



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 29

Commissioner: Honourable Justice Leo Barry

Thursday

23 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Okay. Anything before we start?

MR. AVIS: Very briefly, Commissioner.

I was going to do this yesterday evening, but I appreciate why everyone was leaving. I simply want to advise the Commission that it is my intention to be making application on behalf of the RNC to introduce some expert testimony on threat and risk assessment.

We retained a Staff Sergeant Patrick Lenehan from the Justice – I think I have the acronym right, JOPIS, Justice Officials Protection and Investigations Section.

I expect that – I've been advised that the report will be available to me, ready by Friday, but then because it's –

THE COMMISSIONER: Tomorrow?

MR. AVIS: Yeah, but because it's out of province, it has to go up a couple of levels and I'm working on accelerating that process so that we get it as soon as possible.

THE COMMISSIONER: Well, this train is going downgrade. You can pass on. We're not delaying for anything unless it's very, very significant.

MR. AVIS: Well, I'm merely advising at this time. And I understand that we'll debate that later, but I wanted to just put it on the record, Sir, that's all.

THE COMMISSIONER: All right.

I tell you, Mr. Avis, I'm wondering why it's at this late stage that it's coming forward, you know.

MR. AVIS: Well, with all – see, it is something that potentially could be addressed by the use-of-force expert.

THE COMMISSIONER: Right.

MR. AVIS: I don't have the report. And it's the same with the other one. Mr. Kennedy and I have been working on these. Mr. Kennedy apparently has been writing to your counsel about this particular threat and risk assessment saying he feels it's necessary.

I indicated as with, because I was initially –

THE COMMISSIONER: We have – anyhow.

MR. AVIS: I really didn't – I just wanted to – I realize – let me get the report and discuss it then because we're in a bit of a vacuum right now. I didn't want to take up any time, I merely wanted to advise you, but I –

THE COMMISSIONER: All right. I'm –

MR. AVIS: The argument will come later.

THE COMMISSIONER: And, you know, –

MR. AVIS: I know what – I know you've –

THE COMMISSIONER: You know my –

MR. AVIS: Yes.

THE COMMISSIONER: – where I'm coming from, Mr. Avis.

MR. AVIS: Absolutely, and I will address that.

THE COMMISSIONER: We've got a schedule that's laid down, the time within which the report is to be filed, et cetera, et cetera and everybody has known that for several months.

So I'll hear you but you're going to have to be a persuasive individual, possibly, but I'll keep an open mind and we'll see what the report is.

All right. Anything else?

MR. KENNEDY: Commissioner, I can just indicate that, in terms of your request yesterday of some, any articles or materials that are out there in relation to the – we'll call it the 24- to 72-hour suggestion, for lack of a better term right now.

THE COMMISSIONER: Right.

MR. KENNEDY: I spoke to Dr. Collins last night and he will have a number of these articles to me today which I will provide to you.

THE COMMISSIONER: All right.

There's some material out there with respect to one of the so-called experts, Mr. Grossman, that is not all that complimentary to him, if I could put it in those terms.

MR. KENNEDY: Sorry, to who?

THE COMMISSIONER: Grossman, I think it is. Is that –?

MS. O'BRIEN: David Grossman.

THE COMMISSIONER: He was referred – he's referred to in the –

MS. O'BRIEN: RNC.

THE COMMISSIONER: – the RNC's Use of Force Training Manual, yeah.

MR. KENNEDY: I'm not sure who Grossman is.

THE COMMISSIONER: Anyhow, that's – I just mention it because his name is mentioned in the Use of Force manual.

MR. KENNEDY: Yeah.

THE COMMISSIONER: Presumably Artwohl is one of the ones that you're –

MR. KENNEDY: No, no, there's a couple, actually. There's a 2016 article by the – you'll remember, Commissioner, the reference to the 2013, I think it's international association of the chief of police –

THE COMMISSIONER: Chiefs of police, yeah.

MR. KENNEDY: – psychological association.

THE COMMISSIONER: Yeah.

MR. KENNEDY: They followed in – that was 2013. They followed up with a 2016 report.

THE COMMISSIONER: Right.

MR. KENNEDY: Which I will have today.

THE COMMISSIONER: Okay, the quicker you can get it to me the better.

MR. KENNEDY: I will, I will. I –

THE COMMISSIONER: I want to have that stuff read before Monday morning.

MR. KENNEDY: Yeah, even if I have time – I will have general articles for you, too. I can provide copies of all of that.

THE COMMISSIONER: Yeah.

MR. KENNEDY: But if I can get back to my office over lunch I'll actually be able to get that article, the 2016 or '15 article.

THE COMMISSIONER: Right. Okay.

All right, go ahead when you're ready.

MS. O'BRIEN: Thank you, Commissioner.

We'll call Wanda Richards to the stand.

THE COMMISSIONER: Good morning, Ms. Richards.

MS. RICHARDS: Good morning, Sir.

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

MS. RICHARDS: I do.

MS. SHEEHAN: Please state your full name.

MS. RICHARDS: Wanda Richards.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Commissioner, before we begin I'd ask to have entered Exhibits P-0660 through to P-0674 inclusive.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

I understand, Commissioner, from counsel for the RCMP that Ms. Richards has with her at – one of the exhibits that's been entered into evidence. She's just had it highlighted for her own purpose to assist her with her testimony but that is all it is, is an exhibit that's already entered.

THE COMMISSIONER: Security blanket. We understand.

MS. RICHARDS: Thank you.

MS. O'BRIEN: Thank you.

All right, Ms. Richards, I understand that you've been a member of the RCMP as a civilian member for 11 years. Is that right?

MS. RICHARDS: That's accurate.

MS. O'BRIEN: Thank you.

And I'm going to go through your background a little bit quickly. Of course you and I had met prior to today at a pre-hearing interview. You started with the RCMP as a telecoms operator but you moved to the division of Criminal Analysis Section ultimately.

And your CV – Commissioner, Ms. Richards's CV has been exhibited as Exhibit P-0660. And I'm not going to review it all with you, Ms. Richards, but to summarize I understand you currently hold the position as an analyst within that division of Criminal Analyst Section which is known as DCAS within the RCMP. Is that right?

MS. RICHARDS: That is correct.

MS. O'BRIEN: Okay.

And to become an analyst I understand you had to complete certain course work and do a two-year mentorship program. Is that accurate?

MS. RICHARDS: That's accurate as well.

MS. O'BRIEN: Okay.

When did you complete your course work in mentorship and become an independent analyst?

MS. RICHARDS: It's kind of a fluid process, Mr. Commissioner. We do have a two-year understudy and as the same as any apprenticeship, your work would be graded by a seasoned analyst until such time that it's determined that it was of good enough quality to go alone.

MS. O'BRIEN: Do you recall what year you became an independent analyst?

MS. RICHARDS: Like I said, it would have been actually a fluid process so two years –

MS. O'BRIEN: Approximately?

MS. RICHARDS: Estimated, a year and a half to two years after I joined the DCAS unit.

MS. O'BRIEN: Okay.

And I understand even as an independent analyst, all the work that you do is reviewed by a supervisor before it's released. Is that right?

MS. RICHARDS: That is correct.

MS. O'BRIEN: Okay.

And in the present case your work was reviewed by Kyle Strong who is a criminal analyst coordinator within DCAS. Is that correct?

MS. RICHARDS: Yes. Yes.

MS. O'BRIEN: Okay. All right.

Now, before we begin I understand that your name actually appeared as a contact in Constable Smyth's cellphone records. Is that right?

MS. RICHARDS: That was true, yes.

MS. O'BRIEN: Okay.

I understand that you don't actually know why that is and that you don't recall having any communications with Constable Smyth prior to April 5, 2015. Am I right?

MS. RICHARDS: That is correct as well.

MS. O'BRIEN: Okay.

And have you had any communication with Constable Smyth since?

MS. RICHARDS: No, Ma'am.

MS. O'BRIEN: Okay.

All right, I understand that as an analyst you gather information or intelligence from open sources such as the Internet, and also private sources which would include cellphones and such. And essentially what you do is you organize that information and you analyze it and you do that to assist police members of the RCMP. Is that more or less right?

MS. RICHARDS: That a general good synopsis, yes.

MS. O'BRIEN: Okay. Thanks.

And in this case, in the investigation of Constable Smyth involving Mr. Dunphy, what were you asked to do for this investigation?

MS. RICHARDS: Commissioner, I was asked to produce a timeline of events surrounding the incident at Mitchells Brook.

MS. O'BRIEN: And who asked you to do that?

MS. RICHARDS: The direction would have come from Corporal Steve Burke.

MS. O'BRIEN: Okay and we know he was the primary investigator.

Did Corporal Burke ask you review Constable Smyth's phone records generally to look for information that may be relevant to the investigation but may not necessarily be relevant for your timeline?

MS. RICHARDS: No, I received no direction from Corporal Burke in that regard.

MS. O'BRIEN: No direction in that regard. Is that what you just said?

MS. RICHARDS: No.

MS. O'BRIEN: Okay. All right.

Now, were you given full access to the RCMP's PROS file or all the records they had in order to complete your work?

MS. RICHARDS: That's correct.

MS. O'BRIEN: Okay.

And was it you who determined what documents you would review, or were you directed by Corporal Burke to review these certain documents to create your timeline?

MS. RICHARDS: No, all the included documents would be reviewed.

MS. O'BRIEN: Okay, so you had your discretion to look through things and determine what was important.

MS. RICHARDS: That's correct.

MS. O'BRIEN: Okay.

Did you keep a record of all the documents you did review?

MS. RICHARDS: It would have been inclusive of all, so there was no need. It would have been redundant.

MS. O'BRIEN: Okay, so you took a look at everything? Okay.

I'm going to now – you submitted a report that is in at – and I'll bring it up, it's P-0664.

Thank you.

So, Ms. Richards, I understand this is your report here; I'll go through in a bit more detail. But do you recognize this as the report you prepared?

MS. RICHARDS: Yes, Ma'am, I do.

MS. O'BRIEN: Okay.

And you said just a moment ago that you prepared a timeline. And I'm just going to go through what I understand to have been your methodology in creating the timeline. So I'm at page 4 of your report and I'm just going to review the first paragraph here.

It says that: Writer reviewed available documents associated with the PROS file and the file number. "This included telephone call history, written statements, audio recordings and video recordings of statements and scene re-enactments of the events surrounding DUNPHY's death. By cross referencing witnesses' estimation of time, with documented time stamped events, the writer created a time line to approximate the actual time series of events on the day in question." The resulting chart can be viewed in Appendix A which is a graphical representation of your timeline.

"It should be noted that activities that occur over a range of time, or those that do not impart clarity to the specific time of events, have been recorded in general terms i.e. Morning. Similarly, events that have no distinct associated time stamp are listed as approximate. These events have, however, been assigned a date and time solely for the purpose of maintaining their chronological order."

So that – is that a good general description of the methodology you used?

MS. RICHARDS: As written, yes, Ma'am.

MS. O'BRIEN: Thank you.

And we will just see here that in the Findings section of your report which starts on – it's page 2 of your report but it's page 4 of the exhibit and it extends on to page 5 of the exhibit. This is where you review some of the more significant events in your timeline using, you know, written language, more writing style, and your actual timeline itself appears on page 7 and page 8 of your report which is in appendix A. Is that correct?

MS. RICHARDS: It does, yes.

MS. O'BRIEN: Okay.

And we're going to go through that in some detail and we will be, we'll expand it, we will be challenging people's eyesight. And we'll go through that in just a moment.

Before I do that though, there's two other appendixes to your report that I just quickly want to review. Appendix B which is cellphone data from Constable Smyth's phone and then there's Appendix C which is cell phone data from Mr. Dunphy's phone and one follows the other.

I just want to return very quickly to your methodology for creating the tables of the cellphone data and that is in the second paragraph of your report under the Methodology section. So here you wrote: "To further enhance understanding of the precipitating events and actions/re-actions of the persons involved in the investigation, writer reviewed cell phone data extracted from the ..." two cell phones. They were labeled as PE038 and PE5. "Writer reviewed the content of the extracted data for each phone; specifically under the Timeline tab in the Excel workbook. This spreadsheet contains a chronological list of outgoing and incoming communications to the cell phone including emails, text messages, telephone calls and Blackberry messages Where available, information such as the number dialed, text message content and email content are

displayed in this spreadsheet. This information was screened for data pertinent to the investigation and all unrelated entries deleted. Similarly, any columns containing meta data such as file size, type, tags or operating system were trimmed from the resulting spreadsheets. The remaining documents were then correct to Newfoundland Daylight Time from Coordinated Universal Time ... and used to enhance and validate the information on the timeline draft.”

So just quickly here to ensure that we understand what you’re saying here, when we look at – if we can go to page 19 of the document please, Madam Clerk. And this is just a sample from the spreadsheet that you created for Constable Smyth’s cellphone. So when we look at this, what I understand from what I just read, and please confirm that you looked for messages, emails, calls, et cetera that you felt were related. You’ve organized them here in an Excel spreadsheet form in chronological order. Is that correct?

MS. RICHARDS: They came in chronological order. I didn’t have to do anything with that.

MS. O’BRIEN: In the documents you received though, all the SMS messages were in one section and all the phone calls were in another section and all the emails were in another section. Is that not correct?

MS. RICHARDS: Yes.

MS. O’BRIEN: So you took those different types of messages and put them all together so they all flowed together in one chronological order. Is that fair to say?

MS. RICHARDS: Actually, the different sections that can be broken down, depending upon on how it’s retrieved from the cellphone, and I won’t get into that because that’s something that major crime takes care of.

MS. O’BRIEN: Sure.

MS. RICHARDS: But there are different sections where you can see, for lack of a better term, a timeline that includes the full chronological list of activities of the phone.

MS. O’BRIEN: Uh-huh.

MS. RICHARDS: It’s also broken down into sections for text messages, SMS messages, Internet access, things of that nature. So, I guess, I’m sorry, my answer is yes and no.

MS. O’BRIEN: Okay.

So what we look at here in the appendix though, it is chronologically ordered. We have in these tables, we have SMS or text messages, calls and emails all together in the same appendix.

MS. RICHARDS: Yes.

MS. O’BRIEN: Okay. And you have added a column here, the first column here that I’m understanding here, this was the UTC time. The next column that you entered you adjusted for Newfoundland standard time.

MS. RICHARDS: That’s correct.

MS. O’BRIEN: Okay. All right. And you trimmed out some metadata and file size, tags, those kind of things that weren’t of much use.

All right. I'm now going to – I'm not going to review every event on your timeline.

Madam Clerk, if we could go to page 7. I'm just going to focus on the sections of the timeline that are, that really start with when Mr. Dunphy arrived at – sorry, when Constable Smyth arrived at Mr. Dunphy's home.

Madam Clerk, if you could make that bigger. (Inaudible) I'm interested in one that takes place at approximately 1:22 p.m. on April 5.

MS. RICHARDS: Try the next page down there.

MS. O'BRIEN: (Inaudible) go to the first page and then –

MS. RICHARDS: I believe it might be entered reversed, so if you scroll down you might find the first page.

MS. O'BRIEN: Yeah, I think it has been entered in the reverse order. So here we go. So 1:22, that's the one there we're looking at.

All right. So I'll just read this out to assist people because the writing is so small, but it says that on "2015/04/05 Approx. 1:22 PM SMYTH arrives at DUNPHY residence. SMYTH arrives at the residence of Donald DUNPHY. He knocks on a window but it seems that DUNPHY is not at home. SMYTH notes anti-political signage on the residence."

Can you read that there?

MS. RICHARDS: I do, do read that.

MS. O'BRIEN: Okay. You have noted that event at approximately 1:22 p.m.

Where did you get that time information from?

MS. RICHARDS: That would have come from the re-enactment, the video re-enactment of Smyth at scene.

MS. O'BRIEN: Did he give a time of 1:22 in that re-enactment?

MS. RICHARDS: He gave an approximation.

THE COMMISSIONER: Who was that, Constable Smyth? Constable Smyth gave that –

MS. RICHARDS: I'm sorry, Sir, yes.

MS. O'BRIEN: Okay.

Did he give an approximation of 1:22?

I should say, I understand from our pre-hearing interview that at that time, at least, you weren't certain how you had estimated the time but you expected it had come from your review of Constable Smyth's re-enactment and then your own estimation of time, given the surrounding events and some of the events you knew you had definite times for.

MS. RICHARDS: I didn't need to make any estimation on that time. I got it directly from statement, so

MS. O'BRIEN: So he said 1:22, is that what you're saying?

MS. RICHARDS: Yes.

MS. O'BRIEN: Okay.

MR. KENNEDY: Sorry, but I'm a little lost here, Ms. O'Brien, 1:22 came from what?

MS. O'BRIEN: The witness is saying Constable Smyth said that in his re-enactment statement.

MR. KENNEDY: That he did what?

MS. O'BRIEN: Said that he arrived at Mr. Dunphy's residence at approximately 1:22.

It's not the information I had during the interview, but at that time I had understood that you had come up with that estimation yourself based on information he had given in his re-enactment and also your – based on other events you had known.

MS. RICHARDS: Absolutely, that's not an estimation that I made. That came verbatim from Sergeant Smyth.

MR. KENNEDY: The actual transcript says that he arrived at Mitchells Brook at 2 p.m.

I mean if we're going to have to get all these transcripts, it'll be a long day.

MS. O'BRIEN: That's fine. And I think for the purposes as we go on, Mr. Kennedy, this might not become so relevant, but we will be able to confirm that, Ms. Richards.

The next event that we have here is at 1:30 p.m. and if we just bring it over. It's the next event on the screen. Here you've noted that at approximately 1:30 p.m. "SMYTH attends Neighbour/Brother's residence SMYTH attends residence of Richard DUNPHY, brother of Donald. SMYTH is told that Donald is "difficult to deal with".

Oh, okay. I'll read it out. "Richard does not believe that there are any firearms in Donald's house." That's what that block says there.

That information of 1:30, again, I had understood that you had estimated that time from Constable Smyth's, either his –

MS. RICHARDS: His statement.

MS. O'BRIEN: – his statement.

MS. RICHARDS: And I would have cross-referenced with the statements of the neighbours as well.

MS. O'BRIEN: Okay. Okay.

The next event that you have recorded there, you have recorded it as 1:39:39 p.m. And this says, "SMYTH calls Colin DINN/Friend of DUNPHY. SMYTH makes several outbound calls to Colin DINN who is a friend of DUNPHY. Last call made at 1:39 PM."

Can you see –?

MS. RICHARDS: I can't see that. I –

MS. CHAYTOR: No (inaudible).

MS. RICHARDS: There's a scroll bar on the bottom of the screen. If you move that to the right, it should move your ...

MS. O'BRIEN: Okay. Do you have a copy of that there in front of you?

MS. RICHARDS: I don't, Ma'am.

MS. O'BRIEN: The paper document? Okay.

MS. CHAYTOR: There you go.

MS. O'BRIEN: There we go.

MS. RICHARDS: There we go.

MS. CHAYTOR: There we go. We got it figured out.

MS. O'BRIEN: Okay, so this is at 1:39:39. So we're over here. We have to go further.

MS. CHAYTOR: Move over further, Madam Clerk.

MS. O'BRIEN: All right.

MS. CHAYTOR: There we go.

MS. O'BRIEN: Okay, so here is the –here's the entry. Ms. Chaytor can just point to it, and it's at 1:39:39 and it –

MS. CHAYTOR: No, we're still not there. Hang on, now. I'm (inaudible).

MS. O'BRIEN: Oh, okay. That's fine, I've read it out. Smyth calls Colin Dinn, friend of Donald Dunphy. You refer to the time calls.

I'm actually now going to ask to go page 37 of the report, to go to the calls that you are referring to.

MS. CHAYTOR: That's correct.

MS. O'BRIEN: Okay, so we can all see it there now, and now that we've got it, I'm going to ask us to go to page 37. And the calls that you're referring to, Ms. Richards, if you just can confirm – yeah. These are the calls here. The last one is in fact at 1:39:39. And there's in fact six calls made there in that short time period between 1:36:39 and 1:39:39.

MS. RICHARDS: Yes.

MS. O'BRIEN: Is that correct? Okay. Thank you.

So I understand that, although when you created your timeline you attributed these calls as having been made to Colin Dinn, but I understand that now you know this is an error and that

those six calls were actually placed by Constable Smyth to phone numbers he had for Mr. Donald Dunphy. Yes?

MS. RICHARDS: Yes, Ma'am.

MS. O'BRIEN: Okay, and four of those calls were actually placed to Mr. Dunphy's cellphone number?

MS. RICHARDS: Yes.

MS. O'BRIEN: Okay, so Colin Dinn is an error here and that there – is it fair to say there was no indication from either Mr. Colin Dinn or from Constable Smyth that Constable Smyth ever called Colin Dinn?

MS. RICHARDS: That's – yes, as far as I know.

MS. O'BRIEN: Okay.

And, Commissioner, just to remind you that Constable Smyth's testimony was that he did not have service when he attempted to place those calls that we're looking at now, and from the information that we have from Mr. Dunphy's cellphone it appears Mr. Dunphy did not receive any incoming calls during that time period. So just to remind everyone of what the evidence has been to date.

Ms. Richards, that's one error we've just identified with respect to your timeline, but I understand that there is a second error, in that in statements – when Constable Smyth was interviewed by the RCMP and when he did his re-enactment, he did not make any statements about making those calls. Is that correct?

MS. RICHARDS: I did not find anything in the information I reviewed.

MS. O'BRIEN: Okay, so there was no statements. And he didn't offer the information. He wasn't asked questions about it. It just – it was not addressed in the interviews. Is that fair to say?

MS. RICHARDS: No, Ma'am.

MS. O'BRIEN: Okay.

So now – so when you were creating –

THE COMMISSIONER: So what are you saying is the error? You're saying this is the second error. What –?

MS. O'BRIEN: Well, I'm about – the second error is the order of two events on the timeline, Commissioner. So if I could go back to the timeline –

THE COMMISSIONER: In terms of calling Mr. Dunphy before going to Dick's and Debbie's?

MS. O'BRIEN: Yes, exactly.

THE COMMISSIONER: Sorry, Mr. Kennedy.

MR. KENNEDY: Yes, Mr. Commissioner, is there any chance that Ms. Blackmore could run off a copy of this timeline for us with a bit of a bigger print so that we can follow along? I mean, she – I'm finding it very difficult –

MS. CHAYTOR: She's probably listening to us now, but I will text her.

MS. O'BRIEN: It is, and it is.

THE COMMISSIONER: All right.

She's listening, so if she can she will, I'm sure.

MS. O'BRIEN: Yeah. Okay.

So the next area that I'm about to explore with Ms. Richards is that there's a – it's a wrong order on the timeline. In the timeline, the order goes that Smyth attends Richard and Debbie Dunphy's house and then he places these calls. However, I think as we'll see now, this is incorrect.

But, Ms. Richards, out of fairness to you, when you created your timeline you didn't have any information from Constable Smyth on this point.

MS. RICHARDS: I did not.

MS. O'BRIEN: Okay.

And we've since had some evidence from him that he placed the calls prior. He placed the calls to Mr. Dunphy, or attempted to make those calls to Mr. Dunphy, prior to him attending Richard and Debbie Dunphy's house.

MS. RICHARDS: I'm not aware of that fact, but ...

MS. O'BRIEN: Okay. I understand that.

Looking at your timeline, though, there is another way we can see that there is perhaps an error here. It's you have noted – if we look at your entry at 1:30 p.m., so if we noted this 1:30 p.m. is when you have – you've placed Constable Smyth as arriving at Richard and Debbie Dunphy's house. In the – I won't bring you back, but in the textual description of your timeline, in the findings section of your report, you state that he was there for approximately 20 to 25 minutes.

MS. RICHARDS: That's familiar to me, yes.

MS. O'BRIEN: Okay.

And then on your timeline you have him placing those calls to, well, who we now know was Mr. Donald Dunphy approximately 9 minutes later at 1:39:39 p.m., so within that 20 to 25 minutes where your timeline would indicate he was still at Richard and Debbie Dunphy's house. Is that correct?

MS. RICHARDS: It's the approximation. I can't specifically put a time-stamped event into an approximation simply because the approximation was not mine. So I really would have no reference for that, I'm sorry.

MS. O'BRIEN: Okay, fair enough.

But there was no evidence that – in the statements and in the documents you have you used, there was no evidence that Constable Smyth had placed any calls while he was at Richard and Debbie Dunphy’s home. Is that right?

MS. RICHARDS: I did not see any evidence to that, no.

MS. O’BRIEN: Okay.

And, again, so we have now had the benefit of some testimony on this point from Constable Smyth. And he indicates that he placed the calls, then he went to Richard and Debbie Dunphy’s house. So the error, it seems here, Commissioner, is that these two events on the timeline are in the wrong order and that the visit – Constable Smyth’s visit to Dick and Debbie Dunphy’s home took place sometime after 1:39 p.m.

So, Ms. Richards, now that this, you know, this error has been identified, is it fair to say that this – it would trickle down through your timeline, so that any time you have approximate events here regarding Constable Smyth’s interactions with Mr. Dunphy at his home, given that the beginning time of when he was at Richard and Debbie Dunphy’s is incorrect, those approximations now – would it be fair to say we can’t rely on those? Your times that you’ve approximated here might not be right because of this error. Is that fair to say?

MS. RICHARDS: It would be in need of revision, but I can’t speak to where they would lay after without – if I had the information at the time, it might look different, but I wouldn’t know that until I actually went in and did the actual revision. I wouldn’t be able to say just off the top of my head.

MS. O’BRIEN: That’s right.

Okay, so fair enough. So in order for you to speak confidently about your timeline, again, knowing this now, you would have to go back and do, you know, revision work and revisit it.

MS. RICHARDS: Responsibly, yes.

MS. O’BRIEN: Okay, absolutely. And that’s fine.

So I just want to be clear, though, that some of the events on your timeline are events that you approximated looking at witness statements and, you know, making good – you know, making your best estimations, but some of the events you have are actually time-stamped events.

MS. RICHARDS: Correct.

MS. O’BRIEN: Okay.

So anything that’s time-stamped from like a cellphone call or when a text message is sent and received, we can rely on those times. Is that fair to say?

MS. RICHARDS: Yes, Ma’am.

MS. O’BRIEN: Okay.

So, Commissioner, I’ll just point out quickly here on the timeline the events that we cannot really rely on and which ones we can.

THE COMMISSIONER: Uh-huh.

MS. O'BRIEN: So the event that's recorded at approximately 2 p.m., "SMYTH Returns to the DUNPHY Residence," from what Ms. Richards is saying, that one would have to be revisited. So let's not rely on that one.

The event at approximately 2:02 p.m., move to the living room, that's approximated and, again, we can't rely on that now.

Approximately 2:07 p.m., "DUNPHY becomes Suspicious," that's an approximation. We can't rely on that.

Approximately 2:13 p.m., "DUNPHY Shows Physical Signs of Anger" –

THE COMMISSIONER: Which one is that? Two –?

MS. O'BRIEN: 2:13 p.m., "DUNPHY Shows Physical Signs of Anger."

At approximately 2:13:30 p.m., "SMYTH Attempts to Diffuse the Situation." Again, that's a –

MR. KENNEDY: Sorry, Ms. O'Brien, the screen is going all (inaudible).

MS. CHAYTOR: The screen (inaudible).

MS. O'BRIEN: Oh, sorry.

MS. CHAYTOR: We need to make it smaller so it will come up.

MS. SHEEHAN: I can't (inaudible).

MS. O'BRIEN: So the one I was looking at was in the area of 2:13. So, okay, so the event I was just speaking about here, if you can just – it's the first one appearing on the screen there now. There we go.

MS. CHAYTOR: I'll do it. (Inaudible.)

MS. O'BRIEN: There we go.

MS. CHAYTOR: Okay.

MS. O'BRIEN: So these events are the ones that I just went through, 2:07, 2:13 and 2:13:30. They're the ones I was just talking about, Commissioner.

THE COMMISSIONER: Mm-hmm.

MS. O'BRIEN: Again, these cannot be relied on.

The next event is at 2:13:45 p.m.: "SMYTH Recognizes Firearm." That one cannot be relied on.

And the next event is at approximately 2:13:46 p.m.: "SMYTH Draws His Weapon/Shots Fired." Again, we can't rely on that.

The next one is at 2:13:47 p.m.: "SMYTH Exits Livingroom." We can't rely on that.

And the last one is at 2:15:20 p.m.: "SMYTH Re-enters the Livingroom." We cannot rely on that.

Now, within this period, there are a couple of events, Ms. Richards, I'll just get you to confirm we know are correct because they're time-stamped. And that would be at 1:46:34 p.m. where Dunphy texts –

THE COMMISSIONER: Sorry, one second now.

MS. O'BRIEN: Sorry.

THE COMMISSIONER: 1:36 –

MS. O'BRIEN: 1:46:34 p.m.

THE COMMISSIONER: 1:46:34, thank you.

MS. O'BRIEN: “DUNPHY Texts Colin DINN.”

Ms. Richards, that would've been a time-stamped event, is that correct?

MS. RICHARDS: Yes, it is.

MS. O'BRIEN: Okay, so that one can be relied on, Commissioner.

THE COMMISSIONER: Oh, wait now. I'm sorry; I'm just having trouble finding that one – 1:46:34. You don't have that out in the aid, do you, in the –?

MS. O'BRIEN: I do. It's on page two of your aid, Commissioner. It's the second entry on page 2 of your aid.

THE COMMISSIONER: Okay, yeah. All right.

Okay. Thank you.

MS. O'BRIEN: And then the next one there that can be –

THE COMMISSIONER: So that's time-stamped.

MS. O'BRIEN: That's time-stamped, so that is a reliable event.

THE COMMISSIONER: Go ahead.

MS. O'BRIEN: And the next one in this period that's reliable would be on page 3 of your aid. It is the event entered at 2:27:01 p.m.

THE COMMISSIONER: 2:27:01.

MS. O'BRIEN: And that is when Constable Smyth alerted the RCMP Communication Centre. So that's when he made his first call to the RCMP Communications Centre to report the shots having been fired.

And then the next event that is also known is at 2:30:47 p.m., and that is when Constable Smyth alerted the RNC Communication Centre.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: So just to be clear about this, Ms. Richards, so that people know what we're able to rely on here now, when we review your timeline as it was presented, and in fairness you did not have the information that we do now from Constable Smyth when you created it, but according to your timeline the time between when Constable Smyth discharged his firearm and when he first called the RCMP Communications to report those shots fired, on your timeline that was shown as, when you add up the times, 13 minutes and 15 seconds.

Does that sound more or less right to you?

MS. RICHARDS: That looks accurate, yes.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Sorry, from when to when? Give me that again.

MS. O'BRIEN: According to Ms. Richards' timeline, the time between when Constable Smyth discharged his firearm –

THE COMMISSIONER: Right.

MS. O'BRIEN: – and to when he called the Communications Centre at the RCMP –

THE COMMISSIONER: Right.

MS. O'BRIEN: – was 13 minutes and 15 seconds, Commissioner, and to get that number I had to do a little math.

THE COMMISSIONER: Okay.

MS. O'BRIEN: So 13 minutes and 15 seconds.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: And I just want to be clear now that from what we now have from Ms. Richards that is not and you cannot rely, we cannot rely, on that time estimation.

Would that be correct, Ms. Richards?

MS. RICHARDS: I would prefer to go through and have to review it myself and make my own time estimations, but –

MS. O'BRIEN: Yeah.

So, fair enough, but I just want to point out that this 13-minute-or-so time delay, Commissioner, for what we have now, it's not reliable based on the information we have now.

THE COMMISSIONER: Okay.

Now, how did you get that, do your math there?

MS. O'BRIEN: I took the events between – I just calculated, it wasn't – I calculated the event that happened at 2:13:46 p.m.

THE COMMISSIONER: 2:13:46. Okay.

MS. O'BRIEN: That's the event that was shown on this timeline –

THE COMMISSIONER: Well –

MS. O'BRIEN: – as when Smyth drew his weapon and fired shots.

THE COMMISSIONER: Okay.

So that's an approximate number.

MS. O'BRIEN: Right. And that was Ms. Richards's approximate time.

THE COMMISSIONER: Right.

MS. O'BRIEN: And that was an approximate number. And then the time we know – knew was that the RCMP was alerted at 2:27:01 p.m.

THE COMMISSIONER: Right.

MS. O'BRIEN: So the time lapse between those two events was 13 minutes and 15 seconds.

THE COMMISSIONER: Okay.

That's the difference between 2:27:01?

MS. O'BRIEN: Yes.

THE COMMISSIONER: And 2:13:46?

MS. O'BRIEN: Correct.

THE COMMISSIONER: Okay. Fifteen, all right, looks right.

MS. O'BRIEN: And because now we know that the estimation of the first event, when Constable Smyth drew and fired his weapon, is one of the events that we can no longer rely upon –

THE COMMISSIONER: Right.

MS. O'BRIEN: – we cannot rely upon that, the accuracy of that time delay between shots and call.

THE COMMISSIONER: Okay, now, I listened. I missed the last couple you had that you couldn't rely on. You went down the list. At 2:15:20, you can't rely on that. Then you start at 2:27 –

MS. O'BRIEN: The 2:15:20 was the last one I said in this –

THE COMMISSIONER: You can't rely on.

MS. O'BRIEN: – you can't rely on.

THE COMMISSIONER: Okay. Then you started to move down to the ones that you know are correct.

MS. O'BRIEN: That's right.

THE COMMISSIONER: All right. Okay.

Sorry, I'm a little slow this morning.

MS. O'BRIEN: No problem. And I know I am going quickly.

Did you – are you caught up there now or do you need me to review ...?

THE COMMISSIONER: Yes, I'm fine.

MS. O'BRIEN: Okay. Thank you.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: So I just – you know, as we're putting in this document, I just want you to be clear about what we can use it for and what we cannot use it for.

After the calls to the – after Constable Smyth reported the calls, Ms. Richards, your timeline continues on until – from that time up until when the first responders arrived. The error that we have now identified earlier on in the timeline would not have flowed through this period of your timeline because this period of your timeline starts with those known calls. Is that fair to say?

MS. RICHARDS: This one actually – yes. Yeah.

MS. O'BRIEN: So after the known calls were placed to the RCMP and then the RNC, your next entry on your timeline takes place at 2:42 p.m., "SMYTH Exits Residence."

Where did you get that approximate time?

MS. RICHARDS: Well, I would have went through between the call to the OCC– or the call to RCMP and the "RCMP Arrive on Scene," and I would have made a best approximation between those.

MS. O'BRIEN: Okay. So that would have been your best approximation.

Is this – would it have been based on statements Constable Smyth made as to how long he remained in the residence?

MS. RICHARDS: That's correct.

MS. O'BRIEN: Okay.

And then the next event that you have here is at 2:45 p.m., and "SMYTH Turns on Emergency Lights" is the note you have on that one.

Again, would this have been based on statements he made to the RCMP or in the re-enactment?

MS. RICHARDS: My apologies, there is an error on that entry as well.

MS. O'BRIEN: Okay.

MS. RICHARDS: I didn't realize it until I went through it with RCMP legal counsel.

MS. O'BRIEN: Okay.

MS. RICHARDS: The – oh no, I'm sorry, I'm mistaken. That one is correct. I'm sorry. I apologize.

MS. O'BRIEN: But, again, that one was just an estimation.

MS. RICHARDS: It is, it's an estimation.

MS. O'BRIEN: Just an estimation, okay.

And so where is the error? It's on the last one?

MS. RICHARDS: No, it wouldn't be on the last one, either. I'm sorry, I'm mistaken. It must be on another page of the document.

MS. O'BRIEN: Okay.

So the last one is when RCMP arrives on scene, and you have that recorded as 2:55:06 p.m.

MS. RICHARDS: Yes.

MS. O'BRIEN: Okay. And where would you have gotten that number from?

MS. RICHARDS: That would have come from the member's notes, Constable Cox.

MS. O'BRIEN: Constable Cox's notes. Okay, thank you.

Okay, I understand that before you finished your final timeline, you sent drafts of it to Corporal Steven Burke for his review, is that right?

MS. RICHARDS: That's correct.

MS. O'BRIEN: Okay.

Did Corporal Burke identify any problems with the draft timelines you sent him?

MS. RICHARDS: Not that I can recall.

MS. O'BRIEN: Okay.

And I know you sent him a few drafts, but if we go to P – if we can have up exhibit P-0673, please.

Thank you. This is an email, which will be easy for us to manage.

So it looks like here you're righting this in June 9, 2015, and you're writing Corporal Burke to say:

"I just handed off a copy of the report and time line to Kyle Strong for review. Have you had an opportunity to review your draft, before I make the final revision?"

"Also, you requested a large scale copy of the timeline for the judge." Well, that would have been nice. "Once confirmed, I will print this off for large format for better legibility."

So he –

THE COMMISSIONER: Somebody obviously got my copy.

MS. RICHARDS: I apologize for that, Mr. Commissioner. You certainly should've had a copy.

MS. O'BRIEN: Anyway, so you got – so you would have sent him – the draft you sent him at this time, that would have been essentially what became your final draft, is that right?

MS. RICHARDS: It would be logical, but I can't speak specifically if there was another one after that or not.

MS. O'BRIEN: Okay. So, from my review, it looks like this would have been the last one.

He said: "Yes I did review the draft and it looks good to me."

And you said: "10-04." I should have a final copy by end of the day.

So does that sound like it would have been your last draft?

MS. RICHARDS: Like I said, I really can't specifically say; it looks like it would have been.

MS. O'BRIEN: Okay. All right.

And so Corporal Burke never raised an issue with you about the phone calls to Colin Dinn?

MS. RICHARDS: No, Ma'am.

MS. CHAYTOR: (Inaudible.)

MS. O'BRIEN: Okay. Yes, yes – sorry.

And as Ms. Chaytor has just pointed out, the date of this email, which is June 9, is in fact, when we look at your report, it is the same date as your report that's been entered in evidence at P-0664. That's also dated June 9.

MS. RICHARDS: Yes, Ma'am, you're correct, yeah.

MS. O'BRIEN: Okay. So that probably answers that question.

Okay, those are my questions for you, Ms. Richards. Others may have questions. Thank you.

THE COMMISSIONER: Okay, who's going first? Ms. Breen?

MS. BREEN: Thank you.

Good morning, Ms. Richards. My name is Erin Breen; I'm counsel for Meghan Dunphy.

MS. RICHARDS: Morning, Ms. Breen.

MS. BREEN: Good morning.

Ms. Richards, I just have, first of all – I understand the work of the analysts, generally, we see these timelines and documents that you produce in major cases, is that fair to say?

MS. RICHARDS: Yes, Ma'am.

MS. BREEN: And that normally we see these in murder files; we also see them produced in major drug conspiracies. And normally it's when cellphone data is important to a case in terms of determining the sequence of events.

Would that be fair to say?

MS. RICHARDS: Not always, but accurate.

MS. BREEN: Okay. So it would be a regular part of your job to be reviewing cellphone content to place into your documentation to create this kind of a timeline?

MS. RICHARDS: Yes.

MS. BREEN: And, Ms. Richards, sometimes your timelines would be in relation to events that occur over many months, is that correct? Investigations, in particular drug conspiracies, can go on sometimes for over a year, is that right?

MS. RICHARDS: Yes.

MS. BREEN: It is – that can be very complex work.

MS. RICHARDS: Yes, indeed.

MS. BREEN: Okay. But the purpose of the documentation that you produce is merely – it's an aid to the investigator, is that right?

MS. RICHARDS: Yes, Ma'am.

MS. BREEN: Okay. This is not evidence, of itself.

MS. RICHARDS: That wasn't the intent for the production, no.

MS. BREEN: And in this case – and this is a very serious case where a person was killed by a police officer. And obviously, you know, here we are at a public inquiry. And your document was done on June the 9th, 2015.

Did anyone from the RCMP make you aware that this document was going to be included as an appendix to the RCMP final report, prior to its release?

MS. RICHARDS: When we provide these to the investigators, it is theirs to use as they see fit, pretty well much, to enhance their reports or to give support to their investigation. It's prepared for them. So it is at their discretion for its use.

MS. BREEN: Okay, so, ultimately, what happens to the report, you don't expect anyone to come back to you to tell you what they're going to do with it?

MS. RICHARDS: Not specifically, no.

MS. BREEN: Okay.

And, for example, if it was going to be entered into, you know, let's say a trial or a court proceeding, would you have been contacted by someone, come back to you and say: Look, we're

going to use this in trial, we're going to enter it as an exhibit, you may be called to testify as a witness? Is that a normal part of your role?

MS. RICHARDS: It would be. This is the first instances, but I wouldn't say it'd be uncommon.

MS. BREEN: Okay. And I understood from your interview that there had been some training ongoing where you were anticipating that analysts, like yourself, might be called in court to enter these kinds of exhibits, in a trial proceeding.

MS. RICHARDS: It is becoming more common.

MS. BREEN: Okay.

Have you, yourself, been called yet to provide such evidence?

MS. RICHARDS: Never.

MS. BREEN: Okay.

Now, the timeline that was produced here was really in relation to one particular day.

MS. RICHARDS: Yes.

MS. BREEN: April the 5th. And in terms of the time that was required to produce the timeline, I would assume that in other cases, in particular, as I've noted, drug conspiracy cases that can go on for over a year, they would be a much more time-consuming task. Is that right?

MS. RICHARDS: Absolutely, just for the retrieval of data.

MS. BREEN: And the retrieval of data, in this case, this was a cellphone extraction that was provided to you by someone from the investigative team, is that right?

MS. RICHARDS: I was given access by a member of the investigative team.

MS. BREEN: And that would've been Corporal Burke?

MS. RICHARDS: I don't recall who actually gave me the information, but he was the lead on the investigation.

MS. BREEN: Okay.

MS. RICHARDS: I can't – I can't say specifically who gave it to me.

MS. BREEN: And we understand that Corporal Steve Burke was the lead investigator in this case. So would that make sense, that it was Corporal Burke who gave you access to the documentation here?

MS. RICHARDS: It would've been him, one of his team.

MS. BREEN: Okay.

MS. RICHARDS: I really couldn't say. You'd have to speak to him.

MS. BREEN: And I just wanted to ask you, Ms. Richards, the extraction data that you were provided with, you were provided with extraction data first from Constable Smyth's BlackBerry phone; and you were also provided with an extraction from Mr. Dunphy's iPhone. Is that right?

MS. RICHARDS: Correct.

MS. BREEN: So two separate, I guess, extractions. What was the form of the extraction? How did you access it? Did you access it yourself via a link on a computer? Or was it given to you, you know, separately on a disk drive or – I'm just trying to understand here because the cellphone extraction data has become an issue.

MS. RICHARDS: It would have been on a hard disk.

MS. BREEN: So it was something that had been burned off for you or downloaded for you onto a separate disk and provided to you.

MS. RICHARDS: Yes.

MS. BREEN: And were you given – was it an Excel spreadsheet that you had access to with respect to Constable Smyth's BlackBerry?

MS. RICHARDS: I don't recall if it was specifically Excel.

MS. BREEN: Okay, it was some form of a spreadsheet, was it?

MS. RICHARDS: Yes.

MS. BREEN: Okay, so it wasn't the original, because we understand that there's some kind of a software package that the police – and I understand that this is not your role; this is going to be coming from a different witness – but that there's a cell – or a software program that really is a data dump from these phones and is – there should be, you know – as you said, there's everything there. There's a complete record of everything that was on that phone.

Is that what you were provided with when you did your report?

MS. RICHARDS: I don't know what was on the phone itself completely, so I couldn't comment on that.

MS. BREEN: Okay but –

MS. RICHARDS: I got a report, and that's what I used.

MS. BREEN: Okay, and the report that you got, who had the report been done by?

MS. RICHARDS: The report that I received was done by a member of our technical crime unit.

MS. BREEN: And would that be Corporal Luther?

MS. RICHARDS: I can't recall if it was Corporal Luther or another member of his team. Sorry.

MS. BREEN: Okay. And we understand – we're going to have evidence from Corporal Luther that he was the person who, you know, took the cellphone and utilized the software package to create or to get the data from the phone.

So what you're saying is that you were working from Corporal Luther's work, as opposed to the original cellphone, all of the information that was on the cellphone.

MS. RICHARDS: Absolutely. I didn't handle the phone at all, so –

MS. BREEN: Okay. And the same goes for Mr. Dunphy's phone, is that correct?

MS. RICHARDS: Accurate, yes.

MS. BREEN: You're working from Corporal Luther's report?

MS. RICHARDS: If it was Luther who gave me the information, but I can't confirm.

MS. BREEN: Okay, you're working from the RCMP member's report of what was on the phone –

MS. RICHARDS: Yes, Ma'am.

MS. BREEN: Not the original cellphone itself.

MS. RICHARDS: Absolutely.

MS. BREEN: Okay.

Now, we also understand you had a supervisor in your division, Kyle Strong, you've given that information. As well, the sergeant in charge of your unit is a Sergeant Conohan, is that right?

MS. RICHARDS: Staff Sergeant Conohan.

MS. BREEN: Staff Sergeant Conohan.

And you had said in your interview that, when you produce your work, it does get reviewed in that unit first before you provide it on.

MS. RICHARDS: Yes.

MS. BREEN: So, in this case, the document you produced was reviewed by Kyle Strong. Was it also reviewed by Sergeant Conohan?

MS. RICHARDS: Staff Sergeant Conohan would have been included. I don't know if he reviewed the documentation. I could – you would have to ask him. I don't know if he reviewed it at all.

MS. BREEN: Okay. When you say Staff Sergeant Conohan would have been included, included in what?

MS. RICHARDS: He would have been included in any discussion or included on any emails or any documentation that I would have sent by email to my supervisor, Strong. I would have included Staff Sergeant Conohan more as an FYI; at his discretion if he reviewed the attached documents or not.

MS. BREEN: Okay, and do you recall, Ms. Richards, any meeting or any time that Sergeant Conohan or Mr. Strong met with you to review the document or whether there were any discussions in relation to the document that you can tell us about?

MS. RICHARDS: I don't recall.

MS. BREEN: And is that something you would have noted?

MS. RICHARDS: Not specifically, no. It wouldn't be uncommon for my supervisor to review a document, probably make some suggestions with regard to semantics; but with regard to content, no.

MS. BREEN: Okay. And in this particular case with the document that you produced, did Staff Sergeant Conohan or Mr. Strong come back to you to either ask you any questions about the content or request that you make any revisions?

MS. RICHARDS: I don't recall.

MS. BREEN: You don't remember?

MS. RICHARDS: I don't recall, sorry.

MS. BREEN: Okay.

You've told us that Corporal Burke is the member who asked you to produce the timeline of events, but it was in your discretion to basically review what you felt was necessary for that.

MS. RICHARDS: Yes.

MS. BREEN: So he didn't point you to any documents to say: Look, pay close attention to this, this is an issue I'm particularly interested in, this is something I'm trying to figure out?

MS. RICHARDS: I don't recall.

MS. BREEN: Would you have taken note, though, Ms. Richards, in terms of the job that you had before you, if an investigator was saying: I want you to pay particular attention to this specific issue? I presume that's something that you would have noted or that you would recall.

MS. RICHARDS: Yes.

MS. BREEN: But that didn't happen here?

MS. RICHARDS: No, Ma'am.

MS. BREEN: Now did Corporal Burke, Ms. Richards, ask you to look in particular for evidence of contact between Mr. Dunphy and the RNC prior to the shooting?

MS. RICHARDS: I don't recall.

MS. BREEN: Okay, and again, it goes back to my last question. If he had have asked you that question, I presume that's something you would have said: I got to pay close attention to this issue about contact between Constable Smyth and Mr. Dunphy, or the RNC and Mr. Dunphy.

MS. RICHARDS: I might have at the time, but I can't say right now.

MS. BREEN: Okay.

Were you aware, and perhaps if – Madam Clerk, could you bring up Exhibit – I believe it’s P-0511, please.

MS. SHEEHAN: That’s a form?

MS. BREEN: Yes, the form of Constable John Galway.

MS. SHEEHAN: That’s not the right exhibit.

MS. BREEN: Sorry?

MS. SHEEHAN: That’s not the right exhibit.

MS. BREEN: Oh, okay.

It was entered as an exhibit when Corporal Burke testified. I have it in my notes as Exhibit P-0511 and it was a form, a requisition form, for the search of Mr. Dunphy’s cellphone.

Yes, I believe this is the one. Could you – yes, thank you very much.

Ms. Richards, in your access to the documentation in this case, do you recall whether you reviewed this requisition form in relation to Mr. Dunphy’s cellphone?

MS. RICHARDS: I certainly don’t recall specifically.

MS. BREEN: Okay.

Madam Clerk, could you scroll up to the top of that document. I want to make sure this is – yeah, this is the correct one. This is the Assistance Request for the Technological Crime with respect to the cellphone of Don Dunphy, and if we could scroll to the bottom, Madam Clerk, to page 2.

And you’ll see there, Ms. Richards, at that time Constable Galway had asked for the search of Mr. Dunphy’s cellphone. And if you could look at the last three lines there: “The phone needs to be searched, in hopes of finding any evidence that would shed some light on any communication that Mr. DUNPHY had with the RNC, prior to this incident.”

Do you recall – you don’t recall seeing this form during your review of the documentation?

MS. RICHARDS: This form wouldn’t have been sent to me. It was an Assist Request to Tech Crime.

MS. BREEN: Okay.

So you never – this is not a form that you had access to?

MS. RICHARDS: I might have, but in review of the file I wouldn’t delve into this because it wasn’t directed to me.

MS. BREEN: Okay, and fair enough.

MS. RICHARDS: And it wasn’t something I’d need for a timeline of events.

MS. BREEN: Okay.

And I understand that you would have had a lot of documentation there for yourself to wade through, sort through and figure out what did you need, but this is not a document or this is not something that Corporal Burke brought to your attention that the investigators were specifically interested in looking for evidence of communication from Mr. Dunphy or between Mr. Dunphy and the RNC.

MS. RICHARDS: I really don't recall.

MS. BREEN: Okay.

But, again, Ms. Richards, Corporal Burke, you would have expected him to bring that to your attention, if that was a particular issue for him at that time.

MS. RICHARDS: I have no expectations from Mr. Burke whatsoever.

MS. BREEN: Okay.

But I thought you had just said that, you know, Corporal Burke had left it to your discretion, but had he pointed something out to you like this, then you would have gone – you would have paid particular attention to that.

MS. RICHARDS: Like I said, I have no recollection of him making any requests of that nature.

MS. BREEN: And –

THE COMMISSIONER: Yeah –

MS. RICHARDS: I really don't understand what she's getting at, Mr. Commissioner.

THE COMMISSIONER: – Ms. Breen is asking, if Corporal Burke had made a request like that, wouldn't you remember it?

MS. RICHARDS: I'm sorry, I really couldn't say. It's hypothetical. I can't say if I would or wouldn't, like –

THE COMMISSIONER: Well, it's only – it's not pure hypothetical in that it's a question as to how you, yourself, operated. So what was your practice?

MS. RICHARDS: Oh, yes, Sir, but I understand she's asking me if I remember it and would it be noteworthy for me and why don't I recall it now, but –

THE COMMISSIONER: She's not – no, she's not asking you if you remember it. She's asking you, if I understand correctly, Ms. Breen, that if you had been asked by Corporal Burke, would you have probably remembered it because it was your practice to pay attention to what Corporal Burke would direct you to?

MS. RICHARDS: Probably remembered it, I guess, yes. If you want me to say probably, I could say that.

THE COMMISSIONER: Well, that's – that's in –

MS. RICHARDS: So I'm – I'm sorry, I don't mean –

THE COMMISSIONER: It's an important word in law, "probably."

MS. RICHARDS: I don't mean to be difficult, Sir. I really don't.

THE COMMISSIONER: No, no, I'm just trying to help you.

Is that the question you were asking?

MS. BREEN: I appreciate – yes, thank you, Mr. Commissioner.

And, Ms. Richards, I'm not trying to browbeat you on this issue, but the reason I'm highlighting it is because it does become important because there is a mistake made with respect to Constable Smyth's attempt to contact Mr. Dunphy. That's what's come to light now. You've acknowledged that there was a mistake made by you in the preparation of the report.

MS. RICHARDS: Yes.

MS. BREEN: And that we – I believe it's been established here, Constable Smyth has said and the phone records demonstrate that there were in fact several attempts to contact Mr. Dunphy made by Constable Smyth.

MS. RICHARDS: You are probably correct on that but –

MS. BREEN: And so what I'm suggesting to you, Ms. Richards, that it appears that Corporal Burke did not draw your attention to this issue when you were doing your timeline because, I would submit to you, that you would have been attempting to pay particular attention to that issue during your work. And what we have instead is a mistake made on what appears to have been at least an important issue to one investigator when he asked for the search of Mr. Dunphy's cellphone.

I'm asking you, Ms. Richards, I'm suggesting to you that Corporal Burke never drew your attention to this issue prior to you producing the timeline. Is that likely?

MS. RICHARDS: It's possible.

MS. BREEN: So you're saying it's –

THE COMMISSIONER: There's a big difference between possible and probable.

MS. RICHARDS: And I understand, Commissioner.

THE COMMISSIONER: Possible doesn't really answer the question because almost anything is possible, but probable answers the question.

MS. RICHARDS: I understand. Yeah, and I'm sorry, Commissioner. I really don't remember and I can't say that I would have remembered. I just don't know. I really don't recall.

MS. BREEN: Okay, and, Ms. Richards, I'm assuming that when you're doing your duties, you're doing your best to be diligent.

MS. RICHARDS: Absolutely.

MS. BREEN: You're doing your best to be thorough.

MS. RICHARDS: Yes, Ma'am.

MS. BREEN: You're doing your best to listen to any instructions given to you by the lead investigator.

MS. RICHARDS: Yes.

MS. BREEN: That you would take note and you would remember instructions given to you by a lead investigator in a case of this nature.

MS. RICHARDS: I can't say that, Ma'am. I'm sorry. I really don't remember.

MS. BREEN: Okay. And that you would not have made a mistake like this had Corporal Burke drawn your attention to the critical nature of that issue for the investigative team.

MS. RICHARDS: I don't know that to be true. I'm sorry.

THE COMMISSIONER: Okay, I think you've gotten –

MS. BREEN: That's fine. I'm going to move on.

THE COMMISSIONER: – to the point where you're getting into your closing argument on that point now rather than questioning, Ms. Breen.

MS. BREEN: That's fine, Mr. Commissioner.

Ms. Richards, in your work generally, have you had errors brought to your attention before by lead investigators of the file?

MS. RICHARDS: Not that I recall.

MS. BREEN: Okay.

So what is the purpose of sending drafts to the main investigator?

MS. RICHARDS: Okay, we send off drafts to the investigator. The timeline itself and the analytical product is a corroboration between our unit and the unit that we're acting in support of. We keep them involved in the process as we go along to make sure that relevant information that they are looking for is going to be revealed in the documentation and that our analytical product is actually suiting their needs, because it is indeed their product.

MS. BREEN: Okay.

MS. RICHARDS: So –

MS. BREEN: Oh, sorry. Continue.

MS. RICHARDS: No, that's pretty well it. So there would be a give-and-take, communication back and forth, during the process.

MS. BREEN: Okay.

And when you say suiting their needs, what do you mean by that?

MS. RICHARDS: Well, in aid of the investigation. If there are events that they need clarity on, they would come back and – well, for starters, the product would be used to highlight maybe any

omissions or any need for further investigation. So the investigators would take that, probably perform other witness statements and then come back with more information to – if you will allow, Mr. Commissioner, it would be filling in holes in the investigation.

MS. BREEN: Or it could, as you said, highlight other issues or things that may stand out to the investigator when they look at your timeline, to say that requires further questioning.

MS. RICHARDS: Yes.

MS. BREEN: Okay.

For example, in this case what we have, we have in your timeline the fact that Constable Smyth calls Colin Dinn prior to the shooting. That was in your timeline, that was provided to Corporal Burke for his review in a draft, but no one came back to you to say where does that come from, that requires further questioning.

MS. RICHARDS: No.

MS. BREEN: Ms. Richards, have you been asked to revise your timeline by anyone since you provided it to the RCMP up to this day?

MS. RICHARDS: Certainly not.

MS. BREEN: Okay.

And finally, Ms. Richards, I wanted to ask you about one comment that you made in your interview with Commission counsel, and this appears at page 180 of the interview. Ms. Chaytor had asked you a question, and you were referring to an incident where there is a police-involved shooting.

And it appears at page 179 to 180 of your interview, Ms. Richards, and you say: We knew that there was a police-involved shooting. That's always a situation of anxiety for both forces.

Ms. Chaytor says to you: And why is that?

And your answer was: Well, it's a rare occurrence to have a police-involved shooting, I mean, especially here. You know, no one likes – we don't need the bad publicity. And it's just unfortunate circumstances and it just makes everybody tense.

Do you recall saying that to Ms. Chaytor?

MS. RICHARDS: I sure do.

MS. BREEN: And when you say we don't need the bad publicity, who is the "we" that you're referring to?

MS. RICHARDS: I was actually referring to the RCMP.

MS. BREEN: Okay.

Thank you very much.

THE COMMISSIONER: Any other questions?

MR. KENNEDY: I have some questions.

What time were you going to get morning break? It's 20 to now; I will be 10 to 15 (inaudible).

THE COMMISSIONER: Well, if you want to break first or –

MR. KENNEDY: It will probably be easier, then I can organise the documents (inaudible).

THE COMMISSIONER: Sure, okay, why don't we take a – we'll take the recess a little early.

MS. SHEEHAN: All rise.

This 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: Ms. Richards, I placed an enlarged version of the timeline on your witness box.

MS. RICHARDS: I appreciate that, thank you.

THE COMMISSIONER: Okay, go ahead when you're ready.

MR. KENNEDY: Yes, thank you, Commissioner.

Good morning, Ms. Richards. My name is Jerome Kennedy – I'll turn on my mic – and I'm counsel for Constable Joe Smyth.

I want to start with the generally – and you've gone through with Ms. Breen and with Ms. O'Brien – the purpose of your timeline. It's an assistance to the investigators, an aid to the investigators, is that – investigators, is that correct?

MS. RICHARDS: Yes, Sir.

MR. KENNEDY: Okay.

And if I first look at 1:30 on the timeline itself, you've indicated, I think, today that you got that time from Constable Smyth's re-enactment, did you?

MS. RICHARDS: No, I'm sorry, that's incorrect. I would have got that from his statement.

MR. KENNEDY: Okay.

Because, yeah, in his re-enactment, if I could – and we don't need to bring it up, but if I look at Exhibit 0661 your – it appears to be your handwritten notes, the re-enactment video note says 2 p.m. he arrived at Mitchells Brook. That was in your note.

MS. RICHARDS: Yes.

MR. KENNEDY: Okay.

Now, it's my understanding and, again, just in terms of a document, how you would come up with a time frame and – for example, in Constable Smyth's Use of Force Report, it's a very brief, one-page document, he refers – he stated at 2 o'clock he'd arrived at Dunphy's house. In his General Occurrence or narrative history report prepared the next morning, he said it was approximately 2:15. In the re-enactment, he said he arrived at Mitchells Brook at 2 o'clock.

So when you have conflicting time frames, how do you choose the time frame that you're going to put into the timeline?

MS. RICHARDS: What I do, I go through the – anything with a hard and fast time-stamp. And I would corroborate witness statements to make the best estimation of what the actual time could be.

MR. KENNEDY: Yeah, because I don't see that 1:30 time frame. Again, Constable Smyth gave a lot of statements and he told a lot of people about this incident, but I don't remember. Do you have any recollection or is it in your notes where that 1:30 time frame would be referred to? If not, it's not a big issue, we can ...

MS. RICHARDS: I'm sorry, I don't recall.

MR. KENNEDY: Okay.

The hard times we have here would be 1:39:39 there's a number of calls made. If we could have Exhibit 0664 put up, Madam Clerk, and if I could ask to go to page – I think it's 37.

Just go down a little bit Ms. – Madam Clerk. Yeah, okay, so these are – you see the 5 o'clock, 4:57 UTC. I think you – I don't know if you translated or whatever you did, you came up with the 1:39:39. Is that your understanding that those times there would equal 1:30, 1:39 Newfoundland time? Newfoundland and Labrador – Newfoundland time, yes.

MS. RICHARDS: Yes.

MR. KENNEDY: Because Labrador has a different time.

Okay, so the 1:39:39. So, now, when this document is provided to you, is it provided in this form?

MS. RICHARDS: No.

MR. KENNEDY: Okay.

So it's not – what form is it provided in? Because Ms. Breen asked you about that and I'm just trying to get clarification.

MS. RICHARDS: It's actually given to us in UTC time.

MR. KENNEDY: Okay.

Yes, but in the document itself, the UTC time, but is it actually like that document? Is that the format, with these six or seven columns that you're provided with?

MS. RICHARDS: It would be loosely this format, yes.

MR. KENNEDY: Okay.

So then the blackouts or the redactions that we see there, they wouldn't be in the document that you would be given?

MS. RICHARDS: Oh, certainly not.

MR. KENNEDY: So you know, for example, when you're looking at this that they are outgoing calls from Constable Joe Smyth's telephone. You know that, correct, what this –

MS. RICHARDS: Yes, mm-hmm.

MR. KENNEDY: – document represents?

Then you would have seen a number –

UNIDENTIFIED SPEAKER: (Inaudible.)

MR. KENNEDY: Okay.

You'll see a number there, the 765-6476. That's the number you'll see – do you have the last four digits?

See that?

MS. RICHARDS: Yes.

THE COMMISSIONER: It's at 1:37:22 down to 1:36:39.

MS. RICHARDS: Yes, yes.

MR. KENNEDY: Yes, all those.

Okay.

How did you come up with or how did you reach, I don't know if it's a conclusion, that these calls were to Colin Dinn?

MS. RICHARDS: I really don't recall how I made the mistake, but it is an error.

MR. KENNEDY: Yeah. So, but you have no recollection of where Colin Dinn's – where that name would have come from?

MS. RICHARDS: No, I would submit if I knew that it was an error, it wouldn't be there.

MR. KENNEDY: So did you know Colin Dinn? Has his name popped up in the file?

MS. RICHARDS: Only in reference to some texts.

MR. KENNEDY: So when you see the 765-6476, did you check or do any cross-checking to see whose number that would have been?

MS. RICHARDS: No.

MR. KENNEDY: Okay.

As Ms. Breen pointed out to you, did any of investigators bring that to your attention, that a error had been made?

MS. RICHARDS: Not to my recollection.

MR. KENNEDY: But it's clear that these calls are made from Constable Smyth's phone. There's no confusion about that, is there?

MS. RICHARDS: No, there should not be.

MR. KENNEDY: And there appear to be six calls from his telephone made between 1:36:39 and 1:39:39 Newfoundland time.

MS. RICHARDS: Seems to be six, yes.

MR. KENNEDY: So then if we continue to – actually before I do, I do have one question for you, because I don't understand. If I could have exhibit – is this 0661 or 0664? That's 0664 we have up. If we could have Exhibit P-0661, please, Madam Clerk?

These are your handwritten notes, Ms. Richards, from May 20th to May 22nd.

Okay, if we could go to – it would be, I guess, page – the next page, please?

Okay, you see, now, what's redacted there is the name Brad Wicks. You see that?

MS. RICHARDS: I'm sorry, what's redacted is which?

MR. KENNEDY: Oh, you see redaction.

MS. RICHARDS: Yes.

MR. KENNEDY: "Possibly" What does your writing say?

MS. RICHARDS: I'm – oh, "possibly remove ..." (inaudible).

MR. KENNEDY: Brad Wicks. The solicitor – solicitor messages, okay? Then you go on to, down a little bit further. I can't read your writing again. What does that say? In – the last hyphen there, the last bullet: "in report ..." What does that say?

MS. RICHARDS: "In report mention irrelevant and solicitor client privilege."

MR. KENNEDY: Yeah, it says remove Brad Wicks, and then you've got a Drover.

Did you know that Mr. Drover was also a lawyer?

MS. RICHARDS: No, I did not.

MR. KENNEDY: Okay. Then it says: "No!! Leave in for now!!"

MS. RICHARDS: Yes.

MR. KENNEDY: So, what was – had you discussed that with anyone?

MS. RICHARDS: That was a – that was a telephone conversation that I had with Corporal Burke.

MR. KENNEDY: And so he told you to leave in what were obviously solicitor-client communications?

MS. RICHARDS: From the notes, yes.

MR. KENNEDY: But do you have a recollection of that?

MS. RICHARDS: I don't specifically, no, I'm sorry.

MR. KENNEDY: So that's purely what your notes tell you to do? To leave in solicitor – you've identified as potential solicitor-client communications, and he's instructed you to leave them in, correct?

MS. RICHARDS: "In report mention irrelevant and solicitor client privilege." It's probably in reference to removing those entries, and then I was advised, "No!! Leave in for now!!"

MR. KENNEDY: So I'm going to go through this very quickly with you, but in terms of the time frames where we have hard timelines, we know at 1:39:39 is the last call from Constable Joe Smyth's phone to someone who you thought was Colin Dinn, whom we now know is Mr. Dunphy.

MS. RICHARDS: Yes.

MR. KENNEDY: At 1:46:34, we have a text from Mr. Dunphy to Colin Dinn. Correct?

MS. RICHARDS: Yes.

MR. KENNEDY: At 2:27:01, we have the call to the RCMP Comm Centre.

MS. RICHARDS: Yes.

MR. KENNEDY: And at 2:30:47, we have the call to the RNC Comm Centre.

MS. RICHARDS: Yes.

MR. KENNEDY: Ms. Richards, when did you start working on this file? Would you – like, in terms of when does an analyst get involved in a homicide investigation, for example?

MS. RICHARDS: When we're tasked by our –

MR. KENNEDY: Yeah. Do you know when you got involved in this case?

MS. RICHARDS: I would have known at the time. I'm sorry. I don't recall the date that he actually asked me to start.

MR. KENNEDY: We know that your file report is prepared on June 9th, I think. Is that correct?

MS. RICHARDS: Yes.

MR. KENNEDY: So how long does – you did a number of drafts of your timeline.

MS. RICHARDS: Yes.

MR. KENNEDY: And you provided those to Corporal Burke or to Mr. Strong, or to both?

MS. RICHARDS: Both.

MR. KENNEDY: Okay. So how long would it take you from the time you begin working on a file like this to produce a timeline? Is there any estimate that you can give me?

MS. RICHARDS: In this case, it would have been a month to two, two-and-a-half months.

MR. KENNEDY: Okay. So you would have been – if we get a report on June 9th, it's fair to assume that not too long after the event of April 5th that you're working on the file. Could be the

–

MS. RICHARDS: Oh, absolutely.

MR. KENNEDY: Yeah, could have been, like, the middle of April, late April or would it have been earlier than that, even?

MS. RICHARDS: It could have.

MR. KENNEDY: Okay.

Did anyone ever, of the investigators or anyone else, ever bring it to your attention that a Justice Riche was – had inquiries about the 12 minutes between the time – or the 13 minutes between the time of the shooting and the call into the RCMP?

MS. RICHARDS: Not to my recollection.

MR. KENNEDY: No.

Did you even know there was a Justice Riche involved?

MS. RICHARDS: Only through the video of the re-enactment.

MR. KENNEDY: So did you actually watch the video of the re-enactment?

MS. RICHARDS: Certainly.

MR. KENNEDY: Okay, good, yeah.

So, if I look at the timeline again, and I'm just curious as to how you would – when we get into the house and I know that Ms. O'Brien has put forward the position that we can't rely on these time frames, but I am curious as to how you would come up with a – for example, "SMYTH Attempts to Diffuse the Situation" at 2:13:30. How would you come up with a time frame like that?

MS. RICHARDS: That would have come directly from the re-enactment when Smyth was going through the process and procedure of how he moved from one place to another in the home – I spent five minutes here, I spent two minutes here – and I would use his estimations to create the events.

MR. KENNEDY: Okay, but he wouldn't have estimated, like, 30 seconds. How would you have come up with 30 seconds?

MS. RICHARDS: For 30 seconds?

MR. KENNEDY: Yeah.

MS. RICHARDS: I'm sorry, in relation to ...?

MR. KENNEDY: Well, if you look at it, "SMYTH Attempts to Diffuse the Situation," 2:13:30. I guess my question is I know you come up with rough or approximate time frames, but you have, like, thirty seconds added on there.

MS. RICHARDS: It's still only an approximation.

MR. KENNEDY: Okay, so they're all – at its best, the timeline is an approximation from the various information that you have before you.

MS. RICHARDS: Certainly.

MR. KENNEDY: It doesn't really – you say approximate, in your time frame there. We see the word approximate. You see that? Before each time, you have approximate.

MS. RICHARDS: Yes.

MR. KENNEDY: So you're alerting the investigators, or anyone else who's going to use this timeline, that they're all approximates.

MS. RICHARDS: Yes.

MR. KENNEDY: So the position put forward or proposed today by Ms. O'Brien, that the time between the discharge of the firearm, all the time referred to between the discharge of the firearm and the calling of the RCMP, is not reliable, do you accept that?

MS. RICHARDS: It would have actually come from the information I received from statements of Sergeant Smyth. I can't speak to the reliability of it one way or the other.

MR. KENNEDY: Okay, now Ms. – but I want to be clear on this now, and please, Ms. O'Brien, correct me if I'm wrong, but I understood the question or the suggestion being put forward is that the time frame or the time frames within the house and especially the – I think it was 13 minutes referred to at one point, 15 seconds between the discharge of the firearm and the calling of the RCMP, is unreliable as a result of the mistakes referred to earlier. That's the position I think she put to you.

MS. RICHARDS: She did put that to me, yes.

MR. KENNEDY: Do you accept that position?

MS. RICHARDS: As I stated earlier, in order for me to give any type of an answer on that I would much prefer to go through. I would have to re-do the product itself and see where everything fell after that. I'd be speaking out of turn if I didn't do it the due diligence. I wouldn't be able to say specifically.

MR. KENNEDY: You know there's mistakes made.

MS. RICHARDS: Yes.

MR. KENNEDY: Okay. We know that there are time frames that are put in here that are obviously inaccurate. You accept that.

MS. RICHARDS: Yes.

MR. KENNEDY: So, if I understand you correctly, you're saying it's not that you don't accept what Ms. O'Brien is saying or what I'm putting to you as accurate; it's that you would prefer to do it yourself before you would agree with the proposition we're putting to you.

MS. RICHARDS: Absolutely. It's my product. I would prefer to make the revisions myself than accept somebody else's assumption on it. And, I'm sorry, I don't mean to say assumption; their own calculation on it.

MR. KENNEDY: In terms of the documents that you review and how you review them, do you have paper copies or is it all done online?

MS. RICHARDS: Most of it I did write from the repository itself.

MR. KENNEDY: And that would be PROS, would it?

MS. RICHARDS: In PROS and ENR.

MR. KENNEDY: Okay.

So my last question for you: At no point did anyone come back to you and say Constable Joe Smyth made several phone calls, with the last being at 1:39:39, which you put in as Colin Dinn, can you check on that? No one came back to you, did they?

MS. RICHARDS: No.

MR. KENNEDY: No.

Okay.

But you're aware – Corporal Burke had been provided with the first draft of the report, also?

MS. RICHARDS: He would have been included in it, yes.

MR. KENNEDY: Okay.

Thank you.

That's my questions.

THE COMMISSIONER: Anybody else?

Mr. Drover.

MR. DROVER: Good morning, Ms. Richards.

My name is John Drover. I'm counsel for the RNCA.

MS. RICHARDS: Good morning, Mr. Drover.

MR. DROVER: I just have a couple of questions for you.

Do you know how long the RCMP has been using this timeline, the process of building a timeline? Not this particular timeline, but timelines generally?

MS. RICHARDS: No, I think I was actually brought into the unit after the fact, so I really don't know.

MR. DROVER: And what year did you begin with them?

MS. RICHARDS: I began in DCAS in 2009.

MR. DROVER: 2009.

And is there a particular software that you used to construct this timeline or do you just use sort of a word processor?

MS. RICHARDS: No, this is very specific to analysts. We use an IBM product. It's called Analyst's Notebook.

MR. DROVER: Okay.

And it creates – it can create timelines for you such as this?

MS. RICHARDS: Yes.

MR. DROVER: Okay.

So I'm sure you're familiar with the concept of a margin of error, so if I say that I went somewhere at 1:30, plus or minus 10 minutes, I could have been there at 1:20 or 1:40.

MS. RICHARDS: Yes, Sir.

MR. DROVER: But you would probably put that in your timeline as approximately 1:30 because you have no ability to show a margin of error here. Is that correct?

MS. RICHARDS: No, I don't.

MR. DROVER: Okay.

So you have to pick an approximate time and choose that.

MS. RICHARDS: Yes.

MR. DROVER: Do you have any concern that once you put that down that that becomes the time and ignores the margin of error that might be inherent in the evidence?

MS. RICHARDS: That's why, as a general rule, I would put in an approximation to show that it isn't a hard and fast time.

MR. DROVER: And does it concern you that – I know that you give this to investigators as a tool, and I'm sure that they're more familiar with the inherent problems in it than a member of

the general public, but does it concern you that this can be relied on in court and perhaps somebody could be convicted on wrong evidence?

MS. RICHARDS: Does it concern me?

MR. DROVER: Yes, does it concern you? I mean, you produced these timelines.

Ultimately, in this case, for example, there was – ended up with a large error in when Constable Smyth called the RCMP after the shooting, which then allowed Justice Riche in his report to speculate that something completely different happened in the house and perhaps there was a cover-up.

So does it concern you that people can rely on your work in this manner, not recognizing the inherent flaws with it?

MS. RICHARDS: Oh, certainly I do have reservations over, I guess, for lack of a better term, laypeople drawing conclusions from a product when it wasn't prepared for their purposes.

MR. DROVER: And have you raised that concern with your supervisors or with management in any way?

MS. RICHARD: Yes, Sir.

MR. DROVER: And the result is that we're still getting these timelines?

MS. RICHARDS: Yes, Sir.

MR. DROVER: Thank you.

Those are all my questions.

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

THE COMMISSIONER: Ms. Rasmussen?

MS. RASMUSSEN: Thank you, Mr. Commissioner.

Ms. Richards, earlier Ms. O'Brien had asked you, and I think the way the question was asked, with respect to why your contact information might have been in Constable Smyth's phone. I think she asked about, at your interview in December, that you had been asked that question and you didn't really know at that time. Is that right?

MS. RICHARDS: That's correct.

MS. RASMUSSEN: Have you since figured out why your contact might have been in Constable Smyth's phone?

MS. RICHARDS: I know why his contact is in my email address book.

MS. RASMUSSEN: And why is that?

MS. RICHARDS: In 2012, we had the International Association of Women in Policing conference in St. John's and I was the chair of the volunteer committee and, as such, I would have contact information for the other chairs for those responsible for the parade, those

responsible for the dinner, et cetera, and I would be providing volunteers for their assistance. So simply for that reason, I would assume that he had my contact information and I had his as chair of separate committees.

MS. RASMUSSEN: You think he was somehow involved in that event as well?

MS. RICHARDS: I believe that to be true.

THE COMMISSIONER: What was the conference again?

MS. RICHARDS: The International Association of Women in Policing.

MS. RASMUSSEN: Earlier you were asked if Corporal Burke asked you to review the phone records, and I think you said you didn't recall or he had not specifically asked you to do that. But you also said, I believe, that you did look at the content of the phone records because you were looking for what was relevant to put in your timeline. Is that right?

MS. RICHARDS: Absolutely.

Very seldom will I get direction over what to review, what reports to review and what not to review. So, to be thorough, I go through the documentation that's contained in the PROS file and ENR file and anything peripheral, I'll say, that would have been handed off, any CDs, things of that nature, to make sure that I had all the information that I needed.

MS. RASMUSSEN: And when you're looking through the phone records, looking at the content of the messages, would you have brought anything to Corporal Burke's attention if you thought it was relevant or noteworthy or ...?

MS. RICHARDS: Well, certainly.

In going through, even though it's not specific for the timeline of events – well, I guess it would be, but as you're going through for relevant information, you are scanning the data for the date and time, number called and number dialed from, any content of text messages or emails, and Twitter messages and things like that. Anything that would have been retrieved from the phone, I would have at least briefly reviewed.

I mean, certainly if there was anything, any kind of a red flag raised, anything that I thought would have been of concern, I certainly would have made notation of it and brought it to the attention of the investigator.

MS. RASMUSSEN: Okay.

I think you told Mr. Kennedy that the timeline is basically an aid for the investigators, or a tool.

MS. RICHARDS: Absolutely.

MS. RASMUSSEN: I want to clarify something earlier. You had mentioned that there was one more entry on the timeline, and I believe it's the one at 2:15:20, "SMYTH Re-enters the Livingroom."

Is that the one that you thought should also be an approximate time as opposed to an exact time?

MS. RICHARDS: Yes, Ma'am, that is correct.

MS. RASMUSSEN: And can you tell us how that would happen?

MS. RICHARDS: Yeah, it's akin to maybe a typographical error.

Mr. Commissioner, are you familiar with the concept of a radio button?

THE COMMISSIONER: A radio button?

MS. RICHARDS: Yeah.

THE COMMISSIONER: I used to know what –

MS. RICHARDS: An on-off –

THE COMMISSIONER: I used to know what a radio was, but ...

MS. RICHARDS: It's just a selection where you can turn it on or turn it off in a computer program.

THE COMMISSIONER: Uh-huh.

MS. RICHARDS: When the timeline is created, as a default, the program will assign an actual time-stamp to an event. When it is placed on the chart itself, in reference to a timeline that – it's chronological, it runs right across almost like a calendar, across the top of a page. When you place an event on there, it will automatically generate the time where you placed the event.

If I don't actually select – I had put in to this the approximation of the time, but I neglected to select display – it's a display description, as opposed to display date and time. The description would have been approximately 2,000 – or 2:27 p.m. So it was in there, but just because I didn't more or less flick the switch, the approximation didn't go in, just the regular time-stamp, but the location and the approximation of the time-stamp is good for the location in the chain of events.

MS. RASMUSSEN: Okay, and just to be clear, I think we're talking about the 2:15:20, not the 2:27, because the 2:27 is a phone call.

MS. RICHARDS: 2:15:20, I apologize, yes.

THE COMMISSION: The 2:27 is time-stamped.

MS. RASMUSSEN: Right.

MS. RICHARD: Yes, yep, I apologize.

MS. RASMUSSEN: So when you're making your timeline, you're sifting through lots of documents, right?

MS. RICHARDS: Yes, Ma'am.

MS. RASMUSSEN: And you have some exact time-stamps, like phone calls.

MS. RICHARDS: Yes.

MS. RASMUSSEN: And you have lots of other times that are approximate, right?

MS. RICHARDS: Yes.

MS. RASMUSSEN: And sometimes you have in your— in the records you're looking at, the narrative might give a duration of time, 15 minutes, 20 minutes, 22, 25 minutes, is that right?

MS. RICHARDS: Depending upon how the — excuse me, depending upon how the witness responds.

MS. RASMUSSEN: So sometimes you have a duration of time, but you don't know the exact beginning of that duration or the end of that duration, or where that duration fits in the timeline?

MS. RICHARDS: Yes.

MS. RASMUSSEN: Do you sometimes have to estimate forward and backward from a known time-stamp?

MS. RICHARDS: Yes.

MS. RASMUSSEN: So, again, I want to look at the timeline. And there are two known time-stamps on here. You've got the calls that Constable Smyth made at 1:39:39. You see that?

MS. RICHARDS: Yes.

MS. RASMUSSEN: So that's an exact time.

And you've got the call that he makes to RCMP OCC at 2:27:01. You see that?

MS. RICHARDS: Yes, I'm there.

MS. RASMUSSEN: And I think one of the things Mr. Kennedy was asking you is: Why are times that are listed as approximate, why might they be so exact, down to the seconds?

MS. RICHARDS: Well, as I said, when I placed these events on the — in the program itself, when the events are placed in, the system itself will actually generate the time in relation to the actual chronological timeline itself that's on the top of the page, or running behind the system, if you will. So depending upon where I place that specific event, the system will tell me the time that this event should be showing.

Does that make sense?

MS. RASMUSSEN: Yes.

MS. RICHARDS: Okay.

MS. RASMUSSEN: To me, at least.

So these phone calls at 1:39:39, they were on the phone record and that's where you got that from, right?

MS. RICHARDS: Yes, Ma'am.

MS. RASMUSSEN: But in Constable Smyth's statement and the re-enactment, he hadn't mentioned making the phone calls.

MS. RICHARDS: No.

MS. RASMUSSEN: So you didn't know exactly where to place them on the timeline.

MS. RICHARDS: No, I had no reference.

MS. RASMUSSEN: And I think in his statement and his re-enactment, he essentially said – and I know someone will correct me if I'm wrong, but we can pull up the documents if you want, but he essentially said that he knocked on Mr. Dunphy's residence, ascertained no one was home and then went next door to the neighbour's.

Is that what you had seen in the statement?

MS. RICHARDS: I think I'd actually – yes, I would have got that from his statement.

MS. RASMUSSEN: So you wouldn't have known that the phone calls might have been in between those two events?

MS. RICHARDS: No, Ma'am, I didn't have the data from both put together in any type of a chronological order, only – the only reason I knew that phone calls were made were from the telephone log.

MS. RASMUSSEN: So let's look at the events between Smyth attends neighbour's residence and the call to RCMP. So Smyth attends neighbour's –

THE COMMISSIONER: That's –?

MS. RASMUSSEN: – that's an approximate time?

THE COMMISSIONER: What time is that one?

MS. RASMUSSEN: 1:30.

THE COMMISSIONER: Okay. Thank you.

MS. RICHARDS: That is an approximate time, yes.

MS. RASMUSSEN: Okay.

And then we have the phone call at 1:39:39, in which we don't know exactly where it goes, right?

MS. RICHARDS: Yes.

MS. RASMUSSEN: Then there's "DUNPHY Texts Colin DINN." So that doesn't affect what Constable Smyth is doing, is that right?

MS. RICHARDS: No, certainly.

MS. RASMUSSEN: "SMYTH Returns to DUNPHY Residence." That's an approximate time?

MS. RICHARDS: Yes, but I also got that from Smyth's re-enactment, as well.

MS. RASMUSSEN: Okay.

THE COMMISSIONER: So that's the approximately 2?

MR. KENNEDY: Commissioner, she didn't get it from Smyth's re-enactment. I went through it with her. In her notes she said that he – her – the re-enactment he says that he arrived at Mitchells Brook at 2 o'clock. That's what her notes say, and that's what she confirmed.

MS. RASMUSSEN: Okay.

MS. RICHARDS: I – may I?

MS. RASMUSSEN: Certainly.

MS. RICHARDS: From the notes I received information from Smyth that he arrived actually in Mitchells Brook at 1:22. That is from the statement that he gave: he arrived at 1:22.

MR. KENNEDY: That is from a statement of Rochelle Nolan.

THE COMMISSIONER: Okay, wait now.

So you're saying that there may have been an error there, Mr. Kennedy?

MR. KENNEDY: Well, what I'm saying is that there's different statements that are out there. The only 1:20 reference I remember is Rochelle Nolan, the neighbour who saw the vehicle parked on side of the road.

MS. RASMUSSEN: Okay, maybe if you'll bear with me, Mr. Kennedy, my only point here is I want to look at the times between the phone calls, and perhaps I could just make this brief by saying I believe all the times between the phone calls, other than the texts between Dunphy and Dinn, which doesn't factor into what Smyth is doing, I believe all those times are approximate.

Is that right, Ms. Richards?

MS. RICHARDS: Yes, Ma'am.

MS. RASMUSSEN: So, if on your timeline you had placed the Smyth calls that we know are at 1:39:39, if you had placed those before his visit to the neighbour's house, could that have skewed all of those events forward by several minutes?

MS. RICHARDS: It is possible but I – as I mentioned to other counsel, I would certainly prefer to revise it so that I could be certain of where everything would lay. But there would likely be alterations, yes.

MS. RASMUSSEN: Okay.

And if all those events – and I know you don't want to comment without having done the homework and figured it out, but if all those events were skewed forward, it's possible that that last event before the call to the RCMP that we see on here, "SMYTH Re-enters the Livingroom," that could very well have fallen after the call to the RCMP. Is that right?

MS. RICHARDS: It's probable.

THE COMMISSIONER: One second now, where is that, Smyth re-enters living room?

MS. RASMUSSEN: So the Smyth re-enters living room, Mr. Commissioner, which we know now should have been an approximate time, could very well have fallen after –

THE COMMISSIONER: Yeah, but where is that referred to?

MS. RASMUSSEN: Sorry, 2:15:20.

THE COMMISSIONER: 2:15:20?

MS. RASMUSSEN: And I believe she agreed it could very well have fallen after his call to the RCMP at 2:27.

THE COMMISSIONER: Where does that say? That's the next one down at 2:27:01?

MS. RICHARDS: Just ahead of that, Sir.

THE COMMISSIONER: Sorry? Is that the one you're referring to? The 2:27:01?

MS. RASMUSSEN: The 2:27 – yes, the call to the RCMP to alert the RCMP –

THE COMMISSIONER: Okay.

MS. RASMUSSEN: – after the incident.

THE COMMISSIONER: Okay.

The – that's not in conformity with Constable Smyth's testimony.

MS. RASMUSSEN: Pardon me?

THE COMMISSIONER: In terms of Smyth re-enters living room, in his testimony I believe Constable Smyth said after the shooting he finds himself out past the arch into the living room in the front porch. But I don't, didn't understand him to go outside the residence at that time.

He then goes back, re-enters the living room, which seems to be what's referred to there: "Smyth tactically enters the living room and prepares to engage the threat" and sees that Mr. Dunphy is deceased. The rifle is now on the floor.

So that, what you're suggesting there, Ms. Rasmussen, would not conform with Constable Smyth's testimony I don't think. Am I right there –?

MR. KENNEDY: That's my –

THE COMMISSIONER: Okay.

MR. KENNEDY: – recollection was that he went out, did a partial clearing and then made (inaudible).

THE COMMISSIONER: Right.

MR. KENNEDY: I could check that though.

MS. RASMUSSEN: Okay.

Is it possible then – since all these times in between the calls are approximate, if you place the 1:39:39 call before the visit to the neighbours, is it possible that all those approximate times are skewed to the point where that last item is compressed in time, say?

MS. RICHARDS: It is probable.

THE COMMISSIONER: So which one are you saying is compressed in time? Which time, Ms. Rasmussen?

MS. RASMUSSEN: “Smyth Re-enters the living room.”

THE COMMISSIONER: That would be at 12 – 2:15:20?

MS. RASMUSSEN: 2:15:20, right.

MR. KENNEDY: Commissioner, I can just help you out on – your memory recitation of the evidence is certainly good.

On January 18, Constable Smyth testified at page 44 that after the last shot was fired he immediately went out of the room, then re-entered the room, got closer to Mr. Dunphy. He looked deceased. And it was then that he called the RCMP.

THE COMMISSIONER: What is the transcript?

MR. KENNEDY: The transcript is January 18, 2017.

THE COMMISSIONER: Right.

MR. KENNEDY: At pages 44 to approximately 44, 45, 46, Commissioner.

THE COMMISSIONER: Okay. All right.

Now – okay, so we have Ms. Rasmussen suggesting it’s possible that this happened and now you’re saying it’s probable it happened. You’re agreeing with Ms. Rasmussen that the time could have been compressed, are you?

MS. RICHARDS: Yeah, it’s possible.

THE COMMISSIONER: Yeah.

MS. RASMUSSEN: Okay and when you’re making a timeline like this and you’ve got certain exact times based on, for instance, telephone time-stamps and you’ve got to fit in a bunch of other events, the timeline you come up with in the end is as good as the information it’s based on. Is that right?

MS. RICHARDS: Certainly. Yeah.

MS. RASMUSSEN: Those are my questions.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you, Ms. Rasmussen.

Any other questions? Commission counsel, anything arising?

MS. O'BRIEN: Nothing arising, Commissioner.

THE COMMISSIONER: Okay.

Then thank you, Ms. Richards. You're excused.

You finished earlier than you thought.

MS. RICHARDS: Yes, Sir.

Thank you very much.

THE COMMISSIONER: Good.

Now do we have another witness ready to start?

MS. CHAYTOR: Yes, Commissioner.

The next witness is Acting Inspector Joseph Gullage.

THE COMMISSIONER: Okay.

Thank you.

Go tell Mr. Avis that's taken off his time for the application.

Okay.

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

A/INSP. GULLAGE: I do.

MS. SHEEHAN: Please state your full name.

A/INSP. GULLAGE: Joseph Jeffrey Wade Gullage.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Commissioner, before we begin with Acting Inspector's evidence, I'd like, please, to ask that the following exhibits be entered into evidence. We have P-0032, P-0253, P-0514, P-0516 through to P-0521 inclusive, 0523, 0526, 0529 through to 0536 inclusive, 0564, 0618 through to 0621 –

THE COMMISSIONER: Sorry, after 0618 through to ...?

MS. CHAYTOR: Yes, please, 0621.

THE COMMISSIONER: Right.

MS. CHAYTOR: And then we have 0625, 0626, 0627.

THE COMMISSIONER: So ordered.

MS. CHAYTOR: Thank you.

Good morning, Acting Inspector.

A/INSP. GULLAGE: Good morning.

MS. CHAYTOR: I understand that you are in your 40th year of service with the RNC.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And I also understand that your current rank and your rank and position as of April 2015 was acting inspector in the Intelligence and Organized Crime Unit of the Criminal Investigation Division. And is that correct?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

I also understand that you assumed that role and position in October 2014.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: We've already looked at the organizational chart for that section so, Commissioner, I won't bring it up again, but for anybody's reference it's P-0515. And I understand that in your current position, eight units report to you, Acting Inspector?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: That's correct. And included in those would be the Joint Forces CIS-NL. And that's a combined unit with the RCMP?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And they report to you. And I also understand what shows on the organizational chart as the VIP escort is, in fact, the PSU. And that unit was reporting to you as well and reports to you.

A/INSP. GULLAGE: They were for administrative purposes at the time, yes.

MS. CHAYTOR: Okay.

And I understand you report directly to Deputy Chief Singleton.

A/INSP. GULLAGE: I report to Superintendent Jason Sheppard to Deputy Singleton.

MS. CHAYTOR: I'm sorry, yes, to Superintendent Sheppard, of course. And he reports directly in to deputy chief.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Correct. Okay.

And when you say that the PSU was reporting to you on administrative matters, perhaps you can clarify that for the Commissioner.

A/INSP. GULLAGE: In relation to attendance, days off, overtime, these type of things, they would report to me. Files that they would generate, they would come not from my office, they would come from somewhere within government to them and they would investigate it. But they didn't – the files didn't come to me or to my office.

MS. CHAYTOR: Okay.

Now I understand their files though, at least from, to 2013 onwards would have been open in the ICAN system.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And so are you saying that you didn't have oversight on a day-to-day basis of the protective service unit as of April 2015?

A/INSP. GULLAGE: I never had oversight on a day-to-day basis at that point, other than the administrative type or if something significant arose.

MS. CHAYTOR: Okay. All right.

And since you assumed your position in October 2014 had that ever happened? I understand Acting Sergeant Smyth at the time was in charge of that unit. Had he brought anything of significance to your attention?

A/INSP. GULLAGE: No. Not that I can recall, nothing.

MS. CHAYTOR: Okay.

And I also understand though that quarterly reports would have been submitted to you. And those would have contained the numbers and types of cases that they were working on as well as if they required any further resources.

A/INSP. GULLAGE: That is correct.

All eight units would submit a quarterly report. And I would review the quarterly report and do a covering report for the Intelligence Organized Crime Section and report it to Jason Sheppard.

MS. CHAYTOR: Okay.

I understand that you had acted previously in a supervisory capacity with respect to Constable Smyth when he was a member of the Criminal Intelligence Unit. And that was prior to him being assigned to the PSU.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Did you carry out annual performance evaluations of Constable Smyth at any point in time?

A/INSP. GULLAGE: No, I did not.

MS. CHAYTOR: Okay and why would that be?

A/INSP. GULLAGE: There was no performance evaluations that were done on anybody within the Royal Newfoundland Constabulary at that point in time, as I understand it. Although there is process and policy for performance evaluations to be done, there was some issue that had arose that performance assessments were not done.

MS. CHAYTOR: Okay.

And I understood from your interview that that was the case for several years, there hadn't been performance evaluations done.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

Aside then from any formal process or formal carrying out of a performance evaluation, as a supervisor had you ever had any issues or concerns with respect to the performance of his duties?

A/INSP. GULLAGE: None whatsoever.

MS. CHAYTOR: Okay.

Were you aware of any public complaints against him?

A/INSP. GULLAGE: I was aware that –

MS. CHAYTOR: And when I say that I mean complaints to the RNC Public Complaints Commission.

A/INSP. GULLAGE: I was aware of one, back, I think it was around – and I'm just going by memory here – I think it was around 2011, 2012 when acting on a request from the Department of Justice that him and another officer travel to, I think it was Placentia, to talk to an individual about some correspondence that was being sent to a Crown attorney.

And as a result of that, that individual made a public complaint. And he also made a public complaint against me as well because I was the supervisor there.

MS. CHAYTOR: And I understand you were the person who sent them to speak to the individual?

A/INSP. GULLAGE: That is correct.

And we were notified by the Public Complaints Commission that this complaint was made but I understand when they looked at it or whatever there was no further action taken.

MS. CHAYTOR: Okay. All right.

And so that's the only thing you're aware of. And at the end of the day there was nothing found –

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: – against any of you? Okay.

I also understand that you have had and have some connection and relationship with RCMP or RCMP members and you're second in charge of the Combined Forces Special Enforcement Unit when it was for set up about three to four years ago. Is that correct?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And that currently you sit on the Criminal Intelligence Service of Newfoundland and Labrador, the provincial committee which also has RCMP members.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And you attend regular meetings of that committee?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And I understand that you have frequent discussions with various members of the RCMP with respect to source information?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And in your interview I think you told me that your frequency of contact with the RCMP would be a weekly basis that you would have communications.

A/INSP. GULLAGE: That is correct.

I'm also the liaison person for the RNC with B Division national security threat division for terrorism, that sort of stuff.

MS. CHAYTOR: Okay, and so that's – there would be RCMP members of course on that as well.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. All right. I missed that one, thank you.

And I also understand that you did know Corporal Steve Burke, the lead investigator from the RCMP, briefly. That he had performed an internal investigation for the RNC on one of its members approximately five years ago, and you knew of him in that capacity.

A/INSP. GULLAGE: That is correct. We had a file in relation to a member that was assigned to our drug section that was investigated internally. That was passed over to the Royal Canadian Mounted Police to investigate, and I think it was Corporal, or Constable Burke at that point in time was part of the investigating team. He wasn't in charge of the investigation, but he was the person that was tasked to do some things. Like, my contact would have been if he came looking for their attendance records, or came looking for their annual leave schedules at that point in time. So I did know him from that perspective.

MS. CHAYTOR: Okay. And I also understand that you knew – you know Inspector, I think it's Inspector Pat Cahill? Is that correct?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And that you attended some advisory board meetings with him?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

Do you also know Sergeant Kent Osmond or Superintendent – as he then was – Andrew Boland?

A/INSP. GULLAGE: I know them in passing. Superintendent Boland sat on the PEC, we call it, the provincial executive council for criminal intelligence service of Newfoundland, so I do know him from that capacity. And I know him from my involvement in CFSEU.

MS. CHAYTOR: Okay. Thank you.

I'm just going to move on now then and talk about the protective service unit and how that fits in terms of its mandate, as it was, and how it currently is. And if we could bring up please P-0209. And then leading you through this aspect of your evidence, Acting Inspector, I'd like to thank you for the work that you've done for the Commission in putting together some information in terms of the history of the PSU, as well as other information that you've accumulated in recent weeks.

A/INSP. GULLAGE: It's been my pleasure.

MS. CHAYTOR: Thank you.

Now, I understand this document we have up on the screen now, we have seen this before and I understand this was one of the things you drafted as a resource for the inquiry, and it's based on your own knowledge as well as information that you have gathered from others, and basically it tells us that the PSU dates back in fact to the 1980s in various forms.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And I understand that there was no formal unit as such, until under Premier Dunderdale, and at that point in time the RNC was assigned to the unit on a more continuous basis.

A/INSP. GULLAGE: That was in 2012 I think that was.

MS. CHAYTOR: 2012, right. And originally it was two members, and we've also heard how it grew to four members under Premier Dunderdale. And then when Premier Marshall took over, it was reduced to two again.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And I also understand, as of February 2016, it's basically been – and for lack of a better and if you have a better term, please correct me – but it's been taken back in-house into the CIU, as such.

A/INSP. GULLAGE: That is correct. Any complaints that come in now come into my office and personnel assigned to carry out whatever task is required are assigned from my office.

MS. CHAYTOR: Okay. And I'm going to take you to another document where you can explain that in a little more detail, please, to the Commissioner.

So, in terms of the history, I understand what this document here tells us – and I'll just summarize it for the sake of time because, as I said, we've seen it before, but correct me if I say anything that's not quite right. Prior to 2012, a request for the PPS was done on an as-needed basis.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay. And specific file numbers were not necessary generated for each request.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: However, after formalization of the PPS – and I believe the policy came into effect in June of 2013, and after that specific file numbers were then, it says, generated on files which members assigned to the PPS felt required further investigation to follow up.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And there was no formal administrative process in effect, it says in this document, in place for requests sent to the PPS, but come 2013, I guess, when the policy comes into effect, then the more formal administrative process came in; and RNC file numbers were generated for all complaints or threats that required follow-up, and then ICAN files were generated.

Is that correct?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And what does it mean in terms of requiring follow-up in this document?

A/INSP. GULLAGE: You get a complaint where something is happening. For an example, it may be a conference here in town and you may find that some people are making some comments in regard of protesting, that type of stuff. So you would do – we would do some checks to find out what the – if there was a threat level and what that threat level was so that we could assign appropriate personnel.

MS. CHAYTOR: Okay.

And if you're doing intelligence gathering on a person, would that be considered follow-up?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And gathering your intelligence and then going to visit the person, that's follow-up?

A/INSP. GULLAGE: That's part of the process, yes.

MS. CHAYTOR: Okay.

And so those would – you'd have a file or you'd open a file with respect to that.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay. All right.

And so follow-up in the contents of a complaint, I'd take it that would also mean doing a threat assessment?

A/INSP. GULLAGE: Yeah, a threat assessment or a risk assessment. It's basically much the same process.

MS. CHAYTOR: Okay.

And you've given us some numbers and those numbers I think have been further refined in further documents, but in this document you say there was 16 formal file numbers generated for follow-up in 2013 by the Protective Service Detail – and I'll bring you to your more recent document where you have a chart.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. All right.

So this was – so what you described in terms of the process for file opening and the administrative process that was in effect as of April 2015?

A/INSP. GULLAGE: Yes, it was.

MS. CHAYTOR: Okay.

And I understand that since then that remains the process but the work and the files are now opened directly within the CIU?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay. All right.

And if we could bring up P-0534, please, and this is the letter that you wrote on February 8, 2016 to Chief Janes and it's regarding an Initiative for restructuring of the Protective Service Detail. So I understand this is the document where certain changes were put forward, and I also understand – or some initiatives for restructuring, but I understand, Acting Inspector, that this basically is what came into effect at that time?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And so what this tells us is that members at that point in time from the PSU were reassigned back to their regular duties and now the mandate of the PSU is done in-house under your CIU and under your supervision?

A/INSP. GULLAGE: Myself and the NCO in Intelligence and Organized Crime, we work in the same office.

MS. CHAYTOR: Okay. And who is that person?

A/INSP. GULLAGE: Staff Sergeant Glenn Noseworthy.

MS. CHAYTOR: Right, okay. All right.

So any complaints, or threats, or perceived threats against a premier or Cabinet ministers, according to this document, were to be forwarded to a liaison person in the premier's office and then that person will send the complaints along to you.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And that is the situation today.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay. And that person they would forward to Intelligence and Organized Crime unit, that person, for any action, so that's to you. I understand those complaints come directly then to you?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: From the premier's office or from the member – the Cabinet member then to you?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Usually, since February, they usually come through the executive assistant or the premier's secretary directly to me. I haven't had any direct contact with any Cabinet ministers.

MS. CHAYTOR: Okay. All right.

And are files opened on all complaints that are received, or do you do some sort of an assessment first to determine if you need to open a file?

A/INSP. GULLAGE: Our process is that once we receive the complaint we have a look at it. I then send an officer to the Confederation Building to talk to the person that is, that has the concern, take a short statement and then we'll start the process. If there's something comes in that we look at to say there's nothing to this, then we'll make note of it but won't open a file.

MS. CHAYTOR: Okay.

So the practice is if you receive, for example, an email or something of concern, then an officer is dispatched to the person making the complaint to get a statement?

A/INSP. GULLAGE: Yes, somebody from my office would do that.

MS. CHAYTOR: Okay.

So, in essence, in doing that it's the same process. If I were to call up to the RNC or send you something, then you're going to send someone out and get a statement from me for more detail.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And if complaints are sent along that it's determined to be more political rhetoric or political statements and no threats and no issue of harassment in terms of, you know, criminal harassment, do you still send an officer out to take a statement in that regard to get more information?

A/INSP. GULLAGE: In 99 percent of the cases I send an officer out to take a statement from the person that's forwarded this on so that I can have a formal record or our office can have a formal record of what that person's concerns are.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Excuse me.

MS. CHAYTOR: And so then afterwards you put your police lens on it to determine whether or not it's something that should be taken a step forward with it.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

So basically you get that statement, you have a complainant and you move on from there.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

And I also understand from this document too, it says that if it's determined to be medium to high threat, then discussion happens with the chief of staff for the premier to determine whether a security detail should then be assigned, so protective – close protection services.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And is that still the case, that is –

A/INSP. GULLAGE: That is still the case.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Now there are occasions where we'll receive a call from the premier's office to the effect, or from a Cabinet minister to the effect that they're attending a meeting or something along that nature and they're requesting the presence of a close protection detail, I guess, would be the best word I can use.

MS. CHAYTOR: Yes, for other purposes.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. All right.

And so with respect to any complaint that you get, it would be medium to high before you would actually make that call to the chief of staff to determine whether or not you're going to assign someone.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

I also understand in this document you refer here to – and this is of interest to the Commission – members of the “Intelligence and Organized Crime along with RNC social media contacts will closely monitor all social media site for any special threats noticed on Facebook”

And I'm wondering whether or not – because part of the Commission's mandate is to look into any policy or protocol of the RNC with respect to the monitoring and response to social media. So is there a policy or protocol that your people would be following in doing this?

A/INSP. GULLAGE: I'm not aware of any policy in relation to social media.

MS. CHAYTOR: Okay.

And then I think this letter just ends with the fact of vehicles and phones and whatnot being – it says: “All vehicles, radio, computers, blackberries, files and” everything else from the PSU shall be properly – I guess that should be properly – “itemized and returned to Intelligence and Organized Crime Section for storage.”

A/INSP. GULLAGE: Yeah.

MS. CHAYTOR: And I take it, Acting Inspector, that the vehicle – there was one vehicle, I believe, RNC vehicle that was with the PSU at the time.

A/INSP. GULLAGE: That is correct. There was a second vehicle belonging to the Royal Canadian Mounted Police and that was returned to the Royal Canadian Mounted Police as well.

MS. CHAYTOR: Okay.

And do you know if radios, computers, BlackBerries and the files were all returned as well?

A/INSP. GULLAGE: Yes, it was.

MS. CHAYTOR: Okay, including any BlackBerry owned by Acting Sergeant Smyth?

A/INSP. GULLAGE: When this initiative was put in place, Acting Sergeant Smyth was not in that unit.

MS. CHAYTOR: Okay. All right.

And he would have been the only member of the RNC in the unit at the time?

A/INSP. GULLAGE: No, at that point in time, excuse me –

MS. CHAYTOR: Oh, I'm sorry, yes. By this point in time –

A/INSP. GULLAGE: – there was other officers that were assigned.

MS. CHAYTOR: Yes, that's right.

A/INSP. GULLAGE: Excuse me.

MS. CHAYTOR: We would have had – Ed Benoit would have been there.

A/INSP. GULLAGE: And Sergeant Hubert Marrie.

MS. CHAYTOR: And Hubert Marrie.

Correct, yes. Thank you.

A/INSP. GULLAGE: Sergeant Marrie, who was the primary officer assigned, his BlackBerry was returned to the Criminal Intelligence Unit office and it's locked in a filing cabinet.

MS. CHAYTOR: Okay. Thank you.

Did the premier's office, or more broadly the government, have any decision-making power with respect to how the PSU operated or how it was staffed?

A/INSP. GULLAGE: I can't say for sure. I know all the complaints came directly to them. I know that when they travelled, the travel – like if a regular member travels from my office, there's a journey authorization that has to be done and there's a travel explanation that has to be done. And I have to recommend the travel in relation to the premier's protective detail.

That did not come through my office. I'm not sure if it was signed off in the premier's office or if it was signed off at the chief's office.

MS. CHAYTOR: All right.

I'm going to move now then to talk a little bit about some of the work you did in identifying the files that were being handled by the unit at the time. And we did have as an exhibit previously, and I don't need to bring it up, but it's a document that's P-0211. And that was a document that had been put together by Constable Downton dated December 1, 2016.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: And I believe that was done at your request as well. And you've now elaborated, I think, on the work that she put together.

A/INSP. GULLAGE: Yes, I have.

MS. CHAYTOR: Yes. Okay.

And if we could bring up then, P-0619, and I understand this to be files on ICAN that you were able to identify.

A/INSP. GULLAGE: Yes, that's correct.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Now I will, as you can see from this chart here, a lot of these files were prior to my time being there. There's only four files I think that –

MS. CHAYTOR: Yes.

A/INSP. GULLAGE: – were open from the time but I did review all these files.

MS. CHAYTOR: You've reviewed them all.

A/INSP. GULLAGE: I have.

MS. CHAYTOR: Yes, thank you.

And, yes, because your time started in October of 2014 so it's just the bottom files here. Okay.

So in putting this together you've gone through and reviewed the files.

A/INSP. GULLAGE: I have.

MS. CHAYTOR: Okay.

And those are, of course, for the time period from October 2012 to, I believe the last one we have here, April 7, 2015, is actually Mr. Dunphy's file.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

I also understand that you undertook, not only for ICAN, but you undertook a physical search for any files that may not have been in the ICAN system?

A/INSP. GULLAGE: Yes, and if I can refer you to April 11 you can see –

MS. CHAYTOR: 2013 you mean? Yes.

A/INSP. GULLAGE: 2013 there's a file 19179. In ICAN there's no electronic file so I did search the filing cabinet that was at the premier's Protective Services or the Protective Services office at Confederation Building at that point in time. That's in my office as well and was unable to relate anything in relation to that file.

MS. CHAYTOR: Okay, so there's a file number open but nothing in the electronic file. And you couldn't find a hard copy file.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. All right.

And there are a couple, I think, where you did find hard copy files and you've indicated here but nothing on ICAN.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Now, I think they may have been identified. They were identified on ICAN but there was no electronic, nothing electronically in the file.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Excuse me.

MS. CHAYTOR: Okay, so for example – and this may be because it's before the formalized process that we talked about which came in in June of 2013.

October of 2012: Subject of interest, there were Facebook comments. And "Hardcopy of file located in CIU 2011 filing cabinet – no electronic copy."

A/INSP. GULLAGE: It could be. And it could also be, if you look at the thing in the beginning here, it talks about child protection issues which are very sensitive –

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: – and you wouldn't necessarily put that into a file.

MS. CHAYTOR: Okay.

And are there ways, though, to restrict files or (inaudible).

A/INSP. GULLAGE: There is, yes.

MS. CHAYTOR: Okay.

But that wasn't the situation for this file either. There was no restricted file?

A/INSP. GULLAGE: No, it's not.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Some of them were what we would refer privatized –

MS. CHAYTOR: Yes.

A/INSP. GULLAGE: – which means that the protective service detail, myself as the officer in charge of intelligence organized crime, and the senior executive of the force, Jason Sheppard, the deputy chief could view them.

MS. CHAYTOR: Okay. All right.

Now out of the number of files that we find identified here in that time period there are a total of 34 files, and 32 of those seem to be subjects of interest, including Mr. Dunphy.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay.

All right; yeah, there are a couple of others there, for example, doing the security for the premier's home, that type of thing –

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: – which wouldn't be a subject of interest file.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

And in 12 of those you also took the time to indicate whether or not there was any indication in the file as to whether or not the subject was spoken to the police, and there's either no indication in the file – so I take it you weren't able to ascertain, there's no note to say that happened or no note to say it didn't happen.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And out of the ones where there was a definite speaking to the client, I've counted that there were 12, where the person was specifically spoken to.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

And that was in some fashion, whether or not the police called them, spoke to them at their residence, or whether or not some other public location because I think there are a couple that the people were spoken to, for example, at Confederation Building.

A/INSP. GULLAGE: That's correct. And some of them will say spoke to the complainant or spoke to the person. It doesn't specify how they spoke to them.

MS. CHAYTOR: I think that's water for you if you need some water. That's clean, fresh water.

A/INSP. GULLAGE: Okay. Thank you.

THE COMMISSIONER: So that's 12 out of how many?

MS. CHAYTOR: So there's 12 out of 32 that they were spoken to in some fashion.

And I understand, Acting Inspector, you also took the time to look to see whether or not there were any charges laid in any of them. And there were no charges laid in any of these 32 files.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

Acting Inspector, what were the reasons for bringing the PSU unit back in-house?

A/INSP. GULLAGE: I had received a call – if I can go back – back in December month when there was a change of government. Myself and Chief Janes had met with the new premier and the chief of staff, and we had explained to them the policy in relation to – and provide them with a copy of the policy in relation to the protective service detail, what their role was, how the situation worked, and it continued on under Sergeant Marrie and – I think maybe Corporal or Sergeant, excuse me, I'm not sure of the rank – they stayed there.

And in February month I received a call from the chief of staff, Mr. Kelvin Parsons, who asked me if we could meet to discuss the protective services detail. And myself and the chief went into a meeting with him and he felt that, from his conversations with the premier, that there was not

enough work there to maintain the unit and we discussed options, and the initiative that I looked at a little while ago was what we put in place.

MS. CHAYTOR: Okay.

And I think you did say on your interview there were budgetary concerns as well as there was the perception that there wasn't enough work to justify having the unit, stand-alone unit.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

And Acting Inspector has that proven to be correct. Is the current situation workable?

A/INSP. GULLAGE: It's workable but there are problems with it.

MS. CHAYTOR: Okay.

So I think we may have had a change, because I asked you in December whether or not since it came into effect, it had been in effect for over a year at that point, how it was working and – or not quite a year – you said perfectly.

A/INSP. GULLAGE: Not – and it does in relation to complaints received, but in relation to close protection –

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: – I may get a call at 11 o'clock tonight that he needs close protection at 9 o'clock tomorrow morning, and for me to try to contact somebody to have them assigned at 9 o'clock in the morning, from that perspective you need more time. If he's going to a banquet at the hotel or a breakfast at the hotel, or something, we like to do what's called visit the site before, pre-advance to see exactly where the exits, this type of stuff and all that stuff is.

So from that perspective – in regard to the complaints being received or items of concern, no, but from the close protection aspect of it, yeah, there are some concerns.

MS. CHAYTOR: Okay. Fair enough.

So in terms of doing the intelligence gathering piece of the work that's fine, that's working fine within the CIU, but there seems to be an issue in terms of notification or communication in terms of knowing in advance when you're going to have to assign an officer because there isn't somebody permanently assigned.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: In terms of close protection. Okay. All right.

And I'm just going to ask you a few more questions, then, in terms of that, and then come back to ask you a more broad question.

But my first question, I think, would be: In terms of fulfilling the PSU's mandate, and this is going back now before it got brought back in-house, would it be usual for the members of the PSU to have interactions or consultations with members of the CIU?

A/INSP. GULLAGE: There were regular contact, like all the attendance, overtime, that stuff was brought into the office. If I was there, it was given to me; if I wasn't, it was left for me to verify and approve. If they were investigating something or they had a concern, they would call out to say: Are you familiar with this person? Has this person ever surfaced? This type of stuff. And so there was some, but it was not the day-to-day contact that you would with your unit in your office.

MS. CHAYTOR: Okay. And so it's fair to say that now you have much more day-to-day communication and consultation with the members who are investigating those complaints on behalf of the premier's office or other members of government?

A/INSP. GULLAGE: And that is correct.

MS. CHAYTOR: Okay.

And I take it, regardless the situation beforehand, if the PSU required additional resources or consultation, the door was open to that and they could go to CIU for that.

A/INSP. GULLAGE: We have supplied resources when requested, yes.

MS. CHAYTOR: Okay. All right.

And I also understood you to say on your interview that, because of the location of the PSU at the time, operating out of the – the physical location, operating out of the Confederation Building, you also would not have been as familiar with the files they were working or the day-to-day operations or complaints being handled by them.

A/INSP. GULLAGE: That is correct. Most of these files that's on your chart here I was not aware of what it – what they were until I reviewed them.

MS. CHAYTOR: Okay.

And so, in that respect, in terms of you didn't give feedback, guidance or advice to the officers in the PSU regarding these files.

A/INSP. GULLAGE: That is correct. Now, these files as well covers a period of three different –

MS. CHAYTOR: Before you were in your job.

A/INSP. GULLAGE: Yeah, three different inspectors, so I can't comment on what they –

MS. CHAYTOR: It's only four, I guess, then you were there for. Yeah, all right. Okay. All right.

And within your unit, though, it is common, I think you told me, for members to bounce things off one another. So, for example, if they get something that's a bit ambiguous for them and they're trying to determine what, if anything, they need to do to follow up, they have that, they consult with one another and that's a common thing.

A/INSP. GULLAGE: It is. I run an office basically based on a team approach where everybody's input is important to me.

MS. CHAYTOR: Okay. And I guess in that respect it's important, yes, to get the perspective of others, if in doubt.

A/INSP. GULLAGE: Exactly.

MS. CHAYTOR: Okay. All right.

And my purpose for asking you some of those questions is that one of the terms of reference that the Commissioner has is to inquire into the policy and protocols surrounding the security of the premier and Cabinet ministers. And I am wondering if you have any advice or input for the Commissioner in terms of the most appropriate structure for the Protective Services Unit?

A/INSP. GULLAGE: I do.

MS. CHAYTOR: Yes.

A/INSP. GULLAGE: I view the Protective Services detail as having two different functions. One being close protection to officials, and the other one be to investigate any areas of concern in relation to complaints made against government that's of concern or may be viewed as troubling. And I think that is two different functions and I think that there is a need to separate both roles.

MS. CHAYTOR: Okay. And that, of course, is the mandate under the current policy and the policy that existed beforehand. And so how would you best suggest that these roles could be separated?

A/INSP. GULLAGE: I think that you have people who are trained in VIP close protection detail and if there is a requirement for a security detail, that these people be assigned, but any other complaints would be investigated, and I would suggest, out of the Intelligence and Organized Crime office.

Now, I imagine my members are not going to be pleased with me saying that, increasing their workload. But I believe that's where they should come. And I also believe that if you go back on the history that this has been an ad hoc process for a number of years. It depends on who the premier is and how they view their security in the whole thing here and I think, personally, based on my experience, that that should be mandated by legislation.

MS. CHAYTOR: Okay. So then there's no pressure, as such, on the premier or the elected officials to feel that they somehow, you know, have to be cognizant of cost or the perception of them having these services available to them.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: And I just want to state for the record, Mr. Commissioner, these are just my personal views.

MS. CHAYTOR: Yes. Well, thank you, but it is helpful. Thank you.

And in terms of the workload, though, to your members, you're talking about the workload for doing the intelligence gathering, investigating the complaint files?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Because we're not – I not only deal with complaints coming out of the Confederation Building; I deal with complaints coming from the general public. I run the covert operations in relation to the RNC.

MS. CHAYTOR: Yes.

A/INSP. GULLAGE: We do VIP security; assist the RCMP if the prime minister or some other person comes in here. There's a lot of different things that these members do now. It's not just intelligence, organized crime. It's several functions that operate out of that office.

MS. CHAYTOR: Okay.

Okay, and you have been able, though, in terms of the workload generated to date by taking in-house the Protective Services Unit piece, the workload has been manageable?

A/INSP. GULLAGE: It has.

MS. CHAYTOR: Okay.

We do know that the policy of the Protective Services Unit was revised in May of 2016, but I understand from our interview that you weren't consulted with respect to any changes to that policy.

A/INSP. GULLAGE: That is correct, but I have since that reviewed the policy and there were only minor changes.

MS. CHAYTOR: Okay, yes.

I think that some of it had to do with what was expected of the skills and abilities to perform their job, and basically I think that's mostly it. It was the skills that would be required. And from what I've understood, some of that would be required of any officer in any event.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: And there was no adding on, for example, to the policy to say that other qualifications would be required.

A/INSP. GULLAGE: That is correct. I think mostly what I got from the review was the qualification for going in there, physical qualifications, peer testing, that type of stuff, was removed.

MS. CHAYTOR: Okay. All right.

I'm going to turn now, then, to a – it's a different area, so I'm at your discretion, Commissioner. I can keep going.

THE COMMISSIONER: Sorry?

MS. CHAYTOR: I'm going to turn now to threat assessments, some questions along threat assessments and how that's done in the unit.

THE COMMISSIONER: Well, it's almost 12:30, so it's – how are you doing with your ...?

MS. CHAYTOR: I'm halfway.

THE COMMISSIONER: Okay, well, it's probably, then, time for us to break for lunch.

MS. CHAYTOR: Or I'm almost halfway, I'm sorry.

THE COMMISSIONER: Almost, okay.

MS. CHAYTOR: I'll tighten it up over lunch.

THE COMMISSIONER: Anything before we leave for lunch?

Okay, we'll break now for lunch for an hour until 1:30.

MS. CHAYTOR: 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.

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

MS. CHAYTOR: Thank you, Commissioner.

Good afternoon, Acting Inspector.

A/INSP. GULLAGE: Good evening.

MS. CHAYTOR: If we could bring up, please, P-0564.

Acting Inspector, this is a document that you provided to the Commissioner and I understand that this is something – a document that everybody in your office has attached, basically, to their desk when they're doing threat assessments, is what you told me the purpose was.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: That's correct. Okay.

And this has been in existence you said, certainly, for quite a number of years?

A/INSP. GULLAGE: It has. It's used as a guideline when we're doing threat assessments, risk assessments.

MS. CHAYTOR: Okay. And do you understand this document to also be used beyond your unit?

A/INSP. GULLAGE: My understanding, it's used in a lot of different units across the country.

MS. CHAYTOR: Okay. So it's something that any officer who worked within CIU certainly would have been familiar with?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: And I notice in this document that it refers to – it uses the terminology: witness. And I asked you that in your interview and you said that means the same as complainant.

A/INSP. GULLAGE: Yes, to a certain extent. There are occasions where we apply it as well when we're doing an assessment on somebody who needs to be placed into witness protection.

MS. CHAYTOR: Okay. So it's also used for that purpose?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: And that's why we're seeing the word witness?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. So this is though what's used on all threat assessments?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. And the threat, if we look down through, it goes from extreme high, high, medium and low.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. Extremely high, you give examples here of such things as gang affiliation and has tried to harm the person before. So that person would be a very high, extremely high level of threat.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. And so – and basically it goes on down then if we go to the other extreme in terms of a low threat. "Threats have been made, however, the source of the threat has no background towards violence nor the resources to have anyone act on their behalf."

So that's your spectrum?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

Now, in terms of – it does say here in terms of "Your Police Service may have a procedure in place that you are to use."

I'm wondering in terms of response. So once the officer who's doing the threat assessment has determined what the level of threat would be, is there a process or a procedure in place that they could use to give them guidance as to how to best respond to a particular threat?

A/INSP. GULLAGE: There's no formal policy or procedure that I'm aware of, Mr. Commissioner.

MS. CHAYTOR: Okay. And so while the document does give some guidance on how to grade the threat, there's not the guidance on response to various threats. And I guess then it's up to the officer in terms of their professional judgement and the circumstances to make that determination.

A/INSP. GULLAGE: That is correct, yes.

MS. CHAYTOR: Okay.

Did Constable Smyth ever inquire of you or anyone else in the CIU anything to do with Mr. Dunphy?

A/INSP. GULLAGE: No, he did not.

MS. CHAYTOR: Okay. And I understand that in aftermath of this, you have read Mr. Dunphy's threats.

A/INSP. GULLAGE: I have.

MS. CHAYTOR: I'm sorry, Mr. Dunphy's tweets. I'm sorry, I misspoke.

A/INSP. GULLAGE: I have.

MS. CHAYTOR: Okay. And if you were to do the grading on the threat level, how would you have graded Mr. Dunphy's tweets?

A/INSP. GULLAGE: I wouldn't view them as a threat.

MS. CHAYTOR: You say you wouldn't ...?

A/INSP. GULLAGE: I wouldn't view them as a threat.

MS. CHAYTOR: Yes.

A/INSP. GULLAGE: But I would – there are a couple of comments there that would cause me to – some concern that I would need to clarify.

MS. CHAYTOR: Okay. And so you would have tried to make inquiries to clarify what he meant in his tweets?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. And in terms of grading what he was saying, would he – do you have to have a threat before you even put it in this process? Is that what you're saying, in terms of making it a high –

A/INSP. GULLAGE: When we do a risk assessment, threat assessment, we would look at it and say it's low, extremely low, it's medium, that type of stuff. And when I look at the tweets, I wouldn't go through this process.

MS. CHAYTOR: You wouldn't go through this process?

A/INSP. GULLAGE: No. I wouldn't have.

MS. CHAYTOR: Okay. All right.

MR. KENNEDY: Sorry, I'd catch that he would or he wouldn't.

MS. CHAYTOR: He wouldn't.

A/INSP. GULLAGE: I wouldn't have.

MS. CHAYTOR: Wouldn't have.

THE COMMISSIONER: Would not have ...?

MS. CHAYTOR: You would not have done a threat assessment on him?

A/INSP. GULLAGE: No, no. I wouldn't have used this chart.

THE COMMISSIONER: So the scale?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. So he would have been outside the scale.

A/INSP. GULLAGE: Yes, very low, I guess.

MS. CHAYTOR: Lower than low than I take it.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay. All right.

And you also became aware of Mr. Dunphy's background after the fact because Scott Haye carried out background database checks afterwards.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay. And how, with that knowledge and with the tweets, how would you have graded Mr. Dunphy using the diagram or the guidance that you have here?

A/INSP. GULLAGE: Again, very low.

MS. CHAYTOR: Very low. Okay. All right.

And if we could bring up, please, P-0253.

And I'm not going to spend a lot of time on this document but I do have a couple of questions for you because it originates with you.

This is a document that you sent out to: All Staff RNC Sworn Members. And it's regarding a video threat to Canada which may incite-lone actor attacks. That sees it way up through – Joe Smyth emails it to premier, Davis, and as well as a number of members of his office. Were you aware at the time – this is January 25, 2015. Were you aware that Joe Smyth had shared this information?

A/INSP. GULLAGE: No, I was not. I would have expected him to share the, or summarize the information but not the email itself.

MS. CHAYTOR: Okay.

And why would that be? Why would that cause you any concern to actually share the email?

A/INSP. GULLAGE: Because this email came out to all – I sent it to all sworn police officers and it came to me out of Ottawa or from the national security respective to all sworn police officers.

MS. CHAYTOR: Okay.

And he does say in writing here “the fact that Premier Davis fits into a unique category of being a former police officer” He’s sharing it and he’s asking not to distribute further.

So do you think that would be justification, then, for him sharing it to the people in this email, that Mr. – the premier being a former member, a police officer?

A/INSP. GULLAGE: It’s to all sworn police officers and Premier Davis at the time was no longer a law enforcement officer. So from my perspective in sending it to all sworn police officers, I wouldn’t send it to somebody who was a former police officer. But based on the premier’s role, I would have summarized for him what exactly was being said.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Where is the reference to the all sworn in?

MS. CHAYTOR: Okay, so Inspector Gullage –

THE COMMISSIONER: Oh yes (inaudible).

MS. CHAYTOR: – sent it out to all sworn RNC members.

THE COMMISSIONER: Okay. Thank you.

MS. CHAYTOR: And that’s it there.

Okay. All right.

Thank you. I’ll move on from that then, unless there’s any other question there, Commissioner?

THE COMMISSIONER: Thank you. No, that’s fine.

MS. CHAYTOR: Okay.

Acting Inspector, I understand that you learned about Mr. Donald Dunphy’s shooting from Acting Staff Sergeant Mike Adams.

A/INSP. GULLAGE: That’s correct. I think he was acting inspector at the time. He was –

MS. CHAYTOR: Acting inspector, I’m sorry. He’s staff sergeant now.

A/INSP. GULLAGE: He was the – and he was the duty officer, yes.

MS. CHAYTOR: Yes, okay. And you received that call approximately 3 p.m. on April 5?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: And I understand that he contacted you because Constable Smyth asked him to do so because you would have been his immediate supervisor.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

However, prior to Constable Smyth attending on Mr. Dunphy's residence that day you did not have any knowledge that he was doing so?

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

In fact, prior to April 5, 2015, you had never heard of Donald Dunphy?

A/INSP. GULLAGE: Never heard the name before.

MS. CHAYTOR: And he –

A/INSP. GULLAGE: And didn't know where Mitchells Brook was.

MS. CHAYTOR: Didn't know where Mitchells Brook was either. Okay.

And so he wasn't someone on the radar of your division.

A/INSP. GULLAGE: No, he wasn't.

MS. CHAYTOR: Okay.

And the Criminal Intelligence Unit monitors social media, as we've spoken of, and social media messaging in performing its intelligence-gathering duties. And we've heard, the Commissioner has heard, that Mr. Dunphy was a prolific user of Twitter, but I take it nothing that he had ever previously posted had caught the attention of anyone in your unit.

A/INSP. GULLAGE: No.

MS. CHAYTOR: Okay.

Acting Inspector, as the superior officer that Constable Smyth would – administratively, at least – have reported to, were you involved in any debriefing following the event?

A/INSP. GULLAGE: No, I wasn't.

MS. CHAYTOR: And in normal circumstances would that happen? That you would be included in any debriefing?

A/INSP. GULLAGE: I felt right from the beginning when I got the call, based on my experience, that being this was an officer shooting, that we were probably going to end up into some sort of inquiry based on my close to 40 years' experience. And I felt that somewhere along

the line because I was a supervisor I would be questioned as to the character, that sort of stuff, of Constable Smyth. And I stayed away from as much along those lines as I can so that there wouldn't be any conflict.

MS. CHAYTOR: Okay, fair enough.

And in that respect then, Acting Inspector, were you ever contacted by the RCMP during their investigation for any information?

A/INSP. GULLAGE: I was not.

MS. CHAYTOR: I understand that you know Joe Browne.

A/INSP. GULLAGE: I do.

MS. CHAYTOR: Okay.

And I understand that you have policed with him and of course he would have been your chief of police for a period of time.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Did – and you also know Paul Davis.

A/INSP. GULLAGE: I do.

MS. CHAYTOR: And you know him as a former fellow RNC member.

A/INSP. GULLAGE: That is correct.

MS. CHAYTOR: Okay.

Did you ever police with him?

A/INSP. GULLAGE: I supervised him for a number of years. And I also spent some time with him when I was association president. He was involved in the association as well.

MS. CHAYTOR: Okay.

At any point in time did you have any discussions with either of them regarding this matter?

A/INSP. GULLAGE: I've had no discussions with the – former Chief Browne or the premier on any issue in relation to Protective Services detail from the time that I went there in October 26 until now.

MS. CHAYTOR: Okay.

Acting Inspector, I know that you sent a message the next day to Constable Smyth, a BBM message basically asking how he was doing and that you're a phone call away if he needed to speak to you.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Did you actually speak to Constable Smyth prior to him giving his statement to the RCMP?

A/INSP. GULLAGE: I don't think I did. I know there – if my memory serves me correct, I think there was a conversation between, sometime over the two or three days, between myself and Acting Sergeant Smyth via cellphone. Basically my – to see how he was doing, to tell him – and if I can summarize, I guess, that family comes first, that when everything else fails, family is always there and having experienced some personal tragedies in my own life, at the end of the day family stands with you.

MS. CHAYTOR: Okay.

All right so, obviously, no discussion about the incident itself.

A/INSP. GULLAGE: No. And I think he understood that the reason why there would be no discussion about that was because somewhere along the line I may be a witness or interviewed.

MS. CHAYTOR: Yes. You were anticipating that, I guess.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

And I'm going to turn now to, then, a threat assessment that was carried out on an individual in the aftermath of the incident. And you were involved in arranging to have the threat assessment done.

So if we could have P-0499, please. And we're not going to name this individual; I think we'll refer to him – if we need to, we can just refer to him as Mr. F. And basically this is an email, when it comes up on the screen here, it's the next day, it's April 6. And it's from – it's an email to you from your superior, Superintendent Sheppard.

And he's – oops, do I have the wrong number? Yes, it's 0449 that I need.

And anyhow, he's sending along – I'll just give you my brief notes on this – but he's sending along Facebook messages regarding the individual. And he notes that the individual doesn't appear to be threatening anyone directly. And he's talking about injured workers' rights and he mentions that "He seems to be anti-police." And you can see that he sends this to you and he copies other individuals, including Deputy Chief. And he's asked you if you could have someone to do a workup on him that night.

And, Inspector, is this the type of communication – if it's not threatening anyone directly, talking about injured workers' rights, is this the type of thing that would normally require a workup on the individual?

A/INSP. GULLAGE: In some occasions, yes. I think in this situation there was a gathering at the Confederation Building where this guy had said he was attending and he had made some comments in relation to the incident at Mitchells Brook.

MS. CHAYTOR: Yes. He was speaking of Mr. Dunphy's shooting at that –

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Yes. Okay. And you do respond and we don't need to bring up all the communications on it, but 10:25 I think that night and Scott Haye is in the office and he's doing up – he's doing a threat assessment on this individual.

A/INSP. GULLAGE: That is correct, yes.

THE COMMISSIONER: What is the number of that exhibit?

MS. CHAYTOR: This exhibit is P-0449.

THE COMMISSIONER: (Inaudible) thank you.

MS. CHAYTOR: And what was the result of that threat assessment? Do you recall in terms of the level of threat?

A/INSP. GULLAGE: I think it was very low.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Or low – I can't say he classified it without looking at the exhibit, but –

MS. CHAYTOR: Okay, we can –

A/INSP. GULLAGE: – I think it was very low.

MS. CHAYTOR: Yes, and we can bring that up, too. And you do – then the next morning the threat assessment is done and you sent it on up to chief and the deputy chiefs on this person. And why then if it's determined that it's low or a very low threat assessment, why was it necessary to then inform your superiors, the deputy chiefs and the chief?

A/INSP. GULLAGE: Well, this came from my superior, Jason Sheppard. This issue was, I guess, sensitive within the department. I wanted to make sure that everybody was aware of it up the line.

MS. CHAYTOR: Okay. And why was the issue sensitive within the department at the time on April 7?

A/INSP. GULLAGE: Well, we had a – when I talked about the issue of the shooting, Mr. Dunphy's shooting; it was sensitive within our department. It was an officer shooting and we don't have many of these; I think it might have been the second one, or faithful shooting, in my career in 40 years.

MS. CHAYTOR: Okay. All right.

So it's because it was a – the person was commenting on Mr. Dunphy's – the incident regarding Mr. Dunphy and normally I take it you don't send low threat assessments on up to the chief of police?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: Usually if they're very low, they don't go outside the office.

MS. CHAYTOR: Okay.

And if we could have P-0525, and this is the actual Threat Assessment document and I think it might be useful for us just to have a look at this, as an example. And when it comes up here now, Inspector, I think this is – and it's the attachment here. The attachment, so page 2. And I'll just scroll down through, first of all, and perhaps you can tell us is this the – this is how a formal threat assessment – type of document you would have for a formal threat assessment I understand; is that right?

A/INSP. GULLAGE: That's correct. Anytime there's a threat assessment or a risk assessment done in CIU we put it – do a document like this and keep it in our office.

MS. CHAYTOR: Okay.

And so under the Overview section then it's written here that the RNC officer – it talks about the Mitchells Brook incident. And “the RNC officer intended to speak with Donald Dunphy, in relation to threatening comments he had posted on his Twitter account. The comments made by Dunphy appeared to have been directed towards Provincial Cabinet Minister, Sandy Collins, making reference to political figures.”

Now we know this is Scott Haye writing this.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. Do you know where that information came from, that the comments were threatening and that they were directed towards Sandy Collins?

A/INSP. GULLAGE: I think that's what was probably being reported within the media and everywhere at that point in time.

MS. CHAYTOR: Okay.

And this is April 6, I understand, this is happening?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay.

And the Concern – just take you there. The Concern: “The death of Donald Dunphy may entice other individuals throughout Newfoundland and Labrador, to respond with violent/threatening behavior directed towards police and/or government officials. Careful consideration must be given with respect to potentially threatening comments and/or actions of any person(s) advocating in protest of this tragic incident.”

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: And, Acting Inspector, what was the concern exactly? I know I've just read out how it's articulated, but what exactly was the concern and what evidence was this concern based upon?

A/INSP. GULLAGE: I think the concern at that point in time was that there was a lot of anger in relation to this situation and that some people may feel a need to show their frustrations towards the governmental officials over this and that was based on comments that were being made, social media, other comments, Open Line programs, et cetera.

MS. CHAYTOR: Okay. And this is what then, I take it, you instructed your members to do?

A/INSP. GULLAGE: To do this threat assessment, yes.

MS. CHAYTOR: Yes, okay.

A/INSP. GULLAGE: And this was sent to me as well by my superior officer.

MS. CHAYTOR: Your superior, I understand.

A/INSP. GULLAGE: Yeah.

MS. CHAYTOR: All right.

Intelligence/Threat Summary then, under that heading, it refers to this individual having posted comments on his – this person has been actively posting comments on his Facebook page referencing the fatal shooting involving Donald Dunphy. He’s an advocate for the injured workers’ coalition and appears to be displeased with the government, police and the Workplace Health, Safety and Compensation Commission; also has an outstanding work injury claim since 1980 and has been using social media as a method of expressing his frustration.

And then it talks again about threatening comments posted on his Facebook. “As a result of these comments, members of the RNC’s Criminal Intelligence Unit forwarded an Alert/ BOLO, to all members”

And this was back before, I should say – the date, I’m sorry, is blocked out here, but it’s back in 2014, or part of the date, that he made – the police were aware of him beforehand because he had made threatening comments beforehand.

A/INSP. GULLAGE: That is correct, and the officers in Criminal Intelligence were familiar with this individual.

MS. CHAYTOR: Right. Okay. And they had visited him at that time –

A/INSP. GULLAGE: Correct.

MS. CHAYTOR: – and I think the document continues on to say that and that there was concern that he suffered from paranoia and had multiple conspiracy theories.

Okay. All right. In terms of his type of complaint and his grievance, it certainly sounded similar to Mr. Dunphy’s, so I guess you could see why he may sympathize with Mr. Dunphy.

A/INSP. GULLAGE: Absolutely.

MS. CHAYTOR: Yes.

However, he’s somewhat different from Mr. Dunphy in terms of what the police knew about his historical criminal record. It dated back to 1973 and it did include break and enter, possession of stolen property, assault with a weapon, breaches of court orders and CDSA-related offences. His last criminal conviction had been in October of 2010 and that was for possession of a controlled substance. So he is different from Mr. Dunphy in terms of his criminal record, for sure.

A/INSP. GULLAGE: That’s correct.

MS. CHAYTOR: Okay. All right.

He ultimately is graded as being a low threat level, and it says here – in fact, you are right in saying in the very low, I think, because if we look at Conclusion: Upon complete review of numerous databases and social media websites, it is believed there is very low risk to political figures and members of the public service regarding his comments.

And based on the threat assessment and his comment that he may attend the Confederation Building, the following recommendations were made: There was going to be contact with security at the Confederation Building and there was going to be periodic surveillance of the Confederation Building.

So that was the conclusion that was reached –

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: – as being the appropriate response in this situation.

A/INSP. GULLAGE: Yeah.

MS. CHAYTOR: Okay.

In this situation, this person, the threat assessment was very low –

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: – and no home visit was deemed warranted. Perhaps you can tell the Commissioner why that would be in this situation.

A/INSP. GULLAGE: This individual was known by members in our office, compared to Mr. Dunphy, which we had, as I understand, no knowledge of. I know on my unit – our unit had no knowledge of Mr. Dunphy.

MS. CHAYTOR: Okay. All right.

So this gentleman was a known entity is what you are saying.

A/INSP. GULLAGE: That is correct. And we had dealings with him in the past.

MS. CHAYTOR: Okay.

In terms of the formal threat assessment that we see here, so I understand – and correct me if I'm wrong – what's happening is that Constable Haye is gathering his information. He's obviously done his records check because he is able to come up with what the criminal record is for this gentleman.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: He's made an assessment then as to what he assesses the threat as being and then he makes his conclusion as to what action he should take after he has done that?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Okay.

Are you aware of any similar document in your review of the PSU files – are you aware of any similar document to this that was completed by Constable Smyth with respect to Donald Dunphy?

A/INSP. GULLAGE: No, I am not. It's my understanding he was in the process of doing the threat assessment when this unfortunate incident happened.

MS. CHAYTOR: Okay.

So when normally would – normally, when would this document be drafted in terms of putting together your overview, articulating your concern, putting into writing what the results of your intelligence gathering are in terms of people's – and assessing your threat level and then reaching your conclusion as to steps to take. When normally would this happen?

A/INSP. GULLAGE: Usually at the conclusion of your file. When you're doing your investigation, doing your checks, you go back and you write up your findings and make your determination and then put it in the document.

MS. CHAYTOR: Okay. So after you've done your intelligence gathering –

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: – if you reach a conclusion, your conclusion is, I need to go speak to this person –

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: – because I need more information to determine whether or not they're going to act on anything or to determine what they may in fact need, or mean by their comments, would the document be written before that and then you go do it?

A/INSP. GULLAGE: No, it would be done at the end of that. You would go see the individual, if there were concerns first.

MS. CHAYTOR: Okay. All right.

And in terms of then opening up your file before you go through this process, when do you open your file?

A/INSP. GULLAGE: In some occasions when it comes in you look at it and see if there's actually anything to it. You make that determination and you could open your file once you're finished making that – determine that yes, there's a concern, or no, there's not a concern.

MS. CHAYTOR: Okay.

And I believe you told me in your interview that in the normal practice is that you would open your file as soon as the complaint comes in.

A/INSP. GULLAGE: We do in the CIU office.

MS. CHAYTOR: That's your practice.

A/INSP. GULLAGE: That's my practice.

MS. CHAYTOR: Okay.

And I don't think I need to bring up the next document, for the sake of time, but it's an email that was written on April 7, 2015, and for those who would like the reference, it's P-0451.

This is Jason Sheppard to social media within the RNC, but you're copied on it along with Paul Woodruff. They're being asked to forward any Facebook or Twitter posts. You may remember this one, Acting Inspector, anything that's threatening towards the premier, government officials; they're asking that that – anything along whose lines be sent along to you. This is April 7, 2015, as the OIC of the Intelligence Unit, so that appropriate threat assessments can be done in a timely manner. And then disseminated to the premier's Protective Services, or wherever else it needs to go to make officers aware.

And I understand this was somewhat of a new protocol or procedure, and I think you told me on your interview it's because they were making sure there's more control coming from your office at this point in time over these matters.

A/INSP. GULLAGE: That's correct. And that was sent to – we have social media people, I guess, within the RNC that post Facebook things in relation to the force and they monitor these Facebook, Twitter type things. So if they saw something, we wanted to reinsure that it was coming to the Intelligence and Organized Crime Unit.

MS. CHAYTOR: Okay. All right.

And if we could bring up P-0523, please. And this is an email dated April 13, 2015. It originates with Janice Cave of the premier's constituency office. It makes its way to you through Ed Benoit. This is a week after the shooting now. And this is a Facebook post that the premier is said to have mentioned to Ed Benoit, or Doug Noel I think. And then it gets up to Ed Benoit. And they're wondering whether or not CIU has already done the work up on this particular individual.

And Doug Noel writes: "We were talking about it, is it physically threatening or political. In my opinion at first glance it sounds like blackmail either way. Do this or else."

And I understand that this was looked into, that you asked that a CIU file be open on the matter and a threat assessment conducted.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. And you copied your superiors on this, as well as Ed Benoit.

Okay. And in this particular situation, Inspector, if someone lodges a complaint that's not deemed to be threatening, do you still send it up the chain or is this again something different going on in the aftermath here, a week later after the shooting?

A/INSP. GULLAGE: This came from Eddie Benoit to me. Eddie was with the premier's – or, I'm sorry, the protective service detail, and he said due to current resources he was unable to do it and asked if we could do it there. And I looked at it, there was a concern here about corruption, I think, on a national perspective as well. I think something to do with – coming out of Quebec or something along those lines. I'm just trying to remember. And I sent it up to Jason Sheppard because Jason sits on a national committee in relation to intelligence in Ottawa or wherever the committee exists, so I just put it on his radar screen.

MS. CHAYTOR: All right. And I think you told me in your interview because it originated in the premier's office, you wanted to make sure your superiors were aware of this.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

Was there a change in the amount of communications about potential threats to government officials that you and your unit received in the days following the shooting incident in Mitchells Brook?

A/INSP. GULLAGE: I can't say for sure, but I think there might have been a – not as many coming. There was a lot of Facebook stuff that we were monitoring.

MS. CHAYTOR: Yes.

A/INSP. GULLAGE: So we would be picking up that type of stuff ourselves, but my understanding no, not a lot coming from the premier's office. Or from the – and when I say the premier's office I refer to the government offices, not necessarily the premier's office.

MS. CHAYTOR: All right.

I also understand from your interview, and we have evidence along those lines, that there were additional steps taken for Mr. Davis's security in the days following the shooting. Was there a concern on the part of the RNC in the aftermath of Mr. Dunphy's shooting that Mr. Davis was at an increased risk for – at increased risk in terms of his security?

A/INSP. GULLAGE: Yes, there was – there were some concerns we had. When a new premier is elected or appointed, we do what's called an assessment of their residence and that type of stuff, from a security perspective. And we had done that when the – Premier Davis was first elected or appointed, whatever the situation was there. And we had made recommendations in relation to some security concerns and Work, Services and Transportation hadn't completed these at that point in time. So if my memory serves me correct, I received a call from my superior, which was Jason Sheppard, and asked if we could provide additional security.

MS. CHAYTOR: Right, okay. Yes, and I believe there was a second person assigned back to the PSU too, so there were two people then assigned.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Yes, okay. And you – and I've only taken you through some of them, but a lot of the commentary that was being made at the time, there was public outcry, obviously, in the days following that everyone's heard about, and there was a lot of that directed, or some of that anyhow directed to your unit in the aftermath to look into. Was there anything out of – anything that was sent to you that caused you any concern for the premier's safety?

A/INSP. GULLAGE: No.

MS. CHAYTOR: Okay. And nothing that was received which caused any officer to have to go and speak to any of the individuals that had threat assessments carried out on them?

A/INSP. GULLAGE: No, not that I'm aware of.

MS. CHAYTOR: Okay.

I understand then there's some more communications. I move on to dealing with your role in terms of Joe Smyth and his employment at the RNC. On April 9, 2015, the chief emailed you and Jason Sheppard and Deputy Chief Singleton regarding – it would have been Joe Smyth coming back to work, by policy, after three days.

And he – Jason Sheppard replied to the chief that you and Deputy Singleton and himself had been discussing and agreed that Joe Smyth would be placed in the CIU. At that point in time, the chief replied that he may need a new firearm, and then Jason Sheppard replied to that and asked you to attend to having Joe Smyth come in for a chat.

So this is April 9; and did you meet with Joe Smyth then on his – on that date, or thereabouts?

A/INSP. GULLAGE: I think the superintendent met with him and discussed him coming back in an administrative role or an office role within CIU.

MS. CHAYTOR: Okay. And did you understand it was a non-operational position?

A/INSP. GULLAGE: Yes, I did.

MS. CHAYTOR: Okay.

And in terms of you being tasked with making sure that he had his use of force equipment to replace those that the RCMP had seized, were you aware of any policy in terms of the RNC, firearm policy with respect to officers who are assigned non-operational positions and whether or not they're to be equipped with firearms?

A/INSP. GULLAGE: I wasn't at the time; I am now.

MS. CHAYTOR: Okay. And that is P-0627; I don't think we need to bring it up. I'll perhaps review it when the chief is here next week. So in that particular case, I understand, that the policy, which was dated March 10, 2010 in effect at the time – there's a new policy now August 16, 2016 – firearms are to be stored at the RNC armory when officers are assigned non-operational positions and cannot be assigned operationally.

So you weren't aware of that at the time of the discussion to have –

A/INSP. GULLAGE: I didn't review policy at that point in time. I was – the email was coming from the chief to Superintendent Sheppard to me to replace his use of force equipment.

MS. CHAYTOR: Okay.

Acting Inspector, did you receive the email that Constable Smyth sent out to the RNC – his RNC colleagues on April 10, 2015?

A/INSP. GULLAGE: Yes, I did.

MS. CHAYTOR: And what were your thoughts on having received that email?

A/INSP. GULLAGE: I was sitting at my kitchen table, eating my breakfast and it came in on BlackBerry, and when I read it I just shook my head. That's –

MS. CHAYTOR: Okay. And why is that?

A/INSP. GULLAGE: Because I felt that it probably shouldn't have been sent out in the fashion that it was.

MS. CHAYTOR: Okay.

And this is coming in on your BlackBerry to all RNC members?

A/INSP. GULLAGE: Correct.

MS. CHAYTOR: Okay.

And what was your concern?

A/INSP. GULLAGE: My concern was that he was under investigation and that until he had completed the process with the RCMP that he shouldn't be saying anything to his colleagues.

MS. CHAYTOR: Okay. All right.

And then some other communications that I'll just briefly review with you, there's an email of July 29, 2015, and for anyone watching – but Madam Clerk, it's not necessary really to bring it up, P-0199 – it's an email of Constable Smyth and he's sending this to Corporal Steve Burke, the leader investigator of the RCMP, but you and Staff Sergeant Sheppard – I'm sorry, Superintendent Sheppard are copied on the email.

And he writes that – he's obviously frustrated; he's writing about other investigative steps being undertaken. You know, he's wondering what other steps are going to be taken beyond the lab results. And it's causing him to lay awake at 3:30 in the morning.

At this point in time, Constable – are you worried about Constable Smyth when you read this and, if so, did you speak to Constable Smyth at this point in time?

A/INSP. GULLAGE: No, I wasn't worried about Constable Smyth and from 3:30 in the morning would cause no concern for me. I check my BlackBerry as well 3 or 4 in the morning if I'm awake.

MS. CHAYTOR: I guess as a police officer you're –

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: All right.

I'm checking mine at that time in the morning these days, too.

All right. And if we could have P-0526, please. And this is another email from Joe Smyth and this one is to you and it's regarding disconcerting comments. It's August 21, 2015 and he's talking about disconcerting comments towards the RNC, related to Don Dunphy's shooting and the Sean Kelly trial.

And then that gets forwarded on by you, and you say that you're going to open an intelligence file. And in this situation, why is an intelligence file being opened for –?

MR. KENNEDY: Commissioner, I just note that there's a redaction there and Commission counsel referred to the name. I had referred to an initial several weeks ago and was told that that was inappropriate.

MS. CHAYTOR: Oh, I'm sorry. But, what did I say? I said somebody's name? I apologize.

MR. KENNEDY: (Inaudible.)

MS. CHAYTOR: It was a trial, though. I think the name was probably public.

MR. KENNEDY: Sorry?

MS. CHAYTOR: I'm sorry.

MR. KENNEDY: It's just redacted is all I'm saying.

MS. CHAYTOR: I'm sorry, yes.

Okay, I apologize, Mr. Kennedy. Thank you for catching me on that. I apologize. Okay.

So I'm just wondering in terms of, I'm just wondering in terms of why there's going to be a file open for the disconcerting comments?

A/INSP. GULLAGE: It's my understanding that this YouTube video was from the group Anonymous. And I think you're familiar with the group Anonymous. They wear masks and they make various comments, and I think it's the first time – one of the first times that we have saw that type of thing within the province. And he was commenting on things that would happen in the province, and we felt the need to open an intelligence file.

MS. CHAYTOR: Okay. All right.

And then we have another communication, and we don't need to bring these up. I'm going to move along a bit faster here. But there's another communication on October 27, 2015. And, again, this is Constable Smyth to Corporal Burke and he copies you on this. And he's advising Corporal Burke of social media activity in which he's concerned because he's identified and he's finding this to be deeply concerning to him.

Did you think it was appropriate for him to be communicating or sending this information on to the investigator in the criminal investigation?

A/INSP. GULLAGE: I had no problem with him sending that information on. I think in the – the person doing the investigation should be aware of all – everything that was happening. And I had no concerns with that at all.

MS. CHAYTOR: Okay. And in your interview at page 194, December 12, you told me at that time you didn't think it was appropriate.

A/INSP. GULLAGE: It's something that I wouldn't have done, but from the – someone – the investigator, based on my experience, should know everything that's happening. And I wouldn't have done it if it was me, but he's the contact person.

MS. CHAYTOR: Okay.

And I'm going to look now, please, at P-0459. And this is the same date that he's written to Corporal Burke. This is an email from Constable Smyth to yourself. And in this is talking, again, about the social media comments on Twitter and the fact that he's being identified. And you forward that on to your superior and also copy deputy chief, the two deputy chiefs and the chief.

And in this you're indicating that Constable Smyth is concerned to the point that he's moving his child and his wife in with his in-laws.

So did Constable Smyth talk to you about that and tell you that that's what he intended to do?

A/INSP. GULLAGE: I received the email and, yes, we had a discussion.

MS. CHAYTOR: Okay. And he's also saying that he may also be – or you're advising he may be making a request to be armed while at home?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. And why are you sending this on to your superiors and all the way to the chief? Is this because, at this point in time, you're concerned about Constable Smyth?

A/INSP. GULLAGE: I was concerned about the comments that were being made on social media and the fact that his family was being identified. And I felt that the senior executive of the force should be aware of that.

MS. CHAYTOR: Okay. And are you also sending it on because of the request to be armed at home and only the (inaudible)?

A/INSP. GULLAGE: That's correct, as well.

MS. CHAYTOR: And only the – you made me jump.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. All right. And so it's only the chief who would be able to make that decision, I understand, in terms of having him armed at home? Or at least that's what you told me because only chief could make that decision.

A/INSP. GULLAGE: That was my understanding at that point in time, but there are certain provisions in the firearm policy that allows – and I thought this because I had done it my prior assignments as well – that allows the designated chief of police to make a decision.

MS. CHAYTOR: Okay. And the chief would be the person to determine who that designate is, I take it?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Yes.

In terms of what Constable Smyth had provided to you, and it was obviously unpleasant and upsetting to Constable Smyth. Was there anything threatening in the comments that you reviewed?

A/INSP. GULLAGE: I asked Constable Scott Haye, who's in my office, to go through everything that was out there and to report back to me. And the comments, while they were – they were of a concern to us. There was nothing that would be classified as being threatening, no.

MS. CHAYTOR: Okay. And at any point in time, did you or anyone in your unit open up a file regarding any threatening comments made towards Constable Smyth in the aftermath of this matter, up to this point in time?

A/INSP. GULLAGE: I don't think so, no.

MS. CHAYTOR: Okay.

Acting Inspector, did the comments warrant consideration of Constable Smyth being armed at home?

A/INSP. GULLAGE: There was a concern, I felt there was a concern for Constable Smyth and his family based on what I had saw, and that is why I asked that a workup be done.

MS. CHAYTOR: Okay. And under what circumstances would officers be permitted to be armed at home while off duty?

A/INSP. GULLAGE: If there's been a threat made towards them.

MS. CHAYTOR: Okay. And at that point in time was no threat that you had determined?

A/INSP. GULLAGE: That I had determined but that's why I asked for the workup to be done.

MS. CHAYTOR: Right. But after the workup is done, still no threat?

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay. And I would take it, it would have to be fairly significant or exceptional circumstances to have an officer armed at home while off duty.

A/INSP. GULLAGE: There have been occasions, based on my drug background, where we've have several members that were required to take their firearms home because of information that there was threats made towards them.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: So I'm –

MS. CHAYTOR: You don't need to speak quite so close. Sorry.

A/INSP. GULLAGE: I am aware of several occasions where officers have taken their firearms home.

MS. CHAYTOR: Okay. And those are fairly significant circumstances. Is –

A/INSP. GULLAGE: Well, yes, threats against the officers.

MS. CHAYTOR: Right, yes.

A/INSP. GULLAGE: And again, it would be the same process here. You take it home until they determine whether, in fact, the threat exists or if the person making the threat has the means and the ability to carry out the threat.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0201. And this is the email that Constable Smyth did send to you later that afternoon from the same date, October 27, where he does, in fact, make requests:

“Much of the questions and allegations also currently found on social media around this matter are predicated on the lack of information ...” he says “about the details of the investigation.”

And he says: As per our conversation, in light of recent activity that identifies him, I’m requesting me – requesting permission to be armed. And that’s October 27.

And then on November 2, so five days later, you write to Superintendent Sheppard and tell him that you forgot to forward this. “I have given permission subject to review this week.”

And so I take it, only the chief could have given permission, or his designate. Did you check with the chief or consult with the chief prior to doing this?

A/INSP. GULLAGE: No, I did not. I had a lengthy conversation with Acting Sergeant Smyth prior to this.

MS. CHAYTOR: Okay. All right.

So you didn’t consult, though, with anyone else in terms of your superiors prior to giving permission?

A/INSP. GULLAGE: Other than the email that I had forwarded earlier that day that I got no response to.

MS. CHAYTOR: Nobody replied.

A/INSP. GULLAGE: Nobody replied.

MS. CHAYTOR: Okay.

And at the time, of course, Acting Inspector Constable Smyth was still under active investigation by the RCMP for his actions in a shooting and the shooting of a person who had been – who had written what were described as disconcerting comments on social media. You permitted him, or was giving permission to him to be armed at home because he was perceiving comments on social media to be disconcerting towards him. Is that correct?

A/INSP. GULLAGE: That’s correct.

MS. CHAYTOR: Okay.

And I understand, we’ve already heard from Superintendent Sheppard and he meets with Constable Smyth shortly after this, or shortly after he becomes aware of this, and Constable Smyth was not permitted to be armed at home.

A/INSP. GULLAGE: That’s correct. And my understanding that – it’s my understanding that he didn’t take his firearm home. There were other investigative steps taken and Constable Smyth on the day that he – or the next day that he sent me that email, moved his family outside of RNC jurisdiction.

MS. CHAYTOR: And Superintendent Sheppard had been concerned that he stay in a non-operational role. He was concerned that he avoid any situation where he may be put in a situation where he may have to use force while he was under investigation.

Would it have been a concern to you that now he could have been put into a situation where he’s armed at home and potentially would have to react to a situation to protect his loved ones?

A/INSP. GULLAGE: It's a concern in hindsight, but at that point in time it wasn't a concern for me, no.

MS. CHAYTOR: Okay. So it's something you thought about since but at the time you didn't think of it in that context.

A/INSP. GULLAGE: That's correct. Yeah.

While I understand that – once Constable Smyth was assigned to administrative duties in my office, and, yes, he was frustrated with the process and the Facebook postings and the whole thing, from the time he was assigned to administrative duty he was strictly professional. There was nothing – I had no concern whatsoever.

MS. CHAYTOR: So you had no concern for – and he didn't demonstrate any stress or anything like that.

A/INSP. GULLAGE: He was a little bit quiet, a little bit more withdrawn, but there was no outburst. He was pretty respectful. He addressed me by rank. He got along well with his co-workers. There was no outbursts, there was no tipping over chairs, there was no slamming of the doors or anything of that nature. He was a true professional.

MS. CHAYTOR: Okay. So you didn't see any signs to question his frame of mind at the time.

A/INSP. GULLAGE: Not in regards of acting professionally in relation to the firearm, that's correct.

MS. CHAYTOR: Okay. All right.

The other thing that Constable Smyth mentions here – and again, the Commissioner has seen other evidence of this as well – is the frustration that he has about the lack of information publicly. And I'd want to ask you, because I understand you are a former past-president of the RNCA. Is that correct?

A/INSP. GULLAGE: I spent eight years as president of the RNCA.

MS. CHAYTOR: Okay. And with that particular lens, and obviously you advocated for other officers for many years, did you have any concerns with the public communications by the RNC around this matter?

A/INSP. GULLAGE: I had some concerns. I didn't totally agree with Constable Smyth's position, but there were some concerns that I agreed with. I didn't agree, for an example, that the chief should talk about the investigation, but I believe there were steps that could have been taken – other steps that could have been taken to address such things as use of force, that type of stuff, and how our officers are trained, along those lines. But the – I understood the concern of the chief of being put out there in public comment on the investigation.

MS. CHAYTOR: Okay. So what you're saying is – and this is, again, part of the Commissioner's mandate. So what you're saying is that there may have been some issues from a policy and procedure point of view that could have been addressed without actually speaking to the particular investigation.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: But from my – and you asked the background about my – from my association role. I felt, okay, that it's the role of your professional association as well to look after the interests of your members as well, and they didn't make any comments either.

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

Acting Inspector, did you have any communications with any member of the RCMP at any point in time regarding this matter while the investigation was ongoing?

A/INSP. GULLAGE: I did.

MS. CHAYTOR: Okay. And perhaps you can tell the Commissioner about that.

A/INSP. GULLAGE: I think it might have been around December; the latter part of November, that Constable Smyth had advised me that he was informed by the RCMP that there were further delays in the investigation.

MS. CHAYTOR: And this was in 2015, just to be clear.

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Yeah.

A/INSP. GULLAGE: And they understood that the thing had to do with the, and I stand to be corrected, Mr. Commissioner, the 3-D video or something of that nature.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: They were waiting on that. I called Sergeant Sue Efford, who is a member of the RCMP that worked in the Major Crime Unit, she wasn't directly involved in the investigation, to ask her if she had any knowledge of that. And it was her understanding that the person doing the 3-D video was going on holidays for six weeks. And my question to her, okay, I wasn't sure if it was an outside firm that was doing that or it was being done internally, and if there was somebody else in the office that could deal with this issue while he was gone on holidays because I felt this matter needed to be put to bed one way or the other, whatever the outcome was.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0530. And this is in relation to that contact that you made. And page 2, please, Madam Clerk, first paragraph. This is Sue Efford writing to Corporal Burke and Inspector Pat Cahill. And she's referring to her "conversation with Joe Gullage on this date. Just an additional FYI, Gullage is frustrated about the time line (as he sees the effect it has on SMYTH and no reply from the RCMP to the latest media commentary)."

So this would be November 2. So this is the same time frame when –

A/INSP. GULLAGE: Around the same time. I wasn't exactly sure of the date but that's the time, yes. That's the only conversation I had with – so it's got to be the right time.

MS. CHAYTOR: And the same time frame that –

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: – you’re telling Superintendent Sheppard you gave permission for him to be armed at home?

A/INSP. GULLAGE: Yes.

MS. CHAYTOR: Yes, the same day.

“I explained we should know more about the 3D image report ...” Okay, and it goes on to say: “He was concerned the 3D image report would present a further considerable delay.” And she explains: “... that we will consider what the report offers against the time line. He just wanted reassurance we are pressing tighter time lines, obviously as it is one of his members. We discussed the political undertones from the recent social media and he is aware that more may come regardless of our final report. He offered a suggestion to perhaps meet with SMYTH once in a while, and I assured him that a solid flow of communication exists between the lead investigator and SMYTH. I told him I would keep him updated on time lines.”

So, Acting Inspector, in terms of discussing the political undertones from the social media, what is that about? What political undertones?

A/INSP. GULLAGE: Some of the things in social media was the fact that Acting Sergeant Smyth was a trained assassin for the Premier’s office, and comments along these natures. So that’s what we talked about, that it was – social media was saying that he was sent there by government. That’s what we talked about.

MS. CHAYTOR: By government. Okay.

And you talked to, is it Inspector Efford?

A/INSP. GULLAGE: No, she was a sergeant.

MS. CHAYTOR: Sergeant Efford. Okay.

A/INSP. GULLAGE: And I had worked with her on a prior investigation so that’s how I knew her.

MS. CHAYTOR: Okay, so you knew that.

And she offers to keep you updated. And did that happen? Did you have further communications with her?

A/INSP. GULLAGE: No, I didn’t. And she transferred shortly after that to Ottawa, as I understand.

MS. CHAYTOR: Okay.

And were you aware at the time that your immediate supervisor, Superintendent Sheppard, was the liaison for the RCMP?

A/INSP. GULLAGE: I was probably made aware of it but I didn't – it didn't register with me at that point in time.

MS. CHAYTOR: Okay.

The final question or line of questioning is you were interviewed by Sergeant Grant Little with respect to the internal policy review that the RNC had carried out on this matter. And can you tell – what was the focus of your interview with Sergeant Little?

A/INSP. GULLAGE: As I recall there were two questions. There may have been more but I recall one had to do with the dress and deportment, how members dress; for an example, if they're with the premier or Cabinet minister, shirt and tie type thing. If they're not doing – not with the premier or Cabinet that's it's business casual. And he wanted me to confirm that.

And the other one had to do with a criminal intelligence course that Constable Smyth had completed in Halifax. And there was no – nothing in his service record to that and he wanted me to confirm that, yes, he had completed that course.

MS. CHAYTOR: Okay.

And if we could bring up P-0006, please. And I just want to bring you to the reference to you in the report. This is the report of Sergeant Little and it's page 6 of the Saskatoon report.

Thank you.

And this comes under the section of: "Assistance to Outside Agencies Policy & Routine Order" It says: "The RNC has an obligation and responsibility to ensure that information regarding serious/violent crime and dangerous wanted persons is promptly communicated to the RCMP.

"Based on the statement of Constable Smyth, Donald Dunphy was not considered to be a serious/violent criminal nor was he a dangerous wanted person. Constable Smyth did however, as a courtesy and to glean additional information, contact the RCMP prior to travelling to Mitchells Brook.

"The statement of Constable Smyth is corroborated by Acting Inspector Joseph Gullage and the RCMP investigation."

Do you recall Sergeant Little discussing these issues with you?

A/INSP. GULLAGE: It's quite possible.

MS. CHAYTOR: Okay.

A/INSP. GULLAGE: I don't exactly recall what the question was but he might have asked me if I felt there was a serious threat or something of this nature.

MS. CHAYTOR: Okay.

And you've been able to give the background, I guess, on Mr. Dunphy because you had had Scott Hays do the searches on his background after the fact.

A/INSP. GULLAGE: That's correct.

MS. CHAYTOR: Okay.

Those are my questions. Thank you very much.

I'm sure some of my colleagues and the Commissioner may have some questions for you.

A/INSP. GULLAGE: Thank you.

THE COMMISSIONER: I'm sorry, what was that last exhibit?

MS. CHAYTOR: This one is – this is the Saskatoon report, P-0006.

THE COMMISSIONER: P –?

MS. CHAYTOR: P-0006.

THE COMMISSIONER: P-0006. Okay.

MS. CHAYTOR: Yes, all of the first five reports are – or, first six reports are the first five – or six exhibits, I should say.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: Mr. Simmonds?

MR. SIMMONDS: Good afternoon, Inspector Gullage.

A/INSP. GULLAGE: Mr. Simmonds.

MR. SIMMONDS: I read your transcript and I've heard your answers here today. Am I fair to say, Inspector, that the premier's security unit, protective unit, operated – while they reported to you administratively, they really reported to the chief of police with respect to their activities.

A/INSP. GULLAGE: I would say that's fairly accurate. Yes.

MR. SIMMONDS: So they were pretty much an autonomous unit in many regards in that – as opposed to a reporting structure of inspector, superintendent, deputy chief to chief, they went almost directly or directly to the chief.

A/INSP. GULLAGE: To a certain extent, yes.

MR. SIMMONDS: Okay.

I think you also said that your involvement with him was – I think the phraseology you used in your transcript was that you did not micromanage them.

A/INSP. GULLAGE: That's correct.

MR. SIMMONDS: Okay.

They would set their own schedules; they would determine what work had to be done. And they didn't report back for approval unless it was an administrative issue with respect to travel, accommodations, things of that nature.

A/INSP. GULLAGE: That's correct.

MR. SIMMONDS: That seems to be somewhat of a different arrangement than most of the other areas of the RNC. Am I – is that a fair statement?

A/INSP. GULLAGE: That's fair.

MR. SIMMONDS: Is there a – can you explain the justification, Inspector, for why they were given such autonomy in the manner they were?

A/INSP. GULLAGE: No, Sir, I can't. It was set up prior my, me going there.

MR. SIMMONDS: Okay. So you inherited –

A/INSP. GULLAGE: That's correct. I only went there in October of 2014 from the management perspective.

MR. SIMMONDS: Yeah. Okay.

You indicated also in your transcript that Constable Smyth was a very capable – was very capable with respect – and I think the phrase was – with computers, Facebook, Twitter and the like.

A/INSP. GULLAGE: That's correct.

MR. SIMMONDS: So he had more than just a surface knowledge of that; in fact, I understand he set up the webpage or something of that nature for recruitment in the RNC or something along that line?

A/INSP. GULLAGE: That's possible. I'm not aware of that.

MR. SIMMONDS: Okay.

But he was very capable with respect to the use of computer and computer devices.

A/INSP. GULLAGE: No question.

MR. SIMMONDS: No question about it.

Have you read all the tweets that – I know you've certainly probably read the final one, but the tweets that form the series of tweets that were tweets of concern as Donna Ivey phrased it?

A/INSP. GULLAGE: I have, yes. I read them at the, my interview with the counsel for the Commission.

MR. SIMMONDS: Okay.

That's the first time you had read them?

A/INSP. GULLAGE: That's the first time I had read them in sequence, yes.

MR. SIMMONDS: Oh, okay. Having read them and I'm sure reflected on them, would you agree that they are in no way a threat?

A/INSP. GULLAGE: I would agree that there's in no way a threat but I would also say there are a couple of comments that I would have wanted clarified.

MR. SIMMONDS: And I think that's exactly the position you took in your interview: They weren't a threat but there were some things you would want clarified.

Would you have expected, as part of that clarification then – the Commission counsel showed us one that was done after the fact and they're very detailed, done by Constable Haye, I guess it is?

A/INSP. GULLAGE: Yes.

MR. SIMMONDS: Okay.

Would you have expected – and, again, I hearken back to your transcript where you said you – I believe you indicated you would have expected a file to have been generated by Constable Smyth before he went down to Mitchells Brook.

A/INSP. GULLAGE: I would have expected that because that's the normal procedure within my office.

MR. SIMMONDS: And the only – he did have a hard-cover file –

A/INSP. GULLAGE: Yes.

MR. SIMMONDS: – with a couple of sheets in it. But he has told us that, no, he had not set up a file or generated a file within the RNC system –

A/INSP. GULLAGE: Yes.

MR. SIMMONDS: – as might have been expected.

A/INSP. GULLAGE: Yes.

MR. SIMMONDS: It appears that Good Friday he becomes aware of the tweets of concern, does some review of it on Saturday and then Sunday determines – and he doesn't need – because of the autonomy of this section and the way it's set up, he doesn't need to clarify that or bounce that off anybody. In fact, he's the acting sergeant so he's the person acting in charge of that section.

A/INSP. GULLAGE: That's correct.

MR. SIMMONDS: So he determines I'm going to go down there.

A/INSP. GULLAGE: That's correct.

MR. SIMMONDS: We have the discussions with the people at Workers' Comp, and I don't know – were you a party or you apprised of those discussions at all?

A/INSP. GULLAGE: I was not.

MR. SIMMONDS: Okay.

In any event, there were discussions; they didn't consider Mr. Dunphy a threat. It appears that everybody is in unison – every though the message did clearly get mixed after the fact that it was

threats against the premier. There were never threats against the premier. But it appears everybody agrees, or a number of people maintain these are tweets of concern, I think, is the phraseology.

A/INSP. GULLAGE: That's – yes.

MR. SIMMONDS: Okay.

He checks with your system and the RCMP and finds out no firearms registered; here's his criminal record; nothing of violence. What would be – from your point of view as head of the Criminal Intelligence Unit, what would be the driving force to have to deal with this on Sunday, on an Easter weekend of all times? Can you offer any insight into that?

A/INSP. GULLAGE: The only thing I can say to you, Mr. Simmonds, is that in the policing circle –

MR. SIMMONDS: Uh-huh.

A/INSP. GULLAGE: – Easter Sunday, Christmas day, these type of things mean very little to us.

MR. SIMMONDS: I appreciate that comment from your work schedule point of view.

A/INSP. GULLAGE: Yes.

MR. SIMMONDS: But from the point of view of wanting to attend upon someone and build a rapport – number one, they're not a threat; it's not a criminal investigation.

A/INSP. GULLAGE: Yes.

MR. SIMMONDS: You're not even calling him in advance to say I'm coming down. So wouldn't you agree that lunchtime on a long weekend, on a Sunday, may indeed be – if you want to build rapport, may not be the best time to approach somebody at their home?

A/INSP. GULLAGE: It may be, may not. I – it's a decision which the officer would make himself. I do understand – or it's my understanding as well that he had some scheduled leave, he was going out – so it may have been a thing to get his files done or completed before.

MR. SIMMONDS: Okay.

A/INSP. GULLAGE: That's my understanding.

MR. SIMMONDS: Okay. Fair enough. I accept your answer.

Why would not – or wouldn't it be an appropriate approach to have made a personal contact through telephone with him first to try and set up an appointment. And I'll tell you what causes me concern here. When he talks to the RCMP, the RCMP officer – as was a courtesy to do because you're going in their jurisdiction; there is no issue with that. But the RCMP officer offered to go with him. Adrian Cox did. And he said: No, I don't need you to go with me in a marked car, in a uniform; that might set him off. And the very concerning thing, from our point of view, Meghan Dunphy's point of view, is there is no evidence that anything ever set him off –

MR. KENNEDY: Commissioner, Constable Cox did indicate that he was paraphrasing what Constable Smyth said and that was not the exact term.

THE COMMISSIONER: That's correct.

MR. SIMMONDS: I'm going to go with what the evidence has been, Mr. Commissioner – you've heard it; the thrust of it was that it may have some negative reaction for Mr. –

THE COMMISSIONER: It was a paraphrase but the witness, Mr. Kennedy, said that that term – it was his term but it repeated what – the gist of what he understood was being said, so –

MR. KENNEDY: I put to him to him at that point, could it mean agitate, irritate, aggravate, annoy?

THE COMMISSIONER: Yes, you did, yeah, but all of that basically, I think, could be viewed, in my understanding of setting, setting one off – although maybe setting off implies something quicker than a slow development of agitation. Anyhow, I don't think that was the thrust of your question anyhow, Mr. Simmonds, was it?

MR. SIMMONDS: But there's no evidence whatsoever that Constable Smyth, Sergeant Smyth, would have had at the time that he would have any negative reaction from Don Dunphy from a police officer. In fact, the evidence we've heard at one police stop before in 2012 was that Mr. Dunphy was very co-operative. Why would a police officer form that – why would he naturally, or come to a conclusion that there really seems to be no basis for?

A/INSP. GULLAGE: I really can't answer you, Mr. Simmonds, in relation to your question. Each individual officer, when you are doing a threat assessment, has their way of operating. Like some officers like that personal contact –

MR. SIMMONDS: And I –

A/INSP. GULLAGE: – to see –

MR. SIMMONDS: Sorry.

A/INSP. GULLAGE: – to see a person in their environment, okay, that type of thing, and develop trust from that perspective.

MR. SIMMONDS: And I don't take issue with that, Inspector, except that I would think on days that, particularly days that I understand your work schedule demands were, but the far majority of the population of the province are celebrating a holiday, or a family day, that if you're going to do that and you are looking to build trust, going down unannounced would seem to be a harsh, rough way to do that. Do you agree?

A/INSP. GULLAGE: I don't agree with that, but I appreciate your point.

MR. SIMMONDS: Would you think a call first or check with other family members to get some background information, not a threat of concern perhaps, the tweets, ambiguous when read, information from Workers' Comp that they didn't have anything in the way of threats from him?

A/INSP. GULLAGE: There are all kinds of different things that could have been done, okay?

MR. SIMMONDS: Uh-huh.

A/INSP. GULLAGE: But I don't question, me, personally, I don't question the approach taken by the officer of going there. It's was his call to do so, based on what he had.

MR. SIMMONDS: But can you understand from the family's point of view, from Meghan Dunphy's point of view, that her father being subjected to – he makes comments, which he has a right to do. He's on Open Line, which he has a right to do. He's known to Workers' Comp. He's just come back from a Sunday lunch or brunch with his family and he's now portrayed with a comment like: set him off, don't bring a patrol car that might be a problem.

Do you see how that gives an unfair impression of the man?

A/INSP. GULLAGE: I can see that, Mr. Simmonds, and hindsight's a wonderful thing. We would have done things a lot differently.

MR. SIMMONDS: Indeed. Indeed.

THE COMMISSIONER: Sorry, what was it?

MR. SIMMONDS: Hindsight is a wonderful thing. We would have done things a lot different.

A/INSP. GULLAGE: Yes.

THE COMMISSIONER: Yeah, Mr. Simmonds, I'm not trying to cut you off now, but I don't want us to get into – we're getting now to the end of the –

MR. SIMMONDS: I hear you.

THE COMMISSIONER: – the inquiry. We've had a lot of evidence on that point from a lot of different –

MR. SIMMONDS: Different perspectives.

THE COMMISSIONER: – people. I think you've gotten your point across.

MR. SIMMONDS: No, I asked the – I'm sorry, didn't mean to cut you off.

THE COMMISSIONER: No, that's all right. I can understand you seeking another view from another experienced police officer, but you're really, I think – I'd ask you to keep it in proportion in terms of the value of the –

MR. SIMMONDS: No, no, I know. I'm done. I'm done with that (inaudible).

THE COMMISSIONER: Yeah, right.

MR. SIMMONDS: Indeed, those were the questions I had.

Thank you very much, Inspector Gullage.

A/INSP. GULLAGE: Thank you, Mr. Simmonds.

THE COMMISSIONER: I wouldn't have interrupted if I'd known you were that close.

Okay. Mr. Kennedy.

MR. KENNEDY: Commissioner, I'll need 10 or 15 minutes, if you want to take a break (inaudible).

THE COMMISSIONER: No, we may as well break. We'll take our 15 minute break.

Thank you.

MS. SHEEHAN: All rise.

MR. KENNEDY: Commissioner, before you go, I do have those references. I've been given some references on that question you raised yesterday. Do you wish me to –

THE COMMISSIONER: If you can or –

MR. KENNEDY: – copy the documents or the articles and bring them to you tomorrow?

THE COMMISSIONER: Well, if you give them to us, we can get them copied during the break.

MR. KENNEDY: I don't have them with me. I've got the references – have been sent by Dr. Collins.

MR. SIMMONDS: Because we'd like them too. We would like those as well.

THE COMMISSIONER: Yeah.

MR. KENNEDY: Yeah, sure.

THE COMMISSIONER: They're probably not easy references to get at so you (inaudible).

MR. KENNEDY: I'll have them sent to me and I'll bring them in tomorrow and then I guess they can be put, given to the other counsel.

THE COMMISSIONER: Yes, thank you. That'll be fine.

MS. SHEEHAN: I declare this Inquiry in recess.

Recess

MS. SHEEHAN: All rise.

I declare the Commission of Inquiry in session.

Please be seated.

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

MR. KENNEDY: Thank you, Commissioner.

Acting Inspector Gullage, Ms. Chaytor took you through some of that threat assessment chart that you had there from high to low. You indicated, Sir, that there's risk assessments and threat assessments.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: Are there common elements in both? Or how do you distinguish between a threat assessment and a risk assessment?

A/INSP. GULLAGE: There are common elements in both. I guess when you look at a risk assessment you're looking at the risk to yourself. You're looking at – from a threat perspective you're looking at whether in fact there is a possibility that a threat exists so that if you're going to approach somebody – number one, if you're going to approach somebody you want to know from your own perspective what the risk is in approaching them.

If you're doing it, like in this case for the Protective Services detail, you want to know what the risk is in relation to should there be the premier or a Cabinet minister visiting that general area for some sort of meetings, that type of stuff, and whether the individual actually – well, if he shows up, threaten the premier or cause some – so you can adjust your resources accordingly.

MR. KENNEDY: Thank you.

Acting Inspector Gullage, do I understand the first time you actually saw the string of tweets of concern, or the tweet of concern in this case, was during the interview with Commission counsel?

A/INSP. GULLAGE: That is correct.

MR. KENNEDY: And you were asked a lot of questions in relation to what you would have – how you would have interpreted that and what you would have done. Correct? Do you remember that?

A/INSP. GULLAGE: Correct.

MR. KENNEDY: I'm going to read you something now, Sir, and I don't know if this is – please correct me if I'm wrong or – but you – basically, you were asked whether or not the comments, the tweet would have been a threat, the tweets would have been a threat.

And at page 124-125 you say – and the tweet is read to you: Won't mention this time two prick dead MHAs. While it may be low, okay, I think I would have said I need to have a chat. Ms. Chaytor says: Okay, all right. Acting Inspector Gullage: But I certainly wouldn't be – consider him a high or medium. I would consider it a very low threat.

So when you use that term, a very low threat, what did you mean by that when you spoke to Ms. Chaytor?

A/INSP. GULLAGE: There was a comment, as I understand it – I don't have the tweets in front of me but I understand may hurt – two words: may hurt. Okay? And when somebody uses the word "hurt," okay, to me, that's concerning.

MR. KENNEDY: Yeah. Two dead MHAs may have family, may have good family members I may hurt.

A/INSP. GULLAGE: Yes, so may hurt – from that, when you use the word "hurt," that would, to me, be a concern. That would be a word that I would associate with a threat.

MR. KENNEDY: Yeah, you said I would consider it a very low threat.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: So is that – on your threat assessment, is it a threat or is it simply something that's – it's low on what would be threat assessment. Were these comments – did you consider them a very low threat?

A/INSP. GULLAGE: I didn't consider it to be a threat at all. I considered – I would have sought clarification for the word may hurt and two prick dead MHAs.

MR. KENNEDY: Yeah. And then you did say, you went on in that same excerpt I just read to you: But you needed to have a chat.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: In other words, would you have done what Constable Smyth did?

A/INSP. GULLAGE: I have no problem whatsoever with what Constable Smyth done.

MR. KENNEDY: You went on and it was a further discussion: Even if it comes back nothing, I would have wanted to have a chat because, to me, I need to have a chat with him.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: So you do know and I'm not going to through it all – the Commissioner is right.

A/INSP. GULLAGE: Yeah.

MR. KENNEDY: We've heard the steps taken. But, Constable Smyth, on a Friday receives a tweet of concern. On a Saturday he reviews some of the history of Mr. Dunphy's tweets. On Saturday afternoon he commenced doing certain searches and he talked to Workers' Compensation. On Sunday he has checks done at the RNC Communications Centre and a PROS check done at the RCMP. So he then talks to Mr. Dunphy. Is that a natural extension of what should be done in a risk assessment, threat assessment?

A/INSP. GULLAGE: Yes, it is.

MR. KENNEDY: And when shown a formal threat assessment form by Ms. Chaytor, you indicated that would be done after all of the work had been done.

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: Now, Mr. Simmonds asked you about visiting on an Easter Sunday and you indicated that Easter Sunday, Christmas Day; in policing terms there's a job to do, you have to do it.

A/INSP. GULLAGE: Absolutely.

MR. KENNEDY: If you look at, Sir – and there's been suggestions here that the urgency of – what was the urgency? We know that the tweet comes in on a Friday, on Good Friday, and the visit takes place on a Sunday. Wouldn't that be rather routine for a police officer, that over a period, a couple of days later, you do the visit as ...?

A/INSP. GULLAGE: It would be. Yes.

MR. KENNEDY: Yes.

So that's not indicating urgency in those circumstances in the police world, is it?

A/INSP. GULLAGE: Not in my view, no. Three days to do a threat assessment, risk assessment, however you want to word it, is usually standard.

MR. KENNEDY: Yeah.

Sir, one of the realities of policing in this province, and perhaps throughout Canada, is that oftentimes police officers go to people's doors by themselves, isn't it?

A/INSP. GULLAGE: I've been doing it for 40 years.

MR. KENNEDY: Yeah.

And, Sir, in terms of the situation since you've been in the Criminal Intelligence Unit, have there been visits – have you had the occasion to visit anyone yourself, or in a management position do you do that now?

A/INSP. GULLAGE: I don't. I usually visits the chief's office.

MR. KENNEDY: Okay.

THE COMMISSIONER: Sorry, I didn't catch that.

A/INSP. GULLAGE: I said I usually visits the chief's office.

MR. KENNEDY: Okay.

So over your career would you –

THE COMMISSIONER: Is that the same as the woodshed?

MR. KENNEDY: So over your career you would have knocked on someone's door by yourself?

A/INSP. GULLAGE: Absolutely.

MR. KENNEDY: In situations like we're talking about here?

A/INSP. GULLAGE: No question.

MR. KENNEDY: Because police officers are always assessing risks, aren't you?

A/INSP. GULLAGE: You are.

MR. KENNEDY: Do you go to a – from that time you're pulling the car over on the side of the road, to the visit of a house with a call for domestic dispute, there's always risk involved, isn't there?

A/INSP. GULLAGE: That's true. From the time you walk out the door to get into your vehicle.

MR. KENNEDY: So, Sir, in the particular case, even though – can I say the risk? Is it the risk low, the threat level is low, something needs to be done, and what Constable Smyth did is a reasonable and prudent step? Do you agree with that?

A/INSP. GULLAGE: I agree with that.

MR. KENNEDY: You also agree, do you, Sir, that these particular tweets needed to be followed up on and the steps taken by Constable Smyth were appropriate in your view?

A/INSP. GULLAGE: I would agree with that.

MR. KENNEDY: Okay.

Sir, in terms with – let's deal with Constable Smyth and your dealings with him. How did you – you indicated he was very professional after the incident; he came back to work. How did you find Constable Smyth – how would you describe him as a police officer?

A/INSP. GULLAGE: I supervised Constable Smyth for about three years prior to him going to Protective Services detail. I've always found him to be professional, articulate, hard-working, very knowledgeable. Always went out of his way to help individuals. To use an example, a lot of the guys would come into the office and say: How are you this morning, Joe? And I was a staff sergeant or in the role as staff sergeant at that point and Acting Sergeant Smyth would always come in and say: How was your weekend, staff? He would always address me by my rank which is, which I guess is a, in policing in this day and age, a little bit strange.

MR. KENNEDY: It's a sign of respect, isn't it?

A/INSP. GULLAGE: Absolutely.

MR. KENNEDY: Did you ever see him being anything but calm and reasonable in his approach to work or to people he dealt with?

A/INSP. GULLAGE: Never in the – from the time I've known him.

MR. KENNEDY: And he had a particular interest in criminal intelligence work, didn't he?

A/INSP. GULLAGE: He did.

MR. KENNEDY: Very much in terms of intelligence-led policing and proactive policing. That was something he demonstrated a significance interest in, wasn't it?

A/INSP. GULLAGE: He did.

MR. KENNEDY: Yeah. And that's essentially what you're doing when you're going out and looking, talking to an individual prior to something happening, that's proactive or intelligence led policing, isn't it?

A/INSP. GULLAGE: That is correct.

MR. KENNEDY: As opposed to investigating after the fact, which is reactive policing?

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: So this particular day, he's going out to talk to Mr. Dunphy. Did you have any concern that Constable Smyth attended by himself or is that something you would do?

A/INSP. GULLAGE: I didn't know that Constable Smyth was going –

MR. KENNEDY: Okay.

A/INSP. GULLAGE: – on that day in question, but I had no concern whatsoever of him going by himself. He had done his proper checks, I guess for the want of a better word, his CPIC, his – and I had no concern of him going by himself, no.

MR. KENNEDY: Sir, and also too, you say that his email of April 10 was inappropriate. So it's not like you're always agreeing with what he did. That was inappropriate in your view, wasn't it?

A/INSP. GULLAGE: Yes, yeah.

MR. KENNEDY: Sir, Mr. Simmonds asked –

THE COMMISSIONER: Sorry, what was inappropriate?

MR. KENNEDY: The email of April 10 to all of the RNC members –

THE COMMISSIONER: Yeah.

MR. KENNEDY: – and the one that ended up in the media, Commissioner.

Mr. Simmonds asked, well, why didn't he call ahead or why wouldn't he contact someone?

Is it not correct, Sir, in the policing world, the investigation of threats or risk assessment, that often times you want to go and see the person in their environment without advance notice to get a true picture?

A/INSP. GULLAGE: No question, especially where you don't know the individual. If it was an individual that you had known, you know, had some previous dealings with, that you knew the individual, then it's a little bit different. In this case, you didn't know him.

MR. KENNEDY: A couple of points I want to follow-up on, Sir.

In terms of the Protective Services Unit, it's been around or protective – close protection has been around in one form or another since the '80s.

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: It was only when the first premier, where it was formalized, would have been Premier Kathy Dunderdale. Is that correct?

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: And that there was actually a four-person unit at that point.

A/INSP. GULLAGE: Started with two and then was increased to four.

MR. KENNEDY: Yeah.

We've heard, Sir, that there was more comments and perceived, or potential threats, against Premier Dunderdale than there had been or that people had noticed in the past.

A/INSP. GULLAGE: That's correct. And I think if you look at the chart, that's borne out in the chart.

MR. KENNEDY: In 2013, the unit or the process is formalized. Is that the way it worked?

A/INSP. GULLAGE: That's correct, yes.

MR. KENNEDY: And, Sir, how would you describe Constable Joe Smyth's suitability to be the officer in charge of the Protective Services Unit back in 2012, 2013?

A/INSP. GULLAGE: Personally, I thought he was an ideal fit.

MR. KENNEDY: And why would he be an ideal fit?

A/INSP. GULLAGE: He had experience in intelligence-led policing. He was professional. He was articulate. He knew, he knew how to communicate with people professionally. And when you're dealing with the elected officials of the province, there's a certain amount of respect that goes with it and he'd shown that to me on my level and I had no reason to believe that he wouldn't on another level.

MR. KENNEDY: Okay.

If I could have, Madam Clerk, exhibit P-0253, please.

Okay. Will you just scroll down here where the interview – excuse me, where the email comes in from. I think it's Chief Superintendent Boland. Is that correct?

Can you scroll down, Madam Clerk? Okay, just stop right there. Now, you've been asked questions by Ms. Chaytor: Is it appropriate for Constable Smyth to send this matter on to other individuals who weren't police officers, in terms of people in the premier's office?

We'll see that Chief Superintendent Boland is sending it to, it appears to be, is that Jackie Lake-Kavanagh? Do you know that?

A/INSP. GULLAGE: It would appear to be, yes.

MR. KENNEDY: Who's an assistant deputy minister at the Department of Justice at the time.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: She's not a police officer.

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: The other names that are there, do you know if they're all police officers or can you tell because they're redacted?

A/INSP. GULLAGE: One, two, three, four, five, six, I can say that six, seven of them are, yes.

MR. KENNEDY: Okay.

A/INSP. GULLAGE: The only one that I realize is not a police officer is Jackie Lake-Kavanagh.

MR. KENNEDY: In fact, the letter is addressed to her.

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: Okay.

Sir, there was some questions then after the incident with Mr. Dunphy of the approach with Mr. F and I think there was other incidents referred to.

Is it fair to state that at that point your people in your office and people in the premier's protective unit would be in a – operating in a super-sensitive environment?

A/INSP. GULLAGE: No question.

MR. KENNEDY: And would the public attention that was on this matter wouldn't really be good to go out and start talking to people or interviewing them about their perceived or potential threats, would it.

A/INSP. GULLAGE: That's true.

I do notice, Mr. Kennedy, for your information that in relation to this email, it is classified for law enforcement from, only from Superintendent Boland.

MR. KENNEDY: Yeah, that's okay. Yeah.

Sir, in terms of the intelligence-gathering process – I'm not going to go through all of those computer checks and things that were done, but is the interview with the individual also part of the intelligence gathering?

A/INSP. GULLAGE: It is.

MR. KENNEDY: Yeah.

And, Sir, in your experience, have there been – has it occurred or does it occur regularly where conversation with the person who's made comments on social media may be enough to deter the person from continuing that course of conduct.

A/INSP. GULLAGE: Yes, it has.

MR. KENNEDY: And would that happen more often than not?

A/INSP. GULLAGE: It does. We use the phrase in intelligence-led policing that you take information and you turn it into intelligence.

MR. KENNEDY: So you take information and you turn it into intelligence. What do you mean by that, Sir?

A/INSP. GULLAGE: You talk to somebody, you get information and then you verify it.

MR. KENNEDY: Yeah.

So in the Protective Services Unit they would have been responsible for close protection and intelligence gathering.

A/INSP. GULLAGE: Correct.

MR. KENNEDY: In your Criminal Intelligence Unit, it's my understanding, Sir, that you deal with everything from – it's criminal intelligence and organized crime, is it?

A/INSP. GULLAGE: That's correct.

MR. KENNEDY: So you're dealing with organized crime, you're dealing with –

A/INSP. GULLAGE: VIP security.

MR. KENNEDY: Agents and –

A/INSP. GULLAGE: Agents.

MR. KENNEDY: – and informants.

A/INSP. GULLAGE: Agents, informants, UC operations.

MR. KENNEDY: So, Sir, don't you think that it might be helpful to have a separate Protective Services Unit but operating within, perhaps, the CIU?

A/INSP. GULLAGE: Yes, I do.

MR. KENNEDY: So as opposed to having simply your officers who are doing all of this other work, that it might be helpful if a situation like that existed.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: Okay.

So it's a way from the political sphere in terms of the perception but still devoted to that kind of work.

A/INSP. GULLAGE: Yes.

MR. KENNEDY: Now, Constable Smyth talked about this is and it appears to be a common theme that we've heard. We know that a number of different premiers, we've heard of Premier Williams's approach, Premier Dunderdale, Premier Marshall, premier – who else did we have? Premier Davis and now Premier Ball, that the views towards the use of protection or close protection varies, doesn't it.

A/INSP. GULLAGE: It does.

MR. KENNEDY: So that by the time we get to Premier Davis in April 2015, there are only two members in the unit now, isn't there?

A/INSP. GULLAGE: That is correct.

MR. KENNEDY: Would that not then restrict, Sir, your ability to have two members do every call as opposed to one member doing calls of low risk?

A/INSP. GULLAGE: Yes. And there's only – while there was two members there was only one working at the time.

MR. KENNEDY: Yeah.

And in your unit, Sir, you have – how many members do you have in your Criminal Intelligence Unit right now?

A/INSP. GULLAGE: I've got four investigators, two criminal analysts, an informant control officer and a supervisor.

MR. KENNEDY: And the supervisor would be Sergeant Noseworthy, would it?

A/INSP. GULLAGE: That's correct.

THE COMMISSIONER: How many did you say? Five?

MR. KENNEDY: Four investigators.

THE COMMISSIONER: Right.

A/INSP. GULLAGE: Informant control officer which is separate, and two crime analysts and a NCO.

MR. KENNEDY: My last comment for you, Sir – and this is my last question. This has arisen on a number of occasions and we've heard this term and perhaps it's true of all aspects of life, but in policing hindsight can cause you to question anything you do, can't it?

A/INSP. GULLAGE: No question.

MR. KENNEDY: Sir, have you ever done an investigation where you can look back and say, well, I could have done this differently or maybe I could have done that differently?

A/INSP. GULLAGE: Yes, I have.

MR. KENNEDY: Yeah.

How often does that occur in policing, Sir?

A/INSP. GULLAGE: It's a daily occurrence.

MR. KENNEDY: It's part of what helps you improve also, isn't it?

A/INSP. GULLAGE: Absolutely.

MR. KENNEDY: Thank you.

Those will be my questions.

THE COMMISSIONER: Any further questions?

Mr. Avis.

MR. AVIS: Okay.

Inspector Gullage, I just have, I don't know, maybe 15 minutes.

The first question I have about the Protective Services Unit and what have you. This was a burden that was added to the RNC. Was there any increase in the budget with it?

A/INSP. GULLAGE: Not to my knowledge. It was funded out of the normal operation budget of the RNC.

MR. AVIS: There's been some discussion, and it seems to me that the new policy deals with this to some extent, and that is the autonomy of the unit. Am I right? To remove it from what may be either an appearance of political influence but back to the headquarters, right?

A/INSP. GULLAGE: That's correct.

MR. AVIS: But regardless of that, on that Sunday, whether you'd been autonomous or otherwise, do I understand it that Constable Smyth would have done what he did anyway? He wouldn't have had to consult anybody, get permission. He was just doing his job. Am I right?

A/INSP. GULLAGE: That's correct, based on the set-up that existed.

MR. AVIS: Yes.

If, Madam Clerk, you could bring up P-0627. This is the firearms policy and I just want to look at basically one phrase.

Okay, sorry, if we could go – 3.7 c. Just scroll it down a little bit, just stop there. That's the one that Ms. Chaytor put to you except saying that no service firearm is permissible to be taken home.

If you could go forward to 3.7 f. – there we go. This is the one that you mentioned. It says: In extenuating circumstances.

In this situation did you consider that there were extenuating circumstances?

A/INSP. GULLAGE: I did.

MR. AVIS: And are they the ones that you've already addressed with Ms. Chaytor?

A/INSP. GULLAGE: Yes.

MR. AVIS: Thank you.

With respect to this Easter Sunday issue, do criminals take holidays, to your knowledge?

A/INSP. GULLAGE: I wish they did but, no, unfortunately not.

MR. AVIS: So a crime can happen on any day of the week, can't it?

A/INSP. GULLAGE: Absolutely, Sir.

MR. AVIS: And if you're going out on a day, like an Easter Sunday, the appropriate thing to do, which Constable Smyth did – he did try to phone ahead on this occasion, couldn't get through on one occasion. And he goes and he asks permission and he's given it.

MR. SIMMONDS: I can't let that comment about criminal –

MR. AVIS: I'm sorry, I'm sorry, go ahead.

MR. SIMMONDS: I can't let that comment about criminal go when we're referring to Mr. Dunphy. He doesn't fall into that category whatsoever and I'm sure his daughter would be

MR. AVIS: Well, he had a loaded gun in the room. I wasn't necessarily thinking of him, I was being generic.

THE COMMISSIONER: I think you're on a broader scale, general statement not relating to Mr. –

MR. AVIS: Yeah, it wasn't intended.

THE COMMISSIONER: That's the way I saw it. I didn't see this directed at Mr. Dunphy.

MR. AVIS: Yeah. It wasn't intended.

THE COMMISSIONER: Dealing with the – policemen and police persons in general doing their job, they do it weekends, Sundays, holidays.

MR. AVIS: Yeah. With –

THE COMMISSIONER: In Mr. Avis's view, because criminals don't take holidays.

Okay.

MR. AVIS: Thank you, Commissioner.

With respect, again, to passing – you know, not doing it that day, he'd already spent two days working at it. Is it fair to say that on Monday anything could have happened requiring the use of the one officer available, if you know what I mean?

A/INSP. GULLAGE: That's a fair statement. Police work, things changes hourly, daily.

MR. AVIS: And since Constable Smyth had already been working on it would it not be better that he continue to work on it rather than pass it on to the other officer?

A/INSP. GULLAGE: I would say, yes.

MR. AVIS: Also if he's got the time, wouldn't you expect him to do it?

A/INSP. GULLAGE: I would.

MR. AVIS: If you could bring up P-0620.

Now, I don't need to go through this in any great detail. As I understand it, this was one of the numerous documents you prepared simply to show the breadth of your unit in terms of the kinds of situations, people that you have to do threat and risk assessments for. Am I correct? Outside of the Protective Services Unit.

A/INSP. GULLAGE: That's correct. That's not protective services. That's intelligence and organized crime, this chart is.

MR. AVIS: Right. And I think it speaks for itself but I'm just going to address two very carefully.

I understand, for example, when in the provincial court these trials involving what was referred to as the penitentiary riots, what, if anything, was the RNC called upon to do in that situation?

A/INSP. GULLAGE: We went down there to do an assessment of security in relation to court and if there were some concerns. And based on the assessment that we did, we assigned extra personnel.

MR. AVIS: Okay. And I understand, but I don't want to go into any detail, but on one occasion as a result of a decision a judge received some, shall we say, unnecessary attention and as a result you did a threat and risk assessment for that judge. Is that correct?

A/INSP. GULLAGE: That's correct.

THE COMMISSIONER: I'm going to give you a little story now, Mr. Avis, since it's getting late in the day.

A few years ago, we had a drug case and the application was made by police officers to bring loaded weapons into the court room because they were concerned about the security of an informant who was going to testify. And I refused them to have – allow them to have their weapons openly but I said if you have your sports bags with you I won't know what's in them. And that was done. It was never a problem.

Then I walked out at 5 o'clock and walked down over the courthouse steps and there was this unmarked panel van, white panel van. There were two individuals digging under, basically under the courthouse steps with unmarked work clothes. And I went back in to the security to ask: Who are these people? Nobody had any idea who they were.

It turned out when the investigation was made that it was Newfoundland light and power, I think it was, or the telephone company workers, but nobody knew. Now, this was only three or four hours in the morning, you know, it was necessary to carry arms openly in the courtroom, it was suggested.

So I'm coming a little bit from Missouri in terms of that, and I'm sure that the inspector has seen more telling incidents than that. But I'm a little blasé, while at the same time realizing, yes, there are real threats out there and we have to keep our eyes open and do what we have to do to deal with them. But I don't know why, within a space of three or four hours, we went from high alert to letting two unknowns dig under the steps of the courthouse.

MR. AVIS: Good point.

I guess I want –

THE COMMISSIONER: That's my rant for the day.

MR. AVIS: On that point, like – shouldn't be so – would you agree that this concept is, I guess, relatively new to Newfoundland and Labrador, at least in terms of the public perception of it, insofar as it seems to me that until this event, the Newfoundland public may not have had any awareness of this. I don't know if that's something you can comment on or not.

A/INSP. GULLAGE: Of ...?

MR. AVIS: Well, the idea of the Protective Services Unit, criminal intelligence-led policing or the idea that you'll be assessing things, going to people's doors, knocking and asking them questions. I mean

A/INSP. GULLAGE: I think it was more common within the capital city area than someone out in outport Newfoundland would not have been aware of it, but where people in town would see it more often everywhere that the elected official went that the same people were with them.

MR. AVIS: Okay.

One last question, there was a question about monitoring the social media. Can you just list for us the things that you are looking for on social media besides tweets of concern?

A/INSP. GULLAGE: Social media is a new phenomenon to policing as you're – as most people – as it is to most people. But we monitor it for – we've had child-luring cases. We've had drug cases. We've had different schemes in relation to people taking advantage of individuals. We've had – investigated cases of human trafficking. It's used for prostitution purposes.

I can give you a couple of examples; one being a stabbing that occurred at a party in Mount Pearl that we gathered a major piece of evidence from Facebook, these type of things. So it's a lot of different criminal things that we monitor for.

MR. AVIS: Does that include child pornography?

A/INSP. GULLAGE: It does.

MR. AVIS: Thank you.

Those are my questions.

THE COMMISSIONER: Thank you.

Any further questions?

MR. WILLIAMS: Acting Inspector, I apologize for not being here for the start of your testimony this morning. In the interest of fiscal prudence I thought you were being called this afternoon so I apologize for any repetition I may have.

I know you may have touched on some of these issues and I'm not going to dwell on them. But we've been on a bit of theme in the last number of questions put to you regarding improvements. And part of the Commissioner's mandate is to specifically to address protocols and policies, both within the premier's office and the RNC, that pertain directly to the security of the premier and Cabinet ministers.

To that end, is there anything that you could specifically state that you see in terms of your involvement with the – I know the PSU is a relatively new beast since 2013 – that would be recommendations in terms of improvements that could be implemented with respect to the operation of the PSU?

A/INSP. GULLAGE: I did address that this morning. The first one would be I think it should be legislated; a piece of legislation setting up a Protective Services detail, more particular, close protection. That it's not left to the discretion of the person that's elected. That would take some of the political process out of it.

The other one would be I see it as two different and distinct functions: one being VIP security, close protection I call it; and the other one would be the investigation of any complaints, threats, that sort of stuff. I think that should come within the intelligence Organized Crime that resources

would be provided to that unit to investigate all those complaints instead of the officer assigned to VIP security.

MR. WILLIAMS: Okay.

And would you see those totally being under the capsule of the RNC as opposed to having any overlay with government, Department of Justice, Executive Council, any of these groups within government?

A/INSP. GULLAGE: Yes, I do.

MR. WILLIAMS: Are you aware of whether or not there's any coordination as between the Protective Services Unit and Executive Council currently with respect to any briefings for government officials – we've listed a number of premiers – so that they're aware of what the functions of the unit are? I know there's been some initial discussions, but there doesn't seem to be any practice of informing, whether it's government officials or their senior staff, with respect to how the unit actually operates.

A/INSP. GULLAGE: Not currently, but we did have – I did have a meeting with officials from the premier's office about three weeks ago and I did offer to set up a meeting with all the senior officials that we would go in and explain that process to them.

MR. WILLIAMS: And do you feel that that could be a recommendation that came out of the inquiry, that there needs to be a more formalized – I realize there is a policy for the RNC regarding the unit, but do you think that policy and the protocols could be enhanced so that both – not only the operation of the unit, but those who are subject to it, being public officials, would have a better understanding of what their role is and what their expectation is vis-à-vis the unit?

A/INSP. GULLAGE: Yes.

MR. WILLIAMS: Okay.

A/INSP. GULLAGE: The premier – or Protective Services detail would not only, in my view, deal with the premier and Cabinet, but also with Opposition Members and all the different elected officials and the senior government officials.

MR. WILLIAMS: There's also been evidence, and it has been raised by questions put to you already, with respect to there appears to be a public perception that security for officials is a waste of resources. And there seems to be, in keeping with that, a reluctance of public officials, politicians primarily, to utilize those services because of that public image.

Do you have any comment with respect to how that could be addressed in trying to reduce the stigma for public officials in having security requirements?

A/INSP. GULLAGE: Yeah, if you pass the legislation and make it mandatory and explain it to the public why this is necessary, I think it would alleviate these concerns. We have an obligation not only to our elected officials, to everybody to ensure their safety.

MR. WILLIAMS: And I notice in reference to, I think it was, Exhibit 0620 that was just brought up – and, again, I apologize, I think that was brought up in your direct examination this morning. And maybe, Madam Commissioner, if we can – yeah, Madam Clerk, we can bring that up.

And this is, I trust, a list of the threat assessments that have been done by your office at the RNC? Or would that also entail everything that falls under the Protective Services Unit?

A/INSP. GULLAGE: No, that's just the Criminal Intelligence Unit. That's not Protective Services detail.

MR. WILLIAMS: Okay.

And have you seen, in terms of the Criminal Intelligence Unit, an increase in the number of occurrences with respect to public security requirements?

A/INSP. GULLAGE: Yes.

MR. WILLIAMS: Okay.

And I don't know if you're familiar, had you had an opportunity – and I know it hasn't been entered as exhibit and I don't mean to catch you off guard, but there was a recent CBC news article on February 14 of this year that spoke with respect to the premier of Alberta, Rachel Notley, and some of her experiences.

And if I could just read to you from the article, it stated that: "Statistics released by Alberta Justice show Notley was subject to 412 incidents of what's termed inappropriate contact and communication between January 26, 2016 – when tracking such incidents began – to December 19, 2000." So basically a one-year period or eleven-month period. Twenty-six of those files were actually forwarded to the police.

Again, on a local scene, we've had Minister Cathy Bennett, who's brought much attention to the issue of cyber bullying and concerns that she has.

Have you seen from your experience in Criminal Intelligence Unit an increase in these type of concerns brought to your unit or through the Protective Services Unit?

A/INSP. GULLAGE: Yes, we have.

MR. WILLIAMS: And based upon this increase in security requirements for public officials, do you feel that the current resources that are being placed for the unit, given their dual role, one being close security responsibilities as well as criminal intelligence responsibilities – do they have sufficient resources to fulfill these roles?

A/INSP. GULLAGE: No, they don't.

MR. WILLIAMS: Okay.

Have you ever had occasion to make recommendation for any increase in those resources?

A/INSP. GULLAGE: Not at this point in time, but I think it's something that we're in the process of doing. And I also think that may sound a little bit self-serving, I guess, but I also think that the people that's in these positions should be full-fledged – there's no acting that you put in a proper rank structure within these units.

MR. WILLIAMS: Okay.

That's all the question I have. Thank you.

THE COMMISSIONER: (Inaudible) –

MR. AVIS: Commissioner, so I just wanted (inaudible).

THE COMMISSIONER: – Mr. Avis? Sure.

MR. AVIS: Yeah. Just picking up there, if that's okay.

You say there's been an increase in this kind of activity. Is that related to – in any way related to social media and the way we communicate today, do you think?

A/INSP. GULLAGE: So you're right at the social media, and I also would say that based on the fiscal situation that the province currently finds itself into.

MR. AVIS: Thank you.

MR. COMMISSIONER: Any further questions?

All right. Thank you, Inspector. You may step down.

Now, do we have another witness?

MS. O'BRIEN: We do, Commissioner. Now, Sergeant Monty Henstridge. He was corporal at the time, I believe.

SGT HENSTRIDGE: All right. Thank you.

MR. FREEMAN: Your mic is already on there. When it's red, it's on.

SGT HENSTRIDGE: Okay.

MR. FREEMAN: And your exhibits come up here.

SGT HENSTRIDGE: Okay.

MR. FREEMAN: And the questioners after Kate will be behind you, but I can give you some of that detail later.

SGT HENSTRIDGE: Sounds good.

MS. O'BRIEN: I'm going to ask Madam Clerk to affirm your evidence.

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

SGT HENSTRIDGE: I do.

MS. SHEEHAN: Please state your full name.

SGT HENSTRIDGE: Monty Matthew Henstridge.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Good afternoon, Sergeant Henstridge. Kate O'Brien, one of the co-counsel for the Commission of Inquiry.

Before I begin with your evidence, I'm going to ask, Commissioner, for an order that the following exhibits be entered: P-0675 through to P-0701, inclusive.

THE COMMISSIONER: 0675 ...?

MS. O'BRIEN: Through to P-0701.

THE COMMISSIONER: So granted.

MS. O'BRIEN: Thank you.

Sergeant Henstridge, I'm going to go through a bit through your police training and experience rather quickly, as we've already had a pre-hearing interview and I have that information before me. So I understand that you've been a member of the RCMP for over 13 years?

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay.

And your current rank is sergeant.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: All right.

But at the time of the Donald Dunphy and Constable Joe Smyth investigation, you were a corporal.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Thank you.

And I understand in terms of your educational background you have a B.A. and also a bachelor's of education and that you were a high school teacher for approximately eight years before you joined the RCMP.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: And I know you've had quite a bit of training over your years with the force, but as I understand it, the most relevant to your role in this investigation would be training that you completed relevant to major crimes. And we've heard a bit about these courses already from Corporal Burke, but just to confirm that these are ones that you have as well, the major crimes investigative techniques course?

SGT HENSTRIDGE: Correct.

MS. O'BRIEN: Okay, the interviewing and interrogating course?

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: The Major Case Management team commander course?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay.

And I understand that you work – you also do training for – you recently transferred to the Polygraph Unit of the Truth Verification Section of the RCMP. Is that right?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay. All right.

And do you also do instructing to other RCMP members on interviewing and interrogating?

SGT HENSTRIDGE: Yes I do. The new program that we're now offering is something called the Phased Interview Model which has been adopted in B Division, nationally as well. It's, I guess the best term would be an evolution of the interviewing techniques so we don't have an interview in our interrogation course at this point.

MS. O'BRIEN: Okay, so the –

THE COMMISSIONER: We're going to have to get you to move in a bit closer to the mic.

SGT HENSTRIDGE: Yes.

THE COMMISSIONER: Five or six inches, I think, picks you up better. I have the same problem.

MS. O'BRIEN: Okay.

So I understand what you're saying is there's been – there's a changing in the interviewing techniques, a recent change in the interviewing technique used by the RCMP?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: All right.

At the time, going back to April 5, 2015, your immediate supervisor at that time, I understand, was Staff Sergeant Kent Osmond?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: But during the course of this investigation as you were a member of the investigative team you would have reported directly to Corporal Steven Burke for this file because he was the primary investigator. Is that right?

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay.

And in terms of relevant experience for you, I have noted here that prior to April 5, 2015, you had been involved in approximately – the investigation of approximately 12 homicides?

SGT HENSTRIDGE: Yes, 12 to 15 I would say.

MS. O'BRIEN: Twelve to 15. And certainly at least one of those was a shooting incident, was it?

SGT HENSTRIDGE: Well, there were two that were a shooting incident.

MS. O'BRIEN: Two?

And I have noted here that you had been the primary investigator on three to four of those files. Is that approximately right?

SGT HENSTRIDGE: That's fair. Yes.

MS. O'BRIEN: And I also understand that prior to April 5, 2015, you had been involved in one investigation of the use of force by a police officer and that was a firearm discharge?

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: Okay.

And I understand that prior to April 5, 2015, you did not know Constable Joe Smyth personally but you knew his name. And he had had some involvement in the file you had investigated but you had no direct contact with him.

SGT HENSTRIDGE: Actually, I reviewed my notes on that matter after we spoke and the investigation that I referred you to, I checked on that and he wasn't actually involved in that investigation. It was a previous 2010 homicide investigation in which I think he was an intelligence officer at the time for the Royal Newfoundland Constabulary.

And I did note a meeting that I had had with various members of the RNC during the initial stages of that investigation and I did note that he was in attendance, although I don't recall him being there. And I believe he may have relayed information to one of the members of my team in relation to intelligence coming forth on that homicide. But as far as I know I've never met him personally.

MS. O'BRIEN: Okay. Thank you.

And I understand you did not know any members of his family and you did not know Mr. Dunphy or any member of his family.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay.

And I understand in terms of your interaction with the RNC, you have worked with the RNC officers on at least two homicide investigations and you've also done some training with RNC officers.

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: Okay.

I'm going to ask to bring Exhibit P-0687, please. And this is one of your Supplementary Occurrence Reports, Sergeant Henstridge, so one – sort of your typed notes.

And I'm not going to take you through every event here but I understand it says – states here and we've already heard evidence that you received – you learned about this from then Sergeant Osmond, you contacted Corporal Burke and then you headed directly to headquarters. And I understand that would be the RCMP's headquarters here in St. John's in White Hills?

SGT HENSTRIDGE: Yes, that's right.

MS. O'BRIEN: Okay.

And that would have been at 1545. And then you made some contact to the chief medical examiner's office and you made your way out to Holyrood detachment to attend a briefing session there at 5 o'clock that evening. Is that right?

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: Okay.

And we understand this was the first briefing meeting of the major crimes – the first briefing meeting of the investigative team.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay.

And during that meeting, were you assigned any specific tasks?

SGT HENSTRIDGE: I believe during that meeting, once we were briefed by Staff Sergeant Tiller in terms of what he knew at the time, I was initially given the task of – or I was assigned as a tasker but I was given the task of speaking to Constable Smyth in relation to whether or not he'd be willing to provide a statement to us at that time.

MS. O'BRIEN: Okay.

And you note here then, the first entry I want to discuss with you in a little more detail is your one at 5:30 approximate time.

You note: "I spoke briefly with Cst SMYTH who had several RNC members with him for support including Warren SULLIVAN of the RNC Association. SMYTH was shaken but cooperative. He stated he very much wanted to provide a statement immediately but would prefer to wait until tomorrow once he settled. SULLIVAN noted that he advised SMYTH of this given the research which showed recall was stronger and more accurate the following day. I agreed and advised that this would not be a problem. I provided my business card and asked Cst SMYTH to contact me as soon as he was up to it in the morning."

The first question, Sergeant Henstridge: Where did this conversation happen?

SGT HENSTRIDGE: In the upstairs area of the Holyrood detachment. There's a room at sort of the rear of the building. It's a small office that was unused and it was occupied by – I believe

there were three members in the room when I walked in initially: Warren Sullivan, Constable Smyth and I'm not exactly sure who the third person was.

MS. O'BRIEN: Another member of the RNC, though, was it?

SGT HENSTRIDGE: That's correct, yes.

MS. O'BRIEN: Okay.

Okay. And why – and we have heard evidence already that Constable Smyth was provided with a room to meet with members of the RNC. Why did you go up and visit that room? What was your purpose of coming up there?

SGT HENSTRIDGE: The room that he was in?

MS. O'BRIEN: Yes.

SGT HENSTRIDGE: That was to ask him if he'd be willing to provide a statement at this time.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: And to meet him. To be honest, I wasn't exactly sure who he was or ...

MS. O'BRIEN: Okay.

And here, you noted here after Sullivan discussed the research, you stated here that you agreed. Why did you agree?

SGT HENSTRIDGE: I had received some information during previous critical incident debriefings with our own organization in other unrelated files that it is preferable to – if you've engaged in a traumatic event, if you've been directly involved in a traumatic event, that it's preferable to wait a period of time, 24 to 48 hours, before providing a formal statement.

MS. O'BRIEN: Okay.

And that training or the information that you'd received, was that just with respect to police officers?

SGT HENSTRIDGE: We were police officers at the time, but I extrapolated that perhaps it meant more than just police officers. I assume anybody that was involved in a traumatic event would have the same issues cognitively. But, yes, it was in relation to police officers at the time.

MS. O'BRIEN: Okay.

So that – so you got the information related – relation to police officers but you, yourself, did that extrapolation.

Have you ever given the subject of a major criminal investigation time prior to asking the subject to give an interview?

SGT HENSTRIDGE: I don't recall specifically giving anybody a particular amount of time, but if the person was in a situation where they were potentially a key witness and they ask for time, then I'd have no issue with that per se.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: Timing is an interesting –

MS. O'BRIEN: Have you ever been asked?

SGT HENSTRIDGE: I don't recall ever being asked to wait. It could have happened at some point, but I don't recall.

MS. O'BRIEN: Okay.

Did you make any attempt to persuade Constable Smyth to give a statement that evening?

SGT HENSTRIDGE: No.

MS. O'BRIEN: Okay.

Did you see any risk in providing Constable Smyth – and risk, I mean to the investigation – in providing Constable Smyth time before he provided a statement?

SGT HENSTRIDGE: I would say yes. Given the fact that I'd say yes, I'd also clarify that with we need to balance things when we're conducting investigations. And the continued co-operation of witnesses is one thing; the immediacy of receiving information is quite another thing. And to balance those things we have to take that under consideration. So I suppose there were potential risks of waiting, but there are also benefits, in my mind, to waiting.

MS. O'BRIEN: Okay.

So benefits, in other words, are you saying that one of the benefits would be his continued co-operation?

SGT HENSTRIDGE: That would be one benefit. The other benefit for me would be it would give me an opportunity to sort of get down into the community and get some lay of the land, I guess, would be the best way to describe it, to determine whether or not – you know, what we were dealing with, what the house layout was, any potential people that may have been in contact with either of those individuals.

MS. O'BRIEN: Okay. And one of the risks there I think you just identified, but just to be clear, was that you wouldn't have the information as quickly.

SGT HENSTRIDGE: I wouldn't have as full of information. We had received at that point some information in terms of what Constable Smyth had said to the first responders. We had received some information – and this was through Staff Sergeant Tiller – that he had called in advance, basically asking for some CPIC checks and so on.

So it was my understanding that he was in, he was in the execution of his duties on some level. So, yes, we did have some information. We didn't a complete account from him

MS. O'BRIEN: Okay. And when you and I had this discussion, or I asked you a similar question during your interview, you noted that: I guess by allowing more time, you run into the issue of him telling his story to different people.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Confabulations of detail is a concern. So you start, not necessarily inventing things, but misremembering how things went down. And you said confabulation is an issue with memory that we know happens sometimes.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay. So that would have been another risk.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: And just to be clear that I understand the correct definition of confabulation, but that's when someone is not necessarily – they're not being dishonest in their reporting, it's just their memory has become tainted because of interactions with other – it's not accurate.

SGT HENSTRIDGE: Possibly with other similar events. Like, the example I guess I could give is if someone was involved in interaction, an armed robbery, as an example, and they may provide a statement to the police in which they say the person was six-foot-two-inches tall and wielding a large gun.

When they provide the statement, after some time, sometimes confabulation occurs in which they may incorporate things that they've maybe seen on TV to flesh out the details of that account. It's not necessarily an intended misleading of the police; it's a function of human memory.

MS. O'BRIEN: Okay. And I understand that one of the ways you can reduce the risk of confabulation is not to talk about an incident with other people or to view other information about it prior to giving a statement. Is that fair to say?

SGT HENSTRIDGE: I would say that's fair, yes.

MS. O'BRIEN: Okay.

Did you ask Constable Smyth not to speak to anyone about the incident prior to giving his statement?

SGT HENSTRIDGE: I don't believe I did.

MS. O'BRIEN: Okay.

You know, given the portion of your notes we just read out, did you see that Warren Sullivan was having an impact on the investigative decisions that evening with respect to Constable Smyth's statement?

SGT HENSTRIDGE: I would say there was an impact on the investigative decisions in as far as timing of things occurred.

Obviously, with Constable Sullivan – sorry, I'm not sure if he's a sergeant or a constable –

MS. O'BRIEN: Constable, I think.

SGT HENSTRIDGE: – Constable Sullivan's suggestion to Constable Smyth that he should wait, clearly if he hadn't made that suggestion, I suspect that Constable Smyth would have co-operated and provided at least initial account.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: A formal initial account.

MS. O'BRIEN: Okay.

And in your notes here you did note that "SMYTH was shaken but cooperative." Can you remember any more of what his demeanour or how he appeared to you when you were speaking with him?

SGT HENSTRIDGE: I seem to remember that his eyes were slightly watered and he was slouched a little bit in the chair. He was shaken is how I would describe it. I can't speak specifically to any other issues.

MS. O'BRIEN: Okay.

And I note here in your notes that you asked him to contact you as soon as he was up to it in the morning. I understand the next day at just after noon you actually called him –

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: – and eventually touched based with him that way and arranged for the interview that following afternoon. Is that right?

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: Okay.

Now, you did speak to him again this evening because we have another note here at approximately 10 to 6 p.m. on April 5. And you wrote: "I again spoke to Cst SMYTH and obtained his bio information" And you got his full name, where he lived, his cellphone number.

"SMYTH noted that prior to entering the property he noted a camera outside. He was unsure if there was a camera in the dwelling or not. He also noted that he had spoken to the deceaseds brother and sister in law who lived next door just prior to going to the deceaseds residence. He said DUNPHY's brothers name was Dick and his sister in laws name was Debbie. SMYTH said he had never had contact with this individual before. He also stated that all of his notes relating to the call were still inside the residence. I also advised Cst. SMYTH that we would require his clothing as part of the investigation. He said that would be not problem and arrangements were made by his supporters to have his clothing brought to him."

So why did you have this second interaction with him, Sergeant Henstridge, the 20 minutes later?

SGT HENSTRIDGE: The – I was requested, actually, by I believe Corporal Burke to go in and speak to him about the fact that we were going to need his clothing, and at that time I obtained that information. I don't think Corporal Burke said get the bio information; I think that came as a matter of course when I went into the room because I hadn't – I didn't have it at that point.

MS. O'BRIEN: Okay.

And ultimately we've heard evidence that he did provide his clothing to the RCMP that evening.

SGT HENSTRIDGE: Yes, I believe so. I wasn't present when that happened.

MS. O'BRIEN: Okay.

You got some information from him here. One, you got a piece of information that he saw – he had noted a camera outside and also that he had left his notes inside the house.

Did you pass along that information to the ident team, the Forensic Identification section who was en route to scene to do their examination?

SGT HENSTRIDGE: I'm not sure if I passed it directly to ident. I would have told Corporal Burke about it, I believe, so I'm not sure what he did with the information.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: I know just before we were leaving to go down there was a request, either through Staff Sergeant Tiller or – and I think it may have been indirectly from one of the RNC officers that they requested that we make sure that we secure his vehicle if his vehicle was unsecured, in the event that there was some sensitive material in that vehicle.

MS. O'BRIEN: Yes, okay.

And that does come up in your notes just in the next section, which is where I was going to go anyway. Here at 1907 hours that evening, you and Corporal Burke went to the scene.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: So you went to Mitchells Brook. Can you tell the Commissioner: Why did you and Corporal Burke decide to go to Mitchells Brook that evening?

SGT HENSTRIDGE: Once we received the – well, once we received confirmation that Constable Smyth was not going to be providing a statement that night, we made a determination, Corporal Burke made the determination that we would go down. And I wanted to go inside of the residence to sort of assess where things were in preparation for the interview of Constable Smyth the following day.

I find it helpful to have, like I said, a lay of the land to determine the kind of – what kinds of questions I'd like to ask. And once he's providing his pure version, which was the objective of that first interview, I wanted to have sort of a mental picture of what he was referring to in terms of locations.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: The other reason we went down is because based on what he had told us in his second interaction that I had had with him, he had spoken to two individuals, next door neighbours, when he was down there. So we determined to go down and conduct interviews with those two individuals as well.

MS. O'BRIEN: Okay, so that would be his brother and sister-in-law.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay.

When you arrived at the scene in Mitchells Brook was Corporal Foote still guarding the scene?

SGT HENSTRIDGE: Yes, he was.

MS. O'BRIEN: Okay.

Where you – and had ident, had the ident team arrived yet, Sergeant Saunders and Corporal Lee?

SGT HENSTRIDGE: I don't believe so.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: They could have been but I really don't think they were. I remember talking to Constable O'Keefe at the time, Corporal O'Keefe at the time, and relaying that the vehicle needed to be locked and then entering the dwelling.

MS. O'BRIEN: Okay.

Were you or Corporal Burke wearing any protective clothing when you went into the house?

SGT HENSTRIDGE: No.

MS. O'BRIEN: Okay.

And did you go into the living room?

SGT HENSTRIDGE: I may have stepped in but I don't think I walked inside of the living room. I don't recall exactly how far I went but I did step inside the living room, yes.

MS. O'BRIEN: Okay.

Now, we have had lots of descriptions from lots of different witnesses of the inside of the house and we have a good photographic record as well as a video record. But in our interview there was one statement that you made that I'd ask you to explain to the Commissioner, if it's still accurate.

You had said – and I should point out, Commissioner, that Sergeant Henstridge has given in his notes here that are up on the screen – he does give a description of certain other things he saw. But you – in our interview, Sergeant Henstridge, you recall the living room having an impact on you.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: And in your words you fixed a little bit as to whether or not you would have been able to react quickly enough to protect yourself in that room. Can you explain that to the Commissioner?

SGT HENSTRIDGE: Well, that was one of the thoughts I had in terms of my feelings about the room. Certain scenes sometimes strike you a little different than others in terms of your emotional kind of reaction to them. This one did for a variety of reasons and I think I mentioned during our interviews about the fact that it was, it was just generally tragic.

The whole situation appeared tragic. You had an elderly gentleman in a very small community; you had a daughter, an only child as far as I knew, that was without a father; and you had a

police officer that had, at least at that point, we believed had to do something that he normally wouldn't want to do, I would think. At least I wouldn't.

I also remember thinking that if it was me in that situation I'm not sure I would have made it out. I'm not sure I would have got back to my family.

THE COMMISSIONER: You're not sure ...?

SGT HENSTRIDGE: I'm not sure if I would have made it back to my family.

THE COMMISSIONER: Okay.

SGT HENSTRIDGE: Yeah.

MS. O'BRIEN: So fair to say that had – you had an emotional reaction.

SGT HENSTRIDGE: Yes, I did.

MS. O'BRIEN: Okay.

In the, in your notes I just wanted to talk to you about the files that you just mentioned, because as you just stated then and as you recorded here you ask Corporal O'Keefe "to shut the vehicle off, lock it and seize the keys as there were documents inside which needed to be secure."

Where did you get that information that there were documents inside the – and I take it this would be Constable Smyth's vehicle that you're talking about here?

SGT HENSTRIDGE: Yes, that's correct.

MS. O'BRIEN: Where did you get the information there were documents inside?

SGT HENSTRIDGE: I believe that was the information that was provided to me either through Staff Sergeant Tiller or directly from – I believe it was Staff Sergeant Tiller that mentioned it to me actually.

The reason I'm sort of mixing these things up is because I ultimately took a statement from one of the officers that was with Constable Smyth at the time and he relayed to me that he had relayed something to Staff Sergeant Tiller to make sure I secured the vehicle because of potential privileged information that was inside. So I believe it was Staff Sergeant Tiller but I can't be 100 per cent certain.

MS. O'BRIEN: Okay.

And when you say this officer you interviewed, this would have been one of the RNC officers.

SGT HENSTRIDGE: Yes, that's correct.

MS. O'BRIEN: Okay.

Do you know if any documents were found inside that vehicle?

SGT HENSTRIDGE: I seem to recall seeing some papers but I didn't really take a close look inside the vehicle. My purpose for being down there was to go inside the house itself. So in terms

of what I had told Corporal O'Keefe, that was my, that was really my goal there is to make sure that that was secured.

MS. O'BRIEN: Okay.

So you had a brief – a short look inside the vehicle. Is that what you're saying?

SGT HENSTRIDGE: Yes, I believe I glanced in.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: And I seem to recall seeing some papers but I – other than that, I can't speak to what was inside of it.

MS. O'BRIEN: Okay.

We know that you did interview – you and Corporal Burke did interview both Richard Dunphy and Debbie Dunphy that evening.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: And I understand that they were interviewed separately to the extent possible you could. I understand they had a disabled son –

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: – and it was a little difficult to isolate one from the other within the house. Is that –?

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: Is that accurate? Okay.

And have you had an opportunity to review those interviews since?

SGT HENSTRIDGE: I did quite some time ago but, yes, I have reviewed them.

MS. O'BRIEN: Okay.

In looking at the interviews, in reviewing the interviews it seems that you gained a lot of information from Richard and Debbie Dunphy about Donald Dunphy, but not as much information about their interaction with Constable Smyth that day.

Do you – is that a fair assessment in your ...?

SGT HENSTRIDGE: I would say so, yes.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: My objective during those interviews, those initial interviews very early on in the investigation, is to sort of assess kind of a timeline as to when things happened, who had contact with who and so on. I felt at that time – I didn't think to ask questions about their perceptions of Constable Smyth because I think my thinking was that they would have had much more information about the brother.

But, no, I didn't ask any questions, I don't think specifically, about Constable Smyth.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: Other than the fact of what they told him and what he asked them.

MS. O'BRIEN: Okay.

To your knowledge, did anyone go back to interview them in more detail on that point?

SGT HENSTRIDGE: I wouldn't know.

MS. O'BRIEN: You don't know.

SGT HENSTRIDGE: I don't believe so but I don't know.

MS. O'BRIEN: Okay. All right.

The same evening you and Corporal Burke also interview Meghan Dunphy.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: And who made the decision to seek an interview from Ms. Dunphy that night?

SGT HENSTRIDGE: I mean ultimately I suppose it would have been Corporal Burke but I was very much in favour of it. If I didn't suggest it myself, it would have been, it would have been a matter of course to seek out the gentleman's daughter who was last to see him before he entered the house so

MS. O'BRIEN: Okay.

Did you have a plan or an idea in place about what kind of information you wanted to cover with Meghan Dunphy?

SGT HENSTRIDGE: Well, again, during these initial interviews what we're really trying to do is sort of establish, I say, a timeline or some kind of context in which things had happened that day. I was also looking to glean any information that she could about her dad in terms of precursors or any types of behaviours that she saw or any problems in the last number of hours that would have suggested there was an issue

MS. O'BRIEN: Okay. At the time, was there a plan to have a further interview with Meghan Dunphy?

SGT HENSTRIDGE: There was no plan at that time to have a further interview, no.

What generally happens is you'll obtain multiple interviews in the first hours of the investigation, which tends to be fairly, I guess, tense in terms of timing. The primary investigator will typically take that information, assess it, determine whether – what holes are there, what information needs to be filled in and then, as he deems necessary, will reassign those interviews.

MS. O'BRIEN: Okay.

We understand that you and Corporal Burke actually attended at Meghan Dunphy's home to do the interview. Is that right?

SGT HENSTRIDGE: After we called her, yes.

MS. O'BRIEN: You called her first and then attended.

Did you tell her that she did not have to give an interview that night?

SGT HENSTRIDGE: We told her that on the phone.

It's – I've been involved in numerous sudden deaths, whether they be suicides or other – typically suicide is the one that's popping in my mind now. And it's very difficult to speak to the next of kin and obtain a statement from them, but it's also extremely important to get that information as soon as possible. So what we generally do, what I generally do is reach out to them, assess whether or not, first of all, they have a desire to do it.

I can think of one occurrence when they've been very forthright: Yes, I want to do this right now. And I walked into the house and it's clear they're not capable of doing it right now and suggested we wait for some time.

So in this case Meghan Dunphy told us to come down. She gave us directions to her house. She said she was ready to do it and we conducted the interview.

MS. O'BRIEN: Okay. So is it you who placed the call for her? Are you able to say that yes, I told her that, I told her she didn't have to do it.

SGT HENSTRIDGE: I can't say for certain that it was me, but it seems that it was me.

I seem to remember Constable Burke driving, and me in the passenger seat, so I think it was me that actually made the initial call.

MS. O'BRIEN: Okay. Did you note that anywhere in your notes?

SGT HENSTRIDGE: No, I didn't because we were en route. We were actually in the car moving sort of in that direction, but we had no idea where she lived. We knew it was somewhere on Salmonier Line. So that was – yeah, that was en route, I didn't write anything in my notebook about it.

MS. O'BRIEN: Okay.

Meghan Dunphy later raised a complaint, I'll say, through her legal counsel that the interview was – she felt somewhat hostile for a victim's family member, and she felt that the questions had focused on getting her to confirm that her father was mentally unstable or out of control.

Were you aware that she had raised that criticism?

SGT HENSTRIDGE: I was aware that she had raised the criticism, yes.

MS. O'BRIEN: Okay. And do you agree, do you agree that that's a valid criticism?

SGT HENSTRIDGE: No, not at all.

MS. O'BRIEN: Okay. Do you want to just explain that, your answer a little more for the Commissioner?

SGT HENSTRIDGE: I can't speak to why she feels that way. What I can say is that, we, and me in particular, I'm very sensitive to these issues when things like this happen, and I can assure the Commissioner that that was not the case.

I would suggest that – and I'm not sure if this would be something that would be of value to the Commissioner but there was an audio recording of that interview, in terms of the tone of the interview, I think that might speak to kind of how that interview rolled out.

MS. O'BRIEN: Okay. So, yeah, you did audio record it. It wasn't videoed but it was audio recorded?

SGT HENSTRIDGE: It was audio recorded, yes.

MS. O'BRIEN: Okay. All right.

And now I understand Meghan Dunphy came and gave a second, a much longer interview a few days later on April 8, but I don't believe you did, but just to confirm, did you –

SGT HENSTRIDGE: No, I had no involvement in that interview.

MS. O'BRIEN: No involvement. Okay. All right.

So now we're going to move on to your statement with Constable Smyth.

Did you and Corporal Burke have any discussions in advance as to whether or not Constable Smyth would be cautioned?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay. And can you tell the Commissioner what you decided?

SGT HENSTRIDGE: We decided that a caution wouldn't be appropriate. We assessed the information that we had at that time, which was that, as it stood, it appeared as if Constable Smyth was in the execution of his duties. It appeared that, based on what he had told one of the first responders, and I'm not sure if it was Constable X or Constable Cox, that Mr. Dunphy had – they engaged in a discussion. He had been asked to go in in relation to some tweets of concern, that he was invited into the house, that things de-escalated within a matter of a few moments and that –

MS. O'BRIEN: When you said de-escalated, did you mean deteriorate?

SGT HENSTRIDGE: Oh sorry, escalated – deteriorated is what I meant to say.

MS. O'BRIEN: Yes, okay, yeah.

SGT HENSTRIDGE: And at that point, Mr. Dunphy raised a firearm and he returned fire. That was the, that was the crux of the information that we had, and that shots were fired.

So at the point we, at least I saw it as a Section 25, use of force, reasonable force investigation, and at that point, based on the information that we had, and given the fact that there was a firearm involved, I did not see him as a suspect in this matter. I saw him as a witness.

Now – and that was not to the exclusion of any evidence that we would eventually acquire, but at that point in time, his jeopardy was as a witness and as such a caution wouldn't be appropriate.

MS. O'BRIEN: Okay.

Did you understand this to be a criminal investigation who were undertaking?

SGT HENSTRIDGE: Yes, it was a Section 25, at least that the initial stages was a Section 25 investigation.

MS. O'BRIEN: Okay.

We know that the Alberta Serious Response Team did a review of the RCMP's investigation in this matter. Have you had an opportunity to review their report?

SGT HENSTRIDGE: Yes, I have.

MS. O'BRIEN: Okay, so one of the criticism raised by ASIRT was that Constable Smyth should have been cautioned so that he was aware that this was a homicide investigation and that he could have some potential jeopardy.

In hindsight, Sergeant Henstridge, do you agree or disagree with ASIRT on that point?

SGT HENSTRIDGE: I disagree with it.

MS. O'BRIEN: Okay. And for the reasons –

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Anything different than the reasons you just said?

SGT HENSTRIDGE: No, I think, like I said, we assessed – based on the information we had, we assessed his jeopardy to be – well, we assessed him to be a witness in this matter at this point.

And I'm not sure if I mentioned this before but if something were to come to light – the thing about jeopardy is it can change on a dime. And if something were to come to light during that process to suggest that he had an increased jeopardy, I would have an obligation to stop the interview, advise him of that and to caution him.

MS. O'BRIEN: Okay.

Did you and Corporal Burke have any discussion into advance as to your plan for the interview, the approach you would be taking or the information you would be seeking?

SGT HENSTRIDGE: I don't know if there was a specific – I think the discussion would have been around we need to get a pure version. This is, you know, an opportunity to get his account in as much as detail as we possibly can and to take that information and assess it against, well, what we have from ident or what we're about to get through the additional investigation.

So there was no specific we're going to ask this question, this question and this question. No.

MS. O'BRIEN: Okay.

And how – I've come to understand pure version statements. Is that – and please correct me if I'm wrong but the initial, at the initial stage, you allow the subject of the interview just to explain, tell their story, say what happened.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: And then there is a – typically that's followed by a questioning phase where the interviewers may ask some more probing questions to get details where they feel that that story needs to be fleshed out. Is that fair to say?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay.

So did you and Corporal Burke sort of – had you made a list of these are the areas we need to make sure we get the details on?

SGT HENSTRIDGE: I don't believe we made a list. I think we were working from the assumption that we really had very little information at that point. So those things were going to be happening, you know, pending his account, initial account.

And so what I typically do is once I've received that pure version and the subject or the witness indicates that they are finished, I'll typically go back and either summarize what they've told me or go over that information to make sure that (a) something doesn't come to mind that I need to ask about that particular area, (b) to see if they are committed to what they had said or (c) to see if there was something about what they had said that they don't agree with or they felt I misinterpreted.

MS. O'BRIEN: Okay.

Did you and Corporal Burke have any discussion in advance as to what information you would release to Constable Smyth during the interview?

SGT HENSTRIDGE: No.

MS. O'BRIEN: Okay.

All right, I'm going to bring up this, the interview transcript. It's at P-0119.

And, Sergeant Henstridge, I understand from our pre-hearing interview that you have more recently reviewed this transcript.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: And that there are things – you were proactive in our interview. There were things in hindsight that you believe you should not have said during the interview.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay.

So I'm just going to go through those now and I think that will be a time-efficient way of doing it.

P-0119, please.

UNIDENTIFIED MALE SPEAKER: Sorry, P –?

MS. O'BRIEN: 0119.

Okay, so the first step – and you can just – you know, I've made my notes here or what I understood you told me on that day, but you just correct me if I have anything wrong. But the first piece of information that I believe you told me you should not have given Constable Smyth is that when you told him that there was a round in the chamber, a live round in the chamber of the gun. Is that right?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Okay.

And this was one of the criticisms as well –

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: – raised by ASIRT, that you should not have given that information.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Yes, okay.

Can you explain – you know, you know now you share – you understand now or your opinion now is you shouldn't have?

SGT HENSTRIDGE: Uh-huh.

MS. O'BRIEN: Why did you at that time?

SGT HENSTRIDGE: I think in retrospect – and I'd like to sort of just state that in any interview that I've done over the last number of years, depending on who it is and what it is, I'm sure there are mistakes that I've made in those interviews. This is not unique in that way.

I suspect that at that time I was thinking that this is a piece of information that would have had very limited impact on the ultimate outcome of the investigation, but would have had a huge impact on Constable Smyth's sense of well-being. And as a result of that, I stepped out, along with Constable Burke – Corporal Burke, and spoke to Sergeant Osmond about it. And we very quickly kind of assessed that whole issue and made the determination that that information would be provided to him.

MS. O'BRIEN: Okay.

And in our interview you had stated that you were – that you felt you had, at least in some ways, been motivated by a sense of empathy for Constable Smyth.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Is that accurate?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Yes, okay.

The next one, if we could go to page 59, please, Madam Clerk.

So the next item I have recorded that you have – you advised me that you now believe you should not have said is this statement here where you told Constable Smyth: “You saved your life.” Is that correct?

SGT HENSTRIDGE: Yes, I believe that was ill advised.

MS. O'BRIEN: Okay.

And why do you now identify that as an inappropriate statement?

SGT HENSTRIDGE: I think it – while at the time I believed it to be a true statement based on what I knew or the theory that I was working from at that time, I think it can be perceived by the general public as me having made my mind up beforehand. And I think it was probably ill advised to make that statement at that time.

MS. O'BRIEN: Okay.

The next one that you identified on page 60 was this one: “His daughter has got a lot of questions.”

SGT HENSTRIDGE: Uh-huh.

MS. O'BRIEN: “Some of her questions are relevant and some of ‘em are not really relevant at all.”

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: So why do you now believe that was an inappropriate statement to make?

SGT HENSTRIDGE: I think speaking about another witness and what they may or may not be questioning is probably not appropriate to do, although I didn't specifically reference what it was she was asking. This is at a stage in the interview where Constable Smyth was expressing some concerns about how his family was doing and so on and that was my response to that.

If you're asking what I was referring to when I said not really relevant, if that's – I'm not sure if that was your question.

MS. O'BRIEN: No, you can please explain that. What did you mean?

SGT HENSTRIDGE: I think – I don't recall exactly but I think there was something that Meghan had indicated in her statement to us about if he had – I know for a fact if he had identified himself as a police officer, my dad would not have shot him.

Now while that may be relevant that's probably a poor choice of words. I felt at the time that was kind of speculative and it was something that we would never really know, whether or not that could be confirmed. And so, presumably, that's what I was referring to.

MS. O'BRIEN: Okay.

Now this was not one that you raised in your pre-hearing interview but your answer may – you know, it's similar and it's just above and you say to him: “And like I told you before, his brother and sister, ah, have said nothing but support for you. They feel bad for what you're going through and, ah, so you – you don't need to think about that either.”

Was that an appropriate thing for you to say?

MR. KENNEDY: Excuse me, Ms. O'Brien, is that page 60?

MS. O'BRIEN: Yes.

MR. KENNEDY: Okay.

MS. O'BRIEN: I apologize; I have too much caffeine in my system obviously. You made me jump.

THE COMMISSIONER: Page 60, the green 60 or page 59, one of them.

MS. O'BRIEN: Yes, it's page 60 of the exhibit.

Sorry, Sergeant Henstridge.

Was that an appropriate comment for you to make? These were other witnesses you had interviewed.

SGT HENSTRIDGE: Yeah, and they're speaking kind of generally about their empathy for the situation. He had indicated in his earlier statement that he had concerns that his brother may be coming out to cause harm to him. And I think that's where that kind of came from, is sort of assuring him that they were not in a position to be blaming him at this point.

MS. O'BRIEN: Okay.

I understand that, you know, from what I've learned or heard to date, that the general rule is that you don't give the subject of an interview information during the interview unless there's an investigative purpose for it.

SGT HENSTRIDGE: That's true.

MS. O'BRIEN: Is that fair to say?

SGT HENSTRIDGE: That's fair to say.

I would say, though, that during the rapport building of an interview with a witness there's reciprocation. So sometimes there's information that goes back and forth in an attempt to garner co-operation, garner dialogue. But specifically speaking about what another witness has said, I would suggest is something that, if I had my time back, I would not have done.

MS. O'BRIEN: Okay. All right.

And so the next one that you identified is at page 62 and it's here: "The biggest jist of the – the investigation now is to try to figure out what happened in his head. You know, what he was thinking and so on...."

SGT HENSTRIDGE: Uh-huh.

MS. O'BRIEN: And in context, the he here, his head, is Mr. Dunphy.

Why do you now believe this was an inappropriate statement?

SGT HENSTRIDGE: There's times I look at that and I say that it was an inappropriate thing to say but at the same time it was a truthful thing. We had just received all the information from Constable Smyth in terms of what he was thinking through the pure version, and I suggested that the focus of the investigation right now would likely be on what was motivating Mr. Dunphy.

But, again, you know, the rule of thumb is that an interview should be a silo and that the information side of it should be one way. And there were examples of that not being the case in this interview. I'd suggest there are examples of it in many interviews but there certainly was in this one as well.

MS. O'BRIEN: Okay.

We're almost through this list. The next one you pointed out was at page 64. And we'll go through them quickly because I think the same – it will probably be the same answer that you already – same explanation that you've already given for other ones. But you – just want to note that you had identified this as inappropriate where you told Constable Smyth about Mr. Dunphy: He smoked a lot of pot. That we do know. He wasn't a drinker and he's been busted before.

SGT HENSTRIDGE: Yes. And it's the same answer.

MS. O'BRIEN: Okay.

And the last one that you identified at page 67, it's here: "... I will say that I don't think you need to second guess anything that happened in that room. I don't know if I'm supposed to say that or not, Steve, but I think you can leave the room if you feeling that way." So I think the statement is: I don't think you need to be second guessing anything that happened in that room.

Why was that an inappropriate thing to say?

SGT HENSTRIDGE: Yes, based on the theory that I was working from at that point, less than 24 hours into this investigation that was how I felt. I think it would have been best not said and, in fact, it shouldn't have been said by me at any rate, at any time, as Steve was the primary investigator.

MS. O'BRIEN: So it should not have been said by you as a tasker on it –

SGT HENSTRIDGE: No.

MS. O'BRIEN: – at any time and –

SGT HENSTRIDGE: I stepped outside of my role there and I should not have done that.

MS. O'BRIEN: Okay. And if I'm understanding you correctly, even still, even if you had been the primary investigator –

SGT HENSTRIDGE: No.

MS. O'BRIEN: – it was still too early to –

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: – to make that, that type of conclusion-type statement.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: Is that fair to say?

Okay.

In our interview, when we talked, you know, you were very forthcoming about, about these issues, and when I asked you why you believed you had, had said these statements, you said that looking back at it you had enormous empathy for what Constable Smyth had gone through, particularly after you had been in the house and that your empathy clouded your judgement.

Is that a still a fair statement from you today?

SGT HENSTRIDGE: I think in relation to those errors that were made, I suspect that that was a part of why those errors were made, yes.

MS. O'BRIEN: Okay.

Now, I understand that after your interview with Constable Smyth, Staff Sergeant Kent Osmond, who was monitoring the interview from a, by video link in a nearby room.

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: He came and gave you and Corporal Burke some specific feedback about the interview.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: What, what did he tell you?

SGT HENSTRIDGE: I can't speak to the exact wording that he used, but effectively he suggested that it was too familiar. It was too – buddy-buddy is the term that I'm using. I don't know if that's what he used. But the impression that I got is he felt that there was, there was, it was too familiar.

At that time, to be, to be honest, I didn't feel the same way. I felt that he wasn't getting an accurate perception of what was happening in the room because he was monitoring, but one of the reasons we have a monitor is to assess these issues and to, and to determine whether or not there's something that is going on that shouldn't be going on.

Once I got the transcript back and reviewed it, I came to the conclusion that he was in fact correct, that there were things said that shouldn't have been said.

MS. O'BRIEN: Okay.

One last thing I want to ask you about this interview, and it's on page 71.

THE COMMISSIONER: How are you doing with your questioning?

MS. O'BRIEN: I'm doing actually –

THE COMMISSIONER: We'll probably break in another five or 10 minutes if it's –

MS. O'BRIEN: That's fine, and I'm actually – Sergeant Henstridge actually wasn't due on the stand until tomorrow

THE COMMISSIONER: I understand, yeah.

MS. O'BRIEN: So, yeah, so we're doing, I'm doing very well. So we can break at any time, but I am, you know, getting close to the end. So if I go into tomorrow, it won't be very long into tomorrow.

THE COMMISSIONER: Right, okay.

MS. O'BRIEN: So –

THE COMMISSIONER: Well, we'll give it a, we'll give it another 10 minutes. We're a little – the reason we brought you on early – is it Sergeant?

SGT HENSTRIDGE: That's fine, yeah.

THE COMMISSIONER: Sorry – is because we're getting a little jammed up for witnesses, so any time we can get, we can fill in the better. So we'll go for another 10 minutes but that is probably as long as we should.

Go ahead.

MS. O'BRIEN: Okay, thank you.

So this is happening sort of towards the end of the interview, Sergeant Henstridge, and there's some discussion between – this discussion actually started when, on the previous page where Constable Smyth actually asked you specifically about whether the RCMP would be making a media statement. And so some discussion about the media ensues after his question. And then here there's a statement – at some point you bring up the words conspiracy theorists.

Just one moment please and I'll bring it up on my tab. It's on page 72, that's why I'm struggling.

So you have this discussion and then you're talking about people out there, sort of the rumor mill going on in social media, and you make a comment here about conspiracy theorists basically. There's some further comment about the RNC and where with the – so you make, this is you: "Yeah, no, Paul Davis is Premier and you're with the RNC and we're with the RCMP so there's – there's a big cover up or whatever. That's what people say. They – they – it's a resort to effort." Smyth agrees. You say: "It's a bunch of people on the Internet and we deal with it on one of our files in particular every day." He says: "Yeah." You say: "It's frustrating cause you wanna get out there and just" He says: "I can guess which one that one is." I guess he's guessing the file. You say: "Yeah. So, we get that, right. And we can't ask any more of you then what you've done here today and ... hopefully our media release will be specific enough to dispel..." and then you "some of the... some of that" And then you actually get cut off here by Corporal Burke and you never do get to finish that statement when we go through, so just a couple of questions on that.

Do you recall now how you meant to finish that statement?

SGT HENSTRIDGE: No.

MS. O'BRIEN: Hopefully our release will be specific enough to dispel

SGT HENSTRIDGE: I don't recall where I was going with that.

MS. O'BRIEN: Okay.

Did you have any discussions with anybody about – we know the RCMP put out a media release the following day. Did you have any discussions with anyone about getting enough detail there to dispel the rumors or whatever it is that Constable Smyth was struggling with here?

SGT HENSTRIDGE: I don't believe I was consulted on that whatsoever.

MS. O'BRIEN: Okay.

And that interaction that I just went over there, do you believe that was an – today, looking at it, was that an appropriate interaction to have with Constable Smyth?

SGT HENSTRIDGE: It may have been inappropriate but I think it was a result of some frustrations that we shared in terms of the way the public was perceiving what the police were doing and making assumptions about, you know, how these, how investigations work, what should be done and should not be done and not really have a full understanding of how the investigations unfold.

I think the TV culture, the 60-minute TV crime dramas has had an impact on that. And so perhaps I should not have said that but I still stand by the comments themselves.

MS. O'BRIEN: Okay.

I just have one last area of questioning, Commissioner; I expect it will take about five minutes. Would you like me to proceed?

THE COMMISSIONER: Okay.

MS. O'BRIEN: Okay.

This has to do with – I know, Sergeant Henstridge, you are involved with the folder re-enactment on April 20. Do you recall that?

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: And this had to do with the yellow folder. First of all, can you tell the Commissioner why the folder re-enactment was done?

SGT HENSTRIDGE: At some point following the interview I had access or I had seen some photos in relation to the ident photos. And I had noticed that one of the folders, the folder that Constable Smyth had indicated, dropped, had landed on the corner, kind of precariously on the corner of a desk.

It struck me as odd. I thought it was kind of odd that they would land in kind of that location. I didn't think it was impossible or, but it seemed odd and –

MS. O'BRIEN: And you just said desk but you're referring to the coffee table in front of the couch. Is that what you're talking about?

SGT HENSTRIDGE: Yes. I'm sorry, yes.

MS. O'BRIEN: Yes.

SGT HENSTRIDGE: The coffee table. That's correct.

MS. O'BRIEN: Yeah.

SGT HENSTRIDGE: So as a result I mentioned to Corporal Burke that, you know, it might be of some value to see if it's subjectively reasonable whether or not this could or should have happened the way it did. So I conducted a – I'm hesitant to use the word "experiment" because we couldn't control any of the variables – a demonstration, I suppose, to see if it was or wasn't reasonable.

MS. O'BRIEN: Okay.

SGT HENSTRIDGE: I thought it was of limited value basically.

MS. O'BRIEN: And in this demonstration it was video recorded –

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: – and I've seen it. So what I see in that video is you are holding a file folder, a yellow-type legal size file folder with a number of sheets of paper inside, I think the same number as had been in the folder Constable Smyth had and in it. And there's a table, roughly coffee table height nearby and you are – you hold the folder closed?

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: And you are dropping it and sort of seeing where it lands and you're a little bit over the table. And you do this a number of times and sometimes it does actually land on the table intact and sometimes it falls off.

SGT HENSTRIDGE: That's right.

MS. O'BRIEN: Okay.

Now, in his statement Constable Smyth had stated that he was writing notes at the time of – you know, when he saw the gun. Do you recall that?

SGT HENSTRIDGE: He was saying he was writing notes or pretending to write notes is what he said in his statement as I recall.

MS. O'BRIEN: Okay.

And did you examine the actual folder that was seized for notes?

SGT HENSTRIDGE: No, I didn't. No.

MS. O'BRIEN: All right.

So the only notes that were there were on the inside of the folder. And I believe Constable Smyth has since given us testimony that he might have been doing some scribbling on the inside of the folder there.

SGT HENSTRIDGE: Okay.

MS. O'BRIEN: So the question, I guess, would be then, you did this re-enactment with a closed folder.

SGT HENSTRIDGE: That's correct.

MS. O'BRIEN: Okay, but there was no notes on the outside of that closed – outside the folder that was seized.

SGT HENSTRIDGE: No notes – what do you mean, affixed to the folder?

MS. O'BRIEN: On the outside of the folder.

SGT HENSTRIDGE: I didn't use the –

MS. O'BRIEN: So in other words, had he been writing notes the folder could not have been closed at the time.

SGT HENSTRIDGE: Sorry, you're going to have to ask the question again. I'm misinterpreting.

MS. O'BRIEN: No problem. And it's my fault, probably for the way I phrased the question.

The folder that was seized by the RCMP from Mr. Dunphy's home –

SGT HENSTRIDGE: Yes.

MS. O'BRIEN: – would you agree it had no writing anywhere on the outside of the folder?

SGT HENSTRIDGE: I don't know.

MS. O'BRIEN: Okay, so you didn't even do that examination?

SGT HENSTRIDGE: No.

MS. O'BRIEN: Okay.

So you – but when you conducted your folder demonstration you did use a closed folder?

SGT HENSTRIDGE: Yes, I believe so.

MS. O'BRIEN: Okay.

ASIRT questioned the value of this demonstration. Do you agree with that – their conclusion that it was of, I think, dubious assistance was their phrase. Would you agree with that?

SGT HENSTRIDGE: It was of what?

MS. O'BRIEN: Dubious assistance.

SGT HENSTRIDGE: I'm not sure I'd use the word dubious but I think it was of limited assistance.

MS. O'BRIEN: Okay. All right.

I know you had, Sergeant Henstridge, other involvement in this file; I know you did other tasks. I don't have any further questions for you but others may, but I think that will happen tomorrow morning.

SGT HENSTRIDGE: Okay.

Thank you.

THE COMMISSIONER: Okay.

Thank you, Ms. O'Brien.

Sorry, Mr. Simmonds, do you want something?

MR. SIMMONDS: One question. If we indeed – and it looks like we're going finish the sergeant early tomorrow –

THE COMMISSIONER: Right.

MR. SIMMONDS: – and the next witness is Mr. Davis, would there be any witnesses planned after Mr. Davis tomorrow, or ...?

THE COMMISSIONER: You had something on, I think, did you?

MR. SIMMONDS: Well, I've got to be in court at 9. I'll be back here, I'm hoping, by 10 or quarter after.

THE COMMISSIONER: Right.

MR. SIMMONDS: And I was the one that was going to do Mr. Davis. Ms. Breen will be here in the morning to – and she's going to watch this tonight so she'll see the evidence that was given.

THE COMMISSIONER: Right.

When were we contemplating calling Mr. Davis?

MS. O'BRIEN: Mr. Williams may be able to speak to it but I think from Commission counsel's point of view, it would be our preference to, as soon as Sergeant Henstridge is finished, move ahead with Mr. Davis. But it would not be our intention – if we finished up with Mr. Davis earlier on the Friday afternoon we were not anticipating bringing a witness forward from next week. So we would – our plan was to end after Mr. Davis testified.

THE COMMISSIONER: Okay.

MR. WILLIAMS: And I've told –

THE COMMISSIONER: Now, Mr. Davis; I'm aware the House of Assembly is open and I think we should be prepared to make some arrangements for Mr. Davis if he needs it.

MR. WILLIAMS: And he's totally available. He's available all day tomorrow. I didn't anticipate we'd even start this witness today so I will have him available – perhaps if it's satisfactory, I'll have him available for right after the morning break. That will give counsel sufficient time. Or I can have him here at 9:30 if you'd like.

THE COMMISSIONER: Well, you're going to –

MR. SIMMONDS: That's very reasonable. If you can – I'll certainly be here by 11 o'clock. If you can have him here for the morning break that would – I can't imagine – we might even finish with him in the morning but certainly in the early afternoon.

THE COMMISSIONER: Okay.

Well, it sounds as though we might finish with Sergeant Henstridge before the morning break unless counsel have a lot of questions.

Mr. Simmonds is shaking his head no.

Mr. Kennedy?

MR. KENNEDY: I'm not going to have a whole lot.

THE COMMISSIONER: Right. So I don't think –

MR. SIMMONDS: Ms. Breen will be doing it –

MR. AVIS: Very little.

MR. SIMMONDS: – but I don't expect she'll have a fair amount of questions.

THE COMMISSIONER: We'll have work to do if – you know, if we have a gap there. So if you can –

MR. WILLIAMS: Maybe we can take the break early. As soon as you come back we'll start. So we don't have to say 11; I'll have Mr. Davis ready for 10 and then as soon as Mr. Simmonds shows we can start.

MR. SIMMONDS: That's fine.

THE COMMISSIONER: Sure, that sounds –

MR. SIMMONDS: That's reasonable. That's reasonable.

THE COMMISSIONER: That's reasonable?

All right.

Thank you then.

We'll recess now until 9:30.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.