



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 25

Commissioner: Honourable Justice Leo Barry

Friday

17 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning. Just before we start, I'll come back to that evidentiary problem that we had. Mr. Kennedy, were you able to get a chance to look at this last night? Do you have any general ideas? I have a couple of suggestions here which we might – no, you go ahead.

MR. KENNEDY: No, all I was going to say, Commissioner, is I've had a chance – I ran off one of the cases from the Supreme Court of Canada on the privacy rights inherent in, in electronic devices and I haven't had a chance to review it in detail yet. And I know there's a more recent case that I also have to get.

THE COMMISSIONER: Right. Privacy rights, how would that come into play, accepting – I know you haven't read it yet but –

MR. KENNEDY: Well, it would seem to me, Commissioner, that my client obviously has privacy rights in the phone and even though in an inquiry it's meant to be an inquisitorial process and that all relevant or all material are put before the inquiry, the principle of fairness, I would suggest to you, would still encompass, to a certain extent, Constitutional and Charter rights.

THE COMMISSIONER: Was to –

MR. KENNEDY: Would encompass Constitutional and Charter rights so that the question of whether or not there even could be a compellable order to produce information on that phone before April 3, I would suggest to you is a question that would be open to argument.

THE COMMISSIONER: Right.

Now, you understand that one of the issues at least – there may be others, but the one that springs to mind, has had to do with looking at past behaviour or use of force to see if there's any pattern there or something relevant relating to Constable Smyth's demeanour or personality, whatever you might – so that's the sort of issue that's not really limited by the date, say, when Ms. Ivey first got the tweet and passed it on.

MR. KENNEDY: Well, that may be, that may be an issue you may have to decide, Commissioner.

Constable Smyth, from day one in this matter, has consented to everything and, unfortunately, consent doesn't always work in one's favour. So I'm not going to make – certainly if you have any suggestions, Commissioner, but what we're told or what I understand from the RCMP is that all of the information from that phone has been obtained. That –

THE COMMISSIONER: Well, I know there's one that hasn't been, but I'll mention it in a moment.

MR. KENNEDY: Yeah, that's the email or something.

THE COMMISSIONER: The email from –

MR. KENNEDY: I don't, I don't know what it is.

THE COMMISSIONER: – from Constable Buckle –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – to Constable Smyth when they were considering the language to use in the notes that Constable Smyth was preparing. My understanding is that, and I don't recall – I haven't gone back to look at the record specifically, but I didn't recall anything to the contrary.

And the point was made that there was one email that – I think it was – it might have been the one with the final version. When Constable Buckle went back to look, he couldn't find where it was, if you recall any –

MR. KENNEDY: No, I wasn't here that day, but I've read the testimony, Commissioner.

THE COMMISSIONER: Yeah, okay the – so there is that one piece of information that we know is out there in the wind somewhere that we haven't found.

The – it might help in terms of where we go on this if I just go through what we expect that the expert we have in mind might be able to establish. And the first point, as I say, is that there's one piece of the – what would appear to be deleted, arguably relevant, information and that's that email from Constable Buckle to Constable Smyth.

And the concern is if that, if one piece is missing and has been deleted and can't be retrieved, are there any other pieces out there. So it's for the sake of completeness as much as anything that we're looking at, looking further at this data with an expert who has rightly pointed out that the technology seems to be – the software technology seems to be improving at an exponential rate and what might be 'unretrievable,' what might have been two years ago, might not be the same today.

But we have this data, the RCMP has this data that comes from the phones of Constable Smyth and Mr. Dunphy, I believe. So one question is whether the deleted data can be retrieved and, specifically, we know they're about the email. There may be other deletions that we don't know about yet. And I won't get into that quote about – was it Rumsford – knowing what we know or not knowing what we don't know, which might be applicable here.

The second thing that we could ask the expert for are the dates that data was deleted. And here, that question would apply, not just to that 'unretrieved,' deleted email, but the – how many other – four or five BBMs, BlackBerry messages that had been deleted, but, in fact, had been retrieved. And so, we – it would be worth our while to establish the dates that the BBMs were deleted. And it would apply to the emails as I said. And that might apply to unknown data that we might find in the process of taking the initiative that I am suggesting here.

Now, here's where, I think, Mr. Kennedy, you would suggest that it may be too broad in terms of what we are proposing. Searches to ensure there is no other relevant data that had not been discovered by the RCMP. We have the fact that these BBMs were not discovered by the RCMP, or indeed by any parties, or a number of parties, who one would expect could've found these and they weren't found.

So we know this is broadly worded, and I've given some thought to how we might make it more palatable. So if we referred to searches to ensure there was no other relevant data that had not

been discovered by the RCMP, within the month of April, and any searching outside that month, necessary to recover any relevant data within the month of April.

So that's responding, Mr. Kennedy, to a suggestion that you made yesterday, that it might be that, basically, would keep the period of consent from the – if your client was willing – from April 1, but have the extension of searching outside that period, if it's necessary, to recover any relevant data within the month of April.

And this, we've already seen that we have the problem of data not having been found because it appeared for whatever reason – and we'll be hearing some evidence on this; the data seemed to have been dated in March that was in fact in April. So the RCMP didn't find it because they stopped at the – what was it, the 3rd of April I think.

The fourth and final thing I'd comment on is that we'd be asking for an explanation as to the anomalies regarding the dates. And we understand that – who was it, our witness that we're waiting to call who's not on the list yet?

MS. CHAYTOR: Kent Luther.

THE COMMISSIONER: Kent Luther, yes. We understand his testimony will relate to that.

This would – and I'll mention that the RCMP advises that they missed certain BBM messages as it appeared that the last communication with particular individuals took place outside a certain date range that they were authorized to search – that is after April 3 or April 3 and onward – when in fact the discussions were within that range. So that would apply at least to that one email and to the BBMs where they weren't picked up because the wrong – the dates were anomalous, we'll say.

So the suggestion, Mr. Kennedy, is that we deal with this by – and as I say, number three seems to be the one that's too broad – by reference to the month of April and outside that time period, if it came necessary to recover any relevant data within the month of April. And put a qualification there that that would be subject to revisiting after we hear the evidence of, is it Constable Luther?

MS. CHAYTOR: He's a corporal.

UNIDENTIFIED FEMALE SPEAKER: Corporal.

MS. CHAYTOR: Corporal.

THE COMMISSIONER: Corporal Luther, yeah. Hear the evidence of Corporal Luther.

And it may be and what we're expecting might be the case, this expert might assist us in terms of the examination of and understanding the testimony of Corporal Luther. But I don't want to be unfair to Corporal Luther. Maybe he will satisfy any questions that I might have in that regard.

What I'm trying to do is keep several balls in the air at the same time and not leave this question to be decided solely after we hear from Corporal Luther. Because there may not be time, without interfering with the Commission schedule, to have the hard drive – I think we have to send out to the expert, have the expert have time enough to examine it and see what he might be able to find.

It may be that there's nothing that he can find and that's solves our problems. But if there is something that he believes – subject to the testimony of Corporal Luther, that he believes can be usefully retrieved and if he can draw any conclusions in that regard, then we could come back to

the question of whether it is something that should go on the record and, in other words, revisit the issue at that time.

But will it – by getting the process started now, we'd have the material out in the hands of the expert. He'd have time to look at it and see what, if anything, he can conclude from the data supplied and we'd avoid significant delays in the Commission schedule. So do you have any questions on what I'm suggesting there?

MR. KENNEDY: My concern, Commissioner, relates to the definition of relevance. Unfortunately, in this particular – in an inquiry setting, the relevance seems to have a very broad definition. And one of the concerns I have is the – who decides what's relevant.

When I look at the materials that were put in last week, Commissioner – and I sent Commission counsel an email today and I asked them whether or not an individual who was referred to last week, was his consent obtained prior to his name being utilized in the court proceedings.

THE COMMISSIONER: Yeah, we're sort of curious about that because you're not acting for him. What is the ...?

MR. KENNEDY: Because my client has now been exposed to certain comments on social media again.

THE COMMISSIONER: What, relating to –

MR. KENNEDY: Yeah, yeah.

THE COMMISSIONER: – to Mr. Abbass. Well, yeah, like, I can't control –

MR. KENNEDY: But other –

THE COMMISSIONER: But he was – Mr. Abbass, as I understand it, was informed out of courtesy by the Commission that his name would be raised and he didn't object to that. Before it went out, he did not object to that happening.

MR. KENNEDY: Okay.

THE COMMISSIONER: Not that he doesn't – Mr. Abbass, as you probably don't want him to have standing for various reasons which for matters of individual privacy I don't think should go into too freely, we concluded that, no, it wasn't appropriate for him to have standing. But we have been keeping him informed when, for example, his name was going to come up, you know.

MR. KENNEDY: Um –

THE COMMISSIONER: So – and I don't know. The other thing that came from our discussion yesterday had to do with certain redactions. And I'm not sure – again, I was a bit surprised yesterday that in terms of the fashion in which they were labelled.

But we can, as I say – and it would have to be an in-camera session to avoid, you know, the information becoming public when the whole purpose of the exercise is to decide whether it should be something that should go in. We could have a – I forget it, what is it? Is it the Stinchcombe-type inquiry, is it? I've forgotten my –

MR. KENNEDY: Well, Stinchcombe –

THE COMMISSIONER: We've been involved in enough hearings and that –

MR. KENNEDY: Yeah, Stinchcombe would be potential relevance.

THE COMMISSIONER: – over the years I can't remember them all, but that that's type of process where basically there'd be –

MR. KENNEDY: The editing.

THE COMMISSIONER: – the editing.

MR. KENNEDY: That would be Garofoli.

THE COMMISSIONER: Sorry?

MR. KENNEDY: Garofoli.

THE COMMISSIONER: Garofoli. Sorry, yeah.

MR. KENNEDY: Garofoli.

THE COMMISSIONER: That's right. Sorry.

MR. KENNEDY: Yeah. So I mean, Commissioner, we're certainly – Constable Smyth is trying to co-operate and ensuring he co-operates as fully as he can, but I do have some concerns when relevance – as I look at the proposed text and what to be used, in terms of what's the relevance to the hearing other than –

THE COMMISSIONER: And that will still be there for you to make submissions on, you know, in terms of objecting whether it be at the time –

MR. KENNEDY: But they're all out there. Everything goes out, Commissioner. That's the problem here is that the relevance is determined by Commission counsel, appears to me.

THE COMMISSIONER: No, no. Commission counsel is an extension of the Commissioner, you know, in terms of it's my responsibility to make sure that they stay within the proper bounds of Commission counsel which is to remain impartial. It is not – as you may know, I've seen you reading Ratushny. I've been boning up on it as well and –

MR. KENNEDY: I'm actually memorizing it but (inaudible).

THE COMMISSIONER: And you'll see the comments there with respect to the way in which the Commission – he points out the Commissioner could be – I could be examining witnesses myself.

MR. KENNEDY: Yeah, I don't have a problem with that.

THE COMMISSIONER: And the reason Commission counsel is brought into the picture is because there's a risk, if I were doing that, that I would appear to be taking one side or the other based upon, you know, the rigour of the cross-examination. So it's to, it's to insulate the Commissioner, to some extent, from public perception that I'm being – I'm not being impartial.

Now, when Commission counsel starts the process, they have the same, the same difficult balance that they have to, that they have to try and make and I haven't had any problem, I have to confess. So blame me but I haven't had any problem in the way, in the –

MR. KENNEDY: No, Commissioner, your fairness and – that's not something I'll ever question. That's not the issue here. The issue is that my client again is being asked to consent to something and we just need to consider whether or not that consent will be forthcoming, Sir. That's it.

THE COMMISSIONER: That's fine, that's fine, but what I'm, what I'm going to ask you is can you give me a time frame when you think that that might be possible.

MR. KENNEDY: The problem is, Commissioner, we're breaking for a half hour for lunch today. We're going all day. I don't have –

THE COMMISSIONER: I know, I know.

MR. KENNEDY: I don't have time to talk to Constable Smyth.

THE COMMISSIONER: I know. I had the same problem. I was trying to do that little decision on the chair experiment.

MR. KENNEDY: So it's, you know, it's –

THE COMMISSIONER: I was asleep by the time –

MR. KENNEDY: I left the office 9:30 last night.

THE COMMISSIONER: – it came around to looking at it every day. Sorry?

MR. KENNEDY: No, like I left the office 9:30 last night, so trying to address all of these issues is very difficult at this point.

THE COMMISSIONER: Yeah, I understand.

MR. KENNEDY: So I don't – when would you – what would be a –

THE COMMISSIONER: Well, this is the – the sooner, the better just because, as I say, we want to start the process of getting the information in the hands of our expert. And it may be, you know, we find out very quickly after the information goes out that there's nothing to be found there and in which case all our problems are solved. But I don't know how long the expert will need.

Any indication as to how long he felt it would take him to examine the information?

MS. CHAYTOR: He thought it would take several hours but no more than 10.

THE COMMISSIONER: So we're talking a day or two days.

MS. CHAYTOR: Yeah.

THE COMMISSIONER: So, yeah, two or three days, Mr. Kennedy. So it, when – and we haven't scheduled Corporal Luther yet.

How many weeks do we have, left by the way, in witnesses? Is it two weeks?

MS. CHAYTOR: Two weeks we hope. We're hoping.

THE COMMISSIONER: Pardon?

MS. CHAYTOR: Two weeks we're hoping.

THE COMMISSIONER: Two weeks, okay. I'm losing, I'm losing track on not only the day but the month.

MR. KENNEDY: I have to reiterate that we would be coming forward looking to call other witnesses.

THE COMMISSIONER: I understand, I understand, I'm just going on the basis of, on the anticipated witnesses we know about now.

The sooner you, Mr. Kennedy, know who you want to propose to call, if you propose to call someone, let us know so – and I take it some of your, the time in which you want to consider this has to do with the expert reports that are still coming in, or is there more than that?

MR. KENNEDY: We are working on certain things as we speak.

THE COMMISSIONER: Right.

MR. KENNEDY: We haven't been able to wait for the expert reports to come in, Commissioner.

THE COMMISSIONER: Right. So you can anticipate, I think, then the issues that will be dealt with anyhow in the reports, if not the way they handle them.

I didn't speak to counsel about the meeting with, or the telephone conference with –

MS. CHAYTOR: With Mr. Jones, yes, last night.

THE COMMISSIONER: – Mr. Jones.

MS. CHAYTOR: Yes, so Mr. Jones' report will be going out to counsel today.

THE COMMISSIONER: Okay.

MS. CHAYTOR: They'll be receiving that today.

THE COMMISSIONER: Okay.

And then we have Mr. Coleman's we know –

MS. CHAYTOR: Yes, Dr. Coleman and Mike Massine. And, hopefully, we'll have their report next week. We're hoping but –

THE COMMISSIONER: All right. So –

MS. CHAYTOR: – we'll be, yeah, we'll be good for next week. I don't have a definite date, unfortunately.

THE COMMISSIONER: Okay. Well, we should try and push that, if it's at all possible, if we can get it by Friday so that counsel might have –

MS. CHAYTOR: Yes.

THE COMMISSIONER: – a non-interrupted weekend to look at it. Mr. Kennedy has lots of free time on the weekends, I'm sure.

MR. KENNEDY: Just one last –

THE COMMISSIONER: Now, Mr. Kennedy, so let's talk about in terms of – and I sympathize and understand you need to speak with your client and have adequate time to do that. So what about Monday, do you think you'd ...?

MR. KENNEDY: Yes, yeah. We will do that. We'll give you a decision by Monday, Commissioner.

THE COMMISSIONER: Have it by Monday. So –

MR. KENNEDY: Yeah, one last point and it's all related, Commissioner, because the counsel, I mean the issue of whether or not Constable Smyth will be recalled is still up in the air, but this is all related, these text messages would all be related to whether or not he would recall.

At some point if that's going, if there's going to be a discussion of that, I would ask that there be strict limitations placed on any questioning by any counsel in relation to text messages that have been discovered since then.

THE COMMISSIONER: Yeah, we'll consider what the limitations are, but that, it's –

MR. KENNEDY: But, again, relating to the text messages.

THE COMMISSIONER: Right. In other words cross-examination should be dealing with the new information that's come to light, is that what you're saying?

MR. KENNEDY: Yeah.

THE COMMISSIONER: Yeah. That's not a shocking notion to me so ...

All right.

MR. KENNEDY: And I also may be making application, I don't know how you make the application because I don't think we have a voir dire process to exclude one of those text messages.

THE COMMISSIONER: Yeah, and what I'd suggest, Mr. Kennedy, is that you may, you may find if we have a, if we have an in-camera discussion, it would be in camera anyhow –

MR. KENNEDY: In camera, yeah.

THE COMMISSIONER: – in terms of the application, but if we had a previous discussion in camera with counsel present that it might be that your concern might be, might be eliminated or, or reduced considerably.

MR. KENNEDY: That's fine. Thank you, Sir.

THE COMMISSIONER: I won't – as I mentioned, I think, yesterday, I'm not totally comfortable with where the redaction stands right now and we can take a look at that.

MR. KENNEDY: Thank you, Sir.

THE COMMISSIONER: But don't get me wrong, I think there was, I think there was a lot of material redacted, to your client's benefit, that –

MR. KENNEDY: Well –

THE COMMISSIONER: – of a private nature that I think, if nothing else, shows that we're trying to get a proper balance here.

Sorry, go ahead.

MR. KENNEDY: No, I'll perhaps leave it to later. It's probably best.

THE COMMISSIONER: Yeah. We can easily have some of these issues become adversarial, I know, and sometimes unnecessarily so, not just in terms of yourself, Mr. Kennedy. But these are the types of issues that are important so we can become a bit intense on them.

Mr. Freeman, you had a comment.

MR. FREEMAN: Yes, Mr. Commissioner, if I may and I don't want to chew up too much time or put the cart ahead of the horse in terms of this argument. But for your information and for the public's information, I just wanted to take you to a couple of exhibits on the phone records issue.

THE COMMISSIONER: Right.

MR. FREEMAN: If I may.

THE COMMISSIONER: Sure.

MR. FREEMAN: And just explain where we are and why we're there. So could Madam Clerk please call up P-0326 for us – or excuse me, 0440 for us.

MS. O'BRIEN: Mr. Freeman, what is that exhibit?

MR. FREEMAN: I'm sorry, that's the grab that came – BBM chat that came later during the inquiry with Mr. Noel, with Sergeant Noel. And if you could scroll down there, Madam Clerk, please, to I believe it's page 3.

So this is just indicative, Mr. Commissioner, at the top right – and forgive me if this has already been explained during the hearings, I'm not sure that it has. But do you see on the top right of that top box it says: Last Activity?

THE COMMISSIONER: Last Activity; the 30th of the 3rd which is 30th of March 2015. Okay.

MR. FREEMAN: Right. And so that is the sort of erroneous software issue that that's what – that's why things were missed as far as I understand about (inaudible).

THE COMMISSIONER: How do we know that that's erroneous? What ...?

MR. FREEMAN: Well, because the chat below is then in April.

THE COMMISSIONER: Oh, the last activity. Okay, that says that the last thing that occurred and then we go down.

MR. FREEMAN: Oh, and so when RCMP are trying to grab between April 3 and April 24, they've got a message that says the last activity in this chat or this conversation is March 3.

THE COMMISSIONER: Okay. Just to mention to counsel, if you could do me – get me a copy of this before, not right now, but I'd like to have that for later today. I know I have it somewhere but –

MR. FREEMAN: Just to put a tangible –

THE COMMISSIONER: Yeah.

MR. FREEMAN: – document to this problem.

THE COMMISSIONER: Okay, that's helpful.

MR. FREEMAN: The other document I just wanted to call your attention to is P-0326, and that is the consent to search of Constable Smyth.

THE COMMISSIONER: 326?

MR. FREEMAN: Yes, Mr. Commissioner.

THE COMMISSIONER: Okay, go ahead.

MR. FREEMAN: I'll just wait for Madam Clerk to be able to call that one up for us, please.

So the RCMP are concerned about being placed, obviously, in an impossible position of being asked to disclose something that has not been consented to and the possibility that there could be Charter issues. So we would either be in breach of a direction from you or –

THE COMMISSIONER: Well, it seems to me that if we can avoid the Charter question about my jurisdiction over the RCMP by – and I haven't asked Mr. Kennedy for his comment on that, but if I make the order that the production applies to the records which the RCMP holds, that's an order for production by Constable Smyth rather than by the RCMP and –

MR. FREEMAN: Yes, Mr. Commissioner.

THE COMMISSIONER: – if I restricted to that, it would seem to me that we avoid the constitutional question, don't we?

MR. FREEMAN: We certainly avoid the jurisdictional question of federal –

THE COMMISSIONER: Right.

MR. FREEMAN: – absolutely, and we want to stay away from that issue as very much as possible and participate co-operatively, but the Charter issue I'm talking about is Mr. Smyth's Charter rights. So if he were not to consent to that –

THE COMMISSIONER: Right.

MR. FREEMAN: – I just wanted to make it clear that this is the document. We're only in possession; we're only in custody and control of –

THE COMMISSIONER: Right, but then I may have to make a decision if it came to that. After hearing from counsel, all counsel, I might have to make a decision as to whether there is in fact interference with Constable Smyth's rights in that regard.

MR. FREEMAN: Indeed, I just wanted this document and its full contents including what the consent is and its range to be –

THE COMMISSIONER: Yeah, that's helpful.

MR. FREEMAN: – front and center for everyone.

THE COMMISSIONER: So I'd like to get a copy of that as well, just to have it.

MR. FREEMAN: Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you. That's it for you, Mr. – sorry, I didn't see it. Could I just see that again for a second?

Thank you, Mr. Freeman.

Okay, thank you. All right, are we ready to proceed now with – so where we'll leave this is we'll anticipate Mr. Kennedy giving us an indication as to whether there will be a consent to the, with the qualifications that I've noted Mr. Kennedy, whether your client's consent will follow. And if not, then I may have to get into the decision with respect to ordering production through Constable Smyth after, if that's in fact permissible under the Charter.

MR. KENNEDY: Certainly. And, again, just to ensure I understand, is it your suggestion, Commissioner, that anything back to April 1 could be looked at for potential relevance to this here.

THE COMMISSIONER: Yes, and – but we could look at something outside of that to determine or to discover what might be within that period.

MR. KENNEDY: But nothing would be used, even if it was – anything discovered prior to April 1 would not be used.

THE COMMISSIONER: Subject to revisiting if there was some information that came out through Corporal Luther, for example. That's why I noted the subject to revisiting. Now, again, we can give thought to, you know, a refining of that if you have some suggestions in that regard.

We are not interested in engaging in a fishing expedition. I know, and I think, you know, some of your concerns are legitimate in terms of the, for example, the relevance or if not the relevance, the weight to be given to the British Virgin Islands incident, for example, is – you know, that's there. I'll be hearing it as to weight, if nothing else, in final submissions I know. But that's the type of thing where I know where you're coming from in terms of the relevance concerns, but I hope you know where we're coming from in trying to make sure that there's not a rabbit hole there that's left open when we could be satisfied, everybody, that anything that should be looked at, has been looked at.

Okay, if that's –

MR. FREEMAN: Mr. Commissioner, I'm sorry –

THE COMMISSIONER: Mr. Freeman, sorry.

MR. FREEMAN: I just want to be clear that the consent being considered or discussed and being sought instructions on is from, you had said the month of April. I just want to be clear that our consent to search is April 3 to April 24 so –

THE COMMISSIONER: Yeah, well, and I'm suggesting that we –

MR. FREEMAN: April 1 to April 30.

THE COMMISSIONER: – give us that – and I think the only relevance there would be that the first exhibit you mentioned is – there's a three- or four-day movement of dates and that if we started from April 1, that might catch any such anomaly, you know.

MR. FREEMAN: And I just wanted to make sure everyone was with eyes open to the fact that we're talking about six day –

THE COMMISSIONER: Yeah, your consent is April 3, and what I'm suggesting is –

MR. FREEMAN: (Inaudible.)

THE COMMISSIONER: – it is consciously April 1 and 2 as well, you know.

MR. FREEMAN: But also, there's an amount of time at the end of that, when you say the month of April.

THE COMMISSIONER: Oh, yeah, that's a good point.

MR. FREEMAN: Because our consent is April 3 to April –

MS. CHAYTOR: That's when the phone was turned in.

MR. FREEMAN: Okay.

MS. O'BRIEN: So there can't be any – unless the RCMP was using it.

MR. FREEMAN: No. I just wanted to be clear.

THE COMMISSIONER: All right.

Okay, thank you.

MR. FREEMAN: Thank you.

THE COMMISSIONER: All right.

MS. CHAYTOR: All right. Are we good?

THE COMMISSIONER: Let's go.

MS. CHAYTOR: We're good. All right. Perfect.

THE COMMISSIONER: I think.

MS. CHAYTOR: Okay. Commissioner, the next witness please is Superintendent Jason Sheppard.

MR. AVIS: Commissioner, while Superintendent Sheppard is taking the stand, he too created timelines which were provided to everybody.

THE COMMISSIONER: Yes, and –

MR. AVIS: Now, he has what looks like a library. He has his notebooks with him and he's asking that he be able to testify, if he needs to refer to his notes.

THE COMMISSIONER: I have no problem with it. I don't know if – I'll to listen to counsel, if there's any objections. We all know about a desire to have a security blanket when memory fails. But, Mr. Kennedy, do you have any problem with – okay, thank you. Mr. Flaherty and Mr. Simmonds don't seem to be having a problem there. I take it the RCMP has no problem.

Okay, all right. So if you'd affirm.

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

SUPT. SHEPPARD: I do.

MS. SHEEHAN: Please state your –

THE COMMISSIONER: Oh, I just mention, maybe they could bring me down my binder. I forgot – sorry. We don't need to wait for it but just in case I have to use it. Thank you.

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

SUPT. SHEPPARD: My name is Jason Sheppard.

MS. CHAYTOR: You need to press on your mic please, Superintendent.

SUPT. SHEPPARD: Sorry, okay.

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: She was looking at me; I didn't know what she was doing there.

THE COMMISSIONER: And you tend to have to be within four or five inches of the mic in order to get the best reception there.

SUPT. SHEPPARD: My name is Jason Sheppard.

MS. CHAYTOR: Good morning, Superintendent, again.

Any documents that I'm going to refer you to will come up on the screen, but if you wish to look at your hard copy that's fine as well.

Commissioner, before we get started I do have a couple of new exhibits to ask to be entered. We have P-0463, P-0512, P-0563, P-0581 and P-0582.

THE COMMISSIONER: So ordered.

MS. CHAYTOR: Thank you.

Superintendent, I'm just going to lead you through some of your background and your positions. I understand you've been a member of the RNC for almost 33 years.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And your current rank and position, you're superintendent and divisional commander for Criminal Investigation Division and that you've held that position since February of 2014.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: I also understand that in that position you report directly to Deputy Chief Singleton.

SUPT. SHEPPARD: That's right.

MS. CHAYTOR: Okay.

Yesterday we reviewed, Commissioner, the organizational chart for the Criminal Operations with Deputy Chief Singleton. And that is P-0515 for your reference and for counsel.

And, Superintendent, I won't bring that up with you; we looked at it yesterday with Deputy Chief. But I would ask if you could just explain to the Commissioner, please, your duties as superintendent of the Criminal Investigation Division.

SUPT. SHEPPARD: Okay.

Sir, the CID is broken down into four sections. There's a Crimes Against Persons, there's a property crime, Intelligence & Organized Crime and Science & Technology.

Protective Services Unit falls under Intelligence & Organized Crime which would have a – we have an acting inspector there. That would be Inspector Joe Gullage.

And did you want to know my duties? Is that – was that part of the question, Sir?

MS. CHAYTOR: Yes, please.

SUPT. SHEPPARD: So I'm – as divisional commander, I would be in charge of resourcing, budgeting, spending, assignments, Major Case Management teams that would be set up. So it would be allocation of resources to meet the demand of the files we have and work jointly with the executive, I guess, on issues pertaining to the organization as a whole from the CID perspective.

MS. CHAYTOR: Okay. Thank you.

And as of April 5, 2015, the chart that we looked at yesterday showed, with respect to the Protective Services Unit, that they would report into Acting Inspector Gullage and then through to you. Was that in fact the case?

SUPT. SHEPPARD: On the org chart?

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: That is the case. In reality, that's not really how it functioned.

The Protective Services Unit kind of answered directly to the chief as opposed to me. So if Constable Smyth had any issues, he may deal with his inspector who could deal with the chief. I may be aware of some things that are taking place, but on a day-to-day basis, I really didn't know exactly what Protective Services was doing.

THE COMMISSIONER: So that's where they had the dotted line, was it, there?

MS. CHAYTOR: The dotted line into the chief, yes. Okay. All right.

Okay. In your almost 33 years' experience as police officer in this province, how often do you have interactions with members of the RCMP?

SUPT. SHEPPARD: In recent years, obviously I'm meeting at a higher level than I was previously. When I was younger, I worked on joint forces team's drug section over probably an eight-year period. So I worked with the constables and the sergeants a fair – not regular but sometimes our files overlapped. As a manager, we don't meet a whole lot. We don't have a whole lot to do with each other as managers unless there's a situation that comes up that has, again, has an overlap of – it could be jurisdiction, it could be investigation, it could be a joint force that we're doing together. So we do have several joint forces with the RCMP and we do have, we'll call them, a joint management team where we share responsibility of governance of that team.

So you would meet, for example, if we have – right now we don't, but we – I'll use on their behalf. So the Combined Forces Special Enforcement Unit, there's a joint management team in place so that the RCMP and the RNC senior management would provide governance to a superintendent who's running a joint unit of both members. So because there's a vested interest, we would meet to discuss issues pertaining to that unit.

MS. CHAYTOR: Okay.

And in your hierarchy that would be the Drug unit you would have ...

SUPT. SHEPPARD: That's CFSEU is particularly the Drug unit.

MS. CHAYTOR: And that's a joint unit?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay. And that you would have oversight of that unit?

SUPT. SHEPPARD: Yes, jointly.

MS. CHAYTOR: Oh, jointly, yes. Okay. All right.

Had you heard of Donald Dunphy prior to the incident?

SUPT. SHEPPARD: No, I hadn't.

MS. CHAYTOR: And when and how did you learn about his shooting?

SUPT. SHEPPARD: April 5, Deputy Singleton phoned me. I was in my garage doing some work and he advised me that a shooting had taken place.

MS. CHAYTOR: Okay. And I think your handwritten notes indicate that that would have been 3:36 p.m. that day.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And we are going to bring up, please, P-0441, and this is your handwritten notes, Superintendent. And I understand these are contemporaneous with the, with the accounts that you're recording.

SUPT. SHEPPARD: Yeah, they weren't obviously made exactly at the time the events are taking place but, you know, with the electronics, I have my cellphone, I know what time my calls are coming in, what time my emails are coming in and when I get a – it might be in between several phone calls that I'll just make –

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: – notes as to what just took place in the previous –

MS. CHAYTOR: Fair enough, fair enough. Okay. All right.

And what I'm going to show you here, and actually you have – I think you probably have the most extensive notes that we have of anyone. We have 36 handwritten pages, I believe, here of notes that you took. And it does begin with Ab, and we understand that to be Deputy Chief Singleton, calling you at 3:36 p.m.

THE COMMISSIONER: What exhibit? 0443?

MS. CHAYTOR: This is 0443, Commissioner.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: And I believe you told me that in – that you, in your interview you understand the importance of taking detailed notes and recognizing the importance of that, particularly with respect to the incident that came to your attention.

SUPT. SHEPPARD: I try but it's difficult when you're busy to write notes on everything.

MS. CHAYTOR: Okay. All right. Well, we do have some good notes here for you, so I will refer to them back and forth while we're going through your evidence today.

Can you tell us then what was it that Deputy Chief told you when he called you at 3:36 p.m. on April 5?

SUPT. SHEPPARD: Okay, so Deputy Chief contacted me on my cellphone. He advised me that there had been a police shooting, that Joe Smyth from Protective Services was by himself. He was investigating a threat.

Mike Adams and Reg Tilley, who's – Mike Adams was the duty officer at the time and acting inspector and Reg Tilley was the staff sergeant in charge of the shift. They were going to respond to provide EAP support, psychological support, I guess, to Constable Smyth.

We discussed who was our on-call duty officer which we initially thought was Inspector Sue Bill but it turned out to be Pat Roche because we do keep – while events are unfolding, even though the duty inspector may not be on the street and they may be on call, we do try and keep them in the loop as the events unfold.

He advised me that the victim was a Mr. Donald Dunphy. And, again, I'm writing jot notes. You know, some of these are in paragraph form and some are in just bullets.

MS. CHAYTOR: Okay. And so what we have here and you're going through is your jot notes that you're making at the time that you're speaking to Mr. – or Deputy Chief Singleton.

SUPT. SHEPPARD: Yes, that's correct.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So and he advised me that there was a possible mental health issue, that he was a person who had contacted the *Open Line* and that he has issues.

MS. CHAYTOR: And these would have been the words of – this is what Deputy Chief Singleton is telling you.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And did he elaborate on what he meant by has issues or the mental health aspect?

SUPT. SHEPPARD: No, he basically just gave me those three points and then we moved on to the fact that Constable Smyth had called, contacted the Holyrood RCMP on his way out. And at this point Deputy Singleton had to leave. The chief had called him so he –

MS. CHAYTOR: That's right. And I think then the rest of your notes are about having to take breaks in your conversation with him because the chief is calling in and at another point Andrew Boland is calling in to Deputy Chief Singleton.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: There's a lot of activity on the phone at this point.

MS. CHAYTOR: Happening at that point.

And I just want to take you back to the reference to Mike Adams, Reg Tilley going out and then there is an arrow back, EAP. Not seizing weapon; what did you understand him to be telling you there and who would not be seizing the weapon?

SUPT. SHEPPARD: So Acting Inspector Mike Adams and Staff Sergeant Reg Tilley were not going out as police officers to be conducting an investigation or be involved in the matter. It was an RCMP investigation and it was in their jurisdiction, and they were going purely for the psychological support of Constable Smyth and that they would not be seizing a weapon or taking it on – even though I have one here, it's the whole issue of not being involved in the investigation.

MS. CHAYTOR: I'm sorry, even though you have? I missed what you said there. Even though you have?

SUPT. SHEPPARD: I forget what I said. Sorry.

MS. CHAYTOR: Okay. No troubles, I'm sure. That's fine.

Okay. All right.

So would that be normal that your own officers would – if it had to have happened, for example, in RNC territory would your own officers attend and seize the other officer's weapon?

SUPT. SHEPPARD: Well, it's in our policy that if we have a police shooting – for example, if this had to happen downtown –

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: – we would have brought somebody. Somebody else would have come in to do the investigation. In this case, it's in the RCMP area so they were the responding police of jurisdiction for that call. If it happened downtown, our initial responding officers would have seized the firearm and secured it.

MS. CHAYTOR: Okay. Thank you.

All right then. Okay.

And then if we move along then, please, to page 2 of this document. I understand that ultimately you're appointed liaison for the RCMP. And perhaps you could tell the Commissioner: What did you understand that roll to entail?

SUPT. SHEPPARD: Okay.

So, again, according to our policy, when we have a situation like this here we would appoint a liaison person to the RCMP or any outside investigating agency. Because when they come in, who are they going to contact? They don't know any numbers; they don't know who to call. They don't – so I would facilitate any documents that they'll need, any appointments that they'll need, contact information for police officers.

And my role as a liaison was to feed them information that they needed because I did it for Saskatoon as well. So feed them the information they required and to receive any requests that they may have of the RNC.

MS. CHAYTOR: Okay. Fair Enough.

And, yes, we did learn that later on you get appointed for the internal review by Saskatoon Police Force as well.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

All right and are we on page 2 now? Okay, I'll just – or it's page 3, sorry. Page 3 of the exhibit; page 2 of your notes.

At 4 p.m. then, you're called back from Deputy Chief and this is where it says: "Me liaison for RCMP – asked by Andrew." Do you understand that to be Andrew Boland?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And do you know whether Andrew Boland – is this suggesting that he specifically asked for you?

SUPT. SHEPPARD: I don't know if he asked for me or not. I doubt very much that the superintendent, the Chief Superintendent of the RCMP will call and give direction to a deputy chief as to who he's going to assign as liaison.

MS. CHAYTOR: Okay.

And did you –

SUPT. SHEPPARD: So it's my understanding from –

MS. CHAYTOR: Oh, sorry.

SUPT. SHEPPARD: – just being around that, you know, he recognizes that he needs a liaison as well. He needs somebody at the RNC that they can communicate with to get the information that they need.

MS. CHAYTOR: Okay. And how well up to this point in time would you have known Andrew Boland?

SUPT. SHEPPARD: I've known him in the past three years. I know him pretty good.

MS. CHAYTOR: Okay.

And so then there's reference in your next note, I think, that there's calls back and there's some communications then with the chief. And ultimately, then, you're appointed the liaison.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay.

And we can see here at 4:10 he's called you back: I will be the point person for RCMP with the RNC. Ab will email Jamie Zettler and Chief Superintendent Joe Boland. I think that should actually be Andrew Boland.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And up right before that, deputy chief was going to call the chief and call you back. Okay.

So once you were appointed liaison, though, with the RCMP, did you understand all communications would then flow to you? Or would there be multiple contacts still between the RNC and RCMP?

SUPT. SHEPPARD: So my understanding is that I will be the contact for the investigative team. And if the chief wanted to contact the commanding officer of the RCMP – there was no

restriction that they couldn't contact us only through me, but it was for the invested purposes of facilitating the investigation and the investigators.

MS. CHAYTOR: Okay.

All right and we see here reference to Jamie Zettler. And then I believe your next note is that Jamie Zettler, Superintendent Jamie Zettler from the RCMP, then calls you to discuss.

SUPT. SHEPPARD: That's right.

MS. CHAYTOR: All right.

And it says that he's who advises you, I guess, that Joe – meaning Joe Smyth – is being taken to Holyrood.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay.

And he's telling you that Kent Osmond is going to lead.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: There's some reference to Mount Carmel and then: "Went to speak to someone on threats to premier's office."

SUPT. SHEPPARD: Right.

MS. CHAYTOR: So this is what Jamie – Superintendent Zettler is telling you?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And do you understand that to be that he understood that Constable Smyth went to speak to someone about threats to the premier's office?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And he indicates that, I guess, they'll be taking Constable Smyth's firearm, clothes and duty belt.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And then it says: "May interview now or later."

What was discussed between you and Superintendent Zettler regarding the timing – and I take it this means the interview of Constable Smyth? May interview now or later?

SUPT. SHEPPARD: Right. I don't know if there was any discussion other than the fact that he didn't know at this point if he was going to be interviewed tonight or tomorrow or the next day.

MS. CHAYTOR: Okay. So you don't recall any other detail other than what you wrote here, that he may be interviewed now or later.

SUPT. SHEPPARD: I think it's premature for him to know what was going to take place at this point.

MS. CHAYTOR: Okay, but was there any discussion about that at that point?

SUPT. SHEPPARD: No.

MS. CHAYTOR: No.

SUPT. SHEPPARD: Other than the fact that he raised the issue that he wasn't sure if it was going to be now or later.

MS. CHAYTOR: Okay.

And then the last point that you have from your discussion with Superintendent Zettler is that the media release is going out short. It will be short.

SUPT. SHEPPARD: That should be shortly.

MS. CHAYTOR: And he's going to notify you about you about that.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay.

Did you have any discussion with any member of the RCMP, either Superintendent Zettler or otherwise, as to what would be contained in this media release or any media release subsequent?

SUPT. SHEPPARD: I never did.

MS. CHAYTOR: Okay.

And then if we turn up to page 4, you just update your deputy chief. 4:45 p.m. then, the chief is emailing looking for information on the deceased for the a.m.

And if we could then bring up, please, P-0444. And this is an email from the chief shortly or at the same time as your last entry that we just looked at; 4:45 p.m. if we go down here.

And he's saying J. I understand that to be you, Superintendent?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And he's writing to you and Deputy Chief: Can you find out if we have a file on – and I think this should be Dunphy – on the threats. So I take it at this point in time that the chief is also under – on the understanding that there were threats.

SUPT. SHEPPARD: Yes. Yes, that's correct.

MS. CHAYTOR: Okay.

And it also says that he's going to need some information for first thing in a.m. And do you know: What was the purpose of needing that information?

SUPT. SHEPPARD: Well, undoubtedly we've had a police shooting. It's going to attract significant attention, media. It's going to raise the level of the premier's office, the deputy minister. And he was looking for some information so that if – when he had his meeting he would be informed as to who it is and what it is that took place and what we're – what it is that he's going to talk about.

MS. CHAYTOR: Okay.

And if we could go, please, to page 4 of this same document and – is it this document? I'm sorry, no. We go back, please, then to the handwritten notes, page 4. That – yeah 0443.

And this is a note that you make at 5:37 that evening then: The chief has called to say that the premier – that the premier has called him and –

SUPT. SHEPPARD: What time is that? What time, sorry?

MS. CHAYTOR: I'm sorry, 5:37.

SUPT. SHEPPARD: Okay.

MS. CHAYTOR: On the bottom of the page here.

So the chief has called you to say that the premier has called him and concerned with security for tonight. We will assign a two-person and CID vehicle for security at the premier's all night. And Ed Benoit will go in to help Scott Haye, if Scott Haye can't get the info required from ICAN due to restricted. And Ed's to touch base with the premier today to advise and discuss. So what was – this is three hours, basically, after the shooting, or awareness of the shooting of Mr. Dunphy. Why is the premier concerned about his security this evening? What was, what was that about?

SUPT. SHEPPARD: I don't details of their conversation, but I would assume that based on the fact that there's a report of a threat, his – one of his protection officers has shot and killed somebody. He's probably not aware of exactly what's taken place, how the community's going to react, how other people may react to it. People do know where the man lives. I'm sure his wife was concerned. He had concern for his family and he wanted additional protection that night, which we provided.

MS. CHAYTOR: All right.

And if we continue on then, page 5 of this document on the bottom of the page, 6:16 p.m. entry you have a phone call from Doug Noel of the RCMP. He's already spoke to the premier at this point in time and Joe Smyth had contacted him on Friday to advise of Mr. Dunphy. Joe sent him emails over the weekend. Doug will send that info to me so that I am aware and can advise chief of the status for his meetings in the morning.

And what – so this is information you're now receiving from Doug Noel of the RCMP, and he's the remaining member at this point in the PSU.

SUPT. SHEPPARD: That's true.

MS. CHAYTOR: Okay. And it also says that the chief is going to have meetings in the morning. Were you aware of what meetings the chief would be attending in the morning?

SUPT. SHEPPARD: No, like I said earlier, I assume it would be with the ADM, the deputy minister of government.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0466. And this is the same evening, Superintendent, April 5, 2015, at 7:34 p.m. now. And it's an email that you write to the chief and to Deputy Chief Singleton. And also you copy the other deputy chief, Jim Carroll.

It looks like I have the wrong – I'm sorry, I misspoke, it's 0446.

Okay. And what you write here again, is: "Sirs, I will be sending you three emails shortly from RCMP Doug Noel who is Smyth's partner. Apparently this issue with threats from Mr. Dunphy started on Friday on Titter sent to MHA Sandy Collins. See for details and the threat."

And when you say "See for details and the threat" was that the – you're referring to the emails that you then received. And I understand those would have included the email from Donna Ivey on April 3 with the tweet incorporated into her email. Is that correct?

SUPT. SHEPPARD: It is correct, but it was only the very last tweet. It wasn't a full threat. We just had the last tweet.

MS. CHAYTOR: That's right. In essence, it was the email as it was written by Ms. Ivey that had been forwarded on to you.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. So at this point in time what's being told to you, there's no question that people are saying that Constable Smyth was investigating threats from Mr. Dunphy?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And you go on here to say that you're going to keep two members with the premier. I'll just scroll down here. Yes, and this is the same as your note, "... two members with the Premier until we see how this pans out."

And what did you mean by that Superintendent, until you see how what pans out?

SUPT. SHEPPARD: Like I had just said, we don't know how the community is going to react. We don't know what's taken place. We're really – all we know is that there were threats. The premier is concerned, and within a day or two we'll have a better handle on what's taken place. So by panning out, means just give us a couple of days and we'll see where we are and what we have and how we need to react in a different way.

MS. CHAYTOR: Did you understand that the person who was purported to have made the threats, though, was deceased?

SUPT. SHEPPARD: Yes, that's correct.

MS. CHAYTOR: And was there any concern that perhaps someone else was involved in the threats?

SUPT. SHEPPARD: Well, that's my point. I said we don't know – I'm not aware. All I know is that there was a threat made. I don't know what the threat is, other than a tweet. There may be more to the story. There could be other people that may have threatened the premier. You could

end up with a riot, I don't know. I mean we don't know what's going to take place. So we're just being cautious, and we'll wait and see what happens in the next couple of days.

MS. CHAYTOR: Okay. So you're clearly reacting on the understanding there were threats to the premier?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And you also note here again, and you mentioned this in your evidence a few minutes ago, that the premier's wife is upset as well as the premier intimated to you Chief, and also to Ed and Doug. And as a result, then, the security measures that are being taken at his residence and that he's now going to his brother's place and he feels safe there.

So it appears that it's clear from the discussions that have been had with the premier that he is concerned for his own safety and security that evening?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And we can go back to your notes then, please, at P-0443. And we'll look at page 7, and it's a 7:45 p.m. entry. And perhaps you can explain what is written here please, Superintendent. I understand this is Scott Haye who would be a constable reporting up through to you.

SUPT. SHEPPARD: Hu-huh.

MS. CHAYTOR: And this is information that he would be relaying back to you. So perhaps you can tell us, what exercise has Constable Haye carried out and what information is he giving you?

SUPT. SHEPPARD: So Scott Haye is – well, the chief wanted an update for the morning. I had asked Constable Scott Haye, who works in the Intelligence Unit, to go to headquarters and see – find out some information and let us know what's in the file. Who is this person and what is the situation we have? So he contacted me. He said he had nothing to report. There was nothing on Facebook; 95 per cent of the tweets were re-tweets. And he referenced Sandy Collins' tweet. I have no memory of that. I don't know what that means.

MS. CHAYTOR: Okay. And what did he mean by nothing to report? Had he conducted searches at this point?

SUPT. SHEPPARD: Uh-huh, and he didn't have anything to advise me in regards to this file. He didn't have any information to pass on as to what Constable Smyth was doing or where he was to or how this situation came about.

MS. CHAYTOR: Okay. So he had searched ICAN and there was no file or information on ICAN –

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: – as to what Constable Smyth was doing?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And no Facebook, meaning that Mr. Dunphy had no Facebook, I take it?

SUPT. SHEPPARD: I assume.

MS. CHAYTOR: Okay.

And 95 percent of tweets being re-tweets, I take it this is his review of Mr. Dunphy's Twitter account?

SUPT. SHEPPARD: It seems to be, yes.

MS. CHAYTOR: Okay. And did that mean anything to you? You know, he's resending, I understand that to mean that Mr. Dunphy would have been, for the vast majority of time, just resending other people's messages. Is that of any significance from an intelligence point of view?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay.

Was there any discussion with Scott Haye as to the nature of Mr. Dunphy's tweets or the overall concern that he appeared to be expressing in his tweets?

SUPT. SHEPPARD: I don't have any memory of having a discussion with him, and the only information I had was the information that came from Corporal Noel.

MS. CHAYTOR: And what was the purpose in having him check Mr. Dunphy's Twitter account?

SUPT. SHEPPARD: I didn't ask him what to check. I asked him to go into the building and read the file and tell me what happened, why did we have a person there, what – because really it's in a (inaudible). It's Easter, we're home and I'm not aware of what's taking place, so we're looking for some information as to what's the file and what happened.

MS. CHAYTOR: And you're trying to get relevant information to pass along to the chief for his meetings in the morning.

SUPT. SHEPPARD: Correct. That's right.

MS. CHAYTOR: Okay, fair enough.

And so you would expect if Constable Haye found anything threatening or of concern in Mr. Dunphy's twitter account, he would have passed that along to you?

SUPT. SHEPPARD: I would expect so, yes.

MS. CHAYTOR: Okay.

And if we could have P-0447 please. This is where you've asked Constable Haye – this is actually 8:25 p.m. you're getting results from Constable Scott Haye. And you can see that you've asked him to check, if I take you down to bottom of the page – from you to him, you've copied Joe Gullage and you're asking him to: Please also check for the threat file against Premier Davis

that Constable Smyth was investigating. If you can't find a record of it on ICAN or it is restricted, then call me. You should be able to get his date of birth from MRD, I assume.

And then this is the results – you asked him to do that 5:27 and then the results of his searches – and perhaps you – in asking him to look for a file in ICAN, I take it, you were expecting that there would have been a file opened in ICAN?

SUPT. SHEPPARD: I did, yes.

MS. CHAYTOR: Okay.

So perhaps you can tell us then what this means and what Constable Haye was able to determine, having run the various searches with respect to Mr. Dunphy.

SUPT. SHEPPARD: So I believe the phone call that we just had a second ago, he was letting me know that verbally and then he followed up with an email. He says that he checked our internal – I guess you've covered ICAN.

MS. CHAYTOR: ICAN, yes –

SUPT. SHEPPARD: Do you know what ICAN is?

MS. CHAYTOR: – it was negative and I understand what that means. So ICAN negative means that he wasn't able to find –

SUPT. SHEPPARD: Right.

MS. CHAYTOR: – any reference to Mr. Dunphy in your system, including no file opened on him.

SUPT. SHEPPARD: So there is nothing in ICAN. He checked our digital mugshot system where if a person had been arrested and photographed and fingerprinted, there would be – he would – Mr. Dunphy would have been captured in that. That was negative.

MS. CHAYTOR: And that would only be if the RNC had arrested him and fingerprinted him; is that correct?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Yes. Okay. Thank you.

SUPT. SHEPPARD: That's our force only.

MS. CHAYTOR: Right.

SUPT. SHEPPARD: Checked Facebook, which was negative; Twitter, as discussed; CPIC –

MS. CHAYTOR: And he means by that as discussed with you in the phone conversation we just referenced?

SUPT. SHEPPARD: That's right.

MS. CHAYTOR: Okay. Thank you.

SUPT. SHEPPARD: Mostly, 95 percent re-tweets.

MS. CHAYTOR: Yeah.

SUPT. SHEPPARD: He checked CPIC; he came across two drug convictions for 2001, for possession and production. And he said that Mr. Dunphy was also charged with uttering threats in 2005, which was later withdrawn.

He checked Motor Vehicle Registration Division and – which provided an address for Donald James Dunphy, and his address was provided. And he also checked the ACIIS, which is an intelligence database that we have. And he found one intelligence briefing report submitted by Corporal Dwyer of the RCMP in 2005, which makes reference to Mr. Dunphy selling and growing marijuana throughout the summer.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: And then he advised me that he had spoken to Constable Benoit, and advised him to complete a synopsis of the ICAN file in relation to today's incident. And if I required any information, he gave me his phone number.

MS. CHAYTOR: And what would that mean for him to complete a synopsis of the ICAN file, if there is no ICAN file open? What is he –

SUPT. SHEPPARD: Well, the premier's office deals with, I guess, sensitive issues pertaining to the premier, what the premier – the premier's business. And we restrict that so that every police officer can't just go on ICAN and be nosey and check and see what's taking place. So it's kind of on a lockdown, and we will call it restricted.

So if he checked the system and he didn't find it, it doesn't mean – it may have meant that it was there, but he couldn't get it. Ed Benoit was a previous – previously assigned to the public service unit, and he would've had access.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So he was going to – Constable Benoit was also going to check to see if his rights, I guess, into the system could allow him to see if there was a file or not. And if there was, he would've provided the update.

MS. CHAYTOR: Okay.

And I just want to just correct something. In answering that question, you referred to the premier's office. But I understand you meant to say protective service unit; is that correct?

SUPT. SHEPPARD: That's correct, yes.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: That's what I meant.

MS. CHAYTOR: All right.

And I understand that then Constable Benoit did complete the synopsis of the ICAN – or did look into it. And he was not – there was no restricted file found either; is that correct?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

My mouse isn't working. All right, we'll just – sorry, I'm just having a little technical problem there.

MS. O'BRIEN: Do you want to scroll down?

MS. CHAYTOR: I was trying to go up.

MS. O'BRIEN: Okay.

MS. CHAYTOR: Okay, thank you.

Okay, and if we go back then, please, to your notes at P-0443 – and this unto the next day, Superintendent. And I understand that, the next day, on April 6, there were other threat assessments carried out by the Criminal Intelligence Unit. Is that correct?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And these were largely originating from the premier's office; is that correct?

SUPT. SHEPPARD: I assume so. I don't know the details of, of what –

MS. CHAYTOR: Okay. And we'll just look through – some of them get sent I understand directly to you, and I –

SUPT. SHEPPARD: Yes, that's correct.

MS. CHAYTOR: – yes, and I'll ask you to speak to that.

SUPT. SHEPPARD: I think that was on the 7th, maybe?

MS. CHAYTOR: Maybe on the 7th, okay. You've got your timeline; that's good.

Okay. All right, here we go. On April 6 there's a note here, 9:30 a.m., and this particular note says that Premier Davis has called you. And I understand from your interview that you, that while you know Paul Davis fairly well, he was not specifically calling looking for you on this occasion but you were the most senior person available to speak to. Is that correct?

SUPT. SHEPPARD: Yep, that's correct.

MS. CHAYTOR: Okay. And do you know then where deputy chief and the chief would have been at 9:30 a.m. on April 6?

SUPT. SHEPPARD: I have no idea. I assume they were – I have no idea.

MS. CHAYTOR: Okay. And then what was the – we don't have the same detail in your notes here. I'm just wondering, what was the purpose of the premier's call that day?

SUPT. SHEPPARD: He provided me two contacts – I think we're going to see, in a little while, he's got some travel that he's going to be taking up and if I had any issues regarding the security,

I was to contact Cory Grandy – I got (inaudible) I don't know who Cory Granby is – and Lori Anne Companion who was his deputy, and some numbers for his spouse.

MS. CHAYTOR: Okay. All right. So this is to arrange – so he's calling in to you to arrange security for his travel?

SUPT. SHEPPARD: So basically what happened was he called the building looking for the chief and the deputy, they weren't available, and I passed by while the support staff were on the phone and he was looking to speak to somebody so I took the call, and our discussion was just, just about that. That he had some travel coming up, he was talking about security, we've now got a couple of officers assigned to his home, and he's providing me numbers for people if I need to contact them and who I should be contacting.

MS. CHAYTOR: Okay. And so normally, with those communications, he's aware that by this point in time Ed Benoit is being assigned and Doug Noel, of course, is still in the position. Normally those types of inquiries would go directly go, though, through to PSU?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. So this was a bit of an unusual phone call, I take it.

SUPT. SHEPPARD: It was very unusual. I wrote his phone number in the corner because I didn't have his number.

MS. CHAYTOR: Okay. Yes, and that's what we've blocked out over here.

Okay. All right. And then there's another unassociated matter and then he calls back, 2:30 p.m.? Okay. And there's – what was the purpose then of this call at 2:30 p.m.?

SUPT. SHEPPARD: So again, I write a lot of notes in bullet form. Catherine is – I believe it's his executive assistant, Catherine Evans.

MS. CHAYTOR: Catherine Evans, yes.

SUPT. SHEPPARD: I believe that's who it is.

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: We talked about the week, we talked about Friday, what was going to be taking place, and it seems that there was a Quebec climate summit that was taking place that he was going to be attending, so he was identifying for me his travel. He was going to be in Halifax on Wednesday and Thursday and Friday, and he had something to do with an animator in Halifax.

We discussed that the threat assessment that had been conducted – because every time the government changes and we get a new premier, we do do a threat assessment on their home. So we'll send people from our technical investigation unit that will go out and look at the home, the locks, the windows, the area, fence, just to make sure that the home has adequate security.

And that had been done, but it hadn't been – the threat assessment was done, but it hadn't been completed, the work.

MS. CHAYTOR: Okay.

And so at this point in time he's, I take it, looking to have that completed.

SUPT. SHEPPARD: That is correct.

MS. CHAYTOR: Okay.

All right.

So the purpose of his two calls to you are – they are concerning his security, either at his home or for his travel.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

Was there any discussion with Premier Davis in either of those calls about anything to do with the shooting incident?

SUPT. SHEPPARD: No.

I believe that he had been talking to Joe at this point.

MS. CHAYTOR: Meaning Joe Smyth?

SUPT. SHEPPARD: Joe Smyth. But there was no – I didn't have anything to tell him then because I didn't know anything myself. This is received from the night before that Constable Hayes called me. He didn't have any information, and this is 9:30 in the morning and I don't have any information or in the afternoon.

MS. CHAYTOR: Okay.

And did he – was there any communication with him or any questions about Constable Smyth?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay.

And at the top of the next page, into page 9, then, we see he's giving you the contact information for his executive assistant, and you understood that was for the purpose of you being able to coordinate or assist with security measures.

SUPT. SHEPPARD: He didn't need to give me this. The premier's protection people, Smyth and Noel, would have – I guess they would have already had this information, but whatever reason now he's keeping me in the loop and giving me the information.

MS. CHAYTOR: Okay.

And you would be two layers up in terms of the reporting for the protective service unit, and as you've said, that technically on the chart you don't even really – it wouldn't be usual for them to be reporting up to you.

SUPT. SHEPPARD: That is correct.

MS. CHAYTOR: Okay.

And so, again, this is unusual contact.

SUPT. SHEPPARD: That is correct.

MS. CHAYTOR: Okay, and then at 4 p.m. you do call Ms. Evans, and then she's giving you some information again about the premier's travel plans and security for the home. So you're having a discussion with her on those issues.

SUPT. SHEPPARD: So I didn't call the premier. I called her back, as he had given me the number, and let him know that we would be providing security.

MS. CHAYTOR: Okay.

I understand from when we discussed this in your interview that the reason for the perceived need for the heightened security around the premier – this is in the aftermath of Mr. Dunphy's shooting. There's nothing else going on in the province. It's – this is centred around what has happened with Mr. Dunphy?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And if we could have, please, P-0449. And this is, you're right, it is – no, this one is April 6. No, it's April 6.

SUPT. SHEPPARD: No, sorry.

MS. CHAYTOR: So this is one of the email that I was mentioning to you a little while ago about one of the messages that's being sent along, and now we have you sending them to Joe Gullage. And if we scroll down we can see that these originate with Chris Smith, who – I understand he's an officer in your – an RNC officer?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And there's some confusion, not sure who's handling security for the premier. And then Barry Constantine to you.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And then you send on to Joe Gullage and you say: "There are some Facebook messages attached that you might want to read ..." There's an individual who's going to Confederation Building tomorrow. "He doesn't appear to threaten anyone directly and is talking about injured workers rights. He seems to be anti-police. Also attached is a BOLO on" him "from last year 2014 saying he is going after the murders and taking people down."

And that, I understand, was what he had said in 2014, as opposed to what he is saying now in 2015.

SUPT. SHEPPARD: That is correct.

MS. CHAYTOR: The communications he's making at this point in time aren't threatening, doesn't appear to threaten anyone, you say. And he's talking about injured workers' rights.

SUPT. SHEPPARD: I guess.

MS. CHAYTOR: And you're asking for someone to "do a workup on him tonight. Further we should make the Confed Bldg security aware of the situation so that they are prepared if he arrives" up this a.m. and "Barry Constantine is suggesting surveillance"

So you – is this a person – again, he's talking about injured workers' rights. This is the day after Mr. Dunphy's shooting. Is that the context in which this person is speaking out?

SUPT. SHEPPARD: (Inaudible.)

MS. CHAYTOR: Okay. And the reference to the comments that he made in 2014, did you understand they were investigated by the police at that time and this individual was spoken to?

SUPT. SHEPPARD: I don't remember knowing if that had been –

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I'm assuming it had, it was probably – this was an alert that was sent out regarding him.

MS. CHAYTOR: Okay. Fair enough. And we can ask that of Inspector Gullage, then.

And so you're asking your CIU team to do a workup on him, and what does that mean? And is this the type of communication, even though it doesn't appear to threaten anyone directly – is this the type of communication that warrants a workup on the individual?

SUPT. SHEPPARD: In a general sense? Maybe, maybe not. I did ask for this to be done in this particular case because we've had a shooting, we have a premier who's concerned about security, we're not sure what the fallout of the – Constable Smyth's action is going to be. We now have somebody also saying that regarding the – the injured rights really is not the issue. It's a matter of a person who's now going out and saying, stating that they're going to go to the Confederation Building. So my thought in this here is in a proactive sense is: Who is this person, is there a concern, is he a threat, is he not a threat? Can you have a look at him, see what intelligence we have and notify the Confederation Building? Because my role is a lot of dealing with risk and mitigating risk.

So if this person, for example, you did a check and he came out to be – and I'm just talking in the general sense – if he came out to be a very violent person, has a history of violence, then maybe you want to be aware of who this person is that's coming to the Confederation Building. If you did a check and, on the converse side, you didn't have anything, then really there is probably not much concern, but it's an – a we need to educate ourselves on who this person is. That's why I asked for a workup.

It's based on the fact that we did have a police shooting just the day before, and I asked the Confederation Building security to be made aware because we have to share information. We have to – if we do have a threat, then we are obligated to protect the public and protect the safety of the security officers, the staff at Confederation Building and we would pass on any information or any concern that we would have.

MS. CHAYTOR: Okay. And I take it, Superintendent, that it would be unusual for, in the normal day-to-day running of your division, it would be unusual for you to be involved at this level with comments that weren't threatening.

SUPT. CHAYTOR: I would never see this.

MS. CHAYTOR: You would never see this, no, okay, all right.

So then we have P-0450. And this is an email that you write on April 7, the next day, to Joe Gullage, and included in this – I’m sorry, if we can just – included in this, I believe, which might be one – I’m not sure if it is now that I look at it. I was thinking it might have been the email communication that we just had up and I’m not sure.

SUPT. SHEPPARD: There were two that came in –

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: – and you put up the first one.

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: I think the next exhibit is going to be the second email –

MS. CHAYTOR: Right.

SUPT. SHEPPARD: – which raised the reason why I wrote this regarding PEC.

MS. CHAYTOR: Right, okay, all right. We have tortured, frauds and corruption, and I will take you to that one and the potential jump brutal one as well. I’m not sure if the third one, if you can tell me – is that the one that I just brought you to about ...? I’m not sure.

SUPT. SHEPPARD: No, that’s a different.

MS. CHAYTOR: No, that’s a different one.

SUPT. SHEPPARD: That’s just a little box that talks about – it doesn’t talk about anything. It’s just like a – it’s benign. It doesn’t mean anything.

MS. CHAYTOR: Oh, okay. There’s no attachment to that one.

SUPT. SHEPPARD: No.

MS. CHAYTOR: Right. Okay, fair enough.

So we will talk about the other two in a minute. So this one you’re sending on to Joe Gullage and you’re asking for discussion at PEC: “I will explain. I need to ensure that the CEO team at Premier’s house, PPS with Premier, Confed Bldg security, and CIU are all kept in the loop and that no one gets left out of any threats. These emails went to Premiers office overnight.” And these are the two that we’re going to refer to here.

So, first of all, I understand that PEC is the provincial executive council, is that correct?

SUPT. SHEPPARD: Provincial Executive Committee.

MS. CHAYTOR: Committee, sorry.

SUPT. SHEPPARD: There are two. There’s one for the CFSEU, the drug team. I mentioned there was a JMT, and above the JMT there’s a PEC, which is a higher level of basically chief to chief with us, while the CO with the chief. This one here is regarding the intelligence, Criminal Intelligence Services Newfoundland, which again is a joint intelligence initiative between us and

the RCMP. So they have a PEC, which is an executive committee that provides governance to the intelligence (inaudible).

MS. CHAYTOR: Okay.

And on that committee, then, for the RNC, I understand the chief sits on that committee.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And the commanding officer of the RCMP, who at that point in time would have been Tracy Hardy. Is that correct?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And the ADM of Justice and Public Safety at the time, also.

SUPT. SHEPPARD: That's correct, and Deputy Singleton is also on it and the chief superintendent.

MS. CHAYTOR: Chief superintendent, so that would have been Andrew Boland?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: So they all sat on that committee.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: All right.

Okay and –

THE COMMISSIONER: I think an appropriate time for –

MS. CHAYTOR: Oh, yes. Thank you.

THE COMMISSIONER: (Inaudible.)

MS. CHAYTOR: Yeah, I'm going to be a bit longer on the next two exhibits, so this is a good point.

THE COMMISSIONER: Okay, we'll recess for 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: We'll loosen up and do an extra 15 minutes for lunch – so 1:15 instead of 1:30, to help everybody out a bit. Take some of the pressure off.

Go ahead, when you ready.

MS. CHAYTOR: Okay. If we could go back, I think when we left, I had showed you the email you sent to Joe Gullage and asked that these matters be brought up at the Provincial Executive Committee. And these emails had been indicated to have been gone to the premier's office the night before. Two of them are in our exhibits, as you mentioned. And one is the Torture, frauds and corruption email and the other is titled, I think, Brutal – Brutal.

And both of those people I understand, Superintendent Sheppard, were also expressing concern in the aftermath of Mr. Dunphy's shooting. Is that correct?

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay.

And if we could just look at P-52 – 0452, I'm sorry. And this is the one of April 6, 2015: torture, frauds and corruptions. And if we scroll down, we can see where this comes up to your attention. So it starts here and this person is saying he has sent this to Paul Davis, MHA, and also to an account called premier. And there's also other copies – other parties copied here.

Dear Mr. Davis, I'm very sad to see how the case of Mr. Don Dunphy turned out with the death of a person. And he's putting in a CBC story. As you already know, Quebec is the most corrupt province in Canada, and it goes on from there.

In fact, I've been tortured by criminal frauds. And he goes on, for the last 20 years, I've wrote hundreds of thousands of letters claiming justice. I can only witness silence for everyone. Unfortunately, all my documents are in French. I have small website. And I hope the security of the Quebec criminal prime minister won't kill me. And he says, in his p.s., I'm just against torture, frauds and political corruption. I'm a bad guy who deserve to be killed?

And so this was the first one which was Torture, frauds and corruption. That gets sent from Paul Davis MHA account to his executive assistant, Catherine Evans, and then sent on by her to the two individuals in the protective service, Doug Noel and Ed Benoit: FYI. And then she also FYI's it to you. Okay.

And so you received it from his executive assistant and then you – and I understand then you sent it on to Joe Gullage?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: That's correct, okay.

And again, I understand this contact with you from Catherine Evans, that would have been unusual prior to Mr. Dunphy's shooting?

SUPT. SHEPPARD: I was never ever contacted by this lady before.

MS. CHAYTOR: Okay.

And had you received similar contact from the premier's office before?

SUPT. SHEPPARD: Never.

MS. CHAYTOR: Never, okay.

And then if we look at the other one is P-0298, please. And this one we've looked it – actually it was also sent April 6 and this is the one that I think is Brutal. And this is, for lack of a better word – it goes on for pages. So it's quite, you know, a rant, this one. It's several pages.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And again, this person is speaking out because he or she seems to be upset about Donald Dunphy situation.

SUPT. SHEPPARD: That is correct.

MS. CHAYTOR: And it's clearly unpleasant, but would you agree with me that it tends to be more of a political rant as opposed to anything threatening?

SUPT. SHEPPARD: I agree.

MS. CHAYTOR: Okay.

And, in fact, it actually ends with the person looking for an apology to the Dunphy family from Paul Davis, or from the government anyhow. He says, or she: You owe an absolute and unequivocal apology to Dunphy's family and to the entire province.

Okay. And again, this comes up from – I'm sorry; it's quite long – so then it goes from Paul Davis to the premier account and to Catherine Evans, and then the premier account into Doug Noel's, so into the PSU, and ultimately it also goes to you.

SUPT. SHEPPARD: That's right.

MS. CHAYTOR: Okay.

And if we – I won't bring the exhibit up but within a half hour of those messages being received by you is when you send it along to Joe Gullage and suggest discussion at PEC.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

Are those the types of concerns that would normally get elevated to the Provincial Executive Committee?

SUPT. SHEPPARD: No, not at all. This would not normally come up but if you go into the previous exhibit you had, it mentions police corruption, government corruption, government fraud. It talks about the United Nations. It talks about the Queen. It talks about the president of France. So because it has allegations of certainly provincial corruption, then that would be – corruption would be an issue that we would deal with, or would raise to PEC for their attention.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So that piece was why I said maybe this needs to – you know, there might be – there may be absolutely nothing to it, but I can't determine that, so I'm just raising the issue.

THE COMMISSIONER: You have certain key words –

SUPT. SHEPPARD: Sure.

MS. CHAYTOR: Okay.

And so the fact that person was alleging corruption by government officials and other entities –

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: – that's why that one was sent up.

And how about then this one – what I've referred to as the political rant.

SUPT. SHEPPARD: No. I would never raise – that's not a police issue in a sense.

MS. CHAYTOR: Okay.

And so why were you sending that one for consideration by PEC?

SUPT. SHEPPARD: I didn't. I just – the emails came to me and I bundled them and sent to Joe for Inspector Gullage to be aware of because he is the manager of the Protective Services.

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: So the reason this came to me is because, obviously, I had spoken to the premier. He gave me his executive assistant. I spoke to her about travel, which normally I wouldn't do, but now they had my contact information and maybe she's thinking that I'm the right person to receive this, whereas this could have very easily been dealt with by Corporal Noel.

MS. CHAYTOR: Right. The PSU channels, right?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Did you tell her that you can just deal directly with PSU?

SUPT. SHEPPARD: No, I just politely said, thank you.

MS. CHAYTOR: Okay. Fair enough.

Okay. And so but this one that I am referring to here, and it's on your screen still, the one that goes on for pages, that one you did include with what you said to Inspector Gullage to save for discussion at PEC. That one was included in the attachments?

SUPT. SHEPPARD: It was, yes, but I wasn't referencing this one to PEC because I obviously would talk to Inspector Gullage and say we got a situation here. On one email, that's regarding corruption. The other two don't mean anything.

MS. CHAYTOR: Okay. But that's not what – you put them all in the same attached, in the same email for discussion at PEC, but you were expecting him to be able to determine –

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: – is that what you're saying, which ones needed to be discussed and which ones didn't?

SUPT. SHEPPARD: Right. So I just put three of them in one email and sent the three of them.

MS. CHAYTOR: Okay.

Did you have any concern that these are people who are speaking out about their perception of the wrong that they think has been committed against Mr. Dunphy – that's being sent to a provincial committee which has representation from the highest levels of the RCMP and that's the force of course that is carrying out the investigation into Mr. Dunphy's death, and it's the committee of course where high-ranking members of the RNC sit on that committee. So did that cause you any concern in terms of potential invitation for discussion amongst members of the RCMP and the RNC on the topic of Mr. Dunphy's death?

SUPT. SHEPPARD: What was the concern, sorry? I'm missing the point there.

MS. CHAYTOR: I'm just wondering if you had that concern, that you're sending this to a committee, which is a joint committee of RCMP and RNC, and inviting discussion which could potentially be a discussion on Mr. Dunphy's death. These people are speaking out because of Mr. Dunphy's death and in the aftermath of his death.

SUPT. SHEPPARD: I didn't, because I read these and it seems to me mostly anti-Premier Davis, anti-government. While it's probably spurred on by the shooting death of Mr. Dunphy, I didn't see an issue with that, no.

MS. CHAYTOR: Okay.

And I guess the other question that I would have around this is the criticism that is being levelled in those messages against police and against government by these members of the public in the aftermath of Mr. Dunphy, and there were many others.

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: There were many others. It was largely around, why was there a need to have Mr. Dunphy investigated for being vocal about his grievance, and it might appear to some – and I want to ask you, allow you an opportunity to respond. But it might appear to some that the response of the police to that is to now investigate the people who are also being vocal and speaking out.

SUPT. SHEPPARD: I don't know if they were being investigated. What are you referencing? What was going to PEC or the other people that may have voiced anti-government sentiments?

MS. CHAYTOR: Superintendent Sheppard, right now the line of questioning had been geared towards PEC, but they also were sent up through the unit and asked to be investigated. Isn't that correct?

SUPT. SHEPPARD: I think we have a responsibility to have a look at what's coming in, determine if there is a threat, if it is of concern, if it's something that we – we could have read all these and said nothing needs to be done or we could have picked out one that said this one needs attention. I'm not sure that I will classify it as an investigation, the fact that I'm getting emails

and giving them to Inspector Gullage for his review and determination as to what he's going to do with them, I'm not making that decision.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: But I did raise – I did think that the issue of the – another province allegations of corruption need to be at least raised of the flag, the flagpole.

MS. CHAYTOR: Okay. Did you have any communications with anyone else in the premier's office other than the premier and Catherine Evans in the aftermath of Mr. Dunphy's death?

SUPT. SHEPPARD: I don't think so, no.

MS. CHAYTOR: Okay. Do you know Heather MacLean?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay.

Did you ever have any discussions with her in the days following the shooting? She's the communications director for Premier Davis at the time.

SUPT. SHEPPARD: I don't remember ever speak – I don't know the lady, I don't think I ever spoke to her.

MS. CHAYTOR: Okay.

I just want to bring up P-0581, please. And this doesn't say that you had any discussion with her but you are referenced in her messaging. These are BBM messaging between herself and Constable Smyth.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And if we could have page 5 of the exhibit. And if we come down on page 5 we'll see here where there's reference to her telling Constable Smyth – is this page 5 of the exhibit? It is. Okay.

I think it's towards the bottom. Yes, right here. She says – Heather MacLean to Joe Smyth: "Yes – talking to cochrane this am. He may file atippa request on correspondence/ contemplating story on common nature of threats."

And she also asks him: "Police record?" And Constable Smyth replies: "No Record." She says "K thanks." Constable Smyth says: "I wish I could talk to him." And these communications are happening April 7. "Would love them to have insight into intelligence based investigations And threat assessment."

And right here Heather MacLean says to Joe Smyth: "He is putting call into jason sheppard ..."
And Constable Smyth says: I know I can't while an investigation is ongoing, but I could easily answer these questions. And Heather MacLean says: "Hear you ..."
And Joe Smyth says: "Has cochrane said what he's doing with it?" I'm sorry, that's the next day then.

So the reference to you here is that, that Cochrane, and I understand that to be David Cochrane of CBC, is going to be putting a call into you.

So my first question is: Did Heather MacLean ever tell you that or anyone else in the premier's office advise you that she understood the reporter would be contacting you?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay. And do you have any knowledge as to what this is referencing?

SUPT. SHEPPARD: No. I'm assuming she must – she just said, just a couple lines up, that David Cochrane had been in contact with them. So I guess she's getting it from inside Confederation Building.

MS. CHAYTOR: Okay. And did that happen? Did David Cochrane contact you to talk about any of these issues, for example, about what a threat assessment might mean or anything else around – in the aftermath of Mr. Dunphy's death?

SUPT. SHEPPARD: No. He may have called me, and if he did, I can't remember.

I have a professional relationship, Mr. Commissioner, with David Cochrane. We did a story in probably 2007. We worked together for two months on a project. We did a – it was a five-part series that came out and afterward he would, if there was something significant that took place in the city, he would call me to see if there was any release, but he got the same answer every time he called me, is that you're going to have to wait for the media release to come out and contact our media relations officer. So if he called me, I don't remember him calling me but I'm certain –

THE COMMISSIONER: What was the special – what was the five-part series on?

SUPT. SHEPPARD: It was a project that we done in 2006-2007. It was basically a drug file that was coming through Quebec into Newfoundland.

So, you know, if he called me, I certainly wouldn't discuss any issues with Mr. Cochrane.

MS. CHAYTOR: Okay. And would we expect to also see a note in your 36 pages of handwritten notes?

SUPT. SHEPPARD: Probably not.

MS. CHAYTOR: No. You wouldn't have noted that?

SUPT. SHEPPARD: If he called me?

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: No, I wouldn't write that down.

MS. CHAYTOR: You wouldn't write down that you received a call from him and –

SUPT. SHEPPARD: No.

MS. CHAYTOR: – refused to speak to him or give him any information?

SUPT. SHEPPARD: No, I wouldn't write that down.

MS. CHAYTOR: That's not your practice?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay. All right.

Did you speak to him in the aftermath of, either before or after I should ask you, of the April 10 email being leaked to David Cochrane at CBC?

SUPT. SHEPPARD: Certainly not.

MS. CHAYTOR: Okay.

If we could have P-0531, please – P-0453, sorry. Trouble with my numbers today.

And this is an email, when it comes up here, it's from Joe Smyth to you and to others. And he's completed – it's also April 7. He's completed his case summary, and he's sending this to superiors, the top of the RNC here, top management. He's letting you know if there's anything additional, information or documentation you require and he's also going to do his Use of Force form.

And then you reply: "Thanks Joe. Sorry I never got back to you earlier. Take care!! And again, if you need anything just call me."

So did you meet with Joe Smyth or have any discussion with him prior to his completion of his case summary?

SUPT. SHEPPARD: No, we never ever met prior to him writing that report.

MS. CHAYTOR: Did you have any discussions with him?

SUPT. SHEPPARD: I did. And when we were – when you interviewed me previously before Christmas, I had no recollection of it. And since, I've now went back and tried to figure out, put, put a spatial – 'cause I hadn't been prepared for our interview, try and put things in order. It's evident that I did speak to him on the 7th because he provides me with a file number. And when I send my email to Dale Evans for some follow-up work that we needed from the RCMP I said that Constable Smyth had given me the file number and he may have been shaken. So it's not possible that he could give me the file number –

MS. CHAYTOR: You had to have spoken to him to get that?

SUPT. SHEPPARD: Right. He had – but it had to be on this day when he generated the file to get the file number, and it had to be before the next – it had to be before I think it's 8:30 in the night because I sent an email, or 10 o'clock in the night, and asked her to do a follow-up. So I did speak to him on this particular day, yes.

MS. CHAYTOR: Okay. All right.

And do you have anything in your notes to document that or say what was discussed between you and Constable Smyth?

SUPT. SHEPPARD: I do not.

MS. CHAYTOR: Okay. All right.

And if we could look then please at P-0451. And this is also now April 7, and this is to social media within the RNC and it's copied to Paul Woodruff and Joe Gullage and it's re: Twitter – Facebook – Threats to Premier or MHAs, and you're asking if there's any Facebook or Twitter posts that are threatening towards any government officials that they please be sent along to Joe Gullage to do the – so that the appropriate threat assessment can be done in a timely manner.

And why is this being sent at this point in time, Superintendent?

SUPT. SHEPPARD: It's me being diligent in ensuring that anything that, that – new that's going to come in to the department gets funnelled into Inspector Gullage so that it goes in one place because you could end up with a threat's complaint – for example, it could be a bona fide threat's complaint that the street patrol could respond to, but I want to make sure that anybody who's getting any information puts it in the one spot so we can do a proper assessment on it and see what we have.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: And we would – and from that then any notification of any concern that we have would go out to the appropriate people who are providing the security, whether it's at Confederation Building, the premier's office or I think it is the CEO.

MS. CHAYTOR: Okay. And let me be a little more specific – I'm sorry about that – in my question, because what I'm wondering is, is this is a change in procedure because now you're saying then they'll have it disseminated to the premier's Protective Services as well as others – but I'm wondering would it be normal, though, if there are threatening comments towards government officials that that would first go to the Protective Services Unit?

SUPT. SHEPPARD: So I think, in practice, the premier's protection, the Protection Services Unit, would receive from internal from in the Confederation Building. So I'm looking here for external for other officers that may come across something. Social media is an email link to an officer, and I think it was probably the person Smith that we talked about before –

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: – in one of the emails. So I'm just ensuring that if anything comes up, funnel it up to Inspector Gullage, which is the manager of that department, and then he can have it assessed and see where we are.

MS. CHAYTOR: Okay, all right. So even before – this is not a change is what you're telling me. That before that would have been the case in any event. It wasn't that it went to the Protective Service Unit first, complaints against government officials. They would normally go into the CIU, not directly to the Protective Service Unit.

SUPT. SHEPPARD: I can't answer that because I don't know what they would do if they received it, but I'm here trying to clarify that if you get something, if you do see something because you're doing social media, I want you to direct it into Inspector Gullage so he can have it assessed.

MS. CHAYTOR: Okay.

And why did you want it to go directly to Inspector Gullage, those types of complaints?

SUPT. SHEPPARD: Because he's the manager of that unit. He would be the manager of Protective Services Unit and I wanted to make sure we were capturing it.

MS. CHAYTOR: Had you had occasion prior to Mr. Dunphy's shooting to send out a similar notification?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay.

If we could go back to P-0443 please. We're going to look at – these are back to your handwritten notes; we're at pages 10 and 11 and this is at 4:07 p.m., I believe, April 7. You've received a contact from Corporal Burke to provide information to the RCMP, and that's in your role of course as liaison. He's looking for ICAN and CPIC searches.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And if we look at the top of page 10, I believe it might be – I might have the wrong page reference, sorry. It's bottom of page 10 I guess. So he's looking for ICAN searches; any communications with your Comms Centre; CPIC. Okay.

All right. This is the information then I understand that you then ask for Dale Evans to get for you, and we've heard from Kim Harding. And she reports directly into Kim Harding, and we've seen the reports that Ms. Evans carried out. And I understand you then provided those to the RCMP to help them with their investigation?

SUPT. SHEPPARD: Ms. Evans forwarded them directly to Corporal Burke.

MS. CHAYTOR: Okay. All right. And we do have correspondence with you, so if we could look at P-0454. And this is your email to Dale Evans looking for this, and this might clarify the point here.

Oh, on that last exhibit, one question I did have for you on it – you see in the middle of page there it said approximately 2:30 p.m.; did you know what that meant, on April 7?

SUPT. SHEPPARD: Can I see it again, please?

MS. CHAYTOR: Yeah, sorry, just go back. Sorry, 0443 page 10. There was a note that said approximately 2:30 p.m., and I did have a note to ask about that. Right here, after the ICAN file and then approximately 2:30. Maybe it's not 2:30 p.m. Approximately 2:30, do you know what that means?

SUPT. SHEPPARD: Can you just scroll it up so I can see the top –

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: – I'm just looking for context of.

MS. CHAYTOR: So this is at 4:07 p.m., phone call to you from Corporal Burke?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And here's what you write and then we have approximate 2:30?

SUPT. SHEPPARD: I have no idea.

MS. CHAYTOR: No idea?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay. All right. I didn't either, that's why I was hoping you could tell me.

All right, 0454. And this is your email then to Dale Evans and you give her three bullet points of information that you've been asked to provide to Corporal Burke.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And again, we've seen the actual results of this –

SUPT. SHEPPARD: Okay.

MS. CHAYTOR: – and it does appear again, as you've indicated, that you've spoken to Constable Smyth to get the number – the file number because you indicate that he may have made a mistake in the number. You also ask about the Twitter threats.

So you're looking for an offline search conducted on CPIC; "Conduct a query on what Joe Smyth checked/queried on ICAN, and any results, before he attended to Mr. Dunphy's residence"; and a copy of everything and ICAN file number and you're asking to confirm it "regarding the Twitter threats against MHA Minister Collins and Premier Davis. (Joe gave me the file number and he may have made a mistake due to being shaken over this situation)."

So when you spoke to Constable Smyth, did he still appear to be shaken from the situation?

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Okay.

And you could tell that through what he said to you or the way in which he spoke with you?

SUPT. SHEPPARD: You can just tell from a person's manner when they're ...

MS. CHAYTOR: Okay. And you say here –

SUPT. SHEPPARD: He was –

MS. CHAYTOR: Sorry.

SUPT. SHEPPARD: He was heavy.

MS. CHAYTOR: Heavy. Okay.

Were you meeting with him in person or is this over the phone?

SUPT. SHEPPARD: No, on this particular day he did come to my office.

MS. CHAYTOR: Okay.

You're in face to face with him. Okay. And so you're looking for regarding Twitter threats against MHA Minister Collins and Premier Davis. Did Constable Smyth describe it that way, that it was Twitter threats against MHA Minister Collins and Premier Davis?

SUPT. SHEPPARD: We, or myself and Constable Smyth have never discussed the situation of his response to Mr. Dunphy's house. When he came that day I made it clear that I was the liaison. I didn't want to hear what had taken place.

He would understand, no, evidentiary wise, why I'm not – I'm now participating in feeding two different police forces with information and I wasn't interested in hearing what took place. And that might sound kind of cold and kind of mean but it's the reality of what I had to do. We did talk about how he was doing, you know, personally, how it was impacting him, but we didn't discuss –

MS. CHAYTOR: Okay. Fair enough.

SUPT. SHEPPARD: – the Twitter, we didn't discuss the situation.

MS. CHAYTOR: Okay. Fair enough.

So where did you get the information to describe it as being Twitter threats against MHA Minister Collins and Premier Davis? How did you make that, how did you come to that conclusion?

SUPT. SHEPPARD: So I can't tell you that. I don't know how I would have come to that conclusion.

We're still, like I explained to you in our previous meeting, I had never ever read the Twitter until after myself and you met in early December. It's not an examination that I undertook. There's an investigation that's in place, it's not, wasn't of my concern in some respect. I –

MS. CHAYTOR: Okay, so you don't know where that came from or ...?

SUPT. SHEPPARD: I still, I think that as an organization, we didn't know. I was still under the impression that there was threats to the premier.

MS. CHAYTOR: Okay. All right.

And the idea of threats, though, to Minister Collins, you don't know where that came from?

SUPT. SHEPPARD: I really don't know.

MS. CHAYTOR: Okay.

Let's look, go back then to your notes, P-0443. And we're now on April 8 and this is Chief Superintendent Andrew Boland calling you and you have notes of your call.

And it appears that this is on page 12, please. Yes, Madam Clerk, thank you, April 8.

And you do have notes of your call with him. And it appears that he's letting you know that they've retained Justice Riche to be an independent observer and you write here about: He will be an independent observer, attending the walk-through of the scene today.

So Andrew Boland is giving you an update of what's happening here by investigators. Is that right?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And Joe Smyth. “He will have full access investigation”?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: So this is what Andrew Boland is telling you the role will be of Justice Riche.

SUPT. SHEPPARD: That’s correct.

MS. CHAYTOR: At the end of the investigation he will be, “he will file a report based on his observations and will give an account of the thoroughness and independence of the investigation.”

SUPT. SHEPPARD: That’s correct.

MS. CHAYTOR: So you’re getting this information directly from Andrew Boland telling you the role of Justice Riche.

SUPT. SHEPPARD: That’s correct.

MS. CHAYTOR: And then you write: “This initiative is 100% by RCMP.” What does that mean?

SUPT. SHEPPARD: He made it clear to me that it was their initiative.

MS. CHAYTOR: As opposed to whose?

SUPT. SHEPPARD: The government, probably – I don’t know. I assumed it wasn’t coming from the provincial government, that it was their decision to bring in an observer.

MS. CHAYTOR: Okay. And he made a point to tell you that.

SUPT. SHEPPARD: He did.

MS. CHAYTOR: Okay.

Had you – you’ve had a fairly lengthy career in policing. Had you ever heard of an independent observer?

SUPT. SHEPPARD: Never.

MS. CHAYTOR: Did you have any questions of Superintendent Boland or Chief Superintendent Boland, sorry. Did you ask him, well, what does this mean and we’re not familiar with that?

SUPT. SHEPPARD: No, I – the RCMP are their own, their own body. He’s second in command and if he wanted to bring in five, that was his decision. I didn’t, you know, debate with him.

MS. CHAYTOR: Okay, I understand. Yeah.

And you weren’t, you didn’t – so you didn’t question any further on it. Okay.

All right, if we could look at page 14 again continuing on with your notes. Perhaps I’ll just scroll down here, might be the fastest. And 12:30 p.m. now on April 9 and you’re provide – you’ve

been provided with CD and transcripts of, from your Communications Centre I understand is what's going on here.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: And these are recordings that Constable Smyth had or made in relation to going to visit Mr. Dunphy. Is that correct?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: All right. And there, you also – so this is now Superintendent J. Boland. This is in fact Joe Boland, I understand, of the RNC.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: He comes to your office; he gives you the CD of the recordings, also transcripts of the calls. And unfortunately, our – I don't know why we have something wrong with our exhibit here but this did say emails. And I can tell you what it says; I think I have that in my notes here.

I don't know why it's blocked out there because I think it was clear on mine. Do you have it in your hardcopy there?

SUPT. SHEPPARD: Yeah. Can I just see it again?

MS. CHAYTOR: Yeah.

SUPT. SHEPPARD: I'll –

MS. CHAYTOR: Yeah, it's right here: emails noted –

SUPT. SHEPPARD: Emails notes –

MS. CHAYTOR: Email (inaudible)?

SUPT. SHEPPARD: "Emails notes of the matter."

MS. CHAYTOR: Right, "emails notes of the matter." What is that referencing emails notes? So he's giving you a CD, he's giving you transcripts and is he also providing you emails and notes?

SUPT. SHEPPARD: So to the best of my recollection what took place here was that Sergeant Gibbons was working in the Comm Centre sometime between the 5th and now and he took it upon himself, recognizing that this is going to be required. There was an email thread that had taken place about it.

I've already downloaded, I've got these prepared. He knew that somebody was going to come looking for this. It's routine in a whole bunch of different matters that would happen in policing. And I asked for the emails to go with the – I want to make sure I got all the information that pertains to it.

MS. CHAYTOR: Okay. And when you say the emails, do you mean the emails that Doug Noel had provided you with?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Which emails are you talking about?

SUPT. SHEPPARD: No, no, no. This is the emails from the – so Joe Boland is coming to me.

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: He's bringing me this information and there were emails that have taken place amongst Comm Centre staff, the supervisor to him to, I believe it was probably Staff Sergeant Devereaux, about the capture of these – I'm looking at them as notes.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So there's emails pertaining to how you got this and I want – the emails have to go with the information.

MS. CHAYTOR: Okay. Fair enough.

So it's just emails of people requesting the information –

SUPT. SHEPPARD: Right.

MS. CHAYTOR: – the transcripts and CDs.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Notes; are there any notes from the Comm Centre personnel regarding the Dunphy shooting –

SUPT. SHEPPARD: No.

MS. CHAYTOR: – or communications with Joe Smyth?

SUPT. SHEPPARD: To the best of my knowledge, no.

MS. CHAYTOR: Okay.

You also say here that there's – this bullet point here: "A second CD which contains recording of the Comm Centre initially captured but it is not complete." What's that about?

SUPT. SHEPPARD: So he brought me two CDs; one had a full, all the recordings and he had a second one that had, say, half the recordings. So they went back and they captured the whole works of them, put them on a CD and he gave me – I just made a note that he gave me, one is not a complete recording.

MS. CHAYTOR: Okay. And there has been an issue arise so I'm just making sure. There's no suggestion here that there may have been another, any other communications between Joe Smyth and the Communications people, other than what we have.

SUPT. SHEPPARD: No, this is Superintendent Boland being thorough saying I've got a half one and here's your full one.

MS. CHAYTOR: Okay.

And did you listen to the recordings or read the transcripts before you forwarded them on to Corporal Burke.

SUPT. SHEPPARD: I did.

MS. CHAYTOR: Okay, you did.

All right, and so one of the issues –

SUPT. SHEPPARD: Sorry, I can't say if before I forwarded them.

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: I did but when I listened to them, I'm not sure, but it would have been around this time.

MS. CHAYTOR: Around this time period.

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Fair enough.

Okay. All right.

So an issue has arisen that Constable Smyth was not provided with CNI information or criminal record information pertaining to Mr. Dunphy. Are you aware of that issue that has arisen?

SUPT. SHEPPARD: I am, yes.

MS. CHAYTOR: Okay.

And so you would have seen the results in CPIC search because you've been provided that by Constable Scott Haye. He emailed that to you the evening of April 5, so three days before you're receiving the transcripts of and the CDs.

Did that catch your attention that what Mark Oram is relaying to Constable Smyth, that there's nothing in relation to Mr. Dunphy on file as opposed to the information that you had in your possession from Constable Haye on April 5?

SUPT. SHEPPARD: I've never made that relationship 'til now.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: That you're raising it, it's the first time it's entered my mind what Scott Haye had said and what the CD says.

MS. CHAYTOR: Okay, so that discrepancy didn't catch your attention at the time.

SUPT. SHEPPARD: No, it didn't.

MS. CHAYTOR: Okay. All right, fair enough.

Okay. And at 12:44 p.m. you're contacted then by Acting Superintendent Pat Cahill from the RCMP. And you're being asked to attend a meeting at 3:30 p.m. with him and with Chief

Superintendent Andrew Boland for an update on the Smyth investigation. And why would you be getting an update on the Smyth investigation?

SUPT. SHEPPARD: I'm the liaison person. I guess they felt prudent to call me and advise me of what was taking place.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: Because we didn't know – to the best of my knowledge, we didn't know as a force, as an organization, what had happened. So there – I don't know if was a courtesy to call and give it to us but I guess they felt me being liaison, was kind of funnelled back to the RNC.

MS. CHAYTOR: And if we – do you recall then attending that meeting?

SUPT. SHEPPARD: I did.

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

SUPT. SHEPPARD: I think at the next – my next notes I have jot notes on the side there that I'm sure we'll be talking about.

MS. CHAYTOR: Okay.

All right, so other than those jot notes – we can look at your jot notes then, if you need that to refresh your memory.

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: Okay.

So page 14 – so 14, yes, 15, I think, in the exhibit. And this is I believe your note here, is it, Superintendent, 3:30 p.m. RCMP? So you went to the RCMP headquarters?

SUPT. SHEPPARD: At 3:37 and it was finished at 4:37.

MS. CHAYTOR: 3:30 to 4:37?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay, so it was over an hour meeting.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And Pat Cahill gave you a couple of phone numbers it looks like.

SUPT. SHEPPARD: His contact information.

MS. CHAYTOR: Okay.

And also it says: "Identity of Joe/media." What was that about?

SUPT. SHEPPARD: I can't remember all the details of our conversation but it was regarding Joe being identified – Joe Smyth being identified to the media, maybe.

MS. CHAYTOR: Okay.

And you can't remember all the details because your notes are somewhat scant for this meeting, is that fair, compared to some of the detail that we have for – you can see through the pages here I've been taking you through.

SUPT. SHEPPARD: Yeah. And I can't answer that, other than sometimes I'm sitting with my notebook and write longer notes, and sometimes I write bullets and sometimes I reflect afterward of a meeting that has taken place.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So I do know that we spoke about the – oh, sorry, you go ahead.

MS. CHAYTOR: Okay, no. I don't want to cut you off. You go ahead.

SUPT. SHEPPARD: Okay. No, I was going to mention, you asked what we had talked about.

MS. CHAYTOR: Yes. Okay. Well, then before you –

SUPT. SHEPPARD: And the margin on the side.

MS. CHAYTOR: Yeah, okay. Over on the margin, those points, okay.

Before we get there, just so – the other people in attendance besides yourself and Pat Cahill would be Chief Superintendent Andrew Boland and, of course, Pat Cahill, also Sergeant Kent Osmond and yourself.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: So Corporal Burke is not in this meeting.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And these are all fairly senior ranking members of the RCMP.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay. And you're going to tell me over here on the side, these will help jog your memory as to what you discussed.

SUPT. SHEPPARD: Right. So, on the bottom of what you just read you'll see an asterisk there, and I said "Overview of file." So he gave me an overview of what had taken place. They may need the training standard file of Smyth. So we had a discussion about some things that they are going to need, which did get followed up in a letter.

MS. CHAYTOR: Okay. So –

SUPT. SHEPPARD: The vehicle – oh, I'm sorry.

MS. CHAYTOR: Yes, before we go into that then.

So asterisks, overview of file. What did they tell you? Do you have any recollection of what they told you about their investigative file?

SUPT. SHEPPARD: What date is this? The 9th?

MS. CHAYTOR: This is now on – I believe this to be the 9th, April 9, so its four days later.

SUPT. SHEPPARD: I can't be sure what – obviously, we discussed the overview of their response. It probably was assigned to the file, the Major Case Management team, how they have it set up. I can't remember the details of Joe Smyth being interviewed.

MS. CHAYTOR: You can't remember the details of that –

SUPT. SHEPPARD: No, I –

MS. CHAYTOR: – or did they discuss his interview with you?

SUPT. SHEPPARD: I don't know. I can't remember the details on that.

I never realized that, Mr. Commissioner, I was ever going to be here speaking about what the RCMP told me at a meeting. If I had to have realized that I would have much more notes on this meeting.

MS. CHAYTOR: Okay. Fair enough.

Did you realize, or did it occur to you that there would be an inquiry?

SUPT. SHEPPARD: Oh, yes. I –

MS. CHAYTOR: I think everyone – that was a pretty common assumption.

SUPT. SHEPPARD: Well, you know, it may or may not but it's a pretty good guess that our previous, similar incidents and the RCMP's have all resulted in inquiries, so I assumed we were. But I didn't think that what the RCMP told me in this particular case was ever going to be of evidentiary value.

MS. CHAYTOR: You didn't, okay, fair enough. So you didn't think your role as liaison with the RCMP would come under scrutiny is –

SUPT. SHEPPARD: That's true.

MS. CHAYTOR: Okay, fair enough.

Okay. And, "May need training standard of Smyth." Do you recall what that's about and why that would be being considered?

SUPT. SHEPPARD: So I guess they're looking at there, logically, would be his use of force, his training, what he's trained in, how he's trained, what he knows, what would be his understanding of use of force and what he's been trained in. If he was never ever trained, that would probably be a factor in it. So they were looking for his training standard which – and it's not only his training record, but the standard is more so what is taught as opposed to what you may have in your training history.

MS. CHAYTOR: So did they express any concerns with respect to any aspect of his training?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Was this limited to his use of force training, is that what was being discussed? Or did they –

SUPT. SHEPPARD: I can't, I can't specify that.

MS. CHAYTOR: You don't remember it. Okay.

All right. Over on the right then, we have four bullet points, and what is the first one?

SUPT. SHEPPARD: The first one is regarding a vehicle. So Joe Smyth's vehicle, at this point, is still, I believe, at Mr. Dunphy's in his driveway. And when are we going to get the vehicle back, can we use it, are you keeping it. We discussed when we may be able to have the vehicle. There are two vehicles assigned to that unit, and now we've got one sitting in a driveway for a couple of days.

MS. CHAYTOR: Okay. Superintendent Sheppard, the vehicle was given back two days before on April 7.

SUPT. SHEPPARD: I have no idea.

MS. CHAYTOR: Can you think of what else –

SUPT. SHEPPARD: No.

MS. CHAYTOR: – you may have talked about, about the vehicle?

SUPT. SHEPPARD: No, I wouldn't know.

MS. CHAYTOR: Okay.

Was there any discussion with the RCMP as to whether or not any search was carried out of the vehicle?

SUPT. SHEPPARD: No.

MS. CHAYTOR: And so the next then, the next thing is recording. What is the recording? What is that referencing?

SUPT. SHEPPARD: The only recording would be the Comm Centre recording. I think; I don't know if there's any other recording.

MS. CHAYTOR: Was there any discussion regarding anything to do with, and I don't – the fact that the day before the recording of the re-enactment had been lost?

SUPT. SHEPPARD: Well, that'll make sense. That could be the case, yeah.

MS. CHAYTOR: So, but you don't have any independent recollection as to anything discussed around that?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay. And I don't know if that's the case. I'm just, you know, that's the –

SUPT. SHEPPARD: Well, no, I mean it makes sense. I mean it's –

MS. CHAYTOR: – only other thing I could possibly think may have been discussed, so.

SUPT. SHEPPARD: It is logical, yes.

MS. CHAYTOR: Okay.

And then the third bullet is media.

SUPT. SHEPPARD: Yeah.

MS. CHAYTOR: And what got discussed about the media on April 9.

SUPT. SHEPPARD: Again, I apologize, Mr. Commissioner, I – this is almost two years ago and to give you the exact details, Sir, of what specifically was said about media, I have no idea. I can tell you the topics that we spoke about but for the fine details of what was said about media, I really don't know.

MS. CHAYTOR: Okay. And I think they got –

SUPT. SHEPPARD: But media was on the table that we discussed.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: And like I told you, I've never participated or contributed to any of their media releases. I don't know if it's about media reporting, their media releases, or how Joe had been impacted by media, but media was the topic of discussion.

MS. CHAYTOR: Okay.

And do you think you would have talked to them about how Joe was being impacted by the media?

SUPT. SHEPPARD: I would.

MS. CHAYTOR: Okay.

And I think their media release had already been out there or their second detailed media release was already out by April 9. Okay.

Replacement of Joe slash – is that TRU, the Tactical Response Unit?

SUPT. SHEPPARD: I think this is TRU. I think there was an under – a belief and I still – I really don't know – be able to tell you if he was participating in the TRU team process.

But if he was on the TRU team, if he was on the Tactical Response Unit, which would be what people would know as a SWAT team, then he should not be participating in that environment.

MS. CHAYTOR: Okay.

So why would that be discussed with the team who are conducting the investigation into Mr. Dunphy's death?

SUPT. SHEPPARD: Because it would just be a matter of proper business practice that if you're involved in a police shooting that we wouldn't put you in a position to be involved in a second one while your first one is being under investigation.

MS. CHAYTOR: Okay.

And I understand it's a pretty stringent process to be selected –

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: – for the TRU, for the TRU unit.

SUPT. SHEPPARD: That's true.

MS. CHAYTOR: That's true.

So was this of concern that the investigating team would even have this on their radar the potential fallout to Constable Smyth in terms of his career path. Why would that be an issue to be discussed with the RCMP?

SUPT. SHEPPARD: I don't think it speaks to his career path.

It's too bad, really. I mean, you've been involved in a shooting and you're not going to go on a SWAT team and be involved in a second one, while your first one is still being investigated.

So I don't know how – I never brought this up because I don't even know if Constable Smyth ever applied to the Tactical Response Unit. I don't think he was a member of the Tactical Response Unit. And if he was and expressed that to them – if he was involved in the process or I really don't think he was on the Tactical Response Unit – then they're just making me aware that this, you shouldn't proceed in this way.

MS. CHAYTOR: Okay, so you didn't bring it up. This is the RCMP bringing it up with you.

SUPT. SHEPPARD: That's correct.

THE COMMISSIONER: Did I see somewhere where Constable Smyth was contemplating a move to the SWAT team at some stage?

MS. CHAYTOR: I'm not sure. There's –

THE COMMISSIONER: Nobody recognizes – I thought I saw some reference there.

MS. CHAYTOR: I think he had applied but I can't say specifically right now what reference that might have been. I think there was something in the back of my mind, too, Commissioner, but I really can't say yes or no right now. But I believe there was some reference to that. May have been in the interview with Constable Smyth, I'm not – I can't recollect right off now where that was, that reference.

SUPT. SHEPPARD: So if he –

MS. CHAYTOR: But you understood he had been –

SUPT. SHEPPARD: No.

MS. CHAYTOR: No? You didn't know?

SUPT. SHEPPARD: If he was involved in that process, I would not know –

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: – who's involved in the process. That would come under Superintendent Joe Boland. It's a different division; it's a different type of work. If he applied for that I wouldn't be aware. So, obviously, he must have raised it to the RCMP some, in some fashion.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: And they're expressing that this is the case and you're going to have to deal with it.

MS. CHAYTOR: Okay.

All right, and then – anything else then before we move on, Superintendent, that you can recall about this meeting on April 9 with the RCMP?

SUPT. SHEPPARD: I do recall that this meeting was not one hour and seven minutes strictly on this topic. We have this discussion and afterward there was probably 15 minutes of just policing chat, not pertaining to anything that's before you, Mr. Commissioner.

MS. CHAYTOR: Okay. And I understand the last note that we have over here; this is not in relation to the Dunphy matter? Is that right?

SUPT. SHEPPARD: You know, I don't know what that is. I think that it was a reminder to myself to talk to Sergeant Tom Warren of the Major Crime Unit regarding something at the Waterford, but it has zero meaning in this context.

MS. CHAYTOR: Okay. So nothing to do with any mental health issues in the Dunphy context?

SUPT. SHEPPARD: No, absolutely not.

MS. CHAYTOR: Okay.

All right, P-0455, please, and this is still on April 9. And this is an email that is from the chief, Chief Janes, to you and Inspector Gullage and also Deputy Chief Singleton and it's regarding Joe Smyth. And this could be his first day back to work, so he's letting you know that he's been off on his three days mandatory leave and that it could be his first day back to work.

And then you reply that: Joe, Deputy and myself have discussed this matter and all agree that upon Joe's return from AL "which may be 2 weeks, we should place him in CIU until the conclusion of the RCMP investigation. This will give him time to recover and keep him out of the limelight for a while. He came from CIU and I think he will find it meaningful work upon his return. I was going to chat with him today on this very point."

Did you have concerns with Constable Smyth returning to work so soon after the event or the role that may be contemplated for him?

SUPT. SHEPPARD: The role of being in the Intelligence Unit?

MS. CHAYTOR: Or in an operational position.

SUPT. SHEPPARD: Okay, so in the general sense.

MS. CHAYTOR: Yes, please.

SUPT. SHEPPARD: So we have a situation where you have a police officer involved in a shooting. It's still under investigation and as an organization, and as a responsibility to Constable Smyth himself, to the organization, to the public, I'm not putting Constable Smyth – as much as he might want to, I'm not putting him in a position where he's going to be in any position to find himself in a second situation like the first one.

For example, we could, if he came back and we put him in patrol and put him in uniform, he could, like I explained to you in our interview, that he could very easily end up at a bank robbery with shots fired and shoot a bank robber and here we are. It would be negligent on my part to put him in a position where he would use force upon somebody while he's currently under investigation for use of force.

So we had myself and Joe Gullage and the deputy, we had this discussion, and we determined that he will come back in an administrative capacity. That he wouldn't be front line meaning – we call it front line, basically uniform, initial responder.

So that was a debate that we had. And it would take him away from any active investigation, any stress, any – really he could come back to work, he would be in the Intelligence Unit and he would support the officers in that unit with doing their somewhat clerical work, I guess, is probably the way to put it.

MS. CHAYTOR: Okay. And how about your wording here: give him time to recover. Were you concerned about his mental state of health?

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Yes.

And keep him out of the limelight. What were you concerned about there?

SUPT. SHEPPARD: Well, the limelight goes to his level of stress as well. It – you know, like it would be a matter of he's not in the media, he's not somewhat, I'll say – I don't want to say the man is invisible but he's confined, somewhat confined to the police station, he's administrative, he's not in front of cameras, he's not –

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I don't know how to explain it any more than that but it was more of a protection to keep him in a position where, I guess it's somewhat like a cocoon of this has been – it's a tragedy, it's impacted him.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: And it gives him a place to still work and contribute but yet be under investigation.

MS. CHAYTOR: Okay. All right, fair enough.

And you indicate that you were going to speak to him about it on this day. Did you speak to Joe Smyth on April 9?

SUPT. SHEPPARD: No, I didn't.

MS. CHAYTOR: Okay.

And the chief then sends a further email that he agrees on all the points that you've raised. "He may need a new firearm if he does not have one already."

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: And you say that's a good point. And then you task Joe Gullage to "please look after a firearm for Joe and have Joe Smyth come in today if available for a chat regarding his deployment.

"As well, I have chatted with the Deputy, we will" And then it goes on about replacing "the license plate on Joe's vehicle but there is no reason to take it out of commission and replace it with a rental vehicle." And you're going to "contact the RCMP and see when we can get the vehicle back."

And, again, this is April 9 and you still seem to be under the impression that you don't have the vehicle.

SUPT. SHEPPARD: You said that it was – when I said we had the –

MS. CHAYTOR: Yes.

SUPT. SHEPPARD: – when I was at the RCMP, I don't – we don't have the vehicle back here.

MS. CHAYTOR: That's – yeah.

SUPT. SHEPPARD: So I don't know why – I don't know what the misunderstanding is here.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I was at the RCMP discussing. I – and like I told you in the previous interview, I thought it was regarding getting the vehicle back.

MS. CHAYTOR: And I –

SUPT. SHEPPARD: And here I'm saying I'm going to contact them and see if we can get the – when we're going to get the vehicle back.

MS. CHAYTOR: Yeah, so it appears you don't realize that the vehicle was back. Now we do have –

SUPT. SHEPPARD: Yeah.

MS. CHAYTOR: – exhibit I can bring up and show you, if you wish.

SUPT. SHEPPARD: No, no.

MS. CHAYTOR: And it's the communications with – it's P-0285 but it's communications with the officers who actually retrieved the vehicle. And those communications are taking place on April 7 and the note surrounding that confirmed the evidence.

SUPT. SHEPPARD: Who is that?

MS. CHAYTOR: So it's Doug Noel and it's Ed Benoit. They travelled to Mitchells Brook and retrieved the vehicle on April 7 –

SUPT. SHEPPARD: Okay.

MS. CHAYTOR: – is the evidence before the Commissioner, which seems to be consistent with –

SUPT. SHEPPARD: Sure.

MS. CHAYTOR: – the documentation.

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: Okay. So it appears that you don't realize that at this point still.

SUPT. SHEPPARD: That's correct. Yes.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Who was it? Noel and ...?

MS. CHAYTOR: Ed Benoit.

THE COMMISSIONER: Benoit.

MS. CHAYTOR: Ed Benoit and Doug Noel. So that's what their evidence is and they're actually having communications, there's some communications with Corporal Noel and with Constable Smyth on that date that he – or Ed Benoit, sorry, and Constable Smyth saying that he's retrieved the vehicle from Mitchells Brook.

The other questions then that I had for you on this then is whether or not, given your concerns about keeping him out of the limelight and he's going to a non-operational position, did you have any concerns with Constable Smyth being given a new firearm when he's –

SUPT. SHEPPARD: No –

MS. CHAYTOR: – when he's the subject of an ongoing investigation into a shooting?

SUPT. SHEPPARD: No, he's – my thought on this is that, like I said, it's very tragic, it's impacted him significantly. He's in the building. He's doing administrative work and it gives him some sense of still being a police officer carrying a firearm in a police station where he's not a threat to any of us. And that's how I perceived it.

MS. CHAYTOR: Okay.

And were you aware of any policy or protocol that would govern the situation of a non-operational person having a firearm?

SUPT. SHEPPARD: I am now.

MS. CHAYTOR: You are now. At the time you weren't.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And I won't go into that. There will be some other evidence on that from Inspector Gullage, Commissioner, as to the RNC policy when an officer is in a non-operational position, in terms of carrying a firearm.

THE COMMISSIONER: There's no carrying a firearm if it's non-operational?

MS. CHAYTOR: If you're in a non-operational firearm where your weapon should be stored. There will be some further evidence on that. I don't think I need to do it with all three witnesses who were involved. Chief Janes can speak to it and Joe Gullage will speak to it as well.

THE COMMISSIONER: All right.

MS. CHAYTOR: You also discussed here replacing the licence plate of his vehicle and no need to take it out of commission. So that's the vehicle you're referring to, is the Yukon?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And what was the concern about having the licence plate replaced?

SUPT. SHEPPARD: It had been on the news every day, the vehicle and the plate number, and there was consideration that, you know, people react, people can be very vocal to the police. You know, you can be harassed while you work. So in this case, we thought that by changing the plate number you wouldn't say that's the premier protection vehicle and I'm going to have something to say to him.

So if we change the plate, it was just a matter of just carrying on with our business and going forward.

THE COMMISSIONER: But by the sound of the evidence we've had, they can identify a police vehicle from the Trans-Canada into St. Mary's Bay.

SUPT. SHEPPARD: Okay.

MS. CHAYTOR: I think there's some communication later that the tires or the rims get changed on the vehicle. I'm not sure if that masks it any better.

SUPT. SHEPPARD: Because of this?

MS. CHAYTOR: I don't know. There was – it's in that context but whether it's because of that – you're not aware of that?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay. All right.

P-0443, please. We're back to your notes now on page 16 and at this point in time you've contacted Chief Superintendent Andrew Boland and he tells you about the video. This is April 10.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: It looks like he's communicating with you now that the video was lost on the first re-enactment and that they have to do it again. And this is at 3 p.m. You can see: re-do re-enactment. Judge Riche also is going. And he says he's "worried about Joe. MCU. doing this again. hard mentally." And this is Andrew Boland, I believe, expressing concern, or somebody in MCU, expressing concern about Constable Smyth and the impacts of him having to do another re-enactment. Okay. And you recall that discussion, I take it, with him?

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Did you speak to Constable Smyth about that? Did you reach out to him to see whether or not he was up to doing the re-enactment again?

SUPT. SHEPPARD: No, I did not. I didn't participate in the – no, I didn't.

MS. CHAYTOR: Okay. All right.

And then I understand that you drive out to Mitchells Brook that day and you've noted here at 1:30 to 2:30 p.m.: Drive to Mitchells Cove with Pat Cahill. So that again is Pat Cahill of the RCMP. There approximately half an hour. Viewed the scene; never touched or moved anything. Deplorable conditions; worse I have ever seen. Should not be living in such conditions; uninhabitable; wouldn't make a good dog house.

First of all, I want to ask you how did it come about on this day that you and Pat Cahill would drive out to Mitchells Brook and view the scene together?

SUPT. SHEPPARD: So after the phone call from Chief Superintendent Boland, Superintendent Pat Cahill called me. After I spoke to – sorry, Chief Superintendent Boland, I discussed the matter of me going to the scene and it was agreed that I would probably – it was an unusual request because, again, I'm not involved in it. But the thought was that it would give some perspective of the, I guess, the spatial aspect of where's located – because I didn't even know really where Mount Carmel is, the community itself.

So then Superintendent Pat Cahill called me, or I called him, and let him know that I would be going and then he came and picked me up at the front door of the police station.

MS. CHAYTOR: Okay. And so you drove out there together. Were you concerned at all about the appropriateness or the perception of management of the RNC attending the scene, driving out to the scene with management of the RCMP, the force that's still investigating the matter and what had happened at the scene at Mitchells Brook?

SUPT. SHEPPARD: No, I can understand your concern, but it wasn't of any concern to me. I didn't see that – from my perspective, I'm not involved; I'm not influencing in any way. And I'm going out to look at the place, and we're two senior members of police departments and we're gonna drive out instead of taking two vehicles.

MS. CHAYTOR: So it's about an hour's drive out?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: What did you and Inspector Cahill discuss on your drive?

SUPT. SHEPPARD: So when we drove out, you can see from the previous note there where he gave me his contact information, I didn't – you don't need to look for it, but –

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: – he gave his phone number, his contact information –

MS. CHAYTOR: From the meeting on the 9th –

SUPT. SHEPPARD: Because obviously I didn't have the man's contact information, so we hadn't been in contact. So on the drive out I discovered that his father was my sergeant when I first joined the police force, Sergeant Cahill. So we talked a lot about policing. We talked about his dad. What his dad was doing when he retired; where Pat has been in his policing, transferred around the country; where he grew up in the city. Kind of just chit-chat, getting to know Superintendent Cahill. I was just killing time.

You know, I'm – I don't remember if it's coming back or going out but I had some issues at work. Nothing to do with this here, but there's still divisional work taking place, I had made some phone calls. He used the phone. So it was basically that.

MS. CHAYTOR: Okay. And did you talk about anything to do with the file or the investigation?

SUPT. SHEPPARD: I don't remember the investigation. I don't remember discussing the investigation. I still don't know anything about the investigation. We may have talked about – I don't know. Like I said, I really still don't have an understanding of what the RCMP did.

I did tell you in our interview that I hadn't even read the reports that were released until after myself and you had spoke. I haven't seen any pictures and I haven't been involved in this in any way. So if we did talk about the investigation, it was a very low end and my position is the same as it was with Joe Smyth. I'm not interfering, I'm not – I don't want to discuss it. And the RCMP have the job to do and I believe that there will be a mutual understanding between myself and Pat Cahill that I don't need to know the details of what you're doing and you're just going to run your investigation and the outcome is going to be the outcome.

MS. CHAYTOR: Okay.

And I think you told me in the interview, on the transcript reference 4:55, 4:57 – and I wanted to bring up the exact reference for you. But you did talk about your careers, talked about the connection with his dad and you said it was – you didn't talk not so much about the file but I'm sure we did, talked about they're doing it and how hard it is, it's terrible, tragic circumstances, that type of thing that everyone finds themselves in.

Do you remember telling me that?

SUPT. SHEPPARD: I do.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: But I don't remember that conversation right now, but –

MS. CHAYTOR: Okay. So, so it would seem though that there was some discussion about the file.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

Was Constable Smyth discussed and the tragic circumstances he was finding himself in?

SUPT. SHEPPARD: Yeah, I'm sure we talked about – I mean, like I said that this a – it's a very – in any police shooting, I'm sure the officer would be crippled by taking that action.

MS. CHAYTOR: Did they – I think you also told me that you talked about Judge Riche.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay. And what was discussed about Judge Riche, the role he was playing, any concerns expressed by Inspector Cahill about Judge Riche?

SUPT. SHEPPARD: Superintendent Cahill never ever expressed any concerns –

MS. CHAYTOR: I'm sorry, Superintendent.

SUPT. SHEPPARD: He's never ever expressed any concern regarding Judge Riche and it was – our discussion would have been just the fact that they had an oversight on their investigation.

MS. CHAYTOR: Okay. Acting Superintendent Cahill, I apologize. So did he – but you did talk about Judge Riche?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And did you speak about his role, or what context did he come up?

SUPT. SHEPPARD: Just that he was going to be oversight. There's really not much to talk about.

MS. CHAYTOR: Okay.

And you had already been informed about that though –

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: – you knew that he was going to be oversight?

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: Okay.

And it was just the two of you in the vehicle I understand, nobody else drove with you?

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay. And how about the drive back, what was discussed on the drive back?

SUPT. SHEPPARD: This, this was a very sad residence, and we didn't talk a lot. We talked about how deplorable, like what, what a state of despair that home was in. We talked about – sorry, what was the question again?

MS. CHAYTOR: That's okay, and I understand from our interview, Superintendent, that this is a difficult question for you, because you found the conditions that you saw that day to be, as you write here, the worst conditions that you'd seen in your history of policing. And –

SUPT. SHEPPARD: Uh-huh. So you're asking what we talked about on the way back.

MS. CHAYTOR: Yeah.

SUPT. SHEPPARD: So it was very quiet. We talked about his Labrador, or his Northern policing; he's more accustomed to this environment than I was. And I do remember making, doing some work phone calls on the way back. It was – it's just a very sad situation.

MS. CHAYTOR: Okay. And was there any further discussion about what you had seen at the scene? Anything discussed between yourself and Acting Superintendent Cahill.

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay. And according –

SUPT. SHEPPARD: The smell.

MS. CHAYTOR: The smell?

SUPT. SHEPPARD: We talked about the smell.

MS. CHAYTOR: Okay.

You stayed at the scene for about a half hour, according to what you've written here. Did you, did you actually observe the re-enactment – and my co-counsel can correct me, but I think the re-enactment was taking place around this time 3 p.m. – was the re-enactment on the 10th? Did you – was it going on when you were there, or did you stay for it?

SUPT. SHEPPARD: No. So myself and Superintendent Cahill arrived on time, and this – we drove out between 1:30 and 2:30. It was scheduled for 3 o'clock. I remember speaking to Judge Riche, meeting him, exchanging pleasantries, just having chit-chat. I think – I seem to think that I remember that Joe Smyth came with Tim Buckle and they were probably late, or everybody was waiting on them to arrive. They went and did a re-enactment, and after the re-enactment that's when myself and Superintendent Cahill went in. Because I wanted to make sure that I wasn't, I'm not putting myself into an active scene where I'm going to be called upon to have to give any evidence towards the scene.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So it was – as far as I was concerned, when they were finished, they were finished with the scene and then I was okay to go in.

MS. CHAYTOR: And then you and Acting Superintendent Pat Cahill viewed the scene together.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay. And so the re-enactment started sometime after 3 p.m. because it was a bit late starting; so then that lasted a half hour, or however long the re-enactment took. And so then in that time period, are you – you're staying outside with –

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Acting Inspector Cahill stayed outside with you?

SUPT. SHEPPARD: He did.

MS. CHAYTOR: Okay. And so you continued to discuss or chat with him during that time frame?

SUPT. SHEPPARD: I remember the residence is right across from the beach. I remember being by the beach making some phone calls. I'm still carrying on, doing some work to the best of my knowledge, and I think our chit-chat was pretty much done then. We're just kind of waiting to go in.

MS. CHAYTOR: And how about Sergeant Tim Buckle, was he also waiting outside?

SUPT. SHEPPARD: I have no idea.

MS. CHAYTOR: You don't recall him hanging around outside as well?

SUPT. SHEPPARD: I never – no, I don't remember. I don't know if he went in or not. I don't remember Tim Buckle.

MS. CHAYTOR: You had no –

SUPT. SHEPPARD: I remember him showing up, but I had no other involvement with Tim Buckle.

MS. CHAYTOR: And you didn't speak to him at the scene that day?

SUPT. SHEPPARD: I did speak to Joe and Tim when they arrived. I said Hi, how are you doing? And that was it.

MS. CHAYTOR: And that's it. You didn't –?

SUPT. SHEPPARD: No more than a 10-second nicety.

MS. CHAYTOR: Okay. Because I understood from Sergeant Buckle's evidence that he also stayed outside while the re-enactment was going on but you didn't interact with him during that time.

SUPT. SHEPPARD: No, there was – I remember there was a vehicle on the side of the road that the RCMP were kind of milling around, so he could very easily have been with them but I wasn't interacting with them.

MS. CHAYTOR: What about the other RCMP officers who were present, Corporal Henstridge and Corporal Burke, did you have any discussions with them?

SUPT. SHEPPARD: Very brief. Just, again, general: Hi, how are you doing? How's everything? It was really unremarkable.

MS. CHAYTOR: Okay. And you know Monty Henstridge?

SUPT. SHEPPARD: I do.

MS. CHAYTOR: And you've known him for 10 years or so?

SUPT. SHEPPARD: Yeah, probably.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I mean, I don't know him very well but I know who he is.

MS. CHAYTOR: Okay. What about Corporal Lee, Kelly Lee was also there, did you have any discussions with her?

SUPT. SHEPPARD: No, I wouldn't know her if she walked in here.

MS. CHAYTOR: Okay.

Okay, and is there anything –

THE COMMISSIONER: It's getting to be 12:30, if you can pick a place to stop.

How are you doing with your notes?

MS. CHAYTOR: Well, I am happy to report that I am over halfway.

THE COMMISSIONER: I thought you were over halfway before the break.

MS. CHAYTOR: No, no, I didn't get over halfway between the break.

THE COMMISSIONER: Sorry.

MS. CHAYTOR: I would have been over halfway between the break. But you – we had an issue to deal with this morning.

THE COMMISSIONER: I took some of your time, okay.

MS. CHAYTOR: Not –

THE COMMISSIONER: All right. So –

MS. CHAYTOR: I just have one last question, if I could, on this?

THE COMMISSIONER: Sure, yeah.

MS. CHAYTOR: All right. Okay.

I just wanted to ask you about what you did when you entered the residence with Acting Inspector – Acting Superintendent Cahill, where you went in the residence and what exactly you observed?

SUPT. SHEPPARD: Myself and Pat Cahill walked up the driveway, approached the house, went up over the stairs, went through the front door, walked in the hallway, took a right turn, went to the living room, looked around. I remember commenting, jeez, this is really, really close.

MS. CHAYTOR: Meaning the space in the living room?

SUPT. SHEPPARD: The distance from – I don't have much memory of the home. I remember the couch, chair and the mantel. We went into the – then we went to the kitchen and we left. I didn't see any more of the home.

MS. CHAYTOR: Okay. So your impression in the living room was that it was very close, in terms, meaning close distances between Mr. Dunphy and Constable Smyth?

SUPT. SHEPPARD: Yeah, I remember commenting, jeez, this is really – it's really close.

MS. CHAYTOR: Okay.

All right, we can end there, Commissioner, and I'll start up – what time? I'm sorry; we're going start in 45 minutes.

THE COMMISSIONER: At 1:15.

MS. CHAYTOR: Okay, perfect.

Thank you.

THE COMMISSIONER: Okay, we'll adjourn for lunch.

Thank you.

MS. SHEEHAN: All rise.

This Commission of Inquiry is recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Go ahead when you're ready.

MS. CHAYTOR: Okay.

Good afternoon, Superintendent.

I just want to quickly mention to you that – I won't bring the exhibit up, Madam Clerk, but P-0463 is an extract from Constable Smyth's phone records and in that you're asking him to add you to BBM, and that's on April 11, 2015.

Did you engage then in BBM messaging with Constable Smyth regarding this matter?

SUPT. SHEPPARD: I have no idea. I – when you gave me the exhibits I assumed if I did it would be there. I may have and I can't really – I, I BBM people. I wouldn't know if I BBM Joe or not.

MS. CHAYTOR: Okay. And did you, do you have any way to check your own records in that or did you keep any copies of anything BBM messaging with him?

SUPT. SHEPPARD: Well, you can't keep your copy of your BBM. And since that time, my phone's been replaced, maybe a year ago. I had a bad battery and it was problematic and they gave me an upgrade and that's – I have no idea where that is.

MS. CHAYTOR: Okay.

And one of the things that – and this is not in your notes, but on the things that Constable Smyth expresses to you in a text message is asking if you're available for a discussion tomorrow. This again is the April 11 exchange. And he has some regrets about the email that he had written on April 10.

Did you have a discussion with him around that?

SUPT. SHEPPARD: No, the next time I spoke to him was on the 13th.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Was what?

SUPT. SHEPPARD: The 13th, when he went on a holiday.

MS. CHAYTOR: Okay. And I believe you call him in Florida at that point in time because – to discuss his position in the CIU.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay.

All right. If we could bring up please, P-0195, and this is also on April 13, then, 2015.

This is an email that morning where he's seeking advice from you as to whether or not to send this draft email that he's done to Chief Janes. And –

THE COMMISSIONER: Sorry, I missed the number of that.

MS. CHAYTOR: I'm sorry. This one is P-0195.

THE COMMISSIONER: 0195, thank you.

MS. CHAYTOR: And he's looking for advice from you.

He "was going to send this to the Chief, but perhaps there is no point or isn't appropriate. Maybe if it comes up in management meetings and if you agree with it, you could volunteer or make the suggestion. All the best, chat late," he says.

So he – what he's basically saying here, and if we look down at the last paragraph, and again this is the draft that he is contemplating sending it to Chief Janes. He says: "I have had some discussion with Supt Sheppard last week on some of this and he may be a suggestion if at any point you decide to have somebody speak in depth to the media. He has heard my perspective in length... Likely exhaustive length."

And the points that he's raising here are really two points that he thought the RNC could be speaking publicly about; one is the proactive policing piece, and the other one, I believe, is about the fact that he went to the residence alone.

And so first of all, Superintendent, did you agree with the points that he's articulating here in that perhaps the RNC could have spoken out with respect to those points?

SUPT. SHEPPARD: In the beginning, we're just – what's the date? Is this the 13th?

MS. CHAYTOR: This is the 13th of April, yes.

SUPT. SHEPPARD: Mr. Commissioner, we're within just over a week of this incident. I don't think it was appropriate for us at that time to – there was very little we could say. There was a lot that we could say about policing in a general sense and how we respond and why we have one officer.

I think Joe was looking for somebody to defend him and at least settle the community's questions about what was – how we were functioning as a police department. But from just knowing, you know, a file of this magnitude or even if you're doing any serious file, we're not going to wade into a media release in any way while the RCMP are actively investigating.

I do think that in time when they had their report finalized, that we could have come out as a force and there was – I do think that we could have answered a lot of questions for the community.

MS. CHAYTOR: At that point in time.

SUPT. SHEPPARD: In time but – and as we go through this we're going to see some correspondence with myself and Constable Smyth. And almost 100 per cent of his communication with me is: Can somebody talk to the media? I'm getting eaten alive here on social media, can somebody please defend me? Can somebody come out and say something? Because there was really very little that came out from the RNC.

And I'm not saying that to be critical but it's the reality of investigation and it's a juggle of – because once you start the process of having the media release, if you have a scrum or – I mean that takes on its own life and you're just going to have to walk away from it, so ...

MS. CHAYTOR: Yes. And that is one of the issues that the Commission has in his terms of reference in terms of the police, the RNC's communications –

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: – and public communications. So what you're saying is this is early days, April 13. And correct me if I'm wrong, but as time went on did you form the – did you come to the conclusion or have the opinion that perhaps some of these things that Constable Smyth wanted the RNC to speak out on, that perhaps you could have, from a general policing point of view.

SUPT. SHEPPARD: Agree.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I felt that we could do that.

THE COMMISSIONER: I think Constable Smyth's point when he testified was that while he understood the need to preserve the integrity of the investigation, that he was being hit by a number of misconceptions: number one being that he shouldn't have been going anywhere alone in terms of doing a threat assessment or whatever; and secondly, that there shouldn't be proactive policing. If not that term used the notion of getting out ahead of a risk developing to the extent you might have a threat on your hands.

SUPT. SHEPPARD: Uh-huh.

THE COMMISSIONER: I think he felt that those were as two examples of what the RNC might have assisted on in terms of neutralizing these misconceptions. He felt he was being unfairly criticized for doing, I think, what was routinely done.

SUPT. SHEPPARD: Uh-huh.

THE COMMISSIONER: The – your view would be that even though you might eventually be able to make some useful comments in that regard, that it was too soon, too close to the incident to do it and it might interfere with the RCMP investigation. Is that your point?

SUPT. SHEPPARD: Sir, certainly at this point.

THE COMMISSIONER: Right.

SUPT. SHEPPARD: This is, this is the 13th, right.

MS. CHAYTOR: Yes, that's it.

SUPT. SHEPPARD: This is just, we're only –

THE COMMISSIONER: Seven – yeah, seven, eight days.

SUPT. SHEPPARD: We're eight days out and really we, we're not – I mean it could be perceived as – I'd probably be here getting different questions as to why we said what we said. So you're kind of damned if you do and damned if you don't but yet we recognize that.

One of my biggest concerns for this is, you know, Joe's well-being. And I understand he's in a hard spot and we're in a hard spot as a force, but like I said, we do come to a point in time where I think that we could deal with some of these issues.

MS. CHAYTOR: Okay.

And he says that you had discussed this with him in length, a likely exhaustive length. Had you had extensive communications with him on this?

SUPT. SHEPPARD: So the time that I spoke with him was on the 7th. And, again, when we were interviewed I really – because I hadn't prepared, because I was busy – didn't have that fit into a pigeonhole as to where it took place. But it wasn't on the 7th; it was the day that the file was generated.

We did have – this is the debate that myself and Joe Smyth had, it's like addressing issues. He says – sorry, I'm looking for the part that says: Likely exhaustive in length.

MS. CHAYTOR: Yes, right at the very end here.

SUPT. SHEPPARD: You know, I don't remember having a long conversation with Joe. But if Joe was expressing and he exhausted what he had to say, you know, he could use the term exhaustive at length.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I did get his perspective. There was a lot of media attention and I think that my advice to him all along was stay off Twitter, stay off the Internet, don't be reading it, stay away from it. But I don't remember –

MS. CHAYTOR: Okay. All right.

SUPT. SHEPPARD: – an exhaustive conversation.

MS. CHAYTOR: Okay, but you do remember discussing it with him.

SUPT. SHEPPARD: But that's his terminology.

MS. CHAYTOR: Yes, that's his terminology. You're right. Okay.

And so what was your advice to him? Did you go back with any advice as to whether or not he should send this on to the chief?

SUPT. SHEPPARD: No, I don't think I responded to him.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I did –

MS. CHAYTOR: And I couldn't see any response in our records.

SUPT. SHEPPARD: Yeah, I do think that I – this is the day he's in Florida and I follow up with a call. I think if we go to my notes, I phone him.

MS. CHAYTOR: That you phone him. Okay.

SUPT. SHEPPARD: Yeah. And I did send this on through to Deputy Singleton and the chief, I believe.

MS. CHAYTOR: Okay.

And did – he asks also if it, you know, maybe if it comes up at management meetings. Did you raise these issues at any management meetings, the issues that he is expressing in this email in terms of public communications?

SUPT. SHEPPARD: Well, I don't meet with the chief a lot. I answer to Deputy Chief Singleton. Myself and Deputy Chief Singleton; I've expressed to him many times about the, you know, as time went on when Joe arose these issues and we did chat.

It's the chief's prerogative to do a media release or not. It's not something I can do. There's nobody in the force that does a media release without the chief's permission. But myself and the deputy did have discussions on this, yes.

MS. CHAYTOR: Okay.

And you do have a meeting that afternoon with Deputy Chief. If we look at P-0443, it's recorded in your notes at page 17 and some of your notes of what was discussed. It appears you're talking about premier's security again and Joe Smyth's position.

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: And you're also discussing working schedules, I think, with the PSU, those types of things.

So we have page 17 here now. If we could just make that bigger, please, Madam Clerk.

And this is a meeting with Ab Singleton. So the premier's security, Joe Smyth's position, emails, I'm not sure what that is.

SUPT. SHEPPARD: Yeah.

MS. CHAYTOR: Premier detail and some scheduling here for the premier's detail.

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: Dropping off premier. Is this Cheryl – view or change view?

SUPT. SHEPPARD: Yes, that's the premier's spouse came up.

MS. CHAYTOR: Okay.

And do you recall what that was about: premier now embracing? Do you recall –?

SUPT. SHEPPARD: Excuse me.

MS. CHAYTOR: Do you recall what this is about?

SUPT. SHEPPARD: I'd be guessing.

MS. CHAYTOR: Okay. Fair enough.

SUPT. SHEPPARD: I'd be guessing.

MS. CHAYTOR: All right. And nothing, though, recorded – if we come down, nothing recorded where you bring up with him about the concerns raised by Constable Smyth earlier in the morning.

SUPT. SHEPPARD: Just go back up to the top.

MS. CHAYTOR: Is it at the beginning? Is it the emails?

SUPT. SHEPPARD: So right here it says Joe Smyth's position, emails.

MS. CHAYTOR: Position? Oh, emails.

Okay, so this is what that's referring to.

SUPT. SHEPPARD: So I'm assuming that's what it is, yes.

MS. CHAYTOR: Okay. So this is you speaking about his position that he'd articulated in the email.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay.

And do you recall what Deputy Chief Singleton – what was his views?

SUPT. SHEPPARD: Well, he agreed as well.

I mean, we both worked major files in the past 30 years and we understand that when you're in the beginning stages of investigation that you can't come out and say what you might like to say; you have to protect the investigation. You can't release – you have to be very careful how you word it and what you're releasing and how many times you do a media release. And this is the RCMP's investigation and we're not going to get into a firefight with the – it would be inappropriate for us to do a release at this stage.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: And he – both he and I agree to that.

MS. CHAYTOR: Okay. And I think then that you do have a note where you speak to Joe Smyth that evening around 7:50 in the evening I believe and at that point in time you discuss his transfer to the CIU.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And he indicates he would rather the traffic, Traffic section. Do you recall that? And you tell him no, you're going to CIU –

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: – and until the investigation is complete.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And I believe that was – you've already explained your reasons for wanting to keep him off the front line. And there was some discussion, I think, also in your notes about Constable Smyth; concern that there be appropriate rank in the PSU. And he's looking for – he's on an emotional roller coaster I think is what is said –

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: – and he's looking for another week of annual leave. Okay.

If we then look, if we continue on then to page 19, this is then April 14, I understand. I know this is still April – oh, okay, this is the discussion here with Joe Smyth that I just summarized for you.

And then we have April – and I apologize if I'm going a bit fast but I want to make sure we get a chance to finish your evidence. 2:45 p.m. then and this is now, I believe, April 14 over here, Superintendent.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And then there's a meeting re: Donald Dunphy shooting with the chief, with Deputy Chief Carroll, Deputy Chief Singleton and Sue Bill and this is with respect to the internal investigation.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And at this point in time it says: OPP to do the internal review. So at this point in time – and we’ve heard also from Deputy Chief Singleton on this. There was some contemplation that OPP might do the internal review and, however, that was not what happened. And what’s your understanding as to why OPP wasn’t brought in?

SUPT. SHEPPARD: So we have a memorandum of understanding for, I don’t know, probably the past maybe 10 or 15 years. They’re a big force; they come in and assist us with some of these sensitive matters. But, in this case, they were the force that trained Constable Smyth and it would be – it would probably be a conflict to have them come in and then do an investigation into one of their own members that they’ve trained. It would somewhat be similar to us doing it ourselves, so the decision was made to not proceed with that route and to ask another force.

MS. CHAYTOR: Okay.

And in terms of – I think when we met in your interview, you had thought the reason was that the OPP was too busy, but you don’t recall being approached, the OPP being approached and being too busy?

SUPT. SHEPPARD: No.

MS. CHAYTOR: No.

SUPT. SHEPPARD: So when I said too busy it was in reference to we had had several – we had reached out to the OPP several times and, I mean, how many times do you keep going back to the same, well, we felt that maybe we’ve asked them to do enough for us over the past couple of years, and that was a consideration as well.

MS. CHAYTOR: Okay. All right.

And then after that I think the next communication – at least in your notes – now there are some now that we’ll go through, but the next communication you have is quite some months later, and I think that might be page 23, and I think it’s then into November, November 10 that you have another handwritten note. But we do have something else that I can take you through. One thing is the – I’ll bring up P-0155, please.

And this is an email then on April 30, 2015, and you are writing to Sergeant Bill James. You had reviewed a letter that he had written to you about Constable Smyth’s firearm qualifications and you cross reference that with Constable Smyth’s training records. And you noted, what appeared to you, to be a discrepancy that he hadn’t completed any modules of Use of Force since December 2012.

And you’re asking Sergeant James to clarify that for you because, of course, you’re going to provide this information to the RCMP for their investigation. And he does reply and give you an answer as to why there appears to be that discrepancy. And I take it you were satisfied with his answer?

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Okay.

And the Module 3 that didn’t appear to have been done here, I understand that’s the react component.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: All right.

And if we could just bring up, please, P-0153, and this would be the government records that I understand that you would have been cross-referencing. And if you can't explain this, then we'll find another witness hopefully who can answer this question for us. But this is certification of the firearm, Use of Force – Module 1. And I believe, if you look at the date of this, Inspector, April 27, 2015, and this is the government records, the Department of Justice, it says that he would have last Use of Force certification in Module 1 – which is the firearms – is December 12 – or December 7, sorry, 2012.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: And so, do you know why the government records would not be updated to show that, in fact, he did have his 2013-2014 done?

SUPT. SHEPPARD: So this is our internal – it's not at government; it's at the internal of the RNC.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: Sergeant James from the Use of Force, when he completes assessments, testing and that kind of thing, he would then forward records. So I don't know why it's not updated. They could have been busy. It could have been because we were in transfer from – at the time, we were scattered over four different buildings and that could possibly be the reason. You're going to have to ask him (inaudible) –

MS. CHAYTOR: Okay. All right. So I was misunderstanding, I thought this certification was somehow a government certification, but you're saying this is an internal record for the RNC.

SUPT. SHEPPARD: This is our training section would keep track of all-year training.

MS. CHAYTOR: Okay. And so Sergeant James hadn't updated it; he'd be responsible for updating it.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay, he's coming in next week, so I'll ask him.

So P-0151, please. And this is correspondence May 4, 2015 where you're writing to Acting Superintendent Cahill and you're providing him with some of the documentation requested from the RCMP. You, you provide Constable Smyth's training record, you also forwarded along the communication from Sergeant James, which clarifies what appeared to be the gap in his training records.

And the second-last paragraph on page 3, if we could just go there please, Madam Clerk. You write: I have checked our Use of Force forms – okay, here it is – I have checked our Use of Force forms from 2010 to 2015, Constable J. Smyth has not had occasion to use force since 2010, other than this incident involving Mr. Donald Dunphy and his Use of Force form is attached.

And I'm just wondering, is there any reason why you only reviewed from 2010 to 2015, because the RCMP didn't appear to put a timeline on their request.

SUPT. SHEPPARD: No, in their letter to me, they said for me to check and what I thought was pertinent. So in this particular case, did a manual search, so five years, that would be 60 months, pulled out the files, there's no Use of Force.

From my perspective, I didn't see any need – they didn't ask for his complete Use of Force forms, and I thought that five years of no force was an appropriate amount of time. If they wanted more, I would have gave them more. This was never addressed afterward, we didn't discuss it and I assumed it was okay.

MS. CHAYTOR: Okay. And so you made the judgement call that five years, going back five years should be sufficient?

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: That was your judgement call. Okay. All right. And for most of that, from 2011 or thereabouts I think onwards Constable Smyth would have been in the PSU in any event.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay.

And is there any policy within the RNC that would require a review of an officer's – all of an officer's Use of Force in the event that there has been a lethal force used or an occasion in which he or she has used lethal force?

SUPT. SHEPPARD: Not that I'm aware of.

MS. CHAYTOR: Okay.

And if we can look at P-0457, please. And I take it there's been no review undertaken in any situation, any other, any other police-related shooting or where grievous bodily harm is caused, there's no policy to say that you should review the whole Use of Force previously by the officer.

SUPT. SHEPPARD: No, but there are times when – there are files that the chief would have a review on. Like, if we had a serious matter that went to court and, say, the prosecution was lost of – just as an example of, for whatever reason, you lost your search warrants and you lost the case, then the chief sometimes has a review done of the file holistically. He'll check, have the whole file and he'll usually give that to an inspector to undertake.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: So there is no policy but it does take place.

MS. CHAYTOR: Okay.

All right, and this is 0457 and this is from you to Deputy Chief Singleton, May 19, 2015. And you refer to a meeting that you've had with Constable Smyth on May 14 and his concerns regarding the internal.

And this seems to be about he has some concerns about the Saskatoon Police Force. And you note that there is some merit to his concern in using Saskatoon. And so you seem to have been somewhat sympathetic to this issue. And why is that?

SUPT. SHEPPARD: I understood what he was saying. So his concern was Saskatoon didn't have a protective services unit, so we're having a force do an internal review that's not familiar with this style of work.

I said there may be some merit. We discussed it; we had a chat about it. We came to the conclusion that no, Saskatoon is a fairly significant force. I mean, there's national standards for police officers in training and despite the fact that – you know, personally I don't deal with boats, as an example, but if I had to supervise an investigation of a boat crash in the harbour, then do I have to bring in people from the Marine Unit and some other force to come and do it. So we thought that despite the fact that they didn't have it, that it was –

MS. CHAYTOR: They'd be able to do it.

SUPT. SHEPPARD: – sufficient that they did do it.

MS. CHAYTOR: Okay. Fair enough.

Okay. And I just want to look then at P-0161, which is Constable Smyth's use-of-force form that was filed with respect to the shooting. And I've already gone through this yesterday with Deputy Chief but I just have a few questions for you as well.

And one of the questions I guess I would have for you is we come down to the bottom-right corner and this is your signature on the – and you're signing here as the Divisional Commander Signature. Okay.

And is there anything else in this that would be your writing?

SUPT. SHEPPARD: The very bottom portion is not something that I would have to fill in. It's not designed for me, Part B, but I had the information as a result of my inquiry and I just filled in those two slots there.

MS. CHAYTOR: Okay. These down here you mean?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay.

All right, so you filled in here.

SUPT. SHEPPARD: Yeah.

THE COMMISSIONER: Sorry, down where?

MS. CHAYTOR: Down here where it says –

SUPT. SHEPPARD: Part B.

MS. CHAYTOR: – the Officer Involved, name.

THE COMMISSIONER: Oh, Part B. Yeah.

MS. CHAYTOR: Yeah, Part B.

THE COMMISSIONER: Right.

MS. CHAYTOR: You filled this in. And this is all that there is to Part B. There's nothing else, right? This is –

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And all right, so in terms of by signing this, what does it mean to see your signature on this form? Are you certifying that the information contained on it to be accurate or that you witnessed anything completed on this form?

SUPT. SHEPPARD: That I have received it. So it goes through a chain from the supervisor and it should come through the different management levels. It shows up – it was during our interview, me and you –you interviewed me – that we came to realize we didn't have a date; that this was probably not an appropriate – some slots were inappropriate.

There's been changes made to this. And, really, I'm signing off here saying that I've reviewed it, that it's been reviewed by a supervisor and that it's moving through the system.

MS. CHAYTOR: Okay.

And so when you receive this form, before you feel comfortable signing off on it do you make any inquiries? For example, we notice here that the section here about Reviewed by Training Section, there's nothing noted, nothing ticked; recommended for other training. Those aren't completed.

Did you –

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Do you make any inquiries as to why the form wouldn't be completed?

SUPT. SHEPPARD: So they don't get completed at my level. That would take place after – I would forward it through and it would end up at the Use of Force committee. So I would expect these to come in not ticked off unless the – I guess if somebody read it and was requesting a review, they could make a note there that they're recommend – or recommending additional training.

But in this particular case, I was satisfied that the RCMP are doing an investigation. I have a very brief synopsis of what took place and we have to await the investigation to see what comes in of this situation in regards to if Constable Smyth requires any additional training or not.

MS. CHAYTOR: Okay.

Well then, on that question then on the next page that you sign off on here and it's dated May 24, 2015, on the Use of Force Monthly Summary Report, Remedial Training you're saying, no, and then for further information can be gotten from the RNC file.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay.

So how are you able, on May 24, a month or so afterwards, six weeks after the incident, how are you able to indicate that no further remedial training is required?

SUPT. SHEPPARD: So I have to say that that's an error on my part. These are provided by my clerical. We get very, very little use of force in the CID. Each month I put in my report and usually this page doesn't even appear because we have such low use of force.

I passed it – this should not be ticked off. This should be left empty until a determination of what's going to take place with what happens, what the outcome of the investigation is. And it's – it was clicked off by Terry, Glenn and myself. I signed off on it and I should have corrected it.

MS. CHAYTOR: All right, okay.

Because the internal investigation hasn't happened, the RCMP are still –

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: – carrying out their investigation. I mean it was possible they could have found, for example, an excessive use of force or something that required some further training.

SUPT. SHEPPARD: That's true.

MS. CHAYTOR: So at this point in time this was an error on your part.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

Under – did you also tick the Reviewed by Supervisor? Is that you?

SUPT. SHEPPARD: I did.

MS. CHAYTOR: That's saying yes. And the supervisor in this case is indicated to be, I believe this to be Glenn Noseworthy's signature?

SUPT. SHEPPARD: I'm a supervisor as well.

MS. CHAYTOR: You're the – okay.

SUPT. SHEPPARD: So it wasn't ticked off and I was ticking it at my level to say at least some supervisor reviewed it.

MS. CHAYTOR: Okay. And were you – did you feel that you were a supervisor of Constable Smyth at the time of the incident?

SUPT. SHEPPARD: I'm, I'm a supervisor of a manager which sometimes overlaps into a supervision role of over a hundred people. So I'm not his direct supervisor but I'm responsible for the supervision of my division.

MS. CHAYTOR: Had you ever provided any supervision to him in his role in the PSU?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Had Glenn Noseworthy?

SUPT. SHEPPARD: I believe at this point Joe Smyth was an acting sergeant, so Glenn Noseworthy wouldn't supervise him. But when he puts this form in I think – and you can ask

Constable Smyth – I think he realized that his acting role, because he's not in that capacity of being in Protective Services, is going to be reduced to constable status. And he was forwarded to the NCO that was in the unit and – while he was off.

MS. CHAYTOR: Okay. All right.

And I understand that he would have been reporting directly in to Inspector Gullage and we don't see his signature on here.

SUPT. SHEPPARD: No and that, that's an error in this form as well and that has been completely rectified.

MS. CHAYTOR: Okay. Thank you.

I do have a question for you and this is just arising out of a line of questioning I had for you at the time that I interviewed you. And I'll see if I can quickly just find the reference.

And for my learned friends and the Commissioner it's page 589 of the December 8, 2016, interview. And we're talking at the time about the form not being completed.

I said: But you didn't see this as being necessary in this situation – and it was about the Training Section not having been ticked or reviewed it. And you said: Well, I don't know what the Training Section is going to do in this case because they don't even have access to the file, they don't have access to, I mean, the – this investigation went on until when the reports come out a month ago or two months ago. And I say: Okay. And you said: So I don't know how they would even intervene, even have an ability to pass comment on it. The paper really doesn't mean anything other than the guy was making an arrest and shot somebody and that's in simplistic form, okay.

So from a training perspective, they're not going to get access to this investigation. They can't review it. They don't have the ability to go down to the records office. And my question for you on that, Superintendent Sheppard, is: Were you ever under the impression that Constable Smyth was arresting Mr. Dunphy at the time of the incident?

SUPT. SHEPPARD: No, why, why would you think ...?

MS. CHAYTOR: It was just the wording here?

SUPT. SHEPPARD: Based on what I said?

MS. CHAYTOR: Yes, the guy was making an arrest and shot somebody?

SUPT. SHEPPARD: No, that, that was me and you talking and my referred to it as making an arrest but there was no indication in mind that he was ever making an arrest.

MS. CHAYTOR: Okay, so – and that's what I just wanted to clarify.

SUPT. SHEPPARD: It would have just been an error in my speech.

MS. CHAYTOR: Okay. All right. So that information of an arrest never ever got communicated? Anything along those lines to you?

SUPT. SHEPPARD: Never.

MS. CHAYTOR: Okay. Let's skip along here.

Okay, I'm just to bring up, please, P-0199. And this is an email from Constable Smyth to Corporal Burke of the RCMP and it's July 29, 2015 and he's writing this at 3:43 a.m. And he copies you as well as Inspector Gullage on this email and I think you'd be aware of the email.

This is the email in which he refers to himself, he says: the RCMP had referred to him as "another victim" and so we've seen this here at the inquiry a couple of times now. And do you know what he – did he ever say that to you that the RCMP had referred to him as another victim?

SUPT. SHEPPARD: No.

MS. CHAYTOR: And as the liaison with the RCMP, did you ever hear of them express anything along those lines that Joe Smyth is another victim in this matter?

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay.

And he goes on then to talk about further investigative steps having to be taken and it's causing him "to lie awake 330 in the morning running through the incident time and time again"

So at this point in time in receiving this thru copy, did you have concerns for Constable Smyth?

SUPT. SHEPPARD: Concerns for his ...

MS. CHAYTOR: His well-being.

SUPT. SHEPPARD: I have ever since the incident.

MS. CHAYTOR: Okay. Did you speak to him upon receiving this email?

SUPT. SHEPPARD: What's the date again, sorry?

MS. CHAYTOR: This is now July 29.

SUPT. SHEPPARD: No.

MS. CHAYTOR: Okay, because I didn't see anything in your notes –

SUPT. SHEPPARD: Yeah, no –

MS. CHAYTOR: – but that doesn't mean – because you didn't record every conversation with him in your notes.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay. And did it cause you to speak with Inspector Gullage?

SUPT. SHEPPARD: I – do you know what? I can't remember.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I don't know.

MS. CHAYTOR: Did you –

SUPT. SHEPPARD: Each time these came up I did have discussions with the deputy, and myself and Joe Gullage have had discussions. Whether it's in relation to this particular email or two days later or a couple of days before, I have no idea, but we have had conversations about Constable Smyth.

MS. CHAYTOR: And, and you were expressing concern for him throughout?

SUPT. SHEPPARD: And we – yes, I did.

MS. CHAYTOR: Okay. And in terms of the appropriateness then of him sending this to the lead investigator, did you have any concerns about that and in terms of content or the message being sent here?

SUPT. SHEPPARD: No, he's – he knows Constable Burke. He's been I guess – I'm assuming Constable Burke did the interview. He's the investigator of the file and he would be the appropriate person to ask for an update. I didn't have an update to give him.

MS. CHAYTOR: Okay. And do you recall on your interview telling me that you didn't have that concern at the time but now you did?

SUPT. SHEPPARD: I do now – say again, sorry?

MS. CHAYTOR: That you now – at the time of your interview that you had some concern about the appropriateness of the email but at the time it didn't, you didn't?

SUPT. SHEPPARD: I don't remember what I said. I'm ...

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: He, like I just explained, this is the, probably the person to ask. He is the investigator. He's developed, not a relationship, but he's got communication with Corporal Burke. And if you're looking for what are you doing, where you're going, how long is this going to take, those types of questions.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: He would have to ask the team and ...

MS. CHAYTOR: And what about though the reference to himself as “another victim”? That type of comment?

SUPT. SHEPPARD: I can't comment on that because I don't know anything about it.

MS. CHAYTOR: Okay.

You were also involved, you've told us, the liaison for Saskatoon.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: And I'm not gonna ask, take you through any great detail on that. And I understand your role there was just to give whatever information that Corporal Little may have required and that was the policy's and regulations of the RNC.

SUPT. SHEPPARD: Uh-huh.

MS. CHAYTOR: And Constable Grant Little does list you in his report as being one of the people that he interviewed, but I understood from our interview – my interview with you – that wasn't the case. And that while you met with him to provide him information and to assist him, basically, logistically, in his visit to Newfoundland, and you had no other involvement in terms of a substantive interview or otherwise with Sergeant Little?

SUPT. SHEPPARD: That's correct. He referenced it as an interview and I, I didn't see it as an interview. I thought that I was liaison, setting up his contacts. I didn't have any information to give him. Like I said, I still don't know the details of the investigation. So, while he called it an interview, I didn't perceive it as an interview.

MS. CHAYTOR: Okay. And so you had no other involvement in terms of that review, is my understanding?

SUPT. SHEPPARD: Correct. That's correct.

MS. CHAYTOR: Okay.

Can we have P-0459, please, and this is up to October 27, 2015. This is an email also from Constable Smyth to Acting Inspector Gullage. And at this point in time he's forwarding media comments on Twitter about the Don Dunphy shooting and he's concerned that he's being identified, and then Inspector Gullage forwards that onto you, as well as the chief and the two deputy chiefs. And at this point in time he's saying that he feels he needs to move his family in with his in-laws and he's making a request to be armed at home.

Did you have any discussions or meetings around this at the time upon receipt of this email?

SUPT. SHEPPARD: As I stated in our previous interview, I have no knowledge of this email. I have racked my brains since the end of December when we've chatted. I don't remember ever receiving from Joe Gullage that he was looking for this – or that permission was given for him to carry a firearm.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: It was against my thought of what should happen, and I would certainly remember this. And I have no memory of this whatsoever.

MS. CHAYTOR: Okay.

All right, and then we do have P-0201. And this is the email then later that same day. Constable Smyth again contacts Acting Inspector Gullage and he is requesting to be armed at home.

And then it's November 2 that, you can see here, he says: the request is for the personal safety of my family and while this matter remains active. Of heightened concern are some of the social media posts included pictures of me and my family. Much of the questions and allegations also currently found on social media around this matter are predicated on the lack of information that has been released about the details of the investigation.

And you can see then Joe Gullage to you on November 2: I forgot to forward this to you. I have given permission subject to review this week.

Do you recall getting this email?

SUPT. SHEPPARD: No, this is the one I just mentioned. I don't remember this situation at all.

MS. CHAYTOR: Okay. So you don't recall any discussion around Constable Smyth asking to be armed at home while off duty and/or then receiving the second email where Joe Gullage informs you that he had given permission.

SUPT. SHEPPARD: I don't remember this. I don't know if I opened it, skipped over it, phone called. I'm busy; I have 10,000 emails in my inbox and 9,000 in my sent. And for whatever reason, I did not see this and I did not react to it.

MS. CHAYTOR: Okay. And it would be extremely rare and exceptional circumstances for an officer to be permitted to be armed at home while off duty.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: And at this point in time, of course, Constable Smyth is still under investigation by the RCMP and that was in relation to his actions in shooting a person who he'd interpreted as having written disconcerting comments on social media. And if you had received this, would you have been concerned about him being permitted to be armed at home?

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Okay. And I understand from what you've told me in the interview and you're also telling the Commissioner here today, Superintendent, that you had concerns throughout about Constable Smyth in terms of his well-being and his frame of mind.

SUPT. SHEPPARD: That's true.

MS. CHAYTOR: Okay. And it's also true, I believe, that he went off on leave shortly after this.

SUPT. SHEPPARD: I believe that's correct, yes.

MS. CHAYTOR: Okay.

And if we could bring up, please, your notes of P-0443. And this is now November 10, 2015. So it's about a week or eight days after you – that email was sent anyhow, to you from Joe Gullage advising that he'd given permission. That Joe Smyth has now emailed you, social media is getting to him and you forward on that email to the chief and to the two deputy chiefs. And you're, you have a handwritten note here about that. And that you forwarded the email to the chief and the two deputy chiefs.

And then you phone Joe Smyth. And then there's some reference here to Grant Little. And then if we come down to 6:37 p.m. – it's at 6:37. I'm sorry, page 25. I'll just take my hands off it and, Madam Clerk, if you could bring up page 25, please.

It's three days later that you meet with Joe Smyth in your office, and it looks like that meeting lasted about 20 minutes. And you met with him, and perhaps you can just tell the Commissioner what happens in that meeting with him on November 13.

SUPT. SHEPPARD: So –

MS. CHAYTOR: There's some discussion here at the beginning about he's filling in some details of what's going on with the investigation.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: So perhaps we can skip down through the 3-D rendering and the Saskatoon timeline, but if you want to just continue on from there.

SUPT. SHEPPARD: Okay. So in the absence of reading it, I'm not really sure what was said there, but his email for a media scrum to settle a question. So, again, Constable Smyth is again looking for somebody to address the media. I said no, it will not satisfy the negative people. I don't think it was – we were still in a position where we couldn't do that. That was the decision that we had made collectively as senior managers.

The topic of Ms. Breen and Mr. Dunphy's daughter had come up about the news, and it was in the media and there was some press. And I explained to him, you know, Ms. Breen has a job to do. She's representing Ms. Dunphy and she, she has to do what she has to do.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: I read the social media –

MS. CHAYTOR: So this would have been the 27 attachments he'd sent to you. Okay, and you –

SUPT. SHEPPARD: So I read it, and I didn't perceive to be a threat, and I told him that he wasn't going to be armed at home. I recommended that he stay off social media, that he take some time off, and I discussed non-operational duties and, again, the reasoning as to why. He wanted to go back to work, and I was firm that he was going to stay non-operational until we had a conclusion.

MS. CHAYTOR: Okay. And so at this point in time you read the social media and you determined that while it was unpleasant, that there were no threats and nothing threatening or nothing that you would think would warrant consideration of him being armed at home.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: And so your recommendation at this point in time is for him to take time off.

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Okay. And then you also say discussed his non-operational duties. That, I take it from what you're saying is that he wasn't satisfied with his job in terms of it being an administrative position.

SUPT. SHEPPARD: I think Constable Smyth expressed that he felt he wasn't doing anything.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: He wasn't doing anything meaningful and he wanted to be an active police officer.

MS. CHAYTOR: Okay. And then you have another note here, which we don't need to go through, but shortly after this then at 10:23 a.m. you meet with the chief and the deputy chief and you update them on your meeting with Constable Smyth and they all agree on all of the points that you had raised. So there'd be no media scrum and that Joe Smyth was not to be armed at home and you weren't going to place Constable Smyth in an operational position and, in fact, you're recommending he take time off.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay. And I believe shortly after that he does indeed go off on leave.

SUPT. SHEPPARD: Yes.

MS. CHAYTOR: Okay.

Okay, and then, then there are further discussions in January of 2016 I understand about Chief Janes calling to discuss Constable Smyth is looking to come back to work at that point in time, and he's looking to come back in an operational capacity. And at that point in time you also express concern that he had not been cleared by the RCMP in terms of the investigation, and you were still concerned about him being in a front line operational position, similar to the concerns you had voiced earlier.

SUPT. SHEPPARD: That's correct.

MS. CHAYTOR: Okay.

And then I believe that there are some discussions then between you and Acting Inspector Gullage as to whether you could facilitate some other position for him.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay.

And I'm just going to try and skip over some of this, Superintendent, so we can, so we can get you finished today hopefully.

I would like to bring up P-0563, please. And this is an email of – we're now into December 15, 2015, and this is about a Twitter investigation. And I believe it's a fake Twitter account that had been posted of Joe Smyth.

And you're sending this to the deputy to check and see if CFSEU can take on the investigation. It will give us transparency and we won't be blamed for trying to take care of one of our own if something goes wrong with the potential prosecution.

And just remind us, who is CFSEU?

SUPT. SHEPPARD: Combined Forces Special Enforcement Unit, that's the drug unit.

MS. CHAYTOR: Okay and that's –

SUPT. SHEPPARD: Drug and child abuse (inaudible).

MS. CHAYTOR: That's the joint unit between –

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: – RNC and RCMP. Okay.

And how is it that by sending it to that unit you think that will give you more transparency in this situation?

SUPT. SHEPPARD: So Twitter is an Internet-based investigation and the CFSEU also has – I can't remember the term but they do, do child exploitation, so they're familiar with doing online investigations. So in this case, my thought was that if we – myself and Joe Gullage and the deputy had discussed this before. We thought that if we sent Marlene – it's Superintendent Marlene Jesso, she's an RNC member who's in charge of the unit, with RCMP and RNC.

And we thought that if we could send it to her and she could have one of our RCMP officers investigate the fake account which is going to entail IP addresses, like the computer – background of the computer workings, that we wouldn't have ownership of it.

MS. CHAYTOR: Okay.

I'm going to just skip ahead here now then to your notes, if we could back, please, to 0443. And we're now up to page 33, I believe, in the notes. And this is continuing on with some questions about the concern about Constable Smyth's well-being.

And we now have on September 21, 2016, that you've been contacted by Sergeant Kent Osmond to advise that he's very concerned about Constable Smyth's well-being. And this is in the aftermath, we understand, of Judge Riche having spoken to the media.

And perhaps you can just tell us here what's happening.

SUPT. SHEPPARD: So 11:37 a.m. Staff Sergeant – I believe he's Staff Sergeant – Kent Osmond calls me to advise that he's concerned about Joe Smyth's well-being, and he advised that Joe might – Joe Smyth, sorry – had contacted him to say, I want to throw up. I want to speak to you about Riche. This is breaking me. He has dementia.

Staff Sergeant Osmond was the lead for the Donald Dunphy shooting for the RCMP and he says he's spoken to Joe and his wife when he advised of the outcomes – when he was advised of the outcome of the ASIRT review, and he had mentioned that Constable Smyth's wife was concerned about Joe's well-being and he reiterated, Osmond reiterated, that he's concerned about Joe's mindset and he's very worried about him. He says that we need to intervene and take care of him.

MS. CHAYTOR: Okay. And so this is Osmond saying that, that we, meaning the RNC need to intervene and take care of him?

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: Okay.

SUPT. SHEPPARD: Says the RCMP didn't disclose the details of retired Riche's – of Justice Riche's report, and that they thought that it would – they didn't tell him, tell Joe Smyth what was in the report, and they thought that it would come out at a later time, and will be disclosed during the inquiry.

So I asked Osmond how Judge Riche could say that Joe Smyth was an angry man, discussed Constable Steve Burke reviewing Smyth's professional standards file, and he told me that Constable Burke – because I had made arrangements for Constable, for Corporal Burke to come to the police station. Because we, we don't pass out HR files; you can't remove them from the unit. So he came up and reviewed them, and he made documentation of what he was reading in Constable Smyth's HR file.

MS. CHAYTOR: Okay.

And so what this is saying is that this is Judge Riche making this conclusion based on something he read in the –

SUPT. SHEPPARD: Right.

MS. CHAYTOR: – in the professional file, okay, or the HR file, okay.

And so then what action – I believe you went then after getting that – we can scroll down here. You went immediately to see Deputy Chief Singleton after you spoke with Staff Sergeant Osmond, and that you both then, I understand, went to see the chief together about this.

SUPT. SHEPPARD: Correct.

MS. CHAYTOR: So at this point in time you had, I take it, significant concerns for your officer.

SUPT. SHEPPARD: I had to; I had an officer calling me and telling that they were concerned.

MS. CHAYTOR: Yes.

And I expressed concern, you're saying, regarding Joe Smyth. He sent me an email last night saying he wanted to crawl into a big hole. Today, he's sending requests to Osmond expressing stress, and Osmond is concerned. And it's Justice Riche's comments referred to again, and then we discussed the issue of media release. DCS drafted same.

So at this point in time, then, is the RNC considering going out and speaking publicly?

SUPT. SHEPPARD: We're not going out – we're not going to have a scrum, but at this point, it's the – the reports have been released: the RCMP, ASIRT, I believe Saskatoon was released this particular day, I believe, was in the – was being mailed to us.

MS. CHAYTOR: Oh, released you mean, but not publicly released? Released to the RNC?

SUPT. SHEPPARD: No, I thought this was – is this public?

MS. CHAYTOR: This is now September 21, 2016. I don't think the reports are released publicly until the Commission does so, which would have been in November.

SUPT. SHEPPARD: Okay, so my mistake. Can you scroll down again, please?

MS. CHAYTOR: Yes, I may. Here we go.

So “we discussed issue of media release. DCS drafted same. during this time called Insp. Sean O'Reilly to meeting as he is a manager with the extensive EAP ...” and I think this is mental health training, is it?

SUPT. SHEPPARD: Right.

MS. CHAYTOR: Yes, and he will reach out to Constable Smyth. So you're making arrangements for him to get EAP, but what about, there seems to have been contemplation of a draft media release at this point in time. Did that come to fruition?

SUPT. SHEPPARD: I, I don't know the answer. I can't remember if we privileged that or not.

MS. CHAYTOR: Okay.

Okay, Superintendent, I think I'll stop there. Thank you.

Those are my questions or most of my questions that I had, and allow some of my colleagues to ask you some questions as well and the Commission may have some.

SUPT. SHEPPARD: Okay.

MS. CHAYTOR: Thank you very much.

THE COMMISSIONER: Okay. Who's going first? Have you discussed it? Ready to go Mr. Simmonds?

MR. SIMMONDS: Yeah, sure.

I only have a couple of questions for the superintendent.

Firstly, on the day that you received the, the call, you were doing something personal; you got a call from – was it deputy chief?

SUPT. SHEPPARD: Correct.

MR. SIMMONDS: Okay. And I understand, at that time, your understanding or the calls that you got – you got a number of them at that time, you got a number of them on that time frame, but your clear understanding was that Officer Smyth had gone down there to investigate a threat against the Premier.

SUPT. SHEPPARD: That's correct.

MR. SIMMONDS: Okay.

I asked Deputy Chief Singleton this and I'm going to ask you because you indicate the same thing, and it's in one of the exhibits that we had, that the deputy chief told you that there may be mental issues at play here?

SUPT. SHEPPARD: That's correct.

MR. SIMMONDS: Did he elaborate where, how he got that information? Did he give you any – what exactly did he say?

SUPT. SHEPPARD: What exactly he said –

MR. SIMMONDS: Not sure.

SUPT. SHEPPARD: – I can't remember but –

MR. SIMMONDS: Because you've got a bullet, I think, in your notes.

SUPT. SHEPPARD: I do write bullets –

MR. SIMMONDS: Yeah.

SUPT. SHEPPARD: – if we're having a conversation, I go back and address it. There was – I believe he's from that community, at some point in time.

MR. SIMMONDS: Yeah.

SUPT. SHEPPARD: And I don't know who Mr. Dunphy is and he's expressing to me that he's a person who calls into the *Open Line* show. There may be mental health issues and that he has issues, so we didn't explore –

MR. SIMMONDS: And he didn't give you any basis –

SUPT. SHEPPARD: No.

MR. SIMMONDS: – for how he could make a statement –

SUPT. SHEPPARD: No, not –

MR. SIMMONDS: – such as he has mental health issues.

SUPT. SHEPPARD: I didn't question it. I'm, I'm getting a phone call that one of our officers is after shooting somebody and –

MR. SIMMONDS: I understand.

SUPT. SHEPPARD: – and there's a whole bunch of stuff that's going to take place and we didn't really get into a long discussion on that.

MR. SIMMONDS: Fair enough.

And the last area I want to touch to and this – I think, Ms. Chaytor didn't touch it today but she did review it with you towards the end of your fairly lengthy interview on December 8. Officer Smyth asked to have you added to his BBM messaging.

SUPT. SHEPPARD: I asked him.

MR. SIMMONDS: You asked him.

SUPT. SHEPPARD: I asked him to take BBM as opposed to text.

MR. SIMMONDS: Okay. And what is the – do you have any knowledge or what is the understanding – how does BBM messaging work? What's the purpose of it? Why ...?

SUPT. SHEPPARD: So I – text is somewhat like Twitter. Do you use (inaudible)?

MR. SIMMONDS: Not very much.

SUPT. SHEPPARD: Okay. So why I that so I can give you an – how much I have to explain it. So Twitter is –

MR. SIMMONDS: A lot.

SUPT. SHEPPARD: Twitter is very short.

MR. SIMMONDS: Yeah.

SUPT. SHEPPARD: Text is just a little bit longer.

MR. SIMMONDS: Uh-huh.

SUPT. SHEPPARD: I think you get 140 characters.

MR. SIMMONDS: Something like that.

SUPT. SHEPPARD: When you're texting you can – I obviously have to text with my head down and then when you look up you might have a message. You've been typing for two minutes and there's nothing there and then you got to go back and redo it, whereas that doesn't take place with BBM. BBM has the – it comes with our BlackBerries.

MR. SIMMONDS: Yeah.

SUPT. SHEPPARD: It comes with the feature of seeing if it's received, if it's been read, if the person is writing. So I can send you a text and then I got to keep checking to see – check for a response. Whereas, if I send you a BBM, I can look and see; well, I better wait a second because you're responding to what I'm saying.

So I use BBM because it's – I think it's a much better –

MR. SIMMONDS: Manner of communication.

SUPT. SHEPPARD: – whatever it's called, messaging service.

MR. SIMMONDS: Yeah. I understand that there's also a privacy issue with respect to these, that they're not recorded separately any other place –

SUPT. SHEPPARD: That's –

MR. SIMMONDS: – it's –

SUPT. SHEPPARD: That's correct.

MR. SIMMONDS: That is correct?

SUPT. SHEPPARD: That is. Well, I can't say that that's correct because I think you've got 'em. I –

MR. SIMMONDS: Because we got the phone.

SUPT. SHEPPARD: Okay.

MR. SIMMONDS: Okay. Not because we got it from a separate source.

SUPT. SHEPPARD: Okay.

MR. SIMMONDS: Was that ever part of your reasoning with respect to the use of this technology?

SUPT. SHEPPARD: No, I don't have anything to hide in this situation.

MR. SIMMONDS: No, I –

SUPT. SHEPPARD: I don't have anything to hide with myself and Constable Smyth communicating and I've reflected how we've communicated. And my asking him to go to BBM is not reflective of trying to avoid detection. We don't write notes on text, we don't write notes on BBM.

MR. SIMMONDS: Okay.

SUPT. SHEPPARD: What you – what happens in a – for example, if one of my inspectors sends me a text, I'll say send an email, put it in an email and we'll put it into the system as a mechanism of business.

MR. SIMMONDS: I guess that's one of the ways of keeping your file current.

SUPT. SHEPPARD: Oh yeah, that's how – with email, you mean?

MR. SIMMONDS: Yeah.

SUPT. SHEPPARD: Sure.

MR. SIMMONDS: Yeah.

Okay, those are the only questions I had, Mr. Commissioner.

THE COMMISSIONER: Thank you.

MR. KENNEDY: I just have a couple of questions.

Superintendent Sheppard, I want to deal with a couple of issues; one is the communications of the Royal Newfoundland Constabulary after the incident, and you talked about that in discussions with Ms. Chaytor. And you've indicated that it was too early from the perspective of senior management to put anything out there because it could be seen as either commenting on or interfering with the investigation. Is that correct?

SUPT. SHEPPARD: That's correct.

MR. KENNEDY: But, Sir, could not something have been put out there supportive of the officer even without commenting in any way on the investigation?

SUPT. SHEPPARD: One hundred per cent.

MR. KENNEDY: Pardon?

SUPT. SHEPPARD: Well, at which stage?

MR. KENNEDY: Early in – within –

SUPT. SHEPPARD: I –

MR. KENNEDY: Like, I'm going to suggest to you that there's three issues that could have been dealt with in the days after this that Constable Smyth was asking for that could have been dealt with without compromising the investigation. And the first one would be simply that the chief of police say he supports his officer or his officers –

SUPT. SHEPPARD: He could very easily –

MR. KENNEDY: – and will ensure that proper EAP or whatever counselling is required.

SUPT. SHEPPARD: That’s correct.

MR. KENNEDY: Do you see any problem with saying that?

THE COMMISSIONER: Wait, you’re saying that there could have been a press release by the RNC –

MR. KENNEDY: Or the chief of police could have, yeah.

THE COMMISSIONER: – or the chief of police around a week or so after the incident –

MR. KENNEDY: Within days of the incident, simply expressing –

THE COMMISSIONER: – expressing support.

MR. KENNEDY: – support for his officer on a personal level as a police officer who has been involved in an obviously traumatic event, and ensuring that whatever supportive services are required for the officer will be provided.

SUPT. SHEPPARD: Yes, in a supporting role but not in addressing the investigation.

MR. KENNEDY: That’s not asking the chief of police to say that he believes Constable Smyth is innocent or he believes – no, just simply that as a police officer who’s involved in a traumatic event, that the chief of police supports this officer and all his officers.

SUPT. SHEPPARD: He could, yes.

MR. KENNEDY: Yeah.

THE COMMISSIONER: I guess, Mr. Kennedy, there’s always the problem of whether that is then taken to be approval or agreement with the police officer’s position.

MR. KENNEDY: I –

THE COMMISSIONER: I think – was there not a press release later, it might be considerably later, that drew criticism in that regard?

MR. KENNEDY: Well, the RCMP press release of April 7 certainly –

THE COMMISSIONER: No, I was thinking after that. Was there a –

MR. KENNEDY: The next one I’m aware of was the chief of police’s statements after the reports were all released.

THE COMMISSIONER: Okay.

MR. KENNEDY: If I remember correctly.

THE COMMISSIONER: Yes. There’s an Officer Shawn –

MR. KENNEDY: Shawn O’Reilly would be the EAP.

THE COMMISSIONER: Shawn Reilly, is it?

MR. KENNEDY: O'Reilly would be.

THE COMMISSIONER: O'Reilly.

MR. KENNEDY: Yeah.

THE COMMISSIONER: I think he expressed support at one stage.

SUPT. SHEPPARD: Publicly, Sir?

THE COMMISSIONER: Sorry?

MR. KENNEDY: I don't remember that.

SUPT. SHEPPARD: Publicly?

THE COMMISSIONER: Why did I – why am I thinking that?

MS. CHAYTOR: (Inaudible.)

THE COMMISSIONER: Oh, there's too many –

MS. CHAYTOR: Thank you.

THE COMMISSIONER: Okay.

MS. CHAYTOR: The chief did speak, I believe, the day after, but not along the lines of expressing support for his officers. But my understanding is there was a brief statement April 6 by the chief. I could be wrong on that. If I am, I'm sure Mr. Avis will correct me. But I understand the chief spoke either April 6 or 7 and then, it is correct that it's not until the reports are released by the Commission that the chief speaks again.

MR. KENNEDY: Yeah.

MS. CHAYTOR: That's my understanding.

MR. KENNEDY: And, again, Superintendent, I'm not talking the wording, Commissioner. I'm not –

THE COMMISSIONER: So no, I didn't mean to interrupt you, Mr. Kennedy.

MR. KENNEDY: No, I'm not talking about the wording. Yeah.

THE COMMISSIONER: I'm just trying to refresh my memory.

Yeah, go ahead.

MR. KENNEDY: I'm not caught up in the wording here and I know –

THE COMMISSIONER: Yeah.

MR. KENNEDY: – everyone was trying to be careful.

THE COMMISSIONER: No, I know. I understand what you're saying.

MR. KENNEDY: But you have a police officer who is entitled – as a group you're entitled to use force under certain circumstances are met within section 25 of the *Criminal Code*. Correct?

SUPT. SHEPPARD: Right.

MR. KENNEDY: Danger is inherent in the job of a police officer.

SUPT. SHEPPARD: Correct.

MR. KENNEDY: A police officer can go to a domestic dispute and be in grave violence or a grave threat. Correct?

SUPT. SHEPPARD: That's true.

MR. KENNEDY: So all I'm wondering is if there – is there a policy that there can be a blanket policy that there can be no comment, or can comments be crafted in such a way that the officer is not out there hanging by himself or herself, with no apparent support from the chief of police or senior management?

SUPT. SHEPPARD: I believe we could say that we do support our officer. That – exactly what you just said without casting any light on. You have to be careful –

MR. KENNEDY: Yes.

SUPT. SHEPPARD: – if you're going to cast light on because we're not interfering in the RCMP investigation.

MR. KENNEDY: No.

SUPT. SHEPPARD: And we have to be careful that we don't influence the RCMP's investigation. So you can't come out and say I fully support his actions –

MR. KENNEDY: No, I accept that.

SUPT. SHEPPARD: – because we don't really know what his actions are.

MR. KENNEDY: Yeah.

SUPT. SHEPPARD: But we could come out and say that, you know, we're dealing with – this is a traumatic event. Yes, there's inherent dangers of policing and that we're supporting our officer at this time and we would not bring up any EAP.

MR. KENNEDY: Yeah. Right.

SUPT. SHEPPARD: We would not disclose that to the public.

MR. KENNEDY: So –

SUPT. SHEPPARD: But we could say that we were trying to take care of him.

MR. KENNEDY: So that would be the first thing. And the wording, again, the crafting and how the wording, that's something I recognize as sensitive and would have to be discussed.

The second point, Sir, without ever commenting on Constable Smyth's position or what happened on that day, you do know that one of the criticisms right from the beginning is why did he go there by himself.

SUPT. SHEPPARD: Right.

MR. KENNEDY: Could the chief of police not have – and I say the chief of police because I understand from you that you can't go out to the press.

SUPT. SHEPPARD: That's true.

MR. KENNEDY: You can't make the decision to go speak to the press.

SUPT. SHEPPARD: I have to ask permission to –

MR. KENNEDY: To the Chief of Police. And if he agrees, then he could designate you to speak.

SUPT. SHEPPARD: He could. Yes.

MR. KENNEDY: But in your – you cannot simply say: I'm going out, Chief. I'm going to talk about this Smyth situation.

SUPT. SHEPPARD: No, if we done that we'd have police officers calling the media every day.

MR. KENNEDY: Yeah, because in a – and, again, and we use this word "paramilitary organization" but that simply means that it's an organization whereby orders have to be, come from the top and have to be followed. Correct?

SUPT. SHEPPARD: That is correct.

MR. KENNEDY: So was there any discussion about a comment along the lines that our officers go to scenes every day by themselves in this city and in other parts of the province that we supervise or patrol?

SUPT. SHEPPARD: I agree we could have done that. I believe we've fallen down by not doing that. I believe that we could have mitigated a lot of I don't know if stress is the right word, but anxiety in the community of what's going on here. It's one – I mean there was a whole – and it didn't stop, it just kept going and going and going.

I do think we have to be careful in the beginning but I think there came a point in time where we could very easily have addressed those issues. You know, regards to a discussion, I believe, you know, I've expressed that we were able to do that, but our position was – and I mean I didn't cause grief. I mean if the chief makes a decision, here's our interview and we're not going to do it and here's our final interview; he's the chief, it's his prerogative as to when we do our (inaudible).

MR. KENNEDY: If you had been in the position of chief of police within the days following this incident, would you have done the kind of things that we're discussing here today? I know it's a difficult question and you can't be seen as criticizing the chief, but I mean on –

SUPT. SHEPPARD: Can you ask the question again, please? You're putting me in a –

MR. KENNEDY: Okay, well –

SUPT. SHEPPARD: You're putting me in opposition to the chief and –

THE COMMISSIONER: That's right after referring to a paramilitary organization too.

MS. CHAYTOR: (Inaudible.)

MR. KENNEDY: Yeah.

Okay. Well, I guess my point is was there a discussion about some kinds of support being offered to Constable Smyth by the senior, among the senior management of the RNC after this incident within, you know, a reasonable time frame after the incident?

SUPT. SHEPPARD: Yes, there was discussion. I felt we could; we didn't.

MR. KENNEDY: Okay.

And, Sir, a third example I suggest to you that could have been, again, brief discussion that intelligence-led policing or proactive policing is a form of policing which is utilized by police forces throughout, well, if not Canada, you know, North America.

SUPT. SHEPPARD: That's true.

MR. KENNEDY: Correct?

SUPT. SHEPPARD: That is true.

MR. KENNEDY: So would you see any of the types of comments – and there could be more, but would you see any kinds of comments I'm talking about there as interfering or reflecting on the RCMP investigation in any way?

SUPT. SHEPPARD: I don't think so. I think we could have highlighted what intelligence-led policing is and how we – intelligence-led policing is a very simple concept. It's a matter of what is going to come up down the road that could potentially impact public safety, officer safety, what the situation is going to be, so we could talk about how our business operates without and why in the premier's – I call it premier's, but it's the –

MR. KENNEDY: Protective –

SUPT. SHEPPARD: – Protective Services Unit.

MR. KENNEDY: Yeah.

SUPT. SHEPPARD: It used to be called premier protection – why they research and why we look for different things.

If Constable Smyth is with the premier as a matter of intelligence-led policing, he should know who is who in the audience of where he is going. If he doesn't, I think he would be neglectful in going with the premier and saying, well, I'm not allowed to check anybody, I don't know who anybody is and I don't really care, I'll just wait and see if anybody takes a swipe at the premier.

I think we could address that as well and not impact the actual integrity of the action that was taken that day.

MR. KENNEDY: So that preventative – it's a type of a preventative policing, is it?

SUPT. SHEPPARD: Yes.

MR. KENNEDY: You're trying to prevent something from happening?

SUPT. SHEPPARD: It's educated policing.

MR. KENNEDY: Okay.

And is that a new concept in policing in Canada?

SUPT. SHEPPARD: No.

MR. KENNEDY: And how long, Sir, have you been a police officer?

SUPT. SHEPPARD: Thirty-three years.

MR. KENNEDY: Yeah, I mean, how long have you been aware of intelligence-led policing or proactive policing being utilized by police forces in Canada?

SUPT. SHEPPARD: Twenty years, maybe.

MR. KENNEDY: Yeah.

So I guess what I'm trying to say is that prior to Friday, April 10, between – I think Friday is April 10; yeah, I think it is. April 5 is a Sunday when the incident occurs. You know – everyone knows now the outrage – and that's what I think we can describe in the public, correct?

SUPT. SHEPPARD: Right.

MR. KENNEDY: You are aware of the vitriolic and nasty comments being made towards Constable Smyth personally?

SUPT. SHEPPARD: In some regards I was, yes.

MR. KENNEDY: So if not within the first couple of days, within three or four days, could a simple statement like I'm talking along the lines, I'm talking about here – crafted properly, of course, so as not to interfere with the police investigation. Could something like that have been put out?

SUPT. SHEPPARD: I think it could have.

MR. KENNEDY: Yeah.

Now if you look at it, have you seen or ever read Constable Smyth's email of April 10, 2015?

SUPT. SHEPPARD: I did.

MR. KENNEDY: Did you, Sir, interpret part of what was going on there, his frustration that no one was out there explaining what had occurred?

SUPT. SHEPPARD: Yes, he's expressed that ever since April 5.

MR. KENNEDY: And again, recognizing sensitivity, one of the terms of reference here for the Commissioner is how – and again, I don't know, Commissioner, if I'm phrasing or paraphrasing

this properly. But how a police force or the Newfoundland Royal Constabulary should communicate in the days subsequent to an event like we're dealing with here; that's one of the terms of reference.

SUPT. SHEPPARD: Okay.

MR. KENNEDY: Is there any other comments that you could make that could help in that respect, in terms of the police walking that line of supporting their members – which is important for morale, isn't it?

SUPT. SHEPPARD: Hugely.

MR. KENNEDY: Did you sense after this incident and the perceived – was there a perceived lack of support, do you think, among the members in terms of the senior management?

SUPT. SHEPPARD: Of the membership –

MR. KENNEDY: Yeah.

SUPT. SHEPPARD: Can – just because I am pretty sure I got it right.

MR. KENNEDY: Yeah, in terms the failure – or there was no comment supporting or offering support in any way for Constable Smyth. Were you aware of whether or not, among the membership, the day-to-day police officers, if there was any criticism or concern about the failure of senior management to do that?

SUPT. SHEPPARD: I've heard that many times, and there's many officers that feel that Constable Smyth has been left to his own, without support.

That – not that – I'm not saying that that's the case. I'm saying that is the sentiment of some of the membership.

MR. KENNEDY: And was that a sentiment that you heard in the days after the incident itself?

SUPT. SHEPPARD: Not so much – surely afterward. But as time went on, it was a sentiment that I heard.

MR. KENNEDY: And it is sort of – it is a somewhat prevailing sentiment among – again, without talking about getting into the investigation itself. That lack or apparent lack of support has been a prevailing attitude amongst some of the uniformed members; hasn't it?

SUPT. SHEPPARD: It has. And it's – I think some of the officers – it's demoralizing in some – that's why I said, I think we could've done a better job in dealing with the public, and internally.

MR. KENNEDY: So –

SUPT. SHEPPARD: We have been very quiet with this.

MR. KENNEDY: So considering the – what I just outlined, or paraphrased as one of the Commissioner's terms of reference, recognizing the sensitivity of the whole situation and not being perceived as rushing to judgement or getting involved in the investigation, are there any comments that you could suggest to the Commissioner as to how in the future, what policy, or what could be done here in terms of this kind of situation, or have we discussed it already, do you think?

SUPT. SHEPPARD: I have, Mr. Commissioner – I have always felt that we put officer – and this is not any way reflective of the police officers’ ability that we currently have in media relations, or historically that we have there.

We deal with some of the most tragic – I won’t say most, but a lot of our work is tragedy. It’s home invasions, public interest in what we’re doing; we get a lot of – we get a lot of ATIPP requests. There’s a huge burden on the police department to be able to tell a story to the public, but yet protect what we’re doing.

And I have said for many years, and I have expressed it, that we take a young person with four or five years in and we put them in a media relations role. They’re not seasoned; they don’t have any rank. And, again, this is not – I mean the person is in a position and they’re trying their absolute best. And in many, many cases they do a phenomenal job of representing us through Facebook and different sites that we have, the YouTube channel and that kind of thing which comes under media relations.

But I do think that the time has come where we need to have a proper, properly trained media relations person that has an understanding of media relations and dealing with these significant issues and that can probably provide proper advice to the chief as opposed to a junior person.

Now, in defence of the chief, you know, he’s got senior managers. I mean he’s got – I’m one of them. But he’s got five superintendents, he’s got two deputy chiefs and, I mean, he can very easily corral everybody together if he wants debate. But on a day-to-day basis, I think that we would be in a very good position to have a proper communications director, team or however you want to look at that, Sir.

MR. KENNEDY: Sir, it seems that throughout the – as the investigation was ongoing, Constable Smyth’s frustration was growing also. There also appears to have reached a point where there were concerns about his either emotional or mental well-being. Is that correct?

SUPT. SHEPPARD: Yes, I believe the – our failure to respond caused him huge anxiety.

MR. KENNEDY: Sir, in terms of your own involvement, you would seem to have, on a number of occasions, been firm with Constable Smyth and saying, no, we’re not doing something he wanted to do. Did you ...?

SUPT. SHEPPARD: Oh yes, I did.

MR. KENNEDY: And how did he take that? Did he seem to have any great problem with that?

SUPT. SHEPPARD: No.

MR. KENNEDY: Or once you were firm with him and communicated with him, was he fine with it?

SUPT. SHEPPARD: Well, he understood my position that it was looked – our conversation was basically: Joe, you can’t go on the street. I know you don’t feel comfortable where you are, there’s a significant investigation taking place and I’m not putting you in a position that you’re going to have, like I said earlier, have a second shooting that could very easily take place. This could – we could have a shooting tonight, we could have two tomorrow and put him in a position, but he did take – when I said that to him, he understood my rationale as to why I was firm on this position.

MR. KENNEDY: Sir, in terms of your officers carrying guns in that kind of situation, how many shootings and or homicides have there been in the St. John's area in the last year or two? There seems to be an uptake in shootings.

SUPT. SHEPPARD: I think there are currently 14 – I'm not sure, Mr. Commissioner, if this accurate, but it seems to me like there are a dozen that are currently before the courts.

THE COMMISSIONER: Sorry, I think there's a –?

SUPT. SHEPPARD: I think there's a dozen. Now, some of them, you know, they take time to get through the system and some of them may go back a few years, but ...

MR. KENNEDY: So if we go back, Superintendent, to 20 years ago when yourself and myself and Mr. Simmonds were apparently battling it out in the courtrooms, is it fair to say that guns weren't a common – the use of guns in St. John's in robberies, home invasions, drug cases weren't common at that point?

SUPT. SHEPPARD: That's true.

MR. KENNEDY: So that my point is that your officers, your younger – your officers are going into a situation where any given time they may have to draw their gun. Is that a fair assessment?

SUPT. SHEPPARD: That is absolutely accurate.

MR. KENNEDY: So that not only has policing changed, I would assume, over the years, but also crime has changed. Would you agree with me today it's more violent and more gun related than at any time in Newfoundland and Labrador's history?

SUPT. SHEPPARD: Yes, so I've said this at management meetings several times, many times, that while the stats show a decrease in gun crime, I can guarantee you 100 per cent that the increase of violence in the crimes that we are getting are firearms, significant beatings, weapons. The level of violence is significantly increased from when I was there 20 years ago.

MR. KENNEDY: I just want to talk now about your force for a second, or the composition of your force, that my understanding is that there was essentially a 10-year gap, almost, and I go back to the Lamer Inquiry for this. There was almost a 10-year gap when there were no new recruits came into the Royal Newfoundland Constabulary.

SUPT. SHEPPARD: That's true. I think it's 18.

MR. KENNEDY: So how many current members are there in the Royal Newfoundland Constabulary, approximately? I'm sure we'll get this from someone else.

SUPT. SHEPPARD: 415.

MR. KENNEDY: Sorry?

SUPT. SHEPPARD: 415, roughly.

MR. KENNEDY: How many of those have more than 25 years or 30 years of experience.

SUPT. SHEPPARD: I think it's 35 per cent.

MR. KENNEDY: Sorry?

SUPT. SHEPPARD: I think it's 35 per cent.

THE COMMISSIONER: More than how many years?

MR. KENNEDY: Let's say – let's start with 30 years because you can retire at 30, correct?

SUPT. SHEPPARD: You can retire at 25.

MR. KENNEDY: Okay. How many would have – police officers in the Royal Newfoundland Constabulary today, and I am sure we can get these details from someone else if we need them, have more than 30 years' experience?

SUPT. SHEPPARD: Well, I think it's 35 per cent over 25, so maybe, I don't know, 18 per cent maybe, or somewhere around there. (Inaudible.)

MR. KENNEDY: Okay, so 35 per cent over 25. How many would have less than 10 years' experience?

SUPT. SHEPPARD: Greater majority now.

MR. KENNEDY: Yeah, because the gap is between 15 and 25 years, correct?

SUPT. SHEPPARD: Yes, yeah.

MR. KENNEDY: And, Sir, how long has the program been in place in Memorial?

SUPT. SHEPPARD: Maybe 11 years, maybe, I think, or maybe 12, somewhere around there.

MR. KENNEDY: So would you agree with me, Sir, that experience in policing is oftentimes gained on the streets doing the job that you do on a daily basis, going from everything from pulling a car over to domestic assault calls?

SUPT. SHEPPARD: True.

MR. KENNEDY: So is it important that young members, or members as a whole, not only have the support of senior management, but they perceive that they have the support of senior management?

SUPT. SHEPPARD: I agree.

MR. KENNEDY: I want to move on now to a couple of comments where you talked about the, you reviewed the comments made towards Constable Smyth on Twitter, you reviewed some of them.

SUPT. SHEPPARD: Right.

MR. KENNEDY: You didn't see any threats.

SUPT. SHEPPARD: Not directly, no. They were very hostile, but not a threat.

MR. KENNEDY: Do you remember seeing the comment that this was a – you know, it was an assassination, the premier sent him out to –

SUPT. SHEPPARD: Yes.

MR. KENNEDY: – assassinate Mr. Dunphy?

Do you remember seeing the – and I don't know if it was a hashtag, killed for a tweet?

SUPT. SHEPPARD: Yes, I believe that's a (inaudible).

MR. KENNEDY: Do you remember him being called a hit man?

SUPT. SHEPPARD: I do.

MR. KENNEDY: But it was really only when the picture of his family was put up on Facebook that he – and the Judge Riche report, those were the two very significant issues in terms of the effect on his mental health, weren't they?

SUPT. SHEPPARD: Yes.

MR. KENNEDY: Yeah. So when Constable Smyth asked to have a gun at home, the impression I get from you is that's not something you would even consider?

SUPT. SINGLETON: Mr. Kennedy, in this case, I didn't see a threat. If there was security that was required we could – we have the ability to put alarms on his house. We could put panic buttons inside his home. I would assign police officers to his home. There are other avenues that we could take that would provide protection for Constable Smyth. It's very rare that we would send a police officer home with a gun to defend yourself in any case.

MR. KENNEDY: Sir, you made also – you made reference to a fake Twitter account. I don't know if I've seen that reference before. What were you talking about there?

SUPT. SINGLETON: So there was somebody had, so you can – where it's the digital age, you don't necessarily have to show up with your bank card and your IDs and get an account. Somebody had created a fake account, Joe Smyth. The discussion where you've seen in the emails there, we questioned if it was impersonating a police officer when we had – when we wanted CFSEU to take care of it. There was discussion that we were going to proceed to an investigation to see, based on their comments, if they were impersonating a police officer, who is this person, but the – what happened was once we started that process, within a day or two, Constable Smyth came back. He didn't want to be inflammatory. He didn't want to set the media on fire even any more. He knew that there was – would not be a good – so you find out who did the Twitter account and there's a charge laid, for example, if there was, what's the benefit to – how does that assist Joe in any way?

It doesn't do anything only put more fuel on the fire and cause him a lot of grief that now the police are out chasing down and protecting Joe and still feeding that opinion of the public that we take care of our own, we protect our own, and that in fact we would even let Joe commit a homicide and cover it up.

MR. KENNEDY: Sir, in terms of, then – I want to move to the September – I think it's around September 2016 that the retired Justice Riche makes certain media comments, is that correct?

SUPT. SHEPPARD: That's true.

MR. KENNEDY: Did that appear to you to have a significantly detrimental effect on Mr. – on Constable Smyth's psychological and emotional well-being?

SUPT. SHEPPARD: I believe that that interview caused Constable Smyth to come undone.

MR. KENNEDY: And when you say come undone, what do you mean by that?

SUPT. SHEPPARD: I believe it had a crippling effect, significant injury, that caused him a lot of personal anguish and grief. Now, I can tell you that just from his – just from his emails you can see that.

MR. KENNEDY: So it reached a point where even the RCMP were contacting the RNC and saying, look, you know, we have concerns about Constable Smyth.

SUPT. SHEPPARD: So they were previously concerned about the revisit, because it would be difficult to do a re-enactment. Then you have to do it a second time, they had a concern, but I think that this was inflammatory to the point that they considered that Joe is in trouble and he might need some help.

MR. KENNEDY: Did you know that he, when asked, he agreed immediately?

SUPT. SHEPPARD: Sorry?

MR. KENNEDY: Do you know or did you know that when asked, he agreed immediately to the second re-enactment.

SUPT. SHEPPARD: Yeah, I assume. I don't think there was any issue with it.

MR. KENNEDY: Okay. Sir, how long have you known or how well do you know Constable Joe Smyth?

SUPT. SHEPPARD: Constable Smyth and I are not social. I don't – I didn't know until just the last few weeks his wife's name. I know he's – a little bit about his family. We didn't hang out together. I'm a bit older than Constable Smyth. I was in the CID and Joe was in different positions within the force, so we never, ever worked as a partner; I never, ever really supervised him. I've known him ever since he's been in the job. I'm not sure exactly how long that is, 20-plus years.

MR. KENNEDY: Had you ever supervised him, not directly? I know as the superintendent in charge of CIB, you're essentially supervising everyone.

SUPT. SHEPPARD: Yeah. I don't remember ever being Joe's sergeant.

MR. KENNEDY: What, Sir – did you form any opinion of Constable Smyth's capabilities or abilities or reputation as a police officer?

SUPT. SHEPPARD: I think Constable Smyth is a very good police officer, very honest, has integrity, is efficient, is 100 per cent there to get the work done, will assist in any way that he can. If he was asked to participate in any project, assignment, I think he'd be willing to take it on. He doesn't shy away from work. He's very eager to work and I think that was reflected in his request to: please, don't let me be administrative. I want to go do some work. I want to go out; I don't care if it's in traffic or where it is. The man wanted to work, and I was holding him back.

MR. KENNEDY: Yeah. Did he ever get mad at you over that, or did he take what you said as being –

SUPT. SHEPPARD: No, never. I have personally never seen Joe mad. I can just tell you the way it is, that he's – I've always seen him as polite, co-operative, pleasant. I don't know what else to say, really – just the demeanor, that's what I know.

MR. KENNEDY: Okay.

Those will be my questions for you, Superintendent.

Thank you.

THE COMMISSIONER: Any further questions?

MS. RASMUSSEN: Yes, thank you.

Superintendent Sheppard, my name is Lori Rasmussen. I represent the RCMP.

I want to revisit something Ms. Chaytor had spoken about earlier. Inspector Pat Cahill had requested Constable Smyth's Use of Force reports and I believe his terminology – and it's in Exhibit P-0557. He says reports that might feasibly – feasibly may have an impact on our investigation. Do you remember that request?

SUPT. SHEPPARD: That's true.

MS. RASMUSSEN: You chose to rule out – sorry, did you want to look at the exhibit?

SUPT. SHEPPARD: I think you're bringing it up.

MS. RASMUSSEN: Right. So number 2, bullet number 2 there, "... previous use of force incidents that feasibly may have an impact on our investigation."

You chose to rule out anything before 2010. Is that right?

SUPT. SHEPPARD: That's true.

MS. RASMUSSEN: Even though, as we know, there's apparently some incidents before that when Constable Smyth had drawn his sidearm. What was your rationale for limiting the disclosure to anything after 2010?

SUPT. SHEPPARD: I went back five years, no use of force and I didn't see how previous would feasibly – in my opinion, if I were doing the investigation, five years of no use of force I didn't see as an issue. The fact that a police officer draws his firearm is not indicative of wrong doing. I mean we're police officers. We respond to shootings and stabbings and beatings and all kinds of violent crime where you may have to draw your firearm.

And uniforms, uniformed front-line first response, that – I mean you might not point it at the person but to draw your fire – because there's a distinction between drawing and pointing. I didn't see that it would have any bearing because he's a uniformed police officer who's got a firearm. It's a tool; it's an instrument that he uses in his everyday work.

So I didn't restrict it in the sense of trying to protect Joe. I didn't even go back past that time. He may have had 200; I didn't go back and look.

MS. RASMUSSEN: Okay, so you didn't look at anything before 2010.

SUPT. SHEPPARD: No, I didn't. I went back and there was nothing there and I said five years, I didn't know how it would pertain.

MS. RASMUSSEN: So would you say, was the five years just an arbitrary number you came up with or is that some sort of standard?

SUPT. SHEPPARD: No, it was me. Like I said, I went back. I physically went to the files, I pulled 60. I pulled every month and checked and there was nothing there. And I determined this does not reflect on the RCMP. This was my decision. It says here that may feasibly impact their investigation, and I didn't see that anything extra.

MS. RASMUSSEN: Thank you.

SUPT. SHEPPARD: Maybe in hindsight I should have went back and gave 'em every single one but that was a decision I made. I didn't see how it would pertain.

MS. RASMUSSEN: Thank you.

THE COMMISSIONER: Thank you.

Any further questions?

Mr. Avis.

MR. AVIS: Yeah. It's not fair to go last on a Friday afternoon. I'm going to get blamed for keeping everyone here.

Anyway, just on the last point, I believe it came out after the letter and after you had sent the stuff to the RCMP, you didn't get any further requests. Is that ...?

SUPT. SHEPPARD: That's true.

MR. AVIS: And as discussed, that was merely a judgment call of yours at the time. If they'd asked for more, they would have been able to get whatever they want.

SUPT. SHEPPARD: That's true.

MR. AVIS: But you're still of the view it wouldn't – in your opinion as an investigator, you can't really see the relevance of going back that far anyway.

SUPT. SHEPPARD: I can't.

MR. AVIS: Now, just on a couple of the points that Mr. Kennedy brought up, we are looking to get some better figures. I just want to make sure with respect to the age of the officers, do you recall the issue back around the time of the Lamer Inquiry was that there were so many senior people with all that experience able to retire. Correct? If you don't remember, that's fine.

SUPT. SHEPPARD: What year was Lamer?

MR. AVIS: That's okay. We'll pass on.

SUPT. SHEPPARD: Okay.

MR. AVIS: We'll pass on. I'll do this with the chief.

At one point you were being questioned by my learned friend, Ms. Chaytor, and she was asking you about the example you gave in the P-0443, as I recall, not to seize the gun. And she asked

you – you made a comment and you – she asked you and you said you can't remember what you said.

I wrote down that that was just one issue. The whole idea was that we mustn't get involved. Was that what you were trying to say at the time?

SUPT. SHEPPARD: That's why they were restricted to EAP.

MR. AVIS: Right.

SUPT. SHEPPARD: That was their role.

MR. AVIS: Right. Okay.

With respect to the note taking, just to distinguish you from, say, an active investigator, for the most part you are at a desk when you're making notes, aren't you? Sir, you have to answer that.

SUPT. SHEPPARD: Yes.

MR. AVIS: Sorry?

SUPT. SHEPPARD: Yes, I primarily work at a desk.

MR. AVIS: Okay. And I don't need you to go into it now because we, we haven't really discussed it. It's just becoming a discussion. There are questions around here about perhaps some differences between the note-taking policy and the new technology.

In other words, if you send an email, which you put a note to, it's recorded somewhere: date, time and contents. So very quickly is – do you think perhaps the note-taking policy may need to be revisited in light of the new technology?

SUPT. SHEPPARD: Yes, I do think so, but we would not use an email as a statement.

MR. AVIS: No, whatever – we're not getting specific. I'm just saying it's arising now.

SUPT. SHEPPARD: Sure.

MR. AVIS: Do you think it's something worth looking at?

SUPT. SHEPPARD: There's new technology, there's –

MR. AVIS: Okay.

You were questioned in this regard regarding notes, that there were no notes from the Comm Centre with regard to Joe Smyth. Isn't all that recorded, Comm Centre, every last word? Am I missing something?

SUPT. SHEPPARD: There are phone calls recorded and there's a footprint left for everything that you would check on the system.

MR. AVIS: Okay. So all this – there would be no need to take notes because it's all recorded in some other fashion. Am I –?

SUPT. SHEPPARD: I doubt that the Comms Centre write very many notes.

MR. AVIS: And is that not – it's called the heart of the RNC sometimes, but isn't that place sometimes just like a zoo? I mean –

SUPT. SHEPPARD: Chaos.

MR. AVIS: –it's the busiest place you can imagine.

SUPT. SHEPPARD: I'm sure they have –

MR. AVIS: Right.

SUPT. SHEPPARD: – chaotic moments.

MR. AVIS: So the ability and time to take notes is rather limited isn't it, at times especially?

SUPT. SHEPPARD: And they're not generally called as witnesses.

MR. AVIS: Right.

With respect to this meeting you had where you didn't take notes, I not going to get too much into that, but bottom line being whatever may or may not have been discussed at that meeting with the RCMP on 9, April, did you discuss anything in that meeting with Constable Smyth?

SUPT. SHEPPARD: No.

MR. AVIS: You're being questioned and a number of officers are being questioned about, you know, for example, how could you go out – you know, the perception of you going out with an RCMP officer to visit his home. Is it not your ethical and legal responsibility not to discuss the case with him?

SUPT. SHEPPARD: With –

MR. AVIS: With the RCMP officer. You're going out to visit the home, don't you have an ethical and legal responsibility not to discuss the details of the investigation?

SUPT. SHEPPARD: I believe so.

MR. AVIS: And do you take your legal and ethical responsibilities seriously?

SUPT. SHEPPARD: Yes, I do.

MR. AVIS: Would you risk your job over –

SUPT. SHEPPARD: I didn't.

MR. AVIS: – something like this?

SUPT. SHEPPARD: I didn't, no.

MR. AVIS: Right, of course.

We haven't asked you – and if you could, 'cause it seems to be a direction we're going in, but you haven't been asked anything about the possibility of a SIRT team in Newfoundland? We

have discussed it. Perhaps you could give us your reader's-digest version of what you think about a SIRT team and perhaps some of the concerns you have about it.

SUPT. SHEPPARD: So I can, Mr. Commissioner, I can agree and disagree with SIRT. In this particular case, we've called in the RCMP –or sorry, we didn't call them in because it was their jurisdiction. I believe they are quite capable of doing their work, but I do understand how times change and how public opinion changes in a sense of thinking that the police protect the police.

A SIRT would provide an openness and it would remove it from the police hands. I'm not adverse to it; I don't see any issue with it. My only concern is that it would be if the government moves towards a SIRT, then I would hope that it would be properly resourced so that investigations – if SIRT comes into an investigation, it's of the magnitude that it's serious and it needs to have a speedy resolution as opposed to a file that goes without resolution for, you know, an extended period of time.

THE COMMISSIONER: What do you mean? Once it's decided that it should be done, it should be implemented? Or what is it you're saying there?

SUPT. SHEPPARD: Yeah, I don't see any issue with implementing SIRT. Is that your question, Sir?

THE COMMISSIONER: No, I wasn't sure what you were saying. You were saying – I was trying to summarize what I thought you said that once the decision has been made that we should have SIRT, then you believe it should be done, implemented quickly –

SUPT. SHEPPARD: No –

THE COMMISSIONER: – and with proper resources. Is that what you're saying?

SUPT. SHEPPARD: I said it should be properly resourced so that the SIRT team, the SIRT body –

THE COMMISSIONER: Right.

SUPT. SHEPPARD: – can effectively and quickly deal with the issues that are on their plate. And not only put one or two people there, have 15 investigations and it's going to take you three years to have a resolution on the significant situation that's in the public interest.

THE COMMISSIONER: Okay.

So that means a certain number of trained individuals, quite a few. Do you see any difficulty in, first of all, finding appropriate well-trained investigators? And secondly, is it realistic that we'd anticipate having that budget to – because it's not just finding them initially as trained investigators, wouldn't we have to upgrade them almost on an annual basis, or every couple of years anyhow, in order to keep them to date with new techniques and so forth?

SUPT. SHEPPARD: I think if you, if you had a team in place and they're doing investigations – if, for example, you brought in a police officer who hasn't been policing for 15 years, I think you're probably outdated on that particular case.

THE COMMISSIONER: Right.

SUPT. SHEPPARD: But I think if there's a SIRT and the SIRT is active, the SIRT doesn't necessarily need to be trained every year because by virtue of being busy and encountering the

new technologies and the new things that are taking place, you're going to be updated as you investigate –

THE COMMISSIONER: On the job.

SUPT. SHEPPARD: – which we see, I see that in policing every day. I mean, I haven't taken any specific course.

THE COMMISSIONER: On-the-job training, yeah.

SUPT. SHEPPARD: It will come by virtue of being involved in those types of files –

THE COMMISSIONER: Right.

SUPT. SHEPPARD: – I think.

THE COMMISSIONER: Right.

Okay. Sorry, Mr. Avis. I didn't mean to interrupt.

MR. AVIS: No problem. Absolutely, more important you have your questions to ask and –

THE COMMISSIONER: Well, I wasn't – I just want to make I understood what was being said.

MR. AVIS: My learned friend Ms. Chaytor asked you a question about mandatory review of use of force when lethal force – good heavens – lethal force is used. When the Reid and Power matter, lethal force was used. It was investigated criminally and there was an inquiry. Correct?

SUPT. SHEPPARD: Yes.

MR. AVIS: In this case there's an inquiry and any number of investigations into it. Correct?

SUPT. SHEPPARD: True.

MR. AVIS: I'm not going to go into the other history. What's your view of a mandatory use-of-force review by your own people and when should it occur when these matters are being investigated by others and there's an inquiry?

SUPT. SHEPPARD: I'm going to ask you to say it again because there's a couple of segments there.

MR. AVIS: I'm sorry (inaudible).

SUPT. SHEPPARD: I just want to make sure I've got the (inaudible).

MR. AVIS: Sure, we're talking about mandatory use-of-force review when lethal force is used. It's a good idea, a good proposition. I'm asking you about the necessity of it in light of the fact – your view on the necessity of it in light of the fact that as in this case, we have an investigation, and an investigation of an investigation, and a third one coming up, and we have an inquiry; so one on the necessity of the review and when you think it might be appropriate.

SUPT. SHEPPARD: I think we should review, and I believe it may have been addressed because I know that we worked through the use-of-force form and some changes that are going to come on a quarterly basis of some use of force review.

THE COMMISSIONER: And that's reviewing the individual, presumably, we're talking about there.

SUPT. SHEPPARD: Yes, but it's in a general sense of every quarter –

THE COMMISSIONER: Right.

SUPT. SHEPPARD: – the Use of Force – I forget the term, person, we'll use it in that sense – Review Board quarterly will look at, you know, holistically and see if there's any systemic issues with training, if we have an officer that's using too much – probably too much force. But it might look like too much force but when you look at it, it might be a person who's working downtown and is in a lot of – it might be pertinent to his work and that's why he has, or she has, extra use of force.

But in regards to now running – we have lethal force so we've got an internal taking place, we've got an independent body doing a review and now we're going to have a police, some other police doing a use-of-force review. I think that it's going to come out of the investigation and the inquiry what the use of force that Constable Smyth had in this situation. I think we're going to get our answer without having to run a parallel use-of-force review when lethal force is used. I think now we're going to start running three.

MR. AVIS: Okay.

And so you're saying the appropriate time to consider it would be once we have the Commissioner's decision in this particular incidence, is that what you're saying, if at all?

SUPT. SHEPPARD: I think it is being reviewed here. Is that the –

MR. AVIS: Yeah.

SUPT. SHEPPARD: I don't know if I'm missing the question there, sorry.

MR. AVIS: I'm talking about sending it to the Review Board and I said – asked you when. So you're saying you don't think it needs to be sent at all.

SUPT. SHEPPARD: Well, if it's going to be sent, it's going to be after the inquiry. When there's a determination made after the investigation, after the inquiry, then the Use of Force board – Use of Force board can look at it and see what the judgement is.

MR. AVIS: On the use-of-force reports, if an officer does not hear back, Officer, Smyth in this instance – and we have gone through some of his use-of-force reports for a year – a one – a 12-month period. If an officer never hears back from his supervisor – you, Deputy Chief Singleton – is it fair that the officer assumes there is no issue with his or her use of force?

SUPT. SHEPPARD: Yes.

MR. AVIS: With respect to the notion, I'm not sure if this quite helps here but you were being asked questions about Staff Sergeant Glenn Noseworthy not actually supervising Joe Smyth in the PSU, et cetera. But when it comes to the use of force, whatever unit you're in, it doesn't matter does it? Use of force is use of force.

SUPT. SHEPPARD: Yes.

MR. AVIS: Okay.

So whether or not he had knowledge of the protective service unit he's still able to review, if he did in fact do so, review a use of force.

SUPT. SHEPPARD: Well, I reviewed it and I've never worked in Protective Services.

MR. AVIS: Exactly.

I don't know if – have you ever done – it's going back in time, it's been a while since you did investigations. And I'm talking here about you're in a – doing an investigation where you have a person of interest, you haven't decided to lay a charge. Does that person of interest sometimes contact the investigating officer wanting to know: Am I going to be charged? Will I be charged? When is the investigation going to be done? Do you get those kinds of questions fielded to you or your officers by any person of interest who has not been charged?

SUPT. SHEPPARD: Yes.

MR. AVIS: Commissioner, Mr. Kennedy wanted to have a quick word with me. Rather than take a break, can we just have a little caucus on one of the seats back there?

THE COMMISSIONER: Sure. Just let me, for – are there any other questions after this?

MR. AVIS: I may have another question as a result.

THE COMMISSIONER: Right.

MR. AVIS: I need to confer with Mr. Kennedy.

THE COMMISSIONER: Sure, you go ahead.

MS. O'BRIEN: Waiting for counsel to return, we do have another witness here and –

THE COMMISSIONER: I understand.

MR. O'BRIEN: – we are able to start. So we'll, if we take a short afternoon break, we could at least get 45 minutes in with –

MS. CHAYTOR: (Inaudible.)

THE COMMISSIONER: All right, Mr. Simmonds, what's your situation here? You want to get away by 4, was it, you committed to?

MR. SIMMONDS: I did. I thought we were going to break after this (inaudible) police officer.

UNIDENTIFIED FEMALE SPEAKER: Yeah, we said we'd go to 4, right.

THE COMMISSIONER: Yeah, okay.

Anything, Mr. Avis?

MR. AVIS: No. Thank you for that opportunity.

We were able to resolve it. Thank you.

THE COMMISSIONER: No further question?

MR. AVIS: No further questions.

THE COMMISSIONER: Okay. Thank you.

MR. AVIS: Thank you.

THE COMMISSIONER: Commission counsel have anything, or anybody else?

MS. CHAYTOR: No, nothing arising.

THE COMMISSIONER: Nothing?

Okay. Well then, why don't we take a – let's say a – what, a 10-minute break. And then we'll go until sometime before 4 o'clock, Mr. Simmonds.

MR. SIMMONDS: All right.

THE COMMISSIONER: All right.

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.

THE COMMISSIONER: Go ahead when you're ready.

MS. O'BRIEN: Thank you.

Our next witness is Sergeant Kent Osmond. I'd ask to have the witness affirmed, please.

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

S/SGT. OSMOND: I do.

MS. SHEEHAN: Please state your full name.

S/SGT. OSMOND: Douglas Kent Osmond.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

Before we begin, Commissioner, I'd like to get an order for the following exhibits to be entered: P-0583 through to P-0616 inclusive, P-0628 and P-0650.

THE COMMISSIONER: What was the last one?

MS. O'BRIEN: 0650.

THE COMMISSIONER: 0650, thank you.

So ordered.

MS. O'BRIEN: Thank you.

Sergeant Osmond, I understand that you have been a member of the RCMP for over 26 years. Is that right?

S/SGT. OSMOND: That's correct, yes.

MS. O'BRIEN: Okay. And your current rank is sergeant?

S/SGT. OSMOND: Staff sergeant.

MS. O'BRIEN: Staff sergeant. Sorry.

And I'm going to go over a little bit of your background fairly quickly. I understand you had earned a bachelor of arts prior to joining the RCMP. Is that right?

S/SGT. OSMOND: That's correct, yes.

MS. O'BRIEN: And in terms of your training, I understand over 26 years with the RCMP, you had quite a lot of training. But I understand that the major courses that you would have had relevant to your role in this investigation would be similar to the ones that Corporal Burke told us about with respect to training major crimes unit officers go through. So that would be major crimes investigative techniques?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Interviewing and interrogating?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Major Case Management Team Commander Course?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: All right.

And I know additionally you said that you did a number of seminars involving homicide investigations. Is that right?

S/SGT. OSMOND: That's correct, yes.

MS. O'BRIEN: Okay.

And does that sort of encapsulate your training most relevant to your work on this file?

S/SGT. OSMOND: One course that I have that I forgot to mention when we spoke is I have some training in statement analysis.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I'm certainly not an expert, but I have had exposure to that.

MS. O'BRIEN: Okay. Thank you.

Now, you were assigned to the major crimes unit from 2002 to 2015 (inaudible)?

S/SGT. OSMOND: I went to Major Crime in 2003 as a constable.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: And then I left in 2005 and I came back in 2008.

MS. O'BRIEN: Okay and then –

S/SGT. OSMOND: And –

MS. O'BRIEN: – left again in 2015.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

So you actually left the MCU in September 2015, so prior to the conclusion of this file. Is that right?

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay. And then you were replaced, your role, you were replaced by – is it Sergeant Sue Efford?

S/SGT. OSMOND: Yes, inspector now, but sergeant then.

MS. O'BRIEN: Okay. Thank you.

All right, so if we could just bring up P-0308. On April 5, 2015, we understand, Staff Sergeant, that you were the NCO, the non-commissioned officer, in charge of the MCU East. Is that correct?

S/SGT. OSMOND: Correct, yes.

MS. O'BRIEN: Okay. And how long had you held that position by April 2015?

S/SGT. OSMOND: I went there in charge in April of 2008.

MS. O'BRIEN: Okay. And just briefly, what are the duties of the NCO in charge of MCU?

S/SGT. OSMOND: You're running the unit right from administrative to financial to oversight of investigations to program efficiencies, training, obtaining training for your members, just the typical supervisory position.

MS. O'BRIEN: Okay. And just looking at this organizational chart, which we've seen before so I'm not going to spend a lot of time on it, just going to position you on it here, so this is where you were here as the NCO in charge of MCU. And I understand at this time your direct report would have been to the inspector position, which at the time would have been Pat Cahill, I understand.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: All right. And then Corporal Steve Burke, who we've already heard evidence from, would have directly reported up to you?

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Okay.

Now, just in terms of your experience, just quickly I'll just – we'll draw the Commissioner's attention, and entered at P-0628, Commissioner, I'll ask Madam Clerk just to bring it up briefly, but we have a list of major crimes or major cases on which you had been team commander.

S/SGT. OSMOND: Uh-huh.

MS. O'BRIEN: You provided this to the Commission and so it – you have included on it the Donald Dunphy matter, but then other than that you've listed a number of, you know, serious incidents. We're talking homicides, suspicious sudden deaths and a police weapon discharge on which you'd have previous experiences as the team commander.

S/SGT. OSMOND: Yes, there were others I reflected after. I was also in charge of the Cougar 491 investigation, a double-attempted homicide on the Southern Shore. So there were several more as well.

MS. O'BRIEN: Okay. All right.

And I also understand that prior to April 2015, you estimated that in terms of investigating use-of-force incidents by police officers, you provided us with an estimate of approximately 14. Would that still be correct?

S/SGT. OSMOND: Yeah, that's accurate.

MS. O'BRIEN: Okay.

Prior to April 5, 2015, did you know Constable Smyth or any member of his family?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay. And was it likewise for Mr. Dunphy or any member of his family?

S/SGT. OSMOND: No, I didn't know them either.

MS. O'BRIEN: Okay.

Now, I understand, in terms of your interactions with the RNC, you have previously advised us that you had assisted the RNC a couple of times with execution of search warrants in RCMP jurisdiction?

S/SGT. OSMOND: Yeah, it was more of a back-up, like multi-target. You just go in and conceal – or contain, sorry, while search warrants are being executed, that kind of thing.

MS. O'BRIEN: Okay and that you don't – in a more substantial role, you'd worked along the RNC one time previously and that was with respect to a murder investigation in 2013, is that right?

S/SGT. OSMOND: That's correct, yes.

MS. O'BRIEN: And I understand that that was for a more significant period that you were working, like a number of months?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay, and also similar to other officers we've heard from, I understand that over the years you had partaken in training with RNC members who'd also been there at the training.

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay.

Does that briefly describe, then, your interactions, professional interactions, with the RNC?

S/SGT. OSMOND: Yeah, I did also work with a member when I was in Commercial Crimes section; he was part of – seconded from the RNC. He has nothing to do with this investigation, but I thought I should mention it. We were working together for two-and-a-half years.

MS. O'BRIEN: Okay. All right.

We have – I'm going to ask Madam Clerk to bring up Exhibit P-0583. And your handwritten notes, Staff Sergeant Osmond, have been provided to us and entered as several different exhibits, I think just because of the way they were provided. So this is the first set of your notes and this covers the period from April 5 to April 7, 2015.

When we're looking at your handwritten notes, would you have made those more or less contemporaneously with the event?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. All right, so this is going to bring us to the day, April 5, 2015. So we see here this is the first entry in your notes at 4:45 p.m. and you note that you were called by, I understand this to mean, district advisory NCO?

THE COMMISSIONER: 2:45.

MS. O'BRIEN: Sorry, 2:45. My apologies, Commissioner.

S/SGT. OSMOND: Yes, 2:45, and DANCO is that: district advisory NCO.

MS. O'BRIEN: Okay, Rod Tiller, and you record here the first information that you received –

S/SGT. OSMOND: Correct.

MS. O'BRIEN: – from Staff Sergeant Tiller. Okay, and I'm not going to go through it all there, and you told him that you would be arranging a response, and you then called Corporal Henstridge and asked him to call Corporal Burke. At 1520, so 3:20 p.m., before leaving for headquarters, because I take it you were on a day off this day?

S/SGT. OSMOND: Well, it was Easter Sunday, right? So yes.

MS. O'BRIEN: You sent an email to involve parties outlining the requirements, and we're going to come back to that email in a moment. I understand here just, again, going quickly through your early notes, at around the same time you received a call from Inspector Pat Cahill, who gave you a little more information. He was telling you that the victim was deceased at that time.

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay. And then at – and you just, it looks like you just initialed the times here and changed, initial from where you first had it, but at 1556, so 3:56 p.m. you had a further call from Rod Tiller and you got some more information here. I have a couple of questions on this information.

One of the things you include here that "Smythe shot him twice, second time in head." So was that information you would have gotten from Rod Tiller?

S/SGT. OSMOND: Yes, it was.

MS. O'BRIEN: Do you know where he would have received the information?

S/SGT. OSMOND: No, I didn't ask him.

MS. O'BRIEN: Okay. All right.

And here it looks like you're giving some direction, discussing in some direction about controlling the scene and keeping, keeping the scene preserved. And I think this is when you're agreeing to put Corporal Foote in place –

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: – to keep the cats out and your instruction here as you recorded was you told Tiller to ensure he does not disturb the scene.

Okay. At 1655 it looks like you actually attended at the Holyrood detachment. Is that right?

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay. And you get a little more – you note here that you got a little more information en route to Holyrood; that Superintendent Jason Sheppard would be the RNC liaison and the weapon was, I guess Constable Smyth's weapon that would be, was seized, as was the duty belt.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Who was giving you that information at the time?

S/SGT. OSMOND: I think from the context of that it would have been Jamie Zettler, Superintendent?

MS. O'BRIEN: Okay.

All right, in a moment I'm going to your first briefing meeting, which we understand took place around 5 p.m. that evening in Holyrood, but before that I'm going to bring you to that earlier email, P-0592, please.

Staff Sergeant Osmond, do you recognize this as the email that you sent and were referring to a few minutes earlier in those handwritten notes?

S/SGT. OSMOND: I do.

MS. O'BRIEN: Okay. Just explain please, why would you have sent this email?

S/SGT. OSMOND: Well, part of my role as a team commander is to ensure that the wheels are set in motion for a proper investigation. Part of that is mustering resources, part of that is also ensuring that certain steps are taken, and these are the things that I want attended to while we were mustering our resources, while we were travelling. And I wanted to make sure that – I guess certain items were being taken care of.

MS. O'BRIEN: Okay. So we already had some fairly detailed evidence from Corporal Burke with regards to the major case command triangle, and he explained that is how MCU organizes its investigation. And he went through the various roles on the command triangle.

So you just mentioned as team commander, so as NCO in charge of the MCU would you have automatically assumed the role as team commander? Is that what was going on here?

S/SGT. OSMOND: Not automatically.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: It depends on workload, it depends on – I might have had court coming up in two days and been unavailable. So I assumed team commander role for that purpose. Once we got there and determined who was available, what resources were there, who else may have had court, who else was already occupied with another investigation. So, yes, I assumed the team commander role but not necessarily permanently.

MS. O'BRIEN: Okay. In this case, though, you kept it on permanently, is that right?

S/SGT. OSMOND: I did. Yes.

MS. O'BRIEN: All right.

Now, this email, you're copying a number of people, names we'll all recognize now. But the main addressee appears to be Chris Fitzgerald who we did have some testimony yesterday from Chief Superintendent Boland that he was in the position of reader.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Why would you have been addressing this primarily to Chris Fitzgerald?

S/SGT. OSMOND: Because Chris Fitzgerald is – was – Superintendent Boland’s direct subordinate. He needs to be plugged in to anything of major concern that’s going on in the division to inform the OIC of Criminal Operations. Chris is also responsible for writing reports called briefing notes to our national headquarters.

MS. O’BRIEN: Okay.

S/SGT. OSMOND: He’s a conduit of information and I’m expected to contact him.

MS. O’BRIEN: Okay. So you would have –

S/SGT. OSMOND: If possible, if he’s available.

MS. O’BRIEN: Okay. So you would contact him because he, he does do the briefing notes and whatnot but also because he’s your direct conduit up to the CROPS officer, Andrew Boland, at the time.

S/SGT. OSMOND: Yes.

MS. O’BRIEN: Okay.

Now, one of the issues that you raise here in this early email is: “Please determine if the RNC will be reaching out to the OPP as per their MOU.”

Why, why did you ask Chris Fitzgerald to determine that?

S/SGT. OSMOND: Well, I was expecting Chris to relay to management because, I mean, I’m not going to phone the RNC about this. There are conversations and arrangements that are made above my level.

And so what I wanted Chris to find out was whether or not the RNC were going to reach out to another police force to have it investigated. But it was an erroneous thought because it occurred in our jurisdiction. If anybody was going to reach out to another police force, it would have been us, not the RNC.

So that was just – I’m on the BlackBerry, I’m trying to do a lot of things, right.

MS. O’BRIEN: Okay.

Did you get a response to that particular query about the OPP?

S/SGT. OSMOND: No, I didn’t.

MS. O’BRIEN: Okay.

And, ultimately, we know that the RCMP chose to do the investigation itself.

Were you involved in any of the discussions as to whether or not the RCMP would carry out the investigation?

S/SGT. OSMOND: I was informed that we would. I didn’t, I wasn’t part of the discussion.

MS. O’BRIEN: Not part of the decision making process. Okay.

One of the other notes that you mentioned here is: “Advance message to be sent ...” and I’m just, if I can get my mouse going here: “Advance message to be send by Holyrood member / supervisor asap.”

What does that mean?

S/SGT. OSMOND: We have a selected email group in Newfoundland for largely senior managers or program directors and it’s called the advance message group. So when something of significance occurs, the expectation is there’s a formula that the way you report it and it’s delivered to that mailbox for all to see.

MS. O’BRIEN: Okay. And is that all senior managers within the RCMP?

S/SGT. OSMOND: No, no, just within Newfoundland.

MS. O’BRIEN: Sorry, that’s what I meant though but within the RCMP within Newfoundland?

S/SGT. OSMOND: Yes.

MS. O’BRIEN: Okay. All right.

Now, here we see – I think it’s fair to say you are kind of taking early control here. Is that fair to say?

S/SGT. OSMOND: Yes.

MS. O’BRIEN: And you’re communicating and giving instructions to people, to those at the scene.

Would you have communicated to the scene directly or would you have – and I know here you’re – Rod Tiller, Staff Sergeant Rod Tiller of the Holyrood detachment is on the email and you do, you know, mention him directly in the email. Would you have been, you know, sending your information to the scene through Staff Sergeant Tiller?

S/SGT. OSMOND: Yeah, he was my conduit to the scene.

MS. O’BRIEN: Okay.

S/SGT. OSMOND: And vice versa.

MS. O’BRIEN: Okay. So you didn’t speak directly to anybody at the scene?

S/SGT. OSMOND: No, I didn’t.

MS. O’BRIEN: Okay. And one last question on this one. You want to know where the scene is exactly. You make some notes here about establishing a scene log. You say very specifically nobody of either police force inside the scene under any circumstances unless required for operational response such as victim assist.

Would you have been relying on the first responders on-site to do the initial scene security?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. Would you have provided detailed instructions to them as how to do that or would you just be relying on their own experience and knowledge as police officers there to properly secure the scene?

S/SGT. OSMOND: No, I'm not, I'm not going to call the scene and direct them what to do. Everybody knows or should know how to secure a scene.

MS. O'BRIEN: Okay. All right.

We have heard evidence from Corporal Burke already as to the various roles on the Major Case Management Command Triangle so I don't need you to review all those again but as you were the team commander, I would like to hear you just give us a description of that role.

S/SGT. OSMOND: Well, it varies. You know, the team commander role is laid out in policy. But it depends on where you're posted as to what duties may or may not flow in and out of that. That's why the policy says, I think, consist of, but are not limited to. Because if you're possibly leading a homicide in the Northwest Territories, or Nunavut, you may not have the same resources as you do, trying to run one in St. John's

So the team commander, basically, I see myself as an enabler. I muster resources. I get direction when required. Make sure that the investigation stays on track. Make sure that we have adequate funding. Make sure that the team is cohesive. That everybody is getting along, that any issues are addressed.

I'm a conduit to the senior management. So I speak to the investigator, the primary investigator. And usually through report writing, and sometimes through meetings, relay up what's being done on the investigation.

MS. O'BRIEN: Okay.

So fair to say that while you are there and available for consultation with the primary investigator, the decision as to what investigative steps to take lies with the primary investigator?

S/SGT. OSMOND: Yes, they're responsible for the speed, flow and direction of the file.

I don't want to make it sound like we don't consult, because we certainly do. And if I'm aware of a new technology or technique that I think might work in a certain situation, I will feel free to suggest that; I won't dictate it. But I will say, have you considered this, have you considered that.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: So that – it's very much a team approach.

MS. O'BRIEN: Okay.

Now, as the team commander, would you have reviewed all statements that were coming in, all, you know, officers' notes that were coming in?

S/SGT. OSMOND: No, I wouldn't.

MS. O'BRIEN: Okay.

All right, so I'm going to go back to your notes on that first briefing meeting – P-0583, please. And page 4, Madam Clerk?

So we understand that this was the first briefing meeting of the investigative team and it took place at – well, you’ve recorded here very precisely at 17:02, on April 5, and this was at Holyrood detachment.

S/SGT. OSMOND: Correct.

MS. O’BRIEN: Okay.

So present there we have Rod Tiller, Steve Burke, Mike Nippard, John Galway –

S/SGT. OSMOND: Shawn Seward.

MS. O’BRIEN: Shawn –

S/SGT. OSMOND: Corporal Shawn Seward.

MS. O’BRIEN: – Seward. Thank you. And Monty Henstridge. These are all names we’ve heard of.

Now, I understand this was a briefing meeting and I understand that certain investigative positions and duties were assigned at that meeting.

S/SGT. OSMOND: Correct.

MS. O’BRIEN: Is that fair to say?

S/SGT. OSMOND: Yes.

MS. O’BRIEN: All right.

Now, did you select – we know Steve Burke became the primary investigator. Would that – would you have appointed him to that role?

S/SGT. OSMOND: Yes.

MS. O’BRIEN: Okay.

S/SGT. OSMOND: And when I, when I appoint, I always request; I don’t appoint. Because, like I say, I may not be aware of an upcoming trial or a workload that he’s feeling is not conducive to taking on another investigation. So it’s very much a consultation, but yes, I did, I did appoint him.

MS. O’BRIEN: Okay. And why did you select Corporal Burke?

S/SGT. OSMOND: He was a long-term member of Major Crime. He had Major Crime investigative experience. He was available. I had every faith he could do the investigation properly.

MS. O’BRIEN: Okay.

In assigning your human resources to the investigative team, were any conflict checks done?

S/SGT. OSMOND: Not in terms of a formal process. I did speak to our investigative team within MCU and ensured that nobody was conflicted with Constable Smyth or the Dunphy family.

MS. O'BRIEN: Okay.

So you asked specifically about the Dunphy family?

S/SGT. OSMOND: No, I asked if there were conflicts, but I did specifically ask about Constable Smyth.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: But you did not specifically ask about the Dunphy family?

S/SGT. OSMOND: No, I didn't.

MS. O'BRIEN: I'm going to bring you – so I understand you did this from, in the interview, sort of in a more informal way is what you said to us on the interview.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

And I just want to bring up P-0004, please. This is the ASIRT report. So I take it you, you recall the immediate investigation team sort of asking in an informal way about Constable Smyth, you didn't ask any specific questions about Mr. Dunphy, but I understand nobody reported to you any conflicts other than Corporal Burke gave you some information; is that right?

S/SGT. OSMOND: Yeah, Corporal Burke said that he knew him. I think he encountered him. I don't even think he worked with him, but he said I, I knew him from a VIP job.

MS. O'BRIEN: Okay. All right. And other than that, did anyone else have knowledge or –

S/SGT. OSMOND: No, they didn't.

MS. O'BRIEN: Okay.

Okay. And when Corporal Burke told you that he knew him from a VIP job, did you consider that to be a problem or an issue with him continuing on as –

S/SGT. OSMOND: No, I didn't. And I asked him if he considered it a problem, and he didn't.

MS. O'BRIEN: Okay.

Did you record that anywhere?

S/SGT. OSMOND: No, I didn't.

MS. O'BRIEN: Okay. So – and I'm going to page 4 of the ASIRT report. The note that's here is that – I just get it – the note is here; I'm just having trouble seeing it, but I have it here recorded in my note. Here's what it is, and I can find the reference there for it if you need it.

In their report they wrote: “Based on our review, no obvious personal or professional bias was demonstrated. Steps were taken to identify any RCMP or RNC police officer who had personal and/or professional relationship with the subject officer. The recognition of the potential conflict and the steps taken to isolate the impact of that conflict were noteworthy and demonstrative of an intent to maintain the integrity of the investigation.”

Do you know what ASIRT is referring to here?

S/SGT. OSMOND: I don’t.

MS. O’BRIEN: Okay.

Corporal Burke didn’t recall it, but when Constable Smyth testified he said that he had actually recalled doing a house visit or a home call with Corporal Burke at one point, and I think this was when Corporal Burke had come in and needed some assistance from CID of the RNC in St. John’s and they done a home visit together. And Constable Smyth also said he had similarly had some connections or some limited working with him in the VIP job.

You did not know that at the time?

S/SGT. OSMOND: No, I didn’t.

MS. O’BRIEN: If you had known that, would that have made any difference to you in terms of putting Corporal Burke in the primary investigator’s role?

S/SGT. OSMOND: I don’t think so. I would have spoken to him about it to get more detail, but based on that, I mean, I would still consider that pretty arm’s-length.

MS. O’BRIEN: Okay. All right.

Also in a – at page 5 of the ASIRT report here; see if I can find it this time. Here it is. One of the notes here that they make is: “It should be made clear that this is a *homicide* investigation and the subject officer should understand he *could* have some jeopardy ...” They’re talking about in the context of the use of caution, which we will get to later on, but in terms of their – they should be clear that this is a homicide investigation. Do you agree with that statement?

S/SGT. OSMOND: Completely.

MS. O’BRIEN: Okay. And was this treated as a homicide investigation from the start?

S/SGT. OSMOND: Yes.

MS. O’BRIEN: Okay.

Was this a criminal investigation?

S/SGT. OSMOND: I’m recalling our conversation from before.

MS. O’BRIEN: Yes.

S/SGT. OSMOND: I still struggle with the language about that. We were investigating to determine if a criminal act occurred. If that’s your definition of a criminal investigation, then yes.

MS. O'BRIEN: Okay. And I think when we talked about it in the interview you said that, you made statements that this was not prima facie a criminal offence.

S/SGT. OSMOND: Yes, I was trying to distinguish between – nine times out of 10, or if not 99 out of a hundred, when Major Crime is called to an investigation, there's a prima facie crime that's been committed. You know that in advance.

With this particular case it was different, because of section 25 of the *Criminal Code*, and based on what we were being told occurred. So we didn't yet know whether or not a crime had been occurred – a crime had been committed, sorry. So that had to be established, which is usually not the case.

MS. O'BRIEN: Okay. And just, I'm going to bring up the – just to assist here, I'm going to bring up the RCMP policy at P-0546. So I understand you're, you go in, you know there's been obviously a police involved shooting, you know section 25 of the *Criminal Code* may apply –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – and so you're at this point I think saying you don't know, have enough information yet to establish if there's been a *Criminal Code* offence.

S/SGT. OSMOND: Exactly.

MS. O'BRIEN: And I'm just going to bring up – so this is the RCMP policy and I just want your comment on whether you see any inconsistency or whether you see consistent, or inconsistent with this statement, that all reportable deaths occurring within RCMP jurisdiction must be treated as suspicious and thoroughly investigated.

S/SGT. OSMOND: I don't see a conflict there.

MS. O'BRIEN: Okay.

We have heard evidence that Constable X transported Constable Smyth to the RCMP detachment, leaving the scene at approximately 4:10 p.m. that afternoon. And ASIRT raised a concern in their report about insufficient notes being taken by first responders with respect to their early interactions with Constable Smyth. Were you aware of that criticism, or –

S/SGT. OSMOND: Yes, I reviewed the report. Yes.

MS. O'BRIEN: Okay. And I understand from our pre-hearing interview that you did not actually review any of the first responders' notes. Is that right?

S/SGT. OSMOND: No, I didn't. That's correct.

MS. O'BRIEN: Okay. But generally would you agree that detailed notes of first responders are very important?

S/SGT. OSMOND: Yes, I would.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Ms. O'Brien, it's quarter to four, I think it's probably time to let Mr. Simmonds get on with his appointment. Sorry we're running a little behind, Staff Sergeant Osmond. We had a few weather delays, although not as much as some people. We're catching

up. So I think we're looking at the end of next week as it being roughly, completely caught up if all goes well.

So if everybody relaxes and has a good weekend, we'll get on with it on Monday morning at 9:30. You're available then I take it?

S/SGT. OSMOND: I am, Mr. Commissioner.

THE COMMISSIONER: Good.

Thank you.

MS. O'BRIEN: Thank you.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now closed.