



COMMISSION OF INQUIRY  
RESPECTING THE DEATH OF DONALD DUNPHY

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Transcript

Volume 24

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*Commissioner: Honourable Justice Leo Barry*

Thursday

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**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

**THE COMMISSIONER:** Good morning.

Thank you.

Go ahead when you're ready.

**MR. SIMMONDS:** Good morning, Lieutenant.

Lieutenant, we left off yesterday on this highlighting to you what I felt were the difference, the differences – where the differences in the way that Meghan and her – felt they were treated and the way that Constable Smyth was treated.

You indicated that you thought all investigate – or of – and I quoted to you the term you had used yesterday, that never had a case where there – a good – a good investigation wasn't done. That's your feeling.

**CHIEF SUPT. BOLAND:** Correct.

**MR. SIMMONDS:** But I think you acknowledge that you did not know the nuts and bolts of this investigation, except from what was passed along to you in the form of briefing notes or emails or the brief meetings you had.

**CHIEF SUPT. BOLAND:** I'd agree with that. Correct (inaudible).

**MR. SIMMONDS:** Do you understand – and this is not meant to be disrespectful, but do you understand why or how it is that both Meghan, and it appears a segment of the public, feel that the police were guilty of tunnel vision here? They had their decision made up very quickly after speaking to Officer Smyth and really the investigation was done just to confirm the points the Officer Smyth had given, the statements he had – the information he had provided.

Do you understand that – why they feel like that?

**CHIEF SUPT. BOLAND:** I understand why people feel that way, yes. I don't agree with it but –

**MR. SIMMONDS:** No, no, I –

**CHIEF SUPT. BOLAND:** – I understand it.

**MR. SIMMONDS:** Well, I'm going to take you to what I think is an example. And it came up; my learned friend brought it up yesterday. I wonder if we could bring up Exhibit 0570 which is the press release of April 9.

Now, I had April 9 on this. Is it actually the –

**MS. O'BRIEN:** It was April 7.

**MR. SIMMONDS:** It's April 7. And this is the press release.

If you could go up a little bit, no, just – just if you could stop it there for a second.

Yes. So I'm not sure what paragraph it is but it's – on the screen, it's the second one down where the mouse is to. Starting off: To date, the RCMP investigation.

**CHIEF SUPT. BOLAND:** Where it starts the RCMP – oh, to date.

**MR. SIMMONDS:** To date, the RCMP – do you have that?

**CHIEF SUPT. BOLAND:** Yes, I do.

**MR. SIMMONDS:** Okay.

It states – and this went out on the 7th and the event took place on the 5th. Correct?

**CHIEF SUPT. BOLAND:** Right.

**MR. SIMMONDS:** “To date, the RCMP investigation indicates the investigating officer attended the Dunphy residence, spoke with Mr. Donald Dunphy at the door, the officer was identified as a police officer, and was invited into Mr. Dunphy's home by Mr. Dunphy. Once inside the residence, a discussion unfolded between the officer and Mr. Dunphy over a period of approximately 15 minutes. During this time period there was a sudden and dramatic change in the demeanor of the visit. The police officer was faced with Mr. Dunphy holding a long barrel firearm which was pointed at the officer. Evidence indicates” that the officer's response to this threat was lethal – with lethal force by drawing and discharging his service pistol. Mr. Dunphy was fatally shot.

Is that what the – not what the whole investigation was meant to determine, whether or not – this is the 7th, two days later, whether or not Constable Smyth was telling the truth that indeed Mr. Dunphy did pull a gun on him. This seems to have, be clearly accepting what was said by Constable Smyth, his version of facts and the investigation is pretty well over with.

**CHIEF SUPT. BOLAND:** So my view of that paragraph is that's capsulizing or putting out the information that the investigation had received to that point.

**MR. SIMMONDS:** But, Superintendent, to the public, to Meghan Dunphy looking at this, she's told her father, number one, who has no indication – who has no history of violence; number two, who had left them from Sunday dinner and he stopped at their house and then taken her partner's truck home because his had a problem, who had gotten home and texted one of his or emailed one of his – text, I think it was, one of his buddies to come up and have a toke with him, who was not in any kind of angry, upset mood is sitting in his house. And, somehow, when the police officer comes in, Mr. Dunphy ends up pulling a gun that the last she – the last Meghan saw of it was back of the chesterfield and hadn't been used and even the subsequent review of the gun appears to confirm that it hadn't been used. He pulls this gun on a police officer. She doesn't accept that as the facts that took place.

Two days into the investigation, your people have come to a conclusion that Officer Smyth's version is correct and that's very problematic.

**CHIEF SUPT. BOLAND:** So up until this point of the investigation this is the information that the investigators had.

**MR. SIMMONDS:** But maybe the investigation – the information they had, but they are very early in their investigation. It is accepting carte blanche Officer Smyth’s version of what took place. Do you see the concern with this?

**CHIEF SUPT. BOLAND:** I certainly see the concern. I don’t think it was – the investigation was far from concluded.

**MR. SIMMONDS:** Well –

**CHIEF SUPT. BOLAND:** I think an investigation, this particular one, went on for several months. Information could come forward at any time that would change the course of an investigation. And I think –

**MR. SIMMONDS:** But you said out here – I’m sorry, continue (inaudible).

**CHIEF SUPT. BOLAND:** No, no. And I think this simply is putting forward what the information that they had at the time.

**MR. SIMMONDS:** But, Superintendent, it’s been my experience and I expect yours, that until an investigation – and this was a criminal investigation into a homicide – that the police don’t come out and say, okay, here’s the evidence we got the second day, here’s the theory that was presented to us, we’re basically accepting it and here’s our news release. That is not a normal activity of the RCMP.

**CHIEF SUPT. BOLAND:** So I don’t see it that way. I don’t see it as accepting –

**MR. SIMMONDS:** No.

**CHIEF SUPT. BOLAND:** – the outcome of the investigation. I see it as information that they had to that point and trying to find the balance between meeting some public, significant public interest around the investigation and balancing the not – and compromising the integrity of the investigation.

And we are in very different times.

**MR. SIMMONDS:** We are –

**CHIEF SUPT. BOLAND:** We have instant information and –

**MR. SIMMONDS:** Absolutely.

**CHIEF SUPT. BOLAND:** – material flowing. And just prior to this I watched an incident, a national incident where I was very surprised at how much information was put out by the police very early in the investigation in order to help the public understand that the police were working on the investigation.

**MR. SIMMONDS:** And you’re speaking about the shooting on Parliament Hill?

**CHIEF SUPT. BOLAND:** That’s correct. Yes.

**MR. SIMMONDS:** Yeah, on Parliament Hill.

This is somewhat different, is it not? This is a person here who is sitting in his home. This event takes place and right away the version presented by the police officer, without any questions as

to what caused him to be there, what caused him to be there on a weekend, what caused him to be there on lunchtime on a, on Easter Sunday? A whole raft of questions that arise, and you've come out on the 7th, two days later, and said here's what our evidence is to date and basically accepting – certainly reading that I would believe the police has accepted the version as set forward by Constable Smyth.

**CHIEF SUPT. BOLAND:** So I, I still disagree that the, the information that's in that press release and in that was put out in public interest to get as much information to the public before speculation or rumours or other issues came to (inaudible).

**MR. SIMMONDS:** But what you have here is – no, it's not speculation. It's one, it's one officer's version. You haven't had your report back from your forensic unit. You have not, you have not had a consideration of all the evidence that might be gathered. You have not had any kind of testing done on the gun. There's a whole raft of issues that weren't considered, and yet this comes out and says during this period there was a sudden dramatic change of demeanour – Officer Smyth's evidence. The police officer is faced with Mr. Dunphy, who had never held a gun before that we know of, holding a long-barrel firearm which was pointed at the officer. That is clearly and absolutely accepting the officer's version, with the greatest of respect, superintendent.

**CHIEF SUPT. BOLAND:** So I don't, I don't see it that way. I see it as the, the press release putting out the information and – some of the evidence, certainly not all. Also, behind the press release is not all the information that's been gathered, but it's –

**MR. SIMMONDS:** But it clearly indicates that Don Dunphy is the one that pulled the firearm and pointed it at Officer Smyth with appears for no, no reason outside of an argument, and Officer Smyth had no choice but to defend himself and shoot him three times.

**CHIEF SUPT. BOLAND:** And to that time when this press release was put out, that was what the evidence and the information was coming forward.

**MR. SIMMONDS:** Okay, okay.

We're you aware that the scene was released and Corporal Burke, who was the main investigator, wasn't even aware that the scene had been released?

**CHIEF SUPT. BOLAND:** I, I wasn't aware of that information, no.

**MR. SIMMONDS:** Okay. Were you aware that, to date – and I have gone through Officer Lee's interview – that Officer Smyth gave a statement on the 6th, that statement, nor even a précis version of it, was reviewed with the forensic identification people as to see if there was anything in it that would cause them to go back in and say, hey, we better look at this in light of what Constable Smyth's told us. Did you know that that was never communicated to them?

**CHIEF SUPT. BOLAND:** No, so my position is several layers away from the front of the investigation.

**MR. SIMMONDS:** And I'm not trying to fasten blame to you here, I'm just asking, does –

**CHIEF SUPT. BOLAND:** I understand that but the – so the supervision and the supervisors and the chain of command within the investigation itself, the command structure, the supervisors of the major crime, they may have been aware of that information, but it's never reached my attention.

**MR. SIMMONDS:** But would you agree that the information provided in Officer Smyth's first statement, which was taken by constables or Corporals Henstridge and Burke, and, in fact, we were, at one point, told that the autopsy was delayed until they get that information. Now, there seems to be competing information as to whether that's correct or not as to why the autopsy was delayed. I think you in your interview say the autopsy was delayed simply because there was a bad backlog at the examiner's office.

**CHIEF SUPT. BOLAND:** Yeah, I don't recall the cause of the delay of the autopsy though.

**MR. SIMMONDS:** But in any event, would that not be something that the forensic identification unit should be aware of? If not the full statement, at least the gist and thrust of what Officer Smyth said in that statement before they give up the scene?

**CHIEF SUPT. BOLAND:** So, again, as the investigation is moving, it's a fluid – every investigation is different, whether, whether the people who prepared this press release were aware of all those details of the front-end investigation, I can't comment on that.

**MR. SIMMONDS:** But would you agree, from your experience, that providing the forensic identification unit with the thrust of the statement given by the lone witness would appear to be a beneficial piece of information to provide to them.

**CHIEF SUPT. BOLAND:** Well, like I say, every investigation is different in what way information gets shared and when and, you know, within the, within the centre or the core of the investigation. The sharing of information between the key players of an investigation, I would agree that that's important. For how that was unfolding and what way those processes were unfolding ...

**MR. SIMMONDS:** That wasn't done here. That was not done.

**CHIEF SUPT. BOLAND:** So, I'm not aware of that information.

**MR. SIMMONDS:** Would you agree, or were you aware, that no picture, no single photo was taken of where Constable Smyth was standing at the time he first saw the barrel of the gun pointed at him. And that becomes very important because where did the gun come from? It came from the right side, generally, and there's great discussion about that through this inquiry, but we don't have a picture of where he's supposed to have been standing. Do you not agree that that's a shortfall?

**CHIEF SUPT. BOLAND:** So I haven't been following any of the inquiry. I'm unsure what information has come forward and what's been put out there, what pictures the forensic identification folks took or any of the other officers took. You know, every piece of information and every picture and photograph would be of value, absolutely.

**MR. SIMMONDS:** Would particular value, if you had a shot, of where because it would provide the view that he had of Mr. Dunphy and both sides, if he had a view of both sides of the chair. Would you agree?

**CHIEF SUPT. BOLAND:** So having any type of information or graphic, I see there's a board and table and graphic here. Having as much information in photo, visual, audio available as possible, I would agree is ...

**MR. SIMMONDS:** Well, that wasn't done.

And this is a particularly difficult point to understand, if I might approach that diagram, Commissioner. You can see that, can you?

**CHIEF SUPT. BOLAND:** I can, yes.

**MR. SIMMONDS:** This is where Mr. Dunphy was seated, okay. And we know that Constable Smyth moved along the mantelpiece, somewhere over to maybe two-quarters of the way over and back and forth here. We don't know where he was standing when the barrel was first pointed at him, which would be important because it would give you the view of both sides of the chair, depending on where you're at.

We understand in his statements that he has said that he gun came from the right side of the chair. This side right here, okay?

**CHIEF SUPT. BOLAND:** Okay.

**MR. SIMMONDS:** The gun, as I've said many times perhaps ad nauseam, is 38½ inches long. We've had the chair in evidence. It's out in the next room. And we put the gun down by the side of the chair. The places we've heard is that the gun could have been maybe in the cushion of the chair. Well, we think we've eliminated that because it's too long. It might have been in the side pocket but again we've shown that parts of it would be protruding or it could be on the floor or it could be leaning against the wall. Those appear to be the options for where the gun was located.

Yet, the forensic identification unit nor the main investigator asked for any type of re-enactment of laying the gun down, putting it next to the chair in the position it was in, seeing how visible it would be to come over the chair. Some of it may indeed be common sense, but at least placing the gun in those various places to see what your view would be, would you not agree that that would be a crucial piece of information particularly when all we know from Officer Smyth is the gun came from the right side?

**CHIEF SUPT. BOLAND:** So I would agree that gathering as much information and the evidence as you can in any investigation is valuable. How that work unfolded at the front end of the investigation, I can't comment on that. I wasn't involved in any of the front-line investigation.

From the onset of the inquiry, counsel advised, I think, all witnesses to not follow the inquiry. I haven't heard any of the evidence being called. I haven't followed any of the inquiry, other than walking past the odd newspaper stand and seeing a headline. But I can't comment on how the forensic folks and the front line investigators, the major crime folks did their work. I have every confidence they did very competent work, thorough work.

**MR. SIMMONDS:** But our issue is that we don't consider, that part of it, or certainly we don't consider parts of the investigation as competently or appropriately done. Where a firearm of the length that this was and the size that it was, is said to have come over the side of the chair when a man is sitting in it, without really noticing the man get out of the chair or move his arms down to get it, the location of that gun prior to – a gun now that he'd never been seen with, is behind the couch the last thing that anyone heard of it, comes over the right arm of the chair and gets pointed at a trained, professional officer who's gone there to do a risk assessment.

Would that not be something that would stand out in the investigator's mind and say, jeez, how did that happen? Like get the gun, get the chair, let's have a look at it. Let's see what the options are. Is that not a fear, expectation for that kind of checking to be done by a competent investigation?

**CHIEF SUPT. BOLAND:** I have every confidence that they covered off those issues in that investigation.

**MR. SIMMONDS:** They did not.

**CHIEF SUPT. BOLAND:** So I can only go with what I've seen and been briefed and heard of. And I have every confidence they did what needed to be done in that investigation.

**MR. SIMMONDS:** Well, therein lies the (inaudible). I would respectfully submit that placing that gun by the chair, even if we can't definitively determine where it came from, but placing it by the chair in the area where Officer Smyth said it came from to determine its accessibility from a person sitting in the chair, I believe to be a crucial issue in this matter, and it was not done.

**THE COMMISSIONER:** I guess you'll have to agree to disagree on –

**MR. SIMMONDS:** Disagree on this, yeah, and I'm going to move on.

**THE COMMISSIONER:** You know, the point is –

**MR. SIMMONDS:** No, I hear you. I hear you, Mr. Commissioner.

Don Dunphy's phone – which was really his daughter's phone – was taken very quickly, seized that day. Officer Smyth's phone wasn't seized for change off of three weeks, I believe.

Do you agree that the phone of the person who has done the shooting, who has made contacts both coming up and while at the scene, do you not agree that his phone might indeed entail very relevant information to the investigation and this inquiry?

**CHIEF SUPT. BOLAND:** I'm not aware of the process or the investigation at the point of seizing exhibits. I'm not aware of when and how that occurred or the rationale of the investigators, and –

**MR. SIMMONDS:** There were – with the greatest respect, I don't think there was a proper rationale or any rationale. It was not seized from him, and it was seized two-and-a-half weeks or something like that. He went to Florida, came back, and it was seized when he came back. Do you not consider that a shortfall in the investigation?

**CHIEF SUPT. BOLAND:** I can't comment on what the investigators, what their rationale was. In the course of a dynamic investigation – I certainly can't comment that this is the case in this investigation, but in a dynamic investigation, other things could be going on in the investigation where there – just hypothetically, as an example, if the police were entertaining any type of surveillance of a telephone. So I can't say that that's the case here.

**MR. SIMMONDS:** (Inaudible) surveillance of the telephone, he took it with him, went to Florida –

**CHIEF SUPT. BOLAND:** I'm speaking very hypothetically. But in the course of an investigation, it's certainly not my place to second guess what the investigators –

**MR. SIMMONDS:** Superintendent, I get the impression that you're not prepared to comment on any of the points that we see as shortfalls. Your answer has been, and I understand: I'm detached from that. I expect they would do the right job. That's the best I can do.

**CHIEF SUPT. BOLAND:** It's better than the best I can do. It's the, I have every confidence in the investigators and the command structure. They follow the Major Case Management model in their investigation, and every investigation is different. And why –

**MR. SIMMONDS:** But if I am right on these points, if I am correct on the points I pointed out to you, would you not at least agree that there appears to be certain points that should have been covered that weren't?

**CHIEF SUPT. BOLAND:** No, I don't agree. When it comes to the fluidity and the movement of an investigation, they're all different.

**MR. SIMMONDS:** Yes.

**CHIEF SUPT. BOLAND:** And what the rationale is behind what the investigators do when they do something or don't do something, it's entirely within their wheelhouse, or within their responsibility to carry out the investigation as they see fit.

**MR. SIMMONDS:** But that does not make what they did a competent investigation. It may and (inaudible) that an independent view of that, the fact that the scene was released without the knowledge of the investigator, the fact that there was no passage of the information from Smyth's statement to the forensic unit, or the forensic identification people, that no picture was taken of a crucial spot. You don't find that they may indeed be shortfalls in this investigation.

**CHIEF SUPT. BOLAND:** I continue to – I'm of the view, in my opinion, the investigation was done thoroughly and the investigation, the overall investigation itself, there was significant comment about its quality in two independent reports after the investigation was completed.

**MR. SIMMONDS:** The last two points I'll make with respect to what I believe are shortfalls is that, outside of the gun attempt to be fingerprinted, was really no fingerprints taken from any parts of the scene. Does that surprise you?

**CHIEF SUPT. BOLAND:** Again, I – the work that the investigators were doing, it's not my place to comment on what they did. I have every confidence the investigators are well trained and experienced –

**MR. SIMMONDS:** It is your place to comment on what they did. And I do accept your position that, you know, I'm second in command here, god, we couldn't function if I had to get down into the nuts and bolts of every investigation. I accept that. But what I'm saying to you is these are things that weren't done and you're an experienced police officer and I'm putting to you, in a homicide investigation they should have been done.

**CHIEF SUPT. BOLAND:** Why the investigators did or did not do things is entirely up to the path of the investigation and how it flows.

**MR. SIMMONDS:** Okay.

**CHIEF SUPT. BOLAND:** Again, I have every confidence in the people who did the work that they did and I understand that not only the investigation from a supervisor from our organization's point of view, two independent reports bore out the investigation was well done and thorough.

**MR. SIMMONDS:** The last point with respect to shortfalls at the scene, there was – the police vehicle was there, the truck that Officer Smyth had arrived in. There was no search ever done of that truck.

**MR. KENNEDY:** Commissioner, I think that the evidence given the other day by –

**MR. SIMMONDS:** Officer Saunders.

**MR. KENNEDY:** – Officer Saunders was that he did a type of search of the vehicle. That he looked in the vehicle, he used a flashlight, he looked on the floor; looked on the seats. I would suggest to say there was no search done, is not accurate; whether or not the search is as thorough as it should be, that's another question.

**MR. SIMMONDS:** I don't –

**THE COMMISSIONER:** Well, that's fair enough, Mr. –

**MR. SIMMONDS:** I was aware of that evidence by Officer Saunders. He took a flashlight and looked into the truck. I don't consider that a search, but perhaps Mr. Kennedy and I differ on what a, definition of a search.

**THE COMMISSIONER:** Well, you'll have time and argument to do that.

**MR. SIMMONDS:** Yeah.

Finally, I'll put to you Officer, or Chief Superintendent, you couldn't answer why – I think you said each investigation is different, you were satisfied that you had competent people in place. You can't answer why they would not have seized Officer Smyth's phone at the time, it was three weeks later.

We recently got, and I mean within the last seven, eight days, transcripts of information on Constable Smyth's phone that is vitally important to the issues before this inquiry. Would that not, would you not agree – and it took the RCMP – it took someone determining there was an issue here, bringing it back to Commission counsel, who went back to the RCMP, they had another look and, sure enough, they found information that was otherwise deleted.

Would you not agree that that kind of a shortfall, that kind lack of investigation to the public seems, hey, these are very incriminating emails – or texts –

**MR. KENNEDY:** Again, Commissioner, I think that that's –

**MR. SIMMONDS:** Do you think that that's –

**MR. KENNEDY:** – perhaps, that'll be a decision for you to determine.

I don't agree with Mr. Simmonds being able to describe and use his own terms – he's giving evidence in terms of describing this stuff.

**THE COMMISSIONER:** You are categorizing the evidence –

**MR. SIMMONDS:** They're sensitive emails, would that be –

**THE COMMISSIONER:** – sorry?

**MR. SIMMONDS:** Sensitive emails. They would be sensitive emails that would've been a value to –

**THE COMMISSIONER:** Why don't we just say they're relevant emails?

**MR. SIMMONDS:** Relevant emails that would've been of interest to this commission. Yet, they were not found till February of this year.

Does that not, at least, cause you some concern that, hey, there's certainly something that should've been done that wasn't?

**CHIEF SUPT. BOLAND:** I agree. In the course of any investigation, the more information and the most information you can have is valuable.

Why the investigation unfolded the way it did and why information came about in the time frame when it did, and why things were done or not done, the investigators were doing their work, and for whatever reasons – were following whatever information and investigation paths they could and should.

**MR. SIMMONDS:** So these questions should be put to the investors as the Corporal Burkes, the Sergeant Kent Osmonds, those people.

**CHIEF SUPT. OSMOND:** They would certainly be in a better position to explain, explain the investigation process.

**MR. SIMMONDS:** Thank you very much.

**THE COMMISSIONER:** Now, who's going next?

Do we have any agreement here?

**MR. KENNEDY:** I don't think –

**THE COMMISSIONER:** Mr. Kennedy?

**MR. KENNEDY:** I don't think there's any agreement, but I think we're using the default order now.

**THE COMMISSIONER:** Okay.

Well, the default order is subject at all times – if counsel consent to a change and if they don't – if there's some reason for a change, I'll decide. But, for now, we'll –

**MR. KENNEDY:** I'm ready to proceed.

**THE COMMISSIONER:** It's just a tool to speed things up, but if anything (inaudible) –

**MR. KENNEDY:** Commissioner, I mentioned to Ms. O'Brien prior to the start; there are two exhibits that I'm going to want to refer to that I don't have the exhibit number. I can identify them as task 54 and the daily log.

Do we know, Madam Clerk, do –

**MS. SHEEHAN:** (Inaudible.)

**MR. KENNEDY:** Is that a long document; 493 pages?

**UNIDENTIFIED FEMALE SPEAKER:** Yes, (inaudible).

**THE COMMISSIONER:** Exhibit P-0360, we're talking about here, tasking report. Sorted by task, ID, with associated task action.

**MR. KENNEDY:** No, the one I'm looking for is has a page 493 on it.

**THE COMMISSIONER:** Page 493.

**MR. KENNEDY:** Perhaps what we'll do is –

**MS. O'BRIEN:** (Inaudible.)

**MR. KENNEDY:** Okay. So 0359 is the daily log.

**MS. O'BRIEN:** And the task report, I believe, is the one that – it's the 413-page document that Madam Clerk just brought up. I believe the number on that one was P-0360, was it not, Madam Clerk? Yes.

**MR. KENNEDY:** Okay. So that's number Exhibit P-0360.

**MS. SHEEHAN:** (Inaudible.)

**MR. KENNEDY:** Okay. Good, that's fine.

I want to start, Chief Superintendent, with asking you to explain a comment that you made yesterday. It may be somewhat obvious but you talked about a number – a couple of times you asked questions, you said well, looking back in hindsight, and another time you used the term an armchair quarterback. So I want to apply those, Sir, to policing and the review of a police investigation.

Sir, when you're looking back at an investigation, in hindsight, do you look at decisions were made as to whether or not they were reasonable from an objective perspective or whether you would have done the same thing yourself?

**CHIEF SUPT. BOLAND:** I think I would look at it both ways. I would look at both of those premises, I believe.

**MR. KENNEDY:** And, Sir, is there any difficulty, from your perspective as a senior police officer, with reviewing an investigation with hindsight in terms of decisions made by investigators at the time during an investigation?

**CHIEF SUPT. BOLAND:** I believe there are difficulties with that. When you're looking back you have the benefit of all the information that is available up until that moment when you're doing the looking back. At the time, at the period you might be looking at something that occurred a year ago, you might have more information available and it would be very difficult, I believe, to apply the same thinking or logic to the original decision that you would be after the fact.

**MR. KENNEDY:** Sir, in terms then of an armchair quarterback, are you referring then there to second guessing, or to reviewing the decisions of investigators from the perspective, again, of hindsight and the passage of time?

**CHIEF SUPT. BOLAND:** Very much so. I would be concerned about placing – I don't think anybody can place themselves in the date and time of history or the past, so it would be something.

**MR. KENNEDY:** Sir, let's use for example, the decisions that you made in this case. Did you make them in good faith?

**CHIEF SUPT. BOLAND:** I believe so, yes.

**MR. KENNEDY:** Were they made based on your experience and the information you possessed at the time?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Do you believe, or do you have any reason to doubt that your investigators approached it the same way?

**CHIEF SUPT. BOLAND:** I have no doubt in my mind that they would approach the investigation the same way.

**MR. KENNEDY:** So even though, Sir, you decided that the RCMP were going to conduct the investigation here, would you also agree that in the future it might not be a bad idea to have an outside force, or an outside agency, whether it be it a civilian oversight agency or a police force, reviewing or conducting investigations in the province?

**CHIEF SUPT. BOLAND:** Certainly, today with the information and – this matter occurred almost two years ago and I think we're also in times where all the issues around an independent investigation have progressed even further and I would say that I would agree with that comment.

**MR. KENNEDY:** Yeah. So that seems to be, from what I understand, in the policing world today, no great dispute that of the police perhaps shouldn't investigate themselves simply as a perception or public perception as opposed to the reality of bias – is that a fair statement?

**CHIEF SUPT. BOLAND:** Well, I believe it's fair but investigating themselves – I didn't see this as us investigating ourselves. I saw this as us investigating – the RCMP investigating an incident that occurred in our jurisdiction that did not directly involve the RCMP.

**MR. KENNEDY:** But it was the police investigating the police. Now, as Mr. Simmonds has pointed out, you can see how that would cause concern.

**CHIEF SUPT. BOLAND:** I believe it would cause concern for people, but it's still a practice where police conduct investigations. One of the challenges we have here is, in the country, I don't think there are very many civilian systems – I think, at the time of this investigation, there was only two or three in the country so –

**MR. KENNEDY:** Two or three, sorry?

**CHIEF SUPT. BOLAND:** Two or three civilian investigative agencies.

**MR. KENNEDY:** Well, we have –

**THE COMMISSIONER:** I don't think they were completely civilian either, were they?

**CHIEF SUPT. BOLAND:** No, I don't know – you're right, Mr. Commissioner.

**THE COMMISSIONER:** They had former police officers for example, which brings the question (inaudible) –

**MR. KENNEDY:** I think they all do, Commissioner.

**THE COMMISSIONER:** Sorry?

**MR. KENNEDY:** I think they all have civilian – or they all have retired or former police officers.

**THE COMMISSIONER:** Well, I'm not sure all of them, but you're probably right. But there is the suggestion that they move – they should be moving away as far as they could or far as they can –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** – from the use of former police officers.

**MR. KENNEDY:** In fact –

**THE COMMISSIONER:** Then your problem is, of course, you move away, who do you have with experience to investigate?

**MR. KENNEDY:** Yeah.

But this issue has been topical within the RCMP for a number of years, hasn't it?

**CHIEF SUPT. BOLAND:** It's been topical within the entire police community and country, yes.

**MR. KENNEDY:** But specifically, the RCMP in 2009 there was a report prepared by the former chair of the RCMP public complaints commission looking at different models in terms of police investigating themselves; is that correct?

**CHIEF SUPT. BOLAND:** I believe so, yes.

**MR. KENNEDY:** And that's where one of the – at least one of the first references I can find to the use of an independent observer.

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** Yeah.

So in this – or have you ever seen that report I'm referring to prepared by the former chair of the RCMP Complaints Commission where he looks at different models of police oversight?

**CHIEF SUPT. BOLAND:** No, I never read that report.

**MR. KENNEDY:** In fact, from what I understand, Sir, the independent observer arose as a result of dealing with issues in, in isolated First Nations locations where the RCMP had to investigate themselves.

**CHIEF SUPT. BOLAND:** I'm not sure they were – the only word I'm not sure of in what you just said is the word isolated. I don't know if all the communities were isolated, but to the best of my knowledge, they were all First Nations communities.

**MR. KENNEDY:** Where there was an inherent and a significant mistrust of the police within the First Nations communities. That's a fair statement, I think.

**CHIEF SUPT. BOLAND:** I think it is, yes.

**MR. KENNEDY:** And I thought, Sir, – and please correct me if I'm wrong, I know you were in BC for a period of time – that the independent observer had actually started in BC; the use of the independent observer.

**CHIEF SUPT. BOLAND:** I'm not aware of that.

**MR. KENNEDY:** Okay.

So in terms, Sir, of the decisions – back to my point, before I come to the use of the independent observer, my point, Sir, is that looking back at something in hindsight changes the focus and the way you look at things, doesn't it?

**CHIEF SUPT. BOLAND:** I believe it does, yes.

**MR. KENNEDY:** Yeah. And sitting in the chair where you are today, you could simply say, well, if my people didn't do – if the investigators didn't do things right, that's their problem. You could say that, couldn't you?

**CHIEF SUPT. BOLAND:** If they didn't do the investigation right –

**MR. KENNEDY:** Yeah, pointed out by Mr. Simmonds, you could easily say today that if they didn't do things properly that's their problem, I was the person second in command in the, in the operation.

**CHIEF SUPT. BOLAND:** No, I don't think I'd go so far as to say that.

**MR. KENNEDY:** Okay. You haven't said it, but I'm saying you could say that if you wanted an easy way out.

**CHIEF SUPT. BOLAND:** If I wanted an easy way out, I guess I could, but I wouldn't. If the investigators, in any investigation, don't do a good job up front it's a big problem for everybody.

**MR. KENNEDY:** And would you say that today, Sir, if you honestly believe that?

**CHIEF SUPT. BOLAND:** Yes, yes.

**MR. KENNEDY:** Yeah. You're retired now, you don't – even though you worked with this organization for 34 or 34½ years, I mean, are you going to stand by an investigation that you don't think was appropriate?

**CHIEF SUPT. BOLAND:** No, not at all, no.

**MR. KENNEDY:** So the other point I want to make in terms of hindsight is that you're always – and I guess this not only applies to policing, but anything in life – should I have done things differently? It's always easy to look back and ask that question, isn't it?

**CHIEF SUPT. BOLAND:** Very much so.

**MR. KENNEDY:** But the answers are hard.

**CHIEF SUPT. BOLAND:** I agree, yes.

**MR. KENNEDY:** So when you're dealing with a homicide investigation, maybe any investigation, but especially a homicide investigation, and one of the nature that we're dealing with here, there is a fluidity to the investigation, isn't there, Sir?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** There is a dynamic to the investigation that attributes to each case, depending on the facts.

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** Investigators take a statement; that doesn't mean that that's the only statement they're going to take. They can go back and do three or four statements, correct?

**CHIEF SUPT. BOLAND:** Absolutely.

**MR. KENNEDY:** The course of the investigation can change. Correct?

**CHIEF SUPT. BOLAND:** Absolutely, you know, it could be suggested does an investigation, or any investigation, ever end?

**MR. KENNEDY:** Yeah.

**CHIEF SUPT. BOLAND:** Because information could come to light at any time.

**MR. KENNEDY:** Because one of the –

**THE COMMISSIONER:** We have a saying in the judiciary when you're writing a decision, some decisions you don't finish them, you abandon them. You're fed up with the (inaudible). I suspect the same thing might be true at times in an investigation.

**MR. KENNEDY:** So one of the criticisms, Sir, that the RCMP – I think, I guess it would have happened, yeah, while you were there, you weren't putting out enough information. That was a significant and recurring criticism during this matter, correct?

**CHIEF SUPT. BOLAND:** Absolutely.

**MR. KENNEDY:** Yet, on April 7 when you put out information, you're criticized for putting out too much information.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** So is it again, and we've heard this term a number of times now from a police perspective, you're damned if you do and you're damned if you don't.

**CHIEF SUPT. BOLAND:** I couldn't agree, couldn't agree more. The demand of trying to satisfy public interest, especially in the case of a serious matter like this – there's been a shooting and there's been a death. Public concern, public safety issues surface. People want to know if there's any risk, ongoing risk. So getting as much information out as possible is always a very, very fine line and a balancing act.

**MR. KENNEDY:** Sir, now in terms of – and I want to deal with the days after the event, it becomes clear to you fairly early that there is significant public attention and criticism surfacing within 24 to 48 hours, isn't there?

**CHIEF SUPT. BOLAND:** Definitely, I don't think there was –

**MR. KENNEDY:** Unanswered questions might be a better way.

**CHIEF SUPT. BOLAND:** For sure. Yeah, the criticism I think in the early part of the investigation, or post the incident, I think people were, you know, extremely heightened interest in what happened –

**MR. KENNEDY:** Yeah.

**CHIEF SUPT. BOLAND:** – and what occurred up there. It's still – an event like that is still jarring to a province like this and a community like this.

**MR. KENNEDY:** And the conspiracy theorists had started to surface within days of the incident, hadn't they?

**CHIEF SUPT. BOLAND:** Yes, I believe they – that phenomenon, I guess, had started to unfold.

**MR. KENNEDY:** One allegation that Paul Davis, the Premier, had sent out a member of his security detail to assassinate Mr. Dunphy.

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Do you remember hearing that?

**CHIEF SUPT. BOLAND:** I do.

**MR. KENNEDY:** Do you remember seeing that on social media?

**CHIEF SUPT. BOLAND:** I didn't follow any of the social media on it. I certainly heard about it. I didn't follow social media on these – I don't follow social media on these cases. I try not to have my position or my view of things tainted with people's opinions or views.

**MR. KENNEDY:** So, Sir, you were asking yourself within days – and we know that by Tuesday, April 7, you're starting to take steps – how can I, or how can we as the police, ensure the public that the investigation will be impartial and unbiased?

**CHIEF SUPT. BOLAND:** Absolutely. Yes, correct.

**MR. KENNEDY:** And in fact Mr. Simmonds had pointed out that that email, or excuse me, that press release on April 7 could be read saying that as we accept or the police have accepted Constable Smyth's version of events.

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** Do you agree, Sir, with that or is this simply a statement of the facts as you know them at that point in time?

**CHIEF SUPT. BOLAND:** I, I saw the information in that press release as a statement of the facts and evidence that we had up until that time.

**MR. KENNEDY:** And, Sir, you knew, I think, by April 7, you were thinking about this yourself and you knew that an independent observer had been used in First Nations cases.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** There were four to five cases, I think, or examples that you knew about. Is that what I understood you to say?

**CHIEF SUPT. BOLAND:** So they were anecdotally. I had heard of instances and cases. I haven't heard of the specifics of each. So I think, I think I thought there was probably three or four that I was aware of where independent observers had been engaged.

**MR. KENNEDY:** And, Sir, these did relate to the RCMP investigating themselves on First Nations communities where a member, civilian member of the community, whether it be an elder or a chief, was asked to oversee the investigation for thoroughness and impartiality.

**CHIEF SUPT. BOLAND:** So they may not necessarily have been police-involved investigations where the police are directly involved.

**MR. KENNEDY:** Oh, okay.

**CHIEF SUPT. BOLAND:** I think they could have been investigations where there, there were simply heightened community concern because of the seriousness of an event. I don't think they were necessarily police-involved investigations.

**MR. KENNEDY:** Had there been any officer-involved shootings that you are aware of where there had been an independent observer used in the First Nations communities?

**CHIEF SUPT. BOLAND:** None that I'm aware of, no.

**MR. KENNEDY:** Sir, you had never used or hired an independent observer yourself.

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

**MR. KENNEDY:** And you were never aware of independent observer used in a case in Newfoundland and Labrador.

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

**MR. KENNEDY:** During your pre-inquiry interview, I think when asked by Commission counsel at page 231, you said that this was more – your decision to do this was more intuition than anything else.

**CHIEF SUPT. BOLAND:** That's correct. That's what I said.

**MR. KENNEDY:** What did you mean by that?

**CHIEF SUPT. BOLAND:** My sense was that we were – you know, I was looking for – it was mostly me looking for a process or a vehicle that we could use to assure the people of the province, the family, everybody involved, that our investigation would be done in a thorough,

impartial, unbiased manner. And that it just occurred to me that an independent observer – a process I'd heard before – would be able to bring that to the investigation.

**MR. KENNEDY:** And, Sir, would you agree with me – and this may be very obvious – that one of the most basic principles of policing, if not our criminal justice system, is that no one can interfere on a police investigations?

**CHIEF SUPT. BOLAND:** I would agree, yes.

**MR. KENNEDY:** That a police investigation has to be independent and the police officers have to have the ability to act independently?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** That independence means that there can be no interference by members of the public – correct?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Members of the media?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** The suspect or accused?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Or politicians?

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** Now, is that, Sir, perhaps the most basic principle on which policing in Canada has evolved and developed?

**CHIEF SUPT. BOLAND:** Yes, I believe so.

**MR. KENNEDY:** So that would you agree with me that the more people who are involved in an investigation or who get close to the investigation, the more pressure there is then that principle of independence could potentially be interfered with?

**CHIEF SUPT. BOLAND:** Yeah, I would agree. But in complex investigations, you're going to have multiple facets to it, but I agree with overall what you're saying. The fewer people involved, the less likelihood of any type of issues that you could run into.

**MR. KENNEDY:** When you talk about multiple assets or facets to the multiple assets used, multiple facets to the investigation, these are usually, though, steps that are determined by the investigating officers in conjunction with their superiors such as the use of forensic labs?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Specialized police resources?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Could be the FBI or Interpol?

**CHIEF SUPT. BOLAND:** Absolutely.

**MR. KENNEDY:** But it's kept within the policing agency or the police investigators themselves –

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** – to make these decisions?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** So, Sir, if there's pressure put, or apparent pressure put on a police force, does that have the potential to undermine that most basic principle of policing?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Sir, does it mean that principle of independence, does it mean that suggestions could be made whether it be by lawyers, by victims, as to what should take place? The police should not feel compelled or should not be compelled to follow those suggestions or demands. Is that correct?

**CHIEF SUPT. BOLAND:** I agree.

**MR. KENNEDY:** Do you agree with me, Sir, if we start to get to that stage in Canadian – in our justice system, that it could cause a significant problem?

**CHIEF SUPT. BOLAND:** Yes, I agree.

**MR. KENNEDY:** Is it not one of the principles guarded most zealously by the police?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Now, when you were in BC, for example, they had a different system up there. They have a pre-charge screening system – correct?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** So that in this particular case, prior to making a decision as to whether or not to lay a charge, the police could have gone to the Crown and asked for their opinion as to whether or not a charge should be laid.

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** New Brunswick also has that system, does it? Or do you know?

**CHIEF SUPT. BOLAND:** No, I'm not certain. I think – I'm not sure about New Brunswick at all.

**MR. KENNEDY:** Okay.

In Newfoundland and Labrador, though, the system that we have is the police make a determination as to whether or not to lay a charge and it's sent to the Crown then after the charge is laid – correct?

**CHIEF SUPT. BOLAND:** In most cases –

**MR. KENNEDY:** In most cases.

**CHIEF SUPT. BOLAND:** – that's correct, yep.

**THE COMMISSIONER:** I think that's following Mount Cashel, wasn't it –

**MR. KENNEDY:** Yes, it's actually in the prosecutor's handbook now as to how these matters are dealt with.

**THE COMMISSIONER:** Yes, I understand, but I think that was adopted, that practice, if I remember –

**MR. KENNEDY:** It could very well be.

**THE COMMISSIONER:** – as a result of problems that occurred at Mount Cashel.

**MR. KENNEDY:** Because the police, or at least RCMP, take the position the Crown can't tell us what to do when it comes to determining whether or not to lay a charge, don't you?

**CHIEF SUPT. BOLAND:** I wouldn't go so far as to say it as strongly as that, but there is certainly – the police have the autonomy here to lay a charge and then the Crown's role kicks in after that. There are certainly instances I believe where, particularly in complex investigations, that the police would consult with the Crown at a time –

**MR. KENNEDY:** We will come to that in a second. But my point is that – and this was the – one of the basis on which the Regan decision was decided in the Supreme Court of Canada was the question of the relationship or interrelationship between the Crown and the police – correct?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** In terms of the Crown, the police deciding to lay charges and the Crown entering stays of proceedings, things like that?

**CHIEF SUPT. BOLAND:** Yes, correct.

**MR. KENNEDY:** So to follow up on your point, there can be cases or situations where the police can seek the advice of the Crown on investigative steps to be taken or on the decision to be made. Is there a difference?

**CHIEF SUPT. BOLAND:** So again, depending on the case and the complexity of the case, I'm aware of where the police will from time to time consult with the Crown to get their sense and feeling on the investigation at that stage.

**MR. KENNEDY:** In this province, does the Crown – or do the police, again in serious investigations, are you aware of prior to a decision being made whether or not to lay a charge the police, the RCMP, approaching the Crown and asking for their advice?

**CHIEF SUPT. BOLAND:** Am I aware of a case?

**MR. KENNEDY:** Yeah.

**CHIEF SUPT. BOLAND:** I'm aware of cases where that consultation has taken place ahead of time.

**MR. KENNEDY:** Did any such consultation take place in this present case?

**CHIEF SUPT. BOLAND:** I'm not sure. I think I have heard our investigation team did consult the Crown, but I don't know exactly what stage they would have done that, whether they were consulting prior to the conclusion or throughout.

**MR. KENNEDY:** Sir, does the RCMP have any legal counsel on staff in this province?

**CHIEF SUPT. BOLAND:** No.

**MR. KENNEDY:** Do the RCMP have legal counsel on staff in other provinces, do you know?

**CHIEF SUPT. BOLAND:** I believe in other provinces we do, yes.

**MR. KENNEDY:** Sir, would you agree with me that having legal counsel on staff in a situation such as the present could have been helpful?

**CHIEF SUPT. BOLAND:** So in my time in Criminal Operations, it was an ongoing discussion with us to have in-house counsel. We have counsel available to us; we just don't have it in-house here in the province. We have counsel available through the Department of Justice. We can contact our legal services folks in our head office in our national headquarters.

So we have services we can avail of, but having in-house counsel absolutely was a point and a discussion for us here in Newfoundland and Labrador on numerous occasions.

**MR. KENNEDY:** So having regard to the fluidity of the investigation, the dynamic nature of the investigation, some of the issues raised by Mr. Simmonds here today, again looking back on it, would it have been helpful to have legal counsel sitting down the hallway who the RCMP, the investigators, could go and talk to as to the legal ramifications of doing or not doing something?

**CHIEF SUPT. BOLAND:** So very similar to my answers to Mr. Simmonds. Whether it hindered or helped or caused problems with the investigation, I can't say for sure. Hypothetically, would I agree that having counsel available in a very timely manner – I would suggest that would be valuable in any circumstance.

**MR. KENNEDY:** Sir, would you also agree with me and I'm not sure what the practice is here and I'm not sure – I know there's a practice in terms of the police consulting with the Crown. Would you not agree with me that in this particular case, it would have been helpful for the police prior to making their determination as to whether or not to lay a charge to review that matter with the Crown and seek their opinion?

**CHIEF SUPT. BOLAND:** So I hesitate to say we did or we didn't. It's in the back of mind that there was a consultation process prior to a formal decision on whether to charge or not charge. But it's best left to the folks who were involved in that.

**MR. KENNEDY:** So who would be able to answer that?

**CHIEF SUPT. BOLAND:** Certainly anybody, I believe, in the investigation team. I think –

**MR. KENNEDY:** I would – sorry.

**CHIEF SUPT. BOLAND:** Sorry.

**MR. KENNEDY:** I would have thought, Sir, that contact with the director of public prosecutions office would take place at a higher level of the RCMP, such as yourself or the commanding officer.

**CHIEF SUPT. BOLAND:** No, not in an investigation. Certainly, the command team of the investigation, the lead investigator would've likely have reached out to the Crown through the director of public prosecutions office. So that could have been done by anybody in the investigation team. There is a commander in charge of the Major Crime Unit. There is an officer in charge of Major Crimes. Any of those folks could have reached out.

**MR. KENNEDY:** My last question on that point, Sir. Do you think, whether it was done in this case or not, that a good option in a high-profile – again, let's use an officer involved shooting, would be for the police, the RCMP in this case, to review the matter with the Crown as to whether or not a charge should be laid?

**CHIEF SUPT. BOLAND:** I think that certainly would be a good practice. Again, what the investigators were doing, similar to the discussion a while ago back, back six, seven months ago whenever they were doing this, and it also just occurred that the – when I left the organization, the investigation was still underway. It was still open, and I'm not sure where that consultation did or could have taken place, but to have a consultation occur in an investigation like this, I believe it would be a good practice, in my own opinion, from broadly looking at investigations of this nature.

**MR. KENNEDY:** Then wouldn't the RCMP be able to say we reviewed this matter with the Crown and they agree with our decision not to lay a charge.

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

**MR. KENNEDY:** Yeah. Sir –

**CHIEF SUPT. BOLAND:** I might put one variation on it.

**MR. KENNEDY:** (Inaudible.)

**CHIEF SUPT. BOLAND:** I think I'd let the Crown speak for themselves.

**MR. KENNEDY:** Yes, sir.

**CHIEF SUPT. BOLAND:** Instead of having our organization said, somebody said this, I would encourage folks to inquire with the Crown or ask the Crown to comment on it.

**MR. KENNEDY:** I'm just doing it in a general way. I'm just commenting –

**CHIEF SUPT. BOLAND:** No, I understand, yeah.

**MR. KENNEDY:** – in a general way because of the public outcry which has resulted in this case. I'm just looking at how are there ways in the future that we can prevent –

**CHIEF SUPT. BOLAND:** Right, right.

**MR. KENNEDY:** – or help the public understand what’s going on.

**CHIEF SUPT. BOLAND:** Right. So the, so that – whether the Crown was consulted or not in this case and what determination they made, whether they went out and spoke to it –

**MR. KENNEDY:** Okay.

**CHIEF SUPT. BOLAND:** – I think the independence of their office would add some value to that for sure.

**MR. KENNEDY:** And Sir, even after a charge is laid, then the Crown would apply the reasonable prospect of conviction criteria. Is that your understanding?

**CHIEF SUPT. BOLAND:** Sorry, what –?

**MR. KENNEDY:** Even if a charge was laid in any given case, the Crown would then apply the reasonable prospect of conviction criteria or assessment.

**CHIEF SUPT. BOLAND:** Absolutely, yeah. It’s my understanding of their process.

**MR. KENNEDY:** Yeah. That the police could lay a charge and the Crown could determine that there is no reasonable prospect of conviction and determine not to proceed in any event.

**CHIEF SUPT. BOLAND:** Very much so. So that’s the independence of the different parts of the process of, you know, investigations leading into charges, leading into the courts and the Crown certainly has that prerogative.

**MR. KENNEDY:** Sir, in terms of the, again, the investigation being fluid and dynamic, police officers also have to be aware during the investigation of not breaching an accused person’s or a suspect’s Constitutional or Charter rights, correct?

**CHIEF SUPT. BOLAND:** That’s correct.

**MR. KENNEDY:** That their – the police have to guard against, in any investigation, arbitrary detention, for example.

**CHIEF SUPT. BOLAND:** Exactly.

**MR. KENNEDY:** Breach of the right to counsel?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Breach of the right to be protected against unreasonable search or a seizure?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** So that the police officers have to be acutely aware as the, in the – especially in the early stages of an investigation, not to make mistakes which could jeopardize either the investigation or prosecution, correct?

**CHIEF SUPT. BOLAND:** I agree, yes.

**MR. KENNEDY:** So is it better for police officers to be cautious in those circumstances or to just barrel ahead with no real great concern as to future consequences?

**CHIEF SUPT. BOLAND:** No, I think the cautious approach to all aspects of an investigation, particularly in those areas where, you know, we're all familiar with terms in a general sense where matters change in a court setting because of a technicality. Our Constitution and our Charter of Rights within this country are, I would suggest, not technicalities and that those matters would have to be approached very cautiously and carefully.

**MR. KENNEDY:** And that's part of basic police training in this day, and age and ongoing police training isn't it?

**CHIEF SUPT. BOLAND:** Yes, it is. Yeah, and a very complex area as well, because – just for an example. In the course of an investigation, even in the course of an interview, the dynamics of an interview could shift on a word.

**MR. KENNEDY:** Yeah. From witness to suspect on the answer of a question.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Yeah. Then the Charter Rights to counsel has to be given on arrest or detention. Correct?

**CHIEF SUPT. BOLAND:** As soon as the officer forms the opinion that the status of the person, their interview may be changing.

**MR. KENNEDY:** I now want to come back, Sir, to the hiring of the independent observer. So it's my understanding that you had a conversation with Chief Judge Mark Pike of the Provincial Court.

**CHIEF SUPT. BOLAND:** That's correct, a very brief conversation.

**MR. KENNEDY:** Was there any discussion with Chief Judge Pike as to the advisability of using an independent observer?

**CHIEF SUPT. BOLAND:** None whatsoever.

**MR. KENNEDY:** Sir, my understanding and I read this somewhere, that the first name given to you was Justice Margaret Cameron.

**CHIEF SUPT. BOLAND:** That's my recollection. That was the first name that I had.

**MR. KENNEDY:** Did you contact her, or have anyone contact her on your behalf?

**CHIEF SUPT. BOLAND:** I don't recall exactly what we did. I do recall determining that Justice Cameron was not available.

**MR. KENNEDY:** Sir, were any other names given to you by Chief Judge Pike, other than that of Justice Cameron and retired Justice Riche?

**CHIEF SUPT. BOLAND:** No.

**MR. KENNEDY:** You then, your notes indicate – and we can find that if you need to, Sir, but there was a discussion with Heather Jacobs who at that point was the Deputy Minister of Justice.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** And Ms. Jacobs indicated that she would call Justice Riche.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Do you know if she did that?

**CHIEF SUPT. BOLAND:** I believe she did. Yeah, I believe, and I think that was in the context of – she obtained his phone number for me.

**MR. KENNEDY:** Okay. Do you know if she had any conversation with him?

**CHIEF SUPT. BOLAND:** I believe she might have, yes. Well, I'm not 100 per cent sure if she did. No, I'm not aware.

**MR. KENNEDY:** So the Justice Department particularly has to maintain not only independence but the appearance of independence in police investigations, correct?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Yeah. There were some questions yesterday in terms of why there were briefing notes sent to the Deputy Minister and the Assistant Deputy Minister of Justice.

**CHIEF SUPT. BOLAND:** Correct, yes.

**MR. KENNEDY:** The one area that there can be no direction given to the police is from the political sphere is there?

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

**MR. KENNEDY:** Sir, you indicated again – and I think the way you described this in your pre-inquiry interview at page 253 was that you knew you were kind of breaking new ground here.

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

**MR. KENNEDY:** That you were doing it entirely in good faith with a view to assisting the public or to ensure the public that the RCMP were doing the best they could.

**CHIEF SUPT. BOLAND:** Absolutely. It is as simple as that.

**MR. KENNEDY:** So then you look to – you think to yourself, well, if a Supreme Court Judge, the opposite side of – represents to the Canadian public integrity, it represents impartiality. So that was your thinking there?

**CHIEF SUPT. BOLAND:** It was. I agree, yes.

**MR. KENNEDY:** Yeah. And so you're thinking to yourself, well, if I – if we hire an independent observer who's a former judge, that would give a good appearance. Correct?

**CHIEF SUPT. BOLAND:** Well, not only a good appearance, but I wasn't necessarily concerned entirely about appearances. I was concerned about assuring the public and assuring all stakeholders, everybody who had an interest in the investigation, that it was carried out in a manner that it was impartial, had no interference or influence, and was done, you know, thoroughly.

**MR. KENNEDY:** Did you have any, or did you check – take any steps to determine who Justice David Riche was?

**CHIEF SUPT. BOLAND:** No, I didn't, no. I didn't know Justice Riche at all. I was just aware that he was a retired judge.

**MR. KENNEDY:** And, basically, how long was your conversation with him before you decided to hire him or did you just phone him up and offer the job?

**CHIEF SUPT. BOLAND:** My conversation was brief. It was less than 10 minutes. I called Justice Riche – I called his home and got his wife, and he telephoned me back a few minutes later, and we had a very brief conversation. I was interested in engaging the services of an independent observer. I asked Justice Riche if he was aware of the investigation, he was aware of the incident in the community on that Sunday, and simply explained I was looking for an independent observer to join the investigation team and become embedded in the investigation from an observer point of view, observer's role (inaudible) –

**MR. KENNEDY:** Do you remember using that word, “observer”?

**CHIEF SUPT. BOLAND:** I certainly do. That's the terminology I've been using since I formed it in my own mind of what I was looking for, an independent observer.

**MR. KENNEDY:** And I think the way you put it yesterday, that judges have experience examining investigations versus conducting investigations. Did you say that yesterday –

**CHIEF SUPT. BOLAND:** Yes, I did.

**MR. KENNEDY:** – or did I read it somewhere else?

**CHIEF SUPT. BOLAND:** No, no. You're right. So my view of it was a judge has experience in, you know, sitting on the bench, going through a trial process, aware of police practices and procedures, investigation practice and procedures, and that would bring that knowledge and experience to the role.

**MR. KENNEDY:** Okay. so then Sir, when we come to April 7 – if I get my dates correct – April 7, you're thinking about this, April 8 is when you first contact Justice Riche and you had discussions with some other officers – is that correct?

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

**MR. KENNEDY:** Excuse me, Commissioner, I just misplaced some notes.

Now, we've seen the – and if we could perhaps have P-0557 brought up, please. This is, Commissioner, the terms of reference and the cover letter which – no, again, that's the same mistake that was made yesterday. At the top of my – what I'm looking at here is the actual terms of reference, which is P-0577.

**THE COMMISSIONER:** I thought you said P-0557.

**MR. KENNEDY:** Sorry. Okay.

**THE COMMISSIONER:** 0577. Okay.

**MR. KENNEDY:** There you go. Okay.

Now, this is your cover letter, the terms of reference are on the next page and then, I guess, the contractual agreement outlining fees are also attached and signed April 10, 2015.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Do you know what time of the day that these were signed?

**CHIEF SUPT. BOLAND:** The document signed at the bottom of the terms of reference with Inspector Cahill and Judge Riche?

**MR. KENNEDY:** Yeah.

**CHIEF SUPT. BOLAND:** The time of day, no. I do have a faint memory. It was in the morning.

**MR. KENNEDY:** Okay.

**CHIEF SUPT. BOLAND:** It was a Friday morning, I think, because I recall a conversation where they were – somebody said we’re going to go see Judge Riche the next day. But I can’t say for sure what time of the day it was.

**MR. KENNEDY:** Sir, did you have any concern when you entered into this agreement, or the RCMP entered into this agreement with retired Justice Riche that the independent observer could interfere with the independence of the investigation?

**CHIEF SUPT. BOLAND:** I didn’t, no. At the time we entered into this, no, it never entered my mind at all.

**MR. KENNEDY:** Sir, do you agree with me that retired Justice Riche’s actions later on could be seen as interfering with the independence of the police investigation?

**CHIEF SUPT. BOLAND:** Well, I don’t know – I don’t think I’d go so far as to, in my opinion, think that they interfered with the independence of the investigation. Whether it caused the investigation some challenges, I would agree with that.

**MR. KENNEDY:** Sir, if we look at your cover letter – and I’ll come back to that question in a second – if we look at that cover letter, and this is your signature –

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** “We are seeking your services to provide independent observation of a criminal investigation ....”

**CHIEF SUPT. BOLAND:** Yes, that’s correct.

**MR. KENNEDY:** In the interest of transparency – the next paragraph – and public confidence, we ask that you engage with the investigative team as an independent observer. Then, that last sentence: “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.”

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Sir, is there any doubt in your mind that it was made clear to retired Justice David Riche that his role was that of an independent observer and not an investigator?

**CHIEF SUPT. BOLAND:** No doubt in my mind at all that that was the role. That was my expectation of the role. That's what I was directing there.

**MR. KENNEDY:** So now, let's just look at where we're going here now. So early in the investigation, we've got an independent observer hired to observe the independence of the police investigation. Correct?

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** From that point, you are powerless, I'd suggest to you, to give any direction to Justice Riche, because you can be seen as directing him and telling him what to do.

**CHIEF SUPT. BOLAND:** I –

**MR. KENNEDY:** Is that a fair statement?

**CHIEF SUPT. BOLAND:** Yes, it is.

**MR. KENNEDY:** You certainly didn't envisage that, did you?

**CHIEF SUPT. BOLAND:** No.

**MR. KENNEDY:** And that did cause your investigators concern, didn't it?

**CHIEF SUPT. BOLAND:** The – certainly it offered up some challenges as to what kind of effect it could have on the, you know, on the work that was being done.

**MR. KENNEDY:** Did anyone indicate to you that at the second re-enactment, on April 10, the same day he's hired as an independent observer, Justice Riche is asking questions at the re-enactment?

**CHIEF SUPT. BOLAND:** I don't recall that discussion. I'm not saying it didn't take place, you know, in the early (inaudible) – asking questions, I'm not sure to what, what type of questions he was asking.

**MR. KENNEDY:** Okay.

Because, term d., if we could go to the next page, page 2, term d. says that he may monitor witness interviews with the consent of the lead investigator and the written consent of the person being interviewed.

But I think you discussed yesterday may monitor does not mean interviewing, does it?

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

**MR. KENNEDY:** So you – would –

**THE COMMISSIONER:** Mr. Kennedy? Sorry, finish that. I had a question.

**MR. KENNEDY:** No, I was – would monitoring include to you asking questions –

**CHIEF SUPT. BOLAND:** No.

**MR. KENNEDY:** – of, in this case, the subject of the investigation?

**CHIEF SUPT. BOLAND:** No, not at all.

**THE COMMISSIONER:** When you referred earlier to Superintendent Boland, or the RCMP being powerless, it strikes me that that might be going a bit further than it would follow it law in that, although it might be awkward, it might damage the task that had to be set out to oversee their independence.

Judge Riche was subject to his terms of reference, and the police could, at any time, presumably, have stated it either to him or to the public, that they believe that his was overstepping his terms of reference – could they not?

**MR. KENNEDY:** One of the investigators, the next investigator you will hear from, Staff Sergeant Osmond, in his pre-trial interview, state that on a number of occasions that there was little that they felt they could do because the very man who'd been hired to observe the independence of the investigation was now doing things that they didn't feel he could do, but they could do anything about it.

**THE COMMISSIONER:** I'd agree, and that would be awkward, but I –

**MR. KENNEDY:** Okay (inaudible) –

**THE COMMISSIONER:** – just note for you, I'm not necessarily accepting that they'd be powerless.

**MR. KENNEDY:** So – no, I don't mean to use hyperbole, but powerless, let's – we'll go through that in a second.

It was difficult, is that –?

**CHIEF SUPT. BOLAND:** It certainly offered some challenges as to what to do with it.

**MR. KENNEDY:** Okay, so if we look at the terms of reference here now – and let's just see if I can give a specific example – first, let's look at: “b. Will submit his report as and when appropriate to the Commanding Officer/delegate to ensure impartiality, fairness and transparency in the investigative process.”

That's exactly what he was asked to do as an independent observer, wasn't it?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Now, in paragraph c the term observe is used. “e. Will respect the confidentiality of the investigation, briefings and identity of witnesses and suspects.”

Sir, I would suggest to you that Justice Riche, by his actions later in this matter, particularly his media interviews, breached that term of the agreement; do you agree with me?

**CHIEF SUPT. BOLAND:** So I don't understand what the rationale was behind what Justice Riche did or didn't do, so – and I believe his activities unfolded, yeah, well after I had left. So I, I don't have the context around everything that unfolded there, but when I did hear that he spoke publicly, it did surprise me, yes.

**MR. KENNEDY:** Sir, in your – I’m suggesting to you that that is a breach, a clear breach of term e of the terms of reference; do you agree with me?

**CHIEF SUPT. BOLAND:** I, I could see how it could be interpreted that way, yes.

**MR. KENNEDY:** Now, let’s go to f, and I’m going to suggest to you there is no room for confusion on this point: “Will not disseminate any information or documentation provided during the investigation.” Do you see that?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** He certainly breached that term of his agreement, didn’t he?

**CHIEF SUPT. BOLAND:** So “Will not disseminate any information or documentation provided during the investigation.” So I could see that being interpreted a couple of ways. That not to speak about anything during the investigation or not to speak about any material that came to him during the investigation, but I, I would agree that the dissemination of any of the information would be unusual and that any detail or any information that came about within the investigation, considering what our expectation was for the independent observer.

**MR. KENNEDY:** Now, I’m going to suggest to you, Sir, it’s not unusual – and I know that you’re very diplomatic, Assistant Commissioner, but – Chief Superintendent – but you are the highest ranking RCMP officer who we’re going to hear from, is my understanding.

**CHIEF SUPT. BOLAND:** I believe so.

**MR. KENNEDY:** You are the individual who came up with this, the idea of using the independent observer; you are the one who sent the letter. Do you not agree with me that there is a clear breach of these terms in e and f of the terms of reference?

**CHIEF SUPT. BOLAND:** So a clear breach, a breach of the agreement, yes, I would agree that the actions of the Justice were outside what we put into this agreement.

**MR. KENNEDY:** Yeah.

So what could you do about it as the RCMP when he breached the agreement? What were your – what was left for you to do from a practical perspective? Although – I was going to say His Lordship – the Commissioner has pointed out that you weren’t powerless theoretically, what from a practical perspective could you do?

**CHIEF SUPT. BOLAND:** So those activities occurred – I wasn’t privy to all the conversation around the investigation. I had left the organization when this occurred but the – I know the main sentiment and the difficulty everybody felt was if there was any optics or perception that we interfered with the autonomy or the independence of the observer, it would be very problematic. And when it comes to repercussions, there’s no mechanism in the agreement. You know, Justice Riche was not an employee of the RCMP that fell under our regulations and policies when it comes to our conduct, and it was something I didn’t see that they had much options to be able to do anything about it.

**MR. KENNEDY:** But you are aware, Sir, that the media seized upon Justice Riche’s comments immediately and put them out there, aren’t you?

**CHIEF SUPT. BOLAND:** Yes. Yeah.

**MR. KENNEDY:** A tweet on November 28, 2016 by Peter Cowan of CBC. Out of the four reports looking at Dunphy's death and investigation, the one by retired Justice Riche is the most critical. Are you aware of that comment?

**CHIEF SUPT. BOLAND:** No, not of that social media comment.

**MR. KENNEDY:** But you are aware that that's the perception or potentially the perception that was out there as a result of Justice Riche's comments with no other reports released.

**CHIEF SUPT. BOLAND:** I'm aware of the perception and the context that started to unfold there, yes.

**MR. KENNEDY:** If I could ask –

**CHIEF SUPT. BOLAND:** From purely an outside point of view, I was outside the organization at that time, so it was purely from the point of view of what was unfolding in some of the main – and other comments that people have made to me.

**MR. KENNEDY:** And even though you're outside, Sir, of the organization by this point, you had to be asking yourself, again, maybe in hindsight, should I have done this.

**CHIEF SUPT. BOLAND:** With the independent observer? No, I never ever asked myself is this something I should have done. I still maintain the independent observer is a viable option for use when it comes to matters like this. Could it have been done differently or could it have been involving another process to start it up, that certainly is open for discussion. But I think an independent observer is still a tool, I guess, for lack of better words, to utilize in the course of an investigation. I think there's a lot of value in that model. Whether it applies to all circumstances, that would have to be determined.

**MR. KENNEDY:** Okay.

Sir, you did become aware fairly early in the investigation that there were a number of letters written by counsel from Ms. Dunphy which stated that they didn't feel the appointment of the independent observer was enough to undo the tunnel vision and perceived bias of the investigation.

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

**MR. KENNEDY:** So they weren't happy with the independent observer either it appears.

**CHIEF SUPT. BOLAND:** I think – if my memory serves me well, and it was borne out in some of the documents I even saw yesterday or over the last couple of days, the exhibits, that there was some comment about – I think it was in one of Ms. Breen's letters that when the independent observer was appointed, we had some comfort. I don't know to what level but there was some comfort in that, but that comfort, in their mind, diminished over time as things moved along in the investigation.

**MR. KENNEDY:** I wonder if we could have – I have two brief references to the exhibits – if we could have Exhibit P-0060 brought up, that should be the task list. And if we could go to page 219, which should have a task 54.

**MS. O'BRIEN:** 0360, I think.

**THE COMMISSIONER:** 0360, Mr. Kennedy.

**MS. O'BRIEN:** 0360.

**THE COMMISSIONER:** It was 0359 and 0360, I believe.

**MR. KENNEDY:** Okay,

I thought 360 was the daily log, no?

**MS. O'BRIEN:** No, 0359 is the daily log and 0360 is the task report.

**MR. KENNEDY:** Okay. Which one do we have up there?

**THE COMMISSIONER:** That is the task report, 0360.

**MR. KENNEDY:** That will do. Whichever one is up will do.

Okay. If we could go to – it should be page 219, task 54. Okay. That's good.

Now, I want to specifically refer you to June 12. So if we could just go down a little bit, Madam Clerk. Okay. Stop right – no, up a little bit, sorry. Right there, okay.

You see that on June 12, Corporal Burke attends to Dunphy residence with Justice Riche. Justice Riche asks Dunphy when the last time she was in the residence before the shooting and the placement of the furniture. He is now questioning Meghan Dunphy. Did you envisage that when you hired him as an independent observer?

**CHIEF SUPT. BOLAND:** No, not at all.

**MR. KENNEDY:** Did the terms of reference, in your opinion, authorize that kind of activity?

**CHIEF SUPT. BOLAND:** So not knowing the full context of what unfolded there –

**MR. KENNEDY:** Okay. Go back, go back a little bit.

**CHIEF SUPT. BOLAND:** – whether he was clarifying or trying to clarify something that he had to ensure he could understand it. I'm not sure of the context.

**MR. KENNEDY:** Okay. So first if we stop there, you'll see on June 9 there's a meeting with Justice Riche with the office of the chief medical examiner. That would be envisaged by the – there's no problem with that, is there?

**CHIEF SUPT. BOLAND:** No.

**MR. KENNEDY:** In terms of reference?

**CHIEF SUPT. BOLAND:** No.

**MR. KENNEDY:** Go down, we'll see that the meeting takes place with Dr. Avis. Keep going please, Madam Clerk. There's now a meeting postponed till 1530.

Do you remember, Sir, there being a bullet found by Ms. Dunphy at the – an unspent bullet found at the residence?

**CHIEF SUPT. BOLAND:** I recall hearing about that, yes.

**MR. KENNEDY:** And there was a request on someone's part then to have a meeting, if I understand correctly, at the Dunphy residence. Corporal Burke –

**CHIEF SUPT. BOLAND:** Yes, I recall that.

**MR. KENNEDY:** Corporal Burke, Justice Riche, Meghan Dunphy and I'm not sure, but I think Ms. Breen might have also been present.

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** Okay. This is the context here where they're now at the residence. Justice Riche asked Dunphy, when was the last time she was in the residence. He also asked where she saw the gun. Justice Riche asked where she found the bullet. Is that the kind of activity that you expected the independent observer to engage in?

**CHIEF SUPT. BOLAND:** No, not at all.

**MR. KENNEDY:** That's actively involved in questioning a key witness, correct?

**CHIEF SUPT. BOLAND:** I believe it is. Based on what I'm seeing here and what's in this report, it's not within the vision that I had of what the independent observer would do.

**MR. KENNEDY:** If we could just keep going, please.

We now go to July 27; you'll see it on the screen in front of you, Chief Superintendent. This is Justice Riche and Corporal Burke having a conversation. I'm not gonna go through it all. This is again in relation to some of the evidence. Corporal Burke, you'll see in the second paragraph, was aware of the observation of Justice Riche, was referring in respect to his views.

Continue, just keep going. So there's a discussion with the – no, go back, sorry, one bit. Right there.

So there is a discussion there in terms of the evidence. Did you see that as being something that the justice could engage in with the lead investigator?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Okay.

Were you aware, Sir, or did any of the investigators make you aware of Justice Riche's theory of what happened, the two angry men theory?

**CHIEF SUPT. BOLAND:** No, I didn't hear about that until much later, much later on.

**MR. KENNEDY:** Okay.

If we could now go to Exhibit P-0359; it will just be a very quick reference to this, Commissioner, at page 493 – you can make this a little bit bigger. This is September 16, and these are Justice Riche's comments. "The RCMP did not release his report because they were not happy with it and he said the investigators did not cross-examine the witnesses."

Do you know what he's talking about there?

**CHIEF SUPT. BOLAND:** I just got to read the – if you can give me a second to read the –

**MR. KENNEDY:** Sure.

**CHIEF SUPT. BOLAND:** Okay. So these –

**MR. KENNEDY:** His reference to cross-examining witnesses, do you know what he’s talking about there?

**CHIEF SUPT. BOLAND:** No, I don’t, no.

**MR. KENNEDY:** Okay. Do the police cross-examine witnesses?

**CHIEF SUPT. BOLAND:** The police cross-examine witnesses? No, that’s a courtroom – that’s a term I would consider used in a courtroom.

**MR. KENNEDY:** Okay.

“The RCMP did not want him to investigate or act as ‘Columbo.’” Those are his words and that’s a fair statement, isn’t it?

**CHIEF SUPT. BOLAND:** So those bullets under there, I gather those are from what it says on the top there, the following is a summary of the comments by Justice Riche. So these are the note – I guess these are Corporal Burke’s notes, looks like.

**MR. KENNEDY:** Yeah.

**CHIEF SUPT. BOLAND:** He’s just noting the comments that he made and we did not want him to act like –

**MR. KENNEDY:** Yeah, that’s an accurate statement. Justice Riche’s comment that, “The RCMP did not want him to investigate or act as ‘Columbo’”. That is an entirely accurate statement, isn’t it?

**CHIEF SUPT. BOLAND:** So that’s – in that bullet there, that’s Corporal Burke capturing what –

**MR. KENNEDY:** Justice Riche said.

**CHIEF SUPT. BOLAND:** – Justice Riche said. So, well we didn’t want anybody outside, you know, other than the investigators doing the investigation. Justice Riche was the independent observer and not in an investigative role.

**MR. KENNEDY:** Okay.

So, Sir, having gone through some of these things, do you not agree with me that if there was not outright interference in the police investigation, there was certainly an appearance of interference in the independence of a police investigation.

**CHIEF SUPT. BOLAND:** So, again, I don’t know if I’d go so far as to use the word interference. I think there were some challenges brought about by some of the discussion and some of the interaction between the different components of the investigation. I don’t think I’d go so far as to say it brought about any interference.

**MR. KENNEDY:** Okay.

If I could have Exhibit P-0580 brought up; just one quick reference to this. This is the letter to you from retired Justice Riche, dated January 12, 2016. And you were asked by Commission counsel whether or not the actual report had been provided at the same time, but you don't know the answer to that, do you?

**CHIEF SUPT. BOLAND:** I'm sorry, where's the date on that report?

**MR. KENNEDY:** Okay, sorry.

January 12, 2016, it's retired Justice Riche.

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** It's a letter to you.

**CHIEF SUPT. BOLAND:** Right.

**MR. KENNEDY:** And the question I think asked by Commission counsel, was this the cover letter that was sent with the final report?

**CHIEF SUPT. BOLAND:** So I think it is, it appears to be. I think if you scroll further down in this letter – I don't recall seeing this letter before. So I wasn't in the CROPS position at the time. And that time frame in January of 2016, none of this stuff was coming across my desk or through my office.

**MR. KENNEDY:** Did Inspector Cahill ever have any discussion with you where he suggested that Justice Riche has breached the terms of his agreement and we should not release his report?

**CHIEF SUPT. BOLAND:** No, I don't recall any specific discussions. I don't recall hearing any language at all of somebody saying that there was a breach of the contract.

I recall over the course of the investigation and the latter part of the investigation, I recall hearing Justice Riche – there was a sentiment and a feeling that he had gone outside of the mandate of being the observer. And that these were the conversations I referred to you yesterday when I suggested to Inspector Cahill and to Superintendent Sachsse, you need to continue to reinforce with Justice Riche what the terms of reference are.

**MR. KENNEDY:** Okay.

**MR. KENNEDY:** If you look at the last line in this letter from Justice – retired Justice Riche: I find that to get all the answers as I would like to – a "t" I suppose – it looks to be a typo – 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. Correct?

**CHIEF SUPT. BOLAND:** That's what's there, yes.

**MR. KENNEDY:** So it appears that Justice Riche clearly understood from that letter what his mandate and terms of reference asked him to do. Is that correct?

**CHIEF SUPT. BOLAND:** I would agree with that interpretation. And when I saw that in the exhibits, the first time, my thinking was that this – particularly the last line, in the last sentence, was derived from the conversations that I was aware of that Inspector Cahill had with Justice Riche to continue to re-emphasize and re-inforce the terms of the agreement.

**MR. KENNEDY:** Commissioner, I have one brief area left to go and it will be about five minutes. It deals with the release the information. I can either do it now or you can take your break, whatever you wish to do.

**THE COMMISSIONER:** Well, you may as well finish –

**MR. KENNEDY:** Yes, okay.

So one of the issues that has arisen here – and again, it's the April 7 press release personifies the issue, to a certain extent – is the role or the duty of the police, perhaps role, to release this information to the public. You know that was an ongoing issue in this particular case – correct?

**CHIEF SUPT. BOLAND:** Correct. Yeah, I agree with that.

**MR. KENNEDY:** In fact, there was media article after media article criticizing the police and everyone else for not releasing information. You are aware of that, correct?

**CHIEF SUPT. BOLAND:** Yes, yes, I agree.

**MR. KENNEDY:** Sir, historically, it has always been the position, from my understanding of the police, whether it be your force or, again, I can only speak mostly for the RNC, that the police do not release details of cases where no charges are laid.

**CHIEF SUPT. BOLAND:** Do not release details of incidents where charges –

**MR. KENNEDY:** Where no charges are laid, or charges are laid?

**CHIEF SUPT. BOLAND:** So that would be – the context of what you're describing would be at the back end of an investigation when an investigation is completed?

**MR. KENNEDY:** Yeah. I'm going to start there.

**CHIEF SUPT. BOLAND:** So it depends. You know, every investigation is different and every matter takes on a life of its own. It would depend. And a number of factors, I think, would come to bear. One of the biggest issues that has to be addressed by the police in an investigation, any investigation in the beginning, is public safety and concern, whether there are any safety or risks for any members of the community.

**MR. KENNEDY:** Okay. But as we move to this matter, you know that there is – people are complaining that there is a vacuum of information, especially the press, bloggers, media – social media. There's a lot of complaints that there's a vacuum of information out there, correct?

**CHIEF SUPT. BOLAND:** Yes.

**MR. KENNEDY:** Now, that leads to speculation, doesn't it, or can lead to speculation?

**CHIEF SUPT. BOLAND:** It certainly can. It certainly does –

**MR. KENNEDY:** And did in this case.

**CHIEF SUPT. BOLAND:** In this case, I believe there was a certain amount of speculation, for sure.

**MR. KENNEDY:** It leads to speculation, gossip, innuendo, because people don't have the information.

**CHIEF SUPT. BOLAND:** Correct.

**MR. KENNEDY:** Now, I know historically, I know traditionally the way the police have approached this. But, Sir, shouldn't it be in this day and age of instant media, perhaps a reconsideration of when the police should provide information to the public that benefits everyone?

**CHIEF SUPT. BOLAND:** And I think that's evolving. I think that is an issue that is becoming very, very prominent in a lot of ways, due to social media. You know, we don't have to cast our eyes very far or around of what social media's having an impact on local, national, international issues, and I think that is very much an emerging – and well, it's beyond emerging; it's upon us. How and when do you release information and how much in the interest of protecting your investigation and satisfying public interest.

**MR. KENNEDY:** So let's start at the back end. Once a decision is made that no charges are to be laid, why didn't the RCMP at that point release the reports to the public, including the RNC – RCMP investigation report, ASIRT report, and whatever else you had?

**CHIEF SUPT. BOLAND:** So one of the difficulties we have with that question is I was retired by the time the, the investigation was concluded and that issue faced the organization. So I can't, I can't surmise very well. I know it's been in a practice traditionally within our organization not to release information of an investigation in, in the past – and I think you used the word tradition a little while – a few minutes ago.

But I'm a firm believer in put it out there. If it's not going to impact or affect the investigation, put the information out there, make it available. It has to be done step by step. You know, stakeholders like family, friends, acquaintances have to have our information released to them privately, I would suggest, first. But it also goes back to something we talked about a little, a little while ago is every investigation – does an investigation truly end? Does it really come to a halt? I think it's quite a balancing act for investigative organizations as to when and what and how to release information.

**MR. KENNEDY:** Well, we know the investigation didn't end in this case because there was an anonymous letter sent which resulted in the police taking steps which delayed the release of reports by the Commission. But let me put it to you, and I know you're retired, but again, your 34-and-a-half years of experience; improvement of the criminal justice system is perhaps something we can seek your assistance on where you're now retired. If you had been there at that time, would you have released those reports immediately upon the decision being made that no charges were going to be laid?

**CHIEF SUPT. BOLAND:** Releasing the reports – I certainly would have been leaning towards releasing the reports, but I would have had to rely on the advice of counsel or other folks within our policy areas, with the Commission, you know, regardless of when it was announced publicly that this Commission was going to take place, this Commission of Inquiry. There had been talk of it much sooner before, but my personal view is put the reports out there, if they don't jeopardize or compromise the investigation. If there's – you know, sit down and speak with the family, and what do you think? Because one of the dynamics that unfolds in every investigation is there's a lot of confidential information, a lot of information about people, a lot of information about who said what and who was where. You know, there would have to be a lot of consideration given to it.

Personally, I am inclined to release reports. They go a long way in satisfying public interest. Do they cause problems? They can, you know, but in the spirit of transparency, I'm in favour of it.

**MR. KENNEDY:** My last question, Sir: Are you familiar with the serious incident review team, or SIRT, in Nova Scotia?

**CHIEF SUPT. BOLAND:** Yes, I am.

**MR. KENNEDY:** Have you ever seen their website?

**CHIEF SUPT. BOLAND:** I believe – have I looked at their website? I think I have, yes, probably a year or so ago.

**MR. KENNEDY:** And if you look, there's a section, Sir, under decisions or reviews where they actually provide a summary of the investigations. It may not be lengthy, maybe a page or a couple of pages, but they actually provide a summary of the investigation, what took place and their decision.

At a minimum, Sir, do you agree that that would be a good practice to follow for any police force?

**CHIEF SUPT. BOLAND:** Oh, I think so. I think it would be – again, in my opinion, it would be a good practice to put out a synopsis, I guess, of an investigation, but there's inherent issues and problems with those, as well, because the desire and the appetite for detail around any issue or topic is – there's quite a hunger on all fronts for information.

**MR. KENNEDY:** Okay, those would be my questions, Chief Superintendent. Thank you.

**THE COMMISSIONER:** Okay. Now we have Mr. Flaherty. You still have some questions to put, I think you indicated, and Mr. Avis. So we'll break now and come back in 15 minutes.

**MS. SHEEHAN:** All rise.

This Commission of Inquiry is now in recess.

**Recess**

**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry in session.

Please be seated.

**THE COMMISSIONER:** All right, Mr. Avis, you're next.

**MR. AVIS:** Yes, Commissioner, I noticed that Mr. Flaherty and Mr. Simmonds aren't here.

Mr. Simmonds said –

**THE COMMISSIONER:** Mr. Simmonds said we could go –

**MR. AVIS:** Yes –

**THE COMMISSIONER:** – without him, I think.

**MR. AVIS:** – he had something to attend to, and said please proceed. And I don't know where Mr. Flaherty is.

**THE COMMISSIONER:** Well, I guess we better go ahead.

**MR. AVIS:** Sure.

So on – just with respect to one question I have about the media is you have a full-time media person with the RCMP – is that correct?

**CHIEF SUPT. BOLAND:** I believe the organization right now has two – has a communications person and a media person. At the time when this incident occurred in April of 2015, we had the positions, but I don't think we had people in place. I think we were in some flux with transfers and personnel movement.

**MR. AVIS:** So, just to be clear, though, for B Division, you have a communication –

**CHIEF SUPT. BOLAND:** A communications director.

**MR. AVIS:** – director and a media director?

**CHIEF SUPT. BOLAND:** Media relations officer, I believe is –

**MR. AVIS:** Right.

**CHIEF SUPT. BOLAND:** Now, those positions were all under transition and changes as well. I think that's what they are now.

**MR. AVIS:** Sure.

And so these would be people who are trained in communications, trained in media and have experience in media. Am I correct?

**CHIEF SUPT. BOLAND:** Yes.

**MR. AVIS:** Okay.

A question was put to you by inquiry counsel, and I just want to clarify it. When it came to the emails going back and forth between you and Deputy Chief Singleton, the question put to you was, so you didn't – if I wrote it down correctly, so you didn't consider the input from Deputy Chief Singleton. And you said no, I recall.

Was there any input; did he have any input –

**CHIEF SUPT. BOLAND:** No –

**MR. AVIS:** – whatsoever?

**CHIEF SUPT. BOLAND:** No, none whatsoever, no.

**MR. AVIS:** Okay.

I guess the – all he sent to you was the CBC questions, I guess, to bring to your attention (inaudible) –

**CHIEF SUPT. BOLAND:** Yes, I think so. I think it was just a courtesy. He saw them on the website, copied – and I don't know for 100 per cent sure if this is exactly what he did, but my impression was he copied and pasted something and then just sent it to me in an email.

**MR. AVIS:** Sure.

Again, one of the communications with you from Deputy Chief Singleton was he wanted to know if it was okay to commence the internal investigation, correct?

**CHIEF SUPT. BOLAND:** Yes.

**MR. AVIS:** And isn't it – well, it's at least a practice, it's not exactly the law insists in every case, but generally the criminal process goes first and then the internal. Isn't that the way the police work, generally?

**CHIEF SUPT. BOLAND:** So I think it could be either one; I'm aware of incidents where both have been launched or commenced at the same time, where organizations have started operational processes as well as administrative.

**MR. AVIS:** Okay. But as a general rule, the reason they would not do that, they wouldn't want – an internal investigation would not want to interfere with a criminal investigation.

**CHIEF SUPT. BOLAND:** Correct, correct. Yes.

**MR. AVIS:** But what I'm saying is it's a perfectly appropriate thing he's asking you about.

**CHIEF SUPT. BOLAND:** Oh, I think so. It's, it's – actually I would kind of expect it, because an organization would want to review its policies and the actions of any of its folks within the confines of an administrative review.

**MR. AVIS:** And again, just picking up on the language used by Mr. Simmonds, I did object. I just want to clarify. He did indicate that you, as a matter of professional courtesy, advised Jason Sheppard and Ab Singleton of pretty much everything. Now, that's not correct, is it?

**CHIEF SUPT. BOLAND:** No, no, not at all. Everything within the investigation or – no, my dealings were brief initially, just to ensure that, you know, things like media inquiries were directed to the right place.

**MR. AVIS:** So anything you advised them of you felt comfortable, you were only advising them of something that was within their role or mandate, such as Inspector Sheppard being the liaison. Obviously, you have to communicate with the liaison.

**CHIEF SUPT. BOLAND:** Correct, yes.

**MR. AVIS:** And none of your communications had to do with the substance of the investigation, did they?

**CHIEF SUPT. BOLAND:** No, not at all, and again my role in the organization was many layers away from the front-line investigators and I wasn't privy to a lot of the actual front-line investigation activities or details.

**MR. AVIS:** Okay.

With respect to SIRT, and we're talking more about where we might be going as a province, it's my understanding that they are, such as the one in Nova Scotia, there is a trained lawyer, qualified lawyer, as part of the team who tends to function as a go-to person with respect to do we have the grounds, some assistance with the officers in laying charges.

**CHIEF SUPT. BOLAND:** So I'm aware that the person who heads up the SIRT in Nova Scotia is a lawyer and that would be something that the investigators would avail of, getting advice or guidance from him.

**MR. AVIS:** Okay.

Now something about – my learned friend, Mr. Kennedy, was asking you about how important it is for the police to have no interference with their investigation. He referred to it as the basic principle of Canadian investigations. I'm going to suggest to you it's been a basic part of our law for centuries and is reflected in the *Criminal Code*, particularly in the word "may," which appears frequently in the *Criminal Code*.

For example, a police officer may arrest. A police officer may search. A police officer may get a search warrant. What I'm going to say to you is – and perhaps I'm arguing a point of law with you, but I wanted to make the point is that there's nothing you can do as a force with policy, direction or otherwise that can in any way fetter the independent exercise of that discretion by that particular police officer. Is that your understanding?

**CHIEF SUPT. BOLAND:** So that would be my understanding and expectation.

**MR. AVIS:** Right. So you can't direct someone to make an arrest, can you?

**CHIEF SUPT. BOLAND:** No.

**MR. AVIS:** You cannot direct an officer to lay a charge if he or she does not have reasonable and probable grounds. Correct?

**CHIEF SUPT. BOLAND:** Correct.

**MR. AVIS:** And to do so, well, could result in Charter nightmares and things of that nature.

**CHIEF SUPT. BOLAND:** Correct, yes.

**MR. AVIS:** I do have a few questions arising about the independent observer, and again maybe it's just a rhetorical question but how can you – I'm going to suggest to you that there is an inherent contradiction; you cannot be an independent observer and an investigator at the same time. Would you agree with that?

**CHIEF SUPT. BOLAND:** In principle, I would agree with that, yes.

**MR. AVIS:** Okay.

Now, I think the areas have been covered, but there's two additional aspects of this investigation. One, you had an independent observer, correct?

**CHIEF SUPT. BOLAND:** Yes.

**MR. AVIS:** And that work at an additional cost to the Canadian tax payer, having an independent observer?

**CHIEF SUPT. BOLAND:** Yes.

**MR. AVIS:** Similarly, having a review of your investigation is an additional cost. I'm not saying it wasn't warranted, but just saying, bringing that to light, correct?

**CHIEF SUPT. BOLAND:** So it costs somebody, somewhere. I'm not sure if the ASIRT folks or the Province of Alberta billed the province or billed our organization. I don't recall if that unfolded, but certainly there would be a cost somewhere.

**MR. AVIS:** Right, and the theory behind ASIRT would be that those costs are all absorbed by one unit and not doubling their expenses. Am I right there?

**CHIEF SUPT. BOLAND:** Yes.

**MR. AVIS:** Okay.

You talked about – I take the Commissioner's position, in a sense, that you're not powerless, but what do you think the public perception might have been if you had stood up and criticized the independent observer?

**CHIEF SUPT. BOLAND:** Well, I liked the word awkward when it was used. It would have been a very difficult situation, in my view, to say or do anything that looked like it was impeding the independence of the observer.

**MR. AVIS:** Okay. And with respect to the media in general, has it been your experience that the media tend to have a negative view of policing in our province?

**CHIEF SUPT. BOLAND:** So ...

**MR. AVIS:** And I – okay, sorry.

**CHIEF SUPT. BOLAND:** No, so just based on my experience, I wouldn't go so far as to say that I thought the media of this province had a negative view. I have the experience of living in other parts of the country and working in other parts of the country. I think there's probably in recent years been a change in some of the tone, but, no, I don't think I would consider the media here as negative towards police.

**MR. AVIS:** What do you mean by a change in tone?

**CHIEF SUPT. BOLAND:** Well, so, I think, you know – and, Your Honor, this is very much my opinion. It's certainly not the opinion of the organization, but I think the day and age of quick and fast information, social medial, people reaching conclusions without having all the information available to them at the time, I think those things are certainly seeping into the realm of mainstream media.

**MR. AVIS:** Okay.

Just one last question, with a few tentacles.

Just wanted to discuss with you the importance of – we all talk about the importance of protecting investigation. I just want to flesh that out a bit, the problems it can create and you just – if you agree or disagree.

**CHIEF SUPT. BOLAND:** Sure.

**MR. AVIS:** You've already indicated there's always significant personal information which has to be considered, correct?

**CHIEF SUPT. BOLAND:** Absolutely, confidentiality, personal information, circumstances; I'm aware of many investigations where we could've released information over the years that I've been involved in, but the impact it would've had on people, personally, came to mind.

**MR. AVIS:** So, with respect to what I'll call pre-trial media, in this case there was no charge, but if you have pre-trial too much information, I don't – has it been your experience that can create problems with jury selection?

Have you ever had a case where –?

**CHIEF SUPT. BOLAND:** I haven't been personally involved in one, but I'm aware of that concept and certainly that train of thought that jury selection could be problematic, and particularly in small areas.

**MR. AVIS:** Wonder if I could–

**THE COMMISSIONER:** Not going in-depth in that now.

**MR. AVIS:** No, no, I –

**THE COMMISSIONER:** Mr. Avis, I'm familiar with them. There's ways of dealing with changes of venue and so forth. So I've gone through all of that over the years.

**MR. AVIS:** Yes, I – sometimes, Commissioner, forgive me, this is an educational thing, and the questions being asked without the meat, I'm fully aware of –

**THE COMMISSIONER:** Right.

**MR. AVIS:** – with respect, that I'm not speaking to you right now, if you understand what I'm saying?

**THE COMMISSIONER:** All right.

**MR. AVIS:** I believe I'm not. And just a few points, they'll be over –

**THE COMMISSIONER:** Okay.

**MR. AVIS:** – soon.

During the Lamer Inquiry, it was recognized that pre-trial – inappropriate pre-trial releases can actually affect witnesses' testimony, including eyewitnesses and ear-witnesses, so to speak.

**CHIEF SUPT. BOLAND:** I'm not familiar with the Lamer comments on that, but what you say sounds reasonable.

**MR. AVIS:** Okay. But again, I guess I'm just referring to your experience. That's fine.

And ultimately, pre-trial publication, have you had any experience where it can seriously impair the prosecution of the case?

**CHIEF SUPT. BOLAND:** Pre-trial ...?

**MR. AVIS:** Pre-trial publicity, putting out too much information, the wrong information, can impair the Crown's ability to prosecute.

**CHIEF SUPT. BOLAND:** Oh, I – so I think you can impair all aspects of a court process.

**MR. AVIS:** So all I'm just trying to introduce is it's a very delicate balance, with very serious consequences, if you don't do it right.

**CHIEF SUPT. BOLAND:** I agree, yes.

**MR. AVIS:** Thank you.

Those are all my questions.

**THE COMMISSIONER:** Thank you, Mr. Avis.

Mr. Flaherty.

Go ahead when you're ready.

**MR. FLAHERTY:** (Inaudible) Superintendent Boland. My name's Cletus Flaherty and I'm counsel for the Donald Dunphy Community Coalition.

Now, Officer Boland – do you mind if I call you Officer Boland?

**CHIEF SUPT. BOLAND:** I don't mind at all, no.

**MR. FLAHERTY:** Okay.

Officer Boland, we've heard a lot here today of hindsight in review of police actions and investigations, but for a second I want to talk about foresight.

During your testimony – and correct me if I'm wrong – you've used words and phrases to the effect that you had every confidence in the officers to perform a proper investigation, you think that your officers were unbiased and impartial, and at one point I believe you said that your officers were beyond reproach and that it never occurred to you that there would be an issue with respect to bias generally in the investigation. In addition to that, during his interview with Commission counsel and during testimony, Officer Burke stated that there was no problem with bias.

My question for you, Officer Boland, is: Do these mindsets create a culture or environment in which the police officers are unable to (a) identify bias in a police investigation and (b) accurately deal with or address bias that may arise during a police investigation?

**CHIEF SUPT. BOLAND:** So I would have to rely on my understanding of the individual, the people that we put to these serious, you know, major crime units and the people we, you know, train and bring in as police officers. In a large investigation, there are enough people, I believe, involved that if a bias started to form with an investigator, I think the people around them – there are enough checks and balances and enough people involved to be able to recognize if a bias started to unfold.

It certainly has been a topic and issue of concern. You know, I'm familiar with a significant investigation in Northern Canada many years ago where there was some concerns raised about bias. But I think at today's – and I don't know if that investigation – I'm referring to the Giant

Mine disaster where several miners were killed in an underground bombing – I don't – I am just trying to think – I don't think that was pivotal around the issue of bias, but I know it certainly was a time frame when those issues came more and more to the forefront and I believe the training that police officers, particularly Major Crime officers, you know, senior investigators, it's discussed in our basic training, as far back as then, to let officers, investigators know.

You've got to be aware of these issues, if they start to surface and if they start to occur. And I think there are enough people around in an investigation, and with supervision, file, you know, investigation structure and review that if any biases were to unfold or start to develop, that they would be addressed.

And I think that the progression of training and experience of police officers today – I know if I started to form an opinion that I would identify I have a strong opinion and I would look to others and say, tell me, give me some feedback and this is where I use the word critical in the past of my work, give me some critical feedback on what I'm seeing or thinking here. So it's always an issue and a concern, but I think the awareness is as heightened around bias today as it ever has been.

**MR. FLAHERTY:** Okay.

Now, I understand, I mean, as a commanding officer I'll refer to you as, you need to trust the officers below you in rank, and those officers need to know that their commanders have trust in them. Having said that though, with respect to the checks and balances, you're more or less trusting all the officers engaged in an investigation to be a check and balance upon each other. Is that what you're saying?

**CHIEF SUPT. BOLAND:** Certainly that would be a part of it, check and a balance with themselves, it starts right with the individual. One of my, one of my favorite sayings is, you know, I've got to walk by a mirror. So I've got to have a look and see, see if what I'm thinking or doing is with – or in this case we're talking about bias – with or without bias, the peers, the colleagues, the people working with the investigator, whether it's an investigation team or at a detachment there's supervisors who are supervising and reviewing their work, and on up the line of the checks and balances that are in place around the quality of an investigation.

**MR. FLAHERTY:** Would you not agree, though, when we look at the individual officer level, the individual officer's mindset, if an individual officer thinks that bias of any sort in an investigation is not a problem and believes that his surrounding officers are beyond reproach, wouldn't that mindset impair, at the very least, their ability to identify and address bias in any sort during an investigation? If their mind is closed, how would they be able to assess whether or not there is bias in an investigation?

**CHIEF SUPT. BOLAND:** Well, yeah. So when I use the terminology "beyond reproach," I'm talking about integrity, the integrity of the individual to, you know, to identify any issues or matters that come up. So what you are putting forward there is assuming that the person's mind is closed.

I would suggest that in investigations, when you have something as dynamic as an investigation like this and is complex, I don't think, I don't think you would come across with anybody with a closed mind. Any experienced investigator, and I would say even some investigators who were very new in policing investigation, learn very quickly that things change, and they change on a dime. Information comes in, something happens, physical evidence information comes forward, so I wouldn't be comfortable saying anybody's mind is closed on an issue.

**MR. FLAHERTY:** Now, you mentioned the word “integrity,” Officer Boland, although an officer may have integrity, he or she may still be open to bias because as, I believe, we are all aware, bias can have two primary forms: you can be consciously and actively biased; or you can be unconsciously biased. A lot of people have – a lot of people think and come up with thoughts and come up with conclusions that are biased, but they don’t even know it. So although you’re assured, you were confident that your officers are officers of integrity, those officers still may be victims of bias – correct?

**CHIEF SUPT. BOLAND:** So I don’t disagree that bias exists and it’s a challenge to everybody. You know, an example perhaps if I grew up with a certain type of automobile that my parents only bought and drove, I might be biased towards owning that type of vehicle for the rest of my days. But I think the training and the experiences that skilled, experienced investigators obtain and encounter, I think it provides more than enough tools to address any issues that arise with bias.

You either are aware of a bias that you might have, like you say, whether it’s something that tangible or intangible. And you can back it out of what you’re doing, or the extreme end of it is you might have to say I have a bias here and I have to back off of this investigation.

I don’t think any of our investigators ever want to see an investigation not done to the best of their abilities and would back out if a bias surfaced.

**MR. FLAHERTY:** Okay.

**CHIEF SUPT. BOLAND:** Or deal with the bias, not necessarily back out. You can also deal with the bias. You know, in a dynamic or large investigation somebody else could perform the task that might need to be done.

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

Now, Officer Boland, are you aware or knowledgeable on the concept of Groupthink?

**CHIEF SUPT. BOLAND:** I’m sorry, what was the last part?

**MR. FLAHERTY:** Groupthink.

**CHIEF SUPT. BOLAND:** Groupthink?

**MR. FLAHERTY:** Are you aware of that concept or knowledgeable about that concept?

**CHIEF SUPT. BOLAND:** Not specifically, but I can surmise what it probably is about, but no, I’m not familiar with it.

**MR. FLAHERTY:** We’ll leave that there then.

During Mr. Kennedy’s cross-examination of yourself, you said it’s always easy to look back – I’m paraphrasing at this point – at incidents or investigations, but it’s hard to come up with answers.

Even if that is true, should that prevent police from reviewing their investigations, their police individual actions or the practices and procedures? Just because the answers might be hard to formulate, or hard to put out there, does that stop or prevent the police forces from investigating whether or not we’re reviewing their investigations?

**CHIEF SUPT. BOLAND:** So I've got to say I'm not entirely certain what the first part of that means, but the later part of should reviewing occur or not occur, or stop or not stop, you know, we've got a historical investigation in this province that is 35-plus years old and a review of an investigation should be an ongoing process, looking back, whether it's triggered by new information coming to light or a point in an investigation where you are saying to yourself I need to go back and refresh my memory of what's transpired, or I feel like I need to go back and look over the information again.

So a review process ongoing in any investigation, minor or major, I think should be something that is ongoing and occurring.

**MR. FLAHERTY:** So just to clarify, just so you know what I was speaking about, it appeared to me that it had been put to you that it's quite easy to look back an investigation. That part is the easy part.

**CHIEF SUPT. BOLAND:** Right, correct.

**MR. FLAHERTY:** It's hard to come up with answers, following your review.

**MR. KENNEDY:** Excuse me, Commissioner, that's not what I said, so it's not an accurate paraphrase. I don't know if that's his question, but what he suggests was that the question I had put to him and paraphrased that. My questions was four or five questions. I don't remember anything about being hard to get answers.

**THE COMMISSIONER:** Well –

**MR. FLAHERTY:** (Inaudible) review the record on that.

**THE COMMISSIONER:** – the general discussion was along that line, but don't attribute it all to Mr. Kennedy's remarks.

**MR. FLAHERTY:** No, no.

**THE COMMISSIONER:** No. Go ahead.

**MR. FLAHERTY:** True enough, it wasn't just Mr. Kennedy.

So even though answers may be hard to formulate following a review of an investigation or police action, or the general practice and procedures, you still should go through that practice. And I'm not just talking about police investigations during the course of an investigation, but I'm talking following investigations, individual police actions that may not form part of an investigation, or just the general practice and procedures.

Would you agree with that, Officer Boland?

**CHIEF SUPT. BOLAND:** So the part that I'm having difficulty with is I'm not sure what your meaning of is when you're look looking for answers or can't find answers. I'm not sure what that part of the question means.

**MR. FLAHERTY:** Is it difficult for the police forces that you've been a part of to review an investigation and then come up with best practices or a summary of issues that may have unfolded during that police investigation? Do you find that a difficult thing to do?

**CHIEF SUPT. BOLAND:** No, not at all. Okay, so no, I don't.

Best practices are derived from that very work of determining, you know, when you look back and say: Could you have done something differently? Could you have gone in this – could you have turned left instead of turned right? And that's where new practices and best practices, investigations evolve and techniques evolve.

No, I think that's very valuable and, you know, it would take me a long time to describe many years, 34 years, of – when I joined the policing in 1982, what we did in investigations then are completely different than what we do today. So all these things evolve and a significant proportion of that evolution is from reviewing and looking back.

**MR. FLAHERTY:** We've heard it uttered a couple times during this inquiry, and we've heard it uttered today, that the RCMP, specifically, can often be, you know – the phrase damned if you do and damned if you don't can be used to describe the situation that the RCMP finds itself in during investigations.

And damned if you do and damned if you don't has been used to describe, I guess, the process and the fallout of the April 7th press release from the RCMP.

Now, correct me if I'm wrong. It wasn't the fact that the RCMP communicated or sought to communicate what was going on in its investigation – it wasn't criticized for that, per se; it was criticized for the findings and the content of the communications. Correct?

**CHIEF SUPT. BOLAND:** I would say that's a fair summary. I don't recall – oh, sorry. I turned the mic off.

I would say that's a fair summary. I don't recall us being criticized for communicating, no, you're right; but, you know, when you get into the second part of it is, you know, I understand it's been said that we came to conclusions too quickly. And so that's what some of the issues are. It's a Catch-22, you know.

I've been flabbergasted when I sit and listen to people say we want more information, and then when you give them information, you gave us too much information. So that's why when those press releases are prepared and before we hit the send button on them, there's a fair bit of rigour around ensuring that they're accurate in their detail and the information that's in there.

**MR. FLAHERTY:** You can't be all things to all people, and certainly that's the case even for the RCMP.

**CHIEF SUPT. BOLAND:** I would say, yeah, that's, yes, for everybody, yeah.

**MR. FLAHERTY:** And did you realize or did you see that one of the issues that citizens did take with the press release is that the interim findings, I would call it, seemed to lack any corroborating evidence? Do you see – first off, did you see those concerns? Second off, do you appreciate those concerns?

**CHIEF SUPT. BOLAND:** So, yes, on both counts. I did see them; and the corroborating, you know, that's the difficulty. Therein lies the challenge of putting out – one of the challenges to putting out information because when you put it out there, then everybody wants everything behind that. Especially in an active investigation, you can't put it all out there and that's where trials, court proceedings, commissions of inquiry, coroner's inquests, inquiries – that's where those things have certainly come into play.

**MR. FLAHERTY:** Now, is it your opinion that the media interfered in this investigation?

**CHIEF SUPT. BOLAND:** No, I never – it never came to my mind that there was any interference in the investigation. The reporting on it was fairly, you know, robust, I guess. There was lots of reporting, lots of attention on it. It was a significant event, no question in my mind. Along with where I work, I'm a resident of the province, and it was a major event.

So, no, the media coverage didn't surprise me. It wasn't more or less than I expected, I guess.

**MR. FLAHERTY:** And are your officers trained to deal with the pressures that may come to bear from the media either (a) in the media seeking information or (b) the impact of seeing headlines and stories that they don't necessarily agree with. Is there specific training for that, as far as you're aware?

**CHIEF SUPT. BOLAND:** So in our basic training program, you know, there are – there would be scenarios, there would be some training around how to address, prepare, handle at a very basic, a very rudimentary level. When you get into supervisory positions, command positions, you would receive more training, but for the most part, in organizations like ours, it's picked up from experience. You pick up the experience of how to handle inquiries and, you know, most people will, say, recognize somebody else has a role to be the media spokesperson or the media liaison for an incident, but it certainly is an area that poses challenges within the policing environment.

**MR. FLAHERTY:** Now, as you stated, police officers, I would say generally, are aware or acutely aware of personal rights arising from the Constitution, Charter, common law or what have you. Were any – would any of those rights be breached if a police officer had to ask the RNC or Constable Smyth if they could search the Yukon, which was on the scene in Mitchells Brook? Does that breach any rights?

**CHIEF SUPT. BOLAND:** So, to directly comment about what was unfolding at the investigation on the front end, I can't comment on what was in the minds of the investigator, what was the dynamic at the front of that investigation, you know, at the front line, at the front end, how anybody's rights would be impacted or affected. The investigators would certainly have to keep those into consideration.

**MR. FLAHERTY:** Now, you are the chief superintendent who had 30-some-odd years of long-standing service. So my question for you is – just you personally. I'm not asking you to step into the mind or the thought processes of your investigators at the time, but as far as you're aware, would there have been a breach of any personal rights owed to Constable Smyth if the RCMP had asked Constable Smyth or the RNC whether or not they could search the Yukon, which was on the scene in Mitchells Brook?

**CHIEF SUPT. BOLAND:** So, again, the circumstances of what was unfolding with that investigation would come to bear in mind vehicles more and more in Canadian law are becoming subject of, you know – when it comes to the right to search anything, having an awareness, being aware of what your grounds are to search anything, I would argue these days, unless you're dealing with issues like plain view, loss of evidence, continuation of an offence, when you get into all those factors that have to be considered in the course of an investigation, it would be careless for me to comment on what the circumstances at the time, to search that vehicle or not, to search it or not, or what grounds they had to search anything.

**MR. FLAHERTY:** Now, I'm not talking about a search that could be the subject of a warrant; I'm talking about whether or not, in any context – and if there are circumstances that come to bear, please, please educate me on them – would a subject or person of interest's personal rights be breached if a police force asked them, can we voluntarily, with your consent, can we search that vehicle? Is that a breach of rights, generally?

**CHIEF SUPT. BOLAND:** Well, so when you put in the dynamic of a voluntary search and consent, that changes the, you know – that changes, certainly changes, the dynamics of the opportunity to search, so – but it’s still something an investigator has to be very cautious of because the arguments could come much further down the line of whether a person understood the consent, understood the ramifications of what they were doing when it came to their individual rights. So it’s – again, not being in the shoes of the investigators, it wouldn’t be prudent for me to comment on why a search was or was not done.

**MR. FLAHERTY:** Now, when the subject of a search is a police officer, or indeed a police organization, would you not agree that they should or do have a pretty good handle on rights and searches and consent to searches, wouldn’t they?

**CHIEF SUPT. BOLAND:** If we were talking about the police officer or equipment or the organization as the party being searched?

**MR. FLAHERTY:** Yes.

**CHIEF SUPT. BOLAND:** Certainly, I think they would have more, you know, knowledge and experience around those matters than, you know, people who are outside the realm of doing investigations. You know, that could be – that could flow over to anybody who’s in an investigative organization or role.

**MR. FLAHERTY:** And in the same vein, in the context of this inquiry and generally – if there is a difference, you can tell me – would there have been a breach of personal rights flowing from the common law, the Constitution, the Charter, if police had to have asked Constable Joe Smyth on the 5th of April: You know, Joe, can you please come in and give us a statement now? Is that a breach?

**CHIEF SUPT. BOLAND:** To ask somebody to come in and give a statement?

**MR. FLAHERTY:** Yeah, come in and give me a voluntary statement.

**CHIEF SUPT. BOLAND:** To ask to come in and give a statement, would that be a breach of a person’s rights? No, I don’t think so.

**MR. FLAHERTY:** Madam Clerk, can I please have Exhibit P-0577 put up on the screen?

Okay, I’ll ask you to stop there, Madam Clerk.

So there’s been some discussion over what an investigator is, what an observer is, what it means to investigate, what it means to observe.

I refer you to the second paragraph of this letter, and in the last sentence, the last sentence reads: “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.”

Now, in order to provide an opinion with respect to whether or not an investigation has been thorough, does the report drafter not have to scrutinize the evidence that has been – that has been gathered by the police?

**CHIEF SUPT. BOLAND:** Yes, I would agree with that. They would have to, you know – in this case, Justice Riche, under my direction, was given unfettered access to the investigation materials. So scrutinize would be reviewing that, looking at that material, yes.

**MR. FLAHERTY:** And to take that a step further, if the observer has a question, which the answer of which may lead him to believe that the investigation wasn't thorough, i.e., evidence had been overlooked, is it really that inappropriate for an observer to ask – well, in this case, Justice Riche. Is it really improper for him to ask questions of, like, should you not consider this evidence or is there any information with respect to this type of evidence? Is that really a mortal sin in this case?

**CHIEF SUPT. BOLAND:** So I think it is, yes. I think the role of the observer was to simply observe, not to take on any component of the investigation.

I see no difficulty with asking for clarity, if he was to ask the investigator or lead investigator what does this mean or what does this particular piece of information or evidence mean, but to – that would be the only thing I would seek, seeking clarity or understanding of what something means. You know, we can look at a paragraph or look at a piece of evidence and have different interpretations, but to ask for clarity as to what it means to the investigator, I think, would not be unreasonable, but to ask or offer up opinions or thoughts and ideas, in my very basic, simple view of it, that's up to the investigation team and all the systems and checks and balances within a major crime, in this case a major case management investigation.

**MR. FLAHERTY:** Now, I would agree with you on most of those points, Officer Boland, but – and I would agree that maybe some opinions being shared, certain types of opinions being shared, would be improper; but within the role of the observer to provide an opinion as to whether or not an investigation was thorough, in discussing that with the investigators at the time, would it be improper for him – in this case, for Justice Rich – to say, I think this is a glaring hole in your investigation or a glaring hole in the evidence, can you address that?

Because without those types of answers, the observer may not be able to come up with an opinion as to whether or not the investigation was thorough. So providing an opinion like that, going up to an investigator and saying I think that you've overlooked this, is that not part or is that not required in his mandate, to provide an opinion as to whether or not an investigation was thorough?

**CHIEF SUPT. BOLAND:** So I'm aware – I've read Justice Riche's report just recently. I looked at it as part of the exhibits that were coming forward for the inquiry, and in the very first paragraph of his report he talks about the thoroughness and the, you know, satisfied with the police investigation.

When it comes to offering – so I kind of have two minds of what you just described there. When it comes to offering up any commentary during the course of the investigation, I would want an investigator's mind to be wide open all the time. So if somebody puts something out there somewhere along the way that was – and regardless of where it came from, it might come from the independent observer, it might come from – anybody might be standing at a hockey rink on a Saturday morning with your children listening to people talking about things. I think that's a part of the process, of an investigator's mind being wide open to ideas and possibilities.

When it comes to in the confines of this, the context and the reference of why we engaged the independent observer here, as the investigator I don't think I'd be sitting there relying on, hoping that the independent observer would offer me up investigative advice. If he or she did, hey, I'm willing to sit back and listen to anything, and I think most investigators would be. They're willing to hear and look at anything. What they do with it and how they process it would be within the confines of the investigation.

**MR. FLAHERTY:** And that's only common sense because if an observer, even if it's a strict observer, if they can identify material deficiency in an investigation, common sense says bring

that to an investigator. You know, as we all know, it's better to be preventative than reactive; an ounce of prevention is worth a pound of cure. Correct, in this context?

**CHIEF SUPT. BOLAND:** I think so, yeah.

**MR. FLAHERTY:** So when that – sorry, go on, Sir.

**CHIEF SUPT. BOLAND:** When I look at the word thoroughness there in that letter, it's a very high-level, overarching expectation from my part that I would expect that the observer would, you know, if there was something glaring, I would bring it to the attention of people within the chain of command at the investigation.

**MR. FLAHERTY:** So your opinion of what thoroughness means is that it's a high-level, overarching standard of review. Does that mean that an independent observer, Justice Riche in this case, should not have really scrutinized the evidence?

**CHIEF SUPT. BOLAND:** You know, in the context of the independence and the observation of the investigation, I would agree with that. In that context, in the context of taking on the role of an investigator, I think that's where it gets. It would get very challenging.

**MR. FLAHERTY:** Was it clearly improper in your opinion, or did it interfere or compromise the RCMP investigation when Justice Riche asked questions during the second re-enactment performed by Constable Smyth?

**CHIEF SUPT. BOLAND:** So I wasn't, I don't know what those circumstances were. It would be careless of me to comment on that context of what unfolded there, that re-enactment, if those questions were, you know straightforward, trying to understand what was unfolding and why, but it would be very difficult, it would be careless of me to put myself into the shoes of the people who were at that re-enactment and what the context of those questions or answers may have been.

**MR. FLAHERTY:** I understand. Now, there has been some talk about the interview with Meghan Dunphy. I just have some questions with respect to that. It's your evidence, and indeed, I would say it would be the opinion of most that when the police showed up at Meghan Dunphy's house the day of her father's death, she could potentially have said no, I don't want to be interviewed. Correct?

**CHIEF SUPT. BOLAND:** I believe that's correct, yes.

**MR. FLAHERTY:** It's not unfair to say that it's likely or in fact that she was in a, an emotional state, in shock, if not traumatized on that day.

**CHIEF SUPT. BOLAND:** So I would agree that that's certainly, you know in a circumstance like that, I think that's certainly possible.

**MR. FLAHERTY:** In your opinion, if someone is emotional, traumatized or in shock, do they have the emotional and mental wherewithal to consider whether or not they should give an interview at that time when they've been asked a question, asked for an interview? And, secondly, would the information that they can provide likely be reliable, given the emotional mental state?

**CHIEF SUPT. BOLAND:** So in the early hours, in the early minutes and hours and early days of any investigation it is very important for investigators to get as much information as they possibly can.

I would suggest that skilled, experienced investigators would be able to assess the reliability, they would certainly observe the, you know the behaviour – obviously, they’re sitting there with the person they’re interviewing. They would certainly be able to observe their behaviour, their emotions, listen to what they’re saying. If they had any doubt that – if you look at it to be – if you separate the information from, you know, just look at the black and white, or whatever information that they glean during the interview –

**MR. FLAHERTY:** Yeah.

**CHIEF SUPT. BOLAND:** – when they start to put the pieces of the puzzle together, if they have any need for clarity, sometimes they could come back, you know. Well, just to go a step before that, that would also give them opportunity to determine, you know, what kind of condition the person was in. And some people might blurt things out and say things that, when you come back to them a day or two later, there’d be some – okay, so now I remember why I did this, or I remember why I said that.

So in the course of any investigation, especially, again, complicated, complex investigations, you would certainly be assessing the information, interviews as you go. It wouldn’t be uncommon to interview witnesses several times in the course of an investigation as more information comes to light, as the investigation carries on.

**MR. FLAHERTY:** But just to relate your answer to what actually unfolded, the subject of this inquiry. This investigation was neither complex or complicated, was it? Particularly in the initial first couple of days?

**CHIEF SUPT. BOLAND:** Well, so it depends on which part of an investigation – you know, a loss of life, discharging of a firearm. You know, that’s pretty heavy-duty stuff, obviously.

**MR. FLAHERTY:** Oh, it’s definitely heavy duty, but it’s not complex or complicated.

**CHIEF SUPT. BOLAND:** So I would suggest it is complex and complicated, in some regards, not all aspects of that. When you talk about, when you’re sitting with somebody – you know, in the context of the interview with Ms. Dunphy, she’s just lost her father.

**MR. FLAHERTY:** Yep.

**CHIEF SUPT. BOLAND:** You know, that’s as complex and complicated, I think, as any trauma will come in a person’s life, or any difficult situation would come in a person’s life.

**MR. FLAHERTY:** And I agree with you.

Finally, the premise was put to you today, that traditionally, it has always been the case that information would not be provided following the end of an investigation. And you suggested that: well, releasing information depends on the circumstances of the investigation. Correct? Correct?

**CHIEF SUPT. BOLAND:** Yes. So that’s a pretty broad issue. You know, sometimes the release of information is part of an investigation.

**MR. FLAHERTY:** So from public interest perspective, I’m going to provide some, what I would think are differences, different circumstances that may support the release of information.

In the investigation of Constable Smyth, we aren’t just investigating the actions of a normal citizen. Correct?

**CHIEF SUPT. BOLAND:** Yeah.

**MR. FLAHERTY:** A police officer is different from a non-policer officer.

**CHIEF SUPT. BOLAND:** Yes. Yeah, I would agree to that.

**MR. FLAHERTY:** That's pretty uncontroversial.

**CHIEF SUPT. BOLAND:** Yeah.

**MR. FLAHERTY:** And the reason why that is uncontroversial is that from a public perspective is that there is a continuing relationship between the citizens of the province and the subject of the investigation. Whereas, instead of Constable Smyth, Joe Smyth, if it was just Joe Blow on the street who killed someone, that type of consideration does not exist, does it?

There is not a continuing relationship between Joe citizen like there is between a police officer in a police force. Correct?

**CHIEF SUPT. BOLAND:** Correct. Yes.

**MR. FLAHERTY:** And flowing from that would you not agree that citizens need to trust the police to protect them?

**CHIEF SUPT. BOLAND:** Yes.

**MR. FLAHERTY:** Those are all my questions.

**THE COMMISSIONER:** All right, we have about seven minutes.

Sorry, we have – counsel have a question?

**MS. O'BRIEN:** No. Sorry, I was just indicating if the RCMP counsel would be next. Sorry, Commissioner.

**THE COMMISSIONER:** Oh yeah. Yeah.

**MS. BUIS:** Commissioner, I'm filling in for RNCA today and I have a few very brief questions.

**THE COMMISSIONER:** For the RNCA. Okay, go ahead.

**MS. BUIS:** Good afternoon, Chief Superintendent Boland. Amanda Buis, counsel for RNCA.

**CHIEF SUPT. BOLAND:** Okay.

**MS. BUIS:** We heard in your evidence yesterday that you were considering bringing in an outside police force as one of the options prior to bringing in an independent observer. Correct?

**CHIEF SUPT. BOLAND:** Correct.

**MS. BUIS:** But we ultimately know that you made the decision to not.

**CHIEF SUPT. BOLAND:** Right.

**MS. BUIS:** Okay. Are you familiar with the recommendations in the Reid/Power inquiry, also known as the Luther report?

**CHIEF SUPT. BOLAND:** No, I'm not.

**MS. BUIS:** So this was an inquiry that happened in Newfoundland in 2003 concerning the deaths of two gentlemen at the hands of the police.

**CHIEF SUPT. BOLAND:** So I'm familiar with the inquiry.

**MS. BUIS:** Okay.

**CHIEF SUPT. BOLAND:** Yeah. Yeah, but I'm just not familiar with the recommendations.

**MS. BUIS:** Okay.

I'm going to read a recommendation to you. So it's Recommendation #26 and it says: "It is hereby recommended that the Minister of Justice enter into an agreement with the R.C.M.P., through contractual provision or otherwise, for the engagement of an outside police force, such as the Ontario Provincial Police to investigate any future death of any person caused by an R.C.M.P member in the execution of his/her duties. As indicated above, this recommendation has nothing to do with the R.C.M.P competence or professionalism. It has everything to do with public perception and would provide a consistent approach throughout the Province in the event that such a future tragedy arises."

It continues: "A similar protocol as has been developed with the Royal Newfoundland Constabulary, should be put into effect." So you have no familiarity with that recommendation?

**CHIEF SUPT. BOLAND:** So not specific there, no. Not the recommendation itself specifically, no.

**MS. BUIS:** So you didn't consider that in making your decision with regards to not bringing in an outside police force?

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

**MS. BUIS:** Would you agree that this would apply? That that recommendation would apply to this situation?

**CHIEF SUPT. BOLAND:** So if I recall the wording to what you just said, it involved if it was an RCMP shooting?

**MS. BUIS:** Yes, so I'll just – sorry, I kind of went through that quickly.

**CHIEF SUPT. BOLAND:** Yeah. No, no, no, that's okay, I think I understood. I think I heard that's what the recommendation said, that the RCMP would call in an outside police force if it was an RCMP shooting.

Because the Reid and Power, if I recall, one of those matters was an RCMP jurisdiction matter and the other was an RNC jurisdiction matter. So it would be my – from what I heard in that recommendation if the RCMP were, you know, at the centre of the incident, then we would call in an outside police organization to do the investigation.

**MS. BUIS:** Yes, the same as if the RNC were at the centre, then the RNC would call in an outside.

**CHIEF SUPT. BOLAND:** Yes, yes. Yeah.

**MS. BUIS:** Yes, okay.

So I'm going to put to you that the spirit of this recommendation is really that the police should not be investigating the police as opposed to RCMP, not RCMP and RNC, not RNC.

**CHIEF SUPT. BOLAND:** So I don't disagree with this. When you talk about the spirit of something that in that case, you know, the justice at the time could have been thinking go outside the province for another investigation, investigative agency.

**MS. BUIS:** Okay. So would you not agree that having an outside police service would help with the public perception of independence?

**CHIEF SUPT. BOLAND:** So going back to the decision I made, I saw us as an outside police organization outside of the RNC. We are two police organizations housed, operating within the province here, but we're different organizations in many, many ways – very different. And I saw us as having that independence in the jurisdiction.

The two organizations are different in many ways. To start the list: policy, practice, size, some of our issues around equipment, all types of training, all types of different things. So I saw us as that independent. Now, having – at the time that's what I based that decision on.

**MS. BUIS:** But there is a process in place for obtaining an outside police service. Correct?

**CHIEF SUPT. BOLAND:** No. No, not for us there isn't. There's no formal process in place.

I've gone out to outside agencies before and I have a lot of – and not just me. You know, the organization, there isn't a hard and fast policy written on it. When it's dealing with our own – directly with our own people, we have some policies around that. But for how I go out and select an investigation agency, there's no hard and fast policy or protocol on it.

**MS. BUIS:** So no memorandum of understanding or memorandum of agreement –

**CHIEF SUPT. BOLAND:** No.

**MS. BUIS:** – with another police service so that you would investigate them and they would investigate you?

**CHIEF SUPT. BOLAND:** None that I am aware of, no.

**MS. BUIS:** We heard yesterday that in an email from yourself to Ab Singleton that you had delegated the media to Sergeant Greg Hicks. Correct?

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

**MS. BUIS:** So although the media for the investigation into the incident was being handled by the RCMP, could the RNC have spoken to the media about instances such as support for their officer?

**CHIEF SUPT. BOLAND:** Could they have?

**MS. BUIS:** Yes.

**CHIEF SUPT. BOLAND:** I believe so, yes.

**MS. BUIS:** Okay.

**CHIEF SUPT. BOLAND:** Yeah.

**MS. BUIS:** Or something like a workplace, workplace trauma or things happening in the workplace with regards to the RNC that do not directly affect the investigation.

**CHIEF SUPT. BOLAND:** So, yeah, you know, those org – I can think of a number of organizations that could have had – could have spoken to issues that wouldn't have raised an eyebrow with me; you know, the association itself. I often hear police associations in other jurisdictions. I hesitate to name any specific, but Ontario, I think I've heard the Toronto Police organization, association or union speak out openly, publicly about matters.

So I can think of a number of organizations that could speak to issues. I'd get heartburn if they were talking about the investigation but anything outside the investigation, certainly well, well within their realms.

**MS. BUIS:** That's all I have for you.

Thank you.

**CHIEF SUPT. BOLAND:** Okay. Thanks.

**THE COMMISSIONER:** Thank you, Ms. Buis.

**MR. FREEMAN:** I have about five questions, Mr. Commissioner, if you'd like me to proceed.

**THE COMMISSIONER:** Go ahead. Sure, Mr. Freeman.

**MR. FREEMAN:** Superintendent, you've said the PSU was not an integrated unit.

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

**MR. FREEMAN:** But you did say that one RCMP member was seconded to it.

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

**MR. FREEMAN:** You've said that one RCMP member being seconded to that unit didn't change your decision for the RCMP to do the investigation.

**CHIEF SUPT. BOLAND:** That's correct. In, in – so on that Sunday, when I made the decision to go ahead with the investigation, the composition of the PSU didn't come into my factoring of that decision.

**MR. FREEMAN:** And then having learned of that secondment or process that information, I just want you to elaborate on why that didn't change your decision. I don't think you had a chance to really elaborate on why.

**CHIEF SUPT. BOLAND:** So I saw the secondment as a very straightforward, black and white routine of what that personnel, that person did. They were assigned to a unit that did separate

independent work; it had nothing to do with the investigation. There's no crossover between, you know, you know – with the exception of, you know, some administrative, they might have been on training together. There was no, no crossover or responsibilities between the units that would have been involved in investigation and the PSU itself.

**MR. FREEMAN:** Okay.

Another issue came up yesterday and the Commissioner had mentioned perhaps it was clear as mud. And I just want to give you an opportunity to perhaps clarify it if we can. There was reference in some of the correspondence with the RNC to any independent external investigation being at the discretion of the RNC. Can you just elaborate for us on what exactly you meant by that?

**CHIEF SUPT. BOLAND:** That's where I was referring to the administrative reviews. So organizations, policing organizations, when they have a matter like this unfold, have to not only respond and work around the operational investigation part of the incident, but they have to examine if their policies, if their training is appropriate, if the policies and systems that they have in place.

So I was very familiar, having been involved in other incidents, in matters and issues over the years, that it would likely cause an investigation or a review of their administrative processes. They would have to – is there training appropriate? Is there – are the assignments, duties and responsibilities clear? Is there use of any of their systems, policies, databases, those things done appropriately so ...

And in most cases, and dependent on the complexity, a lot of times those reviews are done internally. But it's not uncommon to call in outside organizations and agencies to look at those things for you and to, again, give that fresh set of eyes.

Every police organization, I believe that I'm aware of, is always interested in evolving their practices and policies to ensure that they're current and compliant on several fronts, you know, not only within the realms of an investigation and the public interest, but in the realms of employee safety, organizations. And it doesn't have to be a policing organization; health and safety, occupational health and safety issues, issues around training and ensuring employees know what their duties and responsibilities and the expectations around those are.

**MR. FREEMAN:** And so did the RNC have any say into whether ASIRT, for example, would be called in to look at the RCMP investigation?

**CHIEF SUPT. BOLAND:** No, none whatsoever.

**MR. FREEMAN:** Okay.

We've talked a little about the possibility of calling in an outside force and that decision-making process. I wonder if you could talk a little bit about the logistics of calling in an outside agency, be it ASIRT or be it another police force.

**CHIEF SUPT. BOLAND:** So in this case it didn't factor into my decision making on Sunday, but there are significant challenges around calling in outside agencies. Not necessarily challenges that can't be overcome or that they can't be dealt with but to – you know if you have to freeze-frame a scene while you're waiting for another investigation agency to show up, that can be very challenging to preserve and protect the evidence.

In the environment of the scene you could have numerous factors, you know, influence what you're doing as simple as weather, if you have weather influencing what you're doing; the circumstances, conditions inside of the home, inside of the building or inside of a house. So calling in outside agencies, they don't arrive fast. You've got to reach out into the senior management of organizations, ask for their support. Sometimes they say no; sometimes they can't do it and you've got to start going elsewhere and looking. So you're starting fresh every time explaining what you need.

So logistically, getting outside investigation agencies to come is challenging. I don't know how broad an understanding people have of what it means to bring in an outside independent agency. In my experience, when you call in another police service they don't bring in 100 per cent of the resources that are needed to conduct an investigation. In my experiences, in most instances the support services that they need, whether it's forensic or whether it's a search of a vast area of property, if you have to bring in a police dog to search half an acre of land, all of those resources generally are the resources that are on the ground and belong to the police organization of jurisdiction.

So therein lies some of the challenges, because the majority of the people who are presenting information and evidence here would have been the same people, regardless who came in from the outside to conduct that investigation. Not that it's, should be a contributing factor. We've been fortunate here with our funding, funding contract that there – I've never experienced an instance where somebody has – when I've said I'm going to do something, somebody says, well, what's that going to cost.

I've never had the experience here that an investigative avenue hasn't been followed up because of funding; however, being in the senior management role that I was in here, budgets were a significant part of my work. And when you bring in outside organizations, you're looking at significant cost. I've heard figures of upwards of \$100,000 to do an independent, have an outside organization come in to do an investigation. That becomes very costly. But, like I said, I want to be very cautious in underlining that I've never experienced anybody in this province saying to us, don't do that because we can't afford it. You know, we've gone out and done some extraordinary things in investigations here in the province in the spirit of getting as much information and evidence as we can.

So then – and the Commissioner, I think, himself mentioned it – there's the aspect of blue on blue. This is one of the lines in the articles that I've read over the year. When you have police investigating police, it's a significant challenge.

I'm also aware of a civilian agency in the country, just reading articles – and not saying that they're entirely trustworthy, but reading articles in publications about civilian investigation and organizations because of that need. As the Commissioner struck on, we've all heard about the need for having people with investigative experience to conduct investigations. And when you have civilian organizations – I'm aware of one article, some of the areas I've read where one of the civilian organizations had a very high level of not proceeding with any type of charges against people that they've been subject of to an investigation. And, you know, after decades – I think this organization has been in place for decades – somebody said, hey, you've investigated 100 cases and you've only charged once. How come you didn't charge the other 99 times?

So some of the perceptions come from that, that it's still, the police are getting off with everything. But, again, from my view and my opinion and my experience, again, too, it's – I don't see too many cases where these issues when they're investigated that they're not investigated well, and these outcomes are outcomes based on evidence and information. So it's quite a challenge to determine a good model.

**MR. FREEMAN:** You were asked – thank you. You were asked about the fine balance between the release of information and protecting an investigation. And I’m not sure if you’re fully aware, you may have heard in the news having been retired, but we had some anonymous letters come forward in this matter. Are you aware of that?

**CHIEF SUPT. BOLAND:** Yes. I just saw that in the news that, I think the Commission was delayed, wasn’t it? Even in its – was the release of information –

**THE COMMISSIONER:** The release of reports were delayed roughly a week or so, I think 10 days. Correct?

**MR. FREEMAN:** Right. And so the purpose of my question is just to say whether the release of information could impact on things like that, anonymous letters then being more robust with facts if more information is released. Does that go to this fine balance you’re talking about?

**CHIEF SUPT. BOLAND:** Oh, I think so; very much so. Maybe some of my former police colleagues will be a little annoyed with my comment, but sometimes you put things out there to get a reaction. You know, I’m aware it’s a tactic or a technique within an investigation to put information out to stimulate interest, especially in historical matters. Not necessarily in a case like this, but in historical matters where you want to jog people’s memories or you want to kind of get people thinking back again as to what could have happened in the past.

**MR. FREEMAN:** So the information releases are tactical I guess. Is that a fair way of paraphrasing what you’re saying?

**CHIEF SUPT. BOLAND:** In some circumstances it can be tactical. And it’s sometimes used to, like I say, just to stimulate public interest and bring as much forward. The goal for any investigation organization is to get as much evidence and information as they can.

**MR. FREEMAN:** Thank you.

I just have one more question. Madam Clerk, if you could pull up P-0570, please. That’s the press release email.

I’m just going take you to paragraph number four there. We can see that paragraph, which we’ve talked about here today or you’ve talked about here today says: “To date, the RCMP investigation indicates,” and it goes on to describe what is being said there.

So what’s the purpose of the language: “To date, the RCMP investigation indicates ...”?

**CHIEF SUPT. BOLAND:** So the purpose of that language is just to assure the reader that this release – so this release became stale-dated the minute the time, date and stamp went on it. That was the information right up until that release.

Seconds, minutes, hours and days after that release more information could have come in or, you know, would have come in. And up until that moment in time that’s the information and evidence that we had, and that it would leave me to understand that the investigation, you know, it’s ongoing. The matter is ongoing and still moving forward.

**MR. FREEMAN:** Okay.

Thank you, Superintendent. I have no further questions.

**THE COMMISSIONER:** All right, I hope nothing further. It went over a bit further, longer than I expected. I apologize for that.

So we'll take an extra 15 minutes, if that's all right, Mr. Avis.

**MR. AVIS:** Sure, just one quick question, Sir.

Commissioner, what do I do with Inspector Sheppard? He's supposed to be this afternoon. Any thoughts?

**THE COMMISSIONER:** I don't think we're going to get to him this afternoon by the sound of it. Your estimates of how long we were going to take this morning was considerably out of whack from –

**MR. AVIS:** (Inaudible.)

**THE COMMISSIONER:** – from what was given me yesterday. I'm not saying you; counsel generally.

**MR. AVIS:** Yeah.

**THE COMMISSIONER:** So I'll let it go. To some extent there is repetition or duplication but, again, we're getting at – Superintendent Boland is at the higher level of management, so we – I let it go in terms of hearing from him. But there are other witnesses who will be able to deal, as he pointed out at the end, better with some of the questions that were put to him.

So I'm going to have to, in order to keep this from bogging down I think, periodically question whether the, there should be extensive examination of one witness as opposed to another who will supply probably more detailed information on a particular point.

But, anyhow, for now – sorry, Ms. Chaytor, go ahead.

**MS. CHAYTOR:** Yes, I think that we, it's safe to say we'll be most, if not all of the afternoon, with Deputy Chief Singleton.

**THE COMMISSIONER:** Yeah.

**MS. CHAYTOR:** So the plan then would be to have Superintendent Sheppard first thing tomorrow morning.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** Thank you.

**MR. AVIS:** Thank you.

**THE COMMISSIONER:** All right, thanks.

We'll adjourn until what, quarter to 2, is it?

Thank you.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now recessed.

**Recess**

**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry in session.

Please be seated.

**MS. CHAYTOR:** Okay.

Good afternoon, Commissioner, and good afternoon, Deputy Chief Singleton.

If we could have, please, Deputy Chief Singleton affirmed.

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

**D/CHIEF SINGLETON:** I do.

**MS. SHEEHAN:** Please state your full name.

**D/CHIEF SINGLETON:** Alvin Gerard Singleton.

**MS. SHEEHAN:** Thank you.

**MS. CHAYTOR:** Commissioner, there are a number of exhibits that I would ask to have entered through this witness. And we have exhibit numbers P-0464, P-0465, P-0467 through to 0472, 0474, 0475, 0478, 0481 through to 0491 –

**THE COMMISSIONER:** Sorry, the last one (inaudible).

**MS. CHAYTOR:** 0491. So 0481 to 0491 –

**THE COMMISSIONER:** To –

**MS. CHAYTOR:** – inclusive.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** 0493 through to 0499, 0561 and 0617.

**THE COMMISSIONER:** Okay, so ordered.

**MS. CHAYTOR:** And, Commissioner, before we get started, Deputy Chief Singleton has timelines that he has prepared and he, through his counsel, has asked whether or not he could refer to the timelines during his evidence.

His solicitor, Nick Avis, has canvassed other – the other counsel and my understanding is that nobody has any issue with that.

**THE COMMISSIONER:** No issues with it? Okay.

**MS. CHAYTOR:** Okay.

**THE COMMISSIONER:** That will be fine.

Now, I'm supposed to – a housekeeping matter before we start, I think, regarding the telephone data, is it?

**MS. CHAYTOR:** Oh yes.

**THE COMMISSIONER:** I think there have been some discussion amongst some counsel anyhow. Because of the recent discovery that relevant data was not retrieved by the RCMP from Constable Smyth's cellphone, the Commission requires production of the complete data – the complete data set from both cellphones seized by the RCMP so that an independent analyst can review and ensure that all relevant emails, texts, BBMs and all other relevant information is obtained to the extent possible.

The Commission understands that the RCMP has this telephone data. RCMP counsel, as I understand, have raised a concern that they collected the data from Constable Smyth's cellphone based on a consent search that only authorized them to search data from April 2 to April 24, 2015.

As the only two parties who might have any interest in the cellphone data, the RNC and Constable Smyth are parties with standing before this inquiry who are under a duty to produce all relevant documents. I assume there's no issue here, but I wanted to give the parties a chance to speak to it before I ordered their production. So I think the RCMP counsel may be assuming that there's need for further consent, but it would seem to me that the order to produce all relevant documents would apply in this case.

Ms. Rasmussen, Mr. Freeman, do you have any comment?

**MS. RASMUSSEN:** Thank you, Mr. Commissioner.

Yes, our position was that the complete phone data extraction was necessary to extract the messages from the date range that were consented to.

**THE COMMISSIONER:** Right.

**MS. RASMUSSEN:** So the other data did not factor into the investigation and therefore was not relevant insofar as our investigation went.

I had spoken to Commission counsel about this issue which got us into the nature of any federal immunity to compelling the data to be produced and simply wish to avoid a lengthy argument on that. So we had expressed the – our preference that a consent be obtained from Constable Smyth to produce the rest of the data that actually wasn't looked at by the investigators.

**THE COMMISSIONER:** Yeah and part of the reason it wasn't looked at, I believe, is because there's some, there's some error regarding the date, the ...?

**MS. RASMUSSEN:** No, that's not exactly correct, Mr. Commissioner. The data that – so in order to get any data from the phone, as I understand it, you have to extract the complete data.

**THE COMMISSIONER:** Right.

**MS. RASMUSSEN:** And then Constable Smyth had consented to the date range of April 3 to April 24. And so that was the date range that the analyst had thought he had completely mined for the data.

The issue with respect to the dates came about mostly because of an issue with the, the software –

**THE COMMISSIONER:** Yeah.

**MS. RASMUSSEN:** – that's used to extract the data, which didn't show any relevant information for a certain date range – well, inside the date range for certain people.

So as a result of Corporal – or Corporal Noel's testimony, it came to light that there were messages that appeared to be within the date range that the software did not show in that date range and that resulted in going back and looking through the data. So it wasn't entirely because of the data range that was given that that data wasn't found the first time.

In any event, that's where we stand. We would prefer to have a consent from Constable Smyth and then we would have no problem in, in turning over the rest of the data, which actually wasn't looked at, but ...

**THE COMMISSIONER:** Right.

Mr. Kennedy, I guess you're the other affected counsel. Do you –

**MR. KENNEDY:** I really don't understand the request, Commissioner. Ms. O'Brien mentioned briefly today, we didn't have a chance to follow up on a conversation that you would be making or addressing some issues.

Is the Commission asking for information between April 3 and 24 for which the consent applies or for information outside of that consent?

**THE COMMISSIONER:** We are trying to make certain that we have all the information within those dates, as I understand. But because of the software quirk I'd say, that's mentioned by Ms. Rasmussen, we may not have gotten all documents within those dates. I don't fully understand – I haven't had it explained to me –

**MS. RASMUSSEN:** And I –

**THE COMMISSIONER:** And I'm not sure your technicians understand it either, Ms. Rasmussen, in terms of why it may not have been picked up for, you said, certain individuals within those dates.

**MS. RASMUSSEN:** Well, I think – our analyst is prepared to explain to the Commission what happened and he will be testifying later as to what happened, and he has had conversations with the software company who, I understand, could not explain to him why this happened. Now, it may be an issue because it is a BlackBerry phone as opposed to, say, an Apple phone, I don't know.

The issue now – our analyst is confident that the Commission has everything within the date range; however, he cannot extract just that range in the form of what is called a complete extraction by itself. When you do an extraction from a phone, as I understand it, you do the extraction, it gets everything on phone, and then, what he was tasked to do, was go into that and take that date range.

So he cannot now extract just that date range as a – quote, unquote – complete extraction in the form that it takes initially as a complete extraction to show you. He is confident that he's now mined and double checked and had other people check that there is no outstanding information within that date range of April 3 to 24. But he is not in a position to show you a complete extraction without all the other data from outside those dates. That's how I understand it, and I don't know if that may be as clear as mud.

**THE COMMISSIONER:** Well, it's the problem with – if the software company doesn't know what the problem is, I'm almost certain that I wouldn't. I'd have to leave open the possibility of a miracle, I guess.

Did you follow that, Mr. Kennedy, the thought that we're intending to bring out anything outside of those dates – we're looking for, if I understand, it all the material within those dates. Is that correct, Counsel?

**MS. CHAYTOR:** Yes, that's right or if there – you know, within – it may be that there is a couple of dates before that. We already have material from the phone that's back to April 1, so there may be. But that's the date range we're looking, but what I what I understand the –

**THE COMMISSIONER:** But it was April 2, you're not looking for any –

**MS. CHAYTOR:** April 3, I think, Ms. Rasmussen said.

**MR. KENNEDY:** Consent was April 3.

**MS. CHAYTOR:** April 3, yeah.

**MR. COMMISSIONER:** No, why did I have the 2nd right there?

**MS. CHAYTOR:** So it might be a couple of days one way or the other. We are obviously only looking for what's relevant to the Commission. And what I understand the RCMP's dilemma is that they can't just give April of 2015.

**THE COMMISSIONER:** It was all dumped into, yeah.

**MS. CHAYTOR:** It's all – right, so more than that has to come to the Commission but the Commission is looking at what's relevant and there may be – there are things that we've asked of the RNC – RCMP analysis that they're not able to provide to us, such as anything that may have been deleted in that time period.

They haven't been able to – they've gone back and they've tried, but they haven't been able to do that. So we're also looking at – so we're only looking to get whatever is relevant, can't say that it starts at April 3; might start at March 31. But we're looking to have, you know, obviously anything that's relevant to the Commission.

**THE COMMISSIONER:** Can you explain to me how something that starts at March 31 would be relevant?

**MS. CHAYTOR:** I don't know if there were any – we're looking to see if there may have been any other communications that the Commission doesn't already know about, which may pertain to this matter. It's possible, but depending on the date issued, because it's really not clear in our minds either in terms of how, you know, the issue regarding the dates and why it was only with respect to certain people, so I don't want to stand here and say that yes, it's strictly that date range. We're looking for what may be relevant to the Commission and within that date range

we're hoping to be able to recover documentation or information that hasn't been retrievable by the RCMP.

**THE COMMISSIONER:** Do you want to think about it overnight, or for a day or so?

**MR. KENNEDY:** Well, I can indicate, Mr. Commissioner, one of the problems I have here – and again, I'm not saying it's anyone's fault, but I would have expected that when my client spent six days on the stand that whatever relevant information was out there would have been put to him at that point.

**THE COMMISSIONER:** Well, now, Mr. Kennedy, some of the reason that your client, as I understand, may be called back is because of what appears to be, on one interpretation, an oversight by him in terms of what was available, information that was available that we didn't receive – isn't that the case?

**MR. KENNEDY:** Mr. Commissioner, there is one if – I don't know which one you're particularly talking about, there's, there's –

**THE COMMISSIONER:** I'm thinking about the BBMs there now I think.

**MR. KENNEDY:** Yeah, there's – but my point is that, this has been worked on for a period of time; that it should have been available to put to my client while he was testifying, and now we're placed in a position whereby –

**THE COMMISSIONER:** We didn't have it. You know, you understand that.

**MR. KENNEDY:** Well, I'm not getting any assurance here from Commission counsel today that this is anything but a fishing expedition. I mean, she – we're talking about April 3 to the 24, the consent was given by my client back at that point. And all of a sudden, well, let's go back to March 31, let's go to April 31. I don't think that that's appropriate then, Mr. Commissioner.

**THE COMMISSIONER:** Well, I have the same question as you in terms of the March 31, but – Ms. Chaytor, you have –

**MS. CHAYTOR:** Yeah.

I throw that date out there, I'm not – I don't know March 31; it's probably April 1. I don't know, I'm just throwing that out. But the person we were speaking to in terms of an expert cannot get this data into his hands without us having the entire data.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** That's the issue. So that's the issue we're dealing with and that's the only dilemma that the RCMP finds itself in in not – the RCMP wants to co-operate and put this into our hands, from what I understand, but their dilemma is they can't just take a certain date range and give it to us.

**THE COMMISSIONER:** They would be giving us the prior documents and the prior time, but we'd have to give some, provide some safeguards as to how we'd use them – wouldn't we not in –

**MS. CHAYTOR:** Commissioner, there hasn't – and I agree and it's within what's relevant to the Commission, but I would hesitate to put any date range on what may be relevant to you. We have a lot of documentation that has come forward that predates April 3 of 2015. We have a lot

of documentation that we've poured through and looked at and what someone might not – from what I'm hearing, I mean, Constable Smyth, of course, didn't have recollection of certain communications that he had. There may be other communications that he's not remembering that's there, so I don't think we should limit ourselves –

**THE COMMISSIONER:** That would relate to the incident on April 5 –

**MS. CHAYTOR:** There may be; I don't know.

**THE COMMISSIONER:** – what occurred sometime before that.

**MS. CHAYTOR:** There could very well be. You have other communications that we've looked at that, you know, may be of relevance to you in your mandate and your terms of reference. So there's been an issue here in terms of – from what I understand, we've only heard so far from Acting Sergeant Buckle, but what he has said is that neither he nor Constable Smyth remembered the BBMs. So perhaps there are other communications that may have led up that have escaped the memory of Constable Smyth.

So I don't want – I don't think you should box yourself into saying any particular date. Obviously, we're not going on a fishing expedition. We've got enough to do. We have enough documentation to be looking through as it is. We do not intend to do that. We're only looking for whatever information that might be out there that is relevant to your mandate.

**THE COMMISSIONER:** Yeah, I have some concerns about it. The definition of a fishing expedition would include a situation where you don't know – where what you find is relevant but you don't know – you don't have a basis for asking for it before you obtain it. I think I'm going to take a day or so to just look at this further in terms of how we can avoid it being regarded as a fishing expedition.

Mr. Kennedy, Ms. Rasmussen, I'd like both of you to give some further thought to how we might be able to resolve this as well. I'm not satisfied, Mr. Kennedy, just saying, well, it should've been found previously. Because we had to go looking and, you know, we got – I think Ms. Breen noted an anomaly initially and then the Commission staff, Commission counsel, got at it and found a series of BlackBerry messages – BBMs so called – that have some relevance, the extent of which will be debated I'm sure.

It seems to me that it's in everybody's interest to make sure that we have everything that, that is there that should go it, so – but I don't want to, to give the appearance of engaging in a, as you say fishing expedition. So if there's any way we can, we can provide some protection there that satisfies your client, Mr. Kennedy, we'd look at it very closely.

**MR. KENNEDY:** So wouldn't a logical suggestion be to – early next week to bring in this witness from the RCMP who has been dealing with these messages and hear what – I think it's a he – what he has to say?

**THE COMMISSIONER:** That may be, unless we know before we call him that he's not going to be able to say anything because –

**MR. KENNEDY:** I would like to –

**THE COMMISSIONER:** – the software company can't explain why the anomaly is occurring, but it may be we can get more information ...

**MR. KENNEDY:** He's being called as a witness is my understanding, Commissioner.

**THE COMMISSIONER:** Sorry?

**MR. KENNEDY:** He is being called as a witness; it's my understanding.

**THE COMMISSIONER:** Now, is he – where is he on the list? Do we ...?

**MS. CHAYTOR:** I'm not sure where – is it Corporal Luther, where Kent Luther is on the list at this point in time, but I can tell you that – and I'll ask Ms. Rasmussen, please, if she could correct me if this is wrong, but I understand that he has said that he cannot retrieve deleted information. We've asked for certain information that was deleted, for example.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** So I understand that's that answer.

I understand the explanation that Ms. Rasmussen gave in terms of the software issue. That is the explanation so I don't know that he's going to say anything other than what Ms. Rasmussen has told us. That's what I understand his explanation would be. So we, we have had communications with an expert who is optimistic that he may be able to find additional information that has been deleted within the time range of what we already have.

And I think the only issue is that the RCMP to be able to pass this over to us, and as you said, Commissioner, that there's – you know, the parties are required to produce whatever's relevant, but for the RCMP to pass it over to us, their concern, they had a consent within the date range.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** They're prepared to pass it over to us. So if – what we need to figure out here is whether or not – to reassure them that they can go ahead and pass it over to the Commission and then we can have our expert look at it and, hopefully, we'll get the answers that Kent Luther hasn't been able to provide.

**THE COMMISSIONER:** I don't see Kent Luther's name on the –

**MS. RASMUSSEN:** Mr. Commissioner, I believe he was scheduled for maybe last Friday and had to be bumped and has not been rescheduled.

**THE COMMISSIONER:** He hasn't been rescheduled yet.

**MS. RASMUSSEN:** Just a couple more comments.

So the software issue, once it was identified, has not been an impediment, I don't believe, to finding the data. So it was an impediment to finding the data initially, but I don't think it's an ongoing issue now.

**THE COMMISSIONER:** But your expert seems to be saying that he or she is not convinced that they will be able to bring up deleted items.

**MS. RASMUSSEN:** Well, I think, that whether the Commission has an expert who can do that or not, I'm not sure but –

**THE COMMISSIONER:** We don't know yet but we have, I think, counsel says they have somebody who thinks that they might be able to.

**MS. RASMUSSEN:** And my understanding is some of the delete – like some of the BBMs were deleted and yet retrieved, but emails were not. So it may be an issue with the type of message, but one possibility would be to have Corporal Luther, before he testifies, sit down with the Commission’s consultant or expert and perhaps they could go through this together. The only remaining concern I would have with that is with the dates again, that we are only authorized to produce the data between the date range and the consent.

**THE COMMISSIONER:** Right. Well, we can do that probably now. That’s already been done, is it not, the consent for those dates?

Your concern – would it, does it have to be passed over in terms of if your expert consults with our expert, is that ...?

**MS. RASMUSSEN:** No, my concern – perhaps it could be done with an undertaking, too, at least at this point, to only look at the data between the date range. It just leaves us with the dilemma of the data that’s outside the date range and how to deal with that because we were only given consent for that, those dates.

**THE COMMISSIONER:** Yeah. I think I want a little bit of time to think about it. I don’t want to be creating any bad precedents here, if I’m in a position to do that.

Okay, give some thought, Mr. Kennedy, to, to the notion of the undertaking as well, but we’ll come back to this probably Monday. Would that be – that too late? That’s too late?

Okay, then it’s only tomorrow. All right, give me until tomorrow.

**MR. KENNEDY:** Shouldn’t we provided –

**THE COMMISSIONER:** Mr. Kennedy.

**MR. KENNEDY:** – Mr. Commissioner, with some indication of who this expert is and what’s going on. I mean, I have no idea what, what Commission counsel is talking about in terms of having an expert to review –

**THE COMMISSIONER:** Well, having the name of the expert is no, is not going to change anything, is it?

What, what Commission counsel is talking about is that they have identified a person who says that – I think it’s a he, he –

**MS. CHAYTOR:** It is.

**THE COMMISSIONER:** – he might be able to establish whether or not there are documents which have been deleted which might be recovered. And that would be within those, those dates we’d be looking at. And the problem is that in order to get, to be sure we’ve gotten, as I understand it, within those dates, we’re dealing with a document or a data dump that includes quite a bit more.

Sorry, what else was it you were concerned about knowing, apart from the –

**MR. KENNEDY:** I’m, I’m concerned about the whole issue of fairness, Commissioner. I came forward with, to Commission counsel, with names of a couple of experts that I wanted them to consider calling and they weren’t interested in that. And all of a sudden now, the Commission

can come up with an expert of their own to deal with an issue that – I just think there's a certain unfairness in this whole procedure, Commissioner.

**THE COMMISSIONER:** What is, what is unfair about –

**MR. KENNEDY:** What's unfair, Commissioner –

**THE COMMISSIONER:** We're trying to get at the, all – they don't have to accept the suggested experts that you've put forward if, if they have another who they believe can bring something that useful to them.

**MR. KENNEDY:** No, they just rejected outright.

**THE COMMISSIONER:** Sorry?

**MR. KENNEDY:** They just rejected outright the recommendations or considerations I had moved forward.

**MS. CHAYTOR:** Who?

**THE COMMISSIONER:** When was this?

**MS. CHAYTOR:** No, (inaudible).

**MR. KENNEDY:** Before, prior – excuse me, Ms. Chaytor – before we started this hearing. This whole issue of the independent observer, I had sent a letter to the Commission outlining, to Commission counsel outlining in great detail that I wanted to call a – they should consider calling an expert in relation to the role of an independent observer.

**THE COMMISSIONER:** So you're not talking about an expert on this point at all?

**MR. KENNEDY:** Not on this issue, no.

**THE COMMISSIONER:** Well, I don't –

**MR. KENNEDY:** I wouldn't have known it was an issue, Commissioner.

**THE COMMISSIONER:** Pardon?

**MR. KENNEDY:** I would not have known it was an issue.

**THE COMMISSIONER:** Well, frankly, I don't see, I don't follow your argument in, in terms of their not, not accepting your suggestion for an expert with respect to the Riche report or the independent observer.

**MR. KENNEDY:** Okay.

**THE COMMISSIONER:** I don't understand how the two are synonymous. What – we're talking about something completely different here, aren't we?

**MR. KENNEDY:** No, we're talking about the role of Commission counsel, Commissioner.

**MS. CHAYTOR:** Okay. Can –

**THE COMMISSIONER:** The role of Commission counsel, you got to be a bit more precise than that. There's – as far as I can see, Mr. Kennedy, Commission counsel has been walking a fine line trying to keep a balance between all parties' interests here and, you know, I think you're going to have to be pretty detailed and specific if you're suggesting that they haven't been fair to your client.

You know, you haven't been, you haven't been bringing any of the objections to me until we get into something like this where you seem to fall back on that, but you haven't explained to me why your client would be treated unfairly by ensuring that we have access to all the, the data that we should have access to.

**MR. KENNEDY:** Mr. Commissioner, my understanding from the rules of procedure and practice here is that the – there's not supposed to be surprises, that everyone is supposed to be alert to what's happening.

My client gave a three-day, pre-inquiry interview where he was asked questions on everything. He was on the stand here for six days. So it just reaches a point, I would suggest, Commissioner, where it becomes unfair to him.

**THE COMMISSIONER:** Well, I go back to, why are we back at the phone documents? It's because we have, after further exploration, discovered documents that were not referred to by your client. And, as counsel has noted, Constable Buckle has given the explanation that he had forgotten about them.

It may be that that's – your client is in the same position. We'd like to know, hear that directly if that's so. But, the fact remains that we're back at this because we had documents that were not produced that should've been produced, and there may be a reason, a sound explanation given for it. I don't have it yet, because your client hasn't testified on the point, but I want to know why those BlackBerry messages were not noted. And I want to know, are there any others out there that have been deleted within the relevant time period that should not have been?

**MR. KENNEDY:** Well, again, the issue of deletion, I think that that's something that Corporal Luther should come before this inquiry and discuss. The issue of deletion, Commissioner –

**THE COMMISSIONER:** Yeah, and I'll consider that. That may be, that may very well be something to be considered. I'll keep that in mind.

**MR. KENNEDY:** Commissioner, I have concern about a couple of the proposed texts that Commission counsel want to use. Yes, I do have a concern, Sir.

**THE COMMISSIONER:** The proposed texts –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** – that were most recently –

**MR. KENNEDY:** That were –

**THE COMMISSIONER:** – found?

**MR. KENNEDY:** Yeah. There's one there in particular, I think it's nothing but inflammatory and it's just out to – again, it's not necessary at this hearing.

The ones with Constable Buckle, that's one issue, Sir.

**THE COMMISSIONER:** Yeah and –

**MR. KENNEDY:** The emails of April 2 or 3, whatever those dates are before the visit – April 4 before the visit, I agree with you –

**THE COMMISSIONER:** And I think I know the one you're referring to –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** – as far as –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** – possible prejudicial effect.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** And I gave some thought to that. And there is a reason why it's being put forward which we can deal with, but getting back to this, this is a more immediate problem now. We have to try and keep in mind our schedule, and as far as possible not put this off too long.

But I'm going to consider it overnight and I'm going to hear from you further, Mr. Kennedy, tomorrow, but keep in mind that I want – I want to get everything that's relevant on the table while treating your client fairly. And as I say, there's a reason why we're back at it, it's because of concerns raised by the fact that these messages, whether or not you consider them relevant now, they were not there, they were not for the Commission until we went and dug further to get them out, you know.

**MR. KENNEDY:** And then, if I could just raise the issue; so if the Commission orders my client to be recalled or he agrees to be recalled, then how far does cross-examination go? Is it wide open cross-examination again? I mean how do we deal with all this?

**THE COMMISSIONER:** No, that's been – and we know you've raised that concern. This would be strictly related to the material that's been found. So there will be safeguards there, limitations there in terms of not going back over six days again. Yeah.

Sorry, Ms. Chaytor, you have something further?

**MS. CHAYTOR:** Yes, I would. I'd just like to reply to the, to Mr. Kennedy's statement that Commission counsel – that he put forward experts and that Commission counsel just out rightly rejected those experts.

I can tell you that he put forward Mr. Paul Kennedy. And my co-counsel, Kate O'Brien, had a very detailed conversation with Paul Kennedy. He was – we very much did consider Paul Kennedy and what he could bring to bear to this process. The other person that he put forward was Mark Bellow, and it turned out that Mark Bellow was actually an instructor of Constable Smyth, and so we looked – so we did, so in that sense we did not pursue further with Mr. Bellow.

There have been other parties who have put forward experts. Meghan Dunphy put forward a biomechanical expert, as you know. We, as Commission counsel, did not think that that was something that we needed before the Commission and so they brought their application. So I don't want the suggestion left that we have not responded to all parties with respect to whatever

evidence they sought for us to put before the Commission. So I just want to make sure that that point is made.

Also, I would say that in terms of the comments in the latest BBMs that are put out, we spoke with Mr. Kennedy, we spoke with other parties, to say that we would look at serious redaction of the BBMs and I would put it back out to them that here's what we're proposing would go forward. So we did consult with Mr. Kennedy on that. Last week we sent out to all parties looking for any feedback. We put out what we intended to still go forward with. We did not hear anything further from Mr. Kennedy with respect to anything that remains in those BBMs that he found to be objectionable.

So we are trying to be as fair as we can be. We also have to be very thorough, we have to be comprehensive, we have to ask whatever relevant questions there are to be asked. The fact that there was information that wasn't recovered at an earlier stage wasn't because of any due diligence on our part.

This came to bear when we noticed that in preparing for Corporal Noel's evidence that we couldn't find the BBMs in the records, and that's how this all started. And so it is unfortunate that it is late in the game, but I've also reassured Mr. Kennedy that if his client is looking – that we would like for his client to speak to it, and would offer him of course whatever opportunity he might need to be able to speak to this. So we are trying to be as fair as we can be.

**THE COMMISSIONER:** Okay.

**MR. KENNEDY:** Again, Commissioner, I've got to correct the record here, Sir. And I apologize and I know we want to move along.

Constable – Inspector (inaudible), what we were asking was that a threat assessment expert be brought before this Commission. And that has been a real issue at this hearing as to what Constable Smyth did, should he have done it, when he went out there and – so it wasn't only Constable (inaudible), Mr. Avis raised on a couple of occasions the issue of an expert being called in relation to the state of mind of Constable Smyth in relation to the shooting incident, the effect on police officers. That whole 24 to 48, 72-hour suggestion, that's become a real issue in this hearing.

**THE COMMISSIONER:** The first I heard of it that there was any request that had not been met there. I haven't seen ...

**MR. KENNEDY:** The threat assessment expert was in writing (inaudible).

**THE COMMISSIONER:** But first of all now, you're –

**MS. CHAYTOR:** (Inaudible) threat assessment.

**THE COMMISSIONER:** There's a number of issues getting confused here now. The threat assessment; as I understand it you were awaiting the reports that are now in the process of being finalized.

Mr. Jones, who will be testifying with respect to possible deficiencies in the investigation, his report is there in the – and about to be posted, if not we're just – when did we have the date set for the posting of that? Just being final –

**MS. CHAYTOR:** We're hoping –

**THE COMMISSIONER:** Sorry, I just call this a final meeting –

**MS. CHAYTOR:** Yes.

**THE COMMISSIONER:** – telephone conference set for this afternoon on that. So you will have that report shortly, Mr. Kennedy, and decide whether or not you need your own expert to deal with matters that are contained in that report.

Then there is the, another report of Mr. Coleman and Mr. Massine who are dealing with use of force. And that one is nearing completion, I think there's been a draft or two provided, but do we have any idea of when that's likely there?

**MS. CHAYTOR:** No, there was additional information that was provided yesterday. I'm going to say yesterday or certainly the day before. With the storms I'm a bit just thrown off, but I think it may have been Monday or Tuesday of this week that we received from Sergeant James and Mr. Massine, or Sergeant Massine was waiting on that information.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** So hopefully we'll have that report in our hands by next week.

**THE COMMISSIONER:** All right.

**MS. CHAYTOR:** And so that's –

**THE COMMISSIONER:** So then the intent, as I understand it, is to let counsel see that and come to the Commission counsel with indications of whether they need something further. And, ultimately, it's the right of your client or any party, Mr. Kennedy, if they are concerned by what they consider to be lack of information, whether expert or otherwise, and they believe that something should be added by another witness, then I'll listen to that and make a decision on it. But I haven't, as far as I know, turned down anybody in terms of – so far, apart from the formal application of Mr. Simmonds where I made a decision.

Mr. Avis, I don't know the extent that counsel or Mr. Avis have discussed that matter Mr. Kennedy just referred to.

**MR. AVIS:** I raised it during the first interview with Inspector Sheppard, only in discussion. I did raise it here at the hearing and there didn't seem to be any appetite for it. Your comments at the time were we're getting an opinion, and I said, well we will have to wait for the –

**THE COMMISSIONER:** Yeah, specifically refresh my memory again.

**MR. AVIS:** That was with respect to the 24- or 72-hour business. There are expert opinions coming and the position I believe that was discussed at the time of the hearing was, you've got a report coming; well then, we'll wait for that but we may have to properly apply at that time.

So it has been raised but only in discussion.

**THE COMMISSIONER:** Yeah.

**MR. AVIS:** But it was raised.

**THE COMMISSIONER:** I don't – it wasn't raised very formally anyhow. My recollection, it wasn't – I mean it was nothing that I was aware of, Mr. Avis, that you were concerned about in that regard other than we do know these reports are coming; you'll see them.

And I don't know if they, I can't recall now if in the – are the drafts going to – have they dealt with the – this has to do with the appropriate time for getting a statement from the police officer.

**MS. CHAYTOR:** (Inaudible.)

Yeah, I believe Mr. Jones touches on that in his report. We'll also have the RNC's own use-of-force expert, Sergeant Bill James.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** And he'll mention that in his evidence as well.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** But in terms of a medical expert or something along those lines, no. No, that – and that's not even resonating with me in terms of what we discussed.

**THE COMMISSIONER:** Well, yeah, I've got my own reservations about spending another two or three months speaking to psychiatrists and psychologists and what we're going to get out of it in terms of probative value.

But anyhow, Mr. Avis, if you have concerns in that regard, I think you should first look very closely at the report when you get it, which will be shortly, of Mr. Jones and see whether you need something further after that.

Mr. Kennedy, what else was it – do you know of anything else that I missed in terms of unresolved points? Some of which are new to me frankly but ...

**MR. KENNEDY:** No. I do think the issue, though, of the expert dealing with the 24 to 72 hours, that's more than an expert giving evidence on that. There's expert evidence out there on the effect of trauma, on stress, on a police officer in an officer-related shooting because these issues have been studied throughout North America it's my understanding, Commissioner.

**THE COMMISSIONER:** Yeah, but I also get the impression – and I haven't sat down and gone through it all yet. But I have the impression that it might be far from a settled question or a settled practice, for that matter, in terms of, you know, when police officers should be asked to give or provide a statement.

**MR. KENNEDY:** That's only one aspect of it. The issue of memory, time distortion, things like that, are also issues that are affected by the officer who's involved in that shooting.

**THE COMMISSIONER:** Noted. Yeah, noted.

Anyhow, for now, we're going to proceed one issue at a time and the issue we're dealing with is the possible access to further phone documents for the purpose of having them reviewed by an expert. And I'd invite you to give some thought to it and let me give some more thought to it and I'll deal with it tomorrow morning since counsel are concerned that – and rightly so – that we're going to run out of time otherwise.

Okay, let's proceed with the witness now and we'll continue further tomorrow morning.

**MS. CHAYTOR:** Thank you.

**THE COMMISSIONER:** Sorry for the wait, Chief Singleton, but I'm sure you've seen it before.

**MS. CHAYTOR:** Good afternoon, again.

**D/CHIEF SINGLETON:** Good afternoon.

**MS. CHAYTOR:** Okay.

Deputy Chief, I understand that you've been a member of the RNC for 34 years.

**D/CHIEF SINGLETON:** Thirty-six years.

**MS. CHAYTOR:** Thirty-six years, okay. Sorry about that.

And that you are deputy chief of Criminal Operations with the RNC.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And that was the same rank and position that you held in April of 2015.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

Perhaps you could tell the Commissioner what it means to be the deputy chief of Criminal Operations for the RNC?

**D/CHIEF SINGLETON:** Well, the RNC – I guess, on the high level is the chief and then there's two deputy chiefs: one in charge of Criminal Operations; the other deputy chief in charge of Patrol Operations.

As the deputy chief of Criminal Operations, I'm responsible for three different divisions of or units within the RNC, the largest being the Criminal Investigation Division. There's another one, Information Management services and the other one is the Combined Forces Special Enforcement Unit. These three entities fall under the command of the deputy chief of Criminal Operations.

**MS. CHAYTOR:** Okay.

And as you are the first witness that we've had from the RNC management, I'm just going to bring up P-0515, please, Madam Clerk. And this is a piece of an organizational chart for the Criminal Operations of the RNC.

I understand, if we could just make this a bit bigger, this was as of October 2014, Department of Public Safety, Royal Newfoundland Constabulary, Criminal Operations. So that's as of October 2014 but I understand that this is the chart that would have been in place in April of 2015. Is that correct?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And we see at the top of the chart here, we have Criminal Operations deputy chief. I understand that would be your position?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And oh, sorry, we don't have our monitors up so we'll just get that in play here. And then directly underneath would be Criminal Invest – sorry the superintendent of the CID.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And I understand that position at the time would have been held and is still held by Superintendent Jason Sheppard?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And in terms of – and correct me if I'm wrong on any of this, but in terms of your division of responsibilities, would it be fair to say that you would be considered the executive and Superintendent Sheppard would be more concerned with the day-to-day functioning of the division?

**D/CHIEF SINGLETON:** Yes, he would be the, what we call, the divisional commander.

**MS. CHAYTOR:** Okay. And if we come down and then go over to the right, we see an inspector position, if you just look over here where I'm putting my mouse now.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So this is the inspector at the time and still we have Acting Inspector Joe Gullage in that position.

**D/CHIEF SINGLETON:** There's an acting inspector, yes, and it's Joe Gullage.

**MS. CHAYTOR:** Okay. And then if we come down and we go over to the left we see here that we have Joint Forces CIS-NL?

**D/CHIEF SINGLETON:** Yes, Criminal Intelligence Services Newfoundland.

**MS. CHAYTOR:** Okay. And that is a joint force I understand with the RCMP?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And so that sergeant and the inspector that we – or sorry, sergeant and the constable report directly into Acting Inspector Gullage; is that correct?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And then if we come over to the right, more in the centre here, we see VIP escort and we have one acting sergeant, and I understand that is in fact the Protective

Services Unit, or as of this point in time on October – or in April in 2015, that’s the same as the Protective Services Unit.

**D/CHIEF SINGLETON:** Yes. And this is the chart that was in place at the time. There are other charts that are being, I guess, amended. And I think VIP escorts in the new charts will be called Protection Services Unit.

**MS. CHAYTOR:** Right. So the name changed but that’s what we’re referring to here.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Yes, okay. And the acting sergeant mentioned here at the time of the event on April 5, 2015, that’d be Acting Sergeant Smyth’s position.

**D/CHIEF SINGLETON:** Joe Smyth, yes.

**MS. CHAYTOR:** Yes, okay.

And now I understand that if you were to look at this chart, it looks like that, he would report into Acting Inspector Gullage, and then would he report in through Superintendent Sheppard and up through you, is that – was that the reporting structure?

**D/CHIEF SINGLETON:** The, the chain of – the structure would show that the acting staff sergeant up through the acting inspector to the superintendent to the deputy chief, yes. The practice at the time was that it was – at that particular time, there’s a lot of liaison between that position and the office of the chief of police.

**MS. CHAYTOR:** Okay. All right. And I’ve heard that and Superintendent Sheppard will say similar that there’s really, was also a dotted line from the PSU, so Acting Sergeant Smyth – a dotted line is, in essence, up to the chief, directly to the chief – is that correct?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** With respect to certain aspects of his job.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And, Commissioner, we’ll hear a little bit more about that from Inspector Gullage and from the chief on that.

So, Deputy Chief, tell me in your position – I understand that you would have interactions with members of the RCMP. Perhaps you can tell us what is the frequency and nature of some of the interactions.

**D/CHIEF SINGLETON:** You know, within, I guess, the RCMP, RNC set-up in policing the Province of Newfoundland and Labrador, there are a number of joint initiatives, one being Combined Forces Special Enforcement Unit.

**MS. CHAYTOR:** And that’s what we have here, this unit?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Yes, okay.

**D/CHIEF SINGLETON:** We have CIS-NL, and there's other initiatives that's undertaken from time to time where the executive or the provincial executive or the joint management team is made up of, say, commission officers from either the RNC or the RCMP. And so, in this capacity, we would meet whatever the constitution or the terms of reference state, whether it's, you know, twice a year, once a year, or on an ad hoc or need basis, we would meet with the RCMP. And that's with regard to, you know, set-ups like CFSEU, CIS-NL.

Also, on an operational basis, I guess, in dealing with the provincial government Department of Justice and Public Safety, there are different events or issues that will arise where we have, say, high level – the Criminal Operations level where we have interaction with the Department of Justice and Public Safety and the RCMP.

This could be around different types of initiatives whether it's violence prevention initiatives, or suggested changes to legislation, whether it's around the *Highway Traffic Act* or other pieces of legislation, whether we wish to make proposals to government to change some piece of legislation.

So there's different initiatives and different events that come up where we would have meetings with the RCMP.

**MS. CHAYTOR:** Okay.

And the committee that you sit on, the Provincial Executive Committee for CIS-NL, who else would sit on that committee?

**D/CHIEF SINGLETON:** Well, the chief and – from the RNC, for Criminal Intelligence Services, the chief, the deputy chief of Criminal Operations, Superintendent Sheppard, Acting Inspector Gullage, the bureau chief, who at this time – the bureau chief for the CIS-NL rotates on an every two-year basis between the RNC and the RCMP. So they would – he would also sit on it; that's on the PEC.

On the RCMP side, you'd have their commanding officer, assistant commissioner, the chief superintendent, superintendents and possibly inspectors and other members of the CIS-NL team.

**MS. CHAYTOR:** Okay.

And in any of your dealing with the committees and the various other meetings that you would have with the RCMP for administrative purposes or for meetings with the Department of Justice, did – in any of those meetings, did anything get discussed with the RCMP regarding the matter of the investigation into Mr. Dunphy's shooting?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

Your equivalent at the RCMP as of April 5, 2015, would that be Chief Superintendent Andrew Boland?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

Did you also at the time, did you know Inspector Pat Cahill?

**D/CHIEF SINGLETON:** I knew who Inspector Pat Cahill was; I didn't have much or any dealings with him.

**MS. CHAYTOR:** And how 'bout Sergeant Kent Osmond?

**D/CHIEF SINGLETON:** I, I knew the name; I didn't have any dealings with him.

**MS. CHAYTOR:** And Corporal Steven Burke?

**D/CHIEF SINGLETON:** I didn't know him.

**MS. CHAYTOR:** You had never met him prior to this?

**D/CHIEF SINGLETON:** No, I don't recall ever meeting the man.

**MS. CHAYTOR:** Okay, still, still never met him. Okay, all right.

And so the main person that you would have had interactions with would have been Chief Superintendent Andrew Boland?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And how frequent would you have discussions or communications with him?

**D/CHIEF SINGLETON:** It depends. Like I said, if we were working on an initiative or working on some program through the Department of Justice and Public Safety or some other initiative, we may have frequent contact while you're working on the project. And it could go weeks or longer before, maybe a month or more before I'd have some purpose or Andrew would have some purpose for calling me.

**MS. CHAYTOR:** Okay.

And when and how did you learn about Mr. Dunphy's shooting?

**D/CHIEF SINGLETON:** I learned about Mr. Dunphy's shooting from a telephone call I received on my cellphone from Mike Adams.

**MS. CHAYTOR:** Okay.

And if we could bring up, please, P-0464. And these are handwritten notes that you've provided to us, Deputy Chief.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And they're all for the same date, and it's the date of the shooting, April 4, 2015. And so we have one page of notes here which go from 2:58 p.m. up until 4:04, I guess, or 4:07 –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – p.m. that day. Okay. And I understand these are the only handwritten notes that you have in relation to this matter.

**D/CHIEF SINGLETON:** They are.

**MS. CHAYTOR:** So they're just with respect to the first day.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And we know that we will see some email communications that you had along the way.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. But you also had other meetings and other calls, I understand, but there are no handwritten notes, other than what we have here.

**D/CHIEF SINGLETON:** No, those are the notes that I made on April 5 after getting, being notified.

**MS. CHAYTOR:** Okay, all right.

And you did attend meetings, however, in relation to the matter of Mr. Dunphy's shooting?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And there are no notes of those meetings?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

And if we look here at 2:58 p.m., the first thing you have written here is Andrew Boland, and I understood – did you receive a call from Andrew Boland? Is this your first interaction?

**D/CHIEF SINGLETON:** No, no, actually – and about 10 minutes, 10 – 2:58, around I'd say 10 to 15 minutes before that telephone call to Andrew Boland is when I was notified by Mike Adams of the event and –

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** And following that I spoke to the Chief and following that conversation I called Andrew Boland.

**MS. CHAYTOR:** Okay. So you called Andrew Boland?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** All right. That's not him calling you?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay. All right. And what – this seems to say that: "Joe Smyth called Holyrood Det. this morning."

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** "... investigating complaint against Premier."

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And so is this you writing down what Andrew Boland told you?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And so from what he told you was that Joe Smyth had called into their Holyrood detachment and he was investigating complaint against the Premier?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. All right. And then I think the next entry is you calling the other deputy chief, Jim Carroll.

**D/CHIEF SINGLETON:** Yes, I didn't get any answer.

**MS. CHAYTOR:** Then 3:12 p.m. you were speaking with Bill Janes. Now, did I understand though that you've already spoken to Bill Janes?

**D/CHIEF SINGLETON:** Yes, I would estimate that it was around 2:50; 2:48-2:50 p.m. that I initially contacted the chief and advised him of the incident in Mitchells Brook.

**MS. CHAYTOR:** Okay. And you didn't make any notes though of those calls?

**D/CHIEF SINGLETON:** No, I didn't make any notes. I remember the call.

**MS. CHAYTOR:** Okay. And perhaps then you could tell us at 3:12, when you spoke to Bill Janes, you can tell us what it is that you recall being discussed and if these notes help in your recollection with that, you can tell us what's written here.

**D/CHIEF SINGLETON:** At – I initially called the chief and I subsequently – we had a telephone conversation at 3:12 and he would be advising Justice and Public Safety of the incident. And we, again, discussed Adams and Tilley only as support for Smyth and RCMP major crimes who would be investigating.

**MS. CHAYTOR:** Okay. All right. And then at 3:18 it looks like a call with Mike Adams. So what you're saying is this would be your second call with Mike Adams?

**D/CHIEF SINGLETON:** Yes, Mike Adams, he had spoken to Joe Smyth and he had some – it happened in Dunphy's home. There's a notation: went for gun. And, again, advised Mike, as I did in the first conversation with him, that he's only there for support for Constable Smyth and the RCMP will be handling the media –

**MS. CHAYTOR:** Handle the media, okay.

**D/CHIEF SINGLETON:** – and the investigation.

**MS. CHAYTOR:** Okay. All right. And, so you'd already told him that though in the earlier conversation, that he's only there for support of Constable Smyth?

**D/CHIEF SINGLETON:** Yes, I just want to reiterate that we, that the jurisdiction of this particular incident happened in RCMP jurisdiction and, therefore, I did not want us in any way, shape or form interfering with the investigated file.

**MS. CHAYTOR:** Okay.

And what did you understand this bullet point: Went for gun. Is that something that Mike Adams is telling you? What did you understand that to be referencing?

**D/CHIEF SINGLETON:** No, no. On reflection on, on my notes and that since we spoke on January 6, it's a notation that I made. I wasn't making any verbatim notations from what Mike Adams had said and that, but I just made a note: Went for gun. And that's, you know, exactly what Mike Adams said. I don't recall but that's the notation – that notation is mine and not Mike Adams.

**MS. CHAYTOR:** Okay. And so it's based on what Mike Adams told you, though, is that ...?

**D/CHIEF SINGLETON:** Yes, there's a reference to a gun. Yes.

**MS. CHAYTOR:** Okay. And went for gun meaning Mr. Dunphy went for gun or ...

**D/CHIEF SINGLETON:** That's – no, that's what –

**MS. CHAYTOR:** Is that what you understood him to be telling you?

**D/CHIEF SINGLETON:** Yes, that, that exactly what's said. I didn't record it but that's what I wrote down: Went for gun and it was with reference to Mr. Dunphy.

**MS. CHAYTOR:** Was there any discussion between you and Mike Adams as to the identity of the person who had been shot?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** No, there's – I didn't follow up. Mike advised me of the incident of speaking to Constable Smyth and I don't recall any follow-up questions or details because, you know, everything was happening so fast.

**MS. CHAYTOR:** Okay, now he does tell you that he'd spoken with Joe Smyth and it happened in Dunphy's home.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Right? So did you ask any questions about which Dunphy and who this might be?

**D/CHIEF SINGLETON:** I had, I had – I do believe that earlier that, when he originally called me, that he had told me that it was Joe Smyth was involved and the person was Donald Dunphy. That's my recollection.

**MS. CHAYTOR:** Okay. And I'm sorry; Mike Adams had already told you that.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** The first phone call that I received I do believe that he mentioned that it was who – that it was Donald Dunphy and the incident happened with Joe Smyth and it happened in Mitchells Brook.

**MS. CHAYTOR:** And did he indicate to you whether or not he knew Donald Dunphy or any members of his family?

**D/CHIEF SINGLETON:** At that point I don't recall any discussion about knowing the members of his family.

**MS. CHAYTOR:** Okay.

And then it looks like 3:36 p.m. you're calling, is this the chief?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And you're updating him?

**D/CHIEF SINGLETON:** I updated the chief at 3:36 and I provided him the telephone number for Mike Adams.

**MS. CHAYTOR:** Okay. And 3:54 – is this you calling Andrew Boland back?

**D/CHIEF SINGLETON:** No, that's a call I received from Andrew Boland. Because when I was speaking to Chief Superintendent Boland I advised him – we had a discussion with regard to that it's their file and our officers were only there for support. And when – at 3:54 I received a call from Chief Superintendent Boland advising me that Joe Smyth had been taken from the area and was en route to Holyrood detachment.

So you can see at 4 o'clock, I called –

**MS. CHAYTOR:** You passed that information on to Mike Adams.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And then at 4:04 it looks like that you speak again to the chief. Is that right?

**D/CHIEF SINGLETON:** Well, at 3:58 I called the chief, and myself and Andrew have a conversation with regard to that conversation. We also spoke, too, about a liaison –

**MS. CHAYTOR:** Uh-huh.

**D/CHIEF SINGLETON:** – for the investigation. And that's why at 3:58 there's a notation chief, VM is voicemail on cell. So I called him and left him a voicemail on his cellphone.

I called Mike Adams while I was waiting for a return call at 4 o'clock that Constable Smyth was en route to Holyrood detachment. The chief returned my call at 4:04 and we discussed a point of liaison and we identified Superintendent Jason Sheppard as being the point of liaison for their investigative team.

**MS. CHAYTOR:** Okay. And then it looks like you called and spoke with –

**D/CHIEF SINGLETON:** At 4:07 I called –

**MS. CHAYTOR:** Yes, okay.

**D/CHIEF SINGLETON:** – Superintendent Sheppard and advised him of our decision or request to have him as the point of contact.

**MS. CHAYTOR:** Okay and if we could bring up, please, P-0466. And this is an email exchange between you and Andrew Boland that happens in between there, 3:09 p.m. Andrew Boland writes to you.

Sorry?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Yes, okay.

All right, so 3:09 p.m. so Andrew Boland has written to you and he says he has three members on the scene. The scene is secured, another two have been called, another – and that MCU and FIS have been called. RNC member's weapons are being seized. He tells you Tiller is en route. And I take it you would you understand who Tiller is. He is just saying Tiller.

**D/CHIEF SINGLETON:** One of their officers, yes.

**MS. CHAYTOR:** And “Once MCU takes scene we look at some type of media. Once Tiller on scene he will assess and update me. We will have a better idea of what we need.”

Then at 3:34, I believe –

**D/CHIEF SINGLETON:** Yeah. Yes.

**MS. CHAYTOR:** I'm not sure what's happened here with the time. I think it might be the time difference but I understood it to be 3:34. There's a problem here with the timing but I think that's the –

**MS. O'BRIEN:** RCMP server in Ottawa.

**MS. CHAYTOR:** – RCMP time, yeah, server in Ottawa.

Okay. And he comes back to you: “Thanks Ab. Have you heard how many RNC members at initial call?” and tells you who they anticipate to be the media person at that time. And you come back and say: All we have is one.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Was there ever any suggestion that there was more than one RNC member on the scene that day?

**D/CHIEF SINGLETON:** Not from the information that I received.

**MS. CHAYTOR:** Okay, so you don't know where that question would be coming from?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

What did you think he meant by we will have a better idea when he says: “We will have a better idea of what we need”? What did you understand him to be telling you?

**D/CHIEF SINGLETON:** Well, you know, dealing with these incidents, you know, you get a call of a major crime or, you know, an incident of this nature; things are unfolding fairly quickly. You’re scrambling to get people to the scene; you’re scrambling to establish a Major Case Management team.

So, you know, it’s coming in piecemeal that your first thing you want to do is, you know, have the scene secured, then you might get some Major Crime investigators there. And at the same time, you’re looking at setting up a Major Case Management team.

So, you know, I took it that we’ll have a better idea of what we need when – and it wasn’t that, you know, so much that update me or just let me know what they need, but the – at that time they would be in a, I guess, a situation where they were trying to get this matter resourced as quickly as possible.

**MS. CHAYTOR:** Okay. And why did you understand Andrew Boland would be providing you with this information?

**D/CHIEF SINGLETON:** I guess where I went back and said that – and we’ve already had a conversation saying that, you know, you’re going to be doing the investigation and the media. And I guess it’s just – it looks like something, I’m not sure if that’s – you know, he just, I guess, flicked, flicked an email to me saying – outlining what they were doing right now, that’s all.

**MS. CHAYTOR:** Okay.

Now, Andrew Boland has already given his evidence and he’s indicated that – I think he referred to you as being persistent and making calls to him; at some point in time even calling every couple of weeks to him.

Is that, is that an accurate depiction from your point of view of the frequency of contact that you would have had with him with respect to Mr. Dunphy’s (inaudible).

**D/CHIEF SINGLETON:** No, I think the only time that I’d say would be somewhat persistent, and it would be in later emails and that, is around when the investigation – we would get, periodically get some information, mostly from Constable Smyth, wondering about the status of the investigation, if it was completed. And the same thing happened after it was referred to ASIRT and I would contact Andrew for an update.

Usually the chief would say, you know, can you check and see if there’s an update; I’d call Andrew and ask him if there’s any update. But outside of that, you know, if I was tasked with or asked to check on the status of the file or if they have an update, then I would certainly do that.

**MS. CHAYTOR:** And why would you be doing that if Jason Sheppard has been appointed as the liaison with the RCMP?

**D/CHIEF SINGLETON:** Because I’m dealing with it – Jason was appointed liaison with the Major Case Management team. So, like, you have a case manager, primary investigator, your file coordinator. Jason would be the point liaison with the team.

In this situation, we're going from the executive to the executive to find out. Because if a file of this nature would be, say, going outside of the RCMP as it did with the ASIRT, then that would be coming from the executive of the force and I'd just, you know, call and say: Andrew, any update? And he'd say: No, we're waiting, maybe a couple of weeks. And a couple of weeks down the road I'd have it noted and I'd – you know, mentally and I'd call him and ask him if they had an update.

But, you know, it'd be just that you'd be dealing at the executive level, not so much from the Major Case Management team. The liaison – the point of the liaison would be, you know, information that the Major Case Management team may need with regard to training records or any other documentation with regard to the officer who's the subject of the investigation.

**MS. CHAYTOR:** Okay.

All right, so the communications would still continue and continued at the executive level as well.

**D/CHIEF SINGLETON:** Yes, on certain aspects. Yes.

**MS. CHAYTOR:** Okay.

And you don't have, though, any notes of any of those communications that you had.

**D/CHIEF SINGLETON:** No, it'd be like a phone call: Any update on the file? And there may be some emails where, or that the chief might have contacted Joe and said, you know, that there's – we're still waiting.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** Because I know he was quite concerned about, you know, I guess the delay and –

**MS. CHAYTOR:** Okay.

And Deputy Chief, in terms of the – this is an investigation the RCMP is carrying out of one of your own members.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And so for, even from the point of view of transparency, do you think that it might be important to have notes of any discussions that you had with the RCMP on the matter while the investigation is going on?

**D/CHIEF SINGLETON:** You know, noting down that I called and the file is still open, I don't see it as being, you know, an evidentiary or it be more information. But, I guess in hindsight, I could have noted down that contact I had with Chief Superintendent Boland.

**MS. CHAYTOR:** Okay.

All right and if we could bring up, please, P-0465. And other than Andrew Boland, I should ask you: Did you have any discussions with any other members of the RCMP during the investigation?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

So your point of communication was always Andrew Boland.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. All right.

And these are messaging with Joe Smyth that you had on April 7. And the times that we see here, I believe to be in UTC time.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And you're simply asking him how he's doing. And – I'm sorry, can we make that a little bit bigger, please?

**D/CHIEF SINGLETON:** Actually, I believe there's a text on the bottom of that page.

**MS. CHAYTOR:** Yeah, I think I'm missing it here, aren't I.

**D/CHIEF SINGLETON:** Yeah, you got to scroll down.

**MS. CHAYTOR:** Got to scroll down.

**D/CHIEF SINGLETON:** Right.

**MS. CHAYTOR:** Thank you.

There you are: "... how are you doing?" All right.

And then to – he says he's "Doing as well as could be expected ... An unfortunate set of circumstances, but I'm confident in my actions." And then he tells you he "Had a good interview with the rcmp yesterday and they were very supportive and complimentary." And then he also says: "in case you want to see the summary."

He's giving you the file number, I understand.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And you say: "Yes. Thanks. Take care." Yeah, that's from you. And then: "Good to hear. I have been in contact with the RCMP." And you ask him, "How is the family?"

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And so what, what contact had you had with the RCMP that you're referring to here in the aftermath of him having been interviewed?

**D/CHIEF SINGLETON:** I had no contact with the RCMP with regard to Constable Smyth's interview. I did have contact with the RCMP in emails, I know on the 5th for sure, on the 6th with regard to time of autopsy. And I know I had an email back and forth with Chief Superintendent Boland that morning with regard to some questions in the media.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** But I don't recall – I know I didn't have any discussions with Chief Superintendent Boland or any member of the RCMP about the interview that Constable Smyth had done.

**MS. CHAYTOR:** Okay. All right.

**D/CHIEF SINGLETON:** And I wouldn't expect it.

**MS. CHAYTOR:** Right, okay. So even though he's telling you he had a good interview and you're saying good to hear, I've been in contact with the RCMP, it had nothing to do with his interview.

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay. All right. So then in terms of him saying that he found them to be quite complimentary, very supportive and complimentary, did that surprise you?

**D/CHIEF SINGLETON:** No, it didn't surprise me. And, you know, on the 7th I did reach out to Constable Smyth and ask him how is he doing, and he tells me good as – you know, the first one is: "Doing as well as could be expected I think."

Then he talks about the interview. I didn't – and then he says about his case summary. And, "Yes. Thanks. Take care." And I say, "Good to hear."

And, you know, so – you know, at this point in time I didn't – you know, his commentary about how he felt about the interview and that, I didn't go – you know, under the circumstance, I didn't see much in it.

**MS. CHAYTOR:** Okay. And other than this exchange that we have here, did you have any other communications with Constable Smyth prior to the conclusion of the RCMP investigation?

**D/CHIEF SINGLETON:** Not that I'm aware of. I may have contacted him to update him or – not so much – no, not update him, but I may have had other contacts for him on his behalf around EAP and that, but I don't –

**MS. CHAYTOR:** Okay. Did you ever have occasion to speak to him and for him to tell you what had happened?

**D/CHIEF SINGLETON:** I had occasion to speak to Constable Smyth, say, since the incident, but not for him to tell me what had happened.

**MS. CHAYTOR:** Okay.

All right and if we could bring up, please, P-0478. And this is an email that we saw earlier here and I know we've spoken about it at your interview. And it's an email that was brought up earlier today with Andrew Boland. It's April 7, 2015, and you are providing him with questions that appear on the CBC website. So this is two days after the incident.

**D/CHIEF SINGLETON:** Yes and –

**MS. CHAYTOR:** And Chief Superintendent said in his evidence that it was – he found it somewhat unusual that you would provide him with this, that the RCMP have their own, obviously, media people. So I wanted you to have an opportunity to tell us why are you giving this information to Chief Superintendent Boland?

**D/CHIEF SINGLETON:** Well, the only, the only reason I'm giving it to him, I guess, when I see the article and it says unanswered questions. I just sent it to their chief – or the officer in charge of criminal ops, I wasn't sending it to their Major Case Management team and that. And I believe he came back with a response saying that they'll answer these and all other questions.

**MS. CHAYTOR:** Following sending this email to Chief Superintendent Boland, did you have any discussions with him about these questions?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Or about anything –

**D/CHIEF SINGLETON:** No, I –

**MS. CHAYTOR:** – to do with their media communications?

**D/CHIEF SINGLETON:** No, I had – that was on the 7th and I think he came back with a question, but I'll answer these and all other questions. And I had no other discussions with the RCMP with regard to their media strategy.

**MS. CHAYTOR:** Prior to April 5, 2015, had you heard of Donald Dunphy?

**D/CHIEF SINGLETON:** I knew who Mr. Dunphy was and that. It would have been – I know who he is, I knew who his father was and he had two or three brothers and that.

I knew Mr. Dunphy, but I hadn't seen Mr. Dunphy or heard of Mr. Dunphy in years. I'd say it would be going back to the '70s maybe the last time that I may have, and I'm not even sure. That may have been at the Dunphy residence, his father's house.

**MS. CHAYTOR:** Okay. And I understand that's because you grew up in sort of the same area and that's how you knew –

**D/CHIEF SINGLETON:** Yes, I grew up in St. Mary's Bay.

**MS. CHAYTOR:** St. Mary's Bay. And that's how you knew of the Dunphy family.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And that's how you knew of Donald Dunphy.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And I take it he had never come to your attention as a member of the RNC.

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

And to your knowledge, was he ever the subject of discussion within the RNC? Had you ever heard his name mentioned by anyone else in the RNC?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

Did you directly or indirectly provide Constable Smyth with any information regarding Donald Dunphy or communicate with him regarding Donald Dunphy prior to him attending upon Mr. Dunphy's residence?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** And if we could bring up, please, P-0649. And this is an email that you – an email that you sent to Chief Janes and to Jason Sheppard.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And it's dated April 5, 2015, 4:50 p.m., and in this particular email you're able to provide Mr. Dunphy's name, approximate age, where he lives, and I take it you knew this information: you give the proper spelling of the surname, he'd be about 58, lives in Mitchells Brook part of Mount Carmel. So you would know that information from ...?

**D/CHIEF SINGLETON:** I knew that Mr. Dunphy was several years older than me, and I took a guesstimate that he was 58 at the time. I knew the correct spelling on the surname and I knew that the Dunphy family lived in Mitchells Brook.

**MS. CHAYTOR:** Okay, and then six minutes later you also provide to Chief Janes only: "This fellow has been known to call open line shows and caused issues" – I think you mean issues – "for some family members. No doubt mental health may be raised."

So what's your source, then, of this information if you haven't had any contact with him since the 1970s?

**D/CHIEF SINGLETON:** Well, as you may, well, imagine, you know, that day I received a call at say 10 to 3 advising me of this incident in Mitchells Brook. I took the call; I made the phone calls that I've already referenced. I was in the St. Mary's Bay area, and I'd say, you know, shortly after 3 o'clock – because I know that one of the emails I received that day was from a co-worker. A civilian manager in St. John's advised me of what was happening in Mount Carmel.

And as word began to get around that day, it was certainly, if you use the term, the talk of the town in that everyone was talking about, you know, this event, this tragic event. And I was, you know, in the company of other persons, and you know, taking phone calls, stepping out of the room to take phone calls, or leaving the house to make phone calls, checking emails, sending emails and people were discussing. And some of the discussions at the time were that he was known to call *Open Line*. They did speak about some issues within his family.

**MS. CHAYTOR:** Within his own family?

**D/CHIEF SINGLETON:** His own family, yes.

**MS. CHAYTOR:** So this refers to issues for some family members is referring to Mr. Dunphy's family –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – not your own.

**D/CHIEF SINGLETON:** No, no.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** And the other thing that there was some reference to, I guess, the house he was living in. The other reason, and since we spoke on January 6, and certainly on reflection, mental health, and certainly, you know, in police-related shootings does, is one of the factors that is explored from an investigative perspective.

**MS. CHAYTOR:** Yes, because I had asked you what you meant by: “No doubt mental health may be raised.”

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And so your answer is that that often happens, is it –

**D/CHIEF SINGLETON:** Well –

**MS. CHAYTOR:** – in police-related shootings?

**D/CHIEF SINGLETON:** Yes, I believe I said that on January 6, also.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** But it is, you know. You know, we haven’t had – we’ve had several police shootings over the years in Newfoundland and Labrador and, you know, usually one of the factors that’s considered in these is mental health.

**MS. CHAYTOR:** So you weren’t – you didn’t have any knowledge as to Mr. Dunphy’s specific –

**D/CHIEF SINGLETON:** No, I had no knowledge –

**MS. CHAYTOR:** – mental health.

**D/CHIEF SINGLETON:** – that Mr. Dunphy, you know, had any mental illness or was diagnosed with anything. I’m just looking at it, I guess, from my background and being involved in some of these cases and being aware of other cases that mental health certainly can be an issue.

**MS. CHAYTOR:** Right.

And were those – are the cases you’re thinking of cases where the police got called to a scene because of the person with mental health issues?

**D/CHIEF SINGLETON:** You mean police shootings?

**MS. CHAYTOR:** Yes.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** But all the cases you’re referring to.

**D/CHIEF SINGLETON:** Well, yes, you know, in Newfoundland, I don’t know, I think there’s, you know – the number of shootings I know from the RNC, I think there’s two fatals and maybe

four where shots were fired. And the RCMP I know had four, maybe five, fatal shootings that I can recall and two or three incidents where shots were fired where people injured.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** And in some of those cases – and I know, you know, the most recent one where we had a double inquiry, the Power/Reid inquiry, mental health certainly was factors in that one.

**MS. CHAYTOR:** Right. And in those cases, too, I believe the police were called to –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Yes, called to assist in those situations. Yes. Okay.

So prior, then, to April 5, 2015, were you aware of whether or not Donald Dunphy had any issue or dispute with any member of your family?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

I'm going to turn now, then, to a line of questioning regarding the internal review that was carried out by the Saskatoon Police Service. And first, perhaps you could tell me: Were you involved in any decision making and/or the organization for that internal review?

**D/CHIEF SINGLETON:** Yes and – yes, I was.

**MS. CHAYTOR:** Okay. And perhaps you can tell us about that.

First of all, what was the scope of the review?

**D/CHIEF SINGLETON:** Well, the scope of the review was to – and this was some days later, maybe a week or just a little over a week after the incident on April 5, we met to discuss. Because it's commonplace that when we have an incident or a matter being investigated of this nature that we would have a corresponding internal.

We met the executive, and I believe Superintendent Sheppard may be in attendance at the time and maybe our legal counsel, and we met to discuss the internal process, Mr. Commissioner. And we felt that it would be prudent at that time to reach out to an outside agency to have the internal done.

**MS. CHAYTOR:** Okay. So it was yourself and Chief Janes who made the decision, I take it?

**D/CHIEF SINGLETON:** Ultimately, you know, myself and the chief, we did have a meeting, discussed it. We looked at one police service and then we felt it would not be prudent to have that police service do it, and that was the Ontario Provincial Police, who we do have a memorandum of understanding since 1991 with regard to providing investigative support to us when we want to go to an outside agency. But Constable Smyth had done their, I believe, VIP training, so we felt it would be prudent on our part to go to another force who we felt had the capacity to do it. So we reached out – I reached out, personally, to Saskatoon.

**MS. CHAYTOR:** Okay. And the MOU that you have with OPP, normally you would go to OPP, but in this case because there had been some training by Constable Smyth –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – by the OPP, you deemed that it would be best to go elsewhere.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And Saskatoon, I understand, you had some connection with the chief there and that's why you were able to recommend Saskatoon Police Service.

**D/CHIEF SINGLETON:** Yes. I met Chief Clive Weighill on a number of national committees that I sit on, Mr. Commissioner, and, you know, I got to know him and from what I heard about their force, I felt that they were progressive and had the capacity to do it.

I made a quick phone call on, I believe it was, the 16th of April to the chief and I just asked him, you know, told him of the circumstance, a criminal being done by the RCMP, and we would like to have an internal. And he said no problem. I drafted – I'd say I might have had the letter drafted for someone and I signed it off, had the chief review it and we sent it off that day.

**MS. CHAYTOR:** Okay. And the scope of that review, what was the scope of that review?

**D/CHIEF SINGLETON:** Well, the scope of that review was to review the circumstances surrounding the incident and determine if Constable Smyth breached our regulations and/or breached any of our policies.

**MS. CHAYTOR:** And when you say our regulations, you mean the regulations under the RNC Act? Is that correct?

**D/CHIEF SINGLETON:** Yes, the Royal Newfoundland Constabulary Regulations.

**MS. CHAYTOR:** Okay. And so it was to be a complete review, I take it, of all policies and the regulations –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – pertaining to the RNC.

Okay. And so you're looking at Constable Smyth's conduct –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – on the day in question and whether, basically, he followed protocols, policies and the regulations?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And do you recall a concern being raised by Constable Smyth as to why it would be Saskatoon in that they would not have had a similar protective service unit?

**D/CHIEF SINGLETON:** Yes, I do recall, I believe, Constable Smyth might have emailed Superintendent Sheppard and they – he sent an email to me and I sent it to the chief: FYI. And the chief and I discussed it. And we felt that, you know, the factors around the police shooting

that, again, Saskatoon would have the experience and the capacity to investigate it, and we proceeded with going to Saskatoon.

**MS. CHAYTOR:** Okay. And we don't have to bring up that email, but that email that's being referenced, Commissioner, is 0485.

And I also believe there is some reference in that email that you would have met with Constable Warren Sullivan, the president of the RNCA. Did you meet with him regarding anything to do with ...?

**D/CHIEF SINGLETON:** I don't –

**MS. CHAYTOR:** No, you don't recall that?

**D/CHIEF SINGLETON:** I don't recall –

**MS. CHAYTOR:** Okay. All right.

**D/CHIEF SINGLETON:** – that being in an email –

**MS. CHAYTOR:** Okay –

**D/CHIEF SINGLETON:** – or even meeting with Warren on this.

**MS. CHAYTOR:** Oh, okay. So maybe it's not you; maybe it was Jason Sheppard that met with him then –

**D/CHIEF SINGLETON:** It could be.

**MS. CHAYTOR:** Okay. All right

And then, so Saskatoon is retained. Was there any consideration given in terms of whether or not looking at the facts, I guess, of what Constable Smyth carried out, the facts of what he did that day – for example, he had – there were communications with your communications people, whether or not you looked at anything that happened internally within the RNC that day. One issue that's arisen here, Deputy Chief, is there seems to have been some miscommunication between Mark Oram and Constable Smyth.

And so I'm wondering whether or not your internal review looked at the internal communications that led up to Constable Smyth going to see Mr. Dunphy?

**D/CHIEF SINGLETON:** I don't – I know the issue that you're talking about and I don't know if that was an issue that had been raised or a concern at the time that the internal investigation was underway. That may have come up subsequent even to the reports being released.

**MS. CHAYTOR:** Yes, I know. So, but – yes, and it appears it's something that's come up during our process here, but I'm just wondering in terms of deciding what the scope of your review would be, why is it limited to just policy and regulations? Is this being done – is this being done from a discipline point of view? Is that why you're doing this internal review?

**D/CHIEF SINGLETON:** It's being done – it would be done to look at it – yes, I guess, internals, in some cases, are from a discipline perspective, but it is also from I guess the process, that having it reviewed – you know, did he follow our policies and did he do anything that would be in breach of the Royal Newfoundland Constabulary regulations?

You know, when it comes to the conduct or duties carried out by a member of the Royal Newfoundland Constabulary, there's only certain pillars that, you know, you can follow. One is the regulations, which outlines the conduct and the duties of a police officer, and our policies then flow from that to outline what officers are supposed to do.

**MS. CHAYTOR:** Was there any consideration given to whether or not training is up to date; whether or not your training of your officers is up to date, for example, with respect to de-escalation strategies? Was there any consideration given to an internal review of the RNC policy, procedures and training –

**D/CHIEF SINGLETON:** We did –

**MS. CHAYTOR:** – of the officers?

**D/CHIEF SINGLETON:** – I know we did – and there should be emails to the effect that we did have one of our inspectors look at our own policies from, you know, an update perspective; I believe Inspector Oates may have been tasked by Deputy Chief Jim Carroll to carry out such a review.

**MS. CHAYTOR:** And there were updates carried out to some of your policies?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** What about from a training perspective?

**D/CHIEF SINGLETON:** From a training perspective?

**MS. CHAYTOR:** Yes.

**D/CHIEF SINGLETON:** There was no internal done with regard to our training perspective.

**MS. CHAYTOR:** Okay.

**THE COMMISSIONER:** I think it's probably an appropriate time for a break. We started a bit late, but we're at 3:15 now, Ms. Chaytor.

**MS. CHAYTOR:** Thank you.

**THE COMMISSIONER:** Thank you.

We'll break for 15 minutes.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is recessed.

**Recess**

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now in session.

Please be seated.

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

**MS. CHAYTOR:** Thank you, Commissioner.

Just a couple of more questions before I leave the Saskatoon review. Deputy Chief, is there any policy within the RNC that mandates the scope of an internal review in circumstances such as this?

**D/CHIEF SINGLETON:** No. Like I previously said, the scope usually relate to the officer's conduct which is covered under regulations, and – excuse me – whether or not it's compliant with our policies. And, you know, the internals itself also fall under the regulations.

**MS. CHAYTOR:** Okay.

And if we can bring up, please, P-0483. And this is a communication that you have, an email exchange with Andrew Boland. It's April 22, 2015. And obviously there's been internal communications, that you're thinking about your internal review and you're checking in this communication, Deputy Chief, to make sure that it would be okay to proceed, that it wouldn't interfere with the RCMP investigation?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So you recall that exchange with him?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And he comes back to you and says, "Thanks Ab. From my knowledge of the investigation, considering the stage it is in, at this time I don't think an internal would interfere. I will confirm with the OIC MCU and investigation lead investigator and advise." And you say "Thank you Sir."

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And you send that up of course to the chief. Okay.

So I take it that the – and if we could bring up then, just quickly. And you're having this communication I guess for the obvious reason. You want to make sure that there isn't anything you're going to do internally which can somehow interfere with what the RCMP is doing.

**D/CHIEF SINGLETON:** Well, you know, I would expect that he would consult with his Major Case manager and determine that the investigation there – criminal investigation is at a stage wherein if the internal commences that interviews of witnesses would not, you know, interfere with their ongoing criminal investigation.

**MS. CHAYTOR:** Okay. And was it anticipated that – other than Joe Smyth, was it anticipated that there would be any other witnesses that the RCMP might be interviewing that the RNC would also be interviewing for its internal?

**D/CHIEF SINGLETON:** Well, no, it could be additional officers. You know, we don't put parameters on who the internal interviews.

**MS. CHAYTOR:** Okay. And you're having this communication at the level of Andrew Boland

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – as opposed to – again, it’s not Jason Sheppard communicating. And perhaps you could just explain again, that would be, why it would be happening at your –?

**D/CHIEF SINGLETON:** Well, I would be going to the level of the chief superintendent to find out from their, you know, Major Case Management. I didn’t want to deal with their Major Case Management. I deal with the Crim Ops, and I’d find out, could he check to see if the investigation will interfere. And he did reference the fact that he would be checking with the management – or the MCM team, and then I waited. That was on the 22nd, and then I guess –

**MS. CHAYTOR:** And he got back to you, I believe, later, if we could bring up P-0484. And we see that you communicate back to Rick Penny. So sometime in between, I take it, you have communications –

**D/CHIEF SINGLETON:** No, and I guess this is where chief superintendent may have said that I was persistent because I sent an email on the 22nd. He said he would check with the major case management team and I didn’t hear from him. So on May 1 I went back with an email to Chief Superintendent Boland: Can you check on the status? And I do get an email back that on May 1, Mr. Commissioner, that the RCMP had no issue with us commencing the internal.

**MS. CHAYTOR:** That’s right. Okay. And then you communicate that to Rick Penny. And I understand at the time Rick Penny is who was anticipated was going to do the review for – by Saskatoon Police Service but that ultimately gets changed to Grant Little.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So your communication back to Mr. Penny, at that point in time, is that you had been in contact with Chief Superintendent Boland with regard to the status of their criminal investigation. They feel we can commence and it wouldn’t impede their investigation.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. All right.

And there’s only one other question that I have for you regarding the Saskatoon review, Deputy Chief, or maybe two. I understand you didn’t have, beyond setting it up, you didn’t have a whole lot of dealings then it with it because I understand Jason Sheppard was also tasked with being the liaison. Is that right?

**D/CHIEF SINGLETON:** Yes, and what happened, in the original letter of request dated, I believe it’s the 16th of April to the Chief of Saskatoon from Chief Janes, I was the point of contact and that was so that we would be able to, when we get to a point in time were we would be wanting to commence or the RCMP would allow us to or, you know, determine from the RCMP that the internal would not interfere with the criminal, that was the point in time that we identified a liaison for Saskatoon and the liaison we identified was Jason Sheppard. For the same reason, he was dealing with the RCMP and maybe they might be looking for some of the same information and it was more consistent and concise to have the same person.

**MS. CHAYTOR:** Okay. And I did – later on then in September, September 13, 2016, there is communication back to the Chief of Saskatoon police force with you. And you advised him, at that point in time, that the RCMP had concluded or had released their findings of the investigation and you were asking him, at that point in time, to call you. Did you speak with him?

**D/CHIEF SINGLETON:** I don't recall if I spoke to Clive at that time or Chief Weighill. It would be just to say that the investigation was concluded.

**MS. CHAYTOR:** Okay. And you had told him that in the email.

I'm just wondering is there anything else that you needed to speak to him about regarding the internal review.

**D/CHIEF SINGLETON:** No, and I think we were waiting on Saskatoon or they were waiting on the RCMP's conclusion of their file for them to finish theirs.

**MS. CHAYTOR:** Okay.

I'm going to turn now, then, to your involvement in any communications with the public or any decision making regarding the communications to the public on the Dunphy matter.

So were you involved in any of the decision making or any internal discussions regarding how the RNC would communicate with the public?

**D/CHIEF SINGLETON:** We, we did have discussions, you know, from periodically when issues would arise about whether we would do releases and that, yes. And I know there was one with regard to Saskatoon.

**MS. CHAYTOR:** And I did see that your communications with Andrew Boland. We've seen the emails where you're saying that the RCMP would be responsible for media communications around the investigation itself.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And what was the overall decision of what role, if any, the RNC would or could play with respect to public communications on the matter?

**D/CHIEF SINGLETON:** Well, you know, the subject matter of an investigation, like the RCMP were undertaking, occurred in their jurisdiction. It was a criminal investigation. And, you know, up – I believe the position that we took at the time that we would not be able to do media with regard to the, the event itself.

**MS. CHAYTOR:** Okay. And so you weren't – so basically the overall decision is that RNC isn't going to say anything.

**D/CHIEF SINGLETON:** In – yes. You know, there's discussions, I guess, with the chief and that because, ultimately, the chief is the person who media reports to and who would release any, anything with regard to the public. And I know in this particular case there was only a couple of releases made.

**MS. CHAYTOR:** Okay. And did the chief consult with you on his decisions that he made in that regard?

**D/CHIEF SINGLETON:** At times we do discuss these matters, yes.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** And I believe we did in these cases.

**MS. CHAYTOR:** And I believe you also offered advice along the way –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – in terms of what, if anything, could be said.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Yes. Okay.

And I'm just going to bring up an exhibit here, P-0486, please. And we're going to start at the bottom of the first page, I believe.

This is an email exchange in which you're involved in, and this is now July 19, 2015. And this originates with a question from Mark Quinn of the CBC. And he's learned that there – that the Saskatoon police is coming to do an internal investigation and they're looking for a comment. "We're looking for a comment from the RNC." And you respond with a recommendation – so this gets passed up from Steve Curnew.

And you respond to Bill Janes: "I can confirm that as part of our ... internal process we have asked SPS to conduct a review from an internal perspective. Where the RCMP's criminal investigation is ongoing we are not in a position to comment further." And you're asking the chief for his thoughts on that.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So basically, Deputy Chief, if we look at what Mr. Quinn already knows, he knows that Saskatoon is coming to Newfoundland as part of an internal officer-related or involved shooting.

**D/CHIEF SINGLETON:** Yeah.

**MS. CHAYTOR:** And he's looking for comment from the RNC.

So basically what you're suggesting you go back and do is to confirm to the CBC really what they already knew.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And if we look at, again, 0487, then, please. And I think this might be what gets landed on: "The Saskatoon Police Service has been contacted by the RNC to conduct an internal review into an officer-involved shooting" that occurred – and the date is given. "Such a review is standard practice when serious incidents of this nature occur." And then there's reference to: "The RCMP is continuing to conduct the criminal investigation ...."

Deputy Chief, what was the concern with giving more information regarding the internal investigation. For example, what would be the concern with telling Mr. Quinn, well, here's the scope of the investigation or how it may differ from what the RCMP was in fact doing.

**D/CHIEF SINGLETON:** Maybe in hindsight it wouldn't have made a difference. But certainly in this case, and where you're doing an internal investigation, usually these matters are not something that we release much information into the media on. And I guess in keeping with the

position with regard to the RCMP conducting the criminal investigation, that we would confirm that they were contacted, they're doing the internal review and I left it at that.

**MS. CHAYTOR:** Okay. And if we could bring up 0488, please.

Now, this is an email trail where July 21 Mr. Quinn gets the answer to his question. And if we come down to the middle of the page we can see that – or it's page 2, sorry, middle of the page so the answer goes.

And within a very short period of time, within, I think, just about 10 minutes, Mr. Quinn doesn't seem to be fully satisfied. He's coming back and saying: "Can we record this statement over the phone? I understand ... you can't elaborate." And then there's communication that it's only the chief or one of the deputy chiefs that can speak.

And that gets – he asks: Well, could you ask, basically, the deputy chief or chief to speak on this. That gets passed up to you. Then you come back: "With regard to this matter, here is my response and I will not be doing any interview." And then you put in bold: "With the criminal investigation into this incident ongoing it would be premature to speak to the media with respect to an internal investigation."

And I guess, Deputy Chief, there's also a similar email that I can bring up, but it appears to me that you've already been told by the RCMP that your internal is not going to interfere with the RCMP investigation.

**D/CHIEF SINGLETON:** It's not going to interfere with the RCMP investigation but the – you know, we had an internal ongoing and, like, we wouldn't – or the RCMP – or we wouldn't respond on the RCMP's criminal. We would not also want to make comments because the internal was ongoing.

It's an internal investigation into the officer's conduct under our regulations and policies and I felt at that time and – that the information that we provided to CBC was our response and I didn't see any value added in doing a recording at that time. And I didn't see, especially with an internal matter, that we needed to add more information.

**MS. CHAYTOR:** Okay.

And so the concern is not so much about the RCMP investigation than the criminal investigation ongoing, it's because you also – because there's an internal ongoing, you don't think it's appropriate to speak to that.

**D/CHIEF SINGLETON:** Right.

**MS. CHAYTOR:** Okay.

All right and I won't bring up the other but it's P-0489. And that was a similar request on July 22 from Ashley Fitzpatrick of *The Telegram*.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And she – you were prepared to give her the date that Saskatoon was engaged and that you indicated that you should also go back to Mark Quinn of CBC and give him the date as well. But other than that you weren't going to give any other details.

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** On that particular file, no.

**MS. CHAYTOR:** Okay.

And then if we could have 0490, please. And this is a communication – then you go back to Rick Penny of Saskatoon Police and you advise him of the RNC’s position with respect to media communications.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And you give him two reasons for the position that you’re taking and one is you’re telling him that you’re not making any comment for two reasons: The RCMP investigation is still active and this is an internal matter.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And why did you feel that – your need to tell this now to Saskatoon? Were you concerned that perhaps they might speak publicly about their engagement?

**D/CHIEF SINGLETON:** I, well, they’re conducting an internal on our, on our behalf. I just wanted to communicate with, I believe it was Inspector Rick Penny, that we had gotten a request from the media and this is what we responded to them. And just advised him, I guess, being the – from the executive office of, that they may get a follow-up request.

**MS. CHAYTOR:** Okay. And I believe you told me in your interview that you weren’t concerned if they went to speak, that perhaps they would actually go and give the letter, chief – the chief’s letter.

**D/CHIEF SINGLETON:** Oh, they may very well.

**MS. CHAYTOR:** Yeah.

**D/CHIEF SINGLETON:** We wouldn’t dictate to them what they would do, I just told them what we done.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** And why we done it.

**MS. CHAYTOR:** At any point in time, did the RNC seek any external advice as to the issue of what, if anything, they could communicate to the public in this situation?

**D/CHIEF SINGLETON:** External advice?

**MS. CHAYTOR:** Yes.

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

Ultimately, of course, the matter did gain a lot of public interest and it generated a lot of commentary and discussion. Was the RNC's decision ever reconsidered at any point in time, prior to the conclusion of the investigation?

**D/CHIEF SINGLETON:** I don't – I don't know. And I know we've had discussions throughout about our responses and that and – but we didn't consult any with anyone externally and I don't think that we reconsidered what was put out.

**MS. CHAYTOR:** Okay.

And, Deputy Chief, I understand, and you mentioned earlier today in your lengthy career a number of other police-related incidents that have happened in this province.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And I understand that there were two previous RNC-related shootings that, at the time, you were in RNC Professional Standards unit at the time. And one was the Darryl Power incident in Corner Brook –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – which was, of course, a fatality. And there was also another shooting that didn't involve a death. And in both of those cases, I believe you told me that you were in the Professional Standards unit?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And I realize, of course, you weren't in the executive office at those times, but do you know what the communications strategy of the RNC was during the investigation of those incidents?

**D/CHIEF SINGLETON:** I'm not sure.

**MS. CHAYTOR:** Okay.

Now, were there any concerns or lessons learned from those experiences or any others that influence the RNC in its decision regarding public communications with respect to the Donald Dunphy case?

**D/CHIEF SINGLETON:** I'm not sure.

**MS. CHAYTOR:** Okay.

And so nothing was discussed in terms of, you know, once burned, twice shy kind of; you know, we've gone down this road before. No discussions along those lines or lessons learned from other incidents?

**D/CHIEF SINGLETON:** Not that I was involved with, no.

**MS. CHAYTOR:** Okay.

Now, in your interview you said to me: As you move along with experience – and this is a summary of what you said to me – you begin to learn or, you know, I guess, taper what you say

to the media because of what can come from the media. And that's at page 177 of your, the transcript of your interview.

And I'm just wondering if you could elaborate on what it is you are trying to say in saying that. From experience – and I can read it to you again if you wish.

**D/CHIEF SINGLETON:** Yes, please.

**MS. CHAYTOR:** As you move along with experience you begin to learn, I guess, taper what you say to the media because of what can come from the media.

**D/CHIEF SINGLETON:** Well, what I'm saying there is depending on the, I guess, the subject matter of the investigation and that, you want to control what is being said so that you don't adversely affect the investigation.

**MS. CHAYTOR:** Okay, and I understand that.

Is the communication strategy sometimes determined, or at least influenced, by those who are in the executive at the time?

**D/CHIEF SINGLETON:** Well, yes.

**MS. CHAYTOR:** Okay. Perhaps you can explain that.

**D/CHIEF SINGLETON:** Well, the media relations officer of the Royal Newfoundland Constabulary reports to the office of the chief of police. So the chief ultimately would have say in what is released and Chief Janes, as did Chief Johnston and when I was deputy, would consult.

But, you know, if we did discuss it and we agreed, then it wasn't an issue. If we discussed it and, you know, the chief of the day says, you know, no, this is what we're going to go with and this is why, then that's what we go with. But, you know – and each chief, like each leader of an organization or premier of the province, has their own line or way of dealing with the media. You know, some chiefs are very open and other chiefs are not.

**MS. CHAYTOR:** Okay.

And in this situation did you find that your chief was more open or not so open?

**D/CHIEF SINGLETON:** I find that Chief Janes, on these type of issues, serious investigations and that, usually err on the side of caution to say less.

**MS. CHAYTOR:** Okay, so more along the same thinking as yourself: less said is best –

**D/CHIEF SINGLETON:** On some matters, yes.

**MS. CHAYTOR:** Less said is best said.

**D/CHIEF SINGLETON:** Sometimes, yes.

**MS. CHAYTOR:** Okay.

All right, and if we could look at 0491, and this is an email from you November 8, 2015, to the chief and to Deputy Chief Carroll and also Superintendent Sheppard. And what you're passing along here is a link to a website, and you note that "A lot of speculation on what happened and

why.” And I’m wondering – you’ve sent this on to your superior and also the other deputy chief and Jason Sheppard, so the top of the RNC here – did this get discussed, then, at this level in management?

**D/CHIEF SINGLETON:** No, it didn’t get discussed.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** It was on a Sunday evening I saw the article and I just passed it on as an FYI. We didn’t have any follow-up discussion on it. There was a lot of – like you said, there’s a lot of stuff in social media on it and I just noticed – noted at there’s speculation of what happened and why. I was just passing it as an FYI, not, you know, for us to have a meeting or discussion about social media.

**MS. CHAYTOR:** Okay, so no concern at this point in time whether or not your communication strategy should be reconsidered.

**D/CHIEF SINGLETON:** Not from that particular email, no.

**MS. CHAYTOR:** Okay.

And was there any discussion as to whether the lack of public commentary by the RNC might in fact be contributing or fuelling this speculation?

**D/CHIEF SINGLETON:** I don’t recall at the time, you know, and I know there was concerns raised. You know, and this is something that, no doubt, that we will certainly have to review, the way we do handle media and who we include in our discussions or consultations on media.

**MS. CHAYTOR:** Okay, fair enough. Again, a situation of perhaps lessons learned in going forward.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And if we could look then, please, at P-0492. And this, then, is an email and it’s from Jason Sheppard to you, November 10, 2015. He’s forwarding an email that he’s received from Constable Smyth. Constable Smyth is wondering why the RNC can’t speak to some of the broader aspects of the questions being posed publicly. He mentions, you know, procedural issues such as what you do in carrying out a risk assessment and use-of-force training.

So, if I start at the bottom of the first page, you can see some of the issues that Constable Smyth is concerned about here. And he’s concerned that “The absence of facts, or a basic explanation of police processes, is providing these persons a platform.” He’s concerned, of course, because it’s going to be several more months before investigative findings are released to the public. He mentions “procedural issues, such as risk assessments, use of force training ....” The current state is very frustrating or “beyond frustrating” for him, he says.

So, and then you reply on page 1. Jason Sheppard sends this up to you, Bill Janes, Jim Carroll. He talks about Joe Smyth having 27 attachments, and I believe this to be social media information, and he’s “asked several times for the RNC to publicly make a statement but I can’t see how we can say anything while an investigation is underway.” And then your thoughts are – you say Jim, but you mean Jason.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** “I can appreciate what Joey is experiencing. But I believe we cannot at this time go out and make public comments on either the criminal or internal investigations, which are ongoing. Furthermore, I don’t think we can respond to the comments being made through the various websites or through social media. A premature response will or may provoke additional comment. I believe our best position is to wait the outcome of the investigations. At that time we (the RNC) could make an official response based on the investigative findings. For now, less said is best said.”

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So what was the problem with answering some of the questions that Constable Smyth was asking to have answered and attempt to perhaps provide information to the public on what officers are trained to do and their use of force, for example?

**D/CHIEF SINGLETON:** Well, I guess, you know, rethinking and that we might be able to change our approach in such circumstance, but again, as outlined, and Jason made the comment he don’t think we could do it, and I also responded we couldn’t. And, you know, sometimes you can put facts out there and, you know, that certainly causes its own stir in the media itself.

**MS. CHAYTOR:** Okay, and were you hearing some of the information that Constable Smyth was perceiving to be inaccurate? Were you hearing that, and was that the subject of discussion, then, amongst management that, you know, perhaps there are some facts here that we can correct?

**D/CHIEF SINGLETON:** I don’t recall, and I can certainly understand, you know, Constable Smyth’s position on this. I don’t recall a particular meeting where we were talking about going out with facts to quell the social media, issues for, I guess, attacks that were under way, which, you know, as certainly for Constable Smyth were very problematic.

**MS. CHAYTOR:** Okay, but I think what I am hearing you say, though, Deputy Chief, is perhaps, then, in hindsight more could have been said. For example, if there was inaccurate information out there about your policies and procedures, perhaps those could have been addressed without compromising either investigation.

**D/CHIEF SINGLETON:** You know, anything that we do is subject to, you know, I guess, a post-mortem, Mr. Commissioner, in that if we didn’t handle something right now, what can we do? But we need to have the necessary expertise in the room to do that.

**MS. CHAYTOR:** Yes, okay, fair enough. Then at the time when this was all unfolding and happening, there wasn’t any other expertise consulted?

**D/CHIEF SINGLETON:** No, there wasn’t.

**MS. CHAYTOR:** Okay.

I’m going to move on now, then, unless there is anything else you would like to say about –

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** – public communications or a best way forward in the future.

Well, then, we'll move on to my next line of questioning is with respect to the Use of Force Review Board. And I'd like to bring up, please, P-0499. And this is a routine order that I believe you signed, if I could just go to the bottom here, yes. This is a routine order you signed and this has to do with changes to the Use of Force Policy.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And this, okay, is 2012-018, and then effective immediately there are going to be certain changes.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And one of these changes is going to be the use of force. There's going to be a use-of-force training log, I believe, we have here. And then, under 10-3 c., "Platoon and Divisional Commanders will ... review Form 096," which, I understand, that's your use-of-force form.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And "maintain a record," then, I think it says as well, "of all reported incidents of use of force and submit a detailed report to the Office of Chief of Police by January 31 of the following year."

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And are you the person actually, Deputy Chief, are you the person who maintains these records for the chief's office?

**D/CHIEF SINGLETON:** No, the – our administrative assistant maintains the records. All of the use of force forms flow up through the divisional commanders to the respective deputy chief and they are filed in our office.

**MS. CHAYTOR:** Okay. And so what happens then? They are filed in your office, and what happens to the monthly or annual reports that are filed? Is there any analysis then carried out?

**D/CHIEF SINGLETON:** Yes. Well, the reports are filed and they're – they would be completed by the divisional commander and then they're sent to the respective deputy chief and we would review them. If there are some concerns raised in the reports or in the 324 form, the monthly report, that would be something that we would bring forward.

**MS. CHAYTOR:** Okay. So is there somebody correlating the information so that you know –

**D/CHIEF SINGLETON:** Well, it's correlated on, on I guess, certainly an annual basis with the annual report, but the – and that's why we changed the process that December. I believe it's December 2012, September 2012 – September 28, 2012.

**MS. CHAYTOR:** September, yes.

**D/CHIEF SINGLETON:** And that was followed up with a change, a routine or general order in December 20 of 2012. With regard to the process for, the review of the forms would go from review by a board to a review by the division. And, you know – so the inspector and the superintendent, who are closer to the event, that would have an opportunity to say and assess whether the use of force by an officer was appropriate.

**MS. CHAYTOR:** Okay. And I understand also in this, the changes that happened in September of 2012, there was change to the role of the Use of Force Review Board.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And I understand prior to this, all instances of use of force would be referred to the review board. But at this point in time, I believe the change – and correct me if I'm wrong, but my understanding is that it says: the board will only review instances where remedial training is recommended.

**D/CHIEF SINGLETON:** It says: will review instances where remedial training is recommended by the inspectors as documented. Yes.

**MS. CHAYTOR:** Right. Okay.

All right, so that was the change at this point in time in terms of the role of the board.

**D/CHIEF SINGLETON:** Yes, because the process before that time was a very cumbersome process where each member of the Use of Force Board might receive 200 or 300 forms and they'd have to sit down and go through them, and some people didn't have the background to review the, or assess the use of force. So we felt that it would be better to move it to, as soon as possible after the incident, by giving it to the super – or the supervisor inspector and the superintendent.

**MS. CHAYTOR:** Okay. And what is the Use of Force Review Board?

**D/CHIEF SINGLETON:** The review board, it's a – I know it's outlined in another policy. It's a board. It's chaired by the Deputy Chief of Patrol Operations. It has members of policy and planning. I'm not sure, I believe our in-house legal counsel is on it, and Use of Force Board members and members of the RNCA, and they review new equipment, make recommendations about our Use of Force training, and – because there's new policy issued in August of 2016, and the change that the board would meet at least quarterly.

**MS. CHAYTOR:** Okay. And there is on that – we don't need to bring it up, but I understand that Exhibit P-0561, there's the Use of Force Review Board policy and it's section 17.1, and that is an excerpt I think from the policy of December 20, 2013.

**D/CHIEF SINGLETON:** Yes, that would be the one. And the policy was revamped in 2016.

**MS. CHAYTOR:** Okay.

Was the matter of Constable Smyth's use of force in the Donald Dunphy matter, was that ever referred to the Use of Force Review Board?

**D/CHIEF SINGLETON:** No, it wasn't. And I know when I met you on January 6, I mentioned that I had only seen the form when I photocopied some exhibits at the Commissioner's request for Superintendent Sheppard. But I did see an email that was not in my emails but submitted as an exhibit from Commission where I had sent the form electronically, but I have no recollection of even sending the – and I asked our assistant, you know, where did it come from.

But under that particular circumstance, and maybe this is something for future consideration, is, you know, when you have an active criminal investigation and you have an active internal investigation, I would not see subjecting the use of force used by the subject officer being reviewed by our Use of Force Board.

**MS. CHAYTOR:** Okay. And your Use of Force Review Board, are all internal people are they?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. All right.

And there's no requirement that under – there's no requirement then after the fact, after everything happens, that in certain circumstances, such as what we were dealing with here in terms of severity or bodily injury to a person, there's no provision that those circumstances would also go to the review board?

**D/CHIEF SINGLETON:** There's no provision, no, in our current policy.

**MS. CHAYTOR:** Okay. And I understand that – I understand your point that the review board would get bogged down with the vast number, and so it was deemed that only if remedial training is deemed necessary does it now go to the board. But I was wondering whether or not there was any consideration that perhaps there are other circumstances that should also be considered by the board, regardless of whether or not remedial training had been recommended.

**D/CHIEF SINGLETON:** And this is something, say, since we discussed this issue on January 6, I've had some discussions with the other deputy chief, Mr. Commissioner. And also, you should've received – we've also updated our Use of Force form and policy to – you know, some of the issues that you raised. And we've updated our form to meet what, we believe, is the process and practice that we need.

**MS. CHAYTOR:** Okay. All right, fair enough.

And, yeah, I think one of the things that we were looking at that day included when you would sign off or – and dating the form. I don't think there was a date on the form, those types of issues.

**D/CHIEF SINGLETON:** Right. Signature of supervisors, date and comment section.

**MS. CHAYTOR:** Okay. Fair enough. Okay.

When, or what steps or inquiries must be taken by inspectors or superintendents to determine whether or not remedial training might be necessary?

**D/CHIEF SINGLETON:** Well, the officer in question completes a summary and sometimes they'll, you know, the occurrence report, or their text of the occurrence report will be attached to a Use of Force form. And that's why we moved it to the frontend, or as near as possible to the incident, that the supervisor reviewing the form today is aware that – what the incident the officer was involved with. You know, it happened on today – you know, if it's patrol, who usually have the most frequent use of force, that the sergeant working tonight is aware that two members of his shift, for example, arrested a person for armed robbery, or arrested a person for a home invasion.

So they are aware of the incident. They might've supervised the incident, or they are – after the incident, after the arrest, they're aware of what happened. They can read the report and they can assess at that time. The supervisor can make their comments. And I believe the assessment on whether remedial training is required on the new form would be left for the inspector and the superintendent to decide.

**MS. CHAYTOR:** Okay.

I'm not going to bring up the next exhibit, Deputy Chief, but I'm just going to read from it. And for the benefit of counsel and the Commissioner, it's P-0156.

This is a letter of April 27, 2015, and this is a letter from Sergeant Bill James to Superintendent Jason Sheppard. And this is in relation to some requests that the RCMP had made regarding Constable Smyth's use of force.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And information regarding any prior instances of use of force. And the last paragraph or – I believe it might be the last or second last paragraph: "I have no information to add on any previous Use of Force incidents in relation to Cst. Smyth. Deputy Chief Singleton is the last person to see any and all Use of Force reports. If a report was needing further review Deputy Chief Singleton would forward his concerns to the Use of Force Unit to follow up on."

**D/CHIEF SINGLETON:** Yes, and what I believe Sergeant James is referring to is that prior to – and I don't know what the time period is of his report between, if it's 2010 to 2000. But all the reports used to come to the Use of Force board at the time, when I was the chair of the board – and that process changed in 2012, as I previously spoke about, where the process changed from the Use of Force board reviewing all the forms to the Use of Force board only getting the ones where remedial training is.

And in the new process that we introduced with the new form, we also have all the forms on a monthly basis now going to the Use of Force unit as a second check.

**MS. CHAYTOR:** Okay. And did anyone then approach you ask, well, were there any other Use of Force Reports?

**D/CHIEF SINGLETON:** No.

**MS. CHAYTOR:** Okay.

And in terms of – the person who makes the decision as to whether additional training is required in terms of your review of what you would do, what you're saying here, this is referring back to when you were on the board, as opposed to –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – your current position.

**D/CHIEF SINGLETON:** Yes. Right.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** Or that's what I understand it to be.

**MS. CHAYTOR:** That's what you understand. Okay. All right.

And if we could bring up, please, P-0496. And this might be the email, Deputy Chief Singleton –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – that you were referring to there was some confusion because, when we met for your interview, you indicated that you thought you hadn't seen the Use of Force form.

**D/CHIEF SINGLETON:** Yes, and after getting the exhibits last week, I spoke with our executive assistant and, you know, it came in electronic format, so she's not sure who scanned it at the time because another person working there has retired, but – you know, when I got the form, I sent it on to Jason to ensure that – asking the question if it had been shared with the RCMP and Saskatoon.

**MS. CHAYTOR:** All right. Fair enough. So that's fine, so that you – so it's no confusion; you did in fact receive it and then you sent it on.

And then this is a letter May 20, 2015, and this is Jason Sheppard writing to you and saying that Use of Force Report for April of 2015, and there's only one report submitted this month, and the attached form is the form of Constable Smyth with respect to the Dunphy shooting.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And that was the only one for that month.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And so this is the normal course of Use of Force forms being channelled through the divisional commander –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – to the deputy chief. That's correct?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

Okay. And, generally, when you get this report then submitted to you, I take it you review it?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And you look to see whether or not there's any commentary on the form or whether or not, you know, the superintendent has requested or made any comment regarding remedial training?

**D/CHIEF SINGLETON:** Right.

**MS. CHAYTOR:** Okay.

And I think the last time we met I asked whether you had indicated or sign off on whether or not you had reviewed it, that was one of the things, and whether there was any form to indicate or anywhere on the form to indicate you had done that or even the dates for the form. So what you're telling me it's since then been updated?

**D/CHIEF SINGLETON:** The form has been updated to provide a signature and date line for the supervisor, inspector and the superintendent. And the Monthly Summary sheet, form 324 –

**MS. CHAYTOR:** Which is this one on page 4 of the exhibit, yes.

**D/CHIEF SINGLETON:** Yeah, that has been updated now to include a signature line and date for the deputy chiefs.

**MS. CHAYTOR:** Okay.

Deputy Chief, one of the things – and if we could just make this a little bigger, please, because I don't know how good your eyes are, but mine aren't that good – but under, on the bottom where the boxes are – is that as big as it goes, Madam Clerk? Sorry. Okay.

So on the bottom of the form that we have here – and if we could just centre it now, please – it says that it is reviewed by the supervisor and that's ticked yes. Reviewed by Training Section is not ticked; Recommended EAP counselling is a yes; Recommended Other Training, and there's nothing ticked. So when you got this report, would you look at that and see – and ask any questions as to why the form didn't appear to be complete?

**D/CHIEF SINGLETON:** No. The one that I guess I would be looking at to determine whether or not I'd be forwarded a form – and outside of this case, you know, in the typical Use of Force summary or Monthly Summary Report, I'd look at the form 324 itself and see if the appropriate box on Remedial Training was ticked by the superintendent or inspector and superintendent and whether there's commentary there. You know, the other thing I noticed looking at the form –

**MS. CHAYTOR:** Okay, I just want to stop you there then. So – and because we do see on the next page, we do see where Superintendent – if we can make it smaller now so we can see. Superintendent Sheppard ticks no to remedial training.

Can we make this document smaller, please? Okay. And now I can't read the comments, sorry. Okay.

**MS. O'BRIEN:** Further information can be gathered from RNC file number.

**MS. CHAYTOR:** Right, so and then he says further information can be –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – gathered from the file number. And he signs this and it's dated May 24, 2015. Okay. So and if we go back to what you were telling me earlier that the first, though – and the person who would be in the best situation to know, would be who, would it be Superintendent Sheppard or would it be the –

**D/CHIEF SINGLETON:** Well –

**MS. CHAYTOR:** – most immediate, person most immediate –

**D/CHIEF SINGLETON:** To know what? To know whether remedial training is required?

**MS. CHAYTOR:** Right.

**D/CHIEF SINGLETON:** Well, you know, the Monthly Summary Report would be the inspector and certainly the superintendent who would make an assessment on whether there was remedial training required. The other thing I notice about this form is, is dated 2008, so in actual fact this form – and I know we were doing revisions to it, and I guess they weren't done back in 2012 to meet less legal options. This form should have been, I guess, really at the time of policy updated. But in the new form, you know, we've amended it to meet what, what we believe is the correct process.

**MS. CHAYTOR:** Okay. And the Superintendent Sheppard indicating that remedial training saying no –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – remedial training not required, did you make any inquiries of him as to how he was able, or of him or of anyone else to ascertain how they were able to make that determination on, I think it's May 24, 2015 that he signs that, when the RCMP investigation was still pending and your internal investigation is still pending –

**D/CHIEF SINGLETON:** Well, I guess –

**MS. CHAYTOR:** So did you get it and say well, what did you do to make that determination?

**D/CHIEF SINGLETON:** Well, he does make a – I didn't ask him specifically on this particular case, but he does make a commentary on the monthly form of the reference to the Occurrence Report in that particular file.

**MS. CHAYTOR:** Okay, so did you do that, did you go and read –

**D/CHIEF SINGLETON:** I did.

**MS. CHAYTOR:** – the Occurrence Report?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay, so you recall doing that now?

**D/CHIEF SINGLETON:** I recall – I already had – I don't recall seeing this form until later, but like I said, under this particular circumstance I would not send it to the Use of Force board and that. And whether or not, you know, we change policy, that'll be something that we'll determine. In this particular case, you got two investigations. I wouldn't be sending it to a Use of Force board, knowing that there's two investigations underway.

**MS. CHAYTOR:** No, and I understood your answer to that line of questioning, but my line of questioning here is how there could be any determination as of May 2015 that no remedial training was required?

**D/CHIEF SINGLETON:** You'd, you'd have to go by the information you had that day, and that would be – 'cause in the 324 form Superintendent Sheppard references the Occurrence Report completed by Constable Smyth. So he would have reviewed that form and taken information he had in that particular case, he would have assessed that remedial training was not required.

**MS. CHAYTOR:** And what about the fact that Review by Training Section is not, the box is not even ticked. Did you make any inquiries regarding that?

**D/CHIEF SINGLETON:** No, I didn't make any inquiries. And like I said, this form was an older version which should have been – and I know there were some discussions back in 2012 of having this particular form reviewed or updated. The new form that we have that we recently updated has taken those boxes out and we have a process where there will be a review about use of force.

**MS. CHAYTOR:** Okay.

And in terms of the correlation and analysis of any information on these forms, who's responsible for that? Who does that work for the RNC?

**D/CHIEF SINGLETON:** The correlation of it? Well, each –

**MS. CHAYTOR:** Yeah, the correlation of the information.

**D/CHIEF SINGLETON:** Well –

**MS. CHAYTOR:** To look for trends or statistics, that type of thing.

**D/CHIEF SINGLETON:** I guess the divisional commanders on a monthly basis may pick up trends. The annual report may pick up a trend but the – and I guess what was omitted – omitting in our process was having it actually correlated by use of force. And in a routine order issued on the 7th of February of this year we've changed or introduced a new process which was started informally. But we introduced a process where it will be done by our use-of-force unit.

**MS. CHAYTOR:** I'm sorry. So what's the process that's being implemented?

**D/CHIEF SINGLETON:** That on a monthly – on a quarterly basis –

**MS. CHAYTOR:** February 7 of this year?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay, so just in the last few days.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** But it was a follow-up from our meetings and some issues with the form. So when we were looking at the form we also took the opportunity to look at what processes were informally being done. And one of them that was introduced, I think it was in 2016, was the Use of Force board taking the forms and analyzing the data on it, Mr. Commissioner.

So I made that part of the process that they will sign out the forms on a quarterly basis and review the forms and do an analysis of the various types of force being used by the members.

**MS. CHAYTOR:** Okay, so as of February 7, 2017, there a new process in place.

**D/CHIEF SINGLETON:** It wasn't a comprehensive. No

**MS. CHAYTOR:** There's a new process in place. Okay.

**D/CHIEF SINGLETON:** There's a new process –

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** – to meet a practice that was started, I believe it was last year.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Fair enough.

All right and perhaps I'll follow up with your counsel to get some more information, then, on that.

All right, I just to – I'm almost done you'll be happy to know. But I'm wondering whether or not you were involved in any of the decision making or discussion around Constable Smyth's initial return to work following the incident. And if so, what was discussed and whether you had any concerns?

**D/CHIEF SINGLETON:** I do recall discussions around Constable Smyth's return to work. And discussions I recall was where the investigations were ongoing that he would remain in a non-operational capacity or non-front-line capacity.

**MS. CHAYTOR:** Okay.

Also, in terms of other communications with Constable Smyth, we do have an email from him to you dated September 13, 2016. And at that point in time he was looking to meet with you. So September 13, 2016, did you meet with him then? And if so, what was the purpose of that meeting? What was discussed?

**D/CHIEF SINGLETON:** I know I was questioned on the 6th of January and I don't recall a meeting. And I – a follow-up to this, I know there was other emails that I found from Constable Smyth, between Constable Smyth and the chief and that, where this meeting may have been delayed. And then Constable Smyth, I believe, went – may have went on a holiday and/or went on a vacation and I didn't – I don't recall meeting with him.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** But I know that it may have happened. The chief may have met with him and maybe the other deputy.

**MS. CHAYTOR:** Okay, fair enough.

Okay and I just want to go back because my co-counsel very astutely picked up on a question for me.

In terms of answering the position that Constable Smyth came back to, you said non-front line and non-operational?

**D/CHIEF SINGLETON:** No, it was non-front line. He remained – he wasn't in a front-line position. And I think it was in a non-operational position, yes.

**MS. CHAYTOR:** He was in a non-operational position.

**D/CHIEF SINGLETON:** Yeah.

**MS. CHAYTOR:** Okay. So he remained – he went into a non-operational position but wasn't non-front line?

**D/CHIEF SINGLETON:** It was, it was – I believe the position was in the Criminal Investigation Division.

**MS. CHAYTOR:** Right. Okay.

Is there a difference? Maybe you can tell me: What's the difference?

**D/CHIEF SINGLETON:** Well, front line is usually determined to be patrol. So, really, it would be –

**MS. CHAYTOR:** Okay. That's what you mean –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – by non-front line.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So front line is usually patrol.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

So he was both; he was non-front line and non-operational?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** And non-operational in the sense that there was an investigation underway.

**MS. CHAYTOR:** Okay. I understand.

All right, I'm going to bring you up to P-0443, please. And these are, these are notes that Superintendent Sheppard took, and if we could have page 35 of that document.

And these are notes of September 21, 2016, so it's shortly after the email that Joe Smyth sent to you looking for a meeting; about a week later, I guess, from September 13. And these are handwritten notes, as I say, of Superintendent Sheppard.

And if I just go back the page before – and I can just give you some context here – that he has received a call from Staff Sergeant Kent Osmond of the RCMP.

**D/CHIEF SINGLETON:** Yeah.

**MS. CHAYTOR:** And he's called Superintendent Sheppard because he's expressed concern about Constable Smyth's well-being. And I think this to be in the wake of comments that Judge Riche had made in the media to give you some time reference to it.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And if we then look at 35, Jason Sheppard or Superintendent Sheppard says he immediately went to see you after he spoke with Staff Sergeant Osmond about this and that to see chief with Deputy Chief Singleton.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And “I expressed concern regarding Joe Smyth. He sent me an email last night saying he wanted to crawl into a big hole” and anyhow – so it looks like that you both then go to see the chief about this.

**D/CHIEF SINGLETON:** Yes, we did.

**MS. CHAYTOR:** Okay. So you recall this meeting?

**D/CHIEF SINGLETON:** I do.

**MS. CHAYTOR:** Okay. And you don’t have notes of that meeting though?

**D/CHIEF SINGLETON:** No, I don’t but I recall that myself and Superintendent Sheppard met with the chief with regard to the media.

**MS. CHAYTOR:** Okay. And what discussion was had and what decision or conclusions were reached as to how to best assist Constable Smyth?

**D/CHIEF SINGLETON:** Well, I know there was discussion around the press release but also at that time we contacted Inspector Shawn O’Reilly with regard to EAP.

**MS. CHAYTOR:** Okay. So at this point in time there was discussion around public communications?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay. And so public communications on the issue. And was there a decision then reached to – for the RNC to speak publicly on the matter?

**D/CHIEF SINGLETON:** There’s – I know there was a draft – might have been a draft press release done or something or speaking notes. And I know myself and Superintendent Sheppard, we discussed with the chief that, you know, that notes may need to be amended to – or reflect, you know, the concerns being expressed.

**MS. CHAYTOR:** Okay.

All right, and then my last line of questioning is just regarding the notebook policy. If I could have P-0030, please, and this is dated November 28, 2014, I understand would be the policy in effect on the date of the incident.

1.2 refers to the notebook being one of the most important tools an investigator has at his/her disposal. “1.3 A notebook should not only be a chronological record of an employee’s activities, but must capture in detail his or her observations, records of interviews conducted, meetings attended, instructions and advice given or received and involvement with the arrest of accused persons.”

And so, Deputy Chief, in terms of an officer receiving information from neighbours in this situation, people that Constable Smyth spoke to, receiving information from another police force in terms of any searches that they may have done for him, other types of information that he would have gathered in doing his threat or risk assessment on that date and gathering information for him to be able to do that risk assessment, are those the types of things you would expect to see recorded?

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** Okay.

And “1.4 Note taking is a mandatory requirement for all police officers, regardless of their level of involvement in a particular event or occurrence.” And I take it there’s no exceptions, that this is mandatory for all officers.

**D/CHIEF SINGLETON:** Well, I believe paragraph 1.1 or 1.2 speaks to, refers to operational notes, notebooks relating to police occurrences only, yes. Yes, so it would be for investigators.

**MS. CHAYTOR:** Okay.

And in terms of Constable Smyth being assigned to the protective service unit, there’d be no exception for that unit?

**D/CHIEF SINGLETON:** You would expect him to have notes.

**MS. CHAYTOR:** Okay.

Deputy Chief, those are all the questions that I intended to ask of you, unless there’s something that I have not covered with you or anything else that you want to elaborate on. If not, some of my colleagues may have questions for you and the Commissioner may have some questions.

**D/CHIEF SINGLETON:** Okay.

**MS. CHAYTOR:** So thank you.

**THE COMMISSIONER:** Counsel, who is going first? Any volunteers? Do you have any questions, Mr. Simmonds?

**MR. SIMMONDS:** I just have a couple of questions, Deputy Chief. In your initial – actually Exhibit P-0464 – sorry, thank you. At 2:58 that was call from Superintendent Boland to you or you to Superintendent Boland?

**D/CHIEF SINGLETON:** Made to Superintendent Boland.

**MR. SIMMONDS:** Okay.

And where did you get the information, Joe Smyth called Holyrood detachment this morning investigating complaint against the premier?

**D/CHIEF SINGLETON:** I would have gotten that from Mr. Boland.

**MR. SIMMONDS:** So Chief Superintendent Boland, when you spoke to him, told you that this is what he understood?

**D/CHIEF SINGLETON:** That’s what my notes indicate, yes.

**MR. SIMMONDS:** Okay. This is not something that you understood; this was something that he had passed along to you, which must have come from his first responders?

**D/CHIEF SINGLETON:** Yes.

**MR. SIMMONDS:** Okay.

And the second question – and I know you did answer – and again, this is Exhibit P-0469. I found your answer concerning. This is on –

**MR. AVIS:** Commissioner, I'm going to be saying this with my witnesses that what counsel thinks, I don't know what relevance that has to anything, that Mr. Simmonds is concerned – why doesn't he just ask the questions?

**THE COMMISSIONER:** Well, let him get the question out. He is making a preliminary comment –

**MR. SIMMONDS:** Sorry.

**THE COMMISSIONER:** Go ahead.

**MR. SIMMONDS:** Thank you.

This was sent on the 5th at about 5 o'clock.

**D/CHIEF SINGLETON:** Yes.

**MR. SIMMONDS:** Okay. "This fella has been known to call open line shows and caused issues for some family members." Where did you get that information to?

**D/CHIEF SINGLETON:** On that particular day, I was in St. Mary's Bay area –

**MR. SIMMONDS:** Yep.

**D/CHIEF SINGLETON:** – after this occurrence happened. You know, I got a – like I said, I got a call around 10 to 3 –

**MR. SIMMONDS:** Uh-huh.

**D/CHIEF SINGLETON:** – and within, I'd say, 10-15 minutes there was – I was in a group of people and there were different people commenting and I was stepping out to take phone calls – as you might expect, it was busy – and people were talking and the only – you know, I did hear someone saying that Don Dunphy had called *Open Line* and had some – and they knew he had some issue with his –

**MR. SIMMONDS:** But you have no idea, I take it, as to the reliability of any of the information that was given to you –

**D/CHIEF SINGLETON:** No, and that's what I said to Ms. Chaytor when I was interviewed on January 6.

It was just information I would send it – and I just sent it to the chief only.

**MR. SIMMONDS:** And the second part of this, which is more disconcerting to the Dunphy family: "No doubt mental health may be raised." Where did that come from and how did – I mean, that's a fairly important issue.

**D/CHIEF SINGLETON:** Well, it is, and that's why I used the terminology "may be raised."

**MR. SIMMONDS:** No, you used the terminology "no doubt."

**D/CHIEF SINGLETON:** “No doubt,” “may be raised” because knowing – you know, my experience has been that in these type of situations, mental health is one of the –

**MR. SIMMONDS:** But what kind of situations are we talking about?

**D/CHIEF SINGLETON:** Police shootings.

**MR. SIMMONDS:** Police shootings, okay.

**D/CHIEF SINGLETON:** You know, where there is a fatal police shooting and that during the course of the investigation, this is an avenue that may be or will be – you would expect it will be explored by the investigating agency.

**MR. SIMMONDS:** Well, with the greatest of respect, no doubt mental health may be raised; I don’t take that as the investigating agency. What was the context in which you meant it?

**D/CHIEF SINGLETON:** Well, that’s the context I’ve made and the other information I have spoken to, when questioned by Ms. Chaytor, was the issue around – there was also commentary about his living conditions. So, you know, whether or not that would raise, raise –

**MR. SIMMONDS:** It was the living conditions that brought you to –

**D/CHIEF SINGLETON:** No –

**MR. SIMMONDS:** – make this statement, or I’m not going to say conclusion, but make this statement that no doubt mental health is going to be an issue?

**D/CHIEF SINGLETON:** No, I think it might be a combination of living conditions and the fact the type of investigation, this would be undertaken.

**MR. SIMMONDS:** Did you have any substantive knowledge whatsoever?

**D/CHIEF SINGLETON:** No.

**MR. SIMMONDS:** Whatsoever?

**D/CHIEF SINGLETON:** It’s information that I heard and –

**MR. SIMMONDS:** Pass it on.

**D/CHIEF SINGLETON:** And it wasn’t that he had mental health issues, it wasn’t the information but based on, you know, what was said and I guess my experience with some of these matters, that I just said no doubt mental health may be raised. That’s all I said. It wasn’t diagnosis or nothing.

**MR. SIMMONDS:** So you’re passing along to the chief –

**D/CHIEF SINGLETON:** Yeah.

**MR. SIMMONDS:** – an issue that you believe will be raised without any substantive basis for making that conclusion, coming to that conclusion?

**D/CHIEF SINGLETON:** I’m passing it on to the chief. I wasn’t sending it to the investigators or anything like that, Sir, no.

**MR. SIMMONDS:** Thank you very much, Deputy Chief.

**MR. KENNEDY:** Deputy Chief Singleton, I just have one area to explore with you, Sir, and that's around the use of notebooks. You just went through the policy there in relation to notebooks and Commission counsel indicated it's mandatory to take notes.

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** That's what the notebook says. However, policing is a practical affair, is it not, in that you have to have time and an opportunity to make notes?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** Are you expected or do you expect your officers, Sir – and let's use this as an example. Do you expect Constable Smyth to leave a house where he's talked to two people and right then and there make notes?

**D/CHIEF SINGLETON:** It may be impractical at times when you get different situations where you're – it's more convenient to make notes elsewhere.

**MR. KENNEDY:** And, Sir, also the making of notes these days, I would suggest to you, can be influenced or assisted by electronic media, such as emails and cellphones which have times and dates and they're – are pretty clear in terms of what's said and when it occurred. Correct?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** Now, in terms of note taking, Sir, you know, we've heard – I guess we got the little police notebook, that little black book or whatever –

**D/CHIEF SINGLETON:** Patrol officer's notebook, I believe is the new policy (inaudible).

**MR. KENNEDY:** Okay.

That's about two inches wide. Well, probably a bit bigger than that, is it?

**D/CHIEF SINGLETON:** Not much.

**MR. KENNEDY:** No. So I mean those are simply you jot notes and times into that book. Correct?

**D/CHIEF SINGLETON:** Yes, record –

**MR. KENNEDY:** Okay.

**D/CHIEF SINGLETON:** – your shifts and what you do during the tour of duty.

**MR. KENNEDY:** Yeah.

And so if you're, for example, on street patrol and you haul in an impaired driver or you outline, you put it in your notebook as soon as you can basic information.

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** But sometimes, depending on where you work, that may not occur until you get back to the police station and can sit down and sort out your emails, your cellphone calls, texts and summarize your conversations? Is that correct?

**D/CHIEF SINGLETON:** That could happen.

**MR. KENNEDY:** Yeah.

And, Sir, in terms of depending where you work can outline the type of notebook you use. Correct?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** Is the policy such that you have to use that little notebook or do people use pads like this at times? Do they use books that are similar to the one the Commissioner's writing in, for example?

**D/CHIEF SINGLETON:** The officers – there's three types of notebooks: there's the patrol officer notebook, then there's the investigator's notebook which is used for CID members, and then there's a project notebook which will be used by people, say, that are assigned to a Major Case Management project and they might go to – because the pages are larger, they're doing more writing, usually on a major case, so it's more convenient to use a larger-sized paper.

**MR. KENNEDY:** Sir, isn't the key to the notebook policy that a police officer should make notes as soon as practical and in a complete a manner as possible?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** So are there times, Sir, in your career that you have made – would have made notes on a – it could be, like, anything from a stick or like that, to the back of napkin, to a scrap piece of paper?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** Yeah.

So the key is to get it in writing as soon as you can. Is that correct?

**D/CHIEF SINGLETON:** Yes, as soon as you can, ideally in the notebook. But there are events or situations where it won't be in the notebook right away.

**MR. KENNEDY:** Yeah, because oftentimes now we'll see General Occurrence Reports that can – will contain the police officer's notes.

**D/CHIEF SINGLETON:** Well, you know, and that's one of the things that you see. You know, say, when I was in the CID, you sat down, you wrote out your paper. Now, you know, you make a phone call and you wrote down on your form that you made a phone call, you had a conversation. Officers now are inputting it right into the computer.

**MR. KENNEDY:** Right into the computers.

We'll see, for example, that the notebook may just contain a time and a number or a time and a brief notice of what was said and then the General Occurrence Report which is, oftentimes, prepared at the end of a shift. Is that correct?

**D/CHIEF SINGLETON:** Well, it could be completed any time, I guess.

**MR. KENNEDY:** Yeah.

**D/CHIEF SINGLETON:** At the end of a shift, during a shift –

**MR. KENNEDY:** Yeah.

**D/CHIEF SINGLETON:** – and that.

**MR. KENNEDY:** And the purpose of notes, Sir, is to ensure that the member, the officer, reduces events to writing as soon as possible, in as much detail as possible, so as to properly and accurately record the event. Is that correct?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** And, sometimes, circumstances intervene and the opportunity to make notes may not take place for a couple of hours. Is that correct?

**D/CHIEF SINGLETON:** It depends on the circumstance.

**MR. KENNEDY:** Yeah.

So do the RNC have – do you have computers in your cars that where your officers can input information immediately?

**D/CHIEF SINGLETON:** In patrol cars, yes.

**MR. KENNEDY:** Yeah. Is that something now that police officers do?

**D/CHIEF SINGLETON:** Some they do. The timeliness of it I'm not sure but, you know, when you finish, say, at a call, they'll upload the information into what we call the occurrence queue.

**MR. KENNEDY:** So if you apply strict interpretation of your note-taking policy they're all in breach of their policy, of the RNC policy, are they?

**D/CHIEF SINGLETON:** Depends on the situation.

**MR. KENNEDY:** But if the notebook, if we're going to take a very restrictive view of the notebook policy, then the inputting of information directly into a computer is not allowed, is not addressed in that policy, is it?

**D/CHIEF SINGLETON:** I'm not sure if it's addressed in other parts of policy outside of note booking, whether it's under the Criminal Reporting policy or our IMIT.

**MR. KENNEDY:** So, again, the key is to get it in writing as soon as you can. Is that correct?

**D/CHIEF SINGLETON:** Yes.

**MR. KENNEDY:** Thank you.

**THE COMMISSIONER:** Any other questions?

Mr. Flaherty.

**MR. FLAHERTY:** Is it generally a good practice – well, first off let me introduce myself. Cletus Flaherty, counsel for the Donald Dunphy Community Coalition.

Is it generally a best practice to make notes – if you’re interviewing someone, is it generally best practice to make notes during the interview?

**D/CHIEF SINGLETON:** You know, today when you’re doing an interview, it’s done in different mediums. Like, we have wired rooms where the person is videotaped, audiotaped; other interviews are done audio. If you’re doing a – if a patrol officer, say, they’re more accustomed to doing handwritten statements.

**MR. FLAHERTY:** Yeah.

**D/CHIEF SINGLETON:** Then, you wouldn’t be making notes but you would be taking a statement. And I believe during our interview, our PEACE interview model, that there are notes being taken during an interview, but then again, the interview is being recorded.

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

**D/CHIEF SINGLETON:** But if you’re taking a verbal interview –

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

**D/CHIEF SINGLETON:** – where a person says: No, I’ll tell you what happened but I won’t give you a statement, then you would be taking notes –

**MR. FLAHERTY:** Okay.

**D/CHIEF SINGLETON:** – to, you know, try to accurately reflect. But that’s an interview where you be, you know, making detailed notes around particular comments being made.

**MR. FLAHERTY:** Okay.

So in the situation that we find the subject of this inquiry, Constable Joe Smyth went next door to Donald Dunphy’s house and spoke to his brother and sister-in-law. During this time, when he’s asking questions and being provided information, he should have, unless prevented, made notes at that time or as soon as practicable, but you would rather take it as it’s given to you. Correct?

**D/CHIEF SINGLETON:** Well, I guess, the freshest is as it’s being given to you. But depending on what the detail of the notes are and whether – you know, when you go back to your car whether you can write it down, what was just said.

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

**D/CHIEF SINGLETON:** You know, and some people are – when you start making notes – are apprehensive.

**MR. FLAHERTY:** Okay. And so is it your understanding that Constable Joe Smyth had an opportunity to go back to his car after he spoke with Dick and Debbie Dunphy?

**D/CHIEF SINGLETON:** I’m not sure.

**MR. FLAHERTY:** Okay. And so it is based upon the – is it the circumstances that dictate whether or not you make notes when you're speaking to someone, as Constable Joe Smyth was speaking with Dick and Debbie Dunphy?

**D/CHIEF SINGLETON:** Well, it depends, each, I guess, individual situation will bring its own issues and that, but ideally you'd make notes at the time, yes.

**MR. FLAHERTY:** Okay. And we know that this investigation, or Constable Joe Smyth's investigation, essentially lasted three days.

**D/CHIEF SINGLETON:** Yes.

**MR. FLAHERTY:** And the only notes that exist are two names with a brief descriptor written on a folder. Does that appear to you, based upon what you know, appear to be sufficient? Two names – all the notes are, are two names and an investigation that lasted three days. Does that appear to be sufficient note taking?

**D/CHIEF SINGLETON:** I haven't seen – are you talking about his Occurrence Report? Are you talking about his notes?

**MR. FLAHERTY:** I'm talking about the notes that Constable Joe Smyth took during his three-day investigation. His notes –

**MR. KENNEDY:** Commissioner, again, it depends how you define notes. We know there are emails where there are things reduced to writing back and forth. So, you know, is that question really fair in that respect in terms of hand – if notes in a notebook are what they're talking about, but emails are there, outlining what took place.

**THE COMMISSIONER:** Well, I guess, there's also, Mr. Flaherty, when you talk about investigation over – you said two days?

**MR. FLAHERTY:** Three days.

**THE COMMISSIONER:** Three days, beginning when and ending when?

**MR. FLAHERTY:** Beginning when Donna Ivey first sent an email and ending when Donald Dunphy was shot. That's three days.

**MR. COMMISSIONER:** Is it?

**MR. FLAHERTY:** Friday, Saturday, Sunday.

**MR. COMMISSIONER:** Friday, Saturday – yeah.

**MR. FLAHERTY:** So there maybe emails, but with – sorry, go ahead, Commissioner.

**THE COMMISSIONER:** (Inaudible) I just have to deal with Mr. Kennedy's point.

The, there were recordings – I'm just trying to recall now the, the extent of the notes, Mr. Kennedy. We had the notes on the file folder which I think is what Mr. Flaherty is primarily referring to. You're referring to the fact that there were also other communication between Constable Smyth and the detachment and so forth.

I can't recall the – did he do handwritten notes or was this just done by recording the phone (inaudible) and so forth?

**MR. KENNEDY:** No, there's email notes, Commissioner, going back and forth, as you're well aware.

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** And then we know that there are calls to the, both the RNC and the RCMP which are recorded. I'm not aware of whether or not that – I haven't seen anything to indicate that the summaries were reduced to writing, but we do have –

**THE COMMISSIONER:** Right, it's recorded.

**MR. KENNEDY:** – that information.

**THE COMMISSIONER:** Yeah.

**MR. FLAHERTY:** Okay, but we'll –

**THE COMMISSIONER:** All right, go ahead.

**UNIDENTIFIED MALE SPEAKER:** I'll –

**MS. CHAYTOR:** (Inaudible) I just want to say the calls to the RCMP are after the fact. I don't – and maybe Mr. Kennedy can point me to where there's any recording of the call to the RCMP before the shooting.

**MR. KENNEDY:** I thought that (inaudible).

**MS. CHAYTOR:** Sorry.

**MR. KENNEDY:** I thought that the calls that morning to Constable Cox and Corporal O'Keefe, I thought there was a recording of those.

**THE COMMISSIONER:** The Holyrood ...?

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** I don't think there were.

**MS. CHAYTOR:** No, but if there are if you could tell us, we have not seen that. We have not seen any recording or transcript of those communications.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** The only communication before is a conversation with Constable Smyth to the Communications Centre of the RCMP where there's an exchange of phone numbers. And I believe then the discussion with Constable Cox must have taken place by cellphone.

But that's the only communication I'm aware of, Mr. Kennedy, that he spoke with communication persons. But I'm not aware of any – the communications between him and Constable Cox and Corporal O'Keefe, to our knowledge –

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** – is not recorded.

**THE COMMISSIONER:** Do you have any other information on that, Mr. Kennedy?

**MR. KENNEDY:** No, certainly not, but I mean the call to the RCMP is recorded and then what happens after that ...

My point is simply that there is other information you have to take into account. You can't simply say to this witness there's two notes in a, in a file.

**THE COMMISSIONER:** Yeah, that's fair enough.

We'll let Mr. Flaherty – we'll let you continue your questioning there.

**MR. FLAHERTY:** With respect to the note-taking policy that you reviewed earlier, would a recording of a telephone call between an investigator and another police officer, would that recording itself constitute a note as contemplated by the note-taking policy?

**D/CHIEF SINGLETON:** Well, depends on if, you know, the situation or whether there's a notation that I spoke to RNC Comm Centre.

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

**D/CHIEF SINGLETON:** You know.

**MR. FLAHERTY:** But that would be a note that the investigator makes himself. Correct?

**D/CHIEF SINGLETON:** It may be, and it may depend or change from one investigator to the other.

**MR. FLAHERTY:** Okay.

**D/CHIEF SINGLETON:** You know if you read the policy and that, you know, you'd expect there'd be some notation.

**MR. FLAHERTY:** Okay, you would expect to be some notation. So if I phoned you – this is hypothetical. If I phoned you and there was a recording of that conversation, can I then say that I made notes of that conversation?

**D/CHIEF SINGLETON:** It depends on, you know, the person. If they're saying that, you know, I called the Communications Centre. Did they make a notation that they called, done this or that and that? It depends on the individual officer –

**MR. FLAHERTY:** No –

**D/CHIEF SINGLETON:** – and his follow-up.

**MR. FLAHERTY:** I'm sorry to cut you off but that – what it appears – I just want to make sure that all the evidence is clear before the Commissioner. I'm not talking about – in my hypothetical, I'm not talking about me physically making a notation, say, in a system. I call you and the system records our conversation.

**D/CHIEF SINGLETON:** Yes.

**MR. FLAHERTY:** That recording, is that a note as contemplated by the note-taking policy?

**D/CHIEF SINGLETON:** No.

**MR. FLAHERTY:** Okay. And –

**D/CHIEF SINGLETON:** But it is a reference that you could use later.

**MR. FLAHERTY:** You could use later.

**D/CHIEF SINGLETON:** Yes.

**MR. FLAHERTY:** But how much later, generally, as a police officer, as a police officer in management, how long would you want a police officer to wait before he makes his note based upon a third party notation of something? I mean, how long, how long is someone supposed to wait before they make a note?

**D/CHIEF SINGLETON:** Well, usually notes are close to the incident.

**MR. FLAHERTY:** Okay.

Now, if a complainant sends an email to an investigator and an investigator replies to that email, is that email discourse, does that fit within the definitions of note or notes as contemplated by the note-taking policy? Is that, is that my note to the file, if I, if I'm emailing back and forth to an informant?

**D/CHIEF SINGLETON:** It is – I guess the, the, any emails, especially, you know, in the run of an investigation or other messages and letters, can be printed and put into the – physically put into the file – as part of the recordings for the file.

**MR. FLAHERTY:** Okay.

So I'll, I'll circle back to my initial question. Does it surprise you, based upon on what you know of this matter, based upon what you know of the investigation into Donald Dunphy's death, based upon your experience with note-taking generally, that an investigation that started on a Friday and ended the immediate Sunday, that the only hand-written notes made during that time are the names of two politicians with a brief descriptor, and that's it? Does that, does that surprise you; two handwritten notations of names over arguably what is a three-day investigation?

**D/CHIEF SINGLETON:** Yeah.

**MR. FLAHERTY:** Okay. Those are all my questions.

Thank you.

**MS. CHAYTOR:** Commissioner, I just want to clarify that last question.

There was a sheet of paper that Constable Smyth had in his file folder, inside on the file folder are the two names I believe that Mr. Flaherty is referring to. But Mr. – or Constable Smyth also had a sheet of paper which had names and phone numbers, including, and I can't tell you exactly what was there, but there was Mr. Mahoney's name, I believe, was there with a phone number,

for example. So I just didn't want to leave it that that was the only notes that he had. There were certainly other things on that piece of paper.

**MR. FLAHERTY:** And apologies on that, I had totally forgotten about that page.

**MR. KENNEDY:** (Inaudible.)

**MR. FLAHERTY:** Excuse me?

Mr. Commissioner, I just apologized.

**THE COMMISSIONER:** Right.

**MR. FLAHERTY:** Mr. Kennedy said: Yeah, sure. I mean is that professional or should I receive some –

**MR. KENNEDY:** Perhaps he should –

**THE COMMISSIONER:** All right, so we got to –

**MR. KENNEDY:** Before he asks his questions perhaps he should phrase them properly, Commissioner, and make sure that they're accurate. This has been going on with this particular counsel since we've been here.

**THE COMMISSIONER:** Yes, but there's a way of responding to that Mr. Kennedy, and the mannerism in which you did it is not appropriate, you know that. But we're getting late, so I'm getting more tolerant.

We'll – continue. You're finished with your questions, Mr. Flaherty, are you? Your point is a valid point.

**MR. FLAHERTY:** My point is taken. And further to that, if I am affecting your ability to make any kind of determination, if I am, as Mr. Kennedy alleges, putting out half-truths and misleading questions, please, by all means, call me on that.

**THE COMMISSIONER:** Don't worry about it. If I don't, there will be others who will, I'm sure.

**MR. FLAHERTY:** Very good.

**THE COMMISSIONER:** All right.

Do we have other questions? Anybody else?

**UNIDENTIFIED MALE SPEAKER:** No questions for us, Mr. Commissioner.

Thank you.

**THE COMMISSIONER:** No questions.

Mr. Avis?

**MR. AVIS:** RNCA have any questions?

**MS. RASMUSSEN:** No, no questions.

**THE COMMISSIONER:** I was coming to you.

**MR. AVIS:** Sorry, we're good.

I just have a few I hope. With respect to the media, I'm not going to get into how you responded, why you responded. Who do you have – at the time, who did you have in charge of your media relations?

**D/CHIEF SINGLETON:** We had, in April 2015, we had Constable Steve Curnew.

**MR. AVIS:** And how long had he been a police officer?

**D/CHIEF SINGLETON:** Steve joined the RNC in 2008, so seven years.

**MR. AVIS:** Seven years. Has he had any – did he come with any kind of media background, degree or diploma?

**D/CHIEF SINGLETON:** No, my understanding is that he didn't. And he came into the media relations in an understudy under the previous person, and then when they left he became the media relations person.

**MR. AVIS:** Very briefly, can you give us a little history. And I mean very briefly. I think you did it in a couple of sentences last night. What did you have before Constable Curnew?

**D/CHIEF SINGLETON:** Well, in the past we've had it where I believe the media relations person was either a staff sergeant or an inspector, and then there was – or a sergeant, and then that changed to a senior constable.

**MR. AVIS:** Okay.

And as I understand it, the idea behind having a senior person was both experience in the field and hopefully by then some experience perhaps with the media. Is that right?

**D/CHIEF SINGLETON:** It certainly helps.

**MR. AVIS:** Okay. And then, is it, was it for economic reasons or other operational reasons that it was reduced – I don't mean reduced, you know, but taken from an officer, senior officer, to a junior officer?

**D/CHIEF SINGLETON:** I'm not sure if it's a, what the decision – because at the time it was done I wasn't in the executive offices.

**MR. AVIS:** Okay. Ideally, what do you think you would like to have for your media relations?

**D/CHIEF SINGLETON:** Ideally, I think we would want to have someone who is trained, you know, properly trained in media relations. You know someone who's got a degree with media relations or public relations and who we can call upon to assist us. You can still have a media relations officer who is the speaker, but you want to have a person who is well versed in today's society in providing guidance, consultation, strategies around how to deal with the media, and social media.

**MR. AVIS:** Okay. Is it fair to say the world of media, including social media, has been changing very rapidly? And have you had the resources to keep up with it?

**D/CHIEF SINGLETON:** No. And you know, the RNC, because of the type of work we do, I'd say we get, you know, a thousand, 2,000 requests for media a year.

**MR. AVIS:** Just on one point, a question was put to you is – and I can't remember who put it, it doesn't matter.

Do you think the RNC lack of response contributed to the speculation? In your observation, did the RCMP, when they put out a set of facts, did that stop any speculation?

**D/CHIEF SINGLETON:** I don't think so.

**MR. AVIS:** I'd like to, if I could, P-0496, the Use of Force form. Oh, I'm sorry –

**D/CHIEF SINGLETON:** Yeah, the form's attached.

**MR. AVIS:** Okay. There we go, third page. Just go down to the boxes, I want to ask you about the boxes. Okay.

What I want to get here is you've been saying that the new form accommodates the process.

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** So I just want to specify there what the process is, briefly as possible. Now I understand it, the recommended EAP counselling is not on the new form. Is that correct?

**D/CHIEF SINGLETON:** No.

**MR. AVIS:** And why is that?

**D/CHIEF SINGLETON:** Because we felt that EAP was something that we should take outside of the forms.

**MR. AVIS:** Can you go back up? The boxes; stop there.

**D/CHIEF SINGLETON:** No, but we felt that EAP is something that should be taken outside of the form. It's something that if a supervisor or someone else feels an officer needs EAP referral, that it be done and not left to a form that's going to be seen down the road by someone. And also there's a, you know, a privacy issue around EAP too. So you don't want it that someone's reviewing a form and you're looking at: oh, so-and-so has gone to EAP.

**MR. AVIS:** Now, again, as I say, if you look at recommended other training, as I understand it when it goes to the supervisor, the supervisor could recommend other training. Am I correct?

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** But if the supervisor fills in the box – okay, so the next level up which is divisional commander, he or she could also recommend training. Correct?

**D/CHIEF SINGLETON:** On that form, yes.

**MR. AVIS:** Right. So if, for example, a supervisor said no training and the commander felt otherwise, they'd have to change the box. Am I right?

**D/CHIEF SINGLETON:** Well – and the, the superintendent would also, at this time, have the opportunity to put that in his comment section on the monthly form, recommending remedial training.

**MR. AVIS:** I guess my point is that the way the form's done now, there's a number of people who can address each box.

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** And now the new form permits each of them to address the box each time. Am I right?

**D/CHIEF SINGLETON:** Beyond the supervisor, the supervisor will put down their comments and the inspector and the divisional commander has an opportunity to address training issues.

**MR. AVIS:** Okay.

Just with respect to Mr. Simmonds questioning; as I understand it, you were basically at a family dinner?

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** You immediately got this information; it was coming to you. As I understand it, you were just hearing things.

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** And you passed on your immediate thoughts to the chief in the case that it may be useful in some respect.

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** You weren't making any diagnosis.

**D/CHIEF SINGLETON:** No.

**MR. AVIS:** You hadn't come to any conclusions.

**D/CHIEF SINGLETON:** No.

**MR. AVIS:** You were well aware the information was very limited, possibly even close to gossip at that time.

**D/CHIEF SINGLETON:** Yes.

**MR. AVIS:** Okay, but you felt since you are hearing it, you would pass it on. You weren't making it public.

**D/CHIEF SINGLETON:** No.

**MR. AVIS:** You weren't making it part of the investigation.

**D/CHIEF SINGLETON:** No.

**MR. AVIS:** You were just sharing your immediate thoughts with your superior in case it was of some use.

**D/CHIEF SINGLETON:** Yes, and for his information.

**MR. AVIS:** Okay.

Now, with respect to policy review and things of that nature; again, I just want to speak about it generally.

Is it – and the chief will have more to say about this I'm sure, but policy review, is it not an endless, ongoing process for the RNC?

**D/CHIEF SINGLETON:** It's ongoing; it's coordinated by our Strategic Planning and Research Section. And it's, you know, we try to get into a cycle where the policy is updated.

**MR. AVIS:** And is it in your opinion, do you have sufficient resources – both person, power and money – to take the necessary time to review your policies as often as they need to be?

**D/CHIEF SINGLETON:** I don't think so.

**MR. AVIS:** Okay.

And with respect to decisions being made right now about what is happening here, you know, for example, the investigations that have been considered or looked at internal. Are you aware of any discussions as to where the RNC is thinking what it's going to do once we have the Commissioner's report?

**D/CHIEF SINGLETON:** In what regard? Whether we – are you talking about, you know, these type of investigations where RCMP – RNC or ...?

**MR. AVIS:** Well, the whole issues. Any, all the issues – there's a lot of issues that have arisen during this and if you're not aware of it, it makes –

**D/CHIEF SINGLETON:** No, well, you know, there have been discussions with – last fall with the – or actually the fall in 2015, around the establishment of a SIRT and, and that in the Province of Newfoundland, if that's what you're referring to.

**MR. AVIS:** Okay. That's an example. How do you feel about SIRT?

**D/CHIEF SINGLETON:** Well, you know, as – when I was being questioned by Ms. Chaytor, there's – you know, it seems over the last number of years that the relationship with the RCMP, that we're expanding into more JFOs, who are combined forces. There's some movement put when we're doing, reviewing efficiencies and effectiveness of organizations where we're asked to look at partnerships or ways of partnering with the RCMP to be – both forces to be more efficient.

And I think, you know, there was a lot of media and social media talking about this. And I think from my – where I sit and being involved in investigations where – I was involved in the investigation where the OPP were called in in '91 and that. I think that the more we move along, we need to have a – some type of investigative body to work independently of the RNC and the RCMP.

**MR. AVIS:** And very briefly, do you have any things you might recommend, in a general way, about such an organization?

**D/CHIEF SINGLETON:** Well, you know, I guess looking back at my professional standard, my investigations and that and other issues that are ongoing, I think that it would be prudent that you, you have a SIRT investigative team or a SIU, whatever name we call it, that is properly resourced, have – and the investigators are experienced and properly trained so you attract good investigators and that the oversight understands the, I guess, the dynamics of policing.

It's, it's a bit different in that we're the only province, Mr. Commissioner, that only actually has two police services, and that investigation is to ensure police confidence and certainly public confidence that investigations of this nature are carried out in a timely fashion.

**MR. AVIS:** Okay.

**THE COMMISSIONER:** Just before you move on that –

**MR. AVIS:** Certainly.

**THE COMMISSIONER:** One of the problems of setting up our own agency to do that, presumably, would be the cost of training, would it not? It would have to be kept up-to-date almost on an annual basis.

**D/CHIEF SINGLETON:** That's one of the biggest issues facing policing is keeping pace with changes in technology and keeping training up-to-date. And depending what you look for from an investigative perspective, are you looking to train, you know, a civilian to do this or are you looking at recruiting police officers –

**THE COMMISSIONER:** Ex-police officers, yeah.

**D/CHIEF SINGLETON:** – from a service or retired police officer who has the necessary skill sets and experience to be seconded, not seconded but hired into because a secondment in its way – you know, you take someone from the RCMP and give them a two-year job or RNC a two-year job investigating yourself, then are you really objective?

**THE COMMISSIONER:** Right.

**D/CHIEF SINGLETON:** You know.

**THE COMMISSIONER:** What do you think about combining with or arranging some connection with Nova Scotia SIRT, for example?

**D/CHIEF SINGLETON:** You know, I guess it might have its advantages but I can see it having disadvantages in that, like, these types of investigations are very time sensitive, and we've had the discussion earlier when the – around the 24 hour, 72 hour, first when we started this afternoon.

You know, you get a week like this week, as you see having – losing days in the inquiry and you have shooting on – if you have a shooting here Monday night, your investigative team is not getting in until today. So you got two days gone where your investigators, if they're not on the ground, then you got two days or the 48-hour window for investigations that you lose.

**THE COMMISSIONER:** Thank you.

**MR. AVIS:** Just on that point then, if it was something that occurred outside, how long would the crime scene last?

**D/CHIEF SINGLETON:** Well, you have to have some type of – if you were bringing the resources in from outside the province, you would have to have some type of MOU or oversight, again, that the forensics from the RNC of the RCMP, depending on the jurisdiction, are protecting the scene satisfactorily and then that always is subject to scrutiny.

**MR. AVIS:** And what about lost evidence?

**D/CHIEF SINGLETON:** Well, you certainly lose evidence.

**MR. AVIS:** One thing that's come up, I haven't discussed this with you, but the idea that having civilian investigators. Have you ever met a civilian investigator? Where would they come from? You may not know the answer and I maybe –

**D/CHIEF SINGLETON:** No, I've never – the only thing I guess on a local scene that we have, maybe that we have, I believe the Public Service Commission or the Public Complaints Commission, the RNC Public Complaints Commission, may have people on contract that are considered civilian who do investigations.

**MR. AVIS:** I see.

**D/CHIEF SINGLETON:** But doing this type of investigation or say a serious allegation against a police officer, you need to have someone who's trained, especially in the most up-to-date interview training. And I know that we've, you know, we use a PEACE model training. We're now moving into a suspect type of training and there's lots of issues. I know the RCMP are moving to another hybrid model of interviewing.

So interviewing, police training in this capacity can get, you know, training someone who doesn't have the background, could be expensive, depending on the background of the person coming in.

**MR. AVIS:** And somebody who is expected to investigate a homicide would have to have a very high level of skill, wouldn't they?

**D/CHIEF SINGLETON:** Well, anyone coming in to do a homicide, you expect that it would be set-up under Major Case Management philosophy where you have a manager, primary file coordinator, because some, you know, some of these files, some files that require say oversight might be very, you know, low in scope in that you got, you know, a complainant and you got a subject officer, but some of them could be very large and would take on a Major Case Management set-up.

**MR. AVIS:** Okay.

One last question, Mr. Dunphy somewhere indicated that everybody in his area knows when the police are coming. You're from that area, what, if anything, do you know about that?

**D/CHIEF SINGLETON:** It's commonplace that, you know, when a police car, an RCMP car crosses certain, you know, what we call the head, it's the head of the bay, that people know that the car is in the bay.

**MR. AVIS:** Information is passed on, isn't it?

**D/CHIEF SINGLETON:** Oh, very quickly I understand.

**MR. AVIS:** Those are all my questions.

Thank you.

**D/CHIEF SINGLETON:** Okay.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** Sorry.

**THE COMMISSIONER:** Yes, go ahead, Ms. Chaytor.

**MS. CHAYTOR:** Could you just leave that up, please.

Just two very quick questions because your answer, Deputy Chief Singleton, regarding the example you gave about the bad weather on Monday night and if we were using outside the province – a SIRT outside of the province, the logistics and the issues. Currently, I understand if an incident occurs within RNC territory your MOU is with the OPP.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And that's been the situation for some time.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** So for example if that, the hypothetical situation you gave had happened, something happened Monday night and it was within RNC territory, right now your MOU would be that the OPP comes in. So what do you have in place to cover off such eventualities? How has it been working to date?

**D/CHIEF SINGLETON:** Well, the times that we've – we haven't called them, had to call them in. I guess we did in 2000 and that's the last for this type of – but other cases, I guess, it wasn't weather dependent, you know, whether it was a sexual offence or some other type of conduct. We have seen – it would be challenges and I guess we'd have to look at, after it until they got here.

**MS. CHAYTOR:** Okay, so it's – so you've had that MOU in place for quite a number of years with the OPP –

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** – and there hasn't been an issue in terms of –

**D/CHIEF SINGLETON:** Not – not yet.

**MS. CHAYTOR:** Okay, fair enough.

All right, and just one last question on the Use of Force form we have here – and I meant to ask this when we're going through – but the supervisor signature here, is that Sergeant Glenn Noseworthy?

**D/CHIEF SINGLETON:** That's – yes, 355.

**MS. CHAYTOR:** Okay.

**D/CHIEF SINGLETON:** Yes.

**MS. CHAYTOR:** And so that he would not, however, have been Constable Smyth's supervisor on April 5, 2015.

**D/CHIEF SINGLETON:** He may not have been. And if – I'm not sure what the status of the – or acting Inspector Gullage's leave was at that time, whether he was off or on when the form came in.

**MS. CHAYTOR:** Okay.

And so did that catch your attention when you reviewed the form about the supervisor who's signing off on this and what knowledge he may have of Constable Smyth and the incident?

**D/CHIEF SINGLETON:** No, I didn't.

**MS. CHAYTOR:** Okay.

Those are the only questions that I had in follow-up.

**THE COMMISSIONER:** Okay. Thank you.

Thank you, Chief, we'll adjourn –

**MR. KENNEDY:** Could I –

**THE COMMISSIONER:** Sorry. Mr. Kennedy, go ahead.

**MR. KENNEDY:** – just one point of clarification, Commissioner.

**THE COMMISSIONER:** Yeah.

**MR. KENNEDY:** In terms of our discussion earlier this afternoon in terms of the cellphone records –

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** – the April 3 to the 24, I just want to clarify so I can make sure, I'm addressing the issue tonight. Are you, Mr. Commissioner, willing to consider that if we consent to the information being – or the original consent still applies, that there would be some kind of limit or undertaking given that any information outside of the dates that the original consent applied to would not be reviewed or utilized in any way?

**THE COMMISSIONER:** Here's the – I mean I'm inclined towards that, but I'm informed there's a problem in that it – there is some indication that there may have been the date moved, you know. The March – there was an April date that was moved up to March. And there was some indication that there might be – and this is to look to see if there are any deletions. And it's not just from April 5. It would be – in this case, the ones that were consented to were three days prior.

And the concern is that setting the limit to three days prior, we may not have the opportunity to check for the, you know, the week or two weeks before or whatever to determine whether there

were any deletions, or whether there was any manipulation of the date or whether it's just a software glitch. But, again, how far does that glitch go? There's an unknown factor there that –

**MR. KENNEDY:** So –

**THE COMMISSIONER:** – at this stage, I do not know.

**MR. KENNEDY:** Yeah. So I guess my concern, Commissioner – I mean, there is the original consent that's there. I mean –

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** – it is there. However, I – and obviously there has to be relevance. We know that the first email from Donna Ivey, that's Friday, April 3. So –

**THE COMMISSIONER:** Well – sorry, if I could just maybe speed it up a bit. In terms of –

**MR. KENNEDY:** Okay.

**THE COMMISSIONER:** When you start talking relevance to the offence itself, that's one thing. But there's another – there are other types of issues.

For example – I'm just speaking off the top of my head now – if you're seeking to establish the temperament of Constable Smyth, you know, whether – in terms of prior incidents. I'm not saying there are any, Mr. Kennedy, don't get me wrong, but that's the type of an issue where evidence might – there might be relevant evidence weeks or months or, arguably, years before. So that's the problem in terms of –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** And I confess, I'm grappling with it, you know.

One of the things I can do – I could do, I don't particularly want to do it – is to give my interpretation of how I see the summons to produce as working, as being operative. If I ordered that the summons to produce applies, this might be sufficient. I haven't spoken to Ms. Rasmussen about this, but that might be sufficient to get the authority that she needs to release the emails.

I understand your concern about giving, you know, a blank cheque. I'm trying to figure out if there's some way there can be undertakings where there would be limits on how the information would be used, how far back we'd go, you know. So anything you can do to help me out, I'd be –

**MR. KENNEDY:** It's – I'm having difficulty with it, Commissioner, I have to tell you.

**THE COMMISSIONER:** Yeah, and I am, too. And my concern is, basically, trying to make sure that if we – that there's no gap left, okay, that we've covered everything that we should cover. And I think that's in Mr. Smyth's – Constable Smyth's interest, as well as the inquiry's, to –

**MR. KENNEDY:** Yeah, but –

**THE COMMISSIONER:** – have a decision made clearly on all the available evidence.

Sorry, Mr. Kennedy, go ahead.

**MR. KENNEDY:** Yes, but the salacious information that's in some of the texts, you know, that kind of thing, I'm not –

**THE COMMISSIONER:** Well, there wasn't – my understanding was that there's not – it was not intended to be any, you know, salacious information.

**MS. CHAYTOR:** No, and if we can offer any reassurance. I mean, Mr. Kennedy knows that we have heavily redacted. We only want whatever is relevant and we have no intention. And in terms of what we've already –

**THE COMMISSIONER:** Yeah, I don't know what you're referring to, frankly.

**MS. CHAYTOR:** And, you know, in terms –

**MR. KENNEDY:** I don't either, but all I know, out of the 59 pages, there was a lot of information in there that was simply what I would refer to as salacious and inflammatory and it had very little relevance to anything.

**MS. CHAYTOR:** We have received all of the phone records before now. And in terms of anything that is of any relevance to the Commissioner, out of the hundreds of pages of phone records that we've put in, we have not looked through anything that is irrelevant or any – or put before you anything salacious.

**THE COMMISSIONER:** You'd have to refer me specifically –

**MS. CHAYTOR:** And we have a lot of information – nothing.

**THE COMMISSIONER:** – in terms of what you're talking about because I'm not aware.

**MR. KENNEDY:** Okay.

**THE COMMISSIONER:** I don't know, I don't know what it is you're referring to.

**MR. KENNEDY:** But see, I don't know what's – you know, we don't know what's going on, so it is a truly a fishing expedition unless there are some parameters put around.

In terms of the April 3 to April 24 consent; I'm sure that that can be worked out, Commissioner, and that information, that can be reviewed. I'm – but it's my concern of how far do we go back? You know, what do we look for, for this man?

**THE COMMISSIONER:** And I, you know, as I've just –

**MR. KENNEDY:** He calls – you know, he refers to a guy as a loser. I mean, you know, it's a –

**THE COMMISSIONER:** Well, see, that's an example now – I don't know if that's what you're referring to as salacious. I don't see – what weight should be put on that, you know, is a subject for argument, but it is being put forward as an example of some, shall we say, a less-than-empathetic comment, you know.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** The – you know, Constable Smyth, in his testimony, portrayed himself as being, having a degree of empathy, not just towards Mr. Dunphy but other people in crisis or people with mental health issues. This, to some extent, arguably takes away from that.

On the other hand it, you know, may be viewed as an off-the-hand comment between friends not to be taken too significantly. So these are, this is the way I think it would be presented in final argument. You know, what weight should be given on that would have to be considered.

But if there's anything there that, you know, you consider to be inflammatory and excessively prejudicial and of insufficient probative value to warrant putting it in, then we should have a session to deal with it. And that can be dealt with as, you know, in a drug case, you do redactions and so forth after hearing input from counsel.

Usually one counsel is blind in the sense that they don't, defence doesn't have the prosecution's information. Here, both counsel would have the information; it might be easier to do. But you know, address – I'll listen to you and I'm back tomorrow if you have something –

**MR. KENNEDY:** No, I think I can give you an indication now that my – you know, I'll discuss this with my client. But between April 3 and 24 there is a consent there, but we do have concerns about any information being used outside of those dates. If you have to use dates outside that to get information, that's one thing –

**THE COMMISSIONER:** Yeah.

**MR. KENNEDY:** – but any information that comes before or after that date should not be utilized in this hearing. That's – and then you're back to arguing with the – then, of course, the argument will be with the RCMP as to whether or not they will release the information. So I'm trying to be co-operative here but I'm trying to also protect my client's rights.

**THE COMMISSIONER:** Yeah, I know. And I understand that the RCMP will release it. If it's consented to, it's no problem.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** I understand they're prepared to release it, but the problem is – and, okay, and what you say I guess should be considered. If it's information that's outside that date but can assist in determining whether there are deletions, for example, is that a problem?

**MR. KENNEDY:** I don't know enough about the technical side of it.

**THE COMMISSIONER:** I don't either.

**MR. KENNEDY:** That's why I would have preferred –

**THE COMMISSIONER:** I'm not sure the technicians do either, by the sound of things.

**MR. KENNEDY:** That's why I would have preferred to hear from Corporal Luther because I'd always – I mean my impression has always been, Commissioner, when you deleted a – I assume when we're talking about a BlackBerry message we're talking about a PIN. I'd always assumed when you deleted a PIN it was deleted, but it doesn't appear that anything is really deleted.

**THE COMMISSIONER:** I think we all – I go on the assumption now that I'm speaking on *Open Line* when I go on the telephone. I –

**MR. KENNEDY:** Well, we're willing to – you know, I'm willing to advise my client to cooperate as best we can and to consent. But I'm also concerned, Commissioner, that you know, as to how far down this road we can go.

**THE COMMISSIONER:** I agree, I agree. And I don't want to, as I say, create bad precedent.

So let's sleep on it. And I find that the answer usually comes to me in the shower the next morning.

**MR. AVIS:** Mr. Commissioner –

**THE COMMISSIONER:** (Inaudible.)

**MR. AVIS:** Forgive me, Commissioner. When this debate began – I don't want to weigh in – you did mention something about two phones and both the RNC and Constable Smyth are parties. I may have missed something but am I supposed to be doing something about a phone or we've nothing to do with it?

**THE COMMISSIONER:** Yeah, I think I must – I meant the RCMP is. Yeah.

**MR. AVIS:** Okay. I –

**THE COMMISSIONER:** Sorry, go head Ms. –

**MS. CHAYTOR:** (Inaudible.)

**THE COMMISSIONER:** Although you've – I think you've suggested something to Ms. Chaytor now.

**MS. CHAYTOR:** Yeah, can I?

**THE COMMISSIONER:** Go ahead.

**MS. CHAYTOR:** Yeah, okay.

There is an outstanding request for information from the RNC as to the phone that Constable Smyth was using at the time, and I believe you are following up on that.

**MR. AVIS:** Yeah.

**MS. CHAYTOR:** Ms. Zdebiak might know the answer to that.

**MS. ZDEBIAK:** Yes. There's some, I think, records that we had to get from facilities.

**THE COMMISSIONER:** Can't hear you, sorry.

**MS. ZDEBIAK:** We had to get some records from facilities to confirm what we believe. We don't (inaudible) the phone. We don't have the phone back from the RCMP. That was our understanding based on inquires made but there's records that are going, we believe, confirm that but we're –

**THE COMMISSIONER:** They're still working on it?

**MS. ZDEBIAK:** That's right. The storm sort of put us off.

**THE COMMISSIONER:** All right.

Okay, Mr. Simmonds, you had a final point?

**MR. SIMMONDS:** I just wanted to –

**THE COMMISSIONER:** Nobody wants to go home today apparently.

**MR. SIMMONDS:** I do.

**UNIDENTIFIED FEMALE SPEAKER:** I thought the phone had been returned but –

**UNIDENTIFIED MALE SPEAKER:** I thought it had been too, yes.

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

**UNIDENTIFIED FEMALE SPEAKER:** Oh, okay.

**MR. KENNEDY:** That was my understanding of that.

**THE COMMISSIONER:** Sorry, the – anyhow you'll work it out.

Mr. Simmonds, go ahead.

**UNIDENTIFIED FEMALE SPEAKER:** Right.

**MR. SIMMONDS:** Commissioner, I just want to really get some idea as to we originally were going to break for tomorrow afternoon. I understand that's changed. The latest schedule I saw was up to 3 o'clock. Not so?

**MS. CHAYTOR:** (Inaudible.)

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

**MR. SIMMONDS:** Yeah, I mean that's a problem for me.

**MS. CHAYTOR:** Okay, so the schedule tomorrow is that – is it problem for you?

**MR. SIMMONDS:** Yeah.

**MS. CHAYTOR:** Okay. So we're going to have Superintendent Sheppard here in the morning and I anticipate that he will flow into the afternoon. We hope to use the whole day and that we would get Sergeant -

**UNIDENTIFIED FEMALE SPEAKER:** Sergeant Osmond.

**MS. CHAYTOR:** – Sergeant Osmond up tomorrow afternoon.

**THE COMMISSIONER:** Well, I see counsel, you know, were raising their eyebrows. But just keep in mind now it wasn't Commission counsel or the Commissioner who was loquacious this morning. We went well over our estimated time this morning in terms of ...

**MR. SIMMONDS:** No, and so I'm just looking. I mean I –

**THE COMMISSIONER:** Yeah, what can we do for you? You're (inaudible).

**MR. SIMMONDS:** Are we going to break by 3 o'clock, which was what was in one of the schedules that Ms. Blackmore has been good enough to keep sending me (inaudible).

**THE COMMISSIONER:** You have a problem if we go beyond that, do you?

**MR. SIMMONDS:** I can try and change it if that's a major issue. But did you plan on having Officer Osmond back on Monday?

**MS. CHAYTOR:** Yeah, back on Monday; ready to go tomorrow and back on Monday.

**MR. SIMMONDS:** Oh –

**MS. O'BRIEN:** We plan to do a full afternoon tomorrow, if we could.

**MS. CHAYTOR:** (Inaudible.)

**MR. SIMMONDS:** Yeah, I –

**THE COMMISSIONER:** Sorry, Chief Singleton, if you want to step down. You'll be – I know you're wondering what's going on. Sorry about that.

**MS. CHAYTOR:** (Inaudible.)

**MR. SIMMONDS:** I can go to 4 without a problem.

**MS. CHAYTOR:** (Inaudible.)

**THE COMMISSIONER:** All right, let's – we'll assume we're going to 4 o'clock tomorrow. Is that fine?

**UNIDENTIFIED MALE SPEAKER:** Yeah.

**THE COMMISSIONER:** Okay, we'll try and do a compromise there, Mr. Simmonds.

**MR. SIMMONDS:** No, that's fair.

**THE COMMISSIONER:** All right, 9:30 tomorrow morning.

**MS. SHEEHAN:** All rise.

This Commission of Inquiry is now closed.