



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 27

Commissioner: Honourable Justice Leo Barry

Tuesday

21 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Okay.

Go ahead, whoever is next, with Staff Sergeant Osmond.

Who is going to go next? Mr. –

MR. AVIS: I just have one brief series of questions, Commissioner.

THE COMMISSIONER: Okay.

Mr. Avis, go ahead.

MR. AVIS: I just wanted to address with you the – sorry, good morning, my name is Nick Avis.

S/SGT. OSMOND: Good morning.

MR. AVIS: I just want to talk a little bit about the gun in his living room. Is it fair to say we don't know where the gun was in the living room and we never will, other than it appeared to come from the right-hand side of the chair.

S/SGT. OSMOND: Absolutely.

MR. AVIS: The only evidence we have is that Constable Smyth did not see the gun until it was pointed at him. Is that correct?

S/SGT. OSMOND: Exactly. Correct.

MR. AVIS: Thirdly, Donald Dunphy invited Constable Smyth into his house and his living room that day.

S/SGT. OSMOND: That's the account we have. We have nothing to refute that.

MR. AVIS: Right, that's what I mean, the only evidence. And we know from the evidence or only we have is that Donald Dunphy had a loaded gun in his living room.

S/SGT. OSMOND: That's correct.

MR. AVIS: And would you agree with me that it is a reasonable inference that Donald Dunphy would not have invited a police officer into his living room unless he had the gun well hidden?

S/SGT. OSMOND: I don't think I can comment on that.

MR. AVIS: Don't think you can comment on that.

Thank you.

MR. DROVER: (Inaudible.)

Good morning, Staff Sergeant.

John Drover –

S/SGT. OSMOND: Good morning.

MR. DROVER: – on behalf of the RNCA. I just have a few questions, a few quick questions for you.

Yesterday you said you were involved in about, I believe, around 15 homicide investigations?

S/SGT. OSMOND: That's correct.

MR. DROVER: And I just wanted to clarify: How many of those had you been team commander?

S/SGT. OSMOND: Approximately 10. I provided a list to Commission counsel but it wasn't actually comprehensive. I think there were two or three more but I think the total is around 10.

MR. DROVER: Okay.

And you also said I believe that you did around the same number of use-of-force investigations?

S/SGT. OSMOND: Yes, approximately 13 or 14.

MR. DROVER: Okay. What was your role in those investigations?

S/SGT. OSMOND: Primary investigator.

MR. DROVER: Okay.

In terms of, I guess, the perception of – the public perception of police investigating police, did that occur to you as you were getting involved in this investigation?

S/SGT. OSMOND: In what sense?

MR. DROVER: In the sense that it was the RCMP in Newfoundland investigating the RNC, you know, not so far away; the Holyrood detachment, St. John's. You know, there has been a fair bit of public debate, I guess, about the role of police investigating police and I'm just wondering if that was something that you had thought about early on in the investigation?

S/SGT. OSMOND: Well, certainly, I thought about it. It was crystal clear that that was what was happening. I was relieved when Superintendent Boland requested or suggested an independent observer. I thought even though it didn't go as planned, I thought that was an excellent idea to perhaps alleviate some public concern that way.

MR. DROVER: And I believe that your evidence yesterday was that essentially you were told that you were doing this investigation and that you had no input into whether or not that was a good idea. Is that correct?

S/SGT. OSMOND: Yeah, I was told that it was an occurrence that occurred in our RCMP jurisdiction; therefore, it was ours to do.

MR. DROVER: Okay.

And are you familiar with the Luther report into the Power and Reid shootings?

S/SGT. OSMOND: Yes, but it's been a while since I read it.

MR. DROVER: Okay.

And are you familiar with one of the recommendations in there that for a police-involved shooting, that the RCMP ought to have a policy to bring in an outside force?

S/SGT. OSMOND: Yes, I am. And if I'm not mistaken, I do believe we have an MOU in place and policy in place. I could be mistaken on that but – I'm not 100 per cent certain on that but I know it's not foreign to us to use other police forces as well.

MR. DROVER: Thank you.

MS. O'BRIEN: Just for the record, Commissioner, the exhibit – the list that Staff Sergeant Osmond just referred to has been entered as an exhibit at P-0628. And those are the relevant files he provided us that he acted as team commander and he did add – you know, changed – you gave some additional information yesterday.

S/SGT. OSMOND: Yes, I did.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Okay.

Mr. Freeman.

MR. FREEMAN: Good morning, Mr. Commissioner.

I just wanted to note that for the record that Mr. Flaherty is not here. He normally would be the next questioner so I assume I will go ahead.

THE COMMISSIONER: Yeah, go ahead. Yeah.

MR. FREEMAN: Thank you.

Good morning, Staff Sergeant Osmond.

S/SGT. OSMOND: Good morning.

MR. FREEMAN: Some questions for you. Hopefully it won't take too long.

Could we – Madam Clerk, we're going to call up some exhibits. I'd like to look at the RCMP policies on human deaths.

S/SGT. OSMOND: Sure.

MR. FREEMAN: You're familiar with those?

S/SGT. OSMOND: I am.

MR. FREEMAN: Okay.

And Commission counsel took you to one of those, I believe, during your direct examination.

S/SGT. OSMOND: Yes, the RCMP policy.

MR. FREEMAN: That was the national one.

S/SGT. OSMOND: Yes.

MR. FREEMAN: But at that time you did not look at the B Division one, I don't think.

S/SGT. OSMOND: Earlier in the inquiry? No, I didn't.

MR. FREEMAN: No, not here with Commission counsel, so we're going to take a look at those. So it will be P-0545, please. If we could just scroll down a little bit there.

So you see 1.1: All reportable deaths will be investigated to rule out any suspicion of foul play.

S/SGT. OSMOND: Correct.

MR. FREEMAN: And so was that done in this case?

S/SGT. OSMOND: Yes.

MR. FREEMAN: All right.

And so let's look at P-0546, please. And we'll scroll down just a little to just below where the blue is. Here we are.

And so, 1.2 – excuse me, no, 1.1, this is the – so this – the first one we looked at was the national policy. Correct?

S/SGT. OSMOND: Correct.

MR. FREEMAN: And this one is the B Division policy. Is that right?

S/SGT. OSMOND: I didn't see the top at all. I trust you on that.

MR. FREEMAN: You didn't see the top. Just go up for a second, or do I have it backwards?

S/SGT. OSMOND: I believe you might. Oh no, I think that might be the national.

MR. FREEMAN: All right, so let's – we can confirm that afterwards but I believe that is right. I think the first one we looked at was the B Division policy and this one is the national.

So at 1.1 this one says: All reportable deaths occurring in RCMP jurisdiction must be treated as suspicious and thoroughly investigated. Do you see that?

S/SGT. OSMOND: I do.

MR. FREEMAN: So was that done in this case?

S/SGT. OSMOND: It was.

The word “suspicious” is, you know, it’s like any word, it’s flexible. This death wasn’t suspicious in the sense that we believed, we kind of knew how this happened or – I guess my point is is that we knew that it was a police shooting.

So, oftentimes, when you’re looking at a death like that and it’s suspicious, you don’t kind of know the origin of why the death occurred. But we knew early on that the death had occurred because of a police shooting. But it was thoroughly investigated to the nth degree.

MR. FREEMAN: So do you see the national policy and the B Division policy as being equivalent or not? We can go back to the first one if you’d like. If you could take a look at 1.1 and then we can go back to the first one we looked at if you’d like.

S/SGT. OSMOND: I don’t – no, that’s fine. I don’t really see a great conflict in the two.

MR. FREEMAN: Okay. The wording is different but the –

S/SGT. OSMOND: The wording is different but the spirit is the same.

MR. FREEMAN: Okay.

So I’d like to take a look then, please, Madam Clerk, at P-0018. Now, we’ll just scroll down a little bit more there, please.

So we’ll look at 2.2. This is the RNC policy that’s, basically what I see, and you can tell me if you agree, the equivalent of or the mirror, the opposite number to the RCMP’s –

S/SGT. OSMOND: It seems to deal with the same topic material, yeah.

MR. FREEMAN: Exactly.

So we’ll look at 2.1 – excuse me, no, we’ll look at 2.2. And this one says: “All reportable deaths shall be treated as criminal until determined to be otherwise by the Major Case Manager.”

The Commissioner has heard some evidence on that and what it means. Do you have any – first of all, do you see that as the same as the RCMP policies or do you see it as different?

S/SGT. OSMOND: I see it as different.

MR. FREEMAN: And do you wish to offer any comment on that difference and what you think of it, what your opinion of it is as a team commander of a Major Case Management unit?

S/SGT. OSMOND: Well, I think, as with any investigation, if you go in with a mindset that you’re going to treat every death as criminal, then it’s a dangerous precedent because you could go down – if you don’t have an open mind going in, it could colour the way you look at your investigation.

MR. FREEMAN: Okay.

THE COMMISSIONER: Could you explain that a little bit? Isn’t that better than the converse of perhaps being somewhat lackadaisical because – in the investigation, because you believe that it’s a justified police shooting?

S/SGT. OSMOND: When I was speaking to this I wasn’t speaking about a police shooting specifically.

THE COMMISSIONER: Right.

S/SGT. OSMOND: What I'm saying is when you go into a sudden death, if you go into any sudden death investigation with the mindset that a criminal act occurred, then you're at peril of leaving your open mind behind. So I think you go in and you're alive to the fact that it's suspicious or that it's unusual or unique and that you have to investigate it to its natural end, but I think when you assume anything or label anything on the very first step, it can be dangerous.

THE COMMISSIONER: Is there any difference in labelling it suspicious and labelling it criminal?

S/SGT. OSMOND: There is to me, yes.

THE COMMISSIONER: Isn't – doesn't suspicious imply suspicious because it might be criminal?

S/SGT. OSMOND: It might be criminal, yes.

THE COMMISSIONER: Right.

S/SGT. OSMOND: Yes.

THE COMMISSIONER: And in the RCMP – or sorry, in the RNC policy, they're saying keep in mind that it might be criminal. Is it doing any more than that?

S/SGT. OSMOND: Well, if that's the way you're reading it, Mr. Commissioner, then I would agree with you. That's –

THE COMMISSIONER: Well, I'm – that's just my suggestion. How would you read it, okay?

S/SGT. OSMOND: I'm reading it as though you walk in with a mindset that it is criminal with a means to determining that it is or it isn't. I read our policy as you go in knowing it's suspicious, alive to that fact and with an open mind, but I guess an open mind to all outcomes.

THE COMMISSIONER: Right.

Okay. Thank you.

MR. FREEMAN: So you're comparing the RNC policy where it says: shall be treated as criminal –

S/SGT. OSMOND: Yes.

MR. FREEMAN: – to, I'll look at the B Division policy again, Madam Clerk, please. So it's P-0545. Hopefully I'll get the right one this time. Could you just scroll down a little bit there?

And this one says: "will be investigated to rule out any suspicion of foul play" for example.

S/SGT. OSMOND: Correct.

MR. FREEMAN: So it doesn't say: shall be treated as criminal.

S/SGT. OSMOND: Yes.

MR. FREEMAN: Okay.

All right so –

THE COMMISSIONER: The – will be investigated to rule out any suspicion of foul play. Now, this is ...?

MR. FREEMAN: This is the B Division policy, Mr. Commissioner.

THE COMMISSIONER: This is B – this is B Division. Okay.

MR. FREEMAN: That's 0545.

THE COMMISSIONER: And what is the, and what is the national one?

MR. FREEMAN: It's P-0546.

THE COMMISSIONER: Must be treated as suspicious – must be treated as suspicious. So in one case it's saying: will be investigated to rule out suspicion of foul play, and the RN – the national one is saying: must be treated as suspicious and thoroughly investigated.

I guess one difference between the B Division, I think it is the – there's a designation of the Major Case manager as the person who will determine otherwise in – but that is, this is the RNC policy, is it?

MR. FREEMAN: The RNC policy is P-0018, Mr. Commissioner.

THE COMMISSIONER: P-0008, okay.

MR. FREEMAN: P-0018.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Hmm.

MR. FREEMAN: This one we're looking at now is the national –

THE COMMISSIONER: Right.

MR. FREEMAN: – RCMP. So the –

THE COMMISSIONER: Must be treated as suspicious. Okay.

Now, what's the P-0018?

MR. FREEMAN: That's the RNC policy.

THE COMMISSIONER: RNC –

MR. FREEMAN: With that shall –

THE COMMISSIONER: And 2.2: "All reportable deaths shall be treated as criminal until determined to be otherwise by the Major Case Manager."

So you have a designated individual or person in that particular position, Major Case manager, who's given the authority to determine when you need no longer treat it as criminal.

MR. FREEMAN: And I think – I don't want to go too far into the interpretation and asking for this witness to, you know, interpret and compare them, but in the sense as a Major Case manager team leader, I think the evidence is just that he's said 0545 and 0546, that the RCMP policies are equivalent in his mind; whereas, the RNC is different because of that shall –

THE COMMISSIONER: Right.

MR. FREEMAN: – and because of the other issue you've just noted, perhaps, as well. We haven't talked about that, but ...

THE COMMISSIONER: Right.

Okay. Thank you.

MR. FREEMAN: And I think you were saying that you – I don't want to overstate it, that you had some concerns or you had some questions or issues with the RNC policy the, shall be treated as criminal.

S/SGT. OSMOND: During the investigation?

MR. FREEMAN: Right – or no, excuse me. So it should be presumed to be criminal until proven otherwise. You had given us some evidence –

S/SGT. OSMOND: That seems to me to be a little bit restrictive.

MR. FREEMAN: Okay.

So moving on, then, to a different topic, unless you have anything else you'd like to say about those policies or –?

S/SGT. OSMOND: No, I don't.

MR. FREEMAN: Okay.

In terms of conflicts, you and many other witnesses here from RCMP have been asked about conflicts and how that's handled. And it seems to be that most everyone from Inspector Cahill, who's above you, and Corporal Burke, who's below you on the chain, has said that this is sort of in your wheel house. Is that fair?

S/SGT. OSMOND: Conflicts in terms of?

MR. FREEMAN: Asking about conflicts within the triangle?

S/SGT. OSMOND: Yes, that would have been my responsibility.

MR. FREEMAN: Okay.

So correct me if I'm wrong but you do ask certain members of the MCU triangle whether or not they have conflicts in this case, whether they know Mr. Dunphy or they know Mr. Smyth?

S/SGT. OSMOND: Yes. I confirmed that anybody making decisions in this investigation in the command triangle, and even within our MCU, had no conflict with Constable Smyth.

MR. FREEMAN: So when it comes to first responders, then, is it a different situation or not?

S/SGT. OSMOND: Well, it is because I think earlier I testified that, like, the Major Crime Unit inherits an investigation, we don't often originate an investigation. So by the time we get there any first responder that's already been at scene may have a conflict, but they don't have the option of not responding.

So if they go and they happen to know Constable Smyth or Mr. Dunphy, they still have to act as a police officer and they have no choice in that. As the investigators, we move in and take over the investigation. We mitigate that and make sure that anybody making decisions from that point forward is removed from that sphere of influence.

MR. FREEMAN: And so what are your expectations, if any, when it comes to officers having conflicts who aren't the ones who have been asked? So the first responders and others, what's your expectation of them when it comes to a conflict?

S/SGT. OSMOND: I would expect them to self-identify.

MR. FREEMAN: And so what obligation do they have to self-identify? What is it that would prompt them to do that, if anything?

S/SGT. OSMOND: Professional integrity.

MR. FREEMAN: And do people generally do that in your experience? Do the officers self-identify and they ...?

S/SGT. OSMOND: I haven't run into it a lot. Well, actually, I can't remember ever running into it on a Major Crime investigation but I can tell you that I've self-identified. I've been asked to investigate another police officer that I knew and I declined because I was clearly in conflict.

MR. FREEMAN: Okay. Thank you.

And so you gave evidence yesterday that within Major Case Management, within the triangle, you had a discussion about cautioning Sergeant Smyth/Constable Smyth and decided not to.

S/SGT. OSMOND: That's correct.

MR. FREEMAN: And did you have any particular reasons that led you to not cautioning Constable Smyth at that time?

S/SGT. OSMOND: Yes. We didn't have a criminal offence established at that point. We were investigating whether or not a criminal offence had occurred but we had absolutely no indication that it had.

Now, you have to remember this is very early on in the investigation. We're gathering evidence. He's our only material witness; he was the only one there. I don't want to suggest that we didn't caution him so that we could get a statement, that's unethical, but we chose not to caution him because we didn't perceive him as having any jeopardy at that point.

MR. FREEMAN: This is an area where you've already said you and ASIRT disagree.

S/SGT. OSMOND: Yes. I would like to point out, although ASIRT did say in there that we probably should have cautioned him – I think that’s their exact words, should have – and that it was a debatable decision. They didn’t say we were in error, they said it was a debatable decision.

MR. FREEMAN: So Commission counsel – and, thank you, we’ll move on to a different area. So Commission counsel took you to a document yesterday that’s known as a C-237. Is that right?

S/SGT. OSMOND: Yes.

MR. FREEMAN: Madam Clerk, could we call up P-0565, please.

Now, I don’t know if you would call this one a C-237 or not. It is an email, it doesn’t seem to be on a form of any kind but it does say C-237 there in the –

S/SGT. OSMOND: Yes

So what happens there, Mr. Commissioner, is that the C-237 form has to go through channels for a signature but in a dynamic situation where people need to be in the know immediately I will cut and paste the narrative from the form into an email. And usually there will be an attachment and it will say please forward through channels and sign and return to me, but in the meantime they can read it on their BlackBerry.

MR. FREEMAN: So what is a C-237 exactly?

S/SGT. OSMOND: It’s an investigative report. It’s not a report – it’s not an investigational report, it’s a – sorry. It’s a report on the investigation but it’s not an investigational document itself.

MR. FREEMAN: And so Commission counsel took you to a lot of the language in this document. So who is the audience? What’s the purpose?

S/SGT. OSMOND: The audience is upper management of the RCMP and the command triangle, but it’s primarily – I cc people in that chain so that they’re aware of what I’ve written in case it needs to be corrected or in case they have some objection to it, but it’s primarily from my level up.

MR. FREEMAN: So does that affect or not affect the language that you use in terms of how you’re describing things, who the audience is, what the purpose is of this document?

S/SGT. OSMOND: Yes.

MR. FREEMAN: Can you just give me one moment, please, Mr. Commissioner?

Okay, I’ll move on to a different area then. So, Madam Clerk, can we look at P-0312, please?

I think I may have the wrong exhibit there. So I’m looking for P-0312, please. I believe we’re looking for page 5. I’m just taking to some – what this is, is a Supplementary Occurrence Report, I believe.

Actually, Madam Clerk, if you wouldn’t mind, please take us to page 1, I’ll just confirm the banner that – or the top of that document there. So I’ll go to page 2, actually, for that purpose.

So you see this is a General Report by Steve Burke.

S/SGT. OSMOND: I do.

MR. FREEMAN: Okay. So we will then go to page 5, Madam Clerk.

And we'll scroll down here. This is on the topic of releasing the scene.

S/SGT. OSMOND: Okay.

MR. FREEMAN: So at the bottom of the screen there – maybe just one more click down, please. There we go.

So at – and maybe one little roll up there so I can – or upwards, actually, up – no, sorry, the other way, so there we go, that would be good.

So you can see it's April 8 at 2015 in the morning, at 8 a.m. Dou see that?

S/SGT. OSMOND: I do.

MR. FREEMAN: And then on duty at B Division HQ. This is Burke – Corporal Burke writing?

S/SGT. OSMOND: Yes.

MR. FREEMAN: Yes, okay.

So then at 9:05, Corporal Burke says: Member – which would be him, I guess.

S/SGT. OSMOND: It would be.

MR. FREEMAN: In conversation with Sergeant Smyth was advised – or Osmond, excuse me, “was advised that the scene was released once the autopsy was completed.” And it goes on to say: Mr. Dunphy's daughter had requested the police tape remain and also that member – Galway had the keys, et cetera.

So it seems Sergeant – Corporal Burke was told by you, Sergeant Osmond, that the scene was released –

S/SGT. OSMOND: Yes.

MR. FREEMAN: – once the autopsy was complete, and I think you had said yesterday that it may have been Sergeant Tiller or Constable Galway who released it.

S/SGT. OSMOND: Yes, I went back into the file and looked at this, and there's a note that I think it was Chief Superintendent Boland who was at the scene at a certain point. And then after that Staff Sergeant Tiller and Constable Galway arrived. And my understanding is that at that point, I think it was 7:20 in the evening, they released they scene. They locked it up and brought the keys to Ms. Dunphy.

THE COMMISSIONER: Sorry. Boland was at the scene, Tiller and –

S/SGT. OSMOND: Constable Galway.

THE COMMISSIONER: And Galway arrived. Okay.

S/SGT. OSMOND: I think Chief Superintendent Boland had left, but that was the sequence of events. There was one visit then and then Tiller and Galway showed up, and I believe they met with Ms. Dunphy at the scene or consulted with her, locked up the scene and left.

MR. FREEMAN: And did you take any issue with that? Did you have any further investigative steps to take after the autopsy was done?

S/SGT. OSMOND: No, we didn't.

MR. FREEMAN: So yesterday you were asked some questions again on a different topic about an April 9 meeting with RCMP and an Inspector Sheppard from RNC. Do you remember that?

S/SGT. OSMOND: Yes, I do.

MR. FREEMAN: Was there any investigation or information shared with Inspector Sheppard that could prejudice this investigation at any time?

S/SGT. OSMOND: No.

MR. FREEMAN: Or certainly not at that meeting, I guess, is what I'm asking –

S/SGT. OSMOND: No. The way I remember that meeting it was – I think the way I described it was a 10,000-foot view. It was to give him an idea of timelines, what we anticipated doing, not results or anything of that nature, but we just gave him the overall framework of the investigation, where we were at that point, where we expected to go.

MR. FREEMAN: Okay. Thank you.

You were replaced by Sergeant Efford at MCU; correct?

S/SGT. OSMOND: That's correct, yes.

MR. FREEMAN: And what was the date that you were replaced at MCU, do you recall, even roughly?

S/SGT. OSMOND: I think it was mid- to late September.

MR. FREEMAN: Okay.

And so you were asked some questions about some texts with Constable Smyth and speaking to Inspector Sheppard about Constable Smyth's mental health.

S/SGT. OSMOND: That's correct.

MR. FREEMAN: And at that time – these happened, I believe, in September of 2016 or thereabouts.

S/SGT. OSMOND: Yes.

MR. FREEMAN: So that's after you've left the MCU; correct?

S/SGT. OSMOND: It's the year after.

MR. FREEMAN: A year after you've left the MCU, so you've already moved on to another department altogether.

S/SGT. OSMOND: Yes.

MR. FREEMAN: And, Madam Clerk, if we could look at P-0507, please. Oh no, I think I have the wrong number there again – excuse me. So we can close that one.

Ms. O'Brien I wonder if you could assist me in this. I'm looking for the press release that ...

MS. O'BRIEN: I feel like it's (inaudible).

MR. FREEMAN: Thank you.

P-0570, okay, it looks like I've inverted the zero and the seven there perhaps. Thank you, Madam Clerk, and Ms. O'Brien.

So we'll just scroll down into that press release. You were asked some questions about this document yesterday by Mr. Simmonds; do you recall that?

S/SGT. OSMOND: I do.

MR. FREEMAN: And you were accused basically of tunnel vision based on the wording of this press release; do you remember that?

S/SGT. OSMOND: I do

MR. FREEMAN: Okay. I'll take you down to the fourth paragraph there where it says "To date, the RCMP investigation indicates" What is the purpose of that language in that press release?

S/SGT. OSMOND: To show that the results were preliminary.

MR. FREEMAN: Do you feel that this press release is indication of tunnel vision?

S/SGT. OSMOND: Clearly, I don't.

THE COMMISSIONER: You said it shows the results were –

S/SGT. OSMOND: Preliminaries?

MR. FREEMAN: Okay. Next I'd like to go to a confidential exhibit. This is a photo, so we'll have to turn off the monitors. This is the same photo you were looking at yesterday, with Mr. Simmonds I believe. And so I think that the photos are P-0010 but it's Scene 044.

UNIDENTIFIED SPEAKER: (Inaudible.)

MR. FREEMAN: No. No problem.

So Mr. Simmonds had asked you some questions about whether there was a photo taken from where Constable Smyth was standing?

S/SGT. OSMOND: Correct.

MR. FREEMAN: And also had said – you had said in response that you thought Photo 173 might be that photo?

S/SGT. OSMOND: Yes.

MR. FREEMAN: You were using a PROS reference I believe, so is this the PROS 173 is that Scene 044 here – are those the same?

S/SGT. OSMOND: It is.

MR. FREEMAN: Okay. And so you felt that photo was sufficient for that purpose, is that –

S/SGT. OSMOND: Yes, looking at it now, I was going by memory. Looking at it now, it looks like, based on where he says he was in the re-enactment and based on the vantage point of this photo, I think this photo is taken a little to the left but it is a very good representation of what I believe he would have seen.

THE COMMISSIONER: Sorry. You said what a little bit to the left?

S/SGT. OSMOND: Mr. Commissioner, I think the camera angle is a little to the left –

THE COMMISSIONER: Okay.

S/SGT. OSMOND: – so I believe, based on the re-enactment, Constable Smyth would have been standing slightly to the right. So the vantage point would have been a little bit skewed, but it's a pretty good representation I believe.

MR. FREEMAN: So would that – and, again, if you can't say, you can't say. But do you think that would leave him seeing more of the right side of the chair or less of the right side of the chair?

S/SGT. OSMOND: If he was slightly to the right, he would have seen less.

MR. FREEMAN: And Mr. Simmonds had said that Corporal Burke had said that no such photo had been taken from where Constable Smyth was standing.

S/SGT. OSMOND: Correct.

MR. FREEMAN: I think, Mr. Commissioner, just for your own notes, if you look at February 9, 2016, if you look at the transcript of these hearings, February 9, 2016, at page 18, you'll find that Corporal Burke's answer was he didn't know if such a photo had been taken or not, that no such photo had been taken.

THE COMMISSIONER: That was when – what date did you say? You said –

MR. FREEMAN: February 9, Mr. Commissioner, at page 18 of the transcript –

THE COMMISSIONER: I thought you said 2015 –

MR. FREEMAN: Oh, no.

THE COMMISSIONER: 2017 you're talking about.

MR. FREEMAN: Yes, I am talking about 2017, absolutely.

THE COMMISSIONER: Right.

MR. FREEMAN: I'm having fun with numbers here this morning, obviously.

THE COMMISSIONER: Well, I'm not sure (inaudible). Go ahead. So you're saying that page 18 it shows ...

MR. FREEMAN: Constable Burke saying he doesn't know if such a photo had been taken from exactly from where Mr. Smyth was standing. I think Mr. Simmonds was saying that Burke said no such photo had been taken.

When it comes to – sorry, I'll let Mr. Commissioner finish his note there.

THE COMMISSIONER: Thank you.

Sorry, that photo, there have been some other photos with respect to the position of Mr. Dunphy's left hand that shows a fair gap between his hand and the left side of the chair. I'm just – I don't know if he had – the other photos that we've been looking at – I'm not sure I needed that – they seem to indicate at one stage the hand up somewhat is my recollection from that photo. Can anyone find the prior photos that we looked at in this regard just before we leave that point?

MS. O'BRIEN: Sorry, Commissioner. I'm not remembering what you're speaking of. I have the photo book here if it would be helpful for you –

THE COMMISSIONER: Yeah, just maybe let me take a look at the photo for a second. That would be the quickest. Thank you.

I have one at 101 but that – sorry, number 133 you suggest. Now, 133 – and this one is – no, that's 132. 133 is the bullet. Anyhow, I won't delay matters. It's just if anybody has any comment if they come across another photo. That photo we were just looking at indicates, which is PROS 43 or our 44, seems to indicate a larger gap than I had previously been noticing in the photos, but as I say, we can move on. If anybody has any comment on that I'd welcome it, but otherwise I'll just make sure I go through the photos carefully when I'm looking at them.

MR. FREEMAN: And, Mr. Commissioner, I'll just suggest maybe taking a look at those photos that were taken by Corporal Foote as well.

THE COMMISSIONER: That's right. Yeah.

MR. FREEMAN: And there may be questions in –

THE COMMISSIONER: It may be one those, yeah.

MR. FREEMAN: And maybe that the medical examiner can answer questions about the movement of the body or the settling of (inaudible).

THE COMMISSIONER: That's – I have in mind that I saw somewhere in the documents a reference to the possibility of Mr. Dunphy's body having slumped down over a period of time, I guess it would be fair – it wouldn't be a great lengthy period of time. But before the photos were taken there would have been several hours except for Constable Foote's photos.

Anyhow, I'll look at that as I go through.

MR. FREEMAN: And my recollection is Corporal Lee might be able to speak on this but the medical examiner perhaps, as well, will be able to that.

THE COMMISSIONER: Right. Okay.

MR. FREEMAN: Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you.

MR. FREEMAN: Ms. O'Brien, is it okay if I proceed there?

MS. O'BRIEN: Yes.

MR. FREEMAN: Yeah.

MS. O'BRIEN: (Inaudible.)

MR. FREEMAN: So Mr. Simmonds was basically saying – thank you, Sergeant Osmond.

Mr. Simmonds was basically saying there was no photo taken from where one should have been taken. Is that fair –

S/SGT. OSMOND: Yeah.

MR. FREEMAN: – paraphrasing?

S/SGT. OSMOND: Yes.

MR. FREEMAN: And in so deciding, you're saying you have a photo that's sufficient for that purpose or close to it?

S/SGT. OSMOND: In my opinion it's sufficient, yes.

MR. FREEMAN: And in deciding whether an angle was taken that was appropriate, would you also have to look at scene video taken by Corporal Lee?

S/SGT. OSMOND: I'm going by my visit to the scene and by my review of the file. And when Mr. Simmonds said that no such photo had been taken, I remembered seeing a photo that I believed did represent what he said wasn't represented. I've never seen Corporal Lee's video of the room.

MR. FREEMAN: Okay.

So it's possible or not possible that Corporal Lee's video captures different angles that aren't –

S/SGT. OSMOND: I would suggest it certainly does.

MR. FREEMAN: – that aren't captured in still photos.

S/SGT. OSMOND: Yes.

MR. FREEMAN: Okay.

So is it enough to say that no photo was taken or would you also have to look to the video?

S/SGT. OSMOND: Pardon me? Say again?

MR. FREEMAN: Is it enough to say no photo has been taken or would you also have to look to the video to determine what angles could be looked at?

S/SGT. OSMOND: Well, I think a photo was taken –

MR. FREEMAN: Right.

S/SGT. OSMOND: – in my opinion.

I think the video – if you took still shots from the video, you’re probably going to get a complete panoramic view of the room, you know, based on my experience with what FIS does.

MR. FREEMAN: Okay. Thank you.

This one is a little bit leading with my chin because it’s not something I’m sure you can talk about. But I’m going to go ahead and try it anyway. This is something that came up during Constable Cox’s evidence yesterday.

S/SGT. OSMOND: Okay.

MR. FREEMAN: So, Madam Clerk, if we could look at P-0376, please?

That’s fine there, Madam Clerk. Thank you.

So you see this is a Supplementary Occurrence Report by Adrian Cox.

S/SGT. OSMOND: Yes.

MR. FREEMAN: And there is a section there called Remarks: Folder 003 – Scene Security.

S/SGT. OSMOND: Yes.

MR. FREEMAN: Constable Cox had no idea what that was or where it came from. And Mr. Simmonds had asked him some questions about who could have put such a thing there, why it was there, et cetera. And he also asked some questions about the changing from PROS to E&R and whether that could be it.

And we didn’t – Constable Cox had no idea. I wondered whether you could give us any information about Remarks; how that got there, what that looks like to you.

S/SGT. OSMOND: Yeah, I can.

When we set up a PROS file a lot of the disclosure is paper based. And in E&R it’s all electronic based so it’s scanned; it’s linked to a task. In PROS, it’s paper based so we create folders. So it’s still Major Case Management; however, it’s done hard copy versus electronic copy.

So the Scene Security in the hard file is Folder 003. So that would be printed in hard-copy form to give to Mr. Riche and to disclose to anybody we had to. Folder number 003 would be all the documents pertaining to scene security. That would probably have been put in there in the Remarks thing by the file coordinator because they’re the ones that organize the disclosure and –

THE COMMISSIONER: Probably put in by who?

S/SGT. OSMOND: The file coordinator or the file manager.

THE COMMISSIONER: The file coordinator, sorry.

S/SGT. OSMOND: And that would have been done for organizational reasons. Because, as you know, disclosure can be quite onerous so you have to be very, very detailed. So folder number 003 were all the documents pertaining to scene security.

MR. FREEMAN: And so the file coordinator is Corporal Foote in this case?

S/SGT. OSMOND: It would have been, yes.

MR. FREEMAN: So your understanding is that is who would have the remarks placed there.

S/SGT. OSMOND: Yes.

MR. FREEMAN: Would Corporal Foote have edited or changed the text at all of Adrian Cox?

S/SGT. OSMOND: No.

MR. FREEMAN: And so is the Remarks item there auto generated, do you think, in PROS or not? Or if you can't say, that's okay too.

S/SGT. OSMOND: No, I believe as the task comes up in PROS – now you have to understand that I operate mainly in E&R so PROS is – I'm not that proficient with it. But I do know that when you pull it up, if you're the file coordinator, there's a remarks field there that you can arrange it and Folder 003 on the screen will auto arrange. So it will go numerically for you so you don't have to go in and find all this stuff over and over again. So that would be the file coordinator who would be able to populate that field for his own purposes.

MR. FREEMAN: So do you find it troubling at all, then, that Constable Cox didn't know where this came from, or is that – that doesn't raise a red flag for you, or does it?

S/SGT. OSMOND: Not at all. It's the Major Case Management protocol; he's probably never seen it before.

MR. FREEMAN: Okay.

Okay, so I'll move on to – I only have about maybe one or two areas left here so we should be done very quickly. You talked yesterday about interviewing versus interrogating and you talked about the Reid technique and some other topics. Do you remember that?

S/SGT. OSMOND: I do.

MR. FREEMAN: Okay.

Did you want to offer any more comment on interviewing versus interrogating and when it's done and how it's done in modern policing?

S/SGT. OSMOND: Well, it's a very different process than it used to be. The RCMP right now is nationally going towards what we call a phased-interview approach. The goal of that is to move away from confrontational interviewing.

MR. FREEMAN: Uh-huh.

S/SGT. OSMOND: Not that there can't be challenging of information and – but the idea is to gather as much information as you can, research that information to determine if it's accurate; if it's not accurate, to go back to the person and ask them to explain why it's not accurate.

It's very non-confrontational. It can get to the point where it can be – the person can be challenged on their version but, you know, I think the days – you know, it's still prevalent throughout television and all that where you see police officers yelling and screaming in the interview room and I mean that's just not done. And so when people view the interview with Constable Smyth, if we could, we could also disclose other interviews that are very, very similar with people that we later charge with a criminal offence.

MR. FREEMAN: Anything you can offer us about the timing of interviewing, when the subject is interviewed? Is it at the beginning, the middle, the end? What's your take on that?

S/SGT. OSMOND: It's completely dependent on the circumstances and the investigation. Oftentimes, the person that's the subject of the investigation is actually spoken to last because we spend all of our time gathering facts, gathering evidence, gathering various degrees or various versions of what happened from other witnesses.

This file was a bit – well, not a bit, quite unique, because we didn't have any other witnesses other than Constable Smyth. So that pushed him up, you know, in the order of what we were doing because we needed to get his version of events.

But to take him from that scene and bring him to an RCMP detachment and interrogate him was completely out of the question. We had no right to do that. We asked him for an interview. He said no. We had no facts on which to interrogate him anyway because we hadn't done hardly any of our investigation and was literally an hour or so into our investigation. It would have been foolhardy to do that, plus it would have violated his Charter rights.

MR. FREEMAN: And in this case we see multiple interviews of certain witnesses. Is that normal? Abnormal? Can you comment on that at all?

S/SGT. OSMOND: Completely normal. A normal course of business; we fully expect to go back to people multiple times. We take a statement and we learn new things. We go back and ask about the new information we learned. And that's the way, at least, our investigations in our unit are done and I would suggest across the country are done varied.

I mean it's just, it's – I mean Mr. Kennedy summed it up yesterday: investigations evolve and because they evolve, you adapt to those changes.

MR. FREEMAN: Sergeant Osmond, I just have one more question for you and it's quite open ended. The Commissioner is looking into whether there's any material deficiencies in the RCMP's investigation here. You're aware of that, that's one –

S/SGT. OSMOND: Yes.

MR. FREEMAN: – of the terms of reference. Is there anything else, then, that you wish to add now that has not been already covered in your evidence with respect to this investigation?

S/SGT. OSMOND: In terms of material deficiencies?

MR. FREEMAN: In terms of any information that you wish to share with the Commissioner about this investigation or anything that hasn't already been covered by Commission counsel and all of my learned friends here.

S/SGT. OSMOND: There is.

I've reflected on a question that Mr. Kennedy asked me yesterday about letters that we received from Ms. Breen. And he asked me what I thought the purposes of those letters were and I said I thought the purpose was to have us removed.

I've reflected on that and I think it goes beyond that. And to get a letter from a legal counsel with an attachment where she quotes herself in a sound bite accusing me of tunnel vision, and then sends that to people that can affect my career or my integrity and the integrity of those people in my – under my command and in the RCMP, and then suggest that the tunnel vision that permeates my unit is so egregious that it brings into disrepute all the investigations we've done, I think is scandalous.

MS. BREEN: Mr. Commissioner, obviously that places me in a very difficult position. I think I'm going to have to ask for a break. If Sergeant Osmond is accusing me of something, some kind of misconduct, I feel that I need to deal with that in an appropriate way. That was not something I anticipated happening this morning.

THE COMMISSIONER: Well, I'm not sure, Ms. Breen, that that's something that warrants a break. We're going to be having a break at our usual time but ...

Is there any reason why you can't deal with that subsequently if you have – frankly, I'm missing the reason why you'd be looking for a break.

MS. BREEN: Well, Mr. Commissioner, obviously I'm in a difficult position. You know, I'm here acting as counsel for Meghan Dunphy and now I've had a witness who's accused me of misconduct. I would take that that's what Sergeant Osmond is saying, or in breach of my ethics with the Law Society.

So, you know, I think that I at least need 15 minutes to figure out what am I going to do here. Do I have to get someone else to come into this inquiry and I have to give evidence?

THE COMMISSIONER: Well, I can tell you, you don't, as far as I'm concerned. Now, in terms of what you believe yourself, you know, might be in your own interests. You can consider.

I think the way to do it is to give you leave to come back to this after the break and take a few extra minutes during the break, if you want, to consult with anybody. But I don't want to see the, see the inquiry delayed by what is a collateral or a peripheral issue.

I'm not trying to suggest that it's not significant from your perspective but, you know, I have an inquiry with certain terms of reference and I just want to maintain a schedule here as far as I can. So if you could, as I say, raise this as we go on – and remember that's also Constable Osmond's opinion. And whether it's appropriate or not, it may be something that goes with the territory.

But I'll consider submissions on that either later when you raise it or at the end of the hearing. But you're – Staff Sergeant, you're making a strong statement here and it strikes me that it's been – it's happened before. And I can appreciate your concern about maintaining your reputation, but I'm sure your counsel is going to be able to do that in the – make sure that any comments that have to be made in that regard will be made in closing submissions.

I don't know if you want to go any further, Mr. Freeman, on this point?

MR. FREEMAN: If you had nothing further to say about the investigation itself, Sergeant Osmond, I have no further questions, no.

S/SGT. OSMOND: Thank you.

THE COMMISSIONER: Do you have anything further, Staff Sergeant?

S/SGT. OSMOND: No, I don't. I don't, Mr. Commissioner.

MS. BREEN: Mr. Commissioner, just one further comment. I appreciate your comments so I'll move forward; however, I would also ask for the right for Staff Sergeant Osmond to be recalled if necessary to be cross-examined on that point.

I'm not saying that that's something I'm going to seek right now but I certainly would like the Commission to at least allow me the opportunity to review Staff Sergeant Osmond's comments this morning so I can feel how to appropriately deal with them as I did not anticipate based on – I understood that his redirect this morning was going to be, you know, the issues covered. I did not see any statements made by him like that in his interview and this came out of the blue at me.

THE COMMISSIONER: Right. That's fair enough.

Now, I'm not going to give you leave to recall but I am going to give you leave to make the application to recall, which should have the same effect. And I'll consider it when you've had a – if you make that request. After seeing the transcript, I'll consider what is appropriate to do in those circumstances. So you have leave to raise this again if that's all right.

MS. BREEN: Thank you very much.

THE COMMISSIONER: Thank you.

All right, any other questions for Staff Sergeant Osmond? Finished?

Okay. Thank you, Staff Sergeant.

S/SGT. OSMOND: Thank you.

MS. BREEN: Mr. Commissioner, I understand Mr. O'Flaherty is here. I don't know if he had further questions for Constable – or Sergeant Osmond?

THE COMMISSIONER: Oh, sorry. Staff Sergeant, you better hang on for a second. He can't be –

MS. BREEN: (Inaudible.)

THE COMMISSIONER: He doesn't want to be brought away from the coffee urn this morning, does he? Yeah.

MS. BREEN: I'm not sure, Mr. Commissioner, if he had another court appearance. I didn't speak with him before.

THE COMMISSIONER: You saw him arrive recently?

MS. BREEN: I understand he just arrived.

THE COMMISSIONER: Okay.

MS. BREEN: I just wanted to – because I –

THE COMMISSIONER: No, that's fair enough. Thank you.

MR. FREEMAN: Perhaps I –

THE COMMISSIONER: We'll just wait for a moment.

MR. FREEMAN: Perhaps I didn't put a fine enough point on it when I asked earlier. My hope was that if Mr. O'Flaherty was not here he would not get to question after the redirect, but if that's your decision, Mr. Commissioner, then, I'll leave it in your hands.

THE COMMISSIONER: Well, yeah, I don't see that this is any great prejudice to you, Mr. Freeman. On balance, I think it would be better to – we'll wait and see what Mr. O'Flaherty's position is.

MS. BREEN: (Inaudible.)

Mr. Commissioner, I don't see Mr. O'Flaherty there. I understand he may not have questions for Sergeant Osmond.

Thank you.

THE COMMISSIONER: All right, we'll proceed.

Staff Sergeant, you're free to go.

And – sorry, Mr. Freeman, you have another?

MR. FREEMAN: No, I just – I believe Inspector Pat Cahill should be out here so I can try and retrieve him if we could take a break to have a quick look around.

THE COMMISSIONER: Okay. Bring in the next witness.

Yes, thank you.

MS. O'BRIEN: While we're waiting, Commissioner, I can seek an order to have the following exhibits entered: P-0629 through to P-0649 inclusive.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. FREEMAN: He's here. Your mic is already on and the exhibits; as they call them, they'll be here.

SUPT. CAHILL: Sure.

Is this mine?

MR. FREEMAN: I believe so. That's a new one.

MS. O'BRIEN: Yes, it is.

MR. FREEMAN: Yes.

SUPT. CAHILL: Okay.

THE COMMISSIONER: Oh sorry. Go ahead, Madam Clerk.

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

SUPT. CAHILL: I do.

MS. SHEEHAN: Please state your full name.

SUPT. CAHILL: Patrick Adrian Cahill.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

It's now Superintendent Cahill. Correct?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

So, Superintendent Cahill, I understand you've been a member of the RCMP for over 24 years.

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

And oh, your current rank is Superintendent but during the course of the file involving Mr. Dunphy and Constable Smyth, I understand you were Inspector Pat Cahill at that time?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

And I'm just going to go over a little bit of your background very quickly and just get you to confirm that I have the details right. I understand that you earned a bachelor of business administration and you had a short career in banking prior to joining the RCMP. Is that right?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. And with the RCMP, I understand you actually started out your service in Northern Manitoba?

SUPT. CAHILL: Yes.

MS. O'BRIEN: And you spent 15 or so years in that province? And you had a year's secondment to the UN in the Kosovo war crimes unit?

SUPT. CAHILL: Yes.

MS. O'BRIEN: And then ultimately you were commissioned in 2005? Does that sound right?

SUPT. CAHILL: No.

MS. O'BRIEN: Commissioned within the RCMP? Okay.

SUPT. CAHILL: Commissioned to the officer ranks. That's what we refer to when we say commissioned.

MS. O'BRIEN: Yes.

SUPT. CAHILL: That was in 2011.

MS. O'BRIEN: 2011. Oh, my apologies. Okay.

And you were transferred – you transferred back to Newfoundland and Labrador in 2007. Is that right?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

I'm just going to ask, Madam Clerk, to bring up Exhibit P-0308, please. And this is just an org chart which we've seen previously and I'm just going to place you on the chart very quickly.

And this is an organizational chart for the period of April 2015, there about.

0308? Yeah. Thank you.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. O'BRIEN: Okay.

Well, when Madam Clerk gets the org chart up – that will be fine. But I understand in April 2015 you were the officer in charge of major crimes for the RCMP Division B. Is that right?

SUPT. CAHILL: That was my substantive position but at that particular time I was the acting provincial policing officer.

MS. O'BRIEN: That's right. So you were on this chart – sorry 0308.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. O'BRIEN: But on this chart – that's what I was going to confirm, that on this chart you actually filled two boxes. So your acting – your substantive position was officer in charge of major crimes and you were also acting as the provincial policing officer and those, now that we have it up here – so you were – sorry, you were in this position and acting in this position.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. So you reported up to Chief Superintendent Andrew Boland. And in terms of the major crimes here, major crimes east, which was the unit we're considering, it was then Sergeant, now Staff Sergeant Kent Osmond, who reported directly up to you.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. Thank you.

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

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And we've already had a significant amount of evidence here at the inquiry regarding how the RCMP and the RNC work together in this province. I'm not going to ask you any questions relevant to that.

I'm going to go right into your role with this investigation. Just generally speaking, at a high level, can you explain to the Commissioner what your role in the Constable Smyth investigation was?

SUPT. CAHILL: So MCU, the investigative unit, falls in under my umbrella along with, you know, close to 19 other units. So as a – I guess I would be the manager of the – we call it the line officer but a better word for it, for the folks here today, is manager.

MS. O'BRIEN: Okay.

And I understand as manager, some of the roles you would have done – and you can just confirm this – you would have done briefings up through the chain of command. Is that right?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And here you had some involvement with the independent observer, Judge Riche. Right?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

You also did a meeting or briefing with the family of, I think, was it Meghan Dunphy at the end of the file?

SUPT. CAHILL: Yes.

MS. O'BRIEN: And you also had some involvement with the media.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

Okay. Now, the decision to have the RCMP conduct the investigation of this matter, the evidence we have is that this would have been a decision to be made by, at that time, Chief Superintendent Andrew Boland but who was, in that time, acting as the CROPS officer. Would you agree with that?

SUPT. CAHILL: Yes, he wasn't acting as the CROPS officer.

MS. O'BRIEN: He was.

SUPT. CAHILL: He was the CROPS officer.

MS. O'BRIEN: Sorry, that's my bad use of the word "acting."

SUPT. CAHILL: Yes.

MS. O'BRIEN: He was the CROPS officer.

SUPT. CAHILL: Yes.

MS. O'BRIEN: But the decision of whether –

SUPT. CAHILL: It was his decision.

MS. O'BRIEN: His decision to make.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And you did not have any involvement in that decision, am I right?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

Likewise, from the testimony we have we understand that the decision here to bring in an independent observer was one that was taken by Chief Superintendent Boland.

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

Do you recall having any discussions with Chief Superintendent Boland or others with respect to that decision?

SUPT. CAHILL: I just remember when it was, when he had decided that we were going to bring in an independent observer, just about some other, you know, if I had any experience with it.

MS. O'BRIEN: Okay.

Had you ever worked with an independent observer before?

SUPT. CAHILL: Not personally. But in the province I worked it was not an uncommon thing.

MS. O'BRIEN: Okay. And this is when you were in Manitoba.

SUPT. CAHILL: Manitoba, yes.

MS. O'BRIEN: So you'd had some – so I understand you had some knowledge of independent observers being used in Manitoba although you had not worked with one directly?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And in the instances you were aware in Manitoba where an independent observer was used, were these all incidences or cases taking place on either a reserve or involving First Nations communities?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

And do you know how many times, approximately, you were aware that independent observers had been used?

SUPT. CAHILL: Once or twice I think.

MS. O'BRIEN: Okay.

Okay. And in those one or two times that you were aware of, was the independent observer chosen as an elder or respected member of the community?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay, so not someone who had a law background or a previous history as a judge? Okay.

Were you aware of any prior use of an independent observer in Newfoundland and Labrador?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

And am I correct that you were not involved with the selection of Judge Riche as the independent observer in this case?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

All right, did you know Judge Riche previously?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay. And we'll come back now to the independent observer shortly.

I am going to, though, now to bring up P-0570 which is a press release. We have entered as an exhibit a letter that Erin Breen, who is legal counsel for Meghan Dunphy, wrote to Constable John Galway, who was the family liaison on the file on April 8, where she raised a number – on behalf of her client she raised a number of areas of concern.

Are you familiar with that letter?

SUPT. CAHILL: Vaguely, yes.

MS. O'BRIEN: Okay.

And if you do need to see it at any time, Superintendent Cahill, as I am asking you questions, I'm not – sorry, the press release is up but it's not my first question here. But at any time you need to see that letter you just let me know.

But one of the concerns raised in that letter was that the information that had been put out in the media regarding Mr. Dunphy, Meghan's father, with respect to him pointing a gun, a sudden change in demeanor – Ms. Dunphy felt that painted her father in a negative light. And we believe this would have been referenced to the April 7 press release which is the one that I've just brought up.

Do you generally recall that concern of Ms. Dunphy's?

SUPT. CAHILL: No, I remember the media release with regards to it going out and it talks about information and how much to put in and stuff like that. But I don't remember the concern right off hand, I'm sorry.

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

Now, am I right in saying that you did have some input into the drafting of this press release that's up on the screen there in front of you now?

Sorry, thank you, Madam Clerk.

So here's the press release that we understand that went out from Greg Hicks who was the media relations officer on the file. Is that right?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

And the date of this is April 7 and this is generally – it's not the first press release that was put out by the RCMP, it's in fact the second, but this one has a fair bit of detail about the findings of the investigation to date.

SUPT. CAHILL: Excuse me, what date was that?

MS. O'BRIEN: April 7.

SUPT. CAHILL: No, I wouldn't have had any – I wouldn't have had much input on that.

MS. O'BRIEN: Okay.

I'm just going to bring up Exhibit P-0599.

SUPT. CAHILL: Sure.

I'm just – I'm trying to figure out the date. I know when the incident first happened I was actually in Labrador. And I think I made way out around that date, I'm just trying to –

MS. O'BRIEN: Okay.

Okay, so P-0599, so this is this date here. And it's earlier that morning –

SUPT. CAHILL: Right.

MS. O'BRIEN: – so it's before the press release was finalized. And it's an email from you to Jamie Zettler, Kent Osmond, Greg Hicks –

SUPT. CAHILL: Right.

MS. O'BRIEN: – Steve Burke with a copy to Rod Tiller “Re: Media draft for review at your meeting”?

SUPT. CAHILL: Okay. Sorry, yeah.

MS. O'BRIEN: And so – and just to bring down this – oh, I think we only have a portion of it here but I understand this was a circulation of drafts of the press release that we just looked at.

SUPT. CAHILL: Yeah, it probably flowed through me. And I know Jamie Zettler was involved quite a bit at that particular time.

MS. O'BRIEN: Okay. Does this refresh your memory –

SUPT. CAHILL: It does.

MS. O'BRIEN: – that you had at least some involvement in?

SUPT. CAHILL: Yes, it does. Yeah.

MS. O'BRIEN: So the question I want to ask you about is on this email here, because we looked at yesterday when Staff Sergeant Osmond was giving his testimony that he had done an initial draft of a press release just for people's consideration where he had, you know, identified the number of shots. He had said XXX number of shots; he actually hadn't put in the number.

And then we get – the next morning we get this from you: “Thanks Greg. Further discussion at our meeting. I'm not big on putting out the number of shots fired and the number of hits etc. Multiple shots were fired by the officer may suffice. Public perception may take a swing to ‘overkill’ when we get into the specifics here.

“Again we can discuss further at the meeting.”

Okay? Can you explain for the Commissioner what your concern was that you were raising in this email?

SUPT. CAHILL: That basically the public doesn't understand a police officer's training with regards to course of fire. And when you're faced with certain incidents, training kicks in and, of course, the number of shots may be – well, are usually more and that's what –

MS. O'BRIEN: Number of shots are usually more than what?

SUPT. CAHILL: One, for sure.

MS. O'BRIEN: Okay.

And in this case it was four shots that was fired from Constable Smyth. And your concern was if you published that he'd shot four times that the public might think that that was more shots than necessary? Is that what you're saying?

SUPT. CAHILL: Exactly, yes.

MS. O'BRIEN: Were you aware that at – when you wrote this email on April 7, were you aware at his interview with Corporals Burke and Henstridge on the afternoon of April 6 that at in the course of the interview, they discussed with Constable Smyth his concern over the way he was being treated and portrayed in the press?

SUPT. CAHILL: I can't remember, you know (inaudible) those details right into the file.

MS. O'BRIEN: Okay.

SUPT. CAHILL: Yeah.

MS. O'BRIEN: So – okay. And then in that interview I think, Corporal, one of them specifically raises that the RCMP press release may help dispel rumours in the community. They state that to Constable Smyth but you don't recall whether or not you knew that –

SUPT. CAHILL: No.

MS. O'BRIEN: – at the time that you were making this suggestion for a change.

Okay. Thank you.

Now, you did provide the Commission with some notes that you took on this matter. We will get to those notes in a few minutes but they didn't – your first note, what, didn't start until April 10. Is that right?

SUPT. CAHILL: That's right.

MS. O'BRIEN: Okay.

So I'm going to ask you about a meeting on April 9, so before you took any notes. And if I can just bring up P-0443, please, page 14.

So these are actually notes of RNC Officer Superintendent Jason Sheppard. And he records on – sorry, page 14, Madam Clerk. I might have misspoken. Thank you.

He records a meeting – he records at 12:44 that afternoon that you contacted him by phone to advise that you wished to attend a meeting at 3:30 p.m. You wished him to attend a meeting at 3:30 p.m. with you and Chief Superintendent Boland for an update on the Smyth investigation. Do you recall that?

SUPT. CAHILL: Yes, I recall, you know, parts of it.

MS. O'BRIEN: Okay.

So why, at that time, did you and Chief Superintendent Boland want to meet with Superintendent Sheppard?

SUPT. CAHILL: I think at that point – well, I know at that point Superintendent Sheppard was appointed or assigned as the contact person for the investigation.

MS. O'BRIEN: Okay.

He was the RNC liaison. So I understand if the RCMP required any information from the RNC in the course of their investigation, he was the man you were to contact to get that information?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

So then why would it have been necessary for that – for you to provide him with an update on the investigation?

SUPT. CAHILL: I'm assuming here and I'm pretty sure that Superintendent Boland asked me to call the meeting. So, again, it's putting – it would be a matter of putting a face to a name, bringing him over, getting some contact information. And I do know from the meeting that we did require some information from Professional Standards: code of conduct, training standards and such from the RNC.

MS. O'BRIEN: Okay.

Now, I can bring you to the email if you need it. It's entered as exhibit P-0631. But it looks like you are reaching out in this email to Kent Osmond telling him about the meeting and asking him to join. Do you recall that?

SUPT. CAHILL: Yeah.

MS. O'BRIEN: And why would you have asked Staff Sergeant Kent Osmond to join that meeting?

SUPT. CAHILL: Well, if there was a high-level, basically, update given, that Kent would probably be in the best position if there were anything that needed to be – to, you know – imparted to Jason Sheppard. You know, he was hands on. I'm not right involved with the investigation but Kent would be the best person as he was involved.

MS. O'BRIEN: Okay.

The notes of Jason Sheppard indicate the meeting took place from 3:30 to 4:37, so an hour and seven minutes, but he has said in his testimony here that approximately 15 minutes of that was spent on other topics. Do you have any memory of what was discussed in the meeting?

SUPT. CAHILL: Those things I had mentioned. I'm pretty sure that I – well, I know I did get his contact information. And I think we talked about the requests that were needed with regards to Professional Standards, training standards. I think Jason imparted that he needed, you know, letters for that request – official request for that. And I think we even talked about going to the scene the next day.

MS. O'BRIEN: Okay.

Come back to going to the scene in just a moment. You didn't take any notes at this meeting, is that right?

SUPT. CAHILL: No.

MS. O'BRIEN: How – why not? Why wouldn't you have taken notes?

SUPT. CAHILL: I don't think there was anything there other than, you know, with regards to emails that were probably put out that I usually use as notes. But he just wanted contact information which I quickly probably put in my BlackBerry. And also, you know, again, he told me the format of what he wanted with regards to getting information from the RNC.

MS. O'BRIEN: Okay.

Chief Superintendent Boland testified here at the inquiry and he did not take notes either, but he said although he had not taken any notes of what discussed, he would have expected that either you or Staff Sergeant Osmond would have taken notes. Now, Osmond did note the meeting but he didn't take much in the way of notes.

And would you have expected Staff Sergeant – you didn't take notes. You know, Chief Superintendent Boland here is the most senior officer in the meeting, he's telling us I would have expected one of the two men underneath me to have taken notes. You didn't take notes. Would you have been expected –

SUPT. CAHILL: I don't take notes for every single thing I do. I'm more in an administrative role. Emails are the way of today; we deal with thousands of them. I mean we're – hundreds of emails in a day. I deal with 20-plus units. I mean, you know, if I sit down and I'm taking notes for everything I do, I wouldn't get anything done. This here was covered off in, as I told you, with regards to the information that I required and Jason required.

MS. O'BRIEN: Okay.

We do have some notes anyway; Jason Sheppard did take some notes. And I'll just – he – I'll just see if any of this tweaks some memory for you as to what was discussed. He's written here: "Identity of Joe/media." Does that mean anything to you?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

"Overview of file – may need training standard of Smyth." So I believe that's what you just referred to.

SUPT. CAHILL: Yes.

MS. O'BRIEN: He also has notes over here: Vehicle. Do you recall a vehicle being discussed?

SUPT. CAHILL: No, I don't.

MS. O'BRIEN: "Recording"?

SUPT. CAHILL: No.

MS. O'BRIEN: "Media"?

SUPT. CAHILL: No.

MS. O'BRIEN: "Replacement of Joe/TRU"?

SUPT. CAHILL: No, I don't.

MS. O'BRIEN: Okay.

And I think he's testified that this last note here had nothing to do with this. Okay.

We've heard the term here at the inquiry a number of times: professional courtesy. Would you have described this meeting as a professional courtesy between the forces, or is this something that was fairly standard that you would do if you were – if you were doing an investigation of an employee, would you – would the RCMP regularly meet with the – or meet with the employer?

SUPT. CAHILL: I would call it, you know, somewhat professional courtesy. But, again, we like to do things face to face. I mean, if we're going to be dealing with people I'm mean it's putting a face to a name.

MS. O'BRIEN: Okay.

SUPT. CAHILL: No different than our investigations.

MS. O'BRIEN: Did you already know Superintendent Sheppard prior to this?

SUPT. CAHILL: I may have seen him casually. I mean I'm fairly new to the St. John's area and policing so I didn't, I didn't have, you know – I might have seen him at a function or something with – where the RNC, RCMP are invited but never had a chance to talk and get to know him.

MS. O'BRIEN: Okay.

So you did say you do recall some discussion at the meeting of visiting this – Superintendent Sheppard visiting the scene, visiting the scene at Mitchells Brook?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

The – and we do see there in Exhibit P-0032 there's an email there with Osmond – requesting Osmond to set up a scene visit. Why did Superintendent Sheppard need to go to the scene?

SUPT. CAHILL: I guess you'd have to ask Superintendent Sheppard.

MS. O'BRIEN: Okay, but the scene was under RCMP control, your investigation?

SUPT. CAHILL: Yes.

MS. O'BRIEN: So you have him requesting. You wouldn't have –

SUPT. CAHILL: He hasn't –

MS. O'BRIEN: – inquired as why, you would have said: Yes, you want to come? Absolutely.

SUPT. CAHILL: If you want my opinion I would say, you know, he's the manager of the officer that's involved so I would think he would want something for a contact (inaudible) you know, for his information.

MS. O'BRIEN: Okay.

Was there any benefit for the RCMP investigation to have Superintendent Sheppard visit the scene?

SUPT. CAHILL: So we're probably going to be dealing with him with information and stuff so, I guess, put things in context or ...

MS. O'BRIEN: And here your notes may be of assistance because the next day you visited the scene with Superintendent Sheppard. Is that right?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. If we go to P-0629, page three, Madam Clerk. So these are your notes.

Okay, so here's your notes on – again, we're on April 10 here at 2:30 in the afternoon: Attended Mount Carmel, Don Dunphy residence, Superintendent Sheppard, RNC present viewing of scene. And you note – down here you note you departed. I believe we're just cut off there. I believe that's 1530. Does that accord –

SUPT. CAHILL: That would be approximately, yes.

MS. O'BRIEN: – with your memory? You were there about an hour?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And you have some notes here. I'm going to ask you some questions, if you need to refer to your notes –

SUPT. CAHILL: Sure.

MS. O'BRIEN: – at any time to refresh your memory.

Did you and Superintendent Sheppard travel to and from Mitchells Brook together in the same vehicle?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. And so you drove?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. Why did you travel together?

SUPT. CAHILL: It's convenient. We go to the scene and it's only one time for viewing rather than two separate people going at two separate times.

MS. O'BRIEN: Now, I understand you had said in your interview previously you had just recently transitioned from Labrador, but you do recall having had a few brief dealings with Jason Sheppard prior to this date. Is that ...?

SUPT. CAHILL: Possibly. I said I couldn't remember. It's just possibly seeing him at a function. I mean we're invited all the time to different things going on in the city; ceremonies, PCR functions.

MS. O'BRIEN: Okay. What did you and Superintendent Sheppard speak about on the drive out?

SUPT. CAHILL: I can't remember specifically but I know we talked about probably family, you know, just trying to – I didn't really know him so I might have asked him – small chat.

MS. O'BRIEN: Okay.

Any discussion about the incident itself, the incident that took place –

SUPT. CAHILL: Not that I can remember.

MS. O'BRIEN: – at Mitchells Brook?

Okay. So you don't remember any discussion of Constable Smyth?

SUPT. CAHILL: Not specific. No.

MS. O'BRIEN: Any discussion on the independent observer?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

And you don't recall anything about the investigation at all?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

So what did you do when you arrived in Mitchells Brook?

SUPT. CAHILL: I think we – I think I got there and waited for one of the officers that were there to kind of come down. And as I put here, I met Justice Riche, met some of the MCU and I did meet Joe Smyth and Tim Buckle.

MS. O'BRIEN: Okay. And what's the note there? You have there, PA?

SUPT. CAHILL: I think that's the police association I put there.

MS. O'BRIEN: Okay. Yes, all right.

So you understood that Tim Buckle wasn't –

SUPT. CAHILL: That's what he, I think, introduced himself as.

MS. O'BRIEN: Okay.

And you also note here FIS which would be – there was some ident – people from the –

SUPT. CAHILL: Yes.

MS. O'BRIEN: – Forensic Identification section on the team.

So we know a re-enactment was going on around this time. Did you watch the re-enactment?

SUPT. CAHILL: No, I did not.

MS. O'BRIEN: Did Superintendent Sheppard?

SUPT. CAHILL: No, I don't think so.

MS. O'BRIEN: Okay.

And I know you went into the house because you have a little diagram of it and you viewed the room.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Do you know if you went in before or after the re-enactment?

SUPT. CAHILL: I think it was after the re-enactment.

MS. O'BRIEN: Okay.

The people that you met on scene – and you've just reviewed them here. At any time did you discuss – I'm sure you exchanged pleasantries or whatnot with people as you saw them, but at any time did you discuss the investigation or the shooting of Mr. Dunphy, or anything related to this case?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

How long were you in the house?

SUPT. CAHILL: I think –

MS. O'BRIEN: Approximately.

SUPT. CAHILL: It could be about five minutes, 10 minutes. If – you know, and, again, that's a ...

MS. O'BRIEN: Okay.

And did you and Superintendent Sheppard go in together?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. Was there anyone else in there at that time?

SUPT. CAHILL: Not that I recall.

MS. O'BRIEN: Okay.

What were your impressions of the house?

SUPT. CAHILL: As I noted, unsanitary.

MS. O'BRIEN: Yeah. Yeah, you do have some notes here: unsanitary condition, garbage, cats, run down. And you noted smell. What do you recall about the smell?

SUPT. CAHILL: I guess it would describe, probably – it's cat urine, probably ammonia.

MS. O'BRIEN: Okay.

SUPT. CAHILL: That smell.

MS. O'BRIEN: How did it compare to other houses that you've been inside over your policing career?

SUPT. CAHILL: I've been to worse but that was fairly – that ranks up there.

MS. O'BRIEN: You left at 3:30 and you and Superintendent Sheppard drove back together. Is that right?

SUPT. CAHILL: That's correct.

MS. O'BRIEN: On the drive back did you discuss anything you saw?

SUPT. CAHILL: I can't remember. I – you know, looking back, I think Superintendent Sheppard may have commented on the conditions of the house.

MS. O'BRIEN: Do you think you commented or do you recall –

SUPT. CAHILL: I may have said, you know, that I've seen, you know, similar sites in my experience in Northern Manitoba.

MS. O'BRIEN: Okay.

And other than the condition of the house, do you recall any discussions with Superintendent Sheppard about the shooting, the investigation or anything of those details?

SUPT. CAHILL: No. No, I think if I remember correctly, I mean, he was on his BlackBerry quite a bit.

MS. O'BRIEN: Okay.

Did you have concern about the potential perception of a lack of independence or perhaps too much closeness between the forces, if you have a senior member of the investigating force, you know, driving down and viewing a scene with a senior member of the force whose officer is being investigated?

SUPT. CAHILL: No, I didn't at the time. But when you brought it up in our discovery I kind of – you know, when you're kind of looking back at it you kind of say I can see where there could be, you know, someone's perception.

MS. O'BRIEN: So in hindsight would you not have done it that way again? Is that what you are saying?

SUPT. CAHILL: Probably looking at it, since it was brought up as an issue, I probably would not – not do it.

MS. O'BRIEN: All right.

Now, if we can – do you recall anything else of importance about that day or have I covered – essentially covered your interactions on that day?

SUPT. CAHILL: I think you've covered it all.

MS. O'BRIEN: Okay.

I ask to see Exhibit P-0634. And this – you alluded to this earlier, I think. In your meeting you said that Superintendent Sheppard did require a letter and I believe this is what we are about to look at.

So this is – you sent him an email: Please see the attached for information pertaining to – a/n, I understand, is above noted, right?

SUPT. CAHILL: Right.

MS. O'BRIEN: Investigation. Any questions please don't hesitate to call. And here's your letter and it's April 14 and you are formally requesting some documentation here from the RNC.

I only have one question on it. You ask for the training standards in the first point but in the second one you ask for Acting Sergeant "Joe Smyth's Professional Standards file – Including but not limited to information, investigations for Criminal Code, Code of Conduct and previous use of force incidents that feasibly may have an impact on our investigation."

Are we to understand from this you were leaving it to Jason Sheppard to determine which previous use-of-force forms of incidents would be relevant to you and should be forwarded to you?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

Did you give him any other guidelines other than what we see there in that letter?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

All right, in terms –

SUPT. CAHILL: That – okay, no, that's fine. Yeah.

MS. O'BRIEN: If there is anything you want to add at any time, feel free.

SUPT. CAHILL: Yeah. No, that's fine.

MS. O'BRIEN: Okay.

I'm going to ask you some questions now. If we can go to P-0629, we're going back to your notes on page 3. And I'm going to ask you some questions now on the independent observer, some more questions, because I understand that was a significant role that you played in this case.

So your notes here – actually, I think it's earlier that morning, prior to you travelling out to Mitchells Brook with Sheppard. And this date here, it's hard to read here but it is cut off. That is April 10.

At 10 a.m. you record that you met with Judge Riche at headquarters with Al Warner. Do you recall that meeting?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

So I understand that was to present him with his contract and terms of reference?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And, again, your notes are here if you need to refresh your memory but can you just explain to the Commissioner what you recall of that meeting with Judge Riche?

SUPT. CAHILL: Just basically going over the terms of reference, his letter of engagement and, again, setting up the payment structure and billing as well. That's what Al Warner would have been there as well for.

MS. O'BRIEN: Okay. So Al Warner was there with regard to specific – because a professional services contract is how we've heard it described. So that's the, that's the – what he was getting paid and how his payment would take place.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. All right.

I'm just going to bring up and just get you – your notes here just say you explained the mandate: thoroughness – observer, thoroughness and independence, contact info, any info he needs. Explained he will be going away for a few weeks. I guess that's Judge Riche who was going away?

SUPT. CAHILL: Yes.

MS. O'BRIEN: “Will gather up investigational materials when he returns, explained about re-enactment and technical difficulties losing the video. Is that you explaining to him or him explaining to you?”

SUPT. CAHILL: Yes, yes. There was a problem with the re-enactment the first time, with the video.

MS. O'BRIEN: Okay.

Bring up P-0577. So this is why I was remembering the number 0577 this morning. It's Judge Riche's terms of reference and mandate.

These documents were delivered under a cover letter of Chief Superintendent Boland. Is that consistent with your memory? Here it is here.

Would you have delivered the letter – that letter to Judge Riche that day?

SUPT. CAHILL: I did have a copy of the letter that day. I'm not sure if the, that was the first copy given to him but I did give him a copy and go over it with him.

MS. O'BRIEN: Okay.

And here we have the terms of reference. And I note just at the bottom here it looks to be signed by you and Judge Riche on that day.

SUPT. CAHILL: That's correct.

MS. O'BRIEN: And then the last page here is what I believe is we'd refer to as the professional services contract. Again, signed by you and Judge Riche on that day.

SUPT. CAHILL: That's correct.

MS. O'BRIEN: Okay.

Did you read out or review each of the terms of reference with Judge Riche during that meeting?

SUPT. CAHILL: Read out.

MS. O'BRIEN: Pardon?

SUPT. CAHILL: I read it verbally.

MS. O'BRIEN: You read the –

SUPT. CAHILL: Yes.

MS. O'BRIEN: – all the terms of reference out to him. Do you recall if he had any questions or concerns about those terms of reference?

SUPT. CAHILL: No, he had no questions.

MS. O'BRIEN: Okay.

Had you had any involvement in drafting these terms of reference?

SUPT. CAHILL: The terms of reference; I did reach out to Manitoba for a copy that was there and forwarded it to our Criminal Operations department.

MS. O'BRIEN: I understand I asked in our interview if you could find that email. You said you had reached out to a contact you had in Manitoba but you couldn't find the – so whatever you received from Manitoba we don't know. Is that right?

SUPT. CAHILL: That's what I received from Manitoba.

MS. O'BRIEN: Was there any changes made?

SUPT. CAHILL: Now, there were some minor changes. I'm not sure of the ones but I know that it went to our Criminal Operations department.

MS. O'BRIEN: Okay.

And who is your contact in Manitoba? Do you recall?

SUPT. CAHILL: I think it was Staff Sergeant Todd Doyle in Criminal Operations in Manitoba.

MS. O'BRIEN: Okay. All right.

At the time that the terms of reference were drafted had you turned your mind to the timing of the reports in terms of we know you were looking for a report here, we see Term of Reference (b) the independent observer: "Will submit his report as and when appropriate to the Commanding Officer/delegate to ensure impartiality, fairness and transparency in the investigative process."

So that contemplated Judge Riche doing a report, and we know that the RCMP would have done an investigational report at the conclusion of their investigation. At this time, had you turned your mind to whose report would come first?

SUPT. CAHILL: Well, his report would come when he had finished receiving all the information from the file. His report wouldn't be dependent upon our report, reviewing our report.

MS. O'BRIEN: Okay so your –

SUPT. CAHILL: We didn't – I didn't necessarily turn our mind to it. We're looking at that when he finishes reviewing the material or observing the investigation, that he would submit his report.

MS. O'BRIEN: Prior to reviewing the RCMP's final report.

SUPT. CAHILL: Not necessarily but –

MS. O'BRIEN: Okay. So you didn't turn your mind to it at the time but your thinking is generally that's the way it would go.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

In the cases of independent observers that you were familiar with previously from Manitoba, the ones you're aware of, in those ones do you know whether or not the independent observers submitted a written report?

SUPT. CAHILL: In some cases, no.

THE COMMISSIONER: I see we're at 11 o'clock so when you get an appropriate place to break.

MS. O'BRIEN: I think that's fine, Commissioner. We'll break there.

Thank you.

THE COMMISSIONER: Thank you.

We'll adjourn for 15 minutes.

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in recess.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated

MS. O'BRIEN: Thank you.

Superintendent Cahill, we've heard evidence already that Judge Riche received documentary disclosure in binders and hard paper format, but I understand you weren't involved with providing him his disclosure. Is that right?

SUPT. CAHILL: Yes, that's right.

MS. O'BRIEN: Okay.

And, now, we do know that you had periodic contact with Judge Riche throughout the file to update him on the investigation. And you were his main contact person, though we do understand he had a fair bit of contact also with Corporal Steve Burke in particular?

SUPT. CAHILL: Yeah. I would say that Steve Burke was probably, he had more contact than I did because he was dealing with him on the material.

MS. O'BRIEN: Okay.

SUPT. CAHILL: But I did meet with him on several occasions.

MS. O'BRIEN: Okay.

And we do actually – and I'm not going to bring these up but we do have various emails showing your contact back and forth with him.

SUPT. CAHILL: That's right.

MS. O'BRIEN: None of them are of a particularly interesting substantive nature but for P-0633 has contact on April 13, P-0636 is contact on April 30, P-0637 is on May 14, P-0639 is on October 19. So does that frequency –

SUPT. CAHILL: That's correct. Yes.

MS. O'BRIEN: – agree with your memory? Okay.

Now, looking at P-0562, please, Madam Clerk.

So we have had evidence that Meghan Dunphy in June – June 11, I believe, Meghan Dunphy found an unspent .22-calibre bullet in her father’s home. Do you recall that?

SUPT. CAHILL: Yes, I do.

MS. O’BRIEN: Okay.

And when Corporal Burke went to seize the bullet he brought Judge Riche with him and he met with Meghan Dunphy and her legal counsel at Mr. Dunphy’s house. Do you recall that?

SUPT. CAHILL: Yes, I recall.

MS. O’BRIEN: Okay.

And I think this is an email here that shows, between you and Steve Burke, when they’re going to have this meeting: I’m in contact with Erin Breen. All is fine. She wanted to attend the meeting with Justice Riche and Meghan at the residence in the morning but she is in court. I advised we will postpone. I also attended res in the morning to attend to found – I will also attend residence in the morning to attend to found bullet.

And then you got back to Steve Burke and asking him to call you and I take it what’s vetted out there is your phone number.

SUPT. CAHILL: Yes.

MS. O’BRIEN: Okay.

So this was a meeting between Judge Riche and Meghan Dunphy. At that meeting we understand Judge Riche asked Meghan Dunphy a number of questions. Were you aware of that?

SUPT. CAHILL: I’m not familiar of what was asked or, you know, the type of questions.

MS. O’BRIEN: Okay. And I take you don’t remember the details of that call you had with Steve Burke?

SUPT. CAHILL: No.

MS. O’BRIEN: Okay.

Did the terms of reference contemplate Judge Riche meeting with and interviewing or asking questions of witnesses?

SUPT. CAHILL: No.

MS. O’BRIEN: Okay.

When this did – we understand this did happen at this meeting that was arranged. Would you have considered that activity outside the terms of reference?

SUPT. CAHILL: Interviewing witnesses, yes.

MS. O’BRIEN: Okay.

Okay. So I understand this happened with Corporal Burke there. Do you recall, you know, any consideration or questioning at the time that, look, we're allowing him to ask questions of a witness here, it's outside his terms of reference but we're going to do it anyway. Do you recall any discussions or consideration of that?

SUPT. CAHILL: Could you please repeat the question?

MS. O'BRIEN: I understand at this meeting which was facilitated by Corporal Burke – so he facilitated this meeting between Judge Riche and Meghan Dunphy – at the meeting, Judge Riche did question Meghan Dunphy. Okay, so you're telling us now that you understand that to be outside his terms of reference?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Do you recall any discussion between you and Corporal Burke or anyone else at the RCMP at the time this is ongoing; look, Judge Riche is actually questioning witnesses–

SUPT. CAHILL: No, not specific to this.

MS. O'BRIEN: Okay.

Should Judge Riche have been allowed to question Meghan Dunphy?

SUPT. CAHILL: No, that wasn't in his terms of reference.

MS. O'BRIEN: Okay.

SUPT. CAHILL: He – I think it very explicitly says about monitoring interviews and stuff.

MS. O'BRIEN: Yes, the terms of reference do monitoring. Okay.

We have – I'm going to take you back to your notes, P-0629. Page 4, please, Madam Clerk.

We've heard testimony already from Corporal Burke and Staff Sergeant Osmond that on about August, early August, August 7, they had some concerns about Judge Riche being – acting outside his mandate and they brought that to your attention. Do you recall that?

SUPT. CAHILL: I recall them bringing concerns about Justice Riche, yes.

MS. O'BRIEN: Okay.

And do you recall that it was decided then that the three of you, together with Judge Riche, would meet the following day. Do you recall that?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

So the next day was April – so your notes here on April 7, so I guess they brought it to you on April 6. This is a meeting that took place between you, Osmond, Burke and Judge Riche. Your notes are very hard to read here so – Meghan –

THE COMMISSIONER: I'm just wondering where this is going as far as my – I understand some of the parties may want to cross-examine on it but to – I'm not sure that I have much –

MS. O'BRIEN: Yes, I understand, Commissioner.

THE COMMISSIONER: – interest in, you know, what Judge Riche may have done or been involved with. I don't see how that affects the investigation and the establishing of the circumstances of Mr. Dunphy's death.

MS. O'BRIEN: I understand –

THE COMMISSIONER: But maybe I'm missing something.

MS. O'BRIEN: Well, we have – again, we've addressed this with a number of witnesses who have already said it was Inspector – then-Inspector Cahill's position to speak to Judge Riche about –

THE COMMISSIONER: Seems like we've addressed it quite a few times; I'm not sure if there's anything left. If there's something new to be brought out, I guess.

MS. O'BRIEN: Yes, fair enough. So I'll ask just a couple of questions about this meeting.

At this meeting did you review, did you raise the issue with Judge Riche of the concern that he was acting outside his mandate?

SUPT. CAHILL: Yes, I did.

MS. O'BRIEN: Okay. And what was his response?

SUPT. CAHILL: Justice Riche would, at each meeting we had – he's a bit of a storyteller, likes telling, talking about old files. And, you know, his common theme was he wanted to, you know – he kept saying that he wanted to find out what happened.

MS. O'BRIEN: Okay, so you raised it and no direct response from him. Is that what you're saying?

SUPT. CAHILL: I can't remember an exact response. It would be, you know, to the point probably, yes, I know and, you know, I'm trying to get to the bottom of what happened. That would be the common response I would guess.

MS. O'BRIEN: Okay.

All right and I won't take it to you now but I understand you would have had a follow-up meeting at page, if we – on page 7 of your notes you had a follow-up meeting with Judge Riche. And, again, just for completeness, Commissioner, I will just go – just bring it to the attention in case any other –

THE COMMISSIONER: Sure.

MS. O'BRIEN: – counsel wish to ask a question on it. At page 7 of your notes you indicate another meeting on this date which is December 16, 2015, another meeting that you had with Justice Riche with Sergeant Sue Efford. Do you recall that meeting?

SUPT. CAHILL: Yes, I do.

MS. O'BRIEN: Okay.

And you have a note here then, again, at that time you reviewed the mandate letter with Judge Riche. And your note here is: “report on impartiality, fairness, transparency of investigation.”

SUPT. CAHILL: Yes.

MS. O’BRIEN: Okay.

So you would have reviewed it again. And any difference in the reaction that time as when you had spoken to him about it earlier?

SUPT. CAHILL: No.

MS. O’BRIEN: Okay. All right.

The – I want to bring up P-0629. We’ve had some questions raised about the – whether any meetings with the Crown. And in your notes we do see that you met with Elaine Reid, who I understand at the time might have been acting, the acting DPP in the province. And that would be the director of Public Prosecutions or she was assistant DPP, maybe, at the time.

Sorry, page 6, Madam Clerk. I just want to clarify this, and we’ll bring you to your notes on the meeting. There’s – they’re notes you recorded but I just want to confirm at this time, at this point, Ms. Reid gave you some information and told you, you could – if you had a point of law you could come back to her office to have it interpreted. But I understand you didn’t – you were not consulting with her at that time about any point of law?

SUPT. CAHILL: No.

MS. O’BRIEN: Okay. And you were not seeking advice as –

SUPT. CAHILL: No.

MS. O’BRIEN: – to the laying of charges. Okay.

SUPT. CAHILL: I was actually there on another matter.

MS. O’BRIEN: Okay.

All right, when Chief Superintendent Boland was on this stand I had brought him to an email of – which took place in January. And at that time I had questioned whether that was the first time that ASIRT had been considered. And it was an email I brought him to that’s been entered at P-0647 and it was an email dated January 22.

And his testimony was he recalled earlier conversation or earlier discussions about bringing in an external force. And at that time I didn’t have any reference to bring him to, but I believe I’ve seen it in your notes and I just want to confirm that.

If we go to P – sorry, 0642, Madam Clerk. And these are notes of yours on –notes of yours on November 20 – sorry, it’s an email on September 20 – sorry, November 25 between you and Stephanie Sachsse. And at that time she was the acting CROPS officer at that time. Is that correct?

SUPT. CAHILL: Yes.

MS. O’BRIEN: Okay. So she replaced Chief Superintendent Boland in that role.

And I note here in this email you do have a note here: “If we send to an external police force for review additional time will be required.”

So is that the first time that you recall, or is it around that time that you were first considering bringing in an external body to review the RCMP investigation?

SUPT. CAHILL: What date was that?

MS. O’BRIEN: This is Dec – this is, sorry, November 25.

SUPT. CAHILL: I think it was discussed. I can’t recall but I’m not sure if that was the first time, but it was discussed earlier on.

MS. O’BRIEN: Okay. All right.

And in your notes – and, again, I won’t bring you to it now but in your notes it looks like you would have, at some time in December, met with Judge Riche and advised him that ASIRT was – that an external –

SUPT. CAHILL: Yes.

MS. O’BRIEN: – reviewing force was going to brought in and –

SUPT. CAHILL: Yeah.

MS. O’BRIEN: – explained to him what that meant.

SUPT. CAHILL: Yes.

MS. O’BRIEN: Okay. And so I think that was in mid-December of 2015.

All right. And, again, the first time we see ASIRT actually mentioned in the file doesn’t look like it was until January 22. Does that accord approximately with your –

SUPT. CAHILL: Yes.

MS. O’BRIEN: – recall? Okay.

Can we bring up P-0648?

Okay. This is – this takes place on – this is January 25, 2016, and it’s between you and – covering emails between you and Chris Fitzgerald who we understand was the reader. And at this time you’re actually writing the CROPS officer, Superintendent Sachsse. And it is a report on Judge Riche’s report. Do you recall that?

SUPT. CAHILL: Yes, I do.

MS. O’BRIEN: Okay.

And attached to this, and I’m just going to skip ahead here, we see that there is a summary of findings which is basically a detailed review of Judge Riche’s report. But we understand that Corporal Burke wrote that, not you.

SUPT. CAHILL: That’s correct.

MS. O'BRIEN: Okay.

So in your – so here you are forwarding it on to the CROPS officer and you give some preliminary comments about it, his mandate and whatnot. But I want to ask you a question here.

You said: “Moving forward I purpose the following recommendations:

“1. Follow up with Justice Riche highlighting our concerns in a formalized manner (letter), and meeting with him to discuss. At that time we can ask him to write a report as to his original mandate, full knowing that we will be disclosing both reports.”

Or “Forward a letter to Justice Riche documenting our concerns. No personal meeting/contact after the letter forwarded.”

Did you get a reply to this letter to the CROPS officer?

SUPT. CAHILL: No.

MS. O'BRIEN: Okay.

To your knowledge was either one or your recommendations undertaken?

SUPT. CAHILL: No, other than me eventually meeting with Justice Riche.

MS. O'BRIEN: When did you –

THE COMMISSIONER: I didn't hear. Other than you what?

SUPT. CAHILL: Pardon?

THE COMMISSIONER: I couldn't hear the end of your sentence.

SUPT. CAHILL: At the end, no. None of the recommendations there forwarding, highlighting to him explicitly about his report other than me meeting with him at the end.

MS. O'BRIEN: Okay.

And when – do you recall when you met with him at the end?

SUPT. CAHILL: I'm thinking it was – it's documented in my notes there.

MS. O'BRIEN: Is this in October?

SUPT. CAHILL: Yes.

MS. O'BRIEN: After the Commission of Inquiry was called?

SUPT. CAHILL: Yeah.

MS. O'BRIEN: So I can bring you to that. And that will be my second-last area of questioning, Commissioner, at P-0629.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. O'BRIEN: And if we can go to page 13, Madam Clerk.

So here in your notes, Superintendent Cahill, you have recorded on October 4, 2016, a meeting with Justice Riche attending at the headquarters. Can you just tell the Commissioner about that meeting? Why did it take place?

SUPT. CAHILL: I'll have to look through my notes.

MS. O'BRIEN: Okay, I can maybe assist you with that.

SUPT. CAHILL: Yeah.

MS. O'BRIEN: So this is after the Commission of Inquiry had been called. Is that right?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. And was this a meeting that you planned or did Judge Riche just attend at the –

SUPT. CAHILL: No, we planned – we tried to reach – actually, I know we tried unsuccessfully to reach him for several weeks prior to this.

MS. O'BRIEN: Okay. And why were you trying to reach him?

SUPT. CAHILL: Just to touch base with him, let him know – I'd have to look down and go through the email.

MS. O'BRIEN: Okay.

All right, so you asked him how he was doing. You inform him you'd been trying to meet with him for some time prior to a meeting with the family and public.

I'm having trouble reading your note, your handwriting here. Can you just tell me what that says?

SUPT. CAHILL: With public announcement of the findings.

MS. O'BRIEN: Okay.

SUPT. CAHILL: And Riche advised he and his wife were on holidays outside the country which is why we couldn't get a hold of him.

MS. O'BRIEN: Okay.

SUPT. CAHILL: When he came back he had some health issues which prolonged again our contact.

MS. O'BRIEN: Okay.

So then, you know, you went over the final report with him?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And just tell us here what you pointed out to him in the final report?

SUPT. CAHILL: Basically that it surmised the information he had received up to us writing the final report.

MS. O'BRIEN: Okay.

He talked to you about his report and he wasn't looking forward to dealing with the inquiry I think the note says there. You have a – you tell – on page 14 here there's a note where it says that you reminded him during all of our meetings. Right here, I think – again it's a very bad copy. But "I reminded him during all of our meetings throughout the investigation of his mandate, I could not direct him in any way as it would defeat the independence we were requesting."

So you had that discussion with Judge Riche at that time. Yes?

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay.

And then, then you mention Fred Hutton. Why were you talking to him about Fred Hutton?

SUPT. CAHILL: Simply because on, I had observed an interview with Fred Hutton on the news or on the radio, I can't remember now exactly. But he was asked about – I think it was probably on the radio. And he was asked about, explicitly if he had a confidentiality agreement. And he didn't – he wasn't, said he didn't know or he wasn't sure. And so I reminded him of that, that I did hear it and that it was in fact part of his terms of reference.

MS. O'BRIEN: Okay, so you refreshed his memory about that point.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. All right.

Any other information you want to give us about the meeting or have we essentially covered what was discussed?

SUPT. CAHILL: I think we pretty well covered it.

MS. O'BRIEN: Okay.

One last email I just want to ask you about, P-0635. We've had some discussion at the inquiry about potentially a checklist being received from the Nova Scotia Serious Incident Response Team, their civilian-led investigations unit there.

And I just want to confirm, I think you are the person who can confirm this for us. You were copied on this email and it's actually sent from Paul Coughlin, who I understand is with – is Paul Coughlin with the Nova Scotia SIRT?

SUPT. CAHILL: I'm not sure if he's with Criminal Operations over there.

MS. O'BRIEN: Okay.

SUPT. CAHILL: Probably be talking CROPS to CROPS in our terms in the office.

MS. O'BRIEN: Okay.

SUPT. CAHILL: They're a different division so ...

MS. O'BRIEN: Okay.

So, yes, sorry. And he said he spoke with Keith Stothart –

SUPT. CAHILL: Okay.

MS. O'BRIEN: Sorry, that's my mistake – who's a member with SIRT.

“Keith advised that SIRT does not have a guide specific to this type of investigation and that in the past he has used the RCMP guide ‘Member Involved Shooting.’ I have attached a copy below that I got” a hold of off Info Web. And he asked if he can let you know anything directly.

You have – you checked that attachment for us. Is that right? And I think you can confirm for us that that is not a checklist.

SUPT. CAHILL: No.

MS. O'BRIEN: What this is, it's a document on the RCMP website that has to do with RCMP member-involved shooting incidents and a guide for reviewing those for internal-type reviews.

SUPT. CAHILL: Yes.

MS. O'BRIEN: Okay. Thank you.

Those are all my questions for this witness, Commissioner.

THE COMMISSIONER: Thank you.

Who's going first?

Ms. Breen?

MS. BREEN: Yes, I have some questions, Mr. Commissioner.

Inspector Cahill, Erin Breen for Meghan Dunphy.

Inspector, I just have some questions for you regarding your involvement around April 9, April 10 or earlier in the investigation April 9, April 10, 2015. At that point, Inspector Cahill, you would have been aware that Ms. Dunphy had concerns about some things that had happened with her exchanges or encounters with the RCMP. You would have been aware of a letter written April 8 sent from legal counsel regarding those concerns, were you?

SUPT. CAHILL: Yes.

MS. BREEN: Okay. And you are aware that she did retain legal counsel to assist her in terms of her getting information as well as any rights that she had with respect to the whole issue.

SUPT. CAHILL: Yes.

MS. BREEN: And that, really, the event that caused her to retain legal counsel was the issue about how no one had told her that her father had been shot in the head. Do you recall that?

SUPT. CAHILL: No, I don't.

MS. BREEN: You didn't know that. Okay.

So at that point in time, were you also aware that Ms. Dunphy proactively contacted Sergeant Osmond through counsel and arranged for her to come in for a meeting.

SUPT. CAHILL: I'm not familiar with those specifics. I'm sorry.

MS. BREEN: Okay.

I believe in your notes you do indicate because you are meeting with and having discussions with Sergeant Osmond and Superintendent Boland around the 9th and the 10th. We have seen – and Inspector Cahill, I know you weren't present for the interview but for the benefit, Mr. Commissioner, of you and other counsel, it's Exhibit 0037. And it's at pages 45 and pages 78 of that exhibit.

Inspector Cahill, this is a transcript of the interview that Ms. Dunphy did, or the meeting that she requested with Sergeant Osmond and also with Staff Sergeant Tiller, who I understand was the head officer at the Holyrood detachment. Is that correct?

SUPT. CAHILL: I'm –

MS. BREEN: Rod Tiller?

SUPT. CAHILL: Yeah, I'm not 100 per cent sure at that time but ...

MS. BREEN: Okay.

And do you recall that you were having ongoing contact with Staff Sergeant Tiller at this time with respect to the house, the Dunphy house, Ms. Dunphy and her – allowing the police to enter into the house?

SUPT. CAHILL: So the MCU team would have been.

MS. BREEN: Yes, but do you recall that you also – that Staff Sergeant Tiller had contacted you about going into the Dunphy house on the 10th of April?

SUPT. CAHILL: He was the contact when we were looking to get in and view –

MS. BREEN: Yes.

SUPT. CAHILL: – and also, I think, the independent observer as well.

MS. BREEN: Yes.

SUPT. CAHILL: Yes.

MS. BREEN: Okay. And if I could just go back –

SUPT. CAHILL: And the re-enactment, sorry.

MS. BREEN: Sorry?

SUPT. CAHILL: The re-enactment, I think that's around it.

MS. BREEN: Yes.

SUPT. CAHILL: Yes.

MS. BREEN: Leading up to that.

SUPT. CAHILL: Yes.

MS. BREEN: And that on the night of the 8th – so we all know that Constable Smyth had gone to the Dunphy house on the 8th of April to do the first re-enactment and that there was a problem with the video that gets discovered on April 9. Do you recall that?

SUPT. CAHILL: Yes.

MS. BREEN: And that were you made aware by either Sergeant Osmond or Staff Sergeant Tiller that in Ms. Dunphy's meeting with them on the night of April 8, that she had expressed some concern about the fact that Constable Smyth had been in the house on the 8th of April and that she didn't know.

SUPT. CAHILL: I can't recall specifically.

MS. BREEN: Okay.

And did Sergeant Osmond or Staff Sergeant Tiller make you aware that in fact – and this at page 78, lines 8 to 36, Mr. Commissioner, of the interview – that she specifically asked whether Constable Smyth would have to go back in the house anymore.

SUPT. CAHILL: I'm not aware.

MS. BREEN: (Inaudible.)

SUPT. CAHILL: I can't recall.

THE COMMISSIONER: Sorry, what page was that last?

MS. BREEN: That is page 78 of the exhibit.

THE COMMISSIONER: Okay.

MS. BREEN: And it might be of the interview, lines 8 to 36.

THE COMMISSIONER: Thank you.

MS. BREEN: So she's asking there – and, Inspector Cahill, this is actually up on your monitor there before you now.

SUPT. CAHILL: Uh-huh.

MS. BREEN: This is Ms. Dunphy and she's interacting with Sergeant Osmond and Staff Sergeant Tiller at that night. She's asking them at that time, you know, does he have to go back – I think she's referring to him as buddy at that point. She did not know the name of the officer.

Does he have to go back there anymore? And Sergeant Osmond says: No, he doesn't. She says, to "the house today. Can you imagine if I had to go down there and pull up in the driveway and buddy walked out." And Osmond says, well, "yeah well that's why we told you we needed to go back in there today." And we just got in there and got it – got in, got out and we're done. And then Staff Sergeant Osmond says: "And we told you we'll never go in that house without getting your consent first."

And then she continues on to say: Oh "I know you got the consent but I didn't know when you were there or when you weren't. I'm not blaming anything on you I'm just thinking like we went down like 5 o'clock and I wanted to feed the cats and stuff ... that were there so you know I don't know who would of been worst ... if he had to see me or if I had to see him you know what I mean like he would of got a bigger shock I'd say then I did."

Do you see that there Inspector Cahill?

SUPT. CAHILL: I do see it, yes.

MS. BREEN: Okay. But at the time on April 8, Sergeant Osmond or Staff Sergeant Tiller didn't inform you that this was a particular concern of Meghan Dunphy.

SUPT. CAHILL: Not explicitly, no. They were dealing with the liaison with Mrs. Dunphy.

MS. BREEN: Okay. And at that time, Inspector Cahill, you were aware that the scene had been released on April 7. Where you aware of that?

SUPT. CAHILL: Not explicitly, no.

MS. BREEN: Okay.

Were you aware that the police were only in that house after April 7 or only had legal authority to be in the house with the consent of Meghan Dunphy?

SUPT. CAHILL: Yes, I know that they were asking Ms. Dunphy to attend the house. And I think that's why there was some contact with Staff Sergeant Tiller.

MS. BREEN: Okay, but you were not aware in particular that she had a concern about whether or not the officer, being Constable Smyth (inaudible) –

SUPT. CAHILL: No, I did not.

MS. BREEN: – had to go back into the house.

Madam Clerk, if we could bring up the Daily Log exhibit. I don't know if my friend, Ms. O'Brien, can assist with the exhibit number on that. I had a –

MS. O'BRIEN: P-0359.

MS. BREEN: And if we could go to, it's page 184 of the log. And I'm looking at the entry that has the email from Sergeant Osmond to Staff Sergeant Tiller. I have it marked as 184 of the log. I don't know if there is a difference in the two pages.

MS. O'BRIEN: (Inaudible.)

MS. BREEN: Okay.

Regardless, I'll check that reference in a moment.

MS. O'BRIEN: (Inaudible.)

MS. BREEN: Inspector Cahill, I'm wondering on April 9 there's an indication in the log that Sergeant Osmond contacts Staff Sergeant Tiller and requests – he wants Staff Sergeant Tiller to contact Ms. Dunphy for permission for you and Superintendent Jason Sheppard of the RNC to go into the house. You recall that, those events happening at that time?

SUPT. CAHILL: Yes, I recall them asking or trying to get it set up. Yes.

MS. BREEN: Okay.

And do you recall that Staff Sergeant Tiller contacted you by phone that evening to explain to you that Ms. Dunphy was dealing with the wake of her father that night and that he didn't want to contact her that night, he wanted to wait until the next morning and you said that was fine. Do you recall this?

SUPT. CAHILL: I don't recall but if it's there, yes.

MS. BREEN: Okay.

SUPT. CAHILL: And it's noted, yes.

MS. BREEN: But you have no specific recollection of that –

SUPT. CAHILL: No.

MS. BREEN: – right now.

Now – and I think I have it at page 164, Madam Clerk, of the Daily Log. There it is. That was Task Number 37 and that's the email from Kent Osmond to Rod Tiller.

Now, if we move further down that log there's an indication there that Staff Sergeant Tiller returned a text or received a reply text from Meghan Dunphy thanking him for a message and talking about the SPCA removing cats from the scene. So that appeared to be an ongoing issue that she was contacting the police about.

But then if we go to the following day on page 165 of the Daily Log, we again have Staff Sergeant Tiller indicating contact with Ms. Dunphy and asking her, at that point – so this would be, I believe, April 10 at 8 o'clock in the morning – that whether he can see her to get the house keys that morning.

Now, at that point, Inspector Cahill, my understanding from the evidence as a whole is that there had been no decision made at that point that Constable Smyth was going to be brought back in to do a second re-enactment. And that occurred later in the day of April 10.

Does that accord with your memory? You don't know.

SUPT. CAHILL: You're talking about very specific things with that investigation that the command triangle of MCU would be, you know, dealing with.

MS. BREEN: Okay. And the reason I'm asking you these questions in particular is because you are the officer with Jason Sheppard –

SUPT. CAHILL: Right

MS. BREEN: – who is going there that morning.

SUPT. CAHILL: Yes.

MS. BREEN: So I'm wondering what it is you recall or what you knew about the communications with Ms. Dunphy to make that happen?

SUPT. CAHILL: All I knew was that we were told that we had, basically it was going to be set up that we would be allowed to go in the house.

MS. BREEN: I'm sorry; I couldn't hear the last one.

SUPT. CAHILL: That we would be permitted to go into the house.

MS. BREEN: Okay.

SUPT. CAHILL: And that Ms. Dunphy was going to be notified.

MS. BREEN: Okay.

And if we move further down that log, Madam Clerk; page 165, Daily Log, Task 37; this is Staff Sergeant Tiller again: "Megan immediately returned call by phone – advised not a problem as long as done prior to 8:30 AM as she was departing for" the funeral. You recall that that was the day of Mr. Dunphy's funeral, April 10?

Okay, Madam Clerk, if we scroll further down, page 167 of the Daily Log early on the morning of the 10th. This references Staff Sergeant Tiller going to Ms. Dunphy's residence, speaking with her and her common-law spouse. And she asked who wanted to go into the residence. And Staff Sergeant Tiller advised it was the senior officer that is responsible for major crimes unit as well as a senior officer with the RNC; noted that both wanted to see the location so they could have better understanding of the investigation.

That would have been you and Jason Sheppard.

SUPT. CAHILL: Yes.

MS. BREEN: Okay.

Now, Inspector Cahill, my understanding of the evidence to date is that there was no investigative purpose for you going into the house at the time, was there? You wanted to go see the scene but you weren't an investigator in this file.

SUPT. CAHILL: Not an investigator but a manager of the investigators.

MS. BREEN: Okay.

SUPT. CAHILL: Yeah.

MS. BREEN: And, similarly, for Sergeant Sheppard his –

SUPT. CAHILL: Superintendent Sheppard, yes.

MS. BREEN: Sorry?

SUPT. CAHILL: Yes, Superintendent Sheppard.

MS. BREEN: I'm sorry.

SUPT. CAHILL: That's okay.

MS. BREEN: Superintendent Jason Sheppard.

Similarly, there was no investigative purpose for Jason Sheppard going into the house, was there?

SUPT. CAHILL: No.

MS. BREEN: So can I ask you: What was the purpose for Jason Sheppard attending at the residence?

SUPT. CAHILL: I guess you'd have to ask Jason Sheppard that. I mean, it could be for the same – if I'm asked for my opinion I wouldn't speculate that it would be the same as what I wanted. We're going to be managing this incident throughout, it's great to have a visual, a perspective, put things in context if we're going to be dealing with some of the issues.

MS. BREEN: Okay.

And from your perspective as the manager of the RCMP investigation I understand what you're saying. But my understanding that – was that Superintendent Sheppard's role was as a liaison, is that correct, for the RNC?

SUPT. CAHILL: Contact person liaison.

MS. BREEN: And that his role was to provide the RCMP with any documentation the RCMP required for the criminal investigation. Is that correct?

SUPT. CAHILL: Yes.

MS. BREEN: So my question to you is: Why was he invited to go into Mr. Dunphy's house?

SUPT. CAHILL: Again, it'd probably be like professional courtesy. I'm not sure if that was all his role. I mean, Superintendent Sheppard was here and gave his testimony. I would suspect that you probably gathered that from his purpose and stuff.

I don't have his whole over mandate with regards to the RNC. He could have had, you know, some other things. I don't think he had – you know, we were carrying out the investigation and as, I guess, a professional courtesy he's dealing with the issue as we are through his officer, so

...

MS. BREEN: Okay. And when you say he's dealing with the issue as we are, he is not investigating this incident.

SUPT. CAHILL: No.

MS. BREEN: So he is merely providing the RCMP with information that is required from the RNC.

SUPT. CAHILL: Right.

MS. BREEN: So why would he, from the RCMP perspective, be invited into the house?

SUPT. CAHILL: I guess professional courtesy.

MS. BREEN: Now, do you recall, Inspector Cahill, that Mr. Dunphy's funeral was at 10:30 that morning. Do you recall that?

SUPT. CAHILL: No, I'm sorry, I don't recall.

MS. BREEN: And that a decision was made for Constable Smyth to do a re-enactment – was made at about 11:45 on the 10th. Do you recall that? Do you recall being consulted on that issue?

Do you recall that you then had a discussion with Staff Sergeant Tiller regarding the video re-enactment, the fact that it had failed and that Staff Sergeant Tiller had advised you that the funeral was at 10:30 that morning and it would be inappropriate to advise Meghan of this fact at this time?

SUPT. CAHILL: Okay.

MS. BREEN: Do you recall that?

SUPT. CAHILL: I don't recall but if it's there, I mean, I am not going to –

MS. BREEN: And this appears at P-0359 is my exhibit number. And perhaps I'm – I think it's the Daily Log though, page 173, April 10 at 1300. Madam Clerk, if we could check page 173 of that exhibit that's up:

Yes, it's there, Inspector Cahill, if we scroll down there, Task 37, 2015-04-10, 1300. Does that help refresh your memory?

SUPT. CAHILL: I don't remember specifics of it but it seems to be here so that's, you know.

THE COMMISSIONER: Ms. Breen, how is all this relevant to me? Where is it going?

MS. BREEN: I'm just – I'm almost concluded, Mr. Commissioner.

The issue that I wanted to ask Staff Sergeant Tiller is that ultimately I believe it's the RCMP decision not to tell Ms. Dunphy who is going to be into the house on that day.

THE COMMISSIONER: Right.

MS. BREEN: And I just wanted to ask for his reasoning on that.

THE COMMISSIONER: Okay. Well, yeah, I'm having some difficulty seeing the relevance but go ahead.

MS. BREEN: And, Mr. Commissioner, from my perspective the relevance of it would go – it goes to Ms. Dunphy's understanding of the consent that she was providing to the RCMP to use her father's house on that date. And the specific request she made to Sergeant Osmond on the 8th which is, you know, she didn't want to take the chance of running into the officer at the house and asked specifically would he be back in there again. So, to me, from my perspective, it goes to the relevance of the communications with Ms. Dunphy by the RCMP.

So I'm almost through this line of questions.

THE COMMISSIONER: Okay, continue.

MS. BREEN: Now, Inspector Cahill, if we scroll ahead to page 185, we will see that April 10 at 4:30, Staff Sergeant Tiller, despite saying that we're not going to tell Ms. Dunphy today that we're doing the re-enactment because today is the day of her father's funeral, what we see is that at page 185 at 4:30 p.m., Staff Sergeant Tiller does go to Ms. Dunphy's residence and speaks with her. And he does tell her that the re-enactment was done today as a result of the loss of the video. And, also, he tells her at that time that there was an email that was going to be going to the public that had been leaked to the media.

Did you speak with Staff Sergeant Tiller about that, after the fact, about whether or not to advise Ms. Dunphy that the officer had been in the house that day or that there was going to be a leak of an email to the media that evening and that's why he had to go to her and tell her. Did you know that?

SUPT. CAHILL: I can't recall, no. Sorry.

MS. BREEN: You don't.

Did you know whether anyone asked for her consent to allow an RNC officer into the home for a non-investigative purpose?

SUPT. CAHILL: Assuming that when we asked Ms. Dunphy to go into her residence I mean it was with regards to police, the investigation. I know although Superintendent Sheppard is not specifically involved with regards to the investigation, I mean we were asking for us to have to utilize. We didn't say specifically, you know, who was going in at any particular time. The RCMP was having carriage of the house.

MS. BREEN: So your understanding was that as long as it was a police officer, Ms. Dunphy had basically given a blanket consent for the police to do anything they wanted.

SUPT. CAHILL: Well, I only asked specifically for myself and Superintendent Sheppard.

MS. BREEN: And, finally, did you – were you aware or did anyone – did you put your mind to the fact that possibly you should have told Ms. Dunphy on the 10th that Constable Smyth was going back into the residence that afternoon?

SUPT. CAHILL: Yeah, that would have been – again, that would have been the officers at that level, the MCU triangle, who were doing the coordinating. And Staff Sergeant Tiller would have made those decisions.

MS. BREEN: Okay.

So you're saying that despite any other notations that we've seen in the file that you did not direct any officer not to tell her? You're saying that that was the decision of someone else?

SUPT. CAHILL: I didn't direct them not to tell her. No.

MS. BREEN: And you didn't direct them not to –

SUPT. CAHILL: I didn't know that she wasn't told. I didn't know what or – you know you're flashing up a lot of things on the screen here and I see some of them but I don't see that direct conversation that, you know.

MS. BREEN: And, Inspector Cahill, I understand what you're saying but, Madam Clerk, if we could go back to page 173, April 10 at 1300. That is the specific reference of Staff Sergeant Tiller advising you about the funeral that morning: It would be inappropriate for me – he's talking about himself –

SUPT. CAHILL: Right.

MS. BREEN: – to advise Meghan of this fact at this time out of respect. So I just wanted to get it straight, Inspector Cahill. You're saying that you didn't take that information and then tell other officers not to tell her –

SUPT. CAHILL: No. No, I didn't.

MS. BREEN: – because of the funeral?

SUPT. CAHILL: No.

MS. BREEN: And despite any other notation that's in the file on that, you're saying you definitely did not do that.

SUPT. CAHILL: No.

MS. BREEN: Thank you.

Those are all my questions.

THE COMMISSIONER: Thank you.

Mr. Kennedy?

MR. KENNEDY: Yes, one second.

Superintendent Cahill, from what I can see here – by the way, my name is Jerome Kennedy; I'm counsel for Constable Smyth.

From what I can see here, your main involvement in this file appears to have been dealing with retired Justice David Riche. Is that a fair assessment?

SUPT. CAHILL: One of them, yes.

MR. KENNEDY: Okay.

And, Sir, if I understand correctly, one of the reasons that you were dealing with retired Justice Riche in terms of the concerns of Corporal Burke and Sergeant Osmond was that there was a concern among the RCMP that you would be perceived as directing the independent observer. Is that fair?

SUPT. CAHILL: That's fair.

MR. KENNEDY: In other words, that officers felt or conveyed to you they felt that management should be having these discussions with retired Justice Riche and not the investigators themselves. Is that correct?

SUPT. CAHILL: That's fair.

MR. KENNEDY: In terms, Sir – and there's been a lot of information on this. I'm not going to go through a lot of detail but I just want to confirm a number of things. So on April 10 you actually met with Justice Riche?

SUPT. CAHILL: Yes.

MR. KENNEDY: Went through the terms of reference with him?

SUPT. CAHILL: Yes.

MR. KENNEDY: And then if we look at – and I don't need this brought up, Madam Clerk, but just for reference if we look at Exhibit P-0577 there is a professional services contract signed which is signed by retired Justice Riche and yourself.

SUPT. CAHILL: Yes.

MR. KENNEDY: Then what Justice Riche's signs is: "I, David G. Riche, commit to a remuneration rate of \$300 per billable hour in my role and associated responsibilities of providing independent observation of the Royal Canadian Mounted Police investigation into the shooting death of Donald Dunphy."

So was it clear, or did you feel that you had made it clear to Justice Riche and that it was clear from his signature, that he understood his role and terms of reference as being observation?

SUPT. CAHILL: Yes.

MR. KENNEDY: On a number of occasions, Sir, did you tell retired Justice Riche that you didn't want him to act as a judge but as an observer?

SUPT. CAHILL: Act as a judge and investigator at times.

MR. KENNEDY: Yeah.

SUPT. CAHILL: Yeah.

MR. KENNEDY: Because that was what it appeared to you he was doing. I think in your interview with Ms. O'Brien, a number of times you indicated that you felt he was stepping into the role of a judge and an investigator. Is that correct?

SUPT. CAHILL: That's correct.

MR. KENNEDY: And I think one of the terms you used, you – by having these repeated conversations and how many – before I get to my question, how many times did you have that conversation with Judge Riche where you reviewed the terms of reference and emphasized for him that he was to be an observer, not an investigator. How often would that have happened?

SUPT. CAHILL: There were several times.

MR. KENNEDY: And I think in your interview with Ms. O'Brien you said that you were hoping that a judge would understand through repeated conversations. Do you remember saying that to Ms. O'Brien?

SUPT. CAHILL: I do.

MR. KENNEDY: What did you mean by that?

SUPT. CAHILL: Just a man of, you know, his experience and, you know, profession that he would understand, and if he had any questions or needed any guidance or assistance he would, you know, ask.

MR. KENNEDY: Did you tell him on a number of occasions that he couldn't make assumptions and speculate?

SUPT. CAHILL: Yes.

MR. KENNEDY: Again, was that a common theme?

SUPT. CAHILL: It started to become a common theme, yes.

MR. KENNEDY: He kept repeating – or he repeated, I think, to you on a number of occasions he needed to find out what happened. Correct?

SUPT. CAHILL: Yes.

MR. KENNEDY: What would you say when he said that, Sir?

SUPT. CAHILL: Advised him to stay to his mandate that we're asking him to (inaudible).

MR. KENNEDY: Did it appear to you, Sir, that he was simply ignoring the mandate that he had been given?

SUPT. CAHILL: Yes.

MR. KENNEDY: And that placed the RCMP in a very difficult position, didn't it?

SUPT. CAHILL: Yes, it did.

MR. KENNEDY: Because the independent observer was hired to be independent, obviously. Correct?

SUPT. CAHILL: Yes.

MR. KENNEDY: And you didn't see that you could, or anyone else in the RCMP, could tell him what to do.

SUPT. CAHILL: No, that wasn't – if we hired him as independent, for me to, you know, to be directing him, there'd be a different conversation here today over his report that, basically, the RCMP wanted him to write.

THE COMMISSIONER: I don't – I'm not sure you're being picked up now once if you –

SUPT. CAHILL: Oops, okay.

Sorry, Commissioner.

THE COMMISSIONER: I do the same thing.

SUPT. CAHILL: I'm just saying that if, had we been directing him and we hired him as an independent observer; we'd probably be having a different conversation here today on – basically, it would be more along the lines of the RCMP directed Justice Riche to write a report that they wanted.

MR. KENNEDY: But there was a contractual arrangement here. Why did you not cancel the contract on the basis that he was breaching the same?

SUPT. CAHILL: So you never know at – you know, throughout the progression of this that – until you get the final report exactly what you're going to get.

MR. KENNEDY: But you did know by June 17 and by August 6 in the meetings that he had asked questions of Meghan Dunphy, basically interviewed her at the house at, I think, it's June 17. You knew that. Correct?

By August 6 you had a meeting with Constable – Corporal Burke and Sergeant Osmond and they told you about his investigative theories. Correct?

SUPT. CAHILL: That's correct.

MR. KENNEDY: So why on August 7 didn't you say to retired Justice Riche: You have breached your contract, we are cancelling the same.

SUPT. CAHILL: We didn't breach him, no.

MR. KENNEDY: Pardon?

SUPT. CAHILL: We didn't cancel the contract, we didn't think of that at that time.

MR. KENNEDY: Sir, was it, as you've said, a concern that doing anything like that would be perceived as taking away or interfering with his independence?

SUPT. CAHILL: Absolutely.

MR. KENNEDY: Sir, there was a comment you made and it's in your notes, and if I can find it I – Ms. O'Brien referred to it but she didn't ask you about it. And it's referred to – it's referred to in your interview – yeah, if we can have P-0 – P-0629 brought to the screen. And I don't know if I can't read your writing or if I don't understand it.

THE COMMISSIONER: By the way, if Ms. O'Brien missed asking about it, it's probably because I was urging her to leave it to cross-examination and making the witness available basically.

MR. KENNEDY: Yeah.

So if we could go to the second last page, or the third last page of the document, please. At page – you see at the top of the page at 6 o'clock, this is on October – is that a 4 or 9, Sir?

SUPT. CAHILL: I think that's 8 o'clock, Sir.

MR. KENNEDY: Oh, sorry, it's 8 o'clock, is it? Okay, 8 o'clock in the morning?

SUPT. CAHILL: Yes.

MR. KENNEDY: And is that October 4 or 9?

SUPT. CAHILL: That's the 4th.

MR. KENNEDY: So you met with Justice Riche, you asked him how he was doing, he explained his health considerations. "Felt this incident was taking a toll on their health." Do you see that note there?

SUPT. CAHILL: Yes.

MR. KENNEDY: Now, was this after he made his public comments in the media, do you know?

SUPT. CAHILL: I think it was.

MR. KENNEDY: Yeah.

So a little further down the page, Riche talked about his report – five or six lines from the bottom, Sir. Keep going, please, Madam Clerk, right here, Riche talked about his report and that he was not – I can't read that, is not he's waiting or not wanting to have to deal with an inquiry. What does your wording say there, Sir?

SUPT. CAHILL: "Riche talked about his report, and that he was not wanting to have to deal with an inquiry"

MR. KENNEDY: "... but then went on to ask about possible remuneration." How – what – I don't understand the context of this conversation. What did he mean or what was your understanding of what he was saying of not wanting to do it?

SUPT. CAHILL: I just found it odd that he'd be saying that he didn't want to be involved, yet on the other side flip and say, you know, I'm wondering about compensation if I do come do it.

MR. KENNEDY: In other words, he didn't want to be involved in an inquiry but if he was, he wanted to be paid for it. Is that what you understood him to be saying?

SUPT. CAHILL: Yes.

MR. KENNEDY: Sir, I now want to – the last couple of areas, questions I want to ask, if we could have P-0648 brought to the screen, please. This is your letter or I don't know if it's a letter, it's an internal document to – from yourself, you were an Inspector at the time, to Superintendent Sachsse. Is that how we pronounce her name?

SUPT. CAHILL: Sachsse.

MR. KENNEDY: Sachsse?

SUPT. CAHILL: Sachsse.

MR. KENNEDY: Sachsse, okay. And you're dealing specifically with the – if I could go to page 3, you're dealing specifically with the report of retired Justice Riche. So you've now reviewed his report yourself.

SUPT. CAHILL: Yes.

MR. KENNEDY: You've indicated that to Superintendent Sachsse that you have highlighted the areas or you've highlighted certain areas in the report. In the first paragraph, do you see that?

SUPT. CAHILL: Yes.

MR. KENNEDY: “The highlighted areas are questionable from the point that Justice Riche has not adhered to his mandate/role with the written report he has provided.”

You now go on then to talk about, in the next paragraph: “I wish to compliment the RCMP for their thorough investigation in this manner.” You say: “This would appear to be one of the few times he commented on an area that was he was mandated to observe.”

Correct?

SUPT. CAHILL: Yes.

MR. KENNEDY: You go on to say that he “interprets and makes conclusions on evidence and information provided to him. In most instances his conclusions are not evidence based and are merely reflections of his feelings and thoughts.”

Correct?

SUPT. CAHILL: Correct.

MR. KENNEDY: So that was your opinion in reviewing the report.

SUPT. CAHILL: Yes.

MR. KENNEDY: And then in the bottom paragraph here you say: In addition, you “repeated the mandate and informed Justice Riche that his mandate was to comment on the transparency, independence and thoroughness of the investigation.”

Correct?

SUPT. CAHILL: Correct.

MR. KENNEDY: Now, earlier there had been reference to your notes and again the Fred Hutton interview or comments where he had breached the – he was asked whether or not there was a confidentiality clause and he basically either didn't answer the question or said he didn't know?

SUPT. CAHILL: Yes.

MR. KENNEDY: Was it clear to you at that point that he had breached the confidentiality clause of the agreement?

SUPT. CAHILL: Well, the – so his report was done and he was, you know, pretty well we had concluded our dealings with Justice Riche, other than me meeting with him the final time, but if you look at the terms of reference it, you know, it clearly states that you are to be confidential.

MR. KENNEDY: Was there any considerations given to any sanction or penalty towards Justice Riche for breaching the confidentiality clause?

SUPT. CAHILL: No.

MR. KENNEDY: Was there anything you felt you could do? As the RCMP I'm talking about.

SUPT. CAHILL: No.

MR. KENNEDY: No.

Sir, is it – did you ever see any of the interviews or hear any of the interviews he had given?

SUPT. CAHILL: I've seen some bits on the evening news.

MR. KENNEDY: And he basically repeated what you consider to be the assumptions and speculations that he engaged in throughout the investigation, correct?

SUPT. CAHILL: Some things, yes.

MR. KENNEDY: Yeah.

Sir, did you see that report as either detrimental to the RCMP investigation or interfering with the RCMP investigation? I shouldn't say the report, the conduct of retired Justice Riche and the report?

SUPT. CAHILL: Yeah, some things were. I mean, we thought the report would, you know, show the light that it presented if read by, you know, by most people. It wasn't a help, let's put it that way.

MR. KENNEDY: Sir, would it be fair for me to state that you accepted – the RCMP expected better from a retired Supreme Court Justice?

SUPT. CAHILL: Yes.

MR. KENNEDY: Those are my questions.

Thank you.

THE COMMISSIONER: Any further questions?

MR. AVIS: Thank you, Mr. Commissioner. I just have a few.

Good day, Superintendent Cahill.

I'm Nick Avis, I represent the Royal Newfoundland Constabulary and some of my questions are directed more where the inquiry is going.

With reference – when you were discussing your notes, you indicated at some point that you view your emails as your notes. Is that correct? Did I understand you?

SUPT. CAHILL: That's correct.

MR. AVIS: In the RCMP policy though, does it not refer to notes, note books and things of that nature?

SUPT. CAHILL: Sure, yes.

MR. AVIS: So I'm suggesting that perhaps, as with the RNC, is there any attempt to bring the note taking policies in line with modern technology? Do you know what I mean by that?

SUPT. CAHILL: Yeah, I don't know if there is but that is a good point. Times are changing or have changed.

MR. AVIS: Right because it does say, I've read the policy because it was disclosed to me in another matter, and it does say it's much similar to the RNC, you know, it's like the old style. You got to have a notebook, even though you send an email, as I read the read the policy, you're supposed to put in your note that you sent an email, I mean that's one interpretation of it.

SUPT. CAHILL: Yeah, for the most part, I mean, the note taking is the ground level officers on the road that don't have the luxury of having computers and, you know, at their desk or –

MR. AVIS: Right.

SUPT. CAHILL: – sitting at administrative roles.

MR. AVIS: With respect to the request made of Jason Sheppard when he responded to the correspondence referred to, you said that you were leaving him to have some discretion. He indicated that he did not provide use-of-force forms prior to 2010. There was nothing stopping you or anyone asking for those, was there?

SUPT. CAHILL: No and, in fact, I mean, we asked for the professional standards records so all – any misgivings or anything would have been included in that as well.

MR. AVIS: Okay.

SUPT. CAHILL: Right. The Code of Conduct or the use of force issues, more than likely if they're viewed as excessive force by the public or by any incidents, would be included in that, but we did, we could go back at any time.

MR. AVIS: Right. And would it be fair to say you had absolutely no issues with the co-operation from the RNC in terms of providing you with information?

SUPT. CAHILL: No.

MR. AVIS: Thank you.

With respect to Justice Riche, the Commissioner has to consider a number of alternatives. Do we go with a SIRT-like entity and things like that, I believe, in the future.

So do you have any idea of what it – the cost that you incurred in hiring an independent observer?

SUPT. CAHILL: The costs?

MR. AVIS: Yes. He had a contract.

SUPT. CAHILL: It was \$300 an hour. I think it was –

MR. AVIS: I understand – total?

SUPT. CAHILL: Just over 20 – you’re probably looking anywhere in the vicinity of \$20,000 to \$25,000.

MR. AVIS: Thank you.

And since you’re a senior officer, in your opinion, where do you think we might consider going? What’s your view on a SIRT-like entity being created in Newfoundland? How do you see satisfying the public concern about police officers investigating police officers in the future?

SUPT. CAHILL: Well, the RCMP’s position is that we do support and, you know, we encourage.

MR. AVIS: Encourage what, sorry?

SUPT. CAHILL: The creation of an independent body.

MR. AVIS: Okay.

Thank you, Sir.

THE COMMISSIONER: Thank you.

Any other questions?

MR. FLAHERTY: (Inaudible.)

THE COMMISSIONER: Mr. Flaherty.

MR. FLAHERTY: Good day, Officer Cahill.

My name is Cletus Flaherty. I’m the counsel for the Don Dunphy Community Commission.

I just had one question. I just wanted to see some clarification with respect to the answer you provided to Mr. Kennedy’s last question.

Is it my understanding that you were actually concerned that Justice Riche’s report and conduct maybe detrimental to the RCMP’s investigate or, sorry, RCMP’s reputation or the community’s perception of the quality of the investigation?

Was that your answer or did you –

SUPT. CAHILL: No, just that –

MR. FLAHERTY: Or did you actually believe his conduct and report was detrimental to investigation itself?

SUPT. CAHILL: Not detrimental to the investigation. It’s just, it’s, you know, in this day and age with social media, it didn’t help.

MR. FLAHERTY: It didn't, it didn't help what? The reputation of the RCMP or the –

SUPT. CAHILL: Well, policing in general.

MR. FLAHERTY: – community's perception?

SUPT. CAHILL: I mean, perception. You know, when – it didn't help our perception in the public.

MR. FLAHERTY: Okay.

Thank you very much.

THE COMMISSIONER: Thank you.

Any further questions.

Mr. Freeman.

MR. FREEMAN: Just a couple of questions.

You had mentioned, Inspector Cahill, that you had a meeting with Superintendent Sheppard and you had driven to the scene with him as well. Was any information shared during those interactions that could prejudice this investigation?

SUPT. CAHILL: No, absolutely not.

MR. FREEMAN: And you had mentioned some of your interactions with Mr. Sheppard had been premised on him needing perspective or context, right? Is that what you had said?

SUPT. CAHILL: Pardon?

MR. FREEMAN: That your communications with Mr. Sheppard, you were trying to give him perspective and give him context is that –

SUPT. CAHILL: That's correct.

MR. FREEMAN: And so he needed that for his evidence gathering for the RCMP but also for what other purpose – you had mentioned that it was his member – were you referring to a RNC internal investigation? Is that what you meant by that?

SUPT. CAHILL: It could possibly be, yes.

MR. FREEMAN: If we could just call up P-0634 for a moment, Madam Clerk? And we'll scroll down one more page there to the actual letter. So number 2 there, you had had that called to your attention earlier today, the issue that you had allowed Mr. Sheppard to provide information that feasibly may have had an impact on our investigation. Do you recall those questions?

SUPT. CAHILL: Yes.

MR. FREEMAN: Okay. And you just mentioned a moment ago when speaking to my learned friend, Mr. Avis, that you weren't concerned with the cut-off being 2010 because of the fact that you had asked for more information than just that. Can you just elaborate on that for me?

SUPT. CAHILL: Well, for one, if they wanted more, they could go back, the investigators; and, secondly we asked for the investigations, his Code of Conduct, investigations for *Criminal Code*, so if there was anything in the use of force that was questionable, it would definitely – it would show up in the –

MR. FREEMAN: So inappropriate uses of force before 2010 –

SUPT. CAHILL: That's correct.

MR. FREEMAN: – would show up in those other records?

SUPT. CAHILL: Professional Standards File, yes.

MR. FREEMAN: And so the 2010 cut-off wasn't as much of an issue?

SUPT. CAHILL: No.

MR. FREEMAN: Okay. Those are all my questions.

Thank you.

THE COMMISSIONER: Counsel, any further questions? Okay, I guess that's all the questions we have. Thank you, you may step down.

Anything before we break for lunch? I should mention that I think I asked counsel to let me have any suggestions you might have regarding our Phase 2, one-day series of discussions on various issues noted. Have you had a chance to consider that yet, any of you?

I probably should set a deadline because we want to get information out to the public and invite them to let us have their views on the issues. We've started a process of putting certain articles up on the website. These reports will go up as well. Do you have – have you received Mr. Jones's reports yet? I think that's gone up, is it, counsel?

MR. KENNEDY: I have it, Commissioner.

THE COMMISSIONER: You have it, Mr. Kennedy? Okay. Well, I'll just invite you again if you have it – sorry, Mr. Avis.

MR. AVIS: You say that we've been working on it. If it helps to raise it now on what we do in the RNC, I mean on Phase 2.

THE COMMISSIONER: Yes, we don't need to get into it in detail. I understand one of the things I mentioned to counsel was that I'd liked to have some brief history of the RNC and description of the force –

MR. AVIS: Yes.

THE COMMISSIONER: And I don't know if they have gotten to you. I think it would be useful for me to have statistics on police-involved serious incidents for – probably since the Luther report, actually.

MR. AVIS: Yes, that was something that was requested. We were working on a history and partly, just so when the chief testifies, he may need that, but in light of the suggestions that were made, we have one, two, three, four or five people working on papers as suggested.

THE COMMISSIONER: Uh-huh.

MR. AVIS: We hope to have those, I say, soon. There's a lot more, you know, we're busy –

THE COMMISSIONER: Yeah, we've got to keep it in perspective.

MR. AVIS: Right.

THE COMMISSIONER: Now, we can go, you know, you can have inquiries probably on either one of the topics that I'm asking you to –

MR. AVIS: Yeah. Two, three pages –

THE COMMISSIONER: Yeah.

MR. AVIS: And the person preparing it would be someone we would purpose for the panel, at your discretion, would be the person to appear on any panel if that's the way it goes.

THE COMMISSIONER: Right.

MR. AVIS: But we felt the suggestion, particularly having the information in advance so that if it's a public forum, they need to ask questions, not hear lectures and talks.

THE COMMISSIONER: Right.

MR. AVIS: We're working on that and we'll have something as soon as we can.

THE COMMISSIONER: Okay. Thank you.

I'd ask other counsel to keep in mind that we do have that opportunity to this, partially for my information, but also for the information of the general public.

Okay. We'll adjourn until 1:30, for lunch.

MR. KENNEDY: Who's the witness this afternoon?

THE COMMISSIONER: Sorry.

MS. O'BRIEN: Corporal Kelly Lee and then possibly followed by Barry Constantine – I'm sorry; I don't know his rank.

AN HON. MEMBER: Inspector Constantine.

MS. O'BRIEN: Inspector?

THE COMMISSIONER: Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

MS. O'BRIEN: Thank you.

Before we begin with Corporal Kelly Lee – sorry, Commissioner, I have no new exhibits to enter at this time. They've all previously been entered. And Madam Clerk, you can affirm the witness.

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

CPL LEE: I do.

MS. SHEEHAN: Please state your full name.

CPL LEE: My name is Corporal Kelly Lee. I'm with the Royal Canadian Mounted Police.

MS. SHEEHAN: Thank you.

M. O'BRIEN: Good afternoon, Corporal Lee.

Kate O'Brien, co-commissioner for the Commission of Inquiry – co-counsel for the Commission of Inquiry. I'm going to take you through your background fairly quickly. In terms of your qualifications, I understand you've been a member of the RCMP for approximately 19 years?

CPL LEE: That's correct.

MS. O'BRIEN: Okay. And your current rank is corporal, and that's the same rank you held on April 5, 2015. Is that right?

CPL LEE: That's correct.

MS. O'BRIEN: Okay. I understand you have a Bachelor of Science degree?

CPL LEE: Yes, I do.

MS. O'BRIEN: Okay. And while you were in the RCMP, I understand you trained and became a forensic identification specialist?

CPL LEE: That's correct.

MS. O'BRIEN: Okay. And I understand that this is internal RCMP training to get that designation, and that involves a six – sorry, an eight-week course at the Canadian Police College followed by approximately one-and-a-half years of apprenticeship and then after that you have to pass a series of qualification board exams?

CPL LEE: That's correct. Yes.

MS. O'BRIEN: Okay. And you passed those exams and became a forensic identification specialist in 2010?

CPL LEE: That's correct. Yes.

MS. O'BRIEN: And you've been working as that ever since?

CPL LEE: Yes.

MS. O'BRIEN: Okay.

THE COMMISSIONER: I might perhaps shorten it to ask if counsel, any counsel has any concern about the qualifications of the expert?

Okay. Well, you just bring out what you believe is –

MS. O'BRIEN: That's really all –

THE COMMISSIONER: – interesting and/or important and we can move on, but I think counsel are generally willing to accept that I qualify Corporal Lee as a –

MS. O'BRIEN: An expert in forensic scene examination.

THE COMMISSIONER: Okay. An expert in forensic scene examination.

MS. O'BRIEN: Okay.

So Corporal Lee, we have heard extensively already from Sergeant Chris Saunders who was your immediate supervisor at the relevant time and also worked with you on this file.

CPL LEE: Yes, that's correct.

MS. O'BRIEN: Okay. So I'm not gonna bring you through any of the evidence that we've already heard from Sergeant Saunders. Other counsel may ultimately have questions for you on that, and your notes have been entered into evidence and if at any time you need to refer to them you can just indicate so.

When you first entered the house with Sergeant Saunders, did you make any note of whether doors were open or closed within Mr. Dunphy's home?

CPL LEE: I made note that the doors off the hallway were closed.

MS. O'BRIEN: All the doors off the hallway?

CPL LEE: All the doors off the hallway, yes. So on the diagram that's on display here: the bathroom door, bedroom number one, bedroom number two, and what's labelled cat room, those doors were closed.

MS. O'BRIEN: Okay. So that's your recall from your notes?

CPL LEE: That's correct.

MS. O'BRIEN: Okay.

We – in the diagram you just referred to is P-0035 has been entered into evidence, and I understand Corporal Lee that you took some of the measurements for the house that were ultimately incorporated into that diagram by Sergeant Saunders?

CPL LEE: Yes, I assisted him with taking the measurements.

MS. O'BRIEN: Okay.

Now, we heard from Sergeant Saunders that as part of your processing of the scene you went in the living room. You identified certain objects of interest by placards?

CPL LEE: Yes, that's correct.

MS. O'BRIEN: And then ultimately took photographs of those areas. There's only one that I wanted to ask you about. And if we could bring up Photo 103, which is I believe a confidential exhibit, but I will – it is a confidential exhibit. So if we could have the screens off, please.

This is a placard – placard number three – that was placed in a chair adjacent to Mr. Dunphy. And the photograph's going to come up on your screen, Corporal Lee.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. O'BRIEN: Can you tell me when that photograph is up?

CPL LEE: I will, yes.

UNIDENTIFIED FEMALE SPEAKER: Okay. We're good now, I think.

MS. O'BRIEN: Photo 103. It's flagged here in our book as confidential, but I don't know if this was one of the ones that became no longer confidential. Are you having trouble finding it? Maybe if it has not been made – just one second.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. O'BRIEN: Okay, that's probably one of the ones. Sorry, Madam Clerk.

So it'll be in Exhibit P-0010. This is an area to the right-hand side of the chair that Mr. Dunphy was found in, and the photograph will come up in a moment.

Why did you choose to place the placard in this area?

CPL LEE: I'm just going to wait for the photo.

MS. O'BRIEN: Okay.

UNIDENTIFIED FEMALE SPEAKER: 103?

MS. O'BRIEN: 103.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. O'BRIEN: Okay. It's not listed on my list of confidential exhibits, though, so.

Did you find it, Madam Clerk? I'd move ahead, except my next questions also involve another exhibit. So I do have to wait.

THE COMMISSIONER: This is our first stumble all week.

MS. O'BRIEN: Yes.

It's Photograph 103, and my notes indicate that it is public.

MR. KENNEDY: I can give the officer the pictures, if you want.

MS. O'BRIEN: Yes, could you, please?

Thank you, Mr. Kennedy. That would be helpful.

CPL LEE: Okay. I see the photo that you're referring to.

MS. O'BRIEN: Okay. So why did you place the placard in that area?

CPL LEE: That area stood out to us, somewhat, as there's quite a lot debris and garbage on the floor. But that one particular area was the only clean, the only clean area in that section of the living room.

MS. O'BRIEN: Okay. At that time, did you have any information as to where Constable Smyth had reported the rifle had come from?

CPL LEE: No, we didn't.

MS. O'BRIEN: And you're saying you noted it as a clean area. Were you considering it a clean area as a possible place that the rifle had been or were you just noting it because it was simply a clean area on the floor?

CPL LEE: A combination of both of those things. We considered it was possible that an object the size and shape, roughly, of the rifle or something similar could have been laying there and, therefore, account for that blank space in the garbage.

I have it on my screen here now.

MS. O'BRIEN: Okay. All right.

Okay. Thank you.

And we actually are ready to move on from that line of questioning now, but just so you can see, that was the photograph that we were just referring to.

THE COMMISSIONER: We want it a little bit smaller, do we, that photo?

Okay. So that's what's been referred to as the void in the garbage on the floor, I believe.

CPL LEE: That's the word I used, yes.

THE COMMISSIONER: And you thought it stood out because it could be roughly the shape of a firearm. Is that – was that one of the reasons you gave?

CPL LEE: That was one of the reasons, yes.

THE COMMISSIONER: And the other was because, well, it was the only clean spot in the garbage –

CPL LEE: In that particular area, yes.

THE COMMISSIONER: – in that area.

CPL LEE: It was the only blank area where the floor was visible.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: Okay. Thank you.

If we could bring up now Exhibit P-0543, Madam Clerk, and these will be your typed notes.

So, I understand – while that's coming up – you did your initial scene processing the evening of April 5?

CPL LEE: That's correct.

MS. O'BRIEN: And then you left the scene sometime in the early hours of the morning of April 6. And then we're going to see in your notes here, if we can –

MS. SHEEHAN: P-0543?

MS. O'BRIEN: Exhibit P-0543 is the one I have recorded, yes, and particularly page four.

THE COMMISSIONER: It's, I think it's P-0541 noted in the front, isn't it?

MS. O'BRIEN: The exhibit I have has P-0543 marked on the top of my page.

THE COMMISSIONER: Okay then.

MS. O'BRIEN: As the notes of –

THE COMMISSIONER: It's Continuation Report on mine.

MS. O'BRIEN: Yes, it's Continuation Report, that's right. It's the typed notes of Corporal Kelly Lee that are contained in Continuation Report as exhibit P-0543.

THE COMMISSIONER: Uh-huh.

MS. O'BRIEN: Maybe I can just read from your notes, Corporal Lee. It's, I'm reading from your typed notes and it's on April 6. And so you wrote: "Sgt. Saunders and I met briefly with Major Crime Unit, investigators at their office (approximately 09:30 hrs)." Page four, Madam Clerk. "As there was no new information to share, I departed Headquarters to return to the scene in Mitchell's Brook, and Sgt. Saunders remained behind to attend the autopsy, now rescheduled for 11:00 hrs." And here's the note there that I just read out to you, Corporal Lee.

Can you explain to the Commissioner what you mean by your notation there: no new information to share?

CPL LEE: When we briefly meet with the Major Crimes Unit investigators there in their office, the idea was to touch base to see if anything had arisen in their avenues of investigation that we should be aware of that maybe pertinent to our scene examination.

MS. O'BRIEN: Okay. And they had nothing at that time?

CPL LEE: They had nothing arising, no.

MS. O'BRIEN: Okay. And do you recall who you met with?

CPL LEE: I don't recall specifically, no.

MS. O'BRIEN: Okay.

Now, when you're – having worked in FIS for the number of years you have, does it sometime happen that after you've done your initial investigation, you meet with the investigators and they do have information to share with you that then you take back and use that information in your scene processing?

CPL LEE: Yes, occasionally.

MS. O'BRIEN: Okay.

In this case, were you ever given any information from the investigative team to assist you with your examination of the scene?

CPL LEE: Other than the initial information, there wasn't any specific stand out details that I can recall.

MS. O'BRIEN: Okay.

So were you ever asked by the investigative team to go back and look for anything specific at the scene or look at any part of the scene in more detail?

CPL LEE: Not that I can recall, no.

MS. O'BRIEN: Okay.

Prior to your leaving the scene, I understand you did a final search of the living room.

CPL LEE: Yes.

MS. O'BRIEN: Okay. We know that you seized four spent .40 caliber cartridges from the scene, as well as two unspent .22 caliber rounds.

CPL LEE: One of those .22 caliber rounds was in the rifle and the other was loose.

MS. O'BRIEN: On the table, loose on the table.

Other than that ammunition, did you see any other ammunition in the room that you did not seize?

CPL LEE: I recall seeing some .22 ammunition somewhere in the room in a container.

MS. O'BRIEN: Okay. Do you recall where that container was?

CPL LEE: I believe it was on the, what we refer to as the coffee table. It would be the table directly in front of Mr. Dunphy's position.

MS. O'BRIEN: Okay.

So if we could bring up, please – just looking for one that might not be confidential but I think it is going to be a confidential exhibit.

Can we please have exhibit Scene Photograph 045. Sorry, Commissioner, this one has been made public now so we can see this one. Photograph 045 is public.

MS. SHEEHAN: It is public?

MS. O'BRIEN: It is.

This should be of – okay, while we're waiting to bring that up, I'm also gonna ask you: Did you find a pen on the scene, Corporal Lee?

CPL LEE: I recall a pen but I don't recall specifics about the pen.

MS. O'BRIEN: Okay. You don't recall where it was?

CPL LEE: Somewhere near the second table in the room, the table that was in front of the couch.

MS. O'BRIEN: What we've been calling the coffee table, ovular table? Okay.

CPL LEE: Yes, the ovular table.

MS. O'BRIEN: Okay. Did you photograph that pen?

CPL LEE: Not specifically, no.

MS. O'BRIEN: Okay. And was it seized.

CPL LEE: I don't have any information about that.

MS. O'BRIEN: Okay. So it wasn't one of the exhibits that you turned over to Constable Galway at the end of your processing?

CPL LEE: I don't know what was included with the exhibit with the file folders. So I don't have that information.

MS. O'BRIEN: Okay.

Did you examine the chair that Mr. Dunphy was sitting in for functionality? Did you look at it to see if it was working? It was a lift-type chair. Did you do any examination of that chair?

CPL LEE: No.

MS. O'BRIEN: We've looked at some photographs of security cameras on the outside of the house. Do you recall seeing those?

CPL LEE: Yes.

MS. O'BRIEN: Did you do any examination of those security cameras for functionality?

CPL LEE: I noted one security camera on the front corner of the house and found that it didn't appear to be connected to anything.

MS. O'BRIEN: Okay. So was that the only one you examined?

CPL LEE: That was the only one I saw.

MS. O'BRIEN: And that's in the front corner of the house on the same – roughly the same corner where the sign was on that –

CPL LEE: That's correct. It was above the sign.

MS. O'BRIEN: Okay.

Now, Madam Clerk has brought up Scene 45. I'd asked you where you might have – where you recall finding other ammunition. Do you – does that photograph assist you at all?

CPL LEE: As you see on the table, there's a – it looks like an ice cream container with a black lid. I recall seeing some .22 ammunition inside that container.

MS. O'BRIEN: Okay. Was it all unspent or live ammunition?

CPL LEE: It just looked like loose ammunition. I didn't look at it closely to see if it was – the bullet was still contained in the cartridge, but whether it was live or damaged, I can't recall.

MS. O'BRIEN: Sorry, when I meant live, I just meant the bullet was still there in the cartridge.

CPL LEE: Okay.

MS. O'BRIEN: Yes, sorry.

Okay. Do you know how many rounds you saw?

CPL LEE: I don't recall.

MS. O'BRIEN: And did you take any photographs of that?

CPL LEE: No, I didn't.

MS. O'BRIEN: Okay. Do you recall if there was anything else in that container?

CPL LEE: I don't recall, no.

MS. O'BRIEN: Now, if we can bring up again please, P-0543, which are your typed notes. I understand on April 10 you attempted to get some fingerprints from the rifle that was seized.

CPL LEE: Yes, that's correct.

MS. O'BRIEN: Can you explain that for the Commissioner, please, what you did.

CPL LEE: I examined the rifle first with bright white light and with our forensic light source, which just means that I used various wavelengths of light and appropriate goggles. That sometimes reveals materials that fluoresce under certain wavelengths of light that aren't as quite as visible under normal white light. I didn't observe anything with that visual examination.

I then treated the rifle with cyanoacrylate, which you hear on the crime scene shows as super glue fuming. The idea being that the cyanoacrylate fumes will cling to any fingerprint residue on

the gun. Following the cyanoacrylate fuming, I again examined the rifle under a nice bright light because sometimes that cyanoacrylate residue will show up white against a dark background. I didn't observe anything.

So I then dye stained the rifle with a substance called Ardrex, that absorbs into cyanoacrylate residue and it then becomes visible under a forensic light source. So I followed that process and, again, I observed nothing. There was no development of any friction ridges on the rifle.

MS. O'BRIEN: Okay.

Now, I understand from our prehearing interview, there are two other types of fingerprint examination that can be done. One that you talked about is less sensitive than the cyanoacrylate process you just talked about, and that would be dusting for fingerprints using a dusting powder.

CPL LEE: That's correct.

MS. O'BRIEN: Okay. And so if you didn't get fingerprints using the process you used, I understand you would not have gotten any simply using dusting powder.

CPL LEE: No. The cyanoacrylate process is more sensitive.

MS. O'BRIEN: Okay.

And the other method that you talked about is a vacuum metal deposition or method. Is that more or less sensitive than the process you used?

CPL LEE: It depends on the item being examined. In this particular case with a rifle, I don't know how much benefit would be gotten from that type of process. With certain substances, such as polymer banknotes, it is the method of choice. With this particular case, it would not necessarily be the method of choice.

MS. O'BRIEN: Okay. And I understand that we do not have the ability in this province to run that type of fingerprint testing. Had you wanted to use the vacuum metal deposition testing you would have had to send the rifle away to Ottawa for testing. Is that right?

CPL LEE: Yes, that's correct.

MS. O'BRIEN: And in your professional opinion, was this a case where you could even consider sending it off to Ottawa for that type of testing?

CPL LEE: Not in this case. The rifle was in such poor condition that it would be extremely unlikely that it would be possible to deposit a fingerprint on any of the surfaces of the rifle.

MS. O'BRIEN: We've heard evidence that no DNA swabbing or testing was done on the rifle. Do you know why that was?

CPL LEE: No, I don't know why.

MS. O'BRIEN: Okay. So we heard that, the evidence we have to date is if that swabbing was gonna be done it would have been done by the local FIS, so you in this case, prior to checking for fingerprints.

CPL LEE: That's correct.

MS. O'BRIEN: Is that normally a decision you would take yourself or would you rely on the investigative team to request that you do a DNA swabbing before you proceeded to do your fingerprint analysis?

CPL LEE: Normally there's some discussion with the investigators and to what processes they would want to follow in different cases. There are reasons for and against, and all the variables have to be considered. So it's something that's often a joint discussion.

MS. O'BRIEN: Okay. Was there any discussion in this case?

CPL LEE: No, I don't recall any discussion about DNA swabs.

MS. O'BRIEN: Okay. And did you give any consideration to doing a DNA swab?

CPL LEE: Not at that time, no. I believe – as usual, I always consider that that could be a potential avenue to be followed so we take steps when processing exhibits to protect the item from any contamination of foreign DNA and to protect any DNA that may be present in case that avenue then needs to be followed. So that's what – basically what I did in this particular case.

MS. O'BRIEN: Okay. But did you – okay, I understand you did protecting of it, but did you consider actually – I'm asking, did you consider swabbing and decide, no, it's not worth it in this case, or did you not turn your mind to it at that time?

CPL LEE: Pardon me? Sorry.

MS. O'BRIEN: Did you consider taking a swab in this case or did you just not turn your mind to it at that time?

CPL LEE: At that particular time, no, I didn't consider taking a swab.

MS. O'BRIEN: Okay. All right.

We also understand that nothing else was fingerprinted other than the rifle. Is that consistent with your understanding?

CPL LEE: That's correct.

MS. O'BRIEN: Okay. Would that've been your decision not to pursue any other fingerprinting or, again, would you've been looking for direction from the investigative team as to what they wanted you to analyze for fingerprints?

CPL LEE: Usually the request comes from the investigative team. So, in this case, I was waiting for any direction or request from them.

MS. O'BRIEN: Okay. And so you didn't get any other request?

CPL LEE: That's correct.

MS. O'BRIEN: Okay.

We have had some talk, there was a – you may recall it, but it's shown in P-0035, there there's a stick or a bat as you entered the room. Do you recall that item?

CPL LEE: Yes, I do.

MS. O'BRIEN: Okay. We know that wasn't fingerprinted. Could that have been a potential candidate for fingerprints?

CPL LEE: I would consider that to be a very poor object for fingerprinting. The surfaces there were worn and dirty. And I would consider it, basically, a poor candidate.

MS. O'BRIEN: What about the .22 cartridge that was found inside the rifle? Would that have been a potential candidate for fingerprinting?

CPL LEE: That would be an extremely poor candidate for fingerprinting. Basically, it's challenging to get fingerprints off cartridges to start with, and with the very tiny size of a .22, it's highly unlikely to get anything more than a couple of ridges and, therefore, an identification or comparison wouldn't be possible.

MS. O'BRIEN: Okay.

I understand you did one further aspect of fingerprint testing in this file, and that had to do with the anonymous letter that came to light in November 2016. Is that right?

CPL LEE: That's correct, yes.

MS. O'BRIEN: Okay. And I understand you were not able to get any fingerprints from that document.

CPL LEE: That's correct.

MS. O'BRIEN: Okay.

Those are my questions for you. Other counsel may have questions, and may, in fact, want to question you on information that we did not cover.

Thank you.

THE COMMISSIONER: Ms. Breen.

MS. BREEN: Corporal Lee, I have a few brief questions for you.

First of all, Corporal Lee, I understand from your interview with Commission Counsel, you – when you arrived at the scene in Mitchells Brook you attempted to look in the window –

THE COMMISSIONER: I don't think you're being picked up properly. I'm having a little bit of difficulty.

MS. BREEN: Okay, sorry.

Is that better, Mr. Commission?

THE COMMISSIONER: That's better, yeah.

MS. BREEN: Thank you.

When you arrived at the scene in Mitchells Brook on April 5, you arrived sometime around – I think it was 8:40 p.m. Does that sound right to you?

CPL LEE: That sounds approximately correct, yes.

MS. BREEN: Okay. And I understood from what you had told Commission Counsel in your interview at that time, is that you did – before you actually entered into the house you stood at the window and you looked into the living room from the window. Do you recall that?

CPL LEE: Yes, that's correct.

MS. BREEN: And you gave a description of what you could see standing at the window at that time.

CPL LEE: Yes.

MS. BREEN: And I believe what you told Commission Counsel was that you could only see Mr. Dunphy from the chest up and that you could not see the firearm at that time. Is that correct?

CPL LEE: That's what I recall, yes.

MS. BREEN: Okay.

Corporal Lee, I also want to just ask you briefly about the pen that Ms. O'Brien has already asked you. In your interview, I believe, at the time, you were looking at a photograph of the folder that had been seized by you and Sergeant Saunders on April 5 and that you indicated to Commission Counsel at that time that you thought the pen might be underneath the folder?

CPL LEE: I thought it was possible it could be there.

MS. BREEN: Okay. So at that time when the photo was actually seized, we see we have a separate photograph of the folder that's opened up but we don't ever see that pen. Is that correct? And I've looked at the video, I've looked at the photographs, can you locate that pen, or have you gone back to see if you could see that pen anywhere?

CPL LEE: I have – I had another look at the photos and I can't see the pen in those photos.

MS. BREEN: Okay. And we can see two photos on the very small table in front of Mr. Dunphy. Do you recall that?

CPL LEE: Yes.

MS. BREEN: You can see two visible pens there but nothing else.

Corporal Lee, I just wanted to ask you, because in your interview with Commission Counsel you did go into some detail about the back and forth that occurs between the investigative team and the forensics team at a scene of a major crime or a major incident.

CPL LEE: Yes.

MS. BREEN: And your expectation, as I understood it, as you described it to Commission Counsel, is that upon your initial entry into the scene, you don't want to be equipped with any real specific information because you want the ability to keep an open mind in terms of letting the scene speak for itself. Is that right?

CPL LEE: That's correct, yes.

MS. BREEN: And what you're looking for at that time are, is a change, anything that looks like it could've been a change to the scene. So you're looking for things really that look out of place or like they don't belong. Is that fair to say?

CPL LEE: That is one of the things we're assessing, yes.

MS. BREEN: Okay. And that after you do your initial assessment, what I had understood is that you're expecting that the Major Crimes Unit is at the same time conducting interviews, doing an investigation, interviewing witnesses, and that you would rely on them to pass on to you any relevant information that came from a witness in terms of going back into the scene to determine whether another item should be seized or whether other testing should be done. That comes from the Major Crimes Unit or the investigators who are supposed to be interviewing witnesses. Is that right?

CPL LEE: That's normally how we proceed, yes.

MS. BREEN: Okay. And that you made a point of saying in your interview that as an investigator, obviously, you had no prior knowledge of what this living room looked like or what the items in the room looked like before April 5. You had no knowledge of that yourself?

CPL LEE: That's correct, yes.

MS. BREEN: And so you would be relying on the investigators to pass that information on to you if they had that information, anything to do with the items in that living room or the scene itself. Would you?

CPL LEE: If they have that information I would hope, yes, that it would be passed on to us.

MS. BREEN: And would it be fair to say Corporal Lee, that the expectation would be that a person who had information about that living room or about that scene, they would be a very important person for the investigators to be interviewing to get that kind of information?

CPL LEE: That's hard to answer. I'm not part of that investigative team that do interviews.

MS. BREEN: Yeah. No, that's fair.

In this case, and I think what you said to Ms. O'Brien in your interview is that basically, you know, to understand what exhibits might ultimately be relevant after you've done your initial assessment, you are relying on that information coming from the team, if there is anything additional that has to be done?

CPL LEE: That's correct.

MS. BREEN: Okay.

In this case, Ms. O'Brien has taken you to your notes of April 6. We understand that you went into – I think it was RCMP headquarters that day.

CPL LEE: Yes, that's correct.

MS. BREEN: And you were told that there was nothing new had arisen in the investigation that needed to be brought to your attention.

CPL LEE: Yes, that's correct.

MS. BREEN: Okay.

After the morning of April 6 when that occurred, did you get any contact whatsoever on April 6 or on April 7 before the scene gets released by any of the investigators, Sergeant Osmond, Constable Burke – sorry, Corporal Burke – or Corporal Henstridge to say, can you back into the scene to do anything at all?

CPL LEE: Not to my recollection, no.

MS. BREEN: Okay. Those are all my questions.

Thank you.

THE COMMISSIONER: Mr. Kennedy.

MR. KENNEDY: Yes, thank you.

Just a couple of questions, Corporal. I'm looking at your continuation report that's prepared by yourself, and we don't need to bring it on the screen unless you need to see it, but at page 2 of that report you describe approaching the driveway, and the poor condition of the house and surrounding property was evident. There was junk and debris scattered about and the house was in severe disrepair. There was a strong odour of cat waste in the area. So this is outside the residence as you're approaching it, correct?

CPL LEE: Yes, that's correct.

MR. KENNEDY: Okay. In terms of the odour, that's outside of cat waste, you're talking about, I guess, urine and feces are you?

CPL LEE: Yes, just a general term.

MR. KENNEDY: Yeah, that's outside.

CPL LEE: Yes, that's correct.

MR. KENNEDY: When you go inside the vehicle, you describe the – or excuse me. As you're going in you describe the front deck is in severe disrepair and no proper stairs. How difficult was it to climb up onto the deck or to get up to the doorway? Was it difficult?

CPL LEE: I wouldn't describe it as difficult, but I had to be careful.

MR. KENNEDY: Yeah, so you had to be careful.

CPL LEE: I had to watch my footing.

MR. KENNEDY: And so did you have to step up onto – there was tires or something there, was there? What was there?

CPL LEE: Yes, I believe there was a tire on a rim. There may even be a photograph that shows the condition.

MR. KENNEDY: Yes, there is. Yeah, we can find one.

CPL LEE: And then would have to step onto some planks that were there and then to the upper deck.

MR. KENNEDY: So do you remember how high you would have to step up? Would you have to lift your leg up to get there?

CPL LEE: I don't recall specifically if it was high or low or average. I don't have a specific recall of that.

MR. KENNEDY: I'll see if I can find the photograph. Yes, Madam Clerk, if we could have Scene 030, or actually no, Scene 033 would be better.

So you see that picture that's on the screen in front of you, Corporal?

CPL LEE: Yes.

MR. KENNEDY: Does that accurately depict what you would have seen that day?

CPL LEE: Yes, it does.

MR. KENNEDY: So it appears to me there's a couple of pieces of board that lead up to the two tires, that lead up to the steps. Is that correct?

CPL LEE: Yes, I think so, yes. Yes, it looks like they're across a couple of stumps and then to the right of that you can see, it looks like some sort of paving block, concrete paving block.

MR. KENNEDY: Okay.

CPL LEE: It's in the lower right below those first planks.

MR. KENNEDY: Okay. So do you have any idea how high that – for example, the actual level there, the top step, how high that would be off the ground?

CPL LEE: No, I don't recall.

MR. KENNEDY: Is it two feet, three feet, four feet? No?

CPL LEE: I don't recall.

MR. KENNEDY: Because I'm just wondering, is there any degree of difficulty to climb onto the tires onto the steps to get into the household. Do you remember it being –?

CPL LEE: I do recall having to watch my footing.

MR. KENNEDY: Yeah.

CPL LEE: It wasn't an easy, unconscious – you had to watch where you were placing your feet.

MR. KENNEDY: Okay. So then when you get into the house, you say inside the smell from the cats was much stronger. What did you mean by that?

CPL LEE: It was a similar smell as what I noticed outside, but it was just more pungent inside the house.

MR. KENNEDY: And was it a smell of cat urine, cat feces, things like that?

CPL LEE: Yes. The cat waste is the term I used because I can't be specific what exactly the cause –

MR. KENNEDY: Okay. Was it a very strong smell?

CPL LEE: It was very strong, yes.

MR. KENNEDY: Now Corporal, as a forensic identification member, one of the difficulties I would say – or is it a difficulty when you go into a crime scene like this, in terms of the clutter and the mess that's in the house and trying to determine what's relevant and what's not?

CPL LEE: It is. It's challenging.

MR. KENNEDY: Yeah, because when you're trying to determine – I'm assuming if you go into a crime scene and you're keeping that open mind, one of the things you're looking at, is there anything out of place?

CPL LEE: Yes, that's correct.

MR. KENNEDY: Yeah. So in – for example, you would've noticed on the table in front of Mr. Dunphy there was nothing turned over. There was a blowtorch there. Correct? Do you remember that?

CPL LEE: Yes, and maybe even a drink bottle. If the photo was there but, yes, I recall –

MR. KENNEDY: Okay. Well, we'll find the photo. Let's use scene 44, or whichever one is not – let me just make sure. I'll get the one that's not – yeah, let's use scene 45. I don't think that's confidential.

Okay. So do you see scene 44 there. You'll see that there's a – the container you talked about earlier and that you found, or you found live .22 ammunition in. Do you see that?

CPL LEE: I see that, yes.

MR. KENNEDY: Do you see there's a blowtorch there. There's other things there. Is there anything – did you notice anything out of place when you would have looked at that?

CPL LEE: Nothing stood out to me. It just looked like a table with some cluttered objects on top. Nothing in particular stood out. I believe there was one live .22 round that we marked. But other than that, it was just ordinary objects.

MR. KENNEDY: But I guess if you're looking for a confrontation or struggle, when you go into a situation like this, you're also looking at whether or not there's evidence of a confrontation or struggle?

CPL LEE: That's correct, yes.

MR. KENNEDY: Yeah. So you would have looked at that table and nothing would have alerted you there that there was any confrontation or struggle, is there?

CPL LEE: That's correct.

MR. KENNEDY: And do you remember those glasses that are depicted in the picture there?

CPL LEE: Yes, yeah.

MR. KENNEDY: Is that where you saw and found the glasses?

CPL LEE: What you see here is exactly what we found when we arrived. So that's the placement of those glasses.

MR. KENNEDY: Okay.

And so when you see Mr. Dunphy's hands as they're outlined there, that's exactly as they were when you arrived?

CPL LEE: That's correct, yes.

MR. KENNEDY: Okay.

Now, I need to go back now to a photograph of the – let's go to scene 38. And perhaps you could – this will help you in terms of you were asked questions about a pen and whether – you mentioned something about an oval table.

CPL LEE: Yes.

MR. KENNEDY: When you look at scene 38, is that the oval table you're talking about?

CPL LEE: Yes, the one in the forefront with the yellow folder on it.

MR. KENNEDY: Okay. And where was the pen located, do you know?

CPL LEE: I don't have a very specific recall of that. I wondered if perhaps it was under the folder.

MR. KENNEDY: Okay. But there was a pen. You remember specifically a pen being in the oval, in the oval – in the area of that oval table?

CPL LEE: I do have a recall of a pen, yes.

MR. KENNEDY: And then, it's hard to tell from the picture, but it looks to me like there's a black cellphone in the end of that table. Is there?

CPL LEE: That's correct, it's an iPhone.

MR. KENNEDY: Yeah. So that's a black iPhone that's there.

In terms of, you've given now your attempts to fingerprint the rifle. Is there anything else you can add? Is there any other steps that can be taken or is it simply that the age of the rifle and the condition of the rifle is not conducive to fingerprinting, or is it just your test didn't show fingerprints?

CPL LEE: It's both. The condition of that rifle was such that I wouldn't expect any fingerprints to be present but, that being said, I went through the process –

MR. KENNEDY: So you went through the process.

CPL LEE: – and confirmed that.

MR. KENNEDY: So would it have been – let’s compare the fingerprint to the stick, is it easier to obtain fingerprints from a rifle than it is from the stick or the bat that was there?

CPL LEE: Neither one of those objects would be good candidates for any fingerprints. The condition of both was very poor.

MR. KENNEDY: And would I understand you correctly, that trying to fingerprint a .22 is even, perhaps could be more difficult?

CPL LEE: Yes, that’s a good way to put it. Even if it’s in pristine condition and you can get ridge detail, it would be so small as to be impractical for comparison purposes. There wouldn’t be enough detail.

MR. KENNEDY: So you address your mind to the fingerprinting and did the fingerprinting of the rifle?

CPL LEE: Yes, that’s correct.

MR. KENNEDY: Those are my questions.

Thank you.

THE COMMISSIONER: Any other questions?

Mr. Avis.

MR. AVIS: Just one question with a brief follow-up. I wonder if we could go back to photograph 45 – fine by me.

Okay. Now, if you look to the left of the photograph, right of the chair, that’s the void that you marked with marker 3. Is that correct?

CPL LEE: Yes, that’s correct.

MR. AVIS: And perhaps I’m asking the obvious, but I just want it stated. You have no idea when that void was made. Is that fair to say?

CPL LEE: That’s correct. There’s no way to say.

MR. AVIS: So if there was a rifle there, for example, you wouldn’t know if it was there that morning or the day before or whenever?

CPL LEE: That’s correct.

MR. AVIS: Thank you.

THE COMMISSIONER: Anybody else?

Mr. Flaherty.

MR. FLAHERTY: Good day, Officer Lee.

It’s Cletus Flaherty; I’m counsel for the Don Dunphy Community Coalition.

Just to go back to the void; I recall in your interview with Commission Counsel, you made remarks about surfaces in the house being grimy, caked with cat hair and various matters. Is that correct?

CPL LEE: That's correct, yes.

MR. FLAHERTY: Did that include the floor? Was the floor –

CPL LEE: Areas of the floor, yes.

MR. FLAHERTY: Okay. And so your inspection of the void did it show a disturbance to the grime or any marks through the grime to suggest that something was hauled along the void?

CPL LEE: I didn't see anything like that. I'm not sure if I would have been able to see anything like that. The floor in that area was, if I'm not mistaken, it was a very rough surface.

MR. FLAHERTY: And just a final question. So you have a recollection that this pen you may have seen near the oval table could have been under the yellow folder. Why do you have this recollection? What is making you think that, or is it just a thought that, it's just in your head and you can't explain why you think the pen was underneath the folder?

CPL LEE: I actually hadn't considered it, but I was questioned directly during my initial interview if I had seen a pen and that was the first time I had thought of it.

MR. FLAHERTY: Okay.

CPL LEE: So, yes, I actually do recall seeing a pen in that area.

MR. FLAHERTY: And just to cover off issues of fingerprinting and testing. Would a pen, as long as it's not covered in grime or something like that, would a pen be a candidate for fingerprint testing?

CPL LEE: Possibly, depending on the size, the type of surface. There's a number of variables that would factor into that.

MR. FLAHERTY: And you can't consider those variables now because your memory of the pen isn't sufficient enough for you to say whether or not the pen you recall seeing on the oval table was indeed a candidate for fingerprint testing?

CPL LEE: Yes, that's correct. I can't recall it well enough to know, to be able to give you an opinion on that.

MR. FLAHERTY: Thank you very much.

MR. FREEMAN: Hi, Corporal Lee. We just have a few questions for you.

You'd said that the investigators with MCU didn't come to you and ask for DNA to be taken or testing to be done in that regard?

CPL LEE: That's correct.

MR. FREEMAN: Are there occasions, or have there been occasions in the past where you would suggest that the information would flow in the other direction, where you would suggest that that was a good idea that DNA was an avenue that could be pursued?

CPL LEE: Yes, on occasion.

MR. FREEMAN: And that wasn't the case here, though. Is there a reason for that?

CPL LEE: On times when the information flows from me, it might be in a scenario where an investigator might not be aware of all that what we have is potentially good for a DNA source. In this particular case, rifles and firearms have been used in the past for DNA and I didn't think that was an issue in this case. So it didn't occur to me to bring that up as a specific topic.

MR. FREEMAN: So if there had been sort of – let's say for example, hypothetically, an amount of blood or something on the weapon, on the rifle, then that would be something that you might suggest to the investigators. Is that fair?

CPL LEE: Something with an obvious source of DNA, such as the blood, we'll swab automatically because it's something that you're not normally gonna expect to find on something, like the surface of a rifle.

MR. FREEMAN: And of course there was no organic-type material like that in this case.

CPL LEE: No, nothing.

MR. FREEMAN: Okay.

Madam Clerk, if we could just call up scene 30 from exhibit number 10, please – photo scene 30. I believe it should be the outside of the residence.

Can you recall where you were standing when you looked in the window when you first arrived?

CPL LEE: It would be in the far right of this photo, just several feet back from the house; maybe in that area where the sign is, and slightly closer, slightly further in towards the door.

MR. FREEMAN: And what was the light level in the house at that time, when you looked in?

CPL LEE: The lights were on in the living room when I looked in. So it was quite bright in the living room.

MR. FREEMAN: Okay. So you can only recall, though, looking in from the right corner, from this photo?

CPL LEE: I didn't – that's basically the best way to describe it. Is that I didn't step right up to the wall of the house and put my face directly to the glass. I was several feet back from the wall of the house and somewhere, thereabouts, centered in front of that window.

MR. FREEMAN: Thank you.

The last question I had for you is about the odour in the residence. You had mentioned that there was a very strong smell of cat waste. Is that right?

CPL LEE: That's correct, yes.

MR. FREEMAN: And so, I just don't think that it came out in evidence that you were actually wearing your respirator at the time as well. Is that right?

CPL LEE: The second day I was wearing my respirator.

MR. FREEMAN: Okay. So the first day you were not and the second day you were.

CPL LEE: That's correct.

MR. FREEMAN: And so on the second occasion, could you, or could you not, smell the cat waste with the respirator on as well?

CPL LEE: I could. I could smell it through the respirator.

MR. FREEMAN: Does that that speak to the strength of the smell, or is that – I don't really understand the respirator, so.

CPL LEE: Well, normally with my respirator on I can't smell anything. But in that particular occasion, that scent was that overpowering that it came through my respirator.

MR. FREEMAN: Thank you, Corporal Lee.

Those are all our questions as well.

MS. O'BRIEN: Commissioner, I just have one question arising from Mr. Freeman's questioning.

I just want to make sure I understood your evidence, Corporal Lee. Mr. Freeman was asking you about when you sometimes suggest to investigators to do DNA testing, and am I understanding you, that times where you have suggested that to investigators is when you have a material or an object that you consider that the investigators might not even have considered you could get DNA from that type of object, and that's when you might suggest to them if you thought you could.

But in the case – in this case where you had a firearm and a rifle, you would expect that the investigators would know that could potentially be a source for DNA and is something that if they'd wanted it they would've asked you. Have I understand that correctly?

CPL LEE: That's fairly – yes, that's fairly accurate.

MS. O'BRIEN: You're saying fairly accurate.

CPL LEE: Yeah.

MS. O'BRIEN: Is there anything you just want to clarify?

CPL LEE: It's just that, that is a normal type of exhibit that, you know, on occasion, depending on the circumstances, we would swap for DNA; and, again, depending on all the variables.

I specifically mean, when I would bring it up to the attention of an investigator, there might be some unique, novel item that we hadn't come across before and they may not be aware that it's a potential source of DNA.

MS. O'BRIEN: Okay.

CPL LEE: This type of situation is fairly common, and depending on the scenario and all the variables factored in, they would probably be aware of that.

MS. O'BRIEN: They, meaning the investigators?

CPL LEE: The investigators, yes.

MS. O'BRIEN: Okay.

Thank you.

THE COMMISSIONER: Okay. Nothing further?

Thank you, Ms. Lee. You may step down.

MS. O'BRIEN: Commissioner, we'll be calling our next witness.

MR. AVIS: I can indicate Commissioner, I had indicated to Inspector Constantine to be here at 2:30 quarter to. I just went and phoned him maybe 10 minutes ago, said get here as quickly as possible, and I assume he's on his way.

THE COMMISSIONER: All right. We'll take a break – no reason to panic. We'll take an early afternoon break and hopefully we'll finish before too long.

MS. O'BRIEN: And, Commissioner, we also have to wait for Glenda Van Driel. She wanted to be present for Barry Constantine's evidence.

THE COMMISSIONER: All right.

MS. O'BRIEN: So we've also notified her to come early.

THE COMMISSIONER: Okay. So we'll take a break.

MS. SHEEHAN: All rise.

The Commission of Inquiry is in recess.

Recess

MS. SHEEHAN: All rise.

This Commission of Inquiry is in session.

Constable Constantine, do you solemnly swear that the evidence you shall give shall be the truth, the whole truth and nothing but the truth?

INSP. CONSTANTINE: I do.

MS. SHEEHAN: Please state your full name.

INSP. CONSTANTINE: Inspector Barry Constantine.

MS. SHEEHAN: Thank you.

INSP. CONSTANTINE: Thank you.

MS. CHAYTOR: Good afternoon, Inspector Constantine.

I'm Sandy Chaytor. I'm one of the co-counsels for the Commission. We haven't had an opportunity to meet before.

INSP. CONSTANTINE: No.

MS. CHAYTOR: Before we get started, I do have two exhibits please, Commissioner, to ask to have entered: P-0467 and P-0703.

THE COMMISSIONER: Sorry, you're getting ahead of me. 467?

MS. CHAYTOR: Yes, sorry.

THE COMMISSIONER: Okay.

MS. CHAYTOR: P-0467 and P-0703.

THE COMMISSIONER: 703.

Thank you.

MS. CHAYTOR: Okay.

Inspector Constantine, I understand that you've been a member of the RNC since 1984?

INSP. CONSTANTINE: That's correct.

MS. CHAYTOR: And that you are currently Inspector, second in charge, Operational Support Services.

INSP. CONSTANTINE: Correct.

MS. CHAYTOR: And in that position, I understand that the Communications Centre falls within your area of responsibility?

INSP. CONSTANTINE: Correct, yes.

MS. CHAYTOR: Okay. Also, I understand that you've held that position since July of 2015?

INSP. CONSTANTINE: That's right.

MS. CHAYTOR: Okay. And who held the position prior to you?

INSP. CONSTANTINE: I believe it was Inspector Paul Woodruff.

MS. CHAYTOR: Okay.

And as of April 5, 2015, were you involved in any position that held responsibility for the Communications Centre?

INSP. CONSTANTINE: No, I wasn't at that time.

MS. CHAYTOR: Okay.

And I understand, though, in your current position you report to Superintendent Joe Boland?

INSP. CONSTANTINE: That's correct.

MS. CHAYTOR: And I understand that Mark Oram is one of the communications technicians who report up through the chain to you?

INSP. CONSTANTINE: That's right, yeah.

MS. CHAYTOR: Okay. And that's at this point in time, of course.

INSP. CONSTANTINE: Exactly. Yeah.

MS. CHAYTOR: Okay.

Inspector, there's been an issue that has arisen at the inquiry regarding a 10-29 request that was made of Mr. Oram on April 5, 2015, by Constable Joe Smyth with respect to Donald Dunphy and the issue that has arisen is what information should have been relayed back to Constable Smyth in response to his request. And you're aware –

THE COMMISSIONER: Uh-huh.

MS. CHAYTOR: You're aware of that issue?

INSP. CONSTANTINE: Yes, I am.

MS. CHAYTOR: Okay.

And I understand that since that issue has come to light that you have been involved in assisting with an internal investigation regarding the issue?

INSP. CONSTANTINE: That's right, yes.

MS. CHAYTOR: Okay.

And in that respect you drafted a letter to the Commission, and that's one of the exhibits that I just asked to have entered into evidence. And so that is P-0467 and I will be referring you to portions of your report and it'll come up on the screen in front of you. And that report is dated January 25, 2017.

INSP. CONSTANTINE: Okay.

MS. CHAYTOR: And if I could ask, please, Madam Commissioner, if you could bring that up.

And your report refers to email communications that were sent out. The first email communication is December 23, 2016, and that's at page 66 of your report. It's an attachment to your report, and that's an email that I understand Superintendent Boland sent out, and in your report you refer to that as being in an effort to mitigate any further misunderstandings when a 10-29 is requested.

INSP. CONSTANTINE: That's correct.

MS. CHAYTOR: Okay.

UNIDENTIFIED FEMALE SPEAKER: Yeah, sorry –

MS. CHAYTOR: P-0467 please, and it's page 66. And it will come up on your screen here now if we could have – it's going to be page 66.

And Superintendent Boland sent that out to Bernard Jesso. And who would Bernard Jesso be?

INSP. CONSTANTINE: He is a sergeant in charge of one of the teams in our Communications Centre.

MS. CHAYTOR: Okay.

And what he says here: "To all Communication Center employees, When completing a 10-29 ensure that all CPIC response messages including the PERS, CNI, CR and any additional information is disclosed to a member."

And then it – sorry, I'm just gonna move this over. Okay.

And then Bernard Jesso sends that to Claire Priddle and RNC Communications Centre: "Please see attached." And then there's a response four days later from a Danielle Green. And who's Danielle Green, what's her position?

INSP. CONSTANTINE: She is a communications technician, as well.

MS. CHAYTOR: Okay. So she would have the role the same as Mark Oram?

INSP. CONSTANTINE: Correct, yes.

MS. CHAYTOR: Okay.

And she says: "Just for clarification. The CR ..." So the criminal record check, I understand that to be.

INSP. CONSTANTINE: Right.

MS. CHAYTOR: "... is not done automatically. You have to get the FPS # ..." And we've heard evidence that that's the fingerprints.

INSP. CONSTANTINE: Right.

MS. CHAYTOR: Okay.

"... from the CNI, if it's positive. Do you mean PERS, CNI, and CFRO? CFRO is done automatically with PERS and CNI."

So she's pointing out that the three pieces of information, they get it back automatically, would be the PERS, CNI and the CFRO.

INSP. CONSTANTINE: Right, exactly.

MS. CHAYTOR: Okay.

And then there's a response from – there's a response then from Superintendent Boland on the same date. And that goes to Danielle Green and Bernard Jesso.

“Yes, that’s correct. I am referring to all checks that come back from a 10-29, (PERS, CNI and CFRO) I am not asking for the Criminal Records check.”

THE COMMISSIONER: Sorry, now where – where’s that one?

MS. CHAYTOR: Okay. So now I’m on page 65, Commissioner.

THE COMMISSIONER: 65?

MS. CHAYTOR: Yes. So on page 65, if you come down –

THE COMMISSIONER: Okay.

MS. CHAYTOR: – the second email –

THE COMMISSIONER: Yeah.

MS. CHAYTOR: – communication there, it’s from Superintendent Boland.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: He answers the question that’s been posed by Ms. Green. And he says: “I am not asking for the Criminal Records check.”

And then there’s a gap in time, almost a month later, when it appears Superintendent Boland sends to Peter Deveraux and copies yourself. And who would Peter Deveraux be?

INSP. CONSTANTINE: Peter is the rank below me. So he’s in charge of just the Communications Centre.

MS. CHAYTOR: Oh.

INSP. CONSTANTINE: He’s the NCO in charge.

MS. CHAYTOR: Okay.

And he comes back and asks: “Peter, Can you forward the emails below to all staff in the Communication Center. It was brought to my attention that not all Communication Center employees received my response to Danielle Green’s question.”

So his response in December: “The only person I know that did were Danielle and Sgt. Jesso.”

INSP. CONSTANTINE: Uh-huh.

MS. CHAYTOR: And then we can see – if we scroll up a page here, to page 63, where that goes out to all Communications Centre staff.

INSP. CONSTANTINE: Right.

MS. CHAYTOR: On the same date, January 25. And he – Peter Deveraux confirms back to you that that has happened, “Insp. As you requested.”

INSP. CONSTANTINE: Right.

MS. CHAYTOR: Okay.

And I'm just going to bring you back down to – I'm wondering, has there been any other communications that have gone out to the Communications Centre staff in relation to this, or is this it?

INSP. CONSTANTINE: I believe that to be it. And you can see that Peter Deveraux responded to me, only because I followed up with him. But I didn't follow up with an email; I asked him verbally. So then he wrote me to tell me that this is what he had done.

MS. CHAYTOR: Okay, fair enough. Okay.

So, and what the Communications Centre staff then would have been expected to do was to scroll down through these communications and get the message?

INSP. CONSTANTINE: Right.

MS. CHAYTOR: Okay, and do you think that there might be any confusion in terms of the message from Superintendent Boland that "I am not asking for the Criminal Records check," in terms of what that might mean when a 10-29 is requested?

INSP. CONSTANTINE: I wouldn't think so. I think I know what you mean, but he's referring to the email that he had sent out earlier. So if you see Danielle's email, she asks for clarification and she indicates to him that CR is not done automatically. So then he comes back to that. So if they scroll down, they'll see that in fact it was – he meant to say CFRO. He had those –

MS. CHAYTOR: Right, so he was correcting that –

MR. COMMISSIONER: Sorry, where is that? He meant saying it where?

MS. CHAYTOR: Okay, so I'll just go a little slower on that, Commissioner.

So the initial communication that went out is on your screen now and he had said: "When completing a 10-29 ensure that all CPIC response messages including the PERS, CNI, CR and any additional information is disclosed to a member." And then the technician –

MR. COMMISSIONER: So that CR ...?

MS. CHAYTOR: CR means criminal record.

MR. COMMISSIONER: Right. Was that intended? What was the –?

MS. CHAYTOR: And then what happened –

THE COMMISSIONER: What were you saying he meant?

MS. CHAYTOR: Then it comes back. Danielle Green questions and says: "... for clarification. The CR is not done automatically."

THE COMMISSIONER: Right.

MS. CHAYTOR: "You have to get the FPS # from the CNI, if its positive. Do you mean PERS, CNI, and CFRO?" Because it's the CFRO that's done automatically.

THE COMMISSIONER: Right, okay.

MS. CHAYTOR: Okay.

And then the superintendent responds: “Yes that’s correct. I’m referring to all checks that come back from a 10-29,” and the 3; “... I am not asking for the Criminal Records check.”

Okay, and my question was whether or not – and then this eventually – this does get sent on then, and the staff are asked to read down through the email chain and that’s the communication that’s gone to them.

INSP. CONSTANTINE: Correct.

MS. CHAYTOR: Okay, and my only question was, when I read it – and it may be just be because I’m not trained in this, but I found it somewhat confusing.

INSP. CONSTANTINE: I can see why.

MS. CHAYTOR: And then was – yes. And then was he actually agreeing with Ms. Green’s point that the CR gets done if the CNI comes back positive, then you do the communications or the criminal record check?

THE COMMISSIONER: Well, it’s only done if the CNI comes back positive. Now, the CNI, what’s that point to?

MS. CHAYTOR: That’s Criminal Name Index.

INSP. CONSTANTINE: Correct, yes.

MR. COMMISSIONER: Right, and what’s that normally? I know that I’ve seen it before, but I don’t remember it.

MS. CHAYTOR: That’s right.

THE COMMISSIONER: It’s explained in a report earlier, but –

MS. CHAYTOR: Yes.

THE COMMISSIONER: – just refresh my memory now. What do we get from the CNI?

INSP. CONSTANTINE: So the Criminal Name Index indicates whether or not the person has a fingerprint number on file.

THE COMMISSIONER: Okay.

INSP. CONSTANTINE: And from that you determine that the person may have or has a criminal record or at least some record of being charged criminally.

THE COMMISSIONER: Right. So when you get the CNI, and if there’s a fingerprint on file –

INSP. CONSTANTINE: Mm-hmm.

THE COMMISSIONER: – the CNI report will indicate that and then you have to go on again and look for the criminal record?

INSP. CONSTANTINE: You have to click – there’s actually a function where you can click the number itself and it brings you into the criminal record.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Yes.

THE COMMISSIONER: So what was it we were looking at where there was a default to –?

MS. CHAYTOR: Okay, and that comes up – what you’re thinking about is the – in Kim Harding’s report –

THE COMMISSIONER: Right.

MS. CHAYTOR: – and I can bring that up and show you that screen if you wish, and it shows where it’s defaulted for three things. And what it is defaulted for is the PERS, the CNI and the CFRO, as Ms. Green is pointing out.

THE COMMISSIONER: But not the criminal record?

MS. CHAYTOR: Not the criminal record check. That does not automatically come up, as Ms. Green has pointed out in her email.

THE COMMISSIONER: Okay. So Constable Smyth understood that he was getting the –

MS. CHAYTOR: The CNI.

THE COMMISSIONER: The CNI.

MS. CHAYTOR: Right. And if that CNI information was passed along or if the CNI was looked at, my understanding is Constable Smyth understood he would get that. If that had been looked at, then it would have indicated the CR query recommended, it would have given the FPS number.

THE COMMISSIONER: As far as Mr. Dunphy was concerned?

MS. CHAYTOR: As far as Mr. Dunphy is concerned, there was FPSI – FPS number and then also a query for the CFR – sorry, for the CR and – but the evidence of Mark Oram, and you haven’t heard from Mark Oram yet, will differ from that. That he understood that a CNI would have to be asked for specifically.

THE COMMISSIONER: A CNI would have to be asked for specifically in addition to what was requested, which was?

MS. CHAYTOR: So what – he requested a 10-29.

THE COMMISSIONER: Yeah, and so that –

MS. CHAYTOR: Okay, so 10-29 –

THE COMMISSIONER: So Mr. Oram understood that the request for a 10-29 –

MS. CHAYTOR: Meant –

THE COMMISSIONER: – did not include the CNI. Constable Smyth believed that request for the 10-29 –

MS. CHAYTOR: Understood that it should've, that's right. And if he'd gotten the CNI information –

THE COMMISSIONER: (Inaudible.)

MS. CHAYTOR: – then that's where the violence flag would have been and it would have shown the FPS number and then query or recommendation that they query a criminal record search.

THE COMMISSIONER: So do we know yet or are we going to find out who's correct in this?

MS. CHAYTOR: Well, we're hoping to get – this is why this witness is here, Commissioner. But perhaps I can slow down a bit; I was trying to go faster, but... And there may be some ambiguity, I don't know, but I certainly know from what – the report we have from Inspector Constantine is that he's looking into it and trying to get some answers to that. So we'll find out what answers he's been able to ascertain.

THE COMMISSIONER: Go right ahead. All right.

MS. CHAYTOR: Okay.

And so, Inspector, then this is the only (inaudible), this is the only communication that has gone out now to staff as to what they should be doing when they get a 10-29?

INSP. CONSTANTINE: Correct.

MS. CHAYTOR: Okay. All right.

So my next question, then, for you, maybe we could go back to page 2 of your report. And this might actually help you with some of your questions, too, Commissioner, but in the middle of page 2 of the report, if we scroll down, you refer to here: "When the request is made by an officer for a 10-29 on a person, the Communications technician will enter the person's name, date of birth and gender on the CPIC database which is interfaced with our Versadex system," is it?

INSP. CONSTANTINE: Yes, that's our records management system.

MS. CHAYTOR: Okay. Now, that's different, though, then your – that's not the same as we've heard other information in terms of the file-opening system in the – for the RNC, but that's something different than the Versadex? We've heard about your ICAN, right?

INSP. CONSTANTINE: Right, yeah. Versadex is just really, I think, a brand name. It's our records management system; that's all I can maybe speak to here to that.

MS. CHAYTOR: Okay. All right. And then, an electronic – it's "an electronic mail system," you say, "commonly referred to as V – mail."

And here's where you explain that there's three pieces of mail that comes back, and in those three pieces of mail you would get the personal, which is referred to as PERS; and then you will also get CNI; and the third piece is the CFRO, which is the Firearms Registry.

INSP. CONSTANTINE: Right.

MR. CHAYTOR: Right, okay.

THE COMMISSIONER: So that first one is referred to and abbreviated as PERS, is it?

MS. CHAYTOR: PERS, that's right. That's the person's current status, I understand, and correct me if I'm wrong, Inspector, but that would say if there's any outstanding warrants or arrests or any current cautions with respect to the person.

INSP. CONSTANTINE: Anything current, yes.

MS. CHAYTOR: That's right, so anything current.

And that information was passed along, we understand, to Constable Smyth; there was nothing current against Mr. Dunphy. And the CNI was not opened, I believe is what you will hear from Mark Oram, and that information wasn't passed along.

And the transcription that you have, Commissioner, that we have into evidence as to the communication, Constable Smyth did specifically ask for a CFRO and the CFRO information was passed along, and that was negative, and the PERS was also negative, and that's the information that got relayed.

INSP. CONSTANTINE: Correct.

MS. CHAYTOR: Okay.

So, Inspector, based on the inquiries that you've made in assisting on the internal investigation on this issue, what information were RNC communications technicians expected to provide when an officer asked for a 10-29 as of April 5, 2015?

INSP. CONSTANTINE: Right, so we've conducted, I think, 15 or 16 interviews of 20 communication technicians and they've all indicated that, when they're asked for a 10-29, the information that's relayed is the query on the person, which they interchangeably refer to as the 10-29, but in fact it's actually the query that's on the person, PERS, and the CNI. They open the CNI to give that information, as well as they open up the Canadian Firearms, the CFRO.

MS. CHAYTOR: So the information.

INSP. CONSTANTINE: Right.

MS. CHAYTOR: Is that correct?

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Okay, now let me – just to make sure I understand. They all indicate – give it to me again. They would report which ones?

MS. CHAYTOR: They would report the current situation, which is the PERS –

THE COMMISSIONER: Wait, give me the abbreviation.

MS. CHAYTOR: PERS.

THE COMMISSIONER: Okay.

MS. CHAYTOR: They would give CNI.

THE COMMISSIONER: Right.

MS. CHAYTOR: And they would give the CFRO, which is the Firearms Registry.

THE COMMISSIONER: Okay.

INSP. CONSTANTINE: Now, I should also add that during those interviews some of the people said that there are times that officers will just simply ask for the query on the person. They'll ask for a 10-29, but they'll tell specifically that they don't want the CNI or the CFRO; they're just looking for what's current.

MS. CHAYTOR: Okay, so if an officer asks for a 10-29 and a CFRO –

INSP. CONSTANTINE: Well, they would have to be specific about that, otherwise they'll get the full deal, the three components that come back from CPIC. There are times that officers might be on the road and they just want to know what's current and they'll ask for a 10-29; I just need to know if there's any warrants out on them. They'll say something along those lines, or any wants. And in those cases, the comm techs that we've interviewed said that they would just give what the officer asked for.

MS. CHAYTOR: Okay.

And if we could bring up page 5, please, if we could just scroll along here to page 5. No, no, same exhibit. We're going to be the same exhibit, I think, for the whole evidence. Make this a bit bigger, please.

And here you write that "Since January 5th, 2017 I have been assigned to assist with an internal investigation which is exploring the procedure surrounding the information from a communications technician that is relayed to an officer when he/she requests a 10-29 We are still conducting this investigation however, it appears from most of the Communications technicians who have been interviewed and it seems that their practice is to provide all the information from all three responses from CPIC to officers requesting a 10-29 check."

So at the time that you wrote this report, what did that mean when you're saying that it appears from most of them who've been interviewed, that that was their practice, it seems that's their practice?

INSP. CONSTANTINE: Well, perhaps what I meant to say was that most of the people – we've interviewed most of the people, which is 15 out of 20, or 16 out of 20. I may not have been at that number at that point, but it was apparent to me at this point that most of the people I had interviewed were getting all three pieces of information back.

MS. CHAYTOR: Okay.

And did you have any technician who said otherwise?

INSP. CONSTANTINE: No.

MS. CHAYTOR: Okay.

And in fairness, they're being interviewed in the aftermath of this issue having arisen.

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: And they're being interviewed in the aftermath of the email exchange, or at least some of the email exchanges that we saw –

INSP. CONSTANTINE: Correct.

MS. CHAYTOR: – and they saw Superintendent Boland weigh in with that.

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: Did you ask them what their practice was as of January or what – of 2017 or what their practice was in April of 2015?

INSP. CONSTANTINE: I wasn't specific about April. I was just – I asked – well, actually I don't think I asked. It was the person who was leading the investigation. I'm just assisting. But they were asked, what is their practice?

MS. CHAYTOR: Okay. And did you understand that that had been the practice throughout?

INSP. CONSTANTINE: From them, yes.

MS. CHAYTOR: Okay.

Have you also spoken with Mark Oram?

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: Okay. And was his answer to the question any different?

INSP. CONSTANTINE: Yes. He doesn't always provide all the information. That's what he told us.

MS. CHAYTOR: Okay.

And does it – and did he give – were you also able to make any inquiries as to what training Mr. Oram has or the other communication technicians receive on this issue?

INSP. CONSTANTINE: Yes. We provide on-the-job training for the most part. Usually when people are hired, we hire one at a time. It's very seldom we'd hire any more than one individual at a time. So to develop a training course is really – it's really not feasible to redeploy personnel that would be required to speak on the various topics that a communications technician needs to know about for one person.

So we rely on putting them on a three-month probation, if you will, to shadow other comm techs, sit with maybe one or two on a consistent basis. For the first couple of weeks, they do a regular day shift so they get to meet all teams, and then after that they are assigned to a team and they just follow along, and they ask questions and they learn just by experiencing on the job.

At some point in the past, what we would do is when we had enough people who were new to the organization and had not been formally trained, when there were enough people, then we would devise a course, a training course, a communications technicians course. And that was really something that probably one of the sergeants in the Comm Centre would put together and identify what points they need to cover off with a new technician, and make a presentation on the various areas such as radio procedures and call taking, customer, dealing with difficult customers et cetera. That would be put together and would be presented, and it wasn't on a regular basis because it was done based on need. And that need could occur twice in a year or it could be once every two or three years.

MS. CHAYTOR: Okay.

INSP. CONSTANTINE: Yeah.

MS. CHAYTOR: And I understand that there is a review of the training of the communications technician being considered.

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: And that there's consideration being given to an orientation session when new people begin.

Are there any other initiatives being considered?

INSP. CONSTANTINE: Well, you're correct that they are being considered. Just recently we hired somebody new, and even before this issue came to light, I saw it was a gaping example, to me, of how we are not doing a good job on on-boarding with these new people. So I did meet with the director of Training Section for the RNC, and she and I had a discussion about that very issue, about the first couple of days that this person comes to work for us and then subsequently doing a training course.

Now, having said all that, I'm also in the process of changing the current schedule slightly to accommodate a training day, which would be mandatory for all communication technicians, that they will have to attend once. There will be two training days per year, per team, and issues like this and other relevant issues will be addressed either through in-house subject matter experts or outside the organization, but our intention is to improve this whole process.

MS. CHAYTOR: Okay, fair enough.

And, Inspector, I'm just wondering, I think you also met with Mr. Bob Turnbull as part of your investigation that's ongoing.

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: And that was in January – January 26th, I believe – of this year. And he's the person who provides instruction to Communication Centre personnel.

And what were you able to ascertain from that meeting with him?

INSP. CONSTANTINE: Well, I spoke with him in terms of the training that was provided to previous participants. And what I could ascertain from him was that he would – he should – I had a copy of the slide presentation that was used, and I think that's attached to (inaudible).

MS. CHAYTOR: Okay, and we can bring up page 13, I believe. Page 13 in your report is the – this is the different codes. If I’m remembering correctly, it’s page 13. Yes, here we go. Is this what you’re referring to?

INSP. CONSTANTINE: Yeah, so there you can see there is some redaction.

MS. CHAYTOR: Yes, we redacted the other codes, but these were the three codes that were asked of – the 27, 28 and 29 were asked of Mr. Oram on that date.

INSP. CONSTANTINE: Correct, yes.

MS. CHAYTOR: Okay.

And so, I’m sorry, go ahead with your answer, then, what you were able to ascertain.

INSP. CONSTANTINE: So I specific – so Mr. Turnbull tells me that he definitely reviewed the 10 code with them. I said: Did you review all of them, because it goes from 10-1 to 10-100? No, he said, that would be impractical. I didn’t review all of them, he said, I reviewed the most commonly referred or the most commonly used 10 codes.

So I asked him: Is 10-29 one of those codes? And he said yes. He said he definitely would have reviewed the 10-29 one (inaudible).

MS. CHAYTOR: Okay, and this was in a presentation that he gave to the communication staff.

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: And we know that – I understand Mark Oram has been with the RNC since 2009.

So when did this presentation take place?

INSP. CONSTANTINE: I have that in the file and I’m –

MS. CHAYTOR: Is it in your report? I didn’t see it. I wasn’t quite sure.

Did you understand that Mark Oram was present, then, for this presentation?

INSP. CONSTANTINE: Yeah, there’s a document that I submitted that shows his name on a list and the date is right next to that.

MS. CHAYTOR: Okay. And so Mark Oram was in attendance, and from what Mr. Turnbull is saying that the 10-29, records check, person – means “... record checks, person, vehicle, property, boats & motors ...” and then after that it says CNI.

What’s CRS tile? What does that mean?

INSP. CONSTANTINE: Okay, I think, if you see my note there, I think that should be file.

MS. CHAYTOR: Oh, that’s your handwriting, is it?

INSP. CONSTANTINE: Yes, yeah. That’s my initials.

MS. CHAYTOR: So you added this to the presentation –

INSP. CONSTANTINE: I added this, yes.

MS. CHAYTOR: – afterwards, okay. Should be file. Okay, CRS files is what that should say?

INSP. CONSTANTINE: I think so. To be honest with you, I'm assuming that. That's an assumption on my part, but I really don't know what that is, what that's doing there.

MS. CHAYTOR: Okay. So, and of course, this is just part of a PowerPoint presentation, so what actually got said in relation to the CNI and the CRS, was Mr. Turnbull able to tell you?

INSP. CONSTANTINE: No, I don't think I asked him that.

MS. CHAYTOR: Okay.

I understand that Mark Oram also received some training, CPIC training, from the RCMP, is that correct?

INSP. CONSTANTINE: Correct, yes.

MS. CHAYTOR: Okay.

And do you know whether or not in that training there would be any reference to 10-29 codes?

INSP. CONSTANTINE: I've never done that training, but I'm of the opinion that 10-29 is not addressed; however, query on a person is addressed, or query on a vehicle or query on an article, but it's not referred to. In my understanding, it is not referred to as a, quote, 10-29.

MS. CHAYTOR: Okay.

And I understand 10 codes are unique to each police force.

INSP. CONSTANTINE: For the most part.

MS. CHAYTOR: So what a 10-29 might be to the RNC might not be one and the same to the RCMP, is that correct?

INSP. CONSTANTINE: Right, and I guess that would be a reason why you wouldn't teach that.

MS. CHAYTOR: Okay.

And did Mark Oram offer any explanation as to why his interpretation of a 10-29 differed from most, if not all, of his colleagues?

INSP. CONSTANTINE: No. Well, when it comes to training, and in fairness to Mark, I think he was a bit confused when I asked him about his training. I think he confused his CPIC training as well as the communications training. Because of his answers, he seemed to cross over in both areas. I didn't suggest that to him, but it's just my opinion based on what I know so far.

MS. CHAYTOR: Okay, and there are still four individuals to be interviewed?

INSP. CONSTANTINE: Maybe not, because there are some people who aren't at work.

MS. CHAYTOR: Okay.

And is the internal investigation, then, complete?

INSP. CONSTANTINE: It's not entirely complete, but it's about 90 percent.

MS. CHAYTOR: And what conclusion is it that, to date, you've been able to reach?

INSP. CONSTANTINE: Well, based on what we've discovered, it's that most people in the Communications Center are providing all three responses from CPIC when the 10-29 is requested from an officer.

MS. CHAYTOR: Okay.

I believe those are all my questions. The Commissioner or some of the other lawyers may have questions for you.

Thank you.

THE COMMISSIONER: Counsel have a – I see –

MR. KENNEDY: I have a few.

THE COMMISSIONER: Sorry.

Mr. Kennedy.

MR. KENNEDY: I wonder, Commissioner, if I could get exhibit 0136 on the screen, please?

This, Inspector Constantine, will be the actual call of Constable Smyth with Communications Center on the date in question.

Have you reviewed that before?

INSP. CONSTANTINE: I have, yes.

MR. KENNEDY: Okay.

So we see that this is the April 4. These are the initial conversations with – on Saturday, April 4, with Owen Todhunter. Is he a Comm Centre employee?

INSP. CONSTANTINE: I think so, yeah. Mm-hmm.

MR. KENNEDY: Okay, continue please. Okay, continue. Yeah.

Do you know what page it is there, Mr. Drover, where you get to the April 5th?

MR. DROVER: April 5th one, it's page – starts on page 6.

MR. KENNEDY: Page 6, please. Is that page 6 in the green number or the –

MR. DROVER: Yeah, page 6 with the green number.

MR. KENNEDY: Yup, page 6, please.

Okay. So here we are on – excuse me, stop right there, please. This is April 5, 11:14 in the morning. Comm Tech Mark Oram answers: “Communications.”

“Acting Sergeant Joe Smyth
How are you doing sir?”

“Good.”

“Acting Sergeant Joe Smyth
Joey Smyth here, I’m looking for ah 27, 28 and 29.”

So the 29 that he’s referring to there is the 10-29?

INSP. CONSTANTINE: Correct.

MR. KENNEDY: Those are the codes, correct?

INSP. CONSTANTINE: Yes.

MR. KENNEDY: Then there’s the badge number, asked for the badge number. Okay, continue.

Looking for Don Dunphy. Continue, please.

Continue, please, yeah.

Okay. Continue, sorry. Okay, sorry, stop right there.

“Ah looking to see” – Acting Sergeant Smyth – “... looking to see right now if he got any vehicles registered to ‘em and then I need a 29 on him and a CFRO check,” which would be a firearms check, right?

INSP. CONSTANTINE: Correct.

MR. KENNEDY: So is there – continue please. It’s okay, just – they seem to get cut off. This seems to be the same call, but there’s a brief interlude there. Continue down there, please.

So, back there – go back – sorry, Madam Clerk.

So, you see: “Nothing there”

So, okay.

“Comm Tech Mark Oram
He’s not on file there.”

“Nothing there and no, no CFRO either.”

Okay, you continue – this is a continuation of the conversation: “He’s not on file there
Nothing there and ... no CFRO, no firearms registered ... not on file, no Alright, sir
Good enough.”

Now, it’s pretty clear from that conversation that Constable Smyth – Acting Sergeant Smyth, at the time – is asking for a 10-29.

INSP. CONSTANTINE: Oh, yes, yep.

MR. KENNEDY: And that 10-29 – Sir, in your opinion, should Constable Smyth have been notified of the V for caution, or the caution V, which we know was included, if the CPIC check had been done?

INSP. CONSTANTINE: If the CPIC check was done, Mr. Oram had opened up the CNI information, is that what you're saying, suggesting?

MR. KENNEDY: Yeah.

INSP. CONSTANTINE: Yeah.

MR. KENNEDY: Should he have done that?

INSP. CONSTANTINE: Oh, yes.

MR. KENNEDY: Yeah. So he should've done up – opened up the CNI, the CPIC, whatever it is, and found the V for caution. Or the –yeah, the caution V.

INSP. CONSTANTINE: Caution V.

MR. KENNEDY: Yeah. And he should've provided that for – to Acting Sergeant Smyth.

INSP. CONSTANTINE: Yes, I believe so.

MR. KENNEDY: Sir, and I know you've been a commissioned officer for a while now, Inspector, but you would've been – you spent your time on the streets?

INSP. CONSTANTINE: Some time, yes.

MR. KENNEDY: Yeah. And you would have called in for 10-29s over the years?

INSP. CONSTANTINE: Yes.

MR. KENNEDY: This is very important. The purpose of 10-29 is also very important that oftentimes there's police officers who have an individual, a car pulled over on the road, and they're trying to get some information as to what's going on.

INSP. CONSTANTINE: Mm-hmm.

MR. KENNEDY: Those cautions could tell you a lot, can't they?

INSP. CONSTANTINE: Oh, for sure, yes.

MR. KENNEDY: You can have someone going to a domestic dispute, for an example. Again, the 10-29 provides a lot of relevant information.

INSP. CONSTANTINE: Yes.

MR. KENNEDY: So it's not only the criminal history or the details of the criminal history; it's the criminal history itself, and the cautions which attach to it, that are important to the officer responding to a call, correct?

INSP. CONSTANTINE: Yes, that's why you would do it. You would make –

MR. KENNEDY: Yeah.

INSP. CONSTANTINE – those queries to determine what you're facing when you're going there.

MR. KENNEDY: So they go into your risk assessment?

INSP. CONSTANTINE: Sure.

MR. KENNEDY: Something that police officers do on a daily basis, well, in this city and throughout this province and country.

INSP. CONSTANTINE: Yes.

MR. KENNEDY: Sir, so what does that V for violence or that caution V tell you if you're a police officer either responding to a scene or doing a – or checking on someone?

INSP. CONSTANTINE: Well, what it tells me is that he's had involvement or she's had involvement with the police before and there was some element of an offence that caused the officer or – yeah, I guess the officer who would make those remarks and enter it on the file. There was some events that occurred that would make the officer think that he has a propensity towards violence.

MR. KENNEDY: So it would make you more cautious?

INSP. CONSTANTINE: Of course, yes.

MR. KENNEDY: And it could change your risk assessment if you were planning to proceed to a call on your own.

INSP. CONSTANTINE: Of course.

MR. KENNEDY: Okay.

Those would be my questions. Thank you, Inspector.

THE COMMISSIONER: Other counsel have any questions? Ms. Van Driel, I see you've joined us, acting for Mr. Oram I understand it.

MS. VAN DRIEL: I'm representing Mr. Oram and I thought the evidence today might be of some interest to my client.

THE COMMISSIONER: I'm sorry, I can't hear you.

MS. VAN DRIEL: Sorry.

Yes, I represent Mr. Oram.

THE COMMISSIONER: Right.

MS. VAN DRIEL: And I'm here because I felt the evidence today might be of some interest to my client.

THE COMMISSIONER: Right.

MS. VAN DRIEL: So I do have some questions, not a whole lot, but some, but I'm willing to wait until other counsel has –

THE COMMISSIONER: I don't see anybody else jumping up.

Mr. Avis, do you have anything?

MR. AVIS: He's my witness; I thought I went last.

THE COMMISSIONER: You would normally, yeah.

Mr. Freeman?

MR. FREEMAN: Perhaps just one question.

Good afternoon.

THE COMMISSIONER: Okay.

INSP. CONSTANTINE: Good afternoon.

MR. FREEMAN: I'm counsel with the RCMP. I just had one question for you, and not sure whether you'd be able to answer it or not. But when you look at a CNI, Criminal Name Index query, and you see the caution V.

INSP. CONSTANTINE: Right.

MR. FREEMAN: Is the V for violence – is it populated automatically on the basis of a prior interaction with the police, or does an officer have to put it in there manually, if you will?

So in this case that we know in the CR there's an uttering threats, does the violence in the CNI get populated automatically or is it something the officer puts in himself? Do you know that?

INSP. CONSTANTINE: I don't, I'm sorry. I mean, it's been a long time since I was on that – in fact, I never, ever did do data entry, so I can't answer that, no.

MR. FREEMAN: Those are all our questions. Thank you.

THE COMMISSIONER: Okay, Ms. Van Driel.

MS. VAN DRIEL: So this is on, right?

UNIDENTIFIED MALE SPEAKER: That's on now.

MS. VAN DRIEL: Okay, good. Yeah, thanks.

I just wonder, Madam Clerk, that if you could go back to the audio recordings. I think it is exhibit P-0136.

THE COMMISSIONER: Mm-hmm.

MS. VAN DRIEL: And in particular I would like to go to exhibit page number eight.

So, Mr. Constantine, I see there on the audio recording, just before the section that Mr. Kennedy asked you about, that Acting Sergeant Joe Smyth appears to ask: “Nothing there and no, no CFRO either.”

Would you agree with that?

INSP. CONSTANTINE: Yes, entirely. I can see that.

MS. VAN DRIEL: You can see that.

INSP. CONSTANTINE: Yes.

MS. VAN DRIEL: So the question is there from Mr. Smyth, nothing there in response to what Mark Oram is saying about some error, he’s not on file. And then Acting Sergeant Joe Smyth said: “Nothing there and no, no CFRO either.”

In response, in the third recording – there must have been some break – Mark Oram says: “He’s not in file there.” And then: “Nothing there and no, no CFRO either, no firearms registered.” And Mark Oram says, no, “... he’s not on file”

There was nowhere a specific request in a similar vein from what I have seen on this recording that Mr. Smyth asked for, oh, and is there a CNI? Would you agree with that?

INSP. CONSTANTINE: Right, it’s not asked for, specifically, no.

MS. VAN DRIEL: Sorry for the pauses in between. I try not to repeat any questions that have already been asked.

I just have some – a question on that email that was earlier referred to. That’s the email – chain of emails, really – December 27, that was sent around by Mr. Boland through you, where the email was to duties when you get a 10-29 request, that the communications technicians must also give the CNI – the PERS, the CNI and the CFRO. Correct?

INSP. CONSTANTINE: Correct.

MS. VAN DRIEL: That’s the one that I’m referring to here. We can go there for a moment. I’m not sure what exhibit that is.

MS. CHAYTOR: P-0467 and you’re on page 66.

MS. VAN DRIEL: Right. So let’s just first have a look at the first one from Joe Boland. Just scroll back down there, thank you.

The December 23, it says there: “From: Joe Boland ... To: Bernard Jesso,” December 23, “Subject: 10-29 checks.”

“To all Communication Center employees,

“When completing a 10-29 ensure that all CPIC response messages including the PERS, CNI, CR and any additional information is disclosed to a member.”

Then we scroll up a little bit and it says, then – we get this clarification email from Danielle Green to say that “CR is not done automatically. You have to get the FPS # from the CNI, if it’s

positive. Do you mean PERS, CNI, and CFRO? CFRO is done automatically with PERS and CNI.”

And the answer to that is, if we scroll somewhere else to see the answer, I think maybe on the next page, Joe Boland says: “Yes that’s correct. I am referring to all checks that come back from a 10-29, (PERS, CNI and CFRO) I am not asking for the Criminal Records check.”

So I found it confusing as well when I read this, and you said in your evidence just now that Joe Boland meant to say not CR, but CFRO. He meant to say that.

Is that your interpretation of his email or did you speak to him?

INSP. CONSTANTINE: No, I spoke to him about that.

MS. VAN DRIEL: Okay.

I’m still somewhat confused about the email that Mr. Boland sent back because it also said: and any other additional information that may be relevant. So I’m still a bit confused all that other additional information would be. If I’m a communications technician, now I know that I have to do at a 10-29 the typical identity check, the CNI, CFRO, have to give that information. Now I also have to start including other additional relevant information.

So is that then left to the opinion of the communications technician what that might be or have you issued maybe a further directive of what it should be?

INSP. CONSTANTINE: I haven’t, and I think I’d be going out on a limb to answer for what Superintendent Boland intended by that remark.

MS. VAN DRIEL: Right, but it says clearly: “... and any additional information”

INSP. CONSTANTINE: Mm-hmm. Yep.

MS. VAN DRIEL: But you haven’t seen any directive go around yet of what that possibly might be?

INSP. CONSTANTINE: No, no.

MS. VAN DRIEL: If I may just go to – I think it is page 4 of your report, which is, I think, still part of this exhibit, the beginning.

I note that on your report at page 4 there is a reference to the courses that, according to the records in the RNC, that Mr. Mark Oram has taken.

INSP. CONSTANTINE: Right.

MS. VAN DRIEL: And it says: “CPIC 5 day course at RCMP headquarters (Date unknown).”

INSP. CONSTANTINE: Right

MS. VAN DRIEL: So there’s no record of that?

INSP. CONSTANTINE: There is no record of him taking that. That came from him to me.

MS. VAN DRIEL: Did he say to you: I took the CPIC five-day course at RCMP headquarters, date unknown?

INSP. CONSTANTINE: No, he told me he did a CPIC course at the RCMP headquarters and my investigation determined that it was a five-day course that they always give.

MS. VAN DRIEL: Did he specifically tell you that he did do this at the RCMP headquarters?

INSP. CONSTANTINE: Yes.

MS. VAN DRIEL: Well, we hear from him next week; I think we hear different story there.

Let me go to the – you say something there about your interview with Mr. Turnbull. And I believe he used to be a communications technician himself –

INSP. CONSTANTINE: At one point, yes.

MS. VAN DRIEL: – is that right? Yeah.

So this presentation slide that's attached to your report, you said that you didn't know when this particular presentation was done.

INSP. CONSTANTINE: No, we made inquiries with the RCMP, and they didn't keep records, so –

MS. VAN DRIEL: So you don't know whether Mr. Oram actually received that presentation package?

INSP. CONSTANTINE: Oh, I'm sorry. You're talking about the package that is attached to my report?

MS. VAN DRIEL: Yes.

INSP. CONSTANTINE: And that's the slides where the 10 codes –?

MS. VAN DRIEL: Yes.

INSP. CONSTANTINE: Okay, yeah. Well, yes, Mr. Turnbull told me that he distributed his portion of the presentation to all participants in the class.

MS. VAN DRIEL: Okay, so that is on a regular basis to all classes he teaches. They always get that hard-copy package.

INSP. CONSTANTINE: Well, when you say regular basis, I kind of want to put a caveat there because the training doesn't occur on a regular basis, so ... But, yes, whenever he delivers a training. That's what he told me.

MS. VAN DRIEL: Did Mr. Turnbull also relay to you how in depth he was or he would discuss these – excuse me, I have a cold – these various 10 codes with the participants?

INSP. CONSTANTINE: I'm sorry, would he discuss how in depth –?

MS. VAN DRIEL: How in depth his explanation of the various codes was? So, in other words, would he – did he tell you that he would instruct the participants that, if an inquiring officer only

says 10-29, that you are to give that officer the typical queried response, the typical CNI that comes back separately and the typical CFRO that comes back separately? Did he tell you that?

INSP. CONSTANTINE: No.

MS. VAN DRIEL: No.

Can you show – do you have in your department, other than that email that was circulated the end of December from Mr. Boland to you, to the communications staff, on how to make sure everybody was on the same page, that 10-29 comes in, you give them all, plus anything and other additional relevant? Is there anything other than that in writing that will tell a communications technician that when a 10-29 request comes in, no more (inaudible), that that's what you do.

INSP. CONSTANTINE: No. There's nothing in this instance that I'm aware of that does that, which is why I mentioned earlier that we've identified this as a need that we have to address.

MS. VAN DRIEL: Right.

Okay.

Now, are you familiar with quarterly reports?

INSP. CONSTANTINE: Yes.

MS. VAN DRIEL: What are they?

INSP. CONSTANTINE: They are reports that each division conducts on their employees, so – and their performance. Usually, the sergeant in charge of – it's either communications or patrol, wherever –

MS. VAN DRIEL: Okay, can we just narrow that down a bit, if you don't mind? Can we narrow it down to the communications?

INSP. CONSTANTINE: Okay, sure. Well, yeah, it's the same for everywhere, just the criteria would be different based on the duties.

So, yeah, there's a requirement for the sergeant to supply, in this case, a staff sergeant with a quarterly report of the employees on each team. So the sergeant would be responsible for five civilian employees that he would report on and how they conduct their business and if there are any – and if there are any issues that need to be addressed, then it's their opportunity to address them and report up the line to Staff Sergeant Devereaux.

If there is something that is not addressed and Staff Sergeant Devereaux feels it should be, then he'll go back to the sergeant and he'll ask him to make sure you address this or fix this, whatever the case might be.

And then that report is forwarded to me, and I review it. If there is anything that I have any questions about or concerns, I'll go back to Staff Sergeant Devereaux, have it addressed down the line, and then when it comes back to me, I'll sign off on it and then it goes to Superintendent Baldwin.

MS. VAN DRIEL: So in this Communications Centre, quarterly reports on the communications technicians, which is on the quarterly basis, you just told us, what would they be checked on or – it's sort of like a quality control thing, isn't it?

INSP. CONSTANTINE: Right, yes, yes.

MS. VAN DRIEL: So in the Communications Centre, what I understand, there are constant phone calls coming in from inquiring officers through telephone or through the radio, of course – a lot through the radio. There are 911 calls that come in, public inquiries that come in, all these kinds of things.

INSP. CONSTANTINE: Right.

MS. VAN DRIEL: And so it would be on those calls or messages coming in that the technicians would be checked on, I assume?

INSP. CONSTANTINE: It would include that, yes.

MS. VAN DRIEL: Yes.

INSP. CONSTANTINE: And any time that they dispatched or provided information, yeah, it would. So there are a number of different things they would look at in one given call. We usually refer to the incident as a call. And, yeah, so it could be anything from how they handle speaking to the person to whether they lacked information, which I think might be where you're going. And, yeah, so it's any range of things.

MS. VAN DRIEL: Right, and how many checks – how many incidents, if we use that word here now, how many incidents per communication technician do you check?

INSP. CONSTANTINE: By the time it gets to me – so, okay. So the sergeant does their check and –

MS. VAN DRIEL: How many? How many on that person?

INSP. CONSTANTINE: I'm trying to recall now. For each technician, I think they do four checks per technician.

MS. VAN DRIEL: Per quarter?

INSP. CONSTANTINE: Per quarter.

MS. VAN DRIEL: Right.

INSP. CONSTANTINE: Right.

MS. VAN DRIEL: Yeah.

So how would the check go? They would have a recording of –

INSP. CONSTANTINE: Yes.

MS. VAN DRIEL: – the call that would come in. Listen to it.

INSP. CONSTANTINE: Right.

MS. VAN DRIEL: And then identify if there's an issue, maybe.

INSP. CONSTANTINE: Right.

MS. VAN DRIEL: And if there's no issue, that's fine.

INSP. CONSTANTINE: Correct.

MS. VAN DRIEL: And do you then give written copies of your report to your communication technicians?

INSP. CONSTANTINE: In terms of feedback?

MS. VAN DRIEL: Yes.

INSP. CONSTANTINE: No.

MS. VAN DRIEL: No. You just –

INSP. CONSTANTINE: Not that I'm aware of.

MS. VAN DRIEL: Oh, okay.

INSP. CONSTANTINE: No.

MS. VAN DRIEL: You or the staff sergeant will meet with them to discuss any kind of concern?

INSP. CONSTANTINE: Correct, yes. It's not meant to be disciplinary.

MS. VAN DRIEL: No. No. And ...

So, presumably, as I understand, a lot of calls that come in, it's a very common code, it's the 10-29 code. Call comes in or radio message comes in: Do a 10-29 check.

Now, as we will hear Mr. Oram's evidence next week, and I think we are all already familiar with it, his practice was from the moment he started that he relays back to an officer exactly the information that they're looking for. That's how he was taught; that's what his job – on-the-job training was.

So now a call comes in: 10-29. He relays back the 10-29 query response, doesn't open CNI, doesn't open CFRO. And for the last seven, eight years he's been subjected to a quarterly report, quality control check. Not once, and I mean not once, and we will hear from him next week, has he been – has there been a concern that his response to a 10-29 query was defective or not complete.

INSP. CONSTANTINE: Correct, as I understand it, yeah.

MS. VAN DRIEL: Right.

I think that's all the questions I have. Thank you very much.

THE COMMISSIONER: Thank you, Ms. Van Driel.

Mr. Avis, do you have ...?

MR. AVIS: I'd like to – there's a document I have here. There is a 10 code, I guess, document posted in the Comm Centre. Am I right there?

INSP. CONSTANTINE: That's correct, yes.

THE COMMISSIONER: What did you call it?

MR. AVIS: Well, I'm not sure what it is called. It's a document that is – a copy of it is part of his exhibit.

THE COMMISSIONER: Okay.

MR. AVIS: There is a 10 code posted in the Communications Centre?

INSP. CONSTANTINE: Communications Centre, yes.

MR. AVIS: Could you bring up the exhibit there? I'm not sure what page it is because I have them separately. The report.

THE COMMISSIONER: That's the one with three redactions, is it?

MR. AVIS: No, this is a different one.

UNIDENTIFIED FEMALE SPEAKER: This is highly redacted.

MR. AVIS: This is highly redacted because it contains a hundred 10 codes.

MR. DROVER: 0467, page 47.

MR. AVIS: Thank you.

INSP. CONSTANTINE: Okay, so that's different from what you're holding in your hand, and what you are holding in your hand has not been redacted.

MR. AVIS: I see. I'm sorry.

Can I just show this to the witness?

Okay, I'm sorry, forgive me. I've been working (inaudible).

MS. ZDEBIAK: If I could, I think the one on the screen is actually part of the PowerPoint presentation, and what Mr. Avis has in his hands is a document that was separately posted in the Comm Centre. That's my understanding.

THE COMMISSIONER: The one on the screen is page 48, I think, of the exhibit. Exhibit 0467, page 48.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: Well, I think I have a method (inaudible).

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: What I'm going to suggest to save a bit of time, because this has to be heavily redacted because of the concerns, I'm just going to have this – this was provided. I believe counsel should have a copy. I don't know if it's been exhibited, but we can correct that later.

Is this a copy of the document that is posted in the Comm Centre?

INSP. CONSTANTINE: That's correct, yes. Yes, it is.

MR. AVIS: Okay. And it has at the top: 10 code revised 94-02-08. Correct?

INSP. CONSTANTINE: Correct.

THE COMMISSIONER: Revised – sorry?

MR. AVIS: Sorry, revised 94-02-08. Is that the 8th of February, 1994, give or take?

INSP. CONSTANTINE: Yes.

MR. AVIS: And there are one hundred 10 codes on it.

THE COMMISSIONER: Right.

INSP. CONSTANTINE: Well –

MR. AVIS: Well, okay.

INSP. CONSTANTINE: There's a couple that aren't –

MR. AVIS: Right.

INSP. CONSTANTINE: Yeah, so it's –

MR. AVIS: It goes from 10-1 to 10-100, four columns. I'm just getting a description –

INSP. CONSTANTINE: Sure –

MR. AVIS: – of it –

INSP. CONSTANTINE: – yeah.

MR. AVIS: – so there –

INSP. CONSTANTINE: All right.

MR. AVIS: – is no mistake. Appreciate that.

So would you read out what the 10-29 says, and that is posted in the Comm Centre?

INSP. CONSTANTINE: It says records check – “Records CK” – which is check – “Person-vehicle, property- Boats & Motors CNI-CRS File.”

MR. AVIS: Okay, thank you.

And that's exactly what you have in the slide presentation, am I correct?

INSP. CONSTANTINE: Yes.

MR. AVIS: The one in front of you?

INSP. CONSTANTINE: It appears so, yes.

MR. AVIS: Thank you.

INSP. CONSTANTINE: Same definition, yeah.

MR. AVIS: All right.

So let me see if this is how it goes. When an officer requests a 10-29, they get a CNI, correct?

INSP. CONSTANTINE: Yes.

MR. AVIS: A PERS –

INSP. CONSTANTINE: Yes.

MR. AVIS: – correct?

INSP. CONSTANTINE: Yes.

MR. AVIS: And a CFRO.

INSP. CONSTANTINE: Correct.

MR. AVIS: If in the CNI, if a caution for violence comes up, there's also an FPS or fingerprint number –

INSP. CONSTANTINE: Correct.

MR. AVIS: – correct?

INSP. CONSTANTINE: Correct, yes.

MR. AVIS: And then the Comm Centre worker is expected to press the FPS automatically, and the criminal record pops up. Am I right?

INSP. CONSTANTINE: Correct.

MR. AVIS: And then they're supposed to pass on the criminal record and the caution for violence.

INSP. CONSTANTINE: Well, they'll indicate the caution for violence, but if you get the criminal record and the criminal record is rather lengthy, it's unlikely that that will be read out over the radio.

MR. AVIS: Okay.

INSP. CONSTANTINE: It would be referenced and it would be mentioned that it could be printed, and the officer could retrieve it at headquarters.

MR. AVIS: I understand.

Now, with respect to the caution V for violence, you may not know how it gets there, but what is the source of that information? Is it the person's criminal record?

INSP. CONSTANTINE: No, it's a reference to the criminal record. It's not the actual criminal record.

MR. AVIS: I'm sorry – when the caution for V for violence comes up, does that mean they have a criminal record for violence?

INSP. CONSTANTINE: That's not how I understand it.

MR. AVIS: Okay.

INSP. CONSTANTINE: No.

MR. AVIS: That's what I'm asking you. So what does it mean?

INSP. CONSTANTINE: There's been dealings with the police before, and there's a reason to enter this caution because of circumstances that that officer encountered.

THE COMMISSIONER: So does it mean there's necessarily a conviction – for example, there might have been something in the dealings with the officer that led to that officer thinking there could be a potential for violence?

INSP. CONSTANTINE: That's correct, yes.

MR. AVIS: I'm just looking for clarity here, not a particular position. In the case of Mr. Dunphy, the only indication we have is that the only history of known violence in his background is an uttering threats charge that was reduced to a peace bond. If the V for violence comes up and that is the only violent history we can find, does that mean they are equivalent in this case?

INSP. CONSTANTINE: Can you just repeat that again so that I'm sure I'm following you?

MR. AVIS: Sure, sure. So the V for violence comes up and you say it may not necessarily be reflective of a criminal record, but in Mr. Dunphy's case the only evidence we have before us of any history of violence is that there was an uttering threats charge reduced to a peace bond.

INSP. CONSTANTINE: Correct, okay.

MR. AVIS: Would that be, in his case, where there is no other evidence of any history, the source of the V, or can they still be different?

INSP. CONSTANTINE: I think that would be the only case, the only reason why, yes.

MR. AVIS: Okay.

Now with respect to your interview with Mr. Osmond – for example, you said he told you he did the CPIC course.

INSP. CONSTANTINE: Mr. Oram, okay?

MR. AVIS: Yes.

INSP. CONSTANTINE: Okay.

MR. AVIS: Why, what did I say?

INSP. CONSTANTINE: You said Osmond.

MR. AVIS: Sorry.

INSP. CONSTANTINE: No problem.

MR. AVIS: He was on the stand for a few days. He did this course and he told you he did the CPIC?

INSP. CONSTANTINE: Yes, he did.

MR. AVIS: At RCMP headquarters?

INSP. CONSTANTINE: Right.

MR. AVIS: Then you looked it up what it was. Was anyone else present when you made that interview?

INSP. CONSTANTINE: Oh yes.

MR. AVIS: Who else was present?

INSP. CONSTANTINE: He had representation there from the union.

MR. AVIS: Okay. Anyone else with you?

INSP. CONSTANTINE: Yes, HR Director, Fiona Ellis.

MR. AVIS: Sorry. Slowly, Fiona ...?

INSP. CONSTANTINE: Fiona Ellis.

MR. AVIS: Spell that for me.

INSP. CONSTANTINE: F-I-O-N-A –

MR. AVIS: I got the Fiona.

INSP. CONSTANTINE: Yeah. E-L-L-I-S.

MR. AVIS: Okay, Ellis. And was the interview recorded by either you or Fiona Ellis in any way?

INSP. CONSTANTINE: Only notes.

MR. AVIS: So you had notes on the matter, and Fiona Ellis will have notes on the matter; is that correct?

INSP. CONSTANTINE: Correct.

MR. AVIS: Now, did you discuss with Mr. Oram whether or not he is a mentor or what he tells other workers in the Comm Centre about a 10-29.

INSP. CONSTANTINE: So we did mention the fact that, you know, how we do our on-the-job training and we asked him if he had ever trained anybody and he said he doesn't do that; however, a couple of the people interviewed said that they did sit with him for a period of time and they told us that he did, in fact, instruct them on how to relay a 10-29 and it was to give all three pieces of information.

MR. AVIS: Including if there is a V for violence, to pass that on?

INSP. CONSTANTINE: Well, we didn't discuss about that. What we discussed was giving the person CNI and CFRO.

MR. AVIS: And if on the CNI, a V pops up, they have to pass that on?

INSP. CONSTANTINE: Yes.

MR. AVIS: Okay.

In conclusion, you've been – just to change tact a little; you've been with the RNC for how long?

INSP. CONSTANTINE: It will be 33 years in April.

MR. AVIS: And you have been involved with major cases throughout your career, except since you've been in a more administrative role?

INSP. CONSTANTINE: Correct.

MR. AVIS: So there are two issues before the Commissioner that he has to consider; one is whether or not we should have something the equivalent of a SIRT in Newfoundland and Labrador, and perhaps you give the Commissioner your views on that.

INSP. CONSTANTINE: Sure. You know, I think it is critical that the public maintains confidence in their police department. If the answer to that is SIRT – I mean, to be quite honest, the system that's in place right now is a MOU between this force and the OPP.

My experience is that that has worked well, but that's based on my experience when I've been involved with them. However, it is the police investigating the police and there is a perception perhaps that may linger in the community that that's not quite appropriate or it's not quite the best way of doing things. So it's a long answer, Mr. Avis, to your question, but yes, I do believe that it would be advantageous for the public's confidence in the RNC to have something similar to a SIRT team.

MR. AVIS: And where do you think the SIRT should be situated? In our province, Ontario, Nova Scotia?

INSP. CONSTANTINE: I think, you know, you need to have connection with the community. So to have that connection with the community, I don't think that can be ascertained from afar. So I believe it should be here.

MR. AVIS: Another question I have – I'm not sure if you have the answer to it.

If my observation – Nova Scotia, as an example, they either use X police officers, and sometimes they just get officers from another force.

INSP. CONSTANTINE: Uh-huh.

MR. AVIS: We're talking of a civilian organization. Are there civilians, non-police officers, who have the kind of experience necessary to conduct, say, a murder investigation or a shooting, to your knowledge?

INSP. CONSTANTINE: You know, I've worked with some civilian investigators in terms of – well, for example, the one that I'm doing now, that I'm 90 per cent done, and she's very competent and I find that she does good work; but, she does not have, nor would I expect any real civilian member of the public to have the experience in terms of criminal investigations and the experience investigating, as you say, major crimes, such as homicide or anything like that.

So I guess, really, it should – I mean it could have civilian oversight and – but the investigators I think should be police trained.

MR. AVIS: And one last thing; another issue before the Commission is the RNC's management of media, and if – I ask you if you have any comments on that, most particularly in respect to the case before us, that is with respect to Constable Joe Smyth. So do you have any views on how the media was managed in this matter?

INSP. CONSTANTINE: Yes, I do. I'll take the liberty to speak openly about it. And I think that – you know, the officer, for example, right now that we have in that position, I think he's a competent individual, very smart, very sharp, very on the ball; however, he lacks experience. And that reporting structure right now is from that individual, who's a constable in rank, directly to the chief's office. And I've always had an issue with that.

I always felt that the chief needed at least an extra set of eyes, if not two – excuse me – extra set of eyes to review, vet, advise and come up with a final product. And that would go – should go through people who've had the experience, who know what it's like to be through that.

Yeah, I think – I think the chief's office should definitely rely more-so on the experience that he has at his fingertips – or she, whichever – and use that as a lens.

MR. AVIS: Okay. And so you're saying the reporting – if the reporting structure changed there'd be an improvement. Without any, you know – the young officer who's working there now, I'm sure he's, has been indicated, doing his best. Do you think you would benefit from having someone trained in media, more extensively in media?

INSP. CONSTANTINE: Well, yes, more extensively sure. I know that our media officer does media training, but I guess conversely, as I just said about what should make up the SIRT team, I guess really, if we're gonna do media, then we should have people who have expertise in that area. And I mean sure, yeah, that would be a better fit, and perhaps a police officer alongside. I mean I really haven't given it much thought, to be honest.

MR. AVIS: Oh, no, but your comments – thank you for your comments.

I have no further questions, Commissioner.

THE COMMISSIONER: Ms. Chaytor, do you have questions?

MS. CHAYTOR: Just a couple of things to, just to clarify.

The document which is not part of your exhibit, which is being made into an exhibit, and that is the list that I understood was on the wall in the Communications Centre.

INSP. CONSTANTINE: Correct.

MS. CHAYTOR: Okay. And I didn't specifically bring you to that, Inspector, because I understood on page 2 of your report, P-0467 – and we don't need to bring it up unless you wish to see it – but I understood that you're unable to establish when that document was posted, even though the date on it appears to have been '94 –

INSP. CONSTANTINE: Yes.

MS. CHAYTOR: – you weren't able to ascertain as to how long that had in fact been on the wall?

INSP. CONSTANTINE: Right. And I'm certain that it hasn't been – that particular document has not been in that particular location because we've moved buildings –

MS. CHAYTOR: Right.

INSP. CONSTANTINE: – since then. So it's inevitable that it wasn't there, but when it went there, I have no idea.

MS. CHAYTOR: Okay. All right.

So you're not able to say whether or not that was there and available for Mr. Oram to have consulted with at the time that we're dealing with here?

INSP. CONSTANTINE: No, I'm not.

MS. CHAYTOR: Okay.

And the question about the chief's office relying upon the experience he has around him, and I understand in saying that you're speaking in a general sense and not necessarily specific to the situation regarding this matter?

INSP. CONSTANTINE: Well, I was asked about a media. So what would I see as a better route?

MS. CHAYTOR: Yes, in terms of public communication, though. And you made a comment about him relying on, you know, the other experience that he had around him because we have had evidence – Commissioner has had evidence before him that he did – there certainly were communications between Deputy Chief Singleton and Superintendent Sheppard with respect to some of the issues around public communications.

INSP. CONSTANTINE: Yeah, I have no doubt that he did. I guess I took it to be a more general question –

MS. CHAYTOR: Yes.

INSP. CONSTANTINE: – and not about this situation.

MS. CHAYTOR: And I just wanted to clarify that, yes.

Thank you.

Those are my questions, Commissioner.

THE COMMISSIONER: Okay. Have we exhausted the day? No further questions?

All right, we'll adjourn until tomorrow at 9:30.

Thank you.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now closed.