



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 14

Commissioner: Honourable Justice Leo Barry

Wednesday

1 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

THE COMMISSIONER: Good morning.

MS. SHEEHAN: Please be seated.

THE COMMISSIONER: Just before we start with Dr. McGarry, I have a little bit of housekeeping to do. Trying to look ahead to phase two, which is going to be the way I'm looking at it now, reasonably abbreviated, but we have to sort of set a time. What I'm thinking for phase two that I've identified the questions; they'll be – earlier in the – when we were considering the question of standing, my letter of November 8 to all counsel, 2016, discusses the policy phase and identified six issues that might be considered at that time.

What I'm thinking, some of it, some of this could be handled by selection of the appropriate article or paper that might be webcasted and that might be dealt, that would deal with some of these issues and would be discussed at a town-hall type meeting, which would be carried over the webcast system and would also permit audience participation, if individuals wanted to attend and be heard on these topics.

Now, we have to, as I say, keep it within the time limits that we're going to have available, but just, I want to start today by discussing with counsel, have you started thinking about, if we do take that approach – and part of the problem in terms of being too definitive right now is that some of the significance of these issues may change as the evidence goes in.

I think we're into our 17th, I think Dr. McGarry will be our 18th witness, so we have another 40, I guess, roughly, to go, but they'll go a lot more quickly than the numbers we've dealt with to date. But I've looked at, assuming we keep our schedule, I've looked at March 9 as a day which we might set aside for the town-hall type presentation on some of these, if not all of these issues.

There will be expert reports going in towards the end of the hearing and these are reports of Gareth Jones, Terrance Coleman and Sergeant Massine.

UNIDENTIFIED FEMALE SPEAKER: Massine.

THE COMMISSIONER: Sorry, Michael Massine. They're on the witness list but they're at the – I think they're the last three. You'll have their reports before that, obviously in terms of letting you prepare for questioning of these witnesses, but they, as I'm thinking ahead, would probably be also be good resource personnel to have at a town-hall type meeting which might involve a couple of different, either individuals or panels discussing the issues that are raised in the reports. For example, the question of police investigating police, how that might be dealt with; and that, in turn, may give rise to issues related to the setting up of a civilian controlled serious incident response team.

So I want counsel to – and you don't have to decide right now, but take a look at March 9, which is a Thursday, I think. And we have on our schedule the hearing of witnesses ending on the 7th, Tuesday, the 7th, I believe.

I'm sorry, Ms. Chaytor, do you have a question?

MS. CHAYTOR: I think it's the 8th (inaudible) the 8th.

THE COMMISSIONER: I've written in the 7th, but if – is that what we have on the last witness list?

MR. SIMMONDS: Yes, Mr. Commissioner. On the 8th you had Mr. Massine and Mr. Coleman.

THE COMMISSIONER: All right. Okay. Thank you.

Well then, I'm not giving ourselves any flexibility here, but we're just going to have to work to our – make sure we stay with the schedules as much as we can. So that would see the moving from the end of the witnesses on phase one right into phase two on Wednesday – sorry, on Thursday. As you say, the hearing of testimony would end on the 8th, and then on the 9th, we'd get into some of these broader policy questions.

And again, in terms of how we give the general public the opportunity to participate, and how counsel would see this proceed, I'm open to suggestions and modifications of what I'm proposing there now, so it's not being laid down as dicta.

The other thing we have to keep in mind is this Friday we're going to – on Friday afternoon, consider carrying whether the proposal of Mr. Simmonds should be accepted in terms of the chair experiment I referred to. There'll be an opportunity for counsel to make their submissions on the point in that, while we had some submissions, we didn't canvas all of them very thoroughly. So there will be an opportunity for – I guess Mr. Simmonds you'd elaborate on your and Ms. Breen's, or one of you would, proposal for the experiment and other counsel will have the opportunity to respond. And I'm thinking that I will probably need the weekend and I should be able to make a decision on that by the following Monday. I think that's all I wanted to address now.

Mr. Kennedy, you have a question?

MR. KENNEDY: Yes, Commissioner. In terms of the schedule, I would ask you, though, to consider that under the rules of procedure and policy as outlined in the inquiry, there is a, I think it's a rule – I forget which rule, it might have been 21 or 17, which allows for parties with standing to make application to either have witnesses called whom Commission counsel have decided not to call.

THE COMMISSIONER: Oh, yes, sorry. Yeah, yeah.

MR. KENNEDY: So there is a –

THE COMMISSIONER: Are there any that we haven't called at the –

MR. KENNEDY: Well, I'm still waiting to – yeah, there are a number I have concerns about that I've outlined in letters to Commission counsel back in November. So I have to wait and see. For example, with the next two protective services unit officers, Sergeant Noel and Constable Benoit, whether or not I would argue that there should be anyone else called. For example, there is, there are a couple of other witnesses who, as the evidence comes out, I would also have to look at asking the Commission to call.

THE COMMISSIONER: And that's fair enough. Again, are you in a position to identify the issues at this point or –

MR. KENNEDY: Yes, Commissioner. One of the issues, obviously, in this inquiry has been from day one – and, actually, from the date of the incident – is why did sergeant, Acting Sergeant Smyth on that date, go to the, to Mr. Dunphy's house. Why did he go there on Easter

Sunday? So the issue of threat assessment and how work was done in the Protective Service Unit is obviously an issue that's to the front and center of this inquiry. I would suggest, Commissioner, we've heard a lot of evidence about that.

THE COMMISSIONER: So your – this is the issue of so-called proactive policing?

MR. KENNEDY: Yes, Commissioner.

THE COMMISSIONER: Yeah, and that is also, I think, going to tie in with, to some extent, the question of the extent of which freedom of expression might –

MR. KENNEDY: Correct.

MR. COMMISSIONER: – be dampened by particular approaches that might be taken, whether government is monitoring social media. It sounded – it's a pretty current topic.

I think I heard a story a couple of days ago on the radio that one of the African nations has banned the use of anything ending in .org or .com as a way of controlling the flow of information, just to show how far governments might propose moving if proper consideration is not given to the importance of freedom of expression.

But as I've said some time ago, I don't want to have this inquiry become an inquiry on social media. I've been deliberately trying to, as far as possible, manage how we approach that just in terms of where the main focus is. I believe the circumstances surrounding Mr. Dunphy's death and when you get into the more hypothetical discussions of freedom of expression and so forth, it's a big field. It could take a long time –

MR. KENNEDY: That's not what I'm –

MR. COMMISSIONER: No, I know that.

MR. KENNEDY: No, what I'm talking about is particularly –

MR. COMMISSIONER: Yeah. Sure.

MR. KENNEDY: – what Acting Sergeant Smyth did on that date. There are other witnesses who – we've seen four or five witnesses come in to talk about their contact with Sergeant Smyth on the date of the incident; yet, I wrote letters, outlined there were other individuals out there with potentially relevant evidence. Commission counsel have determined not to call them. We have to wait to see whether or not there are any other RNC or RCMP officers who can deal with this issue of proactive policing, Intelligence-led policing.

THE COMMISSIONER: Okay. I'm going to get the Commission counsel in a moment – just give me a second to respond to that Mr. Kennedy in terms of – and frankly, I wasn't aware that there was any – I'm sure I was told if there were certain witnesses that were not going to be called. But I wasn't aware that there was any question by counsel or concern by counsel.

MR. KENNEDY: From day one I've indicated that Corporal Lindsay Anstey should be a witness at this hearing.

THE COMMISSIONER: Corporal Lindsay –?

MR. KENNEDY: Lindsay Anstey should be a witness at this hearing.

THE COMMISSIONER: Because, who is this –?

MR. KENNEDY: He was a member of the protective services unit there with Sergeant Smyth on the date in question. He had evidence to offer in his –

THE COMMISSIONER: You say there. Where, there?

MR. KENNEDY: In the protective services unit at the –

THE COMMISSIONER: Yeah, but he wasn't in the vehicle or anything with Constable Smyth –

MR. KENNEDY: No, no. He worked at the protective services unit –

THE COMMISSIONER: Right.

MR. KENNEDY: – did the same kind of work as did Constable Smyth.

THE COMMISSIONER: And the purpose of calling him would be to what, to establish –

MR. KENNEDY: How they do their work –

THE COMMISSIONER: – to establish that there was proactive policing as a matter of course, it was routine to –

MR. KENNEDY: Well, my understanding is he also did –

THE COMMISSIONER: – to make home visits and this sort of thing?

MR. KENNEDY: Yeah. My understanding is he did a home visit or home visits that he can talk about how Constable Smyth did his work.

THE COMMISSIONER: Okay. Well, subject to the need for getting out as much information about this to the public as possible, it doesn't seem to be much there in terms of controversy, as far as I can see, in terms of – and this may be a matter of potential duplication. But you finish anyhow and I'll hear from (inaudible).

MR. KENNEDY: Yes. The second witness who I have outlined from day one I thought had relevant evidence to offer and asked to have him interviewed was Steve Kent, the deputy premier of Newfoundland and Labrador at the time. Mr. Kent had unbeknownst to Sergeant Smyth or Constable Smyth, unbeknownst to him, was having dealings with Mr. Dunphy around the same time frame. So it goes to Mr. Dunphy's state of mind how he felt towards government. We've seen the Workers' Compensation file and I would suggest to the Commission, or I may suggest to the Commission as we move through this, that Mr. Kent would have relevant evidence to offer to this inquiry as to his dealings with Mr. Dunphy.

THE COMMISSIONER: Well, okay. If there's anything there other than Mr. Kent's opinion that this was harassing information that was being sent to him by email, if it's a matter of establishing what the emails were, that's fine, that's one thing; but if it's a matter of getting into the interpretation as to whether or not that was harassment, that's something to think that can –

MR. KENNEDY: No, I don't think it's – I don't think –

THE COMMISSIONER: Because I think that was Mr. Kent's reference to the emails, as they're being of a harassing nature. And frankly, I think that's a decision that I'd end up making.

MR. KENNEDY: That's fine. I'm not, I'm not –

THE COMMISSIONER: Anyhow, I'm not trying to discourage or throw cold water on it. I'll hear from Commission counsel, as I say when you finish your point. But this is the first I've heard of it, the same sort of significant concern about particular witnesses not being called.

We have concentrated, to some extent, on avoiding duplication, particularly where the matter discussed is of a non-controversial nature. It is not being disputed. And I haven't heard from witnesses who are saying that, that wasn't a proper way of doing things, so –

MR. KENNEDY: No, in terms of the public, Commissioner, one of the – as you've often indicated –

THE COMMISSIONER: Yeah, the educational functions are (inaudible).

MR. KENNEDY: – the educational aspect to the public, there are still questions out there. There was still a commentator in *The Telegram*, for what it's worth, last week who said that Acting Sergeant Smyth had absolutely no reason to go to Mr. Dunphy's on the date in question.

THE COMMISSIONER: Yeah, that same writer was making certain comments regarding whether or not the police are justified in going and knocking on someone's door, which I'm not sure it accurately stated what the law says in that regard and I just haven't had time to go back and look at it.

MR. KENNEDY: But the invitation to knock is clearly –

THE COMMISSIONER: Sorry?

MR. KENNEDY: There is an invitation to knock in terms of recognized case files from evidence back in 2007 forward, whereby the police come to a door, they have a reason to go, if they're invited in –

THE COMMISSIONER: That's what (inaudible).

MR. KENNEDY: – then they're allowed to enter the premises.

THE COMMISSIONER: That's the point I was making –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – but I haven't followed whether there's been an updating of that approach, but anyhow that's the sort of thing that it would be discussed usefully in phase two as well.

MR. KENNEDY: But if it's non-controversial, Mr. Commissioner, and this is the problem I'm having, is that there still seems to be issues raised. A lot of the cross-examination of Mr. Simmonds and Mr. – for the community coalition – they questioned as to why Constable Smyth went to Mr. Dunphy's house on the date in question. It does not appear to be accepted that he did what is part of his job, and if that's the case, if that is accepted, then certainly then we don't need Constable – Corporal Lindsay, no. But otherwise, I can't take the chance, Commissioner, if there's relevant –

THE COMMISSIONER: That's fine, that's fine –

MR. KENNEDY: – evidence out there, of not putting it before the Commission.

THE COMMISSIONER: Okay, let me hear from Commission counsel now to see if we have an issue here or not.

MS. CHAYTOR: Thank you, Commissioner.

THE COMMISSIONER: A lot of red herrings get floating around sometimes, but go ahead.

MS. CHAYTOR: Well, I certainly wouldn't want it left out there that we somehow hadn't spoken to Mr. Kennedy or tried to address his concerns. And we did receive correspondence and I have had numerous communications and telephone calls in particular with Mr. Kennedy around both – particularly Lindsay Anstey. So what you – who you will hear from, and this is coming up tomorrow, is Doug Noel and we also have Ed Benoit.

There were actually three other members of the PSU at various points in time. Lindsay Anstey was one of them, and it's not correct that he was there at the time with Constable Smyth. He was not a member of the PSU at the time of the incident. So we looked at all five people, Doug Noel, Ed Benoit, Lindsay Anstey, Tammy Madden and Shannon McEntegart I think? I may not be pronouncing her name correctly.

But we looked at all five of those people and, again, we thought who could best cover the evidence that you would need to hear. And we are certainly open to calling additional witnesses if we thought it was necessary. Doug Noel was the RCMP counterpart who was there at the time. Ed Benoit was longer, together in his time with the unit, than Lindsay Anstey, and Ed Benoit also had the benefit of having been with the unit back from 2012 to 2014 and then he was reassigned back to the unit in Constable Smyth's place, in essence, immediately after.

So he could also speak to the operations of the unit after Constable Smyth's time there and how things carried on after that. So that's why we chose both of those witnesses. Lindsay Anstey, there are three others, Tammy Madden and Shannon McEntegart. So they're – it's not a matter of like just, then, looking at Lindsay Anstey and what he might be able to bring as opposed to the other two women who are in the unit.

So we were very, we were trying to be fair and making sure that you had the complete picture, and I think Mr. Kennedy needs to wait and hear from Doug Noel and Ed Benoit tomorrow, and then if there's something in addition that he thinks they have not addressed, that Lindsay Anstey could bring to the table or perhaps one of the others could bring to the table, we certainly are open to doing that. We are very conscious of the time that this inquiry is taking, and not having duplication of evidence.

So we were very open-minded to that and I certainly had several conversations with Mr. Kennedy about the witnesses that he was proposing and, and I thought we had justified our decision as to who were putting forward and I, and it certainly is open, however, to him under the rules once he hears from those two individuals whether or not he still thinks there's still a nagging issue that needs to be addressed.

THE COMMISSIONER: Right.

MS. CHAYTOR: With respect to Steve Kent, he was interviewed by the RCMP. We looked at that interview from the RCMP, and again, I did have communication with Mr. Kennedy

regarding Steve Kent and told him our decision was not to call Steve Kent. We did not see how he had relevant evidence to call.

Yes, he refers, retroactively, to Mr. Dunphy's behaviour as being harassing. He tells that after the fact to Constable Smyth that Mr. Dunphy, apparently, had been harassing him for months. That's not something he saw fit to bring to Constable Smyth's attention prior to the incident, so it wasn't of the degree – even though he had alerted and used the PSU on other occasions, he knew of their existence, he had used them before –

THE COMMISSIONER: Okay, so this is your line of reasoning in not calling him but –

MS. CHAYTOR: Right.

He had never brought it to the attention –

THE COMMISSIONER: Okay.

It's getting, it's starting to border on possible submissions, arguments like that.

MS. CHAYTOR: Right. Okay.

The other – sorry.

THE COMMISSIONER: I think we can cut this short and say that if Mr. Kennedy has a concern that a particular witness is not called, we'll look very closely at it and my inclination will be to go for calling the witness rather than not. But, Mr. Kennedy, as Ms. Chaytor said, we're very conscious of the limited time frame that we're operating in, not that it can't be extended if it's necessary, but we're not going to unduly extend the inquiry if it's just a matter of rolling up the number of witnesses who are saying a particular thing.

If I'm satisfied that the point is out there and there's proper, adequate evidence regarding the practice then the calling of the second, or third or fourth witness is not going to persuade me anymore than the first witness who makes the same point.

So –

MS. CHAYTOR: And if I just may, Commissioner -

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: – though, with Steve Kent as well, I mean we have to be fair to all parties and the idea of classifying Mr. Dunphy's behaviour as harassing, I mean we need to be fair here to Mr. Dunphy as well, and, you know, obviously –

THE COMMISSIONER: Yeah, but as I said, Mr. Kent's opinion is not going to carry the day there. I'm going to decide that.

MS. CHAYTOR: So I'm not sure what else he could bring, I guess, is my point of relevance other than to say – and that comment by him is already gone in, you know, the comment that he made retroactively to Constable Smyth about Mr. Dunphy harassing him. That's already there. I don't know the point otherwise of bringing in Steve Kent here.

THE COMMISSIONER: All right.

MR. KENNEDY: Mr. Commissioner –

THE COMMISSIONER: Mr. Kennedy, keep in mind that there is another inquiry with regarding how Mr. Dunphy was treated by Workers' Compensation and it's not that we're not going to mention that or touch it, but we're not going to go very deeply into that.

Go ahead.

MR. KENNEDY: Yeah, my point though, Mr. Commissioner, is simple. It's not a matter of how Steve Kent classifies or describes what it is that Mr. Dunphy has done. What we are looking at, we've heard evidence and you've heard evidence as to Mr. Dunphy's temperament, you'll hear evidence again today as to how generally he was seen in the community as non-violent, how he acted towards others that he did have a grievance with, with government, or Worker' Compensation and with government. And what I'm suggesting is that Mr. Kent may have relevant evidence to offer in terms of Mr. Dunphy's state of mind as we lead towards (inaudible).

THE COMMISSIONER: And if he does and if it hasn't already gone in, then he'll be called.

MR. KENNEDY: Thank you, Commissioner.

MR. COMMISSIONER: Yes, Mr. Avis.

MR. AVIS: If I may be of assistance, Commissioner.

I am conscious of my friend's concerns. I'm working diligently with Inspector Joe Gullage who is the, basically he's been the head of the Intelligence Unit of which the protective services unit is a subset. And we're working on the same issues. And I believe he testifies on the 16th. I'll –

THE COMMISSIONER: Well, why don't you supply what you have to Mr. Kennedy –

MR. AVIS: Yes, I'm going to be –

THE COMMISSIONER: – as soon as possible.

MR. AVIS: Absolutely.

THE COMMISSIONER: And that may alleviate his concerns.

MR. AVIS: Yes. And I believe I'm trying to address the same thing with the schedule. We haven't really had time to meet and discuss, so we are trying to attempt that through account witness and I will be talking to Mr. Kennedy over it.

Thank you.

THE COMMISSIONER: Okay. Thank you.

Okay. Thank you.

Now, I should make one reservation with respect to that March 10 date. I haven't had a chance to check that with Mr. Hiscock yet, who'll be participating on behalf of the ad hoc coalition and the phase two thing that he was giving; they were giving limit of standing – Mr. Kennedy, you're looking quizzical.

MR. KENNEDY: Yeah, I'm looking quizzical. Sorry, Commissioner, I don't remember your letter, I remember the discussions but I'm trying to remember your, the (inaudible).

THE COMMISSIONER: Well, (inaudible) they would be able to participate in certain issues. I think I specify the issues at the phase two level and we haven't had a chance to, it's been so busy, to really sit down with – although there's been some contact made – to sit down with Mr. Hiscock and get his input and we didn't have a chance to give him notice that we'd be discussing this this morning. So all I'm saying is that we'll, counsel will be approaching Mr. Hiscock with a view to checking and making sure that they're able to participate on that date as well. That's all. So we'll get back to you on that.

Okay, we have Dr. McGarry waiting. I don't want to keep him waiting any longer. Ms. O'Brien, are you ready to go?

MS. O'BRIEN: Yes, Commissioner, I am. I'll ask Dr. McGarry to please come to the stand.

While Dr. McGarry is doing that, Commissioner, all of the exhibits we'll be reviewing with Dr. McGarry today are confidential exhibits. I'm going to ask that you order exhibit C 017 through to C 019 inclusive into the record.

THE COMMISSIONER: Okay, so ordered.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Good morning Dr. McGarry.

DR. McGARRY: Good morning.

MS. O'BRIEN: Dr. McGarry, Madam Clerk is going to get you to affirm your evidence.

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

DR. McGARRY: I do.

MS. SHEEHAN: Please state your full name.

DR. McGARRY: Thomas George McGarry.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Good morning, Dr. McGarry. I'm Kate O'Brien, one of the Commission co-counsel.

Just to quickly review who you are and what you do. I understand that you are a general practitioner, that you practise in the community of Trepassey, Newfoundland and Labrador, and you have practised in that community as a general practitioner since 1976; is that right?

DR. McGARRY: '78, yep.

MR. O'BRIEN: '78.

DR. McGARRY: Yep.

MS. O'BRIEN: My apologies.

THE COMMISSIONER: Okay, now, just for the benefit of counsel, I've suggested to Ms. O'Brien, and I will be to all counsel, that we're going to lead in areas, Ms. O'Brien or Ms. Chaytor will be leading witnesses where matters appear not to be controversial. So if any of you have concerns at any point not just with Dr. McGarry's questioning but any witness, just stand up and object. But again, in the interest of moving the inquiry along, I think that helps us speed up the process.

Sorry, go ahead.

MS. O'BRIEN: Thank you.

Dr. McGarry, you practise as a doctor full-time?

DR. MCGARRY: Yes.

MS. O'BRIEN: Okay.

And you're licensed and in good standing with the College of Physicians and Surgeons of Newfoundland and Labrador; is that right?

DR. MCGARRY: It is, yep.

MS. O'BRIEN: Thank you.

Commissioner, based on that, I'd seek to qualify Dr. McGarry as an expert in the area of family practice medicine or general practice medicine, I apologize.

THE COMMISSIONER: Okay, now, I don't know what counsel is proposing here in terms of ultimately we get into issues regarding – I'm just thinking out loud now, issues regarding the flexibility or disability of Mr. Donald Dunphy. There may be issues regarding the extent – and nothing personal here Doctor, just a legal perspective, the extent of which Dr. McGarry might be qualified to get into certain issues.

I thought we'd leave those difficult questions until an objection is raised if, in fact, an objection is raised and deal with it at that point, whether that particular evidence should be admitted or whether it should be a question of the weight to be given to it, we can discuss that at the appropriate time.

Go ahead.

MS. O'BRIEN: Thank you –

THE COMMISSIONER: So I qualify Dr. McGarry as an expert and qualified to give opinion evidence regarding the matters that come within the purview of a general medical practitioner in Newfoundland and Labrador. The process is, Doctor, I have to –

DR. MCGARRY: Sure.

THE COMMISSIONER: – normally get into, we go through all your –

DR. MCGARRY: Sure.

THE COMMISSIONER: – schooling and so forth –

DR. McGARRY: Sure.

THE COMMISSIONER: – getting to your qualifications. But if counsel at any point wants to go into the extent of particular qualifications of Dr. McGarry, then we'll get to that, but for now we'll assume there's no objection. Okay, seeing none, we'll proceed.

MS. O'BRIEN: Thank you, Commissioner.

Dr. McGarry, when did Donald Dunphy become a patient of yours?

DR. McGARRY: Well, I saw him first November 26, 2009.

MS. O'BRIEN: Okay, thank you.

And Dr. McGarry, I understand what you have in front of you is a copy of your medical chart for Donald Dunphy –

DR. McGARRY: It is..

MS. O'BRIEN: – is that right? And, Commissioner, that's one of the confidential exhibits that's been entered.

THE COMMISSIONER: Uh-huh.

MS. O'BRIEN: Now, do you know prior to that in November 26, 2009, do you know who, what doctor, who Donald Dunphy's regular family doctor was prior to that?

DR. McGARRY: I believe it was Dr. Paul Walsh.

MS. O'BRIEN: Okay. Do you have any information as to why Mr. Dunphy made the switch from Dr. Walsh to you?

DR. McGARRY: You got to remember that we are not working in a city. I'm a two-hour trip to St. John's and it might be a little bit loose to say he was my patient. You know, I'd have no trouble with him seeing Dr. Paul Walsh whatsoever, except for perhaps a prescription of narcotics. What happened here is I believe one of the paramedics asked Mr. Dunphy to see me. But that doesn't mean that I wanted him cut off from Dr. Paul Walsh or I was just gonna take him there, take him as a private patient at that time.

MS. O'BRIEN: Okay. And the paramedic, you, that was Meghan Dunphy you were referring to; is that right?

DR. McGARRY: Well, actually I think – I'm not sure if it really was Meghan but one of the EMRs, that's a little bit lower than a paramedic, told me yesterday that she had mentioned Don to come over and see me –

MS. O'BRIEN: Okay.

DR. McGARRY: – and that was a Mrs. Donna Pike.

MS. O'BRIEN: Okay.

DR. McGARRY: Now this, you know how can I remember seven years who sent him over to me? I can't.

MS. O'BRIEN: Fair enough. So just to be clear there that Meghan Dunphy we know also – I don't know if she was qualified as a paramedic. In fact, I don't think she was, but –

DR. McGARRY: I think she was an EMR.

MS. O'BRIEN: – she worked as an emergency, an EMR.

DR. McGARRY: Yeah.

MS. O'BRIEN: An Emergency Medical Responder and you had some knowledge of her on that professional level –

DR. McGARRY: I did.

MS. O'BRIEN: – prior to –

DR. McGARRY: I did.

MS. O'BRIEN: – Mr. Dunphy becoming your patient?

DR. McGARRY: I did.

MS. O'BRIEN: Okay. That's fine. And when Mr. Dunphy became your patient, did you get his full medical chart from Dr. Walsh or did you just start a new, a fresh chart with you?

DR. McGARRY: I just started, yeah – when I saw him, I was seeing him with relation to some problems in his neck and arms.

MS. O'BRIEN: Okay. So you started a new chart

DR. McGARRY: (inaudible) and back.

MS. O'BRIEN: Okay. I'm just gonna go over a briefly a bit of a general overview of the issues that you saw Mr. Dunphy for. Having reviewed your chart and having spoken to you prior to you giving your testimony here today, I have a list that I think I can give you and you can just confirm –

DR. McGARRY: Sure.

MS. O'BRIEN: – whether this is, generally the things you saw him for. Coronary heart disease?

DR. McGARRY: That's what I diagnosed November 26, 2009, correct.

MS. O'BRIEN: Okay. Chronic pain syndrome?

DR. McGARRY: Yes.

MS. O'BRIEN: Diverticular disease?

DR. McGARRY: Yes.

MS. O'BRIEN: Wolff-Parkinson-White, which I understand is a heart condition?

DR. McGARRY: Yes.

MS. O'BRIEN: And I understand two workplace injuries, or one a major pelvis injury that he had first sustained in 1984, and then a second workplace injury that dealt with, had more to do with his back in 2004.

DR. McGARRY: Yes.

MS. O'BRIEN: Okay. That Mr. Dunphy had had bypass surgery in 2004, but while most of us might think bypass surgery, you know, has to do with the heart –

DR. McGARRY: Sure.

MS. O'BRIEN: This was bypass surgery of the blood flow through his pelvis; is that right?

DR. McGARRY: Yes. And legs, yep.

MS. O'BRIEN: So that was related to the crushing injury he had –

DR. McGARRY: It was yep, bypass and – yeah.

MS. O'BRIEN: In the workplace injury in 1984. Also for chronic prostatitis?

DR. McGARRY: Yes.

MS. O'BRIEN: And irritable bowel syndrome.

DR. McGARRY: Yes.

MS. O'BRIEN: Okay.

Now, I also have a list of some medications that I know he was on during the time he was in your care; I'll just review a list of those quickly.

DR. McGARRY: Sure.

MS. O'BRIEN: And, I'm not sure, there may have been other more minor ones from time to time, but the major medications I have listed are: Percocet?

DR. McGARRY: Uh-huh.

MS. O'BRIEN: Domperidone?

DR. McGARRY: Yep.

MS. O'BRIEN: Aspirin?

DR. McGARRY: Yep.

MS. O'BRIEN: Plavix?

DR. McGARRY: Yep.

MS. O'BRIEN: Tecta.

DR. McGARRY: Yep.

MS. O'BRIEN: Crestor.

DR. McGARRY: Yes.

MS. O'BRIEN: Effexor.

DR. McGARRY: Yes.

MS. O'BRIEN: And I understand we're going to talk a little bit more about the Effexor later on?

DR. McGARRY: Sure, sure.

MS. O'BRIEN: And Coversyl.

DR. McGARRY: Yes.

MS. O'BRIEN: Okay. And I understand that Mr. Dunphy was a non-smoker; he'd given up cigarette smoking quite some time ago but you knew that he smoked medical marijuana.

DR. McGARRY: Yep.

MS. O'BRIEN: All right, and he was not a consumer of alcohol.

DR. McGARRY: No.

MS. O'BRIEN: Okay.

Again, having reviewed your chart Dr. McGarry I understand that you saw Mr. Dunphy on a fairly regular basis. You would have seen him several times each year; is that right?

DR. McGARRY: Yes.

MS. O'BRIEN: Did you ever see him outside of your clinic?

DR. McGARRY: No.

MS. O'BRIEN: Okay, so you didn't make house calls?

DR. McGARRY: No.

MS. O'BRIEN: And your relationship with him then was purely professional, doctor-patient relationship.

DR. McGARRY: Purely professional, yep.

MS. O'BRIEN: Okay.

So I know based on that you would have seen him a limited amount and in that professional capacity, but how would you describe his character, what did you know of him from his visits to your office?

DR. McGARRY: Very polite, well-groomed, pleasant, co-operative. What can I say – he wasn't very talkative, very – I thought he was a perfect gentleman.

MS. O'BRIEN: Okay. Were you ever aware of Mr. Dunphy being involved in any acts of violence?

DR. McGARRY: Never.

MS. O'BRIEN: Okay.

DR. McGARRY: He never raised his voice, very pleasant.

MS. O'BRIEN: Okay. So you never saw any signs of anger issues or –

DR. McGARRY: None whatsoever.

MS. O'BRIEN: Okay. We know here that Mr. Dunphy had a fairly active social media presence on Twitter. Did you ever follow his Twitter account?

DR. McGARRY: No, I didn't.

MS. O'BRIEN: Okay. And did you ever hear him on the open line shows?

DR. McGARRY: Did not.

MS. O'BRIEN: Okay. I'd like to get some sense of Mr. Dunphy's physical limitations or disability at –

DR. McGARRY: Sure.

MS. O'BRIEN: – you know prior to his death, in that period of time. Did he have any mobility limitations?

DR. McGARRY: He did.

MS. O'BRIEN: Okay. And can you just briefly describe those?

DR. McGARRY: He walked with a limp. Often he used a cane to help him get around. He had paravertebral spasm; forward flexion was limited. I don't think he could flex much past his knees. Bending over, getting his hands to his knees would –

THE COMMISSIONER: Sorry, I'm having difficulty hearing you.

DR. McGARRY: Oh, sure, sure.

THE COMMISSIONER: Can you speak into the mic a bit, and if you could speak up. Could you repeat that about the flex over the –

DR. McGARRY: Yeah. He had paravertebral spasm in his back, so bending over was difficult. He could probably just get his hands down to roughly knee level.

MS. O'BRIEN: And is that something you would have tested for Mr. Dunphy?

DR. McGARRY: I would have tested that, the first time I saw him probably, yep. The first time I saw him related to his compensation, I would have tested that.

MS. O'BRIEN: Okay.

I'm just going to ask – Commissioner, I'm going to bring Dr. McGarry to a page in his chart. This is a confidential exhibit, so I'll ask that the monitors, the television screens be turned off. However, because of the nature of of – we're not looking at photographs here.

THE COMMISSIONER: Right.

MS. O'BRIEN: It's just, you know, a medical chart. So I think the counsel computers might be fine. Maybe just turn off the ones that don't have anyone in front of them. And I don't think that will be so much of an issue.

Madam Clerk, could you please bring up C-0019 and go to page 153 of that exhibit.

THE COMMISSIONER: 153 or 163? What did you say, 153?

MS. O'BRIEN: Page 153 of exhibit C-0019.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: So Dr. McGarry, that's going to appear on the monitor in front of you.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: Thank you. Could you make it just a little bit bigger, Madam Clerk? Thank you.

So, I understand that this is a form that you would have completed for WorkplaceNL or then WHSCC, Workers' Compensation. It was a physician's report that you were required to complete from time to time for Mr. Dunphy to continue to get his Workers' Compensation benefits.

DR. McGARRY: That's correct.

MS. O'BRIEN: And the form that we are looking at here would be the last one that you completed for Mr. Dunphy –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – and you completed that, sorry, on – the date is here at the bottom right-hand corner, but I understand it was January –

DR. McGARRY: January 15, 2015.

MS. O'BRIEN: January 15, 2015. Thank you.

Okay. So I'm just going to ask you a couple of questions here. So when we go towards the top of this you give some sort of tombstone data here for Mr. Dunphy, as well as for yourself.

DR. McGARRY: Sure.

MS. O'BRIEN: Here in section B, they ask for specific information for parts of the body injured. The mechanism of injury/incident, you have a note here. Could you please read that out to the Commissioner?

DR. McGARRY: Well, this wouldn't be the mechanism of injury. That would be for the first time that it would present to the physician to describe what happened to him. This is just a note, and actually I was concerned about him having the ability to heat his home. He couldn't go get wood, he couldn't cut wood, he couldn't bring wood into his home. I must say, I misspelled the word wood there. But I wanted the compensation board to help him obtain wood, and that's what that says there.

MS. O'BRIEN: Okay.

DR. McGARRY: And then I also wanted them to help him get wood into his home.

MS. O'BRIEN: Okay.

DR. McGARRY: He couldn't carry wood into his house.

MS. O'BRIEN: Okay. So you had on previous forms given the details of the mechanism of injury which were the workplace injuries.

DR. McGARRY: I would not have. The mechanism of injury would be irrelevant to me treating him.

MS. O'BRIEN: Okay. So here it says: terrible time to get wood to heat home. And then down here you have additional comments.

DR. McGARRY: That was his diagnosis, yes. So, on this form I had two diagnoses, one was mechanical back pain –

MS. O'BRIEN: Okay.

DR. McGARRY: – and the second one, 93 refers to chronic pain syndrome. And then –

MS. O'BRIEN: Okay. So that's chronic pain syndrome.

DR. McGARRY: Yeah.

MS. O'BRIEN: And so where would I get the indication of mechanical back pain?

DR. McGARRY: Just a little bit left of your pointer there. It says right there chronic pain syndrome.

MS. O'BRIEN: Okay, that's chronic pain syndrome.

DR. McGARRY: Yeah. If I said chronic back, I didn't mean to say that. I meant chronic pain syndrome; 25 refers to mechanical back pain.

MS. O'BRIEN: Okay.

DR. McGARRY: Ninety-three, it's just the compensation boards method of drawing their attention to the diagnosis; 93 is their code for diagnosis.

MS. O'BRIEN: Okay. And that would be your diagnosis at this time was chronic pain syndrome.

DR. McGARRY: That was one of them, chronic pain syndrome, one of them, besides the mechanical back pain, yes.

MS. O'BRIEN: And this is an NB, for please note.

DR. McGARRY: Yeah.

MS. O'BRIEN: Okay.

THE COMMISSIONER: What's that word there?

MS. O'BRIEN: Should get –

THE COMMISSIONER: Oh, should. Okay.

DR. MCGARRY: Firewood and it should be in help. That was supposed to say: to bring firewood into the home.

MS. O'BRIEN: Okay. Should get or help firewood into the home.

DR. McGARRY: Yeah. It's probably –

MS. O'BRIEN: So this is your note to Workers' Compensation suggesting that.

DR. McGARRY: Yeah. I was probably carrying on a conversation with him while I was writing the note.

MS. O'BRIEN: Okay.

DR. McGARRY: And then subjective report two refers to his difficulty sitting; three refers to his difficulty standing.

MS. O'BRIEN: Sorry, just to be clear. Where are you reading from here? Subjective –

DR. McGARRY: Subjective report, part of the body 21 –

THE COMMISSIONER: That's the back of the other side of the same document is it, or –

DR. McGARRY: Yes, on the monitor it says part of the body there.

THE COMMISSIONER: Okay. Right.

DR. McGARRY: And when you code –

MS. O'BRIEN: Okay, part of the body, code 21. Is that what you're referring to here? Subjective reports, I see this, okay. Thank you.

DR. McGARRY: Yeah. Well, that said lower leg, but anyways, did it say 21? It should have been 22. Anyways, two refers to his difficulty sitting; three, difficulty standing; and four, was his difficulty walking. And then there were no changes in his physical examination, from other days.

MS. O'BRIEN: Okay, are you – are these rated out of how many numbers?

DR. McGARRY: This is a code the compensation board has to describe a symptom and –

MS. O'BRIEN: Okay. So your codes here are telling, telling Workers' Compensation that he has difficulty sitting.

DR. McGARRY: Sitting, yeah.

MS. O'BRIEN: He had difficulty standing.

DR. McGARRY: And he had difficulty walking.

MS. O'BRIEN: And difficulty walking.

DR. McGARRY: Yeah.

MS. O'BRIEN: Okay. So that's the subjective reports, meaning that's what he's reporting to you.

DR. McGARRY: Correct.

MS. O'BRIEN: That he has those difficulties.

DR. MCGARRY: Correct.

MS. O'BRIEN: That's a self-report by Mr. Dunphy. Okay.

DR. McGARRY: And then the E refers to no significant change in his symptoms.

MS. O'BRIEN: Since his last report.

DR. McGARRY: Yeah.

MS. O'BRIEN: Okay, and then objective findings?

DR. McGARRY: There was no significant change. So he would have had the paravertebral spasm that he had for the years that I'd been seeing him.

MS. O'BRIEN: Okay. And over here it says diagnoses. We have 93, which you explained, and the 25?

DR. McGARRY: Mechanical back pain.

MS. O'BRIEN: That's mechanical back pain that you're referring to here.

DR. McGARRY: Yeah.

MS. O'BRIEN: Okay.

So then further down here you note his medication. He was on Percocet. And I take it that would be for pain?

DR. McGARRY: Yep.

MS. O'BRIEN: And down here on the section for D: Return to Work Status. Again, this is a Workers' Compensation form. So under lifting restrictions, specify. You have ticked: No lifting.

DR. McGARRY: Yep.

MS. O'BRIEN: Bending, you have ticked: No bending/twisting.

DR. McGARRY: Yep.

MS. O'BRIEN: So can you just, sorry – can you just explain that for us, please?

DR. McGARRY: I approved prohibiting from bending and twisting; he wasn't able to do it.

MS. O'BRIEN: Okay.

And now would you have done a functionality test with Mr. Dunphy at this time when you filled out the form?

DR. McGARRY: No. Well – no, I can't exactly remember that part of his – I can't remember that visit.

MS. O'BRIEN: Okay.

THE COMMISSIONER: If you had, if you'd done one there'd be a form presumably, would there? Or you'd have a notation somewhere? If you'd done a functionality test you'd have a record of it?

DR. McGARRY: Yeah, I would have – well, it was known to me that he did, that he had paravertebral spasm. And then 10 is their code for examination, and I had listed that there was no change in him.

THE COMMISSIONER: Okay.

MS. O'BRIEN: So, now, I know you said that you felt that he – that it would have been difficult for him to, I think you said bend beyond his knee.

DR. McGARRY: Yep.

MS. O'BRIEN: Would you – for in terms of twisting of lifting – did you perform any test at any time –

DR. McGARRY: No.

MS. O'BRIEN: – that you could say where –

DR. McGARRY: No.

MS. O'BRIEN: – how far he was able to twist –

DR. McGARRY: No.

MS. O'BRIEN: – or how far –

DR. McGARRY: No.

MS. O'BRIEN: – or how much he was able to lift?

DR. McGARRY: No.

MS. O'BRIEN: So you can't give us any –

DR. McGARRY: No.

MS. O'BRIEN: – any guidance on those?

And in terms of your statement that he was unable to bend beyond his knee –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – when was be the last time that you actually tested Mr. Dunphy for that, to get help (inaudible)

DR. McGARRY: Well, I may have tested that every time I saw him – I mean, I don't know – but I probably did.

MS. O'BRIEN: Oh, so you're not certain when you last looked at that aspect?

DR. McGARRY: I'm pretty obsessive compulsive; I probably did it most times I saw him.

MS. O'BRIEN: Okay. But we don't have a note, necessarily, to that, that's just –

DR. McGARRY: Not necessarily, no.

MS. O'BRIEN: Okay.

Okay, did you ever diagnose Mr. Dunphy with any mental illness, for example, depression, anxiety, panic disorder?

DR. McGARRY: He didn't have any mental issue.

MS. O'BRIEN: Okay. So you never diagnosed it; do you know whether anybody else have ever made such a diagnoses?

DR. McGARRY: I don't know.

MS. O'BRIEN: Okay. Now, one of the drugs that I mentioned earlier was – I think –was Effexor, but I understand –

DR. McGARRY: Yep.

MS. O'BRIEN: – the other name for that drug is Venlafaxine.

DR. McGARRY: Yes.

MS. O'BRIEN: And I know just from having reviewed Mr. Dunphy's chart that he was taking that drug for a period of time, starting in, I think, early 2013 and continuing up, although he had discontinued it before his death.

DR. McGARRY: Yes.

MS. O'BRIEN: So many people may know that drug already –

DR. McGARRY: Yes.

MS. O'BRIEN: – as one that is regularly prescribed for people who have depressive disorders, or chronic anxiety.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: Is that why you prescribed it–

DR. McGARRY: No.

MS. O'BRIEN: – for Mr. Dunphy? Okay. Can you just explain to the Commissioner why you prescribed Effexor to Mr. Dunphy?

DR. McGARRY: Sure. He had chronic pain syndrome. And this is a difficult condition – I'm not interested in biochemistry or any of this new transmitter stuff, but I think of it as like a short circuit in the spinal column. The drugs that work for pain, for acute pain don't work that well for chronic pain. The best you're going to get is maybe a 40 per cent reduction in your pain.

For some reason, this type of drug, including – I think Cymbalta was the first one approved and Effexor was the second one approved helped with chronic pain, and that's why he was on it.

MS. O'BRIEN: Okay.

DR. McGARRY: But he didn't have depression or any mental illness.

MS. O'BRIEN: Okay. So just to summarize that, Dr. McGarry, that this drug can be prescribed for people with chronic pain syndrome; it's another reason the drug is used –

DR. McGARRY: Yes.

MS. O'BRIEN: – that was why you had prescribed it –

DR. McGARRY: Correct.

MS. O'BRIEN: – to Mr. Dunphy.

DR. McGARRY: Correct.

MS. O'BRIEN: And I understand that he – himself – is concerned that he was getting some possible side effects for that drug, just a bit of swelling.

DR. McGARRY: Correct. He thought he had (inaudible) swelling from the drug.

MS. O'BRIEN: Okay. So he had discontinued that, taking that drug sometime himself in 2014.

DR. McGARRY: He did. That's right. He thought he was better off it.

MS. O'BRIEN: Okay.

I'm going to – having reviewed Mr. Dunphy's chart, there are a few notes in there related to anxiety so I'm going to take you through that.

DR. McGARRY: Sure.

MS. O'BRIEN: The first exhibit I'm going to ask Madam Clerk to please bring up is C 017, and Dr. McGarry this is a report that I did not receive from your file; it was in Mr. Dunphy's Eastern Health file.

DR. McGARRY: Yes.

MS. O'BRIEN: Commissioner, that's also been entered as a confidential exhibit, the full Eastern Health file, but this is just one page from it. And this is a report of an operation that he had for a rectal bleed in 2009, early 2009.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: And I'm just going to note – there's a couple of notes here – so this was a clinical note and the surgeon here was Dr. Chandra and the note was sent back to his – the referring doctor at that time was when Mr. Dunphy was still with Dr. Walsh, so that's why it wouldn't be in your chart.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: But I just note here: this 53-year-old-man suffers from functional bowel disease, chronic prostatitis, non-ulcer dyspepsia and chronic anxiety.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: And later on in the report it does say examination revealed an anxious man – there's a little note there – and then a little further on procedure and it goes into a flexible sigmoidoscopy was performed after administering certain drugs, and in spite of that he was extremely anxious.

DR. McGARRY: Sure.

MS. O'BRIEN: All right.

So I'm just going to get you to address that. Had you ever known – the first note I read out there suggests that he suffers from chronic anxiety. Have you seen anything to, in your treatment of him, that would lead you to that? Were you aware that someone had written that previously?

DR. McGARRY: He didn't have chronic anxiety. However, Dr. Sekhar did a good job; he diagnosed non-ulcerative dyspepsia. He certainly had functional bowel disease, he had irritable bowel syndrome and he had chronic prostatitis. And the type of chronic prostatitis he had again was functional, but he didn't have chronic anxiety.

I never order a sigmoidoscopy, painful; it would make me anxious. It wouldn't happen; don't order it. He had every right to be anxious when he was having that done.

MS. O'BRIEN: Okay.

DR. McGARRY: I think this is a good note and the doctor did a good job. That's just – I wouldn't have said chronic anxiety. He's not a psychiatrist and he's not a general practitioner.

MS. O'BRIEN: Okay.

And so, thank you that gives an explanation of that.

I'm going to ask you to bring up, Madam Clerk, please C 018. Again, Dr. McGarry, this is related to a procedure that Mr. Dunphy had in April of 2014.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: There is notes of this procedure in your chart but this particular piece of – this particular record did not come from your chart, it came from the Eastern Health record. And it is the pre-admission form.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: And the actual planned procedure here is a – it says here EPS.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: And so this is – the note I wanted to bring you to here is here under notes, prepared for procedure, anxious plus, plus.

I know you and I reviewed this when you came in with Ms. Chaytor –

DR. McGARRY: Sure.

MS. O'BRIEN: – and I to have your interview. Do you have any comments on this document?

DR. McGARRY: I wonder if he is anxious as I am now.

If I was going to have a test that was going to possibly end in my death – this test was done by a very competent cardiologist, an expert in the field. This cardiologist would have explained to Mr. Dunphy that there would be a possible of sudden death. It would be quite appropriate for this gentleman to be anxious when this test was being done, quite appropriate.

MS. O'BRIEN: Okay.

Could you just explain to us in really layman's terms what kind of procedure this was?

DR. McGARRY: I can't do that in detail, but essentially they're placing electrodes inside the cavity of the heart looking at the electrical pulses going through the heart.

MS. O'BRIEN: Okay, thank you.

And this is a clinical note of Dr. Paulin related to the same visit that is actually in your chart. Madam Clerk, could you bring up please C 019, page 21.

Dr. McGarry, this is the last place where I find, in reviewing the documents –

DR. McGARRY: Sure.

MS. O'BRIEN: – we found any reference to anxiety, but I do want to take you to it. So this is page 21, and we see here: Dear Dr. McGarry, I saw your patient in the cardiac cath lab on April 9, 2014. This 57-year-old gentleman is here today for an EP study, plus an ablation for the Wolff-Parkinson-White syndrome. He goes through the current medications, what his blood pressure reveals; he is quite anxious.

DR. McGARRY: Quite appropriate.

MS. O'BRIEN: Sorry, say that again?

DR. McGARRY: Quite appropriate.

MS. O'BRIEN: Quite appropriate, okay.

So just to be clear, Dr. McGarry, did you ever diagnose Mr. Dunphy with any anxiety disorder?

DR. McGARRY: He didn't have an anxiety disorder.

MS. O'BRIEN: Okay, thank you. All right, thank you.

This same exhibit, Madam Clerk, can we go to page 29?

So Dr. McGarry, this is from your chart –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – it is a physician depression questionnaire that was in your chart, and the date on it here is January 30, 2014.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: And so this questionnaire, I think it consists of, I think, nine questions as you go through it. And is, I'm sure, exactly what it says, a physician depression questionnaire. And each question is answered with a zero, one, two or three. Zero, being not all; one, being several days; two, being more than half the days; and three, being nearly every day.

And so we have you – this form is filled out. So it asks the nine questions. The first one, for example, little interest in pleasure; it looks like a number two is circled. More than half the day feeling down or depressed, it looks like number two is circled, more than half the days. Trouble falling or staying asleep or sleeping too much –

DR. McGARRY: I can – number three, I can actually remember him answering that question to me and he told me he had no trouble falling asleep –

MS. O'BRIEN: Okay.

DR. McGARRY: – which was quite significant. He claimed he didn't have any trouble sleeping.

MS. O'BRIEN: Okay.

DR. McGARRY: And then (inaudible) –

THE COMMISSIONER: I guess he scratched out one and two there, did he?

MS. O'BRIEN: Yeah.

DR. McGARRY: Well, I wasn't expecting the answer being no trouble sleeping, but that's the way it was.

MS. O'BRIEN: So as this, as you're doing this, is it you filling out the form asking –

DR. McGARRY: I'm filling out the form.

MS. O'BRIEN: Your – so this is your writing on it as –

DR. McGARRY: Yep.

MS. O'BRIEN: – as you're questioning –

DR. McGARRY: Yep.

MS. O'BRIEN: – Mr. Dunphy in the clinic?

DR. McGARRY: Yep.

MS. O'BRIEN: Okay, and then feeling tired or having little energy is several days and we look like we might be scratched out; and then a number two here for poor appetite or overeating. And then the rest of the questionnaire is just not completed.

DR. McGARRY: It is completed. They are all zero and his score is required in the compensation form of the same date.

MS. O'BRIEN: Okay, so you didn't record the answers here on this –

DR. McGARRY: No, I just wrote it on the compensation form.

MS. O'BRIEN: You wrote it on the compensation form.

DR. McGARRY: Yep.

MS. O'BRIEN: So I'm just going to get you to help with that explanation. Can I go to page 152 of this document, please, Madam Clerk?

So here we have another Workers' Compensation form, similar to the one we looked at earlier, but it is not the same form. This one is completed on January 30 of 2014. So – just give me a moment. And I think the note you are referring to is up here.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: So it says: not depressed, PDQ (inaudible) – slash, I'm not sure. Maybe you could –

DR. McGARRY: Seven.

MS. O'BRIEN: Number 7 maybe, is that a 7?

DR. McGARRY: It is. It is, yeah.

MS. O'BRIEN: Okay, can you please explain that note for the Commissioner?

DR. McGARRY: Sure, that's a result of his PDQ 9 form.

MS. O'BRIEN: Okay, so that's the result of the form that we had just looked at?

DR. McGARRY: Yep.

MS. O'BRIEN: Okay, and what does that mean, circa seven?

DR. McGARRY: Minimal symptoms of depression that would be going along with his inability to walk, chronic pain syndrome, as opposed to a major depressive disorder.

MS. O'BRIEN: Okay. So you, if I'm understanding your evidence correctly, Dr. McGarry, you're saying you sort of had finished filling out the form with him although you hadn't recorded it. You put down his total score as at seven –

DR. McGARRY: Yep.

MS. O'BRIEN: Okay. And if we can just go back to that, the form that we were looking at, which is on page 29, Madam Clerk. When we go to the end of that form it gives ranges as scores, so are you saying you scored him at seven, which would be minimal symptoms of depression reported? Is that what you're saying?

DR. McGARRY: Correct. That's correct. Yep.

MS. O'BRIEN: Okay.

Just – at the, did your feelings, I know this was January of 2014 where you determined that he had minimal symptoms of depression and you –

MR. KENNEDY: Sorry, I missed that date, Ms. O'Brien. When was that?

MS. O'BRIEN: January 30, 2014.

MR. KENNEDY: Okay.

MS. O'BRIEN: Between that and the last time you saw him, was there any change in Mr. Dunphy in terms of what you felt with, you know, with whether or not he had depression, his levels of depression?

DR. McGARRY: No, I don't think there was any change.

MS. O'BRIEN: Okay.

At the time of Mr. Dunphy's death –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – was he taking any prescription medications that could have affected his behaviour, was there anything in what you had prescribed to him that could cause him to act erratically, or irrationally –

DR. McGARRY: No, not really. He was, his medications were stable. There was no change in his, for example his narcotic Percocet, so that would be a stable drug –

MS. O'BRIEN: And when you say stable drug?

DR. McGARRY: I mean no up and down dosages, no change in his dosage. People drive with narcotics; they can function in society with narcotics. Percocet's not a drug I usually start people on, but he was doing well on it.

MS. O'BRIEN: Okay. So any concern that that could have affected, possibly affected his behaviour?

DR. McGARRY: No. That was a relatively small dose. On a medical exam, that would be equivalent to maybe 7½ milligrams of oral morphine per dose. So, officially, that was a small dose.

MR. KENNEDY: Sorry, I missed that again.

DR. McGARRY: If you're comparing it to morphine, which I use morphine, I use a little of Dilaudid, but I prefer morphine, it would be equivalent of a 7½ milligram dose.

To calculate that they put a normal person's hand in water and then they count the time it takes for the hand to become so painful they have to take it out. You know, have a certain time for morphine and then a certain time for morphine and then they have a accrued estimate of the equivalency of these two narcotics. And by the book it would be equivalent to 7½ – now, that's going to change with the state of health, you know, so maybe 20, 30 per cent change so it may be the same as morphine, 10 milligrams, again a small dose (inaudible) –

MS. O'BRIEN: Right, I understand what you're saying, though, you're talking about how the drug affects someone for pain tolerance –

DR. McGARRY: For pain tolerance, correct.

MS. O'BRIEN: – or helping them cope with pain, but what I'm really asking about here is –

DR. McGARRY: Yes.

MS. O'BRIEN: – any effect on behaviour –

DR. McGARRY: No.

MS. O'BRIEN: – or causing someone to act a little irrationally, lose their temper quicker, feel agitated.

DR. McGARRY: Not – no, not over the long term, no.

MS. O'BRIEN: Okay.

Dr. McGarry, final area of questioning for you. I'd like to take you through your last visits that you had with Mr. Dunphy –

DR. McGARRY: Sure.

MS. O'BRIEN: – before his death and I don't need you to bring this up, Madam Clerk, but I understand that in January of 2015 that Mr. Dunphy had had a CT scan –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – that had noted a growth on his kidney –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – and that had recommended an ultrasound.

DR. McGARRY: Correct.

MS. O'BRIEN: All right. And if I could go to – sorry, Madam Clerk, C 019, page 12. He had had that ultrasound.

DR. McGARRY: He did.

MS. O'BRIEN: And we're going to take you now to the report back of the ultrasound. And the ultrasound was performed on February 18, 2015 –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – renal bladder, bilateral, is where it was done. And it was for re-evaluation of a lesion in the upper pole of the right kidney. So this is what had been noted on the CT scan.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – so we get, the impression here is the important part I think to read, there is hyperechoic lesion in the upper pole of the right kidney, which has shown integral growth and demonstrates vascular flow in its periphery. Its growth and the question of flow is concerning for an underlying malignancy. If this flow is artefactual, a hemorrhagic cyst could be considered –

DR. McGARRY: Uh-huh.

MS. O'BRIEN: – an MRI is recommended for further evaluation.

So this report would come back to you?

DR. McGARRY: It would.

MS. O'BRIEN: Okay.

So can you just explain to us what that means, what you did when you read it?

DR. McGARRY: Common, common – common kidney cancers are silent. A little bit more common in women who smoke. We're looking for them all the time, and we do this over and over and over again. They can bleed into their cyst, which will show the same thing as this did. This would be routine, picking it up. I wouldn't have been that concerned because I think I first ordered a CT scan on him in 2012. I think he had one most years since then. This would be something that I probably told him was just routine, not to worry about it.

MS. O'BRIEN: Okay. So –

DR. McGARRY: And kidney cancers we do pretty good with.

MS. O'BRIEN: Pardon?

THE COMMISSIONER: Sorry?

DR. McGARRY: Kidney cancers we do well with. If they're under three centimetres the chance of them metastasizing, sending out cells to other parts of the body is low – routine, routine, routine.

MS. O'BRIEN: Okay. So, now I understand – and we'll get to it in just a moment. But I know you, you did – I don't, probably don't need to take to you – you did ultimately order the MRI.

DR. McGARRY: The MRI, yeah.

MS. O'BRIEN: And I understand that you met with – you received this on February 20, 2015.

DR. McGARRY: Uh-huh.

MS. O'BRIEN: And I understand – this is your initial here to confirm that you reviewed it.

DR. McGARRY: That's my – that says call. That's instructing my wife to call a patient in.

MS. O'BRIEN: Oh, that says call. Okay. So that's your note to your wife who assists you in your office, I take it.

DR. McGARRY: At home. And then – yeah, and then March 5 is the day that Colleen, my wife, secretary, was able to get hold of him.

MS. O'BRIEN: Okay, got hold of Mr. Dunphy. And you saw him on March 6, 2015.

DR. McGARRY: Yeah, that shows you how much – my wife obviously liked him and got him in the next day.

MS. O'BRIEN: So she got him in the –

DR. McGARRY: A rare occurrence.

MS. O'BRIEN: Okay. And that, what turns out to have been the last time you saw –

DR. McGARRY: Correct.

MS. O'BRIEN: – Mr. Dunphy. So at that point you were calling him in to let him know that you had had this result back and let him know that you were booking him for an MRI.

DR. McGARRY: Yeah, I went through the MRI sheet with him when he came in.

MS. O'BRIEN: Okay. So, would you have communicated to Mr. Dunphy that, you know, you were – he was being investigated possibly for cancer of the kidney?

DR. McGARRY: I don't – I probably never used the word cancer.

MS. O'BRIEN: Okay. Why would that be?

DR. McGARRY: Well, we never ever tell a patient they could have cancer until we have a piece of it.

MS. O'BRIEN: Okay. So what would you – what did you communicate to Mr. Dunphy?

DR. McGARRY: Well, I don't remember; probably a mass, a cyst. I might have told him it could have been blood in it, something like that. It's just routine; he's had CAT scans after CAT scans after CAT scans.

MS. O'BRIEN: Okay. Do you recall what Mr. Dunphy's – what Mr. Dunphy's demeanour or disposition was like on that day?

DR. O'BRIEN: I can't. It wouldn't have been – if it was unusual I would have remembered.

MS. O'BRIEN: Okay. So you're not remembering anything unusual?

DR. McGARRY: No.

MS. O'BRIEN: Do you recall whether or not – you talking to him about this, whether you referred to it as a cyst or a mass. Do you recall him being anxious or concerned about it?

DR. McGARRY: No, no.

MS. O'BRIEN: Okay. Anything from that visit stand out to you?

DR. McGARRY: No.

MS. O'BRIEN: All right.

Okay. So you don't think that there's any concern that Mr. Dunphy would have had that visit with you and then been feeling: oh, my goodness, I may have cancer.

DR. McGARRY: No, it was just a routine, every day. They do it all the time. The radiologists are always doing this. I'm not criticizing them because I think they do a great job, by the way. As I mentioned, we do well for kidney cancers. But routine –

MS. O'BRIEN: Okay. It was – for you it was a routine visit with Mr. Dunphy –

DR. McGARRY: Routine.

MS. O'BRIEN: – and nothing stood out to you in your mind.

DR. McGARRY: No, no.

MS. O'BRIEN: And that was the last time you saw him, right?

DR. McGARRY: That's the last time I saw him.

MS. O'BRIEN: Okay. All right.

Dr. McGarry, those are the questions I have for you. Other counsel may have questions, as well as the Commissioner.

Thank you.

DR. McGARRY: Thank you.

THE COMMISSIONER: Who is going first?

MR. KENNEDY: (Inaudible) a list.

THE COMMISSIONER: I was afraid you were going to say that. I don't have it.

MS. O'BRIEN: So if this is considered to be – I don't know, Mr. Commissioner, if you're considering this to be a Meghan Dunphy witness.

THE COMMISSIONER: I think that would be appropriate, yeah.

MS. O'BRIEN: Okay. Then the first person to question would be Mr. Kennedy.

THE COMMISSIONER: If it's your witness – if it's counsel's witness, then counsel goes last, generally.

Mr. Kennedy, you're looking quizzical again.

MR. KENNEDY: I don't see how this witness can be a witness of Meghan Dunphy, but I don't mind going.

THE COMMISSIONER: Well –

MR. KENNEDY: Thank you.

He's a witness for information, but I mean I don't mind, Commissioner, that's fine.

THE COMMISSIONER: I'm sorry? Well, it's concerning the – it's concerning information primarily of Mr. Dunphy –

MR. KENNEDY: Okay, that's fine. Yeah.

THE COMMISSIONER: So it's only in that sense.

MR. KENNEDY: Thank you, Commissioner.

Good morning, Dr. McGarry.

DR. McGARRY: Good morning.

MR. KENNEDY: I'm Jerome Kennedy; I'm counsel for Constable Joe Smyth.

Dr. McGarry, you knew that Mr. Dunphy had a medical marijuana certificate or a prescription; I'm not sure exactly what it's called.

DR. McGARRY: I did.

MR. KENNEDY: Did you prescribe that to him?

DR. McGARRY: I didn't.

MR. KENNEDY: Do you know if a doctor has to prescribe that or how it's obtained?

DR. McGARRY: Yeah, a doctor has to prescribe it, as far as I know.

MR. KENNEDY: So do you know if he had that medical marijuana certificate when he saw you –

DR. McGARRY: He did, yeah.

MR. KENNEDY: – and if so, which doctor gave it to him.

DR. McGARRY: Yeah.

MR. KENNEDY: Do know which doctor prescribed it? I don't necessarily need the name.

DR. McGARRY: Well, yeah, I do.

MR. KENNEDY: Did he see that doctor at the same time – did he ask you to give a medical marijuana prescription?

DR. McGARRY: No.

MR. KENNEDY: Okay. So he had it prior to seeing you.

DR. McGARRY: Yes.

MR. KENNEDY: Okay. Thank you.

Doctor, do you have any – again, please tell me if my answer is something you can't help me with. But do you have any or can you have any, give any evidence to the Commission in terms of the effect of extended marijuana use on an individual, whether or not their cogitative abilities, how it affects them physically, emotionally, do you have any expertise in that area?

DR. McGARRY: I don't have expertise in the area. There's two common problems – well, not common, but there's two problems you can get with it. We have this little book, DSM-5, Diagnostic and Statistical Manual. It's just a little guideline for diagnosis and they list two conditions in that.

THE COMMISSIONER: I'm sorry, I couldn't hear you. There's what?

DR. McGARRY: Well, there's a little book that most physicians use.

THE COMMISSIONER: Right.

DR. McGARRY: It's called the –

THE COMMISSIONER: The DMS.

DR. McGARRY: Yes, 5.

THE COMMISSIONER: Yeah.

DR. McGARRY: In fact, I usually keep – I have a copy on my iPhone that I use frequently.

THE COMMISSIONER: Right.

DR. McGARRY: Which I can turn to in a minute. And I like doing this if I'm overtired, like today, or nervous like today. So I have it at hand.

THE COMMISSIONER: Okay.

DR. McGARRY: And there's cannabis intoxication and then there's also a problem you can get with psychosis from it.

MR. KENNEDY: And what does, when you say a problem with psychosis, is that a type of paranoia or paranoia delusions or anything along those lines?

DR. McGARRY: Well, let's get it right up, if I can find it here.

Yes, I have it here. So they have to be delusional and have hallucinations. None of which he had. Hallucinations would refer to auditory visual; or again, often the tip off there is it's a visual, and he had no history of that. It could be somatic, thinking things are crawling all over him, this kind of stuff. He didn't have any of that, so he did not suffer from medication induced psychotic disorder.

MR. KENNEDY: Okay. Is there any reference there to symptoms being, for example, paranoia, that someone's out to get you? That, for example, Big Brother is watching or government is going to get you? It's that kind of paranoia symptom, or can it be a symptom of extended or extensive marijuana use?

DR. McGARRY: Well, they list delusions. Delusion could be, but I wasn't aware of any of that.

MR. KENNEDY: Sure. But you then also indicated you didn't follow anything that he did on Twitter or *Open Line* or anything like that?

DR. McGARRY: No, I didn't.

MR. KENNEDY: In terms of the prescriptions that you gave him – and, again, there was a bunch of them, but Percocet will be the narcotic, would it?

DR. McGARRY: Percocet is a narcotic, yeah.

MR. KENNEDY: And you had been – he had been prescribed Percocet for –

DR. McGARRY: Yes, he did.

MR. KENNEDY: – a lengthy period of time.

DR. McGARRY: Yes, he did. Yes, he did.

MR. KENNEDY: Do you know – or did you ever prescribe him OxyContin?

DR. McGARRY: Well, I didn't give him plain OxyContin – Percocet is a similar drug; it's got the small dose with this in it.

MR. KENNEDY: So Percocet has oxycodone, is that the active –

DR. McGARRY: Yeah.

MR. KENNEDY: – drug?

DR. McGARRY: Yeah, small dose, yep.

MR. KENNEDY: Yeah. But in terms of what we call the drug that is often referred to in the public as OxyContin.

DR. McGARRY: That's right.

MR. KENNEDY: Did you –

DR. McGARRY: Don't prescribe it; don't see why I should have to prescribe it. I don't. And it causes a lot of rift in the community. This drug is a very effect pain killer, but it does have a bit of euphoric problem with it.

MR. KENNEDY: Which one, Sir?

Dr. McGARRY: Well, the OxyContin.

MR. KENNEDY: Okay. So you don't prescribe –

DR. McGARRY: With the number of deaths of OxyContin, I don't see why physicians have to prescribe it.

MR. KENNEDY: So you've never prescribed, do you know if Mr. –

Dr. McGARRY: I will continue it, but I don't start people on it.

MR. KENNEDY: Do you know if Mr. Dunphy had ever, had he ever –

Dr. McGARRY: Well, he was on Percocet.

MR. KENNEDY: Yeah, but had he ever reported to you –

DR. McGARRY: A combination.

MR. KENNEDY: Yeah, using OxyContin.

DR. McGARRY: You mean purely OxyContin?

MR. KENNEDY: Yeah.

DR. McGARRY: Not that I know of.

MR. KENNEDY: Okay.

Sir, you indicated in your discussion – before I get to that, do you remember – I'm not sure the actual document, if we need to show it to you, Doctor, fine – but you had Mr. Dunphy sign an opioid agreement on March 20 –

DR. McGARRY: Yes.

MR. KENNEDY: – 2013.

DR. McGARRY: Yes.

MR. KENNEDY: Is that something that you commonly do with your patients?

DR. McGARRY: If I'm prescribing narcotics regularly, I have them fill it in, yeah.

MR. KENNEDY: And what's the purpose of the opioid agreement?

DR. McGARRY: It's so they won't overdose on the drugs – just a little bit more control that I can have over the patient.

MR. KENNEDY: And so, basically the party, or the patient agrees with you that he or she will not go –

DR. McGARRY: Yes.

MR. KENNEDY: – somewhere else looking for opioids.

DR. McGARRY: Correct.

MR. KENNEDY: Okay.

And that is something that you commonly use, is it?

DR. McGARRY: Well, someone who I am giving regular narcotics to.

MR. KENNEDY: Sir, now, during your conversation with Commission counsel – this was back, I think, yeah, November 16. Dr. McGarry, you indicated at one point that, by using Percocet, Mr. Dunphy could stand and do the dishes without stopping, and he could walk for 20 or 30 minutes at times.

DR. McGARRY: Pitiful, isn't it?

MR. KENNEDY: Sorry?

DR. McGARRY: Pitiful; just imagine – you know, I feel sorry for these people – just imagine, you're taking a narcotic and that only lets you stand to finish the dishes. I mean, if that's not a problem with instrumental activities of daily living, I don't know what is.

MR. KENNEDY: But that's – that was your testimony.

DR. McGARRY: Pardon?

MR. KENNEDY: That was your testimony – I'm just asking –

DR. McGARRY: I know – quite true, quite true.

MR. KENNEDY: And Sir, you indicated that though, he wouldn't be able to – as you outlined in your Workers' Comp –

DR. McGARRY: He wouldn't be able to –

MR. KENNEDY: – he wouldn't be able to cut firewood –

DR. McGARRY: Yeah.

MR. KENNEDY: – or get firewood.

DR. MCGARRY: Yeah.

MR. KENNEDY: He wouldn't be able to cut firewood or –

DR. McGARRY: Yes, or he wouldn't be able to stand and do dishes. I'm sorry – I'm still on the first question – he wouldn't be able to stand and do dishes without the Percocet, but he wasn't able to get firewood to partly heat his home, on his own. Correct.

MR. KENNEDY: And so that's what you brought to Workers' Compensation then in I think January, the last one was it January 2015 you filled the last one?

DR. McGARRY: I think that was on the last we saw, yeah.

MR. KENNEDY: Okay.

Sir, did you have any concerns about Mr. Dunphy living by himself or is that something that –

DR. McGARRY: No.

MR. KENNEDY: So he could look after himself as far you –

DR. McGARRY: I don't know about that. He had a good daughter looking after him. I wouldn't say – no, I wouldn't say that.

Meghan, I know for a fact, she took excellent care of him.

MR. KENNEDY: Okay.

So in terms then of your dealings with Mr. Dunphy, the last time you met with him would have been on March – the date, was it March 6, Ms. O'Brien, I think you indicated?

MS. O'BRIEN: Yes.

MR. KENNEDY: Yep. And there was nothing unusual about that particular meeting?

DR. McGARRY: Nothing.

MR. KENNEDY: Okay.

Did Mr. Dunphy ever discuss with you – and I use the word, anger, I'm not –

DR. McGARRY: No.

MR. KENNEDY: Let me see if I can find a better term. His grievance with Workers' Compensation that it was long standing and he was angry towards Workers' Compensation and government, did you ever have any discussions like that?

DR. McGARRY: I think we did. He was living under extreme poverty, working man, two accidents and then he's poor, very poor. I think we did. One of the problems I'm having is after he died, a lot of people were talking about him in my office and I think that might have contaminated my memory from before. This is a problem I'm having.

MR. KENNEDY: Yes, actually, you did say that to Ms. O'Brien during your interview that you were trying to – I think you, at one point, said let's stick to the facts.

DR. McGARRY: Yeah.

MR. KENNEDY: Because part of your concern was that there was a lot of discussion in your office and –

DR. McGARRY: Well, people making comments, yes.

MR. KENNEDY: That could have potentially contaminated your memory.

DR. McGARRY: Yep.

MR. KENNEDY: Or something like that.

DR. McGARRY: Exactly.

MR. KENNEDY: Okay. So I'm just going to ask you this question then, during, in your memory of your dealings with Mr. Dunphy, did he express anger towards Workers' Compensation –

DR. McGARRY: No.

MR. KENNEDY: And anger, Sir, can be, I don't mean jumping up and down or necessarily waving his arms, but did he express an anger towards the way that Workers' Compensation had treated him?

DR. McGARRY: No.

MR. KENNEDY: Did he ever express concern about the way that government had treated him?

DR. McGARRY: No.

MR. KENNEDY: Did he ever express concern about the fact that and I'm talking about January, February, March that he was trying to get help from a particular government members and they couldn't help him or they wouldn't help him?

DR. McGARRY: He didn't discuss that with me.

MR. KENNEDY: No.

So basically your dealings with Mr. Dunphy would have been doctor-patient in relation to way he why seeing you.

DR. McGARRY: Uh-huh.

MR. KENNEDY: Is that correct?

DR. McGARRY: That's correct, yeah.

MR. KENNEDY: I don't have any further questions, thank you.

Who's next?

MS. O'BRIEN: Next would be counsel for the RCMP.

MS. RASMUSSEN: We have no questions for this witness.

THE COMMISSIONER: Thank you, Ms. Rasmussen.

Mr. Avis.

MR. AVIS: I have no questions, thank you.

THE COMMISSIONER: Well, nobody else behind the monitors.

MS. BREEN: Thank you.

Dr. McGarry, my name is Erin Breen. I'm counsel for Meghan Dunphy. Good morning.

DR. MCGARRY: Yes.

MS. BREEN: Doctor, I just want to highlight a few items from the vast medical chart that has been filed with the Commission as a confidential exhibit.

DR. MCGARRY: Sure.

MS. BREEN: I just want to hit a couple of points.

From both the file and from your interview with Commission counsel, is it fair to say that over the six-year period with Mr. Dunphy, you treated him for a multitude of illnesses. Is that true?

DR. MCGARRY: Yes.

MS. BREEN: Okay. And from what I understand, in addition to the conditions that you've outlined, really the physical parts of his body that he complained about having pain in went from his neck to his arms to his back to his pelvis to his legs. Is that correct?

DR. MCGARRY: And his bowels, yeah, and his prostate.

MS. BREEN: I'm sorry, Doctor, I couldn't hear you.

DR. MCGARRY: Prostate and bowels.

MS. BREEN: Okay.

DR. MCGARRY: IBS, yeah; prostatitis, yep.

MS. BREEN: Thank you.

And while you were discussing Mr. Dunphy's file and your observations and treatment of him with Commission counsel in your interview, you had indicated in your file several times, he looked chronically ill to you.

DR. MCGARRY: Yes.

MS. BREEN: So did that change from 2009 to 2015, or is it fair to say that this was a very ill man?

DR. MCGARRY: He was physically very ill, yeah. And he continued to lose weight. He had a cholecystectomy performed by Dr. Felix, chief of surgery at St. Clare's and he was starting to improve after that. There was a slow improvement at that time.

MS. BREEN: Do you recall, Doctor, when that was, when he would have –

DR. McGARRY: Well, it's in his file, I think it was 2013, but I –

MS. BREEN: I'm sorry, and, Doctor, I'm having a lot of difficulty hearing you. I'm a little bit deaf myself, sorry.

DR. McGARRY: I think it was 2013 but –

MS. BREEN: Yes.

DR. McGARRY: Do you want me to find it or –

MS. BREEN: No, I think that from your chart, I can see that you did keep track of his weight at various times. It appears that at one time in 2013, there's a notation that he had lost 40 pounds, I believe; do you recall that?

DR. McGARRY: No, I don't but he had lost a lot of weight.

MS. BREEN: Yes, okay. And this would be around the same time.

DR. McGARRY: Maybe 10 per cent of his body weight and I think that was 2012. Yes, sure. I ordered a CT scan. I think that's the first one I ordered in 2012.

MS. BREEN: Okay. But since that time you say he did gain some weight back?

DR. McGARRY: After his cholecystectomy, he gained some weight back.

MS. BREEN: Okay. And from what I can see from the file, the weight that you had recorded over the years ranged – at the highest point I believe it was 72.5 kilograms, roughly about 152 pounds, I think.

DR. McGARRY: Uh-huh.

MS. BREEN: And that I think another notation you had at one time was 65 kilograms, which would have been about 140 pounds.

DR. McGARRY: Yeah.

MS. BREEN: So is that generally, in your six years of treating Mr. Dunphy, would that have been his weight range around 140, 150 pounds?

DR. McGARRY: Yes. Well, it's recorded in the chart. Like, he was going up. In fact, I think he may even have bottomed out at 62, around there.

MS. BREEN: I'm sorry, Doctor –?

DR. McGARRY: He may have bottomed out at 62 kilograms.

MS. BREEN: Okay. And when you last saw him in March of 2015, I don't see a notation for his weight at that time.

DR. McGARRY: There probably was a notation in the MRI requisition.

MS. BREEN: Okay.

DR. McGARRY: Do you have that there?

MS. BREEN: I believe that's in a different confidential exhibit, is it Ms. O'Brien?

DR. McGARRY: Oh, well I can't remember what it was.

MS. O'BRIEN: Thank you. We do have the –

DR. McGARRY: There's probably things I should explain about these narcotics. These are horrible drugs, bad, bad drugs. We used these drugs for acute pain, worked well, around 2012. Recent research suggested that these drugs didn't work well for chronic pain. And if you're prescribing a drug for pain in the pelvis, pain in the back, the drug of course just doesn't go to the pelvis. It goes to other parts of the body, such as his GI track. It numbs us down. So the body's response to that is to tune up the sensation in these other organs.

Thinking back now, with more evidence that's come out in last year, perhaps a lot of his IBS problems – he was suffering with (inaudible) Fletcher's Syndrome from spasm in his bowel. Perhaps now, in 2016 maybe or certainly in 2017, I would have diagnosed as perhaps as a side effect of Percocet. I'm trying to get all my patients down on their narcotics now.

MS. BREEN: Sir, if it is –

DR. McGARRY: I hope that – so I can't come up and tell you that his weight loss was now related to Percocet. I mean this information has come out since his death, right.

MS. BREEN: Oh, no, I understand that.

DR. McGARRY: But this is one of my concerns.

MS. O'BRIEN: Sorry; if it is of assistance, the request for the MRI, Dr. McGarry, you just mentioned, is found at exhibit C-0019 at page 8.

DR. McGARRY: Yeah. What was the weight there? Did I mention it?

MS. O'BRIEN: I'll get them to bring it up on the screen and you can read the record. C-0119, page 8.

I don't know if there's an area you'd like me to go to Dr. McGarry.

DR. McGARRY: Okay. I'm mistaken, I thought we had the weights down on these because I thought the machines were small and we had to record the weight. But I guess we didn't. Okay, you're right. You're quite right; I don't have a record of the weight at that visit.

MS. BREEN: Okay.

And so, Doctor, in terms of his weight around the time – the last time you saw him was in March. Did he appear to you to be within the range –

DR. McGARRY: Yeah.

MS. BREEN: – that you had previously recorded, 140, 150 pounds?

DR. McGARRY: Correct.

MS. BREEN: Okay. Thank you.

Now, also in your interview with Commission counsel you had reviewed your, I guess, concerns about Mr. Dunphy's chronic pain syndrome and how that impacted his life and his ability to carry out certain tasks.

DR. McGARRY: Absolutely.

MS. BREEN: And the two tasks that you noted most frequently were his ability to get wood to heat his home, as well as – you know, that he would report to you if he was able to stand and do dishes, or if he was able to walk for periods of time, that kind of thing.

DR. McGARRY: Yes.

MS. BREEN: Okay. And at one point you told Ms. O'Brien that even with the prescriptions that he was getting –

DR. McGARRY: Yes.

MS. BREEN: – at most, he would get about 40 per cent relief in his pain.

DR. McGARRY: That's the most anybody gets, 40 per cent really for the pain, yes.

MS. BREEN: So despite his medications and despite what your treatment of him, he was still living in significant pain.

DR. McGARRY: Oh, yes.

MS. BREEN: Is that fair to say?

DR. McGARRY: Oh, yes.

MS. BREEN: Okay. And that was reported to you by Mr. Dunphy, but you had the opportunity to observe him on many times over the last –

DR. McGARRY: Yeah.

MS. BREEN: – six years. Did your observations of him moving physically in your office, were you satisfied that what he was reporting to you was truthful?

DR. McGARRY: Oh, yes.

MS. BREEN: Okay.

DR. McGARRY: Yeah.

MS. BREEN: So when you would observe Mr. Dunphy in your office, Doctor, did you see him have difficulty in physical movement?

DR. McGARRY: Yes.

MS. BREEN: Okay. Can you tell us what you observed?

DR. McGARRY: I saw him limp, I saw him – trouble getting out of the chair, but the important thing was trouble bending over.

MS. BREEN: Okay.

THE COMMISSIONER: I'm sorry? What was the last –

DR. McGARRY: Bending over.

THE COMMISSIONER: Bending over.

And before that, something about the chair.

DR. McGARRY: Getting out of the chair.

THE COMMISSIONER: Getting out of the chair. Okay.

MS. BREEN: And, Doctor, can you explain to us, what do you mean by trouble getting out of the chair?

DR. McGARRY: Well, he wouldn't jump up like a normal person, like getting out of a chair. I prefer really to stick to my notes. Like, you – I suppose it's fair to ask me these questions, fair to ask my observations, but I was trying to stick with what was written in the chart.

MS. BREEN: Yes, and if–

MR. McGARRY: But I mean it's the truth, he would have had trouble getting up out of the chair. He had trouble bending over.

MS. BREEN: Okay.

MR. McGARRY: Yeah.

MS. BREEN: And you say he wouldn't move quickly out of a chair like a normal person.

MR. McGARRY: Right.

MS. BREEN: Okay. So you observed him to be slow in his movements.

MR. McGARRY: Yes.

MS. BREEN: Now, you also recommended in your requisition forms that he not twist or bend.

MR. McGARRY: Yes.

MS. BREEN: And can you explain to us, Doctor, how did that relate to his injury, or his pain in his back and his pelvis?

MR. McGARRY: Well, he had a crushed pelvis. He also had pain going down his left leg. Someone with chronic pain syndrome, just to make this straight, you could have, say, the pain originally coming from his crushed pelvis, you could cure the pelvic problem, you could bring that up to, you know, like a normal person, but it would not change his pain. He'd still have the same symptoms. Getting rid of the source of the pain in chronic pain syndrome does not change

the amount of suffering they have. And this has to do with neurotransmitters in the spinal column.

MS. BREEN: In the spinal cord you said?

THE COMMISSIONER: Spinal column.

DR. McGARRY: Yeah, spinal cord, yeah.

MS. BREEN: And, Doctor, I'm assuming from the file, what I've read and from your interview and your testimony today –

DR. McGARRY: Yeah.

MS. BREEN: – that this related primarily to Mr. Dunphy's lower back. Is that correct, or did it –

DR. McGARRY: He had pain down his left leg since '93.

MS. BREEN: Sorry?

DR. McGARRY: He told me when I first met him that he had sciatica in his left leg since '93. And, in fact, I did a CT scan on the back and there was no obvious cause for pain like his left side with sciatica. That does not mean he didn't have it. He probably at some point did. But the chronicity of the pain, it was probably a factor in him getting this chronic pain syndrome.

MS. BREEN: Okay. And in terms of the injury that he described to you, as well as your observations of him and your treatment of him over the years, and for the layman. Does that relate to the core of the body, difficulty in moving the core of the body?

DR. McGARRY: He'd have difficulty moving his body. Sure he would.

MS. BREEN: Okay. And that would also relate to your recommendation that he not twist or bend.

DR. McGARRY: Yes.

MS. BREEN: Because he would have difficulty – he would experience pain –

DR. McGARRY: Yes.

MS. BREEN: – in the core of his body if he twisted or bent.

DR. McGARRY: Yes. He had pain all over.

MS. BREEN: He had pain all over.

DR. McGARRY: Yeah. His arm pain – his heaviness in his arms and the pain between his inner scapular however, came from his heart.

MS. BREEN: Okay. Thank you, Doctor.

Doctor, you were also – when you were interviewed by Commission counsel you talked about Mr. Dunphy's behaviour in your office –

DR. McGARRY: Yes.

MS. BREEN: – and your experience with Mr. Dunphy, as well as your wife’s, because your wife runs your office. Is that correct?

DR. McGARRY: Yes.

MS. BREEN: And that you found him to be polite. You found him to be, you know, friendly in the waiting room, by all accounts.

DR. McGARRY: Yes, I did.

MS. BREEN: He was appropriate was he, in his behaviour?

DR. McGARRY: Very appropriate.

MS. BREEN: Okay. Did you ever, in your six years of treating Mr. Dunphy, see any evidence that he had experienced delusions?

Dr. McGARRY: None whatsoever.

MS. BREEN: Okay. That he was paranoid?

DR. McGARRY: I did not.

MS. BREEN: Okay. Did he, on your visits with him or your appointments with him, was he coherent in his speech?

DR. McGARRY: Always.

MS. BREEN: Was he sensible in terms of –

DR. McGARRY: I’m sorry?

MS. BREEN: – what he was saying?

Was he sensible in terms of what he was saying?

DR. McGARRY: Absolutely.

MS. BREEN: Okay.

DR. McGARRY: And I spend a lot of time with my patients, and this is very important – with this fact that you just mentioned, that can be the first tipoff that someone has a delusional or, you know, a major psychotic disorder. And this kind of thing that you’re asking right now is what I spend time with discussing things with my patients – very important.

MS. BREEN: Okay.

DR. McGARRY: I hope I made that clear.

MS. BREEN: No, that’s fine, thank you. Thank you, Doctor.

Did he appear to you to be aware and knowledgeable, at least about, you know, the medications that he was taking –

DR. McGARRY: Yep.

MS. BREEN: – and his injury?

DR. McGARRY: Yep.

MS. BREEN: Okay.

Doctor, you also were asked by Commission counsel – when you heard what had happened to Mr. Dunphy, what – how he died and the account of how he died, that he had pointed a gun at a police officer, and he was killed, I believe what you said to Commission counsel was that that was shocking to you.

DR. McGARRY: I thought about this since, and actually my wife told me, and, you know, I send patients to the hospital. An intern might say they're on the wrong drug, and there's a big outcry about that, when really it's a bunch of nonsense. So I've sort of adjusted – you get these things and I take it with a brain of salt – a grain of salt.

MS. BREEN: Okay.

DR. McGARRY: I could not imagine – I'd rather stick with my notes, you know. Is this fair to answer this?

THE COMMISSIONER: I think Dr. McGarry is expressing some unease with having to –

DR. McGARRY: Straight from (inaudible).

THE COMMISSIONER: – speak generally, as opposed to giving the –

MS. BREEN: No, and I –

THE COMMISSIONER: – the facts as he understands them.

MS. BREEN: I understand that, Mr. Commissioner, but Dr. McGarry, is it fair to say what you told Commission counsel on the day of your interview, that when you heard what had happened to Mr. Dunphy it was shocking to you, was not consistent?

DR. McGARRY: Yeah, yeah, that's fair.

MS. BREEN: It was –

DR. McGARRY: Sure it is.

MS. BREEN: Okay.

DR. McGARRY: Sure it is. Yeah, that's fair.

MS. BREEN: Those are all my questions for the doctor. Thank you very much.

DR. McGARRY: All right, you're welcome.

THE COMMISSIONER: I think – Ms. O’Brien, do you have anything –?

MS. O’BRIEN: I have nothing arising, Commissioner, so we can thank – unless you have any questions –

THE COMMISSIONER: No, that’s fine.

MS. O’BRIEN: – for the doctor.

THE COMMISSIONER: Thank you, Dr. McGarry.

DR. MCGARRY: Thank you.

THE COMMISSIONER: You’re excused. You survived.

MS. O’BRIEN: Thank you, Commissioner.

It’s just past 11 o’clock now. It’s time for our break. I’d just ask maybe if – our next witness is Constable John Galway of the RCMP, and maybe if Ms. Rasmussen can just give us an update as to when he would be available to testify.

MS. RASMUSSEN: I’m sorry, Mr. Commissioner, but – with my apologies – I’m unable to get Constable Galway here until 1:30 at the appointed time.

MR. COMMISSIONER: Okay. Well, we have lots of time – lots of work that we can do in the meantime, so that’ll be okay.

Counsel, address your minds now to the – down the road when we finish the – hearing the evidence in terms of how we might deal with phase two and some of those general issues.

I don’t know if there’s anything else that’s outstanding that counsel is waiting to hear on.

MR. KENNEDY: Commissioner, earlier on we had – there had been a discussion in terms of the policy phase that as we move through this there would be – it would be open to suggestions or considerations.

THE COMMISSIONER: Right.

That’s why I’m raising it now.

MR. KENNEDY: Okay.

That’s fine.

So I will address my mind to it.

Thank you.

THE COMMISSIONER: Pardon?

MR. KENNEDY: No, I will address my mind to that.

Thank you.

THE COMMISSIONER: All right.

We'll recess until 1:30, is it?

MS. SHEEHAN: All rise.

This Commission of Inquiry is recessed until 1:30.

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.

MS. O'BRIEN: Thank you.

The next witness will be Constable John Galway of the RCMP.

Just prior to Mr. Galway, Constable Galway being affirmed, I'd ask to have the following exhibits entered: Exhibits P-0392 to P-0427 inclusive, as well Exhibit P-0429.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

Madam Clerk is going to affirm your evidence, Constable Galway.

CST. GALWAY: Okay, thank you.

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

CST. GALWAY: Yes, I do.

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

CST. GALWAY: My name is Constable John Galway, so J-o-h-n G-a-l-w-a-y.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Okay. Good afternoon, Constable Galway. I'm Kate O'Brien, one of the co-counsel for the Commission of Inquiry. I'm going to jump right into your police training and experience. How long have you been a member of the RCMP?

CST. GALWAY: Since 2002.

MS. O'BRIEN: Thank you.

And is constable your current rank?

CST. GALWAY: Yes, it is.

MS. O'BRIEN: Thank you.

And what's your educational background prior to joining the force?

CST. GALWAY: I have an elementary education degree from Memorial University.

MS. O'BRIEN: Thank you.

And I understand that prior to joining the RCMP you had some work background but none of it was police or law enforcement related, is that right?

CST. GALWAY: That's correct, yes.

MS. O'BRIEN: All right.

Beyond basic training, which we understand that all RCMP officers receive, have you had any specialized training or further education with the RCMP that would be relevant to the role that you played in this investigation?

CST. GALWAY: With exhibit custodian and family liaison, I would say no.

MS. O'BRIEN: All right.

Had you have had any specialized training in homicide investigations?

CST. GALWAY: No.

MS. O'BRIEN: And what about in use of force by a police officer incidents?

CST. GALWAY: Not specifically by a police officer.

MS. O'BRIEN: Okay.

What was your position with the RCMP on April 5, 2015?

CST. GALWAY: I was a constable and I'm with the General Investigation section in Holyrood.

MS. O'BRIEN: Okay.

And now, from what I understand from our pre-hearing interview that the GIS, or the General – sorry the General –

CST. GALWAY: Investigation section – GIS.

MS. O'BRIEN: The GIS, the General Investigation section in Holyrood would have really acted like an assistance unit to other divisions or units in the RCMP. Is that accurate?

CST. GALWAY: Yes, or other police forces.

MS. O'BRIEN: Okay.

So in this case when we had the major crimes unit coming in to do a major investigation that took place in the Holyrood area –

CST. GALWAY: Yes.

MS. O'BRIEN: – that the GIS would be a unit that was available there to give them extra help, extra pair of hands, that kind of thing.

CST. GALWAY: Yes.

MS. O'BRIEN: All right.

And at that time, in April of 2015, who was your immediate supervisor?

CST. GALWAY: Corporal Dion Foote was the corporal in the GIS section.

MS. O'BRIEN: Okay.

And so we've already had evidence from Corporal Foote?

CST. GALWAY: Yes.

MS. O'BRIEN: Prior to April 5, 2015, had you ever been involved in the investigation of a homicide?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Am I just understanding there was – was there two incidents you were involved in, one in 2008 and one in 2014?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

In 2008, am I fair, right to say that you were the lead investigator in a missing person's file that turned into a homicide, or was later –

CST. GALWAY: Yes, that's correct.

MS. O'BRIEN: Okay. And then when it was discovered to be a homicide, major crimes unit got involved?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. And at that time you did assistance for the MCU at that time?

CST. GALWAY: Yes.

MS. O'BRIEN: All right.

And the other incident in 2014, were you doing a similar type role, in other words doing assistance to the MCU who was primarily investigating that homicide?

CST. GALWAY: Yes, yeah.

MS. O'BRIEN: Prior to April – sorry, before I move on – have I covered all your previous experience with homicide investigations?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Prior to April 5, 2015, had you ever been involved in the investigation of a police officer in the use-of-force type incident?

CST. GALWAY: No.

MS. O'BRIEN: And again, prior to April 5, 2015, did you know Constable Joe Smyth or any member of his family?

CST. GALWAY: No.

MS. O'BRIEN: Were you asked by a superior officer when you first got involved in this investigation, or any time after that, whether or not you knew Constable Smyth or any member of his family?

CST. GALWAY: I don't recall –

MS. O'BRIEN: Okay.

CST. GALWAY: – if I was asked.

MS. O'BRIEN: You don't recall if you were asked? Okay.

And prior to April 5, 2015 do you know Mr. Dunphy, Donald Dunphy or any member of his family?

CST. GALWAY: No, I didn't

MS. O'BRIEN: Okay, and again I'll put the same question to you: Were you asked by a superior officer whether you had any knowledge of Mr. Dunphy or his family?

CST. GALWAY: I don't recall. I know there was talk around the office that people had heard of him and have dealt with him in the past, but it didn't ring any bells with me. I have never heard of him before.

MS. O'BRIEN: Okay, so you don't specifically recall being questioned by a superior officer but you recall the people in the office, generally, talking about whether or not they knew him or had any knowledge of him.

CST. GALWAY: Yeah, people had heard of Don Dunphy, but I was not one of them.

MS. O'BRIEN: Okay.

Now, were you working on Easter Sunday of 2015, on April 5th?

CST. GALWAY: No, I wasn't.

MS. O'BRIEN: So how did you get involved in this incident?

CST. GALWAY: Well, I was at a hockey arena in the Goulds coaching my son's hockey team and I got a call from our telecoms operators in St. John's.

MS. O'BRIEN: Okay.

And just from our pre-hearing interview I can probably take you through this a bit quickly because I don't think it's very controversial, but you got a call and you said around 3:15?

CST. GALWAY: Yes.

MS. O'BRIEN: And the call was to ask you to call Staff Sergeant Tiller, was it?

CST. GALWAY: Yes, yep.

MS. O'BRIEN: Okay.

And so Staff Sergeant Tiller told you there had been an incident and asked you to come on in to work?

CST. GALWAY: Yes.

MS. O'BRIEN: And I understand that you arrived in the detachment in Holyrood at approximately 4:15 that afternoon.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. And at that point, you sort of spent some time waiting for the major crimes unit to assemble there in Holyrood.

CST. GALWAY: Yes.

MS. O'BRIEN: And my notes indicate that during that period you did a quick call to the chief medical examiner's office, touched base with Dr. Denic there –

CST. GALWAY: Yes.

MS. O'BRIEN: – and just gave him an update that the body was still on the scene and at that time I think it was with Corporal Foote; does that ring a bell?

CST. GALWAY: Yes, that's right.

MS. O'BRIEN: Okay, and then I know at 5 o'clock then there was a meeting held at Holyrood detachment and at that point major crimes was all there and I understand at that meeting was Staff Sergeant Tiller –

CST. GALWAY: Yes.

MS. O'BRIEN: – Sergeant Kent Osmond, Corporal Monty Henstridge, Seaward – I don't recall Seaward's rank.

CST. GALWAY: Corporal Shawn Seward.

MS. O'BRIEN: Corporal Shawn Seward, thank you.

Corporal Steven Burke and Constable Mike Nippard, and you were there.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. And all those names I mentioned were part of the major crimes unit except for Seward, Tiller and you. Is that right?

CST. GALWAY: Yes, that's right.

MS. O'BRIEN: All right.

So this was the first debriefing meeting of the investigation team or meeting of the investigation team.

CST. GALWAY: Yes.

MS. O'BRIEN: What tasks were assigned to you coming out of that meeting?

CST. GALWAY: I believe the first one that I was responsible for was preparing the ME1, the scene report for the medical examiner.

MS. O'BRIEN: Okay.

CST. GALWAY: If at any time is it okay if I refer to my notes?

MS. O'BRIEN: Absolutely.

So at any time, Constable Galway, we do have your notes, if you do feel you need to refresh your memory with your notes, just let me know and I can bring up the notes on the screen and you can refer to what you have.

CST. GALWAY: Okay, sure, thanks.

MS. O'BRIEN: But when I bring up notes on the screen, you're going to see them on your monitor too.

CST. GALWAY: Okay, thank you.

MS. O'BRIEN: Okay, so – and again, I can give you some assistance here. So I understand, what I understood from our interview, that the task that we're assigned to was to complete the ME 1 medical examiner form, which we're going to come back to in a moment.

CST. GALWAY: Okay.

MS. O'BRIEN: You were also tasked to do the attendance at the autopsy.

CST. GALWAY: Yes.

MS. O'BRIEN: And you were – became the exhibit custodian.

CST. GALWAY: Yes. That's correct.

MS. O'BRIEN: All right.

And I know that later on that you were assigned the task of being the family liaison officer, but I believe that didn't – you didn't get that news until the following day on April 6 early afternoon.

CST. GALWAY: That's correct. Yeah.

MS. O'BRIEN: Okay.

At this point when you're at this meeting you're there with the investigative team, you're being assigned certain tasks. What type of investigation did you understand was being carried out by the RCMP?

CST. GALWAY: It was the shooting death of Don Dunphy.

MS. O'BRIEN: Okay.

Did you understand it to be a homicide investigation?

CST. GALWAY: I would think it's a homicide, yes.

MS. O'BRIEN: You would?

CST. GALWAY: Yeah.

MS. O'BRIEN: Now, I did ask you that question when we had our interview and I'll maybe take you to your answer, what you said then.

CST. GALWAY: Yeah.

MS. O'BRIEN: And just for reference of counsel I'm going to page 41 of the transcript for Constable Galway's interview. And my question was, yeah, was it a homicide investigation? And your answer at that time was: I don't know. At the beginning there was no indication that someone, you know, did something criminally, you know, wrong like the officer. From what I understood it was self-defence. And I said: That was your understanding at the time? And your answer was: That was my understanding.

CST. GALWAY: Yes, that's correct.

MS. O'BRIEN: Okay. So at this point, at that time you were telling me – and that interview took place on December 2 of 2016 –

CST. GALWAY: Uh-huh.

MS. O'BRIEN: – you were saying that there was no indication that anything had been done wrong criminally and you understood it was a self-defence situation.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

And I think later on in my questioning there you said you knew that night and you had – you knew that night, you actually visited the home, in Mr. Dunphy's home in Mitchells Brook that night.

CST. GALWAY: Yes.

MS. O'BRIEN: But you'd indicated that you knew, you knew – you had that information in your mind that it was self-defence even before you went to the home that night.

CST. GALWAY: Yes.

MS. O'BRIEN: And then when you went to the home it solidified – I might be that – your understanding of that.

CST. GALWAY: Yeah, my initial information is that, you know, Constable Smyth, an RNC officer, went to the home and he – as a result, he shot Don Dunphy in self-defence.

MS. O'BRIEN: Okay.

CST. GALWAY: So when you asked if it was a homicide, like, in my opinion now, like it is a homicide. At that time when I was going to the house, I wouldn't – I didn't know if I would classify it as a homicide then, right.

MS. O'BRIEN: Okay. So –

CST. GALWAY: But I think it's a homicide.

MS. O'BRIEN: – now you think it's a homicide but at the time that's not how you were thinking of it.

CST. GALWAY: Well, I wouldn't – I didn't know how to label it then, you know. I didn't have a lot of information.

MS. O'BRIEN: Okay.

CST. GALWAY: So that's what I knew, it was self-defence.

MS. O'BRIEN: Okay.

CST. GALWAY: Okay.

MS. O'BRIEN: And so I'm going to bring up –

THE COMMISSIONER: Okay, I guess getting more specific –

MS. O'BRIEN: Yes.

THE COMMISSIONER: – the question is whether it's a culpable homicide.

CST. GALWAY: Exactly. Like, there are justifiable homicides, so from what I understood when I was told, the RNC officer went down there and as a result of an altercation he had to shoot Mr. Dunphy in self-defence.

MS. O'BRIEN: Okay, I'm just going to ask Madam Clerk to bring up Exhibit P-0429, please. And this is going to be the ME 1 form. Just as it's coming up, Constable Galway, can you just explain to us briefly what's the purpose of the ME 1?

CST. GALWAY: It's just the form that we fill out, that we send off to the medical examiner's office. It just gives them a brief overview of what happened; the details, you know, who was involved, the date of birth, you know, was he employed, where he lived, things like that.

MS. O'BRIEN: Okay. And would you have completed this ME 1 form that night the – or that day on April 5?

CST. GALWAY: I believe so yes, if I was tasked to do it then.

MS. O'BRIEN: Okay. And I'm just going to take you down here so what we see, just as you see there it's called Scene Report –

CST. GALWAY: Yes.

MS. O'BRIEN: – and so you give some tombstone details here about Mr. Dunphy – address, date of birth, that kind of information, and you know, timing of the incident, when the death occurred and some other details and the, the – sorry, Madam Clerk, my eyes are going; could you make that just a little bit bigger for me, please?

UNIDENTIFIED FEMALE SPEAKER: It's not just me anymore.

MS. O'BRIEN: No, I'm struggling these days.

Okay. So we see when he was last seen alive, just time, you know, some time entries there and Constable Smyth is mentioned there, of course, as the person who last saw him alive as the witness. Coming down here, this is the circumstance surrounding death in that section.

CST. GALWAY: Yes.

MS. O'BRIEN: All right. So is this, this is what you would have written there to explain to the chief medical examiner what had happened.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. And so it says here Sergeant Joe Smyth, RNC, attended the Dunphy residence in relation to an RNC investigational file. Dunphy had threatened Smyth with a firearm, causing Smyth to draw his pistol and fire multiple shots, killing Dunphy.

Okay, so is that consistent with how you understood the file at that time?

CST. GALWAY: Yes.

MS. O'BRIEN: Constable Galway, it looks – might look to some people like it's a conclusion on the file at that time, that you had concluded at that point that this, that's what had happened.

CST. GALWAY: Why would they think that?

MS. O'BRIEN: Okay, so you don't, you don't see it that way?

CST. GALWAY: Well, that's the circumstances surrounding the death, so those are the circumstances that I had at the time.

MS. O'BRIEN: Okay. Okay, thank you, Madam Clerk.

If you could just briefly describe to the Commissioner what the role of an exhibit custodian is because not everybody will understand that.

CST. GALWAY: Okay. The exhibit custodian takes possession of any exhibits and makes sure that they are locked away securely and that they are added to our computer system, our PROS system.

MS. O'BRIEN: Okay. So that's the – the PROS system is the software system –

CST. GALWAY: Yes.

MS. O'BRIEN: – that the RCMP uses and we have actually seen a fair bit of PROS documentation at this point.

CST. GALWAY: Yes.

MS. O'BRIEN: All right. And so under the PROS system once exhibits – you would seize the exhibit as exhibit custodian, enter them in, make sure they are secure, enter them into PROS and I understand then any movement of those exhibits would also be recorded in PROS.

CST. GALWAY: Well, the people who were examining the scene, the forensic specialists, they seized the exhibits at the scene and then when they were finished, they would pass them over to me, and then I would bring them back to the RCMP Holyrood detachment and then I would secure them and put them in PROS.

MS. O'BRIEN: Okay. And then anytime those exhibits were moved, like if an exhibit was sent out for testing, that would also be recorded in the PROS system –

CST. GALWAY: Yes.

MS. O'BRIEN: – right? So eventually you would get an exhibit report that details, you know, where all the exhibits were at every given time, so you would have a good chain of continuity or proof of the chain of continuity.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Commissioner, I don't need to show this exhibit, but just so you were aware the, the exhibit report from the PROS system has been entered into evidence as P-0415.

Constable Galway, we know that that evening April 5th when you were at the Holyrood detachment, we know that there were RNC officers at the detachment late that afternoon and into the early evening I guess. Did you have any interaction with any of the RNC officers, leaving aside Constable Smyth for the moment?

CST. GALWAY: I am sure I introduced myself and just said hello, but I do remember one of them saying that you know we're not here to interfere with your investigation; we're just here to offer support to Constable Smyth.

MS. O'BRIEN: Okay. So you don't have any recall which officer that was.

CST. GALWAY: No.

MS. O'BRIEN: Okay. And would that have been your, the extent of your interactions with those officers.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

And what about Constable Smyth, did you have any interaction with Constable Smyth on April 5th.

CST. GALWAY: I was asked to take possession of his clothing, so I did accompany him into the male change room in the upstairs of the detachment and I took possession of all of his clothing.

MS. O'BRIEN: Okay, so you would have seized his clothing.

CST. GALWAY: Yes.

MS. O'BRIEN: That would be the word for that. And I understand it would have been his clothing, his badge, his holster and his handcuffs at that time.

CST. GALWAY: Yes, and all his clothing, except his underwear.

MS. O'BRIEN: Right. Okay.

Did you have any conversation – while you're doing that with Constable Smyth in the change room, did you have any conversation with him?

CST. GALWAY: If I did, I might have asked him, you know, how he was doing or introduce myself, but I wouldn't have had any detailed conversation with him, no.

MS. O'BRIEN: Okay.

Did you have any conversation with him about the incident that had occurred –

CST. GALWAY: No.

MS. O'BRIEN: – in Mitchells Brook?

CST. GALWAY: No.

MS. O'BRIEN: Okay.

Can you give us a description? What was his demeanour like? How was he presenting at that time?

CST. GALWAY: He was quite subdued, you know, very – I don't want to say he was in shock, but he was like that: very subdued, very quiet, very – just very disorientated, I guess.

MS. O'BRIEN: And what were you observing to make those, you know, to say he was disorientated (inaudible) –?

CST. GALWAY: Just his head was down. He didn't – you know, he was – he wouldn't smile or change his expression. You could tell his mind was racing.

MS. O'BRIEN: Okay.

I understand that at approximately 8:40 p.m. that night you did attend the scene in Mitchells Brook?

CST. GALWAY: Yes.

MS. O'BRIEN: When you arrived, again, I understand there were other RCMP officers who were on the scene?

CST. GALWAY: Yes.

MS. O'BRIEN: And was the Forensic Identification Section team there? Were the ident, as they say, officers there?

CST. GALWAY: Yes, they were.

MS. O'BRIEN: They were there. Were they – when you arrived, were they still working inside the residence at that time?

CST. GALWAY: I believe I spoke to them; they were outside. So they might have been going back and forth, like getting equipment out of the van.

MS. O'BRIEN: Okay.

CST. GALWAY: But when I spoke to them they were outside.

MS. O'BRIEN: Okay.

Were there any other members in the house at that time?

CST. GALWAY: As far as I know it was just the forensic people were in the house, but when I first got there Dion Foote was still inside.

MS. O'BRIEN: Okay.

CST. GALWAY: Because I do remember bringing him – he called me to bring some some food for him. So he was there when I got there.

MS. O'BRIEN: Okay, and I understand you just passed the food in through the door to Corporal Foote. You didn't actually enter the house when you gave him the food?

CST. GALWAY: No, so...

MS. O'BRIEN: Okay. And we've already had testimony from Corporal Foote that he was there sort of guarding the scene from –

CST. GALWAY: Yes.

MS. O'BRIEN: – from cats. All right.

So, now, what was your reason for being at the scene that night?

CST. GALWAY: I was exhibit custodian.

MS. O'BRIEN: Okay.

CST. GALWAY: So I was waiting for the exhibits.

MS. O'BRIEN: Okay.

So, again, just so that we can review the process for people who might not understand how it works, that the Forensic Identification Section, that team, in this case it was two officers?

CST. GALWAY: Yes.

MS. O'BRIEN: Corporal Saunders, Kelly Foote, Corporal Kelly Lee – sorry, Corporal Kelly Lee and Sergeant Chris Saunders?

CST. GALWAY: Right.

MS. O'BRIEN: They would have been inside doing the processing of the scene. They would have identified items to be seized as exhibits?

CST. GALWAY: Right.

MS. O'BRIEN: And once they had done their processing you, as exhibit custodian, would come in and you would actually bag or secure the exhibits while they were there and then take custody of them?

CST. GALWAY: Yes. So they would normally put the exhibits in containers.

MS. O'BRIEN: Okay.

CST. GALWAY: They have specialized containers.

MS. O'BRIEN: Okay.

CST. GALWAY: So then they would just pass them over to me.

MS. O'BRIEN: Okay, and you would record the time that each item was being seized –

CST. GALWAY: Yes.

MS. O'BRIEN: – and where it was –

CST. GALWAY: And what it was.

MS. O'BRIEN: – being seized from and what it was.

CST. GALWAY: Yes.

MS. O'BRIEN: All right.

And while I understand, too – so you got those documents – those items, sorry, from the Forensic Identification Section. I'm not going to get you to go through that. Commissioner, when we do hear from that team, they'll go through the exhibits that were seized at that time.

While you were waiting for the ident team to do their work, I understand you did take from Corporal Trevor O'Keefe some items that he had earlier seized.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

And my notes indicate that that would have been Constable Smyth's sidearm.

CST. GALWAY: Yes.

MS. O'BRIEN: And two magazines.

CST. GALWAY: Yes.

MS. O'BRIEN: And his OC or pepper spray.

CST. GALWAY: Right.

MS. O'BRIEN: All right. And so you would have treated them as you've already described what you would have done with the exhibits.

CST. GALWAY: Yes.

MS. O'BRIEN: Did you also seize the keys to Constable Smyth's vehicle from –

CST. GALWAY: Yes.

MS. O'BRIEN: – from Corporal O'Keefe?

CST. GALWAY: Uh-huh.

MS. O'BRIEN: Now, the PROS Exhibit Report that I just referenced a few minutes ago, when we look at that report, the keys to Constable Smyth's vehicle do not appear as an exhibit on that report sheet.

CST. GALWAY: Uh-huh.

MS. O'BRIEN: Can you explain why that's the case?

CST. GALWAY: Later on, a few days later, I can't remember the exact time, but they were taken out and given back to the RNC. I guess the vehicle was released.

So before any of, you know, the items were exhibited in PROS, those keys were taken. I guess the truck was determined that it wasn't needed and was just given back to the RNC.

MS. O'BRIEN: Okay. And I think I can assist you with that.

Can we bring up Exhibit P-0398, please, Madam Clerk?

And this is going to be – I'm just going to pull up on the screen your Supplementary Occurrence Report from April 7. And there's a note to that effect that may assist your memory.

Okay. I'm just going to make that bigger. There we go.

So I see here – so it's on April 7 of 2015. So you record here at 11:58 that you received an email from Staff Sergeant Tiller who advised that he had taken the keys to the RNC vehicle out of the exhibit room at 11:30 and had handed them over to the premier's detail at 11:58.

So is that what you're referring to there?

CST. GALWAY: Yes.

MS. O'BRIEN: All right. So that would have been done before you had done the – typed the entry into PROS, so that's why they don't appear in the PROS exhibit, the report.

CST. GALWAY: Right.

MS. O'BRIEN: Okay. Thank you.

Now, other – I know you passed some food in to Corporal Foote earlier, but when you went in with the forensic identification section, that was your first time inside the house. Is that right?

CST. GALWAY: Yes.

MS. O'BRIEN: What were your impressions of the home?

CST. GALWAY: Well, the house was very rundown.

MS. O'BRIEN: Anything else?

CST. GALWAY: Well, one of the first things that struck me, you could smell an overwhelming, you know, smell of cat urine, even outside the house. And there was a lot of garbage outside and just debris, and when you went inside the house it was the same thing: the strong smell of cat urine, very dirty. It was – you know, there was garbage everywhere, just things strewn about everywhere. Wallpaper was, you know, off the wall; there was bare floors, cat litter. It was very dirty, a very disheveled house.

MS. O'BRIEN: How would it compare to other homes you've been in to during the course of your duties as a police officer?

CST. GALWAY: It's probably the worst house I've ever been in; if not, definitely in the top two. One other one stands out, but that one is in the top two, if not the worst house I've ever been in.

MS. O'BRIEN: Okay.

When you were inside, did you see any cats?

CST. GALWAY: Yes, there was lots of cats.

MS. O'BRIEN: Okay, do you recall how many you saw or can you give an estimate? I don't mean for you to give me an exact number, but an estimate.

CST. GALWAY: No, I can't. There was – it's like we never saw the same cat twice. You know, the only cat I remember was a cat that looked very sick; you know, it's like its tongue was sticking out the whole time. But there was cats everywhere.

MS. O'BRIEN: Okay, and are you talking about inside the house or outside the house?

CST. GALWAY: Both.

MS. O'BRIEN: Both, okay.

All right, after that, after you seized the exhibits from the ident team or took custody of the exhibits from the ident team, I understand that you did assist in removing Mr. Dunphy's body from the home and that you accompanied the ambulance, so you helped put it in the ambulance.

CST. GALWAY: It was in the funeral home's –

MS. O'BRIEN: Funeral home, sorry, yes. My apologies, the funeral home vehicle, and then you accompanied that vehicle in your own vehicle, but you drove in proximity to that vehicle as it drove to the Health Sciences Centre, to the morgue at the Health Sciences Centre.

CST. GALWAY: Yes.

MS. O'BRIEN: And just so that people understand, you would have done that because, as an exhibit custodian, you were helping maintain the chain of custody for all exhibits, and that would include Mr. Dunphy's body, and any of his clothing and those kind of things.

CST. GALWAY: Yes.

MS. O'BRIEN: All right.

Now, the autopsy was originally scheduled for April 6, but I understand it didn't go ahead on April 6 as initially planned. Do you recall why that was?

CST. GALWAY: I believe it was because they wanted some further information, like they wanted statements taken, I think, from Constable Smyth.

MS. O'BRIEN: Okay, and they – that was the chief medical examiner who –?

CST. GALWAY: Yes, his office.

MS. O'BRIEN: His office wanted to have Constable Smyth's statement completed before they did the autopsy?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

And the autopsy then was performed on April 7, and did you attend at that time?

CST. GALWAY: I did, yes.

MS. O'BRIEN: Okay.

And I understand there your role would have been to seize and take custody of the exhibits that came from that process, so there were bullets extracted and swabs done and things like that. So you would have taken those exhibits and ultimately secured them.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

I'd like to talk to you now, Constable Galway, a bit about the family liaison position. What is a family liaison?

CST. GALWAY: It's just a point of contact for Meghan Dunphy, in this case. So in the case, she's seen lots of police officers at the scene; there's people from Traffic Services, ident, Major Crime, GIS. It's just a point, I guess a familiar face that she knows, if she has any questions, she can call me. So it's just an aid to help her, you know – if she needs to reach out to someone in the RCMP, if she has a question, I was assigned that role.

MS. O'BRIEN: Okay.

Is there any specialized training that you have to become a family liaison officer?

CST. GALWAY: Not that I know of, no.

MS. O'BRIEN: Okay. So you didn't have any specialized training?

CST. GALWAY: No.

MS. O'BRIEN: Okay. Had you ever performed that role previously?

CST. GALWAY: Yes, I have.

MS. O'BRIEN: Okay. And roughly how many times would you perform that sort of family liaison role?

CST. GALWAY: I was in contact with a family with the murder back in 2008.

MS. O'BRIEN: Okay, so you've done a similar role then?

CST. GALWAY: Yes.

MS. O'BRIEN: Is there any policy or guidelines that you've, that you would have been following as the family liaison or is it just based on your best experience and judgment?

CST. GALWAY: No, not that I'm aware of, 'cause all it is, is, of all the police officers, if you have a question, you can just contact myself and I will help out as much as I can.

MS. O'BRIEN: Okay, so nothing that, no guidelines or checklist or anything for you to follow. You're just doing, when you give Meghan your contact information –

CST. GALWAY: Yes.

MS. O'BRIEN: – when she wants to get in touch with you and ask a question you assist her with that.

CST. GALWAY: Right. So when I introduced myself to Meghan I would, you know, give her my business card, give her my office number and my cell number in case she needed anything.

MS. O'BRIEN: Okay. And a family liaison role, does that happen in all police investigations or is it just when there is a serious type incident where there's – maybe you could just give the Commissioner a little bit of explanation of when a family liaison is used.

CST. GALWAY: In my experience, it's only been used in serious incidents.

MS. O'BRIEN: Okay.

And so you were there as the family liaison for Meghan Dunphy or, you know the, in this case that was Mr. Dunphy's next-of-kin. Would there have been a similar role or position for Constable Smyth or Constable Smyth's family? Would there have been a similar liaison position there?

CST. GALWAY: Not that I'm aware of.

MS. O'BRIEN: Okay.

As part, you know, one of the things that you're doing in your communication with Meghan Dunphy, I would assume, part of that would include giving her updates or information from time to time.

CST. GALWAY: From time to time, yep.

MS. O'BRIEN: Okay. Was there a procedure or a protocol or a system in place that you used to determine when it was okay to share information with Meghan Dunphy; you know, what information you could give her, when you could give her that information.

CST. GALWAY: Well, with regards to this investigation the Major Crime Unit was in charge of the investigation. So they would be in charge of releasing any information and when. Right? So they were the ones who, if they directed me, like say you know, we're going to have a press release this afternoon, just advise Meghan that there's going to be a press release just to prepare her, you know, not to be surprised by it I guess.

MS. O'BRIEN: Okay. So is it fair to say that you would not have given Meghan Dunphy any information about the investigation unless you'd been authorized to do so by the primary investigator or someone, a senior from the MCU?

CST. GALWAY: Without question, yes.

MS. O'BRIEN: Okay.

Madam Clerk, can we bring up Exhibit P-0422, please – P-0422. Okay, I'm just going to go to the bottom of this. It starts with – it's an email chain. It starts with Ms. Erin Breen and she's forwarding some correspondence there, I think, or documents to you which is not relevant to my particular line of questioning now. But you thank her for that and tell her you forwarded it on.

Then she gets back to you, so this is Erin Breen to you, John Galway: "Thank you John.

"One last question for clarity – Meghan said that you mentioned that there would be a retired judge involved in overseeing the investigation but she could not explain beyond that. Could you tell me what that means so I can better explain it to her?"

"Thanks again. Erin."

CST. GALWAY: Okay.

MS. O'BRIEN: And it seems here – so although that email went to you, the response, although you're copied on the response, seems to have come from Sergeant Kent Osmond.

CST. GALWAY: Right.

MS. O'BRIEN: Okay.

So am I correct in assuming that you did not communicate to Meghan Dunphy or to her legal counsel with respect to the, with respect to the mandate or terms of reference or role that the independent observer was going to play?

CST. GALWAY: No. I would have forwarded on that message from Erin Breen to the Major Crime Unit.

MS. O'BRIEN: Okay.

CST. GALWAY: So that was one of the things, I guess, of the family liaison. If there was an issue or concern, again, I would pass it on to the Major Crime Unit.

MS. O'BRIEN: Okay.

CST. GALWAY: And that's why Sergeant Osmond is responding.

MS. O'BRIEN: Okay. So he responds: "Ms. Breen,

"We have requested that an independent observer be appointed to oversee the professionalism, thoroughness and timeliness of the investigation. When police investigate police, it is important that the process is accountable, and is not just transparent, but is seen to be transparent."

Retired Supreme Court Judge David Riche has been assigned to this task and was with me today overseeing some investigative steps we completed this afternoon.

"I have not yet seen the exact mandate letter, or terms of reference, he has been given so I can't specify further than that at this time." Signed: Kent.

Did you ever follow up? Do you have any knowledge of any communication that went through you to Meghan Dunphy or Erin Breen regarding Judge Riche's mandate letter or terms of reference? Or would that communication all have happened with other people not involving you?

CST. GALWAY: Well, once – if Major Crime is responding to Meghan Dunphy's legal counsel, I would have taken that as to say well, they're going to take care of this issue.

MS. O'BRIEN: Okay.

So the answer to my question is no, you didn't have any communications with them on that point.

CST. GALWAY: No. As the family liaison, I'm not the only person who is speaking with Meghan Dunphy.

MS. O'BRIEN: Okay.

CST. GALWAY: Okay.

MS. O'BRIEN: Okay.

And I was just trying to clarify that, Constable Galway. That was my understanding but I just wanted to make sure.

CST. GALWAY: Okay.

MS. O'BRIEN: Thank you.

Can we please now bring up P-0395, and this is going to be your Supplementary Occurrence Report of April 6?

CST. GALWAY: Okay.

MS. O'BRIEN: And I'm not going to go through entry. I'm just going to take you through certain entries. And again, it will come up on your screen. Okay.

So I'm going to take you, the first entry, I just want to understand – so I understand that around – I think we'll see here – that at 1 o'clock, at 1300 hours that day you were debriefed with Staff Sergeant Tiller and you had a teleconference with Sergeant Osmond and that's when you found out you would be the contact person or family liaison for the family.

CST. GALWAY: Right.

MS. O'BRIEN: So it looks like there the next thing you did, pretty quickly, was to call Meghan Dunphy and she said it was fine if you drop by. So I guess you asked to meet her. And so, the entry I want to look at here is – it looks like at 1:45 that afternoon you actually visited Meghan Dunphy at her house.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

And her common law spouse, Billy Corcoran, was there at that time. So you're speaking with her at her residence and her boyfriend was also present. "Meghan was open to talking about things, as she had several questions for police. She felt that the RCMP had not done anything that she had requested, so far. This was in reference to the name of her father being released. I told her that it was not the RCMP that released his name, and that we had no control over where this info had come from. She also took issue with SMYTH walking around the scene ... she felt he should be in custody. I explained to her why this was not the case. She also felt that police were painting her father as the bad guy, talking about his drug use, the firearm, the state of the house, and all the cats."

And then she poses some questions and I'll go over those questions just very quickly before I return to that paragraph.

You asked her if she had any questions, she listed the following: She wants to shut down her father's Twitter account, as it is still getting a lot of activity. And I guess she's asking if that's okay. At some point in the future, she would like to speak with the RNC officer. I told her that this is highly unusual, but said I would forward her request. She would like to take possession of two specific cats from her dad's home. She said that they would come to her if she called them, from out on the street.

She wants to be the main point of contact for the family; she is an only child, and her mother is deceased. She wants her father's cellphone. It is her phone, but he used it. The account is in her name, and she pays the bill. She wanted to see her father's body, as soon as possible, after the autopsy. She was advised that this is usually done at the funeral home.

So I'm going to take you back through just some of these points. Now, up at this point when she took issue with her father walking – or sorry, with Constable Smyth walking around the scene, you say here that you explained to her why this was not the case. What explanation would you have given to her at that time?

CST. GALWAY: I think what I said, that was not the case, because I – at that point, I was of the understanding that no criminal offence had taken place. So it was a homicide, but it was a justifiable homicide, and that Constable Smyth fired his side arm in self-defence. So he would not be in custody.

MS. O'BRIEN: Okay. So you would have explained to her that the reason why he was – why he should not be in custody was that he had fired, it was a justifiable homicide and he'd fired in self-defence?

CST. GALWAY: I'm sure I didn't use the word justifiable homicide.

MS. O'BRIEN: Okay.

CST. GALWAY: But if I'm trying to explain it to her in the most sensitive way I could, I would say that, you know, the way it looks now or the information we have received right now, it was self-defence but we need to get all the information. You know, I wouldn't say it was a justifiable homicide.

MS. O'BRIEN: Okay.

CST. GALWAY: But what we had at the time, there was no criminal offence that had taken place. There was no evidence of that and there was no reason to take him into custody.

MS. O'BRIEN: Okay. So you would have used words to that effect and mentioned to her self-defence.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Now with respect to her question wanting to see her father's body as soon as possible after the autopsy, a little further down in the same document you have a later relevant entry, and that's at 1725, so 5:25 that day.

You write, "After calling the ME's office, I called Meghan and told her that there is no viewing room at the morgue. She advised that she has already been talking to the funeral home, and has arranged a viewing. She was told that an e-mail had been sent to MCU, regarding her requests, mentioned above."

So I guess her other questions. She also asked if you could arrange for a member at the scene to get some special cat food for cats who can't eat regular food, and you said you would look into it.

Is that accurate of your conversation with her then about the viewing of her father's body that day?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

I'm going to – the next relevant document is P-0421 please, Madam Clerk.

So in this document here you have recorded, this is an email between you and – so what happens here is some of these questions you write Kent Osmond: I just got back from meeting with the daughter. The meeting went well, but she had things she wanted me to look into.

And you posed, you know, the closing down of the Twitter account; she would like to speak to the RNC officer; she would like to take possession of two cats; she wants to be the main point of contact for the family; and she wants her father's cellphone.

“Just let me know your thoughts on these things, as I feel it would go a long way.” And what do you mean there by: I feel it will go a long way?

CST. GALWAY: Well, I think it was understood from early on that Meghan, I don't think she trusted the police. So we wanted to make sure that if she had questions, I wanted to make sure that we had those answers for her right away. It would go a long way with, I guess, building trust with Meghan. I let her know that, you know, we'll do whatever we can to get to the bottom of the investigation.

MS. O'BRIEN: Okay.

And then we see that just up top here your response actually comes from Corporal Steve Burke: Thanks John. He says: I feel we should do everything we can to assist Meghan and offer her support where we can. As for the questions below I don't see any other way around it: one, we don't have any authority to close down the Twitter account; speaking with the RNC officer is, of course, ultimately his call, an RNC decision, but we are not in a position – we are not in a position to facilitate such a request; the cats are free to go if they can be summoned from the outside, and he says we're working with the SPCA as well; as far as we are concerned, she is the main contact for the family and will update as much as we can; and, then, once the cellphone is analyzed and no longer required, it will be returned as soon as practical.

And it says: If you guys feel any different – feel any differently about these answers, please advise. And there's some other people, other people copied, but I understand nobody else weighed in on those answers –

CST. GALWAY: No.

MS. O'BRIEN: – that those were the answers. Okay.

And so am I correct that the information that you got here from Corporal Burke on those items would be the information you would have passed along to Meghan Dunphy?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

I'm just going to ask you, at this time, Constable Galway, were you aware that the chief medical officer – chief medical examiner will meet with families of deceased people to review their, you know, to review the matter of their loved one's death with them?

CST. GALWAY: I didn't know the exact protocol where the chief medical examiner comes into it. No.

MS. O'BRIEN: Okay. So you didn't know that that was an option available to Meghan Dunphy at that time?

CST. GALWAY: No, I didn't know the specific, no.

MS. O'BRIEN: Okay.

I'd like you to bring up next, Madam Clerk, Exhibit P-0398. And this, again, is going to be one of your Supplementary Occurrence Reports for April 7.

Okay. So you go to the autopsy that morning. At 9 o'clock you update Meghan Dunphy and update her on her concerns she had put forward yesterday. So I guess that's your communication to her of the information you got from Corporal Burke?

CST. GALWAY: And also the fact that she was worried about the cats, with the special diet, so I would have relayed to her that I did get a hold of a member and they were able to take care of that request.

MS. O'BRIEN: Okay. And said she was very appreciative of this. I'm just, I don't need to go through every entry on this report with you but the next one I want to go to is at 1735 or 5:35. It says that Chief Superintendent Boland, Superintendent Sachsse and Staff Sergeant Fitzgerald arrived on scene. Myself and Staff Sergeant Tiller showed them around the residence. Chief Superintendent Boland advises that the scene may not be released after all as an independent third party may be called in to oversee the investigation. As it turns out, we will seek consent from Meghan to use the residence again.

I'm going to take you through a few before I ask you a question. And then at 1840, "Meghan Dunphy arrives, along with her boyfriend, Billy Corcoran. She is updated on these latest developments, and is happy that a 3rd party is being brought in. She has no issues with the police using the house, again. I, then, help Meghan feed the cats in the house, in the shed, and in the pen, up on the back of the residence."

And I think at 2020 you write: Myself and Staff Sergeant Tiller look around the house and make sure that both doors are locked. We found Dunphy's wallet inside a coat that was hung on a chair – on a kitchen chair. Meghan had mentioned that she would like to have this. We leave the scene unguarded, but leave the police tape up.

So at this point the scene is released, is that right?

CST. GALWAY: Yes. There was a bit of discrepancy going back and forth, were we going to release the scene, were we not, but at the end it was unguarded, but the police tape was just left up.

MS. O'BRIEN: Okay. And am I right, that you did not have any involvement in the, taking the decision about whether or not to release the scene.

CST. GALWAY: No.

MS. O'BRIEN: That wouldn't have been your responsibility. Okay. And, now you, you said Meghan had asked about getting her father's wallet, and that you and Staff Sergeant Tiller had found that wallet, and so you were going to get that to her. Did you look inside the wallet?

CST. GALWAY: Yes. We did look inside the wallet I guess, just to confirm that it was his wallet.

MS. O'BRIEN: Okay.

CST. GALWAY: Yes.

MS. O'BRIEN: All right. Did you find an RCMP business card in that?

CST. GALWAY: No.

MS. O'BRIEN: You don't recall seeing a business card for, at the time maybe Constable Lee Lush in the wallet?

CST. GALWAY: No.

MS. O'BRIEN: So you didn't see that. Okay.

All right. And the next document I'd like to see is P-0400. And, again, this is going to be Supplementary Occurrence Report of yours for April 8 this time, the next day.

MR. KENNEDY: What number is that, Ms. O'Brien?

MS. O'BRIEN: P-0400. Thank you.

And again, I don't need to take you through all of it but at 8:45 you get a call from Erin Breen who advised that she's been retained by Meghan Dunphy. At 9:45, I think this says you're actually – what does 10-7 mean? What's that 10 code?

CST. GALWAY: You're at the scene.

MS. O'BRIEN: Okay. So you're at Meghan's house, along with Staff Sergeant Tiller, and she's given the wallet with lotto tickets and cash that was in one of his pockets. And she hands over both keys to her father's house at that time.

And then at 11:20 is the other one I wanted to go to. Sorry, I had the wrong number noted in my notes; it's at 11:10. At 11:10, you call Meghan and advise her that retired judge David Riche had agreed to be the independent third party. She was also told that police will be back at her dad's house sometime that day.

Okay. Now, that's the day that I believe the police went there to do, with Constable Smyth, to do a re-enactment. That was the first re-enactment that was done.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. Did you tell Meghan Dunphy why you were going to her house that day?

CST. GALWAY: Yes, she knew there was going to be a re-enactment done.

MS. O'BRIEN: Did – she knew that and she knew Constable Smyth would be there?

CST. GALWAY: I believe so, yes.

MS. O'BRIEN: Okay, and would that information have come from you?

CST. GALWAY: I can't recall if I was the one who told her or not.

MS. O'BRIEN: Okay. So what are you basing on she knew that's what was going on that day?

CST. GALWAY: To get the keys – if I wanted the keys from Meghan, it would make sense that I would tell her what I wanted the keys for. So I’m assuming I would tell her that we want a re-enactment, you know, do that on video, just to make sure.

MS. O’BRIEN: Okay. Thank you.

Okay. Next exhibit I’d like to bring up is Exhibit-P-0423. Okay, so this is a letter I think we’ve seen here before as an exhibit at the inquiry, but it’s a letter that was written to you, Constable Galway, by Erin Breen. And do you recall getting this letter?

CST. GALWAY: Yes, I’ve read the letter.

MS. O’BRIEN: Okay. Now, I’m just going to go over parts of it, but before I do, when I look at the file, the RCMP disclosure, I don’t see any – although this letter was written to you – I don’t see any response from you in the file. So is it right to assume that you would have forward this letter on to Kent Osmond and Steve Burke and they would have handled the response?

CST. GALWAY: Yes.

MS. O’BRIEN: Okay.

So I’m just going to take you through a few paragraphs here. And the one I’d like to start with is paragraph 4.

I’m just going to read that out before I begin my questioning on it: “Ms. Dunphy is aware that you are likely not the officer who is making the decisions as to what information may be shared with her or with the public. She is aware that you are carrying out your duties as per instruction. She was most dismayed yesterday evening when she went to the funeral home and was told for the first time by the funeral director that she could not view her father’s body. She had been asking police since she arrived at the scene on Sunday whether she could see her father. She was repeatedly told that she could see him later. Yesterday evening, the director of Dunphy’s Funeral Home told Ms. Dunphy that her father had been shot twice in the forehead and that he was concerned about her viewing of him as his head was covered in a bag. Instead Ms. Dunphy entered the room and simply held her father’s hand. She did not see her father before he was cremated as she had hoped. To say that her heart is broken and her mind tormented over this new information is an understatement.”

So you had been aware of Ms. Dunphy’s request to see her father prior to that date because you’d recorded it early on in your notes that we just reviewed, right?

CST. GALWAY: Right.

MS. O’BRIEN: Okay. And you had understood, and we just went over those notes, that she had made arrangements to view her father, see her father at the funeral home.

CST. GALWAY: Yes.

MS. O’BRIEN: At that time had you told Meghan Dunphy that her father had been shot in the head?

CST. GALWAY: Well, up to that point until the autopsy was over, nobody knew where exactly – you know, how many times Mr. Dunphy was shot or where until the autopsy was finished. So I had not told her that.

MS. O'BRIEN: People knew. You saw, you took his body out of that home. You knew he'd been shot in the head.

CST. GALWAY: Yes, but I can't say if someone is questioning me, how many times was he shot or – like, I'm not going to talk about something that I don't, I'm not trained in. That's for the chief medical examiner and the autopsy.

MS. O'BRIEN: Okay, but he had, you know, three fairly obvious wounds in his head.

CST. GALWAY: He had one significant wound on one side of his head and a small, like I said it was almost like a cigarette burn on the other side.

MS. O'BRIEN: And there was a wound in the middle of his forehead. You don't remember that one?

CST. GALWAY: I don't remember that one.

MS. O'BRIEN: Okay, but you had removed him from the house that night.

CST. GALWAY: Yes.

MS. O'BRIEN: So you had handled his body that night.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

But – so you're saying, you know, I wasn't, I don't, you know, I'm not the one, I'm not the one, I think you're saying I'm not the one qualified to tell her this information.

CST. GALWAY: Yes.

MS. O'BRIEN: But who should have told her that information?

CST. GALWAY: Looking back now, if you have questions about, you know, the injury, the extent of the injuries; I think looking back it would be the chief medical examiner.

MS. O'BRIEN: And was Meghan Dunphy ever told she should speak to the chief medical examiner?

CST. GALWAY: Well, usually what happens in my experience with all the, you know, the deceased people I've dealt with, between the chief medical examiner and the funeral home it's – you know, arrangements are made. If there's questions, if you have questions about what the autopsy revealed, you would speak with the person who conducted the autopsy and if you want to know about viewing the body, that's up to the funeral director or the funeral home.

MS. O'BRIEN: So you – the RCMP had not communicated to her at this point that her father had been shot in the head; is that right?

CST. GALWAY: Not as far as I'm aware, no.

MS. O'BRIEN: Okay. And the RCMP was aware that she had been asking multiple times to be able to view her father?

CST. GALWAY: I – she only asked me once.

MS. O'BRIEN: Okay.

CST. GALWAY: And she didn't ask me, she – the question was, you know, I want to see my dad as soon as possible after the autopsy.

MS. O'BRIEN: Okay. And I think we've had testimony from other officers that she had mentioned that she wanted to see him.

CST. GALWAY: Okay.

THE COMMISSIONER: Just before you move on, just one second now. It seems like there might have been a bit of confusion because there were the initial wounds in Mr. Dunphy's head but then after the autopsy, there would be further disfigurement from the process of the autopsy where the chief medical examiner would be seeking to obtain the bullets if they were still inside the skull, presumably.

CST. GALWAY: Yes.

THE COMMISSIONER: And in terms of viewing the – while it might be appropriate to have a viewing before the autopsy, arguably, in many cases, it's not appropriate after the autopsy, particularly with head injuries; would that be fair?

CST. GALWAY: In my understanding when they perform an autopsy, when you're in the autopsy –

THE COMMISSIONER: Right.

CST. GALWAY: – you know, what they do to do the testing to retrieve the bullets is, of course, they create other injuries.

THE COMMISSIONER: Right.

CST. GALWAY: But I was under the understanding that once the autopsy is finished, they do it in such a way that a body can be presented to the family. So the funeral director, you know, they can preserve and present the body in a way that is acceptable.

THE COMMISSIONER: Well, it doesn't seem as though they were considering that could be done in this case and I could see where, say, in a bad motor vehicle accident or something –

CST. GALWAY: Yes.

THE COMMISSIONER: – it just wouldn't be possible –

CST. GALWAY: Yes, there are –

THE COMMISSIONER: – because of the extent of the injuries.

CST. GALWAY: There are some times I've been to collisions and, you know, that the body is in such bad condition that it might have to be a closed casket.

THE COMMISSIONER: Closed casket, right.

CST. GALWAY: But in this situation, I thought that when someone, you know, underwent an autopsy –

THE COMMISSIONER: Right.

CST. GALWAY: – it was done in such a way you hand the body over to the funeral home and they can – whatever they do, they present the body in a way that is sufficient to the family so they can view the body.

THE COMMISSIONER: Right. It may be questions better put to the chief medical examiner, I guess, when it comes time for his testimony.

CST. GALWAY: Thank you.

MS. O'BRIEN: Okay. So the results of that was, though, when Meghan Dunphy does go to the funeral home, when she's going there expecting to be able to see her father and view her father, that's the first time she finds out that he's been shot in the head and that she in fact can't view him.

CST. GALWAY: Right.

MS. O'BRIEN: You know, would it be fair to say, Constable Galway, that whether – not necessarily saying by whom, but somewhere along the line the communication's ball got dropped here with how information was conveyed to Ms. Dunphy?

CST. GALWAY: Well, everybody feels, like, that is not the way that Meghan should have seen her father, viewed her father. I don't know why the body wasn't prepared, you know, in a way that it could have been presented to her. But, no question – like, we're all looking back and wanted to make sure that, you know, we did everything we could for Meghan Dunphy and she was obviously upset. So, you know, we did not want that to happen.

MS. O'BRIEN: Okay. All right.

And I think Meghan Dunphy in her testimony says that after that she called you up and I think this was her testimony before the Commission that, you know, after she got this information she called you up and she said I pretty much told him off. I think I yelled and screamed at him, why wasn't I told this?

Do you recall her calling you that upset?

CST. GALWAY: We talked about that in my – I don't recall that, and I have no notes made of that.

MS. O'BRIEN: Okay.

CST. GALWAY: And only a couple of hours had passed since the autopsy had been completed to why I brought all the exhibits to Holyrood, then I went down to Mitchells Brook and I met her down there. So I don't recall that phone call.

MS. O'BRIEN: Okay. Right.

And do you recall ultimately getting permission from Corporal Burke to give Meghan Dunphy information about how many times her father had been shot and where he'd been shot?

CST. GALWAY: Yes, I do remember calling Constable Burke. So I had known that she had found out – about meeting with the funeral director and he had told her that he had been shot in the head. So I asked Constable Burke, you know, if she asks me how many times he was shot or how many bullets were fired, we know that, and I think she has a right to know and I should be able to tell her, and he agreed.

MS. O'BRIEN: Okay. And so do you recall giving Meghan Dunphy that information?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. And do you recall when that was or where you were?

CST. GALWAY: Well, it was that same day, down at her house at the end of the driveway. She and Billy were there, and I remember telling her that four shots were fired. Because I remember – I can't remember if it was Meghan or Billy, but one of them said, you know, he was executed. And that sort of stuck with me.

MS. O'BRIEN: Okay. And was Staff Sergeant Tiller there for that conversation as well? Do you remember?

CST. GALWAY: Yes, he was.

MS. O'BRIEN: Okay. So you say you remember someone –

THE COMMISSIONER: That was the 6th of –

MS. O'BRIEN: The 8th, Commissioner.

THE COMMISSIONER: The 8th of April. Okay.

MS. O'BRIEN: Yep.

THE COMMISSIONER: Thank you.

Sorry, Ms. O'Brien, go ahead.

MS. O'BRIEN: No. In her test –

CST. GALWAY: I believe that was not the 8th. Is it okay if I refer to –

MS. O'BRIEN: Well, that –

THE COMMISSIONER: Tell your story; that's fine.

MS. O'BRIEN: We were just looking for the letter you – sorry, I had taken that from you saying it was later that same day. So that was the 8th, the day that I was – this letter that I was referring to.

CST. GALWAY: The letter was the 8th, yes.

MS. O'BRIEN: So it was yesterday. So it was the evening of the 7th –

CST. GALWAY: Right.

MS. O'BRIEN: – is that what you're saying?

CST. GALWAY: Yes, the day of the autopsy.

MS. O'BRIEN: Sorry, my apology.

CST. GALWAY: Okay.

THE COMMISSIONER: So the day of the autopsy was the 7th. Yeah.

CST. GALWAY: The 7th.

MS. O'BRIEN: Yep. Sorry, I added the confusion there, Commissioner.

Meghan Dunphy did give testimony about that interaction that you've just referred to with you and Staff Sergeant Tiller. And, you know, she raised concerns about – along the lines as her father having been used for target practice. And she recalls that you and Staff Sergeant Tiller – although, she attributed the conversation more to the, or the information more from Staff Sergeant Tiller – had basically explained to her that when you do training scenarios and – you know, she understood to be a paintball gun or something, and that you've given an explanation about how, you know, this can happen when you're sort of pumped up with adrenaline. Those are my words, not hers.

Do you recall that conversation? If so, what do you recall of it?

CST. GALWAY: You know, you mentioned a paintball in my pre-interview, and I – there was no mention of paintball. No one ever mentioned the word paintball. I don't remember the conversation totally, but you mentioned about plastic bullets. So I think what happened was, Meghan posed the question about four shots. How is that possible, or that doesn't make sense.

And I believe Staff Sergeant Tiller tried to explain it to her that we've all been in situations – not with live ammunition, but in what we call scenario based training, where we do scenarios, where there is an actor, you know, and he is portraying, you know, the criminal. And in certain situations, we've all done this, where we have pulled our side arms and fired simunition. And it's very highly, you know, intense and adrenaline pumping. And in those situations people will ask you, the instructors, do you remember how many shots you fired? Or do you remember if, where the bullets went? And a lot times you can't. In that stressful situation you cannot remember how many shots you fired.

MS. O'BRIEN: Okay. And when you say: we've all been in that situation. You're referring to police officers.

CST. GALWAY: In scenario based training, yes, as RCMP officers.

MS. O'BRIEN: That RCMP officers receive.

And this Simunition, does it leave a mark wherever it lands? Like, if it hit something, does it leave a mark, kind of similar to –

CST. GALWAY: Yes, it does.

MS. O'BRIEN: – what a paintball would in a paintball game.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

So that's what you remember of the conversation. Okay.

THE COMMISSIONER: What kind of, what kind of ammunition? You refer to it as –

CST. GALWAY: We call it Simunition.

THE COMMISSIONER: Sim – Simunition.

CST. GALWAY: So you could call it like a rubber bullet. It is –

THE COMMISSIONER: So it's basically – sim is for simulated I take it, is it?

CST. GALWAY: Yes.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: Again, I just have a few more questions with respect to this letter.

Then, it continues: Ms. Dunphy was, “does not understand how she was not given this information by the police. While she appreciates the concern for the integrity of the investigation, she is confused by the RCMP releasing other details to the media that also go to the heart of the investigation – i.e. that her father purportedly pointed a loaded firearm at the officer and that he had a change in demeanor 15 minutes into a conversation. I am at a loss to explain to her how certain details are being released to the public while other information – crucial information – was not even given to her as Mr. Dunphy's daughter. She feels at this time that the police are selecting information for public release that puts her father in a negative light.”

Did you have any involvement in drafting any press releases that were done by the RCMP?

CST. GALWAY: No.

MS. O'BRIEN: Okay.

And I understand you said earlier that as part of your family liaison duties, you might have noted if you were instructed to by the primary investigator or someone in the command triangle that a press release was going, you would communicate that to her.

CST. GALWAY: Yes.

MS. O'BRIEN: But that would be the limit of your involvement with press releases.

CST. GALWAY: Yes.

MS. O'BRIEN: All right.

Moving on, in paragraph 6 she, Ms. Dunphy, it says: Ms. Dunphy was interviewed by Corporal Monty Henstridge at her home Sunday evening. She has explained to me that she felt the interview was somewhat hostile for a victim family member and that her opinion – that in her opinion the questioning was clearly focused on getting her to confirm that her father was mentally unstable or out of control. I understand that the statement was not recorded and I am

obviously not privy to the statement. And then in the next paragraph Ms. Breen requests a re-interview.

Just to clarify, I understand that Ms. Dunphy was re-interviewed later that day but you were not involved in that interview. Is that right?

CST. GALWAY: No.

MS. O'BRIEN: So you weren't involved in any of Meghan Dunphy's interviews.

CST. GALWAY: No, I wasn't.

MS. O'BRIEN: Okay.

And the last question I have with respect to this document is one on Victim Services – ah, here it is: Finally, I am wondering whether Ms. Dunphy could possibly be referred to Victim Services at this early stage in order to avail of any trauma/grief counselling? I am aware this is not normal process however that – this is certainly not a normal case. Ms. Dunphy, in my mind, is deeply in need of same and unable to obtain same on her own. Is there any assistance that the RCMP can offer?

So, again, my understanding from our pre-hearing interview is that efforts were made by the RCMP to see if Meghan Dunphy would qualify for support from Victim Services.

CST. GALWAY: Yes, as far as I know there was a referral made, but I believe it was turned down.

MS. O'BRIEN: Right. And you don't ultimately know if she was ever able to get any support, do you?

CST. GALWAY: I don't know.

MS. O'BRIEN: Okay.

The next I'll just ask to bring up fairly quickly, P-0401, which is your Supplementary Occurrence Report of April 9.

UNIDENTIFIED MALE SPEAKER: P –

MS. O'BRIEN: P-0401 –

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. O'BRIEN: And this one is very short.

So this is on the 9th and you say: "I returned a call to Meghan DUNPHY, who had called, earlier. I was driving at the time, and unable to answer the phone. I advised her that I was out of town, but she should still feel free to call me if she needed anything. She said she should be ok for the next couple of days, as she had the funeral service coming up, and she said she had already had answers to most of her questions."

All right. So at this point you're returning a call to her. Are you away, out of town for work or for personal –?

CST. GALWAY: I was in Twillingate for my son's hockey tournament.

MS. O'BRIEN: Okay.

So you were there – it was a day off for you from police duties –

CST. GALWAY: Yes.

MS. O'BRIEN: – but you were still returning her calls that day and staying in touch with her on that day.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Next, P-0403, please, Madam Clerk, and it's your Supplementary Occurrence Report for the next day. And I'm going to take you through a series of questions, Constable Galway, that relate to your role as exhibit custodian and how some exhibit processing is done. And with the Commissioner's consent, I'm going to lead you through a little bit of this evidence.

Here's my understanding of it and then you can correct me if I'm wrong or not, but as exhibit custodian I understand that you communicated with the RCMP forensic assessment centre, which is – some of us might think of it as like the forensic lab.

CST. GALWAY: Yes.

MS. O'BRIEN: And that's the lab that would have done most of the forensic testing in this case.

CST. GALWAY: Yes.

MS. O'BRIEN: And some of the forensic testing was done by the local ident team, but the most of it was done by that forensic lab. And as part of your role as the exhibit custodian, you would be in a bit of back and forth with that lab.

CST. GALWAY: Yes.

MS. O'BRIEN: Now, in this case, I understand Constable Nippard assisted with some of the tasks because you were out of town for a period of time, but looking at the documents there is a C 414 form.

MR. GALWAY: Uh-huh, yep.

MS. O'BRIEN: And that's essentially a request that is made to the forensic assessment centre and so you, as exhibit custodian – but I think in this case Constable Nippard did it – fill out that form to basically request of the forensic lab the type of testing –

CST. GALWAY: Yes.

MS. O'BRIEN: – that you would like to have done on the exhibits. And then you fill that out and before you send off the exhibits, you send in the form to the forensic lab and then they review it. They may ask you some questions, and ultimately they make a decision as to what, what testing they will approve.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay, so in some cases you may request something that they don't approve, and they'll give a reason for that, and in some cases you might not have requested a test and they might come back to you and suggest this test may be of use in this case.

CST. GALWAY: Yes.

MS. O'BRIEN: All right. So that's sort of the process that goes down. Now in terms of, regardless of who filled out the form, in terms of who, what the decision as to what testing to request on that form –

CST. GALWAY: Uh-huh.

MS. O'BRIEN: – who would have made the decision as to what testing to ask the forensic lab to do?

CST. GALWAY: The Major Crime Unit, will be, you know, in consultation with the forensic assessment centre, and they'll determine it.

MS. O'BRIEN: Okay. So here it would be Corporal Burke or Sergeant Osmond who would have made that decision and communicated that to you or Nippard to – this is what we want you to ask for.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Now, I understand – and here we have in this Supplementary Occurrence Report, what's documented here is a little bit, it's reviewing this process and, you know, Constable Nippard has it completed, Sergeant Merritt, who I understand he is with the forensic assessment centre or the forensic lab –

CST. GALWAY: Yes.

MS. O'BRIEN: He came back and asked for some points to be clarified; I don't need to go through all of them. There's one I just wanted to ask you about. One is in, with regard to PE9, and that's an exhibit number nine, and I think if we check the PROS report, we would see that is the leather jacket that was seized from Constable Smyth, I believe.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. The question is, is there any, is there visible blood-like staining on the complainant's jacket?

CST. GALWAY: Yes.

MS. O'BRIEN: So the first question I want to ask you, is, this is Constable Smyth's jacket we're talking about now –

CST. GALWAY: Right.

MS. O'BRIEN: And Sergeant Merritt is referring to him as the complainant. Do you have any explanation for why that would be?

CST. GALWAY: Well, the file, the investigation, is classified or carded as pointing a firearm and Joe Smyth is actually the complainant and, in essence, the victim of that crime. So he is referred to as the complainant.

MS. O'BRIEN: Okay. So just that, we've had a little bit of evidence on this already so when the file was opened up in PROS, someone put the offense down as pointing a firearm and listed him – Constable Smyth – as the complainant.

CST. GALWAY: Yes.

MS. O'BRIEN: And that would not have been changed, at least up until this point, when you're communicating back with, back and forth with Sergeant Merritt.

CST. GALWAY: Right.

MS. O'BRIEN: Okay.

Now, what colour was – do you recall what colour Constable Smyth's jacket was?

CST. GALWAY: It was a dark jacket. I believe it was black.

MS. O'BRIEN: Black, okay. Would it have been difficult to see a small amount of blood on the jacket just with your bare eye?

CST. GALWAY: It's hard to say. Like we talked about before, if, you know, if there was a fair amount of blood, I'm assuming I would see it.

MS. O'BRIEN: Okay.

CST. GALWAY: But a trace amount of blood, I wouldn't be able to see it.

MS. O'BRIEN: Okay. So as a result of getting this question from Sergeant Merritt, I understand that you went and you looked at the jacket.

CST. GALWAY: Yes.

MS. O'BRIEN: You examined it. And did you see any – could you see any blood on that jacket?

CST. GALWAY: No.

MS. O'BRIEN: Okay. And I understand, I don't need to bring the exhibit up, but it's in evidence as P-0424. There's some follow-up correspondence between you and the lab on that and, ultimately, you tell you them there's no blood, I believe, and then they don't do any – they don't need to do any testing on it for that reason then, as a result.

CST. GALWAY: Right.

MS. O'BRIEN: And there's another, some more follow-up correspondence. Again, I don't need to review it with you, but it has been entered into evidence as P-0425.

CST. GALWAY: Okay.

MS. O'BRIEN: So I'm just – all right, and that just covers some of the back and forth that went on between you and the lab.

CST. GALWAY: Uh-huh.

MS. O'BRIEN: The next exhibit I would like to review with you is P-0404 which is your Supplementary Occurrence Report for April 13. And I understand this is going to address that you were trying to obtain some information on the .22 calibre rifle that was located on the scene.

CST. GALWAY: Okay.

MS. O'BRIEN: And this, this Supplementary Occurrence Report records some of your efforts. And I don't need to go over it in details, but I will just – so it's you communicating with Corporal Jayne Stewart. And who is Corporal Jayne Stewart?

CST. GALWAY: She's an RCMP officer and she just works in the National Weapons Enforcement section. So she – they're experts on firearms, if we have questions.

MS. O'BRIEN: Okay. And I understand from your back and forth with Corporal Stewart that ultimately you were, no one was able to obtain a serial number from this gun. Is that right?

CST. GALWAY: Yes.

MS. O'BRIEN: And also there was, they were unable to locate any registration, any registration or other details pertaining to that weapon.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. Thank you. That's all I had for the exhibit, Madam Clerk.

Constable Galway, we have heard evidence already about, evidence of Mr. Dunphy's glasses, eye glasses that were found at the scene by Meghan Dunphy on April 14. Just tell the Commissioner, what do you recall about that event.

CST. GALWAY: I was at headquarters in St. John's, the RCMP headquarters, on something totally not related to this file and I went down to the Major Crime office and I was told by Corporal Burke that Meghan Dunphy had found her father's glasses and they were beaten up, in terrible condition, and she was sort of suggesting that it might be, you know, evidence that a struggle took place.

And so we took – we looked up at photographs of the scene, myself and Sergeant Dion Foote and Corporal Burke. So we pulled up photographs of the scene and we looked at the glasses. So from looking at the glasses, which were not seized initially at the scene, they were not damaged at that point. So they were just sitting on the table in front of Mr. Dunphy, just like I would take off my glasses and lay them down like that so –

MS. O'BRIEN: So just for the purpose of the record, you've just taken your glasses right off your head and just laid them –

CST. GALWAY: Yes.

MS. O'BRIEN: Without bending, folding in the arms or anything, just laid them down on the book in front of you.

CST. GALWAY: Right. And there were things on the table that were underneath the glasses, so it seems that the last thing that were laid down – he put his glasses on the table.

MS. O'BRIEN: Okay.

CST. GALWAY: Now, the glasses were not in good shape. But when I looked at them in the pictures, you know, the lenses were, say, perpendicular to the table. And even though they were covered in tape, you know, they looked to be in poor shape. There was no end pieces. There was tape holding them together, but it looked like they were just laid down like that. So I would consider the glasses – they were in poor condition, but they were consistent with the rest of Mr. Dunphy's house.

MS. O'BRIEN: Okay.

CST. GALWAY: So when I was going down to pick up the glasses –

MS. O'BRIEN: Okay, so then were you given instructions to go seize, seize the glasses?

CST. GALWAY: Yes, we decided, the three of us talking there –

MS. O'BRIEN: And so just for clarification, who is talking you and, and Dion Foote.

CST. GALWAY: And Corporal Burke, Steve Burke.

MS. O'BRIEN: And Burke okay, yes.

CST. GALWAY: So we knew that the glasses held no evidentiary evidence because they weren't seized at the beginning. So two of the forensic specialists examined the scene, took photographs, didn't see any evidentiary value in the glasses. We went back, we checked the photographs, it was clear to see, even though the glasses were in poor condition, they looked as if they came right off Mr. Dunphy's head and he laid them there like I put it down.

THE COMMISSIONER: That's from looking at the photos, is it?

CST. GALWAY: From looking at the photos of the scene.

THE COMMISSIONER: Uh-huh.

CST. GALWAY: But I remember talking to Steve Burke and he requested that I go down anyway, and it was decided that we wanted to do that, not to upset Meghan Dunphy, to show, you know, that we are concerned and – even though we didn't need to go down and they had no evidentiary value, we went down as a, you know, just not to dismiss her, I guess.

MS. O'BRIEN: Okay. And so can you – you went and seized the glasses? Do you – I think you went down on April 15; is that right?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. Did you think it was the right thing to do to go seize those glasses?

CST. GALWAY: At the time it seemed there was no harm in doing it. It was just a good gesture and we didn't want to cause any conflict with Meghan and we didn't want to, I guess, dismiss her.

MS. O'BRIEN: Okay.

CST. GALWAY: Looking back, I should never have seized those glasses.

MS. O'BRIEN: Okay, so why do you say that?

CST. GALWAY: Well, look at all the controversy it's called, or it's caused over something that has had no evidentiary value. We knew it had no evidentiary value and we have photographs to explain why.

MS. O'BRIEN: Okay.

And we talked about this to some extent on your pre-hearing interview. I'm just gonna go to – in your interview, we're talking about the glasses and I was talking – the questions I'd asked were about was – it's at page 140 of your transcript and we talked about you seizing the glasses at that time and the actions you took then. And we'll get to this in a minute in your main line of questioning here, but you didn't take a photograph of them when you, when you seized them, right?

CST. GALWAY: No.

MS. O'BRIEN: So you said you didn't take a picture of them, not because it meant anything, because I felt it was a big deal made about it, and I honestly felt it was a real injustice to Meghan because it was stirring the pot of some kind of conspiracy that was going on, that the police weren't taking things seriously when everybody knew that the glasses had no value. I could have, you know, we could have said no, Meghan, the glasses are no good, or we don't need to take them. Or we could have just said no, we're not coming down to get them.

CST. GALWAY: Yes.

MS. O'BRIEN: So does that accurately reflect your feelings on the matter?

CST. GALWAY: Definitely, yes.

MS. O'BRIEN: Okay.

So – but even after this, so we're gonna get into you, you went and seized the glasses but the RCMP did further, you did – the investigative team did further follow-up investigation with respect to these glasses –

CST. GALWAY: Yes.

MS. O'BRIEN: – not just you seizing them?

CST. GALWAY: Yep.

MS. O'BRIEN: But I understand that they went and sought out video from places that Mr. Dunphy had been to earlier that day –

CST. GALWAY: Yes.

MS. O'BRIEN: – from, they tried to get it from RBC I believe, but they got it from Shoppers Drug Mart. They got it from the Circle K store. They also went out and did, you know – the

RCMP went out and did other further interviews of I think Thomas Hearn and Colin Dinn and maybe even the waitress at the Woodstock about what they'd seen for the glasses that day.

Are you saying that, you know, that's all that work afterwards? I mean, it's one thing to go and seize the glasses, but that's quite – you know, that's far more work than just seizing the glasses –

CST. GALWAY: Yes.

MS. O'BRIEN: – going and getting video and all that. Are you saying to us that was all unnecessary work?

CST. GALWAY: In my opinion, we have photographs that the glasses were in wearable condition at the time of the shooting. So if someone's going to go out and get video that takes – you know, it captures Mr. Dunphy at the bank prior to, what is the value of that when you know his glasses at the time of the shooting are in front of him, on the table, in a wearable condition?

MS. O'BRIEN: So would it be your opinion, then, that, you know, all that –

THE COMMISSIONER: I guess what you're saying, really, is that immediately after the shooting they were in wearable condition.

CST. GALWAY: Yes.

THE COMMISSIONER: Because there could have been a struggle during, while the shooting – you know, the shooting could have occurred while a struggle was going on.

CST. GALWAY: What I'm saying is the photographs that I saw where Mr. Dunphy was still in his chair, the glasses were in front of him.

THE COMMISSIONER: And that was after, after the shooting –

CST. GALWAY: Yes.

THE COMMISSIONER: – but before you'd released the scene.

CST. GALWAY: Exactly, yes. And that's another thing, too, about the glasses; I mean, when we're retrieving evidence from the crime scene, we have control of the crime scene. But the house had been released; I'm sure it was almost a week. So, during that week, we have no control over who was in the house, or what cats were in the house. I know the house was cleaned up.

So the glasses – no one knows what happened to the glasses. I know something happened to the glasses, but it's after the fact. I mean, I wrote down it looked like somebody sat on them or dropped a bag on them or something of that nature. But because of the photos, it's clear to see they were damaged after the shooting. So, in my mind, it has no evidentiary value.

MS. O'BRIEN: Okay.

And so, then, in your mind, would all those other investigative steps, like doing those follow-up interviews and getting the security footage, you know, the video-camera footage, would that all have just been investigative steps that were essentially just done to appease Meghan Dunphy?

CST. GALWAY: I don't know why they were done; I don't know what it would have shown. So if Mr. – 'cause I know, I think someone said that he was wearing them at the Woodstock.

Maybe Meghan had told me that. But if he was wearing them at the Woodstock and you captured it on video, I'm not sure what evidence that would lead to the investigation if the glasses were in wearable condition at the Woodstock and they were in wearable condition at the time of the shooting.

MS. O'BRIEN: Immediately after the shooting –

CST. GALWAY: Immediately after the shooting, sorry, yes.

MS. O'BRIEN: You keep saying – I think that was the question that the Commissioner was just going –

CST. GALWAY: Immediately, yes.

MS. O'BRIEN: Immediately after the shooting.

CST. GALWAY: I don't understand what the evidentiary value would be.

MS. O'BRIEN: Okay.

I'm just going to bring up your Supplementary Occurrence Report on this topic, and it's P-0406, Madam Clerk.

THE COMMISSIONER: Just wondering what – how you're making out in time?

MS. O'BRIEN: I'm making out well, Commissioner, but it's – I am going – you know, I have a few more questions to do, probably would push us a little bit beyond the break time, so if you want to take the break now.

THE COMMISSIONER: Yeah, I think we might as well take the break now.

MS. O'BRIEN: I won't be long after we resume.

THE COMMISSIONER: Okay. Thank you.

We'll recess for 15 minutes.

Thank you.

MS. SHEEHAN: All rise.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

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

MS. O'BRIEN: Thank you.

I'd ask Madam Clerk to bring up P-0010, Photo 100, please. We're going to look at a photograph now, Constable Galway, which I believe might have been the one you were referring to a little earlier in your testimony.

Do you recognize this photograph?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay, so when you spoke earlier – and I don't know if there is a way to make it any bigger than that. I'm not sure.

Here we go. Thank you, Madam Clerk.

So when you talked earlier about having, you know, looking at the photographs with Corporal Burke and Sergeant Foote, is this the photograph of the glasses that you would have been referring to?

CST. GALWAY: It's one of them, yeah. We saw several photos.

MS. O'BRIEN: Okay. So this is, I think, from what I can tell, the best one in the exhibits or the clearest one that we've seen. So this is what you are describing there in terms of them being laid down on the table.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. So you're saying when you look at these glasses you see them not in great condition but in a wearable condition what I understand.

CST. GALWAY: Yes, they're in terribly poor condition but you could wear them.

MS. O'BRIEN: Okay.

Now, I'm going to ask to bring up P-0406, please. So this is your Supplementary Occurrence Report for April 15 when you went to seize the glasses.

Okay. Thank you.

So you went out on the 15th. Burke advises that he wants you to go seize a pair of glasses. So can you just tell us, before I go through the Supplementary Occurrence Report in detail, can you just tell me about when you went out there to seize the glasses? What happened?

CST. GALWAY: Well, that was it. I drove out there. I wasn't in my regular GIS vehicle. So I was in an older, just in an administrative car that we have.

MS. O'BRIEN: Is there a significance to that?

CST. GALWAY: Well, earlier it was about taking a picture. Like, there was mention of, I didn't photograph it. I had mentioned, I didn't have my – I usually have a camera with me and I didn't have it with me. And in our GIS vehicle we do have a spare camera and I didn't have it. So I know I wasn't in my usual GIS vehicle.

MS. O'BRIEN: Okay. So you didn't have a camera with you. Would you have had a camera in your cellphone?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. So you would have had the ability to take a picture but you didn't.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. All right.

So you drove out there to seize the glasses, and who met you there?

CST. GALWAY: Meghan was there, and Billy was there as well.

MS. O'BRIEN: Okay.

CST. GALWAY: So going down there now, I didn't understand what the glasses were going to be, in what condition or how I was going to get them. She could have given them to me, they could have been in a case, but they – I went inside the house and they were right on – you know, in front of where the chair was, I guess, on a little table.

MS. O'BRIEN: Okay.

CST. GALWAY: Yeah.

MS. O'BRIEN: So where Meghan Dunphy had found them and noticed the damage to them. She hadn't touched them at all, is that right, or that's what you understood from her?

CST. GALWAY: Well, I'm not sure who touched them. I mean we haven't had the house for a week or so –

MS. O'BRIEN: Sure.

CST. GALWAY: – but she showed me where the glasses were. Is that what you mean?

MS. O'BRIEN: When – yes, and her – and what she was, and what I understand her evidence to be when she saw the glasses on the table, saw them in that condition –

CST. GALWAY: Yes.

MS. O'BRIEN: – on the 14th, alerted you through her legal counsel, that she had just left them where they were, left them in situ where she'd found them –

CST. GALWAY: Yes.

MS. O'BRIEN: – waiting for you to come seize them.

Okay. Yes?

CST. GALWAY: Yes.

MS. O'BRIEN: So how did you go about seizing them? For example, were you wearing gloves?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay, so latex, exhibit-type gloves.

CST. GALWAY: Yes, just the usual blue latex gloves.

MS. O'BRIEN: Okay. And how would you have secured them or contained them? What did you do?

CST. GALWAY: So what I did, I just picked up the glasses by the arm, like by the ear piece, and I brought them out to the car and I put them in a bag out in the car which was parked, you know, on the road, I guess at the bottom of the driveway.

MS. O'BRIEN: And you put them in an exhibit bag in the car?

CST. GALWAY: Yes, a plastic bag.

MS. O'BRIEN: In a plastic bag.

Now there's some evidence that one of the lenses at that time had kind of popped out of the frame. Carrying them out, was the lens – I mean, was there concern about the lens dropping out if you were just carrying them by the arm?

CST. GALWAY: The lens was sort of half out of the frame, maybe held in by the tape but it wasn't in any jeopardy of falling out.

MS. O'BRIEN: All right.

And this is just your notes of them. Come down (inaudible), if I told her I would leave in five minutes and meet her at the house. She said her father's glasses were beat up and that they were held together with tape. She said that he was wearing his glasses when they went to the Woodstock, that they were not beat up at that time. She said there was no tape on them at that time. I asked her if her father had a second pair of glasses and she said no.

And then we have a note here, at five past three you met with Meghan and Billy Corcoran at the Dunphy residence. The house has been cleaned up and there is a pile of household items on the front lawn.

So you could see that when you went there?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

Meghan shows me the glasses which were on the table directly in front of Don Dunphy's recliner. The glasses are in very poor condition and are being held together by white medical tape. One of the lenses is falling out and is being held in by the tape. Both earpieces have tape at the end in place of the plastic sleeves which would sit on the ears, one of the nose pads is missing and is sitting next to the glasses. The glasses are very dirty with rust spots and green mould which sometimes forms on glasses. The white tape is dirty and appears to have been on the glasses for some time. The glasses were found laying flat on the table with both arms at right angles to their normal position, as if someone stepped on them, sat on them, or something was laid on top of them. The glasses were seized as well as the nose pad.

Okay. Now, you ultimately, you ultimately photographed the glasses, not at the scene, though we have had already displayed here today photographs that Meghan Dunphy took at the scene, but you photographed them after when you returned to the detachment. Is that right?

CST. GALWAY: Did you just say you displayed a photo that Meghan Dunphy took?

MS. O'BRIEN: Earlier in the inquiry.

CST. GALWAY: Okay.

MS. O'BRIEN: We had – when I think Meghan Dunphy testified we had one. One of the exhibits that were entered was –

CST. GALWAY: Okay.

MS. O'BRIEN: – pictures that she took of the glasses on the table.

CST. GALWAY: Right.

MS. O'BRIEN: But I understand you didn't take any glasses while –

CST. GALWAY: No.

MS. O'BRIEN: – they were there in the house.

I apologize for going too fast – pictures while you were there at the house, but that you ultimately photographed those glasses when you were back at the detachment.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay, and I will ask to have that exhibit brought up, P-0420.

And when you saw the glasses in the house that day on the coffee table, that day you went to seize them, did you feel they were in wearable condition then?

CST. GALWAY: No, no. There was a huge change in their appearance and condition from the photos that I had seen just after the shooting as to, you know, the photos that day. It looked like someone had sat on the glasses, or laid something on the glasses, so they were not wearable.

MS. O'BRIEN: Okay, and just these, just entered here now as P-0420, these are the photographs that you took of the glasses – sorry; maybe I'll get you to make this one a little bit smaller, Madam Clerk. It's hard to keep up with us.

Okay. So these are the glasses, then, you had put them in the, in a plastic bag. Is this the plastic bag that you put them in, you said –

CST. GALWAY: Yes.

MS. O'BRIEN: – in Mitchells Brook in your vehicle?

CST. GALWAY: Yeah, the plastic bag.

MS. O'BRIEN: Okay.

Okay. So there's just a series of the photographs there.

Meghan Dunphy had given testimony that – I believe she gave testimony that she'd seen you just lay the glasses on the seat of your vehicle. Is that, you know, consistent with your memory of it?

CST. GALWAY: Yeah, I think I did. I think I laid them on the seat, got the bag and then put the glasses in the bag. So that would be right.

MS. O'BRIEN: Okay. And we're going to see there was a little further email on this because – did you understand that later on there were complaints made as to your handling of the glasses?

CST. GALWAY: Yes.

MS. O'BRIEN: So what do you recall of that?

CST. GALWAY: I guess Meghan was upset about the way I seized the glasses, that I took them out without putting them in a bag. And she, I guess, called Erin Breen. And Erin Breen, I remember there was some kind of correspondence about how the integrity of the glasses, like they were being exposed to the elements when I brought them outside. Is that what you mean?

MS. O'BRIEN: Yeah, that's what I was asking you about. And did you feel that that was a valid complaint or concern?

CST. GALWAY: No. I mean it was a sunny day out and clear. And you have to remember these glasses for seven days were in an unguarded house. You can tell it's, you know, it's very dirty in the house; there's cats roaming everywhere. So by me carrying the glasses down the driveway, I did not expose those glasses to anything that would alter their significance in any way, shape or form.

MS. O'BRIEN: And that email chain, I think we can bring it up, is P-0427.

MS. SHEEHAN: (Inaudible.)

MS. O'BRIEN: P –

MS. SHEEHAN: (Inaudible.)

MS. O'BRIEN: Oh, sorry.

MR. KENNEDY: P – sorry, what?

MS. O'BRIEN: 0427, Mr. Kennedy.

Thank you, Madam Clerk.

So this is an email chain and it starts with an email to you from Kent Osmond on, sorry, April 27: Erin Breen is accusing us of mishandling the glasses by not taking photos and by not placing – I think it's supposed to be – them in an exhibit bag when seized. She states the glasses were taken outdoors and exposed to the elements, thereby potentially compromising them. Please advise how the glasses were handled and include same in your notes, if not already documented. Thanks, Kent.

And this is your response back: “Hey Kent,

“When I went into the house, I was directed to the glasses, which were on the table. I picked them up, wearing latex gloves, as usual, by the end of one of the ear pieces. I brought them out to the car, where they were placed in a bag. They were not exposed to any elements, as it was a fine day. They were not compromised, in any way.”

No photo was taken because I did not have a camera, as I was not in my usual GIS vehicle. Given all the fuss, there is no doubt I wish I had taken a photo BB. Would that –

CST. GALWAY: BlackBerry.

MS. O'BRIEN: BlackBerry.

I am fine with that because there is no photo that can replace my testimony. "I know what saw, where I saw it, and what conditions the glasses were in. Meghan and Billy will corroborate this, as well, as they are the ones who showed me the glasses. Billy even pointed out that one of the nose pads was broken off.

These glasses were seized on April 15th, more than a full week after the scene was handed over to Meghan. House was left, unsecured, as of 20:20 on April 7th. That means we had no continuity over these glasses for eight days. "There is no doubt that these glasses were already compromised. We have no idea who handled them, where they had been, and what was done to them. And, we know that people were in the house after April 7th, as the reenactments were done, and the house was cleaned up, as well.

"To me, these glasses are a non issue. Photos prove that they were in their usual state, at the time of Mr. DUNPHY's passing. That means they were damaged, sometime, after FIS took these photos. Therefore, it cannot be said that these glasses prove that an altercation may have taken place. It makes zero sense, and the photos prove it."

Given the state of the house, it is quite possible that they were damaged when they were, when we were removing Mr. Dunphy, they could have been damaged during one of the reenactments, or they could have been damaged by who, whoever else had been in the house.

"Anyway, that's my two cents.

"If you need anything else, just let me know."

Does that accurately sum up your, your evidence with respect to the seizing of the glasses and your position with respect to their value?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

I understand that you later took some more photographs of the holster, Constable Smyth's holster, his pepper spray and his, his sidearm.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. And I don't need, I don't need to bring you to those, but, Commissioner, for your information, those photographs are at P-0419. And I believe actually included there was pictures of the rifle.

CST. GALWAY: Yes.

MS. O'BRIEN: The .22 so –

I also understand that there was a consent search form completed and received from Meghan Dunphy so that the RCMP could do a search of Mr. Dunphy's cellphone.

CST. GALWAY: Yes.

MS. O'BRIEN: And you were involved in getting that from Meghan Dunphy.

CST. GALWAY: Yes.

MS. O'BRIEN: Okay, so just for the record, that would have been a consent search that allowed the RCMP to go in and do an extraction and a review of all the data that was on that phone?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay. The last exhibit I want to bring you to, Constable Galway, is at P-0426.

So this is an email from Kent Osmond to a number of members of the RCMP, but you're among them as the third recipient.

Subject: Donald Dunphy Investigation. "Yesterday afternoon I was served with a strongly worded letter from Erin BREEN, legal counsel for Ms Meghan DUNPHY, which was also addressed to C/Supt BOLAND and Justice Minister Darin KING. The letter calls for a cessation of RCMP involvement and the immediate assignment of an out-of-province police agency to perform the investigation.

"Her reasons cite 'tunnel vision' on the part of MCU, FIS and the Holyrood members, stating that we may have overlooked or intentionally dismissed a critical piece of evidence at the scene that didn't fit with our current theories. She states our investigation isn't being completed in a thorough or unbiased manner.

"She feels that way due to our not seizing a set of eyeglasses that were worn by Mr. DUNPHY on the day in question.

"Obviously, any decision on such matters will occur at RCMP Management/Governmental levels and we will continue to investigate until told otherwise.

"MCU has been very accommodating of Ms. DUNPHY's needs and questions and have involved Ms. BREEN extensively.

"Moving forward, when dealing with the family or Ms. Breen, please direct them to Cpl BURKE or myself. If they have questions, note the questions and forward same to us. Any interactions are to be well documented.

Kent"

THE COMMISSIONER: What's the date of that?

MS. O'BRIEN: That is April 17, Commissioner.

After that email, did your role as family liaison officer change?

CST. GALWAY: Yes.

MS. O'BRIEN: Okay.

And is it ultimately that there was a transition; Steve Burke became the family liaison?

CST. GALWAY: Yes, that's right.

MS. O'BRIEN: Okay.

All right. Those are the questions I had prepared for you, Constable Galway. Is there anything that we did not cover that you feel we should have covered with respect to your involvement?

CST. GALWAY: No.

MS. O'BRIEN: Okay, thank you.

Other counsel will have some questions as may the Commissioner, thank you.

CST. GALWAY: Okay, thanks.

THE COMMISSIONER: Mr. Simmonds.

MR. SIMMONDS: Constable Galway, my name is Bob Simmonds and I'm one of the counsel for Ms. Dunphy.

If I understand correctly –

THE COMMISSIONER: Sit down if you want to, Mr. Simmonds. You can sit down if you want to (inaudible).

MR. SIMMONDS: No, that's fine.

THE COMMISSIONER: Okay.

MR. SIMMONDS: If I understand correctly, you were at a hockey ring on leisure time and you got a call to come in to the Holyrood detachment.

CST. GALWAY: Yes.

MR. SIMMONDS: Okay. And you got the call in the midafternoon and you got at the detachment sometime after 5 or thereabouts?

CST. GALWAY: I had to go home and –

MR. SIMMONDS: Change.

CST. GALWAY: – and then I went up to the office, yes.

MR. SIMMONDS: Okay. And when you got there I understand, very shortly after you got it, or meeting took place in which there were a number of RCMP officers involved.

CST. GALWAY: Yes.

MR. SIMMONDS: Okay.

And I think you did indicate who the officers were: Henstridge, Seward –

CST. GALWAY: Okay, sure, yes, yep.

MS. SIMMONDS: If you can tell me exactly who was there.

Henstridge, Seward, Corporal Burke –

CST. GALWAY: Yeah, there was Staff Sergeant Tiller, and Sergeant Osmond, Corporal Henstridge, Corporal Seward, Corporal Burke and Constable Nippard.

MR. SIMMONDS: And, at that time, hadn't Officer Smyth arrived at the Holyrood detachment?

CST. GALWAY: No.

MR. SIMMONDS: He hadn't?

CST. GALWAY: Not to my knowledge. I didn't see him, no.

MR. SIMMONDS: So not to your knowledge. So you went into this meeting with five or six other officers.

CST. GALWAY: Uh-huh.

MR. SIMMONDS: And who was calling the shots at the meeting? Was it Officer Kent Osmond?

CST. GALWAY: Major Crime would be in charge, and he's the sergeant.

MR. SIMMONDS: And then, I understand, you shortly after that make the comment, when asked, that you felt this was self-defence?

CST. GALWAY: Yes.

MR. SIMMONDS: Listen, on what basis could you come to that conclusion that quickly? You hadn't attended at the scene, Officer Smyth hadn't given a statement, you're at the detachment and you basically have no information outside of what was communicated by radio. How could you come to any conclusion that this was self-defence by Officer Smyth?

CST. GALWAY: Well, I said based on the information that I had at that –

MR. SIMMONDS: But what information did you have?

CST. GALWAY: Based on the information that I had at that point, it seemed to me that it was self-defence, yes.

MR. SIMMONDS: What – the information you had was that there was a man in his house in Mitchells Brook –

CST. GALWAY: Yeah.

MR. SIMMONDS: – that was shot by Officer Smyth.

CST. GALWAY: No. The information I had was the man in the house pulled a gun on Constable Smyth and Constable Smyth had fired.

MR. SIMMONDS: You had at maximum two witnesses, one of which is dead. So you have one witness left, Officer Smyth, who you haven't got a statement from –

CST. GALWAY: Yes.

MR. SIMMONDS: – and you're coming to the conclusion or willing to make the statement –

CST. GALWAY: I'm not coming to the conclusion –

MR. SIMMONDS: You were willing to make the statement that it was self-defence!

CST. GALWAY: Yes. Based on the information I had, that's what it is.

MR. SIMMONDS: And the only info – I'm sorry, go ahead.

CST. GALWAY: Based on the information I had at the point, that's what I was told at that point. So, if a police officer goes to the house and a man pulls a gun on the officer, and he returns fire, it's self-defence.

MR. SIMMONDS: Officer, you had no statement from the officer that was at the house.

CST. GALWAY: Right.

MR. SIMMONDS: Okay. He hadn't arrived at the detachment. You had what he'd passed along and nothing else. Would I be unfair to say it would be prudent to be suspect and to be very careful with respect to accepting anything at that point in time? You hadn't even attended the scene, but you're willing to make a statement that, based on your information, this is self-defence.

CST. GALWAY: At that point, I think it's safe to say I can make that statement, yes.

MR. SIMMONDS: Okay.

Would you agree that that sentiment permeated the whole RCMP investigation in this matter?

CST. GALWAY: When you say permeate, what do you mean exactly?

MR. SIMMONDS: That, I mean, you said Ms. Meghan Dunphy didn't trust the RCMP. Would you agree that right from the start, ye felt that this is what had happened and that was the vision you had, tunnel vision, call it what you will –

CST. GALWAY: Yeah.

MR. SIMMONDS: – all along.

CST. GALWAY: All I can tell you is what I think. So dealing with Meghan Dunphy –

MR. SIMMONDS: No, no, no, with the greatest of respect –

CST. GALWAY: Oh, okay.

MR. SIMMONDS: With the greatest of respect, Sir, you were part of a meeting where there were five or six high-ranking RCMP officers –

CST. GALWAY: Uh-huh.

MR. SIMMONDS: – early on in this, so I think you can speak for more than just what you think. I would believe you would have been instructed, told or advised by the officers that were at – in that meeting with you.

CST. GALWAY: We did not, so I'm going to disagree with you. I will say I still will not speak for other police officers, but I do not believe there was tunnel vision.

Just because I had certain information at a certain point, and I think it's a certain way up to that point, I feel safe to say that I can make that. And, again, it's not a conclusion, like you're saying; it's just a statement, up to that point, right.

MR. SIMMONDS: You use the phrase that you said – explained something to Ms. Dunphy and you used the phrase in your direct: But we need to get all the information.

CST. GALWAY: Exactly.

MR. SIMMONDS: You didn't have any of the information here.

CST. GALWAY: I had –

MR. SIMMONDS: You didn't have any of the information.

CST. GALWAY: I had some of the info – you just asked me, based on the information I had, can I say that statement. So based on that information I made the statement.

MR. SIMMONDS: And –

CST. GALWAY: So I had that information –

MR. SIMMONDS: What information?

CST. GALWAY: – so I can make the statement.

MR. SIMMONDS: What information did you have?

CST. GALWAY: I had information –

MR. SIMMONDS: From who? Let's start with who.

CST. GALWAY: I can't recall who told me. It could have been Staff Sergeant Tiller or it could have been Corporal Trevor O'Keefe.

MR. SIMMONDS: Did you question where that information came from?

CST. GALWAY: No.

MR. SIMMONDS: So someone who you're not sure –

CST. GALWAY: At that point that's the information I had.

MR. SIMMONDS: Okay.

CST. GALWAY: And to me, that's self-defence.

MR. SIMMONDS: Okay.

Would you agree that a police officer is supposed to keep an open, objective mind with respect to an investigation to make sure, before any conclusions are reached, an open mind is kept and all of the information is weighed, the evidence is weighed, then you make a determination as to what may have happened? Would you agree that that's prudent policing?

CST. GALWAY: Before a conclusion was made, I will say, we did that. We waited for all the information.

MR. SIMMONDS: Well, I put it to you, Sir, that the way Officer Smyth was handled is indicative of your tunnel vision with respect to this. Officer Smyth is brought back to the detachment; there are two waiting RNC officers –

CST. GALWAY: Uh-huh.

MR. SIMMONDS: – one you believe is an acting investigator. I understand from the evidence we had that there were in total four RNC officers there who were allowed to – they said: We're not going to interfere, we're here for support.

Any time I've had a client who's taken in or detained, they're not allowed any such luxury as that. Would you agree that that's an odd way to be conducting an investigation?

CST. GALWAY: I can only speak for myself. When I dealt with Constable Smyth, I dealt with him in an open, respectful way that was –

MR. SIMMONDS: No.

CST. GALWAY: It reflected the position at the time.

MR. SIMMONDS: I'm not –

CST. GALWAY: I don't – I can't speak for the RNC.

MR. SIMMONDS: Constable Galway, don't try that one on me, you can't speak for the RNC. I'm not asking you to speak for the RNC. I'm asking you as one of the officers that was there with this group that had gone through a briefing, or debriefing, a person is brought in, he's the only live witness to a death where there were a number of shots fired and he's allowed – before any statement is taken from him, before any kind of questioning is done of him, he's allowed to sit and talk to four other police officers who are there, not to interfere from his force, but to provide support. That is not a normal occurrence in an investigation, I put to you, Officer Galway.

CST. GALWAY: I'll put to you this is not a normal situation. I had no dealings with Joe Smyth, only to seize his clothing that night, so I can't answer your questions.

MR. SIMMONDS: You can answer whether that's a normal procedure, whether you were surprised at that procedure, whether you see that kind of procedure with other work you do. I put to you, you've never seen it.

CST. GALWAY: But I didn't see that procedure. I didn't see the procedure. All I saw was Joe Smyth. I went into the locker room and I took his clothes, so I don't know what he did with the other RNC officers.

MR. SIMMONDS: You, in fact, indicated – I'm taking you to where you have indicated, you said the other officers – in fact, you said it this morning, today – weren't there to interfere, they were there for support.

CST. GALWAY: Exactly, yes.

MR. SIMMONDS: Right.

So have you ever seen a situation where someone who is at least under investigation is allowed to talk to other people who are there for support?

CST. GALWAY: I have never seen this kind of investigation before with the RNC –

MR. SIMMONDS: No, exactly.

CST. GALWAY: – where a police officer has actually been involved in something like this.

MR. SIMMONDS: Would you agree it is a poor investigative technique to let the person who is at least being investigated – we'll leave it at that, okay – to go and speak to a maximum of four other officers, it appears, who are not there to interfere, but are there for support?

Would you agree that that is an oddity?

CST. GALWAY: No. I don't agree with you, no.

MR. SIMMONDS: You don't agree?

CST. GALWAY: No.

MR. SIMMONDS: So you see no harm – when the public views this – that an officer is brought in after a shooting takes place where he's the only witness, he's not – a statement is not taken immediately from him, but he's allowed to associate with four other officers from his police force who are giving him advice or support while the RCMP sit by and let this go on.

You don't think that that's an oddity or something strange to the public?

CST. GALWAY: But I'm going to tell you that, as far as we know at this point, no criminal offence has taken place.

MR. SIMMONDS: You don't know. That's the problem. You don't know at this point.

CST. GALWAY: No, but what we do know leads us to believe that a criminal offence has not taken place.

MR. SIMMONDS: Leads you to believe.

CST. GALWAY: Yes, leads to believe.

MR. SIMMONDS: But you haven't reached a conclusion.

CST. GALWAY: Exactly.

MR. SIMMONDS: This is the only live witness. Do you not think it would have been prudent not to have the RNC officers have any dealings with him 'til your force had conducted a proper, thorough and full – taken a full statement from him? Do you agree that that would be sensible?

CST. GALWAY: I don't agree with what you're trying to get me to say. Like, it's a very unique situation where a police officer has shot and killed a man. No criminal offence has taken place it looks as if –

MR. SIMMONDS: You don't know that. You don't know a criminal offence is not taken place; you suspect it hasn't.

CST. GALWAY: We suspect. Well –

MR. SIMMONDS: You don't know.

CST. GALWAY: – we do know a criminal offence has taken place with the respect of pointing a firearm but we don't know what happened – for what we know right now, it was self-defence. So if – so with whether he can get comfort or advice or something from colleagues, I don't think that's a huge stretch. If you do, that's your opinion.

MR. SIMMONDS: Okay. You don't think it's a huge stretch that there is a person who is the shooter who goes into someone's house, there's no other information, independent, but from that shooter, as to what took place. He's brought back and before ye question or take appropriate investigative methods with respect to him, he's allowed to converse with four other officers from his force who are giving him advice and support. You believe that that is a fair and appropriate way to conduct an investigation.

CST. GALWAY: They came there to give him support, so I don't agree with what you're saying. I've never seen it before, so I don't, I can't have any experience with it, but I'm not going to agree with the way you're putting it because I don't believe that.

MR. SIMMONDS: Uh-huh.

CST. GALWAY: Whether it's the right thing to do or the wrong thing to do, I think it's a matter of perception. But from my experience, I've never been involved in a situation like this before, but I don't see that it's a huge injustice.

MR. SIMMONDS: You have been involved in investigations before where one of the persons of interest has been brought in for questioning –

CST. GALWAY: Of course, yes.

MR. SIMMONDS: – I'm sure. I don't believe in those situations it would be normal to have family members or other people coming in to give them support before they come in and give that statement to you if they were a person of interest. Is that a fair statement?

CST. GALWAY: Family, yes, that's – of course.

MR. SIMMONDS: So he has a conversation and then he's not asked to give a statement that night; it's the next day.

CST. GALWAY: Okay, yes.

MR. SIMMONDS: Correct? Is that your honest answer?

CST. GALWAY: As far as I know – like I said, I didn't deal with Mr. Smyth and his statement.

THE COMMISSIONER: Just before you move on, Mr. Simmonds. Constable Galway, when you arrive at the conclusion so quickly that it was self-defence, this implies, does it not, that you are accepting the statement of Constable Smyth?

CST. GALWAY: But again, I wouldn't say it was my conclusion but based on the information that I had, it seemed or it appeared as though it was self-defence.

THE COMMISSIONER: If Constable Smyth was telling things as they really happened.

CST. GALWAY: Well, that's the basis of everything, yes.

THE COMMISSIONER: Isn't that it?

CST. GALWAY: Yes.

THE COMMISSIONER: And therefore, isn't it fair to ask why would you or, or the police forces involved come to that conclusion so quickly when that might influence the rigour of the investigation into whether or not that statement by Constable Smyth was true?

CST. GALWAY: Yes, but again, you mention conclusion, Mr. Simmonds mentioned conclusion, and so have you, like I (inaudible) –

THE COMMISSIONER: Well, it's a – as far as I can see it is a conclusion. It may be a provisional one.

CST. GALWAY: Yes.

THE COMMISSIONER: It may be one that you're going to change, but you proceed to act on that basis –

CST. GALWAY: (Inaudible.)

THE COMMISSIONER: – accepting, accepting that that was the, that was how events occurred, did you not?

CST. GALWAY: I didn't – after moving forward, there was more evidence as well that would lend credence to Constable Smyth's testimony.

THE COMMISSIONER: As, as the investigation continued.

CST. GALWAY: As the investigation went on.

THE COMMISSIONER: Right.

CST. GALWAY: But at that point, I mean, Meghan Dunphy is asking me why he is not in custody, so I'm just trying to explain to her this is why, mentioning that from what we know of the investigation, you know –

THE COMMISSIONER: Yes, well, I think what Mr. Simmonds was only speaking about the, the Holyrood, being back at the Holyrood detachment after – I take it, Mr. Simmonds, that's after Constable Galway has spoken with Ms. Dunphy?

MR. SIMMONDS: I, I'm asking from both points, from the first evening when he's there.

THE COMMISSIONER: Right.

MR. SIMMONDS: When Constable Smyth arrives from the scene he's brought up by Constable X –

THE COMMISSIONER: Right.

MR. SIMMONDS: – and dropped off at the detachment.

THE COMMISSIONER: Right.

MR. SIMMONDS: I understand that that point in time, my first question is why would four RNC officers be allowed to have involvement and support or questioning or talk to him –

THE COMMISSIONER: Right.

MR. SIMMONDS: – when they have virtually no information whatsoever?

THE COMMISSIONER: The – I think Constable Galway went back to the next day then. Your reference to speaking to Meghan was when you'd been appointed family liaison the next day, was it not?

MR. SIMMONDS: (Inaudible.)

CST. GALWAY: Yes, there's a lot more information –

THE COMMISSIONER: Yeah.

CST. GALWAY: Yes, there's a lot more information that had been gathered, so I'm (inaudible).

MR. SIMMONDS: I'm going to ask about that (inaudible).

CST. GALWAY: I was in the house that night and had I seen other evidence that, you know, it backed up what Constable Smyth was saying.

THE COMMISSIONER: Okay, go ahead, Mr. Simmonds – thank you.

MR. SIMMONDS: It backed up what Constable Smyth was saying?

CST. GALWAY: Yes.

MR. SIMMONDS: There was a dead body there.

CST. GALWAY: Yes.

MR. SIMMONDS: There was a rifle there.

CST. GALWAY: Yes.

MR. SIMMONDS: And it was his rendition of how that took place, but you had no other investigation outside of that at that stage of the game. Am I correct or incorrect?

CST. GALWAY: Yeah, the— there were things at the scene, like just the, the way, there was some things that stood out in mind during the investigation, and when I was there I remember Mr. Dunphy's hands struck me as if there were positioned that they could have been holding a rifle.

MR. SIMMONDS: And we, we – I'm sorry, go ahead.

CST. GALWAY: Okay. And I remember seeing on the side of the chair there was almost as if there was an imprint or a dent in the garbage like where the rifle would have been positioned.

MR. SIMMONDS: On the floor?

CST. GALWAY: On the floor, yeah.

MR. SIMMONDS: Okay. There was an opening on the floor. Did it strike you as passing strange that a man sitting in a chair is able to get a rifle up from the floor, up over the arm of the chair and into a firing position where a well-trained protective services officer doesn't see any of that and is met with the gun facing him. Does that not raise some questions to you because that's what we're being told?

CST. GALWAY: I think it's possible to reach down the side of a chair and grab a gun, sure.

MR. SIMMONDS: Do you think that would go unnoticed by someone paying acute attention to them as would be someone who's a trained police officer, or am I wrong?

CST. GALWAY: Well, Mr. – Constable Smyth must have noticed the gun.

MR. SIMMONDS: You would think.

CST. GALWAY: No, I mean when it was pointed at him.

MR. SIMMONDS: Officer Galway, you were then on the next day or that evening appointed family liaison.

CST. GALWAY: Yes.

MR. SIMMONDS: And what does liaison mean to you?

CST. GALWAY: It just means it's a point of reference for Meghan Dunphy. So if she has any questions or has any concerns, she knows that she can call me.

I went to visit her. I gave her my business card; I gave her my cellphone so if she has any questions she can just call me. That's it.

MR. SIMMONDS: But liaison, when you liaise with someone it's the passing and communication pipeline of information back and forth to address issues and things of that nature.

CST. GALWAY: Sure.

MR. SIMMONDS: Do you feel you fulfilled that function here?

CST. GALWAY: Yes.

MR. SIMMONDS: Okay.

I take it had you – you said you had been family liaison before.

CST. GALWAY: Yes, I have.

MR. SIMMONDS: And that was liaison for the family of the victim, I take it.

CST. GALWAY: Yes.

MR. SIMMONDS: Okay.

There's no – you don't get any specific training for that.

CST. GALWAY: No. It's just a point of contact in the RCMP.

MR. SIMMONDS: No, no, but you don't get any specific training –

CST. GALWAY: No.

MR. SIMMONDS: – for this function.

CST. GALWAY: No.

MR. SIMMONDS: You tell us that there are absolutely no guidelines, policies or procedures for a family liaison.

CST. GALWAY: Not as far as I know.

MR. SIMMONDS: Okay.

And in fact I think you went as far to say in your interview with Ms. O'Brien that there's no system in place with respect to how the family liaison officer, he or she, should interact, what information they can pass along. Is that correct? That's –

CST. GALWAY: Well, the information is passed down from the investigators. And if they wanted me to tell Meghan something, that's what they would do.

MR. SIMMONDS: But there's no system. It's not written out anywhere –

CST. GALWAY: It's not written down. There's no policy, no.

MR. SIMMONDS: Okay.

You categorized it, in your statement, as a minor role? I can take you to that if you want, but you said it's a minor role.

CST. GALWAY: Yeah, it seems like people have taken it and made it more than it is. Because really what it is, it's a point of contact to help Meghan Dunphy if she has any questions.

MR. SIMMONDS: To help Meghan Dunphy if she has any questions.

Page 175 of your interview on – in December, I believe it was. December 2nd.

Ms. O'Brien: So you weren't discussing what's being communicated.

Constable Galway: I think what the family – it's almost like the family liaison is a minor role. Just, you know, if Meghan needs to talk to someone, she can talk to me.

That's not what I understand the function of a liaison person is. It's to pass along, communicate, make sure there's a pipeline, a line of communication opened up so that information can be passed back and forth. I wouldn't consider that a minor role.

CST. GALWAY: Well, again, the main thing is, if she needs to contact a police officer, it's putting a face to the name, and I was going to be the person she'd call.

MR. SIMMONDS: Okay, Officer Galway, let's take what we know.

CST. GALWAY: Yep.

MR. SIMMONDS: Her father's been shot.

CST. GALWAY: Yes.

MR. SIMMONDS: In his home, in his chair.

CST. GALWAY: Uh-huh.

MR. SIMMONDS: She's not allowed to go in and see him. The officers at the scene tell her this.

CST. GALWAY: Okay.

MR. SIMMONDS: The body is removed and taken to the morgue. You tell her you're the liaison person, where she would believe she can come to you get information like, i.e., when can I see the body –

CST. GALWAY: Right.

MR. SIMMONDS: – tell me about how this came about, tell me what the other officer was saying or what the circumstances were that would bring him to my father's home. Were any of those questions answered for her? I put to you they were not.

CST. GALWAY: When I went to see Meghan for the first time, I asked her of her concerns and she gave me a list of her concerns, and I will say that all of those concerns were answered.

MR. SIMMONDS: With the greatest of respect, Officer Galway, all of her concerns were answered? Her major concern was: I want to see my father's body; I want to see my father. Ms. Breen stated that in the letter. She wanted –she said that to Officer O'Keefe at the scene.

CST. GALWAY: Yes.

MR. SIMMONDS: She said it to you.

CST. GALWAY: Yes.

MR. SIMMONDS: She – it was her central question to everyone. She even attended at the medical examiner’s office to see if she could see her father. Yet, that could not be arranged. Is that communication? Is that assistance? Is that fulfilling the job of liaison?

CST. GALWAY: I have no control of how Meghan Dunphy could see the body. She –

MR. SIMMONDS: Well –

CST. GALWAY: She asked me – she wanted to see the body as soon as possible after the autopsy. I called the medical examiner and they said you can’t see the body at the morgue. So, in my experience, then, it’s up to – when the body is released to the funeral home, that’s how it’s seen.

I called her and, again, she asked me the question. I found out the answer, I gave her the answer and then –

MR. SIMMONDS: No, no.

CST. GALWAY: I gave her the answer and she told me: I’ve got it taken care of; I’ve already arranged a viewing. So I thought that part that she asked me is taken care of.

MR. SIMMONDS: She said she had had conversation with Kenneth Dunphy at the funeral home. But as far as taken care of, if you’re the liaison officer, if you’re there to assist, don’t you think it would have been appropriate to see where you could set up a viewing; and before that viewing, don’t you think it would have been appropriate to tell her in as polite, discrete, diplomatic language as possible that her father had been shot four times, two of those to the skull?

CST. GALWAY: As far as I’m concerned, I did tell her about setting up the viewing. I advised her she should call the funeral home, and then she responded back to me: I did call the funeral home and I have arranged a viewing. Now, in my experience, when the body is given to the funeral home –

MR. SIMMONDS: In your ex –

CST. GALWAY: – the funeral home presents the body and prepares it for a viewing.

MR. SIMMONDS: You didn’t check that. You’re the family liaison. You’ve been the family liaison once before. This is a very unique situation. It’s not liaison for the victim because in this situation the victim is Officer Smyth, we are told, not the man that’s deceased.

CST. GALWAY: Right.

MR. SIMMONDS: You don’t make any inquiries as to how can I broach with her, how can I properly advise her before she goes to the funeral home, that her father was shot in the head?

CST. GALWAY: Yeah, I –

MR. SIMMONDS: You don’t think that that would have been an important, appropriate piece of advice for the young lady to have?

CST. GALWAY: But I never expected and no one would have ever expected, that Meghan would have to see her father in that condition. Looking back on the investigation with the inquiry and things – what could have been done in the future to make sure it doesn’t happen again, we

don't want anybody to ever have gone through what Meghan Dunphy went through at the funeral home.

MR. SIMMONDS: Officer Galway—

CST. GALWAY: Nobody.

MR. SIMMONDS: – this is not rocket science. The man was shot four times, two of them in the head. You saw that, as Ms. O'Brien pointed out, when you removed the body. You know she is gonna want to see him even if – even if – Kenneth Dunphy is able to do some magic with respect to the corpse. Do you not think it would have been appropriate for the police force handling the investigation to have someone with knowledge, experience, the proper training to go to her and say: Now, look, I need to have a sit down and talk to you; there's some things I got to tell you before you go to that funeral home? Don't you think that would have been appropriate?

CST. GALWAY: After that autopsy, I agree with you 100 percent, with conjunction with the medical examiner office, she should have been able to sit down and whatever questions she had about the injuries, she should have been – it should have been discussed with her, without question. I agree with you.

MR. SIMMONDS: Can you imagine the turmoil she went through when Kenneth Dunphy told her: B'y, your father's shot in the head twice; I can't let you see it, his head's in a bag. Can you imagine what –

CST. GALWAY: No, no one –

MR. SIMMONDS: – her feelings were on that date?

CST. GALWAY: Nobody wanted Meghan Dunphy or anybody to see their father like that.

MR. SIMMONDS: Do you understand now why she has some distrust of the RCMP and the way this investigation was handled, when these things happen?

CST. GALWAY: I have a lot of understanding for Meghan Dunphy right from the beginning, so I do understand that.

MR. SIMMONDS: I'll digress for a second, but in a situation where Officer Smyth is the only witness and you're doing up a list of exhibits, why was not exhibits checked for his fingerprints on other things, for instance, the rifle? I don't know if you can get prints from the glasses, but the glasses? Wouldn't it be, if he's the only other person there, he's the only witness, wouldn't it be appropriate to have fingerprints done on those things, too, to see if Officer Smyth's story adds up, if there's anything that counters what he's told you?

CST. GALWAY: I didn't process the scene with regards to fingerprints, so that would be a question for the forensics people.

MR. SIMMONDS: Do you agree it's a fair question that that should be asked? Why wasn't fingerprints taken of some other things?

CST. GALWAY: The rifle was tested for fingerprints.

MR. SIMMONDS: The rifle was fingerprinted for officer Dunphy's – or Officer Smyth's prints?

CST. GALWAY: The rifle was tested for fingerprints, but I believe there was – it was not conclusive. You couldn't get fingerprints off the rifle. That's what I believe.

MR. SIMMONDS: Was the –

THE COMMISSIONER: There's a report there, Mr. Simmonds.

MR. SIMMONDS: Was the ammunition tested? There was two pieces of ammunition found, one on the table and a subsequent one that Ms. Dunphy found over in the corner of the room.

CST. GALWAY: Yes, I had no dealings with the bullet that was found in the room.

MR. SIMMONDS: The eyeglasses. Your decision or your position with respect to the eyeglasses –

CST. GALWAY: Yes.

MR. SIMMONDS: – was that the eyeglasses were damaged when I saw them first and therefore they had no – or I saw them first, they weren't damaged. When I look at them now, they are damaged, so they have no evidentiary value because the house was turned back. That's your position in a nutshell?

CST. GALWAY: In a nutshell, that's quite the nutshell. I mean, they – what I would say, they're in poor condition but they are wearable. And then when I saw them later, when Meghan asked me to come down, they were not wearable and they were crushed, like something was laid on top of them.

MR. SIMMONDS: If I said to you that indeed you didn't have the glove on, that you took the latex glove, or whatever kind of glove it is, out of your pocket and used it wrap around the arm and take the glasses out like that, but you never had the glove on when –

CST. GALWAY: No.

MR. SIMMONDS: – you picked up the glasses.

CST. GALWAY: No, that's a mistake.

MR. SIMMONDS: That's wrong?

CST. GALWAY: I had – that's a mistake. I had the gloves on.

MR. SIMMONDS: Officer, one of the things you found on the table and seized on the subsequent visit was the nosepiece –

CST. GALWAY: Yes.

MR. SIMMONDS: – from the glasses.

I'd like you to view photo – Scene Photo 100. I think that may have been the one that was shown to you before.

If you look at that photo closely, I believe you'll see that, number one, the glasses are twisted.

THE COMMISSIONER: They're what?

MR. SIMMONDS: The glasses are twisted. The part that holds the frames appear to be twisted.

THE COMMISSIONER: You're referring to what would be the right-hand earpiece as we're looking at it?

MS. SIMMONDS: The right-hand side of the glasses, the lens, the body that holds the lens.

THE COMMISSIONER: The lens is in, however, right?

MR. SIMMONDS: The lens is in, but that looks to my sight, vision, my review of it, to be twisted. Would you agree?

CST. GALWAY: They're not straight, yes. I agree with you. They're held together by tape.

MR. SIMMONDS: Would you also agree that the nosepiece is missing?

CST. GALWAY: It looks like it, yes.

MR. SIMMONDS: So if the glasses are twisted, if he was wearing them that day and the information was that they were wearable, it would be likely that this wasn't twisted like this and it certainly would be certain, would it not, that the nosepiece would have been in them?

CST. GALWAY: But you can't say that. The nosepiece might have been missing all along. If they're held together by tape and they're in terrible condition –

MR. SIMMONDS: Ms. Dunphy –

CST. GALWAY: – it seems that it's possible that the nosepiece – and with regards to the scene –

MR. SIMMONDS: Just fell out?

CST. GALWAY: Sorry?

MR. SIMMONDS: Are you asking us to accept, and Mr. Commissioner to accept, that – this was a photo taken while Mr. Dunphy was still seated in the chair.

CST. GALWAY: Yes.

MR. SIMMONDS: Okay.

So there's no chance that the glasses were damaged by the movement of his body out of there or by the scene being turned back over, correct?

CST. GALWAY: Can you rephrase that?

MR. SIMMONDS: Sure, I can.

This photo was taken while Mr. Dunphy, the deceased, was still sitting in the chair.

CST. GALWAY: Yes, right.

MR. SIMMONDS: Correct?

CST. GALWAY: Yes.

MR. SIMMONDS: And you say in that situation this is the true condition that the glasses would be in immediately after the incident took place.

CST. GALWAY: It would appear so, yes.

MR. SIMMONDS: It would appear so.

CST. GALWAY: Yes.

MR. SIMMONDS: If you look at these closely, I think we've agreed that the part of the frame that holds the lens appears to be bent, number one.

CST. GALWAY: Yes, they're in terrible condition. I agree with you 100 per cent.

MR. SIMMONDS: Okay.

Number two, and more importantly, the nosepiece is missing.

CST. GALWAY: It appears to be missing, yes.

MR. SIMMONDS: And it is on the table. You found it on the table, correct?

CST. GALWAY: Yes.

MR. SIMMONDS: It's missing in this photo, it was missing when you seized them and it was on the table next to the glasses.

CST. GALWAY: Right.

MR. SIMMONDS: Would that not lend some substance to the possibility that maybe there was some – I won't call it a fight, but maybe some kind of interaction that caused the nosepiece to come out and the frames to get bent?

CST. GALWAY: I can't see how you would draw that inference from that. The glasses are in terrible condition, but you're asking me how did they get in that condition? I can't –

MR. SIMMONDS: No, I'm not. No, no, no with the greatest –

CST. GALWAY: I can't answer that.

MR. SIMMONDS: – of respect, I'm not asking you that. I'm asking you, in that condition, do they appear wearable with the frame bent and the nosepiece out? And we would have to assume that miraculously the nosepiece just fell out.

CST. GALWAY: To me, there's also another photograph that shows the angle of the glasses. So in my opinion, yes, they do look wearable. They look like you can just take them and place them on your ears and they are wearable. So, yes, they do.

MR. SIMMONDS: I'd ask you to go to what I think in the business is called the temple, which is the – this portion of the glasses that runs back.

CST. GALWAY: Okay.

MR. SIMMONDS: You note how on the one that's nearest the bag of chips, if you will, how that appears to be bent inwards completely.

CST. GALWAY: That looks like it's bent up, not inwards.

MR. SIMMONDS: That looks like it's bent up, not inwards?

CST. GALWAY: Yeah, like it's bent up –

MR. SIMMONDS: If it's bent –

CST. GALWAY: – to go behind his ears, yes.

MR. SIMMONDS: He could also be – with the glasses laid that way, that would be digging into the side of his head, wouldn't it?

CST. GALWAY: It's only –

MR. SIMMONDS: In that photo on top of it?

CST. GALWAY: It's only medical tape.

MR. SIMMONDS: I realize it's only medical tape, but the way that temple is sticking out right there –

CST. GALWAY: Yeah.

MR. SIMMONDS: – it appears the piece is bent in so it would be unwearable.

CST. GALWAY: No, it doesn't look like that to me. It looks like he could take up those glasses and put them right on his ears. Both of the earpieces are bent in at the same angle. The one with the tape is bent out because it's flimsy; it's like a piece of twine.

MR. SIMMONDS: Okay. I'm not going to argue with you, Sir. If that's what you take from the photograph, I put to you that you can't see the other earpiece of the glasses. The one you can see has a significant bend on it.

CST. GALWAY: You can see both earpieces. I can see both on my screen.

MR. SIMMONDS: Maybe you have a better picture than –

THE COMMISSIONER: Well, can you see the – I guess, you may not be able to see the far –

MR. SIMMONDS: I can see what he's – I think he's talking about.

THE COMMISSIONER: – the far end of the earpiece on the one on the left side (inaudible).

CST. GALWAY: I can see both earpieces in –

THE COMMISSIONER: Can you see all of the one on the left?

CST. GALWAY: Yes, all of it.

THE COMMISSIONER: No –

UNIDENTIFIED MALE SPEAKER: I can, too.

THE COMMISSIONER: Sorry?

UNIDENTIFIED MALE SPEAKER: I can.

THE COMMISSIONER: You can?

UNIDENTIFIED FEMALE SPEAKER: Oh, yes, Commissioner.

MR. AVIS: If you come –

THE COMMISSIONER: If – well, I see, I see –

MR. AVIS: If you see where the little X is and you follow that line –

THE COMMISSIONER: Oh, yeah. Okay, I see it. Sorry.

MR. AVIS: – it's right there.

THE COMMISSIONER: Sorry, yes. It's like it's bent back, then, okay.

Is there shadow there? Right there in the shadow.

MR. SIMMONDS: I think that's the shadow of the blowtorch, I believe, but I'm not sure.

THE COMMISSIONER: Yes, but whatever, I see the end of it there now. I was having difficulty seeing the very tip of the earpiece there.

MR. SIMMONDS: So how would the nosepiece just miraculously fall out of the glasses at that time and lie on the table?

CST. GALWAY: Well, you don't know that they miraculously fell out of the glasses at that time –

MR. SIMMONDS: Well –

CST. GALWAY: – that's what I'm saying. That nosepiece could have been sitting there for a week or a month and –

MR. SIMMONDS: Ms. Dunphy told you that the glasses were in wearable condition. He had 'em on at the Woodstock that day. He had 'em on supposedly when he went to the drugstore thereafter.

CST. GALWAY: Right.

MR. SIMMONDS: That's what she told you, was it not?

CST. GALWAY: So I consider that's the way the glasses were of Don Dunphy. I think that's the way he wore his glasses. All the time. They were in terrible condition, I agree.

MR. SIMMONDS: So you're asking us to – you're asking the Commission to accept that the nosepiece, which was out for some period of time, just happened to be on the table, next to the glasses. Just happened to be there.

CST. GALWAY: Why couldn't it have been there if it fell off? Why wouldn't he place it on the table? I don't know what you're –

MR. SIMMONDS: Why couldn't it have been there if there was indeed some kind of altercation, is what I'm putting to you, and that's why the glasses are of some evidentiary value, as opposed to your statement. Would you not agree –

CST. GALWAY: No.

MR. SIMMONDS: – that they may be of some evidentiary value?

CST. GALWAY: No, I don't agree with you.

MR. SIMMONDS: And to use your word, the seizing of the glasses was done to appease.

CST. GALWAY: I didn't use the word appease.

MR. SIMMONDS: If I might have a moment.

CST. GALWAY: Not today.

MR. SIMMONDS: Not today.

CST. GALWAY: Not today.

MR. SIMMONDS: You use the word appease –

CST. GALWAY: In my interview, yes.

MR. SIMMONDS: Yes, you did.

CST. GALWAY: Yup.

MR. SIMMONDS: So it was done to appease her, so it's not done with any real force of conviction, but yet they went out and did all these checks after. So it appears someone disagreed with your assumptions on this.

CST. GALWAY: Well, I didn't want to use the word appease, because I didn't want to make it look like we're dismissing Meghan Dunphy.

MR. SIMMONDS: But that's what you were doing.

CST. GALWAY: Nope. The whole point of the glasses with Meghan Dunphy, we were trying to do the right thing by not, you know, dismissing her, even though the glasses were of no evidentiary value. 'Cause remember, that scene, there's two forensic experts who are photographing that scene and examining the scene. They did not think the glasses held any evidentiary value. If they did, they would have seized them.

Then when I was notified of the glasses, the lead investigator, Steve Burke, Corporal Dion Foote and myself reviewed the pictures and, again, we agreed that they didn't seem – there's no evidentiary value. And eight days or seven days had gone by with no continuity. We have no idea where the glasses came from, what happened to them, and having said that, the glasses were still taken into police custody, brought out to the car and put in a bag. So, if they had any evidentiary value, they could still have been tested. They were not thrown away.

MR. SIMMONDS: Officer Galway, you did that to appease her, basically to shut her up, number one –

CST. GALWAY: No.

MR. SIMMONDS: And shut up Ms. Breen.

CST. GALWAY: No, okay, you're wrong there. I did not ever say that and –

MR. SIMMONDS: Number two – no, you didn't have to say it. You didn't have to say it.

CST. GALWAY: No, that's not the way it went. Don't go putting words in my mouth.

MR. SIMMONDS: Number two, the glasses, in this form here, do appear to have the earpieces bent, whichever you maintain that that goes back here but –

CST. GALWAY: It's clear we have a different opinion of the glasses.

MR. SIMMONDS: It is clear about that. But what we are clear about is that the nosepiece is missing. It is quite possible they could have some evidentiary value. I cannot answer your question as to why your forensics people did not seize it, nor can I understand why the bullet wasn't seized.

CST. GALWAY: Yeah.

MR. SIMMONDS: But, where did those –

CST. GALWAY: Those glasses, we do not think there was any evidentiary value. And at the time that I went to pick up the glasses, it was sure that they had no evidentiary value because the scene had been left, right.

MR. SIMMONDS: Mr. Galway, or Officer Galway, you had very little information outside of the information of Officer Smyth. A forensic team goes in there, they see certain things and they leave certain things there.

CST. GALWAY: Yes.

MR. SIMMONDS: Okay. What information, the information – I put to you, the only information you had about the condition of the glasses would be from Ms. Dunphy, and I don't believe you got that information till some period of time down the road. Is that not correct?

CST. GALWAY: What do you mean about the condition of the glasses?

MR. SIMMONDS: The glasses being what condition the glasses were in when he was at the Woodstock, went to the drug store, because I believe her evidence has been that the glasses were wearable, in good shape –

MR. KENNEDY: I don't – that's not her evidence, no.

MR. SIMMONDS: She said –

THE COMMISSIONER: Well, Mr. Simmonds, the – one aspect of that that I find a bit odd is, is the fact of there being no tape on them.

MR. SIMMONDS: Correct.

THE COMMISSIONER: You know, when at the – when, allegedly, when at the drug store or the Woodstock, and then –

MR. SIMMONDS: Tape on them that –

THE COMMISSIONER: Tape all over them after lunch, by the time when the shooting occurs. So –

CST. GALWAY: And that's why I referenced in my notes that the tape was old and dirty.

THE COMMISSIONER: Yes, I noted that.

CST. GALWAY: So I put it down there because that tape was there for a long time and Meghan said there was no tape on them.

MR. SIMMONDS: When the glasses weren't seized at that time, I understand –

CST. GALWAY: Do you mean at the initial scene?

MR. SIMMONDS: At the initial scene.

CST. GALWAY: Okay.

MR. SIMMONDS: You had no information at all as to whether or not they might be important.

CST. GALWAY: Me, myself?

MR. SIMMONDS: Yes.

CST. GALWAY: I didn't know anything about the glasses. I didn't examine the scene at the beginning. It was the forensic specialists who were –

MR. SIMMONDS: And they left them there.

CST. GALWAY: (Inaudible) the scene.

Sorry?

MR. SIMMONDS: They left them there.

CST. GALWAY: The glasses? Yes.

MR. SIMMONDS: Yes.

CST. GALWAY: They did not seize them.

MR. SIMMONDS: And indeed, the glasses could have had significant evidentiary value, is what I'm putting to you.

CST. GALWAY: And I'm saying to you, if they didn't seize them, they did not see any evidentiary value, and they're the ones trained –

MR. SIMMONDS: What information did they have to make a determination –

CST. GALWAY: You'll have to ask them, you'll have to ask them.

MS. RASMUSSEN: Commissioner, I think (inaudible) answered the question a few times now.

THE COMMISSIONER: Yeah, I was getting to the same point, Ms. Rasmussen.

Mr. Simmonds, you've, you've made your point.

MR. SIMMONDS: Okay.

THE COMMISSIONER: The constable, Constable Galway has given how he saw it, and to be continued. There'll be forensic witnesses you can deal with as well.

MR. SIMMONDS: Officer Galway, would it not be fair to say that very early on in this investigation, not only you, but the other officers, appeared to have come to the conclusion to accept Officer Smyth's version of what took place.

CST. GALWAY: I think it's fair to say that we will accept Constable Smyth's version of things that he said happened, until we have evidence to prove otherwise.

MR. SIMMONDS: Well, I won't go back through what we just finished with respect to the glasses, but there was other evidence left at the scene.

CST. GALWAY: Evidence in whose opinion?

MR. SIMMONDS: And you're saying that is the opinion of the forensic people that should be questioned on that.

CST. GALWAY: All I'm saying, if the two forensic people who are trained in examining the scene, look at something and they don't seize it and they say there's no evidentiary value, and then the lead investigator and other police officers say there's no evidentiary value, then I will take their word for it that they don't think there's any evidentiary value.

MR. SIMMONDS: And then that seems to be at odds with the question Ms. O'Brien put to you as to why after the seizure of the glasses did you attempt to get video from the drug store, wherever else, and in fact go back there to – and attempt to get a statement from one of the waitresses at the Woodstock.

CST. GALWAY: Yes, I've already explained to Ms. O'Brien, I'm not sure why that was taken either, but I had no involvement in the video. So I can't answer to that.

MR. SIMMONDS: And do you agree that as the family liaison, there should be some training, some area of expertise to assist in making sure the proper communication of information, particularly in a unique situation as you said, as you have said this one was, to ensure that people like Ms. Dunphy don't end up receiving from the funeral director the kind of information she did when she was expecting you, as liaison officer, to convey it to her.

CST. GALWAY: Without question, whatever we can do as police officers in the future to make sure that that does not happen again, 100 per cent, I agree with you.

MR. SIMMONDS: Those are all the questions I have.

Thank you, Officer Galway.

THE COMMISSIONER: Just before you finish. Constable Galway, go back to, Mr. Simmonds put it to you that the police accepted Constable Smyth's version too quickly, to summarize what he said. You responded that you believe you should accept Constable Smyth's version until there's evidence to the contrary. The RNC policy manual says that if it's a reportable death then it's to be treated as criminal until the Major Crimes –

CST. GALWAY: Unit.

THE COMMISSIONER: – investigator or the person in charge of the investigation says otherwise. In other words, you seem to be going the other way.

I don't have the position, as far as the RCMP manual, what's set out there as policy. I think counsel were supposed to discuss our getting that, but do you see what the difference would be if, if the RCMP manual is the same as the RNC manual.

CST. GALWAY: Yes.

THE COMMISSIONER: You would start from the premise that it's criminal, even though it's a police officer involved, until there's evidence; and not just evidence, but until the Major Crimes Unit decides otherwise.

CST. GALWAY: Yes, and that is what we are as well. We're an evidence-driven force. We – it's all on facts and evidence.

THE COMMISSIONER: Right.

CST. GALWAY: But this all came about for me trying to explain why Constable Smyth wasn't in custody, and I feel like it's been taken out of context.

THE COMMISSIONER: Well, Mr. Simmonds is not just referring to when you were having a discussion with Ms. Dunphy at the scene that day. He's referring to the fact that Constable Smyth was permitted to meet with four members of the association.

CST. GALWAY: Yes.

THE COMMISSIONER: And he's suggesting that there were other things such as the, shall we say, less than rigorous approach to the eyeglasses or perhaps too quick an assumption that they have no evidentiary value because of what Constable Smyth has said. Do you see there's a problem there if you're supposed to treat it as criminal then until – and you may be correct in your position, but until Constable Smyth has been tested, his credibility has been tested and it's been checked out by the evidence, isn't it a bit premature to arrive at –?

CST. GALWAY: The eyeglasses; I mean there's nothing to do with the eyeglasses based on anything that Constable Smyth –

THE COMMISSIONER: I won't include that in the list, but in terms of the other things that Mr. Simmonds suggests indicates that the investigation was not as rigorous as it would be for a person who's not a police officer.

CST. GALWAY: See, I don't know all the ins and outs of the investigation or how rigorous it was. Like my roles were pretty distinct with the exhibit custodian, the family liaison. I attended the autopsy. So it's almost like Mr. Simmonds is trying to get me to comment on something that

I don't feel I'm qualified to comment on. I don't know what Constable Smyth said to these officers. I don't know who they were. I know they said they came here not to involve themselves in the investigation.

I just don't feel qualified like to answer that question. I don't have all the information of how Constable Smyth was interviewed or how rigorous it was, I really don't.

THE COMMISSIONER: Okay. It's not the investigation itself, but the point that's been made is that normally you wouldn't permit, if there was a non-police officer who was being detained for questioning, you wouldn't permit them to say, well, I'll do it tomorrow rather than today after I have a chance to meet with my colleagues.

CST. GALWAY: But see I don't even know if I can – I can't comment on whether Joe Smyth was detained.

THE COMMISSIONER: All right, I don't, I don't want to put you –

CST. GALWAY: I don't know if he was detained.

THE COMMISSIONER: – in an unfair position, that's fine.

CST. GALWAY: Yeah.

THE COMMISSIONER: But I think we have your position.

Mr. Simmonds, anything arising from my questions?

MR. SIMMONDS: No, just one. Is it not a fair question to a trained police officer who was part of this investigation, who was debriefed to say the person that did the shooting is brought back, right now, you don't have any information, you've said that. And yet, that person, before you get any kind of investigative procedure in relation to them, i.e. a statement, is allowed to sit and have, by himself, discussions with four – and you did know they were RNC officers. I can take you to the point –

CST. GALWAY: Oh, they were in uniform. I know.

MR. SIMMONDS: But you knew they were RNC officers. To sit and have conversations with them, even if they do say we're not here to interfere but to support, that is a unique, strange procedure that I think any member of the public is going to look at and say I'm sure I wouldn't be treated like that. Am I wrong on that, Officer Galway?

CST. GALWAY: I would think the best way to go about that is whoever was involved in getting the RNC officers to speak with Constable Smyth, it's better to ask them. I just don't feel like I'm qualified to answer the question that you're asking me.

MR. KENNEDY: Commissioner, if I could just interject here.

THE COMMISSIONER: Just one second – yes, sorry. I will say, Mr. Kennedy, that we're moving on from that now. I started it again by my question and –

MR. KENNEDY: But there's a legal issue I think that –

THE COMMISSIONER: But I'm going to let you make your statement but if you're concerned about this line of questioning continuing, it's not going to continue.

Go ahead.

MR. KENNEDY: No, my –

THE COMMISSIONER: We've exhausted it.

MR. KENNEDY: My point is, Commissioner, at this point we have to look at the question of whether or not Constable Smyth – at some point we're going to have to examine the legal issues of detention, arrest, the justification or use of force under section 25.1 of the Code. Is it a situation that is similar to other situations or is it unique?

At this point – and I have no evidence at this point, I haven't heard any evidence that Constable Smyth was legally detained. You have to have grounds to detain someone so I'm not saying that (inaudible).

THE COMMISSIONER: He obviously wasn't contained very closely because he was – everybody agrees he was outside the vehicle moving around in the area of the vehicle for some time, 20 or 30 or 40 minutes, I think.

MR. KENNEDY: That's not what the evidence given by the constable –

THE COMMISSIONER: Sorry, go ahead.

MR. KENNEDY: The corporal or the constable who gave the evidence the other day said the majority of time he was in the police car.

THE COMMISSIONER: Well –

MR. KENNEDY: No, I'll –

THE COMMISSIONER: – the same thing.

MR. KENNEDY: Yeah.

THE COMMISSIONER: Whether he's in the police car or outside, if he's by himself, but I'm not –

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: I'll be curious to see how that question comes up and through which witness, you know –

MR. KENNEDY: Yes.

THE COMMISSIONER: – and how you establish the relevance of it. But for now, we're gonna move on to another – Mr. Simmonds, do you have any other line of questioning?

MR. SIMMONDS: (Inaudible.)

THE COMMISSIONER: All right.

Now, any other questions? Mr. Avis?

MR. AVIS: I've discussed with my friend, my learned friend Mr. Kennedy and we've tried to divide it up a bit, so, and I would go first.

THE COMMISSIONER: Uh-huh.

MR. AVIS: Constable Galway, with respect to the training necessary for this position of liaison, how long have you been a police officer again?

CST. GALWAY: Since 2002.

MR. AVIS: Right. So at the time you'd been a peace officer for 13 years, correct?

CST. GALWAY: Yes, yes.

MR. AVIS: How many domestics had you done?

CST. GALWAY: Countless.

MR. AVIS: Right, now are people in domestic situations very volatile, upset, angry?

CST. GALWAY: Of course, yes.

MR. AVIS: And over time you've developed, through your training and experience, the ability to deal with people who are emotionally distraught and upset?

CST. GALWAY: Yes.

MR. AVIS: I would assume in any situation victims, witnesses, neighbours, are likely to be really upset and you're always calming people down. Is that correct?

CST. GALWAY: Yes.

MR. AVIS: So in terms of the specific training –

THE COMMISSIONER: Remind me to stay away from your neighbourhood, Mr. Avis.

MR. AVIS: Yeah.

Sorry, I'm going to have get my train of thought again.

THE COMMISSIONER: Right, I apologize.

MR. AVIS: That's all right.

Okay, in terms of your experience, would you agree with me that you are used to dealing with people who are emotional and distraught – that's part of an everyday part of an officer's job?

CST. GALWAY: Yes.

MR. AVIS: Okay. And your role in this case, it is unusual because you said you've done it twice, and both were homicides; am I correct?

CST. GALWAY: Well, the one in 2008 was actually a murder.

MR. AVIS: Well, I'm, I'm, yeah, still a homicide. Okay.

THE COMMISSIONER: Culpable.

MR. AVIS: Right. So and your role – let's put it this way, you are not the decision maker in any respect in that investigation, were you?

CST. GALWAY: No.

MR. AVIS: Your advice may have been listened to, you may have contributed here and there, but by and large you're not the decision maker, you're told what to do – correct?

CST. GALWAY: Yes.

MR. AVIS: Okay. So you were told to facilitate communication with Meghan Dunphy, correct?

CST. GALWAY: Yes.

MR. AVIS: You weren't, for example, supposed to arrange a visit with the body or anything of that nature; is that correct?

CST. GALWAY: That's totally out of my control.

MR. AVIS: Right. And with respect to passing on information, policy or no, isn't it part of practice, procedure, experience, and a very significant element to the security of an investigation that you don't get to pass out any information about the investigation until the lead investigator feels it's appropriate for the investigation, or the investigation is concluded – is that correct?

CST. GALWAY: That's correct.

MR. AVIS: I don't know – you've been asked these questions, and if you don't feel comfortable, me going there, but I just wanted to talk about seeing the body before the autopsy is complete, and the investigation. If a person is to see a body before the autopsy, they can't go near it, can they?

CST. GALWAY: No.

MR. AVIS: Because contamination. They can't touch the person, can they?

CST. GALWAY: No.

MR. AVIS: Right.

THE COMMISSIONER: And I don't think they have any arrangements facilities for –

MR. AVIS: Right. It would have to –

THE COMMISSIONER: – for doing it, from what I understand.

MR. AVIS: Yeah. It would have to be through, almost through glass. Correct? Similarly, while this situation may be a little bit different, telling – making known to anyone any of the circumstances of the offence – again, you can't do that, to start with, correct?

CST. GALWAY: Right. Yes.

MR. AVIS: And, from your knowledge, you normally you wouldn't release any such details until it's concluded, correct?

CST. GALWAY: Correct.

MR. AVIS: Including the number of shots, and where the injuries were, is that correct?

CST. GALWAY: Correct.

MR. AVIS: There's all kind of speculation about these glasses. I'm not sure were the – were the cats still in the house when the scene was released?

CST. GALWAY: Yes.

MR. AVIS: So a cat big enough to sit on the glasses and flatten them?

CST. GALWAY: I'm sure, yes.

MR. AVIS: Okay.

Now, in your experience, you arrest a lot of people and have to interpret the *Criminal Code of Canada*; is that correct?

CST. GALWAY: Yes.

MR. AVIS: And you have to detain people.

CST. GALWAY: Yes.

MR. AVIS: And know when you can lawfully detain them.

While you weren't the investigating officer, were you aware of any information on that day that would warrant the arrest of Constable Smyth?

CST. GALWAY: No.

MR. AVIS: Were you aware of any information that would of warranted the detention of Constable Smyth?

CST. GALWAY: No.

MR. AVIS: Just to try and put things in a little bit of context, you heard, you know, your minimal information was there was a shooting – correct?

CST. GALWAY: Yes.

MR. AVIS: So police officers are not only allowed to carry guns; they are required to carry them – correct?

CST. GALWAY: Yes.

MR. AVIS: So, initially, you wouldn't make much of that, would you, the fact that a police officer had a gun with him.

CST. GALWAY: No.

MR. AVIS: What about someone having a loaded gun in their living room, would that be a different kind of thing, such as Mr. Dunphy?

CST. GALWAY: I would not expect that, no.

MR. AVIS: Right. Similarly, to your knowledge, he would have been in the execution of his duty. Is that correct?

CST. GALWAY: Yes.

MR. AVIS: So at least at that stage you'd be assuming that he was lawfully present.

CST. GALWAY: Yes.

MR. AVIS: So you weren't investigating a break and enter or anything like that?

CST. GALWAY: No.

MR. AVIS: And just to put things in another kind of context because it's been suggested that there's favouritism here in the way that the officer was treated. If you found a police officer committing the offence of impaired driving, would he get any favouritism?

CST. GALWAY: No, he'd be arrested.

MR. AVIS: Right. If you were – if this was a domestic dispute where a police officer had shot his wife, would he have been arrested, possibly?

CST. GALWAY: Yes, of course.

MR. AVIS: In cases of allegations of sexual assault, fraud, they're arrested, detained just like everybody else.

CST. GALWAY: Yes.

MR. AVIS: The difference here is, all the information you had was that there had been – only offence you were aware of was the pointing of a firearm by Mr. Dunphy at Constable Smyth. Correct?

CST. GALWAY: Yes.

MR. AVIS: Again, don't answer this question if you don't feel entirely comfortable, but you have 13 years of experience. When you have a suspect of any offence, are they always the person you question first or do you like to gather evidence before you question them, sometimes?

CST. GALWAY: A lot of times you'll talk to other people first.

MR. AVIS: Right, because if you interviewed them without the information the interview can be relatively useless.

CST. GALWAY: Yes.

MR. AVIS: And just to go back to then, this idea of when you were around Constable Smyth, isn't it fair to say that if he had said something to you about the incident you are required at some point to note that down?

CST. GALWAY: Yes.

MR. AVIS: Right. But isn't it also correct that in protocol, et cetera, et cetera, you'd actually be in trouble if you started to question him, wouldn't you?

CST. GALWAY: Yes.

MR. AVIS: You could really screw up the investigation, couldn't you?

CST. GALWAY: Yes, you could.

MR. AVIS: And you might actually get disciplined for doing it. Am I correct?

CST. GALWAY: Yes, you're right.

MR. AVIS: Similarly, when they start talking you don't bring out your notebook because it might shut them up.

CST. GALWAY: Right.

MR. AVIS: Thank you.

Just a moment; I believe I'm done. Those are all my questions.

Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr. Avis.

Mr. Kennedy.

MR. KENNEDY: Yes, thank you, Commissioner.

I have four questions for you, Constable Galway.

If we could have ME-1 brought up, please. That was I think the report you prepared for the medical examiner, Constable?

CST. GALWAY: Yes.

MS. O'BRIEN: That is P-0429.

MR. KENNEDY: Okay. So it's P-0249, is the –

MS. O'BRIEN: 429.

MR. KENNEDY: Okay.

So did you fill this document in yourself, Sir?

CST. GALWAY: Yes, I did.

MR. KENNEDY: And what's the date that you filled it in?

CST. GALWAY: Is the date on that file, that form?

MR. KENNEDY: We'll have to go down please, Madam Clerk.

Is this before the medical examiner does work?

CST. GALWAY: Yes, 'cause that's the initial part of it because they want to know the actual, you know –

MR. KENNEDY: You can stop there. Okay.

CST. GALWAY: – so what you have so far –

MR. KENNEDY: No, no. My question was going to be – you were going to explain, please explain if you wish, but I'm just trying to get the Clerk to stop, that's where my question is going to be.

CST. GALWAY: Okay.

MR. KENNEDY: You'll see that the last seen alive, 1425?

CST. GALWAY: Yes.

MR. KENNEDY: So that's why I'm wondering, when did you fill this in and how did you come up with that time?

CST. GALWAY: I guess that time came up either from – it'll probably come in when the actual file was originated. So when Constable Smyth, you know, called whoever he reported the incident to, a PROS file would have been generated and it would have generated a time. So I would have gotten that estimate of time from when the file was opened.

MR. KENNEDY: Thank you.

Constable Galway, did you have any legal grounds to seize Constable Smyth's clothing that day? Or did he simply consent?

CST. GALWAY: He – I was on the understanding that he was consenting.

MR. KENNEDY: Okay.

CST. GALWAY: Because he was waiting to get clothes brought up from another –

MR. KENNEDY: So he actually waited around for you to –

CST. GALWAY: Yes.

MR. KENNEDY: – for him to get another –

CST. GALWAY: Another change of clothes.

MR. KENNEDY: – change of clothing.

CST. GALWAY: Yes.

MR. KENNEDY: So there was no seizure because he consented and was co-operative, correct?

CST. GALWAY: Yes.

MR. KENNEDY: Okay, thank you.

The issue, Sir, of the glasses that we keep coming back to, and I'm not gonna go through what you've outlined here. But your understanding was that the allegation that the glasses could have been damaged in a scuffle or altercation. Is that your understanding of the allegation being made?

CST. GALWAY: Yes.

MR. KENNEDY: Sir, were you aware in the autopsy report whether or not there were any abrasions, cuts, scratches or anything else on Mr. Dunphy's face which was consistent with any kind of scuffle or altercation?

CST. GALWAY: I was not aware of the autopsy report.

MR. KENNEDY: Okay. Have you become aware since, whether or not there was anything in the autopsy report which indicated any damage to his face in terms of bruising, scratches, cuts, abrasions or anything like that?

CST. GALWAY: I haven't heard of that, no.

MR. KENNEDY: No. And –

THE COMMISSIONER: We're calling the chief medical examiner, I assume, so.

MR. KENNEDY: It's just a point though. Commissioner, I think it's important to get out there that there is none –

THE COMMISSIONER: That's fine.

MR. KENNEDY: – of this, yet these glasses, a speculative theory has been put forward that has no basis when we have the autopsy report, which I read last night, saying there are no cuts, abrasions, bruises consistent with any kind of scuffle or altercation.

THE COMMISSIONER: Uh-huh.

MR. KENNEDY: Those are my questions, Officer.

Thank you.

THE COMMISSIONER: Mr. Simmonds –

MR. SIMMONDS: Commissioner –

THE COMMISSIONER: Oh sorry, Ms. Rasmussen has –

MR. SIMMONDS: Oh, I'm sorry. I do apologize. I'm sorry.

MS. RASMUSSEN: (Inaudible.)

MR. SIMMONDS: I just wanted to point out that in Ms. Dunphy's direct testimony she indicated on page 67 what she thought the condition of the glasses were. They were in rough shape. He had – then he dropped them and fixed them. I'm sure they've been cleaned off. There would have been tape on them from point to point if he hadn't fixed them. That's on page 67 of her direct testimony here at the –

THE COMMISSIONER: Yeah, I'm sorry; I'm missing what you're saying. That Ms. Dunphy is saying that –

MR. SIMMONDS: Ms. Dunphy said when she was questioned originally –

THE COMMISSIONER: Yeah.

MR. SIMMONDS: – that, you know, she had acknowledged that there were tape on the glasses from time to time.

THE COMMISSIONER: Right.

MR. SIMMONDS: And I think that that's important.

THE COMMISSIONER: Yeah, there was one statement there where she said there was no tape, is it?

MR. SIMMONDS: That's what the officer says she said to him. Correct.

THE COMMISSIONER: Yeah. Thank you.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. SIMMONDS: Oh, wait now.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. RASMUSSEN: Constable Galway, I'll be brief; just a couple of questions.

With respect to Mr. Dunphy's wallet, you had gone to the house to retrieve the wallet you said. And why was that?

CST. GALWAY: Because Meghan had mentioned that she would like to get his wallet back.

MS. RASMUSSEN: Okay. And you said you looked in the wallet but you didn't find Lee Lush's business card in there.

CST. GALWAY: Right.

MS. RASMUSSEN: Why would that be?

CST. GALWAY: We didn't search the wallet; we really just wanted to look in the wallet to make sure that it was his wallet. So we probably just looked to see if there was an identification card or an MCP card, that it was his. But we didn't search the contents of it; we didn't take everything out of his wallet.

MS. RASMUSSEN: Okay, and just one other issue. We talked about the PROS system, which is software that the RCMP uses to manage files. Is that correct?

CST. GALWAY: Yes.

MS. RASMUSSEN: And I think it's in evidence that when this call first came in it would have been entered in PROS in a certain way.

CST. GALWAY: Yes.

MS. RASMUSSEN: And you talked about the fact that it was entered as a, pointing a firearm.

CST. GALWAY: Yes.

MS. RASMUSSEN: So Mr. Simmonds put it to you that we've been told that Mr. Smyth or Constable Smyth was portrayed as the victim. And I wondered if you could just explain where that idea came from.

CST. GALWAY: Well, again, when I talk about evidence, you know, what is the evidence present, at present, about an alleged offence, the evidence does suggest that a criminal offence was committed but it was committed by Mr. Dunphy. And that was pointing a firearm. So in that offence, I mean, Joe Smyth is the victim, and Donald Dunphy is the, you know, we'd call him the suspect chargeable, I guess.

MS. RASMUSSEN: Okay. And so that would have been, how would that have been entered in the PROS system?

CST. GALWAY: Whoever is adding people to the PROS system – usually it's the lead investigator – they will card or qualify each person as they enter them. So, you know, Don Dunphy could have been again the suspect, or a suspect chargeable; Joe Smyth was the complainant. 'Cause there are several categories you can be classified as more than one.

So he would have been the complainant, 'cause he's the one who actually called. He's also a victim, because he was the one who had the rifle pointed at him, and then people spoken to might be a witness; Meghan Dunphy could be listed as the next-of-kin, and that's how it's done. Usually the lead investigator will qualify or classify a person.

MS. RASMUSSEN: Okay, so that was all based on the initial call that came in to the RCMP following the incident?

CST. GALWAY: Yes.

MS. RASMUSSEN: Those are all my questions, Mr. Commissioner.

THE COMMISSIONER: Thank you, Ms. Rasmussen.

Yes, Ms. O'Brien.

MS. O'BRIEN: Thank you, I think I just have a couple of items arising.

THE COMMISSIONER: Go ahead.

MS. O'BRIEN: Constable Galway, one of the questions I have is arising out of the cross-examination by Mr. Avis. And I think I understood you to say that you would not, you would not

have been allowed to question Constable Smyth that evening? Is that what you said? Because of your policy or you could have been reprimanded for that? Is that what you were saying?

CST. GALWAY: I just know through my experience, my task at that point was to simply go and seize his clothing. So I know not to talk about the details of the offence.

MS. O'BRIEN: Okay. But if somebody has not been detained by the police, is there any prohibition against police officers asking someone questions and carrying out an investigation?

CST. GALWAY: You mean would I ask him questions about that investigation –

MS. O'BRIEN: Is there any prohibition against a police officer questioning someone as part of an investigation if they're not detained, even if they haven't had rights to counsel and police caution.

CST. GALWAY: I don't know the policy, but it's just – with your experience, you know you're not going to do that. That's not the time to be talking about the alleged incident, so I know I didn't talk about it.

MS. O'BRIEN: Okay, so you don't know, though, if someone's not detained whether you're, whether there's any policy that prohibits you from questioning them.

CST. GALWAY: I don't say would prohibit, it would just be up to the team – like who's going to, you know, take a statement from somebody.

MS. O'BRIEN: Okay. I understand. That helps clarify.

The other thing that I'd like to bring up is, it may help with the glasses, in his testimony – in his cross-examination by Mr. Simmonds, Constable Galway mentioned looking at a number, pictures of the glasses and everyone was pretty closely scrutinizing photograph 100. I did find another –

THE COMMISSIONER: Another, there's one other was mentioned, yeah.

MS. O'BRIEN: – photograph that may be helpful.

It is a confidential exhibit, so I'll just ask that the monitor be turned off. And, Madam Clerk, when the monitors are off it's photograph 096, which is a confidential exhibit.

Madam Clerk, you'll see there – and I have my monitor off, but I'm, if I could, Commissioner, with your permission, I approach Madam Clerk's desk –

THE COMMISSIONER: Sure.

MS. O'BRIEN: – so I could help, could help blow it up on the portion of the glasses.

THE COMMISSIONER: Sure.

MS. O'BRIEN: Constable Galway, I have just taken one of the photographs and tried to make that bigger. Would this be one of the other photographs that you talked about looking at that day?

CST. GALWAY: Yes.

MS. O'BRIEN: All right.

So, Commissioner, I'm just more doing that for everyone's benefit to let them know that's the best other one I found there. I'm not saying, I'm not saying I got them all.

THE COMMISSIONER: That's, it shows the glasses from another perspective so it's a

MS. O'BRIEN: And that's all I had on redirect.

Thank you.

THE COMMISSIONER: Right. Just one second now.

Okay, so yourself and Corporal Burke, and who's the other third one?

CST. GALWAY: Dion Foote.

THE COMMISSIONER: And Dion Foote, you looked at that photo as well as Photo 100 in arriving at your decision that the glasses, as subsequently found, had no evidentiary value because that is – you're reasoning being that they were in wearable shape as indicated by –

CST. GALWAY: Yeah, that –

THE COMMISSIONER: – this photo and Photo 100 in your opinion.

CST. GALWAY: But that picture shows a more symmetrical picture of the glasses. The frames are the equal distance as if someone took the glasses and laid them down.

THE COMMISSIONER: Right. Okay.

All right. Thank you.

Anybody have any further questions? If not, we'll adjourn until 9:30, is it, tomorrow morning?

Okay. Thank you.

CST. GALWAY: Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.