spoke to the Commanding Officer, I called Deputy Chief Singleton with the Royal Newfoundland Constabulary and advised him that – my first question or my first comment I believe was, are you aware of this incident, and he was. And I said that we would be conducting the investigation, it was in our jurisdiction. We would be conducting the investigation and moving forward from there.

MS. O'BRIEN: Okay. And what was his reaction when you told him that the RCMP would be conducting the investigation?

CHIEF SUPT. BOLAND: A very brief response. He said okay. And, you know, in essence he just said okay, thanks. I had to get off the phone and move on to another call. It was a brief, brief discussion.

MS. O'BRIEN: Okay. And your purpose in telling him that, did you have any concern in your mind at the time that there may be some push back from the RNC on that, or they might not initially accept that it was the RCMP who's going to be doing the investigation?

CHIEF SUPT. BOLAND: So that's a part of my thinking process. I think, when I think of what police organizations and how they operate, I think there could have been some – at the time I thought there could have been some interest in them to carry out the investigation. In previous investigations and matters we have been involved with the RNC, the RNC has expressed interest in conducting investigations in our jurisdiction and we've pushed and said no. You know, we'll help facilitate and help provide some support but our jurisdiction is our responsibility under the contract.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: There wasn't any push back. I was just – it is a part of my process thinking that it's our area and our jurisdiction.

MS. O'BRIEN: Okay, I understand. So that was one of the thoughts in your head, but when you spoke to Deputy Chief Singleton he accepted immediately that it would be RCMP that –

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay.

All right. Do you recall after you had the conversation with Deputy Chief Singleton – and I understand that was a fairly brief conversation. Is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. Do you know what you did next?

CHIEF SUPT. BOLAND: After that telephone call, I phoned the Assistant Deputy Minister of Justice and advised what we had, and that we were carrying out the investigation and moving forward with the investigation.

MS. O'BRIEN: Okay.

THE COMMISSIONER: That's Ottawa? This is federal or provincial?

CHIEF SUPT. BOLAND: No. I'm sorry, Commissioner. It is provincial. I'm sorry.

It was the assistant deputy minister of the provincial Department of Justice and Public Safety.

MS. O'BRIEN: And at the time that was Jackie Lake-Kavanagh, was it –

CHIEF SUPT. BOLAND: Yes, that –

MS. O'BRIEN: – who you had the discussion with?

CHIEF SUPT. BOLAND: That's correct. That's who I telephoned.

MS. O'BRIEN: Okay.

And in that conversation, or any – or that day, did you have any discussion with Jackie Lake-Kavanagh about the possibility of an outside force or an outside agency doing the investigation?

CHIEF SUPT. BOLAND: I did. I would say, roughly, an hour after that – the call might be a little bit shorter. It might've been in the 45 minute mark. Ms. Lake-Kavanagh phoned me back and asked if we had considered, or if I had considered going outside for the investigation, and I said we had. We had considered that, and that we were confident that we could conduct the investigation. And that was the end of that discussion.

MS. O'BRIEN: And just briefly, what were the factors, in your mind, that led you to be confident that you could conduct the investigation?

CHIEF SUPT. BOLAND: So I had every confidence in our folks, in our organization being able to carry out an investigation in an unbiased, impartial manner. It never crossed my mind that that would be any difficulty or issue with our folks.

It was in our jurisdiction, our responsibility under the contract to provide the police service in the jurisdiction that this matter occurred in. And the – I felt that it wasn't a complex investigation from a purely, kind of a clinical, I guess, is a word I use, point of view that I thought it was – we knew who all the people were who were involved in the incident that occurred. It was a single scene area and it was a small area. So from a resource point of view, I was thinking to myself it's not very complex.

MS. O'BRIEN: Okay. And just for clarity there, you're saying – you said it was our responsibility under our contract. And you're referring to the contract between the RCMP and the provincial government under which the RCMP provides policing services in the province.

CHIEF SUPT. BOLAND: So the Provincial Police Services Agreement is a contract between the federal and provincial government. And the federal government then sends us to fulfill the contractual requirements.

MS. O'BRIEN: Okay. Sorry.

Thank you.

Okay. So that was your decision that day, about who was going to be doing the investigation. You said just a few minutes ago that you got some further information the next day, for example that Constable Smyth had made an advance call to the RCMP detachment in Holyrood, so the next – so the next day, did you have, did you do any reconsideration of your decision and, if so, can you tell the Commissioner about that?

CHIEF SUPT. BOLAND: So throughout the day as more information came to light – and not a lot of information came to my desk; the investigators were busy doing their work. It's one of my personal MOs, I guess, approaches to my work is to let our people do the work without me sticking my nose, trying to find out exactly what they're doing. That first 24-48 hours in every major investigation is very critical. We'll let the investigators do their jobs.

But information started to come to mind about that the RNC officer had done inquiries with our folks prior to his attending the residence in Mitchells Brook and also more consideration of the premier's security detail and the fact that we had an officer seconded to that detail.

MS. O'BRIEN: Okay. So having thought about those things or had those things come to your attention, did it change your decision in any way or did you make any other decision to address these concerns?

CHIEF SUPT. BOLAND: So on Monday, it didn't cause me to change my decision. I was comfortable still with our folks being able to carry out a thorough, impartial investigation. I had every confidence in our Major Crime Unit and our investigators. I knew most of them, if not all – well, I knew all of them, and very good police officers. I had no concern about their integrity and the organizations. So that day, on Monday, I would have to say no, I didn't consider revisiting that decision.

MS. O'BRIEN: Okay.

And just, going forward, in the days that followed, I understand what you're saying, that you had confidence in your team and the integrity of your major crimes unit officers. Did you, not necessarily the next day but in the few days that followed, did you have any concern that there may be even a perception of bias on the part of the public or those directly affected by the investigation because of the close ties between these two forces, the PSU element and the call to the RCMP detachment?

CHIEF SUPT. BOLAND: So I would have to say on Monday, you know later in the day, I certainly started to become aware of some of the issues around perceptions that were being raised in the public realm mostly. And the next day it continued and there became more and more – I became, personally, more aware of concerns being raised with public interest. And I was thinking to myself what could we do that would perhaps assure the people of the province and, more so, perhaps the family of Mr. Dunphy, what could we do to assure people who might have been concerned about us conducting the investigation.

And so Tuesday, I came up with the idea of engaging an independent observer with the investigation team.

MS. O'BRIEN: Okay.

So I going to talk to you about the independent observer now in just one moment, but I have one further question with respect to the independence – from our prehearing interview, I understand that during the Donald Dunphy investigation the RCMP actually retained the RNC to do an investigation of one of your officers regarding a use-of-force incident. Is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And that took place in September of 2015?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And it was a shooting incident as well, was it?

CHIEF SUPT. BOLAND: Yes, it was.

MS. O'BRIEN: And was the RNC doing a *Criminal Code* investigation of the same – for your RCMP officer of the same type as what the RCMP was doing in this case of the RNC officer, Constable Smyth?

CHIEF SUPT. BOLAND: Yes, the same type of investigation. That was my expectation, yes.

MS. O'BRIEN: Okay.

So these two investigations are going on at the same time. At that point, did you consider any conflict of interest issues or the perception of bias or lack of impartiality because you have these two forces at the time, each conducting investigations of the other force's officer?

CHIEF SUPT. BOLAND: So I considered it. My decisions boiled down to I had every confidence in the two organizations to conduct unbiased, impartial investigations.

MS. O'BRIEN: Okay.

And ultimately did the RNC recommend a charge be laid against the RCMP officer?

CHIEF SUPT. BOLAND: In that case, no.

MS. O'BRIEN: Okay. All right.

So I know that came up later on, not until September of 2015.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: I was just jumping ahead a bit there.

So coming back now closer to –

MR. KENNEDY: Mr. Commissioner, I have some concern about a comment being made like that, or a question be phrased that the RNC didn't lay a charge. I mean, there's no – we don't know anything about the facts of the case. It is almost implicit in the questioning that it's the – well, they didn't lay a charge against us; we didn't lay a charge against them. I mean, that's not really –

THE COMMISSIONER: Well, I think that's a fair question to put, in terms of public perception anyhow, that that perception might be there, rightly or wrongly, that there might be a trade-off. I mean, that's part of the concern of having police organizations who have been dealing with other, have been involved with each other. There is a concern that there might be this too good – too much of a familiarity, not necessarily in that direct sense of a trade-off but whether you do have two investigations going on, I mean, isn't it a fair question, Mr. Kennedy, to –

MR. KENNEDY: Yeah, but I would suggest – I'm not disputing the question, but there should be a little bit more detail –

THE COMMISSIONER: Well, we can give – we can decide whether –

MR. KENNEDY: – as to what occurred as opposed to simply leaving it that while there was an investigation and no charge laid – I mean, Commissioner, oftentimes there are investigations, the police will conduct investigations and there are no charges laid, and that's my concern here is that somehow or other Constable Smyth benefited and there's no evidence of that and –

THE COMMISSIONER: No. I think if there is anything, it would be in terms of whether one force benefited or both forces –

MR. KENNEDY: Yeah, my only concern is –

THE COMMISSIONER: – if they made a trade-off.

MR. KENNEDY: Yeah.

THE COMMISSIONER: You know, there's no indication that I've heard that your client –

MR. KENNEDY: That's my –

THE COMMISSIONER: – Constable Smyth, was in any way involved, but Ms. O'Brien is testing Superintendent Boland now in terms of how he saw the situation. He said he had confidence in both forces to carry out an independent, unbiased investigation. And she's exploring whether and to what extent he might have considered, or not, the perception of the public as to whether there might have been a trade-off.

MR. KENNEDY: And again, I have no problem with that, Commissioner. My only concern is that it could adversely reflect or impact on Constable Smyth.

THE COMMISSIONER: Right.

MR. KENNEDY: And there's no evidence of a –

THE COMMISSIONER: Well, Ms. O'Brien, you can clarify that possibly with a couple of questions, if you might. You might not otherwise be going into it but if Mr. Kennedy has a concern that can be alleviated fairly easily, why not do it.

MS. O'BRIEN: Yes, thank you.

So, Chief Superintendent Boland, can you give us a little more detail – I think what Mr. Kennedy is looking for is a little more detail around the incident for which the RNC investigated the RCMP officer.

CHIEF SUPT. BOLAND: The matter – please stop me if I go into too much detail. It was the matter in Labrador in one of the south coastal communities where our officers responded to a call and a complaint, and there was a standoff for an extended period of time. The matter came to a conclusion when there was a, one of our officers shot a person, and I asked the – I think it was a Friday evening, and I asked the Royal Newfoundland Constabulary, I contacted the chief and asked if he could send an investigation team to the community to conduct the investigation on our behalf. The time constraints in the matter were of considerable concern to me. It was a small community.

Perhaps one of the most interesting factors about it, we had two officers in the community. The officer who had discharged his firearm was the officer that was at the health centre with the person who had been injured and was now in our custody and the other officer who was at the scene with him was continuing to guard the scene. So I was very concerned about getting resources there as soon as possible, and that was my main reason for contacting the RNC. They're familiar with our province.

We have a province where policing is very, very challenging in many areas and the RNC understand that. The RNC have a presence in Labrador and they understand the challenges. And asking them to do the investigation, I thought was a way to get it conducted in an efficient manner. And like I said, I had no concern that there would be anything other than a professional investigation done. And to the best of my knowledge and my memory, I think the Major Crime Unit for the RNC was the organization, was the group that they sent to the scene and conducted that investigation.

MS. O'BRIEN: Okay.

THE COMMISSIONER: So a person was wounded –

CHIEF SUPT. BOLAND: That's correct, Commissioner.

THE COMMISSIONER: – then recovered?

CHIEF SUPT. BOLAND: The person was wounded, fortunately survived the gunshot and was – charges were laid against that person and it carried on through. I think all matters have been resolved with that, you know, including the incident with the fellow who started the whole thing.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Anything left hanging there, Mr. Kennedy, you got enough? Okay.

MS. O'BRIEN: Thank you.

Chief Superintendent Boland, I know you're talking about you didn't see any concern yourself for bias. Do you distinguish between actual bias and the perception of bias, the potential perception in the public of bias? And maybe you could give the Commissioner your comments on those two things.

CHIEF SUPT. BOLAND: So it has, that very issue is something that I've had front and center in my mind for many years and I've struggled with just issues around optics or public perception. Right or wrong, within our – within the type of work that we do, the public very rarely gets to hear all the details of an investigation or an incident or a matter. So it's – I find it quite interesting to try and balance the optics or perceptions around what versus the facts or the evidence or the information and all the details in a case.

There's a lot of confidentiality around investigations, a lot of reasons why information can't be released outside the realm of the investigation. Confidentiality of the people involved, and certainly not to mention processes and judicial processes that might flow from any investigation. And so when it comes to public perception or optics or perception, it is something that enters my mind but I think my policing background reverts to the black and white of what's the evidence and what's the information that we have at hand and the confidence that I built up over the years of the integrity of the people that I've worked with to do thorough, good investigations.

MS. O'BRIEN: Okay. So when you're looking at these issues is what you're saying there, that you're looking for actual bias; or that's your concern, actual bias not necessarily the optics of it.

CHIEF SUPT. BOLAND: That's correct. Yeah, I think that's a fair statement.

THE COMMISSIONER: Superintendent, the – would you agree that across Canada in the last 10, 15 years that there have been a number of cases where concerns have been raised about the police investigating police? Where there might be two different organizations involved and completely involved with no overlapping in the sense of one member of a force working with the other force. And wouldn't you agree, there's also been concern about, where possible, removing the possibility of the public being suspicious when you have the force investigating either its own member or the member of another force.

I guess there's arguably, possibly more likely to have a perceived bias if it's a force investigating its own officer directly when there is a serious crime. Would that be fair?

CHIEF SUPT. BOLAND: I think that's very fair, Commissioner. I believe the time frame you mentioned, 10 to 15 years, certainly more so in recent years. In the last two, three, four, five years, you know, cases out of some of the larger cities in the country here. Especially the last while, some cases out of the United States, there have been some significant issues around police investigations.

Our history here has been – it hasn't been uncommon for us to call on each other's organization to conduct investigations for each other on behalf. When it's our officers involved, I have gone out to external police agencies and organizations. And the matter of where we're progressing with those sorts of things today, I believe, whether it's a civilian investigation or another police service investigation, I agree that those issues around perceptions or perceived biases are becoming, have become more and more pertinent in recent years and –

THE COMMISSIONER: But it's becoming a bit more nuance in the discussion. Like, here you had two possible factors that might have created a perception of bias. One was the fact that you had – the RCMP had one of its members involved in the unit, the PSU with the RNC. So it's primarily an RNC unit, as you mentioned, but you had seconded one of your officers.

So arguably, when you're investigating that segment of the RNC you had the perception of bias arguably, because your officer was there. But then you had the other factor of where it's just police investigating police and you have this notion that there should be civilians brought in to head up the organization that's doing the investigation, and that might remove the public's perception of bias. But then they go on, and some of the reports that have been done would suggest that it's not enough. Even to have the civilian-led organization, you've got to have an all-civilian group with civilian investigators –

CHIEF SUPT. BOLAND: Uh-huh.

THE COMMISSIONER: – that are doing the investigation. So all of these factors come into play and you're basically, after a long career, you've been used to operating under the older system, we'll say. And I'm not saying that everything should be thrown out because it's been around for a while, but how would you label yourself in terms of dealing with these issues of perception of bias. Would you be one who, quote, came from the old school, end quote, or do you feel that you've remained up to date with a modern approach to these issues?

CHIEF SUPT. BOLAND: So I think I would select both of what you've described there. I've never had an experience in a case like this where we haven't had a good investigation done. And I think, in recent times, more options have kind of unfolded before us. And as I'm sure, as we go through this afternoon, the independent observer option was something that I had seen in use in other parts of the country, and I thought it was – I think that's a good model, or a good option and –

THE COMMISSIONER: Well, it's another set of eyes that's keeping oversight on what your force is doing –

CHIEF SUPT. BOLAND: Right.

THE COMMISSIONER: – in its investigation.

CHIEF SUPT. BOLAND: Absolutely.

And I think – so the old school, I think police investigating police, I would go a step further. I'm always concerned about people with the experience and the skills to conduct an investigation. When you sit down and interview anybody on either side of a table, whether they're a person of

interest, whether they're a witness, whether they're a suspect, the person sitting there has got to have the skills and expertise to be able to conduct that interview.

So the options that are becoming more and more prevalent – this is what I mean within the last two to three, four or five years – is sending investigations out for reviews by other organizations. In this case, we did that also.

And in the early part of the investigation, I felt that we were far enough away, an arm's-length away. We're a separate organization. We have different policies, approaches to things. We have different cultures. We are different organizations. And the ability for us to carry out the investigation, I thought, was well within our ability to do.

So then where the independent observer and then the external review came on, I think that fits into what you're talking and describing when it comes to –

THE COMMISSIONER: The ASIRT examination of whether you did what ASIRT would believe to be a thorough and transparent investigation.

CHIEF SUPT. BOLAND: Right.

THE COMMISSIONER: Yeah.

CHIEF SUPT. BOLAND: And your comments are very interesting around should these external civilian agencies be non-police officers; should they be of civilian background. You know, therein lies still some of the challenges I think –

THE COMMISSIONER: Well, part of the problem is, I think, the individuals or groups who believe that it would be advantageous to have a civilian-controlled agency or an all-civilian agency doing the investigation, they do stress the need for proper resources –

CHIEF SUPT. BOLAND: Uh-huh.

THE COMMISSIONER: – and they recognize that there are not that many skilled investigators going around who are not ex-police officers.

CHIEF SUPT. BOLAND: Uh-huh.

THE COMMISSIONER: And so that in itself reduces, arguably, the separation that you're looking for if people are believing that, well, it's still policemen even though they're retired policemen doing the examination.

And I'm sorry, I've completely devastated Ms. O'Brien's line of questioning now, so I apologize for that. I was just – I was reading an article last night that did a survey in British Columbia – I think it was the British Columbia Civil Liberties Association. There's a second one, which I haven't got to yet, but the second one is a collection of papers and one of them is a paper saying 10 things not to do when you're setting up a serious incident response team.

CHIEF SUPT. BOLAND: Uh-huh.

THE COMMISSIONER: So many of these issues were bubbling in my brain as a result of having time again this morning while the snow was on, to look at some of these issues. So, Ms. O'Brien, you go ahead and salvage the order of your questions now.

MS. O'BRIEN: That's fine, Commissioner; you didn't derail it at all. It was the perfect opportunity actually and a good segue into my next area of questioning, which was the independent observer.

CHIEF SUPT. BOLAND: Okay.

MS. O'BRIEN: So had an independent observer ever been used previously in this province, to your knowledge?

CHIEF SUPT. BOLAND: To the best of my knowledge, this is the first time an independent observer's been engaged in an investigation.

MS. O'BRIEN: Okay. And just to be clear here, Commissioner, when I'm speaking about the independent observer, now I am speaking about the role that ultimately Judge Riche played, and we will talk about the role ASIRT performed later on in your questioning.

Had you ever worked with an independent observer previously?

CHIEF SUPT. BOLAND: I had not, no.

MS. O'BRIEN: Okay.

So I think you've just explained to us why you came up with the idea or considered, why you gave consideration to an independent observer. Where did you get the idea for an independent observer?

CHIEF SUPT. BOLAND: So the idea came from my working time in the northwest region in Saskatchewan. I was posted to our regional office in Regina and my office there oversaw services that we delivered in programs throughout the Prairie region, all three Prairie provinces. And I was aware that Manitoba had used independent observers in investigations. And the idea struck me as very interesting when I heard what they had been doing, and I thought it was very interesting, kind of ground-breaking procedure, I think, or process.

MS. O'BRIEN: Okay. And –

THE COMMISSIONER: I think the first – I haven't specifically gone looking for this, but the first – earliest date that I've seen it being used in Canada was around 2007, I think, in Ontario. I believe in Toronto, the idea came to the surface. And I think the Ontario ombudsman looked at it in his report that came out some years after that.

Sorry, go ahead.

MS. O'BRIEN: Thank you.

And in the cases that you were familiar with from Manitoba, was that in situations of police-investigating-police type situations or what types incidents were you – you know, had you become aware of independent observers being used?

CHIEF SUPT. BOLAND: So in just – in all the cases – and there weren't a lot. I'm not talking big numbers; I'm talking fairly small numbers. And my awareness was very much on the fringe. I heard and saw discussions –

THE COMMISSIONER: What was the rough date? Can you recall?

CHIEF SUPT. BOLAND: So, Commissioner, when you mentioned 2007, I'm already kind of thinking to myself if it was a process that was used and prior to me leaving the Prairies in 2010, or if it was something I heard afterwards, you know, through other news reports or through briefings – and the time frame, around the 2010 area. It might have been shortly before; it might have 2011-2012. Of course, I'm involved in lots of national discussions with counterparts across the – and meetings across the country, and the time frame, when I heard about an independent observer, I know it stemmed out of Manitoba and I would say early – around the 2010, give or take, that area.

MR. KENNEDY: Commissioner, if I could just – I might be able to help you there. There is a paper prepared by the former commissioner of the RCMP public complaints commission that summarizes the RCMP use of the independent observer.

THE COMMISSIONER: What's it called?

MR. KENNEDY: It's a – I've got it back in my office. It's written by the former Commissioner Paul Kennedy and my recollection is that it started to be used around 2007. I can get the reference to that paper for you, Commissioner, and provide it to you.

THE COMMISSIONER: Yes, that would help save time, Mr. Kennedy. I haven't seen that one. I've seen a couple of other papers. I think the Yakabuski report indicates some history of that. If not that one, then it's the report done by Mr. Dubé, the Ontario Ombudsman. But I'd like to get that reference when you get a chance. Yeah.

Thank you.

MS. O'BRIEN: Yes. And Commissioner, we do actually have – certainly I know I have a summary of the synopsis of the paper that Mr. Kennedy is referring to.

THE COMMISSIONER: Good.

MS. O'BRIEN: Okay.

So, the cases where you heard about the independents that are being used, were these all cases that came out of investigations taking place on, within First Nations communities in Canada?

CHIEF SUPT. BOLAND: That's correct. That's my recollection. They were high profile, highly charged incidents, matters of significant community interest. I think there have been, over the years, many concerns or issues or challenges raised around investigations of that nature. So I believe the police commenced using independent observers from within the community to provide people with assurances that investigations were being done impartially, unbiased, thoroughly.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Excuse me a second.

You were in Yellowknife. A friend of mine – what's his name, a Provincial Court judge – Barry, utilized circles of support and this was quite well received around Canada in testifying the use of circles of support in the case of Aboriginal cases. And I was wondering if that might have come out of this notion – the independent observer might have been connected in any way to the special steps that are taken for the Aboriginal community out west.

CHIEF SUPT. BOLAND: Very much so. I think so, too.

So I'm familiar with a judge in the Nunavut Territory, Judge Justice Brown did the same thing you're describing with Justice Barry, had community people join her on the bench during court processes to provide with culture, knowledge, information. So I think it probably is borne from those concerns.

THE COMMISSIONER: Yeah. We've done some of that in Labrador as well. I think particularly, I think Justice O'Regan and Justice Fowler were using it in Labrador here, but it had to be done carefully and he had to adopt some or make up the rules as he went along.

Go ahead.

MS. O'BRIEN: Thank you.

So in the cases that you were aware of where the RCMP had used independent observers, I understand they were from incidents in First Nation communities, whether on reserves or not, and that in those cases, am I correct, that the independent observer was selected as an elder member of the Aboriginal community who would do the observing. Is that right?

CHIEF SUPT. BOLAND: So I think you're right. I think the majority of the observers probably were elders but I think the terminology that I would use here, they were looking for respected, well-thought-of members of the community who are known to have good reputations, people of integrity.

MS. O'BRIEN: Okay. But not necessarily any legal training or background?

CHIEF SUPT. BOLAND: Oh, no, no.

MS. O'BRIEN: Okay. So the ones you'd heard of had not been someone with legal training or background?

CHIEF SUPT. BOLAND: Correct, yes.

MS. O'BRIEN: Okay.

Now, we know that when you ultimately selected your independent observer you ended up with someone who had legal training and background. In fact, you ended up with a retired Supreme Court judge. So how did that come to happen?

CHIEF SUPT. BOLAND: Tuesday after the matter, a couple of days later as my mind turned more towards public interest and concern that I was becoming aware of, I thought of the independent observer option and I thought to myself: how can I identify an independent observer in this matter? So I contacted the chief Provincial Court judge and told him that I was interested in identifying an independent observer to join our investigation team, and my policing experience in this Province has not been front line. I'm not familiar with many of the people in the judicial community here, so I relied on his knowledge of people who I could call upon.

So he gave me a couple of names and that's how I – and it was, again, a very brief, very brief discussion. I was interested in obtaining an independent observer and could you give me some recommendations. And I got a couple of names and went from there.

MS. O'BRIEN: Okay. And that would have been at the time Chief Judge Pike, Mark Pike –

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: – answered at the time? Okay.

And so when you contacted Chief Judge Pike, were you asking him for recommendations of judges or retired judges, or were you just asking him generally?

CHIEF SUPT. BOLAND: It was a bit of both, you know. I was asking for recommendations, specific names of people. It wasn't – my criteria wasn't very specific. I was just looking for a retired, respected person from within the judicial community.

I felt a retired jurist would be a good fit because of their, you know, experience in court proceedings, experience in examining investigations and sitting through trials, and understanding the steps of an investigation. And so that was – it was pretty basic.

MS. O'BRIEN: And just for the benefit of everyone in this room would understand when you say you were looking for a retired jurist, but that would be a retired judge, right?

CHIEF SUPT. BOLAND: Sorry.

MS. O'BRIEN: Yeah.

CHIEF SUPT. BOLAND: Sorry; yes. Correct.

MS. O'BRIEN: Just for the –

CHIEF SUPT. BOLAND: Sorry, it's an old –

MS. O'BRIEN: – people who are watching.

CHIEF SUPT. BOLAND: – it's an old term I use for judges.

MS. O'BRIEN: Yes, yeah. And I know the Commissioner would know that.

Okay. So did you – prior to doing this, did you contact anyone within the RCMP from other regions of Canada who had used an independent observer to get any guidance or information from them that might have been of assistance to you?

CHIEF SUPT. BOLAND: No, I hadn't.

MS. O'BRIEN: Okay.

And, now I understand that one of the names that Chief Judge Pike gave you was David Riche. Is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And did you know Judge Riche at all previously?

CHIEF SUPT. BOLAND: Not at all. I never had heard his name before.

MS. O'BRIEN: Okay.

I'm going to ask you about how you made contact with Judge Riche, and your notes – you did provide us with some notes in this matter and they may assist you in that regard.

And I'm going to ask Madam Clerk to bring them up, please. Exhibit P-0443.

CHIEF SUPT. BOLAND: So I recall the interaction and the contact with Justice Riche.

The chief judge had given me his name, and then I called the acting deputy minister, I believe, was Heather Jacobs at the time, and gave Heather the name of the person we were planning to engage as an independent observer. And there was – then I think Ms. Jacobs got his telephone number for me –

MR. KENNEDY: Excuse me, could I just get a point of clarification? It's confusion on my part.

Exhibit P-0443; even though the card on the front page is Superintendent Jason Sheppard, these are actually Chief Superintendent Boland's notes. Is that correct?

MS. O'BRIEN: No, they aren't. This is not the right exhibit number. Thank you, Mr. Kennedy.

Sorry, it's P-05 – thank you, Mr. Kennedy – P-0565.

Sorry, continue on, Chief Superintendent Boland, you seem to be doing well without your notes, but they will come up in a few minutes.

CHIEF SUPT. BOLAND: So I have refreshed my memory with those notes, so. Sorry, the screen is so close. So I got – I believe I got Justice Riche's telephone number from Ms. Jacobs and I called, called his house, spoke briefly to his wife, I believe, and he was out at the time. Then he called me back a few minutes later and, again, a brief conversation. I expressed to Justice Riche that I was interested in having somebody join our investigation team as an independent observer, and briefly indicated to him what I was looking for, and he said –

MS. O'BRIEN: And what would you have briefly indicated to him?

CHIEF SUPT. BOLAND: So –

MS. O'BRIEN: What would you have told him you were looking for?

CHIEF SUPT. BOLAND: So I told him I looking for somebody who was impartial, you know, not connected to any of the matter that we're investigating, and I was simply looking for somebody to join the investigation team and observe issues around impartiality, bias, influence, interference, any, any matters that could have come to bear that would have been concern on the investigation, and transparency. I was interested in transparency. The public interest and concern around a unbiased, transparent investigation.

So Justice Riche agreed to take on the role as the independent observer. I was on a little bit of a time crunch. I knew the investigators were preparing to do a re-enactment at the scene, and I felt that having the independent observer engaged as early as we could in the investigation and involved in the investigation as much as possible would be very, very helpful.

So I got off the phone, told the folks that were working around the investigation Judge Riche was joining as an independent observer, and to please make the necessary arrangements to engage him in the re-enactment. So the calls were brief. They were fast and brief, just because of the crunch of time of what was unfolding.

MS. O'BRIEN: And when you say brief, can you just give an estimate of time, particularly that call with Judge Riche?

CHIEF SUPT. BOLAND: Oh, I would say between five and seven minutes. Maybe, roughly – yeah, between five and 10 minutes to be safe.

MS. O'BRIEN: Okay.

So just looking here at your notes – and these are the notes that are taking place on April 8, this is?

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: And in the morning, and I think your first note here is at 9:50 is when you spoke to Heather Jacobs and it says she will, I think, she will contact –

CHIEF SUPT. BOLAND: She will contact Justice Riche.

MS. O'BRIEN: – Justice Riche.

CHIEF SUPT. BOLAND: Yeah.

MS. O'BRIEN: And then we have at – the next entry here is I think at 9:57: Spoke to Al Warren to start personal services contract. What are you referring to there?

CHIEF SUPT. BOLAND: So to engage Justice Riche, we would have to have a vehicle for remuneration and so Al Warner is in our planning office and Al was the fellow who –is – I think he still does that work – puts together any of these agreements and contracts that we have to enter into with outside folks.

MS. O'BRIEN: Okay. And I think we'll see that contract in a few minutes. Then your next note here is at 10:15: Spoke to Justice Riche; agreed to be independent observer; explained will have mandate letter –

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: – independent observer; report on independence – and I believe that says thoroughness; is that right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And then: Agreed; will be picked up at 12 o'clock by –

CHIEF SUPT. BOLAND: Lead investigator to go to scene.

MS. O'BRIEN: To go to scene, and so that was for the re-enactment?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. And then the next thing, your next note here is that you spoke to the officer in charge MCU, so I think that would Pat Cahill from what you said?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: For details, and then also spoke to Chris Fitzgerald re: letter. So your note there speaking to Pat Cahill, would that just be to update him on that Judge Riche had agreed to be the observer?

CHIEF SUPT. BOLAND: Yes. That's correct.

MS. O'BRIEN: And when you say spoke – when you wrote, spoke to Chris Fitzgerald re: letter, what would you have been speaking to Chris Fitzgerald about?

CHIEF SUPT. BOLAND: That would have been the terms of reference, to draft up a terms of reference for Justice Riche and the process to formalize engaging him.

MS. O'BRIEN: Okay. And we'll look at that in a few minutes too.

Then your next note here is at 10:35, you spoke to the CO, so that would be Tracy Hardy, and briefed her on Judge Riche. Then your next note here is you spoke to – at 10:41, you spoke to Jason Sheppard. And I think you have here A/DC. So at that time he was acting deputy chief, is that right?

CHIEF SUPT. BOLAND: That's what I believe, yes.

MS. O'BRIEN: Okay, RNC. And so at this point you were just – it looks here from your note that you were just updating him on the appointment of the observer.

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Do you recall any further details of that conversation with Jason Sheppard?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay. And then your last note here is at 10:50, again that morning: Spoke to Superintendent Zettler and Inspector Cahill to – maybe you could read that for me?

CHIEF SUPT. BOLAND: To update on developments on independent observer, and the next couple of bullets were notes I made to ensure, with the engagement of the independent observer, that the family of Mr. Dunphy was advised and media release – if we were doing any more media work, to advise of the independent observer's appointment.

MS. O'BRIEN: Okay.

We're going to get – in a few minutes, we're going to come to some of your communications with the RNC. But while we are at this point right now, can you just explain to the Commissioner why you would have been providing that update to Jason Sheppard of the RNC?

CHIEF SUPT. BOLAND: Just to let them know that we had engaged an independent observer in the investigation, so keeping stakeholders, I guess, is the best way to describe it, keep them informed of some of the things that I was involved with.

MS. O'BRIEN: So we do understand from other evidence that – and we will hear again from Sergeant Osmond soon – Sergeant Osmond picked up Judge Riche that day and brought him out to the re-enactment that afternoon, so the afternoon of April 8. Had Judge Riche's personal service contract or his terms of reference been drafted at that point?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay.

And I think then when we go on in your notes, in the same exhibit here, in your notes here for the next day, which is April 9, which would have been the Wednesday, there's just a – it says here: Dunphy investigation; chair, myself; Al Warner, whom you just spoke about, Pat Cahill, Chris Fitzgerald and Kent Osmond. So these are all names we now know.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: Discussed finalizing mandate letter to Justice Riche, a personal service contract. Pat Cahill and Al Warner will meet with Justice Riche Friday with finalized docs. Kent Osmond will start – sorry, can you read that part for me, please?

CHIEF SUPT. BOLAND: Kent Osmond will start the flow of ops material.

MS. O'BRIEN: Okay. All right. So, at this point, this is meeting between you and those named individuals, I take it, and at that meeting you're discussing finalizing the terms of Judge Riche's retainment; is that right?

CHIEF SUPT. BOLAND: Correct. That's correct.

MS. O'BRIEN: And would a draft of his, in particular his terms of reference, have been done at that time – would you have been discussing a draft?

CHIEF SUPT. BOLAND: Most likely. I would think so, yes.

MS. O'BRIEN: And who would have, or can you say who would have done the first draft?

CHIEF SUPT. BOLAND: Chris Fitzgerald.

MS. O'BRIEN: Okay.

And what do you recall of the discussions at this meeting about finalizing the draft?

CHIEF SUPT. BOLAND: Just based on my notes there, we probably just went over whatever we had there for a draft and if it was suitable and the personal services contract – it was all pretty straightforward stuff.

MS. O'BRIEN: Okay. So maybe we can look at those documents then.

If we could see Exhibit P-0577, please.

So this exhibit begins with a covering letter from you, Chief Superintendent Boland, dated April 9 to Judge Riche. And your covering letter says: We are seeking your services to provide independent observation of a criminal investigation being conducted by the RCMP, Newfoundland and Labrador. The RCMP Major Crimes Unit is investigating the circumstances surrounding the shooting death of Mr. Dunphy by a member of the Royal Newfoundland Constabulary, which occurred in Mr. Dunphy's home in the community of Mitchells Brook, NL on April 5, 2015.

Just stopping there for a moment; we've had some discussion or a number of questions being posed about whether or not this was a criminal investigation or not. I take it from this letter you understood it at this time to be a criminal investigation. Is that right?

CHIEF SUPT. BOLAND: I did, yes.

MS. O'BRIEN: Okay. And did you always understand it to be such?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: Okay.

Your next paragraph continues: "In interest of transparency and public confidence, we ask that you engage with the investigative team as an independent observe impartial of influence and/or interference. You will have unfettered access to all aspects of the criminal investigation. As outlined in the attached terms of reference, we are asking that you complete a written report regarding your observations of the independence and thoroughness of the investigation.

"Your primary contact person for this matter will be Inspector Patrick Cahill, Officer in Charge, 'B' Division Major Crimes." And I think you provided a telephone number for him here.

"All costs incurred during the course of your work will be the responsibility of 'B' Division RCMP as per the Personal Service Agreement."

So from this I take it you were, this was – you were just a point – giving him who his point person will be or who his primary contact would be on the file. And that was Inspector Cahill, right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. I'm just gonna take you quickly to the personal services agreement which I believe is attached at page three of this exhibit. When you're referring to the personal services agreement in your notes and in that letter is this what you're referring to here, this page that we have up here now?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. So that just basically says his billing rate and whatnot?

CHIEF SUPT. BOLAND: That's right.

MS. O'BRIEN: Okay.

More interest to us is Judge Riche's terms of reference. So this is the document that you had prepared and ultimately presented to him. I'm just gonna note that this looks to have been ultimately signed by Judge Riche on April 10 and at the same time it looks like it was signed by Inspector Pat Cahill. Is that right?

CHIEF SUPT. BOLAND: I agree, yes.

MS. O'BRIEN: Okay. So would that have been the day – I know your letter was dated April 9, the covering letter we just looked at, but is it – from this can we take that Judge Riche actually received this on April 10?

CHIEF SUPT. BOLAND: Yes, I believe so.

MS. O'BRIEN: Okay.

So I'm going to go over each term of reference in a moment, but I just – first I want to ask you, who at the RCMP was charged with ensuring that the terms of reference were followed?

CHIEF SUPT. BOLAND: Inspector – so, I don't recall a discussion that there was a point that you will be, but Inspector Cahill was the Major Crime officer. He would've had a significant role to play in ensuring that the terms of the agreement were adhered to and, you know, the investigators on the file would've had a significant role.

Kent Osmond was the NCO in charge of Major Crimes, and I believe he was in the command triangle on that investigation as well. But from the chair I sat in, my expectation would be Inspector Cahill would be the person who would ensure that my wishes were followed out.

MS. O'BRIEN: Okay. And your wishes, I guess, as those would have been encapsulated in the terms of reference, yes?

CHIEF SUPT. BOLAND: Oh, I think that's fair.

MS. O'BRIEN: Okay. And when I say adherence, just to be clear, you're talking about Judge Riche's adherence to his terms of reference and as also the RCMP's adherence. Would that be the case?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: So make sure both parties are following the mandate.

Okay. So just to go over – some of these we'll go over very quickly but some I'll have some more questions on. The first term of reference is that "The Independent Observer: Will be briefed by the lead investigator in charge of the investigation or a delegate at the onset of the investigation."

So lead investigator here, would this have been Corporal Steve Burke?

CHIEF SUPT. BOLAND: So in the command triangle, I think Corporal Burke was the lead investigator. Yes.

MS. O'BRIEN: Yes. And that's the information that we have that he was, and the team commander was Kent Osmond.

Now, Corporal Burke has given us evidence already here at the inquiry and he's testified that he did not have a formal briefing session with Judge Riche but rather that he kept him up to date more informally as the file progressed.

To your knowledge, did anyone have a formalized briefing session with Judge Riche at the onset of his retainment?

CHIEF SUPT. BOLAND: So from looking at the personal services contact, that Friday, the 10th, was the meeting with Justice Riche and Inspector Cahill and Sergeant Osmond. So I would have expected that that would have been the formal – the onset of the formalizing of the terms of reference.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: I wouldn't expect Corporal Burke to do that.

MS. O'BRIEN: Okay.

Do you have any direct knowledge whether anyone sat with Judge Riche and explained to him how the major case command triangle works or how MCU carries out its investigations? Do you have any knowledge that anyone did that with Judge Riche?

CHIEF SUPT. BOLAND: No, I don't.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: It would be an expectation I would have, though.

MS. O'BRIEN: Okay. And your expectation would have been that that would have been done by Cahill and Osmond at the first meeting?

CHIEF SUPT. BOLAND: Yes, that's correct.

MS. O'BRIEN: Okay.

Okay. The next term is "The Independent Observer: Will submit his report as and when appropriate to the Commanding Officer/delegate to ensure impartiality, fairness and transparency in the investigative process."

Had you or anyone else to your knowledge at this time turned your mind to the timing of Judge Riche's report? For example, would his report be delivered before or after the final RCMP investigative report?

CHIEF SUPT. BOLAND: So I hadn't turned my mind to that kind of detail down the road but, you know, I – I would expect that Judge Riche's report would come after the conclusion of the investigation.

MS. O'BRIEN: Okay. And sorry, I just didn't hear your answer. Were you saying you had or had not turned your mind to it at this point?

CHIEF SUPT. BOLAND: No. No, not at the beginning of this point here, no.

MS. O'BRIEN: Okay.

So you're saying that detail you hadn't turned your mind to it but ultimately your thought was it would come after the RCMP report was done.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay.

The third term is, "The Independent Observer: Will accompany the designated contact member within the RCMP to observe the investigation as directed by the lead investigator in charge of the investigation."

So the designated contact member would, would that have been referring to Pat Cahill?

CHIEF SUPT. BOLAND: So that could have been Cahill or Osmond. I think it would be more of a – I think judge, I think Justice Riche became, you know, worked with both Burke and Cahill. "Will accompany the designated contact member within the RCMP to observe the investigation as directed by the lead investigator"

MS. O'BRIEN: That was my next question. What did you understand that to mean, accompany the designated contact member to observe?

CHIEF SUPT. BOLAND: So the, that would have been the investigator, the lead investigator. So that would have been Corporal Burke.

MS. O'BRIEN: Okay. So just, if you could explain, what did you understand this term to be telling Judge Riche?

CHIEF SUPT. BOLAND: That as becoming a part of the investigative team he would be working with people on the, within the investigation triangle, the command triangle of the investigation.

MS. O'BRIEN: Okay.

And the idea "Will accompany" So is that the – is the – I'm not sure what you're saying here, but just to clarify, does that mean that he wouldn't be doing things on his own, he would, when he was visiting something or doing something, he would be accompanied by someone from, from the RCMP side of the investigative team?

CHIEF SUPT. BOLAND: That's correct, yeah, yeah.

MS. O'BRIEN: And the idea here, this wording again, "as directed by the lead investigator," what did you understand that to mean?

CHIEF SUPT. BOLAND: So the, the lead investigator is the person that's, that's, you know, most aware of what's unfolding in the investigation. He or she would be involved in the briefings and the activities throughout the investigation. So just so the person had one, one point of contact, I guess. They would be working with the lead, the lead person, as opposed to other, other people involved in the investigation.

MS. O'BRIEN: Okay. And so, so that – you would take that as being working under the direction of the lead investigator; is that what you're saying?

CHIEF SUPT. BOLAND: No, not so much under the direction, but more taken – being aware of what's happening. The lead investigator would be advising, letting Judge Riche know what they were doing and, you know, more keeping him in – keeping him aware of what's happening within the investigation. Excuse me.

MS. O'BRIEN: Thank you.

The fourth point: The independent observer may monitor witness interviews with the consent of the lead investigator in charge of the investigation and the written consent of the person being interviewed. In the case of a young person, the *Youth Criminal Justice Act* applies.

So first, I think we can take care of this quickly, but the *Youth Criminal Justice Act* did not apply in this case.

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: No, okay.

CHIEF SUPT. BOLAND: Not that I'm aware of.

MS. O'BRIEN: Okay. And I think in terms of monitoring witness interviews, the only, only interviews of the type we have knowledge that Judge Riche monitored would have been the re-enactments that were done by Constable Smyth. And I think that can be taken as a form of interview at least –

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: – in that he's – okay.

Do you know whether written consent was ever obtained from Constable Smyth for that?

CHIEF SUPT. BOLAND: I'm not aware. No, I wouldn't – I wouldn't have that knowledge of the intricacies of the investigation.

MS. O'BRIEN: Okay. And so who would have been tasked with making sure that was done? Would that have been Inspector Cahill?

CHIEF SUPT. BOLAND: So that could have been either, you know, the lead investigator – I think probably Corporal Burke; it would have been something that would have been fallen within his responsibilities.

MS. O'BRIEN: Okay. And just for clarity, Commissioner, we don't have any information that Constable Smyth in any way objected to Judge Riche's presence at the, at the re-enactments.

Okay. Now, this refers to monitoring witness interviews. What about the conducting of interviews or the act of questioning of witnesses? The terms of reference, when you review them in the whole, they don't address that: Judge Riche actually speaking directly with witnesses. We do know that happened in the course of the investigation, that he did do that. Would that have been a variance from the terms of reference?

CHIEF SUPT. BOLAND: I think so. So throughout the course of an investigation – you know, every investigation is different, what avenues and where things go with an investigation, nobody – I don't think anybody can tell ahead of time exactly where they are going to go. But from my frame and from my mind of what I had engaged Justice Riche for, he wouldn't be carrying out any witness interviews, which is why I think the wording “monitor” is there, to monitor interviews.

Because in the course of an investigation, depending on the type of interview and depending on the people involved in the interview, it's my opinion the fewer people there, the better. Unless they have a very specific purpose to support – in the case of somebody supporting a victim of crime; if there was two police officers carrying out an investigation involving a suspect and they had specific roles that they were going to play within the confines of the investigation. But I didn't have any expectation that Justice Riche would be conducting any interviews on his own.

MS. O'BRIEN: Okay.

Did anyone come to you at any time to let you know that that was a request being made or that was something that was being considered, allowing him to actually question witnesses or parties?

CHIEF SUPT. BOLAND: No, I don't recall any discussions along those lines at all.

MS. O'BRIEN: Who would have been responsible for managing that or making that decision about varying from the terms of reference?

CHIEF SUPT. BOLAND: So I would expect that the lead investigator, or the investigation team, if they had any concerns, if any issues or concerns arose, they would address them with Inspector Cahill first. And if Inspector Cahill couldn't resolve them, I would expect that he would take them to his line officer, the provincial policing officer and so on, within the command structure.

MS. O'BRIEN: Okay.

So again, just to get clarity in what you're saying there, so if – you're saying that you would have expected that if that change was being contemplated by the investigative team, that they would take that to Inspector Cahill first to get authorization to do that?

CHIEF SUPT. BOLAND: Yes. Yes, I agree with that.

MS. O'BRIEN: Okay. And then if Inspector Cahill didn't feel he could resolve it, he could move it up the chain of command?

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay.

The next is paragraph e.: with respect – will respect – the independent observer will respect the confidentiality of the investigation, briefings and the identity of witnesses and suspects. What did you understand that paragraph to mean?

CHIEF SUPT. BOLAND: So just like any investigation, there's an element of confidentiality and I expected that everybody involved would have respected the issues around confidentiality. We certainly don't want information – in some types of investigations, you certainly don't want information getting out that might impact the course of the investigation.

MS. O'BRIEN: What about after the investigation was complete?

CHIEF SUPT. BOLAND: So I hadn't turned my mind towards that at all. You know, in hindsight and over the course of time, I think I wouldn't have expected there would have been any discussion outside the realm of the investigation.

MS. O'BRIEN: You would not have expected; is that what you're saying?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay.

And f. says: "Will not disseminate any information or documentation provided during the investigation." I think that's self-explanatory, how it's written there, but again did you, you know, in your – at the time, had you considered whether this would continue to apply after the investigation was complete?

CHIEF SUPT. BOLAND: No, I didn't consider it at the time. And when I do look back with the advantage of time and hindsight, I wouldn't expect it would – there would be any information come out. I think it would be kept within the confines of the agreements that were in place.

MS. O'BRIEN: Okay. So you're saying you didn't consider it at the time but, looking back at it now, you would expect it to apply post close of the investigation.

CHIEF SUPT. BOLAND: Right. And I shouldn't say within the confines of the agreement; confines of the understanding and the arrangement that we had put in place for what we were expecting from the independent observer.

MS. O'BRIEN: Okay. But would that understanding or agreement, would that all be encapsulated in these documents that we're looking at here?

CHIEF SUPT. BOLAND: Yes, it should be, for sure.

MS. O'BRIEN: Okay.

With respect to g.: "Will ensure that if he becomes aware of any potential witnesses and/or evidence he will notify the lead investigator." And again, I think this is pretty self-explanatory and we have some information that Judge Riche did notify Burke of whether it's, you'd call it, potential evidence but potential avenues for inquiry, shall we say, but we don't have any information that he notified the lead investigator of any potential witnesses.

Do you have any information otherwise?

CHIEF SUPT. BOLAND: I'm not aware of any at all, no.

MS. O'BRIEN: Okay.

And so h. finally says: "Will be provided regular briefings as mutually agreed upon once the initial investigation is complete." And again, I think that's one is self-explanatory. Corporal Burke has already testified that he kept Judge Riche informed with regular updates in the investigation.

Other information that we have is that Judge Riche was provided with paper disclosure of the file as, you know, in various times as it progressed. And that ultimately he was given, I think it was seven or eight very thick binders worth of paper material.

Now, other than – we do – we will see later on in your evidence that at one point you sent Judge Riche a letter, enclosing some correspondences that the RCMP had received from Erin Breen. But other than that, in reviewing the file we haven't found any evidence that any other documents from the file were, you know, the attention of those were specifically drawn to Judge Riche's attention.

Would that have been at your direction, you know, just provide him with all the materials and, you know, let him sift, you know, go through it himself? Or, would those kinds of details as to how disclosure would be provided, whether documents were specifically drawn to his attention, would you have been leaving those kinds of details for Inspector Cahill or somebody else to work out with Judge Riche?

CHIEF SUPT. BOLAND: Yeah, the latter. I would be leaving those details to the investigator to deal with through the disclosure process. And, you know, overall, my direction was that Justice Riche was to have unfettered access to the investigation. And, you know, I relied on the people who I gave that direction to, to work through. If there was issues with disclosure and confidentially, then they would sort through that through the process of the investigation.

MS. O'BRIEN: Okay. Did you ever discuss this document that we've just reviewed with Judge Riche?

CHIEF SUPT. BOLAND: I didn't, no. No, my early goings – the only dealings I had with Justice Riche were in the initial telephone conversation. Justice Riche telephoned me one day – he had my cellphone number. He telephoned me one day and I put him to – somebody within the investigation team. It might've been Inspector Cahill. And that was it. I never discuss any of these terms or reference with him or –

MS. O'BRIEN: Okay. And other than the first conversation which you just told us about, did you ever have any discussions with him about his mandate?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: At all?

CHIEF SUPT. BOLAND: No, no.

MS. O'BRIEN: Okay. And did you ever give any direction to anybody on the investigative team or to Pat Cahill; did you have any contact with them or give them any direction as to how they should proceed or what they should do in discussing or clarifying with Judge Riche's terms of reference or his mandate?

CHIEF SUPT. BOLAND: I recall throughout the course of the investigation some discussions from, coming from – and I believe they were mostly from Inspector Cahill. It might have been also Superintendent Sachsse at the time that Justice Riche was perhaps slipping into – or slipping outside of the role, I guess, of the terms of reference and taking on a, more of an inquiry or an investigative kind of a frame of mind.

And I recall on at least a couple of occasions suggesting to superintendent – it may have been Superintendent Sachsse or it may have been Inspector Cahill, and they've been together in meetings – suggesting to both of them to ensure that they continue to reinforce what our expectations were with Justice Riche around the role of the independent observer.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: They were brief in passing conversations.

MS. O'BRIEN: Okay.

THE COMMISSIONER: That might be an appropriate place for a break.

MS. O'BRIEN: That is. Commissioner, I was just going to raise that. I am about to move to another area of questioning and it's a good time to take a break.

THE COMMISSIONER: How are you making out with your schedule?

MS. O'BRIEN: Well, in terms of my list of questions I am approximately halfway through.

THE COMMISSIONER: Okay.

All right. Thank you.

We'll adjourn for 15 minutes.

MS. SHEEHAN: All rise.

Recess

MS. SHEEHAN: All rise

I declare this Commission of Inquiry in session.

THE COMMISSIONER: Go ahead, when you're ready.

MS. O'BRIEN: Thank you.

I'd like to go over some of your communications with the RNC actually, so we'll start with Exhibit P-0466. So, Chief Superintendent Boland, this is an email chain largely between you and Ab Singleton, who was the deputy chief of the RNC at the time, and it starts with, actually the chain starts – and we are back now on April 5, the day –

MR. KENNEDY: Sorry, excuse me, Commissioner, I'm running into the same problem again. At top, it shows Exhibit P-0645 and then P-0466. Which one is it?

MS. O'BRIEN: This is P-0466.

THE COMMISSIONER: Just go up to the top of 0466.

MS. O'BRIEN: 0466.

THE COMMISSIONER: Do you see that green?

MR. KENNEDY: Yeah, yeah, okay. Are we green? Okay.

MS. O'BRIEN: Yes. Mr. Kennedy, I can't – I have noted that before and I'm not sure why it shows that way on the top, but it is 0466.

So it starts, Chief Superintendent Boland, with an email message from you to Ab Singleton, and this is at 3:09 p.m. So, really, in a very short time after the incident took place, and it's – you write: Ab, just got this – and you give a very brief overview of what's going on. You know, three members on scene, two more called; MCU/FIS has been called; and the officer's weapons being seized; Tiller en route to scene, et cetera. And you say once Tiller's on scene he'll will assess and update me. We'll have a better idea of what we need.

Why would you have been sending Ab Singleton this email at this time?

CHIEF SUPT. BOLAND: So when I first saw this set of notes, it struck me that that email is likely a copy and paste from a briefing that I – or an email I got from somebody. I don't know if I wrote that out like that, but it would have just been professional courtesy. Letting them know the initial part of how the scene was unfolding there.

MS. O'BRIEN: Okay. And so you were second-in-command of the RCMP in this province and Ab Singleton would have been second-in-command – in a deputy chief, sort of second-in-command role of the RNC. Would that have played into why you were communicating with Ab Singleton, or was he just someone you knew on the RNC force? What was the –

CHIEF SUPT. BOLAND: No, you're correct in the first part, Ab Singleton, Deputy Chief Singleton is – I viewed, in my tenure in that position, as my counterpart.

MS. O'BRIEN: Okay. All right.

So he responds to you and says: “Thanks Andrew, We do have two supervisors traveling to the area, strictly to assist from an EAP perspective. Officers advised the file and media are the RCMP’s responsibility. Any issue please advise.”

So you respond to that with a: “Thanks Ab. Have you heard how many RNC members at initial call? Peter McKay will be our media. Just getting him engaged. Already have CBC calling. We are not rushing to the mics.”

So one issue is he has asked you specifically if you have, I think, any issue with respect to the officers, the RNC officers attending to the Mitchells Brook area. You did not respond to that query by him. Did you have any issue with the RNC officers going to assist from an EAP perspective or going to site?

CHIEF SUPT. BOLAND: From the EAP perspective, no, it’s a – that’s an administrative or internal process that all of our organizations – I think every police organization, Employee Assistance Program – so no I didn’t have any concern with that.

MS. O’BRIEN: Okay.

And you say: How many RNC members at initial call? So at this time, did you know how many RNC officers were involved?

CHIEF SUPT. BOLAND: No. No, I wouldn’t have.

MS. O’BRIEN: Okay.

And that’s when he gets back to you and says: “All we have is just one.” Okay.

CHIEF SUPT. BOLAND: Correct.

MS. O’BRIEN: Now, you’re also letting, in this response back to him, you’re also letting him know a little bit about your media – who’s going to be the media and here you say Peter McKay and –

CHIEF SUPT. BOLAND: Right.

MS. O’BRIEN: – we’ll get to it, but I understand ultimately it was Greg Hicks –

CHIEF SUPT. BOLAND: Right.

MS. O’BRIEN: – I think did media –

CHIEF SUPT. BOLAND: Right.

MS. O’BRIEN: – for the RCMP, not Peter McKay. Just getting him engaged. Why would you have been communicating to Ab Singleton at the time about the RCMP’s media response?

CHIEF SUPT. BOLAND: Just so that he would have been aware. So in the initial going, in the initial beginning – excuse me – of anything, any event, we often get the media folks crisscrossing between multiple agencies. And so this is what we’re firming up and clarifying who’s got the responsibility over what area. So, you know, we’ll often have, the media will contact agencies and try to get a hold of folks and in incidents, in major incidents, it’s pretty important to clearly let people know who the responsibility is so you can say no, not – if you get a call, call this person, so they – everybody understands.

MS. O'BRIEN: Okay. So in his note to you where he says: Officers advised the file and media are RCMP's responsibility; what did you understand him to be telling to you in that sentence?

CHIEF SUPT. BOLAND: So my understanding is that – of that, he is advising that his people within the RNC understand that the file – the file meaning the investigation; that's a word we commonly use to refer to an investigation – and the media are all of our responsibility.

MS. O'BRIEN: Okay. So the media response would be the RCMP's responsibility?

CHIEF SUPT. BOLAND: That's correct, yes.

MS. O'BRIEN: Okay.

Can we see exhibit P-0566 please, Madam Clerk?

Again, we have some communications back and forth between you and Deputy Chief Singleton. "Ab, Here are SUPT. Jamie Zettler's coordinates. He is currently in the office in Clarendville." Jamie: "Deputy Chief Singleton will advise shortly who the RNC liaison will be."

And you've got both these gentlemen linked in on this email chain. And it comes back; Ab Singleton comes back and says: "Jamie, Our point of contact will be Superintendent Jason Sheppard."

What was the purpose of the RNC liaison?

CHIEF SUPT. BOLAND: So oftentimes in matters like this, it's important to have a liaison person with any stakeholders where you can see – it's just so you have a go-to person if an issue or an obstacle, or concern or matter arises, who's the main contact person to get the information or get whatever we need. So you have a contact go-to, and these are senior levels. I'm looking at senior levels here as opposed to the front line investigation part. So just to help make sure things went smoothly.

MS. O'BRIEN: Okay. Did you specifically request that Jason Sheppard be appointed to this role?

CHIEF SUPT. BOLAND: No, I didn't, no.

MS. O'BRIEN: Exhibit P-0473, please, Madam Clerk.

Did you know Superintendent Jason Sheppard previously?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: And how did you know him?

CHIEF SUPT. BOLAND: So I knew him from work meetings and I knew he – within the organization chart of the RNC, I knew that he worked in the area where he worked for Deputy Singleton.

MS. O'BRIEN: Okay. And would you, say, have known Deputy Chief Singleton previously?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: Okay.

All right. So the next is, again, some more emails back and forth primarily between you and Ab Singleton. And we did receive these emails from the RNC. So it starts with – it actually starts with Greg Hicks, who was the RCMP media person. This is a summary of the first – this is the first press release that was put out by the RCMP on that day. So we have it here. And you are then forwarding that to Ab Singleton with a FYI.

He comes back and says: “Thanks Andrew, I have copied Bill for his information.” And Bill here is Bill Janes who would be the chief of RNC. And then you respond: “Ab, Sgt. Greg Hicks, our OPS NCO at Harbour Grace, is doing the media. He is doing an on camera interview at Holyrood Detachment this evening. I will get an update later this evening on the investigation and will advise.”

So first question for you is: Why would you – why were you forwarding the RCMP’s press release to Ab Singleton?

CHIEF SUPT. BOLAND: So for a couple of reasons, just for awareness. Suddenly we’re aware of what was going to be in the media release and also continue to clarify – or I shouldn’t even say clarify, but continue to kind of firm up the lines of responsibility of who’s doing what. So that there was no misunderstanding that the media was our responsibility, and it served a couple of purposes there.

MS. O’BRIEN: Okay. Now, when you say the media was our responsibility, are you saying that it would not have – like the RNC should not have done any press releases or releases to the media? Can you just explain to us a little more of what you mean by the media was the RCMP’s responsibility?

CHIEF SUPT. BOLAND: So any – the responsibility around the investigation, the investigation itself. So the RNC wouldn’t – I wouldn’t expect it of – so, of course, I can’t speak for their structure and organization but my expectation would be that any inquiries or any media matters around the investigation would be directed to us. It was our responsibility. And that any of the media – if they wish to go out and stand in front of the media for any purpose, that was their business and prerogative but I would expect a professional understanding was in place, that anything to do with the investigation itself was in our wheelhouse.

MS. O’BRIEN: And here in the last email in the chain, you are telling Deputy Chief Singleton that you’ll get an update later this evening and will advise him. Why would you have been updating Deputy Chief Singleton on the investigation itself?

CHIEF SUPT. BOLAND: So that would have been just a professional courtesy to update him, but I don’t recall there was even a follow up or any update. I don’t recall anything specifically. There might have been a brief phone call, but I don’t even recall that. But it would’ve just been a courtesy, professional courtesy.

MS. O’BRIEN: Okay. And as for the first press release, I really don’t have any questions on it. But were you involved in drafting of the first press release, which was a fairly short one?

CHIEF SUPT. BOLAND: No.

MS. O’BRIEN: Okay. And in terms of the follow up the next day – I don’t need to bring you to these emails, but I can advise that entered as P-0076 and P-0044. There are two emails on April 6 where you do send Ab Singleton to let him know the time of the autopsy, and the time of the autopsy has been moved. So in terms of updates, those have been entered into evidence.

Commissioner, that reminds me; when I entered the exhibits earlier this afternoon, I entered Exhibit P-0565 and P-0580. I should have requested that, the numbers inclusive there be entered. So I'm asking for P-0565 through to P-0580 be entered.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

All right. The next exhibit for you, Chief Superintendent Boland, will be P-0479. And in this email which takes place on April 7, we have – it starts off from Ab Singleton to you. And he says: “Andrew, For your information. These questions appear on the CBC website. The questions are listed below as is the link.” And he actually puts out some questions there. And you said, you respond with: “Thanks Ab. We will be working in what we can to answer as many questions as possible.”

So I know you can't speak necessarily to why Ab Singleton sent you the email, but you can tell us why were you – you know, why did you respond in that way?

CHIEF SUPT. BOLAND: So the – it was just a thanks for sending me that along. And, of course, this is Tuesday, two days after the incident and, you know, questions were arising more and more in the media and the public. So I think it was just bringing an awareness to us that those questions were being asked, and we were – any future media that we were going to be doing would be – trying to address as much as we could. You know, this is where we get into the age-old issue in the beginning of any investigation, what can we say, balancing with public interest, what we shouldn't say and what we can say.

So my take of that line was just to – we were going to try and provide the – I was letting him know, we're going to try to provide the public with as much information as we possibly could.

MS. O'BRIEN: Okay. And when you say the balancing, you're referring to the – you're balancing the public's interest in wanting to know with how much information you can give in terms of protecting the integrity and the investigation.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Is that what you're referring to?

CHIEF SUPT. BOLAND: Absolutely. Yeah, correct.

MS. O'BRIEN: Okay.

Were you at all surprised to get this type of an email from Ab Singleton saying look, these are the questions the public are posing?

CHIEF SUPT. BOLAND: I wouldn't go so far as to say surprised, but it's unusual. I thought it was unusual. You know, there's a professional working relationship to keep each other, you know, aware of what's unfolding but we had media people as well following. We had communications folks and media people who were monitoring these things as well.

MS. O'BRIEN: Okay.

And we're going to see in a few minutes there was a second press release put out by the RCMP, and we'll look at some emails in a few minutes. But I understand you did have some involvement in drafting that press release that went out on April 7?

CHIEF SUPT. BOLAND: That's correct.

So when you asked about the earlier press release, about drafting it, you know, actual creation of it, but I certainly may have seen it before it went out and been able, afforded an opportunity to comment on it, but it was pretty basic. I wouldn't have been involved in the upfront writing of it or anything like that.

MS. O'BRIEN: Okay.

And in drafting the second press release, which again we'll get to in a minute, would you have taken into consideration, or did you consider the input that you received here from Ab Singleton?

CHIEF SUPT. BOLAND: No, I don't think so. I think these – what we see here, I think, he has mentioned it came off a website. You know, they're pretty straightforward. These were some of the issues that were surfacing, but I don't think I ever referenced or referred back to this email again.

MS. O'BRIEN: Okay.

Now, there is an email and it's been entered into evidence as P-0480, and we can just bring it up very quickly, but this email is after the press release has gone to the public, from what we can tell. But you then forwarded the press release to the chief of police for the RNC, Bill Janes. So here we see it here.

So this is: "Bill, Attached FYI." And here is the second press release. Why would you have been forwarding that to the chief of police of the RNC? I mean, presumably he would have seen in the public anyway. It was a press release that the RCMP was putting out.

CHIEF SUPT. BOLAND: So it's unusual for me to do that because our working process within the organizations was I dealt with Deputy Singleton, the commanding officer dealt with Chief Janes. So I might have been going off of some direction from the commanding officer to say, Andrew, can you make sure that's – in fact I'm – I know the way I've worked at – in all likelihood, the way I've written that, Bill – can we scroll down just a tiny bit?

MS. O'BRIEN: Yes, absolutely.

CHIEF SUPT. BOLAND: "Bill, Attached FYI." So I would see that that does stem from the commanding officer saying, Andrew, make sure the chief is aware of the press release that we're sending out, or we've sent out.

MR. KENNEDY: Commissioner, I wonder if Ms. O'Brien could actually – could she confirm that this is the actual press release that went out. Because I thought, in reading one of the pre-inquiry interviews, there were drafts of a press release which were reviewed with one of the officers. I am not sure if I'm accurate on that, but is this the actual release that went out?

MS. O'BRIEN: The one – the press release – and I haven't done a word-for-word comparison on this particular document, but I will bring it up in a few moments, Mr. Kennedy. The press release that's been entered as P-0570 is, to our understanding, the press release that went out. But having looked at the date stamp on that one and when this one is being forwarded, I think this one would have been after that press release went out.

Okay. Would you have had any other communications with the chief of the RNC in the course of this file then?

CHIEF SUPT. BOLAND: I don't recall a need. You know, there might have been – if we're at meetings or at functions, there might have been, in passing, how are things going. You know, the biggest issue, I think, at our levels as the investigation was moving, progressing through, was the timeliness of how things – there was a lot of anxiety over how long it was taking for the investigation to take place in some quarters, but nothing – no, I didn't have any dealings with the chief.

MS. O'BRIEN: Okay.

Now, we don't see this in your notes, but having reviewed the notes of other officers who were in attendance, there is record of a meeting on April 9 at RCMP headquarters. It took place at 3:30 in the afternoon, according to the notes, with you, also Inspector Pat Cahill, Sergeant Kent Osmond and Superintendent Jason Sheppard of the RNC. Do you recall that meeting?

CHIEF SUPT. BOLAND: I recall the meeting, I do, and I recall that group getting together later, yeah.

MS. O'BRIEN: Okay. And what was discussed at that meeting?

CHIEF SUPT. BOLAND: So I don't recall – I think we were talking about the independent observer and I think we were talking about some of the progressing of the investigation. It would have been, in all likelihood, me not doing much other than listening to the other folks talking about how the investigation was moving forward and it would have been very much a meeting of, you know, again, professional courtesy sharing, how we were progressing. So Superintendent Sheppard is a senior, experienced officer with the RNC, so – but it was just probably telling him steps we were going along.

MS. O'BRIEN: Okay.

And he was the RNC liaison and he has taken some notes on that. And according to his notes, that meeting was over one hour long. Do you recall it being that length of time?

CHIEF SUPT. BOLAND: No, I don't recall the meeting, the length of time of the meeting. And, you know, it wouldn't be uncommon for us also to get together and discuss other issues. You know, we would have discussed, perhaps, some of the matters of some other investigations. I know in that time frame we also had a significant – I'm just trying to think now to –

MS. O'BRIEN: Are you remembering that, at that meeting, you discussed other issues or you are just speculating?

CHIEF SUPT. BOLAND: No, no. I'm just very much speculating. It wasn't uncommon for us to talk about other investigations and matters. And at that time, I think there was a fairly significant investigation underway, other than this one.

MS. O'BRIEN: Okay.

I mean there was – if it was just – looking back, I mean if the idea was just to give the RNC liaison an update on the investigation, it raises the question why it would take, you know, three high-ranking RCMP officers to do that. Would that be a usual thing in your experience?

CHIEF SUPT. BOLAND: Oh, very much so. You know, I think I was probably just invited in as the last minute, out of courtesy. It wasn't uncommon for me to be invited into meetings out of courtesy. Because when we have other people visiting from other agencies, it shows a respectful courtesy to the other agency of having different people there, different ranks and levels.

MS. O'BRIEN: Okay.

And why would you not have taken any notes?

CHIEF SUPT. BOLAND: So I think that's because, that's why, because then there was nothing – I wasn't directly involved in the meeting. I think I probably was – for me, not to have my notebook with me, I was probably just asked at the last second to pop in and perhaps just listen to the briefing of what was going on.

MS. O'BRIEN: And again, is that something that you specifically remember or are you just speculating based on your usual practice?

CHIEF SUPT. BOLAND: Oh, I'm speculating. Yeah, based on my usual practice, because that's what I think unfolded there.

MS. O'BRIEN: Okay.

How often – you know, how many times had you previously met with Superintendent Jason Sheppard to discuss files that were ongoing?

CHIEF SUPT. BOLAND: So in this time frame of 2015 – so the CFSEU was started up around 2013 and he would have been present in those meetings as we were setting that up. So how often? Like, I would say maybe once a month.

MS. O'BRIEN: With Jason Sheppard?

CHIEF SUPT. BOLAND: And again, not even so much meetings, I think more I would meet – I would see him, or encounter him, whether it's a meeting or at a function because from time to time –

MS. O'BRIEN: No, I was sort of getting an idea on meetings, sit-down meetings, formal meetings –

CHIEF SUPT. BOLAND: Oh, okay. So sit down meetings? I would even say less than once a month, maybe once every couple of months, depending on what was going on with any particular investigations.

MS. O'BRIEN: Okay. And that would have been with Jason Sheppard, you're referring to there?

CHIEF SUPT. BOLAND: So it would have been – I never – well, I'd never say never. I rarely would have met with Jason Sheppard alone because he's not at – you know, we have our lines of duties and responsibilities and if I met with Jason Sheppard, it would have been with one of our other officers within the structure of the investigations, or whatever the issue was, or any of their other officers. I rarely met him alone.

MS. O'BRIEN: Okay.

If you were not taking notes at that meeting, would you have expected one of the other RCMP officers there to have taken notes?

CHIEF SUPT. BOLAND: Very much so, yep.

MS. O'BRIEN: And detailed notes?

CHIEF SUPT. BOLAND: Yep.

MS. O'BRIEN: The next exhibit I'd like to refer you to is Exhibit P-0574. Thank you.

This is an email again, and we're in May now, May 1, and it's further correspondence between you and Ab Singleton and it's related to the RNC internal investigation. I can go through this with you fairly quickly, I think.

Just in terms of background, I think what was happening here is the RNC was intending to conduct an internal investigation with respect to Constable Smyth. And I think in these emails, when we look at them, it is – Ab Singleton was checking with you to ensure that the RCMP, that that would be okay with the RCMP and it would not interfere with the RCMP's investigation.

And you respond back: "From my knowledge of the investigation, considering the stage it is in, at this time I don't think an internal would interfere." And he says: Thanks. And for some reason it seems to be not in the usual way we see it here.

CHIEF SUPT. BOLAND: Yes, it's in a funny order, yeah.

MS. O'BRIEN: Yes. But it starts with him saying: "Andrew, Can you check on the status of your investigation? As you know we would like to commence our internal investigation, but would not want to do so if it would interfere"

And you come back and say: I don't think so, but I'll check with the MCU. And then you come back up here and say: "The investigation team does not see any reason why" it should not proceed.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay. So do you recall, other than the emails, interactions we've discussed so far, do you recall any further discussions or interactions that you had with Ab Singleton as the file progressed?

CHIEF SUPT. BOLAND: So I recall, but I don't have his specific dates and times, but I recall inquiries around, especially around the ASIRT report. I recall that throughout the summer of 2016 where Deputy Singleton – he's a persistent fellow, and I think he called me about every couple of weeks or every three weeks, asking if we had the ASIRT report back yet.

We were getting indications from ASIRT that the report would be ready the end of May or in June, two more weeks or another month, and so they were – if I recall at the time too, they – I think Saskatoon police service wanted the ASIRT report so they could consider it and review it within the work that they were doing, if my memory serves me well. So there would be brief inquiries: is this in yet, is that done yet.

I recall in the summer of 2015 having the rifle exhibit processed. It was quite a long, dragged out process and there were – we're waiting for that. So there were brief inquiries around: have you heard back, is the exhibit back yet, has the exhibit been processed yet. So there were minor conversations along those lines.

MS. O'BRIEN: Okay.

Did you ever have any direct communications with Constable Smyth?

CHIEF SUPT. BOLAND: None whatsoever.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: Sorry, I just need to clarify your question. In the time frame of the investigation or –

MS. O'BRIEN: Yes. Post April 5, 2015, did you have any communications with Constable Smyth?

CHIEF SUPT. BOLAND: No, none regarding this investigation.

MS. O'BRIEN: Okay.

In terms of – did you have communications with him on other things not involving this investigation?

CHIEF SUPT. BOLAND: So on this past Saturday I bumped into Constable Smyth at the barber shop. He said hello, I said hello, we both got our haircuts and that was it.

MS. O'BRIEN: Okay. So is that the extent of it?

CHIEF SUPT. BOLAND: That's why I was looking for clarification.

MS. O'BRIEN: Okay. That's fine.

CHIEF SUPT. BOLAND: I never want to be in a position where I'm not 100 per cent forthcoming.

MS. O'BRIEN: Okay.

Thank you.

I'm going to bring up Exhibit P-0567, please. And this is an email chain. It starts off with a briefing note on the bottom. So I'm just going down here. So at the bottom of this email is what is termed to be a briefing note and it ends with "END BN" which I understand is a briefing note.

First of all, can you tell the Commissioner, what is a briefing note?

CHIEF SUPT. BOLAND: So a briefing note is just exactly as it sounds. It's just a quick snapshot of a matter or an incident, or an investigation in this case, that is provided. In this case, I think it was a briefing note we probably provided to our national headquarters.

MS. O'BRIEN: Your national –?

CHIEF SUPT. BOLAND: Our national headquarters.

MS. O'BRIEN: Okay.

And who would have drafted the briefing note?

CHIEF SUPT. BOLAND: So in most cases Staff Sergeant Fitzgerald drafts the briefing notes that come out of the division.

MS. O'BRIEN: Okay. So in his –

CHIEF SUPT. BOLAND: On an operational side.

MS. O'BRIEN: Okay. So in his position as reader, that's one of the duties that he would have.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay.

And I understand from speaking with you previously, he would typically do a draft, he'd send it to you for approval, and once you were happy with it then it go on up the chain of command. Is that fair to say?

CHIEF SUPT. BOLAND: So very, very close. So I would get it and I would review it, and I would – if it needed any changes I'd send it back to him but – so I had – on the bottom of a briefing note there's two or three signature, might even be four signature blocks. I was not – generally, anything went to headquarters. The approval was the commanding officer, and I was the recommending block, I think prepared by, is the wording on the bottom of the briefing note. So Staff Sergeant Fitzgerald would have prepared it, I would have recommended it, and the commanding officer would have approved it.

So any briefing note we sent to headquarters went to the commanding officer first. She approved it, and then it went back down, of course, to send up to Ottawa.

MS. O'BRIEN: Okay. Thank you.

And the one we have here certainly looks like it's been cut and paste into an email, so we're not seeing those approval blocks.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: There's a couple of things I just wanted to ask you here with respect to the briefing note. And the first one is – and I am on page 2. One of the notes in the briefing note says: "As per protocol, Sgt. Smyth had advised the Holyrood RCMP that he would be conducting inquiries within their jurisdiction. While assistance was offered from the Holyrood RCMP Detachment members, Sgt. Smyth indicated he did not require or see the need for assistance or backup."

In this briefing note, you're referring to a protocol there. Is that a written protocol?

CHIEF SUPT. BOLAND: My understanding of it is it's a professional courtesy. Whenever a police agency – wherever you have police agencies bordering other police agencies, it would be common for them to notify when they were coming into their jurisdiction. And not so much ask for permission but it could be – sometimes in some cases be kind of seen as that, and just to let them know that if they were doing some inquiries.

So where jurisdiction borders exist, it's not uncommon for police services to say: do you mind if I come across three or four streets and do some inquiries, or just to let us know they're doing that. So that's my – that would be my interpretation of what protocol meant there.

MS. O'BRIEN: Okay. So from that I'm thinking – I asked you if it was a written protocol. I think, from what I'm understanding, you're saying, no, it would be a unwritten, professional courtesy type understanding.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay.

The next question I have, it's on the same page. I want to understand what was meant here. Under Strategic Considerations it says: "Any consideration for an independent External Investigation or Review related to this police officer involved shooting will be at the discretion of the Chief of the Royal Newfoundland Constabulary or his delegate."

Can you explain to the Commissioner what is being referred to here?

CHIEF SUPT. BOLAND: Yeah. I believe what's being referred to there is if the RNC wanted to conduct an administrative type of review or investigation it's not uncommon for police services to do administrative reviews.

MS. O'BRIEN: Okay. So that would be, you're talking about the type of review that ultimately the Saskatchewan police service did for the RNC as opposed to the *Criminal Code* investigation.

CHIEF SUPT. BOLAND: That's correct. Yeah, Saskatoon, yes.

THE COMMISSIONER: Is that the same as an internal review?

CHIEF SUPT. BOLAND: So my wording there is – or our wording, I should say, on that briefing note is kind of hitting all the bases there. A review could be independent, it could be external, so we're just – I think we're kind of putting every word in there.

If the RNC wanted to go do a review, whether they – so some police services do those administrative reviews internally, and some police services go externally. And independent is just the – where they went outside it's – so essentially, same. It's up to the RNC to do whatever they want to.

THE COMMISSIONER: So that could be referring ultimately to either ASIRT or the Saskatchewan review in this case?

CHIEF SUPT. BOLAND: So, Commissioner, I don't think it would have been referring to ASIRT. It would have – that the ASIRT component of that was within the scope of our investigation. I think it was referring to the Saskatoon police service report – so in the time frame, that hadn't even been started yet.

THE COMMISSIONER: Right.

CHIEF SUPT. BOLAND: I think it's referring to if they wanted to go outside to do an external, independent review, that would be at their discretion.

MS. O'BRIEN: Okay.

And I think the confusion that came up, is coming up here, Chief Superintendent Boland, is one that you and I batted about it a fair bit –

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: – in the actual interview. And, you know, when we're talking about – we have heard people refer to the administrative type review, like what Saskatchewan police service did here, being referred as an internal review. And in this briefing note you have used the – we are an internal investigation. And in this briefing note, you have used the words "external investigation," which might lead – which leads to some confusion about whether or not –

CHIEF SUPT. BOLAND: Sure.

MS. O'BRIEN: – you're referring to an external criminal investigation.

CHIEF SUPT. BOLAND: No, I wasn't referring to an external criminal investigation at all there.

THE COMMISSIONER: By the way, I just got a way note that the system is frozen but the audio is still recording. So is that okay with everybody to continue while this is being worked on?

MS. O'BRIEN: Fine with me.

THE COMMISSIONER: They're missing our images, I think.

CHIEF SUPT. BOLAND: Fine with me.

THE COMMISSIONER: We'll continue with the audio portion.

MS. O'BRIEN: Okay. Thank you.

We'll make sure that we don't gesture or make important gestures.

Okay. So going up then, now up this – so it was the briefing note at the bottom there. And sorry, Commissioner, before I move on, have I asked Chief Superintendent Boland enough questions to explain that note in the briefing note there?

THE COMMISSIONER: It's as clear as mud, Ms. O'Brien, but I'm sure I'll understand it by the time I've heard a few more witnesses. I understand what the superintendent said, yeah.

MS. O'BRIEN: Okay. Thank you.

So up here, so when we see the top where this is going, you – this this is forwarded and it's not by you, it's from Tracy Hardy, but you are copied on it and you're the witness here who is being called on this point. But it is being forwarded on to Paul Noble, who I understand was a deputy minister of the Department of Justice and Public Safety at the time. Is that correct?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay.

So: Paul. Forwarded in confidence as per discussion. Message current to 1850 hours this date. And then the briefing note is forwarded on.

Would that have been usual for briefing notes to be handed on not just up to national headquarters RCMP, but to provide them to the department of Justice and Public Safety?

CHIEF SUPT. BOLAND: So I'm not 100 per cent privy, of course, to what the commanding officer did. It was her prerogative. She certainly didn't have to share her activities or practices with me but, in most cases – and in this case she did cc it to me, or I got a cc in the chain there somewhere.

But to send a briefing note, in my mind, is not something that I did. I would often paraphrase briefing notes, briefing notes on minor matters, but briefing notes on serious matters – you know,

and a minor matter would be, say, if I was giving the stats, passing along statistics on an operation impact or a proactive activity. But, in an investigation, I never passed on briefing notes because I was always wanting to ensure that information didn't go out that shouldn't have gone out.

MS. O'BRIEN: Okay. So I understand you're saying this would have been rare, in your experience.

CHIEF SUPT. BOLAND: Yeah. But certainly also not my prerogative to – the CO certainly had no necessary responsibility to tell me everything that the CO did, or what her practices were.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: So my concern always was when you send something – when you hit the send button on something, you have no control over where it's going. So now, I saw some of these exhibits where, you know, there was – and I'm not sure if it's in this one, I just can't see it on the monitor here, but somebody at some point came back and said can we share this and the commanding officer said no.

MS. O'BRIEN: Yes. And that is exactly what happens here. She got a message back from Jackie Lake-Kavanagh who we have already explored –

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: – was the ADM at the time. Heather – and likely, that's referring to Heather Jacobs – is wondering if this can be shared. Mins, ministers, comms, Clerk, and therefore PO – and I take it PO there would refer to premier's office. Would you –

CHIEF SUPT. BOLAND: I would agree with that. I think that's what it means.

MS. O'BRIEN: And then: "Completely your call. Thanks Tracy."

And Tracy Hardy comes back and says: "Hi, this was forwarded as a courtesy to both you and Paul and not to be distributed further given the sensitivity of this ongoing investigation. I appreciate your understanding. Thank you."

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: Do you have any knowledge of this being circulated any further within government?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay. I'd like to go to the drafting of the second press release which came out on April 7, and a few emails I just want to show you first. And the first one to bring up is Exhibit P-0568, please. Maybe a little bit bigger, Madam Clerk, because it's just hard to read the type.

So basically what happens, at the bottom here, is it's from Kent Osmond and the subject is Media suggestions. He writes: As discussed ... if we want to put out more detail, we can go with something along these lines ... or we can wait until after the autopsy and comment on that as well.

"Please advise your thoughts." And there's a draft, you know, some wording here, draft wording, for a possible press release. And then I should note this on April 6, in the evening.

Then it comes back from Greg Hicks: Thank Kent. I haven't had a media inquiry for three hours. I will put something together first thing based on what you have sent us, and we can decide in the morning if we want to get this info out early or, as suggested by Superintendent Zettler, after the autopsy. Either way works for me.

And then you weigh in, Chief Superintendent Boland, and you say: Good plan to go after the autopsy now that we have today's out. Please go ahead and – I think and plan as comprehensive a release as we can do. So that's your weighing in on it.

And then Pat Cahill weighs in says: That is good detail, and will be complemented by the autopsy results tomorrow. And then he makes comments of another investigation being mentioned on Facebook.

So if you could just hold that in your mind there for a moment, please. There's a second email I'd like to show you: P-0626, please.

So this email takes place the next day and a further draft has been done, so we see it here. And there's still some question marks in there and a further draft has been done, and with a little bit on the end of anticipated Q&A, Questions and Answers, coming at the bottom here.

What we see here, Chief Superintendent Boland, is you sending to a group of people: Steve Burke, Pat Cahill, Chis Fitzgerald, Dion Foote, Greg Hicks – we can't really see who all the recipients are there.

It says: "Attached FYI. This draft is still open to critical comment and amendment. Thanks Andrew." So that is on April 7, at 2:05.

We will see – there were some further emails going around. This time as drafts, were going around. You were not copied on a number of those but we can see, at least from this email, you had a draft and you circulated it to this wide group, look, saying it's open to critical comment and amendment.

The first question I have for you is: Why would you have been seeking input from such a large group of people here?

CHIEF SUPT. BOLAND: Just to make sure that what we put out was not in any way, shape or form compromising the investigation. So Steve Burke is the lead investigator, Pat Cahill is the Major Crimes officer, Chris is the co-officer reviewer, Dion Foote, I think, was one of the investigators involved in with the investigation team, and Greg Hicks the media person.

So this was a press release that we were going to put out that was at a very critical time. So not to compromise the integrity of the investigation by information getting out that shouldn't be released, but trying to find a balance of public interest. So I was just wanting to make sure that as many people, you know, with significant involvement or interest in this saw that. So that if any, you know, everybody has a piece and a role to play, to make sure that we didn't miss anybody being able to ensure that information was accurate and that it was information that could be released or shouldn't be released.

MS. O'BRIEN: Okay.

And we'll bring up what I believe to be the final press release. It's at P-0570. And while that's coming up Chief Superintendent Boland, it recorded in Sergeant Kent Osmond's notes, which have not yet been entered into evidence but they will be entered, I believe, as P-0583. And if you do need to see them I can certainly arrange that. But on his notes Osmond writes: "Boland

suggested releasing as much info as possible due to community concern and rampant speculation.”

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: Would that be an accurate note?

CHIEF SUPT. BOLAND: Absolutely.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: The release of this – the creation and the release of this press release was, like I said a few minutes ago, it was at a very sensitive time and, you know, getting information out to help people understand what occurred as early as we could without compromising the investigation were a significant concern to me.

MS. O'BRIEN: And what was the rampant speculation that you were referring to?

CHIEF SUPT. BOLAND: So this time frame, later I would venture to – looking back now, that would have been in the early two, three days of the investigation. I think by now there were theories surfacing in the public. I really – the terminology I think, a hit had been ordered or something along those lines, or this was the government speculation about what transpired out there about conspiracy theories, I guess, for lack of better words.

MS. O'BRIEN: Do you recall any concern in the drafting of this email, any concern for how Mr. Dunphy was portrayed in this media release? Do you have any recollection of that?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay.

What about – I'll ask the same question with respect to Constable Smyth. In the communications going around with the drafts of this, do you recall any concern being raised with how Constable Smyth was being portrayed in this press release?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: Okay.

When we read the press release now, I just want to put a couple of questions to you. And the first one would be whether you had any concern or thoughts at the time whether some aspects of this press release might be read by some as being early conclusions on the file. And I'll just give you an example.

Prior to attending the Mitchell's Brook residence the RNC officer conducted a routine assessment within the scope of his duties accessing police databases and such. At this time, did you feel confident making the statement that Constable Smyth was doing a routine assessment within the scope of his duties?

CHIEF SUPT. BOLAND: Just based on the briefings and the information coming to me from the investigation team and that wouldn't have been very detailed. It just would have been – he did database. Exactly what's written there, did database checks and discuss – neighbourhood inquiries. So common practices in day-to-day police work.

MS. O'BRIEN: Okay. Do you know at this time if the scope of his duties – you know, what investigation steps have been taken to uncover what the scope of his duties in the PSU was?

CHIEF SUPT. BOLAND: I'm sorry, what?

MS. O'BRIEN: Do you know what investigative steps had been taken at this time to determine the scope of Constable Smyth's duties in the PSU?

CHIEF SUPT. BOLAND: Not specific steps, but I was aware that – at this point, I was aware that there was, the investigation was started over a media, a social media posting.

MS. O'BRIEN: Okay.

The other question I have here is whether you had any concern or gave any consideration to the, that at this point – I'm going to be, I'll first ask you: Is it fair to say at this point you were relying very heavily on Constable Smyth's statement of events and what had taken place?

I mean, for example, you didn't have the autopsy, the – you didn't have the autopsy report done. I know the autopsy had been complete but you didn't have the report back, I take it? And you didn't have any forensic testing completed at this time.

CHIEF SUPT. BOLAND: Yeah. So bearing in mind, the information I'm getting is coming from within our organization. So it's either coming from Pat Cahill or Kent Osmond. So, no, I wouldn't have had any specific information or details about specific inquiries that would have been at the front of the investigation. I would have had general, general comments perhaps.

MS. O'BRIEN: Okay. And so would you have been relying on the investigative team with respect to the content of the, what the investigation had revealed to date?

CHIEF SUPT. BOLAND: Yes. So the press release is done up, was done up by the media, the media fellow, either done up by Greg Hicks or in conjunction with him talking with the criminal operations folks because the briefing note also, whatever information was, was flowing from the different processes and offices. So this would have, this would have come to me completed, having been put together by the media folks or somebody within the chain of the district or in the investigation.

MS. O'BRIEN: Okay. So but my question was, would you have been relying on the investigative team to ensure that the details with respect to the investigative findings to date were accurate?

CHIEF SUPT. BOLAND: Yes. Yes.

MS. O'BRIEN: Okay.

The next item that I want to ask you on is Exhibit P-0571, and I think we can go through this fairly quickly. This has to do with, on April 10 an email was sent by Constable Smyth to all members of the RNC, as well as some RCMP members and, as I understand it, some retired RNC members. And we'll see it – first of all I should ask, do you recall that incident?

CHIEF SUPT. BOLAND: I do.

MS. O'BRIEN: Okay. And I'm going to bring you up the second email in just a moment which will show that the genesis of this for you, I believe, was you'd been contacted by Sue Bill, I –

maybe Inspector Sue Bill, we'll check that in a moment – from the RNC. And she'd asked you to, I think make some inquiries as to who had received Constable Smyth's email at the RCMP.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: So I just have – this is you then emailing out to Doug Noel and Steve Burke: Folks, you received an external email this morning related to a sensitive investigation underway. The email is now subject of a police administrative investigation. Please do not distribute the email. If you have, please send me the names of the people who this message has been forwarded to Inspector Cahill – sorry, please send the names. Please also, I think, reach out and advise others without forwarding this email, an investigation is underway.

So this wording sort of jumped out a little bit. Why would you have said without forwarding this email?

CHIEF SUPT. BOLAND: So I – so, from reading those notes, my recollection was the email itself, that came from the RNC. Don't – you know, if you have it there, don't forward it any further and don't forward it to people to let them know what you're talking about. You know, somebody could have said, well, you're asking me about an email, I don't know which email you're talking about, can you send it to me so I know what you're talking about, so –

MS. O'BRIEN: Okay –

CHIEF SUPT. BOLAND: – it was, our interest was – so my overall involvement in this was to ensure that our folks in our organization didn't become any more involved in an internal matter at the RNC.

MS. O'BRIEN: Okay, so – when you're referring to this email it's not the one you've written, you're referring to Constable Smyth's email.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay. And then we'll just, to follow this up, if we bring up exhibit P-0572, and this is your follow-up to Sue Bill. I just have one brief question on it.

So if we go down through this email, we'll see it starts off with Inspector Sue Bill writing, just saying: Sir, as a follow up to our telephone conversation this date, the email in question was sent to the following RCMP members, and this is who she identifies. It was also forwarded to some of our own members with RCMP email addresses – I assume that's supposed to say – but I will make inquiries directly on those. And then you do just come back with her with information of who received it and where it went.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: But the question I have for you is what, what, what RNC members would have had RCMP email addresses? What's going on there?

CHIEF SUPT. BOLAND: So that would have been the folks who were working within the CFSEU or Crime Stoppers who may have had just an email domain on our computer system.

MS. O'BRIEN: Okay. So some of those groups that we talked about earlier today, and we mentioned both of those groups, Crime Stoppers and CFSEU, sometimes you would have had RNC members who actually had RCMP emails.

CHIEF SUPT. BOLAND: Yeah, yes, correct. They would have had a just an email domain within our computer system, and that's what I think that's referring to.

MS. O'BRIEN: So if something went out to all RCMP members, they would have gotten those emails.

CHIEF SUPT. BOLAND: Yeah.

MS. O'BRIEN: Okay.

The next questions I have, have to do with the two re-enactments done by Constable Smyth, and we're aware that the first re-enactment was done on April 8 and that the video footage was lost there just by an error. And we're gonna – we haven't heard from Sergeant Osmond yet, but we anticipate that he will testify along the lines of the initial reaction from the MCU team, when they heard about footage having been lost, was that they did not want to ask Constable Smyth to re-perform the re-enactment.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: They were concerned about his mental health and the stress that it would put on him. I'll leave it for Sergeant Osmond to explain that in a bit more detail, but I think I've paraphrased him.

Now, we also understand that that was not the final decision because the final decision was to go back to Constable Smyth and ask him to re-perform the re-enactment, and I understand that was because you were consulted. So can you just tell the Commissioner about that?

CHIEF SUPT. BOLAND: So I – oftentimes, you hear people say, well, let's not go back and ask him to do it again – so why not? Why not go back and ask him? Because he might very well be willing to do it all over again. So don't assume or don't make an assumption that because a person has done it once, they won't want to do it again. So I recall pressing our folks to go back and ask him.

So if he says no, he says no. He has the prerogative to say that but if he says yes, he's willing to do it, then let's get back and let's do another re-enactment. Certainly a second one is – second of anything is never as good as the first, but it still would have been valuable to the investigation to have a re-enactment.

MS. O'BRIEN: Okay.

And ultimately Constable Smyth was asked and he agreed to do this.

CHIEF SUPT. BOLAND: That's my understanding, there was a second re-enactment. I think Justice Riche was present for both, I believe, as the independent observer.

MS. O'BRIEN: That's consistent with the evidence we have, yes.

I'd like to bring up now a letter from Erin Breen dated April 16; that's Exhibit P-0043. We've already gone through this evidence in some detail, but there's just a couple of things I want to ask you – one quick thing I want to ask you about it and then I'll bring you to your response to it.

You were actually one of the individuals addressed in this letter from Ms. Breen and if I go to the bottom of page 4, I should see – that here we see that Ms. Breen, on behalf of her client, is requesting that an out-of-province police force be immediately brought in to take over both the

Criminal Code investigation and the *Fatalities Investigations Act* investigation. She goes on to say, at this time, that she does not believe that the independent observer is enough to give the proper assurances.

Do you recall getting that letter?

CHIEF SUPT. BOLAND: I do.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: Yes, I do.

MS. O'BRIEN: Okay. I'm going to bring you now to your response to that letter which has been entered as P-0044.

Thank you.

So this is your response back on April 20, and it's a letter signed by you to Ms. Breen. A couple of notes to ask you on this one, and it is – first would like to say – you say: I've given careful considerations to the concerns highlighted in your letter, and I've met with the officer in charge. And your letter references a specific request on behalf of your client that the RCMP call for an independent external investigation to be completed by a police service outside the Province of Newfoundland and Labrador to take carriage of both the investigations.

“Having an outside police service conduct this specific investigation on behalf of, or at the request of RCMP, was one of several options considered from the outset of this incident.” So you say here “several options,” what were the other options? Is there anything else that you have not already discussed with us here today and told the Commissioner about here today that was considered at the outset?

CHIEF SUPT. BOLAND: No, nothing other than what we've already talked about here today: the independent observer; whether in the initial going – the discussion with the commanding officer and I, if we go out and get an outside police service, or an outside entity – and, no, nothing other than what's been discussed.

MS. O'BRIEN: Okay. So we've already had your full evidence on that.

Okay. At this time, did you still have confidence that the independent observer was sufficient to keep public confidence in the integrity of investigation?

CHIEF SUPT. BOLAND: Yes, I do.

MS. O'BRIEN: Next exhibit I'd like to bring up is P-0573. And this is an email, April 23, 2015, and it's from you. And first off, it is sent to Byron Boucher and Eric Stubbs, with a copy to the Commanding Officer Hardy.

Who were Mr. Stubbs and Mr. Boucher?

CHIEF SUPT. BOLAND: Byron Boucher is the –

MS. O'BRIEN: Boucher, sorry.

CHIEF SUPT. BOLAND: – the assistant commissioner in our national headquarters, who oversaw our CAPS program; Community and Aboriginal Policing Services program. And Eric Stubbs was a chief superintendent who reported to Byron Boucher.

So in kind of the scheme of things, when it comes to reporting lines, Eric Stubbs was my go-to person in this program in the headquarters in Ottawa. And Byron Boucher was his supervisor. So there – when it comes to matters occurring – you know, right back from the beginning, we talked about federal policing, provincial policing, these were the fellows that, any provincial policing matters that I briefed up to into headquarters.

MS. O'BRIEN: Okay. And you're sending it for situational awareness, I'll just quickly go over the content of it. So you're telling them about a debate going on in our provincial Legislature here in Newfoundland and Labrador, and that it was – it has to do with who has the authority to bring in an external police service to investigate a police shooting, and you note that the debate in the Legislature was intense.

“As you know we have an active investigation of a police shooting death by the RNC which occurred when a lone officer was making enquiries in a home in our jurisdiction.

“The below noted media article is a good reflection of the issue. The provincial government is confident in our investigation. Frankly, while the death is tragic, the circumstances of the incident are not complex.”

And then you go on to just report on a VOCM report and it notes that the government maintains it has no authority to step into the RCMP investigation of the shooting death. In other words, this is an RCMP matter to be dealt with. I won't read the whole excerpt there.

Then you write: “At the onset of the investigation we engaged an independent observer, a highly respected retired justice of the provincial appeal court, who has unfettered access to the file and will be providing a report at the end of our investigation.”

So first, I'll just make that correction. Do you understand that retired Judge Riche was not from our Court of Appeal –

CHIEF SUPT. BOLAND: Correct, right. Yep.

MS. O'BRIEN: – you know that he was retired from our Supreme Court here in Newfoundland and Labrador. So can you just explain why did you write this email to those individuals?

CHIEF SUPT. BOLAND: Mostly, like it says right at the top there, for awareness, so our national headquarters was aware of the issues, some of the issues that we were dealing with in Newfoundland and Labrador.

MS. O'BRIEN: Okay.

And there's a line here that it says, and this is again from the VOCM report: “Clarifying remarks made yesterday Premier Paul Davis says he did not order the police investigation. When asked if he was under investigation as a result of the death, Davis said he didn't know.”

Are you aware of any direction from Paul Davis or anyone on his behalf to the RCMP regarding the investigation?

CHIEF SUPT. BOLAND: None whatsoever.

MS. O'BRIEN: The next email I wanted to ask you about is actually a letter at P-0578. And this is a letter from you, Chief Superintendent Boland, to Judge Riche, and it's quite simply a letter enclosing letters that had been received by the RCMP from Erin Breen.

Do you recall why you wrote this letter to Justice Riche?

CHIEF SUPT. BOLAND: I believe, and this is just from reviewing the exhibits – I think I saw a comment in one of the letters about Ms. Breen wanting to make sure matters were brought to Judge Riche’s attention. I don’t recall that specifically but my writing this part here would have – just to ensure that Justice Riche did see everything that was coming. It wasn’t a concern that I had that he wasn’t getting things, but I think it was a part of that specific request that please ensure or ensuring Judge Riche was aware.

MS. O’BRIEN: Okay. So we do see – and I don’t need to go to the letter, but in the April 25 letter that’s here that’s been entered here as an exhibit at P-0094, Erin Breen did expressly ask whether her letters were being provided to Justice Riche. So I just want to clarify with you now. So, to the best of your memory, that is why you were writing this letter because of her specific request. Was there any other – I just want to get at, was there any other reason that you would have been doing it?

CHIEF SUPT. BOLAND: No, there wouldn’t have been any other reason.

MS. O’BRIEN: Okay.

The next exhibit I’d liked to ask you a question on is Exhibit P-0579 and this is a letter you write to Heather Jacobs on November 26, 2015. And Commissioner, I can advise you I am getting towards the end of my questions. I have a couple of more exhibits to cover.

So this is you writing to – now Ms. Jacobs is the deputy minister and deputy AG for the province – deputy minister of Justice and Public Safety. And you are giving her an overview of the investigation. And I’ll just scroll through this quickly, but, you know, investigation to date, current investigative activity, future steps and you note that the time lines are only estimates.

Why would you have been writing this letter to Heather Jacobs?

CHIEF SUPT. BOLAND: At the time of this request, I know the department was putting together a briefing book anticipating a new minister, and we were asked to provide documents to brief them on any significant issues, matters or investigations that were underway. So it was the compilation of a briefing book is my recollection of this for the new minister.

So there was an election – I think the election was in three or four days of this letter. And, in any case, there was going to be a new minister, regardless of what happened with the election, because I think our minister at the time had – at this time, had indicated he wasn’t returning to politics. So there was going to be a new minister and they were putting together briefing books.

MS. O’BRIEN: Okay. So that’s when Minister Felix Collins would have been – was that who –

CHIEF SUPT. BOLAND: So I think we had, over the course of this investigation – no, I think at this time – jeez you know –

MS. O’BRIEN: Oh, sorry. No, no, I apologize –

CHIEF SUPT. BOLAND: I don’t remember if it was Minister King – well, we did have Minister Collins, we had Minister King –

MS. O’BRIEN: King, yeah.

CHIEF SUPT. BOLAND: – and we had Minister French in that period of time when I was in there.

MS. O'BRIEN: Okay. It's not particularly important, so I'll just let it go.

Okay, what I do want –

CHIEF SUPT. BOLAND: I think the target of the briefing book was whoever was going to be the new minister.

MS. O'BRIEN: I understand. Okay.

Now, this one note here I just want to make – on the Future Steps, you have noted above that you're just waiting for a couple of reports and that was the use-of-force subject matter expert report as well as the 3D report from Darryl Barr is who we understand that to be.

You write: "Upon receipt of the two outstanding reports, investigators will require 14 days to complete their final investigation report." And then, "Justice Riche has advised that upon receipt of the RCMP's final investigation report, he requires 14 days to complete his independent observer report."

So, from that there, it looks like what you were anticipating at least this time was that the investigative team would do their final report and then, after that, Judge Riche would complete his report.

CHIEF SUPT. BOLAND: Correct. That is my understanding, yes. The matters were progressing and evolving and that's my understanding of those comments.

MS. O'BRIEN: Okay.

And would I also be correct here in looking at what you've written in this letter that at this time ASIRT, the review by the Alberta Serious Incident Response Team was not being contemplated?

CHIEF SUPT. BOLAND: So what – so the date, the time frame of this was the –

MS. O'BRIEN: November 26.

CHIEF SUPT. BOLAND: November 2015?

MS. O'BRIEN: Yes, 2015.

CHIEF SUPT. BOLAND: No, I agree, I think ASIRT – our consideration of bringing ASIRT in, hadn't come in at this point.

MS. O'BRIEN: Okay.

Now, in terms of the timing of the reports, the investigative report which was ultimately done, completed by Corporal Burke and Judge Riche's report, we understand now that that's not the order that they were completed in.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: And so if we bring up Exhibit P-0580, please.

This is a letter to you, Chief Superintendent Boland, from Justice Riche; this is the extent of it there. This letter was written on January 12, 2016. Am I correct that this was the covering letter under which you received Judge Riche's report?

CHIEF SUPT. BOLAND: So I don't recall seeing this letter when I saw it in the exhibits, and I wasn't the CROPS officer at the time that this was sent in. If you scroll down a little bit further there –

MS. O'BRIEN: Uh-huh.

CHIEF SUPT. BOLAND: – there's a date and stamp on it, OIC Criminal Operations –

MS. O'BRIEN: Yes.

CHIEF SUPT. BOLAND: – 13th of 2015. That date's incorrect, I think. I think somebody just hadn't switched over the year on the stamp, and it should be 2016.

MS. O'BRIEN: Okay.

CHIEF SUPT. BOLAND: So the letter would have come into – the report would have come into criminal operations. There was another officer acting in criminal operations at the time as the OIC CROPS, but I don't recall seeing this letter until just recently.

MS. O'BRIEN: Okay.

In terms of the date, January 12, 2016, to your knowledge was that approximately the time frame that the RCMP received Judge Riche's final report?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: Okay. And this was, of course, prior to the RCMP investigative report being completed. Is that right?

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: In this letter – and perhaps because you haven't received it – these questions – we'll go through them very quickly. But one of the things that Judge Riche notes in his letter here is that: I find that to get to all the answers as I would like it is impossible because I am not doing an investigation. That is your job. In fact, one of your members told me that I should not be investigating but just observing.

And I think you gave us some testimony earlier on today that you were aware that that concern had been raised by some of the investigative team. Right?

CHIEF SUPT. BOLAND: That's correct, yes.

MS. O'BRIEN: Okay.

And again, just to make sure I understand, from your earlier testimony you did not raise that issue directly with Judge Riche at any time.

CHIEF SUPT. BOLAND: I did not.

MS. O'BRIEN: Okay. You would have left that to Inspector Cahill or whoever else Inspector Cahill directed. Would that be right?

CHIEF SUPT. BOLAND: That's correct.

MS. O'BRIEN: Okay. Did you ultimately review Judge Riche's report?

CHIEF SUPT. BOLAND: Yes, I did.

MS. O'BRIEN: Okay.

And having the question I just asked you about ever addressing concerns with him about his mandate, did that change after you read the report? Did you have any communication with Judge Riche after you read the report?

CHIEF SUPT. BOLAND: None whatsoever.

MS. O'BRIEN: Okay.

And we know that a review of that report was done by Corporal Burke, and we will see later on that it was then circulated by Inspector Pat Cahill at the RCMP.

CHIEF SUPT. BOLAND: Right.

MS. O'BRIEN: Did you have any involvement at all in the review of Judge Riche's report for the –?

CHIEF SUPT. BOLAND: No.

MS. O'BRIEN: No.

Okay. Thank you.

All right. I want to go now, the last exhibit I want to look at with you is Exhibit P-0575, and this is an email on January 29, 2016. So it's in the weeks after Judge Riche's report had been received. And you are copied on this email, to Superintendent Boland, and it's an email chain with you copied on between Jackie Lake-Kavanagh and Stephanie Sachsse. And just to summarize what it is, it looks like this letter is the, it's addressing the RCMP seeking approval from the Minister of Justice and Public Safety to retain ASIRT to do an independent external review of the RCMP investigation.

CHIEF SUPT. BOLAND: Correct.

MS. O'BRIEN: Okay. Now, had the 'retainment' of ASIRT been considered prior to the RCMP's receipt of Judge Riche's report?

CHIEF SUPT. BOLAND: Oh, yes. Yeah, several – I would say several months before.

MS. O'BRIEN: Okay. So tell us about that.

CHIEF SUPT. BOLAND: So I just got to think back through the time frames. The investigation 2015, throughout 2015, and I think it was in and around the fall. As the – and I don't remember the dates or the time. I remember kind of in the portion of the investigation about halfway or

three-quarters of the way through the investigation, we started talking about the options of having the investigation reviewed externally.

And so I wasn't in criminal – I wasn't a criminal operations – well, I was the – I wasn't overseeing it from the criminal operations officer's perspective of the file. Superintendent Sachsse was doing that. And Superintendent Sachsse and I had had discussions and conversations about having the file, the investigation file go for an external review, a peer-to-peer review prior to the investigation being completed.

So those discussions would have gone on through, throughout the – throughout the latter part of 2015, early 2016, in that time frame.

MS. O'BRIEN: So would it have been after your letter to Heather Jacobs that we just reviewed, which was in on November 26, I believe, of 2015? You do not mention it in that letter to Ms. Jacobs.

CHIEF SUPT. BOLAND: So I think we're talking about it internally. Prior to that, we had been discussing it internally. I don't think we had formalized it in any way, because we viewed it as a part of the investigation itself. It hadn't been discussed externally very much.

MS. O'BRIEN: So what, what was leading you to, at this, you know, stage consider it internally?

CHIEF SUPT. BOLAND: To do the ASIRT review?

MS. O'BRIEN: Yes.

CHIEF SUPT. BOLAND: So it was just an evolution of what we were doing in the investigation, as we went along and issues surfaced and matters and concerns raised. So one of the options we have for any investigation is, prior to completing the investigation, having a peer-to-peer review. So we have another investigative agency look at it and let us know if – you know, look at it with a fresh set of eyes, let us know if we missed anything, could we have done something differently. And it's always done prior to the completion of investigation.

So if they come back with any recommendations to do anything or, you know, an example I would give if, if somebody saw five people in a car. Maybe the investigators got statements from all four people but we missed the fifth person. So the peer-to-peer opportunity is somebody to look at something from a different set of eyes and give us any recommendations of anything else that we could do or should do.

MS. O'BRIEN: Was the concern that had arisen with respect to Judge Riche fulfilling his mandate or staying within his mandate, did that play into your decision to get ASIRT to do a review?

CHIEF SUPT. BOLAND: No, I don't recall it. It wasn't a part of my thinking on it. I was, I was of the view Judge Riche's work was standalone, on its own. He wasn't a part of the, you know, the actual doing of the investigation. He was embedded in observing the investigation, and I saw the ASIRT work as reviewing the actual mechanics, the nuts and bolts of the investigation. So, no, it wasn't – I don't recall it being out of concern for what might have been happening with the independent observer.

MS. O'BRIEN: Okay. But engaging ASIRT added a fair bit of extra time to this investigation. Is that right?

CHIEF SUPT. BOLAND: Oh, it did. Yeah, for – just because of the scope of the material, the volume on the material. I think, I think you mentioned earlier how many binders or volumes went to Judge Riche for his review, so a lot of material.

MS. O'BRIEN: So when you're writing Heather Jacobs on November 26 and you're giving her timelines, and you say, you know, future steps upon receipt of the two outstanding reports being the SME report and Darryl Barr's report, investigators will require a further 14 days and then Judge Riche requires a further 14 days. You know, bringing in someone like ASIRT would have had a major impact on those timelines that you're giving her. Why would you not have raised that in this letter?

CHIEF SUPT. BOLAND: I don't think we had made 100 per cent, the decision that that's what we were going to do. I think we were, we were entertaining doing that, but I don't recall the specifics around the timelines. We didn't put it in the report because we, to the best of my memory, we hadn't started to go down the road of having ASIRT engaged.

MS. O'BRIEN: Okay. And I'll just be clear, in the documents I've seen I – this, I don't see any consideration of ASIRT or that type of review coming up in the documents I've seen in an earlier stage but I may have missed something, I don't – there is a volume of material, but maybe I'll ask your counsel to take a look for that.

What's the difference between what you are asking ASIRT to do and what you had asked Judge Riche to do?

CHIEF SUPT. BOLAND: So I saw Judge Riche's role as very, very defined to observe the investigation. And the ASIRT – so Judge Riche is – I would not deem him an investigator. He wasn't doing the investigation; he was observing the investigation.

Where ASIRT is an investigative entity, they have experienced, skilled, trained investigators and they would be looking at our investigation from an investigator's set of eyes, lenses or perspective, and I saw their work as being a peer-to-peer process, to have a look – did we miss anything.

We haven't completed the investigation yet. The ASIRT work is within the start-finish points of the investigation. And I saw their work as just, like I said, check and balance, a quality assurance, to have a look at the investigation and see if we've missed anything, or if we could've done anything differently.

MS. O'BRIEN: Okay.

Had you ever done a peer – had a peer-to-peer review of an investigation of a file in Newfoundland previous to that, or –

CHIEF SUPT. BOLAND: Yes, I have.

MS. O'BRIEN: – Newfoundland and Labrador?

CHIEF SUPT. BOLAND: Yes.

MS. O'BRIEN: You have?

CHIEF SUPT. BOLAND: I have, yep.

MS. O'BRIEN: And so approximately how many times?

CHIEF SUPT. BOLAND: Not very many. I would say less than a half a dozen, maybe – perhaps, three or four times we sent files to other police services, mostly. I don't recall sending any to any civilian agencies like SIRT or ASIRT. But to other police services to have a look and just give us some feedback on a – on the peer-to-peer work, or, you know, feedback on the investigation itself.

MS. O'BRIEN: Okay.

And so that approximately again – I know you said approximately half a dozen times, that would've been as your – during your tenure as – your tenure here as chief superintendent in the province.

CHIEF SUPT. BOLAND: In Criminal Operations, correct.

MS. O'BRIEN: In Criminal, okay.

CHIEF SUPT. BOLAND: Yep.

MS. O'BRIEN: And I understand that by the time the ASIRT report was completed, you'd actually retired; is that right?

CHIEF SUPT. BOLAND: So I waited as long as I could. I was waiting for the report to come back, and we were waiting for April and May and June. And I was hoping it would be back before I left.

MS. O'BRIEN: Okay. But it wasn't.

CHIEF SUPT. BOLAND: No, it wasn't.

MS. O'BRIEN: Okay. All right.

Those are the questions that I have for this witness, Commissioner. Thank you. Others may have questions for you.

THE COMMISSIONER: Okay, thank you.

Who's to go first?

Any volunteers here – Mr. Simmonds?

MR. SIMMONDS: Chief Superintendent, my name is Bob Simmonds and I am counsel for Meghan Dunphy and family.

CHIEF SUPT. BOLAND: Okay.

MR. SIMMONDS: Is it fine if I just call you superintendent?

CHIEF SUPT. BOLAND: Absolutely, yep.

MR. SIMMONDS: Superintendent, is it fair to say that you didn't have a hands-on involvement into this investigation?

CHIEF SUPT. BOLAND: That's fair, yes.

MR. SIMMONDS: Yours was – you were – you are the second highest in the province and you’re basically an overseer?

CHIEF SUPT. BOLAND: Right.

MR. SIMMONDS: Okay.

Would it also be fair to say that unless your people bring it to you, you’re not going to know if there is a problem with the investigation?

CHIEF SUPT. BOLAND: That is correct.

MR. SIMMONDS: You were driven – and that’s a poor choice of words. You were – you decided it was appropriate to bring in an independent observer because of the amount of press this matter was getting.

CHIEF SUPT. BOLAND: Just – I was becoming aware of some of the concerns that were being raised, yes.

MR. SIMMONDS: Because the question was, there was questions of why would an officer go up there on a Sunday, Easter, long weekend, things of this nature; why are the RCMP investigating their sister force, if you will, that type of thing. And that was becoming very clear very quickly at the outset of this.

CHIEF SUPT. BOLAND: Certainly into day two and day three and my awareness of some concerns around transparency and impartiality.

MR. SIMMONDS: And you were hoping that by bringing in the independent observer and giving him his mandate, which you set out in the terms of reference letter, that you would then have something to be able to say, look, we have an independent observer who going to, has a – we’ve set out some terms of reference for him and he or she is going to do a report at the end of this.

CHIEF SUPT. BOLAND: Yes, yes.

MR. SIMMONDS: And the purpose of the independent observer, being someone you picked, a former Supreme Court judge is because – I think you used the term and I read it in your previous interview: integrity, knowledge, integrity, no question as to the person’s ethics. They’re going to give us – if they sanction this, then it’s a good sanction.

CHIEF SUPT. BOLAND: Impartiality, yes. Yep.

MR. SIMMONDS: So this report and its conclusions are vital to your transparency in this matter.

CHIEF SUPT. BOLAND: Right.

THE COMMISSIONER: The Riche report you are referring to?

MR. SIMMONDS: Yes, Judge Riche report.

And you’ve said, and I can take you to the point, you’ve said basically the same thing again today, but you got a call on Sunday afternoon, you were home in your garage and you made the determination that this is our jurisdiction and, as it is our jurisdiction, we’re going to do the

investigation. You advised Deputy Chief Singleton of that and you advised your superior of that, and there was some discussion of whether or not another force should be utilized.

CHIEF SUPT. BOLAND: Right.

MR. SIMMONDS: Did you realize at the time that there was going to be a significant degree of public concern?

CHIEF SUPT. BOLAND: I didn't anticipate it. No, I didn't realize it.

MR. SIMMONDS: And I'm not trying to find fault here.

CHIEF SUPT. BOLAND: No, no –

MR. SIMMONDS: I'm asking, you know, obviously this took, I think it's fair to say, a life of its own in some ways.

CHIEF SUPT. BOLAND: Uh-huh.

MR. SIMMONDS: Did you anticipate that day when you had those thoughts, you had those phone calls, that the reaction from the public was going to be as severe as it was?

CHIEF SUPT. BOLAND: No, I didn't anticipate it at all.

MR. SIMMONDS: Did it give you a concern – and I guess on this one, I am being a little bit critical, but did it give you are concern where Acting Sergeant Smyth was working in conjunction with now Sergeant Doug Noel in a unit that – and in fact on some – and we can take you to it, but I don't think it's necessary. When these tweets of concern came out, Officer Noel, who was then corporal, was indeed copied on them and replied and things of that nature. So from the very outset, the RCMP involvement through Corporal Noel was clear.

Did you not think that, gee, might be a problem for us?

CHIEF SUPT. BOLAND: No. So that Sunday afternoon – no, I didn't. The position that our member had with the PSU was a working secondment to the program –

MR. SIMMONDS: Uh-huh.

CHIEF SUPT. BOLAND: – and I saw our investigation team as being separate, independent. You know, when we talked earlier about optics and some perceptions, at the time, it never entered my mind. It was our Major Crime folks would do the investigation and they had the independence to do what they needed to do.

MR. SIMMONDS: But the independence, from the public's point of view, would you not agree that justice must not only be done but be seen to be done – both, you need that independence and you need to have a clear exhibit that that independence is, in fact, taking place.

CHIEF SUPT. BOLAND: Right. So I agree. I think from a public point of view, I could see how that independence would be somewhat – they would be unsure of it, how they're related.

MR. SIMMONDS: I'm going to try then – and I'm not going to be a long time here today, but I am going to try and take you to some concerns –

CHIEF SUPT. BOLAND: Sure.

MR. SIMMONDS: – that the Dunphy family had that there were really two sets of treatments here being dished out.

The issue of the public’s perception at that point in time, which was, I think you said Monday or Tuesday or Wednesday you were in Clarendville –

CHIEF SUPT. BOLAND: Uh-huh.

MR. SIMMONDS: – and you called – you at that time made the decision, bounced it off the people that were with you, which were all high-level RCMP officers, and made the call from Clarendville to initially get hold of Judge Riche.

CHIEF SUPT. BOLAND: Correct.

MR. SIMMONDS: You said in your direct examination that you’ve never had a case where a good investigation wasn’t done. Do you recall saying that here this afternoon?

CHIEF SUPT. BOLAND: Yes.

MR. SIMMONDS: Would it be fair to say to you, Sir, that you can’t really tell if a good investigation was done in this case?

CHIEF SUPT. BOLAND: Well, so not being at the front line of the investigation and knowing every twist and turn and intricacy of the investigation, but I was confident in the supervision, the organizational structure of having people in charge and supervisors. So I, you know, I was confident that those mechanisms were in place that provided the necessary oversight and supervision of the investigation.

MR. SIMMONDS: So you felt you had – and I don’t mean to be disrespectful to it, but you felt you had the machinery there that if properly functioning should give you a completely transparent – an investigation with integrity and forthrightness?

CHIEF SUPT. BOLAND: Yes.

MR. SIMMONDS: You early on realize – or not realize, you early on come to the conclusion that because of the fallout from this, perhaps I do need an independent observer. And you’d had some distant experience of seeing that take place in Western Canada, particularly with respect to native issues, I believe, and you decided that’s a good way – it never been tried here before, you didn’t have a template for it, but you were going to try it.

CHIEF SUPT. BOLAND: So as the, as the issues and some of the information out of the investigation came to light at my level and I became aware of some of the, you know, the inquiries with our folks done by the officer from the RCMP prior to attending Mr. Dunphy’s home, some of those factors and information, and some of the public interest and concerns being raised, that’s when I said to myself, you know, there’s some concerns around transparency and bias, impartiality, and how can I address these. We were into the investigation and I felt that the independent observer was a good route to go.

MR. SIMMONDS: Okay. And from that I have two questions. The first one being, you – ASIRT was subsequently brought in and that was a decision, a definitive decision had been made by November of 2015, but before January 29, which was a piece of correspondence, the decision was made to bring in ASIRT. Correct? 2016.

CHIEF SUPT. BOLAND: So the time frame, so I wasn't in the criminal operations office at that time. So, but I think that time frame is all – you know, there had been some informal discussion about getting a peer-to-peer review done, and the decision point of the timing around when it came, between December and January, yeah the –

MR. SIMMONDS: Who's ultimate – I'm sorry, I didn't mean to interrupt you.

CHIEF SUPT. BOLAND: No, no, go ahead I was done.

MR. SIMMONDS: Whose ultimate decision was it to get ASIRT?

CHIEF SUPT. BOLAND: To bring in ASIRT? So at the time, that time frame I was the acting commanding officer, Superintendent Sachsse was in a criminal operations position, Inspector Cahill was still in the major crime (inaudible). So the, I think it was brought forward to me by Superintendent Sachsse about bringing in ASIRT to do that review, and I agreed with it.

MR. SIMMONDS: Would I be being unfair if I said the reason for writing the government saying we'd like to do this, amongst the three of you, was because there was continuing to be issues after issues with respect to concerns raised by the Dunphy family, concerns raised in the press, concerns raised in the media and continuing questioning of whether this really was an independent investigation.

CHIEF SUPT. BOLAND: So I think the main reason why we brought in ASIRT was to have that step in the investigation, to make the investigation as thorough as possible. Did we, did we miss any steps, did we miss anything, could we have done something differently that we can go back and redo, and those issues.

MR. SIMMONDS: Okay. And when you get – take your time.

UNKNOWN MALE SPEAKER: Okay. Go ahead.

MR. SIMMONDS: When you get the decision to bring in ASIRT, when you get Judge Riche's report.

CHIEF SUPT. BOLAND: Right.

MR. SIMMONDS: Okay. You've got your independent observer and the report comes back and he does say in it, and you make this point in your interview with Ms. O'Brien, that he says it was a fair and comprehensive investigation, or phraseology of that nature, but he then goes on to indicate that he has a number of concerns about things that weren't investigated.

CHIEF SUPT. BOLAND: Right.

MR. SIMMONDS: Does that not cause you a concern after you read that?

CHIEF SUPT. BOLAND: So, certainly it caused some concern but not a high level of concern. Judge Riche had been, for several months there had been some discussion that he was kind of going off mandate, I guess for lack of better words.

MR. SIMMONDS: I think the phrase was going off the reservation, or something along that nature.

CHIEF SUPT. BOLAND: Well, so he was going outside the scope of what we intended for the independent observer. So the issues that he brought forward, sure, they would've all been part of the consideration of we want to make sure we address all the concerns.

MR. SIMMONDS: But does that not cause you a concern at that point in time to say – and I understand why you would trust your troops –

CHIEF SUPT. BOLAND: Yeah.

MR. SIMMONDS: – and I understand why you believe you have the machinery there to do what needs to be done, but does that not then cause you a concern that, jeez, maybe there were real problems with this investigation. You know I've got – number one, I got the press and social media and all of these things coming out.

CHIEF SUPT. BOLAND: Hu-huh.

MR. SIMMONDS: Number two, I've got two close forces. Number three, I've got the report coming back from the guy I was hoping was going to look at this and say everything is fine and dandy, and he has issues. Does that, at that point in time, bring home to you that, jeez, maybe there were some real concerns here?

CHIEF SUPT. BOLAND: At that point in time, no. My confidence in the investigation never wavered throughout the investigation and I was very confident that our folks were doing a thorough investigation.

MR. SIMMONDS: Well, in a minute I'm gonna take you to a couple of issues.

CHIEF SUPT. BOLAND: Sure.

MR. SIMMONDS: And I'd ask for your comments on those as the second in command.

One thing that I grapple with and could not understand is if Judge Riche's involvement is meant to be – and I won't say to cleanse, but to sanction it, to basically say, look, this was a fair, clean job. Okay. You don't have to worry. How could the public – and that's done because you wanted to deal with the public issue.

CHIEF SUPT. BOLAND: Yeah.

MR. SIMMONDS: If you weren't going to release his report to the public, how would you ever, how is the public ever gonna have that level – now, as it turned out, it did get released because of the Commission, but originally it wasn't going to be released. If it wasn't going to be released, how would you ever get that level of confidence in the public that, hey, we now have had Judge Riche review this; his report is out, we're happy. If it's not going to be released, how did you hope to accomplish then?

CHIEF SUPT. BOLAND: I don't recall any determination that his report wasn't going to be released. That Judge Riche –

MR. SIMMONDS: I thought the information wasn't, perhaps you can correct me if I'm wrong or Commission counsel, but I thought the initial position of the RCMP was that the report was not going to be released?

CHIEF SUPT. BOLAND: No, I don't recall that at all. I went into it thinking that it would be released, his report.

MR. SIMMONDS: And I think at one of the press releases – and I can't – I will check this, but –

CHIEF SUPT. BOLAND: Sure.

MR. SIMMONDS: – that there was a statement to that effect that it wasn't going to be released.

UNIDENTIFIED MALE SPEAKER: Mr. Simmonds, if I may, I believe it was because the inquiry was being called. I think that's what you'll find if you look at that document, that was the reasoning.

THE COMMISSIONER: Yeah, there was a – I don't recall exactly, Mr. Simmonds, but there was a reference to the fact that the RCMP would not be releasing anything really, including a Riche report –

MR. SIMMONDS: Because of the inquiry.

THE COMMISSIONER: – to avoid compromising the inquiry.

MR. SIMMONDS: And that may be where I saw it, Mr. Commissioner.

THE COMMISSIONER: Now, whether that was necessary or not is a good question. See, by that time, you have a lot of the statements of individuals locked in.

MR. SIMMONDS: The report subsequently got released in a different fashion.

THE COMMISSIONER: Yeah.

MR. SIMMONDS: But you understand my point. Without releasing that report, the hope for effect could not be accomplished by the public having the assurance that we can now agree with this report and release the press releases of it and, yeah, we're satisfied that it's a good investigation.

CHIEF SUPT. BOLAND: Yeah, so – you're right. But the concerns and the interests of the public were a part of the engagement. I also, myself, from my perspective, in the chair I sat in, I also wanted to ensure that the investigation had flowed along without any issues, concerns or problems.

MR. SIMMONDS: I understand, to some degree, your comment, professional courtesy between the two forces, and Ms. O'Brien questioned you about why were these emails sent and why was Deputy Chief Singleton informed.

But to take it from the other side, Ms. Dunphy's side, were you aware that on the night this took place, she had attended at the scene. She had asked numerous first responders and officers that were there if she could see her father. Her evidence is that she was told she'd be able to see him later. That never, ever took place and, in fact, the evidence we've had is that was not said to her.

Were you aware that was an issue that the Dunphy family had, particularly Meghan, very early on?

CHIEF SUPT. BOLAND: I recall hearing something about it much later on, but no, not that, not that – within that very early period of time.

MR. SIMMONDS: Were you aware that a liaison officer was appointed by the RCMP – which I understand is a loose position, with no real policy guidelines in your manuals to set out here are the duties of the liaison officer.

CHIEF SUPT. BOLAND: Right.

MR. SIMMONDS: But it is a common thing, or it has been done before to appoint a family liaison officer in cases like this. Is that correct?

CHIEF SUPT. BOLAND: Yes, yes. So I was aware of that.

MR. SIMMONDS: Okay.

She, in fact, went as far as to go and see the chief medical examiner to see if she could see her father. Didn't get to see him. Were you aware of that?

CHIEF SUPT. BOLAND: No.

MR. SIMMONDS: Okay. Were you aware that the first time she got to see him was when the body was released to the funeral home and when she went to see him, the funeral director, Mr. Dunphy, said to her that I can't show you your father 'cause his head's in a bag, or words to that effect.

CHIEF SUPT. BOLAND: Not aware of that at all.

MR. SIMMONDS: Do you not agree that that is relevant information that should have been conveyed to her and in a diplomatic, appropriate fashion she should have been advised by the liaison officer that, you know, your father suffered significant physical trauma here, because of the autopsy, you may not be able to see him, or something of that nature?

CHIEF SUPT. BOLAND: Uh-huh. So I – if there had been a decision by the liaison officer not to do something, or to do something, I can't comment on why or why not; but, based on what you're describing, to describe to the family, for them to be informed as much as they possibly could, I agree with that approach to issues, to tell somebody ahead of time here's what to expect. I've done it myself. I've said to people, here's what to expect when we go in here, this is what you're going to see and this is why. But why that was done, or not done, I can't speak for –

MR. SIMMONDS: But that is a shortfall here.

CHIEF SUPT. BOLAND: Well, so I can't speak for what the liaison might have been doing at the time, or –

MR. SIMMONDS: Well, let me tell, let me tell you, the liaison officer said that he understood that after the body was released to the funeral home that the funeral director or the people at the funeral home would be able to restore the body – he thought, never checked it, never had a discussion about it – but he thought would be repaired to an extent that it wouldn't be a problem for a viewing. My client found out when she went to the funeral home and was told that and she was, as you can appreciate, very, very upset.

CHIEF SUPT. BOLAND: I don't blame her. Yep.

THE COMMISSIONER: Mr. Simmonds, just to be fair to the record, I suppose, there's – it seems to – there seems to have been some misunderstanding possibly that the liaison officer, as I recall it, called Ms. Dunphy –

MR. SIMMONDS: Yes.

THE COMMISSIONER: – got the impression from her –

MR. SIMMONDS: (Inaudible.)

THE COMMISSIONER: – that the arrangements were made –

MR. SIMMONDS: Correct.

THE COMMISSIONER: – with the funeral director. Now, you know, we could, in hindsight, maybe question whether the liaison officer should have double-checked or whatever, but it really does –

MR. SIMMONDS: And that is my point, Mr. Commissioner –

THE COMMISSIONER: Sorry?

MR. SIMMONDS: That is my point. I think the liaison officer's duties, she was told this was the person she would co-ordinate with and you've heard (inaudible) –

THE COMMISSIONER: Right, but she – the liaison officer said he understood from her when he called that she had gotten the problem solved in discussion with the CME and/or the funeral director, and he left it at that.

MR. SIMMONDS: Correct.

THE COMMISSIONER: So your point is that he should have gone further, is it –

MR. SIMMONDS: Should have gone further and the fact that she was never ever advised that her father was shot in the head and that, indeed, it was going to be – he was likely going to be in a unviewable situation.

THE COMMISSIONER: Yeah. You know, I'm surprised – I'm not speaking about the RCMP now but, just generally, I'm surprised there's not a sort of fixed protocol, shall we say –

MR. SIMMONDS: Absolutely.

THE COMMISSIONER: – that keeps the family in the loop and makes sure that the viewing is part of the whole process. But it seems as though despite many, many, many situations I'm sure where you have terrible trauma inflicted upon bodies and car accidents and so forth –

MR. SIMMONDS: Uh-huh.

THE COMMISSIONER: – for example, I'm surprised that there doesn't seem to be any set way of doing it.

MR. SIMMONDS: No, there doesn't appear to be a protocol and –

THE COMMISSIONER: I don't know if it's within my mandate or not, but it is probably something I should refer to –

MR. SIMMONDS: What I think –

THE COMMISSIONER: – as something that needs looking at –

MR. SIMMONDS: I think it is within your mandate to comment that the family liaison officer should give at least some idea to the family of the difficulties that may be encountered because of the injuries or the shots that were encountered that –

THE COMMISSIONER: Well, it strikes me – it wouldn't, for example, be bad idea to have a little brochure available for families –

UNIDENTIFIED MALE SPEAKER: Absolutely.

THE COMMISSIONER: – who were in that position (inaudible) –

MR. SIMMONDS: 'Cause this – I mean, you heard her evidence; you know how shocked she was when this happened.

THE COMMISSIONER: Yeah, but I'm not sure –

MR. SIMMONDS: That it's the RCMP's fault.

THE COMMISSIONER: – that she fully –

MR. SIMMONDS: I understand.

THE COMMISSIONER: – recalled the discussion or that she fully considered the position that the liaison officer found himself in when he called her up – she didn't deny that he called her back –

MR. SIMMONDS: Oh, no.

THE COMMISSIONER: – and she made – she thought she had the arrangements made till she got to the funeral home.

MR. SIMMONDS: I think she said to him, you don't need to worry about it, Mr. Dunphy – is it Kevin, or Kenneth Dunphy is taking care of it.

THE COMMISSIONER: Yeah. So, you know, to be fair to the liaison officer on that point, it's difficult to say that he just dropped the ball completely, but I'll look at it carefully.

MR. SIMMONDS: Okay, that's fair, Mr. Commissioner.

The other point that is a concern to her – and she certainly agreed to this on the first night. Officers Henstridge and Burke came to her home, which is perhaps a 20-minute drive from where the incident took place, 20 or 25 minutes' drive, and they interviewed her that night. Now, I don't think you've had enough experience in Newfoundland that a police officer shows up at your door, the average Newfoundlander will co-operate. I don't think that's a stretch.

THE COMMISSIONER: Sorry, I didn't hear you. The average –

MR. SIMMONDS: I said if the RCMP show up at your door, the average Newfoundlander will co-operate, answer questions, perhaps invite them in. Would I be stretching your experience if I asked you that Officer Burke – or Officer Boland?

CHIEF SUPT. BOLAND: No, and I don't think it's just a Newfoundland and Labrador phenomenon, but, you know, I would think it's reasonable.

MR. SIMMONDS: So she was very upset that night. She was significantly traumatized and the two officers come in to take a statement from her. That again seems to lack empathy and judgment in light of the events that just took place. Would you agree?

CHIEF SUPT. BOLAND: So if Ms. Dunphy had to say that she wasn't able to give a statement at that time I think the officers would have carried on and come back at a better time. I agree if a person is in an emotional or traumatic mind frame, mindset, that there might be a better time. But from an investigator's point of view, getting the statement from Ms. Dunphy as early as they could would have been very helpful to the investigation.

MR. SIMMONDS: And that's part of what I anticipated you might say. So I'm going to take you to page 215 and 216 of your interview on December 6 with Ms. O'Brien. She asks a question: Okay, there's a statement here on Sergeant Smyth; he still has Sergeant Smyth here. But he says Sergeant Smyth declined to provide a statement regarding the events at the time. Smyth stated through his training he knows that better memory recall will occur several hours after the event and he wants to provide the most detailed and accurate account he possibly can. He has expressed a willingness to provide a statement in the very near future.

And the question was: Were you aware at the time that Constable Smyth had been asked for time before providing a statement? And your reply was: Just in the body of reading that report, right, so I recall hearing, you know, so like if you take the fact that Constable or Sergeant Smyth is a police officer right out of the whole equation and you're looking at him as a person involved in the incident, the earlier you can get the statement from the people, from a police perspective, from the investigator's perspective, is the most desirable, right. But it's frequent that you run into witnesses or persons of interest in an investigation or anybody, you can't get statements out of them, right. So the sooner you can get a statement from a person, the earlier the investigators are able to start to piece together what happens and determine what happens so.

Now, that appears to have a stark contrast – and I don't think I'm being unfair to the two RCMP officers that attended at her home that night. They go down there to get a statement from her. You're right, she didn't have to give it, but I believe it's also fair to say that her father has just been shot. She's been seeking information. She's been significantly traumatized. She's been up to the scene a couple of times. The two officers show up. She probably is hoping that they're going to provide her with some information, so that's why they come in. Yet – and they take that statement from her, and the statement really focuses on, you know, whether her father has any issues and things of that nature.

And you contrast that with the treatment that Constable Smyth received, that he was asked for a statement. No, I don't want to. You know, there's four RNC officers there to give him advice. They were allowed to meet with him in a separate room there and talk to him. That would not be my experience, or that has not been my experience if one of my clients is arrested or under investigation. They're treated very differently than that.

Am I making a fair comparison here, or do you feel it's unjust? There's two standards it appears here.

CHIEF SUPT. BOLAND: Well, so the difficulty I would have in that is at the front line of the investigation. I'm not privy to everything that happened there and what the investigators were doing and how they were doing their work and completing their tasks at the time. I can only rely on their experience. I had every confidence – they are experienced police officers, both from our Major Crime sections.

MR. SIMMONDS: I accept that, but, Superintendent Boland, does it not appear going to Meghan Dunphy's house that night and getting a statement in contrast to Officer Smyth – who the officer that transported him, in fact, said when he tried to bring up about the incident, I turned the subject away because I didn't want to know anything about it – to at the detachment where he's allowed to meet with four other people from the RNC and he's not pushed at all, urged to give a statement. He's let – you go away and give the statement whenever you want. That seems to be a stark contrast between the two, the two poles here, and it's one that obviously concerns the Dunphy family.

CHIEF SUPT. BOLAND: So again, I think as the investigation was unfolding, how things were happening, and based on what they were – what kind of information they were trying to glean from Ms. Dunphy at the time, it's pretty tough for me to sit here and armchair or quarterback what the investigators –

MR. SIMMONDS: Well, that's what I'm asking –

CHIEF SUPT. BOLAND: – were doing at the front of that investigation.

MR. SIMMONDS: That's what I'm going to ask you to do. I mean, you're the second in charge in the province. I think I factually stated what took place here.

MR. KENNEDY: Well, I would have to disagree with he's actually stated what took place. There's been evidence from officers and there will be evidence from other officers that Constable Smyth was under no obligation to give a statement. That he has constitutional rights which were at play, that there were no grounds to either arrest or detain him. That's a different situation, Commissioner, I would suggest in terms of the facts that's being put forward by Mr. Simmonds to –

THE COMMISSIONER: Well –

MR. KENNEDY: – Chief Superintendent Boland.

THE COMMISSIONER: – Ms. Dunphy had the same rights, to some extent, in terms of whether or not she'd give a statement, didn't she?

MR. KENNEDY: Whether or not she gave a statement, but she's not the subject of an investigation, Commissioner.

THE COMMISSIONER: Right.

MR. SIMMONDS: Mr. Commissioner, if I might address Mr. Kennedy.

THE COMMISSIONER: Go ahead. But remember now, there's a place for final argument, too, final submission.

Go ahead.

MR. SIMMONDS: Well, Mr. Kennedy and myself know that when we have a client arrested, or brought in without even being arrested, brought in for questioning, yes, they can leave, but the police usually act very quickly, very sharply to try and get as much information from that person as they possibly can.

That's not what happened here with respect to Constable Smyth. I understand Constable Smyth had the rights he had, but it seemed to be a very lacklustre approach trying to get a statement

from him from right then, by simply saying, when he said, no, I'd like to wait. There was no further push put on.

THE COMMISSIONER: That'll be the subject of submissions, but if you have –

MR. SIMMONDS: Yeah, okay.

THE COMMISSIONER: – for Superintendent Boland.

MR. SIMMONDS: Ms. Dunphy doesn't feel that her – or that she was kept in tune, or kept up with all the things that were going on in this investigation in the hope that she would've been. In light of the fact that it was her father shot, it was a family liaison officer appointed.

I contrast that with – and this is, I believe, one of the things that would cause the public some concern. I contrast that involvement with the involvement that you had with Deputy Chief Singleton, and inspector or Superintendent Sheppard, who, as a professional courtesy – and I have great respect for those courtesies – but as a professional courtesy, they were kept abreast of pretty much everything that was going on. And yet –

MR. AVIS: I don't know that there's any evidence that they were kept apprised of pretty much everything that was going on.

MR. SIMMONDS: We have been –

MR. AVIS: I'm sorry, there's no evidence of that.

THE COMMISSIONER: The one term that keeps reverberating in my head at this hour, almost 5 o'clock, is professional courtesy. And it may be politically incorrect for me to mention it. I know there is a segment in the Law Society that says that these jokes should not be permitted. But we all know why the lawyer wasn't eaten by the fish when he fell into the shark tank.

MR. SIMMONDS: They swam with him for professional courtesy.

THE COMMISSIONER: Professional courtesy, yeah.

MR. SIMMONDS: I'm aware of that.

THE COMMISSIONER: So I realize that doesn't meet Mr. Avis' objection directly, but I think – Mr. Avis, again, that's a matter for final submission.

Go ahead, Mr. Simmonds, nothing personal in that remark.

MR. SIMMONDS: No, none taken; none taken.

Superintendent Boland, would you agree that the RNC was kept abreast of many of the events here? Would you have a concern that the public viewing that, as they will through this inquiry or now – these are not normally correspondence that would have come to light. But once they come to light, would you not agree that the public viewing that may say, well, here's the very concern we have about one police force investigating another. There's no detachment. There's no concern for an arm's-length involvement. One is giving the other information and, in fact, is sending over their press releases before they release them.

Do you think that's a fair or unfair comment?

CHIEF SUPT. BOLAND: So from the public perspective, not perhaps having all the information or being aware of all the environments at play, or all the information, from my perspective, the briefings that I did were high level about the investigation. The information that I passed on were high level and probably would be considered common knowledge in any investigation as to what would have been happening.

MR. SIMMONDS: But do you agree that that kind of interaction with the force you're investigating – or you're investigating a member of that force, could well lead to the conclusion that, look, this is not an arm's-length investigation. This is kind of a buddy system here and their keeping them apprised of what's going on here. You know, that gives us a concern about the objectivity.

CHIEF SUPT. BOLAND: To reach your conclusion, maybe your perception, I think all the people that I've worked with and dealt with on this – people of high integrity, people that I trust, I think did not – there was no activity that it would have caused me any concern about compromising the investigation. My briefing of a senior member to tell them – a senior member of the RNC saying we're waiting for this report or that report to come back. It had nothing to do with the front end of the investigation or the investigation decisions. I'm about four layers, five layers away from the investigation –

MR. SIMMONDS: Let me put it to you this way, Superintendent. If this was an investigation where the person was released, but it was an investigation of a criminal act, which this was a criminal investigation – it was homicide whether it's culpable homicide or not was something you were going to determine. But if that was in another situation where it was Joe Citizen charged or Joe Citizen being the person of interest, the RCMP would not keep the family of Joe Citizen abreast of the things as the RNC were kept abreast of here.

CHIEF SUPT. BOLAND: The family, well – so I think the circumstances of every investigation are very different. I'm aware of investigations where we have done that, where we have kept all parties informed. And I was told all the way along that every inquiry was met and that all information that could be provided when it was asked for was provided.

MR. SIMMONDS: Well that's not – from the Dunphy's point of view, that's not the situation here.

CHIEF SUPT. BOLAND: So, so I understand why that may be a viewpoint that they hold, but I was advised that every request for information was provided.

MR. SIMMONDS: And again, you're going based upon the information that was provided to you.

CHIEF SUPT. BOLAND: That's correct.

MR. SIMMONDS: Mr. Commissioner, I don't know how long you –

THE COMMISSIONER: Well, it's –

MR. SIMMONDS: It's 5 o'clock.

THE COMMISSIONER: – it's 5 o'clock, I don't think that we're going – just let me get a view from other counsel how much time is going to be needed. Mr. Flaherty, do you know ...?

MR. FLAHERTY: My estimate right now would be about 15 minutes, perhaps.

THE COMMISSIONER: Okay.

MR. FLAHERTY: I have three questions I want to ask at this time.

THE COMMISSIONER: Right. Okay. Ms. Rasmussen? Mr. Freeman?

MR. FREEMAN: We'd have very few questions, especially after our friends are complete. I would imagine probably 10 minutes at the most.

THE COMMISSIONER: Right, okay. Mr. Avis?

MR. AVIS: Five to 15 at most.

THE COMMISSIONER: Okay.

UNIDENTIFIED MALE SPEAKER: I'm about the same, about 10 or 15, maybe. Half, half a dozen questions.

THE COMMISSIONER: Yeah, we're going to be into tomorrow morning. Mr. –

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Thank you. Counsel have a problem, we have –

MS. O'BRIEN: Thank you. No, no problem, obviously everyone needs their chance to cross-examine the witness. Just looking forward towards the end of the week because, obviously, we've lost a day and a half already, just wondering, to get the witnesses done this week that we anticipate we would, might need Friday afternoon. So maybe if you could just canvass counsel about their availability. Thank you.

THE COMMISSIONER: Right. I'm sorry, you had mentioned that to me before I came in and I was supposed to do that. You're all right for tomorrow morning 9:30, Superintendent Boland?

CHIEF SUPT. BOLAND: I am, Commissioner, yes, yes.

THE COMMISSIONER: Okay. It sounds like you'll probably be another hour judging by the – although they tend to get their energy up overnight, I find. Yeah, has counsel made any commitments for Friday afternoon that are unbreakable? Because nobody can anticipate the weather and we can – we're going to, I think, be better off keeping to the schedule if we can utilize at least part of this Friday afternoon. Everybody all right with that?

Okay. Well, I propose then we break until 9:30 tomorrow morning, unless there's something else that counsel wants to bring up.

Tomorrow, looking at the weather, it sounds as though the weather is going to start getting bad around 7 or 8 o'clock and then later in the day improve. I'm going to be inclined to be here a bit on the early side, and hopefully the forecast is right. I apologize if that creates difficulty for any of you, but unless there's a significant change, if it's – schools, for example, may start closing because of children, you know, trying to get home at 12 noon or whatever; but if we're here, by the sound of it, we're not going to be staying here, we're not going to be snowed in because the amount of snowfall tomorrow is predicted to be fairly small and may be wind and drifting. So what I'm trying to say I guess is when you hear snow day from the schools, we'll take a hard look.

Now, if it's just – I'm not going to put you in an unreasonable position if I can. If it's really bad, we may have to defer it. But right now I think that we should be able to get away with getting in here for 9:30, maybe get in a bit earlier and you'll miss the worst of the weather in the morning and we'll be out of here, if things go right, by halfway through the afternoon if everybody sharpens their pencil – and Ms. O'Brien is staring at me, but I have confidence.

All right, so we'll adjourn until 9:30 tomorrow morning.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.