



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 30

Commissioner: Honourable Justice Leo Barry

Friday

24 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry open.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Okay. Go ahead when you're ready, Ms. O'Brien.

MS. O'BRIEN: Thank you.

I've finished my direct examination of Sergeant Henstridge, so we're into cross-examination now. So I think the first lawyer would be Erin Breen.

THE COMMISSIONER: Okay, Ms. Breen.

MS. BREEN: Thank you.

Mr. Commissioner, I do feel like I will be a little longer than Mr. Simmonds said I will be yesterday. I just wanted to alert you to that at the beginning. I will not be repeating Ms. O'Brien, but I do have areas to cover with

THE COMMISSIONER: Well, do the best you can.

MS. BREEN: I will.

THE COMMISSIONER: We have other witnesses, yeah.

Thank you.

MS. BREEN: Good morning, Sergeant Henstridge.

Erin Breen for Ms. Dunphy.

Sergeant Henstridge, I apologize if I call you Corporal Henstridge during this examination. It's just that you were Corporal Henstridge at the time, we've been referring to you as Corporal Henstridge. So I do apologize in advance because I think I will slip, but I understand –

SGT HENSTRIDGE: No, that's fine.

MS. BREEN: – you've been promoted in rank since that time.

STG HENSTRIDGE: That's fine.

MS. BREEN: Sergeant Henstridge, how long were you with St. John's Major Crime section?

SGT HENSTRIDGE: Approximately seven-and-a-half years.

MS. BREEN: Okay. And during that time frame, how long was Staff Sergeant Osmond your supervisor?

SGT HENSTRIDGE: The entire time.

MS. BREEN: Okay. And how long have you worked with Corporal Burke?

SGT HENSTRIDGE: At that point it would have been approximately three years, I think.

MS. BREEN: Okay. And in the past had you worked with Corporal Burke as your lead investigator?

SGT HENSTRIDGE: I can't be certain but it seems like there was a file in which he was the primary and I was a tasker, but I can't recall exactly when.

MS. BREEN: Okay. And in reverse, had there been previous files where you were lead investigator and Corporal Burke worked as a tasker?

SGT HENSTRIDGE: Yes, there was.

MS. BREEN: Okay. And how many, roughly, cases would have been like that?

SGT HENSTRIDGE: Three or four.

MS. BREEN: Okay.

So, Sergeant, is it fair to say that you work very closely with Corporal Burke and Sergeant Osmond?

SGT HENSTRIDGE: That's correct.

MS. BREEN: And that throughout this file we see in the disclosure that you met with them regularly, frequently, I would suggest, early, and discussed ideas and tasks?

SGT HENSTRIDGE: During the initial days, yes.

MS. BREEN: And that you work in the same offices, do you? You work –

SGT HENSTRIDGE: That's correct.

MS. BREEN: – in physical proximity to one another very closely.

SGT HENSTRIDGE: That's correct.

MS. BREEN: Sergeant, you've also worked with – or I should say have you worked before with Darryl Barr? We understand Darryl Barr is being called as a witness in this case.

SGT HENSTRIDGE: Yes, his name is familiar to me. I think we may have used him as a firearms person on another file but I've never met the man and I don't know

MS. BREEN: Okay.

We see that in – I won't bring up the exhibit but it's P-0359, page 266. I understand that Mr. Barr had been retained by the RCMP on the Crockwell case. Would that – is that the case you're referring to?

SGT HENSTRIDGE: Yes. And, actually, that's another occasion when Corporal Burke would have been a primary and I would have been a tasker on that file as well.

MS. BREEN: And Dr. Peter Collins, do you know Dr. Peter Collins?

SGT HENSTRIDGE: Yes, I do.

MS. BREEN: Okay. And how do you know Dr. Peter Collins?

SGT HENSTRIDGE: Through an investigation, another investigation that we retained him for.

MS. BREEN: Okay. And what year was that?

SGT HENSTRIDGE: 2013 perhaps, 2014.

MS. BREEN: Okay. And this was the major crimes unit had retained him?

SGT HENSTRIDGE: Pardon me?

MS. BREEN: The major crimes unit had retained Dr. Collins. Is that correct?

SGT HENSTRIDGE: Yes, that's correct.

MS. BREEN: Okay. And what was the purpose of his retention at that time, do you know?

SGT HENSTRIDGE: It was in relation to assisting with a task on a particular historical homicide that we were working on.

MS. BREEN: Okay. And was this the only time that you had worked or had you – you met Dr. Collins at that time I presume.

SGT HENSTRIDGE: Yes, that's correct.

MS. BREEN: And had he been used prior to – by the major crimes unit prior to that?

SGT HENSTRIDGE: No.

MS. BREEN: Or since?

SGT HENSTRIDGE: Not for me to know. I don't believe so.

MS. BREEN: Okay.

Now, Sergeant, just before we get to this matter a couple of questions I want to ask you because I understand that you are – you have a lot of training in the area of interviewing techniques.

SGT HENSTRIDGE: Yes.

MS. BREEN: And general, I guess, police work in terms of taking statements of witnesses. Is that correct?

SGT HENSTRIDGE: That's correct.

MS. BREEN: And would you agree that it is important for an investigator to take notes at all times, have the notebook, and record key times?

SGT HENSTRIDGE: I would agree with that, yes.

MS. BREEN: Okay. And the key times for taking statements from witnesses or interviewing witnesses would be the interview start time and the interview end time. Do you agree with that?

SGT HENSTRIDGE: Yes.

MS. BREEN: Okay.

Now, I was not here yesterday, Sergeant, but I did review your testimony last night, and I will do my very best not repeat any ground where Ms. O'Brien has already gone.

And, I think, it's fair to say that you have acknowledged there were numerous errors in the – at least with the statement of Constable Smyth that you had conducted on April the 6th.

SGT HENSTRIDGE: Yes.

MS. BREEN: And, Sergeant, I saw your testimony yesterday, and I know that you have acknowledged that you had, what I would describe to be, an emotional reaction when you entered into Mr. Dunphy's house.

SGT HENSTRIDGE: That's correct.

MS. BREEN: And that what you described to Ms. O'Brien in your interview was that you had enormous empathy for what Constable Smyth had gone through the night before. And that you think that might have clouded some of your common sense during the interview?

SGT HENSTRIDGE: Yes, that was possible.

MS. BREEN: And this was at page 139 of the interview. And you said to her, at that time: Whether it was because he was a police officer or I empathized with him for some other reason, I can't really say.

SGT HENSTRIDGE: Yes.

MS. BREEN: Do you recall saying that to Ms. O'Brien?

SGT HENSTRIDGE: Yes.

MS. BREEN: You also told Ms. O'Brien at that time, Sergeant, that you had fixated a little bit on that, on that issue, as to whether or not you would've been able to react in time.

SGT HENSTRIDGE: Yes, I did say that.

MS. BREEN: And that was at page 57, lines 3 to 6 of the interview for the benefit of counsel.

So it bothered you, obviously, Sergeant. And you did fixate on that part.

SGT HENSTRIDGE: To a certain extent, yes.

MS. BREEN: Okay.

Now, you've also acknowledged that in your training no information known to the investigative team should have been given to a witness unless it was for an investigative purpose.

SGT HENSTRIDGE: That's correct.

MS. BREEN: You also agreed with Ms. O'Brien – this is at page 141 – that there were certain statements made by Corporal Burke in that interview that were also inappropriate.

SGT HENSTRIDGE: I'd have to see which statements you're referring to, but

MS. BREEN: In particular, she referred you to the fact that Corporal Burke told Constable Smyth about where, apparently, the firearm had – how it had gotten into Mr. Dunphy's house. It had come from family members. I believe that was the statement she was referring to.

SGT HENSTRIDGE: Yes.

MS. BREEN: Okay. And, Sergeant, if you could just tell us why it is that it is inappropriate to provide information to a witness when you are investigating a situation such as this?

SGT HENSTRIDGE: Typically, the issue is you don't really know what the relevance of the information is at that particular time that you're conducting that interview and therefore information should, for the most part, be a silo.

As I mentioned yesterday, there's information exchanged during an interview and these interviews can go on for extended periods of time. And sometimes mistakes are made in an effort to build rapport and in an effort to encourage dialogue. In that case, no, it shouldn't be.

MS. BREEN: Okay.

And I'm not, I'm not here to suggest that there was any motivation by you other than what you have described to us yesterday is that you genuinely felt emotional about this case and you felt empathy for Constable Smyth. So I don't want you to mistake what I am saying that you –

SGT HENSTRIDGE: No.

MS. BREEN: – intentionally did anything here.

THE COMMISSIONER: You're fading out a bit, I think, when you move off from the mic.

MS. BREEN: Okay.

Thank you, Mr. Commissioner.

Sergeant, you also, when Ms. O'Brien asked you about your giving Constable Smyth information in this case, you – she asked you for another example of where you might give information to a witness in an investigation. And the example that you referred to was a, you know, a hypothetical whereby where a battered wife who killed an abusive husband with witnesses present. You agreed you would share information in that situation.

SGT HENSTRIDGE: Yes. I wouldn't say it was a very good example.

MS. BREEN: Is there any other example that you want to provide to us today where you would do it?

SGT HENSTRIDGE: I can't think of another example.

MS. BREEN: Okay.

Now, Sergeant, if we go to your first involvement at the scene, you have said to us your emotion reaction, you put – really, you put yourself in Constable Smyth’s shoes when you went into that room is what happened.

SGT HENSTRIDGE: Yes. As I indicated yesterday I put myself in his shoes. I put myself, I think, in a lot of people’s shoes when I was in that room. There’s a –

THE COMMISSIONER: Did any what?

SGT HENSTRIDGE: I put myself in a lot of people’s shoes in that room. It was a, it was an emotionally charged experience.

MS. BREEN: And you also made note that you had heard on the evening of April 5, someone told you that Constable Smyth had said – I don’t know if it was Constable Smyth who said it directly to you but that all of his notes in relation to this matter were still inside that house. Do you recall that?

SGT HENSTRIDGE: I recall reading that in my notes or in my documents. I –

MS. BREEN: Okay.

Were you expecting to find Constable Smyth’s notebook in the house?

SGT HENSTRIDGE: I’m not sure I was thinking along those lines. I knew that ident was going to be looking at the scene and my purpose for going into the house was to assess where things were situated in an effort to assist me with the interview the following day. So whether I expected to see it, I don’t think I was expecting to see anything –

MS. BREEN: Okay.

SGT HENSTRIDGE: – in terms of that.

MS. BREEN: And, well, I’ll get to that a little later about how that worked out throughout the remaining couple of days. But at that time you believe that this is something you kind of heard at the time but realized or thought about it after the fact that he had told you that all of the notes were in that house.

SGT HENSTRIDGE: Yeah. I’d be interested in seeing where exactly I wrote that, just that it might refresh my memory.

MS. BREEN: I believe it’s at page 50 of the interview where Ms. O’Brien talked to you about that, but I think it also appears in your supplementary report –

SGT HENSTRIDGE: Okay.

MS. BREEN: – where you talk about some things Constable Smyth said to you at the detachment that day.

SGT HENSTRIDGE: Oh, the second visit to Constable Smyth. Yes (inaudible).

MS. BREEN: Okay.

And one of the things he said to you that all the notes will be in the house in relation to this matter.

MS. O'BRIEN: If it assists it's P-0687.

MS. BREEN: I don't know; Sergeant, did you want to review that before you answer?

SGT HENSTRIDGE: Umm.

MS. BREEN: I didn't feel the need to bring it to you but if you want to look at it.

SGT HENSTRIDGE: No, no, I wouldn't mind seeing it just to –

MS. BREEN: Okay.

SGT HENSTRIDGE: Because my focus – that second, the second time I spoke to Constable Smyth I think my focus was the people that he had spoken to and the fact that we were setting up the interview for the second.

THE COMMISSIONER: What's the page reference, Ms. O'Brien?

MS. O'BRIEN: Got it up.

THE COMMISSIONER: Oh, you're bringing it up are you?

MS. O'BRIEN: Page 1. I've brought it up and just highlighted the note there, Commissioner.

SGT HENSTRIDGE: Yes, I see it there now.

MS. BREEN: Thank you very much.

So this was at 1750. This is still while you're at Holyrood detachment is my understanding.

SGT HENSTRIDGE: That's correct.

MS. BREEN: Before you go to the scene.

SGT HENSTRIDGE: That's correct.

MS. BREEN: But when you go to the scene you said that that wasn't really on your mind at that time.

SGT HENSTRIDGE: No.

MS. BREEN: Okay and we will come back to that, Sergeant.

Now, after you leave the scene, your first interview that you conduct, or I should say first interviews that you conduct, are with Dick and Debbie Dunphy. Do you recall that?

SGT HENSTRIDGE: Yes.

MS. BREEN: And that in your interview, Sergeant – and I'm not going to take you through this in detail but it's fair to say that you did acknowledge to Ms. O'Brien that the interviews with Dick and Debbie Dunphy were not as thorough in hindsight in terms of the content of the questions that they were asked about their interaction with Constable Smyth. Is that fair?

SGT HENSTRIDGE: It's fair. It's also true to say that virtually any interview that I conduct on the initial hours of an investigation, when you look back after, there's virtually always information that you could have gleaned.

MS. BREEN: Yes. And it's fair to say that in a serious investigation, the expectation is that at some point someone is going to be reviewing these interviews and reviewing the evidence at the crime scene and likely sending people back if more information is required.

SGT HENSTRIDGE: Potentially. Yes.

MS. BREEN: Okay.

Now if we move ahead, after your interviews with Dick and Debbie Dunphy, you had your interview with Meghan Dunphy at her home on the Salmonier Line.

SGT HENSTRIDGE: That is correct.

MS. BREEN: Okay.

Now, Sergeant, you recall that at that time during that interview, Meghan Dunphy was crying at times.

SGT HENSTRIDGE: At times I believe she had spells. Yes.

MS. BREEN: And her voice was shaking.

SGT HENSTRIDGE: At times.

MS. BREEN: She was calm at times but other times, would you agree, she became highly emotional.

SGT HENSTRIDGE: I would say she became emotional. As I indicated yesterday, the audio recording of that probably speaks better to the tone.

MS. BREEN: Yes. And I agree with you, to get a full sense of the interchange, you would have to listen to the audio for sure.

SGT HENSTRIDGE: Yes.

MS. BREEN: Would you say it was fair that she was exhibiting some signs of grief?

SGT HENSTRIDGE: Yes.

MS. BREEN: And shock?

SGT HENSTRIDGE: Yes.

MS. BREEN: And, Sergeant, you would have found out subsequently on April 7 that she had become very upset, angry with the police because she had not gotten to see her father before he was cremated. You were aware of that issue being raised by her, were you?

SGT HENSTRIDGE: I was less aware of the issue about her not getting to see her father. I don't believe I was aware of that. I was aware that she was upset about our interaction.

MS. BREEN: Okay.

Now, at that time, Sergeant Henstridge – and I did review your testimony from yesterday and your interview. I understand that the purpose of interviewing Meghan Dunphy at that time, you said, was to build a timeline of Mr. Dunphy's actions on that day; where he had been, who he was with and get some background information.

SGT HENSTRIDGE: Yes.

MS. BREEN: That's fair to say?

So upon review of the content of that statement it appears that there was a focus on what kind of issues Don Dunphy had in his life.

SGT HENSTRIDGE: Yes.

MS. BREEN: Do you agree with that? Okay.

And while you did cover other issues such as the contact with her that day at the Woodstock, the time and place, those kinds of things, you also asked her a number of questions. And I'm not suggesting at all that they were improper questions but just that you had asked her at that time did he have mental health issues?

SGT HENSTRIDGE: Yes.

MS. BREEN: You asked her about his behaviour, you asked her about his attitude, you asked her about his concerns with the police, concerns with government. You asked her about his Twitter activity, his Worker's Comp issues, whether he had depression, his marijuana use.

SGT HENSTRIDGE: Hmm.

MS. BREEN: Questions about his marijuana licence, other drug use. So there was a wide variety of questions asked about the issues that Don Dunphy had.

SGT HENSTRIDGE: That's correct.

MS. BREEN: You also did ask her about video cameras. Do you recall that?

SGT HENSTRIDGE: Yes.

MS. BREEN: And you asked her specifically whether there was a video camera on the outside of the house and whether it was functioning at that time.

SGT HENSTRIDGE: Yes, I recall that.

MS. BREEN: Okay.

And you had learned that, Sergeant, through both – Constable Smyth had mentioned that to you at the headquarters. Is that correct?

SGT HENSTRIDGE: Yes.

MS. BREEN: And also you had been to the scene and I believe you said you noted one outside as well.

SGT HENSTRIDGE: That's right.

MS. BREEN: So you did ask her that question on that night.

Now at that time, Sergeant, Corporal Burke is your primary investigator.

SGT HENSTRIDGE: Yes.

MS. BREEN: And he is the one who had tasked you, I assume, to go interview Ms. Dunphy.

SGT HENSTRIDGE: Well, we were both in the same vehicle, but yes.

MS. BREEN: Okay.

So was it something that you had discussed and said we should do? It was a joint decision to go and see her?

SGT HENSTRIDGE: I'm not sure if it was a joint decision. I think it was – it's kind of a – it doesn't require a lot of thought to decide that you're going to speak to the last person that would have seen the person alive. So I don't recall if he said we're going to do it or I said we're going to do it. It was just a matter of course that made sense to make contact with her and to see if she was up to providing a statement. Yes.

MS. BREEN: And I assume, based on the briefing you'd had at the detachment, you understand that it was your role to take the lead in that interview. Is that right?

SGT HENSTRIDGE: No, not particularly.

MS. BREEN: Okay. Can you explain that to me because ...?

SGT HENSTRIDGE: Roles – the primary role is the primary role, there's no question about that. But if the primary is with me during an interview, I will sometimes take the lead or he may sometimes take the lead.

What generally happens after the first number of hours is the primary becomes so inundated with information that he's not capable of being out and actually assisting with tasks. So he'll generally be removed from the investigation at that point, in terms of direct involvement.

In this particular case, it was myself and Corporal Burke that went down to the community. We were both in the same vehicle. So it stood to reason that we would attend those residences together.

MS. BREEN: Okay.

And as you've said, this was not a case where Corporal Burke removed himself. He actually went to the interview with you and he actually asked Ms. Dunphy some questions there as well.

SGT HENSTRIDGE: I believe so, yes.

MS. BREEN: But it's fair to say that you took the lead on the statement at that time.

SGT HENSTRIDGE: Yes.

MS. BREEN: Okay.

Now, Sergeant, looking back, do you agree that Meghan Dunphy would be your best available source of information regarding Don Dunphy and the home of Don Dunphy?

SGT HENSTRIDGE: Yes.

MS. BREEN: And that you were aware she grew up in that house.

SGT HENSTRIDGE: Yes.

MS. BREEN: Okay. And you are aware that she –

SGT HENSTRIDGE: I wasn't – sorry, I don't know if I was aware that she grew up in that particular house.

MS. BREEN: Okay.

SGT HENSTRIDGE: I was aware that it was just her and her dad.

MS. BREEN: Okay. Were you aware that she had visited him that week?

SGT HENSTRIDGE: The previous week or that day?

MS. BREEN: That week. I believe in the statement she talks to you about she had been away but she had been back and she had been down to the house.

SGT HENSTRIDGE: It's possible. It doesn't come to mind right now, but I don't disagree with that.

MS. BREEN: Okay.

Now, at this point, Sergeant, I don't see any questions to Meghan about the scene itself, about the living room, about anything in the living room. I note that you did ask her about the video camera that Constable Smyth had mentioned to you, but no questions there at all beyond that.

SGT HENSTRIDGE: Okay.

MS. BREEN: Do you recall – well, you –

SGT HENSTRIDGE: I know I didn't, no.

MS. BREEN: Yeah. But unprompted by you, Meghan does tell you about the stick.

SGT HENSTRIDGE: Okay. Yes.

MS. BREEN: Do you recall that?

SGT HENSTRIDGE: Yes, I do.

MS. BREEN: She was – she kind of went into a questioning mode herself and was kind of asking questions about what had happened. And she told you: There's a stick there. He always had it. He used it for defence.

SGT HENSTRIDGE: Yes.

MS. BREEN: You remember that. Okay.

When she asks you that question, Sergeant Henstridge, do you remember after you had said to her – or your response was basically, we can't tell you a whole lot about the scene right now.

SGT HENSTRIDGE: Yes, I recall that.

MS. BREEN: And that there will come a time when we are going to sit down with you and give you an assessment of what happened.

SGT HENSTRIDGE: That's correct.

MS. BREEN: Okay.

So fair to say from that statement there or at least at that time, it appears that you weren't looking at Meghan Dunphy at that time as a possible source of relevant information about the scene.

SGT HENSTRIDGE: I'm sorry; I don't understand the connection between those two things.

MS. BREEN: Well, it appears to me from the question or from your response that you're not going to tell her about the scene.

SGT HENSTRIDGE: Not at that point. Yeah.

MS. BREEN: And then you tell her but there will come a time when you're going to sit down with her and you're going to tell her what your assessment is.

SGT HENSTRIDGE: Somebody from the investigative team. It wouldn't have been me but

MS. BREEN: And it doesn't appear at that time – and this is on April 5 and I note –

SGT HENSTRIDGE: Yes.

MS. BREEN: – it's very early in the day or in the investigation. There does not appear to have been an intention at that time to go back and ask her questions about the scene.

SGT HENSTRIDGE: Later on you mean?

MS. BREEN: At this time I'm asking about first, Sergeant.

SGT HENSTRIDGE: No. No.

MS. BREEN: So on April 5, yourself or Corporal Burke did not feel at that time she would have relevant information to offer about the living room or any item found in that living room.

SGT HENSTRIDGE: I don't believe that's the case at all. I think at that time we had taken an initial statement from her. I knew that that statement would be reviewed by Corporal Burke probably with fresh eyes the following day or within days. And as is a matter of course, should further information be required, such as what you're suggesting, that would be sought out, yes.

MS. BREEN: Okay. So it would have been Corporal Burke's role to review the statement and determine, based on all the information that he had, whether a further interview of her was required.

SGT HENSTRIDGE: That's correct.

MS. BREEN: And you did not receive any request to go back to see her, did you, on April 5, April 6 or April 7?

SGT HENSTRIDGE: I did not, no.

MS. BREEN: And it was only you and Constable Nippard who were doing the interviewing on this file. Is that correct?

SGT HENSTRIDGE: During the initial stages. I left the file after about four weeks, I believe. But no, I was never – I don't believe I ever got another request to interview Meghan.

MS. BREEN: Okay.

And beyond not asking her questions about the scene at that time, there were no questions to her about her father's disability or his ability to move was there.

SGT HENSTRIDGE: No.

Based on – I will speak to that if you want me to.

MS. BREEN: Sure, go ahead.

SGT HENSTRIDGE: I don't think I would have asked that question, primarily, because I had gone into the house and it requires some effort getting into the house. So I don't think his mobility was a concern for me at that time.

MS. BREEN: Okay.

But you didn't – you knew she had told you about the injury, the serious injury –

SGT HENSTRIDGE: Yes.

MS. BREEN: – that he had had. She described to you, I think on that day, that he had issues with his leg or his legs. Do you recall that?

SGT HENSTRIDGE: Yes.

MS. BREEN: And that further, and we'll get to this, when you interview Mr. Dinn later, he is telling you about Mr. Dunphy being in a significant amount of pain. Do you recall that?

SGT HENSTRIDGE: Yes.

MS. BREEN: And at that time I think –

SGT HENSTRIDGE: I believe he also said that he was starting to feel better over the last number of days actually.

MS. BREEN: Yes and I think there was a discussion here about his physical pain and his mental pain. Is that fair to say?

SGT HENSTRIDGE: That's correct. I remember that.

MS. BREEN: And that you tell him basically we're going to get all that information from the doctors. We're going to get that file from the doctors.

SGT HENSTRIDGE: We're going to get further information from the doctors, yes.

MS. BREEN: Now, when we move on, Sergeant, to April 6 at 2:30 p.m. is your next interview and that is with Mr. Dinn who had described himself as Mr. Dunphy's best friend. Do you recall that?

SGT HENSTRIDGE: That's right.

MS. BREEN: And that he told you he had been going to that house for 25 years and that he'd been there two to three times per week.

SGT HENSTRIDGE: Yes.

MS. BREEN: So Mr. Dinn would have –

SGT HENSTRIDGE: I think he said there was – sorry to interrupt you.

MS. BREEN: Go ahead.

SGT HENSTRIDGE: I think what he said was that there was a brief time when he was away in Fort McMurray where there was a period of time.

MS. BREEN: Yes.

SGT HENSTRIDGE: And then he came back and re-engaged friendship with Mr. Dunphy.

MS. BREEN: So fair to say you would have known at that date that Mr. Dinn would have been very familiar with that living room as well.

SGT HENSTRIDGE: Yes.

MS. BREEN: Now in your interview with Commission counsel Ms. O'Brien took you to parts of that statement and suggested to you then that there was things that Colin Dinn told you on April 6 at 2:30. And you acknowledged that you should have asked further questions about that because it would have been important to the timeline in this case. Do you recall that?

SGT HENSTRIDGE: I do recall saying that. I've considered some of those issues since so I do have further comment on that if you want to take me through them.

MS. BREEN: Sergeant, I want you to answer as fully as you wish. I'm not going to cut you off.

SGT HENSTRIDGE: There was an issue about – I think Ms. O'Brien asked me a question about the fact that he indicated he didn't use or he didn't smoke pot because he was on pills; he couldn't smoke it anymore. And at the time I thought, you know what, that was something that I potentially should have asked.

I've considered that since and I've looked at the transcript from that interview. I suspect that what I was thinking at the time is that in the number of people that I deal with on a day-to-day basis who are unfortunately addicted to drugs, a good many of them will downplay their particular usage. It just – it seems to be a common feature of people who are using.

MS. BREEN: Okay.

SGT HENSTRIDGE: And so I suspect that when I didn't – when that didn't raise a bell it was probably because it was through that frame that I was hearing what he was saying.

MS. BREEN: Okay and I don't take an issue with that.

But the other issue I think Ms. O'Brien drew your attention to was that Colin Dinn had given you a time where Mr. Dunphy had driven by his house and he saw him.

SGT HENSTRIDGE: That's right.

MS. BREEN: Do you recall that?

SGT HENSTRIDGE: Yes, I do.

MS. BREEN: And that that wasn't flagged in your summary. Is that right?

SGT HENSTRIDGE: It was not flagged, no.

MS. BREEN: And that you felt that you should have flagged that because it could have been important for the timeline.

SGT HENSTRIDGE: Yeah, I was engaged in getting information about the timeline so that should have been something that I zeroed in on, but I didn't.

MS. BREEN: Okay.

And, Sergeant, do you recall also that Mr. Dinn also raised the issue of you – unprompted, about Mr. Dunphy's stick?

SGT HENSTRIDGE: I don't recall but I –

MR. KENNEDY: May I see a reference to that?

THE COMMISSIONER: I'm sorry, what's the question?

MR. KENNEDY: Could I ask to see a reference to that in the statement?

THE COMMISSIONER: What's the question?

MS. BREEN: I asked the sergeant whether he recalled in the statement if Colin Dinn had raised the issue of Mr. Dunphy's stick with him.

SGT HENSTRIDGE: I don't recall him –

MR. KENNEDY: And I'm just asking for the reference to it.

MS. BREEN: And I will get the reference. I'll come back to it.

Mr. Commissioner, I don't have it here in front of me right now but I will get it. I did review it. I don't know if Ms. O'Brien can assist me there.

But Mr. Dinn talks about the stick and it being next to Mr. Dunphy's chair is my recollection. Ms. O'Brien, I don't know if you have the reference there right in front of you?

MS. O'BRIEN: I don't at the moment but I will get that, Ms. Breen, right now.

MS. BREEN: Okay. Thank you.

I'll come back to that.

At that time, Sergeant, you are speaking with Colin Dinn and he is talking about – in the statement he's talking about Mr. Dunphy's health. He's spends a lot of time talking about both his health physically with you as well as Mr. Dunphy's physical health.

SGT HENSTRIDGE: Yes.

MS. BREEN: And you do ask Colin Dinn a series of questions but they appear to be focused on Mr. Dunphy's mental health. You do ask him was Mr. Dunphy paranoid, was he delusional, was he – those kind of issues.

SGT HENSTRIDGE: That's correct.

MS. BREEN: And do you recall, Sergeant, that you also gave Colin Dinn information about Constable Smyth's risk assessment that he had done on Mr. Dunphy before he went in?

SGT HENSTRIDGE: I don't recall that specifically.

MR. KENNEDY: Again, Commissioner, I'm going to need references to some of these things. I'm not seeing it. I –

THE COMMISSIONER: Well, Mr. Kennedy, I'm not sure there has to be a reference in order to, for –

MR. KENNEDY: Well, the statement has to be accurate. That statement of Dinn – Ms. Breen, when she's saying that there's reference –

THE COMMISSIONER: She's asking. Ms. Breen is asking –

MR. KENNEDY: No, she's saying that there is a statement. There's a reference in the statement. And then she said –

THE COMMISSIONER: Well, if there's not a reference in the statement, that still does not mean she's not entitled to ask a question. Do you recall – which is what I heard, both now and earlier on – do you recall this particular conversation?

And whether it's recorded or not, it seems to me the witness would be able to say whether or not he recalled it. If he doesn't recall it, then it'd be up to Ms. Breen if she wanted to refresh his memory to find a specific statement.

MS. BREEN: And –

THE COMMISSIONER: But she doesn't need to, I don't think, have to have – am I missing something here? Mr. – go ahead.

MR. KENNEDY: I thought twice now the witness has said when the question has been put to him that Mr. Dinn said something in his statement. He said I don't recall that but if you can provide me (inaudible). That's what he just said.

THE COMMISSIONER: Well, it seemed to me you – my recollection is the first time, unless I missed – and it's not the first thing I would have missed, but it seemed to me that you asked the question for the reference before the witness had a chance to answer it.

So if we could, just to clarify it, Ms. Breen, forget about looking for the reference, ask the question.

MS. BREEN: I will.

THE COMMISSIONER: You had two questions: Does the witness recall X?

MS. BREEN: Yeah.

THE COMMISSIONER: Does the witness recall Y? And then if you want to, subsequently, when you find the reference, bring him back to it, go ahead.

MS. BREEN: Okay.

And I think you answered the question. You didn't know about giving Colin Dinn the information about Mr. –

SGT HENSTRIDGE: I don't –

MS. BREEN: And if we wish, we can bring the statement up.

THE COMMISSIONER: He doesn't recall giving Colin Dinn –

MS. BREEN: I think he said he did not recall. Is that right?

THE COMMISSIONER: He – that's what I thought I said.

MS. BREEN: Yeah.

THE COMMISSIONER: He did not recall what? Asking Colin Dinn –

MS. BREEN: Giving Colin Dinn information of what Constable Smyth had said about his risk assessment of Mr. Dunphy when he went to see him.

THE COMMISSIONER: Oh, okay. You don't recall that?

SGT HENSTRIDGE: I don't recall it.

THE COMMISSIONER: Okay.

MS. BREEN: Okay.

SGT HENSTRIDGE: I'm not saying it didn't happen, I just don't recall it.

THE COMMISSIONER: What was the other thing?

MS. BREEN: And the – well, I think we have to bring up the exhibit on Mr. Kennedy’s point to show Sergeant Henstridge, if he – if this is an issue. It’s P-0100, is Colin Dinn’s statement.

THE COMMISSIONER: P-0100, that’s the Supplementary Occurrence Report is it?

MS. O’BRIEN: P-0100.

MS. BREEN: Is that correct, Ms. O’Brien? Is Colin Dinn’s statement is P-0100?

MS. O’BRIEN: My binder is actually being carried to the hearing room now. So I can’t –

MS. BREEN: Okay. That’s what I have.

UNIDENTIFIED MALE SPEAKER: P-0100.

MS. BREEN: Yes.

And my reference for the information on the risk assessment comes at page 29 to 30 of that statement. Line 661, Sergeant, do you see that there?

SGT HENSTRIDGE: Yes, I see that. Yes.

MS. BREEN: So, again, at that point, Sergeant, you’re giving Mr. Dinn information from Constable Smyth about the investigation about what happened.

SGT HENSTRIDGE: Very generically but, yes.

MS. BREEN: Okay.

Again, is this appropriate?

SGT HENSTRIDGE: I don’t – perhaps it would have been best unsaid but, at the same time, I don’t see where telling a witness that based on what we know at this point, he took the same steps that I would have taken in assessing risk. And what I meant by that was the phone calls because at that point that’s – I think that was the extent of the information that we had. The phone calls regarding checks and so on and so forth.

MS. BREEN: Yes, you’re talking about the checks that Constable Smyth did on Mr. Dunphy and why he would have gone into the house that day.

SGT HENSTRIDGE: Yes. Yes.

MS. BREEN: Okay.

And the reference for the stick, I believe it’s page 14.

UNIDENTIFIED MALE SPEAKER: Page 14, (inaudible) five references.

MS. BREEN: There’s five different references in the statement, Sergeant. I can take you to the one at page 14 where Mr. Dinn talks about the stick. You’ll see it there line 287 to 290. “... the man had a stick, a wooden stick, I don’t know, an inch and a half in around and four or five long”

SGT HENSTRIDGE: Yes, I recall that now.

MS. BREEN: So he again on April 6, Colin Dinn, another person who you said you knew would have been very familiar with the house, is telling you about this stick.

SGT HENSTRIDGE: Yes.

MS. BREEN: But you didn't ask him any further questions about the stick at that time?

SGT HENSTRIDGE: Not at that time. I – well, not at any time.

THE COMMISSIONER: I'm going to have to break just for a few minutes. I apologize, but nobody need – I'll be less than five minutes. I just recalled something I have to do. I'll be right back. Roughly five minutes.

MS. SHEEHAN: All rise.

Recess

MS. SHEEHAN: All rise.

The Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay, go ahead when you are ready. Sorry for the interruption there.

By the way, how are we doing in ...?

MS. BREEN: I have – I'm going through it as efficiently as I can, Mr. Commissioner, but there are areas I still have to cover.

THE COMMISSIONER: No, I understand. Do you have a rough estimate of how much time you're going to need just for scheduling?

MS. BREEN: I would think another 30 minutes.

THE COMMISSIONER: Another 30.

MS. BREEN: Yes.

THE COMMISSIONER: Okay. Thank you.

MS. BREEN: Sergeant, when we left off we had been going through Mr. Dinn's statement and we showed you the references that we had brought you to about the stick.

SGT HENSTRIDGE: Yes.

MS. BREEN: Did Corporal Burke task you to re-interview Colin Dinn before the scene was released?

SGT HENSTRIDGE: Not before the scene was released, no.

MS. BREEN: Okay.

And the scene was released on April 7.

SGT HENSTRIDGE: I'm not certain.

MS. BREEN: Oh, okay.

Were you tasked to go see Mr. Dinn again before or on April 7?

SGT HENSTRIDGE: I don't believe so.

MS. BREEN: Okay.

SGT HENSTRIDGE: I was tasked with speaking to Mr. Dinn at some later point.

MS. BREEN: And when you did go back to see him the second time it was about the glasses issue. Is that correct?

SGT HENSTRIDGE: That's correct.

MS. BREEN: Okay, nothing – you didn't question him about the stick or anything like that at that time?

SGT HENSTRIDGE: No, that task was specifically in relation to the glasses.

MS. BREEN: Okay.

In relation to Ms. Dunphy, Sergeant, I just – I don't – I just want to bring this up now while it's in my mind. The issue about the front door; did any officer ever ask Ms. Dunphy which entrance to the house her father used?

SGT HENSTRIDGE: No, I don't believe so.

MS. BREEN: Okay. So you had assumed that Mr. Dunphy used the front entry to go in.

SGT HENSTRIDGE: Yes, I did. I wasn't entirely sure there was a back entrance based on my – when I was in the house.

MS. BREEN: Because you would not have seen that at that time yourself.

SGT HENSTRIDGE: No.

MS. BREEN: Okay.

Now, I want to move on now, Sergeant, to Constable Smyth's statement that you did the next day on April 6. This was just after Colin Dinn so it appears immediately after.

I'm not going to take you through what Ms. O'Brien took you through yesterday but there are a couple of points I do just want to confirm with you. You had told Ms. O'Brien in the interview that you did that normally you would draft a formal interview plan for a significant witness in a major crime. Is that right?

SGT HENSTRIDGE: I did say that, yes.

MS. BREEN: Okay but you did not for this case.

SGT HENSTRIDGE: No and the rationale, I think, at the time was that this was a single objective interview and that was to obtain a pure version. There was no evidence presentation, there was no – there was no challenge going on because at that point we didn't have enough information to challenge with. It was a simple pure version statement.

MS. BREEN: Okay.

So, again, I'll ask you the same question about Ms. Dunphy. Was there a plan at that time that Constable Smyth would be giving more than one statement?

SGT HENSTRIDGE: There wasn't a plan. Witnesses are often interviewed multiple times. Sometimes they're not, it certainly depends on what the primary investigator feels are holes or gaps in the investigation that need to be filled.

MS. BREEN: Okay.

You also agreed with Ms. O'Brien that you should have questioned Constable Smyth at that time on past incidents, use of force, those kinds of things.

SGT HENSTRIDGE: Yeah, I felt when I looked at that it would have been prudent to ask some of those questions. I think my thought process at the time was probably that that information was going to come out through other tasking, including seeking those records from the RNC.

My primary goal during that interview was to find out what happened on that date from his perspective.

MS. BREEN: Okay.

You also agreed with Ms. O'Brien that you should not have told or given Constable Smyth information about the video cameras at that time at the Dunphy house.

SGT HENSTRIDGE: That's correct.

MS. BREEN: And you said that was inappropriate.

You also said in the interview it was inappropriate to tell Constable Smyth that his – to trust his memory and that it was basically, it was consistent with the scene.

SGT HENSTRIDGE: To say it was consistent with the scene, yes.

MR. FREEMAN: Mr. Commissioner, if I may, I just – I feel like we're going back over and confirming what Ms. O'Brien has asked. If there are questions that weren't asked that can be asked, that would be better than going back and saying you said yesterday about the video cameras, yes; you said (inaudible) sharing information, yes.

THE COMMISSIONER: Well, I think there's some leeway but particularly where Ms. Breen wasn't here and had to go back look at the television.

MS. BREEN: Mr. Commissioner –

THE COMMISSIONER: But if – unless you're going to raise something new, normally –

MS. BREEN: Mr. Commissioner, I – all the issues that I’m raising now, from my review of Sergeant Henstridge’s testimony yesterday they were not raised in the hearing by Ms. O’Brien. These are other issues that were raised in the interview with Commission counsel.

THE COMMISSIONER: Which ones do you think were raised yesterday, Mr. Freeman?

MR. FREEMAN: My recollection was that both of – the last two that were covered there, the video cameras and the second information sharing. I can’t recall now but I feel like we’ve heard this yesterday, certainly the video cameras.

THE COMMISSIONER: Well, it’s not – if we’re going to avoid duplication, that doesn’t seem to be very excessive in this case, so continue, Ms. Breen.

MS. BREEN: Thank you.

You also agreed, Sergeant, that in hindsight you agree that the focus was more on what Donald Dunphy was doing and thinking, evidenced in the interview.

SGT HENSTRIDGE: That I had said that in the interview?

MS. BREEN: Yeah, at page 110.

SGT HENSTRIDGE: Yes.

And, again, that was raised yesterday. And the issue around that was the fact that we had just received a pure version statement from Constable Smyth, so I had a pretty good idea as to what he was thinking. So now the investigation would be into what Mr. Dunphy was doing or thinking at that time.

MS. BREEN: Okay.

And in terms of focusing on what Constable Smyth’s thought process was, did you at that time suggest to Corporal Burke that you asked Constable Smyth for the consent to search his phone?

SGT HENSTRIDGE: I don’t understand your question.

MS. BREEN: I had understood in your interview you had said that you were focused on what Mr. Dunphy, his thought process was, but it was not to the exclusion of what was going on in Constable Smyth’s mind at that time.

SGT HENSTRIDGE: Yes, that’s true.

MS. BREEN: And I’m asking you that if you were focused on what was going on in Constable Smyth’s mind, was there any thought or did you suggest to Corporal Burke about asking Constable Smyth for the consent to search his cellphone at that time?

SGT HENSTRIDGE: No. Again, my objective in that interview was to interview him.

MS. BREEN: Okay.

Now, after this interview, we’ve heard that Sergeant – Staff Sergeant Osmond made a comment to you about your conduct of the interview.

SGT HENSTRIDGE: That’s correct.

MS. BREEN: Is it fair to say, Sergeant, that in Major Case Management, this is a part of the peer review of the process?

SGT HENSTRIDGE: Absolutely.

MS. BREEN: Okay. But you couldn't be specific about what Staff Sergeant Osmond said. You said he just basically said to you it was too buddy-buddy.

SGT HENSTRIDGE: Yeah, like I used those words yesterday. I guess that's the closest thing that I can come to, my recollection of what he was suggesting.

MS. BREEN: Okay.

And I don't want to cut you off but ...

SGT HENSTRIDGE: No, that's fine.

MS. BREEN: Okay.

Did Staff Sergeant Osmond suggest to you that you had lost your objectivity at that point?

SGT HENSTRIDGE: No.

MS. BREEN: Did he tell you that you should step back from the investigation as a result of what he had watched?

SGT HENSTRIDGE: No.

MS. BREEN: He just basically said you were too friendly on the video.

SGT HENSTRIDGE: Yes.

MS. BREEN: He could have taken you off the investigation, I presume.

SGT HENSTRIDGE: Yes.

MS. BREEN: And even after this was noted to you on April 6, you were again tasked to do further interviews, were you not?

SGT HENSTRIDGE: That's correct.

MS. BREEN: And we'll get to those on – they come the next day, April 7.

Did Corporal Burke ever make any comment to you at any time that he was concerned that you had lost objectivity?

SGT HENSTRIDGE: I don't believe so.

MS. BREEN: And Corporal Burke had reviewed all of these statements that we are reviewing now. He had reviewed them at the time, had he not?

SGT HENSTRIDGE: He had reviewed at some point, I presume. That would have been his role.

MS. BREEN: Okay.

So other than that one comment from Staff Sergeant Osmond, it does not appear that anyone else attempted to correct you or ask you to step back in any way?

SGT HENSTRIDGE: No.

MS. BREEN: Okay.

And if we move ahead, Sergeant, on April 7, then, you do the Mike Adams interview.

SGT HENSTRIDGE: Yes.

MS. BREEN: Mike Adams is an officer with the Royal Newfoundland Constabulary. And in your Commission counsel interview, I don't want to have to go back through it again, but is it fair to say you also acknowledged in that interview that there were mistakes made by you.

SGT HENSTRIDGE: Yes.

MS. BREEN: And that these mistakes included talking to Sergeant Adams about social media issues with Constable Smyth, about the backlash on Facebook. This is at page 164 to 165 of your interview.

SGT HENSTRIDGE: Yes.

MS. BREEN: And that you had also talked to Sergeant Adams. And just for your benefit, Mr. Commissioner, this is at P-0278, page 15.

THE COMMISSIONER: Sorry, one second now. What is it?

MS. BREEN: The exhibit number is P-0278.

THE COMMISSIONER: Right.

MS. BREEN: And it's in the middle of page 15.

THE COMMISSIONER: Right.

MS. BREEN: And, Sergeant, if you wish to review this please just let us know.

SGT HENSTRIDGE: No, I recall. I recall that.

MS. BREEN: But the comment basically, you said to – and this is noted in your questioning of Sergeant Adams. You said: “Joey let me put it to you this way, you, there was, there was that gun was loaded and you absolutely, you know, you did what you had to do in my opinion at this ... point. The autopsy is not done yet or anything but ah, you know, I, from what he was saying, I mean, I felt that, that it was pretty, pretty reasonable.”

So you were describing to Sergeant Adams a discussion that you had or the sentiment you had passed on to Constable Smyth.

SGT HENSTRIDGE: Yes, that was at the end of the interview when we were discussing Sergeant Smyth's well-being, generally.

MS. BREEN: And you had told Ms. O'Brien, I believe in the interview, you believe that that was inappropriate.

SGT HENSTRIDGE: I believe it was inappropriate. I don't think it was fatal in terms of the investigation. I think in particular, the investigation that I provided was: At this time, this is what I think. That was not to negate any new information that would come to light later.

The other issue that I think, I believe, I – well, I know I told Ms. O'Brien at the time was that I had made the assumption that there would be an internal review done by the RNC. And rightly or wrongly, I wanted them to understand that he was being co-operative at that point which he certainly was.

MS. BREEN: And you also, I believe, said to Ms. O'Brien in your interview, in terms of explaining this, that you said: I was certainly too familiar with that subject.

I had taken from that statement, this is at page 165 of the interview, were you referring to Constable Smyth?

SGT HENSTRIDGE: No.

MS. BREEN: Okay. What were you referring to there?

SGT HENSTRIDGE: I was referring to the subject that I was interviewing.

MS. BREEN: Oh, you mean Sergeant Adams.

SGT HENSTRIDGE: Yeah.

MS. BREEN: Okay.

SGT HENSTRIDGE: Familiar being, providing that kind of information.

MS. BREEN: I understand. And that basically should not have been said.

SGT HENSTRIDGE: That's correct.

MS. BREEN: Okay.

Now, if we move ahead then. Continuing on, Sergeant, the next day you then conduct Donna Ivey – the Donna Ivey statement, the Reg Tilley statement.

SGT HENSTRIDGE: That's right.

MS. BREEN: You recall those. Then there was the autopsy on the 7th. And that on the 7th we understand, after the autopsy, the scene gets released.

SGT HENSTRIDGE: Okay, but –

MS. BREEN: Did you attend any briefing with the ident team before the scene was released?

SGT HENSTRIDGE: No.

MR. FREEMAN: Sorry, Mr. Commissioner, I think he may have been trying to finish an answer there about the scene being released?

SGT HENSTRIDGE: Yeah, I was going to say I'm not certain when the scene was released.

MS. BREEN: Okay. So that wasn't brought to your attention?

SGT HENSTRIDGE: Not for me to know.

MS. BREEN: Okay.

SGT HENSTRIDGE: It probably was in passing, like you say earlier, we're in the same room, but I don't recall. I certainly didn't attend a briefing with ident, no.

MS. BREEN: Okay.

We heard from Sergeant Saunders and Corporal Lee on this point that it is normal practice in a major crimes file that there is a briefing with the investigative team and the ident team. Is that your practice in the major crimes unit?

SGT HENSTRIDGE: Yes.

MS. BREEN: And in this case, it appears there was no such briefing. Are you aware of that?

SGT HENSTRIDGE: I'll take your word for it, that there wasn't. I really don't know.

MS. BREEN: Okay.

MR. FREEMAN: Again, Commissioner, these are areas that have been covered. And we understand that Corporal Henstridge is a tasker so he has certain tasks that he's assigned. These questions were answered by Corporal Burke and by Saunders and by Lee.

THE COMMISSIONER: Your memory is better than mine, Mr. Freeman, because I think that – it's too far back to –

MS. BREEN: I didn't understand that we were prohibited from asking ...

THE COMMISSIONER: No, you're not, Ms. Breen, but we are trying to avoid unnecessary questions if you've gotten the answer to those questions, you know, from other officers.

MS. BREEN: Okay, fair enough.

You then attend the next day at the re-enactment of Constable Smyth on the 8th?

SGT HENSTRIDGE: Yes.

MS. BREEN: And then you, on the – and I wanted to put this to you, Sergeant, even though it's repetitious, sometimes you can't avoid a repetitious reference in this case. On the night of the 8th of April, Sergeant Adams – sorry, Sergeant Osmond had told Meghan Dunphy, and this is at page 89, line 39 to 40 of that statement, that most of the statements were taken at that point. This was on the night of April 8. He did say: I mean there's still some outstanding, but it's boiling down right now to forensic work.

Is that you – does that accord with your understanding of where the investigation was on April 8?

SGT HENSTRIDGE: Again, as a tasker, I wasn't sure where they were going or where they weren't going with that investigation.

MS. BREEN: Okay.

SGT HENSTRIDGE: I wouldn't have been privy to those decisions.

MS. BREEN: And prior to April 14, it appears you only conducted one further interview, which was on April 9, you had done the interview with Tom Mahoney. Is that – does that ...?

SGT HENSTRIDGE: That's correct.

MS. BREEN: So most, the majority of your interviews, prior to April 14, because there's some flurry of activity after that where you're going back to people, but most of your interviews at that time had been completed. It was only Tom Mahoney left outstanding.

SGT HENSTRIDGE: That is correct.

MS. BREEN: I do want to go back, Sergeant, with you. Did Corporal Burke ever say to you – to pass on any information to you from the ident team about the scene – to say we need to go back and ask further questions of this witness, that witness, whoever.

SGT HENSTRIDGE: Did he ever task me with doing that?

MS. BREEN: Yes.

SGT HENSTRIDGE: No. The only connection with ident that I recall in that file is I believe when Sergeant Saunders was on scene, he called me that night, presumably because he thought maybe I was the primary investigator on it, and provided some information about some casings that he had found. And then I relayed that to Corporal Burke.

MS. BREEN: Okay and so the answer basically is no.

SGT HENSTRIDGE: No.

MS. BREEN: Corporal Burke never highlighted anything to you. Did you ever accompany Corporal Burke to go look physically at any of the exhibits that were seized?

SGT HENSTRIDGE: I don't believe I ever looked at any of the exhibits specifically, aside from the – some pictures I looked at.

MS. BREEN: Okay.

We know that you went on then to do an experiment on April 20.

SGT HENSTRIDGE: A demonstration.

MS. BREEN: Okay.

And I didn't mean that dismissively; I appreciate why you did that. Was that recommended to you by Corporal Burke, or is that something that you decided on your own?

SGT HENSTRIDGE: That was something that stuck out to me and I asked him if it was something that he felt would be valuable in doing. And he suggested to go ahead.

MS. BREEN: Okay.

And in terms of any other exhibit at the scene, did Corporal Burke ever suggest to you or did you ever have a discussion with him about doing any other kind of demonstrations in that room or in the living room before the scene was released in relation to other things that may have troubled you?

SGT HENSTRIDGE: No. I mean in looking at the scene, this seemed to be something that was manageable in terms of doing and replicating, at least to me at the time; it was a file folder and a desk. But, no, the answer is no. There were no other requests for any other demonstrations, particularly after we did this one and it showed very little value.

MS. BREEN: Okay.

Sergeant, yesterday in your direct Ms. O'Brien had asked you about the delay in getting Constable Smyth's statement.

SGT HENSTRIDGE: Yes.

MS. BREEN: And she asked you specifically about one risk to an investigation by doing that and you had described and went in detail about confabulation.

SGT HENSTRIDGE: Yes.

MS. BREEN: But in your interview the other risk that she asked you about was whether time given could be an opportunity or provide a subject time to fabricate. Do you recall her discussing that with you in the interview?

SGT HENSTRIDGE: Yes.

MS. BREEN: And you agreed that that is a possibility in any case theoretically.

SGT HENSTRIDGE: Yes, it is.

MS. BREEN: That is a potential risk to an investigation but that in this case you had absolutely no concern whatsoever that Constable Smyth would utilize time to fabricate details.

SGT HENSTRIDGE: I had no reason to believe he would, no.

MS. BREEN: And you didn't – this is at page 443, Ms. O'Brien asked you why. You just did not believe that that was possible at the time, but you could not explain why.

SGT HENSTRIDGE: Yes, I just didn't have any reason to believe that he would.

MS. BREEN: Okay.

SGT HENSTRIDGE: He seemed forthright with the investigation at that point and that was my – that was my feeling.

MS. BREEN: And, Sergeant, you're a very experienced investigator. You would know that any person is capable of deceit. Is that correct?

SGT HENSTRIDGE: I would agree with that.

MS. BREEN: And regardless of their station in life, whether they are a priest, whether they are a doctor, an accountant, a millwright capable – people are capable of deceit.

SGT HENSTRIDGE: I would agree with that.

MS. BREEN: Particularly when they –

THE COMMISSIONER: You're starting to get pretty close to the bone there now. Anybody down there I assume you're referring to.

MS. BREEN: What's that?

THE COMMISSIONER: I assume it's anybody down there.

MS. BREEN: It's anybody anywhere.

THE COMMISSIONER: Oh. Okay, I won't pursue it.

Go ahead.

MS. BREEN: So at that point, Sergeant, also, you would agree that in your experience as an investigator, things are not always as they appear.

SGT HENSTRIDGE: That's correct.

MS. BREEN: And that's why we do forensic testing.

SGT HENSTRIDGE: Yes.

MS. BREEN: So these appear to be two principles that I've just outlined to you that you accept as an investigator are always theoretically possible, but that you appear to have rejected in this particular case.

MR. FREEMAN: Again, these are questions for the lead investigator, Mr. Commissioner. They really are. We've heard he's a tasker.

THE COMMISSIONER: Just repeat that for me, I want to get the full ...

MS. BREEN: I had put to Sergeant Henstridge that – and I do think that Sergeant Henstridge is – while he's a tasker in this case, he has fulfilled many roles in major crimes. He's an experienced investigator.

I had put to him that there was two principles: one, that anyone is capable of deceit; and secondly, things are not always as they appear at the time and that's why we do testing.

THE COMMISSIONER: Right.

MS. BREEN: And I asked him why did he reject those possibilities at the outset in this case.

THE COMMISSIONER: Yeah.

No, Mr. Freeman, the fact that a question has been put to another officer, it doesn't foreclose Ms. Breen from putting the same question, if she is pushing to see if she's going to get a similar or different answer. Obviously if she can – and I'm not saying this will be the case, but if Sergeant

Henstridge takes a different approach than the prior witness, well, that will be something ultimately to go to questioning the reliability or credibility or whatever of the prior witness.

Go ahead. You had –

MR. FREEMAN: No, that's okay, Mr. Commissioner. I understand. I'm just – I'm trying – again, my interest is in asking the right questions to the right people so –

THE COMMISSIONER: No, I know. You're making the point that the primary investigator would have an overall view and if Ms. Breen is getting into the overall view, she may be getting away from the work that a tasker would be doing. But, at the same time, if the present witness has the experience to be able to comment on what is the proper way of doing it or what would normally be done generally I think that's fair enough.

Go ahead Ms. Breen.

MS. BREEN: And, Sergeant, I was suggesting to you that those two possibilities appear to have been rejected by you very early in this case.

SGT HENSTRIDGE: That's not true.

MS. BREEN: Okay.

SGT HENSTRIDGE: I didn't reject them.

MS. BREEN: Okay.

Would you agree that as an investigator and as the person who was formulating the questions to ask witnesses it is imperative that you be objective?

SGT HENSTRIDGE: I would agree with that, yes.

MS. BREEN: And that you keep an open mind of all reasonable possibilities.

SGT HENSTRIDGE: Yes, I would.

MS. BREEN: Okay and that as an investigator you can only learn of information if you ask relevant questions.

SGT HENSTRIDGE: That's correct.

MS. BREEN: And that if you have accepted a theory at the very beginning of your investigation, that that may cause you not to think of questions, appropriate questions, to ask of the witnesses that don't fit into that theory.

SGT HENSTRIDGE: Potentially, yeah, it's true. What I would suggest to you is that I at no point accepted the theory to the exclusion of all other theories, or to the exclusion of other reasonable theories I should say. And I certainly didn't accept the theory to the exclusion of all evidence that was to be uncovered through the investigation.

MS. BREEN: And you have already suggested to us though, or you've already confirmed to us I should say, that in the case of Meghan Dunphy and Colin Dinn, when they raised to you the issue of the stick, that does not appear at all to have been further questioned by you.

SGT HENSTRIDGE: Not at the time that I conducted the interviews, no.

MS. BREEN: And that's not something you ever discussed with Corporal Burke after?

SGT HENSTRIDGE: I didn't discuss it but he would have reviewed all his statements so ...

MS. BREEN: Those are all my questions.

Thank you very much.

SGT HENSTRIDGE: Thank you.

THE COMMISSIONER: Thank you –

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: No, I'm just saying thank you to Ms. Breen.

You're next, are you, Mr. Kennedy?

MR. KENNEDY: Yes, I'm just making some notes. Excuse me.

THE COMMISSIONER: Okay. Take your time.

MR. KENNEDY: Sergeant Henstridge, my name is Jerome Kennedy. I represent Constable Smyth.

Ms. Breen has actually opened up a very interesting area which I'd like to explore with you in terms of your experience as a homicide investigator. And I think it's important to gain this perspective.

Sir, the steps taken in an investigation or what you see early in the investigation will oftentimes determine what takes place initially. Correct?

SGT HENSTRIDGE: What takes place initially.

MR. KENNEDY: Initially.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Yeah.

And when we get to homicides, there's a number of different types. There's the whodunit. In other words, you got to find out. You don't know who committed the – there's an obvious murder and you don't know who committed it.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So it's a whodunit. Then there's a what happened. Two people are in a room, it could be a domestic situation, could be two friends, there could be alcohol or drugs involved. And so there's the what happened. Correct?

SGT HENSTRIDGE: That's right.

MR. KENNEDY: And then you go into, what I'd suggest, is the third step, if you have the – it's the why did it happen.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So these are sort of basic principles along similar lines as outlined by Ms. Breen. Correct?

SGT HENSTRIDGE: They sometimes intersect but, yes.

MR. KENNEDY: In this particular case, it's not a whodunit because Constable Smyth has admitted immediately to the first responders that he fired the shots which unfortunately killed Mr. Dunphy.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: He's also told the first responders, again, if we – Constable Cox, Constable – Corporal O'Keefe, Constable Downey that he was there doing an investigation of Mr. Dunphy, that they were having a conversation – and, again, I'm paraphrasing, Sir, so if anyone has a problem with what I'm saying.

He has a conversation with Mr. Dunphy. Mr. Dunphy becomes increasingly agitated, points a firearm at him – points a rifle at him and Constable Smyth draws his firearm in response to protect himself and fires the fatal shots.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: So that's essentially what you know from early in the investigation that Sunday afternoon.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: I think you also knew by the time you got to Holyrood that Constable Smyth had phoned Constable Cox or the Holyrood RCMP earlier that day and said, look, I'm going to visit Mr. Dunphy.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: So there didn't appear to be anything surreptitious about his visit to Mr. Dunphy on the date in question.

SGT HENSTRIDGE: Not at all.

MR. KENNEDY: Okay.

So an investigation, again, along basic principles, would you agree with me is a fluid and dynamic affair which can change in a matter of minutes.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: In the matter of a statement.

SGT HENSTRIDGE: In the matter of seconds.

MR. KENNEDY: Yeah.

So in your initial investigative steps you're in the information-gathering phase where you have to gather as much information as you can.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: And I know there have been questions about visiting Dick and Debbie Dunphy, but isn't that a logical place to start when you know that these are the two people who had – who had contact with Sergeant Smyth, Acting Sergeant Smyth, before he went to ...

SGT HENSTRIDGE: Yes, absolutely.

MR. KENNEDY: Yeah. So it's a normal place to start?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: And, Sir, my review of the interviews with Dick and Debbie Dunphy was that they seem to have their own agenda; they wanted to tell you certain things.

SGT HENSTRIDGE: They sure did, yes.

MR. KENNEDY: What you call your pure version is essentially them telling you about the problems with Donald Dunphy and what they knew about him.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So you gained a lot of information from them, didn't you?

SGT HENSTRIDGE: I believe so, yes.

MR. KENNEDY: The next step – and, again, the appropriateness, you know, is always in question but when you're visiting Meghan Dunphy, that's a difficult step to take for any investigator and for the individual involved that early in the investigation. Correct?

SGT HENSTRIDGE: Yes, it is.

MR. KENNEDY: And Ms. Dunphy is obviously – and I have no problem that she's upset and she's grief stricken. But, again, it's the step to be taken by an investigator: Ms. Dunphy, do you wish to give us a statement? Can you provide us with some information?

Correct?

SGT HENSTRIDGE: Absolutely.

MR. KENNEDY: Because you're going to gain – you know you're going to gain a lot of information about Constable Smyth over the upcoming days. You know that, don't you?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: So now you're simply gathering information in relation to Donald Dunphy.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So the questions you asked about Dick and Debbie Dunphy about – and to Meghan Dunphy – are these questions you would ask anyone in a similar type situation where you're trying to determine not only the physical health but also the mental health or the, any other issues that could arise in relation to the individual?

SGT HENSTRIDGE: Yes, I would think they would have more insight than anybody else at that point.

MR. KENNEDY: Yeah.

So what is the problem, what do you see in terms of the problem where it would have been put to you – the interviews with Dick and Debbie Dunphy for example, what is it you were supposed to have done, do you know?

SGT HENSTRIDGE: Everything, I guess.

MR. KENNEDY: Okay.

The next day you can go back – oftentimes go back –

SGT HENSTRIDGE: Yes.

MR. KENNEDY: – time and time again to interview people. Correct?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: New leads can arise; the case will hit dead ends.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So that's what I talk about, when it's a fluid and dynamic affair you have to be very flexible in your approach.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: And you have to take the steps that are necessary as they arise during the investigation.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: Sir, you go into the house that night. You were in the house?

SGT HENSTRIDGE: Yes, I was.

MR. KENNEDY: And you saw a rifle on, leaning against the Rubbermaid box.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: Mr. Dunphy was sitting in the chair.

SGT HENSTRIDGE: Yes, he was.

MR. KENNEDY: Constable Smyth had said there was a rifle and Mr. Dunphy was in the chair.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Okay.

So, initially, your initial view of the scene – and, again, I’m not – I don’t know if you’ve made up your mind or anything. Have you made up your mind at this point as to what occurred?

SGT HENSTRIDGE: No.

MR. KENNEDY: You see but there are a couple of basic facts which corroborate, to a certain extent although early in the investigation, what Constable Smyth told you.

SGT HENSTRIDGE: That’s right.

MR. KENNEDY: Now, Sir, you said you had an emotional response when you came into this room. Emotional in terms of – initially, I understood that, well, this could be you.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: But every police officer –

SGT HENSTRIDGE: Or my dad too.

MR. KENNEDY: What, sorry?

SGT HENSTRIDGE: It could have been my dad too.

MR. KENNEDY: Is your dad a police officer also?

SGT HENSTRIDGE: No, but the gentleman could have been my dad.

MR. KENNEDY: Okay. Yeah.

So this is something that you live with as police officers, isn’t it.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: So your reaction or having an emotional response, does that somehow or other take away from your ability to be a police officer, Sir?

SGT HENSTRIDGE: I don’t believe so.

MR. KENNEDY: They are not empathy and understanding traits that you expect from police officers?

SGT HENSTRIDGE: I should hope so.

MR. KENNEDY: But objectivity and independence are important.

SGT HENSTRIDGE: Equally.

MR. KENNEDY: Now, when you see Mr. Dunphy there, what do you think about this? What’s going – you say you have an emotional response from Constable Smyth’s perspective, what about Mr. Dunphy?

SGT HENSTRIDGE: I was – as I said yesterday, I was looking at a gentleman that –

MR. KENNEDY: Yeah.

SGT HENSTRIDGE: – whose life ended and I knew that that was going to have an impact on family and it was tragic.

MR. KENNEDY: Yeah, so it's not only you felt empathy for Constable Smyth, you also felt for Mr. Dunphy and his family, didn't you, Sir.

SGT HENSTRIDGE: I did.

MR. KENNEDY: Yeah.

Now, what was your initial reaction to this house, this scene? Did this provoke – did the state in which the man was living – did that provoke any type of emotional response?

SGT HENSTRIDGE: I don't recall an emotional response to that. It wasn't a clean house. The smell of cat urine struck me but I've been in similar houses before.

MR. KENNEDY: Yeah.

So, Sir, you know though at this stage it's early in the investigation but you know that a statement from Constable Joe Smyth is going to be crucial, isn't it, to your investigation.

SGT HENSTRIDGE: Yes, it is.

MR. KENNEDY: And you also know, Sir, that police officers, in use-of-force situations, don't necessarily co-operate with the police do they?

SGT HENSTRIDGE: Oftentimes they don't.

MR. KENNEDY: No.

Because Constable – excuse me, Staff Sergeant Osmond testified in the numerous use-of-force situations he's been involved in, statements have been provided by – through counsel, written statements, with no in-person interviews.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: You were aware of that?

SGT HENSTRIDGE: I'm aware of it. I haven't conducted as many of those investigations as Staff Sergeant Osmond but I am aware of that. Yes.

MR. KENNEDY: So at this point when you're back at the Holyrood detachment now, you've got no reasonable suspicion that will allow you to detain Constable Smyth.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: You've got no reasonable grounds to arrest him.

SGT HENSTRIDGE: No.

MR. KENNEDY: And in fact during your interview statement you don't even have the grounds to caution him at that point because he's still a witness.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: You indicated yesterday and you showed an understanding of the statement process that a person can go from being a witness to a suspect, again, in a matter of seconds can't they.

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: At that point they have to be provided with the police caution and the right to counsel.

SGT HENSTRIDGE: If they're arrested, yes. If they're –

MR. KENNEDY: If they're detained.

SGT HENSTRIDGE: If they're detained, yes, as well. The caution comes at a change of jeopardy though, not necessarily – so for example, if I was conducting an interview on someone who had committed a minor theft and their jeopardy changed from witness to suspect, the caution would be invoked –

MR. KENNEDY: Okay.

SGT HENSTRIDGE: – and they'd be told of their jeopardy. If my intent was to arrest them at that point, I would also engage rights of counsel.

MR. KENNEDY: Okay, well, we won't – for the purpose of my question, we don't have to get into that fine a distinction on this issue, but, in fact, you didn't have the grounds at that point to caution him. You didn't feel he should be cautioned.

SGT HENSTRIDGE: No.

MR. KENNEDY: Okay.

Now, that night, at the police station – and we've seen your continuation reports and we can go to them if necessary – Constable Smyth indicated that he wanted to give a statement.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: He indicated he wanted to be totally co-operative.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: But based on the advice given to him by members of his association – and I think you've referred to Constable Sullivan – he decided he was going to wait until the next day.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: And based on your understanding of taking statements from officers involved in officer-involved shootings, you understood that to be the accepted procedure at that time?

SGT HENSTRIDGE: It was certainly reasonable.

MR. KENNEDY: Yeah.

But you had no basis to demand a statement from him.

SGT HENSTRIDGE: Absolutely not.

MR. KENNEDY: You could have tried to get it that night. You can always try with a person, can't you?

SGT HENSTRIDGE: That's right.

MR. KENNEDY: Yeah.

But then you know you need his co-operation if you're going to get a statement.

SGT HENSTRIDGE: We were going to need his co-operation for more than just a statement, potentially.

MR. KENNEDY: Yeah, so you had to build rapport with him.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So just let me ask you this. This whole argument of giving preferential treatment to Constable Smyth and that the police, helping out the police – were you fellows actually engaged in a valid investigative technique in building rapport to ensure co-operation and to obtain statements?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Yeah.

SGT HENSTRIDGE: It's consistent right across any investigation.

MR. KENNEDY: So in your mind that night, in the police station in Holyrood, is that something that, right away, is going through your mind?

SGT HENSTRIDGE: Rapport?

MR. KENNEDY: Yeah.

SGT HENSTRIDGE: Absolutely.

MR. KENNEDY: Yeah.

In fact, we've got – and we're not going to go through this in detail because the Commissioner has heard about it and I'm sure we'll hear more, but interviewing techniques have certainly changed over the last decade in our country, haven't they?

SGT HENSTRIDGE: Dramatically.

MR. KENNEDY: Yeah.

So now, Sir, the soft-spoken police officer who's seeking co-operation, who empathizes with the suspect, that's probably the more common technique, isn't it, that's used in interviewing?

SGT HENSTRIDGE: That's the norm.

MR. KENNEDY: Yeah, that's the norm.

So the police officer – and I don't know if you were a police officer for that many years and, Commissioner, I don't know how many cases you would have been involved with over the time – but police officers could be very forceful, many years – well, not that many years ago, 15 years ago. They could be very forceful in terms of their interviewing techniques, couldn't they?

SGT HENSTRIDGE: Yes, they could.

MR. KENNEDY: The good guy, bad guy, the you're a piece of dirt, things like that, could be said to witnesses –

SGT HENSTRIDGE: That has been –

THE COMMISSIONER: I think one of my first criminal cases it took me about a day and a half to find which police station they were holding my client in.

MR. KENNEDY: Yeah.

THE COMMISSIONER: That was also a technique at that time to keep –

MR. KENNEDY: That's –

THE COMMISSIONER: – keep moving.

MR. KENNEDY: Yeah, so things have changed. So the soft-spoken, empathetic police officer is now the norm in the interviewing. Correct?

SGT HENSTRIDGE: Yes, and I would suggest that anybody that didn't have that approach probably wouldn't be an interviewer.

MR. KENNEDY: Yeah.

And what you fellows refer to now as a pure version statement, in other words, you let the person tell their side of the story before you ask any questions.

SGT HENSTRIDGE: Uncontaminated, yes.

MR. KENNEDY: Yeah.

And that's – you also do that with witnesses, don't you?

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: Okay.

So the next day when – Constable Smyth shows up, doesn't he?

SGT HENSTRIDGE: Yes, he does.

MR. KENNEDY: Shows up without a lawyer.

SGT HENSTRIDGE: Yes, he does.

MR. KENNEDY: Yeah.

And you go through an extensive interview with him.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: He provided a lot of information to you.

SGT HENSTRIDGE: Yes, he provided a very complete pure version, for sure.

MR. KENNEDY: In fact, the night before when he said he wanted to give a statement, he – there was reference you made to the fact of the security cameras; he mentioned there were security cameras.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Do you remember him at any time saying I hope they're working because they may be helpful to me?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Yeah.

What exactly did he say there?

SGT HENSTRIDGE: What exactly did he say?

MR. KENNEDY: Yeah, what did Corporal – or did Acting Sergeant Smyth say about the security cameras in hoping that they worked?

SGT HENSTRIDGE: I don't recall exactly what he said but he made the suggestion that there's a camera there and I hope they're working.

MR. KENNEDY: Yeah.

In other words, the next day when he's told about security cameras, there's nothing nefarious about it, is there? It's simply he – you tell him that the security cameras weren't working. He hoped they were.

SGT HENSTRIDGE: Yes

MR. KENNEDY: Yeah.

So okay, now, we've got the interviews going on with Dick and Debbie Dunphy and we get the interview with Meghan Dunphy. And I just want to highlight this not as any reference, Commissioner, to any allegation of anything, just, I guess, an issue of the way interviews take place.

If I could ask the witness to – if we could see the Supplementary Occurrence Report prepared by the witness, Exhibit P-0690.

Now, I'm assuming, Sir, that your Supplementary Occurrence Reports are as accurate as you can make them.

SGT HENSTRIDGE: As accurate – they're not a direct transcript, obviously, but they're a synopsis.

MR. KENNEDY: Yeah.

So this is your initial interview with Meaghan Dunphy and I accept what Ms. Breen said, that she's upset and that – just lost her father. But, Meghan, at that first interview, forgets about or doesn't tell you there's a firearm in the house, doesn't it – doesn't she?

SGT HENSTRIDGE: She doesn't. She didn't.

MR. KENNEDY: No, she simply forgot – appears to forget because two days later, in her next interview with the police, or three days later on April 8, she provides detail about the firearm.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: Yeah, so just in the circumstances she finds herself.

SGT HENSTRIDGE: Yeah, I believe she was upset. It would make sense that she would forget certain things.

MR. KENNEDY: Yeah, but that happens with witnesses, doesn't it?

SGT HENSTRIDGE: Absolutely.

MR. KENNEDY: You interview someone immediately and they forget something or it doesn't come to their mind, and a few days later they come back and say: Oh look, I should have told you this.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: It doesn't mean the person who gives that first interview is lying in any way or nothing like that, does it?

SGT HENSTRIDGE: Not necessarily.

MR. KENNEDY: No.

It can be but it doesn't mean – and this is a prime example of just Meghan just, in her circumstances –

SGT HENSTRIDGE: Ms. Dunphy.

MR. KENNEDY: Ms. Dunphy and her circumstances just didn't tell you; a few days later she does. Okay.

She provides a lot of information about her father and basically said that, you know, he didn't have mental health issues. That he was alone and he was in pain but he didn't have mental health issues. Correct?

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So then we get to – this is April 5. So the same night or the next – yeah, you contact Colin Dinn that night.

If I could have, Ms. – Madam Clerk, P-0691.

So you interview – you call Colin Dinn that night.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: And you ask for an interview and the next day you interview him.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: Correct?

SGT HENSTRIDGE: That's right.

MR. KENNEDY: Now, Ms. Breen has pointed you to the references in the statement to the stick, so I don't – did Mr. Dinn – it appears to you from this – this is just a one-page – he appears to be saying here that he did smoke marijuana with Mr. Dunphy.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Okay.

SGT HENSTRIDGE: At least, he was invited over.

MR. KENNEDY: Yeah but he indicated that it was something that he regularly did.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Okay.

No secret about it?

SGT HENSTRIDGE: No.

MR. KENNEDY: Someone using marijuana in a homicide investigation, not that – not what you're concerned about, is it, Sir?

SGT HENSTRIDGE: Not at all.

MR. KENNEDY: Okay.

Now, if I look at your fourth bullet: "DUNPHY often spoke to him about being screwed over by Workers Compensation." Dunphy "tried to explain that when DUNPHY spoke he sounded logical but his overall comments often didn't make sense as it always came back to Workers Comp and this often didn't make sense to DINN."

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Is that a summary of your – that's you paraphrasing what Mr. Dinn told you. Correct?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: When Dinn “asked if DUNPHY was violent, DINN said he wasn’t really violent but very angry.” And then “he said he was very gentle with his cats.”

SGT HENSTRIDGE: That’s right.

MR. KENNEDY: Now is that an exact term? I don’t have the statement here in front of me. Do you know if that’s an exact term used by Mr. Dinn or is that your paraphrasing? We can check it out.

SGT HENSTRIDGE: I would have to see the transcript.

MR. KENNEDY: Okay, sure.

The next statement though, I want to get to, and this is the important one from Constable Smyth’s perspective: “When asked if he was ever paranoid, DINN stated that he recalled an incident in January or February when he visited DUNPHY who had just tweeted something. (He’s unsure of what the tweet said but believed it was directed to some government agency probably Workers Comp). In discussing the tweet, DUNPHY said ‘I wouldn’t be surprised if they come for me some day ... Let em come.’ DINN never questioned him on this and tried to change the subject.”

So do you remember that statement being made to you?

SGT HENSTRIDGE: I do.

MR. KENNEDY: So this is on April 6.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: So, Sir, wouldn’t that kind of statement, or the kind of information being provided by Mr. Dinn, be relevant to your investigation?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Sir, well, I’m not going to go through the other statements you took but you took statements from, I think, Donna Ivey, Mike Adams, Reg Tilley –

SGT HENSTRIDGE: Tom Mahoney.

MR. KENNEDY: – and Tom Mahoney. You went back and took statements from Colin Dinn and tried to contact Tom Hearn.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: So you were interviewing – the interviewing of witnesses was continuing.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Sir, but would you agree with me that, in this particular case, you’ve now got the forensic examination of the scene going on or the examination of the scene.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: You've got the interview with the – some of the background witnesses. You've got the interview with Constable Smyth.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: By now, this investigation – you know that one of the keys or what you're going to be looking for in this investigation, because you don't have to prove who did what, is information to refute or confirm what Constable Smyth said in his statement.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: That's going to be the key, going to be the key focus of the investigation, isn't it?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: And that's an independent approach, isn't it, when you're looking at information that refutes or confirms?

SGT HENSTRIDGE: Yes, generally speaking.

I wanted to just address the fact that it would be the primary investigator that would make those determinations, although we all – we're all thinking along the same lines, yes.

MR. KENNEDY: Yeah.

Again, but in a homicide investigation, sort of, and along the lines asked by Ms. Breen, these are the kinds of things. In this case, this would be a key question.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: So it's not simply accepting everything that Constable Smyth told you.

SGT HENSTRIDGE: No.

MR. KENNEDY: Now you've got to look at: What does the forensic evidence tell you?

SGT HENSTRIDGE: That's right.

MR. KENNEDY: And in the forensic evidence, we have the crime scene examination which could produce fingerprints, DNA, things like that.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: There's going to be ballistic tests.

SGT HENSTRIDGE: Potentially, yes.

MR. KENNEDY: Yeah.

Well, you know there's shots fired so you know there's going to be a comparison of the shots, of the bullets.

SGT HENSTRIDGE: In this particular case, yes.

MR. KENNEDY: Okay, the number of bullets.

And if, for example, Constable Smyth said: I only shot – I shot once from the porch.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Well, the forensic evidence, or the ballistics is either going to tell you if that's correct or not correct, isn't it?

SGT HENSTRIDGE: That's correct.

MR. KENNEDY: Yeah.

There can be trajectory evidence or re-creation.

SGT HENSTRIDGE: Yes, I'm aware.

MR. KENNEDY: The forensic autopsy could provide relevant information.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: There's scene re-creations which could be done, which were done in this case.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: And then there's re-enactments.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: So when you are present during Constable Smyth's statement – you take the statement – did you see the full re-enactment?

SGT HENSTRIDGE: When I took the initial statement?

MR. KENNEDY: You saw – no, no. You saw the initial – you took the initial statement on April 6.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: You are present for the re-enactment on April 8, are you?

SGT HENSTRIDGE: The second re-enactment, yes.

MR. KENNEDY: Oh, so April 10, the second re-enactment?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Did you see the full re-enactment?

SGT HENSTRIDGE: I filmed it.

MR. KENNEDY: Pardon?

SGT HENSTRIDGE: I filmed it.

MR. KENNEDY: Oh, you did the filming. So was there anything that jumped out at you there as inconsistent with what Constable Smyth had told you in his statement?

SGT HENSTRIDGE: No.

MR. KENNEDY: Do you remember, in fact, him going through it trying to show exactly what occurred and referring to where the gun was placed. But he said, like, I don't remember the – and I think this is in his, either his statement or re-enactment. He said I don't remember the green, or the bluish-green container. Do you remember that?

SGT HENSTRIDGE: I don't.

MR. KENNEDY: Okay.

SGT HENSTRIDGE: Sir, to be honest I was focused more on operating that camera.

MR. KENNEDY: Okay.

SGT HENSTRIDGE: I'm not technically savvy so that was my function.

MR. KENNEDY: After what happen on April 8 I guess, too, that –

SGT HENSTRIDGE: And they had backup, yes.

MR. KENNEDY: Sir, I now want to – my last couple of questions for you. So you've got – you're gathering information about Constable Smyth, you're trying to gather as much information as you can about Donald Dunphy.

SGT HENSTRIDGE: That's right.

MR. KENNEDY: And Ms. Breen put it to you that any person is capable of deceit. It's a general statement –

SGT HENSTRIDGE: Sure.

MR. KENNEDY: – but in a homicide investigation I would suggest it's something you always have to be cognizant of. Correct?

SGT HENSTRIDGE: That's true. Yes.

MR. KENNEDY: She also went on to say that things are not always as they seem.

SGT HENSTRIDGE: That's true.

MR. KENNEDY: Again, a very basic principle. Correct?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: Sir, I'm going to suggest to you that any person is capable of violence in any given time if the circumstances are right. Correct?

SGT HENSTRIDGE: Yes.

MR. KENNEDY: That I'm also going to suggest to you – Ms. Breen said that things are not always as they seem, I'm going to suggest to you that things are also sometimes exactly as they seem.

SGT HENSTRIDGE: Yes.

MR. KENNEDY: In other words, in this case Donald Dunphy pointed a rifle at Constable Smyth and Constable Smyth fired his firearm to protect himself.

MS. BREEN: Mr. Commissioner, I believe that that's a submission that he's putting to Sergeant Henstridge.

THE COMMISSIONER: Yes, I guess it is. but it's also, I guess, asking the witness whether he believes what he saw was consistent with that proposition. So I think it's not an unfair question.

SGT HENSTRIDGE: The theory that I –

THE COMMISSIONER: Wait – I'll listen to you in argument as to the weight I should give to it.

SGT HENSTRIDGE: Sorry.

THE COMMISSIONER: Sorry. Go ahead.

SGT HENSTRIDGE: I guess my answer to that is that the theory that I had established was never refuted by any additional evidence that I had seen based on (inaudible).

MR. KENNEDY: In fact, the evidence confirmed what Constable Smyth told you.

SGT HENSTRIDGE: In fact it did confirm it. Yes.

MR. KENNEDY: Those would be my questions. Thank you, Sir.

THE COMMISSIONER: Mr. Avis?

MR. AVIS: I just have a few questions.

Good morning, Sergeant Henstridge. My name is Nick Avis. I represent the Constabulary.

SGT HENSTRIDGE: Good morning.

MR. AVIS: You've mentioned in your questioning from Ms. Breen this morning the information that you gave Colin Dinn was that Constable Smyth took the same steps that you would have in assessing risk. Did I get that correct?

SGT HENSTRIDGE: That's correct.

MR. AVIS: Perhaps you would expand on that for me.

SGT HENSTRIDGE: I was speaking specifically to engaging in some background and distance checks which he, I believed he did, based on the information that we had.

MR. AVIS: And, again, would that include visiting him?

SGT HENSTRIDGE: Absolutely.

MR. AVIS: Now, Mr. Dinn spent a lot of time in Mr. Dunphy's house. Is that correct?

SGT HENSTRIDGE: He spent some time.

MR. AVIS: I – sorry.

SGT HENSTRIDGE: I don't recall exactly how long he spent there.

MR. AVIS: On a regular basis, over time.

SGT HENSTRIDGE: Mr. – oh sorry, Mr. Dinn, yes.

MR. AVIS: Yes, sorry. Okay.

And Mr. Dinn said he'd never seen a gun in Mr. Dunphy's house. Is that correct?

SGT HENSTRIDGE: That's correct.

MR. AVIS: Is it a reasonable inference from that, that that's because Mr. Dunphy kept it well hidden?

SGT HENSTRIDGE: I'm not sure if I'd want to refer that or not. It's possible that it was well hidden but I think it's a reasonable inference.

MR. AVIS: Okay.

And particular on the day, the evidence we have is that Mr. Dunphy invited Constable Smyth into his home. That's the only evidence we have.

SGT HENSTRIDGE: That's right.

MR. AVIS: And would it seem a reasonable inference that you wouldn't invite a police officer into your home and into your living room where you have a loaded gun unless it was well hidden?

SGT HENSTRIDGE: I would agree that's reasonable.

MR. AVIS: Thank you.

THE COMMISSIONER: Any other questions?

MR. FLAHERTY: I've got a couple, Mr. Commissioner.

Good morning, Officer Henstridge. My name is Cletus Flaherty. I'm counsel for the Don Dunphy Community Coalition.

SGT HENSTRIDGE: Good morning.

MR. FLAHERTY: Now, there's been some talk and you've discussed the fact that you were experiencing some emotion when you initially walked into Don Dunphy's house. Correct?

SGT HENSTRIDGE: Yes.

MR. FLAHERTY: And we do know, and I'm not going to question it, but you have to remain or try or attempt to remain objective even in those types of situations. Correct?

SGT HENSTRIDGE: That's correct.

MR. FLAHERTY: But, indeed, many times when a person – I would put it to you that maybe, when you first went into Don Dunphy's house, a visceral emotional reaction may cloud judgement unconsciously. Correct?

SGT HENSTRIDGE: It can potentially, yes.

MR. FLAHERTY: Now, Officer Henstridge – well, before I move on from that, do you think that there is a possibility that your judgement may have been somewhat altered or somewhat impaired given the depth and intensity of emotion that you were feeling when you walked into Donald Dunphy's house? Is it possible?

SGT HENSTRIDGE: No, I wouldn't say it's possible. I would say that it had an effect on me and it may have affected the tone of some of the interviews, but my commitment to seeking the truth and getting to the bottom of things is what I'm – it's how I lead my investigation. So I don't believe that, no.

MR. FLAHERTY: And you can have a conscious commitment for the truth and a conscious commitment to objectivity, but is it your evidence that emotion can't have an unconscious effect on your ability to investigate, interview, think, what have you?

SGT HENSTRIDGE: Sorry, what's your question?

MR. FLAHERTY: My question is that I know that you're committed. I believe you when you say that you're committed objectivity and getting at the truth, I believe that you have that commitment. But even if you have that conscious commitment, your emotional state can still alter or impair your thought process or your ability to think. Correct?

SGT HENSTRIDGE: Yes.

MR. FLAHERTY: So we've heard some talk about Constable Smyth's co-operation level. Is it the fact that any subject or any person of interest, if they're co-operative, that's clearly evidence that they never committed a crime or haven't done something unlawful? Have you ever interviewed someone who was co-operative, yet in the end of the day was found to have committed a criminal offence?

SGT HENSTRIDGE: I have, but the co-operation tends to wane after a period of time.

MR. FLAHERTY: After a period of time. Once that person starts to think that, okay, the police are starting to zero in on me; the police are starting to question what I've told them. Correct?

SGT HENSTRIDGE: Yeah, that's potentially one of the instances. In this particular case I would suggest that after a re-enactment was done and not properly recorded, that somebody that was culpable may decide that this would be the time to withdraw their consent.

MR. FLAHERTY: Okay.

SGT HENSTRIDGE: But at the same time –

MR. FREEMAN: Sorry, Sergeant Henstridge, maybe you could move just a little bit closer to the microphone for just a –

SGT HENSTRIDGE: Yeah.

MR. FREEMAN: Thank you.

SGT HENSTRIDGE: I'm getting multiple different direction here. Someone told me to move closer, someone is telling me to move back.

MR. FLAHERTY: And so that would have been an opportunity, but at the same time someone who was convinced of their own culpability still could have been co-operative after the first re-enactment debacle.

SGT HENSTRIDGE: It's possible.

MR. FLAHERTY: Okay.

And we've talked about how your interview strategy is to empathize with a person you're interviewing, to build a rapport. Now, depending on the circumstances and depending on who you're talking to, rapport building may be somewhat easier or somewhat harder.

Would you agree that it's easier for a police officer to build a rapport with a fellow police officer rather than someone who's never had to deal with the police or someone who is, quote, unquote, a career criminal?

SGT HENSTRIDGE: No.

MR. FLAHERTY: No?

SGT HENSTRIDGE: I –

MR. FLAHERTY: So police officers don't find it –

MR. FREEMAN: Sorry, Mr. Commissioner, he was finishing his answer there.

THE COMMISSIONER: Sorry.

MR. FREEMAN: I believe he was finishing his answer and Mr. Flaherty continued to question him.

THE COMMISSIONER: Okay.

Do you have something further?

SGT HENSTRIDGE: I was going to say basically I've interviewed people that have committed very serious offences and it was very easy to develop a rapport with that person. And I've interviewed people that had not committed serious offences and have not been able to develop a rapport with them, so whether the person is a police officer or not doesn't really change that fact.

MR. FLAHERTY: So having things in common with the subject of your interview, does that not aid in rapport building?

SGT HENSTRIDGE: It does.

MR. FLAHERTY: Okay.

And was it easy or hard to build a rapport with Constable Smyth during the interview?

SGT HENSTRIDGE: It was easy.

MR. FLAHERTY: And was it necessary for you to provide him information in order to build that rapport, information that you now subsequently have come to say was probably inappropriately given?

SGT HENSTRIDGE: I don't believe so. I think it showed – whether it was right or wrong what I did, I think we've already discussed that.

MR. FLAHERTY: Yeah.

SGT HENSTRIDGE: But I think it showed reciprocity in terms of, you know, we're both working toward the truth. And that's ultimately the tact you take with anybody, is we are working towards the truth here and that's how you gain co-operation.

MR. FLAHERTY: Now, Constable Smyth has interviewed people before. Correct? As far as you know? Or do you know if he had ever interviewed –

SGT HENSTRIDGE: I assume he's interviewed people before.

MR. FLAHERTY: Yeah.

And so he knows – as a police officer he would know how an interviewee could act in order to receive a favourable response from an interviewer. Correct?

SGT HENSTRIDGE: That's –

MR. FLAHERTY: He knows that it's good to be soft spoken, collegial, co-operative and show some sort of empathy as opposed to being argumentative or disrespectful during an interview. Correct?

SGT HENSTRIDGE: I suppose so.

MR. FLAHERTY: You would imagine.

SGT HENSTRIDGE: I would think so, yes. I mean, there are police officers out there that aren't co-operative when they're spoken to.

MR. FLAHERTY: No, fair enough.

Now, earlier in your evidence you said that Constable Smyth had hoped that the security cameras in and around Donald Dunphy's property were working. How do you know he actually hoped that?

SGT HENSTRIDGE: Because he said he hoped it.

MR. FLAHERTY: So he said it but you can't really say whether or not if he did, if he had a mental state where he was truthfully sincere with respect to that, that statement. Correct?

SGT HENSTRIDGE: With all due respect, I couldn't read his mind, no.

MR. FLAHERTY: Okay.

Out of – I'll put this to you. Out of all the examples of inappropriate information sharing, would you not say that the most inappropriate was the fact that he had been told that the cameras were not working? Because at that point your only witness knows that there will be no video evidence to contradict what he's about to say or what he just told you. Correct?

SGT HENSTRIDGE: That was an error, for sure, yeah.

MR. FLAHERTY: Was it the biggest error during that interview?

SGT HENSTRIDGE: I would have to assess all of that against the entire file to determine what the biggest error was. That would be a huge analysis, though, and I certainly wasn't in a position to conduct that analysis.

MR. FLAHERTY: And in your experience as being an interviewer, do you find that the person being interviewed will be a little bit more careful with respect to what they say if they know there were other witnesses, either human or technological, in this case security cameras?

SGT HENSTRIDGE: Yes, although I've had witnesses tell me things that are in complete variance to –

MR. FLAHERTY: Oh – and for sure. Once you see that, then you have to get into an analysis of whether or not it's an intention to mislead or if it's just an issue with memory.

In your cross-examination by Mr. Kennedy, he referenced to you Exhibit P-0865, and it's your occurrence report and you make notes with respect to your interview with Colin Dinn.

SGT HENSTRIDGE: Yes.

MR. FLAHERTY: You remember that? And we do see in that report that Colin said, and I'm paraphrasing somewhat: Don Dunphy had said to him, you know, if they want to come get me, you know, let them come.

SGT HENSTRIDGE: Uh-huh.

MR. FLAHERTY: Now did you ask – did you have any follow-up questions to Mr. Dinn? Did you say, you know, was he menacing when he said this? Was he joking when he said this? Did you really try to understand the purpose and the background of that statement?

SGT HENSTRIDGE: No, but I think the context of that interview with Mr. Dinn would suggest that he was given context of that statement. He talked about the fact that Mr. Dunphy is not violent per se but can get angry.

MR. FLAHERTY: Uh-huh.

SGT HENSTRIDGE: He talked about the fact that he was gentle with his cats. He talked about the fact that he sometimes speaks in ways that Mr. Dinn can't understand or fully understand.

MR. FLAHERTY: Uh-huh.

SGT HENSTRIDGE: So I think the context was kind of around that statement at the time. I didn't drill down on that particular phraseology, no.

MR. FLAHERTY: Okay.

MR. COMMISSIONER: Mr. Flaherty, excuse the interruption. It's 11:15, so the appropriate time for us to take a break. How do you –

MR. FLAHERTY: We can take a break now.

MR. COMMISSIONER: Yeah. What's your estimate?

MR. FLAHERTY: Five minutes maybe.

MR. COMMISSIONER: All right. And do we have any other witnesses – sorry, any other questions to be asked after that?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) five minutes.

MR. COMMISSIONER: Five minutes or so.

All right. Well, we'll take a brief break. Well, take the 15 minute break and then we'll resume.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now in recess.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Okay.

Mr. Flaherty, go ahead when you're ready.

MR. FLAHERTY: Thank you, Mr. Commissioner.

Officer Henstridge, were you aware of any evidence prior to your interview, your initial interview of Constable Smyth, that suggested that Constable Smyth had told people he was in Mitchells Brook due to threats made against the premier?

SGT HENSTRIDGE: I don't recall the terminology threats. My memory of it is that when we were briefed there were some tweets that were concerning.

MR. FLAHERTY: Okay.

SGT HENSTRIDGE: And that was the reason he was down there to inquire about those tweets.

MR. FLAHERTY: So from what you recall Constable Smyth telling you during the interview, was his evidence that he was there in Mitchells Brook to see Don Dunphy because of threats Don Dunphy had made against the premier? Was that his evidence during his interview?

SGT HENSTRIDGE: Again, I don't recall the term threats but my memory of that interview – and you'd have to pull up the transcript, I think – is that he was down there to investigate these tweets, yes.

MR. FLAHERTY: Now, I will put it to you that during the interview he said that there wasn't any criminal threat. Why didn't you ask him during the interview, well, why did you tell, or did you tell people yesterday, the date of Don Dunphy's death, that you were there due to threats against the premier.

He didn't say I was there to investigate tweets of concern relating to the premier. There's evidence to suggest that he was there to interview or investigate Don Dunphy's threats against the premier.

SGT HENSTRIDGE: Because, as I said earlier, I wasn't aware during that initial contact that that's why he was down there specific – that terminology was used.

MR. FLAHERTY: Okay.

Now, prior to your interview, leading up to the interview of Constable Smyth, were you aware that Constable Smyth had reviewed the facts of the death of Don Dunphy and had reviewed his notes with Officer Tim Buckle?

SGT HENSTRIDGE: No, I did not.

MR. FLAHERTY: If you had of known that at the time, what further interview or investigative steps would have you taken? Would have you asked some questions based upon that fact?

SGT HENSTRIDGE: I certainly would have asked him about that, yes.

MR. FLAHERTY: Okay.

SGT HENSTRIDGE: And what impact that would have on his statement, what the discussion was. And then, presumably, Constable Buckle would have potentially been interviewed as well.

MR. FLAHERTY: And –

SGT HENSTRIDGE: But I'd have to leave that to Corporal Burke, I suppose, because he was the primary.

MR. FLAHERTY: Uh-huh.

Now, as an investigator you just said that you'd want to address that issue with Constable Smyth and you may even have to follow up with Officer Buckle. Can you tell us why, as an interviewer, sorry, that you would want to do – you'd want to have follow-up questions relating to the review of notes and why you would want to interview Buckle? Is there something that you would want to confirm or rule out?

SGT HENSTRIDGE: I'd want to know what, if any, influence he had on the statement that he provided. I mean, potentially there was no influence, other than his support. I have no idea what Constable Buckle or Sergeant Buckle said to him but I would need to explore that, for sure.

MR. FLAHERTY: Now, it was put to you earlier that upon being given the story, or at least an initial synopsis by the police or by Constable Smyth with respect to how Donald Dunphy died, it's your job to seek information that either refutes or confirms the story that Constable Smyth gave you. Correct?

SGT HENSTRIDGE: Yes.

MR. FLAHERTY: And we do know that there was some forensic evidence gathered. Correct?

SGT HENSTRIDGE: Yes.

MR. FLAHERTY: None of the forensic evidence proves or suggests – no, I'll go back, we'll just leave it at prove – proves that Donald Dunphy pointed a firearm at Constable Smyth. Is there anything there prove that the firearm was pointed at Constable Smyth?

SGT HENSTRIDGE: I don't have access to all the physical evidence that was seized so I don't feel comfortable speaking to that.

MR. FLAHERTY: Are you aware of any forensic evidence which proves Constable Smyth's allegation that he was surprised with the sudden pointing of a rifle at him?

SGT HENSTRIDGE: That proves it?

MR. FLAHERTY: Proves it.

SGT HENSTRIDGE: Definitive proof? No, I don't believe there is.

MR. FLAHERTY: And, in fact, some of the forensic evidence that was put to you during your testimony was the ballistic forensic evidence, and all that shows, all that proves is that – well, two things –

MR. KENNEDY: Commissioner, isn't that decision going to be for you what the ballistic evidence shows? The witness is referring – he's going to now put to this witness that the ballistics evidence will show. I'm not aware if this witness had any involvement in the ballistics. He was gone four weeks –

THE COMMISSIONER: Well, I think it's fair enough. Is he aware of any ballistics evidence; put it in those terms, Mr. Flaherty.

MR. FLAHERTY: Okay.

So are you aware of any ballistic evidence that proves that the shots that Constable Smyth said he took were actually taken?

SGT HENSTRIDGE: I'm not aware of any ballistic evidence that either proves or disproves it. I wasn't privy to the –

MR. FLAHERTY: Okay.

SGT HENSTRIDGE: – to the scene.

MR. FLAHERTY: Okay.

All right, very good.

SGT HENSTRIDGE: Or the ident reports for that matter.

THE COMMISSIONER: Or the ident what?

SGT HENSTRIDGE: Or the ident reports.

THE COMMISSIONER: Thank you.

MR. FLAHERTY: Just one second now, Mr. Henstridge.

Those are all my questions. Thank you.

THE COMMISSIONER: Thank you, Mr. Flaherty.

No further questions?

Mr. Freeman.

MR. FREEMAN: Just a few for Sergeant Henstridge.

Thank you, Mr. Commissioner.

Sergeant Henstridge, just a few questions for you here today. You've talked about the changing of the approach to interviewing over time. And do you remember the old approach was known as the Reid model or the Reid approach? Is that right?

SGT HENSTRIDGE: There were elements of Reid built into it, yes.

MR. FREEMAN: Okay.

And does the new approach have a name, just for the Commissioners benefit and for the public's benefit?

SGT HENSTRIDGE: It's called the RCMP phased interviewing approach.

THE COMMISSIONER: RCMP phased –

SGT HENSTRIDGE: Interviewing model.

THE COMMISSIONER: – Interviewing approach.

Hmm?

SGT HENSTRIDGE: Interviewing model, I apologize.

THE COMMISSIONER: Interviewing model?

SGT HENSTRIDGE: Yes.

MR. FREEMAN: And I've read – and you can tell me whether you agree – but the new approach is less Kojak and more Dr. Phil. Is that a fair description or would not ...?

SGT HENSTRIDGE: Yeah. No, that's a fair description. Yes.

THE COMMISSIONER: I seem to recall, at least in the detective novels, strong emphasis on rubber hoses and telephone directories.

SGT HENSTRIDGE: Yeah, we've evolved from that, Mr. Commissioner.

MR. FREEMAN: Would you like to elaborate for that, Sergeant Hens – elaborate on that, Sergeant Henstridge, for the Commissioner on the differences and that changeover?

SGT HENSTRIDGE: In terms of what the differences are?

MR. FREEMAN: And especially what the new approach really is.

SGT HENSTRIDGE: The approach now is called phased because you can move in and out of these phases. The initial phase deals with dialogue – the initial phases would deal with dialogue building. And, primarily, that initial phase would be obtaining a pure version statement from the person.

From that point on, a period of time could elapse, potentially, given the nature and flow of the investigation. And that would be followed by something called a version challenge where you would put to –

THE COMMISSIONER: What kind of challenge?

SGT HENSTRIDGE: A version challenge

THE COMMISSIONER: A version challenge.

SGT HENSTRIDGE: Potentially, it doesn't always happen –

THE COMMISSIONER: Uh-huh.

SGT HENSTRIDGE: – but it could. And during those phases, what would happen is elements or inconsistencies within the initial account would be challenged. And it wouldn't be put, necessarily, to the person that the challenge is in relation to some deception. It's put to them in a way to suggest that there may be other options.

Would an example help at all?

MR. FREEMAN: Sure.

SGT HENSTRIDGE: Okay.

So, an example would be that there's a homicide in the community of Ferryland, as an example. And you have a suspect who tells you that he wasn't in the community of Ferryland that day, and you learn that in fact he was. So during a version challenge phase you would put to the person that this is in fact incorrect, that they were in the community but that you're still open to an explanation as to why they were in the community, not necessarily that they committed the offence.

So it's still very open ended. It allows for an objective (inaudible) of the assessment and what that means is simply we've moved away from engaging body language and such things, and we've moved into getting the information and then assessing it against existing or new information or evidence that's out there.

MR. FREEMAN: And so Constable Smyth's interview would have been under the newer approach. Is that correct?

SGT HENSTRIDGE: Yes, it would have.

MR. FREEMAN: Okay. And if I were to suggest that the newer approach came in with the RCMP in roughly December of 2014. Is that –

SGT HENSTRIDGE: Yeah, I was – it sort of progressed across the country west to east for the most part, and we were using it – I recall a specific example in February 2015 using it and then even earlier than that it was being adopted, yes.

THE COMMISSIONER: By February '15 you were using it here?

SGT HENSTRIDGE: In this province, yes.

MR. FREEMAN: Thank you.

So I'd like to take us just briefly to Exhibit P-0119 please, Madam Clerk. And this is the statement you took from Constable Smyth. And if we can drop down here to page 61, please, Madam Clerk.

So you've been asked about the timing of the information sharing with respect to the cameras and you've been asked how that occurred. I want to take you here to – actually, Madam Clerk, in the green it's page 61. So the top number should be – there we are, okay, that's right, you got it.

And we'll just scroll down a little bit there. You see there at line 8 you say: "Do you have any questions for us, Joe, at this stage?" So is it fair to say you're sort of wrapping up the interview at this point?

SGT HENSTRIDGE: I would say so, yes.

MR. FREEMAN: All right.

So it's after that, after you've gathered all of the statement virtually from Constable Smyth that the cameras are mentioned.

SGT HENSTRIDGE: Yes.

MR. FREEMAN: Lower down there at line 16.

SGT HENSTRIDGE: Yes.

MR. FREEMAN: So it's toward the end of the interview after the information has been gathered.

SGT HENSTRIDGE: After I obtained the chair version, yes.

MR. FREEMAN: Thank you.

And one last question I have for you, there's been some suggestion, at least in the public – and just for public perception and understanding, and for the Commission – that you could have lied about whether the cameras were working or not. Do you have a comment on that?

SGT HENSTRIDGE: I don't know – I don't know if ridiculous is the right word, but in my mind it's – the proposition is not even reasonable. We're guided by law.

One case in particular that pops in my mind is Oickle, and the Supreme Court had spoken specifically about inventing evidence, or suggesting to a witness or a suspect that evidence exists that doesn't. And that wouldn't be something that I'd be interested in doing. I think, I truly think that would shock the community if I were to do something like that.

THE COMMISSIONER: I don't recall the case. Has the Supreme Court of Canada come out that definitively with –

MR. FREEMAN: We can certainly address that in legal –

THE COMMISSIONER: Sorry?

MR. FREEMAN: We can address that in legal (inaudible) papers as opposed to –

THE COMMISSIONER: Okay. I'm just curious. That's the first time – that one went under my radar.

MR. FREEMAN: Oickle I believe was the case that –

THE COMMISSIONER: Sorry?

MR. FREEMAN: I believe Oickle was the case that our witness mentioned there.

THE COMMISSIONER: Okay. What was the year?

SGT HENSTRIDGE: 2002, maybe.

THE COMMISSIONER: Okay. All right.

Okay. I'm sure I've got others with the same principle.

Remind me before we move on to the next witness, I have a few cases to refer to you for Monday.

MR. FREEMAN: And I have no further questions for Sergeant Henstridge.

So thank you.

THE COMMISSIONER: Okay.

Sergeant, thank you very much.

Oh, sorry. Did Commission counsel have anything? Nothing?

MS. O'BRIEN: Nothing rising.

THE COMMISSIONER: All right. No other counsel.

Thank you, you may step down.

Now, just before we begin with the next witness, just on the expert evidence, this is mainly yours, Mr. Kennedy, but not solely. I've already referred to DD and the decision regarding the chair demonstration, so you have that but that is relevant again for expert evidence.

I don't know if you've seen – you probably weren't up all night like I was watching the Supreme Court of Canada decision from yesterday or the day before on expert evidence. So I'll give you the – that's 2017 SCC12, Bingley v. the Queen, and this is –

MR. KENNEDY: Sorry. Can you spell that, Commissioner?

THE COMMISSIONER: B-i-n-g-l-e-y.

It's pretty much confirmation of the Mohan decision and the way that's been qualified somewhat in White Burgess. And, Mr. Kennedy, you'd be particularly interested, I suspect, in – well, actually, it begins at paragraph 11 of the decision, where they're talking about whether the common law rules of evidence have been displaced. It goes on for a number of paragraphs; paragraph 13 is of particular interest, they refer to trial by expert.

And with respect to the notion of weapon focus when somebody is being put under the gun, as they say, there's a decision of the Ontario Security Court of Justice in the Queen v. Myrie – M-y-r-i-e. I'm not sure I have the – that's the 17th of March 2003. And there they were talking about – it's one of these as to when is it appropriate to bring in expert evidence. This one had to do with the reliability of eye witness identification and credibility.

And there's a reference to an earlier case of McIntosh 1997 117 CCC 3d 385 in the Ontario Court of Appeal. And that's one case where there was a specific reference to paragraph 23, the notion of weapon focus where an individual who has a firearm pointed at him or her, it tends to focus on that and may not be aware of other things in their surroundings.

That also refers to the difference between memory and belief, and specifically they use the term weapon focus in paragraph 23. And they discuss Mohan, and there's another Court of Appeal decision. I guess it's the Ontario Court of Appeal, I'm not sure actually. It's 1996 anyhow, 110 Canadian Criminal Cases (3d) 445. Miaponoose is the decision. M-i-a-p-o-n-o-s-e, you'll see that at paragraph 28.

And finally there's a Court of Appeal of Alberta decision in Stephen Dalla Lana. That's not Dalai Lama, D-a-l-l-a L-a-n-a, two words, and the Governors of the University of Alberta. And that involved, well, there was an error in refusing to admit the opinion of an expert who had been retained. This was the Court of Appeal, Alberta, 2013 ABCA 327.

And I'm not saying that this is an exhaustive search. These are cases that we brought up in a fairly quick search. There may be other authorities and if you have, by the way, any authority right now I'll be happy to receive it. And if you have anything before the end of the day, if you'd drop it off so that I can read it on the weekend it would be helpful.

I think that's all I have to refer to.

So if have no questions, we'll move on to the next witness.

All right.

MS. CHAYTOR: Commissioner, the next witness is Paul Davis.

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

MR. DAVIS: I do.

MS. SHEEHAN: Please state your full name.

MR. DAVIS: Paul Alfred Davis.

MS. SHEEHAN: Thank you.

THE COMMISSIONER: Mr. Davis.

MR. DAVIS: Good morning, Mr. Commissioner.

MS. CHAYTOR: Good morning, Mr. Davis.

MR. DAVIS: Good morning.

MS. CHAYTOR: Commissioner, before we get started, there are a few new exhibits, please, that I would ask to have entered.

We have P-0501, P-0503 through to P-0510 inclusive.

THE COMMISSIONER: Uh-huh.

MS. CHAYTOR: P-0651, P-0656, P-0705 and P-0706.

THE COMMISSIONER: Okay.

So ordered.

MS. CHAYTOR: Thank you.

Mr. Davis, I understand you were a member of the Royal Newfoundland Constabulary from 1985 until 2010 when you retired from the force.

MR. DAVIS: That's correct.

MS. CHAYTOR: And your last position that you held with the RNC was media officer and you held that position from 2006 through to 2010.

MR. DAVIS: Yes.

MS. CHAYTOR: In 2010, you were elected as an MHA and that marked the beginning of your career in provincial politics.

MR. DAVIS: Yes.

MS. CHAYTOR: In September 2010, you became the Leader of the provincial Progressive Conservative Party and was sworn in shortly thereafter as Premier of Newfoundland and Labrador.

MR. DAVIS: I believe you said September 2010, actually it's September –

MS. CHAYTOR: 2010.

MR. DAVIS: 2014.

MS. CHAYTOR: Sorry, I said 2010, did I?

MR. DAVIS: Yes.

MS. CHAYTOR: I'm sorry, yes, 2014. September 2014.

MR. DAVIS: Yes.

MS. CHAYTOR: Yes.

And then you served as Premier until November of 2015.

MR. DAVIS: December technically but, yes.

MS. CHAYTOR: Okay. Yes, I believe the election was probably the last day of November.

MR. DAVIS: It was.

MS. CHAYTOR: Okay.

And you do remain, however, as an MHA for the District of Topsail.

MR. DAVIS: Correct. Topsail – Paradise is the ...

MS. CHAYTOR: Topsail – Paradise. Okay.

I understand that during your time as an RNC officer, you were also a member the executive of the RNCA.

MR. DAVIS: Correct.

MS. CHAYTOR: And that would have been around 2004, 2005 and you served in that position until you retired from the force in 2010.

MR. DAVIS: Yes.

MS. CHAYTOR: In that position you sat on the executive with Constable Joe Smyth.

MR. DAVIS: Yes.

MS. CHAYTOR: And did you get to know him fairly well through that affiliation?

MR. DAVIS: We met regularly. We met – most often we met once a week, but no different than pretty much anyone else on the executive.

MS. CHAYTOR: Okay.

And I take it you also knew him as a fellow police officer with the RNC, although you don't believe that you actually policed with his at any point in time.

MR. DAVIS: Correct.

MS. CHAYTOR: I also understand that you and the current Chief of the RNC, Bill Janes, completed your training together at Holland College in 1985.

MR. DAVIS: Yes.

MS. CHAYTOR: Did you ever police with Chief Bill Janes?

MR. DAVIS: On occasion but nothing long-term or ...

MS. CHAYTOR: Did you have any other connection with him?

MR. DAVIS: No.

MS. CHAYTOR: Are you personal friends?

MR. DAVIS: No.

MS. CHAYTOR: Joe Browne would have been the chief of police for a period of time while you were with the RNC.

MR. DAVIS: Yes.

MS. CHAYTOR: And, in fact, I understand that he was the chief at the same time that you held your position as media officer with the RNC.

MR. DAVIS: Yes.

MS. CHAYTOR: And in that capacity you would have worked closely with him because I understand that the chief is the person responsible for any public communications on behalf of the RNC.

MR. DAVIS: Yes.

MS. CHAYTOR: Perhaps you could tell the Commissioner what your role as media officer entailed.

MR. DAVIS: It was a very broad role, Commissioner, primarily responsible for the – I was the main contact for media, responsible for sharing information or discussing cases that were quite often inquired about by the media, and also making announcements or releases pertaining to policing matters.

MS. CHAYTOR: Okay.

And I understand in that role you did receive training through a course with the Halifax Regional Police and part of that training did include how to respond to the media in situations of high profile cases.

MR. DAVIS: Yes.

MS. CHAYTOR: And it included topics such as protecting the integrity of investigations while, at the same time, trying to be as open and transparent with the public as possible.

MR. DAVIS: Yes.

MS. CHAYTOR: And I realize, Mr. Davis, that's, you know, some time ago.

MR. DAVIS: Yes.

MS. CHAYTOR: Some eight or nine years ago, but it is of interest to the Commission's mandate in terms of public communications by the police in situations of – such as what we're dealing with in Mr. Dunphy's situation.

What generally were you taught in terms of how best to respond to the media requests in such cases while the investigation is proceeding?

MR. DAVIS: It's a pretty broad question. Anything in particular you're referring to?

MS. CHAYTOR: I'm just wondering, were there any general guidelines or anything that you can recall right now that helped you then in your role as a media officer in how to deal with cases that are pending, or investigations, I should say, that are pending and how, in those situations, you can communicate as a police force with the public.

MR. DAVIS: Routinely, there were some general practices on not disclosing the identity of persons charged before they are actually officially charged or appeared in court, those types of principles. I would regularly read investigative files and whenever possible would consult with the investigator to discuss what could or could not be released, or what we had to be careful on.

MS. CHAYTOR: So during your time then, in your position as media officer, were there occasions that you had to respond to the media for requests regarding high profile cases while the investigation was still ongoing?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And can you, without, you know, specifically identifying individuals involved, what generally was the RNC's approach to public communications at that point in time?

MR. DAVIS: Our approach was, we took a co-operative approach with the media. We viewed the media as the conduit to the public and we wanted to provide as much information to the public as we could, while still protecting individual rights, presumption of innocence and the integrity of the investigation.

MS. CHAYTOR: Was there ever an occasion involving an investigation of a fellow officer when you received such media requests?

MR. DAVIS: I think so. There's a couple of occasions there were, but I can tell, when it involved individual officers or of that nature, generally, it would be the chief who would be the primary spokesperson for it.

MS. CHAYTOR: Okay.

And I understand in any event the policy of the RNC is that it's the chief who makes the determination as to what is said.

MR. DAVIS: Yes.

MS. CHAYTOR: And that would have been the case in your time in the role as media officer as well?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

So you never had occasion yourself to speak to an officer-related incident publically or advise the chief in terms of how he should speak?

MR. DAVIS: You know, I'd have to give it some thought but I'm sure there may have been occasions when there was – because when you speak to the media, of course, they're open to ask you about any particular matter. So I'm sure there were occasions when I may have been asked about an incident that involved an officer internally but, generally speaking, the chief would determine specifically what the response would be and, most often, I think he would actually speak to it.

MS. CHAYTOR: Okay.

All right and we have your chief coming in next week so I'll pose the same questions to him.

Did you have – in terms of – then I'll move on with your staff as a premier when you take the role of premier. And I understand that you chose your former chief, Joe Browne, as your chief of staff when you became premier. And other than your connection with him in policing, did you have any other connection with Joe Browne?

MR. DAVIS: No.

MS. CHAYTOR: And why did you choose him to be your chief of staff?

MR. DAVIS: My experience with Joe Browne – other than as the media officer, I never had – I've had very little or very limited experience with Joe Browne. But my experience with Joe Browne while I was the media officer was 2006; it was an era when the RNC was rebuilding how – the image of the force, the training capacity, use of technology and so on.

My experience with him was he was a strong leader, he was a strong administrator. He had a strong – with a team approach. He had values that I believe were going to be beneficial to me in the premier's office and that he could bring those attributes, those experiences, to be a strong leader in the premier's office.

MS. CHAYTOR: And what values in particular were you thinking of at the time?

MR. DAVIS: Well, you know, he did value a team approach; he valued a co-operative approach but yet focused. He was always – my experience has been is that he was always very clear of assigning roles and responsibilities and in holding those roles and responsibilities accountable, or the people for those roles and responsibilities accountable, and I felt I needed that.

MS. CHAYTOR: Okay.

And did Mr. Browne have any government experience or any experience in politics prior to being appointed your chief of staff?

MR. DAVIS: Not in politics but as a chief of the RNC, administratively, there's some – it seemed, quite often, to be similar to a deputy minister. It's different than a deputy minister

whereby the RNC are a separate operation but, however, from a government administrative perspective, he's a deputy minister as far as budgets go or submitting budget requests and those types of functions, administrative functions with government. So that was a value as well.

MS. CHAYTOR: Did the fact that Mr. Browne was a former police officer and chief of police factor in to your decision to have him become your chief of staff.

MR. DAVIS: Not as a police officer per se, but what I just described to you was the lens that I put on it.

MS. CHAYTOR: And now I understand also, during your time as premier you had a staff in your office of approximately 16 people. And but the members of your staff that you would – that would have been involved in any aspect, from what we can see from a review of the documents that we have in addition to yourself and Joe Browne, would have been Donna Ivey. And I understand she was a communications specialist in your office, and the Commissioner has already heard from Ms. Ivey. And I believe she had been a member of your staff when you were first elected in 2010.

MR. DAVIS: She was a member of the Government Members' Office staff.

MS. CHAYTOR: Yes. Okay.

So you had worked with her since then.

MR. DAVIS: Yes.

MS. CHAYTOR: And Heather MacLean, your director of communications, and we heard from her just this week.

MR. DAVIS: Yes.

MS. CHAYTOR: Darrell Hynes, your deputy chief of staff; Veronica Hayden, she was an executive assistant, I believe.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay and she had filled that role as well when you were a Cabinet minister.

MR. DAVIS: She became my executive assistant when I was first appointed to Cabinet in 2011 and is to this day.

MS. CHAYTOR: And continued on and is still to this day.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And Janice Cave was your constituency assistant.

MR. DAVIS: Yes.

MS. CHAYTOR: And she still holds that position, I believe.

MR. DAVIS: Yes.

MS. CHAYTOR: And Peter Morris was a special assistant in communications. And he provided you with strategic advice from time to time.

MR. DAVIS: Yes.

MS. CHAYTOR: And Catherine Evans, we've seen her name. And what exactly was her role?

MR. DAVIS: She was a – I think her actual title was a personal assistant but she was in an administrative assistant role.

MS. CHAYTOR: Okay.

I understand also from your interview that amongst the staff that I've just listed, your two main points of contact as premier would have been your chief of staff, Joe Browne, and your communications director, Heather MacLean.

MR. DAVIS: Yes.

MS. CHAYTOR: During your time as premier did you have contact with the RNC?

MR. DAVIS: As of members of the RNC? You said did I have contact with the RNC?

MS. CHAYTOR: Yes, with the RNC.

MR. DAVIS: I would have had contact with members of the RNC, yes.

MS. CHAYTOR: Okay and in your role as premier?

MR. DAVIS: I don't think specifically as my – well, yes, I would have. Yes.

MS. CHAYTOR: Okay.

And would that have been a normal chain of communication or would your chain of communication normally with your government be through the minister of the Department of Justice or the Department of Public Safety?

MR. DAVIS: My contact with them wouldn't be operational. If there was a special event or function or when they open parts of the new building, that type of thing, then there was communication with the RNC, but if you're asking me from a perspective of operational and within – operations within government of how they operate in a relationship with government, no.

MS. CHAYTOR: Okay.

So your only contact with the RNC while you were premier would have been when you're showing up at official functions such as the opening of their new building.

MR. DAVIS: Yes.

MS. CHAYTOR: So you had no other contact, for example, with the chief of police?

MR. DAVIS: Yeah, you know, there was time – from time to time that I would see the chief or we'd have a discussion or say hello, but I don't recall a time when – you know, there was never a time that we gave – I personally gave any direction to the chief or the RNC.

MS. CHAYTOR: So no picking up the phone to speak to him about any police matters or meet with him on any matters that may be under investigation by the police or of concern to the RNC?

MR. DAVIS: Correct.

MS. CHAYTOR: I'd like to ask you some questions about the role of the protective security unit. The Commissioner has heard, and we have evidence, of a policy which is P-0031. I don't need to bring that up, Madam Clerk. It sets out the mandate of the protective service unit, which included close protection services to the premier as well other VPs, as well as its role in gathering intelligence on persons of interest.

Now, I understand that you would have been aware of the role of the protective service unit prior to becoming premier in that as a minister you had referred a matter to the PSU. Is that correct?

MR. DAVIS: Yes.

MS. CHAYTOR: And I understand that you dealt with Constable Smyth on that matter.

MR. DAVIS: Yes.

MS. CHAYTOR: And it involved correspondences to you that you felt to be troubling and that's why you sent it along to the PSU.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And in that situation perhaps you could tell the Commissioner a bit about what it was in those correspondences that were troubling and why you saw fit to forward it on to the PSU.

MR. DAVIS: Yes. Commissioner, it was – I became the minister of Child, Youth and Family Services in 2000 and – the fall of 2013. There had been a file within the department involving a family that existed in 2000 – fall or late 2012, at which time minister – or Charlene Johnson was the minister.

When I became the minister the father had contacted me, and it was obvious that he had – he was still unhappy with his involvement with the department a year before. I made efforts to hear his concerns, to look into his concerns, to deal with them, but have not been able to satisfy his – what he's been asking for.

MS. CHAYTOR: Okay.

And was that the only occasion prior to becoming premier that you referred anything to the PSU?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And I understand in that circumstance Constable Smyth did speak to the person involved, and did he report back to you on the outcome of that?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And I don't believe any charges were laid; that was basically the end of the matter.

MR. DAVIS: It certainly wasn't the end of the matter.

MS. CHAYTOR: Okay. And the person continued to communicate with you? Is that what you mean?

MR. DAVIS: Continues to communicate with me.

MS. CHAYTOR: And still to this day?

MR. DAVIS: Still to this day, as recently as late December.

MS. CHAYTOR: Okay, and so the matter wasn't resolved to his satisfaction, I take it.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay, and you haven't –

THE COMMISSIONER: When you say the matter continued, this is a matter of, what, of a comment concerning you?

MR. DAVIS: Well, without identifying the gentleman, he was – it was a concern to me, Commissioner; still somewhat of a concern to me, to be honest with you. You know, the – I don't know how much detail you need to put it in perspective, but –

THE COMMISSIONER: No, we don't anything that will identify the parties, but if you could just the type of – a critical comment, I take it, highly critical?

MR. DAVIS: Well, he has a standing offer with me to meet with him anywhere, anytime, so we can find out what kind of man he is and he can find out what kind of man I am.

THE COMMISSIONER: Which you take it to be an invitation to a personal encounter, a physical encounter?

MR. DAVIS: Yes, Sir.

THE COMMISSIONER: Oh, okay.

MS. CHAYTOR: Okay. And has that matter been reported since to the police?

MR. DAVIS: I had several conversations with Constable Smyth, and we had for some time shared correspondence with him, but it could – I don't frequently receive emails now. Probably in, like, the last year, I think there's one in June, one in September, probably another one in December, so I don't really pay much attention to it.

MS. CHAYTOR: Okay, so Constable Smyth left his role in April of 2015, so you haven't referred that on to anyone else since, anyone in the PSU since or anyone in the CIU?

MR. DAVIS: I really made an effort to ignore it for some time, and long before. Even while Constable Smyth was still there and I was in the premier's office, I just was really – really never paid much attention to it.

MS. CHAYTOR: Okay.

And in terms of the role, then, of the PSU in close protection services, I understand that you had experience with that and perhaps your first experience with the close protection role happened the same evening that you became leader of your party. And perhaps you can describe that to the Commissioner.

MR. DAVIS: Yeah, it was – it had been a pretty intensive weekend, and at the end of Saturday night, at the end of the leadership convention, we were leaving the convention hall – I had stayed till practically everyone had left and there was a number of people we were speaking to, saying hello, and extending best wishes, those type of things. People closest to me were still there, some family members, some significant supporters and organizers in my campaign. And as we left, Constable Smyth was there and other members of the RNC, but as we left the Convention Centre there seemed to be a presence of police around. So I commented to Constable Smyth about the calmness; there seems to be a lot of you here, is that really necessary?

And he indicated to me that a short time previous there had been a shooting in the west end of St. John's. And also, at the same time, because of the intensity around the leadership campaign on Twitter, npoli, which is the hashtag for Newfoundland and Labrador politics on Twitter, had been trending on Twitter. And my understanding is at the time ISIS were following hashtags that were trending on Twitter and were posting to npoli, or posting and tagging npoli.

And these things were happening simultaneously and he said we don't know really what this is all about, and kind of they were just being careful. The shooting was still very fresh. It happened just a very short time before. So there were a couple of things he mentioned that were happening and they were just being careful.

MS. CHAYTOR: Okay.

So did they then provide close protection services to you that evening?

MR. DAVIS: Yes. Well, it was very, very late in the evening. The day was essentially over.

MS. CHAYTOR: Okay.

And in terms of the hashtag npoli, is that something you yourself follow? Are you one of the followers of npoli?

MR. DAVIS: I really don't follow Twitter.

MS. CHAYTOR: Okay. But is it something – is it something that – so you don't have that as one of your – you're not a follower of npoli at all?

MR. DAVIS: I don't think there's a way to follow npoli.

MS. CHAYTOR: Or added to – no, you're not?

MR. DAVIS: I don't think so, no.

MS. CHAYTOR: No. Okay. All right.

MR. DAVIS: I really don't – I'm sorry – on a hashtag, I really don't know how to follow it.

MS. CHAYTOR: Oh, okay. I understand, yes.

Is it something that – and I understand you’re not a big user of Twitter; you’re more of a user of Facebook. But in terms of hashtag nlpoli, is that something that you receive alerts to as a politician in the province when there’s things posted to – when there are things out there in hashtag nlpoli?

MR. DAVIS: Not me personally, no.

MS. CHAYTOR: Okay.

And we will get to it later on but – perhaps others on your behalf who would follow your Twitter accounts would be looking out for that.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay. All right.

So when you arrived then in your job as the premier, the PSU was already in place. Was there a meeting at that point in time with members of PSU to discuss what their role would be and any concerns or input that you might have into how they would go about fulfilling its role?

MR. DAVIS: Sergeant Smyth met with me.

MS. CHAYTOR: Okay.

And what was discussed?

MR. DAVIS: He brought me a file folder of some documents. It included the policy that he offered me a copy of so I could familiarize myself with it. He also had some documents and asked for me and my family, closest family members, to complete, personal information that would be – that they felt they needed to have, and he had a discussion with who was on the team and generally how they operated.

MS. CHAYTOR: Did he provide you with any information with respect to any subjects of interest that had already been brought to their attention?

MR. DAVIS: Not at that time, no.

MS. CHAYTOR: Okay, so that happened at a later time?

MR. DAVIS: There was an occasion when he did, yes.

MS. CHAYTOR: Occasionally, throughout?

MR. DAVIS: There was – no, there was occasion when we did have a discussion specifically about some persons of interest.

MS. CHAYTOR: Okay. And did that happen before or after Mr. Dunphy’s shooting?

MR. DAVIS: Before.

MS. CHAYTOR: Okay. All right.

And so would it be a regular occurrence that you would meet with Constable Smyth and he would give you updates?

MR. DAVIS: No, no, there was no updates. There was an occasion when I was travelling to the West Coast of the province and he had planned to drive out the day before. We were going on the early flight in the morning, flying back home, the late flight that night. He came to me and spoke to me and said that his plan was to drive out, he would pick us up at the airport, drop us off at the airport at the end of the day and then return, I guess, the following day. And I had indicated I didn't feel it was necessary. I used to live in Corner Brook, know my way around Corner Brook, and we had a discussion about that.

So he brought to my attention a number of files of persons that they were aware of in the Corner Brook area. When he opened it, then he started to talk about some of these files, he got to a couple of them and I said, look, if you really feel the need to be there, then just carry on; do what you need to do, but ...

MS. CHAYTOR: Okay.

And no other occasion, just that one time when you were going to Corner Brook –

MR. DAVIS: That was –

MS. CHAYTOR: – did he bring subjects of interest to your attention?

MR. DAVIS: Yeah, I don't remember any other time.

MS. CHAYTOR: Okay. All right.

And in terms of written communications, we've seen a couple of written communications through email that Constable Smyth sent to you and members of your team. Other than that, do you recall receiving anything in writing? And you received the policy, you said. Did you receive anything else in writing in terms of the role of the PSU or any particular warnings or cautions that they may have for you?

MR. DAVIS: You know, in preparing to come here today, Mr. Commissioner, I know there was some documents that had been shared to me that were sent, but during my time in the premier's office, most of that would – my email was being tracked and followed and maintained by staff, for the most part. So if there is something that needed to come to my attention, quite often it would come. If it came to my email, the staff would bring it to me, but I don't remember anything specific at the time that he would have come to me and presented it to me as a document or ...

MS. CHAYTOR: Okay.

And I understand that your premier email was being monitored and your Paul Davis, MHA, email you would receive. Is that right?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

MR. DAVIS: Well, I would – yeah, well, you're both right. I guess you're right, partly, in both ways. My – the premier, there's two email accounts: Premier of Newfoundland and Labrador which was completely managed by staff. My MHA email was also monitored by my staff but I had access to that email. That email would come to my own computer and my own phone, I had my own access to it, but it was primarily during my time in the premier's office, managed by staff as well.

MS. CHAYTOR: Okay. And which staff managed your premier email account?

MR. DAVIS: Janice Cave and – or, sorry, the premier’s account?

MS. CHAYTOR: Yes.

MR. DAVIS: It changed a little bit. We had staff who did nothing but correspondence. Sylvia Whelan and Wavey Stockley worked in that. That was their primary role. They managed all correspondence that came in. It was full-time roles and we also had a receptionist who also assisted them.

The volume of correspondence, Mr. Commissioner, is fairly significant in the premier’s office and it was a major function. That was their task. So they also included – that was the Premier of Newfoundland email.

MS. CHAYTOR: Okay. So were they the only ones that would have had access to the premier’s email account?

MR. DAVIS: I’m not sure.

MS. CHAYTOR: Okay. And your Paul Davis, MHA, account, you did have access but it was monitored by Janice Cave.

MR. DAVIS: And Veronica

MS. CHAYTOR: And Veronica Hayden.

MR. DAVIS: Veronica Hayden, yes.

MS. CHAYTOR: Okay.

If we could bring up P-0071, please. And this is one of the emails that I was referring to that was sent by Constable Smyth to members of your offices and as well as to Paul Davis, MHA. And it’s January 25, 2015 and it is regarding an awareness bulletin that went out as a potential threat, threat to Canada. And it had in fact originated as a video and it originated from the RCMP, Andrew Boland. And it went to – from there to – and it’s also Bill Janes and then he sent it to Joe Gullage. Joe Gullage sent it out to All Staff RNC Sworn Members and then Constable Smyth sends it to yourself, your MHA account, Joe Browne, Catherine Evans and other members of your office.

And it is classified as law – “... for law enforcement personnel only,” and he notes that. And he says, “however in light of the fact that Premier Davis fits into a unique category of being a former police officer, and now public Government leader,” he’s forwarding it on. And he says, “Please do not distribute it further.”

Did you understand or agree at the time that you were in a unique category in terms of security because you were a former police officer and now a premier?

MR. DAVIS: Well, unique – I’m told I’m the only (inaudible) police officer to become a premier in the province, so I’m unique from perspective, but I believe that security for any premier would depend on their own circumstances. And I wouldn’t be able to compare mine to anybody else’s.

MS. CHAYTOR: And was there any discussion with the PSU, you and Constable Smyth, for example, or any other member of the PSU at the time about this and about the perception that you may be in a higher risk because you are a former police officer and now premier?

MR. DAVIS: I think there was – I think it's fair to say, Commissioner, there are aspects of security that presented a unique dynamic because of my past. I don't know if it's a heightened risk or a different risk. I don't know if I can categorize that, but the fact that, again, my background creates an element of uniqueness to it.

MS. CHAYTOR: Did you –?

THE COMMISSIONER: Would you say it would be fair to describe your situation as getting a double whammy? There are individuals out there, I'm told, who are not always that empathetic or sympathetic to police officers, and you also have those individuals in general public who would not view favourably any politician, whether police officer or not. Would that be fair? Or do you think everybody loves all police officers and all politicians?

MR. DAVIS: No, I'm pretty sure that's not the case, Commissioner. But, you know, I spent a considerable amount of my career operational, made probably hundreds of arrests, conducted I don't know how many investigations during my career, and I'm sure that there's people who were not happy with the outcomes of the actions I've taken with investigations. So from that perspective it might give me – there's maybe a uniqueness to it.

But premiers across the country, because either of decisions they've made, political decisions they've made, or some other aspects of how they've conducted their business have – they're all different. And I believe that because of the position you hold, yes, there is a different level of a security concern compared to a member of the general public. But I don't know if you can compare one to the other.

And different provinces look at security in different ways. There's a broad range, but I don't know how to compare myself to anybody else.

MS. CHAYTOR: Certainly, lawyers aren't exempt either and your counsel actually brought up the case of Rachel Notley earlier this week.

MR. DAVIS: Yes. I'm aware of that one.

MS. CHAYTOR: Did you –

MR. DAVIS: I said – sorry, I said I'm aware of that one.

MS. CHAYTOR: Yes.

Did you have any concerns that this document was intended for law enforcement only and it was distributed to you and your staff?

MR. DAVIS: No.

MS. CHAYTOR: And why not?

MR. DAVIS: I think the intent of why it was shared, identifying my background, we do that. I don't know what the security classification is on any of this so that would – and I wouldn't know how to interpret that. So I guess that would have to be someone else's interpretation. But it doesn't create any problem for me.

MS. CHAYTOR: Okay.

And if we could look at P-0072, please. This is the second piece of correspondence and I won't take you through all of these documents. This is February 4, 2015 and this is 2015 Threat Assessment Brief and Principal Movement Recommendations, is the subject line, from Constable Smyth again to you and to members of your office. And actually, this one is copied to your MHA account and also to Doug Noel, the other member of the PSU. And it's sent directly to the members of your office.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: He's raising some points of consideration related to the PSU and ongoing assessment, sorry, and threats towards the Office of the Premier. "Please consider these points for any public movements and visits." And there are a number of things, he notes, of course, that you do not enjoying any level of anonymity in the province. And then he notes Newfoundland "is undergoing a period of fiscal adversity and restraint. A struggling economy, whether real or perceived, creates some heightened concern for security of elected officials. Persons whom already hold a grievance towards government can feel further justified in their actions or rhetoric based on a perceived sentiment of an apparent majority. The same perception can also cause an escalation in the number of persons of interest where herd mentality becomes a factor."

Mr. Davis, was this a concern for you or your government at the time that people who held a grievance might now feel further justified in their actions or rhetoric, as Constable Smyth says, because this appears to have been a phase of struggling economy in Newfoundland and Labrador?

MR. DAVIS: I'm sorry, what is it you're asking me?

MS. CHAYTOR: My question is whether or not what I just read out to you in the second bullet here, whether or not this was an issue of concern for you and your government, that the people who had a grievance might now feel, in essence, strength in numbers because they found themselves in a struggling economy?

MR. DAVIS: I don't think I ever thought of it. I don't think we ever said that was a particular issue for us, no.

MS. CHAYTOR: Okay.

After receiving this document, did you ask Constable Smyth about it, the source of the information, or have any discussion around this?

MR. DAVIS: I think we may have had some general discussion. We constantly had discussions about security and the role of the Protective Services Unit. I can't say specifically to this.

MS. CHAYTOR: Okay.

In terms of the PSU, who decided what the role would be? I realize the policy is in place when you come in and you had a meeting with Constable Smyth to explain certain aspects to you. Did you or your government have any input into what its role would be, how it went about actually carrying out the two key functions that it was mandated to do?

MR. DAVIS: I mean, primarily they – they made their own operational decisions. If I was travelling to an event and they were attending with me, who went, or if there was someone went

in advance, there was someone followed or – how many they needed, those types of things, they just appeared and we went on about our business.

There were times when I was going to some events, particularly events in my district where – as a premier, quite often, there was a media advisory or an announcement that a premier is attending a function. When I go to events in my district, that very rarely happened. And there was times that I may have had a breakfast event with a senior group on a Saturday morning, a seniors' group as an example, and they would say – they had access to my calendar but I'd tell them, look, I really don't need you this morning. I'll go there myself or – so from that perspective, we had discussions about the utilization, but how they operated was really within their purview.

MS. CHAYTOR: Okay. And what about in terms of who was assigned to the PSU? I understand, of course, Constable Smyth was already there when you arrived and the other member was an RCMP member. Did you have any ability to express preference as to which officers would be assigned to the units?

MR. DAVIS: None at all. There was a change, actually, in the RCMP while I was there. One left, another one came, and I had no input on it whatsoever.

MS. CHAYTOR: Okay.

Did you – you gave the example earlier to the Commissioner about Corner Brook and there seemed to be some reluctance on your part to agree with Constable Smyth initially and he spoke with you and showed you some information to convince you otherwise but – so did you have reluctance in utilizing the services of the PSU during your time as premier?

MR. DAVIS: I did, yes.

MS. CHAYTOR: And why is that?

MR. DAVIS: Well, there was a number of reasons for it. I was always cognizant of how people likely felt about that. We're in a difficult time, financially. We're headed to an even more difficult time, financially. I was concerned people may see it as a waste of resources or not a good use of resources.

And many times, people would see the Protective Services Unit as an escort service or a chauffeur service, which is really not what it was. And I was really concerned about how that would be perceived. It was a regular matter for me. It was on my mind regularly.

MS. CHAYTOR: Okay, and –

THE COMMISSIONER: By the way, we're past 12:30 where we normally break. Do you have much to finish there?

MS. CHAYTOR: I just have one other question on that line, but it might be something that Mr. Davis might take some time to give his views on because it's about the forward-thinking piece of your mandate as to the role of the Protective Services Unit, so it might be something that would take him a few minutes to give his thoughts on that.

THE COMMISSIONER: Okay.

MS. CHAYTOR: So we can either continue on now, or I can ask that question when I come back.

THE COMMISSIONER: Yeah, we'll break and you can ask it afterwards, but just to get an idea, do you have any feel for how long you're likely to be?

MS. CHAYTOR: I'm not halfway. I'm about a quarter of the way.

THE COMMISSIONER: Okay.

Other counsel, just for planning purposes, have any rough idea? Ms. Breen? Mr. Simmonds?

MR. SIMMONDS: I wouldn't think I'd be more than 15 minutes, 20 minutes.

THE COMMISSIONER: So you're – Ms. Breen, you're leaving it to Mr. Simmonds, are you, I take it?

MS. BREEN: Yes.

THE COMMISSIONER: Yeah.

Mr. Flaherty, roughly?

MR. FLAHERTY: Five minutes, maximum.

THE COMMISSIONER: Right.

MR. AVIS: Five maybe, at most.

MR. WILLIAMS: I could be a half hour to 45 minutes.

THE COMMISSIONER: All right, well, we'll – okay. We'll break, then, for lunch until 1:30.

That's all right in terms of House of Assembly, is it? It's not opened?

UNIDENTIFIED MALE SPEAKER: Opens Monday.

MS. SHEEHAN: All rise.

The inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

MS. CHAYTOR: Thank you, Commissioner.

MR. SIMMONDS: Ms. Chaytor, if I might.

I had a couple of issues that I wanted to discuss with respect to Monday morning, but Mr. Kennedy is going to be a little late so maybe we can do it when we come back from the break or something this afternoon.

Thank you.

MS. CHAYTOR: Yes, and Mr. Kennedy has advised that it's okay for us to continue on in his absence.

Good afternoon, Mr. Davis.

Part of the Commission's mandate is a forward thinking aspect to make recommendations, and one of the issues that the Commission is considering is the mandate existence and structure of the Protective Services Unit. And you are, of course, the only former premier who will be giving evidence, so it would be helpful to the Commissioner to hear you on this point.

You have already stated in your evidence that you were somewhat reluctant at times to utilize the services of the PSU from a bodyguard or close protection point of view. So we'd like to have your thoughts please, as a former premier, on the necessity of such a service and how it might be best structured to provide the services that it's intended to provide.

MR. DAVIS: Yes, certainly. And Commissioner, I further respect it's your role to do that. But from my viewpoint, I absolutely believe in the necessity of the Protective Services Unit or the role that they play. I believe there should be clearly defined roles and responsibilities. So that circumstances where I would say: look, I don't need you today and so on, that would be laid out in a policy somewhere, likely through the RNC, and that they be given carte blanche to make those decisions of how they do their job, to what degree, what level, frequency and so on. And it would be completely removed from other politicians, or senior executive, or staff related to the politicians. I think that would be beneficial.

The second part of that, Mr. Commissioner, was I did receive a briefing, or had a meeting with Constable Smyth when I first became the premier, but I – and I know, and I understand that the Protective Services Unit is not a premier's security detail. It's much broader than that. It also provides a similar function for Cabinet ministers, MHAs, and MHAs of all stripes, and if they're on the government side or on the Opposition side; and, as well, senior executive, senior management within government. And I believe it would be beneficial if there was a formalized briefing or educational component anytime a new MHA was elected, anytime a new Cabinet minister was appointed, or a new premier was appointed, or if there was a wholesale change within government.

I came in – when I came in as a new premier, of course, government didn't change. But if that's the case, or when you have a result of a general election, I believe that should be – that would be beneficial to have that. And clearly, to articulate, when someone has a concern or an issue, define a process to be followed, or how that would be channelled through to the police for follow up, when it should be and so on.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: Okay. Thank you.

I'd like to move on now then, Mr. Davis. And we spoke a little this morning about your use of social media, and I understand that you are an active user of Facebook, but not so much Twitter. And that was also the situation when you were premier.

You also mentioned this morning about your two Twitter accounts that you had, and there were two Facebook accounts. Would you monitor any of those accounts yourself, or have access to any of those accounts yourself?

MR. DAVIS: Today, now you mean, or –?

MS. CHAYTOR: No, at the time.

MR. DAVIS: Well, as I mentioned this morning, that the Twitter – at the time as premier, there was very little time for me to monitor any social media or media. Not just social media, but mainstream or traditional media as well. There was very little time any day of the week to do that.

The most time that I utilized social media myself, if it was attending an event. It could be a significant birthday party to a district event. But, other than that, staff, primarily, monitored and posted and kept up with social media.

MS. CHAYTOR: Okay.

Now I understand your MHA Twitter account at the time, you did to have access to that.

MR. DAVIS: Yes.

MS. CHAYTOR: And any messages that were posted to that would come into your electronic device.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

In terms of the @PremierofNL account, what was the situation there? Would any messages, alerts, notifications to that Twitter account have been received by you on either of your cellphones or any electronic device?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

So you had no access to that account.

MR. DAVIS: No more than anybody else who could search the account. If you have a Twitter account I can go on Twitter and look at your account.

MS. CHAYTOR: Right.

MR. DAVIS: And that –

MS. CHAYTOR: And what you're telling me is, though, in terms of monitoring the account, you had little time and didn't do that. You had other staff doing that for you.

MR. DAVIS: I can assure you there was no time for me to spend monitoring social media.

MS. CHAYTOR: Okay.

So and you would not receive any alert, notification, or the tweets that were posted to that account would not be received on your BlackBerry, your personal cellphone or any other electronic device.

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

And did you – you would – so in terms of that, are you aware of how many followers that account had, the @PremierofNL account?

MR. DAVIS: I do not.

MS. CHAYTOR: Okay.

And I take it, it would have been a high number.

MR. DAVIS: I would think so, yes.

MS. CHAYTOR: Okay. Hundreds of people I would think.

MR. DAVIS: Oh, probably thousands.

MS. CHAYTOR: Probably thousands.

Okay, fair enough. Okay.

MR. DAVIS: I hope.

MS. CHAYTOR: Okay.

And I understand you still have your same MHA Twitter account?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay. Okay.

One of the issues also within the mandate of the Commission is to inquire into the relevant policies, protocol, or manuals in force as of April 2015 in the office of the premier relating to the monitoring and response to social media. And the Commissioner has already seen one social media policy of the government and Heather MacLean and Donna Ivey have both spoken to that.

To your knowledge were there any other policies, protocols or manuals regarding social media, the monitoring, and response to social media by the premier's office?

MR. DAVIS: No.

MS. CHAYTOR: Were you aware that your staff monitored social media?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And what was the purpose that you understood they were monitoring social media?

MR. DAVIS: Primarily, social media is an opportunity to review and understand the feedback response from the public on issues of the day.

MS. CHAYTOR: At any time did you direct your staff to carry out any searches or conduct monitoring with respect to any individual?

MR. DAVIS: I don't think so. No.

MS. CHAYTOR: Okay.

And you think that would be something that you would recall?

MR. DAVIS: Yeah, I don't think I ever directed them to monitor anything. There may have been an event or announcement or, and we may have discussion of generally what's the response. And part of looking at social media would help provide advice to me or an overview of what the response was, but that would be about as specific as it would get.

MS. CHAYTOR: Did you give them any instruction as to what you would ask of them in terms of monitoring social media for issues as you've described and to obtain feedback? Did you provide or anyone on your behalf provide instruction to your staff regarding how to go about monitoring social media and the types of issues that you were looking for them to monitor?

MR. DAVIS: No, I just think it was generally accepted that you look at social media to get – understand what people are saying or feeling.

MS. CHAYTOR: Was there any protocol or practice in place in your office that if they discovered an issue that they thought was of concern that it should be brought to your attention or your chief of staff's attention? Was there any practice or protocol in place?

MR. DAVIS: There was at a point in time where it was quite clear that if there was anything of any concern to forward it to the Protective Services Unit.

MS. CHAYTOR: Okay. And was that the situation prior to the shooting?

MR. DAVIS: I know we discussed it after but I'm assuming it was the situation prior to as well.

MS. CHAYTOR: Okay.

And was there any other practice or protocol to bring it to your attention and/or Mr. Browne's attention?

MR. DAVIS: Not that I'm aware of, no.

MS. CHAYTOR: Okay.

So if there – were there concerns in the past that were identified by your staff that were brought to your attention?

MR. DAVIS: Prior to that, prior to April 5?

MS. CHAYTOR: Yes.

MR. DAVIS: I don't recall any. There may have been but I don't recall any.

MS. CHAYTOR: After the shooting did your government undertake any review of its policies, practices regarding the monitoring of social media?

MR. DAVIS: No.

MS. CHAYTOR: Mr. Davis, in the case of Mr. Dunphy's postings on Twitter were you notified by anyone that a tweet of concern had been identified prior to the shooting?

MR. DAVIS: No.

MS. CHAYTOR: I understand that the tweet was one in a series that was posted by Mr. Dunphy on April 3 and it was sent to @SandyRCollins as well as the @PremierofNL account or NL account. At the time, I understand that Twitter account – at the time that Twitter account that it was posted to was the one that you weren't – you didn't have access to.

MR. DAVIS: Correct.

MS. CHAYTOR: Okay. All right.

And I understand that you were with Sandy Collins when he actually posted the tweet. He's a much more active user of Twitter, I understand –

MR. DAVIS: He is.

MS. CHAYTOR: – or he was at the time, anyhow. All right.

And I understand that you were actually in a vehicle with Mr. Collins when he posted that tweet on April 3. You were driving. Or it may have been actually April 2. Was it April 2 or April 3, the Thursday?

MR. DAVIS: Thursday.

MS. CHAYTOR: Yeah, so the 2nd. And so you were driving, and that's the tweet that caught Mr. Dunphy's attention.

And at the time, apparently, you were listening to a CD by Sherman Downey in your vehicle and Sandy Collins told you he was posting that tweet.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

Did you see or did anyone tell you about anything that Mr. Dunphy posted in reply to Sandy Collins' tweet?

MR. DAVIS: Before April 5?

MS. CHAYTOR: Before April 5.

MR. DAVIS: No.

MS. CHAYTOR: Okay.

So Mr. Collins didn't mention those tweets to you?

MR. DAVIS: No.

MS. CHAYTOR: Before April 5.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

Do you know Ralph Tucker?

MR. DAVIS: Yes.

MS. CHAYTOR: And how do you know Ralph Tucker?

MR. DAVIS: Well, I've known him over the years for, you know, a couple of reasons, but I've known him for some time – excuse me.

MS. CHAYTOR: Okay.

And you know him through, I guess, political party circles as well?

MR. DAVIS: Uh-huh.

Yes.

MS. CHAYTOR: Okay.

And do you know – did you know, prior to April 5 that he had been involved in facilitating some information, contact information for Constable Smyth?

MR. DAVIS: No.

MS. CHAYTOR: Did you discuss the tweet or Mr. Dunphy in any respect with Donna Ivey prior the shooting?

MR. DAVIS: No.

MS. CHAYTOR: Did you have any discussion with Constable Smyth about the tweet, about Mr. Dunphy or about attending in Mitchells Brook prior to the shooting?

MR. DAVIS: No.

MS. CHAYTOR: Did you have any discussion with Joe Browne about the tweet or about Mr. Dunphy prior to the shooting?

MR. DAVIS: No.

MS. CHAYTOR: Did you have any discussion about Mr. Dunphy with any member of the RNC prior to the shooting?

MR. DAVIS: No.

MS. CHAYTOR: Now I understand that the – and I could be wrong on this because I'm no better at Twitter, obviously, than you are, probably less so. But I understand that the way Twitter works is that when Mr. Dunphy included @PremierofNL on the tweet, anyone who was following that account would also receive the tweet. Is that right?

MR. DAVIS: I think so.

MS. CHAYTOR: Right.

Okay, so that would mean –

MR. DAVIS: No, maybe not.

MS. CHAYTOR: Maybe not?

MR. DAVIS: No, maybe not.

MS. CHAYTOR: So people –

MR. DAVIS: I'm really not sure.

MS. CHAYTOR: Okay. All right.

Well, that's what I've been told would happen, not the hashtag as you had said this morning, #NL, but – so if that were the case – assuming that's the case – then there would have been, by your estimation, thousands of people who would have been following that account who also have received it.

MR. DAVIS: And I'm purely guessing at the number.

MS. CHAYTOR: Hundreds.

MR. DAVIS: Yes.

MS. CHAYTOR: Well, I said hundreds, you said thousands. So quite a significant number of people, let's go with that.

MR. DAVIS: And, again, I think you could be right. I can't say with certainty.

MS. CHAYTOR: Okay.

So if that is right then, Mr. Davis, any one of those hundreds or thousands of people following that account – did anyone contact you to give you any notification or warning about what Mr. Dunphy was posting?

MR. DAVIS: No.

MS. CHAYTOR: So it would appear that nobody, other than Donna Ivey, identified any issue with respect to that tweet.

MR. DAVIS: Well, I can't say if that's the case.

MS. CHAYTOR: Okay. Well, she's the only one you're aware of that brought it to the attention of the police.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay. And nobody brought it to your attention.

MR. DAVIS: Before April 5, right?

MS. CHAYTOR: Before April 5.

And we also understand that Mr. Dunphy did tag #nlpoli and in terms of anyone in your office, had they set up any kind of a search, to your knowledge, of #nlpoli? Was that a regular thing that would be searched so that you would be able to identify political issues of the day?

MR. DAVIS: I don't know.

MS. CHAYTOR: So between April 3, when Donna Ivey noticed the tweet and first discussed it with Constable Smyth, up to April 5, the time of the shooting, you had no notification whatsoever about that tweet?

MR. DAVIS: Correct.

MS. CHAYTOR: Or about Constable Smyth visiting Mr. Dunphy?

MR. DAVIS: Correct.

MS. CHAYTOR: Okay. And in that same time period, nobody was accompanying you from the Protective Services?

MR. DAVIS: I think that's correct.

MS. CHAYTOR: From April 3 until the shooting?

MR. DAVIS: Yeah, I believe that's correct.

MS. CHAYTOR: Okay. Do you know if you had any contact from Constable Smyth on April 3 or April 4, or any time on April 5, up to the time of the shooting?

MR. DAVIS: I don't think so. I don't recall. It wouldn't be unusual for him to send me a message and ask if there's any change in my schedule or that type of thing, but I don't remember at that period of time that happening.

MS. CHAYTOR: So if he were on duty, it would be usual for him to check in and see whether or not you're going to require services?

MR. DAVIS: I wouldn't say it was usual but it wouldn't be unusual.

MS. CHAYTOR: Okay.

And since we last met, we have had new BBMs and there are a couple between you and Constable Smyth. And I don't think it's a need to bring them up but I'll just tell you, our Exhibit number is P-0581, and pages 10-11 of that exhibit there are BBMs between you and Constable Smyth. And April 4, 2015, he sent you a BBM and notified you that he was leaving the office shortly and he asked in that BBM if there was anything you would need that evening. There is no response from you in the BBMs. Did you respond otherwise?

MR. DAVIS: I don't think so.

MS. CHAYTOR: Mr. Davis, when and how did you learn about the shooting?

MR. DAVIS: Sunday afternoon I received a phone call from Joe Browne.

MS. CHAYTOR: Okay. And what – and your phone records – and, again, Madam Clerk, we don't necessarily need to bring these up, but P-0252 at page 3, there is – these are Joe Browne's cellphone records. And there's a call there where he called your personal cell at 3:20 p.m. Does that seem about right to you?

MR. DAVIS: It does.

MS. CHAYTOR: Okay.

And where were you at the time that you received that call? And were you able to speak to him at that time?

MR. DAVIS: I was at the arena in Paradise and I was just at a moment in time when I couldn't. I told him I'd call him back.

MS. CHAYTOR: Okay.

And then the records also show that at 3:35 p.m. you called Joe Browne back at his home residence. And is that the first discussion, then, that you have that you learn about Mr. Dunphy's shooting?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay. And what did Mr. Browne tell you?

MR. DAVIS: He told me there had been a – my recollection is, Commissioner, that he'd told me there had been a fatality that Constable Smyth was involved in and it was related to his duties.

MS. CHAYTOR: Related to his duties in the PSU?

MR. DAVIS: That was my understanding.

MS. CHAYTOR: Okay.

And did you ask or did you learn how, at that point in time, how Mr. Browne knew about this?

MR. DAVIS: No. No, I don't think so.

MS. CHAYTOR: Okay. And we'll hear from Mr. Browne on that. According to the same exhibit, P-0252, his records, his phone records show that he received two phone calls just two minutes before he placed the first phone call to you at 3:20. At 3:15 and 3:17, there are two phone calls from the chief of police.

You weren't aware of that, were you?

MR. DAVIS: No, so he – you're saying – give me the times and the ...

MS. CHAYTOR: 3:15 and 3:17 p.m. there are phone calls from the chief of police, Bill Janes, to Joe Browne.

MR. DAVIS: No. Yeah, no, I didn't know about those.

MS. CHAYTOR: Okay.

And what did – did you have any knowledge at that point in time as to why, in the course of his duties in the Protective Services Unit, that Mr. – that Constable Smyth had been involved in a shooting? Did you ask any questions as to, well, how? How could this be? He's my Protective Services Unit; what's happening?

MR. DAVIS: I don't recall asking an awful lot at that point in time. It was a bit of a shock – not a bit of a shock. It was a definite shock to me to receive the call and what he had said. And I said to him that we need to get together right away and we decided that we would meet at the office, and we did shortly after that.

MS. CHAYTOR: Okay.

Had you heard of Donald Dunphy prior to April 5, 2015?

MR. DAVIS: No.

MS. CHAYTOR: And he had made references to you on Twitter and he'd posted many things on your Twitter account including your MHA Twitter account prior to April 3, but you had never heard of them.

MR. DAVIS: Correct.

MS. CHAYTOR: And nobody had ever made you aware of him or his grievance?

MR. DAVIS: He does – I have no recollection of knowing that Mr. Dunphy existed prior to that day.

MS. CHAYTOR: And you think in reflection on what happened, Mr. Davis, if you did know, and had heard of Mr. Dunphy, do you think you would recall?

MR. DAVIS: I can't say. I don't know. I don't have any recollection of knowing of Mr. Dunphy prior to April 5.

MS. CHAYTOR: Donna Ivey was aware that he had been posting to your Twitter account for some time. Did she tell you that?

MR. DAVIS: Not that I know of.

Mr. Commissioner, just to be – to put it in context – there's a significant amount of correspondence that came to our office, came to the premier's office, through a number of means, as I mentioned earlier. Twitter was one of those and Facebook and emails and traditional mail and so on.

THE COMMISSIONER: You may not be getting picked up. Perhaps you could move a bit closer to the mic.

MS. CHAYTOR: I'm sorry, sorry.

Yes, certainly.

I said the correspondence received in the premier's office, at any given time, is significant. Tradition mail, email, Facebook, or Facebook message because you can message through

Facebook as well or Messenger, through Twitter and so on that was monitored by staff. The amount of contact is significant and there was no way that I could be aware of, or keep track of what was the context or content of those type of correspondence.

MS. CHAYTOR: Okay.

If we could you bring up, please, P-0656. And I'd – I'm just going to scroll, you can see here that this is, he says: My name is Don Dunphy. This is from Mr. – these are excerpts that were found in the Workers' Compensation file about Mr. Dunphy. "My real name is Don Dunphy a crucified injured worker form NL Canada where employers treat injured like criminals."

And then on page 2: "@PaulDavisNL @stephenkent police arrested ppl who were cruel 2animals, well Whscc ..." and he goes on from there – what a life. And, again, this one: "@PaulDavisNL@stephenkent animals in NL Canada have better life than injured workers, animals r healthy & can hunt food."

Those are a couple of examples, Mr. Davis, and you have no recollection of having seen those.

MR. DAVIS: Correct.

MS. CHAYTOR: That's right? Okay.

And how about, then, I understand Mr. Kent was one of your ministers at the time. And I understand that he and his office, for weeks leading up to Mr. Dunphy's death, did know about Mr. Dunphy and were hearing from Mr. Dunphy about his grievance. Had Mr. Kent ever mentioned Mr. Dunphy to you?

MR. DAVIS: No. I didn't become aware until sometime after that –

MS. CHAYTOR: Okay.

MR. DAVIS: – that he knew him and had been working with him.

MS. CHAYTOR: And that came to your knowledge how long after the shooting?

MR. DAVIS: I don't remember specifically but it was sometime after, maybe months after.

MS. CHAYTOR: Months after.

MR. DAVIS: Yes.

MS. CHAYTOR: So you've since spoken to Mr. Kent about his dealings with Mr. Dunphy?

I'm sorry, I know you're nodding.

MR. DAVIS: I'm sorry, yes. Well, just briefly, because I also learned that he had been interviewed which I didn't know he had been interviewed by the police as well.

MS. CHAYTOR: Okay and what did Mr. Kent tell you?

MR. DAVIS: The only thing that he mentioned to me was that he had done some work in an attempt to assist Mr. Dunphy. And he mentioned that his – he wasn't able to achieve the correction or help that he wanted, but that he had worked with him for a period of time to try to assist him.

MS. CHAYTOR: Okay.

And the particular issue that Mr. Dunphy was bringing forward wasn't something that Mr. Kent ever brought to the Cabinet table.

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

And in terms of when Mr. Kent did speak to you about it after the shooting, was it something – you were still premier at that point in time?

MR. DAVIS: I'm not sure. I may have been in Opposition, actually. And it was a circumstance that I remember having a conversation. And someone had mentioned that he had been interviewed and I said: You were interviewed? Because I didn't even know he had been interviewed.

MS. CHAYTOR: Okay, so you may not have –

MR. DAVIS: I didn't know he knew him. I didn't know he had any contact with him.

MS. CHAYTOR: So he didn't, in the aftermath of this, bring it to you, the premier's attention, that he had been dealing with Mr. Dunphy sometime.

MR. DAVIS: Correct.

MS. CHAYTOR: For some time. Okay.

And as premier in the aftermath of his death, did you instruct anyone to take any measures to determine Mr. Dunphy's circumstances or the circumstances giving rise to his long-standing grievance?

MR. DAVIS: No.

MS. CHAYTOR: Up until the time you left office had you or your government made any inquiries to ascertain what those issues were so as to ensure if there were legitimate issues, that others may not be or may not encounter the same types of problems?

MR. DAVIS: No, not specific to his. No.

MS. CHAYTOR: Well, did you take anything – anything that might not be considered specific?

MR. DAVIS: From time to time we'd have conversations about various programs or services in government, including Workers' Compensation, and how can we make efforts to improve the system for injured workers.

MS. CHAYTOR: Okay, but nothing specifically related to the issues that Mr. Dunphy had raised.

MR. DAVIS: Correct.

MS. CHAYTOR: Upon learning, then, of the shooting on April 5, you contacted a number of people and you said that you immediately wanted to meet. I saw on your phone records – and,

again, we don't need to bring this up – but between 3:40 and 3:47 that day there are four phone calls that you placed to Heather MacLean in that seven-minute period.

At 3:49 p.m., you called Minister Darin King. I take it he was the Minister of Public Safety, Justice and – Justice? Was it Justice, Justice or Public Safety?

MR. DAVIS: Justice and Public Safety, yes.

MS. CHAYTOR: At that point in time. Okay.

At 4 p.m. you called Darrell Hynes. So I take it this is getting people together for the meeting. Is that right?

MR. DAVIS: In Heather MacLean's case it was and in Darrell Hynes's case it was. In the case of Minister Darin King, I was returning his call because he had already also placed a call to me.

MS. CHAYTOR: Okay, so Minister King did not attend your meeting shortly after at Confederation Building?

MR. DAVIS: Not on Sunday afternoon, no.

MS. CHAYTOR: Not then?

Okay. All right.

And I understand from our interview, you told me Joe Browne did.

MR. DAVIS: Yes.

MS. CHAYTOR: Darrell Hynes, yourself, Heather MacLean, those – was there anyone else?

MR. DAVIS: I think that was all.

MS. CHAYTOR: Okay.

And then what was the purpose of that meeting and what was discussed?

MR. DAVIS: It was to, first of all, to grasp what we knew, an understanding of what had taken place; and then – of course, then the next determination is what do we need – what we need to do next or what I need to do next.

MS. CHAYTOR: Okay.

And in terms of that, what you need to do next, was there any conclusion reached as to what you, as premier, needed to do?

MR. DAVIS: Yes.

And first of all, there was nothing else for us to do that day. The police were investigating; there was a lot of unknowns at that point in time.

We made the decision that there was nothing we would do from a media perspective or talking to the media or talking publicly on it that day until we found out more. And we said we would – we

planned that and anticipated on Monday we would speak to the media and that there was nothing for us to do, nothing else for us to do on Sunday afternoon or nothing else that we could do.

MS. CHAYTOR: Did you garner any further information at that meeting about the circumstances that may have led Constable Smyth to travelling to Mitchells Brook?

MR. DAVIS: You know, tidbits of information became – different aspects of information became available as time went on. I can't specifically recall exactly what, how much or how little, I knew on Sunday afternoon.

I knew there'd been a shooting, knew that, you know, Constable Smyth was involved, that he went – that was regarding tweets. And there was very little – very little else that we knew about it or very little else that I knew about it.

MS. CHAYTOR: Okay.

Well, I understand you're trying to figure out what your next steps would be so I would think that you would be asking a lot of questions to garner as much information as you could at that point in time.

MR. DAVIS: Yeah.

MS. CHAYTOR: Especially if you're considering you're going out to speak to the public the next day

MR. DAVIS: Yes.

MS. CHAYTOR: So let me be a little more specific: Joe Browne was in attendance at that meeting.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: Joe Browne had been included in the email communications or at least some of the email communications between Donna Ivey; she had actually copied Joe Browne on the first email that went out to Doug Noel and Joe Smyth. And Joe Browne had weighed in, in the email communications to indicate that Mr. Dunphy was someone who was known to speak to *Open Line*.

So did Joe Browne give you any information or anyone else in that meeting that this originated with a tweet out of your office from Donna Ivey?

MR. DAVIS: Gave me information that the tweet originated from my office, is that what you're saying?

MS. CHAYTOR: Any of that information, Mr. Davis, in terms of the tweet came out of Donna Ivey in your office and that Joe Browne would have had knowledge of that and that this is what gave rise to Constable Smyth going to Mitchells Brook?

MR. DAVIS: Yeah, I think we – I think I knew that Sunday afternoon that there was a tweet that had been passed on to Protective Services Unit.

MS. CHAYTOR: Okay.

And so I understand this meeting was only about a half an hour in length?

MR. DAVIS: It wasn't very long, yes.

MS. CHAYTOR: Did you see any documentation in that meeting? Did you see the tweet? Did you see anything? Did you see the email communications?

MR. DAVIS: I don't believe I saw any email communication. I may have seen the tweet or that one last tweet on Sunday afternoon but I can't say specifically.

MS. CHAYTOR: Okay.

And so the plan was to monitor the situation overnight?

MR. DAVIS: Yes.

MS. CHAYTOR: And get back together in the morning and discuss further.

MR. DAVIS: Yes.

MS. CHAYTOR: And was that from a public communications point of view? What are you monitoring overnight?

MR. DAVIS: Well, it was from a public communications point of view but it was also gathering what was known, grasp a better understanding of what had taken place and, again, as the premier's office, if there was a role or function or responsibility that we had.

MS. CHAYTOR: Okay.

And I understand, then, after that meeting, later that night you had a series of other phone calls with various ministers who you considered to be your close advisors, including Minister Collins, Sandy Collins.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: And in your discussion with Sandy Collins, did you discuss the fact that this was a tweet that originated from his tweet?

MR. DAVIS: I think we did, yes.

MS. CHAYTOR: And did he – at that point in time had he seen Mr. Dunphy's tweets?

MR. DAVIS: I don't know.

MS. CHAYTOR: He didn't even discuss that?

MR. DAVIS: I think he did, but, you know – Mr. Commissioner, if I may, there was a significant series of events that took place and several conversations, people with different pieces of information. It's very difficult for me to articulate with certainty what pieces of information I knew when or where it came from or where the person who shared it with me received it.

MS. CHAYTOR: Okay.

MR. DAVIS: It's very difficult for me.

MS. CHAYTOR: Okay.

And, Mr. Davis, and I'm not going to ask you every single piece of information that you gained at any particular point in time. The point of this question is this is your first discussion with – to my knowledge, unless I'm wrong – but I understand this is your first communication – it happened at 5:41 p.m. on April 5th – your first communication with Sandy Collins. You're aware that this was linked to this series of tweets; you had been in his presence when he posted it. I would've thought that conversation may have stuck out in your mind and that would've been the subject of discussion. But if it doesn't, that's fine.

No? So you haven't – so you have no –

MR. DAVIS: No. No, I can't – no, I mean –

MS. CHAYTOR: – no specific recollection of your first conversation with Sandy Collins after the event?

MR. DAVIS: No, I can tell you, I contacted a number of ministers that evening: Minister Collins, Minister Dalley and Minister Hutchings.

MS. CHAYTOR: Yes.

MR. DAVIS: But I can't specifically say what each of those discussions were.

It was not unusual for me to contact Cabinet ministers and have a discussion about a circumstance that we were faced with or making decisions on or that we had to – that we had a responsibility for or it could be any number of issues. And it wasn't unusual for me to contact some of those ministers and seek their advice.

MS. CHAYTOR: Yes, and I understand that, and you also spoke with Ross Wiseman, Mr. Dalley –

MR. DAVIS: Yes.

MS. CHAYTOR: – and I also believe that you spoke with Keith Hutchings as well –

MR. DAVIS: I did.

MS. CHAYTOR: – that evening. Isn't that correct?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And I assume – were they able to provide you with any information regarding the shooting or did they provide you with any advice as to what government's next steps should be?

MR. DAVIS: When we left our meeting in the afternoon, Sunday afternoon of the 5th, we had anticipated we would speak to the media the next day. We were – I was cognizant of the need for us to be careful in any type of prejudicing the investigation or interfering with that.

We – I indicated and we discussed that I wanted a way to offer my condolences to Mr. Dunphy's family, and we agreed we would do that at our first public opportunity, felt that was the appropriate way to do that. And as a result of my conversations that followed that night, our plan did not change.

MS. CHAYTOR: Okay. And I believe you also had further discussion that night with Heather MacLean as well as Joe Browne.

MR. DAVIS: Yes.

MS. CHAYTOR: And are you able to tell me what was the purpose of those discussions?

MR. DAVIS: No, again, ongoing discussions, if there was anything new that we may have known or if anything had changed, but not specifically.

MS. CHAYTOR: Okay.

And in terms of your discussion then with Mr. Collins, he was an avid user of Twitter.

MR. DAVIS: Yes.

MS. CHAYTOR: And I believe you told me on your interview that it wouldn't have surprised you if he had in fact seen the tweets, but in any event it wasn't anything that he deemed necessary to bring to your attention prior to the shooting.

MR. DAVIS: Right, there's nothing he brought to my attention prior to Sunday afternoon.

MS. CHAYTOR: Right.

If we could have P-0301, please.

This is an email and it originates with Doug Noel at 5:25 p.m. on – and I'm saying 5:25 p.m. but this may well be Eastern Time. I don't know, Ms. O'Brien, if you're able to tell me. Most of the RCMP times are actually Eastern Time, so this is more likely 4, or just before 4 p.m.

Okay.

And if we come down then to – I'm just going to find the reference here.

MR. DAVIS: 5:18 would be 6:45, wouldn't it?

MS. CHAYTOR: I'm sorry, it'd be later. I'm sorry, yes. Yes, I'm sorry. I'm mixing up my times now, UTC.

Okay. So, yes, it would be later so it's more likely close to 7 in the evening. That makes more sense to me.

Okay. All right.

And this is an email that Joe – that Doug Noel originates and he's sending along some emails, I believe, to his superiors. And in the middle of the page here he's sending this – I understand – to Superintendent Zettler: "... not much there. The Premier just asked that the local members be made aware. I'm sure most of the members already know where Mr. Collin's lives."

And I understand that this – in terms of your communication, because one of the other things in your phone records did indicate that you have a conversation with Doug Noel that night – and I understand this communication is about arranging security for Sandy Collins that evening and RCMP being alerted.

Were you concerned about security for Mr. Collins, or was he concerned about his security that evening?

MR. DAVIS: I can't say. I don't recall the specifics of the discussion. If it says here that I asked that local members be aware, I don't have any doubt that we may have discussed that, but I don't recollect the thought behind it or ...

MS. CHAYTOR: And do you recall that being discussed between yourself and Sandy Collins?

MR. DAVIS: No.

MS. CHAYTOR: In your discussion and your phone records – we don't need to bring it up but, again, it's P-0252 – at 5:55 p.m. local time you had spoken with Corporal Noel. What else or what was discussed with Corporal Noel?

MR. DAVIS: I really couldn't say. I would, you know, if – I don't know. I can't answer your question.

MS. CHAYTOR: Did he tell you that he had been in contact with Constable Smyth before he went to Mitchells Brook?

MR. DAVIS: I don't recall.

MS. CHAYTOR: Did he tell you any of the details of what he may know about what had transpired at Mitchells Brook?

MR. DAVIS: I don't think so.

MS. CHAYTOR: And then what was the purpose of the call to Doug Noel?

MR. DAVIS: Constable Smyth was the primary contact most of the time. Corporal Doug Noel had regular contact with as well. And I would think it was probably because he was contacting me now to – and now become the main contact or a contact.

MS. CHAYTOR: Okay. I think this is you contacting him, though. This is ...

MR. DAVIS: Yeah.

MS. CHAYTOR: So were you concerned about your security that evening?

MR. DAVIS: I was worried about a number of – concerned about a number of things that evening, yes.

MS. CHAYTOR: Including your security. You're contacting the Protective Services Unit.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay. And why is that, Mr. Davis? Why at that point in time – this is just before 6 p.m. that evening – why are you concerned about your security?

MR. DAVIS: All of the circumstances were concerning to me. It was a – there was concern for a number of reasons. There was a person just lost their life. There was a connection to me and my office. Very quickly, through social media and so on, the conversation went – some very strong suggestions, accusations and so on. There was a lot of people who were upset; people around me.

My family were upset by what had taken place, and there was, of course, there was concern for – on a number of fronts.

MS. CHAYTOR: Okay. And I understand the social media piece, but that evening before 6 p.m. you're concerned, and you're concerned there might be a risk to your security because of the shooting death of Mr. Dunphy.

MR. DAVIS: It was a concern, yes.

MS. CHAYTOR: And we have heard some evidence that there was a change in terms of the amount of security given to you that evening and in the days following.

MR. DAVIS: Yes.

MS. CHAYTOR: And, in fact, the PSU was increased. There was an extra person put on the PSU, and I understand from other evidence that that remained in place for – throughout the time that you were premier.

MR. DAVIS: I can't speak to that.

MS. CHAYTOR: Okay.

MR. DAVIS: I know there was some other work done but I can't speak specifically as to what their set-up or design or allocation was.

MS. CHAYTOR: Okay.

Mr. Davis, did you speak with Chief Bill Janes of the RNC following the incident?

MR. DAVIS: No.

MS. CHAYTOR: Either that day or the next day.

MR. DAVIS: I don't think so. No.

MS. CHAYTOR: Okay.

To your knowledge did anyone in your office have any contact or communication with Chief Janes?

MR. DAVIS: I've heard or became aware, just in the process of preparing to come here today, that there's been some discussion about that but that's all.

MS. CHAYTOR: Okay.

Well, you would have heard it at the interview that we did in December.

MR. DAVIS: Right.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0446. And this is an email April 5, 2015, 7:34 p.m., the same evening. And this is internal to the RNC, Jason Sheppard to Bill Janes, Ab Singleton and Jim Carroll.

And he says: I will be sending three emails shortly from RCMP Doug Noel. And apparently this issue with threats from Mr. Dunphy started on Friday on Twitter sent to MHA Collins. See the details and the threat.

And then: Scott Haye and Ed Benoit are going to be going to get some information to RNC. Ed is then assigned to PPS until further notice. And they're going to be keeping two members with the premier until we see how this pans out. And Ed has been in contact with Doug Noel and the premier. So you had some contact and that's in your phone records as well that Ed Benoit contacted you.

MR. DAVIS: Yes.

MS. CHAYTOR: And Doug Noel will be picking up the premier from his home and conveying him to Confederation Building. And then here it says the "Premier's wife ... is upset as well as family as Premier intimated to you Chief, and also to Ed and Doug."

And so when I read that, Mr. Davis, it appeared to me that this is suggesting that you had spoken to the chief and that you had intimated to him that your wife and your family were upset.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: Okay. And this is the evening of the shooting, but you have no recollection of having spoken with the chief?

MR. DAVIS: I've thought about this since we spoke about it last in December.

MS. CHAYTOR: Yes.

MR. DAVIS: And I'm thinking I had a – may have had a conversation with Deputy Chief Singleton. I think either that day or the next day. And I also had a conversation with Superintendent Jason Sheppard but I don't have a recollection of contacting the chief.

MS. CHAYTOR: Okay. All right.

And what was your discussion with Deputy Chief Singleton about?

MR. DAVIS: It was about the – what would be happening immediately as far as Protective Services went.

MS. CHAYTOR: Okay, so strictly related to the PSU?

MR. DAVIS: Yes.

MS. CHAYTOR: And did that happen on the evening of the event?

MR. DAVIS: I believe it did, yeah.

MS. CHAYTOR: Okay

MR. DAVIS: I had a couple of phone calls – I had a couple of conversations that with – you know, I had talked to Ed Benoit, I talked to Doug Noel and I think I may have talked to the deputy chief as well that evening.

MS. CHAYTOR: Okay.

And in terms of your discussion with Deputy Chief Singleton, did he give you any other knowledge about Mr. Dunphy or about the circumstances that he knew of the shooting up to that point in time?

MR. DAVIS: No. I'm just trying to recollect this from our discussion in December, but I don't.

MS. CHAYTOR: Mr. Davis, did you contact Constable Smyth on April 5, 2015, after the shooting?

MR. DAVIS: I did.

MS. CHAYTOR: And what was your purpose in doing that?

MR. DAVIS: I was deeply troubled by the entire circumstance. A gentleman had lost his life. His family, community, was on my mind. I also realized that Joe Smyth was likely having the worst day of his life. We had a working relationship, fairly close working relationship, in the six or seven months before that and I just felt from a human perspective that it would be right just to reach out to him and let him know I was thinking about him.

MS. CHAYTOR: Okay.

And, Mr. Davis, from what you've told us, at the time by the evening, when you would've called Constable Smyth, the evening of April 5th, you had very little details of the actual incident.

MR. DAVIS: Yes, and there was a lot of chatter throughout the province that continued after that, a lot of suggestion or innuendo or presumption, and some facts, so we were – we continued to try and wade through what were – what was factual and what wasn't.

MS. CHAYTOR: Okay. And how were you doing that? How were you wading through it?

MR. DAVIS: Well, I was resulting with staff or listening to the media and so on, and we still didn't know a lot at that point in time.

MS. CHAYTOR: Okay.

And so were you aware of the circumstances that had led to the shooting or the circumstance at all involving the shooting at the time you placed your call to Constable Smyth?

MR. DAVIS: Only that he had gone there because of the – because to follow up –

MS. CHAYTOR: Because of the tweet, yes.

MR. DAVIS: – on the tweet. That was my understanding.

MS. CHAYTOR: Okay.

MR. DAVIS: But, again, I didn't know what he knew. I had no idea what he knew or why he went there.

MS. CHAYTOR: Did you have any details that led you to believe that he had acted in self-defence?

MR. DAVIS: I don't know if I specifically, you know, to self-defence. I really don't. There was very little that we knew at that point in time.

MS. CHAYTOR: Okay.

MR. DAVIS: And I know – I knew enough that we had to be very careful not to prejudice an investigation or jump to conclusion or do any of those types of things as well, to be very careful to know what the facts are.

MS. CHAYTOR: Yes.

MR. DAVIS: But – and I also knew that we had to be very patient because we had to stay out of the way and stay uninvolved so the police could do their investigation.

MS. CHAYTOR: Okay. Fair enough.

I'm just wondering though, you called to offer him support and you knew that he had shot another member of the province, and so would you be doing that if you didn't think that he had somehow responded himself to a threat?

MR. DAVIS: I – you know, we didn't discuss the event.

MS. CHAYTOR: No, I'm talking about before you placed your call to him you called him to offer support. You knew he had shot another individual.

MR. DAVIS: Uh-huh.

Right.

MS. CHAYTOR: Okay.

So did you know, prior to placing that call, any circumstance that would make you think Constable Smyth may have acted in self-defence?

MR. DAVIS: I think I knew that he had – that Mr. Dunphy had either pulled or presented or – a firearm or there was a firearm involved.

MS. CHAYTOR: And where did you get that information?

MR. DAVIS: I can't be certain. It might have been for our meeting or conversations but I can't tell you where I got it.

MS. CHAYTOR: Did you call anyone else in the aftermath to offer support?

MR. DAVIS: No.

MS. CHAYTOR: Did you reach out to Meghan Dunphy or any members of the Dunphy family?

MR. DAVIS: No.

MS. CHAYTOR: As premier of the province, did you on occasion do that, reach out to families who had undergone a tragic loss?

MR. DAVIS: I have, yes.

MS. CHAYTOR: Why didn't you do so in this case?

MR. DAVIS: I didn't feel it was appropriate. We had set a plan in place to offer my condolences publicly the next day. I don't think I knew that – knew anything about Mr. Dunphy's family at that point in time.

Today, I can think of – and I don't know if it's before or after this, but today I can think of two other examples when a time I did and a time I didn't. And both times when I did it was wrong and when I didn't it was wrong, in the past. So it was a difficult decision but we felt that the right thing to do was, at my first public opportunity on Monday, to offer my condolences.

MS. CHAYTOR: What did you and Constable Smyth speak about the evening of April 5?

MR. DAVIS: It was a very short conversation.

MS. CHAYTOR: What did you speak about?

MR. DAVIS: I called him to say you must – just calling to let him know I was thinking about him. I intentionally did not want to discuss the event. He made a comment to me that he did what he had to do, it was the only comment he made, and I just wished him well.

MS. CHAYTOR: At the time you called Constable Smyth did you know whether or not he had already been interviewed by the RCMP?

MR. DAVIS: I didn't know. No.

MS. CHAYTOR: You didn't know?

MR. DAVIS: I did not know.

MS. CHAYTOR: Okay.

And was that of concern to you in terms of any interference with the investigation?

MR. DAVIS: My thought was – is that he had likely had already had an interview and that my thought was if he was still being interviewed, he wouldn't answer the phone or he wouldn't be available. And so I thought it would be safe to call him at that point, that the interview had already been done.

MS. CHAYTOR: You would have thought the interview would have already been done.

MR. DAVIS: That was my thought, yes.

MS. CHAYTOR: Okay.

And is that based on your police background?

MR. DAVIS: I'm sure that's a part of it, yes, but my thought was he would have been interviewed.

MS. CHAYTOR: Okay.

Was that your only communication with Constable Smyth in the weeks following the shooting?

MR. DAVIS: Yes, I believe so. Yes.

MS. CHAYTOR: I believe you told me on your interview it would not have been.

MR. DAVIS: Okay.

MS. CHAYTOR: Do you have any relationship with Constable Smyth outside of a professional relationship? Is he a family friend?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

Is he a friend of your wife?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

MR. DAVIS: His relationship and our knowing of each other was as a result of me being the premier and he being on the Protective Services Unit.

MS. CHAYTOR: Okay.

And you are aware that Constable Smyth's phone records show text messages with your wife in the days following the shooting.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0501, and this is a series of SMS messages. And it's the next day, April 6, 2015, and it's between Joe Smyth and your wife. And it happens at two different times that evening, 7 p.m. and then 8 p.m. that evening.

And on page 2 of the document, please, Madam Clerk – and I can just read out but if you want to be brought to the specific reference – but if we can just scroll down, it should be the only thing unredacted.

He writes to her: "Just checking to see if you're doing ok. Please don't worry about this, it's why we're here and do the work. I'm happy to chat if you need to." And she comes back and says: "Thanks Joey. I'm fine as long as you are fine. You take good care of yourself please." And he says: "I'm fine, thanks. Chat soon." And then she says: "Sure thing."

And then on the next page at 8 p.m., so an hour later –

MR. DAVIS: I don't think that's correct.

MS. CHAYTOR: You don't think that's correct?

MR. DAVIS: No, that looks like it's the morning. Look, it's 10 a.m.

MS. CHAYTOR: Okay.

I'm sorry, where are we? 10 a.m.? Oh, I'm sorry.

Yes, this one came first. I'm sorry. This one came first and then this one is in the evening. You're right, I got them in backwards. Thank you.

All right so this was the first communication. He writes: "...Cheryl, you doing ok today?"

"I'm okay. I am so worried about you." And "I'm fine," he says "a very unfortunate set of circumstances that I can't help feel could have been so much worse. As long as you're not too shook up! We got your back." And she says: "I'll be fine. Thanks to you. He could have killed you. Oh my God."

So this is the next morning at 10:30 a.m. And it appears that your wife is certainly aware of some issue in which Constable Smyth's life could have been put in danger.

MR. DAVIS: Yes.

MS. CHAYTOR: Did your wife discuss this exchange with Constable Smyth with you?

MR. DAVIS: She has told me that she's received messages from him, but I don't believe the specifics of it. I checked on him, very general type of comment.

MS. CHAYTOR: Okay.

And where would your wife have gotten any information to lead her to believe that –

MR. DAVIS: Or – I'm sorry, or he checked on me. Sorry.

MS. CHAYTOR: Okay.

Yes, and where would she have gotten any information to – in terms of Mr. Dunphy could have killed Constable Smyth?

MR. DAVIS: There's any one of a large number of sources of information that existed publicly the next day. The night before as well, actually, but the next day as well.

MS. CHAYTOR: I told you – or you told me, sorry, on your interview that you believed that your wife did continue to communicate with Joe Smyth over the weeks that followed.

MR. DAVIS: There was times that she had communication with him. But if it was the weeks that followed or was it after that, I can't give you a time.

MS. CHAYTOR: Okay, but in the aftermath. This wasn't the only communication.

MR. DAVIS: After – after April 5.

MS. CHAYTOR: After April 6.

MR. DAVIS: Yes.

MS. CHAYTOR: Right.

Did you ever ask her to contact him on your behalf?

MR. DAVIS: No.

MS. CHAYTOR: Did she relay any information from Constable Smyth to you?

MR. DAVIS: No.

MS. CHAYTOR: Other than your discussion with him on the night of April 5 when you said that there wasn't anything in terms of the incident itself discussed or the specifics, what – did you ever have a discussion with Joe Smyth in which he told you about the circumstances of the incident?

MR. DAVIS: Have I ever had a conversation with Joe Smyth?

MS. CHAYTOR: Yes, about what transpired between himself and Mr. Dunphy?

MR. DAVIS: No.

MS. CHAYTOR: I'm going to bring up, please, P-0440. And this is a series of BBMs between Doug Noel and Joe Smyth. And, again, we didn't have those at the time of your interview, Mr. Davis; this is a recent production to the inquiry.

And there are a few references to you in these messages so I'd like to provide you with an opportunity to speak to this. If we look at page 3 and this is – this speaks to, I'm thinking, but you tell me if I'm wrong, but I'm thinking this might speak to your reluctance to use the PSU.

So this is before the incident, it's April 2: Heather and the P – so I take that to mean Heather MacLean and the premier, or at least that's what Doug Noel has told the Commissioner, all right – hop in, they're going to CBC.

“He asks her, now what am I gonna to say if he says I see ya got dropped off by a police officer. They agree he'll respond that this isn't his only stop today. Then as he's getting out he says to me, keep your head down, we don't want them to know you're here. He is so sensitive to everything!”

So is this speaking to your concern not to be seen with Protective Services?

MR. DAVIS: It certainly seems to be, yes.

MS. CHAYTOR: Okay.

And if we can go to page 8, please, Madam Clerk, and it's at the bottom of the page. Okay.

And this is the next evening and it looks like Doug Noel has just dropped you from somewhere. And then Joe Smyth asks: “Ok, how's he doing? He called me a few min ago.”

And so this is actually not the next day, this is still the night of April 5 because our timing here at 12:44 a.m., that's UTC time. And so this would have been that evening which, I guess, equates into about 10:15 a.m. or 10:15 p.m. Newfoundland Time. So does that seem about the right time for your call with Constable Smyth on April 5?

MR. DAVIS: I don't remember calling Constable Smyth on that day.

MS. CHAYTOR: Okay, this is April 5, not April 6.

MR. DAVIS: Oh on April 5. Okay.

MS. CHAYTOR: Yeah.

MR. DAVIS: So – okay.

MS. CHAYTOR: So even though it said the 6th ...

MR. DAVIS: I'm sorry because I was reading the 6th.

MS. CHAYTOR: Yeah, yeah. So we go back 2½ hours. So it's about 10:15. Okay?

MR. DAVIS: Okay. Yeah.

MS. CHAYTOR: And he says: How's he doing? He just called me a few minutes ago.

MR. DAVIS: Yeah.

MS. CHAYTOR: So it looks like you called him around 10:15 or shortly around that time.

MR. DAVIS: I know it was late in the evening, yes.

MS. CHAYTOR: Okay.

And Doug Noel replies: "He's okay. She's rattled."

"Both concerned about you."

"I'm as good as I can be. I don't question what I did."

And then they speak about Jason Sheppard is looking after things at the PSU it appears.

And then if we turn over, please, to the bottom of page 10, Madam Clerk. And this will take us into then the next day. No, it's still the same conversation, sorry. And this is at the bottom of page 10, the same conversation, the same night shortly before 1 a.m. UTC time: "Joe Brown and the P were excellent!"

Okay, no concerns at their end? Smyth asks Noel. No, no problems with them.

And Smyth says: "I was worried that unwanted attention getting put on the detail."

And Doug Noel says: "Lots of attention. It's gone national ..." and he's not happy about that. He says he "stayed away from it ... Not exactly what we wanted."

"Yes. Stay away from it"

"But it does show how we are needed." And he says: "Fair point."

And then this I understand to be referencing you again, according to Doug Noel: "The P is not concerned about that part."

Smyth says: "That's good."

"No worries joe, all good!"

“I told him we need to be cautious of potential sympathizers.” This is Joe Smyth saying to Doug Noel the evening of the 5th, after your conversation, that he told you “we need to be cautious of potential sympathizers.”

Do you remember that being discussed with Joe Smyth when you spoke to him on the evening of the shooting?

MR. DAVIS: No.

MS. CHAYTOR: Do you know what Doug Noel is referring to when he tells Smyth, further up in the chain where I showed you, that you and Joe Browne – there were no concerns with them? What did you and Joe Browne discuss with Doug Noel that evening that he could be referring to?

MR. DAVIS: I’m not sure. Could you put that back up there?

MS. CHAYTOR: Sure.

Okay, just let me find the reference for you. It’ll be faster.

It’s on the bottom of page 10, please, Madam Clerk. It says: Joe Browne and the premier were excellent. “Ok good... No concerns on their end?”

“No concerns with them.”

MR. DAVIS: I don’t know.

MS. CHAYTOR: And this would be the evening, again, of the shooting.

And I can tell you that, if I’m recollecting correctly, you don’t have any recollection as to what this might be referring to, I take it, do you, Mr. Davis?

MR. DAVIS: Yeah, I don’t know what this is referring to.

MS. CHAYTOR: I understood, and I’m sure someone will correct me if I’m wrong, but my recollection of what Doug Noel said on that was in terms of you no longer being as reluctant to have close protection, that you were now letting them do their job, basically.

MR. DAVIS: That could very well be, yes.

MS. CHAYTOR: Would that make sense –

MR. DAVIS: Yes.

MS. CHAYTOR: – in terms of your discussions that evening with Doug Noel?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And he does go on to say that: It does show that we’re needed.

And after that comment about be cautious – where Smyth says he warns you to be cautious of sympathizers, Sergeant Noel replied – if we can just scroll back down to that piece: “I told him we need to be cautious of potential sympathizers.”

And I understand you didn't – you don't recall that part of your conversation with Constable Smyth. And Doug Noel says: "Well, that message took! That's what they were talking about."

Do you recall discussing with Joe Browne, Doug Noel, anybody that evening about the potential for sympathizers towards Mr. Dunphy?

MR. DAVIS: We had a number of conversations about safety and public response and what some of that could be. And very quickly – very, very quickly there was an overwhelming response and difficult for many on many levels.

But he's talking of sympathizers; you know, I understand, I think, what he's saying. I don't remember us having that discussion but I understand what he's talking about. And we talked, we had a conversation about my security and the security of my family and what issues may arise.

MS. CHAYTOR: Okay.

MR. DAVIS: Well, you know.

MS. CHAYTOR: And what was the concern in terms of sympathizers towards Mr. Dunphy and how that might have an impact on security to your family?

MR. DAVIS: Well, Mr. Commissioner, I mean very quickly there were accusations publicly of me being behind this. There was a broad range but it included me being behind this, me having ordered it, me directing Constable Smyth to go to see Donald Dunphy; everything from there to me ordering an assassination, in those types of words and language. And that was a concern.

MS. CHAYTOR: Okay.

But this is the evening of the shooting, though. Was there something at that point in time?

MR. DAVIS: There was, very quickly – I can't tell you specifically what was out, what occurred on Sunday night but I do remember that very, very quickly discussions turned to a –

MS. CHAYTOR: Okay.

MR. DAVIS: Yeah. So it became difficult very quickly.

MS. CHAYTOR: Okay.

And if we go down to the bottom of page 13, please, Madam Clerk.

This is continuation of the same exhibit, and this is Doug Noel and Constable Smyth still speaking. And at this point in time it's now April 6, 3 p.m. or just after 3 p.m. UTC time.

And he's advising him: "He's having a scrum right now where he normally does." So this is your scrum, your media scrum, which we're going to also speak about in your evidence.

And then he says – there's some other communication between them and then Doug Noel tells him: "They are asking him if he spoke to you, how you are." And Constable Smyth is not happy, it appears, with that. "He probably should not of called." And then – and Corporal Noel replies: "Nah he handled it. Said brief convo. No details."

Okay.

Now, Mr. Davis, but it was a brief conversation.

MR. DAVIS: Yeah, it was.

MS. CHAYTOR: And there weren't any details. Is that correct?

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

MR. DAVIS: Mr. Commissioner, if I may, I tend to agree with Constable Smyth's comment there, I have to say. I probably should not have called him.

MS. CHAYTOR: And why is that now, Mr. Davis? Why is it that you think in hindsight you should not have called him?

MR. DAVIS: Yes.

MS. CHAYTOR: And why?

MR. DAVIS: You know, I called him – I gave the reason why I did call him. I explained to you why I did call him. But knowing the circumstances that existed, that there was still going to be an investigation, there was going to be a lot of discussion into the future, if I did not call him it probably would have simplified some of those complications. I should not have called him.

MS. CHAYTOR: Okay.

And if we could have the bottom of page 19 in this exhibit, please. And this is still a communication happening between Constable Smyth and Corporal Noel. And it's April 11, 2015, 1:11 a.m. UTC time, so that would be late in the night of April 10.

And the part that I want to take you through – okay, it's right here. So this is the – on April 10 we know that there was an email that Constable Smyth had written to members of the RNC and a few other people and sent, that he – and it ends up in the hands of David Cochrane, CBC.

And so he's telling – Doug Noel is saying to Joe Smyth: "Yeah, that's gross. Brutal day. But the P thinks the CBC article wasn't too bad."

"Could have been a lot worse."

Did you have discussions with Doug Noel about the email that had been written by Constable Smyth and it having been released to the media and about the press coverage of that?

MR. DAVIS: I don't remember discussing it with him. I don't know if I was having a discussion with somebody else and he may have been there, but I don't remember discussing it. It may have been – I don't remember it.

MS. CHAYTOR: Okay, so not directly with Sergeant Noel or Corporal Noel, but you may have had discussions around that, and you made a comment that it didn't seem too bad, the CBC article.

MR. DAVIS: It may have been a conversation with Corporal Noel, as well. I can't say. I don't know.

MS. CHAYTOR: Okay.

And what is it – if you can turn your mind back, what is it – what did you mean? Is that accurate? Did you say words to that effect, that the CBC article didn't seem too bad and, if so, what did you mean by that?

MR. DAVIS: I don't recall. I'm seeing this – I didn't see this part of this before now so I'm trying to recollect, but obviously it appears to me that my opinion on the article that resulted from that email or that letter that you referenced.

MS. CHAYTOR: Okay, and so you can't offer anything else on that. That's –

MR. DAVIS: Yeah.

MS. CHAYTOR: Okay. Fair enough.

MR. DAVIS: There's a lot of articles involved that's been published that –

MS. CHAYTOR: I understand, but you don't have any –

MR. DAVIS: – that involves Paul Davis, Premier Paul Davis.

MS. CHAYTOR: Yes.

MR. DAVIS: And it's not unusual for staff or us to discuss – not specific to Mr. Dunphy, but on any number of a thousand matters and to offer an opinion: Oh, well, that's balanced or that's not or whatever. It appears here I felt it was – it wasn't – saying it wasn't too bad would be, well, that's not bad. That's –

MS. CHAYTOR: Okay.

MR. DAVIS: But I can't speak specifically to it, but that's what it appears.

MS. CHAYTOR: Were you aware of any communications between members of your staff and Constable Smyth in the days immediately following the incident?

MR. DAVIS: No.

MS. CHAYTOR: Did you give your staff any advice as to the advisability of speaking to Constable Smyth in that time frame?

MR. DAVIS: I don't think so, no.

MS. CHAYTOR: Okay.

And we do know that Donna Ivey spoke with Joe Smyth, and there's also some BBM message that we have, as well, predating that, but she also did indicate that she did speak with him.

And we also now have BBM messaging between Heather MacLean and Joe Smyth, and this is on April 7th, so two days afterwards. And in those messages, Ms. MacLean is looking or asking Constable Smyth if he had any correspondences or if he came across any correspondences from Donald Dunphy when he had been doing his – looking into him, doing his searches into Mr. Dunphy. And she also inquires as to whether or not – of Constable Smyth – whether or not Mr. Dunphy had a police record.

Were you aware that your director of communications was asking for any information about Donald Dunphy?

MR. DAVIS: No, not aware.

MS. CHAYTOR: And not aware that she was posing these questions to Constable Smyth?

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

Did you ask her to obtain any information regarding Donald Dunphy from anyone in the aftermath of the shooting?

MR. DAVIS: No. And I – just to clarify it, other than we were interested to know facts as they became known. It was important if something became publicly known it would be, it would be beneficial for me to know it, knowing that I could have to answer questions on it at any given time. So that’s an ongoing process with any number of topics, including the death of Mr. Dunphy.

MS. CHAYTOR: Okay.

But whether or not Mr. Dunphy had a police record, is –

MR. DAVIS: I had no knowledge that she asked for that.

MS. CHAYTOR: And is that – would that be something that was important for you to know?

MR. DAVIS: No.

MS. CHAYTOR: No. Okay.

Okay, they also communicate – and when I say they, I mean Heather MacLean and Joe Smyth – regarding Constable Smyth’s April 10 email. And either before or after that it was leaked to – either before or after it was leaked to the media, were you aware that Heather MacLean was having any discussions with Constable Smyth about that email.

MR. DAVIS: No.

MS. CHAYTOR: And was that anything that you instructed her to speak to him about?

MR. DAVIS: No.

MS. CHAYTOR: Were you aware that Constable Smyth had reached out to see if he could assist with your media scrum?

MR. DAVIS: No.

MS. CHAYTOR: And would you think that would have been appropriate to take Constable Smyth up on that offer, if you and your staff had been aware of it?

MR. DAVIS: If I was aware of it I would have said not to.

MS. CHAYTOR: Okay. And why is that?

MR. DAVIS: Well, because it's – I – hearing there is communications happening, the same as my own response in my call to him, I think that it would have been important to have a separation, especially during the investigation.

MS. CHAYTOR: Okay.

THE COMMISSIONER: I think we're losing you again.

MR. DAVIS: Oh, sorry, Commissioner.

MS. CHAYTOR: Okay, Mr. Davis, I'm going to move now then to your public communications. And I understand that you spoke publicly on this matter on April 6 and that was your first public communication.

THE COMMISSIONER: Ms. – I'm just checking, do you have an estimate of how you're doing with ...?

MS. CHAYTOR: How I'm doing with time? I'm doing – I'm three quarters.

THE COMMISSIONER: Three quarters, okay.

Well, I think it's about time – we'll take a break and come back. Try and keep it to around 10 minutes, a little bit shorter than normal and, hopefully, we'll finish before 5.

MS. CHAYTOR: Thank you.

MS. SHEEHAN: All rise.

The inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Anybody have their mic on who shouldn't? The reporters are picking up some inputting, but I don't see where it would be coming from here. Okay.

All right, go ahead when you're ready.

MS. CHAYTOR: Okay, thank you.

Mr. Davis, when I left we were about to get into your media scrum that you did on April 6. And other than your director of communications, did you consult with anyone else prior to the media scrum to get any more information?

MR. DAVIS: It was quite normal for Heather MacLean, Joe Browne, sometimes Donna Ivey or Darrell Hynes, for us to have a discussion to prepare. And there was a number of those discussions that occurred in preparation.

MS. CHAYTOR: Okay, so nobody outside your – the premier's office?

MR. DAVIS: I don't think so.

MS. CHAYTOR: Okay.

And there was a phone call that morning. Again, you spoke to Sandy Collins, your records show, at 7:41 a.m. Did you and Sandy Collins speak about anything to do with Mr. Dunphy, the tweets or anything?

MR. DAVIS: Probably.

MS. CHAYTOR: Okay, nothing that you can specifically recall?

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

What message did you, as premier, want to convey to the people of the province about this event?

MR. DAVIS: Well, as I stated earlier, my first priority was to extend condolences to Mr. Dunphy's family, which I did. And we also fully expected that the media would be asking questions on my knowledge or involvement, and what I knew and my perceptions and so on. And we're – and I was very cognizant of the need to not discuss details, specific details, or that may or may not have been accurate at that point in time, but know that they wanted to talk to me about – or that we would speak generally.

MS. CHAYTOR: Prior to doing the media scrum that morning, did you or anybody on your behalf contact anyone at the RNC?

MR. DAVIS: I know now there was – I know there was Heather MacLean. I know then, as well, Heather MacLean had a copy of prepared notes or anticipated notes of some degree for Chief Janes.

MS. CHAYTOR: Okay.

And did you become aware of that through the interview process here?

MR. DAVIS: I knew she had some notes back then and I remember her having some notes. I don't know how she came in possession of them.

MS. CHAYTOR: Okay.

And did you yourself speak to Chief Janes prior to – or communicate in any way with Chief Janes prior to the media scrum?

MR. DAVIS: Yeah, as you, you know, asked before, I don't believe I did.

MS. CHAYTOR: Okay.

All right and if we could bring up P-0252 please. And is your telephone records and there's a call here that I showed you at the time of the interview as well. And it's page 7, please, of this document.

And if we scroll down to – once we get to page 7 we scroll down – the numbers have now been redacted heavily you can see here, Mr. Davis. But number 92 at 9:15 a.m. on Monday, April 6, there's a telephone call here. And it's heavily redacted now but it's a little bit of over eight minutes. And that is – and we discussed it at the time of your interview – an RNC telephone number.

MR. DAVIS: Uh-huh.

Yes.

MS. CHAYTOR: And at the time you indicated that it could have been Chief Janes. Do you have any knowledge as to who it was? And, again, this is 9:15 in the morning, who at the RNC you would have been speaking to.

MR. DAVIS: That number, and I know the one you're referring to, that is the number to the chief's office, but it's also the number to the deputy chief's office. It's the general number into that – so there's a suite of offices within an office.

So, again, I gave this some thought since our discussion in December. I don't recall speaking to Chief Janes. I don't recall that. I believe I spoke to Deputy Chief Singleton.

MS. CHAYTOR: Okay.

MR. DAVIS: But I know that number first-hand, the number.

MS. CHAYTOR: And I think we've heard from Jason Sheppard, Superintendent Sheppard that you were calling into the chief that morning, I believe is his evidence. And, again, I'm sure somebody will correct me if I'm wrong on that. And that he picked up the phone because neither the chief nor the deputy chief was there, but the premier was calling and that he picked up the phone.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: Okay.

MR. DAVIS: I did have – I do recall having a conversation with Superintendent Sheppard.

MS. CHAYTOR: Okay.

MR. DAVIS: I think superintendent is the right rank – Sheppard.

MS. CHAYTOR: Okay.

And what was your purpose in placing a phone call into the chief's office that morning?

MR. DAVIS: I wanted to have a discussion about how we were handling security from – on a – from there forward.

MS. CHAYTOR: Okay.

And in terms of Heather MacLean receiving – she did receive a copy of Chief Janes' speaking notes and there was some Q and A attached to it. So you didn't know that before she got it.

Was that usual that you and the chief of police would exchange or that you would receive his speaking notes prior to addressing the media?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

So it's a pretty unusual circumstance, I take it, that you were dealing with?

MR. DAVIS: All of these circumstances were unusual.

MS. CHAYTOR: Okay.

Do you know whether or not your speaking notes, or did you have speaking notes that were provided to the chief?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

At the time, before you spoke, did you review the chief's notes?

MR. DAVIS: I think Heather MacLean shared them with us by sharing what she had in front of her, but I don't think I had a copy of the notes.

MS. CHAYTOR: I'm sorry, she did share it or shared the content or ...?

MR. DAVIS: She shared the content with us.

MS. CHAYTOR: She shared the content? Okay.

MR. DAVIS: We discussed the content of it.

MS. CHAYTOR: Okay.

And do you know – and what would the purpose of that be? Why would you need to know the content of what the chief is going to say about the incident?

MR. DAVIS: Well, from my perspective, it's still important for me to know what is known publicly, what anyone in authority is saying about it, so we have up-to-date and the most accurate information. And, again, I also want to be cautious of certainly not doing anything to compromise anybody's individual privacy and the integrity of the investigation. So I just feel it's important to have those types of information so we can make those judgment calls, those decisions.

MS. CHAYTOR: Okay.

I understood from your interview that you saw the tweet that was of concern to Ms. Ivey that she brought, that caught her attention. That you saw that on either the day of, after learning of the shooting, or the next morning, but prior to the media scrum. Is that correct?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

And did you at any point in time think that what Mr. Dunphy was saying in that tweet was directed at you?

MR. DAVIS: What he was saying in the tweet?

MS. CHAYTOR: Yes.

MR. DAVIS: The tweet itself was directed at me.

MS. CHAYTOR: Okay, and – but not what he was saying in the tweet?

MR. DAVIS: Correct.

MS. CHAYTOR: And how was the tweet itself directed at you? Because he had put it at @PremierofNL, is that what you mean?

MR. DAVIS: Correct.

MS. CHAYTOR: Okay, so he meant for it to come to your attention. Is that what you're saying?

MR. DAVIS: Yes, it was the – my belief was the message was not to come to my attention, but directed at me.

MS. CHAYTOR: Did you think that it was also, then, directed in that sense at Mr. Collins?

MR. DAVIS: Yes.

MS. CHAYTOR: Okay, so not the content of the tweet, though, in terms of the dead MHAs or family members. You didn't understand that to be directed at you.

MR. DAVIS: It was – well, the information was directed to me. If you're asking me did I think the two dead MHAs, he was referring to me and Sandy Collins, no, if that's what you're asking.

MS. CHAYTOR: Well, I'm just trying to understand your answer because I understand you to say that he meant for you to receive the tweet and see it –

MR. DAVIS: Yeah. Uh-huh.

MS. CHAYTOR: – but I thought your answer was but you didn't interpret the content as being directed at you nor Mr. Collins.

MR. DAVIS: Right, he wasn't talking about me. Yes.

MS. CHAYTOR: Not talking about you.

MR. DAVIS: Yes.

MS. CHAYTOR: Nor your family?

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

MR. DAVIS: You know, I got to say there was a lot of uncertainty and I had a lot of uncertainty as to exactly what the meaning was.

MS. CHAYTOR: Okay. All right.

Now, Mr. Davis, and I realize this is something that's drafted on your behalf for you, but in your application for standing before the Commission and in putting forward whether your participation could further the conduct of the inquiry, it was stated: Given that the alleged threat, which was the subject of the investigation into Mr. Dunphy, may have been directed in part against the applicant, meaning you, that Mr. Davis's evidence as to the circumstances known to him surrounding the same will be essential to the work of the inquiry.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: But it's your understanding it wasn't your – you never felt or thought that what was being said by Mr. Dunphy was directed at you in terms of the content, the dead MHAs, family members that may be hurt.

MR. DAVIS: I think generally what you're saying is correct.

MS. CHAYTOR: Well, tell me what part is not.

MR. DAVIS: Well, the tweet was sent to me, it was addressed to me. That's the way I interpret my name being included in the tweet.

MS. CHAYTOR: Okay. All right.

And if we could then go on to P-0547, and page 2, please, Madam Clerk, of 0547. And this is a transcript of what you said in your media scrum that day.

And if we come down, make it a little larger, please, the middle of the page.

The reporter asks you: "And I am assuming you would have read that tweet by now. I've read the contents of those tweets. Did you view what Mr. Dunphy put on Twitter as any kind of a threat?"

You reply: "You know when people put their hand up to enter politics and to do these types of roles you know sometimes that your life and your family life becomes an open book, you know, in so many ways. So quite often you become accustomed to people challenging us on policies. You know decisions we make and how we govern but you know it's upsetting when you see a comment made like that that's directed. You know, it's directed – it appeared to be directed towards me and another cabinet minister and also the people that are most important to us – our families."

And then you go on to speak of your mother, your wife, your child. "I've got a family myself and you know this impacts them as well. You know, we quite often think about this. They never put their hand up. I put my hand so that's disconcerting and there's no two ways about it that that causes some concern."

Mr. Davis, so I just want to offer you an opportunity to explain then what you mean by that. And I understand you to be saying that you didn't understand the content of what Mr. Dunphy said to be directed towards you.

MR. DAVIS: So, Mr. Commissioner, if you read the transcript from the beginning, or even before I go into the scrum, I can't – I don't think I can adequately describe how difficult this day was for me personally. The aftermath, after Mr. Dunphy's death, was – and response – was quick and it was – and I think I can describe it as brutal in many ways. It not only impacted me, and where it was addressed to me, people were making and beginning to make some very serious allegations. And I can't describe to you the impact this was having on the people around me, and my family and the people around me.

At least three times before I made that statement, reporters had referenced this as a threat in this – during this scrum. There's at least three. I think there's six times during the scrum that the word "threat" or "threatening" – at one point in time a suggestion it's not threatening – was stated by reporters.

At no time did I indicate it to be threatening. And I also knew that the interpretation of the tweet was a significant issue to be determined and discussed and would be – and I anticipated it would be for a long time.

And I in no way wanted to try and offer an interpretation based on the limited knowledge I had of what had taken place. I had no idea of discussions or if Mr. Dunphy had articulated to anybody what he meant by that, and so on.

So after I'd been asked about, I think, three times there, if we go back and look through it –

MS. CHAYTOR: Okay, we can go back. If you want to point out, you just tell me where to stop.

MR. DAVIS: Yeah, so right at the very beginning.

MS. CHAYTOR: Okay, the first time the reporter speaks?

MR. DAVIS: No, even – well, if we go back to the beginning.

MS. CHAYTOR: Yes.

MR. DAVIS: As I indicated our plan was –

MS. CHAYTOR: Yes.

MR. DAVIS: – I first expressed my shock, my sadness and my condolences to the family and to the community.

MS. CHAYTOR: Correct.

MR. DAVIS: And then a reporter asked me a question and says: Premier, do you know about the threats that were made against you?

So I gave an answer and there's – again, I know the question is a little bit longer than that. I gave an answer, and then the reporter says: "And was there a perceived threat?" And I questioned it and he said: "Was there a specific perceived threat against anybody?"

And then I said that it would be part of the investigation, which I've already articulated that it was important to protect the integrity of the investigation, not prejudice any investigation or anybody's rights or privacy, and those types of things were on my mind.

And then there's questions about who would investigate, and I articulated here that who investigates is a decision for the police. I talked about that.

And then back to the tweet again, I'm being asked more about was there more than just what was on Twitter, were there phone calls or letters and so on. I don't know. And then I'm asked again about – you've read the tweets and the content, did you view Mr. Dunphy, what Mr. Dunphy put on Twitter as any kind of a threat.

So – and I know Sunday night when this broke, it was commonly referred to as a threat and I wanted to be careful of that as well. Not that was – that was what the media were reporting; it was a threat. And my family interpreted that too. My family were hearing this and my family were hearing about the response to this.

So, Commissioner, with all sincerity, I can tell you it was a difficult day for me. So I wanted to provide an answer of value and also articulate somehow the difficulties that existed there.

I didn't know what the tweets meant. I didn't. And there are versions and people – you know, some people would say it's simple, here's what it meant. And I don't believe it's simple to know what it meant. I really don't.

And when someone writes a tweet that has dead MHAs, with a description of the dead MHAs, references may hurt, and family, then that needs – someone needs to know what that's about. But all of that was on my mind at this very moment and at this very point in time and the impact it was having on, not only me, but how other MHAs sometimes have difficulties with public commentary and so on and the impact it was having on my family.

MS. CHAYTOR: Okay.

MR. DAVIS: And that's the best way I can describe it to you.

MS. CHAYTOR: Okay.

And so you – at this point in time had you seen the series of tweets or just the one tweet?

MR. DAVIS: I believe I've seen the series of tweets at this point in time.

MS. CHAYTOR: You had seen the series of tweets at this point.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay. All right.

And had – you had spoken with Constable Smyth. And did you understand from your conversation with him that he was investigating a threat?

MR. DAVIS: We didn't discuss that.

MS. CHAYTOR: Okay.

And if we could look at page 5 and 6 in this document and I'm going to take you towards the bottom of page 5. And this is another area of questioning for you.

You're asked: "Will the size or scope of the security detail for you personally change now or other members who"

MR. DAVIS: Who may be threatened.

MS. CHAYTOR: "... who may be threatened?" Sorry.

MR. DAVIS: There it is again.

MS. CHAYTOR: Yeah.

MR. DAVIS: Yeah.

MS. CHAYTOR: Yeah.

"Well Fred you know, good question and fair question but you know we haven't – we always try to stay away from that and stay away from discussing the specifics of it. You know I can tell you that in discussions and talking to the RNC and RCMP since you know I became in this we sometimes have discussions about their presence and when they should be utilized. You know, I like to go places by myself." And you talk about you and your wife having been at the hockey game. And "You know, I had no staff" and no security with you, and you like to go about your life in your role as MHA as well as premier.

"Do you think that's a good idea?"

"Well you know, again, I can tell you that the RCMP and RNC have had numerous discussions with me about that."

And the reporter says: "And your wife I'm sure."

"And my wife as well, yup, and it is something we've got to give ... serious consideration to. We are – I think it's very fair to say we are in a very different time today than we were you know, a number of years ago."

And, Mr. Davis, I'm just wondering, then, what did you mean by that, that we are in a very different time today? And in terms of the context of your media scrum, in terms of this being the aftermath of Mr. Dunphy's shooting?

MR. DAVIS: Well, it's in terms of the comment that I made that we are in a very different time today. We're in a time when everywhere I went as premier, most often people knew where I was going. Where I was and what I was doing at any given time could be shared with large numbers of people. There was – when you're premier, there's very little privacy in your life.

And, also, people can very openly, without any accountability, make statements and comments, reach conclusions or accusations without any level of accountability, and that's new for us. That's new for – I think it's new for the world with the onset of social media. And I believe that that changes a lot of factors.

MS. CHAYTOR: Okay, and so for –

MR. DAVIS: And you referenced yourself earlier Alberta, which I think is a good example.

MS. CHAYTOR: Okay, and so in terms of the times, from the security perspective of you as the premier at the time, what's being referenced here, it's the social media age that we're living in is the extra concern. Is that what you mean?

MR. DAVIS: That, too; inclusive of that, yes.

MS. CHAYTOR: Okay.

You also have here an interview the following day on April 7, unless there's anything else in this that you wanted to speak to, Premier. If there's anything else, but if not I'd like to move along. But you have an interview the next day, I believe, with Evan Solomon of the CBC at the time.

Do you recall that interview as well?

MR. DAVIS: Yes.

MS. CHAYTOR: And you made similar comments to him in terms of – and I can just give you some of the notes that I have from that about “very clearly Canada is changing. It's changed in the last few months”

And you talk about the tragic circumstances that had happened in New Brunswick and in Ottawa, “we saw issues in Halifax” you say “just recently. Times for us as a province are changing. We know that social media quite often opens the door for people to make comments openly more than we have” ever seen before.

And that was an answer to a question with respect to Mr. Dunphy's situation and what he had tweeted. This was two days after his shooting. And were you comparing Mr. Dunphy's case, or did you see that as comparable to the Ottawa shootings on Parliament Hill or the events in New Brunswick or Halifax?

MR. DAVIS: No.

MS. CHAYTOR: Okay, so perhaps you can just put that in context then.

MR. DAVIS: Sure.

The program I was on was a national show, it was a national broadcast. Nationally, there's been lots of discussions about security in our country and the safety in our country in the changing and evolving times that are impacting the world. So this was not relevant to Mr. Dunphy, it was a comment generally in the times that we live in.

MS. CHAYTOR: Okay.

And, Mr. Davis, at the time, of course, you are premier of our province.

MR. DAVIS: Yes.

MS. CHAYTOR: Do you believe that these comments could have the effect of instilling fear in people? And do you have any concerns about those comments in hindsight?

MR. DAVIS: The comments that I made?

MS. CHAYTOR: Yes.

MR. DAVIS: That they may have instilled fear in people?

MS. CHAYTOR: Instill fear in people or instill – you know, instill a degree of apprehension in people as to what these comments could mean in terms of our security.

MR. DAVIS: I don't think so.

MS. CHAYTOR: Okay.

And other than people expressing their views on social media and that adding a layer in terms of hostility, I guess that's – people may sometimes hide beyond anonymously: that, and knowing where you are through social media. Other than that did you have – overall, your government have any concern with social media and people using that as a form in which they could openly communicate and express their views?

MR. DAVIS: Did I have any concerns with it?

MS. CHAYTOR: Yes.

MR. DAVIS: No, I think it's a valuable – can be valuable for governance and policy development.

MS. CHAYTOR: Yes, and your government was using it themselves –

MR. DAVIS: Yes.

MS. CHAYTOR: – to get messages out there.

MR. DAVIS: Yes, absolutely.

MS. CHAYTOR: Okay.

Okay, so it wasn't a concern of your government to try and suppress any kind of freedom of speech through the use of social media.

MR. DAVIS: Not at all. No.

MS. CHAYTOR: And in terms of, in terms of revising your security in the wake of the events – and I think we've already spoken about that – other than the incident itself with Mr. Dunphy, was there already plans underway for that to happen because of social media or those concerns? Or was it Mr. Dunphy's shooting that precipitated the increased security?

MR. DAVIS: There was a change, there was a change – I had a different viewpoint after April 5, but how the RNC conducted the security was completely within their purview.

MS. CHAYTOR: Okay.

Mr. Davis, I think – and you've already mentioned this two or three times but there were a lot of, there was a lot of public outcry in the aftermath of this, and there continues to be a lot of discussion around it. And in the days following the shooting many people in the province – and perhaps beyond, but it's certainly within our province – did speak out voicing concerns and criticizing what they viewed as being your government's emphasis on law enforcement; law enforcement as opposed to justice.

You recall those types of comments and the commentary around government being run by police officers and that type of thing. You remember those comments, of course.

MR. DAVIS: Yes.

MS. CHAYTOR: Okay.

MR. DAVIS: Get the cops out of Confederation Building, those types of things?

MS. CHAYTOR: Those types of comments, yes.

MR. DAVIS: Yes.

MS. CHAYTOR: And was that an attitude of your government? And was that reflected in the change of the name of the Department of Justice to the Department of Public Safety?

MR. DAVIS: No.

MS. CHAYTOR: And in the days following the shooting the Commission had also saw – the Commission has also seen examples of other people who were speaking out in defence of Mr. Dunphy and empathizing with his situation. And some of those communications were sent directly to your office as well. And was that the subject of concern and discussion in your office in terms of those messages that you were receiving?

MR. DAVIS: I'm sorry, so which – what are you asking me, what did we discuss?

MS. CHAYTOR: So other messages that you also received, and there were people at – a lot of people speaking out who were very sympathetic towards Mr. Dunphy's situation and people who were saying they were in similar situations.

And was that the subject of discussion in your office? Other than from a security point of view – because we've seen where some of those messages got forwarded on to the police – but other than from a security point of view, was that the subject of any discussion in your office?

MR. DAVIS: I was aware, in a very general sense, of some of the comments that were coming in, but not specifically so. It wouldn't be: Here's an email from somebody specific and here's what they're saying. But in a general sense, from time to time, I'd be updated as to what we're receiving or what we're seeing.

MS. CHAYTOR: Okay.

One individual, Mr. Andrew Abbass, brought his situation to the Commission's attention. And was he ever brought to your attention?

Mr. Abbass advised the Commission that he was detained the following day, on April 7, after an email had been forwarded to your chief of staff, Joe Browne. An email went from – I think it's an email exchange between Joe Browne and Doug Noel, and Doug Noel left it to the discretion of Mr. Browne as to whether or not to notify you about Mr. Abbass.

Were you advised of that? Did you know that – had you been told anything about Mr. Abbass's situation prior to his detention on April 7?

MR. DAVIS: I think I knew of Mr. Abbass. I knew of Mr. Abbass; I can't say with certainty if I knew beforehand. I think I may have, but I can't say with certainty.

MS. CHAYTOR: Okay.

And did your office, or you or anyone from your office, have any involvement in Mr. Abbass's detention?

MR. DAVIS: I didn't, no. Not that I'm aware of.

MS. CHAYTOR: Are you aware of whether anyone in your office did?

MR. DAVIS: Not that I'm aware of, no.

MS. CHAYTOR: Okay.

And there are a number of others, and for the sake of time, I don't necessarily have to bring them up, unless you would ask – unless you ask, of course, to see them. But for the record, P-0453 is an email of April 6, 2015, and this is a –

THE COMMISSIONER: Sorry, what's the number?

MS. CHAYTOR: P-0453. And, Commissioner, you would've seen this email before, it's April 6, 2015. And this is the one that's a – it's a pretty long rant. And this is –

THE COMMISSIONER: There was some confusion over the time or the dates or something as well?

MS. CHAYTOR: No, not on this one.

THE COMMISSIONER: Not on that one? Okay.

MS. CHAYTOR: No, not on this one. No.

This is the one that – it's a long rant and it does speak – it's hostile towards police officers in Confederation Building. You're familiar with that one, Mr. Davis; I showed it to you on your interview. It goes on for some pages.

And that one was sent to your Paul Davis account and it was sent to your – and then from Paul Davis account, it went to your EA Catherine Evans. And then she sent it on to Doug Noel and Ed Benoit and the members of the protective security unit at the time. And she also sent it to Jason Sheppard, the superintendent of the RNC.

When it was sent from Paul Davis account to Catherine Evans, would that be you forwarding that email to her?

MR. DAVIS: I don't think I did, no.

MS. CHAYTOR: Okay.

Did you ask Ms. Evans to send this to the police?

MR. DAVIS: No, I don't think so. No.

I think this was a function of one of my staff. I can't even tell you which one it was, but I don't have a recollection for it anyway.

MS. CHAYTOR: Okay.

And it's, you know, it's an unpleasant political rant, no doubt. Do you recall if you read it at the time?

MR. DAVIS: No, I don't. No.

MS. CHAYTOR: Okay.

And we also have P-0506, and that's an email – you don't have to bring it up, Madam Clerk, but just for everyone's reference, April 9, 2015. And we can certainly bring it up, Mr. Davis, if you need your memory refreshed on it but I did take you through these before.

And that's an email that goes to both your Paul Davis account and your premier account. And, again, that particular email is forwarded then from the premier account to your executive assistant, Catherine Evans, and she sends that one on to the police as well.

Were you aware that that was happening?

MR. DAVIS: No.

MS. CHAYTOR: And I take it you gave her no instructions to do that.

MR. DAVIS: No.

MS. CHAYTOR: Okay.

Then we have –

MR. DAVIS: I –

MS. CHAYTOR: Sorry?

MR. DAVIS: Mr. Commissioner, again, just to – just to qualify this. There's a – the volume of emails at any given time is substantial and, therefore, I had to require the assistance of staff to process those emails. So I know that they were – I do know they were advised that if there's something of a concern, to forward it on. And the staff had under – because Joe Browne was responsible for the operations in the office and they had created a process where that would happen. But that was not within my purview.

MS. CHAYTOR: Okay.

And if we could look at P-0276, please. This one is April 13, 2015, and this is a Facebook post. And Doug Noel is writing to Ed Benoit about this and he does say in this email: This is the Facebook post that the premier mentioned to me.

And then that does get sent along – if we could make it a bit bigger, please. This does get sent along then to Joe Gullage and a CIU file does get opened up. And you can see here, Doug Noel says: "This is the FB post the Premier mentioned to me." It originated – it was obviously posted on your Facebook account.

And Janice Cave mentions it was sent to premier's MHA Facebook account and apparently, at least according to Doug Noel, you had mentioned it to him.

Do you recall that? And were you aware that it then – well, you've brought it to the attention, according to this, to Doug Noel.

MR. DAVIS: I mentioned the – or I mentioned it to Doug Noel, yeah.

MS. CHAYTOR: Okay.

MR. DAVIS: I don't remember specifically what it is. If I saw it, it might help me but ...

MS. CHAYTOR: Okay.

And he says that he's querying – you know, he says: “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.”

MR. DAVIS: Okay.

MS. CHAYTOR: Does that help with – these were the types of messages, I guess, you were getting in the aftermath of the shooting and up to a week later here now.

MR. DAVIS: That was some of the variety of what we were receiving, yes.

MS. CHAYTOR: Okay.

Did you or anyone on your behalf or on behalf of your government at any time have any discussions with the RCMP in relation to Mr. Dunphy's shooting or the circumstances of the shooting?

MR. DAVIS: You mean outside of Corporal Noel or from – you're talking about –

MS. CHAYTOR: Yes, outside of the –

MR. DAVIS: – from the investigation part you mean?

MS. CHAYTOR: Yes.

MR. DAVIS: No.

MS. CHAYTOR: Okay.

So, for example, Corporal Burke, who was the lead investigator? No?

MR. DAVIS: No, I mean I was to understand that Donna Ivey wasn't – was interviewed or spoke or –

MS. CHAYTOR: Okay, so interviews through – yes, okay.

MR. DAVIS: But other than that, no.

MS. CHAYTOR: Okay. All right.

And I understand that you are friends with a RCMP officer. He's a neighbour and a friend.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: And did you have discussions with him about Donald Dunphy's shooting or the investigation?

MR. DAVIS: Very general discussions.

MS. CHAYTOR: Very general? And what –

MR. DAVIS: But my understanding, he doesn't have any involvement with this investigation.

MS. CHAYTOR: He didn't have –

MR. DAVIS: I don't think he has any involvement with the investigation.

MS. CHAYTOR: Right. He didn't –

MR. DAVIS: Yeah.

MS. CHAYTOR: Okay, right.

Okay, but you did have some general discussions with him while the investigation was underway?

MR. DAVIS: How are you doing? Tough week. You know, very general over the fence type of conversation.

MS. CHAYTOR: Did you meet with assistant – I think her position is Assistant Commissioner Tracy Hardy. Am I saying that right? Is it assistant?

MS. O'BRIEN: Commanding officer.

MS. CHAYTOR: Commanding Officer Tracy Hardy of the RCMP within a couple of days of the shooting?

MR. DAVIS: I don't think so, no.

MS. CHAYTOR: Okay.

MR. DAVIS: During my time as premier I think I had one meeting with her.

MS. CHAYTOR: Okay.

MR. DAVIS: But I don't think it was –

MS. CHAYTOR: Not in this time frame?

MR. DAVIS: I don't think it was. No.

MS. CHAYTOR: And nothing to do with this.

MR. DAVIS: No.

MS. CHAYTOR: Okay. All right.

And if we could look at P-0506, please. And these are some transcripts of *Hansard*. This is the *Hansard* transcript of the House of Assembly proceedings April 22, 2015. And I just want to point you to a couple of communications here.

And down on bottom right-hand side here you're speaking in the House and you say:
"PREMIER DAVIS: Mr. Speaker, I would expect, and I do expect, that the RCMP will conduct a comprehensive, a full, fair and frank investigation into the events that have taken place involving the tragic loss of life of Mr. Dunphy.

“Mr. Speaker, I would not in any way put a timeline or a deadline, impose that upon the police to complete their investigation. There is no way for me to know when they are going to complete their investigation. I asked them to do a full, fair and frank investigation, complete their work in a comprehensive manner, Mr. Speaker, and I look forward to seeing what the results of that investigation are when they have completed their work.”

Mr. Davis, did you instruct the RCMP to carry out this investigation?

MR. DAVIS: No.

MS. CHAYTOR: Did you have any discussions with any member of the RCMP who were carrying out the investigation regarding the manner in which they would conduct their investigation?

MR. DAVIS: No.

MS. CHAYTOR: Why did you make those comments in the House of Assembly?

MR. DAVIS: I – the very next day when it was brought to my attention of the words used, I immediately withdrew, corrected.

When you’re in the House of Assembly, Mr. Commissioner, you may be aware, but when you’re in the House of Assembly you’re quite often speaking third person because the Member of the House of Assembly is speaking to the Speaker. And even in Question Period, you would say, Mr. Speaker, I asked the premier or I asked someone. That’s the language that’s used.

I think here the – what it should have been was I ask, not asked. I don’t know if it was transcribed right or wrong or if I used asked and put the e-d at the end of it or not, it’s hard to determine. But my intention was to say I ask them to do a full, fair, as if I’m saying this here now publicly. Not that I directly asked them but I ask them and I expect them to do a full, fair and frank investigation.

So it wasn’t a direct ask I made to them. It’s parliamentary language and I can understand how it would be misconstrued.

MS. CHAYTOR: Okay.

THE COMMISSIONER: What was the exhibit number of that one?

UNIDENTIFIED FEMALE SPEAKER: 0506.

THE COMMISSIONER: (Inaudible.)

MS. CHAYTOR: 0506, Commissioner.

THE COMMISSIONER: 0506 or 0546?

MS. CHAYTOR: 0506.

If we could look then, it’s the same – and it’s 0506, again, and I think this one’s on page 3. If we could just go to page 3, please, Madam Clerk.

And this is a question that Ms. Michael posed as leader of the NDP on the same date, April 22. And she's asking you to explain the chain of command between the government – and do we have that there now, please? Yeah.

Let's see if I can find it, page 3. Okay.

And she's asking down here: "I ask the Premier: Will he explain the chain of command between government, the Protective Services Unit, the RNC and the RCMP, and who gives instructions to the Protective Services Unit?"

And then you reply: "Mr. Speaker, I think it is quite clear that the questions being raised by the member opposite are directly in relation to the loss of life that her previous questions refer to. I think it would be very inappropriate to discuss any aspect of what is being investigated by the RCMP until we find the results of that investigation"

And I'm just wondering what would have been the problem, Mr. Davis, in explaining and helping to educate the public on the mandate of the PSU and who gives instructions to the PSU?

MR. DAVIS: Ms. Michael was making an effort to open a door on a conversation that I didn't feel was appropriate for me to comment on. And I didn't want to go down that road.

MS. CHAYTOR: Okay.

And if we could have P-0505, please. You and Members of your Cabinet received letters from Ms. Erin Breen as counsel for the Dunphy family.

MR. DAVIS: Did you say me and Members of my Cabinet?

MS. CHAYTOR: Yes.

MR. DAVIS: Okay.

MS. CHAYTOR: You don't recall receiving letters yourself?

MR. DAVIS: I did, I just wasn't aware that Cabinet ministers received it as well.

MS. CHAYTOR: Okay. All right.

It's my understanding.

UNIDENTIFIED FEMALE SPEAKER: Yeah.

MS. CHAYTOR: Yes, Darin King did.

MR. DAVIS: Oh, just one. Okay, I thought you said –

MS. CHAYTOR: Just one? Yeah, Member.

MR. DAVIS: I thought you were saying that they all received it. Sorry.

MS. CHAYTOR: I guess it's ask and asked.

MR. DAVIS: Yes.

MS. CHAYTOR: Members or Member, I apologize.

MR. DAVIS: There – yeah, absolutely.

MS. CHAYTOR: So, yes, Darin King received a letter from – anyhow Ms. Breen, we see here. Yours is, I think, dated June 15 – June 17, 2015.

MR. DAVIS: June 17, yeah.

MS. CHAYTOR: And she is seeking to – and she’s – to have an outside police force brought in is her main concern – brought in to take over the investigation from the RCMP. So you remember this, do you?

MR. DAVIS: Yes.

MS. CHAYTOR: Yes, okay.

So she writes to you on this day. And then you do reply to her and I’ve got your reply here too.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: And it’s August 10, so it’s almost two months later that you reply to her. So in terms of the time period in replying, are you seeking information and gathering advice as to an appropriate reply to her in that time period?

MR. DAVIS: So, Mr. Commissioner, what – I think it’s worthy of explanation – what happens with correspondence when it arrives in my office, it goes through a process called TRIM which is the correspondence or file management process.

So it’s recorded and documented, and then staff would forward it to – generally speaking, staff would forward correspondence to the appropriate department and give instructions to the minister of that department to either respond to it themselves, look into the matter and respond directly themselves, or look into the matter and then reply back to the premier’s office with the necessary information and a draft or suggested response.

So this would have left my office and went to the Department of Justice who would have reviewed it, drafted a response and it came back to my office. It goes through some staff, including Joe Browne, before it comes to me.

I don’t know if it went back to the Department of Finance or not, if there was a go back and forth type of thing, but this was the draft that landed on my desk.

MS. CHAYTOR: Okay, fair enough.

Okay, no one of the things Ms. Breen asked for was a meeting. Did you meet with her?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

And I take it you didn’t think that would be an appropriate thing to do.

MR. DAVIS: Correct.

MS. CHAYTOR: Okay.

Page 4 of the exhibit, we have it up here now. This is the reply, yes. So you write back to her that it's well established – the second paragraph towards the end: "It is well established that the police must be given the authority to operate free from the control of the executive branch of government in conducting a criminal investigation." And that's fair enough.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: Did you make any inquiries, Mr. Davis, as to whether the Minister of Justice and Public Safety had the authority to order that an outside force be brought in?

MR. DAVIS: No.

MS. CHAYTOR: Okay.

And did your government, in addressing this question, consider any recommendations of the Luther inquiry before responding to Ms. Breen's letter?

MR. DAVIS: I don't know. I can't speak to what work the Department of Justice may have done in reviewing her correspondence.

MS. CHAYTOR: Okay.

And I'm just going to refer to a reference out of the Luther inquiry at page 48. And perhaps – I don't know if you're able to answer the question as to whether or not this would be the situation.

But in that – at page 48, Judge Luther had written that the RCMP had brought in the OPP in that situation for an investigation. And he noted that they did this on their volition, that they were not ordered or forced to do so by the Minister of Justice who he says had the authority do to so.

MR. DAVIS: Uh-huh.

MS. CHAYTOR: So you've made no inquiries or this wasn't brought to your attention or there was no discussion around well –

MR. KENNEDY: Mr. Commissioner, I would have – and maybe this is a matter for argument later on, but I would have a concern about the Minister of Justice being able to order the legality or the constitutionality, even, of the Minister of Justice being able to order an outside police force to come in and take over an investigation.

THE COMMISSIONER: We'll discuss that afterwards, Mr. –

MS. CHAYTOR: Okay. And that's not – my question –

THE COMMISSIONER: – Mr. Kennedy.

MS. CHAYTOR: Yeah, sorry, Commissioner, I didn't mean to cut you off.

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: But my question is more geared towards whether or not – this is what's written there, whether it's right or not, whether or not there's contractual issues to also be

addressed in terms of the RCMP's contract with the government, there are other – or whether there are other legal issues. That's not the point of my question.

My question is whether or not there was any discussion of this at the time to address whether or not you might have that authority.

MR. DAVIS: No. This –

MS. CHAYTOR: Or the Minister of Justice.

MR. DAVIS: Well, there was some discussion about the request from Ms. Breen; advice, recommendation. And which was my understanding prior to was that it is not the place for me, as premier, or the minister to involve, make decisions or investigative decisions involving the police, including who would investigate.

MS. CHAYTOR: Okay.

MR. DAVIS: And that it was also my understanding that there were some protocols that were in place prior to this that laid out what would happen in these circumstances.

MS. CHAYTOR: Okay. Fair enough.

And you end your letter to Ms. Breen by saying: "I have every confidence in the RCMP's ability to conduct a thorough and objective investigation into this matter and would encourage you to maintain an open dialogue with them and retired Justice Riche to ensure that your client's concerns are brought to their attention."

And in making that statement, did you make any inquiries to inform yourself about the legitimacy of the concerns that were being expressed by Ms. Breen that would make her believe that wasn't the case, that the RCMP –

MR. DAVIS: I'm sorry?

MS. CHAYTOR: Did you make any inquiries to inform yourself about the legitimacy of Ms. Breen's concerns, which were leading her to believe that this wasn't the case, that the RCMP did not have the ability in this circumstance to conduct a fair and objective investigation?

MR. DAVIS: No, her correspondence was sent to the Department of Justice. And the suggested reply that you see here was a result of work that would've been done by the Department of Justice and my office, and this is what came to me. So I would take it and I would expect that a careful consideration of her correspondence had taken place.

MS. CHAYTOR: Okay.

And, Mr. Davis, then you copy your letter to your minister of Justice and Public Safety, and as well assistant commissioner. I believe that's commanding officer –

UNIDENTIFIED FEMALE SPEAKER: It's both.

MS. CHAYTOR: Both? Assistant commissioner?

MR. DAVIS: No, assistant commissioner.

MS. CHAYTOR: Okay, assistant commissioner, sorry, Tracy Hardy.

Why did you copy Assistant Commissioner Tracy Hardy on this communication?

MR. DAVIS: The same as before. This response is one that would've been recommended to me through the Department of Justice, reviewed by my staff and that would've included on it when it was recommended to me.

MS. CHAYTOR: Okay, so it was based on the recommendation given to you and you didn't see any issue with that.

MR. DAVIS: I think it would be fair to say this would have been the advice from the department.

MS. CHAYTOR: Okay.

Mr. Davis, those are my questions, unless – and I'd like to offer you an opportunity from a broader perspective, if there's anything else in terms of the Commissioner's mandate that you think you might like to address.

MR. DAVIS: No, I'm fine.

MS. CHAYTOR: You're good.

MR. DAVIS: Thank you.

MS. CHAYTOR: Thank you so much.

MR. DAVIS: Thank you.

THE COMMISSIONER: Okay, we have some questions. Who is going to go first?

Mr. Kennedy, you're being pointed at. I don't know if you accept the invitation.

MR. KENNEDY: (Inaudible.)

MR. SIMMONDS: I'll go first. Follow the order again.

THE COMMISSIONER: Go ahead.

MR. SIMMONDS: Good afternoon, Mr. Davis.

MR. DAVIS: Good afternoon, Sir.

MR. SIMMONDS: Mr. Davis, you spoke of the change or the shock to you after the events of April 5. You had that meeting that afternoon and then the next day you had a media scrum. And basically I think you were saying that your world had changed with respect to security and protective services and, generally, the way you had your outlook on things.

Is that a fair statement?

MR. DAVIS: Yes.

MR. SIMMONDS: Can you imagine or would you agree that the Dunphy family also were going through a significant state of shock?

MR. DAVIS: I can't imagine, no.

MR. SIMMONDS: You can't –

MR. DAVIS: I can only try to imagine how significant and difficult it would've been for them.

MR. SIMMONDS: To put this into some kind of perspective, and I don't know if you have had that or if you've been following the events here, but his daughter and her boyfriend had taken him to lunch, to brunch at the Woodstock. He had come back to their house and he had taken a car. Because his was having a problem, he had taken his daughter's boyfriend's car and gone home.

And on the way home he had passed a friend who he subsequently, within minutes, texted and said, basically: Come up to the house to have a toke. This was a man who appeared to be relaxed, was having his Sunday dinner, finished his Sunday dinner, gone home, was having a friend drop in and events unfolded as you've been told.

Would you agree that that's probably a normal activity for most on a holiday weekend, at least a weekend, the kind of thing he was experiencing? Would you agree?

MR. DAVIS: Spend time with his family, go out to dinner, those types of – that aspects of it?

MR. SIMMONDS: Yeah.

MR. DAVIS: Yes, of course.

MR. SIMMONDS: Okay.

Then your first awareness – you had no awareness of the complaint or the tweets of concern when Ms. Ivey received them?

MR. DAVIS: Correct.

MR. SIMMONDS: Your first awareness was significantly after the fact, likely the meeting at Confederation Building or the next day.

MR. DAVIS: Yes.

MR. SIMMONDS: That correct?

MR. DAVIS: Yes, Sir.

MR. SIMMONDS: When you read – and you did say you've read all of these tweets in the appropriate succession. Correct?

MR. DAVIS: Yes.

MR. SIMMONDS: Do you still say that you have a concern or that they're ambiguous?

Sandy Collins sent the original tweet out about the songs. He was travelling with you. Indeed, I understand, and I know very little about tweets or how they work, but I understand the reason you were likely on it is because Sandy Collins had sent it to you and others, and Mr. Dunphy was simply replying to that when he sent his tweets out. So it wasn't specific to you.

Would you agree?

MR. DAVIS: I think the earlier tweets may have been more –

MR. SIMMONDS: I think the –

MR. DAVIS: Because I think he was referenced – and I don't have them in front of me.

MR. SIMMONDS: He referenced two dead MHAs.

MR. DAVIS: I'm talking about earlier than that, Mr. Simmonds, sorry. Like, the earlier conversations – and, again, I don't have it in front of me but I think there was reference in them –

MR. SIMMONDS: There's four of them within a short period of time.

MR. DAVIS: Yes, because the Sherman Downey song, I think, was called "Sun in Your Eyes" –

MR. SIMMONDS: Correct.

MR. DAVIS: – and there's reference you should get the sun out of your eyes.

MR. SIMMONDS: Correct.

MR. DAVIS: That type of thing.

MR. SIMMONDS: Yeah.

MR. DAVIS: So that was directed, I think – and, again, I don't have it in front of me, Mr. Simmonds, but I think they were –

MR. SIMMONDS: I believe they all came – they were all sent back the same way. They all went back to Sandy Collins and you.

MR. DAVIS: Yes.

MR. SIMMONDS: And the two dead MHAs he was referring to was likely, as was found in the file –

MR. DAVIS: Yeah.

MR. SIMMONDS: – Mr. Gullage and Ed Maynard, both who had previous relationships with Workers' Compensation.

Were you ever aware of that?

MR. DAVIS: I'm aware – oh, I'm aware of that now, yes.

MR. SIMMONDS: Can you tell me – and you've said this, and I can only imagine the volume of mail, some of which would be categorized under hate mail or dissatisfaction mail, that must come through the premier's office, but this tweet when read in proper succession, I believe it's fair to say, it's not really ambiguous, not hurting family friends he's referring to, not saying something bad about these dead MHAs, so he would hurt their family.

Did you – do you believe that that's or understand that to be a reasonable interpretation of it?

MR. DAVIS: I think that's a reasonable interpretation.

MR. SIMMONDS: Isn't it?

So Ms. Ivey gets it –

MR. DAVIS: That's one of the reasonable, yeah.

MR. SIMMONDS: Well, fair enough.

MR. DAVIS: Yeah.

MR. SIMMONDS: Ms. Ivey gets it and on Good Friday sends it to your Protective Services Unit.

That not seem a drastic measure with respect to everything that comes across her desk or comes across her computer?

MR. DAVIS: Do I think it's a drastic measure?

MR. SIMMONDS: Yeah, do you think that –?

MR. DAVIS: No, I don't.

MR. SIMMONDS: Then what part of it do you find so troubling that it would have to be dealt with on Good Friday?

MR. DAVIS: And again, Mr. Simmonds, I think there are – I understand your conclusion as to what you're suggesting it all meant and –

MR. SIMMONDS: I think the tweet, while nasty, is innocent would be my interpretation. Would you agree?

MR. DAVIS: I agree it's your interpretation.

MR. SIMMONDS: No, would you agree that's a reasonable interpretation.

MR. WILLIAMS: Can he finish the – answer the question that was asked?

MR. SIMMONDS: Would you agree it's a reasonable interpretation? I'm sorry.

MR. DAVIS: Well, it's your interpretation. I think it's an interpretation that fits with was what the tweet itself. I think – and again, what I was trying to say earlier, I think if you look through all the tweets – and, again, I don't have them here in front of me –

MR. SIMMONDS: Fair enough.

MR. DAVIS: – but the earlier tweets seem to me more directed as a message directly to me and to Sandy Collins: Get the sun out of your eyes. He's talking to us.

MR. SIMMONDS: Uh-huh.

MR. DAVIS: He's not talking about any former MHAs or dead MHAs. He's talking – the conversation was directly towards us.

MR. SIMMONDS: I agree.

MR. DAVIS: And when he gets to – someone gets to a tweet and mentions dead MHAs and expresses his view of what he thinks of those MHAs –

MR. SIMMONDS: Uh-huh.

MR. DAVIS: – includes reference to family, and I could understand your interpretation – and hurt, I think it's and I believe it's important to understand exactly what he was intending by those messages.

MR. SIMMONDS: And I don't disagree with you. You said when you were speaking to Ms. Chaytor with respect to your media scrum the next day that please go back to the first part of it so we can put this paragraph here in context.

MR. DAVIS: Yes.

MR. SIMMONDS: Did you not?

MR. DAVIS: Yes.

MR. SIMMONDS: For the same reasons that we would say to you, take – read all of these tweets in context and they clearly leave the impression that what he's speaking about is not saying anything bad about these two people as to hurt their family, hurt their feelings.

You agree that that's at least a reasonable interpretation, maybe not the only one?

MR. DAVIS: I understand why you could reach that.

MR. SIMMONDS: Okay.

Then, can you offer any insight? Because this is – and it's been a real issue and I'm sure will likely be, continue to be in submissions to the Commissioner. What was the urgency that it had to be dealt with on Good Friday, investigated, contact made with Ralph Tucker through a phone number supplied by Ms. Ivey, Mr. Tucker speaking to Mr. Mahoney, Mr. Mahoney on a Saturday afternoon calling back to Officer Smyth and then Officer Smyth going down there?

And Officer Smyth, let's be blunt, used some very unattractive language here when he tweeted or sent a message to one of his friends: I'm going down to arrest a lunatic who threatened the premier. Nowhere in anything we've seen was that ever anything close to that said.

Would you agree with – did you ever become aware of anything like that?

MR. DAVIS: Well, you just – you just said a lot and, just to be clear, I can't speak to why Ms. Ivey did what she did –

MR. SIMMONDS: Uh-huh.

MR. DAVIS: – why Mr. Tucker made the decisions he did, or Mr. Mahoney or Constable Smyth. And you referenced all of them just then in your preamble to your question. So, just to be clear, I can't answer to why any of those people –

MR. SIMMONDS: Can you answer for Ms. – I'm sorry, can you answer Ms. Ivey?

THE COMMISSIONER: Could I – well, could I just intervene? It's been bothering me a bit, actually, since about the day after Ms. Ivey testified because I think she had instructions, which, as she pointed out, didn't require her to start interpreting tweets.

MR. SIMMONDS: I –

THE COMMISSIONER: When she saw something that was of concern to her, whether rightly or wrongly, the written direction that we've received, I think – I forget which document it was – indicated – I think it was Constable Smyth's instructions to staff, was it not, and the PSU?

MR. SIMMONDS: I believe you're correct, Mr. Commissioner.

THE COMMISSIONER: The instructions said, basically, the slightest concern, pass it on, pass it on to the PSU. They'd interpret; they'd decide whether to act on it. So, and it's come up several times since, and really, in fairness to Ms. Ivey as a witness before this inquiry, I feel that, you know, I don't want – I don't want any more piling on. Not from you; you're not doing it, Mr. Simmonds. I'm not saying that, but generally in the course of –

MR. SIMMONDS: I understand.

THE COMMISSIONER: – when it's brought up, you know, why did she do this? I think there's been some adverse press or public comment on it.

Ms. Ivey did what she was instructed to do, as far as I can see, and it was for the police to interpret, PSU to interpret. Now, you didn't – I'm not raising this because of your comment, Mr. Davis, but it gives me an opportunity because it's come up a number of times in that context and I think I have an obligation to ensure that witnesses before the inquiry are treated fairly and I don't think Ms. Ivey necessarily has been. Intent – it's not intentional on anybody's part, but the way it's come out –

MR. SIMMONDS: Okay.

THE COMMISSIONER: – she did what she was instructed to do as far as I can see. She did her job and nothing else in that respect.

MR. SIMMONDS: And it was not my intention to in any way –

THE COMMISSIONER: No, I know that. I know that.

MR. SIMMONDS: My question, though, is: Can you see anything that would require it to be dealt with? She brings it to the attention – and I don't have the document or exhibit number of the piece that the Commissioner refers to, but there was a document, I believe, in which he indicated: Anything of concern to the staff, you bring it forward to me; that's our job.

Is there anything you – is there anything you can tell us as to why it would be so urgent to deal with it on a Good Friday, a Saturday, to make calls to people at their home and then go up there on Sunday?

MR. DAVIS: Mr. Commissioner, when I got elected in 2010, Ms. Ivey was employed in the Government Members' Office, which was the PC government, our party or Government Members' Office, side of the House we sat in at the time. When I first met her, it was obvious to me that she had a good understanding of the political world and had had good experience in the political world. And she was a communications person who assisted me when I first became an MHA.

When I became the premier and went to the premier's office, I invited Ms. Ivey to come to my office because I believed in her skills and her ability and her knowledge, her experience and her background. And based – I can't speak for her, but based on her background, the strength and history that she had in the political world, if Ms. Ivey felt it was important – she's looking at tweets and Twitter and communications all day long, and if Ms. Ivey picked this out and felt it was important to send it to the Protective Services Unit, I support that decision.

MR. SIMMONDS: You support it based upon her experience, you're saying.

MR. DAVIS: I support the decision she made based on all of the factors.

MR. SIMMONDS: Okay.

From your point of view, yourself, was there anything you saw from the past – you had no knowledge of Don Dunphy.

MR. DAVIS: Correct.

MR. SIMMONDS: Okay.

Was there anything you saw when you read these tweets in proper succession that required it to be dealt with in the fashion that it was, on the Friday, on the Saturday and on the Sunday? And I think that's a fair question, Mr. Davis.

MR. DAVIS: Well, Mr. Simmonds, I don't know what Constable Smyth knew from the time he received that information from Ms. Ivey and as he made his decisions to do what he did. So I really think it's beyond fair for me to try and decide if I saw anything to support why he did what he did. I don't think it's fair for me to try to answer that question because I don't know what he knew.

MR. SIMMONDS: From what we understand he knew was the brief discussion with people at Workers' Compensation and he did some checks through his police force to determine if there was any prior record and things of that nature.

MR. DAVIS: Uh-huh.

MR. SIMMONDS: Nothing which indicated any violence, nothing which indicated any level of threat by his own admission, yet it's done on a Sunday –

MR. DAVIS: Uh-huh.

MR. SIMMONDS: – in the rapid fashion – and it's already been said two days is not rapid; perhaps it's not – in the rapid fashion that took place here.

Then, from your point of your view as the person of concern here, do you have any basis for as to why it was handled in that manner?

MR. DAVIS: Mr. Commissioner, I can't – I don't know. I support the decision Ms. Ivey made based on what she saw. And knowing her and knowing her background I can fully understand why she did what she did and I have absolutely no issue with that.

And for steps that were taken after that, I don't – I mean, I could comment on it from my own experiences and background and so on, but I'm not – I think I'm – that's not what I'm being asked and I don't think it's – I'm not an expert or anything in it.

MR. SIMMONDS: No, but –

MR. DAVIS: But I can only speak to that, what Ms. Ivey did, and then the events that rolled after that.

Like, I can't speak – if you ask me, if your next line of questioning, Mr. Simmonds, with all due respect, was why did Mr. Tucker do what he did, I can't speak to that.

MR. SIMMONDS: No, but flowing from it, and I accept your answer, would you agree that you were given information or a misapprehension of the dynamic of this with respect to you, when you say in your – and I'm not being critical of you. You say this is the information that was given to you, that this was somehow a – Mr. Williams corrected me the other day when I said you said threat in that.

The question came from the reporter about whether you considered this a threat – and you went into your information with respect with to that, that Ms. Chaytor's reviewed with you – but your answer was that, you know, you considered it of great concern, of great concern to your family, and in particular you mention your mother and your children and your wife.

In reality, there was no such threat or aggressive move towards any of those people. Would you agree, when you read those tweets?

MR. DAVIS: The circumstances that I spoke to that day were a combination of circumstances that had evolved from Sunday afternoon until Monday. So I don't think it's fair for you to take any of my answers there in isolation of what was contained in tweets, just to be honest with you.

But I can't – I can tell you that when I read, when I look at those tweets, what you have suggested it's meaning to be is, yes, that's a reasonable interpretation of what it said. From my perspective, I think it would be important to understand with a level of certainty exactly what the intent was and so on.

So from that perspective, I support what Ms. Ivey did, and if someone decided, for whatever reason, that this got to be done in the next couple of days, which I can't speak to, then I can't speak to that.

MR. SIMMONDS: Well, what – what it – it appears to be a heightened level of concern that there's really no basis for, is what I'm saying.

MR. WILLIAMS: Mr. Commissioner, I got to – I need to interrupt. I don't mean to correct Mr. Simmonds again on that same paragraph. I made reference the last day with respect to no reference to threat, and I'll refer to the paragraph or I'll direct Mr. Simmonds back to the discussions with the media. And you keep referring to great concern. There's no such language in that paragraph regarding great concern to the family.

So it's being used for convenience. There's language here being used for convenience when you're posing your questions, and in fairness to the witness.

MR. SIMMONDS: In fairness to the witness, I think it is correct to say that this interview portrays a position where you're expressing concern. Is that fair to say, Mr. Davis, in your answers?

MR. DAVIS: Mr. Simmonds, my family was rattled by this and I can tell you that was on my mind at the time. To take any isolated, any piece of information –

MR. SIMMONDS: I'm not doing that. I'm not doing that.

THE COMMISSIONER: Let him finish.

MR. DAVIS: If I may, Mr. Simmonds, to take any kind of piece of information and try – for me to say that was the reason for this or connect dots and any of that, I'm not able to do that.

MR. SIMMONDS: No, you're not –

MR. DAVIS: It was a very difficult day for me then, and as you pointed out earlier, I can't imagine how difficult a day it would've been for Ms. Dunphy and her family as well, but, you know, I spoke to it to the best of my ability and I can't speak to why someone else did something.

MR. SIMMONDS: No, and I'm not asking you to do. But what I am saying to you is that there was a level of concern here, which I think you've expressed and did just now –

MR. DAVIS: Yes.

MR. SIMMONDS: – that in reality, when viewed against the tweets that were sent, does not have a foundation. The level of concern that obviously you were led to believe related to yourself, your family, which you expressed – and I'm not taking one section by itself. I'm looking at the full of the scrum that day. But there was a significant level of concern, and when in reality and cooler heads prevailed and the tweet was read in full length, it doesn't – it's not pointed directly at you and it does not constitute any kind of a threat to you or your family.

MR. WILLIAMS: Commissioner, this is argument. Mr. Simmonds is standing up giving argument on that.

THE COMMISSIONER: Yeah, I –

MR. WILLIAMS: We've got this point, I think, beaten to death.

THE COMMISSIONER: One second.

Well, Mr. Simmonds, you've gotten, I think, your answer from Mr. Davis. He said: I am not in a position to put myself into the shoes of Constable Smyth, knowing everything that he did, and decide that he was wrong in going down to get this dealt with over a period between Good Friday and Monday.

Now, you can make your submissions, you know, and I'll listen to it in your – by the way, we're still contemplating written submissions, but with an opportunity for some oral presentation regarding the chair, for example, or whatever. But – so when I say in your submissions, it could be either written or oral.

But getting back specifically to what we're dealing with here now, I think you've probably exhausted – if you want to follow up for another question or two, but you've pretty well exhausted – you just have to, yourself and Mr. Davis, agree to disagree, I think. I'll have to work it out.

MR. SIMMONDS: Fair enough, Mr. Commissioner. What I was attempting to do was contrast the levels of concern here in relation to what was really written and what was really received.

THE COMMISSIONER: Well, again, you have Mr. Davis saying he's not free of all concern regarding what was in that tweet. He felt it was directed towards him and, you know, he's entitled to make his –

MR. SIMMONDS: Fair enough.

THE COMMISSIONER: – interpretation just the same as we are to make ours. But you're, you know –

MR. SIMMONDS: No, that's – that's (inaudible).

THE COMMISSIONER: I think Mr. Williams is raising a valid point. It's going to be more a position for argument. We know what the facts are, I think, by and large, in this regard.

MR. SIMMONDS: Those are the questions I have.

THE COMMISSIONER: But I'm not saying to stop it now –

MR. SIMMONDS: No, no, those are the questions I had. The point I was attempting to make was the difference in what I believe is the level of concerns that were raised here and whether when it's viewed coldly, objectively, logically, even making logical assumptions from it, is there any basis for that?

THE COMMISSIONER: Okay.

MR. SIMMONDS: But that's perhaps for submissions.

THE COMMISSIONER: Thank you.

Mr. Kennedy, you're next.

MR. KENNEDY: Yes, thank you.

Mr. Davis, you had, I think, indicated that you dealt extensively with Acting Sergeant Smyth from the time you were elected premier.

MR. DAVIS: Yes.

MR. KENNEDY: (Inaudible) premier. Is that correct?

MR. DAVIS: Yes, that's correct.

MR. KENNEDY: And how often would you have dealt with Constable Smyth on a weekly basis, or on a daily basis, even?

MR. DAVIS: Several days a week, most days; probably a few days that I didn't.

MR. KENNEDY: And, Sir, how would you have described his level of professionalism in terms of his approach to his job?

MR. DAVIS: I was quite pleased with the level of professionalism that he brought to his job.

MR. KENNEDY: So could you elaborate on that a little, Sir, having been a police officer yourself? Did Constable Smyth show the requisite levels of respect? Was he thorough? How did he approach his job?

MR. DAVIS: I can tell you that he always conducted himself appropriately, no matter where I was going or who I was meeting with or where I was attending or what the circumstances were that he was with me. I never had a concern the way he conducted himself, the way he appeared, the way he presented himself or how close he was to me or how intrusive he was to the work we were doing, those types of things. It was – I never had any issues.

MR. KENNEDY: And, Sir, what about his demeanour? How would you describe Constable Smyth's general demeanour?

MR. DAVIS: He was most always calm. I found him to be methodical. He could well articulate what a plan was or why he was – why they were doing what they were doing. He would – for example, if we were travelling to an event, I use downtown as an example because we went to many events at the, you know, the Convention Centre or at the hotel or so on. Before we'd arrive, he'd say, Premier, here's what's – you know, if there's someone else there, who's here? This is who's going to be there. When you'd go in, he already knew the set-up of the room, the number of people that were there; he knew where entrances and exits were. And he might say to me, you know, we're going to go in through the stage door on the left. And, you know, he would do all of that with me on a regular basis and I felt quite comfortable in the way he did his job.

MR. KENNEDY: Sir, did he ever – did you ever see him in any kind of confrontation, argument or with any individual at any event that you were at?

MR. DAVIS: No.

MR. KENNEDY: Did you ever see him calm situations down? Were there ever situations where you would have protestors or people who were vocal that Acting Sergeant Smyth had to intervene and calm them down?

MR. DAVIS: No, there's times that I'd met with or found myself to be in a circumstance that I would do it myself and he wouldn't. I would handle it myself, but ...

MR. KENNEDY: Okay.

Sir, I want to come to these – and, again, I'm not going to – this has perhaps been exhaustively analysed. Did these tweets that have been referred to by Mr. Simmonds, did they concern you?

MR. DAVIS: Yes.

MR. KENNEDY: You've indicated, Sir, that the proposition that put forward by Mr. Simmonds is a reasonable interpretation; you said it was one of the reasonable interpretations. What was your interpretation or what's another reasonable interpretation of the tweets?

MR. DAVIS: I really wasn't sure, Mr. Kennedy. I wasn't comfortable with – I didn't have an understanding of what it was, and I felt that there wasn't – and, of course, I'm seeing it after the fact, too, to put it in context. But I can understand how and why, as I said earlier, Ms. Ivey would send it on. And there wasn't the certainty of exactly what he was referring to.

MR. KENNEDY: And so you believe that one of the important points or things was to understand what exactly was meant or what his intent was?

MR. DAVIS: Yes, even to the identity of the MHAs he's referring to, I had thought it was two completely different people. I didn't know who he was talking about and I had thought: Who could it be? And I thought of two different MHAs; I never even thought of the ones that were actual.

So I didn't know and I knew that I didn't know, and so that level of certainty existed.

MR. KENNEDY: So Ms. Ivey, as she is instructed to do, passes it over to the PSU and they do – they determine, in this particular case, Acting Sergeant Smyth what steps to take.

MR. DAVIS: Yes.

MR. KENNEDY: Yeah, to understand what's going on.

MR. DAVIS: That's my understanding, yeah.

MR. KENNEDY: Yeah.

Sir, were you aware that you had been – there had been previous tweets to you and Deputy Premier Kent in the preceding months from Mr. Dunphy?

MR. DAVIS: No.

MR. KENNEDY: No. You would never – you hadn't been made aware of those?

MR. DAVIS: No.

MR. KENNEDY: Okay.

Sir, to put this in perspective, and you talked about you were having a difficult day, your concern for your family and your mother, your wife, your son. Perhaps you can just go a little bit further: give us this example with this individual with CYFS, the kinds of comments that were made towards you, the kinds of steps, the things that were done.

MR. DAVIS: Well, you know, I referenced it earlier and when I became the minister of Child, Youth and Family Services in fall of 2013, it was within a day or two that this gentleman wrote me with a grievance from contact he had as a father with CYFS a year before. And it's not unusual for a minister to receive correspondence from someone. When a minister or someone new is appointed as minister, someone who's had a previous grievance and it hadn't been settled, it's not unusual for them to contact the new minister or new government to try again to see if they can reach them.

So I made efforts to understand what his issue was and to deal with it. There was nothing I could do to undo what had taken place. He had to deal with – you know, he had to deal with the department. He had dealings with the department.

But his second or third email that he wrote me, and this is where the concern started to grow for me, he started to say first person: You came to my house; you did this to my wife; you did this to my family – when I absolutely had nothing to do with the circumstances.

And to put it completely in context, Mr. Kennedy, and I won't identify the gentleman, but I think it's worthy to understand he's former military. I've met – I met with the man personally. He's a large, you know, looks to be fit, strong, large man. He has – he works for a federal agency, has

security clearances, and he was giving me a really tough time. And as far as I'm concerned, his offer for me to meet him anywhere and anytime stands today.

And that particular file was a problem for me, and somewhat continues to be, but – and Constable Smyth was called to deal with it. So they're the – my wife is aware of that one. I made her aware of it because I was concerned, because he even said: How would you like it if I did this to your wife or if I suggested your wife did this? He was even personal to that level.

So those – so your world as a premier really changes. I've come home from work in the premier's office and had people parked in front of my house waiting to speak to me. I've had occasions where people banged on my front door. So my safety and that of my family absolutely was a concern for me.

MR. KENNEDY: Those are my questions.

Thank you, Mr. Davis.

THE COMMISSIONER: Any further questions?

MR. FREEMAN: No questions for RCMP, Mr. Commissioner.

Thank you.

THE COMMISSIONER: Mr. Avis?

MR. AVIS: Just one question, Mr. Davis. As you know, my name's Nick Avis and I represent the RNC.

I just want to touch in on the – because questions were put to you about media. And it is an issue before the Commission and the chief is going to be speaking to it.

But you mentioned the importance of not revealing details when the investigation is pending. What about, in particular, when another police force is doing the investigation? What do you feel about the appropriateness of the RNC making any comment about it until they make their reports?

MR. DAVIS: I could understand how that would be a problem, yes.

MR. AVIS: That what would be a problem?

MR. DAVIS: Well, speaking to the investigation itself, or the facts, or to speak to the events or details of the events, I think would likely, in most cases, be inappropriate.

MR. AVIS: Okay.

And the only other question is: In your role as a media officer when you were a police officer, have you ever seen such a public reaction in your history as an RCMP – sorry, as an RNC officer or as the media officer with the RNC?

MR. DAVIS: I don't know of a reaction like this. I can't think of a reaction for this for anything in my career.

MR. AVIS: Thank you, Sir.

THE COMMISSIONER: Mr. Williams?

MR. WILLIAMS: Thank you, Mr. Commissioner.

Mr. Davis, I realize it's late in the day; I'm going to try to avoid any duplication of areas that we've covered, but I do want to go back a little ways in terms of when you first took office.

With respect to your transition, you've made reference that you took office mid-term. Is that correct?

MR. DAVIS: Yes.

MR. WILLIAMS: Can you tell me whether or not there was any type of formal briefings provided to you by Justice or by Cabinet Secretariat in terms of transition issues outside of government-related, you know, ongoing issues of the day?

MR. DAVIS: Well, we had many, many briefings regarding business or government and what was taking place.

MR. WILLIAMS: But in terms of procedures, for example security issues, would there have been any briefings or any information provided to you upon taking office other than your initial meeting with Constable Smyth?

MR. DAVIS: No.

MR. WILLIAMS: Okay.

Can you give me a little bit of a sense for the pace? You took office, I think, three years into a mandate. Can you give me a sense of what the pace of the Office of the Premier was like when you took over?

MR. DAVIS: Well, you know, this was an operation that was in full flight. You know, I could almost describe it as trying to jump on a freight train, changing up the crew and keep the freight train going without any hiccups, because we did change many of the staff.

But we – you know, it's – it was quite an adjustment for not only me, but for the staff as well on the significant amount of work and pressure and things that were happening on a continuous basis in the office. We had significant matters that we were dealing with at the time and we were –

MR. WILLIAMS: Can you give us an example of what would've been on your plate at the time when you took office, generally?

MR. DAVIS: Many memories. We were headed for a budget. We were dealing with Muskrat Falls. We were talking about oil and gas development. Where happening – what's happening in Labrador West.

We had an economic circumstance that after a decade of having a strong and good economy, that the economy was changing and we had to find ways as a government to continue to govern, manage the affairs of the province and try and find those avenues for the province to continue to progress.

We had other issues that we were dealing with. Pensions; we were trying to finalize the teachers' pensions, which we were trying to find a long-term plan to find solutions to the long-standing

debt that was applied to the Teachers' Pension Plan and change that plan. Teacher allocations as an example, was a matter.

So there was a whole number of issues that when we came into office that were just – you know, they were just stacked one on top of the other and there was never a break from that type of workload.

MR. WILLIAMS: Okay.

Do I understand you also took on – took on obligations, I'm sorry, with respect to the federation of premiers?

MR. DAVIS: I was the – I was incoming chair for the federation of Atlantic premiers, Council of Atlantic Premiers. I was the chair, incoming chair, of the Council of the Federation, which is the organization of Canadian premiers, which I chaired throughout my time in the office. I was the incoming chair for – they all lined up the same time – and incoming chair for the Eastern Canadian Premiers and New England Governors as well. So from an intergovernmental affairs perspective, we had significant responsibilities as well.

MR. WILLIAMS: Okay, and just to finish up this point, did you have opportunity to set many items for your own agenda coming in as a new premier?

MR. DAVIS: It was tough. It was tough to do. And when I campaigned for the leadership, I made a number of commitments that we would complete, some in 100 days of taking office, and we actually accomplished those commitments. But we made some other commitments that we were trying to accomplish, knowing that not only were we going to a budget where we just are experiencing a significant reduction in provincial revenue, we were also headed to an election in the fall of the same year. So, in many respects, it was a perfect storm.

MR. WILLIAMS: Okay.

I understand, though, one of the matters that you did put some attention on, and I bring this up only because there was some – in your direct examination, there was some questioning as to whether your government had an emphasis on the law enforcement. Did you establish an Advisory Council on Crime and Community Safety at the – during your tenure?

MR. DAVIS: I did.

MR. WILLIAMS: And what was your purpose for addressing the issues of crime and community safety?

MR. DAVIS: When I became premier, I was cognizant of the fact that we had a changing society. We saw an evolution, an increase in violent crime in our communities. There had been – I know from my own experience there had been a lot of work done in the previous decade to change how policing occurred insofar as, for example, with the RCMP – or with the RNC, sorry – to improve training, not only for recruits, but also in-house.

There was an evolution of equipment, how policing was conducted, professionalized, if you like. There was a number of those types of things that took place in the decade ahead, and coming into the premier's office I was aware of and cognizant and concerned about the future of the safety of our communities and wanted to take that on and deal with that and make that a priority for me.

MR. WILLIAMS: Would it be fair to say, based upon your description of what faced you when you took office, that there wasn't any opportunity to review issues of a security nature or any protocols or policies that may have been in place at that existing time?

MR. DAVIS: We really never had any time to evaluate any kind of policies, securities or otherwise, around our office. We essentially took over an office that was in full operation, and we took over an office that was running. The protocols, policies and how the systems operated were already there and we weren't in a position to take the time to try and rejig or refocus or determine if there was a better way to operate the office.

MR. WILLIAMS: Okay, so given the scenario that you've painted for us upon taking office, you had been in government for some period of time in terms of being a minister in previous administrations.

What was your understanding about how the PSU was to work now in your role as premier as opposed to the occasions you had to use the PSU as a minister?

MR. DAVIS: Well, I was somewhat familiar with them because it wasn't unusual for me to be in the company of previous premiers, Premier Marshall and Premier Dunderdale before that. And having been a minister, there was many times that we attended events together or had meetings and so on, so I was used to seeing them there. But, you know, again, when they came into office, how their relationship was with the officer under Premier Marshall, who preceded me, it was a just a continuation of what had already existed.

MR. WILLIAMS: The briefing that you had with Constable Smyth upon taking office where he supplied you with documentation and a copy of the policy, how long would that meeting have been, roughly?

MR. DAVIS: Oh maybe 30 to 60 minutes.

MR. WILLIAMS: Okay.

And would that have been basically the only briefing you had with respect to the operations of the PSU?

MR. DAVIS: Yeah like I – yes, it was. That was the only formal meeting for that purpose but from time to time we would have discussions. But I can also say that I learned some things in preparation to come here that I didn't know before.

MR. WILLIAMS: Did you have a level of comfort with the role that the PSU was providing in terms of security measures while you were in office?

MR. DAVIS: Well, other than the apprehension that I described earlier, as far as their abilities and what they were trained to do and how they conduct their business, I had full confidence in them.

MR. WILLIAMS: Did you feel you had any role to play with the PSU in terms of how they would carry out their security responsibilities?

MR. DAVIS: No, I was very clear not to direct them in how they dealt with it.

MR. WILLIAMS: Did your background as a former RNC officer ever play any part in your interactions with the PCU?

MR. DAVIS: No, only that it made me even more aware that it wouldn't be appropriate for me now as premier to direct how they did police operations.

MR. WILLIAMS: And do you feel they acted any differently in providing the services to you, knowing that you were a former police officer, than they would have anybody else?

MR. DAVIS: No, I fully believe they treated me and worked with me the same as they did Premier Marshall or Premier Dunderdale before that.

MR. WILLIAMS: Again, we touched on this so I don't want to go into any great depth on it, but what was your perception of the public's role of that unit? You know, from the first-hand, when you were dealing out in public with the security detail next to you, what was your perception of how the public interpreted or felt about their presence?

MR. DAVIS: Well, you know, I was concerned about it. I was concerned about, you know, my travel and the expenditures, any costs we had in our operation. I was concerned about the perception of that, how the public perceived it. And I was also concerned about how the public perceived the work done, or the presence of the Protective Services Unit for the same reason.

I did have a concern that – I had two concerns; one is that people would look at it as a waste of resources, not a good expenditure for or good cost or expense for government. And I also looked at it from the point that people would say: Why does he want, you know, his buddies driving him around, which is the way some people perceived it.

MR. WILLIAMS: There was some evidence – Ms. Chaytor brought to your attention some exhibits whereby there was discussion amongst members of the PSU in one of the BBMs regarding your approach and your view of utilizing their services. Did that affect your working relationship with any of the officers in the unit?

MR. DAVIS: No.

MR. WILLIAMS: And would your working relationship with Constable Smyth have been any different than with Constable Noel or Constable Benoit who also operated the unit?

MR. DAVIS: No, it was all the same. Constable Smyth was the primary contact. You know, I did feel that they felt I was maybe restricting them somewhat from doing what they felt was appropriate.

MR. WILLIAMS: Did you have any sense of the workload that these gentlemen were carrying in terms of not only the close security detail that they provided but then additional, what I'll call paperwork, in terms of criminal intelligence work that they were responsible for?

MR. DAVIS: I wasn't. And I got a better sense of it in preparation to come here which I didn't know before.

MR. WILLIAMS: Did you have any sense that their resources were stretched while trying to provide protection to the Office of the Premier?

MR. DAVIS: Not until I was preparing to come here.

MR. WILLIAMS: Okay.

MR. DAVIS: Mr. Commissioner, we had long days. I worked – there's lots of days that we had very, very long days, 6 or 7 o'clock in the morning and we'd be in the office until 8 or 9 o'clock at night

THE COMMISSIONER: Something like an inquiry.

MR. DAVIS: Something like an inquiry, yes.

MR. WILLIAMS: You're talking to the wrong group about long days.

MR. DAVIS: Yeah so – but the point is, is that they were available until I was done for the night or until I was home for the evening so I can –

MR. WILLIAMS: In terms of providing protective services to members of your family, how often would the unit be in the presence of the family members? Give me a sense of the circumstances of how they would be in contact with your family?

MR. DAVIS: Lots of times. Many, many times.

If I had an event to go to, and my wife attended many events with me whenever it was appropriate, whenever she was available; at dinners, conventions, speaking engagements, those type of things. And I attended a lot of events over my time.

So if I was at the office, which I normally would have been, it just wasn't feasible for me to take the time to leave my office, go home and pick up my wife and then to go travel to the event. So there were times when they would directly contact my wife, they would pick her up; they would arrive at the office in time for us then to travel from there to the event.

And that happened regularly, probably most every week or sometimes several times a week.

MR. WILLIAMS: Would there be occasions where your wife would have to contact the unit to coordinate transportation and things like that to various official events?

MR. DAVIS: Yes, and they also had – I just thought of this, but they've also talked to my wife and our son, when he lived with us, and they were provided with the contact numbers for the Protective Services Unit in case they ever needed to call them for anything. And so that was: If you're uncomfortable or have an issue or concern, don't hesitate to pick up the phone and call us.

MR. WILLIAMS: Would you regard your familiarity with Constable Smyth any different than your working relationship with the chief of staff, Joe Browne, or anybody – the other senior staff within your office?

MR. DAVIS: Our relationships were based on the work that we did. They were professional relationships.

MR. WILLIAMS: Mr. Davis, you've given us evidence – and I don't want to go through it (inaudible) had some questions here with respect to the volume of correspondence and communications that comes in your office and I think you've spoken sufficiently on that.

What I would like to ask you is many people of the province are of the understanding that when they write the premier, or whether they send a tweet to the premier's Twitter account, or they send him a Facebook message, when they get a response, that's coming from the premier. Why is that interpretation – given the evidence you've given us today, why would that not be a realistic assumption?

MR. DAVIS: Just the pure, pure volume of requests, information correspondence. I had two people, two staff people in my office who full time tracked correspondence, so such as the letter from Ms. Breen as an example.

They would put it in their file management system, they would send it to the department, there would be diary dates and dates that it would be expected to be completed and sent back. Then it may go to, for example, my chief of staff for review and they would track all of that. They were full time plus another person besides. There was no way possible that me or any premier would be able to try to respond to correspondence, and all correspondence as it came in – impossible to do at that level.

MR. WILLIAMS: So following up on that, if we have an individual such as Mr. Dunphy – I don't want to speak to his case specifically, but if we have an individual who is a troubled or disgruntled recipient of Workers' Compensation or whether they're a client of one of the other departments, and they send a message to the Office of the Premier raising their concerns, how does that get dealt with? Is it thrown in the trash or does it get assessed and dealt with? Tell us how that practically happens.

MR. DAVIS: If someone writes the office?

MR. WILLIAMS: So you have a disgruntled worker who writes, says: I have a problem with Child, Youth and Family Services or I have a problem with the Department of Labour and they write your office, where does that go and how does it get handled?

MR. DAVIS: The same process. And I would say, I would think that anybody who relies on Workers' Compensation for their own livelihood or to care for their families are not happy. I would think that. I think it's fair to say most anybody – I wouldn't want – you know, you're injured, you can't work and you have to rely on this program with a lower level of income and I think anybody would be unhappy with that. So that was a common, we very commonly received – people were generally unhappy if they were applying to Workers' Compensation.

But just like anything, if someone wrote the office, it would be received by the staff that I referenced a few minutes ago, it would be TRIMed and then they, depending on the contents of it, they would forward it to the appropriate department and then track to make sure that a response was obtained.

MR. WILLIAMS: Mr. Davis, with respect to emails and messages, we've had a number by way of exhibits here at the inquiry and I know by way to disclosure – there are hundreds if not thousands of emails that would indicate that they are either sent to the premier, to you in your instance, to Paul Davis, or they're cc'd to Paul Davis, or they're sent from Paul Davis.

Can you give us a sense of how much of that type of correspondence you would actually see?

MR. DAVIS: I wouldn't see very much it. My own email, my own MHA – to use that, if I use that, not the premier of Newfoundland and Labrador email – but my own email, it wouldn't be unusual to receive hundreds of messages on any given day.

So there was no way that we could do an adequate job and sometimes – and I know even when we went in the office, Commissioner, when we first went in the office, we had a period of time where we were trying to catch up, that we were trying to get adjusted to the office and the process and the programs. It took some time for staff to know them.

There was a period of time we were behind and that was a concern for us; do some work in the nighttime and so on to try and catch up but it was just so enormous.

MR. WILLIAMS: What was your understanding, Mr. Davis, of the expectation of the Protective Services Unit in terms of referring matters to them of a security concern?

MR. DAVIS: If there was something that, my understanding was – and again, it was dealt by staff, but my understanding was that if someone saw something, read something, heard something that it was concern for them, to forward it to the Protective Services Unit and let them deal with it.

MR. WILLIAMS: And so would the actions of Ms. Ivey be in keeping with this?

MR. DAVIS: Yes, it would.

MR. WILLIAMS: Okay.

Moving on to the events of April 5, 2015, for the record had you ever heard of Donald Dunphy prior to the events of April 5, 2015?

MR. DAVIS: No.

MR. WILLIAMS: Had you ever dealt with Donald Dunphy in any capacity in your role as a minister in any other government department?

MR. DAVIS: No.

MR. WILLIAMS: Had you ever read or viewed any social media postings by Donald Dunphy posted to any of your accounts, whether they be Facebook, Twitter, email or any other accounts prior to April 5, 2015?

MR. DAVIS: No.

MR. WILLIAMS: Had any other minister or other government official ever brought to your attention any matter concerning Donald Dunphy prior to April 5, 2015?

MR. DAVIS: No, I have no recollection or knowledge of knowing Mr. Dunphy or knowing of Mr. Dunphy prior to April 5.

MR. WILLIAMS: So at any time between April 3, 2015, and late in the afternoon of Sunday April 5 did you have any discussions with Chief of Staff Joe Browne, Communications Director Heather McLean, Communications Assistant Donna Ivey or Constable Smyth with respect to any matters pertaining to Donald Dunphy or the tweets he had posted?

MR. DAVIS: No.

MR. WILLIAMS: So contrary to any social media postings stating otherwise, did you at any time play any role, provide any direction or any instruction to the Protective Services Unit to either investigate or attend at the home of Donald Dunphy on April 5, 2015?

MR. DAVIS: No.

MR. WILLIAMS: The first you ever learned of this matter was two hours subsequent to his death?

MR. DAVIS: When I received – the conversation with Joe Browne was the first I knew of the matter.

MR. WILLIAMS: In the meeting that was held in your office late in the afternoon of April 5, 2015, you indicated that there was to be no formal action taken and you would monitor the matters. Is that correct?

MR. DAVIS: Yes.

MR. WILLIAMS: Did you put your mind to actually addressing the Dunphy family during that meeting?

MR. DAVIS: Yes.

MR. WILLIAMS: And what was determined?

MR. DAVIS: At my first opportunity when we anticipated I would speak the next day, media were already calling; media were calling before we even had our meeting. So we anticipated we'd be speaking to the media or speaking to the people the next day through the media and at my first opportunity I would express my condolences to the family.

MR. WILLIAMS: There's much made of your having called Constable Smyth that I think we established through your direct evidence was between 10:30 and 11 o'clock on the evening of the 5th.

MR. DAVIS: Yes.

MR. WILLIAMS: Is it fair to say that you actually put in your mind to how to address the Dunphy family within two hours of learning of Mr. Dunphy's death?

MR. DAVIS: It was a topic of discussion very early – we had a short meeting when we got together and that was an important part of the discussion.

MR. WILLIAMS: And so you put your mind to that long before you ever called Constable Smyth.

MR. DAVIS: Yes.

MR. WILLIAMS: There's been some attention paid to the fact that there was no follow-up action by your office or government to look into concerns and circumstances regarding Mr. Dunphy or his Workers' Compensation issues following the shooting. Can you advise why there was no action taken by your office to look into why Mr. Dunphy had raised these concerns?

MR. DAVIS: Commissioner, we knew that the investigation was still taking place. But there's always work being done and I would expect work to be done by government and workers' compensation to make that system work as best as it can. And I'm sure they were following what took as well as virtually every person in the province, but I was also cognizant of not interfering with the investigation.

THE COMMISSIONER: How are you doing Mr. Williams, in your –

MR. WILLIAMS: Getting fairly close. I probably will be another five or 10 minutes, but I am getting close.

THE COMMISSIONER: Leave us some time if you can because we have a few things that we have to deal with.

MR. WILLIAMS: Okay.

Well, I'll move to some of the other issues. And that being said, perhaps I'll move to some of the newer exhibits that have not yet been brought. Maybe if, Madam Clerk, could bring up a couple of exhibits. The first one being Exhibit P-0705.

I want to bring to your attention some of the postings that were on social media in the days immediately following, in the months immediately following, to get a sense of the kind of reaction that came to this matter. The matter that's being brought up is a posting to Facebook. I don't have the date on which this was done. I don't think we have the date on it, but I'd like to just read this out to get a sense, and without getting comment, maybe I'll address all three exhibits and then you can give me your comment.

This one states – and it's from Mike and the last name is redacted: “We're going to find this friend of Premier Davis who murdered Don Dunphy in his own home” –

MR. DAVIS: Mr. Williams, sorry, just before you read through it. I think I read here, the gentleman last's name is somewhere in the document.

MR. WILLIAMS: I think that's been extracted. Yeah.

MR. DAVIS: Okay, I didn't – the copy I had his name was still –

MR. WILLIAMS: Yeah, that's been redacted. On the back of that page it has been redacted.

MR. DAVIS: Okay. The copy I have his name was still there. That's why – I'm sorry.

MR. WILLIAMS: Yeah, no, no. We've redacted that, I think, on the second page – yeah, right here on the second page. Yeah, right here.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. WILLIAMS: Yeah.

“We're going to find this friend of Premier Davis who murdered Don Dunphy in his own home in cold blood for insulting his buddy on Twitter. I've read the entire tweet and there was absolutely no threat what so ever in it. Don was murdered for no reason other than exercising his right of free speech! What the hell were Newfie's thinking when they voted in this piece of condescending shite named Davis? This SOB has done nothing but victimize himself and” – I don't know if this is an abbreviation – “ape his friends fictitious excuse for murdering Don Dunphy. As you all know we will be looking hard at Wsib NFDL to see just how arms length from this ex cop premier they truly are. We are also looking for pics of the murderer. I have a suspect already which I'll post and we'll keep going until we hit the right one.”

And then on the back of that the smaller wording: “Don Dunphy was murdered, assassinated on behalf of this POS by one of his old Constable buddies who now plays his bodyguard. We're looking for the murderer and we will discover his identity and make that SOB famous! Would any of condescending Newfie killers like to come to Ontario and try your gun skills on Mean Ole Mr.” Blank? “You're training wouldn't be worth spit here. This event will not pass away and you will wear it the rest of your lives, I promise you all that.”

If we could bring up Exhibit P-0706. And again, I don't intend to read this whole one out, but only the preamble. This is a posting on blog, I understand, on September 23, 2016 from Rock Solid Politics and it states, it's titled: “UPDATED – The Killing of Don Dunphy” and it states:

“Make no mistake about the killing of Don Dunphy – he was wrongly killed. We don’t have all the evidence yet, but we will. What we do know points to a state sponsored killing of one of its own citizens. A citizen that was an active critic of the government on social media. The evidence we do have points solely to that interpretation.”

Again, time doesn’t allow us to go through that and analyse it but it goes on for some pages. I believe it goes on for another five pages.

The last one I’d like to bring to your attention is Exhibit P-0523, please. If we could go to page 3 of that exhibit, please, Madam Clerk.

This is addressed: “Dear Mr. Premier!! Hello, I am Jeremy” Blank “AKA Anon-Foot I have recently heard about a shooting death involving a man named ‘Don Dunphy’ who was apparently shot in the back, while he was pointing a ‘loaded gun’ at an RNC Officer..

“I have a simple question for you... Do You understand how the ‘Law of Physics’ Works on our lovely little planet??

“In Order for that man, to take a bullet in the back, he would have had to have Turned Away from the officer, hense-forth, Dis-engaging in Any Violent Encounter...

“If the Officer had Any Right to shoot the man, Don would have received a bullet in the Chest, Not in the back...

“We at Anonymous, had Also realized, that Don Dunphy, Shortly before his death, Opposed you, and spoke out about you, and your ‘Scandals’ ... couple days later , he is dead...

“when it comes to Politics, This happens A LOT!!!

“I am personally Not sorry to inform you.. that This is a situation, to where Anonymous feels the need to get involved...

“Politicians should NOT have the Right, to Authorize a Murder, on somebody who is Only Telling the Truth!!

“Now, I must warn you...” – and to page 4.

“you only have a couple weeks left, before Anon goes Full Blast on your political career...

“I Suggest, you tell the truth, while you still have the Formal Chance to do so...

“Anonymous is a family.... Unfortunately for You Mr. Davis.... Don Dunphy was a Part of Anonymous, Hence, a part of Our Family!!!

“Come Clean, before we have a chance to grab a rag

“We are Anonymous

“We are Legion

“We Do Not Forgive

“We Do Not Forget

“Corruptive Politicians and Liar Governments

“Expect Us ;-)”

I bring those three to your attention as that’s only a sampling –

MR. DAVIS: It is.

MR. WILLIAMS: – of what we have received in preparation for this inquiry.

Is this the tone and the tenor of correspondence that your office received in the days, weeks and months following?

MR. DAVIS: Yes, it is.

MR. WILLIAMS: What’s your feeling towards – your reaction and feeling towards this kind of correspondence?

MR. DAVIS: You know, there is a lot said in these documents.

MR. AVIS: I can’t hear you, Sir.

MR. WILLIAMS: Move in a little.

MR. DAVIS: Oh, sorry. Sorry. I said there is a lot said in these documents. If you just go back to the last one, you know, for a second, Anonymous, I know who Anonymous are. Anonymous are the people who wear the masks and they show up – I have seen them on the steps of Confederation Building and so on.

So, you know, I can tell you this is all part of the impact that it has, not only on me but anybody who’s elected. And I spoke earlier about there is no accountability for – you can say what you like on social media today without being accountable. One time there was ethics or guidelines for media and so on, but there is none of that anymore and people can say what they like.

So, you know, I said to you when I did the scrum that there was a lot on my mind. There was a lot happened – a lot of things said in a very short period of time. And I think you are right when you said this is just an example of some of the things we received.

MR. WILLIAMS: Just in summary, as opposed to posing questions to you, given the time restraints, I brought the Commission’s attention, the inquiry’s attention, to a CBC article regarding Premier Rachel Notley who have indicated that they have seen a significant increase last year, some 412 incidents, 26 that were actually – had to be followed up by the RN – by the police, I’m sorry, in Alberta.

In Newfoundland, we have seen increased use of video surveillance in the House of Assembly, as well as Confederation Building; security check points now at all entrances.

MR. DAVIS: (Inaudible.)

MR. WILLIAMS: The public is not allowed in the main lobby or to enter the Confederation Building through the main lobby; key card passes to get to every department; security accompanied to go the premier’s floor; and restricted access.

MR. DAVIS: Anywhere.

MR. WILLIAMS: Anywhere in the building –

MR. DAVIS: Any visitor has to be escorted now through the building.

MR. WILLIAMS: Given all of these matters, do you feel there's a real necessity for a protective service unit for not only the premier, but for public officials in this province?

MR. DAVIS: Absolutely.

MR. WILLIAMS: Okay.

That's all the questions I have.

Thank you, Mr. Davis.

THE COMMISSIONER: Thank you, Mr. Davis.

We'll – I have a brief recollection that you've sparked to me where I was in one party and I received constantly an abusive letter from Northern Newfoundland by someone who seemed to be a member of another party just because of the vitriolic comments he would make towards me. So you may have known I changed parties after a while.

MR. DAVIS: I did know something about that, yeah.

THE COMMISSIONER: And within a day or so of changing parties, I see – but this time I can recognize the handwriting of the individual. It got so bad at one point that I wrote back and told him that somebody had stolen his name and was obviously sending out these letters under the wrong name because I'm sure he wouldn't do it.

But one of the first letters I got after moving across the House, across the floor as they say, I recognized the envelope, same handwriting. And I said: Now, this is going to be good, he's going to love me because, obviously, I moved to the right party as far as he's concerned. I tore open the envelope fairly quickly and I started to read it. Well, I wasn't any good then; I'm no good now.

So I could appreciate some of the concerns and the effect of some of the comments you might have had. That's just on a lighter note; I'm not ignoring the stresses that are placed on people because of the anonymous, non-accountable, irresponsible comments on social media. And we'll have an opportunity to have some discussion in a broader sense on those, hopefully on the day that we scheduled for our Phase 2 where we're trying to do some discussion of articles that we've collected on this as well as other items.

Anyhow, thank you.

And we'll, before we go, before we recess, who was it had – did you – you dealt with your details through Commission counsel, did you?

MR. SIMMONDS: I spoke to Commission counsel and I'm satisfied that I have a –

THE COMMISSIONER: Okay.

MR. SIMMONDS: You know, I just thought it would take too long to deal with it in the –

THE COMMISSIONER: All right.

Mr. Avis?

MR. AVIS: If I may, one of the things Mr. Simmonds raised with me is, when you get my application – unfortunately this afternoon I was supposed to be discussing the incident with – the matter with the OPP and its availability. I did manage to leave a contact and it certainly will – I’m supposed to have it Monday.

What my intention was today was to do the application. I’m going to have to do it tomorrow. And what I thought I was going to do then – and I guess it’s just going to be a bit late and it might have to be me typing with my two fingers because I don’t know if I have any staff –

THE COMMISSIONER: Your application, you’re contemplating – refresh my memory again?

MR. AVIS: Threat and risk assessment.

Threat and risk assessment.

THE COMMISSIONER: Right.

MR. AVIS: So what I was going to do and I was going to suggest to do is I’m going to file it. Now, because I’m doing it tomorrow, I will send it to all the parties rather than counsel. And I believe mine’s a lot simpler, but you’re arguing all the same law. It could be dealt with Monday morning as well, but only if everybody’s prepared to. That’s all I can do.

THE COMMISSIONER: Right.

MR. AVIS: I think that’s –

THE COMMISSIONER: Well, we’ll look at it.

Now, I have to say, in this context, I think a number of you, not – don’t – the last person to mention it; don’t think you’re the only one. I’ve had a few concerns raised that we’re going at a breakneck speed. Well, that’s not unplanned, as you know.

From day one, I set a schedule and roughly it was two days – two months of preparing to get the inquiry up and running, two months hearings, two months writing the report. And by and large we’ve stuck to that schedule with a bit more time over Christmas. We didn’t start in Christmas week; we started in January. But that’s the schedule I intend to keep and as far as it’s humanly possible.

So I apologize if everybody’s under stress, but a big part of the reason is just the sheer expense of every day that we’re sitting as an inquiry. This could easily go on for a year or two years at enormous expense. I’ve gotten good co-operation from counsel in terms of negotiating down through the Department of Justice, I think, the rates that would be paid. Everybody worked through that. Everybody’s co-operated in terms of general timing.

And in terms of when we have applications, I’m dealing with them quickly because that’s the only way we’re going to keep a reasonable schedule and the only way we’re going to maintain some reasonable control of the cost to government of this inquiry. Because, as I said, the biggest factor in the inquiry is, frankly – apologies for mentioning it – is the cost of counsel. And that’s on an hourly, daily basis and it is considerable. And you’re earning every cent of your money, but I have to be cost conscious and that’s a big reason why I’m trying to keep us on that schedule.

Also, I want to make sure that I have enough time to write the report without asking for an extension in terms of I've been given a deadline and I have to have this report completed by the end of June and I'm working on that schedule. There will be several weeks required for printing, I understand, which sort of, again, cuts into the time I'm going to have for writing.

But I say that, if Mr. Avis, in the case of your expert, one of the things I thought when you were presenting it is that first of all you don't really know the extent to which it's needed, do you, at this stage in terms of –

MR. AVIS: I – well, you know, today, Mr. Simmonds raised it. All I've done is – what I ended up deciding doing, it took me a while to get there unfortunately, is essentially a brief narrative of what occurred up to going to Mr. Dunphy's door. I realize there are some nuances. I asked eight questions and they're the questions that are before this inquiry.

The tweet, what is that – and this is a unit that, you know, is one of the largest and, I would suggest, best in the country. We're looking – there was a question today about the future of the PSU. I believe this man may be of some great assistance there and the issues that are before us.

Should one person have gone or not, should he have done this, should he have done that: there's eight questions and that's it. The way I do work, the way I –

THE COMMISSIONER: But you may find – I don't know but have you – we don't have our report there in that regard yet, do we?

MR. AVIS: The –

THE COMMISSIONER: Is it filed?

MR. AVIS: You know so –

THE COMMISSIONER: So we don't – you don't know –

MR. AVIS: That's what I'm filing with my application.

THE COMMISSIONER: You don't know if there's any disagreement on any of these issues, do you?

MR. AVIS: Well, with respect, it's brought up every day, so why is it being brought up every day if there's no – your counsel questioned it, Mr. Simmonds questions it. You even said yesterday – I know you were just, you know, being lighthearted and it's much appreciated, but you did use the word a little cynical and I feel that no one's accepting what this is.

THE COMMISSIONER: No, I think – and probably, you probably correctly interpreted it. I think I used the term blasé, didn't I?

MR. AVIS: That's fine, I'm not suggesting anything by it but –

THE COMMISSIONER: But I'm confused to be honest with you. We have two reports coming in; one of which is on file, Gareth Jones. He's speaking about the investigation, how an investigation should proceed. The other is use of force and that's not filed yet and –

MR. AVIS: I understand.

THE COMMISSIONER: And, you know – and what our expert says you may agree with. Your report –

MR. AVIS: Well, absolutely Commissioner.

THE COMMISSIONER: Your report may be redundant, might it not?

MR. AVIS: Commissioner, absolutely. If I may say so – and I'm looking for it in my – we're spending time – I did raise the point that both – although I doubt it for what Mr. Kennedy is doing – that the use-of-force report may answer my concerns. But Mr. Kennedy and I reached the point that we have to start this now because it's going to be too late. If we have to wait – because the report is late – not understand why.

THE COMMISSIONER: Right.

MR. AVIS: So we're providing it in advance, I think it's – we can, you know, –

THE COMMISSIONER: That's fine.

MR. AVIS: – part of our responsibility, and if it's that simple, well then maybe everyone can agree on his answer which may only be a few pages.

THE COMMISSIONER: Yeah, I may be a little optimistic in that regard, but I point out that that's a possibility. Okay.

MR. AVIS: And in terms of time –

THE COMMISSIONER: Well, get your material in, I'll read it on the weekend. I don't know what other counsel have planned but ...

MR. AVIS: Well, they (inaudible).

THE COMMISSIONER: Now, how we're going to get it is another question.

MR. AVIS: I'm going to email it to everybody tomorrow. I just –

THE COMMISSIONER: Okay.

MR. AVIS: I just, I've got to go in, I just hope I press the right buttons.

THE COMMISSIONER: Well, from what I've heard, I'm not going to be anywhere near your office when you try.

Okay, so we'll break now; it's 5 o'clock.

Oh, sorry, Mr. Kennedy.

MR. KENNEDY: You – in terms of the application to edit the text messages.

THE COMMISSIONER: If you want to step down, Mr. Davis, feel free, sorry.

MR. KENNEDY: In terms of the application to edit the text messages, you indicated that you wanted something or some kind of, something in writing.

THE COMMISSIONER: Yes, but –

MR. KENNEDY: So I've got a letter here that – I'm just going to file that. The way we've been doing it is giving it to Commission counsel –

THE COMMISSIONER: That's fine.

MR. KENNEDY: – and they will send it out.

Now the point, Commissioner, that I think has been discussed briefly, but I'm assuming that this application on the text messages will be held in camera until the decision is made.

THE COMMISSIONER: The – that's concerning redactions?

MR. KENNEDY: Yes.

THE COMMISSIONER: Yes, that'll be in camera. Anything related to that will be in camera until the decision is made otherwise, yeah.

MR. AVIS: Sorry, Commissioner, one last point.

THE COMMISSIONER: Go ahead.

MR. AVIS: My brother testifies next week.

THE COMMISSIONER: Sorry?

MR. AVIS: My brother, Dr. Avis, testifies next week.

THE COMMISSIONER: Oh, yes.

MR. AVIS: Now, he also testified at the Lamer inquiry, and I know, I realize there is no such thing as a precedent. Lamer didn't have too much trouble with me if I was just going to question my brother. It turned out that there was a small contradiction, so it had to be raised, I didn't.

I really only just have a few questions for him. I'm just wondering if I have to bring another counsel with me. I have no intention of cross-examining.

THE COMMISSIONER: No, I'm not too concerned, and I'm assuming you don't talk to your brother.

MR. AVIS: Well, we are having – no, we would never talk about this unofficially.

THE COMMISSIONER: No, that's all right.

MR. WILLIAMS: Before we break. I have nothing to do with applications to wonder about, just the scheduling. I had Mr. Browne ready for Monday. Are we starting early Monday and when will he expect to start evidence?

THE COMMISSIONER: The plan is to start at 9:15. I think Mr. – the redaction applications is be heard first and then the – Mr. – so that's Mr. Kennedy's or – well, it's, we put forth our – sorry, go ahead.

MS. O'BRIEN: There's two applications going forward for Mr. Kennedy. So the first one will be the redaction which will be in camera, then we'll go to his application regarding Dr. Collins.

THE COMMISSIONER: Right.

MS. O'BRIEN: And then if we get Mr. Avis's, then we can do the third.

THE COMMISSIONER: We'll go to that.

MS. O'BRIEN: We've currently set aside an hour; 9:15 to 10:15 on Monday morning.

THE COMMISSIONER: Right.

And that is a short time to hear three applications but we have to – what do they say: Cut the garment to suit the cloth. And we have a schedule here and I've given you some cases to read and we'll deal with it.

Mr. Simmonds, do you have anything?

MR. SIMMONDS: No, my only concern, and I'm sure everybody is going – if we get these reports it may require a response to them and there's been – but I understand your concern, I appreciate the concern your saying about the cost, that obviously it's a significant concern here.

THE COMMISSIONER: Yeah.

MR. SIMMONDS: And the time left –

THE COMMISSIONER: But I'm not ignoring the need to be thorough, but I'm assuming, and I don't have no problem with what we've done so far. I think we're being thorough, but we can – I always point out if the US Senate can restrict the Senators speech to five minutes on a matter of nuclear danger, you should be able to get your argument out in 15.

So anything else before we ...?

UNIDENTIFIED MALE SPEAKER: No.

THE COMMISSIONER: Okay, let's recess until 9:15 on Monday morning.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.